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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 465X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision)

STB Finance Docket No. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND OPERATION EXEMPTION –WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502

THE CITY OF KIRKLAND'S COMMENTS IN OPPOSITION TO BALLARD TERMINAL RAILROAD'S PETITIONS FOR EXEMPTION AND TO VACATE NOTICE OF INTERIM TRAIL USE

PUBLIC VERSION

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Dated: September 30, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 465X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision)

STB Finance Docket No. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND OPERATION EXEMPTION –WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502

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PUBLIC VERSION

In evaluating contested petitions to preserve or reactivate rail service the Board requires the petitioner to show (1) that there is a credible demand for freight service, and (2) that the petitioner is capable of acquiring access rights adequate to provide that service.[1] In its decision

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[1] *See, e.g.*, *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407, slip op. at 5-6 (STB served June 15, 2011) (denying reactivation request because petitioner lacked the "necessary financial resources to provide freight rail service," as well as the necessary contractual or property rights to access the right of way at issue, and because of "physical and financial obstacles to providing rail service" to potential customers); *Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In King County, WA, In the Matter of an Offer of Financial Assistance*, 3 S.T.B. 634, 641 (1998) (explaining that a valid offer of financial assistance ("OFA") requires a genuine "inten[t] to provide rail service and . . . a real need for that service" and rejecting OFA for lack of credible freight demand and service plan), *aff'd sub nom. Redmond-Issaquah Railroad Preservation Ass'n v. S.T.B.*, 223 F.3d 1057 (9th Cir. 2000); *Norfolk Southern Railway Co. – Petition for Exemption – In Baltimore City and Baltimore County, MD*, STB docket No. AB-290 (Sub No. 311X), slip op. at 4-5 (STB served Apr. 5, 2010) (dismissing opposition to an

denying Ballard's[2] motion to enjoin rail salvage on the Line, the Board made factual findings that Ballard has not satisfied these criteria.[3] Specifically, the Board found (1) that Ballard lacks the financial resources to reinstitute rail service on the Line, or to pay appropriate compensation for use of the right of way,[4] and (2) that Ballard has not demonstrated a credible demand for rail freight service on the Line.[5] In light of Ballard's failure to present "a concrete, realistic proposal to provide freight rail service on the Line,"[6] the Board found that the public interest did not support Board intervention to delay rail salvage.[7]

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abandonment petition where "forecasts for potential freight rail traffic . . . [were] too speculative to be given any significant weight"); *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, CO*, 4 S.T.B. 116, 119-20 (1999) (rejecting OFA for lack of credible freight service demand), *aff'd sub nom. Kulmer v. S.T.B.*, 236 F.3d 1255 (10th Cir. 2001); *Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, CO*, STB Docket No. AB-1014, slip op. at 7-12 (STB served May 23, 2008) (granting adverse abandonment application after finding railroad's "claims of potential freight rail traffic to be unsubstantiated"); *Norfolk and Western Railway Co. – Abandonment Exemption – In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 9-10 (STB served May 13, 1998) (granting abandonment application after finding opponent's "sudden discovery of a demand . . . in light of redevelopment project . . . [was] neither persuasive nor meritorious"); *see also Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, STB Docket No. FD 35631, slip op. at 3 (STB served Oct. 11, 2012) (explaining, in context of operation exemption, that licensed carrier "must still have a valid property right" under state law "in order to initiate operations") (citing *Allegheny Valley R.R. – Petition for Declaratory Order – William Fiore*, STB Docket No. FD 35388, slip op. at 4 n.4 (STB served Apr. 25, 2011)).

[2] The same short names and abbreviations used in Kirkland's earlier filings are used here.

[3] *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731 (STB served Aug. 1, 2013) (referred to hereinafter as "*August 1 Order*").

[4] *Id.*, slip op. at 5.

[5] *Id.*

[6] *Id.*, slip op. at 7.

[7] *Id.*

Kirkland, King County, and Sound Transit (the "Regional Parties") presented a substantial evidentiary record on these issues, and the Board cited to that record in documenting its findings.

Since issuance of the Board's decision on August 1, Ballard has submitted no new evidence that would warrant a reversal of these findings. On August 21 Ballard petitioned for reconsideration of the Board's decision, but that motion presented little new information,[8] and faulted the Board for deciding the injunction request prior to the public comment deadline.[9]

Kirkland will not repeat here the arguments or the evidentiary submittals that the Board considered in ruling on Ballard's injunction request. The Board made findings on the criteria that govern requests to reactivate rail service, and it did so on the basis of a detailed record. Instead, Kirkland will limit these comments to updating the Board on two material factual issues: the status of rail salvage and Ballard's financial posture.

