

309506

**Before the
Surface Transportation Board**

ENTERED
Office of Proceedings
April 28, 2025
Part of
Public Record

STB Finance Docket No. 34936 (Sub-No. 1)

Port of Moses Lake – Acquisition Exemption – Moses Lake, Washington

Petition for Supplemental Authorization to the Extent Needed

Sandra L. Brown
David E. Benz
Thompson Hine LLP
Suite 700
1919 M Street, N.W.
Washington, DC 20036
202.331.8800
202.331.8330 (fax)

Attorneys for the Port of Moses Lake

April 28, 2025

FILED
April 28, 2025
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 28, 2025
SURFACE
TRANSPORTATION BOARD

**Before the
Surface Transportation Board**

STB Finance Docket No. 34936 (Sub-No. 1)

Port of Moses Lake – Acquisition Exemption – Moses Lake, Washington

Petition for Supplemental Authorization to the Extent Needed

The Port of Moses Lake (“Port”) hereby petitions the Surface Transportation Board (“Board” or “STB”) for supplemental authorization, to the extent needed, regarding the rail line acquisition previously addressed by the Board in this docket. This Petition for Supplemental Authorization to the Extent Needed (“Petition”) is filed pursuant to 49 CFR § 1117.1. In support hereof, the Port states as follows:

The Port filed a combined Petition for Exemption on August 28, 2008 in this docket and the related STB Finance Docket No. 34936. In that Petition for Exemption, the Port sought authorization to acquire a segment of rail line from the Columbia Basin Railroad Company (“CBRW”), known as “Segment 3,” and also to construct two new segments of rail line, “Segment 2” to the north and “Segment 1” to the southeast, that would connect to Segment 3 acquired from CBRW.¹ These related actions were critical components of an effort to preserve

¹ See, e.g., Petition for Exemption, filed August 28, 2008 by the Port in STB FD Nos. 34936 and 34936 (Sub-No. 1), at pages 3-4. The map (“Exhibit A”) from the Petition for Exemption is attached hereto as **Exhibit 1**.

and expand access to rail transportation in the Moses Lake area. The Board granted the requested authorizations in a single decision issued August 27, 2009 (“2009 Decision”).

The 2009 authorization occurred during a severe economic downturn that adversely affected the Port’s efforts to obtain funding and move the project forward.² Therefore, all aspects of the project, including consummation of the rail line acquisition authorized by the Board, were significantly delayed. During this multi-year period, many changes occurred at the Port and, in late 2018, the Port petitioned for, and the Board accepted, the reopening of the related construction proceeding, FD No. 34936, to consider proposed modifications to the route.³ A supplemental environmental review was completed with the Federal Railroad Administration (“FRA”) joining in the environmental review because federal funds for the project originated with the U.S. Department of Transportation.⁴ The construction with the route modifications was authorized by the Board,⁵ and the Port continued to work with FRA on FRA’s grant approval requirements.⁶

Forward momentum has continued, and the Port hopes to begin construction on Segment 1 in the very near future. The timing of the acquisition of Segment 3 from CBRW was accelerated due to certain aspects of the overall land acquisition and funding needed for construction of Segment 1. The Port was able to consummate its acquisition of the CBRW’s rail and land interest from approximately Route 17 to the connection of Port land and track near

² The COVID-19 pandemic also hampered forward progress.

³ Port of Moses Lake - Construction Exemption - Moses Lake, Wash., STB FD No. 34936 (served Jan. 28, 2019).

⁴ Id. at page 2 (note 4).

⁵ Port of Moses Lake - Construction Exemption - Moses Lake, Wash., STB FD No. 34936 (served Dec. 3, 2019).

⁶ See, e.g., Northern Columbia Basin Rail Project description at: <<https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/northern-columbia-basin-rail-project>>.

Grant County International Airport on March 10, 2025, as shown on the attached **Exhibit 2**. The acquisition entails CBRW quitclaim of its rail right-of-way and track that is north of the connection to the soon to be constructed Segment 1. This acquisition ensures that any of CBRW's track north of Segment 1 will be under one ownership with the Port.

