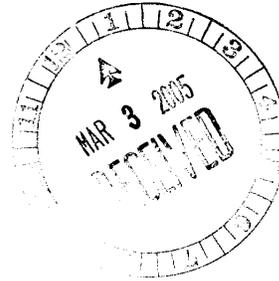




213466



**FEE RECEIVED**

**Stephen L. Day**  
eMail: sday@bpmlaw.com

MAR - 3 2005

March 2, 2005

**TRANSPORTATION BOARD**

**VIA FEDERAL EXPRESS**

**ENTERED**  
**Office of Proceedings**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
U.S. Department of Transportation  
1925 K. Street NW  
Washington, D.C. 20423-0001

MAR - 2 2005

**Part of**  
**Public Record**

AB-771X

Re: Docket No. ~~AB-771~~ (Sub No. ~~50~~), Mount Vernon Terminal Railway Company L.L.C. - -  
Abandonment Exemption - - The City of Mount Vernon, Washington

Dear Mr. Williams:

Enclosed for filing in the above-referenced matters are an original and 10 copies of the Verified Notice of Exemption of Mount Vernon Terminal Railway Company, L.L.C., pursuant to 49 C.F.R 1152. 50. Also enclosed is our check in the amount of \$3,000 for the filing fee.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgement copy and returning it in the self addressed, postage prepaid envelope.

Very truly yours,

Stephen L. Day

SLD:sld

**FILED**

MAR - 3 2005

**TRANSPORTATION BOARD**

255223/030205 1206/65700002

**One Convention Place**  
Suite 1400 - 701 Pike Street  
Seattle WA - 98101-3927  
www.bpmlaw.com • 206.292.9988 • fax 206.343.7053

Before The  
Surface Transportation Board



Mount Vernon Terminal Railway )  
Company L.L.C - - Abandonment )  
Exemption - - The City )  
of Mount Vernon, Washington )

DOCKET NO. AB - 771 X  
~~(11-10-05)~~



VERIFIED NOTICE OF EXEMPTION

49 C.F.R 1152.60

**FILED**

MAR - 3 2005

SURFACE  
TRANSPORTATION BOARD



MOUNT VERNON TERMINAL  
RAILWAY COMPANY L.L.C.  
P.O. BOX 216  
CLEAR LAKE, WASHINGTON 908235

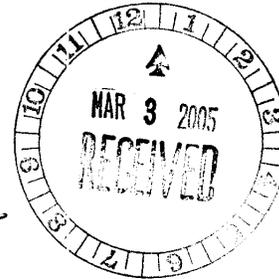
By its attorneys:

STEPHEN L. DAY  
BETTS, PATTERSON & MINES, P.S.  
ONE CONVENTION PLACE  
SUITE 1400  
701 PIKE STREET  
SEATTLE, WASHINGTON 98101-3927

DATED: MARCH 2, 2005

Before The  
Surface Transportation Board

  
Docket No. AB-751 (Sub No. 19)



**Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington**

**Verified Notice of Exemption**

Pursuant to The Surface Transportation Board's regulations at 49 C.F.R. 1152.50, Subpart F – *Exempt Abandonments*, Mount Vernon Terminal Railway Company L.L.C. (herein "MVT"), a class III rail common carrier, files this Verified Notice of Exemption form for an exemption from the prior approval requirement of 49 U.S.C. 10903 to discontinue service over and abandon 4,240 feet line of railroad (which lies wholly within the City of Mount Vernon, Washington, in Skagit County, Washington) between MVT railroad milepost .369 and milepost 1.172 (herein "the Subject Line"). The Subject Line is the southern stub end of MVT's lines and has not carried any rail traffic for over two years in spite of solicitation. A map of the Subject Line is attached as Exhibit A.

In accordance with the Surface Transportation Board's regulations at 49 (C.F.R. 1152.50(d), MVT submits the following:

1. *Proposed Consummation date.*

The abandonment by MVT of the Subject Line is expected to be consummated on or April 22, 2005.

2. *Certification Required by 49 C.F.R. 1152.50(b).*

The Required certification is provided as Exhibit B to this Notice.

3. *Information required:*

(a)(1) *Name of Applicant.*

Mount Vernon Terminal Railway Company, L.L.C.

(a)(2) *Common Carrier Status.*

MVT is a class III common carrier by railroad, subject to 49 U.S.C.

Subtitle IV, chapter 105.

(a)(3) *Relief Sought.*

MVT seeks exemption from the Board's regulations to abandon the Subject Line.

(a)(4) *Map of Subject Line.*

A map showing the location of the Subject Line is attached hereto as Exhibit A.

(a)(7) *Representative of Applicant.*

Stephen L. Day  
Betts, Patterson & Mines, P.S.  
701 Pike Street, Suite 1400  
Seattle, WA 98101  
(206) 292-9988

(a)(8) *Postal Service Zip Codes.*

The Subject Line runs through United States Postal ZIP Code 98273.

(e)(4) *Suitability for Public Purposes and Restrictions on Title.*

The area adjacent to the right-of-way is already devoted to public use as city streets and the abandoned right-of-way may not be suitable for other public purposes.

Based on information in MVT's possession, the line does not contain federally granted rights-of-way. Any documentation in MVT's possession will be made available promptly to those requesting it.

4. *Labor Protection.*

This class exemption does not relieve MVT of its obligation to protect the interests of its employees. No employees will be adversely affected as a result of the abandonment; however, MVT anticipates that the Board will impose the conditions set forth in *Oregon Short Line R. Co. – Abandonment – Goshen Branch*, 360 I.C.C. 91 (1979), for the benefit of any carrier employee who may be adversely affected by the proposed abandonment.

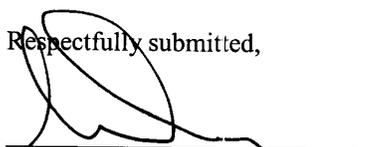
5. *Environmental and Historic Report.*

On February 10, 2005 MVT sent its Environmental and Historic Report (the "Report") to certain federal and state agencies and county commissioners. A sample transmittal letter and the Report (including the related certificate of service) are attached hereto as Exhibit C. Subsequent to that date, MVT received several responsive letters which are attached to MVT's Final Environmental Report (Exhibit C) and Historical Report (Exhibit D).

6. *Notice Requirements.*

A Certification of Publication is attached as Exhibit E. Pursuant to 49 C.F.R. §§ 1152.50(d)(1) and 1105.7(c), on February 10, 2005 MVT sent a notice of the proposed abandonment to certain federal and state agencies and county commissioners. A sample of that letter is attached hereto as Exhibit E. A Certificate of Service regarding these letters is attached hereto as Exhibit F, and a Certificate of Service regarding service of a Notice of Exemption is attached hereto as Exhibit G. A copy of MVT's Notice of Abandonment published in the Skagit Valley Herald is attached as Exhibit H.

Respectfully submitted,



---

Stephen L. Day  
Betts, Patterson & Mines, P.S.  
701 Pike Street, Suite 1400, P.S.  
Seattle, WA 98101  
(206) 292-9988

Attorneys for:

Mount Vernon Terminal Railway  
Company, L.L.C.

