
Executive Summary – Port of Columbia Rail Line Sale Evaluation

The Port of Columbia Board of Commissioners is considering the sale of its 37-mile publicly owned short line rail corridor, currently leased to Columbia Walla Walla Railroad (CWW), a subsidiary of Columbia Rail. Originally gifted to the Port by Union Pacific in 1996, the line supports local agriculture, economic development, and freight transportation. CWW, which has operated the line since 2016, has expressed interest in purchasing the rail corridor but has offered significantly less than the appraised value of \$13.8 million—proposing \$305,000–\$705,000 (2–5% of full value).

The line is currently used for agricultural freight, car storage, and occasional community events. Its utility for future public benefit includes industrial recruitment, tourism potential, broadband and sewer infrastructure placement, and as a transportation corridor that would be cost-prohibitive to replicate. The Port has received some of its state and federal funding for rail improvements only because it owns the line, and sale to a private entity may forfeit eligibility for some of those programs.

CWW states it will cease operations if the line is not sold to them and has not submitted lease renewal notice. The Port has been contacted by other parties interested in a competitive bid process. If the Port chooses to sell, it must follow a legally defined surplus and valuation process. Risks of undervalued sale include constitutional violations (gifting of public funds) and loss of public benefit control.

The Port Commission must weigh the short-term financial benefit of sale against long-term impacts to regional infrastructure, economic development tools, and public access to rail-related funding and land use.

At the request of the Port Commission, Port staff, with the assistance of the Port attorney, Columbia Walla Walla Railroad, and consultants have gathered information on the following topics that were identified by the Port Commission at a Commission workshop held February 5, 2025 and approved at the March 12, 2025 regular Commission meeting.

Background on requested sale of Port's rail line to Columbia Rail:

The Port of Columbia owns 37 miles of railroad track and right of way, stretching from the east end of the City of Dayton near the Seneca seed receiving station to the north side of Veterans Memorial Golf Course in Walla Walla County. The line is currently leased to the Columbia Walla Walla Railroad (CWW), a subsidiary of Columbia Rail. CWW has asked to purchase the rail line for the second time.

The rail line was gifted to the Port by Union Pacific (UP) in 1996. (More information on this donation is included in the *Donation to the Port of Columbia* section on page 3.)

The first time CWW asked to purchase the line was in 2017. The Port Commission at that time opted not to act on the request as they did not desire to sell the line.

The second request to purchase the line came in April of 2022. None of the commissioners from 2017 (Earle Marvin, Sean Milligan, and Shawn Brown) were on the board when the second request was made.

In 2022, the new Commission participated in a series of workshops led by Port Staff that were designed to share current information about Port assets, operations, and finances in a more detailed way than could have been accomplished during a regular commission meeting. A workshop on the railroad was included. At the commission's direction, and in response to the second request to purchase the rail line, staff began researching appraisal consultants in late 2022.

In 2023, the Commission contracted with an outside consulting firm to review the Port's comprehensive plan, clarify the goals of the new Port Commission, and align the Port's work with those goals. Per statute, a port district's comprehensive plan, also known as a Comprehensive Scheme of Harbor Improvements, is a long-range planning document that outlines a port's goals, policies, and development strategies for its facilities and operations. It serves as a roadmap for future investments, guiding decisions related to land use, infrastructure, and economic development within the port district. See Attachment A, Recommendations for the Comprehensive Plan Update, and Attachment B, the current Comp Plan adopted in 2021.

In November of 2023, Port staff received commission approval to contract with a consultant to conduct an appraisal of the rail line. The consultant was recommended by Columbia Rail. Work began in January of 2024. About six months into the process, the consultant became very ill and was no longer able to work. As the consultant was a one-man organization, there

were no backup personnel to finish the appraisal. There was no cost to the Port for this incomplete appraisal.

In August of 2024, two firms - RL Banks and Associates and Gary Anglemeyer & Associates, LLC - were retained by the Port to complete the appraisal at a cost of \$44,050. RL Banks was also recommended by Columbia Rail.

This appraisal was completed in December of 2024 and presented to the commission on December 18. A copy of the appraisal and the presentation are attached to this report in Attachment C. The appraisal in summary:



PRESENTATION TO
THE PORT OF COLUMBIA

SUMMARY OF VALUATION AND COST RESULTS

NLV is the remainder after liquidation expenses were deducted from Gross Liquidation Value (GLV). This is a reasonable expectation of what a seller (acting as its own broker) could receive were the line liquidated in December 2024.

Summary of Valuation and Cost Results

Item	Value / Cost
Net Liquidation Value of Track (Track Removed)	\$2,857,000
Net Liquidation Value of Track (Track In Place)	\$5,326,400
Underlying Real Estate Proceeds (Net Liquidation Value)	\$2,510,000
Underlying Real Estate Cost (Corridor Value)	\$8,398,000
Total PROCEEDS (NLV Real Estate + Track Removed)	\$5,367,000
Total PROCEEDS (NLV Real Estate + Track In Place)	\$7,836,400
Total COST (Corridor Value + Track Removed*)	\$11,255,000
Total COST (Corridor Value + Track In Place*)	\$13,724,400

*Cost is underestimated because it excludes the cost of reconstituting a railroad from scratch.

Note: Values may not appear to add due to rounding

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R.L. BANKS & ASSOCIATES, INC.

Per Port Policy #6 (Attachment D) the entity that requested purchase of the line, Columbia Rail, paid 50% of the appraisal costs.

Sources:

Attachment A - Recommendations for the Comprehensive Plan Update

Attachment B - Comp Plan adopted in 2021

Attachment C – RL Banks Appraisal, Presentation, and Task 5 Responses

Attachment D – Port Policy #6-2025 – Sale of Real Property

At the request of the Port Commission, the following information was gathered by Port staff:

1. What is the history of the line? How did it come to the Port?

The Columbia Walla Walla Rail Line, formerly known as the Blue Mountain Railroad, has a rich history dating back to the 19th century. Here's an overview of its development:

Early Beginnings:

- **1868:** Dr. Dorsey S. Baker, a Walla Walla physician, incorporated the Walla Walla & Columbia River Railroad Company to connect Walla Walla with the Columbia River port at Wallula.
- **1872-1875:** Construction began in 1872, and by 1875, a 32-mile narrow-gauge line using wooden rails with strap iron was completed to Walla Walla.

Expansion and Ownership Changes:

- **1879:** The Oregon Steam Navigation Company acquired a controlling interest and extended the line south to Blue Mountain Station in Oregon.
- **1880-1881:** Henry Villard's Oregon Railway and Navigation Company purchased the line and converted it to standard gauge to integrate with the Northern Pacific Railroad.
- **1899:** Union Pacific acquired the Oregon Railway and Navigation Company, bringing the line under its control.

Modern Operations:

- **1996:** Union Pacific (UP) donated the 37-mile segment from Walla Walla to Dayton to the Port of Columbia.
- **Present:** Columbia Rail operates the line as the Columbia Walla Walla Railway (CWW), providing freight services over 83 miles, including connections from Wallula to Walla Walla and Dayton.

Historical Significance:

- The line played a crucial role in transporting wheat and other agricultural products from the Walla Walla Valley to broader markets via the Columbia River.

- The "Blue Mountain" locomotive, built in 1878, is preserved at the Fort Walla Walla Museum and is recognized as the oldest surviving locomotive in Washington State.

Donation to the Port of Columbia:

The 37-mile rail line- stretching from the east side of the City of Dayton, near the Seneca seed receiving facility, to the north side of Veteran's Memorial Golf Course in Walla Walla County - was donated to the Port of Columbia by Union Pacific in 1996. There was a big flood that year, and parts of the line were damaged severely near Lewis & Clark Trail State Park. Because of declining revenues, Union Pacific was reluctant to repair the line using their own funds. Without repair, the line was inoperable. The idea of public ownership was explored as a way to receive public funds for repair.

Even though revenues had declined on the line, the Green Giant asparagus cannery was still operating in Dayton. The cannery shipped approximately 1,000,000 cans of asparagus per year out of the community on the rail line. Asparagus was a tender product that handled rail shipping much better than truck shipping. The Port of Columbia believed it was important to save the line, and the Port of Walla Walla did not express interest in taking ownership.

The reasons given in Port Commission meeting minutes and the resolution approving acceptance of the donation in 1996 (Attachment E) were:

- If the line is in public hands, it can receive public funds for repair.
- If this offer is not accepted, there is a possibility of a closure of the rail line to Dayton.
- A rail line is very important to local businesses.
- The mission of the Port of Columbia is to promote economic development in Dayton and Columbia County.

Once the line became Port of Columbia property, the Port and its line operator applied for and received State of Washington funds to be used to repair the line from the flood damage. Rail shipping resumed after repairs were made.

The Port inherited the existing rail operator lease from UP along with the line donation: a 20-year lease with a 20-year renewal with WATCO Companies. WATCO continued to operate the line until 2015.

WATCO's annual bridge inspection in 2013 showed 8 bridges that needed repair. While they were not badly damaged enough to stop use of the line, it would require advanced

inspection at each bridge before a train could cross. WATCO embargoed (closed) the line without notifying the Port.

After the Port became aware of the closure, Port staff worked with WATCO to apply to the Washington Station Freight Rail Assistance Program (FRAP) for bridge repair funds. When discussing what to apply for, WATCO insisted the line needed more work than just bridge repair, but the grant program could not award enough funds to do the work WATCO wanted. The Port suggested applying for a smaller amount to cover bridge repair so the line could be reopened. The WATCO track crew was on board with the idea, but upper management would not agree to this approach.

Paul Didelius of Columbia Rail (Frontier Rail at the time) had contacted the Port over the years and expressed interest in operating this line. When WATCO proved to be unwilling to apply for the smaller amount of funds necessary to reopen the rail line, the Port worked with Mr. Didelius and WSDOT to broker a deal: If FRAP funds were awarded to repair the 8 bridges and their approaches, Frontier Rail would take over as the rail operator of the Port's line. WATCO was in favor of giving up their lease and the deal was done. Frontier Rail took over operation of the line in 2016 and made the necessary repairs to the bridges with WSDOT and Port funds.

Sources:

Attachment E, Port of Columbia Meeting Minutes and Resolutions re 1996 Donation
Port staff

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[portofcolumbia.org+3up.com+3union-bulletin.com+3en.wikipedia.org+8portofcolumbia.org+8up.com+8](#)

2. How is the railroad currently being used?

The Port of Columbia leases the rail line and its right of way to Columbia Rail for \$4,000 per year. The Port charges CWW a low lease rate and allows them to keep the revenue from the Right of Way leases in an effort to help the rail business remain financially viable. The prior operator, WATCO Companies, had a 20-year lease with a 20-year renewal option. In lieu of

lease payment, WATCO did not collect any revenue from right of way leases – the Port kept that revenue, which was about \$10,000 per year. Columbia Rail was offered a 20-year lease, instead opting for 3-year terms. Many short line operators prefer longer leases to give the rail company time to recoup capital investments made on a leased line. The current lease with CWW expires December 31, 2025. CWW was required to give 180 days’ notice to renew the lease. As of July 30, 2025, no notice has been received.

SHIPPING: Columbia Rail is currently shipping cars of seed for Seneca Foods and Bayer/Monsanto out of Dayton (around 80 cars per year). These cars are transferred to the UP or Burlington Northern Santa Fe (BNSF) class 1 railroads at Wallula. They also ship some specialty market grains out of Prescott for Northwest Grain Growers (unknown number of cars). In response to Port staff’s request for information, Columbia Rail says they do not maintain specific destination information on either of these customers.

The shipping numbers for the last four years as reported in Columbia Rail’s annual performance reports (Attachment H) to the Port:

- 2021 – 115 cars
- 2022 – 83 cars
- 2023 – 93 cars
- 2024 – 205 cars

At one point in the last 5 years, rock was being shipped out of Columbia County for Konen’s, but that has ceased.

Columbia Rail has indicated that their inability to use a portion of UP’s main line track at Wallula to deliver grain to the barge terminals on the Columbia River has greatly diminished the number of grain cars being shipped and has hurt the financial viability of the line. Columbia Rail states that they are able to interchange cars with UP or BNSF at Wallula on their mainline as long as UP sees it as beneficial to their own interests, but that UP has “reneged” on their written assurances from 2018/2019 that they would provide direct commercial access to the Northwest Grain Growers (NWGG) facility, which is located 1.5 miles downstream from the Columbia Rail/UP junction at Wallula. It is that lack of access to the NWGG facility at Wallula that has reduced the number of cars being used to ship grain.

Columbia Rail says that NWGG has consistently indicated they have around 1,000 railcars per year (equivalent of about 4,000 truckloads currently using Highways 12 and 124) they would put on the rail as soon as CWW is allowed to reach NWGG’s Wallula facility (from

Prescott and Milton-Freewater). Whether or not CWW will ever regain access to these terminals is not clear.

The Washington State Department of Transportation (WSDOT) has stated that it is a lack of Positive Train Control on Columbia Rail's system limiting their access to the UP main line. Positive Train Control (PTC) is an advanced system designed to enhance railroad safety by preventing train-to-train collisions, over-speed derailments, unauthorized incursions into work zones, and movements through improperly aligned switches. The concept of PTC has been around for over a century, but the specific mandate for PTC implementation in the United States, as we know it today, was established in 2008 with the Rail Safety Improvement Act. Many short lines are exempt from the initial mandate, but are impacted by this regulation when operating on lines owned by other railroads that require it (e.g. UP and BNSF). It is very expensive to implement and maintain. Columbia Rail has not stated that the lack of PTC is affecting their access to the Wallula grain terminals, but WSDOT says that all short line rail operators have been affected.

WATCO, the former operator of both the Port-owned line and the UP-owned line between Dayton and Walulla, was able to access the grain terminals using the 1.5 miles of UP line. This was prior to the PTC 2008 mandate.

CAR STORAGE: Columbia Rail uses sidings and spurs for storage of rail cars. Columbia Rail states that the sidetracks stay fairly full with a mix of short stay and higher turnover business. They also state that they have prioritized sidetrack storage only, as opposed to large-scale bulk storage, which would prevent access to shipping to and from Dayton. Paul and his manager, Stuart Smith, have stated that car storage is the only way they make money on this line.

PROPERTY LEASES & CROSSING AGREEMENTS

There is a significant amount of land adjacent to the rail line owned by the Port. The right of way is 100 feet wide in most places. Farmers lease the land to grow crops, which is helpful to both farmer and Port as it provides the farmer with more land for growing crops, and helps the rail operator with weed control. The Port turned over management of the right of way to Columbia Rail during our most recent lease negotiation in an effort to improve Columbia Rail's financial viability. This allows them to keep 100% of the lease revenue from right of way agreements, which was about \$10,000 when we signed the agreement.

Columbia Rail has contracted with a railroad right of way management firm called RAMS, Inc. This company takes care of farm leases, right of way use requests (like the addition of a power line crossing, a road crossing, etc.) on behalf of Columbia Rail and charges a fee for this work. They provide this service to many railroads, both public and private, across the country. RAMS, Inc. has expressed interest in assisting the Port with right of way management if we were to resume management of the right of way.

COMMUNITY EVENTS

In the last few years, Columbia Rail has offered to pull the privately-owned Abraham Lincoln Pullman Car, in cooperation with its owner, to Dayton for community events. This is a nice addition to our activities during special events.

Prior to Columbia Rail taking over operations, Speeder Car rides used to be an annual event during All Wheels Weekend. Private speeder car owners would trailer their cars to Dayton, spend a day riding the rails, and offer rides during our event(s). Columbia Rail has expressed concern over the liability of hosting speeder car rides on the line and refused to allow a group of Speeders to come to Dayton in 2024 for this reason.

The Depot offers pump car rides during All Wheels weekend as an alternative. This is a small hand-pump car owned by the Depot that uses 2 blocks of downtown track area for 5 hours during the event. Columbia Rail has required the Port to provide written acceptance of liability on that section of the track during the pump car rides, which we have done.

Sources:

Attachment F – CWW Lease and Extension

Attachment G - Columbia Rail's full answers to questions posed by the Port Commission

Attachment H - CWW Performance Reports

Emails from Paul Didelius, owner of Columbia Rail

Sept 11, 2024 Port Commission Meeting Minutes

3. What are potential and future benefits and uses of the railroad and right of way by the Port?

FREIGHT: Continued freight shipment into and out of the community is a benefit to the Port and to the community. In addition to providing value to existing shippers (i.e. Seneca says that shipping by truck is more expensive for them, and it increases maintenance needs on

roads and highways), it is a useful tool for attracting new industries to the community. Currently, the Port is constructing a malt processing facility for a private business that would like to use the rail line for the movement of supplies in and goods out.

The breaching of the Snake River Dams would eliminate the shipment of grain out of the community via barge at Lyons Ferry. Shipment would shift to truck and/or rail, and our rail line would potentially receive rehabilitation funds as mitigation for the dam breaching. Shipping by rail instead of trucking grain would be more cost effective and would keep our roads from being damaged by heavy truck traffic.

TOURISM: The Port was recently approached by Walla Walla tourism stakeholders with the idea of a tourism train between Walla Walla and Dayton. This is not the first time we've heard this idea – it has been percolating for years. Stakeholders asked what the line needs in the form of improvements to make this idea happen, and offered to partner with the Port to make improvements to a point at which passenger trains would be allowed.

UTILITY CORRIDOR: The Port-owned right of way is a unique and valuable resource for the location of public utilities.

Example 1: The City of Dayton has signed an agreement with the Port to use the Port's railroad right of way for extension of a sewer line to a new wastewater treatment facility located several miles to the west of Dayton. Having adequate sewer treatment is something that impacts every citizen in the City of Dayton and many in the urban growth area of the County. Improving and maintaining public utilities is an essential economic development component. In a recent negotiation with a Port industrial business tenant on a new lease, the business asked for the right to terminate if the City's treatment plant was unable to continue to treat their waste.

Example 2: The Port has placed 6 miles of fiber optic cable in the railroad right of way to bring broadband to 60 rural customers – including residences, farms, a state park, and a cell tower.

The railroad right of way has been a unique asset and valuable tool for the Port's economic development work in the community.

TRANSPORTATION CORRIDOR: Transportation corridors are a valuable public asset. If the Port were to establish a corridor similar to the rail corridor it currently owns, it would be expensive, if even possible. Consider:

i. Land Acquisition Challenges

- 37 miles x 100 feet = 448 acres (not including larger adjacent parcels)
- Corridor value (not including tracks) in appraisal provided by RL Banks and Associates was \$8.4 million.
- Complications of re-establishing corridor: eminent domain might be required, adding time, legal expenses, land cost and political resistance
- Environmental impact studies, cultural/archeological surveys, which would be complex in the Touchet and Walla Walla River Valleys, endangered species, and water crossings (especially near Touchet River and its tributaries).

ii. Design and Engineering Costs

- Initial studies: \$1M–\$2M for environmental review, engineering, and public process (NEPA, SEPA).
- ROW preparation: Clearing, grading, drainage control, and utilities relocation may cost \$200,000–\$500,000 per mile.
- Total: \$7.4M–\$18.5M.

iii. Corridor Type Cost Variation

Corridor Use Type	Cost per Mile (Typical 2025 Range)	Total for 37 Miles
Gravel road (basic)	\$1M–\$2M	\$37M–\$74M
2-lane paved road	\$4M–\$10M	\$148M–\$370M
Rail line (short line)	\$2M–\$5M	\$74M–\$185M
Light rail/commuter rail	\$20M–\$50M	\$740M–\$1.85B
Multi-use trail (asphalt)	\$200k–\$500k	\$7.4M–\$18.5M

iv. Regulatory, Legal, & Political Considerations

- Permitting from:
 - Washington State Department of Ecology
 - Army Corps of Engineers (for water crossings)
 - U.S. Fish and Wildlife Service
- Tribal consultation (CTUIR and others)
- Public opposition from landowners and environmental groups would be highly likely.

a. How are potential and future benefits and uses of the railroad and right of way by the Port impacted by the sale of the rail and/or right of way?

If the rail line is sold, the Port will lose the ability to control any future uses of the rail line and the right of way. There will be no guardrails on what fees residents and utilities are charged for use of the right of way (e.g. farmers, power companies, residents with rail crossings, etc.)

With the recent media coverage, the Port has received several inquiries from parties interested in finding out more about line operations, both for freight and tourism purposes, and/or if they can submit a bid to purchase the line. It has been many years since a new operator was considered for the Port's rail. Should CWW choose to stop operating the Port's short line, Port staff are ready to follow up with these operator leads.

Sources:

<https://www.landboss.net/post/is-washington-land-a-good-investment?>

<https://www.angi.com/articles/how-much-cost-build-road-property>

<https://www.substrata.us/blog/low-cost-rural-road-construction>

Port Staff

Attachment C – RL Banks Railroad Appraisal, Presentation, and Task 5 Responses

4. What benefit does the Port derive from selling?

The Port would receive money, which could be used to further other Port economic development goals. However, if a claw back clause or first-right-of-refusal clause were placed as a condition of the sale of the short line, it would be risky for the Port to spend the sale proceeds as they would not be available to exercise that right.

The Port could save staff time as it would no longer have to consider right of way use requests, manage maintenance and improvement projects, or supervise our lessee. Note: staff time on average is 1 hour per month. The exceptions are large projects, which take more time, but they don't happen very often. A good example is the sewer line extension agreement with the City of Dayton. This action took approximately 40 hours of staff time plus some of the Port attorney's time. These kinds of actions are limited but do take more time than day-to-day management.

5. What is CWW's vision for the future uses of the railroad and right of way? How is this impacted by sale/no sale?

Begin unedited response from Columbia Rail:

“Note: CWW has indicated that upon conclusion of the current lease, it does not expect to renew lease or continue operating to Dayton under a lease structure with POC.

- 1. Generally (to the extent Columbia Rail continues to operate the RR), current uses of RR and ROW expected to continue in similar fashion into the future*
- 2. Ongoing use as a primarily freight branch line: This works under SALE scenario - but possibly becoming problematic for current shippers under NO SALE scenario*
- 3. Future use of line for charter or special event passenger / excursion train operations: Waitsburg to Dayton updates will soon be completed to a level that could legally permit operation of passenger trains at a maximum speed of 15 mph. Columbia Rail does not currently have ideal coach equipment for market-appropriate opportunities here, but sourcing of same is a current priority (as subject to capital funding). Has a legit future (within 1-3 years) under SALE scenario.”*

End unedited response from Columbia Rail:

6. What is CWW's history with operation of this rail line?

- The first 3-year lease with CWW Railroad, LLC took effect on June 8, 2016.
- The second 3-year lease with CWW Railroad, LLC took effect on January 1, 2020.
- The 3-year renewal option with CWW Railroad, LLC took effect on January 1, 2023.

The lease (Attachment G) requires CWW to notify the Port of its intent to renew the lease 180 days prior to expiration, which would have been June 30, 2025. They did not do so. The owner of Columbia Rail has indicated that if the Port does not sell the line to them, they will no longer lease the line from us or provide shipping services.

a. What improvements/maintenance have been performed by CWW while they have been the tenant?

Please see Attachment H – CWW Performance Reports for the maintenance reported annually.

Begin unedited response from CWW:

“Columbia Rail estimates that it has spent over \$1 million on track maintenance, and that those costs have not been covered by revenue. Below is a list of improvements they provided via email:

- *Columbia Rail repaired several impassable locations between Bolles and Waitsburg to provide for restoration of freight rail service to Dayton in 2017 (after previous lessee had closed the line above Prescott around 2014)*
- *Restoration of service allowed Seneca to load directly into railcars from their shipping department in Dayton - saving approximately 37,000 truck-miles annually (to previously used railhead in Pasco, WA)*
- *From Walla Walla to Dayton, Columbia has improved overall tie condition, road crossing conditions, bridge conditions, drainage upkeep, and brush / weed management conditions*
- *Columbia has brought the railroad back into regular freight use, and has restored the relevance, connection of the railroad to the community 'scene' (events, holidays, etc.)*
- *Columbia Rail restored to operation POC line (and a the non-POC line beyond Walla Walla to Wallula), after bad flooding in Feb 2020 caused numerous severe washouts requiring extensive repairs and rock purchases - doing so on its own dollar (without State or Fed assistance)*
- *Columbia Rail staff have expended considerable time and resources on various public meetings and planning related to the Port's Touchet Valley Trail effort*
- *Columbia also contributed considerable funds to the Port's appraisal of the rail line (providing to the Port a data point of what the railroad might be worth, in the right market / geography, to the right buyer).”*

End Columbia Rail Unedited Response

Please note that some of the above-mentioned improvements were made possible due to the partnership between CWW and Port because many grants used for the improvements

are only available to publicly owned rail lines. See question 10 on page 26 for a list of funding awards the Port has received over the past 14 years, with two different operators, for capital improvements on the rail line.

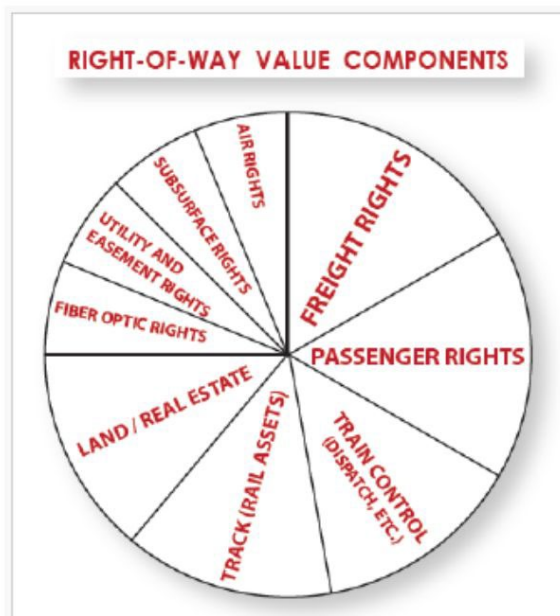
Sources:

Attachment G – CWW Lease and Extension

Attachment H – Annual Performance Reports

7. There are different types/degrees of sale of the railroad. What are those types of sales (e.g. sale of the track but not the land underneath).

Like any other asset, when a railroad is sold (or leased), the terms and conditions of a sale (or lease) can be curated through a transaction to achieve the mutually agreeable objectives of all stakeholders (parties). A railroad can be divested by either selling the entire entity (land, track, equipment, structures etc.) or by separating it component by component. For example, the graphic below illustrates numerous asset components that constitute a railroad line.



Graph from RL Banks & Associates Report

Similarly, the various functions of a railroad also can be separated. For example, when the Los Angeles County Transportation Commission first contracted out its Metrolink commuter rail service elements, it sought separate bids on: 1) the operation of its trains; 2) the maintenance of its tracks and structures and 3) the maintenance of its locomotives and coaches.

When a railroad is separated when sold, in most cases, the land is retained by the seller in the event the land may have future beneficial use should rail service cease. The current scenario facing the Port of Columbia only pertains to the track and land (right of way) as the Port does not own any of the rail equipment or rail maintenance equipment currently deployed on the subject rail line. It is not uncommon for the infrastructure (primarily the track) to be separated from the land (real estate) in a sale or lease agreement. In such arrangements, the selling party often sells the track infrastructure but retains the land, thereby transferring the liability associated with and cost of track maintenance to the track owner (railroad operator). The “vertical boundary” delineating the track infrastructure from land is typically the sub ballast.

An advantage associated with such arrangements is the reduction in responsibility and costs to the landowner. But to the contrary, in such instances, the landowner relinquishes most, if not all, immediate governance of what or how the railroad operates (hazardous shipments, quiet zones or other perceived public nuisances) to the operator.

a. Examples:

The State of Washington, the State of Maryland, the Commonwealth of Massachusetts, other states and the City of Akron own rail lines but they are not the operator. For example, the Commonwealth of Massachusetts owns the Housatonic Railroad’s land and track but it is operated by a private sector operator. The Union Pacific Railroad has pursued an intentional policy of not selling the land or infrastructure to third parties in major metropolitan areas but leases the freight services out to contract operators. The Norfolk Southern followed a similar path, setting up in 1987, a branded unit, the Thoroughbred Shortline Program of lines, that that carrier wanted to lease, not sell.

Washington State owns the land and infrastructure constituting the Palouse River and Coulee City Rail System and contracts out to third party operators all commercial and operational aspects of the various branch lines which

constitute it. The three short line operators on the Washington State-owned lines are:

- Central Washington (CW) Branch is operated by Washington Eastern Railroad (WER)
- Palouse & Lewiston (P&L) Branch is operated by Spokane, Spangle, and Palouse Railway (SS&P)
- PV Hooper Branch is operated by WATCO

The State of Vermont owns the majority of the railroads and railroad mileage within the state's borders and, again, contracts out all operational and commercial aspects to private sector, contract operators.

b. Feedback from other jurisdictions on how/what was sold.

The City of Tacoma reports no complaints from shippers on the portion of the line sold to Columbia Rail. (Attachment

c. Use of a “claw back” clause to allow Port to buy back the railroad if it was not used as a railroad. Provide examples.

A claw back clause would not guarantee the Port the ability to buy back the railroad under any circumstance (use or otherwise). A claw back clause is typically in Lease Agreements when revenue sharing is a condition of the Agreement and performance targets are not met. This would be in the absence of any dead freight clause or terms. Some states have regulations regarding claw backs.

d. Pros and cons? For example:

- Are clawbacks ironclad, or are there instances in which it would not remain valid? (Bankruptcy?)** Primarily, a claw back option serves to limit any operator's incentive to invest capital and grow business (higher uncertainty) and the terms may drive some bidders away or serve to reduce rents paid to the land owner or track lessor. Any clawback clause should be clearly defined in any executed agreement for it to remain valid through a bankruptcy.

Sources:

Attachment C - RL Banks Railroad Appraisal, Presentation, and Task 5

Conversations with WSDOT personnel in charge of the WA State-owned PCC Railroad

Attachment I - City of Tacoma Email, Resolution, Minutes, etc.

8. CWW states they will not pay the appraised value.

a. What is the lawful process for selling the railroad?

- i. The real property must be removed from the comprehensive plan and determined to be surplus (declared “no longer needed for district purposes”). This can happen at the same time, after the process for amending the comprehensive plan has been followed (e.g. public hearing on the topic). An example of a resolution that does this is attached (L).
- ii. Determine fair market value. The more valuable the property the more professional the determination should be. The value **should not** be provided by an individual or entity that has expressed interest in purchasing the property. Beware of conflicts of interest.
- iii. Setting a sale price can occur prior to the public hearing for the comp plan amendment. Discussion of minimum sale price can be had in executive session if public knowledge would cause a likelihood of decreased price.
- iv. Depending on the value of the property being surplus (up to \$22,000 in 2023), the manager can be authorized to sell on behalf of the Port (this can be included in the resolution).
- v. Because this is a railroad, the Surface Transportation Board must be involved in the process. Maybe this is something that the purchaser will handle.

There are two primary risks that create legal and financial liability for the Port:

- 1) Not following the process (public hearing, comp plan amendment considering Port policy, lawful mandate and evidence, resolution, etc.) opens the commission’s decisions and actions to legal attack.
- 2) Not being paid fair market value. This could be considered a violation of the WA State Constitution’s no gifting of public funds mandate. Most

legal challenges to sales are on these grounds. (See Article VIII, Sections 5 & 7).

b. What are the consequences for selling under appraised value?

See risk factors #1 and 2 above and Attachment D regarding case law.

c. Is there a lawful process for selling under appraised value?

The law does allow for a public entity to sell property for less than appraised value under certain circumstances. The reasons for choosing this action need to be clearly stated and supported with findings of fact, and the property cannot be part of an Industrial Development District. Port policy and RCWs must be followed. The Commission is required to determine a minimum acceptable price prior to authorizing a sale.

A written presentation by an attorney at a recent Washington Public Ports Association states the following: *“Port statutes, with limited exceptions, do not require any particular method of sale for real property. In theory, the Executive Director of the Port Commission could negotiate a private sale. However, the “best practice” is to adopt a policy that requires a transparent process to make sure the Port receives fair value for its property. A public auction, or an advertisement with requests for bids, or the use of a real estate agency to market port real property are all methods that ensure the process is transparent and that the port receives fair value. Whatever method a port district chooses, it is important to document the process and the facts that support the Port receiving fair value. This is all about creating a record through adopted policies, recitals in resolutions, or other public-facing documents demonstrating the value the Port receives in addition to any monetary payment.”*

Port policy #6 – Sale of Real Property (Attachment D) uses the term “reasonable return” several times and defines it as “sale at an amount equal to, or greater than, fair market value if sold by negotiated sale, or to best bidder as described in RCW 53.25.150(2) if sold by sealed bid or auction.”

Examples of Port Property Sales

The Port of Columbia has a long history of buying and selling property over its 67 years of existence. Here are some more recent examples:

Lot W, Rock Hill Industrial Park, 1.9 acres:

MAI appraised price: \$53,800 minus allowance for lack of utilities (\$15,000) and clean-up needed (\$4,500) = \$34,300.

The Port felt like the allowances were extreme as utilities were in the street next to the site, and the clean-up needed was minimal. Some site clean-up was done by the Port. Parcel was sold for \$50,000, which is 145% of appraised value.

The South First Street house is an example of selling property for less than appraised value. In that case, the property was deemed surplus because it had been a residential home converted to an office, was in a residential neighborhood, and was no longer desired as a commercial property by the Port or any business prospects. It was put up for sale at the appraised value, which was \$58,000. When no buyers were identified, it was sold by sealed bid (per Port policy #6). A minimum bid of \$52,200 was set by the Port Commission prior to advertising for bids. The closest sealed bid was \$50,250, which was accepted by the commission. This was 86% of appraised value. The Port carried the sale contract, so almost \$20,000 of interest was earned above the sale price.

Small parcels of the railroad right of way: Unused sidings have been sold over the years to abutting landowners (e.g. Seneca, Northwest Grain Growers) at market value, ranging from \$17,000 to \$31,000 per acre. Because these parcels were so small and had limited uses, Port staff used comparable sales to determine a negotiated sale price. Please see Attachment M with parcel information and comparable property sales used to determine prices.

d. What will CWW pay?

Begin unedited Columbia Rail Response:

- *“Dollar amount CWW is willing to pay for the rail line and right of way:*

Note 1: *Properties discussed were considered of limited net commercial value by Union Pacific RR in 1997 - when they donated the 37 mile rail line with associated / adjacent properties to the Port.*

Note 2: *Ownership by CWW would entail assumption of various liabilities, including as associated to rail line operation (Federal rail industry regulation).*

Note 3: *Ownership by CWW would put the properties back to paying into the local tax rolls.*

Note 4: Ownership by CWW protects current shippers / freight utilization using the rails, vs. higher costs of trucks on public highway.

- For the entire Federal / 'Common Carrier' freight franchise between Walla Walla and end of track in Dayton, PLUS all tracks and Right of Way **within Walla Walla County** (incl. any adjacent POC rail line properties there): **\$305,000** (\$370,000 valuation by CWW, minus a valuation credit as described below)
- To include - from end to end within Columbia County - an exclusive rail operations easement of at least 20' lateral to each side from all tracks centerline (as such RE available based upon sometimes tight or limited POC ROW ownership)
 - Port of Columbia to assume forward track maintenance responsibility within this zone (Columbia County)
- Against the CWW \$370,000 "valuation", Port to credit or discount \$65,000 in value for CWW's 2024-2025 \$150,000 pre-investment into the POC line current track conditions, functional qualities between Waitsburg and Dayton (that zone feasibility for excursion etc. movement of passengers) - which conditions / qualities yield to the community / Port independently of SALE/NO SALE
- Additional Port option - for all tracks and ROW / property not included above (all those **within Columbia County** incl. any adjacent RE, all as donated to the Port in 1997): **\$400,000**
 - This to include CWW ownership of all track maintenance responsibilities within this zone as well
- **Total net offer** (subject to Port election on 1 or 2 above) - **\$305,000 or \$705,000**, and as subject to negotiation of exact terms and covenants"

End Columbia Rail Unedited Response

The Port-owned rail line is approximately 37 miles long and 100 feet wide. This equates to approximately 448 acres. The full corridor appraisal, which includes the land and the tracks, is \$13.8 million, or \$30,803 per acre. Columbia Rail's offer for the line equates to \$680 per acre for Columbia Rail's option 1 above (2% of the full corridor value), and \$1,573 per acre for option 2 (5% of the full corridor value).

If the Net Liquidated Value (NLV) of \$7,836,400 is used instead of full corridor value, the per acre value is \$17,492. Columbia Rail's option 1 above is 3.8% of NLV, and option 2 is 9% of NLV.

If the property is sold, the Port does not have a vehicle by which to assure any of the proposed future uses listed by Columbia Rail will occur.

City of Tacoma Example:

Columbia Rail cites the sale of railroad property from the City of Tacoma to Rainier Rail, a Columbia Rail subsidiary, for less than appraised value as a reason the Port should consider doing the same.

There are differences between the two public entities contemplating sale. The City of Tacoma Public Works Department was the owner and operator of the rail line in question, the Mountain Division. They were responsible for all common carrier aspects of ownership, rail service and rail maintenance. The City of Tacoma divested themselves from the less profitable portion of the rail line and retained the more profitable portion within the City of Tacoma that they continue to operate.

The sale from the City of Tacoma to Rainier Rail took place in several transactions.

- 2016 – sold 34.5 miles (RR MP 33.0 – 67.5C) in Lewis and Thurston counties for \$2,801,000 following a request for bids process. Pre-bid estimate in specification PW16-0285F was \$2.5M. The purchase price for this section was 112% of the minimum price set by the City prior to sale.
- 2019 – leased 4.4 miles in Thurston County (RR MP 28.6C – 33.0C) for \$100,000
- 2021-22 – lease ~1 mile in Pierce County (RR MP 27.8C – 28.6C) for \$1,200 per month to include common carrier obligation for 1 freight rail customer.
- 2023 – sold 41.86 miles including leased portions for \$2,210,000 via direct negotiation not-practical-to-bid process. This transaction included transferring all common carrier railroad obligations to serve the existing customer base in Frederickson, WA.
 - This section's appraisal Net Liquidated Value (NLV) determined to be \$3,320,000 by R. L. Banks & Associates.
 - The purchase price for this section was 63% of the NLV appraised number.

Sources:

Columbia Rail

Attachment C - RL Banks Railroad Appraisal, Presentation, and Task 5

Port Attorney

CSD Attorneys at Law 2025 WPPA Director's Conference Question/Answer Key

Attachment J – Case Law (significant court cases)

Attachment K – RCWs describing process in various circumstances

Attachment L – Sample Resolutions

Attachment M - Sales Data Comparisons for Railroad Right of Way Surplus 2024

Attachment I – City of Tacoma Resolutions, Minutes, and Emails

9. What is the current burden on the Port for management/operation of the railroad?

Currently, there is little burden on Port staff for management of the railroad. The former and existing leases call for all maintenance to be performed by the lessee. The Port is required to assist with rehabilitation efforts, which means we have, and will continue to, participate in seeking funding to improve the line beyond regular maintenance.

Right of way management can be the most time-consuming portion of railroad management. Currently, the lease calls for the rail operator to manage the right of way. Columbia Rail contracts with RAMS, Inc., a property management firm, to manage requests for crossings (like a road that crosses the tracks to a house or field), encroachments (like a utility wanting to use the land adjacent to the track) and farm leases (adjacent landowners wanting to add vacant right of way land to what they are farming.) The right of way management company is paid a portion of the fees collected for the uses.

The Port receives phone calls from landowners, utilities, and other citizens with questions about crossing agreements, leases, and access to the right of way, which staff considers the normal course of business when managing an asset. Staff also fields inquiries from parties interested in purchasing portions of the rail line that are no longer in use (such as the sidings sold to Seneca and Northwest Grain Growers) that can be time consuming on an intermittent basis. See Attachment M showing recent sales and comps used to determine prices.)

a. CWW talks about simplicity of management as a reason for wanting to purchase (how is it not simple?)

Begin unedited response from CWW:

"I think this has been broadly covered in numerous past conversations, but this line is become much more politically entangled / engaging than anything else we manage, and I don't see it prudent for my resources as long-term / ongoing shoulder into the future, relative to the meager current freight revenues and ongoing capital CWW needs to put into it every year. The term quiet enjoyment comes to mind, which we enjoy at greater level with our leases with other public entities and even mega corporations. And more still, with our owned lines. I know some will want to say this relates to the sale request on my part, but it really heated up a lot with the trail affair, and now seems to have an overlay from Snake River dams drama (which I don't see them going anywhere, the ESA / Fed Judges would have had that happen 30 years ago if the dams were truly considered just breachable by the Fed gov't)."

End unedited response from CWW.

To date, Columbia Rail has not elaborated on how these items have made management of the line more complex.

The Port has seen a recent increase in phone calls to the office asking about the rail line and why we are considering selling it, and a massive increase in public records requests regarding documents related to operation of the line, communications between port and rail operator, etc.

b. Has CWW managed the Port's RR in a similar manner to the other RRs leased by CWW?

The Port of Benton, which leases a short piece of rail line to Columbia Rail, reports that Columbia Rail has followed their lease, has increased business, and has been great to work with.

The Port of Royal Slope leases 26 miles to Columbia Rail. Columbia Rail pays \$600 per quarter in lease fees, and \$25 per car. Royal Slope keeps right of way use fees. Cars numbers shipped has increased this year (137) over last (33). Sometimes

Columbia Rail is slow in meeting reporting requirements listed in the lease, but they are eventually met. Port of Royal Slope commissioners value public ownership of their line and believe that is the best way to preserve the rail corridor into the future.

c. Value to having public/private alliance

Some grant opportunities are available to both public and private rail owners/operators:

- Freight Rail Assistance Program (FRAP) – administered by WSDOT.
- Consolidated Rail Infrastructure and Safety Improvements (CRISI) – Administered by Federal Railroad Administration (FRA)

The following are only available through public entities:

- INFRA Grant Program – administered by USDOT
- RAISE Grants (Formerly BUILD/TIGER) – administered by USDOT
- Economic Development Administration (EDA) Public Works Grants – administered by EDA
- Federal-State Partnership for Intercity Passenger Rail (FSP) – administered by Federal Railroad Administration
- Freight Rail Improvement Board (FRIB) – administered by WSDOT. Loan program only available to public entities.
- Section 130 safety grants - Federal Rail-Highway programs administered by WSDOT Local Programs.
- Community Economic Revitalization Board (CERB – administered by the WA State Department of Commerce
- Community Project Funding/Congressional Directed Spending – applied for through members of Congress
- State Appropriations – applied for through WA State elected officials

Sources:

Attachment G – CWW Response to Port Questions re Sale

Internet Search

Conversations with WSDOT

Grant Websites

Funding Agency Staff

Port Staff

10. What funding opportunities for improving the railroad have been available for the past 5 years? What has been done to take advantage of those funding opportunities?

a. Examples of successful grants sought by the Port and/or operator.

- i. 2009 – Washington State Department of Transportation (WSDOT) grant of \$332,000 paid for rehabilitation of 5 public crossings within the City of Dayton. Crossings upgraded were at the corner of Commercial and Bulk Plant Road, Commercial and Pine, Commercial and Front Street (concrete crossing) and a double crossing at Commercial and 4th.
- ii. 2011 – WSDOT grant of \$190,000 paid for Walla Walla to Dayton Bridge and Tie Rehabilitation – 2 bridges at milepost 44.68 and 49.90 and ties.
- iii. 2014 – WSDOT Section 130 Program paid for crossing updates on Highway 125 at milepost 15.63 to improve site distance. Improvements include upgrading crossing lights to LED, installing back-to-back crossbucks, installing additional signage at both approaches for advance warning to cyclists, and clearing of brush.
- iv. 2016 – Freight Rail Assistance Program (FRAP): \$267,597 grant from Washington State Department of Transportation to the Port of Columbia for the repair of 8 bridges and their approaches. Matching funds for the grant came from the Port (\$17,703), Seneca (\$10,000), and Frontier Rail (\$10,000) for a total project budget of \$305,300. *Please note that Columbia Rail used to be known as Frontier Rail.* Frontier Rail did much of the work, and we told them ahead of time that there were no additional funds if the project ran overbudget. The project did run over by \$27,000, and Frontier owner Didelius asked the Port for more money. Commissioners agreed to pay him an additional \$5,000, which is included in the Port's total match above.
- v. 2016 - Freight Rail Assistance Program (FRAP): \$227,700 grant from WSDOT to the Port of Columbia for installation of a new siding at Blue Mountain Station in anticipation of a new manufacturing business

locating there. Matching funds provided by Port (\$12,300) and Frontier Rail (\$10,000).

- vi. 2023 - Freight Rail Assistance Program (FRAP): \$420,617 grant from WSDOT to install approximately 3,500 ties including full restoration under 8 local roads, and place and tamp approximately 1,200 tons of ballast and surface approximately 2 miles of rail. Matching funds came from Columbia Rail (\$153,836) and Port of Columbia (\$20,000). Construction was originally slated to be completed by November of 2023 but was finally completed in June of 2025.
- vii. 2025 – Section 130, WSDOT Local Programs - \$1.6 million in Rail-Highway Crossings Safety Program funds to upgrade a crossing on Hwy 124.

Total: Over \$3 million in improvements since 2009.

b. Examples of unsuccessful grants.

- i. 2007 – A \$5.3 million appropriation that was placed in the Washington State Capital Budget for rehabilitation of the Port-owned rail line and the UP section to Wallula was removed from the budget during the financial collapse and the great recession.
- ii. 2014 – Freight Rail Assistance Program: Attempted to work with WATCO, the operator leasing the line from the Port at the time, to apply for funds to make the necessary bridge repairs. WATCO ultimately ended up refusing to ask for less than \$1,000,000, which was more than the fund could support. It was at this time that talks with Frontier Rail began regarding the potential transition from WATCO to Frontier for operations.

In 2018, the Port commissioned HDR Engineering, Inc. to update its 2008 White Paper on the rehabilitation of the rail line between Wallula and Dayton, Washington. We paid for analysis of not only the Port-owned section, but also the UP-owned section that was not yet operated by CWW. (WATCO was still the operator in 2018. CWW took over that section in 2019). The goal was to support future state or federal funding requests by assessing current conditions and maintenance needs. The scope included project management, data collection (including inspection and maintenance records), field inspection, and development of a revised White Paper with cost estimates for rail rehabilitation. The study was completed in 2020 at a cost of \$15,000. Please see Attachment O - Wallula and Dayton Rail Upgrade Est 11-9-20. The Dayton section

estimate was \$16.8 million, and the Wallula section estimate was \$13.9 million. The sections were studied together since they have historically been operated as one continuous line.

Please note that some of these upgrades on the Dayton section have now been completed, and the estimate was meant to show the cost of upgrading the tracks to allow much heavier freight (286,000 lb cars) than are currently used on this track, and would allow passenger travel. After the study was complete, Columbia Rail stated that this line does not need improvements to this high of a degree in order to remain operable.

Sources:

Railbank Grant #RRB1126 Bridge Repair 2016 file

Port Commission Meeting Minutes 5-10-2017

Railbank Grant #RRB1147 BMS Siding 2016 file

Railbank App 2014 file

Rail & Bridge Repair Project 2011 file

Attachment O - Wallula and Dayton Rail Upgrade Est 11-9-20

11. What other lease options are there? Are there other potential lessees?

There are lease options that can be taken into consideration. The option selected is typically based on the scope of the rail service provided with the subject land and rail infrastructure. The scope of rail services can range from the transport (from A to B) of railcars to transloading and switching of railcars (the so-called “first mile / last mile”). Key considerations associated with various lease options are discussed below in the context of the situation that exists at the Port of Columbia.

In a **Gross Lease**, an operator generally would pay a fixed amount at a frequency and term agreed upon by both parties. All land and track maintenance expenses would be the responsibility of the Port.

In a **Net Lease**, an operator generally would pay a fixed amount at a frequency and term agreed upon by both parties but all operating expenses would be the responsibility of the Operator.

An **Operating and Maintenance Agreement** is a hybrid of a Gross and Net Lease. The parties involved mutually agree upon customized terms of the operations, responsibilities and maintenance costs.

A **Freight / Operating Agreement**, generally, relates to shared use tracks, typically, tracks that are utilized by both freight and passenger trains.

A **Trackage Rights Agreement** generally is between two freight rail carriers in which a track owner agrees to host another carrier on its track(s), generally in connection with mainline, or, “over the road” operations in exchange for a payment which usually is comprised of two components. One component is usage based, often a metric such as loaded and empty carloads or car-miles carloads while the other component is fixed, usually representing a return to the owner on the investment the owner has made in the land and improvements on which the non-owning party is operating, based on the passage of time.

Other Lessees:

As to “other potential lessees” being interested in operating the Port’s railroad, RL Banks and Associates claims they are reasonably confident that other parties would express interest in our railroad because the number of parties interested in operating railroads (the demand) exceeds the number (supply) of railroads to be operated. The only way to answer this question would be to go through a competitive bidding process with widespread advertising that the rail line is available for use.

The limited revenue on the line as it stands now may be unattractive to potential operators, but the Port has been contacted by several parties interested in an opportunity to bid on and/or operate the rail line, with both freight and passenger (tourism) service available. It’s possible that fresh ideas might be generated by issuing a request for proposals.

The line as it functions now consists of two separate ownerships operated by the same short line (Columbia Rail). See Attachment N – Map of Port-owned and UP-owned tracks operated by CWW. Should the Port choose not to sell, any new operator on the Port’s section would

have to interchange cars with Columbia Rail at Walla Walla, adding another layer of cost to the shipper. Forcing us to segment a relatively short rail line even further is not helpful to our region's businesses or our economic development efforts.

Short Line Rail Operators in the State of Washington (this list may not be complete):

- Genesee & Wyoming
- Watco Companies
- The Western Group
- Columbia Rail
- Washington Eastern Railroad (WER)
- Spokane, Spangle, and Palouse Railway (SS&P)

Common Carrier Responsibilities and the Surface Transportation Board

Common carrier requirements refer to the legal obligations that certain transportation providers (like railroads, utilities, or telecom companies) must follow when they offer their services to the public. Common carrier requirements obligate railroads to provide freight service to any customer on an active line, without discrimination and at reasonable rates. Railroads must publish tariffs, serve all lawful requests, and are regulated by the Surface Transportation Board to ensure fair access and compliance. These requirements help protect shippers, especially in areas with limited transportation alternatives

The Surface Transportation Board (STB) is an independent federal agency that regulates the U.S. freight railroad industry, along with certain aspects of other surface transportation. It was created in 1996 to take over many of the functions previously handled by the Interstate Commerce Commission (ICC).

The STB regulates the economic aspects of the U.S. freight rail industry. It reviews rail rates where competition is limited, resolves service and performance disputes, and decides on track access, mergers, and line abandonments. The STB also handles disputes involving shippers, railroads, and communities, offering both formal and informal resolution options.

In an email exchange with a reporter that Mr. Didelius recently shared with the Port, he stated the following:

Begin unedited comment from CWW:

"If Columbia Rail is not operating the POC line, there are just a few forward scenarios for the Port /Community:

- *Port operation - very expensive learning curve, financially and staff-wise a loser for most governments - very few Ports or Counties attempting this any more!*
- *Port selection of another rail industry operator - hard to contemplate: TWO small independent railroads to try to split the limited finances available for the 70 mile run to Wallula?*
- *Mothballing of the railroad - shippers have rights to contest this both locally and Federally -would appear costly and politically problematic for the Port”*

End unedited comment from CWW:

In researching this statement, particularly the threat of cost and political problems if the Port does not sell its line as requested by Columbia Rail, Port staff learned that while the STB may require a rail operator (or owner, such as the Port) to provide service to an unserved customer, there is an economic feasibility component that would come into play if CWW were to decide to cease service to Seneca and NWGG. If what Mr. Didelius has stated over the years (that it is not economically favorable for CWW to serve the customers on the Port-owned line) is true, the same would be true for the Port, meaning a legal requirement by the STB to serve the customers stranded by CWW’s departure is unlikely.

Sources:

Conversations with WSDOT Rail Office

Columbia Rail

Attachment C - RL Banks Appraisal, Presentation, and Responses to Task 5

Port of Attachment P - CWW Communication with UB Reporter

12. Could funding cuts to the US Army Corps of Engineers affect the river navigation system and grain shipping? How might that affect rail shipping?

Dam operations have continued as usual through the federal budget cuts at this time. Several of the Corp-operated recreations areas have been closed. Neither the Corp of Engineers nor the Pacific NW Waterways Association knows of negative affects to grain shipping on the rivers.

Recommendations for the Comprehensive Plan Update

Port of Columbia

Final

Prepared for:

Port of Columbia

Dayton, Washington

September 5, 2023

Project No. M2427.01.001

Prepared by:

Maul Foster & Alongi, Inc.

109 East 13th Street, Vancouver, WA 98660

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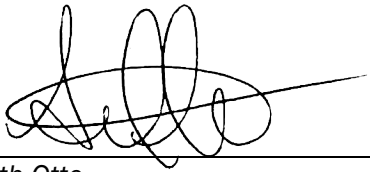
M A U L
F O S T E R
A L O N G I

Recommendations for the Recommendations for the Comprehensive Plan Update

Port of Columbia

The material and data in this report were prepared under the supervision and direction of the undersigned.

Maul Foster & Alongi, Inc.

A handwritten signature in black ink, appearing to read 'Seth Otto', written over a horizontal line.

Seth Otto
Principal Planner

A handwritten signature in black ink, appearing to read 'Abbi Russell', written over a horizontal line.

Abbi Russell
Senior Communications Specialist

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Appendix

Port Commission Memos

Abbreviations

BMS	Blue Mountain Station
Comp Plan	<i>Comprehensive Plan</i>
Commerce	Washington State Department of Commerce
the County	Columbia County
CWW	Columbia Walla Walla
master plan	<i>Lyons Ferry Marina Master Plan</i>
MFA	Maul Foster & Alongi, Inc.
PCC	Palouse River & Coulee City Railroad
the Port	Port of Columbia
STB	Surface Transportation Board
UP	Union Pacific Railroad
WSED	Washington State Employment Security Department
WSDOT	Washington State Department of Transportation
WSU	Washington State University

Summary

The Port of Columbia (the Port) has updated its comprehensive scheme of harbor improvements, commonly known as the *Comprehensive Plan* (Comp Plan) (Port 2019) several times over the last 15 years, as required in the Revised Code of Washington 53.20. An update was completed in 2021, although public interest was minimal at the time. As a small port in Columbia County (the County), the second-smallest county in the state, these updates have always been conducted in-house by Port staff, and the Comp Plan remains a relatively succinct, readable document.

Recent Port Commissioner turnover has precipitated the need to review and update the Comp Plan in order to clarify the goals of the new Port Commission and align the Port's work with those goals. Maul Foster & Alongi Inc. (MFA), was engaged to support this process and the Port's economic development work in the County. MFA attended six Port Commission meetings between January and June of 2023 and, at the direction of the Port's staff and Port Commission, generated five meeting memos covering several Port assets and economic development factors. All five Port Commission memos can be found in the appendix. The following table summarizes recommendations for the Port to inform decision-making during the next Comp Plan update.

Table ES: Summary of Recommendations

Theme	Recommendations
Assets	
Blue Mountain Station	<ul style="list-style-type: none"> • Consult with other ports in Washington and communities across the Northwest and nation that rely on agriculturally based economies and have developed or are considering developing value-added agriculture business clusters. • Seek additional collaboration with farmers, colleges, agricultural associations, and other partners to promote and grow value-added agriculture for Columbia County and the region. • Consider state and federal education and funding opportunities through the Washington State Departments of Agriculture and Commerce, and the U.S. Department of Agriculture.
Columbia Walla Walla Rail	<ul style="list-style-type: none"> • Conduct a cost-benefit analysis that considers both maintaining ownership of and selling the rail right-of-way. • Engage shippers, potential users, and other regional stakeholders in conversations about interest in the rail line and the opportunities it may support. • Consult appropriate legal counsel about issues associated with potential sale. • Perform a full appraisal of the asset. • Update the Port Comp Plan. • Engage the community early and often throughout the process of appraising and selling an asset to avoid unnecessary opposition.

Theme	Recommendations
Lyons Ferry Marina	<ul style="list-style-type: none"> • Identify and implement projects that support continued healthy operations by a concessionaire (e.g., pull-through RV sites) that support a beneficial public-private partnership. • Obtain updated evaluations of the extent and costs of the most critical repairs, as recommended in the 2018 master plan and as understood by Port and concessionaire staff. • Evaluate potential grant funding and/or financing opportunities. Agencies that provide grants and financing to support habitat, recreational programs, and recreational equipment include the following: <ul style="list-style-type: none"> – Commerce – Washington Department of Natural Resources – Washington State Recreation and Conservation Office – Washington State Treasurer's Office
Economic Development	
Implementing Goals	<ul style="list-style-type: none"> • Develop a strong grasp of the inputs and outputs that are driving the local economy and the largest challenges facing workers and businesses that the Port can help address. These might include current employment patterns, the demographics and in- and out-migration patterns of workers, goods and services generated within Columbia County that remain in place or are exported, and the goods and services that are imported to Columbia County. • Engage with other ports and the WPPA to learn about best practices, resources, and creative solutions to economic challenges across the state and in other communities. • Research partners' comprehensive plans and strategic goals to consider aligning the Port's goals and investments with their partners' goals and investments. • Broadly engage with the community to receive direct input from taxpayers, other agencies, community organizations, businesses, and others about what they need and desire the Port to address.
Workforce Development	<ul style="list-style-type: none"> • Continue supporting and facilitating small business development in Columbia County through measures such as removing financial barriers to establishing businesses, providing technical support to current and prospective business owners to obtain grant funding. • Consider providing trade ally training for workers considering entering manufacturing and construction sectors. Specifically, conduct outreach to the entities installing wind turbines to identify whether the organization or its supplier has any apprenticeship or training programs for entry-level staff. • Consider obtaining a grant from the U.S. Department of Health and Human Services, the Washington State Department of Commerce, or the Washington State Department of Health to study the feasibility of expanding the provision of childcare services as a tactic supporting the strategy to attract a greater number of workers with higher-paying jobs. • Coordinate with partners to determine need, level of interest, and ability to fund a WSU Extension in Columbia County. • Contact the WSU Extension office in Pullman to discuss possibilities for the Port and Columbia County to collaborate with WSU. • Explore opportunities to work with local schools on training and education on employment opportunities.

Theme	Recommendations
Housing	<ul style="list-style-type: none"> • Assess available housing stock, median home prices, wages, and demand to develop a more detailed understanding of the need for and supply of affordable and rental housing. • Reevaluate the Port's charter with regard to the nexus of housing to the Port's mission of long-term economic vitality for the County and its communities. Consider revising chartering and other documents to broaden the Port's ability to act with regard to housing and its properties. • Explore options for partnership with public, nonprofit, and/or private organizations to address the multifaceted issue of housing. • Engage with legal counsel and structural consultants about the potential barriers to redeveloping BMS in support of housing.
Downtown Building Purchase	<ul style="list-style-type: none"> • Determine business case and feasibility of reuse. • Coordinate closely with legal counsel in advance of purchase. • Have a plan for assessment and reuse of buildings.
Recreation	<ul style="list-style-type: none"> • Consider how the recreational properties supported by the Port can deliver a return on investment that satisfies the state constitution. Under Article 8, Section 7: Credit Not to Be Loaned, the state prohibits any local government entity from bestowing a gift or lending money, property, or the entity's credit to a private party. This helps ensure that state funds are being used to carry out a fundamental purpose of the government and that public funds and assets are serving the public interest and not solely private interests. • Deliver recreational opportunities that drive private investment to support quality of life in the County. • Decide how and whether the Port can financially support local recreational opportunities. • Potential partnerships to maintain regional recreational opportunities. • Present the findings to the community and engage the community to identify its desires for recreational investments and opportunities.
Funding Opportunities	<ul style="list-style-type: none"> • Conduct targeted research in the near term to help fund projects such as those at BMS, Columbia Walla Walla Rail Line or the Lyons Ferry Marina. • Develop a grant strategy that provides some parameters and criteria for grant pursuits in the future. Identifying the Port's and region's needs, capabilities, and values with regard the criteria named in 3.7.2 will support both go/no-go decision-making and preparation of the grant application.
Notes BMS = Blue Mountain Station. Comp Plan = <i>Comprehensive Plan</i> . Port = Port of Columbia. WPPA = Washington Public Ports Association. WSU = Washington State University. Reference Port. 2019. <i>Comprehensive Plan</i> . Port of Columbia: Dayton, WA. Port. 2018. Lyons Ferry Marina Master Plan. Port of Columbia: Dayton WA.	

1 Introduction

The Port of Columbia (the Port) was formed in 1958 by the citizens of Columbia County (the County) to support the movement of agricultural goods and to support other transportation and industrial development opportunities for economic growth. The Port has evolved over the decades to match the needs of its communities, which have changed as time and technology have transformed farming and transportation in rural Washington state.

The Port's mission is to maximize public resources and private investment to create jobs, provide infrastructure, and maintain and improve the economic vitality of the County and its communities. The Port serves as the lead economic development agency for the County and assists all businesses in the County. The Port also coordinates with neighboring counties on regional initiatives.

The Port has continually invested in strategic properties and facilities to support agricultural, industrial, and recreational opportunities for workers and families in the County. This includes an industrial park, a commercial center, public marina, a rail line, and other assets. Today these assets are owned and leveraged by the Port district to serve its residents and provide jobs and economic stability. They are all outlined in the Port's comprehensive scheme of harbor improvements, the Comprehensive Plan (Comp Plan) (Port 2019).

1.1 Port Commission

The Port Commission consists of three commissioners, elected by the voters of the County. Each commissioner represents a subdistrict within the Port district, which follow the same boundaries as the County Commissioner districts. Subdistricts are determined by evenly balanced population.

The Port Commission serves the residents of the County and is accountable to its electorate. The Commission is charged with governing the Port, setting its tone and direction, and evaluating its progress. Commissions generally inherit policies and plans of their predecessors and are responsible for carrying forward and adapting those plans through strategy, consistency, and collaboration.

The Port commissioners at the time of this process and report are Seth Bryan, District 1; Genie Crowe, District 2; and Johnny Watts, District 3.

1.2 Staff

The Port has three full-time staff positions and one part-time staff position. Full-time positions are the executive director, office manager, and economic development coordinator. The part-time position is the Blue Mountain Station manager, for which the Port covers 50 percent of the cost.

The Port's professional staff implement the policy decisions of the Port Commission and manage the day-to-day operations of the Port including administration, finance and accounting, human resources, communications, facilities, planning, and environmental services.

Port staff at the time of this process and report are Jennie Dickinson, executive director, and Tracy Clark, office manager. The economic development coordinator position is under recruitment. The Blue Mountain Station manager is Valerie Mudry.

The Port also serves as the lead economic development agency for the County. Port staff work with partners at the state and local levels to create an environment that spurs job creation and quality of life by developing real estate and infrastructure, supporting transportation improvements, assisting small businesses, and engaging the community.

1.3 Public Involvement

With input from the Port Commission and staff, Maul Foster & Alongi, Inc. (MFA), developed a communications and community engagement strategy to help the Port communicate the process of researching a potential update to the Comp Plan. The strategy included goals, audiences, key messages, tools and timing, and measurements of success as the Port engaged its community in this process.

MFA also worked with staff to develop website content, social media content, and a one-page handout explaining the process; it included key milestones and ways to get involved and provide public comments. Community members were encouraged to submit comments and/or attend Port Commission meetings to provide comment about Comp Plan priorities and also to attend workshops to hear the Port Commission's discussions and next steps.

These efforts resulted in the attendance of Port district residents who listened in at regular meetings and workshops and provided comments on priorities at different stages in the process. The Port also received written and emailed comments.

2 Port Assets and Initiatives

2.1 Blue Mountain Station

2.1.1 Background

The Port wanted to find a location for a niche-based development strategy and developed the Blue Mountain Station (BMS) on a Port-owned parcel. Marketing and feasibility studies, conducted in 2008 and 2009, identified value-added agriculture, particularly the natural and organic food processing segments, as a market niche that would fit the physical and cultural offerings of the County. Twenty-two acres of the site are designated for the location of value-added businesses (Port 2021). The remaining acreage was left open for other development opportunities. Any acreage not yet developed is cropland.

The County has deep economic and cultural roots in agriculture. As the industry continues to change, the Port and local businesses are evolving to meet new demands and economic realities because profit margins for production agriculture are often narrow.

BMS represents the efforts of the Port and its regional partners to diversify the economy, revive the food processing industry that once thrived in the region, and build a sustainable food hub. The Port leveraged Community Economic Revitalization Board funds to construct commercial facilities at BMS. Revenue from the tenant businesses, the crops, and an onsite farmhouse lease pays for maintenance of BMS and contributes to the debt service payments for the purchase and development of the site.

2.1.2 Site Characteristics

BMS is a thriving Port asset. The fully leased facility supports 40 regional businesses, including a commercial kitchen, co-op, and plant nursery, and a variety of products, including grains, candy, produce, coffee, wine, and spirits. BMS provides space for the regional food and beverage retail sector, which is anticipated to grow 2.4 percent by 2029 (WESD 2022a). BMS also attracts customers and tenants from outside of the County.

There are 20 acres still undeveloped: 13 commercially zoned acres in the food park footprint that could be used for new opportunities to expand the food hub or to support related needs, and 7 acres outside the food park that are zoned for housing. These undeveloped acres are currently cropland.

2.1.3 Value-Added Agriculture

Value-added agriculture generally focuses on production or manufacturing processes, marketing, or services that increase the value of primary agricultural commodities. The foundation of many rural economies is based on agriculture and its complementary manufacturing and processing. Garrett Augustyn of MFA contacted Ajsa Suljic, Eastern Washington regional economist, by phone on April 3, 2023. According Suljic, no rural county has strayed by aligning itself with value-added agriculture. The Port is not the only Port that recognizes the benefit of investing in value-added agriculture.

Port of Skagit

The Port of Skagit owns a facility leased by the Washington State University (WSU) Breadlab. The renowned Breadlab hosts WSU researchers who are working to develop better tasting, healthier, affordable bread and keep the value where it is produced while not pricing people out of staple foods. This port asset is a good example of supporting value-added agriculture, research, education (they offer baking classes), and retail. The Port of Skagit and WSU Breadlab are interested parties for a designated Washington State Department of Commerce (Commerce) Innovation Partnership Zone. The Innovation Partnership Zone, funded by state grant dollars, helps facilitate collaboration between Skagit County agricultural producers, researchers, manufacturers, and businesses that can use Skagit Valley products. This collaboration supports small local businesses and jobs across industries, as well as communities around the Skagit Valley. A similar collaboration between BMS and WSU could provide similar benefits to the County community.

Value-added agriculture is a growing market in the Northwest and the nation. BMS receives consistent attention as a model for similar developments. It was the inspiration for a business incubator-style market that the City of Yakima started in 2016 and for the City Center Market in Florence, South Carolina, which opened in September 2020. The Port regularly receives requests for tours and information about the facility.

2.1.4 Marketing

BMS operates as an artisan food center. Artisan products are generally defined as local, handmade, and crafted in small batches using traditional methods. While this is true of the products offered by the many vendors at BMS, the term may also carry negative connotations for some (e.g., overpriced, organic, elitist). The Port Commission is concerned that these connotations could impact business at BMS and expressed interest in discussing different names that may help turn the focus to producers and the community rather than negative connotations. MFA researched the following terms related to artisan food production and sales and classified the context for each one.

2.1.4.1 Public market: Community commerce and placemaking

Public markets are typically permanent, year-round markets made up of diverse and independent businesses selling products they have grown or made. Public markets exist to serve the public good: They are job creators, economic drivers, and community placemakers. They attract tourists and serve a community's needs for commerce, food, and goods while supporting and showcasing a community's unique culture and character. There are public markets in communities throughout the U.S., though the nation's most noted public markets are typically sizable and located in large cities. Pike Place Market in Seattle is the best-known public market in the Northwest and consistently ranked as a top U.S. public market. Pybus Public Market in Wenatchee is an example of a smaller public market focused on North Central Washington goods and tourism.

2.1.4.2 Farmers markets: Seasonal food and goods

Farmers markets are well-known community gathering spaces for local produce, small-batch food and beverages, handcrafted goods, and entertainment. These markets abound in Northwest communities of all sizes. They are typically outdoor and seasonal, though some markets have an indoor, year-round aspect. Sometimes they include the term “artisan” to reflect the presence of local, handmade, and small-batch food and crafts, such as the Sequim Farmers & Artisans Market. Examples of farmers markets include the Downtown Farmers Market in the City of Walla Walla, the College Place Farmers + Artisans Market and the Northeast Hillyard Farmer's Market in Spokane, and Moscow Farmers Market in Moscow, Idaho.

2.1.4.3 Makers markets: Arts and crafts

Makers markets tend to sell products such as jewelry, pottery, clothing/fabrics, candles, and the like, though they can support microscale food and beverage (e.g., bakery items and drinking vinegars). These can be multipurpose spaces that simultaneously serve as creating and marketing spaces. They can also be temporary locations, including those inside larger businesses or shared/public spaces, and temporary timeframes, such as around key holidays. Washington state examples include the artisan popup shops at Pybus Public Market in Wenatchee, the Entiat Valley Makers Market in the City of Entiat, the Wintertide Makers Market in the City of Port Angeles, and the Everett Makers Market in the City of Everett. In the City of Missoula, Montana, two artisans built the Missoula Makers Collective, which creates a maker community based around education, empowerment, and the visibility and accessibility of local, handmade products.

2.1.4.4 Locally sourced: Groceries, restaurants, and co-ops

In the Food, Conservation and Energy Act of 2008, known as the 2008 Farm Act, the U.S. Department of Agriculture defines locally grown as “being transported less than 400 miles, or from

within the state in which it's produced." The term is often used in grocery stores that carry local produce, dairy, and meat products, and at restaurants. It is also commonly considered as part of community-supported agriculture and farmer co-ops. Locally sourced has cultural connotations with freshness, quality, and a low carbon footprint due to smaller-scale farming practices and a short supply chain.

2.1.4.5 Farm to table: A movement

Farm to table is the movement to connect people to the place where their food originates. It encompasses education and retail food purchase and consumption. Due to historic fraud and overuse of the term in the decades since it was coined, farm to table can be met with apathy or skepticism. However, there are plenty of legitimate establishments that provide truly local, traceable food at market prices. There are also small and microbusinesses that continue to support this movement in various ways. A very local example is the Monteillet Fromagerie in Dayton. Pierre-Louis and Joan Monteillet raise milk goats, produce traditional cheeses, and has hosted farm to table events that include the meat of locally raised animals on the menu.

2.1.5 Recommendations

- Consult with other ports in Washington and communities across the Northwest and nation that rely on agriculturally based economies and have developed or are considering developing value-added agriculture business clusters.
- Seek additional collaboration with farmers, colleges, agricultural associations, and other partners to promote and grow value-added agriculture in the County and the region.
- Consider state and federal education and funding opportunities through the Washington State Departments of Agriculture and Commerce, and the U.S. Department of Agriculture.

2.2 Columbia Walla Walla Rail Line

2.2.1 Background

The Port owns 37 miles of rail between the City of Dayton and the City of Walla Walla; it was gifted to the Port by Union Pacific Railroad (UP) in 1996. The Port's short line, known as the Columbia Walla Walla (CWW) Rail Line, is part of a 67-mile rail connection between the City of Dayton and Wallula. The Walla Walla to Wallula route is still owned by UP and operated by Columbia Rail.

Port ownership of the short line railroad begins at the northern edge of the Veterans Memorial Golf Course in Walla Walla County, travels through farm country and the outskirts of Prescott and the City of Waitsburg, travels through the City of Dayton and terminates just east of the Seneca Foods seed loading and storage area east of the City of Dayton along Patit Road.

At the time of the short line donation, Seneca Foods still used the short line to ship approximately one million cans of Green Giant asparagus out of the community each year. The Port of Walla Walla turned down the donation offer from UP, so the Port accepted the donation to allow shipping to continue for the Green Giant product. The canning plant that supplied the Green Giant asparagus closed in 2005. Since that time, the Port has worked to keep the rail line open as an economic development tool for the community and to provide options for the transportation of bulk agricultural products in Southeastern Washington. The region today relies heavily on river barging to move bulk

products. The existence of a rail line connecting rural agricultural lands to mainline rail, larger communities, and shipping hubs provides transportation resiliency and economic opportunity for Columbia County.

There are several grant opportunities, private investments, and public-private partnerships that can help support the costs of maintaining Port-owned short line rail.

2.2.2 Benefits

Maintaining the CWW Rail Line and its transportation corridor is an important function of the Port. This short line is a key link in a regional and national system that connects transportation hubs and communities and moves products from source to market. In the case of the CWW Rail Line, the line connects the City of Dayton and surrounding communities to the Palouse River & Coulee City Railroad (PCC) line and the UP mainline, benefiting local agriculture and potential biodiesel fuel transportation. The right-of-way along the Port-owned tracks can be used as a utility corridor, which reduces costs and reduces or eliminates the need for private property easements and purchases to install future power, water, internet, and other utility lines. The Port plans to install broadband infrastructure and the City of Dayton plans to install water infrastructure along the right-of-way in the future.

Due to their ability to connect communities and efficiently move products from source to market, rail lines that serve commercial and industrial properties are attractive to certain business sectors and clusters. This makes them an economic development asset and a real asset for a public agency and a community.

Rail lines also provide transportation and environmental benefits in the communities and regions they serve. According to the *Palouse River and Coulee City Railroad 2015 to 2025 Strategic Plan* (WSDOT 2015), the PCC reduces demand for trucking, reduces roadway congestion, reduces roadway and bridge maintenance and construction costs, reduces greenhouse gas emissions, reduces shipping costs for its users, and improves roadway safety (WSDOT 2015). Annual road damage costs of about \$1.7 to 4.1 million per year (or an average of \$2.9 million per year) are prevented by using the PCC.

2.2.3 Challenges

The status of the CWW Rail Line is of interest to local and state partners, as it is an asset with both passive and active economic benefits for the County and the region. Yet ownership comes with challenges. The line needs substantial repairs in the future to maintain operations and to facilitate potential future expansion. The necessary repairs amount to roughly \$30.6 million. Access between the Port Kelley facility, a grain elevator and barge load facility operated by Northwest Grain Growers, and the Columbia River, by which grain efficiently travels to global markets by barge, has not been allowed by UP.

The number of customers served by rail continues to decrease (Port 2021). Condition of the line makes train travel slow, which in turn makes it costly to operate. Revenue generated does not cover needed maintenance, especially deferred rehabilitation work that was inherited with the line. Grain companies prefer shipping by barge rather than rail due to the lower cost and are consolidating many existing rail shipments into unit trains that carry a single commodity and originate from one place. This may make the CWW Rail Line less attractive for shipping bulk agricultural products.

2.2.4 Case Studies

It is not uncommon in Washington state for public entities to own rail trackage, which they may lease to private operators. Examples include the ports of Benton and Royal Slope, the City of Tacoma, and the Washington State Department of Transportation. Managing public transportation assets that can be leveraged by private industry to create jobs and spur economic activity—much like docks, buildings, and roadways—is one significant way public agencies support local and regional economies.

Per the direction of the Port Commission, MFA along with Port staff conducted outreach to a private owner-operator, other Washington ports, and Washington municipalities that own or have owned rail assets. The outreach was intended to collect best practices and summarize challenges and opportunities for the Port's rail asset ownership.

2.2.4.1 Private owner-operator

The regional rail owner-operator owns 85 miles and operates over 300 miles of track in Washington state. The owner-operator sees long-term potential in value-added agriculture and medium-sized industrial development in the Walla Walla-Dayton area and is interested in purchasing the CWW Rail Line. It is the owner-operator's opinion that removing track in the County would be a shortsighted move. The track is more than a century old, and it requires significant investment to allow it to facilitate increased freight movement and bring it to current operational standards. However, the owner-operator's stated justification for purchase includes experience successfully owning and operating short line rail in the region, experience attracting customers, ability to successfully compete for grant money, the possibility of opening access to the Northwest Grain Growers terminal in Wallula, and incentive for the owner-operator to invest in the rail line.

2.2.4.2 Port

A port that owned a half mile of last-mile track decided to sell this asset after having to spend more than \$100,000 annually on updates, repairs, and maintenance while only charging a \$10 spotting fee for use. A Washington State audit confirmed the sale was agreeable for the Port's balance sheet. Since the transfer the private owner-operator has successfully operated the track. The port representative acknowledged that the sale of their last-mile track is not comparable to the sale of 37 miles of short-line track that connects communities and other regional assets.

2.2.4.3 City

A Washington city sold a lightly used rail asset located outside of the city limits to a regional owner-operator due to insufficient revenue for long-term sustainability. The rail line was appraised by a professional appraiser, designated as surplus, and the sale was approved by the city council. The transaction was then filed with the federal Surface Transportation Board (STB) for authorization. The sale price was \$2.2 million. The sale was conducted through direct negotiation instead of through an RFP, because city policy allowed for a direct transaction. The city maintains ownership of the right-of-way and collects monthly revenue from the presence of utilities. There was significant public opposition to the transaction because of the public's desire for a rails-to-trails project. The city recommends the following to any public entity considering the sale of rail assets:

- Learn about the role of the STB in the sale process.
- Consult legal counsel with experience in rail assets and with the STB.

- Engage the community early and often throughout the process of appraising and selling an asset to avoid unnecessary opposition.

The city also maintains ownership of its heavily used rail line that carries roughly 200,000 railcars a year to a local port.

2.2.5 Recommendations

If it is the decision of the Port Commission to sell this asset, the Port is advised to:

- Conduct a cost-benefit analysis that considers both maintaining ownership of and selling the rail right-of-way.
- Engage shippers, potential users, and other regional stakeholders in conversations about interest in the rail line and the opportunities it may support.
- Consult appropriate legal counsel about issues associated with potential sale.
- Perform a full appraisal of the asset.
- Update the Port Comp Plan.
- Engage the community early and often throughout the process of appraising and selling an asset to avoid unnecessary opposition.

2.3 Lyons Ferry Marina

2.3.1 Background

The Lyons Ferry Marina is a 44.5-acre recreation site located on the banks of the Snake River seven miles northwest of the Town of Starbuck, Washington. It was originally established in the 1970s and is owned by the U.S. Army Corps of Engineers. The Port manages the marina, owns most of the improvements, and has full maintenance obligations. In 2018 the Port and its consultant completed the *Lyons Ferry Marina Master Plan* (master plan) (Reid Middleton), which included an assessment of existing conditions and alternatives for investing in the marina.

MFA reviewed the master plan and the Port's current Comp Plan, spoke with Port executive director Jennie Dickinson, and researched potential funding sources. To help the Port understand and prioritize needs for the marina, MFA has summarized the assessments and recommendations from the master plan, outlined investments underway or completed since 2018, and characterized challenges facing the Port as it considers needs and investments at Lyons Ferry Marina.

2.3.2 Lyons Ferry Marina Master Plan

The master plan found that the many assets at the marina—both in-water and upland—were in generally fair condition. The Port and its concessionaire have collaborated and strategically invested over the years to ensure the marina continues to serve its customers and the public.

The master plan alternatives analysis included recommendations for major repairs, replacement, reconfiguration, and expansion of the following in-water and upland elements:

- Breakwater
- Bulkhead

- Moorage dock system
- Boat launch
- Hand-carried watercraft area
- Swim area
- RV and tent sites
- Cabins
- Restroom and laundry facilities
- Entrance facility and security gate
- Recreational amenities

In addition to the assets identified in the master plan, the Port has also identified the need for near-term maintenance to the access roadways and paved parking areas and paths at the marina.

2.3.3 Master Plan Summary of Assessments and Recommendations

Table 2-1: Summary of Lyons Ferry Asset Assessments

Asset	Condition (2018)	Life Span (2018)	Notes
Boat ramp: concrete ramp	Poor	2–5 years	Deterioration and erosion
Boat ramp: approach wedge and float	Fair	5–15 years	N/A
A Dock	Fair–good	10–20 years	Oldest dock; repaired in 2017
B Dock	Good	15–20 years	Newest dock
C Dock	Poor–fair	5–10 years	Some repairs made
AB Linear Dock: oldest section	Fair overall	5–10 years	Does not meet ADA requirements
AB Linear Dock: newest section	Fair overall	20–25 years	Does not meet ADA requirements
C Linear Dock	Fair	5–15 years	Does not meet ADA requirements
Short-term moorage: newer section	Good	20–25 years	N/A
Short-term moorage: older section	Poor–fair	8–10 years	Rot in timber walers; spalling on concrete surface
Fuel and pump-out systems	Fair–good	Not predicted	Pump-out system installed in 2009 to replace older system
Breakwater: gangway to eastern breakwater	Poor–fair	5–10 years	N/A
Breakwater: anchor system	Good	N/A ^(a)	Condition based on 2017 underwater inspections
Breakwater float: pontoon deck	Fair	N/A ^(a)	Minor spalling and cracking
Breakwater float: walers	Poor–fair	N/A ^(a)	Evidence of some plant growth and rot

Asset	Condition (2018)	Life Span (2018)	Notes
Breakwater float: steel hinge assemblies	Poor–fair	N/A ^(a)	Aged and rusting but intact
ADA-accessible fishing dock	Good	20–30 years	Constructed in 2013
Bulkhead	Poor–fair	5–15 years	Underwater timbers decaying; steel strap repairs are helping maintain the structure in the short term
Roadways, parking, and trailer storage areas	Good	N/A ^(b)	N/A
Office/store building	Fair	N/A ^(b)	Predates 1976 master plan; maintained with minor upgrades
Caretaker's house	N/A	N/A ^(b)	Not assessed; Port indicates upgrades were made in 2017
Lower restroom	Good	N/A ^(b)	No showers or laundry facilities
Restroom near tent sites	Fair	N/A ^(b)	No laundry facilities; aesthetically dated; efficiency concerns; does not meet ADA requirements
RV sites	N/A	N/A ^(b)	Upgrades are underway to support larger RVs
Tent/smaller RV sites	Good	N/A ^(b)	Updated amenities
Walkways, stairs, and pathways	N/A	N/A ^(b)	No formal sidewalks or crossings in lower parking/circulation area
Landscaping, fire pit, children's play area, off-leash dog park areas	Good	N/A ^(b)	1970s irrigation system is not functional
Wells No. 1 and No. 2	N/A	N/A ^(b)	Approved for potable/domestic water use; 2016 analysis shows capacity to support expansion
Sanitary sewer system	N/A	N/A ^(b)	Three pump stations on site; 2016 report shows approved design flow of 6,250 gallons/day
Stormwater, electrical, and other utility systems	N/A	N/A ^(b)	Stormwater = sheet flow/infiltration; electrical = overhead, buried, and conduit

Notes

ADA = Americans with Disabilities Act of 1990.

N/A = Not applicable.

Port = Port of Columbia.

^(a)The typical estimated life cycle for the type of breakwater float at Lyons Ferry Marina is 50 years, so the floats are nearing the end of their typical design life. Facility owners have extended the life of this type of float through major repairs and component replacements.

^(b)Condition assessments of these assets were not included in the scope of the 2018 *Lyons Ferry Marina Master Plan*.

