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December 7, 2017

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

Re: Docket No. FD 36161, City of Sammamish, Washington –
Petition for Declaratory Order

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find (i) an executed original (which contains four marked color pages) and ten copies of the City of Sammamish, Washington – Petition for Declaratory Order; (ii) a check for the filing fee of \$1,400; (iii) an executed original and ten copies of the City of Sammamish, Washington's Requests for Filing Fee Waivers; and (iv) three CDs with PDF copies of the two filings.

Kindly date stamp the extra copy of this cover letter and the enclosed pleadings and return them to the bearer of this letter. Thank you for your attention to this matter.

Respectfully submitted,

Peter A. Pfohl
An Attorney for the State

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CITY OF SAMMAMISH, WASHINGTON –
PETITION FOR DECLARATORY ORDER

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) Finance Docket No. FD 36161
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**CITY OF SAMMAMISH, WASHINGTON –
PETITION FOR DECLARATORY ORDER**

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Dated: December 7, 2017

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STATEMENT OF QUALIFICATIONS AND VERIFICATION

EXHIBITS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CITY OF SAMMAMISH, WASHINGTON –
PETITION FOR DECLARATORY ORDER

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Finance Docket No. FD 36161

**CITY OF SAMMAMISH, WASHINGTON – PETITION
FOR DECLARATORY ORDER**

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the City of Sammamish, Washington (“City of Sammamish” or “City”), hereby petitions the Surface Transportation Board (“STB” or “Board”) for an order declaring that the construction and use of a “railbanked” corridor for interim use as a recreational trail by King County, Washington (“King County” or “County”), is not exempt from the City’s local land use and development regulations, and that neither the Interstate Commerce Commission Termination Act, Pub. L. 104-88, 109 Stat. 803 (“ICCTA”) nor the National Trails System Act, 16 U.S.C. § 1247(d) (“Trails Act”) authorizes King County to override such local public health and safety regulations in order to operate such a trail.

While the dispute is pending before the United States District for the Western District of Washington following the issuance of a Preliminary Injunction, the City of Sammamish respectfully submits that issuance of a declaratory order in the limited area of ICCTA preemption is necessary and essential to resolve an active controversy and remove considerable uncertainty. In issuing its preliminary injunction

order, the trial court has made expansive legal categorical findings that, “like any active railroad line, state and local attempts to control a railbanked corridor are preempted by the ICCTA” and that the City of Sammamish “does not have the authority to regulate” trail corridor and crossing activities to protect the public health and safety of its citizens.¹ Such findings that a railbanked corridor enjoys even more expansive preemption rights than an active line of railroad fly in the face of established Board precedent.² Moreover, the Board has issued declaratory orders previously where courts have misconstrued the Board’s preemption authority over state and local law.³

Issuance of a declaratory order is necessary here to avoid the far-reaching and absurd results that King County seeks. A declaratory order is also appropriate given

¹ Exh. 1, Order Granting King Cnty.’s Mot. For Prelim. Inj., *King Cnty. v. City of Sammamish*, No. 2:17-cv-00921-JCC (W.D. Wash. Aug. 8, 2017) (“Order”) at 5-6.

² E.g., *Maumee & W. R.R. Corp. and RMW Ventures, LLC – Pet. for Declaratory Order*, STB Finance Docket No. 34354 (STB served March 2, 2004) (“*Maumee*”); *Lincoln Lumber Co. – Pet. for Declaratory Order – Condemnation of a R.R. Right-of-Way for a Storm Sewer*, STB Finance Docket No. 34915, slip op. at 3 (STB served Aug. 13, 2007) (“*Lincoln Lumber*”); *Mid-Am. Locomotive & Car Repair, Inc. – Pet. for Declaratory Order*, STB Finance Docket No. 34599 (STB served June 6, 2005) (“*Mid American Locomotive*”).

³ *City of Milwaukie – Pet. for Declaratory Order*, STB Finance Docket No. 35625 (STB served Sept. 10, 2012) at 2 (decision instituting a declaratory order proceeding); *Chadwick’s of Boston, Ltd. – Pet. for Declaratory Order – Certain Rates & Practices of United Parcel Serv., Inc.*, 2017 WL 3424972, at *2 (June 16, 1995) (“*Chadwick’s*”) (“we will exercise our broad discretion to institute the requested proceeding on a limited basis in order to assist the court in resolving the issues it faces”); *Ill. State Toll Hwy. Auth. – Pet. for Declaratory Order*, STB Finance Docket No. 36075 (STB served Jan. 17, 2017) (“*Illinois State Toll*”) (Board institutes a declaratory order proceeding on ICCTA preemption while District Court’s § 10501(b) preemption determination is on appeal before the Seventh Circuit).

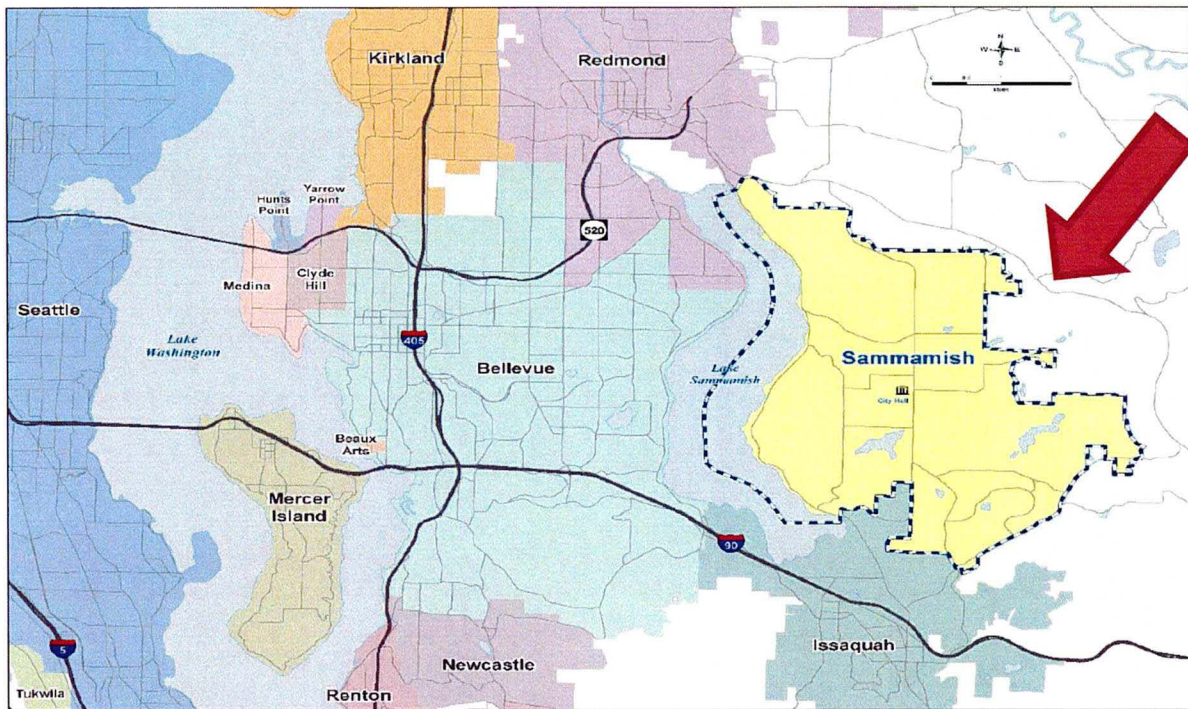
the Board's primary authority to determine the scope of its regulatory authority in an area squarely within its expertise, and in light of the court's initial findings about the nature and extent of preemption that contradict the Board's established interpretation, which could have broad-ranging effects and create confusion and error elsewhere.

The City of Sammamish is submitting this Petition as its case-in-chief in support of the relief requested.

In further support of its Petition, the City of Sammamish states as follows:

I. FACTUAL BACKGROUND

The City of Sammamish, incorporated in 1999 within the confines of King County, is a medium-sized community with a population of approximately 61,250, located in the greater metropolitan Seattle, Washington area adjacent to Lake Sammamish. A regional area map reflecting the location of the City is as follows:



King County operates the East Lake Sammamish Trail (“ELST”), a “railbanked” corridor under the Trails Act.⁴ The approximately 11-mile trail, 7.2 miles of which lie within the City of Sammamish, was authorized in *Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in King County, WA*, STB Docket No. AB-6 (Sub-No. 380X) (STB served Sept. 16, 1998). In that decision, the Board, on reconsideration, modified its prior August 5, 1998 decision that exempted Burlington Northern & Santa Fe Railway’s (“BNSF”) abandonment of the Redmond-Issaquah rail line. The line had been out-of-service and embargoed for safety reasons since 1996.⁵ The Board implemented a 180-day interim trail use/railbanking period to allow for the negotiation and implementation of trail use under the Trails Act.

BNSF then reached agreements to railbank the line, including the approximately 11-mile ELST corridor, to King County. *Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in King Cnty., WA*, STB Docket No. AB-6 (Sub-No. 380X) (STB served Mar. 31, 2000) at 1 n.2. As a result, King County is the interim trail manager for this corridor, with the interim trail use/railbanking subject to the *future* restoration of rail service. *Id.* at 1 n.3.

King County is not a common carrier railroad. To the contrary, the ELST came about only after King County, together with The Land Conservancy of Seattle, was

⁴ *E.g.*, <http://www.kingcounty.gov/services/parks-recreation/parks/trails/regional-trails/popular-trails/east-lake-samm.aspx>.

⁵ *Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in King Cnty., WA*, STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 4, 1998) at 1.

found to have improperly manipulated and misused the STB's exemption procedures under the guise of acquiring and operating a rail line. The acquisition exemption originally became effective in April 1997.⁶ However, the Board later determined that King County (and the Land Conservancy), notwithstanding its prior representations to the contrary, "manifestly" never intended to reinstate rail service, but instead had "put into effect a plan to convert the line to trail use as soon as possible following its acquisition of the line." *King County Rail Line Acquisition* (STB served Sept. 26, 1997) at 3. On reopening, the Board determined that King County had both "misuse[d]" and "abused" the STB's processes because it had intended only to immediately abandon the line for non-rail use as a trail, and "[t]o protect the integrity of [its] processes," the Board revoked the exemption and ordered the rail line be conveyed to BNSF. *Id.*⁷

Apparently undeterred, despite the Board's findings in two decisions that King County is not a rail carrier and "never had any intention of continuing rail service on the subject line," King County, almost a decade later, again seeks to cloak itself in the guise of and invoke the rights of a rail carrier, along with the preemption provisions of ICCTA applicable only to rail carriers, in an improper, unilateral attempt to flout longstanding state and local public health and safety regulations that it clearly does not like.

⁶ *Land Conservancy of Seattle & King Cnty.—Acquisition & Operation Exemption—Burlington N. & Santa Fe Ry. Co.*, STB Finance Docket No. 33389 (STB served Apr. 30, 1997) ("*King County Rail Line Acquisition*").

⁷ The Board's decision was upheld on reconsideration. *King County Rail Line Acquisition* (STB served May 13, 1998) at 5, 10-11.

Under the Board’s rules and applicable precedent, the ELST is subject to future reconstruction and reactivation of rail service. However, King County is not a licensed common carrier railroad, and if any application to construct and operate a rail line over the corridor is authorized (or exempted), “then the [Certificate of Interim Trail Use] will be vacated accordingly.” 49 C.F.R. § 1152.29(c)(3). No such rail service restoration has been sought to date by BNSF, King County, or any other party. Nor could there be, at least by King County, because, as discussed, the Board has held that King County, has “[m]anifestly . . . never had any . . . intent” to reactivate and engage bona fide rail service on the ELST corridor.

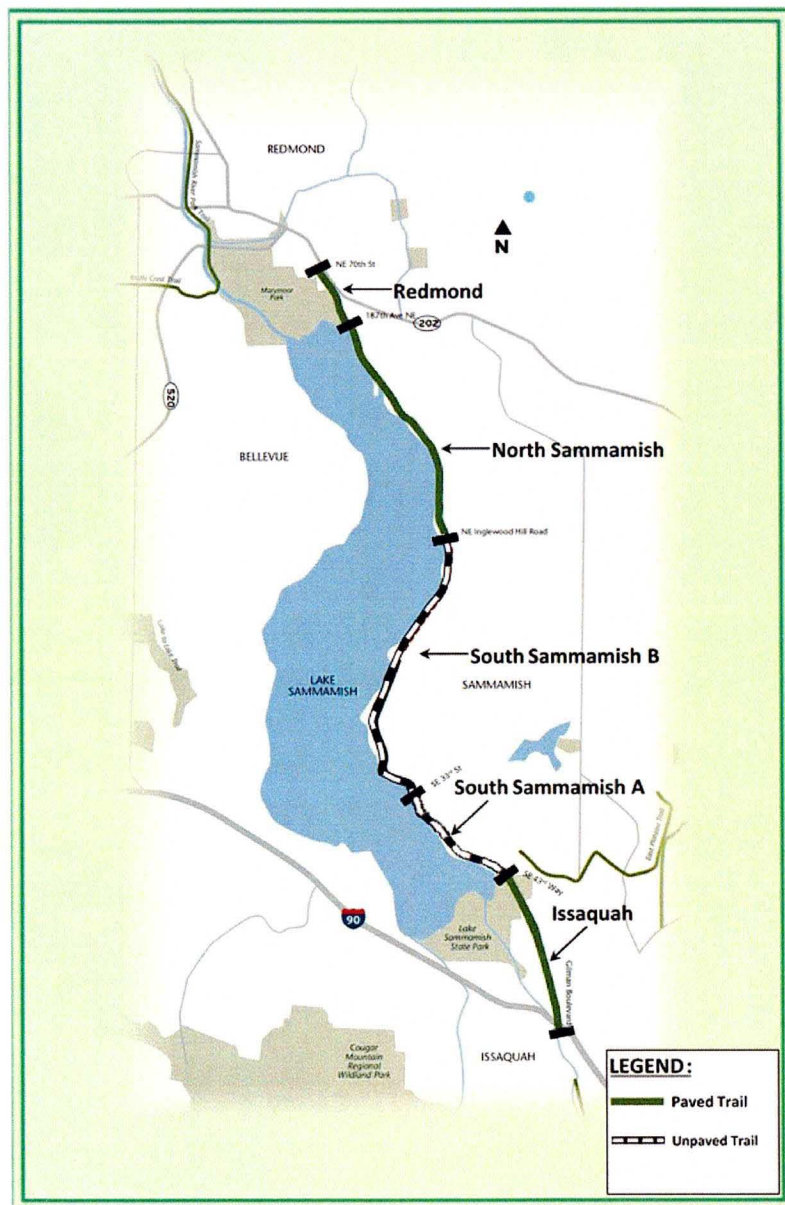
A. Trail Development

King County constructed a soft-surface trail on the ELST in 2006, but is now converting the ELST into a paved shared-use path and non-motorized transportation facility connected to other trails in the County’s regional trail network.⁸ The County has divided the ELST into five segments for this purpose.⁹ As of June 2017, paving was complete on three of these segments (the Issaquah, Redmond, and North Sammamish segments). *Id.* Two segments – South Segment A and South Segment B – both located in the City of Sammamish, are incomplete. South Segment A is substantially complete (although it fails to conform to City requirements at the Intersections) and South Segment

⁸ See Exh. 2, Amended Complaint, *King Cnty. v. City of Sammamish*, No. 2:17-cv-00921-JCC (W.D. Wash. July 17, 2017) (“Amended Complaint”) at ¶¶ 11-12.

⁹ *Id.* ¶ 12.

B is in the first stage of the land-use permitting process under City of Sammamish shoreline development regulations.¹⁰ The location of the trail, and in particular south Segment A, the subject of the parties' current dispute, is shown on the following ELST map:



¹⁰ See *id.* ¶ 13.

1. City Regulations Pertaining to Use of Public Rights-Of-Way

The City is located along Lake Sammamish and understandably attaches a high priority to maintaining public roads in the area. Operation and maintenance of those local City roads became the City's responsibility, and not that of the County, upon the City's incorporation in 1999. Maintenance and repair of the right-of-way for public roads accounts for \$23.8 million of the City's budget.

To protect these significant public assets and avoid harm or public nuisance, the City has adopted a system of right-of-way use permits to control and ensure that right-of-way uses are consistent with the public health, safety, and welfare of the community. The Sammamish Municipal Code ("SMC") makes it unlawful for anyone to perform construction, maintenance, or other such uses of the public right-of-way without first obtaining a right-of-way permit issued by the City.¹¹

A right-of-way permit is not a rubber-stamp authorization; it assures substantive safety and design regulations are adhered to in City streets. The SMC incorporates Public Works Standards that provide minimum engineering criteria and specifications for work in the right-of-way. The city reviews right-of-way permit applications for compliance with the Public Works Standards, SMC, and other applicable regulations.¹² As with other permits, the applicant has the burden to prove it meets the requirements for issuance of the permit.¹³ Failure to obtain or comply with the permit

¹¹ See Exh. 3, SMC 14.30.010.

¹² See Exh. 3, SMC 14.30.010-020.

¹³ See *generally* Exh. 4, SMC 14.01.010.

“may result in stop work orders, removal of work (at developer’s expense) or other penalties as established by ordinance.”¹⁴

**2. The County’s Initial Compliance with the
City’s Permitting Rules**

King County initially complied, without objection, with the City’s standard permitting rules on South Segment A. The County sought, and the City issued, a shoreline substantial development permit (“SSDP”) to the County for South Segment A in July 2015. The SSDP is a land-use permit required under the Washington state Shoreline Management Act¹⁵ before development in the shoreline jurisdiction (within 200 feet of the ordinary high-water mark of Lake Sammamish) may occur.¹⁶ The SSDP approved the County’s plans for the general alignment and design of the improvements to South Segment A, subject to various conditions to mitigate shoreline and related impacts. The County then also sought, and the City issued, a construction permit known as a clearing and grading permit (“C&G permit”) in October 2016 as permit No. CG2016-03488.¹⁷ The County began construction under the C&G permit to pave and widen South Segment A on December 19, 2016.¹⁸

¹⁴ See Exh. 3, SMC 14.30.080; Exh. 5, SMC 23.70.010.

¹⁵ Shoreline Management Act of 1971, Wash. Rev. Code § 90.58, <http://app.leg.wa.gov/rcw/default.aspx?cite=90.58>.

¹⁶ See Exh. 6, SMC 25.08.020.

¹⁷ See Exh. 7, Permit No. CG2016-03488; Exh. 8, SMC 16.15.050-070.

¹⁸ See Exh. 2, Amended Complaint ¶ 15.

The approved permits did not cover any work by the County in the Intersections or other City rights-of-way, for which the SMC requires separate right-of-way use permits.¹⁹ The County had the right, but elected not to file an appeal of the conditions imposed by the City in the C&G permit. Those permit conditions, including the obligation to obtain a right-of-way permit, are now final and unappealable.²⁰

3. The Signage Dispute

During the review of the permits for South Segment A, including both the SSDP and the C&G permit, a dispute arose between the County and the City regarding roadway priority and traffic controls where the ELST intersected two City streets: 206th Avenue SE and SE 33rd Street (collectively, the “Intersections”).²¹ At the time the County applied for the C&G permit, and for many years prior, the City’s existing traffic controls at these Intersections consisted of stop signs directed toward bicyclists on the trail as they approach the cross streets. Motor vehicles were subject to no traffic controls at the Intersections. City records show zero accidents occurred at the Intersections with

¹⁹ Exh. 7, Permit No. CG2016-03488 (provides that: (a) “[t]he modification, relocation, or installation of a traffic control device affecting City Right of Way (ROW) or other work connecting the ROW (e.g., curb returns and ramps) requires approval of a ROW permit prior to placement of any such device or improvement,” and (b) “[n]o work in the ROW is approved under this permit. A separate ROW permit is required for installation of any work in the ROW, including installation of any erosion control measures.”).

²⁰ See Exh. 9, SMC 20.05.020.

²¹ See Exh. 2, Amended Complaint ¶ 24.

the traffic control configurations in place at that time (*i.e.*, with stop signs controlling trail users, but not motor vehicles).

In brief, the County has insisted that the ELST will eventually have higher traffic volumes than the cross streets, and therefore should be assigned priority over the cross streets.²² The County proposed to put stop signs on 206th Avenue SE and SE 33rd Street immediately, so that vehicles on the streets must stop for cyclists and pedestrians on the trail. After engineering review, the City, however, concluded that safety concerns dictate that the public street traffic be prioritized, leaving traffic controls in the same place they have been for years, such that ELST users must continue to yield for cars traveling on 206th Avenue SE and SE 33rd Street.²³

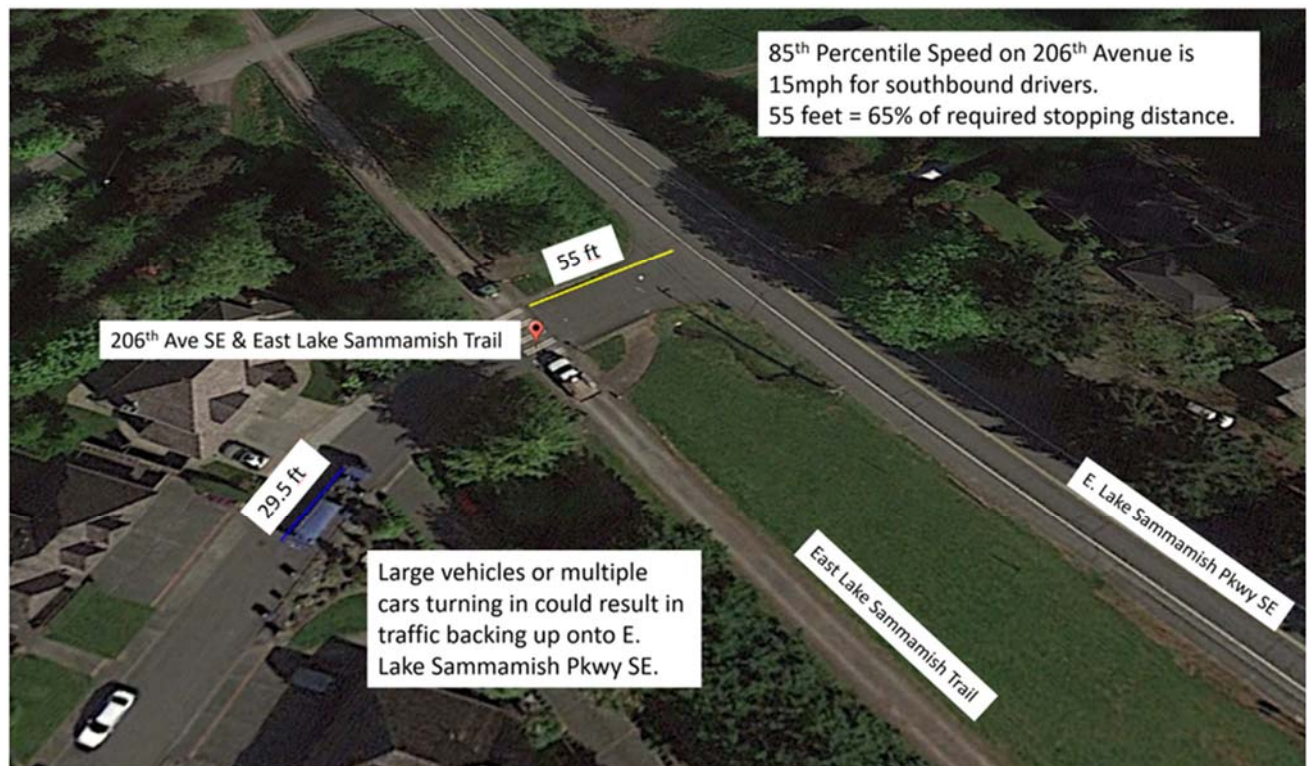
These safety issues arise in large part from the fact that the ELST Intersections are located in close proximity to the East Lake Sammamish Parkway, a major north-south thoroughfare in the City. Simply put, there is not enough distance for vehicles turning and exiting the Parkway onto 206th Avenue SE to come to a stop before they reach the ELST. The County's proposal for stop signs on motor vehicles at this intersection is thus functionally useless. Employing safety-based criteria to resolve this dilemma, the City determined that the County's proposal to change the longstanding traffic controls was unsafe. However, the County, which relies primarily on a

²² Exh. 10, Letter from King Cnty to City of Sammamish (May 23, 2017).

²³ See Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017).

comparison of expected future traffic volumes on the ELST versus the cross streets, believes that the City's engineered traffic controls at the Intersections are not safe.²⁴

A figure of one of the involved crossings, 206th Avenue and the ELST, is set forth below:



4. The County Applied for A Right-Of-Way Permit for the Intersections, and Then Suddenly Withdrew Its Application

On May 5, 2017, pursuant to the conditions imposed by the City on the C&G permit, the County applied for a right-of-way permit for its proposed work at the Intersections ("ROW permit application"). As noted *supra*, the County's ROW permit

²⁴ Compare Exh. 10, Letter from King Cnty. to City of Sammamish (May 23, 2017) with Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017).

application sought to alter the controls at the Intersections to control motor vehicles rather than trail users. The County provided no engineering analysis or other authority with the permit application to justify the new traffic controls. *Id.* The City was in the process of completing its review of the ROW permit application when the County suddenly withdrew its application on May 23, 2017, claiming that the City does not have any property interests at 206th Avenue SE, has only limited property rights at SE 33rd Street, and that the County has superior rights derived from the former railroad.²⁵

When the County withdrew its ROW permit application, the City sent a response explaining that “the C&G permit clearly requires a ROW permit for the proposed activities at 206th Avenue SE and SE 33rd Street.”²⁶ The City warned that it would issue a stop-work order if the County maintained its newly adopted position that it did not require any permits from the City to excavate, re-grade, re-pave, and re-mark a City street, and was immune from any City regulatory oversight of such activity: “If the County intends to work in City ROW without the required ROW permit, the City will post a stop-work order under SMC 23.70.010.”²⁷

On June 16, 2017, the County was observed doing work within the 206th Avenue SE intersection, and as a result, a City Inspector served a stop-work order at the

²⁵ See Exh. 10, Letter from King Cnty. to City of Sammamish (May 23, 2017).

²⁶ Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017).

²⁷ Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017); Exh. 5, SMC 23.70.010.

construction site on the same day.²⁸ The stop-work order allowed the County to continue all other construction on South Segment A, but prohibited work in the Intersections. As part of the same process for City code enforcement, a Notice & Order to Abate was also served for the violation.²⁹

Relying on its projections of vast increases in the anticipated volume of trail users that will occur once the trail is fully paved from end to end, the County has defended its signage preferences by claiming, among other things, that the stop signs at the Intersections must be re-oriented toward cars on the cross streets and that any other configuration is so dangerous as to preclude the County from re-opening South Segment A after construction is complete.³⁰ However, independent transportation engineering experts have verified that placing traffic signs to control trail users and assigning priority to vehicles on the public streets is the safest intersection design option, at least in the near term.³¹ Over the long term, if volumes on the ELST rise as forecasted, then other intersection design options may need to be re-evaluated, just as the City's traffic engineer has maintained from the beginning.³²

²⁸ City of Sammamish had warned King County that it would issue a stop-work order if it commenced work in the right-of-way without the necessary permits. Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017) at 7.

²⁹ Exh. 12, Notice & Order to Abate Civil Code Violation (June 16, 2017).

³⁰ See Exh. 2, Amended Complaint ¶ 28.

³¹ Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017) at 8.

³² *Id.*

These traffic signage matters are matters of state law that are *not* the subject of this Petition and do not require and are not amenable to Board resolution. If the County disputes the City’s findings, it has the right to appeal a permit through the governing state law processes. Instead, the County has elected to withdraw its permit application and ignore stop work orders on the grounds that the orders are preempted under the federal preemption provisions of ICCTA.

II. PROCEDURAL HISTORY

King County filed an action in the United States District Court for the Western District of Washington on June 14, 2017, seeking relief in the form of declaratory judgments, pursuant to 28 U.S.C. § 2201 and 2202, that (1) the City’s efforts to enforce its local regulations at the Intersections – indeed, that all state and local attempts to regulate or control a railbanked trail corridor – are preempted by the ICCTA, pursuant to 49 U.S.C. § 10501(b) and the Trails Act,³³ and (2) that the City’s actions allegedly preventing the construction and reopening of a portion of the ELST are in violation of Washington Law, including the Growth Management Act.”³⁴

³³ See Exh. 13, Original Complaint, *King Cnty. v. City of Sammamish*, No. 2:17-cv-00921-JCC (W.D. Wash. July 17, 2017) (“Original Complaint”) at ¶¶ 39-41; Exh. 14, Docket Report, *King Cnty. v. City of Sammamish*, No. 2:17-cv-00921-JCC (downloaded Dec. 7, 2017).

³⁴ Exh. 13, Original Complaint ¶ 42-44.

Then, despite the fact that the County had withdrawn its permit applications for the ROW at the Intersections,³⁵ the County was observed doing work within the 206th Avenue SE intersection on June 16, 2017, forcing the City to issue a stop work order. Later on the same day, the City issued a notice and order to abate³⁶ In response, the County filed a motion for preliminary injunction on June 26, 2017 to bar enforcement of the City's stop work order.³⁷

The subject of this Petition is limited to the County's first cause of action relating to preemption under ICCTA and its claim that the City's actions in requiring a right-of-way permit before allowing the County to rebuild City streets and relocate traffic controls purportedly constitute an "obstacle to the accomplishment of Congressional intent to facilitate construction of a recreational Trail."³⁸ The County purports to stand in the shoes of BNSF and claim that the STB has exclusive regulatory authority over the

³⁵ Exh. 11, Letter from City of Sammamish to King Cnty. (June 9, 2017) at 2.

³⁶ Exh. 12, Notice & Order to Abate Civil Code Violation (June 16, 2017).

³⁷ See Exh. 15, Mot. for Prelim. Inj., *King Cnty. v. City of Sammamish*, No. 2:17-cv-00921-JCC (July 21, 2017) at 1. The County also filed an Amended Complaint on July 17, 2017, asserting three additional causes of action and seeking declaratory judgments that: (1) the City has violated King County's Due Process rights for denying its right to use its property to construct a recreational trail; (2) the City has treated King County "differently from other landowners" and thus has violated King County's Equal Protection rights; and (3) that the City has violated King's rights under the Trails Act. The County also added an action for quiet title requesting that "[t]he rights and title to the crossings should be quieted in King County..." Exh. 2, Amended Complaint ¶¶ 50-68. Such matters are beyond the scope of this Petition, as they do not require Board resolution.

³⁸ Exh. 2, Amended Complaint ¶ 43.

railbanked corridor, such that any and all of the City of Sammamish's local land use and development regulations, including its right-of-way permit regulations applicable to the Intersections, are categorically preempted.

Without providing an opportunity for oral argument, the District Court granted the County's motion for preliminary injunction on August 8, 2017. The District Court's order, unremarkably first found "that railbanked corridors, like the one at issue here, remain part of the national rail transportation system subject to the jurisdiction of the Surface Transit [sic] Board (STB), pursuant to the ICCTA." Order at 5. However, remarkably, and without further discussion, the court further determined that, because that STB retained jurisdiction, *ipso facto*, "[t]herefore, like any active railroad line, state and local attempts to control a railbanked corridor are preempted by the ICCTA." *Id.*

Rather than discuss the application of ICCTA under the relevant legal authorities, the Court instead simply stated:

[t]he City seems to fundamentally misunderstand this point. The City tries to argue that King County's powers to regulate the railbanked Corridor are not the same as a railroad's powers to regulate a railway. . . . The Trails Act makes it abundantly clear that railbanked corridors are regulated the same as a railway would be. *See* 16 U.S.C. § 11247(d). . . . The Court will not entertain this argument any further."

Order at 5 n.2.

Rather than reserve final judgment, the Court appears to have conveyed that its determination on ICCTA preemption matter is final.

As a result of the Court's order and finding of ICCTA preemption, the City has been enjoined from interfering with the King County's construction of the

Intersections on South Segment A, including any attempts to regulate right-of-way signage.³⁹

III. ARGUMENT

A. There is a Compelling Need for the Issuance of a Declaratory Order in the Face of Clear Controversy

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 (formerly 49 U.S.C. § 721 prior to renumbering), the Board has broad authority to issue a declaratory order to terminate controversies or remove uncertainty. *Norfolk S. Ry. – Pet. for Declaratory Order*, STB Finance Docket No. 35701 (STB served Nov. 4, 2013). On transportation matters where the Board has jurisdiction, “Congress chose to vest the STB with exclusive jurisdiction . . . and it is ‘uniquely qualified’ to determine whether state law is preempted by Section 10501(b).” *N.Y. & Atl. Ry. Co. v. STB*, 635 F.3d 66 (2011) (citing *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 639-43 (2d Cir. 2005)). It has long been settled that the STB (like its predecessor) has the primary authority to determine the scope of its own regulatory authority. *Hayfield N. R.R. v. Chicago & N. W. Transp. Co.*, 467 U.S. 622, 634 (1984); *Burlington N., Inc. v. Chicago & N. W. Transp. Co.*, 649 F.2d 556, 558 (8th Cir. 1981).

While courts also have the authority to determine ICCTA preemption disputes, there are compelling reasons in this instance for the Board to exercise its

³⁹ The City filed a notice of appeal from the preliminary injunction order on August 11, 2017, and its Opening Brief on October 10, 2017. *See* Exh. 16, Docket Report, No. 17-35642 (9th Cir.) (downloaded on Dec. 7, 2017).

authority and discretion at this time and issue a declaratory order and guidance to eliminate controversy, remove uncertainty, and to further uniformity in decision making. Here, the District Court's preliminary injunction directly undermines the STB's long-standing, detailed preemption test followed by all of the federal circuit courts that have applied the STB test. These matters require full and prompt consideration by this Board to remove uncertainty on a matter where previously there has been little doubt.

In fact, to date, few preemption cases involving crossings or Trails Act matters have been brought to the Board. That is because, as explained further below, the Board has consistently made it clear that state laws are *not* categorically preempted and that states (and localities) continue to play their traditional role in resolving disputes in this area. *See, e.g., Maumee; Lincoln Lumber; Mid-American Locomotive; Iowa S. R.R. – Exemption – Abandonment in Pottawattamie, Mills, Fremont & Page Counties, IA*, 5 I.C.C.2d 496 (1989) (“*Iowa Southern*”); *Idaho N. & Pac. R.R. – Abandonment & Discontinuance Exemption – In Wash. & Adams Cntys., ID*, STB Docket No. AB-433 (Sub-No. 2X) (STB served Apr. 1, 1998) (“*Idaho Northern*”). The District Court's decision flies in the face of this settled precedent. Board intervention is especially needed because the District Court has determined that it “will not entertain this argument any further.”

The District Court's view that all local permitting of the ELST and its crossings are expressly preempted is plainly overbroad and directly inconsistent with Congress's intent. It also could lead to absurd results in allowing a Trails Act corridor that does not constitute rail service and that has had no active railroad operations in over

two decades to be immune from the exercise of police power to protect local health and safety. There are hundreds of railbanked trail corridors, many of which involve crossings. The logical result of the District Court's decision is that interim Trails Act managers, including King County, could permanently close any crossing immediately, build massive structures on, and make major changes to trail rights of way, at will, free of any land use or public safety restraints. Congress clearly did not intend for interim trail managers be able to contravene longstanding local permitting requirements enacted by duly authorized officials to protect public safety in an area that states have traditionally occupied exclusively. *See Emerson v. Kan. City S. Ry.*, 503 F.3d 1126, 1132 (10th Cir. 2007) (interpreting ICCTA's preemption clause to avoid absurd results).

The significant national transportation policies at issue – the critical role for states to exercise their traditional safety and police powers where it does not interfere with railroad operations, the need for uniformity in decisionmaking, and to avoid the absurd result of allowing interim trail managers to unilaterally alter or close public or private crossings without any recourse – amply support and require the issuance of a declaratory order.

Finally, the District Court's issuance of a preliminary injunction in no way precludes the Board from issuing a declaratory order. For example, the Board did just that in the *City of Milwaukie – Petition for Declaratory Order*, STB Finance Docket No. 35625, involving a dispute over the enforcement of city ordinances. *Id.* (STB served Mar. 25, 2013) (“*City of Milwaukie*”). The Board opened a proceeding and issued guidance for the state or municipal court finding that “enforcement of the local

ordinances at issue” was not preempted under ICCTA. *City of Milwaukie* at 1. The Board issued such guidance even though a judgment by a city municipal court was being appealed and when a separate citation by the city was stayed pending the outcome of the STB proceeding.⁴⁰ Notably, the Interstate Commerce Commission (“ICC”) also “exercise[d its] broad discretion”⁴¹ in *Chadwick’s of Boston, Ltd. – Petition for Declaratory Order – Certain Rates & Practices of United Parcel Service, Inc.* (“*Chadwick*”), when it opened a limited proceeding “to assist the court,” even though the case was pending at the U.S. District Court for the District of Massachusetts, and the judge had twice rejected Chadwick’s request for a stay and to refer the issues to the ICC.⁴² And while the federal district court judge had opined that “if a proceeding were timely filed with the Commission, he would consider issuing a stay,”⁴³ the agency went ahead and issued its decision in *Chadwick* before a formal stay was requested for a third

⁴⁰ See *City of Milwaukie – Pet. for Declaratory Order*, STB Finance Docket No. 35625 (STB served Sept. 10, 2012) at 2 (decision instituting a declaratory order proceeding) (“The record shows that OPRC has contested the second set of citations in the Municipal Court for the City of Milwaukie and that a trial was set for July 23, 2012. No update has been filed with the Board since the scheduled trial date. OPRC has also indicated it intends to appeal the fine for the first set of citations.”); see also *Reply in Opposition to Pet. for Declaratory Order, City of Milwaukie – Pet. for Declaratory Order*, STB Finance Docket No. 35625 (filed Oct. 10, 2012) at 2 (“The City has twice cited OPR for violation of those ordinances. One such citation resulted in a judgment in favor of the City in the amount of \$48,000, which is under appeal. The other citation has been stayed pending the outcome of the present proceeding.”).

⁴¹ *Chadwick’s*, 2017 WL 3424972, at *2 (June 16, 1995) (“we will exercise our broad discretion to institute the requested proceeding on a limited basis in order to assist the court in resolving the issues it faces”).

⁴² *Id.*

⁴³ *Id.*

time or was approved by the court.⁴⁴ Accord *Illinois State Toll* (Board institutes a declaratory order proceeding on ICCTA preemption while District Court’s § 10501(b) preemption determination is on appeal before the Seventh Circuit).

B. A Declaratory Order is Necessary to Effectuate Governing Precedent that ICCTA Does Not Expressly Preempt State-Law Crossing Permitting and Impliedly Preempts Such Permitting Only to the Extent that It Unreasonably Interferes with Rail Transportation

1. The City’s Crossing Permits Are Presumptively Not Preempted Under ICCTA Preemption Principles

While the ICCTA preemption provisions are expansive, the Act expressly preempts only state-law “remedies . . . with respect to regulation of rail transportation.” 49 U.S.C. § 10501(b). “Congress narrowly tailored the ICCTA pre-emption provision to displace only ‘regulation,’ i.e., those state laws that may reasonably be said to have the effect of ‘manag[ing]’ or ‘govern[ing]’ rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.” *Fla. E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001) (internal citation omitted); see also *Adrian & Blissfield R.R. v. Village of Blissfield*, 550 F.3d 533, 539 (6th Cir. 2008).

The STB has developed a detailed test for determining when state law is preempted as an impermissible regulation of rail transportation. Under the STB test, ICCTA preemption “does not completely remove any ability of state or local authorities to take action that affects railroad property.” *Lincoln Lumber* at 3. Instead, the only two

⁴⁴ *Id.* at ¶ 38226, 2017 WL 3424972, at *3.

categories of state actions that constitute expressly or “categorically” preempted regulation of rail transportation are: (i) permitting or preclearance requirements that could be used to prevent a railroad from engaging in STB-approved activities; and (ii) efforts to regulate matters directly regulated by the STB, such as the construction, operation, and abandonment of rail lines, railroad mergers and acquisitions, and railroad rates and service. *CSX Transp., Inc. – Pet. for Declaratory Order*, STB Finance Docket No. 34662 (STB served May 3, 2005) at 3 (“*CSX Transportation*”).

State laws and regulations falling outside these two categories are not expressly preempted, although they may be barred by implied or “as applied” preemption if the facts show that they have the effect of preventing or unreasonably interfering with rail transportation. See *PCS Phosphate Co., Inc. v. Norfolk S. Corp.*, 559 F.3d 212, 219 (4th Cir. 2009); *New Orleans & Gulf Coast Ry. v. Barrois*, 533 F.3d 321, 332 (5th Cir. 2008) (“*Barrois*”); *New England Transrail, LLC – Constr., Acquisition & Operation Exemption*, STB Finance Docket No. 34797 (STB served July 10, 2007) at 9 (*New England Transrail*). However, “where the state or local law can be applied without interfering with [ICCTA], the courts have done so.” *Cities of Auburn & Kent – Pet. for Declaratory Order*, STB Finance Docket No. 33200 (STB July 2, 1997) at 9; *aff’d sub nom. City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998). That is because “there are areas with respect to railroad activity that are reasonably within the local authorities’ jurisdiction.” *Id.*

Applying this framework to routine crossing disputes such as that involved with the ELST corridor, the STB has *never* concluded that generally applicable state or

local crossing protection laws do not constitute expressly preempted “regulation” of rail transportation. As the Board has consistently held, “routine, non-conflicting uses, such as non-exclusive easements for at-grade road crossings . . . are not preempted so long as they would not impede rail operations or pose undue safety risks.” *Maumee* at 2. Because a claim of crossing rights does not fall within the two categories of expressly preempted state actions discussed above, it does not constitute an “act of regulation” that ICCTA reserves exclusively for the STB. *CSX Transportation* at 3-4. Thus, state law remains applicable to crossing disputes unless it actually interferes with rail transportation and that interference is unreasonable.

There should be no legitimate doubt that the City of Sammamish’s crossing permitting requirements are not expressly or categorically preempted under the STB’s test, even assuming *arguendo* that the ELST should be treated the same as an active line of railroad. At best, this is the type of routine crossing dispute considered by the Board in *Maumee*, except in this instance, as explained below, there is no legitimate attempted regulation of railroad transportation. Even if there were, there is no conflict between the STB’s exclusive jurisdiction with respect to regulation of rail transportation and the states’ traditional police powers regarding crossings. *Home of Economy v. Burlington N. Santa Fe R.R.*, 694 N.W.2d 840, 846 (N.D. 2005). “Crossing disputes, despite the fact that they touch the tracks in some literal sense, thus do not fall into the category of ‘categorically preempted’ or ‘facially preempted’ state actions.” *Barrois*, 533 F.3d at 333; *see also Adrian & Blissfield R.R.*, 550 F.3d at 540. Routine, non-conflicting uses, such as nonexclusive easements for road crossings, are not preempted unless they

unreasonably interfere with railroad transportation. *Maumee* at 2; *CSX Transportation* at 4-5.