Dated: March 2, 2005

Before The  
Surface Transportation Board

Docket No. AB-771X  
~~AB-771 (Sub. No. 1X)~~

Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington

EXHIBIT A

MAP OF SUBJECT LINE

# EXHIBIT A

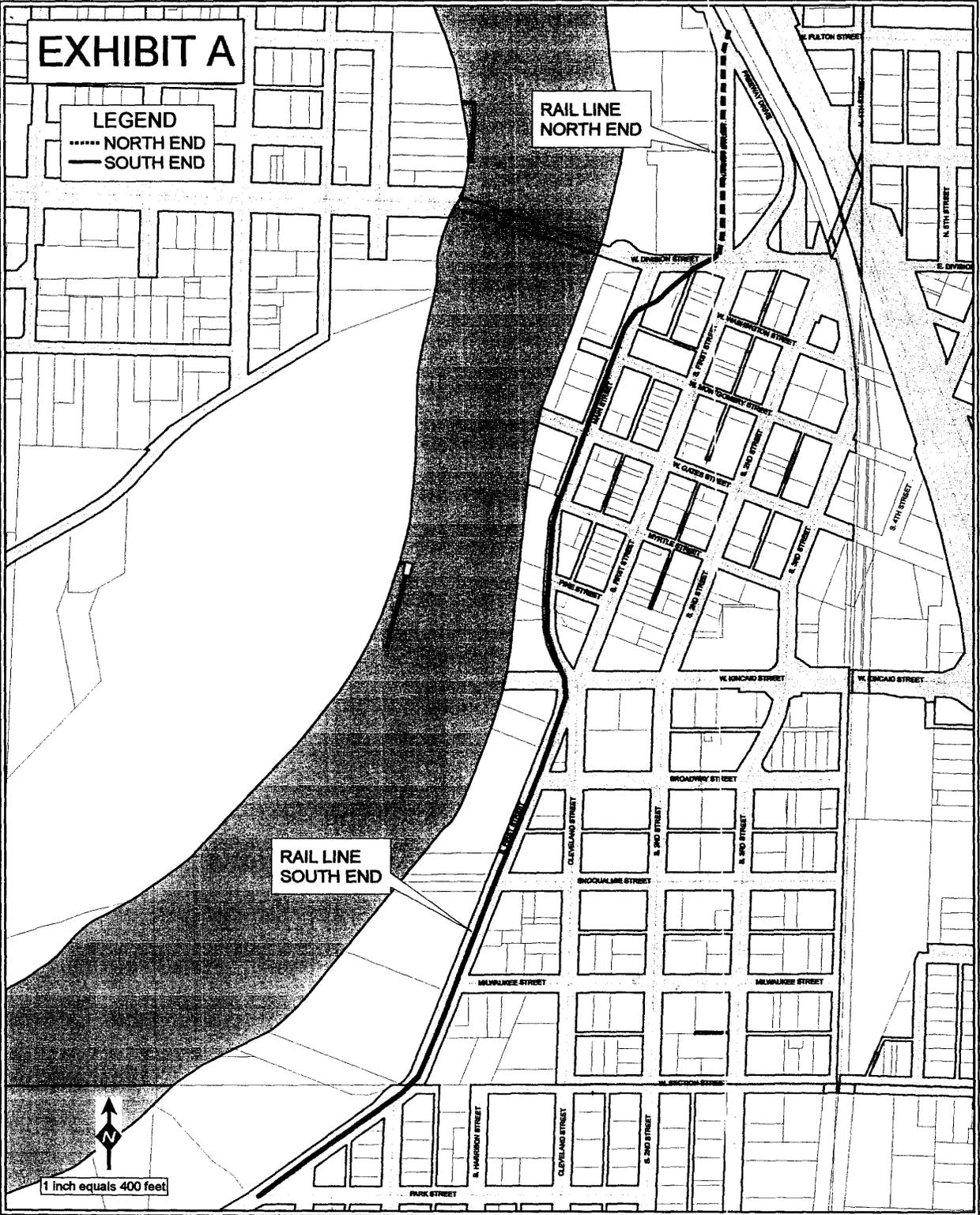
## LEGEND

- ..... NORTH END
- SOUTH END

RAIL LINE  
NORTH END

RAIL LINE  
SOUTH END

1 inch equals 400 feet



Before The  
Surface Transportation Board

AB-771X  
Docket No. ~~AB-771 (Sub-No. 1X)~~

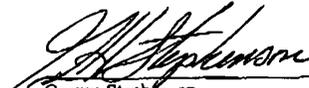
Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington

EXHIBIT B

CERTIFICATION

**CERTIFICATION REQUIRED BY 49 CFR § 1152.50(b)**

In accordance with 49 CFR § 1152.50(b), I, George Stephenson, owner of Mount Vernon Terminal Railway Company, L.L.C., hereby certify that, with respect to the rail line subject to this Verified Notice of Exemption in Docket No. AB-771 (Sub No. IX), (1) no local traffic has moved over the line for at least two years prior to the date hereof; (2) there is no overhead traffic to be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period preceding the date hereof. The foregoing certification is made on behalf of Mount Vernon Terminal Railway Company, L.L.C. and is based upon the knowledge, information and belief of the undersigned.

  
George Stephenson  
Owner

Dated: 3/2/05

Before The  
Surface Transportation Board

AB-771X  
Docket No. ~~AB-771~~ (Sub. No. ~~1~~)

Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington

EXHIBIT C

FINAL ENVIRONMENTAL REPORT

**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**

In the Matter of Mount Vernon  
Terminal Railway, LLC.  
Notice of Intention to Abandon its  
Line of Railroad  
Between MP .369 and MP1.172  
In the City of Mount Vernon Washington

Docket No. AB 771X

**Environmental Report**  
**(49 C.F.R. 1105.7)**

The following information is submitted to the Surface Transportation Board by the Mount Vernon Terminal Railroad Company, L.L.C., (MVT) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding MVT's Notice of Exemption for abandonment of a portion of its line in the City of Mount Vernon, Washington

1. Proposed Action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

MVT, a rail common carrier subject to the jurisdiction of the Surface Transportation Board, proposes to abandon and discontinue service on the southern portion of its rail line, from MP .369 and MP 1.172 in Mount Vernon, Washington, a total

distance of 4,240 feet. (See attached map, Exhibit A). The subject tracks are located wholly within the City of Mount Vernon, Washington, streets, and the city owns the underlying real estate. If abandonment is approved, the tracks will be removed (and salvaged) and the streets will be paved for full vehicle traffic use. The subject line is at the stub-end of applicant's line and has not produced any rail traffic in over two years, and there is no overhead traffic.

2. Transportation system. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed transaction will have no affect on rail passenger or freight operations. No rail traffic moves over these lines at present, including overhead traffic. The subject portion of applicant's line is currently the southern terminus of applicant's lines, they do not connect with any other line, and this transaction will simply shorten applicant's active lines by 4,240 feet. Vehicular traffic flow and safety will be improved by removal of applicants' line from city streets.

3. Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

MVT believes this proposal is consistent with both the City of Mount Vernon and Skagit County. Jana Hanson, Development Services Department Director for the city of Mount Vernon and Gary Christensen, Director for the Skagit County Planning and Permit Center have been provided draft copies of this report. The City of Mount Vernon's response is enclosed as Exhibit 1.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

The subject tracks are located in an urban environment and entirely within City streets. Abandonment of the line and removal of the tracks will have no effect on any prime agricultural farmlands.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by Sec. 1105.9.

The Washington Department of Ecology does not require Coastal Zone Management Review under Washington's Coastal Zone Management Program. See Exhibit 2, letter from Washington Department of Ecology.

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 21 10906 and explain why.

The line is already in property devoted to public use as City Streets. Abandonment and removal of the tracks will not affect that current use or dedication, but will improve and enhance the use as City streets.

4. Energy:

(i) Describe the effect of the proposed action on transportation of energy resources.

To the best of MVT's knowledge, there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of the subject line.

(ii) Describe the effect of the proposed action on recyclable commodities.

