

# East Lake Sammamish Master Plan Trail - South Sammamish Segment B Title Reports

*Prepared for*

**King County**

Division of Capital Planning and Development  
Facilities Management Division, DES  
201 South Jackson, Suite 700  
Seattle, WA 98104

**Exhibit 20**  
**SSDP2016-00415**  
**001461**

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**QUIT CLAIM FROM BNSF TO THE LAND CONSERVANCY OF SEATTLE (TLC)**

Name The Land Conservance of Seattle

Address 1150 19th St.

City, State, Zip Seattle, WA 98112

**COMMONWEALTH  
LAND TITLE INSURANCE COMPANY  
OF PHILADELPHIA**

CW C80212

21-

Document Title(s):

1. Quit Claim Deed
2. \_\_\_\_\_

Reference Number(s) of Documents assigned or released:

(Additional numbers on page \_\_\_\_\_ of document)

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

1. The Burlington Northern and Santa Fe Railway Company
2. \_\_\_\_\_

3. Additional names on page \_\_\_\_\_ of document

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

1. The Land Conservancy of Seattle and King County
2. \_\_\_\_\_

3. Additional names on page \_\_\_\_\_ of document

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

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

(Additional legal description on page \_\_\_\_\_ of document)

Assessor's Property Tax Parcel/Account Number:  
172406-9007-01, 292506-9007-06, 292506-9008-005, 2925069036-01,  
162406-9017-00

(Additional account numbers on page \_\_\_\_\_ of document)

E1540364 04/28/97 26700.00 1500000.00

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**WHEN RECORDED MAIL TO:**

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

**RECORDED AT THE REQUEST OF:**

**QUITCLAIM DEED**

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

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

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

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

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

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

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

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

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

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

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

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

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

By: James J. O'Neil

James J. O'Neil

Vice President Property & Facility  
Management

**ATTEST:**

By: Margaret R. Aclyn

Margaret R. Aclyn  
Assistant Secretary



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ACCEPTED:

THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY

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

ATTEST:

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



STATE OF WASHINGTON      §  
   § ss.  
COUNTY OF KING        §

On this 25 day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CAROL JAMES and [Signature] to me known to be the VICE PRESIDENT and [Signature] respectively, of The Land Conservancy of Seattle and King County, a non-profit tax-exempt corporation organized and existing under the laws of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

Erin Duggan Reed  
Notary Public in and for the  
State of Washington  
Residing at: Seattle  
My appointment expires: 4-29-99

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STATE OF TEXAS

§

§ ss.

COUNTY OF TARRANT

§

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

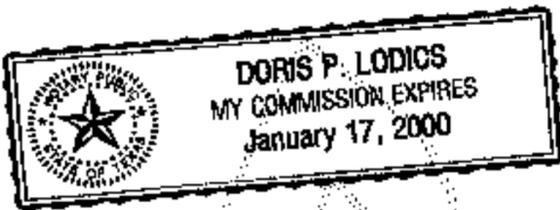
Witness my hand and official seal hereto affixed the day and year first above written.

*Doris P. Lodics*

Notary Public in and for the State of Texas

Residing at: Fort Worth, Texas

My appointment expires: 1-17-2000



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**FORM APPROVED BY LAW**

**EXHIBIT "A"**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ALSO,

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

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

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

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

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

"Line A" Description

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

**ALSO,**

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

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

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

"Line B" Description

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

"Line C" Description

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

"Line D" Description

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

**ALSO,**

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

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

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

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

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**QUIT CLAIM FROM TLC TO KING COUNTY**



Recording Requested By And  
When Recorded Mail To:

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

**QUITCLAIM DEED**

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

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

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

Additional legal(s) on: Pages 5 through 12

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

Project [Area]: East Lake Sammamish Trail

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

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2521  
Exhibit 20  
SSDP2016-00415  
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**EXHIBIT "A"**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Parcel "A" Description

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

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

ALSO,

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

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

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

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

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

"Line A" Description

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

ALSO,

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

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

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

"Line B" Description

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

"Line C" Description

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

"Line D" Description

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

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 and the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, and bounded on the Southeast by the East line of said Government Lot 1; also,

All that portion of said Railway Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 2 of said Section 8, Government Lots 1, 2 and 3 of Section 17, Government Lots 1 and 2 and the E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub> of Section 16, the E<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> and the E<sup>1</sup>/<sub>2</sub> of Section 21, and that portion of the E<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub> of Section 28 lying Northerly of the Southerly right of way margin of Northwest Gilman Boulevard (State Road No. 2, Renton-Issaquah Road), all in Township 24 North, Range 6 East.

9809181252

**KING COUNTY V RASMUSSEN**

 KeyCite Yellow Flag - Negative Treatment  
Declined to Follow by [Haggart v. United States](#), Fed.Cl.,  
December 18, 2012

299 F.3d 1077  
United States Court of Appeals,  
Ninth Circuit.

KING COUNTY, a political subdivision of the State  
of Washington,  
Plaintiff-counter-defendant-Appellee,  
v.  
John RASMUSSEN; [Nancy Rasmussen](#), husband  
and wife, and their marital community,  
Defendants-counter-claimants-Appellants.

No. 01-35610.

Argued and Submitted June 13, 2002.

Filed Aug. 9, 2002.

County filed suit to quiet title to 100-foot-wide strip of land that bisected landowners' property and to obtain declaration of its rights to use former railroad right of way for public trail. Landowners filed counterclaims and removed action. The United States District Court for the Western District of Washington, [Barbara J. Rothstein](#), Chief District Judge, [143 F.Supp.2d 1225](#), entered summary judgment for county, and landowners appealed. The Court of Appeals, [Betty B. Fletcher](#), Circuit Judge, held that: (1) action was properly removed under federal question jurisdiction; (2) original homesteader of surrounding tract had power to convey either easement or fee simple title at time of conveyance to railroad; (3) under Washington law, landowner conveyed fee simple title and thus landowners had no reversionary interest when railway was abandoned; (4) district court did not have authority to review action of Surface Transportation Board (STB) under Rails to Trails Act; (5) county did not violate First or Second Amendment rights of landowners; and (6) landowners due process and rights to compensation for taking of land were not violated.

Affirmed.

West Headnotes (23)

[1] **Removal of Cases**

 **Cases Arising Under Laws of United States**

Quiet title action was properly removed where it could have been originally brought in district court under federal question jurisdiction, inasmuch as plaintiff based a legal right to strip of land in question on federal Rails to Trails Act. [16 U.S.C.A. § 1247\(d\)](#).

[2 Cases that cite this headnote](#)

[2] **Federal Civil Procedure**

 **Matters considered in general**

**Federal Civil Procedure**

 **Matters considered**

Overlength portions of pro se parties' briefs in response to opposing party's motions were properly struck pursuant to local rule, as were legal arguments contained in separate declaration filed in response to motion to dismiss. U.S.Dist.Ct.Rules W.D.Wash., Rule 7.

[6 Cases that cite this headnote](#)

[3] **Federal Courts**

 **Summary judgment**

A grant of summary judgment is reviewed de novo.

[Cases that cite this headnote](#)

[4] **Railroads**

 **Title, estate, or interest acquired**

Homesteader who had perfected his title to homestead property before he conveyed interest in strip of land to railway had power to convey either easement or fee simple title, even though homesteader had not yet received patent for land. Act March 3, 1873, § 1, 17 Stat. 602.

**Exhibit 20**

**SSDP2016-00415**

**001491**

Cases that cite this headnote

[5]

**Railroads**

🔑 Title, estate, or interest acquired

Under Washington law, homesteaders' right-of-way deed to railroad conveyed fee simple interest, not easement; although deed anticipated that right of way would be used to operate railroad, deed did not actually condition conveyance on such use, deeds from other landowners in same year contained additional language to explicitly restrict grant for railroad purposes, and homesteaders' conduct in excepting out right-of-way in subsequent conveyances was inconsistent with conveyance of mere easement.

10 Cases that cite this headnote

[6]

**Railroads**

🔑 Title, estate, or interest acquired

Under Washington law, a conveyance of a right of way to a railroad may be in fee simple, or it may be an easement.

1 Cases that cite this headnote

[7]

**Deeds**

🔑 Creation by deed in general

Under Washington law, intent of the parties is of paramount importance in determining what interest a deed conveyed.

Cases that cite this headnote

[8]

**Deeds**

🔑 Language of instrument

**Deeds**

🔑 Extrinsic circumstances

Under Washington law, to ascertain the intent of the parties to a deed, one must look to the language of the deed as well as the circumstances surrounding the deed's execution and the subsequent conduct of the parties.

Cases that cite this headnote

[9]

**Deeds**

🔑 Extrinsic circumstances

Under Washington law, a finding of ambiguity in the language of the deed is not required to consider extrinsic evidence of the surrounding circumstances and the subsequent conduct of the parties.

Cases that cite this headnote

[10]

**Railroads**

🔑 Title, estate, or interest acquired

Under Washington law, fact that grantors received no monetary consideration in return for conveyance of right of way to railroad was of little weight in determining whether deed was intended to convey easement or fee simple title to strip of land.

4 Cases that cite this headnote

[11]

**Railroads**

🔑 Title, estate, or interest acquired

Under Washington law, whether the parties to railroad right of way deed used a statutory form deed is a significant factor in determining their intent to convey fee simple as opposed to easement; if parties utilized statutory warranty form deed and granting clauses convey definite strips of land, grantors intended to convey fee

simple title unless additional language in deeds clearly and expressly limits or qualifies the interest conveyed.

9 Cases that cite this headnote

[12] **Railroads**

🔑 Title, estate, or interest acquired

Under Washington law, deed of railroad right of way did not give rise to presumption that deed conveyed fee simple interest where it did not follow statutory warranty deed form.

3 Cases that cite this headnote

[13] **Easements**

🔑 Nature and elements of right

Use of the term “right of way” in the granting clause of deed as a limitation or to specify the purpose of the grant generally creates only an easement.

1 Cases that cite this headnote

[14] **Easements**

🔑 Nature and elements of right

**Railroads**

🔑 Conveyances to or for Railroad Company

**Railroads**

🔑 Title, estate, or interest acquired

Term “right of way” in deed can have two purposes: (1) to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement), or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway.

1 Cases that cite this headnote

[15] **Easements**

🔑 Nature and elements of right

Under Washington law, circumstances surrounding execution of deed were relevant in determining whether it was intended to convey fee simple interest or easement.

1 Cases that cite this headnote

[16] **Federal Courts**

🔑 Pleading

Dismissals for failure to state claim are reviewed under de novo standard. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

1 Cases that cite this headnote

[17] **Federal Courts**

🔑 Jurisdiction

Dismissals for lack of subject matter jurisdiction are reviewed de novo. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

1 Cases that cite this headnote

[18] **Eminent Domain**

🔑 Real property in general

Landowners had no claim for just compensation for taking of strip of land for bikeway where fee simple interest, not easement, in land had been conveyed by landowners’ predecessor to county’s predecessor, railroad, such had they had no ownership interest. U.S.C.A. Const.Amend. 5; West’s RCWA Const. Art. 1, § 16.

1 Cases that cite this headnote **Exhibit 20**

[19] **Federal Courts**

🔑 Railroads; national trail system

District court did not have subject matter jurisdiction to consider challenge to authority of Surface Transportation Board to apply National Trail System Act to rail spur line; judicial review of order could only be obtained directly from a Court of Appeals. National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d); 28 U.S.C.A. §§ 1336(b), 2321(a).

2 Cases that cite this headnote

[20] **Civil Rights**

🔑 Property and housing

In absence of any allegation that county violated any local policy, practice, or custom, county could not be held liable under § 1983 for alleged violation of landowners' rights to petition government for redress of grievances for allegedly refusing to communicate further with landowners protesting use of railroad right of way for public trail. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

5 Cases that cite this headnote

[21] **Civil Rights**

🔑 Governmental Ordinance, Policy, Practice, or Custom

Counties are liable for constitutional violations under § 1983 only if the individual officer who committed the violation was acting pursuant to a local policy, practice, or custom. 42 U.S.C.A. § 1983.

7 Cases that cite this headnote

[22] **Civil Rights**

🔑 Governmental Ordinance, Policy, Practice, or Custom

Failure to allege that the violation occurred pursuant to a county custom or practice precluded any claim that county violated citizen's Second Amendment right to bear arms when it obtained order prohibiting him from possessing gun. U.S.C.A. Const.Amend. 2; 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

[23] **Constitutional Law**

🔑 Real property in general

**Eminent Domain**

🔑 Easements and other rights in real property

Landowners who had no reversionary interest in railroad right of way were not deprived of property right without due process of law and did not suffer condemnation without compensation when right of way was converted to public trail. U.S.C.A. Const.Amend. 5, 14; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d)

Cases that cite this headnote

**Attorneys and Law Firms**

\*1079 **J. Jarrette Sandlin**, Sandlin Law Firm, Zillah, WA, for the defendants-counter-plaintiffs-appellants.

**Howard P. Schneiderman** and **Scott Johnson**, King County Prosecuting Attorney's Office, Seattle, WA, for the plaintiff-counter-defendant-appellee.

Appeal from the United States District Court for the Western District of Washington; **Barbara J. Rothstein**, Chief District Judge, Presiding. D.C. No. CV-00-01637-BJR.

Before **B. FLETCHER** and **GOULD**, Circuit Judges, and **MURGUIA**, District Judge.<sup>1</sup>

**OPINION**

**BETTY B. FLETCHER**, Circuit Judge.

This case arises from a dispute over a 100-foot-wide strip of land running along a portion of the eastern shore of Lake Sammamish in King County, Washington, \*1080 that was formerly used as part of a railway corridor. King County filed suit against the Rasmussens to quiet title over this strip of land, which bisects the Rasmussens' property, and to obtain a declaratory judgment that it is entitled to quiet enjoyment of the strip.

King County claims it owns a fee simple estate in the strip. The Rasmussens, in turn, claim that their predecessors in interest granted only an easement over the strip and that the rights in the easement have reverted to the Rasmussens so that they now have fee simple title to the strip. The district court granted summary judgment in favor of King County and dismissed the Rasmussens' counterclaims. Because we conclude that no genuine issues of material fact exist for trial and that King County holds the strip in fee simple, we affirm.

**I.**

**Factual and Procedural Background**

In 1876, homesteaders Bill Hilchkanum and Mary Hilchkanum claimed property along the eastern shore of Lake Sammamish in King County, Washington. They received their final ownership certificate in 1884 and their fee patent in 1888. On May 9, 1887, the Hilchkanums conveyed an interest in the strip to the Seattle Lake Shore and Eastern Railway Company ("the Railway"). The text of the "Right of Way Deed" is as follows:

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

Lots one (1) two (2) and three (3) in section six (6) township 24 North of Range six (6) East.

Such right of way strip to be fifty (50) feet in width on

each side of the center line of the railway track as located across our said lands by the Engineer of said railway company which location is described as follows to wit [legal description in metes and bounds].

And the said Seattle Lake Shore and Eastern Railway Company shall have the right to go upon the land adjacent to said line for a distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road.

To have and to hold the said premises with the appurtenances unto the said party of the second part and to its successors and assigns forever.

The deed was handwritten by a notary public.

Mary Hilchkanum later conveyed lots 1 and 3 of the homestead property to her husband by quitclaim deed. The conveyance is "less (3) acres right of way of Rail Road." Bill Hilchkanum then conveyed lot 1 to Chris Nelson "less three (3) acres heretofore conveyed to the Seattle and International Railway for right of way purposes." The deed by which the Hilchkanums conveyed lot 2 of their homestead property did not contain an exception for the railroad right of way. The Rasmussens claim that the right of way bisects portions of lots 2, 3, and 5.<sup>2</sup>

The Railway, and its successor Burlington Northern, built a track on the strip of \*1081 land and used the track regularly for rail service until approximately 1996. In 1997, Burlington Northern sold its railway corridor, including the Hilchkanum strip, to The Land Conservancy of Seattle and King County ("TLC").

On June 11, 1997, TLC petitioned the United States Surface Transportation Board ("STB") to abandon use of the corridor for rail service under the National Trail System Act, 16 U.S.C. § 1247(d) ("Rails to Trails Act"). The STB approved interim trail use of the corridor—called railbanking—by King County and issued a Notice of Interim Trail Use. The County then purchased the corridor from the TLC and obtained title to the right of way carved from the Hilchkanum property.<sup>3</sup>

The Rasmussens oppose King County's efforts to railbank the right of way and claim that King County has no right to use the right of way as a trail because the Railway and its successors held only an easement for railroad purposes. As a result, King County brought this action in state court to quiet title and to obtain a declaration of its rights in the strip. The Rasmussens removed the action to federal court and counterclaimed with allegations that King County violated their First, Second, Exhibit 20

Fourteenth Amendment rights and violated 16 U.S.C. § 1267(d), 42 U.S.C. § 1983, 28 U.S.C. § 1358, and Article I, Section 16 of the Washington state constitution.

King County moved for summary judgment on its claim to the property and moved to dismiss the Rasmussens' counter-claims for failure to state a claim and for lack of subject matter jurisdiction. In response to these motions, the Rasmussens filed two over-length briefs and a declaration from Mr. Rasmussen containing several additional pages of legal argument. King County filed its reply and moved to strike the over-length portions of the Rasmussens' briefs and the legal arguments in Mr. Rasmussen's declaration. They also moved to strike inadmissible evidence from the briefs and the declaration. The Rasmussens filed a brief in response to King County's motion to strike as well as a separate surrebuttal brief. King County moved to strike the surrebuttal brief.

In a published opinion, the district court struck the over-length portions of the Rasmussens' response brief as well as the legal arguments in Mr. Rasmussen's declaration. See *King County v. Rasmussen*, 143 F.Supp.2d 1225, 1227 (W.D.Wash.2001). It also struck a paragraph in the response brief that indicated that Bill Hilchkanum was a Native American and was illiterate; the Rasmussens cited no evidence in support of this assertion in their brief to the district court. *Id.* at 1227–28. The district court also agreed to strike the surrebuttal brief. *Id.* at 1228. Finally, it granted King County's motion for summary judgment and dismissed the counterclaims. *Id.* at 1231. The Rasmussens appeal.

## II.

### Jurisdiction

<sup>[1]</sup> The district court had jurisdiction over this removal action if King County \*1082 could have brought the case in federal court in the first place. 28 U.S.C. § 1441(a). King County could have brought this action in federal court initially because the district court would have had federal question jurisdiction pursuant to 28 U.S.C. § 1331. King County's complaint included an allegation that it had a legal right to the strip of land in question even if the original deed conveyed only an easement. King County relied on 16 U.S.C. § 1247(d) as the source of this right. Thus, there was a federal question on the face of the well-pleaded complaint. See *Patenaude v. Equitable Life Assurance Soc'y of United States*, 290 F.3d 1020, 1023

(9th Cir.2002) (“The presence or absence of federal-question jurisdiction is governed by the well-pleaded complaint rule ....” (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987)) (internal quotation marks omitted)).

This court has appellate jurisdiction over the district court's summary judgment pursuant to 28 U.S.C. § 1291.

## III.

### Motions to Strike

<sup>[2]</sup> The Rasmussens argue that we should consider materials struck by the court below. The district court struck the over-length portions of the Rasmussens' briefs in response to King County's motions for summary judgment and to dismiss the counterclaims. It also struck legal arguments contained in John Rasmussen's declaration as well as the Rasmussens' surrebuttal brief.

The district court struck these materials on the basis of Western District of Washington Local Civil Rule 7, which limits the length of summary judgment briefs to twenty-four pages, limits the length of briefs relating to other motions to eight pages, and makes no allowance for surrebuttal briefs. Parties may file over-length briefs if they obtain prior permission from the court. The Rasmussens violated this rule by filing two thirty-four-page briefs without obtaining prior permission.<sup>4</sup> Mr. Rasmussen's declaration added further briefing well beyond the twenty-four-page limit. Declarations, which are supposed to “set forth facts as would be admissible in evidence,” should not be used to make an end-run around the page limitations of Rule 7 by including legal arguments outside of the briefs. Fed.R.Civ.P. 56(e). As for the surrebuttal brief, the Rasmussens claim that it merely contained a response to the motion to strike. This is not so. It contains legal arguments on the motion to dismiss the counterclaims. The Rasmussens filed a separate response to the County's motion to strike, which the district court considered. Thus, the district court acted properly in granting King County's motions to strike.

For the most part, however, the fact that this material has been struck will not affect our review. The final pages of the summary judgment response brief do not contain separate legal arguments that are waived because they were not raised in the first twenty-four pages of the brief.

Instead, they contain comparisons between the facts of this case and the facts of a Washington Court of Appeals case dealing with a railroad right of way. We must consider the effect of any case relevant to the arguments raised, regardless of whether the Rasmussens briefed the particular case.

As for the counterclaims, the only claims not addressed in the first twenty-four \*1083 pages of the brief opposing Rule 12(b) dismissal are the Rasmussens' takings claims. However, the district court did not consider these claims waived and instead dismissed them for failure to state a claim. *Rasmussen*, 143 F.Supp.2d at 1231 (disposing of Fifth Amendment and state constitutional takings claims). Thus, we will address all of the Rasmussens' counterclaims.

#### IV.

#### Summary Judgment

##### A. Standard of Review

[3] A grant of summary judgment is reviewed *de novo*. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir.2001). This court must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Id.* All reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Orin v. Barclay*, 272 F.3d 1207 (9th Cir.2001).

##### B. Validity of Conveyance Prior to Obtaining Fee Patent

[4] The Rasmussens claim that Bill Hilchkanum did not have the power to convey anything more than an easement to the Railway because he had not perfected his title to the homestead when he made the conveyance in 1887. Under the Act of March 3, 1873, ch. 266, 17 Stat. 602 (1873),<sup>5</sup> a homesteader could convey a right of way to a railroad before perfecting his title. The use of the term "right of way" in the statute may have limited a homesteader to conveying only an easement, not a fee simple, to a railroad.

However, we need not answer this question to decide this case because Bill Hilchkanum perfected his title to the homestead property in 1884, three years before he conveyed the interest in the strip of land to the Railway in

1887. He entered the subject property in 1876 and took up residence there. The Homestead Act of 1862 provided that he could receive a certificate or patent at the expiration of five years from the date of entry if he provided proof that he had resided or cultivated the land for these five years, that he had not alienated any of the land, and that he had borne true allegiance to the United States. *See* Homestead Act, ch. 75, 12 Stat. 392 (1862). Bill Hilchkanum submitted the necessary proof and obtained his certificate of ownership in 1884. Since he had fulfilled all the necessary conditions of ownership, his title was perfected in 1884. As a result, he did not need to act within the restrictions of the Act of March 3, 1873 to alienate his property nor did he need to include an after-acquired property clause in his conveyances; he had title free and clear and could convey to the Railway whatever he wished.

Although Hilchkanum did not obtain his patent deed until 1888, the Rasmussens cite no authority suggesting that the certificate of ownership did not perfect his title, \*1084 and their own expert opined that Hilchkanum obtained "unqualified and perfect fee simple ownership" in 1884. Graddon Decl. Ex. 1, § 1 at 2. We affirm the district court's conclusion that there are no genuine issues of fact as to whether Hilchkanum had the power to convey a fee simple interest to the Railway in 1887.

##### C. Easement or Fee Simple

[5] King County claims that under Washington state law the Hilchkanum deed conveyed a fee simple estate in the strip of land to the Railway. The Rasmussens argue that, even if Hilchkanum had the power to convey a fee simple estate to the Railway, he intended to convey only an easement. The district court agreed with King County, as do we.

[6] [7] [8] [9] A conveyance of a right of way to a railroad may be in fee simple, or it may be an easement. *Veach v. Culp*, 92 Wash.2d 570, 599 P.2d 526, 527 (Wash.1979). The intent of the parties is of paramount importance in determining what interest the deed conveyed. *Brown v. State*, 130 Wash.2d 430, 924 P.2d 908, 911 (Wash.1996). It has been said that it is a factual question to determine the intent of the parties. *Veach*, 599 P.2d at 527. But the intent of parties to a deed as well as the legal consequences of that intent are in reality mixed questions of law and fact: legal rules of deed interpretation determine how the underlying facts reflect the intent of the parties. *See Brown*, 924 P.2d at 912 (determining intent from undisputed underlying facts on summary judgment). To ascertain the intent of the parties, one must look to the language of the deed as well as the

circumstances surrounding the deed's execution and the subsequent conduct of the parties.<sup>6</sup> *Id.* However, the parties must "clearly indicate" an intent to make a conveyance conditional. *King County v. Hanson Inv. Co.*, 34 Wash.2d 112, 208 P.2d 113, 119 (1949) (cited in *Brown*, 924 P.2d at 912).

<sup>[10]</sup> The Washington Supreme Court provided its most recent guidance on this issue in *Brown*.<sup>7</sup> The *Brown* court identified various factors to consider in determining whether a deed conveyed a fee simple or an easement:

[W]e have relied on the following factors: (1) whether the deed conveyed a strip of land and did not contain additional language relating to the use or purpose to which the land was to be put, or in other ways limiting the estate conveyed; (2) whether the deed conveyed a strip of land and limited its use to a specific purpose; (3) whether the deed conveyed a right of way over a tract of land, rather than a strip thereof; (4) whether the deed granted only the privilege of constructing, operating, or maintaining a railroad over the land; (5) whether the deed contained a clause providing that if the railroad ceased to operate, the land conveyed would revert to the grantor; (6) whether the consideration expressed was substantial or nominal;<sup>8</sup> (7) whether the conveyance \*1085 did or did not contain a habendum clause, and many other considerations.

*Brown*, 924 P.2d at 912.

<sup>[11]</sup> The *Brown* court further explained that whether the parties to a railroad right of way deed used a statutory form deed is a significant factor in determining their intent. *Brown*, 924 P.2d at 912; see *Roeder Co. v. K & E Moving & Storage Co.*, 102 Wash.App. 49, 4 P.3d 839, 841 (Wash.Ct.App.2000). The court ruled that "where the original parties utilized the statutory warranty form deed and the granting clauses convey definite strips of land, we must find that the grantors intended to convey fee simple title unless additional language in the deeds clearly and expressly limits or qualifies the interest conveyed."<sup>9</sup> *Brown*, 924 P.2d at 912.

<sup>[12]</sup> In this case, however, the Hilchkanum deed did not follow the statutory warranty form. The statutory form is as follows:

The grantor (here insert the name or names and place of residence) for and in consideration of (here insert consideration), in hand paid, convey and warrant to (here insert the grantee's name) the following described real estate (here insert

description), situated in the county of \_\_\_\_\_, state of Washington.

Laws of 1886, § 3, pp. 177–78. The Hilchkanum deed used a slightly different form:

In consideration of (here insert consideration), grantor (here insert name of grantor) does hereby donate grant and convey unto grantee (here insert name of grantee) the following described right of way (here insert description).

As a result, the Hilchkanum deed does not give rise to the presumption that the deed conveyed a fee simple. See *Roeder*, 4 P.3d at 843; *Veach*, 599 P.2d at 527 (no presumption that quitclaim deed conveyed fee simple). A failure to use the statutory warranty deed form, however, does not necessarily mean that the parties did not intend to convey a fee simple. The court must consider whether other factors indicate that the parties intended a fee simple.

<sup>[13]</sup> <sup>[14]</sup> Another factor on which the *Brown* court focused was if and how the deed uses the term "right of way." The court noted that use of the term in the granting clause as a limitation or to specify the purpose of the grant generally creates only an easement. *Brown*, 924 P.2d at 913. The term "right of way," however, can have two purposes: "(1) to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement), or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway." *Id.* at 914.

In *Brown*, the term "right of way" appeared only in each deed's legal description or in the description of the railroad's obligations, instead of in the granting or habendum clauses. The court concluded that "used in this manner, 'right of way' merely describes a strip of land acquired \*1086 for rail lines." *Brown*, 924 P.2d at 914. Since the term did not qualify or limit the interest expressly conveyed in the granting and habendum clauses of the deeds at issue, the court concluded it did not indicate an intent to grant an easement only.<sup>10</sup>

Here the term "right of way" appears in the granting clause as well as in the legal description.<sup>11</sup> In this sense, the Hilchkanum deed suggests a possible intent to create only an easement in a way the deeds at issue in *Brown* did not. However, neither the granting nor the habendum clauses contains language clearly limiting the use of the land to a specific purpose. In virtually all cases where

Exhibit 20

Washington courts have found only an easement, the granting or the habendum clauses contained such language. See *Swan v. O'Leary*, 37 Wash.2d 533, 225 P.2d 199, 199 (Wash.1950) (granting premises "for the purpose of a Railroad right-of-way"); *Morsbach v. Thurston County*, 152 Wash. 562, 278 P. 686, 687 (Wash.1929) (conveying a "right of way for the construction of said company's railroad"); *Pacific Iron Works v. Bryant Lumber & Shingle Mill Co.*, 60 Wash. 502, 111 P. 578 (Wash.1910) (holding that deed providing "to have and to hold the said premises ... for railway purposes, but if it should cease to be used for a railway the said premises shall revert to said grantors" granted easement); *Reichenbach v. Washington Short Line Ry. Co.*, 10 Wash. 357, 38 P. 1126 (Wash.1894) (construing deed which provided "so long as the same shall be used for the operation of a railroad" as an easement); *King County v. Squire Inv. Co.*, 59 Wash.App. 888, 801 P.2d 1022, 1022 (Wash.Ct.App.1990) (granting premises to railroad "so long as said land is used as a right-of-way by said railway Company, Expressly reserving to said grantors their heirs and assigns all their riparian rights ..."). Without such additional language, the use of the term "right of way" merely "begs the question" since a railroad could own a right of way either as an easement or in fee. *Brown*, 924 P.2d at 914.