For these reasons, preemption challenges in crossing cases fall into the category of implied preemption, not express preemption as was erroneously determined by the District Court. *Barrois*, 533 F.3d at 333.

2. The City's Crossing Permits are Presumptively Not Subject to Preemption Because ICCTA Preempts Only Laws that Regulate Rail Transportation, Not Railbanked Trails Act Corridors and Their Crossings

The ICCTA's implied preemption test is generally used in routine crossing dispute cases involving actual common carrier railroads to determine if there is a demonstrated unreasonable interference with actual railroad operations. Since the ELST is not an actual operating railroad, and is instead a railbanked trail, the preemption issue is moot because there are no actual rail operations that are subject to interference.

The Board has jurisdiction only over "transportation by rail carrier." 49 U.S.C. § 10501. Every Board and federal court decision that has addressed the section 10501(b) preemption issue has found that both statutory components – "transportation" and "by rail carrier" – must be satisfied to bring a rail facility or transportation activity within the Board's jurisdiction. See *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295, 308 (3d Cir. 2004); *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 249 (3d Cir. 2007); *Grafton & Upton R.R. Co.*, 417 F.Supp.2d 171, 176-77 (D. Mass 2006); *Valero Refining Co. – Pet. for Declaratory Order*, STB Finance Docket No. 36036 (STB served Sept. 20, 2016) ("*Valero Refining*"); *Hi Tech Trans., LLC – Pet. for Declaratory*

Order – Newark, NJ, STB Finance Docket No. 34192 (Sub-No. 1) (STB served Aug. 14, 2003) at 5.

Whether a rail line constitutes transportation by rail carrier under section 10501 requires “a fact-specific determination,” based on an analysis of the specific line and related transportation activities involved, as well as whether those activities and use of the facilities are performed by a rail carrier. *See, e.g., New England Transrail*, at 9-11; *H&M Int’l Transp., Inc. Petition for Declaratory Order*, STB Finance Docket No. 34277 (STB served Nov. 12, 2003) at 3. Neither component of the preemption test is met by the ESLT.

**a. The ELST Corridor Does Not Constitute
“Transportation” Undertaken by a Rail Carrier**

The term “transportation” is broadly defined at 49 U.S.C. § 10102(9)(A) to include in relevant part a “warehouse . . . yard, property, facility, instrumentality . . . of any kind related to the movement of . . . property . . . by rail, regardless of ownership or an agreement concerning use.” The railbanked ELST corridor clearly does not meet the threshold definition of transportation. The ELST corridor is designed and used *exclusively* for non-motorized recreational purposes by the public. There is no “movement of . . . property . . . by rail,” especially inasmuch as the former rail trackage has been ripped up and removed, or graveled/paved over.

Under 49 U.S.C. § 10102(5), a “‘rail carrier’ means a person providing common carrier railroad transportation for compensation.” 49 U.S.C. § 10102(6) defines “railroad” as including “the road *used by a rail carrier* and owned by it or operated under

an agreement,” and “a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, *used or necessary for transportation.*” *Id.* (emphasis added). While the term “common carrier” is not separately defined, the Board has held that “it refers to an entity that holds itself out to the general public as engaged in the business of transporting property from place to place for compensation.” *New England Transrail*, at 10-11. King County is manifestly not a licensed rail carrier. While at one time King County sought permission to operate as a rail carrier under Board’s 49 U.S.C. § 10901 exemption procedures, the Board revoked that exemption, finding that King County “manifestly” has never had an intent to reinstate rail service, and that it had “misuse[d]” and “abused” the Board’s railroad acquisition processes by pretending to have an interest in engaging in common carrier railroad service. *King County Rail Line Acquisition*, STB Finance Docket No. 33389 (STB served Sept. 26, 1997) at 3.

While the ELST rail corridor has not been abandoned for future railroad service by the common carrier *BNSF* (*see* 16 U.S.C. § 1247(d)), BNSF has authorized the line to be railbanked and specifically designated for trail use. King County does not ship commodities by rail as a common carrier for compensation, it has no authority to do so, and it cannot engage in common carrier rail transportation service. Instead, King County has executed a Certificate of Interim Trail Use (“CITU”) under 16 U.S.C. 1247(d). In doing so, King County agreed to preserve the ELST corridor for possible *future* reactivation of rail service by BNSF.

If and when railroad service is restored to the corridor, which appears highly unlikely, King County’s interest in the ELST ceases, the CITU is vacated, and

trails use also ceases – permitting the line to be reactivated for rail service by BNSF or another common carrier railroad. 49 C.F.R. § 1152.29(c). However, King County obviously is not attempting to cease trail use, and neither BNSF nor any other common carrier railroad is seeking to resume railroad service over the ELST corridor.⁴⁵

Moreover, even if King County were somehow deemed to be a licensed common carrier railroad, any proposed new crossing protections or changes to traffic signals still require compliance with state law procedures. See Wash. Rev. Code § 81.53.060; 81.53.261 (<http://app.leg.wa.gov/RCW/default.aspx?cite=81.53>). (railroad companies seeking installation of new public crossing signals or warning devices “shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices.”). King County would need to file a petition with the Washington Utilities and Transportation Commission (“UTC”), provide notice to the public and the municipality in which the crossing is situated, and participate in a public hearing before the UTC on the proposed alterations. *Id.* King County has engaged in no such actions with respect to the Intersections, further confirming that the County is not a common carrier railroad and the ELST is not a railroad transportation.

⁴⁵ Instead, if King County were interested in terminating trail use, it is required to seek vacation of the CITU, at which time the Board “will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way” with the corridor’s property rights restored to the underlying landowners. *Id.*

3. Even if the ELST Were Deemed to Constitute Rail Transportation, the City's Crossing Permits are Presumptively Not Preempted As Applied

Even in the highly unlikely event the ELST were somehow determined to be providing railroad transportation service covered under the ICCTA, there is no evidence that the stop signs ordered by the City on the trail at the Intersections unreasonably interfere with the putative rail operations or cause a safety problem.⁴⁶ Instead, as indicated *supra*, the ELST C&G permit required the County to obtain right-of-way use permits issued under the SMC. *See* Exh. 7, No. CG2016-03488; Exh. 8, SMC 16.15.050-070. The County had the right, but elected not to file an appeal of the conditions imposed by the City in the C&G permit in the proper forum. Additionally, rather than complete engagement in the right-of-way permit application process, where any and all claims as to safety and unreasonable interference could have been made, King County deliberately chose to abandon that process, when it suddenly withdrew its permit application on May 23, 2017, asserted preemption, and proceeded to engage in construction activities. Nothing King County has argued demonstrates and actual or potential unreasonable interference with railroad operations.

For these reasons, King County has exhausted and/or failed to assert all possible available administrative remedies in the appropriate forum. Also, for the

⁴⁶ If actual railroad service were reinstated sometime in the future, the issue of ICCTA preemption may arise with respect to permitting of crossing traffic devices (or other local right-of-way permitting), but that issue is completely speculative and of no immediate controversy requiring Board resolution.

forgoing reasons, King County clearly cannot carry its burden now to secure a belated finding supporting any express or implied preemption defense under ICCTA.

C. A Declaratory Order is Necessary to Effectuate Governing Precedent that the Trails Act Does Not Preempt State-Law Crossing Permitting, or Provide the County any Preemption Protection

While the preemption provisions of ICCTA provide no basis for King County to avoid the City of Sammamish permitting requirements, neither does the Trails Act. Under the Trails Act, the Board's limited duty is to "preserve established railroad rights-of-way for future reactivation of rail service." 49 U.S.C. § 1247(d). "If and when the railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside." *Georgia Great S. Div., S.C. Cent. R.R. – Abandonment & Discontinuance Exemption – Between Albany & Dawson, in Terrell, Lee, & Dougherty Cntys., GA*, STB Docket No. AB-389 (Sub-No. 1X) at 4 (STB served May 16, 2003) (citing 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29(d)(2)-(3)) ("*Georgia Great Southern*"). While King County seeks the preemption protection that the ICCTA extends to a rail carrier, and seeks to avoid standard local permitting on that basis, the County is not purporting to step aside and relinquish its trail to allow BNSF or another authorized common carrier to resume rail service. The County is simply asserting rights without any concomitant obligation, which constitutes a perversion of the preemption afforded by the ICCTA.

There are no specific trail or railroad preemption provision under the Trails Act. To the contrary, all trail activities, including that of the ELST, are subject to normal state and local permitting requirements:

Federal preemption does not extend to the legitimate exercise of police power by states and localities. . . . “[A] trail use must comply with State and local land use plans, zoning ordinances, and public health and safety legislation. . . . Indeed, the State and local agencies in the area are attuned to the specific interests and needs of their communities. . . . Nothing in our Trails Act rules or procedures is intended to usurp the right of state, regional and local entities to impose appropriate safety, land use, and zoning regulations on recreational trails.”

Idaho Northern at 9-10 (emphasis added) (quoting *Iowa Southern*, 5 I.C.C.2d at 505).

Under the Trails Act, the Board’s jurisdiction and role is limited, with its “only responsibility . . . to confirm that the trail sponsor agrees to assume full liability for the property during the interim trail use and to keep the property available for reactivation of rail service.” *Georgia Great Southern* at 5 (emphasis added); *see also Blendu v. Friends of Weiser River Trail, Inc.*, No. CIV. 98-0311-S-BLW, 1999 WL 33944266 (D. Idaho 1999) (“[t]he STB . . . clearly indicated its intention to cede back to the states and local governments the right to impose zoning and safety regulations on trails so long as those regulations do not interfere with . . . the railroad’s right to convert the corridor back into a railway”). While Trails Act corridors must not be used in a manner that would constitute a public nuisance, even there, the Board has clarified that such matters are not a federal concern, and instead are “a state or local requirement, not a Board requirement.” *Idaho Northern* at 9 (cited and quoted with approval by *Blendu v. Friends of Weiser River Trail, Inc.*, 1999 WL 33944266 at *6).⁴⁷

⁴⁷ The STB does “retain jurisdiction over the property throughout the period of the rail banking/interim trail use.” *Cent. Kansas Ry., Ltd. Liability Co. – Abandonment Exemption – In Marion & McPherson Cnty., KS*, STB Docket No.

Instead, the Board possesses only a “ministerial role under the Trails Act” *Georgia Great Southern* at 5 (citing *Citizens against Rails to Trails v. STB*, 267 F.3d 1144 (D.C. Cir. 2001) and *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990)). As such, “we are not authorized to regulate activities over the actual trail, and we have no involvement in the type, level, or condition of the trail that is used for a particular right-of-way.” *Id.* at 6 (citing *Central Kansas* and *Idaho Northern*).

Under this clear precedent, the District Court could not tenably conclude that “[t]he Trails Act makes it abundantly clear that railbanked corridors are regulated the same as a railway would be.”⁴⁸ As discussed, the Board has an interest in ensuring that the trail sponsor preserves and maintains a contiguous corridor that can be restored to active rail service in the future if need ever arises. *Georgia Great Southern* at 6; *Idaho*

AB-406 (Sub-No. 6X) (STB served May 8, 2001) (“*Central Kansas*”) at 4 n.7. However, that jurisdiction is not exclusive, and is retained for very limited purposes, such as determining whether the trail’s interim manager is living up to its Trails Act duties to pay taxes, assume financial liability for the trail, and ensure that sufficient right-of-way is preserved to permit rail service to be restored in the future. See *Burlington N. & Santa Fe Ry. Co. – Abandonment Exemption – in King County, WA*, STB Docket No. AB-6 (Sub-No. 380X) (STB served Sept. 16, 1998) (STB decision authorizing interim Trails Act use, subject to the noted conditions). Another limited purpose for STB jurisdiction would be to approve or deny applications to transfer interim trail management from one entity to another. See 49 C.F.R. § 1152.29(f). By contrast, enforcement of local development and nuisance regulations as applicable to the trail and trail sponsor is left to local and state authorities. *Central Kansas* at 5.

⁴⁸ Exh. 1, Order at 5 n.2. The District Court’s decision appears to conflict with its prior decision that affirmed the rights of municipalities to “impose appropriate safety, land use, and zoning regulations on recreational trails” in railbanked corridors, so long as they do not entirely frustrate the trail sponsor’s ability to construct the trail. See *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260, 1274 (W.D. Wash. 2005).

Northern at 9. However, the Trails Act clearly does not preempt local regulation and construction of the ELST, including the City of Sammamish’s authority to enforce compliance with local street-design standards and public right-of-way permitting rules.

Here, the local code requires everyone – including public agencies like the County – to obtain a right-of-way permit before doing excavation, grading, or other construction work in City streets. The local code also requires that work on or in City streets comply with minimum engineering and design standards.⁴⁹ These regulations and standards are a matter of public health, safety, and welfare, as well as a means of averting public nuisance or harm.⁵⁰ They are a lawful exercise of police power and have no effect on railroad operations.⁵¹ Nor do these local provisions preclude or frustrate the County’s ability to develop (or in this case improve) the ELST. As such, there is no basis for finding federal preemption under the Trails Act.

D. A Declaratory Order is Necessary to Avoid Absurd Results and Significant Safety Problems That Would Result Should the City of Sammamish Be Preempted from Enforcing Its Local Development and Safety Regulations

Finally, the expansive preemption holding of the District Court runs afoul of the principle that statutes should be interpreted to avoid absurd results. *Emerson*, 503

⁴⁹ See Exh. 4, SMC 14.01.010.

⁵⁰ See Exh. 3, SMC 14.30.010.

⁵¹ Wash. Rev. Code § 35A.11.020 (“The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state. . . . [S]uch powers may be exercised in regard to the . . . regulation, use, leasing, [and] disposition . . . of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property”)

F.3d at 1132. That principle is especially pertinent here. If King County's position on preemption is sustained, the City of Sammamish would be precluded from applying its local development and safety regulations to the reconstruction of the Intersections on the ELST corridor, and then King County, and indeed any one of hundreds of Trails Act trail sponsors, could be free to build or install all manner of structures or obstacles in the public rights-of-way, or potentially permanently close the crossings at will.

King County could claim the right to convert the Intersections into a parking lot for trail users because the County, under the District Court's order, has been found to have "exclusive use, possession, and control of the Corridor." Exh. 1, Order at 6. The County could also decide to install rail crossing gates to prevent vehicles from traversing the Intersections on the theory that no less-extreme measures could guarantee the safety of trail users, and therefore that such gates are a pre-condition to the County's willingness to re-open access across the improved trail. Under the County's interpretation, there is likely no recourse for affected communities, and seemingly no remedy before the Board who, in any event, has no experience or particular expertise with respect to state and local land use laws and regulations.

If the Board were required to step in to resolve all of the controversies, the Board has determined that it is likely that a "crush of cases" would "overburden the Board's resources":

To date, only a few preemption cases involving railroad/private road or sewer crossings have been brought to the Board (*i.e.*, *Maumee*; *Mid-America*; and *Lincoln Lumber*). That is because the Board consistently has made it clear that states continue to play

their traditional role in resolving disputes in this area. If the Board had to resolve all crossing disputes, the crush of cases would significantly overburden the STB's resources. This is so, not only because of the sheer number of cases that could be brought given the thousands of crossings that exist throughout the country, but also because the Board has no particular expertise or familiarity with the property laws of each state.

En Banc Brief of Amicus Curiae STB at 17-18, *Franks Inv. Co. LLC v. Union Pac. R.R.*, 593 F.3d 404 (5th Cir. 2010) (en banc), 2009 WL 6297302 at *17-18; *see also PCS Phosphate Co.*, 559 F.3d at 219 (noting that a “broad reading of the [ICCTA] preemption clause would make it virtually impossible to conduct business”).

It cannot plausibly be assumed that Congress intended such a sweeping application of section 10501(b) to override generally applicable state law and promote an interim Trails Act manager's private interest over the demonstrated needs of the public for safe and adequate crossings and construction consistent with local land use laws. Not even the railroad industry has taken such an extreme position. Moreover, the District Court's finding that “state and local attempts to control a railbanked corridor are preempted by the ICCTA” has no logical stopping point, and would preempt the application of state laws to trails in areas where the STB lacks specific authority to act, likely creating massive regulatory enforcement gaps. King County thus winds up with more power than the railroad that previously operated the corridor ever had when actual rail operations occurred. Indeed, its use of the trail corridor would effectively be unregulated.

Additionally, other communities in which Trails Act corridors are situated are immediately implicated. For example, King County's Regional Trails System is one of the nation's most extensive networks with more than 175 miles of trails, most of which are Trails Act related, and the County is seeking to grow its system to 300 miles of trails. <http://www.kingcounty.gov/services/parks-recreation/parks/trails/regional-trails.aspx>.

Countless people, emergency responders, and businesses that rely on access and use of safe crossings and the development of trails corridors consistent with state and local land use and safety laws would be put at the mercy of the County's self-interested decisions on whether to keep crossings open and all manner of development.

Accordingly, a Declaratory Order is necessary here to clarify that the STB's carefully delineated approach on preemption must be adhered to, and to ensure that these unintended absurd results are avoided with respect to all such Trails Act corridors.

E. Alternatively, if the Board Decides to Not Issue a Declaratory Order, It Should Provide Appropriate Findings and Full Guidance on Its Preemption Principles and Reiterate the Unconstrained Land Use and Permitting Role that States and Localities Enjoy Under that Doctrine Over Trails Act Corridors

The City of Sammamish strongly believes there is a compelling need for the Board to issue a declaratory order for the reasons set forth above – especially given the important state and federal law concerns involved over the right of a local governments to protect the public health and safety of its citizens and in light of the District Court's preliminary injunction findings that contravene the Board's longstanding preemption principles that could have broad-ranging effects. However, in the event that the Board decides not to issue a declaratory order, the City urges the Board to provide

full and sufficient findings and guidance on the preemption issues presented. In situations “[w]here the law is clear, the Board may decline to institute a proceeding and instead provide guidance on the preemption issue presented.” *SEA-3, Inc. – Pet. for Declaratory Order*, STB Finance Docket No. 35853 (STB served Mar. 17, 2015) at 4; *accord Valero Refining* at 3; *14500 Ltd. LLC – Pet. for Declaratory Order*, STB Docket No. 35788 (STB served June 5, 2014) at 2.

For example, in *Valero Refining*, a non-carrier petitioned the Board seeking a declaratory order that the City of Benicia, California Planning Commission’s decision denying a crude oil off-loading facility conditional use permit was preempted under ICCTA because the City impermissibly based its findings of environmental impacts related to rail traffic increases, and its permit decision denied rail carrier service to the refinery. While declining to institute a declaratory order proceeding, the Board still issued guidance and legal findings, “find[ing] here that there is no preemption because the Planning Commission’s decision does not attempt to regulate transportation by a ‘rail carrier.’” *Id.* at 4. The Board explained that “[t]he record presented . . . does not demonstrate that Valero is a rail carrier or that it is performing transportation-related activities on behalf of UP or any other rail carrier at its off-loading facility” (*Id.* at 4-5) and that, “accordingly, this situation . . . does not reflect undue interference with ‘transportation by rail carriers’ within the Board’s jurisdiction under § 10501(b).” *Id.* at 6. The Board also affirmed that “state and local regulation is permissible where it does not unreasonably interfere with rail transportation.” *Id.*

Similarly, in *Ingredion Inc. – Petition for Declaratory Order*, STB Finance Docket No. 36014 (STB served Sept. 30, 2016), the Board denied a request to issue a declaratory order on preemption, but issued guidance and went as far as stating the likely outcome of the as applied preemption analysis. (“*Ingredion*”). Specifically, the Board in *Ingredion* found that while “the relief that Viking seeks is likely [as applied] preempted based on the facts of this particular case, it is not completely preempted and therefore not subject to federal jurisdiction.” *Id.* at 6.

Accordingly, if the Board elects not to issue a declaratory order, or institute a declaratory order proceeding, the City of Sammamish respectfully requests that the Board nonetheless follow its standard practice and (i) issue findings on preemption based on the record presented to the Board, and (ii) provide additional full guidance on its applicable preemption principles, including specifically, ICCTA preemption as applied in the Trails Act context.

F. An Expedited Decision by the Board Is Justified

The City of Sammamish respectfully requests that the Board issue its decision in this case on an expedited basis. A full-blown proceeding is unnecessary here as the proceeding can and should be decided based on the facts before the Board.

Expedition is appropriate and necessary here, especially given the Court’s order and finding of ICCTA preemption that violate the Board’s preemption principles, and that the City has been enjoined from interfering with the King County’s construction of South Segment A, including pavement and construction of the Intersections, and any attempts to regulate the ELST right-of-way.

IV. CONCLUSION

WHEREFORE, for the reasons stated above, the Board should issue a declaratory order on an expedited basis, or alternatively, provide appropriate findings and guidance stating that:

(1) the ELST corridor does not comprise transportation by rail carrier that is subject to any preemption from the application of local regulation under the ICCTA or the Trails Act;

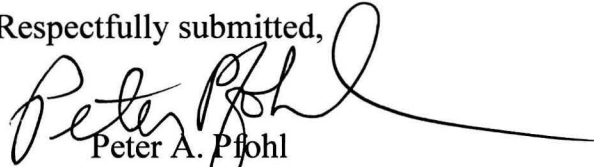
(2) the City of Sammamish's system of land and right-of-way use regulations and permitting as applied to the ELST corridor, and its crossings, are not preempted by ICCTA or the Trails Act; and

(3) King County's construction and use of the ELST corridor, and its public crossings, must comply with all valid City of Sammamish land and right-of-way use regulations and permitting, and neither King County nor any successor interim Trails Act manager can avoid compliance with such requirements on the grounds of preemption under the ICCTA or the Trails Act.

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Dated: December 7, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Pfohl", with a long horizontal flourish extending to the right.

Peter A. Pfohl
Robert D. Rosenberg
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City of Sammamish, Washington

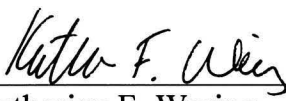
CERTIFICATE OF SERVICE

I hereby certify that this 7th day of December, 2017, I served copies of the City of Sammamish's Petition for Declaratory Order by United States mail, first class postage prepaid on designated outside counsel for the known participants in the state law actions involving matters arising in this Petition, as follows:

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King County Prosecuting Attorney's Office
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Katherine F. Waring

STATEMENT OF QUALIFICATIONS AND VERIFICATION

STATEMENT OF QUALIFICATIONS
FOR STEVEN LENISZEWSKI

Mr. Steven Leniszewski is the Public Works Director for the City of Sammamish, Washington and has served in this capacity since May 2016. As Public Works Director, Mr. Leniszewski is responsible for leading and supervising the Public Works Department (Capital & Operations) and Streets Department. He also is responsible for overseeing, reviewing, and approving development services for the city, including private land development, construction projects, and capital facilities projects.

Prior to May 2016, Mr. Leniszewski was the Public Works Director for the City of Duvall Washington. Additionally, he has over twenty (20) years of private sector engineering work experience including as a design and transportation engineer. He received his B.S. in civil engineering from Washington State University, Pullman, WA with an emphasis in transportation and environmental engineering. With Mr. Leniszewski's input and supervision as City Engineer, and then as the Public Works Director, the City of Duvall received several awards including: environmental "Project of the Year" by the American Public Works Association ("APWA") for its wastewater treatment plant; and transportation "Project of the Year" by the Washington State Chapter of APWA for its Main Street Reconstruction.

Attached is Mr. Leniszewski's resume, which provides additional information regarding his certifications and technical training, employment history, education, and achievements.

STEVEN LENISZEWSKI, PE

425.295.0570 * sleniszewski@sammamish.us

PROFESSIONAL CERTIFICATIONS & TECHNICAL TRAINING

- FEMA: ICS Trainings 100, 200, 300, MGT 343, 400, 700, 800, ATC-20, FEMA 154
- Washington State Professional Engineer License (PE) #39367
- Water System Certifications from Washington State Department of Health:
 - Cross Connection Control Specialist
 - Water System Distribution Manager II

PROFESSIONAL EXPERIENCE

CITY OF SAMMAMISH, SAMMAMISH, WA

PUBLIC WORKS DIRECTOR, MAY 2016-PRESENT

- Lead and supervise the Public Works Department (Capital & Operations), including 42.5 FTE's in the Engineering, Storm Drainage, and Streets Departments
- Responsible for Public Works expenditures within the adopted 2017-2018 bi-annual City budget totaling \$210 million, including \$58 million in Capital projects and \$30 million in Operations
- Provide direction and guidance to staff for development services including review and approval of private land development, construction projects; small, medium, and large capital facilities projects; and operations and maintenance needs

CITY OF DUVALL, DUVALL, WA

PUBLIC WORKS DIRECTOR, JULY 2015-APRIL 2016

PUBLIC WORKS DIRECTOR/CITY ADMINISTRATOR, OCT 2006-JULY 2015

CITY ENGINEER, NOV 2004-SEPT 2006

ASSOCIATE CITY ENGINEER, FEB 2003-NOV 2004

ASSISTANT CITY ENGINEER, JUNE 2001-FEB 2003

- Led and supervised the Public Works Department, including 18 FTE's in the Building, Engineering, Parks, Sanitary Sewer, Storm Drainage, Streets, and Water Departments
- Prior to the City hiring a full time, dedicated City Administrator, I oversaw an additional 6 FTE's in Administration, Utility Billing, and Planning Departments
- Prepared annual Public Works Capital and Operational budgets totaling \$20 to \$30 million as well as portions of the General Fund budget totaling \$5 million
- Provided direction and guidance to staff for development services including review and approval of private land development and construction projects; capital facilities projects (up to \$9 million); and operations and maintenance needs
- Worked with the City Attorney to oversee and negotiate Union labor contracts for Public Works Operations and the Police Guild (normally three year contracts)

STEVEN LENISZEWSKI, PE

425.295.0570 * sleniszewski@sammamish.us

- Worked with other government agencies, developers, consultants, and the general public concerning engineering, public works, land development, and maintenance projects
- Obtained federal and state grants providing 80% of the financial resources for capital improvement projects over the past 6 years, ranging in size from \$10,000 to \$5 million per project
- Oversaw the water distribution system consisting of 35 miles of main lines, one pump station, and two storage reservoirs totaling 2.7 million gallons
- Oversaw the wastewater collection and treatment system. Treatment facility utilizes a membrane bioreactor treatment system that processes up to 1.25 million gallons of effluent per day and consists of a laboratory, treatment plant, 32 miles of collection system and 6 sewer lift stations
- Oversaw the building maintenance and services for all municipal buildings and parks properties
- Appointed and served as the Emergency Management Director responsible for acting in emergencies, developing and implementing emergency preparedness plans; and working closely with King County's department of Emergency Management, local police, and fire departments

ACHIEVEMENTS

- Received Project of the Year Award: Historical Restoration/Preservation, City of Duvall Centennial Project from the Washington State Chapter of the American Public Works Association, 2014
- Outstanding Performance Award, City of Duvall Wastewater Treatment Plant from the Washington State Department of Ecology, 2007, 2008, & 2013
- Governor's Smart Communities Award, City of Duvall, 2010
- Project of the Year Award: Transportation, Main Street Reconstruction, City of Duvall from the Washington State Chapter of the American Public Works Association, 2010
- Project of the Year Award: Environment, City of Duvall Wastewater Treatment Plant from the American Public Works Association, 2006

ADDITIONAL EXPERIENCE

ENTRANCO, INC., BELLEVUE, WA

TRANSPORTATION ENGINEER, MAY 2000-JUNE 2001

THOMPSON-HYSELL INC., SALT LAKE CITY, UT

DESIGN ENGINEER, JUNE 1998-MAY 2000

GEOENGINEERS INC., REDMOND, WA

STAFF I GEOTECHNICAL ENGINEER, AUG 1997-JUNE 1998

EDUCATION

B.S. CIVIL ENGINEERING, WASHINGTON STATE UNIVERSITY, PULLMAN, WA

EMPHASIS: TRANSPORTATION AND ENVIRONMENTAL ENGINEERING

VERIFICATION

I, Steven Leniszewski, verify under penalty of perjury that I have read Part I.A. of the City of Sammamish, Washington's Petition for Declaratory Order, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of the City of Sammamish.



Steven Leniszewski
Public Works Director
City of Sammamish, Washington

Executed on December 5, 2017

EXHIBIT 1

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

CITY OF SAMMAMISH,

Defendant.

CASE NO. C17-0921-JCC

ORDER GRANTING KING
COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiff King County's motion for a preliminary injunction (Dkt. No. 7). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

This case arises out of a dispute over the placement of four stop signs at two intersections within a regional public trail. Trail construction disputes have been before this Court and the Western District of Washington several times. *See, e.g., Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260 (W.D. Wash. 2005) (Coughenour, J.); *Hornish v. King Cty.*, 182 F. Supp. 3d 1124 (W.D. Wash. 2016) (Pechman, J.).

On October 22, 1898, the Northern Pacific Railway Company granted the property in dispute (the Corridor) to the Seattle and International Railway Company, a Burlington Northern

1 & Santa Fe Railway Company (BNSF) predecessor. (Dkt. No. 9-1 at 8.) BNSF then conveyed its
 2 interest in the Corridor to The Land Conservancy. *Hornish*, 182 F. Supp. 3d at 1226.¹
 3 Ultimately, on September 18, 1998, King County acquired the Corridor along the eastern shore
 4 of Lake Sammamish. *Id.* at 1127. King County declared its intention to assume financial
 5 responsibility for the area as an interim trail sponsor, a process created by the National Trails
 6 System Act known as “railbanking.” *Id.*; see 16 U.S.C. § 1247(d). King County was granted all
 7 of The Land Conservancy’s ownership interests in the Corridor. *Hornish*, 182 F. Supp. 3d at
 8 1226.

9 Since acquisition, King County has been constructing a regional trail, the East Lake
 10 Sammamish Trail (ELST). *Id.* The ELST is a King County park that will provide a multi-use
 11 recreational trail and non-motorized transportation corridor to residents throughout the region.
 12 (Dkt. No. 15 at ¶ 3.) King County is currently attempting to construct a permanent trail along
 13 South Segment A. (*Id.* at ¶ 4.) Prior to this most recent dispute with Defendant City of
 14 Sammamish, South Segment A was expected to reopen in late July or early August of 2017. (*Id.*
 15 at ¶ 16.) In short, the parties disagree over the placement of stop signs at two intersections, 206th
 16 Avenue SE and SE 33rd Street, within South Segment A. King County believes the stop signs
 17 should face the oncoming cars, while the City believes the signs should face the pedestrians and
 18 bikers on the ELST. (See Dkt. No. 14 at ¶ 8.)

19 On May 4, 2017, King County submitted Right of Way (ROW) permits to the City for its
 20 preferred intersection designs. (Dkt. No. 15-1 at 2.) King County included a disclaimer that the
 21 applications were not a waiver of its ownership and control over the Corridor and it did not
 22 “concede that any permit [was] required from the City to undertake work or modify traffic
 23 control.” (*Id.* at 5.) On May 23, 2017, King County withdrew its applications for the ROW

24 ¹ The parties have not provided the Court with these conveyance documents and instead cite to
 25 *Hornish* to support these facts. While the Court and the parties do not dispute the specific factual
 26 findings cited in the *Hornish* decision, the parties should have resubmitted the evidence
 submitted in the previous disputes.

permits. (Dkt. No. 15 at ¶ 13.) King County had determined that the City's property interest in the intersections was subject to the superior rights of the railroads, which King County had been conveyed. (*See id.*; Dkt. No. 9-1 at 15, 22.) On June 9, 2017, City Manager Lynn Howard sent a letter to King County and threatened to revoke the construction permits, which had already been granted for construction in South Segment A, if King County did not submit new ROW permits for the intersections at issue. (Dkt. No. 14-1 at 52.)

On June 14, 2017, King County filed this action to resolve the issue. (Dkt. No. 1.) On June 16, 2017, the City issued a stop work order for all remaining construction on South Segment A. (Dkt. No. 15-1 at 7.) Later that same day, the City clarified that King County was only required to stop work at the intersections in dispute. (Dkt. No. 8-1 at 62.) King County estimates the remaining construction will take at least 30 to 45 days to complete after the stop work order is lifted. (Dkt. No. 15 at ¶ 16.) Moreover, the entirety of South Segment A cannot be reopened until the construction is completed at the two intersections. (*Id.* at ¶ 4.)

King County now asks the Court to enter a preliminary injunction that would find (1) the stop work order is preempted by federal law; (2) the City has no authority to regulate the ELST's intersections; (3) the City is demanding intersections designs with unsafe placement; and (4) the City's preferred intersection design violates Washington law. (*See* Dkt. No. 7-1.)

II. DISCUSSION

A. Legal Standard

Pursuant to Federal Rule of Civil Procedure 65(a), a party seeking a preliminary injunction must show (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) that the balance of hardship tips in her favor, and (4) that a preliminary injunction is in the public interest. *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also L.A. Unified Sch. Dist. v. U.S. Dist. Ct.*, 650 F.2d 1004, 1008 (9th Cir. 1981). Issuance of a preliminary injunction is "an

extraordinary remedy never awarded as of right.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter*, 55 U.S. at 24).

B. Likelihood of Success on the Merits

King County argues it is likely to succeed on the merits because the National Trails System Act Amendments of 1983 (Trails Act) and the Interstate Commerce Commission Termination Act (ICCTA) preempt the City’s actions and the City has no authority to regulate the intersections. (Dkt. No. 7 at 11–16.) King County also argues the City’s design is dangerous and contrary to engineering judgment, design standards, and Washington Law. (*Id.* at 16–20.) A showing of likelihood of success on the merits to a certain degree is not required; rather, this factor is considered along with the overall analysis of a balance of hardship. *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 525 F.2d 86, 88 (9th Cir. 1975). Where the potential harm to a plaintiff is “sufficiently serious,” it is “only necessary that there be a fair chance of success on the merits.” *Id.*

Preemption is a corollary of the Supremacy Clause of the United States Constitution, and in general, provides that any municipal or state law that is inconsistent with federal law is without effect. Of the three preemption types, explicit, field, and conflict preemption, this case only concerns the latter. Conflict preemption applies where a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Young v. Coloma-Agaran*, 340 F.3d 1053, 1056 (9th Cir. 2003). It can exist “even when Congress has chosen to include an express preemption clause in a statute.” *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1204 (9th Cir. 2002).

As this Court previously held in *Friends of the East Lake Sammamish Trail*, it is without question that federal regulation of railroads is both pervasive and comprehensive. 361 F. Supp. 2d at 1273 (citing *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981)). There are two relevant federal statutes in the context of railbanking: the Trails Act and the ICCTA. Under the Trails Act, the Corridor in which King County has an ownership interest

remains a federally-regulated railroad corridor designated for interim use as a recreational trail. See 16 U.S.C. § 1247(d). It is clear that railbanked corridors, like the one at issue here, remain part of the national rail transportation system subject to the jurisdiction of the Surface Transit Board (STB), pursuant to the ICCTA. See 49 U.S.C. § 10501(b); *Friends of the E. Lake Sammamish Trail*, 316 F. Supp. 2d at 1273–74. Therefore, like any active railroad line, state and local attempts to control a railbanked corridor are preempted by the ICCTA.² State and local governments have limited powers to regulate these corridors, including “the right to impose zoning and safety regulations on the trails so long as those regulations do not interfere with . . . the train manager’s right and ability to maintain the right-of-way as a recreational trail.” *Blendu v. F. of Weiser River Trail, Inc.*, 1999 WL 33944266, at *6 (D. Idaho June 10, 1999); see *Friends of E. Lake Sammamish Trail*, 316 F. Supp. 2d at 1274 (“Plaintiffs argue that these [city] regulations [on recreation trails] apply only to the extent that they do not frustrate development of the trail on the railbanked right of way. This Court agrees.”).

However, the touchstone of this dispute is whether the City has the right to impose zoning and safety regulations at all. If the City does not have this authority, then preemption is not an issue because there would be no conflict between federal and municipal law. It is well established that a railroad easement grants the easement holder “exclusive control of all the land within the lines of its roadway.” *Grand Trunk R. Co. v. Richardson*, 91 U.S. 454, 455 (1875); see also *Hanson Indus., Inc. v. Cty. of Spokane*, 58 P.3d 910, 914 (Wash. Ct. App. 2002) (A railroad right-of-way “is an easement with the substantiality of a fee and the attributes of a fee, perpetuity and exclusive use and possession.”). The trail easements created by the Trails Act are just as exclusive as the coexisting railroad easements. See *Illig v. United States*, 58 Fed. Cl. 619, 631

² The City seems to fundamentally misunderstand this point. The City tries to argue that King County’s powers to regulate the railbanked Corridor are not the same as a railroad’s powers to regulate a railway. (Dkt. No. 19 at 2, 11.) The Trails Act makes it abundantly clear that railbanked corridors are regulated the same as a railway would be. See 16 U.S.C. § 1247(d). Moreover, the City itself concedes that King County holds the property interests of the previous railroad owner. (Dkt. No. 19 at 11.) The Court will not entertain this argument any further.

(2003) (“We therefore conclude that the Trails Act imposed a new easement across plaintiffs’ properties which retained essentially the same characteristics as the original easement, both in its location and exclusivity.”). Therefore, whoever holds the Corridor easements is granted the exclusive use, possession, and control of the Corridor, unless there is a superior property right.

Here, the Railroad’s crossing easements reserve the right to use the property “for *any and all purposes whatsoever* . . . including but not limited to the right to construct, maintain, repair, renew, reconstruct, replace, and operate . . . facilities” of its choice. (Dkt. No. 9-1 at 22) (emphasis added); (see Dkt. No. 9-1 at 15.) There is no dispute that these rights now belong to King County. See *Hornish*, 182 F. Supp. 3d at 1130 (citing *Kaseburg v. Port of Seattle*, 2015 WL 6449305, at *7 (W.D. Wash. 2015) (Coughenour, J.)); (Dkt. No. 19 at 11) (“The City does not dispute that the County, pursuant to the national Trails System Act, 12 U.S.C. § 1247(d), holds the property interests of the former Burlington Northern Railroad on an interim basis.”). Moreover, the City does not cite any authority that it has superior property rights to King County’s easement. The City merely argues that the Sammamish Municipal Code requires all parties to obtain a right-of-way permit before starting construction on City streets. (Dkt. No. 19 at 14.) However, the intersections are part of an easement that is exclusively controlled by King County. (Dkt. No. 9-1 at 15, 22.) Therefore, King County has shown a substantial likelihood of success on the claim that the City does not have the authority to regulate the intersections at issue.³

Because the City likely does not have authority, the Court need not address King County’s other arguments. The other arguments—federal preemption and the competing designs—are based on the premise that the City has limited authority to regulate activities at the

³ The City argues that King County’s complaint does not seek this kind of relief. (Dkt. No. 19 at 18.) However, the complaint was amended after the City’s response, and a quiet title claim was added. (See Dkt. No. 18 at ¶¶ 64–68.)

1 intersections. At this time, King County has shown a likelihood of success on its claim that King
2 County does not have authority to regulate the intersections.

3 //

4 **C. Likelihood of Irreparable Harm**

5 To obtain a preliminary injunction, King County “must establish that irreparable harm is
6 likely, not just possible.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
7 2011). The Ninth Circuit has found that loss of recreational opportunities is a form of irreparable
8 harm. *Id.* at 1135. Here, King County argues it has the right to pursue redress for the injuries of
9 its residents under the doctrine of third-party standing. (Dkt. No. 7 at 20 n.17.) The Court agrees.
10 *See Washington v. Trump*, 1151, 1160 (9th Cir. 2017). If the stop work order is not lifted, the
11 delay in construction will cause at least a month-long delay in use of the trail for many residents
12 of King County. The Court concludes that this is a small irreparable injury, but injury
13 nonetheless.

14 **D. Balance of Hardship and the Public Interest**

15 Next, the Court assesses whether the balance of equities tips in King County’s favor and
16 if the injunction is in the public interest. *Winter*, 555 U.S. at 20. As is the case here, “[w]hen the
17 government is a party, these last two factors merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d
18 1073, 1092 (9th Cir. 2014). The balance of hardship tips sharply in favor of King County. The
19 construction of four stop signs at two intersections imposes no hardship on the City. As King
20 County points out, the only hardship the City could suffer is having to move the stop signs
21 several feet. This is a trivial hardship in comparison to the delay in construction and ultimate
22 opening of South Segment A that King County would suffer. The Court concludes King County
23 has shown the balance of equities tips in its favor. Additionally, it is in the public interest to enter
24 this preliminary injunction. The trail’s completion will benefit the public, especially residents of
25 King County and the City.

1 Therefore, King County's motion for a preliminary injunction is GRANTED because all
2 of the requirements have been met.

3 //

4 //

5 **III. CONCLUSION**

6 For the foregoing reasons, King County's motion for a preliminary injunction (Dkt. No.
7 7) is GRANTED. King County has demonstrated a likelihood of success on the merits of its
8 argument that the City has no authority to regulate the ELST's intersections with 206th Avenue
9 SE and SE 33rd Street because King County's property rights are superior to any limited crossing
10 rights held by the City. Additionally, King County has demonstrated irreparable harm will be
11 suffered, the balance of hardships weighs in King County's favor, and the preliminary injunction
12 is in the public interest.

13 Effective immediately:

- 14 1. King County is authorized to resume construction of South Segment A, including
15 pavement and construction of the intersections with 206th Avenue SE and SE 33rd
16 Street; and
17 2. The City shall not take any additional actions to impede or delay King County's
18 construction of the ELST, including attempts to require stop signs oriented towards
19 trail users at the intersections with 206th Avenue SE and SE 33rd Street.

20 DATED this 8th day of August 2017.

21
22
23 

24 John C. Coughenour
25 UNITED STATES DISTRICT JUDGE
26

EXHIBIT 2

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

CITY OF SAMMAMISH,

Defendant.

No. 2:17-cv-00921-JCC

AMENDED COMPLAINT

I. INTRODUCTION

1. In this action, King County seeks a declaratory judgment that the City of Sammamish's latest attempts to interfere with King County's construction of the East Lake Sammamish Trail ("ELST") violates state and federal law, along with several other causes of action. The Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501(b) ("ICCTA"), preempts the City of Sammamish's attempt to assert control over a federally-regulated railroad corridor, especially one that has been "railbanked" under the National Trails System Act Amendments of 1983, Pub.L. No. 98-11, § 208, 97 Stat. 42, codified at 16 U.S.C. § 1247(d) (2006) ("Trails Act").

