

980918-1253 01:24:00 PM KING COUNTY RECORDS 002 THE 7/16/81/80 166882917



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.

EXHIBIT 3

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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 $26^{\circ}23'06''$ East, along said west margin 60 feet; thence North $63^{\circ}36'54''$ east, 25 feet; thence North $26^{\circ}23'06''$ West, 60 feet, to a point which bears North $63^{\circ}36'54''$ east from the true point of beginning; thence South $63^{\circ}36'54''$ 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 $89^{\circ}18'33''$ 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 $26^{\circ}23'06''$ east, along said west margin, 309.98 feet to the true point of beginning; thence continuing South $26^{\circ}23'06''$ East, along said west margin 84.95 feet; thence North $63^{\circ}36'54''$ east, 25 feet; thence North $26^{\circ}23'06''$ West, 84.95 feet, to a point which bears North $63^{\circ}36'54''$ east from the true point of beginning; thence South $63^{\circ}36'54''$ 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

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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 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.

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 heretofore 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 $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, 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 $\frac{1}{2}$ 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, and that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ 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.

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Name The Land Conservance of Seattle

Address E150, 19th St.

City, State, Zip Seattle, WA 98112

**COMMONWEALTH
LAND TITLE INSURANCE COMPANY
OF PHILADELPHIA**

CW C8021 2

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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)

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970428-0575 09:49:00 AM KING COUNTY RECORDS 014 JTW

E1540364 04/28/97 26700.00 1500000.00

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

9704280575

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. Acclin
Margaret R. Acclin
Assistant Secretary



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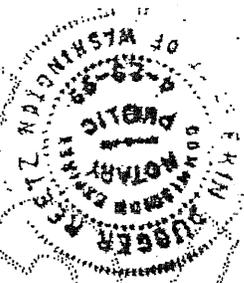
ACCEPTED:

THE LAND CONSERVANCY OF SEATTLE AND KING COUNTY

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

ATTEST:

By: [Signature]
Name: Carol K. Hinkle
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.

[Signature]
Notary Public in and for the
State of Washington
Residing at: Seattle
My appointment expires: 4-29-99

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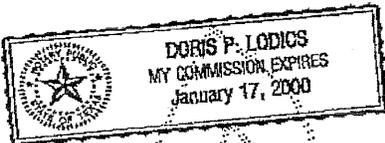
STATE OF TEXAS

§
§ 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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Document

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

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

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

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

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

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

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

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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 $61^{\circ} 02'$ East to the Northwestern line of the hereinabove described 100.0 foot wide Branch Line right of way; thence Southwesterly along said Northwestern 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 Northwestern 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,

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 Monahan, according to the plat thereof, lying between two lines drawn concentric with and distant, respectively, 20.0 feet and 50.0 feet Westerly, as measured radially from said Main Track centerline, **ALSO, EXCEPTING THEREFROM**, the Westerly 30.0 feet of said 100.0 foot wide Branch Line right of way across Tracts 9 and 10, Lake Sammamish Waterfront Tracts to Monahan, according to the plat thereof, lying between two lines drawn parallel with and distant, respectively, 20.0

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

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

"Line A" Description

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

ALSO,

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

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

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

"Line B" Description

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

"Line C" Description

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

"Line D" Description

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

ALSO,

All that portion of said Railway Company's 200.0 foot wide Branch line right of way, being 100.0 feet wide on each side of said Main Track centerline upon, over and across Government Lot 1 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, Township 24 North, Range 6 East, bounded on the Northwest by the West lines of said Government Lot 1 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, 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 $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of Section 21, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 28, the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, and the N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, all in Township 24 North, Range 6 East, bounded on the Northwest by the West line of said Government Lot 2 of Section 8, and bounded on the South by the South line of Mill Street in the City of Issaquah, Washington, said Main Track centerline being 404.1 feet East of the Southwest corner of said Section 27; also,

An additional parcel of land lying contiguous with and Westerly of the 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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SERVICE DATE - SEPTEMBER 18, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 380X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
--ABANDONMENT EXEMPTION--IN KING COUNTY, WA

Decided: September 16, 1998

In a decision served May 13, 1998, the Board granted The Burlington Northern and Santa Fe Railway Company (BNSF) an exemption to abandon a 12.45-mile line of railroad between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, WA (the Redmond-Issaquah Line), subject to labor protective and environmental conditions. Thereafter, in a decision served August 5, 1998, the Board rejected an offer of financial assistance filed by Redmond-Issaquah Railroad Preservation Association under 49 U.S.C. 10904 to continue service on the line.¹

Also in the August 5 decision, the Board deferred action on requests by King County and The Land Conservancy of Seattle and King County (TLC) that the Board impose interim trail use/rail banking under 16 U.S.C. 1247(d). The Board noted that King County and TLC had submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. The Board also

STB Docket No. AB-6 (Sub-No. 380X)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served August 5, 1998, exempting BNSF's abandonment of the Redmond-Issaquah Line, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days from the service date of this decision and notice.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided that the labor protective and environmental conditions imposed in the August 5 decision are met.
7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

361 F.Supp.2d 1260
 United States District Court,
 W.D. Washington,
 At Seattle.

FRIENDS OF THE EAST LAKE SAMMAMISH
 TRAIL, Cascade Land Conservancy, Robert W. &
 Bente K. Pasko, Plaintiffs,

v.

CITY OF SAMMAMISH, Defendant,
 and

East Lake Sammamish Community Association,
 Intervenor-Defendant.

No. C03-2793C. | Jan. 5, 2005. | Order Denying
 Reconsideration Feb. 14, 2005.

Synopsis

Background: Non-profit organizations and their members brought action against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA). Homeowners association intervened. Organizations brought motion for summary judgment.

Holdings: The District Court, Coughenour, J., held that:

^[1] plaintiffs demonstrated injury in fact in order to have standing;

^[2] grievance could not be barred on prudential grounds;

^[3] county was not indispensable party;

^[4] county was not necessary party;

^[5] exhaustion of administrative remedies was not required for court to hear conflict preemption challenge;

^[6] *Pullman* abstention doctrine did not apply;

^[7] conflict between NTSA and ordinance required preemption of ordinance; and

^[8] *Younger* abstention was not required.

Motion granted.

