

Skagit County Planning Commission
Mount Vernon WA.

SKAGIT COUNTY
PERMIT CNTR.

MAR 20 2009

RECEIVED

March 17, 2009

RE: Open Space and Trails Plan Comments;

I was asked to participate in the Open Space Trails Plan Survey June 2007. Yes, it was identified as Open Space Trails Plan, copy of survey mailed to me is in the record. The title of this plan has changed to Open Space Concept Plan, after first public meeting at train station, but the trails component remains intact and the same since the beginning. The survey was very biased and one sided leading to promotion of trails and promoting a new taxation avenue for trails. Trails cost over 1 million dollars per mile to construct. Skagit County already has a Non-motorized Transportation Plan and all towns and cities have a Trail Plan and or Trail Bike Plan. **Skagit County does not need another trail or trail plan that threatens to take private property and travel through our agriculture farming community now or in the future.**

GMA Open Space requirements and intent; To identify existing permanent open spaces within UGA's and protect these open spaces within UGA's to prevent urban sprawl. GMA does not require public access and does not require interconnections between UGA's.

RCW 36.70A.060 - " Shall assure that the use of lands adjacent to agriculture, forest or mineral resource lands shall not interfere with the continued use, ..."

Concerns and Issues; Trails disruptive to agriculture activities.

Padilla Bay trail; Farmers face constant complaints from trail users regarding farming activities dust, spraying odors in the area. Sheriff unable to control vehicle prowls at trail heads. Trespassing and biosecurity concerns.

Cascade Trail; County has no title to railroad corridor, county has taken corridor by adverse possession. Is not permanent open space as required by GMA. Utilities, dikes, levees, and railroad corridors are single use easements on private property that can not be identified for public use.

Railbanked corridor is going to revert back to private underlying property owners when railroad is reinstated, the intention of trail act. Cascade Trail is not a legal trail, has no master plan, landowners property rights have not been addressed. Violates County Comp Plan policy 9A-9.3. (documents attached- 1. County attorney Moffat telling County Commissioners how to take our private land with single use easement by adverse possession. 2. Quit Claim Deed, county claiming ownership of land clouding title. 3. James Cook title to land underlying corridor. 4. Simpson's title research to underlying land showing he is owner.)

Issues our farm has faced because of Cascade Trail:

1. Our house has been robbed in broad daylight by bicyclist who came off Cascade Trail, rode bike across lawn to back door of house, Elane 80 years old went to back door, seeing no one went to yard to find bicycle leaning against house. She went around house looking for person, found man coming out front door, he had robbed house. He jumped on bike then back onto trail. Sheriff unable to help.
2. 7 year old child from cascade trail with unleashed dog in our farm field with cattle and bull.
3. Unleashed dogs from trail chasing our cows through fences causing cows to be injured.
4. Trail walkers digging up and stealing plants from our flower bed.
5. Trail walkers snooping out by our barns, way off trail, concerns with bio-security.
6. At least 3 incidents where bicycles have come off trail, into our private driveway and have come close to hitting our vehicles.
7. Motorbikes are threat and go unpatroled.
8. No trespassing signs ignored by trail users and bicyclists.
9. Many incidents go unreported because Sheriff is unable to respond.

Because Cascade Trail is secluded and so easily accessed by many roads and crossings the 5-15% of undesirables trail users can run wild and have been. 95% of the homes and businesses along and adjacent to the Cascade Trail have been robbed, broken into and vandalized some several times. Skagit County is unable provide the security necessary to protect our agriculture farmers in the rural agriculture community from bio-security threats and trail user threats and complaints..

Cascade Trail and all other rural trails and the taxation for them should be removed from this open space plan. Go with the intent of the GMA and identify the permanent open spaces that are contained already within the UGA's and protect these permanent open spaces within the UGA's. Develop standards the County Ag Advisory Board has suggested.

Aileen Good

Aileen Good
25512 Minkler Rd.
Sedro Woolley, WA.98284
360-856-199

JOHN MOFFAT
CHIEF CIVIL DEPUTY
DAVE NEEDY
CHIEF CRIMINAL DEPUTY
K. GAIL LONG
SENIOR DEPUTY

DORRIN VOLLME
THOMAS BEGUINE
MORGAN WITT
DORRINE CLASEN
KIMBEALY WOODSON
DEPUTIES

MICHAEL RICKERT
SKAGIT COUNTY PROSECUTING ATTORNEY
COURTHOUSE ANNEX - 605 S. 3rd St.
MOUNT VERNON, WASHINGTON 98273
(206) 336-9460 SCAN 554-9460
FAX 336-9347



MAVE McLAVERTY, PLS
OFFICE SUPERVISOR

GRETCHEN PAQUE
VICTIMWITNESS

CHEN McRAE
PATERNITY DIVISION

MEMORANDUM

TO: Board of County Commissioners
FROM: John R. Moffat *JRM*
Chief Civil Deputy
DATE: October 16, 1992
RE: Acquisition of Burlington Northern Right-of-Way

Jon Aarstad has advised me that he intends to place on your agenda in the near future your consideration of the purchase from Burlington Northern of approximately 101 acres of abandoned railroad right-of-way for the Centennial Trail. The negotiated purchase price with Burlington Northern is \$113,254.00, approximately one-third of the appraised value of the acreage which is \$326,992.23.

