

BEFORE THE SURFACE TRANSPORTATION BOARD

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CITY OF SAMMAMISH -)
) F.D. 36161
PETITION FOR A DECLARATORY ORDER)

REPLY ON BEHALF OF
RAILS TO TRAILS CONSERVANCY,
CASCADE BICYCLE CLUB,
FRIENDS OF THE EAST LAKE SAMMAMISH TRAIL
AND
FRIENDS OF THE BURKE GILMAN TRAIL

Rails to Trails Conservancy ("RTC"), Cascade Bicycle Club ("Cascade"), Friends of the East Lake Sammamish Trail ("FELST"), and Friends of the Burke Gilman Trail ("FBGT") (collectively "Trail Users") reply in opposition to the petition for declaratory order filed by City of Sammamish.

The Sammamish petition ostensibly involves the East Lake Sammamish Trail ("ELST"), but the order that it seeks will have a much broader - more deleterious impact - on railbanked trails. The ELST exists by reason of a Notice of Interim Trail Use authorizing trail use rather than abandonment of a former Burlington Northern and Santa Fe Railway corridor between Redmond and Issaquah along the east side of Lake Sammamish in King County, Washington.¹

Since 1971, King County has planned to preserve the corridor when rail use discontinued, not simply for possible

¹ The Burlington Northern and Santa Fe Railway Co. - Ab. Ex. - in King County, WA, AB 6-380X, served Sept. 18, 1998.

future transportation, but also as a key "11-mile 'missing link' in a 44-mile-long regional trail corridor that will connect the Burke-Gilman [T]rail, the Sammamish River Trail, the Marymoor Connector Trail, and the Issaquah-Preston Trail, linking Seattle to the Eastside and the Cascade Foothills."² King County now seeks to develop the corridor as an interim trail in accordance with the STB's railbanking order.

The petition filed by the City of Sammamish purports to seek a ruling that the City's pre-construction permit requirements and unsafe crossing designs are not federally preempted under 49 U.S.C. 10501(b). Since a matter involving the same issue on the ELST is currently pending in the federal court system, this Board as a matter of course should defer to the courts, under its "concurrent jurisdiction" doctrine. Contrary to the hyperbolic language in the Sammamish petition, there are no "compelling reasons" for the Board to disregard long-established principles of federal preemption and comity to take this case.

The Sammamish petition has no merit for a host of reasons. First, the facts and characterizations on which the petition rests are, insofar as relevant here, false or misleading. This

² See <http://www.kingcounty.gov/services/parks-recreation/parks/trails/regional-trails/popular-trails/east-lake-samm.aspx> (provides overview and quotation is from "trail history" section).

starts at the inception of the Petition, where (pp. 4-5) Sammamish claims this Board has found that "King County" "improperly manipulated and misused this Board's exemption procedures" in acquiring the corridor. This is incorrect. A non-profit corporation called "The Land Conservancy of Seattle and King County" ("TLC") - an entity unrelated to King County the political subdivision -- originally acquired the corridor in the history that Sammamish misrepresents. King County in fact acquired the corridor only after it was lawfully railbanked pursuant to a Notice of Interim Trail Use issued by this Board. The Sammamish document is riddled with similar sloppy mistakes of fact.

The greatest error in the Petition, however, is the claim by Sammamish that the United States District Court has somehow committed reversible error in applying the preemption doctrine to the City's actions that are the subject of this petition, which must now be corrected by this agency. In point of fact, the United States District Court has not even reached the doctrine of preemption, ruling instead that the City of Sammamish lacks sufficient property interest in the corridor crossings to impose the requirements it seeks to impose as a matter of state law. See Order Granting Preliminary Injunction, at 6 ("Because the City likely does not have authority [under state law to regulate intersections], *the Court need not address*

King County's other arguments . . . -- federal preemption and the competing designs.") (Sammamish Petition, Exhibit 1) (emphasis added).

Not only does this mean that the City thus does not state a case or controversy concerning preemption, but the City runs afoul of the Board's general policy that state law matters should be resolved by the courts. In all events, the City fails to show any reason, much less a compelling reason, to ignore the doctrine of concurrent jurisdiction. And even if that doctrine did not apply, Sammamish's effort to shut down the trail with pre-construction permits and stop-work orders would be preempted under this agency's well-established interpretation of 49 U.S.C. 10501(b).

Before addressing the petition further, Trail Users will briefly address their interest in this controversy.

Interest of Trail Users

RTC, which began operations in 1986, is a nation-wide non-profit organization with over 160,000 members dedicated to conserving otherwise-to-be abandoned railroad corridor for use of trails -- and in the case of so-called "railbanked"³ trails --

³ As used herein, "railbanking" refers to continued regulation of a rail corridor pursuant to 16 U.S.C. 1247(d). That statute provides that, so long as certain conditions are met, "interim trail use" of an "established rail corridor" "shall not be treated, for purposes of any law or rule of law, as an abandonment of [such corridor] for railroad purposes," and that

for possible future rail reactivation, and for other compatible public purposes. RTC has engaged in the railbanking process in a host of cases in order to preserve railroad corridor for future rail use and interim trail use. In addition, RTC has over 3800 members in the State of Washington, who both use and support King County's effort to construct and to operate a railbanked trail on the former BNSF rail corridor along the east side of Lake Sammamish. RTC is inevitably concerned when local governments attempt to intrude on this agency's preemptive jurisdiction arising from 49 U.S.C. 10501(b) and 16 U.S.C. 1247(d), as City of Sammamish does here, under the guise of pre-construction review requirements and the purported imposition of requirements that burden and interfere with interim trail use that are unrelated to, and in this case, inconsistent with trail user safety.

Cascade is a state-wide organization with over 16,000 members that works with communities across the state of Washington to advocate for bicycling as a transportation and recreation option. In furtherance of this end, Cascade seeks the completion of the East Lake Sammamish Trail, and supports the construction of rail trails elsewhere in the State.

STB, again pursuant to certain conditions, "shall not permit abandonment or discontinuance inconsistent or disruptive of such [interim trail] use." *Id.*

Cascade's members are trail users, and thousands are using and will use the East Lake Sammamish Trail. Cascade obviously wishes that the ELST and all bicycle trails constructed in a safe and efficient manner. Cascade views the City of Sammamish's petition at issue in this case as a threat on two levels: first, it threatens the safety of users of the East Lake Sammamish Trail. Second, it threatens to overburden rail trails and railbanking (preservation of rail corridor for future rail reactivation) throughout the State. See Exhibit A (letter), incorporated herein.

FELST, originally founded in 1999, is currently an unincorporated association devoted to promoting the completion of the East Lake Sammamish Trail. After almost 20 years of hearings and litigation by trail opponents, a paved trail on the corridor has not yet been completed, and FELST is concerned that the City's Petition will further frustrate, delay, or even prevent its completion. See Exhibit B (Declaration and Letter).

FBGT is a Washington State non-profit organization devoted to fostering the completion of a multi-use trail within a railbanked corridor in the City of Seattle in King County, WA. FBGT has approximately 550 individual and business members. FBGT is concerned that opponents of an interim rail trail in Seattle have held up completion of the so-called "missing link" in the Burke Gilman Trail in the Ballard district of Seattle

through continued litigation. Based on estimates from the City of Seattle, the City expended \$4.8 million to comply with local pre-construction requirements before being remanded by a hearing examiner to do a state-law environmental impact statement for the Burke Gilman "missing link," a railbanked trail authorized at Sea Lion RR - Ab. Ex. - in Ballard, AB 544, served Sept. 18, 1998. The City then expended an additional \$2.7 million since then on the state law EIS.⁴ This amount does not include all staff time. And the process has not yet been completed. Most railbanking entities lack the tax base to bear such expensive local pre-construction review requirements and delays, resulting in frustration of STB-authorized railbanking projects.

Collectively, Trail Users oppose the City's efforts to impose burdensome pre-construction review procedures on railbanked corridors. Application of such requirements demonstrably overburden interim trail use. This in turn is directly contrary to the policy behind 16 U.S.C. 1247(d) of encouraging trail users to assume the costs of corridor preservation for rail reactivation by rail shippers in return for facilitating interim trail use of the corridor. Trail Users thus join in opposition to City of Sammamish's effort to apply

⁴ Email communication from City of Seattle to counsel, 25 Jan. 2018 (the numbers quoted are publicly available information from hearings and reports).

pre-construction permit and arbitrary and unsafe construction requirements on railbanked trails that remain under this Board's jurisdiction pursuant to 16 U.S.C. 1247(d).

Statement of Facts

Since much of what City of Sammamish provides as background to the dispute at issue is either irrelevant or inaccurate, Trail Users will briefly summarize the applicable facts.

Active rail use of the line ceased in or around 1996. The Land Conservancy of Seattle and King County (TLC) (a private non-profit) sought to facilitate the preservation of the line by acquiring it from BNSF prior to abandonment, and then arranging for rail operations to the extent needed until and unless it was lawfully railbanked.⁵ When TLC duly sought an abandonment

⁵ By acquiring the property, TLC could better ensure that the railroad did not sell off parcels or pieces of parcels to real estate speculators directly or through a salvage company, thus keeping the corridor intact for rail and railbanking purposes. [For an example of the difficulties caused when a railroad purports to sell a rail line to a real estate speculator for break up prior to abandonment, see City of Jersey City - Pet. Dec. Order and related dockets AB 167-1189X, F.D. 35825 and F.D. 36078 (thirteen years of litigation and counting).] Sammamish in its Petition at pp. 4-5 erroneously claims that King County "improperly manipulated and misused" this Board's procedures" in acquiring the corridor. As already noted, TLC is not King County. But even if the City's insults were directed against TLC, the City misstates the case, for TLC's actions did timely save the corridor for transportation purposes as opposed to real estate speculation. For Sammamish's future information, TLC subsequently changed its name to "Cascade Land Conservancy" and is now called "Forterra." Forterra/Cascade Land Conservancy/The Land Trust of Seattle and King County is and always has been a

license to this end, the Board vacated TLC's original acquisition authority on the ground that BNSF should have abandoned the line directly, presumably to ensure that BNSF did not avoid labor protection requirements owed to union laborers. However, the Board allowed the abandonment proceeding to go forward as a BNSF abandonment (docket AB 6-490X). King County, which since 1971 had signaled in its planning a desire to preserve the railroad corridor, duly filed a "statement of willingness" to railbank the property pursuant to 16 U.S.C. 1247(d).

The effort to preserve the corridor then became the object of opposition by some adjoining landowners.⁶ The opposition initially manifested in an effort by several adjacent landowners

private non-profit corporation. Sammamish's confusion renders the City's insults to King County nothing but non-sequiturs.

Sammamish also intimates that King County is some sort of novice on issues of trail construction and operation. King County has been constructing and operating long distance trails for decades. It currently operates 175 miles of regional trails and 215 miles of backcountry trails. In contrast, Sammamish is a bona fide neophyte as to trails (the City's borders include no long-distance trail other than the County's East Lake Sammamish Trail, see <https://www.sammamish.us/parks-recreation/parks-trails/>). Sammamish likewise erroneously claims that the County has no interests in rail service reactivation. To the contrary, the County works closely with the Port of Seattle (a separate government agency) and with Sound Transit to preserve active and inactive rail corridors for rail purposes.

⁶ For example, Richard Welsh d/b/a National Association of Reversionary Property Owners (NARPO), which opposes trails and especially rail trails nation-wide, lived adjacent to the property in question.

to form a bogus entity called RIRPA to pursue an "offer of financial assistance" ("OFA") to acquire the property.⁷ This agency rejected the OFA on grounds of non-existent current rail need (BNSF - Ab. Ex. - in King County, WA, AB 6- 380X, served Aug. 5, 1998), a decision upheld by the Ninth Circuit in RIRPA v. STB, 223 F.3d 1057 (2000). The property was acquired by King County in September 1998 upon the agency's issuance of an order ("Notice of Interim Trail Use" or "NITU" pursuant to 49 C.F.R. 1152.29) authorizing interim trail use subject to rail reactivation. The Burlington Northern and Santa Fe Railway Co. - Ab. Ex. - in King County, WA, AB 6-380X, served Sept. 18, 1998 (NITU issued).⁸

When King County acquired the railbanked corridor pursuant to the NITU, the portion of the County in which the City of Sammamish is now located was unincorporated. Roughly a year after the County's acquisition of the rail corridor in 1998, the City of Sammamish incorporated.⁹ In seeking to develop the

⁷ NARPO (see note 6) at the time advocated use of the OFA remedy to prevent trails.

⁸ The City of Issaquah subsequently became the interim trail manager/railbanker for a portion of the trail not at issue here. The Burlington Northern and Santa Fe Railway Co. - Ab. Ex. - in King County, WA, AB 6-380X, served April 5, 2000 (replacement NITU).

⁹ See Sammamish Ordinance 090-25 (incorporating City effective August 31, 1999).

corridor as a trail, King County initially voluntarily sought to comply with many local law requirements, including pre-construction permitting. However, the City ruled- pursuant to provisions of the Sammamish Municipal Code (SMC) and related local codes -- that King County had failed to show there was "no practical alternative" to locating the trail on the railbed.

In short, the City through its local regulations sought to prevent a trail on the railroad corridor. In Friends of the E. Lake Sammamish Trail, 316 F.Supp.2d 1260, 1273-74 (W.D. Wash. 2006), the United States District Court held that railbanked trails remain subject to preemptive STB jurisdiction and, as with any active rail line, state and local governments have limited powers to regulate them due to federal preemption. In particular, the local governments could not bar that which was authorized by STB. Accord, City of Auburn v. United States Government, 154 F.3d 1025, 1030 (9th Cir. 1998) ("plain language of ... ICCTA explicitly grant STB exclusive authority" over rail corridor not limited to economic regulation). Since this Board's NITU authorized a trail on the corridor, the Court held that the City's efforts through the hearing examiner to stymie a trail on the corridor were preempted. Dave v. Rails to Trails Conservancy, 863 F.Supp. 1285, 1290-91 (E.D. Wash. 1994) aff'd 79 F.3d 940 (9th Cir. 1996) (Court lacked jurisdiction to hear

challenge seeking to apply civil rights laws to bar a railbanked corridor in Washington State).

Parties opposed to the trail, including Mr. Hornish, who owns lakefront property and is also a member of the Sammamish City Council, then filed suits contending that the County lacked exclusive use of the surface estate and attacking the width of railbanked rail easements. In Hornish v. King County, 182 F.Supp.3d 1124 (W.D. Wash. 2016), appeal pending (9th Cir. Filed June 9, 2016) (Case No. 16-35486), the Court held that railbanked easements commanded exclusive use of the surface estate, and were co-extensive with the rights of the railroad. The Court supported its holding by citing Kaseburg v. Port of Seattle, 2015 WL 4508790 (W.D.Wash. 2015) at *3-4, appeal pending (9th Cir. Filed Sept. 22, 2016) (Case No. 16-357698). The Kaseburg court construed 16 U.S.C. 1247(d) to call for preservation of corridors for future rail reactivation, and not merely for "preserv[ation] upon future rail reactivation." 182 F.Supp. 3d at 1129.

We come now to the situation at bar. Some twenty years after King County lawfully acquired this property for interim trail use subject to possible future rail reactivation, the City of Sammamish is still trying to prevent safe and lawful completion of the project. In particular, the City issued "stop

work" orders to bar the County from constructing trail crossings at two minor streets or driveways.

To get a better sense of this controversy, Trail Users note that Washington State law in general gives pedestrians and bicyclists priority over motorists at unmarked or marked cross walks. Rev. Code of Washington 46.61.235. This is widely known, or should be. See "Let's get something straight: Pedestrians always have the right of way at intersections," Seattle Times, Traffic Lab, Sept. 18, 2017.¹⁰ In short, Trail Users in the State of Washington lawfully have a reasonable expectation of not being runover when using a trail, including railbanked rail trails, at street crossings under Washington state law. Consistent therewith, the King County design standard for trail crossings of minor streets and driveways is to place stop signs facing the street or driveway (to cause motorists to stop) rather than facing the trail (to cause pedestrians or cyclists to stop). This puts the onus on motorists to slow down and stop at crossings so they do not hit pedestrians and cyclists in a crossing, whether the pedestrians or cyclists stop or not.¹¹

¹⁰ <https://www.seattletimes.com/seattle-news/transportation/lets-get-something-straight-pedestrians-always-have-the-right-of-way-at-intersections/>

¹¹ See King County Parks "Frequently Asked Questions, Stop Sign Usage," 7/1/2013 (Exhibit C).

Of course, the same regime applies at active rail crossings: trains have priority; the signs require motorists to stop.

The two, minor street or driveway crossings from which this dispute arose are located on the southern segment of the East Lake Sammamish Trail: so-called 206th Avenue SE and so-called SE 33d Street. In the case of each crossing, the railroad occupied the land first. Each crossing was installed at sufferance of the railroad, pursuant to an easement granted by Burlington Northern (one of BNSF's predecessors) to King County. The railroad retained the superior rights. Thus, although BNSF granted an easement to King County to cross its tracks, the railroad retained the right to use the facility as it chose. The applicable easement for 206th Avenue SE, for example, reserved to the railroad (including "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 limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for purposes." See Exhibit 6

to Nunnenkamp Declaration in USDC WD Wash 17-921, attached as Exhibit G.¹²

The City of Sammamish through its pre-construction permit process (see Complaint, attached hereto as Exhibit D para 14-15¹³) has insisted that the County place the stop signs to face Trail Users rather than motorists. When the County refused, the City threatened to revoke all permitting for the segment of the Trail under construction, and to issue a stop work order, which would have shut down (and severed) the trail permanently.¹⁴

The County responded to the City's threats filing a Complaint in the United States District Court for the Western

¹² Under the doctrine of merger, once an easement is extinguished by merger, it cannot come into existence again merely by severing the dominant and servient estates. For the easement to arise again, it must be created anew by express grant, by reservation, or by implication. Although the County (so far as our research reveals) has not yet made the point, under ordinary principles of merger, when King County acquired BNSF's interests in the rail corridor in 1998, the County's crossing easements for 206th and 33rd merged into the County's newly acquired overall estate. When City of Sammamish incorporated in 1999, there were no crossing easements in existence for it to "enjoy" at 206th and 33rd. The City apparently to date has neither negotiated for, nor acquired, any crossing agreement from King County. City of Sammamish thus appears to enjoy at best a raw right to cross the railroad corridor at the sufferance of King County. Trail Users, however, will assume *arguendo* that the City of Sammamish does have the expired interests originally enjoyed by King County to cross at 206th and 33rd. That *arguendo* assumption is the basis of the United States District Court's analysis discussed *infra*.

¹³ The County's Amended Complaint with similar averments is attached as Exhibit E.

¹⁴ Complaint, supra, para 16 et seq.

District of Washington on June 14, 2017. See Complaint in King County v. City of Sammamish, USDC for WD Wash. 17-921 (Exhibit D). Two days later (June 16), the City issued a stop work order.

The Exhibits to the Complaint make clear that the County informed City of Sammamish that the City lacked sufficient property interests in the railbanked Corridor to impose stop sign requirements upon the County. E.g., Letter to City Manager, 5/23/2017, attached as Exhibit 1 to Complaint, supra. The Complaint sought declaratory and injunctive relief against the City of Sammamish on several bases, including state law and federal preemption. The Complaint was amended on July 17, 2017, to add additional counts, including a "quiet title" count stating that under state law, the City of Sammamish lacked a property interest at 206th and 33rd sufficient to impose crossing conditions on King County inconsistent with the County's own determination. See Amended Complaint, pp. 18-19 (attached as Exhibit E). This Count in essence summarized the County's position that the City under state law lacked a property interest in the Corridor sufficient to require a crossing permit or to impose any crossing-related requirement.

King County moved for a preliminary injunction (Exhibit F), which was granted by the District Court in a decision filed August 8, 2018. See Order Granting King County's Motion for

Preliminary Injunction (attached as Exhibit 1 to Sammamish Petition) ("PI Order").

In issuing the preliminary injunction against City of Sammamish, the District Court did not reach the issue of preemption. Instead, the District Court explained that under the law of Washington, the issue ("touchstone" of the case in the language of the Court) was "whether the City has the right to impose zoning and safety regulations at all" at the two crossings. The Court explained that "[i]f the City does not have ... authority [under state law], then preemption is not an issue because there would be no conflict between federal and municipal law." PI Order, slip op. p. 5. Citing authorities, the Court held that under applicable law, a railroad easement commands "exclusive control of all the land within" the bounds of the easement. Id. Since interim trail use and railbanking may not be treated as an abandonment by the express terms of 16 U.S.C. 1247(d), the Court found that nothing in the statute diminished the exclusive nature of railroad easements under Washington law as to railbanked corridors. In the words of the Court, "whoever holds the Corridor easements is granted exclusive use, possession and control of the Corridor, unless there is a superior property right." Id. at 6.

The Court then considered the crossing easement originally granted by the railroad to the County across the railroad's

exclusive railroad easement. The Court ruled that the "Railroad's crossing easements" reserved the superior property right to the railroad. Id. The Court stated that City of Sammamish simply does not have a sufficient state law property interest to require the holder of the rail easement to place stop signs in the corridor facing the Trail Users rather than motorists. This amounts to relief in the nature of quieting title under state law (count VI of the Amended Complaint). The Court did not reach the County's other alternative arguments, including its preemption arguments.

The City of Sammamish filed an interlocutory appeal of the preliminary injunction order to the Ninth Circuit. The County moved to dismiss the appeal as moot since the underlying construction at issue has been completed. Neither the District Court nor the Ninth Circuit has sought an advisory opinion from the Board on any matter within the STB's jurisdiction as of this date.

