

January 27, 2017

Lindsay Ozbolt
Associate Planner
Community Development
801 228th Ave SE
Sammamish, Wa 98075
lozbolt@sammamish.us

RECEIVED

JAN 27 2017

CITY OF SAMMAMISH

Attention: Ms. Lindsey Ozbolt

Subject: East Lake Sammamish Trail Segment 2B

Dear Ms. Ozbolt,

The following are our comments and concerns regarding the recently-released 60% plans for the development of the East Lake Sammamish Trail (ESLT) Segment 2B. On January 25th we spent 30 minutes with King County reviewing the 60% Plans for the East Lake Trail. We discovered and discussed a number of issues that we believe need to be addressed before the City issues any permits for work. For reference, our property is located at 2325 East Lake Sammamish PL SE, Sammamish WA 98075; on the recently-released 60% plans we are located at station 328+00. We appreciate your time in compiling these issues and helping to get to a resolution that makes the trail great for everyone.

We ask that members of the City of Sammamish Council, City of Sammamish City Manager and King County officials visit us, walk the trail and see firsthand these challenges. Overall, we believe the current plan will unnecessarily adversely impact our property, remove access to our property and create an unsafe situation for trail users and for our family. However, with some adjustments, and by working together, these challenges can be resolved.

We kindly ask that the City of Sammamish take these comments and questions into consideration. More specifically, we hope that the City and County put the safety of its citizens first, minimize the impact on Sammamish lakeside residents, and reduce the impact on the environment and the existing trees. Our goal is to partner with you, work towards resolution and do our part to ensure that the trail is a great asset for all.

Our concerns with the plans fall into five (5) categories:

- Safety
- Access
- Landscaping, Trees, Water and Run-off
- Rest Stop
- Ownership

Safety

We want the trail plan to be safe for all users, and residents, and feel that the 60% plan does not meet this goal of a safe environment in several areas:

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- 1) Currently the plans do not show fencing being replaced along either side of the trail. This is concerning for several reasons.
 - a. First, on the water side, there is a steep drop to the lake and a significant amount of that is comprised of large boulders and rocks. A trail user veering off the trail onto this slope – especially at any significant speed – will be at risk for grave physical harm. What is the rationale in removing the fencing that is there today, and not replacing it? We request that this is addressed by the current fencing, which was installed at the expense of the community homeowners, to remain in place during and after construction, or,
 - b. replacing the fencing on the water side of the trail with fencing comparable to what is in place today including a gate for access.
 - c. Second, there is no fencing replaced on the uphill side of the trail. We have both small children and pets – the current fence keeps them inside the yard safely. It also keeps trail users on the trail and not in our yard. Providing unfettered access onto the trail from our yard, and into our yard from the trail is not safe for our family, or trail users. We request that this is addressed by replacing the fencing on the uphill side of the trail, or we replace it, with fencing comparable to what is in place today including a gate for access.

Access

The construction period for Segment B is listed as 2 years. During the construction period there will be construction fencing erected along the trail. Our home is bisected from our waterfront dock, cabana, deck, beach, etc. by the trail, and our goal is to partner to minimize disruption and access.

- 1) How will we access our waterfront during the construction period?
- 2) Will the construction fencing be up for the entire construction period, along the entire length of Segment B? If so, we request that this be broken into segments to minimize the disruption of waterfront access for all homeowners living within the Segment B section. Being separated from our waterfront docks, cabanas, beaches and boats for this period of time is not acceptable to us.
- 3) We currently have water and electricity running under the existing trail down to our dock and cabana. We wish to preserve these utilities. We request that the county ensures and commits that these utilities will be preserved, between our home and the waterfront during construction and upon completion of the project. We request that the county adds the location of these utilities into the trail development plan and provides assurances that they will continue functioning during construction and afterwards.
- 4) We have concrete stairs that run down to our waterfront on the west side of the trail. The top of these stairs is shown inside the C&G line. What specifically will happen to the top of our stairs during construction? What will happen to them after construction?

Landscaping, Trees, Water and Run-off

Throughout the trail development process many complaints have been lodged with the City of Sammamish and King County regarding the removal of trees, impacting property owners, disregard with code compliances, and many others.

- 1) The current 60% Tree Preservation Plan does not accurately reflect the major trees located on our property, or those neighboring us to the north or south. Currently there are three old-growth Douglas Fir trees displayed in this plan. They are tagged with numbers 8757, 8758, and

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8759 as shown on page TP6 of the Tree Preservation Plan. However, there are a significant number of additional old-growth Douglas Fir trees in the immediate vicinity – as close to the proposed trail as the tagged trees in some cases. Why haven't all of these trees – of similar location, size, species and importance to the local neighborhood – been tagged for preservation? We request that every one of these old-growth Douglas Fir trees adjacent to the trail to be tagged and added to the Tree Preservation Plan, and that they are marked to SAVE as noted with the three trees currently listed.

- 2) Our lower yard sometimes floods as water that runs down the hill to the lake is trapped by the interim trail. How does the current draft design address water run-off and potential flooding on the east side of the trail?
- 3) The enlargement and paving of the trail will generate significant additional run-off from the trail surface itself. How does the current draft design address water run-off from the trail surface?
- 4) The current plans show a pipe funneling runoff into the lake (Outfall #2). What is the proposed elevation of this pipe above the surface level of the lake?
- 5) How big is the drainage pipe coming into catch basin 10?
- 6) What is the proposed landscaping that the county will be installing within the C&G line after construction is completed?

Rest Stop

We are highly concerned about the decision to include a rest stop (note 12) in our yard. We have a number of questions, and for several reasons we urge you to consider removing it or moving its location.

- 1) What are the specifics of a Type 1 rest stop? There are no specifics provided in the plans outside of the rough dimensions noted. What is a Type 1 rest stop?
- 2) What are the criteria utilized to determine locations for rest stops on the trail? How did this location meet those criteria? Can this location be moved to elsewhere on this trail segment that is not in a homeowner's backyard?
- 3) Why was this location chosen when there is another larger – Type 2 – rest stop proposed a very short distance up the trail (AL13 note 13). It should be noted that not only is this location very close to the proposed rest stop in our yard, it is also located in a community property location and not an individual's backyard.
- 4) What is the specific plan for the fill noted around the proposed location of the rest stop?
- 5) We are concerned that the lack of fencing shown in the plans will allow trails users free access to our entire backyard as there is no clear delineation between the trail and our yard, making for an unsafe situation for our family. We request that this is addressed by replacing the fencing on the uphill side of the trail, or we replace it, with fencing comparable to what is in place today including a gate for access.
- 6) We are concerned that a rest stop will generate trash and waste that does not get regularly cleaned up, or cleaned up at all, by the County. How will the County address this?
- 7) We are concerned that a rest stop will generate loitering and questionable uses that puts our family, and neighbors, in danger. How will the County address this risk?
- 8) There is a larger rest stop shown in the 60% plans a short distance to the north, in what's locally called the community beach. What is the rationale, and demonstrated need, to have two rest stops installed so close to each other?

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- 9) Nowhere else on the 60% plan do we see a rest stop being proposed in someone's back yard. We request that it is removed from our yard, and either moved or eliminated given the proximity to a much larger rest stop shortly up the trail.

Ownership

We understand that the County owns the former railroad right of way through a quit claim it received. Various portions of the right of way have different legal origins, some portions were by grants from private landowners, some portions are based on the railroad's use of the right of way and acquisition of rights by prescriptive easement or adverse possession, and some portions are based on a specific grant by the Federal Government. Our property is in the latter category. While the scope of what the County acquired may be somewhat uncertain, the United States Supreme Court has recently held in *Marvin M. Brandt Revocable Trust v. United States*, 134 S.Ct. 1257 (2014), that federal grants of property to railroads were the granting of easements, and not fee ownership. So, the most that King County could have acquired by a quit claim deed is an easement. Additionally, the federal Surface Transportation Board is only allowing King County to use the railroad corridor for trail purposes and for an interim period of time. These too are the hallmarks of an easement.

Because the County only has an easement in this section of the right of way, we are entitled to use the property in any way that does not interfere with the County's trail easement. It seems like we have the right to keep and should be able to retain all landscaping and water, electricity and access across the trail because none of these interfere with trail use. Nevertheless, we are supportive of the trail as a community asset and may be willing to give up some of these rights if the County makes modifications based on the concerns in this letter. In any event, the City should not allow the County to exceed its property rights in this particular area where there can be no doubt that the most it acquired was an easement, without accommodation to the homeowners.

We ask the City of Sammamish and King County to modify the trail plans to address the above concerns such that the improved trail is a safe undertaking for both residents and trail users. We believe the trail, properly developed, will be a wonderful community asset for everyone; however, updates are needed to accomplish that goal.

Thank you for the opportunity to provide comments, and we look forward to partnering with you to resolve the concerns we have raised.

Regards,

Nate and Alison Thompson
2325 East Lake Sammamish PL SE
Sammamish, WA 98075



Email:

nate@weareratio.com

alison-thompson@live.com

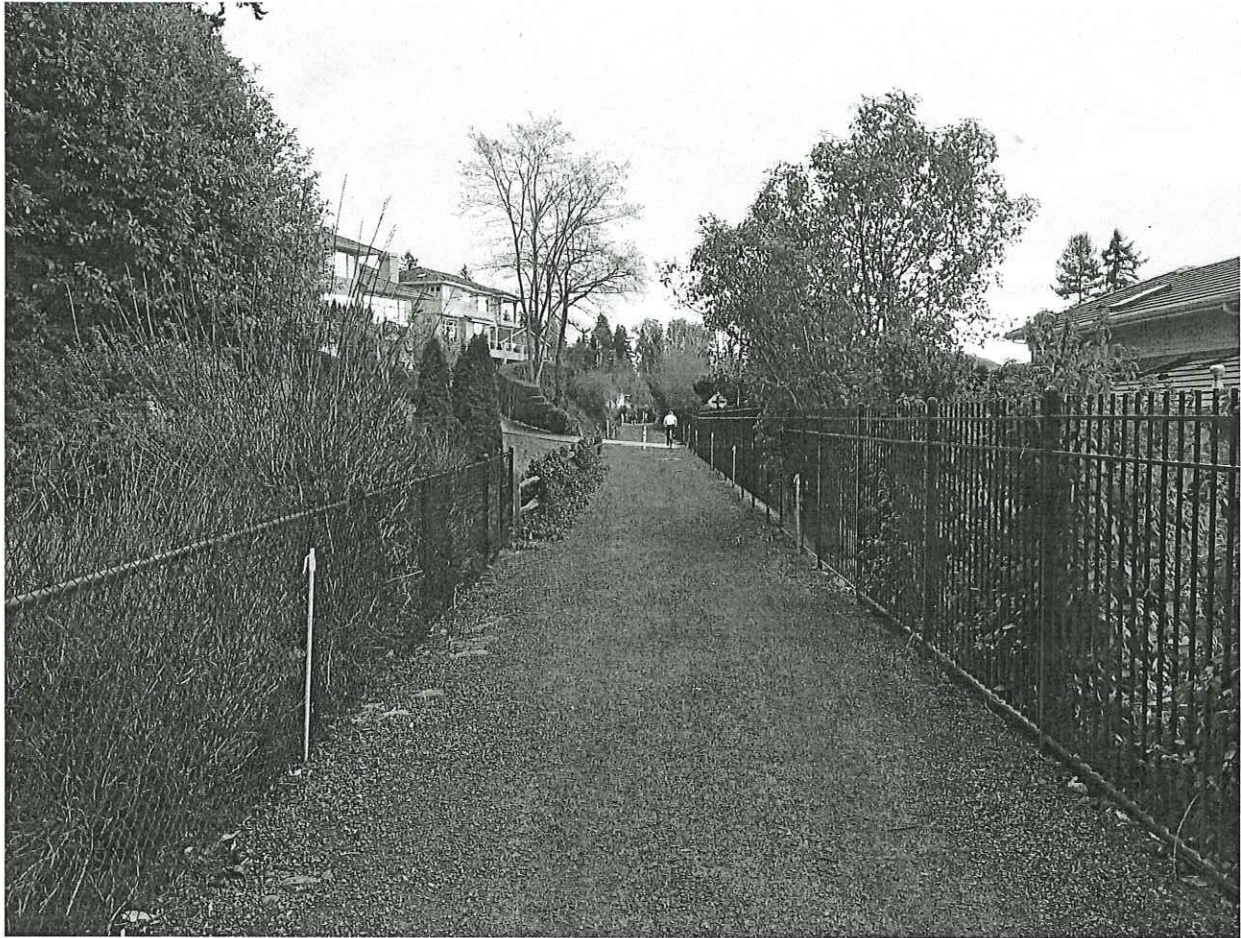
Cell:

Nate: 206-427-1599

Alison: 206-409-9049

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Trail with fence erected by homeowners on water side:



Stairs to Water and fence, both installed by owners:



Exhibit 29
SSDP2016-00415
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Stairs to Water and fence, both installed by owners:



Exhibit 29
SSDP2016-00415
005112

Old-Growth Douglas Fir Trees With and Without Tags:



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View of Backyard area proposed to be developed into Rest Stop:



View of Backyard area proposed to be developed into Rest Stop, note un-tagged Old-Growth Douglas Fir trees:



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View of Trail with wood and metal fencing installed by homeowner:



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Overview of Trail bisecting neighborhood:



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Emailed 1/26/2017 lozbolt@sammamish.us
Hand Delivered 1/27/2017

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Lindsey Ozbolt, Associate Planner
City of Sammamish City Hall
801 228th Avenue SE
Sammamish, Washington 98075

CITY OF SAMMAMISH

RE: King County SSDP Permit-- South Sammamish Segment B
Homeowner comments regarding 60% Design Plan
Survey Station 332+00
2221 East Lake Sammamish PL SE

Dear Lindsey,

I am a Sammamish lakeside property owner with two properties located within the South Sammamish Segment B. I have reviewed the 60% Master Plan Designs in detail that relate to my property and the properties in the near vicinity and met with the County representative on January 17. I have identified several issues regarding safety, property access and landscaping which must be addressed, as discussed below.