The Hilchkanum deed contained precatory language indicating that the parties expected that the right of way would be used to construct and operate a railroad, but it did not actually condition the conveyance on such use.<sup>12</sup> *Brown*, 924 P.2d at 912–13. Also, in *Brown*, the court noted that identifying the general purpose of a conveyance, i.e., for railroad purposes, is not helpful in discerning intent because it does not clarify whether the right of way is an easement or a fee. *Id.* at 913.

One Washington case, *Veach*, supports the Rasmussens' contention that the mere use of the term "right of way" in the granting clause of the Hilchkanum deed, without additional language conditioning the use of the interest, creates an easement. 599 P.2d at 527. In *Veach*, the 1901 deed stated:

\*1087 The said party of the first part, for and in consideration of the sum of Two Hundred and Twenty-five Dollars, ... do by these presents remise, release, and forever quit claim unto said party of the second part, and to its assigns, all that certain lot, piece or parcel of land situated in Whatcom County ... to-wit: "A right of way one hundred feet wide, being fifty feet on each side of the center line of the B.B. & Easter R.R. .... To have and to hold, all and singular, said premises, together with the appurtenances unto the said party of the second part, and to its assigns forever."

*Id.* Like the Hilchkanum deed, the language in the *Veach* deed did not expressly limit the use to a particular purpose. However, the district court distinguished *Veach* on the basis of other language in the Hilchkanum deed and extrinsic evidence indicating an intent to convey a fee simple estate, neither of which was present in *Veach*. *Rasmussen*, 143 F.Supp.2d at 1230 n. 4.

First, the district court compared the Hilchkanum deed's language granting an interest in the strip of land with its language granting the Railway the right to enter the adjacent land to cut trees:

The deed grants a "strip" of land described in metes and bounds rather than merely a right "over" the land (as it does with the tree-cutting grant). The deed uses the word "convey" when granting the strip, which is associated with fee transfers (notably, "convey" is absent in the tree-cutting grant). See *Hanson*, 208 P.2d at 119.

*Id.* We agree with the district court that these factors indicate that Hilchkanum intended to convey a fee simple interest in the strip of land described. Furthermore, the fact that he explicitly limited the purpose of the Railway's right to enter the adjacent land demonstrates that he was aware of the distinction between an easement and a fee simple conveyance.<sup>13</sup>

[5] The district court also looked to the behavior of the parties after the execution of the deed to the Railway, which bolsters the conclusion that the deed conveyed the right of way in fee. *Rasmussen*, 143 F.Supp.2d at 1230. Some of the deeds that the Hilchkanums subsequently used to convey the rest of their property explicitly excepted the strip of land belonging to the Railway. The deeds conveyed the surrounding property "less (3) acres right of way of Rail Road." By excepting the right of way in terms of acres of land, the conveyances betray an understanding that the Railway owned the strip of land and did not merely have a right to enter the strip.

The Rasmussens point out that the Hilchkanums did not mention the railroad right of way in the deed conveying lot 2, which is where most of the strip to which the Rasmussens lay claim is located. However, this does not bring into dispute the fact that the Hilchkanums intended a fee simple. Had they used other language in conveying lot 2 that recognized the Railway's right of way as only an easement, then a factual finding reconciling the contradictory positions might be necessary. \*1088 But the

total failure to except the land subject to the right of way in the lot 2 deed is not significantly probative of whether or not the parties intended to convey a fee simple estate. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir.2000) (noting that a scintilla of evidence or evidence that is not significantly probative does not present a genuine issue of material fact).

[15] Finally, the district court properly looked to the circumstances surrounding the execution of the Hilchkanum deed and concluded that they confirmed the parties' intent to convey a fee simple estate. *Rasmussen*, 143 F.Supp.2d at 1230. Deeds to the Railway from other landowners executed in the same year as the Hilchkanum deed used the same form but contained additional language explicitly restricting the grant to railroad purposes and providing that the interest would revert to the grantor if the railroad ceased to operate. See *Squire*, 801 P.2d at 1023; *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wash.App. 491, 857 P.2d 283, 286–87 (Wash.Ct.App.1993). The differences in these deeds reflected the common practice of the railroads of using fee simple form deeds and adding language to include limitations requested by landowners. See Danaya C. Wright & Jeffrey M. Hester, *Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and the Shifting Scope of Railroad Easements From the Nineteenth to the Twenty-First Century*, 27 Ecology L.Q. 351, 378 (2000). The deed in question here suggests that the Hilchkanums requested no such limitations.

In conclusion, “[t]he language of the deed, the behavior of the parties, and the circumstances converge to show the Hilchkanums’ intent to convey a fee simple.” *Rasmussen*, 143 F.Supp.2d at 1230–31. The underlying facts are undisputed, and, viewing these facts in the light most favorable to the Rasmussens, as we must on summary judgment, we conclude that King County, as the Railway’s successor, possesses a fee simple in the strip of land.<sup>14</sup> We, therefore, affirm the district court’s summary judgment in favor of King County.

## V.

### Counterclaims

[16] [17] The district court dismissed all of the Rasmussens’ counter-claims either for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) or for lack of subject matter jurisdiction under Federal Rule of Civil

Procedure 12(b)(1). We review these dismissals *de novo*, see *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir.2001) (reviewing 12(b)(6) dismissal *de novo*); *La Reunion Francaise SA v. Barnes*, 247 F.3d 1022, 1024 (9th Cir.2001) (reviewing 12(b)(1) dismissal *de novo*), and we affirm.

#### A. Takings

[18] The Rasmussens argue that they are entitled to just compensation for the \*1089 taking of their land by the government under the state constitution and the Fifth Amendment. See Wash. Const., Art. 1, § 16. Their takings claim requires a finding that the Rasmussens own the strip of land. Because King County owns the strip of land in fee simple, the Rasmussens’ land was not taken, and they can state no claim for which relief can be granted.

#### B. Spur Line Arguments

[19] The Rasmussens argue that King County’s title to the right of way is invalid because the STB lacked subject matter jurisdiction to order interim trail use over the railroad right of way. They claim the rail line in question is a spur line over which the STB has no jurisdiction. As the district court wrote, “[b]y challenging the STB proceedings, the Rasmussens are asking the court to reverse an STB order.” The courts of appeals have exclusive jurisdiction over any proceeding “to enjoin or suspend, in whole or in part, a rule, regulation, or order of the STB....” 28 U.S.C. § 2321(a); *Dave v. Rails-to-Trails Conservancy*, 79 F.3d 940, 942 (9th Cir.1996) (finding that district court has no jurisdiction to hear claims that have the practical effect of seeking review of an ICC (now STB) order).

No authority supports the Rasmussens’ proposition that, in spite of 28 U.S.C. § 2321, the district court had jurisdiction to consider the subject matter jurisdiction of the STB. The Rasmussens cite *Powelson v. United States*, 150 F.3d 1103, 1105 (9th Cir.1998), which holds that a statute may create subject matter jurisdiction yet not waive sovereign immunity. They then argue that, because it is not clear whether Congress has waived sovereign immunity of the STB deliberations, there must be subject matter jurisdiction. This argument has no merit. The non-waiver of sovereign immunity does not supply subject matter jurisdiction.

The Rasmussens also rely on 28 U.S.C. § 1336(b), which allows a district court to refer a question or issue to the STB and to exercise “exclusive jurisdiction of a civil action to enforce, enjoin, set aside, annul, suspend, or

whole or in part, any order of the STB arising out of such referral.” This case involves no such referral, and § 1336(b) does not give the district court any power to refer a question that challenges the STB’s jurisdiction to issue an order that it has already issued. The STB implicitly has answered this question by asserting jurisdiction over the rail line; judicial review of the order must be obtained directly from a court of appeals as provided by 28 U.S.C. § 2321(a).

#### C. First Amendment

[20] The Rasmussens contend that their First Amendment right to petition the government for redress has been violated because King County refused to communicate with them. In the Rasmussens’ Answer and Counterclaim and in their briefing to the district court, the Rasmussens also argued that King County had violated their right to free speech. They argued that a letter from King County officials threatening to bring criminal harassment charges against Mr. Rasmussen constituted an impermissible prior restraint on his ability to say that “he shall defend his life and his property, and that he shall arm himself.” The letter apparently arose after Mr. Rasmussen threatened county employees who entered the railroad right of way bisecting his land. The Rasmussens now focus only on their right to petition the government for redress of grievances.

[21] Counties are liable for constitutional violations under § 1983 only if the individual officer who committed the violation was acting pursuant to a local policy, practice or custom. *Monell v. Dep’t of Soc. Serv.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The Rasmussens have failed to allege any local policy, practice or custom here. They attempt no response to this argument in their briefing to this court. The First Amendment claim was properly dismissed for failure to state a claim.

#### D. Second Amendment

[22] John Rasmussen contends that King County violated his Second Amendment right to bear arms when it obtained an order prohibiting Rasmussen from possessing a gun. This claim must fail for the same reason the First Amendment claim fails—the failure to allege that the violation occurred pursuant to a county custom or practice. *Id.*

#### E. Fourteenth Amendment Due Process and Eminent

#### Domain

[23] The Rasmussens argue that they have lost their property right in the railroad right of way without due process of law and that their property has been condemned by the government. They also claim that King County owes them compensation for the wrongful exercise of the federal government’s power of eminent domain through the STB. These claims presume that the Rasmussens held a reversionary interest in the right of way because the original deed conveyed only an easement. Because we affirm the district court’s holding that the original deed conveyed a fee simple, the Rasmussens have no rights in the subject property on which to base a due process or eminent domain claim. The district court properly dismissed these claims.

#### F. Violations of Local Ordinances

The Rasmussens contend that King County violated various local ordinances in using the railroad right of way. These claims do not appear in the Rasmussens’ Answer, Affirmative Defenses and Counterclaims. The Rasmussens never amended their counterclaims to include these new claims. The district court did not consider them. Neither will we.

## VI.

### CONCLUSION

We affirm summary judgment in favor of King County because there are no genuine issues of fact that disparage King County’s claim to a fee simple estate in the strip of land formerly used as a railroad right of way. Further, the district court properly dismissed the Rasmussens’ counterclaims under [Federal Rule of Civil Procedure 12\(b\)](#).

AFFIRMED.

#### All Citations

299 F.3d 1077, 02 Cal. Daily Op. Serv. 7242, 2002 Daily Journal D.A.R. 9108

Footnotes

- 1 The Honorable Mary H. Murguia, United States District Court Judge for the District of Arizona, sitting by designation.
- 2 To the extent a portion of the right of way bisects lot 5, that portion is not at issue in this quiet title action. King County bases its claim on the Hilchkanum deed conveying a right of way bisecting lots 1, 2, and 3 to the Railway. The County presented no deed conveying a right of way across lot 5 to the Railway.
- 3 The Rasmussens contend that King County has not provided evidence that it has an interest in a significant portion of the strip of land bisecting the Rasmussens' property. They claim that the only evidence provided by the County is a title insurance document that refers solely to the portion of the strip on Government Lot 3; only 3% of the subject strip is on Government Lot 3. However, King County has also provided the quitclaim deed by which TLC transferred its interest to King County. This deed indicates that the portion of the strip on Government Lot 2 was also conveyed; the Rasmussens assert that 96% of the strip lies on Government Lot 2. Thus, King County has submitted undisputed evidence that it has an interest in the subject property.
- 4 The Rasmussens claim that their failure to obtain prior approval to file over-length briefs was due to a miscommunication with the district court's law clerk. However, Rule 7 unambiguously requires prior approval to file briefs exceeding the page limitations set forth in the rule.
- 5 The Act provides that:  
[A]ny person who has already settled or hereafter may settle on the public lands of the United States, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer by warranty, against his or her own acts, any portion of his or her said pre-emption or homestead for church, cemetery, or school purposes, or for the *right of way of railroads* across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads.  
Act of March 3, 1873, ch. 266, 17 Stat. 602 (1873) (emphasis added). This statute remains on the books, in slightly altered form, at [43 U.S.C. § 174](#).
- 6 A finding of ambiguity in the language of the deed is not required to consider extrinsic evidence of the surrounding circumstances and the subsequent conduct of the parties. [Brown](#), 924 P.2d at 912; [Roeder Co. v. K & E Moving & Storage Co.](#), 102 Wash.App. 49, 4 P.3d 839, 841 (Wash.Ct.App.2000).
- 7 The *Brown* court examined deeds created from 1906 to 1910.
- 8 The Washington courts in recent years have not given much weight to the amount of consideration in determining the intent of the parties, particularly if the record does not establish the consideration typically paid for easements as opposed to fee simple estates. For example, the *Brown* court did not give this factor much weight because it could not be ascertained from the record whether the consideration paid for the conveyances represented the value of an easement or a fee simple. [Brown](#), 924 P.2d at 914. Likewise, in [Roeder](#), 4 P.3d at 842, the Washington Court of Appeals noted that the fact that nominal consideration was paid did not reveal much because railroads paid significant amounts for both easements and fee simple purchases. In this case, the Hilchkanums received no monetary consideration for the conveyance to the railroad. However, like the nominal consideration in *Roeder*, the lack of monetary consideration here reveals little about the Hilchkanums' intent. Both an easement and a fee simple would have had monetary value, but the Hilchkanums declined to require any payment.
- 9 [Washington Revised Code § 64.04.030](#) states that every deed that follows the statutory warranty deed form "shall be deemed and held a conveyance in fee simple to the grantee, his heirs, and assigns...." This rule originated in 1886. [Roeder](#), 4 P.3d at 841 n. 8.
- 10 In a previous case, the Washington Supreme Court had held that the legal description of the interest conveyed is part of the granting clause. [Veach](#), 599 P.2d at 527. But *Brown* distinguished the language used in the legal description from the language used in the granting clause. [Brown](#), 924 P.2d at 914.
- 11 The Hilchkanum deed is also captioned as a "Right of Way Deed." However, the *Brown* court rejected the contention that use of the term "right of way" in the caption would preclude a holding that a deed conveyed a fee simple interest. [Brown](#), 924 P.2d at 915.

- 12 The deed provided: “*In consideration of the benefits and advantages to accrue to us from the location construction and operation of the Seattle Lake Shore and Eastern Railway* in the County of King in Washington Territory, we do hereby donate grant and convey unto said Seattle Lake Shore and Eastern Railway Company a right of way one hundred (100) feet in width through our lands....” DeGoojer Decl. Ex. 1 (emphasis added).
- 13 The Rasmussens provided evidence to the district court that Hilchkanum could not read or write the English language, suggesting that he was not aware of the wording in the deed and its effect. While the district court struck this argument from their response brief, the evidence itself was not struck. We have considered the evidence since it is part of the district court record. Nevertheless, the evidence indicates that Hilchkanum relied on friends in transacting his business. With the help of his friends, he was able to comply with the Homestead Act and make numerous conveyances of property. There is no evidence that his friends did not assist him with the transaction with the Railway such that he understood the deed’s language and could reflect his intent therein.
- 14 The Rasmussens argue that the Hilchkanum deed incorrectly describes the boundaries of the right of way on which the railroad tracks lie. This does not alter King County’s right to the strip of land in question. According to *DD & L, Inc. v. Burgess*, 51 Wash.App. 329, 753 P.2d 561, 564 (Wash.Ct.App.1988), “[t]hrough the monument referred to in a deed does not actually exist at the time the deed was drafted, but is afterward erected by the parties with the intention that it shall conform to the deed, it will control.” The Hilchkanum deed describes the location of the railroad right of way by referring to railroad tracks not yet erected but which were erected with the intention that the location of the tracks would conform to the deed. Thus, the location of the tracks bisecting the Rasmussens’ property controls.

**RAY V KING COUNTY**

 KeyCite Yellow Flag - Negative Treatment  
Declined to Follow by [Haggart v. United States](#), Fed.Cl.,  
December 18, 2012

120 Wash.App. 564  
Court of Appeals of Washington,  
Division 1.

Gerald L. RAY and Kathryn B. Ray, husband and  
wife, Appellants,

v.

KING COUNTY, a political subdivision,  
Respondent.

No. 50105-4-I.

|

March 15, 2004.

**Synopsis**

**Background:** Landowners, as successors in interest to grantors who conveyed an interest by deed to railway in 1887, brought an action to quiet title against county, as railway’s successor in interest, to determine whether the deed conveyed fee title or an easement with regard to a 100-foot-wide strip of land. County counterclaimed, and on cross motions for summary judgment, the Superior Court, King County, [Catherine Shaffer, J.](#), quieted title in the county. Landowners appealed.

**Holdings:** The Court of Appeals, [Cox](#), Acting C.J., held that:

[1] deed conveyed fee title rather than an easement, and

[2] the fact that railroad tracks were not placed within area described in deed did not divest railway of the interest conveyed by deed.

Affirmed.

[Baker, J.](#), dissented and filed an opinion.

West Headnotes (14)

[1] **Quieting Title**  
 Necessity of Having Title or Interest

[5] **Railroads**

A party seeking to quiet title must succeed on the strength of his or her own title, not on the weakness of the other party’s title.

1 Cases that cite this headnote

[2] **Railroads**  
 Title, Estate, or Interest Acquired

Where a deed conveys a right of way to a railroad, the conveyance may be in fee simple or may be an easement only.

6 Cases that cite this headnote

[3] **Railroads**  
 Title, Estate, or Interest Acquired

The interpretation of whether a deed conveying a right of way to a railroad results in a conveyance in fee simple or an easement only is a mixed question of fact and law; it is a factual question to determine the intent of the parties, and courts must then apply the rules of law to determine the legal consequences of that intent.

6 Cases that cite this headnote

[4] **Easements**  
 Nature and Elements of Right

Whether a conveyance is one of fee title or an easement is a conclusion of law as to the effect of a deed.

Cases that cite this headnote

🔑 [Conveyances to or for Railroad Company Railroads](#)  
🔑 [Title, Estate, or Interest Acquired](#)

When construing a deed that conveys a right of way to a railroad, the following factors are used for determining intent of the parties: (1) whether the deed conveyed a strip of land, and did not contain additional language relating to the use or purpose to which the land was to be put, or in other ways limiting the estate conveyed; (2) whether the deed conveyed a strip of land and limited its use to a specific purpose; (3) whether the deed conveyed a right of way over a tract of land, rather than a strip thereof; (4) whether the deed granted only the privilege of constructing, operating, or maintaining a railroad over the land; (5) whether the deed contained a clause providing that if the railroad ceased to operate, the land conveyed would revert to the grantor; (6) whether the consideration expressed was substantial or nominal; and (7) whether the conveyance did or did not contain a habendum clause, and many other considerations suggested by the language of the particular deed.

[2 Cases that cite this headnote](#)

[6] **Railroads**  
🔑 [Conveyances to or for Railroad Company Railroads](#)  
🔑 [Title, Estate, or Interest Acquired](#)

When construing a deed that conveys a right of way to a railroad, in addition to the language of the deed, courts also look at the circumstances surrounding the deed’s execution and the subsequent conduct of the parties.

[2 Cases that cite this headnote](#)

[7] **Railroads**  
🔑 [Title, Estate, or Interest Acquired](#)

An 1887 deed to a railway conveyed fee title rather than an easement, as demonstrated by the language of the deed, the circumstances

surrounding the deed’s execution, and subsequent conduct of the parties; actual language of the deed conveyed a right of way “strip” of land so as to suggest a fee rather than an easement, the deed did not expressly restrict how the right of way was to be used, a clear distinction existed between this unrestricted right of way and a more limited right to cut trees on land adjacent to the strip that constituted an easement, and subsequent deeds by grantors excluded the previously conveyed right of way.

[5 Cases that cite this headnote](#)

[8] **Deeds**  
🔑 [Fee Simple](#)

Where a statutory warranty form deed is used and the granting clause conveyed a definite strip of land, the court will conclude that the grantor intended to convey fee simple title unless additional language in the deed clearly and expressly showed otherwise.

[3 Cases that cite this headnote](#)

[9] **Deeds**  
🔑 [Limitations Inconsistent with Grant of Fee in General](#)

When a deed conveys a strip of land and there is no language relating to the purpose of the grant or limiting the estate conveyed, courts will construe the deed to convey fee simple title.

[2 Cases that cite this headnote](#)

[10] **Deeds**  
🔑 [Intention of Parties](#)  
**Deeds**  
🔑 [Creation by Deed in General](#)

When the court remains in doubt as to the parties’ intent or as to the quantum of interests

conveyed in a deed, the deed will be construed against the grantor.

[1 Cases that cite this headnote](#)

[11]

**Deeds**

**☞ Nature and Creation of Exceptions**

The term “except” is generally meant to exclude the described property in a deed; an “exception” is properly the withdrawing of some part of a parcel of land from the conveyance.

[2 Cases that cite this headnote](#)

[12]

**Railroads**

**☞ Title, Estate, or Interest Acquired**

The fact that railroad tracks were not placed within the area described in an 1887 deed conveying a 100-foot-wide right of way strip of land to a railway did not divest the railway of the interest conveyed by that deed; the railroad tracks, as constructed, constituted a monument that the deed referred to as the location of the centerline of the right of way conveyed on the deed, and the monument controlled over the conflicting distance calls in the deed, so that the strip of land conveyed in the deed was centered on the railroad tracks.

[1 Cases that cite this headnote](#)

[13]

**Boundaries**

**☞ Natural and Permanent Objects**

**Boundaries**

**☞ Artificial Monuments and Marks**

The term “monument” means a permanent natural or artificial object on the ground which helps establish the location of the boundary line called for.

[1 Cases that cite this headnote](#)

[14]

**Boundaries**

**☞ Control of Natural Objects and Monuments Over Other Elements in General**

If the description in a deed of land is fixed by ascertainable monuments and by courses and distances, the general rule is that the monuments will control the courses and distances if they are inconsistent with the monument calls.

[1 Cases that cite this headnote](#)

**Attorneys and Law Firms**

**\*\*184 \*568 John Maurice Groen**, Groen Stephens & Klinge LLP, Bellevue, WA, for Appellants.

Scott David Johnson, King County Administration Building, Seattle, WA, for Respondent.

Kristopher Ian Tefft, Olympia, WA, for Amicus Curiae (Building Industry Assn. of Washington).

**Opinion**

**COX, A.C.J.**

This quiet title action presents two questions. First, did an 1887 deed to a railroad convey fee title or an easement? Second, did events subsequent to that conveyance divest the railroad of the interest conveyed by that deed?

We hold that Bill Hilchkanum and Mary Hilchkanum, grantors, conveyed fee title by deed dated May 9, 1887 to the Seattle Lake Shore and Eastern Railway (“the Railway”). **\*\*185** We also hold that the location of the railroad tracks, as constructed, controls as a monument. Although the legal description of the location of that monument varies from the legal description of the right of way in the May 9, 1887 deed, there was no abandonment that divested the Railway of its fee title interest in the disputed strip. Accordingly, we affirm the summary judgment quieting title in King County, a successor in interest to the Railway.

**\*569** The facts are largely undisputed.<sup>1</sup> Gerald and Kathryn Ray own lakefront property near the eastern shore of Lake Sammamish in King County, Washington. The Rays are successors in interest to property formerly owned by Bill Hilchkanum and Mary Hilchkanum, husband and wife. The Rays acquired their interest by virtue of conveyances following the Hilchkanums' May 9, 1887 deed that is the focus of our inquiry in this case.<sup>2</sup> Likewise, King County is a successor in interest to the estate the Hilchkanums conveyed to the Railway by that deed.<sup>3</sup>

The basic dispute between the parties centers on their conflicting claims of ownership of the 100-foot-wide strip of land that the Hilchkanums conveyed in their May 9, 1887 deed to the Railway. The strip is adjacent to the property on which the Rays reside.

This strip of land is one segment of the East Lake Sammamish ("ELS") Corridor,<sup>4</sup> which runs near the eastern shore of Lake Sammamish. For most of the last century, the ELS Corridor was known as "Northern Pacific Railroad Right of Way" because Northern Pacific acquired ownership from the Seattle Lake Shore and Eastern Railway.<sup>5</sup> Burlington Northern and The Land Conservancy of Seattle were successors in interest to Northern Pacific to the strip and predecessors in interest to King County for that property.<sup>6</sup>

In 1998, the County purchased roughly 11 miles of the ELS Corridor from The Land Conservancy. The purchase **\*570** included the property the Hilchkanums conveyed in their May 1887 deed.<sup>7</sup>

The Rays argue that the May 9, 1887 deed conveyed an easement only to the Railway, not fee title. They also claim that the subsequent construction of the railway line in early 1888 in a location that varied from the legal description of the right of way set forth in the May 1887 deed constituted an abandonment of the estate conveyed in the deed. For these reasons, they claim title to the strip of land vests in them.

King County disputes the Rays' claim to ownership of the strip. The County maintains that the May 9, 1887 deed, properly construed, conveyed to the Railway an estate in **Bill Hilchkanum and wife )**

fee title to the strip of land. The County further maintains that subsequent construction of the railway line between January and April 1888<sup>8</sup> established a monument as the centerline of the 100-foot strip described in the deed. Finally, the County argues that it acquired fee title to that 100-foot wide strip of land as a successor in interest to the Railway, the grantee under the May 1887 deed.

The Rays commenced this quiet title action to enforce their ownership claim, and King County counterclaimed to enforce its position. On cross motions for summary judgment, the trial court quieted title in the County, confirming that the May 1887 deed conveyed fee title, not an easement. The trial court further decided that the railroad line, as built, established the monument defining the property the original grantors intended to convey by virtue of the May 1887 deed.

The Rays appeal.

**\*\*186 \*571 CONVEYANCE: FEE SIMPLE TITLE OR EASEMENT?**

[1] [2] [3] [4] Our review of the grant of summary judgment below is governed by the usual standards: whether there are genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>9</sup> A party seeking to quiet title "must succeed on the strength of his or her own title, not on the weakness of the other party's title."<sup>10</sup> Where a deed conveys a right of way to a railroad, the conveyance may be in fee simple or may be an easement only.<sup>11</sup> The interpretation of such a deed is a mixed question of fact and law.<sup>12</sup> It is a factual question to determine the intent of the parties.<sup>13</sup> Courts must then apply the rules of law to determine the legal consequences of that intent.<sup>14</sup> Whether a conveyance is one of fee title or an easement is a conclusion of law as to the effect of a deed.<sup>15</sup>

The Hilchkanum deed is entirely handwritten, and states in relevant part:

to ) Right of Way Deed

S.L.S. and E.R.Y. Co. )

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

Lots one (1) two (2) and three (3) in section six (6) township 24 North of range six (6) East.

Such right of way strip to be fifty (50) feet in width on each side of the center line of the railway track as located across our said lands by the Engineer of said railway company which location is described as follows to-wit.

Commencing at a point 410 feet West from North East corner of Section six (6) township 24 N R 6 East and running thence on a one (1) degree curve to the left for 753 3/10 feet thence South 16 degrees and 34 minutes West 774 2/10 feet thence with a 3 degree curve to the right for 700 feet thence with an 8 degree curve to the right for 260 4/10 feet thence South 58 degrees and 24 minutes West 259 6/10 feet thence with an 8° curve to the left for 564 4/10 feet thence South 13° 15' W 341 4/10 feet thence with a 6° curve to the right for 383 3/10 feet thence S 36° 15 W 150 feet to South boundary of lot 3 of said Sec 6 which point is 1320 feet North and 2170 feet west from SE corner of said Sec 6

And the said Seattle Lake Shore and Eastern Railway Company shall have the right to go upon the land adjacent to said line for a distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road.

To have and to hold the said premises with the appurtenances unto the said party of the second part and to its successors and assigns forever.