While its appeal to the Ninth Circuit was pending the City of Sammamish on December 7, 2017, filed the instant petition for a declaratory order asking this Board to determine that federal preemption does not apply to any preconstruction permitting requirements, including the City's demand that the County implement unsafe road crossings.

ARGUMENT

I. THE CITY'S PETITION MUST BE DISMISSED FOR LACK OF JURISDICTION OR ON GROUNDS OF CONCURRENT JURISDICTION

The City claims that the District Court erred in finding that the City's proposed pre-construction permit requirement for stop signs facing motorists at the two street crossings was preempted. Sammamish Petition, at 2. The City calls for this Board to correct the District Court, and to instruct the Court that Sammamish can basically do as it chooses. *Id.* at 2-3.

The short answer to Sammamish is that assuming *arguendo* that the District Court ruled as Sammamish claims, then the City's petition must be dismissed on grounds of concurrent jurisdiction. In Ingration Incorporated - Petition for Declaratory Order, F.D. 36014, served Sept. 30, 2016, this Board denied a petition for a declaratory order of preemption where the party seeking the order was already in a lawsuit in U.S. District Court. The Board explained (slip at 3) that

"issues involving federal preemption under 49 U.S.C. 10501(b) can be decided either by the Board or the courts in the first instance, as both the Board and courts have concurrent jurisdiction to determine preemption. See, e.g., 14500 Ltd. - Pet. for Declaratory Order, F.D. 35788, slip op. at 2 (STB served June 5, 2014); CSX Transp., Inc. - Pet for Declaratory Order, F.D. 34662, slip op. at 8 (STB served May 3, 2005)."

As already noted, the United States District Court has not sought guidance or an advisory opinion on preemption from this

Board. Nor has the Court granted leave¹⁵ for a party to seek an advisory opinion from the Board. The Board therefore should deny the City's petition on the ground that it is already being handled in U.S. District Court, which has concurrent jurisdiction over this issue and may yet address this issue once the City's Ninth Circuit appeal is resolved.

More importantly, Sammamish certainly fails to show any compelling reason for this Board to accept jurisdiction over the City's declaratory judgment request, for the simple reason that the U.S. District Court has so far disposed of the matter on state law grounds rendering the issue of federal preemption moot. The U.S. District Court in its decisions to date has held that under state property law, City of Sammamish lacks sufficient interest in the two crossings at issue to require a pre-construction permit much less impose crossing conditions. Contrary to Sammamish's mischaracterization, this ruling expressly declines to address the City's claim that its actions were not preempted, finding them unlawful instead on state grounds. Indeed, this means that Sammamish cannot even state a case or controversy concerning federal preemption, much less a compelling reason to evade concurrent jurisdiction.

¹⁵ E.g., The City of Ozark, Ark. - Pet. for Declaratory Order, F.D. 36104, served July 28, 2017.

In addition, in Ingredion, supra, this Board noted that state property law disputes are generally more appropriately resolved by the courts. More precisely, in Ingredion, slip at 4, STB stated that

"[t]he Board has explained that questions of property law generally are more appropriately decided by courts. See V&S Ry. - Pet. for Declaratory Order - R.R. Operations in Hutchinson, Kan., F.D. 35459, slip op. at 7 (STB served July 12, 21012) (stating that question about property rights should be decided by the district court applying state property and contract law); Allegheny Valley R.R. - Pet. for Declaratory Order - William Fiore, F.D. 35388, slip op. at 4 (STB served Apr. 25, 2011) (stating that questions concerning size, location, and nature of property rights are best addressed by a state court)."

Here, the United States District Court has determined that Sammamish lacks authority under state law to demand what it is demanding. There is no preemption issue for the Board to resolve and the court has resolved the state law issue against Sammamish. The case must be dismissed on that ground as well. In short, the issue of preemption is irrelevant, moot, and otherwise unripe because Sammamish lacks the legal authority to do what it seeks to do on state law grounds, and the STB is not the forum in which state property issues are resolved. There is nothing here for the Board to address.

Finally, to the extent Sammamish is calling on this Board to review and/or to reverse the decisions of the United States District Court, it has gone to the wrong forum. Review of the United States District Court in situations like that at bar lies

in the Ninth Circuit, not at STB. See, e.g., 28 U.S.C. 1291. The City of Sammamish has appealed to the Ninth Circuit, and should pursue its remedies there. It should not be permitted to file a duplicative or end-run effort here. That is a waste of judicial and administrative agency resources, let alone that of litigants in opposition to the City.

II. ANY DECISION ISSUED BY THIS BOARD SHOULD CONFIRM THAT

THE CITY'S EFFORTS TO REGULATE THE ELST ARE PREEMPTED

Trail Users note that in denying or dismissing petitions for declaratory orders relating to preemption, the Board sometimes provides "guidance." Any such guidance issued by this Board should confirm that the City's attempt to regulate and prevent King County's construction of the ELST are preempted and the authority of the district court to resolve this issue.

Consistent with applicable judicial precedent, this Board has already determined that federal preemption principles apply to railbanked railroad rights of way. Jie Ao and Xin Zhou -- Petition for Declaratory Order, F.D. 35539, served June 6, 2012. The Board there indicated that "[s]ection 10501(b) preemption" imposes limits on state or local regulation. In particular, "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements are categorically preempted." Slip op. at 5. In addition, the Board noted that

"[t]he agency's broad and exclusive jurisdiction over railroad operations and activities prevents application of state laws that would otherwise be available, including condemnation to take rail property for another use that would conflict with rail use." Slip at 5.

In Jie Ao, the Board also held that a local landowner's claim of adverse possession to a portion of a railbanked rail corridor was preempted, inter alia, because it would conflict with rail reactivation by permanently removing a segment of a rail line from the national rail system. Slip at 6-7. The Board noted that carving up rail lines by adverse possession "would undermine interstate commerce and the strong federal policy in favor of retaining rail property in the national rail network, where possible." Slip at 7, citing authorities. The Board explained in a footnote that "[a]dverse possession has the same legal effect on property as condemnation - elimination of the prior ownership interest in the property." Slip at 5 n.4. Even where not preempted on their face, the Board noted that "a factual assessment of whether a [state or local] action would have the effect of preventing or unreasonably interfering with rail transportation" is appropriate. Slip at 5.

The landowners in Jie Ao also claimed a prescriptive crossing easement. The Board said that crossings in general are different from "carving out property that is a part of the

railroad” because crossing easements “may still allow the railroad to access the property.” The Board, following its precedent, indicated that a determination of whether an easement existed and/or was unduly burdensome so as to be preempted “is the type of determination that the state court can appropriately address.” Slip at 8.

Of course, in many instances, the Board has determined that even at-grade crossings sought by state or local governments are preempted. E.g., 14500 Limited LLC - Pet. for Declaratory Order, F.D. 35788, served June 5, 2014; Wichita Terminal Association, BNSF Railway Company & Union Pacific Railway Company - Petition for a Declaratory Order, F.D. 35765, served June 23, 2015. But we do not understand King County to be denying the City an at-grade crossing; the County merely wishes motorists using this minor crossing to stop first, and the court has said that is the County’s absolute right as a matter of state property law.

Trail Users do not object to a restatement of the Board’s general preemption principles as guidance here. But we again reiterate, more for the benefit of Sammamish than the Board, that the Board has said that whether an easement existed and/or was unduly burdensome so as to be preempted “is the type of determination that the state court can appropriately address.” Jie Ao, slip at 8. Here the United States District Court has

addressed that issue. Based on the rights held at state law by the City, the District Court has basically left the matter exactly as it was when trains operated on the Corridor: motorists must stop. This is consistent with safe rail use, safe trail use, Washington state law on traffic priorities, and best ensures preservation of the corridor for future rail reactivation.

III. IN ANY EVENT, CITY OF SAMMAMISH'S ACTIONS
ARE PREEMPTED INSOFAR AS THEY AMOUNT TO THE IMPOSITION
OF PRECONSTRUCTION PERMITTING AND REQUIRE IMPOSITION
OF UNSAFE CROSSING CONDITIONS

Should this Board nonetheless reach the issue of preemption, the Board must still reject Sammamish's petition.

This Board has consistently held that preconstruction review and permitting requirements for activities it authorizes are categorically preempted. As noted in Jie Ao, which involved a railbanked trail, "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements are categorically preempted." Slip op. at 5. Imposition of preconstruction review and permitting requirements on a voluntary basis has already resulted in multi-million-dollar local permitting processes for even small projects in the State of Washington. An example is the more than \$7.5 million spent by Seattle over the past twenty years to comply (so far

unsuccessfully) with local pre-construction review requirements for a roughly 3-mile long railbanked trail authorized in Sea Lion RR, supra, AB 544, served Sept. 18, 1998. No private railbanker, and few public ones, can engage in the STB-authorized railbanking activity if faced with such exposure.

The Board has authorized trail use of the railroad corridor at issue here. The Burlington Northern and Santa Fe Railway Co. - Ab. Ex. - in King County, WA, AB 6-380X, served Sept. 18, 1998 (Notice of Interim Trail Use); id. served April 5, 2000 (replacement NITU). Sammamish cannot blockade or impede the trail via a pre-construction permit process. That is preempted. While King County from time to time in a spirit of cooperation may voluntarily consult with Sammamish through its permit process, the County is not obligated to stop work or comply with the City's demands that the County feels overburden the trail. Accord, Soo Line Railroad Company - Petition for Declaratory Order, F.D. 35850, served Dec. 23, 2014.

If Sammamish were to attempt as a "generally applicable" regulation to stop users of the rail line by itself placing stop signs on the rail line, it still loses. The United States District Court has determined that Sammamish lacks a sufficient property interest at state law in the rail corridor to require the owner to place stop signs burdening its use. The City simply lacks the power to do what it wants.

But equally important, as a general and historical matter, trains do not stop at crossings. That is neither reasonable nor practical. See Joint Declaration of Messrs. Withers and Johnston at p. 2 para 4 ("RLBA Dec.") (Exhibit J). Railbanked trails under 16 U.S.C. 1247(d) remain under STB's jurisdiction and may readily be reactivated for rail service. They presumably must be preserved in a status compatible with ready reactivation. In any event, the statute says that they may not be treated as abandoned for rail purposes by any law or rule of law. "In the absence of a stop sign facing drivers, a generation of drivers" will be habituated to driving across the rail line without stopping, "exposing driver to unnecessary risks" in the event of rail reactivation. RLBA at pp. 2-3 (para 6) (Exhibit J).

Besides the safety hazard imperiling reactivation, what Sammamish wants creates a safety hazard now. The County supplied ample evidence to the United States District Court that placing stop signs facing Trail Users at low density intersections such as 206th and 33rd would be counter to historic use (Mr. Nunnenkamp in his Declaration attached as Exhibit G at p. 2 stated that historically "not one crossing along the Corridor had a stop sign oriented towards trains traveling on

the tracks”¹⁶) as well as to Trail User safety. See, e.g., Exhibit 1¹⁷ to King County’s Complaint (attached hereto as Exhibit D), Declaration of Bill Schultheiss (attached hereto as Exhibit H) (motorists should stop at low traffic density crossings) and Declaration of Yammie Ho (attached hereto as Exhibit I) (motorists can safely stop at the crossings at issue).

As Washington state law recognizes, trains do not stop at crossings, let alone low-density ones. Instead, the burden is on motorists to stop. RCW 46.61.340. And this is consistent with applicable Washington State traffic law for pedestrians and bicycles in crossings. RCW 46.61.235. The strong federal public interest in protecting these corridors for future rail service is undermined by Sammamish’s position urging this Board to ignore these well-established principles embodied, in the State of Washington, in state law.

¹⁶ For this reason alone, Sammamish’s assertion at p. 2 of its Petition that King County seeks more expansive preemption rights than the railroad enjoyed is demonstrably false.

¹⁷ Exhibit 1 includes a letter dated May 23, 2017 from Kevin Brown (King County) to Lyman Howard (City Manager of Sammamish) which at pp. 4-5 explains American Association of State Highway Transportation Officials (AASHTO) guidance and other considerations. Exhibit 1 also includes a November 7, 2014 technical memorandum discussing sight distances and safety. Exhibit 1 also includes an analysis by a professional engineer (Bill Schultheiss) dated January 26, 2016, as well as additional engineering analysis.

The City's attempt to regulate the crossings interferes with federal railbanking in another important way. In seeking to impose a stop sign requirement on the corridor users, it will result in arbitrary deviation from safe crossing requirements. King County manages hundreds of miles of trail, including railbanked trails, pursuant to uniform national (ASSHTO or similar) standards. It is dangerous to users for traffic regulatory signs at similar intersections to call not only for different conduct but for violation of national standards. Since there are railbanked trails nation-wide, it is all the more dangerous literally to require (as Sammamish seeks) deviation from national standards. "Preempting this sort of [deviant] local regulation will best ensure that [railbanked trails] are regulated similarly and not subject to potentially inconsistent or conflicting regulation that any individual locality might impose, in keeping with the basic approach of uniform regulation of rail facilities generally." RLBA p. 3 para 6 (Exhibit J).

In any event, as the court said in Kaseburg v. Port of Seattle, supra, at *3-4, 16 U.S.C. 1247(d) calls for preservation of corridors for future rail reactivation, and not merely for "preserv[ation] upon future rail reactivation." In other words, the corridors should be preserved now, not reassembled only upon actual rail reactivation. Consistent therewith, section 1247(d) provides that, "for purposes of any

connection with the railbanked East Lake Sammamish Trail. Id.
p. 2.

But Sammamish has demonstrated no "compelling reasons" to ignore this principle. They cannot show the United States District Court got the issue of preemption wrong since the Court has not yet addressed this issue. The United States District Court simply ruled as a matter of state law that Sammamish did not have the power to insist on a crossing permit in advance of construction or on placement of stop signs inside the right of way. This Board must defer to the courts on issues of state law. The pertinent court has based its rulings to date on state law, rendering preemption issues moot. The Petition must be dismissed not only on grounds of mootness, lack of ripeness, and irrelevancy, but also on grounds of concurrent jurisdiction.

Respectfully submitted,

AF / *CSH*

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CHM

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Attorney for Rails to
Trails Conservancy,
Cascade Bicycle Club,
Friends of the East
Lake Sammamish Trail,
and Friends of the Burke
Gilman Trail

Due: 26 January 2018

Table of Exhibits

- A - Cascade Bicycle Club Letter
- B - Friends of East Lake Sammamish Declaration and Letter
- C - King County Parks "Frequently Asked Questions, Stop Sign Usage" 7/1/2013
- D - Complaint in King County v. City of Sammamish, USDC WD Wash
- E - Amended Complaint in id.
- F - King County Motion for Preliminary Injunction in id.
- G - Nunnenkamp Declaration in id.
- H - Schultheiss Declaration in id.
- I - Yammie Ho Declaration in id.
- J - RLBA Declaration

Certificate of Service

The undersigned certifies service of the foregoing upon all parties of record appearing in the STB Service List for FD 36161 as of 1/25/2018 including specifically Messrs. Pfol (for Sammamish) and Spitulnik (for King County) at their addresses of record, this 26th day of January, 2018, by US mail, postage pre-paid, first class.


Charles H. Montange



Surface Transportation Board

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Docket #: **FD_36161_0**

Case Title: **CITY OF SAMMAMISH, WASH.--PETITION FOR DECLARATORY ORDER
3 Service List entries found.**

Party Of Record: Montange, Charles H
426 Nw 162Nd Street
Seattle, WA 98177

Party Of Record: Pfol, Peter A.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036-3003

Party Of Record: Spitulnik, Charles A
Kaplan Kirsch & Rockwell Llp
1001 Connecticut Avenue, N.W. Suite 800
Washington, DC 20036

Surface Transportation Board, 395 E Street, SW, Washington, DC 20423

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BEFORE THE SURFACE TRANSPORTATION BOARD

CITY OF SAMMAMISH -)
) F.D. 36161
PETITION FOR A DECLARATORY ORDER)

REPLY ON BEHALF OF
RAILS TO TRAILS CONSERVANCY,
CASCADE BICYCLE CLUB,
FRIENDS OF THE EAST LAKE SAMMAMISH TRAIL
AND
FRIENDS OF THE BURKE GILMAN TRAIL

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I - Yammie Ho Declaration in id.
J - RLBA Declaration

Exhibit A



Improving Lives Through Bicycling

7787 62nd Avenue NE Seattle, WA 98115-8155

P (206) 224-9252 • www.cascade.org • info@cascade.org

[Facebook](#) /CascadeBicycleClub [Twitter](#) @cascadebicycle [Instagram](#) @cascadebicycle

Date: January 16, 2018

To: Charles Montange, Esq., counsel for the Rails to Trails Conservancy

Re: City of Sammamish Petition to STB filing # 244827

Cascade Bicycle Club (Cascade) is a statewide organization with over 16,000 members. Cascade works in communities throughout Washington state to advocate for bicycling as a safe, intuitive, healthy and affordable transportation and recreation option. **Cascade Bicycle Club would like to be added as co-commenters in the Rails to Trails Conservancy response to filing #244827 before the STB by the City of Sammamish.**

Cascade's mission is to improve lives through bicycling. Rail trails help us achieve that mission - from hosting world class bike rides like the annual Ride Seattle-Vancouver and Party (RSVP) - whose route include portions of rail trail -to long term trails advocacy like our ongoing work to complete the East Lake Sammamish trail.

Connected trails networks – which in Washington state are largely railbanked railway lines – are an essential element of bikeable and walkable communities. That's why, for decades, Cascade has been a strong and vocal friend to rail trails like the Burke-Gilman and East Lake Sammamish trails. The railbanking statute enables invaluable access to disused rail corridors for active transportation and recreation. **We believe that the City of Sammamish petition poses a threat on two levels.**

First, and in specific relation to the case cited by Sammamish, the petition threatens East Lake

Sammamish Trail user safety: Cascade is familiar with the issue around stop sign placement for south Sammamish segment 2A of the East Lake Sammamish Trail. Last year Cascade provided a declaration in support of the current federal ruling regarding King County stop sign placement. We support King County's position that the stop signs be placed at driveways/minor roads that cross the trail such that they are oriented towards the road. Trail user safety is paramount, and there are numerous issues (sight lines, consistency, vulnerability of trail users) that point to the need for stop signs to be oriented to the road for safety reasons. A successful petition would allow the City of Sammamish to ignore very real safety issues impacting vulnerable trail users.

Second, and much broader in potential impact to future development of rail trails in Washington

state: The broad nature of Sammamish's request would give local jurisdictions design authority rather than public agency trail builders. In practice this would lead to trails being inconsistently designed, creating potential safety issues, and without thought to the reality that each trail segment is just one

pice of a much bigger – and hopefully cohesive – regional, and sometimes national, network. The petition also aims to undermines a fundamental tenet of the rail banking statute: that rail trails on railbanked corridors be developed in such a way to not preclude future use of railways. The railbanking statute brings unquantified benefit to Washington state's residents, and is mutually beneficial to the railway industry – to change the fundamental equation it rests on is to put the statute at great risk.

Cascade thanks the Rails to Trails Conservancy for responding to the Sammamish petition to the STB. If you have questions regarding our request to be added as co-commenters in the Rails to Trails Conservancy response, or if there are additional ways we can support your effort, please do contact us. Our contact for this project is Vicky Clarke, Cascade Bicycle Club's East King County Policy Manager. She can be reached at vickyc@cascade.org or 206-522-3222.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Smith', with a long horizontal stroke extending to the right.

Richard Smith
Cascade Bicycle Club Executive Director

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

CITY OF SAMMAMISH -)
) F.D. 36161
PETITION FOR A DECLARATORY ORDER)

DECLARATION OF JAN BIRD
LEAD ADVOCATE
FRIENDS OF THE EAST LAKE SAMMAMISH TRAIL

I, Janet "Jan" Bird, make this Declaration for filing on behalf of Rails to Trails Conservancy, Cascade Bicycle Club, and Friends of the East Lake Sammamish Trail in response to the Petition filed by City of Sammamish in STB Finance Docket 36161.

1. I am a resident and taxpayer in the City of Sammamish.

I use and have used the East Lake Sammamish Trail ("Trail"), and wish to use a completed Trail. As of today, the Trail has not yet been completed, even though the property was acquired by King County approximately twenty (20) years ago, when I first moved to what was then unincorporated King County and what is now the City of Sammamish. A key segment of Trail, roughly 3.5 miles long, remains to be constructed along the east side of Lake Sammamish within the City's limits. Completion of the Trail has been unduly delayed by the City's pre-construction permitting reviews, including hearings and permitting requirements. As with others similarly situated, I would prefer that the Trail be finished in my lifetime so that I might enjoy it, and the connections it

would afford to the regional trail system. I therefore oppose any further delays.

2. The petition filed by the City of Sammamish appears to misstate key facts and on that basis in effect invites the Surface Transportation Board to facilitate the City in burdening, delaying, severing, or stopping the Trail. I will be injured by the relief sought by City of Sammamish in this docket, because it will frustrate my ability to use and to enjoy a completed Trail and because it will add to my burdens as a taxpayer within the City.
3. I am a member of both Rails to Trails Conservancy ("RTC") and Cascade Bicycle Club ("CBC"). I hereby authorize and request both RTC and CBC to represent my interests in STB F.D. 36161 in opposing the City of Sammamish's petition.
4. Friends of the East Lake Sammamish Trail ("Friends") is currently an unincorporated association which maintains a website (<http://eastlakesammamishtrail.org/>) and advocates for the completion of the Trail. For the reasons already noted, the relief sought by the City is inconsistent with timely completion - or indeed any completion - of the Trail. I am a member of Friends, and also serve as Lead Advocate for Friends. Friends has authorized participation in the Reply being prepared on

behalf of RTC and Cascade to the Petition filed by City of Sammamish. I authorize and request Friends to represent my interests in STB F.D. 36161 in opposing City of Sammamish's petition.

