

FINAL SUPPLEMENTAL
ENVIRONMENTAL ASSESSMENT

SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 34936

Northern Columbia Basin Railroad Project
Grant County, Washington



Lead Agency:



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Federal Railroad Administration

Surface Transportation Board, Office of Environmental Analysis. 2019.
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Environmental Assessment. November. Washington, D.C.



SURFACE TRANSPORTATION BOARD

Office of Environmental Analysis

Washington, DC 20423

November 5, 2019

Dear Reader:

The Surface Transportation Board's (STB's) Office of Environmental Analysis (OEA), and the Federal Railroad Administration (FRA) are pleased to provide you with the enclosed Final Supplemental Environmental Assessment (FSEA) for the proposed acquisition and construction of an approximately 11-mile-long railroad route in Grant County, Washington (Project). The applicant or Project proponent is the Port of Moses Lake (Port), which would own and construct the rail lines. Columbia Basin Railroad Company (CBRW) would operate over the proposed rail lines. The purpose of the proposed Project is to provide rail service to lands and properties designated for industrial development in the northern area of the City of Moses Lake, as well as to the eastern side of the Grant County International Airport (GCIA), to enhance opportunities for economic development, and to attract new rail-dependent businesses to those areas.

This FSEA reflects OEA's and FRA's independent analysis of the Port's proposed modifications to the project; consultations with agencies; and careful consideration of all comments received on the Draft Supplemental Environmental Assessment (DSEA) from agencies, organizations, and members of the public. This document includes comments received on the DSEA and responses from OEA and FRA. The document also sets forth changes to the analysis and conclusions of the DSEA and OEA's final recommended mitigation measures to mitigate anticipated adverse environmental impacts should the STB approve the project.

Issuance of this FSEA completes the STB's environmental review process. STB now will make a final decision on the proposed modifications to the rail line project. In making its final decision, STB will consider the entire environmental record, including all public comments, the 2008 Preliminary Environmental Assessment, the 2009 Final Environmental Assessment, the 2019 DSEA, this FSEA, and OEA's final recommended mitigation measures. If STB should approve the project modifications, it will also determine what, if any, environmental mitigation measures to impose. FRA, as a cooperating agency, will also issue a decision, with conditions as needed, considering the entire environmental record under their own governing statutes.

OEA and FRA have distributed this FSEA to all parties of record and the environmental distribution list, which includes key governmental agencies, federally recognized tribes, and other appropriate entities. The FSEA is also available on the STB website (www.stb.gov). A hard copy of the FSEA is also available for review at the City of Moses Lake Public Library and at the Port's office in Grant County, Washington.

OEA and FRA appreciate the effort of all interested parties who reviewed and commented on the DSEA. Thank you for your interest and participation in the environmental review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Director

Table of Contents

Acronyms and Abbreviations	iii
Glossary.....	v
Chapter 1. Introduction.....	1-1
1.1 Background.....	1-1
1.2 Purpose and Need	1-2
1.3 Proposed Action	1-3
1.4 Project Setting	1-3
1.5 Supplemental Environmental Review Process	1-3
1.6 Alternatives	1-3
1.6.1 Alternatives Analyzed in the Prior EA.....	1-3
1.6.2 Modified Alignment Alternatives Analyzed in the Supplemental EA.....	1-4
Chapter 2. Public Involvement.....	2-1
2.1 Prior Environmental Assessment (Prior EA)	2-1
2.2 Draft Supplemental Environmental Assessment (DSEA).....	2-2
Chapter 3. DSEA Comments and Responses.....	3-1
3.1 Alternatives	3-1
3.2 Fish, Wildlife, and Vegetation	3-4
3.3 Hazardous Materials	3-5
3.4 Socioeconomics and Environmental Justice	3-6
3.5 Traffic and Transportation.....	3-7
3.6 Water Resources.....	3-8
3.7 Wetlands	3-10
Chapter 4. Port's Response to the DSEA.....	4-1
Chapter 5. Conclusion	5-1
Chapter 6. Final Recommended Mitigation.....	6-1
 Exhibits	
Exhibit 1.1 Location of Original and Proposed Modified Alignments	1-6
Exhibit 3.1 Segment 1 Commenter Proposed Route.....	3-3
Exhibit 4.1 Road I NE Plan (Modification 2C).....	4-2
Exhibit 5.1 Modification 1B	5-3
Exhibit 5.2 Modification 2C.....	5-5

Appendices

Appendix A Comments

Appendix B Programmatic Agreement (PA)

Acronyms and Abbreviations

BMP	Best Management Practice
Board	Surface Transportation Board
CBRW	Columbia Basin Railroad Company, Inc.
CEQ	Council on Environmental quality
CWA	Clean Water Act
DAHP	Washington State Department of Archaeological and Historic Preservation
DSEA	Draft Supplemental Environmental Assessment
EA	Environmental Assessment
Ecology	Washington State Department of Ecology
EL	East Low (canal)
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FASTLANE	Fostering Advancements in Shipping and Transportation for Long-term Achievement of National Efficiencies
FD	Finance Docket
FR	Federal Register
FRA	Federal Railroad Administration
FSEA	Final Supplemental Environmental Assessment
GCIA	Grant County International Airport
Jacobs	Jacobs Engineering Group Inc.
NCBRP	Northern Columbia Basin Railroad Project (see Project)
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Services
NPDES	National Pollutant Discharge Elimination System
OEA	Office of Environmental Analysis (see SEA)
Port	Port of Moses Lake
Project	Northern Columbia Basin Railroad Project (see NCBRP)
RCD	Rocky Coulee Diversion (canal)

RCW	Revised Code of Washington (state)
SEA	Section of Environmental Analysis (see OEA)
SEPA	State Environmental Policy Act
SHPO	State Historic Preservation Office (or Officer)
SPCC	Spill, Prevention, Control, and Countermeasures (Plan)
STB	Surface Transportation Board
SWPPP	Stormwater Pollution Prevention Plan
TESC	Temporary Erosion and Sediment Control (Plan)
U.S.	United States
USACE	U.S. Army Corps of Engineers, Seattle District
USDOT	U.S. Department of Transportation
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
UTC	Washington State Utilities and Transportation Commission
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WQC	Water Quality Certification
WQS	Water Quality Standard
WSDOT	Washington State Department of Transportation

Glossary

Alternative 1A: The NCBR project Segment 1 route studied in the Prior EA and was authorized by the STB in 2009; the route crossed Crab Creek rather than Parker Horn to the south.

Alternative 2A: The NCBR project Segment 2 route studied in the Prior EA but was not authorized by the STB in 2009; the route was east of the Segment 2 route authorized by the STB.

at-grade crossing: Where a railway line intersects/crosses a road at the same level, rather than crossing via an overpass or a tunnel.

Best Management Practices (BMPs): A combination of practices that is determined to be an effective and practicable means of preventing or reducing the amount of pollution.

candidate species: Animals and plants for which sufficient information exists to list them as endangered or threatened, but the listing has not yet occurred.

Clean Water Act Section 401/Water Quality Certification: A process that provides states with the authority to ensure that federal agencies will not issue permits or licenses that violate the water quality standards of a state or tribe.

Clean Water Act Section 402/NPDES Permit (for construction stormwater): Requires that all construction sites on an acre or more of land must obtain authorization under a National Pollutant Discharge Elimination System (NPDES) permit identifying the sources of pollution conducted at the site and the stormwater control practices that will be used to prevent pollutants from making their way into stormwater runoff.

Clean Water Act Section 404/USACE Permit: Regulates the discharge of dredged or fill material into waters of the United States, including wetlands.

critical habitat: Specific areas within a geographic area, occupied by a species at the time it was listed under the Endangered Species Act, that contains the physical or biological features essential to the conservation of the species and that may need special management or protection.

Hydrologic Project Approval (HPA): An approval by the Washington Department of Fish and Wildlife for construction or other work activities conducted in or near state waters that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state.

liquefaction: A phenomenon in which the strength and stiffness of soil is reduced by earthquake shaking, and commonly occurs in loose soils that are saturated with water.

listed species: Plant and animal species listed as endangered or threatened by the U.S. Fish and Wildlife Service or by a state. Endangered species are in danger of extinction throughout all or a significant portion of their range. Threatened species are likely to become endangered within the foreseeable future.

Modified Alignment: Proposed changes to the 2009 STB-approved NCBRP alignment.

National Pollutant Discharge Elimination System (NPDES): (for construction stormwater): Requires that all construction sites on an acre or more of land must obtain authorization under a NPDES permit identifying the sources of pollution conducted at the site and the stormwater control practices that will be used to prevent pollutants from making their way into stormwater runoff. The permit will contain limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health.

Operation Lifesaver: A program that seeks to educate drivers and pedestrians about making safer decisions at crossings and around railroad tracks. Information is available online at the [Operation Lifesaver, Inc. website](#).

Original Alignment: The NCBRP alignment approved by the Surface Transportation Board in 2009.

Prior EA: Collectively, the NCBRP's 2008 Preliminary EA and 2009 Final EA

2008 Preliminary EA: The NCBRP's initial EA prepared for public comment prior to release of the 2009 Final EA.

2009 Final EA: The NCBRP project's final EA prepared after public comment on the 2008 Preliminary EA.

FASTLANE: Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies; a 2017 grant program under the U.S. Department of Transportation.

right-of-way: Legal ownership or easement over the land for transportation purposes such as highways, railroads, and oil and gas pipelines.

spurs/spur sidings: A type of secondary track to allow customers at a location to load and unload railcars without interfering with other railroad operations.

Superfund/Superfund Program: A U.S. federal government program designed to fund the cleanup of sites contaminated with hazardous substances and pollutants.

turbidity: An important indicator of the amount of suspended sediment in water, which can have negative effects on aquatic life.

vacate: In terms of a public road, it means the right "to abandon" or "to give up" the public's right to use the road or road right-of-way for transportation and access; it releases public liability and any question of maintenance.

Yuma myotis: A small bat native to western North America that usually forages over water.

Chapter 1. Introduction

This chapter summarizes information from the July 2019 Draft Supplemental Environmental Assessment (DSEA) for the Northern Columbia Basin Railroad Project (NCBRP or Project), including the key elements of the development of the DSEA, the proposed action and the need for alignment modifications, and major conclusions regarding potential environmental impacts. This Final Supplemental Environmental Assessment (FSEA) builds on the analysis and information included in the DSEA and responds to comments received on the DSEA.

1.1 Background

In 2008, the Port of Moses Lake (Port) filed a Petition for Exemption seeking the authority of the Surface Transportation Board (STB) to construct approximately 7.6 miles of new rail line in two separate segments (Segments 1 and 2) and to acquire approximately three miles of an existing rail line in a third segment (Segment 3), in a project known as the NCBRP. After environmental review by STB's Office of Environmental Analysis (OEA), STB authorized construction and acquisition of the rail lines (Original Alignment) in a decision issued August 27, 2009, in docket numbers FD 34396 and FD 34396 (Sub-No.1).¹

STB's authorization of the construction and acquisition necessary for the NCBRP coincided with a severe economic downturn which, according to the Port, was one of several factors that delayed the Project and complicated the Port's efforts at securing the financing necessary for the Project. In 2017, the Port was awarded a grant from the U.S. Department of Transportation (USDOT), which in combination with earlier funding sources, enables the Port to proceed with the Project. To minimize impacts on existing land uses, including land development that has occurred in the project vicinity since the 2009 Authorization Decision, the Port is requesting that STB authorize certain limited route modifications (the Modified Alignment) so that the Port can fulfill the economic development objectives of the NCBRP.

On November 2, 2018, the Port filed a Petition to Reopen the STB proceeding in Docket No. FD 34936 (Petition to Reopen). To ensure STB compliance with the National Environmental Policy Act (NEPA) for the proposed Modified Alignment, OEA prepared a DSEA and this FSEA to address changes in the Project since the Board issued its 2009 Authorization Decision. The DSEA and FSEA do not include a re-evaluation of project components that are unchanged from those evaluated in the 2008 Preliminary Environmental Assessment and the 2009 Final Environmental Assessment (collectively "Prior EA"), including the potential environmental impacts from the proposed acquisition of Segment 3, and any associated mitigation or conditions imposed in the 2009 Authorization Decision.

¹ See Port of Moses Lake—Construction Exemption—Moses Lake, Wash., FD 34936 and Port of Moses Lake—Acquisition Exemption—Moses Lake, Wash., FD 34936 (Sub-No. 1) (STB served August 27, 2009) (2009 Authorization Decision).

1.2 Purpose and Need

The project purpose is to provide rail service to lands designated for industrial development in the northern part of the City of Moses Lake and east of the Grant County International Airport (GCIA), to enhance opportunities for economic development, and to attract new, rail-dependent businesses to those areas. The project purpose and need has not changed since the 2009 Authorization Decision, in which STB stated the Port's position that "the Project will allow trains to bypass downtown Moses Lake, leaving that area available for possible future development as a waterfront park, boardwalk, and bicycle/pedestrian trail." The Project would also provide rail service to land and properties designated for industrial development that currently have no access to rail service, which would enhance opportunities for economic development and attract new rail-dependent business to the area.²

According to the Port, the Project would restore vital rail service to the City of Moses Lake and adjacent to the GCIA and allow rail traffic to and from the GCIA industrial area to avoid passing through downtown City of Moses Lake. According to the Port, the Project would eliminate a major impediment to retaining and attracting new industries by providing a cost-effective rail connection to the BNSF Railway Company mainline (via the CBRW track) for existing businesses, agricultural producers, and new industries to ship to and from Pacific Northwest ports and the Midwest.

STB has the authority to authorize the construction and acquisition proposed by the Port as part of the NCBRP, either through application filed under 49 U.S.C. § 10901, or by granting an exemption from the prior approval requirements of the statutory framework under 49 U.S.C. § 10502. Section 10901(c) is a permissive licensing standard. It directs the Board to grant rail line construction proposals "unless" the Board finds the proposal "inconsistent with the public convenience and necessity."³ Thus, Congress made a presumption that rail construction projects are in the public interest unless shown otherwise. See Mid States Coalition for Progress v. STB, 345 F.3d 520, 552 (8th Cir. 2003); Alaska R.R. - Constr. and Operation Exemption – Rail line Between North Pole and Delta Junction, Alaska, FD 34658, slip op. at 5 (STB served January 5, 2010).

Under 49 U.S.C. § 10502, the Board must exempt a proposed rail line construction from the detailed application procedures of 49 U.S.C. § 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power. See Alaska Survival v. STB, 705 F.3d 1073, 1082 (9th Cir. 2013).

² See 2009 Authorization Decision, slip op. at 2.

³ Although the statute does not define the term "public convenience and necessity," historically a three-part test has been used to evaluate that term: whether an applicant is financially fit to undertake proposed construction and provide the proposed service; whether there is public demand or need for the proposed service; and whether the proposal is in the public interest and will not unduly harm existing services.

1.3 Proposed Action

The proposed action is the request by the Port for authority to construct the Project with minor modifications to Segments 1 and 2 of the Original Alignment, to reduce the impact of rail line construction on the human and natural environment and to increase the effectiveness of the rail line as a form of transportation. No changes are proposed to the Segment 3 Original Alignment. Exhibit 1.1 shows the general vicinity of the Project and the Segments.

1.4 Project Setting

The NCBRP is located in central Washington, approximately 8.5 miles north of Interstate 90, and lies partially in the City of Moses Lake and partially in unincorporated areas of Grant County. The Project extends west from the community of Wheeler (east end of the rail corridor) to the Crab Creek water crossing, and then north to GCIA (north end of the rail corridor). The project area is a mix of agricultural, industrial, commercial, and residential lands. The Project is situated on the upland Columbia River Plateau and the climate in the project vicinity is semi-arid. Local topography consists of relatively flat uplands broken by the Crab Creek and Parker Horn drainages, where the topography slopes downward to the creek.

1.5 Supplemental Environmental Review Process

The DSEA and this FSEA were prepared by the STB as the lead agency. FRA is a cooperating agency. OEA independently analyzed environmental data and is making environmental recommendations to the Board as part of STB's authorization process. FRA will use the DSEA and FSEA to inform its NEPA compliance responsibilities regarding the Port's 2017 request and subsequent selection to receive a \$9.9 million USDOT Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grant program. FRA will separately consider the entire environmental record and may, if appropriate, issue a Finding of No Significant Impact (FONSI).

OEA considered all comments received on the DSEA. Responses to comments are included in Chapter 3, *DSEA Comments and Responses* and in Chapter 4, *Port's Response to the DSEA*, and comments are included in Appendix A, *Comments*. This FSEA also includes OEA's selected environmentally preferred alternative and final recommended environmental mitigation. STB will consider the entire environmental record, including the Prior EA, the 2019 DSEA, this FSEA, all comments received, and OEA's final recommendations in making its final decision on the Port's request for authority to construct the proposed modifications to the rail line.

1.6 Alternatives

1.6.1 Alternatives Analyzed in the Prior EA

In November 2008, OEA and the Washington State Department of Transportation (WSDOT) prepared a Preliminary EA that analyzed a Build Alternative and a No Build Alternative, along with two alternative water crossings (Parker Horn and Crab Creek) for Segment 1, and two alternative routes for Segment 2. Two additional alternatives were

discussed but rejected primarily because they did not meet the purpose and need of the Project.⁴

OEA and WSDOT issued a Final EA in May 2009 that developed and analyzed five additional alternatives for Segment 1, including one alignment modification proposed by the Washington State Department of Ecology (Ecology) known as the Ecology Modification. OEA and WSDOT rejected these additional alternatives, except for the Ecology Modification, as not meeting the project purpose and need or because they were determined to be unfeasible due to economic, technical, or constructability issues. OEA and WSDOT selected an environmentally preferred alternative in the 2009 Final EA that included the Segment 1 Alternative 1A crossing of Crab Creek and the option to use the Ecology Modification, the standard version of Segment 2 without Alternative 2A, and the acquisition and rehabilitation of Segment 3.⁵

STB issued a final decision in August 2009, specifically authorizing construction of Segment 1 with Alternative 1A (with or without the Ecology Modification), construction of Segment 2 (without Alternative 2A), and acquisition of Segment 3 (collectively “Original Alignment”).⁶

1.6.2 Modified Alignment Alternatives Analyzed in the Supplemental EA

After STB’s authorization of the Project in 2009, a severe economic downturn delayed the Port’s implementation of the Project. As noted previously, the Port was selected to receive a \$9.9 million grant from USDOT under the 2017 FASTLANE program. In combination with earlier funding sources, the federal funds will enable the Port to proceed with the full Project.

To fulfill the economic development objectives of the NCBRP and to minimize impacts on existing land uses, some of which include land development that has occurred in the Project vicinity since the 2009 Authorization Decision, the Port is requesting that STB authorize the proposed Modified Alignment. The proposed modifications, together with the USDOT FASTLANE grant funding, require additional environmental review by STB and FRA under NEPA and other applicable environmental laws through preparation of this Supplemental EA.

Following are summaries of design changes contained in the proposed Modified Alignment alternatives for Segment 1 (Modification 1B) and Segment 2 (Modifications 2B and 2C):

⁴ See Preliminary Environmental Assessment (Preliminary EA), FD 34936, Northern Columbia Basin Railroad Project, at pages ES-3 and ES-5 (Nov. 7, 2008).

⁵ See e.g., 2009 Authorization Decision, slip op. at 5-7. See also Final Environmental Assessment (2009 Final EA), FD 34936, Northern Columbia Basin Railroad Project, at pages ES-5 and ES-9 (May 8, 2009) (showing maps of the various alternatives).

⁶ See 2009 Authorization Decision, slip op. at 4-7. The STB adopted the environmental preferred alternative described in the 2009 Final EA. See id. at 6-7.

Modification 1B is designed to:

- Avoid crossing primary access driveways to several industrial tenants
- Avoid the Grant County Public Works facility and adjacent buildings
- Minimize impacts to an irrigation system and cropland
- Construct a safer, perpendicular rail crossing at Wheeler Road
- Minimize property take and avoid newly constructed buildings
- Avoid crossing Hamilton Road NE and construct a safer, perpendicular crossing at Industrial Street
- Minimize impacts to utilities along Hamilton Road NE
- Minimize wetland impacts and avoid rock outcrops

Modification 1B would also use culverts instead of bridges to cross historic earthen irrigation and drainage ditches at Rocky Coulee Diversion Canal 180+182 (RCD 180+182) and at East Low Lateral Canal 20 (EL 20).