The proposed abandonment will not adversely affect the movement or recovery of recyclable commodities because the line has been out of service for over two years.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

The proposed abandonment will not increase or decrease overall energy efficiency because the line has been out of service for over two years.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:  
(A) 1,000 rail carloads a year; or  
(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversion of traffic because the line is out of service and the only potential shipper on the line has chosen to use motor carriage exclusively for its transportation needs for over two years.

5. Air:

(i) If the proposed transaction will result in either:

(A) An increase in rail traffic of at least 100% (measured in gross tons miles annually) or an increase of at least eight trains a day on any segment of the line affected by the proposal,

There is no increase of rail traffic because the line is out of service:

(B) An increase in rail yard activity of at least 100% (measured by carload activity).

There will be no increase in yard activity.

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a

previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

There will be no increase in truck traffic because the line has been out of service for over two years.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50 percent (measured in gross ton-miles annually) or an increase of at least three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction less than 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstatement of service over a previously abandoned line, only the three trains a day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment

The proposed transaction will not result in an increase of rail or truck traffic because the line is out of service. This transaction will have no net effect on air quality and will not result in any reportable activity under 49 C.F.R. 1105.7(e)(5)(i).

6.Noise: If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more;

Not Applicable

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project

area, and quantify the noise increase for these receptors if the thresholds are surpassed.

No thresholds identified in 49 C.F.R. 1105.7 (e)(5)(i) will be surpassed by this transaction.

## 7. Safety

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

Public safety will be enhanced by removal of railroad tracks from City of Mount Vernon streets. (See City of Mount Vernon letter, Exhibit 1). MVT is unaware of any known hazardous materials spills on the portion of tracks to be abandoned. During salvage operations on the line precautions will be taken to ensure public safety and all applicable safety and health laws will be observed.

## 8. Biological resources

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The proposed transaction is wholly within the city limits of Mount Vernon, Washington and within that City's streets. The proposal will not affect any wildlife sanctuaries or refuges. Draft copies of this report were provided to the State of Washington Department of Fish and Wildlife, National Oceanic and Atmospheric Administration National Geodetic Survey, the United States Department of the Interior Fish and Wildlife Service, Western Washington Fish and Wildlife Office and the State of Washington Department of Ecology. Only the Washington State Department of Ecology responded, and they did not address this issue.

#### 9. Water

i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

MVT believes that the proposed exemption will be consistent with the applicable Federal, State and local water quality standards. The Washington Department of Ecology does not require a stormwater permit. Exhibit 2.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

MVT believes that permits under section 404 of the Clean Water Act are not required for the proposed exemption. The Army Corps of Engineers has indicated no permits are required from that agency (Exhibit 3). MVT believes the proposed exemption will not affect the 100-year floodplain.

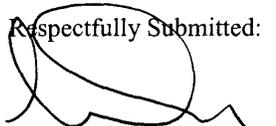
(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

Permits under 402 of the Clean Water Act are not required for the proposed exemption. A construction storm water permit is not required for any construction site that disturbs less than five acres of total land area. Exhibit 3.

10. Proposed mitigation: Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

During salvage operations on the line precautions will be taken to ensure public safety and all applicable safety and health laws will be observed.

Respectfully Submitted:



Stephen L. Day  
Betts, Patterson & Mines, P.S.  
701 Pike Street  
Suite 1400  
Seattle, WA 98101-3927  
Phone (206) 292-9988  
Fax (206) 343-7053

Counsel for Mount Vernon Terminal Railroad Company L.L.C.

Dated: March 1, 2005.

A

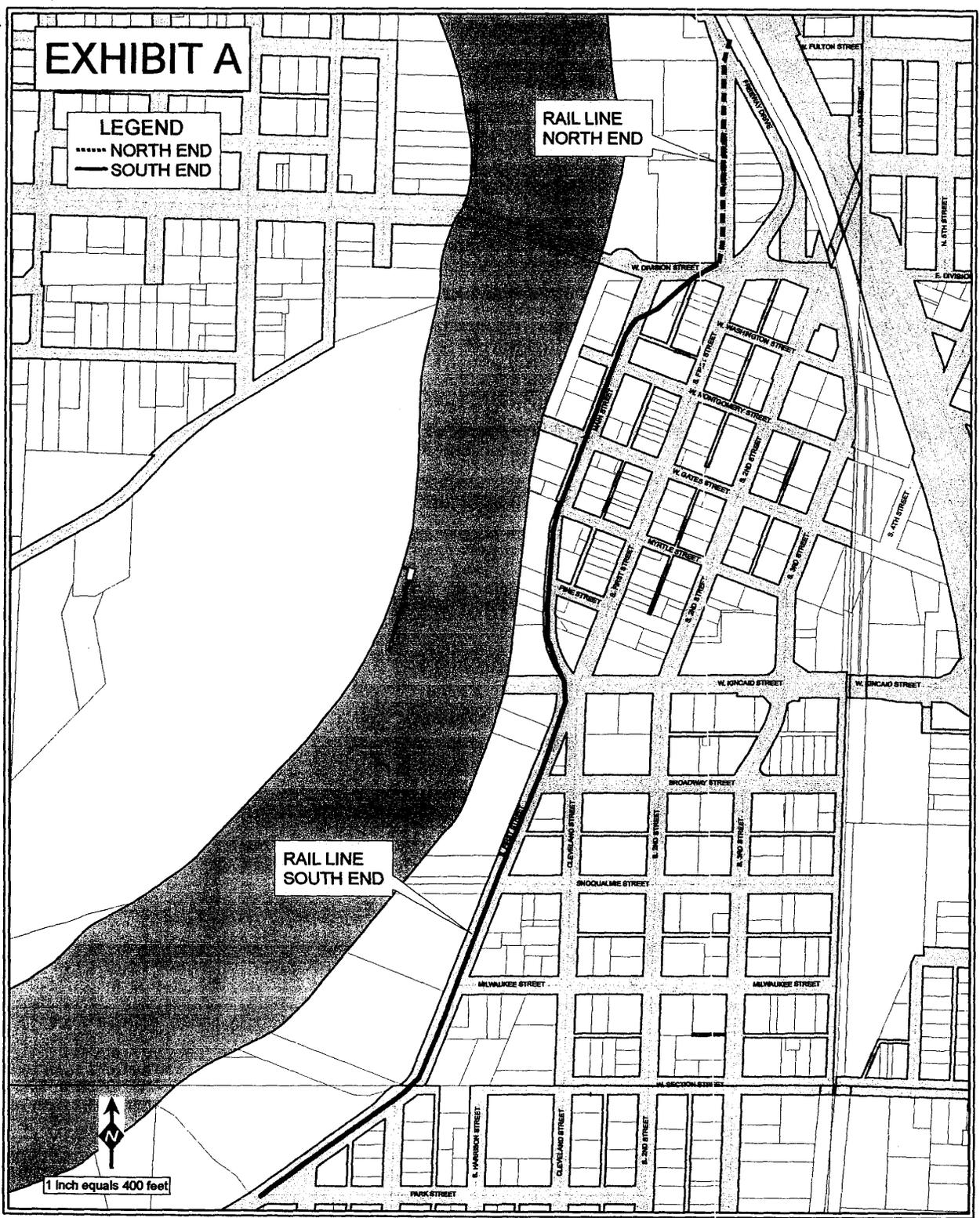
# EXHIBIT A

LEGEND  
..... NORTH END  
—— SOUTH END

RAIL LINE  
NORTH END

RAIL LINE  
SOUTH END

1 Inch equals 400 feet





City of **Mount  
Vernon**

Development Services Department  
*Planning • Engineering • Building*

910 Cleveland Avenue  
P.O. Box 809  
Mount Vernon, WA 98273

Phone (360)336-6214  
FAX (360) 336-6283  
E-Mail: ds@ci.mount-vernon.wa.us  
www.ci.mount-vernon.wa.us

February 22, 2005

Stephen L. Day  
Betts Patterson Mines Attorneys  
One Convention Place  
701 Pike Street, Suite 1400  
Seattle, WA 98101-3927

RECEIVED

FEB 24 2005

BETTS, PATTERSON & MINES, P.S.

