

**ATTACHMENT 1
ANSWERS TO COUNCILMEMBER QUESTIONS
November 13, 2012**

INDEX

EXECUTIVE SESSION: Please note that the materials provided on pages 2 through 26 are confidential attorney-client communications and attorney work product documents and will be discussed in Executive Session.

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These confidential materials have been removed from this document.

PUBLIC SESSION: The answers provided from page 27 through the end of this document consolidate information that was provided in prior briefing packets.

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6. Pecking Order of Property Rights

What is the pecking order of rights in the corridor, for example whose rights are senior between King County and Puget Sound Energy? *Question 10, p. 25.11 | QA Log 1, Tab 3 (Includes an attachment: Attachment 5 | Tab 3 | p. 25.11)*

If the Port's rights are superior to other's rights, and we are "stepping into the shoes of the Port," how come the County's rights aren't superior to others? *Question 8-10/22, p. 11 | QA Log 2, Tab 5*

Under the current proposal the County would acquire the fee interest in the railbanked portion of the Corridor outside of Redmond, Kirkland and the one mile segment of the Corridor owned in fee by Sound Transit in Bellevue. As the fee owner, the County will have the right to make any use of the Corridor that is consistent with its railbanked status and that does not interfere with previously granted rights in the Corridor such as the PSE Easement and the Sound Transit Easement. The County will also be able to convey additional interests in the Corridor, also subject to preexisting rights.

The County would step into the shoes of the Port if it acquires the Corridor. If it does so, the County would become the "fee owner," which is conceptually the "superior" or broadest form of ownership in property. It gives the owner the broadest scope of potential uses, rather than a narrower easement right to make only specified uses of a property. However, the County would take that ownership subject to existing easement interests, such as those in favor of PSE and Sound Transit. Thus, while we would have "superior" rights overall as the fee owner in the sense that the County's rights would be broader than those possessed by any other entity, those rights would still be subordinate to existing easement interests. This is exactly the position that the Port currently holds through its ownership of the fee interest.

The underlying policy question is whether the remaining ownership rights that would be purchased for an additional \$13.9 million are sufficiently advantageous to justify giving up the "first in time" rights the County holds through its multipurpose easement.

The most significant preexisting rights are the PSE Easement (along with the currently proposed Reciprocal Coordination and Cooperation Covenant Agreement between the County and PSE) and the Sound Transit Easement. Those documents comprehensively describe how the County and PSE in the first instance, and the County and Sound Transit in the second instance, will coordinate their respective planning and development activities.

Full overviews of the provisions of these agreements that govern the relationships between these parties follow on the next several pages.

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OVERVIEW OF EXISTING PSE EASEMENT & PROPOSED RCCCA

Property Subject to Easement and RCCCA:

Applies to the portions of the Corridor that are being proposed to be purchased in fee by the County from the Port. County will acquire the Corridor subject to the PSE Easement and will immediately enter into the Reciprocal Coordination and Cooperation Covenant Agreement (“RCCCA”) with PSE. Thus, the PSE Easement and the RCCCA will together define the property interests as between the County and PSE.

PSE Rights:

- PSE obtained a utility easement from the Port in December 2009. The PSE Easement covers the entire Corridor in King County and Snohomish County except within the City of Redmond.
- PSE has a perpetual subsurface, surface and aerial easement with rights to construct, operate maintain, repair and replace gas and electrical distribution and transmission utilities throughout the full length and width of the Corridor.
- PSE has agreed to enter into a Reciprocal Coordination and Cooperation Covenant Agreement (“RCCCA”) with the County. The purpose of the RCCCA is to “further clarify and coordinate PSE’s and the County’s planning and development activities” within the Corridor.

Protecting Shared Use of the Corridor by Managing Interference from New Facilities:

- Under the PSE Easement the County and any third parties granted rights after the PSE Easement (“Third Parties”) must submit proposals for new facilities to PSE for review and approval. PSE must submit proposals for new facilities to the County for review and approval.
- Under the PSE Easement, PSE or the County may disapprove a proposed new facility if it would unreasonably interfere with a then existing facility owned by the objecting party. Under the RCCCA, PSE and the County may also object to a new facility proposed by the other party that would interfere with a Planned Facility (at 30% design level).
- Under the PSE Easement, if the parties are unable to agree as to whether a proposed new facility creates an unreasonable interference then the alternative dispute resolution process is followed. This includes management escalation, mediation and ultimately binding arbitration.

- Further, under the RCCCA the County has the right to relocate PSE gas and electric facilities at its own cost in order to accommodate County trail and wastewater facilities. Similarly, PSE has the right to relocate County trail and wastewater facilities in order to accommodate PSE gas and electric facilities.

Coordination between Trail Facilities and PSE Facilities in the RCCCA:

- Planning process: “The Parties encourage one another to informally consult and cooperate with one another in developing plans for facilities as early and often as reasonably possible in order to minimize cost and to most efficient plan for shared use” of the Corridor.
- The County may at any time establish a Planned Trail Area up to 30 feet wide and in some instances wider to accommodate ancillary facilities. The County may, after carrying out a master planning process, establish a Trail Alignment Area that is more detailed and definite than a Planned Trail Area.
- If PSE proposes to build a new facility in a Planned Trail Area the County may object on the basis that it would unreasonably interfere with trail use and propose solutions to the interference. PSE may then elect whether to proceed with its new facility or to follow the County’s recommendation. However, if the County has objected and in the future it turns out that the PSE facility does unreasonably interfere with trail use, then PSE is obligated to move its facility at its own cost
- If PSE proposes to build a new facility in a Trail Alignment Area, then the County may object on the basis that it would unreasonably interfere with trail use. In this instance, PSE may not proceed unless the County agrees or PSE prevails through the alternative dispute resolution process.

Coordination between Wastewater Facilities and PSE Facilities in RCCCA:

- All existing wastewater facilities are protected against PSE interference based on the terms of the easements the County originally obtained for those wastewater facilities. The Parties agree that such easements are enforceable even if those rights would have been lost through merger. In addition, existing wastewater facilities are protected through the interference provisions of the PSE Easement and RCCA that protect existing facilities.
- The County also has a heightened ability to object to proposals by PSE to install new facilities in a twenty-foot wide Utility Area centered on existing facilities. PSE is required to make a good faith effort to avoid interfering with the County’s ability to operate, replace and expand existing facilities in the Utility Area.
- If PSE proposes to build a new facility in the Utility Area the County may object on the basis that it would unreasonably interfere with its ability to operate, replace or expand its existing wastewater facilities and suggest reasonable solutions. PSE

may then elect whether to proceed with its new facility or to follow the County’s recommendation. However, if the County has objected and in the future it turns out that the PSE facility does unreasonably interfere with wastewater utilities, then PSE is obligated to move its facility at its own cost.

- The County may also build new wastewater facilities anywhere in the Corridor subject to the interference process whereby PSE can object if such facilities would interfere with PSE’s existing facilities or Planned Facilities. The County has the reciprocal right to object to a new PSE facility that would interfere with existing wastewater facilities or future wastewater facilities that qualify as Planned Facilities.

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OVERVIEW OF SOUND TRANSIT EASEMENT

To understand the protection of dual use in the Eastside Rail Corridor, it requires knowledge of a separate agreement between the Port of Seattle [POS] and Sound Transit [ST] that is effectuated upon closing of the Purchase and Sale Agreement between the Port of Seattle and King County. The transportation element of dual use is provided for through that POS/ST Easement.

Property Subject to Easement:

Applies to the portions of the Corridor that are being proposed to be purchased in fee by the County from the Port. The County would acquire the Corridor subject to the Sound Transit Easement.

Sound Transit Rights:

- Sound Transit has a perpetual easement in, on, under, over, along, across and through the Property for high capacity transportation purposes, including the installation, construction, use, operation, inspection, maintenance, repair, replacement, enhancement, expansion, improvement or removal of one or more High Capacity Transit Facilities.
- Sound Transit’s easement areas for these purposes may be of varying widths; provided, however, that except where limited by topographical or physical features of the Property, the Parties intend that each Easement Area be not less than a minimum width of forty (40) feet and may exceed that width as may be necessary to accommodate stations, terminals, parking and other ancillary facilities.

Sound Transit Identification of Easement Area, Development and Operation:

- Sound Transit owns a “floating” easement. Sound Transit can perfect the location of easement areas by following a prescribed process.

- “Pre-Development Period.” Prior to initiating a development process that would lead to identifying the location of easement areas, Sound Transit has the right to enter the Property to study or perform tests in order to evaluate where to develop its facilities. During this period Sound Transit has the right to comment on the proposed installation of new facilities by the County or third parties.
- “Planned Easement Area Period.” Sound Transit may initiate the development process by issuing a Notice of Planned Easement Area identifying areas that it is actively evaluating for High Capacity Transit Facilities. During this period Sound Transit has a heightened ability to review, approve or disapprove proposed new facilities by the county or third parties within a Planned Easement Area.
- “Selected Alignment Area Period.” Following its evaluation Sound Transit may further specify and more definitively describe its intended area for use by issuing a Notice of Selected Alignment Area that identifies its intended alignment for its facilities. Sound Transit rights in a Selected Alignment Area are further strengthened so that no new facilities may be installed in such an area by the County or third parties unless authorized by Sound Transit.
- “Development and Operation Period.” When Sound Transit is ready to legally describe its easement areas and commence development it may provide a Notice of Intent to Develop. This triggers a requirement for Sound Transit and the County “to cooperatively develop a plan for Sound Transit’s use” of the easement areas. This will cover coordination between Sound Transit, the County and third parties and any necessary trail relocation. After completion of this “Development Plan” Sound Transit may record the legal description of its easement areas, commence development, and then operate its system. Sound Transit at that point maintains very strong control over the easement areas.

Dual High Capacity Transportation and Trail Uses:

- The Sound Transit Easement includes additional provisions in Exhibit C that govern dual High Capacity Transportation and Trail Use that come into effect only when the County acquires the fee interest in the Corridor from the Port.
- The Parties “encourage one another to informally consult and cooperate with one another in developing plans for Transportation Use and Trail facilities as early and often as reasonably possible in order to achieve the dual Transportation use and Trail uses that are intended under the Easement Agreement at a reasonable cost.”
- The County may establish a Trail Area of sufficient size to meet the County’s Regional Trail Guidelines in any location on the Property by following a prescribed process. The Trail Area may be thirty (30) feet wide and in some instances wider to accommodate ancillary support facilities.