5. I attach to this Declaration a letter further discussing Friend's involvement in opposition to The City's petition.

Pursuant to 28 USC 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Janet "Jan" Bird

Dated: 11/22/18



FRIENDS

of the East Lake
Sammamish Trail

www.eastlakesammamishtrail.org

<https://www.facebook.com/FriendsofELST/>

Date: January 22, 2018

To: Charles Montange, Esq., counsel for the Rails to Trails Conservancy

Re: City of Sammamish Petition to STB filing # 244827

Friends of the East Lake Sammamish Trail is a grassroots organization of members who either live in Sammamish or adjacent communities in King County and who cycle and walk the East Lake Sammamish Trail. **Friends of the East Lake Sammamish Trail would like to be added as co-commenters in the Rails to Trails Conservancy response to filing #244827 before the STB by the City of Sammamish.**

Our group was originally founded in 1999 with the goal of creating this trail. Once the interim trail was finished in 2006, the goal of our group changed to advocating for the completion of the trail to national standards with a 12' wide paved trail, 4' shoulders and 2' clear areas.

Currently, the East Lake Sammamish Trail connects to the Sammamish River Trail which in turn connects to the Burke-Gilman Trail providing a path around the Seattle area. Both of these other trails are paved whereas the East Lake Sammamish Trail (ELST) has a north and southern segment that have recently been paved and opened with 3.5 miles in the middle to be completed.

This trail has taken many years to complete as the Sammamish section is very close to residential homes and homeowners have been in litigation regarding ownership. They have an appeal in the 9th Circuit Court of Appeals which is expected to be heard sometime this spring.

The Friends has a long history of advocating for the development and completion of this trail. On January 5, 2005, the Friends of the East Lake Sammamish Trail filed a Motion for Summary Judgment, which argued that the federal railbanking statute and the STB Order which authorized King County to develop an interim trail on the inactive railroad right-of-way, preempt the application of the "practical alternative" prong of the Sammamish PAUE to any railbanked railroad right-of-way.

Currently, we are concerned with the City's petition to the STB regarding the placement of stop signs for two reasons. First of all we are concerned about the safety of trail users. On the rest of the trail, trail users have the right of way when crossing driveways and private roads and cars have a stop sign. However, the City is requesting that there be a stop sign at the intersection of two minor roads for trail users to stop for cars. This makes for an inconsistent situation for both cars and trail users. A trail user is much more vulnerable than a person in a car.

Secondly, the broad nature of Sammamish's request would give local jurisdictions design authority rather than the public agency that builds the trails. This is a regional trail but if the city is allowed to control the design to a different standard, it would lead to inconsistency which can cause potential safety issues.

A basic tenet of the rail banking statute is that rail trails on railbanked corridors be developed in such a way to not preclude future use of railways. This petition would undermine this.

Friends of the East Lake Sammamish Trail thanks the Rails to Trails Conservancy for responding to Sammamish's petition to the STB. If you have questions regarding our request to be added as co-commenters in the Rails to Trails Conservancy response, or if there are additional ways we can support your effort, please contact us. Our contact for this project is: Janet "Jan Bird", Lead Advocate birdandcat@aol.com. 425 427-5218.

Sincerely,

A handwritten signature in cursive script that reads "Janet 'Jan' Bird".

Janet "Jan" Bird
Lead Advocate
Friends of the East Lake Sammamish Trail

Exhibit C



www.kingcounty.gov/parks

Frequently Asked Questions: Stop Sign Usage

Will the stop signs that are currently on the gravel trail be removed?

Yes. The stop signs presently located along the gravel trail will be removed during construction and will not be replaced. Many homeowners who live adjacent to the trail have expressed concern about their safety and the safety of trail users if the stop signs are removed. The information below was compiled to provide more information about stop sign usage on the trail.

King County is required to follow applicable traffic engineering and design standards in order to develop the safest trail possible. The Federal Highway Administration sets the national standards for all traffic control devices installed on any street, highway or bicycle trail open to public travel. These national standards are set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD) which includes a chapter addressing traffic control for bicycle facilities. State and local governments are required to substantially comply with these standards when developing roads and trails. The MUTCD references another set of guidelines - the American Association of State Highway and Transportation Officials (AASHTO) "Guide for the Development of Bicycle Facilities." Both the MUTCD standards and the AASHTO guidelines incorporate the best traffic engineering practices for the construction of roads and trails.

King County has designed the ELST (East Lake Sammamish Trail) in accordance with the MUTCD and AASHTO standards and guidelines. Some of the stop signs that are currently on the trail will be removed because they are not consistent with this design approach. In particular, the 2012 AASHTO guidelines provide that stop signs and other intersection controls should follow the principle of providing the least amount of restriction that is effective. These guidelines explain:

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. A common misconception is that the routine installation of stop control for the pathway is an effective treatment for preventing crashes at path-roadway intersection. Poor bicyclist compliance with "STOP" signs at path-roadway intersections is well documented. Bicyclists tend to operate as though there are "YIELD" signs at these locations: they slow down as they approach the intersection, look for oncoming traffic, and proceed with the crossing if it is safe to do so.

In a nutshell, what this guideline explains is that placing stop signs in locations where bicyclists are not required to stop does not enhance safety or prevent accidents. In fact, it may create a safety hazard in that it gives the roadway users a false sense of security when crossing the trail. All users of the roadway or private driveways that cross the trail have a duty to exercise due care when crossing a right of way, and a stop sign will not reduce or eliminate this duty of care. As the AASHTO guidelines referred to above state, there is a common misconception that the routine installation of stop signs makes a trail safer. It is well documented that it does not.

Roadway and intersection design principles give right of way priority to the higher volume/higher speed approach. In most cases, trail users will have priority right of way over users of private roads and driveways that cross the trail and are not therefore required to stop. Chapter 9 of the MUTCD addresses "Traffic Control For Bicycle Facilities." Section 9B.03 of the MUTCD states that "stop signs shall be installed on shared-use paths at points

where bicycles are required to stop.” Since trail users are not required to stop at private roads and driveways installing stop signs at those locations would be inconsistent with MUTCD.

Since the ELST is being transformed from a lightly developed gravel pathway into a fully functional regional trail, it is now subject to uniform standards for traffic control devices. King County is required to apply the best engineering and traffic control practices available and this includes removing unnecessary stop signs. Our regional trails incorporate a number of physical features such as surface treatments to improve safety, including the use of visible concrete surfaces at crossings and the placement of alert bars on approaches to intersections to provide a visual as well as textural contrast to the asphalt trail. Other design elements include removing vegetation to increase sight lines, bollards, striping and consistent signage. Developing the trail in a manner consistent with these standards will enhance safety on the trail.

Safety is King County’s number one priority. King County Parks works hard to make our regional trails as safe as possible for trail users and trail neighbors. Our facilities meet the most current professional engineering guidelines that specify safe sight distances and other best practices including location and placement of stop signs. These practices and features are now standard on new regional trail construction, and they have proven successful at creating improved trails and safer crossings. In addition, King County Parks works closely with the King County Sheriff’s Department during peak use times to monitor trail use and improve use education.

Exhibit D

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
(including car service, interchange, and other operating
rules), practices, routes, services, and facilities of such
carriers; and

13 (2) the construction, acquisition, operation, abandonment, or
14 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,

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

18 49 U.S.C. § 10501(b).

19 **B. The City Of Sammamish Has Repeatedly Attempted To Impede**
20 **Construction Of The ELST.**

21 22. The City of Sammamish and some of the adjacent homeowners who live alongside
22 the ELST have repeatedly attempted to impede King County from completing construction of this
23 regional trail. In the century since the SLS&E assembled the Corridor, numerous property owners
24 have built lakeside homes sandwiched into the narrow area between the Corridor and the shore of
25 Lake Sammamish. The value of these often-multi-million dollar lakefront properties rose
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
 23 approval of a ROW permit prior to placement of any such device or
 24 improvement . . . to clarify when a ROW permit is necessary, details
 25 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.

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

1 placed on an SSDP,” because it was unrelated to compliance with the Shoreline Management Act.
2 *Sammamish Homeowners v. City of Sammamish*, No. 15-012c, 2016 WL 5867913, at *13
3 (Shorelines Hr’g Bd. Sept. 15, 2016).

4 31. As a sign of good faith and to minimize additional delays, King County originally
5 decided to submit applications for ROW permits while its staff reviewed the City’s jurisdiction
6 over the crossings at 206th Avenue SE and SE 33rd Street. On May 4, 2017, King County submitted
7 ROW permit applications, along with the following disclaimer to preserve the County’s position
8 regarding the City’s lack of jurisdiction:

9 By making this permit application, King County does not waive, and
10 intends to fully preserve, all rights King County possesses to the
11 Corridor, including its ownership and control of the Corridor at issue
12 in this permit application as well as other portions of the Corridor.
13 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.

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

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

23 This is the safest design for these two roadway-trail intersections
24 and is in compliance with all applicable standards including the
25 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.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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By: s/ David I. Freeburg
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Attorneys for Plaintiff King County

Exhibit E

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

is just the latest iteration 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).

3. In a previous case against Sammamish, *Friends of the East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260 (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.” *Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260, 1274 (W.D. Wash. 2005). As a result, the Trails Act preempted illegal provisions in the Sammamish Municipal Code and the Sammamish Development Code that were designed to impede construction of the ELST. *Id.* at 1265.

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

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

II. PARTIES

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

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

III. JURISDICTION & VENUE

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

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,

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). As defined in the ICCTA:

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

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

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

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

23. The City of Sammamish has repeatedly failed to recognize the federal jurisdiction over this railbanked and federally-regulated railroad corridor. The City of Sammamish has made numerous demands on the County that go far afield of appropriate safety or environmental regulations. Many of these demands seek to protect the private interests of adjacent property 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*
 23 *to use said land for any and all purposes*, not inconsistent with the
 24 use therefore for purposes [*sic*].

25 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,

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
 3 *expedient* to the Railway Company.

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

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

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

19 The modification, relocation, or installation of a traffic control
 20 device affecting the City Right of Way (ROW) or other work
 21 connecting to the ROW (e.g. curb returns and ramps) requires
 22 approval of a ROW permit prior to placement of any such device or
 23 improvement . . . to clarify when a ROW permit is necessary, details
 24 depicting stops and other improvements must be removed from or
 25 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.

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,
3 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 and without its own independent engineering analysis, the City of Sammamish has
8 ordered King County to give priority of assignment to the roadway rather than the ELST, with the
9 result that stop signs will face *away* from vehicles, toward pedestrians using the trail. This
10 condition of Sammamish's ROW Permits is contrary to national design and safety standards and
11 conflicts with Washington laws such as RCW 46.61.235(1). This unsafe design would impose an
12 untenable level of risk for cyclists and pedestrians, implying a right of way for moving vehicles
13 and forcing pedestrians to cross in the vehicles' uncontrolled path, contrary to properly designed
14 crosswalks elsewhere in the state.

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

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

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

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

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

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

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

19 41. The City of Sammamish's attempt to require placement of stop signs in a dangerous
20 manner is contrary to Washington law, including the GMA. Under the GMA, "[n]o local
21 comprehensive plan or development regulation may preclude the siting of essential public
22 facilities." RCW 36.70A.200(5). The ELST is an essential public facility within the scope of the
23 GMA. By rendering it impossible to design the ELST in a safe manner consistent with national
24 standards, the City has effectively precluded King County from reopening this essential public
25 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.
25

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

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

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

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

13 **SIXTH CAUSE OF ACTION**
14 **Quiet Title**

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

17 65. King County owns fee title and exclusive railroad easement rights characterized as
18 a "quasi-fee" pursuant to the General Railway Right of Way Act of 1875 where the ELST crosses
19 206th Avenue SE and SE 33rd Street, respectively.

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

23 67. The City has interfered with King County's property rights at these locations by
24 treating the crossings as regular city right of way, exceeding any rights the City has with respect
25 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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Attorneys for Plaintiff King County

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
David I. Freeburg

Exhibit F

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.

1 convenience of local homeowners over the safety of trail users, King County will be unable to
2 reopen South Segment A, because it would not be a safe public trail. Brown Decl. ¶ 9.

3 Based on the professional judgment of its expert engineers, King County intends to place
4 stop signs facing drivers at the Intersections. Auld Decl. ¶ 18; Ho Decl. ¶ 8; Schultheiss Decl. ¶
5 7. Despite the clear guidance in all applicable design standards, the City of Sammamish has
6 ordered King County to orient these stop signs *away* from vehicles crossing the ELST and *toward*
7 pedestrians walking along the trail. Brown Decl. Ex. 1. Because King County cannot agree to a
8 design that would put public safety at risk, the City has effectively blocked King County from
9 reopening the ELST.

10 In developing King County's final design for the ELST, Professional Engineer Ho followed
11 MUTCD principles stating that the design should be based primarily on:

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

15 MUTCD § 9B.03 at 749, Harris Decl. Ex. 9. Ms. Ho also considered other criteria set forth in the
16 MUTCD, WSDOT DM and AASHTO, including sight distance, reported crash experience, and
17 the number and angle of approaches. Ho Decl. ¶ 2. Consistent with AASHTO standards, Ms.
18 Ho's design:

19 follow[s] the principle of providing the least amount of restriction
20 that is effective. Installing unwarranted or unrealistically restrictive
21 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.

22 AASHTO at 5-34, Ho Decl. Ex. 2. After exercising her sound engineering judgment, Ms. Ho
23 determined that it would be unsafe to orient stop signs toward the ELST, and she has refused to
24 provide her final stamp of approval to such designs. *Id.* ¶ 8.¹⁴

25 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

1 Furthermore, the Legislature has decided that pedestrians are not required to stop for stop
 2 signs. Under state law, pedestrians have right of way priority over vehicle traffic at every
 3 intersection. Pursuant to RCW 46.61.200, stop signs are only used to designate “intersection[s]
 4 with which *vehicles* shall be required to stop before entering such intersection.” Pedestrians, by
 5 contrast, are only required to stop at illuminated “pedestrian control signals exhibiting the words
 6 ‘Walk’ or the walking person symbol or ‘Don’t Walk’ or the hand symbol.” RCW 46.61.060; *see*
 7 *also* RCW 46.61.230 (“Pedestrians shall be subject to traffic-control signals at intersections as
 8 provided in RCW 46.61.060, and at all other places pedestrians shall be accorded the privileges
 9 and shall be subject to the restrictions stated in this chapter.”). The Legislature has granted cyclists
 10 in a crosswalk—such as the crosswalks painted across both Intersections—the same rights and
 11 privileges of pedestrians under Washington law. RCW 46.61.755.¹⁵

12 In any event, with *or without* a stop sign, Washington law requires drivers to “stop and
 13 remain stopped to allow a pedestrian or bicycle to cross the roadway within an unmarked or marked
 14 crosswalk.” RCW 46.61.235(1). Placing stop signs where Sammamish demands would lead to
 15 absurd results, encouraging drivers to violate this Washington law. A driver seeing a stop sign
 16 oriented toward the trail might reasonably, but incorrectly, assume that vehicles have the right of
 17 way. This would confuse trail users—who have priority under the statute—and drivers—who are
 18 required to stop regardless of where the stop signs are placed.¹⁶

19 By demanding King County install an unsafe design, the City is seeking both to “interfere
 20 with rail operations”—in this case, an interim trail—and to “pose undue safety risks.” *See Norfolk*

21 _____
 22 selection and application of traffic control devices, as well as in the location and design of the
 roads and streets that the devices complement.”).

23 ¹⁵ Although cyclists are “granted all of the rights and . . . subject to all of the duties applicable to
 24 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).

25 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)(I).

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 Envtl. 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
 24 from carrying out the duties of a Trail Sponsor under the Trails Act. *See* 16 U.S.C. § 1247(d).

25 ¹⁸ Additionally, the City has placed its own residents and taxpayers in a lose-lose situation, where
 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 stop 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.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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Attorneys for Plaintiff King County

CERTIFICATE OF SERVICE

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:

David A. Linehan
Michael R. Kenyon
Kim Adams Pratt
Kenyon Disend, PLLC
11 Front Sreet South
Issaquah, WA 98027-3820
David@KenyonDisend.com
Mike@KenyonDisend.com
David@KenyonDisend.com

Attorneys for Defendant City of Sammamish

DATED: June 26, 2017

s/ David I. Freeburg
David I. Freeburg

Exhibit G

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

**DECLARATION OF ROBERT
NUNNENKAMP IN SUPPORT OF
PLAINTIFF KING COUNTY'S
MOTION FOR PRELIMINARY
INJUNCTION**

I, Robert Nunnenkamp, declare and state the following:

1. I am employed as a Property Agent with the King County Division of Parks and Recreation. I have held this position since 2000. I am over the age of eighteen, have personal knowledge of the facts stated below and am otherwise competent to testify regarding these matters. As a property agent for King County, my duties include inspection and inventories of County property along the East Lake Sammamish Trail ("ELST").

I. Historical Traffic Control Signs.

2. I have reviewed available records regarding traffic control signals used before construction of the interim, gravel trail for the ELST.

3. A video recording incorporated as Exhibit 1 shows many of the traffic control devices used along the Corridor before removal of the railroad tracks and construction of the

DECLARATION OF ROBERT NUNNENKAMP IN
SUPPORT OF PLAINTIFF KING COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION – 1
No. 2:17-cv-00921-JCC

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) (296-8820 Fax (206) 296-8819

1 interim trail. The intersection between the Corridor and 206th Ave SE is visible at 6:06 of this
 2 video. The intersection between the Corridor and SE 33rd Street is visible at 9:48 of this video.
 3 Neither intersection contains a stop sign facing toward freight trains on the tracks. In fact, the
 4 video shows that not one crossing along the Corridor had a stop sign oriented towards trains
 5 traveling on the tracks. By contrast, numerous intersections contained stop signs or crossbuck
 6 signs facing vehicles crossing the tracks. As shown at 6:06 of the video, vehicles driving on 206th
 7 Ave SE were subject to a crossbuck sign when crossing the tracks.

8 4. Attached as Exhibit 2 are true and correct copies of photographs showing the
 9 condition of 206th Ave SE prior to removal of the railroad tracks and construction of the interim
 10 trail. As shown in this photograph, vehicles driving on 206th Ave SE were subject to a crossbuck
 11 sign when crossing the tracks.

12 5. Attached as Exhibit 3 is a true and correct copy of a photograph showing the
 13 condition of SE 33rd Street prior to removal of the railroad tracks and construction of the interim
 14 trail. As shown in this photograph, vehicles driving on SE 33rd Street were subject to a crossbuck
 15 sign when crossing the tracks.

16 **II. Property Deeds.**

17 6. Attached as Exhibit 4 is a true and correct copy of King County deed No. 171984
 18 granting property from the Northern Pacific Railway Company to the Seattle and International
 19 Railway Company, dated October 22, 1898. This deed granted the Seattle and International
 20 Railway Company, a predecessor of BNSF Railway Co., the portion of the Corridor later crossed
 21 by 206th Avenue SE.

22 7. Attached as Exhibit 5 is a true and correct copy of a document titled "Right of Way
 23 and Track Map, Northern Pacific Ry., Seattle Div. – Snoqualmie Br., Woodinville to Sallal,
 24 Wash.," originally dated 1917, with subsequent annotations. The "Schedule of Properties" within
 25 this document shows that a predecessor of BNSF Railway Co obtained the portion of the Corridor

1 later crossed by SE 33rd Street as a land grant from the United States through an act of Congress
2 dated March 3, 1875.

3 8. Attached as Exhibit 6 is a true and correct copy of an easement from Burlington
4 Northern Railroad Company to King County granting a public crossing easement at the area now
5 known as 206th Ave SE, dated June 15, 1992.

6 9. Attached as Exhibit 7 is a true and correct copy of an easement from Burlington
7 Northern, Inc. to King County granting a public crossing easement at the area now known as SE
8 33rd Street, dated June 27, 1972.

9
10 I declare under penalty of perjury of the laws of the United States that the foregoing is
11 true and correct.

12 DATED this 23rd day of June, 2017 at Seattle, Washington.

13
14 
15 Robert Nunnenkamp
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24
25

CERTIFICATE OF SERVICE

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:

David A. Linehan
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David@KenyonDisend.com
*Attorneys for Defendant
City of Sammamish*

DATED: June 26, 2017

s/ David I. Freeburg
David I. Freeburg

**(Video Recording Submitted to the
Clerk of the Court for Filing)**

EXHIBIT 1

EXHIBIT 2





EXHIBIT 6

Filed For Record At The Request Of

7-1992-010 Parcel 1
206th Avenue SE*Vesta Jane Smith*
King County Real Property DivisionEASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, whose address for purposes of this instrument is 2100 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104, Grantor, for Three Thousand and No/100 Dollars (\$ 3,000.00) to it paid by KING COUNTY, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an EASEMENT for the construction, maintenance, replacement and removal of 206th Avenue Southeast, hereinafter called street, over, upon and across the following described premises, situated in King County, State of Washington, to-wit:

A 60.0 foot wide portion of said Railroad Company's 100.0 foot wide Snowqualmie Branch Line right of way, being 50.0 feet wide on each side of the said Railroad Company's Main Track centerline, situated in Government Lot 2, Section 17, T24N, R6E, Willamette Meridian, in said King County, as shown outlined in red on attached Exhibit "A", which by this reference is made a part thereof.

RESERVING, however, unto the Grantor, 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 limits of the land hereinbefore described, including the right and privilege to use said land for any and all purposes, not inconsistent with the use thereof for purposes.

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

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said ** shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.
3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said street purposes.