Dear Mr. Day

Thank you for the opportunity to review and comment on the proposed abandonment of the Mount Vernon Terminal Railway. The City of Mount Vernon is supportive of this proposal and finds the proposed action to be consistent with existing land use policies and regulations. This action will not impact the City's only historic property, the Lincoln Theatre due to its proximity to the tracks and the proposed abandonment will significantly improve public safety. The removal of the railroad tracks will likely result in a decrease in personal injury claims received by the City consistently from pedestrian, bicycle, and motorcycle events. Additionally the flow of vehicular traffic will be enhanced with the abandonment of the rail line, improving traffic flow and safety.

Thank you again for involving me in the process. If you need any additional information please call me at (360) 336-6263.

Sincerely,

  
Jana Hanson  
Development Services Director





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

February 25, 2005

Stephen Day  
Betts Patterson Mines Attorneys  
One Convention Place  
701 Pike Street Suite 1400  
Seattle, WA 98101

Dear Mr. Day:

Re: Mount Vernon Terminal Railway Company Abandonment of the Mount Vernon,  
Washington Trackage

The Department of Ecology has received your letter dated February 9, 2005, describing the removal of track materials and abandonment of 4,240 feet of railroad line in Mount Vernon, Washington. Abandonment does not require Coastal Zone Management review under Washington's Coastal Zone Management Program (WCZMP) and in this instance the track removal does not trigger any enforceable policies listed in WCZMP. Therefore your project meets WCZMP.

If you have any questions, please call Alice Kelly of my staff at (425) 649-7145.

Sincerely,

A handwritten signature in cursive script that reads "Jeannie Summerhays".

Jeannie Summerhays  
Section Manager  
Shorelands and Environmental Assistance Program

JS:rp

cc: Penny Keys, Ecology







REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
SEATTLE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 3755  
SEATTLE, WASHINGTON 98124-3755

FEB 25 2005

Regulatory Branch

RECEIVED  
MAR 1 2005

Mount Vernon Terminal Railway, LLC  
Mr. George H. Stephenson  
Post Office Box 216  
Clear Lake, WA 98235-0216

BETTS, PATTERSON & MINES, P.S.

Reference: 200500201  
Mount Vernon  
Terminal Railway, LLC

Ladies and Gentlemen:

We have received the Mount Vernon Terminal Railway, LLC request for a jurisdictional determination for railway abandonment activities on property adjacent to the Skagit River, Mount Vernon, Washington. We have reviewed the information you provided to us pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. We have determined that a Department of the Army (DA) permit is not required for your proposed work as described in your application and drawings.

Under Section 10 of the Rivers and Harbors Act of 1899, a Section 10 DA permit is normally required for work or structures in or affecting navigable waters of the U.S. While the Skagit River is a navigable water, because the proposed actions involve no work waterward of the ordinary high water mark, a Section 10 DA permit is not required.

Under Section 404 of the Clean Water Act, a DA permit is normally required for the discharge of dredged or fill material (e.g., fill, excavation, or mechanized land clearing) into waters of the U.S., including wetlands and navigable waters of the U.S. For more information, see the enclosed *Clean Water Act Extracts and Definitions*. The Skagit River is a water of the U.S. However, the information provided in the application indicates that there are no wetlands present on the site and no work will occur in the Skagit River. Because no dredged or fill material will be placed below the ordinary high water line of the Skagit River or in wetlands, a Section 404 DA permit is not required.

A copy of this correspondence with enclosure will be furnished to Mr. Stephen Day of Betts, Patterson, Mines at 701 Pike Street, Suite 1400, Seattle, Washington 98101-3927. While a DA permit is not required, local, state, and other federal requirements may still apply. If you

have any questions about this letter or our regulatory program, please contact Mr. Randel Perry, by telephone at (206) 764-6985 or by email at [Randel.J.Perry@usace.army.mil](mailto:Randel.J.Perry@usace.army.mil).

Sincerely,



for Ann R. Urich  
Chief, North Application Review Section

Enclosure



US Army Corps  
of Engineers ®  
Seattle District

## CLEAN WATER ACT Extracts and Definitions



### EXTRACTS from the Clean Water Act:

#### 1. SECTION 404

(a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator of the Environmental Protection Agency (Administrator), in conjunction with the Secretary of the Army, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impacts of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

#### 2. SECTION 301

This section prohibits the discharge of any pollutant including fill or dredged material except as in compliance with various sections of the Clean Water Act, including Section 404.

#### 3. SECTION 307

The Administrator shall publish a list of toxic pollutants. Each toxic pollutant shall be subject to effluent standards (which may include a prohibition). Under this section it is unlawful to violate any such effluent standards or prohibition.

#### 4. SECTION 309

This section provides that any person who willfully or negligently violates the provisions of this Act may be punished by a fine of not less than \$2,500 or more than \$25,000 per day of violation or by imprisonment for not more than one year or by both. In addition, any person violating this Act may be subject to a civil penalty of not more than \$25,000 per day of violation.

DEFINITIONS regarding the Clean Water Act:

The term "**wetlands**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The Corps of Engineers has the responsibility for determining whether a specific wetland area is within Section 404 jurisdiction.

The term "**adjacent**" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by manmade dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."

The term "**discharge of dredged material**" means the addition, including redeposition, of dredged material, runoff from a contained land or water disposal area, and any addition, including redeposition, of excavated material. These activities include mechanized landclearing, grading, filling in low areas, sidecasting of excavated material from new ditching work, and other placement of excavated material into waters of the United States, including wetlands.

The term "**discharge of fill material**" means the addition of fill material used for the primary effect of replacing any portion of a water of the U.S. with dry land or of changing the bottom elevation of a water of the U.S., including wetlands. The placement of pilings constitutes a discharge of fill material when such placement has or would have the effect of a discharge of fill material.

The term "**ordinary high water mark**" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

Before The  
Surface Transportation Board

AB-771X  
Docket No. ~~AB-171X (Sub No. 1X)~~

Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington

EXHIBIT D

HISTORICAL REPORT

**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**

**In the Matter of Mount Vernon  
Terminal Railway, LLC  
Notice of Intention to Abandon its  
Line of Railroad  
Between MP .369 and MP1.172  
In the City of Mount. Vernon Washington**

**Docket No. AB 771X**

**HISTORICAL REPORT**

**Mount Vernon Terminal Railway, LLC**

The following is submitted to the Surface Transportation Board by Mount Vernon Terminal Railroad Company, L.L.C. (MVT) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding MVT's Notice of Exemption to abandon its line of railroad between MP .369 and MP 1.172 in Mount Vernon, Washington, a total distance of 4,240 feet.

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

A map prepared by the City of Mount Vernon has been provided to the State of Washington Office of Archeology and historic Preservation and one copy (attached as Exhibit A) is provided to the Surface Transportation Board's Section of Environmental Analysis upon filing this report

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

The proposed abandonment is entirely located within the city limits and streets of the City of Mount Vernon, Washington. The City had a 2003 population of 27,060 and is located in Skagit County and is surrounded by agricultural activity. The city owns the underlying property in the subject right of way, the adjacent properties are primarily retail buildings, and the City has long desired to have the tracks removed from city Streets for safety and aesthetic reasons.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;  
(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

Other than track, ties and related railroad equipment, there are no railroad related structures including buildings or bridges. Photographs are attached as Exhibit B.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

The Mount Vernon Terminal Railway, LLC, was formed to meet a public need for railroad transportation service in the city of Mount Vernon, Washington for a number of industries located away from the main line of the Great Northern Railway. The newly formed railroad was operated over two miles of existing Trackage that had originally been part of an intercity passenger and freight railroad known as the Northern Division of the Pacific Northwest Traction Company. The common carrier railroad that was formed in 1939 also helped to preserve competition between Great Northern and Northern Pacific railroads by using trackage rights granted to the MVT by the Puget Sound & Cascade Railway (PS&C), a logging railroad, to run trains between Clear Lake and Mount Vernon, a distance of seven miles.

