Testimony for Hearing on Amendments to Condition 6 of 2005 MDNS, 3/3/11

Sharron Coontz
3716 85th NW
Olympia, WA 98502

RCW 53.08.240 does not allow a port to "acquire any real property or real property rights in any other port district without the consent of such district." The Port of Olympia cancelled the Interlocal Agreement with Port of Tacoma in June 2008. At that time the Port of Tacoma was required by statute and the Interlocal Agreement itself to divest itself of the property. While there was no set time limit to do so, the law is clear that from then on the Port lacked the authority to engage in permitting, construction, etc. since they had no agreement allowing them to work in Thurston County. Since the SUP was then purporting to authorize sand and gravel mining, it was purporting to authorize an ultra vires and illegal activity.

Because Ports are not authorized to be gravel miners, the permit granted to Port of Tacoma by the County purports to authorize an ultra vires and illegal activity, per RCW 53.04.010.

The Port of Tacoma knowingly violated the Interlocal Cooperation Act (RCW 39.34) and the SEPA conditions for this SUP by approaching the permit center for a building permit for the site in October 2008. Conditions 18 and 19 of the 2005 MDNS preclude the releasing of any building permits prior to approval of sewage and water systems by the Dept. of Health. These are clear and unambiguous conditions, and it's the applicant's responsibility to follow them. They did not. And the County relied on this action and this action
alone, originally, to say the SUP's expiration had been precluded. (See Tony Kantas memo to Sharron Coontz, October 17, 2008.)

-- Under RCW 53.04.010, the Port of Tacoma is not authorized to carry out sand and gravel mining. The contradictions between the testimony and briefs of the Port make it hard to know where to start on this issue. In the Port's hearing brief for the 5 year review, they state that mining was part of the planned logistics center. And at the hearing, two Port witnesses went to great lengths to assure the Hearing Examiner that the Port had always intended to mine the property. Mr. Hedge claimed that the Port planned to mine to recoup some of their expenses, and then as part of the logistics center. FORP pointed out that were that true, the Port or Mr. Allen had an obligation to establish the Conservation Fund when the Port bought the land. In almost contemporaneous briefs for different matters (the 5-year review appeal and the SEPA appeal/amendment hearing) the Port argued that they knew they couldn't operate a mine in one instance, while in another maintaining that Mr. Hedge's testimony that the Port always intended to mine was accurate. Finally, as the contradictions were pointed to by FORP, we got this response in the Port's hearing brief regarding FORP's SEPA appeal: The Port is not a mine operator....However, the Port did intend to mine gravel as part of the logistics center....If the Port had proceeded with the logistics center, it would have hired an operator to extract the gravel." This was, of course, never even hinted at in testimony or earlier briefs.

-- FORP strongly objects to the frequent references to these amendments as either an increase in the safeguards to the site (so no one in their right mind could object to them) or "merely" a technical
timing change. Both arguments miss important points.

There certainly can be adverse effects of these so-called technical timing changes. Despite all the talk about how much more data there is now due to the new monitoring plan, and all the talk about how much data has been collected since 2002, the stark fact remains:

With the broadest interpretation of the monitoring plan (even ignoring well #16 and station #17), the first time one could say that there was complete monitoring to the specifications of the 2005 Groundwater Monitoring Plan is December 2009. Instead of the years of data the Port and MSG keep touting, we have barely one year. This on a site where, for the first time ever, a deadline was set to begin monitoring immediately.

Why was such a condition negotiated? Due to the importance of two hydrologically sensitive species that the conservationists were deeply concerned about -- convinced that they could easily be harmed by mining.

Water monitoring by the applicant was to go hand-in-hand with monitoring of the adjacent wetlands by the conservation organizations. This was to be paid for by the establishment of a fund by the applicant, Jay Allen, if, as he intended, he sold the property to a mining company. As explained by Pat Dunn's testimony (The Nature Conservancy), years of data was expected before the mining actually began. This site had a required freeway ramp addition and numerous other pre-mining conditions that would not be easy to complete quickly.
Although the Port's attorneys now claim they didn't know what they were talking about, they wrote to the County on January 4, 2010, that any owner could be expected to take the 3 ½ years they did to prepare the site. (And they hadn't built the ramp or done the required road improvements in front of the site yet.) Despite the Port's attorneys' current retraction of their statement, the fact remains that their figure is close to what people involved in the negotiations thought, and they expected at least that much water monitoring.

Instead, if this mine is allowed to go ahead soon, there will be a year or a year and a half of applicant water monitoring, and far less by the conservation groups. And the wetlands could suffer irreparable harm.

