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BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket 36261¹

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.

PETITION FOR A DECLARATORY ORDER

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**December 12, 2018
SURFACE
TRANSPORTATION BOARD**

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¹ In a decision served on August 11, 1998, the underlying proceedings in Adventure Trail D/B/A Sea Lion Railroad--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33486 were consolidated with Sea Lion Railroad--Abandonment Exemption--In King County, WA, STB Docket No. AB-544X.

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I. INTRODUCTION

The Ballard Terminal Railroad Company, L.L.C. (hereinafter referred to as the “BTRC” or the “Railroad”) hereby petitions this Board, pursuant to 49 U.S.C. § 10501(b)(2) and other applicable authority, for a declaratory order determining that the City of Seattle, acting by and through its Department of Transportation (hereinafter referred to interchangeably as either the “City” or “SDOT”), is preemptively prohibited from removing or reconfiguring track actively used by the Railroad; is preemptively prohibited from relocating an active drive-lane of a City street so that it is directly on top of an active rail line, forcing the Railroad to operate within a City street (both with and against the flow of vehicle traffic); and, is preemptively prohibited from making roadway improvements adjacent to the active rail line. The City’s proposed actions are part of, or related to, SDOT’s efforts to construct an approximately 1.4 mile section (the “Missing Link”) of the multi-user, recreational, regional Burke-Gilman trail (“BGT”). SDOT’s actions will create unsafe operating conditions for the Railroad, will materially impede the Railroad’s ability to operate, and will impede the Railroad’s ability to perform routine track maintenance and repair. More specifically, BTRC respectfully requests that the

Board order SDOT to redesign the Missing Link to eliminate material impacts to the Railroad by:

- Prohibiting SDOT from removing or reconfiguring approximately 550 linear feet of track (the “Western Pioneer Spur”), which BTRC actively uses for car storage, loading, unloading and transloading;²
- Prohibiting SDOT from relocating an active vehicle travel lane of NW 45th Street in the Ballard neighborhood of Seattle so that the travel lane is located directly on top of and runs on top of a portion of active rail track, thereby forcing the Railroad to operate in an unsafe condition within a public street, going both with and against the flow of vehicle traffic, including passenger vehicles and heavy freight;³ and
- Prohibiting SDOT from making roadway improvements to an unopened public right-of-way, locally known as “Not-54th St.,” that will place vehicle traffic dangerously close to operating rail tracks and that will unreasonably and materially impede BTRC’s ability to perform routine track maintenance and repair.⁴

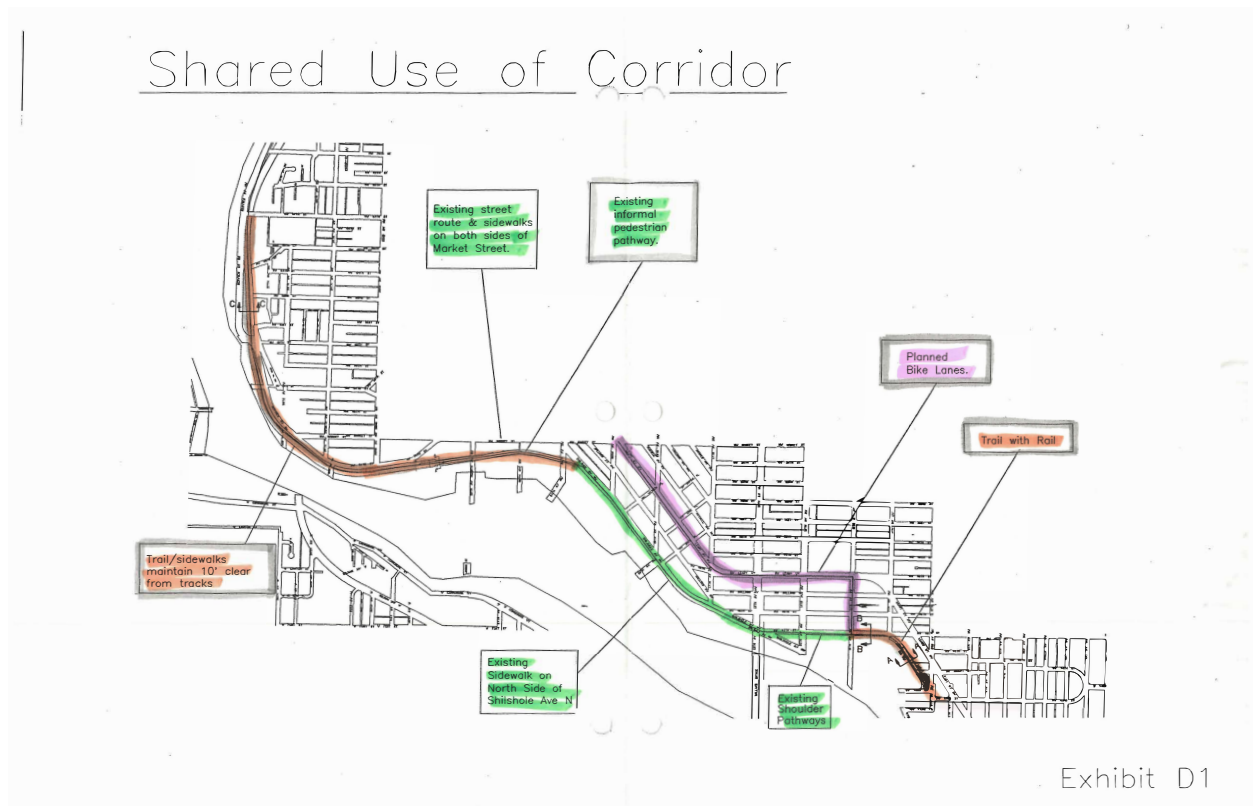
SDOT’s actions will substantially and materially impact BTRC by removing/reconfiguring active rail track used to provide rail service and generate income; will force the Railroad to operate in an extremely dangerous conditions and environments; and will materially impede the Railroad’s ability to perform routine maintenance and repair. In contrast, SDOT can easily relocate the Missing Link away from BTRC’s active rail line: In fact, as

² Exhibit 1 to the Verified Statement of James Forgette (hereinafter the “Forgette Statement”) depicts the location and condition of BTRC’s Western Pioneer Spur.

³ Exhibits 5 and 6 to the Forgette Statement show SDOT’s plans to relocate the active vehicle travel lane of NW 45th St. so it is located directly on top of BTRC’s active railroad tracks.

⁴ Exhibit 7 to the Forgette Statement shows SDOT’s paving plan for Not-54th Street.

part of the agreements in 1996 between BTRC and the City that were the precursor and foundation for the original proceedings before the Board in this Docket, the City agreed to an alignment that located the Missing Link away from the rail line as follows:⁵



Despite clear agreement in 1996 regarding the location of BGT improvements, beginning in about 2001, the City changed its mind and has, for the past 17+ years been trying to build the Missing Link directly adjacent to BTRC's active tracks located along NW 45th Street and Shilshole Avenue Northwest in the Ballard neighborhood of Seattle as follows:

⁵ See Appendix A, which is a copy of Exhibit D1 to the Operating Agreement.

BTRC further moves that all Rebuttals be filed within twenty-one (21) days of the due date for Replies, on February 13, 2019. And BTRC respectfully requests that the Board issue a ruling within sixty (60) days of completion of briefing.

BTRC is seeking a prompt decision and the above-schedule because it appears the City has changed its long-held position that it would not build the Missing Link until all local environmental appeals are completed, and instead SDOT is now pushing to begin construction in early 2019 even though such an environmental appeal is ongoing. In 2009, SDOT represented to the Washington State Court of Appeals, Div. I, that it would not build the Missing Link until all appeals are completed.⁶ Recently, SDOT appears to have changed its position because it issued a new Notice of Action on July 19, 2018⁷ and SDOT, on its website, says:

“Construction is expected to begin in early 2019.”⁸

This case is straightforward and thus an accelerated briefing schedule and prompt decision is warranted. On one hand, SDOT’s actions will materially impede the Railroad’s ability to operate and to do so safely. On the other hand, SDOT can easily redesign the Missing Link and locate it in any other public right-of-way owned and controlled by the City, including moving it just two (2) blocks away to NW Leary Way/Ave as originally agreed in 1996.

III. Factual Background

⁶ A copy of the City’s statement and representation to the Washington State Court of Appeals, Div. I, is attached as Appendix B.

⁷ See Appendix C.

⁸ <https://www.seattle.gov/transportation/projects-and-programs/programs/bike-program/burke-gilman-trail-missing-link-project>

This multi-decade saga began in the 1990s when BNSF indicated it wanted to abandon the already-embargoed Ballard Line. In response, a group of entities, including the City and the to-be-formed BTRC, came together to protect and preserve the Ballard Line for continued rail service while simultaneously preserving portions of the corridor for rails-to-trails and rails-with-trails. On February 26, 1999, in Finance Docket No. 33486, the Board issued and approved a modified certificate of public convenience and necessity (“MCPCN”) authorizing BTRC to operate a line of railroad (the “Ballard Line”) between milepost 0.09 and the end of the line at mile post 2.70, a distance of almost 3 miles in the Ballard District of Seattle, King County, WA. The Board had previously approved, on August 11, 1998, abandonment of the Ballard Line by Adventure Trail, Inc. (d/b/a Sea Lion Railroad (“Sea Lion”)) in Sea Lion Railroad—Abandonment Exemption—In King County, WA et al., STB Docket No. AB 544X, et. al. As part of the Sea Lion abandonment proceedings, the City acquired title to the real property underlying the Ballard Line, conditioned, in part, on the Board approving the MCPCN authorizing BTRC to operate a railroad along the Ballard Line.⁹

The instant dispute before the Board is the culmination of 10-plus years of litigation regarding the City’s attempts to move the location of the Missing Link from where the City told the Board it would build the trail in the 1990s, and to instead build the Trail in a location directly in conflict with BTRC’s rail operations. This issue is finally ripe for Board adjudication because SDOT recently developed its plans for the Missing Link to 90% or greater and intends to begin construction of the Missing Link in early

⁹ See Appendix D, AB 544X, at page 3 (“If abandonment is permitted, Sea Lion proposes to transfer ownership of the Ballard Line real estate to Seattle, sell the track and related rail assets to BTRC for a nominal amount, and assign its operating agreement with BTRC to Seattle”); see also FD 33486 authorizing acquisition and operating exemption.

2019.¹⁰ Thus, the location and impacts of the Missing Link to BTRC are known and subject to Board review.

1. The Missing Link was not Supposed to be Located Adjacent to the Active Railroad Line

When this process began over twenty years ago, the City clearly indicated it would construct the Missing Link away from the Railroad in order to protect and preserve rail service on the Ballard Line. On November 12, 1996, the Seattle City Council adopted Resolution 29474¹¹ (the “Manning Resolution”) in which the Council stated “the guiding principles for extending the Burke-Gilman Trail; to reiterate the City’s commitment to ‘Railbank’ the Ballard rail corridor; [and] to state a preferred alternative for extending the trail....” Some of the “guiding principles” articulated in the Manning Resolution included the City’s desire to:

- Create safe facilities that are conducive to non-motorized, alternative transportation that minimizes negative impacts on adjacent businesses.
- Preserve the vitality of businesses located within the Ballard industrial corridor.
- Encourage and promote continued rail service by private sector.

[And]

- Maintain safe and efficient access to businesses for customers and transport of freight.

The Manning Resolution included preferred trail routes/locations for the different segments of the Trail. The preferred location for the eastern-most section was a separated, multi-use trail from the BGT’s then-current terminus at 8th Avenue Northwest northward and westward on the south side of the railroad tracks to 11th Avenue Northwest, while the preferred location for the western most section was a multi-user

¹⁰ See <https://www.seattle.gov/transportation/projects-and-programs/programs/bike-program/burke-gilman-trail-missing-link-project>.

¹¹ See Appendix E, which is a copy of Resolution 29474, colloquially known as the “Manning Resolution” after its sponsor.

trail within the rail corridor from the Government Locks to Northwest 67th Street, both of which sections the City constructed.¹² For the center section—the Missing Link—the preferred location was a multi-user trail on the east side of 11th Avenue Northwest from 45th Avenue Northwest to Northwest Leary Way and from there bike lanes on each side of Northwest Leary Way to Northwest Market Street.¹³

On September 14, 1997, BTRC entered into an “Operating Agreement” with Adventure Trail (i.e., Sea Lion Rail), which was acting as a proxy for the City, for operation of a short line railroad on the Ballard Line.¹⁴ Sea Lion, for itself and the City as the intended transferee, granted BTRC all rights to operate a railroad providing freight service,¹⁵ and agreed to convey all right, title and ownership of the track and ties to BTRC.¹⁶ The parties also agreed Sea Lion would file a petition before this Board to permit railbanking of the premises pursuant to 16 U.S.C. § 1247 (d).¹⁷ Section 10 of the Operating Agreement controls the City’s construction of any type of trail (e.g., pedestrian-only, bicycle-only or multi-user) within the Corridor, stating, in relevant parts:

10. Rail and Trail facilities. (a) Owner and Operator agree that the trail (which, for this paragraph, may include pedestrian-only trail or path facilities, bicycle-only trail or path facilities, or some combination thereof) and railroad shall be constructed within the areas indicated in Exhibit D in all portions of the premises which are not in street right of way. Owner and Operator agree to design their respective facilities such that crossings of tracks are as safe as reasonably possible, by use of approaches close to right angle, or appropriate rubberized crossing materials, or similar measures. Operator agrees to design Additions and configurations so as to minimize crossing of trail facilities. Owner and Operator shall avoid damage to each other's facilities.

¹² See Section 3 of Resolution 29474.

¹³ See Appendix E, Section 5 of Resolution 29474.

¹⁴ See Appendix E, Section 1(b), of the Operating Agreement.

¹⁵ Id. at Section 1(c).

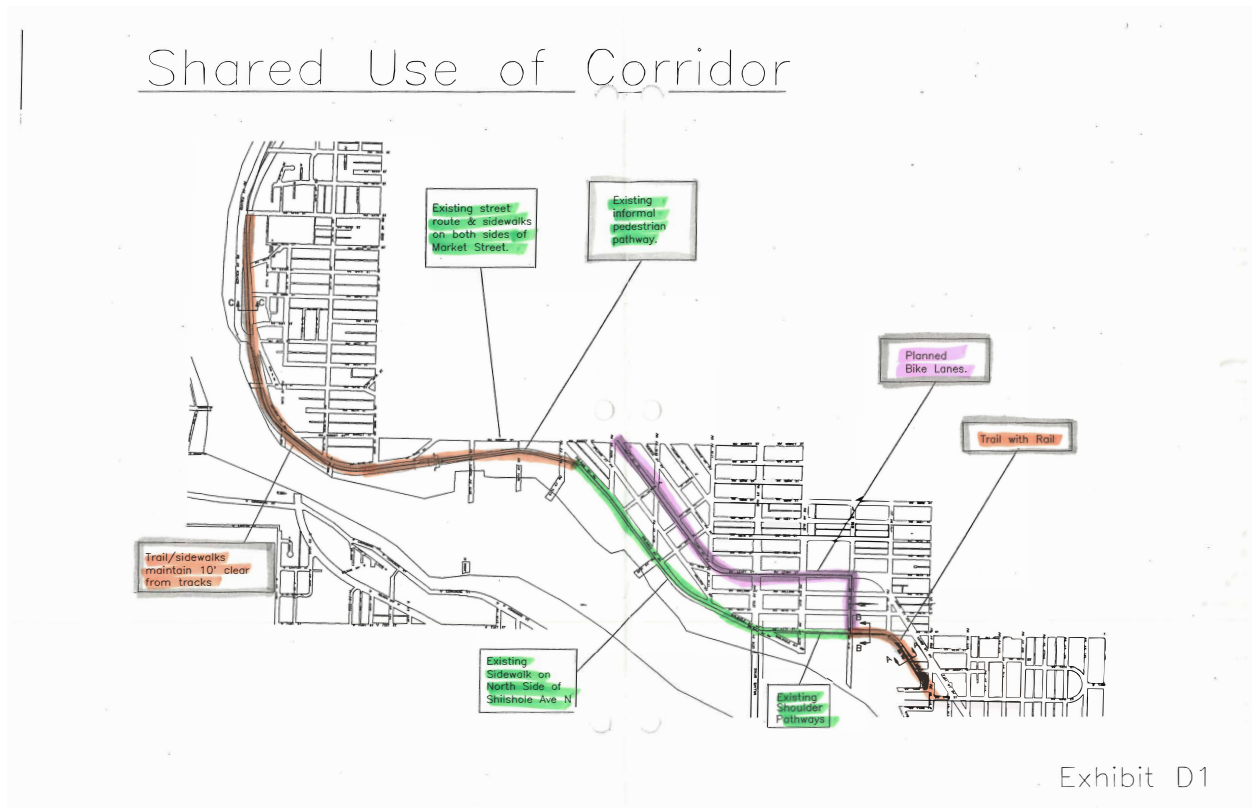
¹⁶ Id. at Section 3.

¹⁷ Id. at Section 9.

(b) Owner and Operator agree that new trail facilities (other than crossings) may be constructed only in accordance with applicable regulations of DOT or WUTC relating to separation from centerline of rail.

(e) Owner shall have the right to require Operator to relocate its track in order to accommodate trail construction in accordance with this Agreement; provided, however, that a continuous track on the premises shall be provided unless Operator consents otherwise.¹⁸

Exhibit D1 to the Operating Agreement (see Appendix A) is a map showing the agreed-upon locations for trail facilities to be constructed within the Corridor, as follows:



2. BTRC Obtained a 30-Year Franchise to Operate the Railroad

On September 29, 1997, the Seattle City Council adopted Ordinance 118734 granting a 30-year railway franchise to BTRC to operate a railroad on the Ballard Line subject to the Board approving the acquisition and exemption for Sea Lion and the City,

¹⁸ Id. at Section 10 (emphasis added).

and the Board issuing a MCPCN to BTRC.¹⁹ The railway franchise expires at 11:59 PM on September 29, 2027.²⁰ In Section 4 of Ordinance 118743, the City reserved unto itself the right “to construct all public improvements (including trails) and to install and carry all public utility facilities across, underneath or above the tracks hereby authorized...” and reserved the “full and complete right of access to any space occupied by such tracks and to all of said franchise right-of-way” provided the City’s exercise of these reserved rights does not “interfere with the safe operation of locomotives, cars and trains on said tracks.”²¹ Ordinance 118743 incorporated and authorized the terms and conditions of BTRC’s Operating Agreement, which is an attachment to the Ordinance.²²

3. The Board Approved a MCPCN Authorizing BTRC to Operate the Railroad

As discussed supra, on February 26, 1999, in FD 33486, the Board issued and approved a MCPCN authorizing BTRC to operate a line of railroad along the Ballard Line, and also permitted the City to acquire title to the real property underlying the Ballard Line, conditioned, in part, on the Board approving the MCPCN authorizing BTRC to operate a railroad along the Ballard Line.²³ As the Board explained in AB 544X,

Thus, under the parties’ plan, BTRC will continue to provide freight rail service over a portion of the corridor while, at the same time, Seattle builds and maintains a parallel trail on a portion of the corridor.²⁴

¹⁹ See Appendix G, Ordinance 118743.

²⁰ Id. at Section 1(a).

²¹ Id. at Section 4 (emphasis added).

²² Id. at Sections 12 and 13 and pages 25 to 49 of the Ordinance.

²³ See Appendix D, AB 544X at page 3 (“If abandonment is permitted, Sea Lion proposes to transfer ownership of the Ballard Line real estate to Seattle, sell the track and related rail assets to BTRC for a nominal amount, and assign its operating agreement with BTRC to Seattle.”); see also FD 33486 authorizing acquisition and operating exemption.

²⁴ Id. at page 3.

As part of obtaining Board approval for the acquisition and exemption of the Ballard Line, Sea Lion and the City convinced the Board they intended for continued rail service instead of an acquisition-to-abandonment scenario as alleged in the Land Conservancy case.²⁵ The Board, in reliance on these assurances, approved the acquisition and exemption, and issued the MCPCN authorizing BTRC to operate the Ballard Line.

4. BTRC's Rail Line, Facilities and Operations.

BTRC's Ballard Line includes, among other facilities, a mainline track, a siding that serves Salmon Bay Sand & Gravel Company, a spur or stub track referred to as the "Western Pioneer Spur," a locomotive yard located towards the eastern third of the line, run-around tracks near the eastern terminus, and two interchange tracks near the western terminus.²⁶ BTRC currently operates its Ballard Line on any day of the week, at all hours of the day depending on its shipper's needs, by picking up inbound cars at the interchange with the BNSF at approximately milepost 0.09 and pulling the cars easterly.²⁷ It is BTRC's practice, whenever possible, to pull cars instead of shoving them because that is safer.²⁸

5. The City has Been Trying to Change the Location of the Missing Link for Nearly 20 Years—In Contravention to its Representations to the Board

The agreements, actions and Board approvals discussed above were premised upon the City's agreement to locate and construct trail facilities away from the railroad,

²⁵ Id. at page 5, citing The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (STB served September 26, 1997).

²⁶ See Forgette Statement at ¶ 6.

²⁷ Id. at ¶ 7.

²⁸ Id. at ¶ 8.

in the locations shown on Exhibit D1²⁹ to the Operating Agreement. Despite this, and based on lobbying efforts by bicycle advocates beginning in 2001, the City changed its mind and has been trying to build the Missing Link adjacent to BTRC's tracks since 2003. In 2003, the City Council adopted Resolution 30583³⁰ (voting 7-2) changing the preferred route for the Missing Link from the agreed-upon routes discussed (and shown on Exhibit D-1) above to a new "preferred" route along Northwest 45th Street-Shilshole Avenue Northwest and "Not-54th Street, directly adjacent to the BTRC tracks. Five years later, in 2008, SDOT, acting as the project proponent and its own lead agency for environmental review under the State Environmental Policy Act ("SEPA") issued itself a determination of non-significance ("DNS") for the Missing Link, concluding it will not have any significant adverse environmental impacts. A group of Ballard businesses, trade unions and trade associations (collectively referred to herein as the "Coalition") appealed the DNS to the City's Hearing Examiner who conducted the first trial in early 2009, ultimately upholding SDOT's DNS. The Coalition appealed the Hearing Examiner's decision to King County Superior Court, and in 2009 Judge Rogers reversed the Examiner, agreeing that SDOT had piecemealed its SEPA analysis and remanded the matter to the City for further SEPA review. In 2011, SDOT issued to itself its second SEPA DNS for the Missing Link, and the Coalition again appealed the DNS to the City's Hearing Examiner, who conducted a second trial, again ultimately upholding SDOT's revised DNS. The Coalition again appealed the Examiner's decision and in 2012 Judge Rogers again agreed with the Coalition, reversing the Examiner and remanding the project to SDOT to "more fully design" the Missing Link in order to identify and disclose

²⁹ See Appendix A.

³⁰ See Appendix H, Resolution 30583.

the project's significant adverse environmental impacts on the local maritime and industrial community, which includes the BTRC. In 2012, SDOT hurriedly prepared a new design for the Missing Link and issued to itself its third revised SEPA DNS. Again, the Coalition appealed to the City's Hearing Examiner, who, after conducting a third trial, in August 2012, agreed with the Coalition that SDOT's decision to move the Missing Link and locate it through the heart of an industrial area bisected by the railroad will have significant adverse environmental impacts and ordered SDOT to prepare an Environmental Impact Statement ("EIS"). The EIS was intended to disclose and discuss the significant safety and traffic hazards created by locating the trail along Shilshole Avenue, adjacent to the railroad tracks. Four years later, in June 2016, SDOT issued the Draft EIS for the Missing Link, again concluding there will be no significant adverse environmental impacts from its project. The Draft EIS focused on building the Missing Link on the new preferred route selected by the City in 2003, adjacent to the railroad. In May 2017, SDOT issued its Final EIS, selecting nearly the exact same location for the Missing Link as chosen in 2003, which moved the trail from the location agreed upon and presented to this Board, so the trail will be directly adjacent to the operating railroad.³¹

The Coalition then appealed the adequacy of the EIS to the City's Hearing Examiner, who, in January 2018, ruled for SDOT and upheld the EIS adequacy. That decision is under appeal to the King County Superior Court.

IV. PETITION

A. Legal Authority

³¹ See https://www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/Vol%200_BGT_FEIS_Exec%20Summ_web_lowrez.pdf

Courts and this Board have long held that the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”) preempts state and local governments, including the City of Seattle here, from unilaterally removing, relocating, reconfiguring or condemning railroad facilities or taking actions that create unsafe railroad operating conditions under the guise of local land use authority exercised for public health or safety reasons.³² Under the ICCTA, only this Board has authority to permit a local government to require a railroad, like BTRC, to remove, reconfigure or relocate its facilities.³³

As the Court explained in Wisconsin Cent. Ltd. v. City of Marshfield, 160 F. Supp. 2d 1009, 1013 (W.D. Wis. 2000),

Courts that have considered the ICCTA preemption clause have found its language to be clear and broad. “It is difficult to imagine a broader statement of Congress’ intent to preempt state regulatory authority over railroad operations.” A Georgia district court stated that “[t]he most natural reading of section 10501(b)(2) is that federal remedies provided by the ICC Termination Act are the only remedies available as to the regulation of rail transportation, and that the federal remedies are exclusive of state remedies except where the ICC Act has expressly provided otherwise.”³⁴

In the City of Auburn case, the 9th Circuit Court, ruling on a case of first impression regarding the preemption issue, rejected a local Washington city’s attempt to limit a railroad’s operation under the guise of “environmental” regulations (i.e., NEPA, which is the federal equivalent of Washington’s SEPA) stating:

³² See Wisconsin Cent. Ltd. v. City of Marshfield, 160 F. Supp. 2d 1009, 1012–13 (W.D. Wis. 2000)(Court stated: “Effective January 1, 1996, the ICCTA extensively revised rail transportation law in the United States. The Act abolished the Interstate Commerce Commission (ICC) and replaced it with the Surface Transportation Board (STB). . . . The ICCTA has a preemption clause which provides: “Except as otherwise provided in this part, the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b)(2). “Transportation” is broadly defined in the ICCTA and includes: (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange or passengers and property.”

³³ Id.

³⁴ Id. (internal citations omitted).

...if local authorities have the ability to impose “environmental” permitting regulations on the railroad, such power will in fact amount to “economic regulation” if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line.³⁵

Consistent with the holding in City of Marshfield, the Court in City of Auburn concluded:

“We believe the congressional intent to preempt this kind of state and local regulation of rail lines is explicit in the plain language of the ICCTA and the statutory framework surrounding it.”³⁶

In preempting and restricting a local city’s attempt to relocate active railroad facilities, the Court in Wisconsin Cent. Ltd. explained that the City of Marshfield’s attempt to relocate actively used track by means of condemnation of the railroad’s track, also is a form of regulation solely within the STB’s purview and beyond the reach and control of local land use authority:

Defendant attempts to distinguish attempts to regulate railroads from exercises of state police power to promote public safety. It argues that its actions do not constitute “regulation” within the meaning of the ICCTA. According to defendant Congress intended only to preempt direct economic regulation of rail transportation by the States. In contrast, it characterizes its proposed action as a “relocation” of plaintiff’s passing track in the interest of providing for highway safety. Defendant relies on *Board of Hudson River Regulating District v. Fonda J & G Railway Co.*, 249 N.Y. 445, 164 N.E. 541 (1928), for the proposition that relocation of railroad property is not its regulation.

The ICCTA does not define “regulation” in section 10102. Nevertheless, the plain meaning is apparent. “Regulation” is the “act or process of controlling by rule or restriction.” See Black’s Law Dictionary 1289 (7th ed.1999).

The Court holds that condemnation is regulation. In using state law to condemn the track defendant is exercising control—the most extreme type of control—over rail transportation as it is defined in section 10102(9). Characterizing condemnation as relocation does not change this conclusion. Were the condemnation properly considered a relocation, the act of forcing WCL to relocate its passing track is no less an exercise of control over transportation by the City through its laws than is outright condemnation.

³⁵ City of Auburn v. U.S. Gov’t, 154 F.3d 1025, 1031 (9th Cir. 1998), *as amended* (Oct. 20, 1998)

³⁶ City of Auburn, 154 F.3d at 1031.

This application of state law would mire the railroads in the very type of regulation from which Congress sought to free them. Under defendant's formulation every municipality in Wisconsin would have the ability to condemn or "relocate" any railroad property deemed to implicate public health or safety. Giving effect to the condemnation authority of municipalities over railroad property conflicts with Congress' purpose in enacting the ICCTA.³⁷

Courts have consistently validated this Board's exercise of its preemptive authority to prohibit local jurisdictions from taking even relatively small amounts of right-of-way used for rail and transportation purposes, where doing so materially impacts rail operations and creates unsafe operating conditions.³⁸ Such is the case here. BTRC respectfully requests that the Board exercise its preemptive authority to prohibit the City of Seattle from removing or reconfiguring track actively used by the Railroad; prohibit the City from moving an active drive-lane of a City street so that it is directly on top of the rail line, thereby forcing BTRC to operate in an unsafe condition within a City street (both with and against the flow of vehicle traffic); and prohibit the City from making roadway improvements adjacent to the active rail line that will create unsafe conditions and impede the Railroad's ability to perform routine track maintenance and repair, all as part of SDOT's efforts to construct a recreational trail, the Missing Link.

B. SDOT's Current Design for the Missing Link Either Removes, Reconfigures or Relocates BTRC's Tracks, Materially Impacting BTRC's Ability to Operate and Creates Unsafe and Dangerous Conditions

SDOT's current preferred location and design for the Missing Link will cause significant and material impacts to BTRC and undermine its ability to operate its railroad

³⁷ Wisconsin Cent. Ltd. v. City of Marshfield, 160 F. Supp. 2d 1009, 1013 to 1015 (W.D. Wis. 2000)(emphasis added).

³⁸ See City of Lincoln v. Surface Transp. Bd., 414 F.3d 858 (8th Cir. 2005)

safely and efficiently. SDOT should be prohibited from doing so pursuant to City of Lincoln and other relevant authority cited above.

SDOT's design for the Missing Link is the product of a Design Advisory Committee ("DAC"), which began working in May 2017, with the final DAC meeting conducted on September 13, 2018.³⁹ SDOT's design is currently at 100% for Phase I (the westerly section located entirely on NW Market Street, which SDOT intends to start building in early 2019) and at or beyond 90% for Phase II of the Missing Link, which are the sections located on Shilshole Avenue NW and NW 45th Street, and which, along with SDOT's proposed work on "Not-54th Street" discussed below, are the focus of this petition.⁴⁰

C. SDOT's Plans to Either Permanently Remove or Reconfigure BTRC's Western Pioneer Spur Will Materially Impact Its Ability to Operate its Railroad Safely and Efficiently: The Board Should Prohibit SDOT from Doing Either and from Locating the Trail Directly Adjacent to the Rail Line.

1. BTRC's Western Pioneer Spur.

BTRC's "Western Pioneer Spur" is approximately 550 linear feet long and runs westerly from the switch located just to the east of the Ballard Bridge at 15th Avenue NW in the Ballard neighborhood of Seattle, WA (hereinafter the "Western Pioneer Spur" or the "Spur").⁴¹ Photographs showing the location, configuration and condition of the Western Pioneer Spur and Switch are attached as Exhibit 1 the Forgette Statement.

BRTC currently accesses the Western Pioneer Spur by pulling cars easterly, from the BNSF interchange near the western terminus a couple miles away, past the Western Pioneer switch and then shoving the cars onto the Spur.⁴² Cars are retrieved by pulling them off-the Western Pioneer Spur and taking them to the run-around tracks

³⁹[https://www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/2017_1017_DAC_WorkPlan_WEB\(0\).PDF](https://www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/2017_1017_DAC_WorkPlan_WEB(0).PDF)

⁴⁰See generally,

https://www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/2018_0913_BGT_DAC10_Presentation_FINAL.pdf

⁴¹ Forgette Statement, ¶ 9.

⁴² Id. at ¶ 10.

near the eastern terminus, where the locomotive changes ends on the consist, to pull the cars back to the interchange.⁴³

BTRC improved the Western Pioneer Spur by installing paved access on both sides of the Spur, giving BTRC unfettered access to load, unload and transload goods and freight.⁴⁴ This is an ideal location to perform these operations since this is a 24/7 truck load and unload zone.⁴⁵ Truck access on the southern side of the Western Pioneer Spur is located between the siding and either an adjoining building or fence, thereby making this area very protected and safe for loading, unloading and transloading operations.⁴⁶ The northerly side of the Western Pioneer Spur provides safe truck access because it is between the mainline and the siding and far enough from Shilshole Avenue NW, the active vehicle right-of-way.⁴⁷ Currently, there are no nearby or adjacent improvements, such as a bicycle trail, that impede access and use of the Western Pioneer Spur.⁴⁸

BTRC needs unobstructed access to use the Western Pioneer Spur for its operations.⁴⁹ BTRC actively uses the Western Pioneer Spur, including using it for car storage for BTRC customers and, as needed, for loading, unloading and transloading freight for BTRC customers.⁵⁰ BTRC is currently negotiating with a potential customer interested in using the Western Pioneer Spur for transloading bulk product.⁵¹

The following photographs show how BTRC has loaded/unloaded freight at its Western Pioneer Spur:

⁴³ Id.

⁴⁴ Id. at ¶ 11.

⁴⁵ Id.

⁴⁶ Id. at ¶ 12.

⁴⁷ Id.

⁴⁸ Id. at ¶ 13.

⁴⁹ Id. at ¶ 14.

⁵⁰ Id. at ¶ 15.

⁵¹ Id. at ¶ 16.

FREIGHT CARS BEING LOADED at WESTERN PIONEER



View Looking West



View Looking East Toward Ballard Bridge



As the above photographs show, BTRC has access on the southern side of the Western Pioneer Spur that is located between the siding and either an adjoining building or fence, thereby making this area very protected and safe for loading, unloading and transloading operations.⁵² The northerly side of the Western Pioneer Spur provides safe access areas because it is away from Shilshole Avenue NW, the active vehicle right-of-way.⁵³

2. SDOT Plans to Either Remove or Reconfigure BTRC's Western Pioneer Spur: In Either Case, Doing So Will Materially Impact BTRC and Create Dangerously Unsafe Conditions.

⁵² Id. at ¶¶ 12-14.

⁵³ Id.

SDOT intends to either eliminate (completely remove) or reconfigure BTRC's Western Pioneer Spur, without BTRC's permission or agreement: In either case, SDOT's actions will materially and negatively impact BTRC's operations.⁵⁴

Relevant portions of SDOT's 90% design plans that include BTRC's Western Pioneer Spur---- Rail Relocation Plan, Sheets RR-102 to RR-104--are attached as Exhibit 2 to the Forgette Statement. As shown in SDOT's 90% design plans, Exhibit 2, SDOT would entirely eliminate BTRC's Western Pioneer Spur. SDOT's action would materially and negatively impact BTRC because it invested money and resources designing and improving the Western Pioneer Spur, actively uses it, has historically used this siding, and is currently negotiating with a potential customer for expanded use of this siding.⁵⁵ BTRC needs the Western Pioneer Spur to maintain and grow its business operation since the Western Pioneer Spur is BTRC's main resource for expanding its business and revenue.⁵⁶

At the September 13, 2018 DAC meeting, SDOT unveiled a "roll-plat" showing how it might reconfigure--instead of eliminate--BTRC's Western Pioneer Spur—again, with no permission or input from BTRC, as follows:⁵⁷

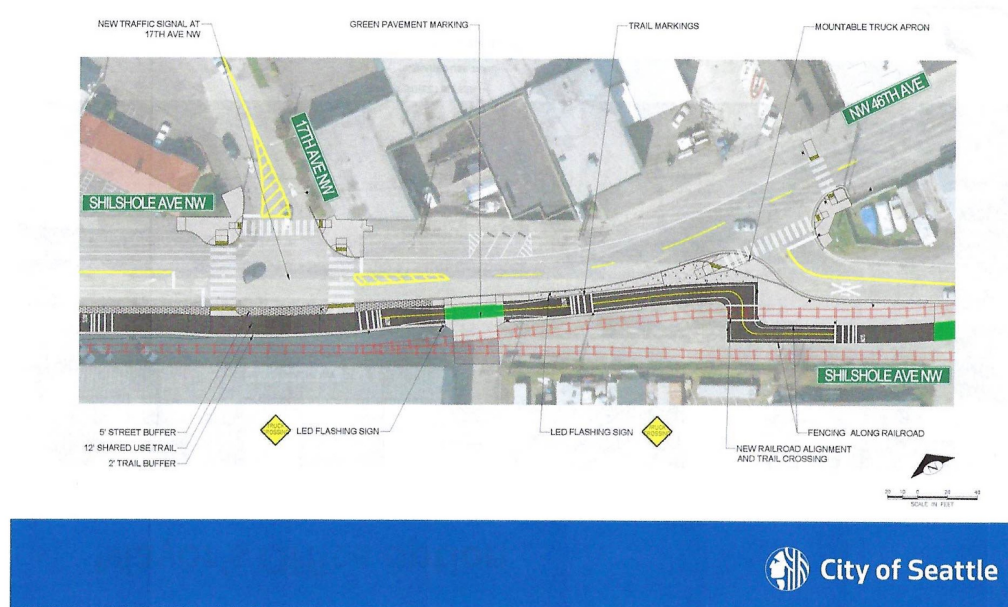
⁵⁴ Id. at ¶ 17.

⁵⁵ Id. at ¶ 20.

⁵⁶ Id.

⁵⁷ Id., Exhibit 3 to Forgette Statement; see also, https://www.seattle.gov/Documents/Departments/SDOT/BikeProgram/BGT/2018_0913_BGT_DAC10_Presentation_FINAL.pdf (graphic plans, sheet #3).

Graphic plans



SDOT's reconfiguration plan for BTRC's Western Pioneer Spur, depicted above, would materially and negatively impact BTRC for numerous reasons,⁵⁸ including:

- SDOT's new configuration is less safe because it sandwiches the Missing Link, a recreational trail, between the main line tracks and new Spur, putting trail users into very close proximity to active rail tracks without sufficient setback or safety barriers;⁵⁹
- SDOT's new configuration is less safe because it does not provide enough space for BTRC to safely operate as the Missing Link appears to be approximately 7.5-feet from the center line of BTRC's main line track and the new spur. Because of this configuration and proximity, trail users

⁵⁸ Forgette Statement at ¶ 22.

⁵⁹ Id. at ¶ 23.

would be in direct conflict with train movements, be in danger in the event of a derailment and in danger from even routine loading, unloading and transloading operations, which currently occur far from Shilshole Avenue;⁶⁰

- SDOT's new configuration is less safe because it forces trail users to navigate between stored rail cars and active train movements. Train crew members would also have inadequate clearance to ride on the side of railcars;⁶¹
- SDOT'S new configuration impacts BTRC by eliminating its service roads. Currently, trucks access the service road from either end (east or west) and can pull up next to either side of a rail car located on the Western Pioneer Spur. This would be impossible under SDOT's new configuration because BTRC would not be able to bring trucks next to rail cars on this new spur, making it unusable for loading, unloading or transloading;⁶² and
- SDOT's new configuration negatively impacts BTRC's ability to maintain and grow its operation because prospective customers want to transload at BTRC's Western Pioneer Spur, which could not be done safely and efficiently under SDOT's plan.⁶³

In a factually similar case directly on point and controlling of the instant matter before the Board, City of Lincoln v. Surface Transportation Board,⁶⁴ the Court upheld the STB's decision to preemptively prohibit the City of Lincoln, Illinois from: 1) removing railroad track and facilities actively used by the Lincoln Lumber Company ("LLC"); and 2) constructing a recreational bicycle trail in close proximity to the active railroad that would create dangerously unsafe conditions.⁶⁵ In City of Lincoln, the Board exercised

⁶⁰ Id. at ¶ 24.

⁶¹ Id. at ¶ 25.

⁶² Id. at ¶ 26.

⁶³ Id. at ¶ 27.

⁶⁴ 414 F.3d 858, (8th Cir. 2005).

⁶⁵ City of Lincoln, 414 F.3d at 861-862.

its preemption jurisdiction under 49 U.S.C. § 10501(b) to prohibit the City of Lincoln from using its state-law power of eminent domain to acquire a portion of railroad right of way in order to construct a mixed use trail (i.e., a bicycle and pedestrian trail exactly like the Missing Link at issue here) and to improve the City's storm drainage system.⁶⁶ To support its petition before the Board seeking a declaratory order permitting it to acquire the rail right of way via state-based eminent domain, the city hired a consultant who opined that existing obstructions "interfered with rail operations more than the city's project would."⁶⁷ In reply to the city, the LLC, which owns and operates the railroad, just like BTRC is doing here, provided this Board evidence that:

it would not be able to get equipment to the tracks for maintenance or to handle derailments if its right of way were narrowed. LLC expressed concerns about the safety of trail users in the case of a derailment or while I joists or large pieces of lumber were being unloaded from center beam cars. These concerns were heightened by the fact that its calculations showed that at one point the trail would be only 7.5 feet from the rail. LLC also projected significant increases in rail traffic and described its plans to develop a railroad terminal area and rebuild a sidetrack. It proposed several alternative routes for the trail.⁶⁸

This Board held in favor of the LLC and rejected the city's claim that the LLC did not need all of the right-of-way to operate its railroad, concluding that "all of these activities are part of transportation by rail as defined in 49 U.S.C. § 10102(9), and the proposed trail could interfere with these transportation activities," and also concluding that the city was unable to refute the "LLC's contentions that the trail [located just 7.5 away] would create safety hazards."⁶⁹ The Court upheld the Board, finding the Board had correctly

⁶⁶ Id. at 858.

⁶⁷ Id. at 859.

⁶⁸ Id. (emphasis added).

⁶⁹ Id. at 860.

concluded that the city's plan would materially impact rail operations and create unsafe conditions.⁷⁰

As it did in City of Lincoln, this Board should preemptively prohibit SDOT from taking the actions described above because they will materially impede BTRC's ability to operate and grow its railroad, and because placing a mixed-use trail within 7.5-feet of the track will create unreasonably unsafe conditions similar to what was proposed and rejected in City of Lincoln. Here too, SDOT's plans will put trail users in direct conflict with train movements and those users will be in danger in the event of a derailment and even from routine loading and unloading operations.

D. SDOT Plans for the Missing Link Also Will Create Unsafe Operating Conditions by Relocating BTRC's Main Track Along 45th Street NW so the Track is Located Directly Within an Actively Used Vehicle Travel Lane.

Currently, the eastern portion of BTRC's Ballard Line is located adjacent to NW 45th Street in Seattle.⁷¹ The active rail line is located immediately to the north of what was the west-bound drive lane of NW 45th Street but which is currently configured as an interim portion of the Missing Link, as depicted below:⁷²

⁷⁰ Id. at 861-82.

⁷¹ Forgette Statement at ¶ 28.

⁷² Id. at ¶ 29.



Looking east, BTRC mainline track as currently configured on NW 45th Street in Seattle.⁷³

Interim trail.

⁷³ Id. at ¶ 30.



