



CITY OF KIRKLAND

Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Jennifer Schroder, Director
Oskar Rey, Assistant City Attorney

Date: March 26, 2015

Subject: DEED OF RIGHT TO USE LAND FOR PUBLIC OUTDOOR RECREATION PURPOSES

RECOMMENDATION

That the Kirkland City Council authorizes the City Manager to sign a Deed of Right to Use Land for Public Outdoor Recreation ("Deed of Right") as a condition to accepting a grant from the Washington State Recreation and Conservation Office ("RCO") in the amount of \$500,000.00 for the acquisition of the Cross Kirkland Corridor.

BACKGROUND DISCUSSION

On April 17, 2012, the City Council approved Resolution R-4917 authorizing staff to submit an application to RCO for Washington Wildlife and Recreation Program (WWRP) grant assistance for the acquisition of the Cross Kirkland Corridor ("CKC"). The City's request for a \$500,000 grant for acquisition was approved by the RCO funding committee in July, 2013.

The WWRP grant program for trail facility acquisitions requires a 50/50 match. In addition, in consideration of accepting grant funds for acquisition RCO requires that the property be dedicated for public outdoor recreation purposes, and be permanently retained and maintained for such use.

Since July 2013, staff has been working with RCO to fulfill the RCO due diligence requirements to ensure the acquisition is eligible for the grant funds. The RCO office has thoroughly reviewed the acquisition records as well as documents related to title insurance, environmental assessments and a review appraisal, among other things. The final step in the process is to record a Deed of Right memorializing that the public has the right to use a portion of the CKC for trail purposes.

City staff had extensive discussions with RCO staff about the form of the Deed of Right. This grant is different from most RCO grants in the sense that it involves a railbanked rail corridor, and the Deed of Right is supposed to cover only a portion of it. The CKC is 100 feet wide in most locations. Since the grant is for \$500,000 with a \$500,000 match from the City, and the

CKC was purchased for \$5,000,000, the Deed of Right is drafted so that it covers a 20 foot width of the CKC (approximately 20% of the CKC).

In addition, the 20 foot width covered by the Deed of Right could not be a fixed 20 foot width because the pedestrian trail location may change over time. Accordingly, City staff and RCO staff agreed to the concept of a "floating" 20 foot width that acknowledges possible changes in alignment in the future. Future trail alignment changes are permitted so long as a 20 foot portion of the CKC is being used for trail purposes.

The Deed of Right document itself is a form created by the Washington Attorney General's Office for RCO. Special acknowledgements and conditions to the Deed of Right are set forth in Exhibit C to the Deed of Right (see page 10). The special conditions include:

- An acknowledgement that the Deed of Right covers a "floating" 20 wide portion of the CKC called the "Trail Area;"
- A statement that the Deed of Right is subject to existing easements and encumbrances of record;
- A statement that different uses of the CKC outside the Trail Area are permitted;
- A statement that the CKC is railbanked pursuant to the federal Rails to Trails Act and subject to reactivation for freight rail service;
- An acknowledgement that the City has already constructed a public recreational trail on the Trail Area;
- A statement that the City may realign the Trail Area to accommodate other uses on the CKC.

Finally, the Deed of Right excludes a section of the CKC between NE 104th Street and 111th Avenue NE, which is approximately 500 linear feet. The City's due diligence records indicate that there may be some environmental contamination in that area. The possible contamination does not impact the City's intended use of the CKC in that area. However, RCO policies preclude it from awarding grants in such instances. Accordingly, RCO and City staff agreed to exclude that area from the Deed of Right. This exclusion does not impact the amount or terms of the grant.

RESOLUTION R-5123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED OF RIGHT TO USE LAND FOR PUBLIC OUTDOOR RECREATIONAL PURPOSES FOR PORTIONS OF THE RAILBANKED RAIL CORRIDOR COMMONLY KNOWN AS THE CROSS KIRKLAND CORRIDOR.