In witness whereof the parties of the first part have hereunto put their hands and seals this 9th day of May AD 1887

Signed Sealed and delivered

in presence of Bill (his X mark) Hilchkanum =seal=

BJ Tallman

DJ Denny Mary (her X mark) Hilchkanum =seal=

[16]

**\*\*187** In *Brown v. State*, our supreme court most recently articulated the principles governing resolution of the **\*573** mixed questions of fact and law before us. There, the court resolved a dispute between property owners abutting the railroad right of way, who claimed reversionary interests in it, and the State, which purchased the right of way from a successor in interest to the original grantees of the strip under some 37 deeds. The deeds, which were dated between 1906 and 1910,<sup>17</sup> were on preprinted forms with blank lines containing handwritten descriptions of the specific properties conveyed.<sup>18</sup> The court ultimately held that the deeds conveyed fee simple title because they were “in statutory warranty form, expressly convey fee simple title, and

contain no express or clear limitation or qualification otherwise.”<sup>19</sup>

[5] [6] The court began its analysis by noting that the decisions dealing with conveyancing of rights of way to railroads in various jurisdictions “are in considerable disarray” and “turn on a case-by-case examination of each deed.”<sup>20</sup> In Washington, the general rule is that when construing a deed, “the intent of the parties is of paramount importance and the court’s duty to ascertain and enforce.”<sup>21</sup> The court then identified the following factors for determining intent:

(1) whether the deed conveyed a strip of land, and did not contain additional language relating to the use or purpose to which the land was to be put, or in other ways limiting the estate conveyed; (2) whether the deed conveyed a strip of land and limited its use to a specific purpose; (3) whether the deed conveyed a right of way over a tract of land, rather than a strip thereof; (4) whether the deed granted only the privilege of constructing, operating, or maintaining a railroad over the land; (5) whether the deed contained a clause providing that if the railroad ceased to operate, the land conveyed would revert to the grantor; (6) whether the consideration expressed was \*574 substantial or nominal; and (7) whether the conveyance did or did not contain a habendum clause, and many other considerations suggested by the language of the particular deed. In addition to the language of the deed, we will also look at the circumstances surrounding the deed's execution and the subsequent conduct of the parties.<sup>[22]</sup>

The court also noted the special significance that has been accorded the term "right of way" in Washington deeds:

In *Roeder*, for example, one of the deeds provided, in part, the grantor: "conveys and warrants unto Bellingham and Northern Railway Company ... for all railroad and other right of way purposes, certain tracts and parcels of land...." Recognizing a railroad can hold rights of way in fee simple or as easements, we held the deed granted an easement based on the specifically declared purpose that the grant was a right of way for railroad purposes, and there was no persuasive evidence of intent to the contrary. We reached the same result in *Morsbach v. Thurston County*, 152 Wash. 562, 564, 278 P. 686 (1929) (deed granted "the right-of-way for the construction of said company's railroad in and over ..."); *Swan*, 37 Wash.2d at 534, 225 P.2d 199 (granted property "for the purpose of a Railroad right-of-way ..."); *Veach*, 92 Wash.2d at 572, 599 P.2d 526 (granted "[a] right-of-way one hundred feet wide ..."). See also *Reichenbach v. Washington Short-Line Ry. Co.*, 10 Wash. 357, 358, 38 P. 1126 (1894) ("so long as the same shall be used for the operation of a railroad" \*\*188 construed as granting easement); *Pacific Iron Works v. Bryant Lumber & Shingle Mill Co.*, 60 Wash. 502, 505, 111 P. 578 (1910) (deed providing "to have and to hold the said premises ... for railway purposes, but if it should cease to be used for a railway the said premises shall revert to said grantors" grants easement not determinable fee); *King County v. Squire Inv. Co.*, 59 Wash.App. 888, 890, 801 P.2d 1022 (1990) ("grant and convey ... a right-of-way.... To Have and to Hold ... so long as said land is used as a right-of-way ..." grants easement), *review denied*, 116 Wash.2d 1021, 811 P.2d 219 (1991).<sup>[23]</sup>

<sup>[7]</sup> <sup>[8]</sup> We begin our analysis of the Hilchkanum deed by determining its form. In *Brown*, the court emphasized the \*575 grantors' use of the statutory warranty form of deed.<sup>24</sup> Where such a statutory deed is used and the granting clause conveyed a definite strip of land, the court will conclude that the grantor intended to convey fee simple title unless additional language in the deed clearly and expressly showed otherwise.<sup>25</sup>

At the time of the May 9, 1887 conveyance, there were three statutory forms of deed: warranty, bargain and sale, and quit claim deed.<sup>26</sup> Comparison of the language of the deed, which states in relevant part that the Hilchkanums "hereby **donate, grant and convey**" their property, with the statute then in effect shows that their deed is not substantially in the form of either a statutory warranty deed or a \*576 bargain and sale deed.<sup>27</sup> Consequently, no presumption arises that the deed conveyed fee simple title.<sup>28</sup> But, as the *Brown* court also indicated, determining the form of the deed does not end the analysis of intent.

We next focus on the actual language of the deed. The Rays argue that the Hilchkanum deed did not convey "land," but rather only a "right of way."<sup>29</sup> According to the Rays, the use of the latter term "invariably" means the grantors conveyed a mere easement.<sup>30</sup> We disagree.

\*\*189 The granting provisions of the Hilchkanums' deed characterize the conveyed property first as a "right of way one hundred (100) feet in width *through* " [the Hilchkanums'] *lands*," and the property conveyed as a "right of way *strip*."<sup>31</sup> The substance of this language is that the subject of the conveyance is a strip of land, not just the grant of some interest "over" the land, as the Rays state. Language conveying a strip of land suggests a fee, not a mere easement.<sup>32</sup>

<sup>[9]</sup> The Rays' argument that the use of the term "right of way" invariably means that only an easement is conveyed is overly simplistic. In Washington, as the *Brown* court observed, the use of that term as a limitation or to specify the purpose of the grant *generally* creates only an \*577 easement.<sup>33</sup> Conversely, where there is no language relating to the purpose of the grant or limiting the estate conveyed, and the deed conveys a strip of land, courts will construe the deed to convey fee simple title.<sup>34</sup> In *Brown*, it was undisputed that the railroad had acquired its interest in the property under the deeds for railroad purposes. But significantly, the court went on to state:

Identifying the purpose of the conveyance, however, does not resolve the issue at hand because a railroad can own rights of way in fee simple or as easements.

Rather than identifying the purpose of the conveyances, we must conduct a deed-by-deed analysis to ascertain whether the parties clearly and expressly limited or qualified the interest granted, considering the express language, the form of the instrument, and the surrounding circumstances.<sup>[35]</sup>

A careful comparison of the express language in the Hilchkanum deed with the language in deeds the courts have examined in other reported cases arising in this jurisdiction reveals few similarities. Only *King County v. Squire*<sup>36</sup> and *King County v. Rasmussen*<sup>37</sup> contain language involving a right of way that is substantially similar to that in the deed before us. For the reasons we discuss later in this opinion, *Squire* is not controlling, merely instructive. And *Rasmussen*, which construed the same deed now before this court, is consistent with *Brown* and the analysis and conclusions of this opinion.

\*578 In *Veach v. Culp*,<sup>38</sup> the court construed language in the relevant portion of the deed, but did not consider the full range of factors that the supreme court in *Brown* later articulated for characterizing the nature of the interest conveyed. Thus, we do not read *Veach* as broadly as do the Rays.

In short, as the *Brown* court states, a narrow focus on the term “right of way simply begs the question of what interest [the railroad] acquired, because a railroad can own rights of way in fee simple if that is what the deed conveyed.”<sup>39</sup> Recognizing that the use of the term does not end the analysis, we therefore examine further the factors guiding determination of intent so that we may properly characterize the nature of the interest conveyed.

The first few factors stated in *Brown* require consideration of whether the deed conveyed \*\*190 a strip of land and whether additional language limited the use of the land or the estate conveyed.<sup>40</sup> As we have already observed, the Hilchkanum deed conveyed a strip of land. Whether language in the deed limited the use of the land is the question. The language of the deed grants a right of way to the Railway without expressly *restricting* how that right of way was to be used.

Turning to the fourth factor, we note that nothing in the language of the Hilchkanum deed limits the grant to the “privilege of constructing, operating, or maintaining a railroad \*579 over the land.”<sup>41</sup> Rather, the granting clause expressly conveys “a right of way one hundred (100) feet in width through our lands,” without any limitations of the type expressed in the fourth factor. This language is most consistent with the grant of fee title, not an easement.

Factor five examines whether or not a reverter clause is

contained in the deed.<sup>42</sup> Presumably, the existence of such a clause suggests an easement was intended.<sup>43</sup> Here, there is no reverter clause. Rather, other language in the deed indicates that the conveyance is without any reservation of any estate in the Hilchkanums.<sup>44</sup>

Factor six requires consideration of whether the expressed consideration for the conveyance is substantial or nominal. Here, the Hilchkanums described the consideration as “the benefits and advantages to accrue to us from the location construction and operation of the Seattle Lake Shore and Eastern Railway in the County of King, in Washington territory.” This statement provides no information on whether the consideration is substantial or nominal. Thus, this factor is neutral.

Factor seven requires consideration of the existence and content of a habendum clause.<sup>45</sup> Here, there is such a clause, which states “To have and to hold the said premises \*580 with the appurtenances unto [the Railway] and to its successors and assigns forever.” Such clarifying language does not limit the extent of the interest conveyed in the granting clause. Rather, it suggests no limitation—the grant of fee title, not merely an easement.

*King County v. Squire Investment Co.* illustrates the significance of the language in the habendum clause in determining whether a fee or an easement is granted in a deed conveying a right of way to a railroad. In *Squire*, the granting clause of the deed granted a “right-of-way Fifty (50) feet in width through said lands,” while the habendum clause contained a handwritten addition, “or so long as said land is used as a right-of-way by said railway Company.” While noting that the language of the granting clause could be understood to convey either a fee or an easement, this court concluded that the granting clause and habendum clause, read together, suggested that “the ‘so long as’ language was inserted by Squire to preclude the claim that he conveyed a fee simple to \*\*191 the railroad, particularly since the habendum clause granted the interest to the railroad and ‘to its successors and assigns forever’.”<sup>46</sup>

In contrast, the habendum clause of the Hilchkanum deed contains no limiting language. This distinction supports the conclusion that the granting clause conveyed fee title, not, as in *Squire*, an easement.

*Brown* recognizes that other considerations suggested by the language of a deed may be helpful in determining whether a conveyance is in fee or merely an easement. The Hilchkanum deed contains such language in the provision following conveyance of the right of way to the Railway:

And the said Seattle Lake Shore and Eastern Railway Company shall have the right to go upon the land adjacent to said line for a distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road.

\*581 While the parties dispute the legal effect of this language, neither side appears to disagree that the “right” to go on property *adjacent* to the right of way to cut trees is an easement, not a fee interest in that adjacent property.<sup>47</sup> We agree that this “dangerous trees” provision conveys an easement—the right to cut trees that endanger the operation of the railway.

Moreover, an easement to cut trees on property adjacent to the right of way is a more limited right than the interest conveyed in the right of way itself—the strip of land. The grant of the interest in the strip was to the land itself, not an interest over the land. The lack of any limitation in the use of the strip starkly contrasts with the more limited right to cut trees only on the property adjacent to the strip. The clear distinction in the extent of rights conveyed supports the conclusion that the grant of the strip of land was in fee, not an easement similar to the more limited right to cut trees on land adjacent to the strip.

We reject as unreasonable the Rays’ claim that the apparent overlap in coverage of the two provisions (both are measured from the centerline of the right of way) means that the right of way is merely an easement. This argument is based on the theory that the grant of the right to cut trees is inconsistent with the grant of a fee because the holder of a fee would not need such a grant. But the argument ignores other language in the “dangerous trees” provision that focuses on that right being granted for property *adjacent* to the right of way.

We turn next to the subsequent conduct of the parties, another factor the *Brown* court identified as indicative of intent. To the extent any uncertainty remains after consideration of the form and language of the May 1887 Hilchkanum deed, Bill Hilchkanum’s exclusion of the right \*582 of way from subsequent deeds removes any doubt that the 1887 deed conveyed fee title to the Railway.<sup>48</sup>

According to the record, the legal description of the Rays’ property is:

That portion of **Government Lot 3**,  
Section 6, Township 24 North,

Range 6 East, W.M., in King County, Washington, described as follows: (metes and bounds description) <sup>[49]</sup>

In 1898, Bill Hilchkanum conveyed to his then wife Annie Hilchkanum “Lot one (1) *less three (3) acres right of way of railroad* and *lot three (3) less three and 25/100 acres right of way of railroad*, and all of lot five (5)....”<sup>50</sup> Thus, the plain language of the 1898 deed excludes the previously conveyed right of way from the conveyance and explains why (“right of way of railroad”). The 1898 deed therefore clearly indicates that Hilchkanum’s intent in 1887 was to convey the right of way to the Railway in fee, not as an easement. And there is no question that this exclusion of the right of way from the \*\*192 1898 deed applied to Lot 3—the property the Rays now own.

Bill Hilchkanum’s 1905 conveyance of another portion of Lot 3 to John Hirder provides further support for these conclusions. The deed describes the boundary of the property, in part, as running “thence in a Northeasterly direction *along the right of way of the Seattle Lake Shore and Eastern Railway*.”<sup>51</sup> Hilchkanum’s exclusion of the previously conveyed right of way is consistent both with his exclusion of the same right of way in the 1898 conveyance and the prior conveyance in fee of that same right of way in the May 9, 1887 deed to the Railway. There is no other reasonable explanation for him to have excluded the right of way from subsequent conveyances. Again, there is no \*583 doubt that we again deal with Lot 3—the property the Rays now own.

A third conveyance by Hilchkanum is also consistent with the view that he intended to convey fee title to the right of way to the Railway. In 1904, Bill Hilchkanum conveyed to Chris Nelson lot number one, “*less three (3) acres heretofore conveyed to the Seattle and International (sic) Railway for right of way purposes*.”<sup>52</sup> Again, there is no indication in this deed that the conveyance was “subject to” the right of way, an indication that the strip of land previously conveyed was an easement. Rather, the right of way is excluded from the conveyance entirely, an indication that the strip of land was previously conveyed in fee.

We are aware that in 1890, Bill Hilchkanum conveyed all of Lot 2 to Julia Curley without any exceptions.<sup>53</sup> But because the 1890 deed contains no reference whatsoever to the right of way, it is not probative of the grantors’ intent in the 1887 deed.<sup>54</sup> In any event, Lot 3 is at issue in this appeal, not Lot 2, and the record before us establishes that Hilchkanum was entirely consistent in excluding the right of way and stating that no other encumbrances

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affected Lot 3.

In short, the deeds subsequent to the May 1887 deed consistently demonstrate that Hilchkanum conveyed the right of way to the Railway in fee, not as an easement.

The circumstances surrounding the execution of the deed may also affect determination of original intent. The Rays make several arguments based on this factor, none of which is persuasive.

They first argue that Hilchkanum must have intended to convey an easement in the 1887 deed because conveying fee title to a portion of his unpatented homestead claim would have violated federal homestead law. We disagree.

**\*584** On March 3, 1873, Congress passed a law, codified at Rev. Stat. § 2288, “providing that any bona fide settler might convey by warranty against his own act ‘any part of his claim for church, school, and cemetery purposes and for a right of way for railroads.’”<sup>55</sup> This statute governs where, as here, the grant of a right of way relates to homestead property.

The Rays argue that the United States Supreme Court’s decision in *Great Northern Railway Company v. United States*<sup>56</sup> is dispositive here. But that decision interpreted a different law, the Act of March 3, 1875, which governed the grant of rights of way **\*\*193** across *public lands* to railroads.<sup>57</sup> Private, not public, lands are at issue here. Thus, the United States Supreme Court’s holding in the *Great Northern* is inapplicable here.

The Rays also cite two Department of the Interior decisions, which they argue support their contention. Again, we disagree.

In the first, *South Perry Townsite v. Reed*,<sup>58</sup> the Department considered whether the term “for the right of way of railroads,” as used in section 2288 of the Revised Statutes, limited the size of the right of way that could be granted to the width of the track and cars, or could include “such space **\*585** as is necessary for side tracks, stock yards, or other purpose incident to the proper business of a railroad as a common carrier.”<sup>59</sup> This issue has no relevance here.

The second Department of the Interior case, *Lawson v. Reynolds*,<sup>60</sup> dealt with an agreement by a homestead applicant to allow construction of an electric plant on the land she was claiming as a homestead, before perfection of her entry. The Department concluded that the agreement was “not an alienation of any part of the land, but a mere lease of a portion of the premises and the grant

of an easement” and therefore did not bar consummation of her entry.<sup>61</sup> This decision is completely inapposite, and the Rays do not explain how it bolsters their arguments.

We conclude that neither of these decisions by a federal agency, neither of which involved the interpretation of Washington real property law, is helpful in addressing the questions before us.

The Rays also look to a dictionary definition of the term “right of way” to support their claim that the 1887 deed conveyed only an easement, not fee title. As *Brown* states, a right of way may either be in fee or an easement.<sup>62</sup> Thus, a dictionary definition is neither dispositive nor particularly helpful here. Moreover, that court expressly rejected the argument that use of the term “right of way” in the caption of a deed meant that the conveyance was an easement rather than fee simple.<sup>63</sup> Thus, parsing the language either in the body of a deed or its caption and looking to a dictionary for the meaning of such language adds little, if anything, that is useful to the analysis.

**\*586** The Rays also speculate that the Railway prepared the May 1887 deed.<sup>64</sup> Thus, they argue that we should construe ambiguities in that deed language against the Railway. We decline to do so because nothing in the record supports this argument.

First, the face of the deed shows that the Hilchkanums executed the deed by making their marks, not by signing the instrument. Of course, neither party disputes that the Hilchkanums could neither read nor write.<sup>65</sup>

While we are mindful of the undisputed evidence that the Hilchkanums could neither read nor write, we are unaware of any rule that says that one who cannot do so lacks the capacity to understand the nature and extent of his or her property or the nature of a **\*\*194** conveyance of such property. Nothing in the record before us indicates that the Hilchkanums failed to understand what they were doing in this particular transaction, a point counsel for the Rays appeared to concede at oral argument of this case.

<sup>[10]</sup> Second, and more importantly, examination of the deed shows that it is entirely handwritten, apparently by the same person. Both the language of the main part of the deed, as well as the acknowledgment, is in the handwriting of the notary who acknowledged the signatures of the Hilchkanums, B.J. Tallman.<sup>66</sup> Nothing in the record before us indicates that he was the agent of the Railway. Absent such proof, we fail to see why we should construe ambiguities in the May 1887 deed against the Railway. Rather, to the extent we were to engage in applying a rule of construction to any perceived

ambiguities in the language of the \*587 Hilchkanum deed, we would construe the deed against the Hilchkanums, the grantors.<sup>67</sup>

Third, the Rays also rely on the opinions of expert witnesses to support their position. Because courts decide the legal questions before us, not experts, we decline to give credence to these opinions.<sup>68</sup> Moreover, none of the designated experts to whom the Rays point has addressed the effect of the language in the very deed by which the Rays acquired title to their property:

That portion of *Government Lot 3*, Section 6, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning on the shore of Lake Sammamish at the northwest corner of a tract of land conveyed to W.C. Dahl by Henry M. Johnson by deed dated October 6, 1931, and recorded in Volume 1588 of Deeds, page 137, under King County Recording No. 2808278, records of King County, Washington; thence running southerly along the shore line of Lake Sammamish, a distance of 300 feet to the true point of beginning;

thence southerly along said shoreline of Lake Sammamish, a distance of 125 feet;

thence east to the westerly right of way of East Lake Sammamish Place S.E. (formerly Redmond Issaquah Road);

thence northerly along said right of way to a point due east of the true point of beginning; thence due west to the true point of beginning;

***EXCEPT the Northern Pacific Railway Company's right of way.***<sup>[69]</sup>

<sup>[11]</sup> \*588 The term “except” is generally meant to exclude the described property.<sup>70</sup> Here, the deed excludes the right of way at issue in this case, another indication that a successor in interest to the Hilchkanums believed that the right of way previously conveyed to the Railway was not part of the fee conveyed to the Rays. For these reasons, we do not rely on expert opinion to decide the questions before us.<sup>71</sup>

\*\*195 The Rays also rely on a recent Division III case of this court, *Hanson Industries, Inc. v. Spokane County*.<sup>72</sup> In *Hanson*, the court held that a series of 1903 and 1904 deeds conveying a right of way to a railroad and granted an easement rather than a fee simple estate. But *Hanson* is of little utility here beyond its reiteration of the principles stated in *Brown*.

First, as our supreme court explained in *Brown*, the language of the deed under scrutiny is of primary importance in determining the intent of the parties, and the cases turn on a case-by-case examination of such language. The *Hanson* court quoted little of the language of the deeds it examined. Thus, we cannot meaningfully compare the language of those deeds with the Hilchkanum deed.

Second, it is apparent from the court’s analysis that the deeds in *Hanson* contained language conditioning the conveyances on the construction and operation of a railroad \*589 within two years, imposing obligations on the railroad to construct and maintain farm crossings, and releasing the railroad from liability for damages caused by railroad construction.<sup>73</sup> In addition, unlike the Hilchkanum deed, the *Hanson* deeds did not describe the right of way in metes and bounds.<sup>74</sup> The *Hanson* court found the foregoing factors to be significant in its determination that the deeds conveyed an easement. The Hilchkanum deed contains no comparable language.

Finally, as we explained above, we find the contrast between the language in the Hilchkanum deed conveying the right of way and the language conveying the right to cut dangerous trees on land adjacent to the right of way to be compelling evidence that the first conveyed a fee interest and the second an easement. The court in *Hanson* did not discuss any similar provisions in the deeds it examined, and we presume none existed. In addition, we concluded that Bill Hilchkanum’s subsequent conduct, in expressly excluding the right of way in subsequent deeds, demonstrated his intent and understanding of the May 1887 deed as a grant of a fee interest in the right of way, not an easement. The subsequent conduct of the parties in *Hanson* did not include any analogous acts.<sup>75</sup>

In sum, *Hanson* provides no support for the Rays’ claim that the Hilchkanums’ 1887 deed conveyed an easement rather than a fee simple estate.

In *King County v. Rasmussen*,<sup>76</sup> the Ninth Circuit Court of Appeals considered the very deed that is presently before us. There, King County sued to quiet title to a 100-foot-wide strip of land that bisected John and Nancy Rasmussen’s property and to obtain a declaration of its rights to use the right of way for a public trail. After applying the *Brown* factors, the Ninth Circuit Court of Appeals concluded that \*590 the May 1887 deed conveyed fee title, not an easement, to the Railway. Our conclusion that the conveyance of the right of way in 1887 was in fee is consistent with the reasoning and conclusions in *Rasmussen*.

### ABANDONMENT

[12] Finally, the Rays argue that the deed cannot be understood to grant a right of way 100 feet wide in the location where the railroad was actually constructed because the actual location of the railroad is not the location described by the course and distance calls in the deed. Again, we disagree.

Here, the parties stipulated that the location of the railroad tracks, as constructed, “is **\*\*196** not within the area described by the distance call stated in the Hilchkanum deed.”<sup>77</sup> Mike Foley, a Senior Engineer for the King County Department of Transportation, attempted to determine the location of the centerline of the right of way as described in the deed. Because the deed was difficult to read, Foley surveyed the route using three different positions. In each of these surveys, the centerline did not match the actual centerline of the tracks, as constructed.<sup>78</sup> The distances between the test centerlines and the actual centerline were 119, 25, and 5 feet. The majority of the first of these three centerlines, at 119 feet from the actual centerline, would be located in Lake Sammamish.<sup>79</sup>

[13] [14] The County argues that the railroad tracks, as constructed, constitute a “monument” that determines the location of the property, which supercedes the course and distance calls outlined in the deed. “The term ‘monument’ means a permanent natural or artificial object on the ground which helps establish the location of the boundary **\*591** line called for.”<sup>80</sup> If the description in a deed of the land is fixed by “ascertainable monuments and by courses and distances, the well-settled general rule is that the monuments will control the courses and distances if they be inconsistent with the monument calls.”<sup>81</sup>

This court considered this question in *DD & L, Inc. v. Burgess*. In that case, a dispute arose regarding the location of the northern boundary of a railroad right of way. The deed in that case described the location of the right of way as follows:

A strip of land 100 feet in width, having 50 feet of such width on each side of the center line of the main track of the Chicago, Milwaukee and Puget Sound Railway Company, as the same is now surveyed, staked out and established ...; said center line being more particularly described

as follows, to-wit: Beginning at a point in the east line of said section 1, 1731.7 feet south 0 51’ east of the northeast corner thereof ...<sup>[82]</sup>

Based on testimony by surveyors, the trial court found that the centerline of the railroad tracks, as constructed, was 17 feet from the distance call recited in the 1912 deed.<sup>83</sup> We held that the law and evidence supported the trial court’s conclusion that the track, as built, was the monument intended for locating the boundary established by the 1912 deed, and that, because the track location conflicted with the distance calls in the 1912 deed, and because monuments control over distance calls, a survey based exclusively on the calls and distances was erroneous.<sup>84</sup>

In this case, the railroad tracks, as constructed, constitute a monument that the deed refers to as the location of **\*592** the centerline of the right of way conveyed in the deed.<sup>85</sup> The description of the location of the right of way in this case is similar to that considered in *DD & L*:

Such right of way strip to be fifty (50) feet in width *on each side of the center line of the railway track as located* across our said lands ... which location is described as follows to wit [legal description]<sup>[86]</sup>

**\*\*197** Because the location of this monument conflicts with the distance calls in the deed, and because the monument controls over the distance calls, we hold that the strip of land conveyed in this deed is centered on the railroad tracks, as constructed.

The Rays argue that this case is distinguishable because the tracks in this case were built after the deed was signed. It appears from the language of the deed in *DD & L* that the tracks in that case were at least staked out when the deed was written. But this distinction is immaterial. As we noted in that case, “[t]hough the monument referred to in a deed does not actually exist at the time the deed was drafted, but is afterward erected by the parties with the intention that it shall conform to the deed, it will control.”<sup>87</sup> The Rays cite no authority to the contrary. Nor do they claim any evidence of intent by the parties to place the tracks in Lake Sammamish, an unreasonable result.

The Rays argue that a Kansas case, *Aladdin Petroleum Corp. v. Gold Crown Properties, Inc.*,<sup>88</sup> and other cases that **\*593** have relied on *Aladdin Petroleum*, support their position.<sup>89</sup> But these cases are entirely inapposite. Each of these cases considered the scope of the use of a right of way easement, not the location of property transferred in

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fee simple by a deed. The rule quoted by the Rays, read in the contexts of these cases, is of no use to us here.

To summarize, application of the factors stated and applied by our supreme court in *Brown* supports the conclusion that the intent of the Hilchkanums and the Railway in May 1887 was to convey a fee simple interest in the strip of land right of way, not an easement. Moreover, the actual placement of the railroad tracks controls as a monument to determine the location of the right of way. Thus, the Railway did not abandon the right of way described in the deed. The trial court properly concluded that fee title vests in King County.

We affirm the summary judgment quieting title in King County.

SCHINDLER, J., concurs.

BAKER, J. (dissenting).

The majority concludes that the 1887 right of way deed between Bill Hilchkanum and Seattle Lake Shore and Eastern Railway conveyed fee title. For a number of reasons I disagree, and conclude that the deed only conveyed an easement.

First, contrary to the majority's conclusion, the evidence establishes that the handwritten deed was drafted by the railroad, and must therefore be construed against it. As King County concedes, Hilchkanum did not write the deed. Extrinsic evidence also supports concluding that the deed must be construed against the railroad. The language contained in the handwritten deed is identical to language used on pre-printed forms produced by the railroad. Hilchkanum's attorney, who signed as a witness, was an \*594 owner of the railroad. The Rays also provided an affidavit from their expert opining that the deed was drafted by the railroad.

The majority also mistakenly concludes that the Hilchkanum deed conveyed a strip of land.<sup>1</sup> But the deed expressly states that "we do hereby donate grant and convey ... a right of way one hundred (100) feet in width through our lands..." The term "right of way strip" is found only in the legal description, not in the granting provision.

The majority points to certain subsequent conduct by

Hilchkanum to support its conclusion that he intended to convey fee title to the railroad. But these subsequent conveyances only establish that Hilchkanum understood that the railway had a right of way across his lands. The majority ignores other \*\*198 conveyances by Hilchkanum which indicate that he only intended to convey an easement to the railroad.

When the language of the deed is properly construed against the railroad, the granting clause conveys only a right of way.