2. This is not the first time the City of Sammamish has violated federal law by attempting to impede the King County Parks Department from constructing the ELST. This case

1 is just the latest iteration in the “highly contentious matter” that is the “disposition of the
2 Redmond–Issaquah [railroad] line.” *Redmond-Issaquah R.R. Pres. Ass’n v. Surface Transp. Bd.*,
3 223 F.3d 1057, 1058 (9th Cir. 2000).

4 3. In a previous case against Sammamish, *Friends of the East Lake Sammamish Trail*
5 *v. City of Sammamish*, 361 F. Supp. 2d 1260 (W.D. Wash. 2005) (J. Coughenour), this Court ruled
6 that the City’s attempts to “frustrate development of a trail on the railbanked right of way” were
7 an “obstacle to the accomplishment and execution of the full purposes and objectives of
8 Congress.” *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260,
9 1274 (W.D. Wash. 2005). As a result, the Trails Act preempted illegal provisions in the
10 Sammamish Municipal Code and the Sammamish Development Code that were designed to
11 impede construction of the ELST. *Id.* at 1265.

12 4. Now, over ten years later, the City of Sammamish is once again violating federal
13 law through its attempts to prevent King County’s construction of a permanent, paved trail
14 pursuant to the Trails Act.

15 5. In addition, the City has also violated Washington law, including the Growth
16 Management Act (“GMA”), by impeding the design and precluding the development and
17 operation of an essential public facility.

18 **II. PARTIES**

19 6. Plaintiff King County is a municipal corporation organized and existing under the
20 laws of the State of Washington.

21 7. Defendant City of Sammamish is a municipal corporation organized and existing
22 under the laws of the State of Washington.

23 **III. JURISDICTION & VENUE**

24 8. This Court has jurisdiction over this litigation pursuant to 28 U.S.C. § 2201, 28
25 U.S.C. § 1331, and 28 U.S.C. § 1367.

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

IV. FACTS

10. The East Lake Sammamish Trail is an 11-mile “missing link” in a 44-mile-long regional trail corridor that will connect the Burke-Gilman Trail, the Sammamish River Trail, the Marymoor Connector Trail, and the Issaquah-Preston Trail, linking Seattle to the Eastside and the Cascade Foothills. The ELST is a County park, and once construction is completed, it will provide a multi-use recreational trail and non-motorized transportation corridor to residents from the City of Sammamish, King County, and throughout the region.

11. After this Court overturned the City of Sammamish's previous efforts to prevent construction of the ELST in *Friends of the East Lake Sammamish Trail*, 361 F. Supp. 2d at 1274, King County completed construction of an interim, gravel trail in 2006.

12. King County is currently upgrading the interim, gravel trail to a permanent, paved trail. King County has divided the 11-mile ELST into five segments for planning purposes. The first segment, located in the City of Redmond, was completed in 2011. The second segment, located in the City of Issaquah, was completed in 2013. The third segment, located in the City of Sammamish, was completed in 2015.

13. King County has applied for permits for the final segment of the ELST, a 3.6 mile section known as South Sammamish Segment B, and the City is reviewing the permit applications. South Sammamish Segment B, which is immediately to the north of South Sammamish Segment A, runs from SE 33rd Street to Inglewood Hill Road. In the fall of 2016, the City repeatedly impeded the County's attempts to submit the permit applications for this segment. It also amended its code and changed permitting procedures to further interfere with trail design and construction.

14. This case involves the fourth segment of the ELST, a 1.3 mile section between SE 43rd Way and SE 33rd Street, known as South Sammamish Segment A. King County applied for and obtained numerous permits before beginning construction of the paved trail in South

1 Sammamish Segment A. In addition to a shoreline substantial development permit, the City of
2 Sammamish required King County to apply for and obtain a clearing and grading permit, No.
3 CG2016-03488, before construction could begin. The shoreline substantial development permit
4 application process was lengthy and expensive for the County, in large part because the City took
5 almost a year to review the County's permit application and ultimately imposed unnecessary,
6 unlawful and burdensome permit conditions. Several of the City's conditions were later stricken
7 in administrative proceedings. Nonetheless, the City eventually granted King County permits to
8 construct the trail.

9 15. To construct the permanent trail, King County temporarily closed the gravel,
10 interim trail in South Sammamish Segment A and began construction on December 19, 2016.
11 King County planned to complete final construction of the paved trail within twelve months,
12 intending to complete South Sammamish Segment A by approximately December of 2017.
13 Although landscaping and other tasks would continue into the fall of 2017, the trail itself was on
14 target to reopen to pedestrian and bicycle traffic by late July or early August of 2017.

15 16. King County filed this action after the City of Sammamish issued a written threat
16 to revoke clearing and grading permit No. CG2016-03488 and to halt King County's construction
17 in South Sammamish Segment A. A stop work order and/or permit revocation would prevent
18 King County from reopening South Sammamish Segment A, thereby turning the temporary
19 closure for construction into a permanent bar on the recreational trail. Immediately after this case
20 was filed, the City of Sammamish followed through with its threat and issued a stop work order
21 that precluded construction activities at two crucial points along the ELST. The City issued the
22 stop work order on the eve of paving that had been scheduled for weeks, and it has substantially
23 disrupted the construction schedule.

A. The ELST Is A Federally-Regulated Railroad Corridor Subject To The Jurisdiction Of The STB.

17. The Seattle, Lake Shore & Eastern Railway Company (“SLS&E”), a predecessor of BNSF Railway Co. (“BNSF”), originally assembled the Corridor containing the ELST in the 1890s. The Corridor contains a mix of property interests that BNSF acquired as railroad easements or fee simple, depending on the terms of each acquisition. *See Hornish v. King Cty.*, No. 2:15-cv-00284-MJP, 182 F. Supp. 3d 1124 (W.D. Wash. 2016) (J. Pechman), *appeal docketed*, No. 16-35486 (9th Cir.). In addition to acquisitions from private parties, the SLS&E acquired one relevant portion of South Sammamish Segment A as a land grant from the United States through the General Railway Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934-939 (repealed 1976).

18. The Trails Act permits railroads to transfer managerial responsibility to a state or local government entity that agrees to maintain the right of way for interim use as a recreational trail. The Trails Act confers upon Trail Sponsors the right to build a trail that is safe and functional for trail users. *See* 49 C.F.R. § 1152.29. Through railbanking, the Trails Act preempts any extinguishment of any railroad easements and any reversion to another owner that would normally occur under state law doctrines regarding discontinuation of use. In this way, through the Trails Act, the Corridor remains under STB jurisdiction so that it can be reactivated for rail use.

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

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

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in

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

18 U.S.C. § 1247(d). The Trails Act also states: “Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.” § 1247(e). Consistent with these provisions, King County intends construction of the ELST to fill the “missing link” in its system of regional trails.

21. Like any active railroad, state and local attempts to control a railbanked railroad corridor are preempted by the ICCTA. According to Congress:

The jurisdiction of the [Surface Transportation] Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

1 is exclusive. Except as otherwise provided in this part, the remedies
2 provided under this part with respect to regulation of rail
transportation are exclusive and preempt the remedies provided
under Federal or State law.

3 49 U.S.C. § 10501(b). As defined in the ICCTA:

4 **‘Transportation’ includes--** (A) a locomotive, car, vehicle, vessel,
5 warehouse, wharf, pier, dock, yard, **property**, facility,
instrumentality, or equipment **of any kind** related to the movement
6 of passengers or property, or both, by rail, regardless of ownership
or an agreement concerning use.

7 49 U.S.C. § 10102(9) (emphasis added).

8 **B. The City Of Sammamish Has Repeatedly Attempted To Impede Construction Of**
9 **The ELST.**

10 22. The City of Sammamish and some of the adjacent homeowners who live alongside
11 the ELST have repeatedly attempted to impede King County from completing construction of this
12 regional trail. In the century since the SLS&E assembled the Corridor, numerous property owners
13 have built lakeside homes sandwiched into the narrow area between the Corridor and the shore of
14 Lake Sammamish. The value of these often-multi-million dollar lakefront properties rose
15 dramatically after BNSF stopped operating freight trains near their backyards. Since then, dozens
16 of those same homeowners (including Sammamish City Councilmember Thomas Hornish) have
17 filed lawsuits seeking to stop King County’s construction of a public trail alongside their homes.
18 *See, e.g., Hornish*, 182 F. Supp. 3d 1124. At the same time, many of these homeowners have
19 sought tens of millions of dollars from the federal government for takings claims arising by
20 operation of the Trails Act.

21 23. The City of Sammamish has repeatedly failed to recognize the federal jurisdiction
22 over this railbanked and federally-regulated railroad corridor. The City of Sammamish has made
23 numerous demands on the County that go far afield of appropriate safety or environmental
24 regulations. Many of these demands seek to protect the private interests of adjacent property
25 owners rather than the public interest in safety or environmental protection. The City of

1 Sammamish's unreasonable and arbitrary actions violate King County's rights under the Trails
2 Act as well as King County's equal protection and due process rights.

3 24. The City of Sammamish's current attempts to impede ELST construction
4 purportedly stem from two public crossings where 206th Avenue SE and SE 33rd Street cross the
5 portion of the Corridor known as South Sammamish Segment A. 206th Avenue SE is a minor
6 dead end street providing access to just 15 waterfront homes. Although SE 33rd Street serves 46
7 waterfront homes, those residents have two other access points across the ELST. By contrast,
8 King County's environmental impact statement projects between 2,500 and 4,000 trail users will
9 cross these intersections on peak days, and newer estimates are even higher.

10 25. The City holds limited crossing easements at these two locations through easement
11 agreements originally granted by BNSF. BNSF's property rights—which were preserved by the
12 Trails Act and transferred to King County—are superior to the rights of Sammamish and preclude
13 the City's regulation of the intersection of the ELST and these roadways. BNSF's property right
14 in the portion of the Corridor crossed by SE 33rd Street is based on a land grant from the United
15 States through the General Railway Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934-
16 939 (repealed 1976). BNSF's property right in the portion of the Corridor crossed by 206th Avenue
17 SE derives from a fee interest granted by another railroad, the Northern Pacific. The easement
18 allowing 206th Avenue SE to cross the Corridor contains a reservation granting, to BNSF and to

19 its successors and assigns, ***the right to construct***, maintain, use,
20 operate, relocate, reconstruct and renew such tracks and ***facilities as***
21 ***it may at any time, and from time to time, desire*** within the limit of
22 the land hereinbefore described, ***including the right and privilege***
to use said land for any and all purposes, not inconsistent with the
use therefore for purposes [sic].

23 Similarly, the easement allowing SE 33rd Street to cross the Corridor states that BNSF,

24 and its successors and assigns, reserves all rights to use the property
25 hereinbefore described ***for any and all purposes whatsoever*** not
inconsistent with the easement hereby granted, ***including***, but not
limited to, ***the right to construct***, maintain, report, renew,

1 reconstruct, replace and operate present tracks and future tracks,
 2 communication, signal and electric power lines, utilities and ***other***
types of facilities on said property when deemed necessary or
expedient to the Railway Company.

3 The rights retained in the reservations have been transferred to King County, which now has the
 4 right under the Trails Act to build the ELST—a “facility” within the scope of these easements.

5 26. The City does not have any property rights in the ELST apart from those granted
 6 by the crossing agreements. The City claims that, despite the clear reservations in these
 7 agreements, the easements grant it the authority to require right of way permits (“ROW Permits”)
 8 before King County can perform any construction in these portions of the ELST. Yet neither
 9 agreement authorizes the City to require ROW Permits before the railroad—or in this case, King
 10 County—can construct facilities envisioned by the Trails Act. To the contrary, the railroad
 11 reserved the right to construct corridor improvements. Because King County disagrees with the
 12 City’s authority to require these permits, the City threatened to revoke clearing and grading permit
 13 No. CG2016-03488 and halt construction of the ELST. When King County filed this action to
 14 resolve the City’s right to regulate crossings through a railbanked corridor, the City retaliated by
 15 issuing a stop work order on the eve of paving scheduled for the ELST.

16 27. The City claims that obtaining ROW Permits is required by two conditions of
 17 clearing and grading permit No. CG2016-03488. According to Condition 1, bullet 12:

18 The modification, relocation, or installation of a traffic control
 19 device affecting the City Right of Way (ROW) or other work
 20 connecting to the ROW (e.g. curb returns and ramps) requires
 21 approval of a ROW permit prior to placement of any such device or
 22 improvement . . . to clarify when a ROW permit is necessary, details
 23 depicting stops and other improvements must be removed from or
 noted accordingly with the plan set (such as the stop signs on sheets
 PS3 at Station 239) and applied for under a separate ROW permit.
 Revised plans where these items have been removed from or noted
 accordingly within the plan set shall be provided to and approved by
 the City prior to the Grading preconstruction meeting.

24 According to Condition 1, bullet 21:

1 No work in the ROW is approved under this permit. A separate
2 ROW permit is required for installation of any work in the ROW,
including installation of any erosion control measures.

3 28. As a condition of granting any ROW Permits, the City has stated that King County
4 must alter its designs for the ELST and construct unsafe intersections that will preclude reopening
5 South Sammamish Segment A. Contrary to the expert guidance provided by King County's
6 engineers and without its own independent engineering analysis, the City of Sammamish has
7 ordered King County to give priority of assignment to the roadway rather than the ELST, with the
8 result that stop signs will face **away** from vehicles, toward pedestrians using the trail. This
9 condition of Sammamish's ROW Permits is contrary to national design and safety standards and
10 conflicts with Washington laws such as RCW 46.61.235(1). This unsafe design would impose an
11 untenable level of risk for cyclists and pedestrians, implying a right of way for moving vehicles
12 and forcing pedestrians to cross in the vehicles' uncontrolled path, contrary to properly designed
13 crosswalks elsewhere in the state.

14 29. King County refused to modify the design to give priority of assignment to vehicles
15 on the roadway because the project's design team and outside experts determined this would not
16 be consistent with safety standards and would result in an unsafe condition for the public. King
17 County's plans for the ELST provide the safest design for these two roadway-trail intersections,
18 complying with all applicable standards including the Manual on Uniform Traffic Control Devices
19 (MUTCD), the American Association of State Highway and Transportation Officials Guide for
20 the Development of Bicycle Facilities, and the Washington State Department of Transportation
21 Design Manual. Applying these national standards, King County's Professional Engineer,
22 Yammie Ho, determined, in her exercise of engineering judgment, that safe design of the ELST
23 requires installation of stop signs facing drivers traveling through both Intersections with the
24 ELST.
25

30. Before including unsafe placement of stop signs as a condition of any ROW Permit, the City of Sammamish previously tried forcing King County to orient stop signs toward trail users crossing 206th Avenue SE as a condition of the shoreline substantial development permit for South Sammamish Segment A. After considering substantial evidence from the City and King County, including testimony from King County's ELST engineer, Yammie Ho, the Sammamish Hearing Examiner deemed the City's design unsafe because "[w]ithout adequate departure sight distance bicyclists will be very vulnerable to being hit in the intersection by vehicles on 206th Avenue SE." *In re SSDP issued to King Cty. Parks and Recreation*, No. SSDP2014-00171, at 38-45 (Sammamish Hr'g Exam'r, Feb. 8, 2016). The Hearing Examiner concluded the condition was "not reasonable and not consistent with the City's authority." *Id.* On appeal, the Washington Shorelines Hearing Board again struck this "unusual condition to be placed on an SSDP," finding it was unrelated to compliance with the Shoreline Management Act. *Sammamish Homeowners v. City of Sammamish*, No. 15-012c, 2016 WL 5867913, at *13 (Shorelines Hr'g Bd. Sept. 15, 2016).

31. Prior to the SSDP appeal, the City had previously decided to allow stop signs toward vehicles at the SE 33rd Street crossing. After the Hearing Examiner's finding relating to 206th Avenue SE, the City made a new decision to require stop signs toward pedestrians at the SE 33rd Street crossing.

32. The City's desire to require stop signs toward pedestrians is without engineering support, is arbitrary and is motivated only by a request from a few residents who live on 206th Avenue SE and SE 33rd Street. In order to appease nearby homeowners, the City has treated King County differently from other entities engaged in large construction projects. It has adopted procedures, like not allowing the South Segment B clearing and grading permit to vest upon submission, that greatly interfere with King County's ability to permit and construct the ELST.

33. As a sign of good faith and to minimize additional delays, King County originally decided to submit applications for ROW permits while its staff reviewed the City's jurisdiction

over the crossings at 206th Avenue SE and SE 33rd Street. On May 4, 2017, King County submitted ROW permit applications, along with the following disclaimer to preserve the County's position regarding the City's lack of jurisdiction:

By making this permit application, King County does not waive, and intends to fully preserve, all rights King County possesses to the Corridor, including its ownership and control of the Corridor at issue in this permit application as well as other portions of the Corridor. King County does not concede that any permit is required from the City to undertake work or modify traffic control in the area of the Corridor at issue. Nor does King County agree that the City has any power to impose conditions on the County as part of any process to review or issue such permit.

After determining that BNSF's reservations did not create jurisdiction for the City, King County withdrew its applications for the unnecessary ROW Permits on May 23, 2017.

34. Also on May 23, 2017, King County sent the City of Sammamish a letter explaining that the ROW permit conditions did not apply to this project because the ELST corridor is not City ROW under the crossing easements. While the easements authorize a street crossing, the City's property interest in these public streets is subject to the superior rights of the railroad, including the rights reserved by the railroad. King County also explained, as it has on numerous prior occasions, that the City's design conditions are unsafe, and they will increase the number of injuries along the ELST:

This is the safest design for these two roadway-trail intersections and is in compliance with all applicable standards including the Manual on Uniform Traffic Control Devices, 2009 edition (MUTCD), the American Association of State Highway and Transportation Officials Guide for the Development of Bicycle Facilities, 2012 (AASHTO), and the WSDOT Design Manual, July 2012.

* * *

With respect to these two intersections, installing stop signs to stop path users will not improve safety or prevent accidents. In fact, it will result in a false sense of safety or control on the part of the trail and roadway user that may result in additional accidents or conflicts.

Ltr. from K. Brown to L. Howard (May 23, 2017), attached as Ex. 1.

35. In response, the City of Sammamish threatened to revoke the permission it has already granted for construction in South Sammamish Segment A, including clearing and grading permit No. CG2016-03488. On June 9, 2017, the City of Sammamish wrote to King County:

the County will now need to submit a new permit application before any work in the 206th Avenue SE or SE 33rd Street ROW will be authorized.

* * *

Moreover, without the required ROW permit, the County will likely be in violation of the conditions of approval of the C&G permit for Segment 2A, as explained below. Because of your actions, the City is forced to consider suspending the C&G permit and instituting proceedings to revoke it under SMC Sections 21A.115.040 and .050.

Ltr. from L. Howard to K. Brown (June 9, 2017), attached as Ex. 2. Thus, the City has escalated a dispute regarding authority over intersections with two dead end roads into a threat to revoke clearing and grading permit No. CG2016-03488 and prohibit the County from continuing with construction of the ELST.

36. Concurrent with the filing of King County's original complaint, on June 14, 2017, King County responded to the City's threats, setting out King County's positions and informing the City that its actions left the County with no choice but to file the complaint. Ltr from K. Brown to L. Howard (June 14, 2017), attached as Ex. 3. King County also informed the City that there was no need to escalate this matter, because installation of stop signs is one of the final steps in trail construction, so construction can proceed without harm to the City's position while the Court resolves this dispute.

37. On June 16, 2017, a City inspector issued a stop work order informing County personnel that "under the authority of SMC 14.30.080, 16.15.110, & 23.70.010 ALL PERSONS ARE HEREBY ORDERED TO IMMEDIATELY STOP WORK." Later that same day, the City issued a notice and order to abate a civil code violation. As a result of this stop work order, King

County had to cancel paving and related work that had been scheduled in and around the Intersections for weeks.

38. On June 28, 2017, as required by the Sammamish Municipal Code and in order to protect its rights, King County filed an appeal of the notice and order to the Sammamish Hearing Examiner. In its filing, King County indicated that it was appealing under protest and that jurisdiction properly lies with this Court.

39. On July 3, 2017, one of King County's contractors, Active Construction Inc., notified King County that the City's stop work order has increased the fees it will charge for constructing the ELST.

40. Because King County would be at substantial risk of claims, litigation and/or liability for any injuries resulting from this unsafe design, the County cannot reopen the trail with the unsafe conditions required by the City, nor can King County implement City requirements that would violate state statutes, including provisions of the motor vehicle code applicable to crosswalks. Construction is already well underway in South Sammamish Segment A, which cannot reopen in its current state. As a result, if the City prevails in its viewpoint, Sammamish will cause a permanent closure of the interim trail, without any possibility for reopening.

C. The City Of Sammamish's Attempts To Interfere With Construction Of The ELST Are Contrary To Washington Law.

41. The City of Sammamish's attempt to require placement of stop signs in a dangerous manner is contrary to Washington law, including the GMA. Under the GMA, "[n]o local comprehensive plan or development regulation may preclude the siting of essential public facilities." RCW 36.70A.200(5). The ELST is an essential public facility within the scope of the GMA. By rendering it impossible to design the ELST in a safe manner consistent with national standards, the City has effectively precluded King County from reopening this essential public facility.

D. The City Of Sammamish's Attempts To Interfere With Construction Of The ELST Are Preempted by The Trails Act And The ICCTA.

42. The City of Sammamish's actions are also contrary to federal law. The Supremacy Clause of the United States Constitution provides that "[t]his Constitution and the laws of the United States which shall be made in pursuance thereof; in all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." U.S. CONST. art. VI, cl. 2.

43. The doctrine of conflict preemption prohibits the City of Sammamish's attempt to stop construction of the ELST, because the City's actions are an obstacle to the accomplishment of Congressional intent to facilitate the construction of a recreational trail. Through the Trails Act, Congress has designated the ELST for development of a recreational trail. Through its actions to impede that trail, the City of Sammamish has violated the express will of Congress. The Supremacy Clause mandates that the will of Congress, rather than the will of Sammamish, will prevail.

FIRST CAUSE OF ACTION
Declaratory Judgment Regarding Preemption By Federal Law

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

45. A declaratory judgment regarding preemption by federal law is proper pursuant to 28 U.S.C. §§ 2201 and 2202 because an actual and justiciable controversy exists among the parties as to their respective rights and obligations under the Trails Act and the ICCTA.

46. King County is entitled to a declaratory judgment that the City of Sammamish's attempts to interfere with construction of the East Lake Sammamish Trail are preempted by the Trails Act and the ICCTA. The Trails Act preempts all provisions of the Sammamish Municipal Code, including SMC 14.30, 16.15, and 21A.05, and any purported application of the SMC that impede the opening and operation of a railbanked recreational trail—including South Sammamish

1 Segment A, South Sammamish Segment B, or any other railbanked recreational trail—by
2 requiring an unsafe design.

3 **SECOND CAUSE OF ACTION**
4 **Declaratory Judgment Regarding Violation Of Washington Law**

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

7 48. A declaratory judgment regarding the City of Sammamish's violations of
8 Washington Law is proper pursuant to 28 U.S.C. §§ 2201 and 2202 because an actual and
9 justiciable controversy exists among the parties as to their respective rights and obligations under
10 Washington law.

11 49. King County is entitled to a declaratory judgment that the City of Sammamish's
12 attempts to interfere with construction of the ELST are contrary to Washington law, including the
13 GMA.

14 **THIRD CAUSE OF ACTION**
15 **Declaratory Judgment Regarding Violation of Due Process**

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

18 51. The City of Sammamish has arbitrarily denied King County the right to use its
19 property for construction of a recreational trail. The City of Sammamish's attempt to require an
20 unsafe design for the ELST lacks any substantial relation to the public health, safety, or general
21 welfare, because there is no legitimate government interest in building an unsafe trail.

22 52. A declaratory judgment regarding the City of Sammamish's violations of King
23 County's Due Process rights is proper pursuant to 28 U.S.C. §§ 2201 and 2202 and the Fourteenth
24 Amendment to the United States Constitution because an actual and justiciable controversy exists
25

1 among the parties as to the City's arbitrary, unreasonable and irrational actions to interfere with
2 the County's property rights with no legitimate reason.

3 53. King County is entitled to a declaratory judgment that the City of Sammamish has
4 violated King County's substantive Due Process rights.

5 **FOURTH CAUSE OF ACTION**
6 **Declaratory Relief Regarding Violation of Equal Protection**

7 54. King County re-alleges and incorporates by reference the allegations contained in
8 the previous paragraphs.

9 55. A declaratory judgment regarding the City of Sammamish's violations of King
10 County's Equal Protection rights is proper pursuant to 28 U.S.C. §§ 2201 and 2202 and the
11 Fourteenth Amendment to the United States Constitution because an actual and justiciable
12 controversy exists among the parties as to the City's intentional treatment of King County
13 differently from other landowners who are similarly situated without a reasonable basis for the
14 difference in treatment.

15 56. King County is entitled to a declaratory judgment that the City of Sammamish has
16 violated King County's Equal Protection rights.

17 **FIFTH CAUSE OF ACTION**
18 **42 U.S.C. § 1983**

19 57. King County re-alleges and incorporates by reference the allegations contained in
20 the previous paragraphs.

21 58. The Constitution confers both Due Process and Equal Protection rights upon King
22 County. The City of Sammamish has violated those rights, as outlined above.

23 59. The Trails Act is a federal statute that confers a substantive federal right upon Trail
24 Sponsors to build a trail that is safe and functional for trail users.

60. Pursuant to 49 C.F.R. § 1152.29, the STB has designated King County as the Trail Sponsor of the ELST.

61. The City has intentionally imposed requirements on King County that would force King County to build an unsafe trail, in violation of King County's rights and in contravention of the Trails Act.

62. The City's actions, in violation of King County's rights under the Trails Act and the Constitution, are pursuant to official municipal policy, as the improper requirements that burden King County stem from the decisions of government lawmakers, acts of policymaking officials, and/or practices so persistent and widespread to have the force of law.

63. Pursuant to 42 U.S.C. § 1983, King County is entitled to a judgment that the City's attempts to inference with construction of the ELST violate King County's rights under the Trails Act and the Due Process and Equal Protection clauses of the Fourteenth Amendment.

SIXTH CAUSE OF ACTION **Quiet Title**

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

65. King County owns fee title and exclusive railroad easement rights characterized as a "quasi-fee" pursuant to the General Railway Right of Way Act of 1875 where the ELST crosses 206th Avenue SE and SE 33rd Street, respectively.

66. The City claims its interests in the crossings are superior to King County's rights to control the crossings and more extensive than those granted by the railroad under the crossing easements.

67. The City has interfered with King County's property rights at these locations by treating the crossings as regular city right of way, exceeding any rights the City has with respect to the crossings, and seeking to impose unsafe conditions on construction of the ELST.

68. The rights and title to the crossings should be quieted in King County, recognizing that it holds all rights previously held by the railroads pursuant to the General Railway Right of Way Act of 1875 and the Trails Act, including the right to control the crossings in a safe manner determined by King County.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff King County prays for the following relief:

- A. For declaratory relief setting forth the parties' rights and obligations regarding the ELST;
- B. For declaratory relief that the City has violated King County's Due Process rights;
- C. For declaratory relief that the City has violated King County's Equal Protection rights;
- D. For injunctive relief;
- E. For judgment quieting title to King County's rights regarding the crossings of the ELST;
- F. For damages pursuant to King County's claim under 42 U.S.C. § 1983;
- G. For King County's costs and attorneys' fees herein; and
- H. For such other relief as the Court deems just and equitable.

DATED this 17th day of July, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED: July 17, 2017

s/ David I. Freeburg
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EXHIBIT 3

Chapter 14.30 RIGHT-OF-WAY USE PERMITS

Sections:

- 14.30.010 Purpose – Permit required.
- 14.30.015 Definitions.
- 14.30.020 Right-of-way use permit application process and fee.
- 14.30.025 Right-of-way use permit types.
- 14.30.030 Type A right-of-way special use permit.
- 14.30.040 Type B right-of-way construction permit.
- 14.30.050 Type C right-of-way utility permit.
- 14.30.060 Type D right-of-way lease permit.
- 14.30.070 Revocation or suspension of permit.
- 14.30.080 Enforcement.

14.30.010 Purpose – Permit required.

The purpose of this chapter is to establish minimum rules and regulations for controlling and enforcing right-of-way uses to assure that proposed uses are consistent with the public health, safety, and welfare of the community, and that harm or nuisance which may result from a proposed right-of-way use is prevented.

It shall be unlawful for anyone to make private use of any public right-of-way without a right-of-way use permit issued by the City, or to use any public right-of-way without complying with all provisions of a permit issued by the City. (Ord. O2010-285 § 1 (Att. A))

14.30.015 Definitions.

The following words and phrases, wherever used in this chapter, shall have the meanings ascribed to them in this section except where otherwise defined or unless the context shall clearly indicate to the contrary.

(1) “Abutting property” means and includes property bordering upon and contiguous to a public right-of-way as defined herein.

(2) “Applicant” means any person, company, corporation, enterprise, or entity applying for the issuance or renewal of a right-of-way use permit or any person, company, corporation, enterprise, or entity that has been issued a right-of-way use permit.

(3) “Application” means, for the purposes of this chapter, the collection of papers or electronic data necessary to initiate a right-of-way use permit request, and shall include

an application in the form approved by the City, and other submittals consistent with the purposes of this chapter.

(4) "Private use" means use of the public right-of-way for the benefit of a person, partnership, group, organization, company, corporation, entity or outside jurisdiction other than as a public thoroughfare for any type of vehicle, pedestrian, bicycle or equestrian travel.

(5) "Right-of-way" or "ROW" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, landscape (parking) strips, squares, triangles, easements and other rights-of-way open to the use of the public, including the space above or beneath the surface of same. This definition specifically does not include streets, alleys, ways, landscape strips, sidewalks, easements, etc., which have not been deeded, dedicated, or otherwise permanently appropriated to the City for public use.

(6) "Special event" means an event which will generate or invite public participation, and/or spectators, for a particular and limited purpose and time including, but not limited to, fun runs/walks, roadway foot races, fundraising walks, bike-a-thons, parades, block parties, carnivals, shows, exhibitions and fairs. (Ord. O2010-285 § 1 (Att. A))

14.30.020 Right-of-way use permit application process and fee.

(1) The City engineer or designee, herein referred to as "the City," shall establish policies and procedures to administer the permit program.

(2) Applicants may be required to submit, in addition to the application form, any documents the City deems necessary for the City to perform an accurate evaluation of the right-of-way use permit application.

(3) Decisions regarding issuance, renewal, denial, or termination of any such permits shall be subject to insurance requirements, bond requirements, indemnification and hold harmless agreements, the capacity of the rights-of-way to accommodate the applicant's proposed facilities or use, evaluation of competing public interests, and any other administrative requirements applicable to the permit.

(4) As part of a complete right-of-way use permit application, the applicant shall submit to the City, at the time of application, right-of-way use permit fees, including a nonrefundable application fee, as set forth in the most current City of Sammamish fee schedule.

(5) If insurance is required, the insurance guidelines in City policy shall apply unless otherwise established by the City.

(6) Conditions of approval will be identified during the City's review of the application and may include a certificate of insurance, indemnification and hold harmless agreement, traffic control plan, performance bond, time and use restrictions, video data, status reports, restoration of disturbed right-of-way features, or any other requirements the City deems necessary to protect the right-of-way and public health, safety, and welfare. (Ord. O2010-285 § 1 (Att. A))

14.30.025 Right-of-way use permit types.

(1) Type A, ROW special use permit, is a short-term permit and allows the use of the right-of-way for nonconstruction activities as described in SMC 14.30.030.

(2) Type B, ROW construction permit, is a permit that allows the use of the right-of-way for construction activities as described in SMC 14.30.040.

(3) Type C, ROW utility permit, is a permit that allows for the use of the right-of-way to construct or maintain utilities as described in SMC 14.30.050.

(4) Type D, ROW lease permit, is a permit that allows long-term usage of public right-of-way for nonconstruction activities as described in SMC 14.30.060. (Ord. O2010-285 § 1 (Att. A))

14.30.030 Type A right-of-way special use permit.

(1) Type A ROW special use permit is required for any special event that is held within the public right-of-way or creates significant traffic impacts within the public right-of-way.

(2) Type A ROW special use permit may be required for uses that are nonconstruction uses but not defined as a special event by this chapter.

(3) Proof of insurance may be required with the City listed as an additional insured to protect the public and the City against liability for injury to persons or property. (Ord. O2010-285 § 1 (Att. A))

14.30.040 Type B right-of-way construction permit.

(1) Type B ROW construction permits are required before any person, firm, corporation, company, enterprise or entity shall commence or permit any other person, firm, corporation, company, enterprise or entity to commence any work within the public right-of-way. Types of activities that would fall under a Type B ROW construction permit include but are not limited to driveways, curbs, stormwater infrastructure, sidewalks, retaining walls, cutting or maintaining trees and haul routes. Construction work associated with a franchised utility provider or a telecommunication provider shall obtain a Type C ROW utility permit as described in SMC 14.30.050.

(2) Proof of insurance shall be required, with the City listed as an additional insured, on all work within the right-of-way to address liability for injury to persons or property. Insurance amounts shall be those identified in Section 1-07.18 (Public Liability and Property Damage Insurance) of the Standard Specifications for Road, Bridge and Municipal Construction (current version) published by the Washington State Department of Transportation, and City amendments thereto. These insurance requirements may be modified at the discretion of the City.

(3) A current City business license is required for any person performing work in the city right-of-way.

(4) It is unlawful for any person to perform any work in City right-of-way unless operating under a valid state of Washington general contractor's license, or a valid state of Washington specialty contractor's license applicable to the type of work being performed.

(5) Contractors are responsible for traffic control, work area protection/security and street maintenance to protect the life, health and safety of the public during any permitted work within the right-of-way, and all methods and equipment used will be subject to the approval of the City.

(6) All streets, sidewalks, alleys, parkways, and other public rights-of-way disturbed in the course of work performed under any permit shall be restored in accordance with the City of Sammamish public works standards or as required and approved by the City engineer.

(7) All work within City right-of-way must be pursued to completion with due diligence, and if work is not completed within a reasonable length of time, as determined by the City engineer, the City shall cause the work to be completed at the applicant's expense.

(8) Any costs incurred by the City for right-of-way restoration will be charged to the property owner and/or developer employing the contractor. (Ord. O2010-285 § 1 (Att. A))

14.30.050 Type C right-of-way utility permit.

(1) Type C ROW utility permits are required before any person, firm, corporation, company, enterprise or entity shall commence or permit any other person, firm, or corporation to commence any work within the public right-of-way associated with providing or maintaining franchised utilities or telecommunication facilities within the City right-of-way.

(2) Proof of insurance shall be required, with the City listed as an additional insured, on all work within the right-of-way to address liability for injury to persons or property. Insurance amounts shall be those identified in Section 1-07.18 (Public Liability and Property Damage Insurance) of the Standard Specifications for Road, Bridge and Municipal Construction (current version) published by the Washington State Department of Transportation, and City amendments thereto. These insurance requirements may be modified at the discretion of the City.

(3) A current City business license is required for any person performing work in the City right-of-way.

(4) It is unlawful for any person to perform any work in City right-of-way unless operating under a valid state of Washington general contractor's license, or a valid state of Washington specialty contractor's license applicable to the type of work being performed.

(5) Contractors are responsible for traffic control, work area protection/security and street maintenance to protect the life, health and safety of the public during any permitted work within the right-of-way, and all methods and equipment used will be subject to the approval of the City.

(6) All streets, sidewalks, alleys, parkways, and other public rights-of-way disturbed in the course of work performed under any permit shall be restored in accordance with the City of Sammamish public works standards or as required and approved by the City engineer.

(7) All work within City right-of-way must be pursued to completion with due diligence, and if work is not completed within a reasonable length of time, as determined by the City engineer, the City shall cause the work to be completed at the applicant's expense.

(8) Any costs incurred by the City for right-of-way restoration will be charged to the property owner and/or developer employing the contractor. (Ord. O2010-285 § 1 (Att. A))

14.30.060 Type D right-of-way lease permit.

(1) Type D ROW lease permits are required before any person, firm, corporation, company, enterprise or entity shall commence or permit any other person, firm, or corporation to commence any work within the ROW or utilize the unopened or unused public ROW for long-term private benefit or use. Types of activities that fall under a Type D ROW lease permit include, but are not limited to, construction of fences, landscaping, private irrigation, sheds, private nonfranchised utilities, and garages. Infrastructure

associated with a franchised utility provider or a telecommunication provider shall obtain a Type C ROW utility permit as described in SMC 14.30.050.

(2) Proof of insurance may be required with the City listed as an additional insured to protect the public and the City against liability for injury to persons or property.

(3) At any time the City deems the area being leased is necessary for public benefit, the ROW lease permit may be terminated and the applicant will be required, at their expense, to move their facilities from the public ROW. (Ord. O2010-285 § 1 (Att. A))

14.30.070 Revocation or suspension of permit.

All permits issued pursuant to this chapter shall be temporary, shall vest no permanent rights in the applicant, and may be revoked by the City as follows:

(1) The permit may be immediately revoked by the City in the event of a violation of any of the terms or conditions of the permit; or

(2) The permit may be immediately revoked by the City in the event the permitted special event or street use shall become dangerous to persons or property, or if any structure, site condition or obstruction permitted becomes insecure or unsafe; or

(3) The permit may be revoked by the City upon 30 days' notice if the permit was not for a specified period of time and is not covered by either of the preceding subsections.

(4) If any event, use or occupancy for which the permit has been revoked is not immediately discontinued, the City may remove any structure, site condition or obstruction, or cause to be made such repairs upon the structure, site condition or obstruction as may be necessary to render the same secure and safe, or to adjourn any special event. The cost and expense of such removal, repair or adjournment shall be assessed against the permittee, including all fees and costs associated with enforcement of the collection of same, including attorney's fees. (Ord. O2010-285 § 1 (Att. A))

14.30.080 Enforcement.

The City engineer is authorized to enforce or seek enforcement of the provisions of this chapter, and ordinances and resolutions codified in it, and any rules and regulations promulgated thereunder pursuant to the enforcement and penalty provisions of SMC Title 23. (Ord. O2010-285 § 1 (Att. A))

EXHIBIT 4

14.01.010 Public works standards adopted.

(1) The City hereby adopts by reference the design standards and specifications set forth in the document entitled "City of Sammamish 2016 Public Works Standards" as now or hereafter amended as the Public Works Standards for the City, which includes but is not limited to transportation standards and street standards. Pursuant to RCW 35A.13.180, a copy of the City of Sammamish Public Works Standards is available from the office of the City clerk.

(2) The public works director is hereby authorized to administratively interpret and apply the standards in a manner consistent with their terms in order to better implement the standards or allow for changes in street design and construction technology and methods. (Ord. O2016-425 § 1 (Att. A))

EXHIBIT 5

Chapter 23.70 STOP WORK ORDERS

Sections:

23.70.010 Stop work orders.

23.70.010 Stop work orders.

(1) Authorization. Whenever a violation of this title threatens the health or safety of the public or materially impairs the director's ability to secure compliance with the Sammamish Municipal Code, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A stop work order shall be served consistent with Chapter 23.90 SMC. Issuance of a notice and order is not a condition precedent to the issuance of a stop work order.

(2) Effect. Work or activity may not resume unless specifically authorized in advance by the director. Any violation of a stop work order is hereby declared to be a nuisance and the director is authorized to enjoin or abate such nuisance by any legal or equitable means available. The costs, specifically including reasonable attorney and expert witness fees, for the injunction or abatement, shall be recovered by the City from the person responsible for the code violation in the manner provided by law. Failure to comply with the terms of a stop work order subjects the person responsible for the code violation to civil penalties and costs as set forth in this title.

(3) Appeal. A stop work order may be appealed according to the procedures prescribed by this title and Chapter 20.10 SMC. Failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease. (Ord. O2011-302 §2 (Att. A))

EXHIBIT 6

Chapter 25.08

PERMIT CRITERIA AND ADMINISTRATIVE STANDARDS

Sections:

- 25.08.010 Permits – General regulations.
- 25.08.020 Permits – Substantial development.
- 25.08.030 Permits – Exemptions from a substantial development permit.
- 25.08.040 Permits – Statements of exemption.
- 25.08.050 Permits – Shoreline variances.
- 25.08.060 Permits – Conditional use.
- 25.08.070 Administration – General standards.
- 25.08.080 Permit process – Land use decisions.
- 25.08.090 Permit process – Appeals.
- 25.08.100 Existing development.
- 25.08.110 Rules of director.
- 25.08.120 Enforcement, violations and penalties
- 25.08.130 Initiation of development.
- 25.08.140 Permit revisions.

25.08.010 Permits – General regulations.

(1) To be authorized under this program, all uses and developments shall be planned and carried out in a manner that is consistent with SMC and this program regardless of whether a shoreline substantial development permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

(2) The City shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this program.

(3) When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of this program, such development or use may only be authorized by approval of a state-issued shoreline variance even if the development or use does not require a substantial development permit (WAC 173-27-170).

(4) A new use or development that is unlisted or listed as a conditional use pursuant to this program must obtain a conditional use permit even if the development or use does not require a substantial development permit.

(5) Issuance of a shoreline substantial development permit, shoreline variance or shoreline conditional use permit does not constitute approval pursuant to any other federal, state or City laws or regulations.

(6) The fee(s) that shall accompany an application for a shoreline development (including applications for shoreline substantial development permits, statements of exemption, shoreline variances, or shoreline conditional use permits) shall be determined by the City council. (Ord. O2011-308 § 1 (Att. A))

25.08.020 Permits – Substantial development.

(1) Substantial development as defined by RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the director, unless the use or development is specifically identified as exempt from a substantial development permit per Chapter 90.58 RCW or by Chapter 173-27 WAC.

(2) The director may grant a substantial development permit only when the development proposed is consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and this program. (Ord. O2011-308 § 1 (Att. A))

25.08.030 Permits – Exemptions from a substantial development permit.

(1) Uses and developments that are not considered substantial developments pursuant to Chapter 90.58 RCW and Chapter 173-27 WAC shall not require a substantial development permit but shall conform to the policies and regulations of this program (WAC 173-27-040).

(2) If any part of a proposed development is not eligible for exemption as defined in Chapter 90.58 RCW and Chapter 173-27 WAC, then a substantial development permit is required for the entire proposed development project.

(3) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.

(4) The burden of proof that a development or use is exempt from a substantial development permit is on the applicant or property owner proposing the use or development action.