In support of its injunction request Ballard declared: "The City's removal of rail assets will make it extremely difficult, if not impossible, for Ballard to reinstate rail service on the Line."[10] Ballard General Manager Byron Cole estimated the cost to reinstall rail and crossings in Kirkland at $10 million.[11]

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[8] The Regional Parties catalogued the omissions in Ballard's new evidence in their replies to Ballard's petition for reconsideration. *See* The City of Kirkland's Reply to Ballard Terminal Railroad Company, LLC's Petition for Reconsideration of Order Denying Ballard's Motion for Preliminary Injunction (filed in these dockets on Sept. 11, 2013); Reply of King County, Washington and Central Puget Sound Regional Transit Authority to Ballard Terminal Railroad Company, L.L.C.'s Petition for Reconsideration (filed in these dockets on Sept. 11, 2013).

[9] *See* Ballard's Petition for Reconsideration at 1 (filed in these dockets on Aug. 21, 2013).

[10] *See* Ballard's Motion for Preliminary Injunction at 5 (filed in these dockets on May 8, 2013).

[11] *See id.*; Verified Statement of Byron Cole at 3, Exhibit B to Ballard's Verified Petition for Exemption (filed in these dockets on Apr. 2, 2013).

As Kirkland explained in its September 11 filing,[12] the City authorized the salvage contractor to proceed as soon as the Board denied Ballard's injunction request, in the hope that salvage work could be completed in 2013. As of September 27, 2013 all of the rails in the Kirkland portion of the Line have been salvaged, and the ties have been removed from approximately 5.25 miles of the 5.75 mile-long segment owned by Kirkland.[13] According to Ballard's own representations, resumption of rail service by Ballard would be "extremely difficult, if not impossible."[14]

Ballard's skeletal financial records reinforce that conclusion. In its August 22 order compelling discovery, the Board directed Ballard to produce financial information showing expenses, revenues, and costs for 2011 and 2013 to date.[15] Ballard produced financial information for 2011, but not 2013.[16] [redacted] [17] Ballard has produced no evidence undermining the Board's finding

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[12] *See* Kirkland's Reply to Ballard's Petition for Reconsideration at 2.

[13] *See* Verified Statement of Aaron McDonald at ¶ 4 (filed herewith).

[14] Ballard's Motion for Preliminary Injunction at 5 (filed in these dockets on May 8, 2013).

[15] *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731, slip op. at 5, 6 (STB served Aug. 22, 2013).

[16] Upon receipt of Ballard's supplemental production counsel for Kirkland requested that Ballard provide the missing 2013 YTD financial information. Ballard's counsel has not responded to this request.

[17] Pursuant to the Protective Order entered in these dockets on August 21, 2013, Ballard's 2011 financial summary is filed under seal as Exhibit 1 to the Confidential Version of Kirkland's Comments, filed contemporaneously herewith.

that Ballard's operations on the Freight Segment just north of the Line lose money.[18] These figures strongly corroborate Ballard's contention and the Board's finding that Ballard could not afford to reinstitute rail service, even if shipper demand materialized. The evidence in the record supported that conclusion prior to rail salvage. Upon completion of rail salvage, even Ballard shares that view.

A situation currently playing out on the Freight Segment that connects the Line to the national rail transportation network provides tangible, if anecdotal, evidence of Ballard's straitened financial condition. Ballard's partner Eastside Community Rail ("ECR") holds an easement to provide freight service between the cities of Woodinville and Snohomish, Washington, and Ballard operates it under lease to ECR.[19] In November 2012 a truck collided with and destroyed a gate and crossing signal at a crossing on the Freight Segment in Maltby, Washington, approximately 13 miles north of Kirkland.[20] Every railcar that Ballard carries on the Freight Segment traverses this crossing. Prior to the accident the intersection was equipped with gates and crossing signals on both sides of the track. The accident destroyed the signal that protects traffic approaching from the south.

As of September 27, 2013, ten months after the accident, Ballard and ECR still have not replaced the crossing signal, despite an apparent early promise to do so.[21] All that remains of the

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[18] *See August 1 Order*, *supra* n.3, slip op. at 5.

[19] *See Ballard Terminal Railroad Company, L.L.C. – Lease Exemption – Line of Eastside Community Rail, LLC*, STB Docket No. 35730 (STB served May 1, 2013).

[20] *See* Maps of the Eastside Rail Corridor and Woodinville-Bellevue Line (filed herewith as Exhibits 2 and 3); Emails of Nov. 30, 2012 between Sean Sullivan of the Port of Seattle, Byron Cole of Ballard, and Doug Engle of ECR, and photograph attachment thereto (Exhibit A to the Verified Statement of Christian Knight filed herewith); Transcript of Deposition upon Oral Examination of Byron Cole ("Cole Tr.") at 205:21-206:21 (filed herewith at Exhibit 4).

