

Lindsey Ozbolt

From: Kathy Koback <kkoback@romeropark.com>
Sent: Thursday, November 2, 2017 5:05 PM
To: Lindsey Ozbolt
Subject: FW: East Lake Sammamish Trail Segment 2B
Attachments: 2017-11-02_Response to Hearing Examiner Comments.ltr.pdf; Comment Response_Exhibit A.pdf

Adding Exhibit A.

Thank you!

Kathy

From: Kathy Koback
Sent: Thursday, November 2, 2017 4:57 PM
To: 'Lindsey Ozbolt' <LOzbolt@sammamish.us>
Subject: RE: East Lake Sammamish Trail Segment 2B

Good afternoon Ms. Ozbolt,

Attached please find our clients' Response in Opposition to the Comments re: the ELST for presentation to and consideration by the Hearing Examiner.

Thank you for your assistance in this matter.

Thank you!

Kathy

From: Lindsey Ozbolt [<mailto:LOzbolt@sammamish.us>]
Sent: Friday, October 20, 2017 3:21 PM
To: Kathy Koback <kkoback@romeropark.com>
Subject: RE: East Lake Sammamish Trail Segment 2B

Good afternoon Ms. Koback.

If you have documentation you would like submitted to the Hearing Examiner for the public hearing, it can either be submitted at the hearing during your testimony or it can be provided to the City c/o of myself. This can be provided via email at lozbolt@sammamish.us or mailed to the City at 801 228th Ave. SE, Sammamish WA 98075. Any documents received by the City will be provided to the Hearing Examiner at the start of the hearing. Please make sure any submitted documentation clearly identifies the name of the project and the project number if possible.

Best regards,

Lindsey Ozbolt
Associate Planner | Department of Community Development | 425.295.0527

From: Kathy Koback [<mailto:kkoback@romeropark.com>]

Sent: Thursday, October 19, 2017 3:45 PM

To: Lindsey Ozbolt <L.Ozbolt@sammamish.us>

Subject: East Lake Sammamish Trail Segment 2B

Good afternoon Ms. Ozbolt,

I'm hoping you can assist me with a question.

After receipt of the Notice of Application re: ELST last year, the responses were addressed to you for submission.

We have now received the Comments back and would like to send in a response prior to the hearing. To whom should we be addressing (and where should we be sending) the responses?

Thank you for your assistance.

**Kathy Koback, Legal Assistant
ROMERO PARK P.S.**

Northwest Office
155 108th Ave. NE, Suite 202
Bellevue, WA 98004
(425) 450-5000 Telephone
(425) 450-0728 Facsimile

California Office
16935 West Bernardo Dr., Suite 260
San Diego, CA 92127
(858) 592-0065



ROMERO
PARK P.S.

NORTHWEST OFFICE
COLUMBIA WEST BLDG.
155-108th Ave NE, Ste. 202
Bellevue, Washington 98004
Telephone (425) 450-5000
Facsimile (425) 450-0728

CALIFORNIA OFFICE
RANCHO BERNARDO CRTYD.
16935 West Bernardo Dr., Ste. 260
San Diego, California 92127
Telephone (858) 592-0065
tromero@romeropark.com

Via Electronic Mail

November 2, 2017

John Gault
Hearing Examiner
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Email: lozbolt@sammamish.us

RE: Comments for Hearing Examiner re: Issuance of SSDP2016-00415 Permit Application
Our Reference: SAMP 501

Dear Hearing Examiner:

Property Owners in Opposition

This office represents the following affected Sammamish property owners: A) Reid and Teresa Brown, the owners of the property located at 3139 E Lake Sammamish Shore Lane SE (“Brown Property”); Shawn and Trina Huarte, the owners of the property located at 3003 E Lake Sammamish Pkwy SE (“Huarte Property”); York Hutton, the owner of the property located at 2823 E Lake Sammamish Pkwy SE (“Hutton Property”); Chris and Tara Large, the owners of the property located at 2811 E Lake Sammamish Pkwy SE, Sammamish (“Large Property”); Annette McNabb, the owner of the property located at 3143 E Lake Sammamish Shore Lane SE (“McNabb Property”); Jordan and Mistilyn Miller, the owners of the property located at 2845 E Lake Sammamish Pkwy SE (“Miller Property”); Elizabeth and Eugene Morel, the owners of the property located at 2933 E Lake Sammamish Pkwy SE (“Morel Property”); Tracy and Barbara Neighbors, the owners of the property located at 3015 E Lake Sammamish Pkwy SE, (“Neighbors Property”); Doug Schumacher, the owner of the property located at 3141 E Lake Sammamish Shore Lane SE (“Schumacher Property”); Iris and Ivan Stewart, the owners of the property located at 2815 E Lake Sammamish Pkwy SE (“Stewart Property”); Arul Menezes and Lucretia Vanderwende, owners of the property located at 3145 East Lake Sammamish Shore Ln SE and Lake Sammamish 4257 LLC, the owner of the property located at 4257 East Lake Sammamish Shore Ln SE (collectively “Lake Sammamish Property”); and Gordon Conger, the owner of the property located at 3027 East Lake Sammamish Pkwy SE (“Conger Property”)(collectively referred to as the “Property Owners”).