West Headnotes (31)

^[1] Railroads

Remedies of parties or persons interested

Non-profit organizations and their members demonstrated "injury in fact," in order to have standing in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement, which stymied county's efforts to implement trail, was preempted by National Trails Systems Act (NTSA), on plaintiffs' allegations that they used trail, their activities and pastimes were affected by proposed trail development plans, and their economic and property interests, due to their investment in development of trail, and their contractual interest in right-of-way, would have been affected if county failed in its efforts to develop trail due to PAUE. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

^[2] Federal Civil Procedure

In general; injury or interest

The party who asserts federal jurisdiction has the burden of establishing the elements of standing; to meet this burden, the litigant must clearly and specifically set forth facts sufficient to satisfy those Article III standing requirements.

Cases that cite this headnote

^[3] Federal Civil Procedure

In general; injury or interest

Federal Civil Procedure

☞Causation; redressability

The elements of standing are: (1) the plaintiff has suffered an injury in fact, i.e., an invasion of a judicially cognizable interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of, i.e., the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Cases that cite this headnote

upon inability to use proposed trail did not mean that grievance by non-profit organizations and their members should have been barred on prudential grounds, in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement, which stymied county's efforts to implement trail, was preempted by National Trails Systems Act (NTSA), since organizations and their members had alleged legally cognizable injury, which inherently required conclusion that plaintiffs' injuries were personal, not merely general. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

[4]

Federal Civil Procedure

☞In general; injury or interest

On a claim of a lack of standing, a plaintiff must show that he has sustained, or is immediately in danger of sustaining, some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.

Cases that cite this headnote

[7]

Federal Civil Procedure

☞Rights of third parties or public

The prohibition against generalized grievances prevents individuals from suing if their only injury is as a citizen.

Cases that cite this headnote

[5]

Federal Civil Procedure

☞In general; injury or interest

In order to have standing, a plaintiff's complaint must specifically allege that he or she has personally suffered an injury.

Cases that cite this headnote

[8]

Federal Civil Procedure

☞Rights of third parties or public

The existence of a generalized grievance is not determined simply by the number of people affected; rather, a generalized grievance is where the plaintiffs sue solely as citizens concerned with having the government follow the law.

Cases that cite this headnote

[6]

Railroads

☞Remedies of parties or persons interested

Fact that other residents of county and municipality might have claimed injury based

[9]

Federal Civil Procedure

☞Governmental bodies and officers thereof

County was not "indispensable party" to litigation between non-profit organizations and

municipality, and homeowners' association as intervenor, claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement, which stymied county's efforts to implement trail, was preempted by National Trails Systems Act (NTSA), since ruling from court would have provided complete relief among those already parties to suit and defendants' concern related solely to avoidance of multiple litigation. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d); Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

1 Cases that cite this headnote

[10] **Federal Civil Procedure**
 ☞Necessary Joinder

Under the rule governing the compulsory joinder of parties, a court must decide whether the absentee is a necessary party; if the court finds that the absentee is a necessary party, then it must consider whether the absentee can be joined, and if not, whether in equity and good conscience the action should be dismissed. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

Cases that cite this headnote

[11] **Federal Civil Procedure**
 ☞Nonjoinder in general

Under the rule governing the compulsory joinder of parties, the burden of proving that a case should be dismissed for failure to join a necessary party falls to the moving party. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

Cases that cite this headnote

[12] **Federal Civil Procedure**
 ☞Necessary Joinder

The "complete relief" clause of the rule governing the compulsory joinder of parties is to be interpreted narrowly; the concern is in rendering complete justice among those already joined, not in finding an absentee is necessary simply to avoid multiple litigation. Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

Cases that cite this headnote

[13] **Federal Civil Procedure**
 ☞Governmental bodies and officers thereof

County, as property owner, project permit applicant, entity financially responsible for railbed pursuant to Notice of Interim Trail Use (NITU), and ultimate operator of trail, was not "necessary party," in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA), since interest in subject matter alone did not make county necessary party and county was aware of litigation and chose to entrust non-profit organization and its members to adequately litigate issue of federal preemption. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d); Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

Cases that cite this headnote

[14] **Federal Civil Procedure**
 ☞Governmental bodies and officers thereof

State court decision that rejected county's preemption claims did not subject plaintiff non-profit organizations and their members and defendant municipality and intervenor homeowner association to inconsistent obligations, in lawsuit under National Trails Systems Act (NTSA) claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted, since state court held that county waived right to litigate preemption issue, plaintiffs were not

parties to that action and were not bound by it, decision in instant litigation had broader import, and joining county in instant litigation would not have obviated risk of inconsistent obligations. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d); Fed.Rules Civ.Proc.Rule 19(a), 28 U.S.C.A.

from resolving claims that are within its jurisdiction; however, abstention is appropriate under *Pullman* when resolution of a state issue would terminate a controversy and allow constitutional adjudication to be avoided.

Cases that cite this headnote

Cases that cite this headnote

[15]

Municipal Corporations

☞Political Status and Relations

Railroads

☞Abandonment and Forfeiture of Land or Rights

National Trails System Act (NTSA) preempted ordinance's "practical alternative" public agency utility exception (PAUE) requirement each and every time that requirement was used to prevent development of trail on railbanked right-of-way. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

I Cases that cite this headnote

[18]

Federal Courts

☞Carriers and Public Utilities

Pullman abstention doctrine, which prevented federal court's resolution of federal constitutional question if case could be resolved on questions of state law, did not apply to lawsuit against municipality which claimed that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA); case was not about how ordinance applied, it was about constitutionality of ordinance in light of Supremacy Clause. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

[16]

Railroads

☞Remedies of parties or persons interested

Exhaustion of administrative remedies was not required for court to hear conflict preemption challenge under National Trails Systems Act (NTSA) to ordinance's "practical alternative" public agency utility exception (PAUE) requirement. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

[19]

Municipal Corporations

☞Political Status and Relations

The preemption doctrine is a corollary of the Supremacy Clause of the United States Constitution, and in general provides that any municipal law that is inconsistent with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

Cases that cite this headnote

[17]

Federal Courts

☞Pullman abstention

Only in exceptional cases may a court abstain

[20]

Municipal Corporations

☞Political Status and Relations

Railroads

☞Abandonment and Forfeiture of Land or Rights

Conflict between ordinance's "practical alternative" public agency utility exception (PAUE) requirement and National Trails Systems Act (NTSA) required preemption of ordinance to any railbanked railroad right-of-way, since federal regulation of railroads was pervasive and comprehensive, railbanked corridors remained part of national rail transportation system subject to jurisdiction of Surface Transportation Board (STB), STB entered order declaring that interim trail use could be implemented, and safety, land use, and zoning regulation on recreation trails could be applied only to extent that they did not frustrate development of trail on railbanked right of way. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

1 Cases that cite this headnote

[21]

States

~~vs~~ Conflicting or conforming laws or regulations

Conflict preemption applies where a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress; it can exist even when Congress has chosen to include an express preemption clause in a statute. U.S.C.A. Const. Art. 6, cl. 2.