The improved trail is a significant asset to our community and the issues I have identified can be easily resolved. I would greatly appreciate the opportunity to discuss them with the appropriate person(s). These issues may simply not have been addressed in the 60% plan, but prudence dictates that I document my concerns with King County, and reach mutual resolution before the SSDP Permit is issued and the design finalized. Thank you for your review and support with this matter.

My primary residence is located between Survey Station 331+00 and 333+00, primarily at 332+00. In this area, the current trail is very close to the lake-edge. The current trail divides homeowners' properties, such that our lakefront property is separated from our residences. This area is challenging to improve, due to this division and the walls that must be built in order to support the width of the improved trail. A long straight wall must be built to support the eastern side of the improved trail, because the natural land is significantly below the trail elevation.

SAFETY: The first issue pertains to the safety of the trail users. As noted above, in this area, the trail is very close to the lakeshore. From approximately Survey 327+00 to 334+00, the trail has a steep drop-off to the lake. My shoreline currently has huge boulders that reinforce the shoreline bank. Consequently, my dock is my only true use of the waterfront. Currently, my property and all properties in the area, have fencing with gates that protect the current trail users, as well as the private property.

The plan noted at AL 11 appears to remove the fence, because it is located within the CG lines. However, the plan does not provide a replacement of the fence with access gates for the homeowners, as evident in the LA7 plan. The improved trail will increase the traffic on the trail, particularly bicyclists.

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Safety mandates for trail-users, that the fence be replaced with a fence adequate to withstand an accident. My property currently has a split-rail fence, which is not adequate for the improved trail. I have been involved in two bicycle accidents on the unimproved trail at low speeds. Without a proper fence in this area, and due to the increased use with the improved trail, inadequate fencing can result in serious injury. Access for emergency vehicles is limited, because neither public, nor private roads, exist in the area to allow access to the trail and to the lakefront. The gates will be required for emergency access, and enable the homeowners' access to their docks and lakefront property.

- 1) Does the County agree that a fence is necessary for the safety of the trail users?
- 2) Does the City agree that a fence is necessary for the safety of trail users?
- 3) Will the County retain the existing fencing along the lakeshore or actually replace with new fencing?

ACCESS: My property has a 70-foot long wooden bridge that leads across a gully in the Railroad Right of Way, to the eastside of the existing trail. Nearby is one other similar bridge. The plan at AL11 indicates removal of the bridge to the R/W line (70 feet) during construction, but does not indicate it will be replaced. The bridge need not be removed completely, given less than 10 feet of it interferes with trail construction. The bridge has been in place for over 40 years and is built on telephone poles. Removing it will disrupt the entire area (including a steep hillside) and likely destroy the bridge. I have engaged a Geotechnical Engineering firm to perform periodic studies to ensure the stability of the hillside and existing terraces which would also be compromised with removal of the bridge. I understand the need to remove a small part of the bridge permanently due to the improved trail, but removing the entire bridge seems unreasonable and unnecessary. Furthermore, without the bridge, my property has no access to the trail or to my lakefront property—an unacceptable result. This issue is further magnified by no designated gate in the fence to access the trail and my lakefront. As the plans are currently drafted, residents and trail-users appear to have access to my lakefront and dock, but I do not have such access which is not an acceptable situation. Several other nearby properties have a similar situation.

- 4) Why is the County removing such a significant private property structure but not providing for its replacement?
- 5) What does the County plan to do to ensure the stability of the hillside of my property if the bridge is removed?
- 6) Is the County going to adjust the plan to provide my access to the trail as well as my lakefront property as it currently exists? This requires a gate in the proposed fencing as well as the bridge or other means to reach the elevated trail.

Currently, electrical service runs along the bridge, and proceeds under the existing trail to my dock. This electrical service must be retained under the improved trail for safety as well as for dock use and maintenance. Unfortunately, this service was installed before my ownership of the property, so I am not aware of the depth of the electrical lines under the existing trail bed.

- 7) Will the County provide for retention of the existing utilities under the improved Trail?

LANDSCAPE: The Landscape Plans (LA 6 and LA 7) indicate the property located at 331+00, owned by Theresa East, has been identified as Wetland 18C. This designation is likely based on prior weather patterns. This designation should be reassessed to determine whether or not this area is actually currently a wetland. The plans should correctly reflect the true size of any wetland, assuming wetland still exists. The plans further provide for a significant portion of my property, and the adjacent two properties to the south, to be stripped of their current plants and grass and replanted as a wetland buffer area. This is beyond the needs of the improved trail and appears to be an unreasonable infringement on property rights to restrict the use of property in this regard. In addition, these areas are actually very dry and it is questionable as to whether or not any plants would flourish without irrigation. I have installed artificial turf, rather than grass, in this area due to the absence of irrigation. Furthermore, the designation appears to include the steep hillside on my property, which have been terraced, planted and maintained to prevent erosion and to ensure stability. Prudence requires reassessment of the wetland designation and mapping, to ensure any remaining wetlands are protected, and any non-wetland areas are not negatively impacted. In addition, the plans should be corrected to reflect the true wetlands, and reduce the wetland buffer area currently indicated in the plans. I believe if we address this together we can resolve the wetland buffer area to the satisfaction of all parties.

- 8) Has the existence of a wetland been confirmed and documented?
- 9) Why has the County chosen this area to establish a large wetland buffer and why is it so expansive?
- 10) Will the County provide ongoing maintenance for the wetland buffer or will I as the property owner be required to maintain the wetland buffer?

PROPERTY RIGHTS:

I understand that the County owns the former railroad right of way through a quit claim it received. Various portions of the right of way have different legal origins. Some portions are based on a specific grant by the Federal Government; including my property. While the scope of what the County acquired may be somewhat uncertain, the United States Supreme Court has recently held in *Marvin M. Brandt Revocable Trust v. United States*, 134 S.Ct. 1257 (2014), that federal grants of property to railroads were grants easements, and not fee ownership. Additionally, the federal Surface Transportation Board is only allowing King County to use the railroad corridor for trail purposes and for an interim period of time. These too are indicative of an easement.

Because the County only has an easement in this section of the right of way, I am entitled to use my property in any way that does not interfere with the County's trail easement. It seems like I have the right to retain my bridge, my yard and other landscaping provided they do not interfere with trail use. Nevertheless, as noted above, I am supportive of the trail as a community asset and may be willing to give up some of these rights if the County recognizes my concerns. The City should not allow the County to exceed its property rights in this particular area where the most it acquired was an easement without addressing my concerns.

Attached are two pictures of the shoreline and one of the bridge and terraces. Please let me know if you have any questions, or I can clarify any of the above issues or provide additional facts. I can be contacted at (425) 765-2267 or at pat_harrell@msn.com. It would be very helpful for the County and

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City to arrange to walk the Trail in our area as well as meet with the homeowners to resolve the issues and concerns presented by us individually as well as in the joint community letter sent this week.

Thank you very much for your assistance with the above matters, and for working with the County to make the necessary changes in the plans. Our community sincerely appreciates your time and support in making the trail enjoyable to everyone.

Very Truly Yours,



Patricia Harrell

2221 East Lake Sammamish Place SE
Sammamish, WA 98075



CITY of SAMMAMISH
ELST SEGMENT 2B COMMENTS
1-27-17

RAY SPENCER
133. E. LK. SAMM. SHLN NE
SAMMAMISH WASH

GENERAL COMMENTS

THE RAILROAD ROW OWNERSHIP IS HELD BY KING CO., THEY HAVE A RAILROAD RIGHT OF WAY SURFACE EASEMENT, WHICH THEY BOUGHT FROM TLC, WHO BOUGHT THE EASEMENT FROM BURLINGTON NORTHERN, THE STB HAS AGREED TO FORESTALL ABANDONMENT AND GRANT ADDITIONAL USE EASEMENT FOR TRAIL USE. IN MOST CASES THE LAND UNDER THE EASEMENT IS OWNED BY PRIVATE PARTIES OTHER THAN THE APPLICANT. TO THE EXTENT THE APPLICANT IS PROPOSING USE BEYOND RAILROAD OR TRAIL ACTIVITY, THEY ARE ASKING FOR APPROVAL FOR USE BEYOND THEIR LEGAL RIGHTS, IT IS SIMILAR TO ASKING FOR A PERMIT TO BUILD A GARAGE WITHIN AN EASEMENT GRANTED ON SOMEONE ELSE'S PROPERTY FOR A DRIVEWAY. IT IS OUTSIDE THE LIMITED USE GRANTED BY THE UNDERLYING LAND HOLDER FOR A SPECIFIC USE EASEMENT. WITHOUT PERMISSION FROM THE UNDERLYING PROPERTY OWNER THIS IS NOT A PERMITTED USE ALLOWED BY THE OWNER OF THE EASEMENT (APPLICANT).

RAYMOND & LAEL S SPENCER
133. E. LK. SAMM, SHLN NE
SAMMAMISH WASH.
425-868-7625 HM
206-949-4962 CELL
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SPECIFIC COMMENTS ON THE FOLLOWING PAGES 2 & 3


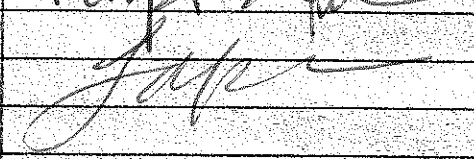
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PAY SPENCER
133 E. LK. SAMM SHW. NE.
SAMMAMISH WASH.

SPECIFIC COMMENTS.

PG. AL 28 - FROM DRIVE WAY #21 SOUTH TO THE QUARTER SECTION LINE, DIRECTLY EAST OF TRAIL IS A 2-3 FOOT BERM WITH 27 TREES MARKED AS SIGNIFICANT (TREE # 8340 - 8366), THE APPLICANT IS PROPOSING TO CUT EVERY TREE, CUT & FILL THE BERM AREA AND REPLACE WITH A DISPERSION AREA. DIRECTLY ACROSS THE TRAIL IS A LARGE LEVEL GRASS AREA. LOCATING THE DISPERSION AREA ON THE WEST SIDE OF THE TRAIL VS THE EAST SIDE OF THE TRAIL IS IN DIRECT CONFLICT WITH 25.07.100 SMC.

NORTH OF DRIVE WAY #21 WEST OF THE TRAIL IS A CONCRETE BLOCK RAISED GARDEN, APPLICANT IS SUGGESTING AN EXPANSION OF THE CLEARING & GRUBBING LIMIT TO ENCRONCH ON THE SE CORNER OF THE GARDEN, THIS WOULD INTERFERE WITH PRIVATE USE OF PRIVATE PROPERTY NOT IN CONFLICT WITH TRAIL USE AND SHOULD BE REDUCED TO THE SAME LIMITS OF CUTTING & GRUBBING IMMEDIATELY TO THE NORTH.