(5) The holder of a certification from the Governor pursuant to Chapter 80.50 RCW shall not be required to obtain a substantial development permit under this program. (Ord. O2011-308 § 1 (Att. A))

25.08.040 Permits – Statements of exemption.

(1) The director shall have the authority to require a statement of exemption for any proposed development or use if she/he has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption or there is a likelihood of adverse impacts to shoreline ecological functions.

(2) No written statement of exemption is required for emergency development pursuant to WAC 173-14-040(1)(d).

(3) In accordance with WAC 173-27-040, statements of exemptions may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act.

(4) A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. In accordance with SMC 20.50.020(1)(a), the director's decision to deny an exemption is not subject to administrative appeal. See SMC 25.08.090 for the formal appeal process.

(5) Whenever the exempt activity potentially requires a hydraulic project approval from the Washington State Department of Fish and Wildlife (WDFW), a copy of the written statement of exemption shall be sent to the applicant/property owner and WDFW.

(6) Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899, or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/property owner and Department of Ecology pursuant to WAC 173-27-050. (Ord. O2011-308 § 1 (Att. A))

25.08.050 Permits – Shoreline variances.

(1) The director is authorized to grant a shoreline variance from the performance standards of this program only when all of the criteria enumerated in WAC 173-27-170 are met.

(2) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this program would impose unnecessary hardships on the applicant/property owner or thwart the policies set forth in RCW 90.58.020.

(3) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances

extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(4) The burden of proving that a proposed variance meets the criteria in WAC 173-27-170 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.

(5) In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions or other users.

(6) A variance from City development code requirements shall not be construed to mean a shoreline variance from SMP use regulations and vice versa.

(7) Variances may not be used to permit a use or development that is specifically prohibited. (Ord. O2011-308 § 1 (Att. A))

25.08.060 Permits – Conditional use.

(1) The director is authorized to issue shoreline conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met.

(2) The burden of proving that a proposed shoreline conditional use meets the criteria in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.

(3) The director is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria. (Ord. O2011-308 § 1 (Att. A))

25.08.070 Administration – General standards.

Unless otherwise stated, this program shall be administered according to the standards and criteria in Chapter 90.58 RCW and Chapter 173-27 WAC. (Ord. O2011-308 § 1 (Att. A))

25.08.080 Permit process – Land use decisions.

Shoreline substantial development permits, statements of exemption, shoreline variances and shoreline conditional use permits shall be subject to all of the applicable requirements of Chapter 20.05 SMC. (Ord. O2011-308 § 1 (Att. A))

25.08.090 Permit process – Appeals.

(1) Appeals of the final decision of the City with regard to shoreline management shall be governed by the provisions of RCW 90.58.180.

(2) Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/property owner or any aggrieved party pursuant to RCW 90.58.180.

(3) The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140. (Ord. O2011-308 § 1 (Att. A))

25.08.100 Existing development.

(1) Existing single-family homes, other structures, existing uses, and appurtenances that were legally established prior to the effective date of this SMP are considered to be conforming to the SMP. Additions, expansion or reconstruction must meet the provisions of the SMP.

(a) Allowed Activities in Critical Areas. The following developments, activities and uses are allowed, provided such activities are otherwise consistent with this program and other applicable regulations. The director may apply conditions to an underlying permit or approval to ensure that the activities are consistent with the provisions of this chapter.

(i) Structural modification of, addition to or replacement of existing legally created structures, except single detached residences in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams, ponds or landslide hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the structure lying within the above-described building setback area, critical area or buffer.

(ii) Structural modification of, addition to or replacement of legally created single detached residences in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams, ponds or landslide hazard areas if the modification, addition, replacement or related activity does not increase the existing total footprint of the residence and associated impervious surface lying within the above-described buffer or building setback area by more than 1,000 square feet over that existing before November 27, 1990, and no portion of the modification, addition or replacement is located closer to the critical area. Mitigation of impacts to

critical areas or buffers disturbed is required and shall be evaluated to assure no net loss of ecological function.

(iii) Maintenance or repair of structures that do not meet the development standards of this chapter for landslide or seismic hazard areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.

(iv) Conservation, Preservation, Restoration and/or Enhancement.

(A) Conservation and preservation of soil, water, vegetation, fish and other wildlife that does not entail alteration of the location, size, dimensions or functions of an existing critical area or buffer; and

(B) Restoration and enhancement of critical areas or buffers; provided, that actions do not alter the location, dimensions or size of the critical area or buffer; that actions improve and do not reduce the existing quality or functions of the critical areas or buffers; and that actions are implemented according to a restoration or enhancement plan that has been approved by the City of Sammamish.

(C) Existing and ongoing agriculture and grazing of livestock is allowed subject to any limitations established by law, if the agriculture or grazing activity was in existence before November 27, 1990.

(b) Structures Not Meeting Current Regulations Other Than Critical Areas Requirements.

(i) Reconstruction, replacement, or expansion of the exterior footprint of an existing, legally established structure not meeting current regulations is allowed; provided, that the addition or reconstruction does not increase the noncompliance to current regulations.

(ii) Replacement may be allowed in a different location not meeting current regulations if a determination is made by the City that the new location results in less impact to shoreline functions than replacement in the existing footprint.

(iii) Existing structures that were legally established but which are not meeting current regulations with regard to the setback, area, bulk, height or density standards established by this program may be maintained, reconstructed, or repaired; provided, that the maintenance/reconstruction/repair does not

increase the extent of noncompliance with current regulations by encroaching upon or extending into the building setback area or shoreline setback or other area where new construction or use would not be allowed.

(iv) If a structure not meeting current regulations is damaged by fire, explosion, or other casualty and/or natural disaster, it may be reconstructed to match the footprint that existed immediately prior to the time the damage occurred or in accordance with subsection (1)(b) of this section; provided, that all of the following criteria are met:

(A) The owner(s) submit a complete application within 24 months of the date the damage occurred; and

(B) All permits are issued within two years of initial submittal of the complete application, and the restoration is completed within two years of permit issuance. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension; and

(C) If a structure not meeting current regulations is damaged by fire, explosion, or other casualty and/or natural disaster and these criteria are not met, the City may require the applicant to plant the vegetation enhancement area with native trees and shrubs in accordance with SMC 25.06.020.

(v) A structure not meeting current regulations that is moved outside the existing footprint must be brought into conformance with this program and Chapter 90.58 RCW, except as allowed by subsection (1)(b) of this section.

(vi) Allowances. The following developments, activities and uses are allowed, provided such activities are otherwise consistent with this program and other applicable regulations and law. The director may apply conditions to an underlying permit or approval to ensure that the activities are consistent with the provisions of the program.

(A) Structural modification of, addition to or replacement of existing legally created structures, except single detached residences, in existence before the effective date of the program, which do not meet the current shoreline setback or building setback requirements if the modification, addition, replacement or related activity does not increase the existing footprint of

the structure lying within the above-described shoreline setback or building setback area.

(B) Structural modification of, or replacement of legally created single detached residences in existence before the effective date of the program, that do not meet the current shoreline setback or building setback, if:

(1) The modification, addition, replacement or related activity does not increase the existing total footprint of the residence and associated impervious surface lying within the shoreline or building setback area more than 200 feet over that existing before the effective date of the program; and

(2) No portion of the modification, addition or replacement is located closer to the OHWM. This allowance may only be used once.

(3) Mitigation proportional (1:1) to the setback area impacted is required through planting of the VEA in accordance with the standards of this program.

(C) Structural modification of, or replacement of legally created single detached residences in existence before the effective date of the program, which do not meet the current shoreline setback or building setback, if:

(1) The footprint expansion extends landward (to the rear) from the existing structure footprint and maintains the same interior lot line setback distances up to the shoreline setback line (known as the “shadow” of the existing structure).

(2) Mitigation proportional (1:1) to the setback area impacted is required through planting of the VEA in accordance with the standards of this program. If the area impacted is over 500 square feet, the entire 15-foot VEA shall be vegetated with the exception of the allowed active use area.

(2) Nonconforming Lots. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM that was legally established prior to the effective date of this program, but which does not conform to the present lot size standards, may be developed subject to conformance to other applicable requirements of this program.

(3) Nonconforming Uses.

(a) Uses that were legally established prior to the adoption or amendment of this program and are nonconforming with regard to the use regulations of this program may continue as legal nonconforming uses.

(b) An existing use designated as a conditional use that lawfully existed prior to the adoption or amendment of this program and which has not obtained a conditional use permit shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.

(c) If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless in compliance with this program. (Ord. O2011-308 § 1 (Att. A))

25.08.110 Rules of director.

The director is authorized to adopt administrative rules as are necessary and appropriate to implement this program. The director may prepare and require the use of such forms as are necessary to its administration. (Ord. O2011-308 § 1 (Att. A))

25.08.120 Enforcement, violations and penalties.

The director is authorized to enforce the provisions of this program, including any rules and regulations promulgated thereunder, pursuant to the enforcement and penalty provisions of Chapter 173-27 WAC. (Ord. O2011-308 § 1 (Att. A))

25.08.130 Initiation of development.

Development pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use shall not begin and shall not be authorized until 21 days after the date of filing or until all appeal proceedings before the Shoreline Hearings Board have terminated. (Ord. O2011-308 § 1 (Att. A))

25.08.140 Permit revisions.

(1) A permit revision is required whenever the applicant/property owner proposes substantive changes to the design, terms or conditions of a use or development from those as approved in the existing and approved permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the existing and approved permit, this program or the Act. Changes that are not substantive in effect do not require a permit revision.

(2) An application for a revision to a shoreline permit shall be submitted to the director. The application shall include detailed plans and text describing the proposed changes.

The City shall review and process the request in accordance with the requirements of WAC 173-27-100. (Ord. O2011-308 § 1 (Att. A))

EXHIBIT 7

Building Permit Number CG2016-03488
Application Date 10/04/2016
Date Permit Issued 10/28/2016
Date Permit Expires
Site Address

Building Permit

CLEARING & GRADING



Parcel Number
 1724069007

Contractor Information

Contractor License Number

Owner Name / Address

Contractor License Expiration

COUNTY-PARKS KING
500 4TH AVE

Project Description

KING COUNTY TRAIL - PHASE 2A CLEAR AND GRADE

Subdivision:

Number of Units: 0

Lot:

Building Square Footage: 0

Fee Description

Fee Amount

Amount Paid

Construction Value: \$0.00

Permit Validity: The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Sammamish Municipal Code or any other State or Federal Laws.
 The Building Official is authorized to suspend or revoke a permit, in writing, whenever a permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation.

Owner / Agent Signature _____ Date 01/06/17

Building Permit Number CG2016-03488

Building Permit Number: CG2016-03488

Conditions

City of Sammamish

Conditions of Approval

Condition Number	Condition
1	VOIDED (LOZB 11/10/2016) (LOZB) - The applicant shall comply with all city, county, state, and federal rules and regulations in effect on September 14, 2014, the vesting date of the Shoreline Substantial Development Permit application SSDP2014-00171, including any necessary permits from applicable state or federal agencies. - The applicant shall comply with the Joint Stipulation dated December 21, 2015, unless events outside of their control make it impossible to construct the improvements to the drainage system depicted in Exhibit 20B of SSDP2014-00171. - Significant trees shown on the approved plans as being "save" or "monitor" within clearing limits require a separate tree removal permit authorization from the City prior to removal. Obtaining a permit may entail providing an arborist report. The City will provide a decision on a tree removal permit application within 24 hours, excluding weekends and holidays, of receipt by the City of a County application and, if required by the City, a County supplied arborist's report on the tree(s) that are subject of the application. - This Grading Permit shall comply with all applicable mitigation measures listed in the East Lake Sammamish Master Plan Trail Record of Decision. - Fences over 6 feet tall and retaining walls exceeding 42 inches in height will require structural review through a separate building permit. (see Conditions of Approval Matrix Item A3) - Consistent with SMC25.04.040(2), interpretive education sign(s) regarding shoreline ecological values and functions shall be placed along the corridor, where appropriate, as an educational tool for the protection of natural resources along the trail. Interpretive signage design and plans for installation (see Conditions of Approval Matrix Item A4) shall be provided to and approved by the City prior to placement of signage and final inspection. - The project mitigation plans shall be updated on sheet LD2 to satisfy Conditions of Approval Matrix Item A5. The updated sheet is required as a post issuance revision provided to and approved by the City prior to the project Grading preconstruction meeting. - Restoration and compensatory mitigation shall be completed substantially as shown on the Mitigation Plans found on the Landscape Plan sheets of the approved grading permit plans, and described in the Final Critical Areas study by Parametrix. - An as-built report shall be completed by a qualified professional to document completion of proposed mitigation and restoration work. The as-built report must be supplied to the City. After the City inspects and approves the as-built conditions, a required 5-year maintenance and monitoring period shall begin. During the 5-year maintenance and monitoring period, a monitoring report shall be prepared by a qualified professional and provided to the City for review by October 31st of each monitoring year. - In addition to mitigation standards described in the critical area mitigation plans, all shrubs and trees installed in mitigation planning areas shall meet a 100% survival standard one (1) year following City acceptance of as-built mitigation plans. All shrubs and trees installed in mitigation planting areas shall meet an 80% survival standard during mitigation monitoring years two (2) through five (5). Planting shall occur as needed to meet these standards in any mitigation monitoring year these standards are not met. (see Conditions of Approval Matrix Item A5) - The project mitigation plans shall be updated on sheet LD1 (or other sheets as appropriate) depicting installation, or other methods to provide, temporary irrigation that provides a minimum of 1-inch of water per week to installed mitigation and landscape plantings from July 1st through September 30th during the first two (2) years following plant installation in the mitigation areas. The updated sheet(s) are required as a post issuance revision provided to and approved by the city prior to the project Grading preconstruction meeting. (see Conditions of Approval Matrix Item A6) - The modification, relocation, or installation of a traffic control device affecting the City Right-of-Way (ROW) or other work connecting to the ROW (e.g. curb returns and ramps) requires approval of a ROW permit prior to placement of any such device or improvement. To satisfy Conditions of Approval Matrix Items B1, C1.26, and C1.34 and to clarify when a ROW permit is necessary, details depicting stop signs and other improvements must be removed from or noted accordingly within the plan set (such as the stop signs on sheet PS3 at Station 239) and applied for under a separate ROW permit. Revised plans where these items have been removed from or noted accordingly within the plan set shall be provided to and approved by the City prior to the Grading preconstruction meeting. - The following Items addressed in the Conditions of Approval Matrix require post issuance revisions: C1.3, C1.12, C1.17, C1.21, C1.24, C1.25, C1.30, C1.31, C1.32, C1.33, , 2.2 & 3.1. In accordance to SMC 27A and 2009 King County Surface Water Design Manual, the attached performance agreement and declaration of covenant shall also be signed and may be submitted post issuance. All required post

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City of Sammamish

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Condition Number Condition

issuance material shall tentatively be submitted to the City by November 7th, 2016 for review. Approval must be granted prior to the tentatively scheduled preconstruction meeting on November 16th, 2016. If the required information is not submitted or approved prior to the Grading preconstruction meeting, the meeting shall be postponed until these Items are met and approved.

- The Applicant has identified emergency overflow routes for infiltration facilities in their response to City comments dated October 24, 2016 and stamped received by the City on October 27, 2016. In accordance to the 2009 King County Surface Water Design Manual, overflow routes for infiltration systems shall safely convey the 100-year developed peak flow to the downstream conveyance system or other acceptable discharge point. Acceptable discharge locations do not include locations that increase flooding of roadways, driveways or habitable structures. The Applicant shall rectify stormwater systems to ensure unforeseen surface water impacts from emergency overflow are addressed. The Applicant has identified several areas for surface water dispersion. In accordance to the 2009 King County Surface Water Design Manual, the dispersion of runoff must not create flooding or erosion impacts. The Applicant shall rectify stormwater systems to ensure unforeseen surface water impacts from dispersion are addressed.

- The Applicant has certified through their professional engineer that CB #5 and its associated conveyance system on Sheet AL3 will not overflow (18-inch diameter connection to existing 12-inch diameter storm pipe). The Applicant shall rectify stormwater systems to ensure unforeseen surface water impacts from this conveyance system connection are addressed.

- A detail for the structural earth wall shown on sheet WD1 shall be stamped by a geotechnical or structural engineer to satisfy Conditions of Approval Matrix Item C1.28 and shall be provided to and approved by the City prior to final inspection.

- Prior to beginning any work, please contact the City's Permit Center at 425-295-0500 to coordinate and schedule a Public Works preconstruction meeting. The meeting is tentatively set for November 16, 2016. (see Conditions of Approval Matrix 4.1)

- A portion of this project is located within an Erosion Hazard Area where any land clearing, grading, filling, and foundation work is only allowed from May 1st to September 30th of each year unless SMC 21A.50.220(1)(a), (2), (4), and (5) are met. A written request to the City for consideration of work outside of the allowed timeframe per City code illustrating how all sections of SMC 21A.50.220 as cited above have been met, shall be provided to and approved by the City prior to the Grading preconstruction meeting.

- Following approval of the final project Grading plans that demonstrate compliance with applicable conditions of approval through post-issuance revision, and prior to the Grading preconstruction meeting, please provide two copies of stamped (engineering) mylar sets for City signature of approval. Following City signature and approval the City will issue one set to the County. Please copy the issued mylar set and provide to the City's Permit Center the following copies: 2 full size (22x34) paper copies, 3 half size (11x17) copies, and 1 CD of scanned PDFs.

- Provide white board signs appropriately placed in a visible location along the linear project corridor with the project name, permit number, and Contractor/Developer/TESC supervisor contact information on site prior to the start of any construction.

- No work in the ROW is approved under this permit. A separate ROW permit is required for installation of any work in the ROW, including installation of any erosion control measures.

- No retaining/rockery wall over 4-feet in height or supporting a surcharge load is approved under this permit. Separate building permit shall be required for each.

- Due to the project location in a CARA, fill material shall not contain concentrations of contaminants that exceed cleanup standards for soil as specified in the Model Toxics Control Act (MTCA). An imported fill source statement is required if more than 100 cubic yards of fill will be imported to the site. The City may require analytical results to demonstrate that fill materials do not exceed cleanup standards.

- Per WAC 173-27-090, construction shall be commenced on the proposed trail widening and paving, and associated improvements, within two (2) years of the effective date of a shoreline permit. Authorization to conduct development activities shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the City.

2 *To schedule an inspection please call 425-295-0573

3 General Conditions

Per Sammamish Municipal Code, section 16.05.030

No construction or noise is allowed on Sunday or outside of:

Building Permit Number: CG2016-03488

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City of Sammamish

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Condition Number Condition

7am to 8 pm Monday - Friday, 9am - 6 pm Saturdays.

No Construction will be allowed on the following holidays:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.

All site plans, construction documents, TESC plans and drainage plans should be kept together as one set of rolled documents and accessible to the Building Inspector at each inspection.

Per the Water District: Any sprinkler head addition or alteration to an existing fire sprinkler system will need approval of the water district. Please contact your water district (Sammamish Plateau Water and Sewer District 425-392-6256 or Northeast Sammamish Sewer and Water District 425-868-1144) for more information or to schedule an appointment.

A. TEMPORARY PROPERTY IDENTIFICATION Prior to the first requested inspection, the property shall be clearly identified by posting a sign with lot number, street number and street name. Where necessary to locate the property, additional directional signs may be required where unidentified driveways or roads branch off of main roads.

B. UTILITIES LOCATING All underground utilities must be located prior to any excavation. Call 1 (800) 424-5555

C. EMERGENCY ACCESS Roads or other access shall not be blocked to prevent the access of emergency vehicles at any time.

D. ROAD CLEANLINESS All public roads are to be kept clean from dirt and other debris from this site and project at all times. The applicant and contractor(s) are considered responsible for determining the necessary methods for cleaning and dirt or debris that may enter onto a public road and then implementing those methods immediately. Failure to keep road surfaces to City standards of cleanliness may mean the involvement of the City Public Works Department and Building Division through orders to direct proper clean-up measures.

- 4 E. TEMPORARY EROSION CONTROL All temporary erosion control measures are to comply with the King County, Washington Surface Water Design Manual and be in place at the footing inspection unless required earlier as determined in the pre-construction meeting. Temporary erosion control measures are to be maintained throughout the duration of this project and will additionally be monitored by the City of Sammamish Building Division.

F. SITE RESTORATION PERMANENT EROSION CONTROL The Certificate of Occupancy or Final Inspection will not be issued without permanent erosion control measures installed and the temporary measures removed, subject to the discretion of the building inspector.

G. PORTABLE TOILET During the period of this project, a toilet shall be available for worker use.

H. SETBACK VERIFICATION The contractor shall verify the property lines and setbacks for the placement of the structure authorized by this permit. All property lines shall be identified and string lines provided at the time of inspection, or be provided with survey pins in building corners with as-built site plan.

- 5 II. BUILDING INSPECTIONS Schedule all essential and incremental visual inspections as listed on the Inspection Record @ www.sammamish.us (For additional unlisted inspections, check with your building inspector.) - Do not cover items required to be inspected without a visual inspection by the City of Sammamish Building Division or as otherwise and previously agreed through an independent special inspection agency. - Under-floor framing inspection is required prior to floor sheathing installation. - Exterior & interior shear-wall nailing inspection is required prior to cover. - Roof-sheathing nailing inspection is required prior to cover. - Electrical inspection by Department of Labor and Industries for cover is required prior to framing inspection. (425) 990-1400 - Other agency sign-off on City Inspection Card required prior to final inspection approval. - A re-inspection fee may be charged if the work to be inspected is incomplete or not ready, and the fee must be paid prior to further city inspections on the project. INSPECTOR SHALL MAKE ANY FIELD MODIFICATIONS DEEMED NECESSARY IN ORDER TO MEET MINIMUM BUILDING CODE REQUIREMENTS.

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- J. APPROVED ADDRESS Approved addresses shall be provided for all new & existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall be a minimum of 4(four) inches high and contrast to the surface in which they are being attached. Larger numbers may be necessary to assure visibility.
- 6 K. STREET SIGN INSTALLATION The developer of plats and subdivisions is responsible for installing street name signs (per City Standards) prior to the final inspection for construction approval and before any residential occupancy may be approved within the plat or subdivision.
- L. CHANGES TO THE APPROVED PLANS- REVISIONS Changes to the approved plans require formal re-approval through the Building Division prior to calling for an inspection of the changed item. The City stamped approved change is to be on-site for any inspection of a revised item. Allow time to process any change. Submit plans of the changes to the City of Sammamish Permit Center for routing to appropriate plan reviewers. Fees will be charged for Permit Center processing, and straight hourly or hourly plus valuation (sq. ft. increase) for the actual review of the changes. Permit processing fees will be charged at the time of revision application and review charges will be due after all new necessary reviews are completed.
- M. Every building permit and its associated ancillary permits issued shall expire in two years from the date of issuance. Within two years of the issuance of the permit for an IRC structure, the outside must be complete including roofing, siding, windows, exterior doors and applicable site and right-of-way improvements. The two years to complete the IRC structure may not be extended.
- It is a violation of this chapter to allow a permit to expire without first obtaining an approved final inspection.
- 7 VOIDED (LOZB 11/10/2016)
(LOZB)
- The Applicant shall ensure that emergency overflows from infiltration facilities are designed, constructed, and maintained in accordance with the Stormwater Manual which indicates the following: An overflow route shall be identified for stormwater flows that overtop the facility when infiltration capacity is exceeded or the facility becomes plugged and fails. The overflow route must be able to safely convey the 100-year developed peak flow to the downstream conveyance system or other acceptable discharge point in accordance with conveyance requirements in Section 1.2.4. (Section 5.4, page 5-60). Section 1.2.4 further describes the significance of impacts to existing drainage problems on page 1-29. The Applicant shall ensure that proposed dispersion areas are designed, constructed, and maintained in accordance with the Stormwater Manual which indicates the following minimum requirements for basic dispersion: The dispersion of runoff must not create flooding or erosion impacts as determined by the DDES [City]... (Appendix C, Section C.2.4.1, page C-52).
 - The Applicant has certified through their professional engineer that CB#5, CB#6, and associated conveyance system on Sheet AL3 will not overflow in a 100-year event in accordance with the Stormwater Manual. However, as a transition from an 18" diameter pipe down to a 12" diameter does not follow industry standard and the TIR has identified existing flooding at CB#6, the Applicant shall monitor and maintain this conveyance system connection for a minimum of one year following substantial completion and shall correct any code related deficiencies. The Stormwater Manual states that an existing system may be utilized if the 100-year peak flow to an existing system will not create or aggravate a severe flooding problem or severe erosion problem (Section 1.2.4.2, page 1-52). Aggravation is defined as increasing the frequency of occurrence and/or severity of a problem (Section 1.2.2.2, page 1-28).
- 8 (LOZB)
- Pursuant to the Wet Weather Work Request Memo (dated November 4, 2016) and Stormwater Pollution Prevention Plan (dated November 3, 2016) prepared by Parametrix, the City will allow wet season work in conformance with SMC 16.15.120(4) and SMC 21A.50.220.
 - The applicant shall comply with all city, county, state, and federal rules and regulations in effect on September 14, 2014, the vesting date of the Shoreline Substantial Development Permit application SSDP2014-00171, including any necessary permits from applicable state or federal agencies.
 - The applicant shall comply with the Joint Stipulation dated December 21, 2015, unless events outside of their control make it impossible to construct the improvements to the drainage system depicted in Exhibit 20B of SSDP2014-00171.
 - Significant trees shown on the approved plans as being "save" or "monitor" within clearing limits require a separate tree removal permit authorization from the City prior to removal. Obtaining a permit

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Conditions

City of Sammamish

Conditions of Approval

- | | |
|------------------|--|
| Condition Number | <p>Condition</p> <p>may entail providing an arborist report. The City will provide a decision on a tree removal permit application within 24 hours, excluding weekends and holidays, of receipt by the City of a County application and, if required by the City, a County supplied arborist's report on the tree(s) that are subject of the application.</p> <ul style="list-style-type: none"> • This Grading Permit shall comply with all applicable mitigation measures listed in the East Lake Sammamish Master Plan Trail Record of Decision. • Fences over 6 feet tall and retaining walls exceeding 42 inches in height will require structural review through a separate building permit. (see Conditions of Approval Matrix Item A3) • Restoration and compensatory mitigation shall be completed substantially as shown on the Mitigation Plans found on the Landscape Plan sheets of the approved grading permit plans, and described in the Final Critical Areas study by Parametrix. • An as-built report shall be completed by a qualified professional to document completion of proposed mitigation and restoration work. The as-built report must be supplied to the City. After the City inspects and approves the as-built conditions, a required 5-year maintenance and monitoring period shall begin. During the 5-year maintenance and monitoring period, a monitoring report shall be prepared by a qualified professional and provided to the City for review by October 31st of each monitoring year. • In addition to mitigation standards described in the critical area mitigation plans, all shrubs and trees installed in mitigation planning areas shall meet a 100% survival standard one (1) year following City acceptance of as-built mitigation plans. All shrubs and trees installed in mitigation planting areas shall meet an 80% survival standard during mitigation monitoring years two (2) through five (5). Planting shall occur as needed to meet these standards in any mitigation monitoring year these standards are not met. (see Conditions of Approval Matrix Item A5) • No work in the ROW is approved under this permit. A separate ROW permit is required for installation of any work in the ROW, including installation of any erosion control measures. • No retaining/rockery wall over 4-feet in height or supporting a surcharge load is approved under this permit. Separate building permit shall be required for each. • Due to the project location in a CARA, fill material shall not contain concentrations of contaminants that exceed cleanup standards for soil as specified in the Model Toxics Control Act(MTCA). An imported fill source statement is required if more than 100 cubic yards of fill will be imported to the site. The City may require analytical results to demonstrate that fill materials do not exceed cleanup standards. • Prior to beginning any work, please contact the City's Permit Center at 425-295-0500 to coordinate and schedule a Public Works preconstruction meeting. The meeting is tentatively set for November 16, 2016. (see Conditions of Approval Matrix 4.1) • Following approval of the final project Grading plans that demonstrate compliance with applicable conditions of approval through post-issuance revision, and prior to the Grading preconstruction meeting, please provide two copies of stamped (engineering) mylar sets for City signature of approval. Following City signature and approval the City will issue one set to the County. Please copy the issued mylar set and provide to the City's Permit Center the following copies: 2 full size (22x34) paper copies, 3 half size (11x17) copies, and 1 CD of scanned PDFs. • Provide white board signs appropriately placed in a visible location along the linear project corridor with the project name, permit number, and Contractor/Developer/TESC supervisor contact information on site prior to the start of any construction. |
|------------------|--|
- 9 (LOZB)
- The project mitigation plans shall be updated on sheet LD2 to satisfy Conditions of Approval Matrix Item A5. The updated sheet is required as a post issuance revision provided to and approved by the City prior to the project Grading preconstruction meeting.
 - The project mitigation plans shall be updated on sheet LD1 (or other sheets as appropriate) depicting installation, or other methods to provide, temporary irrigation that provides a minimum of 1-inch of water per week to installed mitigation and landscape plantings from July 1st through September 30th during the first two (2) years following plant installation in the mitigation areas. The updated sheet(s) are required as a post issuance revision provided to and approved by the city prior to the project Grading preconstruction meeting. (see Conditions of Approval Matrix Item A6)
 - A portion of this project is located within an Erosion Hazard Area where any land clearing, grading, filling, and foundation work is only allowed from May 1st to September 30th of each year unless SMC 21A.50.220(1)(a), (2), (4), and (5) are met. A written request to the City for consideration of work outside of the allowed timeframe per City code illustrating how all sections of SMC 21A.50.220 as cited above have been met, shall be provided to and approved by the City prior to the Grading preconstruction meeting.

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Conditions

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- 10 (LOZB)
 - The Applicant shall ensure that emergency overflows from infiltration facilities are designed, constructed, and maintained in accordance with the Stormwater Manual which indicates the following: An overflow route shall be identified for stormwater flows that overtop the facility when infiltration capacity is exceeded or the facility becomes plugged and fails. The overflow route must be able to safely convey the 100-year developed peak flow to the downstream conveyance system or other acceptable discharge point in accordance with conveyance requirements in Section 1.2.4. (Section 5.4, page 5-60). Section 1.2.4 further describes the significance of impacts to existing drainage problems on page 1-29. The Applicant shall ensure that proposed dispersion areas are designed, constructed, and maintained in accordance with the Stormwater Manual which indicates the following minimum requirements for basic dispersion: The dispersion of runoff must not create flooding or erosion impacts as determined by the DDES [City]... (Appendix C, Section C.2.4.1, page C-52).
- 11 (LOZB)
 - The Applicant has certified through their professional engineer that CB#5, CB#6, and associated conveyance system on Sheet AL3 will not overflow in a 100-year event in accordance with the Stormwater Manual. However, as a transition from an 18" diameter pipe down to a 12" diameter does not follow industry standard and the TIR has identified existing flooding at CB#6, the Applicant shall monitor and maintain this conveyance system connection for a minimum of one year following substantial completion and shall correct any code related deficiencies. The Stormwater Manual states that an existing system may be utilized if the 100-year peak flow to an existing system will not create or aggravate a severe flooding problem or severe erosion problem (Section 1.2.4.2, page 1-52). Aggravation is defined as increasing the frequency of occurrence and/or severity of a problem (Section 1.2.2.2, page 1-28).
- 12 (LOZB)
 - Per WAC 173-27-090, construction shall be commenced on the proposed trail widening and paving, and associated improvements, within two (2) years of the effective date of a shoreline permit. Authorization to conduct development activities shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the City.
- 13 (LOZB)
 - The modification, relocation, or installation of a traffic control device affecting the City Right-of-Way (ROW) or other work connecting to the ROW (e.g. curb returns and ramps) requires approval of a ROW permit prior to placement of any such device or improvement. To satisfy Conditions of Approval Matrix Items B1, C1.26, and C1.34 and to clarify when a ROW permit is necessary, details depicting stop signs and other improvements must be removed from or noted accordingly within the plan set (such as the stop signs on sheet PS3 at Station 239) and applied for under a separate ROW permit. Revised plans where these items have been removed from or noted accordingly within the plan set shall be provided to and approved by the City prior to the Grading preconstruction meeting.
 - The following Items addressed in the Conditions of Approval Matrix require post issuance revisions: C1.3, C1.12, C1.17, C1.21, C1.24, C1.25, C1.30, C1.31, C1.32, C1.33, , 2.2 & 3.1. In accordance to SMC 27A and 2009 King County Surface Water Design Manual, the attached performance agreement and declaration of covenant shall also be signed and may be submitted post issuance. All required post issuance material shall tentatively be submitted to the City by November 7th, 2016 for review. Approval must be granted prior to the tentatively scheduled preconstruction meeting on November 16th, 2016. If the required information is not submitted or approved prior to the Grading preconstruction meeting, the meeting shall be postponed until these Items are met and approved.
- 14 (LOZB)
 - Consistent with SMC25.04.040(2), interpretive education sign(s) regarding shoreline ecological values and functions shall be placed along the corridor, where appropriate, as an educational tool for the protection of natural resources along the trail. Interpretive signage design and plans for installation (see Conditions of Approval Matrix Item A4) shall be provided to and approved by the City prior to placement of signage and final inspection.
- 15 (LOZB)
 - A detail for the structural earth wall shown on sheet WD1 shall be stamped by a geotechnical or structural engineer to satisfy Conditions of Approval Matrix Item C1.28 and shall be provided to and approved by the City prior to final inspection.
- 16 (LOZB)
 - Significant tree retention, monitoring, and removal shall be done in strict conformance with the

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Condition Number	Condition
	memorandum and tree preservation plan set submitted to the City by American Forest Management (AFM) on January 4, 2017. This document shall be attached to the existing approved plan set.
	Any alterations or changes to the January 4, 2017 AFM memorandum and tree preservation plan set shall require another Clearing and Grading Permit Revision or submittal of a new Tree Permit to the City for approval. Construction activity in the affected area shall be halted until such time that the changes have been approved.

Inspection Record

To schedule an inspection please visit <http://www.sammamish.us>.

**No construction or noise is allowed on Sunday or outside of:
7:00 am to 8:00 pm Monday - Friday, 9:00 am to 6:00 pm Saturdays
No construction will be allowed on the following holidays: New Year's Day, Memorial Day,
Independence Day, Labor Day, Thanksgiving Day, and Christmas Day**

Permit Number:
CG2016-03488

Site Address:

Lot #

Plat/Subdivision:

INSPECTION TYPE	DATE	INSPECTOR / COMMENTS
101 PRECON MEETING		
102 TESC		
126 FINAL **		
160 INLET PROTECTION		
161 DISTURBANCE AREA		

RE-INSPECTION FEES

A REINSPECTION FEE MAY BE CHARGED FOR EACH CITY INSPECTION THAT IS REQUESTED AS FOLLOWS:

1. THE WORK TO BE INSPECTED IS INCOMPLETE OR NOT READY.
2. THE PERMIT, PLANS AND INSPECTION CARD ARE NOT ON SITE AND AVAILABLE FOR THE INSPECTOR OR THE INSPECTOR IS UNABLE TO GAIN ENTRY TO THE AREA REQUIRING INSPECTION.
3. EXCESS INSPECTIONS OR REINSPECTIONS (Double Reinspection Fee)

WHEN A REINSPECTION FEE IS REQUIRED (AS NOTED ON THE CORRECTION NOTICE), THE FEE MUST BE PAID PRIOR TO FURTHER CITY INSPECTIONS ON THIS PROJECT

EXHIBIT 8

16.15.050 Clearing and grading permit required – Exceptions.

No person shall do any clearing or grading without first having obtained a clearing and grading permit from the director except for the following:

- (1) An on-site excavation or fill for basements and footings of a building, retaining wall, parking lot, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than five feet after the completion of such structure;
- (2) Maintenance of existing driveways or private access roads within their existing road prisms; provided, that the performance and restoration requirements of this chapter are met and best management practices are utilized to protect water quality;
- (3) Any grading within a publicly owned road right-of-way, provided this does not include clearing or grading that expands further into a critical area or buffer;
- (4) Clearing or grading by a public agency for the following routine maintenance activities:
 - (a) Roadside ditch cleaning, provided the ditch does not contain salmonids;
 - (b) Pavement maintenance;
 - (c) Normal grading of gravel shoulders;
 - (d) Maintenance of culverts;
 - (e) Maintenance of flood control or other approved surface water management facilities;
 - (f) Routine clearing within road right-of-way;
- (5) Cemetery graves; provided, that this exception does not apply except for routine maintenance if the clearing or grading is within a critical area as regulated in Chapter 21A.50 SMC;
- (6) Minor stream restoration projects for fish habitat enhancement by a public agency, utility, or tribe as set out in Chapter 21A.50 SMC;
- (7) Any clearing or grading that has been approved by the director as part of a commercial site development permit and for which a financial guarantee has been posted;
- (8) The following activities are exempt from the clearing requirements of this chapter and no permit shall be required:
 - (a) Normal and routine maintenance of existing lawns and landscaping, including up to 50 cubic

yards of top soil, mulch, or bark materials added to existing landscaped areas subject to the limitations in critical areas and their buffers as set out in Chapter 21A.50 SMC;

(b) Emergency tree removal to prevent imminent danger or hazard to persons or property;

(c) Normal and routine horticultural activities associated with commercial orchards, nurseries, or Christmas tree farms subject to the limitations on the use of pesticides in critical areas as set out in Chapter 21A.50 SMC. This does not include clearing or grading in order to develop or expand such activities;

(d) Normal and routine maintenance of existing public park properties and private and public golf courses. This does not include clearing or grading in order to develop or expand such activities in critical areas;

(e) Removal of noxious weeds from steep slope hazard areas and the buffers of streams and wetlands subject to the limitations on such removal and the use of pesticides in critical areas as set out in Chapter 21A.50 SMC;

(f) Pruning and limbing of vegetation for maintenance of above-ground electrical and telecommunication facilities; provided, that the clearing is consistent with the electric, natural gas, cable communication and telephone utility exemption in critical areas as regulated in Chapter 21A.50 SMC;

(9) The cutting and removal of any coniferous tree of less than eight inches DBH or any deciduous tree of less than 12 inches DBH when not located within a critical area or buffer;

(10) The pruning, limbing, and general maintenance of trees outside of environmentally critical areas and buffers, consistent with the requirements of Chapter 21A.35 SMC;

(11) The pruning, limbing, and general maintenance of trees in buffers or that are otherwise required to be retained pursuant to Chapter 21A.50 SMC;

(12) An excavation that is less than two feet in depth or does not create a cut slope greater than five feet in height and steeper than one unit vertical in two units horizontal (66.7 percent slope), that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers;

(13) A fill less than one foot in depth and placed on natural terrain with a slope flatter than one unit vertical in five units horizontal (20 percent slope), or less than three feet in depth, not intended to support structures, that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers;

(14) Normal routine maintenance of existing single-family drainage systems, including but not limited

to excavation to replace existing pipes, catch basins and infiltration trenches, that does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course, excluding work in critical areas and their buffers; and

(15) Installation of sanitary septic systems with King County health district approval and inspection. (Ord. O2009-249 § 1; Ord. O2005-193 § 2, 2005; Ord. O2005-175 § 1; Ord. O2004-149 § 2; Ord. O2003-132 § 2)

16.15.060 Applications – Complete applications.

(1) For the purposes of determining the application of time periods and procedures adopted by this chapter, applications for permits authorized by this chapter shall be considered complete as of the date of submittal upon determination by the department that the materials submitted contain the following:

(a) For clearing and grading permits:

(i) A legal description of the property;

(ii) A 1:1,000 scale vicinity map with a north arrow;

(iii) Grading plans including:

(A) Horizontal and vertical scale;

(B) Size and location of existing improvements within 50 feet of the project, indicating which improvements will remain and which improvements will be removed;

(C) Existing and proposed contours at maximum five-foot intervals, and extending for 100 feet beyond the project edge;

(D) At least two cross-sections, one in each direction, showing existing and proposed contours and horizontal and vertical scales; and

(E) Temporary and permanent erosion-sediment control facilities;

(iv) The following plans must be stamped and signed by a registered civil engineer, licensed to practice in the state of Washington:

(A) Permanent drainage facilities;

(B) Structures to be built or construction proposed in landslide hazard areas; and

(C) Proposed construction or placement of a structure.

(b) A completed environmental checklist, if required by Chapter 20.15 SMC, State Environmental Policy Act Procedures.

(c) Satisfaction of all requirements for grading permits under SMC [16.15.070](#).

(2) Applications found to contain material errors shall not be deemed complete until such material errors are corrected.

(3) The director may waive specific submittal requirements determined to be unnecessary for review of an application. (Ord. O2003-132 § 2)

16.15.070 Permit requirements.

Except as exempted in SMC [16.15.050](#), no person shall do any clearing or grading without first obtaining a clearing and grading permit from the director. A separate permit shall be required for each site and may cover both excavations and fills.

(1) Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished for that purpose. The director shall prescribe the form by which application is made. No application shall be accepted unless it is completed consistent with the requirements of this chapter and the permit process and procedures chapter of SMC Title 20. In addition to the requirements of SMC 20.05.040 every application shall:

- (a) Identify and describe the work to be covered by the permit for which application is made;
- (b) Describe the land on which the proposed work is to be done, by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed site;
- (c) Identify and describe those critical areas as defined in Chapter 21A.50 SMC on or adjacent to the site;
- (d) Indicate the estimated quantities of work involved;
- (e) Identify any clearing restrictions contained in SMC 16.15.120, wildlife habitat corridors pursuant to Chapter 21A.30 SMC, critical drainage areas established by administrative rule or property-specific development standards pursuant to SMC 21A.50.225;
- (f) Be accompanied by plans and specifications as required in subsections (2) and (3) of this section;
- (g) Designate who the applicant is, on a form prescribed by the department, except that the application may be accepted and reviewed without meeting this requirement when a public agency or public or private utility is applying for a permit for property on which the agency or

utility does not own an easement or right-of-way and the following three requirements are met:

- (i) The name of the agency or public or private utility is shown on the application as the applicant;
- (ii) The agency or public or private utility includes in the complete application an affidavit declaring that notice of the pending application has been given to all owners of property to which the application applies, on a form provided by the department; and
- (iii) The form designating the applicant is submitted to the department prior to permit issuance; and

(h) Give such other information as may be required by the director.

(2) Plans and Specifications. When required by the director, each application for a grading permit shall be accompanied by six sets of plans and specifications and other supporting data as may be required. The plans and specifications shall be prepared and signed by a civil engineer or landscape architect registered to practice in the state of Washington when required by the director; provided, the director may require additional studies prepared by a qualified soils specialist. If the plans and specifications are returned as a result of permit denial or any other reason, they shall be returned to the applicant.