1 Cases that cite this headnote

[22]

Railroads

~~vs~~ Abandonment and Forfeiture of Land or Rights

Under the National Trails Systems Act (NTSA), railbanked corridors remain part of the national rail transportation system subject to the jurisdiction of the Surface Transportation Board (STB).

Cases that cite this headnote

[23]

Federal Courts

~~vs~~ Burford abstention

Burford abstention is appropriate where a case involves an unclear state law question of vital local concern, which must be addressed through a centralized unified state administrative system.

1 Cases that cite this headnote

[24]

Federal Courts

~~vs~~ Carriers and Public Utilities

Burford abstention, which prevented federal court involvement if case addressed unclear state law question of vital local concern that had to be addressed through centralized unified state administrative system, was not warranted, in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA), since case involved question of preemption under federal law, not question of state law. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

1 Cases that cite this headnote

[25]

Federal Courts

~~vs~~ Younger abstention

Abstention under the principles of *Younger* is required upon demonstration of three factors: (1) there is an on-going state proceeding; (2) important state interests are implicated; and (3) the federal litigant is not barred from litigating federal constitutional issues in that proceeding.

Cases that cite this headnote

[26]

Federal Courts

☞Carriers and Public Utilities

Younger abstention, which prevents a federal court from interfering with an ongoing state proceeding that implicates important state interests, was not required, in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA), since issue at stake concerned regulation of railroads, which included regulation of railbanked rights-of-way, and there was pervasive federal regulation in that field. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

[27]

Federal Courts

☞Younger abstention

When considering *Younger* abstention, which prevents a federal court from interfering with an ongoing state proceeding that implicates important state interests, a court must look to the importance of the generic proceedings to the state rather than inquiring into the substantiality of the state's interest in the outcome of the particular case.

Cases that cite this headnote

[28]

Federal Courts

☞Colorado River abstention

Factors relevant to a court's decision to abstain under *Colorado River* include: (1) whether the state court or the federal court has assumed jurisdiction over the res or property; (2) which forum is more convenient to the parties; (3) whether abstention would avoid piecemeal litigation; (4) which court obtained jurisdiction first; and (5) whether federal law or state law provides the basis for the decision on the merits.

Cases that cite this headnote

[29]

Federal Courts

☞Colorado River abstention

Mere potential for conflict in the results of adjudications is not the kind of interference that merits federal court abstention under *Colorado River*.

Cases that cite this headnote

[30]

Federal Courts

☞Carriers and Public Utilities

Colorado River abstention, which permits a federal court to refrain from exercising its jurisdiction when the litigation would be duplicative of a concurrent foreign or state court proceeding, was not required, in lawsuit against municipality claiming that ordinance's "practical alternative" public agency utility exception (PAUE) requirement was preempted by National Trails Systems Act (NTSA), since there was no extensive involvement of state law in claims before parallel state and federal proceedings and there was no congressional policy to avoid piecemeal litigation in adjudicating issue. U.S.C.A. Const. Art. 6, cl. 2; National Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

[31]

Railroads

☞Abandonment and Forfeiture of Land or Rights

Fact that there was only one railbanked right-of-way in municipality did not convert facial challenge to ordinance's "practical alternative" public agency utility exception (PAUE) requirement into an "as applied" challenge under National Trails Systems Act (NTSA). U.S.C.A. Const. Art. 6, cl. 2; National

Trails System Act, § 8(d), 16 U.S.C.A. § 1247(d).

Cases that cite this headnote

Attorneys and Law Firms

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Bruce Laurence Disend, Kenyon Disend PLLC, Issaquah, WA, for Defendant.

Michael P. Witek, Helsell Fetterman LLP, Peter J. Eglick, Gordon Thomas Honeywell Malanca Peterson & Daheim, Seattle, WA, for Plaintiff and Intervenor-Defendant.

ORDER

COUGHENOUR, District Judge.

This matter has come before the Court on Plaintiffs' Motion for Summary Judgment (Dkt. No. 24), Intervenor-Defendant's Motion for Summary Judgment (Dkt. No. 39), and Defendant's Cross Motion for Summary Judgment (Dkt. No. 41). The Court has considered the papers submitted by the parties in support of and in opposition to the motions and determined that oral argument is not necessary. For the reasons set forth in this Order, Plaintiffs' Motion is hereby GRANTED, Intervenor-Defendant's Motion is hereby DENIED, and Defendant's Cross Motion is likewise DENIED.

I. BACKGROUND

This action concerns the development of a recreational trail along a seven-mile section of the former Burlington Northern Santa Fe railroad right-of-way that runs along the east shore of Lake Sammamish.¹ Plaintiffs, the non-profit organizations Friends of the East Lake Sammamish Trail ("Friends") and the Cascade Land Conservancy ("CLC"), and Robert and Bente Pasko, residents of the City of Sammamish and members of Friends, support development of the East Lake Sammamish Trail on the right-of-way. Defendant City of

Sammamish and Intervenor-Defendant East Lake Sammamish Community Association ("ELSCA"), an association of Sammamish residents, many of whom reside along the east shore of Lake Sammamish along the former railbed, (hereinafter collectively "Defendants") contest development of the trail. On September 11, 2003, Plaintiffs filed the instant action, challenging the constitutionality of the "practical alternative" prong of Interim Sammamish Development Code § 21A.24.070 and the identical Sammamish Municipal Code § 21A.50.070(2)(a)² by arguing that it is preempted by the National Trails Systems Act, 16 U.S.C. § 1247(d).