After closing, the Port was reminded of footnote 3 of the 2009 Decision, in which the Board separately addressed "approximately 0.5 miles of existing track located north of where Segments 2 and 3 meet." In that footnote, the Board stated that "the Port or other appropriate party will need to obtain appropriate authority to acquire this portion of existing track prior to operation over it." The Board also described the rail line to be acquired as "from Parker Horn, near Stratford Road, to near the GCIA [Grant County International Airport]."⁷ To remove any potential uncertainty regarding the acquisition segment, the Port is attaching **Exhibit 2** hereto. To the extent that any additional acquisition authority is needed, the Port is requesting such authority herein.

The Port has been unable to determine the exact circumstances that resulted in the footnote excluding the 0.5-mile portion from the original authorization. Acquisition of Segment 3 without the 0.5-mile track near the airport would have left a stub-ended island of track owned by CBRW cut off from the CBRW system by the line that would be owned and constructed by the Port.⁸ The track to be acquired was shown in the original Petition for Exemption (see **Exhibit 1**), in the 2009 Environmental Assessment mapping (attached map as **Exhibit 3**), and in the 2019 Environmental Assessment (attached map as **Exhibit 4**).

⁷ Port of Moses Lake, STB Finance Docket Nos. 34936 and 34936 (Sub-No. 1) (served Aug. 27, 2009), slip op. at 4.

⁸ It is possible that the Port had a preexisting ownership interest in the relevant 0.5-mile right-of-way. See page 4 of this Petition.

The Port owns numerous parcels near the airport and as shown in a website “screen shot” of the Grant County Assessor map, attached as **Exhibit 5**, county records show that the railroad right-of-way ends before Forbes Rd NE. Just north of Forbes Rd NE is the Port’s existing warehouse area that has various parallel stub-ended spurs, including at least a portion of the 0.5-mile track, all of which dead end in the warehouse property. Consequently, the Port may have already owned the track and right-of-way as it owns numerous parcels in the area. To the extent that the recent CBRW quitclaim deed did transfer any ownership of this approximately 0.5-mile section of track, the Port promptly prepared the instant Petition to seek after-the-fact authorization for the acquisition of the 0.5-mile portion of track to the extent required.

The 0.5-mile section near the airport is a stub-ended spur track mirroring several adjacent parallel industrial spurs. The Port has long owned industrial rail-served property comprising the majority of this 0.5-mile track, where various light industrial and warehouse buildings are separated by short, stub-ended spur tracks, including the subject 0.5-mile track. Consequently, the relevant track could be excepted track under 49 USC § 10906 such that no authorization is necessary for acquisition. The Port is filing this Petition out of an abundance of caution and in order to comply with footnote 3 of the 2009 Decision.

The circumstances surrounding this Petition warrant granting the requested authorization. The transaction as described in the original 2008 Petition for Exemption remains unchanged, and an exemption remains appropriate. The Port continues to pursue the project in order to preserve and expand rail access in the Moses Lake region. The extent of rail construction described in FD No. 34936 (as modified in 2019) has not changed. The eventual rail operations and scope of rehabilitation have not changed. CBRW will still provide operations over the acquired track (Segment 3) and any constructed track (Segment 1 and eventually Segment 2), just as described

in the 2008 Petition for Exemption. In fact, the Port and CBRW have recently agreed upon terms for CBRW to remain the operator for all such future operations from approximately Wheeler to the Port area adjacent to the airport. No party will be prejudiced by authorizing acquisition of the track shown in **Exhibit 2**. No shipper will be harmed by this acquisition. There were no comments opposing the transportation merits of the entire project in 2009.⁹ No environmental or historic review is applicable to a rail line acquisition of this type.¹⁰ CBRW supports the Port's request for any authority that may be needed.