Requested Relief

The procedural grounds for the Requested relief are the following, which are further detailed below:

- 1. The Permit Application should be denied because the County has not complied with SMC 20.05.040.**

2. **Not insisting on title insurance only serves to put the City at risk unnecessarily because the County has admitted for years that title to much of the trail Corridor is clouded.**
3. **Conditions 2 and 3 must be imposed because the purported “Corridor Parcel” literally runs through multiple peoples’ homes.**
4. **Failure to Robustly Impose Conditions 2 and 3 will destroy portions of the Property Owners’ properties.**
5. **Granting the Permit Application without the Conditions is inconsistent with prior County action.**
6. **Granting the Permit Application without enforcing the Conditions will be inconsistent with prior City action.**
7. **The County must be made to comply, if it can, with all the Conditions recommended by the Director before construction of the trail “improvements” should be allowed to move forward.**

The Property Owners respectfully request that the Hearing Examiner (“Examiner”) denies King County’s application for a Shoreline Substantial Development Permit, as disclosed in the December 28, 2016 Notice of Application for Shoreline Substantial Development Permit; East Lake Sammamish Trail Segment 2B – SSDP2016-00415 (the “Permit Application”) for the reasons set forth below, notably the County’s continued inability to provide a title report/insurance for the property over which it seeks to improve the interim trail. Alternatively, and at the minimum, the Property Owners respectfully request that the Examiner approve the Permit Application only if and when the County first strictly complies with all conditions set forth in the Director’s Recommendation dated October 4, 2017.

Procedural Grounds for Requested Relief

1. **The Permit Application should be denied because the County has not complied with SMC 20.05.040.**

The County has not complied with SMC 20.05.040, which requires denial of the Permit Application. SMC 20.05.040 provides in part:

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

...

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

Mr. John Gault
City of Sammamish
Hearing Examiner
November 2, 2017
Page 3

...

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

...

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

(emphasis added).

There can be no dispute that the following statements about the County's application are correct:

1. It did not provide verification of exclusive ownership to *all* of the Property in question (in fact, it concedes it does not own the subject property in fee simple, rather it acknowledges that it acquired the **railroad easement** through the Rails to Trails Act, which means that it does not possess all of the bundle of rights of the subject property).
2. It did not provide consent of the affected property owners (in fact, this letter continues to demonstrate that many of the affected property owners are opposed to the proposed shoreline development).
3. It did not provide a copy of a title report showing the County has "sole marketable title" or has a "publicly recorded right to develop the site."

Given the County's failure to provide these requisite deliverables, the Permit Application should be denied as incomplete, despite the Director's Recommendation.

2. Not insisting on title insurance only serves to put the City at risk unnecessarily because the County has admitted for years that title to much of the trail Corridor is clouded.

While the Director may waive submittal requirements if they are determined as "unnecessary." SMC 20.05.040(3). SMC 20.05.040(2)(d) should never be determined by the Director as "unnecessary," especially under the circumstances of this permit application, and the Examiner has the responsibility and the opportunity to protect the City and its citizens by denying the Permit Application until SMC 20.05.040(3) is satisfied.

The Property Owners continue to vehemently deny that the County owns a 100-foot easement for the trail that would allow them to wipe out portions of many peoples' homes and permitted improvements. Even if the County did have a 100-foot easement it still is limited by the Rails to Trails Act to only be allowed to build a trail in the Corridor – it is not allowed under any circumstances to remove anything

that is outside the actual 20' trail since doing so would be going outside its authorized use of the subject alleged easement.

Further, as it relates to the proposed trail improvements themselves, the Property Owners do not believe the County should be allowed to construct a trail that will eliminate some of the Property Owners' decks, garages, mailboxes, parking areas, waterfront access, landscaping, and other property and/or amenities. The Hearing Examiner should take note that the County has changed its position, and especially its representation to the Property Owners and other citizens of Sammamish who live on Lake Sammamish that it will not ever disturb their use of their docks and waterfront access. Specifically, in 2004, Joe Wilson, former Program Manager for the County, informed the City and the citizenry at a City Council meeting:

There are about 27 properties in Section 7 and the county has settled with about 9 of them or they have been settled prior to the county gaining ownership to the Corridor. Section 7 is an area where there is clouded title. That means that you can't go to records and find titles that says whether [the Right of Way] belongs to the railroad or it belongs to someone else so its adverse or can happen either way. So, the County says rather than getting into legal battle about it, let's settle with these people. And let's take what we need for the trail and then they can have what they need for their properties. So, 9 properties out of 27 that have been happened and settled and I have asked the Prosecuting Attorney that it will make my job a lot easier to pursue all the rest of the properties now addressing this so that we get them settled so that when we start building the trail there won't be these questions.

