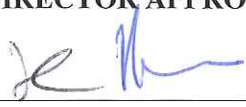


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 7/28/2014

AGENDA ITEM: State Avenue 116th Street NE to 136th Street NE Corridor Improvements - Condemnation Ordinance for Easement Acquisition from Burlington Northern Santa Fe Railway	
PREPARED BY: Patrick Gruenhagen	DIRECTOR APPROVAL: 
DEPARTMENT: Public Works - Engineering	
ATTACHMENTS: <ul style="list-style-type: none">• Excerpt from Washington Administrative Code• Ordinance, Easement Legal Description and Exhibit	
BUDGET CODE: 30500030.563000 R1404	AMOUNT: \$0.00
SUMMARY:	

The City of Marysville will soon enter into negotiations for purchase of an easement from Burlington Northern Santa Fe Railway (BNSF). Located at BNSF's "Arlington spur" crossing of State Avenue, just to the north of 116th Street NE, this easement will facilitate eastward widening the at-grade railroad crossing from its existing three lane configuration to five lanes. These improvements will be constructed as part of the (larger) State Avenue 116th Street NE to 136th Street NE Corridor Improvement Project, scheduled for construction in late 2014.

Fair market value compensation will be offered to BNSF in accordance with valuations established from recently-completed appraisals. If the City and BNSF cannot reach a mutually agreeable settlement, the enclosed ordinance will allow the City to exercise eminent domain for the acquisition of property through condemnation proceedings. Purchase of property under this framework is also of substantial benefit to property owners, as the compensation they receive for the transfer of property to the City will not be subject to real estate excise tax. As the attached WAC 458-61A-206 states:

"Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain, a court judgment or settlement with a government entity based upon a claim of inverse condemnation, or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax."

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to approve the Ordinance authorizing the condemnation, appropriation, taking, and damaging of land and other property for construction of the State Avenue 116th Street NE to 136th Street NE Corridor Improvement Project.

WAC 458-61A-206

Condemnation proceedings.

(1) **Introduction.** Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain, a court judgment or settlement with a governmental entity based upon a claim of inverse condemnation, or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax.

(2) **Transfer must be to a governmental entity.** To qualify for this exemption, the threat of condemnation or the exercise of eminent domain must be made by a governmental entity with the actual power to exercise eminent domain.

(3) **Threat to exercise eminent domain must be imminent.** To qualify for this exemption, the governmental entity must have either filed condemnation proceedings against the seller/grantee; or:

(a) The governmental entity must have notified the seller in writing of its intent to exercise its power of eminent domain prior to the sale; and

(b) The governmental entity must have the present ability and authority to use its power of eminent domain against the subject property at the time of sale; and

(c) The governmental entity must have specific statutory authority authorizing its power of eminent domain for property under the conditions presented.

(4) **Inverse condemnation.** Inverse condemnation occurs when the government constructively takes real property even though formal eminent domain proceedings are not actually taken against the subject property. The seller must have a judgment against the governmental entity, or a court approved settlement, based upon inverse condemnation to claim the exemption.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a sale to a governmental entity may or may not be exempt on the basis of condemnation or threat of eminent domain. The status of each situation must be determined after a review of all the facts and circumstances.

(a) The Jazz Port school district wants to purchase property for a new school. An election has been held to authorize the use of public funds for the purchase, and the general area for the site has been chosen. In order to proceed, the district will need to obtain a five-acre parcel owned by the Fairwood family. The district has been granted authority to obtain property by the use of eminent domain if required. The district has notified the Fairwoods in writing of its intention to exercise its powers of eminent domain if necessary to obtain the land. The Fairwoods, rather than allowing the matter to proceed to court, agree to sell the parcel to the Jazz Port district. The school district will use the parcel for construction of the new school. The conveyance from the Fairwoods to Jazz Port school district is exempt from real estate excise tax because the transfer was made under the imminent threat of the exercise of eminent domain.

(b) The Sonata City Parks Department has the authority to obtain land for possible future development of parks. The department would like to obtain waterfront property for preservation and future development. They approach Frankie and Chaz Friendly with an offer to purchase the Friendlys' 20-acre waterfront parcel. The Parks Department does not have a current appropriation for actual construction of a park on the site, and the City Council has not specifically authorized an exercise of eminent domain to obtain the subject property. The conveyance from the Friendlys to the city is subject to the real estate excise tax, because the transfer was not made under the imminent threat of the exercise of eminent domain.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. WSR 14-06-060, § 458-61A-206, filed 2/28/14, effective 3/31/14. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-206, filed 11/16/05, effective 12/17/05.]