Any oversight to file this request before the transaction was complete was inadvertent, and unintentionally clouded by the distinction between land ownership and track ownership, the passage of time since the 2009 authorization decision, changes in personnel, mapping inconsistencies, and potentially the wording associated with including all three segments in one Petition for Exemption. The Port always intended to acquire all track shown in **Exhibit 2** attached hereto, including all CBRW track in the immediate vicinity of the airport.

The Port has been diligently working to fit all the pieces of this project together, along with meeting federal funding requirements, in order to preserve and expand access to rail transportation in the Moses Lake area. Precedent supports the relief requested herein and the Port respectfully requests that the Board similarly authorize the transaction here.¹¹

⁹ See Port of Moses Lake, STB Finance Docket Nos. 34936 and 34936 (Sub-No. 1) (served Aug. 27, 2009), slip op. at 4 (“No shippers or other parties have filed comments opposing the transportation merits of the proposal.”).

¹⁰ 49 CFR §§ 1105.6(c)(1) and 1105.8(b)(1). See also Lee's Summit, Missouri v. Surface Transportation Board, 231 F.3d 39 (D.C. Cir. 2000).

¹¹ The Board's footnote states that “authority to acquire” should be obtained “prior to operation over” the 0.5-mile track. Operations are not ready to begin but the Port is seeking authority, to extent it is needed, to ensure that this 0.5-mile track has all requisite STB acquisition authorization.

Authorization at this time is also appropriate as the Board has previously granted after-the-fact authorization in situations with inadvertent oversight. See, e.g., Delray Connecting Railroad Co. - Trackage Rights Exemption - Consolidated Rail Corp., STB FD No. 35180 (served Jan. 9, 2009) (Notice of Exemption accepted where entity realized authorization was required for transaction that had already been consummated); David W. Wulfson et al. - Control Exemption - Clarendon & Pittsford Railroad Co. et al., STB FD No. 33607 (served Aug. 20, 1998) (exemption approved where “inadvertent” non-compliance resulted in consummation of transaction prior to authorization); Arkansas-Oklahoma Railroad Co. - Acquisition and Operation Exemption - State of Oklahoma, STB FD No. 36323 (served Sept. 19, 2019) (acquisition exemption granted three years after transaction where railroad stated it “inadvertently did not file for separate authority to purchase and operate the Line”) (citation omitted).

For all the reasons set forth herein, the Port respectfully requests that the Board authorize via exemption, to the extent needed, the acquisition of the rail line shown in the attached **Exhibit**

2.

Respectfully submitted,

/s/ Sandra L. Brown
Sandra L. Brown
David E. Benz
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, DC 20036
202.331.8800
202.331.8330 (fax)