---

The railroad was originally founded by three men; Frank Arndt, an accountant; Frank McGuire, an engineer; and Hugh Finner, a brakeman with twenty-two years experience on the PS&C. The crews had, at that time, been switching the off-line industries while on their daily trip to dump logs in the Skagit River. Puget Sound Pulp & Timber was the owner at the time, and they decided to abandon the railroad, thereby leaving some of the industries without rail service. These businesses were served by the new railroad, both by the link through the Great Northern to the rest of the country and by an intra-line movement of empty tin cans from the Carnation Company then located on the north end of the line to Darigold who was then at the south end of town.

In 1955, Hugh Finner's grandson, George Stephenson, started working for the railroad in the summers as a "gandy-dancer," a term used to mean track maintenance man. He learned track maintenance by doing the job, gathering from the years of experience of his grandfather. He also learned locomotive maintenance, later graduating to switchman, brakeman, and engineer.

In 1962, George purchased his grandfather's interest and started learning the paper work and management aspect of the industry. The railroad was switching up to ten cars per day then, but proved themselves capable of much more. Twice during the 1960s the railroad spent it's summers handling an additional twenty-five cars of steel pipe per day to aid in the construction of a large natural gas pipeline.

The 1970s saw a decline of industry in Mount Vernon. Darigold was the first to close, as the market for condensed milk was failing. Carnation's closing followed, due to the same lack of market. George saw the need for new industry and since attracted a new feed mill operation, a coal and bulk sales yard, a frozen seafood processor, and a farm implement dealer as shippers on the line.

It was in 1978 that George acquired the remaining stock of the MVT to make him sole owner of a FRA Class III railroad that has never shown a loss in over forty years. The railroad then looked at expanding by getting involved with car leasing with Brae Corporation, an industry leader at that time. The two companies were never able to agree on the utilization numbers and nothing materialize. It seemed only natural to look at the opportunities afforded by the Milwaukee Road's demise in Whatcom County. Here, thought George, were several industries that were going to be left without rail service if someone were not to step in and take over. In 1979 he approached the Burlington Northern, hoping to work out division agreements with them that would mean the MVT could acquire the trackage and maintain the service. Stokley-Van Camp, a major shipper, closed its doors in 1980.

At this time, MVT continues to provide serve ice for a number of customers utilizing the northern portion of its line. The southern portion, lying exclusively in City of Mount Vernon streets, has had little rail traffic and no shipper has originated or received a shipment on this portion of MVT's lines. In an historic agreement, MVT and the City of Mount Vernon have agreed to submit to the formal process for removing the MVT lines from City streets in this southern portion.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

There are no structures other than track and related equipment on the line proposed for abandonment. See response under Number, 4 and , above.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions

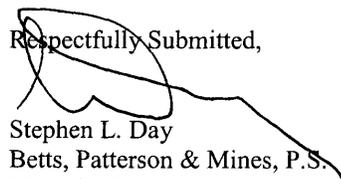
(including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of MVT's knowledge, the proposed abandonment should have no appreciable affect on any known sites or properties listed, or eligible for listing. No historic properties will be affected by the current project. See Exhibit 1, letter from the Washington Office of Archeology and Historic Preservation

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

The property immediately adjacent to the line has been dedicated to public travel as paved City streets for the entire history of the line. The only disturbance on the right of way has been for rail and road construction and maintenance, performed by MVT, the City or contractors for those entities. Otherwise, MVT is unaware of any known prior subsurface disturbance that might affect the recovery of archeological resources.

Respectfully Submitted,



Stephen L. Day  
Betts, Patterson & Mines, P.S.  
701 Pike Street  
Suite 1400  
Seattle, WA 98101-3927  
Phone (206) 292-9988  
Fax (206) 343-7053

Counsel for Mount Vernon Terminal Railroad Company L.L.C.

Date: March 1, 2005.

A

# EXHIBIT A

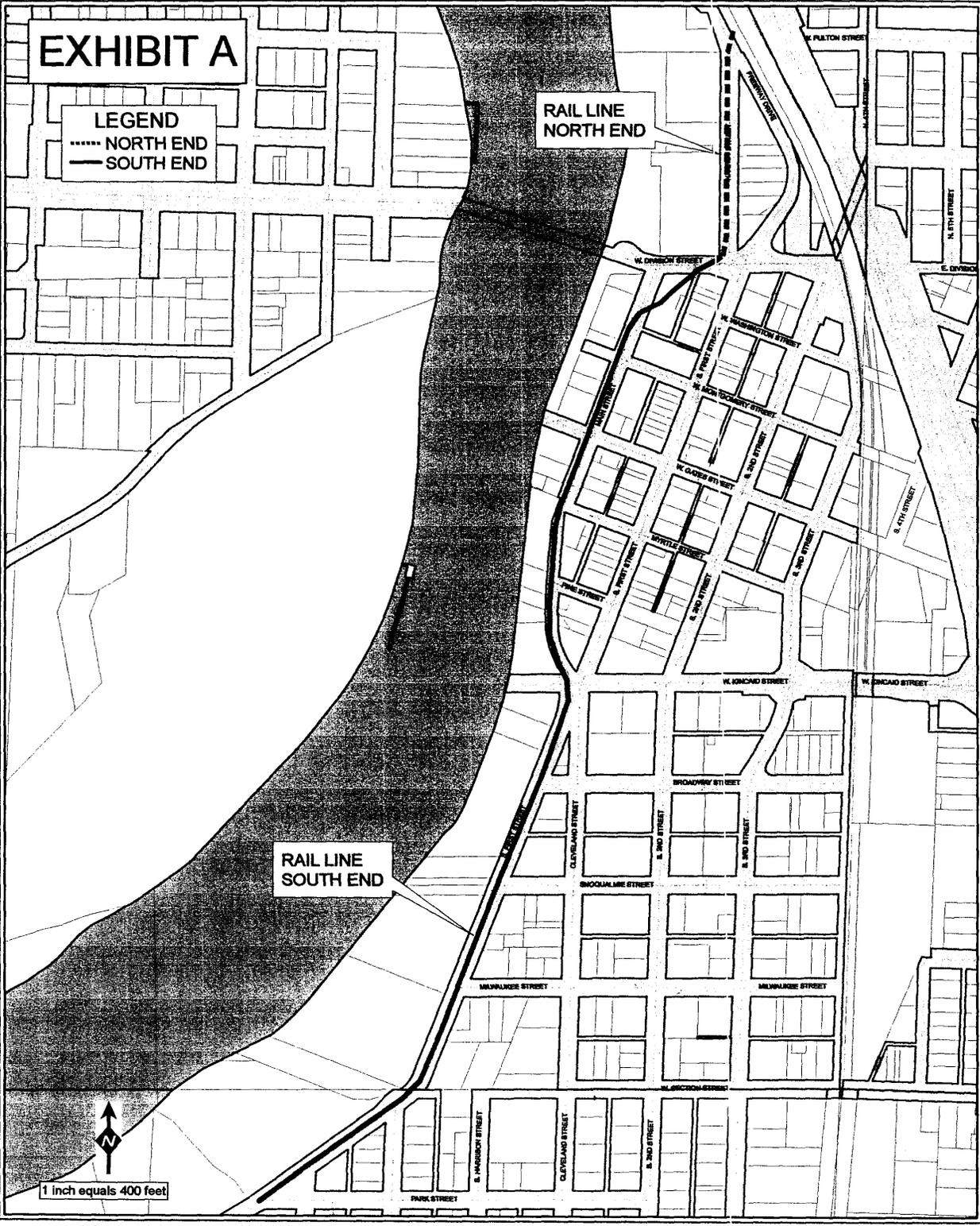
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- SOUTH END

