The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMMAMISH HOMEOWNERS, a Washington non-profit corporation; THOMAS E HORNISH and SUZANNE J. HORNISH, TRUSTEES OF THE THOMAS E. HORNISH and SUZANNE J. HORNISH JOINT LIVING TRUST; TRACY and BARBARA NEIGHBORS; ARUL MENEZES and LUCRETIA VANDERWENDE; and HEBERT MOORE and EVELYN MOORE, Plaintiffs, vs. KING COUNTY, Defendant.	No. 15-cv-00284 RAJ DEFENDANT KING COUNTY'S FRCP 12(b)(1) & (6) MOTION TO DISMISS FOR LACK OF STANDING NOTE ON MOTION CALENDAR: April 17, 2015

I. RELIEF REQUESTED

In this Declaratory Judgment and Quiet Title action, plaintiffs allege that they own fee title in the "railbanked" railroad corridor that runs along Lake Sammamish adjacent to their properties (the "Corridor").[1] Prior to railbanking under 16 U.S.C. §1247(d), the Burlington Northern and Santa Fe railroad ("BNSF") possessed a fee interest in some parts of the Corridor and easement rights in other parts. *See King County v. Rasmussen*, 299 F.3d 1077, 1084 (9th Cir.

[1] Per the requirements of a Fed. R. Civ. P. 12(b) motion, King County is assuming the truth of Plaintiffs' allegation that their properties are adjacent to the Corridor. King County reserves the right to contest this fact and others herein if further proceedings are necessary.

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2002)(addressing property rights in Corridor). In 1998, as part of railbanking, defendant King County purchased BNSF's property rights in the Corridor. *Id.*

The plaintiffs submit deeds that preclude their ownership of any part of the Corridor. Nevertheless, apparently relying on Washington's "centerline presumption" doctrine, plaintiffs claim fee title in the Corridor. The individually-named plaintiffs lack both Article III and statutory standing to raise this claim because Washington's centerline presumption grants them no ownership interests in the Corridor. The related effort to litigate the individual property rights of homeowners through an association, Sammamish Homeowners, also fails because that group lacks standing under *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 343 (1977). Without an ownership interest in the Corridor, plaintiffs cannot state a claim for which relief may be granted. Because plaintiffs lack standing and a viable legal claim, the Court should dismiss this action under Fed. R. Civ. P. 12(b)(1) and (6).

II. RELEVANT FACTS AND PROCEDURAL BACKGROUND

Because this is a Rule 12(b) motion to dismiss, the facts before the Court are derived primarily from plaintiffs' complaint, including the various deeds attached to the complaint. According to the legal descriptions in those deeds, none of the plaintiffs' parcels include any property interest in the Corridor.

Hornish Trust. According to the Complaint, plaintiff The Thomas Hornish and Suzanne J. Hornish Joint Living Trust, Thomas and Suzanne Hornish, trustees ("Hornish Trust") own parcel number 062406-9042 adjacent to the Corridor. Dkt. 1 (Complaint at ¶13). Although the Complaint claims that the Hornish Trust parcel includes "fee title" to the Corridor, the Hornish Trust deed (attached as Exhibit B to the Complaint) excludes any portion of the Corridor from the legal description of the property. The metes and bounds description of the Hornish Trust

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parcel uses the "westerly line of the Northern Pacific Railway right-of-way" as the eastern boundary of the property. Ex. B. at 1. Because the Hornish Trust parcel lies entirely to the west of the western boundary of the Corridor, the Hornish Trust has no described property interest in the Corridor.

Neighbors. Although plaintiff's Tracy and Barbara Neighbors ("Neighbors") appear to own parcel number 072406-9006, the legal description of that parcel also excludes any portion of the Corridor. *See* Complaint ¶14. The Neighbors allege that they own fee title in the Corridor, but the legal description of their property (attached as Exhibit C to the Complaint) excludes any portion of the Corridor from their parcel. The metes and bounds description of the Neighbors' parcel describes the lot lines, "except that portion within the Northern Pacific Railroad right-of-way." Ex. C at 3. Thus, the Neighbors' legal description includes land on both side of the Corridor, but specifically excludes any property interest in the Corridor itself.

Menezes/Vanderwende. Plaintiffs Arul Menezes and Lucretia Vanderwende ("Menezes/Vanderwende") claim to own parcel number 072406-9024, but their legal description does not include property rights in the Corridor acquired by King County. Complaint ¶15. The Menezes/Vanderwende deed is attached to the Complaint as Exhibit D and contains a legal description for two parcels. The main portion of the Menezes/Vanderwende property, parcel 1, specifically excludes the Corridor from the metes and bounds legal description: "Except the right-of-way of the Northern Pacific Railway Company." Ex. D. at 2.