Attorneys for the Port of Moses Lake

April 28, 2025

CERTIFICATE OF SERVICE

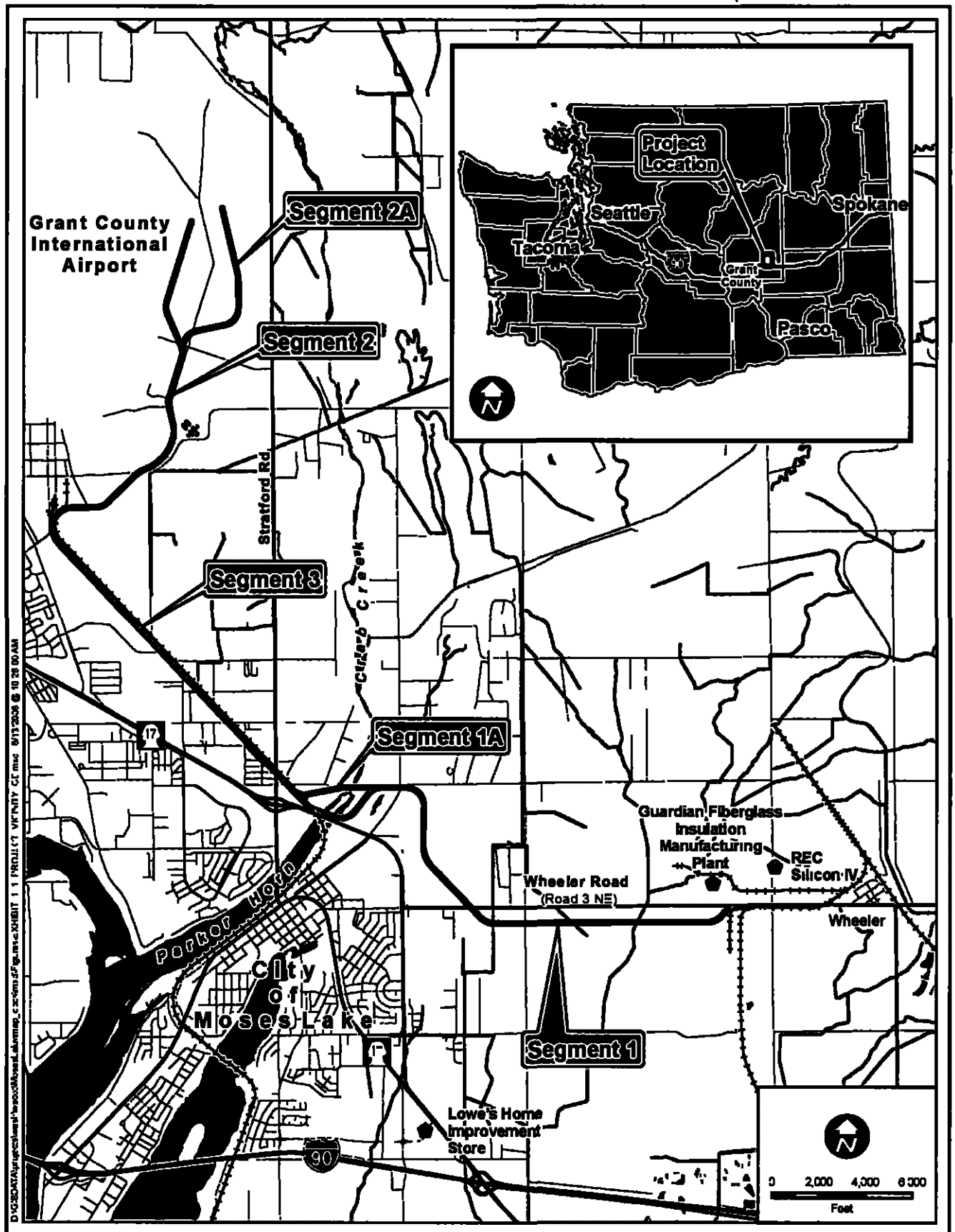
I hereby certify that there are no current parties of record in FD No. 34936 (Sub-No 1) shown on the Surface Transportation Board's website Service List as of this 28th day of April 2025. I also certify that on the same day a copy of the foregoing was served upon external counsel for the Columbia Basin Railroad Company via e-mail to:

Rose-Michele Nardi
2001 L St. NW, Suite 720
Washington, DC 20036
rnardi@mullinslawgroup.net