Had the applicants, or their predecessors, begun and continued the water monitoring on time and to the specifications of the MDNS, there would have been many years of complete data. There is not. Further, had the conservation fund been established per the Settlement Agreement, instead of remaining unpaid in tacit acknowledgement that the mining wasn't planned by the Port there would have been many years of monitoring on the adjacent wetlands where the known endangered species are. (By the time the funds were offered, in April of 2010, there were several reasons to believe that the mine was out of compliance, so the Conservation Organizations could not, in good conscience, accept the money and had it put in escrow pending the outcome of the many legal challenges.)

-- Amending a MDNS and permit that was arrived at by negotiations with several groups without soliciting and receiving input from those groups is a violation of the trust given to the County as the enforcement authority for this permit. The
Conservation Organizations have all written in pointing out how unfair this is. They negotiated a good faith agreement, only to find it being changed without their input. It's especially galling that the groundwater monitoring plan would be changed with no attempt to involve at least BHAS in the process since they were signatory to the Settlement Agreement.

-- We've had testimony from the applicants' witnesses Mr. Garrison and Mr. Naglich that a site such as this often undergoes changes through the years, even adding critical areas, or changing their size and shapes. This is a good reason not to amend an old series of conditions but rather to reinvestigate the site and respond to the current situation. But additionally in this case we have Mr. Kunz of DFW saying that a couple of "drainage" areas need investigation during high water time. (Mr. Hempelmann assured him that he'd set up just such an investigation in January or February, but it wasn't done.) Here's a potential change in the site that needs to be examined, as does the area with canary grass referenced by Ms. Wilson. While DNR, DFW, and Ms. Wilson all assert that Mine Area 1 appears to be Native Outwash Prairie, the applicant's witness, Mr. Naglich, indicated it that he thought it looked like a pasture in 2004. Some studies are needed to reconcile these differences and determine whether some prairie was missed back in 2005, or whether this site has changed again in the configuration of its prairies. In either case, SEPA dictates that in order to prevent harm, the site should be looked at. The County is certainly risking the safety of the environment by attempting to amend SEPA conditions that were established so long ago without looking at the site again.
-- I would like to respond to Mr. Hempelmann's not so subtle smears from yesterday. Somehow FORP, a non-profit, is in league with the County, whose decision FORP has hired an attorney to appeal? We're going through this fight because we're secretly trying to slow the mining down? What a lousy conspiracy we must have fashioned: One that has us at each other's throats and costs us time, aggravation and money. There's got to be a better way. I think if I'd put my mind to it, I could have come up with something more efficient -- something that wouldn't have me still up at 2 a.m. writing testimony. I was also terribly offended at the casting of aspersions on our County's elected officials. And if you want to try to impugn the motives of two of our commissioners, perhaps you should find a decision that wasn't 3 to 0, as in unanimous.
South Sound Logistics Center
April 3, 2007

The Project

- **Who**
  - Port of Tacoma and Port of Olympia

- **What**
  - Explore opportunity to develop a logistics center
  - 745 Acres, former explosive mfg site

- **Where**
  - 2.5 miles east of I-5 near Maytown, WA
  - Adjacent to intersection of BNSF and TMBL
The Project

• When
  – Ports sign MOU to explore potential collaboration July 7, 2006
  – Commissions approve Interlocal July 17 and 18
  – Tacoma closes on property July 28
  – Deadline is December 31, 2007

• How
  – Ports will execute a Joint Development and Operating Agreement

WHY?

• Increase job opportunities
• Shift cargo from trucks to rail
• Expedite movement of cargo in region
• Reduce environmental impacts
• Stimulate private industrial investment
• Create new, sustainable revenue streams for both ports
Local Network

Mainline Network

Tacoma-Vancouver
Union Pacific must run on BNSF main

Stevens Pass -
7.8 miles, 1.7% grade
Everett Longest in U.S.

Stampede Pass
1.8 miles, 1.0% grade
Can't take doulestack

Columbia River Gorge
No width for expansion
Environmental challenges
North and South Portions

Conceptual Design

Exhibit E
HANDLING FULL TRAINS

6 tracks at 10,000 ft min = LOTS OF PARKING

Back To - WHY?

ENBF Railway
Tacoma Rail
Puget Sound & Pacific
Back To - WHY?

ELIMINATION OF WORK EVENTS

This represents TWO WORK EVENTS
ELIMINATION OF WORK EVENTS

This train began slowing down FIVE MILES back

WORK EVENTS on the main line create congestion and reduce capacity
WORK EVENTS cost the railroads TIME AND MONEY

What if just 10 small businesses relocated off the mainline to the SSLC?

Mainline work events 800 eliminated
OTHER POSSIBILITIES...