1 WHEREAS, the City of Kirkland ("City") was awarded a grant from
2 the Washington State Recreation and Conservation Office ("RCO") in the
3 amount of \$500,000 for acquisition costs associated with the Cross
4 Kirkland Corridor ("CKC"); and
5

6 WHEREAS, as a condition of awarding the grant, RCO requires that
7 the City enter into a Deed of Right to Use Land for Public Outdoor
8 Recreational Purposes ("Deed of Right") that reserves the ability of the
9 public to use a "floating" 20 foot wide portion of the CKC for recreational
10 trail purposes ("Trail Area"); and
11

12 WHEREAS, the current interim trail on the CKC complies with the
13 RCO requirements for recreational trails; and
14

15 WHEREAS, the Deed of Right provides the City with the ability to
16 move or realign the Trail Area within the CKC so long as the City maintains
17 a 20 foot wide area within the CKC as a recreational trail; and
18

19 WHEREAS, the City may use portions of the CKC outside the Trail
20 Area for other purposes; and
21

22 WHEREAS, it is in the City's interests to enter into the Deed of
23 Right;
24

25 NOW, THEREFORE, be it resolved by the City Council of the City of
26 Kirkland as follows:
27

28 Section 1. The City Manager is authorized and directed to execute
29 on behalf of the City of Kirkland a Deed of Right substantially similar to
30 that attached as Exhibit "A", which is entitled "Deed of Right to Use Land
31 for Public Outdoor Recreational Purposes."
32

33 Passed by majority vote of the Kirkland City Council in open
34 meeting this ____ day of _____, 2015.
35

36 Signed in authentication thereof this ____ day of _____, 2015.

MAYOR

Attest:

City Clerk

Upon Recording, Please Return To:
Washington State Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: Adam Cole, Grants Manager
360-902-3019
adam.cole@rco.wa.gov

**DEED OF RIGHT TO USE LAND FOR
PUBLIC OUTDOOR RECREATION PURPOSES**

Grantor: City of Kirkland

Grantee: STATE OF WASHINGTON, acting by and through the WASHINGTON STATE RECREATION AND CONSERVATION FUNDING BOARD and the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, including any successor agencies

Abbreviated
Legal

Description: That portion of the BNSF Railway Company's former Woodinville to Kennydale Washington Branch line right-of-way (also known as the Seattle Belt Line and the Lake Washington Belt Line) lying within portions of NE 1/4 and NW 1/4, Sec. 20; SW 1/4 and NW 1/4, Sec. 17; SW 1/4, NW 1/4 and NE 1/4, Sec. 8; SE 1/4 and NE 1/4, Sec. 5; all in Twp. 25 N., Rge. 5 E., W.M.; and portions of the SE 1/4, Sec. 32; SW 1/4 and NW 1/4, Sec. 33; SW 1/4, SE 1/4, and NE 1/4, Sec 28; all in Twp. 26 N., Rge. 5 E., W.M. City Of Kirkland, County of King, State of Washington. (More particularly described in Exhibit "A" (Legal Description) and as depicted in Exhibit "B" (Property Map)),



Assessor's Property Tax Parcel Number(s):

2826059027 (portion); 3326059024; 3226059030 (portion); 3982701763;
3886903065; 0525059033; 0825059059; 1725059053; 2025059276.

Reference Numbers of Documents Assigned or Related: Quit Claim Deed recorded in King
County Washington 20120413001315

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the Washington Wildlife and Recreation Program's Outdoor Recreation Account - Trails Category. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled Cross Kirkland Corridor, Project Number 12-1392 signed by the Grantor on the 5th day of November 2013 and the Grantee the 13th day of November 2013 with supporting materials which are on file with the Grantor and the Grantee in connection with the Project Agreement.

The Grantor hereby conveys Real Property (also known as the "Trail Area") as described in Exhibit A and Exhibit B, subject to Special Acknowledgements and Conditions contained in Exhibit C, and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description for recreational trail and trail related facilities and purposes, consistent with the Project Agreement, so as to provide public access to outdoor recreation opportunities in perpetuity and protect public outdoor recreation and park resources.
2. The Grantor shall allow public access to the Real Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the Project Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with outdoor recreation purposes and the Project Agreement.
3. The Grantor shall provide access to the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.