*Language in the deed must be construed against the railroad*

It is a well established principle that ambiguity must be construed against the grantor.<sup>2</sup> But as we explained in *Harris v. Ski Park Farms, Inc.*,<sup>3</sup> when the grantee drafts the deed, this rule does not apply.<sup>4</sup> Hilchkanum was illiterate and the handwritten deed contained identical \*595 language to that found in a contemporaneous pre-printed deed bearing the railroad's name. The Rays also submitted an affidavit from an expert who opined that "given the use of pre-printed deeds, and given Hilchkanum's illiteracy, there appears no doubt that Hilchkanum did not draft the deed; but rather, it was the product of the railroad company."

The majority states that because Hilchkanum must have understood the nature and extent of his conveyance, the fact that the deed was handwritten by someone else is of no consequence. And the majority holds that because there is nothing in the record indicating that the drafter was an agent of the railway, Hilchkanum must have been the drafter. This conclusion wrongly focuses on the identity of the grantor instead of the identity of the drafter of the deed. It is undisputed that the deed's language was taken from the railroad's standard deed. And the affidavit by the Rays' expert creates a material question of fact concerning who actually drafted the document. Taking this affidavit in a light most favorable to the Rays as the nonmoving party, any ambiguities in the deed must be construed against the railroad.<sup>5</sup>

*Hilchkanum's use of the term "right of way" granted only an easement*

Washington courts have given special significance to the words "right of way" in railroad deeds, explaining that the term "right of way" generally creates only an easement when used "as a limitation or to specify the **EXHIBIT 20** of the

grant.”<sup>6</sup> In fact, most Washington cases have construed \*596 “right of way” language in such instruments as granting only an easement to the railroad.<sup>7</sup>

\*\*199 The majority discounts *Veach v. Culp*<sup>8</sup> because it did not consider the full range of factors later articulated in *Brown v. State*.<sup>9</sup> But *Brown* cites *Veach* with approval. The majority’s selective reading of our Supreme Court’s precedent is unsupported by the *Brown* decision.

*Veach* clarified the rule set forth in the earlier case of *Morsbach v. Thurston County*,<sup>10</sup> that merely using the term “right of way” in a granting clause is enough to establish that the original grantor intended only to convey an easement.<sup>11</sup> In *Brown*, our Supreme Court explained this holding by stating that a “deed in statutory form grants [an] easement where additional language in the deed expressly and clearly limits or qualifies the interest granted.”<sup>12</sup>

\*597 Conversely, when the deed contains no language relating to the purpose of the grant or limiting the estate conveyed, and it conveys a definite strip of land, the deed will be construed to convey fee simple title.<sup>13</sup> Here, Hilchkanum did explain the purpose of the grant (“the location construction and operation of the Seattle Lake Shore and Eastern Railway”) and limited the estate conveyed (“we do hereby donate grant and convey ... a right of way”).

The majority opinion extensively analyzes various factors discussed in *Brown*, and concludes that conveyance of fee simple title was Hilchkanum’s intent. But in *Brown*, the court analyzed prior case law and noted that “use of the term ‘right of way’ as a limitation or to specify the purpose of the grant generally creates only an easement.”<sup>14</sup> That term is used in the deed in question, both in its title and in its granting clause. In contrast, the deeds considered in *Brown* expressly conveyed fee title to definite strips of land. No such language appears in the Hilchkanum deed’s granting clause. Further, although the deed does not explicitly limit the grant to railroad purposes, the consideration recited immediately above the right of way grant does state that to be the purpose of the deed. The majority ignores this language when concluding that there is nothing in the deed limiting the grant to operating a railroad.<sup>15</sup>

For example, in *Swan v. O’Leary*,<sup>16</sup> the deed stated that the conveyance was “for the purpose of a Railroad.”<sup>17</sup> And in *Morsbach*, the deed explained that the right of way was “for the construction of said company’s railroad.”<sup>18</sup> Here, although there are no explicit words limiting the right of \*598 way to railroad use, the Hilchkanum deed does

explain that the purpose of the grant was for “the location construction and operation of the Seattle Lake Shore and Eastern Railway.”

#### *A reversionary clause is not necessary to convey only an easement*

The majority places great emphasis on the absence of a reversionary clause in the subject deed. But a railroad right of way deed need not contain a reverter clause to effect an automatic reversion to the grantor upon abandonment.<sup>19</sup> As *Hanson Industries, Inc. v. County of Spokane*<sup>20</sup> notes, railroad rights of way expire automatically upon abandonment.<sup>21</sup> And in *Veach*, our Supreme Court found that a railroad owned only an easement, despite the absence of a limiting or reversionary clause.<sup>22</sup> The *Veach* court explained that language intending to limit the grant was only “one element in examining the whole of the deed.”<sup>23</sup> Instead, the court focused on the use of “right of way” in the granting clause, and concluded that the original grantor intended to limit the right of way to only an easement.<sup>24</sup> In *King County v. Squire Inv. Co.*,<sup>25</sup> we noted that the phrase “so long as” in the habendum arguably suggested conveyance of a fee simple determinable.<sup>26</sup> But because language in the granting clause strongly suggested conveyance of an easement, we concluded that Squire had \*599 instead inserted this language to clarify that he was granting an easement.<sup>27</sup>

And in *Hanson Industries*, Division Three also found an easement despite the absence of a limiting or reversionary clause.<sup>28</sup> As a recent article explains, a reversionary clause is not necessary to conclude that the landowner only granted an easement:

If a railroad acquired a perpetual or general easement, then the easement exists in perpetuity, regardless of whether or not the company operates a railroad on the land. These rare perpetual or general easements are found only where no language in the grant specifies the type of use the railroad may make of the land.<sup>[29]</sup>

It is clear that the Hilchkanum deed did not include a reversionary clause. But contrary to the majority’s interpretation of the *Brown* decision, this does not necessarily mean that Hilchkanum intended to convey fee title.<sup>30</sup> As Wright and Hester explain, the fact that a grantor (Hilchkanum) did not limit the right of way to railroad use may only serve to make the grant an unconditional easement.<sup>31</sup>

*Absence of exceptions or reservations is indicative of intent to grant an easement*

Another important factor in the *Brown* deeds was the presence of reservations by the grantors. The court found **\*600** these significant in establishing that the railroad had obtained fee simple title, because had the railroad only obtained an easement, the grantors would not have needed to explicitly reserve access crossings and irrigation ditches:

Several of the deeds reserve or except the right of the grantor to make some use of the land conveyed.... The reservation or exception of mineral or irrigation rights is consistent with the conveyance of a fee; it would not have been necessary to reserve such rights had the parties intended an easement because the grantors would have **\*\*201** retained use of the land. Similarly, the obligation to construct or maintain farm crossings or irrigation channels is consistent with the conveyance of fee simple title. These provisions secure easements to the *grantors* across the land conveyed to Milwaukee, and probably would have been unnecessary had Milwaukee only held the rights of way as easements.<sup>[32]</sup>

The Hilchkanums made no exceptions in their deed even though the granted right of way bisected their land. The majority fails to acknowledge that this factor supports concluding that Hilchkanum only granted an easement.

*Language in Hilchkanum’s deed conveying the right to cut dangerous trees is not evidence that Hilchkanum intended to grant fee title*

The majority also holds that the “dangerous trees” easement supports concluding that the right of way deed granted fee title because the easement grant is more limited than the right of way grant in the same deed. Specifically, the deed grants the railway the right to “go upon the land adjacent to said line ... and cut down” dangerous trees within 200 feet of the centerline of the track.

But railroad corporations were prohibited from

appropriating rights of way wider than 200 feet.<sup>33</sup> The railroad’s right to cut trees extended outside of the right of way area **\*601** allowed by the territorial code because the easement allowing the railroad the right to cut trees was distinct from its right of way. This secondary access grant was not exclusive, as the right of way was, and terminated if the railroad use terminated, whereas the railroad right of way was exclusive and akin to a street right of way.

*Subsequent behavior by the parties is inconclusive to show intent*

The majority also concludes that subsequent behavior by the parties supports a conclusion that the deed conveyed fee title.<sup>34</sup> The majority focuses on three subsequent deeds that acknowledge the presence of the railroad right of way, while ignoring an earlier deed that does not make any such reservations. The majority justifies this by explaining that Hilchkanum’s failure to reserve the right of way is not probative of whether or not the parties intended to convey a fee simple estate.<sup>35</sup> But we should not selectively emphasize Hilchkanum’s subsequent conveyances. Instead, we should conclude that the subsequent behavior of the parties does not aid our inquiry because it does not conclusively show that Hilchkanum intended to convey either an easement or fee title.

Moreover, Hilchkanum granted the deed omitting reference to the right of way in 1890, just three years after granting the railway right of way. The deeds that the majority focuses on were granted much later—Hilchkanum’s grant to his wife was 11 years after the railway grant, and the other two several years after that. **\*602** While this is not conclusive evidence of Hilchkanum’s intent, it is interesting that the deed closest in time to the subject conveyance omitted any reference to the railroad right of way. If that right of way was owned in fee by the railroad, the omission was strange indeed.

The majority concludes that the three later deeds show that Hilchkanum intended to convey the right of way as fee, and not as an easement. But if Hilchkanum had conveyed a fee to the railroad, he would not have used the term “right of way” and instead would **\*\*202** have simply indicated that the land itself was previously conveyed to the railroad.

The second deed that the majority relies upon also uses the term “right of way,” but as a point of reference forming one border of the property. Use of the term “right of way” in this manner has no bearing on whether Hilchkanum believed he had conveyed an easement or

fee.

As with street easements, although the abutting owner might refer to the boundary as the adjacent street, this does not necessarily mean that the abutting owner does not also own to the centerline of the street. Because railroad easements—like street easements—are exclusive, referencing them in the deed as a right of way does not establish that the owner transferred fee title to the railroad.

I acknowledge that in *King County v. Rasmussen*,<sup>36</sup> a federal district court interpreted the Hilchkanum deed and held that it conveyed fee simple title to the right of way.<sup>37</sup> On appeal, the Ninth Circuit recognized that the term “right of way” appeared in the Hilchkanum deed’s granting clause as well as in the legal description. But the court did not find the phrase determinative of intent, because the language did not clearly limit the use of the land to a specific purpose.<sup>38</sup> The court went on to explain that in “virtually all cases” finding that the term “right of way” only \*603 granted an easement, the granting or habendum clause contained language clearly limiting the use of the land to a specific purpose.<sup>39</sup> The court concluded that Hilchkanum’s deed did not restrict the conveyance by designating a specific purpose, limiting use of the land, or adding a reversionary clause.<sup>40</sup> Noticeably absent from the court’s discussion on this

issue was any reference to *Veach*.

On appeal, the Ninth Circuit distinguished *Veach* on the basis of (1) other language in the Hilchkanum deed and (2) extrinsic evidence indicating an intent to convey a fee simple estate, neither of which was present in *Veach*.<sup>41</sup> For reasons discussed above, I disagree with the *Rasmussen* court’s analysis.

### Conclusion

Use of the term “right of way” in the granting clause of the Hilchkanum deed did not conclusively establish that Hilchkanum only granted the railroad an easement. But because Washington courts give great weight to the term “right of way” when it is used in the granting clause, and nothing else establishes that Hilchkanum instead intended to grant the railroad fee title, I conclude that the conveyance granted only an easement. I therefore dissent.

### All Citations

120 Wash.App. 564, 86 P.3d 183

### Footnotes

- 1 Certain facts are set forth in a written stipulation of the parties (“Stipulation”). Clerk’s Papers at 12–13.
- 2 Stipulation. Clerk’s Papers at 12–13.
- 3 Stipulation. Clerk’s Papers at 12.
- 4 Clerk’s Papers at 89.
- 5 Clerk’s Papers at 89.
- 6 Clerk’s Papers at 89–90.
- 7 Clerk’s Papers at 89–90. The United States Surface Transportation Board (STB) approved interim trail use (railbanking) of the ELS corridor under the National Trails System Act (16 U.S.C. § 1247(d)) and the STB’s implementing regulations (49 CFR § 1552.29). The STB ruling authorized removal of the rails, ties, and spikes, and conversion of the ELS corridor for a recreational trail as a means of preserving the corridor for future use. Clerk’s Papers at 17.
- 8 Clerk’s Papers at 13.
- 9 CR 56(c); *Brown v. State*, 130 Wash.2d 430, 437, 924 P.2d 908 (1996).

- 10 *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wash.App. 491, 499, 857 P.2d 283 (1993).
- 11 *Brown*, 130 Wash.2d at 439–40, 924 P.2d 908; *Morsbach v. Thurston County*, 152 Wash. 562, 568, 278 P. 686 (1929).
- 12 *Veach v. Culp*, 92 Wash.2d 570, 573, 599 P.2d 526 (1979).
- 13 *Veach*, 92 Wash.2d at 573, 599 P.2d 526.
- 14 *Veach*, 92 Wash.2d at 573, 599 P.2d 526 (citing *Vavrek v. Parks*, 6 Wash.App. 684, 690, 495 P.2d 1051 (1972); *Warren v. Atchison, Topeka & Santa Fe Ry.*, 19 Cal.App.3d 24, 35, 96 Cal.Rptr. 317 (1971)).
- 15 *Veach*, 92 Wash.2d at 573, 599 P.2d 526.
- 16 Clerk's Papers at 92–94. See also *King County v. Rasmussen*, 299 F.3d 1077, 1080 (9th Cir.2002), cert. denied, 538 U.S. 1057, 123 S.Ct. 2220, 155 L.Ed.2d 1106 (2003).
- 17 *Brown*, 130 Wash.2d at 433, 924 P.2d 908.
- 18 *Brown*, 130 Wash.2d at 434, 924 P.2d 908.
- 19 *Brown*, 130 Wash.2d at 433, 924 P.2d 908.
- 20 *Brown*, 130 Wash.2d at 436–437, 924 P.2d 908.
- 21 *Brown*, 130 Wash.2d at 437, 924 P.2d 908 (citing *Swan v. O'Leary*, 37 Wash.2d 533, 535, 225 P.2d 199 (1950); *Zobrist v. Culp*, 95 Wash.2d 556, 560, 627 P.2d 1308 (1981)).
- 22 *Brown*, 130 Wash.2d at 438, 924 P.2d 908 (citations omitted).
- 23 *Brown*, 130 Wash.2d at 438–39, 924 P.2d 908 (citations omitted). (emphasis in original).
- 24 *Brown*, 130 Wash.2d at 437, 924 P.2d 908.
- 25 *Brown*, 130 Wash.2d at 437, 924 P.2d 908. Washington case authority generally classifies the choices in railroad rights of way cases as between either fee simple title or easement. See *Reichenbach v. Washington Short-Line Ry. Co.*, 10 Wash. 357, 358–360, 38 P. 1126 (1894) (construing a conveyance in the form of a bargain and sale deed as conveying an easement, not fee title). No case holds that a defeasible fee was intended.
- 26 Laws of 1885–6, p. 177–79. The statute governing conveyances of real estate and providing for the form of deeds stated, in relevant part:  
SEC. 3. That **warranty deeds** for the conveyance of land, may be substantially in the following form: The grantor ... for and in consideration of ... in hand paid, **convey and warrant** to ... the following described real estate.... Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a **conveyance in fee simple** to the grantee, his heirs and assigns, ...  
SEC. 4. **Bargain and sale deeds** for the conveyance of land may be substantially in the following form: The grantor ... for (and) in consideration of ... in hand paid, **bargain, sell and convey** to ... the following described real estate.... Every deed in substance in the above form shall **convey to the grantee**, his heirs or other legal representatives and estate of inheritance **in fee simple**, ....  
SEC. 5. **Quit-claim deeds** may be in substance in the following form: The grantor ... for the consideration ... **convey and quit-claim to** ... all interest in the following described real estate.... Every deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient **conveyance**, release

and quit-claim to the grantee, his heirs and assigns **in fee** of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. (emphasis added).

27 (Emphasis added.)

28 See *Brown*, 130 Wash.2d at 437, 924 P.2d 908. The Hilchkanum deed contains neither the language nor the warranties of the statutory warranty or bargain and sale form of deeds. Arguably, this conveyance is substantially in the form of a quit claim deed, the third form of statutory deed existing at the time of the conveyance. We note that all three forms of statutory deed convey fee title according to the plain words of the governing statute. Nevertheless, the case authority indicates that the form of conveyance is but one of many factors in analyzing instruments like the one before us.

29 Appellants' Opening Brief at 6.

30 Appellants' Opening Brief at 6.

31 (Emphasis added.)

32 *Brown's* third factor considers "whether the deed conveyed a right of way **over** a tract of land, **rather than a strip** thereof." *Brown*, 130 Wash.2d at 438, 924 P.2d 908 (emphasis added).

33 *Brown*, 130 Wash.2d at 439, 924 P.2d 908 (emphasis added).

34 *Brown*, 130 Wash.2d at 439–40, 924 P.2d 908.

35 *Brown*, 130 Wash.2d at 440, 924 P.2d 908 (emphasis added) (citations omitted).

36 59 Wash.App. 888, 890, 801 P.2d 1022 (1990), *review denied*, 116 Wash.2d 1021, 811 P.2d 219 (1991) (construing a deed conveying "a right-of-way Fifty (50) feet in width through said lands ...").

37 299 F.3d 1077 (9th Cir.2002), *cert. denied*, 538 U.S. 1057, 123 S.Ct. 2220, 155 L.Ed.2d 1106 (2003).

38 *Veach*, 92 Wash.2d at 572, 599 P.2d 526 (construing a deed quit-claiming "A right-of-way one hundred feet wide, being fifty feet on each side of the center line of the B.B. & Eastern R.R. as now located ..."); *see also Reichenbach*, 10 Wash. at 358, 38 P. 1126 (construing deed conveying "right of way for said railroad, twelve feet in width ...").

39 *Brown*, 130 Wash.2d at 442, 924 P.2d 908.

40 These factors are: "(1) whether the deed conveyed a strip of land, and did not contain additional language relating to the use or purpose to which the land was to be put, or in other ways limiting the estate conveyed; (2) whether the deed conveyed a strip of land and limited its use to a specific purpose." *Brown*, 130 Wash.2d at 438, 924 P.2d 908.

41 This factor questions "whether the deed granted only the privilege of constructing, operating, or maintaining a railroad over the land." *Brown*, 130 Wash.2d at 438, 924 P.2d 908.

42 The fifth factor is "whether the deed contained a clause providing that if the railroad ceased to operate, the land conveyed would revert to the grantor." *Brown*, 130 Wash.2d at 438, 924 P.2d 908.

43 *Squire*, 59 Wash.App. at 894, 801 P.2d 1022 (holding that the clause "so long as said land is used as a right-of-way by said railway Company" supports the conveyance of an easement).

44 That language states "To have and to hold the said premises with the appurtenances *unto [the Railway] and to its successors and assigns forever.*" (emphasis added).

- 45 Black's Law Dictionary defines the term habendum clause as the "clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee." Further, "the habendum may lessen, enlarge, explain, or qualify, but not totally contradict or be repugnant to, estate granted in the premises." Black's Law Dictionary 710 (6th ed.1990).
- 46 *Squire*, 59 Wash.App. at 894, 801 P.2d 1022.
- 47 Appellants' Reply Brief at 18 (arguing that the use of the term "right" in this provision of the deed conveys an easement).
- 48 Bill Hilchkanum was a party to each of the subsequent deeds in the record before us. Mary Hilchkanum, the other grantor under the 1887 deed, was not a party to any.
- 49 Clerk's Papers at 66 (emphasis added).
- 50 Clerk's Papers at 57 (emphasis added).
- 51 Clerk's Papers at 63 (emphasis added).
- 52 (Emphasis added.)
- 53 Clerk's Papers at 449.
- 54 See *King County v. Rasmussen*, 299 F.3d at 1087–88.
- 55 *Minidoka & Southwestern Railroad Company v. United States*, 235 U.S. 211, 216, 35 S.Ct. 46, 59 L.Ed. 200 (1914) (quoting Rev. Stat. § 2288). Rev. Stat. § 2288 states in full:  
Any person who has already settled or hereafter may settle on the public lands, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their preemptions or homesteads.
- 56 315 U.S. 262, 62 S.Ct. 529, 86 L.Ed. 836 (1942).
- 57 *Great Northern*, 315 U.S. at 274–75, 62 S.Ct. 529. See also *Minidoka*, 235 U.S. at 216, 35 S.Ct. 46 ("[The Act of 1875], however, by its very terms, applies only to 'public lands,' and hence cannot be construed to empower the Secretary to authorize the building of roads across lands which had been segregated from the public domain by the entry and possession of homesteaders or preemptors.").
- 58 28 Pub. Lands Dec. 561 (1899).
- 59 *South Perry*, 28 Pub. Lands Dec. at 562.
- 60 28 Pub. Lands Dec. 155 (1899).
- 61 *Lawson*, 28 Pub. Lands Dec. at 159–60.
- 62 *Brown*, 130 Wash.2d at 439, 924 P.2d 908.
- 63 *Brown*, 130 Wash.2d at 444, 924 P.2d 908; *Conaway v. Time Oil Co.*, 34 Wash.2d 884, 889, 210 P.2d 1012 (1949) (observing that the term which is applied to a document by the parties thereto does not necessarily define the

nature of the grant).

64 Appellants' Reply Brief at 7.

65 We note that the Rays characterize Bill Hilchkanum as "a Native American who could not read or write." Appellants' Opening Brief at 16. They also state in their brief that he was "an illiterate Native American." *Id.* at 26. The use of the term "Native American" in these characterizations adds nothing that is analytically useful. To the extent that the Rays imply something more than his illiteracy by the use of the term, such implication is improper.

66 Clerk's Papers at 92–94.

67 "When the court remains in doubt as to the parties' intent or as to the quantum of interests conveyed, a deed will be construed against the grantor." 17 William B. Search Term Begin Stoebeck, *Washington PracticeSearch Term End: Real Estate: Property Law* § 7.9 at 463 (1995) (citing *Wright v. Olsen*, 42 Wash.2d 702, 257 P.2d 782 (1953); *Cook v. Hensler*, 57 Wash. 392, 107 P. 178 (1910)).

68 *State v. Olmedo*, 112 Wash.App. 525, 49 P.3d 960 (2002), review denied, 148 Wash.2d 1019, 64 P.3d 650 (2003) ("Under ER 704, a witness may testify as to matters of law, but may not give legal conclusions.").

69 Clerk's Papers at 66 (emphasis added).

70 "An 'exception' is properly the withdrawing of some part of a parcel of land from the conveyance, such as a deed that conveys Lot 4, block 2, *except* for the east 20 feet thereof." 17 William B. Search Term Begin Stoebeck, *Washington PracticeSearch Term End: Real Estate: Property Law* § 7.9 at 463 (1995) (emphasis in original).

71 The dissent appears to rely on an expert opinion by Stephen J. Graddon to support the view that the Railway drafted the deed and that we should construe ambiguities in that deed against the railroad. Dissent at 198. Graddon opines that the railroad drafted the deed because, among other things, the deed's language tracks language in other railroad deeds, a witness signing the deed was associated with the Railway, and Hilchkanum was illiterate. Clerk's Papers at 233–34. No one disputes that Hilchkanum could not have drafted the deed. But neither Graddon's declaration nor anything else in the record before us contests that B.J. Tallman, the notary who acknowledged the deed, drafted it. Likewise, nothing in the record shows that he did so at the direction of the Railway. Neither the status of a witness to the deed nor the alleged similarity in language with other deeds fills this gap. Thus, Graddon's declaration fails either to create a presumption that the Railway drafted the deed or to create a material issue of fact precluding summary judgment.

72 114 Wash.App. 523, 58 P.3d 910 (2002), review denied, 149 Wash.2d 1028, 78 P.3d 656 (2003).

73 *Hanson*, 114 Wash.App. at 532, 58 P.3d 910.

74 *Hanson*, 114 Wash.App. at 534, 58 P.3d 910.

75 *Hanson*, 114 Wash.App. at 535, 58 P.3d 910.

76 299 F.3d 1077 (9th Cir.2002).

77 Clerk's Papers at 13.

78 Clerk's Papers at 222–23.

79 Clerk's Papers at 222. Foley mistakenly stated in his opinion that the centerline would be located "in Lake Washington." Presumably, he meant Lake Sammamish.

80 *DD & L, Inc. v. Burgess*, 51 Wash.App. 329, 331 n. 3, 753 P.2d 561 (1988).

- 81 [Matthews v. Parker](#), 163 Wash. 10, 14, 299 P. 354 (1931).
- 82 [DD & L](#), 51 Wash.App. at 331 n. 2, 753 P.2d 561.
- 83 [DD & L](#), 51 Wash.App. at 333, 753 P.2d 561.
- 84 [DD & L](#), 51 Wash.App. at 336, 753 P.2d 561.
- 85 “[T]o interpret the words, ‘from the center line of the ... Railroad,’ as referring to the center of the track, is to strengthen the descriptive part of the deed by fixing an easily recognized monument.... The words ‘center line of the railroad’ refer to the center of the track, and indicate the track as a monument which aids in determining a certain boundary.” [DD & L](#), 51 Wash.App. at 335, 753 P.2d 561 (quoting [Peoria P.U. Ry. Co. v. Tamplin](#), 156 Ill. 285, 294–95, 40 N.E. 960, 962 (1895)).
- 86 Clerk’s Papers at 92 (emphasis added).
- 87 [DD & L](#), 51 Wash.App. at 335, 753 P.2d 561 (citing 6 G. Thompson, *Real Property* § 3044 (1962 repl.); [Makepeace v. Bancroft](#), 12 Mass. 469 (1815); cf. W. Robillard & L. Bouman, *A Treatise on the Law of Surveying and Boundaries* § 26.11 (5th ed.1987) (a road as constructed becomes the monument and controls)).
- 88 [221 Kan.](#) 579, 561 P.2d 818 (1977).
- 89 See, e.g., [Consolidated Amusement Co., Ltd. v. Waikiki Business Plaza, Inc.](#), 6 Haw.App. 312, 719 P.2d 1119 (1986); [Andersen v. Edwards](#), 625 P.2d 282 (1981); [Lindhorst v. Wright](#), 616 P.2d 450 (1980).
- 1 Majority Op. at 189–190.
- 2 [Hodgins v. State](#), 9 Wash.App. 486, 492, 513 P.2d 304 (1973).
- 3 [62 Wash.App.](#) 371, 814 P.2d 684 (1991), *aff’d*, [120 Wash.2d](#) 727, 844 P.2d 1006 (1993).
- 4 [Harris](#), [62 Wash.App.](#) at 376, 814 P.2d 684 (holding that rule that ambiguities in deed are to be interpreted most favorably to grantee and most strictly against grantor did not apply where alleged ambiguity arose in language incorporated in deed from purchase and sale agreement drafted by grantee); see also [Hanson Indus., Inc. v. County of Spokane](#), 114 Wash.App. 523, 531, 58 P.3d 910 (2002) *rev. denied*, [149 Wash.2d](#) 1028, 78 P.3d 656 (2003) (recognizing that ambiguities must be construed against railroad because it drafted deed).
- 5 See [Hanson Indus.](#), 114 Wash.App. at 531, 58 P.3d 910.
- 6 [Brown v. State](#), [130 Wash.2d](#) 430, 439, 924 P.2d 908 (1996).
- 7 See, e.g., [Roeder Co. v. Burlington N., Inc.](#), [105 Wash.2d](#) 567, 569, 716 P.2d 855 (1986) (holding that deed granted an easement based on the specifically declared purpose that the grant was a right of way for railroad purposes, and there was no persuasive evidence of intent to the contrary); [Morsbach v. Thurston County](#), [152 Wash.](#) 562, 564, 278 P. 686 (1929) (deed granted “the right-of-way for the construction of said company’s railroad in and over....”); [Swan v. O’Leary](#), [37 Wash.2d](#) 533, 534, 225 P.2d 199 (1950) (granted property “for the purpose of a Railroad right-of-way....”); [Veach v. Culp](#), [92 Wash.2d](#) 570, 572, 599 P.2d 526 (1979) (granted “[a] right-of-way one hundred feet wide....”). See also [Reichenbach v. Washington Short-Line Ry. Co.](#), [10 Wash.](#) 357, 358, 38 P. 1126 (1894) (“so long as the same shall be used for the operation of a railroad” construed as granting easement); [Pacific Iron Works v. Bryant Lumber & Shingle Mill Co.](#), [60 Wash.](#) 502, 505, 111 P. 578 (1910) (deed providing “to have and to hold the said premises ... for railway purposes, but if it should cease to be used for a railway the said premises shall revert to said grantors” grants easement not determinable fee); [Hanson Indus.](#), 114 Wash.App. at 536, 58 P.3d 910 (holding that right of way deed

conveying strip of land over and across grantor's lands conveyed easement); *King County v. Squire Inv. Co.*, 59 Wash.App. 888, 890, 801 P.2d 1022 (1990) (holding that "grant and convey ... a right-of-way.... To Have and to Hold ... so long as said land is used as a right-of-way ...." grants easement).