As the above photographs show, while this is not a perfect configuration because the rail line is located so close to the active trail, it is better than SDOT's proposal to reconfigure this area to accommodate the Missing Link, which, as Mr. Forgette verified, will make this area unsafe.⁷⁴ It will make it unsafe because SDOT wants to relocate approximately 1,991 linear feet of main line track (as depicted above) to the south (moving it to the right in the above first two photographs) while at the same time moving the eastbound and westbound vehicle travel lanes of NW 45th St. northward (to the left in the above first two photographs) so the active eastbound vehicle travel lane is directly on top of BTRC's rail line.

This plan is depicted in SDOT's Burke-Gilman Trail 90% Submittal drawings, including its Channelization and Signing Plans, Sheets CH17 to CH20, and its Rail Relocation Plans, Sheet RR-105, which are attached as Exhibits 5 and 6, respectively, to the Forgette Statement.

SDOT's plans will force BTRC's train to operate in a street used by every size and type of vehicle, moving at speeds of 20 MPH or greater.⁷⁵ BTRC operates the Railroad on any day of the week, at all hours of the day depending on its shipper's needs.⁷⁶ Since BTRC moves its train in both directions on this track, when it is heading east, the train will be heading in the same direction as traffic in the lane that the tracks occupy but when the train is heading west, it will be traveling directly into oncoming vehicle traffic. This is extremely dangerous.⁷⁷

SDOT has not included any signals or warnings to alert drivers that they will be driving behind a slow (10 MPH or less) train, going well under the posted speed limit, which, in Mr. Forgette's experience operating trains, will encourage vehicle drivers to perform unsafe maneuvers to get around the train, thereby making this area and operation even more dangerous.⁷⁸

Notwithstanding how dangerous it is to locate a train in an active drive lane, SDOT's new configuration does not provide enough room for BTRC's train to move safely since the travel lanes appear to be approximately 11' or 12' wide and a rail car can be up to

⁷⁴ Id. at ¶ 31.

⁷⁵ Id. at ¶ 34.

⁷⁶ Id. at ¶ 7.

⁷⁷ Id. at ¶ 35.

⁷⁸ Id. at ¶ 36.

11' wide; because of that, the rail car will occupy or hang-over the entire travel lane, possibly crossing over the center-lane into the other lane, and train crew members would have inadequate clearance to ride on the side of railcars as they do now.⁷⁹ SDOT's plan also creates unsafe conditions by forcing BTRC's locomotive to cross the westbound travel lane to enter/exit the locomotive storage area, for which, again, SDOT did not provide any gates or signals to regulate this movement and make it safe.⁸⁰

In sum, as Mr. Forgette, explained, operating a train in the middle of an active travel lane with a 20 MPH speed limit *is extremely dangerous*. SDOT should be preempted from relocating BTRC's rail tracks and from relocating active travel lanes as proposed because SDOT's plans for the Missing Link "would prevent or unduly interfere with railroad operations and interstate commerce," and would "create safety hazards."⁸¹

E. SDOT's Plans to Improve "Not 54th Street" Will Create Unsafe Conditions and Materially Impede BTRC's Ability to Perform Routine Maintenance and Repairs

In a corollary and related project, SDOT plans to make substantial improvements to dedicated but unopened public right-of-way that used to be part of the BNSF Ballard Line and to which the City acquired title as part of the Sea Lion acquisition and exemption approved by this Board, locally known as "Not-54th Street."⁸² Not-54th Street is currently largely unimproved, narrow and tightly constrained,⁸³ as shown in the photographs below:

⁷⁹ *Id.* at ¶ 37.

⁸⁰ *Id.* at ¶ 38.

⁸¹ *City of Lincoln, supra*, at 860.

⁸² *See* Forgette Statement at ¶ 41.

⁸³ *Id.* at ¶ 42.



Not-54^{th84}

⁸⁴ Id. at ¶ 42.





As these photographs show, Not-54th St. has a rough dirt and gravel surface adjacent to the Ballard Line tracks and the currently unimproved portion of Not-54th is used solely for rail traffic with the occasional pedestrian, etc.⁸⁵ Heavy freight trucks and light vehicles do not use this area because it very narrow—there is not enough room for trains and vehicle traffic together—and the surface is unimproved and highly irregular.⁸⁶ It is very hard for vehicle traffic to navigate this area because it is narrow and tightly constrained by the existing railroad tracks; even without a train present, vehicles need to have one side of their wheels inside the rails.⁸⁷

Despite this, SDOT plans to improve a portion of Not-54th Street-- between NW 24th Street and NW 26th Street--by paving the area to the north of the active rail tracks (the area to the right as shown in the above photograph), to create a vehicle travel lane

⁸⁵ *Id.* at ¶ 42 and 43.

⁸⁶ *Id.* at ¶ 44.

⁸⁷ *Id.* at ¶ 45.

and an adjacent sidewalk.⁸⁸ As depicted in SDOT's paving plan, it intends to pave right up to the edge of rail tracks. While the plan shows an "8.5' Min. Clearance" between the centerline of track and the edge of a passenger car, SDOT does not intend to install any physical barrier or fence to maintain a safe operating distance between the travel lane and BTRC's active rail operations and thus moving vehicles will be traveling directly adjacent to a moving train with no barrier or separation.⁸⁹

Since this portion of Not-54th is heavily industrialized, large freight vehicles (e.g., tractor trailer trucks, box trucks and tandem fuel tanker trucks, etc.), would be permitted to travel westbound on Not-54th next to the rail tracks where they cannot presently travel.⁹⁰ As Mr. Forgette attested, in his professional experience based on nearly 2 decades of railroad operations, there is simply not enough room for cars/trucks, much less big trucks, to safely operate next to the active rail tracks in this portion of Not-54th Street, and there would not be enough room for train crew members to safely operate the train.⁹¹ Also, SDOT's action to pave this area will make it a *de facto* portion of the Missing Link by providing a paved surface for bicycle riders, thereby inviting incompatible and often inexperienced users into a dangerous and tightly constrained area next to active rail tracks with no fence or physical barrier.⁹² Again, SDOT should be preempted from improving Not-54th because SDOT's plans "would prevent or unduly interfere with railroad operations and interstate commerce," and would "create safety hazards."⁹³

⁸⁸ *Id.* at ¶ 46; see also Exhibit 7 to the Forgette Statement, which is a copy of SDOT's paving plan for this area.

⁸⁹ *Id.* at ¶ 48.

⁹⁰ *Id.* at ¶ 49.

⁹¹ *Id.* at ¶ 50.

⁹² *Id.* at ¶ 51.

⁹³ City of Lincoln, *supra*, at 860.

Conclusion

For the reasons articulated above, BTRC respectfully requests that the Board preempt and prohibit SDOT from removing or reconfiguring BTRC's Western Pioneer Spur; from relocating an active vehicle travel lane of NW 45th Street so that it is located directly on top of and runs on top of a portion of active rail track; and from making roadway improvements to Not-54th St. because all of SDOT's actions will unreasonably and materially impede BTRC's ability to operate its railroad and will create unsafe conditions for doing so. BTRC also respectfully requests an expedited briefing schedule calling for Replies no later than forty (days), plus three (3) for service, from the filing date (i.e., all Replies by January 23, 2019), with any Rebuttals due twenty-one (21) days later (i.e., February 13, 2019). This would permit a decision to be issued in April, 2019. An expedited schedule is necessary because the City of Seattle is taking steps to break its promise to the Division I Court of Appeals (see Appendix A) and intends to begin construction of the Missing Link in early 2019.

Respectfully submitted this 11th day of December, 2018.

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Supporting Documents

Appendices

Description

Appendix A	Exhibit D1 to the Operating Agreement
Appendix B	Div. I, Court of Appeals Decision
Appendix C	Notice of Action
Appendix D	AB 544X
Appendix E	Resolution 29474
Appendix F	Operating Agreement
Appendix G	Ordinance 118743
Appendix H	Resolution 30583

CERTIFICATE OF SERVICE

The undersigned certifies service of the foregoing document, inclusive of all appendices and the Verified Statement of James Forgette, with all exhibits, on December 11, 2018, on the following person via hand delivery to:

Mayor Jenny A. Durkan, City of Seattle
600 4th Ave, 7th Floor
Seattle, WA 98104

With a courtesy copy to:

Erin Ferguson
Assistant City Attorney
Seattle City Attorney's Office
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erin.ferguson@seattle.gov

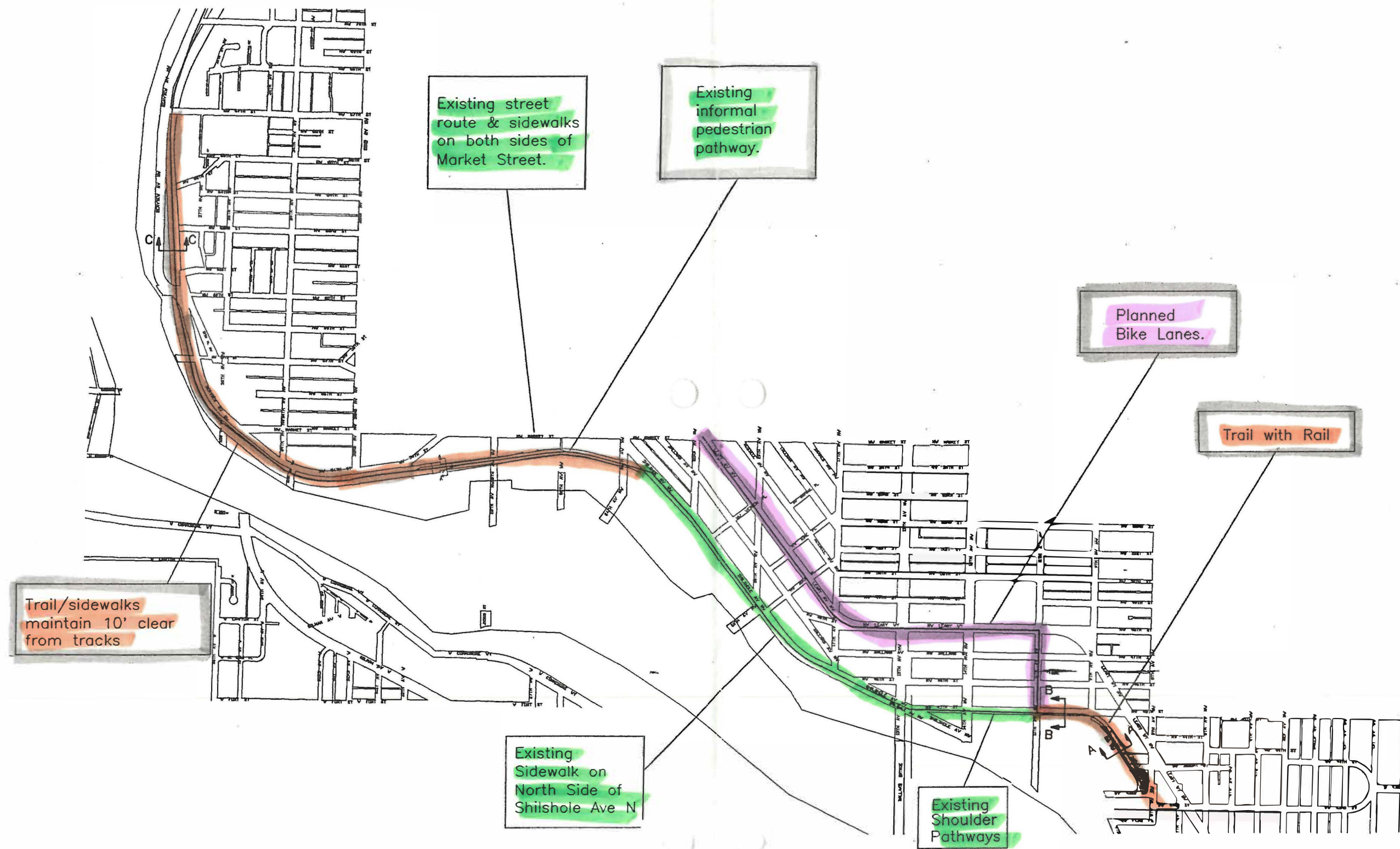
- ☐ Overnight Delivery via Fed Ex
- ☐ First Class Mail via USPS
- ☐ Hand-Delivered via ABC Legal Messenger
- ☐ Facsimile
- ☒ E-mail

*Attorneys for the Respondent City of
Seattle and Seattle Department of
Transportation*

Appendix A

Exhibit D1 to the Operating Agreement

Shared Use of Corridor



Appendix B

Div. I, Court of Appeals Decision

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
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600 University Street
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CASE #: 65572-8-I

Salmon Bay Sand & Gravel Co., et al., Pet. v. The City of Seattle, et al., Res.

Counsel:

Enclosed is the ruling of the Commissioner entered today in the above case.

In the event counsel wishes to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served . . . and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk
TWG
c: Hon. James Rogers
enclosure

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SALMON BAY SAND AND GRAVEL
CO., BALLARD CHAMBER OF
COMMERCE, SEATTLE MARINE
BUSINESS COALITION, BALLARD
OIL COMPANY, NORTH SEATTLE
INDUSTRIAL ASSOCIATION, AND
THE BALLARD INTERBAY
NORTHEND MANUFACTURING &
INDUSTRIAL CENTER,

Petitioners,

v.

THE CITY OF SEATTLE, THE
SEATTLE DEPARTMENT OF
TRANSPORATION, THE SEATTLE
HEARING EXAMINER, and

THE CASCADE BICYCLE CLUB,

Respondents.

No. 65572-8-I

COMMISSIONER'S RULING
ON APPEALABILITY AND
DENYING DISCRETIONARY
REVIEW

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 SEP 16 PM 2:47

This matter arises from the City of Seattle's proposal to complete the "missing link" of the Burke-Gilman bicycle and pedestrian trail between 11th Avenue N.W. and the Ballard Locks at the Ship Canal. Petitioners/appellants are businesses and organizations in the Ballard maritime industrial area whom will be adversely affected by the location and design of the new section of trail: Salmon Bay Sand and Gravel Co., Ballard Chamber of Commerce, Seattle Marine Business Coalition, Ballard Oil Co., North Seattle Industrial Assoc, and the Ballard Interbay Northend Manufacturing & Industrial Center (hereafter

Salmon Bay). Respondents are the City of Seattle and Cascade Bicycle Club. Salmon Bay challenges the City's environmental review of the proposed project under the State Environmental Policy Act (SEPA), and in this court seeks review of the superior court order of remand entered June 7, 2010. Because the order is not appealable as of right under RAP 2.2(a) and discretionary review is not warranted under RAP 2.3(b), review is dismissed.

In 2001 the City Council adopted a resolution directing the Seattle Department of Transportation (SDOT) to work with business and community groups to complete a design study for the missing link of the trail. In 2003, SDOT completed the study, and after apparently analyzing three routes, designated one as the preferred route. In 2003, the City Council adopted a resolution directing the SDOT to construct the missing link with some permanent sections and some interim sections. The trail project is on City right-of-way with the exception of a section from 26th N.W. to 28th N.W.; the City will have to obtain a permanent easement for this section. Because the project required acquisition of the right-of-way in the two-block area, it was not categorically exempt from SEPA and required preparation of a SEPA checklist.¹

SDOT was responsible for preparing the checklist. In November 2008, the director of SDOT prepared a Determination of Nonsignificance (DNS). Salmon Bay sought administrative review. After hearing evidence and

¹ Hearing Examiner's Decision, Finding of Fact 19.

argument over several days, on June 9, 2009, the hearing examiner entered findings of fact and conclusions of law and affirmed the DNS.

Salmon Bay sought review in the superior court, challenging the SEPA checklist and hearing examiner's decision on a host of grounds, including that the City's process involved "piecemealing," that the SEPA checklist did not examine the impacts of alternative designs, and that the checklist did not adequately address safety issues. As to "piecemealing," Salmon Bay argued that the City's proposal left out a key section in its SEPA evaluation, the section on Shilshole Avenue between 17th Ave N.W. and N.W. Vernon Place, which represents approximately 0.3 miles of the 1.5 missing link. The city admitted that SDOT's review did not consider this proposed section of the project. Salmon Bay argued that the City's failure to evaluate this section violated requirements in the Seattle Municipal Code and SEPA that proposals, or closely related parts of proposals, be evaluated in a single action and in the same environmental document, i.e. that "piecemealing" review of a proposed project or projects is not permitted.²

The court affirmed the hearing examiner's decision in all respects except one. The order provides in part:

² "Piecemealing," i.e. limiting review to current segments of a project and postponing review of later segments is disfavored because "subsequent environmental review often appears a mere formality, as construction of later segments of the project has already been compelled by earlier construction segments." 24 TIMOTHY BUTLER & MATTHEW KING, WASHINGTON PRACTICE: ENVIRONMENTAL LAW § 17.20, at 207 (2nd ed. 2007).

3. SEPA does not require the consideration of alternatives at the threshold determination stage of SEPA review. This is not a case about “unresolved conflicts concerning alternative uses of available resources” under RCW 43.21C.030(2)(e). The City’s right-of-way is not such a resource and the City has the right to decide its use of the right-of-way. The Hearing Examiner’s decision to grant the City’s motion to dismiss the issue of alternatives . . . [is] UPHELD.

4. Safety is not a separate element of the environment required to be studied under SEPA. The Hearing Examiner’s decision to limit the safety issue to consideration of traffic mitigation and impacts to public services was proper and is UPHELD.

9. The Record is not clear as to why the “permanent route” of the Burke-Gilman trail along Shilshole Ave., between 17th Ave. and Vernon Pl. was not considered. That future phase is not independent and failure to consider that gap was improper piecemealing, resulting in a failure to comply with SEPA. The Hearing Examiner abused her discretion in failing to consider the piecemealing issue [and] by not allowing [Petitioners] to amend to add piecemealing and thereby not allowing them to develop the record on the issue.

The order further provides:

10. This matter is REMANDED to the . . . (SDOT) for compliance with [SEPA], specifically for environmental review of the “permanent route” of the Burke-Gilman Trail along Shilshole Ave., between 17th Ave. and Vernon Pl.

11. This court retains jurisdiction over this matter, including judicial review of any further administrative appeals of actions taken in response to this Order, and for entry of a final order upon compliance with this court’s Order of Remand. The oral decision of the court is incorporated herein.^[3]

Salmon Bay seeks review of the superior court order. Salmon Bay argues that the order is appealable as of right under RAP 2.2(a)(1), a final

³ It appears from the court’s oral decision that it “retained jurisdiction” in an effort to avoid unnecessary delay. The court stated, “I recognize this case has gone on for a long time and has cost all parties dearly. I will say this, that at whatever point this case reaches this Court again, we will make it a scheduling priority, and we will expedite any future decisions.” VRP 4/16/10 at 13.

judgment, or 2.2(a)(3), a written decision affecting a substantial right that in effect determines the action and prevents a final judgment or discontinues the action.

I disagree. It is apparent from the face of the order that it is not a final judgment, as it leaves one of the key issues subject to further proceedings by the SDOT, and possibly the hearing examiner and the superior court. See 24 WASHINGTON PRACTICE: ENVIRONMENTAL LAW § 17.20, at 207 (2nd ed. 2007) (a DNS is not final if the responsible official withdraws the DNS or the DNS is reversed on administrative or judicial review; a DNS must be withdrawn if there are substantial changes to the proposal, or there is significant new information about a proposal which indicates likely significant adverse environmental impacts). Salmon Bay is concerned that because the review on remand will not include a consideration of alternatives and will not include an adequate consideration of safety, the process will be a waste of time. It is true that in the current posture, the SDOT's review on remand will be more limited in scope than Salmon Bay argues is required. But this fact does not make the order of remand a final judgment. As the City argues, the remand could result in a revised DNS, a mitigated DNS, or a Determination of Significance (DS). And if the result is a DS, an Environmental Impact Statement (EIS) would be required, and the City acknowledges that in preparing the EIS, it would be required to consider alternatives and safety. The order on remand is not a final judgment,

and for the same reasons, the order of remand is not appealable under RAP 2.2(a)(3), as it does not “in effect determine the action.”

Salmon Bay argues that if it is not allowed to appeal now, it will be barred from relitigating its positions regarding the requirements for SDOT to consider alternatives and safety and it will never be allowed an appeal. But it appears that Salmon Bay’s argument confounds its ability to relitigate issues and to appeal decisions on those issues. It is true that depending on what the SDOT determines on remand, Salmon Bay may be precluded from relitigating its positions regarding alternatives and safety. But as the City asserts, Salmon Bay will not be precluded from appealing *any and all issues once a final judgment is entered*. At oral argument, Salmon Bay acknowledged as much.

Salmon Bay has a practical concern, that the City will go ahead and begin building the trail and thereby render any appeal moot. But the City denied this in its response and stated unequivocally at oral argument: “SDOT intends to let the full appellate process play out before the trail is built.” Salmon Bay does not question counsel’s honesty or sincerity, but points out that completing the missing link is a hotly contested political decision and that despite counsel’s assurance, other City officials may decide to go forward before an appeal can be completed. If this were to occur, Salmon Bay has options, including seeking a stay in the trial court and/or this court.

Alternatively, Salmon Bay seeks discretionary review under RAP 2.3(b)(1), obvious error that renders further proceedings useless. Salmon Bay

argues the superior court committed obvious error in upholding the hearing examiner's decision that SEPA does not require consideration of alternatives at the threshold stage and in upholding the hearing examiner's decision to the extent it limited consideration of safety issues to traffic mitigation and public services. The City argues there was no error in either regard.⁴ For the reasons stated above regarding appealability, it is apparent that further proceedings are not useless. Accordingly, Salmon Bay has not demonstrated that interlocutory review is warranted.

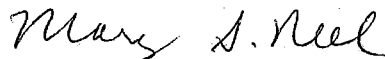
Now, therefore, it is

ORDERED that the challenged order on remand is not appealable as of right under RAP 2.2(a); and it is

ORDERED that discretionary review is denied; and it is

ORDERED that review is dismissed.

Done this 16th day of September, 2010.



Court Commissioner

⁴ Salmon Bay relies primarily on sections of the SMC, RCW and WAC, while the City relies primarily on case law. Salmon Bay appears to take issue with the cases, arguing that the cases neither reference nor discuss the code provisions on which Salmon Bay relies.

Appendix C

Notice of Action



NOTICE OF ACTION
SEATTLE DEPARTMENT OF TRANSPORTATION
BURKE-GILMAN TRAIL MISSING LINK

Notice is given under SEPA, RCW 43.21C.080, that the Seattle Department of Transportation (SDOT) took the action described in (2) below on July 19, 2018.

1. Any action to set aside, enjoin, review, or otherwise challenge such action on the grounds of noncompliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) shall be commenced on or before August 16, 2018.
2. Description of agency action: Proceed with design and construction of the Burke-Gilman Missing Link Project, as described in (3) and (4) below.
3. Description of proposal: The Project will compete the Burke-Gilman Trail through the Ballard neighborhood with a marked, dedicated multi-use trail between 11th Ave NW and the Hiram M. Chittenden (Ballard) Locks following the route described in (4) below. The Project includes corridor-wide improvements such as landscaping, stormwater drainage facilities, new and upgraded traffic signals and signage, roadway paving, and new sidewalks and pedestrian crossings.
4. Location of proposal: The Project is located in the Ballard neighborhood of Seattle, Washington. Beginning at the Ballard Locks, the trail will generally travel along the south side of NW 54th St, NW Market St, Shilshole Ave NW, and NW 45th St.
5. Type of environmental review under SEPA: A Final Environmental Impact Statement for the Project was published by SDOT on May 25, 2017.
6. Documents may be examined during regular business hours at: Seattle Department of Construction and Inspections Public Resource Center, 700 Fifth Avenue, Suite 2000, Seattle or online at www.seattle.gov/transportation/projects-and-programs/programs/bike-program/burke-gilman-trail-missing-link-project.
7. Name of agency, proponent, or applicant giving notice: Seattle Department of Transportation
8. This notice is filed by: Goran Sparrman, Interim Director and SEPA Responsible Official, SDOT


Goran Sparrman, Interim Director

7/12/18
Date

Appendix D

AB 544X

29280
EB

SERVICE DATE - LATE RELEASE AUGUST 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-544X¹

SEA LION RAILROAD--ABANDONMENT EXEMPTION--
IN KING COUNTY, WA

STB Finance Docket No. 33594

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.--
MODIFIED RAIL CERTIFICATE

STB Finance Docket No. 33486

ADVENTURE TRAIL D/B/A SEA LION RAILROAD--
ACQUISITION AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: August 11, 1998

In STB Docket No. AB-544X, by petition filed April 23, 1998, and supplemented on June 1, 1998, Adventure Trail, Inc., doing business as Sea Lion Railroad (Sea Lion), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad (hereafter, the Ballard Line) between milepost 0.09 and the end of the line at milepost 2.70, a distance of almost 3 miles in the Ballard District of Seattle, King County, WA. In addition, Sea Lion seeks to be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. A request by the City of Seattle for issuance of a notice of interim trail use (NITU) was filed with the petition. Pursuant to 49 U.S.C. 10502(b), the Board served and published notice of the petition in the Federal Register (63 FR 26676) on May 13, 1998.

Comments were filed by the National Association of Reversionary Property Owners (NARPO or the Association), Ballard Terminal Railroad Company, L.L.C. (BTRC), and BTRC's Operations Manager Byron Cole. Letters of support were filed by five shippers. Sea Lion replied to

¹ These proceedings are consolidated in this decision.

the comments of NARPO.² We will grant the abandonment exemption, subject to standard employee protective conditions. We will deny the request for exemption from section 10904, and we will defer action on the request for issuance of a NITU. The request for an exemption from section 10905 will be denied as moot.

In STB Finance Docket No. 33594, on May 4, 1998, BTRC filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, to operate the above-described line. BTRC says that it has been the operator of the line since the line was acquired by Sea Lion. BTRC and the City of Seattle state that they anticipate that, once abandonment is authorized, Sea Lion will transfer to Seattle the real estate underlying the right-of-way, Sea Lion will transfer to BTRC all track and rail assets, and BTRC will operate the line under a contract with Seattle. As discussed below, we will defer action on the notice because the request for a modified certificate is premature.

In STB Finance Docket No. 33486, on October 8, 1997, Sea Lion filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the above-described line. Notice was published and served October 30, 1997. No comments were filed in response to the notice. The exemption became effective October 5, 1997. Sea Lion consummated the acquisition on December 19, 1997.

On May 20, 1998, the United Transportation Union (UTU) filed a petition to revoke the exemption in STB Finance Docket No. 33486. Sea Lion and BNSF individually replied to the petition on June 5, 1998. We will deny the petition to revoke.

BACKGROUND

These proceedings have arisen as a result of private negotiations between BNSF, Ballard Line shippers, the City of Seattle, and Sea Lion, which is a Washington State nonprofit corporation. As we understand it, BNSF wants to shed an unprofitable, low-traffic branch line and, at the same time, to retain the long-haul traffic the line generates. Shippers on the line want to preserve their rail service. Seattle wants to acquire the rail corridor in order to develop the final portions of its Burke-Gilman Trail.

² NARPO has submitted a letter reply to a letter from The Burlington Northern and Santa Fe Railway Company (BNSF) that responds to certain allegations made in NARPO's comments. Sea Lion has moved to strike NARPO's letter as an impermissible reply to a reply, NARPO has replied to the motion, and Sea Lion has moved to strike portions of NARPO's reply. We will not consider the letters or the motions. We admonish the parties to confine their arguments to permissible pleadings and to refrain from attempting to supplement their cases by means of letters to the Secretary.

To accomplish this, the interested parties entered into negotiations, which resulted in a plan under which Sea Lion would become the “interim custodian” of the involved BNSF rail and real estate assets. Sea Lion would acquire the Ballard Line, secure an operator for the line, coordinate a transfer of assets, and assist in developing a rail-with-trail project. Pursuant to this plan, two shippers formed BTRC to become the new operator of the Ballard Line. Sea Lion entered into a contract with BTRC which contemplates that the latter would provide service on the line. After BNSF sold its Ballard Line assets to Sea Lion in December 1997 (pursuant to the acquisition exemption), Sea Lion evidently supplied BTRC start-up funds and facilitated a \$350,000 no-interest loan from the Washington State Department of Transportation (WSDOT). BTRC engaged a contractor to rehabilitate the line in early 1998 and thereafter began providing service.

Sea Lion now seeks an exemption to abandon the Ballard Line. If an abandonment is permitted, Sea Lion proposes to transfer ownership of the Ballard Line real estate to Seattle, sell the track and related rail assets to BTRC for a nominal amount, and assign its operating agreement with BTRC to Seattle. Seattle has entered into an agreement granting BTRC the right to own and operate a rail line on city property rent-free. Thus, under the parties’ plan, BTRC will continue to provide freight rail service over a portion of the corridor while, at the same time, Seattle builds and maintains a parallel trail on a portion of the corridor.

POSITIONS OF THE PARTIES

The acquisition exemption. The UTU seeks revocation of the exemption under which Sea Lion acquired the Ballard Line from BNSF. The union argues that Sea Lion never had any plan, ability, or intention to operate the line and that its notice is therefore false and misleading. The union claims Sea Lion’s acquisition of the line from BNSF was a bogus transaction designed to evade the imposition of labor protective conditions which would have benefitted BNSF employees had BNSF, rather than Sea Lion, filed for Board authorization or exemption for the abandonment of the line. Had BNSF abandoned the line itself, UTU asserts, that railroad’s employees would have been protected by the imposition of these conditions. In support of its arguments, UTU cites the decision in The Land Conservancy of Seattle and King County--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (STB served Sept. 26, 1997) (Land Conservancy). There, the Board revoked an acquisition exemption based on a finding that it was a misuse of our processes for an entity to acquire an active rail line without having any intent to operate it.

In reply, Sea Lion asserts that its notice of exemption did not contain any “false and misleading information,” as alleged by UTU. Sea Lion avers that there was and is an intent to operate the line through BTRC. Sea Lion points out that the notice of exemption stated that Sea Lion had entered into a contract with BTRC for operational services. Sea Lion emphasizes that, pursuant to agreements between the parties, BTRC has rehabilitated and begun operating the line, subject to Sea Lion’s control of dispatching. Sea Lion also states that this transaction was not designed to avoid labor protection.

BNSF similarly argues that the assailed transaction was structured with its main purpose being to continue rail service. The carrier states that no jobs were lost and no work was reassigned as a result of either the carrier's cessation of service on the line or its subsequent transfer of the line. BNSF argues that the completion of significant rehabilitation and, most importantly, the conduct of actual rail operations belie UTU's assertions that Sea Lion never intended to continue service on the Ballard Line.

The abandonment exemption. Sea Lion indicates that, at the time it acquired the Ballard Line, it had been embargoed by BNSF. The only shippers to patronize the line in recent years were Western Pioneer, Inc. (inbound and outbound frozen fish products), Olsen Furniture, Inc. (inbound shipments of furniture), Salmon Bay Sand & Gravel Company (inbound shipments of sand), and Covich-Williams Co., Inc. (inbound shipments of fuel). The last shipments that moved on the line for these shippers were 155 shipments in 1996 and 47 shipments in 1997. Sea Lion asserts that the number of expected shipments available for handling on completion of rehabilitation, approximately 150 a year, would not generate sufficient revenue to cover operation and maintenance costs and to service debt. To the contrary, petitioner asserts, expected rail revenue of less than \$60,000 per year is barely sufficient to cover expected operating costs. Sea Lion believes, however, that, by virtue of agreements with Seattle, BTRC would be able to operate the line successfully. Sea Lion notes that Seattle will not charge BTRC for the capital cost of the line. Sea Lion adds that BTRC expects to stimulate business through shipper participation in the operation of that railroad.

Sea Lion seeks an exemption from the OFA provisions of section 10904. Sea Lion views the OFA provisions as "superfluous" in this case, as Sea Lion intends that BTRC will operate the line after abandonment. In petitioner's view, the purposes of the OFA provisions would be served without the application of those provisions because service for current or future shippers would be preserved.

Sea Lion also seeks exemption from the public use provisions of section 10905. Sea Lion views the provisions as redundant here because petitioner has entered into a memorandum of understanding with Seattle providing for the transfer of the line to that city for interim trail use, rail banking, and other public purposes.

As noted, Seattle has submitted a request for issuance of a NITU and has filed an appropriate "statement of willingness" under 49 CFR 1152.29. Sea Lion states that it consents to our issuance of the NITU.

NARPO questions the motives behind Sea Lion's overall plan. NARPO challenges the plan as a scheme designed, in part, to evade labor laws, gain tax deductions, and take land that otherwise would revert to adjacent landowners. NARPO opposes the request for exemption from the OFA procedures. It notes that there are short line operators other than BTRC in the Seattle area and around the country that would like the opportunity to serve the existing shippers and possibly attract new shippers. NARPO suggests the possibility that an operator more qualified than BTRC might make an offer.

Sea Lion replies that the shippers' interests are well protected without an OFA. In petitioner's opinion, all that an OFA would accomplish would be to drive up regulatory costs and "panic" both the shippers and BTRC, an entity in which the shippers have invested. BTRC asserts that, as part of the overall plan it negotiated with the interested parties, it gave up its right to file an OFA, and, thus, it would not be able to file one in the event the Board denies the exemption request. The four above-named shippers that previously used the line also have filed letters supporting an exemption from the statutory OFA requirements.

DISCUSSION AND CONCLUSIONS

The acquisition exemption. Under 49 U.S.C. 10502(d), we may revoke an exemption if we find that regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101. In addition, if a notice of exemption contains false or misleading information, it is void ab initio. 49 CFR 1150.32(c). Labor interests may raise, in a petition for revocation, issues concerning the appropriate level of labor protection. See 49 U.S.C. 10502(g) and Simmons v. ICC, 900 F.2d 1023 (7th Cir. 1990). To the extent that a party wishes to challenge the bona fides of a transaction, we retain the right to review the transaction to protect the integrity of our processes. Minnesota Comm. Ry. Inc.--Trackage Exempt.--BN R.R. Co., 8 I.C.C.2d 31 (1991) (Minnesota). The party seeking to revoke an exemption, however, must meet its burden of proof by articulating reasonable, specific concerns to satisfy the revocation criteria. Wisconsin Central Ltd.--Exemption Acquisition and Operation--Certain Lines of Soo Line Railroad Company, Finance Docket No. 31102 (ICC served July 28, 1988), and Minnesota, supra, 8 I.C.C.2d at 35. Accord, Norfolk Southern Railway Company--Trackage Rights Exemption--Norfolk and Western Railway Company, Finance Docket No. 32661 (STB served Feb. 21, 1996).

The record fails to show either that the notice contained false or misleading information or that the exemption should be revoked. Accordingly, UTU's petition will be denied. While we remain committed to preserving the integrity of our processes, we do believe that the situation here substantially differs from the situation in Land Conservancy, where an entity acquired an active rail line and almost immediately sought to abandon it for conversion to nonrail use. Here, the record shows that it was always Sea Lion's intent to facilitate continued rail service. Service has resumed under Sea Lion's ownership, and Sea Lion says that it expects that another carrier will continue service after petitioner abandons the line. Moreover, as noted, no jobs were lost, and no work was reassigned as a result of BNSF's transfer of the line to Sea Lion. There was no demonstrated intention to avoid labor protection, and the record does not show that labor interests have actually been harmed.

The abandonment exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation under 49 U.S.C. 10903 when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the

transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

We will grant the request for an abandonment exemption here. Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the abandonment process, an exemption will reduce barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving Sea Lion of the costs of owning and managing the line and allowing it to apply its assets more productively elsewhere [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. No shipper has opposed the petition for exemption. Nevertheless, to ensure that the shippers are informed of our action, we will require that Sea Lion serve a copy of this decision on them within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

As required by our environmental regulations, Sea Lion submitted an environmental report with its petition and notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 26, 1998, explaining, and requesting public comment on, its initial recommendation that the environmental impacts of the proposed abandonment would not be significant and that no environmental or historic conditions are warranted.

No comments to the EA were filed by the July 27, 1998 due date. Accordingly, we will adopt the recommendations in the EA and find that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. Requests for a public use condition were due June 2, 1998. No one has sought a public use condition, and none will be imposed.

Other requests. Exemption from the OFA provisions of section 10904 are only rarely granted (i.e., there must be a compelling need to use the property for a valid public purpose and no overriding public need for continued rail service). See, e.g., Norfolk and Western Railway

Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13, 1998), and cases cited there at p. 11. There is no basis for us to grant an exemption from the OFA provisions here. Given that there are shippers on the line that obviously wish to receive continued rail service, we cannot find that there is no need for continued rail service. While the right-of-way is proposed to be used for a public purpose--continued rail service with interim trail use--Congress in section 10904 has established a procedure to address the need for continued rail service when a carrier is authorized to abandon a line. It would be inappropriate for us to subordinate that process to a private agreement simply because interested parties find it preferable to use such a mechanism. Under section 10904, "any" financially responsible person has the right to offer financial assistance to avoid abandonment or discontinuance. Moreover, the statute specifically contemplates that multiple offers to subsidize or purchase a rail line may be made. In these circumstances, Sea Lion's request for an exemption from the OFA provisions will be denied. While the record does not warrant an exemption from the OFA provisions, we are mindful of the valid public purpose for which that exemption is being sought, and we will carefully review both the form and the substance of any OFA filed for the subject line. See The Burlington Northern and Santa Fe Railway Company--Abandonment Exemption--in King County, WA (In the Matter of an Offer of Financial Assistance), STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998).

As noted above, the due date for requests for a public use condition has passed. No requests have been filed, and no such condition will be imposed. Accordingly, we will deny the requested exemption from the provisions of section 10905 as moot.

Finally, given our decision on the request for an exemption from the OFA provisions, action on Seattle's request for issuance of a NITU would be premature. We will defer action on the request pending final action on any OFA that might be filed.

The modified certificate. As specified in section 1150.21 of our regulations, the terms of the rules governing modified certificates apply to operations over rail lines that have been fully abandoned or approved for abandonment and acquired by a state or political subdivision of a state through purchase or lease. In this case, the notice for a modified certificate has been filed prematurely. Neither of the preconditions has been met, as the abandonment exemption request is not administratively final, and, obviously, Seattle has not yet acquired the subject line. Accordingly, we will defer action on the notice pending final disposition of the abandonment exemption proceeding and receipt of notice from Seattle regarding its acquisition of the line.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. In STB Finance Docket No. 33486, the petition for revocation is denied.

2. In STB Docket No. AB-544X:

a. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

b. Petitioner must serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and certify to the Board that it has done so.

c. Petitioner's requests for exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 is denied. Its request for an exemption from the public use provisions of 49 U.S.C. 10905 is denied as moot.

d. Action on Seattle's request for issuance of a notice of interim trail use (NITU) under 16 U.S.C. 1247(d) and 49 CFR 1152.29 is deferred pending final action on any OFA that might be filed under the provisions outlined below.

e. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 21, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

f. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

g. Provided no OFA has been received, this exemption will be effective on September 10, 1998. Petitions to stay must be filed by August 26, 1998. Petitions to reopen must be filed by September 8, 1998.

h. Pursuant to the provisions of 49 CFR 1152.29(e)(2), petitioner shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by petitioner's filing of a notice of consummation by August 11, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

3. In STB Finance Docket No. 33594, action on the notice for a modified certificate of public convenience and necessity is deferred pending final disposition of the abandonment exemption proceeding in STB Docket No. AB-544X and notice from Seattle that it has acquired the line.

4. In all three proceedings:

- a. These proceedings are consolidated in this decision.
- b. Except as noted in paragraph 2(g), above, this decision will take effect on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

Appendix E

Resolution 29474

RESOLUTION No.

2947

MC

INDEXED

A RESOLUTION to state the guiding principles for extending the Burke Gilman Trail; to reiterate the City's commitment to 'Railbank' the Ballard rail corridor; to state a preferred alternative for extending the trail, pending completion of a final review; and to provide direction to the Engineering Department, the Office of Economic Development and the Neighborhood Planning Office on how to proceed.

Introduced:	By:
10-14-96	Manning
Referred:	To:
10-14-96	Transportation
Referred:	To:
Reported:	ADOPTED
NOV 12 1996	
Passed:	Signed:
NOV 12 1996	NOV 12 1996
Filed:	Published:
NOV 19 1996	Little 298

U65171

Passed, as amended on file

10/21/96 Held until November

11/4/96 Held until Nov

Full Council 11/2

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ADOPTED
NOV 12 1996

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it, pending completion of a final-
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Planning Office on how to proceed.

INDEXED

passed as amended on file

10/21/96 Held until November 4, 1996. motion by Manning.

11/4/96 Held until Nov. 12, 1996. motion by Manning

Full Council Vote 9-0

W E 772

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

BGRES
10/8/96
VLPL

RESOLUTION 29474

A RESOLUTION to state the guiding principles for extending the Burke Gilman Trail; to reiterate the City's commitment to 'Railbank' the Ballard rail corridor; to state a preferred alternative for extending the trail, and to provide direction to the Engineering Department, the Office of Economic Development and the Neighborhood Planning Office on how to proceed.

WHEREAS, Seattle has long anticipated and planned for extending a bikeway into Ballard; and

WHEREAS, a lengthy public process has been completed that provided an opportunity for all interests to provide input and be heard; and

WHEREAS, it is in the public interest to finalize the bikeway route, and proceed to the design and construction phases in a timely fashion; Now, Therefore;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING:

Section 1. The Seattle City Council endorses the following Guiding Principles in resolving issues related to the extension of the Burke Gilman trail west of 8th Avenue Northwest:

Railbank rail corridors if and when they are no longer needed for rail purposes by Burlington Northern/Santa Fe.

Create safe facilities that are conducive to non-motorized, alternative transportation that minimizes negative impacts on adjacent businesses.

Preserve the vitality of businesses located within the Ballard industrial corridor.

Encourage and promote continued rail service by private sector.

Maintain safe and efficient access to businesses for customers and the transport of freight.

Section 2. The Seattle City Council reiterates its support for 'railbanking' the 'Ballard Line' from 6th Avenue Northwest to where it joins the main line at approximately Northwest 67th Avenue, if Burlington Northern/Santa Fe Railroad abandons the corridor.

Section 3. As the preferred alternative, the Seattle City Council supports the immediate extension of the Burke-Gilman Trail as a separated, multi-use trail from where it currently ends at 8th Avenue Northwest northward and westward along the south side of the railroad tracks to 11th Avenue Northwest, and the development of a separated, multi-use trail within the rail corridor from the Government Locks to Northwest 67th Street

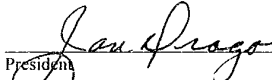
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Section 4. The Seattle City Council supports the expenditure of the entire amount of the Intermodal Surface Transportation Efficiency Act (ISTEA) grant funding (consistent with the requirements of the granting agency) for this project only on the segments within the rail corridor.

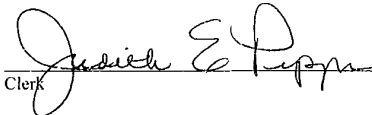
Section 5. The Seattle City Council supports, as part of the preferred alternative, the construction of a separated, multi-use path along the east side of 11th Avenue Northwest from 45th Avenue Northwest to Northwest Leary Way, and the installation of bike lanes on each side of Northwest Leary Way from 11th Avenue Northwest to Northwest Market Street. No physical changes are planned for Northwest Market Street. The Engineering Department and the Office of Economic Development will work together in presenting this part of the preferred alternative to adjacent businesses and will report to Council within eight weeks on how to best implement this part of the preferred alternative. The report will include input from the Office of Management and Planning, the Office of Neighborhood Planning and the Department of Neighborhoods.