THE CHAIN LINK FENCE ON BOTH SIDES OF THE TRAIL IN SAME AREA PROVIDES NO PRIVACY OR SAFETY FUNCTION, AND SHOULD BE REMOVED.

PG. AL 29 - WEST OF THE TRAIL ARE 23 TREES MARKED AS SIGNIFICANT, APPLICANT PROPOSES REMOVAL OF ALL BUT 2 OF THESE TREES. EVEN THOUGH MOST OF THE EAST SIDE OF THE TRAIL IS WETLANDS APPLICANT PROPOSES TO FILL THE WEST SIDE AND CREATE A DISPERSION AREA, THIS IS IN DIRECT CONFLICT WITH 25.07.100 SMC, IT FURTHER CONFLICTS WITH CURRENT PRIVATE USE FOR TEMPORARY PARKING AND GARDENS ON PRIVATE PROPERTY NOT IN CONFLICT WITH TRAIL USE, THE DISPERSION AREA SHOULD BE MOVED TO THE WETLAND AREA EAST OF THE TRAIL.

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TRAYSPENCER
= 133 E. LK SUMMIT, SHUWNE
SAMMAMISH WA.

PG AL 30 - THE NORTH 3/4 OF THE TRAIL HAS 15 TREES MARKED AS SIGNIFICANT. APPLICANT PROPOSES TO REMOVE ALL OF THESE TREES. APPLICANT PROPOSES TO FILL, THEN CREATE A DISPERSION AREA ON THE WEST SIDE OF THE TRAIL EVEN THOUGH WETLANDS CURRENTLY EXIST ON THE EAST SIDE OF THE TRAIL. THIS IS IN DIRECT CONFLICT WITH 25.07.100 SMC. THE DISPERSION AREA CONFLICTS WITH CURRENT PRIVATE USE FOR TEMPORARY PARKING AND GARDENS ON PRIVATE PROPERTY NOT IN CONFLICT WITH TRAIL USE. THE TREES SHOULD REMAIN, NO FILLING SHOULD BE ALLOWED AND THE DISPERSION AREA SHOULD BE MOVED TO THE WETLAND TO THE EAST OF THE TRAIL.

PG AL 31 - SAME COMMENTS AS ABOVE.

PG LA 16 & 17 - ON THE EAST SIDE OF THE TRAIL NORTH OF DRIVEWAY #21 APPLICANT PROPOSES SIGNIFICANT WETLAND ENHANCEMENT, WETLAND BUFFER ENHANCEMENT AND WETLAND BUFFER ADDITION. THIS IS PRIVATE PROPERTY NOT OWNED BY APPLICANT. APPLICANT HAS NO RIGHT TO ASK FOR THIS CHANGE IN USE AFFECTING OTHER OWNERS' RIGHTS. IT IS NOT CRITICAL TO APPLICANTS INTENDED USE FOR A TRAIL. EXPANSION OF USE ON OTHER OWNERS PROPERTY SHOULD NOT BE GRANTED.

CREATION OF DISPERSION AREAS AND INCREASING WETLAND AREAS WILL EXPAND WETLAND SET BACK AREAS. THIS AFFECTS THE RIGHTS OF PRIVATE PROPERTY OWNED BY OTHERS. IT IS AN EXPANSION OF THE RIGHTS OF THE APPLICANT BEYOND THOSE CURRENTLY HELD BY APPLICANT UNDER THE EASEMENTS IT CURRENTLY CONTROLS.

CUTTING AND GRUBBING BEYOND 3 FEET OF THE TRAIL IS UNNECESSARY AND INTERFERES WITH PRIVATE USE OF PRIVATE PROPERTY NOT OWNED BY THE APPLICANT. CURRENT USE DOES NOT CONFLICT WITH APPLICANTS TRAIL USE AND SHOULD NOT BE ALLOWED.



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January 27, 2017

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Via Email & Hand Delivery

CITY OF SAMMAMISH

City of Sammamish
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lozbolt@sammamish.us

King County
Department of Natural Resources and Parks
Attn: Gina Auld, Capital Project Manager IV
201 S. Jackson St., Ste. 700
Seattle, WA 98104-3855
gina.auld@kingcounty.gov

**Re: Shoreline Substantial Development Permit 2016-00415
East Lake Sammamish Trail, South Sammamish B Segment
Hild Property, King County Tax Parcel No. 0624069123**

Dear Ms. Ozbolt and Ms. Auld:

This Firm represents Robert & Janet Hild, the owners of a residence located at 1204 East Lake Sammamish Parkway SE, Sammamish, WA 98075. This residence is located on an uphill slope immediately east of East Lake Sammamish Parkway. Relevant for purposes of this letter, my clients also own a separate parcel that is located downslope from their residence and is currently used for recreational purposes. This parcel contains approximately 60 feet of frontage on Lake Sammamish and is improved with a dock, boathouse, and deck, the existence of which predate their purchase in May of 2000. This parcel is known as King County Tax Parcel No. 0624069123 (“Hild Property”).

My clients are in receipt of the City’s Notice of Application for the above SSDP and they have reviewed the 60% design plans for the Trail, dated on or about September 2016 (“Preliminary Plans”). The Hild Property will be adversely affected by the proposed modifications to the East Lake Sammamish Trail (“Trail”) that have been proposed by King County (“County”) in the above shoreline substantial development permit (“SSDP”). Please accept the following as (1) a response on behalf of my clients to the SSDP application, including the Preliminary Plans, and (2) a request for my clients to be included as parties of record for this SSDP and to receive future notifications and status updates regarding the SSDP application.

A. Property Interests

As an initial matter, it is prudent to note that the nature of the property interests involved with respect to the Trail and adjoining properties have been the subject of various, and sometimes even conflicting, adjudications by state and federal courts. It is my clients’ understanding that some of these judicial proceedings are still pending. Accordingly, nothing in this letter is intended to be construed as bearing on the status of those property interests and my clients’

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reserve, to the fullest extent of the law, any property interest that they may have in the area burdened by the Trail.

B. Incomplete Preliminary Plans

It is also necessary to observe that the ability to completely assess the full impact of the Preliminary Plans upon the Hild Property was necessarily limited by incomplete surveying work and/or an omission in the Preliminary Plans. In particular, as indicated above, the Hild Property is improved with a dock, boathouse, and deck. For unknown reasons, however, although all existing improvements on the adjoining parcels to the immediate north and south are depicted in the Preliminary Plans, my clients' boathouse and deck were omitted.¹ A data sheet from the King County Assessor regarding my clients' property, which includes a photo of the deck, is attached hereto.

In the absence of this rudimentary information from a complete and accurate survey, my clients are left to speculate regarding the true impacts of the Preliminary Plans upon their property. However, utilizing the tools available to them, including some aerial photography, the following comments have been prepared based upon the following assumptions, which are subject to change based upon more complete information: (1) all or most of the existing boathouse is located wholly within the boundaries of the Hild Property, (2) all or most of the associated deck is located within the right of way for the Trail.

C. Impacts of Preliminary Plans

A review of the Preliminary Plans indicates that the County's project will have adverse impacts on the Hild Property, including the following:

- **Impairment of Access** – My clients currently access their property via a stairway that commences from East Lake Sammamish Parkway and proceeds downslope to the Trail. This existing stairway is depicted on the Preliminary Plans between stations 373+00 and 374+00.² The Preliminary Plans propose the permanent elimination of this stairway.³ The elimination of this stairway will require my clients to access their property further to the south by entering the Trail at the crossing at near station 371+00 and then backtracking to reach their property.⁴ For obvious reasons, my clients do not support removal of this stairway. Moreover, the County has previously represented that retaining such access points would be a priority in the Trail design.

¹ See Preliminary Plans, Existing Conditions Plan, at pg. EX12 (attached hereto).

² See Preliminary Plans, Existing Conditions Plan, at pg. EX12 (attached hereto).

³ See Preliminary Plans, Plan and Profile, at pg. AL19 (attached hereto).

⁴ See Preliminary Plans, Plan and Profile, at pg. AL19 (attached hereto).

- **Safety/Privacy** – From the Trail, my clients currently access their property via a locked gate depicted on the Preliminary Plans between stations 373+00 and 374+00.⁵ The Preliminary Plans propose widening the Trail, which will result in the construction of a block retaining wall on its west side.⁶ This wall will be exposed approximately 5 feet above the existing grade when viewed from the west.⁷ In order to bridge the elevation difference between the widened Trail and the lower portion of the County’s right of way and the Hild Property, the Preliminary Plans depict the construction of a concrete stairway identified as “Stair #63.”⁸ It appears that this stairway is designed to both facilitate access by the County for maintenance of the new retaining wall and for private access to the Hild Property.

As confirmed by the County, however, these stairs will not contain any gate, let alone a locked gate comparable to my clients’ existing one. This gate has been necessary to maintain the safety of my clients’ valuable boat (and other personal property) and maintain privacy in utilizing their recreational amenities. My clients recognize the necessity for widening the Trail and the accompanying need to construct a new access stairwell. However, they do not support the construction of an unlocked stairway that will facilitate, and perhaps even encourage, access to their property by Trail users. Although the County has suggested that my clients install a privacy and security fence at the east boundary line of the Hild Property, such a fence would be located within just a few feet of ordinary high water, which may not only be undesirable from a permitting standpoint, but may unnecessarily impede visual access to the water.

- **Wetland Mitigation** – The Preliminary Plans identify two alleged wetlands (Wetlands 23A and 23B) and one alleged jurisdictional ditch (Jurisdictional Ditch #14) in the vicinity of the Hild Property.⁹ The limited time available for public comment has not afforded my clients an opportunity to retain a biologist to determine if he or she agrees with the wetland category and rating assigned to each of these wetlands and the alleged jurisdictional nature of the ditch. That being said, inasmuch as wetlands are identified by the presence of soils, hydrology, and vegetation, my clients do not believe that these wetlands meet the appropriate definitions to be regulated as such under local, state, and/or federal law.

Not only are these areas generally lacking in these elements, but to the extent that said wetlands exist, they have been artificially created as a result of modifications to the

⁵ See Preliminary Plans, Existing Conditions Plan, at pg. EX12 (attached hereto).

⁶ See Preliminary Plans, Plan and Profile, at pg. AL19 (attached hereto).

⁷ See Preliminary Plans, Wall Profiles, at pg. WP6 (attached hereto).

⁸ See Preliminary Plans, Plan and Profile, at pg. AL19 (attached hereto).

⁹ See Preliminary Plans, Existing Conditions Plan, at pg. EX12 (attached hereto).

grade of the former rail corridor and current Trail. *See* SMC 21A.15.1415 (“Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.”). As such, they should not be regulated as wetlands and impacts to those alleged wetlands and/or accompanying buffers should not be required.

Unfortunately, the Preliminary Plans reveal that approximately 1,000 feet (or more) of “wetland buffer addition area” will be planted in the very location where my clients’ longstanding deck is situated.¹⁰ My clients are concerned that this mitigation may require the removal of their longstanding deck. As indicated, however, it does not appear that these wetlands meet the applicable criteria to be designated as such, so no such mitigation should be required. *See* SMC 21A.15.1415. Moreover, it appears that the County is largely exempt from mitigating wetland buffer impacts as a result of Trail. *See* SMC 21A.50.290(2)(a) (“Where...the East Lake Sammamish Trail transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of...the East Lake Sammamish Trail if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland.”). In short, as a result of this provision, the Preliminary Plans should not depict or otherwise project buffers onto the opposite side of the Trail from the respective “wetlands,” let alone mitigate for alleged impacts to their non-existent buffers. In summary, requiring mitigation in the proposed location of my clients’ longstanding deck appears to be wholly unnecessary and an equally unwise use of taxpayer resources.

D. Preferred Resolutions

On January 27, 2017, the undersigned and Mr. Hild attended a productive meeting with County representatives to discuss the potential adverse impacts to the Hild Property as a result of the Preliminary Plans. The County representatives in attendance included Barbara Flemming, Senior Deputy Prosecuting Attorney and Frank Overton, Capital Projects Managing Supervisor for the King County Department of Natural Resources and Parks. My clients were very much appreciative of the tone of the meeting and the County’s willingness to consider creative options for the Hild Property.

