

King County Wins Significant Railbanking Decision in 9th Circuit Court of Appeals with Support from BNSF

News
August 6, 2018
Foster Garvey Newsroom

Foster Pepper attorneys filed an amicus brief on behalf of BNSF Railway Company in this matter

On August 3, 2018, the Honorable Marsha J. Pechman of the U.S. Court of Appeals for the 9th Circuit affirmed the U.S. District Court of Western Washington's summary judgment in favor of King County in *Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust, et al. v. King County*. The case focused on the County's rights to a strip of corridor property adjacent to plaintiffs/appellants' properties.

Foster Pepper submitted an *amicus curiae* brief on behalf of BNSF Railway Company, one of the largest freight railroad networks in North America, and prior owner of the railbanked corridor at issue in the case.

The case revolved around a strip of land formerly used for freight rail service along the eastern shoreline of Lake Sammamish. In 1997, BNSF transferred its interests in the corridor to King County and to The Land Conservancy of Seattle and King County which petitioned the Surface Transportation Board (STB) to "railbank" the corridor under provisions of the federal National Trails System Act, also known as the Rails to Trails Act. Railbanking under the federal statutes allows for indefinite use of rail corridors for trail purposes while preserving the potential for future reactivation of freight rail operations.

The STB granted railbank status to the corridor property in 1998, and King County constructed a hiking and biking trail within the corridor. The plaintiffs filed suit in federal court seeking a declaration of their rights to the corridor and disputing the nature and scope of King County's property rights. The District Court

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denied summary judgment to the plaintiffs and quieted title in King County.

On appeal, Judge Marsha Pechman affirmed summary judgment in favor of King County and ruled that the conveyances to King County successfully preserved all rights formerly held by the railroad owners and the new easement for recreational trail purposes created under the Rails to Trails Act.

Foster Pepper was pleased to represent BNSF Railway Company in this matter.