(3) Information on Plans and in Specifications. Plans shall be drawn to an engineer's scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that the plans will conform to the provisions of this chapter and all other relevant laws, rules, regulations, and standards. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the name of the person by whom the plans were prepared. The plans shall include the following minimum information:

- (a) General vicinity of the proposed site;
- (b) Property limits and accurate contours of existing ground and details of terrain and area drainage;
- (c) Limiting dimensions, elevations, or finished contours to be achieved by the grading, proposed drainage channels, and related construction;
- (d) Location of all proposed cleared areas;
- (e) Location of any open space tracts or conservation easements if required pursuant to:
 - (i) SMC 16.15.120;

- (ii) Chapter 21A.30 SMC;
 - (iii) Critical drainage area; or
 - (iv) Property-specific development standards pursuant to Chapter 21A.85 SMC;
- (f) Calculations of the total proposed area cleared on site as a percentage of the total site area;
- (g) Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, berms, settling ponds, and other protective devices to be constructed with or as a part of the proposed work, together with the maps showing the drainage area and the estimated runoff of the area served by any drains;
- (h) A determination of whether drainage review applies to the project pursuant to Chapter 9.04 KCC as adopted by Chapter 15.05 SMC, and, if applicable, all drainage plans and documentation consistent with King County surface water design manual requirements;
- (i) Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners that are within 50 feet of the property or that may be affected by the proposed grading operations;
- (j) Other information as may be required by the director; and
- (k) If the clearing or grading is proposed to take place in or adjacent to a sensitive area as regulated in Chapter 21A.50 SMC, provide information as required by that chapter.

(4) Granting of Permits.

- (a) The director shall determine if the proposed grading will adversely affect the character of the site for present lawful uses or with the future development of the site and adjacent properties for building or other purposes as indicated by the interim comprehensive plan, the shoreline master program, and the development code.
- (b) After an application has been filed and reviewed, the director shall also ascertain whether such grading work complies with the other provisions of this chapter. If the application and plans so comply, or if they are corrected or amended so as to comply, the director may issue to the applicant a grading permit. A grading permit shall be valid for the number of days stated in the permit but in no case shall the period be more than two years; provided, that when operating conditions have been met, the permit may be renewed every two years, or less if a shorter approval and/or renewal period is specified by the director.
- (c) No grading permit shall be issued until approved by federal, state, and local agencies having jurisdiction by laws or regulations.

(d) Upon approval of the application and issuance of the grading permit, no work shall be done that is not provided for in the permit. The director is authorized to inspect the premises at any reasonable time to determine if the work is in accordance with the permit application and plans.

(e) The permits from the director shall be required regardless of any permits issued by any other department of City government or any other governmental agency who may be interested in certain aspects of the proposed work. Where work for which a permit is required by this chapter is started or proceeded with prior to obtaining the permit, the violator shall be subject to such civil penalties as provided in Chapter 23.40 SMC. However, the payment of such civil penalties shall not relieve any persons from fully complying with the requirements of this chapter in the execution of the work nor from any other penalties prescribed thereon. (Ord. O2009-249 § 1; Ord. O2003-132 § 2)

EXHIBIT 9

Chapter 20.05
PROCEDURES FOR LAND USE PERMIT APPLICATIONS, PUBLIC NOTICE,
HEARINGS AND APPEALS

Sections:

- 20.05.010 Chapter purpose.
- 20.05.020 Classifications of land use decision processes.
- 20.05.030 Feasibility conference – Preapplication conference.
- 20.05.035 Neighborhood meetings.
- 20.05.037 Unified zone development plan process.
- 20.05.040 Application requirements.
- 20.05.050 Notice of complete application to applicant.
- 20.05.060 Notice of application.
- 20.05.070 Vesting.
- 20.05.080 Applications – Modifications to proposal.
- 20.05.085 Reasonable accommodation.
- 20.05.090 Notice of decision or recommendation – Appeals.
- 20.05.100 Permit issuance.
- 20.05.110 Semi-annual report.
- 20.05.120 Citizen's guide.

20.05.010 Chapter purpose.

The purpose of this chapter is to establish standard procedures for land use permit applications, public notice, hearings, and appeals in the City of Sammamish. These procedures are designed to promote timely and informed public participation in discretionary land use decisions; eliminate redundancy in the application, permit review, hearing and appeal processes; provide for uniformity in public notice procedures; minimize delay and expense; and result in development approvals that implement the policies of the interim comprehensive plan. These procedures also provide for an integrated and consolidated land use permit and environmental review process consistent with Chapter 347, Laws of 1995. (Ord. O99-29 § 1)

20.05.020 Classifications of land use decision processes.

(1) Land use permit decisions are classified into four types, based on the amount of discretion associated with each decision. Procedures for the four different types are distinguished according to who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made, and whether administrative appeals are provided. The types of land use decisions are listed in Exhibit A of this section.

(a) Type 1 decisions are made by the director (director) of the department of community development (department). Type 1 decisions are non-appealable

administrative decisions that require the exercise of little or no administrative discretion. For Type 1 decisions for which the department has issued a SEPA threshold determination, the issuance of any subsequent permits shall not occur until any allowed administrative appeal of the SEPA threshold determination is decided.

(b) Type 2 decisions are made by the director, or his or her designee. Type 2 decisions are discretionary decisions that are subject to administrative appeal in accordance with applicable provisions of law or ordinance.

(c) Type 3 decisions are quasi-judicial decisions made by the hearing examiner following an open record hearing. Type 3 decisions may be appealed to superior court.

(d) Type 4 decisions are quasi-judicial decisions made by the hearing examiner. Type 4 decisions may be appealed to the State Shoreline Hearings Board.

(2) Except as provided in SMC 20.15.130(1)(f) or unless otherwise agreed to by the applicant, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest numbered land use decision type applicable to the project application.

(3) Certain development proposals are subject to additional procedural requirements beyond the standard procedures established in this chapter.

(4) Land use permits that are categorically exempt from review under the State Environmental Policy Act (SEPA) will not require a threshold determination (determination of nonsignificance (DNS) or determination of significance (DS)). For all other projects, the SEPA review procedures codified in Chapter 20.15 SMC are supplemental to the procedures set forth in this chapter.

Exhibit A

LAND USE DECISION TYPE

Type 1	Decision by director, no administrative appeal	Building; clearing and grading; boundary line adjustment; temporary use; TDR sending site certification; right-of-way; road variance except those rendered in conjunction with a subdivision or short plat decision ¹ ; variance from the requirements of Chapter 9.04 KCC as adopted by SMC Title 13; shoreline exemption; approval of a conversion harvest plan; temporary homeless encampment permit ²
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Type 2	Decision by director appealable to hearing examiner, no further administrative appeal	Short plat; road variance decisions rendered in conjunction with a short plat decision; zoning variance; conditional use permit; procedural and substantive SEPA decision; site development permit; approval of residential density incentives; reuse of public schools; reasonable use exceptions under SMC 21A.50.070(2); preliminary determinations under SMC 20.05.030(3); critical areas exceptions and decisions to require studies or to approve, condition or deny a development proposal based on the requirements of Chapter 21A.50 SMC; binding site plan; unified zone development plan under Chapter 21B.95 SMC ³
Type 3	Recommendation by director, hearing and decision by hearing examiner appealable to superior court	Preliminary plat; plat alterations; preliminary plat revisions; plat vacations; zone reclassifications ⁴ ; urban planned development; special use
Type 4	Recommendation by director, hearing and decision by hearing examiner appealable to the State Shoreline Hearings Board	Shoreline variances; shoreline substantial development permits (SSDPs); shoreline conditional use permits

¹ The road variance process is administered by the City engineer pursuant to the City's street standards as set forth in the public works standards.

² Subject to the notice requirements of SMC 21A.70.195(4).

³ Subject also to the procedural requirements of SMC 20.05.037 and Chapter 21B.95 SMC.

⁴ Approvals that are consistent with the interim comprehensive plan may be considered by the examiner at any time. Zone reclassifications that are not consistent with the interim comprehensive plan require a site-specific land use map amendment and the City council's hearing and consideration will be scheduled with the amendment to the interim comprehensive plan pursuant to SMC 24.25.040 and 24.25.050.

(Ord. O2016-410 § 1 (Att. A); Ord. O2014-372 § 1; Ord. O2011-297 § 1 (Att. A); Ord. O2010-293 § 1 (Att. A); Ord. O2009-249 § 1; Ord. O2004-150 §§ 1 – 4; Ord. O2000-63 §§ 1, 2, 3; Ord. O99-29 § 1)

20.05.030 Feasibility conference – Preapplication conference.

(1) Prior to the filing of a land use application, applicants shall contact the department for a feasibility conference and shall subsequently request a preapplication conference with the department as provided by subsections (2) and (3) of this section.

(a) Feasibility Conference. The purpose of the feasibility conference is to discuss the general scope of the proposed project prior to the preapplication conference. The feasibility conference may be an informal conversation between the department and the applicant.

(b) Preapplication Conference. The purpose of the preapplication conference is to review and discuss the application requirements with the applicant and provide comments on the development proposal. The preapplication conference shall be scheduled by the department, at the request of an applicant, and shall be held in a timely manner within 30 days from the date of the applicant's request. The director may waive the requirement for a preapplication conference if it is determined to be unnecessary for review of an application. Except as provided in subsection (5) of this section, nothing in this section shall be interpreted to require more than one preapplication conference or to prohibit the applicant from filing an application if the department is unable to schedule a preapplication conference within 30 days following the applicant's request. The provisions of subsections (2) through (5) of this section apply only to the preapplication conference and not to the feasibility conference.

(2) The applicant shall contact the department to schedule a preapplication conference prior to filing a permit application for a Type 1 decision involving any of the following:

- (a) Property that will have 5,000 square feet or greater of development and/or right-of-way improvements; or
- (b) Property in a critical drainage area; or
- (c) Property that has a wetland, steep slope, landslide hazard, or erosion hazard; or
- (d) Single-family residences and accessory buildings directly impacting critical areas and/or their buffers;

provided, that the provisions of this subsection shall not apply to structures where all work is in an existing building and no parking is required or added.

(3) Prior to filing a permit application requiring a Type 2, 3 or 4 decision, the applicant shall contact the department to schedule a preapplication conference that shall be held prior to filing the application, except as provided in subsection (1)(b) of this section.

(4) For the purposes of this section, "applicant" means the person(s) with actual or apparent authority to speak for and answer questions about the property or project on behalf of the applicant as defined in SMC 19A.04.030.

(5) Information presented at or required as a result of the preapplication conference shall be valid for a period of 180 days following the preapplication conference. An applicant wishing to submit a permit application more than 180 days following the preapplication conference for that permit must schedule and participate in another preapplication conference prior to submitting the permit application; however, the director may waive this requirement for de minimus deviations or if it is determined to be unnecessary for review of an application.

(6) At or subsequent to a preapplication conference, the department may issue a preliminary determination that a proposed development is not permissible under applicable City policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner in the manner provided for a Type 2 permit, as an alternative to proceeding with a complete application. Mailed and published notice of the appeal shall be provided for as in SMC 20.05.060(7) and (8). (Ord. O2016-415 § 2 (Att. A); Ord. O2016-413 § 4 (Att. C))

20.05.035 Neighborhood meetings.

(1) The applicant for a subdivision, short subdivision, or conditional use permit shall conduct and attend a neighborhood meeting within the City limits to discuss the proposed development after the preapplication conference but prior to submission of the development proposal to the City, at a date and time which shall not be unreasonable. The purpose of the meeting shall be to receive neighborhood input and suggestions prior to submission of the application, and an opportunity for the applicant to amend the proposal to address neighborhood feedback as appropriate. Such a public meeting is not a mediation, and any party who participates in such a meeting may still request mediation in accordance with SMC 20.20.060 and the provisions of the City land use mediation program. For the purposes of this subsection, "applicant" means the person(s) with actual or apparent authority to speak for and answer questions about the property or project on behalf of the applicant as defined in SMC 19A.04.030.

(2) At least 21 days prior to the neighborhood meeting, the applicant shall give notice of the date, time, and location of the meeting to the community development director and to all persons who would be entitled to receive notice of the proposed plat application, short subdivision application or conditional use permit application under the requirements of the Sammamish Municipal Code.

(3) The notice shall be on a form provided by the community development director and shall briefly describe the proposal and its location and shall include the name, address, and telephone number of the applicant or a representative of the applicant who may be contacted for additional information about the proposal. Notice to the community development director shall include a list of the persons and addresses notified of the neighborhood meeting.

(4) Within 30 days following the neighborhood meeting, the applicant shall provide to the community development director, and to all attendees who signed in at the meeting, documentation of the meeting as follows:

(a) The date, time, and location of the meeting;

(b) Contact information for all persons representing the applicant at the meeting;

(c) A summary of comments provided for the meeting attendees by the applicant prior to or during the meeting;

(d) A summary of comments received from meeting attendees or other persons prior to or during the meeting; and

(e) Copies of documents submitted or presented at the meeting.

(5) Complete applications must be received by the City within 120 days of the neighborhood meeting. If an application is not submitted in this time frame, or if the materials submitted with the application do not substantially conform to the materials provided at the meeting, the applicant shall be required to hold a new neighborhood meeting. (Ord. O2016-413 § 5 (Att. D); Ord. O2004-151 § 2)

20.05.037 Unified zone development plan process.

Following application submittal and prior to approval of the unified zone development plan, the applicant and City shall conduct an open house. Notice of the open house shall be provided at least 14 days prior to the open house, and shall include the date, time, and location of the meeting and shall be mailed to all persons who would be entitled to receive notice of decision pursuant to SMC 20.05.090. The purpose of this open house is to provide an additional opportunity for the community to review and provide comments on the proposed unified zone development plan. (Ord. O2010-293 § 1 (Att. A))

20.05.040 Application requirements.

(1) The department shall not commence review of any application set forth in this chapter until the applicant has submitted the materials and fees specified for complete applications. Applications for land use permits requiring Type 1, 2, 3, or 4 decisions shall be considered complete as of the date of submittal upon determination by the department that the materials submitted meet the requirements of this section. Except as provided in subsection (2) of this section, all land use permit applications described in SMC 20.05.020, Exhibit A, shall include the following:

(a) An application form provided by the department and completed by the applicant that allows the applicant to file a single application form for all land use permits requested by the applicant for the development proposal at the time the application is filed;

(b) Designation of who the applicant is, except that this designation shall not be required as part of a complete application for purposes of this section when a public agency or public or private utility is applying for a permit for property on which the agency or utility does not own an easement or right-of-way and the following three requirements are met:

- (i) The name of the agency or private or public utility is shown on the application as the applicant;
 - (ii) The agency or private or public utility includes in the complete application an affidavit declaring that notice of the pending application has been given to all owners of property to which the application applies, on a form provided by the department; and
 - (iii) The form designating who the applicant is is submitted to the department prior to permit approval;
- (c) A certificate of sewer availability from the Sammamish Plateau Sewer and Water District or site percolation data with preliminary approval by the Seattle-King County department of public health;
- (d) A current certificate of water availability, as required by Chapter 21A.60 SMC;
- (e) Review by Sammamish fire services;
- (f) A site plan, prepared in a form prescribed by the director;
- (g) Proof that the lot or lots are recognized as separate lots pursuant to the provisions of Chapter 19A.04 SMC;
- (h) A sensitive areas affidavit if required by Chapter 21A.50 SMC;
- (i) A completed environmental checklist, if required by Chapter 20.15 SMC, State Environmental Policy Act Procedures;
- (j) Payment of any development permit review fees, excluding impact fees, as set forth by resolution;
- (k) A list of any permits or decisions applicable to the development proposal that have been obtained prior to filing the application or that are pending before the City or any other governmental entity;
- (l) Approved traffic impact analysis from the director or designee, if required by Chapter 14.15 SMC;
- (m) Certificate of future connection from the appropriate purveyor for lots located within the City that are proposed to be served by on-site or community sewage system and/or group B water systems or private well;
- (n) A determination if drainage review applies to the project pursuant to Chapter 9.04 KCC as adopted by SMC Title 13, and, if applicable, all drainage plans and

documentation required by the King County Surface Water Design Manual adopted pursuant to Chapter 9.04 KCC as adopted by SMC Title 13;

(o) Current assessor's maps and a list of tax parcels to which public notice must be given as provided in this chapter, for land use permits requiring a Type 2, 3 or 4 decision;

(p) Legal description of the site;

(q) Variances obtained or required under SMC Title 21A to the extent known at the date of application;

(r) Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (2)(d) of this section shall satisfy the requirements of this subsection (1)(r); and

(s) For commercial site development permits only, a phasing plan and a time schedule, if the site is intended to be developed in phases or if all building permits will not be submitted within three years.

A permit application is complete for purposes of this section when it meets the procedural submission requirements of the department and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the department from requesting additional information or studies either at the time of notice of completeness or subsequently if new or additional information is required or substantial changes in the proposed action occur, as determined by the department.

(2) Additional complete application requirements apply for the following land use permits:

(a) Clearing and grading permit, as set forth in SMC 16.15.070;

(b) Construction permits as set forth in SMC 16.20.215;

(c) Mobile home permits as set forth in SMC 21A.70.170;

(d) For all applications for land use permits requiring Type 2, 3, or 4 decisions, a title report from a reputable title company indicating that the applicant has either sole marketable title to the development site or has a publicly recorded right to develop the site (such as an easement); if the title report does not clearly indicate that the applicant has such rights, then the applicant shall include the written consent of the record holder(s) of the development site.

(3) The director may specify the requirements of the site plan required to be submitted for various permits and may waive any of the specific submittal requirements listed herein that are determined to be unnecessary for review of an application.

(4) The applicant shall attest by written oath to the accuracy of all information submitted for an application.

(5) Applications shall be accompanied by the payment of the applicable filing fees, if any, as set forth by resolution. (Ord. O2016-415 § 3 (Att. B); Ord. O99-29 § 1)

20.05.050 Notice of complete application to applicant.

(1) Within 28 days following receipt of a land use permit application, the department shall mail or provide written notice to the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall state with specificity what is necessary to make the application complete. To the extent known by the department, the notice shall identify other agencies of local, state, regional, or federal governments that may have jurisdiction over some aspects of the development proposal.

(2) An application shall be deemed complete under this section if the department does not provide written notice to the applicant that the application is incomplete within the 28-day period as provided herein.

(3) If the application is incomplete and the applicant submits the additional information requested by the department, the department shall notify the applicant in writing within 14 days whether the application is complete or what additional information specified by the department as provided in subsection (1) of this section is necessary to make the application complete. An application shall be deemed complete if the department fails to provide written notice to the applicant within the 14-day period that the application is incomplete.

(4) The date an application is deemed complete is the date of receipt by the department of all of the information necessary to make the application complete as provided in this chapter. The department's issuance of a notice of complete application as provided in subsections (1) or (3) of this section, or the failure of the department to provide such a notice as provided in subsections (2) or (3) of this section, shall cause an application to be conclusively deemed to be complete and vested as provided in this chapter.

(5) The department may cancel an incomplete application if the applicant fails to submit the additional information required by this chapter within 90 days following notification from the department that the application is incomplete. (Ord. O99-29 § 1)

20.05.060 Notice of application.

(1) A notice of application shall be provided to the public for all land use permit applications requiring Type 2, 3 or 4 decisions or Type 1 decisions subject to SEPA pursuant to this section.

(2) Notice of the application shall be provided by the department within 14 days following the department's determination that the application is complete. A public comment period of at least 21 days shall be provided, except as otherwise provided in Chapter 90.58 RCW.

(3) If the director has made a determination of significance (DS) under Chapter 43.21 RCW prior to the issuance of the notice of application, the notice of the DS shall be combined with the notice of application and the scoping notice.

(4) All required notices of application shall contain the following information:

(a) The file number;

(b) The name of the applicant;

(c) The date of application, the date of the notice of completeness and the date of the notice of application;

(d) A description of the project, the location, a list of the permits included in the application and the location where the application and any environmental documents or studies can be reviewed;

(e) A site plan on eight-and-one-half-by-14-inch paper, if applicable;

(f) The procedures and deadline for filing comments, requesting notice of any required hearings, and any appeal procedure;

(g) The date, time, place, and type of hearing, if applicable and scheduled at the time of notice;

(h) The identification of other permits not included in the application to the extent known;

(i) The identification of existing environmental documents that evaluate the proposed project;

(j) A statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation and of consistency with applicable City plans and regulations.

(5) Notice shall be provided in the following manner:

- (a) Posted at the project site as provided in subsections (6) and (9) of this section;
- (b) Mailed by first class mail as provided in subsection (7) of this section; and
- (c) Published as provided in subsection (8) of this section.

(6) Posted notice for a proposal shall consist of one or more notice boards posted by the applicant within 14 days following the department's determination of completeness as follows:

(a) A single notice board shall be posted for a project. This notice board may also be used for the posting of the notice of decision and notice of hearing and shall be placed by the applicant:

- (i) At the midpoint of the site street frontage or as otherwise directed by the department for maximum visibility;
- (ii) Five feet inside the street property line except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than five feet from the street property without approval of the department;
- (iii) So that the top of the notice board is between seven to nine feet above grade; and
- (iv) Where it is completely visible to pedestrians.

(b) Additional notice boards may be required when:

- (i) The site does not abut a public road;
- (ii) A large site abuts more than one public road; or
- (iii) The department determines that additional notice boards are necessary to provide adequate public notice.

(c) Notice boards shall be:

- (i) Maintained in good condition by the applicant during the notice period through the time of the final City decision on the proposal, including the expiration of any applicable appeal periods, and for decisions that are appealed, through the time of the final resolution of any appeal;
- (ii) In place at least 28 days prior to the date of any required hearing for a Type 3 or 4 decision, or at least 14 days following the department's determination of completeness for any Type 2 decision; and

(iii) Removed within 14 days after the end of the notice period.

(d) Removal of the notice board prior to the end of the notice period may be cause for discontinuance of City review until the notice board is replaced and remains in place for the specified time period.

(e) An affidavit of posting shall be submitted to the department by the applicant within 14 days following the department's determination of completeness to allow continued processing of the application by the department.

(f) Notice boards shall be constructed and installed in accordance with this subsection, and any additional specifications promulgated by the department pursuant to Chapter 2.55 SMC, Rules of City Departments.

(7) Mailed notice for a proposal shall be sent by the department within 14 days after the department's determination of completeness:

(a) By first class mail to owners of record of property in an area within 1,000 feet of the site and, if the site lies within an erosion hazards near sensitive water bodies overlay, to owners of record of property within a 2,000-foot-wide column centered at the site and extending directionally with the natural drainage of the basin to the perimeter of the overlay or to the Lake Sammamish shoreline, as determined by the director; provided, that such area shall be expanded as necessary to send mailed notices to at least 20 different property owners;

(b) To any utility that is intended to serve the site;

(c) To the State Department of Transportation, if the site adjoins a state highway;

(d) To the affected tribes;

(e) To any agency or community group that the department may identify as having an interest in the proposal;

(f) Be considered supplementary to posted notice and be deemed satisfactory despite the failure of one or more owners to receive mailed notice; and

(g) For preliminary plats only, to all cities within one mile of the proposed preliminary plat.

(8) Notice of a proposed action shall be published by the department within 14 days after the department's determination of completeness in the official City newspaper.

(9) Posted Notice for Approved Formal Subdivision Engineering Plan, Clearing or Grading Permits Subject to SEPA, or Building Permits Subject to SEPA. Posted notice for approved formal subdivision engineering plans, clearing or grading permits subject to SEPA, or building permits subject to SEPA shall be a condition of the plan or permit approval and shall consist of a single notice board posted by the applicant at the project site, prior to construction as follows:

- (a) Notice boards shall comport with the size and placement provisions identified for construction signs in SMC 21A.45.070(3);
- (b) Notice boards shall include the following information:
 - (i) Permit number and description of the project;
 - (ii) Projected completion date of the project;
 - (iii) A contact name and phone number for both the department and the applicant; and
 - (iv) Hours of construction, if limited as a condition of the permit;
- (c) Notice boards shall be maintained in the same manner as identified in subsection (6) of this section;
- (d) Notice boards shall remain in place until final construction approval is granted. Early removal of the notice board may preclude authorization of final construction approval. (Ord. O2016-415 § 4 (Att. C); Ord. O2016-413 § 6 (Att. E); Ord. O99-29 § 1)

20.05.070 Vesting.

(1) Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all of the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

(2) Supplemental information required after vesting of a complete application shall not affect the validity of the vesting for such application.

(3) Vesting of an application does not vest any subsequently required permits, nor does it affect the requirements for vesting of subsequent permits or approvals. (Ord. O2009-249 § 1; Ord. O99-29 § 1)

20.05.080 Applications – Modifications to proposal.

(1) Modifications required by the City to a pending application shall not be deemed a new application.

(2) An applicant-requested modification occurring either before or after issuance of the permit shall be deemed a new application when such modification would result in a substantial change in a project's review requirements, as determined by the department.
(Ord. O99-29 § 1)

20.05.085 Reasonable accommodation.

(1) Purpose and Intent. The Federal Fair Housing Act (FFHA) requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. The community development director is therefore authorized to make accommodations in the provisions of this code as applied to dwellings occupied or to be occupied by persons with disabilities as defined in the Federal Fair Housing Act, when the director determines that such accommodations reasonably may be necessary in order to comply with such Act.

(2) Applicability. The director may grant reasonable accommodation to individuals with disabilities as defined by the Fair Housing Amendments Act (FHAA), 42 U.S.C. 3602(h), or the Washington Law Against Discrimination (WLAD), Chapter 49.60 RCW.

(3) Procedure. If modification of a standard or regulation in the Sammamish Municipal Code is sought, the director shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the following:

(a) Application. Requests for reasonable accommodation by any eligible person or entity described in subsection (1) of this section shall be submitted on an application form provided by the community development department, or in the form of a letter, to the director of community development and shall contain the following information:

(i) The applicant's name, address, email, and telephone number.

(ii) Address of the property for which the request is being made.

(iii) The property owner's name, address and telephone number and the owner's written consent.

(iv) The current actual use of the property.

(v) The basis for the claim that the individual that resides or will reside at the property is considered disabled under the Acts.

(vi) The provision, regulation or policy from which reasonable accommodation is being requested.

(vii) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.

(viii) Copies of emails, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation.

(b) No fee shall be charged to the applicant for a response to a reasonable accommodation request.

(c) The director shall determine what adverse land use impacts, including cumulative impacts, if any, would result from granting the proposed accommodation. This determination shall take into account the size, shape and location of the dwelling unit and lot; the traffic and parking conditions on adjoining and neighboring streets; vehicle usage to be expected from the residents, staff and visitors; and any other circumstances determined to be relevant.

(d) A grant of reasonable accommodation permits a dwelling to be inhabited only according to the terms and conditions of the applicant's proposal and the director's decision. If it is determined that the accommodation has become unreasonable because circumstances have changed or adverse land use impacts have occurred that were not anticipated, the director shall rescind or modify the decision to grant reasonable accommodation.

(e) Appeals of reasonable accommodation decisions made by the director must be filed within 21 days of the decision issuance date. (Ord. O2016-408 § 1 (Att. A))

20.05.090 Notice of decision or recommendation – Appeals.

(1) The department shall provide notice in a timely manner of its final decision or recommendation on permits requiring Type 2, 3 and 4 land use decisions and Type 1 decisions subject to SEPA, including the threshold determination, if any, the dates for any public hearings, and the procedures for administrative appeals, if any. Notice shall be provided to the applicant, to the Department of Ecology, and to agencies with jurisdiction if required by Chapter 20.15 SMC, to the Department of Ecology and Attorney General as provided in Chapter 90.58 RCW, and to any person who, prior to the decision or

recommendation, had requested notice of the decision or recommendation or submitted comments. The notice shall also be provided to the public as provided in SMC 20.05.060.

(2) Except for shoreline permits that are appealable to the State Shorelines Hearings Board, all notices of appeal to the hearing examiner of Type 2 land use decisions made by the director shall be filed within 21 calendar days from the date of issuance of the notice of decision as provided in SMC 20.10.080. (Ord. O99-29 § 1)

20.05.100 Permit issuance.

(1) Final decisions by the City on all permits and approvals subject to the procedures of this chapter should be issued within 120 days from the date the applicant is notified by the department pursuant to this chapter that the application is complete; provided, that the following shorter time periods should apply for the type of land use permit indicated:

New residential building permits	90 days
Residential remodels	40 days
Residential appurtenances, such as decks and garages	15 days
Residential appurtenances that require substantial site review	40 days
SEPA exempt clearing and grading	45 days
SEPA clearing and grading	90 days
Health department review (for projects pending a final department review and/or permit)	40 days

The following periods shall be excluded from this 120-day period:

(a) Any period of time during which the applicant has been requested by the department, hearing examiner or council to correct plans, perform required studies or provide additional information, including road variances and variances required under Chapter 9.04 KCC as adopted by SMC Title 13. The period shall be calculated from the date of notice to the applicant of the need for additional information ("request for revision") until either the City advises the applicant that the additional information satisfies the City's request or 14 days after the date the information has been provided,

whichever is the earlier date. If the City determines that the correction, study, or other information submitted by the applicant is insufficient, it shall notify the applicant of the deficiencies, and the procedures of this section shall apply as if a new request for revision had been made.

(i) The department shall set a reasonable deadline for submittal by the applicant of corrections, studies, or other information in response to a request for revision, and shall provide written notification of the deadline to the applicant. The deadline may not exceed 90 days from the date of the request for revision; provided, that an extension of such deadline may be granted upon written request by the applicant providing satisfactory justification for an extension or upon the applicant's agreement to and compliance with an approved schedule with specific target dates for submitting the full revisions, corrections or other information requested.

(ii) Applications may be canceled for inactivity if an applicant fails to provide, by such deadline, an adequate response substantively addressing code requirements identified in the written request for revision.

(iii) When granting a request for a deadline extension, the department shall give consideration to the number of days between receipt by the department of a written request for a deadline extension and the mailing to the applicant of the department's decision regarding that request.

(b) The period of time, as set forth in SMC 20.15.060, during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW.

(c) A period of no more than 90 days for an open record appeal hearing by the hearing examiner on a Type 2 land use decision, and no more than 60 days for a closed record appeal by the county council on a Type 3 land use decision appealable to the county council, except when the parties to an appeal agree to extend these time periods.

(d) Any period of time during which an applicant fails to post the property, if required by this chapter, following the date notice is required until an affidavit of posting is provided to the department by the applicant.

(e) Any time extension mutually agreed upon by the applicant and the department.

(2) The time limits established in this section shall not apply if a proposed development:

(a) Requires an amendment to the Comprehensive Plan or a development regulation, or modification or waiver of a development regulation as part of a demonstration project;

(b) Requires approval of a new fully contained community as provided in RCW 36.70A.350, master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided for RCW 36.70A.200; or

(c) Is substantially revised by the applicant, when such revisions will result in a substantial change in a project's review requirements, as determined by the department, in which case the time period shall start from the date at which the revised project application is determined to be complete.

(3) Permits or approvals subject to the procedures of this chapter may be denied if the applicant is unable to present satisfactory proof of ownership of the property or development site as required by SMC 20.05.040(1)(r).

(4) If the department is unable to issue its final decision within the time limits established by this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision. Within 14 days of the date of such notice, a copy of the notice shall be provided to the public in the manner set forth in SMC 20.05.060(5). (Ord. O2016-415 § 5 (Att. D); Ord. O2016-413 § 7 (Att. F); Ord. O2009-253 § 1 (Att. A); Ord. O99-29 § 1)

20.05.110 Semi-annual report.

Beginning January 1, 2000, and continuing semi-annually thereafter, the director shall prepare a report to the City council detailing the length of time required to process applications for Type 1, 2, 3, and 4 land use decisions in the previous period, categorized both on average and by type of permit. The report shall provide commentary on department operations and identify any need for clarification of City policy or development regulations or process. (Ord. O99-29 § 1)

20.05.120 Citizen's guide.

The director shall issue a citizen's guide to permit processing including making an appeal or participating in a hearing. (Ord. O99-29 § 1)

EXHIBIT 10



King County

Parks and Recreation Division

Department of Natural Resources and Parks

King Street Center, KSC-NR-0700

201 South Jackson Street

Seattle, WA 98104-3855

206-477-4527 Fax 206-588-8011

TTY Relay: 711

May 23, 2017

Lyman Howard
City Manager
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075

Sent via US Mail and email to lhoward@sammamish.us

RE: East Lake Sammamish Trail South Segment A, Clearing and Grading Permit Number CG2016-03488 – Right of Way Permit conditions

Dear Lyman:

I am writing you to follow up on my conversation with Jesse Bon last week with regard to the above referenced right-of-way (ROW) permit conditions. I explained the situation with Jesse and let her know that I would be sending you a letter this week outlining the County's position.

There are two City streets - 206th Avenue SE and SE 33rd – that cross over the East Lake Sammamish Trail (ELST) corridor in the South Segment A. Two of the clearing and grading permit conditions address ROW permits.¹ One condition requires approval for any modification, relocation or installation of a traffic control device affecting the ROW, and the other requires approval before any work is done in the ROW.

¹ **Condition 1, bullet 12:** The modification, relocation, or installation of a traffic control device affecting the City Right of Way (ROW) or other work connecting to the ROW (e.g. curb returns and ramps) requires approval of a ROW permit prior to placement of any such device or improvement.....to clarify when a ROW permit is necessary, details depicting stop signs and other improvements must be removed from or noted accordingly within the plan set (such as the stop signs on sheets PS3 at Station 239) and applied for under a separate ROW permit. Revised plans where these items have been removed from or noted accordingly within the plan set shall be provided to and approved by the City prior to the Grading preconstruction meeting.

Condition 1, bullet 21: No work in the ROW is approved under this permit. A separate ROW permit is required for installation of any work in the ROW, including installation of any erosion control measures.

These conditions do not refer to any particular intersections or make findings or assumptions about what property is within the City's ROW. Rather, these conditions refer generally to the City's ROW and require a permit for any work within the ROW.

On January 24, 2017, representatives of the City and County met to discuss the ROW permit requirement with reference to the intersection at 206th Avenue SE. At that time, the City representatives stated that they wished to research the property issue and would get back to the County as soon as they had additional information. Since we are currently in construction and the County's contractors need to work on these two intersections within a matter of weeks, the County applied for right of way permits while the County and City were evaluating this property issue to avoid any project delays.²

The City located documents related to the development at 206th SE and recently provided these to the County. We have had the opportunity to review these documents and have concluded that the City does not have any property interest in the 206th SE intersection. In addition, the County has located and reviewed property documents related to the SE 33rd intersection and has concluded that the City has limited crossing rights that are subject to the County's rights.

After reviewing the relevant documents, the County's position is that these ROW permit requirements do not apply to these two crossings because they are not within the City's right-of-way. As a result, we are withdrawing our ROW permit applications and are proceeding with work in the two intersections. Below is a summary of the property issue and a summary of the County's design decisions with reference to applicable safety standards and relevant data.

1. The ROW permit condition does not apply to the 206th SE intersection because City has no property interest or right to control this portion of the corridor

Since ROW permits are only required when work within the City's ROW is contemplated, a threshold issue here is whether any part of this project is located within the City's right of way. It goes without saying that the City does not have authority to require a ROW permit for activities on property owned or controlled by the County.

The County purchased the ELST corridor from Burlington Northern Sante Fe (BNSF) railroad in 1998 and acquired all of the railroad's property interests including that portion of the corridor crossed by 206th SE. We have reviewed the documents that you provided related to the development of the property on 206th Avenue SE and our own documents and have found no

² On May 4, 2017, the County submitted the ROW permit applications. These applications included the following statements to preserve the County's position on ownership and control of the ELST corridor: "By making this permit application, King County does not waive, and intends to fully preserve, all rights King County possesses to the Corridor, including its ownership and control of the Corridor at issue in this permit application as well as other portions of the Corridor. King County does not concede that any permit is required from the City to undertake work or modify traffic control in the area of the Corridor at issue. Nor does King County agree that the City has any power to impose conditions on the County as part of any process to review or issue such permit."

record that the City has any ownership interests or right to control any part of the ELST corridor³ at 206th SE. Unless and until the City provides the County with proof of ownership, easement or other property interest in the ELST that grants the City the right or authority to control the intersection, and makes a portion of the ELST part of the City's right-of-way, it is clear that these conditions do not apply to these crossings. Even if these conditions specifically addressed the 206th SE intersection, the City does not have the authority to require a ROW permit because it lacks the property interest to do so.

2. The ROW permit condition does not apply to the SE 33rd intersection because the City has limited property rights in the crossing of the ELST corridor

Again, the ROW conditions apply only to the City's rights-of-way. Although SE 33rd crosses the ELST corridor, that portion of the street does not constitute a City right-of-way because the railroad retained all rights to use the property for railroad purposes and the granted only a limited right to cross the corridor.

In 1972, BNSF granted an easement to King County for public road purposes for the SE 33rd crossing. A copy of the easement is attached as Exhibit 1. Section I of the easement reserves all rights to use the property for railroad purposes not inconsistent with the easement:

The Railroad Company, for itself and its successors and assigns, reserves all rights to use the property herein before described for any and all purposes whatsoever not inconsistent with the easement hereby granted, including, but not limited to the right to construct, maintain, repair, renew, reconstruct, replace and operate present tracks and future tracks, communication, signal and electric power lines, utilities and other types of facilities on said property when deemed necessary or expedient to the Railroad Company. Rights reserved shall be so exercised as not to damage or interfere with the highway as above defined.

The ELST corridor is railbanked under the Trails Act and is subject to the exclusive jurisdiction of the Surface Transportation Board (STB). The act of railbanking preserved all of the property and ownership rights formerly held by the railroad and they were passed on to the County. In addition, the railbanking process added the right to construct and operate a trail within the railroad corridor. Because of the railbanking, the County now possesses the right to "exclusive use and possession of the area on, above, and below the surface of the [ELST] Corridor." Exhibit 2, *Hornish et al v. King County, Order on Cross-Motion for Summary Judgment*, at 8. The railroad granted limited easement rights for the SE 33rd road crossing but specifically retained control over the property in order to permit railroad related activities which now includes trail activities. Since the limited road easement was granted *subject to* the railroad's activities, the railroad's purposes predominate in the area of the crossing.

³ It appears that obtaining an easement or similar property interest from the railroad was a condition of the development at 206th SE. However, Parks personnel have not seen any record that this transaction was completed or that the railroad conveyed a property interest at the 206th SE location.

As a result, this permit condition does not apply to this intersection. The City does not have the right to control the intersection and has no authority to require a ROW permit for the SE 33rd crossing because the easement granted by the railroad reserved the right to continue to use the property for “any and all” railroad purposes which now includes the trail.

3. The County’s intersection designs are safe and comply with safety standards

Safety is the County’s number one priority. Notwithstanding the property issue, this project has been designed to meet the highest safety standards. Included with the permit applications are project plans showing traffic control devices that give priority of assignment to the ELST rather than the street crossings and requires road users to stop for the trail. This is the safest design for these two roadway-trail intersections and is in compliance with all applicable standards including the Manual on Uniform Traffic Control Devices, 2009 edition (MUTCD), the American Association of State Highway and Transportation Officials Guide for the Development of Bicycle Facilities, 2012 (AASHTO), and the WSDOT Design Manual, July 2012.

Attached as Exhibit 3 is the November 7, 2014, memorandum that summarizes the professional judgment and rationale for the assignment of priority at these intersections provided by the ELST design engineer. In addition, the County sought the opinion and expertise of a nationally recognized expert in bicycle and pedestrian facilities and one of the authors of AASHTO, William Schultheiss, P.E. of Toole Design Group. Mr. Schultheiss concurred with the engineering judgment of the design engineer and concluded that the ELST should be given priority over the two city streets. Mr. Schultheiss recommends either yield or stop control for 206th SE or an uncontrolled crossing for both approaches. Attached as Exhibit 4 is William Schultheiss’ January 26, 2016, memorandum which references the applicable provisions of the MUTCD and AASHTO.

The MUTCD has been adopted as the applicable standard in Washington State.⁴ The MUTCD lists three considerations for determining priority at a shared use path⁵/roadway intersection:

- A. Relative speeds of shared-use path and roadway users;
- B. Relative volumes of shared-use path and roadway traffic; and
- C. Relative importance of shared-use path and roadway.

(MUTCD, 2009 Edition, Section 9B.03).

When these considerations are applied to the intersections at SE 33rd and 206th SE, the ELST clearly has priority. While the relative speeds of the path and roadway users is approximately the

⁴ WAC 468-95-010 General. The 2009 Edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation.

⁵ The ELST is defined as a shared use paths meaning a paths designed for both transportation and recreation purposes used by pedestrians, bicyclists, skaters, equestrians and other users. WSDOT Design Manual, M 22-01.99, July, 2012.

same, the ELST has much greater volumes and relative importance than either SE 33rd or 206th SE. As noted in Exhibit 3, SE 33rd Street provides access for 46 homes, generating 552 trips per day, and 206th SE provides access for 15 homes, generating 180 trips per day. The ELST's estimated volume is far higher. Original design estimates ranged from 2500 to 4000 per day on peak days. More recent data show higher estimated volumes.

In order to make more informed design decisions about the ELST, in 2016 the County asked bicycle facilities expert William Schultheiss to estimate trail volumes on the ELST using the most current methodology. Mr. Schultheiss conducted an analysis using the "Direct Demand Model" recommended by the National Cooperative Highway Research Program's Report 770, a multi-year research effort that developed improved methods for estimating bicycling and walking for planning and project purposes. This model is the most widely used tool to predict bicycle and pedestrian volumes on a new facility. This method gathers data from trail counters, considers surrounding land use characteristics and analyses trail characteristics such as elevation gain and connectivity and provides estimates well into the future. Attached as Exhibit 5 is the East Lake Sammamish Demand Analyses, dated May 19, 2016. This analysis estimated bicycle volumes on the ELST ranging from 2,735 in 2020 to 5,526 in 2035 on peak weekend days. In addition, this analysis estimated a higher number if you combine bicycle and pedestrian uses – 4,273 in 2020 and 8,634 in 2035. All of the available data is clear that trail volumes will far exceed volumes on 206th SE and SE 33rd. Therefore, the second of the MUTCD consideration for determining priority weigh heavily in favor of the ELST.

With respect to the third consideration, the ELST clearly has greater relative importance than the two low volume streets. The ELST is not a local trail. Rather, the ELST is a part of the King County regional trail system, one of the nation's most extensive multi-use networks with more than 175 miles of trails for recreation and non-motorized mobility and commuting. The regional trail system connects communities from Bothell to Auburn and Seattle to the Cascades. The County plans to expand the regional trail system to 300 miles of trail. The ELST provides access to recreation, employment, and retail centers in Redmond, Sammamish, and Issaquah, and connects to the entire regional trail system.