/s/ Sandra L. Brown
Sandra L. Brown

Exhibit 1

Exhibit A to Petition for Exemption filed August 28, 2008



Washington State
Department of Transportation



PROJECT VICINITY Exhibit 4.1a

Northern Columbia Basin Railroad Project

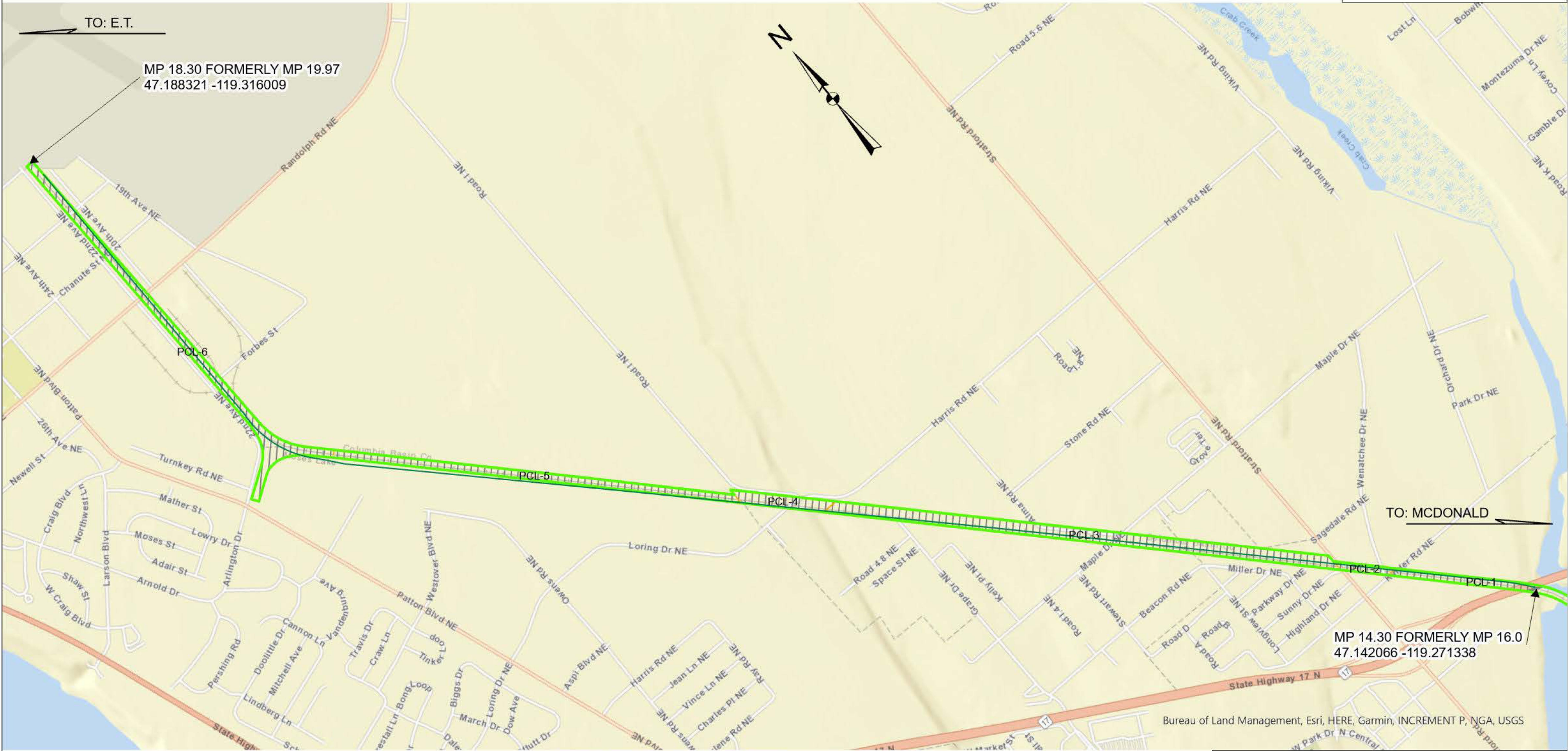
Exhibit 2

Exhibit A-1 to Donation Agreement (March 10, 2025)

SCALE:1:15,000

JLL TI #:
BW Proj. No.: 17641.004
MAP REFERENCE:
STA. = -
R/W = r52473,r80706

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



TO: PORT OF MOSES LAKE
AT: MOSES LAKE
GRANT COUNTY,
WA

- LEGEND:**
- SALE AREA
 - RIGHT OF WAY LINE
 - PARCEL LINES
 - TRACK



NORTHWEST DIVISION
UNDETERMINED SUBDIVISION - L.S. 0456
VAL.SEC. 51117
CM&STP RY CO WA-07A, MAP 06
SEC. 33/4,3,10,11,14, T20N/19N, R28E WILLM
DATE: 12/5/2024
MP 14.30 - 18.30

Exhibit 3

Final Environmental Assessment, STB FD No. 34936, Exhibit ES.1 (May 8, 2009)