- Directional running, BNSF main and TMBL Mountain Division
- Clean zone around ports
- Agile port to inland processing
QUESTIONS
Exhibit E
---------- Forwarded message----------
From: Tony Kantas <KANTAST@co.thurston.wa.us>
Date: Fri, Oct 17, 2008 at 8:51 AM
Subject: Re: your call yesterday
To: sharroncoontz@gmail.com

Sharon,
TCC 20.54.040(4) states the application expires after 3 years, if a building permit has not been issued. The Port of Tacoma has applied for and obtained a building permit for the scale building to weigh the trucks, so the application has not expired.
-Tony
Tony Kantas
Associate Planner
Thurston County Development Services Dept.
2000 Lakeridge Drive SW
Olympia, WA 98502-6045
(360) 786-5472
kantast@co.thurston.wa.us
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PORT OF OLYMPIA AND THE PORT OF TACOMA
REGARDING
JOINT EXERCISE OF POWERS
REGARDING
REGIONAL LOGISTICS FACILITY

This Memorandum of Understanding is entered into this 30th day of June, 2006, by and between the Port of Olympia, a Washington port district located in Thurston County, Washington, and the Port of Tacoma, a Washington port district located in Pierce County, collectively “the Parties”.

WHEREAS, the Parties have identified a parcel of real property available for purchase in Thurston County (the “Property”); and

WHEREAS, the Parties believe that the Property may be suitable for the development of a regional logistics facility and related uses which it is anticipated will provide substantial benefits to the Parties, their customers, and vendors; and

WHEREAS, the Parties desire to pursue the evaluation, purchase, and development of the Property by the joint exercise of powers pursuant to RCW 53.08.240;

NOW, THEREFORE, it is hereby agreed as follows:

1. The Parties agree that the Port of Tacoma shall proceed with the evaluation of the Property and negotiation of the proposed Purchase And Sale Agreement for the Property and shall keep the Port of Olympia advised with respect thereto: provided however, no final agreement shall be approved until such time as formal approval by a majority of both Port Commissions in open public session.

2. The Parties agree that upon execution of this Memorandum of Understanding, the Parties will enter into good faith negotiations with one another regarding an Interlocal Agreement for the development and operation of the Property. The Parties understand and acknowledge the proposal under consideration anticipates the joint development of the property on mutually beneficial terms. The rights and obligations of the Parties among themselves with respect thereto have not yet been determined and may not be determined within the timeline for completing the purchase of the Property as required by the Seller, and therefore may be negotiated later. The Parties do agree that the mutual intent of the Parties is to maximize the benefits to the Parties and their existing and future operations from the development and operation of the Property and not to give one of the Parties a competitive advantage over the other. The parties recognize the site may have land use and environmental
issues which may require a substantial period to resolve. If the Parties are unable to reach agreement regarding the development and operation of the Property by June 30, 2007, then the Port of Tacoma shall proceed to divest itself of its ownership of the Property at no risk or cost to the Port of Olympia.

3. The Parties acknowledge that they have not set forth herein or agreed to all essential terms of an Interlocal Agreement regarding the development and operation of the Property, including without limitation, specific obligations of each party, and other terms, and that such essential terms will be the subject of future negotiations. Each party will bear their own costs in investigation, exploration, analysis and development of the inter-local agreement.

4. The Parties do not intend to be bound by this Memorandum of Understanding beyond the terms expressly stated herein. An agreement as to terms not expressly stated herein will not exist unless and until the Parties have executed a formal agreement that is approved by their respective Boards or other authorities and contains all essential terms of an agreed-upon transaction. Efforts by either Party to complete due diligence, negotiate, obtain financing, or prepare a contract shall not be considered as evidence of intent by either party to be bound regarding the proposed transaction. In addition, the performance by either Party prior to execution of a formal contract of any of the obligations which may be included in a contract between the Parties when negotiations are completed shall not be considered as evidence of intent by either Party to be bound regarding the proposed transaction.

5. The purpose of this document is to permit the Port of Tacoma to proceed with investigation and potential acquisition of a substantial industrial asset in Thurston County. Ultimately, such acquisition requires approval of the Port of Olympia. Because the site is unique and is currently sought by other purchasers and if the information contained herein is divulged to the other purchasers, the ability of the Port of Olympia and the Port of Tacoma to acquire the site on favorable terms could be severely comprised. Information relating to the investigation and potential acquisition should be held confidential as long as negotiations are continuing. This document is not a public document pursuant to the Washington State Public Disclosure Act, RCW 42.17.250.

Port of Olympia:
By: __________________________
Its: __________________________
Date: 06-30-06

Port of Tacoma
By: __________________________
Its: __________________________
Date: 07/1/06
3.4 **Summary of Potential Uses for the Site**

Increasing trade volume, especially in containerized cargo, regional population and job growth, and limited land supply in the Puget Sound region has created demand sufficient to support a rail logistics center and accompanying industrial development for use by the Ports of Olympia and Tacoma. The emphasis of such a facility should be on facilitating containerized cargo operations, and would likely be operated by Tacoma Rail with access to both BNSF and UP. Demand for the following uses could be met by the SSLC facility, and used to inform the layout and design of the alternative development scenarios at the Site.