Modification 2B is designed to:

- Straighten a curve and reduce the amount of track construction
- Better reach existing and future development areas
- Avoid a newly constructed building

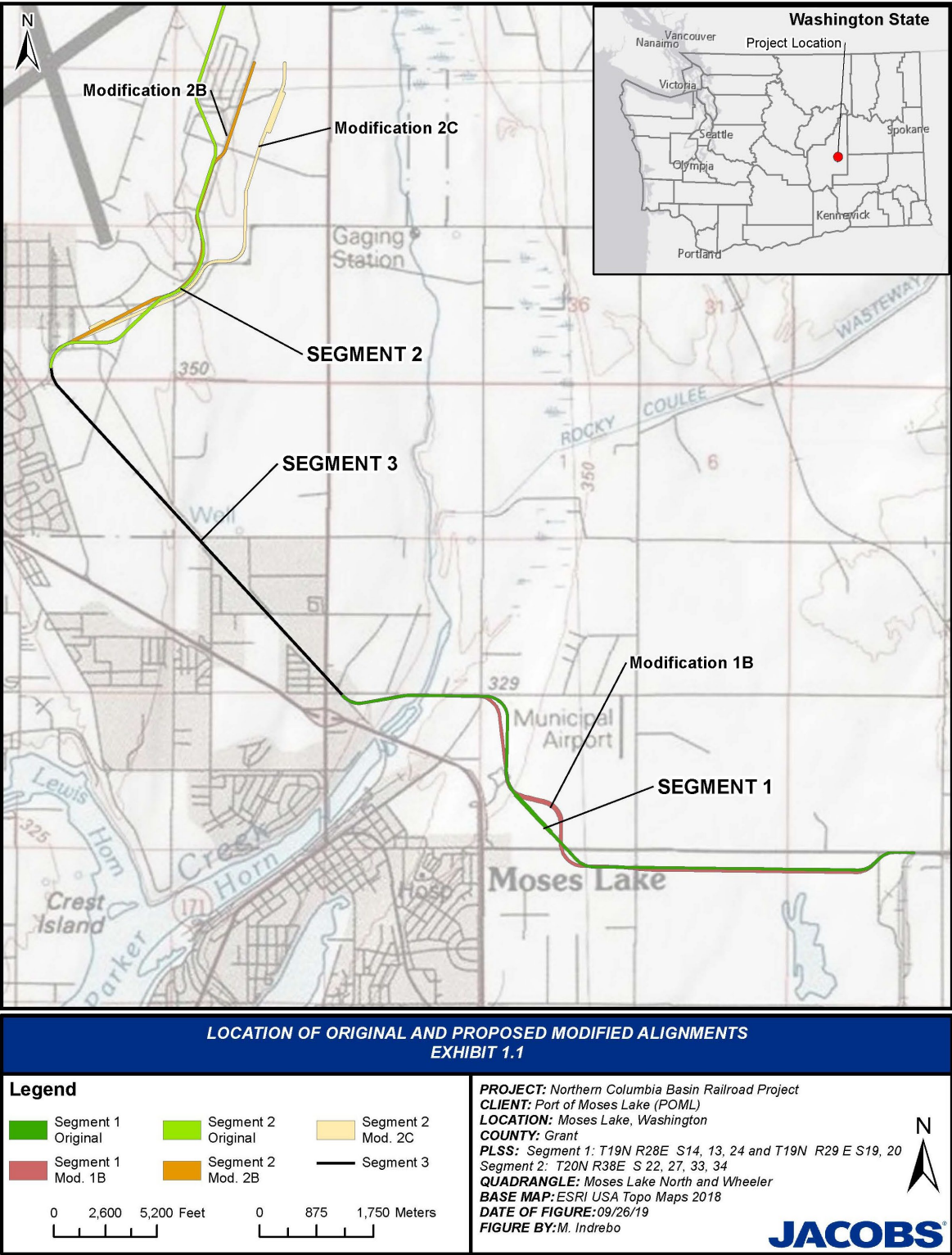
Modification 2C is designed to:

- Straighten a curve and reduce the amount of track construction
- Better reach future development areas
- Avoid a newly constructed building
- Avoid crossing Randolph Road and construct safer, perpendicular crossings at lesser-traveled roads
- Minimize impacts to utilities along Randolph Road
- Avoid crossing primary access driveways to several industrial tenants

OEA evaluated these alternative modifications proposed by the Port. OEA incorporated information from technical reports and memoranda (Appendices B, C, D, E, and F in the DSEA) and considered input from agencies and the public. OEA first determined that the Port's initial proposed modifications represented reasonable alternatives that could meet the Project's stated purpose and need. OEA then analyzed the alternatives using criteria that focused on the key impact issues of wetlands, water resources, land uses and land development, historical sites, and traffic and transportation, and selected an environmentally preferred alternative (see Chapter 5 *Conclusion*).

The following Exhibit 1.1 shows the locations of the Original Alignment and proposed Modifications 1B, 2B, and 2C.

Exhibit 1.1 Location of Original and Proposed Modified Alignments



Chapter 2. Public Involvement

2.1 Prior Environmental Assessment (Prior EA)

As part of the environmental review process for the Prior EA, OEA and WSDOT held public open houses and posted information on their websites throughout 2007 to solicit comments prior to preparing a Preliminary EA. Additionally, OEA, and WSDOT sent consultation letters soliciting comments from the following agencies, groups, and Tribes in 2007:

Federal Agencies

- U.S. Army Corps of Engineers (USACE)
- U.S. Bureau of Reclamation
- U.S. Bureau of Land Management
- U.S. Department of Agriculture, Natural Resources Conservation Service
- U.S. Environmental Protection Agency (USEPA)
- U.S. Fish and Wildlife Service (USFWS)
- NOAA Fisheries Service
- National Park Service
- Federal Railroad Administration (FRA)
- Federal Aviation Administration (FAA)

State Agencies

- Washington State Department of Archaeology and Historic Preservation (DAHP) or State Historic Preservation Office (SHPO)
- Washington State Department of Community, Trade and Economic Development
- Washington State Department of Ecology (Ecology)
- Washington Department of Fish and Wildlife (WDFW)
- Washington State Department of Natural Resources
- Washington State Department of Transportation, North Central Region (WSDOT)
- Washington State Parks
- Washington State Utilities and Transportation Commission (UTC)

Local Agencies

- Grant County Community Development Department
- Grant County Economic Development Council
- Grant County Public Utility District
- Port of Moses Lake
- City of Moses Lake Community Development Department
- Moses Lake Irrigation and Rehabilitation District
- TransCo, via the Washington State Potato Commission
- Quad-County Regional Transportation Planning Organization

Tribes

- Colville Confederated Tribes
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Warm Springs Reservation
- Wanapum Tribe

The Preliminary EA was made available to the public in November 2008 for a 30-day comment period and was served on all parties to the proceeding; the federal, state, and local agencies and Tribes noted above; and any party requesting copies of the document. STB also solicited comments on the Preliminary EA via their website and a Notice in the Federal Register.

STB and WSDOT issued a Final EA for the Project in May 2009 that responded to public and agency comments, presented and analyzed new alternatives and modified routes, added to information that was in the Preliminary EA, and modified mitigation measures that were in the Preliminary EA. The 2009 Final EA was made available for review at the City of Moses Lake Public Library, the Port, and on the WSDOT project website. STB subsequently issued their Authorization Decision for the Project in August 2009, which became effective in September 2009.

2.2 Draft Supplemental Environmental Assessment (DSEA)

On November 2, 2018, the Port filed a Petition to Reopen Docket No. FD 34936 seeking Board authorization for proposed changes to the Project since STB issued its 2009 Authorization Decision. OEA and FRA determined that these circumstances warranted creation of a Supplemental EA in accordance with NEPA.

As part of the DSEA environmental review process, OEA consulted with and solicited comments from the following agencies and Tribes prior to release of the DSEA for public comment:

- DAHP/SHPO
- WDFW
- WSDOT, North Central Region
- East Columbia Basin Irrigation District
- City of Moses Lake
- Colville Confederated Tribes
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Warm Springs Reservation
- Wanapum Tribe

On July 11, 2019, STB issued the DSEA for public review and comment and published a Notice of Availability of the DSEA in the *Federal Register* (84 FR 33114). OEA provided notice of the DSEA to all parties of record for this proceeding, parties that submitted comments for the Prior EA, as well as to federal, state, and local agencies and officials, and Tribes served in 2007 for the Prior EA, in addition to those noted previously. The DSEA was made available on STB's website and printed copies were

made available for review at the City of Moses Lake Public Library and at the Port of Moses Lake office in Grant County, Washington.

STB encouraged the public and any interested parties to submit written comments on all aspects of the DSEA. The comment period closed on August 12, 2019. STB received six comments on the DSEA; five comments were received from state and federal agencies and one comment was received from the Port. Additionally, one letter with environmental comments was received from an individual before the DSEA was served (see Appendix A *Comments*). STB considered all comments received and has responded to all substantive comments in this FSEA. The points raised in each of these comments and STB's responses are provided in Chapter 3, *DSEA Comments and Responses*, and in Chapter 4, *Port's Response to the DSEA*.

Chapter 3. DSEA Comments and Responses

STB received six comments regarding the environmental review of the Port's proposed modifications to the Project: one submitted prior to issuance of the DSEA and four submitted after its service (*see Appendix A Comments*). The specific matters raised in the comments, followed by responses to each group of comments, are captured below by topic. The topics for which STB received comments are fish, wildlife, and vegetation; hazardous materials; socioeconomic and environmental justice; traffic and transportation; water resources; wetlands; and alternatives. OEA received no comments on the following eight topics analyzed in the DSEA: air quality; cultural, historic, and archaeological resources; energy; land use; Section 4(f) properties⁷; noise and vibration; soils and geology; and visual quality. Accordingly, OEA's analysis of those resource areas remains unchanged, and are not discussed in detail in this chapter.

3.1 Alternatives

Comment: One comment from a private landowner asked that further consideration be given to an alternative Segment 1 route north of Wheeler Road, which the commenter suggested would be shorter and straighter.

Response: This commenter proposed a route that is very similar to an alternative that STB addressed and evaluated in the 2009 Final EA, known as the Piercy Alternative. Though OEA (formerly SEA) determined that the Piercy Alternative would meet the purpose and need of the proposed project, and was feasible, OEA rejected the alternative in 2009 as not reasonable or practical due to a variety of technical and economic factors.⁸ Key factors that OEA considered in 2009, and OEA confirmed are still applicable today, include the following:

- The alternative would connect to the existing CBRW Scalley Lead track, as illustrated in the following Exhibit 3.1. The Scalley Lead track is 1.5 miles long and contains 3 percent grades and 12-degree curves. The lead track also has limited clearances with existing industries. These factors are not acceptable for through railroad track.⁹

⁷ Section 4(f) stipulates that USDOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent avoidance alternative to the use of land, the action includes all possible planning to minimize harm to the property resulting from such use, or the use of the property will have a *de minimis* impact (USDOT 2019). OEA evaluated Section 4(f) properties in the DSEA at FRA's request. While FRA is a USDOT agency, STB is not and, thus, Section 4(f) does not apply to the Board.

⁸ *See* Final EA (May 8, 2009) at pages 3-3, 3-14, and 3-15.

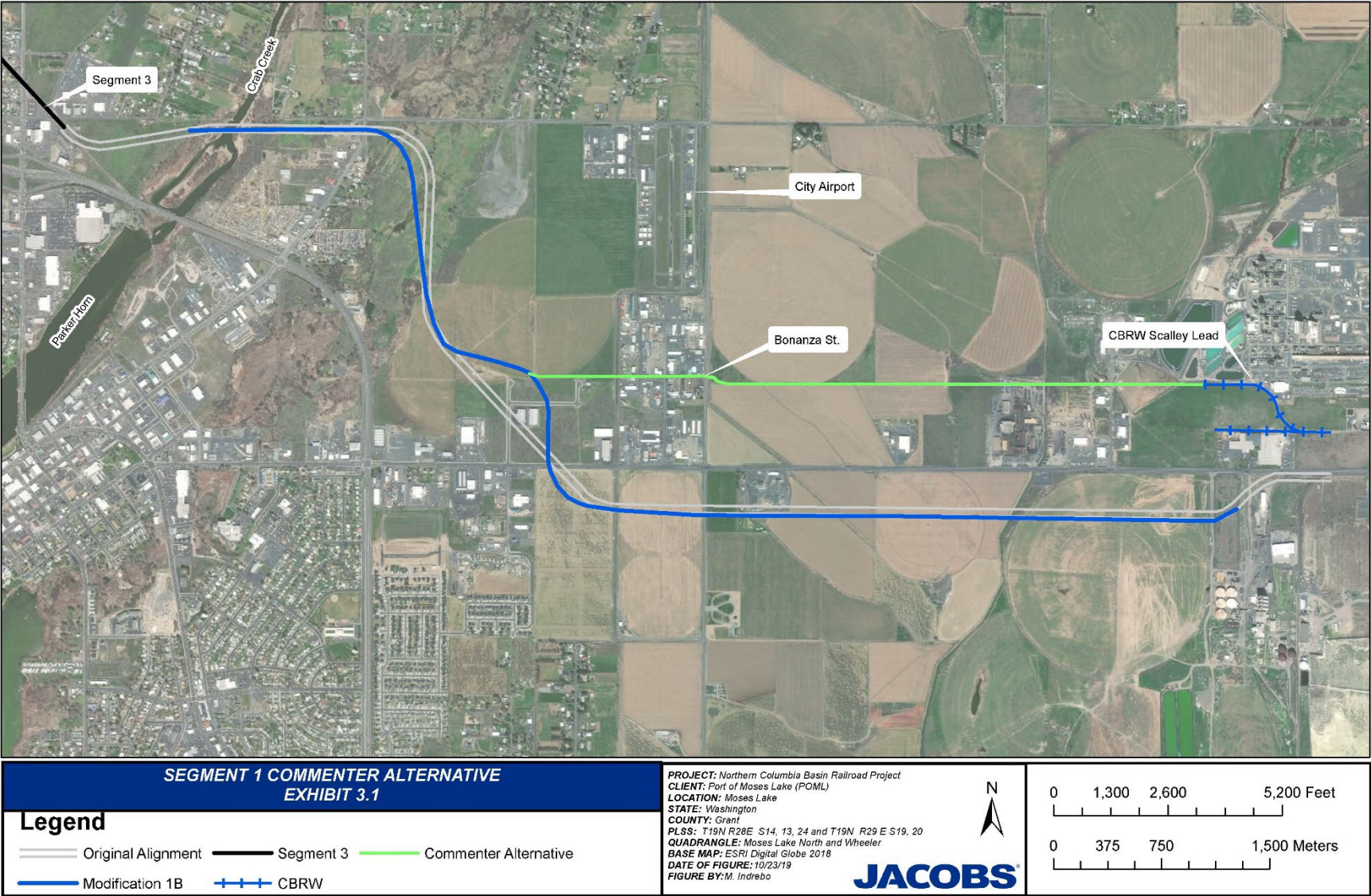
⁹ Through track, or mainline track, is used for trains operating between points with few stops in between. Lead track or industrial track is typically used as switching track to serve industries off the mainline.

- The alternative would require the acquisition and demolition of at least three industrial buildings.
- The alternative could present a safety hazard to workers and disruption of existing industrial operations because it would cross through an existing busy industrial area where goods and materials would actively cross the tracks between buildings.
- The alternative would require coordination with the Federal Aviation Administration (FAA) because of the route's proximity to the south side of the Moses Lake Municipal Airport.

There is one variation between the Piercy Alternative proposed in 2009 and the route the commenter is proposing in 2019 relating to Bonanza Street. In 2009, the Piercy Alternative ran parallel to Bonanza Street. The route being proposed in the comments here appears to locate the track directly on Bonanza Street, thereby eliminating it from all non-rail use. The removal of Bonanza Street would disrupt traffic in the area south of the municipal airport. In addition, this area is an industrial area and the proposed alignment would require demolition of industrial buildings. Exhibit 3.1 shows the commenter alternative proposed in 2019.

OEA finds again that this alternative is not reasonable or practical due to technical issues associated with the Scalley Lead Track, coordination with FAA, economic factors associated with acquisition and demolition of industrial buildings, location of the track on Bonanza Street, and safety issues associated with existing industrial operations.

Exhibit 3.1 Segment 1 Commenter Proposed Route



3.2 Fish, Wildlife, and Vegetation

Comment: USEPA recommended that information be included regarding consultation and coordination with U.S. Fish & Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and WDFW, including measures to reduce risks and protect biota and habitat since there are federal- and state-designated protection statuses for several species within the project area.

Response: As noted in the DSEA, there are no federally-listed threatened, endangered, or candidate fish, wildlife or plant species in the project area, and there is no federally-designated critical habitat.¹⁰ Therefore, no further consultation or coordination with USFWS and NMFS is required. OEA included both agencies on the DSEA distribution list and did not receive comments from either agency. Consultant Jacobs Engineering Group Inc. (Jacobs)¹¹ subsequently contacted USFWS and confirmed that OEA's "no effect" determination does not require concurrence (see Appendix A *Comments*).

Regarding state-listed threatened, endangered, or candidate fish, wildlife, or plant species, the DSEA notes the presence of four candidate wildlife species (burrowing owl, Townsend's big-eared bat, western grebe, and Clark's grebe) and that the state-endangered northern leopard frog is no longer present in the project area. The DSEA also notes that since the Prior EA the bald eagle has been removed from the state's threatened species list, walleye, bass, and mink have been removed from the state's priority species list, and that construction of the rail crossing over Crab Creek rather than Parker Horn would result in fewer impacts to biological resources.¹²

Consultant Jacobs consulted with WDFW to confirm the current status of state fish, wildlife, and plant species and to review and develop appropriate measures to avoid, minimize and/or mitigate potential impacts to biota and habitat.¹³ These measures include limitations on construction activities, in-water and near-water work timing restrictions to protect fish spawning and grebe nesting, burrowing owl nesting surveys and potential artificial burrow installations, installation of bat boxes, and preservation and replanting of vegetation. After consultation and coordination with WDFW, five measures were revised, and one measure was deleted since the Prior EA. The deleted measure is associated with the northern leopard frog that is no longer present in the project area (see Chapter 6 *Final Recommended Mitigation – Fish, Wildlife, and Vegetation* – Measures 7 through 14).

Comment: WDFW commented that during communications and coordination with Jacobs regarding minimizing or avoiding potential impacts to nesting Clark's grebes, a state candidate species, WDFW recommended that Project-related construction

¹⁰ See Draft Supplemental Environmental Assessment (July 11, 2019) at pages 4-7 through 4-10 (DSEA).

¹¹ Contractor Jacobs is working under OEA's direction in the preparation of this Supplemental Environmental Assessment .

¹² See DSEA (July 11, 2019) at pages 5-5 and 5-6.

¹³ See DSEA (July 11, 2019) Appendix C.

activities remain outside 300' of the stream channel from June 1st to September 1st and requested that this specified information be included in the Final EA.

Response: A revision has been made to Mitigation Measure 8 (formerly Measure 9 in the DSEA) to specify that construction activities remain 300' outside of the stream channel from June 1 to September 1 to minimize or avoid impacts to nesting Clark's grebe (see Chapter 6 *Final Recommended Mitigation – Fish, Wildlife, and Vegetation*).

3.3 Hazardous Materials

Comments: USEPA made the following comments regarding existing and potential contaminated sites:

- Because of the existence of contaminated sites in the project area and the possibility that more contaminated sites could be discovered during construction of the project, we recommend that the STB coordinate with the USEPA Superfund Program as the project is implemented so that the STB actions are consistent with agreed upon remedies for the contaminated sites cleanup.
- We also recommend the final EA include a monitoring program designed to assess both impacts from the project and effectiveness of mitigation measures for the impacts. Please indicate how the program would use an effective feedback mechanism, such as through adaptive management, so that any needed adjustments can be made to the projects to meet environmental objectives during this project operations and maintenance. For example, monitor emerging contaminants and take corrective action if pollutant levels exceed standards or pose risk to human health and the environment.

Response: The DSEA notes that hazardous materials mitigation measures imposed by STB in its 2009 Authorization Decision would avoid or minimize potential impacts from hazardous materials, and that OEA proposes to impose these same mitigation measures at the newly identified sites in Segment 1 and in Modifications 2B and 2C.¹⁴ OEA outlined five mitigation measures in the DSEA, one of which was revised to incorporate newly identified sites¹⁵, and continues to recommend these mitigation measures in this FSEA (see Chapter 6 *Final Recommended Mitigation – Hazardous Materials* – Measures 15 through 19). Additionally, revisions have been made to Mitigation Measure 15 in this FSEA (formerly Measure 17 in the DSEA) to include coordination with the USEPA Region 10 Superfund program to maintain consistency with remedies agreed upon by USEPA for contaminated sites, and to incorporate any new sites that may be encountered during construction.