II. FACTS

In the late 1880s the Seattle Lake Shore & Eastern Railroad built a rail line from Issaquah north along the east shore of Lake Sammamish to Woodinville. The line, known as the Issaquah spur, eventually became part of the Burlington Northern/Santa Fe Railroad ("BNSF") system. In 1996, BNSF ceased operations on its tracks through the East Lake Sammamish corridor and a year later CLC acquired BNSF's interests in the railbed by quit *1266 claim deed. CLC commenced Surface Transportation Board ("STB") proceedings to railbank³ the right-of-way. The STB issued its Notice of Interim Trail Use ("NITU")⁴ in September 1998. The NITU Decision provides in relevant part that "[i]f an agreement for interim trail use/railbanking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented." (Ex. 1 to Roberts Decl. in Supp. of Pls.' Mot. for Summ. J. ("Roberts Decl.")). CLC then quit claimed its interests in 10.9 miles of the railbanked railbed to King County on September 18, 1998. On December 15, 2000, the King County Council unanimously adopted an ordinance and appropriated funds for development of a soft surface trail on the railbanked East Lake Sammamish right-of-way.

King County then applied to the cities of Issaquah, Redmond, and Sammamish for land use permits to construct a gravel trail on the existing crushed rock surface of the rail corridor. On May 7, 1999, King County filed a grading permit application for its trail. Since parts of the proposed trail would pass through areas classified as "wetland" and "wetland buffer" under SMC ch. 21A.50, King County had to apply for a Public Agency Utility Exception ("PAUE") to proceed with the trail's development. The Sammamish PAUE ordinance does not permit destruction or alteration of sensitive areas for public agency and utility projects unless it is shown that there is no practical alternative with less impact to sensitive areas:

The Department shall review the [PAUE] application based upon the following criteria: (a) there is no other practical alternative to the proposed development with less impact on the sensitive area; and (b) the proposal minimizes the impact on sensitive areas.

SMC § 21A.50.070.

King County filed a PAUE application with the City of Sammamish on April 13, 2001. On April 12, 2002, the City of Sammamish Planning Director issued an initial City decision on the PAUE application, authorizing King County to pour a new gravel surface on the railbed, and requiring King County to offset and mitigate the loss of wetland buffer by preserving and enhancing other wetland areas within the railroad right-of-way. ELSCA appealed the City's decision, and King County and Mark Cross and Bente Pasko (both members of Friends) filed their own cross-appeals.

The City of Sammamish appointed a pro tem hearing examiner to conduct the appeal. On April 24, 2003, following discovery and a seven-day trial on the appeals, the hearing examiner issued his decision reversing the City's decision and denying the requested PAUE based on his findings and conclusions that practical alternatives existed⁵ with fewer impacts on protected environmentally sensitive areas than would *1267 occur with the County's proposed railbed-only trail alignment.

King County and ELSCA appealed the hearing examiner's decision to the Snohomish County Superior Court. On March 16, 2004, the court reversed certain elements of the PAUE decision and remanded the case to the City for further proceedings. It appears that the case is still pending before the City. Of note is the Superior Court's finding that King County was precluded from raising the issue of federal preemption because it had failed to raise the issue before the hearing examiner. Despite this finding the court went on to find that even if the issue could be raised, the argument would fail as there is no federal preemption.

The PAUE for which King County applied would authorize only construction of a soft surface trail on the East Lake Sammamish rail corridor. The County is currently planning for a permanent paved trail to replace the interim trail. Should the County apply to build the permanent trail on the railbanked right-of-way, all parties to this litigation agree that the permanent trail will require another PAUE from the City of Sammamish that satisfies

the requirements of SMC § 21A.50.070. Thus, this issue is still ripe for review.

As of April 2004, the soft surface East Lake Sammamish Trail was completed and open to the public in Redmond, Issaquah and unincorporated King County. The middle seven miles through Sammamish, however, remained closed.

III. ANALYSIS

Currently before the Court is Plaintiffs' Motion for Summary Judgment, which argues that the federal railbanking statute, 16 U.S.C. § 1247(d), and the STB Order which authorized King County to develop an interim trail on the inactive railroad right-of-way, preempt the application of the "practical alternative" prong of SMC § 21A.50.070(2)(a) to any railbanked railroad right-of-way. Defendant City of Sammamish filed a Cross Motion for Summary Judgment, countering that Plaintiffs lack standing to bring this claim. Intervenor-Defendant ELSCA also sets forth multiple grounds for summary judgment against Plaintiffs in its own Motion for Summary Judgment, including Plaintiffs' failure to join an indispensable party (King County), failure to state a claim upon which relief can be granted, and failure to exhaust administrative remedies. Alternatively, ELSCA proposes that the *Pullman* abstention doctrine dictates that this Court abstain from deciding the federal preemption issue set forth in Plaintiffs' Complaint. The Court will address Defendants' procedural and jurisdictional arguments first.⁶

A. Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment motions, and provides in relevant part, that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In determining whether an issue of fact exists, the court must view all evidence *1268 in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable fact-finder to find for the non-moving party. *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. The moving party bears the burden of

Issue

showing that there is no evidence which supports an element essential to the non-movant's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The parties all assert that there are no material facts at issue, thus this matter is particularly well suited for decision by summary judgment. The Court agrees.

B. Standing

^[1] Defendants challenge Plaintiffs' standing to bring this action by characterizing their interest as a mere desire for speedier construction of a recreational trail, and by arguing that Plaintiffs cannot demonstrate that they have suffered an injury to a legally protected interest. Defendants further argue that prudential limitations bar Plaintiffs' suit.

^[2] ^[3] A showing of standing is an essential predicate to federal jurisdiction. *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C.Cir.1996). The Plaintiffs in this case, as the parties asserting federal jurisdiction, have the burden of establishing the elements of standing. *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir.1992). "To meet this burden, the litigant must clearly and specifically set forth facts sufficient to satisfy those Article III standing requirements." *Whitmore v. Arkansas*, 495 U.S. 149, 155-56, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990). Those requirements are as follows:

(1) that the plaintiff have suffered an "injury in fact"— an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of— the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (2) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 167, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Since Defendants only challenge the existence of

an "injury in fact" and the applicability of prudential limitations, the Court will only address these two aspects of standing.