See Transcription of 2004 Sammamish City Council Meeting attended by the Property Owners and many others in the community.

In summary, the County's ownership of the Corridor is challenged on at least the following grounds:

1. The County only has an easement, not fee ownership;
2. The County does have the use of 100' for a trail;
3. Even if the County has the right to build a trail over the entire alleged 100-foot Corridor it does not follow that it has the right to remove docks and other structures and/or deny property owners access rights to Lake Sammamish that they have enjoyed for decades; and
4. The County acknowledged in 2004 that it did not have clear title to construct the trail in the Corridor, and it should now be estopped from asserting that its ownership rights are clear.

Because of these "ownership challenges" the County should be required to provide a title insurance policy from a reputable title insurance company.¹

¹ The City will also benefit from title insurance because if the permit is issued, and the Property Owners and/or other injured City residents bring legal action challenging the ownership issue then the City will be able to call upon the title insurance to defend itself in any such proceeding. Of course, if the Property Owners/others prevail and it is determined the permit was wrongfully issued, then the City will also have a source of recovery for the likely multi-million dollar damage claim said

Mr. John Gault
City of Sammamish
Hearing Examiner
November 2, 2017
Page 5

The Property Owners have taken on the County in King County Superior Court challenging the County's assertion of ownership to a 100-foot right of way through their properties. Specifically, King County Cause No. 15-2-20483-1 SEA, challenges the County's assertion that it owns 100 feet of property through each of the Property Owners' properties and has a right to construct the trail on this enormous and highly valuable land ("State Case") that the Property Owners and their predecessors-in-interest have owned and occupied for decades, well before the County ever had an interest. *See* Exhibit A. We recognize that the County has submitted a decision of a federal court judge in an effort to try to dissuade the City from requiring title insurance and/or argue that the Property Owners have effectively already lost their property rights to the Corridor. However, this case does not stand for such a broad proposition, and is further under appeal.² While it is true that Judge Pechman, in a federal case, U.S. District Court Case No. 2:15-cv-00970 ("Federal Case") ruled that the County had the authority to build the trail through *a few of* the affected Property Owners' properties, that decision is on appeal to the 9th Circuit (and of course has no bearing on those Property Owners not a party to the Federal Case). If either the Federal Case decision is reversed and/or the Property Owners win the State Court case, *after* the City has allowed the County to build the trail (and destroy hundreds of thousands, if not millions, of dollars of property, landscape, and amenities) the Property Owners, and others damaged by the County's installation of the trail, will sue not only the County for damages, but also very likely the City.

The presumed reasons the City enacted SMC 20.05.040(2)(d) are at least: a) to have the backing of title insurance in the event the applicant and/or the City get sued based on a claim of a lack of title to the project site; and b) to receive an independent verification that the applicant does in fact have the requisite title authority to construct the project. The City should step back and ask itself, "why has the County failed to provide a copy of its title insurance to the subject property?" Should that not be a red flag?

Since the SMC does not define the word "unnecessary," (the *only* grounds upon which the City Director can ignore the requirements of SMC 20.05.040(2)(d)) the word should be given its ordinary meaning. Webster's defines "unnecessary" as "not needed" or of "no import." Applying this definition to the question at hand, the Hearing Examiner must decide, "is requiring the County to provide title insurance not needed or of no import to the City?" How can the answer to this question be "no?" It must be yes. Securing title insurance will give the City an independent, experienced, third party opinion that the County does indeed have ownership/exclusive rights to the subject property and more importantly, that the insurance is there to cover damages if the Property Owners bring legal action against the County and/or City in the event they prevail in the State Case and/or other affected property owners prevail on appeal in the Federal Case.

residents will have if the trail is constructed and ultimately determined to be violative of the Property Owners' property rights.

² It is important to note that Judge Pechman's decision is currently under appeal to the 9th Circuit. It is also important to note that the 9th Circuit allowed the record to be supplemented to show that the County did not, as alleged in the hearing before Judge Pechman, pay taxes on the Corridor property. While the Property Owners argue that this shows that Judge Pechman's decision will likely get reversed, at a minimum it shows that the decision has at least some risk of reversal, and basing a decision to not insist on title insurance on a case that could be overturned on appeal not does seem to fall within the definition of "unnecessary." In fact, it would appear under these circumstances that it is absolutely necessary to require the County to provide title insurance.

Additional Grounds for Requested Relief

Most, if not all of the Property Owners will individually provide the Examiner with their comments on how the proposed project will impact them and their respective properties and how, if the Examiner does not deny the Permit Application, imposing the conditions outlined by the Director are imperative to protecting their residences and the shoreline. Accordingly, we will not provide all of the substantive grounds for denying the Permit Application nor will we detail the negative impacts the trail will have on each of the Property Owners – even though for some of them it is quite substantial. What we will do, however, is share with you some illustrative examples of the impact the proposed “improvement” will have on individual Property Owners as well as how this project is inconsistent with decades of prior use (including being inconsistent with prior County and City action).