8 92 Wash.2d 570, 572, 599 P.2d 526 (1979).

9 130 Wash.2d 430, 439, 924 P.2d 908 (1996); Majority Op. at 189–190.

10 152 Wash. 562, 565–66, 278 P. 686 (1929).

11 *Veach*, 92 Wash.2d at 574, 599 P.2d 526. In *Veach*, the court held that the legal description is part of the granting clause. Although *Brown* appears to contradict this, the court in *Brown* cited *Veach* with approval for the proposition that the term "right of way" in the granting clause limits the estate conveyed. *Brown*, 130 Wash.2d at 437–38, 924 P.2d 908.

12 *Brown*, 130 Wash.2d at 438, 924 P.2d 908 (citing *Veach*, 92 Wash.2d at 570, 599 P.2d 526).

13 *Brown*, 130 Wash.2d at 439–40, 924 P.2d 908 (citing *Swan*, 37 Wash.2d at 536, 225 P.2d 199; 65 Am.Jur.2d Railroads § 76 (1972); *Urbaitis v. Commonwealth Edison*, 143 Ill.2d 458, 159 Ill.Dec. 50, 575 N.E.2d 548, 552 (1991)).

14 *Brown*, 130 Wash.2d at 439, 924 P.2d 908 (emphasis added).

15 Majority Op. at 189–190.

16 37 Wash.2d 533, 534, 225 P.2d 199 (1950).

17 *Swan*, 37 Wash.2d at 534, 225 P.2d 199.

18 *Morsbach*, 152 Wash. at 564, 278 P. 686.

19 *Hanson Indus.*, 114 Wash.App. at 533, 58 P.3d 910; *Veach*, 92 Wash.2d at 572–73, 599 P.2d 526; *Lawson v. State*, 107 Wash.2d 444, 452, 730 P.2d 1308 (1986); see also *Morsbach*, 152 Wash. at 567, 278 P. 686.

20 114 Wash.App. 523, 531, 58 P.3d 910 (2002) *rev. denied*, 149 Wash.2d 1028, 78 P.3d 656 (2003).

21 *Hanson Indus.*, 114 Wash.App. at 533, 58 P.3d 910 (citing *Lawson*, 107 Wash.2d at 452, 730 P.2d 1308).

22 See *Veach*, 92 Wash.2d at 573, 599 P.2d 526 (reciting deed language).

23 *Veach*, 92 Wash.2d at 574, 599 P.2d 526.

24 *Veach*, 92 Wash.2d at 574, 599 P.2d 526.

25 59 Wash.App. 888, 801 P.2d 1022 (1990).

26 *Squire Inv. Co.*, 59 Wash.App. at 894, 801 P.2d 1022.

27 *Squire Inv. Co.*, 59 Wash.App. at 894, 801 P.2d 1022.

28 *Hanson Indus.*, 114 Wash.App. at 533, 58 P.3d 910.

- 29 Danaya C. Wright and Jeffrey M. Hester, *Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and Shifting Scope of Railroad Easements From the Nineteenth to the Twenty-First Centuries*, 27 Ecology L.Q. 351, 382 (2000).
- 30 See, e.g., *Hanson Indus.*, 114 Wash.App. at 533, 58 P.3d 910 (“A railroad right-of-way deed need not, however, contain a reverter clause to effect an automatic reversion to the grantor upon abandonment”) (citing *Veach*, 92 Wash.2d at 572–73, 599 P.2d 526; *Lawson*, 107 Wash.2d at 452, 730 P.2d 1308; and *Morsbach*, 152 Wash. at 567, 278 P. 686).
- 31 Even the conclusion that the easement is unconditional is not necessarily true. As *Hanson Industries* recently explained, “A railroad right-of-way need not, however, contain a reverter clause to effect an automatic reversion to the grantor upon abandonment.” *Hanson Indus.*, 114 Wash.App. at 533, 58 P.3d 910.
- 32 *Brown*, 130 Wash.2d at 442 n. 9, 924 P.2d 908 (citation omitted).
- 33 Code of 1881, § 2456 provides:  
Such corporation may appropriate so much of said land as may be necessary for the line of such road or canal, or the site of such bridge, *not exceeding two hundred feet in width*, besides a sufficient quantity thereof for toll-houses, work-shops, materials for construction, a right of way over adjacent lands to enable such corporation to construct and repair its road, canal, or bridge, and to make proper drains; and in the case of a railroad, to appropriate sufficient quantity of such lands, in addition to that before specified in this section, for the necessary side tracks, depots, and water stations .... (emphasis added).
- 34 *King County v. Rasmussen*, 299 F.3d 1077, 1087–88 (9th Cir.2002), *cert. denied*, 538 U.S. 1057, 123 S.Ct. 2220, 155 L.Ed.2d 1106 (2003).
- 35 Majority Op. at 192.
- 36 143 F.Supp.2d 1225 (W.D.Wash.2001) *aff'd*, 299 F.3d 1077 (9th Cir.2002).
- 37 *Rasmussen*, 143 F.Supp.2d at 1230.
- 38 *Rasmussen*, 299 F.3d at 1086.
- 39 *Rasmussen*, 299 F.3d at 1086.
- 40 *Rasmussen*, 143 F.Supp.2d at 1229.
- 41 *Rasmussen*, 299 F.3d at 1087 (citing *Rasmussen*, 143 F.Supp.2d at 1230 n. 4).

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT ECF 65**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS E. HORNISH AND  
SUZANNE J. HORNISH JOINT LIVING  
TRUST, et al.,

Plaintiffs,

v.

KING COUNTY,

Defendant.

CASE NO. C15-284-MJP

ORDER ON CROSS-MOTIONS FOR  
SUMMARY JUDGMENT

The above-entitled Court, having received and reviewed:

1. Defendant King County’s Motion for Summary Judgment (Dkt. No. 46), Plaintiffs’ Response (Dkt. No. 54), and Defendant’s Reply (Dkt. No. 56);
2. Plaintiffs’ Motion for Summary Judgment (Dkt. No. 55), Defendant’s Response (Dkt. No. 61), and Plaintiffs’ Reply (Dkt. No. 62);

all attached exhibits and declarations, and relevant portions of the record, and having heard oral argument, rules as follows:

1 IT IS ORDERED that Plaintiffs' motion for summary judgment is DENIED.

2 IT IS FURTHER ORDERED that Defendant's motion for summary judgment is  
3 GRANTED; Plaintiff's claims are ordered DISMISSED with prejudice.

4  
5 **Background**

6 At issue in this lawsuit is a strip of land formerly utilized as a railroad corridor in King  
7 County, Washington ("the Corridor"). The Corridor was created in the late 1800s by the Seattle,  
8 Lake Shore & Eastern Railway Company (the "SLS&E") through a combination of federal land  
9 grants, homesteader deeds and adverse possession, resulting in a strip of property comprised of  
10 both easements and fees simple. *See Beres v. United States*, 104 Fed. Cl. 408, 412 (2012).

11 The Hornish property is adjacent to land acquired by SLS&E through a quit claim deed in  
12 1887 ("the Hilchkanum Deed"). (Decl. of Nunnenkamp, Ex. E.) When Hilchkanum sold the  
13 remainder of his property, he excluded the Corridor from the property description. (*Id.*, Ex. F.)  
14 There are no original deeds for the portions of the Corridor adjacent to the remaining Plaintiffs.  
15 The property surrounding the Corridor in these areas was owned by the Northern Pacific  
16 Railroad by means of an 1864 land grant. (*Id.*, Ex. G.) In 1889, Northern Pacific conveyed the  
17 land surrounding the Corridor to Mr. Middleton (without mentioning the Corridor; *id.* at Ex. H);  
18 Defendant claims that tax assessment rolls from 1895, however, exclude the 100 foot Corridor  
19 from Middleton's property. In the 1909 Pierce County probate action following Middleton's  
20 death, the Corridor was expressly excluded. (Decl. of Hackett, Ex. C. at 4, 8.)

21 SLS&E eventually became part of Burlington Northern & Santa Fe ("BNSF"). In 1997,  
22 BNSF conveyed its interest in the Corridor to The Land Conservancy ("TLC") via quit claim  
23 deed. (Decl. of Nunnenkamp, Ex. I.) Later that year, TLC petitioned the Surface Transportation  
24 Board ("STB") to abandon the use of the Corridor for rail service and King County declared its

1 intention to assume financial responsibility for the area as an “interim trail sponsor,” a process  
2 created by the Trails Act known as “railbanking.” *See* 16 U.S.C. § 1247(d).

3 On September 16, 1998, STB issued a Notice of Interim Trail Use (“NITU”). The Land  
4 Conservancy of Seattle and King County – Abandonment Exemption – in King County, WA,  
5 No. AB-6 (SUB 380X), 1998 WL 638432, at \*1 (Sept. 16, 1998). As part of TLC’s arrangement  
6 with the County to take over as trail sponsor, the County was granted all TLC’s ownership  
7 interest in the Corridor, which was memorialized by a Quitclaim Deed recorded in King County.  
8 (Decl. of Nunnenkamp, Ex. J.) The County then constructed a soft surface public trail and is in  
9 the process of constructing a paved trail the length of the Corridor. (Mtn., at 4.)

### 10 Discussion

#### 11 Hornish Plaintiffs’ property

12 The County presents federal and state authority supporting its position that it owns a fee  
13 interest in this part of the Corridor. In King County v. Rasmussen, 299 F.3d 1077, 1087 (9th Cir.  
14 2002), the Ninth Circuit Court of Appeals found that “Hilchkanum intended to convey a fee  
15 simple interest in the strip of land described;” the “strip of land” being a 100-foot corridor  
16 granted to SLS&E (which interest was later conveyed to the County). Two years later, the state  
17 court reached a similar conclusion (citing the reasoning in Rasmussen with approval) in Ray v.  
18 King County, 120 Wn.App. 564, 589 (2004).

19 Plaintiffs cite two cases as well. First, Brown v. State, 130 Wn.2d 430 (1996), which laid  
20 out a series of factors to be considered when determining whether an easement or fee was  
21 intended to be conveyed in a railroad right of way. Second, Kershaw Sunnyside Ranches, Inc. v.  
22 Interurban Lines, 156 Wn.2d 253 (2006) which held that “whether by quitclaim or warranty  
23 deed, language establishing that a conveyance is for right of way or railroad purposes  
24 presumptively conveys an easement...” Id. at 269.

1 The Court remains unpersuaded that Plaintiffs' authority stands for the proposition they  
2 assert (that the Hilchkanum Deed conveyed an easement). First of all, the Washington Supreme  
3 Court in Kershaw qualified their holding as follows: "[W]hen the granting document uses the  
4 term 'right of way' as a limitation or to define the purpose of the grant, it operates to 'clearly and  
5 expressly limit[] or qualify[y] the interest conveyed.'" Id. at 265 (citation omitted). The  
6 Hilchkanum Deed does not use the phrase "right of way" to describe or limit the purpose of the  
7 grant, an impression which is bolstered by the habendum language in the conveyance indicating  
8 that SLS&E is "[t]o have and to hold the said premises with the appurtenances unto the said  
9 party of the second part and its successors and assigns forever." (Decl. of Nunnenkamp, Ex. E at  
10 2.) There are no conditions of use imposed on the grant. Had the Hilchkanums intended to limit  
11 the purpose of the grant, presumably they would not have assigned it unconditionally and forever  
12 to their grantee.

13 Second of all, even if the Court were to follow Kershaw to the point of entertaining the  
14 presumption that an easement was conveyed, the courts in Rasmussen and Ray went through the  
15 same analysis of the Brown factors that the Washington Supreme Court did in Kershaw and  
16 concluded that the grant intended to convey an interest in fee simple; i.e., the presumption was  
17 successfully rebutted. Plaintiffs have given us no reason to overturn that ruling. Indeed, neither  
18 Rasmussen nor Ray were overturned in the wake of Kershaw, and Rasmussen remains  
19 controlling precedent for this district.

20 Mention must be made (as both sides do) of Beres v. United States, 104 Fed. Cl. 408  
21 (Fed.Cl. 2012), in which the Federal Claims Court examined the Hilchkanum Deed in the light of  
22 Kershaw and came to the exact opposite conclusion as the Ninth Circuit in Rasmussen; i.e., that  
23 the Deed conveyed an easement, not a fee interest. Id. at 430-31. The Federal Claims Court  
24

1 conducted an exhaustive analysis of the Deed and the case law concerning the proper  
2 interpretation of such conveyances. In the final analysis, the most that can be said is that  
3 reasonable jurists disagreed: the Ninth Circuit arrived at one conclusion and the Federal Claims  
4 Court arrived at another. This Court is bound by Ninth Circuit ruling, and on that basis finds that  
5 the County owns the portion of the Corridor abutting the Hornish Plaintiffs' property in fee  
6 simple. The County's summary judgment motion in that regard is GRANTED.

7  
8 The remaining Plaintiffs

9 *Nature of the railroad easements and the Trails Act*

10 The County seeks the authority to exercise all the rights in the Corridor that the railroads  
11 had. Plaintiffs interpose two interrelated arguments that they should not be allowed to do so.

12 Plaintiffs' first argument is that the Trails Act preserves the right of the railroad to  
13 reactivate its easement *for future purposes only*; another way Plaintiffs phrase this is by arguing  
14 that railbanking is not a "current railroad purpose" and that railbanking extinguishes the railroad  
15 easement. This is relevant to the County's argument that it has the power to exercise all the  
16 rights the railroad had under its railroad easement.

17 The weight of authority favors Defendant's position that railbanking does not extinguish,  
18 suspend or otherwise operate as an abandonment of the railroad easement. The Supreme Court  
19 has held that "interim use of a railroad right-of-way for trail use, when the route itself maintains  
20 intact for future railroad purposes, shall not constitute an abandonment of such rights-of-way for  
21 railroad purposes." Presault v. Interstate Commerce Commission, 494 U.S. 1, 8-9 (1990)  
22 (quoting H.R. Rep. No. 98-28 at 8-9 (1983)).

23 Nor does the language of the Trails Act lend itself to Plaintiffs' interpretation.  
24

1 [I]n furtherance of the national policy to preserve established railroad rights-of-way for  
 2 future reactivation of rail service... in the case of interim use of any established railroad  
 3 rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner  
 4 consistent with this chapter... *such interim use shall not be treated, for the purposes of  
 any law or rule of law, as an abandonment of the use of such rights-of-way for railroad  
 purposes.*

5 16 U.S.C. § 1247(d)(emphasis supplied). As U.S. District Judge Coughenour of this district has  
 6 pointed out in a similar case, (1) “preserve” means “[t]o keep in its original or existing state: ...  
 7 to maintain or keep alive” (Oxford English Dictionary, 3d ed.) and (2) the statute says  
 8 “preserve... *for* future reactivation,” not “preserve *upon* future reactivation.” Kaseburg v. Port  
 9 of Seattle, 2015 WL 4508790 at \*3-4 (W.D. Wash. July 24, 2015).

10 For their second argument on this point, Plaintiffs cite to a 1986 Washington case which  
 11 held that the change in use (from rails to trails) of a railroad right-of-way constituted  
 12 abandonment of the railroad easement. Lawson v. State of Washington, 107 Wn.2d 444, 452  
 13 (1986). But Lawson is not a case involving the federal Trails Act and thus that court was not  
 14 guided (or constrained) by the language in the Trails Act indicating exactly the opposite.  
 15 Plaintiffs also quote the language of the Federal Circuit court in a later Presault case (Presault v.  
 16 United States, 100 F.3d 1525, 1554 (1996); “Presault II”) that railbanking is not a “current  
 17 railroad purpose” and in fact constitutes abandonment of such purpose. What Plaintiffs fail to  
 18 point out is that the language is from a concurring opinion and has no precedential power.  
 19

20 The County takes its “no abandonment, no extinguishment” argument one step further  
 21 and maintains that, by virtue of its quitclaim deeds from BNSF, it acquired all of BNSF’s  
 22 property interests in the Corridor. Decl. of Nunnenkamp, Ex’s I and J. Judge Coughenour’s  
 23 Kaseburg order sides with the County on this issue, finding that “the Trails Act preserves  
 24 railroad easements and [] a trail sponsor may own and exercise the rights inherent to the railroad



1 Because the scope of trail easements under the Trails Act is coextensive with railroad  
 2 easements, Illig, 58 Fed.Cl. At (*sic*) 63, the Court now holds that the Corridor Easements  
 3 provide exclusive subsurface, surface, and aerial rights in the corridor for railroad and  
 4 trail purposes.”

5 Id.

6 It is the finding of this Court that the railroad easement survives, that the County’s rights  
 7 are coextensive with the railroad’s and that it “is entitled to the exclusive use and possession of  
 8 the area on, above, and below the surface of the Corridor for railroad purposes and incidental  
 9 uses permitted by Washington law, including use as a recreational trail.” (Mtn., at 1.)

10 The Court finds further support for this ruling in the language of the Trails Act itself:  
 11 “[I]n furtherance of the national policy to preserve established railroad rights-of-way for future  
 12 reactivation of rail service...” (16 U.S.C. § 1247(d).) The County would be unable to “preserve  
 13 establish railroad rights-of-way for future reactivation of rail service” if it could not employ and  
 14 protect the full range of rights which the railroad possessed in the Corridor (and which it may yet  
 15 possess again). Summary judgment will be granted in favor of the County on this issue.

16 Width of the Corridor

17 Preliminarily, the Court disposes of the undisputed matters concerning this particular issue:

- 18 1. Although the County seeks a declaration that the Corridor is 100 feet wide, it  
 19 acknowledges that BNSF entered into “prior property transactions” (specifically, with the  
 20 Morels, Menezes and Vanderwendes Plaintiffs) which decrease the size of the Corridor in  
 21 certain parcels (50 feet adjacent to the Morels, 75 feet adjacent to the Menezes and  
 22 Vanderwendes; *see* Decl. of Nunnenkamp, ¶¶ 21, 23-24).

1 2. There are no original deeds delineating the nature of the property interest originally  
 2 acquired by SLS&E/BNSF and conveyed to TLC and the County. This means that the  
 3 property rights which the County seeks to establish must be analyzed as those emerging  
 4 from an easement by prescription (as opposed to an easement arising from claim of title).

5  
 6 There is a marked distinction between the extent of an easement acquired under a  
 7 claim of right and the scope of one acquired under color of title. When one seeks  
 8 to acquire an easement by prescription under a claim of right, user and possession  
 9 govern the extent of the easement acquired. It is established only to the extent  
 10 necessary to accomplish the purpose for which the easement is claimed.  
 11 Northwest Cities Gas Co. v. Western Fuel Co., 17 Wn.2d 482, 135 P.2d 867  
 12 (1943).

13  
 14 On the other hand, however, where one's occupancy or adverse use is under color  
 15 of title that is a matter of public record, possession or user of a portion is regarded  
 16 as coextensive with the entire tract described in the instrument under which  
 17 possession is claimed. Omaha & Republican Valley R. v. Rickards, 38 Neb. 847,  
 18 57 N.W. 739 (1894).

19 Yakima Valley Canal Co. v. Walker, 76 Wn.2d 90, 94 (1969)

20  
 21 In keeping with the finding that the County possesses an interest and property rights  
 22 coextensive with the railroad easement, Defendant's rights pursuant to a prescriptive easement  
 23 would be those necessary for the operation of a railroad, and the boundaries of the Corridor  
 24 would be the amount of property (up to 100 feet) required to accomplish that. The County  
 presents ample evidence that railroad operations require boundaries that extend further than  
 simply the width of the railroad tracks (Def Mtn at 20-22), including declarations from railroad  
 personnel that a 100 foot wide corridor is required

- As a "safety buffer to ensure minimum setbacks between freight trains and residential development, to prevent nearby construction and development activities that could undermine the stability of the steep slopes above and below the tracks, and to provide

**Exhibit 20**  
**SSDP2016-00415**  
**001537**

1 access for maintenance activities, such as tie replacement, that require significant  
2 clearance on one or both sides of the track.” (Decl. of Nuorala, ¶ 8, Decl. of Hackett, Ex.  
3 J.)

- 4 • To provide space between each of the rails, side clearance, drainage of the slope, a  
5 drainage ditch, and access for maintenance and emergencies (such as derailments).  
6 (Decl. of Sullivan, ¶¶ 4-5, 8-9.)

7  
8 The only Plaintiffs who bring forward any evidence that the 100 foot Corridor does not  
9 represent the extent necessary for railroad operations are the Morels, who present proof that at  
10 one point the house which originally stood on their property (from 1920-2000) was within the  
11 right of way now claimed by the County, as well as walkways and trees planted well within the  
12 Corridor. (Decl. of Morel, Ex. B.)

13 The Morel evidence does not suffice to create a disputed issue of material fact. First, the  
14 “extent of the right is fixed and determined by the user in which it originated” (NW Cities Gas  
15 Co. v. Western Fuel Co., 17 Wn.2d 482 486 (1943)(citation omitted)), in this case by the SLS&E  
16 in the 1890s. The Morels do not hold themselves out to be experts in railroad operations, do not  
17 rebut what Defendant’s railroad experts say about the extent necessary for operations and do not  
18 create a disputed issue of material fact. Furthermore, the County has conceded that the Corridor  
19 narrows to 50 feet abutting the Morels’ property line (a transaction in which the quitclaim deed  
20 acknowledged that the Morels were purchasing “a portion of BNSF’s 100.0 foot wide  
21 Snoqualmie Line right of way;” Quitclaim Deed, Decl. of Nunnenkamp, Ex. O) and the Morels’  
22 current house is outside that 50 foot strip.

1 None of the other Plaintiffs provide similar evidence of encroachments upon the  
 2 Corridor, but even had they done so the above analysis would apply. Plaintiffs' inability to  
 3 provide any expert testimony rebutting Defendant's evidence of the necessity of a 100 foot wide  
 4 corridor for railroad operations entitles the County to summary judgment on this issue.

5 RCW 7.28.070

6  
 7 BNSF executed a quitclaim deed to TLC in 1997 that included a complete description of  
 8 the 100 foot-wide Corridor (with the exceptions noted above). (Decl. of Nunnenkamp, Ex. I.)  
 9 The following year, TLC conveyed that same property (with the identical legal description) to  
 10 King County. (Id., Ex. J.) Both deeds were recorded. Since assuming title to the property, the  
 11 County has paid all fees and taxes on the Corridor, including fees for surface water management,  
 12 noxious weed control, and conservation futures. Decl. of Sweany, ¶ 3.<sup>1</sup>

13 RCW 7.28.070 provides:

14 Every person in actual, open and notorious possession of lands or tenements under claim  
 15 and color or title, made in good faith, and who shall for seven successive years continue  
 16 in possession, and shall also during said time pay all taxes legally assessed on such lands  
 17 or tenements, shall be held and adjudged to be the legal owner of said lands or tenements,  
 18 to the extent and according to the purport of his or her paper title.

19 In addition to holding the Corridor "under claim or color of title" since the 1998 quitclaim deed  
 20 and paying taxes on the property since that time, the County has been in "open and notorious"  
 21 possession of the Corridor by recording the deed, appearing as trail sponsor in public

22 <sup>1</sup> The Morels claim to have paid taxes on the Corridor. (*See* Pltf Response, Ex. B., Dkt. No. 54-2 at 4-5,  
 23 10.) Their claims about their 1971 taxes (which actually appear to include portions of the Corridor) are irrelevant as  
 24 they predate the County's acquisition of the property in 1998. Their assertions regarding their "Current Property  
 Taxes" (p. 10) appear to indicate that, although they did not pay taxes based on a property line that includes the  
 Corridor, their property's assessed value was based in part on improvements which encroach upon the Corridor.  
 This is not the same thing as paying taxes on the Corridor and does not refute the County's claim to have done so  
 since the 1998 conveyance.

1 | proceedings before the STB, removing the old railroad tracks, installing a soft-surface trail and  
2 | requiring adjacent landowners to apply for permits for crossings or other encroachments on the  
3 | Corridor. (Decl. of Nunnenkamp, ¶¶ 2-11, 18.)

4 |         The Washington Supreme Court has held that color of title exists when a deed  
5 | “sufficiently describes the property in question and purports to convey it to the [movants].”  
6 | Scramlin v. Warner, 69 Wn.2d 6, 8 (1966). By recording the deed, the titleholder “dispenses  
7 | with the need for other proof of a hostile or adverse claim... color of title itself establishes those  
8 | elements.” Fies v. Storey, 21 Wn.App. 413, 422 (1978). Finally,

9 |         [W]here one’s occupancy or adverse use[] is under color of title that is a matter of public  
10 | record possession or use[] of a portion is regarded as coextensive with the entire tract  
11 | described win the instrument under which possession is claimed.

12 | Yakima Valley Canal Co. v. Walker, 76 Wn.2d 90, 94 (1969).

13 |         Plaintiffs make no substantive response to this argument, interposing instead an argument  
14 | that they had “inadequate notice” (under FRCP 8(a)) that Defendant intended to assert claims  
15 | that the Corridor was 100 feet wide or that the County claimed title by virtue of adverse  
16 | possession. It is not a persuasive argument. Defendant’s counterclaims included allegations that  
17 | “Plaintiffs... have interfered with King County’s property rights in the ELSRC by erecting and  
18 | maintaining various unauthorized improvements that impede King County’s access to its  
19 | property, its exclusive control, and prevent public enjoyment” (Answer, Dkt. No. 32,  
20 | Counterclaim ¶ 3) and that “[u]nder RCW 7.28, title to any disputed portions of the corridor  
21 | should be quieted in King County.” (Id. at ¶ 4.) The Court finds it difficult to believe that, in a  
22 | dispute about property lines, a party was not on notice that the actual size of the property was  
23 | going to be an issue.

1 Plaintiffs also claim that “King County’s request for summary judgment on the width  
2 issue... attempts to circumvent this Court’s prior order remanding the issue to the Washington  
3 State court.” (Pltf Response at 12.) Again, this fails to persuade. First, this Court did not  
4 remand “the width issue” to the Washington State court, but remanded the Neighbors v. King  
5 County case (C15-1358MJP) on Plaintiffs’ motion. At no time have Plaintiffs moved to have  
6 this case stayed or remanded on the basis of that decision and they will not be allowed to cherry-  
7 pick an issue while proceeding forward with the remainder of this case. Either this case (and all  
8 its issues) is properly before this court or it is not. Additionally, the Hornish Plaintiffs are not a  
9 party to the Neighbors case, so their claims can only be adjudicated in this proceeding.

10 Standing under the centerline presumption doctrine

11 This is the resumption of an argument the Court addressed in June 2015. (Dkt. No. 19,  
12 Order re: Motion to Dismiss for Lack of Standing.) Roeder County v. Burlington Northern, 105  
13 Wn.2d 567 (1986) is the Washington case which established the “centerline presumption”  
14 doctrine:

15  
16 Generally then, the conveyance of land which is bounded by a railroad right of way will  
17 give the grantee title to the center line of the right of way if the grantor owns so far,  
18 unless the grantor has expressly reserved the fee to the right of way, or the grantor’s  
19 intention to not convey the fee is clear.

20 Id. at 576. However, the Washington Supreme Court set two restrictions on the presumption.

21 The first restriction states:

22 When, however, a deed refers to the right of way as a boundary but also gives a metes  
23 and bounds description of the abutting property, the presumption of abutting landowners  
24 taking to the center of the right of way is rebutted. A metes and bounds description in a  
deed to property that abuts a right of way is evidence of the grantor’s intent to withhold  
any interest in the abutting right of way, and such a description rebuts the presumption  
that the grantee takes title to the center of the right of way.

Exhibit 20  
SSDP2016-00415  
001541

1 Id. at 577. The Court’s previous ruling (that Plaintiffs’ deeds contained metes and bounds  
2 descriptions that used the railroad right of way as a boundary) is the law of the case.

3 The second restriction concerns chain of title:

4 The presumption that the grantor intended to convey title to the center of the right of way  
5 is inapplicable where the adjoining landowner presents no evidence of having received  
6 his or her property from the owner of the right of way. A property owner receives no  
interest in a railroad right of way simply through ownership of abutting land.

7 Id. at 578. Plaintiffs also claim they have established chain of title back to the original grantor.

8 First, their failure to establish the first prong of the centerline presumption test renders their  
9 proof in this regard moot. Second, they do not succeed in establishing the chain of title --

10 Defendant presents evidence that in the probate of the original grantor (Middleton), the Corridor  
11 was specifically excluded. (Decl. of Hackett, Ex. C at 4, 8.) It is, at the very least, a disputed  
12 issue of material fact but (as mentioned) the Court is not convinced that proof one way or the  
13 other would be determinative of the issue.