1. Injury in Fact

^[4] Plaintiffs must show that they have "sustained or [are] immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). To support their argument that Plaintiffs have failed to assert a cognizable injury, Defendants rely on *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). In that case the Supreme Court found that the Sierra Club's asserted interest in "the *1269 conservation and the sound maintenance of the national parks, game refuges, and forests of the country" was insufficient for standing purposes because there was no allegation any of the Sierra Club members ever used the area in question. The Supreme Court stated:

The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the...development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in a way that would be significantly affected by the proposed actions of respondents.

Id. at 735, 92 S.Ct. 1361. See also *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (finding that plaintiffs were not entitled to standing unless they could demonstrate that they used specific federal lands that were being mined under the new federal regulations). The case at bar, however, cannot fail on these same grounds since Plaintiffs have alleged that they do use the area in question, and that their activities and pastimes have been affected by the proposed trail development plans. (See Pasko Decl. in Supp. of Pls.' Mot. for Summ. J. ¶¶ 2-4; Duvernoy Decl. in Supp. of Pls.' Mot. for Summ. J. ¶¶ 3-4.) Defendants' argument also ignores CLC's economic and property interests through its investment in the development of the trail, and its contractual interest in the right-of-way, should King County fail in its efforts to develop the trail. (See Duvernoy Decl. ¶ 3.) See, e.g., *Tyler v. Cuomo*, 236 F.3d 1124, 1132 (9th Cir.2000)

(finding standing based on plaintiffs' property interests).

¹⁵¹ In contrast to *Sierra Club*, the Court finds *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973), to be more on-point. In *SCRAP* the Supreme Court upheld the standing of a group of students who maintained that their enjoyment of the forests, streams, and mountains in the Washington D.C. areas would be lessened as a result of an increase in railroad freight costs that would then have a domino effect of discouraging the use of recycled goods due to higher shipping costs which would lead to more use of natural resources, including more mining and pollution in the immediate area. *Id.* at 688, 93 S.Ct. 2405. See also *Friends of the Earth v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (holding plaintiffs had standing to challenge environmental harm because they alleged that they used the affected areas for recreational purposes). The lesson from these cases is that a plaintiff's complaint must specifically allege that he or she has personally suffered an injury. Plaintiffs, by alleging personal injuries, demonstrate that they understand this lesson. (See, e.g., Compl. ¶¶ 2.1–2.3.) In sum, the Court finds that Plaintiffs have demonstrated "injury in fact" through an inability to use and enjoy the trail as a result of its stymied development allegedly due to the City of Sammamish's PAUE permitting requirements.

2. Prudential Limitations

¹⁶¹ ¹⁷¹ ¹⁸¹ Defendants also object that Plaintiffs lack standing based on prudential limitations invoked to guard against generalized grievances. The prohibition against generalized grievances prevents individuals from suing if their only injury is as a citizen. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The existence of a generalized *1270 grievance is not determined simply by the number of people affected. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1177 n. 5 (9th Cir.2000). Rather, a generalized grievance is where the plaintiffs sue solely as citizens concerned with having the government follow the law. *Northern Plains Res. Council v. Lujan*, 874 F.2d 661, 668 (9th Cir.1989). As the Court has already found, however, Plaintiffs have alleged a legally cognizable injury, which inherently requires a conclusion that Plaintiffs' injuries are personal, not merely general. The fact that other King County and Sammamish residents might also claim injury based on the inability to use the proposed trail does not mandate that the Court find Plaintiffs' grievance to be too general to support standing. To the contrary, the Court finds that Plaintiffs have alleged an "injury in fact" and that prudential limitations do not apply. As a matter of

law Defendants' standing arguments must fail. Plaintiffs have the standing necessary to bring this suit.

C. Necessary and Indispensable Party

¹⁹¹ Defendants further argue that King County, as the trail proponent and property owner, is a necessary party under Fed.R.Civ.P. 19(a), that King County cannot be joined because it lacks standing to sue, and that King County should be deemed "indispensable" under the four factor test in Fed.R.Civ.P. 19(b), forcing dismissal of this action.

Fed.R.Civ.P. 19 ("Rule 19") governs the compulsory joinder of parties needed for just adjudication. In general, "necessary" refers to those absentees who should be joined in the pending case; if joinder is infeasible, the present action can continue without a necessary party. 4 James W. Moore et al., *Moore's Federal Practice and Procedure* § 19.02[2][c] (3d ed.1997). "Indispensable" refers to those absentees who must be joined in the pending case if it is to go on; if joinder is infeasible the present action must be dismissed. *Id.* In federal question cases, such as the case at bar,⁷ federal law governs whether any party is "necessary" or "indispensable." 7 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. and Proc.: Civil 3d* § 1603 at 30.

¹¹⁰¹ ¹¹¹¹ Analysis under Rule 19 is a two-step process. First the Court must decide whether King County, the absentee, is a "necessary party" under Rule 19(a). If the Court finds that King County is a necessary party, then it must consider whether King County can be joined, and if not, whether "in equity and good conscience the action...should be dismissed." *Washington v. Daley*, 173 F.3d 1158, 1169 (9th Cir.1999). The burden of proving that a case should be dismissed for failure to join a necessary party falls to the moving party. *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir.1990).

1. Is absentee needed for just adjudication?

An absent party is a necessary party if a court finds any of the following requisites have been met:

- (1) in the person's absence complete relief cannot be accorded among those already *1271 parties,
- or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede

the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Fed.R.Civ.P. 19(a).

^[12] Defendants argue that complete relief cannot be accorded in the County's absence since King County would not be bound by a decision from this Court adverse to Plaintiffs. The purpose of the "complete relief" clause is to avoid duplicative litigation. *See Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir.), *cert. denied*, 464 U.S. 849, 104 S.Ct. 156, 78 L.Ed.2d 144 (1983). It is to be interpreted narrowly, which is to say that the concern is in rendering complete justice among those already joined, not in finding an absentee is necessary simply to avoid multiple litigation. *Id.* at 1046. The Court finds that a ruling from this Court would provide complete relief among those already parties to this suit. Defendants' concern that King County would not be bound by a decision in Defendants favor is both irrelevant given the Court's findings on the federal preemption issue, *see* discussion *infra* at 14–15, and relates solely to the avoidance of multiple litigation.