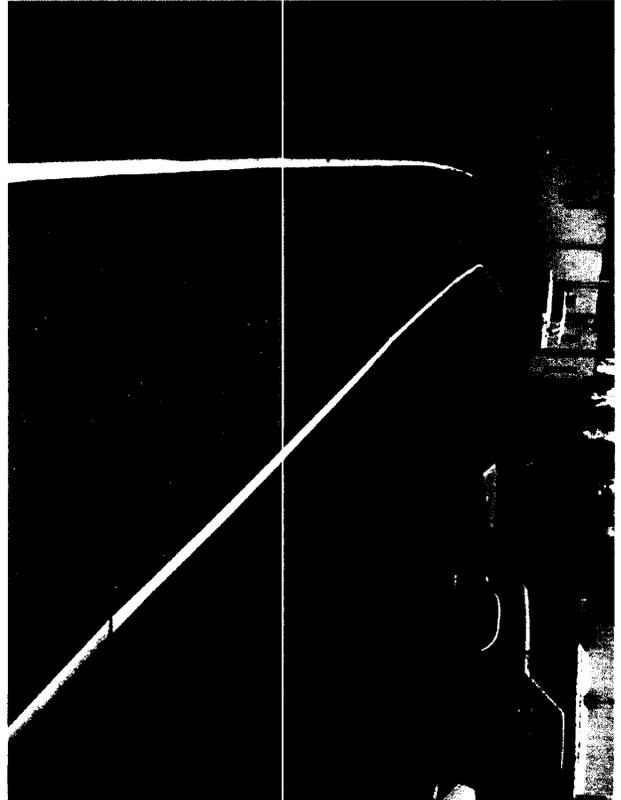
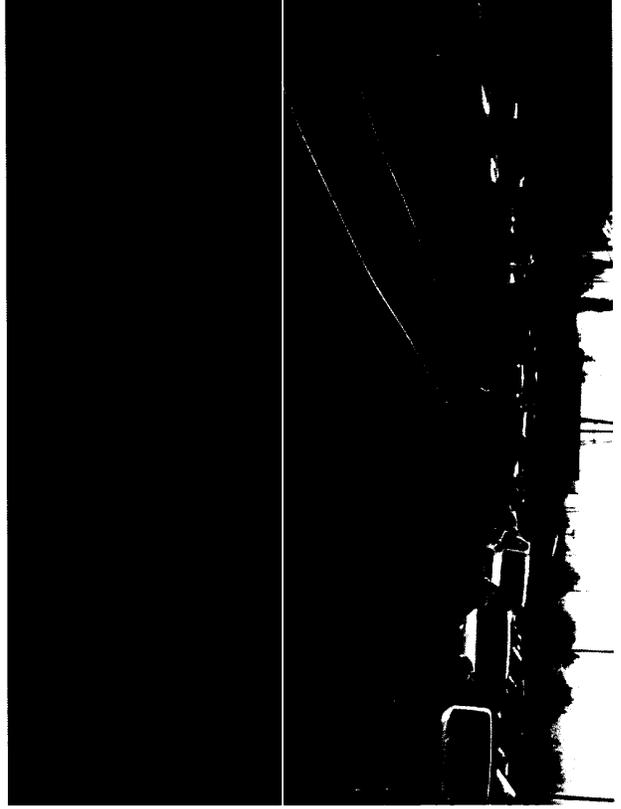
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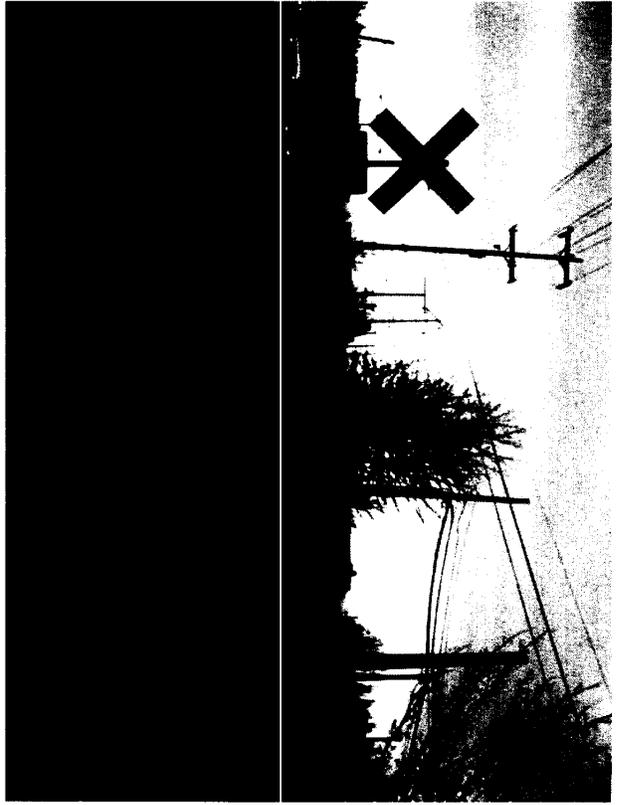
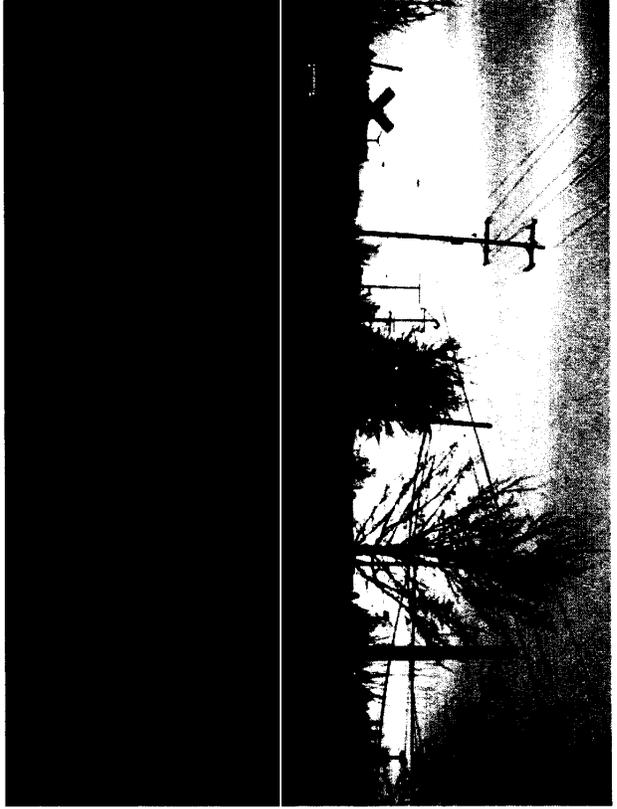
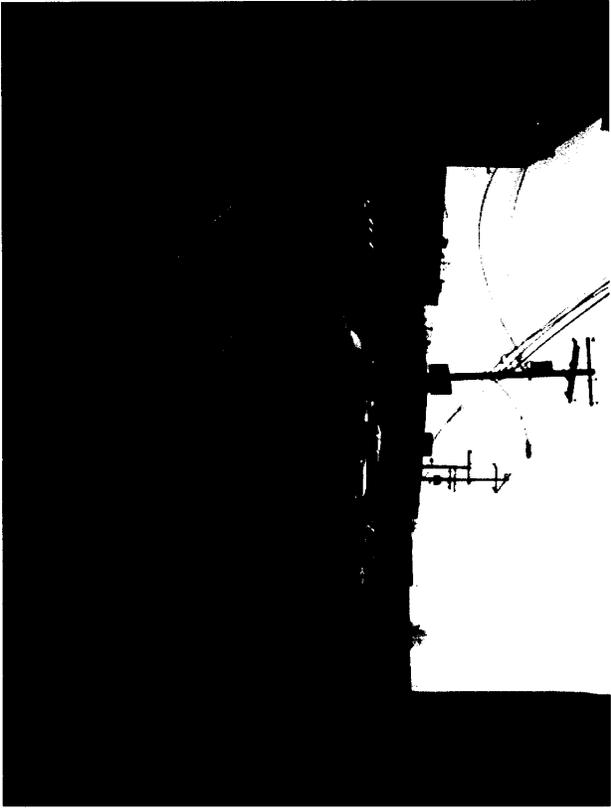
RAIL LINE  
SOUTH END