Regarding a monitoring program, Mitigation Measure 17 in the DSEA requires the Port to coordinate with USEPA regarding existing available information and the need to conduct additional investigations (known as Phase II Environmental Site Assessments

¹⁴ See DSEA (July 11, 2019) at pages 5-7 and 5-8.

¹⁵ See DSEA (July 11, 2019) at pages 6-3, 6-4, and 6-5.

or ESAs)¹⁶ in areas of known or potential contamination prior to initiating construction activities.¹⁷ If additional site investigations are conducted, additional measures and a monitoring program, to be implemented during construction activities, may be recommended. The additional mitigation measures and monitoring program, if needed, would be developed for specific sites or locations in coordination with USEPA. Principles of adaptive management,¹⁸ which encourage continuous re-evaluation and management prioritization of site activities to account for new information and changing site conditions, would be employed during implementation of the mitigation measures and monitoring program.

Additional revisions have been made to Mitigation Measure 15 in this FSEA to include a monitoring program, if USEPA determines that it is warranted, and to incorporate adaptive management (see Chapter 6 *Final Recommended Mitigation – Hazardous Materials*).

3.4 Socioeconomics and Environmental Justice

Comments: Several comments were received from the Washington State Utilities and Transportation Commission (UTC) reiterating their concerns about safety at a non-designated pedestrian crossing of Segment 3 near the Longview Elementary School. In its comment letter, UTC continues to express the following concerns from their 2009 comment letter on the Prior EA:

- Citizens, including students, were crossing over the tracks to reach Longview Elementary School and crossing them again when they returned home. There is no designated pedestrian crossing at this location, making it particularly hazardous for students.
- At the time, multiple ideas were discussed including construction of a pedestrian crossing or underpass, redirecting students to an existing crossing, installing fencing to channel student to a single crossing site, or replacing existing fencing to keep students off the tracks.
- UTC recommends that the Port focus particular attention on this issue during the acquisition and rehabilitation of Segment 3. UTC staff is available to provide additional guidance to the Port on this matter.

Response: Because the Port is not proposing to modify Segment 3 from what was originally approved by the STB in 2009, a re-evaluation of the acquisition of Segment 3 was not part of the DSEA, and discussion concerning Segment 3 was minimal. The Prior EA noted that UTC, a State representative, the CBRW, and school officials met in 2008 to discuss options for a designated pedestrian crossing or other safety device, including the options noted in the previous bulleted list.¹⁹ At that time, a pedestrian

¹⁶ A Phase II ESA tests subsurface soil, soil gas, and/or groundwater and evaluates the presence or absence of petroleum products or hazardous substances.

¹⁷ See DSEA (July 11, 2019) at page 6-3.

¹⁸ See Final EA (May 2009) at page 2-10.

¹⁹ See Final EA (May 2009) at page 2-10.

underpass/tunnel was determined to not be practicable. However, the use of fencing or other means to channel students to a single crossing site was noted as a reasonable suggestion, along with the Prior EA's recommended Mitigation Measure 30 (rail safety program such as Operation Lifesaver) and Mitigation Measure 31 (coordination with the Port, CBRW, and Moses Lake School District to identify and implement practicable and safe crossings).²⁰

OEA recommended these mitigation measures in the DSEA²¹ and continues to recommend them in this FSEA. A revision has been made to Mitigation Measure 28 here (formerly Measure 30 in the DSEA) to include coordination with UTC (see Chapter 6 *Final Recommended Mitigation – Socioeconomics and Environmental Justice*).

3.5 Traffic and Transportation

Comments: The following comments were received from UTC regarding the Modified Alignment, new at-grade crossings and proposed warning devices, and petitions required for UTC approval of the crossings:

- UTC supports the proposed Modification 1B with at-grade crossings perpendicular to roadways.
- UTC prefers Modification 2C instead of Modification 2B because it involves construction of fewer new at-grade rail crossings, avoids the possibility of blocked crossings, and utilizes safer perpendicular crossings rather than skewed crossings contained in Modification 2B and the Segment 2 Original Alignment.
- A description of the proposed warning devices at these crossings was not provided.
- The Port will need to formally withdraw its Original Alignment crossing petitions approved by the UTC in 2010 and file a revised petition for approval to construct crossings in Modification 1B, and Modification 2B or 2C, including any changes to previously-approved warning devices. UTC notes that the Port's petitions at that time did not indicate the potential for crossing blockages (associated currently with proposed Modification 2B).
- Prior to petition filing, UTC recommends that the Port convene diagnostic review meetings with affected parties, including the appropriate road authority, the railroad, and UTC staff. The diagnostic review team would appropriately evaluate the proposed crossings and surrounding areas with input from all parties and agree on the appropriate levels of protection.

Response: The Port has represented to OEA that it intends to formally withdraw its 2010 petition to the UTC and file a revised petition that includes all new proposed at-grade crossings for the Modified Alignment, pending STB's final decision. The Port states that the revised petition would describe whether passive warning devices (signage only, no lights) or active warning devices (lights and/or gates and lights) would be constructed at each crossing based on updated traffic counts and federal, state and

²⁰ See Final EA (May 2009) at page 2-11.

²¹ See DSEA (July 11, 2019) at page 6-6.

local guidance, requirements, and laws.

Project design to-date includes the following proposed warning devices:

- Modification 1B - active devices at Wheeler Road and Road L NE, and a passive device at Industrial Street.
- Modification 2B – active devices at Randolph Road, Road 7 NE, and Tyndall Road, and passive devices at Turner Road and Graham Road.
- Modification 2C – active devices at Road 7 NE and Tyndall Road, and a passive device at Road 6.7 NE.

In addition to requiring the Port to consult with appropriate federal, state, and local transportation agencies to determine the final design of the grade crossings and associated warning devices, Mitigation Measure 36 (formerly Measure 38 in the DSEA²²) has been revised to address the submittal and contents of new crossing petitions and convening of diagnostic review meetings to evaluate appropriate levels of crossing protection (see Chapter 6 *Final Recommended Mitigation – Traffic and Transportation*).

Comment: One comment from a private individual (on the Petition to Reopen) expressed concerns about the proposed alignment in Segment 1 crossing Wheeler Road twice at a 45-degree angle.

Response: There is an existing 45-degree angled/skewed crossing of Wheeler Road near the starting point/east end of Segment 1. This skewed crossing is owned by the Columbia Basin Railroad Company, Inc. (CBRW) and is not part of the Port's NCBRP. Rather, the Project joins/starts at the existing CBRW track after it crosses Wheeler Road.²³ Additionally, the DSEA notes that the second crossing of Wheeler Road in the Modified Alignment (between Road L NE and S. Hamilton Road), which is part of the NCBRP, would be a safer, perpendicular crossing.²⁴

3.6 Water Resources

Comments: USEPA submitted the following comments regarding impacts from construction activities, compliance with the federal Clean Water Act (CWA) and state water quality standards (WQSs), permitting requirements, and overall protection of water resources:

- Construction activities may impact water resources, particularly from increased turbidity and sedimentation of downstream waters at crossings of Crab Creek and irrigation canals.

²² See DSEA (July 11, 2019) at page 6-7.

²³ See DSEA (July 11, 2019), Exhibit ES.1 at page ES-5.

²⁴ See DSEA (July 11, 2019) at pages ES-4, 2-2, 3-1, 3-3, 5-12, and 7-1.

- Include information to demonstrate that the proposed action would comply with anti-degradation provisions of the Clean Water Act to prevent deterioration of water quality within waterbodies that currently meet water quality standards.
- Discuss the National Pollutant Discharge Elimination System (NPDES) permit application process and measures to protect water quality; project construction would disturb a land area of one or more acres, subjecting it to the NPDES permitting requirements and a related Stormwater Pollution Prevention Plan (SWPPP) and construction best management practices (BMPs).
- Provide the most current information regarding the status of the State of Washington's CWA Section 401 water quality certification (WQC) and any conditions of the certification that assure the project would meet state WQs especially for temperature, dissolved oxygen and turbidity within the affected waters in the project area.
- Coordinate with the Washington State Department of Ecology and all affected tribes to assure that state and tribal water resources are protected from impacts associated with the proposed project's construction and operation activities.

Ecology also submitted several comments regarding discharges of sediment or other pollutants to state waters, erosion and sediment control measures, and BMPs.

- Any discharge of sediment-laden runoff or other pollutants to waters of the State without a permit violates RCW 90.48-Water Pollution Control, and WAC 173-201A. Even on projects that do not require a permit, the applicant shall not discharge polluting matter into Waters of the State of Washington or Municipal Separate Storm Sewer System.
- The applicant must utilize adequate erosion and sediment control measures throughout the project.
- Implement and maintain BMPs throughout the entirety of the project.
- Comments made do not constitute an exhaustive list of the various authorizations you may need to obtain, nor legal requirements you may need to fulfill in order to carry out the proposed action. Applicants should remain in touch with their Local Responsible Officials or Planners for additional guidance.

Response: The DSEA notes that the proposed Modified Alignment would not change construction or operational impacts on water resources identified in the Prior EA, and mitigation measures that were imposed by the 2009 Authorization Decision and included in the DSEA would avoid or minimize potential adverse impacts.²⁵

OEA believes that the water resource-related mitigation measures in the DSEA and this FSEA sufficiently address the issues raised in USEPA's comments regarding sedimentation, anti-degradation, pollutants, and planning requirements. There are 10 water resource-related mitigation measures in the DSEA and this FSEA that mandate compliance with federal, state and local stormwater management requirements;

²⁵ See DSEA (July 11, 2019) at page 5-15.

preparation of a Spill Prevention, Control, and Countermeasure (SPCC) plan, a Temporary Erosion and Sediment Control Plan (TESC) and a SWPPP; implementation of erosion and sediment controls and BMPs; compliance with CWA Section 402 NPDES, Section 404, and Section 401 WQC and permitting requirements; and other related items (see FSEA Chapter 6 *Final Recommended Mitigation – Water Resources*, Measures 39 through 48).

Specifically, Mitigation Measure 40 (Measure 42 in the DSEA) requires the Port to comply with federal, state, and local stormwater management regulations, including Ecology's Stormwater Manual for Eastern Washington and the federal NPDES program for construction stormwater, which are also required by the City of Moses Lake's stormwater regulations to prevent unauthorized discharges into the City's municipal storm system or into surface waters.

There are no water resources present in Segment 2 and no water resources present in either proposed Modification 2B or Modification 2C.²⁶ As required by Mitigation Measures 7, 40, 45 and 47, the Port will submit water resource-related permit applications for Segment 1/Modification 1B after STB issues its authorization decision on the Modified Alignment and associated environmental mitigation. Should the STB authorize the Project, the Port would consult and coordinate with USACE for submittal of a Section 404 permit (Mitigation Measures 45 and 47), with Ecology for submittal of a NPDES permit and Section 401 Water Quality Certification (WQC) (Mitigation Measures 40, 45, and 47), and with WDFW for a Hydraulic Project Approval (HPA) (Mitigation Measures 7 and 47), as required by federal and state laws and STB's final imposed mitigation measures for the Project (see Chapter 6 *Final Recommended Mitigation*).

The Port would comply with requirements of the NPDES and Section 404 permits, the Section 401 WQC, and the HPA (Mitigation Measure 47), and would include all permit conditions in any construction documents that the Port provides to contractors (Mitigation Measure 55) (see Chapter 6 *Final Recommended Mitigation – Water Resources* and - *Permit Conditions*). A Section 401 WQC and any included conditions would ensure that the Project complies with the anti-degradation provisions of the CWA and with state WQSS.

Regarding coordination with all affected Tribes to assure that state and tribal water resources are protected, the affected Tribes were included on the distribution list for the DSEA, and OEA notes that no comments were received. However, USACE and Ecology are required to notify and consult with the affected Tribes regarding water resource protection during the future CWA Section 404, Section 401 WQC, and Section 402 NPDES permitting processes for the Project.

3.7 Wetlands

Comments: USEPA requested updated information on the CWA Section 404 permit application process and any proposed mitigation measures for impacts to aquatic

²⁶ See DSEA (July 11, 2009) at page 5-14.

resources resulting from wetlands that could be filled in the project area.

Response: The DSEA notes that mitigation measures imposed in the 2009 Authorization Decision that are included in the DSEA, along with new and/or different mitigation measures reflecting current regulatory agency guidance, would result in no significant adverse impacts to wetlands.²⁷

There are six mitigation measures in the DSEA and this FSEA that address minimization and avoidance of wetland impacts (Mitigation Measures 50, 51, 52, and 54), compensatory mitigation for unavoidable impacts (Mitigation Measures 52 and 53), and compliance with additional mitigation measures that may be required by federal, state and/or local agencies (Mitigation Measures 52 and 53) (see Chapter 6 *Final Recommended Mitigation – Wetlands*, Measures 49 through 54).

There are no wetlands present in Segment 2, and no wetlands present in either proposed Modification 2B or Modification 2C.²⁸ The Port will submit wetland-related permit applications for Segment 1/Modification 1B after the STB issues its authorization decision on the Modified Alignment and associated environmental mitigation, and after additional field work and analysis can be conducted for properties previously unavailable for wetland assessment (Mitigation Measures 47 and 49).

Should the STB authorize the Modified Alignment, the Port would consult and coordinate with USACE for submittal of a CWA Section 404 permit and with Ecology for submittal of a CWA Section 401 WQC (Mitigation Measures 45 and 47), and with the City of Moses Lake for permits associated with the City's Shoreline Management Master Plan and Critical Areas Ordinance (Mitigation Measures 52 and 53) in accordance with federal, state and local laws and STB's imposed mitigation measures for the project (see Chapter 6 *Final Recommended Mitigation – Wetlands and - Water Resources*).

²⁷ See DSEA (July 11, 2019) at page 5-16.

²⁸ See DSEA (July 11, 2019) at page 5-15.

Chapter 4. Port's Response to the DSEA

After OEA issued the DSEA, the Port submitted a comment in which it outlined design changes that would affect certain roadways in proposed Modification 1B and Modification 2C (see Appendix A *Comments*). The Port stated that the design changes were prompted by continued design refinement and the review of comments to the DSEA, including comments by UTC regarding crossings and roadways. The Port's comments include the following design change descriptions, which are followed by OEA's response.

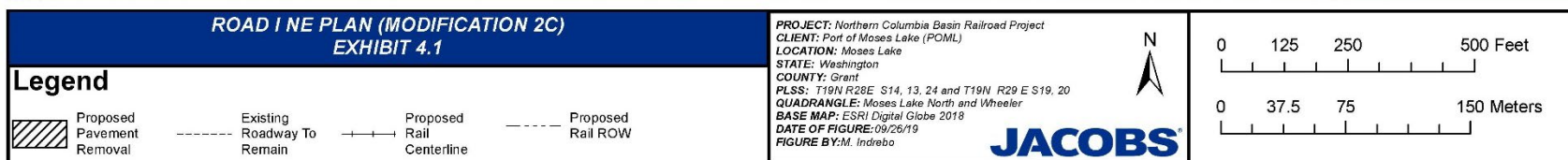
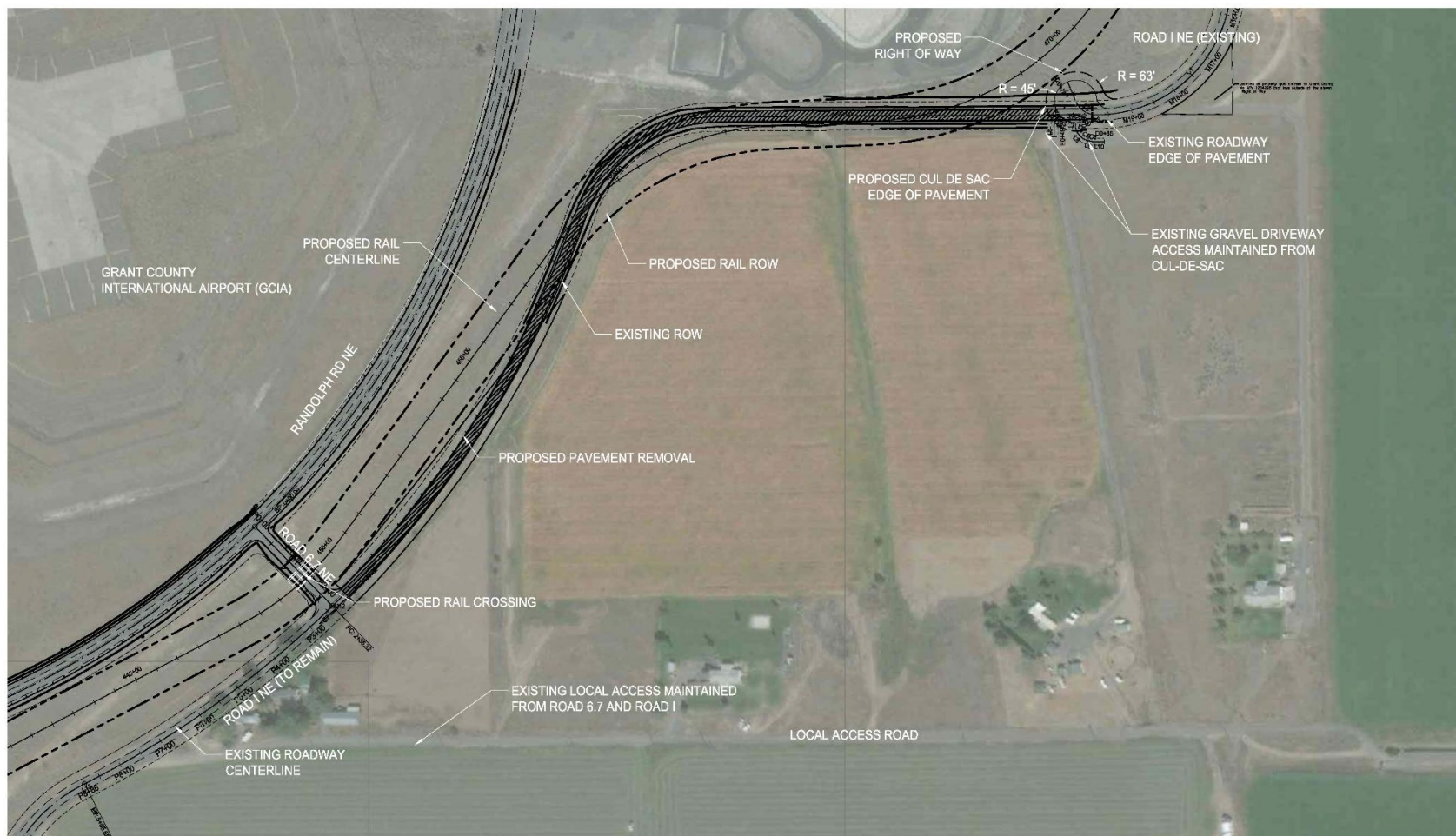
1. In Segment 1, Modification 1B, the design in the DSEA included closing off Industrial Street and extending Silva Street. Under the design change, the Port would construct a new, perpendicular at-grade crossing of Industrial Street to maintain access to industrial properties, rather than closing off Industrial Street and constructing an extension of Silva Street. The Port stated that this design edit would have no environmental impact, including no impact to traffic and transportation.
2. In Segment 2, Modification 2C, additional design work revealed the need to avoid utilities and construction of two long, skewed (and less safe) crossings of Road I NE located south of the GCIA industrial area. To avoid these negative impacts, Modification 2C would need to be constructed over a portion of Road I NE. That portion of the road would need to be vacated (or closed) with Grant County.

To maintain access for three residences located on other portions of Road I NE, the Port would change the existing Road I NE by constructing a cul-de-sac on the road and a new, perpendicular at-grade crossing of Road 6.7 NE, and Road I NE would be closed between the cul-de-sac and Road 6.7 NE. The Port stated that the perpendicular crossing of Road 6.7 NE would be a safer design than the skewed (not perpendicular) crossings of Road I NE in the previous design.

The Port also stated that it would consult with Grant County and other applicable parties when seeking UTC approval of the Road 6.7 NE at-grade crossing, and approval to vacate a portion of Road I NE. The Port stated that this design edit would have only a minor impact on vehicle traffic from rail construction and operation, and no other environment impacts.

The following Exhibit 4.1 shows the revisions planned for Road I NE.

