## STAFF REPORT

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| **Agenda Item:** | 15 | **Name:** | Mary Bourguignon |
| **Proposed No**.: | 2015-0438 | **Date:** | November 12, 2015 |

**SUBJECT**

Proposed Ordinance 2015-0438 would appropriate $3,390,609 from the Regional Trail Reserve, a fund backed by the Parks, Trails and Open Space Levy, to remove rails, replace culverts, and conduct other activities on the County-owned portions of the Eastside Rail Corridor.

**SUMMARY**

In February 2013, the County purchased ownership interests in 15.6 miles of the Eastside Rail Corridor (ERC) within a railbanked area between Renton and Woodinville and along a portion of a rail spur north of Redmond. The transaction also included related agreements with Sound Transit, Puget Sound Energy and the City of Redmond. As part of the transaction, the Council required the Executive to develop a rail removal plan, to be approved by the Council by motion, prior to the removal of any of the rail track on the County’s portions of the ERC.[[1]](#footnote-1)

The Executive transmitted the required rail removal plan as an attachment to Proposed Motion 2015-0439. This rail removal plan was passed out of the Council’s Committee of the Whole on November 4, 2015, as amended, with a “do pass” recommendation. At the time of this writing, Proposed Motion 2015-0439, as amended, was scheduled to be considered at Council on November 9, 2015.

Simultaneously with transmittal of the rail removal plan, the Executive transmitted Proposed Ordinance 2015-0438, which would appropriate $3,390,609 from the Regional Trail Reserve to cover the costs of rail removal design, a rail removal contract, replacement of failing culverts underneath the rail bed, hazardous tree removal, interim trail design and construction along a portion of the ERC, and outside legal counsel.

The committee was briefed on the proposed appropriation on October 28, 2015.

**BACKGROUND**

**Eastside Rail Corridor.**The Eastside Rail Corridor (ERC) is a 42-mile former rail line running from Renton to Snohomish, through Woodinville, Kirkland, Redmond and Bellevue, and parts of unincorporated Snohomish and King Counties. In 2003, the BNSF Railway Company announced its intention to divest itself of this rail corridor. In response, in 2009, a group of regional partners, including King County and the Port of Seattle, signed a Memorandum of Understanding envisioning a regional effort to preserve the corridor for multiple uses.[[2]](#footnote-2) Subsequently, the Port of Seattle acquired BNSF’s interests in the corridor. The southern portions of the corridor (between Woodinville and Renton, and from Woodinville to Redmond) were railbanked.[[3]](#footnote-3) King County became the Interim Trail Sponsor[[4]](#footnote-4) of the railbanked portion and purchased a multipurpose easement from the Port in the railbanked area.[[5]](#footnote-5)

The Port subsequently sold other property interests in the railbanked portion of the corridor to Redmond, Kirkland, Sound Transit, and Puget Sound Energy. On February 8, 2013, King County acquired the Port’s residual interest in the remaining 15.6 miles of the railbanked area, as well as a 3.6-mile trail easement north of the railbanked area to the Brightwater treatment plant.[[6]](#footnote-6) The County’s multipurpose easement remains in effect in segments acquired by Kirkland and Sound Transit, comprising approximately 6.6 miles. In total King County owns property interests in approximately 25.8 miles of the ERC.

The five entities that acquired the Port’s interests in the railbanked portion of the ERC (King County, Sound Transit, Redmond, Kirkland, and Puget Sound Energy) have been planning collaboratively around a shared, multi-use vision for the corridor through a Regional Advisory Council (RAC).[[7]](#footnote-7) In October 2013, the RAC approved a report, *Creating Connections,* that summarized the joint planning effort to date and articulated progress in achieving the multi-use vision.[[8]](#footnote-8) In early 2014, King County commenced a master trail planning process for its ownership areas of the ERC. This process is anticipated to result in Council consideration of a trail master plan in the fourth quarter of 2016.

**Rail removal proposal.** When the Port sold its ownership interests in the railbanked portion of the ERC, the corridor included all of the rail infrastructure located there, including rails, ties, ballast, drainage structures, and other structures and equipment that had supported BNSF rail use of the corridor prior to the termination of BNSF active rail use in 2008. The cities of Redmond and Kirkland have removed and salvaged the rail tracks in their portions of the corridor; and Sound Transit has indicated that it will remove the rails on its portion in preparation for the construction of the East Link Wilburton Station and the Link Operations and Maintenance Satellite Facility.

For the County’s portion of the ERC, the Council required that prior to any rail removal, the Executive must prepare a rail removal plan, which must be transmitted to the Council and approved by motion.[[9]](#footnote-9) As noted above, the Executive transmitted this required rail removal plan as part of Proposed Motion 2015-0439, which was passed out of the Committee of the Whole on November 4, 2015, and is scheduled to be considered at Council on November 9, 2015.