Reference

Reid Middleton and JA Brennan. 2018. *Lyons Ferry Marina Master Plan*. Prepared for Port of Columbia. April 12.

2.3.4 Master Plan Alternatives

Two alternatives were developed in 2018 for in-water and upland facilities. The alternatives were developed with input from the Port, past and current concessionaires, and the County community. Alternatives A and B both include refurbishment of the existing breakwater, bulkhead, and office building. Both alternatives can be implemented in phases to accommodate priorities and funding availability.

- Alternative A would include a full build-out that includes expanded moorage docks, an expanded boat launch, new cabins, RV and tent sites, and a variety of other recreational amenities. The estimated cost of full implementation of Alternative A in 2018 was \$22.24 million.
- Alternative B would include a moderate build-out that includes expanded moorage decks, an expanded boat launch, new cabins, RV and tent sites, and a variety of other recreational amenities. The estimated cost of full implementation of Alternative B in 2018 was \$16.33 million.

Although both alternatives propose similar facility upgrades, Alternative A would include greater investment in the moorage dock, boat launch, upland point area, and upland terraced area; it would include more new deluxe cabins than Alternative B.

2.3.5 Marina Investments Since 2018

Since the master plan was published, the Port and its concessionaire have prioritized upland investments that will meet KOA campground requirements¹ and improve user experience. These investments include the following:

- Upgrading several RV sites to pull-through sites to accommodate larger RVs (currently underway)
- Adding two Conestoga wagons, including electrical upgrades, as tent sites
- Purchasing and establishing three cabins, including utility extensions, wood decking, and barbeques
- Establishing a laundromat
- Replacing the roofs on the lower restrooms and on the upper-level shower house
- Painting the store and restaurant

2.3.6 Challenges

The marina has seen increased activity since the master plan was published, caused by a combination of factors. These include a surge in outdoor recreation during the COVID-19 pandemic, the reopening of Lyons Ferry State Park, and the designation of nearby Palouse Falls as a state park. All of these factors have contributed to increased public use and revenue to the Port's concessionaire. Increased use has also led to more wear and tear on the Port's assets at the marina. The Port has implemented incremental increases for the concessionaire's lease payment to approach the break-even point for costs associated with maintaining marina facilities and continues to contribute \$20,000 per year to facilities maintenance.

¹ KOA campgrounds are affiliated with the KOA campground franchise; it helps connect potential campers to hundreds of KOA affiliated sites across the US. A campground must meet certain service standards to become a KOA campground.

The Port's 2019 comprehensive scheme of harbor improvements states that the need for refurbishment at the marina outstrips the Port's ability to fund (Port 2019), and grant monies will be needed. In the five years since the master plan evaluation of marina assets, two key conditions have changed: the facility has seen a marked increase in public use and the cost of construction materials has increased due to inflation; this will affect the updated cost estimate.

2.3.7 Recommendations

- Identify and implement projects that support continued healthy operations by a concessionaire (e.g., pull-through RV sites) that support a beneficial public-private partnership.
- Obtain updated evaluations of the extent and costs of the most critical repairs, as recommended in the 2018 master plan and as understood by Port and concessionaire staff.
- Evaluate potential grant funding and/or financing opportunities. Agencies that provide grants and financing to support habitat, recreational programs, and recreational equipment include the following:
 - Commerce
 - Washington Department of Natural Resources
 - Washington State Recreation and Conservation Office
 - Washington State Treasurer's Office

3 Economic Development

3.1 Role of the Port in Economic Development

Fully grasping the ability of ports to influence the direction of its local economy requires an understanding of what drives growth in a local economy. The role of Washington state's ports in economic development is twofold and depends on the drivers of the local, state, and national economies. Ports participate in economic development in two ways: as a community partner in programmatic economic development, and through brick-and-mortar investments in facilities, infrastructure, and commercial and industrial real estate. Economic development as a port can be complicated—pulling in factors that are both in and out of a port's control—and contentious. Ports must support their actions with data, work to align their actions with other local priorities and communicate early and often to their communities about projects and initiatives undertaken in the name of economic development.

To understand the Port's role in economic development, it is necessary to first use a data-based perspective to examine the local economy and what drives it. Economic data can come from many sources; the most reliable sources include the Commerce, Washington State Employment Security Department (WESD) and local economic assessments. Data from Commerce show that the economy in the County is driven primarily by existing small businesses and local government, with significant contributions from a few large businesses (e.g., those involved in wind energy). Key industries

include agriculture, energy, government, and tourism. The unemployment rate is low at 5.2 percent and wages are only slightly lower than the rest of the state, excluding King County (WESD 2022d).

3.1.1 Supporting Workforce Development

The next step is understanding which assets support the existing workforce in the County, as well as understanding workers and employers who are considering locating in the County. As discussed in commission workshops, the Port has invested proactively in facilities and infrastructure that support the local economy, including light industrial and recreational facilities, Blue Mountain Station, and broadband infrastructure. However, the County struggles with limited diversity in housing, a lack of childcare options, and a shortage of industrial lands (see sections 3.4.2 and 3.2 for discussion of housing and industrial lands, respectively).

The next step is to connect the Port's current and future assets and capabilities to the economic challenges and needs of workers and employers. This involves a combination of understanding the current state of assets, focusing on the Port's mission, and strategically forecasting where the Port and its community want to be in the coming years. This step involves relying on keystone documents including the Comp Plan and (if applicable) a strategic plan.

3.1.2 Implementing Goals

The Port should also consider the goals and input of the community including agencies, partners, businesses, and of course, district taxpayers. Documents that can support the understanding of these goals include City of Dayton and County comprehensive plans and partner strategic plans.

MFA recommends the following:

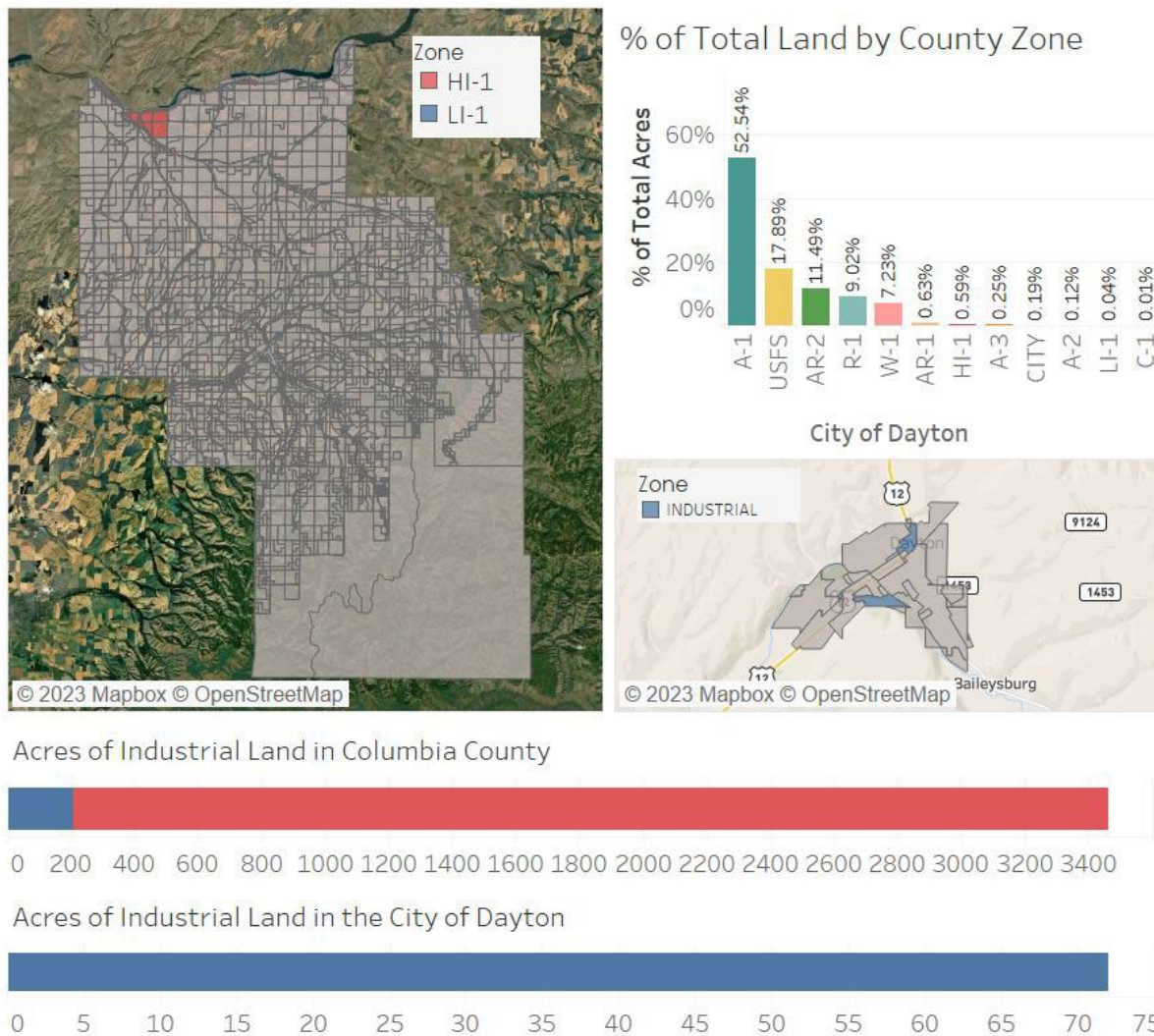
- Develop a strong grasp of the inputs and outputs the Port can help address. These include current employment patterns, the demographics and in- and out-migration patterns of workers, goods and services generated within the County that remain in place or are exported, and the goods and services that are imported to the County—that are driving the local economy and the largest challenges facing workers and businesses that the Port can help address.
- Engage with other ports and the Washington Public Ports Association to learn about best practices, resources, and creative solutions to economic challenges across the state and in other communities.
- Research partners' comprehensive plans and strategic goals to consider alignment and synergy with Port goals and investments.
- Broadly engage with the community to receive direct input from taxpayers, other agencies, community organizations, businesses, and others about what they need and desire the Port to address.

3.2 Industrial Lands

There are limited industrial zoned lands in the County and the City of Dayton. The County encompasses 3,464 acres of industrial land, which makes up 0.61 percent of the total land in the County (County 2023). The majority of the land zoned Heavy Industrial in the County along the Snake River would require construction of a new power substation to accommodate industrial development. The City of Dayton has 72 acres of industrial land, which makes up 3.8 percent of the City of

Dayton's total land. The limited inventory of development-ready industrial land makes the County less attractive to industrial developers. The figure shows an overview of industrial land in the County and the City of Dayton.

Figure: Industrial Land in Columbia County and the City of Dayton



Notes:

HI-1= Columbia County heavy industrial zoned land (depicted in red on the map and bar charts)
 LI-1= Columbia County light industrial zoned land (depicted in blue on the map and bar charts)
 INDUSTRIAL= City of Dayton industrial zoned land (depicted in blue on the map and bar charts)

3.3 Workforce

The WESD predicts a County population decline from 4,049 in 2020 to 3,913 in 2030 (WESD 2022b). According to WESD forecasts, most working age population categories will decrease, with growth in retired population categories (WESD 2022b) (Table 3-1).

Table 3-1: Working Age Population Change 2020–2030

Age	2020	2030
0-4	217	226
5-9	203	234
10-14	214	236
15-19	187	170
20-24	212	175
25-29	228	167
30-34	159	224
35-39	188	216
40-44	163	126
45-49	200	150
50-54	220	136
55-59	314	182
60-64	275	223
65-69	336	317
70-74	345	288
75-79	262	301
80-84	169	271
85 +	157	271
Total	4,049	3,913

Source: WESD 2022b

Notes

The cells highlighted in grey represent the working age population. Cells with green text represent population gain, and cells with red text represent population loss.

References

Office of Financial Management. YYYY. [Title] City, ST. Month DD.

Washington State Employment Security Department, Labor Market and Economic Analysis Branch. 2022. *Columbia County Profile 2022*. "Population Estimates and Projections, 1960-2040."

Population loss in rural counties is not unique to the County. For the first time in history, rural America lost population between 2010 and 2020 (Johnson 2022). A 2012 value-added agriculture implementation task force report found that most farmers are aging. (Community Council) Many of these producers are looking for ways to increase profitability so their children who have left the farm to find employment might return to farm or as preparation for selling their operation.

In 2021, the unemployment rate in the County was the same as in Washington state (WESD 2022c) (Table 3-2). Average wages across all industries in 2021 were slightly lower than Washington state wages, excluding King County (WESD 2022d) (Table 3-3). It's important to note that while wages are a bit lower than the Washington state average, the County's wages have increased substantially because three wind farms were constructed in the area; the wind farms pay a living wage and offer full benefits.

Table 3-2: Columbia County Employment, 2021

County	Work-Eligible Civilian Labor Force	Employment	Unemployment	Unemployment Rate
Columbia	1,822	1,728	94	5.2%
Washington State	3,899,298	3,695,896	203,402	5.2%

Notes

Placeholder text.

ReferenceWashington State Employment Security Department, Labor Market and Economic Analysis Branch. 2022. *Columbia County Profile 2022*. "Labor Area Unemployment Statistics (LAUS)."**Table 3-3: Columbia County Wages, 2021**

2021 Region	Average Wage
Columbia County	\$25.25
Washington State Excluding King County	\$25.81
Washington State with King County	\$30.50

Notes

Placeholder text.

ReferenceWashington State Employment Security Department, Labor Market and Economic Analysis Branch. 2022. *Columbia County Profile 2022*. "Median Hourly Wage–Unadjusted for Inflation."

During Garret Augustyn's April 3, 2023, phone interview with Ajsa Suljic, Eastern Washington regional economist they recognized the positive workforce and economic trends in the County. The County has a higher labor force participation rate than neighboring Walla Walla, Garfield, and Asotin counties.

3.3.1 Opportunities to Expand Area Jobs

Ajsa Suljic addressed the importance of small businesses to the County economy. Small businesses accounted for 50 to 60 percent of the employment and \$87 million of annual payroll in the County in 2021. It is in the best interest of the Port to continue supporting and facilitating small business development in the County.

Rural economic development grants are an opportunity to boost economic growth. The Port is making the City of Dayton more attractive to businesses and workers by planning and funding broadband internet infrastructure to improve local and regional connectivity.

Construction has been another recent strength of the County economy. Wind turbine construction has created a spike in construction jobs in the County, which has benefited wage creation and growth. In 2021, annual wages for construction workers were more than \$25,000 higher than the annual average County wage across all industries (WESD 2022e).

3.3.2 Washington State University Extension

On April 20, 2023, Garrett Augustyn and Abbi Russell, of MFA, discussed workforce potential with WSU Extension Community and Economic Development Director Michael Gaffney. Gaffney shared

background on the university's Extension system, Extension office roles and opportunities, and return on investment for partners.

3.3.2.1 Background

The land grant extension system is a three-legged partnership between counties, states, and the federal government. Funding is provided by all three and can take the form of dollars and/or in-kind support. In the State of Washington, the Revised Code of Washington 36.50.010 grants power to municipalities to create an extension to extend land grant knowledge of a university to practical application in the real world. Typically, Extensions are physically located with an office in the host county and formalized through a memorandum of agreement between WSU and the host county.

3.3.2.2 Roles and opportunities

Locating an Extension program requires demonstrating the need for a program to support local industries and communities. Examples of programs around the state include research farms, orchards, and vineyards; farming classes; malting, fermentation and distillation research and classes; agriculture and food experimentation; and opportunities for students to learn in a hands-on program. These programs are often multifaceted and require collaboration with local public and private partners.

Locating an Extension office in a jurisdiction also requires funding. While the national structure relies on funding from three levels: local, state, and federal, private investment may also contribute to extension placement. WSU is facing a 6 percent budget reduction over two years beginning July 1, 2023, that will require an increase in investment to bring Extension opportunities to communities.

3.3.2.3 Return on investment

The presence of a WSU Extension office brings an influx of local, state, and federal dollars to local economies. According to Michael Gaffney, the return on the local, state, and federal investment is roughly a three-to-one ratio. For every one dollar invested, the Extension returns about three dollars to the local economy. WSU Extension offices provide direct jobs, student opportunities, and volunteering opportunities. They support the primary industries that form the basis of an economy (e.g., agriculture, manufacturing, tourism) and support secondary economies by creating more need and opportunity for services that support primary industries.

3.3.3 Recommendations

- Consider providing trade ally training for workers considering entering manufacturing and construction sectors. Specifically, conduct outreach to the entities installing wind turbines to identify whether the organization or its supplier has any apprenticeship or training programs for entry-level staff.
- Consider obtaining a grant from the U.S. Department of Health and Human Services, Commerce, or the Washington State Department of Health to study the feasibility of expanding the provision of childcare services as a tactic supporting the strategy to attract a greater number of workers with higher-paying jobs.
- Coordinate with partners to determine need, level of interest, and ability to fund workforce training program(s) in partnership with the Columbia County WSU Extension.

- Contact the WSU Extension office in Pullman to discuss possibilities for the Port and Columbia County to collaborate with WSU.
- Explore opportunities to work with local schools on training and education on employment opportunities.

3.4 Housing

Housing is a new endeavor for public ports in Washington state. Ports and their communities are grappling with the challenges presented by the lack of affordable, quality housing not only on the lives of their district's citizens but also on their ability to attract employers, grow employment centers, and improve overall livability. Partnership, innovation, and a cohesive vision for the future of a port and the community in which it operates are critical to effectively addressing housing in ways that align with port powers under state law and meet communities' unique needs.

3.4.1 Port Involvement in Housing

The Comp Plan does not identify the need for additional housing stock in the County. It does, however, identify the need for affordable and rental housing. One way to begin addressing these issues is through mixed-use development as the ports of Skagit, Everett, and Bellingham are considering or have done.

The Port of Skagit is considering mixed-use development on property it owns at the La Conner Marina and RV Park. Ports do not typically address housing as their role is centered around economic development, but the Port of Skagit understands that workforce housing is a significant issue impacting employers today, which has led them to look at and consider mixed-use options.

The Port of Everett partnered with developers to construct market-rate, mixed-use housing on the Everett waterfront. The Port of Everett saw an opportunity to create residential density in a mixed-use area that could support office, retail, and recreational uses while maintaining public access to the waterfront. The residential units provide updated multifamily housing and contribute to diverse housing options in Everett. Diversity in housing options helps communities be more resilient and provides options for families of different incomes, sizes, ages, abilities, and other demographics. Revenue from the investment helps pay for other port endeavors.

Another option for ports seeking to support housing needs in their communities is attracting developers to purchase port property for housing. In 2021 the Port of Bellingham approved an option to sell 3.3 acres of property located on Bellingham's downtown waterfront to Mercy Housing Northwest. The project, known as Millworks Family Housing, will feature 83 apartment homes, ten percent of which will be reserved for families exiting homelessness. The community will also feature an early childhood education center sponsored by the Whatcom County YMCA.

3.4.2 Blue Mountain Station Housing

MFA investigated the potential for multifamily housing development on seven acres adjacent to the BMS property located on County parcels 268537 and 268507, which are in a County Agricultural Residential-1 (AR-1) zone. Both single-family and multifamily housing are permitted in the County AR-1 zoning designation. Upgrades to water and sewer systems may be required for multifamily housing development on the parcels.

To learn more about water and sewer system requirements for the BMS property, MFA and Port Executive Director Jennie Dickinson met with the City of Dayton Planning and Community Development Department on May 10, 2023, to discuss utility connections for the BMS property. Currently, the City of Dayton is negotiating to purchase property for an updated wastewater treatment plant, with a target construction year of 2025. Upgrades to the City of Dayton's wastewater treatment plant would enable a gravity sewer line to serve the BMS property and provide the needed capacity for potential multifamily housing.

3.4.3 Recommendations

- Assess available housing stock, median home prices, wages, and demand to develop a more detailed understanding of the need for and supply of affordable and rental housing.
- Reevaluate the Port's charter with regard to the nexus of housing to the Port's mission of long-term economic vitality for the County and its communities. Consider revising chartering and other documents to broaden the Port's ability to act with regard to housing and its properties.
- Explore options for partnership with public, nonprofit, and/or private organizations to address the multifaceted issue of housing.
- Engage with legal counsel and structural consultants about the potential barriers to redeveloping BMS in support of housing.

3.5 Downtown Building Purchase

The Port Commission expressed interest in purchasing a building in the City of Dayton's downtown core to invest in an asset that could potentially provide future economic benefit for residents and local businesses. The Port wanted to understand best practices and pros and cons from other Washington state ports that own similar properties.

Garrett Augustyn and Abbi Russell, of MFA interviewed staff at the Port of Anacortes, which purchased a full city block as a buffer property between the commercial downtown and marine industrial areas on Main Street in Anacortes in 2014. The city block contains a historic chandlery building, the Marine Supply and Hardware building (both of which are on the national historic register), and equipment storage. The downtown buildings were purchased by the port prior to the completion of building inspections or structural reporting. After the purchase, engineering consultants reported that the buildings require significant repair and maintenance for safe use.

The community expects the port to fund maintenance and repair of the historic buildings and objects to alteration or demolition of the structures. Repairs to maintain the Marine Supply and Hardware building for roughly 20 more years of use are estimated at nearly \$1 million. Historic preservation benefits in the form of tax breaks have not been beneficial for the Port. The Port sold the Marine Supply and Hardware building to the Anacortes Housing Authority for potential residential reuse, with a clawback clause if it ceases to serve workforce housing.

3.5.1 Recommendations

The Port of Anacortes provided the following recommendations if the Port considers purchasing a downtown building:

- Determine the business case and feasibility of reuse.

- Coordinate closely with legal counsel in advance of purchase.
- Have a plan for assessment and reuse of buildings.

3.6 Recreation

Washington ports are authorized to develop and operate public park and recreation facilities when the facilities support and enhance use of harbors, wharves, and piers; air, and water passenger terminals; and transfer terminals. Many of Washington state's public ports participate in the development and maintenance of recreational sites, including parks and green spaces, tourism areas, trails, interpretive areas, natural spaces, and public art. They often partner with other public agencies and community organizations to fund, develop, and manage recreational sites. Public recreational sites support economic development and quality of life in communities by attracting tourism and private investment, providing green infrastructure, promoting active lifestyles, and providing educational opportunities.

At the Lyons Ferry Marina, the Port has prioritized upland investments to meet KOA campground requirements and improve user experience (see Section 2.3) and has developed a master plan with two alternatives to further enhance public enjoyment and use of both the in-water and upland facilities. The need for refurbishment of the marina outstrips the Port's ability to meet that need; and grant monies will be needed, especially as both use of the marina and the cost of materials have increased greatly since the beginning of the COVID-19 pandemic. The Port can obtain updated evaluations of costs and evaluate whether grant opportunities can substantially relieve the financial burden associated with marina improvements and upkeep. However, in light of the other roles the Port is playing, the Port Commission may need to study and evaluate the relative benefits of investment in the marina compared to investments in other areas (such as housing) that might prove to be bigger levers in catalyzing County or regional development.

3.6.1 Case Studies

The Port of Garfield County, located in the City of Pomeroy, owns and manages the Pataha Creek RV Park. The small, recreational park provides full hookups and other amenities for a variety of RVs. Its location in Pomeroy draws visitors to local recreational sites, such as the Blue Mountains and Umatilla National Forest, and local history and culture, including the Agricultural Museum and Garfield County Museum.

The Port of Whitman County in the City of Colfax operates Boyer Park and Marina. The 56-acre full-service marina and campground is located on the Snake River and provides public access to the river, a public park and trail, lodging, and access to retail and other services. Boating, fishing, trail walking, and bird and wildlife watching are all supported by this port-owned site.

The Port of Quincy manages the nearly 90-acre Bishop Recreation Area, 10 miles southeast of the town of Quincy. The site features camping, two public horse corrals, and temporary weather-dependent restrooms. Bishop Recreation Area borders lands owned by the Washington Department of Fish and Wildlife, Bureau of Reclamation, and Bureau of Land Management. It provides access to those lands as well as opportunities for horseback riding, hiking, fishing, bird and wildlife watching, astronomy, and more.

The Port of Camas-Washougal manages three public parks on or near the Columbia River. Amenities include trails, interpretive signs, historic replicas, public art, a children's natural play area, restrooms, and picnicking and event sites. Parker's Landing Marina is next to the port's marina and provides access to motorized and nonmotorized water sports. The port partnered with Clark County Public Works to develop and manage Captain William Clark Regional Park, which features several amenities and commemorates an historical site where the Corps of Discovery camped for six days in 1806.

The Port of Bellingham partnered with the Whatcom Mountain Bike Coalition to build Bellingham's Waterfront Pump Track at a former industrial site near the downtown waterfront. The site attracts locals, regional visitors, and international tourists, who enjoy both the track and the food and beverage vendors next door. The site offers parking, restrooms, picnic tables, food trucks, short-term makerspace, event rentals, and an entertainment stage.

3.6.2 Recommendations

- MFA recommends the Port consider the following:
 - How the recreational properties supported by the Port can deliver a return on investment that satisfies the state constitution. Under Article 8, Section 7: Credit Not to Be Loaned, the state prohibits any local government entity from bestowing a gift or lending money, property, or the entity's credit to a private party. This helps ensure that state funds are being used to carry out a fundamental purpose of the government and that public funds and assets are serving the public interest and not solely private interests.
 - How local recreational opportunities may drive private investment to support quality of life in the County.
 - How and whether the Port can financially support local recreational opportunities.
 - Potential partnerships to maintain regional recreational opportunities.
- Present the findings to the community and engage the community to identify its desires for recreational investments and opportunities.

3.7 Funding Opportunities

Public funding resources, typically in the form of grants and low-interest loans, play a vital role in advancing capital improvement and economic development priorities across Washington. Importantly, as a public entity, the Port can bring grants and low-interest loans to a public-private partnership. A variety of funding programs from an equally large variety of sources are available to the Port for the projects that have been identified by the commissioners as priorities to pursue. Port staff are familiar with many available resources and have a proven record of success in accessing and leveraging them.

3.7.1 Funding Sources

Recent infusions of funding from the federal 2021 American Rescue Plan Act and Infrastructure Investment and Jobs Act have increased available funding in certain state and federal programs and have spurred the creation of new programs. Additional funding from the 2022 Inflation Reduction Act, which emphasizes clean energy and emissions reductions, further augments available

resources. Much of this funding is anticipated to be available for allocation for five years following passage of relevant legislation, or through September 2027. Federal funding resources are typically more competitive and rigid than state funding resources.

The most promising funding resources to support the Port's priority projects are likely state resources that can support business recruitment, land acquisition, workforce investment, infrastructure and transportation improvements, housing growth, and investments in recreation programs. These are more flexible and less competitive than federal resources and target the largest anticipated expenses associated with the project. Several of these grants have flexibility in match requirements. The biggest constraint is likely to be the size of the award and finding grants that provide funding for land acquisition, which is a precondition for any infrastructure improvements.

Leveraging multiple resources and attracting private investment will be essential to project success for projects that involve land acquisition. Grants and low-interest loans will not provide sufficient funding for acquisition or necessary infrastructure improvements.

3.7.2 Recommendations

As part of a short-term tactic for projects such as BMS, CWW Rail Line, or the Lyons Ferry Marina, consider targeted research of state funding sources (mentioned in Section 2.3.7) and/or federal sources, especially those that aim to provide benefits to rural communities and underserved areas.

As part of a future Comp Plan update, MFA recommends an evaluation and sorting of the primary funding sources to develop a focused strategy for accessing and leveraging funding programs. This evaluation of funding programs would weigh certain key variables, including the following:

- Federal and state. Generally, state grants are less competitive than federal grants, but they are also smaller. Some state grants are available once every two years, while others are available annually. Federal grants are typically available annually, but also require more effort and sometimes require more proof of already established plans and documentation.
- Eligibility and accessibility. A grant strategy should identify the activities that are eligible or excluded under specific grant programs to ensure best alignment with project needs. As grants are identified, one of the key considerations should be how competitive the Port might be in an application. For example: highly competitive programs that receive a lot of applications might not be as good of a fit as grants that give priority to or target rural communities?
- Focus. The recent spate of grant funding has focused on helping communities improve roads and other rights-of-way, lowering the carbon footprints of transportation options and some buildings, improving access to housing for underserved populations, and joining with other entities in finding innovative technologies to help reduce waste in everything from agriculture to forest thinning. Identifying three to five unique needs and strengths for the region would help the Port quickly identify appropriate grants and efficiently develop applications once a grant has been identified.
- Match. Some state and federal grants require no match, especially for planning efforts. Construction projects tend to require a match, which can range from 10 to 50 percent. Match can typically be cash or in-kind, though requirements for an in-kind match can be stringent. Cash matches must typically be nonstate for state grants, and nonfederal for federal grants.
- Timing. When possible, aligning the timing of different state and federal grants can allow applicants to leverage one as a source of match for another. This is where conversations with grant managers can be critical: They can advise on how best to achieve what can often be a

complex choreography of application deadlines, project periods (how long the Port has to expend funding), project milestones, and other requirements.

References

- Community Council. 2012. *Final Report of the Value-Added Agriculture Implementation Task Force*. Walla Walla, WA. October.
- County. 2023. *Online Web Map*. Columbia County. Accessed March 22, 2023.
<https://www.columbiaco.com/482/GIS>.
- Johnson, Kenneth. 2022. "Rural America Lost Population Over the Past Decade for the First Time in History." *Carsey Research*. National Issue Brief No. 160. University of New Hampshire: Durham, NH. Winter.
- Port. 2019. *Comprehensive Scheme of Harbor Improvements*. Port of Columbia. Dayton, WA. July 10.
- Reid Middleton. 2018. *Lyons Ferry Marina Master Plan*. Prepared for the Port of Columbia. Reid Middleton and JA Brennan. April 12.
- WESD. 2022. *Columbia County Profile 2022*. "Eastern Washington Ten-Year Occupational Employment Projections." Washington State Employment Security Department, Labor Market and Economic Analysis Branch.
- WESD. 2022b. *Columbia County Profile 2022*: "Population Estimates and Projections, 1960-2040." Washington State Employment Security Department, Labor Market and Economic Analysis Branch.
- WESD. 2022c. *Columbia County Profile 2022*: Labor Area Unemployment Statistics (LAUS). Washington State Employment Security Department, Labor Market and Economic Analysis Branch.
- WESD. 2022d. *Columbia County Profile 2022*: Median Hourly Wage--Unadjusted for inflation. Washington State Employment Security Department, Labor Market and Economic Analysis Branch.
- WESD. 2022e. Covered Employment Classified by Three-Digit NAICS Industry Subsectors. Washington State Employment Security Department, Labor Market and Economic Analysis Branch.
- WSDOT. 2015. *Palouse River and Coulee City Railroad 2015 to 2025 Strategic Plan*. Washington State Department of Transportation: Olympia, WA. May.

Limitations

The services undertaken in completing this report were performed consistent with generally accepted professional consulting principles and practices. No other warranty, express or implied, is made. These services were performed consistent with our agreement with our client. This report is solely for the use and information of our client unless otherwise noted. Any reliance on this report by a third party is at such party's sole risk.

Opinions and recommendations contained in this report apply to conditions existing when services were performed and are intended only for the client, purposes, locations, time frames, and project parameters indicated. We are not responsible for the impacts of any changes in environmental standards, practices, or regulations subsequent to performance of services. We do not warrant the accuracy of information supplied by others, or the use of segregated portions of this report.

Appendix

Port Commission Memos



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MEMORANDUM

To: Jennie Dickinson Date: February 3, 2023
From: Abbi Russell and Sarah Sieloff Project No.: M2427.01.001
RE: Commission meeting materials

This memorandum informs the Port of Columbia (Port) Board of Commissioners of preliminary findings for its Comprehensive Scheme update report. Priority topics covered in this memo are Blue Mountain Station, Columbia Walla Walla Railroad, and workforce and housing trends.

BLUE MOUNTAIN STATION

Columbia County has deep economic and cultural roots in agriculture. As the industry continues to change, the Port and local businesses are evolving to meet new demand and economic realities. Profit margins for production agriculture are often very narrow. The government is moving away from direct support for the farmer, which presents additional challenges to many facets of the agriculture industry. And some non-farmers are seeking ways to enter agriculture or related fields for the first time. (Community Council 2012).

Blue Mountain Station (BMS) represents the efforts of the Port and regional partners to diversify the economy, revive the food processing industry that once thrived in the region, and build a sustainable food hub. Community Economic Revitalization Board funds were leveraged to construct the original facility. Revenue from the tenant businesses, the crop, and the farmhouse lease pays for maintenance of the park and contributes to the debt service payments for the purchase and development of the site.

Value-added agriculture is a growing market in the Northwest and the nation. BMS receives consistent attention as a model for similar developments. It was inspiration for efforts to bring a business incubator-style market to Yakima around 2016 and for the City Center Market and Kitchen in Florence, South Carolina, which opened in September 2020. The Port regularly receives requests for tours and information about the facility.

BMS is a thriving Port asset. The fully leased facility supports 40 regional businesses and a variety of products, including grains, candy, produce, coffee, wine, spirits, a commercial kitchen, co-op, and plant nursery. BMS provides space for the regional food and beverage retail sector, which is

anticipated to grow 2.4% by 2029. BMS also attracts customers and tenants from outside of the county.

There are 21 acres still undeveloped: 14 in the food park footprint that could be used for new opportunities for expansion of the food hub or to support related needs, and 7 acres outside the food park that are zoned for housing. These undeveloped acres are currently in cropland.

COLUMBIA WALLA WALLA RAIL

It is not uncommon in Washington state for public entities to own rail trackage, which they may lease to private operators. Examples include the ports of Benton and Royal Slope, the City of Tacoma, and the Washington State Department of Transportation. Managing public transportation assets that can be leveraged by private industry to create jobs and spur economic activity – much like docks, buildings, and roadways – is one significant way public agencies support local and regional economies.

The Port owns 37 miles of rail between Dayton and Walla Walla, which was gifted to the Port by Union Pacific (UP) in 1996. The Port's short line, known as the Columbia Walla Walla (CWW) Rail Line, is part of a 67-mile rail connection between Dayton and Wallula. The Walla Walla to Wallula route is still owned by UP and operated by Columbia Rail.

The status of the CWW Rail Line is of interest to local and state partners, as it is an asset with both passive and active economic benefits for Columbia County and the region. Yet ownership comes with challenges. The line needs substantial repairs in the future to maintain or expand operations. The necessary repairs amount to roughly \$30.6 million. Access between the Port Kelley facility, operated by Northwest Grain Growers, and the Columbia River, by which grain efficiently travels to global markets by barge, has not been allowed by UP.

According to the Palouse River & Coulee City (PCC) Railroad 2015 to 2025 Strategic Plan, the PCC Railroad reduces demand for trucking, reduces roadway congestion, reduces roadway and bridge maintenance and construction costs, reduces greenhouse gas emissions, reduces shipping costs for its users, and improves roadway safety. Annual road damage costs of about \$1.7 to 4.1 million per year (or an average of \$2.9 million per year) are prevented by utilizing the PCC.

Maintaining the CWW Rail Line and its transportation corridor is an important function of the Port of Columbia. This short line is a key link in a regional and national system that connects transportation hubs and communities and moves products from source to market. In the case of the CWW Rail Line, the line connects Dayton and surrounding communities to the PCC line and the UP mainline, benefiting local agriculture and potential biodiesel fuel transportation. The right of way along the Port-owned tracks can be used as a utility corridor, which reduces costs and reduces or eliminates the need for private property easements and purchases. The Port plans to install broadband infrastructure and the City of Dayton plans to install water infrastructure along the right of way in the future.

There are several grant opportunities, private investment, and public-private partnerships that can help support the costs of maintaining Port-owned trackage.

WORKFORCE TRENDS

The Washington Office of Financial Management (OFM) predicts population decline in County from 4,049 in 2020 to 3,913 in 2030. OFM also forecasts losses in most working age population categories, while growing in retired population categories (see table below).

Working Age Population Change 2020 – 2030

Age	2020	2030
0-4	217	226
5-9	203	234
10-14	214	236
15-19	187	170
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40-44	163	126
45-49	200	150
50-54	220	136
55-59	314	182
60-64	275	223
65-69	336	317
70-74	345	288
75-79	262	301
80-84	169	271
85 +	157	271
Total	4,049	3,913
Notes: Red text denotes a decline; green text denotes an increase. Cells highlighted in grey represent working age populations. Source: WSED 2022		

Population loss in rural counties is not unique to Columbia County. For the first time in history, rural America lost population over the past decade¹. A 2012 value-added agriculture implementation task force report found that most farmers are aging. Many of these producers are looking for ways to

¹ Kenneth Johnson. 2022. *Rural America Lost Population Over the Past Decade for the First Time in History*. University of New Hampshire. Durham, New Hampshire. February, 22.

increase profitability so their children who have left the farm to find employment might return to farm, or as preparation for selling their operation.

As of December 2022, the unemployment rate in Columbia County was 0.8% higher than that of the state and wages were lower than state wages both including and excluding King County (See tables below). Note: While they are still lower than the state, Columbia County's wages have increased substantially since construction of three wind farms in the area, which pay a living wage and offer full benefits.

Columbia County Employment, 2022

County	Civilian labor force	Employment	Unemployment	Unemployment rate
Columbia	1,822	1,728	94	5.2%
Source: WSED 2022				

Columbia County Wages, 2022

	2021
Columbia County	\$25.25
State Less King County	\$25.81
State With King County	\$30.50

Rural economic development grants are an opportunity to boost economic growth. The Port is making Dayton more attractive to businesses and workers by planning and funding broadband internet infrastructure to improve local and regional connectivity.

HOUSING OPPORTUNITIES

The 2020 Columbia County Comprehensive Plan does not identify the need for additional housing stock in the county. It does, however, identify the need for affordable and rental housing. One way to begin addressing these issues is through mixed-use development.

The Port of Skagit is considering mixed-use development on property it owns at the La Conner marina. Ports don't typically address housing as their role is centered around economic development, but the Port of Skagit understands that workforce housing is a significant issue impacting employers today, which has led them to look at and consider mixed-use options.

Another option for ports seeking to support housing needs in their communities is attracting developers to purchase port property for housing. In 2021 the Port of Bellingham approved an option to sell 3.3 acres of property on Bellingham's downtown waterfront to Mercy Housing Northwest. The project, known as Millworks Family Housing, will feature 83 apartment homes, 10% of which will be

reserved for families exiting homelessness. The community will also feature an early childhood education center sponsored by YMCA of Whatcom County.

Housing is a new endeavor for public ports in Washington state. Ports and their communities are grappling with the challenges presented by the lack of affordable, quality housing, not only on the lives of their district's citizens, but also on their ability to attract employers, grow employment centers, and improve overall livability. Partnership, innovation, and a cohesive vision for the future of a port and the community in which it operates are critical to effectively addressing housing in ways that align with port powers under state law and meet communities' unique needs.



MEMORANDUM

To: Jennie Dickinson Date: March 3, 2023
From: Abbi Russell and Sarah Sieloff Project No.: M2427.01.001
RE: Commission meeting materials

This memorandum informs the Port of Columbia (Port) Board of Commissioners of preliminary findings for its Comprehensive Plan Update Report. Priority topics covered in this memo are Port rail ownership, value-added agriculture, workforce and housing trends, and Port purchase of a downtown building.

PORT RAIL OWNERSHIP

MFA interviewed staff at Washington state ports that own short line rail assets. They view rail lines as a utility, much like roads: Rail lines provide the only access in and out of certain tracts of land and to related uses, such as barge terminals and industrial facilities. Port-owned rail lines provide public access, tax benefits, and control of public interest; these benefits would be lost if these public assets were sold. The ports interviewed spoke about the value of port rail asset ownership and intend to retain ownership of their rail lines. The values discussed include the following:

- Owning the rail line and right of way in an area with potential for industrial operations, which are attracted to and often require rail access.
- Investing public dollars in facilities that are owned, operated, and cared for by a public agency for the benefit of their communities.
- Developing and maintaining public assets to provide fair market competition and lower barriers to entry for private businesses to create jobs and economic benefit.
- Incentivizing private investment: According to the Tri-City Development Council, approximately 30% of firms looking to locate in the Tri-Cities area are looking for rail access.

There is continued demand for short line rail capacity around the state. There is also potential for partnership between Port of Columbia and other ports and partners to apply for state and federal grant money for rail repair and maintenance.

In an interview with Eastern Washington Regional Economist Ajsa Suljic, she noted the importance of rail assets in rural county economies. Ms. Suljic highlighted the importance of complementary rail transportation in the value-added agriculture clusters (food manufacturing, processing and storage). Ms. Suljic pointed out the increasing burnout of truck drivers and wear of truck transportation on local roadways as limitations to exclusive truck transportation. Economic development is a long-range consideration, and investment in rail transportation would be beneficial to development of the value-added agriculture sector.

It is recommended that the Commission consider the following:

- The long-term economic potential of Port rail ownership for Columbia County and future industries, which ties firmly into value-added agriculture, workforce, and housing.
- Speaking with other Washington state ports that own short line railroads, including the ports of Benton, Grays Harbor, and Royal Slope.
- Acquiring an appraisal for the value of the rail line and right of way. There is a regulatory process involved with compensation for the sale of public assets at fair market value.

VALUE-ADDED AGRICULTURE

Value-added agriculture generally focuses on production or manufacturing processes, marketing, or services that increase the value of primary agricultural commodities. The foundation of many rural economies is based on agriculture and its complementary manufacturing and processing. According to Eastern Washington Regional Economist Ajsa Suljic, no rural county has strayed by aligning itself with value-added agriculture. Blue Mountain Station (BMS) represents the efforts of the Port of Columbia and regional partners to diversify the economy, revive the food processing industry that once thrived in the region, and build a sustainable food hub. The Port of Columbia, however, is not the only Port that recognizes the benefit of investing in value-added agriculture.

The Port of Skagit owns a facility leased by the Washington State University (WSU) Bread Lab. The renowned Bread Lab hosts WSU researchers working to develop better tasting, healthier, affordable bread and keep the value where it is produced while not pricing people out of staple foods. This port asset is a good example of supporting value-added agriculture, research, education (they offer baking classes), and retail. The Port of Skagit and WSU Bread Lab are interested parties for a designated Innovation Partnership Zone. The Innovation Partnership Zone, funded by state grant dollars, helps facilitate collaboration between Skagit County agricultural producers, researchers, manufacturers, and businesses that can utilize Skagit Valley products. This collaboration supports small local businesses and jobs across industries, as well as communities around the Skagit Valley.

It is recommended that the Commission consider:

- Speaking with other ports in Washington and communities across the Northwest and nation that rely on agriculturally based economies and have developed or are considering developing value-added agriculture business clusters.
- Seeking additional collaboration with farmers, colleges, agricultural associations, and other partners to promote and grow value-added agriculture for Columbia County and the region.
- Consider state and federal education and funding opportunities through the Washington State Departments of Agriculture and Commerce, and the USDA.

WORKFORCE TRENDS

Eastern Washington Regional Economist Ajsa Suljic recognized in our interview with her the positive workforce and economic trends in Columbia County (the County). The County has a higher labor force participation rate than neighboring Walla Walla, Garfield, and Asotin counties. Ms. Suljic addressed the importance of small businesses to the County economy. Small businesses accounted for 50 to 60 percent of the employment and \$87 million of annual payroll in the county in 2021. It is in the best interest of the Port to continue supporting and facilitating small business development in the County.

Construction has been another recent strength of the county economy. Wind turbine manufacturing has created a spike in construction jobs in the county which has benefited wage creation and growth. In 2021, annual wages for construction workers were over \$25,000 higher than the annual average wage across all industries.

HOUSING OPPORTUNITIES

The 2020 Columbia County Comprehensive Plan does not identify the need for additional housing stock in the county. It does, however, identify the need for affordable and rental housing. One way to begin addressing these issues is through mixed-use development.

The Port of Everett partnered with developers to construct market-rate, mixed-use housing on the Everett waterfront. The Port of Everett saw an opportunity to create residential density in a mixed-use area that could support office, retail, and recreational uses while maintaining public access to the waterfront. The residential units provide missing updated multi-family housing and a diversity of housing options in Everett. Revenue from the investment helps pay for other Port endeavors.

Another option for ports seeking to support housing needs in their communities is attracting developers to purchase port property for housing. As shared in the February memo and Commission workshop, the Port of Bellingham did just this in 2021 when it approved an option to sell 3.3 acres of property on Bellingham's downtown waterfront to Mercy Housing Northwest. The project will feature

83 apartment homes, 10% of which will be reserved for families exiting homelessness. The community will also feature an early childhood education center sponsored by YMCA of Whatcom County.

It is recommended that the Commission consider:

- The highest and best use of the Port's Blue Mountain Station property, and how its use may interact with BMS and the surrounding community.
- The nexus of housing to the Port's mission of long-term economic vitality for Columbia County and its communities.
- Options for partnership with public, non-profit, and/or private organizations to address the multifaceted issue of housing.

DOWNTOWN BUILDING PURCHASE

It is not uncommon in Washington state for public entities to own buildings that are located at a distance from their main properties and lease them to private operators. The Port of Willapa Harbor recently entered into a purchase agreement to acquire a former cannery building in Downtown South Bend for redevelopment into a business accelerator training program and spaces for small-scale manufacturing or artisan businesses as well as a retail store for products made on site and locally. The goal for the project is to catalyze economic development and job creation in Willapa Bay region. The economic feasibility study for this project was funded through a State Community Economic Revitalization Board (CERB) grant.

The Port must attend to both mission and margin in all activities and should take stock of its assets and liabilities and demonstrate the highest and best use for a particular building before considering purchase. Along these lines, it is recommended that the Commission consider:

- The potential economic and community benefits that can be derived from continued investment in existing Port assets, consistent with market demand and community needs.
- Whether Port investment is precluding private investment in downtown buildings.
- Assessing the economic feasibility of purchasing a downtown building. The Port may consider pursuing a CERB grant to access planning funding for such an assessment.



MEMORANDUM

To: Jennie Dickinson Date: April 7, 2023
From: Seth Otto and Abbi Russell Project No.: M2427.01.001
RE: Commission meeting materials

This memorandum informs the Port of Columbia (Port) Board of Commissioners of preliminary findings for its Comprehensive Plan Update Report. Priority topics covered in this memo are the Columbia Walla Walla Rail Line, Blue Mountain Station, housing, downtown building, industrial lands, recreation, and funding opportunities.

COLUMBIA WALLA WALLA RAIL LINE

MFA interviewed a private regional rail owner-operator and staff at a Washington state port and city that have sold rail assets to private operators.

Private Owner-Operator

The regional rail owner-operator owns 85 miles and operates over 300 miles of track in Washington state. The owner-operator sees long-term potential in value-added agriculture and medium-sized industrial development in the Walla Walla-Dayton area and is interested in purchasing the Columbia Walla Walla (CWW) Rail Line. It is the owner-operator's opinion that removing track in Columbia County would be a short-sighted move. The track is more than a century old. It requires significant investment to allow it to facilitate increased freight movement and bring it to current operational standards. The owner-operator's stated business case includes experience successfully owning and operating short line rail in the region, experience attracting customers, ability to successfully compete for grant money, possibility of opening access to the Northwest Grain Growers terminal in Wallula, and incentive for the owner-operator to invest in the rail line.

Port

A Port that owned a half mile of last-mile track decided to sell this asset after having to spend over \$100,000 annually on updates, repairs, and maintenance while only charging a \$10 spotting fee for use. A state audit confirmed the sale was agreeable for the Port's balance sheet. The private owner/operator has successfully operated the track since the transfer. The Port representative

acknowledged that the sale of their last mile track is not comparable to the sale of 37 miles of short-line track that connects communities and other regional assets.

City

A Washington city sold a lightly used rail asset outside of the city limits to a regional owner-operator due to insufficient revenue for long-term sustainability. The rail line was appraised by a professional appraiser, surplusized, and the sale approved by City Council. The transaction was then filed with the federal Surface Transportation Board (STB) for authorization. The sale price is \$2.2 million. The sale was conducted through direct negotiation instead of through an RFP, because City policy allowed for a direct transaction. The City maintains ownership of the right-of-way and collects monthly revenue from the presence of utilities. The City also maintains ownership of its heavily used rail line that carries roughly 200,000 cars a year to a local port. There was significant public opposition to the transaction because of the public's desire for a rails-to-trails project. The City recommends the following to any public entity considering the sale of rail assets:

- Learn about the role of the STB in the sale process.
- Consult legal counsel with experience in rail assets and with the STB.
- Engage your community early and often at the start and throughout the process of appraising and selling an asset.

BLUE MOUNTAIN STATION

Blue Mountain Station (BMS) operates as an “Artisan Food Center.” Artisan products are generally defined as local, handmade, and crafted in small batches using traditional methods. While this is true of the products offered by the many vendors at BMS, the term may also carry negative connotations for some (e.g., “overpriced,” “organic,” “elitist”). The Commission is concerned that these connotations could impact business at BMS and expressed interest in discussing different names that may help turn the focus to producers and the community. MFA researched the following terms related to artisan food production and sales and classified the context around each one.

Public market: Community commerce and placemaking

Public markets are typically permanent, year-round markets made up of diverse and independent businesses selling products they've grown or made. Public markets exist to serve the public good: They are job creators, economic drivers, and community placemakers. They attract tourists and serve a community's needs for commerce, food, and goods while supporting and showcasing a community's unique culture and character. There are public markets in communities throughout the U.S., though the nation's most noted public markets are typically sizable and located in large cities. Pike Place Market in Seattle is the best-known public market in the Northwest and consistently ranked as a top U.S. public market. Pybus Public Market in Wenatchee is an example of a smaller public market focused on North Central Washington goods and tourism.

Farmers markets: Seasonal food and goods

Farmers markets are well-known community gathering spaces for local produce, small-batch food and beverages, handcrafted goods, and entertainment. These markets abound in Northwest communities of all sizes. They are typically outdoor and seasonal, though some markets have an indoor, year-round aspect. Sometimes they include the term “artisan” to reflect the presence of these kinds of food and crafts, such as the Sequim Farmers & Artisan Market. Examples include the Downtown Farmers Market in Walla Walla, the College Place Farmers & Artisan Market, Hillyard Farmers Market in Spokane, and Moscow Farmers Market in Moscow, Idaho.

Makers’ markets: Arts and crafts

Makers’ space tends to be related to products such as jewelry, pottery, clothing/fabrics, candles, and more, though it can support micro-scale food and beverage (e.g., bakery, vinegar). These can be multi-purpose spaces that simultaneously serve as crafting, marketing, and selling spaces. They can also be temporary locations, including those inside larger businesses or shared/public spaces, and temporary timeframes, such as around key holidays. Washington state examples include the artisan popup shops at Pybus Public Market in Wenatchee, the Entiat Valley Makers Market, the Wintertide Makers Market in Port Angeles, and the Everett Makers Market. In Missoula, Montana, two artisans built the Missoula Makers Collective, which creates a makers’ community based around education, empowerment, and the visibility and accessibility of local, handmade products.

Locally sourced: Groceries, restaurants, and co-ops

The Food, Conservation and Energy Act of 2008 (2008 Farm Act) defines locally grown as “being transported less than 400 miles, or from within the state in which it’s produced.” (USDA) The term is often used in grocery stores that carry local produce, dairy, and meat products, and at restaurants. It’s also commonly considered as part of community-supported agriculture and farmer co-ops. Locally sourced has cultural connotations with freshness, quality, and a low carbon footprint due to smaller-scale farming practices and a short supply chain.

Farm to table: A movement

Farm to table is the movement to connect people to where their food originates. It encompasses education and retail food purchase and consumption. Due to historic fraud and overuse of the term in the decades since it was coined, “farm to table” can be met with apathy or skepticism. However, there are plenty of legitimate establishments that provide truly local, traceable food at market prices. There are also small and micro businesses that continue to support this movement in various ways. A very local example is the Montelilet Fromagerie in Dayton. Pierre-Louis and Joan Montelilet raise milk goats, produce traditional cheeses, and host farm to table events for which the meat of locally raised animals is on the menu.

HOUSING

MFA investigated the potential for multi-family housing development adjacent to the Blue Mountain Station campus on Columbia County parcels 268537 and 268507, which are in a Columbia County Agricultural Residential-1 (AR-1) zone. Both single-family and multi-family housing are permitted in the Columbia County AR-1 zoning designation. Upgrades to water and septic systems may be required for multi-family housing development on the parcels.

DOWNTOWN BUILDING

MFA interviewed staff at the Port of Anacortes, which purchased a full city block as a buffer property between the commercial downtown and marine industrial areas on Main Street in Anacortes in 2014. The city block contains a historic chandlery building, a Marine Supply and Hardware building (both of which are on the national historic register), and equipment storage. The downtown buildings were purchased by the Port prior to the completion of building inspections or structural reporting. After the purchase, engineering consultants reported that the buildings require significant repair and maintenance for safe use.

The community expects the Port to fund maintenance and repair for the historic buildings and objects to alteration or demolition of the structures. Repairs to maintain the Marine Supply and Hardware building for roughly 20 more years of use are estimated at nearly \$1 million. Historic preservation benefits in the form of tax breaks have not been beneficial for the Port. The Port sold the brick building to the Anacortes Housing Authority for potential residential reuse, with a claw-back clause if it ceases to serve workforce housing.

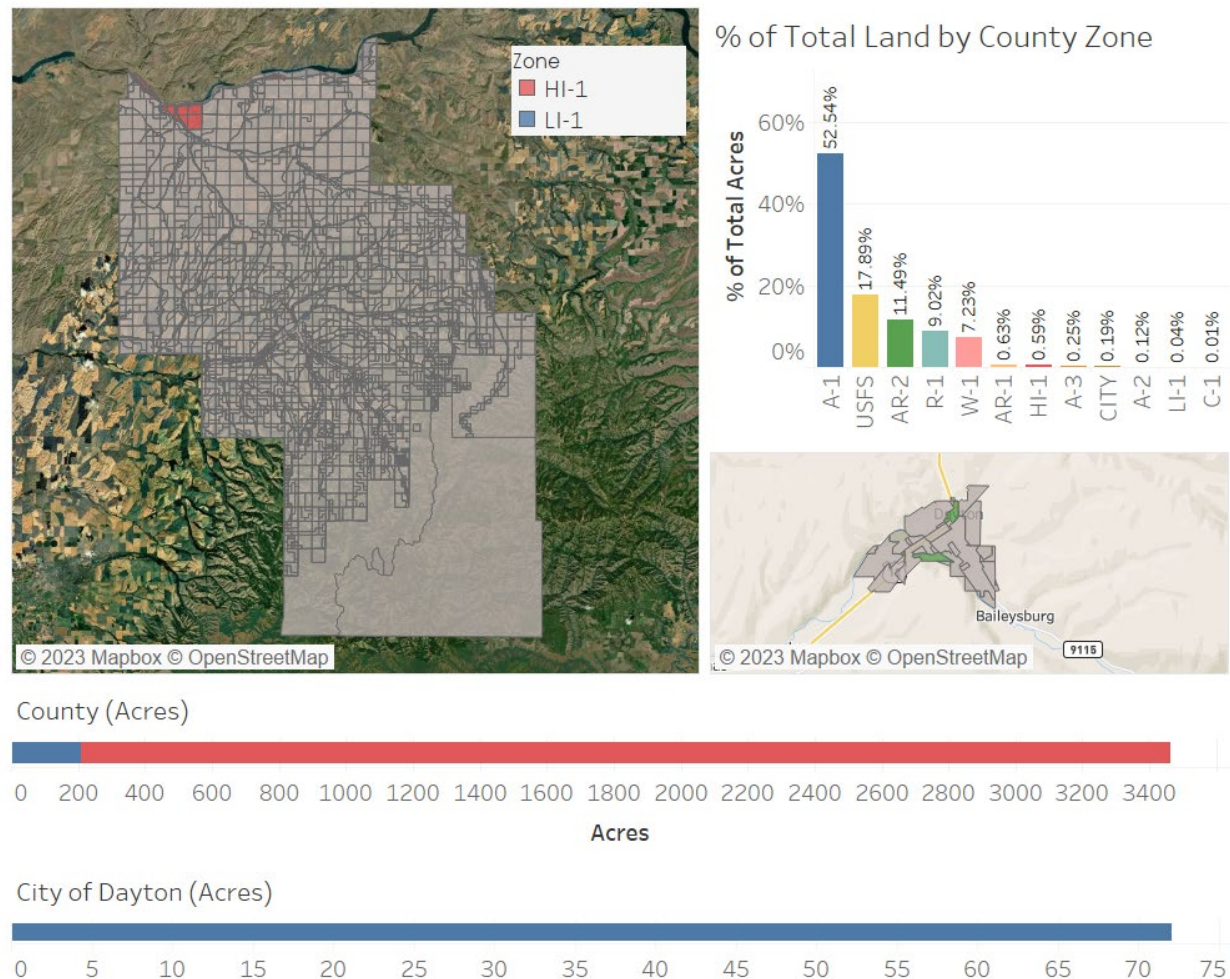
The Port of Anacortes provided the following recommendations if the Port considers purchasing a downtown building:

- Determine business case and feasibility of reuse.
- Coordinate closely with legal counsel in advance of purchase.
- Have a plan for assessment and reuse of buildings.

INDUSTRIAL LANDS

There are limited industrial-zoned lands in Columbia County and the City of Dayton. Columbia County contains 3,464 acres of industrial land, which makes up only 0.61 percent of the total land in the county. The majority of the Heavy Industrial Land in the County along the Snake River would require construction of a new power substation to accommodate industrial development. The City of Dayton has 72 acres of industrial land, which makes up 3.8 percent of the total land in the city. The limited inventory of development-ready industrial land makes the county less attractive to industrial developers. Figure 1 shows an overview of industrial land in Columbia County and Dayton.

Figure 1: Industrial Land in Columbia County and the City of Dayton



RECREATION

Washington ports are authorized to develop and operate public park and recreation facilities when they support and enhance use of harbors, wharves, and piers; air, and water passenger terminals; and transfer terminals. Many of the state's public ports participate in the development and maintenance of recreational sites, including parks and green spaces, tourism areas, trails, interpretive areas, natural spaces, and public art. They often partner with other public agencies and community organizations to fund, develop, and manage recreational sites. Public recreational sites support economic development and quality of life in communities by attracting tourism and private investment, providing green infrastructure, promoting active lifestyles, and providing educational opportunities.

The **Port of Quincy** manages the nearly 90-acre Bishop Recreation Area, 10 miles southeast of the town of Quincy. The site features camping, two public horse corrals, and temporary, weather-dependent restrooms. Bishop Recreation Area borders lands owned by the Washington Department of Fish and Wildlife, Bureau of Reclamation, and Bureau of Land Management. It provides access to those lands as well as opportunities for horseback riding, hiking, fishing, bird and wildlife watching, astronomy, and more.

The **Port of Garfield** in Pomeroy owns and manages the Pataha Creek RV Park. The small, recreational park provides full hookups and other amenities for a variety of RVs. Its location in Pomeroy connects visitors to local recreational sites, such as the Blue Mountains and Umatilla National Forest, and local history and culture, including the Eastern Washington Agricultural Museum and Garfield County Museum.

The **Port of Whitman County** in Colfax operates Boyer Park and Marina. The 56-acre full-service marina and campground is on the Snake River and provides public access to the river, a public park and trail, lodging, and access to retail and other services. Boating, fishing, trail walking, and bird and wildlife watching are all supported by this port-owned site.

The **Port of Camas-Washougal** manages three public parks on or near the Columbia River. Amenities include trails, interpretive signs, historic replicas, public art, a children's natural play area, restrooms, and picnicking and event sites. Marina Park is next to the port's marina and provides access to motorized and non-motorized water sports. The port partnered with Clark County Public Works to develop and manage Captain William Clark Park, which features several amenities and commemorates an historical site where the Corps of Discovery camped for six days in 1806.

The **Port of Bellingham** partnered with the Whatcom Mountain Bike Coalition to build Bellingham's bicycle pump track at a former industrial site near the downtown waterfront. The site attracts locals, regional visitors, and international tourists, who enjoy the track as well as the food and beverage vendors next door. The site offers parking, restrooms, picnic tables, food trucks, short-term makers' space, event rentals, and an entertainment stage.

It is recommended that the Commission consider:

- How recreational properties support the Port's fundamental purpose and whether they can deliver a return on investment that satisfies the state constitution (Article 8, Section 7: Credit Not to Be Loaned).
- How recreational opportunities may drive private investment to support quality of life in Columbia County.
- Community desires and potential partnerships for recreational investments and opportunities.

FUNDING OPPORTUNITIES

Public funding resources, typically in the form of grants and low-interest loans, play a vital role in advancing capital improvement and economic development priorities across Washington. Importantly, as a public entity, the Port can bring grants and low-interest loans to a public-private partnership. A variety of funding programs from an equally large variety of sources are available to the Port for the projects that have been identified as priorities by the Commissioners. Port staff are familiar with many available resources and have a proven record of success in accessing and leveraging them.

Recent infusions of funding from the federal 2021 American Rescue Plan Act and Infrastructure Investment and Jobs Act have increased available funding in certain state and federal programs and have spurred the creation of new programs. Additional funding from the 2022 Inflation Reduction Act, which emphasizes clean energy and emissions reductions, further augments available resources. Much of this funding is anticipated to be available for allocation for five years following passage of relevant legislation, or through September 2027.

The most promising funding resources to support the Port's priority projects are likely state resources that can support business recruitment, land acquisition, workforce investment, infrastructure and transportation improvements, housing growth, and investments in recreation programs. These are more flexible and less competitive than federal resources and target the largest anticipated expenses associated with the project. Several of these grants have flexibility in match requirements. The biggest constraint is likely to be award size and which grants provide funding for land acquisition, which is a precondition for any infrastructure improvements. Grants and low-interest loans will not provide sufficient funding for acquisition or necessary infrastructure improvements. Leveraging multiple resources and attracting private investment will be essential to project success.

As part of a future Comprehensive Plan update, we recommend an evaluation and sorting of the primary funding sources to develop a focused strategy for accessing and leveraging funding programs. This evaluation of funding programs would weigh certain key variables, including:

- **Federal versus state.** Generally, state grants are less competitive than federal grants, but they are also smaller. Some state grants are available once every two years, while others are available annually. Federal grants are typically available annually.
- **Eligibility and accessibility.** Identify what activities are eligible or excluded under a specific grant program to ensure best alignment with project needs. It's also important to consider how competitive the Port might be in an application. For example: Are there set-asides for rural communities? Is this a highly competitive program that receives a lot of applications?
- **Timing.** When possible, aligning the timing of different state and federal grants can allow applicants to leverage one as a source of match for another. This is where conversations

with grant managers can be critical: They can advise on how best to achieve what can often be a complex choreography of application deadlines, project periods (how long the Port has to expend funding), project milestones, and other requirements.

- **Match.** Some state and federal grants require no match, especially for planning efforts. Construction projects tend to require a match, which can range from ten percent to 50 percent. Match can typically be cash or in-kind, though requirements for an in-kind match can be stringent. Cash matches must typically be nonstate for state grants, and nonfederal for federal grants.
- **Grant size.** No grant is truly “free money.” It is important to consider whether a small grant is truly worth the costs it imposes in terms of management requirements and staff time.

As a first step, we want to confirm the primary categories of funding types as they relate to the specific priorities identified by the Port Commission. We understand these include:

Economic Development (Planning and business recruitment; Real estate acquisition; Workforce development)

Infrastructure (Lyons Ferry Marina; Rock Hill Industrial Park)

Transportation (Columbia Walla Walla Railroad)

Housing (new initiative)

Natural Resources/Open Space/Recreation (new initiative)



MEMORANDUM

To: Jennie Dickinson, Port of Columbia Date: May 5, 2023

From: Seth Otto and Abbi Russell,
Maul Foster & Alongi, Inc. Project No.: M2427.01.001

RE: Port of Columbia Board of Commissioners meeting materials

This memorandum informs the Port of Columbia (Port) Board of Commissioners of preliminary findings for its Comprehensive Plan Update Report. Priority topics covered in this memo are workforce development, Blue Mountain Station, funding strategy, and general economic development.

WORKFORCE DEVELOPMENT—WASHINGTON STATE UNIVERSITY EXTENSION

Maul Foster & Alongi, Inc. (MFA) discussed workforce potential with Washington State University (WSU) Extension Community and Economic Development Director Michael Gaffney. Mr. Gaffney shared background on the extension system, extension office roles and opportunities, and returns on investment for partners.

Background

The land grant extension system is a three-legged partnership between counties, states, and the federal government. Funding is provided by all three and can take the form of dollars and/or in-kind support. In the state of Washington, the Revised Code of Washington 36.50.010 grants power to municipalities to create an extension to extend land grant knowledge of a university to practical application in the real world. Extensions are physically located with an office in the host county and formalized through a memorandum of agreement between WSU and the host county. However, the structure is not constrained by the county office model.

Roles and opportunities

Locating an extension requires demonstrating needs for a program to support local industries and communities. Examples of programs around the state include research farms, orchards, and vineyards; farming classes; malting, fermentation and distillation research and classes; agriculture and food experimentation; and opportunities for students to learn in a hands-on program. These programs are often multifaceted and require collaboration with local public and private partners.

Locating an extension in a jurisdiction also requires funding. The national structure relies on funding from each level: local, state, and federal. Private investment may also contribute to extension

placement. WSU is facing a 6 percent budget reduction starting July 1 for two years, which will require an increase in investment to bring extension opportunities to communities. Investment can be through direct funding or through local investment networks that help develop entrepreneurial funding sources.

Return on investment

The presence of a WSU extension office brings an influx of local, state, and federal dollars to local economies. According to Mr. Gaffney, the return on the local, state, and federal investment is roughly a 3:1 ratio. For every \$1 invested, the extension returns about \$3 to the economy. WSU extensions provide direct jobs, student opportunities, and volunteering opportunities. They support the primary industries that form the basis of an economy (e.g., agriculture, manufacturing, tourism) as well as secondary economies by creating more need and opportunity for services to support primary industries.

MFA recommends the following:

- Coordinating with partners to determine need, level of interest, and ability to fund an extension office in Columbia County.
- Building the case for need and a program that is unique to Columbia County.
- Contacting Michael Gaffney to discuss possibilities for the Port of Columbia and Columbia County to collaborate with WSU.

BLUE MOUNTAIN STATION—HOUSING

MFA and Port Executive Director Jennie Dickinson have scheduled a follow-up meeting with City of Dayton Planner Ryan Paulson on Wednesday, May 10, 2023, to discuss utility connections for the Blue Mountain Station property.

FUNDING STRATEGY

The April 2023 meeting established that an evaluation and sorting of primary funding programs available to the Port should be included as part of a future Comprehensive Plan update. MFA recommends that this funding strategy take the form of an organized matrix. Examples are attached to the memo to illustrate this approach.

The funding matrix is a living document. It contains basic information about relevant state and federal grants, loans, and technical assistance resources, with information that is current at the time of development. The matrix is designed to be updated periodically as new grant opportunities arise. Program guidelines change from year to year, and grant program managers are always the best resource for the most current information.

Primary matrix components include the following:

- The cover sheet includes a quick reference list with links to primary funding sources.
- The calendar of funding deadlines includes a rough estimate of grant periods, based on past available data.
- The Grants, Loans and Technical Assistance section contains more detailed information, including contact information for program managers, where available. As appropriate, the funding programs in this table can be sorted by best fit and relevance to Port priority projects.

GENERAL ECONOMIC DEVELOPMENT

The role of Washington State ports in economic development is two-fold and dependent upon the drivers of the local, state, and national economies. Ports participate in economic development in two ways: through participation as a community partner in programmatic economic development, and through brick-and-mortar investments in facilities, infrastructure, and commercial and industrial real estate. Economic development as a port can be complicated—pulling in factors that are both within and outside a port’s control—and contentious. Ports must support their actions with data, work to align them with other local priorities, and communicate early and often to their communities about projects and initiatives undertaken in the name of economic development.

To understand the Port of Columbia’s role in economic development, it is necessary to first examine the local economy and what drives it, from a data-based perspective. Data can come from many sources; the most reliable sources include the Washington State Department of Commerce (Commerce) and local economic assessments. As discussed in previous workshops, data from Commerce show that the economy in Columbia County is driven primarily by existing small businesses and local government, with significant contributions from a few large businesses (e.g., those involved in wind energy). Key industries include agriculture, energy, government, and tourism. The unemployment rate is low at 5.2 percent (2022) and wages are competitive with the rest of the state (excluding King County).

The next step is understanding which assets support the existing workforce in Columbia County, as well as workers and employers who are considering locating in Columbia County. As discussed in previous workshops, the Port has invested proactively in facilities and infrastructure that support the local economy, including light industrial and recreational facilities, Blue Mountain Station, and broadband infrastructure. However, the county struggles with limited diversity in housing, a lack of childcare options, and a shortage of industrial lands.

The next step is to connect the Port of Columbia’s current and future assets and capabilities to the economic challenges and needs of workers and employers. This involves a combination of understanding the current state of assets, focusing on the Port’s mission, and strategically forecasting where the Port and its community want to be in the coming years. This step involves relying on keystone documents, including the approved Comprehensive Plan and (if applicable) a strategic plan.

The Port should also consider the goals and input of the community, including agencies, partners, businesses, and of course, district taxpayers. Documents that can support the understanding of these goals include city and county comprehensive plans and partner strategic plans.

MFA recommends the following:

- Developing a strong grasp of the inputs and outputs that are driving the local economy and the largest challenges facing workers and businesses that the Port can help address.
- Engaging with other ports and the Washington Public Ports Association to learn about best practices, resources, and creative solutions to economic challenges across the state and in other communities.
- Researching partners' comprehensive plans and strategic goals to consider alignment with Port goals and investments.
- Broadly engaging with the community to receive direct input from taxpayers, other agencies, community organizations, businesses, and others about what they need and desire the Port to address.

Attachment: Example funding matrices

Category	Federal/State	Grant	Website	Match Required	Appropriateness for City Needs	Notes
	Grant Funding					
	Best fit					
Parks	State	Recreation Projects -- WA Wildlife and Recreation Program	Recreation Projects-Washington Wildlife and Recreation Program - RCO	50%, 10% non-state, non-federal requirement	Most	
Bicycle- and Pedestrian-Friendly Infrastructure	State	Pedestrian & Bicycle Program	Pedestrian & Bicycle program WA Dep. Of Transportation	Not required	Most	
Bicycle- and Pedestrian-Friendly Infrastructure	State	Safe Routes to School Program	Safe Routes to School Program	Not required	Most	
Bicycle- and Pedestrian-Friendly Infrastructure	State	Complete Streets Award	Complete Streets Award	Not required	Most	Next round of funding likely in 2024.
Placemaking	Private	National Association of Realtors Placemaking Grant	Placemaking Grant & Resources	None	Most	Work through the local chapter of the Nat'l Assn of Realtors.
	Potential fit					
Bicycle- and Pedestrian-Friendly Infrastructure	Federal	Safe Streets and Roads for All (SS4A)	Safe Streets and Roads for All (SS4A) Grant Program US Department of Transportation	20%, non-Federal	Less	New funding, applications due Sept. 15. For more information, visit https://www.transportation.gov/grants/SS4A .
Parks	Federal, administered through State	Land and Water Conservation Fund (state program)	Land and Water Conservation Fund - Recreation and Conservation Office	50%, 10% of which must be non-state, non-federal	Less	
Energy	State	Electrification of Transportation Systems Program	Electrification of Transportation Systems Program	50% unless partnership justifies a match reduction. Cash only, must be non-state.	Less	First stage applications due Sept. 15. See https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/electrification-of-transportation/ for more information.
Placemaking	Federal	Our Town	OUR TOWN National Endowment for the Arts	1:1 match required, using non-federal funds	Less	
Parks and Historic Restoration	State	Heritage Capital Projects	Heritage Capital Projects	33% (2:1 match). No state funding or dollars already used to match other state funding can count toward match for HCP.	Less	
	Weak fit					
Parks	State	Youth Athletic Facilities	Youth Athletic Facilities - RCO (wa.gov)	50%, 10% non-state, non-federal requirement	Less	
Placemaking	Federal	Grants for Arts Projects	Grants for Arts Projects	50%, non-Federal	Less	
Parks, Historic Restoration, Façade Improvements, Local Business Support	Federal, administered by County	Community Development Block Grant	https://snohomishcountywa.gov/864/Community-Development-Block-Grant	None	Least	Proving direct benefit to low and moderate-income communities will be challenging, but could be possible if the investment targeted certain segments of TCM that align with lower income census blocks.

Primary Category	Secondary Category	Grant, Agency and Website	Eligibility	Match Required	Maximum Award	Timing	Fit for City Needs	Contact
		Grant Funding						
		Best fit						
Economic Development	Infrastructure	Public Works and Economic Adjustment Assistance (Economic Development Administration, Federal); https://www.grants.gov/web/grants/view-opportunity.html?oppld=321695	District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; institution of higher education or a consortium of institutions of higher education; or public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State	Typically 20%, though EDA can fund up to 100% depending on economic distress criteria	Historic average for Public Works grants is \$1.4 million, though sizes range from \$600,000 to \$3 million, and there isn't a hard upper limit. Economic Adjustment Assistance awards historically average \$650,000 but generally range from \$150,000 to \$1 million.	Rolling	Most	Laura Ives Economic Development Representative, Washington State (206) 200-1951 Llives@eda.gov
Economic Development	Infrastructure	Community Economic Revitalization Board (CERB, State), https://www.commerce.wa.gov/building-infrastructure/community-economic-revitalization-board/prospective-development-program/	Eligible Applicants include: <ul style="list-style-type: none">• Cities and Towns• Counties• Federally Recognized Indian Tribes• Municipal Corporations• Quasi-Municipal Corporations• Public Port Districts• Special Purpose Districts	50% cash match for total project cost, demonstrate economic feasibility with a supporting study	CERB will fund land acquisition as part of a larger construction project, with total project up to \$3 million, and up to 25% grant available as determined by underwriting process and debt service coverage ratio.	Rolling	Most	Leslie Wolff Outreach Specialist Community Economic Revitalization Board (CERB) leslie.wolff@commerce.wa.gov cell: 360.259.2671(call or text)
Parks		Recreation Projects -- WA Wildlife and Recreation Program (Recreation and Conservation Office, State), https://rco.wa.gov/grant/washington-wildlife-and-recreation-program-recreation/	Cities, counties, towns Federally recognized Indian tribes Special purpose districts, port districts, or other political subdivisions of the state providing services to less than the entire state	50%, 10% non-state, non-federal requirement	\$500,000 for development (includes acquisition)	Awarded every 2 years. Early May of even year, apps are due. Over winter, they get their budget from the Legislature. They receive spending authority and can start writing contracts. Note that March 1 is the deadline for submitting a comprehensive recreation plan (so start looking now). Funding applications are due in May.	Most	Allison Dellwo Outdoor Grants Manager 360-867-8626 allison.dellwo@rco.wa.gov



Memorandum

To: Jennie Dickinson, Port of Columbia Date: June 9, 2023

From: Seth Otto and Abbi Russell, Project No.: M2427.01.001
Maul Foster & Alongi, Inc.

Re: Port of Columbia Board of Commissioners meeting materials

This memorandum informs the Port of Columbia (Port) Board of Commissioners of preliminary findings for its Comprehensive Plan Update Report. The priority topic covered in this memo is the Lyons Ferry Marina.

Lyons Ferry Marina

Background and Summary

The Lyons Ferry Marina is a 44.5-acre recreation site located seven miles northwest of Starbuck, Washington, on the Snake River. It was originally established in the 1970s and is owned by the U.S. Army Corps of Engineers. The Port manages the marina, owns most of the improvements, and has full maintenance obligations. In 2018 the Port and its consultant completed the Lyons Ferry Marina Master Plan (master plan), which included an assessment of existing conditions and alternatives for investing in the marina.¹

Maul Foster & Alongi, Inc. (MFA), reviewed the master plan and the Port's current *Comprehensive Scheme of Harbor Improvements*, spoke with Port Executive Director Jennie Dickinson, and researched potential funding sources.² To help the Port understand and prioritize needs for the marina, MFA has summarized the assessments and recommendations from the master plan, outlined investments underway or completed since 2018, and characterized challenges facing the Port as it considers needs and investments at Lyons Ferry Marina.

2018 Lyons Ferry Marina Master Plan

The master plan found that the many assets at the marina—both in-water and upland—were in generally fair condition. The Port and its concessionaire have collaborated and strategically invested over the years to ensure the marina continues to serve its customers and the public.

¹ Reid Middleton and JA Brennan. 2018. *Lyons Ferry Marina Master Plan*. Prepared for Port of Columbia. April 12. Accessed June 8, 2023. <https://www.portofcolumbia.org/wp-content/uploads/2019/06/Lyons-Ferry-Marina-Facilities-Plan-Final-2018.pdf>.

² Port of Columbia. 2019. *Comprehensive Scheme of Harbor Improvements*. Adopted July 10. Amended February 10, 2021. Accessed June 8, 2023. <https://www.portofcolumbia.org/wp-content/uploads/2021/02/2021-Comprehensive-Plan-Minor-Update-Final.pdf>.

The master plan alternatives analysis included recommendations for major repairs, replacement, reconfiguration, and expansion of the following in-water and upland elements:

- Breakwater
- Moorage dock system
- Boat launch
- Hand-carried watercraft area
- Swim area
- Bulkhead
- RV and tent sites
- Cabins
- Restroom and laundry facilities
- Entrance facility and security gate
- Recreational amenities

In addition to the assets identified in the master plan, the Port has also identified the need for near-term maintenance to the access roadways and paved parking areas and paths at the marina.

2018 Master Plan Summary of Assessments and Recommendations

Asset	Condition (2018)	Life Span (2018)	Notes
Boat ramp: concrete ramp	Poor	2–5 years	Deterioration and erosion
Boat ramp: approach wedge and float	Fair	5–15 years	
A Dock	Fair–good	10–20 years	Oldest dock; repaired in 2017
B Dock	Good	15–20 years	Newest dock
C Dock	Poor–fair	5–10 years	Some repairs made
AB Linear Dock: oldest section	Fair overall	5–10 years	Does not meet ADA requirements
AB Linear Dock: newest section	Fair overall	20–25 years	Does not meet ADA requirements
C Linear Dock	Fair	5–15 years	Does not meet ADA requirements
Short-term moorage: newer section	Good	20–25 years	
Short-term moorage: older section	Poor–fair	8–10 years	Rot in timber walers; spalling on concrete surface
Fuel and pump-out systems	Fair–good	Not predicted	Pump-out system installed in 2009 to replace older system
Breakwater: gangway to eastern breakwater	Poor–fair	5–10 years	
Breakwater: anchor system	Good	N/A ^(a)	Condition based on 2017 underwater inspections
Breakwater float: pontoon deck	Fair	N/A ^(a)	Minor spalling and cracking
Breakwater float: walers	Poor–fair	N/A ^(a)	Evidence of some plant growth and rot
Breakwater float: steel hinge assemblies	Poor–fair	N/A ^(a)	Aged and rusting but intact

Asset	Condition (2018)	Life Span (2018)	Notes
ADA-accessible fishing dock	Good	20–30 years	Constructed in 2013
Bulkhead	Poor–fair	5–15 years	Underwater timbers decaying; steel strap repairs are helping maintain the structure in the short term
Roadways, parking, and trailer storage areas	Good	N/A ^(b)	
Office/store building	Fair	N/A ^(b)	Predates 1976 master plan; maintained with minor upgrades
Caretaker's house	N/A	N/A ^(b)	Not assessed; Port indicates upgrades were made in 2017
Lower restroom	Good	N/A ^(b)	No showers or laundry facilities
Restroom near tent sites	Fair	N/A ^(b)	No laundry facilities; aesthetically dated; efficiency concerns; does not meet ADA requirements
RV sites	N/A	N/A ^(b)	Upgrades are underway to support larger RVs
Tent/smaller RV sites	Good	N/A ^(b)	Updated amenities
Walkways, stairs, and pathways	N/A	N/A ^(b)	No formal sidewalks or crossings in lower parking/circulation area
Landscaping, fire pit, children's play area, off-leash dog park areas	Good	N/A ^(b)	1970s irrigation system is non-functional
Wells No. 1 and No. 2	N/A	N/A ^(b)	Approved for potable/domestic water use; 2016 analysis shows capacity to support expansion
Sanitary sewer system	N/A	N/A ^(b)	Three pump stations on site; 2016 report shows approved design flow of 6,250 gallons/day
Stormwater, electrical, and other utility systems	N/A	N/A ^(b)	Stormwater = sheet flow/infiltration; electrical = overhead, buried, and conduit

Notes

ADA = Americans with Disabilities Act of 1990.

(a) The typical estimated life cycle for the type of breakwater float at Lyons Ferry Marina is 50 years, so the floats are nearing the end of their typical design life. Facility owners have extended the life of this type of float through major repairs and component replacements.

(b) Condition assessments of these assets were not included in the scope of the 2018 *Lyons Ferry Marina Master Plan*.

Reference

Reid Middleton and JA Brennan. 2018. *Lyons Ferry Marina Master Plan*. Prepared for Port of Columbia. April 12. Accessed June 8, 2023. <https://www.portofcolumbia.org/wp-content/uploads/2019/06/Lyons-Ferry-Marina-Facilities-Plan-Final-2018.pdf>.

2018 Master Plan Alternatives

Initial concepts were developed in 2018 for in-water and upland facilities. The concepts were developed with input from the Port, past and current concessionaires, and the Columbia County community. Alternatives A and B both include refurbishment of the existing breakwater, bulkhead, and office building. Both alternatives can be implemented in phases to accommodate priorities and funding availability.

- Alternative A is a full build-out that includes expanded moorage docks, an expanded boat launch, new cabins, RV and tent sites, and a variety of other recreational amenities. The estimated cost of full implementation of Alternative A in 2018 was \$22.24 million.
- Alternative B is a moderate build-out that includes expanded moorage decks, an expanded boat launch, new cabins, RV and tent sites, and a variety of other recreational amenities. The estimated cost of full implementation of Alternative B in 2018 was \$16.33 million.

Marina Investments Since 2018

Since the master plan was published, the Port and its concessionaire have prioritized upland investments to meet KOA Kampground requirements and improve user experience. These investments include the following:

- Upgrading several RV sites to pull-through sites to accommodate larger RVs (currently underway)
- Adding two Conestoga wagons, including electrical upgrades, as tent sites
- Purchasing and establishing three cabins, including utility extensions, wood decking, and barbeques
- Establishing a laundromat
- Replacing the roofs on the lower restrooms and the shower house near the restaurant
- Painting the store and restaurant

Challenges

The marina has seen increased activity since the master plan was published, caused by a combination of factors. These include a surge in outdoor recreation during the COVID-19 pandemic, the reopening of Lyons Ferry State Park, and the designation of nearby Palouse Falls as a state park. All of these factors have contributed to increased public use and revenue to the Port's concessionaire. Increased use has also led to more wear and tear on the Port's assets at the marina. The Port has implemented incremental increases for the concessionaire's lease payment to approach the break-even point for costs associated with maintaining marina facilities and continues to contribute \$20,000 per year to facilities maintenance.