Section 6. The Seattle City Council directs the Engineering Department to develop an ordinance that provides Council authority for the Engineering Department to negotiate with Burlington Northern/Sante Fe to secure the corridor.

Adopted by the City Council the 12 day of Nov., 1996, and signed by me in open session in authentication of its adoption this 12 day of Nov., 1996.


President

Filed by me this 19 day of Nov, 1996.


Clerk

THE MAYOR CONCURRING:


Norman B. Rice, Mayor

(Seal)

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

RESOLUTION 29474

1 A RESOLUTION to state the guiding principles for extending the Burke Gilman
2 Trail; to reiterate the City's commitment to 'Railbank' the Ballard rail corridor; to
3 state a preferred alternative for extending the trail, ~~pending completion of a final~~
4 ~~review~~, and to provide direction to the Engineering Department, the Office of
5 Economic Development and the Neighborhood Planning Office on how to proceed.

6 WHEREAS, Seattle has long anticipated and planned for extending a bikeway into Ballard;
7 and

8 WHEREAS, a lengthy public process has been completed that provided an opportunity for
9 all interests to provide input and be heard; and

10 WHEREAS, it is in the public interest to finalize the bikeway route, and proceed to the
11 design and construction phases in a timely fashion; Now, Therefore;

12 BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE
13 MAYOR CONCURRING:

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15 resolving issues related to the extension of the Burke Gilman trail west of 8th Avenue
16 Northwest:

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18 purposes by Burlington Northern/Santa Fe.

19 Create safe facilities that are conducive to non-motorized, alternative
20 transportation that minimizes negative impacts on adjacent
21 businesses.

22 Preserve the vitality of businesses located within the Ballard
23 industrial corridor.

24 Encourage and promote continued rail service by private sector.

25 Maintain safe and efficient access to businesses for customers and the
26 transport of freight.

27 Section 2. The Seattle City Council reiterates its support for 'railbanking' the
28 'Ballard Line' from 6th Avenue Northwest to where it joins the main line at approximately
29 Northwest 67th Avenue, if Burlington Northern/Santa Fe Railroad abandons the corridor.

30 Section 3. As the preferred alternative, the Seattle City Council supports the
31 immediate extension of the Burke-Gilman Trail as a separated, multi-use trail from where
32 it currently ends at 8th Avenue Northwest northward and westward along the south side of
33 the railroad tracks to 11th Avenue Northwest, and the development of a separated, multi-
34 use trail within the rail corridor from the Government Locks to Northwest 67th Street.

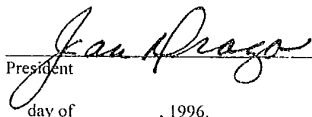
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Section 4. The Seattle City Council supports the expenditure of the entire amount of the Intermodal Surface Transportation Efficiency Act (ISTEA) grant funding (consistent with the requirements of the granting agency) for this project only on the segments within the rail corridor.

Section 5. The Seattle City Council supports, as part of the preferred alternative, the construction of a separated, multi-use path along the east side of 11th Avenue Northwest from 45th Avenue Northwest to Northwest Leary Way, and the installation of bike lanes on each side of Northwest Leary Way from 11th Avenue Northwest to Northwest Market Street. No physical changes are planned for Northwest Market Street. The Engineering Department and the Office of Economic Development will work together in presenting this part of the preferred alternative to adjacent businesses and will report to Council within eight weeks on how to best implement this part of the preferred alternative. The report will include input from the Office of Management and Planning, the Office of Neighborhood Planning and the Department of Neighborhoods.

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Adopted by the City Council the 12 day of November, 1996, and signed by me in open session in authentication of its adoption this 12 day of November, 1996.



President

Filed by me this _____ day of _____, 1996.

Clerk

THE MAYOR CONCURRING:

Norman B. Rice, Mayor

(Seal)

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON - KING COUNTY

74561
City of Seattle, City Clerk

—SS.

No. RES BY TITLE

Affidavit of Publication

City of Seattle
TITLE-ONLY PUBLICATION
The full text of the following resolutions, passed by the City Council on November 12, 1996, and published here by title only, will be mailed, at no cost, upon request, for two months after this publication. For further information, contact the Seattle City Clerk at 684-9344.
RESOLUTION NO. 29474
A RESOLUTION to state the guiding principles for extending the Burke-Gilman Trail to reiterate the City's commitment to "Railbank" the Ballard rail corridor, to state a preferred alternative for extending the trail, and to provide direction to the Engineering Department, the Office of Economic Development, and the Neighborhood Planning Office on how to proceed.
RESOLUTION NO. 29479
A RESOLUTION to affirm the City of Seattle's intent in the future to make capital contributions to the redevelopment of Holly Park and directing the development of the City's financial contribution plan.
RESOLUTION NO. 29482
A RESOLUTION adopting the 1997-98 Consolidated Plan for Housing and Community Development, and authorizing its submission to the United States Department of Housing and Urban Development.
Publication ordered by JUDITH PIPIN, City Clerk.
Date of official publication in the Daily Journal of Commerce, Seattle, November 27, 1996. (11/27/96)

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTRT: 29474, 79, 82

was published on

11/27/96

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

11/27/96

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Appendix F

Operating Agreement

COPY

14 September 1997

Operating Agreement

This is an operating agreement between Adventure Trail (a Washington State IRC 501(c)(3) non-profit corporation ("Owner") and Ballard Terminal Railroad Company, LLC ("Operator") for operation of a line of railroad, owned by Adventure Trail, described as follows:

All that portion of the Ballard Branch acquired by Adventure Trail from Burlington Northern and Santa Fe Railroad Company ("BNSF") being more particularly described as BNSF MP .09 (that being approximately 1000 feet south of the clearpoint to the mainline) to end of line at BNSF MP 2.7 (that being approximately the south edge of Northwest 40th Street) in Ballard, all in Seattle in King County, Washington, including the "Olympic Stain" Spur, but excluding the "Bardahl" Spur. The aforementioned line of railroad is hereinafter referred to as "the line" or "the premises." The purpose of this Agreement is to preserve the line intact for rail use, trail use, and other compatible public purposes, provided, however, that Owner shall not be obligated to subsidize, directly or indirectly, rail use on the line other than as specifically provided herein. Adventure Trail shall do business as "Sea Lion Railroad Project" for purposes of this transaction and attendant regulatory proceedings, and shall be referred to as SLR herein.

1. Use. (a) As of the effective date of this agreement, it is the intent of the parties that while SLR is Owner, SLR shall have all common carrier obligations relating to the premises. Operator shall bear all responsibility to provide all freight rail services during the period of SLR ownership on an as needed basis pursuant to this contract. SLR agrees to furnish Operator (a) ten thousand dollars (\$10,000) to repair and to rehabilitate the track and ties, such amount payable upon tendering of receipts by Operator for actual expenditures for repair and rehabilitation, along with certification that the work has been completed in a satisfactory manner, and (b) up to eighteen thousand five hundred dollars (\$ 18,500) to pay for the first year of freight railroad liability insurance in a form satisfactory to SLR, in an amount no less than \$5,000,000 per incident, \$5,000,000 aggregate. Operator assumes responsibility to pay all costs of repair, rehabilitation and insurance above these specific amounts, and further agrees to provide all other railroad services (including but not limited to maintenance, rehabilitation, operation, interchange, and billing) reasonable or necessary to ensure safe and prudent operation without any further compensation from Owner, and to hold Owner harmless from all liability or claims (including claims for penalties and attorneys' fees) in the event Operator fails to discharge any or all of its obligations to provide such services.

(b) The parties acknowledge that SLR intends to seek authorization to railbank the premises pursuant to 16 U.S.C. 1247(d) and to transfer the underlying real estate to City of

Seattle free of any current common carrier obligation as quickly as reasonably possible, consistent with the other terms of this Operating Agreement, after the date upon which the railbanking authorization becomes effective. It is the intent of the parties that Operator obtain a modified certificate of public convenience and necessity ("modified PCN") (49 C.F.R. 1150.21, et seq.) upon the City's ownership of the premises, and for this operating agreement to be assigned by SLR to the City to serve as the operating agreement underlying the modified PCN. Once the modified PCN is issued, it is the intent of the parties that, from that point forward, Operator shall have the only extant current common carrier obligations with respect to the premises. It is the intent of the parties to cooperate in taking prudent and efficient actions to accomplish these intents. This Operating Agreement is intended to serve as a contract to provide services as needed during the period of SLR ownership of the premises, and as an Operating Agreement upon assignment to the City of Seattle, including for purposes of a notice for modified PCN.

(c) During the period of SLR ownership, and after SLR transfers ownership to the City of Seattle, Owner hereby grants to Operator permission to use any and all of the Owner's rights and licenses in the line and between the line and the point of interconnection with BNSF as may be necessary for the purpose of providing rail freight service. The rights granted to Operator relate solely to the provision of rail service on the line, and Operator may not use the line for any other purposes without the prior written authorization of Owner. During the period when SLR is Owner, SLR shall have the right to control dispatch.

(d). In the event operation of a railroad on the premises conflicts with any current trail use on that portion of the premises east of Eighth Avenue, Operator shall undertake one of the following three courses of action: (i) cease operation over any such portion of the premises; (ii) move (at Operator's expense) the tracks and ties, or reconfigure the tracks and ties, such that there is no conflict; or (iii) seek a waiver of any regulation resulting in such a conflict (provided, however, that Owner will cooperate in seeking such a waiver). When the City becomes Owner, Owner at the request of Operator will consider approval of a plan by Operator permitting Operator to close the trail during brief intervals when rail equipment is actually moving adjacent to the trail. Owner will cooperate with Operator in seeking rehabilitation grant money to move track and ties if necessary, provided however there is no liability upon Owner.

2. Inspection. Owner or its duly authorized representative, upon reasonable notice to Operator, shall have the right to inspect any and all rail facilities for the purpose of verifying Operator's compliance with the terms and conditions of this agreement. Further, the parties hereto agree that a Federal Railroad Administration (FRA), Washington Department Transportation (DOT), or Washington Utilities and Transportation Commission (WUTC) rail inspector shall perform a total inspection of the trackage prior to

commencement of rail service, said inspection to serve as a base inspection for all future maintenance and/or rehabilitation efforts on the trackage. The trackage shall be subject to FRA, DOT, and WUTC (as used herein, FRA, DOT and WUTC shall include successor agencies) inspection until termination of this agreement. Operator agrees to abide by such inspections and to address any and all concerns raised in these various rail inspections, consistent with the remainder of this agreement. Nothing herein shall limit the City's lawful police powers of inspection under its Charter and any applicable franchise.

3. Ownership of Track and Ties. Upon (i) transfer of all Owner's real estate interests in the line to the City of Seattle, (ii) effectiveness of a modified PCN for BTRC, and (iii) payment by Operator of ten dollars in compensation, Owner shall execute, and Operator shall accept, a bill of sale transferring by quitclaim to Operator all Owner's right, title and interest in the track, ties and other track material in the property. Such transfer shall be AS IS, WHERE IS, without any warranties, including warranties of title, merchantability, or suitability for any purpose or use. Operator shall employ such material for purposes of providing railroad services in Ballard. Upon acquisition of said material from Owner, Operator shall own and have the right to remove any of said material; provided, however, that in the event (i) this agreement is terminated, (ii) Owner enters into an agreement with a subsequent operator to provide rail services, and (iii) Owner notifies Operator that it wishes to re-acquire sufficient track for through operation, then Operator shall not cause any track or tie to be removed which shall cause the rail facilities to be less serviceable than as of the date Owner acquired the rail facilities, and Operator shall sell said track to Owner or Owner's designee for the price paid by Operator to Owner for same. In the event Owner or Owner's designee wish to acquire Additions constructed by Operator at Operator's expense, Owner or Owner's designee shall have the right to acquire said Additions at net liquidation value (NLV) using the methodology for calculation of NLV employed by the Surface Transportation Board; provided, however, that if the acquisition is for freight or excursion passenger rail purposes and within five years of the effective date of this Agreement, Owner's designee shall acquire the property at a price mutually agreed upon between Owner's designee and Operator.

4. Additions. Owner hereby grants to Operator the right to make such Additions to the rail facilities as Operator may require to permit rail freight or passenger (consistent with paragraph 25) service, at Operator's sole expense, consistent with the remainder of this agreement. The term "Additions" shall mean capital improvements which are in addition to the rail facilities provided by Owner. Operator shall own and have the right to remove any of said Additions which can be removed without causing the rail facilities to be less serviceable than before said Addition was made.

1 5. Conditions on service. (a) During operations under this
2 Agreement pursuant to a modified PCN, Operator shall have no
3 obligation to provide freight rail services unless shippers meet
4 the following term and condition as a condition to receiving
5 service:

6 Shippers or prospective shippers must ship at least 30
7 carloads/year, averaged over a rolling three year period.

8 (b) During operation, Operator shall be responsible for the
9 normal and regular work required to keep the rail facilities in a
10 condition necessary to enable safe operations. Owner shall not be
11 responsible for track, tie, or roadbed maintenance, repair,
12 rehabilitation, or operation. No owner subsidy shall be provided
13 for the line, other than as specifically provided herein.

14 (c) No interest in land, or title to real estate, shall
15 transfer to Operator under this agreement, with the exception of
16 the parcel referenced in paragraph 6 in the event Operator
17 exercises the option therein set forth, and with the exception of
18 the lease of the parcel provided in paragraph 9.

19 (d) Operator shall not interrupt any business access except as
20 necessary to provide rail services or to comply with applicable
21 regulations.
22

23 6. Locomotive facility. Operator may acquire by purchase the
24 property identified in Exhibit A from SLR, pursuant to the terms
25 and conditions set forth below. (i) Operator must inform SLR in
26 writing that it wishes to proceed within thirty (30) days of the
27 effective date of this agreement, (ii) Operator must assume all
28 environmental liability for said parcel and hold SLR harmless from
29 same, (iii) the parties must agree on a property description, and
30 on the square footage to be leased or conveyed (said description
31 shall presumptively be that set forth in Exhibit A, provided that
32 either party may request corrections for forty five days after the
33 effective date of this Operating Agreement), (iv) the transfer
34 shall be made prior to the date of transfer of all other real
35 estate interests in the corridor to the City, (v) SLR shall have no
36 obligation to convey the property unless STB authorizes railbanking
37 of the premises, and said authorization becomes effective, (vi)
38 Operator shall bear all costs of closing, including recording fees,
39 excise and property taxes, and so forth, (vii) the transfer shall
40 be by quitclaim deed by SLR to Operator of all interests it
41 receives from BNSF, subject to whatever restrictions BNSF places
42 upon SLR, without any warranty of title, or propriety for any
43 particular use, (viii) Operator shall pay in cash to SLR \$14.50 per
44 square foot times the total amount in square feet of property to be
45 conveyed, in cash, at closing, and (ix) should rail service cease
46 on the line, Operator agrees to offer the property to City for
47 acquisition for 120 days at a price to be mutually agreed upon.
48

49 7. Modified PCN. Upon transfer of the real estate underlying
50 this line to the City of Seattle, Operator shall secure a modified
51 certificate of public convenience and necessity (modified PCN)
52 pursuant to 49 C.F.R. § 1150.21, et seq., or equivalent order for

operators of state or local government owned railroads previously authorized for abandonment from the Surface Transportation Board. Operator shall be responsible for all costs associated with obtaining such order, but shall have the right to recover those costs (and any other regulatory costs or expenses) from any shippers or prospective shippers. A form of application for the modified PCN is attached as Exhibit B.

8. Liability for operations, disclaimer and insurance. (a)

Upon commencement of rail operations (including any repair or rehabilitation) on the premises by or under the authority of this agreement, Operator shall be responsible for all legal liability arising from said operations, shall hold Owner harmless from same (including claims for attorneys' fees, court costs, or penalties), and shall obtain insurance, satisfactory to Owner, for such operations.

(b) Owner makes no representations or warranties with respect to the condition of the property, including the right of way, for any purpose, or with respect to compliance with any environmental laws, or with respect to the existence of, or compliance with, any required permits of any governmental agency. Operator acknowledges to Owner that Operator has fully inspected the premises and is not relying on any statements made by Owner or Owner's agents with respect to the condition of the premises, including any rail, track or other track material, or crossings, and that Operator assumes the responsibility and risks of all conditions, including such defects and conditions, if any, that cannot be observed by casual inspection.

(c) (i) Operator shall, at all times during the term of this Agreement, obtain and maintain continuously, at its own expense, and promptly supply to such representative of Owner as Owner may from time to time designate in writing, evidence of a policy or policies of insurance for railroad purposes, in a form and in amounts acceptable to Owner prior to the initiation of rail service. Owner shall not be obligated to approve Operator's insurance coverage unless it includes all the conditions and specifications enumerated below:

(A) A policy of Comprehensive Railroad Liability Insurance, including coverages known as

- (1) premises/operations liability
- (2) products/completed operations
- (3) personal/advertising injury
- (4) contractual liability
- (5) bill of lading
- (6) foreign rolling stock
- (7) fire suppression expenses
- (8) pollution clean-up expenses
- (9) stop gap or employers contingent liability

(B) Such policy or policies shall provide the following minimum limits:

(1) bodily injury and property damage:
\$5,000,000 each occurrence, \$5,000,000 aggregate. Property

3 damage coverage shall include coverage for clean-up of spills of
4 hazardous material on the rail corridor or from the rail corridor
5 to adjacent property.

6 (2) stop gap employers liability:

7 \$1,000,000 each accident, \$1,000,000 disease-policy limit,

8 \$1,000,000 disease-each employee.

9 (3) Owner will consider reducing the insurance coverage
10 specified in item (1) above to \$3,000,000 per occurrence and
11 aggregate after three years experience with actual operations.

12 (C) In the event rail passenger service is instituted, any
13 such service shall be insured in an amount not less than
14 \$10,000,000 per occurrence/aggregate.

15 (D) The maximum deductible or self-insured retention shall be
16 \$25,000, and shall be subject to approval by Owner to ensure
17 conformity to this provision.

18 (E) Operator shall include any subcontractors or agents as
19 insureds under its policies or require such subcontractors or
20 agents to maintain insurance acceptable to Owner, which insurance
21 shall be specified in writing prior to commencement of work by the
22 subcontractor or agent after consultation with Owner, but shall not
23 be less than general commercial liability insurance in an amount no
24 less than \$1,000,000 per incident, \$2,000,000 aggregate.

25 (F) Operator shall maintain a policy (or policies) of General
26 Commercial Liability in an amount no less than \$1,000,000, and
27 Business Automobile Liability, including coverage for owned, non-
28 owned, leased or hired vehicles written on an insurance industry
29 standard form (CA 00 01) or equivalent. Such policy (or policies)
30 shall provide a minimum limit of \$1,000,000 for bodily injury and
31 property damage per accident.

32 (G) All insurance provided under this agreement shall be
33 endorsed to include the Owner (including any successor Owner), its
34 officers (including elected officials if a successor is a political
35 subdivision or the City), employees, agents and volunteers as
36 additional insured. In addition, Operator's insurance shall be
37 primary as respects Owner (including any successor Owner), and any
38 insurance maintained by Owner shall be excess and not contributing
39 insurance with the Operator's insurance.

40 (H) The following clause shall be made part of all said
41 policies of insurance: "It is agreed that in the event of material
42 change or cancellation, this company shall give forty-five (45)
43 days prior written notice to the Owner of the property, addressed
44 to: Property Manager, SLR, P.O. Box 17883, Seattle, WA 98107, or,
45 if the Owner is the City of Seattle, to Seattle City Risk Manager,
46 Room 103, Municipal Building, 600 Fourth Avenue, Seattle, WA
47 98104-1891."

48 (ii) (A) If any policy is written on a claims made form, the
49 retroactive date shall be prior to or coincident with the effective
50 date of this agreement. The policy shall state that coverage is
claims made, and state the retroactive date. Claims made form
coverage shall be maintained by the Operator for a minimum of six
years following expiration or earlier termination of this
agreement, and Operator shall annually provide Owner with proof of

renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Operator shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to Owner to assure financial responsibility for liability for actions, inactions, and services.

(B) Owner shall have discretion to require Operator to provide reasonable security (e.g., interest bearing escrow account, irrevocable letter of credit, bond, or third party guarantee), acceptable to Owner, that Operator will have sufficient assets to discharge, and will discharge, its obligation under subparagraph (ii) (A) above with respect to claims made coverage. In addition, Owner shall have discretion to require Operator to provide similar reasonable security, acceptable to Owner, to ensure that Operator will have sufficient assets to cover the entire amount of any self-insured retention provided in the insurance coverage herein. Unless otherwise agreed, acceptable security shall constitute a fully-funded interest bearing escrow account at a federally-insured institution containing funds at all times equal to no less than the self-insured retention amount, or \$25,000, whichever is greater.

(iii) As evidence of insurance coverage, the following documents must be provided to Owner prior to occupancy of the premises by Operator:

(A) a certified copy of the policy or policies

(B) copies of all relevant endorsements naming Owner as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2026 (ISO) or equivalent

(C) copies of all relevant "Endorsements Form Lists" to the policy or policies showing endorsements issued on the policy, and including any company specific or manuscript endorsements

(D) evidence of compliance with subparagraph (H) above

(E) for commercial general liability and business automobile liability insurance, a copy of a "separation of insureds" or "severability of interests" clause, indicating in substance that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, the insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

(iv) All policies shall be subject to approval by Owner as to form, coverage, and being primary to all other insurance. Owner also shall require each company to be rated A-VII or higher in the current A.M. Best's Key Rating Guide, and to be licensed to do business in the State or Washington, or a surplus Lines carrier authorized to do business in the State of Washington.

(v) Operator and its insurer(s) shall waive their rights of subrogation against Owner for damages arising from any risk covered by the required insurance policies or any other coverage maintained by Operator. Operator's insurance shall be primary with respect to any insurance carried by Owner.

(vi) At the request of Owner (which request may be made no more frequently than five year intervals), the minimum levels of

coverage herein shall be adjusted in proportion to changes in the consumer price index (or successor index) from its base in January 1997.

(vii) Failure to comply with insurance coverage requirements or failure to comply with indemnity requirements shall constitute material breach of this agreement.

9. Surface Transportation Board. (a) Owner and Operator will cooperate in any required filings before the Surface Transportation Board, or its successor. Operator acknowledges that Owner contemplates filing a petition for exemption, requesting expeditious treatment and an exemption from "offer of financial assistance" provisions, to permit railbanking of the premises under 16 U.S.C. § 1247(d); and that Owner intends to transfer the premises to City of Seattle upon the effectiveness of a railbanking order. Owner acknowledges that Operator intends to file for a modified PCN in order to serve as Operator for the City of Seattle when the City obtains ownership of the railbanked corridor. Operator will supply to Owner letters from each shipper on the line for the two years preceding suspension of service by BNSF in the form attached in Exhibit C-2 evincing support for the transactions and relationships contemplated pursuant to this Operating Agreement. Such letters may be employed before the STB and in other relevant public forums. Upon request, Operator will support Owner's position in any STB railbanking proceeding in writing. Upon request, Operator will also obtain letters of support specifically for filing with STB the aforementioned shippers in the form attached in Exhibit C-1. If Operator has become a common carrier on the line by the time of said railbanking petition of Owner, Operator will participate in the filing of the railbanking petition requesting identical relief (abandonment or discontinuance, as the case may be, coupled with railbanking) to that sought by Owner. Upon request, Owner will support Operator's filing for a modified PCN subsequent to a railbanking authorization.

(b) This agreement is subject to whatever conditions are imposed by the Surface Transportation Board, or its successor.

10. Rail and Trail facilities. (a) Owner and Operator agree that the trail (which, for this paragraph, may include pedestrian-only trail or path facilities, bicycle-only trail or path facilities, or some combination thereof) and railroad shall be constructed within the areas indicated in Exhibit D in all portions of the premises which are not in street right of way. Owner and Operator agree to design their respective facilities such that crossings of tracks are as safe as reasonably possible, by use of approaches close to right angle, or appropriate rubberized crossing materials, or similar measures. Operator agrees to design Additions and configurations so as to minimize crossing of trail facilities. Owner and Operator shall avoid damage to each other's facilities.

(b) Owner and Operator agree that new trail facilities (other

than crossings)¹ may be constructed only in accordance with applicable regulations of DOT or WUTC relating to separation from centerline of rail.² At the request of Operator, Owner will consider installing dividers between the rail and trail at limited locations consistent with applicable guidelines for bicycle facilities or, in the case of purely pedestrian facilities, guidelines issued by the City for same,³ provided that separation of such dividers from the centerline of the rail is consistent with applicable regulations of DOT or WUTC. The desired width for the trail corridor between Eighth and Eleventh Avenue shall be twenty (20) feet in width, but may be reduced to no less than eighteen and one half (18-1/2) feet in order to accommodate an additional line of track installed by Operator. Owner shall be responsible to install appropriate informational and safety signage relating to any new trail construction in accordance with applicable City of Seattle guidelines.⁴

(c) Owner and Operator acknowledge that there are certain portions of the rail corridor where the available width for new trail development purposes, taking into account Washington State regulations for minimum trail clearances, unless the rail line is moved, is less than ten feet, and where trail facilities have not yet been constructed. In all such instances, Owner reserves the right to develop a trail, but in the event of trail development, will limit trail use to pedestrians, employing appropriate City of Seattle guidelines for pedestrian facilities, and will develop a bicycle trail at suitable alternative locations. Nothing herein shall prohibit use of sidewalks or existing streets by motorized or non-motorized users, or pedestrians.

(d) In the event trail maintenance or construction damages rail facilities owned by Operator, Owner shall be responsible for the costs of repair. In the event railroad maintenance or construction damages trail facilities, Operator shall be

¹ For purposes of this subparagraph, new trail facilities means any trail facility within the premises constructed from Eighth Avenue west.

² The parties concur that the applicable regulations include WAC 480-60-050. As a matter of convenience, Owner intends to provide a ten foot separation where practical.

³ The applicable guidelines for bicycle paths and trails are currently set forth by the American Association of State Highway and Transportation Officials in "Guide for the Development of Bicycle Facilities" (August 1991), particularly at p. 24. The applicable City of Seattle guidelines for purely pedestrian facilities are (a) Seattle Street Improvement Manual and (b) City of Seattle Standard Plans and Specifications.

⁴ See footnote 3 and Manual for Uniform Traffic Control Devices.

responsible for the costs of repair.

(e) Owner shall have the right to require Operator to relocate its track in order to accommodate trail construction in accordance with this Agreement; provided, however, that a continuous track on the premises shall be provided unless Operator consents otherwise. Unless otherwise agreed, Operator shall promptly move its track at Owner's written request to accommodate the construction of trail facilities. Owner shall be responsible for the direct labor costs of such movement, plus five (5) per cent overhead based on those costs with respect to the entire premises, except that, with respect to that part of the premises north of Seaview Avenue, N.W., owner shall be responsible for the costs of retaining structures, grading, drainage, and engineering associated with trail installation north of Seaview Avenue N.W., and shall not otherwise be responsible for the costs of any new ballast, track, ties, or other material used in such move. Owner and operator shall enter into a written agreement regarding any construction project to be undertaken associated with movement of rail to accommodate trail development on the premises north of Seaview Avenue, N.W. The construction agreement referred to herein will ensure that owner is only responsible for reimbursing operator for those costs specified above caused by owner's plan to develop a trail on the premises, and the parties will endeavor to minimize owners' cost to the extent possible. Consent to an agreement shall not be unreasonably withheld. Owner shall reimburse Operator for such direct labor costs upon receipt of an itemized bill from Operator. Operator shall use reasonable care in the construction of all new or moved rail facilities. Owner shall use reasonable care in the construction of all new or moved trail facilities. The provisions of paragraph 1(d) shall govern the portion of rail with trail east of Eighth Avenue. Owner shall be responsible for design and installation of a safe crossing for the trail north of Seaview Avenue in the event of trail development.

(f) Operator shall not engage in construction of rail or rail-related facilities which interfere with the trail to be constructed on the premises. Owner shall not be responsible for the costs of moving any new rail or rail-related facilities which interfere with the trail. Operator may tender Owner proposed construction drawings for all new facilities, to such person as Owner identifies in writing. If Owner within thirty days of receipt of said drawings does not state a determination that interference will or may occur, Owner shall be deemed to have made a determination of no interference and shall be responsible for costs for moving said facilities in accordance with this paragraph in the event the facilities are constructed and later found to interfere.

(g) Operator and City both covenant and agree to keep their respective portions of the premises free and clear of debris and equipment not in actual use for rail or trail construction, maintenance or operations.

(h) Notwithstanding any other provision of this agreement, Operator shall have access to, and full responsibility for, all

signals, including grade crossing signals, used or installed for operation of this railroad line.

(i) Effective when City becomes Owner under this Operating Agreement, City undertakes to provide Operator with 120 days notice, and a subsequent opportunity to consult, prior to City's presentation of a request for initial authorization or financing for an extension of the Burke-Gilman Trail in the area between 11th Avenue and the Locks within the premises. Nothing herein shall require advance notice to Operator of, or otherwise abridge any right of the City to engage in, site-specific and ordinary bicycle or pedestrian improvements, site-specific safety improvements, or sidewalk installation, replacement, or repair in the referenced area.

11. Transload. (a) Taking note that this Operating Agreement is in accordance with the Burke-Gilman Agreements between the City and BNSF, and that said Agreements provide for certain lease cancellations by BNSF in the event of transfer pursuant to the Agreements, SLR agrees to request BNSF to terminate all leases for the property described in Exhibit E prior to transfer to SLR. Provided said leases are terminated, Owner and Operator agree that, for the duration of this operating agreement, Operator shall have a lease providing for exclusive use to the property described in Exhibit E for transload purposes. The lease with Operator shall provide that any fixture remaining upon the premises shall become the property of Owner at the termination of this operating agreement. Operator shall leave the premises free and clear of any contamination or debris at the termination of this operating agreement.

(b) Operator shall be solely responsible for all losses, claims of damage, or liability (including liability for attorneys fees, court costs, penalties, or environmental contamination) arising from its use of the area set forth in Exhibit E, and shall hold Owner harmless from same.

12. Indemnities. (a) Operator shall defend Owner (with counsel approved by Owner) and shall fully indemnify Owner, and hold Owner and its officers, employees, and agents harmless from any and all losses, claims, actions, judgments, property damages, death, personal injuries, or damage suffered by any person or entity arising out of resulting from any occurrence of property damage, death or injury (i) in or on the premises occupied or used by Operator, including common carrier liability, (ii) arising from Operator's operations on or off the premises, and (iii) arising from the violation of any law or breach of any franchise or operating agreement, including this agreement by Operator, or any of its officers, directors, employees, agents, or contractors. In the event Operator fails to defend (or to defend adequately in the opinion of Owner) the suit, Owner shall have the right to assume the defense and to be held harmless from all costs arising from same, including costs for legal counsel and all fees and charges related thereto; provided, however, that Owner may always

participate in a proceeding at its own expense. Under this indemnity, Operator shall be responsible promptly to satisfy any final judgment adverse to the Owner or Owner and Operator jointly.

(b) The indemnity provided in this paragraph is intended to be broad and comprehensive. It shall not be diminished by the fact, if it is a fact, that the liability in question may have been contributed to by the negligence of the Owner, its officers, employees, or agents, provided, however, that Owner shall be liable if the liability arises solely and entirely from the fault of the Owner.

(c) The indemnification provided by this paragraph has been mutually negotiated by the parties and shall survive the termination of the Operator's franchise, the Operator's surrender of use and occupancy, and expiration or termination of this agreement. This indemnity is for the sole benefit of Owner, and shall not inure to the benefit of any third party other than Owner, its successors, and Owner's (or successor's) officers, employees, or agents. Operator waives, with respect to the Owner (and its successors) only, its immunity under RCW Title 51, Industrial Insurance, and to any other industrial insurance, workers' compensation, disability, or employee benefit legislation of any jurisdiction which would otherwise be applicable.

13. Environmental. (a) Operator (i) shall cause the premises under its control or use, and all Operator's operations thereon, to be conducted in accordance with all environmental laws and orders of any governmental authorities having jurisdiction, (ii) shall obtain, keep in effect, and comply with all governmental permits and authorizations required by environmental laws with respect to the premises under Operator's control or use, and with respect to Operator's operations, and (iii) shall furnish Owner with copies of all such permits and authorizations, including any amendments or renewals thereof, upon request, and notify Owner promptly in the event of expiration or revocation of such permits or authorizations.

(b) Operator's indemnity in paragraph 12(a) shall also apply to hold Owner harmless from any claims (including claims for attorneys' fees, court costs, or penalties) relating to any hazardous, dangerous or toxic material, waste, substance, or other pollutant or contaminant (hereinafter collectively referred to as "hazardous material"⁵) arising out of, or resulting from (i) Operator's operations, (ii) the violation of any law or breach of this agreement by Operator or any of its officers, directors, employees, agents or contractors, (iii) the release by Operator of any hazardous material on the premises controlled or used by Operator or involving Operator's operations outside the premises.

⁵ It is the intent of the parties that hazardous material shall include such substances, materials and wastes as are currently or as become regulated or subject to clean-up authority under any local, state or federal law.

under its control or use. In the event Owner must take action to respond to such claims, Operator shall indemnify Owner for all costs which Owner incurs, including all clean-up and remediation costs, including attorneys', consultants' and contractor's fees to achieve compliance with applicable laws, regulations, and orders.

(c) Owner shall have the option, at Owner's expense, to require an environmental audit of the premises used by the Operator at any time, and shall have a right of entry for same. If Owner at any time has reasonable grounds to believe that Operator is not complying with the terms of this paragraph or that a release of a hazardous substance has occurred or is about to occur, Owner may require Operator to furnish Owner with an environmental audit or site assessment, at Operator's expense, conducted by a qualified consultant acceptable to Owner. If such environmental audit does not disclose noncompliance or a release by Operator, Owner shall promptly reimburse Operator for all costs incurred in connection with such environmental audit.

(d) Nothing in this agreement shall be construed to abridge the rights of Owner or Operator to pursue the liability of responsible third parties for contamination of the premises, and the parties agree to undertake reasonable measures to assist each other in any such endeavor.

(e) Unless Owner specifically agrees otherwise in a writing signed by Owner, Operator shall not store, treat, recycle, manufacture, refine or generate hazardous material on the premises, except as may reasonably be necessary for its own operations, or as incidental to a shipment. Operator shall not dispose or release hazardous material on the premises. Operator in all events shall conduct its operations so as to comply with all applicable environmental laws and to minimize the likelihood of any releases on, in, above, under or from the premises.

(f) Operator shall undertake all investigatory, preventive, and remedial actions reasonably necessary to comply with applicable environmental laws, regulations, and requirements, or to prevent or minimize property damage, personal injury, or damage to the environment, or threat of same, by releases or exposure to hazardous materials in connection with the premises or Operator's operations. Operator shall promptly notify Owner of any spill or release of a hazardous material, any violation of law relating to same, any lawsuit filed or threatened regarding same, any notice, fine or penalty regarding same, and any investigation or proceeding regarding same, arising in connection with the premises or Operator's operations.

(g) Sixty (60) days prior to the expiration of this agreement, or upon receiving notice of termination, Owner shall have the right (including a right of entry) to conduct an environmental assessment designed to establish the environmental condition of the premises. Upon completion of the assessment, Owner shall provide Operator with a copy of an environmental report that describes the results. The parties agree that there shall be a presumption (which shall be rebuttable) that the assessment shall establish the environmental condition of the premises as of the

date this agreement terminates. Nothing in this agreement shall be construed as (I) a presumption or determination that any contamination or hazardous substance disclosed in such assessment was caused by Operator or during Operator's occupancy of the premises, or (II) an undertaking by Operator to cure or address any such contamination or hazardous substance, or (III) a waiver by Operator of any claim of responsibility by either party against the other, or any other person or entity, relating in any manner to any such contamination or hazardous substance.

(h) Notwithstanding any other provision in this agreement, in the event of a breach of this paragraph by Operator, Owner upon reasonable notice and opportunity to cure (which notice and opportunity to cure may be as short as twenty four hours in the event of an emergency involving a release or threatened release of a hazardous substance) may suspend all or a portion of this agreement, or, if the release involves an imminent danger to the public, may terminate this agreement. Owner may also exercise any remedies otherwise available in law. Nothing in this subparagraph shall be construed as a waiver by Operator of any claim against Owner for wrongful termination or suspension of this agreement.

(i) Nothing herein shall be construed to constitute a waiver of, or release of, or a limitation upon, the rights or responsibilities of the Owner or Operator in any future action pursuant to the Washington Model Toxics Control Act, RCW Chapter 70.105D, or the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C. 9601, et seq., as either statute is amended or supplemented, or pursuant to any successor statute.

14. Laws to be observed. Operator shall keep fully informed of all Federal and State laws, all local laws, ordinances, regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. Operator shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees (to the extent not preempted by federal law) and shall protect, hold harmless and indemnify the Owner against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.

15. Assignment. Operator shall not assign its right or delegate its duties under this agreement, or any part hereof, without the prior written consent of Owner. The parties contemplate that SLR shall assign all its interests in this Operating Agreement to City of Seattle pursuant to the form of assignment attached as Exhibit F. Upon such assignment, SLR shall be deemed relieved of all obligations to Operator.

16. Term. The term of this agreement shall be thirty years, subject to cessation of operations or termination of the agreement as provided herein.

17. Breach. In case of breach of this agreement by Operator, Owner shall give Operator no less than thirty (30) days notice to cure, in writing, stating the breach that has occurred, the basis for viewing the occurrence (or non-occurrence) as a breach, and a request or demand that the breach be cured. Upon request, Owner will reasonably cooperate in effecting cure (so long as consistent with applicable law, and so long as costs of cure are borne by Operator). If cure is not substantially effected within the time specified in the notice (no less than thirty (30) days calculated from delivery of said notice), Owner may declare this agreement terminated if the breach is material, or, alternatively, and also in the case of non-material breaches, shall have a right to require suspension of rail operations until the breach is remedied, or shall have a right of entry to make such repairs or modifications (or to perform such work) as is necessary to remedy the breach, charging all costs and expenses to the Operator, which shall pay the amount within thirty (30) days. For purposes of this Agreement, material breach shall include, but not necessarily be limited to, failure to maintain required insurance coverage, use of the premises by the Operator for purposes other than rail or rail-related purposes, failure to comply with final FRA, DOT or WUTC orders, failure to remedy environmental conditions caused by the Operator, failure to discharge common carrier (freight railroad) obligations, failure to comply with paragraph 25 (relating to passenger uses), and/or failure to comply with any portion of paragraph 9 (cooperation before STB).

18. Other termination and termination generally. (a) Owner may terminate this agreement if the level of freight rail usage decreases below an average of 30 carloads per year averaged over any 36 month period.

(b) During the period SLR owns the premises, Operator may not terminate this agreement without the prior written consent of SLR. Upon assignment of this agreement to the City of Seattle, Operator may terminate this agreement upon sixty (60) days prior written notice to the City of Seattle, compliance with all the terms of this Agreement, and satisfaction of any applicable regulations or requirements of the Surface Transportation Board, or its successor.

(c) In the event of termination, Operator upon request of Owner shall cooperate in any required filings before the Surface Transportation Board, or its successor, to secure a prompt termination of any applicable operating authority and in a fashion so as to secure preservation of the premises under 16 U.S.C. 1247(d).

(d) Nothing herein shall be construed to limit or to abridge the City's rights of termination provided in the City's Charter applicable to franchise agreements generally.

19. Notices. All notices under this agreement shall be deemed delivered if posted by U.S. Mail, postage pre-paid, first class, or sent by express delivery (one or two day service), or by

2 fax transmission, to the addressees or (if appropriate) fax numbers
3 provided below:

4 If to Owner, to: Property Manager

5 SLR

6 P.O. Box 17883

7 Seattle, WA 98107

8 Fax number: (206) 706-1991

9
10 If to Operator, to: Byron Cole, Managing Member

11 Ballard Terminal Railroad Company, LLC

12 5228 Shilshole Ave. N.W.

13 Seattle, WA 98107

14 Fax number: (206) 781-0984

15
16 These addresses may be changed provided notice is given in
17 writing.

18
19 20. Severability. In the event any section, paragraph,
20 sentence, clause or phrase contained herein shall be determined,
21 declared, or adjudged invalid, illegal, unconstitutional, or
22 otherwise unenforceable, such determination, declaration, or
23 adjudication shall in no manner affect the other sections,
24 paragraphs, sentences, clauses, or phrases of this agreement, which
25 shall remain in full force and effect as if the section, paragraph,
26 sentence, clause or phrase declared, determined, or adjudged
27 invalid, illegal, unconstitutional or otherwise unenforceable were
28 not originally a part thereof.

29
30 21. Governing law. This agreement shall be governed by the
31 laws of Washington.

32
33 22. Amendment. This agreement may be modified or amended
34 only in a writing referring to this agreement and executed by both
35 parties. In the event of a conflict between this agreement and the
36 applicable franchise ordinance, the franchise ordinance shall
37 control.

38
39 23. Subsidies. Except for financial contributions which
40 SLR has committed to make in paragraph 1, in no event shall Owner
41 be responsible for repair, rehabilitation, maintenance, or
42 operation of rail facilities, or property in the corridor used or
43 occupied by Operator. Notwithstanding the above, Owner will
44 cooperate with Operator in seeking to facilitate grants or loans
45 for rehabilitation, provided, however, that Owner on no account
46 will be liable for repayment of said grants or loans except to the
47 extent of salvage value in the event Owner owns the salvage. SLR
48 agrees to send a form of letter in support of a rehabilitation
49 grant request substantially in accordance with Exhibit H.

50
24. Survival. All indemnities and allocations of liability,
including associated insurance provisions, shall survive expiration

or earlier termination of this agreement.

25. Passenger use. Owner shall permit passenger use on the following conditions: (a) insurance requirements for said use as set forth in this agreement are met, (b) FRA or DOT inspectors certify that the line meets at least FRA Class I standards (or higher standards if applicable for passenger service), (c) the engineer for any passenger operation is FRA-certified, (d) all equipment employed meets FRA, DOT, WUTC and other applicable standards, and (e) Operator receives prior written approval from Owner (if the City, through its Director of Transportation) of an operating plan (i) covering hours of operation and boarding/deboarding locations consistent with maintaining safe traffic flow, egress and ingress to abutting businesses, and the provision of adequate parking, (ii) demonstrating consistency with trail use, compatibility with freight service, and showing that the primary purpose of the line remains freight rail service, (iii) identifying safety measures to be implemented during passenger operations at crossings, and (iv) consistent with the construction and operation of passenger facilities in connection with commuter rail use of the BNSF mainline.