- The County shall propose the Trail Area to Sound Transit, which will have sixty days to respond.
- During the Pre-Development Period Sound Transit may comment on the proposed Trail Area by suggesting “reasonable changes to the County’s proposal that would result in the future ability of Sound Transit and King County to carry out the Transportation and Trail uses in a manner that would reduce the need for Sound Transit to incur costs to relocate a Trail or Trail Area.”
- “King County will reasonably and in good faith consider implementing any such reasonable suggestions.”
- At any time after Sound Transit issues a Notice of Planned Easement Area, a proposed Trail Area is subject to review, approval or disapproval by Sound Transit on the same grounds as any other proposed new facility that is within a Sound Transit designated Planned Easement Area, Selected Alignment Area, or actual Easement Area.

Trail Relocation for Sound Transit High Capacity Transportation Facilities:

- If the County has established a Trail Area or developed an actual Trail and Sound Transit elects to develop its High Capacity Transit Facility in an area that would unreasonably interfere with trail use, then Sound Transit may relocate the Trail Area or Trail, as the case may be, at its expense.
- The relocated Trail Area or Trail is required to be consistent with King County’s Regional Trail Guidelines, the development standards and conditions of other regional trails within King County, and the Railbanking Obligations, and may, to the extent consistent with the Railbanking Obligations be outside of the Property.
- In rare circumstances if it is not reasonably practicable to relocate a Trail Area or Trail in a manner that matches the standards for a Regional Trail, then Sound Transit may provide a smaller replacement Trail Area or Trail, as the case may be, provided that it allows for a minimum ten feet of paved surface with at least one-foot wide shoulders on either side.

7. Dual Use

How is dual use covered/addressed/documentated in writing in the agreements? How do the agreements establish the dominant position for dual use? *Question 2, p. 25.3 | QA Log 1, Tab 3 (Includes an attachment: Attachment 1 | Tab 3 | p. 25.15)*

How does the proposal package ensure that Sound Transit isn't spending more in the future to move trails in order to effectuate passenger rail? *Question 6, p. 25.7 | QA Log 1, Tab 3*

What can King County do to work with Sound Transit to develop a trail in such a way that Sound Transit doesn't have to move the trail and drive up its cost of business? *Question 15, p. 25.13 | QA Log 1, Tab 3*

The originally approved transaction between BNSF, the Port and the County was structured to allow for dual use. This was primarily accomplished through the Interlocal Agreement between the Port and the County that was executed in May 2008, and the Public Multipurpose Easement that the Port granted to the County in December 2009.

Under the Interlocal Agreement the parties agreed that their shared intent was to use the Corridor for trail and other public transportation use, and further that the intended trail use would not prevent such transportation use, but rather, would be designed to accommodate such use. Further, the parties agreed to cooperate in good faith to carry out a formal, multi-agency process to plan and recommend appropriate uses of the Corridor.

Under the MPE, the parties agreed that following the regional process, the Port and the County would agree on the location of the trail area that the County could use to develop and operate a trail. The MPE also made clear that the Port or a third party authorized by the Port would be able to carry out a transportation use, and that such transportation use could require a trail to be relocated at the cost of the County to accommodate the transportation use.

Under the current proposal, the terms of the Interlocal Agreement and the MPE would no longer apply. Rather, the concept of dual use would be carried out through a new set of agreements. The agreements deal with dual use in different ways.

The proposed Purchase and Sale Agreement between the Port and the County acknowledges the dual use status of the Corridor. It recites that the Corridor is railbanked "to protect this rail transportation corridor and preserve it for future reactivation of rail service, and to allow interim regional recreational trail and other public uses and transportation uses while railbanked."

While the PSE Easement and the proposed Reciprocal Coordination and Cooperation Covenant Agreement (RCCCA) between the County and PSE do not directly address dual use, these instruments explicitly acknowledge and are subject to the obligations imposed by railbanking. Further, the agreements make clear that the Corridor may be put to any use that does not interfere with PSE's rights, which other uses would include public transportation.

In the proposed property agreement with Redmond, the City covenants to build a trail in the Corridor subject to Sound Transit Easements. Further, the City of Redmond has granted Sound Transit a High Capacity Transit Easement and a Light Rail Easement over the Corridor.

In Kirkland, the City purchased its segment of the Corridor already subject to the Sound Transit High Capacity Transportation Easement Agreement that the Port granted to Sound Transit in April 2012.

In relationship to the County, the concept of dual use is most directly implemented through the terms of the Sound Transit High Capacity Transportation Easement Agreement with the Port of Seattle. That easement comprehensively describes how Sound Transit and the County will coordinate the planning and development of light rail and trail uses. Under the easement Sound Transit has the authority to determine where to build and operate a High Capacity Transit system and to relocate other facilities, including a County trail, to accommodate its use.

Sound Transit has an easement for passenger rail. That easement gives Sound Transit priority if and when they choose to exercise their right to use the corridor, although depending on when and where they exercise that right it could cause them to have to move and rebuild a trail. The issue to discuss is how to balance known cost increases of building a trail in the margins of the corridor against future uncertainties of whether and when Sound Transit will want to use the corridor beyond their fee holdings, and if so, which portions of the corridor Sound Transit may want to use in the future.

8. Transit Uses

What types of transit could Sound Transit operate on its high capacity transit easement? What is the difference between the high capacity transit easement and the light rail easement the City of Redmond granted Sound Transit in Downtown Redmond? *Question 1-10/29, p. 14 | QA Log 2, Tab 5*

Does King County have the right to operate bus rapid transit on the Corridor? *Question 2-10/29, p. 15 | QA Log 2, Tab 5*

Do the easements the City of Redmond granted to Sound Transit address the possibility of an east/west connection? *Question 1-10/29, p. 15 | QA Log 2, Tab 5*

Sound Transit Rights: Sound Transit has secured two types of easements, as well as 1.1 mile of fee simple ownership. The types of transit allowed by these different types of ownership interests are described below.

- **ST High Capacity Transit Easements.** The high capacity transit easements the Port of Seattle and the City of Redmond granted to Sound Transit cover nearly all of the Southern Portion of the Corridor (south of Woodinville). These easements permit any type of public transportation that operates principally on exclusive rights-of-way – meaning that a high capacity transit easement could support a busway, train, or other type of high capacity transport.
- **ST Fee Simple Ownership.** Sound Transit owns 1.1 miles in Bellevue in fee. Under the proposed legislative package, the County would retain its MPE in this area. Sound Transit could operate any type of transit in this area, within the context of the County's MPE and the PSE utility easement.
- **ST Light Rail Easement.** In the southernmost 0.9 mile of the Redmond Spur in Downtown Redmond, the City of Redmond granted Sound Transit a light rail easement. This easement permits light rail use ONLY. This easement is based around Sound Transit's Preferred Alternative for East Link Segment E Downtown Redmond Extension, with a specific design and alignment to be determined after Sound Transit receives funding for this segment of East Link. Dual use planning for this segment of the Corridor was coordinated with Sound Transit's East Link plan, and the easement is structured to effectuate that plan.

County Transit Rights: King County's existing multipurpose easement (MPE) would not permit the County to operate transit. The MPE allows the County to carry out trail and railbanking uses only.

If King County were to purchase fee simple interest in the Corridor, it would have the right to operate bus rapid transit along the Corridor in the areas it purchased, subject to its railbanking responsibilities, the PSE utility easement, and the Sound Transit

easement. Because the County would not own fee simple in the 1.1-mile Sound Transit area, in Kirkland, or in Redmond, however, it would not be able to operate transit in those areas unless it secured separate agreements with the property owners.

Redmond East/West Connections: The easements the City of Redmond granted to Sound Transit focus specifically on transit to be developed along the Corridor (north/south). They do not specifically address east/west transit crossings. However, these crossings would not be prohibited by the easements should Sound Transit develop east/west services in the area of the Corridor.

9. Crossings

What does the County do with crossings within cities? Who has preeminent authority in this pecking order of rights and through local planning/permitting processes? *Question 1, p 25.1 | QA Log 1, Tab 3*

Short answer: a city may not use its local planning/permitting process to prohibit trail use of the Corridor. However, a city that desires to establish a new crossing over the Corridor likely may do so, and may even be able to condemn a crossing over the Corridor, but only to the extent the crossing does not conflict with (i.e. is not incompatible with, or may be made compatible with) existing public uses of the Corridor, including trail, light rail or other public transportation, utilities, etc.

Street crossings within cities may be divided into three categories: (A) Those that pre-date the railroad line; (B) those that post-date the railroad line, but pre-date the County's acquisition of the Corridor from the Port; and (C) new crossings proposed after the County acquires the Corridor from the Port.

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Detailed Analysis:

Category (A) Crossings in category (A) are “senior” to all other interests in the corridor, including the railroad; as such the railroad (and therefore the County's interest in the Corridor) is of lesser priority. The effect is that the County would acquire its fee interest subject to any limitations associated with the City's ownership of the street crossing and so will likely be limited in its ability to reconfigure the crossing without the city's permission.

For example, if the city had an 80' wide road within a 100' strip of land, and wished to widen its crossing to a 95' – or even 100' – wide road, the County likely could not prohibit the city from doing so. However, the city could not prohibit the County from establishing a trail crossing for the Corridor, consistent with the city's code and other recognized trail and traffic standards and guidelines.

Category (B) Crossings in category (B) would have been established by easement or other interest granted by the railroad (or the Port) and therefore are “junior” to the railroad (or the Port), but would be “senior” to the County's acquisition of the Port's interest because they were created earlier in time. The effect is that the County would acquire its fee interest subject to the terms of the easement or other interest that established the crossing, and so its ability to reconfigure the crossing may be limited by such instrument.

For example, if the city's easement granted it the right to install fiber optic cables within its road right of way, the County could not prohibit the city from doing so; but the city would have to do so in a way that did not interfere with the County's uses of its fee

interest; so if the County planned to put in a large sewer interceptor within the Corridor, the city would have to route its fiber optic cables so as to avoid the interceptor alignment.

Potentially, some crossings were established by a mere permit (license) that terminated as matter of law upon BNSF's sale of the Corridor to the Port. In such a case it is possible that the street crossing is no longer authorized and the County could require the city to get a new license, or acquire a new easement on such terms and conditions as they County may require. However, if a crossing serves property that would otherwise be landlocked it is possible that a city could argue that the crossing is authorized (or should be authorized) as a prescriptive easement or an easement of necessity. See discussion of category (C), below.

Category (C) If a city wished to establish a new crossing (or re-authorize an existing one formerly authorized by a BNSF-issued license), then a city (for example, the City of Bellevue) likely could acquire a property interest in the Corridor for road crossings through an arms-length, negotiated transaction with the County (as well as the owner of any other affected property interest, such as Sound Transit, or PSE, etc.). However, for railbanking purposes, the city's crossing may not permanently sever the Corridor from the interstate rail network or otherwise prevent the reactivation of interstate freight service.

