## REVISED STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Jake Tracy |
| **Proposed No**.: | 2021-0200 | **Date:** |  |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2021-0200, authorizing the executive to enter into a recreational trail use agreement with Puget Sound Energy (PSE) to use portions of PSE property for the construction, maintenance, and operation of the Interurban Trail South, passed out of committee on August 25, 2021 with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment 1 to make clarifying changes to the agreement regarding nonmotorized trail use and maintenance activities.*** |

**SUBJECT**

The proposed ordinance (PO) would authorize the executive to enter into a recreational trail use agreement with Puget Sound Energy (PSE) to use portions of PSE property for the construction, maintenance, and operation of the Interurban Trail South.

**SUMMARY**

Puget Sound Energy (PSE) owns a utility corridor running from Pacific to Tukwila, which is primarily used for the transmission and distribution of electric power, gas, and other utility systems. In 1977, PSE granted a recreational easement to King County that allowed for the development, maintenance, and operation of a public trail on the property, spanning twenty-four tax parcels and fourteen miles, and King County developed the Interurban Trail South in the corridor over the next decade.

The recreational easement for the Interurban Trail South expired in 2002, and in the intervening two decades, only basic maintenance has been done to the trail by adjacent cities, with the executive characterizing the trail as being in a state of "disrepair."

The proposed ordinance would authorize the Executive to enter into a twenty-five-year use agreement between the Parks and Recreation Division of the Department of Natural Resources and Parks and Puget Sound Energy, for the construction, operation, and maintenance of the Interurban Trail South. Such agreement would be substantially in the form of Attachment A to the ordinance and would allow for certain nonmotorized uses of the trail by the public, and would make King County responsible for construction, operation, and maintenance of trail.

Amendment 1 would replace the agreement with an updated agreement that includes changes to match executive intent.