In contrast, 206th SE and SE 33rd are both minor dead end streets and are classified as such under the City's Street Classification map. There is no doubt that the ELST has greater relative importance than these two streets.

AASHTO specifically addresses priority of assignment at roadway/shared use path intersections. The principles of assigning priority to the higher volume/higher speed approach also applies to shared use paths – roadway intersections and user volumes should be considered in intersection design because "user volume on popular paths sometimes exceed traffic volumes on minor crossed streets." AASHTO, page 5-33. AASHTO recommends a stop or yield sign on the roadway where the volume is far greater on the path. AASHTO, page 5-33.

AASHTO also addresses the common misconception that placing stop signs to control high volume pathways improves safety:

A common misconception is that the routine installation of stop control for the pathway is an effective treatment for preventing crashes at path-roadway intersections. Poor bicyclist compliance with "STOP" signs at a path-roadway intersections is well documented.

AASHTO, page 5-34. Attempting to stop control a high volume shared use path for a low volume street violates the important traffic control principle that designers should provide the least amount of restriction that is effective. As Mr. Schultheiss explains: "The proliferation of stop signs on paths has led to a lack of compliance by path users in many communities and may actually diminish safety if ignored when truly needed." Exhibit 4 at 2.

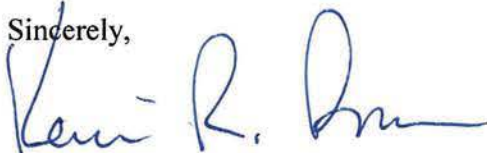
With respect to these two intersections, installing stop signs to stop path users will not improve safety or prevent accidents. In fact, it will result in a false sense of safety or control on the part of the trail and roadway user that may result in additional accidents or conflicts. The County's design appropriately gives priority of assignment to the trail users which will result in a safety facility for all trail users and vehicles crossing the trail.

Conclusion

Now that the property and ownership issues have been resolved, we are withdrawing our ROW permit applications and moving forward with construction of the ELST South Segment A. As the ownership issue has been clarified, this permit condition does not apply. If you have any questions or need further clarification of this issue, please do not hesitate to contact me.

I am looking forward to hearing from the City with regard to this issue.

Sincerely,



Kevin Brown
Division Director

Attachments

cc: Jessi Bon, Deputy City Manager, City of Sammamish
Lindsey Ozbolt, Associate Planner, City of Sammamish
Haim Strasbourger, Development Review Engineer, City of Sammamish
Jenny Bailey, Senior Planner, Parametrix
Gina Auld, Capital Projects Manager, Parks and Recreation Division, Department of Natural Resources and Parks (DNRP)
Frank Overton, Capital Projects Managing Supervisor, Parks and Recreation Division, DNRP
Monica Leers, Capital Planning and Land Management Section Manager, Parks and Recreation Division, DNRP

KING CO

N. R. 4 E. W. M.

N. R. 4 E. W. M.

EASEMENT

7210200676

The Grantor, BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called Railway Company, for and in consideration of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00), to it paid, and the agreements herein contained, does hereby grant to KING COUNTY, a political subdivision of the State of Washington, hereinafter called County, an easement for public-road purposes only, including a grade crossing upon and across the Railway's right of way and tracks, upon the following described premises situated in King County, State of Washington:

That area located on the Railway's Kenmore to North Bend line at Railway Survey Station 778 +29.4, Mile Post 14+3924.4, in the Government Lot 1, Section 8, Township 24 North, Range 6 East, W.M. near Monohan, Washington, as shown in GREEN color on Exhibit "A" dated January 17, 1972, attached hereto and by this reference made a part hereof.

This easement is made subject to and upon the following express conditions:

I

The Railway Company, for itself and its successors and assigns, reserves all rights to use the property hereinbefore described for any and all purposes whatsoever not inconsistent with the easement hereby granted, including, but not limited to, the right to construct, maintain, repair, renew, reconstruct, replace and operate present tracks and future tracks, communication, signal and electric power lines, utilities and other types of facilities on said property when deemed necessary or expedient to the Railway Company. Rights reserved shall be so exercised as not to damage or interfere with the highway as above defined. This easement is subject to all existing interests of third parties in said property of any kind or nature whatsoever and any and all extensions or renewals thereof.

II

The County agrees to provide, at its sole cost and expense, adequate drainage of the Railway Company's property in connection with construction and maintenance of said highway structure, also agrees to reimburse the Railway Company for any and all expense incurred by it by reason of any failure of the County to provide such drainage.

III

This easement is granted pursuant to the terms of the construction agreement entered into between the parties dated

June 8, 1972.

Page (1)

Post-It® Fax Note	7671	Date	# of pages
To	RON	From	SHARAD
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

IV

In the event that said property shall at any time cease to be used by the public as street or highway grade crossing, or shall by operation of law or otherwise become vacated or abandoned, the easement herein granted shall immediately cease and terminate without notice of other proceedings on the part of the Railway Company, and the County, its successors or assigns, shall reconvey immediately said property to the Railway Company.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate this 27th day of June, 1972.

COUNTY OF KING

BURLINGTON NORTHERN INC.

By

By

King County Executive

Vice President

Attest:

Attest:

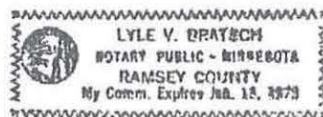
Manager, Property & Purchasing

Secret

STATE OF MINNESOTA)
) ss
 County of Ramsey)

On this 27th day of June, 1972, before me, the undersigned, a Notary Public in and for the State of Minnesota, duly commissioned and sworn, personally appeared G. F. DEFIEL and R. M. O'KELLY to me known to be the Vice President and Secretary, respectively of Burlington Northern Inc., 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 were 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.



Lyle V. Dratech
 Notary Public in and for the State of Minnesota
 residing at St. Paul
 My Commission expires Jan. 13, 1973

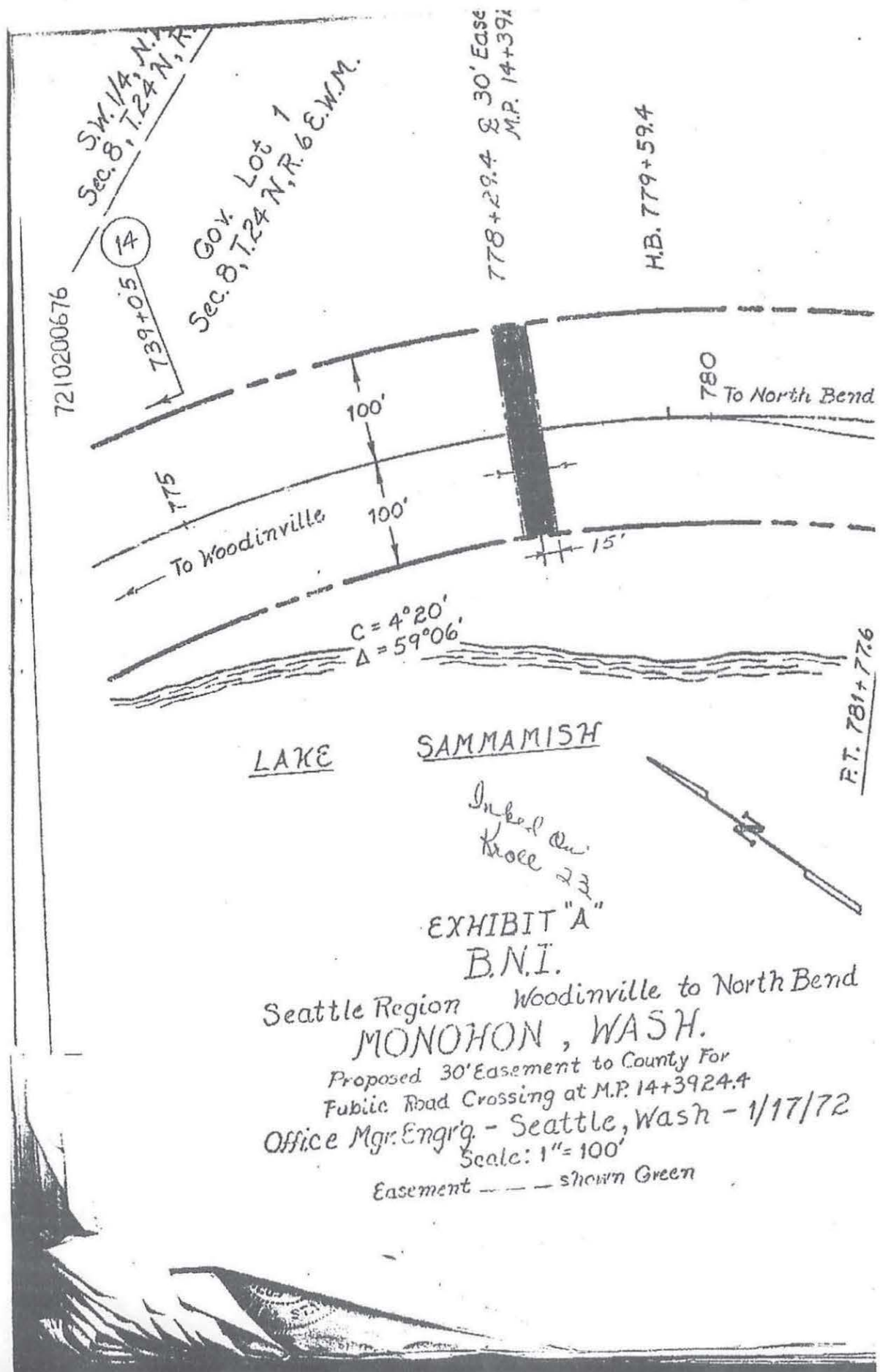


EXHIBIT 11



801 – 228th Avenue SE • Sammamish, WA 98075 • Phone: 425-295-0500 • Fax: 425-295-0600 • web: www.sammamish.us

June 9, 2017

Kevin Brown
Director
Parks and Recreation Division
King Street Center
201 S. Jackson St., Ste. 700
Seattle, WA 98104-3855

Re: East Lake Sammamish Trail Segment 2A — Right-of-Way Permits:
Letter from Kevin Brown dated May 23, 2017

Dear Kevin:

I am writing in response to your letter dated May 23, 2017, regarding right-of-way permits required for certain work by King County on Segment 2A of the East Lake Sammamish Trail (ELST).

Your letter is just the latest of several recent examples where you have directly and materially contradicted in writing earlier statements you or your subordinates have made to the City regarding the ELST. After months of permit review, you now claim that right-of-way (ROW) permits are not needed for King County's work in the two intersections where the ELST crosses 206th Avenue SE and SE 33rd Street, both of which are City of Sammamish public streets. You base this assertion on your claim that the City owns no ROW at either 206th Avenue SE or SE 33rd Street, even though just two weeks earlier, on May 8, 2017, Deputy Prosecuting Attorney Barb Flemming had a telephone conversation with David Linehan (Assistant City Attorney) in which she correctly took the opposite position.

In their May 8 phone conversation, Ms. Flemming and Mr. Linehan discussed the County's *own* archival records showing how the County acquired ROW over 206th Avenue SE by purchasing a public road easement from the Burlington Northern Railroad in 1992, and how the City later obtained ownership of that ROW from the County when the City was incorporated in 1999. At the time of Ms. Flemming's and Mr. Linehan's May 8 phone conversation, the recorded easement for 206th Avenue SE had not yet been located, but Ms. Flemming admitted that the County had certainly intended to acquire the public road easement from the Railroad when it approved the Alexanders on the Lake plat and, moreover, if there were any shortcomings in the documentation, that she (or others on the County's staff) may be willing to ask the King County Council to grant a ROW easement to the City.

In any event, Ms. Flemming understandably expressed that the County would proceed as planned to seek ROW permits at both 206th Avenue SE and SE 33rd Street, because the ROW permits are required under the conditions of approval of the Clearing & Grading (C&G) permit

for Segment 2A (CG2016-03488). The County *did not appeal*¹ the C&G permit or any of its conditions.

After the May 8 conversation, the City obtained the recorded easement granted in 1992 to the County by the Railroad. The easement is recorded under King County recording number 199206301491, and it clearly quitclaims to the County “an EASEMENT for the construction, maintenance, replacement and removal of 206th Avenue Southeast [for] ... street purposes.” (Caps in original.) A copy of the recorded easement is enclosed for your records.

Under state law, this street easement became City right-of-way upon incorporation in 1999, just like every other inch of right-of-way in existence at the time of the City’s incorporation. It is difficult to understand how King County was unable or unwilling to locate this document from its own records, and why you now deny that the City owns this ROW despite your attorney’s statements to the contrary, and despite being provided other ample documentation demonstrating the existence of this ROW.

The C&G permit for Segment 2A clearly requires a ROW permit for the proposed activities at 206th Avenue SE and SE 33rd Street. As expected, the County applied for the required ROW permit on May 5, 2017, and the City was in the process of reviewing the County’s permit application when your letter arrived stating that you were withdrawing the pending ROW permit application because you deemed it unnecessary. Given that you have expressly withdrawn the County’s required ROW permit application, the County will now need to submit a new permit application before any work in the 206th Avenue SE or SE 33rd Street ROW will be authorized.

As a reminder, the County also had proposed to do work within the East Lake Sammamish Parkway ROW under the now-withdrawn ROW permit. Since you have withdrawn the permit, work in the Parkway will also be barred unless and until the County submits, and the City approves, a new ROW permit application covering such work.

Moreover, without the required ROW permit, the County will likely be in violation of the conditions of approval of the C&G permit for Segment 2A, as explained below. Because of your actions, the City is forced to consider suspending the C&G permit and instituting proceedings to revoke it under SMC Sections 21A.115.040 and .050.

¹ In fact, Ms. Flemming stated that if the City would not approve the ROW permits based on the original plan set provided with the County’s application, the County would simply revise the drawings per City instructions and remove an adjacent entrance monument to improve sightlines for trail users. Ms. Flemming then inquired about possible alternative traffic control configurations at 206th Avenue SE and whether the City would approve plans featuring such alternatives.

I. THE CITY ACQUIRED ROW FROM KING COUNTY AT
BOTH 206TH AVENUE SE AND AT SE 33RD STREET

Kevin, you argue that SE 33rd Street and 206th Avenue SE are not City ROW, and therefore King County does not need a ROW permit to do work in these areas. There are multiple problems with this assertion.

You claim that the 206th Avenue SE easement does not exist despite Ms. Flemming having been provided documents from the King County Archives for the Alexanders on the Lake plat evidencing the easement — documents which included:

- Correspondence from the King County Real Property Division to former King County Executive Tim Hill, dated April 23, 1992, specifically referencing the County's acquisition of a "public right of way crossing" from the Railroad at 206th Avenue SE, and asking Hill to sign and accept the easement on behalf of King County; and
- A \$3,000 check request from the County's Real Property Division, payable to the Railroad, dated May 5, 1992, for a "Roadway Easement" located at 206th Avenue SE.

While the City would have expected your department to have a copy of this easement, the City has now obtained a copy from the Railroad, which shows it was recorded with the King County Recorder's Office in 1992 — approximately eight years before the Railroad quit-claimed the corridor to the Land Conservancy (which later sold it to King County).

With respect to SE 33rd Street, your letter admits the existence of an easement granted by Burlington Northern Railroad to the County for "public-road purposes only." As shown on its face, it was granted in 1972 for payment of \$3,000, and there is no dispute that this easement transferred to the City upon incorporation by operation of state law.

A ROW permit is required under Sammamish Municipal Code Section 14.30.010 prior to construction being done within the City's ROW. Both SE 33rd Street and 206th Avenue SE are ROW as that term is defined in the City's interim public works standards (IPWS 10.020) and SMC Section 14.30.015(5) to which the C&G permit for Segment 2A vested.

'Right-of-way' means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto. IPWS 10.020.

'Right-of-way' or 'ROW' means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, landscape (parking) strips, squares, triangles, easements and other rights-of-way open to the use of the public, including the space above or beneath the surface of same. This definition specifically does not

include streets, alleys, ways, landscape strips, sidewalks, easements, etc., which have not been deeded, dedicated, or otherwise permanently appropriated to the City for public use. SMC 14.30.015(5).

The plain language of the easements themselves also supports the assertion that they conveyed ROW easements: The SE 33rd Street easement says it is for public road purposes, and the 206th Avenue SE easement is explicitly to be used for a street. Also, both easements were granted to the County, not a private party, and the County itself labeled both as “public” on the approved plans for the C&G permit for Segment 2A.

The City clearly owns ROW for street purposes at both SE 33rd Street and 206th Avenue SE.

II. RAILS-TO-TRAILS AND RESERVED RIGHTS

Citing to Judge Pechman’s April 20, 2016, Order in the Hornish v. King County case, you contend that the Federal Rails to Trails Act grants the County trail rights in the street crossings at SE 33rd Street and 206th Avenue SE that override the City’s interest in its ROW. I agree with you that the County obtained whatever rights the Railroad had at the time it quit-claimed the corridor. But, you have ignored the property rights that the Railroad conveyed away *before* rail-banking. Judge Pechman’s Order does not say that rail-banking resurrects rights that the Railroad had conveyed away prior to rail-banking. Rather, Judge Pechman’s Order correctly provides only that the County has the same control over the corridor that the Railroad had when it quit-claimed the corridor. Order at 7. The Railroad of course had no control over rights that it had already conveyed to others.

In the case of SE 33rd Street, the railroad conveyed “an easement for public-road purposes” to the County more than twenty-seven years before rail-banking. In the case of 206th Avenue SE, the railroad conveyed an easement for a public street approximately eight years before rail-banking. I hope you would agree that the Railroad could not have conveyed to The Land Conservancy (and thus to the County) more than the rights it had at the time of the quit-claim deed.

Your letter goes on to say that even if easements exist at 206th Avenue SE or SE 33rd Street, they are insufficient to give the City control over the ROW because the Railroad reserved rights in the easements, and those reservations somehow supersede the City’s rights. You are misreading the scope of those reserved rights and how they may be exercised by the County (as the Railroad’s successor in title).

In the easement for SE 33rd Street the railroad made what appears at first glance to be a very broad reservation: “[A]ll rights to use the property for any and all purposes.” This seemingly broad reservation is restricted, however, in that the grantor’s use cannot be “**inconsistent with**” the public road easement, and it must be exercised so as to not “**damage or interfere with the highway**” described in the “public-road” easement. (Emphasis added.) The

improvements proposed by the County in the SE 33rd Street ROW — and the construction of those improvements — “damage or interfere” with the City’s public road easement. With an approved ROW permit (appropriately conditioned), the County’s proposed improvements and construction activity would not improperly damage or interfere with the SE 33rd Street ROW. But, without approved permit conditions, the County’s construction activities and ongoing presence of the improvements will improperly interfere with the SE 33rd Street ROW. As such, it is incorrect to assert that the County’s residual or reserved rights in the corridor somehow entitle it to unconstrained use of, or interference with, the City’s “public-road” ROW located at SE 33rd Street.

In the easement for 206th Avenue SE, the Railroad reserved a right to use the easement area for “any and all purposes, not inconsistent with the use thereof for purposes” [sic]. Despite there being a word missing between “for” and “purposes,” the clear intent was to say, “not inconsistent with the use thereof for **street** purposes,” as that is the very purpose described a few lines above in the document. This intent is in accord with case law providing that the owner of the property over which a road easement passes (e.g., King County) may protect its ownership interests in the underlying property, so long as its actions “do not unreasonably interfere with the dominant owner’s use” of the road easement. *See, e.g., Rupert v. Gunter*, 31 Wn. App. 27, 29, 640 P.2d 36 (1982). *See also Beebe v. Swerda*, 58 Wn. App. 375, 384, 793 P.2d 442 (1990) (the owner of the servient property is entitled to use it “for any purpose that does not interfere with the proper enjoyment of the easement”). Like the easement at SE 33rd Street, the County’s inherited rights from the Railroad do not entitle the County to make unconstrained use of the public road at 206th Avenue SE. Rather, such use must not be inconsistent with the original intention of the parties, the nature of the property, and the manner in which it has been used and occupied by the City (and the citizens of Sammamish) — specifically, as a road.

The County’s proposed placement of a stop sign impeding vehicular traffic on 206th Avenue SE constitutes an improper degree of “interference” with the intended use of the road easement as granted by the Railroad. The intent of the easement was to allow the public to use 206th Avenue SE as a City street and for the City to regulate the public’s use of that street. The County’s unilateral placement of a stop sign would impose a limitation or interference that exceeds what the grantor and grantee of the easement originally intended, and in a manner inconsistent with how the street has been used and occupied for decades. Similarly, the County’s proposed construction activities at 206th Avenue SE constitute an unlawful interference with the City’s road easements, unless properly conditioned through an approved ROW permit.

III. CLEARING & GRADING PERMIT VIOLATIONS

The C&G permit for Segment 2A expressly states that it does not constitute approval of the County’s proposed ROW work, and that such work requires approval through a separate ROW permit. Even if you were correcting that the City does not actually own ROW at SE 33rd Street and 206th Avenue SE, or that the City’s interests in the ROW are somehow superseded by the

County's reserved rights, a C&G permit is an undisputed requirement for the County to construct its proposed improvements for Segment 2A within the Sammamish city limits.

The City issued the C&G permit for Segment 2A, and the County declined to appeal any permit conditions of the C&G permit. Accordingly, without a valid ROW permit, the following is a partial list of C&G permit modifications the County will need to proceed to complete Segment 2A:

- Eliminate all work within 206th Avenue SE and SE 33rd Street. By withdrawing the ROW permit you have left the County unable to meet conditions in the C&G permit. The discussions among County and City Staff upon submission of the C&G permit in 2016 were clear: The County's proposed work in the SE 33rd Street and 206th Avenue SE ROWs required a subsequently issued ROW permit. And, indeed, the County's plans submitted with the C&G permit for Segment 2A represented both streets as public, and the County then applied for the required ROW permit. It is disingenuous, at best, for you to now assert that work within SE 33rd Street and 206th Avenue SE was approved in the C&G permit. If the County genuinely disputed the City's right to demand a ROW permit, it should have, and could have, raised it months ago by appealing the C&G permit conditions.
- Revise Plan Sheet DP7. The approved plan set at page DP7 has a portion of the ROW work (SE 33rd Street and East Lake Sammamish Parkway) delineated and provides: "THIS WORK IS NOT APPROVED UNDER CLEARING AND GRADING PERMIT. SIDEWALK, CURB RETURN AND DRAINAGE SHALL BE PERMITTED, REVIEWED AND APPROVED UNDER A SEPARATE CITY OF SAMMAMISH RIGHT-OF-WAY PERMIT." This language unambiguously demonstrates that the C&G permit did not approve this particular work in City ROW. The County must address how it will meet the City's requirements for this work.
- Revise Plan Sheet PS3. Plan sheet PS3 was changed by hand by Steve Leniszewski with the County's engineer, Yammie Ho, standing next to him at City Hall. The approved C&G permit plans show the stop sign controlling traffic on the ELST, not the City street. PS3 specifically provides at General Note 3: "A SEPARATE RIGHT-OF-WAY PERMIT IS REQUIRED PRIOR TO INSTALLATION OF SIGNS." Your stated intention with respect to stop signs at the 206th Avenue SE intersection would violate the current C&G permit.² Installation of traffic signs that vary from those that existed prior to construction is not allowed under the C&G permit, and PS3 must be revised to show traffic signs outside of the City's sixty-foot ROW and completely within the trail corridor.
- Revise Plan sheet PS9. The County does not take the position that East Lake Sammamish Parkway is not public ROW, yet you have now formally withdrawn the only permit application that would have allowed the County to work in the Parkway. The County must address how it will meet the City's requirements for this work.

² See also Letter to Gina Auld from David Pyle, dated October 24, 2016, regarding CG2016-03488.

Your decision to withdraw the ROW permit applications for Segment 2A, has left the City with little choice but to consider invoking its code enforcement authority under SMC Sections 21A.115.040(2)(c) and 21A.115.050. If the County intends to work in City ROW without the required ROW permit, the City will post a stop-work order under SMC Section 23.70.010. The Director of Community Development is authorized under SMC 21A.115.050(1) to suspend any permit for violation of the conditions of approval and to initiate proceedings to revoke the permit for noncompliance. Additionally, the City may issue a stop-work order if unauthorized construction activity is observed in City ROWs. While the City is eager to see the proposed ELST Segment 2A improvements come to fruition for the benefit of the community, we have an equal obligation to ensure that it is constructed in compliance with our Municipal Code and the conditions imposed through the permitting process.

Unfortunately, your withdrawal of necessary permits has now caused delay in your department's own project. And, even if you revert to Ms. Flemming's earlier position, the County must now apply for, and the City must first issue, new ROW permits before the County may lawfully proceed with any ELST construction activities within 206th Avenue SE, SE 33rd Street, or the Parkway.

IV. STOP SIGN ON 206TH AVENUE SE – SAFETY CONCERNS

Finally, your letter includes engineering analysis that was not previously submitted to the City as part of the permit review for the County's Segment 2A C&G permit or the ROW permit. Your after-the-fact letter to me is not an appropriate mechanism for the County to now argue about permit conditions that the County itself declined to appeal. Given the County's knowing decision not to appeal, those conditions are now binding and not subject to further judicial review.

For its own reasons, the County chose not to submit these engineering issues during the C&G permit review and ROW permit review processes. Indeed, the County asked the City for expedited review of the C&G permit for Segment 2A because of the amount of time that had passed during the County's consecutive appeals to the Hearing Examiner and Shorelines Hearings Board (SHB) of the Shoreline Substantial Development Permit (SSDP) for Segment 2A. The City accommodated the County's request, but it now appears that the County either intentionally left out vital information so the permitting process would be expedited, or has decided to materially change its position on the permit conditions after failing to appeal them when imposed.

Although the engineering analysis of traffic controls at 206th Avenue SE is somewhat tangential to the thrust of your letter, I would be remiss if I did not point out that this topic was the subject of extensive testimony, argument, and documentary evidence submitted to the SHB and during the earlier Hearing Examiner proceedings in connection with the Segment 2A SSDP appeals. The City's traffic engineer, Steven Chen, explained at length during his direct

testimony to the Board why the stop sign currently placed on the ELST could not safely be switched to stop vehicular traffic on 206th Avenue SE, as the County's engineers have proposed. And, the County's design engineer admitted on cross-examination that she failed to consider key factors for assigning priority and placement of stop signs when analyzing the intersection of the ELST with 206th Avenue SE. See also, e.g., the following exhibits and testimony from the SHB appeal hearing:

- Ex. R-13.1, R-13.2
- Ex. R-14.1, R-14.2, R-14.3, R-14.4
- Ex. R-15.1, R-15.2, R-15.3, R-15.4, R-15.5
- Ex. R-16.1, R-16.2, R-16.3, R-16.4, R-16.5
- Ex. R-21 (Accident History Report)
- Ex. R-23
- Ex. P-6
- Ex. P-8
- Ex. P-9, p. 0008
- Ex. P-10, pp. 00016, 00028
- Ex. P-13, P.00034
- Ex. P-18, p. 0003
- Ex. P-22, pp. 0001, 0005
- Ex. P-24
- Ex. P-25
- Ex. P-26
- Ex. P-27, p. 00013
- Testimony of Yammie Ho
- Testimony of Steven Chen
- City Public Works Standards 15.050 Table II & Table IV, 15.070, 15.160
-

The testimony and documentary evidence support keeping the stop sign where it currently exists, and against moving it to where the County proposes. Also remember that during the SHB appeal hearing, Mr. Chen testified that the City would, in the future, periodically review and assess the volume of traffic on the ELST and consider whether future observed conditions warrant moving the stop sign to control vehicles on 206th Avenue SE, rather than stopping trail users.

I hope you can sense from this response that my Staff and I are disheartened, to put it mildly, by the constantly shifting positions and combative posture assumed by the County. What should be a relationship based on cooperation and mutual trust has been damaged by your repeated vacillations and frequently oppositional attitude. The City has worked diligently to be transparent, communicative, and cooperative with County personnel in reviewing and processing the required permits for this complex project. We have devoted countless Staff hours to make the process as efficient and expeditious as possible. Actions like those taken in your letter are

Kevin Brown
June 9, 2017
Page 9

contrary to the spirit with which the City has approached this process, and do nothing but engender mistrust and hinder progress toward a goal we both desire — the successful completion of the ELST.

My understanding is that County construction crews anticipate commencing work in the 206th Avenue SE and SE 33rd Street intersections as early as next week. Without approved ROW permits, such work is not authorized. If work begins in the ROW without permits, a variety of enforcement actions will be taken. I hope that the County will reconsider, and reject, the positions asserted in your letter so that progress can continue in a timely manner. I look forward to your response.

Sincerely,



Lyman Howard
City Manager

LH/me

Enclosures

cc: Christie True, Director, Dept. of Natural Resources and Parks
Fred Jarrett, Senior Deputy County Executive

EXHIBIT 12

AFTER RECORDING MAIL TO:
City of Sammamish / City Clerk
801 228th Ave SE
Sammamish, WA 98075

**NOTICE AND ORDER TO ABATE CIVIL CODE VIOLATION
CITY OF SAMMAMISH**

THE CITY OF SAMMAMISH, a municipal corporation of
the State of Washington,

vs.

King County, a municipal corporation of the State of
Washington; and Active Construction, Inc., a Washington
Corporation.

Notice and Order

This **Notice and Order to Abate a Civil Code Violation** is issued pursuant to Chapter 23.60 of the Sammamish Municipal Code (SMC) and relates the Stop Work Order issued on this same date. The undersigned has determined the real property described below is in violation of one or more provisions of the SMC as hereafter set forth.

1. **Abbreviated Legal Description:** Portion of Government Lot 1, Sec 32, T 25 N, R 6 E, WM
2. **Tax Parcel:** Portion of Parcel No. 1724069007
3. **Location:** East Lake Sammamish Trail Segment 2A, between station(s):
 1. 238+60 (+/-) and 239+25 (+/-), and
 2. 282+60 (+/-) and 282+95 (+/-).
4. **Case Number:** CVC2017-00054
5. **Background:** On or before June 16, 2017, work activities in preparation for paving and concrete work were performed on behalf of King County under the Clearing & Grading permit CG2016-03488 (C&G Permit) issued October 28, 2016. The ELST corridor within the C&G

Permit area intersects with the City's 206th Avenue SE and SE 33rd Street right-of-ways (ROW). The work performed on behalf of King County extended beyond the boundaries of the C&G Permit, violated the conditions of the C&G Permit, and altered the existing ground surface within the City's 206th Avenue SE ROW. The County also appears poised imminently to alter the ground surface within the SE 33rd Street ROW. A Stop Work Order was issued on site June 16, 2017, prohibiting further work in the City's 206th Avenue SE and SE 33rd Street ROWs. The remainder of the work approved in the C&G Permit may continue.

Conditions of the C&G Permit require King County to obtain a ROW permit for performing any work in the ROW. King County applied for the required ROW permit on May 5, 2017, and withdrew the application on May 23, 2017. The letter withdrawing the ROW permit from Kevin Brown, Director Parks and Recreation Division, provided that the County was "withdrawing our ROW permit applications and are proceeding with work in the two intersections." A subsequent letter from Mr. Brown on June 14, 2017, states, "Unless the City issues a stop work order, King County will be proceeding with its plans to pave Segment A of the trail this week (if the weather allows it), and subsequently, to install stamped concrete across the intersections." The Stop Work Order issued applies to 206th Avenue SE and SE 33rd Street, not the remainder of the area in the C&G Permit.

The unauthorized work was investigated on June 16, 2017, by City of Sammamish Construction Inspector, Jim Krieg who observed the conditions on the site. Photographs depicting a portion of the ROW area within 206th Avenue SE are attached as **Exhibit A**. No ROW permit has been issued by the City for the work that encroached into the City's ROW. The work performed is within the 60-foot ROW area of 206th Avenue SE. The work performed on behalf of King County in the ROW was not authorized under the C&G permit and all work in City ROW requires a ROW permit under 14.30.030 SMC and as is conditioned and noted on the approved C&G permit. In withdrawing its ROW permit, King County explicitly represented that it would not apply for the necessary ROW permits for work in both 206th Avenue SE and SE 33rd Street.

6. **Person(s) Responsible/Named Person(s):** The Property owner(s) of record, King County, through its representatives have committed a civil code violation by authorizing clearing and grading without obtaining the required permit(s) from the City of Sammamish. ACI, Inc. was the King County representative that had the actual clearing and grading work performed in the ROW.

The City reserves the right to supplement this Notice and Order of Civil Violation if additional person(s) responsible are identified.

7. **Violation(s):** The specific provisions of the ordinance, resolution, regulation, public rule, permit condition, notice and order provision, or stop work order that have been violated are:
 - A. SMC 14.30.010 & 14.30.040 – Work within public right-of-way without a City-issued right-of-way use permit; namely, clearing and grading/land altering activities with large construction equipment within the 206th Avenue SE.

- B. SMC 16.15.070(4)(d) – Work that is not provided for in the approved Clearing and Grading permit for this project; namely, clearing and grading/land altering activities with large construction equipment within the public right-of-way of 206th Avenue SE.
8. **Required Actions to Correct Violation(s):** Pursuant to Chapter 23.10.010 SMC, as the Property owner(s) of record you are hereby ordered to take the proper corrective action to abate all listed violation(s) above.
- A. Prepare and submit a right of way permit application with appropriate permit fees to the City of Sammamish in accordance with SMC 14.30.010 and 14.30.030 with plans and specifications prepared and signed by a civil engineer describing the proposed work that would be performed in the right of way. Work within the limits of the C&G Permit must not leave either 206th Avenue SE or SE 33rd Street in an unsafe condition for vehicle or pedestrian use. A right of way permit application or an application for modification of the C&G permit must address these safety concerns and the proposed work must be approved through the permit process.
- B. Obtain the right of way permit described in A., perform the work approved in the permit and have same inspected by the City for compliance with the terms of the permit.
9. **Failure to Correct:** Failure to appeal this Notice and Order renders the Notice and Order a final determination that the conditions described in this Notice and Order existed and constituted a civil code violation, and that the named party or parties are liable as a person responsible for the code violation. Moreover, a failure to correct the violations cited in the Notice and Order could lead to the suspension, revocation, modification, and/or denial of current or subsequent City of Sammamish permit applications for the Property. The Director may also proceed to correct the violation and cause the work to be done, and charge the associated costs thereof as a lien against the Property and as joint and several personal obligations of any persons responsible for the code violation, and take any other appropriate legal action to remedy this violation.
10. **Civil Penalty:** Pursuant to SMC 23.100.010, the following civil penalties shall be assessed against the property owner of record for non-compliance with this Order as follows:
- A. The accrual of daily civil penalties for each day the property remains noncompliant are assessed as follows: 1-15 days: \$100 per day; 16-31 days: \$250 per day; 31+ days: \$500 per day (\$50,000 maximum) from the date of civil penalty issuance.
11. **Criminal Penalty:** Pursuant to SMC 21A.37.290, any person who violates the provisions of SMC 23.100, or fails to comply with any of the requirements to correct said violations in this Order shall be guilty of a gross misdemeanor and subject to additional penalties set forth in SMC 1.10.010. In keeping with the City's concern regarding protection of the environment, the court should consider the imposition of a maximum fine of no more than \$5,000 per occurrence and imprisonment not to exceed one year. Each day such violation continues shall be considered a separate, distinct offense.

12. **Authorized to Grant Extensions:** The Director is authorized to grant deadline extensions for any of the above requirements if requested and warranted. It shall be the Director's sole judgement for granting an extension if the Owner demonstrates circumstances exist beyond their diligent effort and control to comply with this Order.
13. **Duty to Notify:** The person(s) responsible for the code violations(s) shall notify the Director of any actions taken to achieve compliance with this Notice and Order.
14. **Right to Appeal:** Any person named in this Notice and Order or having any record or equitable title in the property against which the Notice and Order is recorded may appeal the Notice and Order to the City Hearing Examiner within ten (10) days of the date of service of this Notice and Order. The procedures for exercising appeal rights are attached as Exhibit B.
15. **Failure to Appeal:** Unless an appeal is properly filed within the applicable time limits, this Notice and Order shall become the final administrative order of the Director, and the civil penalties assessed shall be immediately due and subject to collection.

I, Jeff Thomas, Director of Community Development for the City of Sammamish, have reviewed the forgoing information and believe that it is true and correct.

THE CITY OF SAMMAMISH,
Department of Community Development

By:  6-16-2017
Jeff Thomas
Director Community Development
801 228th Ave SE
Sammamish, WA 98075

I, Steve Leniszewski, Director of Public Works for the City of Sammamish, have reviewed the forgoing information and believe that it is true and correct.

THE CITY OF SAMMAMISH,
Department of Public Works

By: 
Date: 6/16/17
Steve Leniszewski
Director Public Works
801 228th Ave SE
Sammamish, WA 98075

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me Jeff Thomas to me known to be the Community Development Director of the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.



GIVEN my hand and official seal this 16th day of JUNE, 2017

A handwritten signature in blue ink, appearing to read "Paullette OConnell".

Name: PAULLETTE OCONNELL
Notary Public in and for the State of Washington
My commission expires: 12-9-19

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me Steve Leniszewski to me known to be the Public Works Director of the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.



GIVEN my hand and official seal this 16th day of JUNE, 2017

A handwritten signature in blue ink, appearing to read "Paullette OConnell".

Name: PAULLETTE OCONNELL
Notary Public in and for the State of Washington
My commission expires: 12-9-19

EXHIBIT B:

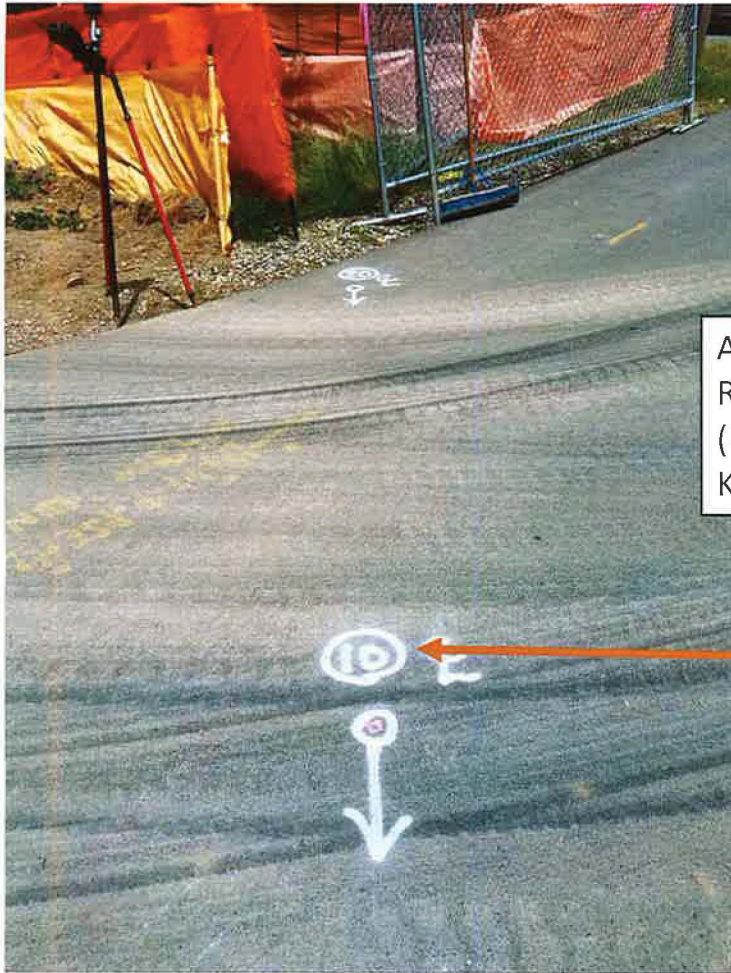
Appeal Procedures: If you have been issued a *Notice and Order*, a *Stop Work Order* or a *Notice of Environmental Damages/Critical Area Violations* by the Department of Community Development or Public Works Department for the City of Sammamish, you have a right to appeal this decision pursuant to Sammamish Municipal Code Section 23.110. The purpose of this guide is to help assist you in the process of understanding your right to appeal or participate in a hearing.

Critical Information:

- You have 10 days after receiving or otherwise being served with a written notice of a violation to file an appeal.
- If you do not appeal within 10 days you are indicating that you agree with the charges.
- There is a charge to file an appeal. The fee is \$250.
- Sammamish Municipal Code Section 23.90 explains the methods for placing written notice on a property. In cases where an order is not posted on site and/or given to the person in violation, the Sammamish Municipal Code states that the 10-day appeal period starts three days after the post marked date on the letter sent via first class mail. A delay in picking up the certified letter *does not* give you more time for an appeal.
- The individual who will review your appeal is a hearing examiner. The hearing examiner is an individual with training and experience to conduct administrative or quasi-judicial hearings on issues related to building and development. You may want to consult with an attorney to ensure that you follow the process and know your rights. If the legal process is not followed then your appeal may be dismissed.
- Sammamish Municipal Code Section 20.10.140 makes it specifically illegal for any City Council member to interfere with the process or to intervene on behalf of any individual who is appealing an Order or Agreement. While it may be tempting to ask for a City Council member to help in the process they will not be able to do so.

How to File an Appeal:

- You must provide the Department with a "letter of appeal" stating that you intend to appeal the Notice and Order, a Stop Work Order or a Notice of Environmental Damages/Critical Area Violations. The request shall clearly explain the basis for the appeal and be submitted within the 10-day appeal period.
- This letter must be accompanied by a check for the appeal fee of \$250.
- Postmarks on the appeal letter do not signify that the City of Sammamish received the appeal in the required time frame.
- You are entitled to obtain copies of all the files detailing the facts and other information from which the City of Sammamish based the Order and/or Notice.
- The City of Sammamish is required to provide this information to you within a reasonable time and at a reasonable charge.
- To obtain copies of the files detailing the facts and other pertinent information you will need to file a Public Records Request. You may obtain this form at City Hall (801 – 228th Ave SE, Sammamish) or online. To obtain the form online go to www.sammamish.us. Up in the top right corner of the home page is a pull-down menu called "Quick Links." Select Public Records Request.
- This form may be brought to City Hall, mailed to City Hall (Public Records Request, 801 228 Ave SE, Sammamish, WA 98075), or faxed (425-295-0600).



Approximate location of 60' ROW area (30' from centerline (N) of 206th AVE SE ROW and KC Trail intersection)

-10' offset shown.
ROW is 60' total



EX. A - 1

EXHIBIT 13

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

CITY OF SAMMAMISH,

Defendant.

