

Testimony to SSDP hearing on ELST Segment 2B

King County is not adhering to a legally binding agreement made with the property owners along all segments of the East Lake Sammamish Trail (ELST), including Segment 2B. A copy of that agreement is submitted along with this testimony. The agreement was achieved in connection with a property owner challenge of the SSDP for the North segment. However the intent of the parties was that the agreement apply to the entire ELST, and nothing in its terms limit it in scope to just the North segment.

At issue are two conditions of that agreement.

Quoting from Item 10 in the agreement:

The County also agrees that, regardless of the existence of formal comment periods required by applicable law, The County will make the 60% and 90% plans available to the public with sufficient time to allow for public review, consideration, and feedback.

The County has expressed its intention to treat the 90% plans for Segment 2B as final insofar as citizen requested changes are concerned. In that case public review and feedback would be meaningless, and this condition of the agreement will have been ignored.

The second issue concerns Exhibit 1, which forms a part of the agreement and concerns treatment of residents' plantings and other enhancements in the right-of-way. The following four items are most relevant.

4) Plantings/landscaping in the County's right of way must not encroach onto the trail footprint.

9) Plantings/landscaping in the County's right of way may be native or non-native, if consistent with the above criteria.

10) Plantings/landscaping removed as a result of the County's forthcoming construction of the ELST may be replaced in-kind if consistent with the above criteria.

12) All references to "landscaping" in these criteria mean other manmade features, including, but not limited to, planting beds, fences, retaining walls, etc.

When construction of the North segment was completed, the county "conveniently forgot" this agreement and denied property owners permission to re-plant privacy barriers outside the trail footprint. In the North segment, when confronted with this agreement by some property owners, the county in some cases relented, (after considerable delay). But the County's responses to citizen comments on Segment 2B clearly show the intent not to allow restoration of resident enhancements outside the trail footprint. This is in conflict with the County's legally binding agreement.

We affected citizens are aware of no means, short of legal action, to hold the county to its agreement. We urge the Hearing Examiner to make such adherence a condition of approval of the SSDP.

Testimony presented by Susan Brockway
167 E Lk Sammamish Sh Ln NE

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into by and between King County ("County") and Shorelines Hearings Board Petitioners James T. Stenson, Greg & Karma Chapman, and Sammamish Homeowners (collectively "Petitioners"). The County and Petitioners are collectively referred to herein as the "Parties." The Parties enter into this Agreement to resolve (1) an appeal filed with the Shorelines Hearings Board on January 17, 2014, namely *Stenson, et al. v. King County, et al.*, SHB No. 14-001, and (2) other disputes associated with the construction of the North Sammamish segment of the East Lake Sammamish Trail, among other issues.

RECITALS

1. James T. Stenson ("Stenson") owns residential real property commonly known as 2029 E. Lk. Sammamish Pkwy. NE, Sammamish, WA 98074, also known as King County Parcel No. 7525900080.
2. Greg & Karma Chapman ("Chapman") own residential real property commonly known as 2831 E. Lk. Sammamish Pkwy. NE, Sammamish, WA 98074, also known as King County Parcel No. 2025069119.
3. Sammamish Homeowners is a Washington non-profit corporation that advocates regarding property issues affecting individuals who own residential real property within the City of Sammamish ("City"), including owners on Lake Sammamish in the vicinity of the East Lake Sammamish Trail ("ELST").
4. On July 31, 2012, King County Parks applied for a Shoreline Substantial Development Permit to widen and make other improvements to the northern portion of the ELST within the City, also known as the North Sammamish segment. This application was assigned permit no. SSDP 2013-00145 ("Application"). On September 3, 2013, the City conditionally approved the Application. In addition to the North Sammamish segment, the County is currently in the planning process for the South Sammamish segment.
5. On September 26, 2013, Stenson and Chapman filed a timely appeal of the Application to the City's Hearing Examiner ("Appeal"). Thereafter, King County filed a Motion to Dismiss Appeal of Shoreline Substantial Development Permit (SSDP), seeking dismissal of the Appeal on various grounds. On December 12, 2013, the Hearing Examiner issued a Dispositive Order on Motions, dismissing the Appeal in its entirety. On January 17, 2014, Stenson, Chapman, and Sammamish Homeowners filed a Petition for Review ("Petition") with the Shorelines Hearings Board.
6. The Parties now desire to fully and finally dismiss the pending appeal of the SSDP and resolve other disputes associated with the construction of the North Sammamish segment of the ELST, among other issues.

AGREEMENT

In consideration for the mutual covenants set forth below, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Landscaping Improvements and Vegetation: The County agrees that owners of real property burdened by, or adjacent to, the County right of way for the ELST may install landscaping improvements and vegetation within the County's right of way in accordance with the criteria set forth in **Exhibit 1**.
2. Special Use Permits: The Parties agree that those property owners who have already obtained a Special Use Permit ("SUP") for their landscaping improvements and/or vegetation, will not be required to obtain a new one for new landscaping improvements or vegetation necessitated or desired as a result of the County's forthcoming construction of the ELST. Those property owners with an SUP who seek to establish new landscaping improvements or vegetation must amend their SUP. No fee will be charged for such amendments.