14 In rebuttal, Plaintiffs file a declaration from an “expert witness,” a civil engineer with  
15 purported expertise in “identifying source deeds that Railroads used in acquiring specific  
16 property and determining what rights were conveyed to the Railroad.” (Decl. of Rall, Dkt. No.  
17 54-4, ¶ 1.) The expert makes no mention of having examined the Middleton probate document  
18 which excludes the Corridor. More critically, Plaintiffs offer no authority supporting their right  
19 to offer expert testimony on the legal interpretation of a deed. On the contrary, “expert  
20 testimony [regarding] the interpretation of a contract [is] an ultimate question of law upon which  
21 the opinion of an expert may not be given.” PMI Mortgage Ins. Co. v. Amer. Int’l Specialty  
22 Line Ins. Co., 291 Fed.Appx. 40, 41 (9th Cir. 2008). The Court has not considered the expert’s  
23 opinion in reaching its conclusion on this issue.

1 Ultimately, the Court finds the issue of the centerline presumption to be non-  
2 determinative of the issues presented by this case. In the first place, it is only a presumption and  
3 a ruling one way or the other would not foreclose the losing party from presenting evidence to  
4 rebut the presumption. Secondly (and more to the point), the Court's rulings on the other issues  
5 presented establish the parties' respective rights to a degree which renders the centerline  
6 presumption doctrine inapplicable.

### 7 Conclusion

8  
9 The Court GRANTS summary judgment to King County on the following issues:

- 10 1. "Railbanking" under the Trails Act preserved all rights formerly held by the railroad  
11 easement owners.
- 12 2. King County holds all of BNSF's property rights (besides the trail rights created by the  
13 Trails Act); i.e., King County holds a "railroad easement" and a "trails easement."
- 14 3. As holders of a "railroad easement," the County has subsurface, surface and aerial rights  
15 in the Corridor to extent permitted by Washington law.
- 16 4. The County owns the portion of the Corridor adjacent to the Hornish property in fee.
- 17 5. Except where narrowed by prior transactions, the County owns a 100 foot-wide easement  
18 adjacent to Plaintiffs' property.
- 19 6. Even if the County had not acquired the 100 foot Corridor from BNSF, it acquired the  
20 same through the operation of RCW 7.28.070.
- 21 7. Plaintiffs lack standing under the centerline presumption doctrine to challenge the  
22 County's property rights.
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The above rulings necessarily operate to DENY Plaintiffs’ motion for summary judgment.

From the Court’s reading of Plaintiffs’ amended complaint, this ruling resolves the issues raised by their litigation. If there are issues remaining to be decided, the parties are invited to bring them to the Court’s attention. If not, Defendant is directed to submit a judgment reflecting the outcome of these dispositive motions and terminating the lawsuit.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 20th day of April, 2016.



Marsha J. Pechman  
United States District Judge

**JUDGMENT QUIETING TITLE ECF 67.**

**Exhibit 20  
SSDP2016-00415  
001545**

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

Plaintiffs,

v.

KING COUNTY, a home rule charter county,

Defendant.

No. 2:15-cv-00284-MJP

**JUDGMENT QUIETING TITLE TO  
KING COUNTY**

This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

The Court granted summary judgment to Defendant King County in accordance with the April 20, 2016 Order on the Parties’ Cross-Motions for Summary Judgment. The Plaintiffs’ August 14, 2015 Amended Complaint is DISMISSED in its entirety, with prejudice. King County’s counterclaims for a declaratory judgment and quiet title are GRANTED.

1 It is hereby ORDERED:

2 1. King County is granted a decree quieting title free and clear from all claims by the  
3 Plaintiffs and/or their successors in interest to any portions of the land conveyed by the September  
4 18, 1998 quit claim deed from The Land Conservancy to King County (recording No.  
5 9809181252), which is attached as **Exhibit A** to this judgment. The Plaintiffs, King County, and  
6 their successors in interest shall recognize in perpetuity the boundary lines described in Exhibit A.

7 2. Title is quieted confirming that King County owns a fee interest in the portions of  
8 the property described in Exhibit A that are derived from the May 9, 1887 deed from Bill and Mary  
9 Hilchkanum to the Seattle, Lake Shore and Eastern Railway, which is attached as **Exhibit B** to this  
10 judgment. Consistent with the boundaries of the property conveyed by the Hilchkanum Deed, King  
11 County owns a fee interest in all portions of Government Lots 1, 2, and 3 of Section 6,  
12 Township 24 N, Range 6 E that are described in Exhibit A.

13 3. Title is quieted confirming that King County owns a prescriptive easement in the  
14 portions of the property described in Exhibit A that are derived from the August 26, 1889 deed from  
15 the Northern Pacific Railway Company to Samuel Middleton (recording No. 44096), which is  
16 attached as **Exhibit C** to this judgment. Consistent with the boundaries of the property conveyed  
17 by the Middleton Deed, King County owns an easement interest in all portions of Government Lot  
18 2 of Section 7, Township 24 N, Range 6 E and Government Lots 1 and 3 of Section 17, Township  
19 24 N, Range 6 E that are described in Exhibit A. King County is entitled to exercise its easement  
20 rights in any manner consistent with the April 20, 2016 Order.

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1 This order constitutes a final judgment resolving all remaining issues in this case.

2 DATED this 13th day of May, 2016.

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5 

6 Marsha J. Pechman  
7 United States District Judge

8 Presented by:

9 DANIEL T. SATTERBERG  
10 King County Prosecuting Attorney

11 By: s/ David J. Hackett  
12 DAVID HACKETT, WSBA #21236  
13 Senior Deputy Prosecuting Attorney

14 By: s/ H. Kevin Wright  
15 H. KEVIN WRIGHT, WSBA #19121  
16 Senior Deputy Prosecuting Attorney

17 By: s/ Peter G. Ramels  
18 PETER G. RAMELS, WSBA #21120  
19 Senior Deputy Prosecuting Attorney

20 By: s/ Barbara Flemming  
21 BARBARA A. FLEMMING, WSBA #20485  
22 Senior Deputy Prosecuting Attorney

23 King County Prosecuting Attorney's Office  
24 500 Fourth Ave., 9th Floor  
Seattle, WA 98104  
Telephone: (206) 296-8820 / Fax: (206) 296-8819  
Email: david.hackett@kingcounty.gov  
kevin.wright@kingcounty.gov  
pete.ramels@kingcounty.gov [barbara.flemming@kingcounty.gov](mailto:barbara.flemming@kingcounty.gov)

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Email: eharris@corrchronin.com  
dfreeburg@corrchronin.com

*Attorneys for Defendant King County*

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Exhibit A



Recording Requested By And  
When Recorded Mail To:

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

**QUITCLAIM DEED**

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

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

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

Additional legal(s) on: Pages 5 through 12

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

Project [Area]: East Lake Sammamish Trail

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

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2521 Exhibit 20  
SSDP2016-00415  
980918-1252





**EXHIBIT "A"**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Parcel "A" Description

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

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

**ALSO,**

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

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

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

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

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

"Line A" Description

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

ALSO,

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

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

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

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"Line B" Description

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

"Line C" Description

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

"Line D" Description

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

**ALSO,**

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

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

9809181252

Exhibit B

Bill Hilchkanum &	}	
Mary Hilchkanum	}	
	}	
to	}	Right of Way Deed
	}	
S. L. S. and E. R.'Y Co.	}	

In Consideration of the benefits and advantages to accrue to us from the location construction and operation of the Seattle, Lake Shore and Eastern Railway in the County of King in Washington territory we do hereby donate grant and convey unto said Seattle Lake Shore and Eastern Railway Company a right of way one hundred (100) feet in width through our lands in said County described as follows to wit: Lots one (1) two (2) and three (3) in section six (6) township 24 North of Range six (6) East.

Such right of way strip to be fifty (50) feet in width on each side of the center line of the railway track as located across our said lands by the Engineer of said Railway Company which location is described as follows to wit:

Commencing at a point 410 feet West from North East corner of Section six (6) township 24 N, R. 6 East and running thence on a one (1) degree curve to the left for 753 3/10 feet thence South 16 degrees and 34 min. West 774 2/10 feet thence with a 3 degree curve to the right for 700 feet thence with an 8 degree curve to the right for 260 4/10 feet thence South 58 degrees and 24 minutes West 259 6/10 feet thence with an 8° curve to the left for 564 4/10 feet thence South 13° 15' W 341 4/10 feet thence with a 6° curve to the right for 383 3/10 feet thence S 36° 15' W 150 feet to South boundary of lot 3 of said Sec. 6 which point is 1320 feet North and 2170 feet west from SE corner of said Sec. 6.

And the said Seattle Lake Shore and Eastern Railway Company shall have the right to go upon the land adjacent to said line for a distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road.

To have and to hold the said premises with the appurtenances unto the said party of the second part and to its successors and assigns forever.

In witness whereof the parties of the first part have hereunto set their hands and seals this 9<sup>th</sup> day of May A.D. 1887.

Signed Sealed and delivered in the presence of

B.J. Tallman	}	Bill [his mark] Hilchkanum.	[Seal]
	}		
D.T. Denny	}	Mary [her mark] Hilchkanum.	[Seal]
	}		
Territory of Washington	}		
County of King	}	SS	

I hereby certify that on this 9<sup>th</sup> day of May A.D. 1887 before me a Notary Public in and for Washington Territory personally came Bill Hilchkanum and Mary Hilchkanum to me known to be the individuals described in and who executed the within instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

And the said Mary Hilchkanum, wife of said Bill Hilchkanum, upon an examination by me separate and apart from her said husband when the contents of said instrument were by me fully made known unto her and she was by me fully apprised of her rights and the effect of signing the within instrument did freely and voluntarily separate and apart from her said husband sign and acknowledge the same acknowledging that she did voluntarily of her own free will and without the fear of or coercion from her husband execute the same.

Witness my hand and official seal the day and year in this certificate first above written.

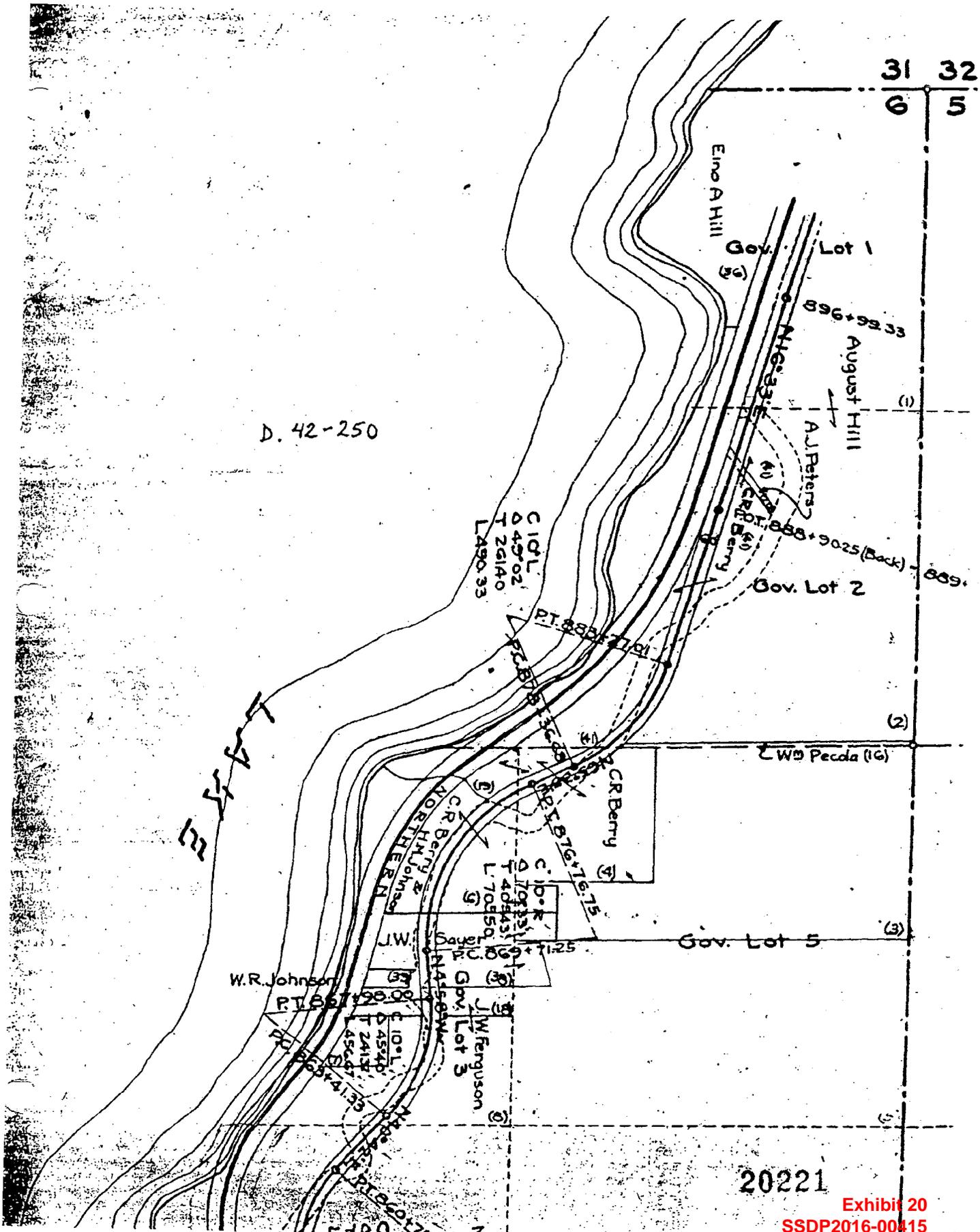
B.J. Tallman {seal}  
Notary Public in and for Washington Territory

Filed for record at the request of Burk and Haller, May 9<sup>th</sup> A.D. 1887 at 6 mins. past 1 PM.

Lyman Wood  
County Auditor

**Exhibit 20**  
**SSDP2016-00415**  
**001565**

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D. 42-250

20221

Exhibit 20  
SSDP2016-00415  
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in presence of  
B. G. Tallman  
T. N. Waller

Hans Anderson

Seal

Territory of Washington }  
County of King } ss

I hereby certify that on this 6<sup>th</sup> day of May A. D. 1882 before me a Notary Public in and for Washington Territory personally came Hans Anderson to me known to be the individual described in and who executed the within instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hands and official seal the day and year in the certificate just above written

B. G. Tallman

Seal

Notary Public in and for Washington Territory  
Went forward at the request of Burke and Waller. May 9<sup>th</sup> A. D. 1882  
at 5 o'clock past P. M.

Lyman Wood  
County Auditor

13449

Bill Wildkanun and wife

To

Right of Way Deed

S. S. S. and S. P. S. Co.

In Consideration of the benefits and advantages to accrue to us from the location construction and operation of the Little Lake Shore and Eastern Railway in the county of King in Washington Territory we do hereby donate grant and convey unto said Little Lake Shore and Eastern Railway Company a right of way one hundred (100) feet in width through our lands in said County described as follows to wit: Lots One (1) Two (2) and three (3) in section six (6) Township 24 North of Range Six (6) East. Such right of way strip to be fifty (50) feet in width on each side of the center line of the roadway track as located across our said lands by the Engineer of said railway Company which location is described as follows to wit:

20222

commencing at a point 410 feet West from North East corner of Section 16 (6) Township 24 N R 6 East and running thence on a one (1) degree curve to the left for 753 2/3 feet thence South 16 degrees and 34 minutes West 774 2/3 feet thence with a 3 degree curve to the right for 700 feet thence with an 8 degree curve to the right for 260 4/5 feet thence South 58 degrees and 24 minutes West 259 4/5 feet thence with an 8 degree curve to the left for 564 4/5 feet thence South 13 degrees 15' West 341 4/5 feet thence with a 6 degree curve to the right for 383 3/5 feet thence S 36 degrees 15' West 150 feet to North boundary of lot 3 of said Sec 6 which point is 1320 feet North and 2170 feet West from S.E. corner of said Sec 6

And the said Little Lake Iron and Eastern Railway Company shall have the right to go upon the land adjacent to said line for a distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road

to have and to hold the said premises with the appurtenances unto the said party of the second part and to its successors and assigns forever

In Witness Whereof the parties of the first part have hereunto set their hands and seals this 9th day of May A.D. 1882

Signed sealed and delivered  
 in presence of } Bill W. Wilckhamm  
 R. G. Tallman }  
 J. S. Denny } W. H. Wilckhamm

Territory of Washington }  
 County of King } ss

I hereby certify that on this 9th day of May A.D. 1882 before me a Notary Public in and for Washington Territory personally came Bill Wilckhamm and W. H. Wilckhamm to me known to be the individuals described in and who executed the within instrument and acknowledged that they signed and placed the same as their free and voluntary act and deed for the use and purposes therein mentioned

And the said W. H. Wilckhamm is upon an examination by me separate and apart from his former husband when the contents of said instrument were by me fully made

20223 Exhibit 20  
 SSDP2016-00415  
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known into his said premises by me fully apprised of her rights and the effect of signing the within instrument and fully and voluntarily separate and apart from her said husband sign and acknowledge the same acknowledging that she does voluntarily of her own free will and without the fear of or coercion from her husband execute the same.

Witness my hand and <sup>official</sup> seal the day and year within this certificate first above written.

B. J. Tallman  
Notary Public in and for Washington Territory

Witness my hand at the request of Bank & Haller May 9<sup>th</sup> A.D. 1882  
at Grand Rapids, Idaho

Lymman Wood  
County Auditor

13450  
Alfred Pearson & wife  
To  
S. S. S. and C. R. Y. Co.

Right of Way Deed

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

South West quarter of North West quarter of Section Eight (8) Township twenty six (26) North of Range five (5) East

Such right of way strip to be fifty (50) feet in width on each side of the entire line of the railway track as located across our said lands by the engineers of said Railway Company which location is described as follows to wit:

Commencing at a point 630 feet due North from quarter section corner on West boundary of Section Eight (8) Township twenty six (26) North of Range five (5) East being also station 334 + 32 = 356 line and running thence with a

20224 Exhibit 20  
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Exhibit C

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J.P. Carroll }  
D Griffith }  
State of Washington } ss.  
County of King }

Rees P Daniels (seal)

I, J. P. P. Carroll notary Public in and for said County and State do hereby certify that on this 18 day of December A.D. 1889 personally appeared before me Rees P. Daniels to me known to be the individual described in and who executed the within instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned Given under my hand and official seal this 18<sup>th</sup> day of December A.D. 1889



J.P. Carroll

Notary Public in and for said County and State

Filed for record at request Rees P Daniels Dec 19<sup>th</sup> 1889 at 11 min past 11

W.R. Arnold  
County Auditor  
Deputy

44096 Northern Pacific RR Co }  
D. To. } Deed.

Samuel J Middleton

Pacific Division

Contract No 5474

Deed No A 1097

Northern Pacific Railroad Company

This Indenture Made the Twenty sixth day of August in the year of our Lord one thousand eight hundred and eighty nine by and between the Northern Pacific Railroad Company a corporation created by and existing under an Act of the Congress of the United States of America entitled "An Act Granting Lands to aid in the Construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound, on the Pacific Coast by the Northern Route" approved July 2, 1864 party of the first part, the Central Trust Company of New York, a corporation existing under the laws of the State of New York Trustee, under a certain indenture of Mortgage or Deed of Trust made by the said party of the first part and bearing date the first day of January A.D. one thousand eight hundred and eighty one, party of the second part and Samuel J Middleton of the City of Tacoma in the County of Pierce and

Exhibit 20  
BSP 2016-00415  
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Territory of Washington party of the third part. Whereas the said party of the first part, under and by virtue of the said Act of Congress became and is the grantee of certain lands situate in the Territory of Washington, and did execute and deliver to the said party of the second part a mortgage inter alia of the said lands in trust for the purposes therein mentioned bearing date the first day of January A.D. one thousand eight hundred and eighty one duly filed and recorded in the office of the Secretary of the Interior in the City of Washington. And Whereas it is provided and covenanted in said mortgage among other things, that the said party of the first part shall at all times be at liberty to contract for the sale of any parcel or parcels of said lands at such price or prices as to it shall seem reasonable, not below the appraisal thereof approved by the said party of the second part, and that upon deposit of the proceeds of such sale or sales with the said party of the second part whether the same be in cash bonds coupons or other securities, it shall by deed or deeds executed by it or its authorized attorney or attorneys, release the land so sold and paid for from the lien created thereby. And Whereas the said party of the first part has contracted to sell and convey to the said party of the third part, the parcels of the said lands which are hereinafter described, free from the encumbrance of the said mortgage, for the price hereinafter specified being not less than the appraisal thereof approved by the said party of the second part; and the said Trustee has become a party hereto for the purpose of releasing the said land hereby conveyed from the said encumbrance so that the said party of the third part his heirs and assigns, shall take and hold the same free from any lien existing by reason of said mortgage. Now this indenture witnesseth that the said parties of the first and second parts by virtue of the said powers in said mortgage expressed and of all others their powers and estates in the premises and for and in consideration of the sum of One thousand seven hundred twenty four and  $\frac{37}{100}$  (1724.37) Dollars unto the said party of the first part, and by it unto the said party of the second part, well and truly paid, at and before the sealing and delivery of these presents the receipt of which is hereby acknowledged have granted bargained and sold aliened, released, conveyed and confirmed and by these presents do grant bargain

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and sell alien release convey and confirm unto the said party of  
the third part his heirs and assigns the following described tracts  
or parcels of land situate and being in the County of King in  
the Territory of Washington that is to say The North east quarter  
of North east quarter and the Lot numbered Two (2) of section  
no seven (7) and the Lots numbered one (1) and three (3) and north  
east quarter of north east quarter of section no seventeen (17)  
all in Township no Twenty four (24) North of Range no six  
(6) east of the Willamette Meridian containing according  
to the United States Government survey one hundred thirty  
seven and <sup>95</sup>/<sub>100</sub> (137.95) acres more or less Together with all and  
singular the hereditaments and appurtenances thereunto  
belonging or in anywise appertaining and all the estate  
right title interest property claim and demand whatsoever  
of the said parties of the first and second parts and of each  
of them respectively in law equity or otherwise, of, in and  
to the same and every part thereof To have and to hold  
the said granted and conveyed lands and premises with  
the appurtenances unto the said party of the third part  
his heirs and assigns forever, free and clear of the dues  
and encumbrance of the said Indenture of Mortgage, and  
of all the trusts therein or thereby declared or created, and  
free and clear of all other liens charges and encumbrances  
except taxes and assessments if any levied or assessed  
since the Twenty sixth day of August AD 1889 And the  
said party of the first part for itself and its successors  
does by these presents covenant and agree to and with the  
said party of the third part his heirs and assigns that  
it shall and will Warrant and Defend the title to the said  
granted premises unto the said party of the third part  
his heirs and assigns forever against the lawful claims  
of all persons whomsoever except for taxes or assessments  
as aforesaid; and as to which if any the said party of the  
third part hereby assumes to pay the same In Witness  
whereof the said parties of the first and second parts have  
caused these presents to be sealed with their respective  
corporate seals the day and year first above written

Exhibit 20  
SSDP 2016-00415  
001573

Northern Pacific Railroad Company  
By James B. Williamson



istant Secretary  
of New York Trusts  
2nd vice President  
Secretary

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Mrs B Williams  
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knows the corporate seal of said Company; that the seal af-  
fixed to the foregoing instrument as such is said corporate seal, that  
the same was affixed to the foregoing instrument by au-  
thority of the Board of Directors of said Company and that  
he signed the said instrument by like authority And the said  
E Francis Hyde at the same time acknowledged the fore-  
going instrument to be the act and deed of the said the  
Central Trust Company of New York and that said com-  
pany executed the same freely and voluntarily for the  
uses and purposes therein expressed In Witness Whereof  
have herunto set my hand and affixed my official seal  
at my office in the City of New York the day and year last  
aforesaid

(Mrs  
seal)

L R Kidder

Commissioner of Deeds in New York for Territory of Washington

Filed for record at request Grantee Dec 19<sup>th</sup> 1899 at 20 min past 1 PM.

W R Forrest

County Auditor  
Deputy

44320 West Coast Imp Co }  
To } Warranty Deed.  
P D John F Lloyd }

This Indenture, made the 23<sup>rd</sup> day of December 1899 between  
The West Coast Improvement Company, a corporation duly  
incorporated, organized and existing under and by virtue  
of the laws of Washington Territory, the party of the first  
part, and John F Lloyd of Seattle Wash the party of the  
second part: Witnesseth that the said party of the first  
part for and in consideration of Two hundred and Ten  
Dollars to it paid by the said party of the second part, does  
hereby grant, bargain sell and convey to said party of the  
second part and to his heirs and assigns forever, the follow-  
ing described tracts or parcels of real estate, lying and be-  
ing in the County of King, Territory of Washington and par-  
ticularly bounded and described as follows: to wit All of  
Lot Fifteen (15) in Block thirty five (35) Selman Park together  
with all and singular the tenements, here ditaments and  
appurtenances therunto belonging, or in any way apper-  
taining. And also, all the estate, right title and interest that

Exhibit 20  
SSDP 2016-00415  
001573

## BUCK SETTLEMENT EASEMENT



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PAGE 001 OF 009  
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After Recording Return To:  
LEESA BARROW  
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NORM MALENG  
PROSECUTING ATTORNEY  
CIVIL DIVISION

EASEMENT AGREEMENT

HOWARD F. BUCK and COLLEEN M. BUCK ("Grantors"), and KING COUNTY, a political subdivision of the State of Washington ("Grantee"), agree as follows:

1. Easement

1.1 This agreement relates to real property located in King County, Washington ("the Property") that is described as follows:

A portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., further described on Exhibit Nos. 1, 2, and 3, attached hereto.

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TAX PARCEL Nos.:	0724069036	0724069039
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1.2 Grantors quitclaim to Grantee, without warranty, a permanent 25-foot wide easement on and across the Property ("the Easement") for construction, operation and maintenance of a railroad, underground utility lines and/or a recreational trail for use by the general public; SUBJECT TO that certain utility easement being granted to The Burlington Northern and Santa Fe Railway Company concurrently herewith. Grantors intend to convey after acquired title, if any.

1.3 The Easement bisects the Property and is legally described as follows:

A PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY; WASHINGTON, FURTHER DESCRIBED IN EXHIBIT No. 4, ATTACHED HERETO.

2. Construction Access

In the event of the construction of a recreational trail, Grantee temporarily may occupy that portion of the Property needed to construct the trail. Construction access shall not materially interfere with Grantors' use of the Property for their principal residence.

3. Use of Easement Area

3.1. The easement area shall not be open for public use unless it is part of a continuous trail.

3.2. Grantors shall continue to have the right to use and cross over the easement (i) for pedestrian access to and from various portions of their property, and (ii) for vehicular access in emergency situations, and with the County's permission when moving large objects. In addition, Grantor's shall continue to have the right to use the existing vehicular crossing over the right of way at M.P. 14+2367, Monohan, WA.

**Exhibit 20**  
**SSDP2016-00415**  
**001577**

2001 012 5000994

3.3. Grantors shall have the right to construct an elevated roadway (subject to County approval for safety, which approval shall not be unreasonably withheld) provided that the clearance between the overpass and the surface of the easement is at least 10 feet or whatever is required for safe railroad operation should railroad service resume.

4. Miscellaneous

4.1. This agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties herein.

4.2. Grantee shall indemnify and hold harmless (including from court costs and attorney's fees) Grantors and their assigns for personal injury or damage to property caused by Grantees, its employees', and its agents' sole negligence.

GRANTORS:

Howard F. Buck  
HOWARD F. BUCK  
Dated: 8-14-00

Colleen M. Buck  
COLLEEN M. BUCK  
Dated: 8-14-00

GRANTEE:

KING COUNTY

By: Dad Pughent  
Its Property Services Manager  
Dated: Sept. 13, 2000

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this day personally appeared before me HOWARD F. BUCK to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed and sealed said instrument as a free and voluntary act and deed for the uses and purposed therein mentioned.



and official seal this 14th day of August, 2000.

Print Name Sylvia E. Thomson  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bulleray  
My commission expires: 4-20-01

2001 012 5000994

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me COLLEEN M. BUCK to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that she signed and sealed said instrument as a free and voluntary act and deed for the uses and purposed therein mentioned.

GIVEN under my hand and official seal this 14<sup>th</sup> day of August, 2000.