**Proposed appropriation.** Proposed Ordinance 2015-0438would appropriate funding to remove the rails and cover other tasks on the ERC. The appropriation would be funded from the Regional Trail Reserve, a fund backed by the Parks, Trails and Open Space Levy. It would fund:

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| **Item** | **Proposed Amount** |
| Outside legal counsel | $700,000 |
| Rail removal design | $250,000 |
| Rail removal contract | $1,300,000 |
| Additional funds for failing culverts | $107,039 |
| Interim trail design/construction | $800,000 |
| Hazardous tree removal | $200,000 |
| One percent for Art | $33,570 |
| **TOTAL** | **$3,390,609** |

**Outside legal counsel.** The ERC has been the subject of a number of legal challenges. The proposed appropriation would fund outside legal counsel to protect the County’s interests.

**Rail removal design and contract.** A total of $1.55 million would be used to develop a plan to remove the rails and to hire a contractor to remove them. According to the rail removal plan transmitted with Proposed Motion 2015-0439, the rails would be removed in phases, with rails south of the Kirkland/King County ERC property boundary to be removed in Phase 1, and rails north of the ownership areas of Kirkland and Redmond and south of the license area for head and tail freight operations would be removed as part of Phase 2.

**Culvert replacement.** Parks staff have noted that existing culverts underneath the ERC in a number of areas are failing due to lack of maintenance prior to the County’s ownership. These failing culverts are located up-slope from adjacent properties and require replacement to avoid failure.

**Interim trail design and construction.** In response to development along and beneath Northup Way near SR 520, and in collaboration with the City of Bellevue and the Washington State Department of Transportation, Parks intends to develop an interim trail along the ERC between 108th Avenue NE and Northup Way/SR-520 to help facilitate connections in this area. The interim trail is proposed to consist of crushed rock overlaid on top of the existing railroad ballast materials, with a total width between eight and ten feet. The existing rail bed is not proposed to be widened.

**Hazardous tree removal.** In their inspections of the corridor, Parks staff have identified a number of hazardous trees that present the potential for damage if they are not removed. The proposed appropriation would provide funding to remove these hazardous trees.

**ANALYSIS**

Based on Council approval of Proposed Motion 2015-0439, the proposed appropriation would be consistent with the required rail removal plan. The proposal is also consistent with maintenance and operations planning for the ERC. As noted above, funding would come from the Parks levy, and the proposed expenditures are consistent with the allowed uses within that levy.

Staff has identified one issue, which was also discussed at the Committee of the Whole: the potential for salvage value from removed rail materials. Both Redmond and Kirkland have removed the rail track on their portions of the ERC. Both were able to realize salvage value from the removed rail track. The proposed ordinance would appropriate the full amount needed for a rail removal contract, without accounting for any salvage value.

**AMENDMENT**

Staff is working to draft an amendment to address the issue of potential salvage value, by requiring that any funds recouped by King County due to salvage value of removed rail materials, including rails, ties, ballast, drainage structures, and other structures and equipment that had support rail use of the corridor prior to termination of active rail use, shall be refunded to capital project 1121155 to be used for future planning and development of the eastside rail corridor consistent with adopted policy guidance and the allowed uses of the fund.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0438 (and its attachments)
2. Transmittal Letter
3. Fiscal Note

**INVITED**

1. Kevin Brown, Director, Parks and Recreation Division
1. Ordinance 17503, Section 4 [↑](#footnote-ref-1)
2. Ordinance 16738 [↑](#footnote-ref-2)
3. Under the Federal National Trails Act, also known as the Rails to Trails Act, 16 U.S.C. §1247(d). [↑](#footnote-ref-3)
4. As the Interim Trail User, the County is subject to legal obligations imposed by Section 8(d) of the Rails-to-Trails Act, 16 U.S.C. § 1247(d) and 49 C.F.R § 1152.29, as implemented through the Notices of Interim Trail Use (NITUs) for the various parts of the Corridor issued by the Surface Transportation Board (STB), and also the Trail Use Agreement entered into between BNSF and the County, and the STB-required Statement of Willingness to Accept Financial Responsibility (SWAFR). Pursuant to the Rails to Trails Act, all interim uses of railbanked corridors are subject to reactivation of potential interstate freight rail service. [↑](#footnote-ref-4)
5. Ordinance 16084 [↑](#footnote-ref-5)
6. Ordinance 17503 [↑](#footnote-ref-6)
7. Motion 13801 [↑](#footnote-ref-7)
8. Motion 14105 [↑](#footnote-ref-8)
9. Ordinance 17503, Section 4 [↑](#footnote-ref-9)