Under state law, a city (for example, Bellevue) may have the power to condemn a property interest in the Corridor for street crossings, so long as the property interest and the crossings do not interfere with the existing public uses in the Corridor, including interim trail use, light rail, and public utility purposes. The city would have to show that its use is compatible with, and does not defeat, those public uses. Whether a city's street crossing is compatible with existing public uses of the Corridor would likely require case-by-case review of the competing uses. A city might have a stronger case if it could show that property would be stranded (landlocked) without the crossing, which could persuade a court to find an easement of necessity or a prescriptive easement in favor of the city.

It is possible (though unlikely) that federal law could preempt a city's state-law condemnation powers. Under the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §10501(b)(2), certain classes of local regulation are preempted outright ("per se") while others may be preempted on a case-by-case basis ("as applied"). While we cannot say for certain, it seems likely a court would analyze the City's condemnation power "as applied," in which case the City likely could condemn its desired crossings so long as those crossings would not preclude interim trail use or the future restoration of freight service. A "per se" analysis—which seems unlikely in the condemnation context—would preempt the City from condemning any crossings.

In any event, a city may not use its local planning/permitting process to prohibit trail use of the Corridor. The Rails to Trails Act, 16 U.S.C. §1247(d), preempts local land use regulations to the extent that they would prohibit the interim trail use of railbanked

corridors as contemplated in that statute. See, e.g. *Friends of East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp.2d 1260, 1275 (W.D. Wash. 2005) (Rails-to-Trails Act preempted portions of Sammamish Municipal Code).

10. Transit and Trail Coordination in Pinch Point Areas

How would trail and transit use be addressed in Corridor pinch points? What is the cost of addressing pinch points? *Question 5-10/29, p. 16 | QA Log 2, Tab 5*

Where is the corridor physically cut? *Question 13, p. 25.12 | QA Log 1, Tab 3*

The current and proposed agreements coordinate property interests on the Eastside Rail Corridor and would set the size and location for both the Trail Area and the Transportation Area.

General Circumstances. The Corridor is generally 100 feet wide. In areas where the Corridor is 100 feet wide and flat and there are no special circumstances, the areas would be sized as follows:

- The Trail Area would be approximately 30 feet wide, and
- The Transportation Area would be at least 40 feet wide.

The Trail Area can be located on the existing rail bed, if desired, although the specific location will depend on the planning processes included within each of the agreements.

Special Circumstances. In some areas, the Trail Area may need to be wider because of the Corridor's topography (steep slopes or a need for abutments or pilings), to provide an entrance to the trail or access to trail-related facilities, or to provide adequate separate from transportation uses. In those cases, the agreements provide provisions within the planning processes for the Trail Area to be wider than 30 feet, assuming there is room on the Corridor in that area.

Pinch Points. In some areas, the Trail Area is narrower than 100 feet or is constrained by topography. In those pinch point areas, the Trail Area could be significantly narrower – as narrow as 10 feet wide with 1-foot paved shoulders or potentially even as narrow as a footpath (the smallest trail width allowed by railbanking) – depending on the agreement in force in that area.

Relocation off the Corridor. In severely constrained pinch point areas, if there is not enough room on the Corridor for even a narrow Trail Area along with a Transportation Area, the Trail Area can be relocated off the Corridor. In those cases, the Transportation provider would pay for the relocation of an existing trail.

Areas where the Corridor is physically cut. The corridor is physically cut at the former Wilburton Tunnel over I-405 (approximately Milepost 11), which is just north of the I-90 crossing. The right of way still exists, but there is no physical bridge or connection currently over I-405, and between approximately milepost 10.6 and Milepost 11.25 the track has been removed. In 2006, King County, WSDOT and BNSF signed a

letter of understanding noting various commitments related to the removal of the Wilburton Tunnel. In addition the track is already physically removed within the City's of Redmond's ownership, and may possibly be removed in the near term within Kirkland's ownership.

11. Encroachments

What is the impact of encroachments, on both fee lands and easement lands and how does the County protect against them? *Question 4, p. 25.5 | QA Log 1, Tab 3*

Short answer: In 2005 - 2007, the County made initial assessments of possible encroachments along the Corridor as part of its due diligence and title work. Detailed survey work will be needed to precisely identify (and determine the extent of) specific encroachments. The Parks and Recreation Division regularly deals with encroachments on various trails and parks, and resolves nearly all of them without resort to formal enforcement.

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Detailed Analysis:

(A) Status of Encroachments and Related Work to Date To properly evaluate encroachments it is necessary to have detailed, up-to-date survey work. Such work remains to be done on the Corridor, so at this juncture it is not possible to assess encroachments in great detail. A more comprehensive review of encroachments and adjacent uses is a top priority for DNRP's 2013 work program for the Corridor.

Some additional preliminary information has been gathered from KC staff inspection. This data is visual only, and has not been surveyed or verified. This information needs to be prioritized by a team from FMD and DNRP, based on potential impact to KC use of the corridor. A consultant for the Port of Seattle gathered other encroachment data as part of the Port's acquisition due diligence. Contingent on Council approval of funding and acquisition of the Corridor, FMD intends to hire a consultant (the same consultant the Port used) to assist KC staff to transfer, review, and assess existing documentation from the Port regarding permits, easements, and identified encroachments.

In relation to the Corridor, which was previously a federally regulated interstate freight rail line, and is now publicly owned (and also "railbanked" under federal law, 16 U.S.C. §1247(d)), most encroachments are primarily a nuisance or practical concern, rather than a legal one, because the law does not permit adverse possession of property subject to federal railroad regulation or owned by a government. Exceptions to this rule may include easements of necessity or prescriptive easements for crossings where adjoining property would otherwise be landlocked or inaccessible, but until a more detailed inventory is completed it is not possible to estimate how many such crossings may exist. See, for example, *Ao and Zhou - Petition for Declaratory Order*, STB Docket No. 35539 (Service Date June 6, 2011) (affirming King County Superior Court decision that neighboring property owner could not adversely possess portion of Corridor; remanding question whether same neighbor could establish prescriptive easement for driveway crossing).

(B) Options for Protecting Against Encroachments The Parks Division regularly monitors its parks and trails for encroachments. Most encroachments are relatively minor and involve things that are relatively simple to remove or reconfigure, such as landscaping, fencing, or vehicles (cars, boats, trailers, other equipment). In these cases Parks typically issues a letter informing a neighboring property owner of the encroachment and requesting that the encroachment be removed. In many cases, and where the encroachment does not substantially impact public use of the property in question, Parks and Real Estate Services may offer to issue the neighbor a special use permit under K.C.C. chapter 14.30, which can allow the encroaching use to continue, subject to terms and conditions specified in this permit. Parks and Real Estate Services have issued many such permits along existing trails such as the East Lake Sammamish Trail.

In cases where the neighboring property owner refuses to remove the encroachment, or an encroachment interferes with public use, or otherwise is not susceptible to a permit, the County typically has several options. It may initiate an administrative process to abate the encroachment as a civil violation of the King County Code pursuant to King County Code Title 23; it may initiate a lawsuit to enjoin the encroachment as an illegal trespass or public nuisance, seek damages, or both; or (in cases where the neighbor alleges there is no encroachment because they claim to own the property at issue) it may initiate a lawsuit to quiet title to the disputed property.

Parks does not lightly initiate enforcement proceedings and always seeks to exhaust other, more constructive remedies (such as notice, communication, negotiation, and voluntary permitting) before considering more rigorous action. In connection with recent trail improvement projects (East Lake Sammamish Trail in Redmond; Burke-Gilman Trail in Lake Forest Park) Parks was very successful in communicating with neighboring property owners and resolving encroachments that might have interfered with the planned trail improvements, without resort to litigation or code enforcement.

12. Trail Connections

How will the County make the connection from the ERC to Lake to Sound/Interurban/Cedar River Trails? *Question 3, p. 25.4 | QA Log 1, Tab 3*

Please explain how the agreements ensure good trail connections will be addressed with Kirkland and Redmond. *Question 2-10/22, p. 8 | QA Log 2, Tab 5*

In the area near Woodinville where there are a number of trails in close proximity, would it be possible to use one of those trail corridors for relocation of the trail if needed? *Question 18, p. 25.14 | QA Log 1, Tab 3*

Request for more information on whether supplemental and/or 2013 budget request includes money for signage noting County ownership and Dual Use corridor, and if not should it. *Question 7-10/22, p. 10 | QA Log 2, Tab 5*

- **South County Connections.** There are four regional trails just south and southeast of the southern end of the Proposed County ownership portion of the ERC – the existing Cedar River, Green River and Interurban Trails, and the currently under development Lake to Sound Trail. The Cedar River Trail is closest to the ERC and is about 1 mile south of Mile Marker 5 of the ERC.

Connecting missing links is a critical priority for the Parks Division. Under the Parks Division Business Plan Regional Trails and trail connections are a priority.

The Lake to Sound Trail will eventually be a 16 mile long corridor, running southwest from Renton, through Tukwila, SeaTac, Burien and Des Moines. Roughly half the corridor is already developed and the remainder has been planned and is under development in a partnership between King County and the five cities. Upon completion, the eastern third of the Lake to Sound Trail will connect the Green River, Interurban and Cedar River Trails. The remaining missing link would be a connection to the Eastside Rail Corridor.

The Parks Division will work closely with the City of Renton to ensure a route is found to connect the ERC to the four other trails. A portion of the distance may be bridged by using a local trail that runs through the City of Renton's Gene Coulon park and the City's Lake Washington Trail (on street bike lane)

The current Parks levy expires at the end of 2013. A Task Force has recently convened and is recommending a 6 year levy renewal for 2014 and beyond and is recommending money be included in the next levy package for regional trails, including making trail connections and developing major regional trail segments, including the Lake to Sound Trail and the Eastside Rail Corridor.

- **Redmond/Kirkland Connections.** The Redmond agreement contains a covenant through which Redmond would commit to develop and maintain a trail on the part of the Corridor it owns and take on the County's Interim Trail User railbanking status. The easements Redmond granted to Sound Transit specify a dual use planning process similar to the dual use planning process the County and Sound Transit will be following in the County's portions of the Corridor. Redmond has completed a master planning process for the trail in its portion of the Corridor, which includes planned connections to the County's Sammamish River Trail. This connection will ensure linkage to the County's regional trails system. Staff understands that a similar agreement is being developed with Kirkland. This agreement has not yet been finalized or transmitted.