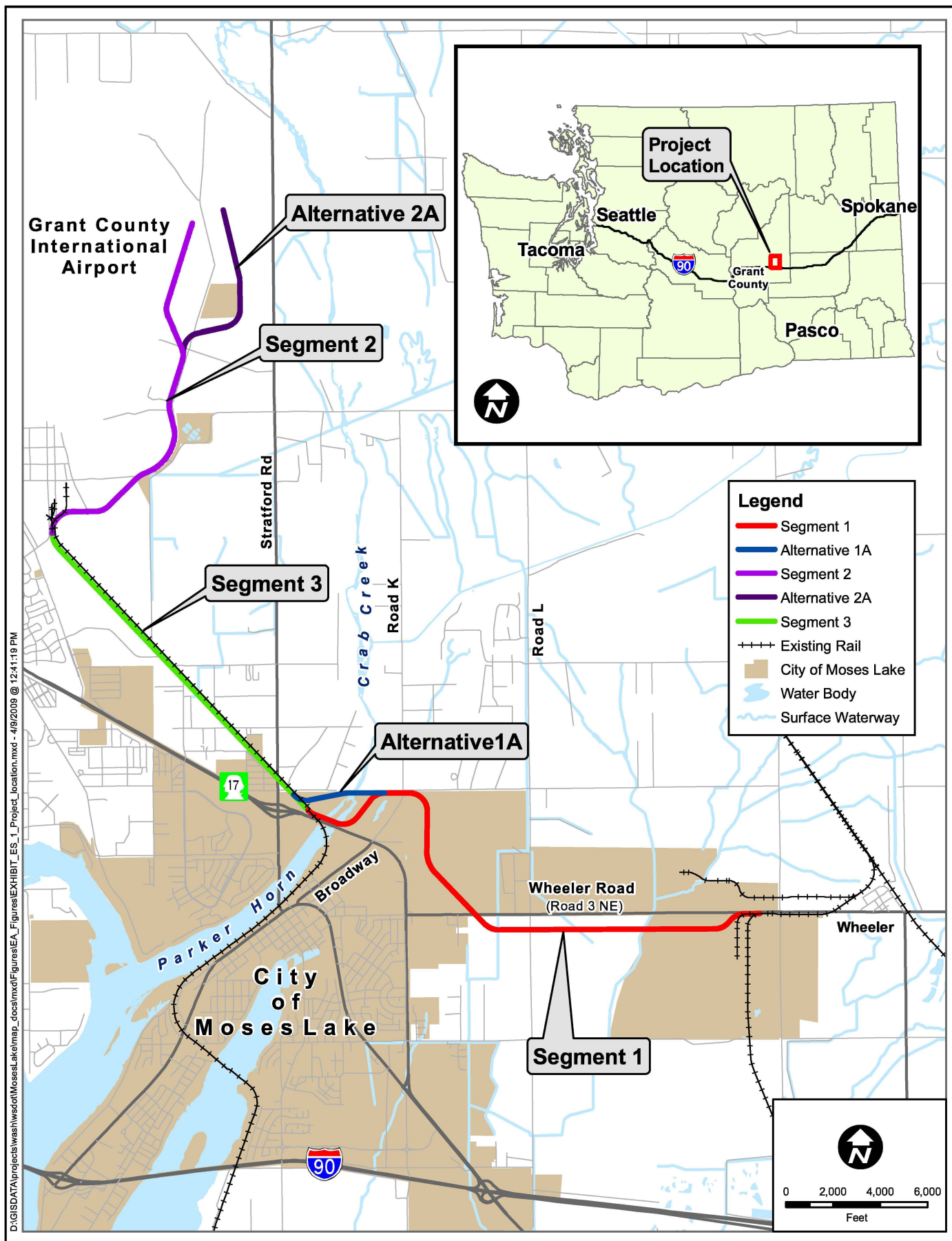


Exhibit 4

Final Supplemental Environmental Assessment, FD No. 34936, Exhibit 1.1 (Nov. 5, 2019)