Although parcel 2 includes a small chunk of the *original*, late 1800's railroad corridor, it is not part of the current, railbanked Corridor. Parcel 2 was broken off from the original railroad corridor in 1996 – two years prior to railbanking and BNSF's sale of the Corridor to King County. The immediate predecessor in title to Menezes/Vanderwende, Lynne Goldsmith,

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acquired this chunk of the original railroad corridor through a 1996 adverse possession action against BNSF. On December 9, 1996, the King County Superior Court granted fee title in parcel 2 to Goldsmith. *See* Agreed Order Quieting Title, King County Superior Court No. 96-2-24980-7 (Dec. 9, 1996).[2] As a result, in 1998, when defendant King County acquired BNSF's property interest in the Corridor that is the subject of this lawsuit, it did not include parcel 2 of the Menezes/Vanderwende parcel.

Moores. The Complaint alleges that Plaintiffs Hebert and Elynne Moore ("Moores") own parcel number 172406-9007 and "fee title" to the Corridor. However, the Moores' metes and bounds legal description, which is attached as Exhibit E to the Complaint, establishes the Corridor as the northern boundary of the Moores' parcel. The Moores' property is described as the area "lying *south* of the Northern Pacific Railroad right-of-way." Ex. E. at 1 (emphasis added). No portion of the Corridor is included in their parcel's legal description.

Sammamish Homeowners. The only other plaintiff in this matter is an organization that calls itself "Sammamish Homeowners." Complaint ¶12. There is no allegation in the Complaint that Sammamish Homeowners itself owns or has any property interest in the Corridor. In its most recent public filing with the Washington Secretary of State, the Sammamish Homeowners lists its purpose as: "Civic, work with property owners and government organizations on regulations and projects that affect shorelines in the City of Sammamish. Examples are the East Sammamish trail and Willowmoor reconfiguration of the Sammamish River."[3] The Complaint

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[2] A copy of this order is attached as Exhibit 1 to this Motion. This Court may take judicial notice of state court decisions. *Bentley v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 414 Fed.Appx. 28, 30 (9th Cir. 2011).

[3] A certified copy of the Sammamish Homeowner's annual corporate report is attached as Exhibit 2 to this motion. This Court may take judicial notice of corporate disclosure filings that are publicly available without converting a Rule 12(b) motion into a motion for summary judgment. *In re American Apparel, Inc. Shareholder Litigation*, 855 F.Supp.2d 1043, 1060-61 (C.D. Cal. 2012).

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does not otherwise disclose the nature of this organization. According to the Complaint, the group allegedly has 400 members that "own the fee title" to the Corridor, but the member's parcels, legal descriptions and deeds are not disclosed. *Id.*

III. ISSUES

A. Do the individually named plaintiffs have standing to bring this action when they possess no property interest in the Corridor? No.

B. Does plaintiff Sammamish Homeowners have standing to bring this action when it has no property interests in the corridor and otherwise fails the associational standing test from *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 343 (1977)? No.

C. Have plaintiffs' stated a claim upon which relief may be granted when no plaintiff possesses a property interest in the Corridor? No.

IV. AUTHORITY AND ARGUMENT

A. Judgment As A Matter of Law.

Plaintiffs lack both Article III and statutory standing. The question of constitutional standing is analyzed under to the provisions of Rule 12(b)(1), whereas a failure of statutory standing is analyzed under Rule 12(b)(6). *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011).

A lack of standing under Article III implicates this Court's jurisdiction. Plaintiffs have the burden to establish that subject matter jurisdiction is proper. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). This obligation includes the burden of establishing standing. U.S. v. City and County of San Francisco; 979 F.2d 169, 171 (9th Cir. 1992). A plaintiff suing in a federal court must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so,

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the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect [can] be corrected by amendment." *Smith v. McCullough*, 270 U.S. 456, 459, 46 S.Ct. 338, 70 L.Ed. 682 (1926).