Exhibit 4.1 Road I NE Plan (Modification 2C)



Response:

1. The Port's proposed Modification 1B, analyzed in the DSEA, would require closing off Industrial Street and extending Silva Street to maintain access to industrial properties. Under the Port's proposed design change, the Port would construct a new, perpendicular at-grade crossing of Industrial Street to maintain access to industrial properties, rather than closing off Industrial Street and constructing an extension of Silva Street. OEA concurs with the Port's statement that the perpendicular crossing would be safer than a skewed one because perpendicular crossings generally have less impediments to visibility for train and road traffic. After carefully reviewing the Port's minor proposed design change to Modification 1B, OEA has determined that any potential environmental and transportation impacts would be comparable to those previously analyzed in the DSEA and discussed in DSEA Chapter 3, and, accordingly, sufficiently addressed in the mitigation measures set forth in DSEA Chapter 5.
2. The Port's proposed design change for Segment 2, Modification 2C, would replace a skewed crossing with a safer perpendicular crossing. The Port asserts that this change would not impact any residence directly, but would change the road access for three residences located nearby the closure of Road I NE between the cul-de-sac and Road 6.7 NE. After carefully considering this design change, OEA has concluded that it would have a minor impact on vehicle traffic from rail construction and operation and construction of the cul-de-sac. Any potential environmental and transportation impacts resulting from the Port's minor proposed design change to Modification 2C would be comparable to those previously analyzed in the DSEA and discussed in DSEA Chapter 3 and are sufficiently addressed in the mitigation measures set forth in DSEA Chapter 5. OEA is further revising Mitigation Measure 36 in this FSEA to require consultation with the three nearby residential owners in the grade crossing petitions with UTC and to require notice of the road closure process with Grant County

Chapter 5. Conclusion

Based on an independent analysis of all information available to date, including the Prior EA, DSEA, and all comments received, OEA and FRA conclude that the construction of approximately 7.6 miles of rail line in Grant County, Washington would not result in any significant environmental impacts if the mitigation measures recommended in this FSEA are implemented.²⁹

OEA and FRA have determined that the environmentally preferred route for the Modified Alignment to the rail line is Modification 1B for Segment 1 and Modification 2C for Segment 2, incorporating the design changes proposed by the Port in its comment discussed in Chapter 4 of this FSEA. Modification 1B for Segment 1 and Modification 2C for Segment 2 are similar to the Original Alignment approved by STB's 2009 Authorization Decision, with minor adjustments that minimize impacts on existing land uses, including land development that has occurred in the project vicinity since 2009.³⁰

Segment 1/Modification 1B would still involve construction of approximately 4.5 miles of new track from a connection with a rail line of the Columbia Basin Railroad Company, Inc. (CBRW) in the community of Wheeler on the east side of the City of Moses Lake, to a connection with CBRW's rail line just west of the Crab Creek water crossing. However, the following modifications would be made:

1. Redesign a curve and industrial and other driveway crossings at the beginning/east end to accommodate the existing topography.
2. Shift the rail line approximately 86 feet southward at the eastern end, south of/along Wheeler Road, to avoid the Grant County Public Works facility, a buried gas line, and three buildings.
3. Shift the rail line slightly to the north near EL 20, south of Wheeler Road, to avoid an irrigation pivot and to maximize cropland usability.
4. Add a new curve south of Wheeler Road to make a safer, perpendicular rail crossing at Wheeler Road, and to minimize property needed along the frontage of Wheeler Road.
5. Add a new curve north of Wheeler Road to cross Industrial Street, rather than Hamilton Road NE, to avoid removal of a newly constructed building and impacts to utilities in Hamilton Road NE (Hamilton Road NE and Industrial Street did not exist when the Project was originally designed).

²⁹ Any discussion regarding potential environmental impacts associated with the acquisition of the approximately three miles of track in Segment 3 was incorporated into the DSEA by reference to the Prior EA."

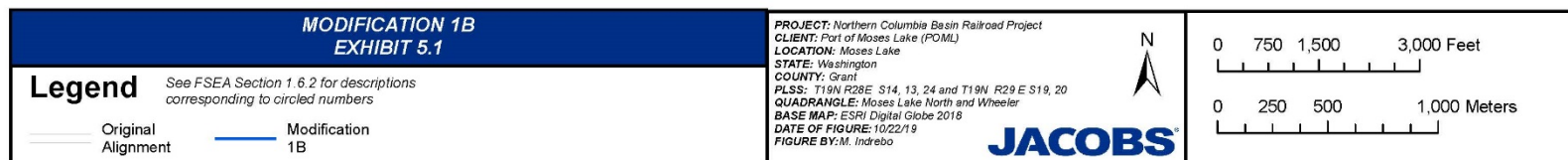
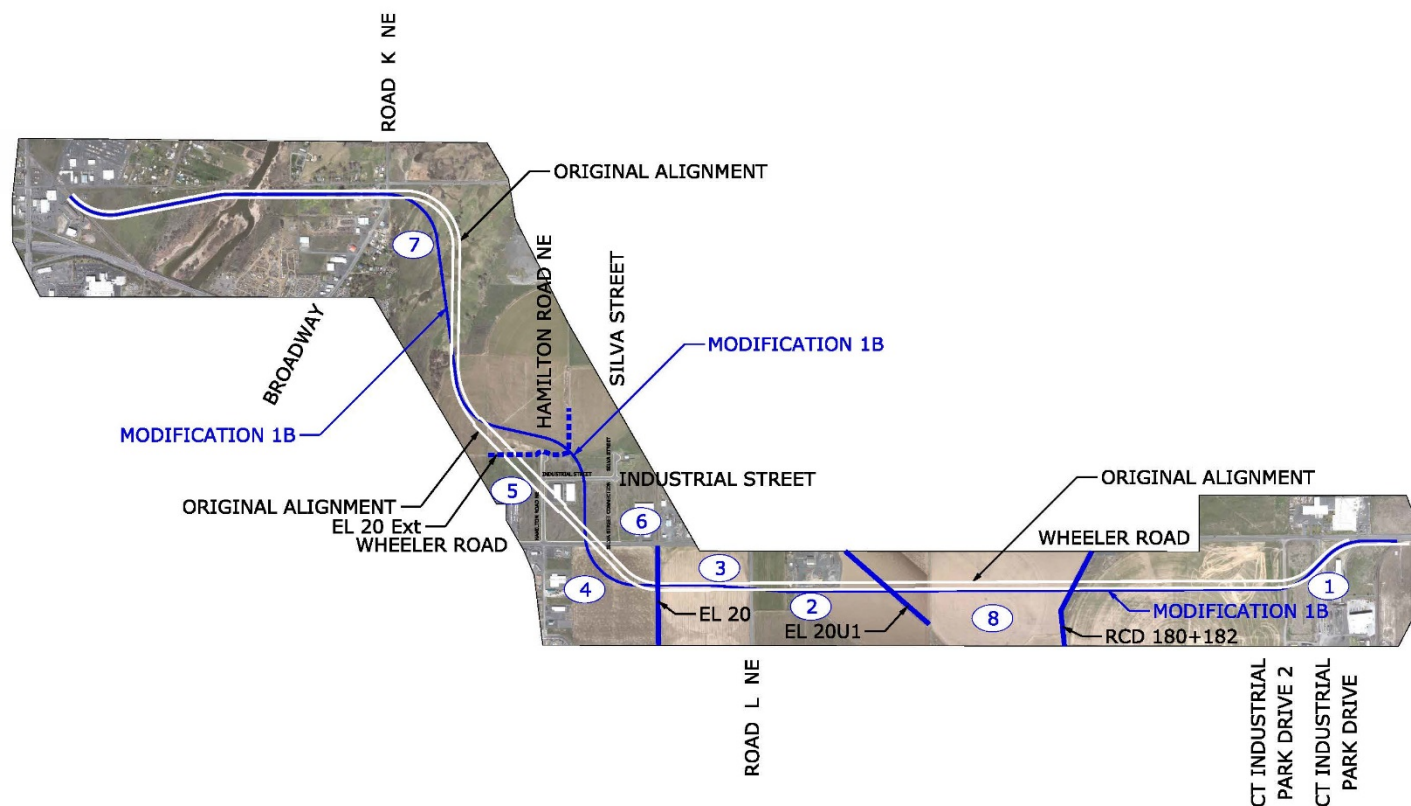
³⁰ Segment 3 involves acquisition and rehabilitation of approximately 3 miles of CBRW track that connects Segments 1 and 2. Because the Port is not proposing to modify Segment 3, it remains as approved by the STB in its 2009 Authorization Decision.

6. Construct a new, perpendicular at-grade crossing of Industrial Street to maintain access to industrial properties, rather than closing off Industrial Street and constructing an extension of Silva Street.
7. Deviate the rail line slightly to the west between Hamilton Road NE and Broadway Avenue to minimize impacts to a wetland, avoid rock outcrops, and enable the rail line to better follow existing topography.
8. Install culverts instead of bridges for the crossings of historic, earthen irrigation/drainage ditches at RCD 180+182 and EL 20.³¹

This numbered list of modifications corresponds to numbered locations shown on the following Exhibit 5.1; the exhibit illustrates the Segment 1 Original Alignment and the Modification 1B alignment.

³¹ See Preliminary EA, at page 5-5. Crossings were generally mentioned in the 2009 Authorization Decision, slip op at 19. See also 2009 Final EA, at pages ES-20 and 5-16.

Exhibit 5.1 Modification 1B



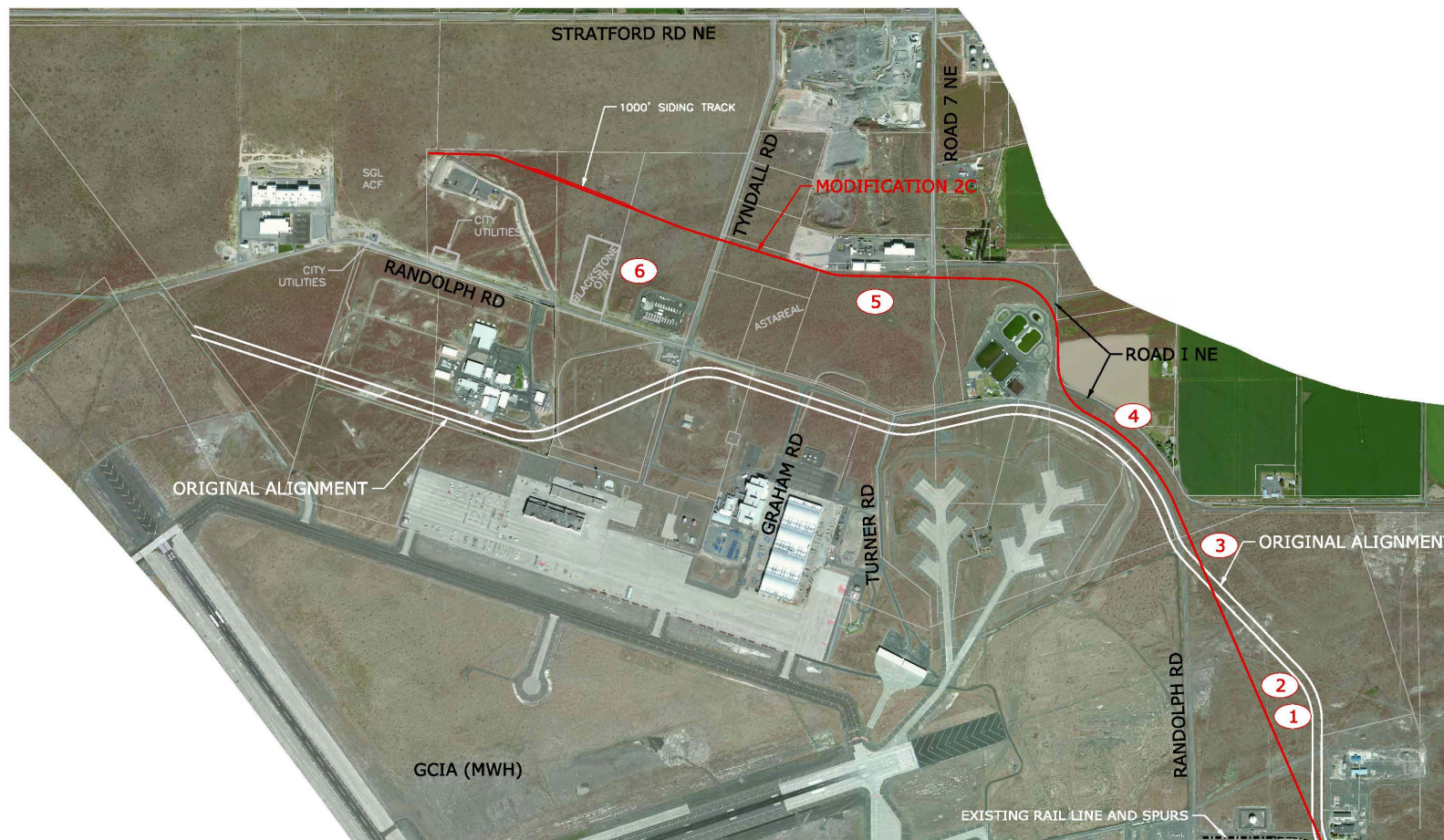
Segment 2/Modification 2C would still involve construction of approximately 3 miles of new track from the existing CBRW line to the eastern side of the GCIA as in the Original Alignment. However, the following modifications would be made:

1. Remove a curve and straighten the alignment at the beginning/south end immediately northeast of the connection with the existing CBRW rail line.
2. Reduce the length of track construction by approximately 2,000 feet.
3. Eliminate rail crossings of Randolph Road immediately south of and within the GCIA industrial area.
4. Shift the alignment further east and away from Randolph Road to minimize conflicts with utilities (storm drain, sewer, power, natural gas) that emanate from and/or parallel the road.
5. Continue north with the eastern alignment shift, bisecting undeveloped portions of existing industrial parcels to allow for future spur sidings and turnouts that would avoid existing buildings and serve both existing and future industrial tenants.
6. Avoid crossing primary access driveways to existing industrial tenants along Randolph Road and substantially reduce the amount of grading.

This numbered list of modifications corresponds to numbered locations shown on the following Exhibit 5.2; the exhibit illustrates the Segment 2 Original Alignment and the Modification 2C alignment.

Additionally, Modification 2C is preferable to Modification 2B because it involves construction of fewer new at-grade rail crossings, avoids the possibility of simultaneously blocked crossings contained in Modification 2B, and utilizes safer perpendicular crossings rather than skewed crossings contained in Modification 2B and the Segment 2 Original Alignment.

Exhibit 5.2 Modification 2C



Legend

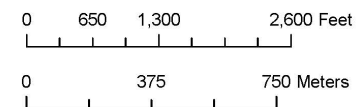
— Original Alignment

See FSEA Section 1.6.2 for descriptions corresponding to circled numbers

— Modification 2C

MODIFICATION 2C EXHIBIT 5.2

PROJECT: Northern Columbia Basin Railroad Project
CLIENT: Port of Moses Lake (POML)
LOCATION: Moses Lake
STATE: Washington
COUNTY: Grant
PLSS: T19N R28E S14, 13, 24 and T19N R29 E S19, 20
QUADRANGLE: Moses Lake North and Wheeler
BASE MAP: ESRI Digital Globe 2018
DATE OF FIGURE: 10/22/19
FIGURE BY: M. Indrebo



The Port would construct the rail line within a 100-foot-wide right-of-way³² during daytime hours over a period of 14 to 20 months, depending on project phasing, contractor scheduling, material availability, and environmental constraints (WSDOT 2008). The following new features would be constructed:

- A bridge crossing over Crab Creek.
- At-grade rail crossings of the following public roads:
 - Segment 1 – Road L NE, Wheeler Road, and Industrial Street.
 - Segment 2 Modification 2C - Tyndall Road, Road 7 NE, and Road 6.7 NE.
- Culvert crossings of four irrigation canals/drainage ditches.

The Port anticipates one round-trip train weekly increasing to a maximum of one round-trip train daily as the need for future freight rail develops, and trains consisting of up to 10 cars traveling at a maximum of 25 mph, with a normal operating speed of 15 to 20 mph (WSDOT 2008).

³² The right-of-way may be wider at certain locations along the rail corridor to accommodate laydown and staging areas and other construction needs, and/or depending on condemnation or property purchase negotiations with current landowners. The Port will be negotiating property acquisitions needed for the Project right-of-way.

Chapter 6. Final Recommended Mitigation

Based on the information available to date, the Surface Transportation Board's (STB) Office of Environmental Analysis' (OEA) independent analysis of the proposed rail line, the Prior Environmental Assessment (EA), the Draft Supplemental EA (DSEA), all comments received, and mitigation requested by various federal, state, and local agencies, OEA recommends that any final decision by STB authorizing the Port of Moses Lake's (Port) proposed rail line Modified Alignment be subject to the following mitigation measures.³³

The following final mitigation measures recommended by OEA are organized by environmental resource area. If a measure imposed by the 2009 Authorization Decision has been revised, it is followed by notes in parentheses indicating whether it was revised in the DSEA and/or in the Final Supplemental EA (FSEA). Measures imposed in 2009 and recommended again here without changes have no notes. Some minor editorial changes that do not affect the substance of the mitigation imposed in 2009 have been made for clarity.

The measures listed here are the same as those included in the DSEA except for revisions to what are now mitigation measures 7, 8, 11, 15, 28, 36, and 53. Numbering has been changed to be consecutive.

Air Quality

1. The Port³⁴ shall implement Best Management Practices (BMPs) and appropriate fugitive dust suppression controls, such as spraying water on haul roads adjacent to construction sites and exposed soils, street sweeping, covering loaded trucks, and washing haul trucks before they leave the construction site.
2. The Port shall comply with the requirements of all applicable federal, state, and local regulations regarding open burning and the control of fugitive dust related to rail line construction activities.
3. The Port shall revegetate areas disturbed during construction with native grasses or other appropriate native habitat as soon as possible after construction activities are completed, to minimize windblown dust.

³³ If there are conflicts between the measures in this Chapter and any federal, state, or local requirements for the Project that are not preempted under the Interstate Commerce Act, such federal, state, or local requirements shall prevail and supersede these measures.

³⁴ It is understood that the Port may utilize contractors, in which case the Port shall ensure that its contractors implement the mitigation measures imposed in this proceeding. The Port must also ensure that its operator of the line complies with all mitigation measures, including the Programmatic Agreement (PA), applicable to line operators.

4. The Port shall shut off construction equipment when it is not in use to reduce idling emissions.
5. The Port shall verify that construction equipment is properly maintained and regularly inspected and that required pollution control devices are in good working condition.

Cultural, Historic, and Archaeological Resources

6. The Port shall comply with the terms of the June 2009 Programmatic Agreement (PA), as amended on July 3, 2019, which sets forth the steps for the identification and evaluation of historic properties, including archaeological sites, as well as the mitigation of any adverse effects. The PA addresses unanticipated historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts if discovered during Project construction. ***(Originally revised in the DSEA; the DSEA revision combined Measures 6 and 7 of the 2009 Authorization Decision.)***

Fish, Wildlife, and Vegetation

7. The Port shall abide by construction timing and guidelines stipulated by the Washington Department of Fish and Wildlife (WDFW) through the Hydraulic Project Approval (HPA). If there are differences between other mitigation measures for this Project and the conditions of the HPA, the HPA shall take precedence. ***(Originally revised in the DSEA as Measure 8. Revised in the FSEA to clarify that the HPA takes precedence if there are other conflicting mitigation measures.)***
8. The Port shall consult with WDFW and comply with its applicable laws and regulations so that project-related construction activities are conducted in a manner that avoids or minimizes impacts to birds and bats (e.g., roosting bald eagles, over-wintering waterfowl, migrating shorebirds, foraging bats, and nesting birds). Such measures include, but are not limited to, avoidance of work that could impact these species, such as construction activities, within 300 feet of the Crab Creek stream channel from June 1 to September 1. ***(Originally revised in the DSEA as Measure 9. Revised to add last sentence regarding distance and timing restriction in the FSEA.)***
9. To minimize disturbance to wildlife and vegetation to the maximum extent possible, the Port shall limit construction activities, including staging areas and vehicle turnaround areas, to the rail right-of-way or within previously disturbed areas to the maximum extent possible. Existing vegetation shall be preserved to the maximum extent possible. The Port shall replant disturbed areas with native flora and vegetation unless it would impair rail operations or maintenance. ***(Originally revised in the DSEA as Measure 10.)***

10. To preserve water quality in aquatic or wetland habitat, the Port shall implement measures to prevent uncured concrete from coming into contact with surface waters, and all refueling shall occur more than 200 feet from a water body or wetlands.
11. The Port shall minimize the impacts that could result from over-water structures, such as the bridge crossing Crab Creek. To minimize or avoid impacts to walleye spawning, the Port shall comply with measures specified by WDFW. Such measures include, but are not limited to, avoidance of work within the waters of Crab Creek/Parker Horn between March 1 and early July. ***(Originally revised in the DSEA as Measure 12. Further revised for clarity in the FSEA.)***
12. To minimize or avoid impacts to nesting burrowing owls, the Port shall:
 - a. Conduct a directed survey for burrowing owl nests within 0.5 miles of the areas to be disturbed by construction. Surveys shall be done during the breeding season (April to June) and shall abide by a WDFW-approved protocol. Survey results shall be submitted to WDFW prior to the start of construction. If active nests or nests that could become active are located within the track alignment footprint, WDFW may require artificial burrow installations. Artificial burrows would be provided by WDFW and may be installed within the project right-of-way. ***(Originally revised in the DSEA as Measure 13.a.)***
 - b. Avoid new construction work in areas within 200 meters of identified nesting areas close to Segment 1 and Segment 2 between February 15 and September 25. If construction activities take place during this period, then the Port shall consult with the WDFW to ensure that construction activities are conducted in a manner that avoids or minimizes impacts to burrowing owls. ***(Originally revised in the DSEA as Measure 13.b.)***
13. To minimize or avoid impacts to bald eagle roost trees, the Port shall locate the project alignment and support areas, such as staging areas, away from roost trees. If clearing of any roost trees is required, the Port shall create artificial roosts in an appropriate location near the existing roost.
14. To minimize or avoid impacts to Yuma myotis and Townsend's big-eared bats, the Port shall install bat boxes (alternative bat roosting structures) to allow bat roosting near the Crab Creek crossing.³⁵

Hazardous Materials

15. Prior to initiating any construction activities, the Port shall consult and coordinate with the U.S. Environmental Protection Agency's (USEPA) Region 10 Office, USEPA Superfund program, and the Washington Department of Ecology

³⁵ Measure 15 in the 2009 Authorization Decision was deleted in the DSEA because the northern leopard frog and its habitat are no longer present in the Project area.