EXCISE TAX NOT REQUIRED
King Co. Records Division

By *L. C. [Signature]* Deputy

9206301491

4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said street on said premises.
5. For any encumbrance or interest affecting the described premises as set forth in Sections 2 and 3 hereinabove.
6. For any work performed in the State of Washington, nothing in this agreement is intended to be construed as an indemnification against the sole negligence of the Grantor, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the Grantee specifically and expressly agrees to indemnify the Grantor against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the concurrent negligence of (a) the Grantor or the Grantor's agents or employees, and (b) the Grantee or the Grantee's agents or employees, to the extent of the Grantee's negligence.

For any work performed in the State of Washington, the Grantee specifically and expressly waives any immunity it may have under Washington Industrial Insurance, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties hereto.

For so long as this easement shall survive, all contracts between the Grantee and its contractor, for either the construction herein provided for or maintenance work on the street within any easement area described herein or shown on the exhibit attached hereto, shall require the contractor to protect and hold harmless the Grantor and any other railroad company occupying or using the Grantor's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents; and shall further provide that the contractor shall:

A. Furnish to the Grantor a railroad protective liability policy in the form provided by FHFM 6-6-2-2, or as such form may be hereafter amended or supplanted, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of loss or destruction of or injury or damage to property in any one occurrence, and, subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000.00), for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of or loss or destruction of or injury or damage to property during the policy period. Said insurance policy executed by a corporation qualified to write the same in the State in which the work is to be performed, shall be in the form and substance satisfactory to the Grantor and shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of its property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

B. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in FHFM 6-6-2-2, or as such form may be hereafter

supplanted or amended, and any other pertinent instructions issued by the Federal Highway Administration, Department of Transportation, providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000.00) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance executed by a corporation qualified to write the same in the State in which the work is to be performed, in form and substance satisfactory to the Grantor, shall be delivered to and approved by the Grantor's Regional Chief Engineer prior to the entry upon or use of the Grantor's property by the contractor. This being a potentially perpetual easement, Grantor reserves the right to require higher limits of insurance in the future as may be commercially reasonable at the time.

If the Grantee, its contractor, subcontractors or agents, in the performance of the work herein provided or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the Grantor, such damage or destruction shall be corrected by the Grantee in the event its contractor or the insurance carriers fail to repair or restore the same.

7. The Grantee shall notify the Regional Chief Engineer of the Grantor at least five days prior to entering the Grantor's right of way.
8. The Grantee shall, or shall require its contractor to, notify the Grantor's Regional Chief Engineer a sufficient time in advance whenever the Grantee or its contractor is about to perform work on or adjacent to Grantor's right of way and tracks to enable Grantor to furnish flagging and such other protective service as might be necessary and Grantee shall reimburse Grantor for the cost thereof
9. All construction, maintenance and improvements of said street shall be done at no expense to the Grantor.
10. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
11. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said BURLINGTON NORTHERN RAILROAD COMPANY has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the 15th day of June, 1992.

BURLINGTON NORTHERN
RAILROAD COMPANY

BY

D. P. Schneider
D. P. Schneider, Director
Title Services & Field Support

ATTEST:

BY

Victoria H. Vasquez
Victoria H. Vasquez
Assistant Secretary

STATE OF TEXAS)

) ss.

COUNTY OF TARRANT)

On this 15th day of June, 1992, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Victoria H. Vasquez, to me known to be the Director - Title Services & Field Support, and Assistant Secretary, respectively, of Burlington Northern Railroad Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

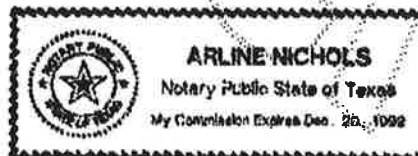
Witness my hand and official seal hereto affixed the day and year first above written.

Arline Nichols
Notary Public in and for the State of Texas

Residing at: Ft. Worth, TX.

My appointment expires: December 20, 1992

BN 8868 Issaquah, WA



TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said BURLINGTON NORTHERN RAILROAD COMPANY has caused this instrument to be signed by its authorized officers, and the corporate seal affixed on the _____ day of _____, 19____.

BURLINGTON NORTHERN
RAILROAD COMPANY

ACCEPTED:
KING COUNTY

BY

Jesus Sanchez
Title
JESUS SANCHEZ For
KING COUNTY EXECUTIVE

BY

J. H. Ilkka
Director - Title Services

ATTEST:

BY

Title

BY

Anita D. Wells
Assistant Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Ilkka and Anita D. Wells, to me known to be the Director - Title Services, and Assistant Secretary, respectively, of Burlington Northern Railroad Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

Notary Public in and for the State of Washington

Residing at: _____ Seattle, Washington

My appointment expires: _____ January 9, 1993

BN 8868 Issaquah, WA

9206301491

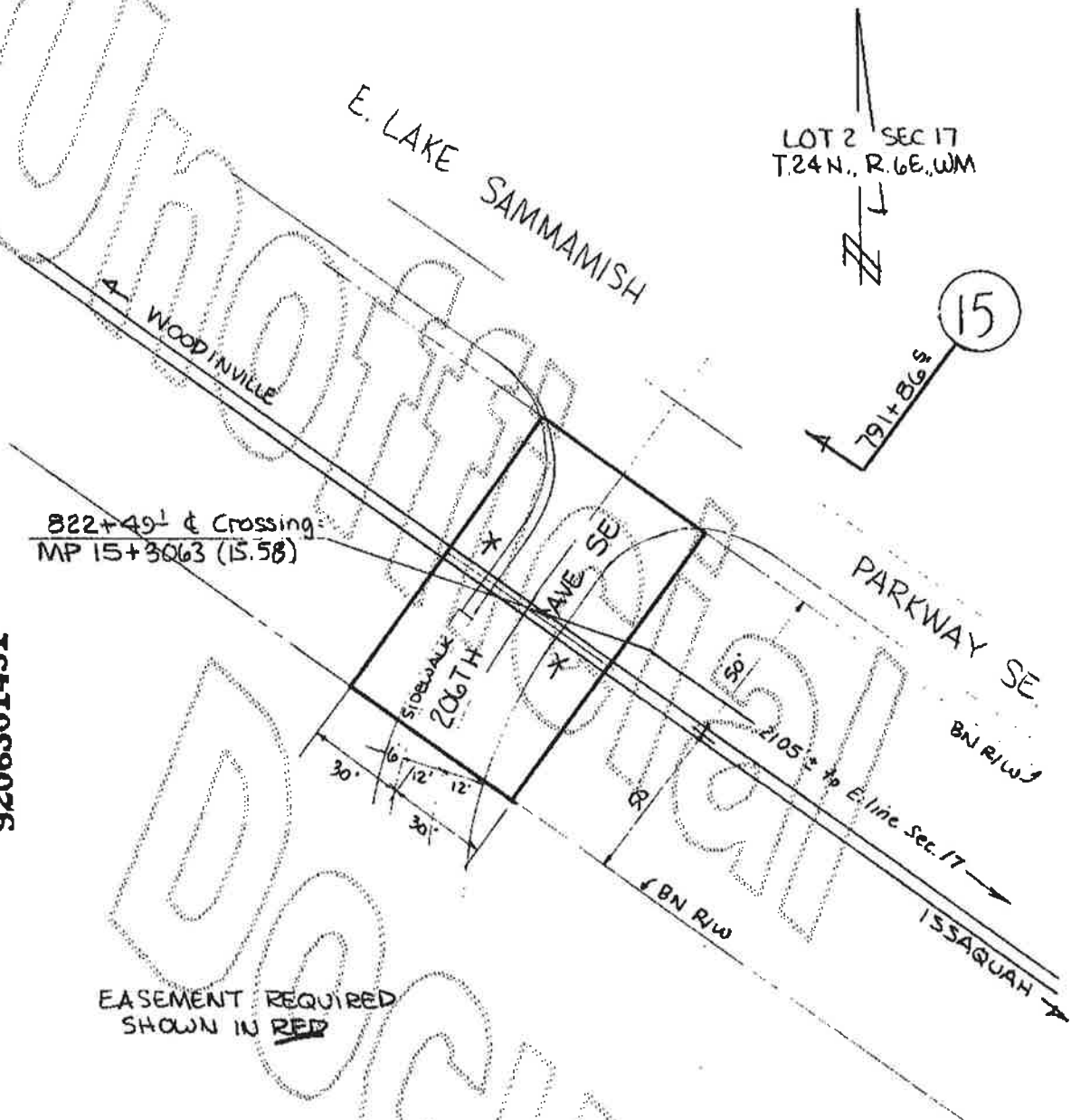


EXHIBIT A
BN RAILROAD CO
SEATTLE REGION - WOODINVILLE - ISSAQUAH
EASEMENT REQUIRED FOR
206TH AVE. SE. (ALEXANDERS
ON THE LAKE (MP 15.58)
ISSAQUAH, WA.

SCALE 1"=40'
CHIEF ENGINEER, REGION - SEATTLE 7-16-86

JMC

EXHIBIT 7

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	8/1/17
To	RON	From	SHARPA
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

By

King County Executive

Attest:

Manager, Property & Purchasing

BURLINGTON NORTHERN INC.

By

Vice President

Attest:

Secret

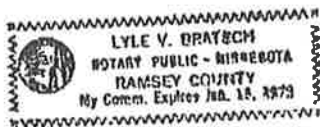
STATE OF MINNESOTA

County of Ramsey

ss

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

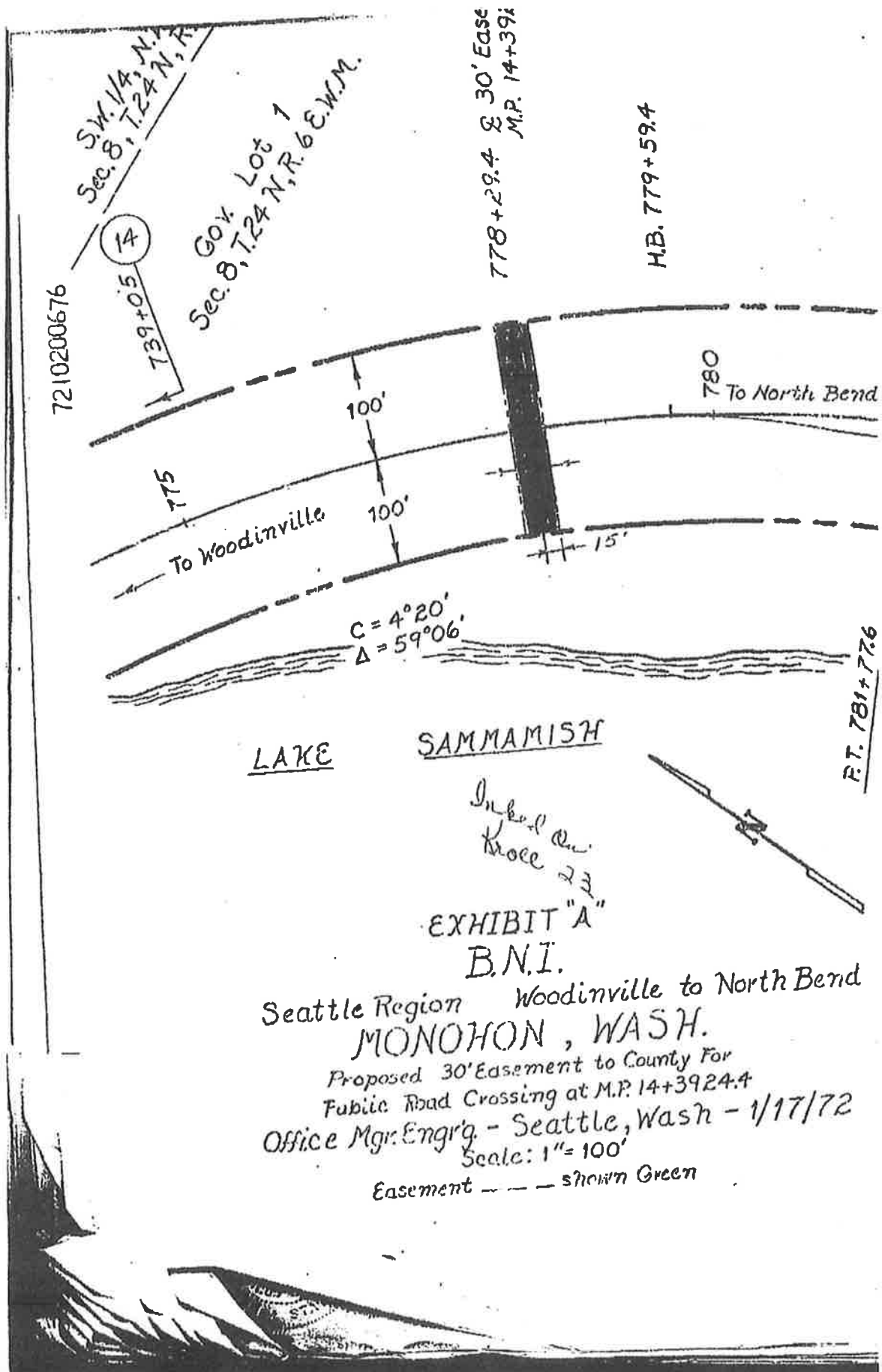


Exhibit H

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiffs,

v.

CITY OF SAMMAMISH,

Defendant.

No. 2:17-cv-00921-JCC

**DECLARATION OF BILL
SCHULTHEISS IN SUPPORT OF
PLAINTIFF KING COUNTY'S
MOTION FOR PRELIMINARY
INJUNCTION**

Bill Schultheiss states and declares as follows:

1. I am the Vice President of and a Principal Engineer at Toole Design Group (TDG). I am also one of the primary authors of the 2012 edition of the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities (AASHTO Bike Guide). Since January 2005, I have served on the National Committee for Uniform Traffic Control Devices. This organization proposes content and advises the Federal Highway Administration (FHWA) regarding traffic control devices and practices that are incorporated in the Manual on Uniform Traffic Control Devices (MUTCD). I am over eighteen years of age, competent to testify and submit this declaration based upon personal knowledge. My resume is attached as **Exhibit 1.**

DECLARATION OF BILL SCHULTHEISS IN SUPPORT OF
PLAINTIFF KING COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION – Page 1
No. 2:17-cv-00921-JCC

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) (296-8820 Fax (206) 296-8819

1 2. King County asked TDG to evaluate the proposed design for the intersection of the
2 East Lake Sammamish Trail (ELST) and 206th Avenue SE to determine compliance with applicable
3 safety standards and guidelines. My January 26, 2016 memorandum providing my opinions on these
4 topics is attached as **Exhibit 2**. King County also asked TDG to study estimated bicycle volumes
5 on the ELST using the most current methodology available. My May 19, 2016 memorandum on
6 this topic is attached as **Exhibit 3**.

7 3. When evaluating whether the ELST or a roadway that crosses ELST gets priority –
8 or put another way, which gets the right-of-way – there are a number of considerations that must be
9 taken into account. The standards and guidelines for determining right-of-way are outlined in traffic
10 control principles as set forth in the MUTCD and the AASHTO Bike Guide and applicable state
11 laws.

12 4. Under RCW 46.61.235, bicyclists are provided the same rights as pedestrians in
13 crosswalks, whether they are marked or unmarked. Pedestrians and bicyclists have the right-of-way
14 in crosswalks, whether marked or unmarked, if they are within the crosswalk as motorists approach.

15 5. Under traffic control principles, the right-of-way should ordinarily be assigned to the
16 higher volume facility. This is to ensure that any traffic control device implemented commands
17 respect from the road user. The ELST is projected to have a volume of up to 300 - 400 users (150 -
18 200 bicyclists) per hour during peak periods. and SE 206th is expected to have a volume of 10 motor
19 vehicles per hour during peak periods. Under these circumstances, if a stop sign were posted facing
20 the ELST users and there were only a few cars on the cross street, the lack of traffic on the cross
21 street will result in the vast majority of bicyclists ignoring the stop sign. This behavior was
22 confirmed in a study of the Burke Gilman Trail, and was discuss in my January 26, 2016
23 memorandum providing my opinions on these topics is attached as **Exhibit 2**. This behavior results
24 in an unsafe intersection and increases the likelihood of accidents and injuries. A loss of respect for
25

1 traffic control devices would also increase the likelihood of accidents and injuries elsewhere along
2 the ELST.

3 6. The City of Sammamish has argued that a stop sign must face the ELST users because
4 a) cars present a significant danger to pedestrians and bicyclists, b) all streets and driveways have a
5 higher priority than all trails (shared use paths) in the transportation system, c) motorists will not
6 have sufficient space to stop after they turn from East Lake Sammamish Parkway. This claim is
7 unsupported, as shown in the Parametrix Technical Memorandum Dated November 7, 2014, which
8 I reviewed as part of my work. Under the MUTCD standards, roads do not automatically have a
9 higher priority than shared use paths. AASHTO at 5-33. The ELST is a significant component of
10 the regional transportation system, whereas the street is effectively a cul-de-sac driveway serving 15
11 homes. The distance between the ELST and East Lake Sammamish Parkway is sufficient to allow
12 turning motorist from the Parkway time to recognize trail users at the crossing and to stop in
13 accordance with RCW 46.61.235.

14 7. In my professional engineering judgment, the City's proposed intersection design is
15 unsafe and not consistent with applicable safety standards.

16
17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct.

19 DATED this 26 day of June, 2017.

20
21 

22 Bill Schultheiss
23
24
25

CERTIFICATE OF SERVICE

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:

David A. Linehan
Michael R. Kenyon
Kim Adams Pratt
Kenyon Disend, PLLC
11 Front Sreet South
Issaquah, WA 98027-3820
David@KenyonDisend.com
Mike@KenyonDisend.com
David@KenyonDisend.com
*Attorneys for Defendant
City of Sammamish*

DATED: June 26, 2017

s/ David I. Freeburg
David I. Freeburg

DECLARATION OF BILL SCHULTHEISS IN SUPPORT OF
PLAINTIFF KING COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION – Page 4
No. 2:17-cv-00921-JCC

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) (296-8820 Fax (206) 296-8819

EXHIBIT 1

William Schultheiss, P.E.

Principal Engineer



Bill Schultheiss has a broad civil engineering background relating to many facets of engineering planning, design, and construction administration. Bill serves as lead technical engineer or principal-in-charge for all of Toole Design Group's (TDG) Complete Streets and sustainable safety projects. He has personally overseen and designed the retrofit of over 250 miles of urban streets to improve their multimodal capacity and safety in support of community livability, economic, safety, and mobility goals. Retrofits have incorporated road diets, lane narrowing, bike lanes, cycle tracks, medians, improved sidewalks, turn lanes, transit stop improvements, and various traffic calming treatments. Bill regularly negotiates the interpretation of guidelines and research with public agency professionals for retrofit projects to build support for Complete Streets treatments. Bill frequently leads public meetings, stakeholder workshops, and charrettes to educate and build support for his client's planning and design efforts.

Selected Project Experience

- **Capital City Bikeway and Jackson Street Reconstruction, Saint Paul, MN**
As Principal-in-Charge, Bill oversaw the redesign of Jackson Street and the development of the separated bike lanes that comprise the Capital City Bikeway. Project responsibilities included providing technical assistance to resolve project challenges, such as protected intersection design, ADA design, conflict management, and conformance to federal and state guidelines. Bill led design review meetings with City Staff to build support for design treatments. Bill also provided peer review at each deliverable stage of the project. The project is currently under construction.
- **North Lynn Street Esplanade, Arlington, VA**
As Senior Engineer, Bill established a conceptual design to improve pedestrian and bicyclist safety along North Lynn Street at intersections with limited access roadway ramps. The design modified curb lines, widened sidewalks, adjusted traffic operations at intersections, and improved sight lines and signage to increase pedestrian safety at two key intersections with a history of crashes. Throughout the development of construction documents, Bill provided final design oversight and at key points supported the development of successful design exception requests to the Virginia State Department of Transportation.
- **2017 AASHTO Guide for the Development of Bicycle Facilities, Washington, DC**
Under contract with the National Cooperative Highway Research Program (NCHRP), Bill is serving as the Principal Investigator for the 2017 edition of the Guide. He is responsible for coordination with the panel and stakeholders, team management, content development, and quality control. The project includes extensive literature review and best practice research. Anticipated updates to the Guide will include guidance for choosing bicycle facilities to accommodate all ages and abilities, guidance for working in constrained corridors, separated bike lane design, bicycle signal operation, bicycle boulevards, intersection operations, and bicycle share station placement, as well as an overhaul of the guide's organization and graphics. The project will be completed in 2018.