**Rail Holding Facility** capable of receiving and dispatching full length trains, at speed, to and from the BNSF mainline. While such a facility could hold trains for delivery to the Port of Tacoma, this is not a requirement for the success of the SSLC. The facility would also provide car storage and surge capacity for military shipments;

**Rail Oriented Logistics Center** capable of handling truck and rail shipments generated both on and off site and “cross dock” processing of domestic intermodal containers.

**Transload or Reload Center**, aimed particularly at the forest products manufacturing sector, which increasingly uses imported materials and generates high value manufacturing and cold storage which demands specialized rail cars and/or containers;

**Municipal Solid Waste (MSW) collection center** capable of generating unit trains of MSW for developed landfill destinations in Washington, Oregon and Idaho.

**Manufacturing uses**, likely those that require rail access for import and export of production materials and finished products; and

**Distribution & Warehousing**, especially associated with domestic intermodal and cold storage but also on surplus areas of the Site not used specifically for rail-related uses.

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**Categories & Industrial Tenants/Users**

Specific rail and non-rail users of the Site have not been identified at this early phase of analysis for the SSLC site. Categories of potential users and example tenants are identified below and are informed by the rail and non-rail market analysis and the Heartland/HDR team’s expertise and knowledge of the market.

**Railway Companies**
- BNSF
- UP
- Tacoma Rail

**Waste Companies**
- Allied Waste
- Waste Management
- Recycling
Distribution & Warehouse
- Local retailers
- National retailers of the caliber of Target, Walmart, and Home Depot
- Transportation and logistics companies

Transload & Crossdock
- National retailers, particularly those receiving international containers through ports of Tacoma and Seattle
- Forest Products Manufacturers located off-site

Manufacturing
- Metal, plastics, chemical production
- Product assembly (GE appliances)
- Any manufacturers, such as forest products or steel fabricators, requiring rail service
The BNSF and UP railroads are interested in the solid waste traffic, but they want to move full trains. However, the volumes produced are not large enough in all counties to create unit trains. The Maytown site has the potential to serve as a collection point for solid waste from a number of communities. Full unit trains could be assembled on the Site, then handed off to the BNSF or UP.

One potential would be to collect waste from Pierce, Thurston and Lewis County. Tacoma Rail could move Pierce County waste to the site by rail. Lewis County and Thurston County both currently ship waste containers by rail from Centralia, with Thurston County waste moving to Centralia for loading on rail. These loads could be trucked to the site, where full trains of the combined counties' waste could be assembled.

The most effective organization to run the site would likely be a municipal government that could contract for services through competitive bids with MSW, Allied and other solid waste handlers.

The ideal train size for transport of solid waste is 200 container trains that carry approximately 5,000 tons of waste. This is more than any single center in the Puget Sound area is currently producing on a daily basis. However, the location of the Site would make it ideal to either collect material for a train every other day or to bring additional containers in on Tacoma rail and assemble a full train each day for BSNF or UP.

Lumber and Forest Products
Large volumes of finished forest products are moved by rail in or through the region. The mills that now exist in the region tend to be smaller than the mills that once dominated the industry, and they tend to specialize in engineered wood products and other higher-value products than the lumber mills of the past.

Rail is the most cost effective way to move forest products to distant markets, such as Southern California. However, lumber mills face a similar problem as the municipal solid waste facilities, which is too little volume to create full trainloads. As discussed, the mainline railroads are not interested in carload traffic, but want customers to provide full trains. The Site may be useful as a central consolidation point for mills in the area.

Another potential forest product is box manufacturing. Weyerhaeuser currently operates two box manufacturing plants in the Puget Sound area, one in Bellevue and one in Olympia. The Bellevue plant is located on valuable urban land that could be redeveloped. Because the plant ships and receives by rail it is a potential candidate to relocate to the Maytown site.

Military Uses
Fort Lewis has two types of significant rail transportation needs that could be enhanced by the location of a major rail facility at Maytown. First, an emergency mobilization would require a complete loading of equipment for Pacific Rim destinations within 96 hours. Existing rail and port facilities are sufficient for this type of mobilization. Maytown could aid this type of deployment by providing a site for storage of civilian trains and rail cars during the deployment.

The second military related use of the site would be for the storage of military rail equipment used in the normal rotations. While the military has its own loading facilities on area bases, this site could provide a location for storing cars and permanently mounted equipment when not in use. If the military determined that it wished to use the site for actual loading and unloading, this could be accomplished by the inclusion of "circus tracks" (ramps for loading multiple hitched cars from the end) in the Maytown facility.
Opportunities Not Considered for Further Analysis

Rail Intermodal and Train Staging for Port of Tacoma
When Port of Tacoma first began to consider the Maytown site, a key consideration was its potential use to stage BNSF and UP intermodal trains destined for the dock area to relieve congestion in that area and increase throughput. However, BNSF recently announced that if improvements were made to the Stampede Pass rail route the long-range plan would be to use that route for intermodal service in addition to Stevens Pass and the I-5 Columbia River Gorge routes. Therefore, this feature of long arrival/departure tracks would be less critical for BNSF but could still prove beneficial to UP, who has trackage rights on BNSF’s mainline and is currently experiencing capacity issues at its Argo Yard.