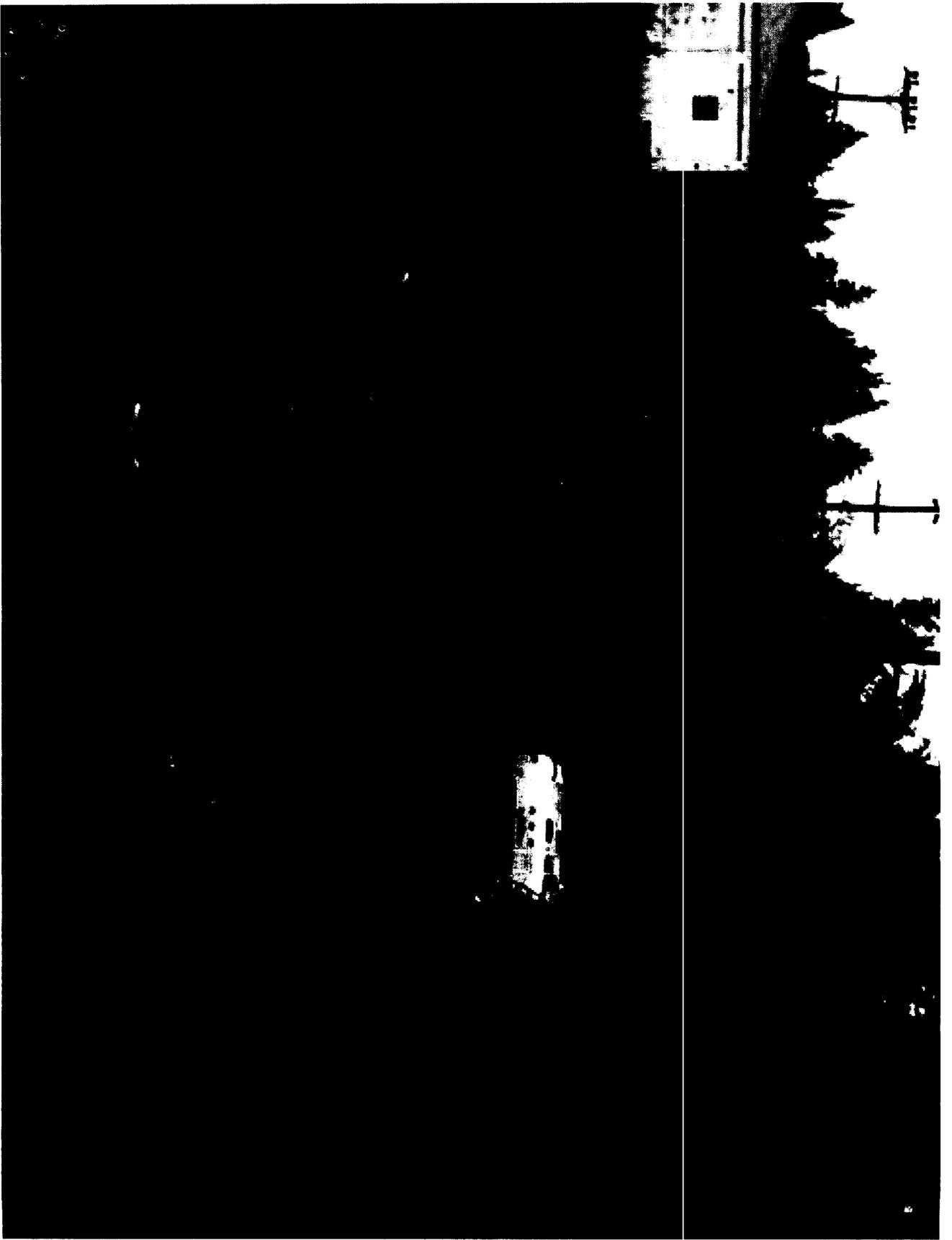
1 inch equals 400 feet



B











STATE OF WASHINGTON

**Office of Archaeology and Historic Preservation**

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501  
(Mailing Address) PO Box 48343 • Olympia, Washington 98504-8343  
(360) 586-3065 Fax Number (360) 586-3067

February 14, 2005

Mr. Stephen Day  
Betts, Patterson, Mines Attorneys  
701 Pike St.  
Suite 1400  
Seattle, WA 98101-3927

In future correspondence please refer to:

Log: 021405-13-STB

Property: Mount Vernon Terminal Railway Abandonment STB Docket AB 771 X

Re: No Historic Properties Affected

Dear Mr. Day:

Thank you for contacting the Washington State Office of Archaeology and Historic Preservation (OAHP). The above referenced project has been reviewed on behalf of the State Historic Preservation Officer under provisions of Section 106 of the National Historic Preservation Act of 1966 (as amended) and 36 CFR Part 800. My review is based upon documentation contained in your communication.

We concur that no historic properties will be affected by the current project as proposed. If additional information on the project becomes available, or if any archaeological resources are uncovered during construction, please halt work in the area of discovery and contact the appropriate Native American Tribes and OAHP for further consultation. As of July 1, 2005, we will also require the use of OAHP Archaeology Site Forms for all archaeological survey projects. You can obtain the Archaeology Site form on our website as well. Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me.

Sincerely,

Russell Holter  
Project Compliance Reviewer  
(360) 586-3533  
russellh@cted.wa.gov

**Before The  
Surface Transportation Board**

\_\_\_\_\_  
*AB-771X*  
Docket No. ~~AB-771(Sub 26-1X)~~

**Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington**

\_\_\_\_\_  
EXHIBIT E  
\_\_\_\_\_

SAMPLE LETTER



**Stephen L. Day**  
eMail: sday@bpmlaw.com

February 9, 2005

Office of Archaeology and Historic Preservation  
Office of Community Development  
State of Washington  
1063 S. Capitol Way, Suite 106  
Olympia, WA 98501

Re: Proposed Railroad Abandonment  
Mount Vernon Terminal Railway, L.L.C. -- AB 771

Dear Sir or Madam:

Mount Vernon Terminal Railway Company proposes to abandon and discontinue service on the southern portion of its rail line, from MP .369 and MP 1.172 in Mount Vernon, Washington, a total distance of 4,240 feet. (See attached map, Exhibit A). The subject tracks are located wholly within the City of Mount Vernon, Washington, streets, and the city owns the underlying real estate. If abandonment is approved, the tracks will be removed (and salvaged) and the streets will be paved for full vehicle traffic use. The subject line is at the stub-end of applicant's line and has not produced any rail traffic in over two years, and there is no overhead traffic.