1. Conditions 2 and 3 must be imposed because the purported “Corridor Parcel” literally runs through multiple peoples’ homes.

While the County is, at the present time, “only” seeking to use 20 feet of its purported 100 feet of width of the “Corridor Parcel,”³ the City should share with its citizens the grave concern that granting the Permit Application could be used by the County to assert ownership over the entire Corridor Parcel. A review of the Corridor Parcel shows that it runs through the homes of a number of the Property Owners (and many others not represented by this office) and destroys structures and landscaping over all of the Property Owners’ properties. Many of these residences and improvements have been in place for upwards of 80 years, first constructed when the Railroad was operating and the County had no interest in the land. Most of those residences are still in the exact footprint built out with County approval, and those that have expanded upon original footings have done so with the proper County or City approval, depending on the timing.⁴

It is critically important that the Examiner requires the County to amend its plans, using conditions 2 and 3, to avoid the destruction of structures that are not owned/controlled by the County but are nevertheless properly installed via County/City permits.

2. Failure to Robustly Impose Conditions 2 and 3 will destroy portions of the Property Owners’ properties.

Even “only” using 20 feet of the Corridor Parcel, the County’s plans actually impact a larger width than 20 feet up to the clearing and grubbing lines, and if the Permit Application is granted and the County builds the “improvement,” the County is going to destroy some of the Property Owners’ structures, parking, and/or landscaping. For example:

³ The County uses the term “Corridor Parcel” to define both the width of the trail along the abandoned railbed but also 50 feet out from the midway point each way, for a total purported width of 100 feet (the County does concede that by recorded instrument the 100 feet width of the Corridor Parcel is less than this amount on a few lots). While the Property Owners disagree that there is a Corridor Parcel running through their properties, solely for purposes of definition they will use this term.

⁴ It is interesting that the County never had a problem with the owners’ improvements when the Railroad was in operation (neither did the Railroad) and even approved the majority of the same without requiring permission from the Railroad because the County understood that the land was not controlled or owned by the Railroad.

- On the Large Property, they will lose their stairs to the trail, a portion of their deck, living space inside their residence, and the fence/gate separating the existing trail from their property to the West.
- On the Schumacher Property, he will lose significant square footage from his residence, parking, fencing, and access staircase.
- On the Brown Property, they will lose their significant square footage from their residence, fencing, a retaining wall and staircase.
- On the Lake Sammamish Property, they will lose fencing, parking, landscaping.
- On the Conger Property, they will lose significant square footage from their residence and ability to access their property along the shoreline.
- On the Huarte Property, they will lose their deck and access to their property along the shoreline.
- On the Hutton Property, he will lose the ability to park vehicles at his residence and access his residence safely.
- On the Miller Property, they will lose significant square footage to their residence, outdoor structures along the shoreline, decking, and tennis courts—all built with the City's permission.
- On the Morel Property, they will lose the ability to park their cars in their garage, as permitted by the City, and would be required to park over 100 feet away from their house on an outdoor parking pad.
- On the Neighbors Property, they will lose decking and outdoor improvements facilitating access to their shoreline property.
- On the Stewart Property, they will lose significant square footage to their residence and the ability to use their garage.
- On the McNabb Property, she will lose several hundred square feet of her residence and parking.

All of the Property Owners are going to lose landscaping and other amenities if the Permit Application is granted and the project constructed. The City has recommended Conditions 2 and 3 be imposed on the City to assure that none of these structures are damaged or removed during trail construction and future use, and the Property Owners ask the Examiner to enforce these conditions if it is inclined to grant the Permit Application.

3. Granting the Permit Application without the Conditions is inconsistent with prior County action.

The County asserts it can build the project in the Corridor Parcel because it owns it, effectively in fee simple. This is neither accurate nor consistent with the County's prior actions.

To illustrate, in 1998, the Large Property's predecessor owner filed an application for a major addition/renovation, which included: modifications to the entire face of the house facing the trail, including turning a portion of the deck into an enclosed glass sun room, plus modifications to the deck and stairs down to the trail. In 2000, the County granted the Large Property's predecessor owner the permit to construct the project within what is now known as the Corridor Parcel. The Corridor Parcel covers a few feet of the entire house facing the trail, at least 50% of the sun room, and the entire deck and stairs, which the County permitted. At least as late as 2000, the County's actions illustrate the following: a) the County did not own the Corridor Parcel; and b) the County authorized a property

Mr. John Gault
City of Sammamish
Hearing Examiner
November 2, 2017
Page 8

owner's use of land within the Corridor Parcel. Now, the County has applied for a permit that flips its position on the situation in complete reverse: a) the County owns the Corridor Parcel; and b) the County not only will not allow a property owner's use of land within the Corridor Parcel but is going to destroy improvements that the County itself properly permitted within the Corridor Parcel! The County should not be allowed to repudiate what clearly was its position back when it first inherited the Railroad's "rights" (whatever they were) back in 1998.