[21] *See id.*; Verified Statement of Christian Knight and photographs attached thereto as Exhibit B.

former signal is its concrete foundation. No light or physical barrier warns north-bound vehicles of an approaching train. Alert drivers know to stop because the gate on the north side of the track still operates. Although Byron Cole testified that the "[t]he traffic pattern around this one [the crossing] is really bad,"[22] Ballard and ECR appear to be waiting for local governments to replace the crossing signal.[23] Mr. Cole testified, "I'm not putting anything back until we can have some protection."[24]

The few developments that have occurred since the Board denied Ballard's injunction request on August 1 reinforce the accuracy of the Board's factual findings that Ballard lacks the financial resources to reinstate rail service, and that there is no credible demand for rail freight service on the line. For these reasons the Board should reject Ballard's petitions to reinstate rail service and to vacate a NITU.

Respectfully submitted,

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Counsel for the City of Kirkland, Washington

Dated: September 30, 2013

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[22] *See* Cole Tr. at 206:22-25 (filed herewith as Exhibit 4).

[23] *Id.* at 207:2-209:1.

[24] *Id.* at 208:25-209:1.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing motion upon the following parties of record in the above-captioned proceedings by first class mail with postage prepaid and properly addressed:

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Dated: September 30, 2013

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 465X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
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BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND OPERATION EXEMPTION –WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502

EXHIBITS AND VERIFIED STATEMENTS
THE CITY OF KIRKLAND'S COMMENTS IN OPPOSITION TO BALLARD TERMINAL RAILROAD'S PETITIONS FOR EXEMPTION AND TO VACATE NOTICE OF INTERIM TRAIL USE

PUBLIC VERSION

Ballard Terminal Railroad 2011 Financial Summary (REDACTED)	Exhibit 1
Eastside Rail Corridor Map	Exhibit 2
Woodinville-Bellevue Line Map	Exhibit 3
Excerpts of Deposition upon Oral Examination of Byron Cole, Ballard's General Manger	Exhibit 4