26. Conformity to acquisition contract. In the event the contract for acquisition of the premises by SLR from Burlington Northern Santa Fe Railway imposes terms or conditions more stringent than this agreement, the acquisition contract terms or conditions shall control. A copy of the most recent form of acquisition contract is attached as Exhibit I. The parties agree that the acquisition contract, when executed and delivered by both parties, shall be automatically substituted for the form of contract attached as Exhibit I upon delivery (by hand, express, or U.S. Mail, postage pre-paid, first class) by Owner to Operator.

27. Effective date. This agreement shall become effective at such time as SLR obtains authority from the Surface Transportation Board, or its successor, to acquire and in fact acquires the premises from The Burlington Northern and Santa Fe Railway Company. (A draft form of notice of exemption for that purpose is attached as Exhibit G.) Until such time as SLR obtains the property pursuant to an effective notice of exemption (or other appropriate authorization from the Surface Transportation Board, or its successor), the parties shall not be obligated to each other, other than to cooperate in efforts to achieve the conditions precedent to the effectiveness of this agreement.

28. Miscellaneous. (a) All parties to this Agreement attest that they have freely and willingly entered into this Agreement, with advise of counsel, and that neither this Agreement nor any provision within it is the result of superior bargaining power or duress. Furthermore, all parties to this agreement represent to each other that they neither can nor will take the position that this Agreement, or any portion of this Agreement, is a contract of

1 adhesion.

2 (b) Notwithstanding any other provision of this Agreement,
3 Operator shall conform to the provisions set forth in Exhibit I
4 relating to salvage activities and utilities.

5 (c) The parties jointly undertake to support the provision of a
6 letter in the form set forth in Exhibit J to BNSF.

7 (d) The parties acknowledge that SLR and Seattle intend to enter
8 into a memorandum of understanding substantially in the form set forth
9 in Exhibit K.

10
11 29. Separate counterparts. BTRC and SLR agree that this
12 Operating Agreement may be executed in separate counterparts and shall
13 be deemed accepted when the counterparts are delivered by each to the
14 other. Delivery may be evinced by transmission by fax of executed
15 signature pages to (in the case of BTRC) Stephen L. Day, Esq. at 206-
16 292-9988, and (in the case of SLR) Fred Wert at 202-706-1991. City's
17 approval as to form may be evinced by appropriate signature on either
18 counterpart. The parties will cooperate in achieving fully executed
19 originals should the separate counterpart method be initially
20 employed.

21
22 Ballard Terminal Railroad Company, LLC

23
24 by: Paul Henderson

25
26
27 Sea Lion Railroad Project

28
29 by: Fred Wert

30
31
32 The form of this agreement is acceptable for purposes of future
33 assignment to the City of Seattle.

34
35 Seattle Department of Transportation

36
37 by: Dayl G. Galy

38
39 Exhibit A: parcel for locomotive facility
40 Exhibit B: form of application for modified PCN
41 Exhibit C-1: form of support letter for STB
42 Exhibit C-2: form of general support letter
43 Exhibit D: rail and trail maps
44 Exhibit E: parcel for transload
45 Exhibit F: form of assignment to City of Seattle
46 Exhibit G: form of "notice of exemption for acquisition and
47 operation"
48 Exhibit H: form of letter supporting grant application
49 Exhibit I: form of BNSF-SLR purchase agreement, including
50 conditions relating to salvage and utilities
51 Exhibit J: form of City letter to BNSF regarding compliance
52 with Burke-Gilman agreements
53 Exhibit K: form of MOU SLR/Seattle

Exhibit A -- Engine Facility

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Exhibit A

ON OF PARCEL FOR LOCOMOTIVE FACILITY

Those portions of Lots 15, 16 and 17, Block 17 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, lying Northeasterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

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Exhibit A -- Engine Facility

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Exhibit A

DESCRIPTION OF PARCEL FOR LOCOMOTIVE FACILITY

Those portions of Lots 15, 16 and 17, Block 17 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, lying Northeasterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

Ballard Terminal Railroad Co. --)
exemption -- operator per §1150.21,) F.Dkt. _____
et seq.)

Notice for Modified Certificate
of Public Convenience and Necessity

This is a notice for modified certificate of public convenience and necessity pursuant to 49 C.F.R. § 1150.23. In accordance with the requirements of § 1150.23(b), operator Ballard Terminal Railroad Company ("BTR" or "Operator"), states as follows: BTR by assignment has entered into a contract with the City of Seattle to become an operator for the line described as MP 0.09 to MP 2.7 in Ballard in the City of Seattle, King County, Washington. The line in question is formerly a portion of Sea Lion Railroad. The line was authorized for abandonment in Adventure Trail d/b/a Sea Lion Railroad, AB __, served _____. Subsequent to the abandonment authorization, the line was acquired by City of Seattle. All track and tie remains largely in place but the line will require some rehabilitation. Operator has entered into an operating agreement by assignment with the Seattle Department of Transportation ("SeaTrans") allowing Operator to provide freight services.

1. Name and address of the operator. Ballard Terminal Railroad Company, _____, Seattle, WA _____. The articles of incorporation are attached as Appendix A. The names and addresses of all officers and directors are attached as Appendix B. Information sufficient to show financial responsibility of the operator is attached as Appendix C.

2. Information about prior abandonment. The line which is the subject of this notice was formerly owned by Adventure Trail d/b/a Sea Lion Railroad. The line was authorized for abandonment in Adventure Trail d/b/a Sea Lion Railroad, AB __, served _____. A copy is attached as Appendix D.

3. Period of operation; agreement with State. The period provided for operation is 30 years. A copy of the agreement with the City of Seattle is attached as Appendix E.

4. Service to be provided. Operator will provide freight rail service over the line from MP 0.09 (1000 feet from clearpoint with mainline) to MP 2.7 (approx. Northwest 40th St.) in Ballard in the City of Seattle. The agreement with the City provides for liability insurance coverage satisfactory to the City to be in place upon commencement of rehabilitation or operations. Further insurance information is set forth in Appendix F. Continuation of

operations is contingent upon shippers meeting the following precondition:

Minimum of 30 carloads per year averaged over a rolling 36 month period.

5. Name and address of any subsidizers. At this time, no entity has committed to subsidize operations on the line, or Operator.

6. Financial responsibility of subsidizers. Not applicable.

Respectfully submitted,

for Ballard Terminal Railroad Company

Appendix A: Articles of Incorporation

Appendix B: Officers and Directors

Appendix C: Financial Responsibility

Appendix D: Orders authorizing abandonment

Appendix E: Agreement with City of Seattle

Appendix F: Insurance

Exhibit C-1 -- Form of Support Letter

Secretary
Surface Transportation Board
1975 K Street, N.W.
Washington, D.C. 20423

Re: Adventure Trail d/b/a Sea Lion Railroad --
exemption -- Ballard Branch in King County, WA, AB- ____ (Sub-
no. ____)

Dear Sirs:

This letter is in support of the petition for exempt
abandonment filed in the above captioned proceeding and is made on
behalf of [Shipper]. [Shipper] supports expeditious treatment of
the pending petition, supports the issuance of an immediately
effective "NITU", in this proceeding, and supports an exemption
from the provisions of 49 U.S.C. 10904 ("offers of financial
assistance") and 49 U.S.C. 10905 (public use conditions).

[Shipper] understands that, upon the effectiveness of a NITU,
the City of Seattle intends to acquire the entire line, and is
making arrangements for permanent preservation of the entire
corridor for transportation and related public purposes, including
rail operation by a City Operator under a Modified certificate of
Public Convenience and Necessity, should the Board grant the
application to be filed by said operator, Ballard Terminal Railroad
Company, LLC, under the Board's regulations.

Expeditious and favorable treatment of the pending petition is
in the public interest.

Very truly,

for: [Shipper]

cc. Charles H. Montange
426 NW 162d St.
Seattle, WA 98177

Exhibit C-2 -- form of letter to SLR

28 August 1997

President
Sea Lion Railroad Project
P.O. Box 17883
Seattle, WA 98107

Re: Ballard Branch of BNSF

Dear Sirs:

It is our understanding that Sea Lion Railroad Project (SLR) intends (a) to acquire the Ballard Branch from Burlington Northern and Santa Fe Railway (BNSF), (b) to enter into an Operating Agreement with Ballard Terminal Railroad Company (BTRC) under which BTRC will operate the line on behalf of SLR, (c) to seek railbanking authorization (application of section 8(d) of the Trails Act) from the Surface Transportation Board (STB), and (d) subsequently to transfer the rail corridor to the City and the track and ties to BTRC for continued rail operation under a modified certificate of public convenience and necessity (modified PCN).

This letter is to assure SLR that _____ will support SLR's acquisition of the Ballard Branch, as outlined above, and, subsequent to SLR acquisition, will not assert (directly or indirectly) against SLR any claims (including claims for damages) for failure to provide (or relating to failure to provide) common carrier services, provided only that SLR enters into an Operating Agreement with BTRC as contemplated in item (b) above and acts, insofar as in SLR's discretion, consistent with said Agreement. This letter is also to assure SLR that _____ will support (1) railbanking of the line and (2) subsequent transfer of the rail corridor to the City, transfer of track and ties to BTRC, and issuance of a modified PCN to BTRC. We understand that these representations will be relied upon by the parties in entering into contractual relationships, and in regulatory proceedings.

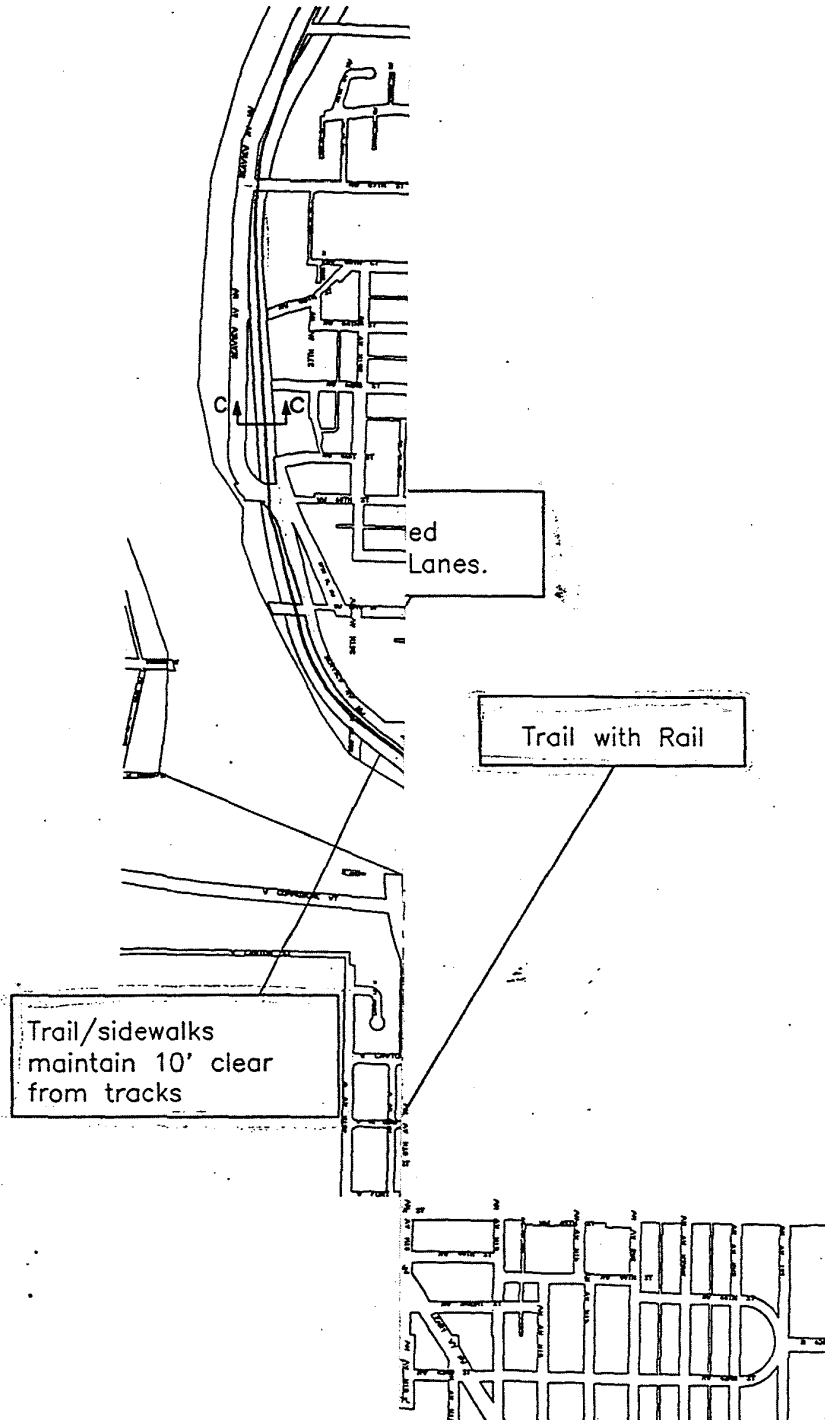
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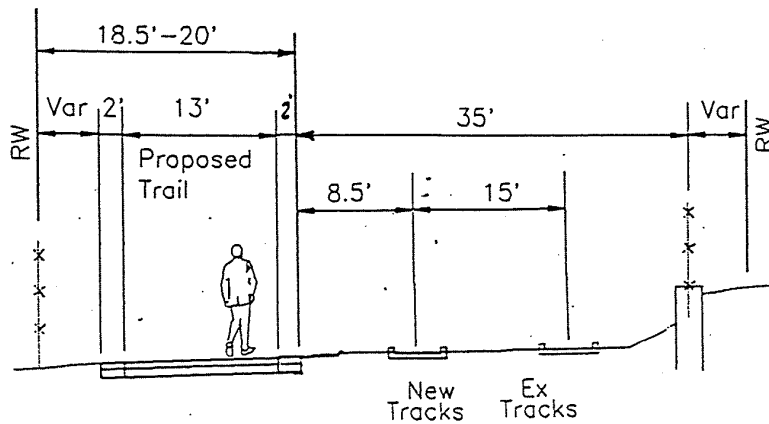
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Title: _____
for: _____
Address: _____

Exhibit D -- Rail and Trail Maps

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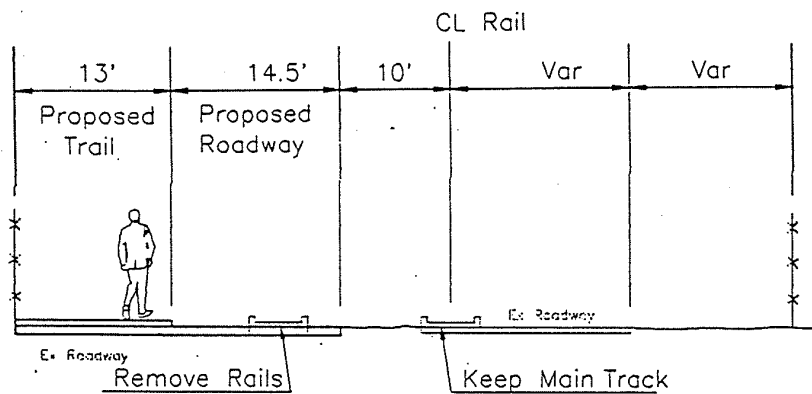
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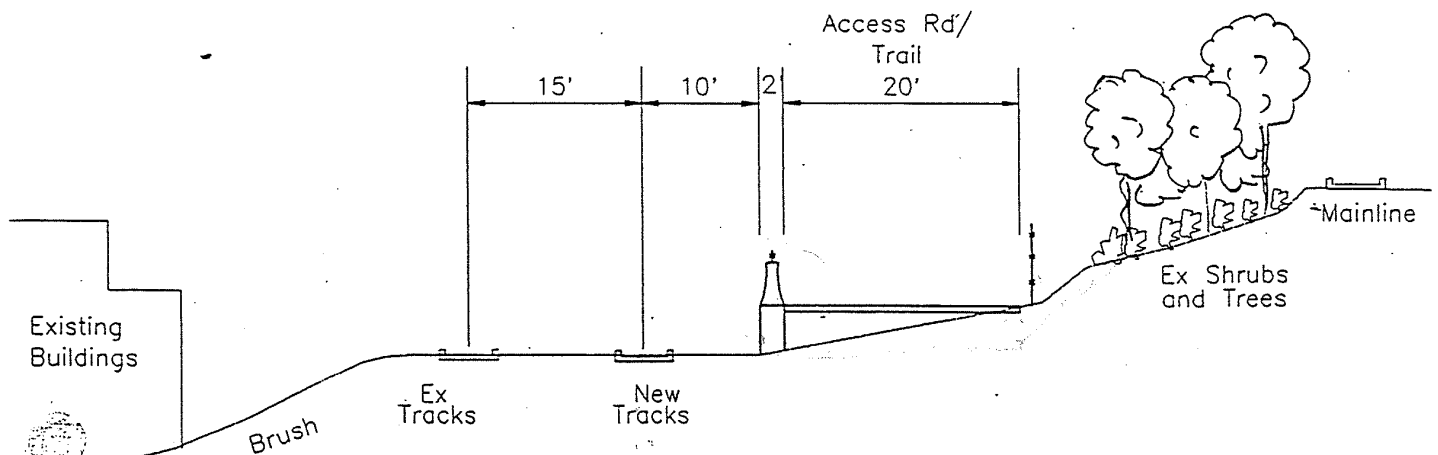
Section A-A

Typical Section
Between 8th & 45th
Looking Northwest



Section B-B

Typical Section
on 45th between
BNRR & 11th



Section C-C

Typical Section
North of Seaview
Looking North

Exhibit E -- transload facility.

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Exhibit E

DESCRIPTION OF PARCEL FOR TRANSLOAD

Those portions of Lots 11, 12 and 13, Block 18 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, lying Northeasterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from a line drawn parallel with and distant 224.80 feet Southwesterly, as measured at right angles from the centerline of Leary Way Northwest, as established by the monuments at Northwest 36th Street and Northwest 45th Street, all in Section 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington.

1 Exhibit F -- Form of Assignment to City of Seattle

2
3
4 Assignment of Contract and Operating Agreement

5
6 This assignment is made by and between Adventure Trail d/b/a
7 Sea Lion Railroad Project ("SLR") and City of Seattle, Department
8 of Transportation ("SeaTrans").
9

10 Whereas SLR is Owner of that certain property known as the
11 Ballard Branch ("the premises") pursuant to a contract entitled
12 _____, dated _____, with The Burlington
13 Northern and Santa Fe Railway Company ("BNSF"), (hereinafter
14 "Contract"); and
15

16 Whereas SLR desires to assign, transfer and set over to
17 SeaTrans all of SLR's right, title and interest in and to the
18 Contract (except as to the track, track material and ties, and
19 except as to one parcel of land, to the extent SLR has committed to
20 sell and to transfer same to Ballard Terminal Railroad Company LLC
21 (BTRC)), as well as obligations therein with respect to the
22 premises;
23

24 Whereas SLR also desires to assign, transfer and set over to
25 SeaTrans all of SLR's right, title and interest in and to the
26 Operating Agreement between SLR and BTRC dated _____
27 (hereinafter "Operating Agreement"), as well as all obligations
28 therein with respect to the premises;
29

30 Now, therefore, for valuable consideration, receipt whereof is
31 hereby acknowledged by SLR, and upon condition that City of Seattle
32 hold SLR harmless from all claims and liabilities (including claims
33 for attorneys' fees) arising out of said Contract, Operating
34 Agreement, this assignment, or actions and inactions pursuant
35 thereto, SLR does hereby assign, transfer and set over to SeaTrans
36 all of SLR's said right, title and interest in and to the Contract
37 (with the exception noted) and Operating Agreement with respect to
38 all property on or in the premises.
39

40 Dated:

SLR, Assignor:

41
42 by: _____

43
44 Title: _____
45
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1 City of Seattle, Department of Transportation hereby accepts
2 assignment of said Contract and Operating Agreement on the
3 condition stated, and agrees to assume, be bound by and fulfill all
4 of the terms, provisions, conditions and obligations in said
5 Contract to be performed by SLR as Buyer with respect to the
6 referenced property, and in said Operating Agreement to be
7 performed by SLR as Owner with respect to the premises, except that
8 City on no event shall be obligated to assume, nor be treated as
9 assuming, any active common carrier obligations with respect to
10 said premises.

11
12 Dated: City of Seattle, Department of
13 Transportation, Assignee:
14

15
16 By: _____
17

18 Title: _____
19

20 Ballard Terminal Railroad Company, LLC, which has provided
21 railroad services for SLR, pursuant to the Operating Agreement,
22 acknowledges this assignment, to which it has consented in advance,
23 and has further consented to serve as operator pursuant to a
modified PCN under 49 C.F.R. 1150.21, et seq., for which it has or
will make application, under the terms of the Operating Agreement
upon ownership of the premises by City of Seattle, and so assume
all attendant common carrier obligations.

27
28
29 Dated: Ballard Terminal Railroad Co.
30

31 By: _____
32

33 Title: _____
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Exhibit G -- form of notice of exemption for acquisition

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. _____

ADVENTURE TRAIL d/b/a SEA LION RAILROAD
-- ACQUISITION AND OPERATION --
THE BURLINGTON NORTHERN SANTA FE RAILWAY

NOTICE OF EXEMPTION

Dated: 8 July 1997
For filing: ?

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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. _____

ADVENTURE TRAIL d/b/a SEA LION RAILROAD
-- ACQUISITION AND OPERATION --
THE BURLINGTON NORTHERN SANTA FE RAILWAY

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NOTICE OF EXEMPTION

Adventure Trail, a Washington State non-profit corporation, d/b/a Sea Lion Railroad (hereinafter referred to as "SLR"), submits this Notice of Exemption pursuant to 49 C.F.R. § 1150.31, et seq., for the acquisition and operation of a line owned by The Burlington Northern Santa Fe Railway ("BNSF") known as the Ballard Branch, from MP 0.09 (1000 feet from clearpoint to mainline) to terminus at MP 2.7 (near Northwest 40th St.) in the Ballard region of the City of Seattle in King County, WA.

Per 49 C.F.R. § 1150.34, a caption summary is set forth in Exhibit A.

SLR submits the following information in compliance with 49 C.F.R. § 1150.33:

(a). Name and address of applicant: Adventure Trail d/b/a Sea Lion Railroad, Manager, P.O. Box 17883, Seattle, WA 98107.

(b). Name, address and telephone number of representative of applicant who should receive correspondence: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

(c). Statement concerning agreement: An agreement between applicant SLR and BNSF was executed by the parties on or about _____, 1997, with a closing contingent upon meeting certain contingencies, including compliance with the procedures of the Surface Transportation Board (STB).

(d). Operator: Applicant Adventure Trail d/b/a Sea Lion Railroad will provide rail service through a contract with Ballard Terminal Railroad Company.

(e). Brief summary of proposed transaction: SLR will acquire the Ballard Branch from approximately MP 0.09 (that being a point approximately 1000 feet from clearpoint to mainline) to end of line at MP 2.7 (approximately Northwest 40th St. in Ballard).

1. Name and address of transferor: The Burlington Northern and Santa Fe Railway Company, 3017 Lou Men Drive, Fort Worth, TX 76131-2830.

2. Proposed time schedule. The closing will occur on or after the later of (a) _____, or (b) seven days from date of filing of this notice with the STB.

3. Mileposts. Approximately MP 0.09 (approximately 1000 feet from clearpoint to mainline) to MP 2.7 (end of line at approximately Northwest 40th St.).

4. Total route miles. Approximately 2.7 miles.

(f) Map. A map indicating the area to be served, origins, termini, stations, cities, counties and state, is attached.

(g) Certificate of revenue. The required Certificate is attached.

Applicant acknowledges that it must preserve intact all sites
and structures more than 50 years old until compliance with the
requirements of section 106 of the National Historic Preservation
Act, 16 U.S.C. § 470f, is achieved.

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for Applicant
Adventure Trail
d/b/a Sea Lion Railroad

Atts.

Applicant SLR hereby submits the following caption summary prepared in accordance with 49 C.F.R. § 1150.34:

Surface Transportation Board

Notice of Exemption

STB Finance Docket No. _____

Adventure Trail d/b/a Sea Lion Railroad -- Acquisition and Operation Exemption -- The Burlington Northern and Santa Fe Railway Company

Adventure Trail d/b/a Sea Lion Railroad, a non-carrier, has filed a notice of exemption to acquire and to operate The Burlington Northern and Santa Fe Railway Company's line between approximately MP 0.09 (1000 feet from clearpoint to mainline) and approximately MP 2.7 (approximately Northwest 40th Street at end of line in Ballard) in the City of Seattle, King County, Washington. Comments must be filed with the Board and served on Charles H. Montange, 426 NW 162d St., Seattle, WA 98177, telephone (206) 546-1936.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certificate in Accordance
with 49 C.F.R. § 1150.33(g)

I, _____, _____ of Adventure Trail d/b/a Sea Lion
Railroad Project (SLR), hereby certify that applicant SLR's
projected revenues as a result of the transaction covered by this
notice of exemption will not exceed those that would qualify it as
a Class III carrier.

Verification

City of Seattle)
State of Washington) ss.

I, _____, being duly sworn, depose and state that I am
_____ of Sea Lion Railroad Project (SLR), that I am
authorized to make this verification, and that I have read the
foregoing Notice of Exemption, and know the facts asserted therein
are true and accurate as stated to the best of my knowledge,
information and belief.

Subscribed and sworn to before me this ____th day of _____, 1997.

Notary public

My commission expires: _____

2 Exhibit H -- letter to support grant application
3
4

5 draft: 3 September 1997
6

7 Mr. Ray Allred
8 Rail Office
9 Washington State Department of Transportation
10 310 Maple Park Ave. SE
11 P.O. Box 47387
12 Olympia, WA 98504
13

14 Re: Application for Grant from WSDOT Freight
15 Rail Assistance Program for "The Ballard
16 Line" in Seattle, WA
17

18 Dear Sirs:
19

20 This letter is on behalf of Sea Lion Railroad Project (SLR) in
21 connection with the Ballard branch of The Burlington Northern and
22 Santa Fe Railway Company (BNSF) railroad. SLR is the business name
23 for Adventure Trail, which in turn is an IRC 501(c)(3) Washington
24 State non-profit corporation dedicated, among other things, to
preserving otherwise to-be-abandoned railroad corridors.

25 SLR, Seattle, BNSF, and Ballard Terminal Railroad Company
26 (BTRC) have negotiated a transaction designed to preserve the
27 Ballard Branch for rail and trail purposes. A key purpose of the
28 transaction is to permit the continuation of rail service through
29 a new shortline railroad (BTRC), while at the same time allowing
30 extension of the Burke-Gilman Trail from Eighth Avenue to Eleventh
31 Avenue and north of the Government Locks. In order to accomplish
32 this purpose, SLR and Seattle currently plan to make the bulk of
33 the rail corridor (including track) available to BTRC for rail
34 operations for free. SLR will supply up to \$28,500 in the first
35 year for insurance and track repair. Seattle will not be
36 responsible for any subsidy for rail operations, other than
37 continuing the provision of free use of the real estate once
38 Seattle becomes owner. We see this as the only means to preserve
39 rail service to Ballard shippers consonant with recognizing the
40 underlying real estate values in the rail line. The transaction
41 is summarized in more detail below:
42
43
44

45 1. SLR will acquire, under an acquisition and operation
46 exemption from the Surface Transportation Board, all BNSF's
47 interests in the Ballard Branch (BNSF MP 0.09 to BNSF MP 2.7) in
48 Seattle. SLR will assume all common carrier obligations. The
49 current acquisition contract draft calls for a bargain sale
substantially below BNSF's appraised value for the entire line.
BTRC will serve as operator for SLR under an Operating Agreement.
SLR will enter into a memorandum of understanding with Seattle to

transfer all real estate interests to Seattle upon or shortly after the effective date of an STB authorization for railbanking of the Ballard Branch.

2. As soon as SLR acquires the line (expected approximately October 1, 1997), SLR will authorize BTRC to commence rehabilitation activities, with an eye toward commencing service as quickly as possible. SLR intends to pay \$10,000 toward rehabilitation, and pick up the first year's insurance (up to \$18,500). SLR will not charge any sum to BTRC for use of real estate or track.

3. SLR will petition STB for an authorization for abandonment. Seattle will file a "statement of willingness" invoking section 8(d) of the Trails Act ("railbanking"). SLR will consent to railbanking. BTRC and shippers will support railbanking. (STB authorization for railbanking will qualify the line for STB's "modified PCN" procedures, and allow transfer of the line by SLR to City without City assuming any common carrier obligations.) BTRC will file for a modified PCN, applicable when (a) STB authorizes railbanking, and (b) Seattle acquires the underlying rail corridor from SLR.

4. STB authorizes railbanking as requested by SLR and Seattle. STB issues the modified PCN. At this time, SLR transfers all real estate in the line (save one parcel to be transferred to BTRC for an engine house) to City at a price adequate to cover SLR's reasonably expected costs, and assigns the Operating Agreement with BTRC to Seattle. SLR transfers track and ties to BTRC. BTRC commences operation under the modified PCN.

At the conclusion of all these steps, SLR will have no ownership interest in real estate, track or ties. BTRC will own the track, ties, and other track material. Seattle will own all the real estate, save for the engine house parcel.

We currently estimate the elapsed time between SLR acquisition and ultimate transfer to the City of Seattle at approximately six months.

SLR and Seattle are willing to cooperate with BTRC in seeking grants from the Washington State Department of Transportation for rehabilitation of the line. Both SLR and Seattle require assurance on the following point: neither SLR nor Seattle wish to be liable for repayment of the grant when (a) the ownership of the track and ties (including any rehabilitation grant improvement) is transferred to BTRC, (b) the ownership of the underlying real estate is transferred to Seattle, (c) rail operations cease on the Ballard Branch at some future time, and (d) BTRC or its successor in interest engages in salvage of the track and ties (including any rehabilitation grant improvement). Seattle and SLR have no opposition to grant conditions rendering BTRC responsible for

2 repayment of some or portions of rehabilitation grants, or for
3 WSDOT having a contingent interest in the improvements, so long as
4 there is no claim back to Seattle or SLR.
5

6 In the event of rehabilitation financing from the State, SLR
7 will work with BTRC to accomplish rehabilitation.
8

9 The transaction with BNSF may close as early as the latter
10 part of September. In order to permit service to resume as quickly
11 as possible, we encourage the State to expedite consideration of
12 this grant application.
13

14 We are authorized to state that representatives of the City of
15 Seattle have reviewed this letter and concur in the representations
16 contained herein insofar as the representations bear upon the City.
17
18

19 Very truly,
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21 _____
22 for SLR
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25 Agreed:

26 _____
27 for Ballard Terminal Railroad Company
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Exhibit I -- form of BNSF-SLR acquisition agreement

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09/15/1997 08:45 2065463739
Sep. 15. 1997 10:24AM BNSF LEGAL

CHARLES H MONTANGE

PAGE 02
No. 9576 P. 2/8

DRAFT 9/12/97

AGREEMENT FOR THE TRANSFER OF
CERTAIN ASSETS, RIGHTS AND OBLIGATIONS
OF

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
(Formerly Known as Burlington Northern Railroad Company)

BY AND TO

ADVENTURE TRAIL,
DOING BUSINESS AS SEA LION RAILROAD

DRAFT 9/12/97

AGREEMENT FOR THE TRANSFER OF
CERTAIN ASSETS, RIGHTS AND OBLIGATIONS
OF

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
(Formerly Known as Burlington Northern Railroad Company)

BY AND TO

ADVENTURE TRAIL,
DOING BUSINESS AS SEA LION RAILROAD

This Agreement is entered into between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (formerly known as Burlington Northern Railroad Company), a Delaware corporation with its principal place of business at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830 (hereinafter referenced as "BNSF"), and ADVENTURE TRAIL, a non-profit tax-exempt corporation organized and existing under the laws of the State of Washington, with its principal place of business at _____ and doing business as Sea Lion Railroad (hereinafter referenced as "SLR").

WHEREAS, SLR desires to obtain and BNSF desires to transfer in a transaction that is part sale and part charitable donation (a "Bargain Sale"), on the terms and conditions set forth in this Agreement, BNSF's Ballard rail line and rail line corridor between MP 0.21 and MP 2.92 in Seattle, King County, Washington as more specifically identified in this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth herein, SLR and BNSF agree as follows:

1. Description of Assets and Business Transferred.

(a) BNSF shall convey by quit-claim deed to SLR on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set forth in the approved form of deed (or multiple deeds, as needed to effect and record the conveyance) attached hereto as Exhibit "A", all of BNSF's right, title and interest, if any, in the real property, improvements thereon, and right-of-way of BNSF's Ballard rail line and rail line corridor in Seattle, King County, Washington, as shown in schematic Exhibit "B" attached hereto, (hereinafter "Rail Line"), and more particularly described in the attached legal description.

(b) BNSF shall convey to SLR, on the date of Closing, the rail freight transportation business which BNSF conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement.

(c) BNSF shall convey to SLR, on the date of Closing, by a Bill(s) of Sale in the form of Exhibit "C" attached hereto, all of BNSF's right, title and interest, if any, in structures and equipment currently present or routinely used in the ownership and operation of the Rail Line, including without limitation, all rail, ties, spikes, tie plates, rail anchors, bridges, culverts, signaling equipment, crossings, roundhouses, depots, and other supporting structures, ballast, track materials and supplies (excluding any BNSF vehicles, maintenance equipment on wheels, radios, computer equipment, or any crossing signals owned in whole or in part or purchased by a municipality or other such entity.). From the Effective Date of this Agreement to the date of Closing, BNSF shall not remove any structures or equipment from the Rail Line, except in the

performance of routine maintenance and repair of the line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit C, Bill of Sale, and the terms and conditions set forth in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement.

(d) BNSF shall assign to SLR, on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by BNSF to SLR in accordance with the terms of this Agreement, all assignable rights, interest, authorizations and agreements pertaining to said Rail Line, and all obligations of BNSF to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit "D", Agreements to be Assigned to SLR in Whole or in Part ("Assigned Agreements"), which is attached hereto. SLR hereby accepts the assignment of all such rights and obligations, effective on the date of Closing, in accordance with their terms and the terms of this Agreement. BNSF, and not SLR, shall be responsible for performing all of BNSF's duties in assigned agreements which are required to be performed on or before the date of Closing. SLR, and not BNSF, shall be responsible for performing all assigned duties in assigned agreements which are required to be performed after the date of Closing. BNSF reserves all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to (i) BNSF's retained interests pursuant to this Agreement; or (ii) one or more other rail lines or property of BNSF not included in this transaction. If any contract is related to the Properties and inadvertently is not identified in Exhibit D, it is the intent of BNSF and SLR that such contract be deemed to have been assigned by BNSF to SLR, in whole or in part as appropriate, effective the date of Closing. BNSF promptly shall provide to SLR a copy of such contract immediately upon locating it. Buyer shall make no claim against

BNSF arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by BNSF to SLR, in whole or in part. It is the intent of both BNSF and SLR that all assignments of rights and obligations related to the Properties shall be effective on the date of Closing.

(c) Inspection. Promptly after the date of execution of this Agreement and up to Closing, BNSF shall upon reasonable notice (i) subject to SLR signing BNSF's standard Right of Entry Agreement (the form of which has been approved by SLR as of the Effective Date hereof and is attached hereto as Exhibit "E"), provide access to and cooperate with SLR and its agents in the inspection of the premises; (ii) provide to SLR copies of the current track profiles and valuation maps which may be in BNSF's possession and (iii) at BNSF's request, and SLR's convenience, provide access to the Rail Line to SLR and its agents for the performance of a land survey or environmental investigations (at SLR's sole cost) subject to SLR and its contractor's signing BNSF's standard Right of Entry Agreement.

(f) Title Insurance. At SLR's option and expense, SLR may seek to obtain a binding commitment for title insurance for the Rail Line. BNSF shall provide reasonable and necessary cooperation and administrative assistance (but not monetary or otherwise) to SLR in any such efforts or in SLR's attempts to cure title defects, where possible; provided, however, SLR acknowledges that BNSF provides no guarantees of success in either obtaining title insurance or curing title defects.

2. Terms of Transfer.

(a) SLR agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults".
- (2) To assume or arrange for the assumption of all common carrier obligations pertaining to said Rail Line as may be required by law.
- (3) To pay on or before the date of Closing the total sum of \$ 582,871.00 by wire transfer to either: (i) BNSF, or (ii) Apex Property & Burlington Exchange, Inc. ("APEX"), BNSF's intended assignee of BNSF's right to receive payment hereunder. The wire transfer by SLR shall be made in accordance with written wire transfer instructions provided to SLR by BNSF at least thirty (30) days prior to Closing. BNSF represents that APEX is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation 1.1031(k)-1(g). BNSF intends to assign to APEX BNSF's right to receive payment of the purchase price for the Rail Line, for the purpose of BNSF completing a tax-deferred exchange. An initial deposit on the total amount of \$58,287.10 shall be wired within two working days of final execution of this Agreement by both parties.
- (4) To cooperate with BNSF, with respect to any tax-deferred exchange or any other tax-related transaction (including, without limitation, any donation tax deductions resulting from this transfer) pertaining to the transfer of the Rail Line and to execute such documents as may be required to effect any tax-deferred exchange or other tax-related transaction.

- (5) SLR acknowledges that the fair market value of the Rail Line pursuant to an independent appraisal of the Rail Line is represented to be substantially higher than the consideration paid hereunder, and SLR agrees to accept a donation (Bargain Sale) of the Rail Line to the extent that the fair market value of the Rail Line is in excess of the payment required by paragraph 2.(a)(3) above, which SLR acknowledges is not representative of the fair market value of the Rail Line. SLR agrees to take all actions and execute all documents, including, but not limited to, the Donee Acknowledgment section of Internal Revenue Service Form 8283, which are necessary to allow BNSF to take a tax deduction with regard to the donation (Bargain Sale) described herein.
- (6) To pay in addition to the sum of \$ 582,871.00, all costs of Closing (except BNSF's costs of preparation of documents to be delivered at Closing). This includes, but is not limited to, any transaction fees, escrow and service fees, wire service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

(b) This transaction and the consideration paid by SLR is not divisible.

3. Governmental Approval.

(a) Promptly following execution of this Agreement, SLR, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from approval, of this transaction by the Surface Transportation Board of the United States

Department of Transportation ("STB"), and other governmental agencies, as appropriate. BNSF shall cooperate reasonably with SLR to secure approval of this transaction by the STB and any other governmental agencies. SLR shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before October 1, 1997. SLR shall permit BNSF to review and comment on prior to filing all documents proposed by SLR to be filed with the STB, or any court, to secure legal approval or exemption of this transaction. In the event the STB refuses to grant or revoke authority for the transfer of the Rail Line, this transaction shall be rescinded, and any deposits paid by SLR shall be refunded within a reasonable period of time after an administratively final decision denying or revoking authority for the transfer.

4. Representations and Warranties.

(a) BNSF hereby represents and warrants to SLR and SLR's successors and assignees, the following facts, as of the date of this Agreement and as of the date of Closing:

- (1) BNSF is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and is qualified to do business as a foreign corporation in the State of Washington;
- (2) BNSF has the corporate power and authority to enter into this Agreement, to make the donation (Bargain Sale) described herein, and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of BNSF, and no further corporate proceedings of BNSF are required to complete the transactions covered by this Agreement;

- (4) There is no provision in the Certificate of Incorporation or By-Laws of BNSF which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) The negotiations related to this Agreement have been handled by BNSF on its own behalf, without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;

(b) SLR hereby represents and warrants to BNSF, and BNSF's successors and assigns, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) SLR is a non-profit corporation, validly existing and in good standing under the laws of the District of Columbia;
- (2) SLR is a qualified donee pursuant to Section 501(c)(3) of the U.S. Tax Code and any rules and regulations thereunder;
- (3) SLR has all requisite authority to acquire BNSF's rights and properties which are conveyed to SLR by this Agreement; to enter into this Agreement; to conduct or make arrangements to have conducted, rail freight transportation business on the Rail Line (as of the date of Closing only); and to perform all of SLR's obligations under this Agreement;

- (4) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary actions by SLR;
- (5) There is no provision in the SLR's corporate charter, by-laws (or other similar documents of incorporation), or laws of the State of Washington, which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) As of the date of Closing only, SLR will have obtained all legal authority which is necessary to enable SLR to conduct or make arrangements to have conducted rail freight transportation operations over the Rail Line (as of the date of Closing only) and assumption (or arrangement of assumption by a third party) of all common carrier liability therefor;
- (7) The negotiations related to this Agreement have been handled by SLR on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (8) To the best of SLR's knowledge, neither SLR nor any of SLR's financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad.

5. Inspection and Condition of Rail Line.

(a) SLR acknowledges that SLR has inspected the Rail Line, including improvements and structures on the Rail Line. SLR further acknowledges that no representation has been made by BNSF to SLR concerning the state, condition or quality of title of the Rail Line, or the age of any improvements on the Rail Line.

(b) BNSF HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES, OR THE QUALITY OF TITLE TO THE RAIL LINE. BNSF SHALL NOT BE LIABLE TO SLR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SLR ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON BNSF'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6. Management Operation and Maintenance of the Premises.

SLR assumes full and complete responsibility -- whether financial or otherwise -- for the management, operation and maintenance of the conveyed premises, and under no circumstances shall BNSF be required to manage, operate or maintain the conveyed premises after Closing. In

no event shall this agreement be construed to create a joint enterprise for the use or operation of premises.

7. Indemnity of SLR

SLR will indemnify and hold BNSF harmless from any and all liability (including without limitation, strict liability regardless of BNSF's negligence), cost or expense, including attorneys' fees, arising from the actions or inactions of SLR, its agents and invitees and any third party trespasser(s) after the date of Closing or arising as a result of this sale, including injuries, death, or property loss or damage. SLR shall protect, hold harmless and indemnify BNSF against any claim or liability arising from or based on the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, whether by SLR or its employee, agents or subcontractors. Except as otherwise provided in Paragraph 9 below, SLR assumes the risk that hazardous substances and contaminants may be present on the premises, and indemnifies, holds harmless, and hereby waives, releases and discharges BNSF from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the premises or the presence of any hazardous substances or contaminants in, or under the premises. SLR shall be responsible for defense of any litigation contesting the right of the parties hereto to enter into or effectuate this Agreement. In the event that SLR does not actively defend against such claims on its own behalf and/or in joint defense with BNSF, SLR agrees to reimburse BNSF for reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees incurred by BNSF in connection with litigation arising out of the transfer or use of

the premises covered by this Agreement SLR warrants to BNSF that SLR (or its operator, contractor, agent, or assignee or other party in possession, custody, or control of the Rail Line in lieu of SLR) shall, at its own expense, obtain and maintain in force during rail operations and/or interim trail use Commercial General Liability Insurance for all claims arising out of bodily injury, illness and death and from damages to or destruction of property of others, including loss or use thereof, and including liability of BNSF (excepting any liability of BNSF resulting from use of its retained interests pursuant to paragraph 1(b) herein,) with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, with an aggregate of \$5,000,000. In the event SLR assigns this Agreement to a political subdivision, a Certificate of Self Insurance up to said amounts for the same or similar coverage shall be sufficient for said assignee. Evidence of insurance (or self insurance, as the case may be) shall be provided to BNSF prior to Closing.