4. Granting the Permit Application without enforcing the Conditions will be inconsistent with prior City action.

The City has also previously taken the position that some of the Property Owners own, and are entitled to build and improve, within the Corridor Parcel.

To illustrate, in 2003, the City issued a building permit for the Millers to build their home on the Miller Property. The home is located, in part, within the Corridor Parcel. See King County Permit Number 03-0095, issued on June 9, 2003. If the City really believed that the County owned the Corridor Parcel, it would not have issued a building permit for a Sammamish resident to build into the County's property. Of course, back in 2003, the City did not believe the County owned the Corridor Parcel and it should not now issue the Permit Application, which would effectively be repudiating its prior position.⁵

5. The County must be made to comply, if it can, with all the Conditions recommended by the Director before construction of the trail "improvements" should be allowed to move forward.

The City is not recommending that the County be given carte-blanche to begin construction even if the Examiner approves the Permit Application. It has set forth requirements that the County must adhere to and comply with, if it can, prior to the issuance of any permit and the beginning of construction. Many of the conditions, including Conditions 2, 3, 8 and 9, seek to have the County mitigate the damage it will do to the properties across which it seeks to "improve" the trail—not just the Property Owners represented by this office. These areas include critical areas regulated by Sammamish City Code and other regulatory schemes, all of which will be impacted by the "improvements" to the trail. For example, the County seeks to significantly change the width and nature of the trail, proposing to widen and pave the same, which will drastically increase the volume of water run off in the area. Given the topography, the County, through conditions imposed by the Examiner, must demonstrate and put into practice, its plans for dealing with this storm water in a way that will not negatively impact critical areas, the lake itself, and the private properties being bisected by what amounts to this new road being installed.

Thank you for your time in reading the Property Owners' Response in Opposition. Both the Property Owners and I are available to answer any questions the City staff has regarding this Response.

Thank you for your service to the great city of Sammamish!

⁵ The Millers are not the only ones to receive a building permit from the City from 1998 to the present within the Corridor Parcel. For example, see the title history on the Conger Property (City issues building permit for house in 2003 within the Corridor Parcel).

Mr. John Gault
City of Sammamish
Hearing Examiner
November 2, 2017
Page 9

Sincerely,
ROMERO PARK P.S.

/s/H. Troy Romero

H. Troy Romero

cc: Clients

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

TRACY NEIGHBORS and BARBARA
NEIGHBORS; ARUL MENEZES and
LUCRETIA VANDERWENDE; LAKE
SAMMAMISH 4257 LLC; HERBERT
MOORE and ELYNNE MOORE; TED DAVIS
and ELAINE DAVIS; REID BROWN and
TERESA BROWN; SHAWN HUARTE and
TRINA HUARTE; ANNETTE MCNABB;
EUGENE MOREL and ELIZABETH MOREL;
VOLKER ELSTE and GAIL UREEL; JOHN R.
WARD and JOANNA WARD, AS CO-
TRUSTEES OF THE WARD HALES LIVING
TRUST; YORK HUTTON; L. LARS
KNUDSEN and LISA SHDO; DOUG
SCHUMACHER; IVAN STEWART and IRIS
STEWART; CHRISTOPHER LARGE and
TARA LARGE; JORDAN MILLER and
MISTILYN MILLER; and GORDON
CONGER,

Plaintiffs,

vs.

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

Defendant.

Cause No: 15-2-20483-1 SEA

AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND TO
QUIET TITLE

1 COME NOW Plaintiffs Tracy Neighbors and Barbara Neighbors, Arul Menezes and Lucretia
2 Vanderwende, Lake Sammamish 4257 LLC, Herbert Moore and Elynne Moore, Ted Davis and Elaine
3 Davis, Reid Brown and Teresa Brown, Shawn Huarte and Trina Huarte, Annette McNabb, Eugene
4 Morel and Elizabeth Morel, York Hutton, Doug Schumacher, Ivan Stewart and Iris Stewart,
5 Christopher and Tara Large, Jordan and Mistilyn Miller, and Gordon Conger (collectively
6 “Plaintiffs”), pursuant to the Revised Code of Washington § 7.28.010, *et seq.*, and § 7.24.010, *et seq.*,
7 and allege as follows:

8 THE PARTIES

9 1. Plaintiffs Tracy and Barbara Neighbors are husband and wife and are residents of King
10 County, Washington who own land adjacent to both sides of a former railroad right of way which is
11 now the site of a recreational trail known as East Lake Sammamish Trail (“ELST”). Tracy and Barbara
12 Neighbor’s property, King County Tax Parcel No. 072406-9006, includes the fee title, which
13 encompasses all surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