In *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003), the Ninth Circuit explained that a Rule 12(b)(1) motion to dismiss for lack of standing requires a court to "to accept all allegations of fact in the complaint as true and construe them in the light most favorable to the plaintiffs." However, a court is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint," and "[w]e do not ... necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Id.*

The bare legal conclusions in the Complaint that plaintiffs' own a "fee interest" in the Corridor cannot prevail over the express language of their own deeds, which plaintiffs themselves attached to their Complaint. It has long been the rule in the Ninth Circuit that a motion to dismiss under Fed. R. Civ. P. 12(b) need not assume the truth of allegations that are contrary to public record documents: "A motion to dismiss pursuant to Rule 12(b) . . . admits all well pleaded facts, but does not admit facts which the court will judicially notice as not being true nor facts which are revealed to be unfounded by documents included in the pleadings or introduced in support of the motion." *Interstate Nat. Gas Co. v. Southern California Gas Co.*, 209 F.2d 380, 384 (9th Cir. 1953). The exhibits that a plaintiff attaches to a complaint "are part of the complaint for all purposes" and the Court is not required to "accept as true allegations that *contradict* exhibits attached to the [c]omplaint." *Estate of Prasad ex rel. Prasad v. County of Sutter*, 958 F.Supp.2d 1101, 1110 (E.D.Cal. 2013)(emphasis in original; *citing* and *quoting* *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir.2010)). As stated in *Daniels-Hall*,

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"[w]e are not . . . required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." 629 F.3d at 998. *Id.* at 1031.

B. The Individual Plaintiff's Lack Standing to Bring This Action

As demonstrated by the deeds attached to plaintiffs' complaint, none of the legal descriptions that plaintiffs submit include *any* property interest within the boundaries of the Corridor. These deeds appear to support ownership of property adjacent to the Corridor, but not within the Corridor. Absent some ownership interest in the Corridor, plaintiffs lack both Article III and statutory standing to challenge King County's property rights in the Corridor. *See Johnson v. U.S.*, 402 Fed.Appx. 298, 300 (9th Cir. 2010)(plaintiff who "failed to establish that she possesses an interest in the property at issue" lacked standing in quiet title action.); *Regan v. Qwest Communications Intern., Inc.*, 2010 WL 3941471, at *7 (E.D.Cal. 2010)(Standing to bring a cause of action for trespass and corresponding claims for unjust enrichment and declaratory judgment require proof of ownership of the subject property.).

Because plaintiffs have no deeded property interest in the Corridor itself, plaintiffs' legal assertion of fee ownership in their Complaint appears to rest on misapplication of Washington State's "centerline presumption" doctrine. The Washington Supreme Court has explained that:

> By statute, upon abandonment of a public street or alley, title vests in the adjoining landowners. Similarly, at common law, the conveyance of land bounded by or along a highway carries title to the center of the highway unless there is something in the deed or surrounding circumstances showing an intent to the contrary. This rule is based on a presumption that the grantor intended to convey such fee along with and as a part of the conveyance of the abutting land, generally on the theory that the grantor did not intend to retain a narrow strip of land which could be of use only to the owner of the adjoining land. The rule is also intended to lessen litigation caused by the existence of narrow strips of land distinct in ownership from the adjoining property.

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Roeder Co. v. Burlington Northern, Inc., 105 Wash.2d 567, 575-76, 716 P.2d 855 (1986)(footnotes omitted). The centerline presumption, which was developed for road and highway easements, also applies to railroad corridors that were created by means of an easement.[4] *Id.* at 576.

There are at least two reasons why any effort by plaintiffs to claim fee ownership in the Corridor through the centerline presumption fails. First, plaintiffs cannot claim the benefit of the centerline presumption because they make no allegations in their Complaint establishing their chain of title back to the original grantor of the property, nor do they submit the deeds necessary to support that chain of title. The original grantor is the person or entity that held fee title to *both* the Corridor and the adjacent land when the Corridor was acquired by BNSF's predecessor railroad.

As *Roeder* explains, a plaintiff is entitled to no centerline presumption whatsoever absent chain of title proof:

> The presumption that the grantor intended to convey title to the center of the right of way is inapplicable where the adjoining landowner presents no evidence of having received his or her property from the owner of the right of way. A property owner receives no interest in a railroad right of way simply through ownership of abutting land.

105 Wash.2d at 578. "Without evidence showing that the owner of abutting property received that property from the fee owner of the right of way property, the railroad presumption is inapplicable." 105 Wn.2d at 578.

Second, even if the centerline presumption is properly applied to plaintiffs' parcels, the language in plaintiffs' deeds adequately refutes it. The centerline presumption is only an

[4] King County disputes plaintiffs' assertion that the Corridor is held solely in easement. The Ninth Circuit's *Rasmussen* decision and other cases recognize that certain portions of the Corridor were held in fee by BNSF and King County. Nevertheless, for purposes of this motion only, King County will assume that the Corridor adjacent to plaintiffs' properties is held only through an easement and will analyze the centerline presumption doctrine in accord with this assumption.