Verified Statement of Aaron McDonald

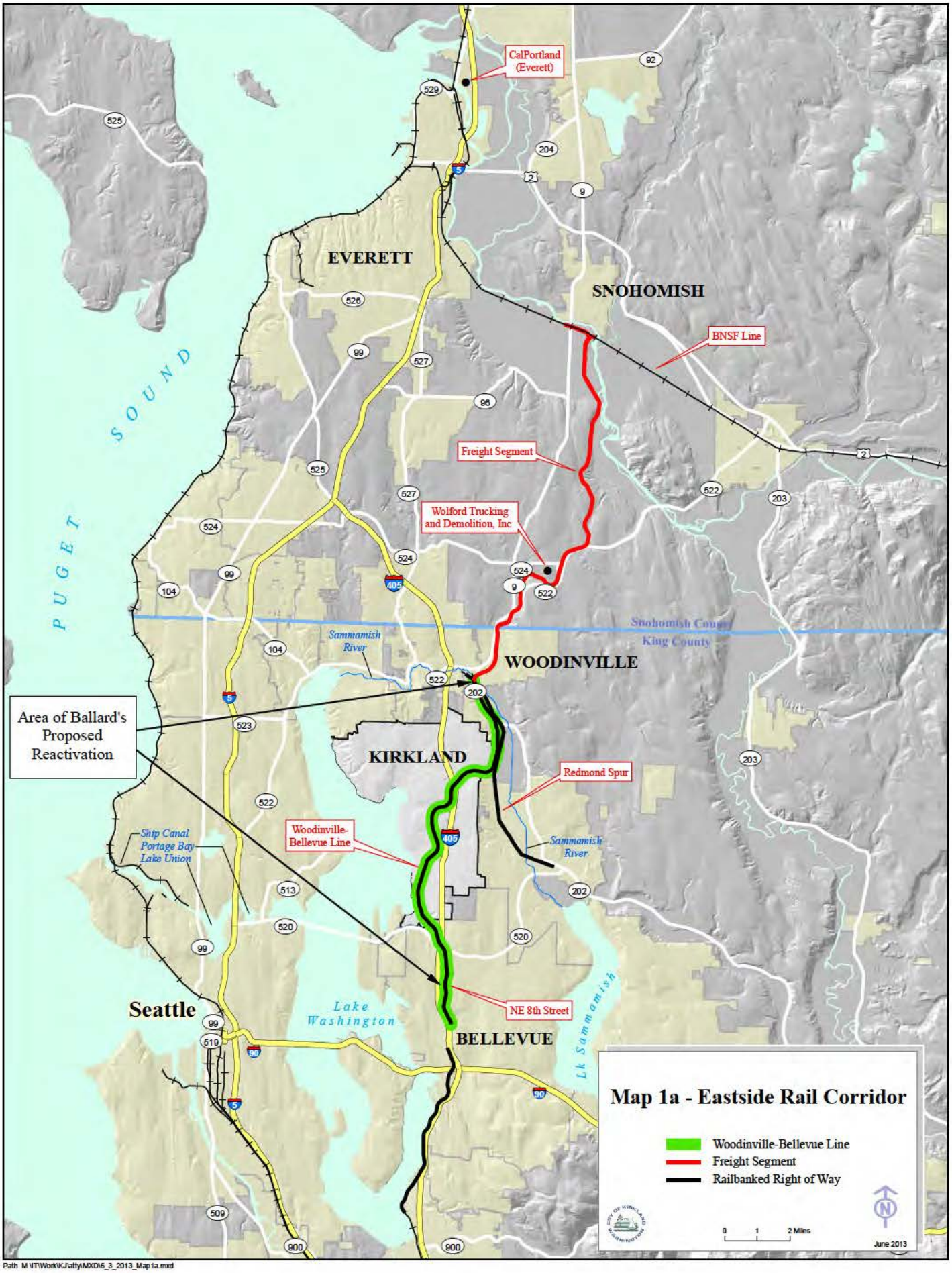
Verified Statement of Christian Knight

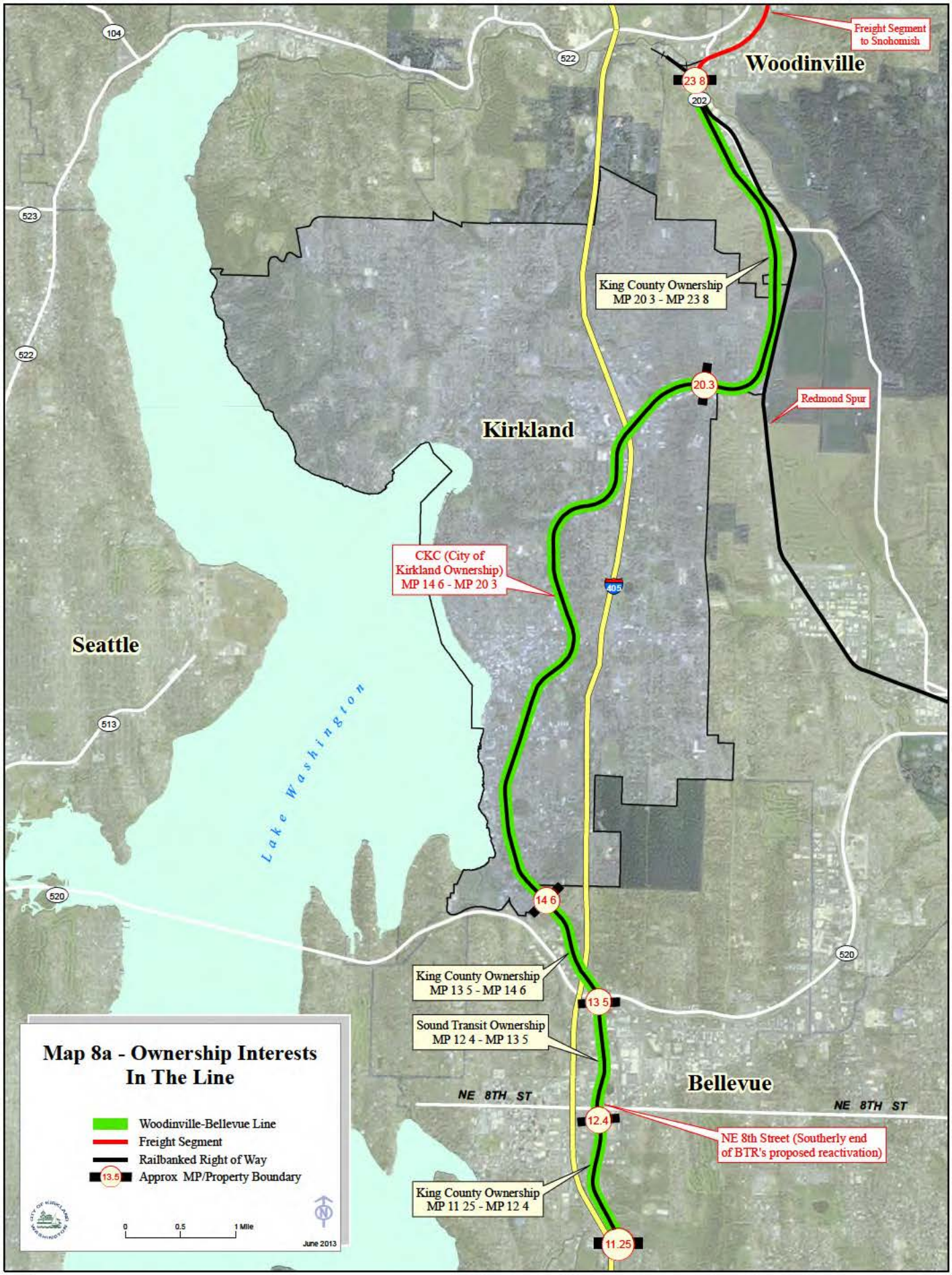
- Exhibit A: Email Correspondence Destroyed Crossing Signal on Freight Segment in Maltby, Washington
- Exhibit B: Photographs of Current Crossing Signal Conditions