(Ecology) concerning any necessary additional investigations of identified contaminated sites and the remedies that may be required for those contaminated sites. The Port shall also consult and coordinate with the USEPA Region 10 Office, USEPA Superfund program, and Ecology concerning any necessary additional investigations of contaminated sites encountered during construction and the remedies that may be required for those newly encountered sites. If USEPA determines it is warranted based on the results of site investigations, a monitoring program will be developed and implemented during construction activities. The Port will employ principals of adaptive management during implementation of the mitigation measures and any monitoring program. Site-related consultation, investigation, and monitoring shall be conducted by a qualified environmental professional as defined by ASTM International and USEPA. The following contaminated sites have already been identified: ***(Revised in the FSEA to add Superfund program, new sites encountered during construction, monitoring, and adaptive management; formerly Measure 17 in the DSEA.)***

- a. On Segment 1 and Alternative 1A, the Bernard Cattle Company site at the southwest corner of Broadway and Road 4 NE (Cherokee Road).
 - b. On Segment 1 and Alternative 1A, the Francis J. Jenny UST site north of Road 4 NE between the Bernard Cattle Company site and Crab Creek. ***(Originally recommended in the DSEA as a new item under Measure 17.)***
 - c. On Segment 1, the Grant County Road District No. 2 facility on the south side of Wheeler Road (Road 3 NE) just east of Road L.
 - d. On Segment 2, the Randolph Road Base Dump (EPA Site No. 8), and the Paint Hangar Leach Pit (EPA Site No. 22).
 - e. On Modification 2B, Moses Lake Industries Inc. ***(Originally recommended in the DSEA as a new item under Measure 17.)***
 - f. On Segment 2, the Boeing polychlorinated biphenyl cleanup area located on Tyndall Road.
 - g. On Modification 2C, the Grant County Shooting Range, the Dumpster Wash Area, and the Base Closure Landfill. ***(Originally recommended in the DSEA as a new item under Measure 17.)***
16. The Port shall coordinate with the operator of the rail line to develop a Spill Prevention Control and Countermeasures (SPCC) plan and an emergency response plan. In a manner consistent with applicable legal requirements, the SPCC plan and emergency response plan shall address the following:
- a. Definition of what constitutes a reportable spill.

- b. Requirements and procedures for reporting spills to appropriate government agencies.
 - c. Equipment available to respond to spills and where the equipment will be located.
 - d. Training of personnel and training records.
 - e. List of government agencies and response personnel to be contacted in the event of a spill.
 - f. Measures to address the transport of hazardous materials by rail.
17. The Port shall observe the requirements of the Federal Railroad Administration (FRA) and other federal, state, and local applicable requirements concerning the handling and disposal of any hazardous waste or hazardous materials and clean-up in the event of a spill during construction.
 18. The Port shall ensure that the operator of the rail line observes the requirements of FRA and other federal, state, and local applicable requirements concerning the handling and disposal of any hazardous waste or hazardous materials and clean-up in the event of a spill during rail operation.³⁶
 19. The Port shall ensure that locomotives associated with project operations are checked regularly for leaks.

Land Use

20. To the maximum extent practicable, the Port shall advise businesses and the public of construction schedules in advance to minimize disruptions.
21. The Port shall abide by all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.). Relocation assistance shall be provided for any commercial properties acquired for the Project.
22. To the extent practicable, the Port shall negotiate with affected property owners to minimize any project-related severance impacts, including impacts to irrigation systems.
23. The Port shall submit form 7460 (Notice of Proposed Construction or Alteration) to the Federal Aviation Administration (FAA) prior to construction.

³⁶ The requirements of the U.S. Department of Transportation (USDOT) Hazardous Materials Regulations, 49 C.F.R. Parts 171-180, apply to the transportation by rail of hazardous waste and other hazardous materials, and are subject to enforcement by FRA.

Noise and Vibration

24. During construction, the Port shall ensure that manufacturer-recommended mufflers have been installed on all diesel-powered equipment and that all equipment is kept in good operating condition.
25. The Port shall ensure that construction within the boundaries of the City of Moses Lake will not occur between 10:00 p.m. and 7:00 a.m. without prior approval by the City Council.

Socioeconomics and Environmental Justice

26. During Project construction, the Port shall comply with applicable state, county, and city regulations or requirements regarding detour signs and the routing of construction vehicle traffic. The Port shall also provide proper notification of the construction schedule to the public and the nearest fire department and emergency response units.
27. The Port shall work with the operator of the rail line, the City of Moses Lake, community organizations, and Longview Elementary School to arrange for a rail safety program, such as Operation Lifesaver,³⁷ to be offered at least once per year for as long as the Port operates trains over the rail line. ***(Originally revised in the DSEA as Measure 29.)***
28. The Port shall coordinate with the operator of the rail line, the Washington State Utilities and Transportation Commission (UTC), and the Moses Lake School District, to help identify and implement practicable safe crossings and other potential rail safety measures. ***(Revised in the FSEA to add UTC.)***
29. On Segment 3, the Port shall upgrade the existing crossing gate structures and signs to help provide better advance warnings of approaching trains for pedestrians and drivers.

Soils and Geology

30. The Port shall construct the proposed Project in accordance with the American Railway Engineering and Maintenance of Way Association guidelines.
31. The Port shall mitigate the potential liquefaction of loose or soft alluvium or other soils during an earthquake by designing foundation elements for reduced soil strength, accounting for potential ground displacements, and/or implementing ground improvements.

³⁷ Operation Lifesaver seeks to educate drivers and pedestrians about making safer decisions at crossings and around railroad tracks. Information is available online at the [Operation Lifesaver, Inc. website](https://www.oli.org/) (<https://www.oli.org/>).

32. The Port shall minimize sedimentation and erosion in the project area by employing BMPs during construction.
33. The Port shall revegetate disturbed areas with native grasses as soon as practicable after Project construction ends.

Traffic and Transportation

34. The Port shall ensure, to the extent possible, that all construction vehicle activity associated with the construction of the proposed Project occurs during daytime hours. ***(Originally revised in the DSEA as Measure 36.)***
35. The Port shall consider school bus schedules in planning and executing the necessary road work.
36. The Port shall consult with appropriate federal, state, and local transportation agencies, and the three residential landowners near Road I NE, and convene diagnostic review meetings to evaluate appropriate levels of crossing protection and to determine final design of the grade crossings and associated warning devices prior to submitting new crossing petitions to UTC.³⁸ In addition, the Port shall include notice to the three residential landowners near Road I NE in any road closure process with Grant County. ***(Revised in the FSEA to add the three residential landowners, diagnostic review meetings, and submittal of new crossing petitions to UTC.)***
37. The Port shall comply with applicable FRA track maintenance and inspection standards or ensure that the operator of the rail line does so.

Visual Quality

38. To the extent practicable, the Port shall be responsible for the following:
 - a. Ensuring that only the vegetation that needs to be cleared for construction purposes is removed.
 - b. Using native flora and vegetation when replanting disturbed areas.
 - c. Adding compost to the soil before seeding or planting in order to increase plant establishment.
 - d. Ensuring that cut-and-fill slopes are blended with the form and line of the existing landscape through grading practices to enhance visual quality.

³⁸ As part of the administration of the USDOT 2017 FASTLANE grant, which is being used to fund final design and construction of the Project, the Port shall submit engineering design sets to FRA for review and approval.

- e. Ensuring that vegetative buffers, such as trees or bushy shrubs, are located near residential areas to help screen the railroad corridor from viewers. These buffers should be located where additional vegetation would not impair visibility at road crossings.

Water Resources

- 39. The Port shall ensure that any bridge constructed over Crab Creek is designed such that stormwater runoff does not enter the water body.³⁹
- 40. For project-related construction, the Port shall comply with the stormwater management requirements of all federal, state, and local regulations regarding stormwater management, including Ecology's *Stormwater Manual for Eastern Washington* and National Pollutant Discharge Elimination System (NPDES) requirements.
- 41. The Port shall prepare an approved Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control (TESC) plan prior to construction. The temporary erosion control measures shall be inspected regularly by the Port and maintained as necessary to ensure that these measures are functioning properly.
- 42. Consistent with applicable legal requirements, the Port shall coordinate with the operator of the rail line to prepare a Spill Prevention, Control, and Countermeasure (SPCC) plan to minimize any impacts associated with accidental spills of hazardous materials. The SPCC plan will require the development of a spill contingency plan and will provide for the implementation of containment and other countermeasures that could prevent spills from reaching navigable waters or wetlands.
- 43. The Port shall implement the following erosion and sedimentation controls:
 - a. Installing silt fencing with geotextile material along the proposed project area perimeter to filter sediment from unconcentrated surface water runoff.
 - b. Placing catch basin inserts in all new and existing catch basins receiving runoff from the disturbed areas of the Project.
 - c. Placing straw bales in paths of concentrated runoff to filter sediment.
 - d. Preserving existing vegetation to the maximum extent possible.

³⁹ As part of the administration of the USDOT 2017 FASTLANE grant, which is being used to fund final design and construction of the Project, the Port shall submit engineering design sets to FRA for review and approval.

- e. Revegetating areas disturbed during construction with native grasses, where practicable. These areas shall be reseeded as soon as practicable following construction to prevent erosion.
 - f. Covering exposed soils with plastic or straw in the event of a major storm.
 - g. Constructing temporary ditches, berms, and sedimentation ponds to collect runoff and prevent discharge of sediment into drainages, streams, or wetlands.
 - h. Installing stabilized construction entrances and exits⁴⁰ for truck access to the construction site to protect existing roadways and railroad tracks.
 - i. Cleaning any storm sewer facilities affected by project construction to prevent sediment from leaving the site after construction is completed and erosion control measures are removed.
44. If the erosion and sediment control measures described above are not adequate to control erosion and sedimentation, all work shall cease, and the Port shall consult with Ecology regarding additional erosion control or restoration measures to protect adjacent properties.
45. To avoid or minimize impacts to water resources during construction, the Port shall implement the following measures:
- a. Consulting with the U.S. Army Corps of Engineers (USACE) and complying with the requirements of the Section 404 permitting process (Segment 1/Alternative 1A only).
 - b. Consulting with Ecology and complying with the requirements of the Section 401 Water Quality Certification (WQC) process (Segment 1/Alternative 1A only).
 - c. Locating equipment staging areas further than 200 feet from water bodies (Parker Horn, Crab Creek, or wetlands).
 - d. Leaving in place erosion control measures at culvert construction sites until the permanent culvert construction process is completed.
 - e. Coordinating with farmers and/or agricultural businesses regarding drainage issues that might arise.

⁴⁰ A stabilized construction entrance involves placing blacktop or gravel along the edge of the roadway to avoid erosion or displacement of soil where trucks access and leave the roadway.

- f. Applying noxious weed control measures by an appropriately licensed contractor, using herbicides approved by the USEPA's Region 10 Office. Herbicides shall not be applied during periods of high wind.
46. To prevent non-sedimentation pollutants (such as hazardous materials) from entering water bodies, the Port shall implement the following measures:
- a. Handling and disposing of all pollutants used on-site during construction in a manner that does not contaminate stormwater, wetlands, irrigation canals, Parker Horn, or Crab Creek.
 - b. Establishing staging areas for equipment repair and maintenance at least 200 feet from all wetlands or water bodies.
 - c. Inspecting all construction equipment regularly for any fuel, lube oil, hydraulic fluids, or antifreeze leaks. If leaks are found, the Port shall immediately remove the equipment from service and repair or replace it and remediate the spill.
 - d. Disposing any washout from concrete trucks in a manner that avoids dumping it into storm drains or onto soil or pavement.
 - e. Ensuring that thinners and solvents are used at least 200 feet from wetlands or water bodies. Capturing, containing, and properly disposing of thinners and solvents.
 - f. Requiring that fuel trucks maintain a minimum distance of 200 feet from water bodies and fueling construction vehicles away from sensitive areas, such as areas of permeable soils where a spill could more easily migrate to surface water.
 - g. Designing staging areas to capture all runoff and/or spills.
 - h. On-site excavated material, and/or clean structural rock from local commercial quarries that meets the engineering design criteria for use in railroad construction, may be used for fill. On-site excavated materials used for fill shall be tested before it is placed into surface water to ensure it is free of polluting materials. On-site excavated material shall not be used for fill if polluting materials are found and shall be removed from the site using BMPs. ***(Originally revised in the DSEA as Measure 48.h.)***
47. The Port shall implement the following construction-related mitigation measures at the Crab Creek crossing:
- a. Isolating cast-in-place concrete bridge piers or abutments from water in Crab Creek for seven days to allow the concrete to cure and to avoid toxicity to aquatic life. Uncured or wet concrete shall not come into contact with flowing waters. Any isolated water that comes into contact with wet

concrete and that has a pH greater than nine shall be pumped out and disposed of appropriately. ***(Originally revised in the DSEA as Measure 49.a.)***

- b. Consultation with USACE, Ecology, and WDFW, and compliance with the requirements of the Clean Water Act Section 404 permit, the Section 401 WQC, and the HPA.
48. To minimize the operational effects of the proposed Project on water resources, the Port shall implement the following railroad practices, or ensure that the operator of the rail line does so:
- a. Develop a bridge maintenance plan in compliance with FRA regulations.
 - b. Regularly check locomotives associated with the proposed operations to identify and repair fluid leaks or discharges.

Wetlands

49. Prior to submittal of wetland permit applications to appropriate federal, state, and local agencies, the Port shall perform additional field work and conduct analysis for the properties that were previously unavailable for wetland assessment.
50. The Port shall avoid or minimize disturbance to wetland areas whenever possible during construction.
51. The Port shall not allow construction staging areas in wetlands, including wetlands located within the project right-of-way. ***(Originally revised in the DSEA as Measure 53.)***
52. The Port shall prepare a Wetland Mitigation Plan to describe measures to avoid and minimize impacts to wetlands. The following measures shall be included:
- a. Compensating for unavoidable impacts by creating, restoring, or enhancing existing wetlands, or by purchasing compensatory wetland mitigation credits at an approved Wetland Mitigation Bank. ***(Originally revised in the DSEA as Measure 54.a.)***
 - b. Adhering to current agency guidance on wetland mitigation, Wetland Mitigation in Washington State⁴¹, as well as guidance in the City of Moses Lake's Shoreline Management Master Plan and the Critical Areas Ordinance (for wetlands within the city), and complying with replacement

⁴¹ Ecology, USACE Seattle District, and EPA Region 10. 2006. *Wetland Mitigation in Washington State: Part 1 and Part 2*. Version 1. Washington State Department of Ecology Publications #06-06-011a and #06-06-011b. Olympia, WA. March 2006.

ratios, buffer width, site selection criteria, and other criteria presented in this guidance.

- c. Identifying a suitable off-site mitigation site.
 - d. Designing bridge span widths, fill slope angles, and the alignment to minimize impacts to wetlands and other aquatic resources.
 - e. Restoring disturbed areas in native plant communities near Wetland A and in the Crab Creek area to improve habitats and buffer wetlands.
(Originally revised in the DSEA as Measure 54.e.)
 - f. Including habitat restoration to the extent practicable in the design of the proposed Crab Creek bridge to offset loss of wildlife habitats.
53. The Port shall mitigate wetland impacts at an available and approved Wetland Mitigation Bank if this is the preferred mitigation method of USACE and Ecology and shall comply with additional mitigation measures, if any, required by these agencies and the City of Moses Lake. If using a Wetland Mitigation Bank, the Port shall prepare a Mitigation Bank Use Plan that describes the appropriate categories, functions, and acreage of each impacted wetland and buffer and describes cost, credit ratio calculations, and available number of credits for purchase. The following impacted wetlands in Segment 1 shall be mitigated at an approved Wetland Mitigation Bank if the Port is required to do so by USACE, Ecology, or the City of Moses Lake: Wetland A, Wetland B, Wetland C and Wetland E. ***(Originally revised in the DSEA as Measure 55. Further revised in the FSEA for clarity.)***
54. The Port shall ensure that irrigation ditches and canals are either avoided by spanning both banks with the crossing structure, or that a culvert is installed to allow water to flow beneath the rail fill.

Permit Conditions

55. Conditions of all permits shall be included in any construction documents that the Port provides to contractors.

APPENDIX A

COMMENTS

- Ronald S. Piercy
- Port/Thompson Hine LLC Response to Ronald Piercy Comments
- State of Washington, Utilities and Transportation Commission
- State of Washington, Department of Ecology
- U.S. Environmental Protection Agency, Region 10
- State of Washington, Department of Fish and Wildlife
- Port/Thompson Hine LLC Regarding Road I
- U.S. Fish and Wildlife Service Correspondence

Ronald S Piercy
12319 Rd 4 NE
Moses Lake WA 98837

February 13, 2019

Surface Transportation Board
Washington DC 20423-0001

RECEIVED FEB 15 2019

Docket #: FD34936

I am glad that the railroad plan for segment one of the Northern Columbia Basin Railroad project is being reviewed.

I believe that there is a substantially better route for the railroad to take other than the one presently proposed.

I have attached a map drawn by me of my proposed route compared to the NCBRR proposed route. My route is shorter resulting in less tract to build and less track for trains to have to transverse resulting in savings in fuel and wear on trains and tracks.

My proposed route is almost straight and takes out the twists and turns. It may require some fill on the East end.

Wheeler road is a busy four lane road the proposed tracks cross wheeler in two places at a 45 degree angle. My proposed route stays North of Wheeler Road.

My proposed route will serve industrial customers on the north side of wheeler road. In my proposal the county would vacate Bonanza road. The tracks would be built on this roadbed. Going west the south wing of one building would have to be removed and the now vacant building that was Commercial Tire would have to be removed.

In this area agriculture is only possible with irrigation. This whole Columbia Basin Project was developed in the 50's by millions of federal dollars. Without the Columbia Basin Irrigation Project there would be no agriculture here and thus very little economy. The NCBRR proposed tracks are very disruptive to agriculture. In the eastern half of the United States there is sufficient rainfall to support agriculture. If you build a railroad through the middle of a field it is OK you can still farm on both sides of the railroad. By cutting across an irrigated field the irrigation systems are destroyed making it nearly impossible to continue farming the piece of property. If I was a farmer and the Railroad wanted to pass through one of my fields I would demand that the railroad purchase the whole property because I could no longer farm that property efficiently.

I own two access just north of the proposed railroad and road 4. I have nothing to gain or loose depending on where the tracks are built except that I travel the roads in the area. I don't like to see wheeler road crossed twice. I think there is a better way.