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operative presumption, not a *fait accompli*. It does not support ownership of the Corridor by an adjacent landowner when the language of the landowner's deed excludes the Corridor: "the conveyance of land which is bounded by a railroad right of way will give the grantee title to the center line of the right of way if the grantor owns so far, *unless the grantor has expressly reserved the fee to the right of way, or the grantor's intention to not convey the fee is clear*." *Id.* (emphasis added). What this means is that any grantor within plaintiffs chain of title is free to defeat operation of the centerline presumption by expressly reserving the fee to the right of way or otherwise indicating the intention to exclude the corridor from the conveyance.

In examining a conveyance, a major concern is to give effect to the intent of the parties. *Id.* at 576. Under the facts of *Roeder*, the centerline presumption is fully refuted in situations where a metes and bounds legal description in a deed uses the railroad corridor as a boundary to the adjacent property:

> When the deed refers to the grantor's right of way as a boundary without clearly indicating that the side of the right of way is the boundary, it is presumed that the grantor intended to convey title to the center of the right of way. When, however, a deed refers to the right of way as a boundary but also gives a metes and bounds description of the abutting property, the presumption of abutting landowners taking to the center of the right of way is rebutted. *A metes and bounds description in a deed to property that abuts a right of way is evidence of the grantor's intent to withhold any interest in the abutting right of way, and such a description rebuts the presumption that the grantee takes title to the center of the right of way.*

Id. at 576-77 (emphasis added). When a deed does not use a metes and bounds description, deed language that excludes the railroad corridor from the parcel also overcomes the centerline presumption. *Id.* at 577 n.27.

Here, as noted in the facts section, all of the deeds submitted by the individual plaintiffs exclude the Corridor from their property descriptions:

- Hornish Trust: the metes and bounds property description specifies the Corridor as the boundary of the property;

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- Neighbors: the metes and bounds property description states "except that portion within the [Corridor]."
- Menezes/Vanderwende: the metes and bounds property description of parcel 1 states "except the [Corridor]," while the metes and bounds property description of parcel 2 specifies the Corridor as the boundary of the property;
- Moores: the metes and bounds property description specifies the Corridor as the boundary of the property.

The legal description in these deeds adequately refutes any centerline presumption. Plaintiffs simply have no property interest in the Corridor.[5]

The lack of a property interest deprives plaintiffs of standing under Article III. Even if plaintiffs' were correct that King County's interest in the Corridor is limited to an easement, plaintiffs have no standing to raise this claim. In order to "satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). Because plaintiffs have no ownership interest in the Corridor, they have no "injury in fact." They cannot claim injury to property they do not own.

Absent a property interest in the Corridor, plaintiffs also lack statutory standing. Actions to quiet title are controlled by RCW 7.28.010. As the Washington Court of Appeals has

[5] If King County's property rights in the Corridor are limited to an easement, the reversionary interests in the fee would likely belong to the grantor in plaintiffs' chain of title (or the heirs of that grantor) who retained reversionary rights in the Corridor. It is not necessary, for purposes of this motion, to determine which grantor retained reversionary rights or in what decade they were possible severed from plaintiffs' legal description or if plaintiffs' parcels ever included reversionary rights to the Corridor. Plaintiffs' current legal descriptions are sufficient to demonstrate, as a matter of law, that they have no ownership claim. *See also King County v. Squire Inv. Co.*, 59 Wash.App. 888, 899, 801 P.2d 1022 (1990)(adjacent property owner has no interest even when successors to the original grantor's reversionary interest are unidentified and absent from the court).

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explained, a person has standing to bring a quiet title action only where the person has a valid interest in real property and a right to possession:

> RCW 7.28.010 sets forth the requirement regarding who may maintain an action to quiet title: "Any person having a *valid subsisting interest* in real property, *and a right to the possession thereof* ..." (Italics ours.) CR 17(a) provides in part: "Every action shall be prosecuted in the name of the real party in interest." If Magart's claim of ownership fails, he lacks standing to attack Fierce's claim, as the plaintiff in an action to quiet title must succeed on the strength of his own title and not on the weakness of his adversary. *Rohrbach v. Sanstrom*, 172 Wash. 405, 406, 20 P.2d 28 (1933); *Turner v. Rowland*, 2 Wash.App. 566, 573, 468 P.2d 702 (1970); *see also Shelton Logging Co. v. Gosser*, 26 Wash. 126, 66 P. 151 (1901).