Enclosed are draft Environmental and Historical Reports and, a set of photographs of the affected line of railroad for your review. There are no physical structures other than the tracks and related materials on the portion of the tracks to be abandoned. The City has long wished to have the tracks removed so that the streets could be paved over. The plan is to salvage the track materials and reuse them on the retained portion of the line as well as possible new line construction.

As part of the abandonment process Mount Vernon Terminal Railway Company must show that the proposed abandonment complies with Section 106 of the National Historic Preservation Act.

253365/030205 1522/65700001

A Professional Service Corporation

**One Convention Place**  
Suite 1400 • 701 Pike Street  
Seattle WA • 98101-3927  
www.bprnlaw.com • 206.292.9988 • fax 206.343.7053

Office of Archeology and Historic Preservation  
March 2, 2005  
Page 2

We request you review the proposed transaction and provide us with a letter outlining your conclusions as to the proposed transaction for inclusion with the final report. You can see that we have drafted proposed language for the roirt concerning required historical compliance. Any edits or suggested additions you have for the reports will be appreciated.

Thank you in advance for your assistance and cooperation.

Very truly yours,

Stephen L. Day

cc: Mr. George Stephenson

**Before The  
Surface Transportation Board**

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**Docket No. AB-771 (Sub. No. 1X)**

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**Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington**

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**EXHIBIT F**

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**CERTIFICATE OF SERVICE  
OF FEBRUARY 10, 2005 LETTER**

## CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2005, notice of the proposed abandonment was deposited in the mail for sending by first-class mail, postage prepaid to the following parties:

State of Washington  
Department of Ecology  
P.O. Box 47600  
Olympia WA 98504-7600

Joseph K. Buesing  
District Manager  
U.S. Department of the Interior  
Bureau of Land Management  
1103 Fancher  
Spokane, WA 99212-1275

Washington State Parks and  
Recreation Commission  
7150 Cleanwater lane  
P.O. Box 42650  
Olympia, WA 98504-2650

Jack Gossett  
U.S. Army Corps of Engineers  
Seattle District  
P.O. Box 3775  
4735 East Marginal Way South  
Seattle, WA 98124-3755

Jeannie Summerhays  
Section Manager  
Shorelands and Environmental  
Assistance Program  
State of Washington  
Department of Ecology  
Northwest Regional Office  
3190 16th Avenue SE  
Bellevue, WA 98008-5452

National Oceanic and  
Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

Charles Natsuhara  
Area Resource Soil Scientist  
Natural Resources Conservation  
Service  
1011 East Main, Suite 106  
Puyallup, WA 98372

United States Department  
of the Interior  
Fish and Wildlife Service  
Western Washington Fish and  
Wildlife Office  
510 Desmond Drive SE, Ste 102  
Lacey, WA 98503

Environmental Protection  
Agency  
1200 Sixth Avenue  
Seattle, WA 98101

Washington State Transportation  
Commission  
P.O. Box 47308  
Olympia, WA 98504

USDA Natural Resource  
Conservation Service  
West 316 Boone Ave., Ste 450  
Spokane, WA 99201

Shore Lands and Coastal Zone  
Management Program  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

State of Washington  
Department of Fish and Wildlife  
600 Capital Way N  
Olympia, WA 98501-1091

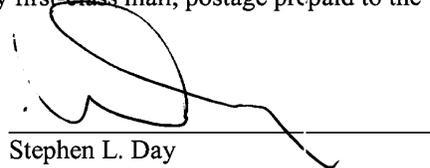
Kenneth M. Uznanski  
Manager, Rail Branch  
Washington Dept. of  
Transportation  
P.O. Box 47300  
310 Maple Park  
Olympia, WA 98504-7300

Office of Archaeology and  
Historic Preservation  
Office of Community  
Development  
State of Washington  
1063 S. Capitol Way, Suite 106  
Olympia, WA 98501

National Park Service  
Rivers, Trails & Conservation  
Assistance Program  
1849 C St., NW, Org. Code 2220  
Washington, D.C. 20240

USDA Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0003

I hereby certify that on February 10, 2005, Environmental Report, Historical Report and Notice of Exemption was sent by first-class mail, postage prepaid to the parties identified above.



Stephen L. Day

**Before The  
Surface Transportation Board**

Docket No. ~~AB 771 (Sub. No. 1A)~~  
*AB 771X*

**Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington**

EXHIBIT G

CERTIFICATE OF SERVICE  
OF NOTICE OF EXEMPTION

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2005, Notice of Exemption was deposited in the mail for sending by first-class mail, postage prepaid to the following parties:

Director  
Surface Deployment Distribution  
Command  
Transportation Engineering Agency  
Attn: SDTE-SA (Railroads for  
National Defense)  
720 Thimble Shoals Blvd., Ste 130  
Newport News, VA 23606-4537

Washington State Transportation  
Commission  
P.O. Box 47308  
Olympia, WA 98504

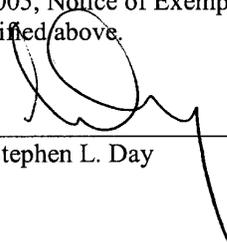
USDA Natural Resource  
Conservation Service  
West 316 Boone Ave., Ste 450  
Spokane, WA 99201

Kenneth M. Uznanski  
Manager, Rail Branch  
Washington Dept. of Transportation  
P.O. Box 47300  
310 Maple Park  
Olympia, WA 98504-7300

National Park Service  
Rivers, Trails & Conservation  
Assistance Program  
1849 C St., NW, Org. Code 2220  
Washington, D.C. 20240

USDA Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0003

I hereby certify that on February 10, 2005, Notice of Exemption was sent by first-class mail, postage prepaid to the parties identified above.

  
\_\_\_\_\_  
Stephen L. Day

Before The  
Surface Transportation Board

AB-771X  
Docket No. ~~AB-771 (Sub No. 1A)~~



**Mount Vernon Terminal Railway Company L.L.C - - Abandonment  
Exemption - - The City of Mount Vernon, Washington**

EXHIBIT H

NOTICE OF ABANDONMENT  
PUBLISHED IN THE SKAGIT VALLEY HERALD

# Skagit Valley Herald

Published February 7, 2006 SVH6567

## NOTICE OF OUT-OF-SERVICE ABANDONMENT EXEMPTIONS NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE RAIL SERVICE

Mount Vernon Terminal Railroad Company, L.L.C. gives notice that on or about February 24, 2005, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F - Exempt Abandonments permitting the abandonment and discontinuance of service on a 4,240 foot line of railroad between railroad milepost 369, wholly within the City of Mount Vernon, Washington which traverses through the United States Postal Service ZIP Code 98273 and railroad milepost 1.172, in Skagit County, Washington. The proceeding will be docketed as No. AB 771.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W. Washington, DC 20423-0001 or by calling that office at 202-565-1545.

108A. through the United States Postal Service ZIP Code 98273 and railroad milepost 1.172, in Skagit County, Washington. The proceeding will be docketed as No. AB 771.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W. Washington, DC 20423-0001 or by calling that office at 202-565-1545.

Appropriate offers of financial assistance to continue rail service can be filed with the Board.

Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, NW, Washington, DC 20423. See 49 CFR 1104.12(a). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at (202) 565-1594. Copies of any comments or requests for conditions should be served on the applicant's representative Stephen L. Day, Betts Patterson Mines, Suite 1400, 701 Pike Street, Seattle, WA 98101-3927, telephone 206-292-9988.

Published February 7, 2006 SVH6568

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