Print Name Sylvia E. Thomson  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellevue  
My commission expires: 4-20-01

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me David Preugschat, to me known to be the Property Services Manager of King County, a political subdivision of the State of Washington, who executed the within and foregoing instrument, and acknowledged to me that he/she signed and sealed said instrument as a free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13 day of September, 2000.



Carol J. Thompson  
Print Name Carol J. Thompson  
NOTARY PUBLIC in and for the State  
of Washington residing at  
Seatac  
My commission expires 11-15-2000

2001 012 5000994

EXHIBIT 1

DESCRIPTION (PARCEL A):

Westerly 44.86 feet of that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East quarter corner of said Section;  
Thence along the East line of said Section South 0°10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, in page 555, records of said county;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

SUBJECT TO easements in favor of King County and the Burlington Northern and Santa Fe Railway Company.

2001 012 5000994

EXHIBIT 2

DESCRIPTION (PARCEL B):

The Easterly 44.86 feet in width of the Westerly 89.72 feet in width that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East ¼ quarter corner of said Section;  
Thence along the East line of said Section South 0°10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, on page 555, records of King County, Washington;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

SUBJECT TO easements in favor of King County and the Burlington Northern and Santa Fe Railway Company.

2001 012 5000994

EXHIBIT 3

DESCRIPTION (PARCEL C):

The Westerly 77.57 feet of the Easterly 110.28 feet in width of that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East ¼ quarter corner of said Section;  
Thence along the East line of said Section South 0° 10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, on page 555, records of King County, Washington;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

SUBJECT TO easements in favor of King County and the Burlington Northern and Santa Fe Railway Company.

2001 012 500994

EXHIBIT 4  
(page 1 of 3)

LEGAL DESCRIPTIONS FOR EASEMENT AREAS

That portion of the Northern Pacific Railway Company right of way within the following described Parcels A, B and C lying between parallel lines drawn 15 feet Northeasterly and 10 feet Southwesterly of the centerline of said right of way (not the centerline of the tracks) as shown on that map titled "East Lake Sammamish Trail" and given Map No. 311-99, records of the King County Engineer:

PARCEL A:

Westerly 44.86 feet of that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East quarter corner of said Section;  
Thence along the East line of said Section South 0°10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, in page 555, records of said county;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

2001 012 5000994

EXHIBIT 4  
(page 2 of 3)

PARCEL B:

The Easterly 44.86 feet in width of the Westerly 89.72 feet in width that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East ¼ quarter corner of said Section;  
Thence along the East line of said Section South 0°10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, on page 555, records of King County, Washington;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

2001 012 5000994

EXHIBIT 4  
(page 3 of 3)

PARCEL C:

The Westerly 77.57 feet of the Easterly 110.28 feet in width of that portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., in King County, Washington, described as follows:

Beginning at the East ¼ quarter corner of said Section;  
Thence along the East line of said Section South 0° 10' East 74.4 feet;  
Thence North 79° 51' West 490 feet;  
Thence North 68° 30' West 132.60 feet to the TRUE POINT OF BEGINNING;

THENCE North 68° 30' west 44.85 feet;  
Thence North 54° 45' West 171.65 feet to an iron pipe marking the Easterly boundary of the John Rudstrom property as shown in the boundary line agreement in Volume 1402 of Deeds, on page 555, records of King County, Washington;  
Thence along said boundary line North 10° 35' East 228.71 feet, more or less, to the Southerly line of the Issaquah-Redmond Road;  
Thence Southeasterly along said road line to a point which is North 10° 35' East from the true point of beginning;  
Thence South 10° 35' West to the TRUE POINT OF BEGINNING;

TOGETHER WITH all upland and shorelands of the second class in front thereof lying between the side lines of said tract extended Southerly;

SUBJECT TO an easement for road purposes 8 feet in width.

2001 012 5000337

## GREEN SETTLEMENT

## SETTLEMENT AGREEMENT

This agreement, dated for reference purposes this 20<sup>th</sup> day of May, 2008, between **DANIEL J. IVANOFF** and **LAURIE A. IVANOFF** (the "Ivanoffs"), and **KING COUNTY**, a political subdivision of the State of Washington ("County"), is made with reference to the following facts:

- A. The Ivanoffs claim ownership of the property described in Exhibit No. 1 (the "Property").
- B. The County claims an interest in the railroad right-of-way that bisects the Property (the "Right-of-Way").
- C. The County claims fee title to the Right-of-Way, and further claims that the Right-of-Way is 100 feet in width.
- D. The Ivanoffs claim that the only interest that the County has in the Right-of-Way is an easement for railroad purposes over that part of the Property that was historically improved with rails, ties and ballast.
- E. The purpose of this Agreement is to resolve the dispute so that litigation can be avoided.

Based upon the foregoing, and for good and valuable consideration, the parties hereby agree as follows:

### 1. CONVEYANCE TO THE IVANOFFS

The County, simultaneous with the execution of this Agreement, shall deliver to the Ivanoffs a Quit Claim Deed in the form attached as Exhibit No. 2. The deed, as provided in Exhibit No. 2, shall reserve to the County an easement for railroad and recreational trail purposes subject to the terms and conditions set forth in the Deed and Exhibit C attached thereto (the "Reserved Easement").

### 2. MISCELLANEOUS

2.1 The Ivanoffs agree to pay all excise taxes and/or recording fees associated with filing and recording the Quit Claim Deed. The Real Estate Excise Tax Affidavit shall state that the conveyance is to "clear title only" as provided in WAC 458-61A-215.

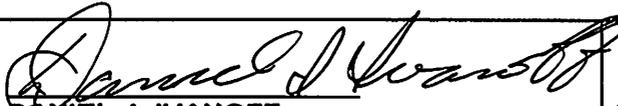
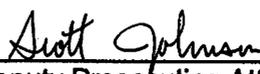
2.2 This Agreement is binding on the heirs, successors and assigns of each of the parties.

2.3 In the event that any party to this Agreement files suit to enforce any or all of the provisions herein, the prevailing party or parties shall be entitled to an award of reasonable attorney's fees and costs.

2.4 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

2.5 Except as specifically set forth herein, each party shall bear its own costs and expenses, including attorney's fees, related to the negotiation and execution of this Agreement.

2.6 This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties herein to the extent said third parties claim an interest in the Property or the Easement.

<p> <b>DANIEL J. IVANOFF</b> Dated: <u>MAY 14, 2008</u></p> <p> <b>LAURIE A. IVANOFF</b> Dated: <u>5/14/08</u></p>	<p><b>KING COUNTY</b></p> <p>by:  Printed Name: <u>Bob Evans</u> Its: <u>Deputy Director, DNRP</u> Dated: <u>5/20/08</u></p>
	<p>Approved as to form for King County only:</p> <p>by:  Deputy Prosecuting Attorney Dated: <u>5-14-08</u></p>

THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON AND SECOND CLASS SHORE LANDS ADJOINING, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;

THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A DISTANCE OF 23.37 FEET;

THENCE SOUTH 20°18'10" EAST 124.63 FEET;

THENCE SOUTH 75°39'45" WEST 283.32 FEET TO THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY AS SHOWN ON THAT MAP TITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

THENCE SOUTHEASTERLY ALONG SAID EASTERLY MARGIN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 652.83 FEET, THE CENTER POINT OF WHICH BEARS NORTH 68°41'04" EAST, THROUGH A CENTRAL ANGLE OF 4°27'56", AN ARC DISTANCE OF 50.88 FEET;

THENCE SOUTH 72°54'38" WEST TO THE OUTER BOUNDARY OF THE SECOND CLASS SHORE LANDS OF LAKE SAMMAMISH;

THENCE NORTHWESTERLY ALONG SAID OUTER BOUNDARY TO A POINT WHICH BEARS SOUTH 75°39'45" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 75°39'45" EAST TO THE TRUE POINT OF BEGINNING.

(BEING THAT PORTION OF TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF LYING WEST OF THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY)

TOGETHER WITH A 10 FOOT ACCESS AND UTILITY EASEMENT AS RECORDED IN KING COUNTY RECORDS UNDER RECORDING NUMBERS 9002090920 AND 9002090921.

SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 1

EXHIBIT 2

FORM OF QUIT CLAIM DEED

**AFTER RECORDING RETURN TO:**

King County Real Estate Services  
500 A King County Admin. Bldg.  
500 Fourth Avenue  
Seattle, WA 98104

**QUIT CLAIM DEED**

**GRANTOR: KING COUNTY**, a political subdivision of the State of Washington,

in order to clear title pursuant to the terms of a Settlement Agreement, conveys and quit claims to

**GRANTEE: DANIEL J. IVANOFF and LAURIE A. IVANOFF**, husband and wife, and their successors of record,

all of its right, title and interest, together with all after acquired title of Grantor therein, in the following described real property (the "Property") located in King County, Washington, together with all interest of Grantor in the railroad right-of-way and/or easement that crosses said Property:

That portion of Government Lot 2, Section 7, Township 24 North,  
Range 6 East, W.M., further described on Exhibit "A".

Tax Parcel No.: 406510-0025

**Subject to:** A reservation of an easement for the construction, operation and maintenance of a railroad, and/or a recreational trail for use by the general public, over that portion of the Property legally described on Exhibit "B" (the "Reserved Easement"). The Reserved Easement is subject to the provisions set forth in Exhibit "C".

**And Subject to:** All rights vested in a permittee, licensee or grantee under any recorded or unrecorded license agreement, permit, lease, crossing agreement or easement in effect on September 18, 1998, that authorizes the permittee, licensee, lessee or grantee to traverse or use some portion of the Property, including but not limited to Electric Line Permit No. 88370, dated September 16, 1960; provided, that the rights referenced in this paragraph shall not be deemed to include any claim by Grantor with respect to a right of way for railroad and recreational trail purposes over the Property that would be in addition to the easement reserved by the Grantor in the prior paragraph.



THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON AND SECOND CLASS SHORE LANDS ADJOINING, DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2; THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A DISTANCE OF 23.37 FEET; THENCE SOUTH 20°18'10" EAST 124.63 FEET;

THENCE SOUTH 75°39'45" WEST 283.32 FEET TO THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY AS SHOWN ON THAT MAP TITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

THENCE SOUTHEASTERLY ALONG SAID EASTERLY MARGIN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 652.83 FEET, THE CENTER POINT OF WHICH BEARS NORTH 68°41'04" EAST, THROUGH A CENTRAL ANGLE OF 4°27'56", AN ARC DISTANCE OF 50.88 FEET;

THENCE SOUTH 72°54'38" WEST TO THE OUTER BOUNDARY OF THE SECOND CLASS SHORE LANDS OF LAKE SAMMAMISH;

THENCE NORTHWESTERLY ALONG SAID OUTER BOUNDARY TO A POINT WHICH BEARS SOUTH 75°39'45" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 75°39'45" EAST TO THE TRUE POINT OF BEGINNING.

(BEING THAT PORTION OF TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONAHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF LYING WEST OF THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY)

TOGETHER WITH A 10 FOOT ACCESS AND UTILITY EASEMENT AS RECORDED IN KING COUNTY RECORDS UNDER RECORDING NUMBERS 9002090920 AND 9002090921.

SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT "A"**

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF RESERVED EASEMENT**

THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

A STRIP OF LAND 22.00 FEET IN WIDTH LYING 4.67 FEET WESTERLY AND 17.33 FEET EASTERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;

THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A DISTANCE OF 23.37 FEET; THENCE SOUTH 20°18'10" EAST 124.63 FEET;

THENCE SOUTH 75°39'45" WEST 333.67 FEET TO THE CENTERLINE OF THE EAST LAKE SAMMAMISH TRAIL AS SHOWN ON THAT MAP TITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

THENCE SOUTHEASTERLY ALONG SAID CENTERLINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 702.83 FEET, THE CENTER POINT OF WHICH BEARS NORTH 69°10'59" EAST, THROUGH A CENTRAL ANGLE OF 4°20'30", AN ARC DISTANCE OF 53.26 FEET TO THE TERMINUS;

(BEING A PORTION OF THE N.P.R.R. RIGHT OF WAY BOUNDED BY TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF)

SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

## **EXHIBIT "C"**

The Easement reserved herein by Grantor is subject to the following terms and conditions:

1. A recreation trail, if constructed on the Reserved Easement, shall consist of a ± twelve foot wide paved surface, with ± three foot wide soft shoulders on each side (the "trail prism"). The area within the Reserved Easement (but outside the trail prism) may be used by the County for improvements reasonably necessary for the operation of the trail including, but not necessarily limited to, fencing, drainage and a guardrail. Grantor may temporarily occupy that portion of the Property needed to construct the trail. Construction access shall not materially interfere with Grantee's use of the Property as a principal residence, or for parking or related uses thereto.
2. The Reserved Easement shall only be opened or available for public use so long as it remains part of a continuous recreation trail.
3. Grantee shall continue to have the right to use and cross over the Reserved Easement for (i) pedestrian access to and from various portions of the Property, (ii) installation, maintenance and repair of utilities serving the Property; (iii) vehicular access in emergency situations, and (iv) moving large objects including without limitation vehicles reasonably needed to access the Property in connection with any future construction thereon; provided that the rights of Grantee under (ii) and (iv) above shall be subject to Grantee first obtaining the consent of the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.
4. Grantee shall have the right to construct an elevated walkway or roadway over the Reserved Easement (subject to Grantor's approval for safety which approval shall not be unreasonably withheld, conditioned or delayed) provided that the clearance between the overpass and the surface of the Easement is at least ten (10) feet, or whatever is required for safe railroad use should railroad service be resumed.
5. Grantee shall have the right to construct improvements up to, the easterly and westerly boundaries of the Reserved Easement.
6. The provisions herein shall be binding upon, and inure to the benefit of, the successors and assigns of the Grantor and the Grantee.

**JAMESON BABBITT STITES & LOMBARD, P.L.L.C.**

**ATTORNEYS AT LAW**

999 THIRD AVENUE, SUITE 1900  
SEATTLE, WASHINGTON 98104-4001  
TEL 206 292 1994  
FAX 206 292 1995

**TRANSMITTAL  
VIA MESSENGER**

Date: May 14, 2008

Client/Matter:

---

TO: Scott Johnson

FROM: Jennifer D. Cobb

RE: King County/Ivanoff

---

Documents and/or papers listed below are enclosed:  
Settlement Agreement; Excise Tax Affidavit; Quit Claim Deed.

---

Please take the following action:

\_\_\_\_\_ FOR YOUR INFORMATION.

\_\_\_\_\_ PLEASE FILE.

\_\_\_\_\_ PLEASE PAY THE ENCLOSED INVOICE DIRECTLY.

  X   Enclosed are two originals of each of the above documents (one original of the Quit Claim Deed). Please arrange to have the County execute the documents. Once the documents have been executed, please forward all documents to Donna Koerber at First American Title Company (Escrow #NCS 342990-WA1). She will arrange for recording. The Ivanoffs have not taken title to the property. Copies of the documents will be sent to you upon recording.

Enclosures



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED (See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form sections 1 and 2: Seller/Grantor and Buyer/Grantee information including names, addresses, and phone numbers.

Form section 3: Property tax correspondence and street address information.

Form section 5: Land use code selection and exemption questions.

Form section 6: Property classification questions regarding forest land, current use, and historic property.

Form section 7: Continuation and compliance notices for forest land and historic property.

Form section 8: Signature lines for Deputy Assessor and Owner(s).

Form section 9: Personal property included in selling price.

Form section 10: Exemption information including WAC number and reason for exemption.

Table with 2 columns: Description of charges and Amount. Includes Gross Selling Price, Exemption, Taxable Selling Price, Excise Tax, and Total Due.

Form section 11: Certification statement and signature lines for Grantor/Agent and Grantee/Agent.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON AND SECOND CLASS SHORE LANDS ADJOINING, DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;

THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A DISTANCE OF 23.37 FEET;

THENCE SOUTH 20°18'10" EAST 124.63 FEET;

THENCE SOUTH 75°39'45" WEST 283.32 FEET TO THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY AS SHOWN ON THAT MAP TITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

THENCE SOUTHERLY ALONG SAID EASTERLY MARGIN ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 652.83 FEET, THE CENTER POINT OF WHICH BEARS NORTH 68°41'04" EAST, THROUGH A CENTRAL ANGLE OF 4°27'56", AN ARC DISTANCE OF 50.88 FEET;

THENCE SOUTH 72°54'38" WEST TO THE OUTER BOUNDARY OF THE SECOND CLASS SHORE LANDS OF LAKE SAMMAMISH;

THENCE NORTHWESTERLY ALONG SAID OUTER BOUNDARY TO A POINT WHICH BEARS SOUTH 75°39'45" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 75°39'45" EAST TO THE TRUE POINT OF BEGINNING.

(BEING THAT PORTION OF TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF LYING WEST OF THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY)

TOGETHER WITH A 10 FOOT ACCESS AND UTILITY EASEMENT AS RECORDED IN KING COUNTY RECORDS UNDER RECORDING NUMBERS 9002090920 AND 9002090921.

SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

Exhibit 20  
SSDP2016-00415  
001597

SIGNATURE PAGE

GRANTOR:

KING COUNTY

By:   
Name: Bob Evans  
Its: Deputy Director, DWR  
Date and City of Signing: 5/20/06

GRANTEE:

  
Daniel J. Ivanoff

  
Laurie A. Ivanoff

Date and City of Signing: \_\_\_\_\_

**AFTER RECORDING RETURN TO:**  
King County Real Estate Services  
500 A King County Admin. Bldg.  
500 Fourth Avenue  
Seattle, WA 98104

Document Title:  
Quit Claim Deed

Reference Number(s) of Documents assigned or released:  
N/A

Grantor(s):  
King County

Grantee(s):  
Daniel J. Ivanoff and Laurie A. Ivanoff

Legal Description:  
See Exhibit A

Assessor's Property Tax Parcel/Account Number:  
406510-0025

## QUIT CLAIM DEED

**GRANTOR: KING COUNTY**, a political subdivision of the State of Washington,

in order to clear title pursuant to the terms of a Settlement Agreement, conveys and quit claims to

**GRANTEE: DANIEL J. IVANOFF and LAURIE A. IVANOFF**, husband and wife, and their successors of record,

all of its right, title and interest, together with all after acquired title of Grantor therein, in the following described real property (the "Property") located in King County, Washington, together with all interest of Grantor in the railroad right-of-way and/or easement that crosses said Property:

That portion of Government Lot 2, Section 7, Township 24 North,  
Range 6 East, W.M., further described on Exhibit "A".

Tax Parcel No.: 406510-0025

**Subject to:** A reservation of an easement for the construction, operation and maintenance of a railroad, and/or a recreational trail for use by the general public, over that portion of the Property legally described on Exhibit "B" (the "Reserved Easement"). The Reserved Easement is subject to the provisions set forth in Exhibit "C".

**And Subject to:** All rights vested in a permittee, licensee or grantee under any recorded or unrecorded license agreement, permit, lease, crossing agreement or easement in effect on September 18, 1998, that authorizes the permittee, licensee, lessee or grantee to traverse or use some portion of the Property, including but not limited to Electric Line Permit No. 88370, dated September 16, 1960; provided, that the rights referenced in this paragraph shall not be deemed to include any claim by Grantor with respect to a right of way for railroad and recreational trail purposes over the Property that would be in addition to the easement reserved by the Grantor in the prior paragraph.



SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH A 10 FOOT ACCESS AND UTILITY EASEMENT AS RECORDED IN KING COUNTY RECORDS UNDER RECORDING NUMBERS 9002090920 AND 9002090921.

(BEING THAT PORTION OF TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF LYING WEST OF THE EASTERLY MARGIN OF THE NORTHERN PACIFIC COMPANY RIGHT OF WAY)

THENCE NORTH 75°39'45" EAST TO THE TRUE POINT OF BEGINNING; BEARS SOUTH 75°39'45" WEST FROM THE TRUE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG SAID OUTER BOUNDARY TO A POINT WHICH

THENCE SOUTH 72°54'38" WEST TO THE OUTER BOUNDARY OF THE SECOND CLASS SHORE LANDS OF LAKE SAMMAMISH;

DISTANCE OF 50.88 FEET; BEARS NORTH 68°41'04" EAST, THROUGH A CENTRAL ANGLE OF 4°27'56", AN ARC THE LEFT HAVING A RADIUS OF 652.83 FEET, THE CENTER POINT OF WHICH THENCE SOUTHEASTERLY ALONG SAID EASTERLY MARGIN ALONG A CURVE TO THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

"EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF NORTHERN PACIFIC COMPANY RIGHT OF WAY AS SHOWN ON THAT MAP TITLED "THENCE SOUTH 75°39'45" WEST 283.32 FEET TO THE EASTERLY MARGIN OF THE

THENCE SOUTH 20°18'10" EAST 124.63 FEET; DISTANCE OF 23.37 FEET;

WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;

GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE

LANDS ADJOINING, DESCRIBED AS FOLLOWS; 6 EAST, W.M., IN KING COUNTY, WASHINGTON AND SECOND CLASS SHORE THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

THAT PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

A STRIP OF LAND 22.00 FEET IN WIDTH LYING 4.67 FEET WESTERLY AND 17.33 FEET EASTERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF SAID GOVERNMENT LOT 2, SAID POINT BEING SOUTH 88°14'38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;

THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 10°02'46" EAST A DISTANCE OF 23.37 FEET;

THENCE SOUTH 20°18'10" EAST 124.63 FEET;

THENCE SOUTH 75°39'45" WEST 333.67 FEET TO THE CENTERLINE OF THE EAST LAKE SAMMAMISH TRAIL AS SHOWN ON THAT MAP TITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NUMBER 311-99, RECORDS OF THE KING COUNTY ENGINEER AND THE POINT OF BEGINNING;

THENCE SOUTHEASTERLY ALONG SAID CENTERLINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 702.83 FEET, THE CENTER POINT OF WHICH BEARS NORTH 69°10'59" EAST, THROUGH A CENTRAL ANGLE OF 4°20'30", AN ARC DISTANCE OF 53.26 FEET TO THE TERMINUS;

(BEING A PORTION OF THE N.P.R.R. RIGHT OF WAY BOUNDED BY TRACT 5, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, ACCORDING TO THE UNRECORDED PLAT THEREOF)

SITUATE IN THE CITY OF SAMMAMISH, COUNTY OF KING, STATE OF WASHINGTON.

**LEGAL DESCRIPTION OF RESERVED EASEMENT**

**EXHIBIT "B"**

**Exhibit 20  
SSDP2016-00415  
001603**

## **EXHIBIT "C"**

The Easement reserved herein by Grantor is subject to the following terms and conditions:

1. A recreation trail, if constructed on the Reserved Easement, shall consist of a  $\pm$  twelve foot wide paved surface, with  $\pm$  three foot wide soft shoulders on each side (the "trail prism"). The area within the Reserved Easement (but outside the trail prism) may be used by the County for improvements reasonably necessary for the operation of the trail including, but not necessarily limited to, fencing, drainage and a guardrail. Grantor may temporarily occupy that portion of the Property needed to construct the trail. Construction access shall not materially interfere with Grantee's use of the Property as a principal residence, or for parking or related uses thereto.
2. The Reserved Easement shall only be opened or available for public use so long as it remains part of a continuous recreation trail.
3. Grantee shall continue to have the right to use and cross over the Reserved Easement for (i) pedestrian access to and from various portions of the Property, (ii) installation, maintenance and repair of utilities serving the Property; (iii) vehicular access in emergency situations, and (iv) moving large objects including without limitation vehicles reasonably needed to access the Property in connection with any future construction thereon; provided that the rights of Grantee under (ii) and (iv) above shall be subject to Grantee first obtaining the consent of the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.
4. Grantee shall have the right to construct an elevated walkway or roadway over the Reserved Easement (subject to Grantor's approval for safety which approval shall not be unreasonably withheld, conditioned or delayed) provided that the clearance between the overpass and the surface of the Easement is at least ten (10) feet, or whatever is required for safe railroad use should railroad service be resumed.
5. Grantee shall have the right to construct improvements up to, the easterly and westerly boundaries of the Reserved Easement.
6. The provisions herein shall be binding upon, and inure to the benefit of, the successors and assigns of the Grantor and the Grantee.



## King County

Department of Natural Resources and Parks

### Division of Parks and Recreation

Property Management

King Street Center Building

KSC-NR-0700

201 South Jackson Street

Seattle, WA 98104-3855

206-263-6216

May 15, 2008

TO: Theresa Jennings, Director, Department of Natural Resources and Parks

FM:  Kevin Brown, Director, Parks and Recreation Division

RE: King County/Ivanoff-Green Settlement

Scott Johnson, Deputy Prosecutor, from the King County Prosecuting Attorney's Office has been negotiating a settlement agreement with Daniel and Laurie Ivanoff for an adverse possession portion of the East Lake Sammamish Trail corridor with a clouded title. The Ivanoffs are purchasing property from David and Cindy Green and this settlement will conclude negotiations begun with the Greens in 2000.

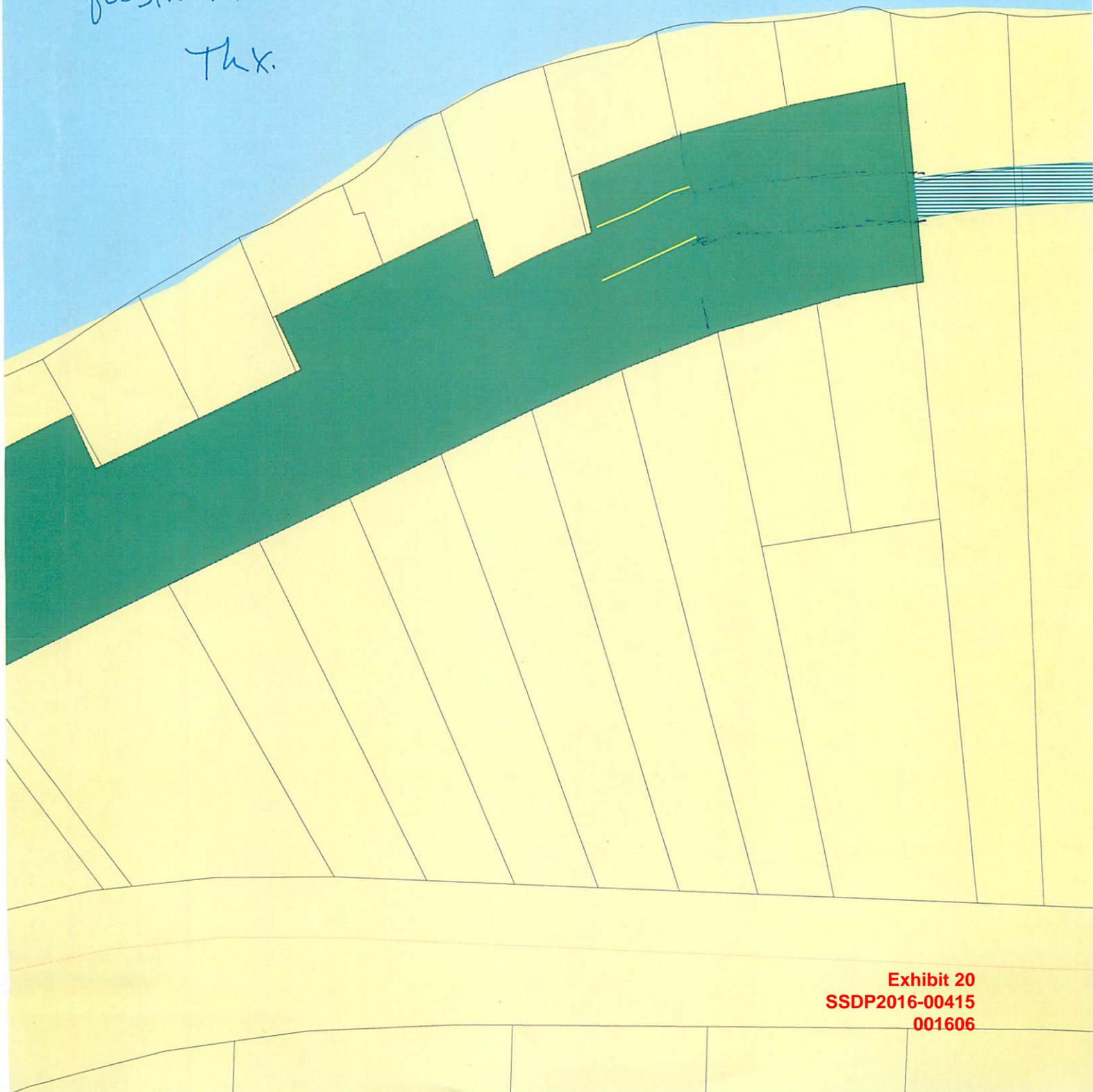
The settlement protects and preserves King County's interest to develop a master plan trail in this area. The settlement document package includes the settlement document itself (with exhibits), the quitclaim deed and real estate tax affidavits for your signature and notary signature.