14 2. Plaintiffs Arul Menezes and Lucretia Vanderwende are residents of King County,
15 Washington who own land adjacent to both side of the ELST. Arul Menezes and Lucretia
16 Vanderwende’s property, King County Tax Parcel No. 072406-9024, includes the fee title, which
17 encompasses all surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

18 3. Plaintiff Lake Sammamish 4257 LLC is a Washington limited liability company duly
19 licensed and existing under and by virtue of the laws of the state of Washington. Lake Sammamish
20 4257 LLC owns land adjacent to one side of the ELST. Lake Sammamish 4257 LLC’s property, King
21 County Tax Parcel No. 172406-9079, includes the fee title, which encompasses all surface, subsurface,
22 and aerial rights, to all their property to the edges of the ELST.

23 4. Plaintiffs Herbert Carvel and Elynne Moore are husband and wife and are residents of
24 King County, Washington who own land adjacent to the ELST. Herbert Moore and Elynne Moore’s
25 property, King County Tax Parcel No. 172406-9077, includes the fee title, which encompasses all
26 surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

27 5. Plaintiffs Ted R. and Elaine M. Davis are husband and wife and are residents of King
28 County, Washington who own land adjacent to both sides of the ELST. Ted R. and Elaine M. Davis’
29 property, King County Tax Parcel No. 072406-9020, includes the fee title, which encompasses all
30 surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

1 6. Plaintiffs Reid and Teresa Brown are husband and wife are residents of King County,
2 Washington who own land adjacent to both sides of the ELST. Reid and Teresa Brown's property,
3 King County Tax Parcel No. 072406-9003, includes the fee title, which encompasses all surface,
4 subsurface, and aerial rights, to all their property to the edges of the ELST.

5 7. Plaintiffs Shawn and Trina Huarte are husband and wife and are residents of King
6 County, Washington who own land adjacent to both sides of the ELST. Shawn and Trina Huarte's
7 property, King County Tax Parcel No. 072406-9041, includes the fee title, which encompasses all
8 surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

9 8. Plaintiff Annette McNabb is a resident of King County, Washington who owns land
10 adjacent to both sides of the ELST. Annette McNabb's property, King County Tax Parcel No.
11 072406-9030, includes the fee title, which encompasses all surface, subsurface, and aerial rights, to all
12 their property to the edges of the ELST.

13 9. Plaintiffs Eugene and Elizabeth Morel are husband and wife and are residents of King
14 County, Washington who own land adjacent to both sides of the ELST. Eugene and Elizabeth Morel's
15 property, King County Tax Parcel Nos. 072406-9008 and 072406-9090, includes the fee title, which
16 encompasses all surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

17 10. Plaintiffs Volker Elste and Gail Ureel are residents of King County, Washington who
18 own land adjacent to the ELST. Volker Elste and Gail Ureel's property, King County Tax Parcel No.
19 0724069057, includes the fee title, which encompasses all surface, subsurface, and aerial rights, to all
20 their property to the edges of the ELST.

21 11. Plaintiffs John R. Ward and Joanna Ward are the Co-Trustees of the Ward Hales Living
22 Trust (the "Ward Hales Trust") and are residents of King County, Washington. As Co-Trustees of the
23 Ward Hales Trust, John and Joanna Ward own land adjacent to the ELST. The Ward Hales Trust
24 property, King County Tax Parcel No. 072406-9023, includes the fee title, which encompasses all
25 surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

26 12. Plaintiff York Hutton is an individual and resident of King County, Washington who
27 owns land adjacent to both sides of the ELST. York Hutton's property, King County Tax Parcel No.
28 4065100030, includes the fee title, which encompasses all surface, subsurface, and aerial rights, to all
29 his property to the edges of the ELST.

30

1 13. Plaintiffs L. Lars Knudsen and Lisa Shdo are husband and wife and are residents of
2 King County, Washington who owns land adjacent to the ELST. L. Lars Knudsen and Lisa Shdo's
3 property, King County Tax Parcel No. 072406-9050, includes the fee title, which encompasses all
4 surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

5 14. Plaintiff Doug Schumacher is an individual and a resident of King County, Washington
6 who owns land adjacent to both sides of the ELST. Doug Schumacher's property, King County Tax
7 Parcel No. 072406-9031, includes the fee title, which encompasses all surface, subsurface, and aerial
8 rights, to all his property to the edges of the ELST.

9 15. Plaintiffs Ivan and Iris Stewart are husband and wife and are residents of King County,
10 Washington who own land adjacent to both sides of the ELST. Ivan and Iris Stewart's property, King
11 County Tax Parcel No. 4065100020, includes the fee title, which encompasses all surface, subsurface,
12 and aerial rights, to all their property to the edges of the ELST.