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON AUTHORIZING THE CONDEMNATION, APPROPRIATION, TAKING, DAMAGING AND ACQUISITION OF LAND AND OTHER PROPERTY FOR THE PURPOSE OF WIDENING STATE AVENUE FROM THREE LANES TO FIVE LANES AND CONSTRUCTING CURBS, GUTTERS AND SIDEWALKS, FROM APPROXIMATELY 116th STREET NE TO APPROXIMATELY 136th STREET NE, AND REPEALING ORDINANCE NUMBER 2703

WHEREAS, the City Council of the City of Marysville (hereinafter the "City") finds as follows:

1. Public safety, convenience, use and necessity demand the widening of State Avenue from three lanes to five lanes from approximately 116th Street NE to approximately 136th Street NE, together with construction of curbs, gutters and sidewalks, to meet the requirements of increased traffic.

2. The City has conducted engineering studies and has determined that it will be necessary to acquire an easement from Burlington Northern Santa Fe Railroad for the street widening as more specifically described in **EXHIBIT "A,"** attached hereto and depicted on **EXHIBIT "B"** and incorporated herein by this reference.

3. The entire cost of the acquisition provided by this ordinance shall be paid by the following funds of the City:

Fund No. 305 (GMA-Street)

or such other general funds of the City as may be provided by law.

4. The City may be unable to agree with the property owner upon the compensation to be paid for the **EXHIBIT "A"** easement.

5. The City has authority pursuant to RCW Chapter 8.12 to acquire, if necessary, title to real property for public purposes. Improvement of State Avenue between 116th Street NE and 136th Street NE is a public purpose.

6. The proposed improvement is for the widening of an existing at-grade crossing of State Avenue. The railroad line being crossed is a spur with limited usage, typically about one train per day. The easement will not impair the ability of Burlington Northern Santa Fe Railroad to conduct any part of its operations, nor will the acquisition prevent or unreasonably interfere with railroad transportation or pose undue safety hazards.

7. Notice of the planned final action authorizing the condemnation of the property described in **Exhibit A** has been given to the owner of said property and published in the Everett Herald and Marysville Globe in accordance with the provisions of RCW 8.25.290.

8. The City previously passed Ordinance No. 2703 on June 11, 2007, which pertained to acquisition of an easement from BNSF Railway Company required for improvements to State Avenue between 116th Street NE and 136th Street NE, which ordinance is superseded by this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON DO ORDAIN AS FOLLOWS:

1. The City is hereby authorized to condemn, appropriate, take and damage the real property described in **EXHIBIT A** hereto, together with all rights appurtenant thereto, including access where applicable. The City is further authorized to amend the legal description contained in **EXHIBIT A** as may be necessary and appropriate to meet requirements of the project.

2. The use of the property described in **EXHIBIT "A"** is for widening State Avenue from three to five lanes and constructing curbs, gutters and sidewalks, from approximately 116th Street NE to approximately 136th Street NE, which is a permanent public use and is reasonably necessary for the purposes for which it is sought.

3. All lands, rights, privileges and other property lying within the limits of the land described in **EXHIBIT "A,"** as the legal may be amended, together with all rights appurtenant thereto, including access where applicable, are hereby authorized to be condemned, appropriated, taken and damaged for the purpose of widening of State Avenue from three to five lanes and constructing curbs, gutters and sidewalks, from approximately 116th Street NE to approximately 136th Street NE. The easement rights authorized to be condemned include the perpetual right, privilege and authority to construct, install and maintain a roadway, curbs, gutters and sidewalks and appurtenances thereto for use of the public, over, under, through, across, in, upon and above the lands described in **EXHIBIT "A,"** together with any and all other rights reasonable and necessary for the purpose of installing, constructing and maintaining a roadway, curbs, gutters, sidewalks and associated appurtenances, and together with the right of ingress and egress for said purposes.

4. All lands, rights, privileges and other properties are to be taken, damaged and appropriated only after just compensation has been made, or paid into the court for the owners thereof in the manner provided by law.

5. The cost of the acquisition provided for by this ordinance shall be paid by the following funds of the City:

Fund No. 305 (GMA-Street)

or such other general funds of the City as may be provided by law.

6. The City's attorneys should be and hereby are authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to carry out the provisions of this ordinance, and to enter into settlements to mitigate damages.

