



King County

**Department of
Natural Resources and Parks**
Director's Office

King Street Center
201 South Jackson Street, Suite 700
Seattle, WA 98104-3855

April 9, 2010

Mr. James G. Roes, Jr.
4467 Airport Road
Pullman, WA 99163

Dear Mr. Roes:

I would like to thank you and the members of Rutherford LLC for taking the time to meet with King County representatives on March 25 to discuss access issues on SE 39th Place. You indicated that a meaningful, long-term resolution to those access issues is a priority for you. We too hope for a long-term solution to this matter. This letter is intended to follow-up on our March 25 meeting.

Tax Parcel No. 1124079028 (the "Rutherford Slough property"), which Rutherford LLC acquired from the Weyerhaeuser Company in September 2009, includes a portion of SE 39th Place, which runs through the Rutherford Slough property and connects Highway 202 to a railbanked BNSF corridor that presently serves as the County's Snoqualmie Valley Trail. As previously discussed, the portion of SE 39th Place on the Rutherford Slough property is located within a right of way easement that King County acquired from Weyerhaeuser in 1911. That easement is a matter of public record and is listed as an exception to title in the deed which Weyerhaeuser gave to Rutherford Slough LLC. King County also owns fee title to the right of way for SE 39th Place on either side the Rutherford Slough property.

Following the finalization of the sale, and prior to the deed being recorded in October of 2009, the County heard that Rutherford LLC was considering different uses of the property, including potentially restricting access on the portion of SE 39th Place that crosses the Rutherford Slough parcel. The County promptly explained to Rutherford LLC that it has a public highway easement for SE 39th Place and that restricting public access would be a violation of the public's easement rights. In an effort to be a good neighbor and partner, County representatives made repeated efforts to establish a cooperative and constructive dialogue with Rutherford LLC.

On October 30, 2009, Kevin Brown, Division Director of the Parks and Recreation Division, and Bob Burns, Interim Director for the County's Department of Natural Resources and Parks, met with Rutherford LLC representatives to discuss the access issues, including Rutherford LLC's concerns regarding impacts from the public's longstanding use of SE 39th Place to access the railbanked BNSF corridor that presently serves as the regional Snoqualmie Valley Trail. On November 5, 2009, the County provided Rutherford a written response addressing

Mr. James G. Roes, Jr.
April 9, 2010
Page 2

the concerns discussed at the October 30th meeting. The County's letter provided specific proposals to address parking, signage, potential trespassing, maintenance, hours of operation and trash collection.

County representatives attempted to schedule a follow-up meeting to confirm that Rutherford LLC's concerns had been addressed by the County's November 5 response. The County initially contacted Mr. Brian Wall of Rutherford LLC numerous times and then Mr. Jim Roes on multiple occasions to set up a meeting to discuss the County's November 5th response. Despite the County's efforts, representatives from Rutherford LLC were unavailable to meet. Initially it was indicated to us by a Rutherford LLC representative that you planned on responding to our November 5th response and that it was a matter of unavailability of all the partners that was causing a delay. Subsequently we heard from a different representative of the LLC that the reason was that the LLC had not yet decided what it's long term plans were for the property.

Rutherford LLC subsequently agreed to talk further with the County and we agreed to hold a follow-up meeting on March 25, 2010. We were encouraged by this renewed sense of cooperation with Rutherford LLC and were hopeful that we would be able to resolve the access issue in a win-win manner, especially since a representative of Rutherford LLC had also expressed a commitment—in two separate phone conversations, one with Councilmember Lambert, and another with myself—that the LLC would not physically block public access to SE 39th Place on the Rutherford Slough property.

In light of this, the County was particularly alarmed when just prior to the March 25 meeting, Rutherford LLC blocked public access to SE 39th Place with large concrete ecology blocks—even though an LLC partner told the County the LLC would not do so. When we met on March 25, 2010, to address the long-term access issues, as well as the immediate issue of the new physical blockage of SE 39th Place, you made it clear that Rutherford LLC would not remove the blocks at any time in the near future and it would not even be considered unless and until the County implemented a "proposal" to somehow authorize the LLC to develop the property (zoned for low-density rural development and agriculture use) for higher density, large-scale single-family residential development, with access from an entirely new road to be constructed at County expense. Rutherford LLC did not provide any documentation or mapping of its proposal, and it appears the concept did not take into account applicable zoning or land use laws and regulations.

Upon hearing this at the meeting of March 25, we explained that we want to find a permanent solution that works well for both parties, but leaving the ecology blocks in place in the interim was not acceptable to us and that we would think about your position on this issue and get back to you. The present situation regarding the ecology blocks and Rutherford LLC's strong statements about not removing them remain unacceptable. The County has a century-old easement for a public highway over the Rutherford Slough property. The County holds that easement for the benefit of the public. The public has a significant investment in the railbanked BNSF corridor and has a right to access and use the regional trail that occupies the corridor.