A. Redmond Agreement: The Redmond Agreement includes affirmative covenants and other promises by the City that it will: (1) build a trail on the in-city segment of the Corridor; (2) include the trail covenant in the deed for any voluntary conveyance of the in-city segment of the Corridor; and (3) comply with all "railbanking" requirements related to the in-city segment of the Corridor and take on Interim Trail User duties for that segment under the federal Rails to Trails Act, 16 U.S.C. 1247(d). See proposed ordinance 2012-0382 at Attachment A pp.3-4 (covenants in ILA), pp.70-71 (covenants in easement), pp.137-38 (terms and conditions in assignment of trail use agreement).

Together these covenants serve to protect the County's trail-related interests by ensuring that a trail will be built, that trail-related obligations will run with the Corridor property in the city, and that railbanking will be preserved. Given that the County's existing East Lake Sammamish Trail already connects directly to its existing Sammamish River Trail via Marymoor Park, and given that the in-city segment of the Corridor crosses directly over the Sammamish River Trail at the Sammamish River (such that making a connection between those two trails should be relatively straightforward; see proposed ordinance 2012-0382 at Attachment A pp.111-12, illustrating this crossing and likely connection), the covenants in the Redmond Agreement protect the County's trail-related interests in the Corridor by ensuring that there will be a new, separate trail segment for trail users that wish to reach downtown Redmond or the Willows Road vicinity from the County trail system.

B. Kirkland Agreement: The Kirkland agreement is not yet complete, and remains in process and subject to negotiation. As a result, any trail-related covenants or other terms and conditions remain to be defined. However, Executive staff are mindful that the Kirkland segment of the mainline corridor is a key section of what could be a regional public trail "backbone" running north-south from Pierce County through King County and into Snohomish County. Executive staff intend for the final agreement to include protective covenants, terms, and conditions reflecting the relative importance of this Corridor segment and ensuring that it be integrated into a future regional trail system.

- **Woodinville Area Trail Coordination.** The Sammamish River Trail is located starts in Marymoor Park and runs northerly along the Sammamish River up to Bothell, where it connects with the Burke Gilman Trail. The Sammamish River Trail roughly parallels the spur from Redmond up to where the spur connects with the main line, at times getting fairly close and at others up to $\frac{3}{4}$ of a mile away. On average it is about $\frac{1}{2}$ mile to the east of the spur.

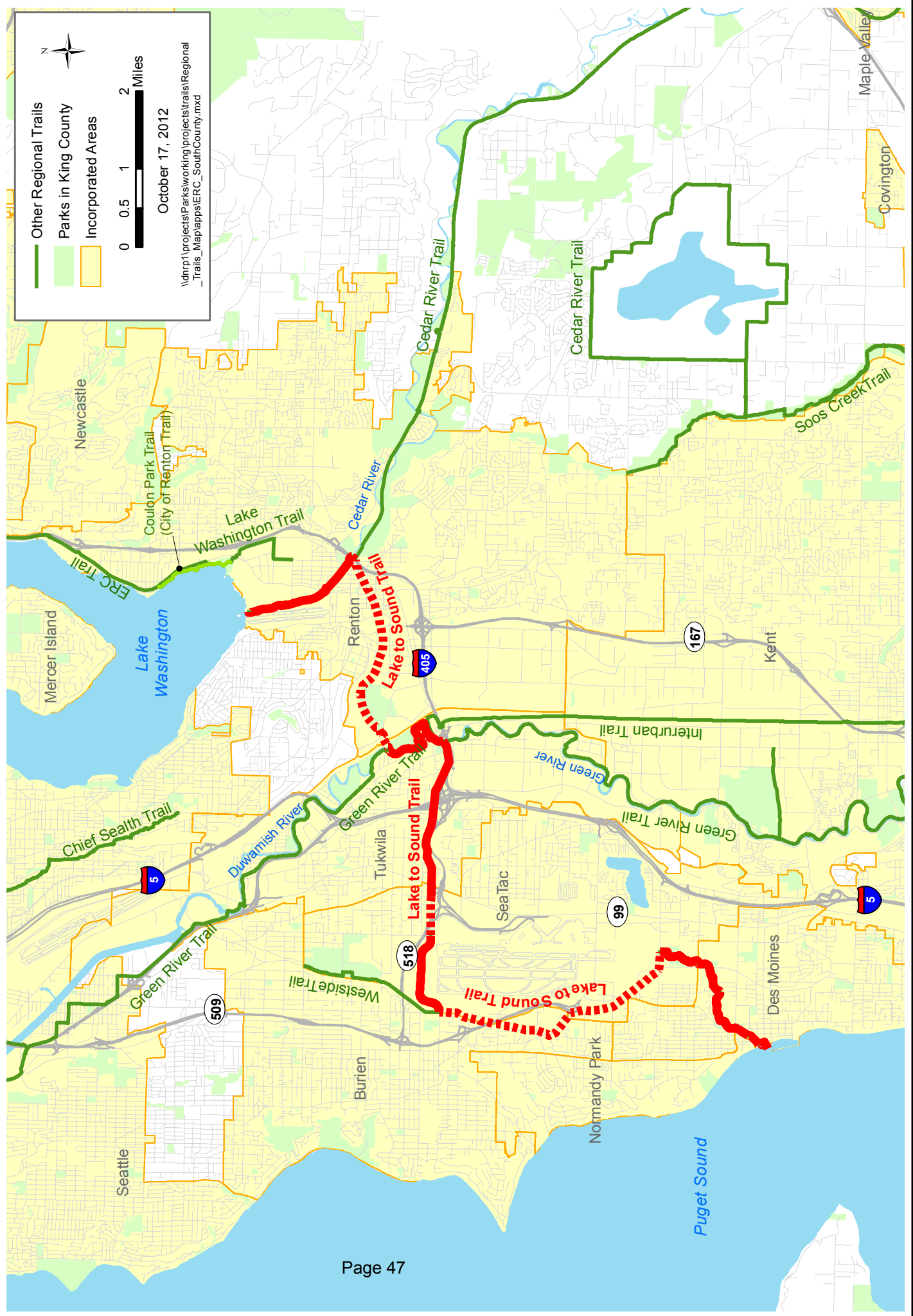
The other trails in the Woodinville area are the Burke Gilman trail and the Tolt Pipeline trail, both of which run east-west in this location, and do not provide any opportunity to be used in lieu of the Eastside Rail Corridor for a north-south trail.

- **Corridor Signage.** The Division of Natural Resources & Parks (DNRP) would take the lead in managing immediate capital improvements as well as ongoing maintenance of the Corridor if the County purchases fee simple ownership.

During 2013, DNRP plans to erect simple metal signs at approximately 15 major crossing points along the Corridor. These signs will alert the public to the County's ownership and to the dual usage planned for the Corridor.

Later, during the master planning or trail development phases, DNRP would install permanent and more frequent signage as part of a coordinated corridor identification and trail wayfinding plan.

Detailed trail connections maps for South County and North County can be found on the next two pages.



Other Regional Trails

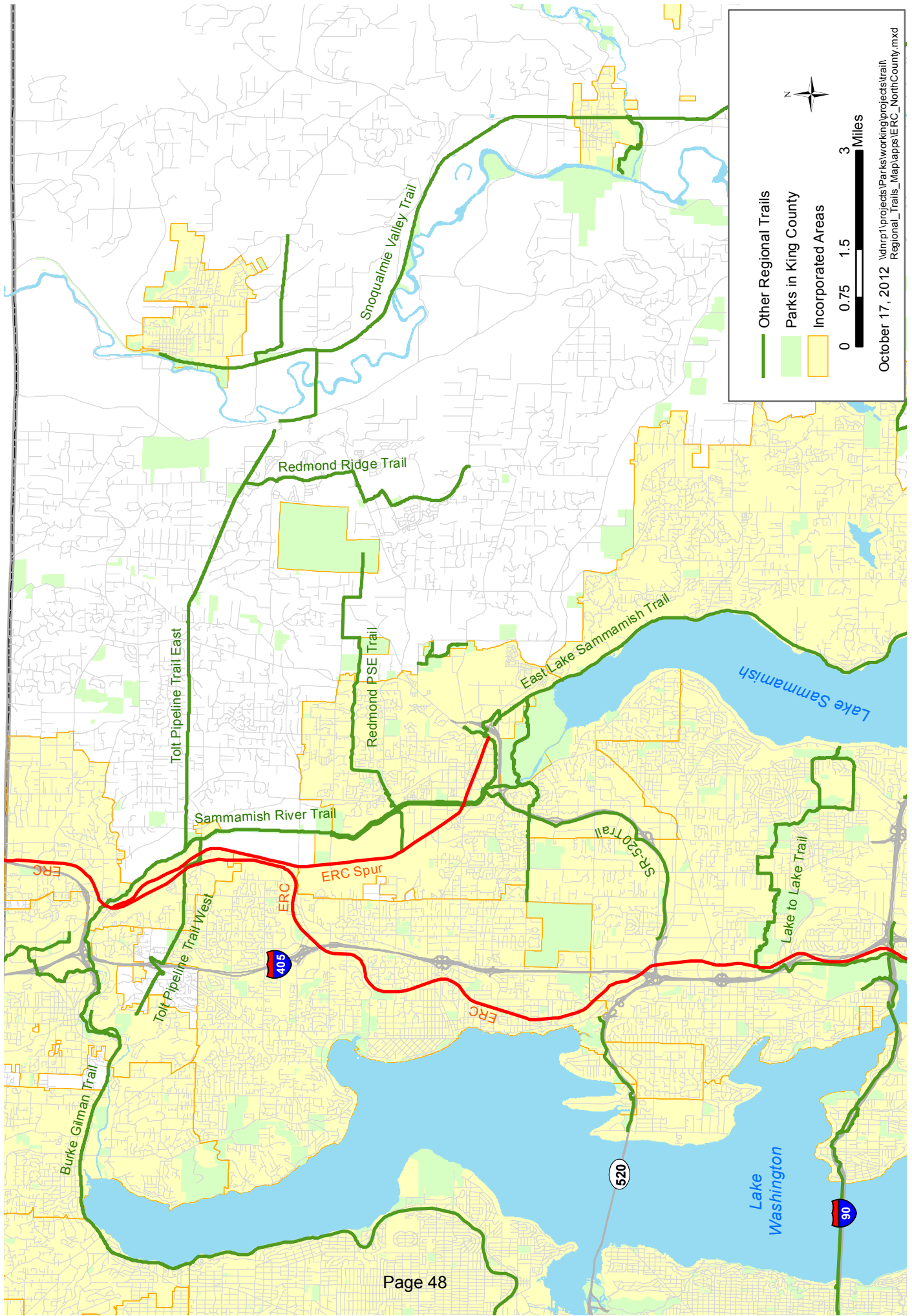
 Parks in King County

 Incorporated Areas

 0 0.5 1 2 Miles

 October 17, 2012

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— Other Regional Trails
 Parks in King County
 Incorporated Areas

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13. Freight Issues

How is freight reactivation protected? *Question 8, p. 25.5 | QA Log 1, Tab 3*

How can the County ensure that excursion service is protected? *Question 9, p. 25.10 | QA Log 1, Tab 3*

Provide more information on the Woodinville turnaround. *Question 7, p. 25.8 | QA Log 1, Tab 3*

- **Freight Reactivation.** The fundamental premise of railbanking is that railbanked property may be restored to active service upon demand of a bona fide interstate freight rail operator, subject to acquisition of the necessary property rights.