Sincerely,


Ronald S Piercy

cc: Port of Moses Lake
Representative Tom Dent
Congressman Dan Newhouse
Senator Judy Warnick

Road 4NE

City Airport

Mr. Jones
Circle

takes the edge off of / takes out
a field Irrigation Ok Bonanza Rd

serves industrial area

Shofter trackage

Align with takes the edge off of
Bonanza a field Does not
Road disrupt irrigation

serves Industrial area

Wheeler road

NCBRP Proposed route

Cuts across fields destroying developed irrigation systems

Crosses
Wheeler
road twice

Road NE

via electronic filing

March 11, 2019

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Re: STB Finance Docket No. 34936, Port of Moses Lake – Construction
Exemption – Moses Lake, Washington**

Dear Ms. Brown:

On February 19, 2019, Ronald Piercy filed a letter in the above-captioned proceeding requesting that the Surface Transportation Board (“Board” or “STB”) consider an alternative alignment for Segment 1 of the rail construction project that was approved by the Board in 2009. The Board recently reopened this proceeding in order to consider minor project modifications proposed by the Port of Moses Lake (“Port”), and the Board invited comment “on the transportation merits of the proposed project as modified.”¹ We note that Mr. Piercy’s letter is not limited to the transportation merits of the proposal. Mr. Piercy’s letter focuses on requesting that the Board consider a wholly different route for Segment 1 of the project – a route, we note, that the Board already thoroughly evaluated in 2009 but found not reasonable due to a variety of technical and economic factors.² The remainder of the February 19th letter then focuses on asserted impacts of the project on agriculture, irrigation, and local roads; these concerns are more appropriately considered by the Board’s Office of Environmental Analysis (“OEA”).³

Despite these issues and in case the Board deem any portion of Mr. Piercy’s letter relevant to the transportation merits, the Port will briefly respond to the substance of Mr. Piercy’s comments in the remainder of this reply. The most salient point is that the Board previously considered and rejected an alternative routing almost identical to that proposed now by Mr. Piercy. That earlier routing – which was also proposed by Mr. Piercy – was known as the “Piercy Alternative” and was addressed at length in the Final Environmental Assessment

¹ See Board reopening decision, slip op. at 3 (served January 28, 2019).

² See Final Environmental Assessment (May 8, 2009) at page 3-15.

³ See Board reopening decision, slip op. at 3 (n. 7) (“The environmental review process, which is undertaken by OEA, is separate from the agency’s consideration of the transportation merits of the proposed modified project. Correspondence commenting on the environmental impacts of the proposed route modifications may be submitted to OEA...”).

March 11, 2019

Page – 2 –

(“Final EA”) published in May 2009.⁴ In the recent letter, there appears to be only one minor update in the routing previously promoted by Mr. Piercy: whereas in 2009, the “Piercy Alternative” was said to be parallel and adjacent to Bonanza Street, Mr. Piercy now states that his offered routing would be built on top of the Bonanza Street roadbed, meaning that the road would be permanently closed.⁵

This minor update to the Piercy Alternative does not change the findings previously made by the Board, which still apply to the routing promoted by Mr. Piercy. After a thorough review, the Board rejected the Piercy Alternative as not reasonable “based on technical and economic factors.” See Final EA at page 3-15. Assertions in Mr. Piercy’s recent letter do not change these facts, as shown below:

Feb. 19th assertion	Board determination in 2008
alternative is shorter	alternative requires rebuilding industrial track at east end, thus requiring 5.17 miles instead of 4.7 miles for selected route (Final EA at p. 3-3 and 3-15)
alternative is better because it avoids crossing Wheeler Road twice	alternative “could present a safety hazard to workers and disrupt existing industrial operations” because it is routed across several roadways in the midst of a busy industrial area (Final EA at p. 3-15) ⁶
alternative is better because it avoids harm to agriculture and irrigation systems	thorough consideration was given to the alternative in light of possible irrigation impacts, but the Board found the alternative “not practical based on technical and economic factors” (Final EA at p. 2-4 and 3-15); the Port is required to negotiate with affected property owners to minimize any impacts to irrigation systems (Final EA at p. 2-2 and 5-9) ⁷
alternative is better because it is almost straight and removes turns	alternative relies on industrial track at its eastern end; this industrial track has excessively tight turns typically not seen on through railroad track (Final EA at p. 3-15)

⁴ The Piercy Alternative was examined thoroughly by the OEA staff, as described on pages ES-9, ES-11, ES-14, ES-15, 2-2, 2-4, 3-3, 3-11, and 3-14 through 3-18 of the Final EA.

⁵ Compare Final EA at page 3-14 (“the alternative would parallel the south side of Bonanza Street”) to Mr. Piercy’s 2019 letter (“the county would vacate Bonanza road [sic]. The tracks would be built on this roadbed.”).

⁶ Additionally, the newly-revised Piercy Alternative would require wholesale elimination of another public street – Bonanza Street.

⁷ Additionally, the modifications now being considered by the Board include adjustment of Segment 1 to avoid an irrigation pivot.

March 11, 2019

Page – 3 –

The Port has diligently endeavored to develop the project in a manner that would least impact existing land uses in the Moses Lake area, including agriculture and its supporting irrigation infrastructure. Indeed, one of the main goals of the route modification is to reduce and minimize the impacts of the project on current land uses in the project area.

In his recent letter, Mr. Piercy does discuss one issue that could be considered related to the transportation merits of the project. Specifically, he states that his alternative route would serve industrial customers on the north side of Wheeler Road. The alignment approved by the Board in 2009 already enables service to the vast majority of industries north of Wheeler Road (as would the modified route now proposed by the Port) due to the preexisting industrial track at the east end of the project area. It is true that the Piercy Alternative could also provide rail access to a few small commercial buildings just west of L Street NE, which the approved alignment does not do. However, it is unlikely that any of these businesses would utilize the rail option, as they consist of very small, service-oriented “light industrial” zoned buildings which typically do not make use of freight rail service. Furthermore, the Piercy Alternative requires demolition of several industrial and commercial buildings along Wheeler Road (including some west of L Street NE), not to mention elimination of the public Bonanza Street.

The Port appreciates Mr. Piercy’s interest in developing the best rail line for Grant County and the Moses Lake area, as that is identical to the Port’s goal. The Port looks forward to working with area stakeholders as this project moves forward. Please do not hesitate to contact the undersigned if you have any questions.

Best regards,



Sandra L. Brown

David E. Benz

Thompson Hine LLP

1919 M Street NW, Suite 700

Washington, DC 20036

Attorneys for the Port of Moses Lake

cc: Adam Assenza, Office of Environmental Analysis



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

August 9, 2019

Adam Assenza
Docket No. FD 34936
Surface Transportation Board
395 E Street SW
Washington, DC 20423

RE: Draft Supplemental Environmental Assessment – Northern Columbia Basin Railroad Project (FD 34936)

Dear Mr. Assenza:

The Washington Utilities and Transportation Commission (UTC) submits the following comments in response to the Surface Transportation Board's (STB) draft supplemental environmental assessment (DSEA) for Docket No. FD 34936, published on July 11, 2019.

The UTC has responsibility under Washington State law for regulating, inspecting, and establishing standards for safety at more than 2,800 public railroad crossings. The UTC also reviews and approves construction of new crossings and alteration, modification, or closure of existing crossings.

Background

In 2008, the Port of Moses Lake (Port) filed a Petition for Exemption with the STB for authority to construct a new rail line and acquire an existing rail line for the Northern Columbia Basin Railroad Project (NCBRP). The project has three components: Segment One will construct approximately 4.5 miles of new track from Wheeler to Moses Lake, Segment Two will construct approximately 3.1 miles of new track from an existing rail line to the east side of the Grant County International Airport (GCIA), and Segment Three involves acquisition and rehabilitation of approximately three miles of existing track that connects Segments One and Two. The Port of Moses Lake will own and construct the rail lines and the Columbia Basin Railroad Company will be the railroad operator. The purpose of the project is to provide rail service to lands and

properties designated for industrial development in the northern area of Moses Lake, as well as the east side of the GCIA.

The UTC did not offer specific comments on the Port's 2008 preliminary environmental assessment, but provided a copy of a Jan. 9, 2009, letter from the UTC to a state legislator regarding rail safety issues at an elementary school located in the area of Segment Three of the project.

The STB authorized construction and acquisition of the rail lines in 2009. In 2010, the Port submitted petitions to the UTC to construct four new at-grade railroad crossings and reconstruct one existing crossing in the project area. The UTC approved these petitions with specific conditions; however, to the UTC's knowledge, the Port has not commenced construction or modification of these crossings.

According to the DSEA, the NCBRP was delayed due to regional economic downturn and lack of funding. However, in 2017, the Port received grant funding to proceed with the project.

Proposed Modifications

To minimize impacts on existing land uses and otherwise fulfill the economic development objectives of the project, the Port requested that the STB approve modifications to the original petition for the NCBRP. The UTC limits its comments to these proposed modifications.

- **Modification 1B:** This proposed modification involves construction of new at-grade crossings at Wheeler Road and Industrial Street. The proposed alignment for each crossing would be perpendicular with the roadway, instead of a skewed track alignment as originally proposed. No new crossing would be constructed at Hamilton Road NE.

UTC comments: The UTC supports the proposed modification. Whenever possible, crossings should be constructed with an alignment perpendicular to the roadway at or near 90 degrees, to improve safety and line of sight for crossing users. A description of the proposed warning devices at these crossings was not provided. The Port will need to file petitions with the UTC to receive approval for the construction of these new crossings.

- **Modification 2B:** This proposed modification involves construction of two new at-grade crossings at Randolph Road with skewed track alignment and one new at-grade crossing each at Turner Road, Graham Road, and Tyndall Road with perpendicular track alignment. The crossings at Turner, Graham, and Tyndall could potentially be blocked simultaneously for

short periods of time due to their proximity (approximately 500 to 1,000 feet apart). Crossings would be protected with flashing lights but no gates.

UTC comments: The UTC granted approval for construction of at-grade crossings at Graham, Tyndall, Turner, and a single at-grade crossing on Randolph Road in 2010; however, the Port's petitions at that time did not indicate the potential for crossing blockages. The UTC approved the Tyndall and Randolph crossings to be constructed with a skewed track alignment, but the proposed perpendicular track construction is preferable. The UTC also approved installation of passive warning devices (signage only, no lights) at Graham, Tyndall, and Turner, and active warning devices (lights and gates) at Randolph Road.

If Modification 2B is selected, the Port will need to submit revised petitions to the UTC articulating the changes proposed for each crossing and receive approval for those changes. The Port will also need to petition the UTC for approval for the construction of the second crossing on Randolph Road.

- **Modification 2C:** This proposed modification reduces the number of new at-grade crossings from four to two. New crossings would be constructed at Tyndall Road and Road 7 NE, with perpendicular track alignment. Crossings would not be constructed at Randolph Road, Turner Road, and Graham Road.

UTC comments: The UTC prefers Modification 2C, because it involves construction of fewer new at-grade crossings. The perpendicular track alignment is also preferred. In addition, this modification avoids the possibility for blocked crossings.

If Modification 2C is selected, because the UTC has already approved new crossings at Randolph, Turner, and Graham, the Port will need to formally withdraw its petitions from the UTC to construct these crossings. The Port will also need to submit a revised petition for Tyndall Road to reflect the proposed modifications, and file a petition to construct the new at-grade crossing on Road 7 NE.

Prior to petition filing, UTC staff recommends that the Port convene diagnostic review meetings with affected parties, including the appropriate road authority, the railroad, and UTC staff. The diagnostic review team would appropriately evaluate the proposed crossings and surrounding areas with input from all parties and agree on the appropriate levels of protection.

UTC staff reiterates the concerns expressed in its 2009 letter, which involve an area of pedestrian trespass over the railroad tracks located in Segment Three of the project area. At the time, citizens including students were crossing over the tracks (not at a crossing) to reach Longview Elementary School and crossing them again when they returned home. There is no designated pedestrian crossing at this location, making it particularly hazardous for students. At the time of the letter, multiple ideas were discussed for improving safety at this location, including construction of a pedestrian crossing or underpass, redirecting students to existing crossings, installing fencing to channel students to a single crossing site, or replacing existing fencing to keep students off of the tracks. UTC staff recommends that the Port focus particular attention on this public safety issue during the acquisition and rehabilitation of Segment Three of the project. UTC staff is available to provide additional historical information and guidance to the Port on this matter.

We appreciate the opportunity to comment on the DSEA. For questions, please contact Betty Young, Rail Safety Program Advisor, at betty.young@utc.wa.gov or (360) 664-1202.

Sincerely,



Mark L. Johnson

Executive Director and Secretary

cc: Jeffrey Bishop, Executive Director, Port of Moses Lake
Fred Snoderly, Municipal Services Director, City of Moses Lake
Tim Marshall, General Manager, Columbia Basin Railroad Company
Ron Pate, Director, WSDOT Rail, Freight and Ports Division



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

August 9, 2019

Adam Assenza
Surface Transportation Board
395 "E" St. SW
Washington, DC 20423

Re: Northern Columbia Basin Railroad Project, Docket No. FD 34936

Dear Adam Assenza:

Thank you for the opportunity to comment on the National Environmental Policy Act-Environmental Assessment regarding the proposal analyze the potential environmental impacts of route modifications to an 11-mile rail line providing service to the northern area of the City of Moses Lake and eastern side of the Grant County International Airport (Proponent: Port of Moses Lake). The Department of Ecology (Ecology) has reviewed the documents and submits the following comments:

Water Quality Program-Shannon Adams (509) 329-3610

RCW 90.48.080 prohibits the discharge of polluting matter to Waters of the State of Washington. Any discharge of sediment-laden runoff or other pollutants to waters of the State without a permit violates RCW 90.48-Water Pollution Control, and WAC 173-201A-Water Quality Standards for Surface Waters of the State of Washington and may be subject to enforcement action.

Even on projects that do not require a permit, the applicant shall not discharge polluting matter into Waters of the State of Washington or Municipal Separate Storm Sewer System. The applicant must utilize adequate erosion and sediment control measures throughout the project.

Please implement and maintain Best Management Practices throughout the entirety of the project.

For technical assistance or additional information, please contact Shannon Adams at (509) 329-3610 or via email at Shannon.Adams@ecy.wa.gov.

State Environmental Policy Act (SEPA)

Ecology bases comments upon information submitted for review. As such, comments made do not constitute an exhaustive list of the various authorizations you may need to obtain, nor legal requirements you may need to fulfill in order to carry out the proposed action. Applicants should remain in touch with their Local Responsible Officials or Planners for additional guidance.

To receive more guidance on or to respond to the comments made by Ecology, please contact the appropriate staff listed above at the phone number or email provided.

Department of Ecology
Eastern Regional Office
(Ecology File #: 201904396)

cc: Richard Hanover, Dir of Business Development, Port of Moses Lake

From: Mbabaliye, Theogene <Mbabaliye.Theogene@epa.gov>
Sent: Monday, August 12, 2019 7:50 PM
To: Assenza, Adam <Adam.Assenza@stb.gov>
Cc: Martin, Bradley <martin.bradley@epa.gov>
Subject: Northern Columbia Basin Railroad Project - DOCKET NO. FD 34936

Dear Mr. Assenza:

The U.S. Environmental Protection Agency has reviewed the draft supplemental environmental assessment for the proposed Northern Columbia Basin Railroad Project in Grant County, Washington (EPA Region 10 Project Number 19-0042-STB). Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR §§ 1500-1508), and Section 309 of the Clean Air Act.

The DSEA assesses potential environmental impacts associated with construction, operation and maintenance of an 11-mile-long railroad line in Grant County. This route would provide rail service to lands and properties designated for industrial development in the northern area of the City of Moses Lake, as well as to the eastern side of the Grant County International Airport (GCIA), to enhance opportunities for economic development, and to attract new rail-dependent businesses to those areas. After the initial analysis of the project in 2009, new circumstances and information led to the decision to analyze the project further and disclose the most current environmental impacts. We note that the original line segments 1 and 2 would be modified, resulting in a 0.5-mile reduction in the length of the route.

We believe the DSEA includes analysis of specific resources that would be impacted by the proposed action, nature of the potential impacts, and measures that would be followed to minimize impacts. We find that most of the potential impacts from the project appear to be related to construction activities, which would result in long-term noise and land use impacts, but also impacts on other resources including water and biological resources. Although mitigation measures would be applied to keep the impacts from becoming significant, we believe that it would be important to coordinate with other federal and state agencies throughout the implementation of the project to ensure that activities are conducted in a manner protective of human health and the environment. We recommend that the Final EA include additional clarifying information as discussed below:

Potential impacts on contaminated sites

- Because of the existence of contaminated sites in the project area and the possibility that more contaminated sites could be discovered during construction of the project, we recommend that the Surface Transportation Board coordinate with the EPA Superfund Program as the project is implemented so that the STB actions are consistent with agreed upon remedies for the contaminated sites cleanup. The EPA Manager for the Site is: Martin Bradley and he may be reached at 206-553-4029 or at martin.bradley@epa.gov.
- We also recommend the final EA include a monitoring program designed to assess both impacts from the projects and effectiveness of mitigation measures for the impacts. Please indicate how the program would use an effective feedback mechanism, such as through adaptive management, so that any needed adjustments can be made to the projects to meet environmental objectives during this project operations and maintenance. For example, monitor emerging contaminants and take corrective action if pollutant levels exceed standards or pose risk to human health and the environment.

Potential impacts to water quality

As construction activities may impact water resources, particularly from increased turbidity and sedimentation of downstream waters at crossings of Crab Creek and irrigation canals, we recommend that the Final EA:

- Include information to demonstrate that the proposed action would comply with anti-degradation provisions of the Clean Water Act to prevent deterioration of water quality within waterbodies that currently meet WQSs;
- Discuss the National Pollutant Discharge Elimination System or NPDES permit application process and measures to protect water quality. The DSEA indicates that the project construction would disturb a land area of one or more acres, which would subject it to the NPDES permitting

requirements for discharges to waters of the United States and related Stormwater Pollution Prevention Plan, as well as construction best management practices;

- Provide the most current information regarding the status of the State of Washington Clean Water Act Section 401 certification and any conditions of the certification that assure the project would meet the state water quality standards; especially for temperature, dissolved oxygen and turbidity within the affected waters in the project area, e.g., the Crab Creek;
- Including the updated information on the CWA Section 404 application process with the U.S. Army Corps of Engineers. The final EA should include any proposed mitigation measures for impacts to aquatic resources as a result of this project. The draft EA indicates that there wetlands in the project area that could be filled; and
- The STB coordinate with the Washington State Department of Ecology and all affected tribes to assure that state and tribal water resources are protected from impacts associated with the proposed project's construction and operation activities.

Potential impacts to biological resources

Since there are federal- and state-designated protection statuses for several species within the project study area, we recommend that:

- The Final EA include information on work with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and as appropriate, with the Washington Department of Fish and Wildlife including recommended measures to reduce risks and protect biota and habitat. The draft EA indicates there are fish-bearing creeks and other threatened, endangered, candidate, sensitive species occurring within the project area, which could be impacted by the proposed project activities. Thus, the Final EA should include outcomes of consultations and coordination with the services and agencies.

Thank you for the opportunity to review this DSEA and look forward to reviewing the Final EA when it will be available. If you have questions about our comments, please contact us for assistance.

Theo Mbabaliye, Ph.D.
USEPA Region 10
Regional Administrator's Division (RAD)
Policy & Environmental Review Branch (PERB)
1200 6th Ave., Suite 155, 14-D12
Seattle, WA 98101-3140
Phone: (206) 553-6322



State of Washington
Department of Fish and Wildlife

Mailing Address: 1550 Alder St. NW, Ephrata, WA 98823
Main Office Location: Natural Resources Building, 1111 Washington St. SE Olympia WA

August 27, 2019

Surface Transportation Board
Attention: Adam Assenza
395 E. St., SW
Washington, D.C. 20423-0001

Dear Mr. Assenza:

**SUBJECT: DRAFT SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT, SURFACE
TRANSPROTATION BOARD DOCKET NO. FD 34936**

The Washington Department of Fish and Wildlife (WDFW) apologizes for submitting its comments for the Draft Supplemental Environmental Assessment (DSEA) after the close of the comment period due to a notification error. WDFW hopes that its recommendations will be considered and added to the Final Supplemental Environmental Assessment for this project.

Revised Measure 9 in Chapter 6, page 6-2 states “The Port shall consult with the WDFW and comply with its applicable laws and regulations so that Project-related construction activities are conducted in a manner that avoids or minimizes impacts to birds and bats (e.g., roosting bald eagles, over-wintering waterfowl, migrating shorebirds, foraging bats, and nesting birds). WDFW’s District 5 Wildlife Biologist, Sean Dougherty, consulted with representatives from Jacobs regarding potential impacts to nesting Clark’s Grebes. During those discussions, Biologist Dougherty recommended remaining outside 300’ of the stream channel from June 1st to September 1st to lessen or avoid potential impacts to nesting Clark’s Grebe. WDFW would ask that this specified information be included in the Finalized Environmental Assessment for the protection of Clark’s Grebe, a Washington State Candidate Species.