The Port's 2019 *Comprehensive Scheme of Harbor Improvements* states that the need for refurbishment at the marina outstrips the Port's ability to fund, and grant monies will be needed.² In the five years since the master plan evaluation of marina assets, two key conditions have changed: the facility has seen a marked increase in public use and the cost of construction materials has increased due to inflation, which will affect the updated cost estimate.

MFA recommends the following:

- Obtain updated evaluations of the extent and costs of the most critical repairs, as recommended in the 2018 master plan assessment, and as understood by Port and concessionaire staff.
- Evaluate potential grant funding and/or financing opportunities. Agencies that provide grants and financing to support habitat, recreational programs, and recreational equipment include the following:
 - Washington State Department of Commerce
 - Washington Department of Natural Resources

- Washington State Recreation and Conservation Office
- Washington State Treasurer's Office

PORT OF COLUMBIA

Comprehensive Scheme of Harbor Improvements

(Commonly known as the Comprehensive Plan)

Adopted July 10th, 2019

Amended February 10th, 2021



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CAPITAL FACILITIES PLAN

Updated and adopted in January of each year by the Port of Columbia Board of Commissioners. See Port Policies for most up-to-date plan.

-REFERENCE DOCUMENTS

- A. Blue Mountain Station Development Agreement
- B. Economic Development Plan for Columbia County
- C. Lyons Ferry Marina Facilities Plan
- D. Cooperative Parks Master Plan
- E. Blue Mountain Regional Trails Plan

1.0 OVERVIEW

1.1 HISTORY OF WASHINGTON PORTS

The State of Washington authorized the formation of the first public port district with the passage of RCW 53 in 1911 in an effort to retain public use of the waterfront. Ports are municipal corporations that have taxing authority as a special purpose district. Some port districts are county-wide, while others operate within a specifically-drawn boundary. Economic development is the primary purpose of a port district, and within that broad purview there are many ways that individual port districts carry out that mission.

Because the state is so geographically, economically, and socially diverse, each of the 76 port districts in the state has its own characteristics and reasons for existence. Because ports may serve different purposes, each port in the state differs in size, scope of facilities and operations, and jurisdictional boundaries.

1.2 PORT OF COLUMBIA

The Port of Columbia, like all port districts in the State of Washington, operates from two tiers of authority. The first tier derives from Washington State statutes, which enable ports to pursue economic development activities that strengthen the economies of their regions. The second tier is established by a comprehensive scheme of harbor improvements, otherwise known as a comprehensive plan, which guides all activities of a port – not just harbor improvements. This comprehensive planning model is authorized by RCW 53.20. A port's comprehensive plan lays out the goals of the Port District, describes the real property of the Port District, and describes implementation strategies and tactics designed to maximize assets to meet these goals.

This plan also describes the general needs and the planned progress for the community, and is subject to, in every phase, the requirements of the State Environmental Policy Act (SEPA).

1.3 PURPOSE AND INTENT

The purpose of this Comprehensive Plan is to provide general guidance for the orderly development of real property owned and being developed by the Port of Columbia. This plan is intended to be a guideline for the future rather than rigid direction, and was developed to be adaptable to meet changing needs or unforeseen conditions. It is assumed that the Comprehensive Plans for Columbia County and the City of Dayton will be useful as directional devices in coordination with the Port's Comprehensive Plan.

The Port's comprehensive planning process should meet the requirement by law to inform the public of the nature and extent of Port of Columbia projects under consideration and encourage the public to participate in planning for the economic development of the community.

It is the policy and intent of the Port of Columbia to observe and comply with the provisions of the Equal Opportunity laws and practices of the Federal Government and the State of Washington in the purchase of services, labor or contractual agreements of all kinds.

The Port Commission understands that it is important to have the major goals, objectives and policies of the Port clearly defined to be utilized as a guide for future port direction.


This is a revised plan of development for the Port of Columbia. All efforts have been made to ensure that this revised plan is concise, meaningful and easy to implement.

1.4 PORT HISTORY

On November 4, 1958, an election was held in conjunction with the General Election, to establish a port district in Columbia County to be known as "The Port of Columbia County." There were 1,260 votes cast in favor of the district and 316 votes against. On November 5, 1958, the Board of Commissioners of Columbia County established a new port district.

Also, during the November 4th election, Directors for the District were elected. They were: Dorsey Martin, District #1, 6-year term; Richard Ingram, District #2, 4-year term; and Charles Mead III, District #3, 2-year term.

HAROLD HOPKINS
DISTRICT NO. 2
CHAIRMAN
ROSS BROWN
DISTRICT NO. 1
GUY PRATER
DISTRICT NO. 3


Columbia County
DAYTON, WASHINGTON

HOLT BOONE, CLERK

OFFICE OF
BOARD OF COUNTY COMMISSIONERS

NOV 5 1958


PORT DISTRICT

ELECTION WAS HELD NOVEMBER 4th 1958 FOR THE PURPOSE OF VOTING ON THE ~~REPEAL~~
FORMATION OF A PORT DISTRICT TO INCLUDE ALL OF COLUMBIA COUNTY AND TO BE
KNOWN AS " THE PORT OF COLUMBIA COUNTY".

THE VOTE WAS:
FOR 1260
AGAINST 316

DIRECTORS ELECTED WERE:

DIST #1	DORSEY MARTIN	6 yrs
" #2	RICHARD INGRAM	4 yrs
" #3	CHAS MEAD III	2 yrs


HOLT BOONE
County Auditor
DAYTON, WASHINGTON

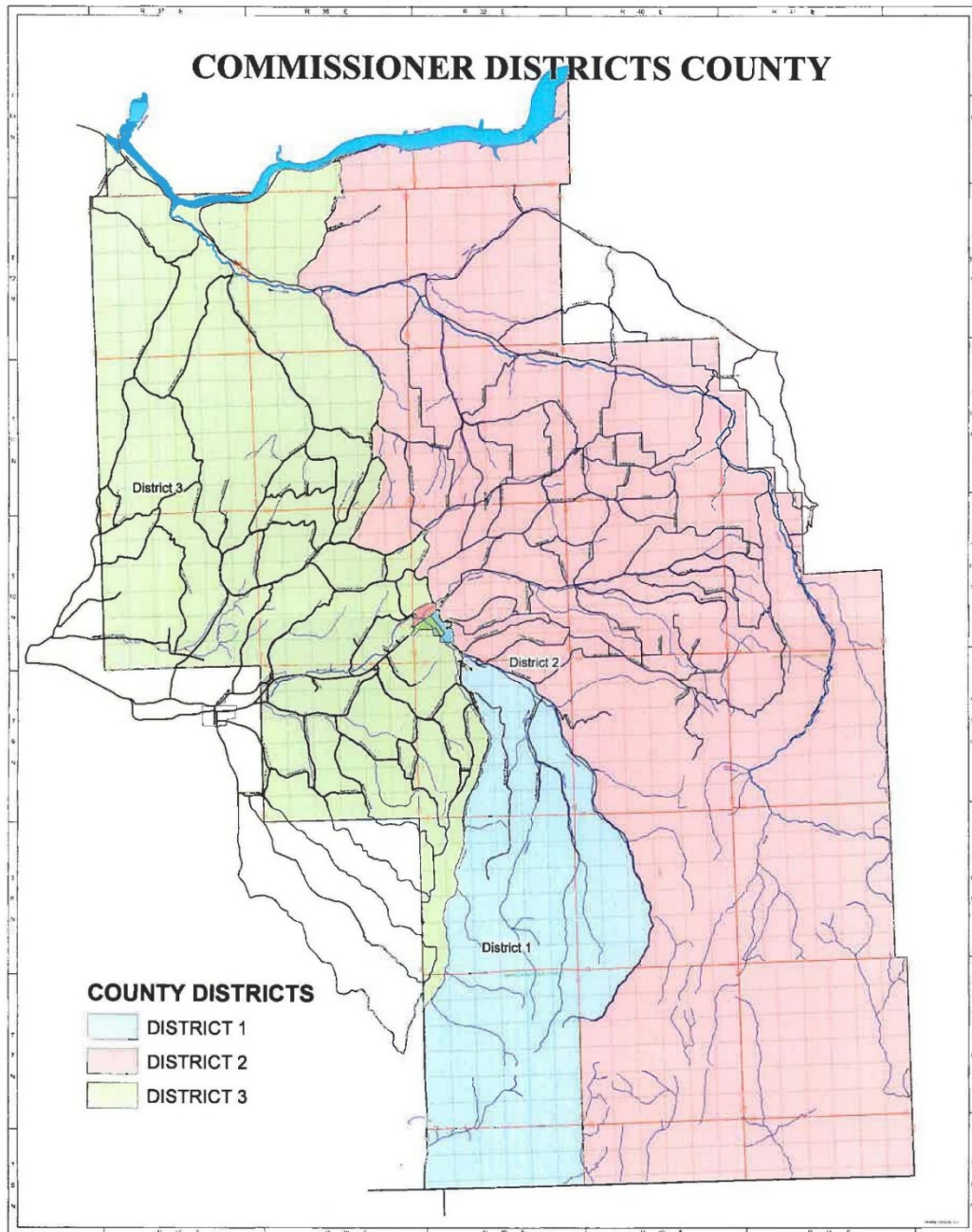
1.5 JURISDICTION AND GOVERNANCE

The jurisdictional boundaries for the Port of Columbia and its commissioner districts are identical to those of Columbia County and the County Commissioners. Each Port Commission district includes a portion of the City of Dayton.

A three-member, non-partisan Board of Commissioners governs the Port of Columbia. All of the commissioners are elected by voters residing within the port district. All commission members serve staggered, six-year terms to enable the election of one commissioners every two years.

The Port Commissioners at the time of the adoption of this Comprehensive Plan update are:

- Shawn Brown - District #1
- Earle Marvin – District #2
- Sean Milligan – District #3



1.6 COLUMBIA COUNTY HISTORY

Named in honor of the nearby Columbia River, the county was initially partitioned from what was Walla Walla County in 1875. The enacting legislation was drafted by the Washington Territorial Legislature and signed by Territorial Governor Elisha P. Ferry. At that time, Columbia County also included the present-day counties of Asotin and Garfield. In 1881, the latter was formed out of the eastern half of Columbia County. Columbia County was again reorganized by the Washington State Legislature in November of 1895, the bill having been signed by Governor John H. McGraw.

Long before the advent of white exploration and settlement, Native American Indians hunted, fished, picked berries, and recreated in what is now Columbia County. Dayton's Main Street is located on what was then the Nez Perce Trail, a well-used path that Lewis and Clark used as they passed through our area in May, 1806 on their return journey during the Corps of Discovery.

A handful of early pioneers ventured into Columbia County in the period following the Lewis and Clark expedition. Many were veterans of the Indian Wars. It was not until 1859 that the first permanent settlers arrived in the county. Most settled near the Touchet River or Patit Creek in the vicinity of what is now Dayton. Elisha Ping, the county's first permanent settler, cultivated 50 acres of wheat while Jesse N. Day, after whom the City of Dayton was named, raised cattle.

In the early pioneer days, cattlemen like Jesse Day led efforts to establish livestock raising as the first major industry in Columbia County. Within 10 years, there were as many as 3,000 to 4,000 head of cattle and 10,000 head of sheep grazing in the lowlands from fall through the spring and up in the Blue Mountains during summer. The grazing land, however, was also coveted by farmers. As a result, confrontations over land-use occurred frequently.

Before the turn of the century, severe winter storms and subsequent feed shortages devastated the county's livestock industry. This led many ranchers to grow and stockpile hay and grain for winter use. Many cattlemen eventually switched to farming altogether. This move cleared the way for newcomers to cultivate crops. By the early 1900's, the cattlemen's efforts to ward off encroachment by wheat farmers proved futile. As the ranchers' dominion over the range diminished, farmers more intensively cultivated the rich and fertile soil.

In the 1860's, Columbia County wheat farmers continued to expand production. In fact, production exceeded demand to the extent that some of the wheat was shipped down river to Portland. More significant, though, was the laying of railroad tracks through the county in the 1870's. This provided an efficient method for transporting goods to distant markets. Railroads allowed local wheat farmers to profit substantially from the ever-increasing production.

Around the turn of the century, numerous technological advances were made in the equipment used to harvest wheat. Early farmers, such as Elisha Ping, relied tremendously on their own hands to harvest their crop. Wheat stalks were felled and bundled by hand, set out to dry, trampled by oxen to separate the grain from the stock, and tossed by hand to remove the chaff. Horses, mules and wagons were later introduced to make the harvest more efficient. Still, manual labor remained vital to the process. The first revolutionary change in the industry occurred when horse-drawn binders were introduced in the 1890's. The process evolved further with the introduction of horse-drawn combines and later, steam-driven tractors.

Because of the abundant stands of timber (mostly pine and fir) in the Blue Mountains, it is of little surprise that logging and timber evolved as yet another major industry. Timber cutting was first introduced locally to provide logs for pioneer cabins. Later, crude sawmills were erected to supply lumber for the county's first homes and buildings. Real growth in the local logging and lumber industries came during the 1880's, when migration into the county was on the increase and numerous small towns were being platted. The logging and lumber boom eventually subsided. Many mill owners invested their profits in land purchases, closed their mills, and turned to farming. Nevertheless, the two industries continued to be major employers in the county through the 1960's.

No account of early Columbia County history would be complete without mentioning the food processing industry. It was recognized as the county's major source of employment between 1934 and 2005, when the last Green Giant cannery in the region closed. Constructed in 1934, the Blue Mountain Cannery was among the nation's largest and most modern. During its initial season, the company canned approximately 7,500 cases of peas a day. Later pea production expanded and the canning season would last approximately four months each summer. Several years later, the firm expanded into asparagus. In 1947, the cannery was sold to the Minnesota Valley Canning Company. Pillsbury owned the plant before it was purchased by Seneca Foods, its current owner. They operated the largest asparagus cannery in the world with a production of 2,247,281 cases in 1998. The Green Giant asparagus canning operation moved to Peru in 2005. Seneca still owns the factory and operates a Green Giant seed research and processing facility.

Grain production was also once the county's primary industry. Among the principal cash crops still grown are wheat, barley, oats and dry peas. But efficiencies in agriculture reduced employment dramatically over time, and programs that paid farmers to take fields out of production devastated the supporting agribusiness sector which hurt the downtown business sector. Input prices have continued to rise, while commodities prices have remained stagnant, making profitability more difficult. While agriculture is still a huge part of our economy, it does not provide the employment and income levels our community previously enjoyed.

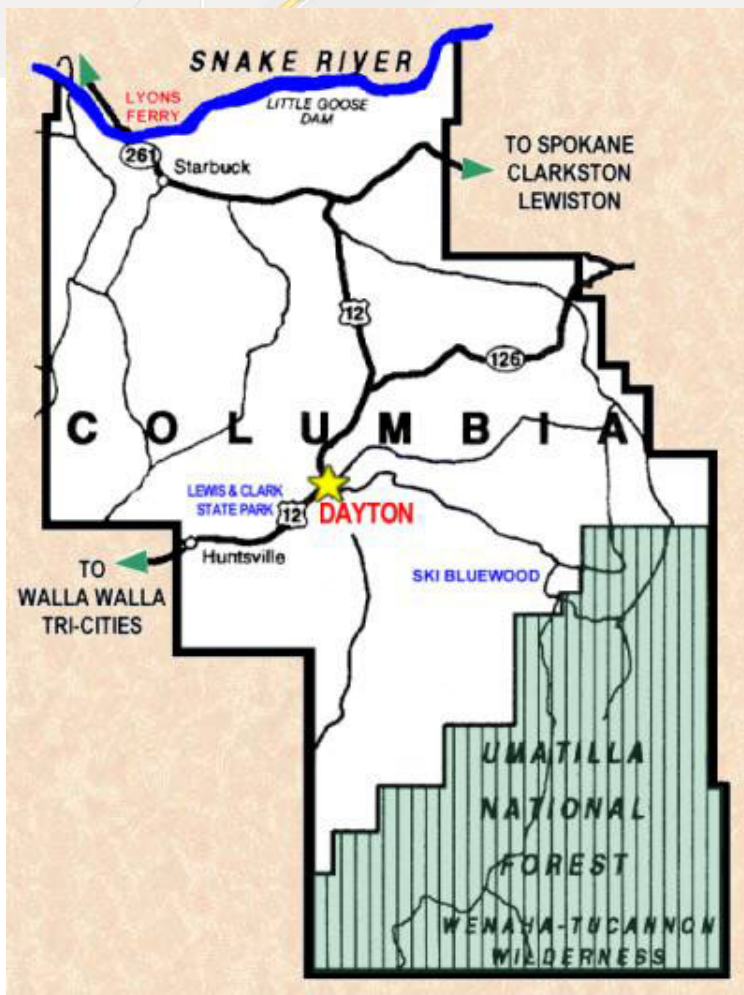
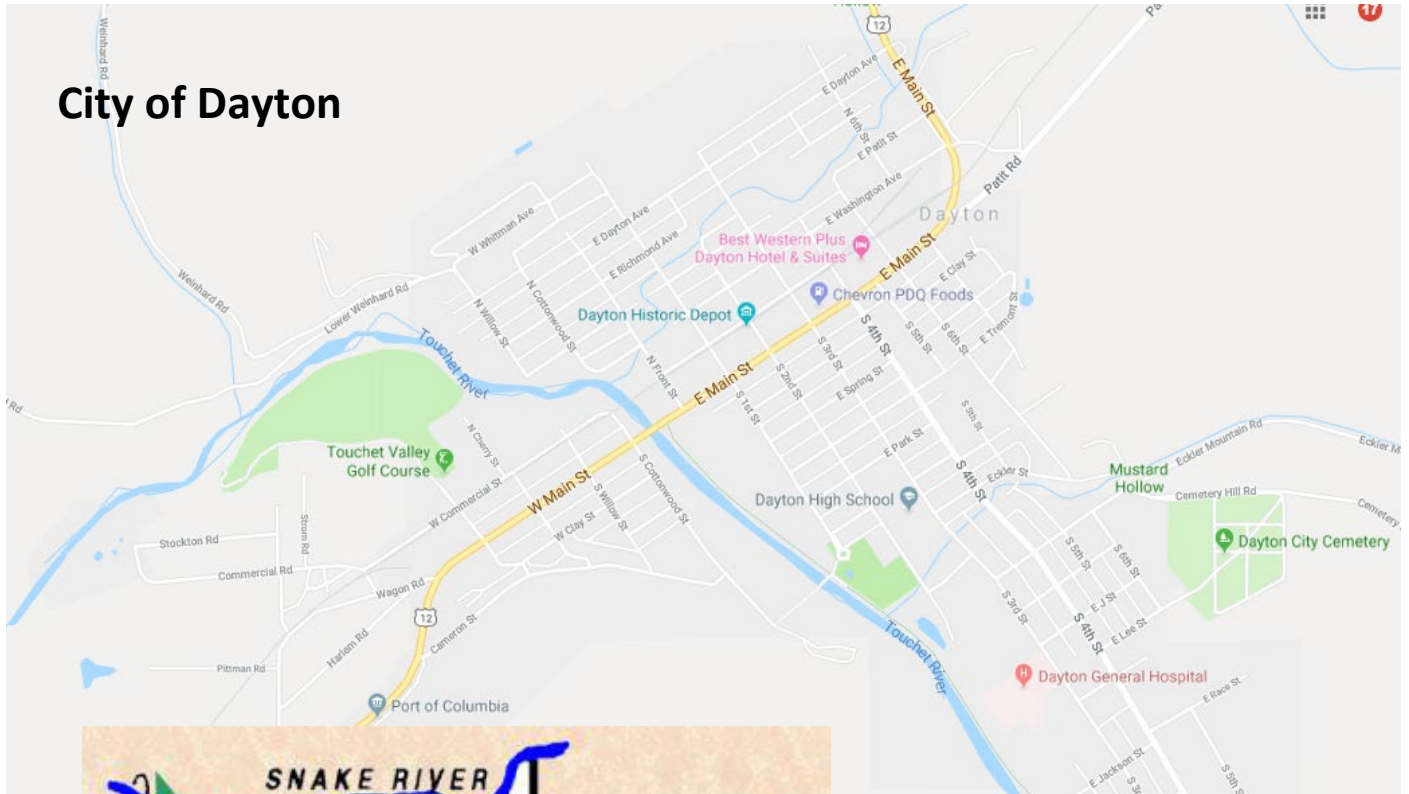
In the wake of these waning industries, new industries focused on sustainable practices have been recruited to the region. In 2005, PacifiCorp built the first of 4 wind generation facilities in Columbia County. Leasing land from farmers, three more wind farms were constructed throughout the county. Wind energy brought new family wage jobs to the region, provided much-needed additional revenue to landowners, and infused new tax dollars in to the county.

While this new industry was welcome, Columbia County continued to focus on agriculture in the new millennium through the construction of Blue Mountain Station. This 28-acre food park centered around value-added agriculture and food processing businesses. Its focus on locally-made food and artisanal products matches the values of the 21st century while still celebrating the history of Columbia County.

In 2017, construction began on the Columbia Pulp straw plant on the northern border of Columbia County. This newly developed technology turns waste straw from area fields in to pulp for papermaking and processed byproducts. The plant opened in December 2018, providing 100 family wage jobs and bringing new people and additional tax dollars to the community. Columbia Pulp is now the 3rd largest taxpayer in the county. This focus on recruiting large sustainable industries and supporting small local businesses has served Columbia County well, and will continue to be the focus going in to the future.

1.7 Maps

City of Dayton



Columbia County

2.0 PORT ASSET INVENTORY

2.1 ROCK HILL INDUSTRIAL PARK TRACT II

LOCATION: This tract lies within the City limits to the south of and adjacent to Highway 12 and Cameron Street on the western edge of Dayton, Washington.

DESCRIPTION: Tract II is a 47-acre parcel, 14.4 acres of which is zoned Fringe Commercial and Industrial, and 32.6 acres of which is zoned Agricultural/Residential.

The tract was divided into lots of nearly one acre in size:

- Lots I through T are zoned fringe commercial and have Highway 12, Port Way and Cameron Street addresses from west to east.
- Lots U through W are zoned Industrial and have Cameron Street addresses.
- Lot X, consisting of 34.7 acres that is mostly steep hillside, is zoned Agricultural Residential and lies immediately south of this chain of industrial lots. There is a 7-acre bench along the back (or south) edge of Lot X that could be exclusive residential, a hotel or a retirement home with a view of the whole valley and city below. Oliver Road, which is just a dirt trail, shows up on city maps leading to the 7-acre bench. Lot X is currently home to the Rock Hill Trail, developed and maintained by volunteers and used by local residents for recreation.

UTILITIES: Water and sewer service are provided by the City of Dayton. Electricity is provided by Pacific Power. Telecommunications options include CenturyLink, Touchet Valley TV, and Columbia Energy. There is a 7 ½ acre water right for this tract from the Hearn Ditch irrigation district.

ASSET INTENT: This property was purchased in the 1980s with the intent of assisting the then-suffering Dayton economy through the development of a light industrial park. Diversification of a primarily ag-based economy was a community-wide goal at the time. Tourism and historic preservation were also identified as community goals during the same time period. There are currently 10 buildings located in the Rock Hill Industrial Park with 15 business tenants. Vacancies are rare and fill quickly in the existing buildings. A portion of lot U and all of lot V are vacant and available for new building construction.

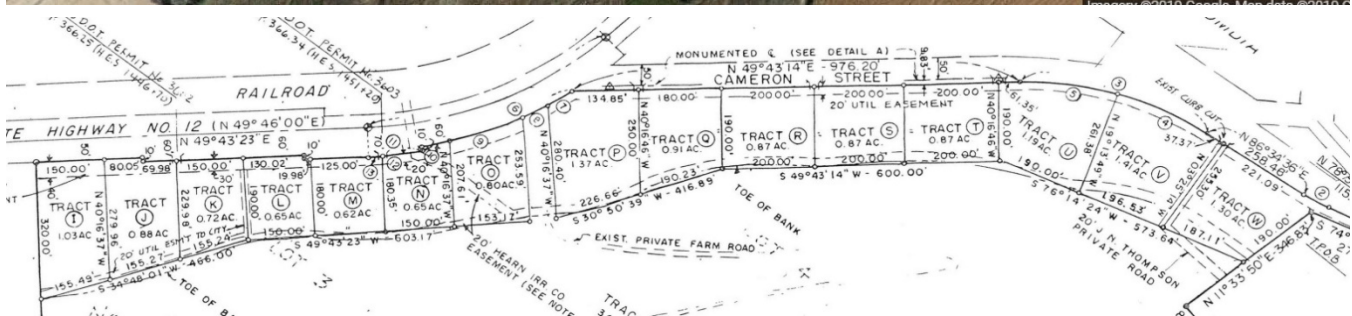
BUILDING INVENTORY:

BUILDING	ADDRESS	SIZE	# OF RENTABLE BAYS	LEASED?
DTM Building	36710 Hwy 12	13,600 sf	1	Yes
Industrial Bldg. #1	3, 4, & 5 Port Way	10,000 sf	3	Yes
Industrial Bldg. #1-A	2 Port Way	3,360 sf	1	Yes
Industrial Bldg. #2	531 Cameron	4,500 sf	1	Yes
Industrial Bldg. #3	523, 525, 527 Cameron	6,810 sf	3	Yes
Industrial Bldg. #4	409 Cameron	4,000 sf	1	Yes
Industrial Bldg. #5	517, 519, 521 Cameron	9,120 sf	3	Yes
Industrial Bldg. #6	507 & 509 Cameron	8,750 sf	2	Yes
Office Bldg. #2	1 Port Way	1,920 sf	3	Yes
Office Bldg. #3	533 & 535 Cameron	2,080 sf	12	Yes

HISTORY: This land was purchased by the Port of Columbia from the Oliver estate in August of 1984. The land joined Rock Hill Industrial Tract One on its west end and made an ideal situation for platting and development.

The Rock Hill Industrial Tract Two was platted, surveyed and recorded by A. D. Stanley & Associates Inc. of Pasco, Washington. The land was divided into much smaller lots than was Tract One to accommodate smaller businesses and give them highway exposure for customer convenience.

CHALLENGES & CONSTRAINTS: The Hearn Ditch easement along the southerly edge of Lots P through W is a barrier to full development of each lot. The accessibility of Lot X is an agricultural road (shows on maps as Oliver Road) uphill to the seven useable acres. The Private J.N. Thompson Road, as shown on the plat, would have to be improved and added to on the south end corner of Lot X for fire access and escape routes. Development cost may be a barrier for this lot.



2.2 BLUE MOUNTAIN STATION SITE (BELL FARM)

LOCATION: Blue Mountain Station is a 28-acre site just west of Dayton on the north edge of State Highway 12 and west of Wagon Road. The Port-owned rail line is the northern boundary of the parcel. Valley View Trailer Park is the west boundary.

DESCRIPTION: The site has been separated into two use areas:

- 22.12 acres have been designated for the Blue Mountain Station Artisan Food Processing Park. It is legally divided into lot 1B (7.846 acres) and lot 2B (14.274 acres). Most of these 22 acres are located in the City of Dayton Urban Growth Area (UGA), but because a small portion is not, a request has been made to the Columbia County Planning Department to place the remainder of the entire 28-acre site into the UGA to allow City utilities to serve the area. This portion of the site is governed by a Development Agreement between the Port of Columbia and Columbia County executed in June of 2015. The development agreement lays out all project development standards for a 20-year period, giving new businesses consistency in permitting and zoning for an extended period of time. The Development Agreement is attached to this plan as **Reference Document A**.
- The remainder of the 28 acres (approximately 6 acres) is outside the confines of the Development Agreement mentioned above and is currently zoned AR-2.
- All portions not yet developed are leased as farm land, with wheat being grown as the primary crop.

UTILITIES: Infrastructure has been installed on Lot 1B. The City of Dayton provides water and sewer service, and Pacific Power provides electric service. Touchet Valley TV is currently the only telecommunications provider on site. The Port owns and maintains a sewer lift station on site. There is a future service utility plan included in the Development Agreement.

ASSET INTENT: This property was purchased to provide the Port of Columbia with a location for a niche-based business development strategy. Marketing and feasibility studies were conducted in 2008 and 2009 respectively, identifying value-added ag, particularly the natural and organic food processing segments, as a market niche that would fit the physical and cultural offerings of Columbia County. 22 acres of the site are designated for the location of value-added businesses. The remaining acreage was left open for other development opportunities. Any acreage not yet developed is in cropland.

BUILDING INVENTORY:

BUILDING	ADDRESS	TOTAL SIZE	# OF RENTABLE BAYS	LEASED?
Artisan Food Center	700 Artisan Way	6,912 sf	7	Yes – all bays
Building #2	711 Artisan Way	6,000 sf	2	Yes
Bell Farm House	36543 Hwy 12	1,328 sf	1	Yes



HISTORY: This land was purchased by the Port of Columbia from Delbert and Kay Bell in October, 2009. The site was identified for purchase through a feasibility study and industrial land inventory as an ideal location for the Blue Mountain Station eco-industrial park, now referred to as the Artisan Food Processing Park, which is part of a long-term business development strategy for the Port.

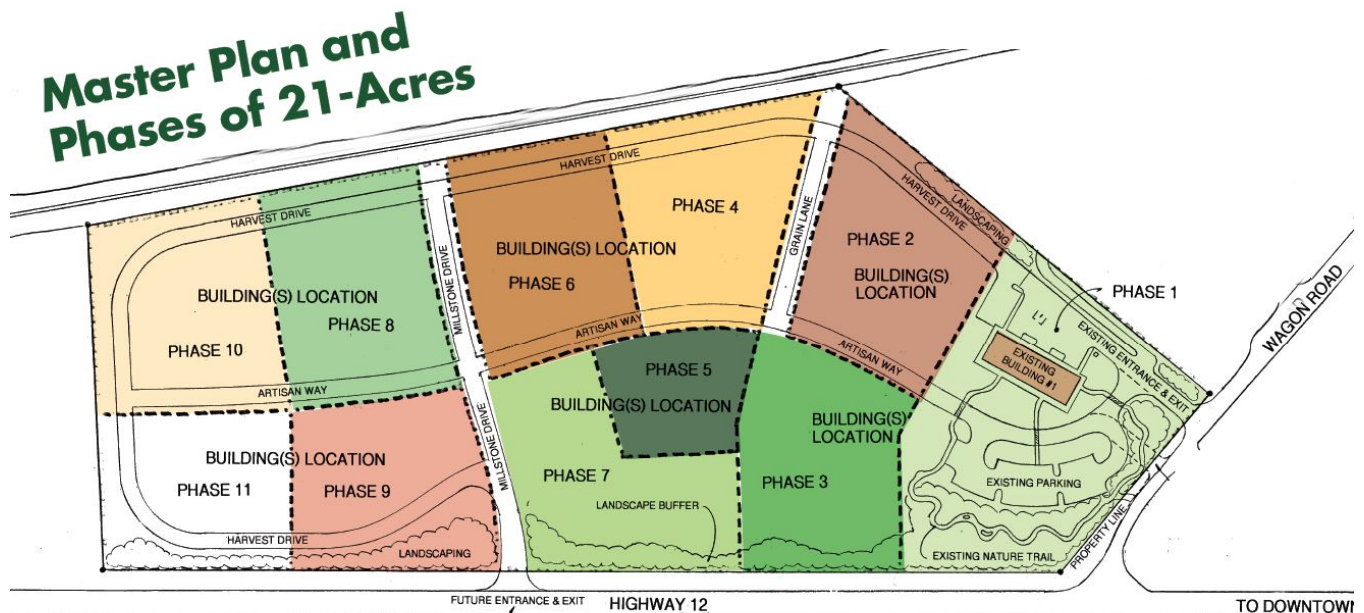
CHALLENGES & CONSTRAINTS: Adding the remainder of the land into the UGA. Financing future infrastructure and buildings. Overcoming a local disdain for organic production.

ADDITIONAL INFORMATION:

The Artisan Food Center has a Commercial Kitchen that is managed by the Port and rented out by the hour. It has served as an incubator for new food businesses needing a place to start out. All other bays in the building are rented to private food or beverage processors. There is commercial garden on site the leased to a small farmer.



Building #2 was purchased from a private developer in 2018 as a building shell. The building interior was completed in the fall of 2019, and both bays are rented to two business tenants.



2.3 COLUMBIA WALLA WALLA RAILROAD

LOCATION: Port ownership of the short-line railroad begins at the northern edge of Veterans Memorial Golf course in Walla Walla County, travels through farm country and the outskirts of Prescott and Waitsburg, travels through the City of Dayton and terminates just east of the Seneca seed loading and storage area east of Dayton along Patit Road.

DESCRIPTION: The 37 miles of rail line is mostly made up of 100-plus-year-old 90-pound track with tracks, ties, bridges, and ballast in generally poor condition. Outside of the city limits, most of the line lies in the middle of a 100-foot-wide right of way. In some areas, particularly the section between Dayton and Waitsburg, track speed is 5 mph due to the condition of the line.

The line is currently leased to a private operator, Frontier Rail, which is now operating the line as the Columbia Walla Walla Rail Line under the business name of CWW, LLC.

UTILITIES: Not applicable.

ASSET INTENT: At the time of the line donation in 1996, Seneca Foods still used the line to ship approximately a million cans of Green Giant asparagus out of the community each year. The Port of Walla Walla turned down the donation offer from Union Pacific, so the Port of Columbia accepted the donation in order to allow shipping to continue for the Green Giant product. The canning plant closed in 2005. Since that time, the Port has worked to keep the rail line open as an economic development tool for the community. The potential removal of the Snake River Dams is one reason we continue to work to preserve the line.

BUILDING INVENTORY: There are portions of some buildings (grain elevators and old packing houses) that lie on the Port's right-of-way, but none that are Port-owned.

HISTORY: The line was donated to the Port of Columbia by Union Pacific Railroad in 1996. As part of the donation, the Port inherited a lease with an independent short line operator, Watco Companies, headquartered in Pittsburg, Kansas. It was operated as the Blue Mountain Railroad by Watco for many years,



then they changed the name to the Palouse River Coulee City South Subdivision. The lease inherited through the donation expired in 2011.

20,000 new ties have been replaced and 35,000 tons of ballast put in place since 2008 to increase the stabilization of the track so that speeds up to 25 mph can be attained on parts of the line. In 2009, four public crossings in Dayton were replaced with funding received from the Department of Transportation. Two bridges between Prescott and Walla Walla were repaired with WSDOT funds in 2011. Watco embargoed the line between 2012 and 2015 due to the conditions of bridges. The Port applied for and received Rail Bank funds in 2016 for the repair of eight bridges and their approaches, which allowed the new line to be re-opened under a new operator. A new siding was installed at Blue Mountain Station with Rail Bank funds in 2016 as well.



CHALLENGES & CONSTRAINTS: The number of customers served by rail continues to decrease. Condition of the line makes train travel slow, which in turn makes it costly to operate. Revenue generated does not cover needed maintenance, especially deferred rehabilitation work that we inherited with the line. Grain companies prefer shipping by barge rather than rail due to the lower cost, and are consolidating many existing rail shipments into unit trains that make our line even less attractive for shipping.

OTHER INFORMATION: Northwest Grain Growers used to be the largest shipper on the line. The Seneca Seed Processing division in Dayton still utilizes the rail line seasonally. Rock is being shipped from the Konen Rock Crushing pit to Koncrete Industries in Walla Walla.

Regional tourism partners are very interested in a tourism train between Dayton and Walla Walla. However, passenger rail is not currently allowed due to the condition of the tracks.

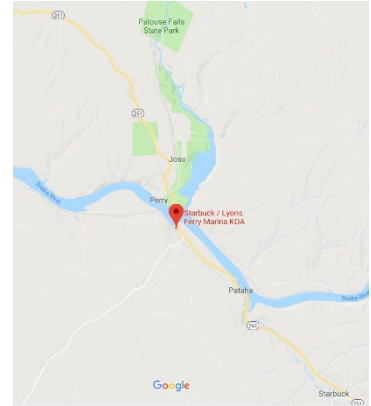
Substantial rehabilitation needs to occur for passengers to use the rails.

2.4 LYONS FERRY MARINA SITE

LOCATION: Located on the Snake River approximately 6 miles north of Starbuck, Washington, on Highway 261 at the site of the old Lyons Ferry's south side landing upstream from Lower Monumental Dam and downstream from Little Goose Dam on Lake Bryan. It is a total of 44.5 acres, which includes 19 acres of water surface. Physical address is 102 Lyons Ferry Road.

There is a portion of the trailer storage located on railroad right-of-way that is rented from the Union Pacific Railroad.

DESCRIPTION: The marina facility includes a boat launch, covered and open



boat

moorage with both permanent and transient spaces, A store and restaurant buildings, 2 fueling stations and a boat pump-out station, 18 full hook-up RV spaces with 3 designated for employees and 6 designated for long-term camping, some partial hook-up RV spaces, tent camping, 1 restroom and 1 combination restroom/shower house, 3 cabins, a laundromat, a playground, a pet area, a day use area, and an ADA accessible fishing deck.. A 3,414 sq. ft. building houses a restaurant and store that were remodeled in 2010. There is a Department of Ecology approved aboveground fuel storage area with a service pump for boats on the crib wall and a pump island for automobiles on shore. The facility is operated by a private concessionaire as a KOA Kampground on a seasonal basis.

UTILITIES:

- **WATER:** 2 wells, both 100 gallons/minute test
- **WASTE AND SEPTIC SYSTEM:** 2 septic tanks and 2 drain fields. Pressure pumped effluent to drain field, designed for 200 plus occupancy.
- **ELECTRICITY:** Inland Power

ASSET INTENT: Lyons Ferry Marina serves Columbia County and portions of Walla Walla, Garfield, Franklin and Whitman counties as a water recreation area. It is also an important link to the tourism industry, area retail sales and summer jobs. When the Snake River Dams were constructed in the 1960s and 1970s, area residents were

adamant that water recreation sites were included in the project areas, which is why the Port of Columbia became involved.

BUILDING INVENTORY: A complete inventory and condition of buildings, docks, etc. is listed in Lease #DACA68-1-17-09 between the Port of Columbia and the US Army Corps of Engineers, effective November 11, 2016 through November 10, 2041.



HISTORY: The Port of Columbia assisted the Corps of Engineers with design and construction of Lyons Ferry Marina in the early 1970s as a water recreation area. The land and some of the improvements are owned by the Corps of Engineers, and the Port holds a long-term lease on the facility. A master plan for the facility was created in 1976 by the Corps of Engineers, and a new facilities plan was created by the Port of Columbia in 2017. The Port has operated the facility through sublease to a private concessionaire since it opened.

CHALLENGES & CONSTRAINTS: The facilities at the marina are aging and in need of replacement. The cost of replacement far exceeds the ability of the Port of fund, so grant monies will be needed. All work accomplished at the marina must be permitted and approved by the Corps of Engineers, which often takes an extended period of time. This is an unattractive feature to the private sector, which makes adding improvements unattractive as well.

OTHER INFORMATION: The designation of Palouse Falls State Park as the state waterfall has increased traffic in the area. This has been good for business at the marina. The re-opening of Lyons Ferry as a State Park has also been helpful. Between the 3 facilities it is truly a recreation destination.

2.5 LYONS FERRY/SNAKE RIVER PARCEL

LOCATION: Adjacent to Hwy 261 and the Northwest Grain Growers barge facility north of Starbuck, WA.

DESCRIPTION: 9-acre parcel with Snake river frontage. There is potential for future barge loading facility development at this site if a business case warranted the investment.

CHALLENGES AND CONSTRAINTS: There is no existing water or wastewater infrastructure on this parcel for large business development. This site is located on a relatively steep embankment. The US Army Corps of Engineers' permitting processes may make development slow or even impossible.

OTHER INFORMATION: Water was drawn from the river from this parcel and used during construction of the Columbia Pulp straw processing facility in 2018. The location of this industry across the highway may create new interest in this parcel.



2.6 PROPERTIES NO LONGER OWNED BY THE PORT

ROCK HILL INDUSTRIAL PARK TRACT I

All lots in this tract have has now been sold. Here is the history:

Tract 1 was a 25.6-acre industrially-zoned parcel lying south of Cameron Street on the west side of South Cottonwood Street in Dayton, Washington. Water and sewer are provided by the City of Dayton, whose water is three 1200 – 1300 feet deep wells into the Blue Mountain aquifer. The tract was purchased from the Union

Pacific
Railroad
Real Estate
Division in
December
1974. This
area was
the



Oregon-Washington Railroad and Navigation Rail Depot and Yards during the late 1800's.

The tract was divided into seven platted industrial-zoned lots. Lot F and a portion of Lot G were sold to the Corps of Engineers for a fish rearing facility. Lots D and E were devoted to an industrial incubator building which was later sold to the McGregor Company. Lot B was purchased from the Port by the Rock Hill Concrete Company which had been leasing from the Railroad Real Estate Division since 1923. Lot A was sold to Draper Investments in 2018.

OFFICE BUILDING - 120 S 1st Street, Dayton, Washington

A professional office building was purchased from Dr. Wesley Frick in 1970 for use as the office and operations headquarters for the Port district. In 1988, the Port moved its office to a new building in the Rock Hill Industrial Park, and the former office space was leased out.

The property was useful for many years, but because of its location, condition, and non-industrial or recreational purpose of use, it was declared surplus and sold by the Port in 2010.

3.0 STRATEGIC GOALS

3.1 Intent

Mission Statement: The Port of Columbia's mission is to maximize public resources and private investment to create jobs, provide infrastructure, and maintain and improve the economic vitality of Columbia County and its communities.

Core Lines of Business:

- Economic Development
- Commercial & Industrial Real Estate
- Recreation (Lyons Ferry Marina, Trails)
- Transportation (Columbia Walla Walla Rail Line, general freight mobility)



Lease revenue from commercial and industrial real estate holdings, tax collections, and grant funds are used to conduct economic development initiatives that provide county-wide benefits such as job growth, increased tax base, and improvements to the quality of life of our citizens.

Setting Goals and Developing Tactics: The Port's goals and tactics are based on fulfilling its mission for Columbia County. These goals were reviewed and agreed upon by Port staff and commissioners, and will guide the Port's work into the future. The Port recognizes that goals need to be adaptable based on changes in business, the economy, and in the community going forward.

3.2 Economic Development

The Port operates as the lead economic development agency in Columbia County. Through both constitutional authority and a contract with the State of Washington, the Port conducts county-wide economic development coordination by strategizing with community partners and providing assistance to businesses and community organizations.



Goal: Foster an environment that leads to the creation of jobs, new businesses, increases in the tax base, and a thriving local economy.

Tactics:

- 3.2.1 Maintain the ADO Contract with the State of Washington and measure the impact of the program.
- 3.2.2 Coordinate the monthly Economic Development Steering Committee (EDSC) that brings together representatives from the public and private sector to

provide strategic direction of Columbia County Economic Development through coordination, accountability, and prevention of duplication.

- 3.2.3 Implement the county-wide economic development plan, with community input, that includes projects that have been prioritized with community members. **See Reference Document B**
- 3.2.4 Identify realistic value-added artisan food and beverage processing business targets/opportunities as well as individual firms for start-up, expansion, and relocation opportunities.
- 3.2.5 Support tourism, recreation, and historic preservation promotion efforts to increase the number of visitors and new residents to the county.
- 3.2.6 Seek funding for design, engineering, and construction of a Port-owned fiber optic wholesale network in the City of Dayton and Columbia County. Partner with local and state agencies and funding organizations.
- 3.2.7 Provide economic recovery assistance to businesses harmed by the COVID-19 pandemic.

3.3 Real Estate

The Port manages its real estate assets to meet the needs of existing and future businesses, including the growth of the value-added food processing industry and the changing needs of businesses due to technological advancements.

Goal: Provide space for new, existing, and expanding businesses to operate in, leased at a price that covers maintenance and future construction needs.

Tactics:

- 3.3.1 Explore feasibility of constructing a third building at Blue Mountain Station.
- 3.3.2 Market available spaces and properties to potential businesses.
- 3.3.3 Analyze lease rates versus maintenance costs to determine needed return on investment.
- 3.3.4 Make continued improvements to Cameron Street Co-working space.
- 3.3.5 Explore feasibility of constructing a new building in the Rock Hill Industrial Park.
- 3.3.6 Provide broadband access to Port properties when feasible.
- 3.3.7 Explore possibility of annexation of Blue Mountain Station into the City of Dayton along with other adjacent commercial properties to reduce utility fees and increase ability to place signage along Highway 12.



3.4 Recreation

The Port continues to provide public access to water recreation through management of the Lyons Ferry Marina facility in coordination with the Corps of Engineers and a private concessionaire. Public demand for local trails has also increased the Port's visibility in bicycle and pedestrian trail work.

Goal: Provide recreation opportunities that foster economic and community vitality.

Tactics:

- 3.4.1** Implement Lyons Ferry Marina Facilities Plan improvements as funding allows. **See Reference Document C.**
- 3.4.2** Continue design and engineering of the Touchet Valley Trail with an eye toward construction.
- 3.4.3** Support initiatives from the Cooperative Parks Master Plan (joint Port, City, and County Plan) and the Blue Mountain Regional Trails Plan (Walla Walla Valley-Wide). **See Reference Documents D & E.**
- 3.4.4** Coordinate with volunteers and professionals in the maintenance and improvement of the Rock Hill Trail. Plan gradual improvements such as a multi-seasonal surface and shade structures.



3.5 Transportation

The efficient movement of goods is important to businesses. The Port continues to find value in the preservation of the Columbia Walla Walla short line railroad, and believes that increasing the sustainability of the line is of primary concern. The Port is also a partner agency of the Palouse Regional Transportation Planning Organization (PRTPO).

Goal: Move goods efficiently and effectively through, into, and out of Columbia County.



Tactics:

- 3.5.1** Continue to seek funding for rail rehabilitation and research other uses for the rail corridor that would require a smaller investment.
- 3.5.2** Discuss importance of rail line with existing shippers. Support rail operator in efforts to regain grain traffic and find new shippers as long as rail line use remains feasible.
- 3.5.3** Participate actively in the PRTPO to support transportation planning initiatives that help Columbia County and the region.

- 3.5.4 Stay abreast of Washington State Department of Transportation initiatives that effect Columbia County. Advocate for relevant transportation improvements.
- 3.5.5 Support regional active transportation planning, e.g. walking, biking, and water trails.

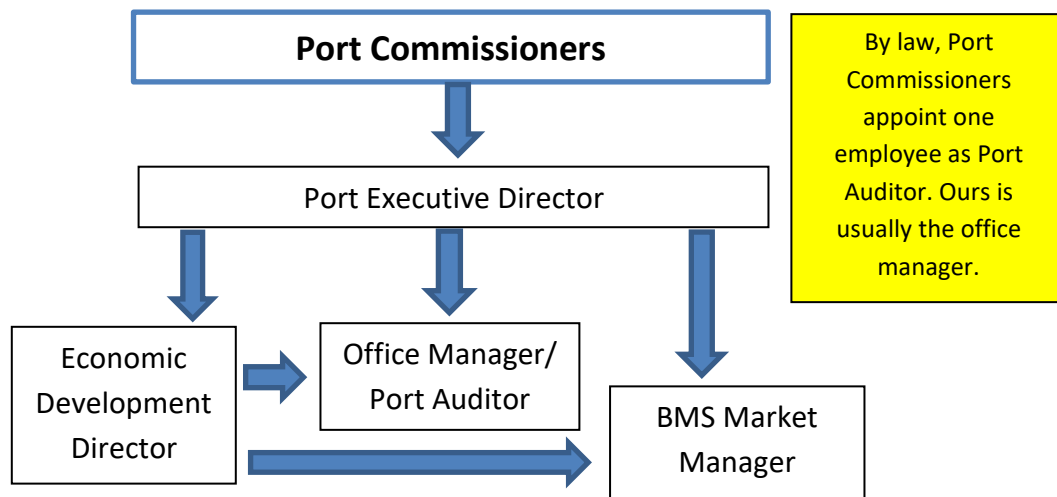
3.6 Management

Goal: Create a healthy work environment with ample resources to enable implementation of strategic plan.

Tactics:

- 3.6.1 Establish work duties that support a healthy balance between work and home for staff members.
- 3.6.2 Perform periodic analysis of income versus expenses to maximize efficient use of resources.
- 3.6.3 Seek outside funding to supplement financial support of programs and projects.

Port of Columbia Organizational Chart:



REFERENCE DOCUMENTS

See reference documents A through E as supporting documents for planning purposes. These documents may be amended from time to time and can be found on the Port's website at www.portofcolumbia.org on the Policies, Plans, and Budget page.

- A. Blue Mountain Station Development Agreement
- B. Economic Development Plan
- C. Lyons Ferry Marina Facilities Plan
- D. Blue Mountain Regional Trails Plan
- E. Cooperative Parks Master Plan

Presentation to:
Port of Columbia



Prepared by:
R.L. Banks & Associates, Inc.



December 18, 2024

**NET LIQUIDATION VALUATION,
REAL ESTATE APPRAISAL
AND
RAIL FEASIBILITY
OF
PORT OF COLUMBIA - OWNED RAIL ASSETS**

Prepared for:

The Port of Columbia

Prepared by:

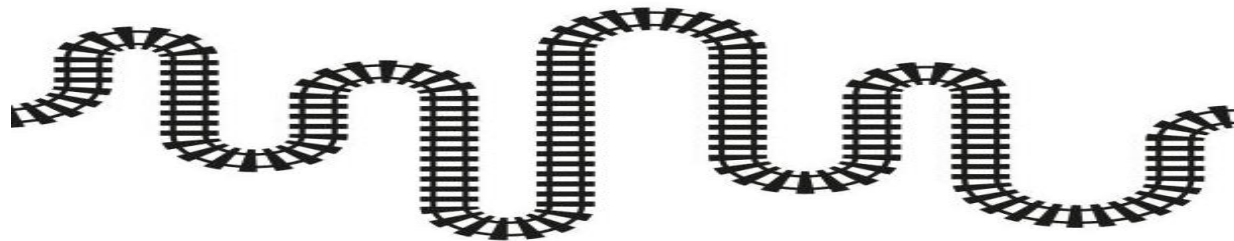
R.L. BANKS & ASSOCIATES, INC.

and

GARY R. ANGLEMYER & ASSOCIATES, INC.

PRESENTATION ROADMAP

- Project and Team Introductions – Jennie Dickinson
- Approaches to Valuing Business Enterprises – Charles Banks
- Task 1: Cost Approach: Track Valuation – Keith Bruno
- Task 2: Cost Approach: Real Estate Appraisal – Gary Anglemeyer
- Task 3: Income Approach: Preliminary Rail Feasibility Analysis - Keith Bruno
- Questions and Answers



PROJECT INTRODUCTION

R.L. Banks & Associates (RLBA) was engaged by the Port of Columbia (The Port) to perform valuations of the Track Structure Assets constituting the roughly 37 route miles of track, extending between Dayton and Walla Walla, owned by The Port and the Real Estate underlying those assets. The Port also asked RLBA to perform a Preliminary Rail Feasibility Analysis of the railroad freight business along the corridor.

The RLBA Team accomplished the requested scope by performing three separate tasks:

Task 1: Net Liquidation Value (NLV) of the Track Assets Informed by a Physical Inspection

Task 2: Appraisal of the Real Estate Underlying the Track Assets - Restricted Appraisal Report and

Task 3: Preliminary Rail Feasibility Analysis.



TEAM INTRODUCTION

RLBA is a multidisciplinary consulting firm operating **exclusively in the Rail space** providing economic, operational and engineering counsel to Class I (major) and Short Line (smaller) railroads, their customers, State, local and Federal government agencies and financial institutions that finance (debt and equity) rail projects and companies. RLBA features more than 60 years of experience in providing expert economic analytical services to a nationwide group of clients representing every principal segment of the economy. RLBA has teamed with Gary R. Anglemeyer & Associates, Inc. (GRAA), Infrastructure Realty Advisors on this project.





TEAM INTRODUCTION

Charles Banks – President

Since joining RLBA in 1985, Mr. Banks has focused on railroad negotiations, strategic planning and evaluating the economics of financing the acquisition, expansion, and rehabilitation of numerous railroads, often assessing their potential viability as part of due diligence studies performed by the firm.

Keith Bruno - Director, System Planning and Development

Mr. Bruno brings a variety of rail transportation experience to the RLBA Team. Having worked at both major and short line railroads and as a rail freight shipper, he has developed a thorough knowledge of the goals and challenges that both shippers and the public sector face when dealing with a railroad.

Gary Anglemyer – Senior Associate, Real Estate

Mr. Anglemyer has more than thirty - four years of real estate valuation service experience across a wide range of conventional and complex special purpose product types and assignments especially including railroad rights of way and commercial real estate in the US and abroad. He founded GRAA in 2012 after working with Grubb & Ellis Landauer Valuation Advisory Services starting 2011 as an Appraiser. From 1990-2002 Mr. Anglemyer was the Director of the Right of Way Valuation Division of Arthur Gimmy International.

Don Bagley – Senior Associate, Transportation Engineering

Mr. Bagley spent nearly four decades working with Norfolk Southern Corporation (NS) and CSX Transportation, in the Maintenance of Way & Structures and Engineering Departments, progressing through positions of increasing responsibility, ultimately serving as Chief Engineer at NS and VP Engineering and Chief Engineering Officer at CSXT.

THREE WAYS TO VALUE ANY BUSINESS; THE BUYER IS ENTITLED TO THE HIGHEST VALUE

Stock Market Approach (Business Value)

Number of Issued Shares **X** Price per Share

=

Total Value of Shares — Debt Outstanding

=

Company Value



Cost Approach (Value of Assets)

Assets

Track

Real Estate

Net Liquidation Value
(Not Market Value)

Cost to
Reproduce

Reproduction Cost New Less Depreciation (RCNLD)	Corridor / Assembly Value
Net Liquidation Value (NLV)	Net Liquidation Value (NLV)

Income Approach (Going Concern Value)

Expected Annual Revenues — Expected Annual

Costs =

Expected Annual Cash Flows

(Discounted) Expected Annual Cash Flows:

Year 1
Year 2
Year 3
Year 4
Year 5

SUMMARY OF VALUATION AND COST RESULTS

NLV is the remainder after liquidation expenses were deducted from Gross Liquidation Value (GLV). This is a reasonable expectation of what a seller (acting as its own broker) could receive were the line liquidated in December 2024.

Summary of Valuation and Cost Results

Item	Value / Cost
Net Liquidation Value of Track (Track Removed)	\$2,857,000
Net Liquidation Value of Track (Track In Place)	\$5,326,400
Underlying Real Estate Proceeds (Net Liquidation Value)	\$2,510,000
Underlying Real Estate Cost (Corridor Value)	\$8,398,000
Total PROCEEDS (NLV Real Estate + Track Removed)	\$5,367,000
Total PROCEEDS (NLV Real Estate + Track In Place)	\$7,836,400
Total COST (Corridor Value + Track Removed*)	\$11,255,000
Total COST (Corridor Value + Track In Place*)	\$13,724,400

*Cost is underestimated because it excludes the cost of reconstituting a railroad from scratch.

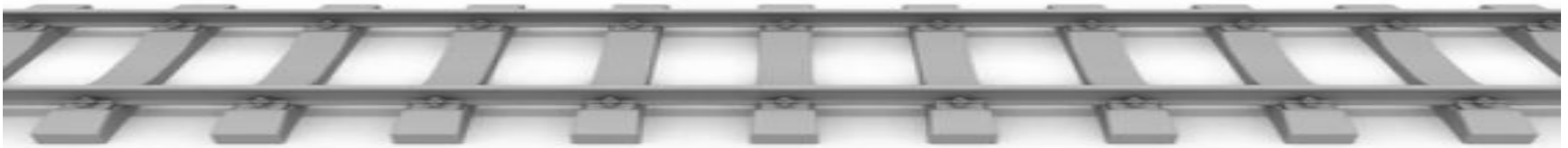
Note: Values may not appear to add due to rounding

NET LIQUIDATION VALUATION OF TRACK

Methodology to Determine NLV

NLV was determined utilizing and adhering to the methodology employed by the Surface Transportation Board (STB), as manifest in decisions made by its Commissioners involving abandonments and other, related issues involving the prescribed use of NLV. RLBA arrived at this NLV through application of a multiple step process, the building blocks of which are summarized below:

- **Gross Liquidation Value (GLV);** the market value of salvageable track assets
- **Liquidation Expenses;** the expense incurred to remove salvageable track assets:
- **Track Salvage Value (TSV);** that value remaining after deductions of Liquidation Expenses due to removal and restoration as necessary to render assets saleable and preparation of the corridor for non-rail use;
- **Administrative, Marketing and Transportation Expenses;** the additional expense beyond the physical removal of the salvageable track assets associated with the liquidation process, as well as a profit margin for the liquidator and
- **Net Liquidation Value (NLV);** that value remaining after deductions of administration/marketing expense and conduct of the sales process such as transportation of materials.



NET LIQUIDATION VALUATION OF TRACK

Summary Net Liquidation Value Of Track Results

Item	Value
Gross Liquidation Value	\$ 5,326,400
Liquidation Expenses	\$ (1,075,600)
Track Salvage Value	\$ 4,250,800
Administrative, Marketing and Transportation Expenses	\$ (1,393,900)
Net Liquidation Value (Track Removed)	\$ 2,857,000
Gross Liquidation Value (Track In Place)	\$ 5,326,400

Note: Values may not appear to add due to rounding

REAL ESTATE APPRAISAL

Two Methods to Value Railroad Rights of Way:

- 1) Net Liquidation Value
- 2) Corridor Value



Both scenarios start with the Across The Fence (**ATF**) Value

REAL ESTATE APPRAISAL (CONTINUED)

Across the Fence Value (ATF) of Real Estate



The ATF value is the value of the adjacent land applied to the right of way area.
ATF is the baseline from which the Net Liquidation Value (NLV) and Corridor Values are calculated.

The **UNADJUSTED** ATF in this case, the ATF is estimated to be:

\$7,000,000

REAL ESTATE APPRAISAL (CONTINUED)

Net Liquidation Value (NLV) of Real Estate



A crew for Utah's A & K Railroad Materials removes railroad spikes Wednesday on the Nickel Plate Line. Robert Scheer

In non-rail use or liquidation scenarios, ATF value is adjusted to reflect non-conventional real estate physical characteristics: i.e. access, narrow shape and marketability; sold off piece meal over time: proceeds discounted to a net present value; based on Surface Transportation Board (STB) Guidelines yielding not market value but lowest threshold of value.

The NLV is only applicable if rail operations cease and the track is to be liquidated, per governance of the STB.

In this case, the NLV is estimated to be:

\$2,500,000

REAL ESTATE APPRAISAL (CONTINUED)

Corridor Value of Real Estate



In continued rail use scenarios, ATF value is not discounted for atypical physical characteristics and ATF value is multiplied by the appropriate market-based corridor factor. A corridor factor is any corridor sale price divided by its ATF value. It is used to **estimate market value** and generally tends toward the higher end of the value spectrum.

In this case, the corridor value of real estate is estimated to be:

\$8,400,000

PRELIMINARY FEASIBILITY ANALYSIS

The purpose of this analysis was to conduct a preliminary exploration of the potential profitability of the line as a freight railroad. The analysis was designed to shed some light on the likelihood as to whether the combined value of the assets constituting the railroad owned by the Port of Columbia exceeds the likely Going Concern Value of a railroad enterprise using those assets.

The RLBA Team conducted a Preliminary Feasibility Analysis study to identify any potential future use of or business on the Port of Columbia's rail assets. The Team analyzed:

- **Rail Carload Volumes,**
- **Railcar Storage and**
- **Corridor Physical Characteristics**



PRELIMINARY FEASIBILITY ANALYSIS (CONTINUED)

Carloads

Typically, the largest single revenue generator on a railroad is the sum of charges assessed in connection with the movement and placement of railcars tendered by shippers and/or consignees.

- The Columbia – Walla Walla line currently does not serve a significant number of customers in comparison to other rail operations of similar length.
- Those customers do not generate a significant number of carloads, thereby resulting in a low number of originating or terminating number of carloads per mile, the best single metric to measure “traffic density.”
- The railroad does not currently enjoy significant revenue from traditional means.



PRELIMINARY FEASIBILITY ANALYSIS (CONTINUED)

Railcar Storage

At times, railcar owners or lessees experience a surplus of railcars in their fleets. Railcars become idled, or stored when a car owner or lessee experiences a decline in transport needs due to commodity seasonality, a decline in commodity demand or other factors outside their control. Providing locations and track capacity on which to temporarily store surplus railcars is an ancillary revenue stream on most short lines.

Car storage providers typically offer locations where:

- Idled railcars will not impede the movement of other rail traffic;
- Extra track space in a rail yard;
- Passing sidings are not required to conduct network operations or
- Track is available where customers at formerly, rail-served facilities no longer ship by rail.

PRELIMINARY FEASIBILITY ANALYSIS (CONTINUED)

Summary and Synthesis of Preliminary Rail Feasibility

The Port's Dayton – Walla Walla line presents a significant amount of potential. Even though the rail line is a stub-ended branch line (dead end), it features several, favorable attributes.

PROS

- Connections to UP and BNSF
 - Shipper / Consignee Reach
 - Rate Negotiations
- Provides Rail Option
 - Less Trucks
 - Alternative to Barge
- Current Adjacent Land Use
 - Attractive to Industrial Development
 - Minimizes Impacts to Public

CONS

- Stub End Branch Rail Line
- Insufficient Revenue Streams
 - Low Carload Volumes
 - Limited Car Storage Capacity
- Requires Significant Amount of Grants to Sustain Operations

SUMMARY OF VALUATION AND COST RESULTS

NLV is the remainder after liquidation expenses were deducted from Gross Liquidation Value (GLV). This is a reasonable expectation of what a seller (acting as its own broker) could receive were the line liquidated in December 2024.

Summary of Valuation and Cost Results

Item	Value / Cost
Net Liquidation Value of Track (Track Removed)	\$2,857,000
Net Liquidation Value of Track (Track In Place)	\$5,326,400
Underlying Real Estate Proceeds (Net Liquidation Value)	\$2,510,000
Underlying Real Estate Cost (Corridor Value)	\$8,398,000
Total PROCEEDS (NLV Real Estate + Track Removed)	\$5,367,000
Total PROCEEDS (NLV Real Estate + Track In Place)	\$7,836,400
Total COST (Corridor Value + Track Removed*)	\$11,255,000
Total COST (Corridor Value + Track In Place*)	\$13,724,400

*Cost is underestimated because it excludes the cost of reconstituting a railroad from scratch.

Note: Values may not appear to add due to rounding

Thank You

We Look Forward to Answering Any Questions You May Have



R.L. Banks & Associates, Inc.

ECONOMICS | ENGINEERING | SERVICE PLANNING

SUITE 750, 2107 WILSON BLVD.
ARLINGTON, VA 22201

703.276.7522 • transport@rlbadc.com
www.rlbadc.com

A PROUD MEMBER OF:

 MEMBER
American Short Line and
Regional Railroad Association

 ASSOCIATION OF
AMERICAN RAILROADS

 APTA
AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION



Ms. Jennie Dickinson
Executive Director
Port of Columbia
1 Port Way
Dayton, WA 99238

July 31, 2025

**S U B J E C T: TASK 5 RESPONSES TO THE PORT OF COLUMBIA
QUESTIONS DATED MAY 14, 2025**

Task 5: Further Rail Valuation and Feasibility Counsel

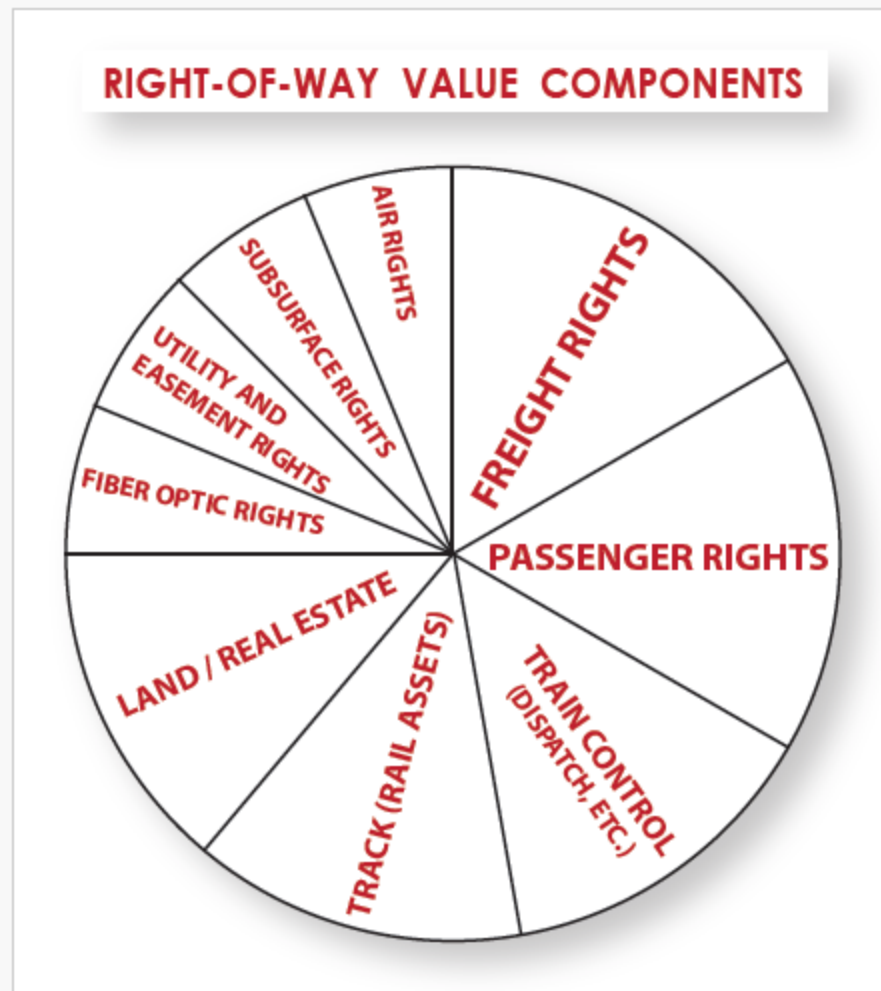
RLBA is pleased to continue assistance to the Port of Columbia with efforts associated with consideration of a possible transaction involving the subject rail assets. In this Task 5 assignment, RLBA is providing both: 1) a primer to provide context in connection with and 2) responses to questions posed by the Port.

Please see the attached primer, which is in a separate document.

After researching and drawing upon RLBA's knowledge and experience, the RLBA Team is happy to provide the following in response to your scope as spelled out in an attachment entitled Request For Assistance to your email of May 14, 2025, the essence of which is repeated below:

- ***There are different types/degrees of sale of the railroad, what are those types of sales? (e.g. sale of the track but not the land underneath).***

Like any other asset, when a railroad is sold (or leased) , the terms and conditions of a sale (or lease) can be curated through a transaction to achieve the mutually agreeable objectives of all stakeholders (parties). A railroad can be divested by either selling the entire entity (land, track, equipment, structures etc.) or by separating it by component by component. For example, the graphic below illustrates numerous asset components that constitute a railroad line.



Similarly, the various functions of a railroad also can be separated. For example, when the Los Angeles County Transportation Commission first contracted out its Metrolink commuter rail service elements, it sought separate bids on: 1) the operation of its trains; 2) the maintenance of its tracks and structures and 3) the maintenance of its locomotives and coaches.

When a railroad is separated when sold, in most cases, the land is retained by the seller in the event the land may have future beneficial use should rail service ceases. The current scenario facing the Port of Columbia only pertains to the track and land as the Port presumably does not own any of the rail or rail maintenance equipment currently deployed on the subject rail line. It is not uncommon for the infrastructure (primarily the track) to be separated from the land (real estate) in a sale or lease agreement. In such arrangements, the selling party often sells the track infrastructure but retains the land, thereby transferring the liability associated with and cost of track maintenance to the track owner (railroad operator). The “vertical boundary” delineating the track infrastructure from land is typically the sub ballast.

An advantage associated with such arrangements is the reduction in responsibility and costs to the landowner. But to the contrary, in such instances, the landowner relinquishes most, if not all, immediate governance of what or how the railroad operates (hazardous shipments, quiet zones or other perceived public nuisances) to the operator.

- **Examples**

The State of Washington, the State of Maryland, the Commonwealth of Massachusetts, other states and the City of Akron own railroads but do not operate them. For example, the Commonwealth of Massachusetts owns the Housatonic Railroad's land and track but it is operated by a private sector operator. The Union Pacific Railroad has pursued an intentional policy of not selling the land or infrastructure to third parties in major metropolitan areas but leases the freight services out to contract operators. The Norfolk Southern followed a similar path, setting up in 1987, a branded unit, the Thoroughbred Shortline Program of lines, that that carrier wanted to lease, not sell. Washington State owns the land and infrastructure constituting the Palouse River and Coulee City Rail System and contracts out to third party operators all commercial and operational aspects of the various branch lines which constitute it. The State of Vermont owns the majority of the railroads and railroad mileage within the state's borders and, again, contracts out all operational and commercial aspects to private sector, contract operators.

- ***Use of a "claw back" clause to allow Port to buy back the railroad if it was not used as a railroad.***

A claw back clause would not guarantee the Port the ability to buy back the railroad under any circumstance (use or otherwise). A claw back clause is typically in Lease Agreements when revenue sharing is a condition of the Agreement and performance targets are not met. This would be in the absence of any dead freight clause or terms. Some states have regulations regarding claw backs.

- ***Pros and cons? For example: Are clawbacks ironclad, or are there instances in which it would not remain valid? (Bankruptcy?)***

Primarily, a claw back option serves to limit any operator's incentive to invest capital and grow business (higher uncertainty) and the terms may drive some bidders away or serve to reduce rents paid to the land owner or track lessor. Any clawback clause should be clearly defined in any executed agreement for it to remain valid through a bankruptcy.

- ***What other lease options are there? Are there other potential lessees?***

There are lease options that can be taken into consideration. The option selected is typically based on the scope of the rail service provided with the subject land and rail infrastructure. The scope of rail services can range from the transport (from A to B) of railcars to transloading and switching of railcars (the so-called "first mile / last mile").

Key considerations associated with various lease options are discussed below in the context of the situation that exists at the Port of Columbia.

In a **Gross Lease**, an operator generally would pay a fixed amount at a frequency and term agreed upon by both parties. All land and track maintenance expenses would be the responsibility of the Port.

In a **Net Lease**, an Operator generally would pay a fixed amount at a frequency and term agreed upon by both parties but all operating expenses would be the responsibility of the Operator.

An **Operating and Maintenance Agreement**, is a hybrid of a Gross and Net Lease. The parties involved mutually agree upon customized terms of the operations, responsibilities and maintenance costs.

A **Freight / Operating Agreement**, generally, relates to shared use tracks, typically, tracks that are utilized by both freight and passenger trains.

A **Trackage Rights Agreement** generally is between two freight rail carriers in which a track owner agrees to host another carrier on its track(s), generally in connection with mainline, or, “over the road” operations in exchange for a payment which usually is comprised of two components. One component is usage based, often a metric such as loaded and empty carloads or car-miles carloads while the other component is fixed, usually representing a return to the owner on the investment the owner has made in the land and improvements on which the non-owning party is operating, based on the passage of time

In summation, there are many options available to the Port when considering a possible sale, or lease, of the rail assets. RLBA is providing this information to inform and educate the stakeholders of the options available. No two transactions are exactly identical due to numerous unique factors or circumstances surrounding each.

RLBA is presenting these responses to inform the Port of possible options and the final options are at the sole discretion of the Port. With RLBA’s robust experience in rail contract drafting and negotiations, RLBA will be happy to assist if the Port choses to pursue one of the options, or consider a “hybrid” option.

As to “other potential lessees” being interested in operating the Port’s railroad, I am reasonably confident that other parties would express interest in your railroad because the number of parties interested in operating railroads (the demand) exceeds the number (supply) of railroads to be operated. As I see it, the real question is would they do a better job than the incumbent provider. Unfortunately, one can’t know the answer to that question at least until one went through a competitive bidding process and that process would take time and cost money as it is critical to get the word out there that the Port is considering its options. More publicity attracts more bidders which, at least in theory, results in better contract terms realized by the railroad’s owner.

In recent years, RLBA has helped two Ports go through a competitive process to secure a railroad operator. One of those Ports replaced an in-house operation with a contracted one. The other Port, in California, Port Hueneme, elected to renew its relationship with its incumbent, contract operator but realized approximately twice as much rent per year as a result of the bidding process.



**NET LIQUIDATION VALUATION,
REAL ESTATE APPRAISAL
AND
RAIL FEASIBILITY
OF
PORT OF COLUMBIA OWNED RAIL ASSETS**

Prepared for:

The Port of Columbia

Prepared by:

R.L. BANKS & ASSOCIATES, INC.

DECEMBER 13, 2024

PROJECT INTRODUCTION

R.L. Banks & Associates (RLBA) was engaged by the Port of Columbia (The Port) to perform valuations of the roughly 37 route miles, extending between Dayton, WA and Walla Walla, WA, track owned by The Port and the real estate underlying that railroad track. The Port also requested that the RLBA Team perform a preliminary rail feasibility analysis of the railroad freight business along the corridor.

Columbia Rail is a railroad company comprised of five separate railroads. In this project, the RLBA Team inspected and evaluated the portion of the Columbia Rail system's Columbia-Walla Walla Railway (CWW) division which is owned by and leased from the Port of Columbia.

The RLBA Team accomplished the requested scope by performing three separate tasks:

Task 1: Net Liquidation Value (NLV) of the Track Assets Informed by a Physical Inspection

Task 2: Appraisal of the Real Estate Underlying the Track Assets - Restricted Appraisal Report and

Task 3: Preliminary Rail Feasibility Analysis.

Results flowing from the accomplishments of Tasks 1 and 2 also informed portions of Task 3.

The values and cost estimates presented herein are opinions of current, probable values and costs. These opinions are based on the application of RLBA's reasonable professional judgment and extensive experience gleaned from many, quite similar projects on behalf of other public agencies, rail carriers and private sector lenders or investors. These estimates do not constitute a warranty, expressed or implied, that contractors' bids nor negotiated prices of work will correspond with the opinions of probable values and costs prepared by RLBA.

Per the request of the Port of Columbia, this report is solely intended to provide estimates of the NLV, real estate values and feasibility of using the subject track assets and to inform The Port's internal decision-making as it considers a potential transaction involving the subject assets.

Excluding any value of the assets in contributing to a going concern freight rail franchise, RLBA estimates the Port's assets are worth approximately \$ 15,505,700 if they were to be purchased, as detailed in Table 1 and the accompanying Task text sections.

The real estate valuation is calculated from both a buyer and seller perspective. The value, if sold in current market conditions, is significantly less than the corridor value if the real estate was to be purchased back.

Table 1: Valuation Summary

Item		Value
Net Liquidation Value of Track	\$	7,107,700
Underlying Real Estate Proceeds (Net Liquidation Value)	\$	2,510,000
Underlying Real Estate Cost (Corridor Value)	\$	8,398,000
Total Proceeds (Net Liquidation Value)	\$	9,617,700
Total Cost (Corridor Value*)	\$	15,505,700

*Cost is underestimated because it excludes the cost of reconstituting a railroad from scratch.

Note: Values may not appear to add due to rounding

Task 1: Net Liquidation Value (NLV) of the Track Assets Informed by a Physical Inspection

Introduction

Columbia Rail is a railroad company comprised of five separate railroads. In this valuation project, R.L. Banks & Associates (RLBA) inspected and evaluated the portion of the Columbia - Walla Walla Railway (CWW) which is owned by and leased from the Port of Columbia. This portion is roughly 37 route miles, extending between Dayton, WA and Walla Walla, WA. The Port of Columbia retained R.L. Banks & Associates, Inc. (RLBA) to perform a valuation of track assets along this corridor.

This effort determines the Net Liquidation Value (NLV) of track assets in the subject property as of 7, November 2024, based on findings recorded during a physical inspection of the assets which occurred on 7, November 2024 conducted by Don Bagley, RLBA's Senior Associate, Transportation Engineering. This report presents findings of the research and discusses the factors which influence the value of railroad rail, other track material (OTM) and ties.

Map One: Map of Columbia - Walla Walla Railway



The cost and value estimates presented herein are opinions of current, probable values and costs based on RLBA's reasonable professional judgment and experience. These estimates do not constitute a warranty, expressed or implied, that contractors' bids nor negotiated prices of work will correspond with the opinions of probable costs and values prepared by RLBA.

Net Liquidation Value

For the purposes of this valuation, RLBA defines NLV as:

- "An opinion of the dollar value which could be realized from a liquidation sale of a particular asset, assuming the seller is not under distress and, as such, has a reasonable period of time to identify and compare various offers for the assets, less the liquidation, administrative, marketing and transportation expenses incurred to remove and prepare said assets for sale, as of a certain date."

Uses of this Report

Per Port of Columbia's request, this report is solely intended to provide an estimate of the NLV of the subject line and to inform the Port for the purposes of internal decision-making only.

Summary of Net Liquidation Value

As summarized below in Table 2 and seen in greater detail on Appendix One, the NLV of the track is \$ 7,107,700 as of 7, November 2024. That figure was determined via desktop application of current market prices to the physical inventory inspected. A summary of the material evaluated appears in Appendices Two through Six addressing each respective segment, which identify key rail asset characteristics by milepost location.

Table 2: Net Liquidation Value Summary

Item	Value
Gross Liquidation Value	\$ 5,326,400
Liquidation Expenses	\$ (1,075,600)
Track Salvage Value	\$ 4,250,800
Administrative, Marketing and Transportation Expenses	\$ (1,393,900)
Net Liquidation Value	\$ 7,107,700

Note: Values may not appear to add due to rounding

Methodology to Determine NLV

NLV was determined utilizing and adhering to the methodology employed by the Surface Transportation Board (STB), as manifest in decisions made by its Commissioners involving abandonments and other, related issues involving the prescribed use of NLV. RLBA arrived at this NLV through application of a multiple step process, the building blocks of which are summarized below:

- **Gross Liquidation Value (GLV);** the market value of salvageable track assets (primary components with a value greater than related salvage expenses):
 - Fixed Asset Ownership
 - Fixed Asset Inventory
 - Inventory Adjustment for Wear and Recovery Reductions and
 - Application of Market Value Unit Prices;
- **Liquidation Expenses;** the expense incurred to remove salvageable track assets:
 - Removal Expenses and
 - Restoration Expenses;
- **Track Salvage Value (TSV);** that value remaining after deductions of Liquidation Expenses due to removal and restoration as necessary to render assets saleable and preparation of the corridor for non-rail use;
- **Administrative, Marketing and Transportation Expenses;** the additional expense beyond the physical removal of the salvageable track assets associated with the liquidation process, as well as a profit margin for the liquidator and
- **Net Liquidation Value (NLV);** that value remaining after deductions of administration/marketing expense and conduct of the sales process such as transportation of materials.

Gross Liquidation Value

GLV in the context of this analysis was defined as current retail market value (with the exception of ties, which would be wholesaled) of all fixed assets as if they were available for immediate sale.

Signals and communications facilities, highway crossing signals, bridges, culverts and ballast, as will be explained later, yield no positive NLV value because of high removal costs.

Fixed Asset Ownership

In performing this track-related NLV evaluation, RLBA assumed that the Port of Columbia owns all the rail assets in fee simple including all yard, siding and industry spur tracks.

Fixed Asset Inventory

To assess the physical condition of the track assets, the valuation was based on a field inspection. Data concerning track condition and inventory obtained during that field inspection was used to inform the development of this NLV report. The track assets considered as part of this valuation include:

- Steel
 - Rail
 - Other Track Material
 - Turnouts
- Ties and
- Other Track Assets.

Steel

The most significant marketable materials reflected in this valuation were steel components, found in the rail, other track materials and turnouts. Steel was assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition.

Rail

Generally, rail in the main track designated as "fit" or "relay" can be reused in other railroad applications, if it weighs at least 85 pounds per yard or greater. Rail may have a functional use and life with wear up to and exceeding ½ inch vertical or horizontal head wear but is not generally considered worth installing again into a relay, (cascading) position if it exhibits more than 1/4 inch wear. Relay rail is classified into one of the following three categories: Fit #1, which includes all rail with less than 1/8 of an inch head wear, Fit #2, rail with less than 3/16 of an inch head wear and Fit #3, rail with less than 1/4 inch in head wear. The retail price of Fit #1 is set at a premium relative to Fit #2 and #3, respectively. If not suitable for rail relay, the next highest value application is reroll, where rail is rolled into new, non-rail products. Rail not suitable for reroll because of excessive side head wear, excessive metal flow, holes mid-rail, short length or attached asphalt or concrete is suitable only as scrap. Reroll rail generally brings higher dealer prices than scrap subject to market demands by the US electric steel mills. Scrap is divided into two categories: rail and other track material (OTM) such as joint bars, tie plates, rail anchors, nuts, bolts, washers and spikes. Table 2 displays the values assigned to each rail and OTM classification.

Other Track Material

The vast majority of double shoulder tie plates were classified as relay, even if the rail they supported was classified as scrap, because they would be matched with other relay rail featuring less desirable tie plates. All single shoulder tie plates were valued as scrap due to low market demand. If rail reuse as relay were warranted, joint bars and rail anchors were assumed reused whereas if rail were assumed scrapped or rerolled, the joint bars and rail anchors were assumed to be scrapped. Remaining OTM such as spikes, bolts and washers were valued as scrap.

Turnouts

Turnout values are typically determined through two characteristics: rail weight and frog size. Turnouts are classified as either “heavy” or “light,” with heavy turnouts having a rail weight of greater than or equal to 112 pounds per yard and light turnouts having a rail weight of less than 112 pounds per yard. Most switches on the rail lines were determined to be size 9 turnouts and the others size 10 with the spring, rigid, rail-bound manganese (RBM), or solid manganese, self-guarded (SMSG) frogs. The unit prices only reflect the material, not the cost of installation.

Ties

Because tie installation costs often approach tie material costs, only recently installed ties are suitable for rail reuse. The cost to sort, handle, transport and inventory ties is high and, in comparison with the wholesale prices they command, generally yield only a low net salvage value. Overall tie condition on the inspected Port of Columbia track was poor, with nearly half of the ties classified as landscape or scrap.

Other Track Assets

No net salvage value was assigned to signals and communications facilities, highway crossing signage and signals, bridges, culverts or ballast on the line in the calculation of the NLV. Reuse of signals by even a short line railroad is unlikely; typically, no inventory is kept on-hand and new replacements are ordered from standard suppliers and immediately installed. Marketing costs to inform railroads of second-hand availability and handling costs likely would exceed the amount that could be recovered through sale. Signal material scrap value would not exceed salvage costs. Likewise, there is no ready market in which to sell used, highway crossing signals and so they are not included in NLV calculations. Bridge, culvert and ballast removal costs and proceeds traditionally approximate each other, typically have no net effect on NLV and so are omitted from NLV calculations.