Freight reactivation is protected in at least two ways: (A) through railbanking; and (B) through federal procedures that allow any bona fide interstate freight rail service provider to seek authorization to reactivate a “railbanked” line.

(A) Freight Reactivation is Protected Through Railbanking. Under the federal Rails-to-Trails Act, 16 U.S.C. 1247(d) (“the Act”) “railbanking” protects disused portions of interstate rail lines by allowing them to be used for trails for an indefinite but interim period. The basic premise of the Act is that railbanked property may be restored to active service (“reactivated”) upon demand of a bona fide interstate freight rail operator.

The Act is implemented by the Surface Transportation Board (“STB”), the federal agency charged with regulating interstate freight rail service. While reactivation appears to be relatively rare, the STB’s regulations are quite specific that the designated Interim Trail User (here, King County) must acknowledge at the outset that “interim trail use is . . . subject to possible future reconstruction and reactivation of the right-of-way for rail service.” 49 C.F.R. §1152.29(a)(3).

The core duty of an interim trail user is to ensure that sufficient real property interest remains in a railbanked corridor to allow the restoration of freight rail service, and that the corridor not be severed from the interstate freight rail system. In this case, the various additional uses contemplated for the railbanked segments of the Woodinville Subdivision—trail use, local mass transit, utilities, excursion trains, etc.—all tend to preserve the corridor for future freight use. As such (and because all new uses of the corridor are subject to railbanking), it is unlikely that freight reactivation would be jeopardized by such uses.

In any event, all uses of a railbanked right of way are “interim” in nature and subject to being foreclosed by restoration of interstate freight rail service. An STB-approved rail service provider seeking to restore rail service would need

only petition the STB to vacate the trail use notice or certificate (NITU or CITU), and acquire the necessary property interests.

(B) The STB May Authorize Reactivation By Any Bona Fide Interstate Freight Rail Service Provider. In the initial Port-County-BNSF transaction, the County acquired BNSF's "reactivation right." The reactivation right is the abandoning railroad's right to unilaterally reinstitute federally regulated rail service over a railbanked line, at such time as the railroad may choose. Reactivation rights came into being with the Act, which created the "railbanking" framework and made it possible for a rail line to be preserved for future reactivation. The right embraces a privilege to reinstitute rail service at any time, together with an unextinguished or "residual" common carrier obligation.

While the reactivation rights of an abandoning railroad are superior to those of any other railroad that may wish to operate over the line in the future, the abandoning railroad's reactivation right is not an exclusive one: Other bona fide entities may petition the STB for permission to operate over (and thus reactivate) a railbanked line. In such a case, the STB typically requires that the abandoning railroad submit a letter for the record, concurring in the resumption of rail service by another provider.

If a bona fide third party requests authority to reactivate all or a portion of the Corridor, and if the STB authorizes the reactivation, then subject to receiving appropriate compensation for any property interests that King County (or others) may relinquish, the County and other interest holders will have little option but to allow the reactivation.

- **Excursion Rail Service.** Excursion rail service in the railbanked portion of the Corridor exists as a matter of contract between the Port and a third party, GNP Rly Inc. At present King County is not a party to that contract. If the County acquires the Port's interest in the railbanked portion of the Corridor and the Spur, the County will "step into the Port's shoes" insofar as the license applies to those parts of the Corridor. The County will have all of the rights, duties, and obligations of the Port as to those parts of the Corridor, including the rights to enforce, amend, or terminate the contract according to its terms.

When the Port purchased the corridor from BNSF in 2009, they entered into a Right of Way License with GNP (License), for the northern 2.5 miles of the Redmond spur. This License enables GNP to run an excursion service over the portion of the corridor covered by the License. In addition, when the Port purchased the corridor from BNSF, BNSF retained a freight easement (Rec. No. 200912118001536) covering MP 23.8 to MP 38.25 of the main line, essentially southern Woodinville to the town of Snohomish (Freight Easement). BNSF conveyed this easement interest to GNP. GNP also entered into an Operations and Maintenance Agreement (O&M Agreement) with the Port that provided additional terms governing GNP's freight

service and excursion service on the portion of the Corridor subject to the freight easement.

The Freight Easement, the O&M Agreement and the License protect both freight north of Woodinville, and excursion service on the northern 2.5 miles of the spur and north of Woodinville on the mainline. Any extension of either freight or excursion service beyond the areas included in the Freight Easement, the O&M Agreement and the License would need to be negotiated with the fee owners of the areas sought.

Note: When BNSF sold the corridor, they needed to find an operator for the portion of the line not being rail banked. BNSF and the Port conducted a process and GNP was selected as the operator. Since then GNP has gone bankrupt. The bankruptcy court has recently ruled that a new entity, Eastside Community Rail, can purchase the assets of GNP, including the Freight Easement, O&M Agreement, and License to operate freight and excursion services in the areas described above. Staff are available to further discuss the conveyance of GNP's assets and any implications that may have for County acquisition of the Port's interests in the Corridor.

- **Woodinville Turnaround.** The Woodinville “turnaround” area is located on the main line between approximately milepost 23.8 and milepost 24.2, just north of the point where the Redmond Spur begins. It is comprised of several sections of track that diverge from the Main Line and lie west of it near the Sammamish River. This section of the corridor includes multiple parallel tracks within the Corridor and a “Y”-shaped segment of track that enables trains to be turned around. The “turnaround area” is not railbanked and remains in active freight service. The Port of Seattle holds fee ownership of this area now and will maintain ownership of the area. GNP owns a freight easement in this area, and additionally holds an Excursion Service license extending to milepost 2.5 on the Redmond Spur as well. Under section 2.8 of the excursion license GNP may also use a short segment of the “railbanked” Redmond Spur (from milepost 0.0 to milepost 1.0) for “head and tail” operations (moving and organizing freight cars) but no other freight-related purposes.

While King County is seeking to acquire a trail easement between milepost 23.8 and milepost 27.4 on the “freight segment” of the Main Line (see the Purchase and Sale Agreement now before the Council), that easement would be “junior” to (and therefore could not interfere with) existing freight use, including the “turning area” and other existing freight rail infrastructure.

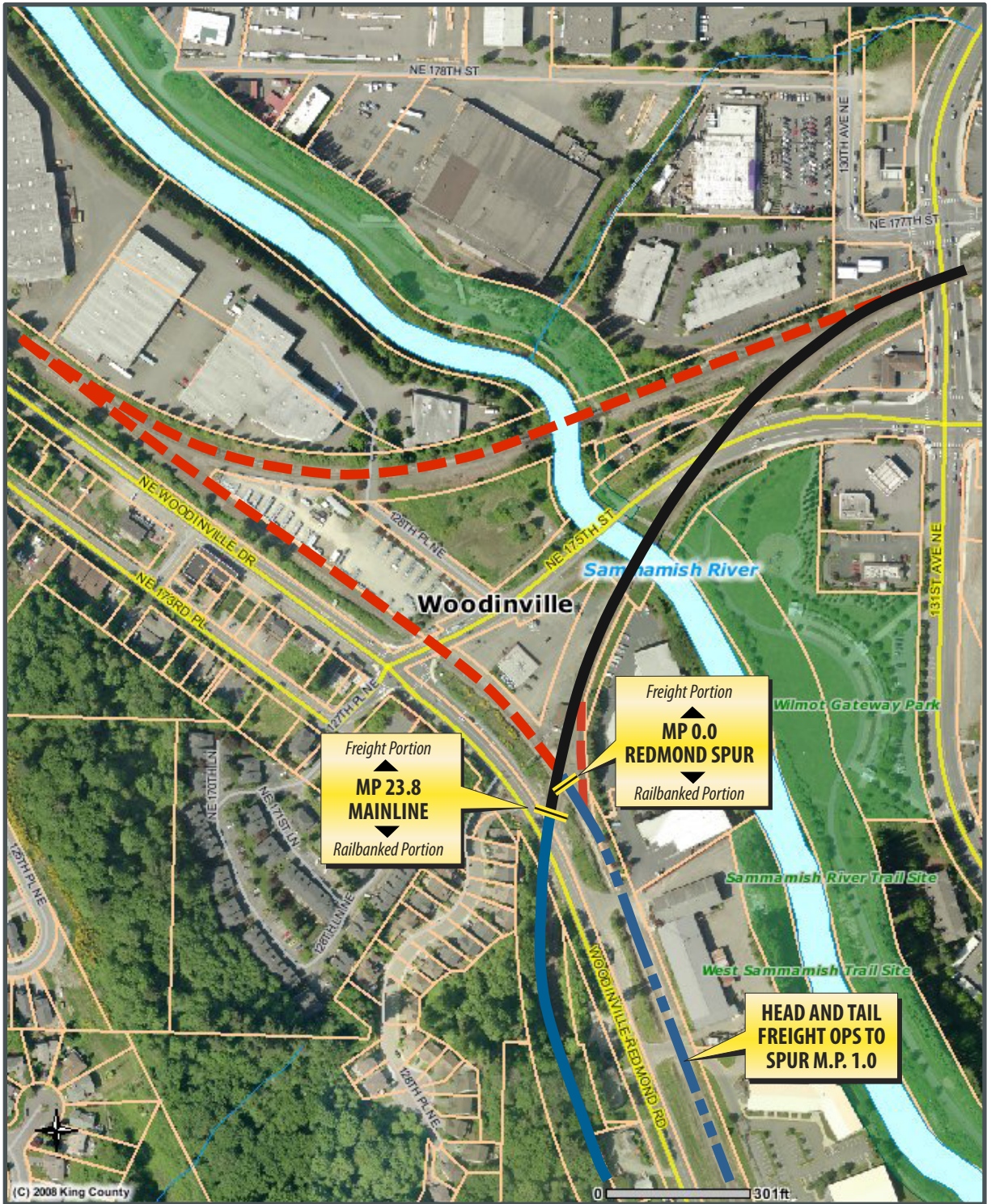
Detailed illustration of the freight easement and Woodinville turnaround areas can be found on the next pages.