No. _____

COMPLAINT

I. INTRODUCTION

1. In this action, King County seeks a declaratory judgment that the City of Sammamish's latest attempts to interfere with King County's construction of the East Lake Sammamish Trail ("ELST") violates state and federal law. The Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501(b) ("ICCTA"), preempts the City of Sammamish's attempt to assert control over a federally-regulated railroad corridor, especially one that has been "railbanked" under the National Trails System Act Amendments of 1983, Pub.L. No. 98-11, § 208, 97 Stat. 42, codified at 16 U.S.C. § 1247(d) (2006) ("Trails Act").

2. This is not the first time the City of Sammamish has violated federal law by attempting to impede the King County Parks Department from constructing the ELST. This case is just the latest iteration in the "highly contentious matter" that is the "disposition of the

1 Redmond–Issaquah [railroad] line.” *Redmond-Issaquah R.R. Pres. Ass’n v. Surface Transp. Bd.*,
 2 223 F.3d 1057, 1058 (9th Cir. 2000).

3 3. In a previous case against Sammamish, *Friends of the E. Lake Sammamish Trail*
 4 *v. City of Sammamish*, 361 F. Supp. 2d 1260 (W.D. Wash. 2005) (J. Coughenour), this Court ruled
 5 that the City’s attempts to “frustrate development of a trail on the railbanked right of way” were
 6 an “obstacle to the accomplishment and execution of the full purposes and objectives of
 7 Congress.” *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260,
 8 1274 (W.D. Wash. 2005). As a result, the Trails Act preempted illegal provisions in the
 9 Sammamish Municipal Code and the Sammamish Development Code that were designed to
 10 impede construction of the ELST. *Id.* at 1265.

11 4. Now, over ten years later, the City of Sammamish is once again violating federal
 12 law through its attempts to prevent King County’s construction of a permanent, paved trail
 13 pursuant to the Trails Act.

14 5. In addition, the City has also violated Washington law, including the Growth
 15 Management Act, by impeding the design and precluding the development and operation of an
 16 essential public facility.

17 **II. PARTIES**

18 6. Plaintiff King County is a municipal corporation organized and existing under the
 19 laws of the State of Washington.

20 7. Defendant City of Sammamish is a municipal corporation organized and existing
 21 under the laws of the State of Washington.

22 **III. JURISDICTION & VENUE**

23 8. This Court has jurisdiction over this litigation pursuant to 28 U.S.C. § 2201, 28
 24 U.S.C. § 1331, and 28 U.S.C. § 1367.

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

IV. FACTS

10. The East Lake Sammamish Trail is an 11-mile “missing link” in a 44-mile-long regional trail corridor that will connect the Burke-Gilman Trail, the Sammamish River Trail, the Marymoor Connector Trail, and the Issaquah-Preston Trail, linking Seattle to the Eastside and the Cascade Foothills. The ELST is a County park, and once construction is completed, it will provide a multi-use recreational trail and non-motorized transportation corridor to residents from the City of Sammamish, King County, and throughout the region.

11. After this Court overturned the City of Sammamish’s previous efforts to prevent construction of the ELST in *Friends of the E. Lake Sammamish Trail*, 361 F. Supp. 2d at 1274, King County completed construction of an interim, gravel trail in 2006.

12. King County is currently upgrading the interim, gravel trail to a permanent, paved trail. King County has divided the 11-mile ELST into five segments for planning purposes. The first segment, located in the City of Redmond, was completed in 2011. The second segment, located in the City of Issaquah, was completed in 2013. The third segment, located in the City of Sammamish, was completed in 2015.

13. King County has applied for permits for the final segment of the ELST, a 3.6 mile section known as South Sammamish Segment B, and the City is reviewing the permit applications. South Sammamish Segment B, which is immediately to the north of South Sammamish Segment A, runs from SE 33rd Street to Inglewood Hill Road. In the fall of 2016, the City repeatedly impeded the County’s attempts to submit the permit applications for this segment.

14. This case involves the fourth segment of the ELST, a 1.3 mile section between SE 43rd Way and SE 33rd Street known as South Sammamish Segment A. King County applied for and obtained numerous permits before beginning construction of the paved trail in South Sammamish Segment A. In addition to a shoreline substantial development permit, the City of Sammamish required King County to apply for and obtain a clearing and grading permit, No.

CG2016-03488, before construction could begin. The shoreline substantial development permit application process was lengthy and expensive for the County, in large part because the City took almost a year to review the County's permit application and ultimately imposed unnecessary, unlawful and burdensome permit conditions. Several of the City's conditions were later stricken in administrative proceedings. Nonetheless, the City eventually granted King County permits to construct the trail.

15. To construct the permanent trail, King County temporarily closed the gravel, interim trail in South Sammamish Segment A and began construction on December 19, 2016. King County planned to complete construction of the paved trail within twelve months, intending to reopen the ELST in approximately December of 2017.

16. The City of Sammamish is now threatening to revoke clearing and grading permit No. CG2016-03488 and to halt King County's construction in South Sammamish Segment A. This would prevent King County from reopening South Sammamish Segment A, thereby turning the temporary closure for construction into a permanent bar on the recreational trail.

A. The ELST Is A Federally-Regulated Railroad Corridor Subject To The Jurisdiction Of The STB.

17. The Seattle, Lake Shore & Eastern Railway Company ("SLS&E"), a predecessor of BNSF Railway Co. ("BNSF"), originally assembled the Corridor containing the ELST in the 1890s. The Corridor contains a mix of property interests that BNSF acquired as railroad easements or fee simple, depending on the terms of each acquisition. *See Hornish v. King Cty.*, No. 2:15-cv-00284-MJP, 182 F. Supp. 3d 1124 (W.D. Wash. 2016) (J. Pechman), *appeal docketed*, No. 16-35486 (9th Cir.). In addition to acquisitions from private parties, the SLS&E acquired one relevant portion of South Sammamish Segment A as a land grant from the United States through the General Railway Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934-939 (repealed 1976).

1 18. The Trails Act permits railroads to transfer managerial responsibility to a state or
 2 local government entity that agrees to maintain the right of way for interim use as a recreational
 3 trail. Through railbanking, the Trails Act preempts any extinguishment of any railroad easements
 4 and any reversion to another owner that would normally occur under state law doctrines regarding
 5 discontinuation of use. In this way, through the Trails Act, the Corridor remains under STB
 6 jurisdiction so that it can be reactivated for rail use.

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

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

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

1 permit abandonment or discontinuance inconsistent or disruptive of
2 such use.

3 18 U.S.C. § 1247(d). The Trails Act also states: “Such trails may be designated and suitably
4 marked as parts of the nationwide system of trails by the States, their political subdivisions, or
5 other appropriate administering agencies with the approval of the Secretary of the Interior.”

6 § 1247(e). Consistent with these provisions, King County intends construction of the ELST to
7 fill the “missing link” in its system of regional trails.

8 21. Like any active railroad, state and local attempts to control a railbanked railroad
9 corridor are preempted by the ICCTA. According to Congress:

10 The jurisdiction of the [Surface Transportation] Board over—

11 (1) transportation by rail carriers, and the remedies provided
12 in this part with respect to rates, classifications, rules
13 (including car service, interchange, and other operating
14 rules), practices, routes, services, and facilities of such
15 carriers; and

16 (2) the construction, acquisition, operation, abandonment, or
17 discontinuance of spur, industrial, team, switching, or side
18 tracks, or facilities, even if the tracks are located, or intended
19 to be located, entirely in one State,

20 is exclusive. Except as otherwise provided in this part, the remedies
21 provided under this part with respect to regulation of rail
22 transportation are exclusive and preempt the remedies provided
23 under Federal or State law.

24 49 U.S.C. § 10501(b).

25 **B. The City Of Sammamish Has Repeatedly Attempted To Impede
Construction Of The ELST.**

26 22. The City of Sammamish and some of the adjacent homeowners who live alongside
27 the ELST have repeatedly attempted to impede King County from completing construction of this
28 regional trail. In the century since the SLS&E assembled the Corridor, numerous property owners
29 have built lakeside homes sandwiched into the narrow area between the Corridor and the shore of
30 Lake Sammamish. The value of these often-multi-million dollar lakefront properties rose
31 dramatically after BNSF stopped operating freight trains next to or through their backyards. Since

1 then, dozens of those same homeowners (including Sammamish City Councilmember Thomas
2 Hornish) have filed lawsuits seeking to stop King County's construction of a public trail alongside
3 their homes. At the same time, many of these homeowners have sought tens of millions of dollars
4 from the federal government for takings claims arising by operation of the Trails Act.

5 23. The City of Sammamish has repeatedly failed to recognize the federal jurisdiction
6 over this railbanked and federally-regulated railroad corridor. The City of Sammamish has
7 repeatedly made demands on the County that go far afield of appropriate safety or environmental
8 regulations. Many of these demands seek to protect the private interests of adjacent property
9 owners rather than the public interest in safety or environmental protection.

10 24. The City of Sammamish's current attempts to impede ELST construction
11 purportedly stem from two public crossings where 206th Avenue SE and SE 33rd Street cross the
12 portion of the Corridor known as South Sammamish Segment A. 206th Avenue SE and SE 33rd
13 Street are officially classified as minor dead end streets by the City of Sammamish. 206th Avenue
14 SE provides access to just 15 homes, while SE 33rd Street serves 46 homes that have two other
15 access points across the ELST. By contrast, original design estimates for the ELST have projected
16 between 2,500 and 4,000 trail users would cross these intersections on peak days, and newer
17 estimates are even higher.

18 25. The City holds limited crossing easements at these two locations through easement
19 agreements originally granted by BNSF. BNSF's property rights—which were preserved by the
20 Trails Act and transferred to King County—are superior to the rights of Sammamish and preclude
21 the City's regulation of the intersection of the ELST and these roadways. The easement allowing
22 206th Avenue SE to cross the Corridor contains a reservation granting, to BNSF and to

23 its successors and assigns, ***the right to construct***, maintain, use,
24 operate, relocate, reconstruct and renew such tracks and ***facilities as***
25 ***it may at any time, and from time to time, desire*** within the limit of
the land hereinbefore described, ***including the right and privilege***
to use said land for any and all purposes, not inconsistent with the
use therefore for purposes [sic].

1 Similarly, the easement allowing SE 33rd Street to cross the Corridor states that BNSF,

2 and its successors and assigns, reserves all rights to use the property
 3 hereinbefore described ***for any and all purposes whatsoever*** not
 4 inconsistent with the easement hereby granted, ***including***, but not
 5 limited to, ***the right to construct***, maintain, report, renew,
 6 reconstruct, replace and operate present tracks and future tracks,
 communication, signal and electric power lines, utilities and ***other***
types of facilities on said property when deemed necessary or
expedient to the Railway Company.

7 The rights retained in the reservations have been transferred to King County, which now has the
 8 right under the Trails Act to build the ELST—a “facility” within the scope of these easements.

9 26. The City does not have any property rights in the ELST apart from those granted
 10 by the crossing agreements. The City claims that, despite the clear reservations in these
 11 agreements, the easements grant it the authority to require right of way permits (“ROW Permits”)
 12 before King County can perform any construction in these portions of the ELST. Yet neither
 13 agreement authorizes the City to require ROW Permits before the railroad—or in this case, King
 14 County—can construct facilities envisioned by the Trails Act. To the contrary, the railroad
 15 reserved the right to construct corridor improvements. Because King County disagrees with the
 16 City’s authority to require these permits, the City is threatening to revoke clearing and grading
 17 permit No. CG2016-03488 and halt construction of the ELST.

18 27. The City claims that obtaining ROW Permits is required by two conditions of
 19 clearing and grading permit No. CG2016-03488. According to Condition 1, bullet 12:

20 The modification, relocation, or installation of a traffic control
 21 device affecting the City Right of Way (ROW) or other work
 22 connecting to the ROW (e.g. curb returns and ramps) requires
 approval of a ROW permit prior to placement of any such device or
 23 improvement . . . to clarify when a ROW permit is necessary, details
 depicting stops and other improvements must be removed from or
 24 noted accordingly with the plan set (such as the stop signs on sheets
 PS3 at Station 239) and applied for under a separate ROW permit.
 Revised plans where these items have been removed from or noted
 25 accordingly within the plan set shall be provided to and approved by
 the City prior to the Grading preconstruction meeting.

1 According to Condition 1, bullet 21:

2 No work in the ROW is approved under this permit. A separate
 3 ROW permit is required for installation of any work in the ROW,
 including installation of any erosion control measures.

4 28. As a condition of granting any ROW Permits, the City has stated that King County
 5 must alter its designs for the ELST and construct unsafe intersections that will preclude reopening
 6 South Sammamish Segment A. Contrary to the expert guidance provided by King County's
 7 engineers, the City of Sammamish has ordered King County to give priority of assignment to the
 8 roadway rather than the ELST, with the result that stop signs will face **away** from vehicles, toward
 9 pedestrians using the trail. This condition of Sammamish's ROW Permits is contrary to national
 10 design and safety standards and conflicts with Washington laws such as RCW 46.61.235(1). This
 11 unsafe design would impose an untenable level of risk for cyclists and pedestrians, implying a
 12 right of way for moving vehicles and forcing pedestrians to cross in the vehicle's uncontrolled
 13 path, contrary to properly designed crosswalks elsewhere in the state.

14 29. King County refused to modify the design to give priority of assignment to vehicles
 15 on the roadway because the project's design team and outside experts determined this would not
 16 be consistent with safety standards and would result in an unsafe condition for the public. King
 17 County's plans for the ELST provide the safest design for these two roadway-trail intersections,
 18 complying with all applicable standards including the Manual on Uniform Traffic Control Devices
 19 (MUTCD), the American Association of State Highway and Transportation Officials Guide for
 20 the Development of Bicycle Facilities, and the Washington State Department of Transportation
 21 Design Manual.

22 30. Before including unsafe placement of stop signs as a condition of any ROW Permit,
 23 the City of Sammamish previously tried forcing King County to place stop signs in the same
 24 locations as a condition of the shoreline substantial development permit for South Sammamish
 25 Segment A. The Washington Shorelines Hearing Board struck this "unusual condition to be

placed on an SSDP,” because it was unrelated to compliance with the Shoreline Management Act. *Sammamish Homeowners v. City of Sammamish*, No. 15-012c, 2016 WL 5867913, at *13 (Shorelines Hr’g Bd. Sept. 15, 2016).

31. As a sign of good faith and to minimize additional delays, King County originally decided to submit applications for ROW permits while its staff reviewed the City’s jurisdiction over the crossings at 206th Avenue SE and SE 33rd Street. On May 4, 2017, King County submitted ROW permit applications, along with the following disclaimer to preserve the County’s position regarding the City’s lack of jurisdiction:

By making this permit application, King County does not waive, and intends to fully preserve, all rights King County possesses to the Corridor, including its ownership and control of the Corridor at issue in this permit application as well as other portions of the Corridor. King County does not concede that any permit is required from the City to undertake work or modify traffic control in the area of the Corridor at issue. Nor does King County agree that the City has any power to impose conditions on the County as part of any process to review or issue such permit.

After determining that BNSF’s reservations did not create jurisdiction for the City, King County withdrew its applications for the unnecessary ROW Permits on May 23, 2017.

32. Also on May 23, 2017, King County sent the City of Sammamish a letter explaining that the ROW permit conditions did not apply to this project because the ELST corridor is not City ROW under the crossing easements. While the easements authorize a street crossing, the City’s property interest in these public streets is subject to the superior rights of the railroad, including the rights reserved by the railroad. King County also explained, as it has on numerous prior occasions, that the City’s design conditions are unsafe, and they will increase the number of injuries along the ELST:

This is the safest design for these two roadway-trail intersections and is in compliance with all applicable standards including the Manual on Uniform Traffic Control Devices, 2009 edition (MUTCD), the American Association of State Highway and Transportation Officials Guide for the Development of Bicycle

Facilities, 2012 (AASHTO), and the WSDOT Design Manual, July 2012.

* * *

With respect to these two intersections, installing stop signs to stop path users will not improve safety or prevent accidents. In fact, it will result in a false sense of safety or control on the part of the trail and roadway user that may result in additional accidents or conflicts.

Ltr. from K. Brown to L. Howard (May 23, 2017), attached as Ex. 1.

33. In response, the City of Sammamish threatened to revoke the permission it has already granted for construction in South Sammamish Segment A, including clearing and grading permit No. CG2016-03488. On June 9, 2017, the City of Sammamish wrote to King County:

the County will now need to submit a new permit application before any work in the 206th Avenue SE or SE 33rd Street ROW will be authorized.

* * *

Moreover, without the required ROW permit, the County will likely be in violation of the conditions of approval of the C&G permit for Segment 2A, as explained below. Because of your actions, the City is forced to consider suspending the C&G permit and instituting proceedings to revoke it under SMC Sections 21A.115.040 and .050.

Ltr. from L. Howard to K. Brown (June 9, 2017), attached as Ex. 2. Thus, the City has escalated a dispute regarding authority over intersections with two dead end roads into a threat to revoke clearing and grading permit No. CG2016-03488 and prohibit the County from continuing with construction of the ELST.

34. Concurrent with the filing on this Complaint, on June 14, 2017, King County responded to the City's threats, setting out King County's positions and informing the City that its actions left the County with no choice but to file this Complaint. Ltr from K. Brown to L. Howard (June 14, 2017), attached as Ex. 3.

35. Because King County would be at substantial risk of claims, litigation and/or liability for any injuries resulting from this unsafe design, the County cannot reopen the trail with the unsafe conditions required by the City, nor can King County implement City requirements that

1 would violate state statutes, including provisions of the motor vehicle code applicable to
 2 crosswalks. Construction is already well underway in South Sammamish Segment A, which
 3 cannot reopen in its current state. As a result, if the City prevails in its viewpoint, Sammamish
 4 will cause a permanent closure of the interim trail, without any possibility for reopening.

5 **C. The City Of Sammamish's Attempts To Interfere With Construction Of The**
 6 **ELST Are Contrary To Washington Law.**

7 36. The City of Sammamish's attempt to require placement of stop signs in a dangerous
 8 manner is contrary to Washington law, including the Growth Management Act ("GMA"). Under
 9 the GMA, "[n]o local comprehensive plan or development regulation may preclude the siting of
 10 essential public facilities." RCW 36.70A.200(5). The ELST is an essential public facility within
 11 the scope of the GMA. By rendering it impossible to design the ELST in a safe manner consistent
 12 with national standards, the City has effectively precluded King County from reopening this
 13 essential public facility.

14 **D. The City Of Sammamish's Attempts To Interfere With Construction Of The**
 15 **ELST Are Preempted by The Trails Act And The ICCTA.**

16 37. The City of Sammamish's actions are also contrary to federal law. The Supremacy
 17 Clause of the United States Constitution provides that "[t]his Constitution and the laws of the
 18 United States which shall be made in pursuance thereof; in all treaties made, or which shall be
 19 made, under the authority of the United States, shall be the supreme law of the land." U.S. CONST.
 20 art. VI, cl. 2.

21 38. The doctrine of conflict preemption prohibits the City of Sammamish's attempt to
 22 stop construction of the ELST, because the City's actions are an obstacle to the accomplishment
 23 of Congressional intent to facilitate the construction of a recreational trail. Through the Trails
 24 Act, Congress has designated the ELST for development of a recreational trail. Through its
 25 actions to impede that trail, the City of Sammamish has violated the express will of Congress.

1 The Supremacy Clause mandates that the will of Congress, rather than the will of Sammamish,
2 will prevail.

3 **FIRST CAUSE OF ACTION**

4 **Declaratory Judgment Regarding Preemption By Federal Law**

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

7 40. A declaratory judgment regarding preemption by federal law is proper pursuant to
8 28 U.S.C. §§ 2201 and 2202 because an actual and justiciable controversy exists among the parties
9 as to their respective rights and obligations under the Trails Act and the ICCTA.

10 41. King County is entitled to a declaratory judgment that the City of Sammamish's
11 attempts to interfere with construction of the East Lake Sammamish Trail are preempted by the
12 Trails Act and the ICCTA.

13 **SECOND CAUSE OF ACTION**

14 **Declaratory Judgment Regarding Violation Of Washington Law**

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

17 43. A declaratory judgment regarding the City of Sammamish's violations of
18 Washington Law is proper pursuant to 28 U.S.C. §§ 2201 and 2202 because an actual and
19 justiciable controversy exists among the parties as to their respective rights and obligations under
20 Washington law.

21 44. King County is entitled to a declaratory judgment that the City of Sammamish's
22 attempts to interfere with construction of the East Lake Sammamish Trail are contrary to
23 Washington law, including the Growth Management Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff King County prays for the following relief:

- A. For declaratory relief setting forth the parties' rights and obligations regarding the ELST;
- B. For King County's costs and attorneys' fees herein; and
- C. For such other relief as the Court deems just and equitable.

DATED this 14th day of June, 2017.

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EXHIBIT 14

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:17-cv-00921-JCC

King County v. City of Sammamish
Assigned to: U.S. District Judge John C Coughenour
Case in other court: 9th Circuit Court of Appeals, 17-35642
Cause: 28:2201 Declaratory Judgment

Date Filed: 06/14/2017
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

King County

represented by **David Ian Freeburg**
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V.

Defendant

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Date Filed	#	Docket Text
06/14/2017	<u>1</u>	COMPLAINT against defendant(s) City of Sammamish (Receipt # 0981-4910669), filed by King County. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Civil Cover Sheet, # <u>5</u> Summons)(Harris, Emily) (Entered: 06/14/2017)

06/15/2017		U.S. District Judge John C Coughenour added. (ST) (Entered: 06/15/2017)
06/15/2017	2	Summons electronically issued as to defendant(s) City of Sammamish. (ST) (Entered: 06/15/2017)
06/16/2017	3	ORDER REGARDING DISCOVERY AND DEPOSITIONS by U.S. District Judge John C. Coughenour. (PP) (Entered: 06/16/2017)
06/16/2017	4	MINUTE ENTRY re: STATUS CONFERENCE. The attorney who will be responsible for trying the case should attend the conference and be prepared to discuss the following matters at the conference: 1. The nature of the case; 2. The status of matters which are presently set before the Court, e.g., hearings, motions, etc.; 3. The status of discovery and a time schedule for its completion; 4. A statement of any legal issues about which motions are contemplated and a possible briefing schedule; 5. An estimate of the number of days needed for trial; 6. Whether the case is jury or non-jury; 7. The date by which the case will be ready for trial; 8. Settlement probabilities; and 9. Whether the parties consent to proceed to trial before an assigned magistrate judge pursuant to 28 U.S.C. 636(c). If counsel's office is outside of the Greater Metropolitan Seattle area, arrangements may be made to participate telephonically in the conference by contacting the Courtroom Deputy Clerk at Paul_Pierson@wawd.uscourts.gov at least TEN (10) days prior to the proceeding. Counsel do NOT need to file a Joint Status Report or Rule 26(f) Report in advance of the Status Conference. Counsel should plan on arriving 10-15 minutes early to check in with the Courtroom Deputy Clerk, as the Court's calendar begins promptly at 9:00 a.m. COUNSEL OR THE PRO SE PARTY WHO FILED THIS MATTER SHALL IMMEDIATELY NOTIFY ALL PARTIES OF THE DATE AND TIME OF THE SCHEDULED STATUS CONFERENCE. A Status Conference is set for 9/26/2017 at 9:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (PP) (Entered: 06/16/2017)
06/16/2017	5	NOTICE of Appearance by attorney David A Linehan on behalf of Defendant City of Sammamish. (Linehan, David) (Entered: 06/16/2017)
06/19/2017		Attorneys Michael R Kenyon and Kim Adams Pratt added for Defendant City of Sammamish per 5 Notice of Appearance. (PM) (Entered: 06/19/2017)
06/23/2017	6	AFFIDAVIT of Service of Summons and Complaint on Melonie Anderson, City Clerk on 6/16/2017, filed by Plaintiff King County. (Satre, Mallory) (Entered: 06/23/2017)
06/26/2017	7	MOTION for Preliminary Injunction , filed by Plaintiff King County. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 7/21/2017, (Freeburg, David) (Entered: 06/26/2017)
06/26/2017	8	DECLARATION of Emily Harris filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-10)(Freeburg, David) (Entered: 06/26/2017)
06/26/2017	9	DECLARATION of Robert Nunnenkamp filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-7)(Freeburg, David) (Entered: 06/26/2017)
06/26/2017	10	NOTICE of Filing Ex 1 (DVD) re Nunnenkamp Declaration in Paper or Physical Form with the Clerk's Office by Plaintiff King County. inre 9 Declaration. (Freeburg, David) (Entered: 06/26/2017)
06/26/2017	11	DECLARATION of Yammie Ho filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-3)(Freeburg, David) (Entered: 06/26/2017)

		06/26/2017)
06/26/2017	12	DECLARATION of Blake Trask filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Freeburg, David) (Entered: 06/26/2017)
06/26/2017	13	DECLARATION of Bill Schultheiss filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-3)(Freeburg, David) (Entered: 06/26/2017)
06/26/2017	14	DECLARATION of Kevin Brown filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-3)(Freeburg, David) (Entered: 06/26/2017)
06/26/2017	15	DECLARATION of Gina Auld filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-3)(Freeburg, David) (Entered: 06/26/2017)
06/27/2017	17	RECEIPT of one (1) DVD from Plaintiff King County re 10 Notice of Filing Paper or Physical Materials. Kept on shelf in Clerk's Office. (SWT) (Entered: 06/29/2017)
06/29/2017	16	MOTION to Dismiss <i>for Lack of Jurisdiction</i> , filed by Defendant City of Sammamish. Oral Argument Requested. (Attachments: # 1 Proposed Order GRANTING CITY OF SAMMAMISH'S MOTION TO DISMISS FOR LACK OF JURISDICTION) Noting Date 7/21/2017, (Linehan, David) (Entered: 06/29/2017)
07/17/2017	18	AMENDED COMPLAINT against defendant(s) City of Sammamish, filed by King County.(Harris, Emily) (Entered: 07/17/2017)
07/17/2017	19	RESPONSE, by Defendant City of Sammamish, to 7 MOTION for Preliminary Injunction . (Linehan, David) (Entered: 07/17/2017)
07/17/2017	20	DECLARATION of Jim Krieg filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	21	DECLARATION of Kevin Jeffers filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	22	DECLARATION of Steve Leniszewski filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	23	DECLARATION of Charles Alexander filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	24	DECLARATION of David Linehan filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	25	DECLARATION of David Rainey filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/17/2017	26	RESPONSE, by Plaintiff King County, to 16 MOTION to Dismiss <i>for Lack of Jurisdiction</i> . Oral Argument Requested. (Attachments: # 1 Proposed Order)(Harris, Emily) (Entered: 07/17/2017)
07/17/2017	27	DECLARATION of David Pyle filed by Defendant City of Sammamish re 7 MOTION for Preliminary Injunction (Linehan, David) (Entered: 07/17/2017)
07/21/2017	28	REPLY, filed by Defendant City of Sammamish, TO RESPONSE to 16 MOTION to Dismiss <i>for Lack of Jurisdiction</i> (Linehan, David) (Entered: 07/21/2017)
07/21/2017	29	MINUTE ORDER deferring ruling on Defendant's 16 Motion to Dismiss. Authorized by U.S. District Judge John C Coughenour. (SWT) (Entered: 07/21/2017)

07/21/2017	30	REPLY, filed by Plaintiff King County, TO RESPONSE to 7 MOTION for Preliminary Injunction (Harris, Emily) (Entered: 07/21/2017)
07/21/2017	31	DECLARATION of David Hackett filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-2)(Harris, Emily) (Entered: 07/21/2017)
07/21/2017	32	Supplemental DECLARATION of Gina Auld filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-8)(Harris, Emily) (Entered: 07/21/2017)
07/21/2017	33	Supplemental DECLARATION of Yammie Ho filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1-6)(Harris, Emily) (Entered: 07/21/2017)
07/21/2017	34	Supplemental DECLARATION of Bill Schultheiss filed by Plaintiff King County re 7 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1)(Harris, Emily) (Entered: 07/21/2017)
07/31/2017	35	ANSWER to 18 Amended Complaint by City of Sammamish.(Pratt, Kim) (Entered: 07/31/2017)
08/08/2017	36	ORDER granting plaintiff King County's 7 Motion for Preliminary Injunction signed by U.S. District Judge John C Coughenour.(RS) (Entered: 08/08/2017)
08/11/2017	37	NOTICE OF APPEAL to Ninth Circuit re 36 Order on Motion for Preliminary Injunction by Defendant City of Sammamish. Filing Fee \$505, Receipt number 0981-4976243. (Linehan, David) (Entered: 08/11/2017)
08/11/2017	38	USCA Case Number 17-35642 for 37 Notice of Appeal filed by City of Sammamish. (CDA) (Entered: 08/11/2017)
08/15/2017	39	NOTICE OF VACATING THE STATUS CONFERENCE. The Court, on its own motion and in the interest of judicial economy, hereby orders the Status Conference set on 9/26/2017 at 9:00 a.m. vacated. No appearances by counsel or the parties shall be necessary and any future scheduled proceedings will be set in a separate written order to follow.(PP) (Entered: 08/15/2017)
08/18/2017	40	MOTION for Reconsideration re 36 Order on Motion for Preliminary Injunction , filed by Defendant City of Sammamish. Noting Date 8/18/2017, (Linehan, David) (Entered: 08/18/2017)
08/21/2017	41	MINUTE ORDER RE-NOTING Defendant City of Sammamish's 40 MOTION for Reconsideration re 36 Order on Motion for Preliminary Injunction ; Noting Date 9/8/2017, Authorized by U.S. District Judge John C Coughenour. (SWT) (Entered: 08/21/2017)
08/31/2017	42	STIPULATION AND PROPOSED ORDER <i>REVISION TO PRELIMINARY INJUNCTION</i> by parties re 36 Order on Motion for Preliminary Injunction, 41 Order to Re-Note Motion (Hackett, David) (Entered: 08/31/2017)
09/01/2017	43	MINUTE ORDER granting parties' 42 stipulation and proposed revision to the preliminary injunction order of August 8, 2017; noting date of September 8, 2017 for 40 Motion for Clarification is stricken. Authorized by U.S. District Judge John C Coughenour. (TH) (Entered: 09/01/2017)
09/05/2017	44	NOTICE of Appearance by attorney Michael Charles Walter on behalf of Defendant City of Sammamish. (Walter, Michael) (Entered: 09/05/2017)
09/15/2017	45	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney David Ian Freeburg for Plaintiff King County. (Freeburg, David) (Entered: 09/15/2017)

09/19/2017	46	AMENDED Notice of Appeal as to 37 Notice of Appeal, 38 Appeal Number from USCA by Defendant City of Sammamish. (cc: USCA) (Linehan, David) (Entered: 09/19/2017)
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PACER Service Center			
Transaction Receipt			
12/07/2017 05:06:24			
PACER Login:	sl1010:2772552:0	Client Code:	Sammamish
Description:	Docket Report	Search Criteria:	2:17-cv-00921-JCC
Billable Pages:	4	Cost:	0.40

EXHIBIT 15

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

CITY OF SAMMAMISH,

Defendant.

No. 2:17-cv-00921-JCC

**PLAINTIFF KING COUNTY'S
MOTION FOR PRELIMINARY
INJUNCTION**

**NOTE ON MOTION CALENDAR:
Friday, July 21, 2017**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

By exceeding its regulatory authority and insisting on a dangerous intersection design, defendant City of Sammamish ("City") is precluding plaintiff King County from completing construction and reopening South Segment A of the East Lake Sammamish Trail ("ELST"). This is not the first time that the City has violated federal law by impeding the construction of the ELST. In a previous case, *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260, 1274 (W.D. Wash. 2005) (J. Coughenour), this Court ruled that the City's attempts to "frustrate development of a trail on the railbanked right of way" were an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Because the City is once again blocking the construction and reopening of the ELST without justification, its actions are preempted by both the National Trails System Act Amendments of 1983, 16 U.S.C. § 1247(d)

(“Trails Act”), and the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10501(b). The Court should grant a preliminary injunction lifting the City’s stop work order, allowing King County to resume construction immediately, and precluding further efforts by the City to interfere with King County’s completion of ELST South Segment A.

II. STATEMENT OF FACTS

The issues surrounding King County’s efforts to build the ELST pursuant to the Trails Act are familiar to this Court. *E.g.*, *Friends of the E. Lake Sammamish Trail*, 361 F. Supp. 1260; *Hornish v. King Cty.*, 182 F. Supp. 3d 1124, 1126 (W.D. Wash. 2016), *appeal docketed*, No. 16-35486 (9th Cir.). Indeed, the current case represents yet another chapter in the “highly contentious matter” that is the “disposition of the Redmond–Issaquah [railroad] line.” *Redmond-Issaquah R.R. Pres. Ass’n v. Surface Transp. Bd.*, 223 F.3d 1057, 1058 (9th Cir. 2000).

In 1998, King County acquired a one-hundred-year-old railroad corridor (“Corridor”) along the eastern shore of Lake Sammamish. Because the Corridor was railbanked under the Trails Act and remains under the jurisdiction of the Surface Transportation Board (“STB”), all property rights held by BNSF Railway Co. (the “Railroad”) are now possessed by King County. *Hornish*, 182 F. Supp. 3d at 1130. Pursuant to a notice of interim trail use issued by the STB, King County is also the “Trail Sponsor” under the Trails Act. *See id.* at 1127 (summarizing creation and railbanking of the Corridor).

In accord with its duties as Trail Sponsor, King County is currently in the midst of constructing a permanent trail along the 1.3-mile South Segment A of the ELST.¹ The East Lake Sammamish Trail is an 11-mile “missing link” in a 44-mile-long regional trail corridor that will

¹ King County completed construction of an interim, gravel trail in 2006. Declaration of Gina Auld (“Auld Decl.”) ¶ 4. It is currently upgrading the interim, gravel trail to a permanent, paved trail. *Id.* It has divided the 11-mile ELST into five segments for planning purposes. *Id.* Construction of the first three segments was completed between 2011 and 2015. *Id.* South Segment A, which lies between SE 43rd Way and SE 33rd Street, is the fourth segment of the ELST. After completion of South Segment A, the only remaining portion of the ELST not upgraded to a permanent surface will be South Segment B, which also lies within the City of Sammamish. It is currently in permitting stages.

1 connect the Burke-Gilman Trail, the Sammamish River Trail, the Marymoor Connector Trail, and
 2 the Issaquah-Preston Trail, linking Seattle and the Salish Sea to the Eastside and the Cascade
 3 Foothills. Auld Decl. ¶ 3. The ELST is a King County park, and once construction is completed,
 4 it will provide a multi-use recreational trail and non-motorized transportation corridor to residents
 5 from the City of Sammamish, King County, and throughout the region. *Id.*

6 During construction, all of South Segment A is temporarily closed and trail users are
 7 required to find alternative routes. Auld Decl. ¶ 4; Declaration of Blake Trask (“Trask Decl.”) ¶
 8 4. Ensuring safe trail access and use—and limiting construction closures—is a fundamental part
 9 of King County’s mission as Trail Sponsor for the ELST. Declaration of Kevin Brown (“Brown
 10 Decl.”) ¶¶ 6-9. Prior to this dispute with the City, South Segment A was expected to reopen in
 11 late July or early August of 2017.²

12 On June 14, 2017, King County filed this declaratory judgment action. The action came
 13 in response to the Sammamish City Manager’s written threats to revoke all permitting for South
 14 Segment A unless King County acceded to the City’s alleged regulatory authority and adopted
 15 unsafe intersection designs at locations where the ELST crosses two minor streets, 206th Avenue
 16 SE and SE 33rd Street (the “Intersections”). Brown Decl. Exs. 2-3. Under the City’s desired
 17 intersection designs, stop signs would be pointed toward trail users and motor vehicle traffic would
 18 cross the ELST without any traffic control devices requiring drivers to stop or yield. Auld Decl.
 19 ¶ 8; Declaration of Emily Harris (“Harris Decl.”), Ex. 8. In essence, contrary to both Washington
 20 law and sound traffic engineering, cars accessing a limited number of waterfront houses would
 21 have priority over vastly superior numbers of trail users.³ King County brought this declaratory
 22 judgment action based on federal preemption and state law claims because the City’s intersection

23
 24 ² Some additional work on the trail, like planting shrubs would continue into the fall, but this work
 is compatible with simultaneous public trail use.

25 ³ King County expects over 2,200 users on peak weekend days following the reopening of South
 Segment A, increasing to 8,600 users on peak weekends after ridership matures. Declaration of
 Bill Schultheiss, (“Schultheiss Decl.”), Ex. 3.

1 requirements would force South Segment A to remain closed due to its unsafe design. With the
 2 City and King County at an impasse over the Intersections, this declaratory judgment action is
 3 necessary to resolve the dispute between these governments so that the ELST can reopen for public
 4 use.

5 Prior to filing the declaratory judgment action, King County and the City experienced
 6 substantial disagreement over regulation and design of the Intersections. 206th Avenue SE is a
 7 minor dead end street providing access to just 15 waterfront homes. Declaration of Yammie Ho
 8 (“Ho Decl.”) ¶ 3. Although SE 33rd Street serves 46 waterfront homes, those residents have two
 9 other access points across the ELST. *Id.* ¶ 3. By contrast, King County’s environmental impact
 10 statement projects between 2,500 and 4,000 trail users will cross the Intersections on peak days.
 11 Harris Decl., Ex. 2 at 3.7-10.

12 The City’s effort to regulate the Intersections for the convenience of waterfront
 13 homeowners and to the detriment of trail users previously arose in the context of the shoreline
 14 substantial development permit for South Segment A. The shoreline substantial development
 15 permit application process was lengthy and expensive for King County, in large part because the
 16 City took almost a year to review the County’s permit application and ultimately imposed
 17 unnecessary, unlawful and burdensome permit conditions that were later stricken in administrative
 18 proceedings. *See In re SSDP issued to King Cty. Parks and Recreation*, No. SSDP2014-00171 at
 19 38-45 (Sammamish Hr’g Exam’r, Feb. 8, 2016), attached as Harris Decl. Ex. 1 at 38-39 (finding
 20 “no legitimate justification” for City condition); *Sammamish Homeowners v. City of Sammamish*,
 21 No. 15-012c, 2016 WL 5867913, at *10 (Shorelines Hr’g Bd. Sept. 15, 2016) (finding condition
 22 was “not reasonable and not consistent with the City’s authority.”).⁴

23
 24 ⁴ During the permitting process, the City repeatedly made demands that went far beyond
 25 appropriate safety or environmental regulations, seeking to protect the private interests of adjacent
 property owners rather than the general public. *See Sammamish Homeowners*, 2016 WL 5867913,
 at *10; *In re SSDP issued to King Cty. Parks and Recreation*, No. SSDP2014-00171, Harris Decl.
 Ex. 1 at 39 (“The City cannot delegate its permit authority to neighbors, nor can it create a
 condition which effectively grants to neighbors a veto power over the project.”).

1 The City inappropriately sought to change the stop sign priority at the 206th Avenue
 2 intersection as a condition of the South Segment A shoreline substantial development permit.
 3 After considering substantial evidence from the parties, including testimony from King County’s
 4 ELST engineer, Yammie Ho, the Sammamish Hearing Examiner deemed the City’s design unsafe
 5 because “[w]ithout adequate departure sight distance bicyclists will be very vulnerable to being hit
 6 in the intersection by vehicles on 206th Avenue SE.” *In re SSDP issued to King Cty. Parks and*
 7 *Recreation*, No. SSDP2014-00171, Harris Decl. Ex. 1 at 41. On appeal, the Washington
 8 Shorelines Hearing Board agreed this “unusual condition to be placed on an SSDP” was improper,
 9 finding it was unrelated to compliance with the Shoreline Management Act. *Sammamish*
 10 *Homeowners*, 2016 WL 5867913, at *13.

11 After the City’s own Hearing Examiner declared its intersection design unsafe for trail
 12 users, the City not only renewed its demand for this unsafe design at 206th Avenue SE, but also
 13 attempting to expand it to the SE 33rd Street intersection.⁵ In January 2017, King County officials
 14 Frank Overton and Gina Auld met with the City to discuss the Intersections. Auld Decl. ¶ 10. At
 15 this meeting, the City indicated that it was unsure if it possessed valid rights of way for the
 16 Intersections. *Id.* The City indicated that they would research the issue and get back to King
 17 County, but they never did. *Id.* ¶ 10-11.

18 In order to avoid further construction delays on South Segment A, King County decided to
 19 submit applications for city right of way permits (“ROW permits”) while its staff continued to
 20 review the City’s unsupported claim of jurisdiction over the Intersections. On May 4, 2017, King
 21

22
 23 ⁵ In proceedings before the Shorelines Hearing Board, King County showed that the City’s desire
 24 to require stop signs toward trail users at 206th Avenue SE was motivated by a request from
 25 residents along that dead-end road, rather than engineering judgment. Harris Decl. Ex. 7. King
 County also argued that the arbitrary nature of the City’s unsafe design at 206th Avenue SE was
 shown through its previous decision to allow stop signs toward vehicles along the busier SE 33rd
 Street. Harris Decl. Ex. 8 at 12-13. The City’s new decision to require stop signs toward trail
 users at SE 33rd Street is presumably a reaction to King County’s prior briefing.

County submitted ROW permit applications, along with the following disclaimer to preserve the County's position regarding the City's lack of jurisdiction:

By making this permit application, King County does not waive, and intends to fully preserve, all rights King County possesses to the Corridor, including its ownership and control of the Corridor at issue in this permit application as well as other portions of the Corridor. King County does not concede that any permit is required from the City to undertake work or modify traffic control in the area of the Corridor at issue. Nor does King County agree that the City has any power to impose conditions on the County as part of any process to review or issue such permit.

Auld Decl. Ex. 1.

As is often the case with old railroad corridors, the deeds establishing the property rights granted by the Railroad for the Intersections were difficult to find. But, a review of the deeds and easements established that the City holds only a limited property right to cross the Corridor at the location of the Intersections, which precludes its current efforts to dictate intersection control devices.

After many decades of uninterrupted railroad use, BNSF granted two public crossing easements in 1972 and 1992, respectively. Declaration of Robert Nunnenkamp ("Nunnenkamp Decl."), Exs. 6-7. The easement allowing 206th Avenue SE to cross the Corridor contains a reservation granting, to BNSF and to

its successors and assigns, ***the right to construct***, maintain, use, operate, relocate, reconstruct and renew such tracks and ***facilities as it may at any time, and from time to time, desire*** within the limit of the land hereinbefore described, ***including the right and privilege to use said land for any and all purposes***, not inconsistent with the use therefore for purposes [sic].