EXHIBIT 1

Ballard Terminal Railroad 2011 Financial Summary

REDACTED


CalPortland (Everett)
EVERETT
SNOHOMISH
BNSF Line
Freight Segment
Wolford Trucking and Demolition, Inc
PUGET SOUND
Snohomish County
King County
Sammamish River
WOODINVILLE
Area of Ballard's Proposed Reactivation
KIRKLAND
Redmond Spur
Woodinville-Bellevue Line
Ship Canal
Portage Bay
Lake Union
Sammamish River
Seattle
Lake Washington
NE 8th Street
BELLEVUE
Lk Sammamish
Map 1a - Eastside Rail Corridor
Woodinville-Bellevue Line
Freight Segment
Railbanked Right of Way
0 1 2 Miles
June 2013
Path M:\IT\Work\KJ\city\MXD\6_3_2013_Map1a.mxd



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BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)
BALLARD TERMINAL)
RAILROAD COMPANY, L.L.C.)
-ACQUISITION AND EXEMPTION-)
WOODINVILLE SUBDIVISION)
)
STB DOCKET NO. AB-6 (SUB. NO. 465X))
BNSF RAILWAY COMPANY)
-ABANDONMENT EXEMPTION-)
IN KING COUNTY, WA)
)

DEPOSITION UPON ORAL EXAMINATION

OF

BYRON COLE

Taken at 600 University Street, Suite 3600

Seattle, Washington

DATE: Friday, May 24, 2013

REPORTED BY: Katie J. Nelson, RPR, CCR
CCR NO.: 2971

1 tell me the complaining about anything. I'm still not
2 exactly sure what the complaint is. Would you like to use
3 your own words to tell me what the complaint is?
4 Q. Not allowed to do that.
5 A. It's the first I've ever heard of it. It would
6 be nice if the Port would pick up the phone and call me and
7 said, could you come down and talk to me here about this.
8 Blah, blah, blah, blah, blah. I've never gotten one call
9 like that in the four years we've been doing this. Not one
10 call. And most of the time, I mean, there's no
11 communication at all with the Port. I call Tay Yoshitani's
12 secretary and say, Can I make an appointment to talk to Tay
13 for a while? Sure, no problem. Would you like to do it
14 tomorrow? Okay.
15 So I go talk to him. It's -- he never says, by
16 the way, you should talk to my real estate guy for
17 something.
18 I'm not going to be very happy if the Port is
19 sabotaging me after carrying the water on their doggone
20 railroad for three years without getting paid. And those
21 guys, we asked them, would you apply for some federal grant
22 to rehabilitate the lines over here and stuff like that.
23 No, we couldn't do that. That actually might be work.
24 Q. You asked them to apply for a federal grant?
25 A. Doug did. I mentioned it to Tay Yoshitani even,

1 like -- I mean, for the amount it takes to rehabilitate
2 these lines, they spill that much every week out at that
3 airport.
4 MR. COHEN: So I don't have any more
5 questions today. But I will note for the record that
6 during the course of this deposition, Kirkland was served
7 with two sets of document responses from Ballard Terminal
8 Railroad that I've had no chance to look at. And I reserve
9 the right and intend to call Mr. Cole back after Ballard
10 has responded to the discovery that we served on his
11 company to complete this deposition.
12 But, Mr. Cole, I appreciate your efforts to
13 answer my questions today.
14 THE WITNESS: Mm-hm (answers affirmatively).
15 MR. COHEN: And feel like we made some
16 progress.
17 THE WITNESS: Okay.
18 MR. MONTGOMERY: Some progress. For the
19 record, I would say that the documents were served, one in
20 the morning and one I think in the early afternoon. There
21 are two of you for the City of Kirkland here who have been
22 intimately involved in the case. Mr. Ferguson taking the
23 lead on two depositions and then you on one. And he
24 certainly, looks and appears to me to have had time to
25 review the documents.