8. BNSF's Indemnity

Subject to the provisions of Section 9 pertaining expressly to environmental liability, BNSF will indemnify and hold SLR harmless from any and all liability, cost or expense, including attorneys' fees, incurred by or assessed against SLR arising before the date of closing on account of injuries, death, or property loss or damage resulting from BNSF's willful or negligent acts or omissions in connection with BNSF's use, operation or maintenance of the premises.

9. Environmental Liability

(a) Seller shall indemnify, defend and hold Buyer harmless from all costs, losses, liabilities, obligations and claims that may arise from (i) Seller's failure to comply with any

applicable environmental laws before Closing or (ii) the release or disposal of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises before Closing.

(b) Buyer shall indemnify, defend, and hold Seller harmless from all costs, losses, liabilities, obligations, and claims of any nature whatsoever that may arise from (i) Buyer's failure to comply with any applicable environmental laws with respect to the premises after Closing or (ii) the storage, disposal or release of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises after Closing. For purposes of this Paragraph 9(b), the term "release" does not include any further or continuing release of any hazardous substances or other environmental contamination that was otherwise present on the premises as of Closing.

As used above, the term "applicable environmental laws" means all state, federal or local laws, statutes, ordinances, rules, regulations or orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Washington State Model Toxics Control Act ("MTCA"), as each is amended from time to time. As used herein, the terms "hazardous substance" and "release" (except as provided above in Paragraph 9(b)) have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA (except as provided above in Paragraph 9(b)(ii)). If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this Agreement after the effective

date of the amendment. Moreover, to the extent that Washington law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

10. Salvage Conditions

In the event salvage is conducted upon approval of governmental authorities, SLR or its contractor shall ensure the following conditions are satisfied:

(a) SLR (or its agent) shall, at its own expense, obtain all necessary permits and licenses and shall comply in all respects with any and all federal, state, and local ordinances, laws, or regulations applicable to salvage or track materials obtained pursuant to this Agreement.

(b) SLR shall keep open and in safe condition all public or private highways, highway crossings, and highway approaches that may be affected by its operations hereunder, unless permission to the contrary is given by proper public or private authority, as the case may be.

(c) Whenever, upon proper authority having been obtained, highways, highway crossings, or highway approaches are temporarily closed, disturbed, or detours established, SLR, at its own expense, shall erect and maintain suitable barriers, warning signs, and lights for the protection of the public and interested owners of private property affected.

(d) At the completion of work, public and private highways, highway crossings, and highway approaches that have been disturbed by SLR's operations shall be restored by and at the expense of SLR to a condition satisfactory to any interested public authority.

(e) SLR IS PLACED ON NOTICE THAT FIBER OPTIC, COMMUNICATIONS, CONTROL SYSTEMS, AND OTHER TYPES OF CABLES MAY BE BURIED ON THE PROPERTIES. Before beginning work, SLR shall telephone BNSF's Communications Network

Control Center 1-800-533-2891 (a 24 hour number) to determine if cable systems are buried on the property. The Communication Network Control Center will contact the appropriate personnel to have cables located and make arrangements with SLR for protective measures that must be adhered to prior to the commencement of any work on the property. In addition to the liability terms elsewhere in this Agreement, SLR shall indemnify and hold BNSF harmless against and from all costs, liability and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of SLR, its subcontractors, agents and/or employees, that cause or in any way or decree contribute to (1) any damage to or destruction of any telecommunications system by SLR, and/or its subcontractors, agents and/or employees, on the property (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on the properties, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

11. Maintenance.

Through the Closing Date, BNSF agrees to be responsible for the operation, maintenance and repair of the Rail Line (and associated structures and equipment).

12. Obligations are Continuing.

The representations, warranties and obligations of SLR and BNSF in this Agreement are continuing and survive the Closing. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both SLR and BNSF, or their respective successors or assigns.

13. Closing.

(a) At Closing, BNSF shall deliver to SLR the following documents:

- (1) A sufficient number of original counterparts of an executed Quitclaim Deed to the Rail Line, in exact form as the Quitclaim Deed attached hereto as Exhibit A, to enable SLR to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;
- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit B;
- (3) All other documents and agreements required from BNSF under this Agreement.

(b) At Closing, SLR shall deliver to BNSF or APEX (if so directed by BNSF) the balance of any sums due hereunder pursuant to Paragraph 2 of this Agreement.

14. Proration.

Real estate taxes, prepaid rentals, utilities, and other income or fees attributable to the Rail Line interests transferred to SLR under the terms of this Agreement, shall be prorated between BNSF and SLR in such manner as to allocate to BNSF all income, taxes and expenses attributable on or prior to the date of Closing, and to allocate to SLR all income, taxes and expenses attributable after the date of Closing. The sum paid by SLR to BNSF or Apex at Closing shall not be adjusted based on this proration, but payment settling in full all prorated items shall be made no later than 60 days following the date of Closing.

15. Interchange.

SLR and/or its designated operator and BNSF shall designate a location at which they may interchange rail freight cars and equipment upon transfer of operations and shall reach mutual agreement upon the essential terms and conditions of such potential interchange.

16. Transfer of Operations.

All rail operations on the Rail Line shall be transferred from BNSF to SLR (or its contractor or agent as the case may be) at 12:01 a.m. on the day following the date of Closing subject to the terms of this Agreement.

17. Rail Line Operations.

From the effective date hereof through and including the Closing Date, BNSF shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; (b) any freight loss and damage claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line.

18. Governing Law and Dispute Resolution.

This agreement shall be governed by the laws of the State of Washington. In the event any dispute between SLR (or its assigns) and BNSF (or its assigns) arises out of or relates to the construction of and/or performance under this Agreement, the dispute shall be resolved by binding arbitration pursuant to the Commercial Rules of Arbitration, as amended from time to time, of the American Arbitration Association.

19. Effect of Waiver.

Any waiver by either SLR or BNSF or failure of either SLR or BNSF to insist upon full and complete performance by BNSF or SLR of obligations set forth in this Agreement shall not

constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

20. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

BNSF: Mr. Jim O'Neil
Vice President
Property Management Department
The Burlington Northern and Santa Fe Railway Company
P. O. Box 961050
Fort Worth, Texas 76161-0050

SLR: Mr. David Burwell
Rails to Trails Conservancy
1400 Sixteenth Street, N.W.
Suite 300
Washington, D.C. 20036

Mr. Charles Montange
425 N.W. 162nd Street
Seattle, Washington 98177

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

21. Entire Agreement; Integration of Agreement.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between SLR and BNSF relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, concerning the subject matter hereof are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of SLR or BNSF. All rights and obligations of SLR and BNSF set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement.

22. Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors in interest of the respective parties hereto.

23. Recording.

The parties agree to execute all documents necessary for the recording of the entry by the parties into this Agreement or for the Closing of this transaction.

24. Cooperation.

BNSF and SLR shall cooperate to complete the requirements and Closing of this Agreement. Each party shall bear its respective costs for staff, consultants and attorneys utilized to enter into and complete the requirements of this Agreement.

25. Liens of Seiler's Mortgages

BNSF shall deliver to SLR, who shall place of record, good and sufficient releases of the liens of BNSF's mortgages, where required under the terms of any mortgage on the premises, within a reasonable period of time after Closing. In the event the BNSF shall be unable to obtain said releases for any reason within two (2) years from the date of the Closing, the BNSF shall have the right to terminate this agreement upon serving written notice of termination upon SLR within thirty (30) days thereafter, and both parties shall thereupon be released and discharged from all liabilities and obligations hereunder, except that BNSF shall repay to SLR any sums paid hereunder upon a reconveyance of title to the premises to BNSF free and clear of defects or obligations to the same extent as if no conveyance had been made to SLR hereunder.

26. Future Trail Development North of Seaview Avenue

In the event SLR elects to develop a trail north of Seaview Avenue, the following criteria shall be applicable:

(a) BNSF shall retain a non-exclusive easement to use the current access road north of Seaview Avenue extended northerly to the intersection of the Ballard right-of-way with the North line of West 65th Street extended southerly for access to BNSF's mainline, provided, however, that the parties recognize the access road may be shifted to the east to provide space for the interchange track, and may be used by SLR for trail purposes, and provided, further, that in no event will any design changes result in disruption of BNSF's ingress and egress to BNSF's mainline;

(b) SLR shall develop any jointly used access road and trail such that the facility will support SLR's vehicles and equipment;

(c) SLR shall install and maintain a six foot high chain link fence between the jointly used access road and trail and BNSF's mainline, provided, however, that said fence shall allow access to the 65th Street underpass and shall have gates precluding access by the general public to i) BNSF's mainline; ii) the remainder of the access road onto BNSF's property north of the 65th Street underpass; and iii) the Ballard Branch interchange;

(d) SLR will install a fence or divider three to three and one-half feet high on the west side of the jointly used access road and trail;

(e) SLR may provide a crossing of the Ballard Branch interchange tracks on the north side of the interchange area for access to Seaview Avenue, and SLR agrees that any such crossing will i) not unreasonably interfere with BNSF's interchange operations; ii) be designed with adequate crossing protection, which at a minimum provided for zig-zag barriers or other similar structures or devices intended to slow and/or stop trail traffic at the crossing;

(f) In order to accommodate SLR's trail development plans, SLR may, at SLR's expense, elevate the access road and trail, provided no such development will result in any degradation of the toe of the slope of the existing main line grade located east of the current track structure; and

(g) SLR shall be responsible for ensuring adequate drainage is provided, at SLR's expense, to the extent drainage work is required to accommodate future trail development. The parties agree that a conceptual design reasonably similar to that set forth in the attached Exhibit ___ is generally acceptable;

(h) All fence, gate, and divider clearances from trackage shall meet or exceed any clearances required by federal, state, regulatory, or municipal law as such laws and regulations may be amended from time to time.

(i) Notwithstanding any provision to the contrary, any design of a trail, interchange track, and/or design changes to BNSF's existing road access in the area shall be done with prior consultation and approval of BNSF's engineering personnel, which approval shall not be unreasonably withheld or delayed.

27. Effective Date.

The effective date of this Agreement shall be the ____ day of _____, 1997 ("Effective Date").

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of the Effective Date.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____

Title: _____

ADVENTURE TRAIL,
doing business as Sea Lion Railroad

By: _____

Title: _____

STATE OF TEXAS §
COUNTY OF TARRANT §

On this _____ day of _____, 1997, before me, a notary public in and for said county and state, personally appeared _____ and _____ of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, known to me to be the identical persons and who acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

WITNESS my hand and notarial seal the date above written.

Notary Public

STATE OF _____ §
COUNTY OF _____ §

On this _____ day of _____, 1997, before me, a notary public in and for said county and state, personally appeared _____ and _____ of ADVENTURE TRAIL, doing business as Sea Lion Railroad, known to me to be the identical persons and who acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

WITNESS my hand and notarial seal the date above written.

Notary Public

Exhibit J -- form of letter from Seattle to BNSF

draft: 28 August 1997

Mr. Douglas Babb
Senior Vice President
The Burlington Northern and Santa Fe Railway Company
3017 Lou Menck Drive
Fort Worth, TX 76161

Re: Burke-Gilman Agreements and
BNSF-SLR Transaction

Dear Mr. Babb:

This letter is to confirm to The Burlington Northern and Santa Fe Railway Company (BNSF), as successor to the Burlington Northern Railroad Company (BN), that the City of Seattle hereby waives its right of first refusal provided in paragraph 7 of the Burke-Gilman Agreement dated 24 January 1989 between the City and BN with respect to the Ballard Line defined as BNSF MP 0.09 (that being a point approximately 1000 feet south of the clearpoint to the mainline) to end of line at approximately BNSF MP 2.70 (approximately 45th St.) in the Ballard district in Seattle, provided:

a) BNSF sells and otherwise transfers the entire Line to SLR in a fashion permitting Sea Lion Railroad (SLR) either to continue rail operations on the property or to railbank the property pursuant to 16 U.S.C. 1247(d);

b) BNSF also enters into appropriate interchange arrangements acceptable to SLR or its nominee (Ballard Terminal Railroad Company) for continued rail operation.

The intent of the 24 January 1989 agreement was to preserve, among other things, the Ballard Line for continued public purposes, including extension of the City trail system. Paragraph 13 of the 24 January 1989 agreement anticipates that the parties may take additional acts to implement the intent of the agreement. The City regards transfer of the property in question from BNSF to SLR as an additional act "reasonably require[d] to consummate the transactions contemplated" under the 24 January 1989 agreement. The City further regards the transfer as consistent with the Trail Implementation Agreement between BN and the City dated 23 September 1991.

The City supports acquisition of the Ballard Line by SLR, railbanking of the Ballard Line by SLR, operation of the Ballard Line for rail purposes under a "modified PCN" by Ballard Terminal Railroad Company upon transfer of the railbanked premises to the

City, and joint operation of the premises for public purposes
(including trails) by the City compatible with rail operation under
the modified PCN. The City on no account wishes to assume any
common carrier obligations itself. The City does desire to ensure
that the entire corridor is preserved intact, and the transaction
between BNSF and SLR is part of an approach which is the most
efficient, cost-effective, and reasonable method to accomplish the
City's goals. We appreciate BNSF's cooperation in this effort.

Very truly,

Bruce Brooks
Deputy Mayor

2
3
4 Exhibit K -- Form of MOU SLR/Seattle
5
6

7 28 August 1997
8

9 Memorandum of Understanding
10

11 The City of Seattle ("City"), a municipal corporation of the
12 State of Washington, and Adventure Trail d/b/a Sea Lion Railroad
13 Project ("SLR"), a District of Columbia non-profit corporation,
14 hereby enter into the following Memorandum of Understanding (MOU):

15 1. SLR will employ its best efforts to acquire all property
16 interests from The Burlington Northern and Santa Fe Railway Company
17 (BNSF) in the Ballard Branch from approximately BNSF MP 0.09 (1000
18 feet from mainline) to terminus of line at approximately BNSF MP
19 2.70 (45th St.) in Ballard. SLR intends to transfer, and City
20 intends to accept, all real estate interests obtained by SLR
21 pursuant to that contract, save only for the parcel specified in
22 the Operating Agreement (see below) for use as a locomotive
23 facility. SLR will submit the final form of the purchase agreement
24 to City for approval as to form before SLR executes said contract.
25 SLR intends to transfer, and City intends to assume, all
26 obligations and responsibilities SLR acquires with respect to the
27 real estate under the BNSF/SLR contract. If the agreement between
28 BNSF and SLR is acceptable, City will expeditiously supply SLR with
29 a letter stating "The agreement for purchase of the Ballard Branch
30 between BNSF and SLR dated ____, 1997, is acceptable as to form."

31 2. SLR will employ its best efforts to enter into an
32 Operating Agreement with Ballard Terminal Railroad Company in a
33 form acceptable to the City. City shall acknowledge the
34 acceptability of the form of an Operating Agreement by signing a
35 statement to such effect on the Operating Agreement.
36

37 3. Subsequent to acknowledgment of the acceptability of the
38 form of the Operating Agreement, the City shall employ its best
39 efforts to adopt a franchise ordinance consistent with authorizing
40 Ballard Terminal Railroad Company to operate on behalf of the City
41 pursuant to a modified certificate of public convenience and
42 necessity (modified PCN). Upon adoption of said franchise, SLR
43 will employ its best efforts to petition the Surface Transportation
44 Board (STB) for an expedited abandonment authorization, including
45 exemptions from "offer of financial assistance" ("OFA") and public
46 use provisions. City promptly will file a "statement of
47 willingness" to assume financial responsibility, and otherwise
48 coordinate and cooperate with SLR in obtaining authorization for
railbanking the Ballard Branch. City will bear all reasonable
legal fees incurred by SLR in obtaining railbanking authorization.
SLR shall bear all filing fees for the petition.

4. When STB authorizes the line for railbanking, City agrees to employ its best efforts to obtain final City Council approval for acquisition of all real estate interests in the corridor (except for a parcel designated for the locomotive facility) from SLR. It is the intent of the parties that the City shall be in a position to accept assignment of the obligations, rights and responsibilities of SLR under the Operating Agreement with Ballard Terminal Railroad Company and the obligations, rights and responsibilities of SLR with respect to BNSF. The City understands and acknowledges that it will seek Council approval to accept the property in AS IS, WHERE IS condition, and that it will hold SLR harmless from liability for actions or inactions upon the corridor. SLR warrants and agrees that it will not authorize any additional uses on the corridor except as specifically provided in the Operating Agreement with Ballard Terminal Railroad Company, without thirty (30) days prior notice and consultation with the City.

5. Subject to completion of appraisals to demonstrate that the value of fee-owned parcels in the corridor meets or exceeds the sum of \$710,000, City offers and agrees to pay SLR that amount in cash for the transfer of real estate interests in the corridor, but not including track, ties, or other track material, by quitclaim deed. That sum shall be reduced by an amount equal to \$14.50 per square foot multiplied by the square footage of land owned in fee by SLR that is conveyed by SLR to BTRC for use as a locomotive storage area. The amount payable shall be paid in cash, as of closing. City agrees to assume all closing costs, excise taxes, and other fees, and to pay any property taxes incurred by SLR in the period of SLR ownership, as of closing. City and SLR agree to cooperate to achieve closing as soon as possible after the issuance of an effective railbanking order, but in a fashion consistent with continuity of rail service under a modified certificate of public convenience and necessity. City shall not withdraw this offer and agreement any earlier than twenty days following the effective date of an STB order authorizing railbanking of the premises. SLR may accept this offer and agreement at any time that it remains outstanding.

6. In the event (i) STB declines to issue an authorization for an exempt abandonment/railbanking within ten (10) months of SLR's application for such an exemption; or (ii) STB issues an effective Notice of Interim Trails Use, SLR notifies City of acceptance of the offer and agreement set forth in paragraph 5, and City fails to acquire the property within two months thereafter, SLR may dispose of the property or interests in the property as SLR sees fit without further obligation to City.

7. During the period of SLR ownership, SLR shall not approve any construction plans tendered it for approval by Ballard Terminal Railroad Company which the City determines interfere with future trail plans. City acknowledges that SLR as Owner has only thirty days from receipt in which to review such plans. City acknowledges

2 that it must complete review within that period or it shall be
3 deemed to have waived objections. SLR undertakes to employ its
4 best efforts promptly to tender any plans received from BTRC to
5 City.

6 8. City accepts Ballard Terminal Railroad Company as SLR's
7 operator prior to City acquisition of the Ballard Branch.

8 9. Notices under this agreement shall be sent as follows:
9 if to City, to Director of Seattle Transportation Department,
10 City of Seattle, 600 -- 4th Ave., 4th Floor, Seattle, WA 98104;
11 fax -- 206-684-5180.
12

13 if to SLR, to Manager, SLR, P.O. Box 17883, Seattle, WA 98107;
14 fax -- 206-706-1991.
15

16 10. City agrees to hold SLR harmless from any claims for
17 injury or property damage, including attorneys' fees, that arise by
18 reason of operation of the Burke-Gilman Trail or extensions thereof
19 in the corridor during the period of SLR ownership.
20

21 11. The parties agree to cooperate in the execution of such
22 further agreements, or in the taking of such additional actions, as
23 may be necessary to accomplish the intent of this MOU.
24

25 12. City represents that it has authority from City Council
26 to acquire the property from SLR.
27

28 13. Upon SLR and BTRC executing an Operating Agreement, City
29 and SLR will cooperate with BTRC in seeking rehabilitation grant
30 financing from the State, provided, however, that neither City nor
31 SLR incur any liability by reason of the grant when property is
32 transferred as contemplated between the parties, or in the event
33 rail service ceases and a party other than SLR or the City salvages
34 track, ties, or other track material.
35

36 14. At any time after acquisition of the premises by SLR,
37 City shall have a right of entry to perform such surveys and
38 preliminary studies as are reasonable and appropriate to expedite
39 construction of additions to the Burke-Gilman Trail west of the
40 Government Locks and between 8th Avenue and 11th Avenue upon City
41 acquisition, provided, however, that City agrees to hold SLR
42 harmless from any claims, including claims for personal injury,
43 property damage, attorneys fees, court costs, or penalties, arising
44 due to any action or inaction of the City under this right of
45 entry.
46

47 15. This Memorandum of Understanding is subject to whatever
48 orders or conditions are placed upon the subject property by the
49 Surface Transportation Board.
50

City of Seattle

by:

Boyle G. G. G.
Director, Seafair

9/16/97

Adventure Trail d/b/a Sea Lion
Railroad (SLR)

by:

Fred Wert

9/16/97

Appendix G

Ordinance 118743

ORDINANCE No.

118734

COUNCIL BILL No.

111841

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between Sixth Avenue North West and North West 67th Street, for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

OK

COMPTROLLER FILE No.

Introduced:	AUG 18 1997	By:	McIVER
Referred:	AUG 18 1997	To:	TRANSPORTATION
Referred:		To:	
Referred:		To:	
Reported:	9-29-97	Second Reading:	
Third Reading:	9-29-97	Signed:	9-29-97
Presented to Mayor:	9-29-97	Approved:	OCT - 6 1997
Returned to City Clerk:	OCT - 6 1997	Publisher:	Full SPR
Vetoed by Mayor:		Veto Published:	
Passed over Veto:		Veto Sustained:	

Law Department

The City of Seattle

Honorable President:

Your Committee on

to which was referred the within Council Bill No. report that we have considered the same and recommend

PASS 2-0 - 9/16/97

9-29-97 Full Council Action

NO DISK

Law Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____

report that we have considered the same and respectfully recommend that the same:

Pass 2-0 - 9/16/97

9-29-97 Full Council Action Passed 9-0

NO DISK

Committee Chair

ORDINANCE 118734

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between 6th Avenue Northwest and Northwest 67th Street for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

WHEREAS, the Burlington Northern and Santa Fe Railway Company (BNSF) has expressed its intention to abandon that part of its line between BNSF Milepost 0.09 and BNSF Milepost 02.70 in the Ballard area of the city; and

WHEREAS, in 1988 the Burlington Northern Railroad Company and The City of Seattle set forth their joint objective to maintain a permanent linear corridor along selected railroad rights-of-way for trail purposes, including the right-of-way designated as the "North Ship Canal," being the Section from Third Avenue NW to the connection with the north/south rail line at NW 68th Street, which Section includes the above Mileposts; and

WHEREAS, the City's long-held policy is also to support rail-served businesses along the selected railroad rights-of-way; and

WHEREAS, Resolution 29474, passed November 12, 1996, reiterated the City's commitment to railbanking the North Ship Canal right-of-way for trail purposes and specified a preferred location for the trail's extension; and

WHEREAS, the Ballard Terminal Railroad Company (BTRC) recently has been formed to provide rail service to businesses located in the Ballard industrial area; and

WHEREAS, BNSF intends to enter into agreements that will result in the right-of-way being railbanked and owned by the City, and the rails, ties and other track materials being owned and used for rail service by BTRC pursuant to a modified certificate of public convenience and necessity issued by the Surface Transportation Board as authorized by 49 C.F.R. 1150.21 *et seq.*; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Conditions of Grant.

(a) That The City of Seattle ("the City") does hereby grant to Ballard Terminal Railroad Company ("Grantee"), a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own and operate standard gauge railroad tracks in, upon, along and across Burlington Northern and Santa Fe Railway Company's current Milepost designations M.P. 0.09 to M.P. 02.70 of the existing rail line previously owned by the Burlington Northern and Santa Fe Railway Company in Ballard, for a term of thirty (30) years, expiring at 11:59 p.m. on September 29th, 2027.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 (b) That this ordinance shall be effective only when the following conditions
2 are first satisfied: (i) that an interchange agreement with Burlington Northern and Santa Fe Railway
3 Company exists to which Grantee is a party; (ii) that the rail line has been authorized for preservation
4 under 16 U.S.C. § 1247(d) as administered by the Surface Transportation Board; (iii) that the City has
5 acquired the rail line pursuant to 16 U.S.C. § 1247(d); (iv) that Grantee has entered into an Operating
6 Agreement with The City of Seattle in conformity to this ordinance and specifying a program of joint
7 use permitting for interim trail use alongside rail use at least in those locations where the rail is not in
8 street right-of-way; (v) that Grantee has obtained a modified certificate of public convenience and
9 necessity as provided for in 49 C.F.R. § 1150.21-23 for operation of the rail line; (vi) the City's Risk
10 Manager has approved liability insurance policies in accordance with Section 14 herein; and (vii) that
11 the City shall not acquire any freight railroad common carrier obligations by reason of this ordinance
12 and the Operating Agreement entered pursuant thereto.

14 (c) The Operating Agreement shall provide that Grantee shall not be required
15 to pay a fee for use of City property under this ordinance, provided (i) Grantee agrees to be fully
16 responsible for all costs of maintenance, operation, and rehabilitation of the railroad, including but not
17 limited to maintenance of crossings, acquisition of liability insurance, maintenance of way, and all
18 liability for accidents occurring on the property used by the railroad or arising out of railroad operations,
19 and provided further (ii) Grantee shall provide a minimum level of freight rail service equal to 30
20 carloads picked up or delivered to freight rail customers on the line, per year, averaged over any three-
21 year period, as more particularly specified in the Operating Agreement. In the event the minimum level
22 of service is not met, or the conditions stated at Section 1 (c) (ii) are not met, the Operating Agreement
23 shall provide that, in addition to such other remedies as may be available to the City, the City in its
24 discretion may require Grantee to take appropriate action in conformity to instructions from the City
25 within no less than ninety days to terminate freight rail service, including appropriate filings with any
26 agencies with rail regulatory jurisdiction.

28 (d) The Director is authorized to enter into an Operating Agreement consistent
29 with this ordinance. The Director is further authorized to allow passenger use on terms and conditions
30 as provided in said Operating Agreement.
31
32
33

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1 (e) The City may, from time to time, cooperate with Grantee in seeking grants
2 in aid from State sources for rehabilitation of the line, provided, however, that the City shall not be liable
3 for repayment of the grant except to the extent funds are available to the City from salvaged materials
4 attributable to the grant in the event rail service is discontinued and provided further that the City at its
5 option may impose a fee sufficient to recover its costs for administering the grant.
6

7 **Section 2.** The tracks of standard gauge railway shall be located, laid down, constructed and
8 maintained within the portions of right-of-way described on Attachment A hereto.
9

10 **Section 3.** The City shall retain the same control of the streets, avenues, multi-use trails, and
11 other rights-of-way in and across which said railway tracks shall be laid down as over other streets,
12 avenues, multi-use trails and other rights-of-way within the City, and shall have the right at all times by
13 general ordinance, to regulate the speed of the locomotives, cars and trains within the limits of the
14 franchise right-of-way herein granted, and the maximum period of time for which such locomotives, cars
15 and trains shall be allowed to blockade travel along and across the streets, avenues, multi-use trails and
16 intersecting streets embraced in this grant, and shall have such further control and police power over
17 such franchise rights-of-way and tracks, and the use thereof, as the City Charter and the Federal and
18 State Constitutions and laws may now or hereafter permit. Grantee shall comply with SMC Chapter
19 11.66, Railroad Operation and shall erect and maintain all such safety devices, warning signs and
20 signals, lights and appliances as may be necessary to protect and facilitate public travel across each and
21 every track herein authorized.
22

23 **Section 4.** The City hereby reserves to itself and its Grantee the right to construct all public
24 improvements (including trails) and to install and carry all public utility facilities across, underneath or
25 above the tracks hereby authorized, and the City reserves to itself full and complete right of access to
26 any space occupied by such tracks and to all of said franchise right-of-way, together with the right to
27 open and excavate the ground beneath said tracks, or within said franchise right-of-way, for all purposes
28 of construction, maintenance, repair, operation and inspection of any public utilities and public
29 improvements which rights shall, however, be exercised in such manner as not to interfere with the safe
30 operation of locomotives, cars and trains on said tracks. In all cases involving a possibility of such
31 interference, or removal of lateral support or excavation beneath the tracks of Grantee, sixty (60) days'
32
33

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
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1 written notice shall be given Grantee, and Grantee shall, at its own cost and expense, remove, relocate,
2 support, reinforce said tracks as necessary, provide flagging, and shall also furnish an authorized agent
3 or representative at Grantee's own cost and expense, who shall supervise such removal, relocation,
4 support, reinforcement or excavation or other work; provided that, in case of emergency repairs, the
5 length of such notice may be less than sixty (60) days, but not less than twelve (12) hours. Grantee shall
6 have the option of requiring that any such construction, repair, renewal, maintenance or inspection of
7 municipally owned utility be done by tunneling or jacking beneath said tracks, if such utility determines
8 that tunneling or jacking is practicable, and upon Grantee's providing assurances, satisfactory to such
9 municipally owned utility, that Grantee will pay the extra cost of tunneling or jacking, over the cost of
10 open cutting. If it is necessary that such tracks should be removed, relocated, supported, or reinforced
11 during the progress of the construction, repair, renewal, maintenance, or inspection of any municipally
12 operated utility, or for any public improvement, Grantee shall remove or relocate said tracks and shall
13 construct and place such support and provide a flagman as necessary, and shall attend to the replacement
14 and readjustment of its tracks, all at its own cost and expense. Grantor may agree to assume a share of
15 the costs for removal or replacement of track due to any such public improvement or public utility that
16 generally parallels said tracks and requires the removal of more than 100 feet of track.
17
18

19 **Section 5.** Grantee shall be solely responsible for the maintenance and safety of the right-of-
20 way granted herein, including all tracks and all grade crossings, and shall cooperate and coordinate with
21 the City of Seattle Director of Transportation to assure adequate rehabilitation, repair and maintenance
22 of all tracks and grade crossings herein authorized, all at Grantee's sole cost and expense. Grantor shall
23 issue permits to Grantee which shall set forth the terms and conditions for railroad track work within the
24 limits of The City of Seattle, pursuant to applicable law, including State and Federal Law.
25

26 **Section 6.** Grantee shall construct and maintain the tracks herein authorized so that the top of
27 the rail thereof shall at all times conform to the street grade (except where change is made in separation
28 of grades), and the City hereby reserves the right to change the grade of any streets, avenues or public
29 places at any time, and when the City shall change such grade the Grantee, by acceptance of this
30 ordinance, hereby covenants and agrees with the City, to waive any and all damages that it may sustain
31 on account of having to readjust its tracks by reason of such change of grade. Such waiver is made upon
32
33

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1 condition that any change of grade hereafter made by the City to the streets and avenues upon which the
2 franchise is hereby granted, shall not be unreasonable, or such as to interfere with the proper and
3 practical operation of said track when the same shall have been adjusted to said new grade.

4
5 **Section 7.** Grantee shall, upon permit issued by the Director or such other body as may in the
6 future be by law authorized to act, allow each owner or occupant of a warehouse or industry contiguous
7 or adjacent to said track herein authorized, or to any street, avenue or other public place along or across
8 which said tracks shall be constructed, a spur track or tracks connecting said track with such warehouse
9 or industry; provided, however, that Grantee may require that such spur track or tracks and all street
10 grading, surfacing or paving appertaining to the right-of-way of such spur track or tracks, be constructed
11 and maintained at the expense of such owner or occupant of such warehouse or industry; and provided
12 further that any such spur track shall start from such point on said track as Grantee shall determine upon
13 as the most proper therefor; and shall be subject to such rules and regulations as to the opening and
14 closing of switches controlling access to and as to the use of said track as Grantee may from time-to-
15 time establish. All of the obligations and duties of Grantee expressed in this franchise shall apply with
16 full force and effect to each and every spur track laid down, constructed, maintained or operated by
17 Grantee connecting with the tracks or right-of-way granted in Section 1 of this franchise.
18

19
20 **Section 8.** Nothing contained in this ordinance shall be construed as granting an exclusive
21 franchise or privilege for the use of the right-of-way described in Section 2, or any portion thereof, and
22 the rights granted by this ordinance shall be subject to the right of the City Council to at any time
23 hereafter, to repeal, amend or modify this ordinance and grant, with due regard to the rights of Grantee
24 and of the interests of the public, and to cancel, forfeit and abrogate any right or privilege granted by this
25 ordinance if the franchise hereby granted is not operated in full accordance with the provisions hereof, or
26 at all, and at any time during the grant to acquire by purchase or condemnation, for use of the City itself,
27 all the property of the Grantee within the limits of said streets and right-of-way at a fair and just value,
28 which shall not include any valuation of the franchise itself, which franchise shall thereupon terminate.
29

30 **Section 9.** Except as herein provided, this franchise and the rights herein granted, or any
31 interest in them, shall not be sold, assigned or mortgaged without the consent of the City by ordinance.
32 Nor shall the same in such event accrue to the benefit of the purchaser, assignee or mortgagee unless
33

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1 within sixty (60) days after such consent it or they shall file with the City's Finance Department and
2 City Clerk an acceptance of all the rights, privileges and authorities hereby granted, subject to all the
3 conditions, restrictions, specifications and requirements herein expressed.

4
5 **Section 10.** (a) Grantee and any permitted successors or assigns, shall defend (with
6 counsel approved by the City), and shall fully indemnify and hold the City and its officers, employees,
7 and agents harmless from any and all losses, claims, actions, judgments, property damages, death,
8 personal injuries, or damages suffered by any person or entity arising out of or resulting from (1) any
9 occurrence of property damage, death or injury in or on the franchise right-of-way, including common
10 carrier liability; (2) the Grantee's operations on or off the franchise right-of-way; (3) the violation of
11 any law or breach of this Franchise Agreement or Operating Agreement by the Grantee or any of its
12 officers and directors, employees, agents or contractors; and (4) any release of hazardous material arising
13 out of Grantee's operations, actions or inactions. It is intended that the foregoing indemnity shall be
14 broad and comprehensive. In the event any suit, claim or action is brought against the City, Grantee,
15 upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City,
16 and promptly satisfy any final judgment adverse to the City or to the City and Grantee jointly; Provided,
17 that in the event the City determines that one or more principles of governmental or public law are
18 involved, the City retains the right to participate in such action at its own expense.

19
20 (b) The above liability shall not be diminished by the fact, if it be a fact, that
21 any such death, injury, damage, loss, cost, or expense may have been, or may be alleged to have been,
22 contributed to by the negligence of the City or its officers, employees, or agents, unless such negligence
23 is solely and entirely the fault of the City.

24
25 (c) The indemnification provided by this section shall survive the termination
26 of the Grantee's franchise, the Grantee's surrender of use and occupancy of the franchise right-of-way,
27 and expiration of this Franchise Agreement. This indemnity is for the sole benefit of the City and shall
28 not inure to the benefit of any third party. The Grantee waives, with respect to the City only, its
29 immunity under RCW Title 51, Industrial Insurance, and to any other industrial insurance, workers
30 compensation, disability, or employee benefit legislation of any jurisdiction which would otherwise be
31 applicable.

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(d) The Operating Agreement may provide additional conditions consistent with this section.

Section 11. Grantee, by its acceptance of this ordinance, does covenant and agree with The City of Seattle, that whenever the City separates the grades of existing or future streets and multi-use trails by the construction, reconstruction, renewal, maintenance, and/or widening of any overhead structure across the franchise right-of-way herein granted, Grantee will bear its proportionate share of all costs incident to the span crossing said right-of-way and the piers or abutments supporting such span. Such proportionate share shall be determined on the ratio the length of the portion of the span crossing said right-of-way bears to the total length of said span, and Grantee shall pay its aforesaid share upon proper billing therefore by the Director; provided, however, that this section shall not apply to future changes or additions to the existing 15th Avenue North West bridge structure (Ballard Bridge).

Section 12. Insurance.

(a) The Grantee shall, at all times during the term of this Agreement, obtain and maintain continuously, at its own expense, and file with the City's Risk Manager, evidence of a policy or policies of insurance satisfactory to the City's Risk Manager, as further specified in the Operating Agreement, including a policy of Comprehensive Railroad Liability Insurance for operations in an amount no less than \$5,000,000 for bodily injury and property damage; provided, however, the Risk Manager may consider reducing said coverage to no less than \$3,000,000 based on at least three years of experience with actual operations.

(b) The Operating Agreement shall provide such additional terms and provisions relating to insurance for rail operations (including operating by Grantee's contractors or subcontractors) as shall reasonably protect the City from liability arising out of Grantee's actions or actions.

Section 13. The Operating Agreement may provide that rail operation and rail equipment shall be inspected by the Federal Railroad Administration (FRA), Washington State Department of Transportation (WSDOT), Washington Utilities and Transportation Commission (WUTC) or successor agencies, or equivalent inspectors and that Grantee should be responsible to remedy, at Grantee's

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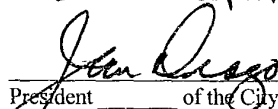
1 expense, all deficiencies identified in any inspection. Grantee shall be responsible to comply with all
2 laws and regulations relating to railroad operations. Nothing herein shall reduce the City's police
3 powers of enforcement and inspection.

4
5 **Section 14.** In order to claim the benefits of this ordinance and to acquire the rights, privileges
6 and authorities hereby granted, Grantee must, within two (2) months after this ordinance becomes
7 effective file in the office of the City's Finance Department and City Clerk a copy of a resolution duly
8 adopted by its Board of Directors, or by the Executive Committee of said Board, which copy shall be
9 duly certified and attested by its proper officer, under its corporate seal, or comparable documentation of
10 acceptance approved by the Seattle City Attorney's Office, accepting the benefits of this ordinance, and
11 the rights, privileges and authorities hereby granted, subject to all the conditions, restrictions,
12 specifications and requirements expressed.

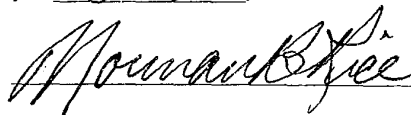
13
14 **Section 15.** Any act consistent with the authority and prior to the effective date of this
15 ordinance is hereby ratified and confirmed.

16
17 **Section 16.** This ordinance shall take effect and be in force thirty (30) days from and after its
18 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
19 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

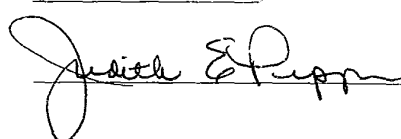
20 Passed by the City Council the 29th day of September, 1997, and signed by me in open
21 session in authentication of its passage this 29th day of September, 1997.

22
23 
24 President _____ of the City Council

25 Approved by me this 6th day of October, 1997.

26
27 
28 Mayor

29 Filed by me this 6 day of October, 1997.

30
31 
32 City Clerk

33 (Seal)

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copy

BALLARD TERMINAL RAILROAD COMPANY, LLC

4725 Ballard Avenue N. W., Seattle WA 98107

Phone: 206 937-4192 Fax: 206 937-2120

March 2, 1998

Mr. Barry Reiss, Project Manager
Seattle Public utilities
710 Second Avenue
Seattle, WA 98104

FILED
CITY OF SEATTLE
98 MAR -3 AM 10:09
CITY CLERK

Reference: Your letter of January 16, 1998 requesting additional documentation for acceptance of franchise Ordinance No. 118734.

Dear Barry,

Attached are three items:

- 1) A newly accomplished "Acceptance of Railway Franchise" document, with the notarized signature of both of the Ballard Terminal Railroad Company's current managing members.
- 2) A copy of Ballard Terminal Railroad Company's formation documents.
- 3) A copy of Ballard Terminal Railroad Company's original acceptance submittal made to the City on January 6, 1998.

Please acknowledge receipt of these documents and advise as to their suitability for fulfilling the ordinance acceptance requirements.

Thanks,



Byron Cole
Managing Member
Operations Manager

BC/jmm
Attachments

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ACCEPTANCE OF RAILWAY FRANCHISE

Ballard Terminal Railroad Company LLC, by and through its managing members. Paul Nerdrum and Byron Cole, hereby accepts the benefits of the City of Seattle Ordinance No. 118734, granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right of way between 7th Ave. N.W. and N.W. 67th St. for a term of thirty years, specifying terms and conditions upon which this franchise is granted, and providing for the acceptance of the franchise, its terms and conditions.

BALLARD TERMINAL RAILROAD COMPANY, LLC

By Paul Nerdrum
Paul Nerdrum, Managing Member

By Byron Cole
Byron Cole, Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 2ND day of MARCH, 1998, before me personally appeared Paul Nerdrum and Byron Cole, to me known to be Managing Members of Ballard Terminal Railroad Company, LLC, the limited liability company that executed the within and foregoing instrument and acknowledged the signing of said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and

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BALLARD TERMINAL RAILROAD COMPANY, LLC

By Paul Nerdrum
Paul Nerdrum, Managing Member

By Byron Cole
Byron Cole, Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 2ND day of MARCH, 1998, before me personally appeared Paul Nerdrum and Byron Cole, to me known to be Managing Members of Ballard Terminal Railroad Company, LLC, the limited liability company that executed the within and foregoing instrument and acknowledged the signing of said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and

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that the seal affixed thereto (if any) is the company seal of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal the day and year first above written.

Ronald B. Canniff
Notary Public in and for the State
of Washington
Printed Name: RONALD B. CANNIFF
My appointment expires: 02/29/00

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STATE of WASHINGTON



SECRETARY of STATE

I, **RALPH MUNRO**, Secretary of State of the State of Washington and custodian of its seal,
hereby issue this

CERTIFICATE OF FORMATION

to

BALLARD TERMINAL RAILROAD COMPANY,
L.L.C.

a Washington Limited Liability Company filed for record in this office on the date indicated
below.

UBI Number: 601 744 485

Date: October 10, 1996



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

RALPH H. MUNRO

Ralph Munro, Secretary of State

2-542890-5

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601744 485

FILED
STATE OF WASHINGTON

OCT 10 1996

CERTIFICATE OF FORMATION
OF
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.

RALPH MUMRO
SECRETARY OF STATE

The undersigned, for the purpose of forming a limited liability company pursuant to the provisions of the Washington Limited Liability Company Act, RCW Chapter 25.15, hereby adopts the following Certificate of Formation.

ARTICLE I

The name of this Limited Liability Company (herein the "Company") is BALLARD TERMINAL RAILROAD COMPANY, L.L.C.

ARTICLE II

The address of the initial registered office of the Company is 800 Financial Center, 1215 - 4th Avenue, Seattle, Washington 98161-1090 and the name of the initial registered agent at such address is John P. Braislin.

ARTICLE III

The address of the principal place of business of the Company is 4051 - 56th Ave. S.W., Seattle, Washington 98116.

ARTICLE IV

The business of the Company shall be to carry on any lawful business or activity which may be conducted by a limited liability company organized under RCW 25.15 et. seq.

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ARTICLE V

The date on which the Company is to dissolve is the 1st day of October, 2026.

ARTICLE VI

Management of the Company shall be vested in one or more managers elected by the Members of the Company. The following Members shall serve as the initial managing members of the Company and shall have co-equal management authority:

<u>Name</u>	<u>Address</u>
Byron Cole	4051 - 56th Ave. S.W. Seattle, WA 98116
Paul Nerdrum	5228 Shilshole Ave. S.W. Seattle, WA 98107

The initial managing members shall have management authority unless and until one or more successor managers are elected and qualified at a duly called meeting of the Members of the Company.

ARTICLE VII

The debts, obligations, and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligation, and liabilities of the Company; and no Member or Manager of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Manager of the Company.