If you have any questions, please call me at (509) 754-4624 ext. 215.

Sincerely,

Eric D. Pentico
Area Habitat Biologist

October 24, 2019

Via Email Adam.Assenza@stb.gov

Adam Assenza
Environmental Protection Specialist
Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RE: Docket No., FD 34936, Port of Moses Lake – Construction Exemption – in Grant County, WA.; **Design Edits**

Dear Adam:

The Port of Moses Lake (Port) has continued refinement of the design of the proposed acquisition and construction of an approximately 11-mile-long railroad route in Grant County, Washington (Project). In conjunction with the design refinement and reviewing comments to the Draft Supplemental Environmental Assessment (DSEA), including comments by Washington State Utilities and Transportation Commission (UTC) regarding crossing and roadways, there are two design edits needed for certain roadways in Segment 1 and Segment 2, Modification 2C.

The first design edit is in Segment 1. In the DSEA, the Port design included closing off Industrial Street and extending Silva Street. Under the design edit, the Port would construct a new, perpendicular at-grade crossing of Industrial Street to maintain access to industrial properties, rather than closing off Industrial Street and constructing an extension of Silva Street. The Port analysis found that this design edit will have no environmental impact, including no impact to traffic and transportation.

The second design edit is in Segment 2, Modification 2C. Additional design work revealed the need to avoid utilities and the construction of two long, skewed crossings (and less safe crossings) of Road I NE located south of the GCIA industrial area. In order to avoid these negative impacts, Modification 2C would need to be constructed over a portion of Road I NE. That portion of Road I NE would need to be vacated (or closed) with Grant County. To maintain access to Road I NE for three residences that are located on other portions of Road I, the Port would change the existing road by constructing a cul-de-sac on Road I NE and a new perpendicular at-grade crossing of Road 6.7 NE, and Road I NE would be closed between the cul-de-sac and Road 6.7 NE. The perpendicular crossing is a safer design than the skewed (not perpendicular) crossings in the prior design. The Port would consult with Grant County and other applicable parties when seeking UTC approval of the Road 6.7 NE crossing and Grant

Adam Assenza
October 24, 2019
Page 2

County approval to vacate the portion of Road I. The attached exhibit illustrates the revisions planned for Road I NE. The changes involving Road I NE would have a minor impact on vehicle traffic from rail construction and operation associated with Modification 2C. No other environmental impacts were found in the analysis of this design edit.

Thank you for your attention to this matter.

Very truly yours,



Sandra L. Brown

CC: Lydia Kachadoorian, FRA lydia.kachadoorian@dot.gov
Valarie Kniss, FRA valarie.kniss@dot.gov
Jeannie Becket jbeckett@thebeckettgroup.org
Diane Williams Diane.Williams@jacobs.com

From: Franks, Sierra
To: [Williams, Diane M.](#)
Cc: [Sorensen, Katherine](#); [Michelle Eames](#); [Katy Fitzgerald](#)
Subject: [EXTERNAL] Request for Information and Concurrence, STB Finance Docket No. 34936, Rail Line Construction and Operation in Grant County, WA
Date: Monday, October 28, 2019 3:51:44 PM

Hi Ms. Williams,

We received your request and additional information regarding the upcoming completion of the Final Supplement EA for the above mentioned project. The implementing regulations of the Endangered Species Act do not provide us a mechanism to concur with a "no effect" determination. This email serves as a receipt of your request.

If you have any questions, please feel free to contact me.

--

Sierra E. Franks (*she/her*)
ESA Consultation Branch Manager
Diversity Change Agent
215 Melody Ln. Suite 103
Wenatchee, Washington 98801
Office #: 509-665-3508 ext. 1880
Work Cell #: 509-393-5882

From: Williams, Diane M.
To: ["katherine_sarensen@fws.gov"](mailto:katherine_sarensen@fws.gov)
Subject: Request for Information and Concurrence, STB Finance Docket No. 34936, Rail Line Construction and Operation in Grant County, WA
Date: Thursday, October 24, 2019 12:35:00 PM
Importance: High

Dear Ms. Sarensen,

I am writing to following up on a Draft Supplemental Environmental Assessment (DSEA) that was issued on July 11, 2019 regarding proposed modifications to the Port of Moses Lake's Northern Columbia Basin Railroad (NCBR) that will be constructed and operated in Grant County, WA.

The rail line was originally authorized by the Surface Transportation Board (STB) in August 2009. In December 2008, we received communication from Suzanne Audet, Section 7 and Recovery Programs Branch Chief, Upper Columbia Basin Fish and Wildlife Office in Spokane, WA, that if STB concluded that the project would have "No Effect" on listed species, there is no requirement for consultation with the USFWS nor do the Section 7 consultation regulations specifically provide for USFWS concurrence for such agency determinations.

The STB's Office of Environmental Analysis (OEA) has independently reviewed the Port's proposed modifications to the NCBR original alignment, and as concluded in the July 2019 DSEA for the project, OEA has again determined that the project and the proposed modifications would have "No Effect" on federally-listed threatened, endangered or candidate species or designated critical habitat.

A postcard notice was sent to the USFWS Eastern Washington Office in Spokane, WA noting the availability of the 2019 DSEA on the Surface Transportation Board website (www.stb.gov under "Decisions" and "FD 34936") and the comment period ended on August 11, 2019. No comments were submitted by the USFWS.

Since we are currently preparing the Final Supplemental EA for the project, would you confirm that consultation is not required? Or, if consultation is required, could you confirm whether the USFWS concurs with the determination that the construction and operation the rail line, as well as the proposed modifications to the rail alignment, will have "No Effect" on federally-listed threatened or endangered species or designated critical habitat?

If you need additional information, please let me know.

Thank you,

Diane M. Williams

Jacobs – Environmental Services

Environmental Planner | Project Manager

101 N. Fourth Ave., Suite 203 | Sandpoint, ID 83864 | 208.263.9391 ofc | 208.920.6042 direct

Diane.Williams@jacobs.com www.jacobs.com

APPENDIX B

PROGRAMMATIC AGREEMENT

NORTHERN COLUMBIA BASIN RAILROAD PROJECT

AMENDED PROGRAMMATIC AGREEMENT

AMONG

THE SURFACE TRANSPORTATION BOARD,

THE FEDERAL RAILROAD ADMINISTRATION,

**THE WASHINGTON DEPARTMENT OF ARCHAEOLOGY AND HISTORIC
PRESERVATION, AND**

THE PORT OF MOSES LAKE

**REGARDING STB FINANCE DOCKET NO. 34936, PORT OF MOSES LAKE —
CONSTRUCTION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**STB FINANCE DOCKET NO. 34936 (SUB-NO. 1), PORT OF MOSES LAKE —
ACQUISITION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**STB FINANCE DOCKET NO. 34936 (SUB-NO. 2), NORTHERN COLUMBIA BASIN
RAILROAD — OPERATION EXEMPTION — MOSES LAKE, WASHINGTON**

AND

**FRA'S ADMINISTRATION OF FY17 INFRASTRUCTURE FOR REBUILDING
AMERICA GRANT FUNDS**

WHEREAS, the Port of Moses Lake (Port) is proposing the Northern Columbia Basin Rail Project located in Grant County, Washington (hereinafter, "the Project"), which is an undertaking as defined in 36 C.F.R. § 800.16(y) with the potential to adversely affect historic properties; and

WHEREAS, on August 27, 2009, the Surface Transportation Board (STB) issued a decision authorizing construction of two segments of rail line and acquisition of a third segment of rail for the Project that was then proposed by the Port, subject to environmental mitigation measures, including compliance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C § 306108; and

WHEREAS, the Port is now seeking authorization from STB for modifications to the route of the rail construction previously authorized as part of the Project; and

WHEREAS, the Port applied for and is receiving funding from the US Department of Transportation under its Fiscal Year 2017 Infrastructure for Rebuilding America (INFRA) Grant Program for the Project and the USDOT's Federal Railroad Administration (FRA) is administering the INFRA grant and the Port intends to use INFRA funds to pay for right-of-way (ROW) acquisition, final design, and construction of the Project; and

WHEREAS, STB is preparing a Supplemental Environmental Assessment (Supplemental EA) in accordance with the National Environmental Policy Act (NEPA) for the proposed modified route for the Project and FRA is participating in the preparation of the Supplemental EA as a cooperating agency; and

WHEREAS, a Programmatic Agreement (hereinafter Agreement) to govern compliance with Section 106 of the NHPA for the Project was previously executed among STB, the Washington Department of Archaeology and Historic Preservation (which serves as the State Historic Preservation Officer (SHPO)), the Port, the Washington State Department of Transportation (WSDOT), and the Columbia Basin Railroad Company, Inc. (CBRW) on June 10, 2009 and due to modifications to the Project, the Agreement is being amended to (1) extend the time period set forth in the Duration Clause (Section X), (2) to add FRA as a Signatory, (3) to update the Agreement to align with guidance and policies issued by the Advisory Council on Historic Preservation (ACHP) since 2014, and (4) address additional Section 106 compliance requirements that are necessary as a result of the proposed route modifications. This executed version shall supersede the June 10, 2009 version; and

WHEREAS, the Project, with the proposed modifications and as illustrated in Appendix A, consists of the following three segments and associated activities: acquire ROW through purchase, design, and construct approximately 4.5 miles of new rail line along the Wheeler Industrial Corridor, between the area known as Wheeler and Parker Horn, and reroute rail traffic from the existing aging rail infrastructure to this new route (Segment 1); acquire ROW through purchase, design, and construct approximately 3.1 miles of new rail line to access industrial lands adjacent to the Grant County International Airport (Segment 2); and acquire existing rail line through donation from CBRW and rehabilitate approximately three miles of existing track between Parker Horn and the Airport, restoring rail service to the Port and Airport and connecting Segments 1 and 2 (Segment 3); and

WHEREAS, STB, as the lead federal agency responsible for compliance with Section 106 for the Project, has consulted with SHPO, pursuant to 36 C.F.R. Part 800; and

WHEREAS, pursuant to 36 C.F.R. § 800.2(a)(2), FRA, in correspondence dated July 25, 2018, designated STB to serve as the lead federal agency to fulfill the agencies' collective Section 106 compliance responsibilities and participated in the preparation of this Agreement and is a Signatory; and

WHEREAS, the Port as the Project Applicant is an Invited Signatory to this Agreement; and

WHEREAS, STB consulted with the following federally-recognized Native American tribes and invited them to participate in this Agreement: the Confederated Tribes and Bands of the Yakama Nation; the Colville Confederated Tribes; and the Confederated Tribes of the Warm Springs Reservation of Oregon. However, those Tribes have not elected to participate; and

WHEREAS, STB consulted with the non-federally recognized Wanapum Tribe and invited it to participate in this Agreement, and the Wanapum Tribe has not elected to participate; and

WHEREAS, STB has consulted with the WSDOT Rail, Freight, and Ports Division and invited WSDOT to sign this Agreement as a concurring party, and WSDOT has agreed; and

WHEREAS, once the Project has been constructed, CBRW shall operate service over the line, and was invited by STB to sign this Agreement as a concurring party, and CBRW has agreed; and

WHEREAS, on December 8, 2008, STB invited the ACHP to participate in the development of this Agreement, and the ACHP declined to participate; and

WHEREAS, STB, pursuant to 36 C.F.R. § 800.4(a)(1), established the Area of Potential Effects (APE) for the Project as it was originally proposed by the Port in 2009 (Original APE), which encompassed a 200-acre area extending 50 feet on either side of the proposed rail corridor centerline. Analysis of potential noise and vibration impacts considered historic buildings or structures within this 100-foot-wide corridor. SHPO concurred with the Original APE in a November 2, 2007 letter; and

WHEREAS, the APE has been adjusted to cover the proposed modified route for the Project (Modified APE). Generally, the Modified APE for the proposed alignment modifications is 100-feet-wide (50 feet on either side of the proposed track centerline). The Modified APE for Segment 1 has been expanded at certain locations, ranging from 90 feet to 120 feet on either side of the modified track centerline, to accommodate construction, staging, and/or laydown areas. Likewise, the Modified APE for Segment 2 has been expanded to include review of two alternative modifications to the originally proposed route, and ranges from 100 feet wide to approximately 325 feet wide, including a staging area at the north end of the alignment. STB's Office of Environmental Assessment (OEA), FRA, and SHPO approved the Modified APE in August 2018¹ and November 2018²; and

¹ August 22, 2018 letter from SHPO to OEA

² November 6, 2018 letter from SHPO to OEA

WHEREAS, a cultural resource survey to identify historic properties in the APE and evaluate whether the historic properties are eligible for listing in the National Register of Historic Places (NRHP) was conducted in 2008³; and

WHEREAS, a supplemental resource survey was conducted in 2019 to investigate the surface and subsurface of the Modified APE that included previously unsurveyed parcels⁴; and

WHEREAS, STB has determined that some areas within the APE are not currently accessible and cannot be adequately investigated prior to the Port's acquisition of the ROW, and may contain NRHP-eligible historic properties; and

WHEREAS, a phased process for compliance with Section 106, as provided for in 36 C.F.R. § 800.4(b)(2), is appropriate because historic and archaeological investigations are still in process and cannot be completed on all land within the APE until the Port acquires the property for the Project; and

NOW, THEREFORE, STB, FRA, the Port, and SHPO (collectively referred to as the Signatory Parties or Signatories) agree that the Project is subject to the following stipulations in order to take into account the effects of the Project on historic properties and further agree that these stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

STIPULATIONS

I. GENERAL REQUIREMENTS AND STANDARDS

- A. All work carried out under this Agreement shall be conducted by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualification Standards* (36 C.F.R. Part 61).
- B. All work carried out under this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 Fed. Reg. 44716) as well as standards and guidelines for historic preservation activities as established by SHPO.
- C. Timeframes and Notification
 - 1. All time designations in this Agreement are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday or Federal holiday,

³ HDR Engineering, Inc. 2008. Northern Columbia Basin Railroad Project Draft Cultural Resources Report

⁴ Jacobs. 2019. Port of Moses Lake Northern Columbia Basin Railroad Project Supplemental Cultural Resources Investigations for Draft Supplemental Environmental Assessment. Historic canals in the original and modified APE were also looked at further and are discussed in Jacobs. 2017. Historic Canals Effects Assessment for the Northern Columbia Basin Railroad Project.

the review period shall be extended until the first business day following the Saturday, Sunday, or Federal holiday.

2. All review periods stipulated by this Agreement start on the day the documents are sent to the relevant parties which constitutes notification unless otherwise stipulated in this Agreement.
3. All notifications required by this Agreement shall be sent by email and/or other electronic means unless a recipient requests a hard copy notification.

D. Document Review

1. Where required under this Agreement, STB, in coordination with the Port, shall submit documentation to the Signatory Parties, any interested or affected Native American tribes, and other consulting parties for review, comment and/or concurrence.
2. If the appropriate parties do not provide written comments to STB as specified during the specified review period, it is understood that the non-responding parties have no comments on the submittal, and STB shall proceed to the next step of the consultation process.
3. If the Signatory Parties, any interested or affected Native American tribes, or other consulting party objects or recommends extensive revisions to submissions, STB, in coordination with the Port, shall work expeditiously to respond to objections and resolve disputes. STB may elect to follow the dispute resolution process identified in Stipulation VI to resolve any such dispute.

II. ADDITIONAL MODIFICATIONS TO THE APPROVED APE

- A. The Port shall notify STB of any changes in Project plans and the following shall occur if those changes are not major changes to the Project that require reopening F.D. 34936 for new or additional authorization from STB:
 1. STB, in consultation with FRA, shall review the changes in Project plans to determine if they necessitate revisions to the approved APE.
 2. If the APE requires revision, the Port, in coordination with STB, shall prepare a written justification with accompanying graphics, as appropriate, for the proposed revised APE, which STB shall submit to SHPO for review.
 3. Following SHPO concurrence on the revised APE, STB shall promptly notify the Signatories, any interested or affected Native American tribes, and other consulting parties of the revised APE.

4. As appropriate, the Port shall update or perform additional cultural resources work in accordance with Stipulation III or IV of this Agreement. The Port shall not commence ground disturbing and/or construction activities within the revised APE prior to the completion of the Section 106 process required by this Agreement until such time as Approval to Proceed is received in accordance with Stipulation V.

III. PHASED SECTION 106 IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

- A. The Port shall conduct cultural resource survey work on parcels contained within the Modified APE that were not part of previous investigations, and any previously inaccessible parcels that are included in the Supplemental EA.
- B. Once access to a previously inaccessible area within the Modified APE has been obtained, the Port shall:
 1. Provide written notification to STB, Signatories, interested and affected Native American tribes, and other consulting parties of the survey methodology and Project schedule at least fourteen (14) calendar days prior to initiating the cultural resources survey.
 2. Conduct a cultural resources survey and produce a Draft Survey Report with associated Historic Property Inventory (HPI) forms to identify archaeological resources and historic structures that are 45 years old or older. Any identified resources shall be inventoried per Stipulation I.B and evaluated for their eligibility for inclusion in the National Register of Historic Places (NRHP). The Draft Survey Report shall: a) summarize the findings; b) make recommendations regarding any resources' eligibility for listing in the NRHP; and c) assess effects to historic properties applying the criteria for adverse effects (36 C.F.R. §§ 800.5 (a)(1) and (2)) as a result of the Project.
 3. Specify any resources within the Draft Survey Report that were not fully identified, evaluated, and/or assessed for effects and the reasons why, and provide recommended actions for further investigation of those resources.
- C. The Port shall provide the Draft Survey Report and any associated HPI forms to STB. The STB shall review and provide written comment to the Port on the Draft Survey Report and HPI forms within fourteen (14) calendar days. The Port shall revise the Draft Survey Report consistent with STB's comments and submit the revised Draft Survey Report to STB within fourteen (14) calendar days of the receipt of comments for finalization.
- D. The STB shall consult with the Signatories, any interested or affected Native American tribe, and other consulting parties on the findings by providing the Draft

Survey Report to them for review and comment. All parties shall review and provide written comments within thirty (30) calendar days.

- E. Once STB receives concurrence from SHPO and FRA on the Draft Survey Report's sufficiency, the Survey Report shall be finalized by the Port, taking any comments received into account, and submitted to STB, SHPO, FRA, and any interested or affective Native American tribe and/or consulting parties that requested a copy during the comment period.
- F. The STB, in consultation with the Signatories, any interested or affected Native American tribes, and other consulting parties, may determine that further investigation is necessary. The STB may require the Port to conduct additional fieldwork, including a pedestrian survey and/or subsurface testing, as necessary. All subsequent work shall be reported in additional Survey Reports following the processes outlined in this Stipulation.

IV. RESOLUTION OF ADVERSE EFFECTS - TREATMENT OF HISTORIC PROPERTIES

- A. If STB determines, through the process laid out in Stipulation III, that the Project shall adversely affect a historic property(ies), it shall address the effects through the development of a treatment plan(s), rather than through the development of a Memorandum of Agreement or other Section 106 agreement document. A treatment plan may address one or multiple historic properties in the same plan.
- B. After taking into consideration the significance of the historic property(ies) affected and the severity of the adverse effect(s), STB shall develop a treatment plan that proposes to avoid, minimize, or mitigate adverse effects to the historic property(ies). The treatment plan shall include a curation plan for any artifacts that are recovered, as applicable.
- C. The treatment plan, and all associated treatment measures, shall be developed and implemented by cultural resource professionals that meet the Secretary of the Interior's Standards as referenced in Stipulation I.A.
- D. The STB shall submit the proposed treatment plan to the Signatories, any interested or affected Native American tribe, and other consulting parties in writing for review and comment. All parties shall review and provide written comments within thirty (30) calendar days.
- E. If STB receives an objection to the proposed treatment plan, it shall notify all the Signatories, any interested or affective Native American tribe, and other consulting parties within fifteen (15) calendar days. STB, in consultation with SHPO and the objecting party, shall work expeditiously to address the objection. The final version of the treatment plan requires SHPO concurrence prior to implementation.

- F. Unless SHPO, the Signatories, any interested or affected Native American tribe, or another consulting party objects within thirty (30) calendar days of receipt of the proposed treatment plan, STB shall take into account any comments timely submitted. STB shall summarize the comments, provide written notification to the Signatories, any interested or affected Native American tribe, or other consulting parties, and proceed with the implementation of the treatment plan.
- G. The Port shall implement the treatment plan.

V. APPROVAL TO PROCEED

The Port shall not proceed with construction of any portion or segment of the Project until notified in writing by STB's OEA that all Section 106 requirements are satisfied for that specific segment of the Project. This includes all identification, evaluation, assessment of effects, and resolution of adverse effects to any identified historic properties within the Modified APE for each segment.