Nunnenkamp Decl. Ex. 6. Similarly, the easement allowing SE 33rd Street to cross the Corridor states that BNSF,

and its successors and assigns, reserves all rights to use the property hereinbefore described ***for any and all purposes whatsoever*** not inconsistent with the easement hereby granted, ***including***, but not limited to, ***the right to construct***, maintain, report, renew, reconstruct, replace and operate present tracks and future tracks, communication, signal and electric power lines, utilities and ***other***

types of facilities on said property when deemed necessary or expedient to the Railway Company.

Nunnenkamp Decl. Ex. 7. Through the Trails Act, these reservations of property rights by the Railroad were then preserved and transferred to King County, which has the express right to build any “facilities” within the scope of these easements—including the ELST.⁶

On May 23, 2017—after determining that the City’s property interest in these Intersections was subject to the superior rights of the Railroad—King County withdrew its applications for the unnecessary ROW Permits. Auld Decl. ¶ 13. That same day, King County sent the City of Sammamish a letter explaining that it lacked authority to require ROW permits. King County also explained, as it had done numerous times before, that the City’s design conditions are unsafe and would increase the number of injuries along the ELST. Brown Decl. Ex. 1.

The City waited until paving of South Segment A was imminent before rejecting King County’s position and escalating the dispute. On June 9, 2017, a letter from the City Manager threatened to revoke the permits that it had already granted for construction in South Segment A, including clearing and grading permit No. CG2016-03488. The City Manager continued:

the County will now need to submit a new permit application before any work in the 206th Avenue SE or SE 33rd Street ROW will be authorized.

* * *

Moreover, without the required ROW permit, the County will likely be in violation of the conditions of approval of the C&G permit for Segment 2A, as explained below. Because of your actions, the City is forced to consider suspending the C&G permit and instituting proceedings to revoke it under SMC Sections 21A.115.040 and .050.

⁶ Due to the rapid escalation of the stop work order, King County continues to research the exact nature of the City’s property rights in the Intersections. The Railroad originally issued the crossing easements to King County prior to incorporation by the City of Sammamish. Nunnenkamp Decl. Exs. 6-7. The City claims that “[u]nder state law, th[ese] street easement[s] became City right-of-way upon incorporation in 1999, just like every other inch of right-of-way in existence at the time of the City’s incorporation.” Brown Decl. Ex. 2 at 3. King County assumes, for the purposes of this motion, that the crossing easements passed to the City, but it reserves the right to challenge the City’s assertion of property rights at summary judgment or trial.

1 Brown Decl. Ex. 2. Despite the Railroad's clear reservations in the limited crossing easements,
 2 the City claimed that it possessed the ability to require ROW permits before King County could
 3 perform any construction in the Intersections. *Id.* As a condition of granting any ROW Permits,
 4 the City also reaffirmed its demand that King County adopt the City's unsafe design for the
 5 Intersections. *Id.*

6 On June 14, 2017, King County filed its declaratory judgment complaint to resolve its
 7 impasse with the City, including questions of federal preemption. Concurrent with the filing of
 8 this Complaint, King County submitted another letter to the City pointing out that King County
 9 could not reopen South Segment A with the City's unsafe intersection design. Brown Decl. Ex.
 10 3.⁷ This design is in direct conflict with Washington laws like RCW 46.61.235(1). It would
 11 impose an untenable risk to cyclists and pedestrians, giving priority for moving vehicles and
 12 forcing pedestrians to cross in their uncontrolled path. *See* Ho Decl. ¶ 8; Schultheiss Decl. ¶ 7;
 13 Harris Decl. Ex. 1. Because it would create a hazard to trail users, King County will be unable to
 14 open a trail with this design to public use. Brown Decl. ¶ 9.

15 The County's letter also urged the City to reconsider its threat to issue a stop work order
 16 and revoke South Segment A construction permits. Brown Decl. Ex. 3. King County informed
 17 the City that there was no need to further escalate the matter, because trail construction could
 18 proceed, without harm to the City's position, while this Court resolves the dispute. *Id.* A
 19 continuation of construction activities, including previously scheduled paving, would minimize
 20 the delays to the public in reopening South Segment A. *Id.* It would not prejudice the City because
 21

22 ⁷ King County's Professional Engineer, Yammie Ho, has primary responsibility for King County's
 23 intersection design. She determined, in her exercise of engineering judgment, safe design of the
 24 ELST requires installation of stop signs facing drivers traveling through both Intersections with
 25 the ELST. Ho Decl. ¶ 8. King County selected the safest possible design for the Intersections,
 complying with all applicable standards including the Manual on Uniform Traffic Control Devices,
 2009 ("MUTCD"), the American Association of State Highway and Transportation Officials
 Guide for the Development of Bicycle Facilities, 2012 ("AASHTO"), and the Washington State
 Department of Transportation Design Manual, Ch. 1515, Shared Use Paths ("WSDOT DM"). *Id.*
 ¶ 2; Schultheiss Decl. ¶ 6.

1 installation of Intersection stop signs—using either the City’s unsafe design or King County’s safe
 2 design—is one of the last steps in the construction process. Auld Decl. ¶ 15.⁸ It makes no sense
 3 to preclude the vast majority of steps in construction that have no impact on the placement of stop
 4 signs.

5 Nevertheless, on June 16, 2017, the City responded to King County’s federal lawsuit with
 6 a stop work order informing County personnel that “under the authority of SMC 14.30.080,
 7 16.15.110, & 23.70.010 ALL PERSONS ARE HEREBY ORDERED TO IMMEDIATELY STOP
 8 WORK.” Auld Decl. Ex. 2 (emphasis original). Later that same day, the City issued a notice and
 9 order to abate a civil code violation. Harris Decl. Ex. 4. Clarifying the unnecessarily overbroad
 10 stop work order, the notice and order stated that King County was only required to stop work in
 11 the purported City right-of-way at the Intersections, rather than along the entirety of South
 12 Segment A. *Id.* Although this clarification allowed much of the previously scheduled paving to
 13 proceed the following Monday, King County had to cancel paving and related work scheduled in
 14 and around the Intersections. Auld Decl. ¶ 16.⁹

15 The stop work order effectively prevents King County from reopening any of South
 16 Segment A, because the trail cannot reopen without safely completed intersections. The City’s
 17 decision to issue a stop work order will substantially delay the planned July/August 2017

18
 19 ⁸ King County also pointed out that allowing construction to proceed would minimize the City’s
 20 liability for impeding construction activities. Brown Decl. Ex. 3. At a minimum, the damages
 21 associated with the City’s decision to issue a stop work order and preclude completion of the
 22 project will be \$5-6,000 per day.

23 ⁹ Sammamish City Council Member Ramiro Valderrama spoke to the press about the City’s stop
 24 work order. Sammamish Comment, *King County sues Sammamish again over Lake Trail* (June
 25 19, 2017), Harris Decl. Ex. 4. According to the Sammamish Comment:

[Sammamish Councilmember Ramiro] Valderrama was critical of
 the County’s move. ‘They are treating the City just like they treat
 citizens,’ Valderrama told Sammamish Comment yesterday. The
 County, he said, made promises and then reneged, he charged.
***Asked what the City would do if the County refused to Stop Work,
 he said the police would be called to enforce the order.***

Id.

1 reopening of the trail. Apart from rescheduling paving work in and around the Intersections, there
 2 are a substantial number of other construction activities necessary to complete construction in these
 3 areas prior to stop sign placement. Auld Decl. ¶ 16. It will take a **minimum** of 30-45 days to
 4 complete construction of the Intersections and get the project back on schedule once the stop work
 5 order is lifted. *Id.* If the stop work order persists beyond the optimal summer/fall construction
 6 season, this delay will substantially increase. *Id.* Due to the City's actions, the public will be
 7 prevented from using and enjoying the trail and will be forced to either forego use altogether or
 8 ride bicycles on alternative routes through public streets, facing increased safety hazards. Trask
 9 Decl. ¶¶ 3-4.

10 Construction is already well underway in South Segment A and it cannot reopen in its
 11 current state. Auld Decl. ¶ 4. Because King County will not agree to a design that would risk
 12 serious injury to the public, it cannot reopen the trail with the conditions required by the City.
 13 Brown Decl. ¶ 9. Nor can King County implement City requirements, which would violate state
 14 statutes. As a result, if the City prevails in its viewpoint, it will cause a permanent closure of the
 15 interim trail and thwart Congressional intent, per the Trails Act, to allow public use of a trail along
 16 South Segment A of the ELST.

17 **III. ISSUE**

18 Should the Court issue a preliminary injunction lifting the City's stop work order and
 19 enjoining further efforts to impose unsafe designs, because the City of Sammamish is thwarting
 20 the Trails Act by exceeding its regulatory authority and precluding King County from reopening
 21 South Segment A? Yes.

22 **IV. ARGUMENT**

23 King County is entitled to a preliminary injunction because it can show: (1) a likelihood
 24 of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief;
 25 (3) the balance of hardships tips in its favor; and (4) an injunction is in the public interest. *Winter*
v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Even "if a plaintiff can only show that

there are ‘serious questions going to the merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of hardships tips sharply in the plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013). All of these elements are satisfied here.

A. King County Is Likely To Succeed On The Merits.

King County is likely to succeed on the merits because the City of Sammamish is applying its limited authority to regulate “the right-of-way in such a manner as to interfere with or completely bar [King County’s] operation of the recreational trail.” *Blendu v. Friends of Weiser River Trail, Inc.*, 1999 WL 33944266, at *6 (D. Idaho, June 10, 1999). Federal law preempts the City’s regulatory efforts to require unsafe traffic controls that block King County from reopening the ELST.

1. The Trails Act And ICCTA Preempt The City’s Attempt To Impose Conditions That Will Block The Opening Of A Railbanked Trail.

The ICCTA and the Trails Act preempt the City’s improper attempt to claim regulatory authority over the Intersections and require an unsafe design that will block reopening of the ELST. Any contrary provisions of the Sammamish Municipal Code, including SMC 14.30 and SMC 16.15, are preempted as applied to the ELST and contrary to state law. Harris Decl. Exs. 5-6.

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

The Secretary of Transportation . . . shall encourage State and local agencies and private interests **to establish appropriate trails** using the provisions of such programs. **Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service**, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of **interim use of any established railroad rights-of-way** pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use **shall not be treated**, for purposes of any law or rule of law, **as an abandonment of the use of such rights-of-way for railroad purposes**. If a State, political subdivision, or qualified private organization is prepared to assume full

responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

16 U.S.C. § 1247(d).

Like any active railroad line, state and local attempts to control a railbanked railroad corridor are preempted by the ICCTA. According to Congress:

The jurisdiction of the [Surface Transportation] Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b). “[T]he Supreme Court repeatedly has recognized the preclusive effect of federal legislation in this area,” *City of Auburn v. U.S. Gov’t*, 154 F.3d 1025, 1029 (9th Cir. 1998), which is “among the most pervasive and comprehensive of federal regulatory schemes.” *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981).

The Supremacy Clause prevents states from enforcing any law that conflicts with the ICCTA or the Trails Act. U.S. CONST. art. VI, cl. 2. Because of the broad authority Congress reserved for the STB, local governments only have limited powers to regulate a railbanked trail:

Congress has given the power to control economic, environmental and virtually every other aspect of railroads and their corridors to the STB. The STB has, on the other hand, clearly indicated its intention to cede back to states and local governments the right to impose zoning and safety regulations on the trails ***so long as those regulations do not interfere with*** (1) the railroad’s right to convert

the corridor back into a railway at some point in the future and (2) ***the trail manager's right and ability to maintain the right-of-way as a recreational trail in the interim.***

Blendu, 1999 WL 33944266, at *6. Local jurisdiction is limited to “reasonable . . . restrictions which do not prevent [the Trail Sponsor] from operating the trail.” *Id.* at *7. Sammamish has gone far beyond that barrier, exceeding its regulatory authority and requiring installation of unsafe intersections that will block “the trail manager’s right and ability to maintain the right-of-way as a recreational trail.” *Id.*

This Court applied the same standards the last time the City obstructed construction of the ELST. “While all parties agree that state and local governments have the right ‘to impose appropriate safety, land use, and zoning regulation on recreation trails,’ . . . these regulations apply ***only to the extent that they do not frustrate development of a trail*** on the railbanked right of way.” *Friends of the E. Lake Sammamish Trail*, 361 F. Supp. 2d at 1273 (citing *Iowa S. R.R. Co.—Exemption—Abandonment in Pottawattamie, Mills, Fremont and Page Counties, IA*, 1989 WL 239065, 5 I.C.C.2d 496, 505 (1989)). As this Court recognized, the City’s actions are preempted when they “stand[] as a[n] obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.*

The STB has applied the same analysis to active railroads, holding that the ICCTA “is broad enough to preclude all state and local regulation that would prevent or unreasonably interfere with railroad operation.” *Norfolk S. Ry. Co. & the Alabama Great S. R.R. Co. Petition for Declaratory Order*, 2010 WL 691256, at *2 (STB, Feb. 26, 2010). Cities are allowed to regulate “non-conflicting and non-exclusive easements across railroad property for at-grade road crossings,” but only if “they would not ***interfere with rail operations or pose undue safety risks.***” *Id.* at *2; see also *Pere Marquette Hotel Partners, L.L.C. v. United States*, 2010 WL 925297, at *5 (E.D. La. Mar. 10, 2010) (“The design and construction of a railroad crossing and the roadbed for tracks is necessarily inextricably intertwined with the design and construction of the railroad tracks

located at the crossing.”). Here, the City’s demands violate both prongs of this test, forcing King County either to close the ELST or risk serious injury to the public. Auld Decl. ¶ 4.

Municipal police powers—granted only by Washington law—do not allow a city to avoid federal preemption under the ICCTA, and in this case, the Trails Act. “If the court were to allow local authorities to impose regulation upon railway operations under a police power rationale, a railroad might be prevented from operating a line”—or an interim trail. *City of Seattle v. Burlington N. R. Co.*, 22 P.3d 260, 263 (Wash. Ct. App. 2001), *aff’d*, 41 P.3d 1169 (Wash. 2002); *see also Pere Marquette Hotel Partners, L.L.C.*, 2010 WL 925297, at *5 (“Congress made no blanket exception for a state’s police power when describing the ICCTA’s preemption scope.”). Similarly, in *City of Auburn v. United States Government*, the Ninth Circuit explained that “if local authorities have the ability to impose ‘environmental’ permitting regulations on the railroad, such power will in fact amount to ‘economic regulation’ if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line.” 154 F.3d 1025 (9th Cir. 1998). Just as the City cannot block an active railroad, it cannot block this railbanked trail.

2. *The City Has No Authority To Regulate The Intersections.*

The City’s attempt to assert regulatory authority over the Intersections is dubious and arbitrary. The City’s memory is short, as trains used the Corridor for over one hundred years without ever stopping for cars. *Id.* This is consistent with both physics and applicable law:

[O]ne operating a locomotive and train has a right to assume, until the contrary becomes evident, that one approaching the track in an automobile . . . will give the train the right of way to which it is entitled under the law.

Klouse v. N. Pac. Ry. Co., 312 P.2d 647, 651 (Wash. 1957) (quoting *Sadler v. N. Pac. Ry. Co.*, 203 P. 10, 12-13 (Wash. 1921)). There were no stop signs facing trains along the ELST prior to removal of the tracks. Nunnenkamp Decl. ¶¶ 3-4, Exs. 1-3.¹⁰ In contrast, homeowners who moved

¹⁰ Although the interim trail—designed under obsolete standards—included stop signs facing trail users, increased volume and speeds require a different arrangement for the permanent trail.

1 onto these waterfront streets faced railroad crossbuck signs that required cars to yield or stop for
2 railroad traffic.¹¹

3 The City's effort to regulate the Intersections exceeds the limited property right it received
4 from the Railroad. The plain language of the Railroad's crossing easements reserved the right to
5 use the property "for any and all purposes whatsoever," allowing King County to build any
6 "facilities" of its choice, including a crossing for the ELST. Nunnenkamp Decl. Ex. 7; *see also id.*
7 Ex. 6 (reserving the right to construct "such tracks and facilities as [the Railroad] may at any time
8 . . . desire"). As the successor to the Railroad, those reserved rights now belong to King County.
9 *Hornish*, 182 F. Supp. 3d at 1130. The City cannot claim rights it never received, especially ones
10 that were deliberately withheld by the Railroad.

11 The City's claim that the intersections are regular city "rights of way" fails because the
12 limited crossing easements did not convey the property rights necessary to make such a claim.
13 Rights of way are specific property rights that must be acquired by a municipality. *See City of*
14 *Seattle v. Samis Land Co.*, 779 P.2d 277, 278 (Wash. Ct. App. 1989) ("**By virtue of the City's**
15 **easement**, it has exclusive dominion and control over public street rights-of-way . . ."). In *Brown*
16 *v. McAnally*, 644 P.2d 1153, 1158 (Wash. 1982), the Washington Supreme Court explained the
17 difference between the limited property rights that merely form "a 'way' i.e., a mere right of
18 passage over land" and the more vigorous property rights necessary for a municipal right of way
19 with its attendant regulatory privileges. The Court determined that a county could not convert the
20 limited rights conveyed through a private easement of necessity into the full right of way for a
21 public road. *Id.* at 372. Due to the broad rights reserved by the Railroad, the City never acquired
22 the same rights that it holds in other public streets.¹²

23
24 ¹¹ "Crossbucks are black-and-white, X-shaped signs that read 'RAILROAD CROSSING.'" *Veit*
25 *v. Burlington N. Santa Fe Corp.*, 207 P.3d 1282, 1284 n.1, (Wash. Ct. App. 2009), *aff'd*, 249 P.3d
607 (Wash. 2011) (citation omitted).

¹² The City may argue that the Intersections qualify as "rights of way" under the broad definition
in the Sammamish Municipal Code. This, however, creates more problems for the City than it
solves. First, any effort by the City to assert jurisdiction over an intersection where it lacks

Regardless of the rights reserved by the easements, code cities like Sammamish lack the authority to control railroad grade crossings. “Since 1937, Washington law has assigned to the Washington Utilities and Transportation Commission [“WUTC”] or a predecessor commission the authority and responsibility to grant or deny the right to construct, at grade, a railroad across a road, or a road across a railroad.” *Tri-City R.R. Co., LLC v. State*, 377 P.3d 282, 283 (Wash. Ct. App. 2016); *see also Dep’t of Transp. of State v. Snohomish Cty.*, 212 P.2d 829, 831 (Wash. 1949) (“[T]he legislature delegated very wide powers to the public service commission with regard to railroad and highway crossings”). The City never had the authority, either through the limited crossing easements or through law, to make trains stop for cars—nor can it point to anything that has given it new authority to regulate a railbanked trail.¹³ The City does not have authority to regulate the Intersections, and its current efforts to thwart operation of the Trails Act are both *ultra vires* and unnecessary.

3. *The City Of Sammamish Is Demanding Placement Of Unsafe Stop Signs Contrary To Engineering Judgment, Design Standards, And Washington Law.*

Regardless of the City’s illusory authority to regulate the Intersections, its attempt to require placement of stop signs in a dangerous manner is contrary to engineering judgment, design standards, and Washington law. If the City prevails on an intersection design that favors the

adequate property rights would constitute an unconstitutional taking, thereby creating substantial liability for the City. Second, the ICCTA preempts any local government’s attempt to condemn or forcibly acquire interests in a federally regulated rail corridor. *See Union Pac. R. Co. v. Chicago Transit Auth.*, 647 F.3d 675, 681 (7th Cir. 2011).

¹³ In correspondence with King County, the City has claimed that clearing and grading permit No. CG2016-03488 includes two conditions authorizing it to require ROW Permits. Brown Decl. Ex. 2. However, because the City did not obtain full property rights from the Railroad, these Intersections do not qualify as “right of ways” under Washington law, and thus, are not subject to the general permit provision cited by the City. Even if the Intersections were “rights of way,” the Sammamish Municipal Code specifically provides that clearing and grading permits are *not* required for work within public right of way. SMC 16.15.050 (“No person shall do any clearing or grading without first having obtained a clearing and grading permit from the director *except for* . . . (3) *Any grading within a publicly owned road right of way.*”), Harris Decl. Ex. 6.

convenience of local homeowners over the safety of trail users, King County will be unable to reopen South Segment A, because it would not be a safe public trail. Brown Decl. ¶ 9.

Based on the professional judgment of its expert engineers, King County intends to place stop signs facing drivers at the Intersections. Auld Decl. ¶ 18; Ho Decl. ¶ 8; Schultheiss Decl. ¶ 7. Despite the clear guidance in all applicable design standards, the City of Sammamish has ordered King County to orient these stop signs **away** from vehicles crossing the ELST and **toward** pedestrians walking along the trail. Brown Decl. Ex. 1. Because King County cannot agree to a design that would put public safety at risk, the City has effectively blocked King County from reopening the ELST.

In developing King County's final design for the ELST, Professional Engineer Ho followed MUTCD principles stating that the design should be based primarily on:

- A. Relative speeds of shared-use path and roadway users;
- B. Relative volumes of shared-use path and roadway traffic;
- and
- C. Relative importance of shared-use path and roadway.

MUTCD § 9B.03 at 749, Harris Decl. Ex. 9. Ms. Ho also considered other criteria set forth in the MUTCD, WSDOT DM and AASHTO, including sight distance, reported crash experience, and the number and angle of approaches. Ho Decl. ¶ 2. Consistent with AASHTO standards, Ms. Ho's design:

follow[s] the principle of providing the least amount of restriction that is effective. Installing unwarranted or unrealistically restrictive controls on path approaches in an attempt to 'protect' path users can result in path users disregarding the signs and other traffic control devices at the intersection. This can lead to a loss of respect for traffic control at more critical locations.

AASHTO at 5-34, Ho Decl. Ex. 2. After exercising her sound engineering judgment, Ms. Ho determined that it would be unsafe to orient stop signs toward the ELST, and she has refused to provide her final stamp of approval to such designs. *Id.* ¶ 8.¹⁴

¹⁴ See MUTCD 2B.04.07, attached as Harris Decl. Ex 10 ("Once the decision has been made to control an intersection, the decision regarding the appropriate roadway or control should be based on engineering judgment."); WAC 468-95-017 ("Engineering judgment should be exercised in the

Furthermore, the Legislature has decided that pedestrians are not required to stop for stop signs. Under state law, pedestrians have right of way priority over vehicle traffic at every intersection. Pursuant to RCW 46.61.200, stop signs are only used to designate “intersection[s] with which **vehicles** shall be required to stop before entering such intersection.” Pedestrians, by contrast, are only required to stop at illuminated “pedestrian control signals exhibiting the words ‘Walk’ or the walking person symbol or ‘Don’t Walk’ or the hand symbol.” RCW 46.61.060; *see also* RCW 46.61.230 (“Pedestrians shall be subject to traffic-control signals at intersections as provided in RCW 46.61.060, and at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.”). The Legislature has granted cyclists in a crosswalk—such as the crosswalks painted across both Intersections—the same rights and privileges of pedestrians under Washington law. RCW 46.61.755.¹⁵

In any event, with **or without** a stop sign, Washington law requires drivers to “stop and remain stopped to allow a pedestrian or bicycle to cross the roadway within an unmarked or marked crosswalk.” RCW 46.61.235(1). Placing stop signs where Sammamish demands would lead to absurd results, encouraging drivers to violate this Washington law. A driver seeing a stop sign oriented toward the trail might reasonably, but incorrectly, assume that vehicles have the right of way. This would confuse trail users—who have priority under the statute—and drivers—who are required to stop regardless of where the stop signs are placed.¹⁶

By demanding King County install an unsafe design, the City is seeking both to “interfere with rail operations”—in this case, an interim trail—and to “pose undue safety risks.” *See Norfolk*

selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement.”).

¹⁵ Although cyclists are “granted all of the rights and . . . subject to all of the duties applicable to the driver of a vehicle” when driving on a roadway, they are “granted all of the rights and . . . subject to all of the duties applicable to a pedestrian” when riding on crosswalks. *Id.*; *see also Pudmaroff v. Allen*, 977 P.2d 574, 581 (Wash. 1999).

¹⁶ Although national standards such as MUTCD and AASHTO suggest that it may be appropriate to orient stop signs toward trail users in some circumstances, those standards are superseded in Washington by statutes such as RCW 46.61.235(1).

1 S. Ry. Co., 2010 WL 691256, at *2. The City thwarts the will of Congress by preventing King
 2 County from reopening the ELST and by interfering with “the trail manager’s right and ability to
 3 maintain the right-of-way as a recreational trail.” *Blendu*, 1999 WL 33944266, at *6.

4 4. *The GMA Precludes The County’s Right To Construct And Reopen An*
 5 *Essential Public Facility.*

6 The City’s effort to impose an unsafe intersection design also violates Washington’s
 7 Growth Management Act (“GMA”), RCW 36.70A. Under the GMA, “[n]o local comprehensive
 8 plan or development regulation may preclude the siting of essential public facilities.” RCW
 9 36.70A.200(5); *see also City of Des Moines v. Puget Sound Reg’l Council*, 988 P.2d 27, 34 (1999)
 10 (defining “preclude” to prohibit regulations that would “render impossible or impracticable” an
 11 essential public facility). “Essential public facilities” are defined as:

12 those facilities that are typically difficult to site, such as airports,
 13 state education facilities and state or regional transportation
 14 facilities as defined in RCW 47.06.140, regional transit authority
 15 facilities as defined in RCW 81.112.020, state and local correctional
 16 facilities, solid waste handling facilities, and inpatient facilities
 17 including substance abuse facilities, mental health facilities, group
 18 homes, and secure community transition facilities as defined in
 19 RCW 71.09.020.

20 RCW 36.70A.200(1); *see also* WAC 365-195-340(a)(l).

21 Because the ELST is an essential public facility, the City’s efforts to impose an unsafe
 22 intersection violate the GMA. In an almost identical case, *Cascade Bicycle Club v. City of Lake*
 23 *Forest Park*, 2007 WL 2340878, at *10 (Growth Mgm’t Bd. July 23, 2007), the Growth
 24 Management Hearings Board recognized that the Burke-Gilman Trail, which connects to the
 25 ELST, “is an essential public facility because of (1) its regional nature, (2) its importance in serving
 the non-motorized safe transportation needs of the County, and (3) it is a facility difficult to site.”
 The Board held that the City of Lake Forest Park could not require King County to orient stop
 signs toward trail users, “maintaining right-of-way to motor vehicular traffic” even in the face of
 King County’s contrary “exercise of engineering judgment.” *Id.* at *4-5, *14-16 (explaining the
 City standard violated the MUTCD, AASHTO, and WSDOT DM). As a result, “the conflicting

standards between federal, state and city law lead to impracticability – one trail design cannot adhere to conflicting regulatory requirements created by the City – [and] this situation yields preclusion and a violation of RCW 36.70A.200(5).” *Id.* at *16.

Just like Lake Forest Park, the City of Sammamish is imposing an unsafe design that would prohibit King County from safe operation of an essential public facility. The City has precluded King County from reopening the ELST, contrary to the Growth Management Act.

B. King County And The Public Will Suffer Irreparable Harm In The Absence Of A Preliminary Injunction.

The City of Sammamish is causing irreparable harm to King County and its residents, who are denied the opportunity to enjoy recreational use of the ELST. At the very least, the City’s actions preclude the trail from reopening in the summer of 2017 absent immediate issuance of a preliminary injunction. Merely by issuing the stop work order, the City has knowingly disrupted the construction schedule and delayed the reopening of the trail. This delay is unnecessary because construction can continue in the Intersections—in the exact same manner—without harm to the City while the Court resolves this dispute. Without a preliminary injunction, the reopening of the trail will be delayed a *minimum* of 30-45 days, which greatly harms the public interest protected by the Trails Act.

The impact on the public of delaying trail use is substantial and cannot be remedied with any monetary award. Based on surveys of connecting trails, King County’s environmental impact statement projects that anywhere “from 2,500 users on a peak weekday to 4,000 users on a peak weekend day” will use and enjoy the ELST. Harris Decl. Ex. 2 at 3.7-10. Without injunctive relief, the City’s stop work order would impose an irreparable harm to all these users of the ELST. Trask Decl. ¶ 3-4.¹⁷ Summer trail use literally benefits families with children, not to mention

¹⁷ Under the doctrine of third party standing, King County has the right to pursue redress for injuries of its residents, whose “interests are ‘inextricably bound up with the activity [King County] wishes to pursue.’” See *Washington v. Trump*, 847 F.3d 1151, 1160 (9th Cir. 2017) (citing *Singleton v. Wulff*, 428 U.S. 106, 114-16 (1976)). In this case, the City’s actions have prevented King County from fulfilling its legislative mandate to “establish park and playground systems for

1 people commuting to work and using the trail for other important tasks. These trail users should
 2 not be forced to endure a longer trail closure than necessary, especially when the City's interest in
 3 delaying construction during the pendency of this litigation is nonexistent. The longer the trail is
 4 closed due to the City's efforts to regulate beyond its authority and impose an unsafe intersection
 5 design, the greater the continuing, real, and irreparable damages facing the public.

6 Numerous courts, including the Ninth Circuit, have recognized that denial of recreational
 7 opportunities causes irreparable harm. In *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
 8 1135 (9th Cir. 2011), the plaintiffs sought to enjoin a timber sale that would deny its members use
 9 of "the areas subject to logging under the Project, for work and recreational purposes, such as
 10 hunting, fishing, hiking, horseback riding, and cross-country skiing." *Id.* In another case brought
 11 by dog walkers challenging loss of access to an urban park, the court recognized that "[t]he
 12 deprivation of a source of personal satisfaction and tremendous joy can constitute an irreparable
 13 injury," as the plaintiffs were denied "continued access to recreation that improves the quality of
 14 their lives." *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021, 1039 (N.D. Cal. 2000).
 15 Similarly, in *Galusha v. N.Y. State Dep't of Env'tl. Conservation*, 27 F. Supp. 2d 117, 122
 16 (N.D.N.Y. 1998), the court agreed "that every day [the plaintiffs] miss in the Park constitutes an
 17 irreparable harm because no amount of money could compensate for such a loss." *Id.* In the same
 18 manner, the City's actions deny thousands of people an opportunity to use the ELST.¹⁸

19 **C. The Balance Of Hardships Weighs In Favor Of King County.**

20 "When deciding whether to issue a narrowly tailored injunction, district courts must assess
 21 the harms pertaining to injunctive relief in the context of that narrow injunction." *Sierra Forest*

22
 23 public recreational purposes." RCW 36.68.010. Likewise, the City has prevented King County
 from carrying out the duties of a Trail Sponsor under the Trails Act. See 16 U.S.C. § 1247(d).

24 ¹⁸ Additionally, the City has placed its own residents and taxpayers in a lose-lose situation, where
 25 even their economic harms are, to large extent, irreparable. Due to this unexpected construction
 delay, the City is forcing all County taxpayers to foot the bill for increased costs from contractors
 and suppliers. As the residents of the City are also residents of King County, the City's tactics
 benefit no one and leave the trail unnecessarily closed.

1 *Legacy v. Rey*, 577 F.3d 1015, 1022 (9th Cir. 2009). Where irreparable injury is “sufficiently
 2 likely, therefore, the balance of harms will usually favor the issuance of an injunction.” *League of*
 3 *Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 765 (9th
 4 Cir. 2014)). In this case, the balance of hardships weighs strongly in favor of King County.
 5 Indeed, construction at the Intersections imposes no hardship on the City, whatsoever. Regardless
 6 of where the stop signs are eventually placed, King County’s design plans—approved by the City
 7 in all other respects—call for constructing all other elements of the Intersections in exactly the
 8 same way. Auld Decl. ¶ 15. Thus, the hardship faced by the City—requiring the County to move
 9 stop signs several feet—is minimal at best. *Id.* The much larger hardship faced by King County—
 10 substantial delays in opening the ELST—will deprive the public of the benefits of the Trails Act.
 11 *Id.* ¶ 16.

12 The City of Sammamish is directly responsible for the disparity in this harm.¹⁹ Rather than
 13 work to resolve this dispute in a reasonable manner and avail itself to the orderly processes of this
 14 Court, the City chose to issue an aggressive stop work order that is far broader than needed for the
 15 placement of stops signs at two minor roads. *See* Auld Decl. ¶ 15. The City ordered King County
 16 to stop **all** construction in the Intersections, including paving of asphalt and laying of concrete that
 17 has no impact on where the stop signs will be placed. *Id.*; Auld Decl. Ex. 2. Yet none of this work
 18 would prevent the parties from placing the stop signs in the correct orientation and **immediately**
 19 **opening the trail** once construction of South Segment A is complete and this Court resolves the
 20 preemption dispute. Auld Decl. ¶ 15.

21 In evaluating claims for injunctive relief, “courts must balance the competing claims of
 22 injury and consider the effect of granting or withholding the requested relief, paying particular
 23 regard to the public consequences.” *Winter*, 555 U.S. at 7. Here, the “public consequences”
 24

25 ¹⁹ The City’s position is all the more puzzling because its own hearing examiner has already
 determined Sammamish’s preferred design is unsafe. *In re SSDP issued to King Cty. Parks and*
Recreation, No. SSDP2014-00171, Harris Decl. Ex. 1 at 39.

1 include thousands of users denied an opportunity to enjoy the ELST, a continual “missing link” in
 2 the 44-mile system of recreational trails, unsafe construction standards, and an increase in
 3 construction costs that will ultimately be shouldered by the taxpayers of the County (and the City).
 4 See Auld Decl. ¶ 3; Trask Decl. ¶¶ 3-4. Meanwhile, the City only faces the potential and *de*
 5 *mimus* harm of moving stop signs. The balance of equities weigh strongly in favor of King
 6 County.

7 **D. A Preliminary Injunction Is In The Public Interest.**

8 The Court should issue an order allowing King County to proceed with its design, because
 9 safe and timely completion of the ELST is in the public interest. “The public interest inquiry
 10 primarily addresses impact on non-parties rather than parties.” *League of Wilderness Defs.*, 752
 11 F.3d at 766 (citing *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)).
 12 “When the government is a party, these last two factors merge,” meaning the hardship balance and
 13 public interest inquiry become one. *Id.* (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073,
 14 1092 (9th Cir. 2014)). The irreparable injuries faced by the County and trail users are direct
 15 evidence of the harm to the public interest.

16 Further, “Congress has determined that every inactive railroad right of way is appropriate
 17 for trail use,” and the City’s actions are contrary to that Congressional intent. *Friends of the E.*
 18 *Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d at 1274. This congressional
 19 judgment about the public interest is instructive in a claim for injunctive relief. See, e.g., *S. Fork*
 20 *Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 728 (9th Cir.
 21 2009). For the same reasons, the court in *Palmetto Conservation Found. v. Smith*, 642 F. Supp.
 22 2d 518, 522, 532 (D.S.C. 2009), granted a preliminary injunction against another party seeking to
 23 block construction of a railbanked trail. The court found that the defendant’s “interfer[ence] with
 24 the Foundation’s use of the subject property violates the public interest in retaining rail lines for
 25 potential reactivation and, in the interim, providing a public trail for recreational use.” *Id.* at 532.
 Likewise, the public interest favors King County’s fulfillment of its statutory duty as Trails

Sponsor under the Trails Act, by completing construction of a recreational trail. There is no public interest in additional delay. Rather than the *public* interest, the City is serving the *private* interest of residents on these minor streets.

E. The Court Should Waive The Bond Requirement Of Fed. R. Civ. P. 65(c).

The Court should waive the bond obligation of Fed. R. Civ. P. 65(c), as the requirement is generally unnecessary for municipalities or political subdivisions of a state. *See, e.g., Washington v. Trump*, 2017 WL 462040, at *3 (W.D. Wash. Feb. 3, 2017) (“No security bond is required under Federal Rule of Civil Procedure 65(c).”). Although the rule does not specifically exempt state bodies from having to provide a bond, the Court has discretion to decide whether a bond is necessary, and Washington law exempts counties from posting bonds in similar circumstances. *See Hockley v. Hargitt*, 82 Wn.2d 337, 347 (1973). Further, there is no dispute that King County has the assets to move any stop signs consistent with the terms of a court judgment. Thus, the Court should not require King County to provide a bond as security for a preliminary injunction.

V. CONCLUSION

For these reasons, King County respectfully requests that this Court grant its application for a preliminary injunction.

DATED this 26th day of June, 2017.

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I hereby certify that on June 26, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED: June 26, 2017

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EXHIBIT 16

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 17-35642**Docketed:** 08/11/2017**Nature of Suit:** 3890 Other Statutory Actions

King County v. City of Sammamish

Appeal From: U.S. District Court for Western Washington, Seattle**Fee Status:** Paid**Case Type Information:**

- 1) civil
- 2) private
- 3) null

Originating Court Information:**District:** 0981-2 : [2:17-cv-00921-JCC](#)**Trial Judge:** John C. Coughenour, Senior District Judge**Date Filed:** 06/14/2017**Date Order/Judgment:**

08/08/2017

Date Order/Judgment EOD:

08/08/2017

Date NOA Filed:

08/11/2017

Date Rec'd COA:

08/11/2017

Prior Cases:

None

Current Cases:

None

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KING COUNTY,

Plaintiff - Appellee,

v.

CITY OF SAMMAMISH,

Defendant - Appellant.

- 08/11/2017  [1](#)
14 pg, 1.48 MB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 08/18/2017. Preliminary Injunction Appeal. C.R. 3-3. [10541467] (KM) [Entered: 08/11/2017 12:28 PM]
- 08/11/2017  [2](#)
2 pg, 256.86 KB Filed clerk order (Deputy Clerk: ME): The appeal filed August 11, 2017 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. If they have not already done so, within 7 calendar days after the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than September 8, 2017; the answering brief is due October 6, 2017 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 21 days after service of the answering brief. See 9th Cir. R. 3-3(b). The parties are reminded that streamlined requests for extensions of time are not available in preliminary injunction appeals. See http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000638. Any request for an extension of time must be requested under Ninth Circuit Rule 31-2.2(b). Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. [10542302] (ME) [Entered: 08/11/2017 05:21 PM]
- 08/14/2017  3 Terminated David Andrew Linehan for City of Sammamish in 17-35642 (Due to incorrect ECF account information). [10542738] (SLM) [Entered: 08/14/2017 10:03 AM]
- 08/14/2017  4 Added attorney David Andrew Linehan for City of Sammamish, in case 17-35642. [10543843] (KM) [Entered: 08/14/2017 03:03 PM]
- 08/14/2017  [5](#)
5 pg, 1.76 MB Filed (ECF) Appellant City of Sammamish Mediation Questionnaire. Date of service: 08/14/2017. [10543938] [17-35642] (Kenyon, Michael) [Entered: 08/14/2017 03:24 PM]
- 08/16/2017  [6](#)
2 pg, 798.24 KB Filed (ECF) notice of appearance of Kim Adams Pratt for Appellant City of Sammamish. Date of service: 08/16/2017. [10546776] [17-35642] (Adams Pratt, Kim) [Entered: 08/16/2017 11:06 AM]
- 08/16/2017  [7](#)
1 pg, 181.48 KB MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [10547366] (LW) [Entered: 08/16/2017 02:36 PM]
- 08/16/2017  8 Added attorney Kim Adams Pratt for City of Sammamish, in case 17-35642. [10547396] (RR) [Entered: 08/16/2017 02:41 PM]
- 08/24/2017  [9](#)
9 pg, 41.26 KB Filed (ECF) Appellant City of Sammamish Motion to extend time to file Opening brief until 10/10/2017. Date of service: 08/24/2017. [10557723] [17-35642] (Linehan, David) [Entered: 08/24/2017 03:29 PM]
- 08/31/2017  [10](#)
1 pg, 33.38 KB Filed clerk order (Deputy Clerk: AMT): Appellant's unopposed motion (Docket Entry No. [9](#)) to extend time for filing the opening brief is granted in part. The opening brief is due October 10, 2017. The answering brief is due November 7, 2017 or 28 days after service of the opening brief, whichever is earlier. The optional reply brief is due within 21 days after service of the answering brief. [10566118] (WL) [Entered: 08/31/2017 02:59 PM]
- 09/15/2017  [11](#)
3 pg, 297.9 KB Filed (ECF) Appellee King County Correspondence: Notice of Withdrawal of Counsel David I. Freeburg. Date of service: 09/15/2017 [10582445] [17-35642] (Freeburg, David) [Entered: 09/15/2017 09:52 AM]
- 09/18/2017  12 Terminated David I. Freeburg for King County in 17-35642 [10584386] (RR) [Entered: 09/18/2017 10:36 AM]
- 09/19/2017  [13](#)
3 pg, 82.85 KB Received copy of amended notice of appeal from district court. [10586324] (KM) [Entered: 09/19/2017 01:02 PM]
- 10/10/2017  [14](#)
90 pg, 332.01 KB Submitted (ECF) Opening Brief for review. Submitted by Appellant City of Sammamish. Date of service: 10/10/2017. [10611348] [17-35642] (Linehan, David) [Entered: 10/10/2017 12:48 PM]
- 10/10/2017  [15](#)
248 pg, 20.77 MB Submitted (ECF) excerpts of record. Submitted by Appellant City of Sammamish. Date of service: 10/10/2017. [10611355] [17-35642] (Linehan, David) [Entered: 10/10/2017 12:50 PM]
- 10/10/2017  [16](#)
2 pg, 186.23 KB Filed clerk order: The opening brief [14](#) submitted by City of Sammamish is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [15](#) submitted by City of Sammamish. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10611563] (KT) [Entered: 10/10/2017 01:51 PM]
- 10/16/2017  17 Filed 4 paper copies of excerpts of record [15](#) in 2 volume(s) filed by Appellant City of Sammamish. [10619068] (KT) [Entered: 10/16/2017 02:07 PM]
- 10/16/2017  18 Received 7 paper copies of Opening Brief [14](#) filed by City of Sammamish. [10619319] (DB) [Entered: 10/16/2017 03:11 PM]

11/06/2017	 19 26 pg, 1.62 MB	Filed (ECF) Appellee King County Motion to dismiss for lack of jurisdiction. Date of service: 11/06/2017. [10645314] [17-35642] (Harris, Emily) [Entered: 11/06/2017 04:48 PM]
11/16/2017	 20 44 pg, 559.66 KB	Filed (ECF) Appellant City of Sammamish response to motion ([19] Motion (ECF Filing), [19] Motion (ECF Filing) motion to dismiss for lack of jurisdiction). Date of service: 11/16/2017. [10657224] [17-35642] (Linehan, David) [Entered: 11/16/2017 02:24 PM]
11/22/2017	 21 21 pg, 238.89 KB	Filed (ECF) Appellee King County reply to response (motion to dismiss for lack of jurisdiction). Date of service: 11/22/2017. [10664167] [17-35642] (Harris, Emily) [Entered: 11/22/2017 09:44 AM]

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