ARTICLE VIII

The name and address of the individual executing this Certificate of Formation as attorney for the Company is:

Name

John P. Braislin

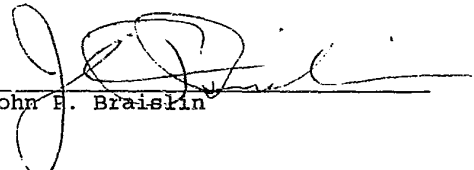
Address

800 Financial Center
1215 - 4th Avenue
Seattle, WA 98161-1090

ARTICLE IX

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Formation, in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on Members and Managers are subject to this reserved power.

DATED this 10th day of October, 1996.

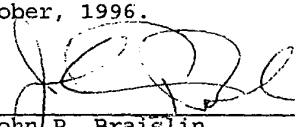

John P. Braislin

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CONSENT TO APPOINTMENT AS REGISTERED AGENT

I, John P. Braislin, hereby consent to serve as registered agent, in the State of Washington, for the Company herein named. I understand that as agent for the Company, it will be my responsibility to receive service of process in the name of the Company; to forward all mail to the Company; and to immediately notify the office of the Secretary of State in the event of my resignation, or of any change in the registered office address of the Company for which I am agent.

DATED this 10th day of October, 1996.



John P. Braislin
Registered Agent
800 Financial Center
1215 - 4th Avenue
Seattle, WA 98161-1090

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**BALLARD TERMINAL
RAILROAD COMPANY**

4725 BALLARD AVENUE NW
SEATTLE, WA 98107
Off: (206) 937-4192
Fax: (206) 937-2120

December 20, 1997

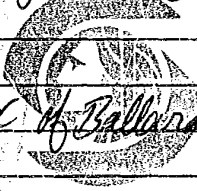
Seattle City Clerk
Seattle Municipal Building
600 Fourth Avenue
Seattle, WA 98104

Attached is a copy of a resolution duly adopted by the Managing Members of the Ballard Terminal Railroad Company, LLC, accepting the benefits of Seattle Ordinance 118734, per the requirement set forth in Section 14 of that Ordinance.

We request that the City acknowledge in writing that this filing is acceptable to the City, and that it satisfies the requirement set forth in Section 14.

Byron Cole

Byron Cole
Managing Member,
Operations Manager

CITY OF SEATTLE		999-77000								
MISC. RECEIPT										
684-8300		Date <u>1/16/98</u>								
Received From <u>Byron Cole</u>										
Address _____										
For <u>Resolution of Ballard Terminal PRC</u>		Dollars \$ <u>0.</u>								
										
BY <u>CHARLA C. Vaughan</u>										
<table border="1"><thead><tr><th colspan="2">How Paid</th></tr></thead><tbody><tr><td>Cash</td><td>☒</td></tr><tr><td>Check</td><td>☒</td></tr><tr><td>TOTAL</td><td>☒</td></tr></tbody></table>			How Paid		Cash	☒	Check	☒	TOTAL	☒
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Cash	☒									
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FILED
CITY OF SEATTLE
98 JAN -6 PM 4:56
CITY CLERK

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

FILED
CITY OF SEATTLE

98 JAN -8 PM 1: 28

98 JAN -6 PM 12: 00

**BALLARD TERMINAL
RAILROAD COMPANY**

4725 BALLARD AVENUE NW
SEATTLE, WA 98107
Off: (206) 937-4192
Fax: (206) 937-2120

December 20, 1997

Seattle City Clerk
Seattle Municipal Building
600 Fourth Avenue
Seattle, WA 98104

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We request that the City acknowledge in writing that this filing is acceptable to the City, and that it satisfies the requirement set forth in Section 14.

Byron D Cole

Byron Cole
Managing Member,
Operations Manager

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**BALLARD TERMINAL
RAILROAD COMPANY, LLC**

4725 BALLARD AVENUE NW
SEATTLE, WA 98107

December 20, 1997

SUBJECT: Meeting of Managing Members of BALLARD TERMINAL RAILROAD COMPANY, LLC.
this day at 1000 hours, at 5228 Shilshole Ave NW, Seattle, WA 98107.

The Managing Members, Paul Nerdrum and Byron Cole, hereby resolve to accept the benefits of the City of Seattle Ordinance #118734, granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, laydown, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right of way between 7th ave NW and NW 67th St for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for the acceptance of the franchise, its terms and conditions.

Byron D Cole

Byron Cole
Managing Member,
Operations Manager

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City of Seattle

Norman B. Rice, Mayor

Executive Department - Office of Management and Planning

Judy Bunnell, Director

MEMORANDUM

September 9, 1997

TO: Jan Drago, Council President

FROM: Judy Bunnell, OMP Director
Daryl Grigsby, SEATRAIN Director
Mary Jean Ryan, OED Director

SUBJECT: Franchise Ordinance for Ballard Terminal Railroad Company

The Office of Management and Planning, SEATRAIN, and the Office of Economic Development have reviewed the legislation granting a railroad franchise to the Ballard Terminal Railroad Company for the purpose of maintaining rail service along the Ballard rail corridor. All of these departments find that this franchise, in concert with requirements of its associated agreements, will provide significant economic, recreational, and mobility benefits to Seattle's citizens, businesses, the City as a purveyor of utilities and transportation infrastructure, and the region.

Entering into this franchise agreement is consistent with implementing City policy regarding support for industrial uses located in industrially-zoned land, as well as for providing a city-wide urban trails system, both being integral elements in achieving the vision of the Comprehensive Plan. To put it concisely, the terms of this franchise will yield more than was anticipated when the City began its study of how to extend the Burke-Gilman Trail. Not only will the city retain ownership of a valuable public use corridor, it will be able to complete a significant section of the trail, while preserving rail service when and where it is still needed.

Introduction of this legislation represents a significant milestone in the effort to preserve rail service for businesses in the Ballard industrial area, while securing for future generations a corridor for trail and other public uses. This is being accomplished through the cooperation of many parties, yet has not come easy. Getting to this point has required

Seattle Municipal Building, 600 Fourth Avenue, Seattle, WA 98104-1826

Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

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Council President ~~Laage~~
September 9, 1997
Page 2

the involvement of staff from SEATRAN, SPU, Law, the OED, the Neighborhood Planning Office, Risk Management, DON, several councilmembers (most recently Councilmember McIver) and the Mayor's Office, as well as representatives of business, local residents, the bicycling community, and the state. It has taken much time, investigation, review, and negotiation on all sides to craft an agreement that both meets the City's interests without the loss of amenity, the burden of liability, and undue expense to the City, and also assures that the franchised rail operator has the flexibility to service the needs of Ballard shippers, operate a safe and successful business, and sustain its obligations as a common carrier within the city.

To satisfy the numerous and, at many points, conflicting interests of the stakeholders in this endeavor, both the City and the rail proponents have had to work hard at finding solutions that are mutually acceptable. Complicated, arduous and lengthy negotiations over the last year have produced this franchise agreement. Obviously, it contains compromise on both sides, yet it represents the best of efforts and intentions to have rail service and a public trail system co-exist in a successful manner. Further, while this franchise contains some elements unique to the context of the agreement and essential to its implementation, it has been constructed to be as consistent as possible with other recent franchises granted by the City, and with an eye toward avoiding setting any new precedents for the City in this regard.

Staff will be briefing the Transportation Committee at its next meeting about this legislation and the steps involved in fully realizing its implementation subsequent to its passage. We anticipate that all councilmembers will have many specific questions concerning the complexities of implementing this agreement, and look forward to addressing these through your review. Barry Reiss of SPU is the project manager for the Burke-Gilman Trail Extension; he can provide historical and technical information regarding the trail's routing, design and construction. Peter Lagerwey of SEATRANS' Bicycle and Pedestrian Program and Judy Barbour of Law can elucidate the policy and legal aspects of corridor acquisition. The engineering expertise of Mark Clemmens and trail designers Amy Yamabe and Leanora Rines of SEATRANS has been invaluable in creating a viable plan for the integration of trail, rail and roadway. City Risk Manager Pamela Hughes and Peter Hapke of Law were diligent in assuring that all agreements adequately protected the City from operational and environmental liability. Ben Wolters of OED and Eric Chipps of OMP have been directly involved in the rail service facet of this project; they can discuss the economic implications for the Ballard area concerning the rail's operation. All will be happy to provide information and briefings at your convenience.

In summary, we are all proud to have been involved in the creation of this legislation, and we endorse its passage.

NOTICE:
IT IS THE POLICY OF THE CITY OF SEATTLE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

COPY

1 14 September 1997

Operating Agreement

5 This is an operating agreement between Adventure Trail (a
6 Washington State IRC 501(c)(3) non-profit corporation ("Owner") and
7 Ballard Terminal Railroad Company, LLC ("Operator") for operation
8 of a line of railroad, owned by Adventure Trail, described as
9 follows:

10 All that portion of the Ballard Branch acquired by Adventure
11 Trail from Burlington Northern and Santa Fe Railroad Company
12 ("BNSF") being more particularly described as BNSF MP .09
13 (that being approximately 1000 feet south of the clearpoint to
14 the mainline) to end of line at BNSF MP 2.7 (that being
15 approximately the south edge of Northwest 40th Street) in
16 Ballard, all in Seattle in King County, Washington, including
17 the "Olympic Stain" Spur, but excluding the "Bardahl" Spur.
18 The aforementioned line of railroad is hereinafter referred to as
19 "the line" or "the premises." The purpose of this Agreement is to
20 preserve the line intact for rail use, trail use, and other
21 compatible public purposes, provided, however, that Owner shall not
22 be obligated to subsidize, directly or indirectly, rail use on the
23 line other than as specifically provided herein. Adventure Trail
24 shall do business as "Sea Lion Railroad Project" for purposes of
25 this transaction and attendant regulatory proceedings, and shall be
26 referred to as SLR herein.

28 1. Use. (a) As of the effective date of this agreement, it
29 is the intent of the parties that while SLR is Owner, SLR shall
30 have all common carrier obligations relating to the premises.
31 Operator shall bear all responsibility to provide all freight rail
32 services during the period of SLR ownership on an as needed basis
33 pursuant to this contract. SLR agrees to furnish Operator (a) ten
34 thousand dollars (\$10,000) to repair and to rehabilitate the track
35 and ties, such amount payable upon tendering of receipts by
36 Operator for actual expenditures for repair and rehabilitation,
37 along with certification that the work has been completed in a
38 satisfactory manner, and (b) up to eighteen thousand five hundred
39 dollars (\$ 18,500) to pay for the first year of freight railroad
40 liability insurance in a form satisfactory to SLR, in an amount no
41 less than \$5,000,000 per incident, \$5,000,000 aggregate. Operator
42 assumes responsibility to pay all costs of repair, rehabilitation
43 and insurance above these specific amounts, and further agrees to
44 provide all other railroad services (including but not limited to
45 maintenance, rehabilitation, operation, interchange, and billing)
46 reasonable or necessary to ensure safe and prudent operation
47 without any further compensation from Owner, and to hold Owner
48 harmless from all liability or claims (including claims for
49 penalties and attorneys' fees) in the event Operator fails to
50 discharge any or all of its obligations to provide such services.

52 (b) The parties acknowledge that SLR intends to seek
53 authorization to railbank the premises pursuant to 16 U.S.C.
54 1247(d) and to transfer the underlying real estate to City of

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1 Seattle free of any current common carrier obligation as quickly as
2 reasonably possible, consistent with the other terms of this
3 Operating Agreement, after the date upon which the railbanking
4 authorization becomes effective. It is the intent of the parties
5 that Operator obtain a modified certificate of public convenience
6 and necessity ("modified PCN") (49 C.F.R. 1150.21, et seq.) upon
7 the City's ownership of the premises, and for this operating
8 agreement to be assigned by SLR to the City to serve as the
9 operating agreement underlying the modified PCN. Once the modified
10 PCN is issued, it is the intent of the parties that, from that
11 point forward, Operator shall have the only extant current common
12 carrier obligations with respect to the premises. It is the intent
13 of the parties to cooperate in taking prudent and efficient actions
14 to accomplish these intents. This Operating Agreement is intended
15 to serve as a contract to provide services as needed during the
16 period of SLR ownership of the premises, and as an Operating
17 Agreement upon assignment to the City of Seattle, including for
18 purposes of a notice for modified PCN.

19 (c) During the period of SLR ownership, and after SLR
20 transfers ownership to the City of Seattle, Owner hereby grants to
21 Operator permission to use any and all of the Owner's rights and
22 licenses in the line and between the line and the point of
23 interconnection with BNSF as may be necessary for the purpose of
24 providing rail freight service. The rights granted to Operator
25 relate solely to the provision of rail service on the line, and
26 Operator may not use the line for any other purposes without the
27 prior written authorization of Owner. During the period when SLR
28 is Owner, SLR shall have the right to control dispatch.

29 (d) In the event operation of a railroad on the premises
30 conflicts with any current trail use on that portion of the
31 premises east of Eighth Avenue, Operator shall undertake one of the
32 following three courses of action: (i) cease operation over any
33 such portion of the premises; (ii) move (at Operator's expense) the
34 tracks and ties, or reconfigure the tracks and ties, such that
35 there is no conflict; or (iii) seek a waiver of any regulation
36 resulting in such a conflict (provided, however, that Owner will
37 cooperate in seeking such a waiver). When the City becomes Owner,
38 Owner at the request of Operator will consider approval of a plan
39 by Operator permitting Operator to close the trail during brief
40 intervals when rail equipment is actually moving adjacent to the
41 trail. Owner will cooperate with Operator in seeking
42 rehabilitation grant money to move track and ties if necessary,
43 provided however there is no liability upon Owner.
44

45 2. Inspection. Owner or its duly authorized representative,
46 upon reasonable notice to Operator, shall have the right to inspect
47 any and all rail facilities for the purpose of verifying Operator's
48 compliance with the terms and conditions of this agreement.
49 Further, the parties hereto agree that a Federal Railroad
50 Administration (FRA), Washington Department Transportation (DOT),
51 or Washington Utilities and Transportation Commission (WUTC) rail
52 inspector shall perform a total inspection of the trackage prior to

1 commencement of rail service, said inspection to serve as a base
2 inspection for all future maintenance and/or rehabilitation efforts
3 on the trackage. The trackage shall be subject to FRA, DOT, and
4 WUTC (as used herein, FRA, DOT and WUTC shall include successor
5 agencies) inspection until termination of this agreement. Operator
6 agrees to abide by such inspections and to address any and all
7 concerns raised in these various rail inspections, consistent with
8 the remainder of this agreement. Nothing herein shall limit the
9 City's lawful police powers of inspection under its Charter and any
10 applicable franchise.

11
12 3. Ownership of Track and Ties. Upon (i) transfer of all
13 Owner's real estate interests in the line to the City of Seattle,
14 (ii) effectiveness of a modified PCN for BTRC, and (iii) payment by
15 Operator of ten dollars in compensation, Owner shall execute, and
16 Operator shall accept, a bill of sale transferring by quitclaim to
17 Operator all Owner's right, title and interest in the track, ties
18 and other track material in the property. Such transfer shall be
19 AS IS, WHERE IS, without any warranties, including warranties of
20 title, merchantability, or suitability for any purpose or use.
21 Operator shall employ such material for purposes of providing
22 railroad services in Ballard. Upon acquisition of said material
23 from Owner, Operator shall own and have the right to remove any of
24 said material; provided, however, that in the event (i) this
25 agreement is terminated, (ii) Owner enters into an agreement with
26 a subsequent operator to provide rail services, and (iii) Owner
27 notifies Operator that it wishes to re-acquire sufficient track for
28 through operation, then Operator shall not cause any track or tie
29 to be removed which shall cause the rail facilities to be less
30 serviceable than as of the date Owner acquired the rail facilities,
31 and Operator shall sell said track to Owner or Owner's designee for
32 the price paid by Operator to Owner for same. In the event Owner
33 or Owner's designee wish to acquire Additions constructed by
34 Operator at Operator's expense, Owner or Owner's designee shall
35 have the right to acquire said Additions at net liquidation value
36 (NLV) using the methodology for calculation of NLV employed by the
37 Surface Transportation Board; provided, however, that if the
38 acquisition is for freight or excursion passenger rail purposes and
39 within five years of the effective date of this Agreement, Owner's
40 designee shall acquire the property at a price mutually agreed upon
41 between Owner's designee and Operator.

42
43 4. Additions. Owner hereby grants to Operator the right to
44 make such Additions to the rail facilities as Operator may require
45 to permit rail freight or passenger (consistent with paragraph 25)
46 service, at Operator's sole expense, consistent with the remainder
47 of this agreement. The term "Additions" shall mean capital
48 improvements which are in addition to the rail facilities provided
49 by Owner. Operator shall own and have the right to remove any of
50 said Additions which can be removed without causing the rail
51 facilities to be less serviceable than before said Addition was
52 made.

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1 5. Conditions on service. (a) During operations under this
2 Agreement pursuant to a modified PCN, Operator shall have no
3 obligation to provide freight rail services unless shippers meet
4 the following term and condition as a condition to receiving
5 service:

6 Shippers or prospective shippers must ship at least 30
7 carloads/year, averaged over a rolling three year period.

8 (b) During operation, Operator shall be responsible for the
9 normal and regular work required to keep the rail facilities in a
10 condition necessary to enable safe operations. Owner shall not be
11 responsible for track, tie, or roadbed maintenance, repair,
12 rehabilitation, or operation. No owner subsidy shall be provided
13 for the line, other than as specifically provided herein.

14 (c) No interest in land, or title to real estate, shall
15 transfer to Operator under this agreement, with the exception of
16 the parcel referenced in paragraph 6 in the event Operator
17 exercises the option therein set forth, and with the exception of
18 the lease of the parcel provided in paragraph 9.

19 (d) Operator shall not interrupt any business access except as
20 necessary to provide rail services or to comply with applicable
21 regulations.
22

23 6. Locomotive facility. Operator may acquire by purchase the
24 property identified in Exhibit A from SLR, pursuant to the terms
25 and conditions set forth below. (i) Operator must inform SLR in
26 writing that it wishes to proceed within thirty (30) days of the
27 effective date of this agreement, (ii) Operator must assume all
28 environmental liability for said parcel and hold SLR harmless from
29 same, (iii) the parties must agree on a property description, and
30 on the square footage to be leased or conveyed (said description
31 shall presumptively be that set forth in Exhibit A, provided that
32 either party may request corrections for forty five days after the
33 effective date of this Operating Agreement), (iv) the transfer
34 shall be made prior to the date of transfer of all other real
35 estate interests in the corridor to the City, (v) SLR shall have no
36 obligation to convey the property unless STB authorizes railbanking
37 of the premises, and said authorization becomes effective, (vi)
38 Operator shall bear all costs of closing, including recording fees,
39 excise and property taxes, and so forth, (vii) the transfer shall
40 be by quitclaim deed by SLR to Operator of all interests it
41 receives from BNSF, subject to whatever restrictions BNSF places
42 upon SLR, without any warranty of title, or propriety for any
43 particular use, (viii) Operator shall pay in cash to SLR \$14.50 per
44 square foot times the total amount in square feet of property to be
45 conveyed, in cash, at closing, and (ix) should rail service cease
46 on the line, Operator agrees to offer the property to City for
47 acquisition for 120 days at a price to be mutually agreed upon.
48

49 7. Modified PCN. Upon transfer of the real estate underlying
50 this line to the City of Seattle, Operator shall secure a modified
51 certificate of public convenience and necessity (modified PCN)
52 pursuant to 49 C.F.R. § 1150.21, et seq., or equivalent order for

1 operators of state or local government owned railroads previously
2 authorized for abandonment from the Surface Transportation Board.
3 Operator shall be responsible for all costs associated with
4 obtaining such order, but shall have the right to recover those
5 costs (and any other regulatory costs or expenses) from any
6 shippers or prospective shippers. A form of application for the
7 modified PCN is attached as Exhibit B.
8

9 8. Liability for operations, disclaimer and insurance. (a)
10 Upon commencement of rail operations (including any repair or
11 rehabilitation) on the premises by or under the authority of this
12 agreement, Operator shall be responsible for all legal liability
13 arising from said operations, shall hold Owner harmless from same
14 (including claims for attorneys' fees, court costs, or penalties),
15 and shall obtain insurance, satisfactory to Owner, for such
16 operations.

17 (b) Owner makes no representations or warranties with respect
18 to the condition of the property, including the right of way, for
19 any purpose, or with respect to compliance with any environmental
20 laws, or with respect to the existence of, or compliance with, any
21 required permits of any governmental agency. Operator acknowledges
22 to Owner that Operator has fully inspected the premises and is not
23 relying on any statements made by Owner or Owner's agents with
24 respect to the condition of the premises, including any rail, track
25 or other track material, or crossings, and that Operator assumes
26 the responsibility and risks of all conditions, including such
27 defects and conditions, if any, that cannot be observed by casual
28 inspection.

29 (c) (i) Operator shall, at all times during the term of this
30 Agreement, obtain and maintain continuously, at its own expense,
31 and promptly supply to such representative of Owner as Owner may
32 from time to time designate in writing, evidence of a policy or
33 policies of insurance for railroad purposes, in a form and in
34 amounts acceptable to Owner prior to the initiation of rail
35 service. Owner shall not be obligated to approve Operator's
36 insurance coverage unless it includes all the conditions and
37 specifications enumerated below:

38 (A) A policy of Comprehensive Railroad Liability Insurance,
39 including coverages known as

- 40 (1) premises/operations liability
- 41 (2) products/completed operations
- 42 (3) personal/advertising injury
- 43 (4) contractual liability
- 44 (5) bill of lading
- 45 (6) foreign rolling stock
- 46 (7) fire suppression expenses
- 47 (8) pollution clean-up expenses
- 48 (9) stop gap or employers contingent liability

49 (B) Such policy or policies shall provide the following
50 minimum limits:

- 51 (1) bodily injury and property damage:
52 \$5,000,000 each occurrence, \$5,000,000 aggregate. Property

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1 damage coverage shall include coverage for clean-up of spills of
2 hazardous material on the rail corridor or from the rail corridor
3 to adjacent property.
4 (2) stop gap employers liability:
5 \$1,000,000 each accident, \$1,000,000 disease-policy limit,
6 \$1,000,000 disease-each employee.
7 (3) Owner will consider reducing the insurance coverage
8 specified in item (1) above to \$3,000,000 per occurrence and
9 aggregate after three years experience with actual operations.
10 (C) In the event rail passenger service is instituted, any
11 such service shall be insured in an amount not less than
12 \$10,000,000 per occurrence/aggregate.
13 (D) The maximum deductible or self-insured retention shall be
14 \$25,000, and shall be subject to approval by Owner to ensure
15 conformity to this provision.
16 (E) Operator shall include any subcontractors or agents as
17 insureds under its policies or require such subcontractors or
18 agents to maintain insurance acceptable to Owner, which insurance
19 shall be specified in writing prior to commencement of work by the
20 subcontractor or agent after consultation with Owner, but shall not
21 be less than general commercial liability insurance in an amount no
22 less than \$1,000,000 per incident, \$2,000,000 aggregate.
23 (F) Operator shall maintain a policy (or policies) of General
24 Commercial Liability in an amount no less than \$1,000,000, and
25 Business Automobile Liability, including coverage for owned, non-
26 owned, leased or hired vehicles written on an insurance industry
27 standard form (CA 00 01) or equivalent. Such policy (or policies)
28 shall provide a minimum limit of \$1,000,000 for bodily injury and
29 property damage per accident.
30 (G) All insurance provided under this agreement shall be
31 endorsed to include the Owner (including any successor Owner), its
32 officers (including elected officials if a successor is a political
33 subdivision or the City), employees, agents and volunteers as
34 additional insured. In addition, Operator's insurance shall be
35 primary as respects Owner (including any successor Owner), and any
36 insurance maintained by Owner shall be excess and not contributing
37 insurance with the Operator's insurance.
38 (H) The following clause shall be made part of all said
39 policies of insurance: "It is agreed that in the event of material
40 change or cancellation, this company shall give forty-five (45)
41 days prior written notice to the Owner of the property, addressed
42 to: Property Manager, SLR, P.O. Box 17883, Seattle, WA 98107, or,
43 if the Owner is the City of Seattle, to Seattle City Risk Manager,
44 Room 103, Municipal Building, 600 Fourth Avenue, Seattle, WA
45 98104-1891."
46 (ii) (A) If any policy is written on a claims made form, the
47 retroactive date shall be prior to or coincident with the effective
48 date of this agreement. The policy shall state that coverage is
49 claims made, and state the retroactive date. Claims made form
50 coverage shall be maintained by the Operator for a minimum of six
51 years following expiration or earlier termination of this
52 agreement, and Operator shall annually provide Owner with proof of

1 renewal. If renewal of the claims made form of coverage becomes
2 unavailable, or economically prohibitive, Operator shall purchase
3 an extended reporting period ("tail") or execute another form of
4 guarantee acceptable to Owner to assure financial responsibility
5 for liability for actions, inactions, and services.

6 (B) Owner shall have discretion to require Operator to
7 provide reasonable security (e.g., interest bearing escrow account,
8 irrevocable letter of credit, bond, or third party guarantee),
9 acceptable to Owner, that Operator will have sufficient assets to
10 discharge, and will discharge, its obligation under subparagraph
11 (ii) (A) above with respect to claims made coverage. In addition,
12 Owner shall have discretion to require Operator to provide similar
13 reasonable security, acceptable to Owner, to ensure that Operator
14 will have sufficient assets to cover the entire amount of any self-
15 insured retention provided in the insurance coverage herein.
16 Unless otherwise agreed, acceptable security shall constitute a
17 fully-funded interest bearing escrow account at a federally-insured
18 institution containing funds at all times equal to no less than the
19 self-insured retention amount, or \$25,000, whichever is greater.

20 (iii) As evidence of insurance coverage, the following
21 documents must be provided to Owner prior to occupancy of the
22 premises by Operator:

23 (A) a certified copy of the policy or policies

24 (B) copies of all relevant endorsements naming Owner as an
25 Additional Insured, showing the policy number, and signed by an
26 authorized representative of the insurance company on Form CG2026
27 (ISO) or equivalent

28 (C) copies of all relevant "Endorsements Form Lists" to the
29 policy or policies showing endorsements issued on the policy, and
30 including any company specific or manuscript endorsements

31 (D) evidence of compliance with subparagraph (H) above

32 (E) for commercial general liability and business automobile
33 liability insurance, a copy of a "separation of insureds" or
34 "severability of interests" clause, indicating in substance that,
35 except with respect to the limits of insurance, and any rights or
36 duties specifically assigned to the first named insured, the
37 insurance applies as if each named insured were the only named
38 insured, and separately to each insured against whom claim is made
39 or suit is brought.

40 (iv) All policies shall be subject to approval by Owner as to
41 form, coverage, and being primary to all other insurance. Owner
42 also shall require each company to be rated A-VII or higher in the
43 current A.M. Best's Key Rating Guide, and to be licensed to do
44 business in the State or Washington, or a surplus Lines carrier
45 authorized to do business in the State of Washington.

46 (v) Operator and its insurer(s) shall waive their rights of
47 subrogation against Owner for damages arising from any risk covered
48 by the required insurance policies or any other coverage maintained
49 by Operator. Operator's insurance shall be primary with respect to
50 any insurance carried by Owner.

51 (vi) At the request of Owner (which request may be made no
52 more frequently than five year intervals), the minimum levels of

1 coverage herein shall be adjusted in proportion to changes in the
2 consumer price index (or successor index) from its base in January
3 1997.

4 (vii) Failure to comply with insurance coverage requirements
5 or failure to comply with indemnity requirements shall constitute
6 material breach of this agreement.
7

8 9. Surface Transportation Board. (a) Owner and Operator will
9 cooperate in any required filings before the Surface Transportation
10 Board, or its successor. Operator acknowledges that Owner
11 contemplates filing a petition for exemption, requesting
12 expeditious treatment and an exemption from "offer of financial
13 assistance" provisions, to permit railbanking of the premises under
14 16 U.S.C. § 1247(d); and that Owner intends to transfer the
15 premises to City of Seattle upon the effectiveness of a railbanking
16 order. Owner acknowledges that Operator intends to file for a
17 modified PCN in order to serve as Operator for the City of Seattle
18 when the City obtains ownership of the railbanked corridor.
19 Operator will supply to Owner letters from each shipper on the line
20 for the two years preceding suspension of service by BNSF in the
21 form attached in Exhibit C-2 evincing support for the transactions
22 and relationships contemplated pursuant to this Operating
23 Agreement. Such letters may be employed before the STB and in
24 other relevant public forums. Upon request, Operator will support
25 Owner's position in any STB railbanking proceeding in writing.
26 Upon request, Operator will also obtain letters of support
27 specifically for filing with STB the aforementioned shippers in the
28 form attached in Exhibit C-1. If Operator has become a common
29 carrier on the line by the time of said railbanking petition of
30 Owner, Operator will participate in the filing of the railbanking
31 petition requesting identical relief (abandonment or
32 discontinuance, as the case may be, coupled with railbanking) to
33 that sought by Owner. Upon request, Owner will support Operator's
34 filing for a modified PCN subsequent to a railbanking
35 authorization.

36 (b) This agreement is subject to whatever conditions are
37 imposed by the Surface Transportation Board, or its successor.
38

39 10. Rail and Trail facilities. (a) Owner and Operator agree
40 that the trail (which, for this paragraph, may include pedestrian-
41 only trail or path facilities, bicycle-only trail or path
42 facilities, or some combination thereof) and railroad shall be
43 constructed within the areas indicated in Exhibit D in all portions
44 of the premises which are not in street right of way. Owner and
45 Operator agree to design their respective facilities such that
46 crossings of tracks are as safe as reasonably possible, by use of
47 approaches close to right angle, or appropriate rubberized crossing
48 materials, or similar measures. Operator agrees to design
49 additions and configurations so as to minimize crossing of trail
50 facilities. Owner and Operator shall avoid damage to each other's
51 facilities.

52 (b) Owner and Operator agree that new trail facilities (other

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1 than crossings)¹ may be constructed only in accordance with
2 applicable regulations of DOT or WUTC relating to separation from
3 centerline of rail.² At the request of Operator, Owner will
4 consider installing dividers between the rail and trail at limited
5 locations consistent with applicable guidelines for bicycle
6 facilities or, in the case of purely pedestrian facilities,
7 guidelines issued by the City for same,³ provided that separation
8 of such dividers from the centerline of the rail is consistent with
9 applicable regulations of DOT or WUTC. The desired width for the
10 trail corridor between Eighth and Eleventh Avenue shall be twenty
11 (20) feet in width, but may be reduced to no less than eighteen and
12 one half (18-1/2) feet in order to accommodate an additional line
13 of track installed by Operator. Owner shall be responsible to
14 install appropriate informational and safety signage relating to
15 any new trail construction in accordance with applicable City of
16 Seattle guidelines.⁴

17 (c) Owner and Operator acknowledge that there are certain
18 portions of the rail corridor where the available width for new
19 trail development purposes, taking into account Washington State
20 regulations for minimum trail clearances, unless the rail line is
21 moved, is less than ten feet, and where trail facilities have not
22 yet been constructed. In all such instances, Owner reserves the
23 right to develop a trail, but in the event of trail development,
24 will limit trail use to pedestrians, employing appropriate City of
25 Seattle guidelines for pedestrian facilities, and will develop a
26 bicycle trail at suitable alternative locations. Nothing herein
27 shall prohibit use of sidewalks or existing streets by motorized or
28 non-motorized users, or pedestrians.

29 (d) In the event trail maintenance or construction damages
30 rail facilities owned by Operator, Owner shall be responsible for
31 the costs of repair. In the event railroad maintenance or
32 construction damages trail facilities, Operator shall be

¹ For purposes of this subparagraph, new trail facilities means any trail facility within the premises constructed from Eighth Avenue west.

² The parties concur that the applicable regulations include WAC 480-60-050. As a matter of convenience, Owner intends to provide a ten foot separation where practical.

³ The applicable guidelines for bicycle paths and trails are currently set forth by the American Association of State Highway and Transportation Officials in "Guide for the Development of Bicycle Facilities" (August 1991), particularly at p. 24. The applicable City of Seattle guidelines for purely pedestrian facilities are (a) Seattle Street Improvement Manual and (b) City of Seattle Standard Plans and Specifications.

⁴ See footnote 3 and Manual for Uniform Traffic Control Devices.

1 responsible for the costs of repair.
2 (e) Owner shall have the right to require Operator to
3 relocate its track in order to accommodate trail construction in
4 accordance with this Agreement; provided, however, that a
5 continuous track on the premises shall be provided unless Operator
6 consents otherwise. Unless otherwise agreed, Operator shall
7 promptly move its track at Owner's written request to accommodate
8 the construction of trail facilities. Owner shall be responsible
9 for the direct labor costs of such movement, plus five (5) per cent
10 overhead based on those costs with respect to the entire premises,
11 except that, with respect to that part of the premises north of
12 Seaview Avenue, N.W., owner shall be responsible for the costs of
13 retaining structures, grading, drainage, and engineering associated
14 with trail installation north of Seaview Avenue N.W., and shall not
15 otherwise be responsible for the costs of any new ballast, track,
16 ties, or other material used in such move. Owner and operator
17 shall enter into a written agreement regarding any construction
18 project to be undertaken associated with movement of rail to
19 accommodate trail development on the premises north of Seaview
20 Avenue, N.W. The construction agreement referred to herein will
21 ensure that owner is only responsible for reimbursing operator for
22 those costs specified above caused by owner's plan to develop a
23 trail on the premises, and the parties will endeavor to minimize
24 owners' cost to the extent possible. Consent to an agreement
25 shall not be unreasonably withheld. Owner shall reimburse Operator
26 for such direct labor costs upon receipt of an itemized bill from
27 Operator. Operator shall use reasonable care in the construction
28 of all new or moved rail facilities. Owner shall use reasonable
29 care in the construction of all new or moved trail facilities. The
30 provisions of paragraph 1(d) shall govern the portion of rail with
31 trail east of Eighth Avenue. Owner shall be responsible for design
32 and installation of a safe crossing for the trail north of Seaview
33 Avenue in the event of trail development.
34 (f) Operator shall not engage in construction of rail or
35 rail-related facilities which interfere with the trail to be
36 constructed on the premises. Owner shall not be responsible for
37 the costs of moving any new rail or rail-related facilities which
38 interfere with the trail. Operator may tender Owner proposed
39 construction drawings for all new facilities, to such person as
40 Owner identifies in writing. If Owner within thirty days of
41 receipt of said drawings does not state a determination that
42 interference will or may occur, Owner shall be deemed to have made
43 a determination of no interference and shall be responsible for
44 costs for moving said facilities in accordance with this paragraph
45 in the event the facilities are constructed and later found to
46 interfere.
47 (g) Operator and City both covenant and agree to keep their
48 respective portions of the premises free and clear of debris and
49 equipment not in actual use for rail or trail construction,
50 maintenance or operations.
51 (h) Notwithstanding any other provision of this agreement,
52 Operator shall have access to, and full responsibility for, all

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1 signals, including grade crossing signals, used or installed for
2 operation of this railroad line.

3 (i) Effective when City becomes Owner under this Operating
4 Agreement, City undertakes to provide Operator with 120 days
5 notice, and a subsequent opportunity to consult, prior to City's
6 presentation of a request for initial authorization or financing
7 for an extension of the Burke-Gilman Trail in the area between 11th
8 Avenue and the Locks within the premises. Nothing herein shall
9 require advance notice to Operator of, or otherwise abridge any
10 right of the City to engage in, site-specific and ordinary bicycle
11 or pedestrian improvements, site-specific safety improvements, or
12 sidewalk installation, replacement, or repair in the referenced
13 area.

14
15 11. Transload. (a) Taking note that this Operating
16 Agreement is in accordance with the Burke-Gilman Agreements between
17 the City and CNF, and that said Agreements provide for certain
18 lease cancellations by BNSF in the event of transfer pursuant to
19 the Agreements, SLR agrees to request BNSF to terminate all leases
20 for the property described in Exhibit E prior to transfer to SLR.
21 Provided said leases are terminated, Owner and Operator agree that,
22 for the duration of this operating agreement, Operator shall have
23 a lease providing for exclusive use to the property described in
24 Exhibit E for transload purposes. The lease with Operator shall
25 provide that any fixture remaining upon the premises shall become
26 the property of Owner at the termination of this operating
27 agreement. Operator shall leave the premises free and clear of any
28 contamination or debris at the termination of this operating
29 agreement.

30 (b) Operator shall be solely responsible for all losses,
31 claims of damage, or liability (including liability for attorneys
32 fees, court costs, penalties, or environmental contamination)
33 arising from its use of the area set forth in Exhibit E, and shall
34 hold Owner harmless from same.
35

36 12. Indemnities. (a) Operator shall defend Owner (with
37 counsel approved by Owner) and shall fully indemnify Owner, and
38 hold Owner and its officers, employees, and agents harmless from
39 any and all losses, claims, actions, judgments, property damages,
40 death, personal injuries, or damage suffered by any person or
41 entity arising out of resulting from any occurrence of property
42 damage, death or injury (i) in or on the premises occupied or used
43 by Operator, including common carrier liability, (ii) arising from
44 Operator's operations on or off the premises, and (iii) arising
45 from the violation of any law or breach of any franchise or
46 operating agreement, including this agreement by Operator, or any
47 of its officers, directors, employees, agents, or contractors. In
48 the event Operator fails to defend (or to defend adequately in the
49 opinion of Owner) the suit, Owner shall have the right to assume
50 the defense and to be held harmless from all costs arising from
51 same, including costs for legal counsel and all fees and charges
52 related thereto; provided, however, that Owner may always

1 participate in a proceeding at its own expense. Under this
2 indemnity, Operator shall be responsible promptly to satisfy any
3 final judgment adverse to the Owner or Owner and Operator jointly.

4 (b) The indemnity provided in this paragraph is intended to
5 be broad and comprehensive. It shall not be diminished by the
6 fact, if it is a fact, that the liability in question may have been
7 contributed to by the negligence of the Owner, its officers,
8 employees, or agents, provided, however, that Owner shall be liable
9 if the liability arises solely and entirely from the fault of the
10 Owner.

11 (c) The indemnification provided by this paragraph has been
12 mutually negotiated by the parties and shall survive the
13 termination of the Operator's franchise, the Operator's surrender
14 of use and occupancy, and expiration or termination of this
15 agreement. This indemnity is for the sole benefit of Owner, and
16 shall not inure to the benefit of any third party other than Owner,
17 its successors, and Owner's (or successor's) officers, employees,
18 or agents. Operator waives, with respect to the Owner (and its
19 successors) only, its immunity under RCW Title 51, Industrial
20 Insurance, and to any other industrial insurance, workers'
21 compensation, disability, or employee benefit legislation of any
22 jurisdiction which would otherwise be applicable.

23
24 13. Environmental. (a) Operator (i) shall cause the
25 premises under its control or use, and all Operator's operations
26 thereon, to be conducted in accordance with all environmental laws
27 and orders of any governmental authorities having jurisdiction,
28 (ii) shall obtain, keep in effect, and comply with all governmental
29 permits and authorizations required by environmental laws with
30 respect to the premises under Operator's control or use, and with
31 respect to Operator's operations, and (iii) shall furnish Owner
32 with copies of all such permits and authorizations, including any
33 amendments or renewals thereof, upon request, and notify Owner
34 promptly in the event of expiration or revocation of such permits
35 or authorizations.

36 (b) Operator's indemnity in paragraph 12(a) shall also apply
37 to hold Owner harmless from any claims (including claims for
38 attorneys' fees, court costs, or penalties) relating to any
39 hazardous, dangerous or toxic material, waste, substance, or other
40 pollutant or contaminant (hereinafter collectively referred to as
41 "hazardous material") arising out of, or resulting from (i)
42 Operator's operations, (ii) the violation of any law or breach of
43 this agreement by Operator or any of its officers, directors,
44 employees, agents or contractors, (iii) the release by Operator of
45 any hazardous material on the premises controlled or used by
46 Operator or involving Operator's operations outside the premises

L
⁵ It is the intent of the parties that hazardous material shall include such substances, materials and wastes as are currently or as become regulated or subject to clean-up authority under any local, state or federal law.

1 under its control or use. In the event Owner must take action to
2 respond to such claims, Operator shall indemnify Owner for all
3 costs which Owner incurs, including all clean-up and remediation
4 costs, including attorneys', consultants' and contractor's fees to
5 achieve compliance with applicable laws, regulations, and orders.

6 (c) Owner shall have the option, at Owner's expense, to
7 require an environmental audit of the premises used by the Operator
8 at any time, and shall have a right of entry for same. If Owner
9 at any time has reasonable grounds to believe that Operator is not
10 complying with the terms of this paragraph or that a release of a
11 hazardous substance has occurred or is about to occur, Owner may
12 require Operator to furnish Owner with an environmental audit or
13 site assessment, at Operator's expense, conducted by a qualified
14 consultant acceptable to Owner. If such environmental audit does
15 not disclose noncompliance or a release by Operator, Owner shall
16 promptly reimburse Operator for all costs incurred in connection
17 with such environmental audit.

18 (d) Nothing in this agreement shall be construed to abridge
19 the rights of Owner or Operator to pursue the liability of
20 responsible third parties for contamination of the premises, and
21 the parties agree to undertake reasonable measures to assist each
22 other in any such endeavor.

23 (e) Unless Owner specifically agrees otherwise in a writing
24 signed by Owner, Operator shall not store, treat, recycle,
25 manufacture, refine or generate hazardous material on the premises,
26 except as may reasonably be necessary for its own operations, or as
27 incidental to a shipment. Operator shall not dispose or release
28 hazardous material on the premises. Operator in all events shall
29 conduct its operations so as to comply with all applicable
30 environmental laws and to minimize the likelihood of any releases
31 on, in, above, under or from the premises.

32 (f) Operator shall undertake all investigatory, preventive,
33 and remedial actions reasonably necessary to comply with applicable
34 environmental laws, regulations, and requirements, or to prevent or
35 minimize property damage, personal injury, or damage to the
36 environment, or threat of same, by releases or exposure to
37 hazardous materials in connection with the premises or Operator's
38 operations. Operator shall promptly notify Owner of any spill or
39 release of a hazardous material, any violation of law relating to
40 same, any lawsuit filed or threatened regarding same, any notice,
41 fine or penalty regarding same, and any investigation or proceeding
42 regarding same, arising in connection with the premises or
43 Operator's operations.

44 (g) Sixty (60) days prior to the expiration of this
45 agreement, or upon receiving notice of termination, Owner shall
46 have the right (including a right of entry) to conduct an
47 environmental assessment designed to establish the environmental
48 condition of the premises. Upon completion of the assessment,
49 Owner shall provide Operator with a copy of an environmental report
50 that describes the results. The parties agree that there shall be
51 a presumption (which shall be rebuttable) that the assessment shall
52 establish the environmental condition of the premises as of the

1 date this agreement terminates. Nothing in this agreement shall be
2 construed as (I) a presumption or determination that any
3 contamination or hazardous substance disclosed in such assessment
4 was caused by Operator or during Operator's occupancy of the
5 premises, or (II) an undertaking by Operator to cure or address any
6 such contamination or hazardous substance, or (III) a waiver by
7 Operator of any claim of responsibility by either party against the
8 other, or any other person or entity, relating in any manner to any
9 such contamination or hazardous substance.