Although nothing concrete emerged from this meeting, Mr. Hild expressed a potential willingness to grant the County a covenant or easement that would allow the installation of a storm drainage pipe under and through the Hild Property for a direct discharge into the Lake. In turn, this would save taxpayers the installation of a very expensive infiltration trench depicted on the Preliminary Plans.

¹⁰ *See* Preliminary Plans, Landscape Plan, at pg. LA12 (attached hereto).

Additionally, my clients are also considering the potential removal of their boathouse, which is constructed upon a retaining wall that now presumably represents the ordinary high water mark on that portion of the Hild Property. Removal of this bulkhead and the accompanying boathouse would presumably result in a net increase of shoreline ecological functions and values and allow for more meaningful mitigation than the seemingly arbitrary "wetland buffer addition area" currently depicted in the area containing my clients' longstanding deck. In turn, the County may be willing to grant my clients a special use permit to (1) retain their existing deck, (2) construct a new boathouse on the upland portion of right of way in the vicinity of the new retaining wall, and/or (3) install a locked gate to preserve the safety and privacy of the Hild Property.

In summary, to the extent that wetland mitigation is required in the vicinity of the Hild Property, my clients respectfully request that County and City staff employ some regulatory flexibility, creativity, and patience to determine if the parties can reach a mutually beneficial resolution.

CONCLUSION

My clients do not generally oppose the improvements to the Trail and hope that the County is able to fulfill its vision for the corridor. They openly recognize that the property and permitting issues involved in this segment of the Trail are complex and will necessarily require some time to analyze and resolve. My clients look forward to working with the City and County to successfully resolve their concerns.

Sincerely,

LAW OFFICE OF SAMUEL A. RODABOUGH PLLC



Samuel A. Rodabough
sam@rodaboughlaw.com

cc: Barbara Flemming, Senior Deputy Prosecuting Attorney

Exhibit 29
SSDP2016-00415
005129

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- [Map This Property](#)
- [Glossary of Terms](#)
- [Area Report](#)
- [Property Detail](#)

PARCEL

Parcel Number	062406-9123
Name	HILD ROBERT L & JANET M
Site Address	
Legal	S 58.70 FT OF POR OF GL 1 LY WLY OF NP R/W & SH LDS ADJ

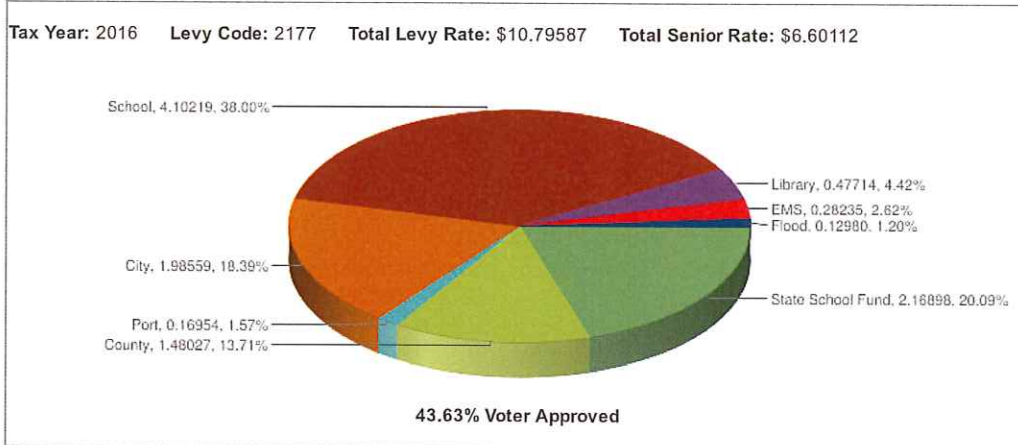
BUILDING 1

Year Built	
Total Square Footage	
Number Of Bedrooms	
Number Of Baths	
Grade	
Condition	
Lot Size	804
Views	Yes
Waterfront	LAKE SAMM



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TOTAL LEVY RATE DISTRIBUTION



[Click here to see levy distribution comparison by year.](#)

TAX ROLL HISTORY

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2016	2017	100,000	48,000	148,000	100,000	48,000	148,000
2015	2016	100,000	45,000	145,000	100,000	45,000	145,000
2014	2015	100,000	39,000	139,000	100,000	39,000	139,000
2013	2014	100,000	18,000	118,000	100,000	18,000	118,000
2012	2013	100,000	10,000	110,000	100,000	10,000	110,000
2011	2012	100,000	10,000	110,000	100,000	10,000	110,000
2010	2011	156,000	0	156,000	156,000	0	156,000
2009	2010	156,000	0	156,000	156,000	0	156,000

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GENERAL NOTES:

1. SEE SHEET C4 FOR SYMBOL AND LINE LEGEND.
2. THE RAIL ROAD CENTERLINE (RR C/L) & R/W LINES WERE PROVIDED BY KING COUNTY, DATED 1998, UNLESS OTHERWISE NOTED.
3. OUTLINES FOR BUILDING STRUCTURES SHOWN ARE BASED ON GS AND AERIAL PHOTOS, DATED 2012.
4. NOT ALL HEDGES AND ARBORETTAKES ARE INCLUDED IN THE SURVEY.
5. UTILITY ASBUILT AND POTHOLOGING RESEARCH HAVE NOT BEEN INCORPORATED.
6. MODIFICATIONS WERE DONE TO THE RIGHT OF WAY CENTERLINE RECORD DOCUMENTATION AS PROVIDED BY KC.
7. PARCEL LINES WERE LIMITED PER GIS INFORMATION PROVIDED BY COUNTY, DATED 2018.

LEGEND:

- FORMER RAILROAD CENTERLINE 220 RR C/L
- CONSTRUCTION CENTERLINE 220-00 B-LINE

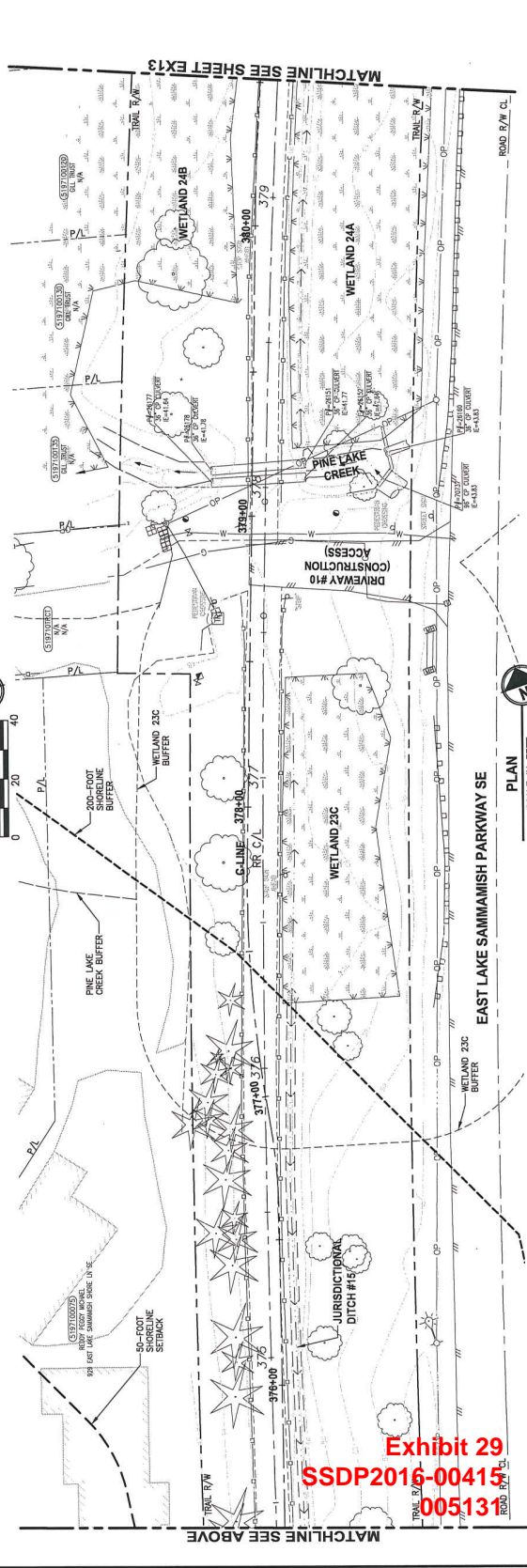
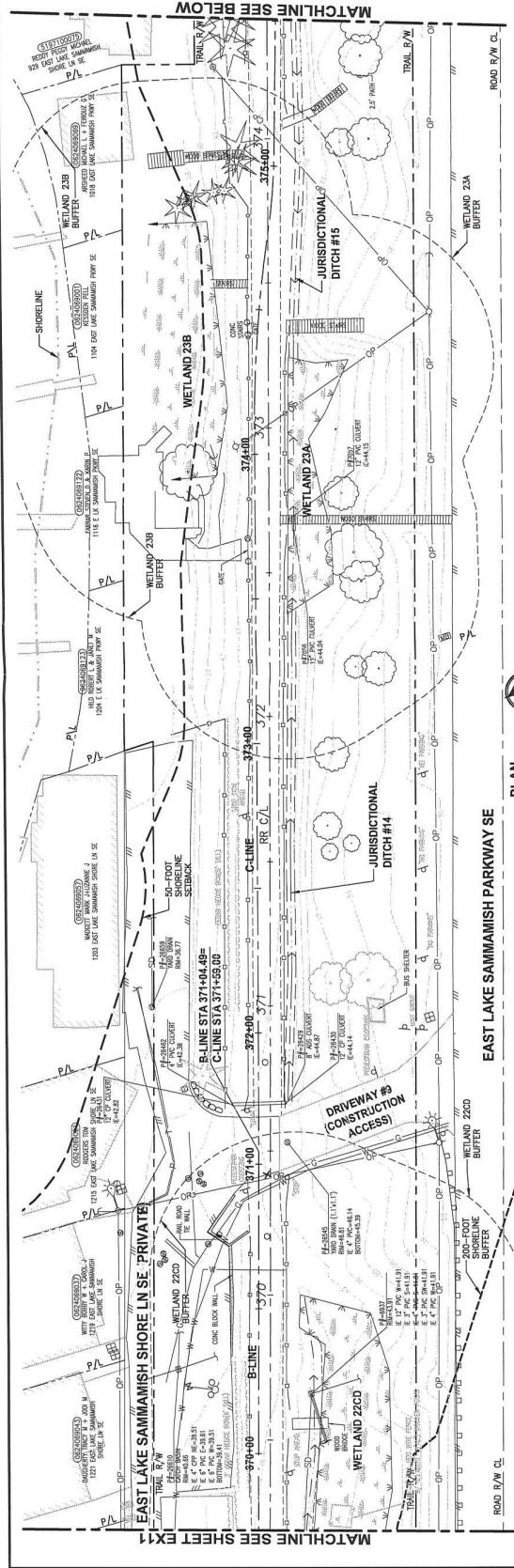


Exhibit 29
SSDP2016-00415
005131

CITY OF SAMMAMISH APPROVAL		
City Engineer	Title	Date
Community Development		

60% REVIEW SUBMITTAL
NOT FOR CONSTRUCTION

SHEET NO.
20 OF 135
EX12

EXISTING CONDITIONS PLAN

PROJECT NAME
**EAST LAKE SAMMAMISH
MASTER PLAN TREATMENT
SOUTH SAMMAMISH SEGMENT B**
SAMMAMISH, WA

Parametrix
ENGINEERING PLANNING ENVIRONMENTAL SCIENCES
719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104
WWW.PARAMETRIX.COM

PRELIMINARY

ONE INCH AT FULL SCALE.
FILE NAME: 201609031000X-03
ISSUE: 03/15/2016-07/19/16
DATE: 07/19/16
APPROVED: 07/19/16

REVISIONS	DATE	BY	DESIGNED
01			M. TSUN
02			B. PURGANAN
03			C. CHANNESSEN
04			V. HO



SAMUEL A. RODABOUGH
ATTORNEY AT LAW
11820 NORTHUP WAY, STE. E200
BELLEVUE, WA 98004
(425) 440-2593
(425) 284-3051 (FAX)

RECEIVED

January 27, 2017

JAN 27 2017

Via Email & U.S. Mail

CITY OF SAMMAMISH

City of Sammamish
Department of Community Development
Attn: Lindsey Ozbolt, Associate Planner
801 228th Ave. SE
Sammamish WA, 98075
lozbolt@sammamish.us

King County
Department of Natural Resources and Parks
Attn: Gina Auld, Capital Project Manager IV
201 S. Jackson St., Ste. 700
Seattle, WA 98104-3855
gina.auld@kingcounty.gov

**Re: Shoreline Substantial Development Permit 2016-00415
East Lake Sammamish Trail, South Sammamish B Segment**

Dear Ms. Ozbolt and Ms. Auld:

This Firm represents William & Debra Gottschalk (collectively "Gottschalk") and William & Kathryn Greve (collectively "Greve"), the owners of residential properties located within the City of Sammamish ("City"). My clients' properties will be adversely affected by the proposed modifications to the East Lake Sammamish Trail, South Sammamish B Segment ("Trail") that have been proposed by King County ("County") in the above shoreline substantial development permit ("SSDP"). My clients are in receipt of the City's Notice of Application for the above SSDP and they have reviewed the 60% design plans for the Trail, dated on or about September 2016 ("Preliminary Plans"). Please accept the following as (1) a response on behalf of my clients to the SSDP application, including the Preliminary Plans, and (2) a request for my clients to be included as parties of record for this SSDP and to receive future notifications and status updates regarding the SSDP application.