Inventory Adjustment Reflection of Wear and Recovery Reductions

Due to material age, condition and the economics of expedited removal procedures, RLBA determined that not all railroad assets in the existing right-of-way would be recovered. RLBA typically assumes the liquidation of all rail lines to yield the following recovery rates, based on the theoretical weight of new rail:

- 97 percent of fit rail;
- 97 percent of scrap and reroll rail;
- 97 percent of tie plates on fit rail;

- 95 percent of tie plates on scrapped rail;
- 97 percent of joint bars on fit rail;
- 95 percent of joint bars on scrapped rail;
- 97 percent of turnout material;
- 80 percent of fit rail anchors and
- 80 percent of rail anchors, bolts, spikes, washers and other scrap materials.

The recovery rate assumption applied to relay, reroll and scrap rail reflects a three percent reduction applied to gross rail weight as an adjustment recognizing average rail wear. Five percent of scrap OTM gross weight was judged likely to be lost as a result of the removal process. In addition, twenty percent of anchors, spikes, bolts, washers and other materials were estimated as rusted or lost during salvage operations, leaving only eighty percent to be salvaged as scrap.

Application of Market Value Unit Prices

The GLV and NLV estimates were based on the application of actual unit market prices as of 7, November 2024, as supplied by active market participants who confidentially provide current pricing information to RLBA and is displayed in Table 3.

Table 3: Unit Market Prices

Steel (Rail)		Net Ton	Steel (OTM)		Component
Jointed, Fit #1	Jointed, Fit #1	\$ 630.00	Scrap OTM (Gross Ton)		\$ 315.00
Jointed, Fit #2	Jointed, Fit #2	\$ 710.00	Tie Plates	8 x 13 DS	\$ 9.15
Jointed, Fit #2	Jointed, Fit #2	\$ 640.00	Joint Bars	131	\$ 84.55
Jointed, Fit #3	Jointed, Fit #3	\$ 590.00	Joint Bars	100	\$ 42.90
Jointed, Fit #3	Jointed, Fit #3	\$ 570.00	Joint Bars	90	\$ 36.35
Jointed, Fit #3	Jointed, Fit #3	\$ 620.00	Joint Bars	85	\$ 34.70
Jointed, Fit #3	Jointed, Fit #3	\$ 760.00	Joint Bars	80	\$ 30.90
Rail Reroll (Gross Ton)		\$ 362.25	Joint Bars	70	\$ 30.95
Rail Scrap (Gross Ton)		\$ 315.00	Joint Bars	60	\$ 29.70
			Anchors (welded), Fit		\$ 1.25
			Anchors (jointed), Fit		\$ 0.95

Turnouts		Component
Heavy	9	\$ 12,500.00
Heavy	10	\$ 14,000.00
Light	8	\$ 2,500.00
Light	9	\$ 3,000.00
Light	10	\$ 4,000.00
Light	11	\$ 4,500.00

Ties		Component
Relay		\$ 38.00
Landscape		\$ 15.00
Scrap		\$ -

Transportation		Rate/Railcar
Walla Walla, WA to Chicago, IL		\$ 4,567.52

Liquidation Expenses

Two fundamental assumptions were employed in development of expenses that were netted against gross liquidation values:

- costs associated with removal, sorting and transporting railroad materials reflected a deliberate and efficient liquidation and
- restoration expenses were assumed to be required in connection with highways, including coordination with local governments.

Removal Expenses

The cost of taking up track, including disassembly, sorting, stacking and loading of materials for shipment and disposing of ties was estimated at \$25,000 per mile where rail was classified as relay and \$20,000 per mile where rail was classified as reroll or scrap. Turnout removal was estimated at \$1,300 per fit turnout and \$630 per scrap turnout.

All tracks in roadways and crossing protection devices must be removed and pavement restored as a condition of service termination. The removal of track materials from pavement and restoration of pavement was estimated at \$5,000 per improved crossing and \$380 per unimproved crossing. Removal of crossing protection devices was estimated to equate to salvage value.

Restoration Expenses

As a condition of service termination and non-rail reuse of the real property, governments frequently require correction of some existing conditions that might cause the public sector to incur future expense. Such regulations affect the subject NLV determination in three principal asset categories: 1) bridges and culverts, 2) grade crossings and 3) structures.

Track Salvage Value

Track salvage value is equal to gross liquidation value less liquidation expense.

Administrative, Marketing and Transportation Expenses

RLBA's standard methodology to determine cost to administer liquidation and market steel assets so as to achieve retail prices arrived at an estimation of fifteen percent of retail GLV (excluding transportation) regarding relay steel materials and five percent of GLV regarding scrap, reroll and non-steel materials. This methodology assumes liquidation is either performed by the railroad itself, which presumably has limited liquidation experience, or by a hired, third party at a premium. Additionally, ten percent of TSV was deducted to account for the profit margin the railroad or third party would yield from liquidating the line. Transportation of reroll and scrap steel materials was assumed to be shipped by rail to Chicago, IL to maximize income with carload transportation costs reflecting same. Relay materials were estimated to be shipped to Chicago by rail to obtain maximum, net market prices.

Net Liquidation Value

NLV is the remainder after liquidation expenses were deducted from GLV. This is a reasonable expectation of what a seller (acting as its own broker) could receive were the line liquidated in December 2024.

Railroad Rail Market

The predominant component of railroad track asset value is the rail itself. The rail market consists of four primary products: new rail and the three, previously described grades of used rail: relay, reroll and scrap. Since the Dayton – Walla Walla line is entirely comprised of second-hand rail, the discussion which follows is limited to the used rail markets. The NLV depends not only on the wear experienced on the subject rail but also on the situation in those markets.

Relay Rail

Rail replaced because of wear or defects on a busy or fast main track is eminently suitable to install on slower speed or lighter traffic lines. At the slow speeds operated in yards, few broken rails result in derailments. In turn, welded replacement rail installed on secondary lines is superior to older rail still in use in some yards. Relay rail tonnages installed consistently exceed new rail tonnages because rail removed from a main line and installed on a branch line frequently generates an additional rail cascade to yard tracks. At each step, however, a portion of the rail is scrapped, usually resulting in short lengths of rail (from cuts made at road crossings and switches) or rail with excessive curve wear.

Through the cascading process, relay rail is generated by installing new rail (or other relay rail). In addition, some liquidated rail lines generate relay rail, though abandonment rail is frequently light, worn sections which are scrapped. While most relay material generated by a railroad is used on its own lines, there is a very active commercial relay market; several brokers supply material to regional and short line railroads and shipper-owned spurs, which neither require nor can justify the cost of new rail.

At lower levels of remaining useful life, rail becomes unattractive to sell in the relay market because the expenses of marketing, transportation and installation of rail on a regional or short line railroad would constitute an excessive share of total value.

Most rail relay programs include welding the rail before installation. Welding significantly reduces maintenance expenses incurred in the joint area associated with surfacing and bolt tightening. In addition, by removing the location of greatest rail wear, rail life is extended.

Reroll and Scrap Rail

Rail is a premium scrap grade because it is hard steel with known chemistry. While the scrap steel market includes many grades, used rail enters the scrap market as reroll or as charging material (heavy melting scrap) to be melted in furnaces and made into other steel products. Reroll is the designation attached to clean lengths of rail that can be rerolled into new products (construction rebar, fence posts, etc.). Scrap material is required in charging both integrated mills and in mini-mill electric furnaces. The mini-mill demand for scrap is expected to remain strong. While most mills will accommodate rails up to five feet in length, some buyers prefer shorter lengths of two or three feet.

User Categories

The primary categories of rail users are Class I (large), regional, short line railroads and industrial plants with rail sidings and/or yards. Class I railroads primarily purchase new rail and generate relay rail internally with light weight rail sold as scrap.

Use of relay rail by weight depends on specific railroad practice but, in general, on Class I (major) railroads, 112 pounds per yard and heavier will be reinstalled on secondary main lines if within wear limits, otherwise it will be installed in yard tracks. Good relay rail is required in yard turnouts. Rail between 100 and 112 pounds per yard is suitable in yard and industry tracks, though if generated in abundance in any one year, it may be sold into the second-hand market. Rail sections less than 100 pounds per yard are generally scrapped when taken up by Class I railroads.

Regional railroads are in need of second-hand rail and demand for repair rail has propelled second-hand prices on medium and heavy rail to a high value proportionate to prices of new rail with respect to remaining life as indicated by rail wear. This anomaly results because at typical regional railroad annual traffic levels of three to five million gross tons (MGT), half-worn rail may last another 50 - 80 years and so is a relative bargain compared with new rail.

From the distinct economic perspective of regional railroads, by contrast with Class I railroads, paying one-half to three-quarters the price of new rail for half-worn rail can provide savings because replacement expenditures are years away. Rail weighing 115 pounds per yard or greater is preferred for replacement. Rail designated 132RE or greater (RE designation representing rail that adheres to American Railway Engineering and Maintenance-of-Way Association ((AREMA)) specifications) would be considered if the costs, including shipping and other track materials, were the same or less than a 115RE section of rail. Similar economics drive the decision of Class I railroads to cascade worn rail, with little in-place economic life to another line on the system with lower traffic density rather than continuing to wear the rail down to scrap condition at its original location.

Short line railroads use any rail from new 136RE to second-hand 85 pounds per yard rail, depending on traffic volume and financial strength. Generally, 100 pounds per yard rail or heavier is preferred but some lines still install less than 100-pound rail (to replace even lighter weight installments). If predominant traffic is carried in 100 ton cars, 100 pounds per yard is a minimum standard although some western railroads in dryer climates, and hence better subgrade conditions, use 90 pounds per yard section. (The demand for relay quality 90 and 100 pounds per yard rail is still there but appears to be more regionalized, resulting in decreasing value due to the shift of the railroad industry toward being able to handle even greater axle loads.) Only a few short lines, generally those owned by the primary company they serve, can finance new rail purchases.

Industrial users can use any weight rail but prefer 100 pounds per yard or heavier section. A nearly universal specification by civil engineering firms of 115RE rail (instead of 115RE or heavier) on new sidetrack construction has driven the relay price per ton of that rail section higher than most other sections. The high

volume of 115RE rail installed in mainline tracks during the 1950's and 1960's followed by a shift to heavier 119, 132 and 136RE rail has led to a scarcity of available 115RE repair rail. During the last few years, the relative bargain of 119 and 132RE rail has been recognized and those prices also have risen to match that of 115RE at least on a lineal foot basis.

Qualifications to Estimate

The findings of this cost estimate are subject to several qualifications and limiting conditions which are stated as follows:

It is assumed that all rail valued was manufactured according to AREMA and American Society of Civil Engineers (ASCE) recommended practices and that the rail assets are in full compliance with all FRA standards;

Further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws;

RLBA takes no responsibility for changes in market conditions which may occur after the date of valuation or for the inability of the rail owner to identify a qualified purchaser;

With regards to the valuation, RLBA has not conducted any title search or verification of legal ownership. RLBA has conducted this valuation under the assumption that the entire rail described herein is owned by the Port of Columbia free and clear of any liens and encumbrances;

No employee or representative of RLBA will be required to give testimony or attend court or appear at any governmental hearing with reference to the subject rail material, unless prior arrangements have been made directly with RLBA;

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection or areas not inspected;

RLBA has not conducted any environmental remediation investigation and as such has not factored in any environmental remediation costs that may result from actual liquidation of line.

Certification

I, Don Bagley, do hereby certify that to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.

I have no specified or unspecified present or prospective interest in the properties that are the subject of this report and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

I made a personal inspection of the property that is the subject of this report on 7, November 2024.

Submitted,

A handwritten signature in black ink that reads "Don D. Bagley".

Don Bagley

Task 2: Appraisal of the Real Estate Underlying the Track Assets – Restricted Appraisal Report

A Restricted Appraisal Report is limited in content and intended use. It is a written statement setting forth the appraiser's conclusions but does not provide detail or explanations as does a Full Appraisal Report. The Restricted Appraisal Report is often used when the appraisal is intended for a client's internal use only.

RLBA and The Port engaged Gary R. Anglemeyer & Associates, LLC (GRAA) to value the real estate underlying the rail line that extends approximately 37 miles, including the easement that resides up to 50 feet from the center of the rails' gauge along both sides. Specializing in railroad-related real estate appraisals, GRAA is RLBA's preferred real estate appraiser regarding railroad matters.

December 11, 2024

Jennie Dickinson
Executive Director
Port of Columbia
1 Port Way
Dayton, WA 99328
c/o
R.L. Banks & Associates, Inc.

Sent via email @ cbanks@rlbadc.com

Re: Appraisal of Port of Columbia Railroad 37.1-Mile Right of Way between City of Walla Walla, Walla Walla County and City of Dayton, Columbia County, Washington State

Restricted Net Liquidation Value and Corridor Value Report

Dear Ms. Dickinson:

In accordance with your request, I have prepared a Restricted Appraisal Report regarding the above-referenced property. This restricted appraisal report is intended to comply with the reporting requirements set forth by the Uniform Standards of Professional Appraisal Practice (USPAP). It presents a statement of the appraiser's conclusion. As stipulated by (USPAP) STANDARDS RULE 2-2(b), a restricted appraisal report cannot be relied upon by a third party due to the limited documentation and analysis. It is prepared for the eyes only of the intended users. Data, information, and calculations leading to the value conclusion is retained in the appraiser's file. Please note the conclusion may not be understood properly without additional information in the appraiser's work file.

Based on my analysis of the property and supporting market data, it is my opinion that the appraised property's fee simple net liquidation and corridor values as of December 11, 2024, is:

Net liquidation Value
TWO MILLION FIVE HUNDRED TEN THOUSAND DOLLARS
(\$2,510,000)

Corridor Value
EIGHT MILLION THREE HUNDRED NINETY-EIGHT THOUSAND DOLLARS
(\$8,398,000)

The appraised property is a 37.1-mile active railroad right of way owned by the Port of Columbia. It extends between the City of Walla Walla in Walla Walla County and the City of Dayton in Columbia County, State of Washington State.

The client and intended users are Port of Columbia and its representative, R. L. Banks & Associates, Inc. The intended use is to assist with the potential disposition of the appraised property. The date of this report and the date of value is December 11, 2024.

For purposes of this assignment, the property rights appraised are fee simple interest. As defined by the Office of the Comptroller of the Currency under 12 CFR, Part 34, Sub-part C – Appraisals, 34.42 Definitions (g), market value is defined as:

“The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

The significant elements of the scope of work include an on-line digital inspection of the appraised property and its abutting uses, a highest and best use analysis, segmentation of the property into zones of value, an analysis of the comparable land sales and a comparison of the attributes of the subject right of way with sales of similar right of ways. A Sales Comparison or Market Approach and Income Approach using the Across the Fence (ATF), Net Liquidation Value (NLV) and Corridor Valuation Methodologies were developed.

Corridor Characteristics/Highest and Best Use

The subject is primarily located in a rural area of southeastern Washington state. As such, most of the abutting land is rural in nature. However, a substantial amount of industrial and commercial uses exists in the Cities of Walla and Dayton with some agriculturally-oriented industrial uses in smaller rural towns along the way. It features a very minor amount of residential land use in the City of Walla Walla. The subject has a Highest and Best Use of continued linear right of way uses.

ATF and Gross Fee Liquidation Value

The ATF value is needed for both the NLV and Corridor Valuation Methodologies. The unadjusted ATF value is the value of the adjacent land applied to the corridor area. This number is used for the Corridor Valuation Methodology. The ATF value estimate is \$6,998,000, rounded, as shown of the following pages.

The Gross Fee Liquidation Value is the ATF value discounted for access and marketability to induce the sale of the property for non-rail or alternative uses for the NLV Methodology. The Gross Fee Liquidation Value is \$6,218,000, rounded, as shown on the following pages.



Port of Columbia ATF Valuation Summary Table

No.	Location	Gross Linear Feet	Public Road Xings	Net Linear Feet	Avg. Width	Square Feet	Zone Acres		Highest & Best Use	ATF \$ per Acre	ATF Value	NLV Adjustments Access	Marketability	Gross Fee Liquidation Value
City of Walla Walla														
1	E of Woodland Ave, N of W Rose St to W Cherry St	2,952	50	2,902	95	275,690	6.33	IH & IL; Industrial Heavy & Light	Industrial	\$60,000	\$379,738	-25%	0%	\$284,804
2	N of W Cherry St to S of W Pine St	512	0	512	95	48,640	1.12	RN; Neighborhood Residential	SFR Infill	\$165,000	\$184,242	0%	0%	\$184,242
3	N of W Pine St to Golf Course	2,560	50	2,510	95	238,450	5.47	IH & IL; Industrial Heavy & Light	Industrial	\$60,000	\$328,444	-15%	0%	\$279,177
4	Golf Course	4,604	0	4,604	95	437,380	10.04	PR; Public Reserve	Open Space Low Ag	\$4,200	\$42,172	0%	0%	\$42,172
Walla Walla County														
5	Golf Course to City of Prescott S C St	88,909	180	88,729	95	8,429,255	193.51	PA-40; Primary Agriculture	Ag Cropland	\$6,000	\$1,161,054	0%	-25%	\$870,791
Prescot														
6	S C St to Rogers Rd	3,142	100	3,042	95	288,990	6.63	Industrail Ag	Batch Plant/Coop	\$60,000	\$398,058	0%	0%	\$398,058
Walla Walla County														
7	Rogers Rd to end of Suburban Res Development	1,391	0	1,391	95	132,145	3.03	C-4; Retail	Retail	\$100,000	\$303,363	0%	-25%	\$227,522
8	End of 7 to Waitsburg	34,904	140	34,764	95	3,302,580	75.82	PA-40; Primary Agriculture	Ag Cropland	\$6,000	\$454,901	0%	-25%	\$341,176
Waitsburg														
9	E Boundary to EJ Hayes Pl	5,154	90	5,064	95	481,080	11.04	Industrial Ag	Industrial	\$45,000	\$496,983	0%	0%	\$496,983
10	EJ Hayes Pl to Walla Walla County Line	7,168	0	7,168	95	680,960	15.63	RA-5 & RA-10; Rural Agriculture	Premium Ag	\$7,900	\$123,498	0%	-25%	\$92,624
Columbia County														
11	County Line to Mill Race Rd. – E. End of Airfield	5,546	70	5,476	95	520,220	11.94	Industrial Ag		\$45,000	\$537,417	0%	0%	\$537,417
12	From Above to C-1 Commercial Land-SW of Wagon Rd	28,800	100	28,700	70	2,009,000	46.12	PA-40; Primary Agriculture	High Ag	\$7,900	\$364,350	0%	0%	\$364,350



Port of Columbia ATF Valuation Summary Table

Dayton

13	SW of Wagon Rd. to N Front St	4,464	360	4,104	95	389,880	8.95	Fringe Commercial/C-1	Small Town Commercial Lower Tier	\$100,000	\$895,041	0%	0%	\$895,041
14	N. Front St. to W. of N. 5th St	2,268	70	2,198	95	208,810	4.79	C-1; Commercial; Downtown CBD; Retail Hotel etc.	Commercial	\$225,000	\$1,078,564	0%	0%	\$1,078,564
15	N. 5th St. to End of Line past City Line into County at Seneca Seed	3,514	50	3,464	70	242,480	5.57	LI-1; Industrial Older Large	Industrial	\$45,000	\$250,496	-25%	-25%	\$125,248
Totals and/or Averages		195,888	1,260	194,628	91	17,685,560	406.00			\$17,237	\$6,998,323			\$6,218,170
		37.10	0.24	36.86							\$6,998,000			\$6,218,000

Net Liquidation Value

A summary of my Net Liquidation Value (NLV) analysis is shown below.

Port of Columbia NLV Summary Table

Gross Fee Liquidation Value	\$6,218,000									
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
Sales Revenue Forecast										
Potential Sold by Year	15%	15%	15%	15%	15%	5%	5%	5%	5%	5%
Total Potential Revenue	\$932,700	\$932,700	\$932,700	\$932,700	\$932,700	\$310,900	\$310,900	\$310,900	\$310,900	\$310,900
Percentage Sold Forecast	90%	90%	90%	90%	90%	90%	90%	90%	90%	90%
Effective Annual Gross Income	\$839,430	\$839,430	\$839,430	\$839,430	\$839,430	\$279,810	\$279,810	\$279,810	\$279,810	\$279,810
Liquidation Costs										
Estimated at 13% of Income	<u>\$109,126</u>	<u>\$109,126</u>	<u>\$109,126</u>	<u>\$109,126</u>	<u>\$109,126</u>	<u>\$36,375</u>	<u>\$36,375</u>	<u>\$36,375</u>	<u>\$36,375</u>	<u>\$36,375</u>
Cash Flow	\$730,304	\$730,304	\$730,304	\$730,304	\$730,304	\$243,435	\$243,435	\$243,435	\$243,435	\$243,435
End of Year Discount Rate at 19.50%	0.83682	0.70027	0.58600	0.49038	0.41036	0.34339	0.28736	0.24047	0.20123	0.16839
Present Value of Annual Cash Flows	\$611,133	\$511,410	\$427,958	\$358,127	\$299,688	\$83,593	\$69,953	\$58,539	\$48,986	\$40,992
Net Liquidation Value	\$2,510,379									
Rounded to	\$2,510,000									

Net Liquidation Value Summary

Based upon my analysis of the property and supporting market data, the estimated Net Liquidation Value of the fee simple interest in the appraised property as of December 11, 2024, subject to the limited scope and assumptions and limiting conditions stated herein, is:

TWO MILLION FIVE HUNDRED TEN THOUSAND DOLLARS
(\$2,510,000)

Port of Columbia Corridor Sales Summary Table

Sale No.	Buyer Seller Location	Sale Date	Sale Price	Length (Miles)	\$/Mile	Corridor Factor	Comments
1	Virginia Passenger Rail Authority Norfolk Southern Alexandria to Manassas, Virginia	Sep-24	\$358,900,000	29.96	\$11,979,306	1.19	Continued Passenger Rail Service
2	City of Cincinnati/ Norfolk & Western Railway Hamilton County, Ohio	Jul-16	\$11,800,000	4.10	\$2,878,049	1.88	Recreational Trail; Potential Future Light Rail
3	San Bernardino Area Governments/ BNSF San Bernardino to Colton San Bernardino County, California	Jan-16	\$3,000,000	2.27	\$1,321,586	1.50	Freight and Passenger Service; Shared Use Easement; 50% Use Factor x 1.50 Corridor Factor
4	Brook Street Capital & Noble House Hotels Napa Valley Wine Train, Inc. Napa, California	Sep-15	\$35,000,000	22.7	\$1,541,850	0.54	Continued Tourist Train and Real Estate Development; Price based on business value
5	Denver RTC/ Union Pacific Railroad Company Adams, Weld and Boulder Counties	Jun-09	\$117,637,821	32.70	\$3,597,487	1.02	Land Banking (most); Commuter Rail (some)
6	Santa Clara Valley Transit Authority Union Pacific Santa Clara County/Metro/Suburban, CA	Dec-02	\$80,000,000	14.50	\$5,517,241	0.88	Mass Transit; Price in part based on NLV
7	Utah Transportation Authority Union Pacific Wasatch Front, Salt Lake Metro, Utah	Sep-02	\$185,000,000	166.00	\$1,114,458	1.28	Passenger and Freight Service
8	FDOT and City of Lakeland CSX Transportation Lakeland, Polk, Florida; Suburban	Dec-01	\$7,700,000	7.70	\$1,000,000	1.72	Future Public Transportation
9	Sacramento Regional Transit District Union Pacific Sacramento, California	Dec-99	\$8,400,000	6.10	\$1,377,049	1.23	Future Public Transportation; Operating Right of Way
10	Harris County Metropolitan Transit Authority (Metro) Houston Metro, TX	Nov-99	\$14,344,860	10.50	\$1,366,177	1.50	Toll Road; 50% of Railroad R/W
11	Santa Clara Valley Transit Authority/ Southern Pacific San Jose to Los Gatos, Santa Clara County	Jun-99	\$19,000,000	5.73	\$3,315,881	0.65	Proposed Future Public Transportation

Corridor Valuation Summary

Based upon the preceding corridor sales, I conclude to a corridor factor of 1.20, applied to the previously estimated ATF value of \$6,998,000, which results in a corridor or market value of **\$8,398,000**, rounded.

Based on my analysis of the property and supporting market data, the estimated market value of the fee simple interest in the appraised property as of December 11, 2024, subject to the limited scope and assumptions and limiting conditions stated herein, is:

EIGHT MILLION THREE HUNDRED NINETY-EIGHT THOUSAND DOLLARS

(\$8,398,000)

It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if Gary R. Anglemyer & Associates, LLC can be of further service, please contact me.

Respectfully submitted,

GARY R. ANGLEMYER & ASSOCIATES, LLC



Gary R. Anglemyer, MAI

Principal

ASSUMPTIONS AND LIMITING CONDITIONS

1. Unless otherwise specifically noted in the body of the report, it is assumed that title to the property or properties appraised is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. Gary R. Anglemyer & Associates, LLC is not aware of any title defects nor has it been advised of any unless such is specifically noted in the report. However, Gary R. Anglemyer & Associates, LLC has not examined title and makes no representations relative to the condition thereof. Documents dealing with liens, encumbrances, easements, deed restrictions, clouds and other conditions that may affect the quality of title have not been reviewed. Insurance against financial loss resulting in claims that may arise out of defects in the subject's title should be sought from a qualified title company that issues or insures title to real property.
2. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraisers. Gary R. Anglemyer & Associates, LLC has no knowledge of the existence of such materials on or in the property. Gary R. Anglemyer & Associates, LLC, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.

Gary R. Anglemyer & Associates, LLC has inspected, as thoroughly as possible by observation, the land; however, it was impossible to personally inspect conditions beneath the soil. Therefore, no representation is made as to these matters unless specifically considered in the appraisal.
3. It is assumed that all factual data furnished by the Client, property owner, owner's representative, or persons designated by the Client or owner to supply said data are accurate and correct unless otherwise specifically noted in the appraisal report. Unless otherwise specifically noted in the appraisal report, Gary R. Anglemyer & Associates, LLC has no reason to believe that any of the data furnished contain any material error. Information and data referred to in this paragraph include, without being limited to, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any material error in any of the above data could have a substantial impact on the conclusions reported. Thus, Gary R. Anglemyer & Associates, LLC reserves the right to amend conclusions reported if made aware of any such error. Accordingly, the Client should carefully review all assumptions, data, relevant calculations, and conclusions within 30 days after the date of delivery of this report and should immediately notify Gary R. Anglemyer & Associates, LLC of any questions or errors.
4. The date of value to which any of the conclusions and opinions expressed in this report apply, is set forth in the Letter of Transmittal. Further, that the dollar amount of any value opinion herein rendered is based upon the purchasing power of the American Dollar on that date. This appraisal is based on market conditions existing as of the date of this appraisal. Under the terms of the engagement, we will have no obligation to revise this report to reflect events or conditions that occur subsequent to the date of the appraisal. However, Gary R. Anglemyer & Associates, LLC will be available to discuss the necessity for revision resulting from changes in economic or market factors affecting the subject.
5. Gary R. Anglemyer & Associates, LLC assumes no private deed restrictions, limiting the use of the subject in any way.
6. Unless otherwise noted in the body of the report, it is assumed that there are no mineral deposits or subsurface rights of value involved in this appraisal, whether they be gas, liquid, or solid. Nor are the rights associated with extraction or exploration of such elements considered unless otherwise stated in this appraisal report. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.
7. Gary R. Anglemyer & Associates, LLC is not aware of any contemplated public initiatives, governmental development controls, or rent controls that would significantly affect the value of the subject.
8. The estimate of Market Value, which may be defined within the body of this report, is subject to change with market fluctuations over time. Market value is highly related to exposure, time promotion effort, terms, motivation, and conclusions surrounding the offering. The value estimate(s) consider the productivity and relative attractiveness of the property, both physically and economically, on the open market.
9. Any cash flows included in the analysis are forecasts of estimated future operating characteristics are predicated on the information and assumptions contained within the report. Any projections of income, expenses and economic conditions utilized in this report are not predictions of the future. Rather, they are estimates of current market expectations of future income and expenses. The achievement of the financial projections will be affected by fluctuating economic conditions and is dependent upon other future occurrences that cannot be assured. Actual results may vary from the projections considered herein. Gary R. Anglemyer & Associates, LLC does not warrant these forecasts will occur. Projections may be affected by circumstances beyond the current realm of knowledge or control of Gary R. Anglemyer & Associates, LLC.
10. Unless specifically set forth in the body of the report, nothing contained herein shall be construed to represent any direct or indirect recommendation of Gary R. Anglemyer & Associates, LLC to buy, sell, or hold the properties at the value stated. Such decisions involve substantial investment strategy questions and must be specifically addressed in consultation form.
11. Unless otherwise noted in the body of this report, it is assumed that no changes in the present zoning ordinances or regulations governing use, density, or shape are being considered. The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based, unless otherwise stated.

12. This study may not be duplicated in whole or in part without the specific written consent of Gary R. Anglemyer & Associates, LLC nor may this report or copies hereof be transmitted to third parties without said consent, which consent Gary R. Anglemyer & Associates, LLC reserves the right to deny. Exempt from this restriction is duplication for the internal use of the Client-addressee and/or transmission to attorneys, accountants, or advisors of the Client-addressee. Also exempt from this restriction is transmission of the report to any court, governmental authority, or regulatory agency having jurisdiction over the party/parties for whom this appraisal was prepared, provided that this report and/or its contents shall not be published, in whole or in part, in any public document without the express written consent of Gary R. Anglemyer & Associates, LLC which consent Gary R. Anglemyer & Associates, LLC reserves the right to deny. Finally, this report shall not be advertised to the public or otherwise used to induce a third party to purchase the property or to make a "sale" or "offer for sale" of any "security", as such terms are defined and used in the Securities Act of 1933, as amended. Any third party, not covered by the exemptions herein, who may possess this report, is advised that they should rely on their own independently secured advice for any decision in connection with this property. Gary R. Anglemyer & Associates, LLC shall have no accountability or responsibility to any such third party.
13. Any value estimate provided in the report applies to the entire property, and any pro ration or division of the title into fractional interests will invalidate the value estimate, unless such pro ration or division of interests has been set forth in the report.
14. The maps, plats, sketches, graphs, photographs, and exhibits included in this report are for illustration purposes only and are to be utilized only to assist in visualizing matters discussed within this report. Except as specifically stated, data relative to size or area of the subject and comparable properties has been obtained from sources deemed accurate and reliable. None of the exhibits are to be removed, reproduced, or used apart from this report.
15. No opinion is intended to be expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. Values and opinions expressed presume that environmental and other governmental restrictions/conditions by applicable agencies have been met, including but not limited to seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits, licenses, etc. No survey, engineering study or architectural analysis has been made known to Gary R. Anglemyer & Associates, LLC unless otherwise stated within the body of this report. If the consultant has not been supplied with a termite inspection, survey or occupancy permit, no responsibility or representation is assumed or made for any costs associated with obtaining same or for any deficiencies discovered before or after they are obtained. No representation or warranty is made concerning obtaining these items. Gary R. Anglemyer & Associates, LLC assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard insurance.
16. Acceptance and/or use of this report constitutes full acceptance of the Assumptions and Limiting Conditions and special assumptions set forth in this report. It is the responsibility of the Client, or Client's designees, to read in full, comprehend and thus become aware of the aforementioned contingencies and limiting conditions. Neither the Appraiser nor Gary R. Anglemyer & Associates, LLC assumes responsibility for any situation arising out of the Client's failure to become familiar with and understand the same. The Client is advised to retain experts in areas that fall outside the scope of the real estate appraisal/consulting profession if so desired.
17. Gary R. Anglemyer & Associates, LLC assumes that the subject analyzed herein will be under prudent and competent management and ownership; neither inefficient nor super-efficient.
18. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
19. All areas and dimensions furnished are presumed to be correct. It is further assumed that no encroachments to the realty exist.
20. The Americans with Disabilities Act (ADA) became effective January 26, 1992. Notwithstanding any discussion of possible readily achievable barrier removal construction items in this report, Gary R. Anglemyer & Associates, LLC has not made a specific compliance survey and analysis of this property to determine whether it is in conformance with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the ADA. If so, this fact could have a negative effect on the value estimated herein. Since Gary R. Anglemyer & Associates, LLC has no specific information relating to this issue, nor is Gary R. Anglemyer & Associates, LLC qualified to make such an assessment, the effect of any possible non-compliance with the requirements of the ADA was not considered in estimating the value of the subject.
21. Client shall not indemnify Appraiser or hold Appraiser harmless unless and only to the extent that the Client misrepresents, distorts, or provides incomplete or inaccurate appraisal results to others, which acts of the Client proximately result in damage to Appraiser. The Client shall indemnify and hold Appraiser harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the appraisal report to any third party. In the event of any litigation between the parties, the prevailing party to such litigation shall be entitled to recover from the other reasonable attorney fees and costs.
22. The report is for the sole use of the Client; however, Client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. Appraiser is not required to explain or testify as to appraisal results other than to respond to the Client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by Gary R. Anglemyer & Associates, LLC or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an indemnification Agreement and/or Non-Reliance letter.
23. The linear and area calculations presented herein are for purposes of reasonable analysis and should not be relied upon as a legal description. The appraiser is not a certified land surveyor or engineer.

CERTIFICATION OF THE APPRAISER

I certify to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and have no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal institute.
8. Gary R. Anglemyer, MAI has not made a personal physical inspection of the property that is the subject of this report.
9. Zeth Stone provided research and administrative assistance to the person signing this certification.
10. The appraiser has not performed other services, as an appraiser or in any other capacity regarding the subject property within the three-year period immediately preceding the date of acceptance of this assignment.
11. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
12. The use of this report is subject to the requirements of the Appraisal institute relating to review by its duly authorized representatives.
13. As of the date of this report, Gary R. Anglemyer, MAI has completed the continuing education program for Designated Members of the Appraisal institute.



Gary R. Anglemyer, MAI

QUALIFICATIONS OF THE APPRAISER

GARY R. ANGLEMYER, MAI

Qualifications

Mr. Anglemyer has extensive local, national, and international real estate valuation experience in a wide range of complex special purpose and conventional property types with emphasis on railroad right of way related valuation and advisory services. A representative list of railroad right of way appraisals is shown below and on the following pages.

Representative Railroad Right of Way Appraisals

Virginia Department of Rail and Passenger Transportation – Manassas Line – Appraised the Manassas Line extending between Alexandria and Manassas in 2019, and 2020, and 2024.

Virginia Passenger Rail Authority – Right of Way Acquisition Budgeting – Cost Estimates for the Alexandria Fourth Line and Long Bridge Projects in Alexandria, Arlington, and Washington DC in 2024.

Virginia Railway Express: Appraised the Conrail Easement and Tunnel under New York Avenue needed for access to their proposed Midday Storage Yard located just north of Union Station in DC along with other property of Amtrak, the District and private property owners for condemnation purposes.

Southern Pacific/Union Pacific and Santa Cruz County Regional Transportation Commission, California: Appraised a 31-mile Southern Pacific, now Union Pacific-owned right of way in Santa Cruz County in 1995, 2002, 2008, and 2009. Mr. Anglemyer also studied the existing rental income and identified prospective lease income of the corridor property. This transaction closed in 2009.

CSX Real Property Inc. and Town of Mount Airy, Maryland – Mr. Anglemyer served as somewhat of an arbitrator conducting a third appraisal of a railroad right of way – the two prior appraisals ranged widely. The transaction is currently being negotiated.

Union Pacific and Utah Transit Authority: Appraised the fee, easement and other property rights acquisition/dispositions involving more than 166 miles of Union Pacific right of way in the Salt Lake metropolitan area. This \$185 Million transaction closed in 2002.

Norfolk Southern Company Real Estate Department: Appraised the Middle Brook Branch in New Jersey to assist with prospective disposition purposes.

International Rail Partners, Inc: Prepared an appraisal of a 373-mile corridor for bidding purposes.

Port Jersey Railroad: Appraised the railroad right of way for the owner in regards to an acquisition by the Port Authority of New York and New Jersey. The transaction closed in 2010.

New England Central Railroad: Appraised the 72.8-mile railroad right of way to assist with trackage rights negotiations.

OmniTRAX Holdings Combined, Inc.: Appraised the 69.03-mile Heart of Texas railroad right of way for right of way for internal record keeping purposes.

Napa Valley Wine Train: Beginning in 2002, appraised the 20.1-mile right of way to assist with: acquisition and disposition purposes; condemnation; mortgage financing and am currently assisting them with the donation of a conservation easement on a portion of the right of way located between Yountville and St. Helena that will be used for recreational trail purposes.

Grafton and Upton Railroad Company: Estimated the across-the-fence and net liquidation value of the land assets of a 15.4-mile rail line between North Grafton and Upton, Massachusetts as part of a larger effort to assist in the disposition of the assets.

Caton Loudon Railroad: Appraised this short line for the owner who donated it Baltimore City/County in Maryland who used as a recreational trail.

Southern Railroad Company of New Jersey, Atlantic City, Camden County: Conducted a Net Liquidation Value of an existing corridor in Southern New Jersey.

Dallas Area Rapid Transit Estimated the Corridor Value for five separate corridors in the Dallas Fort Worth area to assist with interagency transfers in 2006 and 2009.

Oklahoma Department of Transportation: Appraised the NLV of the Blackwell Subdivision to assist with internal record keeping purposes.

Golden Gate Bridge Highway and Transit District; Marin, Mendocino, Napa and Sonoma Counties: Completed an appraisal of Southern Pacific right of way in the following corridors: Larkspur-Novato, Novato-Napa, Novato-Healdsburg and Willits-Healdsburg – the transactions closed.

Santa Clara Valley Transportation Authority: Appraised more than 100 miles of several Union Pacific corridors in the Silicon Valley area of California. Responsible for valuation under various scenarios and for the valuation of the improvements and going-concern, which were prepared by subcontractors under his supervision.

Peninsula Joint Powers Board: Appraised the following Southern Pacific, now Union Pacific, right of ways: San Francisco-San Jose, San Jose-Gilroy, Dumbarton Line and various other freight lines. Transaction went to closing.

Los Angeles Department of Water and Power: Appraised 100 miles of railroad right of way in northeast Nevada.

San Bernardino Area Governments (SANBAG): Appraised the Shortway line in San Bernardino, California. The right of way was part of a shared use corridor.

Alameda County Transportation Commission: Appraised the Oakland Subdivision to assist with prospective acquisition purposes for public transportation purposes.

U.S. Internal Revenue Service: Reviewed an appraisal of 162 miles of Southern Pacific right of way between Llano, Texas and Giddings, via Austin and several other corridor appraisals in Washington and Oregon, which sold as “Bargain Exchanges” to government agencies or non-profit organizations.

Union Pacific’s Hollister Branch in San Benito County: Appraised the ATF and Corridor Value for the acquisition and private funding of the corridor. Transaction closed in 2013.

City of Charlotte: Appraised a portion of the North Carolina Railroad Right of way and other properties that were ultimately acquired for the extension of their light rail system. The transaction closed with FTA approval in 2012.

Rocky Mount and Western Railroad Co. Inc. properties in Nash County, North Carolina: to facilitate an Offer of Financial Assistance (OFA) by the State of North Carolina using Surface Transportation Board (STB) valuation regulations (Net Liquidation Value) in 2005.

City of Whittier – Los Angeles County: Estimated the value of a portion of an abandoned Union Pacific railroad right of way called the La Habra Branch in 2007. Said right of way is encumbered with a gas pipeline and was being studied for the purpose of implementing a pedestrian trail.

City of Burlington, Vermont: Estimated the value of a leased short line operating corridor for purposes of continued freight service and future public transportation, land banking and recreational trail purposes.

Bay Area Rapid Transit (BART) District: Completed appraisal of right of way for BART between San Bruno and San Francisco International Airport for placement of an easement by Pacific Gas & Electric (PG&E)

Regional Transportation Commission of Southern Nevada: Reviewed an appraisal of Union Pacific's Las Vegas, Nevada Henderson Branch.

Professional Experience

Gary R. Anglemyer & Associates, LLC

2012 to Present

President – Baltimore, Maryland

Commercial Real Estate Appraisers and Consultants

Notable projects include:

- Maryland Transit Administration - Mr. Anglemyer appraised the necessary surface and mainly subsurface land for the Downtown Bethesda, Montgomery County, Maryland Purple Line Station.
- Maryland Transportation Authority - Mr. Anglemyer appraised the surface and mainly aerial property needed to replace the Canton Viaduct, which connects the Harbor Tunnel with the surface area of Interstate 895, in Baltimore, Maryland. The viaduct crossed over six different railroad properties.
- Maryland Transportation Authority/Maryland Port Authority - Mr. Anglemyer appraised the CSX Intermodal Rail-to-Dock Facility and the Seagirt Marine Terminal.

- State Highway Administration - Mr. Anglemyer has provided several condemnation appraisals in Maryland and consequently testified as an expert witness in several cases in Baltimore and Harford Counties.
- Century Link, City of Mt. Airy, CSX Transportation, Inc., Washington Metropolitan Area Transit Authority - Appraisals of various corridor property in Maryland and Virginia. Served as an arbitrator in a case with CSX and Mt. Airy regarding a rails-to-trails property.

Grubb & Ellis Landauer Valuation Advisory Services, LLC**2011 to 2012****Appraiser** – Baltimore, Maryland

Grub & Ellis Gary R. Anglemyer & Associates, LLC, now Newmark Grubb Knight Frank, was a national valuation advisory business with approximately 150 appraisers nationwide.

Cassidy Turley – Commercial Real Estate Services**2006 to 2010****Senior Appraiser** - Baltimore, Maryland

Cassidy Turley is the fourth largest full-service commercial real estate firm in the U.S. Notable projects include:

- U.S. Department of State - Mr. Anglemyer was the Project Director overseeing the assignment, completion and review of real estate appraisal and consulting assignments for the Department of State – projects included anything anywhere in the world but mostly existing and proposed consulate properties.
- IRS - Washington DC Façade Easement – Mr. Anglemyer was the Project Manager for the IRS involving a comprehensive study of residential façade easements and their impact on residential property values in Washington DC's Historic Districts.
- Government Properties Trust - a \$630 Million-dollar REIT comprised of 21 Federally leased special purpose properties located throughout the United States for merger and acquisition purposes

Westholm & Associates - Appraisers and Consultants**2002 to 2006****Senior Appraiser** - Annapolis, Maryland

Responsible for the appraisal of general commercial real estate in the Mid-Atlantic Region

Arthur Gimmy international - Appraisers and Consultants**1988 to 2002****Director** - San Francisco, California

Responsible for the appraisal of general commercial real estate in California and the western States Region - notable projects include:

- The ultimate settlement of an ongoing condemnation case regarding land acquisitions for military bases dating back to World War II for the Department of Justice in Guam.
- Successfully represented several San Francisco Bay Area agencies and Joint Powers Boards with the acquisition and funding of several railroad right of ways for public transportation.

Federal Reserve Bank, Science Management Corporation and**Proudfoot Consulting****1985 to 1988****Management Consultant/Business Analyst** - New York City and Pittsburgh, PA

Conducted business analysis and management consulting services for a wide range of industries and clients throughout the U.S. and Canada

Education**Johnson & Wales University**

Providence, Rhode Island

Baccalaureate of Science - Business Management 1984

Completed all educational requirements for the MAI (Member of the Appraisal institute) Designation, California and Maryland State Certified General Real Estate Appraiser license and the California State Real Estate Broker license

Professional Associations

- Designated Member of the Appraisal institute
- Certified General Real Estate Appraiser; VA, DC, MD, and DE
- Board of Directors; Maryland Chapter of the Appraisal institute 2011-2024
- Candidate Advisor for the Appraisal Institute

Task 3: Preliminary Rail Feasibility Analysis

Introduction

Transportation by the rail mode offers advantages enjoyed by many freight customers as rail provides a competitive advantage over trucks in many circumstances. These advantages are best realized when transporting large volumes of low value, heavy, bulk commodities continuously, over long distances where timely and reliable delivery are not at a premium. The economics of rail transportation on a cost-per-ton basis are far more favorable than most alternative modes in many circumstances, although not necessarily over the movement of cargo via barges, particularly if the characteristics of a commodity and shipment align well with the advantages of using the rail mode.

The RLBA Team conducted a Preliminary Feasibility Analysis study to identify any potential future use of or business on the Port of Columbia's rail assets. This included, but was not limited to, expansion of current rail traffic and/or volumes, potential right of way use to host existing or potential rail-served businesses and market research of potential shippers and/or consignees that are or might be located along the Port of Columbia's rail line.

The purpose of this analysis was to conduct a preliminary exploration of the potential profitability of the line as a freight railroad. It is not intended to be a comprehensive Feasibility Analysis but, rather, given significant budget constraints, to shed some light on the likelihood that the combined value of the assets constituting the railroad owned by the Port of Columbia exceeds the likely Going Concern Value of a railroad enterprise using those assets. If that likelihood is not clear, additional work may be warranted.

Carloads

Typically, the largest single revenue generator on a railroad is the sum of charges assessed in connection with the movement and placement of railcars tendered by shippers and/or consignees. The Columbia – Walla Walla line currently does not serve a significant number of customers in comparison to other rail operations of similar length. Nor do those customers generate a significant number of carloads, thereby resulting in a low number of originating or terminating number of carloads per mile, the best single metric to measure "traffic density" of a given line. Thus, the railroad does not currently enjoy significant revenue from traditional means.

Railcar Storage

At times, railcar owners or lessees experience a surplus of railcars in their fleets. This occurs due to several reasons. Railcars become idled, or stored when a car owner or lessee experiences a decline in transportation needs due to seasonality of a commodity, a decline in commodity demand, railcars not under a lease agreement or other factors outside their control. When this occurs, it is the responsibility of the owner or lessee to select a location at which to store surplus railcars. Providing locations and track capacity on which to store temporarily surplus railcars is an ancillary revenue stream of most short line

railroads. The storage providers enjoy the ability to draft agreements as applicable to the location, car type, commodity type and car status (loaded or empty) as regards the storage of said surplus cars and also to assess fees when cars enter or depart said storage location(s) (switch fees).

Car storage providers typically offer locations where the idled railcars will not impede the movement of other rail traffic. Such locations can be extra track space in a rail yard, passing sidings not required to conduct network operations and former rail-served facilities which no longer ship by rail. The Dayton – Walla Walla line features numerous rail sidings that can host stored railcars. Although actual railcar lengths vary, the standard length used in calculating train length and track capacity is 50 feet per car. In Table 4 below, the sidings on the Port’s rail line both in their actual length and in their railcar storage capacities, assuming an average length of 50 feet per rail car. Car storage agreements are typically based on a quantity of cars. In some instances, the car storage agreements are based on linear track feet. This is more common when the car storer desires the assurance that space will be available when needed

Table 4: Dayton - Walla Walla Rail Line Siding Lengths and Rail Car Capacities*

Siding	Length (in feet)	Railcar Capacity*
Dayton	915	18
Artisan	660	13
Long	1,340	27
Huntsville	1,980	40
Waitsburg	1,000	20
Bolles	1,335	27
Prescott	1,955	39
Valley Grove	1,065	21
Total	10,250	205

**Does not consider any reductions due to regulatory compliance*

Summary and Synthesis of Preliminary Rail Feasibility

The Port’s Dayton – Walla Walla line presents a significant amount of potential. Even though the rail line is a stub-ended branch line (dead end), it features several, favorable attributes. Although there may not be immediate carload growth opportunities, this corridor features several, favorable attributes. The first and perhaps the most important is that the subject line enjoys connectivity to both BNSF and Union Pacific Railways (the two largest railroads in the West), which affords existing and potential rail shippers or consignees access to more customers on favorable terms, i.e. a competitive edge. In other words, it not only provides broader accessibility to more customers but also should result in significantly lower freight rail rates as compared with the vast majority of railroads (and customers) which enjoy access to only one major railroad.

Another key attribute of the subject rail corridor is that, in the event a large operation is established, it will have the option of using rail. Having the rail option available may entice future businesses that would grow the local economy. In contrast, at least some future, potential businesses may not be attracted to the local area in the absence of a rail line. While other potential businesses might well be interested in the region even if a rail option weren't available, those businesses would more than likely utilize the truck mode, which would be more impactful on local traffic and public roadway infrastructure.

Another mode available in the geographical area is barge. If there are changes that impact the waterways in a way that would prohibit or limit the barge option, rail is the only other viable option to move large volumes of material.

Current land uses adjacent to the corridor property bolster the overall feasibility. Review of the real estate appraisal performed by Mr. Gary Anglemeyer, indicates that the predominant use is agricultural and industrial. That is not to say that there is a strong forecast of commodity growth in the future but that the zoning / use is conducive and attractive to development of businesses that may utilize the rail mode. Attracting such businesses is favorable to local economic growth.

The low volumes of freight on the line, including the railcar storage business, creates a lack of viability as depicted in Table 5 below. These two revenue streams seem insufficient to support the continued existence in the absence of receiving a significant amount of grants.

Table 5 - Railcars Per Mile

Year	Railcars	Railcars Per Mile
2021	115	3
2022	104	3
2023	93	3
Total	312	8

*Data not available. Average of 2021 and 2023 railcars used in calculation

Appendix One

Net Liquidation Value of Track Assets

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

	Unit	Unit Cost	Total	Grand Total
Gross Liquidation Value				
Relay Railroad Materials			\$ 1,680,500	
Steel Scrap and Reroll OTM			\$ 2,483,600	
Ties and Non-steel OTM			\$ 1,162,300	
Gross Liquidation Total				\$ 5,326,400
Removal Cost Expense				
Fit Rail & OTM Removal (miles)	15	\$ 25,000	\$ (363,000)	
Scrap/Reroll Rail & OTM Removal (miles)	25	\$ 20,000	\$ (503,000)	
Fit Turnout Removal (each)	3	\$ 1,300	\$ (3,900)	
Scrap Turnout Removal (each)	23	\$ 630	\$ (14,500)	
Removal Cost Total				\$ (884,400)
Restoration Cost Expense				
Crossing with Improvements (each)	33	\$ 5,000	\$ (165,000)	
Unimproved Crossing (each)	69	\$ 380	\$ (26,200)	
Restoration Cost Total				\$ (191,200)
Liquidation Expense				\$ (1,075,600)
Track Salvage Value				\$ 4,250,800

Administrative, Marketing and Transportation Expense		
Profit Margin - 10 percent of Track Salvage Value	\$	425,100
Relay Steel Materials - 15 percent	\$	252,100
Scrap, Reroll and Non-steel Materials - 5 percent	\$	182,300
Transportation	\$	534,400
Administrative, Marketing and Transportation Total	\$	1,393,900
Net Liquidation Value	\$	2,857,000
Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth. Values may not appear to add		

Appendix Two
Gross Liquidation Value of Track Assets
Port of Columbia - Walla Walla to Dayton, WA.
MP 33.00 to MP 70.10
7-Nov-24

Rail														
Miles		Weight and Description	Condition	Quantity per Mile	Unit	Total	Re-Useable				Scrap and Reroll			Grand Total (a + b)
Fit	Scrap						%	Unit Value	Value (a)	%	Unit Value	Value (b)		
0.10	131	Jointed	Fit #1	230.6	Ton	23	97 %	\$ 630.00	\$ 14,100					\$ 14,100
0.13	100	Jointed	Fit #2	176.0	Ton	23	97 %	\$ 710.00	\$ 15,800					\$ 15,800
0.10	90	Jointed	Fit #2	158.4	Ton	16	97 %	\$ 640.00	\$ 9,800					\$ 9,800
1.07	90	Jointed	Fit #3	158.4	Ton	170	97 %	\$ 590.00	\$ 97,400					\$ 97,400
	0.08	90	Jointed	Reroll	158.4	Ton	13				97 %	\$ 362.25	\$ 4,400	\$ 4,400
	0.06	90	Jointed	Scrap	158.4	Ton	9				97 %	\$ 315.00	\$ 2,800	\$ 2,800
7.05	85	Jointed	Fit #3	149.6	Ton	1,054	97 %	\$ 570.00	\$ 583,000					\$ 583,000
	0.88	85	Jointed	Reroll	149.6	Ton	132				97 %	\$ 362.25	\$ 46,300	\$ 46,300
	1.08	85	Jointed	Scrap	149.6	Ton	162				97 %	\$ 315.00	\$ 49,400	\$ 49,400
2.91	80	Jointed	Fit #3	140.8	Ton	410	97 %	\$ 620.00	\$ 246,600					\$ 246,600
	4.08	80	Jointed	Reroll	140.8	Ton	574				97 %	\$ 362.25	\$ 201,700	\$ 201,700
	4.66	80	Jointed	Scrap	140.8	Ton	656				97 %	\$ 315.00	\$ 200,500	\$ 200,500
3.15	75	Jointed	Fit #3	132.0	Ton	416	97 %	\$ 760.00	\$ 306,900					\$ 306,900
	4.73	75	Jointed	Reroll	132.0	Ton	624				97 %	\$ 362.25	\$ 219,400	\$ 219,400
	8.79	75	Jointed	Scrap	132.0	Ton	1,160				97 %	\$ 315.00	\$ 354,300	\$ 354,300
	0.80	60	Jointed	Scrap	105.6	Ton	84				97 %	\$ 315.00	\$ 25,800	\$ 25,800
14.52	25.15	Rail Total							\$ 1,273,600			\$ 1,104,600		\$ 2,378,200
Other Track Material														
Miles		Description	Condition	Unit	Quantity per Mile	Total	Re-Useable				Scrap			Grand Total (a + b)
Fit	Scrap						%	Unit Value	Value (a)	%	Unit Value	Value (b)		
0.10		Tie Plates 8 x 13 DS	Relay	Each	6,336	634	97 %	\$ 9.15	\$ 5,600					\$ 5,600
	0.10	Tie Plates 8 x 11 SS	Scrap	Ton	106.2	11					95 %	\$ 315.00	\$ 3,200	\$ 3,200
	4.48	Tie Plates 8 x 10 SS	Scrap	Ton	106.2	476					95 %	\$ 315.00	\$ 142,400	\$ 142,400
	29.93	Tie Plates 7 x 10 SS	Scrap	Ton	106.2	3,178					95 %	\$ 315.00	\$ 951,100	\$ 951,100
	4.98	Tie Plates 6 x 8 SS	Scrap	Ton	106.2	529					95 %	\$ 315.00	\$ 158,300	\$ 158,300
0.10		Joint Bar 131	Relay	Pair	271	27	97 %	\$ 84.55	\$ 2,200					\$ 2,200
0.13		Joint Bar 100	Relay	Pair	271	35	97 %	\$ 42.90	\$ 1,500					\$ 1,500
1.31		Joint Bar 90	Relay	Pair	271	355	97 %	\$ 36.35	\$ 12,500					\$ 12,500
9.01		Joint Bar 85	Relay	Pair	271	2,440	97 %	\$ 34.70	\$ 82,100					\$ 82,100
11.65		Joint Bar 80	Relay	Pair	271	3,154	97 %	\$ 30.90	\$ 94,500					\$ 94,500
16.67		Joint Bar 70	Relay	Pair	271	4,514	97 %	\$ 30.95	\$ 135,500					\$ 135,500
0.67		Joint Bar 60	Relay	Pair	271	181	97 %	\$ 29.70	\$ 5,200					\$ 5,200
	0.13	Joint Bar 60	Scrap	Ton	9.5	1					95 %	\$ 315.00	\$ 400	\$ 400
14.52		Rail Anchors Jointed	Relay	Each	2,708	39,312	80 %	\$ 0.95	\$ 29,900					\$ 29,900
	25.15	Rail Anchors	Scrap	Ton	3.7	94					80 %	\$ 315.00	\$ 23,800	\$ 23,800
	39.67	Spikes	Scrap	Ton	5.1	201					80 %	\$ 315.00	\$ 50,600	\$ 50,600
	39.67	Bolts & Washers	Scrap	Ton	1.4	56					80 %	\$ 315.00	\$ 14,100	\$ 14,100
Other Track Material Total									\$ 369,000		\$ 1,343,900		\$ 1,712,900	

Appendix Two
Gross Liquidation Value of Track Assets
Port of Columbia - Walla Walla to Dayton, WA.
MP 33.00 to MP 70.10
7-Nov-24

Turnouts														
Turnouts							Re-Useable				Scrap			Grand Total (a + b)
Fit	Scrap	Weight	Frog Size	Condition	Unit	Quantity per Turnout	Total	%	Unit Value	Value (a)	%	Unit Value	Value (b)	
2		Heavy	9	Relay	Each		2	97 %	\$12,500.00	\$ 24,300				\$ 24,300
1		Heavy	10	Relay	Each		1	97 %	\$14,000.00	\$ 13,600				\$ 13,600
	1	Light	8	Scrap	Ton	5	5				97 %	\$ 315.00	\$ 1,500	\$ 1,500
	14	Light	9	Scrap	Ton	5	70				97 %	\$ 315.00	\$ 21,400	\$ 21,400
	7	Light	10	Scrap	Ton	5	35				97 %	\$ 315.00	\$ 10,700	\$ 10,700
	1	Light	11	Scrap	Ton	5	5				97 %	\$ 315.00	\$ 1,500	\$ 1,500
3	23	Turnouts Total									\$ 37,900		\$ 35,100	\$ 73,000
		Steel OTM Total									\$ 406,900		\$ 1,379,000	\$ 1,785,900
Non-Steel Material														
Miles							Re-Useable				Scrap			Grand Total (a + b)
Fit	Scrap	Description	Condition	Unit	Quantity per Mile	Total	%	Unit Value	Value (a)	%	Unit Value	Value (b)		
39.67		Ties	Relay	Relay	Each	3,168	125,675	5 %	\$ 38.00	\$ 217,600			\$ 217,600	
39.67		Ties	Landscape	Relay	Each	3,168	125,675	50 %	\$ 15.00	\$ 944,700			\$ 944,700	
	39.67	Ties	Scrap	Scrap	Each	3,168	125,675				45 %	\$ -	\$ -	\$ -
Non-Steel OTM Total										\$ 1,162,300		\$ -	\$ 1,162,300	
Grand Total										\$ 2,842,800		\$ 2,483,600	\$ 5,326,400	
Notes: Dollar amounts are rounded to the nearest hundred; tons to the nearest tenth; units to the nearest integer. Values may not appear to add due to rounding.														
Source: Vendors, and RLBA estimates.														

Appendix Three

Summary of Rail Evaluated

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Milepost		Rail				Miles
From	To	Section	Rolled	Type	Control Cooled	
Main Track						
33.00	38.15	75	1896	JT	No	5.15
38.15	38.25	90RA	1916	JT	No	0.10
38.25	41.06	75	1898	JT	No	2.81
41.06	41.16	131RE	1945	JT	Yes	0.10
41.16	43.40	75	1898	JT	No	2.24
43.40	45.60	80	1900	JT	No	2.20
45.60	45.65	90RA	1916	JT	No	0.05
45.65	55.10	80	1900	JT	No	9.45
55.10	56.30	85	1899	JT	No	1.20
56.30	61.15	75	1899	JT	No	4.85
61.15	68.76	85	1908	JT	No	7.61
68.76	68.98	90RA	1920	JT	No	0.22
68.98	69.70	75	1899	JT	No	0.72
69.70	70.10	90RA		JT	No	0.40
Main Track Total						37.10

Appendix Three

Summary of Rail Evaluated

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Milepost		Rail				Miles
From	To	Section	Rolled	Type	Control Cooled	
Yard Tracks & Sidings						
38.55	38.75	60		JT	No	0.20
45.87	45.95	60	1888	JT	No	0.08
51.49	51.86	90RA	1919	JT	No	0.37
56.05	56.30	60	1890	JT	No	0.25
59.36	59.56	85	1899	JT	No	0.20
61.65	62.03	75	1900	JT	No	0.38
64.35	64.40	60	1888	JT	No	0.05
65.75	66.00	75	1900	JT	No	0.25
67.65	67.78	100RE	1923	JT	No	0.13
69.20	69.23	75	1898	JT	No	0.03
69.26	69.50	75		JT	No	0.24
69.54	69.76	60		JT	No	0.22
69.84	69.93	90RA		JT	No	0.09
69.93	70.01	90RA		JT	No	0.08
Yard Track & Siding Total						2.57
Track Miles Grand Total						39.67

Source: RLBA On-site inspection

Appendix Four

Summary of Turnouts

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Location	Turnout	Frog		Condition		Switch Points			Switch Stand	
MP	Weight	Type	Size (#)	Relay	Scrap	LH	RH	Lead	Manual	Power
38.77	75	Spring	9		X	X			X	
45.87	80	Spring	10		X	X			X	
46.00	80	Spring	9		X		X		X	
51.62	80	Spring	9		X	X			X	
51.73	80	Spring	9		X		X		X	
52.08	90RA	Rigid	10		X		X		X	
56.05	80	Spring	10		X	X			X	
56.36	85	Spring	10		X		X		X	
61.60	85	Rigid	9		X	X			X	
62.05	85	Rigid	9		X		X		X	
64.33	85	Spring	11		X	X			X	
65.85	85	Rigid	9		X		X		X	
66.16	85	Rigid	9		X	X			X	
67.65	115RE	SMSG	9	X			X		X	
67.88	115RE	SMSG	9	X		X			X	
68.25	85	Spring	10		X		X		X	
69.20	133RE	Spring	10	X		X			X	
69.26	75	Rigid	8		X	X			X	
69.50	75	Rigid	9		X		X		X	
69.53	75	Spring	10		X	X			X	
69.54	90RA	Rigid	10		X		X		X	
69.76	90RA	Rigid	9		X		X		X	
69.84	90RA	Rigid	9		X	X			X	
69.91	90RA	Rigid	9		X		X		X	
70.01	90RA	Rigid	9		X		X		X	
51.70	90RA	Spring	9		X		X		X	

Appendix Four

Summary of Turnouts

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Location	Turnout	Frog		Condition		Switch Points			Switch Stand	
MP	Weight	Type	Size (#)	Relay	Scrap	LH	RH	Lead	Manual	Power
Turnouts										
	Heavy		9	2	5					
	Heavy		10	1	2					
	Light		8	0	1					
	Light		9	0	9					
	Light		10	0	5					
	Light		11	0	1					
Grand Total				3	23					

Note: Heavy turnouts are classified as having a rail weight of greater than or equal to 112 pounds per yard, while "Light" turnouts have a rail weight of less than or equal to 110 pounds per yard.
Source: RLBA on-site inspection.

Appendix Five

Summary of Tie Condition

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

(Sample Blocks of 100)

Location		Condition	
MP	Relay	Landscape	Scrap
33.34	0	13	87
37.63	5	24	71
40.50	4	72	24
47.83	3	55	42
52.15	5	50	45
54.32	5	69	26
58.35	16	54	30
61.15	3	57	40
65.05	0	57	43
Average Total (%)		5	50
			45
With tie spacing of		20	inches
Inches on center equates to :		3,168	ties per mile
Estimated average of		144	Relay ties per mile
		1,588	Landscape ties per mile
		1,436	Scrap ties per mile
Notes: Units are rounded to the nearest integer.			
Source: RLBA On-site Inspection.			

Appendix Six														
Summary of Rail Class By Mileage														
Port of Columbia - Walla Walla to Dayton, WA.														
MP 33.00 to MP 70.10														
7-Nov-24														
Location				Condition/Type of Rail (%)										
MP	MP	Miles	Weight	CWR Fit #1	CWR Fit #2	CWR Fit #3	Jointed Fit #1	Jointed Fit #2	Jointed Fit #3	CWR Reroll	CWR Scrap	Jointed Reroll	Jointed Scrap	
Main Line Miles														
75	33.00	38.15	5.15	75					20%			30%	50%	
90RA	38.15	38.25	0.10	90				100%						
75	38.25	41.06	2.81	75					20%			30%	50%	
131RE	41.06	41.16	0.10	131			100%							
75	41.16	43.40	2.24	75					20%			30%	50%	
80	43.40	45.60	2.20	80					25%			35%	40%	
90RA	45.60	45.65	0.05	90					100%					
80	45.65	55.10	9.45	80					25%			35%	40%	
85	55.10	56.30	1.20	85					80%			10%	10%	
75	56.30	61.15	4.85	75					20%			30%	50%	
85	61.15	68.76	7.61	85					80%			10%	10%	
90RA	68.76	68.98	0.22	90					90%			10%		
75	68.98	69.70	0.72	75					20%			30%	50%	
90RA	69.70	70.10	0.40	90					80%			10%	10%	
Total		37.10												
Sidings & Yard Track Miles														
60	38.55	38.75	0.20	60									100%	
60	45.87	45.95	0.08	60									100%	
90RA	51.49	51.86	0.37	90					100%					
60	56.05	56.30	0.25	60									100%	
85	59.36	59.56	0.20	85									100%	
75	61.65	62.03	0.38	75									100%	
60	64.35	64.40	0.05	60									100%	
75	65.75	66.00	0.25	75									100%	
100RE	67.65	67.78	0.13	100				100%						
75	69.20	69.23	0.03	75									100%	
75	69.26	69.50	0.24	75									100%	
60	69.54	69.76	0.22	60									100%	
90RA	69.84	69.93	0.09	90					80%			10%	10%	
90RA	69.93	70.01	0.08	90					80%			10%	10%	
Total		2.57												
Grand Total Mileage		39.67												
Source: RLBA On-site Inspection														

Appendix Seven

Summary of Shipment Volumes

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Rail

Material			Railcars			Total
Conditon	Type	Tons	Tons per	Number	Rate	
Fit #1	CWR	-	93	-	\$ 4,567.52	\$ -
Fit #2	CWR	-	93	-	\$ 4,567.52	\$ -
Fit #3	CWR	-	93	-	\$ 4,567.52	\$ -
Reroll	CWR	-	93	-	\$ 4,567.52	\$ -
Fit #1	Jointed	23	93	1	\$ 4,567.52	\$ 4,568
Fit #2	Jointed	39	93	1	\$ 4,567.52	\$ 4,568
Fit #3	Jointed	2,051	93	23	\$ 4,567.52	\$ 105,053
Reroll	Jointed	1,343	93	15	\$ 4,567.52	\$ 68,513
Scrap	Rail	2,071	93	23	\$ 4,567.52	\$ 105,053
Rail Total		5,527		60		\$ 274,100

OTM

Material			Railcars			Total
Conditon	Type	Tons	Tons per	Number	Rate	
Relay	Tie Plate	10	93	1	\$ 4,567.52	\$ 4,568
Relay	Joint Bars	365	93	4	\$ 4,567.52	\$ 18,270
Relay	Rail Anchors Welded	-	93	-	\$ 4,567.52	\$ -
Relay	Rail Anchors Jointed	44	93	1	\$ 4,567.52	\$ 4,568
Scrap	OTM	4,670	93	51	\$ 4,567.52	\$ 232,944
OTM Total		5,089		55		\$ 251,200

Turnouts							
Material			Railcars			Total	
Conditon	Type	Tons	Tons per	Number	Rate		
Relay	Heavy	24	93	1	\$ 4,567.52	\$	4,568
Relay	Light	-	93	-	\$ 4,567.52	\$	-
Scrap	Turnouts	115	93	2	\$ 4,567.52	\$	9,135
Turnouts Total		139		2		\$	9,100
Grand Total		10,755		117		\$	534,400
Source: RLBA Estimates							

Appendix Eight

Track Material Unit Prices

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Steel (Rail)

Type	Weight	Unit Prices per		Comments
		Component	Net Ton	
Jointed, Fit #1	131		\$ 630.00	
Jointed, Fit #2	100		\$ 710.00	
Jointed, Fit #2	90		\$ 640.00	
Jointed, Fit #3	90		\$ 590.00	
Jointed, Fit #3	85		\$ 570.00	
Jointed, Fit #3	80		\$ 620.00	
Jointed, Fit #3	75		\$ 760.00	
Rail Reroll (Gross Ton)			\$ 362.25	
Rail Scrap (Gross Ton)			\$ 315.00	

Steel (OTM)

		Component	Gross Ton	Comments
Scrap OTM			\$ 315.00	
Tie Plates	8 x 13 DS	\$ 9.15		
Joint Bars	131	\$ 84.55		
Joint Bars	100	\$ 42.90		
Joint Bars	90	\$ 36.35		
Joint Bars	85	\$ 34.70		
Joint Bars	80	\$ 30.90		
Joint Bars	70	\$ 30.95		
Joint Bars	60	\$ 29.70		
Anchors (welded), Fit		\$ 1.25		
Anchors (jointed), Fit		\$ 0.95		

Appendix Eight

Track Material Unit Prices

Port of Columbia - Walla Walla to Dayton, WA.

MP 33.00 to MP 70.10

7-Nov-24

Timber (Ties)

	Component	Gross Ton	Comments
Relay	\$ 38.00		
Landscape	\$ 15.00		
Scrap	\$ -		

Turnouts

Type	Frog Size	Component	Gross Ton	Comments
Heavy	9	\$ 12,500.00		
Heavy	10	\$ 14,000.00		
Light	8	\$ 2,500.00		
Light	9	\$ 3,000.00		
Light	10	\$ 4,000.00		
Light	11	\$ 4,500.00		

Transportation

Origin	Destination	Railcar		Comments
		Capacity (Ton)	Rate	
Walla Walla, WA	Chicago, IL	93	\$ 4,567.52	

Source: Vendors, American Metal Markets & RLBA Estimates

Port of Columbia Policy #6-2025 Sale of Real Property

POLICY AND PROCEDURES FOR DISPOSITION OF PORT-OWNED REAL PROPERTY

A. Policy. In accordance with RCW 53.08.090 and RCW 53.20.010, the Port of Columbia Governing Board may declare that it is in the public interest for real property held by the Port to be returned to the tax rolls, if it is not needed for some present or future use, it is needed for furtherance of the Port's economic development goals, and if it can be sold for a reasonable return. It is therefore the policy of the Port to dispose of real property in which the Port holds a free interest, where such property is surplus to its current or future needs, or will assist with improving the local economy, where such disposition would afford the Port a reasonable return from the transaction, and the surplus or sale is consistent with the Port's Comprehensive Plan. For purposes of this Chapter, the definition of "reasonable return" means sale at an amount equal to, or greater than fair market value if sold by negotiated sale, or to best bidder as described in RCW 53.25.150(2) if sold by sealed bid or auction. For purposes of this Chapter, "surplus property" means real property for which the Port has no current or future need and if disposed of, would be put to a higher or better use for the community at large.

B. Procedures. Real property declared surplus may be disposed of for a reasonable return by any of the following means as allowed by state law:

1. Sealed bid,
2. Auction, or
3. Negotiated sale.

SURPLUS PROPERTY DECLARATION

A. Whether due to a specific request to purchase Port owned real property, or a determination of the Governing Board, real property owned by the Port may be declared surplus by the Board of Commissioners after the following procedures have been completed:

1. The Board shall review a written Itemized Property Costs report, prepared by the Executive Director based on Columbia County actual property sales, and discussion may be held to include any or all of the following information, as applicable, for each parcel under consideration ("Subject Parcel"):
 - (a) Description of the Subject Parcel's size and its general location;
 - (b) Description of what municipal use the Subject Parcel has been put to in the past, if any, and what use, if any, for which it might be held;
 - (c) Recommendation as to whether the Subject Parcel should be disposed of or

retained;

(d) Appraised value of the Subject Parcel;

(e) Whether further appraisal before sale is recommended and the type of appraisal required;

(f) Whether the Subject Parcel is only usable by abutting owners or is of general marketability;

(g) Whether special consideration ought to be given to some other public agency that has a use for the Subject Parcel;

(h) Whether the Subject Parcel should be sold at auction, by sealed bid or by negotiation;

(i) Recommendation as to whether any special covenants or restrictions should be imposed in conjunction with sale of the Subject Parcel.

2. A public hearing shall be held to consider the surplus declaration of the Subject Parcel. Notice of said hearing shall be published in the City's official newspaper following standards set by RCW.

B. Following the Governing Boards review of the Report, and conclusion of the public hearing, the Board shall determine whether the Subject Parcel shall be declared surplus. Upon making a declaration of surplus, the Board shall also make the following determinations:

1. Whether the Subject Parcel should be sold by sealed bid, at auction, or through negotiated sale;

2. Whether special covenants or restrictions should be imposed as a condition of the sale;

3. Whether a further appraisal is necessary in setting the minimum acceptable price;

C. All requests to purchase Port property shall be directed to the Port Executive Director.

SALE PROCEDURE

The following procedures and requirements shall apply to property sold as surplus by the Port:

A. Determination of Value/Minimum Acceptable Price.

1. If the Port has a sufficient and acceptable appraisal of the Subject Property, as determined by the Governing Board, no additional appraisal shall be required unless RCWs or some other reason indicates that such should be obtained.

2. If the Governing Board determines that no sufficient and acceptable appraisal is available, the Board shall choose one of the following 3 types of appraisals to be conducted by an appraiser:

- a. Limited opinion of value,
- b. Short form appraisal report, or
- c. Full narrative appraisal report.

All interested parties shall be notified and advised of the cost of obtaining an appraisal. The party that requests to purchase the Subject Parcel, whether by sealed bid, auction or negotiated sale, shall be obligated to reimburse the Port 50% of the cost of the appraisal at the time the appraisal is completed.

3. If property is disposed of by means of sealed bid or auction, the bidding process will determine current fair market value. However, the commission may still require an appraisal to determine if any bids meet the minimum acceptable price. The commission is not required to accept any bid that does not meet the minimum acceptable price as determined by the commission and/or the appraisal. If the commission accepts any bid, it shall be that of the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof per RCW 53.25.150(2)

Whether surplus property is to be disposed of by sealed bid, auction or negotiated sale, interested parties shall be advised that the minimum acceptable price shall be the value determined by the sufficient and acceptable appraisal plus reimbursement of 50% of the cost of obtaining said appraisal.

B. Processes/Earnest Money/Time to Closing.

1. **Disposition by Sealed Bid.** Where a Subject Parcel is sold by sealed bids, any and all bids submitted must be accompanied by a bid deposit in the form of a cashier check payable to the Port of Columbia in the amount of \$5,000. Such deposit accompanying the successful bid shall be deposited into escrow until closing on the purchase of the Subject Parcel and payment of the remaining amount of the purchase price shall be made within 30 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the Port as liquidated damages and not as a penalty, since the calculation of actual damages due to time lost, transaction expenses and etc. will be difficult, if not impossible. The Port of Columbia reserves the right to waive any irregularities in the bid process.
2. **Disposition by Auction.** Where property is sold at auction, the prevailing bidder must immediately tender a cash deposit or certified check for deposit into escrow as earnest money to the Port of Columbia in the amount of \$5,000. Payment of the remaining amount of the purchase price shall be made within 30 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the Port as Liquidated Damages.
3. **Disposition by Negotiated Sale.** Where property is sold by negotiated sale, the purchaser shall deposit earnest money into escrow in the amount of \$5,000 within 3 business days of execution of a purchase and sale agreement for the purchase of the Subject Parcel. Payment

of the remaining amount of the purchase price shall be made within 30 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the Port as Liquidated Damages.

C. Notification of Sale of Surplus Property. In the event the Subject Parcel is to be disposed of by sealed bid or by auction, the following notification procedures shall be followed:

1. A notice of the Port's intent to dispose of the Subject Parcel shall be conspicuously posted on the property no less than 2 weeks prior to the date set to commence accepting bids or the date set for the auction.
2. A similar notice shall be posted on the Port of Columbia's web site.
3. Notice shall be published in the City's official newspaper no less than once each week in 2 consecutive weeks preceding acceptance of sealed bids or the public auction. All notices shall include a description of the Subject Parcel, the procedure by which the Subject Parcel is to be disposed of, any earnest money deposits which must be made and the minimum price that will be accepted.

D. Form of Conveyance. All conveyances shall be made by quitclaim deed.

E. Closing Costs. All closing costs, exclusive of deed preparation, shall be borne by the purchaser including, but not limited to, survey work, title insurance if desired, recordation costs, brokerage and escrow fees if applicable, and the costs.

SALE TO ABUTTING OWNERS

If the Subject Parcel can only be put to its highest and best use when aggregated with an abutter's property because of its size, shape, topography, or other restriction, the Subject Parcel may be negotiated for sale to the abutter, provided:

- A. The abutter is willing to purchase for the fair market value of the Subject Parcel;
- B. If more than one qualifying abutter expresses interest in purchasing the Subject Parcel, the Governing Board may solicit sealed bids from all.

INTERGOVERNMENTAL TRANSFERS

Intergovernmental transfers of real property shall be made in accordance with RCW Chapter 39.33, RCW Section 43.09.210 and/or any other applicable statutes.

PORT OF COLUMBIA
Regular Monthly Meeting
August 13, 1996

Attachment E

Vice Chairman Robert Warren opened the meeting at 7:40 p.m. Those present were Commissioners Warren and Lawrence Turner and Commissioner Jay Lyman arrived at 7:50 p.m.; Port Manager Gene Turner; Port Attorneys Kim Boggs and Terry Nealey; Paul Palmsly, Wayne Peterson and Terry Robbins from Seneca; Mark Blazer, Steve Kaylor and Mike Clouse from Blue Mt. Railroad; Kevin Anderson of Great Western Barley Co.; Ray Allred, Washington Department of Transportation; Charles O'Connor; Jerry Cox and Bonnie Williams. The minutes of the previous meeting were read and approved.

Ray Allred of the WA DOT spoke to Commissioner concerning what the state would do in helping to get the railroad tracks back in working condition. Much state money has already been invested in the rail line and it is important that a public entity such as the Port take ownership of the line so that further monies can be given through the Port to continue the repair of this line. Representatives of the Blue Mt. Railroad commented that if the Port took over ownership now their goal would be for the line to be in Class 1 condition, or 10 mph by December 31, 1996. Eventually they would like the line to be a Class 2 at 25 mph. After much discussion, Commissioners ask that Port Attorneys contact the Union Pacific Railroad to find out about the leases for the railroad's right of ways. A decision will be made within the next 10 days as to whether the Port of Columbia will accept the donation from the Union Pacific Railroad for the rail line from Walla Walla to Dayton.

A motion was made by Commissioner Turner to accept the following bids for the Office Building:

Adran Company - site preparation	\$ 24,500.00
Varney Plumbing - plumbing	3,232.42
Chapman Heating and Air Conditioning - heating and cooling systems	4,412.94
all bids are without tax	

The motion was seconded by Commissioner Warren and passed.

The bid submitted by Ferron Drywall is void because of changes made. A new proposal will be submitted.

Commissioners signed a new lease with Coyote Engineering for rent in the amount of \$750/month. Renewal leases were signed with BumperCrop and Gemmell's Machine Works at \$450/mo and \$800/month. All lessees will pay appropriate leasehold tax.

Manager Turner reported a second payment in the amount of \$23,401.29 has been received from the US Forest Service.

The following vouchers were presented for approval of payment:

Payroll	\$ 3,215.51
---------	-------------

Bank of the West	\$2,825.29
Bank of the West	717.27
City of Dayton	539.89
City Lumber	1,416.80
Dickerson Pump	859.73
Incidental Fund	271.16
Layrite	431.60
Nealey & Marinella	400.00
R. L. Shanklin	258.80
Sunny Hill Gardens	161.25
Donald G. Turner	61.00

The amount of vouchers approved for payment is \$11,158.30.

The meeting adjourned at 10:00 p.m.


Lawrence Turner
Secretary

PORT OF COLUMBIA
1 PORT WAY
DAYTON, WASHINGTON

R E S O L U T I O N NO. 96-1

WHEREAS, The Port of Columbia was formed in accordance with R. C. W. 53.04.060 on December 1, 1958, and

WHEREAS, the Union Pacific Railroad has offered to donate to the Port of Columbia ownership of railroad right of way and fixtures from Dayton, Mile Post 14.1, to Walla Walla, Mile Post 48.0; and

WHEREAS, if this offer is not accepted there is the possibility of the closure of the rail line to Dayton; and

WHEREAS, a rail line is very important to local businesses in Dayton and Columbia County; and

WHEREAS, the mission of the Port of Columbia is to promote economic development in Dayton and Columbia County; and

Whereas, the Port of Columbia has no intention to be an operator of a rail line, only the owner; and


WHEREAS, the Port of Columbia intends to lease the rail line to an operator; and

NOW, THEREFORE BE IT RESOLVED that the Port of Columbia accepts the donation from the Union Pacific Railroad for the transfer of property ownership of railroad right of way and fixtures from Dayton, Mile Post 14.1, to Walla Walla, Mile Post 48.0, with the Port having no intention of being an operator of the rail road.

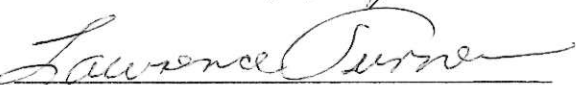
Dated at Dayton, Columbia County, Washington, the 8th
day of August, 1996.

PORT OF COLUMBIA

SEAL:


Chairman

ATTEST:


Secretary

Attachment F

**PORT OF COLUMBIA
-OPERATING LEASE AGREEMENT FOR THE DAYTON RAIL LINE-
CWW, LLC**

THIS OPERATING LEASE AGREEMENT ("Agreement") dated December 11th 2019, is entered into by and between the Port of Columbia ("Port") and CWW, LLC a Washington Limited Liability Company ("Lessee").

Section 1 Recitals

1.1 The Port owns certain rail trackage between Walla Walla, WA, and Dayton, WA: beginning at Mile Post 33 in Walla Walla County, WA and ending within the city of Dayton, WA, at Mile Post 70.01 within Columbia County, WA (the trackage referenced and collectively referred to as the "Rail Line").

1.2 The Port is duly authorized to lease the Rail Line for the benefit of economic development pursuant to statute.

1.3 The Port finds it in the public interest to enter into an agreement with a qualified lessee to provide railroad freight transportation service to the public upon the terms and conditions contained herein.

1.4 The Lessee is qualified and willing to lease the aforesaid Rail Line from the Port of Columbia and to provide Freight Rail Service as defined in Section 4.1 to the public on the Rail Line upon the terms and conditions contained herein.

1.5 The Lessee and the Port further intend to work in partnership with one another and with local governments, economic development authorities, shippers, and connecting railroads to develop innovative and efficient operating and shipping methods and improvements in order to provide competitive freight transportation for the shipping community.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:

Section 2 Right to Provide Freight Rail Services

2.1 The Port hereby leases to Lessee and Lessee hereby leases from the Port the Rail Line and associated railroad rights-of-way and railroad related parcels, all improvements and appurtenances thereon and fixtures affixed thereto, including without limitation, all tracks, rails, ties, ballast, and other track materials, switches, crossings, bridges and bridge abutments, culverts, drainage ditches, buildings, signals, crossing protection devices, communication devices, lines and poles.

2.2 Throughout the term of the Lease, Lessee shall have the exclusive use, right of access to and possession of the Rail Line for the purpose of providing Freight Rail Service on the Rail Line, subject to those terms and conditions contained herein. Lessee shall acquire the right to provide Freight Rail Service on the Rail Line from the STB and shall obtain such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder. The Port shall not admit any other railroad, operator, or user to any part of the Rail Line without the prior written consent of the Lessee, which consent may be withheld by Lessee for any reason whatsoever and upon such terms as Lessee shall determine at its sole discretion. Lessee shall retain all income derived from providing Freight Rail Service on the Rail Line, and Lessee shall be responsible for any losses incurred by the Lessee, except as otherwise provided herein.