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BNSF CORRIDOR Freight Easement and Excursion License Areas

- Railbanked Portion of Main Line—
No Freight Easement or Excursion License
(South of Milepost 23.8)
- Railbanked Portion of Spur with Excursion License
(to Milepost 2.5)
- Main Line with Freight Easement and Excursion License
(North of Milepost 23.8)



BNSF CORRIDOR Illustration of Woodinville "Wye"

- Railbanked Spur
- Ancillary Track in Freight Portion
- Railbanked Main Line
- Freight Portion of Main Line



DNRP-IT GIS, Visual Communications & Web Unit
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14. County Wastewater Easements

Request for more information on Wastewater easements in the corridor: how/when did WTD originally acquire; did WTD pay for those in the past/ is WTD a possible contributing funding source for the County's purchase from the Port?

Question 3-10/22, p. 9 | QA Log 2, Tab 5

Are the existing WTD interests being merged into the single subsurface easement in Redmond? *Question 17, p. 25.13 | QA Log 1, Tab 3*

The Wastewater Treatment Division (WTD) has previously purchased four non-exclusive easements, 16 recorded permanent sewer pipeline permits (easements), and three standard railroad permits for facilities located in the Eastside Rail Corridor (ERC). The majority of these were acquired between 1963 and 1966 to accommodate the construction of the East Side Interception (ESI) sections 1 (Renton) to 14 (Kirkland). Minor expansions occurred in 1971 with major expansion occurring in 1990 with the construction of the York Force Mains and Pump Station (Woodinville) and in 1997 with the North Creek Force Mains (Bothell). All the facilities described above are situated in the Main Line of the former BNSF Corridor.

WTD also has facilities located in the Redmond Spur, which the City of Redmond has subsequently acquired from the Port of Seattle. These facilities include the NE Lake Sammamish Interceptor (which was acquired through condemnation in 1990) and the NW Lake Sammamish Interceptor (which was a permanent permit/easement acquired in 1973). As part of the collective discussions between the City of Redmond and WTD, a new subterranean sewer utility easement was negotiated to honor the spirit of providing future accommodations for all users of the former BNSF Corridor (included as part of PO 2012-0382). Through there is no project currently proposed within the new sewer utility easement, it is an asset that may be utilized in the future for conveyance should an alternatives analysis and environmental review demonstrate that it is feasible for project purposes.

WTD is a possible contributing funding source. The amount WTD would pay would be based on fair market value.

Redmond-Area WTD Easements. The Redmond agreement covers two separate wastewater easements in the Redmond agreement:

1. The Wastewater Treatment Division currently has two separate interceptor pipes that cross the Corridor in Redmond in two places. One of those, the NE Lake Sammamish Interceptor already has an easement. The other, the NW Lake Sammamish Interceptor crosses the Corridor under an old BNSF license, not an easement. The Redmond agreement would upgrade it from a license to an easement. Under both the license and the proposed easement, the rights allow

the existing NW Lake Sammamish to cross the Sammamish River under the bridge trestle in the Corridor. It is important to distinguish between the two similarly-named interceptors, one of which (the NW Lake Samm Interceptor) is affected by the agreement, and the other of which (the NE Lake Samm Interceptor) is not. See Recitals I and J in the easement agreement. The County's existing easements for the NE Lake Samm Interceptor are not affected by the Redmond agreement.

2. In addition, the Redmond agreement would create a new 10' x 10' subsurface easement for wastewater-related purposes. That 10' x 10' easement, plus two construction areas, one at either end of the downtown portion of the Redmond segment, would run the linear length of the Redmond segment.

15. Existing County Easements

What other property interests do King County agencies own on the corridor?
Question 16, p. 25.13 | QA Log 1, Tab 3

See the following pages for a detailed description of the County's easements.

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COVER SHEET
KING COUNTY EASEMENT INTERESTS BNSF (SEATTLE BELT LINE & REDMOND SPUR LINE)

1. Easement in favor of King Co., AFN 7206260582 for a public street and grade crossing (Northeast 200th Street). Located at Mile Post 26.581 Seattle Belt Line.
2. Easement, AFN 9011071501 for a public street and grade crossing within Northeast 195th Street. Located at Mile Post 25.86 Seattle Belt Line.
3. Easement, AFN 9211020836 for a street grade crossing and sewer line near Northeast 190th Street. Located at Mile Post 25.63 Seattle Belt Line.
4. Easement in favor of King Co., AFN 5605388 River Bank Protection (Right Bank Sammamish River). Located southwesterly of and in the vicinity of Mile Post 24.70 Seattle Belt Line Seattle Belt Line.
5. Easement in favor of King Co., AFN 8004090488 for a foot, bicycle and equestrian Trail. Located along the Sammamish River, northerly of and in the vicinity of Mile Post 24.47 Seattle Belt Line, area beneath BNSF Bridge Nos. 23 and 24.
6. Unrecorded Easement for street right of way under the 131st Avenue trestle disclosed by the assessors map. Located just southwesterly of and in the vicinity of Mile Post 24.70 Seattle Belt Line.
7. Easement in favor of King County Water District No. 104, AFN 8309260957 for a water line. Located in the vicinity of Mile Post 23.91 Seattle Belt Line.
8. Easement in favor of King Co., AFN 9711242207 for sewer force mains. Located in the Redmond Spur Line at a point just westerly of and in the vicinity of Mile Post 24.47 Seattle Belt Line thence crossing the Seattle Belt Line and running to the vicinity of Mile Post 2.00 Redmond Spur.
9. Public Multipurpose Easement in favor of King Co. for a trail, AFN 20091218001538 Located between Mile Post 23.80 and Mile Post 5.00 Seattle Belt Line and Mile Post 0.00 to Mile Post 7.30 Redmond Spur.
10. Easement in favor of King County Water District No. 104, AFN 7704250688 for a water line. Located near of Mile Post 1.26 Redmond Spur Line.
11. Unrecorded Easement in favor of an unknown party (assumed King Co.) for a public Road (NE 145th Street) as disclosed by assessors map. Located in the vicinity of Mile Post 22.25 Seattle Belt Line.

12. Easement in favor of King Co., AFN 5809830 for public highway Northeast 124th Street. Located at Mile Post 3.4 Redmond Spur Line.
13. Easement in favor of King Co., AFN 9808071223 for public grade crossing within Northeast 124th Street. Located at Mile Post 3.4 Redmond Spur Line.
14. Easement in favor of King Co., Commissioner's Records Vol. 65, Pg. 137 for public road Slater Ave. Northeast. Located at Mile Post 20.36 Seattle Belt Line.
15. Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public street crossing (Main Street aka SE 1st Street) as disclosed by assessors map. Located in the vicinity of Mile Post 12.50 Seattle Belt Line.
16. Easement in favor of King Co., Commissioner's Records Vol. 16, Pg. 660 for public road overcrossing of Richards Road on the Wilburton Trestle. Located in the vicinity of Mile Post 11.50 Seattle Belt Line.
17. Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for Southeast 9th Street as disclosed by assessors map. Located in the vicinity of Mile Post 11.50 Seattle Belt Line.
18. Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public street under crossing (Henry Boch Road) as disclosed by assessors map. Located in the vicinity of Mile Post 10.30 Seattle Belt Line.
19. Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for Mercer Island Pipeline Right of Way as disclosed by assessors map. Located in the vicinity of Mile Post 9.75 Seattle Belt Line.
20. Easement in favor of King Co., Commissioner's Records Vol. 16, Pg. 683 for public road under crossing for Lake Washington Blvd. Located in the vicinity of Mile Post 9.10 Seattle Belt Line.
21. Unrecorded Easement for Southeast 50th Street for public road in favor of King Co. (assumed) as disclosed by AFN 2778079. Located in the vicinity of Mile Post 8.25 Seattle Belt Line.
22. Easement in favor of King Co., AFN 2672718 for public road Erbach Road. Located in the vicinity of Mile Post 7.75 Seattle Belt Line.
23. Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public road crossing (Southeast 62nd Street) as disclosed by assessors map. Located in the vicinity of Mile Post 7.25 Seattle Belt Line.
24. Easement in favor of King Co., AFN 3013390 for unnamed road crossing. Located in the vicinity of Mile Post 6.75 Seattle Belt Line.

EASTSIDE RAIL CORRIDOR - KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR

1 - Brightwater

Beginning at the northerly terminus of the King County acquisition of the BNSF right of way near the Brightwater Treatment Plant in Snohomish County, thence running south as follows:

Snohomish County

NW Sec, 35, T27N, R5E
EH & SW Sec, 34, T27N, R5E
SW Sec, 26, T27N, R5E:

- None (no King County interests lie in the Snohomish County portion of the right of way.)

2 – County Line

Thence crossing the county line into King County and running south as follows:

King County

NW Sec 3, T26N, R5E:

- Easement in favor of King Co., AFN 7206260582 for Northeast 200th Street.
- Easement in favor of an undisclosed party (grantee in document is Woodinville Water District), AFN 9011071501 for street grade crossing within Northeast 195th Street.

This segment is the most northerly portion of the BNSF right of way located in King County (north line of this section is the south line of Snohomish County).

The two easements listed are specific to this segment.

SW Sec 3, T26N, R5E:

- Easement in favor of an undisclosed party (grantee in document is Woodinville Water District), AFN 9011071501 for street grade crossing within Northeast 195th Street.
- Easement in favor of King Co., AFN 9211020836 for street grade crossing and sewer line near Northeast 190th Street.

This segment is adjacent to and south of above. The two easements listed are specific to this segment.

NW Sec 10, T26N, R5E:

- None

This segment is adjacent to and south of above. There are no King County interests disclosed as being located in this segment.

SENE Sec 9, T26N, R5E:

- Easement in favor of King Co., AFN 5605388 River Bank Protection (Sammamish River)
- Easement in favor of King Co., AFN 8004090488 for a foot, bicycle and equestrian Trail.

KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR, continued

- Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for street right of way under the 131st Avenue trestle disclosed by the assessors map.

This segment is adjacent to and southwest above.

The river bank easement affects that portion of the BNSF right of way lying adjacent to the Sammamish River in this segment.

The foot, bicycle and equestrian trail easement affects this segment and other segments.

The street easement listed is specific to this segment.