We wish to be sure that you are aware of the fact that one of the reasons why Burlington Northern may be willing to sell at a reduced value is that it is likely that the railroad does not have clear title to the right-of-way which it is selling to the County. The case of King County v. Squire Investment Co., 59 Wash. App. 888 (1990) (copy attached) indicates that where a railroad abandons right-of-way for railroad purposes, the railroad no longer owns the right-of-way; rather, the adjoining property owners own it.

In the Squire Investment Co. case, the Court found that the deed from the property owners to the railroad back in the 1890's conveyed only an easement interest and that after the railroad abandoned the railroad line in 1985 the ownership of the right-of-way reverted to the adjoining property owners. As stated in the Squire Investment Co. case:

Burlington Northern formally abandoned the right of way on July 29, 1985. The easement was extinguished at that moment and its interest reverted to the Squires' (original grantor) heirs. Burlington Northern had no interest to convey to King County for use as a

railroad much less as a trail. Even if the right of way had not been formally abandoned, Lawson v. State, (107 Wn.2d 444 [1986]) defeats the County's argument. Responding to a similar argument, the court stated:

Applying common law principles, we hold that a change in use from "rails to trails" constitutes abandonment of an easement which was granted for railroad purposes only. At common law, therefore, the right of way would automatically revert to the reversionary interest holders.

Lawson at 452. . . .

In summary, the Squire deed conveyed an easement to the railroad which terminated when its successor, Burlington Northern, abandoned the line with the approval of the ICC. The reversionary interest passed to the successors of the grantors. The trial court's alternative holding that the Squire deed conveyed an easement and, consequently, King County acquired no interest in the right of way is affirmed.

59 Wash. App. at 894-95.

In our case, it is impossible to ascertain the exact nature of the ownership of the right-of-way without examining each and every deed through which Burlington Northern or its predecessor-in-interest acquired title to the railroad right-of-way.

It is instructive to note that the Squire Investment Co. case came about because King County elected to file an action to quiet title and to condemn the entire portion of the right-of-way that it intended to use as a trail before it declared the same as a trail. This is certainly the safer way to go and would avoid problems arising later regarding the ownership of the trail. However it would also be more likely to alert adjoining property owners of their potential interest in the trail property.

If the Board is concerned with adjoining property owners exerting a claim to the trail without the County having established formal ownership thereof, an appropriate course of action would be for the County to commence a quiet title action to the 101 acres, color of

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title to which it is acquiring through the purchase from Burlington Northern. Then, any adjoining owners who contest the County's quiet title action can be addressed separately either through private negotiation or a subsequent condemnation action. The County may be able to establish title by default judgment against a number of the adjoining property owners in the quiet title action, thus obviating the necessity of paying any compensation to them through a condemnation suit.

Alternatively, the County could post signs indicating the trail is County property and proceed to treat it as County property, subject to being challenged by adjoining landowners for a period of seven years pursuant to RCW 7.28.050. This procedure could result in the County paying less for the land to adjoining owners, but would also result in additional uncertainty of title for some time.

If you have any further questions regarding this, please let me know.

JRM:tad

cc: Jon Aarstad
Steve Colby
Dave Fleming

Leandro Libbey
to
successor

County of Skagit
Dapney

Quit Claim

RECORDED
REQUEST OF County
Commissioner

BURLINGTON NORTHERN RAILROAD COMPANY (formerly named Burlington Northern Inc.), a Delaware corporation, Grantor, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, conveys and quit claims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **SKAGIT COUNTY**, a political subdivision of the State of Washington, Grantee, all its right, title and interest, if any, in real estate situated in Skagit County, State of Washington, together with all after acquired title of Grantor therein, described in Exhibit "A" attached hereto and made a part hereof:

SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise.

EXCEPTING AND RESERVING, however, unto said Grantor, its successors and assigns, all of the coal, oil, gas, casinghead gas and all ores and minerals of every kind and nature, including sand and gravel, underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the premises herein conveyed, together with the right of access at all times to exercise said rights.

ALSO, the Grantee, and for its successors and assigns, by acceptance of this deed, hereby releases and forever discharges the Grantor, its successors and assigns, from any and all present or future obligations of the Grantor, its successors and assigns, including but not limited to the construction of or continued maintenance thereto of any railroad fences, snow fences, road crossings, cattle guards, gates, farm crossings, bridges, drainage or irrigation pipes, if any, located and situate on the premises herein conveyed.