1 Moreover, the offer was made to postpone the
2 deposition pending receipt of all documents, which was
3 refused by you guys. You decided to go forward, knowing
4 full well that you were not likely going to have all of the
5 documents. I think for that reason, Ballard will resist a
6 resumption of this deposition. Those and other reasons.
7 MR. COHEN: So noted.
8 MR. WAGNER: I have a couple questions if
9 you don't mind.
10 THE WITNESS: Sure.
11
12 E X A M I N A T I O N
13 BY MR. WAGNER:
14 Q. Mr. Cole, Jordan Wagner from Sound Transit.
15 A little bit earlier you had suggested that you
16 had offered to buy land from Sound Transit?
17 A. No. I'm -- I said that you folks bought the old
18 Weyerhaeuser --
19 Q. Is that the --
20 A. -- paper --
21 Q. -- site I think we call International Paper site?
22 A. Yeah, it was Weyerhaeuser and then IP bought all
23 of Weyerhaeuser mills like that all over the country and
24 they put down a bunch of them because too many. So it
25 would make a great trans-load site. And just by some pure

1 coincidence, after IP had moved out, there was a salvage
2 guy who salvaged the track. And he just, I don't know,
3 looked through the phone book, he called me up and asked me
4 if I was interested in buying the track. I went out and
5 looked at it and said, Yeah.
6 So we have the 90-pound rail and a pretty good
7 set of ties and tie weights and spikes to put the spur back
8 in. We have it down at our Puyallup yard.
9 But if Sound Transit's plans are such that you
10 don't need that building until 7 years from now or
11 something, maybe we could put a tenant in there and be easy
12 to put the track back in.
13 Q. Another subject.
14 A. Could you respond to that?
15 Q. No. Sorry, I can't Mr. Cole. That's not how it
16 works.
17 A. How does it work?
18 Q. Maybe we can talk about it offline, but right now
19 I get to ask you questions.
20 A. Okay.
21 Q. Doug Engle, when he testified on Wednesday,
22 suggested that there was an outstanding safety issue at a
23 crossing in Maltby. Do you know anything about that?
24 A. I do.
25 Q. Can you tell me about it?

A. There's actually two of them.
Q. Okay.
A. I was seeking some help from -- from Snohomish County on one of the crossings. It got mowed down by a 18-wheeler making a sharp U-turn and the tractor got around the post that has the lights and the gates on it. But in making this U-turn, his trailer took a much shorter course and flattened the entire signal. And there was a hit and run, nobody saw it. Maltby is unincorporated, there's no cops.
Q. How long ago was that?
A. It's been about three months. And so I looked at the problem and decided that we should put a bunch of ecology blocks out in front of the signal when they replace it. It's just a signal mass, lights and so.
Q. This one signal that came down, we're not talking cross bars or anything like that?
A. No, this is isolated signal here and diagonally across the street the other isolator. But the street --
Q. It's just a light and --
A. It has gate arms.
Q. Okay.
A. These have a pair of gate arms, but only one was affected by this. The traffic pattern around this one is really bad. The other one is really benign and on the

other side of the street.
Anyway, this is getting a little cooperation with Public Works in Snohomish for getting some kind of a barrier around this so it doesn't get mowed down. It's like a $30,000 project to, you know, build a new crossing there. And it's not protected from that kind of thing. So --
Q. That's okay. Who is --
A. Through Public Works.
Q. Whose responsibility do you think it is to replace that crossing arms and signals?
A. Well, in some cases it's the railroad's. It kind of depends what document was made when the signal was put up.
Q. So what about this case?
A. I don't know. I haven't taken time to try to research the archives. I don't have data on it. Certainly we didn't get that as a package --
Q. So you don't?
A. -- for one reason or another.
Q. You don't know whose responsibility it is to repair that signal at that crossing?
A. I don't. But there's been some cooperation with the Public Works director and people up that chain. And the fellow -- the second meeting out there with a fellow

who said, Well, look, we can make a barrier here. We've got some of these highway segments, of the barriers along the side of the highways, he said we've got some with a real sharp curve already formed in them. We can bring a couple of those down. We have the posts. We can build the barrier around the nose of this thing.
But I haven't heard from him since. And he had to go talk to his boss, could this be done. And I haven't heard from the boss and I've been really busy.
Q. Is there any FRA requirements for this crossing to be signalized in order to allow cars to cross?
MR. MONTGOMERY: Foundation, and to the extent it calls for a legal conclusion.
Q. (By Mr. Wagner) That you know?
A. I don't know. I don't think it's a very good answer to just take it out. You know, there's more and more traffic year after year, not less and less. I think the answer is to build a barricade around the nose of it so it doesn't get run over.
Q. Well, I'm not talking about protecting it. I'm asking about having it work. It's broken right now, correct?
A. It's broken off at ground level.
Q. So --
A. I'm not putting anything back until we can have