3 – Redmond Spur begins

SE Sec 9, T26N, R5E:

- Easement in favor of King Co., AFN 5605388 River Bank Protection (Sammamish River)
- Easement in favor of King Co., AFN 8004090488 for a foot, bicycle and equestrian Trail.
- Easement in favor of King County Water District No. 104, AFN 8309260957 for a water line.
- Easement in favor of King Co., AFN 9711242207 for sewer force mains.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. The BNSF right of way splits into two lines in this Map, Seattle Belt Line running south to Renton and the Redmond Spur running southeast to Redmond.

The river bank easement affects that portion of the BNSF right of way lying adjacent to the Sammamish River in this segment.

The foot, bicycle and equestrian trail easement affects this segment and other segments.

The water line easement listed is specific to this segment.

The sewer force main easement affects this segment.

The public multipurpose easement for trail affects this segment and other segments.

SE Sec 16, T26N, R5E:

- Easement in favor of King Co., AFN 9711242207 for sewer force mains.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this Map.

The sewer force main easement affects this segment and other segments.

The public multipurpose easement for trail affects this segment and other segments.

NW Sec 15, T26N, R5E:

KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR, continued

- Easement in favor of King Co., AFN 9711242207 for sewer force mains.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this Map.

The sewer force main easement affects this segment and other segments.

The public multipurpose easement for trail affects this segment and other segments.

SW Sec 15, T26N, R5E:

- Easement in favor of King County Water District No. 104, AFN 7704250688 for a water line.
- Easement in favor of King Co., AFN 9711242207 for sewer force mains.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this Map.

The water line easement is specific to this segment.

The sewer force main easement affects this segment and other segments.

The public multipurpose easement for trail affects this segment and other segments.

SE Sec 15, T26N, R5E:

- Easement in favor of King Co., AFN 9711242207 for sewer force mains.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.
- Unrecorded Easement in favor of an unknown party (assumed King Co.) for NE 145th Street as disclosed by assessors map.

This segment is adjacent to and south of above. Only the Redmond Spur is located in this section.

The sewer force main easement affects this segment and other segments.

The public multipurpose easement for trail affects this segment and other segments.

The street easement is specific to this segment.

NW & NE Sec 22, T26N, R5E:

- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this section.

The public multipurpose easement for trail affects this segment and other segments.

SE Sec 22, T26N, R5E:

KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR, continued

- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this section.

The public multipurpose easement for trail affects this segment and other segments.

4 – Terminus of Redmond Spur portion

The following segment contains the terminus point of the Redmond Spur (South line of Northeast 124th Street extended west) The Seattle Belt Line continues south:

5 – Seattle Belt line continues south

Sec 27, T26N, R5E:

- Easement in favor of King Co., AFN 5809830 for public highway Northeast 124th Street.
- Easement in favor of King Co., AFN 9808071223 for public grade crossing within Northeast 124th Street.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. Both BNSF right of way lines, Seattle Belt Line and the Redmond Spur are located in this Section.

The public highway easement is specific to this section.

The public grade crossing easement is specific to this section.

The public multipurpose easement for trail affects this segment and other segments.

Continuing south the segment as follows ends at the northerly point of the City of Kirkland ownership (which begins at the west line of Slater Ave. NE more or less) The King County segment continues south again in Section 20 further below:

NE Sec 28, T26N, R5E:

- Easement in favor of King Co., Commissioner's Records Vol. 65, Pg. 137 for public road Slater Ave. Northeast.
- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and west of above. This segment covers only a short segment of the Seattle Belt Line right of way up to the point of the City of Kirkland most northerly ownership point which starts at Slater Ave. NE.

The public road easement is specific to this section.

The public multipurpose easement for trail affects this segment and other segments.

KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR, continued

6 – South portion of Kirkland ownership

The following segment begins at the southerly point of the City of Kirkland ownership (westerly line of 108th Ave NE). Thence continues south as follows:

NE Sec 20, T25N, R5E:

- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment begins at the southerly point of the City of Kirkland's ownership (westerly line of 108th Ave. NE). This segment covers the Seattle Belt Line right of way south of the point of the City of Kirkland Ownership.

The public multipurpose easement for trail affects this segment and other segments.

SE Sec 20, T25N, R5E:

- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail.

This segment is adjacent to and south of above. This segment contains only the Seattle Belt Line right of way.

The public multipurpose easement for trail affects this segment and other segments.

7 – North portion of Sound Transit

The following segment runs to the north line of the Sound Transit ownership (Southerly line of Section 21) and continues south again in Section 33 further on below:

SW Sec 21, T25N, R5E:

- Public Multipurpose Easement in favor of King Co., AFN 20091218001538 for trail affects this segment and other segments.

This segment is adjacent to and southeasterly of above. This segment contains only the Seattle Belt Line right of way and runs to the northerly point of the Sound Transit ownership of 1.1 miles of the right of way, the southerly point of which terminates in Section 33, 25N, R5E.

The public multipurpose easement for trail affects this segment and other segments.

7a – South portion of Sound Transit

NW Sec 33, T25N, R5E: This segment begins at the south line of the Sound Transit ownership (South line of the north 700 feet of Section 33). Thence runs southerly to the terminus of the Seattle Belt Line as follows:

SW Sec 33, T25N, R5E:

NW Sec 4, T24N, R5E:

SW Sec 4, T24N, R5E:

NW Sec 9, T24N, R5E:

SW Sec 9, T24N, R5E:

KING COUNTY EASEMENT INTERESTS IN THE CORRIDOR, continued

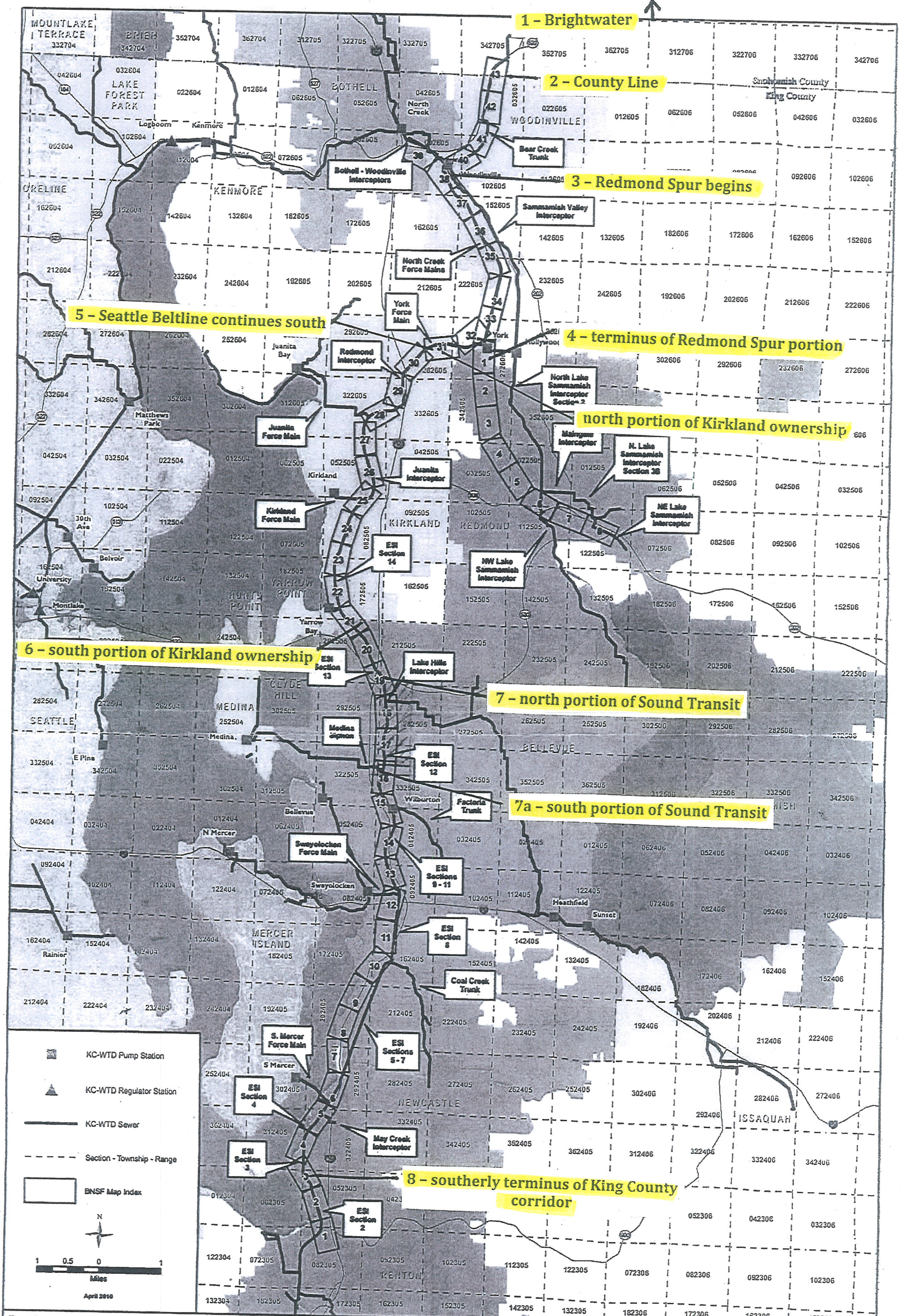
NW Sec 16, T24N, R5E:
SW Sec 16, T24N, R5E:
SE Sec 17, T24N, R5E:
NE Sec 20, T24N, R5E:
SE Sec 20, T24N, R5E:
NH Sec 29, T24N, R5E:
SE Sec 29, T24N, R5E:
SW Sec 29, T24N, R5E:
SW Sec 32, T24N, R5E:
SE Sec 31, T24N, R5E:

8 – Southerly terminus of King County corridor

NE Sec 6, T23N, R5E: **(Southerly terminus point of the King County acquisition of the Seattle Belt Line is located in the section in the Renton area)**

- The public multipurpose easement in favor of King Co., AFN 20091218001538 for trail affects this segment and other segments.
Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public street crossing (Main Street aka SE 1st Street) as disclosed by assessors map. SW Sec 33.
- Easement in favor of King Co., Commissioner's Records Vol. 16, Pg. 660 for public road overcrossing of Richards Road on the Wilburton Trestle. NW Sec 4.
- Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for Southeast 9th Street as disclosed by assessors map. NW Sec 4.
- Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public street under crossing (Henry Boch Road) as disclosed by assessors map. NW Sec 9.
- Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for Mercer Island Pipeline Right of Way as disclosed by assessors map. SW Sec 9.
- Easement in favor of King Co., Commissioner's Records Vol. 16, Pg. 683 for public road under crossing for Lake Washington Blvd. NW Sec 16.
- Unrecorded Easement for Southeast 50th Street as disclosed by AFN 2778079. NE Sec 20.
- Easement in favor of King Co., AFN 2672718 for public road Erbach Road. SE Sec 20.
- Unrecorded Easement in favor of an undisclosed party (assumed King Co.) for a public road crossing (Southeast 62nd Street) as disclosed by assessors map. SE Sec 20
- Easement in favor of King Co., AFN 3013390 for road crossing. NH Sec 29 & SE Sec 29.