2.3 Lessee's provision of Freight Rail Service on the Rail Line shall comply with ICC Termination Act, 49 USC 10501 et. Seq. and other applicable laws and regulations. Lessee shall participate and agree to abide by AAR freight claim and damage prevention principles and practices and freight claim rules as amended from time to time. Lessee shall comply with OT-55 as amended as well as all other applicable AAR, state and federal regulations applicable to the transport and handling of hazardous materials.

2.4 In consideration for the rights granted in Subsections 2.1, 2.2, and 2.3 and contained elsewhere herein, the Lessee shall maintain the Rail Line, provide Freight Rail Service to businesses that desire to use its services, develop business along the Rail Line, and perform other obligations, all as set forth in this Agreement. In addition, Lessee shall remit to the Port, in advance, on an annual basis rent in the amount of four thousand dollars (\$4,000), and Lessee shall be responsible for the payment of Washington State leasehold tax calculated on the rental payment per Chapter 82.29A RCW and Chapter 458-29A WAC. The first payment shall be due and payable on the effective date of this agreement and thereafter on the 1st day of September.

Section 3 Term

3.1 The term of this Agreement shall commence as of January 1, 2020 ("Effective Date") and shall be for an initial term of three (3) years, subject to the termination clauses contained in this Agreement. The Lessee may request to extend this Agreement for additional three year periods, and the Port may grant such extensions at its sole option. The Lessee must make its request to the Port in writing at least one hundred eighty (180) days prior to the expiration of the initial term or any extension of this Agreement, and the Port must notify the Lessee of its decision within one hundred twenty (120) days prior to the expiration of the initial term or any extension of this Agreement.

3.2 The Lessee shall have and hereby assume all duties and obligations with relation to the use, repair, maintenance, existence, and operation of the Rail Line for the Lessee's purposes, including all improvements and fixtures thereto and thereon and hereafter located on the Rail Line, except matters, responsibilities and obligations assumed by the Port as provided for in this Agreement.

Section 4 Freight Rail Service

4.1 As used in the Agreement, "Freight Rail Service" shall mean the provision of rail freight transportation service to customers on or along the Rail Line and all services and functions ancillary thereto, including without limitation, movement and placement of railcars, switching, interchanging with line-haul providers, operating track vehicles and track equipment, Lessee sponsored business car trips over the Rail Line, customer service associated with freight transfer, loading and unloading, car storage, car cleaning, car repair and providing such other rail services as are customarily provided to similar industries using rail services. The Lessee shall cooperate in the interchange of loaded and empty railcars and other rail equipment with Palouse River and Coulee City Railroad, L.L.C. ("PCC"), and any additional railroad that may obtain interchange access to the Rail Line. The Lessee shall meet Freight Rail industry standards to comply with all applicable rules, regulations, and requirements pertaining to the interchange of railcars between rail carriers and the terms of any interchange agreement Lessee enters into with any connecting railroad.

4.2 An operating officer of the Lessee with authority to act on behalf of the Lessee shall be available by telephone during normal business hours to answer customer inquiries.

Section 5 Performance Report

5.1 Performance Report: The Lessee shall prepare a Performance Report annually and submit it to the Port. Timely submission of the Performance Report is a material term of this Agreement and shall include:

- a. The number of annual railcars and number of trains that were run on the Rail Line.
- b. Annual Track Maintenance performed (ties replaced, etc.)
- c. Condition Report describing the current condition of the track, track sub-structure, ballast and all appliances and all structures, and outlining sections of the Rail Line that are at risk for limited service or non-service via embargo.
- d. Signature of an officer of Lessee, certifying the accuracy of the information contained in the Performance Report.
- e. Other relevant points of inquiry as identified in writing by Port.

5.2 Performance Report shall be based on a calendar year. The Performance Report for calendar year 2020 shall be submitted to the Port of Columbia by March 1, 2020. The Lessee shall submit subsequent Performance Reports by March 1st, each year thereafter.

5.3 The Lessee shall bear all costs of preparing and submitting all Performance Reports.

5.4 Upon receipt by Port of the Performance Report, Port shall, upon giving at least fifteen (15) days' written notice, have the right, at its sole cost and expense, to review and audit all of Lessee's records relating to or forming the basis of the Performance Report.

Section 6 Utilities

The Lessee, at no cost or expense to the Port, shall arrange for, obtain and pay all bills, charges and assessments in connection with any heat, water, electricity, sewer and other utility services required for the Lessee's use of the Rail Line.

Section 7 Taxes and Assessments

Except as otherwise set forth in Section 2.3, Lessee shall not be liable for any real property taxes or special assessments which may be levied, assessed or imposed upon the real property comprising the Rail Line owned by the Port during the term of this Agreement.

Section 8 Third Party Agreements, Easements and Licenses

8.1 For the duration of this Lease, and any extensions thereof, the Port hereby assigns to Lessee and Lessee accepts and agrees to administrate all **existing** licenses, easements and ancillary agreements pertaining to the Rail Line, together with all rights and responsibilities therefor and to retain all future, uncollected revenues derived therefrom.

8.2 During the term of this Lease, Port retains the right to grant new licenses, easements and ancillary agreements with Third Parties situated or seeking to situate along the Rail Line. While retaining review and approval rights over all non-rail service related licenses, easements and ancillary agreements, Port does hereby delegate to the Lessee the authority to receive, review, and make recommendations to the Port regarding applications for new non-rail service related licenses, easements and ancillary agreements. Port does hereby assign to Lessee the authority to administrate all such future licenses, easements and ancillary agreements, and retain all ancillary revenues resulting therefrom. In addition to the foregoing, Port is hereby excepting rail service-related matters from its review and approval requirement; therefore, Lessee may enter into new sidetrack and rail freight service agreements with customers along the Rail Line and shall provide written notice to the Port of such agreements.

8.3 Lessee retains the right to seek relief from Port-granted encroachments in the nature of relief from the obligation to pay some or all future rent, and, if rail operations were to become impractical or impossible due to the encroachment, the right to terminate the lease without penalty and with compensation. The amount of relief, if any, due Lessee will be determined at the time of the encroachment and shall be reasonable and proportionate to the extent to which the encroachment interferes with Lessee's ability to provide freight rail service.

Section 9 Interchange Agreements

9.1 The Lessee shall be responsible for making arrangements for the interchange of loaded and empty rail cars moving to or from the Rail Line.

9.2 Lessee shall enter into and remain bound by the Association of American Railroads equipment interchange agreements and similar agreements which are standard in the rail road industry.

9.3 The Lessee shall adopt and follow the General Code of Operating Rules, and all other rules necessary for the Lessee to operate on joint interchange tracks of all railroads with which Lessee interchanges.

Section 10 Use

10.1 The Lessee will use the Rail Line only for the provision of Freight Rail Service as defined in Section 4.1 unless Lessee obtains the written consent of the Port to use such property for any other purpose.

10.2 The Lessee's use, rehabilitation, maintenance, management and operation of the Rail Line shall comply with all laws, rules, and regulations which apply to the operation, condition, maintenance, rehabilitation, inspection and safety of trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated on the Rail Line. The Lessee shall also comply with all applicable industry standards. Throughout the term of this Agreement and any extensions thereof, upon request, the Lessee shall provide to the Port all Federal Railroad Administration and Washington Utilities and Transportation Commission inspection reports, and the Lessee's reports of action taken in response to the inspections.

10.3 Lessee shall take the Rail Line in an "AS IS, WHERE IS" condition and without any express or implied warranties, including but not limited to any warranties of merchantability and subject to: (a) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes; (b) existing encroachments or other conditions that may be revealed by a survey, title search or inspection of the property; and (c) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created.

Section 11 Rehabilitation

11.1 "Rehabilitation Work" means capital expenditures made on a non-annualized basis to improve, rehabilitate or restore the Rail Line to FRA Class 1 track. Lessee shall not be responsible for the cost of performing any Rehabilitation Work on the Rail Line such as reconstruction of any portion of the Rail Line, or extensive replacement or repair of ties, roadbed, ballast or bridges that would fall outside the definition of Cyclical/Programmed Maintenance provided in Section 12 of this Agreement.

11.1.a. Rehabilitation Work resulting from catastrophic loss of any of any kind or nature shall not be the Lessee's responsibility.

11.1.b. The parties agree to cooperate in seeking public monies available for the purpose of funding Rehabilitation Work.

11.2 Prior to Lessee commencing operations over the Rail Line the Lessee and the Port will jointly inspect the Rail Line. The Parties will thereafter confer to discuss any defects identified during the inspection and attempt to jointly arrive upon a corrective action plan, if necessary. Defects impairing the safe operation of the Rail Line shall be prioritized for corrective action.

11.3 Lessee shall bear the cost of the required annual (FRA) bridge inspections. Each Party shall receive a copy of the report. The parties understand that in the future the FRA may require bridge repairs and replacements. The parties acknowledge that the issue of responsibility for the cost of future bridge repairs and replacements (as distinguished from those repairs and replacements identified in the WSDOT Rail Bank application and charter agreement) is beyond the scope of this Lease Agreement and is reserved for future consideration.

11.4 Nothing in this Agreement shall restrict the Lessee from providing funds or seeking funds from third Parties or other government agencies to facilitate rehabilitation and/or economic development projects in addition to any State Funded Rehabilitation Work ("Lessee Rehabilitation Projects") so long as the other terms and conditions of this Agreement are satisfied. The Lessee will notify the Port of any planned Lessee Rehabilitation Projects. The Lessee will control any Lessee Rehabilitation Projects to be performed on the Rail Line subject to the approval of the Port of the plans, location, scope and quality of the work.

11.5 The Lessee and the Port shall cooperatively support the existing Federal Law allotting Federal tax credits to shortline and regional rail operators, including advocating the renewal, extension or re-authorization of that Law or any similar Law which may hereafter be enacted.

11.6 The Lessee agrees to keep and maintain all buildings, bridges, structures, appliances and appurtenances over which it has control or use, including those currently constituting the Rail Line and any facilities added to the property, in a reasonably safe condition for the use intended.

11.7 From time to time, additions or extensions to the Rail Line may be desired for the purpose of providing freight service to a user along or in reasonable proximity to the Rail Line. If the Port desires such addition or extension, then Lessee agrees to cooperate with the Port in pursuing funding sources and in design consultations.

11.8 Nothing in this Agreement shall require the Port to perform, fund or pay for any Rehabilitation Work.

11.9 Rehabilitation Report: The Lessee shall prepare a Rehabilitation Report annually and submit it to the Port. Timely submission of the Report is a material term of this Agreement. The Report shall include a general description of the Rehabilitation Work that may need to be performed in the next 3 to 5 years, including information regarding the urgency of the work as well as other relevant points of

inquiry as identified in writing by Port. This Report directly impacts the Port's efforts to secure outside funding. Ideally, this information would be initially provided to the Port on or before September 1, 2020 (in anticipation of the next fiscal funding cycle) and thereafter submitted to the Port by March 1st, each year.

Section 12 Maintenance

12.1 Upon commencing rail operations over the Rail Line, Lessee shall become solely responsible for the cost of performing all Normalized Maintenance on the Rail Line. "Normalized Maintenance" means maintenance expenses which are estimated on a "normalized" basis, or the average annual expenditure required to maintain the Rail Line at a desired level of operation and includes annual maintenance and an allowance for cyclical/programmed maintenance. Normalized Maintenance includes Annual Maintenance and Cyclical/Programmed Maintenance, but excludes Rehabilitation Work as defined in Section 11 of this Agreement.

12.1.a Annual Maintenance includes:

- Track inspections and appropriate record keeping
- Weed control
- Brush Cutting
- Snow removal/Storm water maintenance and control
- Incidental track repairs needed to comply with Federal Railroad Administration or ("FRA") laws, rules and regulations applicable to the FRA track class existing on the date of this Agreement and the FRA track class existing after rehabilitation.
- Grade crossing surface repairs
- 'Routine' naturally-caused damage recoveries resulting from a non-catastrophic storm / fire / or similar track outage (time critical responses manageable by local staff within one working day using on-hand materials not exceeding \$1000 in replacement costs).

12.1.b Cyclical/programmed maintenance includes:

- Cross tie/switch tie replacements and renewals
- Turnout repairs or component replacements
- Incidental (non-wholesale) rail replacements
- Grade crossing surface replacement
- Ballast placement, tamping and lining
- Sign replacements
- Maintenance of passing, set out and yard switching tracks
- Ditch and storm water maintenance

12.2 The Lessee agrees to perform all Normalized Maintenance as required for safe operations and as needed to maintain the Rail Line at the same or better condition as it currently is, excluding normal deterioration unrelated to usage.

12.3 Notwithstanding Lessee's obligation to fund and perform maintenance and repair work on grade crossing surfaces necessary to comply with the Washington Utility Transportation Commission orders, the Port may elect to seek public funding for and to pay for the cost of such repairs in the event such public funding becomes available.

12.4 All improvements to the Rail Line and rights-of-way shall become the property of the Port upon installation, unless otherwise agreed to, by and between the Parties in writing.

12.5 No subcontract relieves Lessee from its obligations hereunder or binds Port unless specifically agreed to in writing by Port. Nothing in this Agreement shall create or deem any contractual relationship between any subcontractor and Port. Lessee shall be solely responsible for all acts and omissions of any subcontractors.

Section 13 Inspection

The Lessee shall allow an annual joint inspection of the Rail Line by representatives of the Port upon reasonable advance notice. Appropriate representatives from both the Port and the Lessee shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Rail Line at its election at any time during the term of the Agreement so long as the following conditions are met: (1) The Port provides reasonable advance notice to the Lessee; (2) The Port complies with all reasonable safety requirements of the Lessee or as required by law applicable to the Rail Line; (3) The Port obtains the appropriate authorizations from the Lessee to be on the designated portions of the Rail Line, such as track warrants; (4) The Lessee will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with the Lessee to minimize any interference with Lessee's operations on the Rail Line. Any employee of the Port or the Port's Commissioners participating in such inspections shall execute Lessee's standard release of liability form before participating in such inspections.

Section 14 Assignment

Assignment of this Agreement may occur only with the written consent of the Port. To obtain the Port's consent to such an assignment, the Lessee will provide written notice to the Port of its desire to assign this Agreement, including a letter signed by an authorized officer of the intended assignee stating that the assignee agrees to such assignment and agrees to be bound by all the terms of such assignment and the approvals and evidences required by this Agreement. The prospective assignee shall provide to the Port all documents reasonable and necessary for the Port to determine whether the prospective assignee has the financial, operational, business and maintenance capability to perform the terms of this Agreement at the same level or better than the Lessee. This Agreement will be binding upon and inure to the benefit of successors and assigns of the Port and successors and permitted assigns of the Lessee.

Section 15 Liability

15.1 Pre- Lessee commencing operation of Rail Freight Services: Port, *subject to and affected by the liability of former owners and operators of the Rail Line*, assumes the risk of and agrees to indemnify and hold Lessee harmless, and to defend Lessee against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source arising or resulting from events occurring prior to the Lessee commencing freight rail services involving (i) any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be leased hereunder, (ii) any personal injury to or death of persons whosoever (including without limitation employees, agents or contractors of Port, Lessee or any third party), or (iii) any property damage or destruction of whatsoever nature (including without limitation property of Port, or Lessee, or property in its or their care, custody, or control and third party property.)

15.2 Post- Lessee commencing operation of Rail Freight Services Lessee assumes the risk of and agrees to indemnify and hold Port harmless, and to defend Port against and from any claims, costs, liabilities, expenses, (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source arising or resulting from events occurring after the Lessee commences freight rail services involving (i) any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be leased hereunder, (ii) any personal injury to or death of persons whosoever (including without limitation employees, agents or contractors of Port, Lessee or any third party), or (iii) any property damage or destruction of whatsoever nature (including without limitation property of Port, or Lessee, or property in its or their care, custody, or control and third party property.)

15.3 "Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act or 1980 (as amended) and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatsoever nature which arise from environmental damage, contamination, toxic wastes or similar causes.

Section 16 Insurance

16.1 To comply with its indemnity obligations under Subsection 15.2, Lessee, at Lessee's cost and expense, shall procure or cause to be procured and maintain or cause to be maintained, during the continuance of this Agreement, railroad operating and liability insurance covering liability assumed by the Lessee under this Agreement with a limit of not less than Twenty-Five Million Dollars (\$25,000,000) single limit for personal injury per occurrence and single limit for property of Five Million Dollars (\$5,000,000) for damage per occurrence, such limits to be reviewed by the Port every five (5) years during the term of this Agreement and any extensions of it. At three (3) years intervals the Port and the Lessee shall meet and confer in good faith to determine whether modifications should be made to the insurance requirement. The Lessee shall furnish to the Port certificates of insurance evidencing the above coverage in the form of a policy (or policies) at the time of execution of this Agreement. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed under this Agreement and an endorsement naming the Port as "additional insured". In addition, such insurance shall contain notification provisions under which the Lessee's insurance broker shall endeavor to give thirty

(30) days' written notice to the Port of any policy changes in or cancellations of the policy. These endorsements and notice provisions shall be stated on the certificate of insurance provided to the Port.

Section 17 Surface Transportation Board Approvals

17.1 Prior to initiation of Rail Freight Service on the Rail line, the Lessee hereby warrants and represents to the Port that the Lessee will expeditiously seek all necessary orders or approval, if any, from the Surface Transportation Board ("STB") and all other appropriate governmental or regulatory authorities, orders approving or authorizing the Lessee to enter into this Agreement and to conduct railroad operations on the Rail Line according to the terms and provisions hereof, or exempting the Lessee from the requirement of obtaining such approval and authorization. The Parties understand and agree that the entry of an order of the STB approving and authorizing or exempting this transaction and the railroad operations of the Lessee according to the terms and conditions hereof is a condition precedent to the obligations of either Party hereunder.

17.2 Except as provided in Section 18.1 Lessee will not seek authority, or an exemption therefrom, of the STB or other governmental or regulatory authority to discontinue Freight Rail Service over all or any portion of the Rail Line unless this Agreement is terminated or the Lessee has cause to terminate this Agreement pursuant to the termination provisions of this Agreement.

Section 18 Termination

18.1 Grounds for Termination.

18.1.a Termination by Election – the Parties may not terminate this Agreement by election except by mutual consent except as follows:

(1) After December 31, 2020 either Party may terminate this Agreement by election if the number of revenue carloads is less than 200 for any calendar year during the term of this Agreement or any extension thereof. The election must be exercised during the month of January following the calendar year in which number of revenue carloads was less than 200. Termination will be effective May 31 of that year.

(2) Nothing in this Agreement requires the Port to perform, fund or pay for any Rehabilitation Work. In the event the Lessee is unable to perform Freight Rail Service because of the condition of the Rail Line, and the Port elects to not fund Rehabilitation Work, then in that event, the Port may terminate this Agreement with 30 days written notice to Lessee.

18.1.b Termination by Breach. So long as the Lessee is not in breach of any material terms or conditions of this Agreement and the Lessee continues to provide Freight Rail Service on the Rail Line, unless otherwise agreed to by and between the Parties, the Port shall not have a right to terminate this Agreement prior to its natural expiration (whether of the initial term or any renewal or extension hereof) except as otherwise provided in Subsection 18.1.a.

However, in the event that the Lessee breaches a material term or condition of this Agreement, or without the Port's consent, ceases to provide Freight Rail Service on any portion of the Rail Line for more than fifteen (15) days when there is a bona fide demand for service, the Port shall give Lessee written notice of that fact. If within sixty (60) days of receipt of such notice, the Lessee has not cured such breach, or if the Lessee has not taken all reasonable steps toward effecting such cure, and the Lessee has not reinstated Freight Rail Service, then the Port shall have the right to terminate this Agreement.

18.2 The Lessee, upon termination of this Agreement, shall have three (3) month to remove all personal property and improvements placed by it on the Rail Line, except those improvements that the Port paid for or state in writing to Lessee the Port's desire to retain and any Normalized Maintenance and Rehabilitation Work, which shall become the property of the Port. If the Lessee fails to so remove its property, at the expense of the Lessee, subject to offset by any net salvage proceeds actually received by the Port, the Port may remove the Lessee's personal property and improvements. The Lessee's obligation to pay the costs of removal shall survive termination of this Agreement.

18.3 Termination of this Agreement by the Lessee which results in cessation of operations shall result in an obligation of the Lessee to reasonably make available operating data (including, but not limited to car tracing, shipper identification and rates, and accounting records) to the Port or the Port's designee at the Port's expense.

18.4 Termination of this Agreement shall not relieve either Party hereto from any obligation under this Agreement arising prior to termination.

18.5 Upon termination of this Agreement, Lessee shall promptly relinquish to Port possession of the Rail Line.

Section 19 Notices

19.1 All notices, demands, requests or other communications which may be or are required to be given, served or sent by either Party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

If intended for the Lessee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by reputable overnight courier, addressed to Lessee at:

CWW, LLC
Mr. Paul Didelius, owner
710 N 10th Ave
Walla Walla, WA 99362
Phone: (509) 492-3553

If intended for the Port, by mailing by registered or certified mail, return receipt requested, with postage prepaid, or by reputable overnight courier, addressed to the Port at:

Port of Columbia
1 Port Way
Dayton WA 99328
Phone: (509) 382-2577

Each notice, demand, request or communication mailed by registered or certified mail to either Party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time of such notice, demand, request or communication is either received by the addressee or refused by the addressee upon presentation. Either Party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

Section 20 Events Constituting Default

20.1 Any of the following events shall constitute a default by Lessee hereunder:

20.1.a The failure of Lessee to submit the Annual Performance Report and Rehabilitation Report required under Subsections 5.1 and 11.9, respectively, by May 31st of each contract year beginning in 2020, or the material non-performance by Lessee of any maintenance required under Section 12, or the failure to adequately perform any other material term, covenant or condition of this Agreement which is not cured within thirty (30) days after written notice from the Port.

20.1.b Any affirmative act of insolvency by the Lessee, or the filing by the Lessee of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors.

20.1.c The filing of any involuntary petition under any bankruptcy statute against the Lessee, or the appointment of any receiver or trustee to take possession of the property of the Lessee.

20.1.d The suspension or revocation of the Lessee's federal, state or local regulatory authority to operate Freight Rail Service on the Rail Line.

20.2 Any of the following events shall constitute a default by the Port hereunder:

20.2.a Any act or omission on the part of the Port or its agents, servants or employees which substantially interferes with Lessee's ability to provide freight rail transportation service and which is not cured within thirty (30) days after written notice from the Lessee.

Section 21 Rights on Default

21.1 On the occurrence of any of the events of default listed in Section 20, the Non-defaulting party may terminate this Agreement by written notice to the Party in default and, in addition, may take any other action or exercise any additional remedy available to the Non-defaulting party at law or equity.

Section 22 Obligations of the Parties upon Termination

22.1 In case of termination by the Port or the Lessee pursuant to any provision of this Agreement, the parties' obligations on termination shall be governed by the provisions of Section 18 hereof.

22.2 In the event of termination by either party for any reason, the Port shall grant Lessee reasonable access to the leased premises for the purposes of removing Lessee's personal property and improvements in accordance with the provisions of Section 18.2.

Section 23 Amendment

23.1 No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by both parties hereto.

Section 24 Clean Air and Water

24.1 In performing Freight Rail Services hereunder, the Lessee shall comply with all applicable standards, orders, or requirements issued under: (i) the Clean Air Act (42 USC 7414 et. Seq.), and any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act or Executive Order 11738 or any applicable implementation plan as described in sections 110 (d), 111 (c) , 111 (d), or 112 (d) of the Clean Air Act; (ii) the Clean Water Act (33 USC 1318 et seq.) and any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Clean Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency ("EPA"). The Lessee shall hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or penalties arising from any violation of the provisions of this Section 24 in the performance of Freight Rail Service on the Rail Line, regardless of the absence of negligence or other malfeasance by the Lessee. This provision shall survive the termination of this Agreement for any reason.

For the purposes of this Section 24, the term "facility" means any building, plant, installation, structure, location, or site of operations, owned, leased, or supervised by the Lessee or a subcontractor of Lessee, used in the performance of this Lease. When a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed to be a facility except when the Administrator, or a Designee, of the Office of Federal Activities, EPA determines that independent facilities are co-located in one geographical area.

Section 25 Hazardous Materials

25.1 If the performance of this Agreement creates any solid or hazardous wastes (e.g., the removal of any materials from the trains that require disposal), said waste shall be properly disposed of in accordance with Federal, state and local laws, at the expense of the Lessee. In no event shall the Port be identified as the generator of the wastes. The Lessee shall notify the Port of any such hazardous wastes and the Port shall receive a copy of the results of any tests conducted on the wastes. The Lessee shall

hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or other penalties arising from the disposal of any wastes created by the performance of this Agreement, regardless of the absence of negligence or other malfeasance by the Lessee. This provision shall survive the termination of this Agreement for any reason.

25.2 At no time during the term of this Agreement shall the Lessee, without the prior written consent of the Port, maintain, treat, dispose of, store or have on the Rail Line, or permit any other party to have, maintain, treat, dispose of, or store on the Rail Line, anything which is classified by federal, state or local authorities as a Hazardous Substance or Hazardous Waste or which requires a permit for the storage, treatment, disposal, handling or maintenance of it from any government authority. This excludes (1) transport or storage of materials by or on rail as long as said transport or storage complies with the Hazardous Materials Transportation Act, 49, USC Section 1801, et seq., and (2) petroleum products, lubricants, antifreeze and such other materials that may be normally consumed in the daily operations of a railroad.

Section 26 Public Records

The Port is a Special Purpose District and subject to the Public Disclosure requirements in Chapter 42.56 RCW, including the exemptions set forth in 42.56.260 concerning communications and written materials submitted by the prospective lessee in pre-agreement meetings and negotiations. This Agreement and any records, data or other information generated by Lessee at Port's request for use by the Port in the course and performance of this Agreement shall become a public record as defined in RCW 42.56.010(3). Any specific information that is claimed by the Lessee to be confidential or proprietary must be clearly identified as such by the Lessee. To the extent consistent with Chapter 42.56 RCW, et seq., the Port will maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Lessee's information identified by Lessee to be confidential or proprietary, the Port will notify the Lessee of the request and the date that such records will be released to the requester unless the Lessee obtains a court order enjoining disclosure. The Port will release the requested information on the date specified.

Section 27 Entire Agreement

This Agreement constitutes the entire agreement between the Lessee and the Port and no other representations, warranties or agreements, either oral or written will be binding upon the Lessee and the Port.

Section 28 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Venue of any action hereunder shall be in Columbia County Superior Court, Washington.

Section 29 Compliance with Applicable Laws

The Lessee, subject to federal preemption, as applicable, shall comply with all statutes, laws and ordinances of all federal, state and local governments or other governmental authorities, regulatory authorities and commissions, foreseen and unforeseen, ordinary as well as extraordinary, for the entire term of this Agreement.

Section 30 Warranty of Signature

The Port warrants to the Lessee that the person executing this Agreement for the Port is fully authorized to sign this Agreement for the Port and to bind the Port to the terms of this Agreement. The Lessee warrants to the Port that the person executing this Agreement for the Lessee is fully authorized to sign this Agreement for the Lessee and to bind the Lessee to the terms of this Agreement.

Section 31 Disputes

31.1 Any disputes relative to obligations, remedies, or performance of this Agreement shall be resolved by the President of Lessee and the Port Commissioners, or their designees at a meeting to be held at the office of the Port of Columbia in Dayton, Washington within thirty (30) days of written submission of the dispute by one party to the other. In the event the dispute is not so resolved at such meeting, the parties are left to their remedies at law, including alternative dispute resolution modalities.

Section 32 Consequential Damages

UNDER NO CIRCUMSTANCES SHALL THE PORT OR LESSEE HAVE ANY LIABILITY TO THE OTHER PARTY, THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES, FOR ANY CONSEQUENTIAL, INCIDENTAL, OR OTHER INDIRECT LOSS OR DAMAGES, PUNITIVE, OR EXEMPLARY DAMAGES OR COSTS HOWEVER CAUSED.

Section 33 Headings

The headings in this Agreement are for ease of reference only and shall not be used to construe or interpret the provisions of this Agreement.

Section 34 Attorney's Fees

Should it become necessary for the Port or Lessee to engage in binding arbitration or other legal proceedings as may be necessary for the purpose of enforcing this Agreement for the purpose of recovering damages or otherwise, it is agreed that the prevailing party shall be entitled to recover reasonable attorney fees in addition to costs and such other relief, including fees and costs upon appeal, as may be awarded by the court or the arbitrator..

Notwithstanding the foregoing, should the dispute be resolved through alternative dispute resolution modalities (including but not limited to non-binding arbitration, mediation, or through settlement negotiations with or without the help of the judge or court personnel), then neither party shall be deemed the prevailing party, and the parties' claims to entitlement to an award of attorneys fees shall

be deemed waived, and each party shall bear its own costs. Upon settlement of any appeal, the issue of attorneys fees and costs shall not be deemed waived, but shall be expressly addressed as a provision of any settlement agreement.

Section 35 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

Section 36 Miscellaneous

36.1 NONDISCRIMINATION

To the extent applicable, the Lessee shall comply with the regulations for compliance with Title VI of the Civil Rights Act of 1964 (42 USC Section 2000d, et.seq.) and 23 CFR Section 710.405 (b).

Contracting: the Lessee shall not create barriers to open and fair opportunities for all businesses including MWBE's to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Lessee shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental, or physical disability in an otherwise qualified disabled person.

36.2 WORKERS RIGHT TO KNOW

Except where such matters are regulated by the FRA, Lessee shall comply with the requirements of WAC 296-62-054 of the State of Washington Department of Labor and Industries regarding worker awareness of hazardous substances in the work environment. WAC 296-62-054 requires among other things that all manufactures or distribution of hazardous substances must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container must be labeled with:

- The identity of the hazardous material
- Appropriate hazardous warnings, and
- Name and address of the chemical manufacture, importer, or other responsible Party.

Labor and Industries may levy appropriate fines against employers for noncompliance. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

36.3 FORCE MAJEURE

Neither Party shall be liable to the other or deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

If either Party is delayed or its performance is prevented by force majeure, said Party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other Party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion for a requirement under this Agreement shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed Party from performing in accordance with this Agreement.

Section 37 Independent Contractor

The Lessee shall be deemed an independent contractor for all purposes and the employees of the Lessee, or any of its contractors, subcontractors, lessees, and the employees thereof, shall not in any manner be deemed the employees or agents of the Port. Lessee shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. Lessee shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Agreement.

Section 38 Workers Compensation

Except to the extent such statutes and regulations are pre-empted or superseded by the Federal Employers Liability Act (45 U.S.C. Sec. 51 et seq.), Lessee shall comply with all applicable workers compensation statutes and regulations. Prior to the start of work under this Agreement, workers compensation coverage shall be provided for all employees of Lessee and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement. Except as prohibited by law, Lessee waives all rights of subrogation against the Port for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance. If Lessee, subcontractor, or sub-subcontractor fails to comply with workers compensation statutes and regulations and Port incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify Port. Indemnity shall include all fines, payment of benefits to Lessee or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Section 39 Severability

If any term or provision hereof is or becomes invalid or unenforceable, the Lessee and the Port

shall in good faith negotiate to replace the invalid or unenforceable term or provision with a term or provision which is valid and enforceable, and which comes as close as possible to expressing the intention of the invalid or unenforceable term or provision. The validity or enforceability of the remainder of the Agreement shall not be affected by the invalidity or unenforceability of any provision if the remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed under seal by their duly authorized representatives.


Port of Columbia


Dan Aschenbrenner, Commissioner


Earle Marvin, Commissioner


Fred Crowe, Commissioner

Lessee/Operator


Paul Didelius, Owner
CWW, LLC

Date: December 11th, 2019

Date: January 22, 2020

STATE OF WASHINGTON

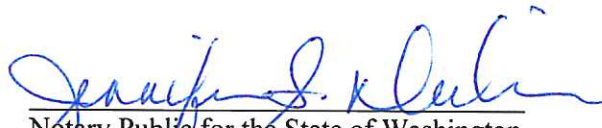
County of Columbia

)
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)

On this day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Paul Didelius, to me known to be the Manager of the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that Paul Didelius is authorized to execute the said instrument and that the seal affixed is the corporate seal of said company.

Given under my hand and official seal this 22 day of January, 2020.

JENNIFER S DICKINSON
Notary Public
State of Washington
License Number 130672
My Commission Expires
September 13, 2023


Notary Public for the State of Washington,
residing at Dayton, WA

STATE OF WASHINGTON

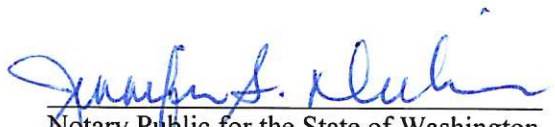
County of Columbia

)
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)

On this day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Fred Crowe, Earle Marvin, and Dan Aschenbrenner, to me known to be the commissioners of the Port of Columbia, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that Fred Crowe, Earle Marvin, and Dan Aschenbrenner are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 11th day of Dec, 2019.

JENNIFER S DICKINSON
Notary Public
State of Washington
License Number 130672
My Commission Expires
September 13, 2023


Notary Public for the State of Washington,
residing at Dayton, WA

LENNER & DICKINSON
Notary Public
State of Washington
License Number 130673
My Commission Expires
September 12, 2023

LENNER & DICKINSON
Notary Public
State of Washington
License Number 130673
My Commission Expires
September 12, 2023

COLUMBIA RAIL OPERATING LEASE EXTENSION

Per the guidelines set forth in section 3.1, the parties below hereby agree to a 3-year extension of the lease dated December 11, 2019 by and between the PORT OF COLUMBIA, a municipal Corporation of the State of Washington, and CWW, LLC, a Limited Liability Corporation.

The lease extension term will begin January 1, 2023 and end December 31, 2025. All other terms of the lease will remain the same.


IN WITNESS WHEREOF, said Corporation has caused this instrument to be executed by its proper Commissioners this 14th day of September, 2022.

PORT OF COLUMBIA

By: 
Genie Crowe

LESSEE:

By: 
Paul Didelius, Owner, CWW, LLC

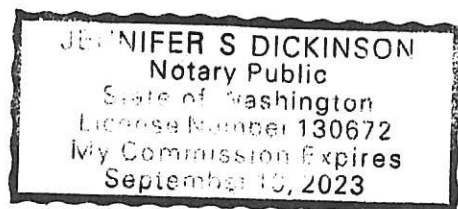
By: 
~~Johnny Watts~~ Seth Bryan


By: _____
~~Seth Bryan~~

STATE OF WASHINGTON)
) ss
County of Columbia)

On this day personally appeared before me GENIE CROWE, JOHNNY WATTS, and SETH BRYAN, Commissioners of the Port of Columbia, to me known to be the individuals described herein and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 14th day of September, 2022.

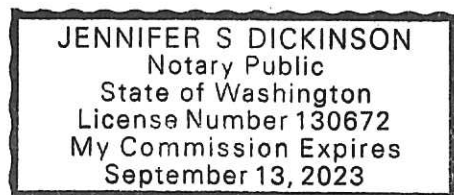




Notary Public for the State of
Washington, residing at Dayton

[illegible]

On this day personally appeared before me, PAUL DIDEIUS that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Given under my hand and official seal this 19th day of September, 2022.




Notary Public for the State of
Washington, residing at Dayton



Attachment G

Jennie Dickinson <jennie@portofcolumbia.org>

CWW Response to POC RFI: RR Sale

3 messages

Paul Didelius <pd@columbiarail.com>

Mon, Jun 23, 2025 at 3:15 PM

To: Jennie Dickinson <jennie@portofcolumbia.org>

Jennie, responding to Port's questions:

1. How is the RR currently being used?
 1. Seneca Foods in Dayton loads seed for its veg farms back east, and I believe also processes seeds for one other shipper
 2. Northwest Grain Growers in Prescott loads typically wheat
 1. FYI, we don't maintain specific destination info on either of these
 3. Car storage - we tend to stay fairly full - with regards to the (very limited) sidetrack capacity - where we are generally fairly full of 3rd party railcars. There is a mix of long stays and higher turnover business.
 1. Of note, we have consistently from day one protected the end-to-end passability of the mainline, over large scale bulk storage which would prevent access to shipping to/from Dayton WA. Any large scale storage would either require extensive capital infusion (to create new side track capacity), or it would conflict with the nature of the *railroad providing transportation* to the POC-area account/s
 4. Other uses:
 1. Port and CWW continue to support (as market-priced as practical) neighboring property owner leases of ROW, private road crossings, and utility encroachments
 2. CWW has in the past hosted / allowed various public interaction with the railroad:
 1. Pump carts
 2. Motorcars... recent years has not been favored by our insurer (or necessarily economical for the requestors)
 3. CWW has handled Curt Andrews office car ("Abraham Lincoln") to and around Dayton associated with certain community events
2. CWW vision for future uses of the RR and Right of Way, and how these are impacted by SALE vs. NO SALE?

Note: CWW has indicated that upon conclusion of the current lease, it does not expect to renew lease, or continue operating to Dayton under a lease structure with POC.

 1. Generally (to the extent Columbia Rail continues to operate the RR), current uses of RR and ROW expected to continue in similar fashion into the future
 2. Ongoing use as a primarily freight branch line: This works under SALE scenario - but possibly becoming problematic for current shippers under NO SALE scenario
 3. Future use of line for charter or special event passenger / excursion train operations: Waitsburg to Dayton updates will soon be completed to a level that could legally permit operation of passenger trains at a maximum speed of 15 mph. Columbia Rail does not currently have ideal coach equipment for market-appropriate opportunities here, but sourcing of same is a current priority (as subject to capital funding). Has a legit future (within 1-3 years) under SALE scenario
3. Improvements / Maintenance performed by CWW since 2016?
 1. Please see attached - select reports of work / conditions. Columbia Rail estimates these track / property costs have cost it over 1 million (which costs to date have not

been covered by net operating revenue)

2. More generally:

1. Columbia Rail repaired several impassable locations between Bolles and Waitsburg to provide for restoration of freight rail service to Dayton in 2017 (after previous lessee had closed the line above Prescott around 2014)
2. Restoration of service allowed Seneca to load directly into railcars from their shipping department in Dayton - saving approximately 37,000 truck-miles annually (to previously used railhead in Pasco, WA)
3. From Walla Walla to Dayton, Columbia has improved overall tie condition, road crossing conditions, bridge conditions, drainage upkeep, and brush / weed management conditions
4. Columbia has brought the railroad back into regular freight use, and has restored the relevance, connection of the railroad to the community 'scene' (events, holidays, etc.)
5. Columbia Rail restored to operation POC line (and a the non-POC line beyond Walla Walla to Wallula), after bad flooding in Feb 2020 caused numerous severe washouts requiring extensive repairs and rock purchases - doing so on its own dollar (without State or Fed assistance)
6. Columbia Rail staff have expended considerable time and resources on various public meetings and planning related to the Port's Touchet Valley Trail effort
7. Columbia also contributed considerable funds to the Port's appraisal of the rail line (providing to the Port a data point of what the railroad *might be worth, in the right market / geography, to the right buyer*)

4. Dollar amount CWW is willing to pay for the rail line and right of way:

Note 1: Properties discussed were considered of limited net commercial value by Union Pacific RR in 1997 - when they donated the 37 mile rail line with associated / adjacent properties to the Port.

Note 2: Ownership by CWW would entail assumption of various liabilities, including as associated to rail line operation (Federal rail industry regulation).

Note 3: Ownership by CWW would put the properties back to paying into the local tax rolls.

Note 4: Ownership by CWW protects current shippers / freight utilization using the rails, vs. higher costs of trucks on public highway.

1. For the entire Federal / 'Common Carrier' freight franchise between Walla Walla and end of track in Dayton, PLUS all tracks and Right of Way ***within Walla Walla County*** (incl. any adjacent POC rail line properties there): **\$305,000** (\$370,000 *valuation* by CWW, minus a valuation credit as described below)
 1. To include - from end to end within Columbia County - an *exclusive rail operations easement* of at least 20' lateral to each side from all tracks centerline (as such RE available based upon sometimes tight or limited POC ROW ownership)
 1. Port of Columbia to assume forward track maintenance responsibility within this zone (Columbia County)
 2. Against the CWW \$370,000 "valuation", Port to credit or discount \$65,000 in value for CWW's 2024-2025 \$150,000 pre-investment into the POC line current track conditions, functional qualities between Waitsburg and Dayton (that zone feasibility for excursion etc. movement of passengers) - which conditions / qualities yield to the community / Port independently of SALE/NO SALE
2. Additional Port option - for all tracks and ROW / property not included above (all those ***within Columbia County*** incl. any adjacent RE, all as donated to the Port in 1997): **\$400,000**
 1. This to include CWW ownership of all track maintenance responsibilities within this zone as well

3. **Total net offer** (subject to Port election on 1 or 2 above) - **\$305,000 or \$705,000**, and as subject to negotiation of exact terms and covenants

5. Is CWW willing to purchase just the rail line and not the ROW?

1. Qualified yes, with regards to Columbia County portion, as per previous question (option 4.1 above). This yes does not apply to the portion within WW County however, which section CWW would only wish to buy incl. its ROW / lands

In closing, I'll offer the following comments (which are not answering any specific Port question here, but may yet be helpful):

- Our consideration can and presumably would involve non-cash commitments or acceptance to Port-favorable terms as to ongoing operations or future preservation of the rail line and corridor
- We appreciate Port's query, and hope we have responded to it helpfully. We believe this should provide a good understanding of CWW's enthusiasm and willingness to pay / good starting point for Port feedback / follow up questions, terms discussion, etc.

We also will understand if sale is not attractive or supportable around this valuation neighborhood. But we have crafted offer to hopefully show sale path and CWW consideration as attractive / beneficial to the Port / community, and in keeping with Port economic development goals including advancement of transportation features and private sector business promotion / growth.

Thank you again -

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

Business Addr:








[709 N. 10th Ave.](#)

[Walla Walla, WA 99362](#)

Representing following independent Carriers -

Inland PNW: **CWW [including RYAL, YAK]**

Western WA: **RNIR**

-  **Closeout reports_ 2016-2019 RR lease.pdf**
187K
-  **Annual Report 2022.pdf**
145K
-  **2023 Performance Report.pdf**
174K
-  **2024 Performance Report.pdf**
181K
-  **Letter to CWW re lease compliance covering 2019 - 2021.pdf**
173K
-  **POC - Draft Wallula and Dayton Items-Qtys-Estimate 11-9-20 (1).pdf**
391K
-  **2021 Performance Report.pdf**
178K

Paul Didelius <pd@columbiarail.com>
To: Jennie Dickinson <jennie@portofcolumbia.org>

Wed, Jun 25, 2025 at 8:00 AM

Jennie, just wanted to check this was rec'd by Port.

Thank you,

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

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[Walla Walla, WA 99362](#)

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Western WA: **RNIR**

[Quoted text hidden]

Jennie Dickinson <jennie@portofcolumbia.org>
To: Paul Didelius <pd@columbiarail.com>

Wed, Jun 25, 2025 at 3:05 PM

Yes, I have received it. I may have some follow up questions. Thanks.

Jennie Dickinson
Executive Director
Port of Columbia
1 Port Way, Dayton, WA 99328
509-382-2577 office
509-520-4341 cell
[Quoted text hidden]



Jennie Dickinson <jennie@portofcolumbia.org>

Another Question

2 messages

Jennie Dickinson <jennie@portofcolumbia.org>

Tue, Jul 29, 2025 at 4:31 PM

To: Paul Didelius <pd@columbiarail.com>

Hi Paul,

I've got another question posed by the commission I'd like your input on. Can you please tell me how managing the line is not simple for you now? Thank you!

a. CWW talks about simplicity of management as a reason for wanting to purchase (how is it not simple?)

Jennie Dickinson

Executive Director

Port of Columbia

1 Port Way, Dayton, WA 99328

(509) 382-2577 office

(509) 520-4341 cell

www.portofcolumbia.org

Paul Didelius <pd@columbiarail.com>

Tue, Jul 29, 2025 at 6:20 PM

To: Jennie Dickinson <jennie@portofcolumbia.org>

Jennie,

Thanks. I think this has been broadly covered in numerous past conversations, but this line is become much more politically entangled / engaging than anything else we manage, and I don't see it prudent for my resources as long-term / ongoing shoulderable into the future, relative to the meager current freight revenues and ongoing capital CWW needs to put into it every year. The term quiet enjoyment comes to mind, which we enjoy at greater level with our leases with other public entities and even mega corporations. And more still, with our owned lines.

I know some will want to say this relates to the sale request on my part, but it really heated up a lot with the trail affair, and now seems to have an overlay from Snake River dams drama (which I don't see them going anywhere, the ESA / Fed Judges would have had that happen 30 years ago if the dams were truly considered just breachable by the Fed gov't).

FYI also: we have a few more spots to fix up but our hope is to provide an inspection trip to the Commissioners / staff sometime this fall by train car over the portion of line which is coming into Class 1 track condition, between Dayton and Waitsburg. If you can please make mention of that to them.

Thank you,

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

Business Addr:

[709 N. 10th Ave.](#)

[Walla Walla, WA 99362](#)

Representing following independent Carriers -

Inland PNW: **CWW [including RYAL, YAK]**

Western WA: **RNIR**

[Quoted text hidden]



Jennie Dickinson <jennie@portofcolumbia.org>

Written Response to Walulla Issue

3 messages

Jennie Dickinson <jennie@portofcolumbia.org>

Wed, Jul 23, 2025 at 11:12 AM

To: Paul Didelius <pd@columbiarail.com>

Hi Paul - in a follow-up from our earlier questions:

Can you please put in writing why Columbia Rail can no longer use the UP line at Walulla to access the barge terminals? Also please tell me how many rail cars you estimate could be shipped there per year if access was granted.

Please provide this answer by August 1.

Thanks!

Jennie Dickinson

Executive Director

Port of Columbia

1 Port Way, Dayton, WA 99328

(509) 382-2577 office

(509) 520-4341 cell

www.portofcolumbia.org

Paul Didelius <pd@columbiarail.com>

Fri, Jul 25, 2025 at 8:31 AM

To: Jennie Dickinson <jennie@portofcolumbia.org>

Jennie, answers to your requests here:

1. For starters we do use the UP mainline, nearly every time we need to interchange cars with UP or BNSF at Wallula (both outbound from and inbound to us). They don't object to that and accept it's a fact they'll live with, specific though to *interchange of traffic to / from them* (THEIR / MAJOR RR TRANS-CON TRAFFIC - that to / from our UP and BNSF leases). Since August 2019, UP reneged on their written assurances of 2018/2019 that they would provide for *our direct commercial access* into the NWGG facility, which is located 1.5 miles downstream of our junction with them at Wallula. [So they are rejecting our using their mainline for OUR business - that which doesn't really hit their operations or revenues.] They have not directly addressed their failure or corporate behavior here, and we are not in a wise position to legally or politically attack them in attempt to force the issue externally. They are however recognizing they have to do something to facilitate our traffic, and our parties are working directly together to resolve the matter and get the freight moving (and we are happy to see UP paid a reasonable comp for our incidental use of their line here). As you may recall, we also leased from the Port of Walla Walla the connecting track going into the NWGG facility off the UP mainline, and this is also helping us with our negotiation
2. NWGG has consistently indicated they have around 1000 railcars per year (equivalent of about 4000 truckloads currently using Highways 12 and 124) they'd put on the train as soon

as we have the economic means to get to their Wallula facility (from Prescott and Milton-Freewater). We believe there may develop down the road more traffic than this, but this is what NWGG is indicating.

Thank you,

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

Business Addr:

[709 N. 10th Ave.](#)

[Walla Walla, WA 99362](#)

Representing following independent Carriers -

Inland PNW: **CWW [including RYAL, YAK]**

Western WA: **RNIR**

[Quoted text hidden]

Jennie Dickinson <jennie@portofcolumbia.org>

To: Paul Didelius <pd@columbiarail.com>

Fri, Jul 25, 2025 at 3:22 PM

Got it. Thank you!

Jennie Dickinson

Executive Director

Port of Columbia

1 Port Way, Dayton, WA 99328

(509) 382-2577 office

(509) 520-4341 cell

www.portofcolumbia.org

[Quoted text hidden]

Port of Columbia Dayton Rail Line

2021 Performance Report

Prepared by CWW, LLC (Columbia Rail)

1. Railcars – 115

2. Trains – 30

3. Track Maintenance

Dayton

- 8 ties, 2 gage rods in upper switch
- Removed mud and leaves over rails twice on rail beneath underpass
- Repaired 3 damaged crossbuck signs
- Cut vegetation in city of Dayton, removed tree limbs twice via side dumps and trailer
- Cleaned up 2 areas with old bridge timbers and ties at Dayton Bridge and steel Bridge by state park

Long

- Derailment related damage - 65 ties and 10 rails 75# from longs siding east end
- Rebuilt private crossing

Huntsville

- 4 switch ties, replaced 2 center cracked 85# bars along main
- Cleaned main and ditched 100' of siding
- Improvements to poor cross-level section east of Huntsville
- 60 ties on main, level roadbed.

Waitsburg

- Rebuilt and upgraded Mill Race Rd crossing in concert with Public Works
- Pulled planks in Bolles Rd crossing and reset them from snow plow damage
- Derailment related repairs - 65 ties and 10 rails 75# from siding east end, added 4 gage rods to curve
- Rebuilt private crossing
- 8 gage rods in curve past Bolles elevator, 3 gage rods in old Bolles switch
- Added gravel to private crossing, roughly MP 55

Prescott

- 8 switch ties
- Paved C St. crossing
- Repaired gravel crossing on siding
- 2 ties and 4 gage rods, MP 48.25,

Valley Grove

- 12 gage rods
- Replaced 1 broken rail with 12' piece

Misc.

- Cleared various drainage issues
- Weed sprayed entire line once, spot sprayed problem areas at later date
- Repaired 20 center cracked bars with half bars at various locations
- Repaired 20 center cracked bars with half bars, MP 33 – 60, 75# rail

4. Condition Report

Walla Walla to Bolles:

General conditions here - light construction qualities here (roadbed and rails), but conditions decent / holding;

Curve areas between Walla Walla and Valley Grove better than in previous years (2020 work), but still some 5 mph restrictions. Additional tie and surface work required here to lift restriction;

Given tonnages expected out of Prescott in years to come, rail upgrades ultimately will be helpful to maintenance costs and track safety;

Bolles to Waitsburg:

This is most challenged section of POC line - light construction standard (roadbed especially, plus strangely tight curve patterns), we have derailed here typically once per every year somewhere in this section;

Until this section could be significantly updated rail-wise and ties, will remain 5 mph;

Waitsburg to Dayton:

Relatively serviceable - resilient / durable 85# per yard rails, drainage mostly good;

Tracks through City of Dayton continue to represent a challenge due to located in City Streets essentially, poor drainage or property control;

Issues at Seneca subject to some planning / improvements, between railroad, Seneca;

Fair bit of encroachment issues this section, neighboring parties, etc., this will need to be progressively brought into compliance.

Officer of Lessee/Operator

Derek Reid

CWW, LLC

Date: 2/9/2022



Port of Columbia Dayton Rail Line

2022 Performance Report

Prepared by CWW, LLC (Columbia Rail)

1. Railcars – 83
2. Trains – 25

Officer of Lessee/Operator

Derek Reid

CWW, LLC

Date: 10/24/2024



Port of Columbia Dayton Rail Line

2023 Performance Report

Prepared by CWW, LLC (Columbia Rail)

1. Railcars – 93
2. Trains – 24
3. Track Maintenance
 - Ties installed numerous areas (171), installed (25) gage rods on Prescott hill.
 - Huntzville 2 head block ties and switch repairs, center cracked bars numerous locations (48).
 - Repaired 5 pull a parts.
 - Drainage and track repairs at 125 crossing.
 - Replaced 3 85# broken rails. Raised and tamped 3 locations bridge approaches and sink holes.
 - Bolles elevator upgraded and paved (100#)
 - Fall application weed spray, UTC defect repairs for crossing defects, extra vegetation removal in some bad areas. Bridge inspection done annually. Slow order and block signs installed.
4. Condition Report

Walla Walla to Bolles:

General conditions here - light construction qualities here (roadbed and rails), but conditions decent / holding;

Curve areas between Walla Walla and Valley Grove better than in previous years (2020 work), but still some 5 mph restrictions. Additional tie and surface work required here to lift restriction;

Given tonnages expected out of Prescott in years to come, rail upgrades ultimately will be helpful to maintenance costs and track safety;

Bolles to Waitsburg:

This is most challenged section of POC line - light construction standard (roadbed especially, plus strangely tight curve patterns), we have derailed here typically once per every year somewhere in this section;

Until this section could be significantly updated rail-wise and ties, will remain 5 mph;

Waitsburg to Dayton:

Relatively serviceable - resilient / durable 85# per yard rails, drainage mostly good;

Tracks through City of Dayton continue to represent a challenge due to located in City Streets essentially, poor drainage or property control;

Issues at Seneca subject to some planning / improvements, between railroad, Seneca;

Fair bit of encroachment issues this section, neighboring parties, etc., this will need to be progressively brought into compliance.

Officer of Lessee/Operator

Derek Reid

CWW, LLC

Date: 2/23/2024



Port of Columbia Dayton Rail Line

2024 Performance Report

Prepared by CWW, LLC (Columbia Rail)

1. Railcars – 205
2. Trains – 42
3. Track Maintenance
 - Replaced 16 ties, tamped and lined curve at milepost 56.84
 - Replaced 8 ties past frog at Bolles elevator
 - Installed switch ties at Seneca
 - Installed 35 ties at hart road crossing, 54 ties in Prescott by grain elevator
 - Replaced ties at old farmer bridge crossing.
 - Installed 16 gage rods in multiple locations with wide gauge. And 12 more gauge rods at Dayton line hills
 - Ditched out shoulders and cleared vegetation at milepost 41.
 - Tamped curve at milepost 34.7 slow order.
 - Tamped low spot on Bolles Rd curve and the curve past state park
 - Paved Rose Gulch and approaches at Stedman Rd crossings and asphalt patched on Ward Rd.
 - Repaired center cracked pull apart by old elevator
 - Rebuilt Seneca crossings
 - Repairs to 124 crossing panels
 - Removed 133 switch from old flour mill.
 - Replaced 16 ties Robinson Ranch RD curve, slid center cracks and nipped joint ties
 - Repaired Center crack bar in crossing at Cherry St
 - Replaced 20 ties between Cherry and Willow St
 - Repaired 3 double center cracked bars at MP 55.5
 - Repaired 7 center crack bars from MP 61 to MP 60.5
 - Cleared vegetation at wye past Seneca / cleared mud and trees at overpass
 - Installed 8 ties at private crossing approach MP 44.47
 - Tamped private crossing at old rock loading spot MP 43.32
 - Cut trees at Valley Grove siding, MP 38.97, MP 33.34
 - Installed 4 ties at MP 41.74 and 3 ties at MP 48.17
 - Cut trees at MP 52.14, 59.62, 63.51, 65.38
 - The City upgraded 3rd St., Columbia Rail assisted with removal of old siding and rail in general area, along with updating court house crossing when parking lot was being done.
 - Removed vegetation and trees in the town of Dayton from wind storms and dumping along right of way.
 - Coordinated with local entities for track closures to cover graphite on steel bridge.

4. Condition Report

Walla Walla to Bolles:

General conditions here - light construction qualities here (roadbed and rails), but conditions decent / holding;

Curve areas between Walla Walla and Valley Grove better than in previous years (2020 work), but still some 5 mph restrictions. Additional tie and surface work required here to lift restriction;

Given tonnages expected out of Prescott in years to come, rail upgrades ultimately will be helpful to maintenance costs and track safety;

Bolles to Waitsburg:

This is most challenged section of POC line - light construction standard (roadbed especially, plus strangely tight curve patterns), we have derailed here typically once per every year somewhere in this section;

Until this section could be significantly updated rail-wise and ties, will remain 5 mph;

Waitsburg to Dayton:

Relatively serviceable - resilient / durable 85# per yard rails, drainage mostly good;

Tracks through City of Dayton continue to represent a challenge due to located in City Streets essentially, poor drainage or property control;

Fair bit of encroachment issues this section, neighboring parties, etc., this will need to be progressively brought into compliance.

Officer of Lessee/Operator

Derek Reid

CWW, LLC

Date: 3/1/2025



Attachment I

Jennie Dickinson <jennie@portofcolumbia.org>

RE: TRMW Sale to Rainier Rail

5 messages

Matheson, Alan <amatheson@tacoma.gov>
To: Jennie Dickinson <jennie@portofcolumbia.org>

Mon, Aug 4, 2025 at 12:53 PM

Hi, Jennie.

In response to your inquiry regarding the City's divestment of the Mountain Division rail line to Rainier Rail, the City concluded the divestment in several steps:

- 2016 – sold 34.5 miles (RR MP 33.0 – 67.5C) in Lewis and Thurston counties for \$2,801,000 following a request for bids process. Pre-bid estimate in specification PW16-0285F was \$2.5M.
- 2019 – leased 4.4 miles in Thurston County (RR MP 28.6C – 33.0C) for \$100,000
- 2021-22 – lease ~1 mile in Pierce County (RR MP 27.8C – 28.6C) for \$1,200mo to include common carrier obligation for 1 freight rail customer.
- 2023 – sold 41.86 miles including leased portions for \$2,210,000 via direct negotiation not-practical-to-bid process. This transaction included transferring all common carrier railroad obligations to serve the existing customer base in Frederickson, WA.
 - This section's appraisal Net Liquidated Value (NLV) determined to be \$3,320,000 by R. L. Banks & Associates.

Alan Matheson

Rail Superintendent

Tacoma Public Utilities

(253) 502-8934 (desk) (253) 405-6782 (cell)

From: Jennie Dickinson <jennie@portofcolumbia.org>
Sent: Monday, August 4, 2025 11:10 AM
To: Matheson, Alan <amatheson@tacoma.gov>
Subject: Sale to Rainier Rail

Hi Alan - thanks for your help.

Jennie Dickinson <jennie@portofcolumbia.org>
To: "Matheson, Alan" <amatheson@tacoma.gov>

Mon, Aug 4, 2025 at 4:55 PM

Hey Alan - one more question: Has Rainier Rail performed as promised on the portion of the line that they purchased?

Thanks,

Jennie Dickinson
Executive Director
Port of Columbia
1 Port Way, Dayton, WA 99328
(509) 382-2577 office
(509) 520-4341 cell
www.portofcolumbia.org

[Quoted text hidden]

Matheson, Alan <amatheson@tacoma.gov>
To: Jennie Dickinson <jennie@portofcolumbia.org>

Mon, Aug 4, 2025 at 5:18 PM

I'm not aware of any customer complaints or noncompliance issues.

Alan Matheson
Sent from my smartphone

From: Jennie Dickinson <jennie@portofcolumbia.org>
Sent: Monday, August 4, 2025 4:56:05 PM
To: Matheson, Alan <amatheson@tacoma.gov>
Subject: Re: TRMW Sale to Rainier Rail
[Quoted text hidden]



Legislation Passed October 4, 2016

The Tacoma City Council, at its regular City Council meeting of October 4, 2016, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 39550

A resolution awarding a contract to Western Peterbilt, LLC, in the amount of \$981,709, plus sales tax, budgeted from the Solid Waste Fund, for six Peterbilt Transfer Tractors with automatic transmissions - Washington State Contract No. 01513.

[Gary Kato, Solid Waste Management Division Manager;
Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 39551

A resolution awarding a contract to R. L. Alia Company, in the amount of \$518,516.50, excluding sales tax, plus a 15 percent contingency, for a total of \$596,293.98, budgeted from the Wastewater Fund, for the removal and construction of approximately 2,200 linear feet of underground wastewater mains, and roadway surface restoration in various locations within the City - Specification No. ES16-0281F.

[Geoffrey M. Smyth, P.E., Science and Engineering Division Manager;
Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 39552

A resolution awarding a contract to Republic Parking Northwest, Inc., in the amount of \$671,574, plus sales tax, budgeted from the Tacoma Dome Enterprise Fund, for parking services, for an initial contract period of four years, with the option to renew for one additional two-year period, for a projected contract total of \$1,007,360 - Specification No. PF16-0327F.

[Jon Houg, Deputy Director; Kim Bedier, Director, Public Assembly Facilities]

Resolution No. 39553

A resolution declaring surplus and approving the sale of approximately 35 miles of property, related railroad infrastructure, and personal property associated with the Western Junction Facility, owned by the Public Works Department - Tacoma Rail Mountain Division, located between Rainier and Chehalis, to WRL, LLC, for the amount of \$2,801,000; and depositing said sum into the Tacoma Rail Mountain Division Fund.

[Alan Matheson, Assistant Rail Superintendent;
Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 39555

A resolution authorizing the execution of an amendment to the agreement with Comprehensive Life Resources, in the amount of \$254,400.00, budgeted from the Mental Health Substance Use Disorder Fund, for a total of \$1,434,227.28, for the period of January 1, 2015, through December 31, 2016, to continue the Positive Interactions Program.

[Pamela Duncan, Human Services Division Manager, Nadia Chandler Hardy, Director, Neighborhood and Community Services]

Resolution No. 39556

A resolution expressing support for the Center for Popular Democracy's Anti-Hate Campaign, which condemns violence and hate speech and expresses solidarity with the campaign for Muslims and all those targeted for their ethnicity, race, or religion.

[Council Member Woodards]

Resolution No. 39557

A resolution authorizing the execution of a Collective Bargaining Agreement with the Professional Public Safety Management Association, which consists of approximately eight budgeted full-time equivalent positions, retroactive to January 1, 2015, through December 31, 2018.

[Joy St. Germain, Director, Human Resources]



RESOLUTION NO. 39550

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the execution of a contract
3 with Western Peterbilt, LLC, in the amount of \$981,709, plus sales tax,
4 budgeted from the ES Solid Waste Fund, for six Peterbilt Transfer
5 Tractors with automatic transmissions, pursuant to Washington State
6 Contract No. 01513.

7 WHEREAS the City has complied with all applicable laws and processes
8 governing the acquisition of those supplies, and/or the procurement of those
9 services, inclusive of public works, as is shown by the attached Exhibit "A,"
10 incorporated herein as though fully set forth, and

11 WHEREAS the Board of Contracts and Awards has concurred with the
12 recommendation for award as set forth in the attached Exhibit "A"; Now,
13 Therefore,

14 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

15 Section 1. That the Council of the City of Tacoma concurs with the
16 Board of Contracts and Awards to adopt the recommendation for award as set
17 forth in the attached Exhibit "A."

18 Section 2. That the proper officers of the City are hereby authorized to
19 enter into a contract with Western Peterbilt, LLC, in the amount of \$981,709, plus
20 sales tax, budgeted from the ES Solid Waste Fund, for six Peterbilt Transfer
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1 Tractors with automatic transmissions, pursuant to Washington State Contract

2 No. 01513, consistent with Exhibit "A."

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4 Adopted _____

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6 _____
Mayor

7 Attest:

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9 _____
City Clerk

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11 Approved as to form:

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13 _____
City Attorney

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RESOLUTION NO. 39551

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the execution of a contract with
3 R. L. Alia Company, in the amount of \$518,516.50, excluding sales tax,
4 plus a 15 percent contingency, for a cumulative total of \$596,293.98,
5 budgeted from the ES Wastewater Fund, for the removal and construction
6 of approximately 2,200 linear feet of 8-inch diameter underground
7 wastewater mains and roadway surface restoration in various locations
8 within the City, pursuant to Specification No. ES16-0281F.

9 WHEREAS the City has complied with all applicable laws and processes
10 governing the acquisition of those supplies, and/or the procurement of those
11 services, inclusive of public works, as is shown by the attached Exhibit "A,"
12 incorporated herein as though fully set forth, and

13 WHEREAS the Board of Contracts and Awards has concurred with the
14 recommendation for award as set forth in the attached Exhibit "A"; Now,
15 Therefore,

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18 Board of Contracts and Awards to adopt the recommendation for award as set
19 forth in the attached Exhibit "A."

20 Section 2. That the proper officers of the City are hereby authorized to
21 enter into a contract with R. L. Alia Company, in the amount of \$518,516.50,
22 excluding sales tax, plus a 15 percent contingency, for a cumulative total of
23 \$596,293.98, budgeted from the ES Wastewater Fund, for the removal and
24 construction of approximately 2,200 linear feet of 8-inch diameter underground
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wastewater mains and roadway surface restoration in various locations within
the City, pursuant to Specification No. ES16-0281F, consistent with Exhibit "A."

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney



RESOLUTION NO. 39552

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the execution of a contract with
3 Republic Parking Northwest, Inc., in the amount of \$671,574, plus sales
4 tax, budgeted from the Tacoma Dome Enterprise Fund, for professional
5 parking services, for an initial contract term of four years, with the option to
6 renew for one additional two-year period, for a projected contract total of
7 \$1,007,360, pursuant to Specification No. PF16-0327F.

8 WHEREAS the City has complied with all applicable laws and processes
9 governing the acquisition of those supplies, and/or the procurement of those
10 services, inclusive of public works, as is shown by the attached Exhibit "A,"
11 incorporated herein as though fully set forth, and

12 WHEREAS the Board of Contracts and Awards has concurred with the
13 recommendation for award as set forth in the attached Exhibit "A"; Now,
14 Therefore,

15 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

16 Section 1. That the Council of the City of Tacoma concurs with the
17 Board of Contracts and Awards to adopt the recommendation for award as set
18 forth in the attached Exhibit "A."

19 Section 2. That the proper officers of the City are hereby authorized to
20 enter into a contract with Republic Parking Northwest, Inc., in the amount of
21 \$671,574, plus sales tax, budgeted from the Tacoma Dome Enterprise Fund,
22 for professional parking services, for an initial contract term of four years, with
23 the option to renew for one additional two-year period, for a projected contract
24



1 total of \$1,007,360, pursuant to Specification No. PF16-0327F, consistent with

2 Exhibit "A."

3

4 Adopted _____

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6 _____
Mayor

7 Attest:

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9 _____
City Clerk

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11 Approved as to form:

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13 _____
City Attorney

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RESOLUTION NO. 39553

1 A RESOLUTION relating to City-owned property; declaring surplus and approving
2 the sale of approximately 35 miles of property, related railroad
3 infrastructure, and personal property associated with the Western Junction
4 Facility, owned by the Public Works Department - Tacoma Rail Mountain
5 Division, located between Rainier and Chehalis, to WRL, LLC, for the
6 amount of \$2,801,000, less any associated closing/transaction costs, for
7 deposit into the Tacoma Rail Mountain Division Fund.

8 WHEREAS the City of Tacoma, Public Works Department, has owned,
9 operated, and/or maintained the rail line and right-of-way that runs between
10 Tacoma and Chehalis known as the Tacoma Rail Mountain Division ("TRMW")
11 since it was acquired from the Weyerhaeuser Company in 1995, and

12 WHEREAS the 35-mile section of the TRMW beginning slightly northeast of
13 Rainier, in Thurston County, and ending in Chehalis, in Lewis County ("Property"),
14 is currently operated by a third party, Western Washington Railroad, LLC, under a
15 short-term lease agreement, and

16 WHEREAS, in 2007, the City's General Fund loaned TRMW approximately
17 \$6.2 million to provide interim financing for cash flow and grant match for capital
18 projects, and

19 WHEREAS approximately \$4 million of this loan was retired in 2015, upon
20 the sale of a portion of track related to Sound Transit improvements, leaving a loan
21 balance of approximately \$2.2 million, and, additionally, approximately \$89,000 in
22 lease-related uncollectable lease debt and closing costs related to the sale, and

23 WHEREAS remaining funds from the proposed sale are anticipated to be
24 used for required maintenance on other areas of track still under Public Works
25 Department ownership, and
26



1 WHEREAS TRMW has determined that a divestiture of its assets within this
2 area would be in the best interests of the City, as it would eliminate maintenance,
3 operational, and capital costs, and

4 WHEREAS, in May 2016, the Public Works Department issued Bid
5 Specification No. PW16-0285F, which called for bids for the approximately 35-mile
6 section of Property, with a minimum price of \$2,500,000, which was based on
7 information received from a feasibility study and railroad industry experts, and

8 WHEREAS one bid was received, from WRL, LLC, a railroad operator, in
9 the amount of \$2,801,000, less any associated closing/transaction fees, and

10 WHEREAS this bid meets all of the required conditions and will allow for
11 continued freight rail service through this area, and

12 WHEREAS proceeding with this transaction is consistent with the
13 commitment to divest portions of TRMW assets when feasible; Now, Therefore,

14 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

15 Section 1. That continued ownership of approximately 35 miles (609 acres)
16 of Tacoma Rail Mountain Division property located between Tacoma and Chehalis,
17 legally described in Exhibit "A," is not essential to the needs of the City and is
18 hereby declared surplus pursuant to RCW 35.22.020 and Article I, Section 1.2,
19 and Article IX of the Tacoma City Charter.

20 Section 2. That the sale of approximately 35 miles of said real property,
21 related railroad infrastructure, and personal property associated with the Western
22 Junction Facility to WRL, LLC, for the amount of \$2,801,000, less any associated
23



1 closing/transaction costs, is hereby approved, said proceeds to be deposited into
2 the Tacoma Rail Mountain Division Fund.

3 Adopted _____
4

5 _____
6 Mayor

7 Attest:
8

9 _____
10 City Clerk

11 Approved as to form:
12

13 Legal Description Approved:
14

15 _____
16 Chief Deputy City Attorney

17 _____
18 Chief Surveyor
19 Public Works Department
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EXHIBIT "A"

LEGAL DESCRIPTION

That portion of the Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Weyerhaeuser Company by Quit Claim Deed recorded under Thurston County Auditor's File No. 9508140208 and Bargain and Sale Deed recorded under Thurston County Auditor's File No. 9508140207, records of Thurston County, Washington and by Quit Claim Deed recorded under Lewis County Auditor's File No. 9511613, records of Lewis County, Washington, lying between the East line of Section 2, Township 16 North, Range 1 East, W.M., in Thurston County, Washington (Railroad Engineering Station 270+77.7) and the Southerly terminus of said Tacoma Rail Mountain Division right of way located in the Southeast Quarter of Section 31, Township 14 North, Range 2 West, W.M, in Lewis County, Washington.

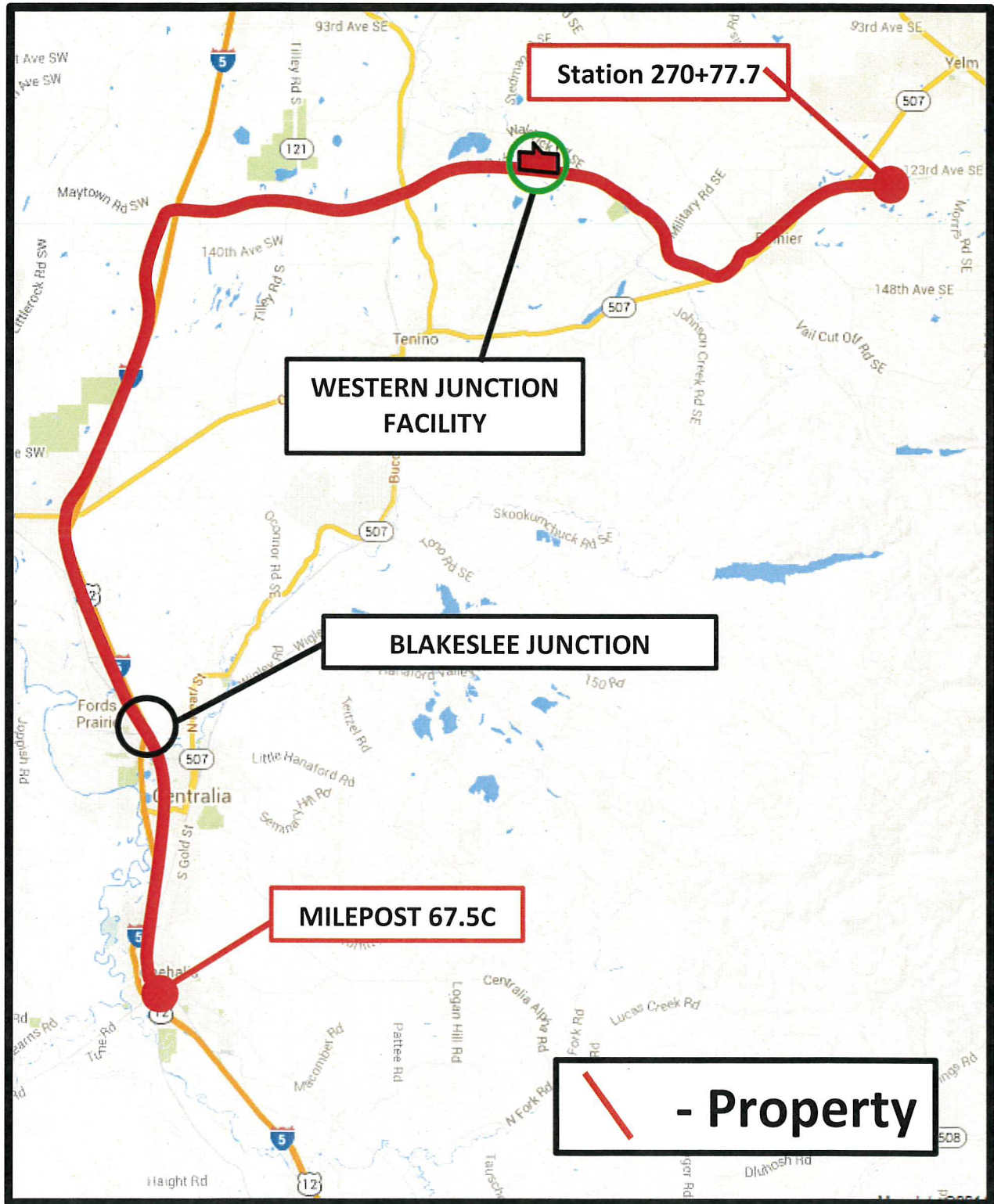
TOGETHER WITH those tracts of land acquired by Deeds recorded under Thurston County Auditor's File No. 4190043, records of Thurston County, Washington and Lewis County Auditor's File Nos. 3364589 and 3262870, records of Lewis County, Washington.

EXCEPT THOSE tracts of land conveyed by Deeds recorded under Thurston County Auditor's File No. 4190041 records of Thurston County, Washington and Lewis County Auditor's File Nos. 3346701, 3377947, 3377948 and 3262871, records of Lewis County, Washington.

SUBJECT TO the rights of the public in and to all existing public roads, trails, and utilities, all outstanding assessments, leases, licenses and permits, whether recorded or unrecorded, all matters which a prudent inspection of the premises would disclose, all matters of public record.

Situated in the Counties of Thurston and Lewis, State of Washington; and as further shown in Exhibit "A" attached hereto and by this reference incorporated herein.

EXHIBIT A
Property Depiction





RESOLUTION NO. 39555

1 A RESOLUTION relating to human services; authorizing the execution of an
2 amendment to the agreement with Comprehensive Life Resources, in
3 the amount of \$254,400.00, for a cumulative contract amount of
4 \$1,434,227.28, budgeted from the Mental Health Substance Use
Disorder Fund, for the period of January 1, 2015, through December 31,
2016, to continue the Positive Interactions Program.

5 WHEREAS, on July 22, 2014, the City Council adopted the 2015-2019
6 Human Services Strategic Plan, and approved direct funding of programs that
7 meet the criteria of (1) systems sustainability; (2) high-performing programs; and
8 (3) address areas of critical need, and
9

10 WHEREAS, on February 24, 2015, the City Council approved direct
11 funding to several agencies for human services programs, including
12 Comprehensive Life Resources ("CLR"), for a variety of programs, including
13 Positive Interactions, in the amount of \$280,000, and
14

15 WHEREAS the Positive Interactions Program ("Program") provides
16 businesses with a 24/7 response system that includes on-site response within
17 two hours during traditional business hours, and individuals struggling with
18 chronic and/or street homelessness are provided with peer support interventions
19 encouraging and motivating client change, and
20

21 WHEREAS, in November 2015, the City Council approved an amendment
22 to the agreement with CLR, in the amount of \$121,719.28, to continue Program
23 services; however, the amended budget did not anticipate the increased need for
24 weekend support and community clean-ups, and
25
26



WHEREAS the City has seen an increased presence of street
homelessness, which has created undue hardship for local businesses and
increased risk for individuals living without shelter, and

WHEREAS it is necessary to expand the Program to ensure sufficient
staffing for weekend and after-hours services, and

WHEREAS City staff is recommending an amendment to the agreement
with CLR, in the amount of \$254,400, for a cumulative contract total of
\$1,434,227.28, budgeted from the Mental Health Substance Use Disorder Fund,
to allow CLR to continue Program services through December 31, 2016; Now,
Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to an
amendment to the agreement with Comprehensive Life Resources, in the
amount of \$254,400, for a cumulative contract amount of \$1,434,227.28,
budgeted from the Mental Health Substance Use Disorder Fund, for the period
of January 1, 2015, through December 31, 2016, to continue the Positive



1 Interaction Program, said document to be substantially in the form of the
2 proposed agreements on file in the office of the City Clerk.

3
4 Adopted _____

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6 _____
Mayor

7 Attest:

8

9 _____
City Clerk

10 Approved as to form:

11

12 _____
Deputy City Attorney

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RESOLUTION NO. 39556

1 BY REQUEST OF DEPUTY MAYOR MELLO AND COUNCIL MEMBERS BLOCKER,
2 IBSEN, AND WOODARDS

3 A RESOLUTION expressing support for the Center for Popular Democracy's
4 Anti-Hate Campaign, which condemns violence and hate speech and
5 expresses solidarity with the campaign for Muslims and all those targeted
6 for their ethnicity, race, or religion.

7 WHEREAS the City Council supports the rights and freedoms of all
8 residents of the City and our nation to practice and embrace their heritage and
9 religious traditions without fear of persecution, and

10 WHEREAS Tacoma's diversity is one of its greatest strengths, and

11 WHEREAS the City is a member of the Welcoming Cities and Counties
12 Initiative, and supports all efforts to make the City a more vibrant, inclusive,
13 equitable, and welcoming place for all people to live, work, and play, and

14 WHEREAS the City continues to pledge its support as being a community
15 that welcomes and values those of different faiths, ethnicities, and races; Now,
16 Therefore,

17
18 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

19 That the City Council hereby expresses its support for the Center for
20 Popular Democracy's Anti-Hate Campaign, which condemns violence and hate
21
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1 speech and expresses solidarity with the campaign for Muslims and all those
2 targeted for their ethnicity, race, or religion.

3
4 Adopted _____

5

6 _____
Mayor

7 Attest:

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9 _____
City Clerk

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11 Approved as to form:

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13 _____
City Attorney

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RESOLUTION NO. 39557

1 A RESOLUTION related to collective bargaining; authorizing the execution of a
2 four-year Collective Bargaining Agreement between the City and the
3 Professional Public Safety Management Association, effective retroactive to
January 1, 2015, through December 31, 2018.

4 WHEREAS the City has, for years, adopted the policy of collective
5 bargaining between the various labor organizations representing employees and
6 the administration, and

7
8 WHEREAS this resolution allows for the execution of a four-year Collective
9 Bargaining Agreement ("CBA") between the City and the Professional Public Safety
10 Management Association ("Union") on behalf of the employees represented by said
11 Union, and

12 WHEREAS the bargaining unit consists of approximately eight budgeted,
13 full-time equivalent ("FTE") positions, and

14
15 WHEREAS the proposed CBA will provide for a wage increase of
16 2.6 percent retroactive to January 1, 2015; a wage increase of 1.1 percent
17 retroactive to January 1, 2016; a wage increase of 2 percent effective January 1,
18 2017; and for 2018, wages will be based on revised indexing/parity language, and

19
20 WHEREAS other changes include: (1) confirmation that the bargaining unit
21 shall be covered by the health benefits plan negotiated between the City and a
22 coalition of unions in the Joint Labor Committee for the term of the agreement;
23 (2) a change to the deferred compensation provided by the employer from a
24 matching amount to an employer contribution; and (3) a reduction in the amount of
25 employee wages forgone toward the Voluntary Employee Beneficiary Association
26



(“VEBA”) program beginning in 2017, pursuant to a Letter of Agreement between
the parties, and

WHEREAS it appears in the best interests of the City that the CBA
negotiated by said Union and the City be approved; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute the
four-year Collective Bargaining Agreement between the City and the Professional
Public Safety Management Association, effective retroactive to January 1, 2015,
through December 31, 2018, said document to be substantially in the form of the
agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



TO: Elizabeth A. Pauli, City Manager
FROM: Alan Matheson, Assistant Rail Superintendent
Kurtis D. Kingsolver, Interim Deputy City Manager
COPY: City Council and City Clerk
SUBJECT: Resolution – Authorization for the sale of the remaining available Tacoma Rail Mountain Division right-of-way and operations situated outside of the City of Tacoma limits to Rainier Rail, LLC and transfer of common carrier obligations consistent with Surface Transportation Board protocols - January 31, 2023
DATE: January 17, 2023

SUMMARY AND PURPOSE:

A resolution authorizing the execution of a Quit Claim Deed and Master Utility Easement Agreement for sale of the remaining available Tacoma Rail Mountain Division (TRMW) right-of-way and operations situated outside of the City limits to Rainier Rail, LLC., a Class III Common Carrier railroad, transference of associated common carrier obligations consistent with Surface Transportation Board protocols, and approval of Purchase and Sale Agreement No. 3323 for consideration of \$2,210,000 to be deposited into the Tacoma Rail Mountain Division Fund 4120.

BACKGROUND:

This Department's Recommendation is Based On:

In 1990, the City of Tacoma accepted a donation from Weyerhaeuser of 54.5 miles of track. Later, in 1995, the City purchased another 77 miles of track from Weyerhaeuser for \$3,159,457. The Association of American Railroads assigned the railroad mark TRMW to the assembled railroad corridor.

The acquisition of the railroad corridor was pursued for economic development purposes, specific to tourism. At that time, the City had plans to build a "Train to the Mountain", program which would include both passenger rail and bus service to Mount Rainier. While there was some investment to upgrade various segments of the rail line, the overall cost to realize and maintain the initial vision was substantial. From 2005-2011 the City attempted partnerships with a series of passenger excursion operations, however, they all failed as ridership was unsustainable.

In order to generate additional revenue for planned passenger operations and maintenance, the City also utilized the line to re-establish freight rail service in the Frederickson area. Currently, this line's annual traffic averages around 1,500 railcars, generating gross revenue of approximately \$1.2M each year.

Revenues are insufficient for long term sustainability as operated by the City. Currently, the General Fund subsidizes the TRMW budget with \$400K per year. Ongoing subsidies from the General Fund would likely be necessary in perpetuity to sustain continued City ownership and operations. Economic development opportunities for freight rail on this rail line are infrequent because developable property adjacent to the rail line is sparse.