The County further agrees to establish a pre-approval/screening process whereby property owners can present planting/landscaping plans to the County and obtain guidance and pre-approval from the County without risking the loss of the fee for a SUP, if applicable. If the SUP application is consistent with the criteria in Exhibit 1, the County shall approve the SUP.

The County acknowledges that it has performed a survey of the right of way for the ELST, and the County agrees that property owners will not be required to submit a survey or perform additional survey work as a condition of applying for a SUP to utilize the right of way for the ELST.

3. Notification re Commencement of Construction: Following dismissal of the Appeal to the SHB as set forth in Paragraph 11 below, the County agrees to mail a letter to all owners of real property burdened by, or adjacent to, the County right of way for the North Sammamish segment of the ELST, informing them of the anticipated schedule for construction and offering a new deadline to remove any improvements that will interfere with construction. To the extent any of these property owners seek individualized direction from the County regarding which improvements or vegetation will need to be removed as a result of construction, the County will provide this consultation by means of the pre-screening/consultation process referred to in Paragraph 2 above. The County shall also mail a similar notification prior to construction of the South Sammamish segment.
4. Liability/Indemnity: In addition to the letters to property owners required by Paragraph 3 above, the County shall also mail those property owners a letter

acknowledging that the ELST is a County facility, designed, developed and maintained by the County.

5. Signage: In addition to the signage included in the ELST design and construction plans, the County agrees to install the following additional signage on the north segment of the ELST:
 - (i) Sign pairs stating "narrow bridge" to warn trail users that the ELST narrows to eight feet in the vicinity of Stenson's residence.
 - (ii) Sign pairs stating "congested area/reduced speed" in the vicinity of Stenson's residence.
 - (iii) A total of four additional sign pairs of the existing "multiple driveway" signs currently on the design and development plans will be modified to say "congested area" and "reduce speed" instead of "multiple driveway." In addition, sign pairs stating "congested area/reduce speed" will be placed at the following locations, Audett property, 2813 E. Lk. Sammamish Pkwy. NE; Woodin property, 2927 E. Lk. Sammamish Pkwy. NE.

6. Chapman Wall: The County agrees to construct the proposed County wall in front of the Chapman residence (Wall 13A on plan sheet AL 10) on the same alignment as the wall in the existing construction plans for the adjoining property to the immediate south (Wall 13 on plan sheet AL 10). The County agrees to temporarily remove the driveway retaining wall constructed by Chapman. Chapman shall obtain three competitive bids from licensed and bonded contractors for rebuilding the wall. Chapman shall either accept the lowest bid, or if a higher bid is accepted, Chapman must agree to pay out-of-pocket the different between the higher bid and the lowest bid. The County agrees to pay Chapman a sum equal to the lowest bid, with the County's obligation capped at a maximum of \$7,500, to compensate Chapman for the costs of rebuilding the wall following construction of the North Sammamish segment of the ELST. Payment shall be received by counsel for Chapman within 45 days of the County's receipt of the competitive bids. With respect to construction of the County's proposed retaining wall adjacent to the Chapman residence, the County shall give Chapman the option of choosing one of the styles/designs attached as **Exhibit 2**.

7. Mirrors: Stenson has requested a mirror in the vicinity of the driveway serving Stenson's residence to increase the safety of crossing the ELST. The County agrees to install a mirror at this location to assist with this purpose. The County will not be obligated to maintain the mirror. The County also agrees to consider requests to retain existing mirrors, and/or install new mirrors, by other property owners concerned about the safety of crossings. Approval for the retention or installation of mirrors will be performed on a case-by-case basis, and such approval will not be unreasonably withheld.