A. The Properties

Gottschalk owns and resides in the residence located at 2419 E. Lk. Sammamish Pl. SE, Sammamish, WA 98075, also known as King County Tax Parcel No. 0724069055 ("Gottschalk Property"). Greve owns and resides in the adjoining residence located at 2417 E. Lk. Sammamish Pl. SE, Sammamish, WA 98075, also known as King County Tax Parcel No. 0724069059 ("Greve Property"). The Greve Property is located immediately north of the Gottschalk Property. As with many waterfront properties in this area, the Gottschalk Property and the Greve Property are physically constrained by Lake Sammamish to the west and the Trail to the east. Although these properties enjoy significant waterfront amenities, they are also characterized by significant access constraints and privacy concerns stemming from their proximity to the Trail.

**Exhibit 29
SSDP2016-00415
005135**

By way of background, and for purposes of this letter, with the limited time available for public comment, my clients have been unable to undertake a comprehensive review of the titles to their respective properties to determine the origin of the County's right-of-way for the Trail. However, per maps available through the County's Department of Natural Resources and Parks, it appears that the origin of the right-of-way in this section of the Trail is the "Tibbetts Deed."¹ The map does not explain if the County believes it owns a fee simple interest in this section of the Trail, or a mere easement. In this limited time available for public comment, however, my clients have been unable to verify if the property interest conveyed by the Tibbetts Deed has previously been adjudicated by any state or federal court. Nonetheless, until demonstrated otherwise, similar to other sections of the Trail, my clients' necessarily take the position that the County's interest constitutes an easement and that my clients own the underlying fee simple interest.

B. Deficiencies in Preliminary Plans

As indicated, my clients have reviewed the Preliminary Plans for the Trail. In this regard, it is worth noting that Mr. Gottschalk has over 35 years of complex construction experience. He is currently the President of Lydig Construction, Inc., a regional commercial construction company whose project portfolios include federal, state, and local government buildings (*e.g.*, secondary and higher education buildings, courthouses, administration buildings, correction centers, civic halls, etc.) and private commercial buildings (*e.g.*, offices, hospitals, hotels, casinos, etc.). In short, Mr. Gottschalk is well-versed and highly qualified in reviewing construction drawings. Accordingly, my clients offer the following comments regarding the Preliminary Plans:

1. Unnecessary Waterward Realignment of Trail Centerline

Per the Preliminary Plans, it appears that the County is unnecessarily realigning the centerline of the Trail waterward (*i.e.*, closer to my clients' residences).² Notably, the County has previously published the criteria that it employs to determine if the existing centerline of the Trail should be realigned, which include the following: (1) "[m]inimizing costs where possible without impacting trail standards," and (2) "[m]inimizing impacts to adjacent homeowners."³ As explained in greater detail below, it does not appear that the County's proposed realignment complies with either of these criteria.

¹ See East Lake Sammamish Trail Railroad Right of Way Historical Acquisitions, King County Department of Natural Resources and Parks, Parks Division (July 29, 2014), at pg. 15.

² Compare Preliminary Plans, Existing Conditions Plan, at pg. EX6 (attached hereto as Exhibit 2) with Plan and Profile, at pg. AL10 (attached hereto as Exhibit 1).

³ East Lake Sammamish Trail Project, King County Parks (Spring 2014), at pg. 5.

Specifically, the proposed realignment occurs between stations 327+31.99 and 326+71.62.⁴ The realignment results in the following significant, adverse impacts, among others:

- **Reduced Utility of Shared and Separate Driveways** – The realignment shortens the approach to the shared portion of my clients’ driveway and severely limits vehicle maneuverability and ingress and egress from the easternmost portions of their separate driveways. In particular, the turning radius of their driveways are significantly compromised and may require the owners to trespass onto each other’s property for future, rudimentary driveway navigation.
- **Reduced Safety/Visibility** – The proposed Trail realignment creates an increased safety hazard for both vehicles and Trail users at this crossing. Specifically, the rather abrupt realignment near the north property line of the Greve Property appears to reduce sight distance for vehicles exiting the shared portion of my clients’ driveway, which decreases safety for both my clients and Trail users.
- **Proximity, Loss of Privacy and Safety** – The proposed Trail realignment will undoubtedly negatively affect the values of my clients’ residences, both of which are multi-million dollar residences. The proposed Trail realignment and accompanying widening will require the loss of most, if not all, of the existing privacy screening for these residences, including mature arborvitae hedges. In short, Trail users will not only be much closer to these residences, but will be staring through windows into their homes. Additionally, the increased proximity of the Trail to my clients’ residences may encourage Trail users to engage in unauthorized use of the highly visible boat launch located on the Greve Property.

2. Inadequate Drainage Infrastructure

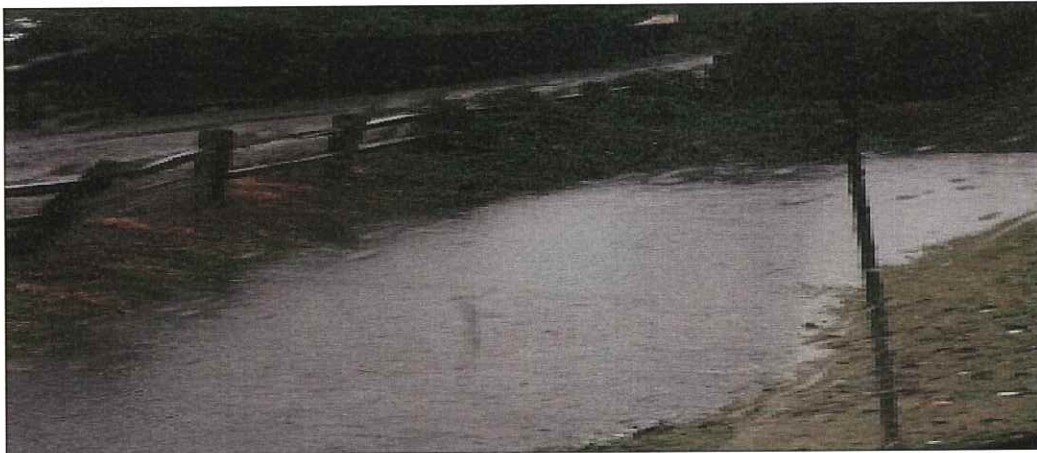
The existing elevated Trail corridor currently acts as a berm that collects surface water behind it during extreme weather conditions. This problem is exacerbated by excess hydraulic water pressure from Jurisdictional Ditch #11B and runoff from nearby impervious surfaces, including the existing semi-permeable gravel Trail.⁵ Although the Preliminary Plans depict the existence of four, 6-inch culverts located near the north end of Jurisdictional Ditch #11B,⁶ these culverts do not currently provide an outlet for the ponding water. Instead, because the ponding water currently has no outlet, it builds hydraulic pressure that adversely affects the foundations and sewer systems of both the Gottschalk and Greve residences. This hydraulic pressure has led to water infiltration through the foundations and into their respective residences.

⁴ See Preliminary Plans, Plan and Profile, at pg. AL10 (attached hereto as Exhibit 1).

⁵ See Preliminary Plans, Existing Conditions Plan, at pg. EX6 (attached hereto as Exhibit 2) with Plan and Profile, pg. AL10 (attached hereto as Exhibit 3).

⁶ See Preliminary Plans, Existing Conditions Plan, at pg. EX6 (attached hereto as Exhibit 2).

The following photos depicts the water that ponds behind the Trail corridor in front of my clients' residences and the damage to these residences as a result of this ponding and associated hydraulic pressure:



*Note – The above photo was taken at approximately 3:00 p.m. on January 18, 2017. The ditch collects and retains water during extreme weather conditions. The ditch was water free 18 hours prior to the time that this photo was taken. As explained in greater detail herein, adopting my clients' recommended drainage improvements, will resolve the existing drainage issues and better protect any Trail improvements from unnecessary erosion and damage.



*Note – The above photo depicts the source of water forced up through the foundation of the residence as a result of hydraulic pressure.

Exhibit 29
SSDP2016-00415
005138



*Note – The above photo depicts the pathway by which water, forced up through the foundation from hydraulic pressure, runs along the interior walls of the residence.

The proposed drainage improvements in the Preliminary Plans do not appear to adequately address these drainage concerns. In particular, changing the Trail from a semi-permeable gravel surface to an impervious paved surface, while simultaneously widening the Trail, will increase surface water runoff. Moreover, the Preliminary Plans do not depict any underdrain in the vicinity of my clients' properties that will allow for surface water collecting on the east side of the Trail to drain to the west side and ultimately be discharged into the Lake. In other words, it is likely that the existing ponding conditions will continue unless and until the Preliminary Plans are revised with respect to drainage.

3. Design

My clients, including Mr. Gottschalk with his extensive design and construction experience, believe that the Proposed Plans depict a Trail with poor design and a general lack of consideration to architectural exterior design. Specifically, the Preliminary Plans include a masonry retaining wall with a coated chain link for only a portion of affected property, and leaving the remainder with no protection at all. This total lack of architectural perspective by the County fails to follow any reasonable architectural standards for the proposed improvements. The County should have designed something more consistent with the existing improvements that takes into consideration that the two residents share one common entrance and the architectural barrier should be consistent along the affected property.

Exhibit 29
SSDP2016-00415
005139

B. Proposed Resolutions for Deficiencies in Preliminary Plans

My clients believe that there are simple and cost-effective design solutions that would largely alleviate the above concerns that are both (1) consistent with the County's design objectives for the Trail, and (2) avoid negative impacts to adjacent property owners. These solutions are as follows:

1. Shift Proposed Realignment of Trail Centerline to the South

My clients propose that the abrupt transition for the Trail centerline realignment currently depicted as occurring between stations 327+31.99 and 326+71.62 be shifted to the south between stations 324+50 and 324+00.⁷ It does not appear that shifting the transition to that location would impact any adjacent properties, as that location does not involve constraints that are similar to those in the immediate vicinity of my clients' property. For example, unlike the County's proposed location, my clients' proposed location is not in the vicinity of a Trail crossing, such as a driveway. Moreover, my client's proposed location for the transition would alleviate concerns regarding impaired sight lines at my clients' Trail crossing, as the Trail alignment could be straightened in the absence of the proposed transition. My clients' proposal would also accommodate the following:

- **Retaining Wall #10** – My clients' preferred alignment would allow for Retaining Wall #10 to be moved east, closer to the alignment of the Trail, which could then be reengineered to be either a smaller retaining wall, or be eliminated altogether as a result of existing elevations. This common sense change would result in considerable savings to taxpayers.⁸
- **Clearing and Grubbing Limits** – My clients also propose that the clearing and grubbing lines be modified to correspond to my clients' preferred Trail realignment. My clients' proposed modifications are depicted on the attached Exhibit 3. Further, the clearing limits should be adjusted to follow the course of the Trail in order to prevent and/or limit, any adverse impacts to my clients' existing stamped concrete driveway, irrigation, drainage, and landscape lighting.
- **Drainage Revisions** – My clients also request that certain changes be made to the Preliminary Design with respect to drainage, as depicted in the attached Exhibit 4. These proposed changes are summarized as follows:

⁷ See Preliminary Plans, Existing Conditions Plan, pg. EX6 (attached hereto as Exhibit 2).