EASTSIDE RAIL CORRIDOR - KING COUNTY
EASEMENT INTERESTS IN THE CORRIDOR



King County
Department of
Natural Resources and Parks
Wastewater Treatment
Division

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BNSF Map Index

16. Harbor Bond Properties

Concern with the proposed surplusing of the Harbor Bond properties, and request for more information on how much annual revenue the Harbor Bond properties generate for the general fund. *Question 1-10/22, p. 7 | QA Log 2, Tab 5*

The proposed Purchase and Sale Agreement (PSA) between King County and the Port allows the County to pay for the Corridor through cash, surplus properties, or a combination of both. If the County wishes to use surplus properties to pay for some or all of the Corridor purchase, the PSA lists eight Harbor Bond properties that could be considered.

Table 1 shows each property's appraised value and the amount of rental income the County General Fund receives each year. The properties have a combined appraised value of **\$29.3 million** and generate **\$1.3 million** in rental income each year. Council staff continues to analyze options. One possibility that is being investigated is the possibility of bonding against the revenue generated by these properties, rather than selling them, and using those bond proceeds to purchase the Corridor.

Table 1, Potential Properties for Eastside Rail Corridor Purchase¹⁵

Property Parcel #	Address	Occupants	Appraised Value (Fee Simple)	Annual Rental Income to General Fund
N Lk Union 408880-4530	1301 North Northlake Way	City Dock	\$600,000	\$45,225
Duwamish 19204-9041	5209 East Marginal Way	Manson	\$7,380,000	\$510,000
Duwamish 19204-9052	5225 East Marginal Way			
Duwamish 19204-9067	5225 East Marginal Way			
Duwamish 19204-9070	5225 East Marginal Way			
S Lk Union 408880-2995	1111 North Fairview Ave	SLU Limited Partnership	\$3,480,000	\$120,055
Duwamish 19204-9002	5801 East Marginal Way	St. Gobain Parcel A	\$11,700,000	\$560,500
Duwamish 19204-9043	5427 Ohio Ave South ¹⁶	St. Gobain Parcel B & St. Gobain	\$6,150,000	\$41,528
TOTAL			\$29,310,000	\$1,277,308

¹⁵ Information provided by the Department of Executive Services, October 2012.

¹⁶ Former Iconco lease site.

17. County's current and proposed property interests

Please provide more information about the County's floating easement and how it relates to other rights. *Question 9-10/22, p. 11 | QA Log 2, Tab 5*

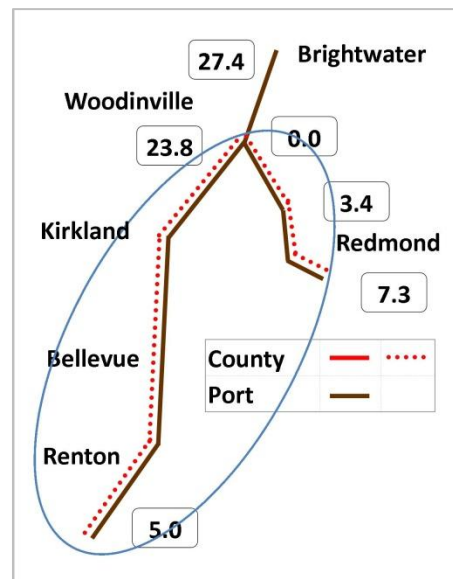
How would the County's multipurpose easement change in Kirkland? *Question 4-10/29, p. 15 | QA Log 2, Tab 5*

Request for more information about the floating trail easement north of Woodinville. *Question 10-10/22, p. 14 | QA Log 2, Tab 5*

County Multipurpose Easement (2009). In 2009, King County purchased a Multipurpose Easement (MPE) from the Port of Seattle. This easement covered the entire Southern Portion of the Corridor south of Woodinville, including both the Main Line and the Redmond Spur.

With the MPE, the County was entitled to do two things:

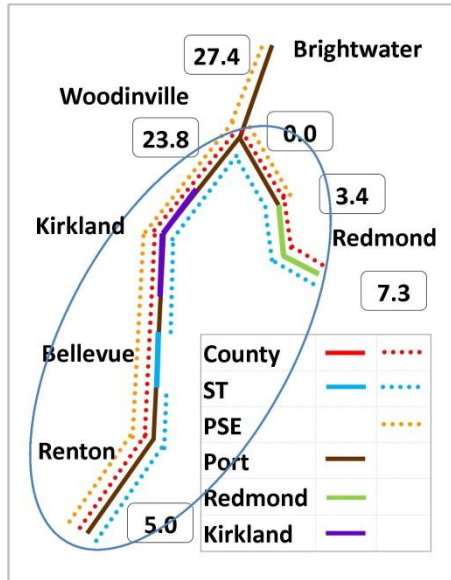
- Meet its railbanking responsibilities; and
- Construct a trail within a **Trail Area** that would generally be 10 to 30 feet wide (except in areas with steep slopes or other issues that might require the Trail Area to be wider; or in pinch point areas, where the Trail Area could be as narrow as railbanking rules allow).



The MPE was called a floating easement because the 10-to-30-foot-wide Trail Area could “float” anywhere within the 100-foot-wide Corridor.

Because of the Council's goal of ensuring dual use along the Corridor, the specific location of the Trail Area was expected to be identified through a Regional Planning Process with transit and utility agencies and other stakeholders.

County's Current Status (prior to proposed legislative package). Between 2009 and 2012, the Port sold fee simple ownership interests to Redmond, Sound Transit, and Kirkland, as well as additional easements to Puget Sound Energy and Sound Transit.

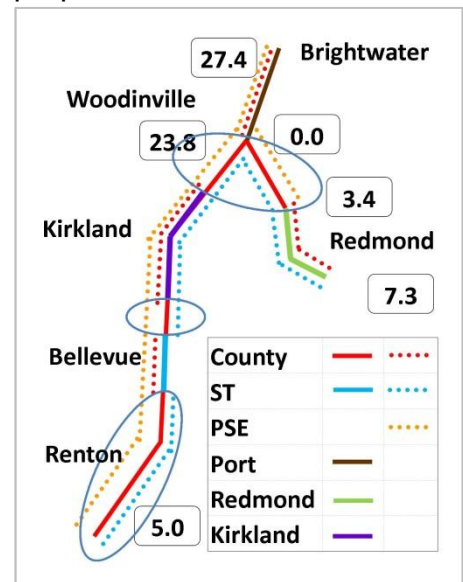


Although these new ownership interests make a patchwork along the Corridor, the County's MPE remains in place, and the MPE is "first in time" or "senior" to the other entities' property rights.

The "nature and scope" of the MPE is not as broad as the fee simple ownership interests, but the two main rights granted by the MPE (railbanking and trail) remain in place. To use its MPE, the County would need to coordinate with each of the other entities.

Proposed Fee Simple Acquisition from Port. The County's ownership interests would change again with the proposed legislative package: as proposed, in addition to a new trail easement in the Northern Portion, the County would purchase fee simple ownership from the Port along the Southern Portion of the Corridor (in the circled areas in the diagram to the right). In the areas where it would purchase fee simple ownership, the County's MPE would terminate or "merge into" its ownership interests due to the doctrine of merger.

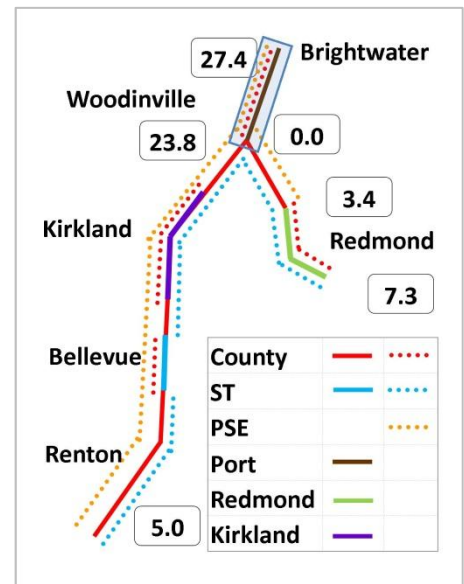
Even in the areas where it would acquire fee simple ownership, the County's property rights would still be subject to the rights of the other property and easement owners. Although the County's new fee simple ownership would provide broader "nature and scope" rights than the easement holders have, the County's fee simple ownership would be "junior" to the other easements in terms of time.



To provide a coordinated trail planning and development process and to ensure the dual use of the Corridor, the proposed legislative package includes agreements with Sound Transit and Puget Sound Energy. These agreements would address how the County's Trail Area would be identified, and how potential conflicts between different types of uses would be managed.

Proposed North Trail Easement. The proposed Purchase and Sale Agreement with the Port would also include the purchase of 3.6 miles of trail easement in the Northern Portion of the Corridor (the area of the Corridor from Woodinville north to Brightwater, an area that is not railbanked and is subject to active freight use). The easement agreement makes clear that the existing freight uses and authorized excursion service take priority. County trail planning and development must be planned around the existing rail line and the needs of the freight operator.

There has been no hazardous materials assessment done on the 3.6 miles proposed for the new trail easement. Executive staff are in the process of walking the line to visually identify any potential areas of concern.



Remaining MPE Areas (Following Purchase). As proposed, in the areas where the County would not be purchasing fee simple ownership (that is, the areas owned by Sound Transit, Redmond, and Kirkland), the County’s MPE would remain in place, and the County’s MPE rights would remain as described above, unless the County chooses to relinquish those rights. For instance, an agreement has been proposed with Redmond (PO 2012-0382) to have the County relinquish its MPE and Interim Trail User railbanking status in return for wastewater easements and a covenant from the City that would guarantee trail development. The City would coordinate dual use planning and trail/transportation development with Sound Transit. A separate agreement is being negotiated between the Executive and the City of Kirkland.

Area within Kirkland. As noted above, if the County purchases the Port-owned portions of the Corridor its multipurpose easement (MPE) would remain in place in Kirkland, unless the County chooses to relinquish it. Staff understands that an agreement similar to what is proposed for Redmond is being negotiated with Kirkland and may be transmitted soon. As proposed, the agreement with Redmond (PO 2012-0382) would have the County relinquish its MPE and railbanking status in return for utility easements and a covenant from Redmond regarding trail development.