



## King County

### Parks and Recreation Division

Department of Natural Resources and Parks  
 King Street Center  
 201 South Jackson Street, Suite 700  
 Seattle, WA 98104-3855  
 206-457-4527

November 20, 2014

Fereshteh Dehkordi  
 Project Manager  
 Resource Product Line  
 Department of Permitting and Environmental Review

Dear Ms. Dehkordi:

In your October 29, 2014 letter to Gina Auld (see Attachment 1), you asked for "a letter addressing all disputed property ownership issues" including "sufficient documents regarding ownership of the trail corridor." In addition, you asked Ms. Auld to identify "where special use permits have been granted for alterations within the rail right of way, and where unpermitted encroachments exists in the trail right of way."

At the time of submission of the SSDP, we provided a notebook that contained, among other things, all of the Special Use Permits that we are aware of on this segment of the trail. In terms of unpermitted encroachments, we have identified and attached for your review a table of the encroachments within the clearing and grubbing limits that will be disturbed by construction (see Attachment 2).<sup>1</sup> We intend to notify all of the adjacent property owners with these encroachments in order to give them an opportunity to remove them prior to construction. It is possible that we will identify additional encroachments prior to construction.

With regard to your first request, we are unclear what "disputed property ownership issues" you are referring to. King County is the record owner of the ELST corridor from milepost 7.3 near Redmond to Milepost 19.75 near Issaquah. King County purchased this corridor from the Land Conservancy of Seattle and King County ("TLC") for \$2,988,500. On September 18, 1998, the corridor was conveyed by TLC<sup>1</sup> to King County by way of a quit claim deed.<sup>2</sup> These documents are recorded with the King County Assessor's office and are a matter of public record. For your convenience, I have attached a copy of the document conveying title to King County. See *Exhibit 1, Quitclaim Deed*. King County acquired all of BNSF's property interests in the right of way.

<sup>1</sup> TLC acquired the right-of-way from Burlington Northern and Sante Fe Railway Company ("BNSF") in April of 1997 with the intent of selling the property to King County. See *Exhibit 2, Quitclaim Deed*.

<sup>2</sup> A quit claim deed conveys all legal and equitable rights of the grantor in the described property. RCW 69.04.050. This quit claim deed was a valid instrument of conveyance as it was "in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized ... to take acknowledgments of deeds." RCW 64.04.020.

To my knowledge, there are no pending quiet title actions or other litigation encumbering this property within the City of Sammamish.

Not only is King County the owner of record but the trail corridor is preserved for interim trail use and future rail use by operation of federal law. The ELST corridor has been "railbanked" under the National Trails System Act, 16 U.S.C. Section 1247(d). This statute was adopted in 1983 in response to the drastic shrinking of the national rail transportation system. The railbanking statute authorizes state and local governments to acquire railroad corridors proposed for abandonment for use as recreational trails, subject to future reactivation for railroad use should the need arise.

As a railway corridor, this right of way is regulated and subject to the authority of the Surface Transportation Board ("STB"), a successor agency to the Interstate Commerce Commission ("ICC"). The STB has exclusive and plenary authority over freight rail operations in interstate commerce and STB approval is necessary for any abandonment or railbanking of a rail line. See 49 U.S.C. Section 10903-04; *Philips Company v. Denver & Rio Grande Western Railroad*, 97 F.3d 1375 (10<sup>th</sup> Cir. 1996). When a rail line is "railbanked," the STB retains jurisdiction over the corridor and it remains part of the national rail transportation system. *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004); *Friends of East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 1260, 1273-74 (W.D. Wash. 2005).

Through railbanking, the Trails Act operates to preempt operation of state property law that might otherwise "provide that the property reverts to the abutting landowner upon abandonment of rail operations." *Preseault v. I.C.C.*, 494 U.S. 1, 110 S.Ct. 914, 920, 108 L.Ed.2d 1 (1990). Once a corridor is railbanked, the Trails Act allows local governments such as King County to assume management and establish interim trail use. 16 U.S.C. Section 1247(d). The statute provides: "[i]f a state, political subdivision, or qualified private organization is prepared to assume full responsibility for the management of such rights-of-way....[then] the Commission....shall not permit abandonment or discontinuance inconsistent or disruptive of such [trail] use." 16 U.S.C. 1247(d). The statute specifically provides that interim trail use "shall not be treated for purposes of any law or rule of law, as abandonment of the use of the [railbanked] rights-of-way for railroad purposes." *Id.*

As you know, the BNSF operated a railway in the ELST right of way until 1996. In 1997, TLC acquired the corridor and a Notice of Interim Trail Use ("NITU") was issued by the STB on September 18, 1998. See Exhibit 3, *Surface Transportation Board, Decision and Notice of Interim Trail use or Abandonment, September 18, 1998*. The STB ruled that TLC and King County's request for interim trail use "complied with the requirements for interim trail use/railbanking" and that "use of the right of way for trail purposes is subject to restoration for railroad purposes." This federal order preempts state law on the question of abandonment because "the ICC's determination of abandonment is plenary, pervasive, and exclusive of state law." *Grantwood Vill. V. Missouri Pac. R. Co.*, 95 F. 3d 654 (8<sup>th</sup> Cir. 1996).