Exhibit 1.1 Location of Original and Proposed Modified Alignments

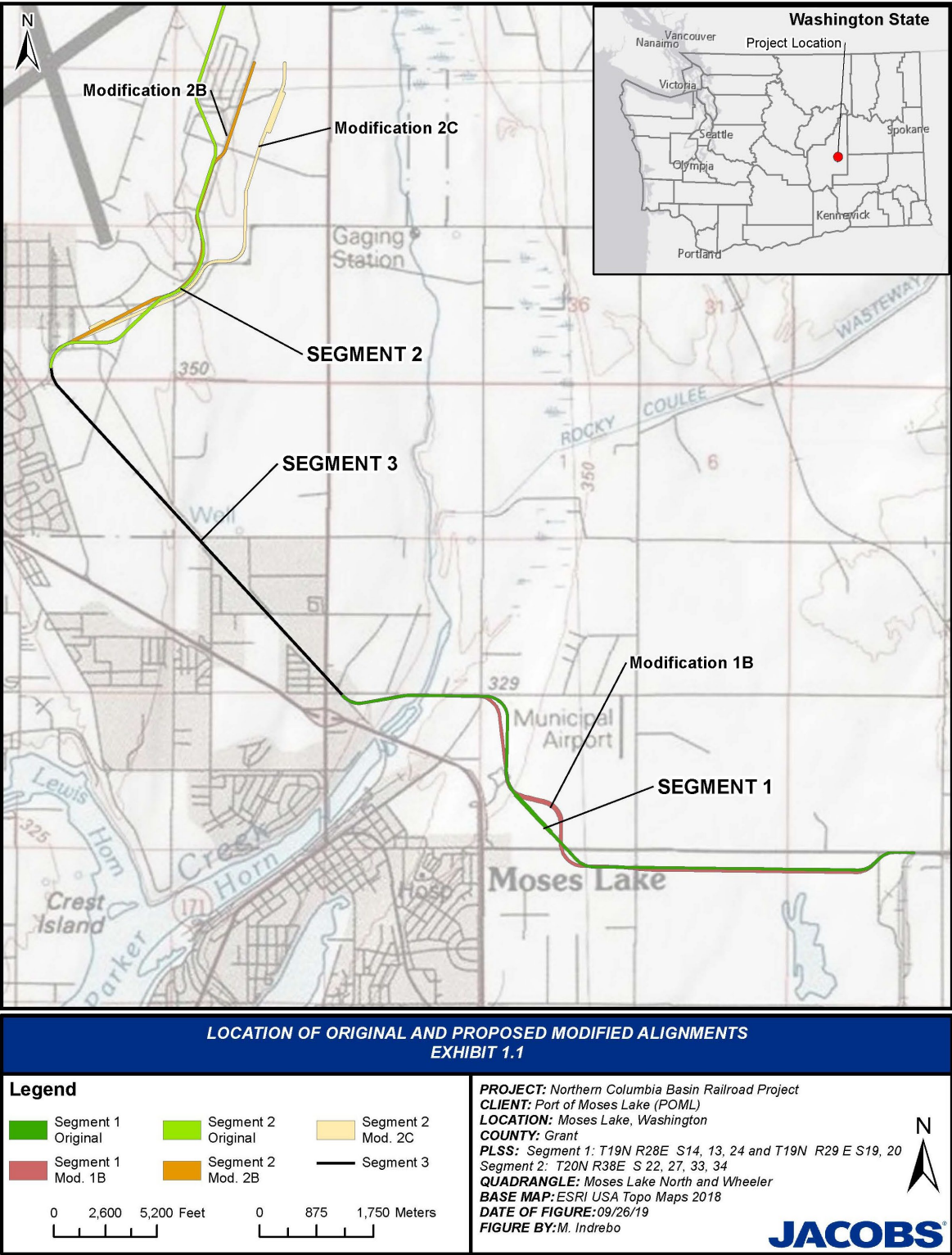


Exhibit 5

excerpt from Grant County, WA, government property database map, available at:
<https://harrisgovern.maps.arcgis.com/apps/webappviewer/index.html?id=527bc678c8c547eabeca5b5b5442f82b&find=>