13 16. Plaintiffs Chris and Tara Large are husband and wife and are residents of King County,
14 Washington who own land adjacent to both sides of the ELST. Chris and Tara Large's property, King
15 County Tax Parcel No. 4065100016, includes the fee title, which encompasses all surface, subsurface,
16 and aerial rights, to all their property to the edges of the ELST.

17 17. Plaintiffs Jordan and Mistilyn Miller are husband and wife and are residents of King
18 County, Washington who own land adjacent to both sides of the ELST. Jordan and Mistilyn Miller's
19 property, King County Tax Parcel Nos. 4065100040 and 4065100035, includes the fee title, which
20 encompasses all surface, subsurface, and aerial rights, to all their property to the edges of the ELST.

21 18. Plaintiff Gordon Conger is an individual and a resident of King County, Washington
22 who owns land adjacent to both sides of the ELST. Gordon Conger's property, King County Tax
23 Parcel No. 072406-9032, includes the fee title, which encompasses all surface, subsurface, and aerial
24 rights, to all his property to the edges of the ELST.

25 19. Defendant King County ("Defendant") is a municipal corporation and political
26 subdivision of the State of Washington.

27 JURISDICTION AND VENUE

28 20. Pursuant to RCW 7.28.010 *et seq* and 7.24.010 *et seq* this Court has jurisdiction to rule
29 on the claims and defenses in this action.

30 21. Pursuant to RCW 4.12.010, venue is properly laid in this Court.

1 FACTS

2 22. For more than 100 years, various railroad companies operated trains over a narrow,
3 12.45 mile long strip of property (what King County calls the "Right of Way") or ("ROW") adjacent
4 to the east shore of Lake Sammamish, in the cities of Issaquah, Sammamish and Redmond.

5 23. In a Quit Claim Deed recorded under King County Recording No. 9704290575 the then
6 current operator of rail service, Burlington Northern & Santa Fe Railroad ("BNSF"), quit claimed its
7 interest in the ROW to Defendant and the Land Conservancy of Seattle, who then conveyed their
8 interest in the ROW to Defendant in a Quit Claim Deed recorded under King County Recording No.
9 9809181252 ("Defendant's Quit Claim Deed"). On information and belief, BNSF did not, at the time
10 it quitclaimed to Defendant, in fact own the ROW it purported to convey.

11 24. Defendant has asserted control over the real property described in Defendant's Quit
12 Claim Deed and is wrongfully allowing public use of portions of the former ROW as the ELST that
13 BNSF did not own or control at the time of the purported conveyance. Since receiving its Quit Claim
14 Deed Defendant has performed substantial construction within, and made substantial changes to,
15 portions of the ROW. Defendant has now applied for permits to make additional substantial changes
16 to the ROW abutting Plaintiffs' properties in a scope that far exceeds the purported right of Defendant
17 to maintain a trail along the former rail bed and exceeding the actual scope of the rights BNSF could
18 have properly conveyed via the Quit Claim Deed. Additionally, deeds going back decades define the
19 BNSF ROW as a far narrower strip of land than Defendant is now seeking to control and take from
20 Plaintiffs. This narrower description is corroborated in more modern recordings and matches
21 historical and actual usage by the various railroad operators.

22 25. On information and belief, although the Quit Claim Deed that BNSF gave to Defendant
23 and the Land Conservancy of Seattle may have included a description of portions of the ROW abutting
24 Plaintiffs' properties, BNSF did not, in fact, have any recorded interest in said properties capable of
25 being conveyed to the Land Conservancy of Seattle and Defendant.

26 26. Consequently, Defendant did not acquire any interest in properties abutting the
27 Plaintiffs' properties when it accepted BNSF's Quit Claim Deed.

28 27. Alternatively, Defendant acquired, at most, unrecorded and unperfected prescriptive
29 easement rights to cross the area of the ROW that had been improved with railroad tracks, ties and
30 ballast, which is much narrower than the width of the ROW.

CLAIM FOR DECLARATORY RELIEF

28. Plaintiffs reassert the foregoing paragraphs of this Complaint.

29. Plaintiffs seeks a declarative order from the Court that, even if Defendant were able to prove BNSF acquired prescriptive easement rights to widths greater than the railroad tracks, ties and ballast, Defendant later lost those rights when Plaintiffs improved and occupied major portions of the ROW for the time period necessary to extinguish Defendant's interest under adverse possession and the operation of RCW 7.28 because Defendant has left abandoned those portions of the now-alleged ROW that Plaintiffs have been assessed taxes on for decades (and paid said taxes).

30. Additionally, Plaintiffs' uses and improvements include, without limitation construction of portions of homes, cabanas, walkways, driveways, parking areas, landscaping systems, utilities and the planting of trees, shrubs and ground cover, all within the ROW. Plaintiffs' use and improvements were open, notorious, continuous and under claims of right for periods exceeding ten years, and in some cases existing for decades. Plaintiffs have adversely possessed the sections of the ROW, adjacent to their properties, lying outside the margins of the former railroad tracks, ties and ballast.