Public Works has administrative oversight for TRMW, and TPU-Rail operates and maintains the railroad line on the City's behalf. Structural features of the rail line include 11 bridges, 34 track switches and 76 at-grade crossings (26 are signalized). In addition to the ongoing routine maintenance costs, there is a projected \$40M capital investment



need over the next 10 years to make necessary improvements to tracks, bridges and crossing surfaces between Tacoma and Frederickson.

Based on the foregoing, City staff has negotiated Purchase and Sale Agreement No. 3323 with Rainier Rail, LLC., a Class III common carrier railroad, for the sale of the remaining available TRMW outside of the City of Tacoma limits. The Purchase and Sale Agreement outlines a purchase price of \$2,210,000.00, the sale will be via Quit Claim Deed (As-Is/No Warranties), Rainier Rail, LLC will be assigned federal/state grant encumbrances applicable to the subject railroad, City will indemnify against claims related to environmental conditions near Lake Kapowsin, the City will receive a Master Utilities Easement Agreement for existing and future City utilities in the subject railroad right-of-way.

COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:

The proposed sale was presented to the Infrastructure, Planning and Sustainability Committee on January 11, 2023. Further, TRMW currently leases a segment of railroad to Rainier Rail to provide service to Wilcox Farms, and both TRMW and Wilcox Farms have been satisfied with Rainier Rail's operational performance. Based on this information and additional customer research, TRMW is confident Rainier Rail will be able to provide an adequate level of service to the additional railroad customers currently served by TRMW.

2025 STRATEGIC PRIORITIES:

Equity and Accessibility:

The discontinuance of freight rail service on the TRMW rail line within City of Tacoma limits will improve air and noise pollution within historically disadvantaged communities. Moreover, the divestment will provide TPU-Rail an opportunity to reduce the number of City owned locomotives, thereby reducing fuel consumption associated with City railroad operations.

Economy/Workforce: *Equity Index Score:* The subject railroad extends across all Equity Index Scores

Increase positive public perception related to the Tacoma economy.

Livability: *Equity Index Score:* The subject railroad extends across all Equity Index Scores

Reduction in carbon emissions, open space conditions, sustainability, clean air, water and soil, and noise and light pollution.

Increase positive public perception of safety and overall quality of life.

Explain how your legislation will affect the selected indicator(s).

The discontinuance of freight rail service on the TRMW within City of Tacoma limits will improve air and noise pollution and will provide an inactive right of way for a future trail should funding become available. (Currently there is no funding in place for a trail project).

ALTERNATIVES:

Presumably, your recommendation is not the only potential course of action; please discuss other alternatives or actions that City Council or staff could take. Please use table below.



Alternative(s)	Positive Impact(s)	Negative Impact(s)
1. City continue operating the TRMW railroad.	None.	The City will incur significant costs to continue to operate the TRMW railroad.

EVALUATION AND FOLLOW UP:

This is a one-time action with no on-going evaluation required.

STAFF/SPONSOR RECOMMENDATION:

Staff recommends City Council authorize the execution of a Quit Claim Deed and Master Utility Easement Agreement for sale of the remaining available TRMW situated outside of the City limits to Rainier Rail, LLC and to transfer of common carrier obligations consistent with Surface Transportation Board protocols.

FISCAL IMPACT:

Selling the TRMW for \$2,210,000.00 is a one-time source of revenue, but additional costs saving will be realized by the City due to cessation of TRMW common carrier railroad operations.

Fund Number & Name	COST OBJECT (CC/WBS/ORDER)	Cost Element	Total Amount
Fund 4120, PW Tacoma Rail Mountain Division	633000	4343500	\$2,210,000.00
TOTAL			\$2,210,000.00

What Funding is being used to support the expense? N/A

Are the expenditures and revenues planned and budgeted in this biennium's current budget?

NO, PLEASE EXPLAIN BELOW

Proceeds from the sale of the TRMW railroad operations were not budgeted.

Are there financial costs or other impacts of not implementing the legislation?

YES

Will the legislation have an ongoing/recurring fiscal impact?

No

Will the legislation change the City's FTE/personnel counts?

No

ATTACHMENTS:

- PowerPoint Presentation with Maps
- Quit Claim Deed
- Master Utilities Easement Agreement
- Purchase and Sale Agreement

After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

MASTER UTILITIES EASEMENT AGREEMENT

Reference No.	P2022-137/A3324
Grantor:	Rainer Rail, LLC
Grantee:	City of Tacoma
Abbr. Legal Description:	Portion of the SW, S27, T20N, R3E; NW, SW, SE, S34, T20N, R3E; NE, SE, S03, T19N, R3E; NE, SE, S10, T19N, R3E; NW, SW, S11, T19N, R3E; NW, SW, SE, S14, T19N, R3E; NE, S23, T19N, R3E; NW, SW, S24, T19N, R3E; NE, NW, SE, S25, T19N, R3E; NE, NW, SW, S36, T19N, R3E; SE, S35, T19N, R3E; NE, NW, SW, S2, T18N, R3E; NW, S11, T18N, R3E; NE, NW, S10, T18N, R3E; NE, NW, S9, T18N, R3E; ALL, S8, T18N, R3E; SE, S7, T18N, R3E; NE, NW, SW, S18, T18N, R3E; SE, S13, T18N, R2E; ALL, S24, T18N, R2E; NW, S25, T18N, R2E; NE, SW, SE, S26, T18N, R2E; NW, S35, T18N, R2E; NE, SW, SE, S34, T18N, R2E; NW, SW, S03, T17N, R2E; NW, S10, T17N, R2E; NE, SE, S09, T17N, R2E; NE, SE, S16, T17N, R2E; SW, SE, S21, T17N, R2E; NE, SE, S31, T19N, R4E; NE, NW, SE, S06, T18N, R4E; SW, S05, T18N, R4E; NE, NW, SE, S08, T18N, R4E; SW, S09, T18N, R4E; NE, NW, S16, T18N, R4E; NE, NW, S15, T18N, R4E; NE, NW, SE, S14, T18N, R4E; NE, S23, T18N, R4E; NW, SW, S24, T18N, R4E; SW, S25, T18N, R4E; NE, NW, SE, S36, T18N, R4E; SW, S31, T18N, R5E; NW, SW, S06, T17N, R5E; NW, SW, S07, T17N, R5E; NW, S18, T17N, R5E; NE, SE, S13, T17N, R4E; NE, NW, SW, S24, T17N, R4E; SE, S23, T17N, R4E; NE, SE, S26, T17N, R4E; NE, SE, S35, T17N, R4E; NW, SW, S36, T17N, R4E; NE, NW, SW, S02, T16N, R4E; NE, NW, S11, T16N, R4E, W.M.

Tax Parcel Numbers: All unparcelized railroad ROW within the herein described property, 032027-308-8, 041713-400-8, 041723-400-9, 041724-100-8, 041736-200-2, 041816-207-0, 041825-203-6, 041931-206-4, 041931-302-2, 051707-300-9, 580500-084-2, 775000-043-1 and Portion of 041735-400-4

County: Pierce

This Master Utilities Easement Agreement (“**Master Easement Agreement**”) is entered into to be effective as of the ____ day of _____, 2023 (“**Effective Date**”) by and between the City of Tacoma, a political subdivision of the State of Washington, operating as a first class city (“**City**”), and Rainier Rail, LLC, a Washington limited liability company (together with its affiliates, “**Owner**”). The City and Owner may be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS:

A. The City has installed and constructed and maintains, repairs and operates various electric lines, communication lines, sewer and water lines, and related facilities, (individually “**Utility Facility**” and collectively “**Utility Facilities**”) over, under and across certain portions of the Owner’s real property as described in the herein attached **Exhibit “A”** (“**Rail Corridor or Property**”). The Utility Facilities were installed subject to previously provided written or unwritten authorizations, approvals, easements, licenses, permits or other written or unwritten authorizations governing such use of the Rail Corridor or Property (“**Previous Authorizations**”). that have been identified by the City as of the Effective Date, and are depicted on **Exhibit “B”**. Previous Authorizations that have not been identified by the City as of the Effective Date are hereinafter referred to as “**Unidentified Authorizations**” until such time as the Easement Area is identified and documented as provided at Section 1.2 herein.

B. Owner and City desire to enter into this Master Easement Agreement contemporaneous with, and as a condition of conveyance of the Rail Corridor or Property pursuant to the governing purchase and sale agreement, to amend and restate in their entirety each and every Previous Authorization, with easement rights extending 5 feet from all horizontal sides of the Utility Facilities (with no vertical limitations) as now located and to provide complete easement terms to cover Previous Authorizations, and to provide procedures for establishing complete easement terms for all future Utility Facilities directly owned and operated by City, over, under or across the Property (“**Future Easements**”).

C. The Previous Authorizations and Future Easements are collectively referred to herein as “**Easements**” and are sometimes referred to individually herein as an “**Easement**”. Each Easement is or shall be for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and removing Utility Facilities over the applicable Easement Area. The applicable purpose is referred to herein as the “**Easement Purpose**” for the applicable Easement.

NOW, THEREFORE, for and in consideration of the premises, mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner agree as follows:

ARTICLE 1

Establishment of Easements; Fees

1.1 Previous Authorizations.

1.1.1 The prior terms and conditions governing all Previous Authorizations are hereby superseded in their entirety, so that all rights and obligations of City and Owner with respect to each such Easement Area shall be determined and controlled, as of the Effective Date, by the terms of this Master Easement Agreement. Plans and Specifications for the Utility Facilities for Previous Authorizations are hereby deemed approved as set forth in Section 3.2.

1.1.2 No additional fee or other compensation is owed to Owner for the granting and/or continuation of such Previous Authorizations.

1.2 Unidentified Authorizations.

1.2.1 All rights and obligations of City and Owner with respect to each Easement Area covered by any Unidentified Authorization shall be determined and controlled by the terms of this Master Easement Agreement upon execution by City and Owner of a confirmation of easement with respect thereto, in the form of **Exhibit "C"** attached hereto and made a part hereof ("**Confirmation of Easement**"). A Confirmation of Easement will be executed by City and Owner for each Unidentified Authorization that is identified after the Effective Date and may be recorded on title at the cost and expense of the City.

1.2.2 No additional fee or other compensation is owed to Owner for the granting or continuation of such Easement.

1.3 Future Easement.

1.3.1 When in the future City desires to install or construct new Utility Facilities to be covered by Future Easement, City shall submit to Owner for its review and approval detailed information concerning the location of each proposed Future Easement, its Easement Purpose, the components of the Utility Facilities constituting such proposed Future Easement and the Plans and Specifications for the Utility Facilities constituting such proposed Future Easement. Upon Owner's approval, which approval shall not be unreasonably withheld or delayed, of the location of a proposed Future Easement, its Easement Purpose, and the components of the applicable Utility Facilities constituting such proposed Future Easement and the Plans and Specifications for the Utility Facilities constituting such proposed Future Easement as set forth in Section 3.4, the Parties shall execute a Confirmation of Easement with respect thereto, in substantially the form as attached hereto as **Exhibit "C"** and made a part hereof, whereupon all rights and obligations of City and Owner with respect to such Future Easement shall be determined and controlled thereafter by the terms of this Master Easement Agreement.

1.3.2 For each Future Easement, City shall pay to Owner, upon its execution of the applicable Confirmation of Easement, a one-time payment fee (“**Fee**”). The Fee for each Future Easement that will be located over, under, along or across Owner’s Rail Corridor or Property shall be \$1,500.00 as an administrative fee for engineering review and contract preparation, plus a one-time charge equal to the schedule of rates as provided in this Master Easement Agreement’s Exhibit “D”, attached hereto and made a part hereof, for a strip of land over, under, along or across Owner’s Rail Corridor or Property, extending 5 feet from all horizontal sides of the Utility Facilities (with no vertical limitations) or alternative distances when mutually acceptable for the Parties. If a Future Easement is a crossing that originates from a longitudinal, each crossing will have one-time charges separate from the longitudinal as provided in Exhibit “D”. A longitudinal will be defined as a facility that occupies the Owner’s Rail Corridor or Property and is parallel to the tracks.

ARTICLE 2

General Easement Terms

2.1 Easement Grant. For each Easement established under Article 1, Owner hereby grants (or grants upon the full execution of the Confirmation of Easement) to City a non-exclusive easement, subject to all rights, interests and estates of third-parties in and near the Easement Area, including, without limitation, any leases, licenses, easements, liens, ownership interests or encumbrances in existence as of the date of this grant, and upon the terms and conditions set forth in this Master Easement Agreement, to enter upon the Easement Area for the applicable Easement Purpose.

2.2 Certain Reserved Rights. Subject to the provisions of Article 6, Owner excepts and reserves from the grant of each Easement, the right, to be exercised by Owner, its contractors and/or any other party who has acquired an ownership right in Owner’s Rail Corridor or Property from Owner, or who has obtained written permission or authority from Owner to exercise such right (the Owner, its contractors and/or any other party who has acquired an ownership right in Owner’s Rail Corridor or Property from Owner, or who has obtained written permission or authority from Owner to exercise such right, being collectively referred to as the “Owner Parties”):

(a) to construct, maintain, renew, use, operate, change, modify, relocate and/or remove any or all existing pipe, power, communication lines and appurtenances and other facilities or structures of Owner Parties upon, under or across any Easement Area; provided, however, Owner Parties shall give prior notice to City when any such construction, maintenance, renewal, use, operation, change, modification, relocation and/or removal by Owner is likely to affect City’s use of the Utility Facilities as granted hereunder;

(b) to construct, maintain, renew, use, operate, change, modify, relocate and/or remove its current and any future tracks and rail facilities on or adjacent to any Easement Area and to conduct its other activities; provided, however, Owner Parties shall give prior notice to City when any such construction, maintenance, renewal, use, operation, change, modification, relocation and/or removal by Owner Parties is likely to affect City’s use of the Utility Facilities as granted hereunder; and

(c) to use any Easement Area in any manner as Owner in its sole discretion deems appropriate.

2.3 Term. The grant of each Easement under this Master Easement Agreement shall be perpetual, except that any such Easement shall terminate at the time when all Utility Facilities for such Easement have been removed from the applicable Easement Area.

2.4 Easement Purpose. City shall use each Easement Area solely for the applicable Easement Purpose in accordance with this Master Easement Agreement and the applicable Plans and Specifications.

2.5 No Warranty of Any Conditions of Easement Area. City acknowledges that Owner has made no representation whatsoever to City concerning the state or condition of any Easement Area, or any personal property located thereon, or the nature or extent of Owner's ownership interest in any Easement Area. City has not relied on any statement or declaration of Owner, oral or in writing, as an inducement to entering into this Master Easement Agreement, other than as set forth herein. Owner HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY EASEMENT AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. Owner SHALL NOT BE RESPONSIBLE TO CITY OR ANY OF CITY'S CONTRACTORS (AS HEREINAFTER DEFINED) FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY EASEMENT AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. CITY ACCEPTS ALL RIGHTS GRANTED UNDER THIS MASTER EASEMENT AGREEMENT IN ALL EASEMENT AREA "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON OWNER'S RIGHTS, INTERESTS AND TITLE TO ALL EASEMENT AREA. OWNER DOES NOT WARRANT ITS TITLE TO ANY EASEMENT AREA NOR UNDERTAKE TO DEFEND CITY IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. City has inspected or will inspect each applicable Easement Area, and enters upon Owner's Rail Corridor and Property with knowledge of its physical condition and the danger inherent in Owner's rail operations on or near any Easement Area. City acknowledges that this Master Easement Agreement does not contain any implied warranties that City or City's Contractors can successfully construct or operate the Utility Facilities. In case of eviction of City or City's Contractors by anyone owning or claiming title to, or any interest in the Easement Area, or the abandonment by Owner of the affected rail corridor, Owner shall not be liable to City or City's Contractors for any costs, losses or damages of any other party.

ARTICLE 3

Plans and Specifications

3.1 General. All Utility Facilities shall be installed, constructed, reconstructed (or renovated, if required in order to eliminate a safety hazard or interference, to meet the standard set forth in this Section), located and configured in strict accordance with the plans and specifications approved in writing by Owner ("**Plans and Specifications**").

3.2 Plans and Specifications for Previous Authorizations. Owner hereby confirms its approval of the Plans and Specifications for the Utility Facilities, as they exist on the Effective Date, pertaining to Previous Authorizations as applicable, prior to the Effective Date.

3.3 Plans and Specifications for Unidentified Authorization. In the case of Unidentified Authorization, as such Unidentified Authorization are identified in the ordinary course of City business, City promptly shall submit to Owner, for its approval, Plans and Specifications for all Utility Facilities as they currently exist pertaining to such Unidentified Authorizations, or if such Plans and Specifications cannot be located, a narrative description of the Utility Facilities together with a drawing depicting the location of the Utility Facilities based upon the best available information (collectively the “**Best Available Information**”). Owner shall approve such Plans and Specifications, or in the alternative Best Available Information, except where the applicable Utility Facilities create, or threaten to create, a safety hazard or interference with the activities of, or under the authority of, Owner on the rail corridor, in which case such approval shall not be given until City has taken all measures to Owner's satisfaction to eliminate such hazard or interference, including, as applicable, the rebuilding, repair and/or relocation of the Utility Facilities. Following any disapproval, City shall have the right to modify either the location or the other aspects of the Utility Facilities and to resubmit such modified information to Owner for its further review and approval. Where Owner disapproves the location of any Utility Facility because it creates or threatens to create a safety hazard or interference, Owner shall use commercially reasonable efforts to designate an alternative location for such Utility Facilities.

City shall have no rights to enter upon Owner's Rail Corridor or Property to install, construct or reconstruct any Utility Facility whose location and other aspects of the Plans and Specifications or Best Available Information have not been approved by Owner as set forth in this Section. As part of the review of an Unidentified Authorization Utility Facility and to provide notice to Owner, the City's contractor(s) may be required to enter into a right-of-entry (ROE) Agreement acknowledging the scope of work for the rebuilding, repair and/or relocation of the Utility Facility, to ensure proper insurance has been provided by City's contractors, and Owner agrees to provide notification instructions to City's contractor(s) for Owner's operations department. Any such ROE will have administration fees as provided in Exhibit “D” and consent to such ROE will not be unreasonable withheld. City's contractor will not be required to enter into the ROE if they will only be visually surveying or inspecting an Unidentified Authorization Utility Facility. Notwithstanding anything in this Section, City may perform maintenance or emergency repair on a previously unidentified Utility Facility in accordance with Article 4 before Owner approval of the Plans and Specifications or Best Available Information if City determines such maintenance or repair must be performed prior to the time Owner's approval can be obtained. “Emergency” shall mean a condition or occurrence which requires immediate action to eliminate the risk of harm to persons or property or interruption of utility service.

In each case where the location or other aspects of the Plans and Specifications or Best Available Information for an Unidentified Authorization are not approved by Owner because it creates or threatens to create a safety hazard or interference, City shall have one hundred and eighty (180) days either to remove all Utility Facilities for that Easement from the Easement Area, or to modify the Utility Facilities so that they are approved by Owner.

3.4 Plans and Specifications for Future Easement. In concurrence with the review of a Confirmation of Easement, as part of the review for a Future Easement, and to provide notice to Owner, the City's contractor(s) will be required to enter into a right-of-entry (ROE) Agreement acknowledging the scope of work for the rebuilding, repair, upgrade, and relocation of the Utility Facility, and to ensure proper insurance has been provided by City's contractors. Owner agrees to provide notification instructions to the City's contractor(s) for Owner's operations department. Any such ROE will have administration fees as provided in Exhibit "D" and consent to such ROE will not be unreasonably withheld. When in the future City desires to install or construct new Utility Facilities to become a Future Easement, City shall submit to Owner for its review and approval detailed information concerning the location of each proposed Future Easement, the Easement Purpose, and Plans and Specification for the proposed Utility Facilities. As soon as reasonably practicable after Owner's receipt of the applicable Plans and Specifications and other information required by Owner about the proposed location of the Utility Facilities, but in no event later than ninety (90) days after such receipt, Owner will notify City in writing whether Owner has approved, or disapproved the location, the Easement Purpose, or the Plans and Specifications, and shall include one or more reasons for any disapproval. Following any disapproval, City shall have the right to modify either the location, the Easement Purpose, or the Plans and Specifications of the proposed Utility Facilities and to resubmit such modified information to Owner for its further review and approval. Where Owner disapproves the location of any proposed Utility Facility, Owner shall use commercially reasonable efforts to designate an alternative location for such Utility Facilities.

ARTICLE 4

Construction and Maintenance of Utility Facilities

4.1 Utility Facilities Construction and Maintenance. City, and City's Contractors, at City's sole cost, shall install, construct, reconstruct, maintain, repair, operate, relocate and remove the Utility Facilities in a good and workmanlike manner and of such material that no component of the Utility Facilities at any time will be a source of danger to, or interference with, any activity, rail operation or property of Owner, or anyone or anything present on the Rail Corridor or Property. Owner may direct one of its field engineers to observe or inspect the installation, construction, reconstruction, maintenance, operation, repair or removal of the Utility Facilities, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Utility Facilities comply with the applicable Plans and Specifications. If City, or any of City's Contractors, is ordered at any time to halt any activity on the applicable Easement Area, then the City, or any of City's Contractors conducting that activity immediately shall cease such activity and leave the applicable Easement Area, if the order was issued by Owner's personnel to promote safety, such noninterference with other activities or property, or because the applicable Utility Facilities were not in compliance with the applicable Plans and Specifications associated with the subject easement. Notwithstanding the foregoing right of Owner, Owner has no duty or obligation to observe or inspect, or to halt work on, the applicable Utility Facilities, it being solely City's responsibility to ensure that the Utility Facilities are installed, constructed, reconstructed, maintained, operated, repaired, relocated, and removed in strict accordance with Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Owner to exercise any right set forth in this Section shall alter the liability allocation set forth in this Master Easement Agreement. City shall use its best efforts to cause record drawings of all Utility Facilities to be electronically accessible to Owner.

4.2 No Interference. During the installation, construction, reconstruction and relocation of, and any subsequent maintenance or repairs performed on, operation of, or removal of, all or any portion of the Utility Facilities, City, and City's Contractors, shall perform such work in a manner to preclude injury to persons or damage to the property of Owner, or any other party on or with property on Owner's Rail Corridor or Property, and shall ensure that there is no interference with the railroad operations or other activities of Owner, or anyone present on Owner's Rail Corridor or Property with the authority or permission of Owner, unless City has obtained prior written consent from Owner. City shall not disturb any improvements of Owner or Owner's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements, without prior written consent of Owner. The installation, construction, reconstruction, relocation or modification of the Utility Facilities within a particular Easement Area shall be completed by City and City's Contractors within a reasonable period of time after the Owner approves the Plans and Specifications for such Utility Facilities as evidenced by the execution of a Confirmation of Easement. Upon completion of installation, construction, reconstruction, relocation, subsequent maintenance or repair thereon, or removal of all or any portion of any Utility Facilities from the applicable Easement Area, City and City's Contractors, at City's sole cost, shall restore the Easement Area in a reasonably neat and clean manner.

4.3 No Alterations. Except as may be shown in the Plans and Specifications or Best Available Information approved by Owner for an Easement, or as may be necessary to respond to an Emergency, City, and City's Contractors, may not make any alterations to the applicable Easement Area, or permanently affix anything to the applicable Easement Area, without Owner's prior written consent. If City desires to change the location of any Utility Facilities or expand the use of the Easement Area, City shall submit such change to Owner in writing for its approval under this Section 4.3. City shall have no right to commence any such change until after City has received Owner's approval of such change in writing.

4.4 Compliance with Laws and Safety Rules. Prior to entering any Easement Area, and at all times during the term of the applicable Easement, City shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Easement Area or entering the Easement Area on behalf of City (collectively, "**City's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders ("**Laws**"), and all of Owner's applicable safety rules and regulations. Any City Contractors on the applicable Easement Area shall be deemed to be servants and agents of City, with no relationship to Owner, with respect to such City's Contractors' activities on and near the applicable Easement Area.

4.5 Emergency or Safety Hazard. In the event that any condition on or resulting from the Easement Area presents an emergency or safety hazard, City or City's Contractors shall immediately commence and diligently pursue a remedy to such condition. City shall complete such remedy as soon as possible after City became aware or should have become aware of such condition.

4.6 Notice and Location of Entry. Prior to any entry onto any Easement Area for any purpose, City shall notify the Person designated by Owner. Such notice shall be given at least five (5) business days prior to any entry upon the applicable Easement Area (except in emergencies, when such notice must be given as far in advance of any entry as is practicable)

and shall specify both the location of entry and the nature of activities planned to be performed on the applicable Easement Area.

4.7 Flagging. City agrees to reimburse Owner (within thirty (30) days after receipt of bills therefore) for all costs and expenses incurred by Owner for the furnishing of Owner's Flagman in connection with City's use of the Easement Area or the installation, construction, reconstruction, relocation, repair and maintenance of the Utility Facilities. The cost of flagger services provided to the City, when deemed necessary by the Owner's representative, will be borne by the City. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph. Owner may require derails be placed and an operations "shutdown" in lieu of flagging with the same or comparable flagging costs.

4.8 Compliance with Environmental Laws.

4.8.1 City shall strictly comply with all federal, state and Environmental Laws related to the installation, construction, reconstruction, maintenance, repair, operation and removal of the Utility Facilities. City shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Easement Area. City shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Easement Area. City shall not use or store on any Easement Area "hazardous waste" or "hazardous substances", as may now or in the future be defined by any Environmental Laws.

4.8.2 City shall give Owner immediate notice of any release of hazardous substances on or from any applicable Easement Area, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of the applicable Easement Area. City shall use the best efforts to promptly respond to any release on or from any applicable Easement Area. City also shall give Owner immediate notice of all measures undertaken on behalf of City to investigate, remediate, respond to or otherwise cure such release or violation.

4.8.3 Except as may be otherwise provided at Section 4.8 (5) & (6) herein, in the event that Owner has notice from City or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Utility Facilities which occurred or may occur during the term of any Easement, Owner may require City, at City's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the applicable Easement Area or Owner's Rail Corridor or Property.

4.8.4 City shall promptly report to Owner in writing any conditions or activities upon any applicable Easement Area known to City which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that City's reporting to Owner shall not relieve City of any obligation whatsoever imposed on it by this Master Easement Agreement. City shall promptly respond to Owner's request for information regarding said conditions or activities.

4.8.5 In the event that the activities of the City upon a Easement Area results in the discovery of the presence of Hazardous Substances ("Discovered Matters") in, on, or upon a Easement Area excavated or otherwise opened or exposed by City within any Easement Area

(the “Excavated Areas”), the City shall immediately notify the Owner, as required pursuant to Section 4.8.2 herein, and take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an Environmental Authority orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or Owner, or City decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, City agrees to indemnify, defend, and hold the Owner harmless from and against the cost of all Remedial Actions which are required by the Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, as between City and Owner, subject to the provisions of Subsection 4.8.6 below, Owner shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Owner Rail Corridor (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

4.8.6 In the event City’s activity on the Easement Area within an Excavated Area results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by City are released beyond the Excavated Areas, or if the release is caused in whole or in part by the City, then the City shall indemnify, defend and hold the Owner harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of City’s share of the liability for the release. City’s liability for the release may be determined by City’s admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by City and the Environmental Authority.

4.8.7 Ownership of Utilities. Notwithstanding anything herein to the contrary, ownership of all Utility Facilities within the Easement Area shall remain with the City, and the Owner is not taking any interest in the Utility Facilities nor assuming any responsibility for past, present or future discharges from the Utility Facilities.

4.8.9 This Agreement uses the terms “**Remedy**”, “**Remediate**” and “**Remedial Action**” as they are defined under the Model Toxics Control Act (Chapter 70A.305 RCW) and its implementing regulations at Chapter 173-340 WAC. The term “**Environmental Law**” means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“**CERCLA**”), the Toxic Substances Control Act, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and any similar or comparable state or local law. The term “**Hazardous Substance**” means any hazardous, toxic, radioactive, or infectious substance, material or waste as defined, listed, or regulated under any Environmental Law, and includes, without limitation, petroleum oil and any of its fractions.

4.8.10 Each of the Party’s obligations under this Section 4.8 shall survive termination of Master Easement Agreement.

ARTICLE 5

Insurance and Waiver

5.1 Insurance. City's contractors employed to perform construction work within the Owner's Rail Corridor or Property, shall have, prior to commencing such work, delivered to and secured Owner's approval of the required insurance.

5.2 Railroad Protective Insurance. If City (including its contractors and agents) performs any work within Owner's Rail Corridor or Property related to maintenance or to installation of Utility Facilities when such work is (i) vertically within 23'-3 ½" above the top of the rail, or (ii) with heavy tools, material, equipment or machinery over the top of the rail or within 25'-0" of the centerline of the nearest track, then the City's contractor must procure and maintain the following insurance coverage for such work:

Railroad Protective Liability insurance naming only the ***Railroad*** as the Insured with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the ***Railroad*** prior to performing any work or services under this Master Easement Agreement

5.3 Personal Property Waiver. ALL PERSONAL PROPERTY OF CITY, INCLUDING, BUT NOT LIMITED TO, ALL FIXTURES, EQUIPMENT OR RELATED MATERIALS, AND FACILITIES, THAT ARE PRESENT UPON OR ADJACENT TO ANY EASEMENT AREA WILL BE AT THE RISK OF CITY, AND ANY OF CITY'S CONTRACTORS, ONLY, AND OWNER SHALL NOT BE LIABLE FOR ANY DAMAGES THERETO OR THEFT THEREOF, WHETHER OR NOT SUCH IS DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF OWNER; PROVIDED THAT, SUCH WAVIER SHALL NOT APPLY TO UTILITY FACILITIES THAT ARE BUILT AND MAINTAINED IN COMPLIANCE WITH PLANS AND SPECIFICATIONS OR BEST AVAILABLE INFORMATION APPROVED BY OWNER.

5.4 Self-Insurance. Notwithstanding anything to the contrary, the City may self-insure as is customary under the City's risk management program. The self-insured retentions are in keeping with the net worth and cash flows and are consistent with that of municipalities of similar operations and size. Adequate reserves are maintained for claims within the retentions.

ARTICLE 6

Material Interference/Relocation

6.1 Owner, in the performance of any work by or for Owner within twenty-five (25) feet of City's Utility Facilities within the Easement Area, shall make good faith efforts to avoid material interference with City's Utility Facilities and use and operation of the Utility Facilities as authorized hereunder.

6.2 Where it is practicable to do so, Owner shall provide to City at least one hundred twenty (120) days prior written notice of Owner work within the Easement Area that may materially interfere with City Utility Facilities or use or operation of its Utility Facilities. In circumstances where such notice is not practicable, Owner shall provide to City as much notice as it reasonably can, and in no case, except in an emergency situation, less than twenty (20) days prior written notice.

6.3 The Parties agree that in the event that the performance of work by Owner in the Easement Area will materially Interfere with City's Utility Facilities or use or operation of its Utility Facilities, the Parties will work cooperatively in good faith, to identify and develop a reasonable and practicable accommodation in order that the proposed project for which the work is being done can be accomplished. Due consideration shall be given to cost, the relative benefits and burdens of and upon the Parties, and any operational or scheduling impacts. The Parties further acknowledge that, in some instances, one hundred twenty (120) days prior written notice Utility Facilities will not need to be moved or removed from the applicable Easement Area, but can be protected in place.

6.4 Except as may be agreed to in writing by the Parties, Owner shall bear the actual cost and expense of any work and/or agreed upon accommodation necessary to ensure that, in the performance of any work by or for Owner within twenty-five (25) feet of City's Utility Facilities within the Easement Area, such work performed by or for Owner, does not materially interfere with City's Utility Facilities or use and operation of its Utility Facilities, or materially interferes in a manner that is agreed upon by the Parties pursuant to Section 6.3 herein. Such costs and expenses shall include, without limitation, the cost and expense to modify, remove, relocate, or protect in place City Utility Facilities.

ARTICLE 7

Default and Remedies

7.1 Owner Performance Rights. If at any time City, or City's Contractors, or any of City's Assignees fails to properly perform its obligations under this Master Easement Agreement, Owner, in its sole discretion may (i) seek specific performance of the unperformed obligations, or (ii) at the responsible Party's sole cost, may arrange for the performance of such work as Owner deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any Interference with the activities or property of Owner, or anyone or anything present on the Rail Corridor or Property with the authority or permission of Owner. City promptly shall reimburse Owner for all costs of work performed on City's behalf, upon receipt of an invoice for the same. Owner's failure to perform any obligations of City, or City's Contractors, shall not alter the liability allocation set forth in this Master Easement Agreement.

7.2 City Performance Rights. If at any time Owner, or Owner's Contractors, fails to properly perform its obligations under this Master Easement Agreement, City, in its sole discretion may, in addition to all other rights or remedies it may have under law or in equity or under this Master Utilities Easement Agreement, (i) seek specific performance of the unperformed obligations, or (ii) injunctive relief as City deems necessary for the safety of its Utility Facilities or activities, or to avoid or remove any Interference with the activities or Utility Facilities of City. City's failure to perform any obligations of Owner, or Owner's Contractors, shall not alter the liability allocation set forth in this Master Easement Agreement.

7.3 Wavier of Proof. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Master Easement Agreement without any requirement to prove or establish that such Party does not have an adequate remedy at law. The City and Owner hereby waive the requirement of any such proof of an adequate remedy at law and acknowledges that the City and Owner would not have an adequate remedy at law for material default hereunder. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of a breach of this Master Easement Agreement and to obtain a judgment or order specifically prohibiting a violation or breach of this Master Easement Agreement without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. City and Owner hereby waive the requirement of any such proof and acknowledges that City and Owner would not have an adequate remedy at law for commission material default hereunder.

7.4 Rights cumulative. The Party's rights under this Article 7 are cumulative, non-exclusive and in addition to any other rights or remedies each may have under this Master Easement Agreement, at law or in equity, including the right to seek specific performance.

7.5 Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative and non-exclusive, and the exercise or failure to exercise one or more of such rights or remedies by either Party, including the right of specific performance and seeking injunctive relief, shall not preclude the exercise by either Party, at the same time or different times, of any right or remedy for the same default or any other default by the other Party.

ARTICLE 8

Miscellaneous Provisions

8.1 Controlling Law. Any disputes concerning the application or interpretation of any of the provisions of this Master Easement Agreement shall be governed by the laws of the State of Washington.

8.2 Venue. Owner and City hereby consent that venue of any action brought under this Master Easement Agreement shall be in Pierce County, Washington, provided, however, that venue of such action is legally proper.

8.3 Definition of Costs. For the purpose of this Master Easement Agreement, "cost" or "costs" includes, but is not limited to, in-house labor, equipment and material costs including all assignable additives, and material and supply costs at their current value where they are used.

8.4 Liens. City shall promptly pay and discharge any and all liens arising out of any installation, construction, reconstruction, relocation, alterations or repairs done, suffered or permitted to be done by City on any Easement Area. Owner is hereby authorized to post any notices or take any other action upon or with respect to any Easement Area that is or may be permitted by law to prevent the attachment of any such liens to any Easement Area; provided, however, that failure of Owner to take any such action shall not relieve City of any obligation or liability under this Section 8.4 or any other Section of this Master Easement Agreement.

8.5 Interest on Amounts Owed. All invoices are due forty-five (45) days after the date of invoice, or sooner if required by law. In the event that a Party shall fail to pay any monies to another Party as and when due hereunder, then such Party shall pay interest on such unpaid sum from forty-five (45) days after the date due at an annual rate equal to twelve percent (12%) per annum, or (ii) the maximum rate permitted by law, whichever is less. Invoices shall be directed to the addresses identified at Section 8.13 herein.

8.6 Assignment. City may assign this Master Easement Agreement to another party with respect to one or more Easements, but no assignment shall be effective except after prior written notice to Owner and assignee's written commitment, which may include entering into a separate agreement, delivered to Owner, that assignees shall thereafter be responsible for all obligations under the Master Easement Agreement with respect to the Easement that is assigned. Such an assignment shall relieve the City of any further obligations under the Easement that is assigned, including any obligations not fulfilled by City's assignee; provided that, the assignment shall not in any respect relieve the City, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the assignment. City may not assign this easement or any of its rights or obligations under this easement to any entity that is not a political subdivision of the State of Washington; provided that, City may assign this easement to a non-governmental third party who can, to the reasonable satisfaction of Owner, establish it has the legal, financial and technical qualifications to maintain and operate the licensed facilities that are assigned.

8.7 Waiver. No waiver by either Party of any provision of this Master Easement Agreement shall in any way impair the right of such Party to enforce that provision for any subsequent breach, or such Party's right to enforce all other provisions of this Master Easement Agreement.

8.8 Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Master Easement Agreement, the prevailing Party or Parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party or Parties may be entitled.

8.9 Recordation. It is understood and agreed that neither this Master Easement Agreement may be recorded and shall be binding upon successors and assigns of Owner.

8.10 Amendment. This Master Easement Agreement may be amended only by a written contract signed by authorized representatives of Owner and City.

8.11 Severability. If any provision of this Master Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Master Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in

full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Master Easement Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

8.12 Joint and Several Liability. City acknowledges that, in any case in which City and City's Contractors are responsible under the terms of this Master Easement Agreement, such responsibility is joint and several as between City and any such City's Contractors; provided that, the City is not prohibited from allocating such liability as a matter of contract.

8.13 Notices. Any notice contemplated, required, or permitted to be given under this Master Easement Agreement shall be sufficient if it is in writing and is sent either by: (a) registered or certified mail, return receipt requested; or (b) a nationally recognized overnight mail delivery service, to the Party and at the address specified below, except as such Party and address may be changed by providing notice to the other Party no less than thirty (30) days' advance written notice of such change in address.

Rainier Rail, LLC
1104 Dell Ave
Walla Walla, Washington 99362-1053
Attn: Paul Didelius

City of Tacoma
Real Property Services Division
747 Market Street, Room 737
Tacoma, WA. 98402-3701

8.14 Dispute Resolution.

8.14.1 Dispute Avoidance. The Parties are fully committed to working with each other throughout the term of this Master Easement Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a question or controversy. If a question or controversy arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained herein or the rights or obligations of either Party under this Master Easement Agreement (a "Dispute"), the Parties each commit to resolving such Dispute in an amicable, professional and expeditious manner. The Parties further agree that in the event a Dispute arises, they will first attempt to resolve any such Disputes through discussions between representatives of each Party. If a dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

If, within thirty (30) days after the meeting, the Parties have not despite their best efforts negotiated a resolution or mutually extended the period of negotiation, either Party may, if the amount in Dispute is less than the amount set forth below ("Dispute Amount"), without consent of the other Party, or if the amount that is in dispute is equal to or greater than the amount set

forth below, upon mutual agreement of the Parties, seek binding arbitration as provided at section 8.14.2 herein. The Dispute Amount shall be \$100,000 as of the Effective Date and shall adjusted upward on each annual anniversary of the Effective Date by 2% of the total Dispute Amount for the prior year.

8.14.2 Arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 8.14 shall be governed by the rules and procedures set forth in this Section 8.14.2.

8.14.2.1 The Party calling for arbitration ("Initiating Party") shall give written notice the other Party setting forth: (a) a statement of the issue(s) to be arbitrated; (b) a statement of the claim showing that in Initiating Party is entitled to relief; and (c) a statement of the relief provided for in this Master Easement Agreement to which the Initiating Party claims to be entitled. Within twenty (20) days from the receipt of such notice, the other Party ("Receiving Party") may submit its written response and give notice in the same manner required above of additional issues to be arbitrated. The Initiating Party shall have ten (10) days from receipt of said response to respond to any issues submitted for arbitration by the Receiving Party.

8.14.2.2 If, within sixty (60) days of the date of the Initiating Party's written notice requesting arbitration, the Parties are able to agree upon a single arbitrator, then the dispute shall be submitted to and settled by that single arbitrator. In the event the Parties cannot agree upon such a single arbitrator, each Party shall designate a competent and disinterested person to act as that Party's designated arbitrator, with the two (2) persons designated selecting a third neutral arbitrator within thirty (30) days of their designation. Should the Receiving Party fail within 80 days after receipt of the notice of arbitration to name its arbitrator, the arbitrator of the Initiating Party shall select an arbitrator for the Receiving Party so failing, and if the arbitrator for the Initiating Party and the Receiving Party cannot agree on that selection, said arbitrator shall be appointed by the American Arbitration Association ("AAA") in compliance with the Rule of Appointment of Neutral Arbitrator upon written notice to all other Parties. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any Party, be appointed by the AAA rules pursuant to the Rule for Appointment of Neutral Arbitrator. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) who chose that arbitrator, or the AAA, as appropriate, shall appoint another to act in such arbitrator's place. Any arbitrator appointed by AAA under this Article 8.14.2.2 shall possess knowledge or experience of the particular matters at issue in arbitration.

8.14.2.3 Upon selection of the arbitrator(s), said arbitrator(s) shall determine the questions raised in said notice of demand for arbitration within 30 days, unless a different period of time is otherwise agreed upon by the Parties. Said arbitrator(s) shall then give all Parties reasonable notice of the time (which time shall be within 30 days of the arbitrator(s)' determination of the questions raised, unless a different period of time is otherwise agree upon by the Parties), and place (of which the arbitrator(s) shall be the judge in the event that the Parties are unable to mutually agree upon a location) of hearing evidence and argument; take such evidence as is admissible under the Washington State Rules of Civil Procedure Rules 26 through 37 and the Washington State Rules of Evidence Rules 103 through 1103 with witnesses required to be sworn; and hear arguments of counsel or others.

8.14.2.4 After considering all evidence, testimony and arguments, said single arbitrator or a majority of the board of arbitrators shall, within 30 days of completion of the hearing provided, promptly state such decision or award in writing. Said decision or award shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them, except as provided in Article 8.14.2.7. A judgment on the award entered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for the arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

8.14.2.5 Each Party to the arbitration shall pay the compensation, costs and expense of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by both Parties to the arbitration.

8.14.2.6 The books and papers of all Parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s). The arbitration shall be governed by the Washington State Rules of Civil Procedure Rules 26 through 37 and the Washington State Rules of Evidence Rules 103 through 1103. The arbitrator(s) shall have the authority to enter awards of equitable remedies consistent with the obligations of the Owner and the City under this Agreement, other than with regard to the allocation of costs and fees as provided for under Section 8.14.2.5 herein, except as provided in Article 8.14.2.7. The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement.

8.14.2.7 The arbitrator(s) shall not have the authority to enter any award, the satisfaction of which by the Party to be bound, would be impermissible under any law, regulation, or funding agreement to which the bound Party is subject or which would constitute punitive or exemplary damages against the other Party. The determination of any such impermissibility shall be made by a state or federal court of competent jurisdiction within the state of Washington and under the laws of the state of Washington. Any such determination shall be appealable.

8.15 Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of God, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage.

8.16 Subsequent Action. In the event that after this Master Easement Agreement becomes effective, (a) there is a change in the law which requires the City or the Owner to perform any act or cease performing any act which is inconsistent with this Master Easement Agreement; (b) there is a change in the law which broadens the authority of the City or the Owner with respect to any act permitted or authorized under this Master Easement Agreement; or (c) the City or the Owner believe that amendments to this Master Easement Agreement are necessary or appropriate, then the City and the Owner agree to enter into good faith negotiations to amend this Master Easement Agreement so as to enable the Parties to address, in a manner reasonably acceptable to all Parties, such change or other development which formed the basis for the negotiations. The

Parties recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with law, the scope and purpose of this Master Easement Agreement.

8.17 Entire Agreement. This Master Easement Agreement is the full and complete agreement of City and Owner with respect to all matters covered herein and all matters related to the use of Owner's Rail Corridor or Property by City and City's Contractors, and this Master Easement Agreement supersedes any and all other agreements of the Parties hereto with respect to all such matters, including, without limitation, all agreements evidencing the Previous Authorizations; provided that, it is not the intent of the Parties that this Master Easement Agreement shall replace or supersede or take precedence over any easements granted now or in the future to the City with respect to the Owner's rail corridor nor is it the intent of the Parties that this Master Easement Agreement shall replace or supersede any agreements in place now or in the future governing Owner activities within the public rights of way of the City of Tacoma.

(Remainder of this page left intentionally blank, signature page to follow)

IN WITNESS WHEREOF, authorized representatives of City and Owner hereby execute this Master Easement Agreement as of the Effective Date.

CITY OF TACOMA, A MUNICIPAL
CORPORATION

RAINIER RAIL, LLC, A WASHINGTON
LIMITED LIABILITY COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to Form:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT “A”

Rail Corridor and Property

That portion of the former Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Chehalis Western Railroad Company by Quit Claim Deed recorded under Auditor’s File No. 9012240111 and acquired from Weyerhaeuser Company by Quit Claim Deed recorded under Auditor’s File No. 9508180647, records of Pierce County, Washington.

Except any portion thereof lying within the currently incorporated limit of the City of Tacoma, more specifically described as:

Any portion thereof lying Northerly and Northwesterly of the Easterly right of way line of McKinley Avenue in the Northwest Quarter of the Southwest Quarter of Section 27, Township 20 North, Range 3 East, W.M., (approx. Mile Post 5.6 or Railroad Engineering Station 194+64), in Pierce County, Washington.

Also, except any portion thereof lying Southeasterly of the Northerly line of the South Half of the North Half of Section 11, Township 16 North, Range 4 East, W.M. (approx. Mile Post 32 or Railroad Engineering Station 1630+68), in Pierce County, Washington.

Also, except that portion conveyed to Pierce County by Quit Claim Deed recorded under Auditor’s File No. 201105060441, which supersedes and replaces Quit Claim Deed recorded under Auditor’s File No. 201103030242, records of Pierce County, Washington.

Also, except that portion conveyed to WRL, LLC by Quit Claim Deed recorded under Auditor’s File No. 201909090221, records of Pierce County, Washington.

EXHIBIT “B”

Depictions of Utility Facilities
(Previous Authorizations)

After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

Confirmation of Easement

Reference No.

Grantor: Rainer Rail, LLC

Grantee: City of Tacoma

Abbr. Legal Description:

Tax Parcel Numbers:

County: Pierce

This Confirmation of Easement ("**Confirmation of Easement**") is executed to evidence the creation or existence of a specific Easement under that certain Master Utilities Easement Agreement dated _____, 20____ ("**Master Easement Agreement**") between Owner, a _____ corporation ("**Owner**") and the City of Tacoma, a political subdivision of the State of Washington ("**City**"). All terms and provisions of the Master Easement Agreement are incorporated herein by reference. Capitalized terms used in this Confirmation of Easement have the same meaning as such terms in the Master Easement Agreement unless otherwise indicated. The Parties agree that the following described Easement shall exist and be governed by the terms and conditions of the Master Easement Agreement, as of the execution date set forth below.

1. The type of Easement is as follows (check one):

- ☐ Communication Easement
- ☐ Electric Easement
- ☐ Sewer or Water Easement
- ☐ Other _____

2. This Easement is (check one):

- ☐ An Unidentified Authorization as of the Effective Date of the Master Easement Agreement.
- ☐ A Future Easement approved after the Effective Date of the Master Easement Agreement.

3. The Easement Area is located across or along the rail corridor of Owner at or near the station of _____ County of _____, State of Washington, Line Segment _____, Mile Post _____ as shown on the attached Drawing No. _____, dated _____, attached hereto as **Exhibit "1"** and made a part hereof.

4. The approved Plans and Specifications for the Utility Facilities and the location thereof within the Easement Area are shown on **Exhibit "2"** attached hereto.

5. City shall pay Owner the following fee for the Easement upon execution of this Confirmation of Easement:

- ☐ No fee (existing Unidentified Authorization).
- ☐ \$1,500 engineering review and administrative fee plus a one-time charge of \$_____ (as provided in the attached Exhibit "D"). The one-time charge is the agreed fair market value, with no enhancement factor, of an easement to a strip of land over, under or across Owner's Rail Corridor or Property, the width of which is five feet on either side of the outer edge of the Utility Facilities.

7. Special provisions: _____

_____.

IN WITNESS WHEREOF, City and Owner have executed this Confirmation of Easement as of _____, 2____.

City:

CITY OF TACOMA, a political
subdivision in the State of Washington

Owner:

RAINIER RAIL, LLC, a Washington
limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit 1 – Drawing of Location of Easement Area

Exhibit 2 – Plans and Specifications

**CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISION
REAL ESTATE PURCHASE AND SALE AGREEMENT
AGREEMENT NO. 3323**

Reference No.: P2022-137

Seller: City of Tacoma, Department of Public Works, Tacoma Rail Mountain Division

Buyer: Rainier Rail, LLC

Abbreviated Legal Description: Portion of the SW, S27, T20N, R3E; NW, SW, SE, S34, T20N, R3E; NE, SE, S03, T19N, R3E; NE, SE, S10, T19N, R3E; NW, SW, S11, T19N, R3E; NW, SW, SE, S14, T19N, R3E; NE, S23, T19N, R3E; NW, SW, S24, T19N, R3E; NE, NW, SE, S25, T19N, R3E; NE, NW, SW, S36, T19N, R3E; SE, S35, T19N, R3E; NE, NW, SW, S2, T18N, R3E; NW, S11, T18N, R3E; NE, NW, S10, T18N, R3E; NE, NW, S9, T18N, R3E; ALL, S8, T18N, R3E; SE, S7, T18N, R3E; NE, NW, SW, S18, T18N, R3E; SE, S13, T18N, R2E; ALL, S24, T18N, R2E; NW, S25, T18N, R2E; NE, SW, SE, S26, T18N, R2E; NW, S35, T18N, R2E; NE, SW, SE, S34, T18N, R2E; NW, SW, S03, T17N, R2E; NW, S10, T17N, R2E; NE, SE, S09, T17N, R2E; NE, SE, S16, T17N, R2E; SW, SE, S21, T17N, R2E; NE, SE, S31, T19N, R4E; NE, NW, SE, S06, T18N, R4E; SW, S05, T18N, R4E; NE, NW, SE, S08, T18N, R4E; SW, S09, T18N, R4E; NE, NW, S16, T18N, R4E; NE, NW, S15, T18N, R4E; NE, NW, SE, S14, T18N, R4E; NE, S23, T18N, R4E; NW, SW, S24, T18N, R4E; SW, S25, T18N, R4E; NE, NW, SE, S36, T18N, R4E; SW, S31, T18N, R5E; NW, SW, S06, T17N, R5E; NW, SW, S07, T17N, R5E; NW, S18, T17N, R5E; NE, SE, S13, T17N, R4E; NE, NW, SW, S24, T17N, R4E; SE, S23, T17N, R4E; NE, SE, S26, T17N, R4E; NE, SE, S35, T17N, R4E; NW, SW, S36, T17N, R4E; NE, NW, SW, S02, T16N, R4E; NE, NW, S11, T16N, R4E, W.M.

County: Pierce

Tax Parcel No.: All unparcelized railroad ROW within the herein described property, 032027-308-8, 041713-400-8, 041723-400-9, 041724-100-8, 041736-200-2, 041816-207-0, 041825-203-6, 041931-206-4, 041931-302-2, 051707-300-9, 580500-084-2, 775000-043-1 and Portion of 041735-400-4

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of _____, 2023 between the **CITY OF TACOMA**, a first class municipal corporation ("Seller"), by and through its DEPARTMENT OF PUBLIC WORKS, TACOMA RAIL MOUNTAIN DIVISION and **Rainier Rail LLC, a Washington limited liability company**, ("Buyer"). The Seller and Buyer may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Seller is the owner of certain real property, as more particularly described in Section 1.1.1 below.

WHEREAS, Seller is the owner of certain personal property, as more particularly described in Section 1.1.3 below, on the real property.

WHEREAS, Seller, owns, operates, and maintains various public utilities on the real property, and in order for the Seller to continue to use, occupy and/or expand said public utilities on the real property the Seller has requested and Buyer will grant at closing a Master Utilities License Agreement to Seller encumbering the real property.

WHEREAS, Seller desires to sell, convey, assign transfer and deliver to Buyer and Buyer desires to purchase, assume and accept from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's right, title, obligations and interest in and to the personal property and real property, as more particularly described in Sections 1.1.1 and 1.1.2 below.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1.1 Property to be Sold. Seller agrees to sell, convey, assign transfer and deliver to Buyer and Buyer agrees to purchase, assume and accept from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's right, title, obligations and interest in and to the following assets and real property (the "Purchased Assets"),

1.1.1 Real Property. The real property ("Real Property") located in the county of Pierce in the state of Washington, more particularly described as follows:

{See attached legal description **Exhibit "A"**}

1.1.2 Property Interests. All of Seller's tenements, hereditaments, easements and rights appurtenant to the Real Property and all leases, licenses, government approvals and permits affecting the Real Property.

1.1.3 Personal Property. All rail, ties, spikes, tie plates, rail anchors, bridges, trestles, culverts, signaling equipment, and other supporting structures, ballast, track materials and supplies (excluding any vehicles, maintenance equipment on wheels, radios, computer equipment, or office furnishings or supplies) that, on the date of the Closing are present on the Real Property ("Personal Property"); provided, however, Seller does not purport to own any interest in signaling or grade crossing equipment or property to the extent that it may be owned by a third party or any other governmental authority or municipality. Seller conveys and transfers whatever rights and obligations it may have to possess or use such signaling or grade crossing equipment. All personal property owned by Seller or any third parties located on the Real Property and not expressly conveyed herein may be removed by Seller prior to Closing. Except as may be expressly provided otherwise herein, any and all personal property of Seller remaining on the Premises as of Closing and not reserved herein or used in Seller's daily operations shall pass to Buyer. Buyer acknowledges and affirms that Buyer's assumption of the rail freight transportation services in no way entitles Buyer to any right, title, interest or use in, to and of any Tacoma Rail trademark, service mark or other intellectual property.

1.2 Common Carrier Transportation Obligation. Upon and after Closing, Buyer agrees to operate as a rail carrier within the meaning of 49 U.S. §§ 10101 et. seq. and provide common carrier transportation for compensation on reasonable request. The obligations set forth in this subsection shall survive closing.

1.3 Contingent Interest Obligations. Upon and after Closing, Buyer agrees to accept the transfer or assignment of any and all contingent interest agreements (collectively Contingent Interest Agreements) issued by any governmental agency to the Seller and encumbering or otherwise applicable to the Property, subject to the contingent interests of the governmental agencies and all residual duties and obligations set forth therein, which contingent interest agreements include by way of example and not limitation, the following:

Date	Amount	Granting Agency	Grant Number	Description	TRMW line segment	Agreement on file Y/N	Obligation to repay: sale, conveyance, transfer to private	Term
4/14/2004	\$ 2,153,879.00	WA St. Dept. of Transp. Freight Rail (Section 1177) RR-00318	RR-00318	Frederickson McPip, Morton, Eatonville trestle		Y	Upon abandonment	5/31/2045
8/16/2005	\$ 1,240,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (Section 117) RR-00332 (WA-133)	WA 133/RR-00332 DTFR-05-G-00309	Pierce County track upgrades	MP 26.5 - 31.5M	Y	Upon sale or abandonment prior to 10/31/2016	10/31/2046
8/16/2005	\$ 2,480,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (Section 117) RR-00331 (WA-132)	WA 132/RR-00331 DTFR-05-G-00313	Pierce County track upgrades	MP 14.0 - 26.5M	Y	Upon sale or abandonment prior to 10/31/2016	10/31/2046
10/24/2002	\$ 320,000.00	WSDOT/FRA - CM-2027 (035)	CM-2027(035)	RR Improvements Fredrickson Wye to Eatonville Phase II MP 0-17	MP 0-17M	N	Unknown	Unknown
	\$ 754,600.00	FRA thru WSDOT (WA-298)		Track improvements 15C - 31.0C	MP 15C - 31.0C	Y	Upon sale or abandonment prior to 10 years	40 year
1/1/2008	\$ 1,485,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (WA-278)	WA 278	Trestle Improvements	MP 10 - 34.1M	Y	10/1/2019	10/1/2049
7/3/2003	\$ 846,000.00	FRA 117 - RR-0312		Frederickson to Eatonville		Y	Upon sale or abandonment	7/3/2043

Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability, penalties, losses and expenses (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any governmental entity arising from Seller's non-compliance with this paragraph 1.3 or Seller's non-compliance with any duty or obligation of a Contingent Interest Agreement assigned or transferred to Buyer. The obligations set forth in this subsection shall survive closing.

1.4 Interim Trail Use.

1.4.1. Notwithstanding the provisions of section 1.2 of this agreement, Buyer may seek abandonment or discontinuance of all or a portion of the rail line that is the subject of this Agreement, upon the condition that Buyer satisfies all contingent interests and other assumed obligations in accordance with Section 1.3 of this Agreement, including the duty to indemnify, defend and save Seller harmless, and Buyer complies with the provisions of Section 1.4.2.

1.4.2 In the event that Buyer intends to file an application to abandon or discontinue operations over all or any portion of the rail line that is the subject of this Agreement, Buyer agrees that a minimum of 120 days prior to filing such an application with the Surface Transportation Board, or successor agency, (the "Board"), Buyer shall exercise diligent good faith efforts to seek and identify a state (or state agency), political subdivision or qualified private organization, that is interested in acquiring or using right-of-way of the rail line for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d). In the event that a state, political subdivision, or qualified private organization files a comment, request or petition for interim trail use and rail banking and the Board determines that the Trails Act is applicable, Buyer agrees that it will timely notify the Surface Transportation Board of its intent to negotiate a trail use agreement and will exercise reasonable good faith efforts to negotiate such a trail use agreement within one year from the date that the Certificate of Interim Trail Use is issued by the Board, or any extensions that may be granted by the Board. Buyer further agrees that if an agreement is reached, Buyer will take such actions as are required to implement the agreement, including but not limited to providing timely notice and certification to the Board as required pursuant to 49 C.F.R. § 1152.29 (h).

1.4.3 The obligations set forth in this subsection 1.4 constitute partial consideration for the sale of the Purchased Assets and shall survive closing. In the event that Buyer assigns, transfers, or sells or otherwise conveys its interest in the rail line, in whole or in part, Buyer shall include the obligations of this Section 1.4 as an obligation of the assignee, transferee or buyer and the City shall be an intended third-party beneficiary of such obligations.

1.4.4 Buyer also agrees that in the event that the state of Washington, Pierce County or the City of Tacoma requests Buyer to consider a proposal for public trail use within the Real Property, which proposal is compatible with rail transportation operations and includes a plan for funding and protecting the Buyer from liability associated with trail use, Buyer agrees to engage in good faith discussions regarding such proposal with representatives of the governmental entity proposing compatible rail with trail use.

2. Deposit. Buyer shall, no less than thirty (30) days following execution of this Agreement by both Seller and Buyer, deliver to Seller a deposit in the amount of **ONE HUNDRED TWENTY THOUSAND and No/100 U.S. Dollars (\$120,000.00)** (the "Deposit"), the full purchase price of the Purchased Assets. The Deposit will be held by Seller pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Seller, and if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Failure to timely deliver said deposit shall render this Agreement voidable in the sole discretion of the seller.

3. Purchase Price. The total purchase price for the Premises (the "Purchase Price") will be **TWO MILLION TWO HUNDRED TEN THOUSAND and No/100 U.S. Dollars (\$2,210,000.00)**, which shall be deposited with Seller as provided in Section 2. The Purchase Price, the Deposit amount, will be paid to Seller in cash at Closing. Seller and Buyer agree that the entire Purchase Price is allocable to Real Property and that the value of the Personal Property is de minimus.

4. Title.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Real Property by duly executed and acknowledged quit claim deed (the "Deed") as substantially shown in **Exhibit "C"** attached hereto and by this reference incorporated herein. All right, title and interest of the Seller in and to the Personal Property shall pass to the Buyer at closing. Further, at Closing, Buyer shall grant to the Seller a Master Utilities Easement Agreement ("MUEA") to secure authorizations for the Seller's previously constructed public utilities on the Real Property, to create a streamlined process for obtaining new authorizations to use and occupy the Real Property with new public utilities, reduce the cost for obtaining new authorizations to use and occupy the Real Property with public utilities, clarify the requirements for notice when the Seller is working on the Real Property or when the Buyer is working proximate to Seller's public utilities. The MUEA will be substantially in the form of **Exhibit "D"** attached hereto and by this reference incorporated herein.

4.2 Preliminary Commitment and Title Policy. Buyer hereby waives receipt of a preliminary title commitment and will not seek to have issued an owner's policy of title insurance insuring Buyer's title to the Premises.

4.3 Condition of Title. Buyer hereby accepts the condition of title to be conveyed via the Deed and hereby waives the right to advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer.

5. Conditions to Closing.

5.1 Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma City Council prior to Closing. If said approvals are not obtained, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 5.1 will obligate Seller to obtain City Council approval beyond the ordinary course of City of Tacoma procedure.

5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or

employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with, or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement, except for claims caused by Seller's sole negligence.

5.3 Buyer Feasibility Study. Buyer hereby waives the right to conduct inspections or feasibility studies related to the Premises and will take title to the Premises on an as-is basis.

5.4 Non-Suitability. Buyer hereby waives the right to terminate this Agreement if, in Buyer's good faith judgment, the Premises is not suitable for Buyer's intended use. However, in the event Buyer does not complete the purchase, Buyer shall return the Premises as near as is practicable to its original condition.

6. Condition of the Purchased Assets.

6.1 "As Is". Per Section 5.3 Buyer has waived the right to conduct inspections and feasibility studies; nevertheless, Buyer acknowledges that Buyer is purchasing and shall acquire the Purchased Assets under this Agreement in the physical condition of the Purchased Assets existing at Closing, "AS-IS, "WHERE IS" AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR UNDER THE PURCHASED ASSETS, SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS. As of the date this Agreement is signed by the parties, excluding those representations and warranties expressly provided in this Agreement, Seller does not make and specifically disclaims any representations or warranties, express or implied, with respect to the Purchased Assets, including any warranty of merchantability or fitness for a particular purpose, and any warranties or representations with respect to, the structural condition of the Purchased Assets, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Purchased Assets, and the compliance or noncompliance of the Purchased Assets with applicable federal, state, county and local laws and regulations, including, without limitation, Environmental Laws and regulations and seismic/building codes, laws and regulations.. Seller shall surrender the Purchased Assets in as good condition, except for normal wear and tear, as exists on the date of this Agreement. Seller agrees that it will not damage nor commit waste on the Purchased Assets between the date of acceptance of this Agreement and Closing. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

6.2 Release. Except with respect to Seller's representations and warranties expressly provided in this Agreement, Buyer releases Seller and its directors, officers, employees, and agents from any and all statutory, common law, and other claims, obligations, causes of action, losses, damages, liabilities, costs and expenses (including without limitation attorney fees), unknown to Seller, that Buyer may have against Seller arising from, in whole or in part, or related in any way to the physical condition of the Purchased Assets (including

conditions not readily apparent and the presence of any material classified under state or federal law or regulations as hazardous).

6.3 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Premises, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Purchased Assets for Buyer's intended use.

7. Closing. This transaction will be closed outside of escrow. Closing will be held at the office of the Seller on or before ninety (90) days following approval by the Tacoma City Council as outlined in Section 5.1 above ("Closing Date"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Seller will immediately terminate the sale and forward the Deposit to Buyer, less any portion of the Deposit due Seller under Section 11 of this Agreement. When notified by Seller, Buyer will deposit with Seller without delay all instruments and monies required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to Seller, and legal title passes to Buyer, or in the event the Surface Transportation Board approvals are not obtained by said date, such alternative date as may be mutually agreed upon in writing by the parties hereto shall apply.

8. Closing Costs and Proration. Seller shall pay state of Washington real estate excise taxes, if any, applicable to the sale. Seller shall pay the cost of recording the Deed. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

9. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Purchased Assets. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Purchased Assets, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Purchased Assets to Buyer upon Closing. Seller shall remove any and all personal property not conveyed to Buyer pursuant to this Agreement from the Premises on or before Closing, unless any such items are specifically authorized to remain in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Purchased Assets, then that portion of the Deposit which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Purchased Assets, Buyer shall be entitled to immediate return of its Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: Tacoma Public Utilities – Real Property Services
ABS – 2nd Floor

3628 S. 35th Street
Tacoma, WA 98409
Facsimile No.: (253) 502-8539

Buyer: Rainier Rail, LLC
709 N. 10th Ave.
Walla Walla, Washington 99362-1053
Attn: Paul Didelius

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

13. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the Closing of this transaction.

15. Professional Advice. Seller and the Buyer hereby acknowledge that it may be advisable for either or both parties to obtain independent legal, tax or other professional advice in connection with this transaction, as the terms and conditions of this Agreement affect the parties' rights and obligations. The parties agree that they have satisfied themselves that they understand the terms and conditions of this sale and have accepted full responsibility to seek such professional advice as they deem necessary.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of Closing, will be deemed to be material, and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

18. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington.

19. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. Time of the Essence. Time is of the essence in the performance of this Agreement.

21. FIRPTA. Seller will prepare a certification or equivalent that Seller is not a “foreign person” within the meaning of the Foreign Investment in Real Property Tax Act (“FIRPTA”), and Seller agrees to sign this certification. If Seller is a “foreign person” as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, Seller will withhold and pay the required amount to the Internal Revenue Service.
22. Waiver. Neither Seller’s nor Buyer’s waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.
23. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive the Closing of the transaction contemplated under this Agreement.
24. Assignment. Buyer shall not assign this Agreement without Seller’s prior written consent, which consent may not be unreasonably withheld or delayed.
25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.
26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.
27. Survival. Any terms, conditions, or provisions of this Agreement which by their nature should survive shall survive the Closing of the sale.
28. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Premises may constitute “Commercial Real Estate” or “Residential Real Premises” as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled “Environmental.” The Environmental section of the seller disclosure statement (the “Disclosure Statement”) shall be provided to Buyer within five business days after acceptance of this Agreement. Buyer shall within three business days thereafter either deliver written notice to Seller to rescind the Agreement, else the Disclosure Statement will be deemed approved and accepted by Buyer. If Buyer rescinds this Agreement, the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.
29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Premises, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.
30. Legal Relationship. The parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from this Agreement.
31. Cooperation. Prior to and after closing the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

32. Kapowsin Property Hazardous Substances Indemnification Obligations

32.1 Notwithstanding provisions of Section 6 of this Agreement, and except as provided in Section 32.1.C below, the City agrees as follows:

- A. The City agrees to indemnify, defend and hold harmless Buyer, its members, employees, successors in interest (including lenders), and lessees, from and against any and all costs, claims, demands, causes of action, damages, liabilities, penalties, losses and expenses, and all related defense costs, caused by or resulting from:
 - a. The existence of Hazardous Substances on or beneath the Kapowsin Property at the time of conveyance, including Hazardous Substances in groundwater and soils.
 - b. The migration in groundwater or soil of Hazardous Substances that were present on the Kapowsin Property at the time of conveyance.
- B. This indemnification includes claims for or related to the clean-up, storage, treatment, handling disposal, transportation, presence of, threatened release of, or discharge of any Hazardous Substances present at, to, from or beneath the Kapowsin Property, at the time of conveyance, including Hazardous Substances in groundwater, stormwater, air, soils, and sediment, as well as any claims for resulting property or personal injury damages alleged by any party, including governmental entities, neighbors and any other party. This indemnification applies to all such claims, regardless of whether the claim is made before or after transfer of title to Buyer.
- C. This indemnification does not apply to any costs, claims, demands, causes of action, damages, liabilities, penalties, losses and expenses, or related defense costs, caused by or resulting from:
 - a. The voluntary excavation of soil, fill, or debris on the Kapowsin Property undertaken by Buyer, its successor's or assigns, including without limitation any subsequent disposal or treatment of excavated soil, fill, or debris, which may contain Hazardous Substances
 - b. Any release or threatened release of Hazardous Substances on or from the Kapowsin Property directly caused by Buyer, its successors or assigns, or a third party that occurs after the Kapowsin Property is transferred to Buyer.
- D. Indemnification Process
 - a. The Seller will respond in writing within thirty (30) days to an indemnification claim by the Buyer. Said response shall specify whether the Seller will defend the claim(s) made against Buyer that gives rise to the Seller's obligation to indemnify and hold harmless under this Agreement.
 - c. If the Seller rejects the Buyer's request for indemnification, the Parties may pursue any remedies available to them.

32.2 Buyer shall indemnify, defend, and hold harmless the Seller and its elected or appointed officials, agents and employees, from and against any and all costs,

claims, demands, causes of action, damages, liabilities, penalties, losses, and expenses, and all related defense costs caused by, resulting from, or related to Hazardous Substances on the Property under the circumstances in which the Seller's indemnification does not apply, which are identified in Section 32.1.C of this Agreement. If the Seller is damaged, incurs cleanup costs, or incurs liability resulting from any of these circumstances, Buyer is liable for the Seller's actual direct cleanup costs related to the Property.

- 32.3 The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.
- 32.4 The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.
- 32.5 The term "Kapowsin Property" shall mean and refer to that portion of the Real Property lying within Government Lot 11, in Section 6, Township 17 North, Range 5 East, W.M., in Pierce County, Washington, that is depicted in **Exhibit "B"** attached hereto and incorporated herein by this reference.
- 32.6 The provisions of this Section 32 shall survive closing. The rights, duties and obligations under this Section 32 may be assigned to the Buyer's successor's in interest, heirs and assigns upon prior written consent of the Seller and written acceptance by the successor in interest of the obligations of Buyer hereunder, in a form acceptable to the Seller's City Attorney.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

BUYER:

CITY OF TACOMA

RAINIER RAIL LLC

Elizabeth A. Pauli, Date
City Manager

Paul Didelius Date
Managing Member

Josh Diekmann, P.E. PTOE, Date
Interim Public Works Director/City Engineer

Approved as to form:

Christopher Bacha, Date
Chief Deputy City Attorney

City of Tacoma Review

Gary Allen, P.L.S. Date
Chief Surveyor

FINANCE:

Andrew Cherullo, Date
Director of Finance

EXHBIT A
Real Property Legal Description

That portion of the Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Chehalis Western Railroad Company by Quit Claim Deed recorded under Auditor's File No. 9012240111 and acquired from Weyerhaeuser Company by Quit Claim Deed recorded under Auditor's File No. 9508180647, records of Pierce County, Washington.

Except any portion thereof lying within the currently incorporated limit of the City of Tacoma, more specifically described as any portion thereof lying Northerly and Northwesterly of the Easterly right of way line of McKinley Avenue in the Northwest Quarter of the Southwest Quarter of Section 27, Township 20 North, Range 3 East, W.M., (approx. Mile Post 5.65 or Railroad Engineering Station 194+64), in Pierce County, Washington.

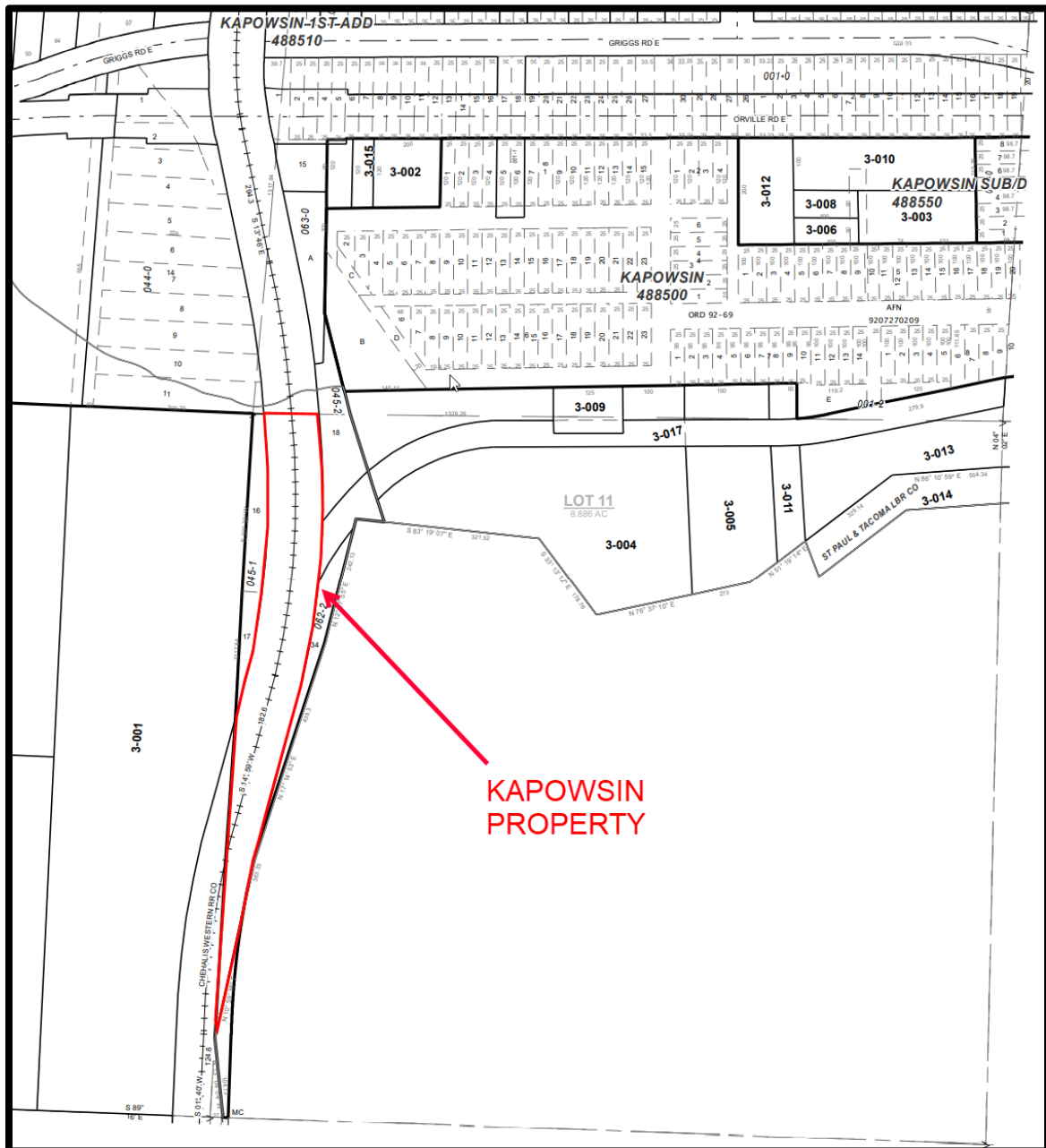
Also, except any portion thereof lying Southeasterly of the Northerly line of the South Half of the North Half of Section 11, Township 16 North, Range 4 East, W.M. (approx. Mile Post 32 or Railroad Engineering Station 1630+68), in Pierce County, Washington.

Also, except that portion conveyed to Pierce County by Quit Claim Deed recorded under Auditor's File No. 201105060441, which supersedes and replaces Quit Claim Deed recorded under Auditor's File No. 201103030242, records of Pierce County, Washington.

Also, except that portion conveyed to WRL, LLC by Quit Claim Deed recorded under Auditor's File No. 201909090221, records of Pierce County, Washington.

SUBJECT TO the rights in and to all existing roads, trails, and utilities, all outstanding assessments, easements, leases, licenses and permits, whether recorded or unrecorded, all matters which a prudent inspection of the premises would disclose, all matters of public record.

EXHIBIT B
Kapowsin Property Map



EXHBIT C
Quit Claim Deed

EXHBIT D
MUEA

After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

CITY OF TACOMA
CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISION
QUIT CLAIM DEED NO. 6788

Reference No.	P2022-137
Grantor:	City of Tacoma, Department of Public Works, Tacoma Rail-Mountain Division
Grantee:	Rainer Rail, LLC
Abbr. Legal Description:	Portion of the SW, S27, T20N, R3E; NW, SW, SE, S34, T20N, R3E; NE, SE, S03, T19N, R3E; NE, SE, S10, T19N, R3E; NW, SW, S11, T19N, R3E; NW, SW, SE, S14, T19N, R3E; NE, S23, T19N, R3E; NW, SW, S24, T19N, R3E; NE, NW, SE, S25, T19N, R3E; NE, NW, SW, S36, T19N, R3E; SE, S35, T19N, R3E; NE, NW, SW, S2, T18N, R3E; NW, S11, T18N, R3E; NE, NW, S10, T18N, R3E; NE, NW, S9, T18N, R3E; ALL, S8, T18N, R3E; SE, S7, T18N, R3E; NE, NW, SW, S18, T18N, R3E; SE, S13, T18N, R2E; ALL, S24, T18N, R2E; NW, S25, T18N, R2E; NE, SW, SE, S26, T18N, R2E; NW, S35, T18N, R2E; NE, SW, SE, S34, T18N, R2E; NW, SW, S03, T17N, R2E; NW, S10, T17N, R2E; NE, SE, S09, T17N, R2E; NE, SE, S16, T17N, R2E; SW, SE, S21, T17N, R2E; NE, SE, S31, T19N, R4E; NE, NW, SE, S06, T18N, R4E; SW, S05, T18N, R4E; NE, NW, SE, S08, T18N, R4E; SW, S09,

T18N, R4E; NE, NW, S16, T18N, R4E; NE, NW, S15,
T18N, R4E; NE, NW, SE, S14, T18N, R4E; NE, S23,
T18N, R4E; NW, SW, S24, T18N, R4E; SW, S25, T18N,
R4E; NE, NW, SE, S36, T18N, R4E; SW, S31, T18N,
R5E; NW, SW, S06, T17N, R5E; NW, SW, S07, T17N,
R5E; NW, S18, T17N, R5E; NE, SE, S13, T17N, R4E;
NE, NW, SW, S24, T17N, R4E; SE, S23, T17N, R4E; NE,
SE, S26, T17N, R4E; NE, SE, S35, T17N, R4E; NW, SW,
S36, T17N, R4E; NE, NW, SW, S02, T16N, R4E; NE,
NW, S11, T16N, R4E, W.M.

Tax Parcel Numbers: All unparcelized railroad ROW within the herein described property, 032027-308-8, 041713-400-8, 041723-400-9, 041724-100-8, 041736-200-2, 041816-207-0, 041825-203-6, 041931-206-4, 041931-302-2, 051707-300-9, 580500-084-2, 775000-043-1 and Portion of 041735-400-4

County: Pierce

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC WORKS, TACOMA RAIL MOUNTAIN DIVISION, a municipal corporation, for good and valuable consideration of TWO MILLION TWO HUNDRED TEN THOUSAND and No/100 U.S. Dollars (\$2,210,000.00), hereby conveys and quit claims to Rainer Rail, LLC, a Washington limited liability company, as Grantee, all its interest in the following described real property situated in Pierce County, State of Washington:

That portion of the Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Chehalis Western Railroad Company by Quit Claim Deed recorded under Auditor's File No. 9012240111 and acquired from Weyerhaeuser Company by Quit Claim Deed recorded under Auditor's File No. 9508180647, records of Pierce County, Washington.

Except any portion thereof lying within the currently incorporated limit of the City of Tacoma, more specifically described as any portion thereof lying Northerly and Northwesterly of the Easterly right of way line of McKinley Avenue in the Northwest Quarter of the Southwest Quarter of Section 27, Township 20 North, Range 3 East, W.M., (approx. Mile Post 5.65 or Railroad Engineering Station 194+64), in Pierce County, Washington.

Also, except any portion thereof lying Southeasterly of the Northerly line of the South Half of the North Half of Section 11, Township 16 North, Range 4 East, W.M. (approx. Mile Post 32 or Railroad Engineering Station 1630+68), in Pierce County, Washington.

Also, except that portion conveyed to Pierce County by Quit Claim Deed recorded under Auditor's File No. 201105060441, which supersedes and replaces Quit Claim

Deed recorded under Auditor's File No. 201103030242, records of Pierce County, Washington.

Also, except that portion conveyed to WRL, LLC by Quit Claim Deed recorded under Auditor's File No. 201909090221, records of Pierce County, Washington.

SUBJECT TO the rights in and to all existing roads, trails, and utilities, all outstanding assessments, easements, leases, licenses and permits, whether recorded or unrecorded, all matters which a prudent inspection of the premises would disclose, all matters of public record.

Authorized by City Council Resolution No. _____ adopted _____.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers this _____ day of _____, 2023.

CITY OF TACOMA

By: _____
Mayor

Attest:

City Clerk

APPROVED BY:

Interim Public Works Director/City Engineer

Tacoma Rail Superintendent

Risk Manager

Finance Director

LEGAL DESCRIPTION APPROVED:

Chief Surveyor

APPROVED AS TO FORM:

Deputy City Attorney

Accepted by Grantee

By: _____
Paul Didelius, Managing Member
Rainer Rail LLC

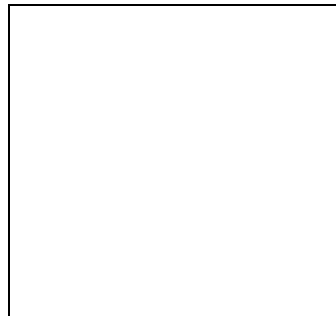
Date: _____

STATE OF WASHINGTON)
)
COUNTY OF PIERCE)

On this ____ day of _____, 2023, before me personally appeared Victoria R. Woodards, to me known to be the Mayor of the City of Tacoma, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the City of Tacoma, for the uses and purposes herein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Tacoma.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Place Notary Seal in Box



Notary Public in and for the State
of Washington
Residing in _____
My Commission Expires _____



Mountain Division Rail Line Divestment

City of Tacoma | Public Works and TPU-Rail

City Council Meeting
February 28, 2023

1

OVERVIEW

Assembling the TRMW railroad corridor

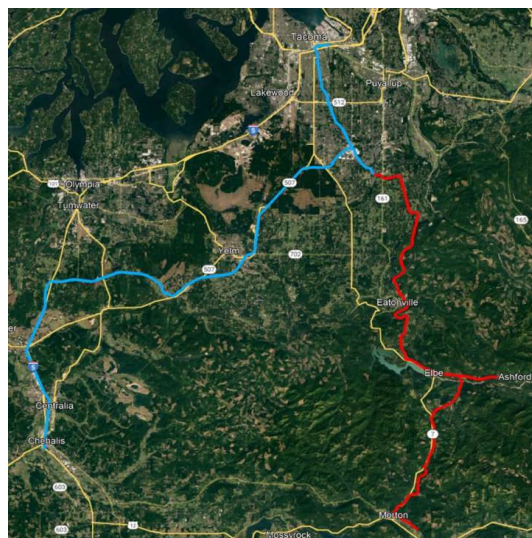
■ Donation Corridor

- 1990 – 54.5 miles accepted by City of Tacoma from Weyerhaeuser

■ Purchased Corridor

- 1995 – 77 miles acquired by City of Tacoma from Weyerhaeuser for \$3,159,457

Association of American Railroads (AAR) assigned railroad mark TRMW for the ~132-mile railroad corridor



2

2



OVERVIEW

Initial Objectives - 1995

Economic development through tourism

- Scenic railroad/bus service to Mount Rainier
 - Train to the Mountain
- Re-establish freight rail service in Frederickson

Administration oversight assigned to Public Works Department

- General Government FUND-4120

3

3



ISSUES

Revenues are insufficient for long term sustainability as operated by the City

- Fixed overhead costs of TPU-Rail, e.g. shared City services, prevailing wage projects, etc.