8. Pet stations: The County agrees to install up to four additional pet stations along the north segment of the ELST at locations agreed upon the Petitioners and counsel for Petitioners. These pet stations shall include signage setting forth the rules for the ELST. These pet stations shall be in addition to those included in the ELST design and construction plans at pre-determined locations.
9. Copying Costs: Stenson and Chapman received an invoice from the County, dated November 26, 2013, in the amount of \$1,014.85 for copying costs and legal messenger fees allegedly incurred in response to a requested by counsel for Stenson and Chapman. The County agrees to pay these costs and fees.
10. Process: Petitioners have expressed a concern that the County's engineering plans are simply too difficult for laypersons to interpret in order to determine what effect the County's anticipated construction of the ELST will have on their existing improvements. Accordingly, the County agrees to provide additional information to property owners to assist in the interpretation of the plans. Such additional information shall include a "how to" guides explaining how to determine the location of sight lines and grub lines for the anticipated construction. In addition, the County will offer property owners group and individual meetings for those individuals who have questions about the County's plans and their effect on their existing improvements. The County also agrees that, regardless of the existence of formal comment periods required by applicable law, the County will make the 60% and 90% plans available to the public with sufficient time to allow for public review, consideration, and feedback. The County further agrees to provide Sammamish Homeowners with the notifications, letters, and guides set forth in Paragraphs 3 and 10 herein at the same time they are provided to the public.
11. Dismissal and Waiver: Petitioners agree to file a Motion to Dismiss with prejudice the Petition for Review in *Stenson, et al. v. King County, et al.*, SHB No. 14-001. The Motion to Dismiss shall be filed no later than Friday, February 7, 2014. Stenson, Chapman and Sammamish Homeowners agree not to file any additional legal or administrative appeals of SSDP 2013-00145, and shall not otherwise interfere with any permits for construction of the North Sammamish segment of the ELST.
12. Entire Agreement: This Agreement and the exhibits attached hereto contain the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in a writing signed by duly authorized representatives of the respective Parties or their successors in interest or assigns.
13. Enforcement: This Agreement may be enforced by filing an action in King County Superior Court. The Parties agree that damages are not an adequate remedy for any breach of this Agreement, and that a party alleging breach may seek specific performance and/or injunctive relief. The prevailing Party in such an action shall be entitled to recover its reasonable costs and attorney's fees, including those

reasonable costs and attorneys' fees incurred in any appeal from the judgment of a lower court.

14. Notice: Any notice or other communication of any sort required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if personally delivered or three days after being mailed by certified mail as follows:

For Petitioners:

Samuel A. Rodabough, Esq.
Law Office of Samuel A. Rodabough PLLC
10900 N.E. 4th St., Ste. 2300
Bellevue, WA 98004

For the County:

Barbara A. Flemming, Esq.
Senior Deputy Prosecuting Attorney
Civil Division
King County Prosecuting Attorney
516 3rd Ave., Rm. W400
Seattle, WA 98104-2388

15. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
16. Headings/Interpretation: The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement. Nothing in this Agreement shall be construed as a waiver or otherwise have any affect upon, the ongoing dispute between the Parties regarding the nature of the property interests owned by the Parties, respectively.
17. Authority: The persons executing this Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Agreement on the terms and conditions herein stated.
18. Effective Date: The "Effective Date" of this Agreement shall be that latest date identified below when any party has executed this Agreement.
19. Counterparts: This Settlement Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
20. Binding Effect: This Settlement Agreement shall be binding upon the respective successors and assigns of the Parties hereto, shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

For King County:

Monica Leers

Monica Leers, Program Manager
King County Parks

2/7/2014

Dated

For James T. Stenson:

James T. Stenson
James T. Stenson

2/6/2014

Dated

For Greg & Karma Chapman:

Greg Chapman
Greg Chapman

2/6/2014

Dated

Karma Chapman
Karma Chapman

2/6/2014

Dated

For Sammamish Homeowners:

Dwight Martin
Dwight Martin, President

2/6/2014

Dated

EXHIBIT 1

LANDSCAPING/PLANTINGS ON COUNTY RIGHT OF WAY EAST LAKE SAMMAMISH TRAIL

- 1) Plantings/landscaping in the County's right of way must not impact sight lines along the trail. Plantings/landscaping less than 3 feet in height do not impact sight lines, unless steep topography requires otherwise (slopes may dictate less than 3 feet). Plantings/landscaping outside of the sight lines may exceed 3 feet in height if the other criteria set forth below are met.
- 2) Plantings/landscaping in the County's right of way must not cause damage to the trail or trail infrastructure (including drainage facilities, infiltration, retaining walls, pavement etc).
- 3) Plantings/landscaping in the County's right of way must not result in additional maintenance costs for the County.
- 4) Plantings/landscaping in the County's right of way must not encroach onto the trail footprint.
- 5) Plantings/landscaping in the County's right of way must not adversely impact the health of other plantings on the trail or irrigation/mitigation projects on the trail.
- 6) Plantings/landscaping in the County's right of way must not be placed in critical areas, unless part of an approved restoration project.
- 7) Plantings/landscaping in the County's right of way must be consistent with City code requirements
- 8) Any proposed irrigation systems must be approved in advance to ensure compliance with the landscaping guidelines.
- 9) Plantings/landscaping in the County's right of way may be native or non-native, if consistent with the above criteria.
- 10) Plantings/landscaping removed as a result of the County's forthcoming construction of the ELST may be replaced in-kind if consistent with the above criteria.
- 11) All references to "plantings" in these criteria mean the mature height and width of the plants, shrubs and trees.
- 12) All references to "landscaping" in these criteria mean other manmade features, including, but not limited to, planting beds, fences, retaining walls, etc.
- 13) All references to "trail" in these criteria means the paved portion of the trail and trail infrastructure, including its 2-foot shoulder.