Professional Highlights

- Toole Design Group: 2003-Present
- Earth Tech, Inc: 1999-2002
- SEA Consultants: 1998-1999
- Anderson Nichols & Co. Inc.: 1996-98

Education/Certification

- Bachelor of Science, Civil Engineering, Northeastern University: 1998
- Professional Engineer: AZ, CO, DC, FL, GA, IL, KY, MA, MD, MN, MO, NC, OH, SC, TN, TX, VA, WA, WI

Instructor

- AASHTO Bicycle and Pedestrian Guide Training
- NACTO Urban Street and Bikeway Guide Certified Instructor
- National Center for Safe Routes to School Certified Instructor
- Complete Streets
- History of North American Roadway Design Practices
- Sustainable Safety/Vision Zero
- Traffic Calming

Appointments/Affiliations

- National Committee on Uniform Traffic Control Devices-Bicycle Subcommittee and Pedestrian Taskforce
- Institute of Traffic Engineers
- Association of Pedestrian and Bicycle Professionals

Other Transportation Projects

- **MassDOT Separated Bike Lane Design Guide**, Boston, MA
Bill served as a technical author for the 2015 *Separated Bike Lane Planning and Design Guide*. Bill performed a comprehensive review of guidance, research, and best practices from international and North American resources to identify strategies for retrofitting existing streets to include separated bike lanes. Bill developed language and graphics to support planning, geometric, operations, maintenance, and safety content in the guide for street level, sidewalk level, and intermediate level separated bike lanes. Design criteria was proposed for separation strategies, sight line requirements, driveway crossings, pedestrian crossings, ramp design, intersection design, drainage, surface materials, and signal phasing approaches.
- **Maryland Avenue Corridor Design**, Washington, DC
As Project Manager, and lead design engineer, Bill has developed conceptual design alternatives to improve multimodal safety of the roadway. The alternatives provided options for multi-leg intersection geometric improvements, green street drainage improvements, and a potential road diet. The preferred design selected was the road diet option which adds left turn lanes, reconfigures intersections, relocates bus stops, and adds bicycle lanes. The project is now in final design by another consultant.
- **On-Call Bikeway Design**, Boston, MA
Bill serves as senior engineer for the development of conceptual and final designs for over 100 miles of bike lanes in addition to 19 cycle tracks including Boylston Street, Malcolm X Boulevard, Summer Street, and the perimeter roadways of the Public Gardens. Bill assists with the development of concept drawings, design memorandums, and meetings with the agency staff and the public. He provides Quality Assurance/Quality Control (QA/QC) review of all construction drawings. The designs required assessments of left and right side placement, one-way versus two-way operation, political feasibility, parking, driveway and intersection conflicts, transit and pedestrian interactions, and analysis of bicyclist safety.
- **Complete Streets Guide**, Boston, MA
Bill was responsible for developing the City of Boston's new minimum lane width policy based upon current research and best practices. Bill led discussions with City Staff and oversaw the development of key aspects of the guide including Accessible Pedestrian Signal guidance, signal timing considerations, curb ramp design, and bicycle facility design.
- **Westlake Cycle Track**, Seattle, WA
Bill served as technical advisor for the design and evaluation of protected bike lane alternatives along the Westlake Corridor in South Lake Union. He was the technical resource for the design team overseeing development of design criteria, alignment concepts, multimodal safety assessment, and intersection design. Bill played a leading role explaining the project at public meetings and key agency review meetings leading presentations and answering questions.

Other Representative Projects

Specific Projects (2011-2016)

- Seattle Vision Zero, Seattle, WA
- Boston Vision Zero, Boston, WA
- Denver Vision Zero, Denver, WA
- C Street Corridor Study, Washington, DC
- Protected Bike Lane Training, Portland OR
- 14th Street Protected Bike Lane Design, Denver, CO
- Governor's Island Shared Use Path Safety Assessment, New York City, NY
- Brighton Boulevard Conceptual Design, Denver, CO
- Achieving Multimodal Networks, Applying Design Flexibility & Reducing Conflicts Report, FHWA

EXHIBIT 2



Memorandum

To: Barbara Flemming, Senior Deputy Prosecuting Attorney
From: Bill Schultheiss, P.E. (WA. P.E. #46108)
Date: January 26, 2016
Re: East Lake Sammamish Trail Best Practice Discussion for assignment of right-of-way at crossings and a review of Engineers report for crossing at 206th Avenue SE

King County has asked Toole Design Group (TDG) to evaluate the assignment of right-of-way approach for a proposed shared use path (named the East Lake Sammamish Trail) as currently designed. As a key segment of the King County regional shared use path network (similar to the Burke Gilman Trail and I-90 Trail) it can reasonably be anticipated the trail will often be very busy and serve a wide range of users, including bicyclists, walkers, joggers, skaters and persons using wheelchairs. Preliminary estimates project upwards of 300 people per hour to use the trail on Saturdays and Sundays throughout the summer months. King County is interested in constructing a trail and applying traffic control devices that meet current design standards and best practices, anticipates growing use, and can handle projected future demands while providing a safe operating environment for all trail users. The trail construction is funded with a combination of Local, State, and Federal funding.

This memorandum describes requirements and best practices for right-of-way assignment at trail/roadway crossings and reviews a proposed crossing design at 206th Avenue SE. There are two primary categories of trail crossings. The first type of crossing is where the trail crosses at least one street at an intersection of two or more streets (a sidepath crossing). The second type of trail/roadway crossing is where a trail crosses one street or one path (a mid-block crossing, typically at least 30 to 50 feet from another intersection).

Considerations of Applicable Laws

Under Washington State Law, bicyclists are provided the rights as pedestrians within crosswalks, regardless of whether the crosswalk is marked or unmarked (RCW 46.61.235). Bicyclists are also considered operators of vehicles when riding a bicycle upon a roadway (RCW 46.61.755).

Traffic Control Principles

In general, right-of-way should always be assigned to the higher volume facility to ensure users respect the traffic control device. The Manual on Uniform Traffic Control Devices (MUTCD) standards and guidance are developed in accordance with these core principles from Section 1A.02:

- A. Fulfill a need;
- B. Command attention;
- C. Convey a clear, simple meaning;
- ★ D. Command respect from road users; and
- E. Give adequate time for proper response.

Of critical importance is the concept the traffic control device must command respect from road users or it will fail to provide the safety benefits intended. Research has proven the application of traffic controls which do not command the respect of the user will not be adhered to creating unsafe conditions and excessive burdens on law enforcement.

Determining Priority Assignment

The following is taken directly from the AASHTO Bike Guide and provides guidance for subsequent recommendations. The term intersection includes intersections with streets, and other paths. Likewise the term “roadway” in this context could apply to other intersecting paths. Driveways are a special circumstance where the path should generally always be assigned the right-of-way with restrictive control applied to the driveway. An exception would be a high volume, commercial driveway that functions more similarly to a street.

In conventional roadway intersection design, right of way is assigned to the higher volume and/or higher speed approach. In the case of a path–roadway intersection, user volumes on the path should be considered. While in many cases roadways will have greater volumes, user volumes on popular paths sometimes exceed traffic volumes on minor crossed streets. In such situations, total user delay may be minimized if roadway traffic yields to path traffic, and given bicyclists’ reluctance to lose momentum, such an operating pattern often develops spontaneously. In such situations, “YIELD” or “STOP” control is more appropriately applied on the roadway approaches (page 5-33).

Further, the Guide recommends the application of the least control necessary to maintain user respect for the traffic control and to improve safety.

Application of intersection controls (“YIELD” signs, “STOP” signs, or traffic signals) should follow 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.

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 path–roadway intersections is well documented. Bicyclists tend to operate as though there are “YIELD” signs at these locations: they slow down as they approach the intersection, look for oncoming traffic, and proceed with the crossing if it is safe to do so. “YIELD” control (either for vehicular traffic on the roadway or for users on the pathway) can therefore be an effective solution at some mid-block crossings, as it encourages caution without being overly restrictive.

Intersection controls often stop path users, even when stopping might be unnecessary or inappropriate. 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 where truly needed. Therefore, the least restrictive control that is effective should be used (MUTCD 2009, Sec. 2B.06). For example, the 2009 MUTCD recommends that “STOP signs should not be used where YIELD signs would be acceptable” (MUTCD 2009, Sec. 9B.03). This was proven in a local study of the Burke Gilman Trail where stop signs were posted for trail users instead of being applied to the lower volume streets and driveways the trail crossed. The lack of traffic on the cross streets and driveways breeds disrespect for the stop sign by bicyclists degrading compliance to almost zero – the study documented fewer than three percent of bicyclists complied with the stop signs (May 16, 2005

Transpo Memo to King County). This is why when priority is assigned, the least restrictive control that is appropriate should be placed on the lower priority approaches.

The following, which is taken directly from the 2009 MUTCD, provides direction on when it is appropriate to assign right-of-way to a shared use path:

“When placement of STOP or YIELD signs is considered, priority at a shared use path and roadway intersection should be assigned with consideration of the following:

- Relative speeds of shared use path and roadway users,
- Relative volumes of shared use path and roadway traffic, and
- Relative importance of shared use path and roadway.

Speed should not be the sole factor used to determine priority, as it is sometimes appropriate to give priority to a high volume shared use path crossing a low volume street, or to a regional shared use path crossing a minor collector street.” (MUTCD 2009, Sec. 9B.03)

Once priority has been assigned, the least restrictive control that is appropriate should be placed on the lower priority approaches. STOP signs should not be used where YIELD signs would be acceptable. The acceptability of YIELD signs depends primarily on sight distance, which should be evaluated through an engineering study using standard engineering practices for such a study. Appropriate warning signs and markings should be placed on the trail and roadway.

Assessment of Proposed Traffic Control Design at 206th Avenue SE

The design engineer (Parametrix) projects peak hour traffic as being approximately 10 motor vehicle crossings per hour onto 206th Avenue SE and approximately 400 trail users per hour (50% bicyclists) on the Trail. 206th Avenue SE is a local, dead-end street. The East Lake Sammamish Trail is a regionally significant trail that is equivalent to an arterial roadway in transportation importance for bicycling. Typical traffic control options at a trail crossing for these conditions would include:

- An uncontrolled crossing for both approaches
- Yield control applied to 206th Avenue SE
- Stop control applied to 206th Avenue SE

These treatments may also be supplemented by:

- marked crosswalk (currently present)
- trail warning signs (W11-15) (currently present in form of separate W11-1 and W11-2 signs)
- raised trail crossing

The decision for which type of control is based on the available sight distance which has been evaluated by the design engineer. The construction of the developments “gateway” features including the walls, signs, fences and some trees obstruct the view between approaching trail users and crossing motorists who are approaching from the south (from the residences). Recommendations for removing the sight distance obstructions were provided. If these objects can be removed, an uncontrolled (both approaches) or yield control (applied to 206th Avenue SE) is recommended. If they cannot be removed, stop control should be provided to 206th Avenue SE.

EXHIBIT 3



Memorandum

To: Barbara Flemming, Senior Deputy Prosecuting Attorney

From: Bill Schultheiss, P.E. (WA. P.E. #46108)
Rebecca Sanders, PhD, Lisa Enns

Date: May 19, 2016

Re: East Lake Sammamish Trail Demand Analyses

King County has asked Toole Design Group (TDG) to estimate bicycle volumes on the East Lake Sammamish Trail, a significant link in the King County Trail network. The King County trail network is an important component of the overall transportation network, connecting major population and employment centers via safe, comfortable off-street facilities. In addition to transportation, the benefits of trail facilities include increasing public health and wellness and boosting the economy.

The East Lake Sammamish Trail (ELST) will be a key part of King County's regional trail network, shown in Figure 1. The ELST runs along the east side of Lake Sammamish for approximately 11 miles, connecting Issaquah and Redmond through Sammamish. Both Issaquah and Redmond's comprehensive plans call for concentrating growth and development in mixed use centers and offering multiple options for transportation. The ELST will directly connect these cities via a flat, paved, high quality trail that provides a safe and comfortable alternative to riding on roadways. The ELST will provide transportation and recreational opportunities for residents in Sammamish, Issaquah, Redmond, and the surrounding region. In addition to connecting the adjacent communities, the trail will be a vital link in the 44-mile regional trail corridor, linking Puget Sound to east King County and the Cascade Foothills.

The demand analysis presented in this document aims to provide the project team with a means to inform the overall design of the trail, including width as well as traffic control measures that will ensure a safe user experience.

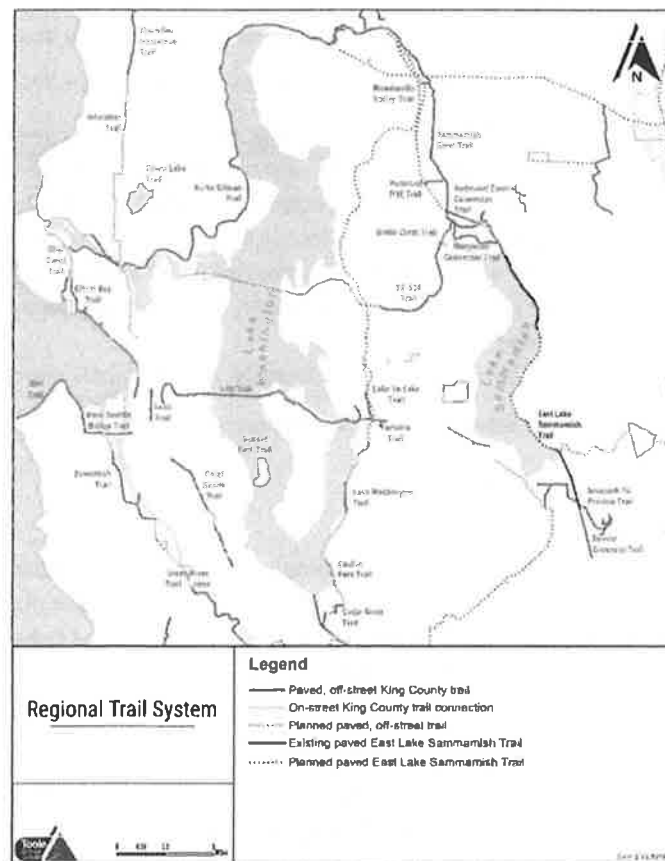


Figure 1 - King County Regional Trail System

Direct Demand Model

In the past few years, the quality of data available for bicycling on trails in King County has increased. Several permanent trail counters were installed by the Seattle Department of Transportation (SDOT) in 2014, and the Washington Department of Transportation (WSDOT) installed permanent counters in several locations approximately a year ago. The additional data allows for the use of a more sophisticated trail estimate methodology than was previously available. The National Cooperative Highway Research Program's (NCHRP) Report 770¹, *Estimating Bicycling and Walking for Planning and Project Development: A Guidebook*, was consulted to select the best method for this analysis. NCHRP Report 770 is the result of a multi-year research effort that developed improved methods for estimating bicycling and walking for planning and project development purposes. Some of the methods only account for commute trips, so a direct demand model, which accounts for all trip purposes (including recreational use), was chosen for this analysis. This model is one of the most widely used tools to predict bicycle and pedestrian volumes. This process uses characteristics of the built environment and existing trail counts to provide an estimate of volumes on a new facility. The direct demand model only takes into account bicycle volumes. Pedestrian volumes are factored into the estimate via a mode split analysis based on similar trails.

The direct demand model recommended in NCHRP Report 770 follows this six-step process to estimate trail volumes:

1. Gather data from seven existing, permanent trail counters.
2. Create a "catchment area" around the permanent trail counters.
3. Summarize land use characteristics within the catchment area.
4. Analyze trail characteristics, such as elevation gain and connectivity.
5. Explore models including factors gathered in steps 3 and 4 to determine which factors influence trail usage.
6. Apply factors discovered in step 5 to surrounding land use and trail characteristics of the proposed East Lake Sammamish Trail.
7. Estimate pedestrian/bicycle mode split and apply pedestrian adjustment to calculate total trail volumes.

The following sections explain how estimated trail volumes were developed following this process.

1. Bicycle Counts

The first step in a direct demand model is to gather existing bicycle volumes. The Seattle Department of Transportation has 12 permanent bicycle counters that gather bicycle volumes continuously. This data is available from the City's website summarized by hour. We selected only off-street, paved trail count locations, similar to the proposed East Lake Sammamish trail. An entire year of data from 2014 was selected to include in the analysis from these counters:

- Elliott Bay Trail at Myrtle Edwards Park
- Burke-Gilman Trail at NE 70th
- Mountains to Sound Trail west of the I-90 Bridge
- Chief Sealth trail at S Thistle St

¹ Transportation Research Board, NCHRP Report 770, "Estimating Bicycling and Walking for Planning and Project Development: A Guidebook," Research sponsored by the American Association of State Highway and Transportation Officials (AASHTO) in cooperation with the Federal highway Administration, Final Report, 2014

The Washington Department of Transportation (WSDOT) has also begun installing permanent counters along trails. WSDOT counters used in this analysis were:

- I-90 trail at SE 34th St
- SR 520 trail at NE 24th St
- Sammamish River trail at Redmond City Hall

Two of the WSDOT counters have been running for at least a year, allowing us to select a year's worth of data from May 1, 2015, to April 30, 2016, with the exception of the Sammamish River Trail, which did not have data points for May or June. Using the Federal Highway Administration's Traffic Monitoring Guide methodology outlined in Chapter 4, "Traffic Monitoring for Non-Motorized Traffic," the missing May and June volumes were extrapolated to complete the Sammamish River Trail data set.

King County also provided data from two recently installed counters along the East Lake Sammamish Trail. Location #1 is on the East Lake Sammamish Trail just south of the intersection with the Marymoor Connector Trail in Redmond, and location #2 is on the East Lake Sammamish Trail just north of the intersection with the Issaquah-Preston Trail in Issaquah. These counters provide continuous data in the same manner as the SDOT and WSDOT counters. They were installed in the spring of 2016, thus data is only available from April 8- April 20, 2016. Annual counts were extrapolated from this two week period following the procedures from the Federal Highway Administration's Traffic Monitoring Guide methodology.

The goal of this analysis is to identify the volumes of trail traffic on the ELST at different times of the year, week, and day. To represent the spectrum of volumes expected, six volume metrics were pulled from each counter: annual, peak weekday, peak weekend, average weekday, average weekend, and peak hour. **Since the counts provided by King County were only from the month of April, the peak weekday, peak weekend, and peak hour volumes pulled from the April data are likely slightly lower than actual peak volumes the trail will experience in summer months.** The trail counts provided and national research show that bicycle usage rises in the summer months, resulting in actual peak volumes occurring between May and August which can correspond up to 12% of the annual trail traffic volumes. April data for these two count locations was also used to calculate average weekday and average weekend day volumes. The average data should be very similar to actual averages, as April is a typical month for bicycle ridership.

2. Catchment Area

In order to gather land use characteristics in areas near the trail, a catchment buffer was created. A GIS software analysis tool was used to find all areas of a trail within a 2 mile distance from each trail with a bicycle counter. A 2-mile proximity buffer around the trail was selected based on research which shows bicyclists will go up to a total of 3 miles out of their way to access high quality/low stress bicycle facilities (including bike lanes, bicycle boulevards, low traffic streets, and multi-use paths).² The actual built road and trail network was used to determine the catchment areas which results in the buffer's irregular shapes. Once on the trail, we assumed that a bicyclist would stay on the trail for 2-4 miles.

A future potential counter location was created on the ELST, near 190th PI SE, that is used for trail volume estimates. The catchment area process was then applied to that location. All nine resulting catchment areas are shown in Figure 2.

² Jennifer Dill and John Gliebe, "Understanding and measuring bicycling behavior: a focus on travel time and route choice," Final report OTREC-RR-08-03 prepared for Oregon Transportation Research and Education Consortium (OTREC), December 2008.

The result of this process is a catchment area around each counter location for people who have easy access to the trail, either by bicycle or a short car drive. Some trail users will likely drive or bicycle more than two miles to a trail access point, thus the catchment areas shown are likely conservative estimates that will have the effect of reducing potential trail volume. These users will be more influenced by the quality of the trail, such as connectivity, elevation gain, and other factors described in Section 4.

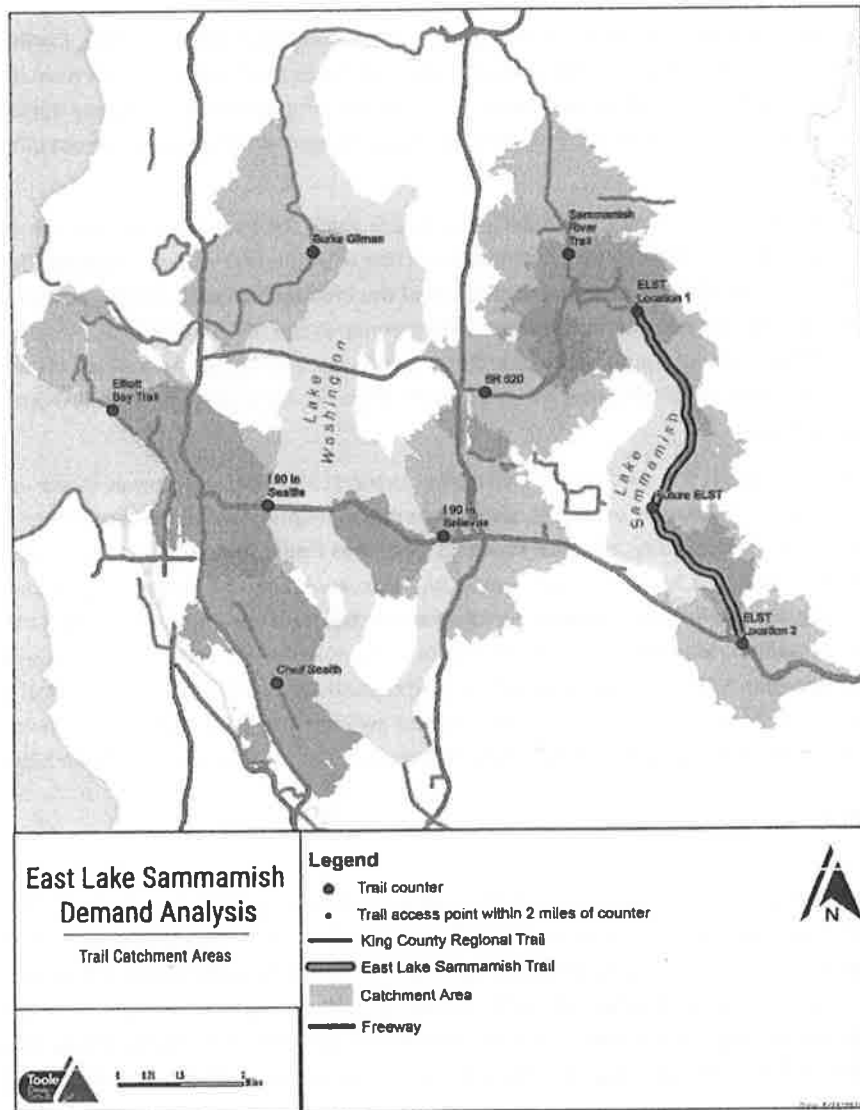


Figure 2: Catchment Areas

3. Land Use Information

The NCHRP Report 770 lists several factors that may influence bicycle use, including population and employment densities, land use mix, facility characteristics, transit availability, and major generators. These factors, along with other readily available factors, were gathered and represent existing conditions and data as provided from the King County data sets. All factors represent current conditions. The following describes each factor considered in this process:

Transit Access

Transit access was calculated by the sum of number of bus trips available per week at each stop in the catchment area, using King County data from the General Transit Feed Specification.