7. Ordinance No. 2703 is hereby repealed.

PASSED by the City Council and APPROVED by the Mayor this _____ day of July, 2014.

CITY OF MARYSVILLE

By _____
JON NEHRING, Mayor

ATTEST:

By _____
Deputy City Clerk

Approved as to form:

By _____
GRANT WEED, City Attorney

Date of Publication: _____

Effective Date (5 days after publication): _____

**EXHIBIT A
EASEMENT LEGAL DESCRIPTION**



Pacific Surveying & Engineering

1812 Cornwall Avenue
Bellingham, WA 98225
Phone 360-671-7387 ^ Fax 360-671-4685
www.psesurvey.com

"EXHIBIT A-1"

**EASEMENT FROM BURLINGTON NORTHERN SANTA FE RAILROAD
SITUATED WITHIN THE NW ¼ OF SECTION 9 TOWNSHIP 30 NORTH, RANGE 5 EAST OF
THE WILLAMETTE MERIDIAN, SNOHOMISH COUNTY, WASHINGTON**

5/7/2007

SURVEYORS NOTE:

The center line of State Avenue is based on the Right of Way plans titled State Avenue, 116th St NE to 136th St NE, dated December 26, 2006.

Commencing at the centerline of State Avenue marked by a brass cap monument at the Right of Way Plan station 237+44.46; thence North 12°31'41" West along said centerline 1550.87 feet to station 252+95.33; thence at right angles North 77°28'19" East 30.00 feet to the easterly margin of said State Avenue and Point of Beginning; thence North 12°31'41" West parallel with said centerline along said easterly margin 542.35 feet to station 258+37.68 being a point of intersection with the westerly margin of the said Burlington Northern Santa Fe Railroad, also being the beginning of a curve concave to the east, from which radius point bears South 89°14'54" East 5779.58 feet; thence along said curve and said westerly margin northerly 55.48 feet through a central angle of 0°33'00" to the end of curve at station 258+91.62, 43.00 feet right of said centerline; thence South 12°31'41" East parallel with said centerline 199.33 feet to station 256+92.29, 43.00' right from said centerline; thence North 89°12'23" East 22.55' to station 256+87.70, 65.08 feet right from said centerline; thence South 01°08'26" East 99.18 feet to station 255+90.47, 45.50 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 119.05 feet to station 254+71.42, 45.50 feet right from said centerline; thence perpendicular to said centerline South 77°28'19" West 2.50 feet to station 254+71.42, 43.00 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 88.00 feet to the intersection with the easterly margin of said Railroad and beginning of a curve concave to the east at station 253+83.42, 43.00 feet right from said centerline from which radius point bears North 86°19'02" East 5679.58 feet; thence along said curve and said easterly margin southerly 89.02 feet through a central angle of 0°53'53" to the end of curve and intersection with said easterly margin of said State Avenue and Point of Beginning. Containing 8,365 Square Feet more or less.