Aggregate
Aggregate associated with concrete manufacture is a significant need in Western Washington and is currently being brought to the area in 110 car unit trains. To be effective a site must be able to unload such trains in 15 hours. While the receipt and unloading of the trains is feasible, to be effective the site would require significant material storage and would be most efficient if associated crushing, sorting and mixing plants could be located nearby. Since such activities would interfere with more valuable uses of the site it was determined that the site was not economically competitive for these products.

Automobile Import and Export Facilities and International Containers
Both of these activities require immediate access to docks to efficiently move cargos from ship to storage to trains. Autos are driven on and off ships and then either distributed to local markets or placed on unit auto trains for point in Southern, Mid West and Eastern States. International containers are either immediately dispatched by truck to local markets or immediately loaded on dedicated intermodal trains for Mid West and East Coast destinations. The additional cost created by moving these products to Maytown for loading on trains would make the process uneconomical.

Liquid Bulks
Liquid bulk movements are primarily tied to the petroleum refineries on northern Puget Sound, and the majority of the inbound and outbound product moves by water or pipeline, with little shipped by rail. The possibility of locating a biodiesel manufacturing plant at the SSLC site was also considered, but was deemed to have limited potential since it is not near the source of raw material. However, a biodiesel plant to be located in the Grays Harbor area is currently in planning, so the SSLC location may not be out of the question.
3.8 Findings & Conclusions:

General Physical Characteristics

- The Site is generally flat south of the Tacoma Rail Mountain line. However, much of the Site north of the Tacoma Rail right-of-way is characterized by undulating hills and valleys and contains an abundance of low grade wetlands. More information on the quality of wetland habitats north of the Tacoma Rail line needs to be obtained to determine development capacity for this area of the Site.

- The potential for groundwater contamination turned out to be a major concern for nearby residents during permit approval of the gravel mine. Given that the Thurston County Critical Areas Ordinance has classified much of the site as having "extreme aquifer sensitivity" due to the shallow water table, this will remain a primary topic of debate for development of the site.

Environmental Remediation

- Remaining remediation will likely require treatment of soils, protection of groundwater, maintenance of buffers with surrounding sensitive sites and protection of surrounding sites from water contamination from the development. The cost of required remediation identified to date is relatively small. However, the nature and cost of this remaining remediation is under investigation and more definitive costs estimates will be established as the planning process continues.

- Additional studies need to be undertaken to determine if additional actions are required on this site to protect sensitive habitat on adjoining WDFW property.

Existing Regulatory Framework

- There are two zoning classifications that pertain to the site, RRI and RRR1/5. Industrial uses are allowed outright in the RRI zone if such uses are considered compatible with the character of rural areas. Industrial uses are not allowed in RRR1/5 zones. Since the portion of the property zoned RRI is likely to be used for the rail logistics center, a rezone would be required for portions of the property proposed for industrial use.

- The Site is further than a half-mile from the freeway and therefore manufacturing, storage, and distribution uses in the RRI zone would not seem to be allowed. However, the proposed gravel mine operation was excused from this requirement, so there is precedent for this issue to be negotiated.

- It is possible that within either of the existing zoning classifications, the SSLC may be allowed as a Type I essential public facility. More investigation on this matter will be required.
Infrastructure & Operational Requirements

Rail Uses

- Upgrading the track of the Tacoma Rail line will likely be required between Maytown and the Port of Tacoma for this line to play any significant role in operations of the SSLC. With upgrade of the track to Federal Railroad Administration Class 4 standards, which would allow a maximum operating speed of 60 mph, a volume of 40 containers per day would make this option feasible. In addition, Tacoma Rail’s access to the Port of Tacoma may need improvement if longer trains are to be moved via Tacoma Rail to the SSLC. Currently grades on this line reach four percent, which is far in excess of normal operating requirements.

- For the receiving and dispatching of full length trains to and from the BNSF mainline to be practical, trains must be able to enter and exit the mainline at speed, which would require additional lead track of 18,700 feet to the south and 6,400 feet to the north. BNSF would require an additional 100 foot right-of-way for these new leads. This would require the Port of Tacoma to condemn a significant amount of property that currently fronts the BNSF mainline.

Non-Rail Uses

- On-site utility requirements for industrial users would include water, sewer/septic, electricity, natural gas, and telecommunications.