Population

Block groups that intersect the catchment area were selected, and the population calculated. Data is the 2015 estimate from the Office of Financial Management, tabulated by block group. Population density was calculated by dividing the 2015 population by the total land area of the selected block groups.

Employment

Employment values are from the Puget Sound Regional Council, tabulated by census tract. Census tracts that intersect the catchment area were selected, and employment values summed. Employment density was calculated by dividing the total employment by the total land area of the selected census tracts.

Street Network

A connected street network can be a factor in influencing bicycle rates. The number of intersections was summed in each catchment area.

Access Area

The total square mileage of each catchment area was calculated. A larger catchment area means that the trail is easier to access.

College Enrollment

Colleges are major activity generators for a region. The King County "schsite_point" layer was used to find colleges and universities within each catchment area, and each school's website was used to estimate enrollment.

4. Trail Characteristics

In addition to surrounding land use, characteristics of the trail or facility itself influence bicycle ridership. The trails selected for analysis all have similar characteristics to the future East Lake Sammamish Trail, but there are a few differences that were explored.

Connectivity

Trail connectivity may drive trail use, as bicyclists on longer rides may prefer a connected trail network. Multiple factors were explored as a way to measure connectivity.

Total mileage of King County Regional Trails in the catchment area

King County has a robust regional trail network. Most of the network is off-road, paved trails. However, on-street connections were included in this factor as a measure of connectivity.

Connected miles of paved, off-street trails

Some bicyclists may prefer to ride their entire route along paved, off-street trails. The total connected miles of paved, off-street trail was summed for each trail location.

Paved, off-street trail extension past the catchment area

An additional measure of trail connectivity was also explored in the model; the trail was considered not extended if it did not connect to any other paved trails on either end of the catchment area (such as the Chief Sealth), semi-connected if the trail connected on one end of the catchment area (SR 520 Trail) and very connected if it connected on both ends (Burke Gilman, Sammamish River).

Elevation

Most trails in the King County Trail network have little to no elevation gain. A few, however, have a significant amount of elevation change, which may impact trail usage. Elevation gain was calculated using bicycle directions on Google Maps, divided by the distance of the trail within the catchment area to calculate average elevation gain/mile. The Chief Sealth, 520, and I-90 trails had the most elevation change; the Burke-Gilman, Elliott Bay, and Sammamish River trails had little to no elevation change. The East Lake Sammamish trail will also have little to no elevation change.

Freeway

The 520 and I-90 trails run directly adjacent to a freeway. Noise and stress level of freeway trails may deter some riders. Trails near a freeway were coded as a value of one, and non-freeway trails were given a value of zero.

5. Exploratory Models

The direct demand model attempts to explain observed levels of bicycle activity on facilities as related to surrounding land uses or facility characteristics. Because the explanatory variables act simultaneously to influence demand, we need a way to control for their influence in order to understand how important one variable is in comparison to another. We do this through regression analysis, which allows us to mathematically estimate the influence of each variable compared to all of the other variables. Additionally, we can use the regression outputs to determine how significant each relationship is—that is, how likely it is that the observed relationship is due to a real relationship as opposed to chance. The regression analysis compared estimated demand on the East Lake Sammamish Trail to segments of the larger King County trail system. The first step of a regression analysis is exploratory regression, which entails producing many different models to find out which variables best predict volumes.

During the exploratory phase, we discovered that the Chief Sealth trail had many characteristics that were not typical of the rest of the network. The trail is unconnected and hilly, which was accounted for by the elevation and network connectivity factors. However, the Chief Sealth trail also has a parallel roadway option, which could divert significant traffic from the trail. Due to this factor, the Chief Sealth trail was determined an outlier and removed from the analysis.

After running various models to determine the best fit, the following variables were found to have the highest influence on trail ridership.

- Population density
- College enrollment
- Miles of trail in the catchment area
- Connections to shared-use paths once the trail leaves the catchment area
- Intersection density
- Network length

However, many of these variables are highly correlated³, and therefore cannot coexist in a model without causing problems. For example, population density is highly correlated with both college enrollment and intersection density,

³ We used a correlation value cut-off of 0.6.

meaning that there is enough similarity between population density and the other two variables that the model is unable to attribute accurate values to either intersection density or college enrollment when population density is also included. Additionally, we can assume that when a model includes intersection density or college enrollment, some portion of the explanatory value of those variables is due to population density. However, in both cases, there is something else that made those variables a better fit for the model than just population density. Modeling is as much an art as a science in this way.

Another important aspect of modeling is having enough data points to be able to say something with confidence. Although King County is on the forefront of collecting bicycle volume data, there were only 8 robust data points to work with. While the models we present here are significantly better than not knowing any information at all (i.e., the “null model”), additional count locations would have allowed us to produce a more robust model.

6. Application of Predictive Model

After testing several models in the exploratory phase, final models were selected based on a combination of the highest R squared value (a measure of how much of the variation in bicycle volumes can be explained by the model), the statistical significance of the variables (a measure of how likely it is that the observed relationship is real and not just by chance), and minimal multicollinearity (as explained in Section 5, a correlation value of 0.6 was the cut-off for inclusion in the model). A separate model was built for each volume estimate: annual, peak hour, average weekday, average weekend day, peak weekday, and peak weekend day. Because the models are different, the annual volumes do not automatically match up with the average weekday and average weekend day volumes.

The following regression equations use 2015 and 2016 conditions, meaning that the resulting volumes are an estimate of what trail usage would be if the trail were built today.

Each variable in the model is a land use or trail characteristic described in steps 3 and 4.

Annual

This model estimates the annual trail volume. The model indicates that intersection density, ability to easily access the trail, college enrollment, and network mileage influences the annual volume. Note that this and all other models presented here were based on eight data points. The resulting annual volumes are much lower than expected from the calculation of average weekend and weekday volumes separately, but this is not unexpected, given that each model has some percentage of error, as noted by the R-squared values.

The annual model had an R-squared value of 0.7538, suggesting that the significant variables predict approximately 75% of the variation in annual trail counts from the eight data locations. The model produced the following equation, which can be applied to the ELST fictional point to predict its annual volume:

$$= \exp(9.710414 + 0.0005635 * \text{intersection density} + 0.1153764 * \text{access area} + 0.000024 * \text{college enrollment} + 0.0062116 * \text{network mileage})$$

Poisson (count) models are easier to interpret if we turn the coefficients above into incidence rate ratios (IRRs), which explain the expected change in annual counts due to the effect of each variable, holding all other variables constant in the model. This model produces the following IRRs:

- Intersection density – for a one-unit increase in intersection density, annual counts would be expected to change by a factor of 1.0006 (increase by 0.06%)
- Access Area – for a one-unit increase in square mileage of access area, annual counts would be expected to change by 1.12 (increase by 12%)

- College enrollment – for a one-student increase in college enrollment, annual counts would be expected to just barely change (increase by 0.002%)
- Network mileage – for a one-mile increase in network mileage, annual counts would be expected to change by 1.0062 (increase by 0.62%)
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected annual volume when all other variables are zero would be 16,488.

When the equation was applied to the data, the model predicted an annual volume of 57,945.

Peak Weekday

This model estimates the peak weekday volume of the trail. This model indicates that ability to easily access the trail, college enrollment, and connections to other paved trails influence the peak weekday volume. The peak weekday model had an R-squared value of 0.9103, suggesting that the significant variables predict approximately 91% of the variation in peak weekday trail counts from the eight data locations. The model produced the following equation, which can be applied to the ELST fictional point to predict its peak weekday volume:

$$= \exp(3.559199 + 0.0009682 * \text{intersection density} + 0.1436083 * \text{access area} + 0.4158266 * \text{paved, off-street trail connections} + 0.0000247 * \text{college enrollment})$$

The peak weekday model produced the following IRRs:

- Intersection density – for a one-unit increase in intersection density, peak weekday counts would be expected to change by a factor of 1.0010 (increase by 0.1%)
- Access Area – for a one-unit increase in square mileage of access area, peak weekday volumes would be expected to change by 1.15 (increase by 15%)
- College enrollment – for a one-student increase in college enrollment, peak weekday volumes would be expected to just barely change (increase by 0.002%)
- Network connections – for each additional connection beyond the catchment area to a paved, off-street trail, peak weekday volumes could be expected to change by 1.52 (increase by 52%)
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected peak weekday volumes when all other variables are zero would be 35.

When the equation was applied to the data, the model predicted a peak weekday volume of 269.

Peak Weekend

This model estimates the peak weekend volume of the trail. The model indicates that population density, miles of trail, and connections to other paved trails significantly influence the peak weekend volume. The peak weekend model had an R-squared value of 0.6767, suggesting that the significant variables predict approximately 68% of the variation in peak weekend trail counts from the eight data locations. The model produced the following equation, which can be applied to the ELST fictional point to predict its peak weekend volume:

$$= \exp(5.397286 + 0.0000332 * \text{population density} + 0.0250577 * \text{total mileage of King County Regional Trails in the catchment area} + 1.014041 * \text{paved, off-street trail connections})$$

The peak weekend model produced the following IRRs:

- Population density – for a one-unit increase in population density, peak weekend counts would be expected to change by a factor of 1.0010 (increase by 0.1%)
- Miles of regional trail—for each additional mile of trail in the catchment area, peak weekend volumes could be expected to change by 1.025 (2.5%)
- Network connections – for each additional connection beyond the catchment area to a paved, off-street trail, peak weekend volumes could be expected to change by 2.75 (increase by 175%)
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected peak weekend volumes when all other variables are zero would be 221.

When the equation was applied to the data, the model predicted a peak weekend volume of 2,236.

Peak Hour

This model estimates the peak hour volume of the trail. This model indicates that total mileage of King County Regional Trails in the catchment area, college enrollment and trail connections influence the peak hour volume. The peak hour model had an R-squared value of 0.7505, suggesting that the significant variables predict approximately 75% of the variation in peak hour trail counts from the eight data locations. The model produced the following equation, which can be applied to the ELST fictional point to predict its peak hour volume:

$$= \exp(3.801138 + 0.037278 * \text{total mileage of King County Regional Trails in the catchment area} + 0.0000225 * \text{college enrollment} + 0.6865772 * \text{paved, off-street trail connections})$$

The peak hour model produces the following IRRs:

- Miles of regional trail—for each additional mile of trail in the catchment area, peak hour volumes could be expected to change by 1.038 (3.8%)
- Network connections – for each additional connection beyond the catchment area to a paved, off-street trail, peak hour volumes could be expected to change by 1.99 (increase by 99%)
- College enrollment – for a one-student increase in college enrollment, peak hour volumes would be expected to just barely change (increase by 0.002%)
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected peak hour volumes when all other variables are zero would be 45.

When the equation was applied to the data, the model predicted a peak hour volume of 233.

Average Weekday

This model estimates the average weekday volume of the trail. This model indicates that college enrollment, intersection density, and access area influence the average weekday volume. The average weekday model had an R-squared value of 0.7946, suggesting that the significant variables predict approximately 79% of the variation in average weekday trail counts from the eight data locations. The model produced the following equation, which can be applied to the ELST fictional point to predict its average weekday volume:

$$= \exp(3.745707 + 0.0000255 * \text{college enrollment} + 0.000946 * \text{intersection density} + 0.1115804 * \text{access area})$$

The average weekday model produces the following IRRs:

- College enrollment – for a one-student increase in college enrollment, average weekday volumes would be expected to just barely change (increase by 0.002%)
- Intersection density – for a one-unit increase in intersection density, average weekday counts would be expected to change by a factor of 1.00095 (increase by 0.1%)
- Access Area – for a one-unit increase in square mileage of access area, average weekday volumes would be expected to change by 1.12 (increase by 12%)
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected average weekday volumes when all other variables are zero would be 42.

When the equation was applied to the data, the model predicted an average weekday volume of 113.

Average Weekend Day

This model estimates the average weekend day volume of the trail. The only variable that was found to be statistically significant for the average weekend day volume model was college enrollment. Relatedly, this model had an R-squared value of 0.3705, suggesting that the significant variable only predicts approximately 37% of the variation in average weekend day trail counts from the eight data locations. This model suggests that there is a similar base average weekend day volume for the entire trail system, and high college enrollment increases the base. This model produced the following equation, which can be applied to the ELST fictional point to predict its peak weekday volume:

$$= \exp(6.293539 + 0.000022 * \text{college enrollment})$$

The average weekend day model produces the following IRRs:

- College enrollment – for a one-student increase in college enrollment, average weekend day volumes would be expected to just barely change (increase by 0.002%).
- Constant – This represents the value when all other variables in the model are evaluated at zero. In this case, the expected average weekend day volumes when all other variables are zero would be 541.

When the equation was applied to the data, the model predicted an average weekend day volume of 541.

East Lake Sammamish Volumes

Applying these equations to the factors to the East Lake Sammamish Trail, the resulting volumes are:

Table 1: Estimated trail volumes on the East Lake Sammamish Trail

Annual	Peak Hour	Average Weekday	Average Weekend Day	Peak Weekday	Peak Weekend Day
57945	233	113	541	269	2236

Figure 3 and Figure 4 on pages 13 and 14 show the estimated average weekday and weekend day volumes in comparison to other regional trails.

Future Bicycle Use Estimate

Using the estimates calculated in the direct demand model, we can assume that trail ridership will increase along with population increase in the area. Population forecasts for the area are readily available from the Puget Sound Regional Council. Using data from the Regional Macroeconomic forecast and using 2015 as a base year for comparison, we can calculate the percentage of growth for 5, 10, and 20 years in the future.

Table 2: Expected population change in 5, 10, and 20 years

Year	Expected Percent Population Change (from 2015)
2020	6%
2025	10%
2035	19%

Assuming a linear relationship between expected population growth and trail ridership, the estimated future trail bicyclist volumes are shown in Table 3.

Table 3: Estimated future trail bicycle volumes with static bicycling rates

Year	Annual	Peak Hour	Average Weekday	Average Weekend Day	Peak Weekday	Peak Weekend Day
2015	57945	233	113	541	269	2,236
2020	61422	247	120	573	285	2,370
2025	63740	256	124	595	296	2,460
2035	68955	277	134	644	320	2,661

These volumes assume that the rate of bicycling in the region will remain the same. It is very likely that actual numbers will be much higher, due to the network effect of a completed trail network, as well as increased bicycling rates as Issaquah and Redmond grow denser and encourage land use mixes in their urban growth centers. According to the online Census Explorer, King County's bicycling commute rate has grown from 0.9% in 2000 to 1.5% in 2013, a growth of approximately 0.04% per year. If this growth continues at a linear rate, in addition to the population growth, the future volumes of bicyclists estimated on the East Lake Sammamish Trail are:

Table 4: Estimated future trail bicycle volumes with increasing bicycling rates

Year	Annual	Peak Hour	Average Weekday	Average Weekend Day	Peak Weekday	Peak Weekend Day
2015*	57945	233	113	541	269	2,236
2020	70871	285	138	662	329	2,735
2025	93158	375	182	870	432	3,595
2035	143213	576	279	1337	665	5,526

*A bicycling rate of 1.5% was assumed for 2015.

Again, these numbers may be underestimated because the Census and American Community Survey only ask about commuting habits, and do not take into account any growth in recreational or non-commute bicycling.

Future Bicycle and Pedestrian Use Estimate

The model above only considers bicycle volumes. To estimate trail use including pedestrians, a mode split factor was applied. The mode-split factor was determined by calculating how many users of the trail system, on average, are bicyclists. All trail counts from step 1 which included both pedestrian and bicyclists counts were assessed to identify an average mode split for trails in this region. The average trail mix consisted of 64% bicyclists with 36% pedestrians, thus the mode split factor of 0.64. Applying this factor to Table 3 calculates expected total trail usage with static bicycling rates.

Table 5: Estimated future trail volumes (bicycle and pedestrian) with static bicycling rates

Year	Annual	Peak Hour	Average Weekday	Average Weekend Day	Peak Weekday	Peak Weekend Day
2015	90539	364	177	845	420	3,494
2020	95972	386	188	895	445	3,703
2025	99594	400	194	930	463	3,844
2035	107742	433	209	1,006	500	4,158

If we assume that the level of pedestrian activity will grow in conjunction with increased bicycling activity, we can apply the mode split factor to Table 4 and calculate expected total trail usage with increasing bicycle and pedestrian activity.

Table 6: Estimated future trail volumes (bicycle and pedestrian) with increasing bicycling rates

Year	Annual	Peak Hour	Average Weekday	Average Weekend Day	Peak Weekday	Peak Weekend Day
2015*	90539	364	177	845	420	3,494
2020	110736	445	216	1,034	514	4,273
2025	145559	586	284	1,359	675	5,617
2035	223770	900	436	2,089	1,039	8,634

*A bicycling rate of 1.5% was assumed for 2015.