⁸ See Preliminary Plans, Existing Conditions Plan, Plan and Profile, pg. AL10 (attached hereto as Exhibit 3).

(1) Continue the underdrain depicted for installation south of station 326+00 on the east side of the Trail through to station 327+31.99. Tie the underdrain to Catch Basin #9 located at station 327+34.

(2) To address the additional ponding that will be expected from increasing the impervious surface from the Trail due to widening, my clients request the installation of a CMP slotted trench drain in the existing driveway, such as the product available from Contech Engineering Solutions depicted in Exhibit 6.


- **Fencing** – My clients also request that they be allowed to maintain the existing level of safety and security that exists for their properties, which will be significantly compromised by the removal of their vegetative privacy screening, existing fence, and electric gate. Maintaining the same level of security will also eliminate the potential for unauthorized use of the highly visible boat launch located on the Greve Property. My clients recommend realigning the chain link fence depicted in the Proposed Plans consistent with their preferred Trail realignment and extending said fence across both properties as depicted in Exhibit 5. Further, they request permission to install an electric rolling security gate similar to existing one serving the properties. Doing so will also maintain a reasonable resemblance of the exterior architecture of these multi-million dollar homes.

CONCLUSION

The Trail constitutes a regional asset that is beneficial to the greater public. As such, my clients do not oppose improvements to the Trail and sincerely desire that the project will be successful and completed in a timely manner. However, my clients justifiably believe that the proposed Trail improvements should consider the adverse impacts to adjoining properties (as expressly set forth in the County's own criteria), including the Gottschalk Property and Greve Property. My clients respectively request that the County give their proposed improvements serious and thoughtful consideration, as the adoption of those proposals would remedy their concerns.

Sincerely,

LAW OFFICE OF SAMUEL A. RODABOUGH PLLC



Samuel A. Rodabough
sam@rodaboughlaw.com

cc: Barbara Flemming, Senior Deputy Prosecuting Attorney

Exhibit 29
SSDP2016-00415
005141

Exhibit 6



PRODUCTS

MARKETS

START A PROJECT

KNOWLEDGE CENTER

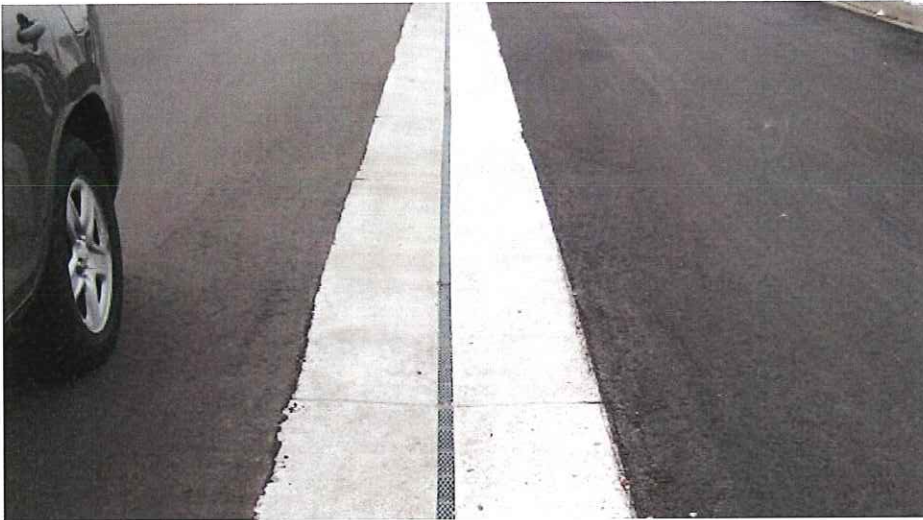
COMPANY

Products

Pipe

Corrugated Metal (CMP)

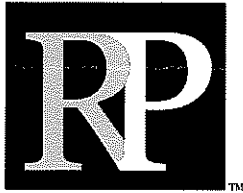
Slotted Drain



Slotted DrainTM

Slotted Drain pipe removes sheet flow from streets, highways, and parking lots without multiple grades or water channeling devices. The result is an aesthetically pleasing inlet that is safer and easier to install and maintain.

Exhibit 29
SSDP2016-00415
005147



ROMERO
PARK P.S.

NORTHWEST OFFICE
COLUMBIA WEST BLDG.
155-108th Ave NE, Ste. 202
Bellevue, Washington 98004
Telephone (425) 450-5000
Facsimile (425) 450-0728

CALIFORNIA OFFICE
RANCHO BERNARDO CRTYD.
16935 West Bernardo Dr., Ste. 260
San Diego, California 92127
Telephone (858) 592-0065
tromero@romeropark.com

Via USPS

January 4, 2017

City of Sammamish
Attn: Lindsey Ozbolt, Associate Planner
City Hall
801 228th Avenue SE
Sammamish, Washington 98075

RECEIVED

JAN 4 9 2017

CITY OF SAMMAMISH

**Re: Notice of Application for Shoreline Substantial Development Permit – East Lake Sammamish
Trail Segment 2B – SSDP2016-00415**

Our File: HILB 506

Dear Ms. Ozbolt:

Pursuant to Sammamish City Code §20.05.090, on behalf of our client Robert Hild, we request notice of any decision, recommendation or submitted comments regarding the application for a Shoreline Substantial Development Permit for East Lake Sammamish Trail Segment 2B (SSDP20016-00415).

Notice should be addressed to:

H. Troy Romero
Romero Park P.S.
155 108th Avenue NE
Suite 202
Bellevue, Washington 98004
tromero@romeropark.com

Very truly yours,
ROMERO PARK P.S.

H. Troy Romero
HTR/sp

Exhibit 29
SSDP2016-00415
005148

Ms. Lindsey Ozbolt
Associate Planner
City of Sammamish

1/10/2017

Skip Buchanan
813 E. Lake Sammamish Shln. N.E.
Sammamish, WA. 98074

RECEIVED

JAN 23 2017

CITY OF SAMMAMISH

Re: 3755300004. Trail segment 2B, STATION 446
ELST, 60% Plan, Comments and Concerns

I will try to keep this brief:

1. The ELST 60% plan calls for my rockery to remain. Thank you. That will save King County a great deal of money and promote an esthetic front for my home.
2. At the top of the rockery at station 446.00, the center marker of the trail measures 10 feet to my fence, west, and 11.5 feet east to a ditch. I ask for a little flexibility on the part of ELST should it need another 12 inches, one way or the other, to keep my fence. I will be happy to help ELST with any additional resources needed to do this.
3. "Wetland 28E is a ditch. It is dry on one end of its 75- foot length and runs into an unmaintained broken pipe on the other end. If area 28E could be correctly used with drainage pipe placed back in service, it could connect with pipe plans for areas 447.00 and 448.00 and take the combined drainage down to a cabin property at 833 East Lake Sammamish N.E. that I own, and into Lake Sammamish.

Comment:

I have been meeting and requesting a little flexibility on the development of the 125 feet of trail that runs behind my home for over a year. It should be noted that every King County and Parametrix employee I have met has been exceptionally professional and kind, especially Kelly Donahue.

Thank you,

Skip Buchanan
skipbuc@gmail.com

Exhibit 29
SSDP2016-00415
005149

City of Sammamish City Hall
Attn: Lindsey Ozbolt, Associate Planner
801 228th Avenue SE
Sammamish, WA 98075

RECEIVED

JAN 27 2017

CITY OF SAMMAMISH

January 26, 2017

Re: E. Lake Sammamish Trail South Segment 2B – King County's 60% Design Plan
File Number: SSDP2016-00415
Request Permit Denial

Lindsey Ozbolt:

We have several concerns regarding how the 60% Design Plans will very negatively affect our property at 2305 E. Lake Sammamish Place SE, Sammamish, WA 98075. Our property tax account number is 892010-0082-09. We have been paying taxes on this waterfront parcel since 1975.

In the design plan the station #for our parcel is approximately 330.00 to approximately 330.50.

We purchased our property in 1975. We have title to the Second Class Shorelands Adjoining - which begins at the high water mark and runs out into the lake. Our dock sits on the Second Class Shorelands Adjoining that we own. We have a 1976 permit for our dock from King County, Washington State, and the Federal Government. We have won 2 Federal Court of Claims decisions on our ownership of the 200' wide 1875 Federal Right of Way Grant (Beres vs. US #1 and Beres vs. US #2) and 1 Federal Supreme Court decision that used the two Beres vs. US decisions as a reference (Brandt vs. US concerning who owns 1875 Right of Way Grant deeds). There is no question of our ownership! See Court Decisions attachments.

King County's plan as proposed will deny us access to our beach and dock. They propose a retaining wall (wall #11) topped with a tall cyclone fence that will run a length of 550 feet cutting off our access. Since our property is 70' wide we will be prevented from reaching the other side of our own property! Our underground utilities, our gate, and our 80' long decorative pedestrian bridge to our beach and dock that we have used for 42 years is proposed to be demolished with no replacement! This is an outrage – we will be looking at a 'Berlin Wall' with no way to get through to our waterfront and boats that we have owned for 42 years! We demand that our historic access to our beach/dock be restored as it has existed!

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King County's plan will also remove all of the existing security fencing that is waterward of the trail that King County installed some years ago to prevent the public from trespassing onto our docks, boats and beach properties! They are leaving us totally exposed to public trespassing, theft, vandalism, destruction, and liability. We demand that the security fencing as it has existed for several years be retained and included in the plan.

King County's plan will also demolish and remove all of our beautiful, valuable, mature magnolia trees and shrubs and 2000 square feet of green lawn! Why?? Our landscaping is already a wildlife and bird haven and a trail enhancement. Trail users frequently stop to take photos of the beautiful trees and shrubs. In the past King County said they would allow preservation of attractive private landscaping because it would save them money and maintenance. Instead King County is going to destroy it all and create an unneeded 'wetland buffer addition'!!! What a ridiculous waste for no gain! A terrible loss for all! We demand that our existing landscaping should be allowed to remain for the public to enjoy!

Since the highest court in the land has confirmed our ownership we have a right to have our above demands met.

The City of Sammamish should deny King County's permit request because of King County's abusive intentions to the adjacent property owners' legitimate concerns, problems and issues.

Attached are 10 photos representing our property affected by King County's proposed trail plans.

Attached also are 3 Federal Court Decisions referenced in paragraph 3.

Warren and Vicki Beres
2305 E. Lake Sammamish Place S.E.
Sammamish, WA 98075

The image shows two handwritten signatures in black ink. The top signature is 'Vicki Beres' and the bottom signature is 'Warren Beres'. Both are written in a cursive, flowing style.

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Please Retain This
Landscaping & Bridge

10 Beres
Property
Photos

SB-831

Exhibit 29
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Please Retain This
Existing Fencing Around
Our dock & rock beach
area, to prevent
trespassing, vandalism,
& destruction of our
private property.