^[13] Defendants further argue under Rule 19(a)(2)(i) that King County is a necessary party because it is the property owner, project permit applicant, the entity financially responsible for the railbed pursuant to the NITU, and will ultimately operate the trail. It is unquestionable that King County has an interest in the case at bar. However, interest in the subject matter alone does not make one a necessary party. Given that King County is aware of this litigation and has chosen to entrust Plaintiffs to adequately litigate the issue of federal preemption (*see* Decl. of Ron Sims in Opp. to ELSCA's Mot. for Summ. J. ¶ 10), it would make little sense for the Court to find that King County's absence would impair its ability to protect its interest.

^[14] Finally, Defendants express concern that the current parties could be subjected to inconsistent obligations in light of the state court decision rejecting the County's preemption claims. The Snohomish County Superior Court held that King County waived the right to litigate the preemption issue by failing to raise it before the hearing examiner. Plaintiffs were not parties to that action and are not bound by it. Therefore, a decision in this matter would simply moot that portion of the state court's order requiring application of the "practical alternative"

requirement in SMC § 21A.50.070(2)(a) on remand. It does not subject Defendants to inconsistent obligations. *See Delgado v. Plaza Las Americas, Inc.*, 139 F.3d 1, 3 (11th Cir.1998). Moreover, a ruling in Plaintiffs' favor by this Court does not limit the application of SMC § 21A.50.070(2)(a) to the East Lake Sammamish Trail alone—it limits its application to all railbanked rights-of-way approved for interim trail use by the STB. Finally, even if there were a risk of inconsistent obligations, which there is not, joining King County in this litigation would not obviate that risk. King County is not a necessary party.

In light of this finding, the Court need not proceed to the second step of the *1272 Rule 19 analysis. Defendants' "necessary and indispensable party" arguments fails as a matter of law.

D. Failure to state a claim

^[15] Defendants argue that Plaintiffs' "purported facial challenge to a local ordinance based upon conflict preemption" does not state a claim upon which relief can be granted. Additionally, Defendants argue that Plaintiffs' failure to exhaust administrative remedies, which they avoid by characterizing this as a "facial challenge" instead of an "as applied" challenge, also bars Plaintiffs' complaint.

^[16] Plaintiffs have raised a conflict preemption challenge essentially arguing that since the STB has designated the East Lake Sammamish right-of-way for development of a recreational trail, it is therefore beyond the power of the City of Sammamish to require King County to secure the right to develop a trail on the right-of-way, as opposed to near the right-of-way. The Court understands this to mean Plaintiffs are arguing that any application of the City's "practical alternatives" PAUE requirement goes above and beyond merely imposing safety, land use, or zoning regulations on a trail developed on railbanked land, and thus is *per se* preempted by the federal Rails to Trails Act. *Cf. California Coastal Comm'n v. Granite Rock*, 480 U.S. 572, 580, 107 S.Ct. 1419, 94 L.Ed.2d 577 (1987). This clearly states a claim upon which relief can be granted. There are no administrative remedies requiring exhaustion before the Court can hear Plaintiffs' conflict preemption challenge. As a matter of law, the Court cannot grant summary judgment on this issue.

E. Abstention

^[17] ^[18] Defendants also argue that the *Pullman* abstention doctrine precludes this Court from reviewing Plaintiffs'

claim. Only in exceptional cases may a court abstain from resolving claims that are within its jurisdiction. *United States v. Morros*, 268 F.3d 695, 703 (9th Cir.2001). However, abstention is appropriate when resolution of a state issue would terminate a controversy and allow constitutional adjudication to be avoided. *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 501, 61 S.Ct. 643, 85 L.Ed. 971 (1941).

Defendants' argument that the *Pullman* abstention doctrine applies ignores clear Ninth Circuit precedent stating that in preemption cases *Pullman* abstention is inappropriate.⁸ See *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 940 n. 12 (9th Cir.2002) (stating that preemption, as a federal question, is not considered a constitutional issue); *Morros*, 268 F.3d at 704 (same); *Hotel Employees and Rest. Employees Int'l Union v. Nevada Gaming Com'n*, 984 F.2d 1507, 1512 (9th Cir.1993) (same); *Knudsen Corp. v. Nevada State Dairy Com'n*, 676 F.2d 374, 377–378 (9th Cir.1982) (same). Moreover, Defendants' characterization of this case as a land use case is not an accurate description of the preemption issue before this Court. The controversy has not been terminated following remand to the City of Sammamish by the Snohomish County Superior Court *1273 since this case is not about how the ordinance applies, it is about the *constitutionality* of the ordinance. Once a definitive ruling has been issued on whether the ordinance is preempted, then the City and the state courts are free to decide how it applies to the East Lake Sammamish Trail.

F. Preemption

^[19] ^[20] ^[21] The preemption doctrine is a corollary of the Supremacy Clause⁹ of the United States Constitution, and in general provides that any municipal law that is inconsistent with federal law is without effect. Of the three types of preemption, explicit, field, and conflict preemption, this case only concerns the latter. Conflict preemption applies where a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Young v. Coloma-Agaran*, 340 F.3d 1053, 1056 (9th Cir.2003) (quoting *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995)). It can exist "even when Congress has chosen to include an express preemption clause in a statute." *Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1204 (9th Cir.2002) (citing *Freightliner*, 514 U.S. at 287, 115 S.Ct. 1483). See also *Geier v. American Honda Motor Co.*, 529 U.S. 861, 869, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000).

^[22] It is without question that federal regulation of

railroads is both pervasive and comprehensive. See, e.g., *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318, 101 S.Ct. 1124, 67 L.Ed.2d 258 (1981). In amending the National Trails System Act Congress sought to effect two purposes: (1) to "preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use," and (2) to "encourage the development of additional trails" and "assist recreation[al] users by providing opportunities for trail use on an interim basis." *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 17–18, 110 S.Ct. 914, 108 L.Ed.2d 1 (1990). The section of the Act at issue in this case, 16 U.S.C. § 1247(d), provides as follows:

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way...such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.

It is therefore clear that railbanked corridors remain part of the national rail transportation system subject to the jurisdiction *1274 of the STB. *Preseault*, 494 U.S. at 5–6 n. 3, 110 S.Ct. 914; *Good v. Skagit County*, 17 P.3d 1216, 1219 (Wash.App.2001).