- Depending on the preferred site program, road infrastructure upgrades may be required between I-5 and the Site entrance, to include the addition of turn lanes from the I-5 exit ramp onto Maytown Road, as well as the potential widening of both Maytown Road and Tilley Road between the Site and I-5. Access to the portions of the Site north of the Tacoma Rail line would require construction of a road extending out from Maytown Road that would parallel the rail right-of-way.
Chapter 4 - Alternative Development Scenarios

Preliminary Site Layout of Rail Logistics Center
Three alternative development scenarios have been created based on the Site's opportunities, constraints and market analysis. In all cases, primary emphasis was placed on siting the logistic center's intermodal and rail-based uses, and then configuring parcels for alternative or complementary uses on the surplus land area.

Alternative #1
This alternative provides the base configuration for the rail logistics center and defines the minimum space requirements for this core part of the SSLC project (see Exhibit 7). This design is driven by the market analysis for the rail uses of the Site. A detailed description of the rail logistics center part of the Site and the rationale for its configuration is provided in this alternative. Few changes to this central component are proposed among the Alternatives, therefore this description will be referred to in discussion of Alternatives #2 and #3 also. A detailed operating plan for this alternative is included as Appendix A.

Arrival/Departure Yard
The layout features the arrival and departure yard, which would have two to four lead tracks of 8,000 feet each, located adjacent to the existing Tacoma Rail tracks, to assemble trains for movement on and off of the BNSF mainline. The capability of the Site to accommodate this requirement for such an extensive amount of linear contiguous track length was one of the key initial drivers for site selection. BNSF recently announced that if improvements were made to the Stampede Pass rail route the long-range plan would be to use that route for intermodal service in addition to Stevens Pass and the I-5/Columbia River Gorge routes. This feature of long Arrival/Departure Tracks would then be less critical for BNSF but could still prove beneficial to UP, who has access trackage rights on BNSF's mainline and is currently experiencing capacity issues at its Argo Yard.

Other Rail-based uses
South of the arrival and departure yard is the classification yard, which would be used to distribute and collect rail car traffic in and out of the South Puget Sound area. To the west of the classification yard would be the intermodal facility, for sorting container-based cargo. Separated from the intermodal facility by a parking area and space for administrative offices would be a substantial transloading facility, which could be used for reloading the large volumes of finished products or other cargo that are moved by rail today through the region.

Municipal Solid Waste Transfer Facility (MSW)
The layout design includes a municipal solid waste (MSW) transfer facility in the northeast corner of the Site. This location on the Site is ideal for such a facility because it allows for toploading, which is the preferred method used for transfer of solid waste, the dimensions are more conducive to an MSW, and it isolates the MSW function away from most of the other uses on the site, which may be preferable given the odor and noise typically associated with this use. It also would allow a separate lead for assembling unit trains of solid waste so that MSW operations do not interfere with intermodal services.

Surplus Property
The remaining approximately 284 acres of the Site could be divided into a wide variety of parcels to meet the demand for industrial sites. In Alternative #1 the area south of the rail logistics center is divided into medium sized, rail served parcels that are designed to accommodate additional
INTERLOCAL AGREEMENT
Between the Port of Olympia and the Port of Tacoma
Regarding a proposed South Sound Logistics Center

THIS AGREEMENT is made and entered into pursuant to Chapter 39.34
RCW effective as of the 19th day of July, 2006, by and between the PORT OF
OLYMPIA, a Washington port district located in Thurston County, Washington,
and the PORT OF TACOMA, a Washington port district located in Pierce County,
Washington, hereinafter collectively referred to as “the Parties”.

WHEREAS, the Parties have identified a parcel of real property available
for purchase in Thurston County (the “Property”); and

WHEREAS, the Parties believe that the Property may be suitable for the
development of rail and industrial facilities and related uses which it is anticipated
will provide substantial benefits to the Parties, their customers, and vendors; and

WHEREAS, the Parties desire to pursue the evaluation, purchase, and
development of the Property by the Joint exercise of powers pursuant to RCW
53.08.240;

NOW, therefore, in consideration of the mutual promises and obligations
hereinafter set forth, the parties hereto agree as follows:

1. Purchase of Property. The Port of Tacoma may proceed with the
purchase of the Property under terms substantially in the form set forth in the
proposed pursuant to the Purchase and Sale Agreement approved by a majority
of the Port of Olympia Port Commission and a majority of the Port of Tacoma
Commission in open public sessions. The Port of Tacoma shall be the lead for
purchase of the Property, and the Parties hereby delegate authority to the Port of
Tacoma Executive Director to acquire the Property, working in close coordination
with the Port of Olympia on terms and conditions.
2. **Permitting.** The Port of Olympia shall be the lead for site land use planning and permitting of the Property. The Port of Olympia will work in close coordination with the Port of Tacoma on all land use planning and permitting activities. The Port of Olympia shall have approval authority in all land use activities at the site.