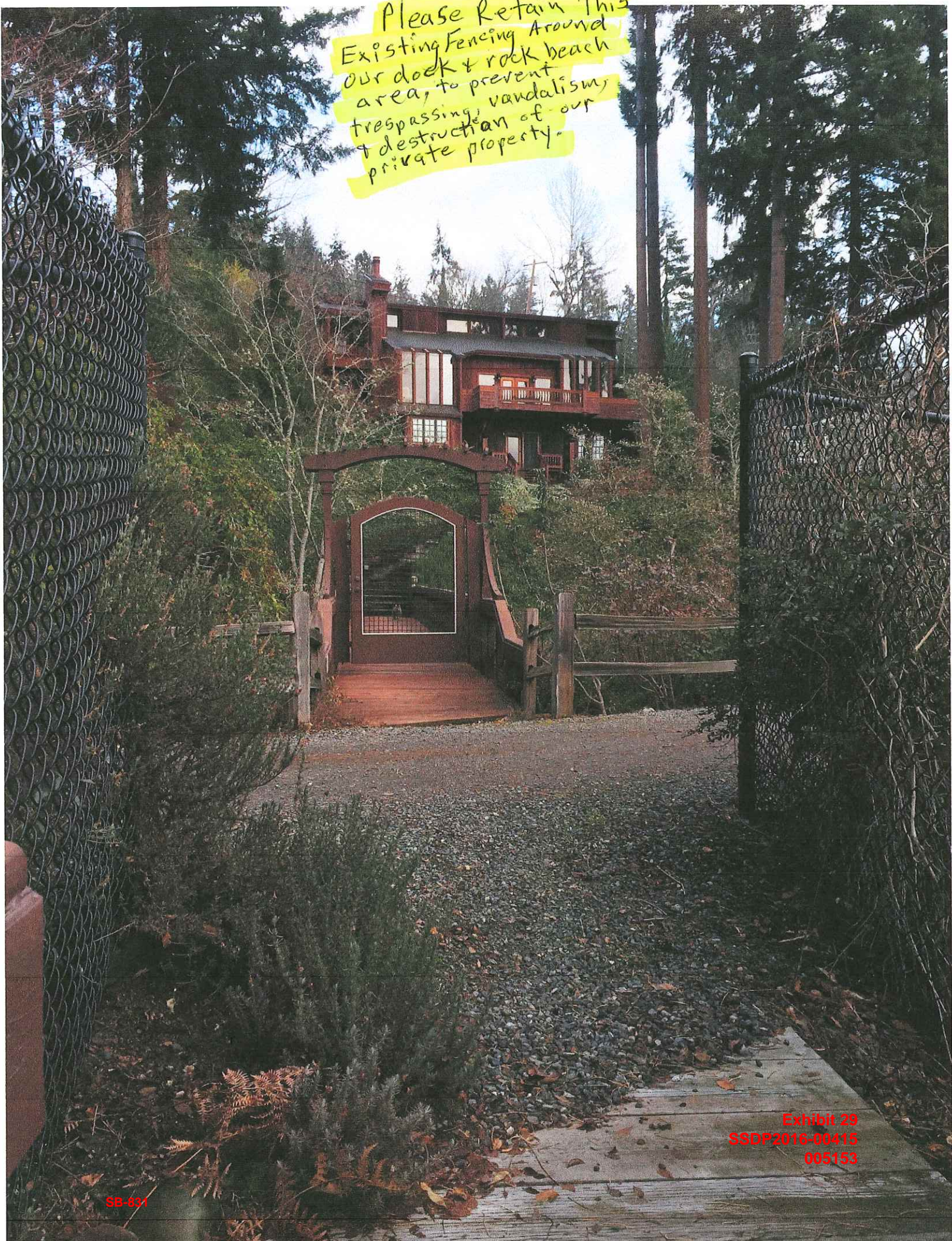


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Exhibit 29
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SB-031



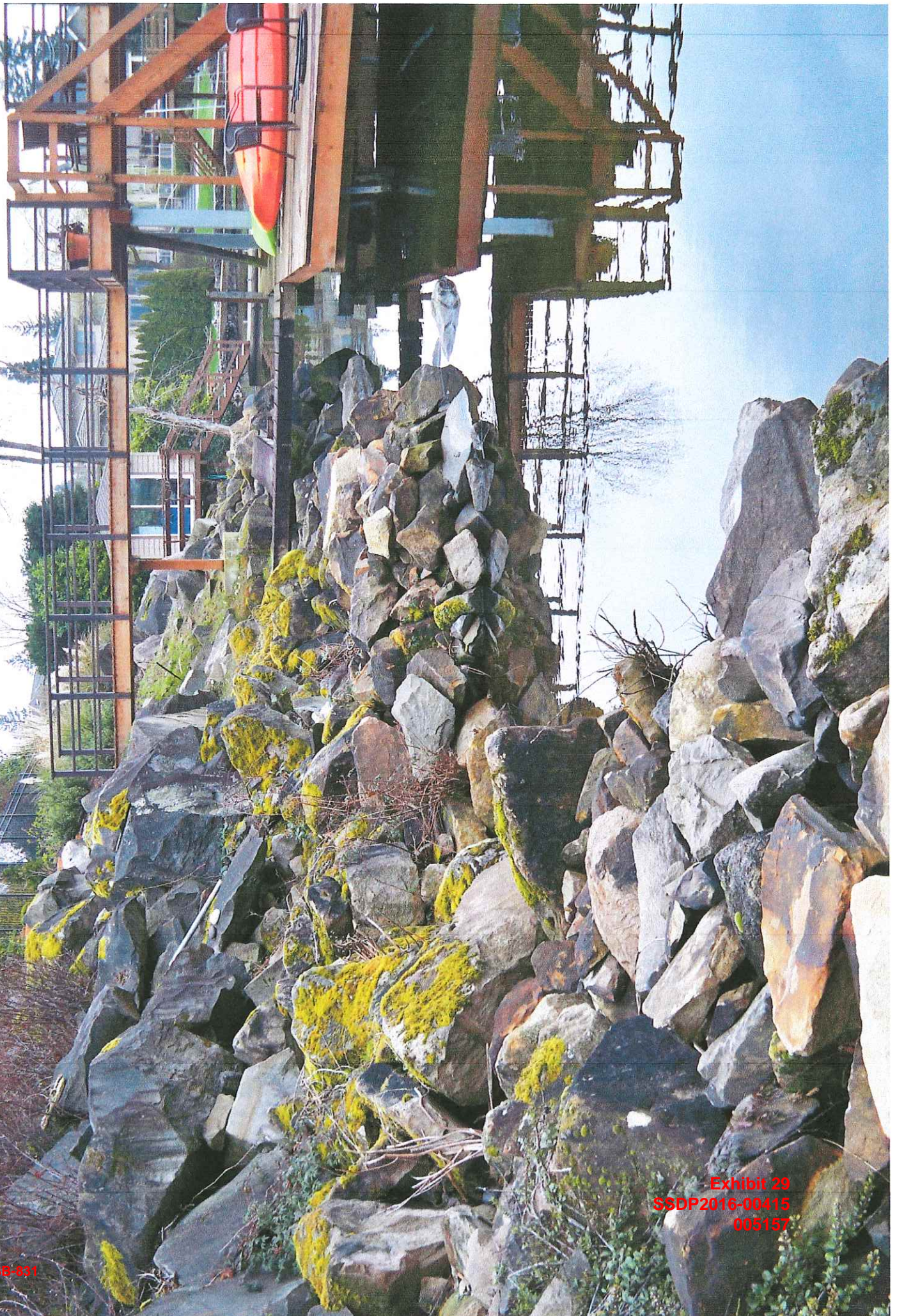
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SB-831

* Sharp Rocks On All Beaches
In our section *



58-031

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SB-831

Exhibit 29
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Exhibit 29
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Exhibit 29
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SB-831

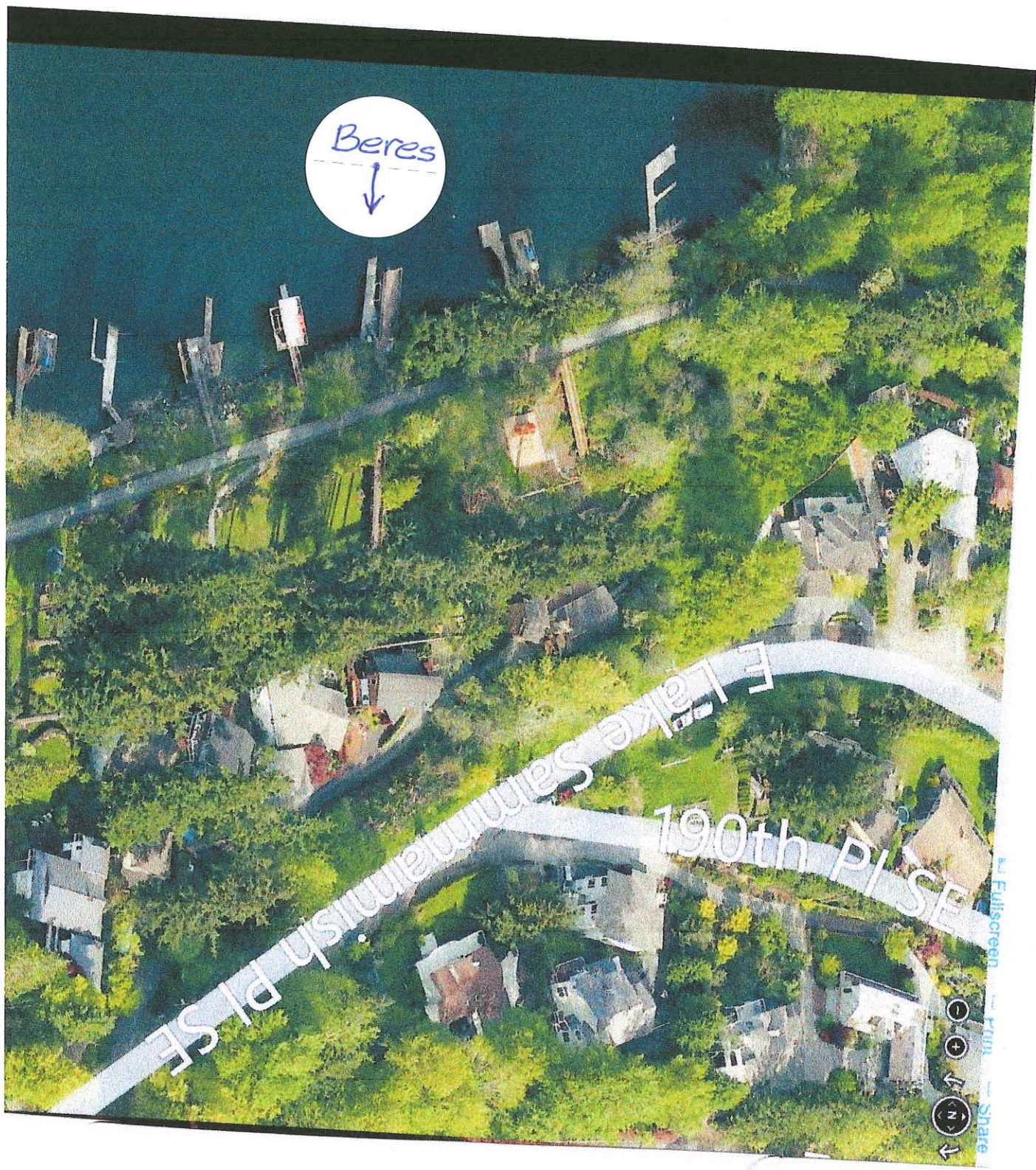


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MEMORANDUM

RECEIVED

JAN 27 2017

FROM: Nels Ackerson, on behalf of Ackerson Kauffman Fex, PC CITY OF SAMMAMISH

TO: Friends who Support Landowners' Rights

DATE: April 9, 2014

RE: Landmark U.S. Supreme Court Decision for Landowners
And Application of that Decision to Current and Future Cases

The U.S. Supreme Court handed down a landmark decision last month that will benefit hundreds of thousands of private property owners across the nation. In *Marvin M. Brandt Revocable Trust v. United States*, the Court upheld the landowner's claim of ownership of land where a railroad right-of-way had been abandoned. The Court rejected the government's argument that it owned the land.

The Court's rationale goes far beyond ownership rights on a specific abandoned railroad. The opinion states categorically that "essential features of easements . . . are well settled as a matter of property law," and explains that "granting an easement merely gives the grantee the right to enter and use the grantor's land for a certain purpose."

Our firm filed an *amicus* brief in the *Brandt* case as *pro bono* counsel for the National Association of Reversionary Property Owners and on behalf of landowners nationwide. The issues were familiar to us because Cecilia Fex and other lawyers in our firm prevailed for landowners in earlier cases involving the same issues before the U.S. Court of Appeals for the 7th Circuit and the U.S. Court of Appeals for the Federal Circuit. The *Brandt* case reached the Supreme Court on an appeal from a 10th Circuit Court decision that reached the opposite conclusion, holding that the government owned the land. The Supreme Court often accepts cases for decision when there is a split in the circuits.

A central issue in all three Court of Appeals cases was whether the government or private landowners own land where railroad use had been abandoned and where a railroad once had received an easement limited to railroad use under an 1875 federal program that incentivized railroad companies to build transcontinental railroads. The Supreme Court reversed the unfavorable 10th Circuit decision, with an opinion that is aligned with the favorable results received in the 7th Circuit and Federal Circuit decisions, and also aligned with the positions that we took for landowners in our *amicus* brief.

More than a century ago, the federal government granted an easement for a railroad across the Brandt family's property. In 2004, railroad operations were abandoned, leaving a disputed 200-foot-wide strip of land that severed the Brandt family's property. The United States

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claimed it owned the abandoned 200-foot strip and sought to quiet title which would allow a trails organization to use the land for a recreational trail.