Magart v. Fierce, 666 P.2d 386, 388-89, 35 Wash.App. 264, 266 (1983). A party who is not the owner of the property lacks standing under the statute to maintain a quiet title action. *Id.* at 267; *Washington Securities and Investment Corp. v. Horse Heaven Heights*, Inc., 130 P.3d 880, 884, 132 Wash.App. 188, 195, *review denied* 158 Wn.2d 1023 (2006).

Plaintiffs' similarly lack statutory standing under RCW 7.24.020, which allows a declaratory judgment action only for persons "interested under a deed." For standing under Washington's declaratory judgment statute, "a party must (1) fall within the zone of interests that the statute in question protects or regulates and (2) have suffered an 'injury in fact.'" *Lakewood Racquet Club, Inc. v. Jensen*, 156 Wash.App. 215, 224, 232 P.3d 1147 (2010). Standing to proceed under the declaratory judgment law, requires that:

> a party must present a justiciable controversy *based on allegations of harm personal to the party* that are substantial rather than speculative or abstract. *Walker v. Munro*, 124 Wash.2d 402, 411, 879 P.2d 920 (1994). This statutory right is clarified by *the common law doctrine of standing, which prohibits a litigant from raising another's legal right.* "The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity." *Id.* at 419, 879 P.2d 920.

Grant County Fire Protection Dist. No. 5 v. City of Moses Lake, 150 Wash.2d 791, 802, 83 P.3d 419 (2004) (emphasis added). Without an ownership interest in the Corridor, plaintiffs have no standing to bring a declaratory judgment action against King County; they fall outside the zone

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of interest and have suffered no personal injury. *See Lakewood Racquet Club*, 156 Wash.App. at 228 (no justiciable interest where plaintiffs' lacked "an ownership interest in the benefited property).

C. "Sammamish Homeowners" Lacks Standing to Bring this Action

The Sammamish Homeowners group also lacks standing to bring this action. The factual allegations in the complaint and the submitted deeds establish neither a direct injury to Sammamish Homeowners, nor do they establish associational standing for the group. The Court should dismiss this plaintiff from the lawsuit.

1. Sammamish Homeowners Has No Injury In Fact Because It Has No Ownership Interests in the Corridor

There is no allegation in the Complaint that the corporate entity called Sammamish Homeowners owns any property adjacent to the Corridor, or otherwise possesses a property interest in the Corridor. *See* Complaint ¶12. To establish "the irreducible constitutional minimum of standing," a plaintiff invoking federal jurisdiction must establish "injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury." *Carrico v. City and County of San Francisco*, 656 F.3d 1002, 1005 (9th Cir. 2011). As noted above, the lack of direct ownership precludes Sammamish Homeowners from proceeding independently of its members. It has no standing in its own right to bring this action.

2. Sammamish Homeowners Does Not Qualify for Associational or Representational Standing

It is likely that Sammamish Homeowners will seek to proceed under the doctrine of associational or representational standing. The Supreme Court has recognized that:

> an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

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Hunt v. Washington State Apple Advertising Com'n, 97 S.Ct. 2434, 2441, 432 U.S. 333, 343 (1977). The first two questions implicate the Court's Article III jurisdiction, while the third question represents a prudential limitation on standing. Here, Sammamish Homeowners satisfies none of the criteria necessary to grant the entity associational standing.[6]

First, the Complaint is insufficient to demonstrate that the undisclosed members of the Sammamish Homeowners would have standing to bring suit in their own names. No injury in fact by a specially named member of Sammamish Homeowners is alleged in the Compliant. *See* Complaint ¶12. There are no allegations for this individual establishing chain of title and no deeds demonstrating chain of title. As a result, there is no centerline presumption. *Roeder*, 105 Wash.2d at 578. Especially when the named individual plaintiffs were unable to establish an ownership interest in the Corridor, there should be no assumption – especially under Article III – that undisclosed members of a corporate group would fare any better. *See Physicians Committee for Responsible Medicine v. U.S. E.P.A.*, 292 Fed.Appx. 543, 545 (9th Cir. 2008)(denying associational standing to group when individual appellants failed to establish sufficient evidence of standing).