some protection.
Q. Okay. So what about the other safety issue at Maltby?
MR. MONTGOMERY: Is this necessary to do on the record for the STB proceeding?
MR. WAGNER: Yes.
MR. MONTGOMERY: Can you tell me why at 5:30 after we've been here eight and a half hours?
MR. WAGNER: I'm almost done. I really am.
MR. MONTGOMERY: Object to the form.
THE WITNESS: That's why I thought it was off the record because it seemed so far out of whack.
Do you want me to finish up?
MR. MONTGOMERY: What is the other issue?
THE WITNESS: It's another grade crossing that's damaged. It's the one at Maltby Road intersection with -- it crosses our tracks, two tracks there. And I don't know what the north/south road is there.
Q. (By Mr. Wagner) How long ago was that --
A. This was like a maintenance deal. Bad paving in the approach to the tracks. So I went to look at it. I met with somebody again, about the paving issue. I got a voicemail from that guy's boss a couple days ago, that basically said, we don't want to hear from you. We're going to go do it as we marked it out.

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VERIFIED STATEMENT OF AARON MCDONALD IN SUPPORT OF THE CITY OF KIRKLAND'S COMMENTS IN OPPOSITION TO BALLARD TERMINAL RAILROAD'S PETITIONS FOR EXEMPTION AND TO VACATE THE NOTICE OF INTERIM TRAIL USE

I, Aaron McDonald, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.

2. I am currently employed as a Project Engineer in the Public Works Department, Capital Projects Division, for the City of Kirkland ("Kirkland").

3. One of my current responsibilities as a Project Engineer for Kirkland is to plan and supervise the salvage of rail infrastructure within the Cross Kirkland Corridor ("CKC"), the 5.75 mile segment of railbanked right-of-way owned by Kirkland. These responsibilities include coordinating and monitoring the work of A&K Railroad Materials, Inc. ("A&K"), Kirkland's salvage contractor. A&K began salvage operations in August 2013 at the northeastern end of the CKC and has worked its way south along the CKC.

4. As of the afternoon of September 27, 2013 the progress of salvage activities is as follows: all of the rails have been removed from the rail bed along the entire length of the CKC. With the exception of approximately one-half mile, all of the ties have been removed from the entire length of the CKC. In addition, all other track material has been removed from the entire length of the CKC. A&K estimates that by October 15 it will complete all salvage work and haul all rail salvage materials away from the CKC.

AARON MCDONALD, P.E.

Dated: 9/27/13

Place: Kirkland, WA

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SURFACE TRANSPORTATION BOARD

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VERIFIED STATEMENT OF CHRISTIAN KNIGHT IN SUPPORT OF THE CITY OF KIRKLAND'S COMMENTS IN OPPOSITION TO BALLARD TERMINAL RAILROAD'S PETITIONS FOR EXEMPTION AND TO VACATE THE NOTICE OF INTERIM TRAIL USE

I, Christian Knight, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.

2. I am currently employed as a Management Analyst in the Office of the City Manager for the City of Kirkland ("Kirkland").

3. Exhibit A to this statement consists of two e-mails and a photograph that Kirkland obtained from the Port of Seattle. In the first of those emails, dated November 30, 2012, Sean Sullivan of the Port contacted Byron Cole and Doug Engle about a destroyed crossing signal at the intersection of Yew Way and Broadway Avenue in Maltby, Washington, approximately 13 miles north of Kirkland.

4. Mr. Engle replied, by e-mail dated November 30, 2012, that he was aware of the problem and that he met with a contractor (NW Signal) regarding replacement of the signal.

5. On August 30, 2013 I visited this rail crossing. On the south side of the crossing I observed the concrete foundation of the former crossing signal. The approach to the rail line from the south was not controlled by a lighted signal or traffic control gate. Photographs that I took during this visit are attached hereto as Exhibit B.

6. On September 27, 2013 I returned to the rail crossing at the Yew Way-Broadway Avenue intersection. During this visit, I observed the same conditions with respect to rail crossing signals and traffic signs that I observed on August 30.

CHRISTIAN KNIGHT

Dated: 9/30-2013

Place: Kirkland, WA

From: Sullivan, Sean
Sent: Friday, November 30, 2012 11:15 AM
To: Doug Engle (dengle76@comcast.net); Byron Cole (byroncole@comcast.net); P69, 3CC08 (6)
Cc: Miller, Melinda; perry.stacks@pasmarketing.com
Subject: FW: Port ERC - Damaged crossing
Attachments: DSCN1051.JPG

Gentleman,

Assume you are already aware of this signal issue(see picture) at Yew Way and Broadway (just north of 522) in the freight area and have resolved or plan to resolve soon.

Please let me know status.