VI. DISPUTE RESOLUTION

- A. Any party to this Agreement or any tribe or other consulting party may object to any proposed action(s) or the manner in which the terms of this Agreement are implemented by submitting its objection in writing to STB. If STB receives an objection, it shall notify the Signatories of the objection and consult with the Signatories and objecting party to resolve the objection. If STB determines that the objection cannot be resolved through consultation, STB shall:
 - 1. Forward all documentation relevant to the dispute to the ACHP (with a copy to the Signatories). Such documentation shall include STB's proposed resolution to the objection. STB shall request that the ACHP provide STB with its comment on the resolution of the objection within thirty (30) calendar days of receiving documentation. STB shall take into account any timely comments received regarding the dispute from the ACHP and the Signatories when making its final decision on the dispute.
 - 2. If the ACHP does not provide comment regarding the dispute within thirty (30) calendar days, STB shall make the final decision on the dispute and proceed accordingly.
 - 3. STB shall document this decision in a written response that and provide ACHP and the Signatories with a copy of the response.
 - 4. STB shall then proceed according to its final decision.
- B. Any recommendation or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute, and STB's responsibility regarding

actions outside the dispute shall remain unchanged. The parties may continue all actions under this Agreement that are not the subject of the dispute.

- C. Each party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.

VII. AMENDMENTS

Any signatory to this Agreement may propose that it be amended, whereupon the parties shall confer and consider the amendment. Any resulting amendment requires the agreement of all Signatory Parties and shall be executed in writing.

VIII. UNANTICIPATED DISCOVERIES

In the event that any unanticipated historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts are discovered during Project construction, the Port shall immediately cease all work and notify STB, the Signatories, interested federally-recognized Indian tribes, and other consulting parties, to determine if additional consultation and/or mitigation is necessary. In the event that human remains are discovered, the Port shall also notify appropriate law enforcement agencies. (See the Plan and Procedures for the Unanticipated Discovery of Cultural Resources and Human Skeletal Remains in Appendix B).

IX. TERMINATION AND WITHDRAWAL

- A. Should STB find that the terms of this Agreement shall not or cannot be carried out, STB shall immediately consult with the other Signatories to develop an amendment per Stipulation VII. If within thirty (30) calendar days (or another time period agreed upon by all Signatories) an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatories.
 - 1. Any discovery of historic or cultural properties, archaeological sites, human remains, funerary items, or assorted artifacts in process under the terms of this Agreement at the time of the termination shall be processed to its completion by the Port.
- B. If at any time, FRA disagrees with the manner in which the terms of the Agreement are carried out, FRA may object in writing to STB. STB shall follow Stipulation VI in resolving the objection. If STB and FRA are unable to come to agreement, FRA may withdraw its participation in this Agreement entirely upon 30-days written notification to all Signatories, leaving the Agreement in full force and effect with respect to STB's Section 106 compliance responsibilities. If FRA withdraws from this Agreement, FRA shall be responsible for satisfying its own Section 106 compliance responsibilities.

- C. In the event of termination of this Agreement or FRA withdrawal under paragraph B of this stipulation, the Port cannot continue work on the Project until STB and/or FRA, as appropriate, executes a new agreement pursuant to 36 C.F.R. § 800.14(b); requests, takes into account, and responds to comments of the ACHP under 36 C.F.R. § 800.7; or otherwise complies with Section 106 per 36 C.F.R. Part 800. The STB and FRA shall provide written notice to the other Signatories as to the course of action pursued.
- D. If the Port withdraws from participation in this Agreement, then the Agreement is terminated.

X. DURATION

Unless terminated pursuant to Stipulation IX, this Agreement shall terminate automatically within ten (10) years after the date of any STB decision authorizing or declining to authorize the proposed modifications to the Project in Grant County, Washington.

XI. EFFECTIVE DATE

This Agreement shall be effective on the date of the last signature by the Signatories. Pursuant to 36 C.F.R. § 800.6(c)(2), the effective date of this document is not contingent upon the signature of Concurring Parties.

XII. EXECUTION AND IMPLEMENTATION

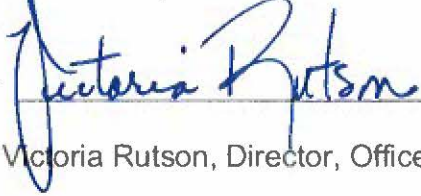
Execution and implementation of this Agreement evidences that STB and FRA have taken into account the effects of this undertaking on historic properties, have afforded the ACHP a reasonable opportunity to comment, and STB and FRA have satisfied their responsibilities under Section 106 of the NHPA and its implementing regulations.

ACCEPTED AND AGREED

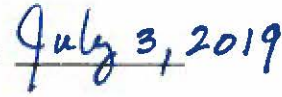
SIGNATORY PARTIES

Surface Transportation Board

By: _____

A handwritten signature in blue ink, appearing to read "Victoria Rutson", is written over a horizontal line.

Date: _____

A handwritten date "July 3, 2019" in blue ink is written over a horizontal line.

Victoria Rutson, Director, Office of Environmental Analysis

Federal Railroad Administration

By: *Dawn A. Smith*

Date: *July 3, 2019*

for

Marlys Osterhues, Chief, Environment and Project Engineering Division, Office of
Railroad Policy and Development

Washington Department of Archaeology and Historic Preservation

By: _____



Date: _____

6/25/19

Dr. Allyson Brooks, Washington State Historic Preservation Officer

The Port of Moses Lake

By:  _____

Jeffrey Bishop, Executive Director

Date: 07/03/19

CONCURRING PARTIES

Washington State Department of Transportation

By: Ron Pate

Date: 7-23-2019

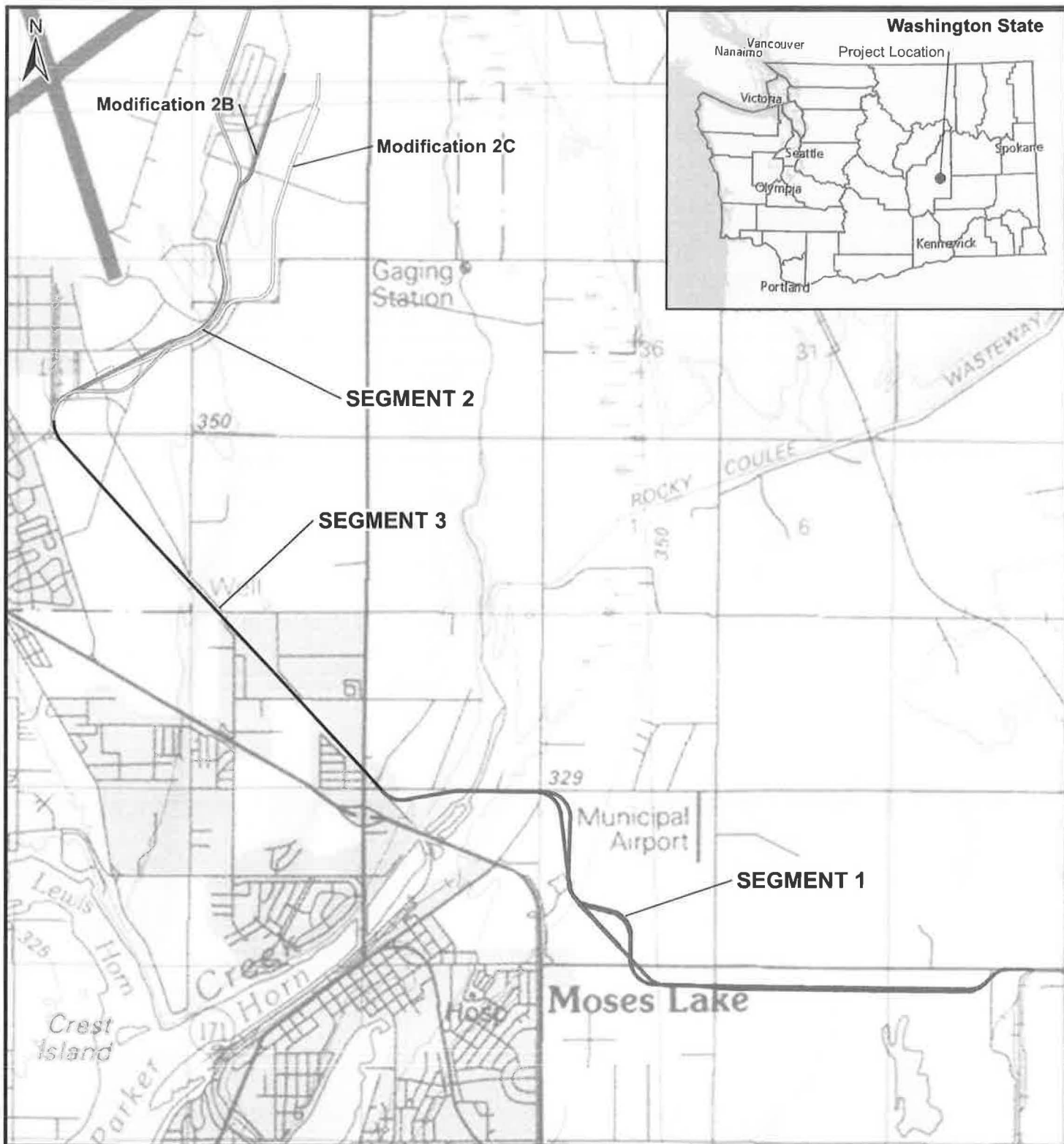
Ron Pate, Director, Rail, Freight, and Ports Division

Columbia Basin Railroad Company, Inc.

By: 
Brig Temple, President

Date: 6/23/19

APPENDIX A



Vicinity Map

- | | | |
|--------------------|--------------------|-------------------|
| Segment 1 Original | Segment 2 Original | Segment 2 Mod. 2C |
| Segment 1 Modified | Segment 2 Mod. 2B | Segment 3 |

0 2,500 5,000 Feet



0 750 1,500 Meters



PROJECT: Northern Columbia Basin Railroad Project

CLIENT: Port of Moses Lake (POML)

LOCATION: Moses Lake, Washington

COUNTY: Grant

PLSS: Segment 1: T19N R28E S14, 13, 24 and T19N R29 E S19, 20
Segment 2: T20N R38E S 22, 27, 33, 34

QUADRANGLE: Moses Lake North and Wheeler

BASE MAP: ESRI USA Topo Maps 2018

DATE OF FIGURE: 04/24/19

FIGURE BY: M. Indrebo



JACOBS



Segment 1 APE Overview

-  Original Alignment APE
-  Historic Canal Segments
-  Modification 1B APE
-  Segment 3

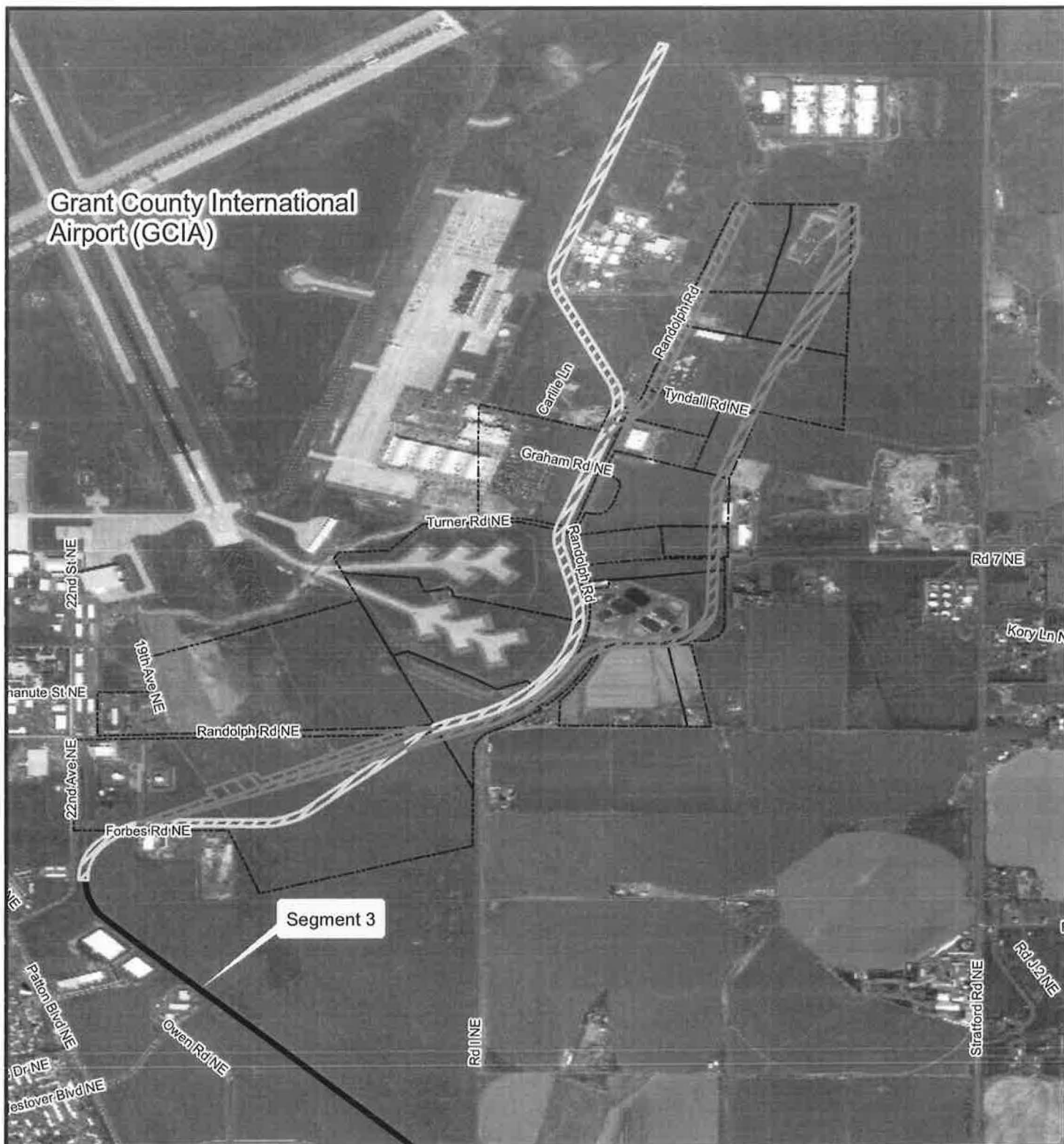
PROJECT: Northern Columbia Basin Railroad Project
 CLIENT: Port of Moss Lake (POML)
 LOCATION: Moss Lake
 STATE: Washington
 COUNTY: Grant
 PLSS: T19N R28E S14, 13, 24 and T19N R29 E S19, 20
 QUADRANGLE: Moss Lake North and Wheeler
 BASE MAP: ESRI Digital Globe 2018
 DATE OF FIGURE: 4/10/19
 FIGURE BY: M. Indrebo



0 1,300 2,600 5,200 Feet

0 375 750 1,500 Meters

JACOBS



Segment 2 - APE Overview

-  Original Alignment APE
-  Modification 2B APE
-  Modification 2C APE
-  Segment 3

0 1,000 2,000 Feet 0 350 700 Meters

PROJECT: Northern Columbia Basin Railroad Project
CLIENT: Port of Moses Lake (POML)
LOCATION: Moses Lake
STATE: Washington
COUNTY: Grant
PLSS: T20N R38E S 22, 27, 33, 34
QUADRANGLE: Moses Lake North
BASE MAP: ESRI Digital Globe 2018
DATE OF FIGURE: 4/30/19
FIGURE BY: M. Indrebo



JACOBS

APPENDIX B

PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS

NORTHERN COLUMBIA BASIN RAILROAD PROJECT, IN GRANT COUNTY, WASHINGTON

1. INTRODUCTION

The following Unanticipated Discovery Plan (UDP) outlines procedures for the Port of Moses Lake (Port) to follow, in accordance with state and federal laws, if archaeological materials or human remains are discovered.

2. RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic. Examples include:

- An accumulation of shell, burned rocks, or other food related materials,
- Bones or small pieces of bone,
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

3. ON-SITE RESPONSIBILITIES

STEP 1: STOP WORK. If any Port employee, contractor, or subcontractor conducting ground-disturbing activities encounters human skeletal remains during construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State Historic Preservation Officer (SHPO) provides notice to proceed. If human remains are encountered, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not speak with the media.

STEP 2: NOTIFY ON-SITE RESPONSIBLE PARTY. If there is an archaeological monitor for the project on-site, notify that person, otherwise notify the Project Manager, Foreman, Chief Engineer, or whomever is supervising on-site activities. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that

finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains."

STEP 3: NOTIFY THE FEDERAL AGENCY. Contact the Surface Transportation Board's Office of Environmental Analysis (OEA) and the Federal Railroad Administration (FRA).

Contact Information for OEA:

Victoria Rutson
Director, Office of Environmental Protection
Federal Preservation Officer
202-245-0295

Adam Assenza
Environmental Protection Specialist
202-245-0301
Adam.Assenza@STB.gov

Contact Information for FRA:

Katherine Zeringue, FRA Federal Preservation Officer
202-578-4115
katherine.zeringue@dot.gov

4. FURTHER CONTACTS AND CONSULTATION

A. Project Manager's Responsibilities: Stop Work In the Area of the Discovery

- **Protect Find:** The Port is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following provisions for treating archaeological/cultural material as set forth in this document.
- **Direct Construction Elsewhere On-site:** The Port may direct construction away from cultural resources to work in other areas prior to contacting the concerned parties.

B. Identification and Consultation

- **Identify Find:** The Port will ensure that a qualified professional archaeologist examines the find to determine if it is archaeological and will provide findings to SEA.
 - If it is determined not to be archaeological, work may proceed with no further delay.

- If it is determined to be archaeological, the Port and OEA will continue with notification.
- If the find may be human remains or funerary objects, the Port will ensure that a qualified physical anthropologist examines the find. If it is determined to be human remains, the procedure described in Section 5 will be followed.
- Notify DAHP: OEA will contact the Department of Archaeology and Historic Preservation (DAHP).
- Notify Tribes: If the discovery may relate to Native American interests, OEA will also contact any federally-recognized tribes with ancestral connection to the area.

Contact Information for DAHP:

Dr. Allyson Brooks
State Historic Preservation Officer
360-586-3066 or

Dennis Wardlaw
Transportation Archaeologist
360-586-3085
Dennis.Wardlaw@DAHP.WA.GOV

C. Further Activities

- Archaeological discoveries will be documented as described in Section 6.
- Construction in the discovery area may resume as described in Section 7.

5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL

Any human skeletal remains, regardless of antiquity or ethnic origin, will at all times be treated with dignity and respect.

The Port will comply with applicable state and federal laws, and the following procedure:

A. Notify Law Enforcement Agency or Coroner's Office:

In addition to the actions described in Sections 3 and 4, the Port will immediately notify the local law enforcement agency or coroner's office.

The coroner (with assistance of law enforcement personnel) will determine if the remains are human, whether the discovery site constitutes a crime scene, and will notify DAHP of its determination.

B. Participate in Consultation:

Per RCW 27.53.030, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains. Port personnel, as well as OEA and the Federal Railroad Administration (FRA), will participate in consultation.

C. Further Activities:

- Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process described in RCW 27.53.030, RCW 68.50, and RCW 68.60.
- When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.

6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D.

The Port will ensure the proper documentation and assessment of any discovered cultural resources in cooperation with OEA, DAHP, affected tribes, and a contracted consultant (if any).

All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist using standard techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.

Cultural features, horizons and artifacts detected in buried sediments may require further evaluation using hand-dug test units. Units may be dug in controlled fashion to expose features, collect samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent, and integrity of subsurface cultural deposits to evaluate the site's significance. Excavations will be conducted using state-of-the-art techniques for controlling provenience.

Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, regolith, or bedrock will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number, and vertical provenience (depth below surface and stratum association where applicable) for all artifacts recovered from the level. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.

Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh, unless soil conditions warrant 1/4-inch mesh.

All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with OEA, DAHP, and any affected tribes.

Within 90 days of concluding fieldwork, a technical report describing any and all resultant archaeological excavations will be provided to OEA, DAHP, and any affected tribes.

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 5 above will be followed.

7. PROCEEDING WITH CONSTRUCTION

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed. A qualified professional, or a person who meets, at a minimum, the *Secretary of the Interior's Professional Qualification Standards* (36 C.F.R. Part 61), must determine the boundaries of the discovery location. In consultation with DAHP, FRA, and any affected tribes, OEA will determine the appropriate level of documentation and treatment of the resource. OEA will make the final determinations about treatment and documentation. Construction may continue at the discovery location only after the process outlined in this plan is followed and OEA and FRA determine that compliance with state and federal laws is complete.