Because of federal preemption, adjacent property owners cannot rely on the state law mechanism of quiet title and declaratory judgment to limit the County's rights to build a recreational trail. Local jurisdictions cannot take actions that would prevent or frustrate the federal order providing for interim trail use. "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." *Friends of the E. Lake Sammamish Trail v. City of*

*Sammamish*, 361 F. Supp. 2d 1260, 1273 (W.D. Wash. 2005). Any state or local governmental action or decision that conflicts with federal law is “without effect.” *Cipollone v. Liggett Group, Inc.* 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992).

This principle was illustrated in the 2005 federal court decision involving the ELST, *Friends of the East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. at 1273-1276 (attached as *Exhibit 4*). In *Friends*, as part of development of the interim trail, King County applied for a Public Agency Utility Exception (“PAUE”) pursuant to the City of Sammamish code. At that time, the City of Sammamish code prohibited alteration of sensitive areas for public agency utility projects unless it was shown that there was no practical alternative available. *Id.* at 1266. The City’s Hearing Examiner denied the PAUE, based on his determination that “practical alternatives” existed and those were outside of the railroad corridor. The plaintiffs, a local community group, appealed the decision to federal court arguing that the federal railbanking statute and the STB NITU order authorized development of the trail and thereby preempted application of the “practical alternative” prong of the PAUE ordinance. *Id.* at 1267. In effect, the plaintiffs argued that the federal NITU order mandated a recreational trail within the railway corridor, and the City of Sammamish’s decision precluded this result.

The court agreed, recognizing that the authority of local jurisdictions over railbanked corridors is limited since they “remain part of the national rail transportation system subject to the jurisdiction of the STB.” Moreover, the U.S. Congress “has determined that every inactive railroad right of way is appropriate for trail use.” *Id.* at 1274. The court ruled that the United State Constitution, the railbanking statute, and the NITU preempted application of the City of Sammamish’s Municipal Code PAUE “practical alternatives” prong to this railbanked corridor. *Id.* at 1275. While State and local governments have the right “to impose appropriate safety, land use, and zoning regulations on recreational trails,” these regulations apply only to the extent that they do not frustrate development of a trail on the railbanked right of way. *Id.* at 1274. The court explained:

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. 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. (*Citation omitted*) 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.

*Id.* at 1274.

King County is aware that there are adjacent property owners who are making assertions to city officials, the press, and other citizens challenging the sufficiency and scope of the County’s ownership rights in the corridor. One of the assertions is that the County only possesses an easement and not fee title to the corridor. While the County disagrees with many of these

assertions, the fact remains that whether the County owns a fee interest or an easement does not impact the County's right to build a recreational trail. The County owns whatever property rights the railroad had at the time of conveyance, and the corridor – as it existed at the time of the NITU was issued in 1998 – is preserved for future railroad use and interim trail use by operation of federal law.

To my knowledge, the only pending ELST litigation involving property owners adjacent to the trail in the City of Sammamish are the cases now being decided in the Federal Court of Claims. The Federal Court of Claims is a court of limited jurisdiction that decides questions of compensation against the federal government. King County is not a party to this litigation and the Federal Court of Claims has no jurisdiction or authority related to this railbanked corridor and its rulings do not have any effect whatsoever on the County's rights within the corridor. The issues before that court are whether the federal NITU order resulted in a "taking" of property without compensation, and if yes, how much compensation is due. The Court of Claims has ruled that the NITU order has resulted in a "taking" and the plaintiffs are entitled to compensation. This compensation will likely be substantial.<sup>3</sup> Since most of these property owners never paid for any land within the corridor, this settlement is a windfall. It goes without saying that property owners who are being compensated for a "taking" – arguing that the federal action resulted in a loss of property – cannot be allowed to prevail in arguments to the city that would largely eliminate the taking for which they are being compensated. In other words, the Court of Claims plaintiffs cannot have it both ways: assert on the one hand that they are entitled to be compensated for this "taking" of property, and on the other hand, assert that King County has limited rights within the corridor.

Thank you for your timely review and consideration of this information and the entire SSDP application. At this time we are requesting that DPER's report and recommendations be submitted to the City of Sammamish in January of 2015 in order to meet our construction schedule for the South Sammamish A segment of the trail. Please do not hesitate to contact me if you have any questions or if you need additional information.

Sincerely,



Monica Leers  
Capital Planning and Land Management Section Manager

cc: Kevin Brown, Director, Parks and Recreation Division, Department of Natural Resources and Parks (DNRP)  
Frank Overton, Capital Projects Managing Supervisor, Parks and Recreation Division, DNRP  
Gina Auld, Capital Projects Manager, Parks and Recreation Division, DNRP

<sup>3</sup> In a similar action involving the Eastside Rail Corridor, the federal government was ordered to pay approximately \$140 million dollars to compensate property owners.