Thanks,

Sean Sullivan
Port of Seattle

RAILROAD
CROSSING
2
TRACKS
TD
Tire

From: Doug Engle <dengle2001@gmail.com>
Sent: Friday, November 30, 2012 1:47 PM
To: Sullivan, Sean
Cc: Byron Cole (byroncole@comcast.net); P69, 3CC08 (6); Miller, Melinda; perry.stacks@pasmarketing.com
Subject: Re: Port ERC - Damaged crossing

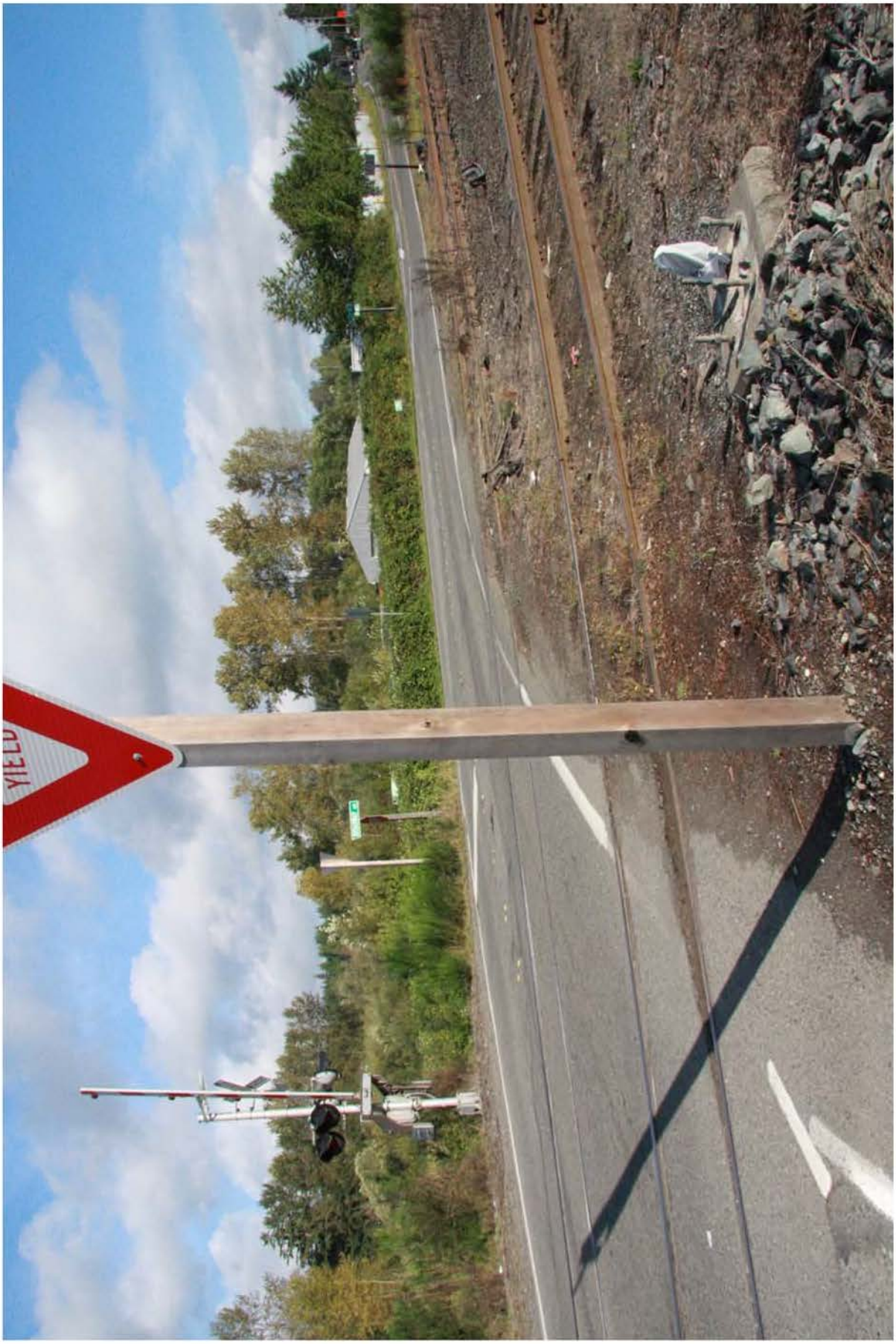
Yes. Met with NW Signal last night regarding replacement.

Please reply to:
DEngle76@comcast.net
Sent from my iPhone

On Nov 30, 2012, at 11:14 AM, "Sullivan, Sean" <Sullivan.S@portseattle.org> wrote:

> Gentleman,
>
> Assume you are already aware of this signal issue(see picture) at Yew Way and Broadway (just north of 522) in the freight area and have resolved or plan to resolve soon.
>
> Please let me know status.
>
> Thanks,
>
> Sean Sullivan
> Port of Seattle
>
> <DSCN1051.JPG>

RAIL ROAD
CROSSING


YIELD