Please contact Robert Nunnenkamp, Property Agent, at 263-6207 if you have any questions regarding the Ivanoff settlement.

**Exhibit 20**  
**SSDP2016-00415**  
**001605**

Theresa - this map outlines what this proposal is about. Due to unclear title we agreed upon a 22ft wide easement where the yellow lines are placed. This is consistent with how we have negotiated with other property owners in this area - just to their right (in blue). Let me know if you have questions.

Thx.



## PICKERING EASEMENT

990312210

Recording Requested By And  
When Recorded Mail To:

King County  
Water and Lands Resources Division  
Resource Lands and Open Space Section  
810 – Third Avenue, Suite 350  
Seattle, WA 98104

**RECORDING COVER SHEET**

**EASEMENT AGREEMENT**

Grantor [Seller]: David Dwight Pickering & Leslie Ann Pickering

Grantee [Buyer]: King County

Legal Description: A portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M. in King County, Washington.

Additional legal(s) on: 2

Assessor's Tax Parcel ID#: 072406-9033-01

EXCISE TAX NOT REQUIRED  
King Co. Records Division

By [Signature] Deputy

**Exhibit 20**  
**SSDP2016-00415**  
**001608**

After Recording Return To:

King County - Resource Lands Open Space  
810 - Third Ave., Suite 350  
Seattle, WA 98104

EASEMENT AGREEMENT

DAVID DWIGHT PICKERING and LESLIE ANN PICKERING ("Grantors"), and KING COUNTY, a political subdivision of the State of Washington ("Grantee"), agree as follows:

1. Easement

1.1 This agreement relates to real property located in King County, Washington ("the Property") that is described as follows:

A portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., further described on Exhibit No. 1.

TAX PARCEL NO.: 072406-9033-01

1.2 Grantors grant to Grantee a permanent 26-foot wide easement on and across the Property ("the Easement") for construction, operation and maintenance of a railroad, underground utility lines and/or a recreational trail for use by the general public; SUBJECT TO that certain utility easement being granted to The Burlington Northern and Santa Fe Railway Company concurrently herewith. Grantors intend to convey after acquired title, if any.

1.3 The Easement bisects the Property as shown in Exhibit No. 2 and is legally described as follows:

A PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHERN PACIFIC RIGHT-OF-WAY LYING 11 FEET NORTHEASTERLY AND 15 FEET SOUTHWESTERLY OF THE CENTERLINE OF THE RIGHT OF WAY [NOT THE CENTERLINE OF THE TRACKS] AS SHOWN ON THAT MAP ENTITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NO. 311-99, RECORDS OF THE KING COUNTY ENGINEER.

9903112210

2. Landscaping

Grantors shall be allowed to landscape to within eight (8) feet on either side of the Centerline described in Paragraph 1.3, subject to the right of Grantee to remove or displace any landscaping as needed to construct or maintain any of the improvements described in Paragraph 1.2.

3. Construction Access

In the event of the construction of a recreational trail, Grantee temporarily may occupy that portion of the Property needed to construct the trail. Construction access shall not materially interfere with Grantors' use of the Property for their principal residence.

4. Miscellaneous

This agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties herein.

GRANTORS:



DAVID DWIGHT PICKERING

Dated: 1-14-99

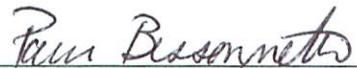


LESLIE ANN PICKERING

Dated: 1/19/99

GRANTEE:

KING COUNTY

By: 

Its Director, Dept. of Natural Resources

Dated: 3/2/99

9903112210

9903112210

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me DAVID DWIGHT PICKERING to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed and sealed said instrument as a free and voluntary act and deed for the uses and purposed therein mentioned.

GIVEN under my hand and official seal this 14<sup>th</sup> day of JANUARY, 1999.



Print Name DARYL A. DEUTSCH  
NOTARY PUBLIC in and for the State of  
Washington, residing at KING COUNTY  
My commission expires: 3/10/01

9903112210

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me LESLIE ANN PICKERING to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed and sealed said instrument as a free and voluntary act and deed for the uses and purposed therein mentioned.

GIVEN under my hand and official seal this 19<sup>th</sup> day of JANUARY, 1999.



[Signature]  
Print Name DARYL A. DEUTSCH  
NOTARY PUBLIC in and for the State of  
Washington, residing at KING COUNTY  
My commission expires: 3/10/01

Faint, illegible text at the top of the page, possibly a header or title.

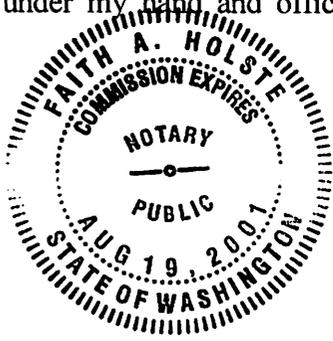
OFFICIAL SEAL  
DARYL A. DEUTSCH  
Notary Public - State of Washington  
My Commission Expires 3/31/2016

OFFICIAL SEAL  
DARYL A. DEUTSCH  
Notary Public - State of Washington  
My Commission Expires 3/31/2016

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Pam Bissonnette, to me known to be the Director, Dept. of Nat. Resour. of King County, a political subdivision of the State of Washington, who executed the within and foregoing instrument, and acknowledged to me that he/she signed and sealed said instrument as a free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 2 day of March, 1999.



Faith A. Holste  
Print Name Faith  
NOTARY PUBLIC in and for the State  
of Washington residing at  
Belleve WA  
My commission expires Aug 19, 2001

9903112210

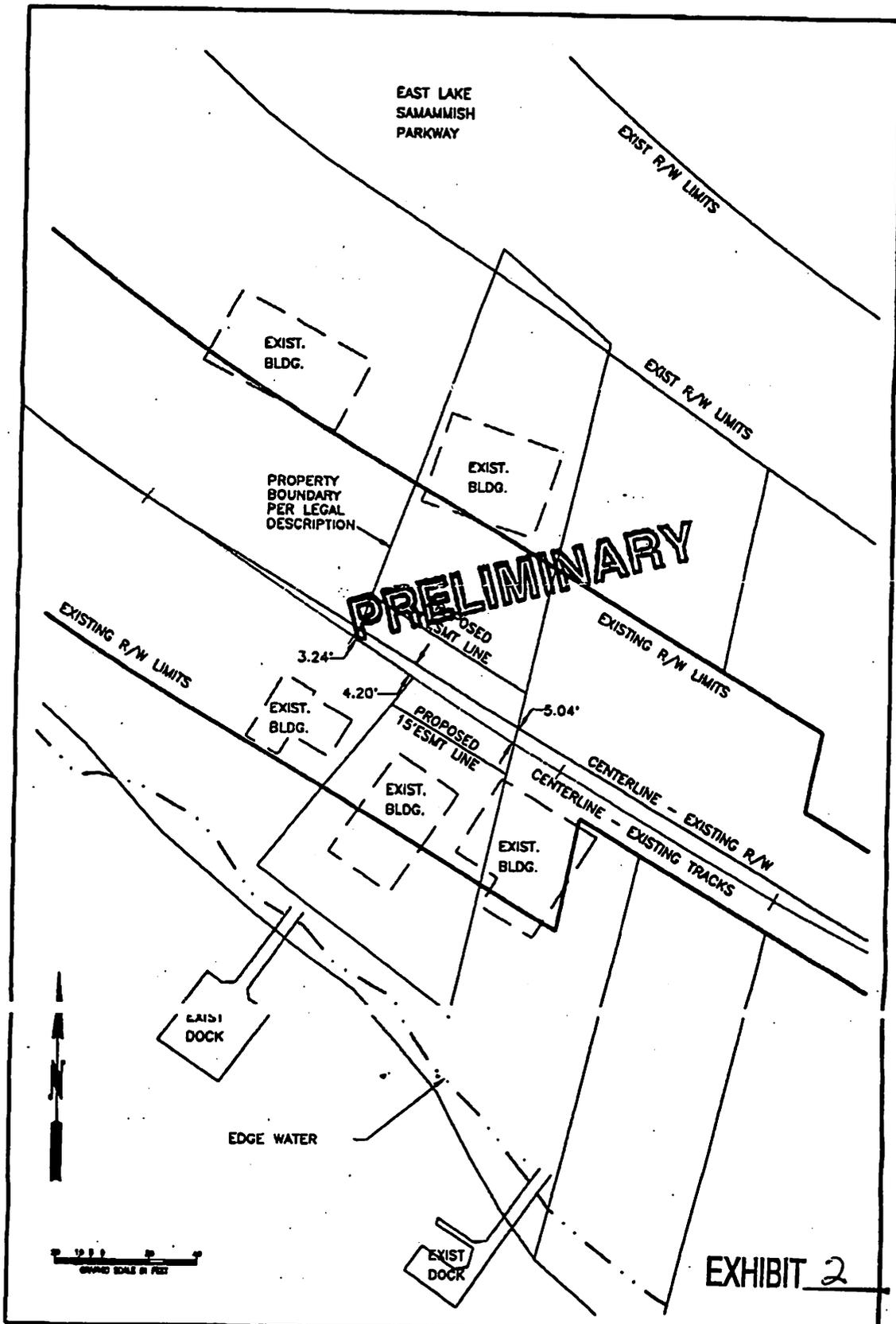
EXHIBIT 1

A portion of Government lot 2, section 7, township 24 north, range 6 east, W. M., in King County, Washington, described as follows:

Beginning at the east quarter corner of said section 7; thence south  $0^{\circ}10'$  east 74.40 feet; thence north  $79^{\circ}51'$  west 490 feet; thence north  $68^{\circ}30'$  west 177.4 feet; thence north  $54^{\circ}45'$  west 169.59 feet to the iron post or hub marking the southeast corner of the John Rudstrom tract as established by boundary line agreement recorded in volume 1402 of deeds, page 555, under auditor's file No. 2490949, records of said county, the true point of beginning of this description; thence north  $54^{\circ}45'$  west 78.58 feet; to the intersection with the westerly edge of an 8" concrete block bulkhead, thence north  $36^{\circ}28'55''$  east along said westerly edge of bulkhead 31.62 feet; thence continuing north  $36^{\circ}28'55''$  east along a projection of said westerly edge of the bulkhead 47.56 feet to the centerline of Northern Pacific Railway right of way; thence north  $58^{\circ}39'05''$  west along a chord of said centerline 22.37 feet thence north  $17^{\circ}54'$  east 135.49 feet more or less to the southerly margin of the Redmond-Issaquah Highway; thence easterly along said southerly highway margin 46.28 feet, more or less, to the east line of the John Rudstrom tract as established by said boundary line agreement; thence south  $10^{\circ}35'$  west 224.01 feet more or less, to the true point of beginning; EXCEPT roads; TOGETHER with all shorelands of the second class adjoining.

9903112210

9903112210



**REINHARDSEN & HAMILTON EASEMENT AGREEMENT**

Recording Requested By And  
When Recorded Mail To:

King County  
Water and Lands Resources Division  
Resource Lands and Open Space Section  
810 – Third Avenue, Suite 350  
Seattle, WA 98104

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**RECORDING COVER SHEET**

**EASEMENT AGREEMENT**

Grantor [Seller]: Jeffrey Lane Reinhardtsen and Karen Marie Hamilton

Grantee [Buyer]: King County

Legal Description: A portion of Government Lot 2, Section 7, Township 24 North, Range 6  
East, W.M.

Additional legal(s) on: 5

Assessor's Tax Parcel ID#: 406510-0011-00

1



WATER & LANDS EAS

16.00

19990707000512  
PAGE 001 OF 009  
07/07/1999 10:58  
KING COUNTY, WA

**Exhibit 20**  
**SSDP2016-00415**  
**001617**

After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EASEMENT AGREEMENT

JEFFRY LANE REINHARDSEN and KAREN MARIE HAMILTON ("Grantors"), and KING COUNTY, a political subdivision of the State of Washington ("Grantee"), agree as follows:

1. Easement

1.1 This agreement relates to real property located in King County, Washington ("the Property") that is described as follows:

A portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., further described on Exhibit Nos. 1 and 2.

TAX PARCEL Nos.: 406510-0011-00

1.2 Grantors quitclaim to Grantee, without warranty, a permanent 20-foot wide easement on and across the Property ("the Easement") for construction, operation and maintenance of a railroad, underground utility lines and/or a recreational trail for use by the general public; SUBJECT TO that certain utility easement being granted to The Burlington Northern and Santa Fe Railway Company concurrently herewith. Grantors intend to convey after acquired title, if any.

1.3 The Easement bisects the Property and is legally described as follows:

A PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON, FURTHER DESCRIBED IN EXHIBIT No. 3.

2. Construction Access

In the event of the construction of a recreational trail, Grantee temporarily may occupy that portion of the Property needed to construct the trail. Construction access shall not materially interfere with Grantors' use of the Property for their principal residence.



3. Use of Easement Area

- 3.1. The easement area shall not be open for public use unless it is part of a continuous trail.
- 3.2. Grantors shall continue to have the right to use and cross over the easement (i) for pedestrian access to and from various portions of their property, and (ii) for vehicular access in emergency situations, and with the County's permission when moving large objects.
- 3.3. Grantors shall have the right to construct an elevated roadway (subject to County approval for safety, which approval shall not be unreasonably withheld) provided that the clearance between the overpass and the surface of the easement is at least 10 feet or whatever is required for safe railroad operation should railroad service resume.

4. Miscellaneous

- 4.1. This agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties herein.
- 4.2. Grantee shall indemnify and hold harmless (including from court costs and attorney's fees) Grantors and their assigns for personal injury or damage to property caused by Grantor's, its employees', and its agents' sole negligence.

GRANTORS:



JEFFREY LANE REINHARDSSEN

Dated: 3/4/99



KAREN MARIE HAMILTON

Dated: 3/4/99





STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Pam Bissonette, to me known to be the Director, Dept of Nat Resources of King County, a political subdivision of the State of Washington, who executed the within and foregoing instrument, and acknowledged to me that he/she signed and sealed said instrument as a free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 1 day of July, 1999.



Faith A. Holste  
Print Name Faith A. Holste  
NOTARY PUBLIC in and for the State  
of Washington residing at  
Bellevue, WA  
My commission expires Aug 19, 2001

Document



EXHIBIT 1

DESCRIPTION

That certain portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., described as follows:

Beginning at the intersection of the Westerly margin of the Thomas Alexander County Road with the North line of said Government Lot 2, said point being South  $88^{\circ} 14' 38''$  West, 1085.18 feet from the Northeast corner of said Government Lot 2; thence Southerly along the Westerly line of said County Road on a curve to the left, having a radius of 130.52 feet; the tangent to which curve at the point of beginning bears South  $10^{\circ} 02' 46''$  East, a distance of 23.37 feet; thence South  $20^{\circ} 18' 10''$  East, 13.63 feet to the true point of beginning; thence continuing South  $20^{\circ} 18' 10''$  East 37.00 feet; thence South  $81^{\circ} 38' 02''$  West to the outer boundary of the second class shore lands of Lake Sammamish; thence Northerly along said outer boundary to a point which bears South  $84^{\circ} 53' 35''$  West to the true point of beginning; thence North  $84^{\circ} 53' 35''$  East to the true point of beginning;

TOGETHER WITH that portion of vacated Thomas Alexander Road No. 867 adjoining, as attached by operation of law;

EXCEPT that portion lying easterly of the center-line of the right-of-way as shown on the map entitled "East Lake Sammamish Trail" and given Map No. 311-99, records of the King County Engineer.

(BEING KNOWN AS a portion of Tract 2 of Lake Sammamish Waterfront Tracts, according to the unrecorded plat thereof);

Situate in the County of King, State of Washington.



EXHIBIT 2

DESCRIPTION:

That certain portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., described as follows:

Beginning at the intersection of the Westerly margin of the Thomas Alexander County Road with the North line of said Government Lot 2, said point being South  $88^{\circ} 14' 38''$  West, 1085.18 feet from the Northeast corner of said Government Lot 2; thence Southerly along the Westerly line of said County Road on a curve to the left, having a radius of 130.52 feet; the tangent to which curve at the point of beginning bears South  $10^{\circ} 02' 46''$  East, a distance of 23.37 feet; thence South  $20^{\circ} 18' 10''$  East, 13.63 feet to the true point of beginning; thence continuing South  $20^{\circ} 18' 10''$  East 37.00 feet; thence South  $81^{\circ} 38' 02''$  West to the outer boundary of the second class shore lands of Lake Sammamish; thence Northerly along said outer boundary to a point which bears South  $84^{\circ} 53' 35''$  West to the true point of beginning; thence North  $84^{\circ} 53' 35''$  East to the true point of beginning;

TOGETHER WITH that portion of vacated Thomas Alexander Road No. 867 adjoining, as attached by operation of law;

EXCEPT that portion lying westerly of the center-line of the right-of-way as shown on the map entitled "East Lake Sammamish Trail" and given Map No. 311-49, records of the King County Engineer.

(BEING KNOWN AS a portion of Tract 2 of Lake Sammamish Waterfront Tracts, according to the unrecorded plat thereof);

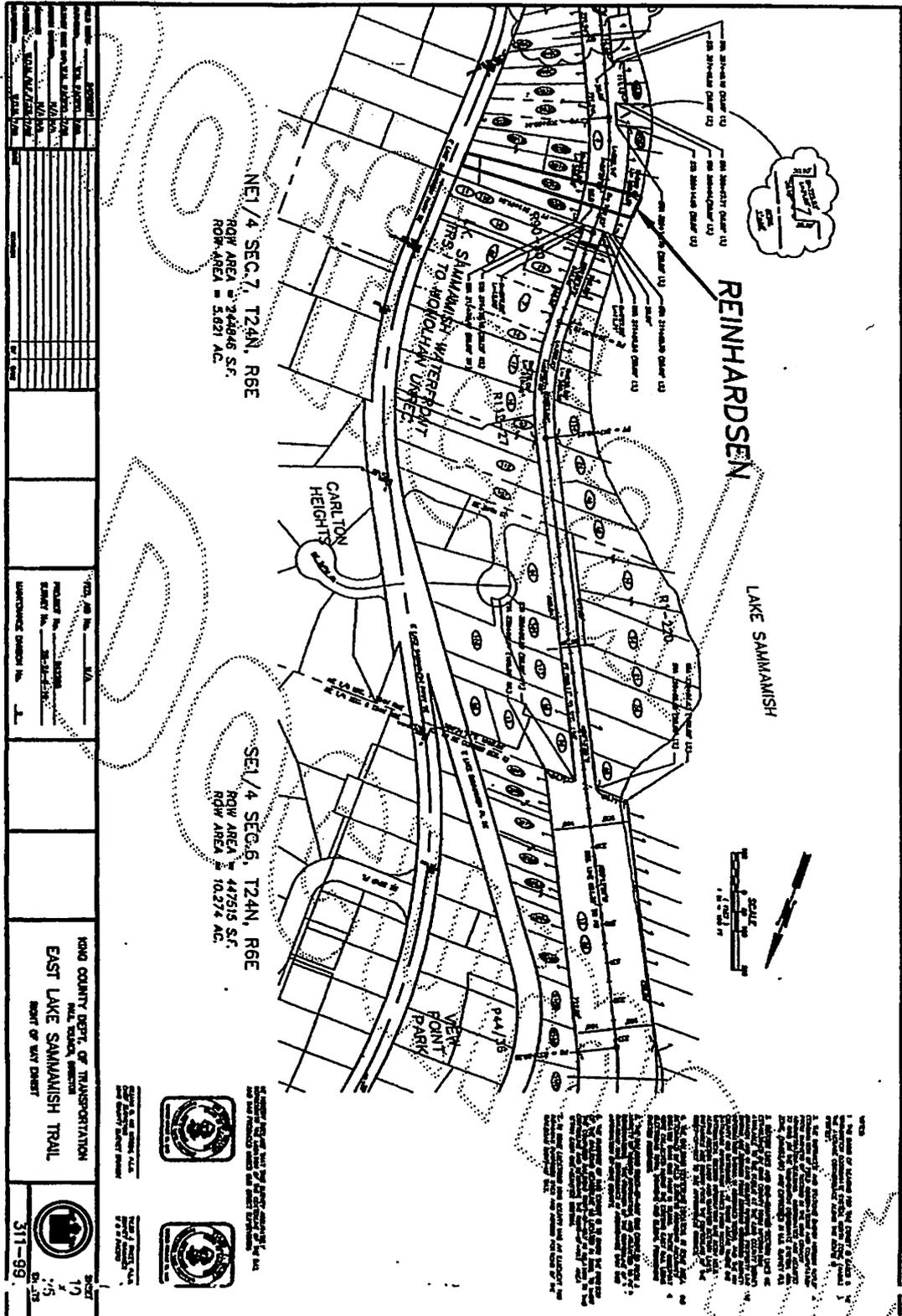
Situate in the County of King, State of Washington.



EXHIBIT 3

THAT PORTION OF THE NORTHERN PACIFIC RIGHT-OF-WAY LYING 16.25 FEET EASTERLY AND 3.75 FEET WESTERLY OF THE CENTERLINE OF THE RIGHT-OF-WAY [NOT THE CENTERLINE OF THE TRACKS] AS SHOWN ON THAT MAP ENTITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NO. 311-99, RECORDS OF THE KING COUNTY ENGINEER AND AS DEPICTED IN THE DRAWING ATTACHED AS HERETO AS EXHIBIT 3-A.





NE 1/4 SEC. 7, T24N, R6E  
 ROW AREA = 24846 S.F.  
 ROW AREA = 5.821 AC.

SE 1/4 SEC. 6, T24N, R6E  
 ROW AREA = 44751 S.F.  
 ROW AREA = 10.274 AC.

PROJECT NO.	100-10000-000
DATE	1/15/99
SCALE	AS SHOWN
BY	...
CHECKED BY	...
APPROVED BY	...
DATE	...

FILE NO.	100-10000-000
PROJECT NO.	100-10000-000
DATE	1/15/99
BY	...
CHECKED BY	...
APPROVED BY	...
DATE	...

KING COUNTY DEPT. OF TRANSPORTATION  
 EAST LAKE SAMMAMISH TRAIL  
 RIGHT OF WAY DESIGN

DATE	1/15/99
BY	...
CHECKED BY	...
APPROVED BY	...
DATE	...



NOTES:  
 1. THE TRAIL SHALL BE 10 FEET WIDE AND SHALL BE CONSTRUCTED TO THE CENTERLINE OF THE TRAIL.  
 2. THE TRAIL SHALL BE 15 FEET WIDE AT THE ENDS OF THE TRAIL.  
 3. THE TRAIL SHALL BE 20 FEET WIDE AT THE ENDS OF THE TRAIL.  
 4. THE TRAIL SHALL BE 25 FEET WIDE AT THE ENDS OF THE TRAIL.  
 5. THE TRAIL SHALL BE 30 FEET WIDE AT THE ENDS OF THE TRAIL.  
 6. THE TRAIL SHALL BE 35 FEET WIDE AT THE ENDS OF THE TRAIL.  
 7. THE TRAIL SHALL BE 40 FEET WIDE AT THE ENDS OF THE TRAIL.  
 8. THE TRAIL SHALL BE 45 FEET WIDE AT THE ENDS OF THE TRAIL.  
 9. THE TRAIL SHALL BE 50 FEET WIDE AT THE ENDS OF THE TRAIL.  
 10. THE TRAIL SHALL BE 55 FEET WIDE AT THE ENDS OF THE TRAIL.  
 11. THE TRAIL SHALL BE 60 FEET WIDE AT THE ENDS OF THE TRAIL.  
 12. THE TRAIL SHALL BE 65 FEET WIDE AT THE ENDS OF THE TRAIL.  
 13. THE TRAIL SHALL BE 70 FEET WIDE AT THE ENDS OF THE TRAIL.  
 14. THE TRAIL SHALL BE 75 FEET WIDE AT THE ENDS OF THE TRAIL.  
 15. THE TRAIL SHALL BE 80 FEET WIDE AT THE ENDS OF THE TRAIL.  
 16. THE TRAIL SHALL BE 85 FEET WIDE AT THE ENDS OF THE TRAIL.  
 17. THE TRAIL SHALL BE 90 FEET WIDE AT THE ENDS OF THE TRAIL.  
 18. THE TRAIL SHALL BE 95 FEET WIDE AT THE ENDS OF THE TRAIL.  
 19. THE TRAIL SHALL BE 100 FEET WIDE AT THE ENDS OF THE TRAIL.

EXHIBIT 3-A

Exhibit 20  
 SDDP2016-00415  
 19990707000512  
 PAGE 009 OF 009  
 07/07/1999 10:59  
 KING COUNTY, WA

**ROGALSKI DEED FROM KING COUNTY**

E1693240  
06/24/1999 10:12  
KING COUNTY, WA  
TAX \$2.00  
SALE \$0.00

PAGE 001 OF 003

After Recording Return To:

JARVIS A. DEUTSCH  
Three Lake Bell Dr #100  
Bellevue, WA 98005

QUIT CLAIM DEED

KING COUNTY, a political subdivision of the State of Washington ("Grantor"), for valuable consideration, receipt of which is hereby acknowledged, conveys and quit claims to MARK E. ROGALSKI and CAROL L. ROGALSKI, husband and wife ("Grantees"), all of its right, title and interest, together with all after acquired title of Grantor therein, in the following described real property ("the Property") located in King County, Washington, together with all interest of Grantor in the railroad right of way that crosses said property:

A portion of Government Lot 2, Section 7, Township 24 North, Range 6 East, W.M., further described on Exhibit No. 1:

TAX PARCEL NO.: 400510-0005-07

EXCEPTING AND RESERVING all right, title and interest of the Grantor arising under that Easement Agreement dated as of March 4, 1999, between Mark E. Rogalski and Carol L. Rogalski, as grantors, and King County, as grantee, which easement describes the following property:

A PORTION OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED IN EXHIBIT No. 2.

AND EXCEPT: all rights vested in the Grantor and in the permittee, licensee or grantee under any recorded or unrecorded license agreement, permit, crossing agreement or easement in effect on January 1, 1999 that authorizes the permittee, licensee or grantee to traverse or use some portion of the Property, including but not limited to Electric Line Permit No. 88370, dated September 16, 1960.



S MICHAEL RODG QCD

12.00

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06/24/1999 10:12  
KING COUNTY, WA



EXHIBIT 1

DESCRIPTION

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF KING AND IS DESCRIBED AS FOLLOWS:

TRACT 1, LAKE SAMMAMISH WATERFRONT TRACTS TO MONOHAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY MARGIN OF THE THOMAS ALEXANDER COUNTY ROAD AND THE NORTH LINE OF GOVERNMENT LOT 2, SECTION 7, TOWNSHIP 24 NORTH, RANGE 6 EAST W.M., SAID POINT BEING SOUTH 88° 14' 38" WEST 1085.18 FEET FROM THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2;  
THENCE SOUTHERLY ALONG THE WESTERLY MARGIN OF SAID COUNTY ROAD ON A CURVE TO THE LEFT HAVING A RADIUS OF 130.52 FEET, THE TANGENT TO WHICH CURVE AT THE POINT OF BEGINNING BEARS SOUTH 20 ° 18' 10" EAST 13.63 FEET;  
THENCE SOUTH 84° 53' 35" WEST, TO THE OUTER BOUNDARY OF THE SECOND CLASS SHORELANDS OF LAKE SAMMAMISH;  
THENCE NORTHERLY ALONG SAID OUTER BOUNDARY TO A POINT ON THE NORTHERLY BOUNDARY OF SAID SHORELAND IN FRONT OF SAID GOVERNMENT LOT 2;  
THENCE EASTERLY ALONG SAID NORTHERLY BOUNDARY TO THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 2;  
THENCE ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 2, NORTH 88° 14' 38" EAST TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.



S MICHAEL RODG QCD

12.00

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06/24/1999 10:12  
KING COUNTY, WA

EXHIBIT 2

THAT PORTION OF THE NORTHERN PACIFIC RIGHT-OF-WAY LYING 16.25 FEET EASTERLY AND 3.75 FEET WESTERLY OF THE CENTERLINE OF THE RIGHT-OF-WAY [NOT THE CENTERLINE OF THE TRACKS] AS SHOWN ON THAT MAP ENTITLED "EAST LAKE SAMMAMISH TRAIL" AND GIVEN MAP NO. 311-99, RECORDS OF THE KING COUNTY ENGINEER AND AS DEPICTED IN THE DRAWING ATTACHED HERETO AS EXHIBIT 2-A.

Document



S MICHAEL RODG QCD

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KING COUNTY, WA