4. Without the prior written consent of the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute recreation land must be of reasonably equivalent usefulness and location for the public outdoor recreation purposes as the Real Property prior to any inconsistent use; (2) the substitute recreation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the Project Agreement includes any amendments thereto that occur prior or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Real Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Real Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Washington State Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

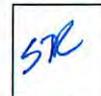


EXHIBIT A
Legal Description

A strip of real property also known as the "Trail Area," 20 feet wide floating within and throughout the entire length of the real property known as the Cross Kirkland Corridor property, except for an "Excluded Area" residing on that portion of Parcel 3226059030 (approximately 500 linear feet) beginning at the north edge of the public right of way of NE 104th St to the eastern edge of the public right of way for 111th Ave NE situated in the City of Kirkland.

The Cross Kirkland Corridor property is described as:

That portion of Sections 5, 8, 17 and 20, Township 25 North, Range 5 East, W.M. and Sections 28, 32 and 33, Township 26 North, Range 5 East, W.M., in King County, Washington, lying within the eight (8) tracts of land described as follows:

Tract 1

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed upon, over and across the S½,NE¼ and the NW¼,SE¼ and the SW¼ of Section 28, the W½,NW¼ and the NW¼,SW¼ of Section 33, the SE¼ of Section 32, all in Township 26 North, Range 5 East, W.M., bounded on the East by a line that is parallel with and 42.00 feet west of, when measured at right angles to, the centerline of 132nd Avenue NE (aka Slater Avenue NE or 132nd Place NE) as surveyed under King County Survey No. 28-26-5-19 and bounded on the South by South line of said SE¼ of Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington; **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington;

Tract 2

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said King County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue, Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 feet wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3; Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5;



Tract 3

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats at Page 5, records of said King County, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way;

Tract 4

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats, at Page 5, records of said King County, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angle to said Railway Company's Main Track centerline as originally located and constructed;

Tract 5

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline; as now located and constructed upon, over and across the SE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 5, NW $\frac{1}{4}$, NE $\frac{1}{4}$ and the E $\frac{1}{2}$, NW $\frac{1}{4}$ and the E $\frac{1}{2}$, SW $\frac{1}{4}$ of Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right of way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$, SW $\frac{1}{4}$ of Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in Deed dated February 24; 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington,

Tract 6

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

"Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.";



Tract 7

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railroad Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as

the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17, Township 25 North, Range 5 East, Willamette Meridian";