Moreover, Congress has determined that every inactive railroad right of way is appropriate for trail use. See *Citizens Against Rails-To-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1153 (D.C.Cir.2001); *Idaho N. & Pacific R.R. Co.*, 1998 WL 146208, *8 (1998) (quoting *IOWA S.*

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R.R. CO.—EXEMPTION—ABANDONMENT IN POTTAWATTAMIE, MILLS, FREMONT AND PAGE COUNTIES, IA, 1989 WL 239065, 5 I.C.C.2d 496, 502–503 (1989)). While all parties agree that state and local governments have the right “to impose appropriate safety, land use, and zoning regulation on recreation trails,” see *IOWA SOUTHERN*, 1989 WL 239065, 5 I.C.C.2d at 505, Plaintiffs argue that these regulations apply only to the extent that they do not frustrate development of a trail on the railbanked right of way.¹⁰

This Court agrees. The purpose of the Rails to Trails Act is not to encourage the development of recreational trails near inactive railroad rights of way—it is to encourage the transition of these railbeds into recreational trails, and to preserve the right-of-way for possible future railroad reactivation.¹¹ In the case at bar, the STB has entered an order declaring that “interim trail use may be implemented” over the section of railbanked land at issue. (See Ex. 1 to Roberts Decl.) That the hearing examiner overturned the PAUE on the grounds that there are practical alternatives to location of the trail on the right-of-way demonstrates that this provision of the SMC “stands as a obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” As a result, the Court finds that 16 U.S.C. § 1247(d) preempts the application of SMC § 21A.50.070(2)(a) to any railbanked railroad right-of-way. Summary judgment in Plaintiffs’ favor is necessitated as a matter of law.

IV. CONCLUSION

In sum, the Court finds and rules as follows:

(1) Plaintiffs have standing to bring suit. Defendant City of Sammamish’s Motion for Summary Judgment is DENIED.

*1275 (2) King County is not a necessary party. Plaintiffs have stated a claim upon which relief can be granted, and application of the *Pullman* abstention doctrine is inappropriate. Defendant–Intervenor ELSCA’s Motion for Summary Judgment is DENIED.

(3) U.S. Const. art. VI, cl. 2, 16 U.S.C. § 1247(d), and the September 16, 1998 decision of the Surface Transportation Board in *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In King County, WA.*, STB Docket No. AB–6 (Sub. No. 380X) preempt the application to any railbanked railroad right-of-way of those portions of Sammamish Municipal Code § 21A 50.070 that require an applicant for a Public Agency Utility Exception to show that “there is no

practical alternative to the proposed development with less impact on sensitive areas.” Plaintiffs’ Motion for Summary Judgment is GRANTED.

(4) The Clerk is directed to enter judgment accordingly.

ORDER

This matter comes before the Court on Intervenor–Defendant East Lake Sammamish Community Association’s Motion for Reconsideration (Dkt. No. 73). ELSCA challenges the Court’s January 5, 2005 Order granting summary judgment in favor of Plaintiffs. Specifically, ELSCA argues that the Court committed manifest error in declining to abstain, or, alternatively, that the Court erred by applying the incorrect legal standard to Plaintiffs’ preemption challenge to the Sammamish Municipal Code § 21A.50.070. For the following reasons, ELSCA’s Motion for Reconsideration is hereby DENIED.

^[23] ^[24] ELSCA asserts that it was manifest error for the Court to limit its abstention analysis solely to the doctrine set forth in *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941).¹ Yet, even if the Court had considered the other myriad abstention doctrines, the result would have been the same. For example, had the Court considered *Burford v. Sun Oil Company*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), it would have found abstention to be inappropriate in the case at bar. *Burford* abstention is appropriate where a case involves an unclear state law question of vital local concern, which must be addressed through a centralized unified state administrative system. *Id.* at 332, 63 S.Ct. 1098. It does not take a thorough recitation of the facts to realize that *Burford* is inapposite. It is simply enough to observe that, rather than involving a question of state law, the parties’ dispute involved a question of preemption under federal law, thus it fails the first part of the *Burford* test. See *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 362, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989) (finding that adjudication of plaintiff’s federal preemption claim “would not disrupt the State’s attempt to ensure uniformity in the treatment of an ‘essentially local problem,’ [citation omitted].”); *U.S. v. Commonwealth *1276 of Kentucky*, 252 F.3d 816, 827 (6th Cir.2001) (finding *Burford* abstention not warranted where case involved a question of preemption under federal law, not a question of state law).

^[25] ^[26] ^[27] Moreover, abstention under *Younger v. Harris*,

401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and its progeny would have likewise been inappropriate. Abstention under the principles of *Younger* is required upon demonstration of three factors: (1) there is an on-going state proceeding; (2) important state interests are implicated; and (3) the federal litigant is not barred from litigating federal constitutional issues in that proceeding. *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir.2004). "Direct interference" with the state court proceeding is no longer required as a condition of *Younger* abstention. *Id.* Here the first factor is satisfied since there is no dispute that the state court action was on-going when Plaintiffs filed this federal action. However, despite ELSCA's attempt to characterize the underlying issue as one affecting a state's land use decisions (an important state interest), the Court must look to the "importance of the generic proceedings to the state" rather than inquiring "into the substantiality of the State's interest in the outcome of the particular case." *NOPSI*, 491 U.S. at 365, 109 S.Ct. 2506 (emphasis in original). Upon such inquiry it becomes clear that the true issue at stake concerns regulation of the railroads, which includes regulation of railbanked rights-of-way. Given the pervasive federal regulation in this field,² this case clearly implicates important federal interests, rather than important state interests. *Cf. NOPSI*, 491 U.S. at 365, 109 S.Ct. 2506 (reiterating that regulation of utilities is "one of the most important of the functions traditionally associated with the police power of the States"). Because *Younger* abstention principles do not mandate abstention when the dispute does not implicate "important state interests" as refined by *NOPSI*, the Court did not err in declining to abstain from reaching the merits of Plaintiffs' federal preemption claim.