Indeed, the allegations in the Complaint and the deeds submitted by plaintiffs are insufficient to satisfy the first prong of the *Hunt* test. An associational plaintiff must provide "specific allegations establishing that at least one *identified member* had suffered or would suffer harm." *Associated General Contractors of America, San Diego Chapter, Inc. v. California Dept. of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013)(emphasis in original). An association fails to

[6] Before turning to the *Hunt* criteria, the Court should dismiss Sammamish Homeowners from this lawsuit because the allegations in the Complaint fail to adequately describe the group or qualify it as an association. The Complaint nowhere addresses the group's purposes, its bylaws, officers, or membership to establish that it is an actual organization. *Egri v. Connecticut Yankee Atomic Power Co.*, 270 F.Supp.2d 285, 292 (2002) (suggesting that group's "questionable existence" implicates standing).

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meet this standard when it fails to identify any affected members by name. *Id.* Because Sammamish Homeowners has failed in its burden to establish standing, it should be dismissed from this lawsuit. *Id.* at 1195.

Plaintiff Sammamish Homeowners also fails to establish standing under the second *Hunt* prong. The Complaint fails to aver that this lawsuit is "germane to the organization's purpose." The purpose of the organization is not pled in the Complaint. The only information the Court has about the purpose of Sammamish Homeowners is found in the Washington Secretary of State filing that is attached as Exhibit 2. The claimed purpose of the group is "Civic, work with property owners and government organizations on regulations and projects that affect shorelines in the City of Sammamish. Examples are the East Sammamish trail and Willowmoor reconfiguration of the Sammamish River." Ex. 2. A lawsuit to establish the private property rights of members in the Corridor, which lies *upland* from the Lake Sammamish shoreline, is far astray from this purpose. Thus, Sammamish Homeowners should be denied associational standing because it fails the second *Hunt* criteria.

Finally, associational standing should be denied to Sammamish Homeowners because this suit cannot proceed absent the participation of the individual members of the Sammamish Homeowners group. *See Aspen Grove Owners Ass'n v. Park Promenade Apartments, LLC*, 2010 WL 4860345, at *4 (W.D.Wash.,2010)(plaintiff homeowners association lacked standing under third *Hunt* prong for CPA claim because claim required showing that "each homeowner was injured and that each injury was caused by Defendants' allegedly unfair or deceptive acts"). As the analysis in section B above demonstrates, this lawsuit cannot proceed without analyzing and scrutinizing the legal descriptions of the individual properties owned by each member along the Corridor. Such an inquiry is highly individualized and requires an examination of the language

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and circumstances of each deed. It also requires an examination of each individual's chain of title. Further, the Court can neither quiet title nor declare judgment without examining the encroachments on the Corridor, which may require individualized surveys or claims of adverse possession. In short, contrary to the third *Hunt* criteria, this suit cannot proceed without the individual participation of each Sammamish Homeowner member. *See generally Washington Legal Foundation v. Legal Foundation of Washington*, 271 F.3d 835, 850 (9th Cir. 2001)(plaintiff association lacked standing under third *Hunt* prong for takings claim because determination of just compensation required participation of individual members); *Lake Mohave Boat Owners Ass'n v. National Park Service*, 78 F.3d 1360, 1367 (9th Cir. 1995)(plaintiff association lacked standing under third *Hunt* prong for restitution claim because it required participation of individual members to determine "[b]oat size, slip size, and amount of use.").

Thus, under any of the *Hunt* criteria, Sammamish Homeowners lacks standing to bring this action. The Court should dismiss Sammamish Homeowners from this case.

D. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted

The lack of any ownership interest in the Corridor not only removes plaintiff's Article III and statutory standing, it also prevents them from stating a claim for which relief may be granted. The Court should dismiss plaintiffs' Complaint "if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations." *McGlinchy v. Shull Chem. Co.*, 845 F.2d at 810 (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir.1980).

Without an ownership interest in the Corridor, plaintiffs cannot prevail in this action. Under Washington law, "[t]he party with superior title, whether legal or equitable, must prevail." *Washington Securities and Investment Corp. v. Horse Heaven Heights, Inc.*, 130 P.3d 880, 884,

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132 Wash.App. 188, 195 (2006). Without a valid property interest in the Corridor, plaintiffs cannot state a claim upon which relief may be granted.

V. CONCLUSION

For the foregoing reasons, the Court should grant King County's motion to dismiss.

DATED this 23rd day of March, 2015 at Seattle, Washington.

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DECLARATION OF FILING AND SERVICE

I hereby certify that on March 23, 2015, I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 23rd day of March, 2015 at Seattle, Washington.

s/ Karen Richardson
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