The *Brandt* decision directly affects thousands of miles of railroad rights of way where the federal government, under the 1875 law, granted railroad right-of-way easements. Ownership rights other than for railroad uses were generally transferred to or retained separately by underlying and adjoining landowners.

Importantly, owners of land on tens of thousands of additional miles of right-of-way may also be affected the Court's *Brandt* analysis—far more than the thousands of miles of 1875 railroad right-of-way easements. Indeed, the *Brandt* Court's language quoted in the second paragraph above may be cited by landowners in cases involving railroad rights of way that did not arise under the 1875 federal law.

Still more, the *Brandt* language quoted above and the Court's analysis may be cited as precedent for landowners who assert reversionary rights and rights that are outside the scope of any easement that is for a limited use. Issues involving the scope of an easement typically arise when the owner of the easement attempts to benefit from use of the land for a different or additional purpose. Examples include a railroad selling rights for trail use on abandoned railroad right-of-way land; or a railroad, power transmission company or pipeline company selling rights to install fiber optic cable on land that is subject to an easement limited to the company's single use.

Our firm and three allied law firms plus affiliated local firms across the country are not the only law firms who have represented landowners in disputes over the scope of right-of-way easements. But our work on behalf of landowners for more than two decades has included litigation against the federal government, railroads, fiber telecommunications companies, power companies, pipe lines, recreational trails groups and others who have asserted control over land in which they either have no rights or who have wrongly asserted and profited from rights that are outside of the limited use of their easements.

A current example of a case where *Brandt* language may be cited by landowners is pending in Texas. Our firm and others represent landowners who have requested approval of a class settlement covering some 3,200 miles of railroad rights of way in Texas where telecommunications companies paid railroads for rights to install fiber-optic cable, but did not ask for or receive the consent of landowners.

The attached press release is focused on that concerning the status of the Texas class settlement that is pending approval. It has taken us nearly 15 years of litigation to achieve final approval of parallel cases in 40 other states. Only with court approval of the Texas settlement can tens of thousands of Texas landowners receive the payments and other benefits of the settlement, including restrictions on the scope of future use of the right-of-way land.

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**MARVIN M. BRANDT REVOCABLE TRUST ET AL. v.
UNITED STATES**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

No. 12–1173. Argued January 14, 2014—Decided March 10, 2014

Congress passed the General Railroad Right-of-Way Act of 1875 to provide railroad companies “right[s] of way through the public lands of the United States,” 43 U. S. C. §934. One such right of way, obtained by a railroad in 1908, crosses land that the United States conveyed to the Brandt family in a 1976 land patent. That patent stated, as relevant here, that the land was granted subject to the railroad’s rights in the 1875 Act right of way, but it did not specify what would occur if the railroad later relinquished those rights. Years later, a successor railroad abandoned the right of way with federal approval. The Government then sought a judicial declaration of abandonment and an order quieting title in the United States to the abandoned right of way, including the stretch that crossed the land conveyed in the Brandt patent. Petitioners contested the claim, asserting that the right of way was a mere easement that was extinguished when the railroad abandoned it, so that Brandt now enjoys full title to his land without the burden of the easement. The Government countered that the 1875 Act granted the railroad something more than a mere easement, and that the United States retained a reversionary interest in that land once the railroad abandoned it. The District Court granted summary judgment to the Government and quieted title in the United States to the right of way. The Tenth Circuit affirmed.

Held: The right of way was an easement that was terminated by the railroad’s abandonment, leaving Brandt’s land unburdened. Pp. 8–17.

(a) The Government loses this case in large part because it won when it argued the opposite in *Great Northern R. Co. v. United States*, 315 U. S. 262. There, the Government contended that the

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TABLE OF AUTHORITIES

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CASES

<i>Amoco Prod. Co. v. S. Ute Indian Tribe</i> , 526 U.S. 865 (1999).....	3, 32, 41
<i>Beres v. United States</i> , 64 Fed. Cl. 403 (2005).....	14, 38, 40, 42, 58
<i>Brandt v. United States</i> , 102 Fed. Cl. 72 (2011).....	13
<i>Brandt v. United States</i> , 710 F.3d 1369 (Fed. Cir. 2013).....	13
<i>Chicago & N. W. Ry. Co. v. Continental Oil Co.</i> , 253 F.2d 468 (10th Cir. 1958)	28, 52
<i>Chickasaw Nation v. United States</i> , 534 U.S. 84 (2001).....	56
<i>Choctaw, O. & G. R.R. Co. v. Mackey</i> , 256 U.S. 531 (1921).....	23
<i>Circuit City Stores, Inc. v. Adams</i> , 532 U.S. 105 (2001).....	56
<i>City of Aberdeen v. Chicago & N. W. Transp. Co.</i> , 602 F. Supp. 589 (D.S.D. 1984)	34, 44
<i>Denver & R.G. Railway Co. v. Alling</i> , 99 U.S. 463 (1878).....	23, 41
<i>Dominguez De Guyer v. Banning</i> , 167 U.S. 723 (1897).....	31
<i>Grainger v. United States</i> , 197 Ct. Cl. 1018 (1972).....	31
<i>Great Northern Ry. Co. v. United States</i> , 315 U.S. 262 (1942).....	<i>passim</i>

Opinion of the Court

1988—12 years after the United States patented the Fox Park parcel to the Brandts—that Congress did an about face and attempted to reserve the rights of way to the United States. That policy shift cannot operate to create an interest in land that the Government had already given away.⁵

* * *

More than 70 years ago, the Government argued before this Court that a right of way granted under the 1875 Act was a simple easement. The Court was persuaded, and so ruled. Now the Government argues that such a right of way is tantamount to a limited fee with an implied reversionary interest. We decline to endorse such a stark change in position, especially given “the special need for certainty and predictability where land titles are concerned.” *Leo Sheep Co.*, *supra*, at 687.

The judgment of the United States Court of Appeals for the Tenth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

⁵The dissent invokes the principle that “any ambiguity in land grants is to be resolved favorably to a sovereign grantor,” *post*, at 1 (quoting *Great Northern R. Co. v. United States*, 315 U. S. 262, 272 (1942)), but the Solicitor General does not—for a very good reason. The Government’s argument here is that it gave away more in the land grant than an easement, so that more should revert to it now. A principle that ambiguous grants should be construed in favor of the sovereign hurts rather than helps that argument. The dissent’s quotation is indeed from *Great Northern*, where the principle was cited in support of the Government’s argument that its 1875 Act grant conveyed “only an easement, and not a fee.” *Id.*, at 271.

In the United States Court of Federal Claims

Nos. 03-785L, 04-1456L, 04-1457L, 04-1458L, 04-1459L, 04-1463L, 04-1465L, 04-1466L, 04-1467L, 04-1468L, 04-1469L, 04-1471L, 04-1472L, 04-1473L, 04-1474L

Filed: April 5, 2012

RECEIVED

JAN 27 2017

* * * * *

WARREN BERES and VICKI BERES, et al.,

Plaintiffs,

v.

UNITED STATES,

Defendant.

* * * * *

CITY OF SAMMAMISH

Fifth Amendment Taking; Rails to Trails; Scope of Easement; Railbanking; Deed Interpretation.

John M. Groen, Groen Stephens & Klinge LLP, Bellevue, Wash. and **Cecilia C. Fex**, Ackerson Kauffman Fex, P.C., Washington, D.C., for the plaintiffs.

Bruce K. Trauben, Trial Attorney, Natural Resources Section, Environment and Natural Resources Division, United States Department of Justice, Washington, D.C., for the defendant. With him was **Ignacia S. Moreno**, Assistant Attorney General, Environment and Natural Resources Division.

OPINION

HORN, J.

At issue is the scope of the rights of way in these multifaceted takings cases, involving numerous plaintiffs, multiple statutory land grants, different deed types, a prescriptive easement and subsequent conveyances over a more than one hundred year time period for property located along the eastern shore of Lake Sammamish in King County, Washington. The plaintiffs in these consolidated¹ lawsuits allege that

¹ For case management purposes all of the above captioned cases were consolidated under the lead case, **Beres v. United States**, No. 03-785L. Originally seventeen separate cases were consolidated, and as of the date of this opinion, fifteen cases are now consolidated.

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CONCLUSION

For the reasons discussed above, the court finds that the scope of the easements in the SLS&E Deeds, the 1904 Reeves Quit Claim Deed, the prescriptive easement, and the 1875 Act easements, were exceeded by the establishment of the public recreational trail. Therefore, the court **DENIES** the defendant's cross-motion for partial summary judgment, and **GRANTS** the plaintiffs' cross-motion for partial summary judgment. The plaintiffs in the above captioned consolidated cases may proceed with their causes of action for Fifth Amendment takings. The parties shall consult and propose procedures for the further proceedings to resolve all of the above captioned consolidated cases.

IT IS SO ORDERED.

s/Marian Blank Horn
MARIAN BLANK HORN
Judge

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WILLIAM VAL ROBINS
2905 EAST LAKE SAMMAMISH PARKWAY SE
SAMMAMISH, WA 98075
Tel 425.392.4211 Fax 425.677.8129 Email valrobins@comcast.net

January 20, 2017

Lindsey Ozbolt, Associate Planner
Community Development - City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075

RECEIVED

JAN 23 2017

CITY OF SAMMAMISH

RE: Comments on ELST, Segment 2B

Dear Ms. Ozbolt:

Our property, on the 60% review submittal, is located between station points 307 and 308. It is shown on Sheet 38 of 135 AL6 on the plan and profile. We have several comments, questions and observations for your consideration:

1. Access to the cabin and recreational lot - temporary and permanent. There appears to be no provision for access during the construction period. We use the cabin and dock extensively all year.

2. Chain link fence on top of new wall. How tall will the proposed chain link fence be? Will we be able to put wooden slats on the fence to maintain our privacy as we have with the current chain link fence? There is no provision on the plan for a sliding gate, similar to what is currently installed, to gain access to our property. We have a sliding gate that provides privacy and can be locked so strangers do not enter our property. Retaining a gate for privacy and security is mandatory.

3. Entry to cabin and recreational lot area. The proposed plan shows a landing with steps going down to a second landing. Our current entry from the gravel trail is a ramp, not a stairway. We designed and built a ramp when we constructed our home for a number of important reasons. We have friends and family who visit us and the steps will be a hazard. Many visitors carry items to our beach when they visit us, and steps are an impediment. We also have to clean the beach and bring garbage and yard waste up to the road for disposal. We use hand trucks, wheelbarrows and movable waste containers for this purpose. Steps are not a practical alternative and create a lot of extra work.

With regard to item 2 above, the gate placement in the chain link fence may need to be moved to provide proper access to a new ramp and landing. The current ramp structure is built with large rocks. We would prefer to retain our rocks as part of any new ramp.

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4. Type 1 rest area. There is a proposed type 1 rest area shown on the drawing. The plans do not show a drawing of such rest area. We would like to know what you are proposing. In this regard, we believe that this rest area is not needed and should be removed. The rest area is less than 1/2 mile from the 7-11 store, which is a major access point to the trail. We understand that restrooms and other amenities including parking will be in that area.

If the rest area cannot be eliminated, then it should be centered between B-Line Station 306+09.55 and 307+00 as it is a more appropriate area based on current utilities and drainage.

Although there is an open recreational lot in front of the proposed rest area, that will not be permanent. We designed and planned for the building of a new home that would be connected to the present cabin.

5. The CG (Cut and Grub) and C Line (cut line) area proposed near the Type 1 rest area and other CG areas. There is a very large area proposed for this work. When we built our home, we put our electrical, gas, water, sewer, telephone, and cable utilities for the cabin underground in this area. In addition, there is a large underground storm drainage pipe crossing the entire area.

During our construction process, great care was taken in locating and installing all utilities and drainage components. The County will have to exercise extreme care and precaution within all CG areas to avoid damage to all these items.

6. East side of trail drainage. There is an existing large ditch running on the eastside of the trail that requires some type of drainage work for runoff along the trail. We put in an extra catch basin for this purpose near station point 308. We have no information regarding the plans for drainage in this area. We need information and clarification how this will be protected and preserved.

We have many concerns to discuss and resolve with you. We would welcome a time to meet on the property to discuss this with you so you have a clear understanding. It may be prudent to have a locate service identify all utility locations prior to a meeting. I have attached three photos for your review to the email transmittal of this letter. Thank you for your help.

Sincerely,



William Val Robins

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