[28] [29] [30] Finally, even consideration of *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976), shows that abstention in this matter is not appropriate. *Colorado River*, and subsequent caselaw, emphasizes the discretionary nature of a federal court's decision to abstain from exercising validly conferred jurisdiction. *See id.* at 817, 96 S.Ct. 1236. Factors relevant to a court's decision to abstain include: (1) whether the state court or the federal court has assumed jurisdiction over the res or property; (2) which forum is more convenient to the parties; (3) whether abstention would avoid piecemeal litigation; (4) which court obtained jurisdiction first; and

(5) whether federal law or state law provides the basis for the decision on the merits. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15-16, 23, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). However, the "mere potential for conflict in the results of adjudications is not the kind of 'interference' that merits federal court abstention." *Green v. City of Tucson*, 255 F.3d 1086, 1097 (9th Cir.2001) (citing *Colorado River*, 424 U.S. at 816, 96 S.Ct. 1236) (internal quotations omitted). Important to the Supreme Court's holding in *Colorado River* were its findings of the extensive involvement *1277 of state water rights in the claims before the parallel state and federal proceedings, and the existence of federal legislation reflecting a congressional policy to avoid piecemeal litigation in adjudicating water rights. *Colorado River*, 424 U.S. at 819-20, 96 S.Ct. 1236. Similar factors are notably absent from the case at bar. It would be inappropriate for the Court to rely on *Colorado River* as supporting abstention in this case.

[31] Alternatively, ELSCA argues that the Court "overlooked the significant difference between a 'facial' and an 'as applied' challenge to legislation," (Mot. for Recons. at 5), thus the Court's Order was in manifest error. ELSCA correctly points out that the standard applied to a "facial" constitutional challenge is different from the standard used in an "as applied" constitutional challenge. (ELSCA's Mot. for Summ. J. at 14-16.) However, in granting summary judgment in favor of Plaintiffs, the Court found that the National Trails System Act, 16 U.S.C. § 1247(d), preempts the practical alternatives prong of the Sammamish Municipal Code § 21A.50.070 *each and every time* that requirement is used to prevent development of a trail on a railbanked right-of-way. In reaching this conclusion the Court appropriately focused on the standard applicable to a facial challenge. The fact that there may be only one railbanked right-of-way in the City of Sammamish does not convert Plaintiffs' facial challenge into an "as applied" challenge. The Court applied the correct legal standards in its preemption analysis.

In sum, the Court finds no error in its January 5, 2005 Order. For the aforementioned reasons, ELSCA's Motion for Reconsideration is DENIED.

Footnotes

¹ The right of way, which varies from 50 to 200 feet wide, traverses parts of Redmond, Sammamish and Issaquah. Approximately 7.2 miles of the corridor lie within the City of Sammamish.

² The City of Sammamish recodified its ordinances on October 7, 2003. Former Interim Sammamish Development Code ("ISDC") §

21A.24.070 is now recodified, without change, at Sammamish Municipal Code ("SMC") § 21A.50.070. The Court will refer to the recodified Public Agency and Utility Exception Ordinance, SMC § 21A.50.070, in the Analysis and Conclusion sections of this Order.

3 "Railbanking" describes the process of preserving inactive railroad rights-of-way as recreational trails.

4 A NITU authorizes potential interim use of a railbed for trail purposes subject to a trail manager's assuming financial responsibility for the property and subject to possible future reconstruction and reactivation of the right-of-way for rail service under 49 C.F.R. § 1152.29.

5 The hearing examiner agreed with ELSCA that its plan (named the Rundle-Haro Plan), which detoured for various segments away from the wetland areas on the railbanked right-of-way, was a practical alternative with fewer impacts.

6 Although the City of Sammamish did not specifically join in ELSCA's Motion for Summary Judgment, both parties presumably desire the same outcome—an entry of summary judgment against Plaintiffs. Therefore, for ease of reference, the Court will refer to the various arguments as arising collectively from "Defendants" rather than identify which party set forth which argument.

7 This matter does not, as Defendants suggest, arise out of King County's property interest in the railbanked right-of-way. Rather, the cause of action is federal preemption, and thus arises "under the Constitution, laws, or treaties of the United States." *See* 28 U.S.C. § 1331.

8 Perhaps that is why Defendants have abandoned the argument in their Reply and argue instead that the Court should abstain under the *Colorado River* Doctrine. Defendants raise the specter of *Colorado River* abstention for the first time in their reply brief. As such, the matter is not appropriately before the Court, and Plaintiffs' Surreply Motion to Strike (Dkt. No. 53) is therefore GRANTED.

9 The Supremacy Clause provides: "[t]his Constitution and the laws of the United States which shall be made in pursuance thereof; in all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." U.S. Const. art. VI, cl. 2.

10 Defendants attempt to discredit Plaintiffs' preemption argument by pointing out several instances throughout the PAUE permitting process during which King County committed to complying with all state and local permitting requirements is unavailing. Implicit in these statements is a commitment to comply with all environmental regulations as they might be applied to the railbanked land. Indeed this is still a commitment Plaintiffs appear willing to make. (*See* Pls.' Mot. at 2:10-2:12, 16 n. 4.) By agreeing to comply with all permitting requirements as they relate to development of the trail on the railbanked land, Plaintiffs have not ceded their right to argue federal preemption of parts of these regulations that might require the County to locate the proposed trail elsewhere.

11 This decision squares with the reasoning of our sister court in Idaho, who addressed a strikingly similar set of facts. In *Blendu v. Friends of the Weiser River Trail, Inc.*, Civ. No. 98-0311-S-BLW, 1999 WL 33944266 (D. Idaho June 10, 1999) (Ex. 10 to Roberts Decl.) opponents of a proposed trail sought to enjoin trail use of a railbanked right-of-way on grounds that recreational use of the corridor was inconsistent with a county zoning ordinance. The district court held, "[t]he STB has...clearly indicated its intention to cede back to states and local governments the right to impose zoning and safety regulations on the trails *so long as those regulations do not interfere with* (1) the railroad's right to convert the corridor back into a railway at some point in the future and (2) *the trail managers's right and ability to maintain the right-of-way as a recreational trail in the interim*" (emphasis added). *Id.* at 11.

1 This argument is based on the Ninth Circuit's reference in *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir.2004), to the Supreme Court's observation that "the various types of abstention are not rigid pigeon-holes into which Federal Courts must try to fit cases [...]." *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 359, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989) (internal citation omitted). (*See* Mot. for Recons. at 3.)

2 *See, e.g., Chicago v. N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318, 101 S.Ct. 1124, 67 L.Ed.2d 258 (1981).