Revenues and expenses accrue to General Government FUND-4120

- Average annual expenses for Mountain Division ~\$1.6M
- Annual Mountain Division railroad revenues ~\$1.2M
- \$400k annual subsidy from the General Fund

Economic Development opportunities for freight Rail are infrequent

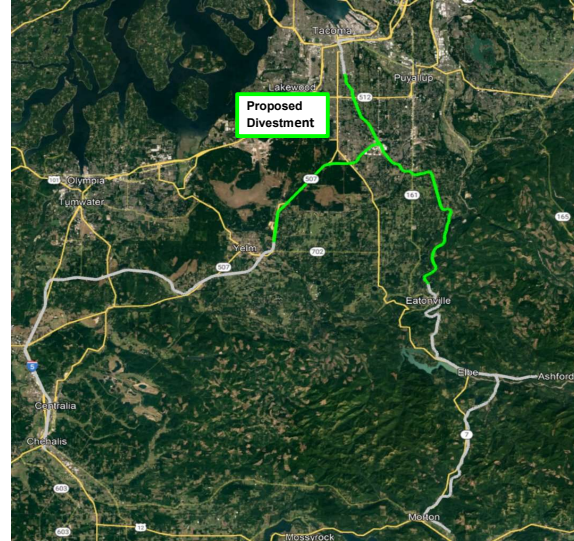
- Developable property adjacent to the rail line is sparse
- Ongoing subsidization from the General Fund would likely be necessary

4

4

PROPOSED DIVESTMENT

- Established railroad right-of-way and track features outside of the City limits including freight rail common carrier obligations for service
- Surface Transportation Board (STB)
 - Must approve transfer of common carrier service obligations to another railroad
 - Must approve City's request to terminate common carrier obligations associated with the line



5

PURCHASE AND SALE

- Purchase Price: \$2,210,000
 - Earnest Money: \$120,000 held in escrow
- Sale via Quit Claim Deed
As-Is/No Warranties
- City to receive Master Utilities Easement Agreement for existing and future public utilities in the railroad ROW
- City to indemnify buyer against claims related to known historic environmental conditions at Lake Kapowsin
- Buyer will file with Surface Transportation Board to accept Common Carrier obligations.

Fund 4120 GG Mountain Division Summary

2023 Beginning Balance	\$ 850,000
Easement	\$ 310,000
Proposed Divestment	\$ 2,210,000
Grand Total	\$ 3,370,000

6

6

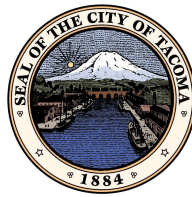
NEXT STEPS



- Surface Transportation Board (STB) filings – following Council approval
- Execute Purchase & Sale Agreement & Record Deed following STB decision
- Work with Federal Railroad Administration / WSDOT on transferring Grant Agreements associated with historic track/bridge improvement projects to the buyer
- TPU-Rail will continue to support general upkeep of the retained segments within the City limits.
- Engage the community to develop plans for alternate uses of the ROW within City limits

7

7



Mountain Division Rail Line Divestment

City of Tacoma | Public Works and TPU-Rail

City Council Meeting
February 28, 2023



8



RESOLUTION NO. 41130

1 A RESOLUTION relating to rail operations; authorizing the execution of a Quit
2 Claim Deed and Master Utilities Easement Agreement for the sale of the
3 remaining available Tacoma Rail Mountain Division ("TRMW") right-of-way
4 and operations situated outside of the City limits to Rainier Rail LLC, a
5 Class III Common Carrier railroad, and transference of associated common
6 carrier obligations consistent with Surface Transportation Board protocols,
7 all in accordance with Purchase and Sale Agreement No. 3323 for
8 consideration of \$2,210,000 to be deposited into the TRMW Fund.

9 WHEREAS, in 1990, the City accepted a donation from the Weyerhaeuser
10 Company ("Weyerhaeuser") of 54.5 miles of railroad track, and in 1995, the City
11 purchased another 77 miles of railroad track from Weyerhaeuser for \$3,159,457,
12 and the Association of American Railroads assigned the railroad mark Tacoma
13 Rail Mountain Division ("TRMW") to the assembled railroad corridor, and

14 WHEREAS at that time, the City had plans to build a "Train to the Mountain,"
15 program which would include both passenger rail and bus service to Mount Rainier,
16 and the acquisition of the railroad corridor was pursued for economic development
17 purposes, specific to tourism, and

18 WHEREAS while there was some investment to upgrade various segments of
19 the rail line, the overall cost to realize and maintain the initial vision was substantial,
20 and from 2005-2011 the City attempted to form partnerships with a series of
21 passenger excursion operations, however, they all failed as ridership was
22 unsustainable, and

23 WHEREAS, in order to generate additional revenue for planned passenger
24 operations and maintenance, the City also utilized the line to re-establish freight rail
25 service in the Frederickson area, and this line's current annual traffic averages
26



1 around 1,500 railcars, generating gross revenue of approximately \$1.2 million each
2 year, and

3 WHEREAS these revenues are insufficient for long-term sustainability as
4 operated by the City, and currently, the General Fund subsidizes the TRMW budget
5 with \$400,000 per year, and
6

7 WHEREAS ongoing subsidies from the General Fund would likely be
8 necessary in perpetuity to sustain continued ownership and operations by the City,
9 as economic development opportunities for freight rail on this rail line are infrequent
10 due to the scarcity of developable property adjacent to the rail line, and
11

12 WHEREAS the Public Works Department has administrative oversight for
13 TRMW, which has structural features of rail line that include 11 bridges, 34 track
14 switches, and 76 at-grade crossings (26 are signalized), and Tacoma Public Utilities-
15 Tacoma Rail operates and maintains the railroad line on behalf of the City, and
16

17 WHEREAS, in addition to the ongoing routine maintenance costs, there is a
18 projected \$40 million capital investment need over the next ten years to make
19 necessary improvements to tracks, bridges, and crossing surfaces between Tacoma
20 and Frederickson, and

21 WHEREAS, City staff has negotiated Purchase and Sale Agreement
22 No. 3323 ("Agreement") with Rainier Rail LLC ("Rainier"), a Class III Common
23 Carrier railroad, for the sale of the remaining available TRMW outside of the City
24 limits, and
25
26



1 WHEREAS the Purchase and Sale Agreement outlines a purchase price of
2 \$2,210,000, and the sale will be via Quit Claim Deed (As Is/No Warranties), and

3 WHEREAS Rainier will be assigned federal/state grant encumbrances
4 applicable to the subject railroad, the City will indemnify against claims related to
5 environmental conditions near Lake Kapowsin, and the City will receive a Master
6 Utilities Easement Agreement for existing and future City utilities in the subject
7 railroad right-of-way, and
8

9 WHEREAS the proposed sale was presented to the Infrastructure, Planning,
10 and Sustainability Committee on January 11, 2023, and
11

12 WHEREAS, TRMW currently leases a segment of railroad to Rainier to
13 provide service to Wilcox Farms, and both TRMW and Wilcox Farms have been
14 satisfied with Rainier's operational performance, and
15

16 WHEREAS, based on this information and additional customer research,
17 TRMW is confident Rainier will be able to provide an adequate level of service to the
18 additional railroad customers currently served by TRMW; Now, Therefore,

19 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

20 Section 1. That the proper officers of the City are hereby authorized to
21 execute a Quit Claim Deed and Master Utilities Easement Agreement for the sale
22 of the remaining available Tacoma Rail Mountain Division ("TRMW") right-of-way
23 and operations situated outside of the City limits to Rainier Rail LLC, a Class III
24 Common Carrier railroad, as more specifically set forth in the documents on file
25 in the office of the City Clerk.
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Section 2. That the proper officers of the City hereby authorize the transference of associated common carrier obligations consistent with Surface Transportation Board protocols, all in accordance with Purchase and Sale Agreement No. 3323, for consideration of \$2,210,000 to be deposited into the TRMW Fund.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

108 Wash.2d 679
Supreme Court of Washington,
En Banc.

The CITY OF TACOMA, a municipal
corporation and city of the first
class of the State of Washington,
Respondent and Cross-Appellant,

v.

The TAXPAYERS OF the CITY
OF TACOMA, Respondent,
The City of Seattle, a municipal corporation,
Respondent and Cross-Appellant,
Washington Natural Gas Company, a
Washington corporation, Appellant.

No. 51817-3.

|

Aug. 27, 1987.

|

Reconsideration Denied Nov. 6, 1987.

Synopsis

Action was brought challenging municipal energy conservation ordinance under which municipality which operated electric utility paid for installation of conservation devices in commercial and residential structures. The Superior Court, Pierce County, Donald H. Thompson, J., held that program was authorized by statute but constituted an unconstitutional gift of public funds, and appeals were taken. The Supreme Court, Utter, J., held that: (1) program was authorized by municipal utility statute, and (2) program did not constitute unconstitutional gift of public funds.

Reversed.

Goodloe, J., dissented and filed an opinion in which Andersen, Dolliver and Callow, JJ., concurred.

Attorneys and Law Firms

*681 **794 Robert J. Backstein, Tacoma City Atty.,
William J. Barker, Chief Asst., Tacoma, for City of Tacoma.

Johnson, Lane & Crawford, Joanne Henry, Tacoma, Cartano,
Botzer, Larson & Birkholz, J. Jeffrey Dudley, Thomas C.
Armitage, Seattle, for respondent.

Douglas N. Jewett, Seattle City Atty., William H. Patton,
Asst., Roberts & Shefelman, Joni H. Ostergaard, Seattle, for
City of Seattle.

Opinion

UTTER, Justice.

The City of Tacoma appeals a trial court's declaratory judgment invalidating Tacoma's electrical energy conservation ordinance. The ordinance authorizes Tacoma's municipally owned utility company, Tacoma City Light, to issue electric revenue bonds and use other funds to invest in energy conservation measures installed in privately owned, electrically heated, residential and commercial structures located within the utility's service area. Although the trial court found Tacoma's conservation program authorized by RCW 35.92.050, the court invalidated the program as a gift of public funds prohibited by Const. art. 8, § 7. Accordingly, the trial court declared the conservation ordinance void and of no force and effect. While we *682 agree that RCW 35.92.050 authorizes the conservation program, we conclude that the trial court erred in characterizing the program as an unconstitutional gift. Consequently, we reverse and reinstate the conservation ordinance.

I

On May 17, 1984, the City of Tacoma, as plaintiff, filed a declaratory judgment action to determine the constitutional and statutory validity of its conservation ordinance (Ordinance 23165). In addition to filing the action, Tacoma obtained orders appointing both a representative and an attorney for the taxpayers of the City of Tacoma (Tacoma Taxpayers). In June, the court entered orders permitting Public Utility District 2 of Grant County to intervene as a party plaintiff and the City of Seattle to intervene as a plaintiff-intervenor. In December, the court issued an order permitting Washington Natural Gas Company (WNG) to intervene as a defendant-intervenor, but the court restricted WNG's intervention to the issues raised by the pleadings of the existing parties.

The record compiled during a 3-week trial reveals that Tacoma and Seattle each own and operate an electrical utility, which serves residential and commercial customers both within and without city limits. At ****795** the present time, however, both cities are unable to meet present electricity demands, much less future load growth, and must purchase a portion of the electricity they require from the Bonneville Power Administration (BPA). Both cities have made legislative policy determinations to own or control the electric generating resources used to supply the needs of their electrical utility and its ratepayers, thereby reducing their reliance on purchased power.

For the last half century, hydroelectric projects, which utilize energy from falling waters, have been the prevailing method of producing electricity in the Pacific Northwest. Because of environmental concerns, Indian treaty rights, and the near exhaustion of available sites, significant hydroelectric resources are not available for development to ***683** meet future electrical load growth. Consequently, Tacoma and Seattle must look to other resources to meet their anticipated growth. Possible electrical energy resources include thermal generating plants, cogeneration, and conservation. As to conservation, its importance as a source of electricity came into full focus with Congressional enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Pub.L. No. 96-501, 94 Stat. 2697 (1980) (codified at 16 U.S.C. § 839). Both the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council) and the BPA consider conservation a resource of electrical energy equivalent to a generating plant. Finding of fact 22, Clerk's Papers, at 319-20. Various legislative enactments also consider conservation an energy resource. Finding of fact 23, Clerk's Papers, at 320.¹

¹ See, e.g., RCW 35.92.355 (encouraging conservation programs by Washington municipal corporations); RCW 39.35 (requiring employment of energy conservation practices and renewable energy systems in the design of major publicly owned or leased facilities); RCW 43.19.668-685 (legislative finding that "state government should undertake an aggressive program designed to reduce energy use in state buildings, facilities, equipment, and vehicles" and instituting energy audits and installation of energy conservation measures for that purpose); RCW 28A.51.010(4) (authorizing school districts to borrow money for energy efficiency improvements); RCW 80.28.025 (rate of return increment allowed to utilities for conservation).

Tacoma and Seattle have adopted conservation programs as a consequence of legislative determinations that these programs will result in their utilities' acquisition of electricity by conservation. Section 4 of Tacoma's ordinance characterizes its conservation program as the "purchase [of] electrical energy produced as a result of the implementation of the plan and system of energy conservation adopted [by the ordinance]." Exhibit 8. The Tacoma ordinance requires participating ratepayers to (1) submit to an energy audit; (2) have installed only city-approved conservation measures by a city-approved contractor; and (3) before payment is received, have the installed measures inspected by Tacoma. The measure of payment is the cost of the conservation measures or an amount equal to 29.2 cents ***684** times the estimated first year's kilowatt hour savings, whichever is less. Ratepayers participating in the program are under no obligation to repay the funds received. To finance the conservation program, the ordinance authorizes Tacoma to issue electric revenue bonds in the principal amount of \$5,000,000 and to use other City Light funds. The cities employ different methods for determining the cost effectiveness of conservation measures. Tacoma measures cost effectiveness against the present and projected costs of electricity purchased from BPA. Seattle's measuring standard is the present and projected costs of electricity purchased from a new regional thermal generating plant. Finding of fact 18, Clerk's Papers, at 319.

At the conclusion of a 3-week trial, the trial court found the purchase of conservation equivalent to the purchase of electricity or of a generating facility, and thus authorized by the municipal utility statute, RCW 35.92.050. Although the exact amount of energy saved was uncertain, the trial court found that studies indicated a range of 3,500 to 5,000 kilowatt hours per residence. However, the court concluded that the amount of savings beyond the first year could not be predicted and that Tacoma ****796** had failed to show that the consideration it received was measurable and lasting. Consequently, even though Tacoma lacked donative intent, the trial court held that the lack of adequate consideration made the payments to ratepayers an unconstitutional gift of public funds.

WNG appealed to Division Two of the Court of Appeals, challenging the trial court's holding that Tacoma had statutory authority to enact a conservation program pursuant to RCW 35.92.050. Tacoma and Seattle cross-appealed directly to this court, challenging the trial court's holding that the Tacoma ordinance constituted an unconstitutional gift. This court

assumed jurisdiction on July 18, 1986. Direct review is appropriate pursuant to RAP 4.2(a)(2) because the trial court held the Tacoma ordinance unconstitutional and pursuant to RAP 4.2(a)(4) because this case involves a fundamental issue of broad public import.

*685 II

At oral argument it became apparent that WNG did not have standing to bring its appeal. Only an “aggrieved party” may seek review of a trial court decision. RAP 3.1. At trial, the court rejected WNG's statutory authority challenge to Tacoma's conservation program, but did agree with WNG's contention that the program constituted an unconstitutional gift. On appeal, WNG asks this court to affirm the declaration of invalidity, but on statutory authority grounds, rather than as an unconstitutional gift. Because WNG merely objects to the reasoning by which the trial court invalidated the ordinance, WNG cannot be considered “aggrieved”, and therefore does not have standing to appeal. *In re Estate of Lyman*, 7 Wash.App. 945, 953–54, 503 P.2d 1127 (1972), *aff'd*, 82 Wash.2d 693, 512 P.2d 1093 (1973). However, because Tacoma and Seattle brought a cross appeal, we regard WNG as a respondent along with Tacoma Taxpayers.

Although considered a respondent, rather than an appellant, WNG may nevertheless assign error to trial court findings, *Burt v. Heikkala*, 44 Wash.2d 52, 54, 265 P.2d 280 (1954), and may offer additional reasons in support of the judgment, even if the trial court rejected such reasoning. *Peterson v. Hagan*, 56 Wash.2d 48, 351 P.2d 127 (1960). We have therefore considered WNG's contention, unsupported by co-respondent Tacoma Taxpayers, that the trial court erred in finding the conservation program within Tacoma's statutory authority. Thus, the parties raise two issues: (1) whether the municipal utility enabling statute, RCW 35.92.050, authorizes the purchase of cost effective conservation measures from ratepayers; and if the statutory authority exists (2) whether article 8, section 7 of the Washington Constitution prohibits such purchases as gifts of public funds. We hold that Tacoma's conservation program is both statutorily authorized and constitutionally permissible.

III

As “creatures of statute,” municipal corporations possess *686 only those powers conferred on them by the

constitution, statutes, and their charters. 2 E. McQuillin, *Municipal Corporations* § 10.09 (3d rev. ed. 1979). Tacoma's authority to enact its conservation program must derive from either an express grant or by necessary or fair implication from such a grant. *See Spokane v. J-R Distributions, Inc.*, 90 Wash.2d 722, 585 P.2d 784 (1978). The trial court held that RCW 35.92.050 authorizes municipally-owned utilities such as Tacoma City Light and Seattle City Light to purchase the electricity saved by cost-effective conservation measures.

WNG challenges the trial court's conclusion, asserting that municipalities may not undertake conservation programs unless such programs constitute loan financing as authorized under article 8, section 10 (amendment 70) of the Washington Constitution and its implementing statute, RCW 35.92.360. WNG further contends that this court has narrowly confined a municipal utility's statutory authority to the ordinary meaning of the terms used in RCW 35.92.050. *See Chemical Bank v. WPPSS*, 99 Wash.2d 772, 666 P.2d 329 (1983) (*Chemical Bank I*)². According to WNG, under our *Chemical Bank I* approach, RCW 35.92.050 does not authorize the purchase of electricity in the form of conservation. We reject both of WNG's contentions, finding them to be based upon a misunderstanding of the intent underlying article 8, section 10 (amendment 70) and a misreading of our *Chemical Bank I* decision.

- 2 We refused to alter our *Chemical Bank* holding in a subsequent decision arising out of the same set of facts. *Chemical Bank v. WPPSS*, 102 Wash.2d 874, 691 P.2d 524 (1984), *cert. denied*, 471 U.S. 1075, 105 S.Ct. 2154, 85 L.Ed.2d 510 (1985). To enhance clarity, we will refer to our earlier decision as *Chemical Bank I*.

A

The Washington Constitution prohibits gifts or loans of public money, except for the necessary support of the poor or infirm. Const. art. 8, § 7. In 1979, the People ratified a constitutional amendment creating a limited exception to the loan portion of the prohibition. Const. art. 8, § 10 (amend. 70). The amendment empowered the Legislature *687 to authorize municipal utilities to offer loan financing to owners of residential structures for the purpose of installing effective conservation materials and equipment.³ In enacting enabling legislation implementing article 8, section 10, the Legislature created a comprehensive scheme requiring all conservation measures to be cost effective, setting out the

specific conditions under which municipal utilities may offer loans to their residential customers. RCW 35.92.360. The People rejected a 1983 proposal to expand the loan program to include commercial and industrial utility customers. *See* Senate Joint Resolution 112.

- 3 Const. art. 8, § 10 (amend. 70) provides:
 “Notwithstanding the provisions of section 7 of this Article, until January 1, 1990 any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of energy may, as authorized by the legislature, use public moneys or credit derived from operating revenues from the sale of energy to assist the owners of residential structures in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of energy in such structures. Except as provided in section 7 of this Article, an appropriate charge back shall be made for such extension of public moneys or credit and the same shall be a lien against the residential structure benefited....”

Tacoma's conservation program does not purport to be a loan financing program authorized by Const. art. 8, § 10 and RCW 35.92.360. Rather, Tacoma asserts, and the trial court agreed, that RCW 35.92.050 authorizes Tacoma's conservation program as the reacquisition of electricity from one ratepayer to be offered for resale to another. WNG urges us to conclude that RCW 35.92.360 constitutes the exclusive manner by which a municipal utility may pursue conservation, and thus precludes RCW 35.92.050 from authorizing Tacoma's inconsistent program. To interpret article 8, section 10 and RCW 35.92.360, we must examine the legislative history and materials in the official voters pamphlet. *Port of Longview v. Taxpayers*, 85 Wash.2d 216, 232, 533 P.2d 128 (1974). These reveal that the People and the Legislature developed a limited exception to the constitution's loan prohibition, but did not intend to preclude conservation programs that might otherwise be *688 authorized.

In 1979, the Legislature submitted amendment 70 to the People in the belief that article 8, section 7 prohibited the use of municipal utility funds for conservation grants or loans. *See* Substitute Senate Joint Resolution 120. The Legislature reached this conclusion by relying on an Attorney General's opinion, which predicted that this court would hold article 8, section 7 prohibited municipal utility conservation loans or grants. AGLO 4 (1979). As a result, the People were also informed that the constitution prohibited municipal utilities from giving funds or extending credit to ratepayers for

conservation purposes. *Official Voters Pamphlet* 16 (1979). Soon after ratification, we explicitly recognized that the Legislature proposed amendment 70, and the People ratified it, for the limited purpose of carving out an exception to the lending of credit prohibition in anticipation that this court would hold public utility energy conservation **798 loans as violative of article 8, section 7. *State Health Care Facilities Auth. v. Ray*, 93 Wash.2d 108, 115, 605 P.2d 1260 (1980).

Contrary to WNG's assertion, legislative history does not demonstrate that the Legislature considered expenditure of utility funds for conservation without payback as violative of article 8, section 7. The Legislature acted in anticipation of what this court would do, not on the basis of its own independent determination as to the constitutionality of direct purchase conservation. Moreover, whether expenditure of municipal utility funds for conservation without payback requirements violates the constitution is a question for this court to decide, not for the Legislature or the Attorney General. As we have repeatedly recognized, the judiciary has the exclusive function of determining the constitution's meaning, and the Legislature cannot define what is and is not a proscribed gift or loan under the state constitution. *Scott Paper Co. v. Anacortes*, 90 Wash.2d 19, 33, 578 P.2d 1292 (1978).

Much has changed since the Legislature predicated its actions on a prediction of this court's attitude toward the *689 constitutionality of conservation expenditures. In 1979, use of utility funds for conservation was characterized as either grants or loans.⁴ A full appreciation of conservation's role as an electrical energy resource had not yet developed. Congress had not yet enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) Pub.L. No. 96–501, 94 Stat. 2697 (1980) (codified at 16 U.S.C. § 839).⁵ The full extent of conservation's potential as an energy resource would not come into full focus until 1983, with the Pacific Northwest Electric Power and Conservation Planning Council's (the Regional Council) publication of the first Northwest Conservation and Electric Power Plan.⁶

- 4 In 1979, the most visible conservation program models were loan programs of the type approved by the Washington Utilities and Transportation Board, and offered by investor-owned electrical utilities. *See* cause Nos. U–78–45, –46.

- 5 The Act defines “resource” to include an “actual or planned load reduction resulting from direct application

of a renewable energy resource by a consumer, or from a conservation measure.” 16 U.S.C. § 839a(19)(B).

- 6 In its first regional energy plan, the Regional Council concluded that conservation could free up enough electricity to supply up to 17 percent of the Northwest's electrical energy needs, which equals 4,790 megawatts, the equivalent of 4.7 nuclear power plants. 1 Northwest Power Planning Council, *Northwest Conservation and Electric Power Plan* 7–13, table 7–5 (1983). Most recently, the Regional Council “has identified close to 3,700 average megawatts of conservation ... at an average cost of 2.4 cents per kilowatt-hour—enough energy to replace more than eight coal plants, at about half the cost.” (Footnote omitted.) 1 Northwest Power Planning Council, *Northwest Conservation and Electric Power Plan* 6–1 (1986).

WNG argues further that the comprehensive scheme set down in RCW 35.92.360 makes it inconceivable for RCW 35.92.050 to authorize an inconsistent conservation program such as the purchase of conservation directly from ratepayers, unless the Legislature acted to delineate specific conditions. WNG fails to appreciate the inherent differences between loans of public funds and use of utility funds to purchase conservation. With loans, the Legislature must concern itself with conditions, such as the term of the loan and the method of repayment. *See* RCW 35.92.360(5). The very nature of a loan required the Legislature to list conditions *690 that would assure cost effectiveness and proper installation, RCW 35.92.360(1)–(4); once the constitution authorizes conservation loans, no outside factors would dictate the cost-effective requirement. In contrast, unless demonstrated as cost effective, Tacoma's direct purchase program would run afoul of the article 8, section 7 gift prohibition. Moreover, a municipal utility, like any other business, is subject to market forces, and thus has disincentives to investing its own money in measures that are improperly installed and not cost effective.

We also reject WNG's invocation of a basic rule of statutory construction, requiring a specific statute to control a statute of general application. *See, e.g., Sim v. State Parks & Recreation Comm'n*, 90 Wash.2d 378, 382, 583 P.2d 1193 (1978). According **799 to WNG, section .360 precludes section .050 from authorizing Tacoma's admittedly inconsistent program because section .360 sets forth a specific, comprehensive scheme governing conservation financial assistance to ratepayers, while section .050 is nothing more than a general grant of authority. However, this court gives preference to a more specific statute *only* if the two

statutes deal with the same subject matter and they have an apparent conflict. *In re Estate of Little*, 106 Wash.2d 269, 284, 721 P.2d 950 (1986). Moreover, we have often recognized our responsibility to harmonize statutes if at all possible, so that each may be given effect. *See, e.g., In re Mayner*, 107 Wash.2d 512, 522, 730 P.2d 1321 (1986).

Here, as the trial court concluded, no conflict exists between RCW 35.92.360 and .050. In enacting RCW 35.92.360, the Legislature had to conform to the limited grant of authority contained in amendment 70. As a result, section .360 could *only* create a comprehensive scheme authorizing municipal utilities to provide loans for conservation measures. Even with its mandate limited, the Legislature still took the opportunity to demonstrate that it contemplated other types of authorized conservation expenditures, explicitly requiring payback of municipal funds “*except* where otherwise authorized.” (Italics ours.) RCW 35.92.360. *691 As a result, amendment 70 and section .360 must be viewed as merely controlling conservation loan programs. Tacoma does not seek to offer financing or financial assistance, but rather claims authorization under RCW 35.92.050 to reacquire the electricity saved through conservation. *See* Clerk's Papers, at 321–22. While both deal with conservation, direct purchase of conservation-produced electricity differs significantly from loan financing programs. Thus, if “otherwise authorized” by section .050, Tacoma's direct purchase program does not conflict with amendment 70 and section .360.

We recognize that in construing the various provisions of RCW 35.92, we must insure that no portion is made superfluous. *See Sim v. State Parks & Recreation Comm'n, supra*. However, if we determine that section .050 authorizes Tacoma's action, section .360 does not become superfluous as WNG contends. The two statutes would provide municipal utilities with choices for pursuing conservation. As the trial court correctly reasoned, if municipal utilities choose to help ratepayers finance conservation measures, they need only adopt a loan program that conforms with amendment 70 and section .360. Oral Decision of the Court, Clerk's Papers, at 305–06. On the other hand, to pursue conservation as an electrical resource under RCW 35.92.050, a municipal utility would have to specifically intend to purchase electricity, which would require supporting studies, and generally have more to back up its program than a desire to make a loan or provide assistance. Oral Decision of the Court, Clerk's Papers, at 305–06.

In sum, the People ratified amendment 70, and the Legislature enacted RCW 35.92.360, for the limited purpose of creating a narrow exception to the article 8, section 7 loan prohibition. No attempt was made to limit municipal utility conservation programs that might otherwise be authorized. *See* RCW 35.92.360. Conservation loan financing programs must be consistent with the conditions set out in RCW 35.92.360. Tacoma City Light, however, does not purport to offer financial assistance to its customers. Rather, it seeks ***692** to increase its available supply of electricity by purchasing back the electricity saved through conservation measures. Whether RCW 35.92.050 authorizes Tacoma's conservation purchase program, and whether such a program constitutes an unconstitutional gift, are questions totally separate from, and uninfluenced by, the ratification of amendment 70 and the enactment of RCW 35.92.360.

B

As a municipal corporation, Tacoma's authority is limited to those powers expressly granted and to powers

necessarily or fairly implied in or incident to the powers expressly granted, and also those essential to the declared objects and purposes of the corporation. ****800** ... If there is a doubt as to whether the power is granted, it must be denied.

Port of Seattle v. State Utilities & Transp. Comm'n, 92 Wash.2d 789, 794–95, 597 P.2d 383 (1979); 1 J. Dillon, *Municipal Corporations* § 237 (5th ed. 1911). As Judge Dillon recognized in formulating the above rule, the rule of strict construction does not apply to the mode or means a municipal corporation uses to carry out its grant of power. 1 J. Dillon, *supra* at § 239. In RCW 35.92.050, the Legislature granted municipalities authority to acquire and operate electric utilities.⁷ More specifically, RCW 35.92.050 provides:

⁷ As a first class city, Tacoma also has authority “[t]o provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;” RCW 35.22.280(15).

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, ...; authorize the construction of such plant or plants ***693** by others ... and purchase ... electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

The trial court held that RCW 35.92.050 authorized Tacoma's conservation program. Although the court realized that the traditional meaning of the individual powers granted in section .050 may not include conservation, in the world of electric utility professionals an investment in conservation is considered the equivalent of purchasing electricity or of purchasing an electric generating facility. Findings of fact 11, 22–25. WNG urges us to reject the trial court's interpretation and to construe RCW 35.92.050 using a standard rule of statutory construction: unambiguous words within a statute which are not defined therein should be given their ordinary meaning. *See King Cy. Council v. Public Disclosure Comm'n*, 93 Wash.2d 559, 561, 611 P.2d 1227 (1980). WNG argues that conservation does not come within the ordinary meaning of the statutory language, which merely conveys the power to “purchase” “electricity” or “generating facilities” for the purposes of “resale.” We reject such a simplistic approach. A mechanistic use of statutory construction rules would lead us astray from our paramount duty, which is “to ascertain and give expression to the intent of the Legislature.” *Service Employees Int'l, Local 6 v. Superintendent of Pub. Instruction*, 104 Wash.2d 344, 348, 705 P.2d 776 (1985). When we seek to determine the meaning of words used but not defined within a statute, we give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute. *See, e.g., State v. Stockton*, 97 Wash.2d 528, 533, 647 P.2d 21 (1982).

Like other state supreme courts, we have historically taken different approaches to construing municipal powers according to whether the power exercised is governmental or proprietary in nature. *See, e.g., PUD 1 v. Newport*, 38 Wash.2d 221, 227, 228 P.2d 766 (1951); 2 E. McQuillin, ***694** *supra* at § 10.22. When a governmental function is involved, less opportunity exists for invoking the doctrines

of liberal construction and of implied powers. *Newport*, at 227, 228 P.2d 766.⁸ But when ****801** the Legislature authorizes a municipality to engage in a business, “[it] may exercise its business powers very much in the same way as a private individual ...” *Newport*, at 227, 228 P.2d 766. Actions taken pursuant to RCW 35.92.050 serve a business, proprietary function, rather than a governmental function. *State v. O’Connell*, 83 Wash.2d 797, 834, 523 P.2d 872 (1974); *Newport* at 227, 228 P.2d 766; *Seattle v. Stirrat*, 55 Wash. 560, 564–66, 104 P. 834 (1909). Since 1910, we have broadly construed the means a municipality may use to conduct a statutorily authorized business.⁹ We have viewed the Legislature as implicitly authorizing a municipality to make all contracts, and to engage in any undertaking necessary to make its ***695** municipal electric utility system efficient and beneficial to the public. *See Municipal League of Bremerton, Inc. v. Tacoma*, 166 Wash. 82, 88, 6 P.2d 587 (1931); *Puget Sound Power and Light Co. v. PUD 1*, 17 Wash.App. 861, 864, 565 P.2d 1221 (1977). In addition, we have traditionally viewed an express grant of proprietary authority as implying those “powers ... necessarily or fairly implied in or incident to [express powers] and also those essential to the declared objects and purposes of the [municipal] corporation.” *Port of Seattle v. State Utils. & Transp. Comm’n*, 92 Wash.2d 789, 794–95, 597 P.2d 383 (1979).

⁸ Even in cases of governmental functions, we tailor our approach to statutory construction according to certain factors. Thus, we liberally construe municipal governmental function authority when (1) we find that legislative intent underlying an express statutory grant of power requires us to do so; (2) first class or code cities are involved; and (3) when the exercise of authority is pursuant to the police powers. Note, *A Cry for Reform in Construing Washington Municipal Corporation Statutes*, 59 Wash.L.Rev. 653, 655 (1984). However, we have employed a narrow construction to municipal exercises of the eminent domain power. *See, e.g., In re Seattle*, 96 Wash.2d 616, 629, 638 P.2d 549 (1981). For municipalities to exercise the power to tax, we require specific express statutory authority. *Hillis Homes, Inc. v. Snohomish Cy.*, 97 Wash.2d 804, 809, 650 P.2d 193 (1982).

⁹ *See Tacoma v. Nisqually Power Co.*, 57 Wash. 420, 433, 107 P. 199 (1910) (broadly construed power to operate electric utility as extending power to condemn and purchase to acquiring existing private utility); *Chandler v. Seattle*, 80 Wash. 154, 141 P. 331 (1914) (broadly construed power to provide lighting as encompassing power to supply electricity); *Tacoma v. State*, 121

Wash. 448, 209 P. 700 (1922) (authority to operate utilities conferred “broad powers upon cities”); *Seattle v. Faussett*, 123 Wash. 613, 212 P. 1085 (1923) (broadly construed power to condemn and acquire conferred in authority to operate a utility); *McCormacks, Inc. v. Tacoma*, 170 Wash. 103, 107, 15 P.2d 688 (1932) (city has power to conduct its light business in a reasonable manner); *Armstrong v. Seattle*, 180 Wash. 39, 38 P.2d 377 (1934) (broadly construed power to operate stone or asphalt plant as including power to condemn despite absence of express words to that effect); *Metropolitan Seattle v. Seattle*, 57 Wash.2d 446, 460, 357 P.2d 863 (1960) (authority to provide sewer system implies authority to pay another to do so).

Of course, Tacoma's municipal utility authority has limits. In exercising its proprietary power, Tacoma may not act beyond the purposes of the statutory grant of power, *State ex rel. PUD 1 v. Wylie*, 28 Wash.2d 113, 182 P.2d 706 (1947), or contrary to express statutory or constitutional limitations. *Metropolitan Seattle v. Seattle*, 57 Wash.2d 446, 459–60, 357 P.2d 863 (1960); 12 E. McQuillin, *supra* at § 35.35. Thus, if municipal utility actions come within the purpose and object of the enabling statute and no express limitations apply, this court leaves the choice of means used in operating the utility to the discretion of municipal authorities. We limit judicial review of municipal utility choices to whether the particular contract or action was arbitrary or capricious, *see, e.g., State ex rel. PUD 1 v. Schwab*, 40 Wash.2d 814, 829–31, 246 P.2d 1081 (1952), or unreasonable, *see, e.g., McCormacks, Inc. v. Tacoma*, 170 Wash. 103, 107, 15 P.2d 688 (1932).

The record abundantly demonstrates the wisdom of Tacoma's decision to pursue conservation as an electric power resource.¹⁰ ****802** Consequently, RCW 35.92.050 authorizes ***696** Tacoma's conservation program if the program bears a sufficiently close nexus to the purpose and object the Legislature intended to serve in granting the power to operate an electric utility. The grant of authority now codified in RCW 35.92.050 has remained virtually unchanged since its original enactment in 1890, Laws of 1890, § 1, p. 520; and reenactment in 1909, Laws of 1909, ch. 150, § 1, p. 580. The purpose was clear: to grant municipalities authority to “conduct and operate utilities.” In 1909, the policy underlying legislative authorization of municipal utilities was the belief that municipalities could provide lower cost and more efficient electrical service. 3 J. Dillon, § 1291, at 2094 (5th ed. 1911). This court has consistently viewed section .050's primary purpose as supplying electricity to the municipal corporation and its inhabitants. *See Chemical Bank I*, 99 Wash.2d at 789, 666

P.2d 329; *Wylie*, 28 Wash.2d at 126, 182 P.2d 706. Municipal utilities have a duty to provide low cost, efficient service. *See Municipal League of Bremerton, Inc. v. Tacoma*, 166 Wash. 82, 88, 6 P.2d 587 (1931); *Puget Sound Power & Light Co.*, 17 Wash.App. at 864, 565 P.2d 1221.

10 We note in passing that Tacoma does not claim authority to operate a separate business. On several occasions, we have rejected the contention that the legislative purpose in granting authority to operate one business, impliedly conveys the authority to operate a separate, but necessarily incident, business. *Port of Seattle v. State Utils. & Transp. Comm'n*, 92 Wash.2d 789, 794, 597 P.2d 383 (1979). The Port of Seattle had claimed authority to operate its own ground transportation business (airporter service) pursuant to its authority under RCW 53.08.020 to control and operate Sea-Tac airport. We rejected the Port's contention, holding that an airporter service business was neither implied in, nor within the purposes of, the legislative grant of authority contained in RCW 53.08.020. *Port of Seattle*, at 794–96, 597 P.2d 383. Our decision in *Port of Seattle* conformed with a much earlier decision, where we held that the authority to organize a port district does not include authority to operate a separate belt railway line business. *State ex rel. Huggins v. Bridges*, 97 Wash. 553, 166 P. 780 (1917).

The record developed through a 3–week trial amply established the close nexus between the legislative purpose and Tacoma's conservation program. *See Findings of fact 7–12, 22–25, 28, Clerk's Papers*, at 317–21. Installation of conservation measures frees up electricity supplies for sale to other customers, thereby furthering the efficient provision of low cost energy and providing for future needs. Moreover, because of the heavy environmental and financial costs of thermal generating resources (*i.e.*, nuclear and coal powered plants), municipal utilities must be allowed to pursue conservation; a resource that offers the cheapest and *697 cleanest alternative for meeting future electrical supply needs.

WNG asserts that Tacoma's conservation program is unauthorized because it does not produce any power for use or resale. This argument contradicts the views of utility professionals, the Congress, the Bonneville Power Administration, the Regional Council, and the Legislature. *See Findings of fact 22–23, Clerk's Papers*, at 319–20. Today, the almost universally held view is that

[a] kilowatt-hour saved from existing demand is as fully a source of new supply as another kilowatt-hour generated from the utility's next planned new plant. In both cases

the utility makes available to the entire customer system a kilowatt-hour that was previously unavailable.

Schroeder & Miller, *The Validity of Utility Conservation Programs According to Generally Accepted Regulatory Principles*, 3 Solar L.Rep. 967, 1008 (1982). The Legislature implicitly reached the same conclusion by enacting RCW 80.28.025, which authorizes investor-owned utilities to earn a rate of return on conservation investments on an equal footing with investments in other sources of electric energy. *See RCW 80.28.025*.

We also reject WNG's contention that this court adopted an absolute literal approach to the scope of authority granted by RCW 35.92.050 in *Chemical Bank v. WPPSS*, 99 Wash.2d 772, 666 P.2d 329 (1983) (*Chemical Bank I*). There, this court held that municipal utilities did not have authority to enter into guaranteed contracts to purchase the potential output of yet to be constructed nuclear plants. *Chemical Bank I* at 798, 666 P.2d 329. What the court found objectionable was the “dry hole” contract provision, which obligated the participating municipal utilities to pay their proportionate shares of the nuclear power costs *whether or not the plants were ever completed, operable, or operating*. *Chemical Bank I*, at 778, 666 P.2d 329. The court concluded that the purchase of project capacity could not qualify as electricity when accompanied by “[t]he unconditional obligation to pay for *no electricity*”, which the court concluded “is *698 hardly the purchase of electricity.” (*Italics ours.*) *Chemical Bank I*, at 784, 666 P.2d 329.

To reach its conclusion, the *Chemical Bank I* court did not resort to maxims of statutory construction requiring literal interpretation of statutory terms. Instead, **803 the inquiry focused on what utility actions “qualified” as the purchase of electricity, *Chemical Bank I*, at 784, 666 P.2d 329, and what measure of control would be the “equivalent” of ownership, *Chemical Bank I*, at 787, 666 P.2d 329. Use of terms like “qualify” and “equivalent” would be inappropriate had the *Chemical Bank I* court opted for a literal, ordinary meaning approach. Rather, the court concluded that the express proprietary authority to supply residents with electricity did not include the power to unconditionally guarantee to pay for no electricity. *See Chemical Bank I*, at 799, 666 P.2d 329.

The *Chemical Bank I* court did, however, apply a strict construction approach to determine if municipal utilities had the implied power to enter into contracts containing these “dry hole” provisions. *Chemical Bank I*, at 792, 666 P.2d 329. The court viewed the issue presented as the power

of municipal utilities to avoid statutory protections when incurring indebtedness by way of an unconditional guarantee of repayment. *See Chemical Bank I*, at 798, 666 P.2d 329. Viewing the issue as the power to incur indebtedness to pay for municipal services, the court found it necessary to apply a “more stringent” governmental functions approach used in public indebtedness and taxation cases. Thus, to analyze the implied power issue, the court invoked a strict “legal necessity” test employed when municipalities impose taxes without express authority. *Chemical Bank I*, at 792, 666 P.2d 329 (citing *Hillis Homes, Inc. v. Snohomish Cy.*, 97 Wash.2d 804, 808, 650 P.2d 193 (1982)).

Having characterized the “dry hole” provision as an “elaborate financing arrangement that required the participants to guarantee bond payments irrespective of whether the plant was ever completed”, *Chemical Bank I*, 99 Wash.2d at 798, 666 P.2d 329, it is understandable why the court felt compelled to apply a stricter governmental function approach. When a municipality *699 acts to further its governmental function, it exercises authority as an arm of the state, and has express powers to tax, spend, incur indebtedness, police, and take regulatory action. These express powers involve some element of sovereignty conferred by the Legislature, and therefore should be more strictly construed to minimize the encroachment on citizens' substantive rights and liberties. *See Note, Chemical Bank v. Washington Public Power Supply System: The Questionable Use of the Ultra Vires Doctrine To Invalidate Governmental Take-Or-Pay Obligations*, 69 Cornell L.Rev. 1094, 1104 (1984).

By contrast, legislative grants of express proprietary authority do not convey any elements of sovereignty. In most cases exercises of proprietary power are less likely to affect citizens' substantive rights. Consequently, “courts will not interfere with the manner in which the [proprietary] power is exercised [if it is] exercised in good faith and for a proper municipal purpose.” 3 J. Dillon, *Municipal Corporations* § 1296, at 2114–15 (5th ed. 1911). In *Chemical Bank I*, however, the court considered the “dry hole” provision as a financing scheme under which the municipal utilities had no real management control or ownership, but which committed ratepayers to a huge financial risk irrespective of whether the plants produced any electricity. *Chemical Bank I*, at 798, 666 P.2d 329. Because it perceived the issue to be the municipal utility's authority to incur and unconditionally guarantee indebtedness “based upon general grants of authority to provide services,” *Chemical Bank I*, at 792, 666 P.2d 329,

the court applied the more stringent governmental function approach.

Here, however, we find it unnecessary to apply the approach used in *Chemical Bank I*. Tacoma's conservation program has none of the dry hole provision characteristics that triggered the stricter governmental function approach. Unlike the dry hole provisions, the purchase of electricity in the form of conservation is not an elaborate financing arrangement. Payment to the ratepayer specifically depends upon the predicted amount of electricity saved in *700 the first year. No one challenges the trial court finding that the first year's electricity savings range from 3,500 to 5,000 **804 kilowatts. In addition, under the contracts at issue in *Chemical Bank I*, the utilities “virtual[ly] abdicate[d] all management functions and policy decisions” to a third party. *Chemical Bank I*, at 788, 666 P.2d 329. By contrast, Tacoma's conservation program calls for total management control over the selection of conservation measures, the method of installation, the identity of the installation contractor, and the quality of installation work. Finally, unlike nuclear power plants, conservation is the type of electrical resource capable of being brought on line incrementally, as needed. *See* 1 Northwest Power Planning Council, *Northwest Conservation and Electric Power Plan* 6–1 (1986). Thus, the ratepayer is subjected to at most a minimum economic risk, unlike the dry hole provisions, which committed ratepayers to an “enormous” financial risk, irrespective of whether the plants ever produced electricity. *Chemical Bank I*, at 788, 666 P.2d 329.¹¹

¹¹ WPPSS employed this financing scheme because investors perceived nuclear plants as extremely high risks; without dry hole provisions, WPPSS could not market its bonds at commercially feasible rates. Note, 69 Cornell L.Rev. at 1096; Comment, 5 J.Energy L. & Pol'y, 273, 281 (1982).

Pursuant to RCW 35.92.050, Tacoma has proprietary authority to own and manage an electric utility and to purchase and sell power from “within or without” the city for its own use or for resale to its electric utility customers. Unlike the dry hole contracts at issue in *Chemical Bank I*, Tacoma's proposed investment in the conservation resource comes within the intent and purpose underlying RCW 35.92.050. No statutory provision expressly limits or conflicts with Tacoma's program and Tacoma's conservation program has not been shown to be arbitrary or capricious, or unreasonable. Consequently, under our traditional approach to proprietary

authority, we hold as the trial court did, that RCW 35.92.050 authorizes Tacoma's conservation program.

*701 IV

Having resolved the statutory authorization issue in Tacoma's favor, we now turn to whether the conservation program constitutes an unconstitutional gift of public funds. Under the relevant constitutional language, a municipality is prohibited from giving any money to or in aid of any individual, association, company or corporation, except for the poor and infirm. Const. art. 8, § 7.¹² The trial court concluded that despite an absence of donative intent, the conservation purchase program constituted a gift because the bargained-for consideration was not shown to be measurable and lasting. Finding of fact 27, Conclusion of law 8, Clerk's Papers, at 321–22. However, the trial court's analysis is inconsistent with this court's most recent requirements for analyzing challenges based on article 8, section 7. *See Adams v. University of Washington*, 106 Wash.2d 312, 722 P.2d 74 (1986). Consequently, we reverse the trial court and hold that Tacoma's program does not constitute an unconstitutional gift.

- 12 In its entirety, Const. art. 8, § 7 provides:
 “No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.”

In adopting article 8, section 7, and its counterpart, article 8, section 5,¹³ the framers intended to prevent the harmful “effects on the public purse of granting public subsidies to private commercial enterprises, primarily railroads.” *Marysville v. State*, 101 Wash.2d 50, 55, 676 P.2d 989 (1984); *see Reich, *702 **805 Lending of Credit Reinterpreted: New Opportunities for Public and Private Sector Cooperation*, 19 Gonz.L.Rev. 639 (1984). In recent years, we have narrowed our application of the gift prohibition, in an attempt to limit its scope to the evils the framers sought to prevent. *See Marysville*, at 55, 676 P.2d 989.¹⁴ No unconstitutional gift of public property occurs when funds are expended as entitlement payments, made by the government in carrying out its fundamental purposes. *Seattle v. State*, 100 Wash.2d 232, 240–42, 668 P.2d 1266 (1983) (plurality opinion); Spitzer, *An Analytical View of*

Recent “Lending of Credit” Decisions in Washington State, 8 U. Puget Sound L.Rev. 195, 199, 208–09 (1985).¹⁵ Outside of expenditures for fundamental governmental purposes, we focus on two factors to determine if a gift occurs: consideration and donative intent. *General Telephone Co. v. Bothell*, 105 Wash.2d 579, 587, 716 P.2d 879 (1986); *Louthan v. King Cy.*, 94 Wash.2d 422, 428, 617 P.2d 977 (1980).

- 13 Const. art. 8, § 5 provides: “The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.” Despite differences in wording, we interpret article 8, sections 5 and 7 identically, construing them to contain similar prohibitions and exceptions. *See, e.g., Adams v. University of Washington*, 106 Wash.2d 312, 326–27, 722 P.2d 74 (1986); *Morgan v. Department of Social Sec.*, 14 Wash.2d 156, 127 P.2d 686 (1942).
- 14 A similar narrowing has occurred in our lending of credit cases. Note, *State Lending of Credit—New Analysis of State Constitutional Prohibitions*, 61 Wash.L.Rev. 263, 264–266 (1986).
- 15 We defined entitlements as “a form of assistance provided to the public, or a segment of the public, as cash or services, in carrying out a program to further an overriding public purpose or satisfy a moral obligation.” *Seattle v. State*, 100 Wash.2d 232, 241, 668 P.2d 1266 (1983). Examples of entitlement payments include: payments for day-care services, vaccinations, fare-free bus zones, crime victim compensation, and relocation assistance payments to people or businesses displaced by condemnation. *Seattle*, at 242, 668 P.2d 1266. Although many of these “entitlement” payments involve private benefit, the “overriding public purpose” makes any private benefit “incidental.” *Seattle*, at 241, 668 P.2d 1266.

Because Tacoma enacted its conservation program pursuant to proprietary authority, we determine whether a gift has occurred by employing our donative intent/consideration analysis. Tacoma's program must be presumed constitutionally valid, and the burden of overcoming that presumption lies with those challenging Tacoma's authority. *State Housing Fin. Comm'n v. O'Brien*, 100 Wash.2d 491, 495–96, 671 P.2d 247 (1983). To meet their burden, Tacoma Taxpayers and WNG must demonstrate that Tacoma's conservation program amounts to “a transfer of property without consideration and with donative intent.” *703 *General Telephone Co. v. Bothell*, 105 Wash.2d 579, 588, 716 P.2d 879 (1986). We use the donative intent element to determine how closely we scrutinize the sufficiency of

the consideration, “the key factor.” *Adams v. University of Washington*, 106 Wash.2d 312, 327, 722 P.2d 74 (1986). “Unless there is proof of donative intent *or* a grossly inadequate return, courts do not inquire into the adequacy of consideration.” (Italics ours.) *Adams*, at 327, 722 P.2d 74; *see Scott Paper Co. v. Anacortes*, 90 Wash.2d 19, 32–33, 578 P.2d 1292 (1978). Absent a showing of donative intent or gross inadequacy, trial courts should only apply a legal sufficiency test, under which a bargained-for act or forbearance is considered sufficient consideration. *Adams*, 106 Wash.2d at 327, 722 P.2d 74.

Adams is dispositive in the case at hand. Here there is no allegation of gross inadequacy and the trial court's conclusion that Tacoma lacked donative intent remains unchallenged. Conclusion of law 8, Clerk's Papers, at 322. The trial court concluded that the consideration Tacoma bargained for was the electricity saved through the installation of conservation measures. Conclusion of law 9. Under *Adams*, the trial court should have limited its inquiry to whether the bargained for consideration was legally sufficient. Instead, despite finding that it was within Tacoma's legislative authority to determine what measure of cost effectiveness to use, the trial court conducted an in-depth analysis of the statistical assumptions underlying Tacoma's program, and compared the relative economic adequacy of the consideration exchanged. Findings of fact 17–21, Clerk's Papers, at 318–19. To allow trial courts to delve this deep into the choice of methodology intrudes upon Tacoma's power to make its own legislative judgment. As we recognized in *Adams*, absent donative intent or grossly inadequate consideration, examination of the adequacy of governmental transactions would constitute impermissible interference and “establish a burdensome ****806** precedent for future court calendars”. *Adams*, at 327, 722 P.2d 74.

In effect, the trial court found that under Tacoma's program somewhere between 3,500 and 5,000 kilowatt hours of ***704** electricity would be saved in the first year following installation, but over the long term it was uncertain how much electricity would be saved year to year. Findings of fact 19–20, Clerk's Papers, at 319. Under *Adams*, the first year's savings would constitute constitutionally sufficient consideration. The inability to predict the actual savings over the long run, and the specific concerns listed by the trial court, seem inherent in any prediction of long term cost effectiveness.¹⁶ The Legislature has already indicated its willingness to rely on predictions of future cost effectiveness. *See* RCW 35.92.360 (authorizing loans for cost-effective conservation measures); RCW 80.28.025

(authorizing investor-owned utilities to earn a rate of return on cost-effective conservation investment).

- 16 These concerns included the amount by which the electricity saved would decline over the life of the conservation measures, the effect of the loss in utility revenue caused by a decrease in usage, and the uncertainty as to what extent BPA's rates will increase in the future. Findings of fact 18–20, Clerk's Papers, at 319.

Under Tacoma's program the amount of payment to the participating ratepayer depends upon the 3,500–5,000 kilowatts of electricity to be saved in the first year after installation. This feature distinguishes Tacoma's program from cases where we found insufficient consideration. For example, in one case we invalidated as an unconstitutional gift a port district's promotional hosting of potential customers. *State ex rel. O'Connell v. Port of Seattle*, 65 Wash.2d 801, 399 P.2d 623 (1965). There, private individuals had no legal obligation and the only public benefit was the potential business that may have resulted from the hosting program. *O'Connell*, at 804, 399 P.2d 623. As we have seen, no one challenges the fact that the Tacoma program produces savings in the first year. This actual savings also distinguishes this case from others where we expressed the view that a generalized public benefit is not sufficient consideration. *See Adams*, at 326, 399 P.2d 623.

Finally, any benefit received by the private participating ratepayers, in the form of lower utility bills and a small ***705** potential increase in property values, is incidental to the public benefit derived from reducing dependence on outside electrical sources and supplying future load requirements using the electricity saved. “Aid to individuals is not absolutely prohibited under our law but is only improper where public money is used solely for private purposes.” *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 82 Wash.2d 265, 277, 510 P.2d 233 (1973). Where the public receives sufficient consideration, and benefit to an individual is only incidental to and in aid of the public benefit, no unconstitutional gift has occurred. *Seaboard Surety Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc.*, 81 Wash.2d 740, 746, 504 P.2d 1139 (1973); *see also Seattle v. State*, *supra* 100 Wash.2d at 242–44, 668 P.2d 1266.

V

Because we find Tacoma's conservation program authorized under RCW 35.92.050, we affirm the trial court as to the

statutory authorization issue. We conclude, however, that under its conservation purchase program, Tacoma receives constitutionally sufficient, bargained-for consideration. Thus, no unconstitutional gift has occurred. We therefore reverse the trial court's declaration of invalidity and reinstate Tacoma's conservation ordinance.

PEARSON, C.J., and BRACHTENBACH, DORE and DURHAM, JJ., concur.

GOODLOE, Justice (dissenting).

The court's focus in this appeal is not on the merits of conservation. Indeed, conservation is laudable and should be encouraged. However, our duty is to determine what forms of financial assistance a city may use under existing Washington law to encourage conservation. In order to reach **807 a desired result the majority: (a) ignores controlling constitutional and statutory authority dealing specifically with conservation; (b) rejects basic rules of statutory construction; (c) distorts beyond all recognition the language of a statute enacted in 1890; (d) interprets words in that statute to mean something other *706 than what is commonly understood by those words; and (e) disregards recent case law. Therefore, I dissent.

CONST. ART. 8, § 10 AND RCW 35.92.360

Determining the propriety of Tacoma's conservation program requires an analysis of Const. art. 8 § 10 and RCW 35.92.360. Const. art. 8, § 7 prohibits gifts or loans of public money, except for the necessary support of the poor or infirm. In 1979, the voters passed an amendment which created an exception to the loan portion of the prohibition. *See* Const. art. 8, § 10 (amend. 70). The exception created by Const. art. 8, § 10 is limited; it allows municipal utilities to offer *loan* programs to non-poor, non-infirm residential customers to assist in the purchase of conservation measures. In each case the utility must take a lien on the benefited residential structure. RCW 35.92.360 is the enabling legislation which implements Const. art. 8, § 10.

Tacoma's conservation program is inconsistent with Const. art. 8, § 10 and RCW 35.92.360 in several respects. First, participating customers are neither obligated to repay any of the funds received nor is a lien placed on any benefited structure. Second, the program extends to commercial as well

as residential customers. Tacoma argues that its conservation program does not involve grants or loans, but rather authorizes the reacquisition of electricity from one ratepayer to be offered for resale to another. Thus, Tacoma argues that the restrictions imposed by RCW 35.92.360 are inapplicable. I disagree.

Where the language of the constitution is clear, the words used therein should be given their plain meaning. *State ex rel. O'Connell v. PUD 1*, 79 Wash.2d 237, 240-41, 484 P.2d 393 (1971); *State ex rel. State Capitol Comm'n v. Lister*, 91 Wash. 9, 156 P. 858 (1916). Const. art. 8, § 7 in express terms prohibits municipal corporations from giving or loaning money to any individual, except for the necessary support of the poor and the infirm. Our constitution directly and unequivocally prohibits all gifts and loans of money in *707 aid of individuals, subject to limited exceptions. *See State ex rel. O'Connell v. Port of Seattle*, 65 Wash.2d 801, 805, 399 P.2d 623 (1965).

One exception, Const. art. 8, § 10, along with RCW 35.92.360, authorizes municipal utilities to provide financial assistance for conservation programs. RCW 35.92.360 sets forth explicit preconditions before a municipal utility may commence a conservation financial assistance program. If the preconditions are met, then the financial assistance program is further limited by five specific requirements, such as the payback requirement. *See* RCW 35.92.360(1)-(5). A significant purpose of RCW 35.92.360 is to insure that municipal utilities will establish well conceived and cost-effective conservation programs. The Legislature has prohibited municipal utilities from providing financial assistance for conservation measures which are not cost effective.

I find it inconceivable that the Legislature intended to condition carefully and limit a municipal corporation's authority to make conservation assistance loans but did not intend to place any conditions on its authority to make conservation assistance grants. A fundamental rule of statutory construction is that the express mention of one thing implies the exclusion of the other. *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wash.2d 455, 462, 722 P.2d 808 (1986). Here, the enactment of a financial conservation assistance scheme complete on its face, with specific monetary safeguards, denies cities and towns the authority to embark on conservation programs which are inconsistent with RCW 35.92.360.

The Tacoma conservation program does not contain the preconditions and safeguards required by RCW 35.92.360. I cannot agree with the majority that these preconditions and safeguards are not necessary due to the influence of market forces. Such market protection is illusory because ****808** the Tacoma conservation program involves direct grants to participating customers. The residential or commercial customer receives conservation measures but gives up nothing. ***708** Once the money is invested by the municipal utility it is spent whatever the results. Only *if* sufficient energy is conserved can Tacoma City Light recoup on its investment. After receiving the conservation measures, the participating customer may double or triple energy consumption. Therefore, there is *no* guarantee of energy savings. Consequently, the market protection relied upon by the majority is no protection at all.

These concerns demonstrate the wisdom of the Legislature in enacting the comprehensive scheme detailed in RCW 35.92.360. The comprehensiveness of RCW 35.92.360 indicates that the Legislature intended to impose sufficient requirements to help insure cost effectiveness as a *prerequisite* of any conservation program. The majority argues that the protections of RCW 35.92.360 are not necessary because “*unless demonstrated as cost effective, Tacoma's direct purchase program would run afoul of the article 8, section 7 gift prohibition.*” (Italics mine.) Majority opinion, at 798. I reject the majority's inference that the constitutionality of Tacoma's conservation program can only be decided by an after-the-fact assessment of cost effectiveness. Accordingly, I believe that the Legislature intended RCW 35.92.360 to be the exclusive authority for conservation loans and intended to prohibit conservation grants. As such, I would hold that Tacoma's conservation program is not statutorily authorized.

The majority places great emphasis on the “[e]xcept where otherwise authorized” language found in RCW 35.92.360 (majority opinion, at 799) interpreting this language to indicate that other statutes, such as RCW 35.92.050, may authorize conservation programs. However, from this language it does not logically follow that the Legislature intended RCW 35.92.050 to authorize conservation programs. In fact, the consensus at the time RCW 35.92.360 was passed was that existing constitutional and statutory authority, *including RCW 35.92.050*, did not authorize *any* conservation program. This is demonstrated by the legislative history of RCW 35.92.360.

***709** In 1979, the Legislature passed Substitute Senate Joint Resolution (SSJR) 120 and Substitute Senate Bill (SSB) 2976 (now Const. art. 8, § 10 and RCW 35.92.360). The 1979 Legislative Report, published by the Legislature, contained the following:

Substitute Senate Joint Resolution (SSJR) 120 is a proposed amendment to the Washington State Constitution which ... would allow various governmental entities to use public moneys or credit, as authorized by the Legislature, to finance energy conservation programs. *Existing constitutional language does not allow the use of public moneys or credit for such programs*, and it is suggested that this impedes the efforts of public utilities to broaden energy conservation and energy efficiency programs.

(Italics mine.) *Final Legislative Report 1979* 178–79.

Prior to the passage of SSJR 120 the Attorney General opined that loaning public money to utility customers to enable them to acquire and install conservation materials would be unconstitutional. *See* AGLO 4 (1979). The Attorney General's letter opinion stated that he did not believe a potential public benefit would make an unconstitutional loan acceptable. AGLO 4, at 4 (1979).

SSJR 120 was submitted to the voters on November 6, 1979. The official ballot title stated: “Shall municipal utilities be permitted by the constitution to assist owners of residences in financing energy conservation measures until 1990?” *Official Voters Pamphlet* 16 (1979). The voters pamphlet represented:

The law as it now exists:

Under the state constitution, municipal corporations such as counties, cities, and public utility districts cannot give or lend, or be authorized by the state legislature to give or lend, any of their funds or credit to assist private homeowners ... in financing purchases or services, such as home insulation.

****809** *Voters Pamphlet*, at 16. The voters ratified SSJR 120. Const. art. 8, § 10 and its corresponding enabling legislation, RCW 35.92.360, became law.

This history supports the conclusion that RCW 35.92.360 ***710** is the exclusive method by which a municipal utility may implement a conservation financial assistance program. I recognize that legislative and Attorney General opinions are not definitive on the issue, nevertheless, they do support my

conclusion that RCW 35.92.360 is the exclusive authority for conservation loans, and conservation grants are prohibited.

The majority asserts that Tacoma's conservation program does not purport to offer financing. Majority opinion, at 799. However, that is what Tacoma's program does—the participating consumer receives conservation measures at the municipal utility's expense. The majority fails to see the similarities between the use of public funds to purchase conservation and a grant or loan of public funds made pursuant to an authorized conservation financial assistance program. Merely labeling Tacoma's program as something other than a conservation financial assistance program does not alter the fact that the Legislature intended RCW 35.92.360 to preclude inconsistent conservation schemes.

RCW 35.92.050

Because RCW 35.92.360 precludes Tacoma's conservation program, I do not believe it can be resurrected by reliance on RCW 35.92.050, a general electricity statute. Nonetheless, I will address the majority's argument that RCW 35.92.050 authorizes Tacoma's program.

A city's authority to enact a conservation financial assistance program must be found either in an express grant or by necessary implication from such a grant. *See Spokane v. J–R Distribs., Inc.*, 90 Wash.2d 722, 726, 585 P.2d 784 (1978); 2 E. McQuillin, *The Law of Municipal Corporations* § 10.09 (3d rev. ed. 1979). A municipal corporation

is limited in its powers to those necessarily or fairly implied in or incident to the powers expressly granted, and also those essential to the declared objects and purposes of the corporation.... *If there is a doubt as to whether the power is granted, it must be denied.*

(Italics mine. Citations omitted.) *711 *Port of Seattle v. Utilities & Transp. Comm'n*, 92 Wash.2d 789, 794–95, 597 P.2d 383 (1979); accord *Chemical Bank v. WPPSS*, 99 Wash.2d 772, 792, 666 P.2d 329 (1983). The majority must ignore controlling constitutional, statutory, and recent common law authority, as well as the above-quoted language, to hold that Tacoma's conservation program is authorized by RCW 35.92.050.

RCW 35.92.050 provides:

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate

works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

This statute, originally passed in 1890, is general enabling legislation authorizing a city or town to operate a municipal electric utility. It authorizes the purchase or acquisition of electric generating facilities. It also authorizes the purchase of electricity for a city's use and for resale to other customers. RCW 35.92.050 does not authorize Tacoma's conservation program.

Unambiguous words within a statute which are not defined therein should be given their ordinary meaning. *King Cy. **810 Council v. Public Disclosure Comm'n*, 93 Wash.2d 559, 561, 611 P.2d 1227 (1980). I protest the majority's selective rejection of rules of statutory construction which have been developed to aid courts in ascertaining legislative intent. Majority opinion, at 800. However, I realize that the *712 majority must reject these rules to reach the result it desires.

We recently construed RCW 35.92.050 in *Chemical Bank v. WPPSS*, 99 Wash.2d 772, 666 P.2d 329 (1983). I do not find the majority's distinction between *Chemical Bank* and this case to be particularly compelling. Here, Tacoma's conservation program will not necessarily result in reduced energy consumption. Thus, the Tacoma program suffers from deficiencies similar to the agreement in *Chemical Bank* to purchase electricity which may never exist. In *Chemical Bank* we used an ordinary commonsense reading of the term “electricity”. We held that an agreement to purchase project capability did not qualify as the purchase of electricity. *Chemical Bank*, at 784, 666 P.2d 329. Likewise, in the present case, I would find that the purchase of “electricity” and the purchase of “electric generating facilities” as used in RCW 35.92.050 are clear and unambiguous. I would hold that the

purchase of conservation does not qualify as the purchase of electricity or as the purchase of an electric generating facility.

I realize that some electrical utility professionals view conservation as the “functional equivalent” of purchasing electricity. But this view is by no means universal. For example, Donald Caha, power manager of Tacoma City Light, testified as follows:

Q Now, I believe, Mr. Caha, that you testified that you are responsible for purchasing power for the Tacoma Light Division? A Yes, sir. Q And I take it your Department also constructs or acquires electrical generation facilities? A Yes, that is correct. Q Now, conservation is not the purchase of electricity as you commonly use that term, is it, Mr. Caha? A Yes, that is correct. Q And conservation is not an electric generation facility as you commonly use that term? A That is true.

(Italics mine.) Report of Proceedings, Vol. 2, at 41.

Undoubtedly, the Legislature was aware of the conflicting opinions of utility professionals when it passed the carefully detailed conservation program described in RCW 35.92.360. However, neither at that time nor at any subsequent time *713 has it authorized the purchase of functional equivalents of electricity. Moreover, if RCW 35.92.050 authorized a program like Tacoma's, RCW 35.92.360 would not have been necessary.

The court's role is to ascertain the intent of the Legislature. *Service Employees Int'l Local 6 v. Superintendent of Pub. Instruction*, 104 Wash.2d 344, 348, 705 P.2d 776 (1985). The majority abdicates its responsibility of interpreting RCW 35.92.050 by its total reliance on the views of some utility professionals. The majority would have us rely on electric utility professionals and recent conservation statutes enacted elsewhere to turn the general RCW 35.92.050 into a conservation statute, despite legislative intent to the contrary. In my view, nothing in the legislative history or the plain language of RCW 35.92.050 suggests that the Legislature has ever intended to authorize a conservation grant program by enactment or amendment of RCW 35.92.050. To hold that it did requires a distorted reading of the language of RCW 35.92.050. Furthermore, under the majority's analysis almost any program whose intent is conservation and which remotely results in some savings of electricity would be authorized

—surely the Legislature's grant of authority under RCW 35.92.050 is not that broad.

It is not the judiciary's role to expand the scope of statutory authority. See *Addison v. Holly Hill Fruit Prods., Inc.*, 322 U.S. 607, 617, 64 S.Ct. 1215, 1221, 88 L.Ed. 1488, 153 A.L.R. 1007 (1944). Never before have we stretched statutory interpretation to authorize the purchase of functional equivalents. Absent any indication that the Legislature intended otherwise, I would hold that RCW 35.92.050 does not authorize the purchase of functional equivalents. See **811 *Port of Seattle*, 92 Wash.2d at 794–95, 597 P.2d 383.

The majority's interpretation of RCW 35.92.050 also ignores other basic rules of statutory construction. In particular, it ignores the rule that a specific statute will control a statute of general application which seemingly conflicts. *Sim v. State Parks & Recreation Comm'n*, 90 Wash.2d 378, 382, 583 P.2d 1193 (1978). RCW 35.92.050 is a statute of general *714 authority. RCW 35.92.360 is a specific and comprehensive statute dealing with the financing of conservation programs. Accordingly, I would find that the specific statute, RCW 35.92.360, controls. Further, the majority ignores that in addition to being more specific, RCW 35.92.360 is more clearly worded than is RCW 35.92.050, and later in time. See *State ex rel. Graham v. San Juan Cy.*, 102 Wash.2d 311, 320, 686 P.2d 1073 (1984).

The majority's judicial transformation of RCW 35.92.050 into a statute which authorizes Tacoma's conservation program thwarts the process of responsible legislative deliberation and decisionmaking. Accordingly, I would hold that the Tacoma conservation program is beyond the authority granted by RCW 35.92.050; moreover, I would hold that it is precluded by RCW 35.92.360. I would affirm the trial court, but on statutory rather than constitutional grounds. See *Senear v. Daily Journal-American*, 97 Wash.2d 148, 152, 641 P.2d 1180 (1982).

ANDERSEN, DOLLIVER and CALLOW, JJ., concur.

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182 Wash.App. 1008

NOTE: UNPUBLISHED OPINION, SEE WA R GEN
GR 14.1

Court of Appeals of Washington,
Division 1.

COLUMBIA RIVER CARBONATES, a
general partnership, Appellant,

v.

PORT OF WOODLAND, a municipal
Corporation; Port Commission of The
Port of Woodland; and the CRRVP LLC, a
Washington limited liability company,
Respondent.

No. 71734–1–I.

|

June 30, 2014.

Appeal from Cowlitz Superior Court; Honorable Stephen
M. Warning, J.

Attorneys and Law Firms

Charles A. Klinge, W. Forrest Fischer, Groen Stephens &
Klinge LLP, Bellevue, WA, for Appellant.

Earl William Jackson Jr., Jackson Jackson & Kurtz PS,
Battle Ground, WA, Robert G. Casey, Eisenhower
Carlson, PLLC, Terrence Joseph Donahue, Attorney at
Law, Tacoma, WA, for Respondent.

UNPUBLISHED OPINION

LAU, J.

*1 Columbia River Carbonates (CRC) sued the Port of
Woodland and CRRVP LLC to void the Port’s sale of
surplus land to CRRVP. CRC alleged that the Port
violated a statute governing the sale of port district real
property and the constitutional prohibition on gifts of
public funds. The trial court granted summary judgment
dismissal in favor of the Port and CRRVP. Because CRC

identifies no genuine issue of material fact, CRC and the
Port are entitled to judgment as a matter of law. We
affirm.

FACTS

The Port owned two narrow strips of land (subject
property) abutting the Columbia River in unincorporated
Cowlitz County. The strips were situated to the south and
north of an 8.06-acre recreational vehicle park (RV park)
operated by CRRVP. CRRVP purchased the RV park in
2006. At that time, Mike Landels owned the lot to the
south of the subject property’s southern strip.¹

¹ Landels was a plaintiff below but is not a party to this
appeal.

The subject property was zoned MH, for heavy
manufacturing. The property’s southern strip
accommodated an unofficial dump site. CRRVP manager
Shirley Temming testified that the site was filled with old
tires, railroad ties, creosote-coated pilings, appliances,
batteries, broken concrete, and other construction debris.
Temming considered the site an eyesore and a potential
liability to her customers, especially children. She and her
employees cleaned the site with the Port’s permission.

In March 2007, the Port leased the subject property to
CRRVP for \$50 per year. The five-year term lease
included a one-time renewal option. CRRVP installed a
landscaped parking lot after it cleaned the southern strip.

In 2008, a survey revealed that structures on Landels’
property encroached onto the southern strip. The Port
agreed to a boundary line adjustment under which
Landels acquired title to the encroached land. The
agreement was premised on the Port’s understanding that
the southern strip “has never been part of the
Comprehensive Plan of the Port of Woodland and is not
needed for Port District purposes.”

In 2009, CRRVP cooperated with the Port by agreeing to
exclude Landels’ newly-acquired land from the scope of
its lease. The boundary line adjustment reduced the
southern strip’s area to 1.35 acres. At a public meeting in
late 2009, the Port agreed to offer CRRVP a new lease
with an option to purchase the subject property.

In January 2010, Landels recorded a short plat subdividing his property into two lots. CRC purchased lot 2, the lot situated nearest to the southern strip.

On March 22, 2010, CRC's attorney wrote an e-mail to Port executive director Erica Rainford indicating CRC's interest in purchasing the southern strip. The e-mail stated in part:

I understand that you will remain at your post through the end of this month. I wanted to let the Port know that CRC would be interested in purchasing the strip of property that lies to the west of the Dike Road between the RV park and Mike Landels/CRC property. Would you please put us on the list of potential purchasers should the Port decide to sell this strip? I would appreciate an opportunity to discuss this with you if you have some time.

*2 Rainford responded that she consulted with the Port's attorney and concluded that three issues affected a potential sale to CRC: (1) CRRVP's leasehold interest, (2) a requirement that the Port "declare the property surplus," and (3) CRRVP's "first right of refusal" on the property." She added, "This does not barr [sic] us from pursuing the sale with CRC—but these are the issues at hand." CRC's attorney replied, "We have no time line at all, merely wanted to be considered should the property ever be available for sale."

Nelson Holmberg succeeded Rainford as executive director in April 2010. During his July 2012 deposition, Holmberg testified that he first learned about this e-mail from CRC's attorney in December 2011—well after the Port finalized the sale to CRRVP.

On April 22, 2010, at a Port Commission public meeting, CRRVP submitted a written offer to purchase the subject property for \$35,000.² The Port Commission tabled the proposal to allow Holmberg to "check into the proper steps that will need to be made before the Port can sell these two strips of property and to follow up with surveys and appraisals." Holmberg testified that the Port posted the meeting minutes on its web site. No CRC representative attended the meeting.

² The record shows that CRRVP initially offered \$30,000 for the southern strip. CRRVP then offered an additional \$5,000 for the northern strip.

In November 2010, Holmberg obtained an appraisal from Integra Realty Resources. Integra appraised the southern strip at \$120,000. It assumed the "highest and best use" for the southern strip was as "a single waterfront home site." It noted, "This would require a zone change;

however, it is assumed that such a change would be possible at a cost to the buyer." Without the zone change, the value dropped "significantly below the value of the subject as a home site...."

On December 1, 2010, Holmberg e-mailed the Integra appraisal to CRRVP agent Jay Pyle. Pyle considered the appraisal as flawed. He wrote, "We were assured by [the] Cowlitz County Assessor and the Cowlitz County Building and Planning Dept. that re-zoning to Residential would not be permitted."

Temming testified by declaration that she and Pyle met with Holmberg and a Cowlitz County planning department representative to discuss possible uses for the subject property. According to Temming, Holmberg was advised at this meeting that the assessor's office and planning department considered the subject property an "orphan strip," and that the planning department believed "a boundary line adjustment to incorporate it into the RV park property would be favorable...."

Holmberg testified that he met with CRC on March 8, 2011, to learn about CRC's plan to build a marine terminal on the Columbia River. Holmberg said he did not alert CRC to a possible sale of the subject property. When asked why he "didn't talk to CRC about the subject property," Holmberg responded, "I don't recall my explanation. I just know I didn't do it, and failed to do my job on that one." He denied that any of the Port commissioners instructed him "not to talk to CRC" about the potential sale.

*3 On March 11, 2011, Holmberg obtained a second appraisal from North By West. North By West appraised the subject property at \$65,000—about half the value proposed by Integra. Unlike Integra, North By West assumed the property would be used for development "in conjunction with adjoining tracts also zoned for heavy industrial uses." Holmberg e-mailed the appraisal to CRRVP.

On March 17, 2011, the Port Commission held a public meeting and hearing to debate whether to surplus the subject property. Holmberg testified at his deposition that he was "sure there was a news release" announcing the public hearing. Pyle and Temming attended the public hearing. No CRC representative attended.

During the public meeting, Holmberg told the Port Commission that the subject property could not "be a parcel on its own." He explained, "Well, it's—one, it's too small for any—any heavy manufacturing that could possibly exist. Two, there's just not the possibility that

heavy manufacturing is going to come and sit down right next to a[n] RV park.” He also noted a zoning change would require a “significant expense.” The commission approved a motion to surplus the property.

On April 21, 2011, at a public meeting, the Port Commission formally approved a resolution declaring the subject property surplus. At the same public meeting, the commission agreed to sell the subject property to CRRVP for \$44,000. The Port asserts, and CRC does not dispute, that the meeting agenda appeared on the Port’s web site prior to the meeting. No CRC representative attended the meeting.

According to an April 20, 2011 memorandum prepared by Holmberg, the \$44,000 sale price reflected North By West’s \$65,000 appraisal price, discounted (1) by approximately five percent to account for the absence of municipal water and sewer connections, (2) by \$17,000 to account for CRRVP’s tenant improvements, and (3) by \$1,000, for reasons not made clear by the record.³ Regarding the \$17,000 credit for tenant improvements, Holmberg wrote:

³ Holmberg’s typewritten memorandum states, “With these considerations, port staff recommends an asking price of \$45,000 for the property....” A handwritten note states, “\$44,000 Boundary Line Adjustment.” At his deposition, Holmberg testified, “And then I suggested the price of \$45,000, and they asked for 44, and I felt like it was close enough to where we were.”

[T]he port recognizes the cleanup of trash, removal of blackberries and improvement (while the property has been under a lease from the port) including a gravel parking area on the property, paid for and maintained by [CRRVP] which amounts to approximately \$17,000 (as reported by CRRVP) as a tenant improvement and includes that amount in the offered selling price below.

Following the sale, CRRVP obtained a quitclaim deed. In March 2012, CRC sued the Port and CRRVP. CRC alleged four causes of action: (1) illegal designation of surplus property under RCW 53.08.090, (2) illegal sale of port district property under RCW 53.08.090, (3) violation of the Open Public Meetings Act, chapter 42 .30 RCW, and (4) unconstitutional gift of public funds.

CRRVP moved for summary judgment. It argued that the Port had authority to sell the subject property and followed all statutory requirements. It argued in the alternative that it had a right to enforce the sale as a bona fide purchaser for value. The Port joined the motion. CRC filed a cross motion for partial summary judgment on its illegal surplus designation and illegal sale claims. The

trial court granted CRRVP’s motion in part and denied CRC’s cross motion. This resulted in dismissal of CRC’s illegal surplus designation, illegal sale, and Open Public Meetings Act claims.

*4 CRRVP subsequently moved for summary judgment on the remaining unconstitutional gift issue. The trial court granted the motion and dismissed CRC’s complaint with prejudice. CRC appeals.

ANALYSIS

CRC appeals the trial court’s grant of summary judgment dismissal in favor of CRRVP and the Port. For the reasons discussed below, we affirm.

On appeal from an order granting summary judgment, we review de novo whether “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). “A material fact is one that affects the outcome of the litigation.” *Owen v. Burlington N. Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005).

Illegal Surplus Designation

CRC first challenges the summary judgment dismissal of its claim that the Port Commission “improperly designated the Subject Property as surplus.” It contests the surplus designation on two grounds: (1) failure to provide public notice of the March 17, 2011 surplus hearing and (2) failure to establish that the subject property was “no longer needed for district purposes” under RCW 53 .08.090(1), the statute governing the sale of port district property.

CRC first challenges the sale based on the Port’s alleged failure to provide public notice of the March 17, 2011 meeting at which the Port approved the surplus motion. It does not contend that any statute required the Port to hold a public meeting. Instead, it argues that once the Port decided to hold a public meeting, it was required to follow the “standard practice of posting notice”—specifically, “posting notice in The Daily News.”⁴ Br. of Appellant at 22. This claim fails because

CRC cites no controlling authority requiring a public meeting or notice of the public meeting. It thus fails to identify a genuine issue of material fact.

- ⁴ CRC clarifies it is “arguing that after the Port decided that it would be prudent to hold such a public hearing, it failed to comply with notification requirements of public meetings.” Reply Br. of Appellant at 26.

The relevant statute requires public notice only when the property to be sold is part of the port district’s comprehensive plan and, even then, only when the district modifies the plan to reflect the surplus designation:

A port district may sell and convey any of its real or personal property valued at more than ten thousand dollars when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property *which is a part of the comprehensive plan of improvement* or modification thereof shall be disposed of until the comprehensive plan has been modified to find the property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010. RCW 53.08.090(1) (emphasis added).⁵ CRC identifies no ambiguity. And it acknowledges that the subject property was not part of the Port’s comprehensive plan.⁶ It follows that RCW 53.08.090(1)’s public notice requirement does not apply in this case.

- ⁵ A statute provides, “All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.” RCW 53.12.245. The Port argues, “There is no requirement in the statute that resolutions be adopted at public hearing, rather only requiring that the resolution be maintained as a public record.” Port’s Resp’t’s. Br. at 21. CRC offers no reply.

- ⁶ CRC’s opening brief states, “The statute [RCW 53.08.090] contains other unique requirements applicable to Port property when the property is part of the Port comprehensive plan or within an industrial development district, but the Subject Property was not subject to those requirements.” Br. of Appellant at 19 n. 18.

*5 CRC next argues, “The subject property was not surplus as statutorily defined.” Br. of Appellant at 23 (capitalization and emphasis omitted). This claim involves RCW 53.08.090(1)’s requirement that the Port declare, by resolution, that the property to be sold is “no

longer needed for district purposes.” RCW 53.08 .090(1). CRC identifies no genuine issue of material fact.

CRC acknowledges that the Port declared, by resolution, that the subject property was no longer needed for district purposes.⁷ It merely disputes the truthfulness of that statement. It argues that the Port “abused its discretion by determining that the Subject Property was surplus,” and that the surplus designation “was obviously arbitrary and capricious.” Br. of Appellant at 23.

- ⁷ The Port adopted Resolution 381. The Port justified its surplus decision by explaining (1) “the port staff, in working with the Cowlitz County Assessor’s Office and the Cowlitz County Office of Building and Planning has determined that the property has no usefulness to the port or any other entity besides CRRVP or Mike Landels,” (2) “Port Commissions in the State of Washington are authorized to declare property surplus if it has no apparent use to the port,” (3) “the property in question is zoned heavy manufacturing and is—according to the Cowlitz County Department of Building and Planning—too small to accommodate a heavy manufacturing facility,” and (4) “the property in question is subject, on its own merits, to a number of setback, ordinary high water and other infrastructure regulations, as well as zoning regulations, that would make it difficult for any other property owner to use the property, according to the Cowlitz County Department of Building and Planning.”

CRC cites no controlling authority establishing that we may review the merits of a port district’s surplus designation under an abuse of discretion standard, or an arbitrary and capricious standard. No material fact issue exists.

Illegal Sale

CRC next argues that the Port “violated its trusteeship duties and abused its discretion by selling the subject property at a significant discount to fair market value.” Br. of Appellant at 24 (boldface omitted). It contends the Port was required to “maximize the return on any sale of public property that has been surplus,” to sell the property at a price equal to the average appraisal value, and to “use some reasonable marketing approach unless the Subject Property was sold at the price in an appraisal.” Br. of Appellant at 25–29. These claims depend on CRC’s assumption that “[t]he Port owes both trustee and fiduciary duties to the public when selling real property in order to ensure full and complete protection for public assets.” Br. of Appellant at 24 (boldface omitted).