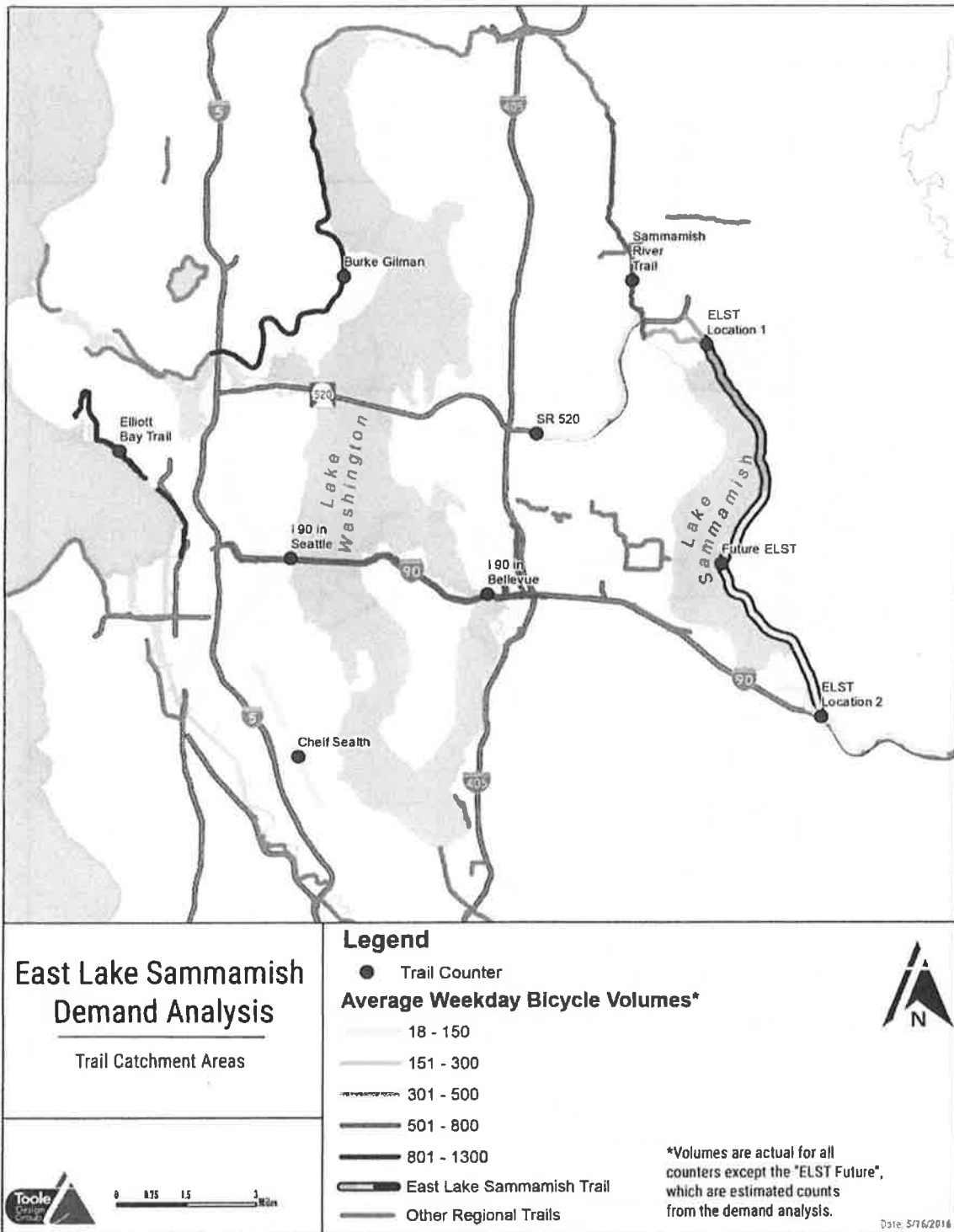


Figure 3: Estimated Average Weekday Bicycle Volumes

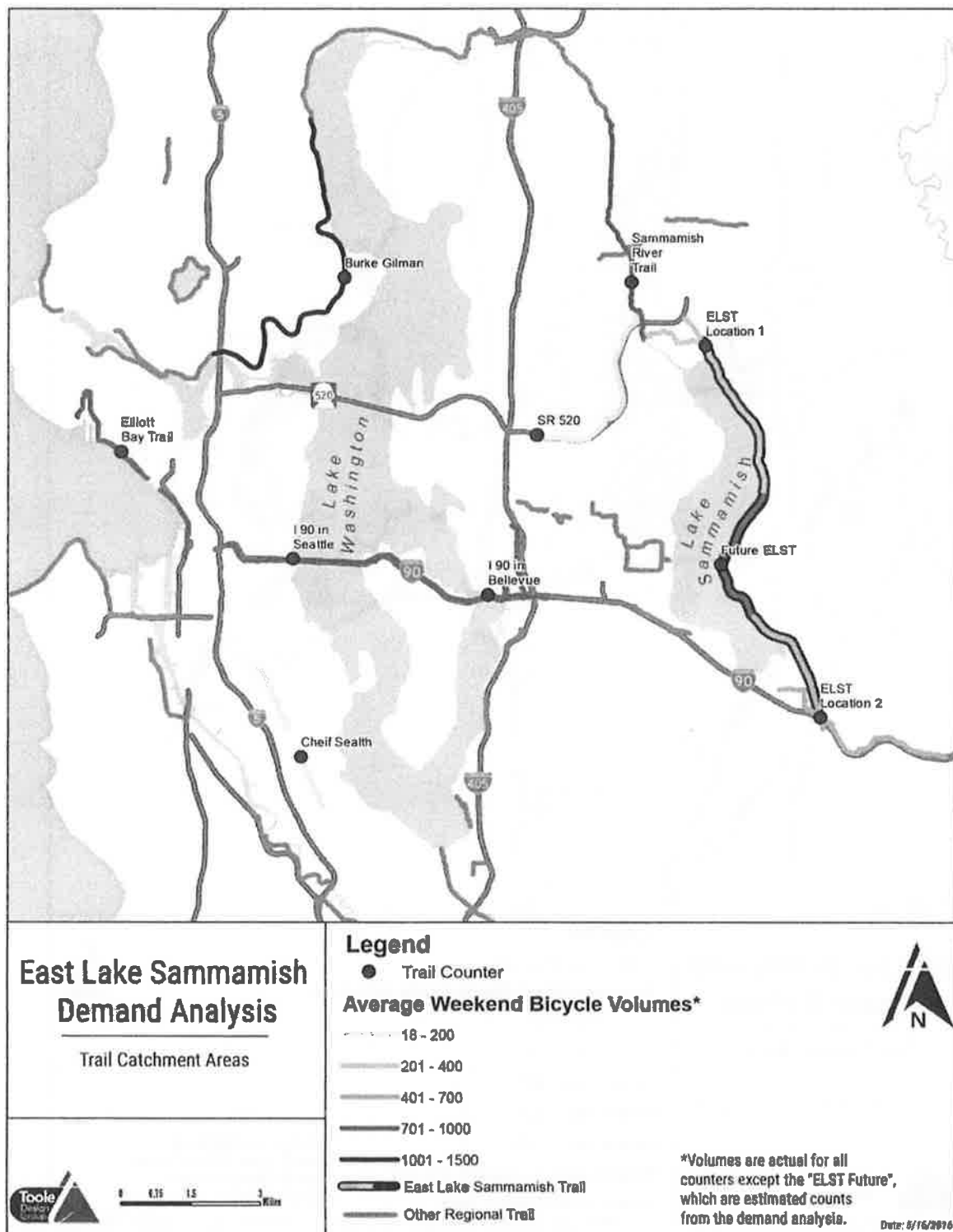


Figure 4: Estimated Average Weekend Bicycle Volumes

Conclusion

The East Lake Sammamish trail will become a critical transportation facility for residents and employees in East King County. As part of the King County Regional trail system, the trail will provide a safe, pleasant non-motorized transportation and recreation option for the entire region. The estimates of volumes of bicyclists that will use this trail are similar to other regional trails, with peak volumes near those of the I-90 trail and the Elliott Bay trail. **Peak hourly volumes should be anticipated to be above 300 users per hour when the trail is complete and grow towards 900 users per hour in the future. As part of the regional trail network, the trail should be designed to anticipate growing use and be able to handle projected future demands while providing a safe operating environment for all users.**

Similar to other transportation projects, it is recommended the 20 year demand projections be considered when planning for the design of a trail facility. Given the anticipated opening day and 20 year volumes, a minimum trail width of at least 12 feet is needed to meet both AASHTO and WSDOT guidelines, as well as King County guidelines for regional trails.⁴ Anything less than 12 feet will compromise safety and the ability to meet projected demand and will likely lead to conflicts between pedestrians and bicyclists during peak periods of travel.

⁴ King County trail guidelines recommend a trail width of at least 12 feet where volumes are anticipated to be greater than 2,000 users a day on peak days (as in the context of estimated user volumes on the ELST).

Exhibit I

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiffs,

v.

CITY OF SAMMAMISH,

Defendant.

No. 2:17-cv-00921-JCC

**DECLARATION OF YAMMIE HO IN
SUPPORT OF PLAINTIFF KING
COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION**

Yammie Ho states and declares as follows:

1. I am a Senior Engineer at Parametrix. I am the design engineer and engineer of record for the East Lake Sammamish Trail (ELST) and have been involved in the project since 2001. I am over eighteen years of age, competent to testify and submit this declaration based upon personal knowledge. My resume is attached as **Exhibit 1**.

2. Parametrix was retained by King County to develop the master plan, design the interim and permanent trail and provide construction management services for the ELST. As part of the work undertaken by Parametrix, I have examined priority and traffic control measures for the ELST intersections with 206th Avenue SE and SE 33rd Street. This analysis included determining traffic volumes for the ELST users and vehicles, assessing the relative priority of the ELST and the roadways, and traffic studies to gauge speed. Through this work we helped ensure that King County

1 selected the safest possible designs for the Intersections, complying with all applicable standards
 2 including the MUTCD, AASHTO, and WSDOT DM. These standards provide principles on areas
 3 including, but not limited to, shared-use design, reported crash experience, sight distances, approach
 4 angles, and speed factors. My November 7, 2014 Technical Memorandum regarding many of these
 5 issues is attached as **Exhibit 2**.

6 3. Using GIS information and aerial photos, I determined that 15 homes use 206th
 7 Avenue SE for access and 46 homes use SE 33rd Street for access. The homeowners that use SE
 8 33rd Street also have two alternative access points. Based on Institute of Transportation Engineers
 9 Trip Generation Manual 9th Edition (2012), 12 daily trips will be generated per each single family
 10 home. This equates to 180 trips per day and 552 trips per day, respectively for the two local roads.

11 4. In response to concerns raised by the City, I conducted additional analysis to
 12 determine daily volumes and vehicle speeds on 206th SE. As part of this analysis, I collected data
 13 on inbound and outbound daily volumes for the 206th Avenue SE intersection by both PM peak
 14 turning movement counts and by 72-hour tube counts. In addition, I confirmed the turning speeds
 15 for inbound and outbound traffic from the East Lake Sammamish Parkway. The traffic count
 16 confirmed that the average daily trips was less than the estimated 180 trips. The speed analysis
 17 confirmed that the majority of southbound traffic on 206th Avenue SE travels at speeds less than 15
 18 mph. My May 20, 2016 Memorandum regarding these issues is attached as **Exhibit 3**.

19 5. The volume of ELST users greatly exceeds expected car volume at these two local
 20 roads. In order to gather more data on expected volumes for the ELST, the County hired the Toole
 21 Design Group to provide estimates of expected trail volumes based on the most current
 22 methodology. This analysis determined that the expected volume of trail users for the paved ELST
 23 is over 3400 per day, and this expected volume will rise to over 5,600 by 2025. The ELST is part
 24 of a regional trail network that provides access to recreation, employment and retail centers in the
 25

1 Cities of Redmond, Sammamish and Issaquah. The trail completes a link in the King County
2 regional trails system.

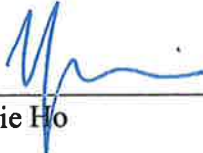
3 6. The two local roads are classified as minor dead end streets, as indicated on the City's
4 Street Classification Map.

5 7. The City of Sammamish has argued that a stop sign must face the ELST users because
6 cars will not have sufficient space to stop after they turn from East Lake Sammamish Parkway. This
7 claim is unsupported, as shown in the Parametrix Technical Memorandum Dated November 7, 2014.
8 Several cars will be able to stop at both intersections given the distance between the ELST and East
9 Lake Sammamish Parkway. A less restrictive control, such as a yield sign (which is preferred under
10 the MUTCD), is not possible at the 206th Avenue SE crossing because of sight line concerns created
11 by a monument near the crossing and the grade of the roadway. For SE 33rd Street, the development
12 of a future parking lot and restroom on the northeast corner of the crossing may cut the sight line for
13 yield control on the driver's approach.

14 8. In my professional engineering judgment, it would be unsafe if the 206th Avenue SE
15 crossing, or the SE 33rd Street crossing, were controlled by a stop sign facing the ELST users instead
16 of the car traffic.

17 I declare under penalty of perjury under the laws of the state of Washington that the foregoing
18 is true and correct.

19 DATED this 26th day of June, 2017, at Seattle, Washington.

20
21 
22 _____
Yammie Ho

CERTIFICATE OF SERVICE

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:

David A. Linehan
Michael R. Kenyon
Kim Adams Pratt
Kenyon Disend, PLLC
11 Front Sreet South
Issaquah, WA 98027-3820
David@KenyonDisend.com
Mike@KenyonDisend.com
David@KenyonDisend.com
*Attorneys for Defendant
City of Sammamish*

DATED: June 26, 2017

s/ David I. Freeburg
David I. Freeburg

DECLARATION OF YAMMIE HO IN SUPPORT OF
PLAINTIFF KING COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION – Page 4
No. 2:17-cv-00921-JCC

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) (296-8820 Fax (206) 296-8819

EXHIBIT 1



YAMMIE HO, PE

Yammie has worked as a lead design engineer for projects that involve intersection widening, sidewalk, non-motorized trails, transit centers, drainage, right-of-way acquisition, railroad crossing, utility coordination, state route corridor study and EIS, municipal park, and wetland and stream impact mitigation. She is familiar with federal funded projects' requirements and was responsible for construction administration services and coordination with WSDOT Local Program, including all documentations as required by the certified local agency. She had completed seven trail PSE and construction projects in the last five years. She is currently active in non-motorized trail design projects, including preparation of plans, specifications, and cost estimate, right-of-way acquisition, and construction services. Her relevant projects include North Creek Non-Motorized Trail, the East Lake Sammamish Trail through the Cities of Redmond, Sammamish and Issaquah, the Bear and Evans Creek Trail and Greenway, Marymoor Park Connector Trail, Lakeview Trail and Lake to Sound Trail project.

19 YEARS
EXPERIENCE

17 YEARS WITH
PARAMETRIX

BS, CIVIL
ENGINEERING, 1998

PROFESSIONAL
ENGINEER - CIVIL,
WA

Certifications

Bachelor of Applied Science – University of British Columbia

Registered Professional Engineer in WA– Civil

Memberships

Washington State Department of Licensing – Professional Engineer

American Public Works Association – Washington Chapter

Relevant Training

2012 AASHTO Guide for the Development of Bicycle Facilities – City of Seattle
Department of Transportation and Washington State ITE

Public Works Construction Project Management – UW Engineering Professional Programs

EXHIBIT 2

TECHNICAL MEMORANDUM

DATE: November 7, 2014
TO: Gina Auld
FROM: Yammie Ho
SUBJECT: Priority Assignment for Trail Crossings
CC: Jenny Bailey
PROJECT NUMBER: 554-1521-075
PROJECT NAME: East Lake Sammamish Master Plan Trail- South Sammamish Segment A

The purpose of this memorandum is to summarize how priority and traffic control measures were assigned for the East Lake Sammamish Trail intersections with 206th Avenue SE and SE 33rd Street. It is my understanding that City of Sammamish staff will review these recommendations in conjunction with the City's permitting authority.

East Lake Sammamish Trail is considered a high priority corridor because it is a regionally significant trail. The volume of trail users could match counts taken on the Burke-Gilman Trail and Sammamish River Trail, ranging from 2,500 to 4,000 trail users per day. By comparison, using the latest GIS information and aerial photos, 15 homes use 206th Avenue SE for access and 46 homes use SE 33rd Street for access. Based on Institute of Transportation Engineers Trip Generation Manual 9th Edition, 2012 (land use code 210-Single Family Detached Housing), 12 daily trips will be generated per each single family home. This equates to 180 trips per day and 552 trips per day, respectively for the two local roads. This potential volume of trail use greatly exceeds the daily vehicular volumes that would be generated by the residences that use these roads for access. As a result, the trail is given priority over the local roads at both intersections.

This assignment of priority means trail users would not have to stop or yield at these intersections. Instead, vehicles yield where sight distances are adequate and vehicles stop where sight distances are limited. This is consistent with the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities, which recommends to "follow 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.

Based on this priority assignment, sight distance triangles are drawn on the site specific plans to check if adequate sight distance triangles can be achieved.

- For 206th Street SE, the adequate sight distance triangles for drivers to yield cannot be achieved unless substantial removals of existing vegetation would be implemented. It is recommended that vehicles stop rather than yield. There is 52 feet between East Lake Sammamish Parkway and the trail, enough space to accommodate a queue of two cars or one car with a boat trailer.
- For SE 33rd Street, the adequate sight distance triangles for drivers to yield can be achieved. However, with the development of a future parking lot on the northeast corner of the crossing, the sight line for

yield control on the driver's approach might not be maintained due to the future restroom building. It is recommended that vehicles stop rather than yield. There is 78 feet between East Lake Sammamish Parkway and the trail, enough space to accommodate a queue of four cars or one car and one car with a boat trailer.

For the City's reference, I have attached documents providing additional details about the assignment of priority and sight distance triangles. Please let me know if you have any questions.

EAST LAKE SAMMAMISH MASTER PLAN TRAIL SIGHT DISTANCE TRIANGLE MEMORANDUM

March 2014

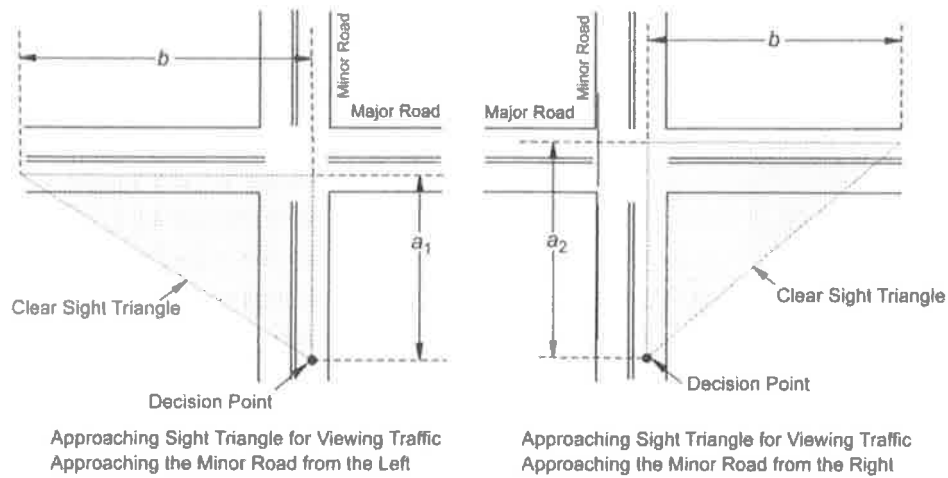
Intersection sight distances and traffic control measures are important design considerations for the 11-mile East Lake Sammamish Trail, which intersects over 60 roads and driveways. The purpose of this document is to summarize how sight distances were evaluated and traffic control assigned for the East Lake Sammamish Trail.

Priority is assigned to the trail. As a result, sight triangles for the East Lake Sammamish Trail are calculated from the perspective of the intersecting vehicle. Vehicle sight distances were sourced from the American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets, 2011* (Green Book). Figure 1 provides an illustration of sight triangles taken from the AASHTO Green Book.

In these schematics, the trail is considered the major road and the intersecting driveway the minor road. As shown by these figures, the sight distance triangles are larger where vehicles yield rather than stop. When constraints like topography, the angle of the crossing, and the presence of other features such as retaining walls present challenges for providing recommended sight distance triangles, a more restrictive control on the minor road (in this case, the driveway) is considered. At many intersections along the corridor, stop control is assigned to the minor road because of these constraints.

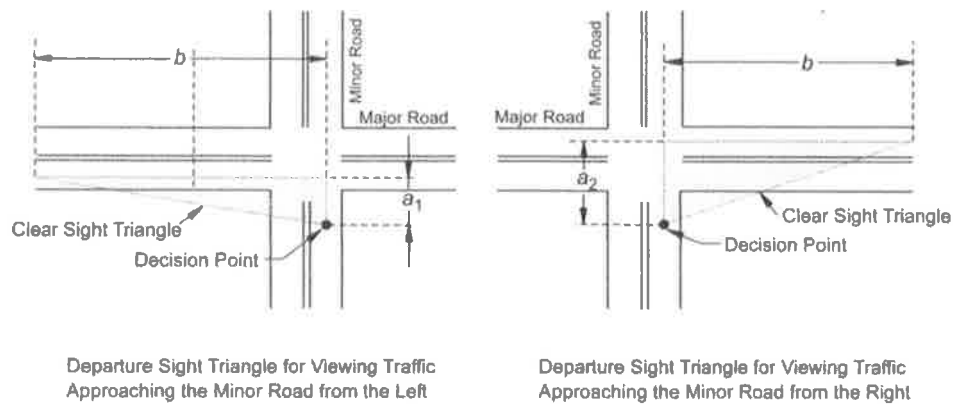
Procedures to determine the dimensions of sight distances at intersections are presented as Cases A through F in the AASHTO Green Book. Sight distances for a facility with a slower design speed could be calculated using the figures accompanying the *Intersection Control Case* presented in the AASHTO Green Book and formulas. This methodology was used for calculating sight triangles at the intersection of East Lake Sammamish Trail with driveways. The design speeds used for calculations are 15 mph for a minor roadway/driveway and 20 mph for trail. The trail will be signed for 15 mph speed limit, but it was designed for 20 mph to improve safety on the trail.

Figure 1. Intersection Sight Triangles



Approach Sight Triangles (Uncontrolled or Yield-Controlled)

– A –



Departure Sight Triangles (Stop-Controlled)

– B –

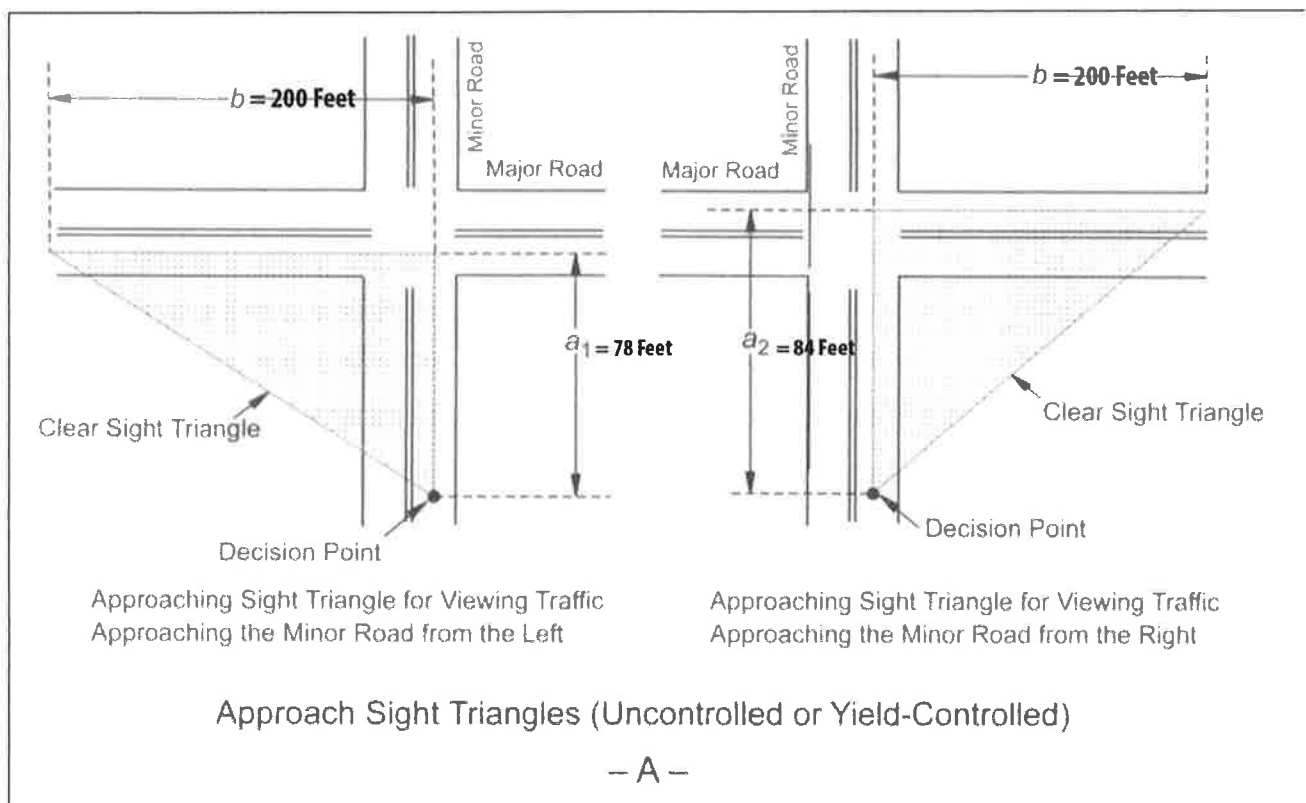
Where Drivers Yield

Based on the design speeds, a sight distance triangle of 75 feet (measured along the driveway) by 200 feet (measured along the trail) is required. When applying this triangle to a site specific situation, the width of traveled lanes of the major road (in this case, the trail) is considered for each intersection.