3. **Payment of Costs.** All direct, third party costs associated with the purchase, due diligence, environmental review and remediation, land use planning and permitting of the Property and all legal and project staff costs related thereto will be paid by the Port of Tacoma, including reimbursement of costs incurred by the Port of Olympia. This obligation shall continue until these activities have been completed, all appeals have been resolved and the Parties have agreed to terms of operation of the Property. The Parties shall concur as to the scope of work and selection of consultants or project staff before work is authorized and the expense is approved.

4. **Development and Operation.** The Parties will jointly plan, develop, and operate the Property, subject to site planning, land use, and environmental review. The Parties acknowledge that they have not set forth herein or otherwise agreed to all essential terms of an agreement regarding the development and operation of the Property; such terms once agreed to will be the subject of a separate agreement. The Parties further acknowledge that the Property may have land use, planning, development, and environmental issues that may require a substantial period to resolve. The Parties agree that upon execution of this Interlocal Agreement, the Parties will enter into good faith negotiations with one another regarding a further agreement for the development and operation of the Property. The Parties agree that the mutual intent of the Parties is to maximize the benefits to the Parties and their existing and future operations from the development and operation of the Property and not to give one of the Parties a competitive advantage over the other. The public interest to be served by the project for each port shall be determined by each port based on its own evaluation of costs, benefits and public interest to its constituents. If the Parties are unable to agree on terms and conditions for the joint development and operation of the Property by December 31, 2007, then the Port of Tacoma shall proceed to divest itself of its ownership of the Property, at no risk or cost to the Port of Olympia.

5. **Duration.** The term of this Agreement shall commence upon its execution by both Parties hereto, and shall continue through December 31, 2007, unless extended by mutual agreement of the Parties.

6. **Administration.** The terms of this Agreement shall be administered jointly by the parties. Each of the parties shall designate from its respective staff a contact person with responsibility for administration of this Agreement.
7. **Effect of Applicable Laws.** This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law, except as provided by RCW 39.34.030(5).

8. **General Provisions.**

   a. Amendment or Modification. No amendment, modification, or change of this Agreement shall be valid unless made in writing and signed by the parties hereto.

   b. Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one Agreement binding on the parties.

   c. Headings. The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the interpretation or construction of any term or provision of this Agreement.

   d. Inducements. The execution and delivery of this Agreement by the parties hereto has not been induced by any statements, representations, warranties, or agreements other than those expressed herein.

   e. Integration. This Agreement constitutes the complete and entire understanding and agreement of the parties with respect to its subject matter, and any and all other agreements, understandings, representations, or proposals with respect thereto are of no force or effect.

   f. Interpretation. The provisions of this Agreement were negotiated by the parties hereto, each of whom was represented by legal counsel. Each party participated in the preparation of this Agreement and reviewed this Agreement. No particular provision shall be deemed to have been drafted by any particular party, and no question of interpretation shall be resolved by any rule of interpretation providing for interpretation against a drafting party.

   g. Other Relationships Excluded. Nothing contained herein shall be construed to create the relationship of principal and agent, partnership, joint venture, or any other form of legal association which would impose liability upon one party for the act or failure to act of another party.

   h. Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will
remain in full force and effect except to the extent of the clauses that are unenforceable, illegal, or contrary to public policy.

i. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

j. Third Party Beneficiaries. This Agreement is entered into for the benefit of the parties to this Agreement only and shall not confer any rights, benefits, or remedies on any persons other than the parties to it and their respective successors and assigns, if any, nor shall any provision of this Agreement give any third parties any right of subrogation or action against any party to this Agreement.

k. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of Washington.

l. Venue. The venue of any dispute arising out of or related to this Agreement shall be Thurston County Superior Court, Washington.

m. Attorney Fees. In any legal action or proceeding, including but not limited to arbitration, brought to enforce this Agreement, to declare the rights and duties under this Agreement, or to resolve a dispute, breach, or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including expert witness fees, incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

IN WITNESS WHEREOF the parties have executed this Agreement on the date above first written.

PORT OF OLYMPIA

By: 
E.B. Galligan
Executive Director

PORT OF TACOMA

By: 
Timothy J. Farrell
Executive Director
I. INTRODUCTION AND EXECUTIVE SUMMARY

After three-and-a-half years of work on compliance with SUP conditions, the Port recently executed a purchase-and-sale agreement to sell the Maytown site to Maytown Sand & Gravel ("MSG" or "Buyer") and MSG is preparing to commence gravel mining in the near future. We ask the County to continue to work cooperatively with the Port and MSG to ensure SUP conditions and steps are finalized properly, so that MSG can commence mining operations at the Maytown site.

As stated in greater detail below and in the attached documents, the Port has taken the necessary steps to preserve the SUP and comply with relevant SUP conditions and those of the October 24, 2005 Mitigated Determination of Non-Significance ("MDNS"). The County Memo raises questions relating to certain SUP conditions and provides information on possible next steps in finalizing the SUP. In response, this memorandum: 1) examines the SUP conditions discussed in the County Memo; 2) provides a detailed update on its compliance with the relevant SUP conditions; and 3) suggests appropriate next step(s) leading up to final County review of SUP compliance.