10 (h) Notwithstanding any other provision in this agreement, in
11 the event of a breach of this paragraph by Operator, Owner upon
12 reasonable notice and opportunity to cure (which notice and
13 opportunity to cure may be as short as twenty four hours in the
14 event of an emergency involving a release or threatened release of
15 a hazardous substance) may suspend all or a portion of this
16 agreement, or, if the release involves an imminent danger to the
17 public, may terminate this agreement. Owner may also exercise any
18 remedies otherwise available in law. Nothing in this subparagraph
19 shall be construed as a waiver by Operator of any claim against
20 Owner for wrongful termination or suspension of this agreement.

21 (i) Nothing herein shall be construed to constitute a waiver
22 of, or release of, or a limitation upon, the rights or
23 responsibilities of the Owner or Operator in any future action
24 pursuant to the Washington Model Toxics Control Act, RCW Chapter
25 70.105D, or the Comprehensive Environmental Response, Compensation
26 and Recovery Act, 42 U.S.C. 9601, et seq., as either statute is
27 amended or supplemented, or pursuant to any successor statute.

28
29 14. Laws to be observed. Operator shall keep fully informed
30 of all Federal and State laws, all local laws, ordinances,
31 regulations, injunctions and all final orders and decrees of bodies
32 of tribunals having any jurisdiction or authority, which in any way
33 affect the performance of this agreement, including without
34 limitation any laws, ordinances, regulations, orders, or decrees,
35 identified herein. Operator shall at all times observe and comply
36 with all such laws, ordinances, regulations, and all final orders
37 and decrees (to the extent not preempted by federal law) and shall
38 protect, hold harmless and indemnify the Owner against any claim or
39 liability arising from or based on the violation of any such law,
40 ordinance, regulation, injunction, or final order or decree.

41
42 15. Assignment. Operator shall not assign its right or
43 delegate its duties under this agreement, or any part hereof,
44 without the prior written consent of Owner. The parties
45 contemplate that SLR shall assign all its interests in this
46 Operating Agreement to City of Seattle pursuant to the form of
47 assignment attached as Exhibit F. Upon such assignment, SLR shall
48 be deemed relieved of all obligations to Operator.

49
50 16. Term. The term of this agreement shall be thirty years,
51 subject to cessation of operations or termination of the agreement
52 as provided herein.

1 17. Breach. In case of breach of this agreement by Operator,
2 Owner shall give Operator no less than thirty (30) days notice to
3 cure, in writing, stating the breach that has occurred, the basis
4 for viewing the occurrence (or non-occurrence) as a breach, and a
5 request or demand that the breach be cured. Upon request, Owner
6 will reasonably cooperate in effecting cure (so long as consistent
7 with applicable law, and so long as costs of cure are borne by
8 Operator). If cure is not substantially affected within the time
9 specified in the notice (no less than thirty (30) days calculated
10 from delivery of said notice), Owner may declare this agreement
11 terminated if the breach is material, or, alternatively, and also
12 in the case of non-material breaches, shall have a right to require
13 suspension of rail operations until the breach is remedied, or
14 shall have a right of entry to make such repairs or modifications
15 (or to perform such work) as is necessary to remedy the breach,
16 charging all costs and expenses to the Operator, which shall pay
17 the amount within thirty (30) days. For purposes of this
18 Agreement, material breach shall include, but not necessarily be
19 limited to, failure to maintain required insurance coverage, use
20 of the premises by the Operator for purposes other than rail or
21 rail-related purposes, failure to comply with final FRA, DOT or
22 WUTC orders, failure to remedy environmental conditions caused by
23 the Operator, failure to discharge common carrier (freight
24 railroad) obligations, failure to comply with paragraph 25
25 (relating to passenger uses), and/or failure to comply with any
26 portion of paragraph 9 (cooperation before STB).

27
28 18. Other termination and termination generally. (a) Owner
29 may terminate this agreement if the level of freight rail usage
30 decreases below an average of 30 carloads per year averaged over
31 any 36 month period.

32 (b) During the period SLR owns the premises, Operator may not
33 terminate this agreement without the prior written consent of SLR.
34 Upon assignment of this agreement to the City of Seattle, Operator
35 may terminate this agreement upon sixty (60) days prior written
36 notice to the City of Seattle, compliance with all the terms of
37 this Agreement, and satisfaction of any applicable regulations or
38 requirements of the Surface Transportation Board, or its successor.

39 (c) In the event of termination, Operator upon request of
40 Owner shall cooperate in any required filings before the Surface
41 Transportation Board, or its successor, to secure a prompt
42 termination of any applicable operating authority and in a fashion
43 so as to secure preservation of the premises under 16 U.S.C.
44 1247(d).

45 (d) Nothing herein shall be construed to limit or to abridge
46 the City's rights of termination provided in the City's Charter
47 applicable to franchise agreements generally.

48
49
50 19. Notices. All notices under this agreement shall be
51 deemed delivered if posted by U.S. Mail, postage pre-paid, first
52 class, or sent by express delivery (one or two day service), or by

1 fax transmission, to the addressees or (if appropriate) fax numbers
2 provided below:

3
4 If to Owner, to: Property Manager
5 SLR
6 P.O. Box 17883
7 Seattle, WA 98107
8 Fax number: (206) 706-1991
9

10 If to Operator, to: Byron Cole, Managing Member
11 Ballard Terminal Railroad Company, LLC
12 5228 Shilshole Ave. N.W.
13 Seattle, WA 98107
14 Fax number: (206) 781-0984
15

16 These addresses may be changed provided notice is given in
17 writing.

18
19 20. Severability. In the event any section, paragraph,
20 sentence, clause or phrase contained herein shall be determined,
21 declared, or adjudged invalid, illegal, unconstitutional, or
22 otherwise unenforceable, such determination, declaration, or
23 adjudication shall in no manner affect the other sections,
24 paragraphs, sentences, clauses, or phrases of this agreement, which
25 shall remain in full force and effect as if the section, paragraph,
26 sentence, clause or phrase declared, determined, or adjudged
27 invalid, illegal, unconstitutional or otherwise unenforceable were
28 not originally a part thereof.
29

30 21. Governing law. This agreement shall be governed by the
31 laws of Washington.
32

33 22. Amendment. This agreement may be modified or amended
34 only in a writing referring to this agreement and executed by both
35 parties. In the event of a conflict between this agreement and the
36 applicable franchise ordinance, the franchise ordinance shall
37 control.
38

39 23. Subsidies. Except for financial contributions which
40 SLR has committed to make in paragraph 1, in no event shall Owner
41 be responsible for repair, rehabilitation, maintenance, or
42 operation of rail facilities, or property in the corridor used or
43 occupied by Operator. Notwithstanding the above, Owner will
44 cooperate with Operator in seeking to facilitate grants or loans
45 for rehabilitation, provided, however, that Owner on no account
46 will be liable for repayment of said grants or loans except to the
47 extent of salvage value in the event Owner owns the salvage. SLR
48 agrees to send a form of letter in support of a rehabilitation
49 grant request substantially in accordance with Exhibit H.
50

51 24. Survival. All indemnities and allocations of liability,
52 including associated insurance provisions, shall survive expiration

1 or earlier termination of this agreement.

2
3 25. Passenger use. Owner shall permit passenger use on the
4 following conditions: (a) insurance requirements for said use as
5 set forth in this agreement are met, (b) FRA or DOT inspectors
6 certify that the line meets at least FRA Class I standards (or
7 higher standards if applicable for passenger service), (c) the
8 engineer for any passenger operation is FRA-certified, (d) all
9 equipment employed meets FRA, DOT, WUTC and other applicable
10 standards, and (e) Operator receives prior written approval from
11 Owner (if the City, through its Director of Transportation) of an
12 operating plan (i) covering hours of operation and
13 boarding/deboarding locations consistent with maintaining safe
14 traffic flow, egress and ingress to abutting businesses, and the
15 provision of adequate parking, (ii) demonstrating consistency with
16 trail use, compatibility with freight service, and showing that the
17 primary purpose of the line remains freight rail service, (iii)
18 identifying safety measures to be implemented during passenger
19 operations at crossings, and (iv) consistent with the construction
20 and operation of passenger facilities in connection with commuter
21 rail use of the BNSF mainline.

22
23 26. Conformity to acquisition contract. In the event the
24 contract for acquisition of the premises by SLR from Burlington
25 Northern Santa Fe Railway imposes terms or conditions more
26 stringent than this agreement, the acquisition contract terms or
27 conditions shall control. A copy of the most recent form of
28 acquisition contract is attached as Exhibit I. The parties agree
29 that the acquisition contract, when executed and delivered by both
30 parties, shall be automatically substituted for the form of
31 contract attached as Exhibit I upon delivery (by hand, express, or
32 U.S. Mail, postage pre-paid, first class) by Owner to Operator.

33
34 27. Effective date. This agreement shall become effective at
35 such time as SLR obtains authority from the Surface Transportation
36 Board, or its successor, to acquire and in fact acquires the
37 premises from The Burlington Northern and Santa Fe Railway Company.
38 (A draft form of notice of exemption for that purpose is attached
39 as Exhibit G.) Until such time as SLR obtains the property
40 pursuant to an effective notice of exemption (or other appropriate
41 authorization from the Surface Transportation Board, or its
42 successor), the parties shall not be obligated to each other, other
43 than to cooperate in efforts to achieve the conditions precedent to
44 the effectiveness of this agreement.

45
46 28. Miscellaneous. (a) All parties to this Agreement attest
47 that they have freely and willingly entered into this Agreement,
48 with advise of counsel, and that neither this Agreement nor any
49 provision within it is the result of superior bargaining power or
50 duress. Furthermore, all parties to this agreement represent to
51 each other that they neither can nor will take the position that
52 this Agreement, or any portion of this Agreement, is a contract of

1 adhesion.

2 (b) Notwithstanding any other provision of this Agreement,
3 Operator shall conform to the provisions set forth in Exhibit I
4 relating to salvage activities and utilities.

5 (c) The parties jointly undertake to support the provision of a
6 letter in the form set forth in Exhibit J to BNSF.

7 (d) The parties acknowledge that SLR and Seattle intend to enter
8 into a memorandum of understanding substantially in the form set forth
9 in Exhibit K.

10
11 29. Separate counterparts. BTRC and SLR agree that this
12 Operating Agreement may be executed in separate counterparts and shall
13 be deemed accepted when the counterparts are delivered by each to the
14 other. Delivery may be evinced by transmission by fax of executed
15 signature pages to (in the case of BTRC) Stephen L. Day, Esq. at 206-
16 292-9988, and (in the case of SLR) Fred Wert at 202-706-1991. City's
17 approval as to form may be evinced by appropriate signature on either
18 counterpart. The parties will cooperate in achieving fully executed
19 originals should the separate counterpart method be initially
20 employed.

21
22 Ballard Terminal Railroad Company, LLC

23 by: Paul Henderson

24
25
26 Sea Lion Railroad Project

27 by: Fred Wert

28
29
30 The form of this agreement is acceptable for purposes of future
31 assignment to the City of Seattle.

32
33
34 Seattle Department of Transportation

35 by: Dayle Hely

36
37 Exhibit A: parcel for locomotive facility

38 Exhibit B: form of application for modified PCN

39 Exhibit C-1: form of support letter for STB

40 Exhibit C-2: form of general support letter

41 Exhibit D: rail and trail maps

42 Exhibit E: parcel for transload

43 Exhibit F: form of assignment to City of Seattle

44 Exhibit G: form of "notice of exemption for acquisition and
45 operation"

46 Exhibit H: form of letter supporting grant application

47 Exhibit I: form of BNSF-SLR purchase agreement, including
48 conditions relating to salvage and utilities

49 Exhibit J: form of City letter to BNSF regarding compliance
50 with Burke-Gilman agreements

51 Exhibit K: form of MOU SLR/Seattle

FRANCHISE DESCRIPTION

Portions in Former BNSF Right of Way

Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) former Ballard Line right of way, varying in width on each side of the Railway Company's Main Track centerline, as located and constructed upon, over and across Section 13, Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That portion of Lots 1 and 28-30, Block 4 of Ross Addition to the City of Seattle, as recorded in Volume 2 of Plats, page 96, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

That portion of Lots 3 and 4, Block 3 of Ross Addition to the City of Seattle, as recorded in Volume 2 of Plats, page 96, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 8-11 in Block 1 of Ross Home Addition, as recorded in Vol. 11 of Plats, page 25, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 1 and 6-8, Block 2 of Ross Addition, as recorded in Vol. 2 of Plats, page 96 Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 1 and 2, Block 4 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of Lots 5-8, Block 1 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

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That portion of Lot 1, Block 2 of Fern Addition to the City of Seattle, as recorded in Volume 7 of Plats, page 52, Records of King County, Washington, lying Southwesterly of a line drawn parallel with and distant 7.5 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 10-14, Block 18 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 5-8 and 15-18, Block 17 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, together with the 12.0 foot wide alley in said Block 17, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline, and lying Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

That portion of 60.0 foot wide vacated Northwest 44th Street (formerly Salmon Street) as vacated by Ordinance 79548, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the Main Track centerline, and Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles from the Main Track centerline; also,

Those portions of Lots 1- 4 and 19 - 22, Block 16 of Denny's Addition to Ballard and Seattle, as recorded in Volume 14 of Plats, page 16, Records of King County, Washington, together with the 12.0 foot wide alley in said Block 16, lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles and radially from the Main Track centerline, and Southwesterly of a line drawn parallel with and distant 15.0 feet Northeasterly, as measured at right angles and radially from the Main Track centerline; also,

Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly jointly owned by the Northern Pacific Railway Company and Great Northern Railway Company) former Ballard Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as located and constructed upon, over and across Sections 11 and 12, all in Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

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That portion of Lots 5, 6, 19, 20, 21 and 22, Block 174 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Lots 6 and 19, Block 171 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Lots 6 and 19, Block 168 of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, being 10.0 feet wide on each side of said Lead Track centerline as now located and constructed; also,

That portion of Government Lot 2 of said Section 11, Township 25 North, Range 3 East lying contiguous to and Southwesterly of Shilshole Avenue Northwest, and Northeasterly of a line drawn parallel with and distant 8.5 feet Southwesterly, as measured at right angles from said Railway Company's relocated siding track centerline, bounded on the Northwest by the Northeasterly extension of the Northwesterly line of Lot 5, Block 8 of Ballard Tide Lands, and bounded on the Southeast by the Southeasterly line of vacated 22nd Avenue Northwest (formerly 3rd Avenue West); also,

Those portions of The Burlington Northern and Santa Fe Railway Company's (formerly Great Northern Railway Company) former Ballard Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as located and constructed upon, over and across Sections 10 and 11, all in Township 25 North, Range 3 East of the Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That 17.0 foot wide portion of said Railway Company's right of way, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline as located and constructed upon, over and across Government Lot 2 all in said Section 11, Township 25 North Range 3 East, bounded on the East by the Southwesterly line of Shilshole Avenue and bounded on the West by the Easterly line of 24th Avenue Northwest; also,

That 17.0 foot wide portion of said Railway Company's right of way, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline as located and constructed upon, over and across Government Lot 3 and the East 520.0 feet of Government Lot 4, all in said Section 11, Township 25 North, Range 3 East, bounded on the East by the West line of 24th Avenue Northwest, and bounded on the West by the West line of the East

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520.0 feet of said Government Lot 4, **EXCEPTING THEREFROM**, the right of way for 28th Avenue Northwest; also,

That 20.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline upon, over and across Government Lot 4, of said Section 11 and Government Lots 3, 2 and 1 of Section 10, all in Township 25 North, Range 3 East, bounded on the East by the West line of the East 520 feet of said Government Lot 4 of Section 11, and bounded on the North by the easterly extension of the north line of Lot 10 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, **EXCEPTING THEREFROM**, the rights of way for 40 foot wide 30th Avenue Northwest, 80 foot wide 32nd Avenue Northwest, 66.0 foot wide West 57th Street, 80.0 foot wide Market Street, and for Seaview Avenue Northwest at Northwest 60th Street, **ALSO EXCEPTING THEREFROM** that portion of said Railway Company's right of way, lying within an area between two lines drawn parallel and concentric with and distant 150.0 feet wide on each side of a line lying directly below the centerline of said Railway Company's Bridge No. 4 over said Ballard Line right of way, and over and across Salmon Bay Waterway; also,

That 35.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on the Westerly side, and 25.0 feet wide, as measured at right angles, on the Easterly side of the Main Track centerline upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, bounded on the South by the Easterly extension of the North line of Lot 10 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, and bounded on the North by the Easterly extension of the South line of Lot 3 of said Block 15 of Ballard Tide Lands; also,

That 20.0 foot wide portion of said Railway Company's right of way, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, bounded on the South by the Easterly extension of the South line of Lot 3 of Block 15 of Ballard Tide Lands according to the recorded plat thereof, and bounded on the North by the North line of said Section 10; also,

That 20.0 foot wide portion of said Railway Company's right of way in Government Lot 4 of Section 3, Township 25 North, Range 3 East, lying East of Block 16 of Ballard Tide Lands, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline, bounded on the South by the South line of said Section 3 and bounded on the North by the South margin of Northwest 67th Street; and

Portions in City Street Right of Way

Those portions of City Streets, all in Sections 3, 10, 11, 12 and 13, Township 25 North, Range 3 East, Willamette Meridian, King County, Washington, more particularly described as follows, to-wit:

That portion of 80.0 foot wide Northwest 40th Street (formerly Ross Place) lying 7.5 feet on each side of the Main track centerline, as measured at right angles; also,

Those portions of 66.0 foot wide 6th Avenue Northwest and 80.0 foot wide Northwest 41st Street lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of 60.0 foot wide Northwest 42nd Street and 60.0 foot wide 7th Avenue Northwest, lying 7.5 feet on each side of the Main Track centerline, as measured at right angles; also,

Those portions of 60.0 foot wide Northwest 43rd Street and 66.0 foot wide 8th Avenue Northwest, lying 7.5 feet on each side of the Main Track centerline; also,

That portion of 60.0 foot wide Bright Street (formerly West 44th Street) lying Northeasterly of a line drawn parallel with and distant 23.5 feet Southwesterly, as measured at right angles from the centerline of said Mainline Track, and Southwesterly of a line drawn parallel with and distant 30.0 feet Northersterly, as measured at right angles from said Main Track centerline; also,

That portion of the East 33.0 feet of 9th Avenue Northwest (formerly 2nd Avenue East and Eastern Avenue), lying Northeasterly of a line drawn concentric with and distant 7.5 feet Southwesterly, as measured radially from the Main Track centerline; also,

That portion of Northwest 45th Street (formerly "A" Street) East of the Northerly extension of the East line of 9th Avenue Northwest (formerly 2nd Avenue East and Eastern Avenue), lying Southwesterly of a line drawn concentric with and distant 15.0 feet Northeasterly, as measured radially from the Main Track centerline; also,

That 15.0 wide portion of Northwest 45th Street (formerly "A" Street) and the East 33 feet of 9th Avenue Northwest (formerly 2nd Avenue East and Eastern Avenue), as provided by Ordinance No. 972, from the City of

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Ballard, bounded on the East by the East line of 9th Avenue Northwest, and the Northerly extension thereof, and bounded on the West by a line drawn parallel with and distant 45.0 feet Northeasterly, as measured at right angles from the Southwesterly line of 100.0 foot wide Shilshole Avenue Northwest, according to the plat of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington; also,

Those 15.0 foot wide portions of Northwest 45th Street (formerly "A" Street), Northwest 46th Street (formerly "B" Street), Northwest Ballard Way (formerly West 47th Street or "C" Street) and Northwest Leary Way (formerly West 48th Street or "D" Street), being 7.5 feet wide on each side of said Railway Company's Lead Track centerline, as now located and constructed, as provided by Ordinance No. 1114 from the City of Ballard; also,

The Southwesterly 45.0 feet of 100.0 foot wide Shilshole Avenue, bounded on the Southeast by the Easterly margin of 15th Avenue Northwest according to the plat of Gilman Park, as recorded in Volume 3 of Plats, page 40, Records of King County, Washington, and bounded on the Northwest by the Southwesterly extension of the North line of Lot 21, Block 72 of said plat of Gilman Park; also,

That 17.0 foot wide portion of 24th Avenue Northwest, being 8.5 feet wide as measured at right angles on each side of the Main Track centerline; also,

That 17.0 foot wide portion of 28th Avenue Northwest, being 8.5 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 40 foot wide 30th Avenue Northwest, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 80 foot wide 32nd Avenue Northwest, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of 80 foot wide Northwest Market Street, being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

That 20.0 foot wide portion of Seaview Avenue Northwest at Northwest 60th Street (also known as the Seaview Crossing), being 10.0 feet wide, as measured at right angles, on each side of the Main Track centerline; also,

Portions in Easement from BNSF

That 20.0 foot wide portion of an easement area across the right of way of the Burlington Northern Santa Fe Railway Company's Seattle to Everett Main Line granted to the City by said Railway Company being 10.0 feet wide, as measured at right angles, on each side of the Ballard Line Main Track centerline, as located and constructed upon, over and across Government Lot 1 of Section 10, Township 25 North, Range 3 East, W.M., King County, Washington, bounded between two lines drawn parallel and concentric with and distant 150.0 feet, as measured at right angles and radially on each side of a line lying directly below the centerline of said Railway Company's Bridge No. 4 over the Main Track, and over and across Salmen Bay Waterway;

AND THE END OF THIS DESCRIPTION.



City of Seattle

Norman B. Rice, Mayor

Executive Department - Office of Management and Planning

Judy Bunnell, Director

September 3, 1997

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT:

Management and Planning

SUBJECT:

AN ORDINANCE granting to the Ballard Terminal Railroad Company a railway franchise and the right, privilege and authority to locate, lay down, construct, maintain, own, and operate standard gauge railway tracks in, upon, along and across that portion of the Burlington Northern and Santa Fe Railway Company's former Fremont to Ballard, Washington Branch Line right-of-way between Sixth Avenue North West and North West 67th Street, for a term of thirty years, specifying terms and conditions under which this franchise is granted, and providing for acceptance of the franchise, its terms and conditions.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Eric Chipps at 4-8365.

Sincerely,

Norman B. Rice
Mayor

by

Eric Chipps for
JUDY BUNNELL
Director

h:\admin\legisl\law\tr\chipps1

Seattle Municipal Building, 600 Fourth Avenue Seattle, WA 98104-1826

Enclosure

Tel: (206) 684-8080, TDD (206) 684-8118, FAX: (206) 233-0085

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*O/C to enact
9-12-97*

*City Clerk: Please note that the
expiration date on page 1, line
30, needs to be filled in after
the Mayor approves the ordinance*
JB

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Richard M. [unclear]

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

85627
City of Seattle, City Clerk

—SS.

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118734

was published on

10/13/97

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

10/13/97

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON - KING COUNTY

84989
City of Seattle: FINANCIAL CNTR.

—SS.

No. FRANCHISE PR

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

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CT:CB111841:BALLARD

was published on

09/18/97 09/19/97 09/20/97 09/22/97
09/23/97 09/24/97 09/25/97 09/26/97
09/27/97 09/29/97

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

09/29/97

Notary Public for the State of Washington,
residing in Seattle

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Affidavit of Publication

Appendix H

Resolution 30583



City of Seattle Legislative Information Service

Information retrieved on August 3, 2010 4:06 PM

Resolution Number: 30583

A RESOLUTION adopting a preferred route for the Burke-Gilman Trail through Ballard for the completion of the "missing link"; and directing Seattle Transportation, along with other City departments, to pursue funding opportunities to complete the route as presented in this resolution.

Date introduced/referred: March 10, 2003

Date passed: April 14, 2003

Date adopted: April 14, 2003

Status: Adopted As Amended

Note: *Burke-Gilman Trail Missing Link*

Vote: 7-2 (No: McIver, Pageler)

Committee: Transportation

Sponsor: CONLIN

Index Terms: STATING-POLICY, BURKE-GILMAN-TRAIL, BALLARD, TRANSPORTATION-PLANNING, CHITTENDEN-LOCKS, BALLARD, PLANNING, BIKEWAYS, PEDESTRIANS, TRAILS, SIDEWALKS

References/Related Documents: Related: Res. 30408

Text

*Note to users: {- indicates start of text that has been amended out
-} indicates end of text that has been amended out
{+ indicates start of text that has been amended in
+} indicates end of text that has been amended in*

A RESOLUTION adopting a preferred route for the Burke-Gilman Trail through Ballard for the completion of the "missing link" between 11th Avenue NW and the Ballard Locks; directing Seattle Transportation, along with other City departments, to pursue funding opportunities to complete the route as presented in this resolution; and affirming the City's commitment to supporting manufacturing and industrial businesses in the area.

WHEREAS, the Burke-Gilman Trail currently links Bothell, Kenmore, the University of Washington and several Seattle neighborhoods with a current terminus at 11th Avenue NW; and

WHEREAS, the Burke-Gilman Trail serves much of north Seattle and the Puget Sound Region as a successful, scenic and safe non-motorized transportation, recreation and community facility; and

WHEREAS, the citizens of Ballard identified the completion of the Burke-Gilman Trail through Ballard as one of four top priorities in the 1998 Crown Hill - Ballard Neighborhood Plan; and

WHEREAS, the City has a strong planning framework and policy

commitment, as demonstrated by its comprehensive plan and strategic transportation plan, that guide and encourage expanded facilities and safety improvements for citizens who walk, bicycle or use other non-motorized forms of travel, recognizing that freight mobility is critical to the City's economic base; and

WHEREAS, the Ballard Interbay Northend Manufacturing/Industrial Center has been identified and designated as one of two areas where the City will promote manufacturing and industrial employment growth including manufacturing uses, advanced technology industries and a wide range of industrial-related commercial functions, such as warehouse and distribution activities; and

WHEREAS, the Ballard Interbay Northend Manufacturing/Industrial Center contributes to Seattle's diversified employment base and to the growth of high-wage jobs within the Central Puget Sound region; and

WHEREAS, maintaining freight mobility and freight access is a high priority in the City's Transportation Strategic Plan and the City's Comprehensive Plan and it is critical that the City work to preserve freight mobility and access in the industrial areas; and

WHEREAS, protecting the integrity of those areas of the City that are zoned for industrial activity, particularly the Ballard Interbay Northend Manufacturing/Industrial Center and other industrial zones that host water dependent marine industrial activities, is identified as an important policy objective in Seattle's Comprehensive Plan; and

WHEREAS, Resolution 30408, adopted in October, 2001, directed Seattle Transportation to evaluate "three bicycle/pedestrian routes to complete the Burke-Gilman Trail between 11th Avenue NW and the Locks;...work closely with business and property owners, trail advocacy groups and community groups;...determine where acquisition of land may be necessary;...(and) prepare a final report summarizing its analysis of alternative routes;" NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. The City reiterates its commitment to the following guiding principles that have guided trail development for the past fifteen years:

A. The first priority when building transportation facilities is always safety.

B. Safe and efficient customer and freight access to businesses must be maintained.

Section 2. The rail corridor between 11th Avenue NW and the Ballard Locks is already in public ownership. Consistent with current City policy, the City should continue preservation of the corridor, in public ownership, for rail and trail use.

Section 3. Consistent with adopted City policies and plans, the preferred route (both interim route and permanent routes described in Section 4 below) for the Burke-Gilman Trail from 11th Avenue NW to the Ballard Locks will be designed to address safety concerns and to be compatible with water-dependent and industrial uses, particularly in the Ballard Interbay North End Manufacturing/Industrial Center,

and to ensure that the trail does not unnecessarily impede or delay trucking and freight access to manufacturing and industrial businesses. Examples of possible safety measures include pavement markings; regulatory, warning and wayfinding signs; pedestrian/bicycle signals; mechanical gates; mirrors; elevated crossings; etc.

Section 4. The preferred route for the Burke-Gilman Trail "missing link" between 11th Avenue NW and the Ballard Locks, as described below and as shown on the map attached as Exhibit A (once final design is completed, some small modifications may be required; these modifications to be left to the discretion of the City Traffic Engineer for approval), is hereby adopted and SDOT will design and construct the preferred route as follows:

A. Design and construct the following permanent route:

1. On the south side of NW 45th Street, from 11th Avenue NW (the current terminus of the Burke-Gilman Trail) to Shilshole Avenue NW construct a trail.
2. On the south side of Shilshole Avenue NW (north side of tracks) between NW Vernon Place and 24th Avenue NW, construct a trail.
3. On the north side of the railroad tracks from 28th Avenue NW to 30th Avenue NW (the Locks), construct a trail.

B. Design and construct an interim route as follows:

1. On Shilshole Avenue NW from NW 45th Street to 17th Avenue NW, construct an interim trail or install bike lanes.
2. On 17th Avenue NW from Shilshole Avenue NW to Ballard Avenue NW, install a signed bike route.
3. On Ballard Ave NW from 17th Avenue NW to NW Vernon Place, install a signed bike route.
4. On Vernon Place between Ballard Avenue NW and Shilshole Avenue NW, install a signed bike route.
5. On 24th Avenue NW from the rail corridor to NW Market Street, construct an interim trail.
6. On NW Market Street from 24th Avenue NW to 28th Avenue NW, construct an interim trail that can be used later as a sidewalk.
7. On 28th Avenue NW from NW Market Street to the rail corridor, install a signed bike route.

C. Subject to the conditions in Section 3, design and construct a permanent route to replace the interim route as follows:

1. On Shilshole Avenue NW, from NW 45th Street to NW Vernon Place, construct a bicycle and pedestrian facility.
2. On the railroad right-of-way, from 24th Avenue NW to 28th Avenue NW, construct a trail.

Section 5. Seattle Transportation, in cooperation with other appropriate City departments, including the Department of Finance, will seek funding (e.g. federal grants and other sources that may be

available) for the following:

- A. The design and construction of the trail as described above.
- B. The purchase, for public use, of a narrow strip of property (its exact width to be determined) on the north side of the railroad tracks, west of 26th Avenue NW; and other smaller pieces of property, as required, to complete the design and construction of the trail. Once the right-of-way between 26th Avenue NW and 28th Avenue NW has been secured, Seattle Transportation will determine whether it is appropriate to construct a trail along this section; and then decommission all or part of the interim route along NW Market Street.

Section 6. In locations where private redevelopment or public works projects are being considered near the rail corridor, Seattle Transportation and other appropriate City departments will work with property owners to resolve design challenges and make safety improvements for all modes, so as to accommodate a future trail described in Section 4C above.

Section 7. Beginning immediately and continuing for two years subsequent to operation of the new segment of trail, SDOT shall monitor auto, bike and pedestrian accident data, and trail use along the length of Burke Gilman Trail from the intersection of N.W. 45th Street and 11th Avenue N.W. to where the trail meets the Ballard Locks. SDOT shall monitor bike and pedestrian use prior to construction to generate baseline data, and post construction to determine if the public is utilizing the new "interim" sections of trail as intended, or if riders are deviating from the trail to follow the Shilshole Avenue and "Not 54th Street" corridor. In particular, SDOT shall monitor trail use at the intersection of Shilshole Avenue N.W. and 17th Avenue N.W., the intersection of Ballard Avenue N.W. and N.W. Vernon Place, and the intersection of Shilshole Avenue N.W. and 24th Avenue N.W. SDOT shall develop a monitoring methodology that provides data that is representative of bike and pedestrian use at different times of day throughout the year. SDOT shall report back to the Council on its findings periodically, and at the conclusion of the two year monitoring period shall provide Council with a report and recommendations for any modifications to the interim and permanent trail routes that may be called for to encourage usage along the designated path.

Section 8. The Seattle Transportation "Ballard Corridor Design Study (11th Avenue NW to the Locks)" February, 2003, fulfills the requirements of Resolution 30408 to complete an analysis of three alternative routes for completing the Burke-Gilman Trail between 11th Avenue NW and the Locks.

Section 9. The City will continue to support manufacturing and industrial businesses in the area, including working with the Manufacturing Industrial Council and the Ballard Interbay Northend Manufacturing/Industrial Center members to develop and implement initiatives to meet the needs for freight mobility, trained workforce and land use of Seattle's industrial business community, and to assist the maritime industry in completion of an economic analysis and action plan for the maritime industry in response to a 2003 Budget Statement of Legislative Intent adopted by Council (Resolution 30576).

Section 10. The Council believes that the current Industrial zoning of the Ballard Interbay Northend Manufacturing/Industrial Center

should remain unchanged. The City will continue to support manufacturing and industrial businesses across the City and will work collaboratively with representatives of industry to insure that there will always be sufficient zoning to meet the needs of the Seattle's industrial manufacturing sectors, particularly water dependent marine industrial enterprises.

Adopted by the City Council the ____ day of _____, 2003, and signed by me in open session in authentication of its adoption this ____ day of _____, 2003.

President _____ of the City Council

THE MAYOR CONCURRING:

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2003.

City Clerk

Exhibit A: Map of the plan for completing the Burke-Gilman Trail
"missing link" between 11th Avenue NW and the Locks

April 14, 2003
Version 5

[Exhibit A: Map of the plan for completing the Burke-Gilman Trail
"missing link" between 11th Avenue NW and the Locks](#)

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1
2 **BEFORE THE SURFACE TRANSPORTATION BOARD**

3
4 **STB Finance Docket 36261**

5 **BALLARD TERMINAL RAILROAD COMPANY, L.L.C.**
6 **PETITION FOR A DECLARATORY ORDER**

7
8 **VERIFIED STATEMENT OF JAMES FORGETTE IN SUPPORT OF BALLARD TERMINAL**
9 **RAILROAD COMPANY, L.L.C.'S PETITION FOR A DECLARATORY ORDER**

10 I, James Forgette, do swear and affirm the following to the best of my personal
11 knowledge:

- 12 1. I am over 18 years of age. I have personal knowledge of the facts contained in this
13 Verified Statement and am otherwise competent to testify to the matters herein.

14 **Professional Background**

- 15 2. I am currently employed by the Ballard Terminal Railroad Company, L.L.C.
16 (hereinafter referred to as the "BTRC") as its General Manager. I have held this
17 position for two (2) years.
- 18 3. I have worked for BTRC for approximately 17 years, since 2001. During this time, I
19 have been employed by BTRC as a Conductor for 17 years, as an Engineer for 15 years,
20 and as its Operation Manager for 15 years.
- 21 4. Prior to joining BTRC, I worked for BNSF for one (1) year as a Brakeman/Switchman.

22 **BTRC Facilities and Operations**

- 23 5. Having worked for BTRC for 17 years in many capacities, I am familiar with its three
24 rail lines, including its equipment, facilities and operation of the "Ballard Line," which
25 is a shortline between milepost 0.09 and the end of the line at mile post 2.70, a
distance of almost 3 miles in the Ballard District of Seattle, King County, WA.

1 6. The Ballard Line includes, among other facilities, a mainline track, a siding that serves
2 Salmon Bay Sand & Gravel Company, a spur or stub track referred to as the "Western
3 Pioneer Spur," a locomotive yard located towards the eastern third of the line, run-
4 around tracks near the eastern terminus, and two interchange tracks near the western
5 terminus.

6 7. BTRC operates the Railroad on any day of the week, at all hours of the day depending
7 on its shipper's needs. BTRC currently operates its Ballard Line by picking up inbound
8 cars at the interchange with the BNSF at approximately milepost 0.09 and pulling the
9 cars easterly.

10 8. It is BTRC's practice, whenever possible, to pull cars instead of shoving them because
11 that is safer.

12 **Western Pioneer Spur Impacts**

13 9. BTRC's Western Pioneer Spur is approximately 550 linear feet long and runs westerly
14 from the switch located just to the east of the Ballard Bridge at 15th Avenue NW in the
15 Ballard neighborhood of Seattle, WA. True and accurate photographs depicting the
16 location and condition of the Western Pioneer Spur are attached as Exhibit 1 to this
17 verified statement.

18 10. BTRC currently accesses the Western Pioneer Spur by pulling cars easterly, from the
19 interchange near the western terminus a couple miles away, past the Western
20 Pioneer switch and then shoving the cars onto the Spur. Cars are retrieved by pulling
21 them off the Western Pioneer Spur and taking them to the run-around tracks near the
22 eastern terminus, where the locomotive changes ends on the consist, to pull the cars
23 back to the interchange.

24 11. BTRC improved the Western Pioneer Spur by installing paved access on both sides of
25 the Spur, giving BTRC unfettered access to load, unload and transload goods and
freight. This is an ideal location to perform these operations since this is a 24/7 truck
load and unload zone.

- 1 12. Truck access on the southern side of the Western Pioneer Spur is located between the
2 siding and either an adjoining building or fence, thereby making this area very
3 protected and safe for loading, unloading and transloading operations. The northerly
4 side of the Western Pioneer Spur provides safe truck access because it is between the
5 mainline and the siding and far enough from Shilshole Avenue NW, the active vehicle
6 right-of-way.
- 7 13. Currently, there are no nearby or adjacent improvements, such as a bicycle trail, that
8 impede access and use of the Western Pioneer Spur.
- 9 14. BTRC needs unobstructed access to use the Western Pioneer Spur for its operations.
- 10 15. BTRC actively uses the Western Pioneer Spur, including using it for car storage for
11 BTRC customers and, as needed, for loading, unloading and transloading freight for
12 BTRC customers.
- 13 16. BTRC is currently negotiating with a potential customer interested in using the
14 Western Pioneer Spur for transloading bulk product.
- 15 17. Based on my discussions with and review of its design documents for the Missing Link
16 extension of the Burke-Gilman recreational trail, it is my understanding that the City
17 of Seattle Department of Transportation ("SDOT") intends to either eliminate or
18 substantially reconfigure the Western Pioneer Spur in order to construct the trail. In
19 either case, SDOT's actions will materially and negatively impact BTRC's operations.
- 20 18. True and correct copies of SDOT's Burke-Gilman Trail 90% Submittal drawings, Rail
21 Relocation Plan, Sheets RR-102 to RR-104 are attached as Exhibit 2 to this verified
22 statement.
- 23 19. In its 90% Submittal drawings, Exhibit 2, SDOT intends to entirely eliminate the
24 Western Pioneer Spur.
- 25 20. SDOT's action would materially and negatively impact BTRC because it invested
money and resources designing and improving the Western Pioneer Spur, actively
uses it, has historically used it, and is currently negotiating with a potential customer
for expanded use of this Spur. BTRC needs the Western Pioneer Spur to maintain and

1 grow its business operation: The Western Pioneer Spur is BTRC's main resource for
2 expanding its business and revenue.

3 21. A true and correct copy of SDOT's "Graphic Plan" showing its post 90% design for
4 reconfiguring the Western Pioneer Spur, which directly contradicts their 90% plans
5 for removing the Spur altogether, as presented on September 13, 2018, is attached as
6 Exhibit 3 to this verified statement.

7 22. SDOT's plan to reconfigure the Western Pioneer Spur, instead of eliminating it, as
8 depicted in Exhibit 3, also would materially and negatively impact BTRC for numerous
9 reasons.

10 23. SDOT's new configuration is less safe because it sandwiches the Missing Link, a
11 recreational trail, between the main line tracks and new Spur, putting trail users into
12 very close proximity to active rail tracks without sufficient setback or safety barriers.

13 24. SDOT's new configuration is less safe because it does not provide enough space for
14 BTRC to safely operate as the Missing Link appears to be approximately 7.5-feet from
15 the center line of BTRC's main line track and the new spur. Because of this
16 configuration and proximity, trail users would be in direct conflict with train
17 movements, be in danger in the event of a derailment and in danger from even
18 routine loading, unloading and transloading operations, which currently occur far
19 from Shilshole Avenue.

20 25. SDOT's new configuration is less safe because it forces trail users to navigate between
21 stored rail cars and active train movements. Train crew members would also have
22 inadequate clearance to ride on the side of railcars.

23 26. SDOT'S new configuration impacts BTRC by eliminating its service roads. Currently,
24 trucks access the service road from either end (east or west) and can pull up next to
25 either side of a rail car located on the Western Pioneer Spur. This would be impossible
under SDOT's new configuration because BTRC would not be able to bring trucks next
to rail cars on this new spur, making it unusable for loading, unloading or transloading.

1 27. SDOT's new configuration negatively impacts BTRC's ability to maintain and grow its
2 operation because prospective customers want to transload at BTRC's Western
3 Pioneer Spur.

4 **NW 45th Street Impacts**

5 28. The eastern portion of the Ballard Line is located adjacent to NW 45th Street in
6 Seattle.

7 29. The active rail line is located immediately to the north of what was the west-bound
8 drive lane of NW 45th Street but which is currently configured as an interim portion of
9 the Missing Link.

10 30. True and correct photographs depicting this area, a portion of the Ballard Line, and
11 the interim trail, are included in the Petition and attached as Exhibit 4.

12 31. While this is not a perfect configuration because the rail line is located so close to the
13 active trail thereby creating a dangerous condition, it is better than SDOT's proposal
14 to reconfigure this area to accommodate the Missing Link, which will make this area
15 unsafe.

16 32. True and correct copies of SDOT's Burke-Gilman Trail 90% Submittal drawings,
17 Channelization and Signing Plan, Sheets CH17 to CH20 are attached as Exhibit 5 to this
18 verified statement. And true and correct copy of SDOT's Burke-Gilman Trail 90%
19 Submittal drawings, Rail Relocation Plan, Sheet RR-105 is attached as Exhibit 6 to this
20 verified statement.

21 33. As depicted on Exhibit 5, as part of constructing the Missing Link, SDOT plans to
22 reconfigure NW 45th Street to once again make it a two-way road and to locate the
23 Missing Link to the south of the active drive lanes. To accommodate the trail, SDOT
24 needs to move the travel lanes to the north, thereby locating the east-bound travel
25 lane directly on top of BTRC's active rail line.

34. This means that BTRC's train will operate in the active roadway of NW 45th Street,
used by every size and type of vehicle, where the speed limit is 20 MPH.

1 35. Since BTRC moves its train in both directions on this track, when it is heading east, the
2 train will be heading in the same direction as traffic in the lane that the tracks occupy.
3 When the train is heading west, however, the train will be traveling directly into
4 oncoming vehicle traffic. This is extremely dangerous.

5 36. SDOT has not included any signals or warnings to alert drivers that they will be driving
6 behind a slow (10 MPH or less) train, going well under the posted speed limit for
7 vehicles. In my experience operating trains, drivers will perform unsafe maneuvers to
8 get around the train, thereby making this area and operation even more dangerous.

9 37. Forgetting about how dangerous it is to locate a train in an active drive lane, SDOT's
10 new configuration does not even provide enough room for the train to move safely
11 since the travel lanes appear to be approximately 11' or 12' wide and a rail car can be
12 up to 11' wide. Because of that, the rail car will occupy or hang-over the entire travel
13 lane, possibly crossing over the center-lane into the other lane. Train crew members
14 would also have inadequate clearance to ride on the side of railcars.

15 38. The new configuration also creates an unsafe condition by forcing BTRC's locomotive
16 to cross the westbound travel lane to enter/exit the locomotive storage area. SDOT
17 did not provide any gates or signals to regulate this movement and make it safe.

18 39. Operating a train in the middle of an active travel lane with a 20 MPH speed limits is
19 extremely dangerous.