INTERSTATE COMMERCE COMMISSION, through its Docket No. AB-6 (Sub No. 934X): Burlington Northern Railroad Company - Abandonment Exemption - Skagit County, Washington, has issued a Notice of Interim Trail Use, in lieu of a Notice of Exemption for Abandonment, for that right-of-way conveyed hereunder, that the transfer is made pursuant to that Notice of Interim Trail Use, and is further subject to an Interim Trail Use/Railbanking Agreement Between Burlington Northern Railroad Company and the Rails to Trails Conservancy which provides for reconveyance of the right-of-way in the event of the restoration of railroad service, dated August 23, 1993.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its Director, Title Services & Field Support, attested by its Assistant Secretary, and its corporate seal to be affixed on the 29th day of November, 1993.

BURLINGTON NORTHERN RAILROAD COMPANY

**ACCEPTED:
SKAGIT COUNTY**

By Jon Aarstad
Title:
**JON AARSTAD, DIRECTOR
SKAGIT COUNTY PARKS, RECREATION AND
FAIR DEPARTMENT**

BY D. P. Schneider
**D. P. Schneider, Director
Title Services & Field Support**

ATTEST:

KATHY HILL
SKAGIT COUNTY CLERK

99 MAY 11 AM 01

99
9905110012

RECORDED _____ FILED _____
REQUEST OF _____

Return Address
JAMES A. COOK and TERRI ELLEN COOK
16135 MINNELLER ROAD
SEASIDE WOODLEY, WA 98284

Statutory Warranty Deed

ESCROW NO. 03-18353
FILED FOR RECORD AT REQUEST OF
FIRST AMERICAN TITLE COMPANY

FIRST AMERICAN TITLE CO.

ORIGINAL 858353E-1

Grantor/borrower: THE ESTATE OF ALP ALBERTINE, JR.
Grantee/assignee/beneficiary: JAMES A. COOK and TERRI ELLEN COOK
Abbreviated Legal:

Additional legal(s) on page: _____
Assessor's Tax Parcel Number(s):
35661720000002

THE GRANTOR PATSY TAYLOR, PERSONAL REPRESENTATIVE OF THE ESTATE OF ALP ALBERTINE, JR., UNDER COUNTY CAUSE NO. 98-4-00285-9.

for and in consideration of: TEN DOLLARS AND OTHER VALUABLE CONSIDERATION
in hand paid, conveys and warrants to JAMES A. COOK and TERRI ELLEN COOK,
husband and wife

the following described real estate, situated in the County of SKAGIT,
State of Washington:

5 ac
The West 1/2 of the Southwest 1/4 of the Northwest 1/4 of
Section 17, Township 33 North, Range 6 East, W.M., lying
northerly of the Great Northern Railway right-of-way, established
by document recorded July 10, 1890 in Volume 10 of Deeds, page 633
EXCEPT County road right-of-way. records of Skagit County.

as to b c
SUBJECT TO: PARAGRAPHS A AND B, SCHEDULE B-1 OF FIRST AMERICAN TITLE
COMPANY'S PRELIMINARY COMMITMENT FOR TITLE INSURANCE NO. 56353, 2ND HALF
1998 TAXES.

DATED: 04/29/1999
THE ESTATE OF ALP ALBERTINE, JR.
By *Patsy Taylor*
PATSY TAYLOR

as PERSONAL REPRESENTATIVE

**TOGETHER WITH: all rights and title of the grantor, if any, to the
above mentioned railroad right-of-way.

29270
SKAGIT COUNTY CLERK
MAY 11 1999

3060 00
MAY 11 1999
SKAGIT COUNTY CLERK

9905110012

BK1988PGU042



First American Title Company of Skagit County

formerly Skagit County Title Company

P.O. Box 1667, 1301-B Riverside Dr., Mount Vernon, WA 98273

(360) 424-0115, 1-800-869-7045, FAX (360) 424-5885

January 23, 1997

Leonard Simpson
507 Park Street
Concrete, WA 98237

Re: Railroad

Dear Mr. Simpson:

I have not done a full title examination for you but I have spent some time looking at documents affecting your title claims. The railroad obtained its title in your area by a decree entered in Skagit County Cause No. 3624 and recorded in Volume 4 of Judgments, Page 325 records of the Auditor of Skagit County.

To the best of my knowledge all condemnation takings only take the least quality of title necessary to accomplish the purpose of the taking. This means that takings are usually easements as that can accomplish the purpose without taking the fee title. Railroads in many locations in this county have operated with only an easement so it seems that that is all they should have acquired in this case.

After the railroad your plat was recorded, which created the street between your lots and the railroad. Since the street is only an easement you would own the fee under the street and then under part of the railroad.

Of course, the railroad deeded the railroad to Skagit County which clouds your title. Thus should you desire to clarify your title you may need get a deed from the County or sue them. In either case that would be the time to request a formal report from this Company. At

Agents For
First American Title Insurance Company

this point I have merely pulled out some documents for a quick review
I have not fully examined your title.

Sincerely Yours,
First American Title Company of
Skagit County

John S. Milnor
by John S. Milnor, Title Officer