Mining in an environmentally sensitive manner is a difficult and complicated affair, and both the MDNS and the SUP reflect that fact, including more than 55 discrete conditions ranging from wheel washing to road improvements. Given the extent of the requirements imposed by the SUP and the MDNS, it is not surprising that the Port has taken years to prepare the property for mining, just as any permit holder would. The Port has worked diligently throughout its ownership to ensure the viability of the mining plan authorized in the SUP. The delay on one condition (No. 6), on which the County Memo focused, is not significant from a mining or environmental protection perspective. Although the Port and Citifor may have not fully complied with the strict letter of certain subparts of one condition relating to groundwater monitoring, the added time for monitoring between 2005 and 2009 has in fact turned out to provide a far more comprehensive baseline data prior to actual mining than was originally envisioned in the Examiner’s decision. Moreover, the delay associated with Condition 6 compliance has caused no harm whatsoever to any of the potential impacts of mining protected by the Examiner’s SUP issuance and SUP Conditions. Lastly, the Port is now in full compliance with the conditions discussed in the County memo. Any failure to comply is now only of historical interest, no harm to the environment resulted from the delay, and a more accurate and relevant baseline of data has been established.

For all these reasons, the Port respectfully requests that the County carefully consider the information set forth in this memorandum and its attached documents as part of the County review. We understand that until recently the County has not closely reviewed the SUP Conditions, which include the Groundwater Monitoring Plan which was incorporated into the MDNS. To inform the County’s review, this memorandum provides updated information and a broader context for the Port’s compliance actions taken to date. When viewed in the larger context, we believe it is reasonable for the County to find that the Port has in fact substantially complied with virtually all of the SUP Conditions required at this point in the process. The
MAYTOWN AGGREGATES CHRONOLOGY
SUP 02-0612
1/20/2010

1. **8/02** Application submitted for a 300-acre mine with a 587-acre disturbed area. The disturbed area was proposed to receive Mineral Lands Designation status. All this was within a 1,600-acre ownership. Property owned by Citifor. Expanded environmental checklist was required as part of the application. It included Habitat Management Plans for oaks and prairie, Wetland Delineation, Noise Study and Traffic Analysis.


3. **8/04** Based on SEPA comment letters and the appeal, the County wrote a letter to the applicant indicating the likelihood that an Environmental Impact Statement would be required.

4. **8/04 through 9/05** The applicant revised the project based on the 8/04 letter and subsequent discussions with Thurston County and various conservation groups. The mine area was reduced to 284 acres, disturbed area was reduced to 497 acres, designated mine area was reduced to 284 acres, prairie buffers were expanded to 100 feet from the initial proposal of 35 feet, four small oak groves were protected, the amount of gravel to be extracted over the life of the project was reduced by 6%, a 1000-foot long noise attenuation berm was added, the amount of fill dirt to be brought in was reduced by 50%, and the storage areas for the fill dirt and the recycled asphalt were moved farther away from wetlands.

5. **10/05** A written agreement between the applicant and BHAS was signed. It provided BHAS with funding to better monitor, enhance and restore habitats and hydrology. BHAS withdrew their appeal of the original SEPA determination.

6. **10/05** The SEPA determination was re-issued based on the revised project and the Agreement with BHAS. There were no appeals.

7. **11/05** The applicant submitted an Archaeological Reconnaissance for the site that found no significant historical areas, but did find an area of potential interest that would require additional study. That area has been marked as off-limits in the field.

8. **12/05** After a public hearing, the Hearing Examiner approved the Special Use Permit (SUP) for the mineral extraction operation, subject to 54 conditions. There were no appeals. Approval became final on 12/30/05.

9. **3/06** Over 800 acres of the Citifor ownership sold to the Washington State Department of Fish and Wildlife. Nearly all of this property is covered by wetlands, prairie and oaks. The property surrounds the proposed mining area on the west, south and east.

10. **7/06** The Port of Tacoma and the Port of Olympia entered into an Interlocal Agreement to purchase and develop much of the Citifor acreage as the South Sound Logistics Center.
Mr. Williams raised a crucial point that I believe is relevant to this hearing. He gave a legal argument—In lay terms, 'there's always lots of talk about finality in land use decisions.'

Where is there finality in environmental protection decisions? In this case, citizens & agencies worked hard for a negotiated settlement, & when it was done, felt confident enough that what they thought would happen next was safely established, protections were in place, & so on. At that point they signed off on the MDNs, & everyone, still knowing it was a compromise, but an acceptable one based on what they knew, withdrew their objections & appeals & said go ahead.

If these amendments to the MDNs conditions & the SUP are allowed, a decision made & counted on years ago is nullified & we act as if...
there's a new proposal, but remove all the negotiating parties & their right to input.

What a horrible precedent.