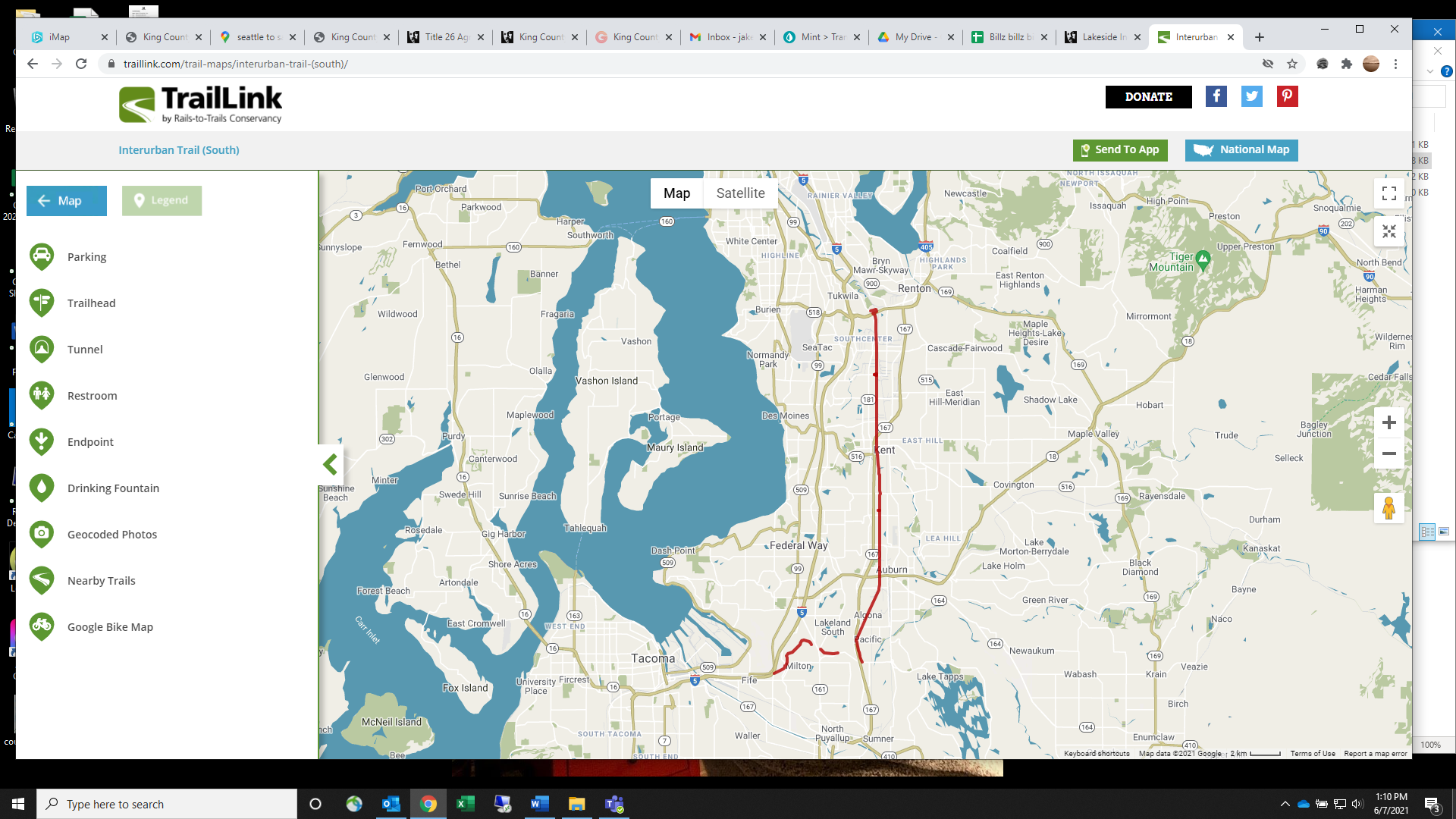
**BACKGROUND**

Puget Sound Energy (PSE) owns a utility corridor running from Pacific to Tukwila, which is primarily used for the transmission and distribution of electric power, gas, and other utility systems. In 1977, PSE granted a recreational easement to King County that allowed for the development, maintenance, and operation of a public trail on the property, spanning twenty-four tax parcels and fourteen miles, and King County developed the Interurban Trail South in the corridor over the next decade.

The recreational easement for the Interurban Trail South expired in 2002, and in the intervening two decades, only basic maintenance has been done to the trail by adjacent cities, with the executive characterizing the trail as being in a state of "disrepair."

On January 19, 2018, Puget Sound Energy filed a Petition for Declaratory Order with the Washington Utilities and Transportation Commission under Declaratory Order U-180068. The petition requested that the Washington Utilities and Transportation Commission allow Puget Sound Energy to grant King County permission to use the property in order to operate, maintain, and improve the Interurban Trail for public recreation purposes. Order 01 was issued by the Washington Utilities and Transportation Commission on March 6, 2018, granting Puget Sound Energy authorization to allow King County use of the property for recreational purposes.

Figure 1 – Location of the Interurban Trail South



**Legend**

**–** Interurban Trail South

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**ANALYSIS**

The proposed ordinance would authorize the Executive to enter into a twenty-five-year use agreement between the Parks and Recreation Division of the Department of Natural Resources and Parks and Puget Sound Energy, for the construction, operation, and maintenance of the Interurban Trail. Such agreement would be substantially in the form of Attachment A to the ordinance.

**Trail Use.** The agreement would authorize King County non-exclusive use of the corridor to operate and maintain a twenty-foot-wide trail, with a five-foot vegetation management area on either side. The trail would be used by members of the general public free of charge. The agreement, in Section 1.2, states that the trail is for use of pedestrians, bicycles, and "other modes of travel allowed on regional trails by section 7.12.295 of the King County Code." That section of code allows for "all nonmotorized users," including but not limited to foot, bicycle, horse, skateboard, and roller skates. However, Section 4.2.a of the agreement further restricts use of the trail to pedestrian, equestrian, and bicycle uses only. Executive staff state that the intent was not to further limit the use of nonmotorized vehicles beyond what is provided in King County Code.

**Construction Activities.** Under Section 3 of the agreement, King County would be solely responsible for construction and maintenance of the trail. Any construction activities would require written approval from PSE prior to commencing, and King County would be solely responsible for notifying adjacent property owners about impending construction activities.

**Operation and Maintenance.** King County would be responsible for operation and maintenance of the trail and the five-foot vegetation buffer on either side of the trail, and would be the point of contact for trail-maintenance complaints. King County would also be responsible for posting and maintaining signage on the trail. All signage would require prior approval by PSE. King County would need express written permission of PSE in order to bring any hazardous, dangerous, or toxic material, waste, substance, pollutant or contaminant regulated under federal, state, or local law onto the property. Because gasoline is a federally regulated substance according to 49 CFR § 172, King County would need express written consent to bring any gas-powered equipment onto the property. Executive staff state that this was not intended.

While King County would generally be responsible for repairing damage to the trail, Section 4.8 of the agreement specifies that PSE will repair any damage that occurs as a result of PSE's activities in the corridor.

If PSE decides to construct or repair utility systems within the corridor, King County would be responsible for reimbursing PSE for any costs or expenses that are a result of "accommodating an existing or contemplated Recreational Trail."

**Trail Relocation, Removal, or Termination, and Agreement Termination.** PSE would reserve the right to remove, relocate, or terminate any portion of the trail for any reason, with King County responsible for any costs incurred to restore the corridor to its previous condition. PSE could order relocation, removal or termination immediately upon King County's receipt of written notice.

Generally, King County could terminate the agreement with six months written notice to PSE and PSE could terminate the agreement upon 180 days written notice. Failure of either party to comply with the terms of the agreement could result in default, meaning the agreement could be terminated upon failure to comply after receiving a 30-day notice from the other party.

Upon termination of the agreement, King County would be responsible for removing all trail improvements from the property, or in failing to do so within 180 days of PSE's notice to terminate the agreement, would be responsible for reimbursing PSE for the cost of doing so.

By executing the agreement, both parties would agree that the previous recreational easement is terminated.

The agreement has been reviewed by King County's legal counsel.

**AMENDMENT**

Amendment 1 would replace the agreement (Attachment A) with a new version of the agreement which includes two changes to match executive intent:

* Striking a sentence that would restrict use of the trail to pedestrians, equestrians, and bicycles. Deletion of the sentence would permit the use of all nonmotorized uses typically allowed on regional trails by County code.
* Specifying that gas-powered maintenance equipment is exempt from the general prohibition on bringing hazardous materials onto the trail easement.