For the sight line looking to the left, as shown in Figure 2 (left) below, the smaller side of the triangle along the driveway is measured 75 feet from the edge of the intersecting traveled way (edge of the asphalt for the trail). This line is extended to the center of the travel lane of the trail coming from the left. For East Lake Sammamish Trail, that distance would be 3 feet. The total length of this smallest side of the triangle would be 78 feet ($a_1 = 78$ feet $\leftarrow$ trail is 12-foot-wide, trail lane is 6-foot-wide, half of 6 feet is 3 feet, thus $75+3=78$). Then the triangle extends 200 feet along the centerline of the travel lane of the trail ($b=200$ feet).

For the sight line looking to the right, as shown in Figure 2 (right) below, the smaller side of the triangle along the driveway is also measured 75 feet from the edge of the intersecting traveled way. This line is then extended to the center of the travel lane of the trail coming from the right. For this project, that distance would be 9 feet ($a_2 = 84$ feet $\leftarrow$ trail is 12-foot-wide, trail lane is 6-foot-wide, one and half of trail lane is 9 feet, thus $75 \text{ feet} + 9 \text{ feet} = 84 \text{ feet}$). The triangle also extends 200 feet along the centerline of the travel lane of the trail ($b=200$ feet).

Figure 2. Intersection Sight Triangles for Yield Control



Where Drivers Stop

Based on the design speeds, a sight distance triangle of 14.5 feet (measured along the driveway) by 195 feet (measured along the trail) is required. When applying this triangle to a site specific situation, the width of traveled lanes of the major road (in this case, the trail) is considered for each intersection.

For the sight line looking to the left, as shown in Figure 3 (left) below, the smaller side of the triangle along the driveway is measured 14.5 feet from the edge of the intersecting traveled way (such as a road or trail). This line is extended to the center of the travel lane of the trail coming from the left. For East Lake Sammamish Trail, that distance would be 3 feet. The total length of this smallest side of the triangle would be 17.5 feet ($a_1 = 17.5$ feet ← trail is 12-foot-wide, trail lane is 6-foot-wide, half of 6 feet is 3 feet, thus 14.5 feet+3 feet=17.5 feet). Then the triangle extends 195 feet along the center of the travel lane of the trail ($b=195$ feet).

For the sight line looking to the right, as shown in Figure 3 (right) below, the smaller side of the triangle along the driveway is measured 14.5 feet from the edge of the intersecting traveled way. The line is extended to the center of the travel lane of the trail coming from the right. For this project, that distance would be 9 feet. The total length of this smallest side of the triangle would be 23.5 feet ($a_2 = 23.5$ feet ← trail is 12-foot-wide, trail lane is 6-foot-wide, one and half of trail lane is 9 feet, thus 14.5 feet+9 feet=23.5 feet). Then the triangle extends 195 feet along the center of the travel lane of the trail ($b=195$ feet).

Figure 3. Intersection Sight Triangles for Stop Control

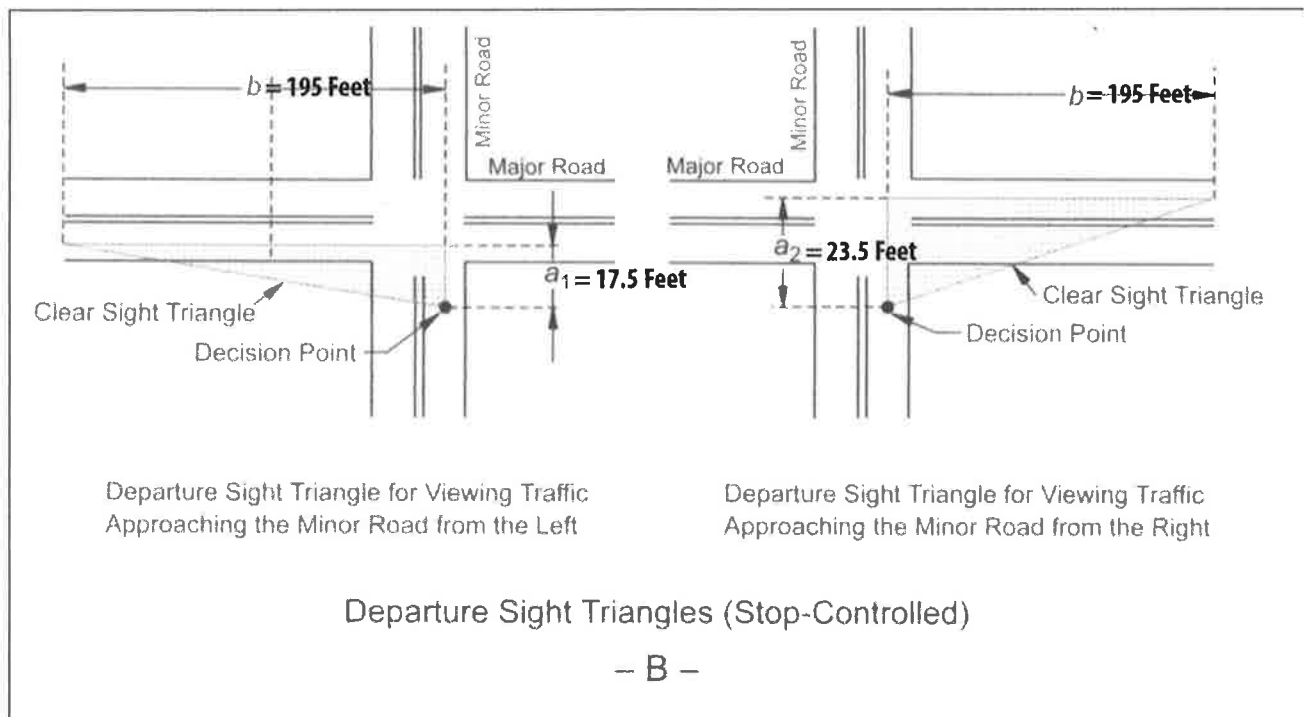


EXHIBIT 3

MEMORANDUM

DATE: May 20, 2016
TO: Barbara Flemming
FROM: Yammie Ho
SUBJECT: 206th Avenue SE Intersection Count & Speed Data
CC: Gina Auld & Jenny Bailey
PROJECT NUMBER: 554-1521-075
PROJECT NAME: East Lake Sammamish Master Plan Trail - South Sammamish Segment A

Purpose:

- Confirm the inbound and outbound daily volumes for 206th Avenue SE by PM Peak turning movement counts and 72-hr tube counts.
- Confirm turning speeds for southbound right-turn traffic and northbound left-turn traffic at 206th Avenue SE/East Lake Sammamish Parkway intersection.

Findings:

- Traffic counts and speed data were collected on the dates from May 10 to May 12, 2016, by Innovative Data Acquisitions LLC (IDAX). Traffic counts were collected between 4 – 6 pm on May 12. Speed data was collected for 72 hours.
- Two-hour PM peak hour counts on May 12, 2016 indicate that total of 14 cars (9 cars for southbound direction and 5 cars for northbound direction) were turning in and out of 206th Avenue SE.
- The 72-hr tube from May 10 to May 12, 2016 indicates an average of 172 total daily trips turning in and out of 206th Avenue SE.
- Vehicle speeds data collected on 206th Avenue SE, just south of the existing stop sign (Tube location #3), indicates that 85th percentile speed for southbound traffic into 206th is 14.4 mph and mean (average) speed is 11.4 mph. The 85th percentile speed is defined as “the most frequently used measure of the operating speeds associated with a particular location or geometric feature”, per AASHTO 2011 Policy on Geometric Design of Highways and Streets (Section 2.3.6 Page 2-54).

Conclusions:

- Past analysis during design assumed the following:
 - The average daily trips for 206th Avenue SE was estimated to be 180 trips. The traffic count confirms that the average daily trips is less than the estimated 180 trips.
 - For stopping sight distance analysis, the design speed used for turning movements is 15 mph. The speed data confirms that the majority of southbound traffic on 206th travels at speeds less than 15 mph.

Attachments: Peak-hour turning movement count, 72-hr tube counts, vehicle speed report summary & tube location map.



Location: 206TH AVE SE SIO E LAKE SAMMAMISH PKWY
 Date Range: 5/10/2016 - 5/16/2016
 Site Code: 03

Time	Tuesday 5/10/2016			Wednesday 5/11/2016			Thursday 5/12/2016			Friday 5/13/2016			Saturday 5/14/2016			Sunday 5/15/2016			Monday 5/16/2016			Mid-Week Average		
	NB	SB	Total	NB	SB	Total	NB	SB	Total	NB	SB	Total	NB	SB	Total	NB	SB	Total	NB	SB	Total	NB	SB	Total
12:00 AM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1:00 AM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2:00 AM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3:00 AM	1	1	2	1	1	2	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
4:00 AM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5:00 AM	1	0	1	1	0	1	0	1	1	1	0	1	1	0	1	1	0	1	1	0	1	1	0	1
6:00 AM	7	4	11	7	1	8	5	3	8	7	1	8	5	3	8	7	1	8	5	3	8	7	1	8
7:00 AM	6	2	8	6	3	9	9	3	12	6	3	9	9	3	12	6	3	9	9	3	12	6	3	9
8:00 AM	8	2	10	6	3	9	5	3	8	8	3	11	5	3	8	8	3	11	5	3	8	8	3	11
9:00 AM	6	4	10	6	5	11	9	6	15	6	5	11	9	6	15	6	5	11	9	6	15	6	5	11
10:00 AM	6	3	9	3	2	5	4	2	6	6	3	9	4	2	6	6	3	9	4	2	6	6	3	9
11:00 AM	9	5	14	3	2	5	6	21	26	9	5	14	3	2	5	6	21	26	9	5	14	3	2	5
12:00 PM	3	7	10	3	5	8	5	6	11	3	5	8	5	6	11	3	5	8	5	6	11	3	5	8
1:00 PM	2	7	9	4	5	9	6	5	11	2	7	9	4	5	9	6	5	11	2	7	9	4	5	9
2:00 PM	8	8	16	4	6	10	19	9	28	8	8	16	4	6	10	19	9	28	8	8	16	4	6	10
3:00 PM	4	6	10	6	9	15	10	8	18	4	6	10	6	9	15	10	8	18	4	6	10	6	9	15
4:00 PM	2	5	7	4	3	7	4	9	13	2	5	7	4	3	7	4	9	13	2	5	7	4	3	7
5:00 PM	4	7	11	3	5	8	7	8	15	4	7	11	3	5	8	7	8	15	4	7	11	3	5	8
6:00 PM	6	9	15	3	2	5	1	8	9	6	9	15	3	2	5	1	8	9	6	9	15	3	2	5
7:00 PM	5	6	11	5	4	9	5	2	7	5	6	11	5	4	9	5	2	7	5	6	11	5	4	9
8:00 PM	4	1	5	3	9	12	0	4	4	4	1	5	3	9	12	0	4	4	4	1	5	3	9	12
9:00 PM	7	5	12	3	3	6	0	4	4	7	5	12	3	3	6	0	4	4	7	5	12	3	3	6
10:00 PM	0	0	0	0	3	3	1	0	1	0	0	0	0	3	3	1	0	1	0	0	0	0	1	1
11:00 PM	0	1	1	0	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0	1	1	0	1	1
Total	89	83	172	71	73	144	97	104	201	89	83	172	71	73	144	97	104	201	86	87	172	86	87	172
Percent	52%	48%		49%	51%		48%	52%		52%	48%		49%	51%		48%	52%		50%	50%		50%	50%	

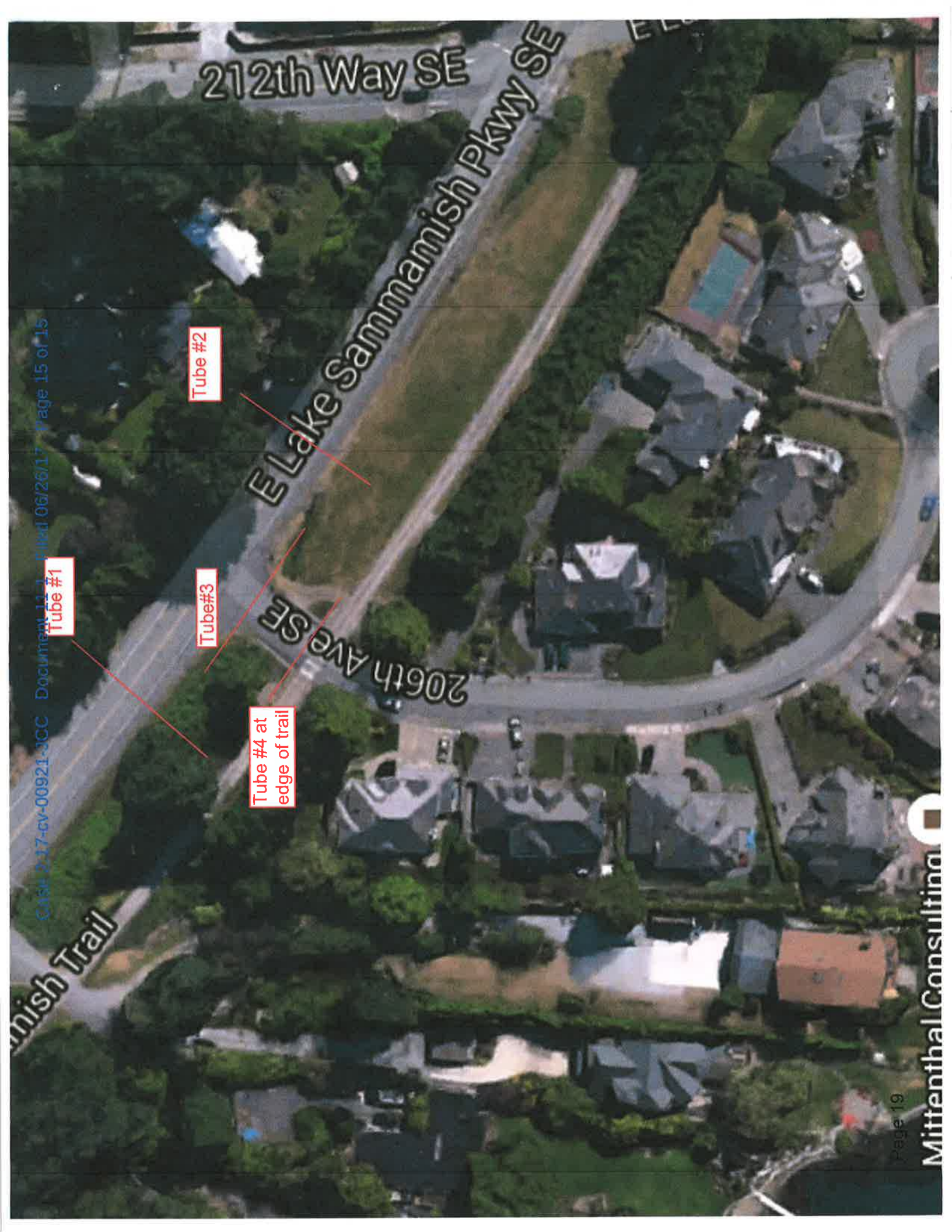
1. Mid-week average includes data between Tuesday and Thursday.

Vehicle Speed Report Summary

Location: 206TH AVE SE S/O E LAKE SAMMAMISH PKWY
Count Direction: Northbound / Southbound
Date Range: 5/10/2016 to 5/12/2016
Site Code: 03

		Speed Range (mph)																Total	
		0 - 10	10 - 15	15 - 20	20 - 25	25 - 30	30 - 35	35 - 40	40 - 45	45 - 50	50 - 55	55 - 60	60 - 65	65 - 70	70 - 75	75 - 80	80 - 85	85 +	Volume
		Study Total																	
Northbound		130	126	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	257
Percent		50.6%	49.0%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100%
Southbound		88	151	21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	260
Percent		33.8%	58.1%	8.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100%
Total		218	277	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	517
Percent		42.2%	53.6%	4.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100%

Total Study Percentile Speed Summary		Total Study Speed Statistics	
Northbound		Northbound	
50th Percentile (Median)	9.8 mph	Mean (Average) Speed	9.7 mph
85th Percentile	11.6 mph	10 mph Pace	3.8 - 13.8 mph
95th Percentile	12.8 mph	Percent in Pace	99.2 %
Southbound		Southbound	
50th Percentile (Median)	11.1 mph	Mean (Average) Speed	11.4 mph
85th Percentile	14.4 mph	10 mph Pace	6.9 - 16.9 mph
95th Percentile	16.0 mph	Percent in Pace	93.5 %



Tube #1

Tube #2

Tube #3

Tube #4 at
edge of trail

Exhibit J

BEFORE THE SURFACE TRANSPORTATION BOARD

CITY OF SAMMAMISH –	)	
	)	F.D. 36161
PETITION FOR A DECLARATORY ORDER	)	

Joint Declaration of Ken Withers, P.E. and Ted Johnston

This is a joint declaration by Ken Withers, P.E. and Ted Johnston for the use of Rails to Trails Conservancy in connection with its planned comments in the above-referenced proceeding.

1. Ken Withers, P.E., has been with R.L. Banks & Associates (RLBA) for 28 years, and is a member of the Transportation Research Board's Highway-Rail Grade Crossings Committee. Ted Johnston joined RLBA in 2017 after spending 6 years in transportation operations at Union Pacific Railroad, where he was a Manager of Train Operations and currently sits on the American Short Line and Regional Railroad Association's Safety and Training Committee. RLBA, in turn, is a multidisciplinary consulting firm providing economic, operational and engineering counsel in freight as well as passenger rail, high speed rail, commuter railroads and light rail operations. RLBA features more than 60 years of experience in providing expert analytical services and powerful litigation support to a nationwide group of clients representing every principal segment of the economy: communities and government agencies, transportation, industrial firms, financial and service institutions, agriculture and public utilities. RLBA has advised from time to time on projects including trails or rails with trails. We make this Joint Declaration on the basis of our experience and expertise as well as the experience of RLBA, in rail operations and design.

2. Based on our review of the City of Sammamish petition in this proceeding, we understand that the City of Sammamish desires to impose preconstruction requirements and/or environmental review requirements, including stop signs, specifically, facing the Rails to Trails users, on the East Lake Sammamish railbanked trail. (Railbanking as used herein refers to rail corridors with trails that remain under STB jurisdiction and may not be treated as abandoned for rail purposes of any law or rule of law pursuant to 16 U.S.C. 1247(d).)

3. In general, RLBA understands that local preconstruction review and permit requirements on transportation facilities operated under the authority

of STB are “categorically” preempted. Thus, in RLBA’s extensive experience, we have not heard of wholesale application of state and local preconstruction permit processes to railroad users, or to railbanked trails. Where such occurs, it appears to be because the railroad or railbanked trail user voluntarily submitted its project to a local preconstruction permit process out of a spirit of cooperation. However, wholesale or required submission for local or state preconstruction review would amount to ceding authority over construction, operation and abandonment to local and state authorities, would result in: 1) duplicative regulatory procedures, 2) potentially inconsistent regulatory requirements for corridors that cross multiple jurisdictions and 3) would slow, delay, overburden or thwart STB authorized activities.

4. Here the record indicates that Sammamish issued a stop work order because King County failed to complete a preconstruction permit process in which Sammamish insisted, at two relatively minor street crossings, that the County erect stop signs facing railbanked trail users. It would be completely unreasonable and impractical to expect a train to stop at a stop sign. In RLBA’s nationwide experience, this does not happen anywhere in the United States. RLBA has performed many highway/railroad grade crossing assignments and can state with complete assurance that it is not trains that stop at grade crossings but highway vehicles, pedestrians and bicyclists. Also, from an engineering point of view, it would not make sense or be reasonable or practical for a train traveling at its authorized speed to stop for pedestrian, automobile, or bicycle traffic. From a physics point of view, the train simply could not stop on short notice. This is why trains have the right of way at grade crossings. Since railbanked trails are to be treated as if rail use has not been abandoned, the direction which the City of Sammamish is taking makes no sense to RLBA.

6. To preserve railroad corridors for future rail reactivation, it is important to preserve them in a status as close to that received from the railroad as reasonably feasible. Part of this status is the expectation that parties crossing the railroad corridor will give priority to the user of the railroad corridor. This is consistent with 16 U.S.C. 1247(d), which states that railbanked corridors “shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-ways for railroad purposes.” There is a very practical reason for this precedent as well. In the absence of a stop sign facing drivers, a generation of drivers who have learned to drive over the railroad line without stopping will find it extremely difficult to change their habits should a stop sign be installed years later, exposing drivers to unnecessary risks of colliding with a freight

or passenger train in the event rail service is restored, due to habits that will have formed in the absence of a stop sign. Based on RLBA's information, railbanked trails are found throughout the country. Preempting this sort of local regulation will best ensure that they are regulated similarly and not subject to potentially inconsistent or conflicting regulations that any individual locality might impose, in keeping with the basic approach of uniform regulation of rail facilities generally.

7. Nothing herein should be read to suggest that we or RLBA contend that the City has authority under local or state law to place, or require to be placed, stop signs on the railbanked trail at issue herein requiring pedestrians to stop for vehicular traffic crossing the trail. Our point is that even if the City had such authority under local or state law, the City and this agency in our view should treat the trail corridor as an active rail line to act consistently with possible future rail reactivation of this rail facility. To that end, if an active rail line were in place the city could not require a train to stop for any vehicular traffic as the train would have the right-of-way at the crossing.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Ken Withers
Ken Withers, P.E. date: January 25, 2018

Ted Johnston
Ted Johnston date: January 25, 2018