20 **Not-54th Street Impacts**

21 40. The western third of the Ballard Line is located along a former railroad easement that
22 was conveyed to the City of Seattle but remains an undedicated public right-of-way
23 locally referred to as "Not-54th Street" since, were it to be dedicated, this right-of-way
24 would be the continuance of NW 54th Street through the Ballard neighborhood of
25 Seattle, WA.

41. Not-54th Street is currently largely unimproved, narrow and tightly constrained.

1 42. It has rough dirt and gravel travel surfaces adjacent to the Ballard Line tracks. True
2 and accurate photographs depicting the condition of this area are included in
3 the Petition.

4 43. The currently unimproved portion of Not-54th is used solely for rail traffic with the
5 occasional pedestrian.

6 44. Heavy freight trucks and light vehicles do not use this area because it very narrow—
7 there is not enough room for trains and vehicle traffic together.

8 45. It is very hard for vehicle traffic to navigate this area because it is narrow and tightly
9 constrained by the existing railroad tracks. Even without a train present, vehicles
10 would need to have one side of their vehicles wheels inside the rails.

11 46. Despite this, SDOT plans to improve a portion of Not-54th Street by paving the area to
12 the north of the active rail tracks between NW 24th Street and NW 26th Street, creating
13 a travel lane and an adjacent sidewalk.

14 47. A true and accurate copy of SDOT's NW 54th Street Paving plan for this area is attached
15 as Exhibit 7 to this verified statement.

16 48. As shown on Exhibit 7, SDOT plans to pave right up to the edge of rail tracks. While
17 this exhibit shows an "8.5' Min. Clearance" between the centerline of track and the
18 edge of a passenger car, SDOT is not planning to install any physical barrier or fence
19 to maintain this safe operating distance. As such, vehicles can drive right up to and
20 next to the moving train under SDOT's plan to "improve" this area.

21 49. Under SDOT's plan, heavy freight vehicles would travel westbound on NOT-54th next
22 to the rail tracks.

23 50. There is not enough room for cars, much less big trucks, to safely operate next to the
24 rail tracks in this portion of Not-54th Street. Train crew members would also have
25 inadequate clearance to ride on the side of railcars.

51. It appears SDOT is paving this area to make it a de facto portion of the Missing Link by
providing a paved surface for bicycle riders. Improving this area will invite

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incompatible users into a dangerous and tightly constrained area next to active rail tracks with no fence of physical barrier.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6th day of December, 2018.

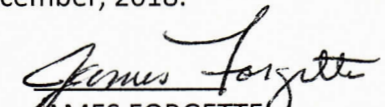

JAMES FORGETTE

EXHIBIT 1



NAHX 330213

SPRD 6 00 DS
7 IC DS
8 IC DSA
CH 30 31 CLASS C NALS
MOIS DRAFT CLEA



CAUTION
NO SIDE LADDER

TILX
32812

SPRG 7 OC D-5
5 IC D-5
2 5062
2 5063
CH 36 1W CLASS C WHLs
M901E DRAFT GEAR

RNU

WASHINGTON
C46065M

NORTHWEST
SUPREMEcorp.com

NORTHWEST
SUPREMEcorp.com



CAUTION
NO SIDE LADDER

TILX
32812

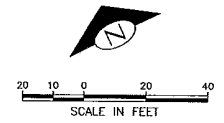
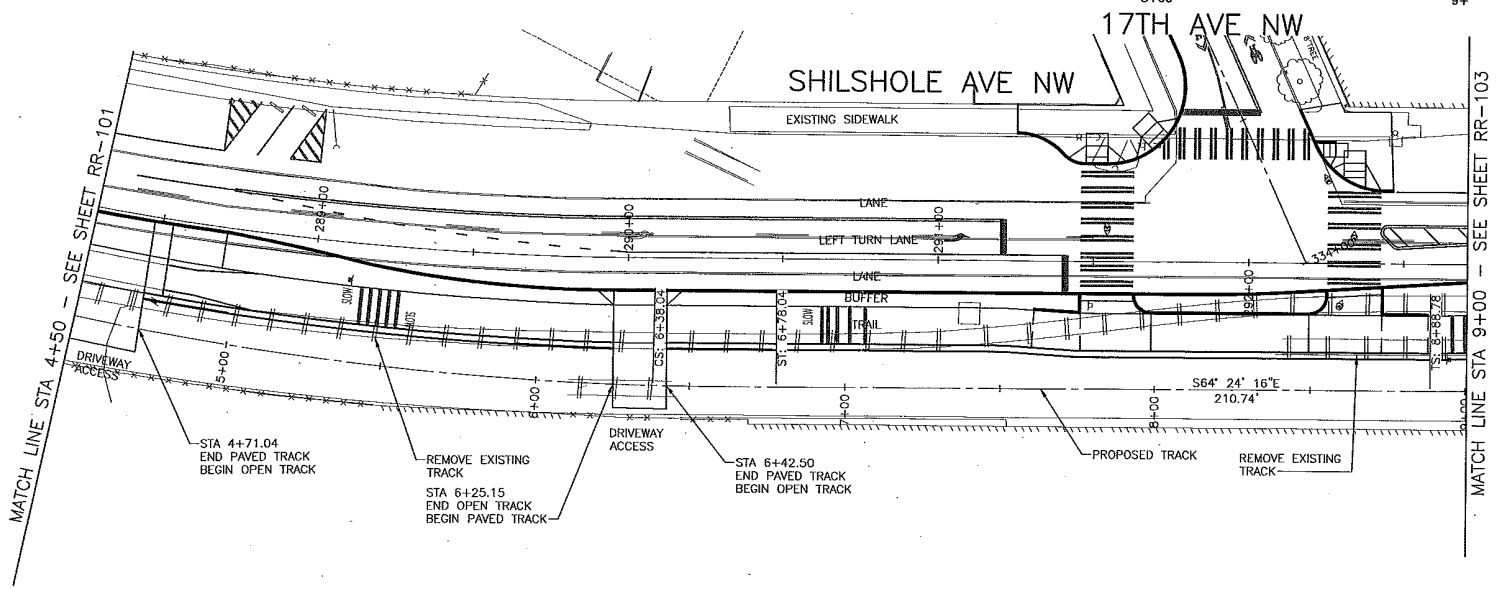
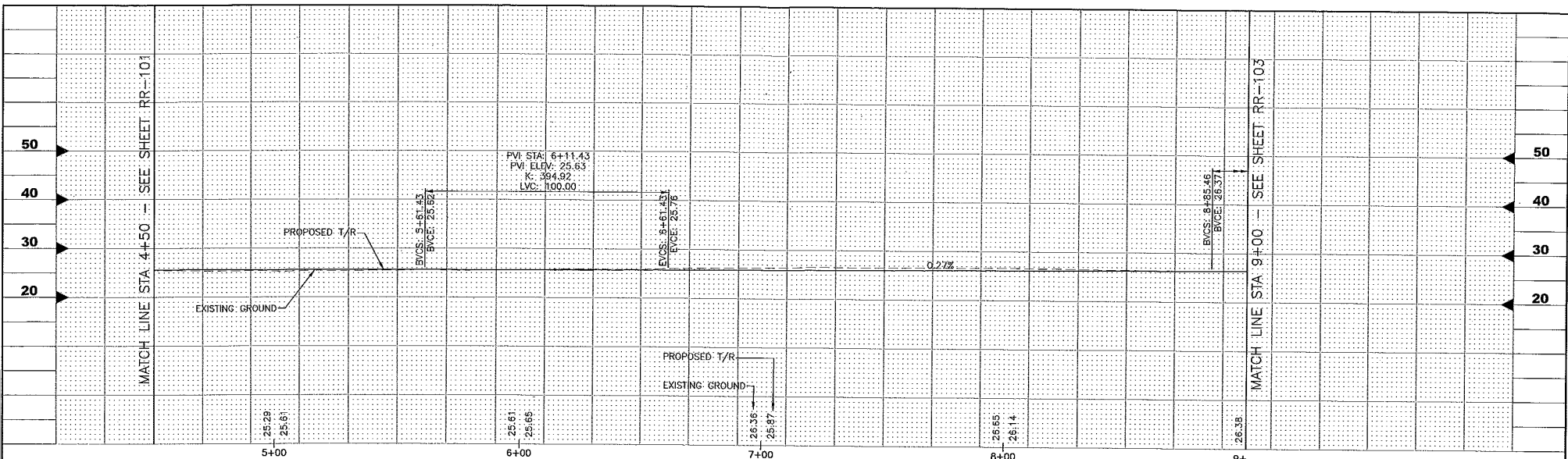
SPRG 7 OC D-5
5 IC D-5
2 5062
2 5063
CH 35 1W CLASS C WHLS
M901E DRAFT GEAR

ESTO 33 O



EXHIBIT 2

DATE	REVISION
10/10/17	1
10/10/17	2
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10/10/17	49
10/10/17	50



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RAIL RELOCATION PLAN

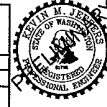
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SEATTLE, WA 98104
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Tacoma Washington 98402
Phone: 253.922.8780

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DEPARTMENT OF FINANCE & ADMINISTRATIVE SERVICES
SEATTLE, WASHINGTON 20

INITIALS AND DATE DESIGNED: SML CHECKED: KJH	INITIALS AND DATE REVIEWED: SML CONST. PROJ. MGR.
DRAWN: SML CHECKED: KJH	REVISOR: AS: KJH

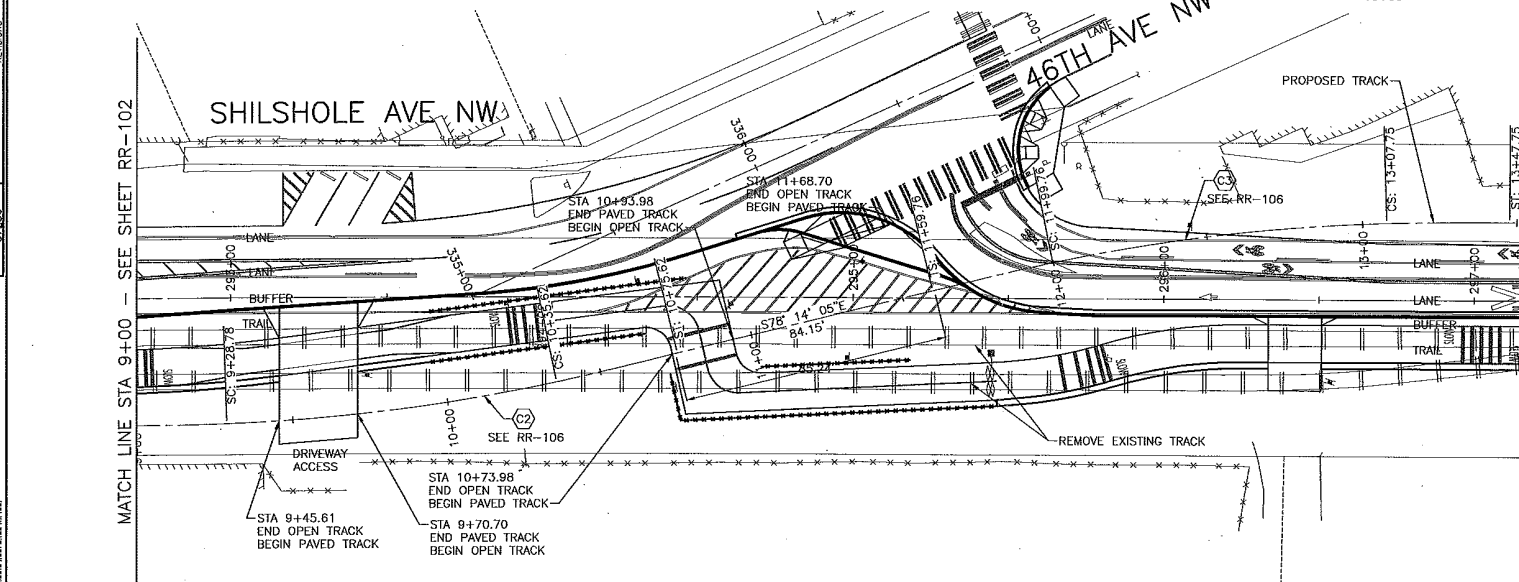
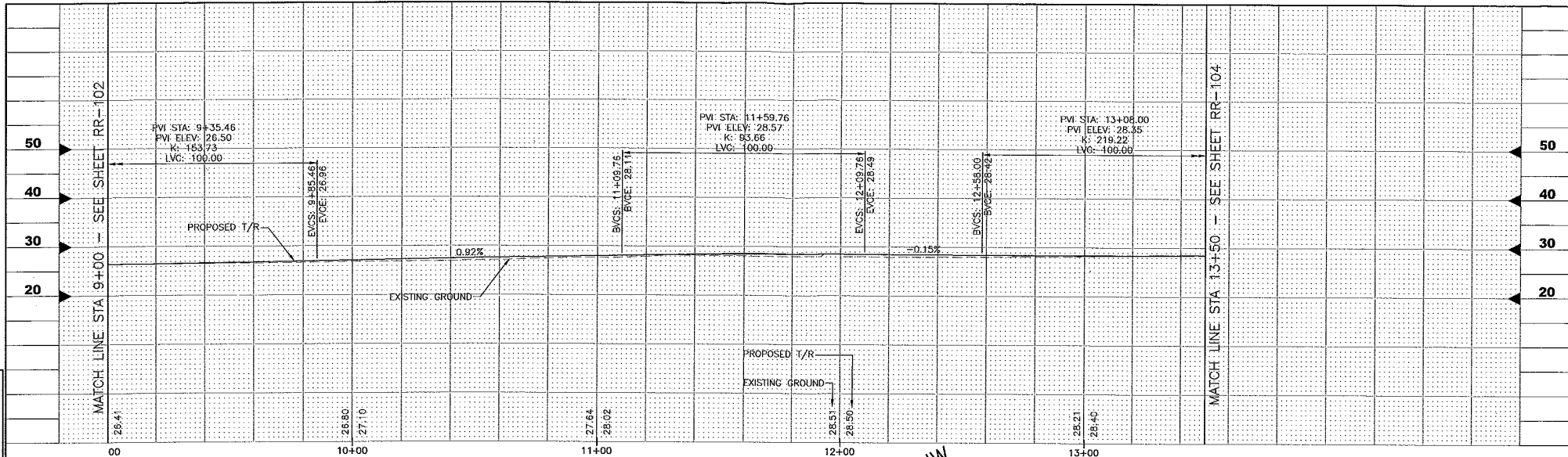
ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SEATTLE STANDARD PLANS AND SPECIFICATIONS AND OTHER DOCUMENTS CALLED FOR IN SECTION 9-02.3 OF THE PROJECT MANUAL.



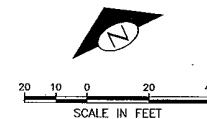
Seattle Department of Transportation
ORDINANCE NO. 115000
FUND: 115000
SCALE: H. 1"=20', V. 1"=10'

BURKE-GILMAN TRAIL MISSING LINK

PC	790-604
VP	RR-102
SHEET 252 OF 258	



MATCH LINE STA 13+50 - SEE SHEET RR-104



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CITY PURCHASING & CONTRACTING SERVICES DIRECTOR

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DRAWN: SMH	CHECKED: KML	RECEIVED	RECEIVED AS BUILT



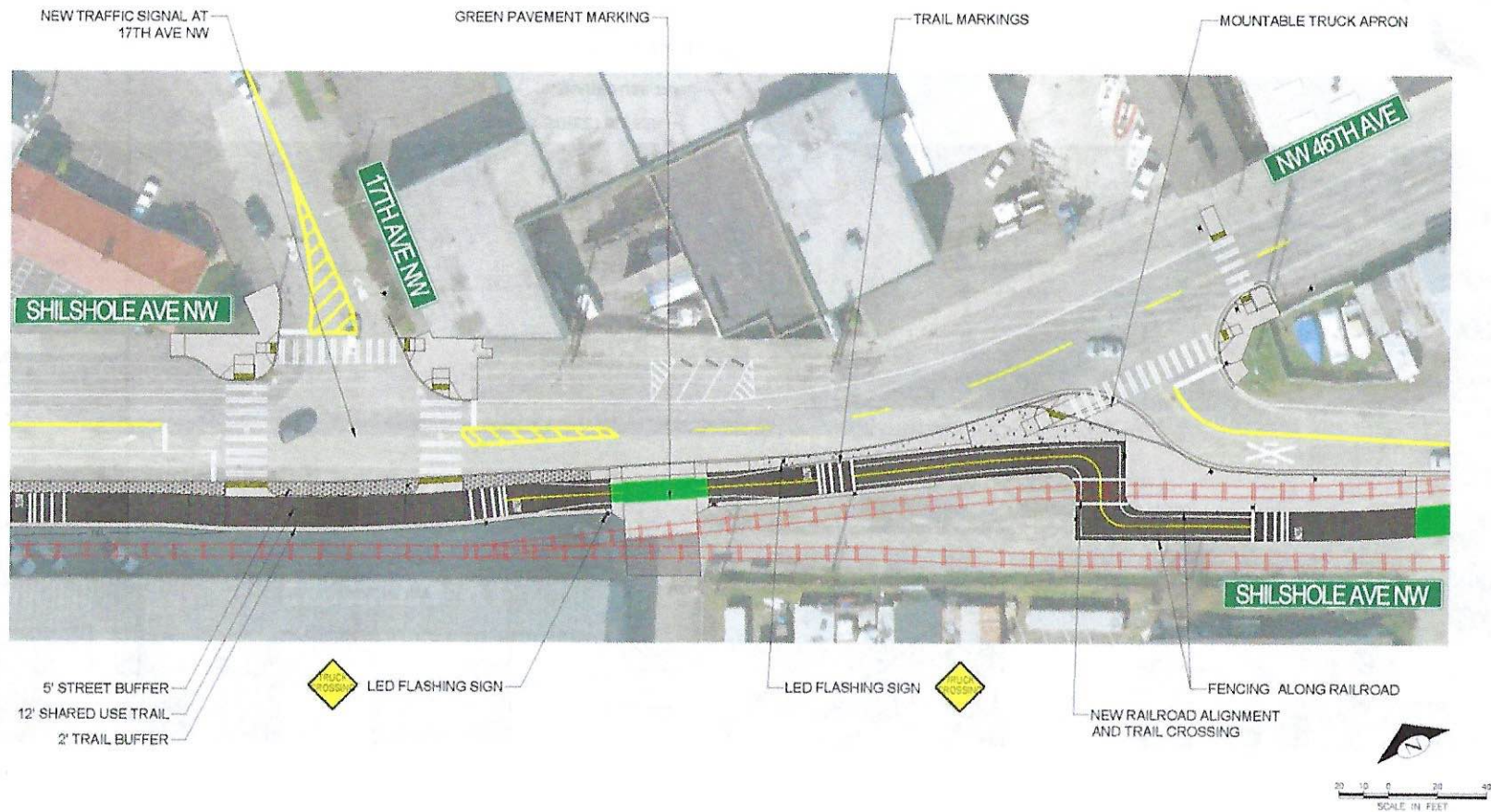
Seattle Department of Transportation
ORDINANCE NO.
FUND:
SCALE: H. 1"=20', V. 1"=10'

**BURKE-GILMAN TRAIL
MISSING LINK**

PC	790-604
CD	RR-103
SHEET 253 OF 258	

EXHIBIT 3

Graphic plans



City of Seattle

EXHIBIT 4

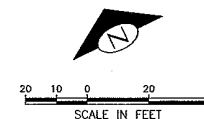
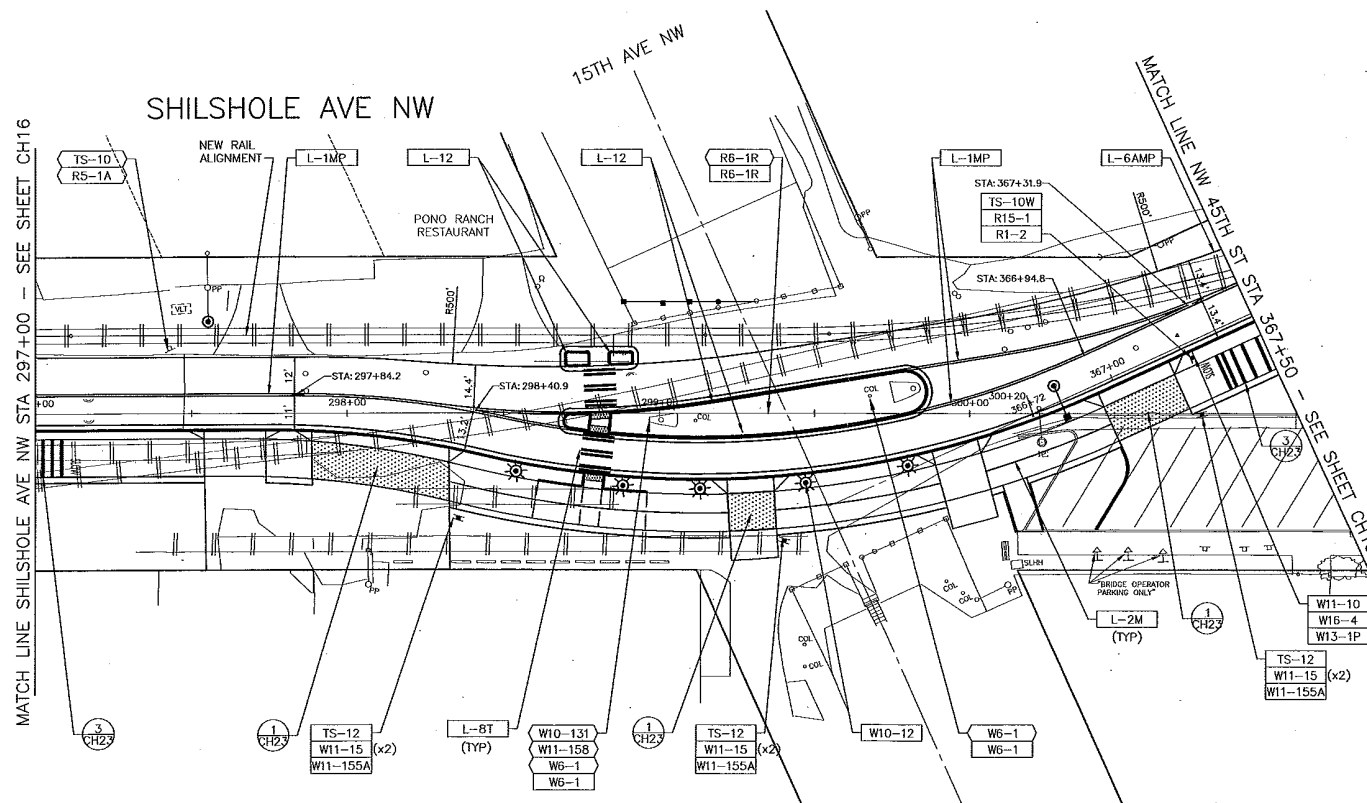




EXHIBIT 5

1. PAVEMENT MARKINGS PER COS STD SPEC SECTION 8-22.1(2)
2. SEE SIGNAL PLANS FOR SIGNS LOCATED ON SIGNAL POLES AND MASTARMS
3. SEE SITE PREPARATION PLANS FOR EXISTING PAVEMENT MARKING REMOVALS
4. PARKING SIGNS TO BE INSTALLED BY OTHERS (SDOT)
5. INSTALL TYPE 2A RPM'S PER COS STD PLAN 710
6. "M" SUFFIX DESIGNATES MMA PAVEMENT MARKING
7. "T" SUFFIX DESIGNATES THERMOPLASTIC PAVEMENT MARKING
8. "P" SUFFIX DESIGNATES PROFILED PAVEMENT MARKING
9. ALL CROSSWALKS SHALL BE 10' WIDE UNLESS OTHERWISE NOTED
10. SEE CH122 FOR CHANNELIZATION AND SIGNAGE LEGEND
11. PAVEMENT MARKING SHOULD NOT BE PLACED ON TOP OF CONCRETE JOINTS; FIELD ADJUST AS NECESSARY

- | | |
|---|---|
|  | INSTALL |
|  | REMOVE |
|  | RELOCATE |
|  | EXISTING SIGN |
|  | NEW SIGN |
|  | NEW UTILITY POLE AND LIGHT;
SEE ILLUMINATION PLANS |



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By: _____
CITY PURCHASING & CONTRACTING SERVICES DIRECTOR

INITIALS AND DATE

DESIGNED CS
CHECKED XL

DRAWN	JRW
CHECKED	ALC

ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SEATTLE STANDARD PLANS AND SPECIFICATIONS AND OTHER DOCUMENTS CALLED FOR IN SECTION 0-02.3 OF THE PROJECT MANUAL.

INITIALS AND DATE

REVIEWED:
DES. **###**
COST **###**

RECEIVED **###**
REVISED AS BUILT **###**

OF SEATTLE STANDARD PLANS AND
SECTION 9-02.3 OF THE PROJECT MANUAL



Seattle
Department of
Transportation

ORDINANCE NO. ----- PW NO. 2017-098
SUBPROJECT ID: TC30483026
SCALE: 1"=100'

CHANNELIZATION AND SIGNING PLAN

BURKE-GILMAN TRAIL MISSING LINK

PC	TS7895A
----	---------

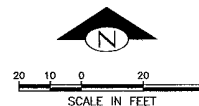
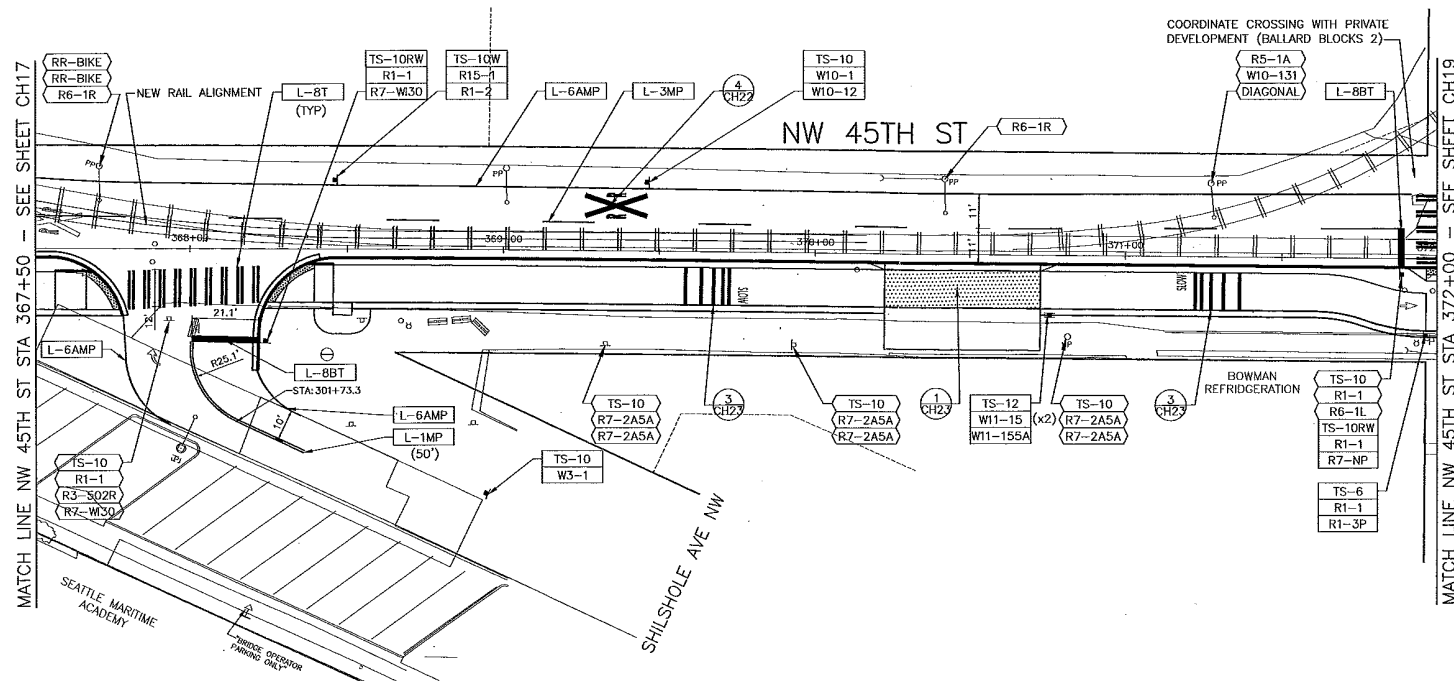
Q	CO	# # # #
VP1 #		790-604

CH17

SHEET 160 of 258

1. PAVEMENT MARKINGS PER COS STD SPEC SECTION 8-22.1(2)
2. SEE SIGNAL PLANS FOR SIGNS LOCATED ON SIGNAL POLES AND MASTARMS
3. SEE SITE PREPARATION PLANS FOR EXISTING PAVEMENT MARKING REMOVALS
4. PARKING SIGNS TO BE INSTALLED BY OTHERS (SDOT)
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10. SEE CH22 FOR CHANNELIZATION AND SIGNAGE LEGEND
11. PAVEMENT MARKING SHOULD NOT BE PLACED ON TOP OF CONCRETE JOINTS; FIELD ADJUST AS NECESSARY

- | | |
|---|---|
|  | INSTALL |
|  | REMOVE |
|  | RELOCATE |
|  | EXISTING SIGN |
|  | NEW SIGN |
|  | NEW UTILITY POLE AND LIGHT;
SEE ILLUMINATION PLANS |



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BY:
CITY PURCHASING & CONTRACTING SERVICES DIRECTOR

INITIALS AND DATE

DESIGNED CS
CHECKED KL

DRAWN JRW
CHECKED ALC

ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND OTHER DOCUMENTS.

INITIALS AND DATE

DES. ###	CONST. ###
SDOT ###	PROJ. MGR. ###

RECEIVED 1155
REVISED AS BUILT 1155

THE CITY OF SEATTLE STANDARD PLANS AND
FOR IN SECTION 0-02.3 OF THE PROJECT MANUAL.



Seattle
Department of
Transportation

ORDINANCE NO. PLA NO. 2017-098 PW NO. 2017-098
SUBPROJECT ID: TC36483026
SCALE: 1"=100'

CHANNELIZATION AND SIGNING PLAN

BURKE-GILMAN TRAIL MISSING LINK

JOB	PC	TS7895A
	CO	####
VPI #		790-604
		CH18
SHEET		161 of 258

GENERAL NOTES

1. PAVEMENT MARKINGS PER COS STD SPEC SECTION 8-22.1(2)
2. SEE SIGNAL PLANS FOR SIGNS LOCATED ON SIGNAL POLES AND MASTARMS
3. SEE SITE PREPARATION PLANS FOR EXISTING PAVEMENT MARKING REMOVALS
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- INSTALL
REMOVE
RELOCATE
EXISTING SIGN
NEW SIGN
NEW UTILITY POLE AND LIGHT;
SEE ILLUMINATION PLANS

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CHANNELIZATION AND SIGNING PLAN

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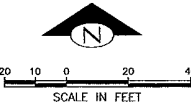
INITIALS AND DATE
DESIGNED CS
CHECKED RL
20
DMMH JRM
CHECKED ALC
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Seattle Department of Transportation
ORDINANCE NO. _____ PW NO. 2017-068
SUBPROJECT ID: TC36483026
SCALE: 1/8" = 1'-0"

**BURKE-GILMAN TRAIL
MISSING LINK**

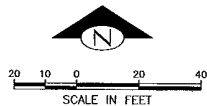
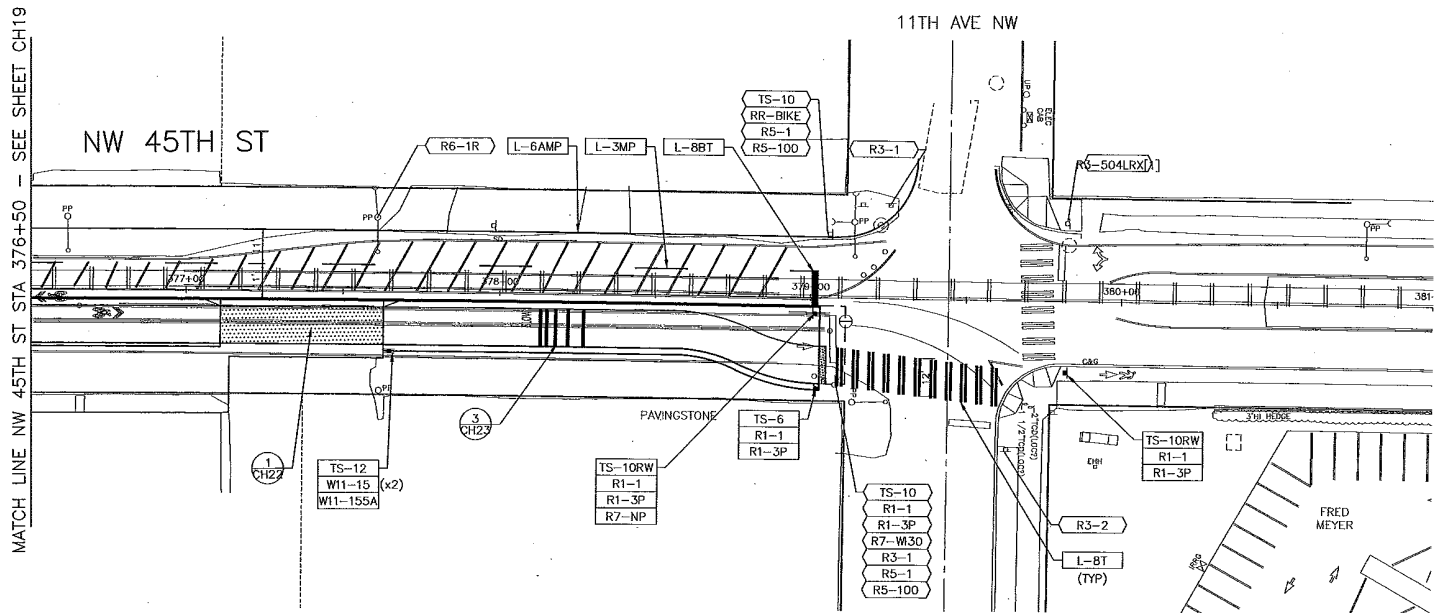
PC 157895A
CO ###
VPI # 790-604
CH19
SHEET 162 OF 258



GENERAL NOTES

1. PAVEMENT MARKINGS PER COS STD SPEC SECTION 8-22.1(2)
2. SEE SIGNAL PLANS FOR SIGNS LOCATED ON SIGNAL POLES AND MASTARMS
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10. SEE CH22 FOR CHANNELIZATION AND SIGNAGE LEGEND
11. PAVEMENT MARKING SHOULD NOT BE PLACED ON TOP OF CONCRETE JOINTS; FIELD ADJUST AS NECESSARY

-  INSTALL
 REMOVE
 RELOCATE
 EXISTING SIGN
 NEW SIGN
 NEW UTILITY POLE AND LIGHT; SEE ILLUMINATION PLANS



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CHANNELIZATION AND SIGNING PLAN

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INITIALS AND DATE		INITIALS AND DATE	
DESIGNED CS	CHECKED RL	REVIEWED: DES. HHH	CONST. HHH
DRAWN JRM	CHECKED ALC	SDOT HHH	PRQA HHH
		RECEIVED HHH	REVISED AS BUILT HHH

ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SEATTLE STANDARD PLANS AND SPECIFICATIONS AND OTHER DOCUMENTS CALLED FOR IN SECTION 8-02.2 OF THE PROJECT MANUAL.

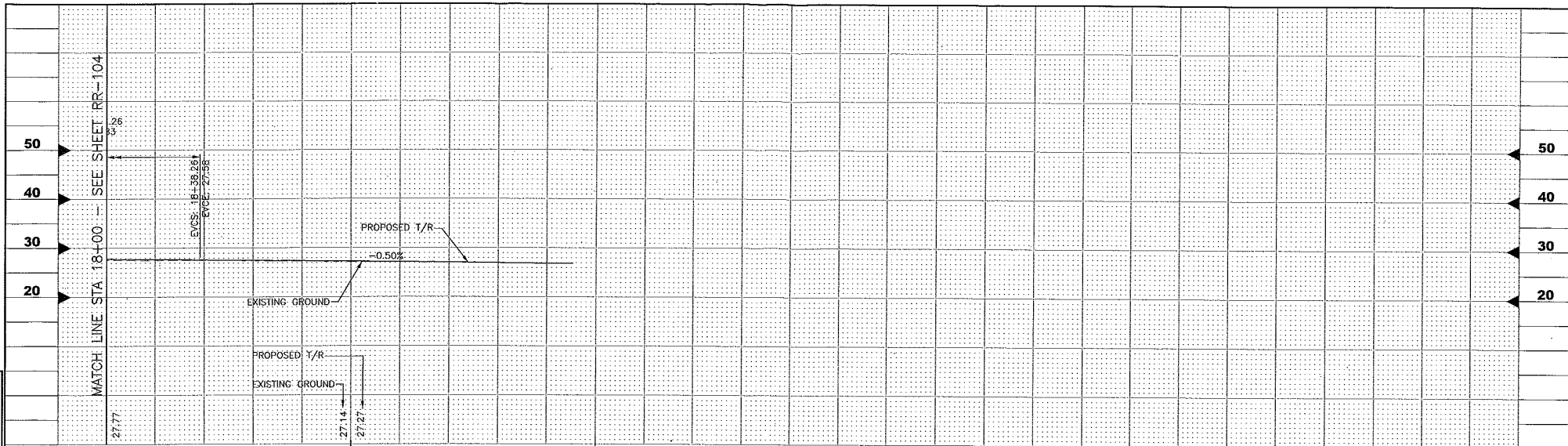


Seattle Department of Transportation
ORDINANCE NO. _____ PW NO. 2017-098
SUBPROJECT ID: TC36483026
SCALE: **HHH**

**BURKE-GILMAN TRAIL
MISSING LINK**

PC	TS7895A
CO	###
VP	790-604
CH20	
SHEET 163 OF 258	

EXHIBIT 6



TURNOUT 3 NOTES

1. REMOVE EXISTING MANUAL SWITCH MACHINE.
2. INSTALL IN-GROUND SWITCH MACHINE FROM NORTRACK RACOR 336-EC, OR APPROVED EQUAL.

EXISTING TURNOUT 3 TO BE MODIFIED, SEE NOTES.



SCALE IN FEET
20 10 0 20 40

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DESIGNED SMR
CHECKED NAW

DRAWN SMR
CHECKED NAW

INITIALS AND DATE
REVIEWED:
DES. SDY
CONST. PROJ. MGR.

RECEIVED
REVISED AS BUILT



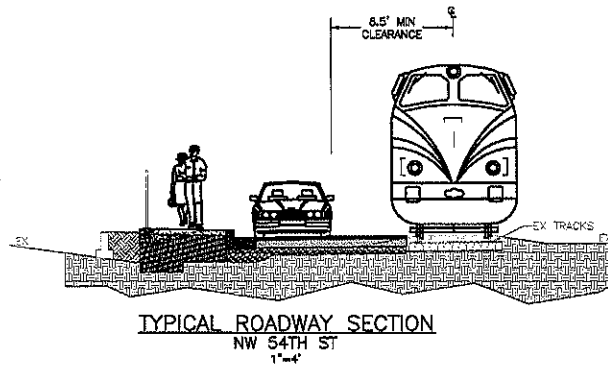
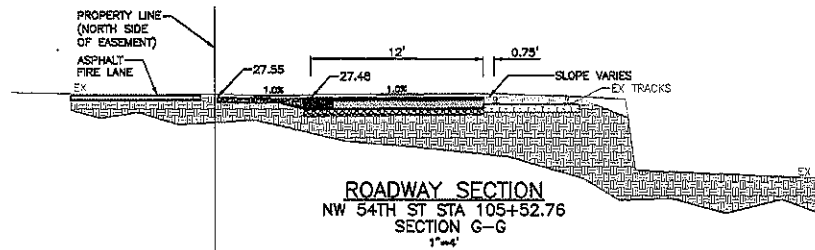
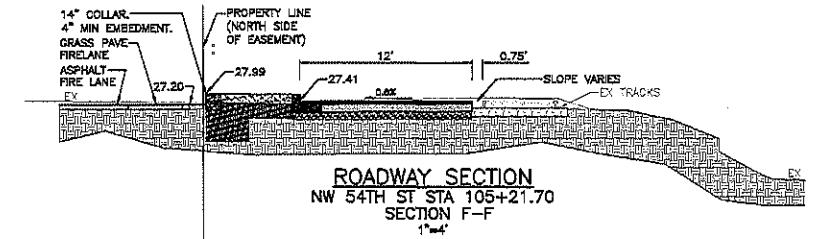
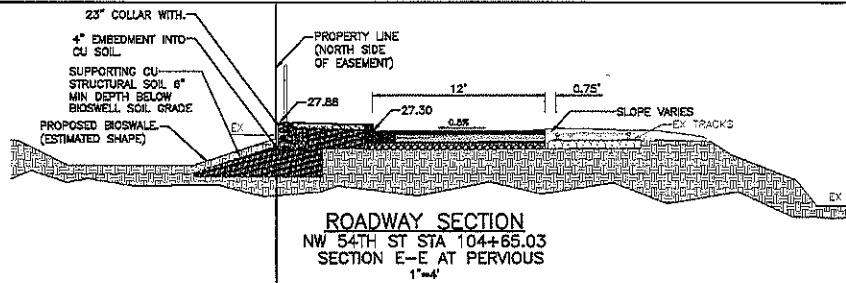
Seattle Department of Transportation
ORDINANCE NO.
PW NO. 2017-008
SCALE: H. 1"=20', V. 1"=10'

RAIL RELOCATION PLAN

**BURKE-GILMAN TRAIL
MISSING LINK**

PC
00
790-604
RR-105
SHEET 255 of 258

EXHIBIT 7



SECTIONS LEGEND

- 2" HMA (CL 1") OVER 7" HMA (CL 1") OVER MINERAL AGG. PER STD PLAN 4020
- CEMENT CONCRETE BOARDER, 12" x 12"
- SIDEWALK PERVIOUS CEM. CONC. 8" PER STD PLAN 425
- CURB & GUTTER -- PER STD PLAN 410B
- 12" DEPTH CORNELL UNIVERSITY STRUCTURAL SOIL OR APPROVED PVIOUS SIDEWALK
- PLANTER -- TOPSOIL
- MINERAL AGGREGATE TYPE 1
- MINERAL AGGREGATE TYPE 2
- MINERAL AGGREGATE TYPE 21

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PW#2017-XXX

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CITY ENGINEER & CONTRACTING SERVICES DIRECTOR

INITIALS AND DATE		INITIALS AND DATE	
DRAWN BY	CHKD BY	DESIGNED BY	CONST. PROJ. MGR.
CHECKED BY	REVIEWED BY	REVIEWED BY	REVIEWED BY



Seattle
Department of
Transportation
ORDINANCE NO.
SUPERSEDED BY
SCALE: 1"=40'

NW 54TH STREET
PAVING

RS3
ROADWAY SECTIONS
PG TS5084A
R/W TS5084A
CO TS5084A
VAULT PLAN NO. XXX-XXX
SHEET 8 OF 11