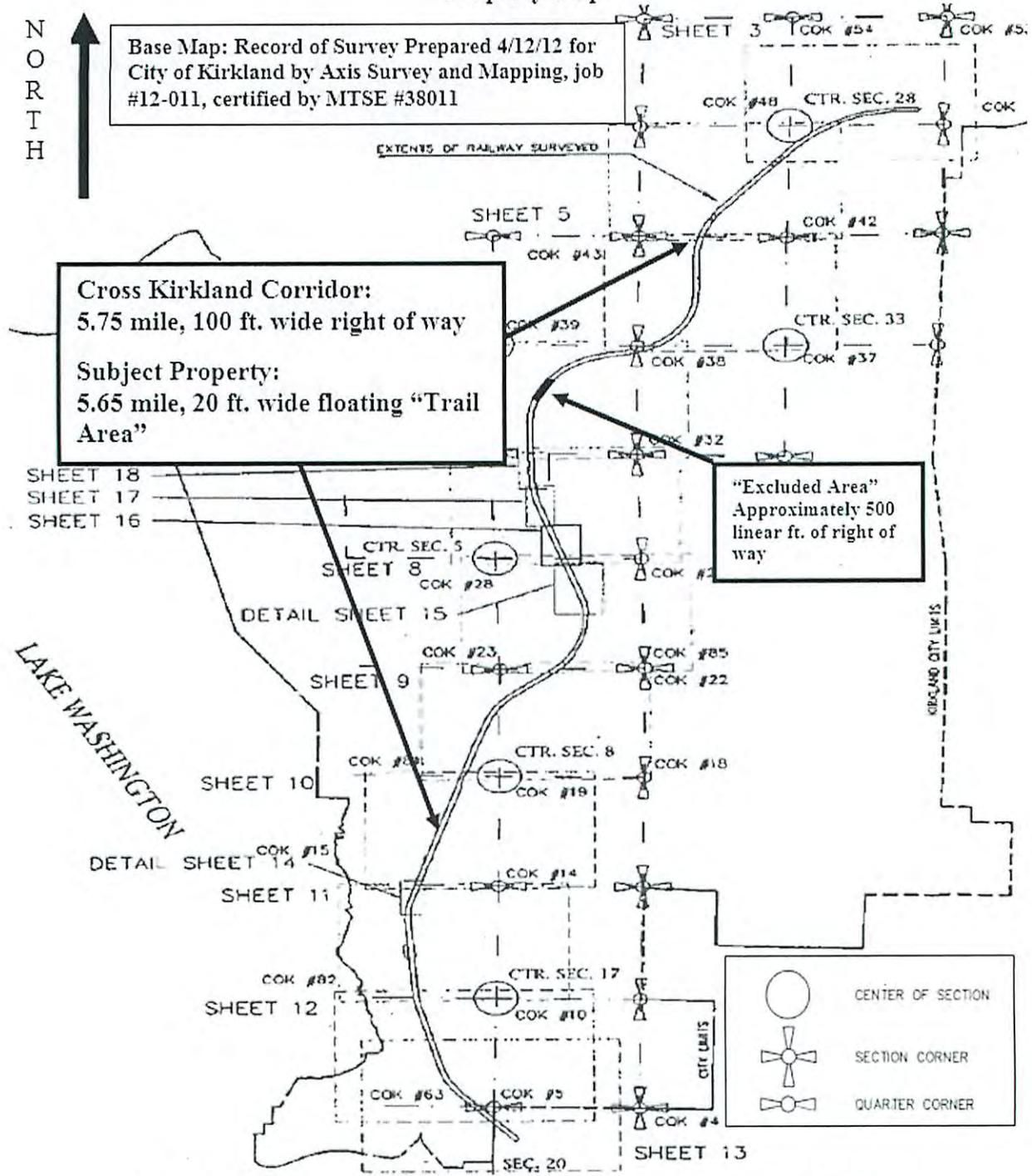
Tract 8

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4 of Section 8, Government Lots 1, 2, and 3 and the E $\frac{1}{2}$,SW $\frac{1}{4}$ of Section 17, and the NE $\frac{1}{4}$,NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 20, all in Township 25 North, Range 5 East, W.M., bounded on the North by the South line of that certain herein above described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4 of Section 8, and bounded on the South by the westerly margin of 108th Avenue NE as described in the Quit Claim Deed from State of Washington to the City of Bellevue recorded under Recording Number 9303190367, records of said King County, together with such additional widths as may be necessary to catch the slope of the fill in N $\frac{1}{2}$ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.

(Tracts 1 – 8 being a portion of the parcel of land conveyed by BNSF Railroad Company to the Port of Seattle by Quit Claim Deed recorded under Recording Number 20091218001535, records of said King County.)



EXHIBIT B Property Map



RCO Project #12-1392 "Cross Kirkland Corridor", City of Kirkland
Map prepared by RCO, Adam Cole 3/9/15

EXHIBIT C.
Special Acknowledgements and Conditions

Grantor and Grantee acknowledge that this Deed of Right covers the Real Property (also known as the "Trail Area"), which is a "floating" 20 foot wide portion of the "Cross Kirkland Corridor," to be used for trail purposes, and that different uses of the Cross Kirkland Corridor outside the Trail Area are not prohibited by this Deed of Right. The Real Property and Cross Kirkland Corridor are subject to existing easements and encumbrances of record.

Grantor and Grantee acknowledge that the Trail Area is located within a rail-banked rail corridor pursuant to the federal Rails to Trails Act (16 USC 1241 et. seq.) and this area is subject to reactivation for freight rail service. In the event any portion of the Real Property is reactivated for freight rail service, the Grantor shall make good faith efforts to preserve existing recreational trail uses within the corridor while accommodating reactivated freight rail uses.

Grantor and Grantee acknowledge that upon signing this Deed of Right, the Grantor has constructed a public recreational trail on the Trail Area. Grantor may realign this trail to accommodate other uses in the Cross Kirkland Corridor and that this will not in itself constitute an "inconsistent use or property interest" under Section 4 of this Deed of Right, provided that the Grantor continue to maintain a 20 foot wide Trail Area.