31. Also, in addition to Plaintiffs' open and notorious improvements within the ROW, which were permitted by the proper municipality, Plaintiffs have paid all taxes legally assessed on their property, including those portions of their homes and/or other improvements within the ROW. Plaintiffs and/or their predecessors interest have been assessed taxes on these portions of their properties in the alleged ROW for decades without interruption, and have continually paid taxes on the same. Further, Plaintiffs seek a declarative order that Defendant should be restrained by Court Order from entering onto and performing construction on the land abutting Plaintiffs' properties and/or any construction in the purported ROW that impacts Plaintiffs' improvements in any way.

32. Plaintiffs are entitled to entry of a Declaratory Judgment declaring: (a) BNSF never acquired recorded interests in the properties abutting Plaintiffs' properties; (b) Defendant did not succeed to any previously recorded interests in the abutting properties when it accepted BNSF's Quit Claim Deed; (c) Defendant holds no fee in the ROW to the extent it purports to have obtained its rights through BNSF and it and the public do not have any right to use or build in the ROW adjacent to Plaintiffs' properties; (d) alternatively, Defendant and the public only have a prescriptive easement to use the portions of the ROW between the margins of the former railroad tracks, ties and ballast; and

1 (e) alternatively, Defendant and the public do not have any right to use any portions of the ROW that
2 have been adversely possessed by Plaintiffs.

3 CLAIM TO QUIET TITLE

4 33. Plaintiffs reassert the foregoing paragraphs of this Complaint.

5 34. Plaintiffs are also entitled to entry of an Order Quieting Title to their properties that (a)
6 approves modified legal descriptions for Plaintiffs' properties establishing their fee ownership of the
7 entire ROW, less surface easement favoring Defendant no larger than the margins of the historical rail
8 bed (and current trail) which reflect the Court's rulings on Plaintiffs' claims and defenses; (b)
9 establishes scope of the trail such that it will not impact any of Plaintiffs' improvements and/or
10 structures as currently constructed and/or permitted; and (c) extinguishes any interest Defendant might
11 have in property outside the margins of the historical rail bed and current width of the trail.

12 WHEREFORE, Plaintiffs pray as follows:

- 13 1. For entry of the Orders granting the relief described hereinabove; and
14 2. Entry of an Order granting such other and further relief as the Court deems just and
15 equitable.

16 RESPECTFULLY SUBMITTED this 20th day of March, 2017.

18 ROMERO PARK P.S.

19 /s/ Craig Simmons

20 H. Troy Romero, WSBA #19044

21 Craig Simmons, WSBA # 38064

22 155 – 108th Avenue NE, Suite 202

23 Bellevue, WA 98004

24 Telephone: 425-450-5000

25 Fax: 425-450-0728

26 Email: tromero@romeropark.com

27 Email: csimmons@romeropark.com

28 Attorneys for Plaintiffs

1 **PROOF OF SERVICE VIA ELECTRONIC MAIL**

2 I, Samantha Prendergast, certify and declare as follows:

3 I am a citizen of the United States and a resident of the State of Washington. I am over
4 the age of 18 years and not a party to the within-entitled cause. I am an employee with the law
5 firm of Romero Park P.S., whose address is 155 – 108th Avenue NE, Suite 202, Bellevue,
6 Washington 98004.

7 On March 20, 2017, at my place of business in Bellevue, Washington, a copy of the
8 attached document described as:

9 AMENDED COMPLAINT FOR DECLARATORY RELIEF AND TO QUIET TITLE
10 was sent via Electronic Mail for delivery and addressed to:

11 David Freeburg
12 dfreeburg@corrchronin.com

John Ludlow
jludlow@hansonbaker.com

13 David Hackett
14 david.hackett@kingcounty.gov

Kevin Wright
kevin.wright@kingcounty.gov

15 Kris Bridgman
16 kris.bridgman@kingcounty.gov

Emily Harris
eharris@corrchronin.com

17 Mallory Satre
18 msatre@corrchronin.com

Leslie Nims
lnims@corrchronin.com

19 Donna Patterson
20 dpatterson@corrchronin.com

Cathy Anderson
canderson@hansonbaker.com

21 Volker Elste and Gail Ureel
22 volker.elste@intergraph.com

L. Lars Knudsen and Lisa Shdo
lknudsen@hightoweradvisors.com

23 I certify and declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.

25 DATED this 20th day of March, 2017.

26 ROMERO PARK P.S.

27 */s/Samantha Prendergast*

28 Samantha Prendergast, Legal Assistant
29 155 – 108th Avenue NE, Suite 202
30 Bellevue, WA 98004
Telephone: 425-450-5000

Fax: 425-450-0728

Email: sprendergast@romeropark.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30