Because that bare assumption lacks merit, no material fact issue exists.

CRC cites no controlling case authority to establish that the Port holds its property—in this case, the subject property—in trust for the public’s benefit. For that proposition, it cites (1) Robert F. Hauth, Washington Ports, *Knowing the Waters: Basic Legal Guidelines for Port District Officials*, an attorney-authored document published by the Washington Public Ports Association (WPPA); (2) Resolution 378, a document adopted by the Port Commission on March 17, 2011; and (3) RCW 42.17A.001, a statute declaring the policy underlying a campaign finance law known as Initiative 276. None of these sources controls.

CRC first relies on the WPPA publication, which states in relevant part:

As a rule, a port district may sell unneeded port district property, both personal and real property, at its discretion and without calling for competitive bidding. However, public bidding or other procedures may be required by statute, depending upon the kind or situation of the property, and sound business discretion must be exercised in all cases.

It contends the WPPA publication authoritatively establishes that the Port was required to exercise “sound business discretion,” the sale at issue here was a matter of discretion, and the proper standard for evaluating discretionary port district action comes from administrative law, which defines abuse of discretion as discretion exercised in an “arbitrary and capricious manner.” “Br. of Appellant at 20 (quoting *Conway v. Dep’t of Soc. & Health Servs.*, 131 Wn.App. 406, 419, 120 P.3d 130 (2005)). This claim fails. The WPPA publication lacks the force of law. As CRC acknowledges, it is at most a source of “commentary.” Reply Br. of Appellant at 24.

*6 CRC next relies on Resolution 378, which states in relevant part that the Port Commission “acts in trusteeship for port owners who are the citizens of the Woodland Port District, and serves as the legitimizing connection between this base and the organization.” Nothing in Resolution 378 shows that the Port intended to hold the subject property in a legally enforceable trust. “[T]here must be strong evidence of an intent to create a trust, such as specific direction from the legislature, before we impose trust or fiduciary duties on an agency.” *Cedar River Water & Sewer Dist. v. King County*, 178 Wn.2d 763, 778, 315 P.3d 1065 (2013). Aside from Resolution 378’s reference to “trusteeship,” CRC cites no evidence of a trust.

CRC relies on RCW 42.17A.001, which states in relevant part, “It is ... the public policy of the state of Washington: ... (2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.” RCW 42.17A.001.⁸ This claim fails because nothing in chapter 42.17A RCW, which governs disclosure of campaign contributions, authorizes this court to void a port district’s sale of surplus property.

⁸ We question whether a cognizable cause of action is available under this provision.

CRC also argues, “Proper Port purposes, as declared by the Legislature, are ‘industrial development or trade promotion.’” “Br. of Appellant at 23. It relies on article VIII, section 8, of the Washington State Constitution, which provides:

The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article.

CRC cites no authority applying this provision to a sale under RCW 53.08.090(1).

Under RCW 53.08.090(1), the Port must declare, by resolution, that the property to be sold is “no longer needed for district purposes.” The record shows no genuine dispute as to whether the Port complied with this requirement.⁹

⁹ CRC filed a RAP 10.8 statement of additional authorities citing RCW 53.08.260 and RCW 53.08.270. These citations are not persuasive. We note that CRC submitted argument along with its citations. RAP 10.8 provides, “The statement should not contain argument, but should identify the issue for which each authority is offered.”

Open Public Meetings Act

CRC alternatively challenges the sale on the ground that the Port violated the Open Public Meetings Act (OPMA). It contends the trial court erroneously dismissed this claim “sua sponte”¹⁰ on CRRVP’s first summary judgment motion. Br. of Appellant at 34. It argues the “sua sponte” ruling was unfair because CRRVP “nowhere mentioned OPMA” in its motion and thus left CRC without “notice

or ‘a full and fair opportunity to ventilate’ “ the claim. Br. of Appellant at 34–35. As for the remedy, it argues this court should “send the OPMA claim back to be heard on the merits.”¹¹ Br. of Appellant at 36.

¹⁰ According to Law.com, “sua sponte” is “Latin for ‘of one’s own will,’ meaning on one’s own volition, usually referring to a judge’s order made without a request by any party to the case.” <http://dictionary.law.com/Default.aspx?selected=2032> (last visited June 20, 2014).

¹¹ CRC clarifies that this issue “goes to whether CRC was provided with an adequate opportunity to develop its claim.” Reply Br. of Appellant at 19.

The record fails to support CRC’s claim that it lacked reasonable notice. It shows CRC received actual notice and a full and fair opportunity to be heard by the court. CRRVP’s unambiguous summary judgment motion sought “dismissal of the Plaintiffs’ Complaint with prejudice.” CRRVP’s summary judgment reply brief argued:

*7 CRRVP has moved for summary judgment on all issues in this case, and respectfully requests that the Court dismiss the Plaintiffs’ Complaint with prejudice. CRC argues that the issue of a violation of the Open Public Meetings Act remains as an issue, but that is not the case. CRC has presented no facts which support this theory.

Indeed, the record shows CRC presented no facts to support its claim that the Port violated the OPMA when it allegedly approved the subject property’s sale in an executive session. But even if we assume CRC was surprised by the OPMA summary judgment motion, it failed to move for a continuance of the summary judgment hearing under CR 56(f).¹²

¹² CR 56(f) states, “When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” (Boldface omitted.) The record indicates CRC engaged in presummary judgment discovery. It deposed every Port commissioner, Port executive director Holmberg, and Port auditor Carol Moore. It also obtained all Port meeting documents related to the property sale.

OPMA claim. CRC’s counsel argued that the claim necessarily survived based on CRRVP’s failure to brief the issue.¹³ CRRVP’s counsel responded by challenging the claim’s merit.¹⁴ At a hearing on proposed orders, CRRVP’s counsel argued, “There are no facts to support a violation of the Open Public Meetings Act....” Report of Proceedings (RP) (Aug. 17, 2012) at 3. CRC’s counsel responded that the claim failed premised on lack of briefing. He added, “[W]e think that we should at least keep that cause of action open for—and see if we can establish sufficient evidence of a violation.” RP (Aug. 17, 2012) at 6. The trial court ruled, “The Open Public Meeting matter, there was no proof of a violation. There’s no material issue of fact in that regard.”¹⁵ RP (Aug. 17, 2012) at 8. It dismissed the claim with prejudice.

¹³ The record shows CRRVP’s opening and reply briefs addressed all the claims asserted by CRC, including the OPMA claim. CRRVP’s briefs also included citations to the record evidence in support of its summary judgment motion.

¹⁴ At the summary judgment hearing, CRRVP’s counsel argued, “Regarding the Open Public Meetings Acts issue, there is nothing in the record that indicates there were any decisions made in executive sessions.” Report of Proceedings (RP) (July 27, 2012) at 27. He added, “The references made by Mr. Holmberg to those executive sessions show that they were talking about the status of appraisals, and the—and that was it. And that is allowed under the Open Public Meetings Act in executive session.” RP (July 27, 2012) at 27.

¹⁵ A defendant moving for summary judgment may meet the initial burden of proof by showing that there is an absence of evidence to support the nonmoving party’s case. *Lake Chelan Shores Homeowners Ass’n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn.App. 168, 179, 313 P.3d 408 (2013), *review denied*, 179 Wn.2d 1019 (2014). When a defendant moves for summary judgment and satisfies the initial burden of establishing the absence of a material fact issue, the inquiry shifts to the plaintiff. If the plaintiff fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party bears the burden of proof at trial, the court should grant the defendant’s motion for summary judgment. *Burton v. Twin Commander Aircraft LLC*, 171 Wn.2d 204, 222–23, 254 P.3d 778 (2011); *see also* CR 56(e).

The record fails to establish CRC’s claim that the court ruled sua sponte. The court ruled in response to CRRVP’s motion, the parties’ briefing, and the arguments of counsel over the course of two hearings. As noted above,

Finally, at a hearing, the parties argued the merits of the

CRC never moved to continue the summary judgment hearing in order to conduct discovery to “see if we can establish sufficient evidence of a violation.” RP (Aug. 17, 2012) at 6. The trial court properly granted summary judgment dismissal on CRC’s OPMA claim.

For the first time in its reply brief, CRC contends CRRVP failed to meet its initial burden to demonstrate the absence of any genuine issue of material fact. It argues, “Even the most liberal interpretation of the moving party’s burden under summary judgment would find CRRVP’s lack of evidence and argument to be insufficient.” Reply Br. of Appellant at 23. We decline to address CRC’s untimely claim.¹⁶ *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (“An issue raised and argued for the first time in a reply brief is too late to warrant consideration.”).¹⁷

¹⁶ In any event, this assertion lacks merit. See *supra* note 13.

¹⁷ CRRVP contends that even if the Port somehow violated RCW 53.08.090(1) or the OPMA, the trial court correctly dismissed CRC’s surplus designation, illegal sale, and OPMA claims premised on CRRVP’s status as a bona fide purchaser for value. Given our disposition discussed herein, we need not reach this issue. We also need not reach CRC’s claim that the OPMA claim “is clearly substantive in nature and cannot be defeated by the BFP defense.” Br. of Appellant at 33.

Unconstitutional Gift of Public Funds

CRC argues that the sale violated article VIII, section 7 of the Washington State Constitution. That provision generally precludes gifts of public funds:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

*8 CRC asks this court to “steady the erosion of the Gift Clause by holding that the ‘sweetheart deal’ in this case justifies judicial scrutiny of the facts to determine whether a Constitutional violation has occurred.” Reply Br. of Appellant at 2. For the reasons below, we affirm the trial court’s summary judgment dismissal of this claim.

“In adopting article 8, section 7, and its counterpart, article 8, section 5, the framers intended to prevent the harmful ‘effects on the public purse of granting public subsidies to private commercial enterprises, primarily railroads.’” *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 701, 743 P.2d 793 (1987) (footnote omitted) (quoting *City of Marysville v. State*, 101 Wn.2d 50, 55, 676 P.2d 989 (1984)). “The manifest purpose of these provisions ... is to prevent state funds from being used to benefit private interests where the public interest is not primarily served.” *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996) (quoting *Japan Line, Ltd. v. McCaffree*, 88 Wn.2d 93, 98, 558 P.2d 211 (1977)). “[T]he Supreme Court has increasingly narrowed the application of this prohibition in order to more precisely conform to ‘the evils the framers sought to prevent.’” *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wn.App. 491, 507, 857 P.2d 283 (1993) (quoting *Taxpayers of Tacoma*, 108 Wn.2d at 702).

As the party alleging a violation, CRC bears the burden to show that the sale of the subject property to CRRVP amounted to “ ‘a transfer of property without consideration and with donative intent.’” *King County v. Taxpayers of King County*, 133 Wn.2d 584, 597, 949 P.2d 1260 (1997) (quoting *Gen. Tel. Co. v. City of Bothell*, 105 Wn.2d 579, 588, 716 P.2d 879 (1986)). “ ‘Absent a showing of donative intent or gross inadequacy, trial courts should only apply a legal sufficiency test, under which a bargained-for act or forbearance is considered sufficient consideration.’” *CLEAN v. City of Spokane*, 133 Wn.2d 455, 469, 947 P.2d 1169 (1997) (quoting *City of Tacoma*, 108 Wn.2d at 703).

¹⁸ Our Supreme Court has written that no “gift of public funds has been made” if “the funds are being expended to carry out a fundamental purpose of the government.” *City of Spokane*, 133 Wn.2d at 469. The Port and CRRVP do not contend the sale at issue here fulfilled a fundamental government purpose.

CRC contends the Port transferred the subject property to CRRVP with donative intent and with a grossly inadequate return. It relies on the following evidence:

- The Port sold the subject property on April 21, 2011, for \$44,000. CRC’s expert, real estate appraiser Darin Shedd, offered a declaration stating, “As of June 14, 2011, it is my opinion that the fair market value of the subject property was \$206,000.”
- CRRVP’s March 2007 lease contained a clause releasing the Port from any obligation to reimburse CRRVP for “improvements, alterations or repairs” to

the subject property. In April 2011, the Port reduced the property's sale price by \$17,000 to account for CRRVP's tenant improvements.

- The Port never contacted CRC or Landels to evaluate their respective alleged interests in purchasing the subject property.
- Holmberg wrote in his April 20, 2011 memorandum that he was recommending "an asking price of \$45,000." The final sale price was \$44,000.
- ***9 •** CRRVP offered to pay for the entire cost of a survey. The Port split the cost.

This evidence, viewed in the light most favorable to CRC (summarized above), fails to create a genuine issue of material fact as to either donative intent or grossly inadequate return. The Port Commission agreed on the \$44,000 sale price at a public meeting after negotiating with CRRVP for more than a year. At the time of the sale, CRRVP held a long-term lease worth only \$50 per year to the Port. CRRVP's initial offer was \$35,000.

Further, the Port Commission acted on information that the subject property was useful only to adjoining landowners. CRRVP submitted its written purchase offer at a public meeting. The commission's surplus and sale decisions also occurred at public meetings. No CRC representative attended these meetings. On this record, the \$44,000 sale price reflects a properly negotiated transaction, not an unconstitutional gift.

CRC relies on *State ex rel. O'Connell v. Port of Seattle*, 65 Wn.2d 801, 399 P.2d 623 (1965), and *City of Bellevue v. State*, 92 Wn.2d 717, 600 P.2d 1268 (1979), to argue that the Port's "[u]nobligated" \$17,000 credit for tenant improvements evidences donative intent. Br. of Appellant at 41. Neither case controls.

In *O'Connell*, the court held that the Port of Seattle violated former article VIII, section 7 when it used public funds to "treat shippers and other private individuals to free meals and refreshments" in what the Port described as "promotional hosting."¹⁹ *O'Connell*, 65 Wn.2d at 802. Key was the fact that prospective customers received the meals and drinks without "any contract with the Port of Seattle" and, thus, the customers had no legal obligation to reimburse the Port. *O'Connell*, 65 Wn.2d at 804.

¹⁹ A constitutional amendment changed this rule. Article VIM, section 8 provides, "The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be

deemed a gift within the provisions of section 7 of this Article."

In *City of Bellevue*, the court upheld an ordinance allowing the city to reimburse public employees for tips paid during business meals. The court reasoned that because tipping was basically obligatory, the act of tipping provided no evidence of donative intent. And unlike meals and drinks purchased for prospective customers, tips constituted "payment for service rendered." *City of Bellevue*, 92 Wn.2d at 721. The court noted, "It is the presence of consideration in recognizing that the tip is connected to the service rendered that distinguishes this case from *O'Connell*." *City of Bellevue*, 92 Wn.2d at 721.

CRC cites no relevant authority that the Port's decision to credit the \$17,000 for tenant improvements under these circumstances constitutes an impermissible gift of public funds.²⁰

²⁰ We note that each of the Port commissioners who approved the sale provided deposition testimony evidencing the absence of donative intent. CRC objected to the court's consideration of this evidence on grounds of an impermissible opinion on an ultimate issue. Even if we disregard this evidence, our resolution of the gift of public funds issue is unaffected.

CRC also argues that Holmberg failed to investigate its interest in the property. CRRVP acknowledges that Holmberg made a mistake.²¹ On this bare record, Holmberg's mistake fails to establish donative intent on the part of the Port Commission.

²¹ CRRVP states, "The Port commissioners asked the Port Director [Holmberg] to see if CRC was interested in purchasing the property, but he mistakenly failed to do so." CRRVP's Resp't's. Br. at 27.

CRC also claims that Pyle asked Holmberg in an October 2010 e-mail not to mention CRRVP's interest in the subject property at an upcoming Port Commission meeting. Holmberg responded, "All I planned to do in the CRRVP update was to let the commission know we've been working on the road to the north of your property, and that I expect to have the appraisals very soon." He added, "I would be happy to strike that update and have private conversations with the individual commissioners instead." Pyle replied, "I think that I'd prefer a Private update. Just to keep the chatter down." CRC's opening brief barely addresses the relationship of this evidence to the issue of donative intent.²² This argument is

inadequately briefed. RAP 10.3(a)(6); *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn.App. 474, 486, 254 P.3d 835 (2011). In any event, nothing in the e-mail exchange creates a fact question as to whether the commission acted with donative intent. Pyle e-mailed Holmberg more than six months before the Port sold the subject property. The record shows no connection between this e-mail exchange and the Port Commission's actions leading up to the sale of the subject property.

²² It appears that CRC relied on the above-described evidence primarily to establish collusion between the Port and CRRVP for purposes of CRRVP's bona fide purchase defense. CRC argues, "Simply stated, the undisputed fact that CRRVP purposely sought to 'keep the chatter down' should automatically disqualify it from asserting the BFP defense." Br. of Appellant at 31. As noted above, we need not reach the bona fide purchaser issue.

*10 CRC also relies on *Casa del Rev v. Hart*, 110 Wn.2d 65, 750 P.2d 261 (1988), *Zucker v. Mitchell*, 62 Wn.2d 819, 384 P.2d 815 (1963), and *Buckerfield's Ltd. v. B.C. Goose & Duck Farm Ltd.*, 9 Wn.App. 220, 511 P.2d 1360 (1973), to argue that the Port received a grossly inadequate return. These cases are unpersuasive because none analyzed the adequacy of consideration for purposes of article VIII, section 7.

Our Supreme Court's decision in *King County* is persuasive on the question of gross inadequacy under article VIII, section 7. There, a public facilities district leased a publicly-funded baseball stadium to the Seattle Mariners. A group of citizen taxpayers claimed the lease amounted to an unconstitutional gift, premised on donative intent and gross inadequacy. A majority of the court rejected the argument, relying in part on evidence that the lease required the Seattle Mariners to pay \$700,000 annual rent for 20 years. Justice Sanders dissented, citing the expert's opinion that \$700,000 annual rent was "50 times less than the fair market rent." *King County*, 133 Wn.2d at 634 (Sanders, J., dissenting). Unpersuaded by this expert opinion, the majority declined to inquire into the adequacy of consideration but employed the well-settled legal sufficiency test.

CRC's "sweetheart deal" charge falls within a similar claim asserted by the taxpayers in *King County*. On that point, the court reasoned:

At its core, the Taxpayers' argument is the District and the County made a bad deal. While that may or may not be true, "The wisdom of the King County plan is not for the consideration of this court—its constitutionality is." *Louthan v. King County*, 94 Wn.2d 422, 427, 617

P.2d 977 (1980). The Taxpayers have failed to demonstrate a constitutional infirmity under Const. art. VIII, §§ 5 and 7.

King County, 133 Wn.2d at 601. It also noted, "An incidental benefit to a private individual or organization will not invalidate an otherwise valid public transaction." *King County*, 133 Wn.2d at 596.

In *City of Spokane*, citizens groups challenged an ordinance providing public support for a new parking garage in downtown Spokane. In rejecting the challenge, the court declined to void the transaction. "Although Appellants may view the transaction as an unwise use of public funds that unduly benefits the Developers, the wisdom of the plan is not for this court to consider." *City of Spokane*, 133 Wn.2d at 470.

At its core, CRC argues that the Port gave CRRVP a "sweetheart deal." Br. of Appellant at 44. Under *King County* and *City of Spokane*, we decline to question the wisdom of the sale under the circumstances of this case. CRRVP achieved price reductions through legitimate negotiations with the Port. On this record, no reasonable trier of fact could find that the Port sold the subject property to CRRVP with donative intent or that it received a grossly inadequate return.

The remaining question is whether the consideration underlying the sale meets the legal sufficiency test. *City of Spokane*, 133 Wn.2d at 469. On this record, we conclude the sale meets this test. CRC's constitutional challenge fails.

Attorney Fees on Appeal

*11 CRC requests attorney fees on appeal pursuant to the OPMA, which permits the recovery of attorney fees and costs by "[a]ny person who prevails against a public agency in any action in the courts for a violation of [the OPMA]...." RCW 42.30.120(2). Because the claim fails, we decline the attorney fee request.

CONCLUSION

For the reasons discussed above, we affirm the trial court's order granting summary judgment dismissal in favor of the Port and CRRVP.

All Citations

Not Reported in P.3d, 182 Wash.App. 1008, 2014 WL 2963955

WE CONCUR: DWYER and APPELWICK, JJ.

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Attachment K

RCW 53.08.090

Sale of property.

(1) A port commission may, by resolution, authorize the managing official of a port district to sell and convey port district property having a value not exceeding the value limit in subsection (2) of this section. The authority must be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of the property having a value in excess of the value limit in subsection (2) of this section must not be broken down into components having a value not exceeding the value limit in subsection (2) of this section and sold in the smaller components unless the smaller components be sold by public competitive bid. A port district may sell and convey any of its real or personal property valued at more than the value limit in subsection (2) of this section when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof must be disposed of until the comprehensive plan has been modified to find the property surplus to port needs. The comprehensive plan must be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section repeals or modifies procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW.

(2)(a) Beginning on July 23, 2023, the value limit in subsection (1) of this section is \$22,000. Beginning December 2024, and each December thereafter, the department [of revenue] shall adjust the value limit for the following calendar year by multiplying the current value limit by one plus the percentage by which the most current consumer price index available on December 1st of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest \$10.

(b) For purposes of this subsection (2):

(i) "Consumer price index" means the consumer price index for all urban consumers, all items less food and energy, for the Seattle area as calculated by the United States bureau of labor statistics or successor agency.

(ii) "Seattle area" means the geographic area sample that includes Seattle and surrounding areas.

[2023 c 68 s 1; 1994 c 26 s 1; 1981 c 262 s 1; 1969 ex.s. c 30 s 1; 1965 c 23 s 1; 1955 c 65 s 10. Prior: 1943 c 166 s 2, part; 1921 c 183 s 1, part; 1917 c 125 s 1, part; 1913 c 62 s 4, part; 1911 c 92 s 4, part; Rem. Supp. 1943 s 9692, part.]

NOTES:

Restriction on sale of harbor rights and property: State Constitution Art. 15 s 1 (Amendment 15).

Surplus real property program.

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or building improvements or for construction of highway improvements at fair market value to any person through the solicitation of written bids through public advertising in the manner prescribed under RCW 47.28.050 or in the manner prescribed under RCW 47.12.283.

(3) The department may forego the processes prescribed by RCW 47.28.050 and 47.12.283 and sell the real property to any of the following entities or persons at fair market value:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;
- (g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within 15 days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;
- (h) To any other owner of real property required for transportation purposes;
- (i) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185A RCW;
- (j) During the 2021-2023 fiscal biennium, any nonprofit organization that identifies real property to be sold or conveyed as a substitute for real property owned by the nonprofit within the city of Seattle to be redeveloped for the purpose of affordable housing; or
- (k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(4) When selling real property pursuant to RCW 47.12.283, the department may withhold or withdraw the property from an auction when requested by one of the entities or persons listed in subsection (3) of this section and only after the receipt of a nonrefundable deposit equal to 10 percent of the fair market value of the real property or \$5,000, whichever is less. This subsection does not prohibit the department from exercising its discretion to withhold or withdraw the real property from an auction if the department determines that the property is no longer surplus or chooses to sell the property through one of the other means listed in subsection (2) of this section. If a transaction under this subsection is not completed within 60 days, the real property must be put back up for sale.

(5) Sales to purchasers may, at the department's option, be for cash, by real estate contract, or exchange of land or highway improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(6) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(7) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW **47.12.320** shall be deposited in the motor vehicle fund.

(8) The department may not enter into equal value exchanges or property acquisitions for building improvements without first consulting with the office of financial management and the joint transportation committee.

[**2023 c 275 s 21**; **2022 c 186 s 710**; **2015 3rd sp.s. c 13 s 2**; **2011 c 376 s 2**; (2011 c 376 s 1 expired June 30, 2012); (2010 c 157 s 1 expired June 30, 2012); **2006 c 17 s 2**; **2002 c 255 s 1**; **1999 c 210 s 1**; **1993 c 461 s 11**; **1988 c 135 s 1**; **1983 c 3 s 125**; **1977 ex.s. c 78 s 1**.]

NOTES:

Effective date—2022 c 186: See note following RCW **47.01.071**.

Effective date—2015 3rd sp.s. c 13: See note following RCW **47.12.283**.

Effective date—2011 c 376 s 2: "Section 2 of this act takes effect June 30, 2012." [**2011 c 376 s 4**.]

Expiration date—2011 c 376 s 1: "Section 1 of this act expires June 30, 2012." [**2011 c 376 s 3**.]

Expiration date—2010 c 157 s 1: "Section 1 of this act expires June 30, 2012." [**2010 c 157 s 2**.]

Finding—1993 c 461: See note following RCW **43.63A.510**.

*Proceeds from the sale of surplus real property for construction of second Tacoma Narrows bridge deposited in Tacoma Narrows toll bridge account: RCW **47.56.165**.*

PDF**RCW 39.33.020****Disposal of surplus property—Hearing—Notice.**

Before disposing of surplus property with an estimated value of more than fifty thousand dollars, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least ten days but not more than twenty-five days prior to the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement.

[**1995 c 123 s 1**; **1981 c 96 s 2**.]

RESOLUTION NO. 3757

A RESOLUTION of the Port of Seattle Commission amending Unit 20 of the Comprehensive Scheme of Harbor Improvements of the Port of Seattle (Lower Duwamish Industrial Development District) by: (i) declaring certain real property surplus and no longer needed for port district purposes; (ii) deleting said property from Unit 20 of the Comprehensive Scheme; and (iii) authorizing the Executive Director to take all necessary steps and execute all documents for the sale of such real property to West Coast Self-Storage Group, LLC.; amending Resolutions No. 17, 2769, and 2805 of the Port of Seattle Commission.

WHEREAS, the original Comprehensive Scheme of Harbor Improvements of the Port of Seattle was fixed in Resolution No. 17 of the Port Commission and was ratified by the qualified electors of the Port District at a special election held therein on March 5, 1912; and

WHEREAS, Unit 20 of the Comprehensive Scheme – the Lower Duwamish Industrial Development District – was initially created by Port Commission adoption of Resolution No. 2769 on May 27, 1980; and

WHEREAS, the boundaries of said Unit 20 were subsequently revised and restated by Port Commission adoption of Resolution No. 2805 on February 10, 1981, as subsequently amended; and

WHEREAS, included within said Unit 20 is the Port-owned property legally described on attached Exhibit A (the “Property”); and

WHEREAS, the property is located at the extreme northern edge of Unit 20 – Lower Duwamish Industrial District – of the Port’s Comprehensive Scheme, disconnected from any waterfront or associated industrial Port property, and surrounded by Harbor Avenue Southwest and privately owned, non-Port property; and

WHEREAS, the development options do not match the Port of Seattle goals that are found within the Century Agenda and the site has been found to have no value for supporting small business growth or workforce development and it did not provide support to maritime or cargo-related uses; and

WHEREAS, the Port has negotiated a purchase and sale agreement (the "Purchase and Sale Agreement") with West Coast Self-Storage Group, LLC ("West Coast") to sell the Property to West Coast for its appraised fair market value; and

WHEREAS, a resolution declaring the Property surplus and deleting the Property from Unit 20 of the Comprehensive Scheme is a prerequisite to sale of the Property; and

WHEREAS, an official public hearing was held March 26, 2019, after notice of such hearing was duly published as provided by law, to consider whether said Unit 20 of the Comprehensive Scheme should be amended to provide for the Property to be declared surplus to Port of Seattle needs and no longer needed for Port purposes, delete it from Unit 20 of the Comprehensive Scheme, and authorize its sale to West Coast; and

WHEREAS, the Port of Seattle Commission has heard from all persons desiring to speak at said public hearing regarding the proposed amendment and modification to Unit 20; and

WHEREAS, the members of the Port of Seattle Commission have discussed and considered the proposed amendment to Unit 20 of the Comprehensive Scheme in light of all comments by members of the public at the public hearing;

NOW, THEREFORE, BE IT RESOLVED by the Port of Seattle Commission as follows:

Section 1. The Property, which is part of Unit 20 of the Comprehensive Scheme, is hereby declared surplus to Port of Seattle needs and no longer needed for Port purposes and is deleted from Unit 20 of the Comprehensive Scheme.

Section 2. The Executive Director is authorized to take all necessary steps and to execute all documents, including the Purchase and Sale Agreement, necessary to accomplish sale of the Property to West Coast, in accordance with state law.

ADOPTED by the Port of Seattle Commission at a duly noticed public meeting thereof, held this 16th day of APRIL, 2019, and duly authenticated in open session by the signatures of the commissioners voting in favor thereof and the seal of the commission.






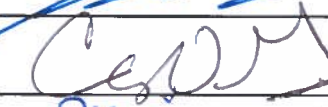
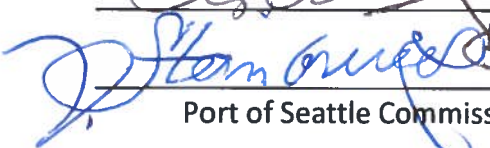

STEPHANIE BOWMAN

FRED FELLEMAN

RYAN CALKINS

COURTNEY GREGOIRE

PETER STEINBRUECK
Port of Seattle Commission

EXHIBIT A

(Legal Description of Property)

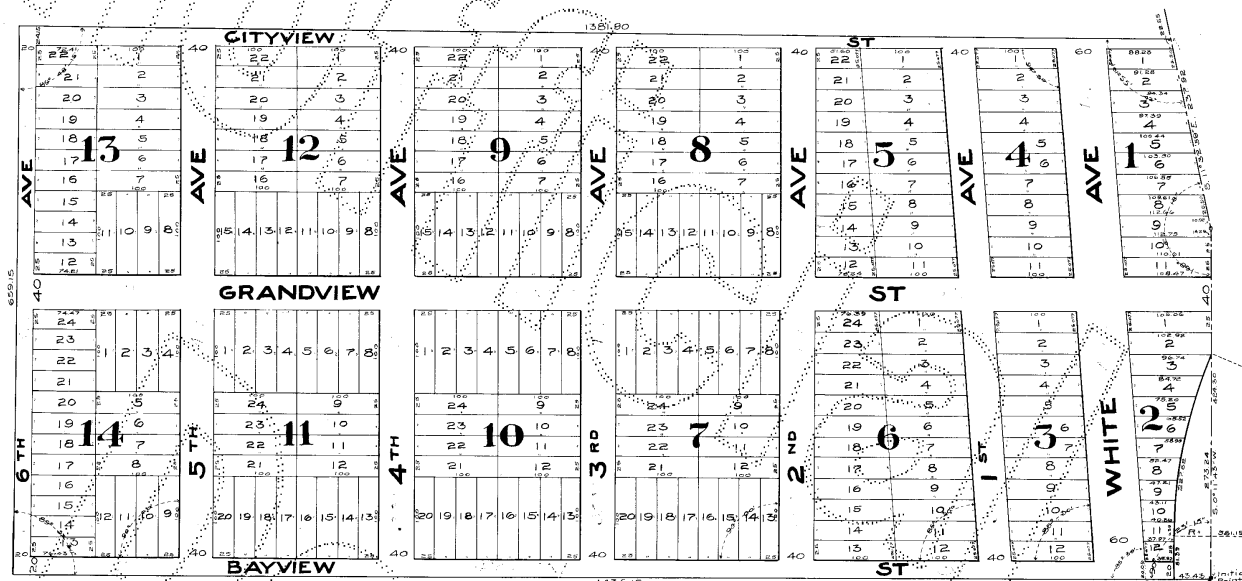
LOTS 6 THOROUGH 9, BLOCK 1, STEEL WORKS ADDITION TO WEST SEATTLE,
ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 12 OF PLATS,
PAGE 5, RECORDS OF KING COUNTY, WASHINGTON.

SITUATED IN THE COUNTY OF KING, STATE OF WASHINGTON

Steel Works Addition TO WEST SEATTLE

Scale 1 in. = 100 ft.

COTTERILL & WHITWORTH
Civil Engineers



DESCRIPTION

This plat of STEEL WORKS ADDITION to West Seattle comprises the South 21st 1/2nd Acres of Lot five (5) of Section thirteen of Township twenty four (24) North of Range three (3) East of the Willamette Meridian, King County, Washington, except the following described tract, viz: Beginning at the Southeast corner of said Lot 5 and running thence N 0° 11' 45" E. 273.24 feet along the U.S. Government Meander line, thence south westerly on a curve to the left with a radius of 581.19 feet, a distance of 227.62 feet, thence due South on a straight line a distance of 51.39 feet to an intersection with the south line of said Lot 5; thence East 43.43 feet to the point of beginning containing 0.2 of an acre.

Dimensions of all lots streets and avenues are as shown in feet upon the face of the plat.

The initial point is the S.E. corner of said lot 5, which is 7771 feet E. of the west line of Block 2 produced to the south boundary of L. 5

DEDICATION

Know all men by these presents that I, Albert C. Phillips, a single man, owner in fee simple of the tract comprising Steel Works Addition to West Seattle, do hereby declare said plat and dedicate to the use of the public forever, all streets and avenues platted thereon.

Witness my hand and seal the day of AD. 1905.

In the presence of Albert C. Phillips
Harrison Bostwick
R.M. Butterfield

Examined and approved by the board of County Commissioners this 9th day of Feb. A.D. 1905

R.J. Smith
Chairman

326172

Filed for Record at Request of Albert C. Phillips Feb. 9, 1905 at 3:55 min past 2 P.M. and recorded in Vol. 12 of Plat Books page 5 Records of King County, Wash.

J.P. Agnew
Deputy County Auditor

ACKNOWLEDGEMENT

STATE OF WASHINGTON } S.S.
COUNTY OF KING

This is to certify that on this 3rd day of Feb. A.D. 1905, before me a Notary Public in and for the State of Washington, personally appeared Albert C. Phillips, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and seal the day and year first above mentioned.

Harrison Bostwick
Notary Public in and for
the State of Washington,
residing at Seattle

Approved this 3rd day of February A.D. 1905.

A.L. Valentine
County Surveyor

PORT OF COLUMBIA

**1 Port Way
Dayton, WA 99328**

RESOLUTION No. 2009-07

A Resolution of the Port of Columbia to surplus real property located in the city of Dayton in Columbia County.

WHEREAS, the Port of Columbia owns certain real property located at 120 S. 1st Street in Dayton, Washington, Property ID No. 1-050-22-139-0000 and by this reference incorporated herein as PROPERTY.

WHEREAS, the Port of Columbia Board of Commissioners has the responsibility to dispose of real property pursuant to Section 53.08.090 RCW; and

WHEREAS, the Port of Columbia Board of Commissioners must assure that those responsibilities are carried out in the public interest by the Port; and

WHEREAS, the PROPERTY is valued at greater than \$10,000.00; and

WHEREAS, the PROPERTY is listed in the Port of Columbia Comprehensive Plan as a parcel no longer needed for Port District purposes; and

WHEREAS, the Port of Columbia has held a Public Hearing to consider public comment on the sale of the PROPERTY; and now

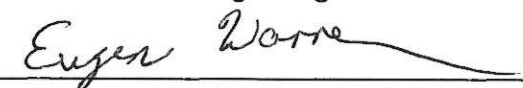
BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF COLUMBIA that the PROPERTY is hereby found and determined to be surplus to the Port's needs, and the sale of such property is in the public interest.

Adopted this 9th day of September, 2009.

PORT OF COLUMBIA BOARD OF COMMISSIONERS

By: 
Lawrence Turner, chairman

By: 
Doug Krueger

By: 
Eugene Warren

PORT OF COLUMBIA

**1 Port Way
Dayton, WA 99328**

RESOLUTION No. 2009-08

A Resolution of the Port of Columbia to surplus real property located in Columbia County, Washington.

WHEREAS, the Port of Columbia owns a certain .71 acre parcel of real property located in the Northeast quarter of the Northwest quarter of Section 2 in Township 9 North, Range 38 East, of the Willamette Meridian, commonly known to be located near 36413 Highway 12 in Columbia County, Washington, and by this reference incorporated herein as PROPERTY.

WHEREAS, the Port of Columbia Board of Commissioners has the authority to dispose of real property pursuant to Section 53.08.090 RCW; and

WHEREAS, the Port of Columbia Board of Commissioners must assure that those responsibilities are carried out in the public interest by the Port; and

WHEREAS, Columbia County Grain Growers, an abutting owner, wishes to purchase the PROPERTY; and

WHEREAS, the PROPERTY is valued at greater than \$10,000.00; and

WHEREAS, the Port of Columbia Comprehensive Plan states that the Board of Commissioners shall sell, lease or trade port property for the purposes of business retention, expansion and recruitment when it is deemed in the best interest of Columbia County; and

WHEREAS, the Port of Columbia has held a Public Hearing to consider public comment on the sale of the PROPERTY; and now

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF COLUMBIA that the PROPERTY is hereby found and determined to be no longer needed for port district purposes and therefore surplus to the Port's needs, and the sale of such property is in the public interest.

Adopted this 9th day of September, 2009.

PORT OF COLUMBIA BOARD OF COMMISSIONERS

By: Lawrence Turner
Lawrence Turner, chairman

By: Doug Krueger
Doug Krueger

By: Eugene Warren
Eugene Warren

Attachment M

Sales Data Comparisons for Railroad Right of Way Surplus 11-22-24

Prior Sales:

- 2010 - Sold .71 acres of railroad right of way property adjacent to Long's Elevator to Columbia County Grain Growers for \$17,750, which is \$25,000 per acre.
- 2016 - Sold .07 acres of railroad right of way property near an old grain tank at Bergevin Springs Road in Walla Walla County for \$1,190, which is \$17,000 per acre.
- 2017 – Sold .2 acres of railroad siding property to Seneca for \$5,500, which is \$27,500 per acre.
- 2023 – sold 1.29 acres of railing siding property to NWGG for \$40,288, which is \$31,000 per acre.

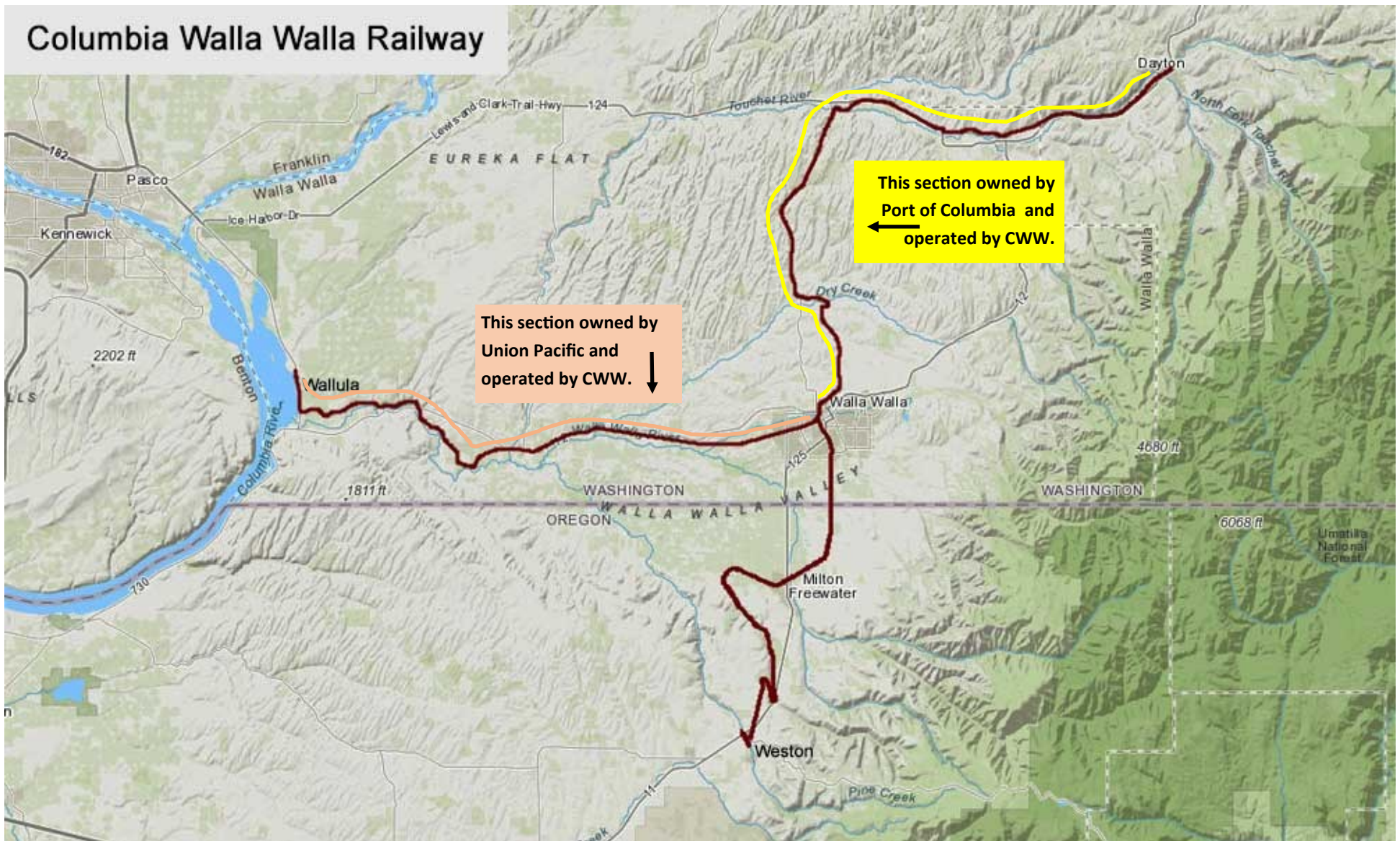
County Assessments of Similar Land:

- Seneca properties near their seed plant and processing facility:
 - .94 acres on Washington St. - \$20,480 (\$21,787 per acre)
 - 1.009 acres on N. 4th St. - \$22,000 (\$21,786 per acre)
 - .16 acre on N. 6th St. - \$6,120 (\$38,250 per acre)
- Northwest Grain Growers Properties near their seed facility and elevators in Dayton
 - .25 acres commercial property on Guernsey St. - \$12,000 (\$48,000 per acre)
 - .25 acres commercial property on Guernsey St. - \$12,000 (\$48,000 per acre)

City Lots

- A 3.3 acre industrial lot in the City of Dayton near Cameron Street sold for \$23,353 per acre.
- 2016 City Lots – range from a low of \$41,817 per acre to a high of \$124,581 per acre
- Other sales of non-ag bare land in the county range from about \$15,000 to \$30,000 per acre.

Attachment N



Attachment 0

Dayton
Condition / Rehab Notes

DRAFT

MP56 is a long mile

UP Ownership ends at MP 48. MP48 is equivalent to MP33 for the Dayton Line.

Mile Posts may be estimated. MP limits should not be used for anything other than rough estimates.

MP	Name	Type	Comments	
	Curve 33	Ditch	Ditching Needed	
	Curve 34	Rail	Relay Rail Candidate	
	Curve 34	XL	Excessive Cross Level	700
	Curve 34	Ties	Poor Tie Condition	
	Curve 35	Surface	Poor surface near middle and end	
	Curve 35	Ditch	Needs ditching near 36.25	
	Curve 35	Culvert	Culvert near 36.4 needs work	
37.4	37.6 Tangent	Ditch	Ditching Needed	Do in Phase 1
	Curve 38	Ballast	Very Shy on Ballast	
	Curve 39	Rail	Relay Rail Candidate	
	Curve 39	Ballast	Shy Ballast	
	Curve 39	XL	Excessive Cross Level	655
39.73	39.73 Bridge	Surface	Surface Approaches	
	Curve 39B	Ditch	Minimal Ditching	
40.4	40.5 Tangent	Ditch	Minimal Ditching	Muddy Track
40.4	40.5 Tangent	Ballast	Shy Ballast	
	Curve 40	Rail	Relay Rail Candidate	
40.9	40.9 Crossing	Crossing	Drainage issue at field crossing, maybe rebuild	
41.3	41.75 Tangent	Ditch	Ditching Needed	Maybe raise track as well
42.2	42.3 Tangent	Ballast	Shy Ballast	
42.5	42.5 Crossing	Crossing	Remove muddy private crossing	
42.7	42.75 Tangent	Ties	Clusters of really bad ties	
42.75	42.75 Tangent	Ditch	Very muddy near 3/4 board	
	Curve 42	Ditch	Poor drainage	
	Curve 42	Grub	Clear vegetation in curve	
42.85	42.85 Bridge	Surface	Surface Approaches	Bridge "57.85"
43.35	43.35 Tangent	Crossing	Crossing needs rebuilt	
43.4	43.6 Tangent	Ditch	Ditching Needed	
44.1	44.1 Tangent	Crossing	Bad Crossing	
	Curve 44	Ditch	Ditching Needed	
44.68	44.68 Bridge	Surface	Surface Approaches	Bridge "59.68"
44.5	44.5 Curve 44	Crossing	Bad Crossing	
	Curve 46	Silt	Silt in track	
45.6	45.6 Turnout	Ties	Poor tie condition in straight railed TC	
45.6	45.6 Turnout	Ditch	Ditching Needed	
45.7	46.1 Tangent	Regulate	Regulate between switches at Ennis	
46.1	46.1 Turnout	Rail	Debating straight rail on East Ennis switch	
46.4	46.5 Tangent	Ditch	Ditching Needed	
	Curve 46A	Ditch	Ditching Needed	
	Curve 46A	Culvert	Culvert needed	
46.9	46.9 Tangent	Culvert	Culvert needs fixing	
47.3	47.5 Tangent	Ballast	Shy Ballast	
47.6	47.6 Tangent	Crossing	Bad Crossing	
	Curve 48A	Ditch	Ditching Needed	
	Curve 48C	Ditch	Ditching Needed	
	Curve 48C	Ties	Very poor ties	
	Curve 48C	Surface	Line and surface needed	
	Curve 48D	Ditch	Ditching Needed	
49.2	49.25 Tangent	Ditch	Ditching Needed	
49.22	49.22 Tangent	Crossing	Old crossing	
49.4	49.5 Tangent	Ditch	Ditching Needed	
49.44	49.44 Tangent	Culvert	Box Culvert Bad	
	Curve 49A	XL	Excessive Cross Level	305
	Curve 49B	XL	Excessive Cross Level	305 Ties into a bridge on the east side. Unknown XL on bridge
	Curve 50A	Rail	Relay Rail Candidate	
	Curve 50A	Ditch	Ditching Needed	
	Curve 50A	Ties	Poor tie condition	
50.72	50.72 Bridge	Surface	Surface Approaches	Bridge "65.72"
	Curve 51	Ditch	Ditching Needed	
	Curve 51A	Ballast	Shy Ballast	
51.2	51.25 Tangent	Ballast	Shy Ballast	
51.24	51.24 Bridge	Surface	Surface Approaches	Bridge "66.24"
	Curve 51B	Ballast	Shy Ballast	
51.75	51.75 Curve 51B	Crossing	West Crossing in Prescott needs fixing	
52.05	52.05 Tangent	Crossing	Crossing needs rebuilt	
52.05	52.15 Tangent	Ditch	Poor drainage near Prescott	
53.1	53.1 Tangent	Ditch	Poor drainage near crossing	
53.18	53.18 Tangent	Culvert	Culvert sign but no culvert	
53.25	53.25 Tangent	Culvert	Culvert sign but no culvert	
	Curve 53	Ditch	Ditching Needed	
	Curve 53	Silt	Silt in track	
53.8	53.85 Tangent	Ditch	Poor drainage near crossing	
53.85	54 Tangent	Farmer	Farmers are very close to track	
54	56 Tangent	Ballast	Spotty shy ballast	

54.5	54.6 Tangent	Ditch	Ditching Needed	
	Curve 56	Ditch	Ditching Needed	
56.3	57.75	Ties	Poor Tie Condition	
	Curve 56B	Ditch	Ditching Needed	
	Curve 56B	Rail	Rail Relay	Phase 1
	Curve 56C	Ballast	Shy Ballast	
56.7	56.75 Tangent	Ballast	Shy Ballast	
	Curve 56E	Rail	Rail Relay	
	Curve 57A	Rail	Rail Relay	
	Curve 57A	XL	Excessive Cross Level	470
57.3	57.35 Tangent	Ditch	Poor Drainage	
	Curve 57F	XL	Excessive Cross Level	
	Curve 57F	Ballast	Shy Ballast	
	Curve 58	Ditch	Ditching Needed	
			Possibly design a fix for the area that was already	
57.6	57.7 Curve	Design	fixed one other time.	
			Slight settling from a bridge that was converted to a	
58.28	58.28 Curve	Surface	culvert	
	Curve 58A	Ditch	Ditching Needed	
58.5	58.5	Crossing	Crossing needs rebuilt	
	Curve 59	Rail	Relay Rail Candidate	
59.2	59.2 Curve 59	Crossing	Rough Crossing	
59.6	59.6	Crossing	Crossing needs rebuilt	
			Need to talk to farmer who is plugging the drainage	
60.3	60.3 Tangent	Farmer	ditch running South from the tracks	
60.9	61 Tangent	Ditch	Ditching Needed	
62.7	62.8 Tangent	Ditch	Ditching Needed	
62.7	62.8 Tangent	Ties	Poor tie condition	
62.7	62.8 Tangent	Ballast	Shy Ballast	
	Curve 63	Ditch	Ditching Needed	
	Curve 63	Ties	Poor tie condition	
	Curve 63	Ballast	Shy Ballast	
	Curve 64A	Ditch	Ditching Needed	
65.6	65.7 Tangent	Ditch	Ditching Needed	
65.95	66.1 Tangent	Ditch	between switches at Long	
66.5	66.6 Tangent	Ditch	Ditching Needed	
66.75	66.75 Tangent	Rip	Rip Rap Needed. Have Port pusue permits	
66.9	66.9 Tangent	Crossing	Gage 58"	
		Ties	Poor tie condition west of Pine Street	
		Crossing	Rebuild Cherry Street Crossing	
		Ditch	Drainage issue between Cherry and Willow	
		Crossing	Rebuild Willow Street Crossing	
		Crossing	5th street near senica needs fixed	

Dayton Crossings

DRAFT

Reconstruct with Timber

MP	Track	Type	Description	Length P1	Length P2	Comments
40.9	Crossing	Crossing	Drainage issue at field crossing, maybe rebuild	32		Farmer, Ballast Crossing, Bad drainage as well
43.35	Tangent	Crossing	Crossing needs rebuilt	0	16	Private Looks to be dirt
44.1	Tangent	Crossing	Bad Crossing	0	16	Private, Dirt, Poor drainage
44.5	Curve 44	Crossing	Bad Crossing	16		Private, Dirt, Poor drainage
47.6	Tangent	Crossing	Bad Crossing	0	24	Private, Dirt, Poor drainage
51.75	Curve 51B	Crossing	West Crossing in Prescott needs fixing	24		Public, Asphalt
52.05	Tangent	Crossing	Crossing needs rebuilt	0	24	Public, Wood Planks, Asphalt road
58.5		Crossing	Crossing needs rebuilt	24		Private, Dirt
66.9	Tangent	Crossing	Gage 58"	24		0 Ward Road, Public , wood panels

120 80

Total 200

Reconstruct with Concrete

MP	Track	Type	Description	Length P1	Length P2	Comments
59.2	Curve 59	Crossing	Rough Crossing	70		Public, Wood Planks, Asphalt road
59.6	Curve 59B	Crossing	Crossing needs rebuilt	66		Waitsburg, public, asphalt, maybe when city does road
	Tangent	Crossing	Rebuild Cherry Street Crossing	0	32	Public, asphalt
	Tangent	Crossing	Rebuild Willow Street Crossing	0	32	Public, asphalt
	Tangent	Crossing	5th street near senica needs fixed	0	24	Public, Asphalt
				136	88	

Total 224

Remove Crossing

MP	Track	Type	Description	Length P1	Length P2	Comments
42.5	Crossing	Crossing	Remove muddy private crossing	24		I think it's the private crossing next to a small bridge
49.22	Tangent	Crossing	Old crossing	10		One plank and some dirt to be cleaned up
			Total	34		

Dayton Bridges

DRAFT

Priority 2

Bridge no	Desc of Work	Cost
37.01	1 cap, crushing shims over both bents	\$ 10,000.00
38.14	crushing top and bottom caps on bent one	\$ 20,000.00
39.75	cap on bent, subcap of pier	\$ 18,000.00
42.85	Frame bent four	\$ 26,000.00
43.14	Replace all stringers of span 3, think about replacing all stringers	\$ 32,000.00
57.79	center cracked joint bar	\$ 300.00
		\$ 106,300.00

Priority 3

Bridge no	Desc of Work	Cost
39.75	Shim under both cords of piles 3 and 4	\$ 2,000.00
41.08	Repair broken weld in south steel handrail	\$ 600.00
42.85	Replace top timber of East Headwall	\$ 2,000.00
43.14	replace subcap on bent 2 and 3	\$ 16,000.00
44.68	Replace cap	\$ 8,000.00
	Headwall ballast leak and poor members. Replace shims on bent 2.	
45.50	Ballast and tamp approaches	\$ 10,000.00
46.15	Frame bent 3	\$ 30,000.00
50.17	Post piles 1 and 5 of bent 4. Shim undert Stringer 8 at bent 1 and 4	\$ 16,000.00
50.72	Replace 1.25" Shim. Replace cap	\$ 8,000.00
	replace 0.5" shims on bent 1. Additional member to headwall and	
51.24	backfill ballast. Shim 3 other piles.	\$ 6,000.00
60.3	Replace bottom cap	\$ 10,000.00
61.55	Install 2 or 3 split bolts in new cap to prevent more splitting	\$ 1,000.00
63.31	replace 1.5" Shim	\$ 1,000.00
66.77	Shim piles	\$ 1,000.00
		\$ 111,600.00

Priority 4

Bridge no	Desc of Work	Cost
37.01	Post Piles (3 of them)	\$ 12,000.00
38.14	Post pile. Replace top timber plank of headwall	\$ 6,000.00
38.46	Ballast and tamp approaches. Rip rap a bent.	\$ 4,000.00
	Post Piles (3 of them). Sway brace (3 of them). Repalce plate cut ties in	
39.75	approaches. Ballast and tamp approaches	\$ 18,000.00
41.08	Tamp and ballast approaches	\$ 2,000.00
41.17	Ballast and tamp approaches. Excavate around bent 3 and 4.	\$ 3,000.00
42.85	Post piles (2 of them). Ballast and tamp approaches.	\$ 10,000.00
	Replace ties (subcap) on bent one with 12"x6"x9'. Place riprap north side	
43.14	of headwall. Ballast and tamp both approaches.	\$ 7,000.00
	Post reject piles (some buried and inaccessible recommend excavating	
	around bents. Excavate bents 1 and 4 to original groundline. Ballast	
44.68	and tamp approaches.	\$ 12,000.00
45.5	Excavate around bent 4	\$ 500.00

Replace 48 bridge ties. Replace stringer 1 in span 2. Excavate spans 1		
46.15	and 3 (silt). Remove silt, add ballast, and tamp approaches.	\$ 26,400.00
50.17	Replace stingers (2 of them)	\$ 20,000.00
50.72	Ballast approaches	\$ 1,000.00
Reset bent 3 (leaning east with 1.5" tapered gaps at sill. Recommend removing drift pins, plumbing, drilling new holes and reinstalling pins).		
Add wingwall to north shoulder. Install 2 inboard bearing bolts in spans		
51.24	1 and 2 on pier 2. Ballast and tamp approaches.	\$ 12,000.00
57.79	Post Pile (1). Ballast and tamp both approaches	\$ 6,000.00
60.3	Replace fouled ballast and surface approaches. Replace headwalls	\$ 8,000.00
61.55	Replace stringers 1 and 3. Ballast and tamp approaches.	\$ 22,000.00
62.07	Ballast and tamp approaches	\$ 2,000.00
62.55	Replace Cap. Ballast and tamp approaches.	\$ 10,000.00
Install ballast retainers, add ballast, and tamp approaches. Excavate around bent 1 and 2 (silty). Cut off old hanging bridge bolts beneath		
63.31	stringers.	\$ 11,000.00
66.77	Replace ties. Ballast and tamp approaches	\$ 8,000.00
68.73	Replace at least 6 ties. Replace ties in span1.	\$ 5,000.00
		\$ 205,900.00

Priority 5

Bridge no	Desc of Work	Cost
49.9	Improve "fencepost and tie" wingwalls to better retain ballast	
	Replace Cap. Post Pile. Replace reject sections of guard timber. Balast	
50.17	and tamp approaches	
50.72	Post Pile	
51.24	Post Pile	
61.55	Add additional member to west headwall to raise height	
62.55	Replace top timber east headwall	
65.83	Post Pile (2)	
	Replace stringer in spans 1 and 2. Redrive pile 2 of bent 2 for better	
66.77	alignment and bearing.	

Dayton Ditching

DRAFT

MP	Track	Description	Linear Feet	Comments
	Curve 33	Ditching Needed Right Side	273	
	Curve 35	Needs ditching near 36.25, Both Sides	1638	
37.4	37.6 Tangent	Ditching Needed Both sides	2184	Do in Phase 1, 2 spots
	Curve 39B	Minimal Ditching Right	78	
40.4	40.5 Tangent	Minimal Ditching Right	507	Muddy Track, 2 spots
41.3	41.75 Tangent	Ditching Needed Both sides	5694	Maybe raise track as well
42.75	42.75 Tangent	Very muddy near 3/4 board	800	No Video, used average for length
	Curve 42	Poor drainage	800	No Video, used average for length
43.4	43.6 Tangent	Ditching Needed Right Side	1404	Farmer Pressure
	Curve 44	Ditching Needed Right Side	2730	
45.6	45.6 Turnout	Ditching Needed Both sides	468	
46.4	46.5 Tangent	Ditching Needed Both sides	1404	
	Curve 46A	Ditching Needed Right Side	975	Plus some tangent
	Curve 48A	Ditching Needed Both sides	1872	Plus some tangent
	Curve 48C	Ditching Needed Both sides	624	
	Curve 48D	Ditching Needed left Side	156	
49.2	49.25 Tangent	Ditching Needed Both sides	546	
49.4	49.5 Tangent	Ditching Needed left Side	351	
	Curve 50A	Ditching Needed Right Side	936	
	Curve 51	Ditching Needed Right Side	273	
52.05	52.15 Tangent	Poor drainage near Prescott left side	585	
53.1	53.1 Tangent	Poor drainage near crossing	800	No Video, used average for length
	Curve 53	Ditching Needed left Side	3705	Very poor, both sides
53.8	53.85 Tangent	Poor drainage near crossing both sides	312	Farm field just after this
54.5	54.6 Tangent	Ditching Needed Both sides	1638	
	Curve 56	Ditching Needed left Side	585	
	Curve 56B	Ditching Needed	800	No Video, used average for length All the way to the realignment.
57.3	57.35 Tangent	Poor Drainage, left side	1365	Through a tangent and a curve more
	Curve 58	Ditching Needed Both sides	702	
	Curve 58A	Ditching Needed left Side	312	
60.9	61 Tangent	Ditching Needed Both sides	1560	farm pressure
62.7	62.8 Tangent	Ditching Needed	800	No Video, used average for length
	Curve 63	Ditching Needed	800	No Video, used average for length
	Curve 64A	Ditching Needed Right Side	546	
65.6	65.7 Tangent	Ditching Needed left Side	585	farm pressure
65.95	66.1 Tangent	between switches at Long both sides	1950	
66.5	66.6 Tangent	Ditching Needed left Side	351	
		Drainage issue between Cherry and Willow both sides	1794	
Total			42903	

Dayton Rail

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MP Start	MP End	Curve	Length Estimated	
			by Public Aerial	Cost
		Curve 34	700	\$ 70,000.00
		Curve 39	655	\$ 65,500.00
		Curve 40	825	\$ 82,500.00
46.1	46.1	Turnout	110	\$ 11,000.00
		Curve 50A	1020	\$ 102,000.00
		Curve 56B	750	\$ 75,000.00
		Curve 56E	635	\$ 63,500.00
		Curve 57A	470	\$ 47,000.00
		Curve 59	385	\$ 38,500.00
		Total	5550	\$ 555,000.00

Unit Cost \$ 100.00

Dayton Ties

DRAFT

From	to	Miles	Rate (Tie/mile)	Ties	Cost
33	39	6	845	5070	\$ 1,014,000.00
39	51	12	1117	13404	\$ 2,680,800.00
51	56.3	5.3	845	4479	\$ 895,800.00
56.3	69.15	12.85	1117	14354	\$ 2,870,800.00
Total		36.15		37307	\$ 7,461,400.00

Walla Walla to Dayton Rehab Items - DRAFT	Unit	Quantity	Cost	Totals	Phase 1 Quantity	Phase 1 Cost	Phase 2 Quantity	Phase 2 Cost	Phase 3 Quantity	Phase 3 Cost	Comments
Replace Cross Ties	EA	37307	\$ 200.00	\$ 7,461,400.00	7089	\$ 1,417,800.00	14923	\$ 2,984,600.00	15295	\$ 3,059,000.00	
Replace Rail & OTM	TF	5550	\$ 100.00	\$ 555,000.00	5550	\$ 555,000.00	0	\$ -	0	\$ -	
Ditching	LF	42903	\$ 14.00	\$ 600,642.00	42903	\$ 600,642.00		\$ -	0	\$ -	
Reconstruct Crossing with Timber	TF	200	\$ 1,100.00	\$ 220,000.00	120	\$ 132,000.00	80	\$ 88,000.00	0	\$ -	
Reconstruct Crossing with Concrete	TF	224	\$ 1,500.00	\$ 336,000.00	136	\$ 204,000.00	88	\$ 132,000.00	0	\$ -	
Remove Crossing	TF	34	\$ 40.00	\$ 1,360.00	34	\$ 1,360.00		\$ -	0	\$ -	
Ballast Distribution	TON	19088	\$ 30.00	\$ 572,640.00	3627	\$ 108,810.00	7636	\$ 229,080.00	7825	\$ 234,750.00	
Surface Line and Dress	TF	188437	\$ 2.50	\$ 471,092.50	35804	\$ 89,510.00	75375	\$ 188,437.50	77258	\$ 193,145.00	
Replace Culvert	LF	120	\$ 200.00	\$ 24,000.00	120	\$ 24,000.00	0	\$ -	0	\$ -	Assuming 20' culvert lengths
Remove Vegetation	LS	1	\$ 1,800.00	\$ 1,800.00	1	\$ 1,800.00	0	\$ -	0	\$ -	
Place Riprap	CY	280	\$ 30.00	\$ 8,400.00	280	\$ 8,400.00	0	\$ -	0	\$ -	
Realign Curves	LS	1	\$ 35,000.00	\$ 35,000.00	1	\$ 35,000.00	0	\$ -	0	\$ -	
Surface Line and Dress with Remove Super Elevation	TF	2435	\$ 6.00	\$ 14,610.00	2435	\$ 14,610.00		\$ -	0	\$ -	Includes premium for additional ballast
Bridge Repair Allowance	LS	1		\$ 423,800.00	1	\$ 106,300.00	1	\$ 111,600.00	1	\$ 205,900.00	See Bridge Repairs sheet for Breakdown
Miscellaneous Ditching	LF	40000	\$ 13.00	\$ 520,000.00	0	\$ -	20000	\$ 260,000.00	20000	\$ 260,000.00	
Item Total				\$ 11,245,744.50		\$ 3,299,232.00		\$ 3,993,717.50		\$ 3,952,795.00	
Contingency			25%	\$ 2,811,436.13	25%	\$ 824,808.00	25%	\$ 998,429.38	25%	\$ 988,198.75	
Permitting			2%	\$ 224,914.89	2%	\$ 65,984.64	2%	\$ 79,874.35	2%	\$ 79,055.90	
Mobilization and Bonding			5%	\$ 562,287.23	5%	\$ 164,961.60	5%	\$ 199,685.88	5%	\$ 197,639.75	
Tax			8.55%	\$ 961,511.15	8.55%	\$ 282,084.34	8.55%	\$ 341,462.85	8.55%	\$ 337,963.97	
Engineering			8%	\$ 899,659.56	8%	\$ 263,938.56	8%	\$ 319,497.40	8%	\$ 316,223.60	
Total				\$ 16,705,553.45		\$ 4,901,009.14		\$ 5,932,667.35		\$ 5,871,876.97	

Wallula

Condition / Rehab Notes

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Mile Posts may be estimated. MP limits should not be used for anything other than rough estimates.

MP	Name	Type	Comments	
0	0.9	Ballast	Shy Ballast. UP Milepost	
0	1.5	Ties	Poor tie condition. UP MP	
3	3.25 Tangent	Ties	Poor tie condition. UP MP	
4.25	4.5 Mostly Tangent	Ties	Center cut ties from derailment. UP MP	
	Curve 4B	Ditch	Ditch low side	
5.25	5.25 Tangent	Crossing	Poor Crossing	
	Curve 5A	Ditch	Ditch low side	
	Curve 5A	Ballast	Shy Ballast	
	Curve 6	Ditch	Ditch High Side	
6.1	6.12 Tangent	Ditch	Ditch Left Side	
	Curve 6A	Ditch	Ditch Low Side	
	Curve 6B	Ditch	Ditch High Side	
6.44	6.44 Bridge	Ballast	Shy Ballast on approach	
6.5	6.6 Tangent	Ditch	Ditch Left Side	
	Curve 6C	Ditch	Ditch low side	
	Curve 6D	Ballast	Shy Ballast	
6.83	6.86 Tangent	Ditch	Ditch Left Side	
6.84	6.84 Culvert	Culvert	New Culvert Needed	
	Curve 6E	Ballast	Shy Ballast	
	Curve 6E	Ditch	Ditch low side	
	Curve 7	Ditch	Ditch High Side	
	Curve 7	River	Watch river on low side	
7.4	7.55 Tangent	Ballast	Shy Ballast	
7.55	7.55 Tangent	Crossing	Finish removal of crossing	
	Curve 7A	Ballast	Shy Ballast	
	Curve 7B	Ditch	Ditch Both Sides	
	Curve 8	Ballast	Shy Ballast	
	Curve 8B	Ballast	Shy Ballast	
9.15	9.3 Tangent	Ditch	Ditch Left Side	
	Curve 9	Ditch	Ditch Left Side	
	Curve 9A	Ditch	Ditch Left Side	
9.7	9.75 Tangent	Ballast	Shy Ballast	
	Curve 9B	Ditch	Ditch Left Side	
	Curve 10A	Ditch	Ditch Both Sides	Fouled Ballast
10.38	10.7 Tangent	Ditch	Ditch Right Side	
	Curve 10B	Ditch	Ditch Right Side	
	Curve 11	Ditch	Ditch Both Sides	End of Curve
11.3	11.3 Curve 11	Ballast	Shy Ballast	
11.4	11.45 Tangent	Ballast	Shy Ballast	
	Curve 11A	Ditch	Ditch Both Sides	
	Curve 11B	Ditch	Ditch Both Sides	
	Curve 12	Ditch	Ditch Left Side	
	Curve 12	Ballast	Shy Ballast	
12.4	12.5 Tangent	Ballast	Shy Ballast	
12.4	12.5 Tangent	Ditch	Ditch Both Sides	
	Curve 12A	Ballast	Shy Ballast	
12.6	12.65 Tangent	Ditch	Ditch Left Side	
	Curve 12B	Ditch	Ditch Right Side	
13.3	13.35 Tangent	Ballast	Slightly Shy Ballast	
13.5	13.7 Tangent	Surface	New Ballast dumped, has not been regulated	
14.32	14.32 Bridge	Surface	Needs surfacing	Recently rehabbed
	Curve 14	XL	Excessive Super Elevation	400' Between 2 bridges. Not sure what the bridge super's are (if any)
14.6	14.6 Turnout	Ballast	Shy Ballast	
14.6	14.6 Turnout	Ties	Poor Tie Condition	
16	17 Tangent	Ballast	Intermittent Shy Ballast	
16	17 Tangent	Ditch	Intermittent Ditching Needed	
17.5	17.5 Tangent	Spikes	Some hight spikes	
17.95	18 Tangent	Ballast	Shy Ballast	
19.2	19.2 Turnout	Ties	Poor Ties	
19.5	19.5 Turnout	Ties	Some new ties but they got damaged	
21	21.5 Tangent	Ballast	Intermittent Shy Ballast	
21.9	21.95 Tangent	Ballast	Shy Ballast Right Side	
22.36	22.36	Culvert	Culvert is starting to scour	
23.5	23.5 Tangent	Crossing	Les Pump and Electrical crossing is rough	
25.45	25.5 Tangent	Ballast	Shy Ballast	
26.5	26.55 Tangent	Ditch	Ditch Both Sides	
26.75	26.75 Tangent	Pile	Old Tie Pile	
28	28.1	Regulate	Regulating needed	
			Lot of water on the left side of the track that needs addressing. Coming from Damson Ave.	
29.2	29.3 Tangent	Water		
29.9	29.9 Tangent	Crossing	Crossing needs work	
30	31	Ties	Poor ties throughout yard	
	Curve 47B	XL	Excessive Cross Level	About 1000'

Wallula Crossings

DRAFT

MP	Track	Type	Description	Length	Comments
5.25	Tangent	Crossing	Poor Crossing	16	Looks to be private, Wood panel
23.5	Tangent	Crossing	Les Pump and Electrical crossing is rough	16	Private, timber

Total 32

Reconstruct with Concrete

MP	Track	Type	Description	Length	Comments
29.9	Tangent	Crossing	Crossing needs work	32	Public, Asphalted

Total 32

Remove Crossing

MP	Track	Type	Description	Length	Comments
7.55	Tangent	Crossing	Finish removal of crossing	20	Private, only earthwork to be done

Total 20

Wallula Ditching

DRAFT

MP Start	MP End	Track	Description	Linear Feet	Comments
		Curve 4B	Ditch low side	234	
		Curve 5A	Ditch low side	429	Two spots
		Curve 6	Ditch High Side	117	
6.1	6.12	Tangent	Ditch Left Side	156	Continuous
		Curve 6A	Ditch Low Side	468	Continuous
		Curve 6B	Ditch High Side	195	
6.5	6.6	Tangent	Ditch Left Side	273	Two spots
		Curve 6C	Ditch low side	507	
6.83	6.86	Tangent	Ditch Left Side	273	Some at start of next video as well
		Curve 6E	Ditch low side	585	Including some tangent prior and after curve
		Curve 7	Ditch High Side	312	Two spots
		Curve 7B	Ditch Both Sides	702	Two spots
9.15	9.3	Tangent	Ditch Left Side	546	Three spots
		Curve 9	Ditch Left Side	507	Two spots
		curve 9A	Ditch Left Side	624	
		Curve 9B	Ditch Left Side	390	
		Curve 10A	Ditch Both Sides	702	
10.38	10.7	Tangent	Ditch Right Side	1560	From bridge to curve 10B
		Curve 10B	Ditch Right Side	1131	Entire Curve
		Curve 11	Ditch Both Sides	1560	
		Curve 11A	Ditch Both Sides	624	
		Curve 11B	Ditch Both Sides	546	Two spots
		Curve 12	Ditch Left Side	351	
12.4	12.5	Tangent	Ditch Both Sides	234	
12.6	12.65	Tangent	Ditch Left Side	507	Continuous
		Curve 12B	Ditch Right Side	312	
16	17	Tangent	Intermittent Ditching Needed	468	Mainly in one area
26.5	26.55	Tangent	Ditch Both Sides	1170	
Total				15483	

Wallula Ties

DRAFT

From	to	Miles	Rate (Tie/mile)	Ties	Cost
0	6.44	6.44	1328	8553	\$ 1,710,600.00
6.44	17.05	10.61	996	10568	\$ 2,113,600.00
17.05	25.24	8.19	1328	10877	\$ 2,175,400.00
25.24	29	3.76	996	3745	\$ 749,000.00
29	33	4	1328	5312	\$ 1,062,400.00
Total		33		39055	\$ 7,811,000.00

Wallula Bridges

DRAFT

Priority 2

Bridge no	Desc of Work	Cost
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	\$	-
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Priority 3

Bridge no	Desc of Work	Cost
7.51	Bottom Cap	\$ 12,000.00
17.05	Replace stringer shims	\$ 8,000.00
17.85	Post Piles 1 and 3	\$ 12,000.00
		\$ 32,000.00

Priority 4

Bridge no	Desc of Work	Cost
14.21	Replace exterior stringers	\$ 16,000.00
14.44	replace shim under left chord over bent 5, 6, and 8. Post piles (6 of them)	\$ 4,000.00
14.53	Post piles (2 of them)	\$ 12,000.00
17.05	Repost pile 3	\$ 4,000.00
17.85	Post piles (3 of them)	\$ 18,000.00
		\$ 54,000.00

Priority 5

Bridge no	Desc of Work	Cost
6.44	Ballast and tamp approaches	\$ 4,000.00
	Replace broken headwall member. Replace reject mudblock in bent 1 and 5. Repair and construct as necessary return walls to improve ballast retention at both	
7.51	approaches. Replace stringer 4 of span 1. Post pile 5 of bent 4.	\$ 28,000.00
14.21	Replace bottom east headwall member. Ballast and tamp approaches.	\$ 6,000.00
14.44	Post pile 4	\$ 4,000.00
14.53	Post Pile (7 of them). Replace poor exterior stringers	\$ 48,000.00
17.85	Replace Cap	\$ 8,000.00
18.03	Excavate around bent 4 and replace short/reject headwalls members	\$ 8,000.00
		\$ 106,000.00

Wallula to Walla Walla Items - DRAFT	Unit	Quantity	Cost	Totals	Phase 1 Quantity	Phase 1 Cost	Phase 2 Quantity	Phase 2 Cost	Phase 3 Quantity	Phase 3 Cost	Comments
Replace Cross Ties	EA	39055	\$ 200.00	\$ 7,811,000.00	13670	\$ 2,734,000.00	12693	\$ 2,538,600.00	12692	\$ 2,538,400.00	
Ditching	LF	15483	\$ 14.00	\$ 216,762.00	15483	\$ 216,762.00	0	\$ -	0	\$ -	
Reconstruct Timber Crossing	TF	32	\$ 1,100.00	\$ 35,200.00	0	\$ -	32	\$ 35,200.00	0	\$ -	
Reconstruct Crossing with Concrete	TF	32	\$ 1,500.00	\$ 48,000.00	0	\$ -	32	\$ 48,000.00	0	\$ -	
Remove Crossing	TF	20	\$ 40.00	\$ 800.00	0	\$ -	20	\$ 800.00	0	\$ -	
Ballast Distribution	TON	17424	\$ 30.00	\$ 522,720.00	6099	\$ 182,970.00	5663	\$ 169,890.00	5662	\$ 169,860.00	
Surface Line and Dress	TF	172840	\$ 2.50	\$ 432,100.00	60494	\$ 151,235.00	56173	\$ 140,432.50	56173	\$ 140,432.50	
Replace Culvert	LF	40	\$ 200.00	\$ 8,000.00	0	\$ -	0	\$ -	40	\$ 8,000.00	Assuming 20' culvert lengths
Surface Line and Dress with Remove Super Elevation	TF	1400	\$ 6.00	\$ 8,400.00	1400	\$ 8,400.00	0	\$ -	0	\$ -	Includes premium for additional ballast
Bridge Repair Allowance	LS	1	\$ 192,000.00	\$ 192,000.00	1	\$ 32,000.00	1	\$ 54,000.00	1	\$ 106,000.00	
Miscellaneous Ditching Allowance	LF	8000	\$ 13.00	\$ 104,000.00	0	\$ -	4000	\$ 52,000.00	4000	\$ 52,000.00	
Item Total				\$ 9,378,982.00		\$ 3,325,367.00		\$ 3,038,922.50		\$ 3,014,692.50	
Contingency			25%	\$ 2,344,745.50	25%	\$ 831,341.75	25%	\$ 759,730.63	25%	\$ 753,673.13	
Permitting			2%	\$ 187,579.64	2%	\$ 66,507.34	2%	\$ 60,778.45	2%	\$ 60,293.85	
Mobilization and Bonding			5%	\$ 468,949.10	5%	\$ 166,268.35	5%	\$ 151,946.13	5%	\$ 150,734.63	
Tax			8.55%	\$ 801,902.96	8.55%	\$ 284,318.88	8.55%	\$ 259,827.87	8.55%	\$ 257,756.21	
Engineering and CM Assistance			8%	\$ 750,318.56	8%	\$ 266,029.36	8%	\$ 243,113.80	8%	\$ 241,175.40	
Total				\$ 13,932,477.76		\$ 4,939,832.68		\$ 4,514,319.37		\$ 4,478,325.71	



Attachment P

Jennie Dickinson <jennie@portofcolumbia.org>

Fwd: U-B article(s): Potential railroad sale, railroad management

1 message

Paul Didelius <pd@columbiarail.com>

Sun, Aug 3, 2025 at 5:03 PM

To: Jennie Dickinson <jennie@portofcolumbia.org>

Jennie:

Given the growing controversy, I needed to respond to UB reporter - copying you on my written response. Please pass it to the Commissioners.

I would assume my novel here only so interesting to reporter / Editor / readers, so who knows what does or doesn't make the cut.

Hope you've had a great weekend, and

Thank you,

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

Business Addr:

[709 N. 10th Ave.](#)

[Walla Walla, WA 99362](#)

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Western WA: **RNIR**

----- Forwarded message -----

From: **Paul Didelius** <pd@columbiarail.com>

Date: Sun, Aug 3, 2025 at 4:59 PM

Subject: Re: U-B article(s): Potential railroad sale, railroad management

To: <ebengel@wwub.com>

Erick,

I think the Port has done a good job of providing the public both transparency and forum on the sale of the railroad; I've been at a number of events where the public has come - both to hear the Commissioners ask questions / get info on the matter - and also to provide their views on sale or otherwise. I never sought out public profile on this - but given the increased controversy with regards our interest, concerns about Commission makeup, relationship with Port staff, etc. - I feel there's a need to provide answers and respond to your questions.

A railroad is an expensive and complex thing to manage, and advance / take care of. A solid, committed railroad is not a trivial thing for a community to have. Arguably the most stable situation the community had with rail was under major railroad ownership - nominally 100 years concluding in the 1990's. The last major to leave, the Union Pacific, obviously was no longer interested in maintaining their operating presence - effective 1992, and ownership - effective 1996. The UP's original shortline (and after 1997 the Port's) - the Blue Mountain Railroad - determined to stop further upkeep of the line east of Prescott (and service to Dayton) in 2014. The Port ultimately determined to lease us the railroad in 2016 and we re-established service to Dayton in 2017. [We assumed the balance of the Blue Mountain leases at Walla Walla in 2019.]

We've been consistent that the upkeep needs of the line relative to its current business patronage doesn't favor our managing a continued lease relationship - but the risks and costs inherent in managing it and keeping it going are favorable under a reasonably priced acquisition scenario. Which would put it back into its original management model: operation by a durable railroad industry owner. The distinction to previous rail industry owner being: our local management presence, and lower cost structure / local business appetite (vs. simply trans-continental freight interests of the major rails).

If Columbia Rail is not operating the POC line, there are just a few forward scenarios for the Port / Community:

1. Port operation - very expensive learning curve, financially and staff-wise a loser for most governments - very few Ports or Counties attempting this any more!
2. Port selection of another rail industry operator - hard to contemplate: TWO small independent railroads to try to split the limited finances available for the 70 mile run to Wallula?
3. Mothballing of the railroad - shippers have rights to contest this both locally and Federally - would appear costly and politically problematic for the Port
 1. The main outcome of this, if a closure of the rail line were ultimately successful, would be the removal of the line and establishment of a (cheaper) trail upon the empty railroad bed

We don't see many good Port choices there - but with our interest we are offering real value to the taxpayers - as well as levers of accountability protecting for future scenarios.

There are two other things that should be made note of, with regards to some who have said the railroad should be retained "in case it's needed if the dams are removed" -

1. have these parties made any effort to patronize the railroad with their freight at any significant level in the last 40 years? Freight-funded infrastructure is a use it or lose it proposition...
2. if there is no sale, and the railroad operation becomes too complicated or expensive, are they just supporting (inadvertently or otherwise) the cohort that wants the rail line removed to establish a cheap on-railbed walking trail?

Under our purchase scenario, if there is some new need to move great volumes of grain out of Dayton, we'll be very interested and available to handle that (whether to Wallula barge terminal or via major railroad to Portland). My railroads operate around 250 miles of line around WA - we make the investments needed to match the usage and stay ahead of track and bridge needs. And if we somehow failed to thrive or stay, the Port has simple legal terms to get the railroad back. The **'retain in case the dams are taken' concern simply seems misplaced** or counterproductive to freight concerns.

To your specific questions:

- I don't know Port staff has any concerns with regards to our management of the railroad. Shippers request cars, we move the cars, everything is normal. I am very proud of our operating, maintenance, and administrative teams! We value our professional relationship / communication with the Port staff. It is not an easy business and has its complexities, sometimes emotion or frustration enters in for both parties. Again though - we do feel having solo control would be simpler
- Report what makes sense to you. We understand our communications can be published. We are doing the best we can at all times to advance things. A railroad has a lot of people and projects to keep moving
- my / Jennie Dickinson emails regards "ROW violations": I did not agree to how she put things but I provided a thorough response. As far as I'm aware my group and 3rd party RE agreements administrator are current with requests (and other ongoing issues that are at various states of advancement / communications)

I appreciate your interest, questions, and reference points.

Thank you,

Paul Didelius

Owner / President



pd@columbiarail.com

Office: Lewiston, ID

(208) 508-2735

(509) 492-3553

Business Addr:

[709 N. 10th Ave.](#)

[Walla Walla, WA 99362](#)

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On Fri, Aug 1, 2025 at 2:00 PM Erick Bengel <ebengel@wwub.com> wrote:

Paul,

We're continuing to follow the potential sale of the Port of Columbia's railroad to Columbia Rail.

We — and, I think, the community — would like to hear your point of view about the sale: why you want to buy the railroad, why buying it is necessary (as opposed to a long-term lease), how the public benefits from a sale, what your short- and long-term plans are for the rail, etc.

We also plan to write a story, based on emails we obtained through a records request, about the conflict between you and Jennie Dickinson last summer as she grew concerned that the prospect of purchasing the railroad had started to affect how Columbia Rail managed the railroad.

Specifically, we plan to report that you were reluctant to spend grant funds on refurbishing the rail unless you could be confident you could buy it — something you brought up in last September's Port meeting.

We're also going to mention that you'd told Dickinson you weren't enforcing ROW violations to remain on good terms with the community as a potential sale comes together.

The emails speak for themselves — both you and Dickinson lay out your concerns and respond to each others' points — but if there's any context you'd like to add, or anything you'd like to say on this or other topics, we'd like to hear it.

We know that Columbia Rail eventually used the grant funds for the refurbishing project, and in an email to Dickinson, you indicated that you'd ask RAMS to get to work on ROW enforcement, and we'll be sure to mention that.

We hope to finish this story by the middle of next week, say, Wednesday. I'm happy to speak with you over the phone or do the interview via email.

Thanks,

Erick Bengel
Reporter
Walla Walla Union-Bulletin
ebengel@wwub.com
509-526-8313

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