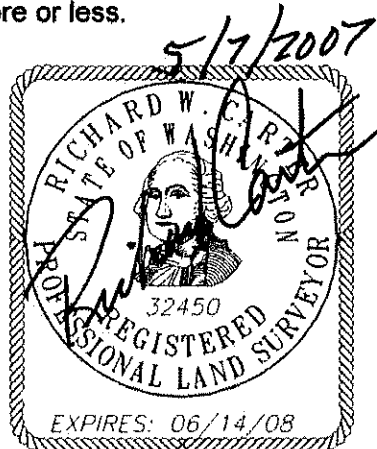


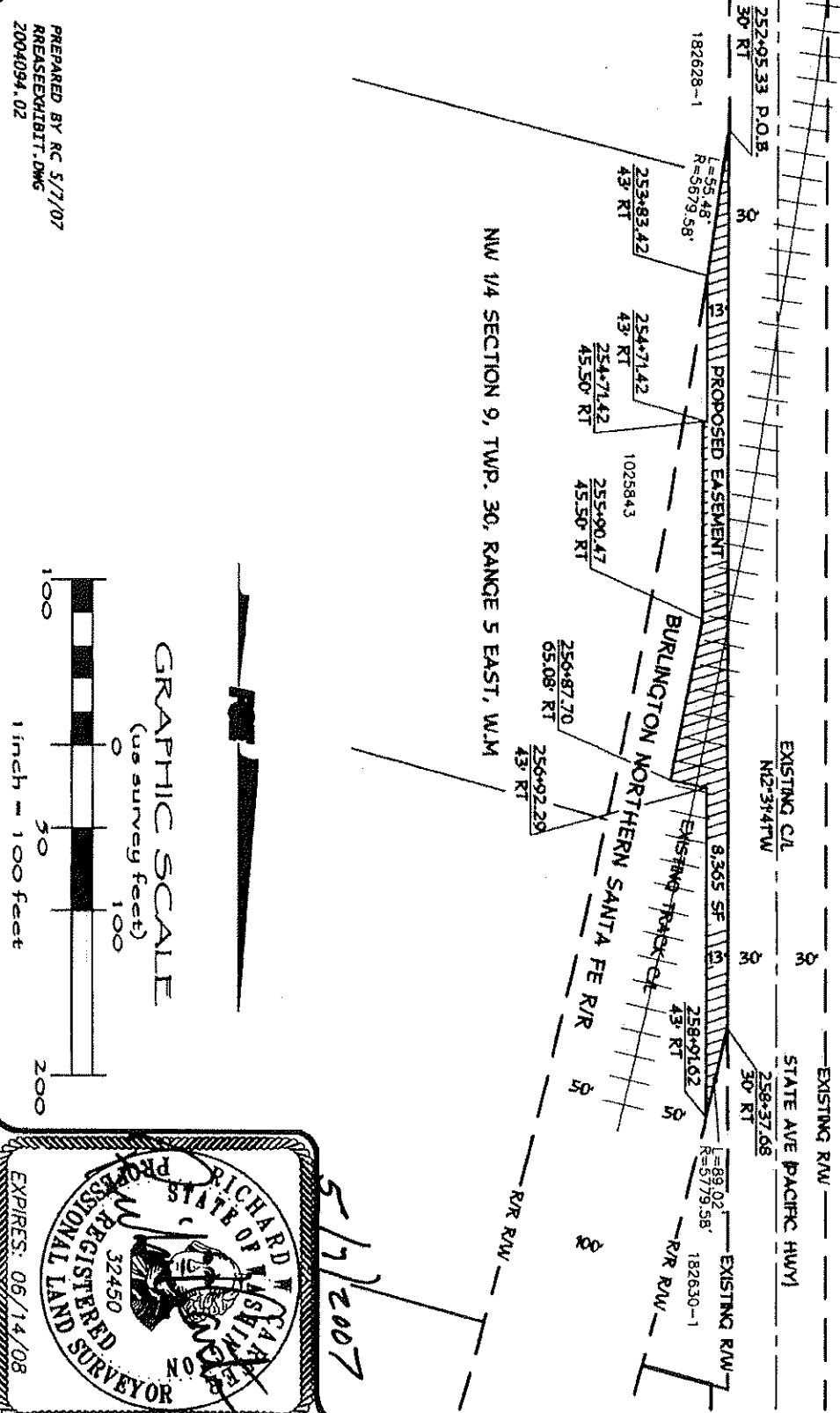
EXHIBIT B EASEMENT SKETCH

PACIFIC SURVEY & ENGINEERING INC BELLINGHAM @ BOTHELL
 22122 20TH AVE, SE, SUITE 159, BOTHELL, WA 98021 PH: 425.205.2035 F: 205.205.2038
 EMAIL: pse@pseurvey.com www.pseurvey.com

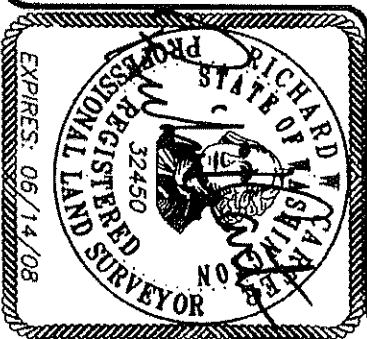
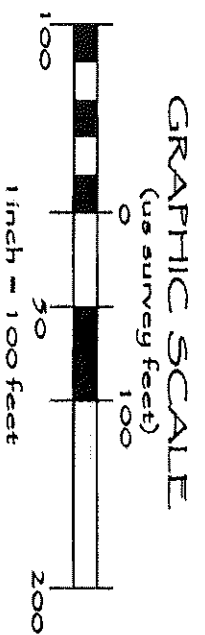


EXHIBIT A-2: FOR PROPOSED EASEMENT

THE RIGHT OF WAY AND STATIONING OF STATE AVE IS REFERENCED TO THE RIGHT OF WAY PLAN CALLED 'STATE AVENUE, 16TH ST NE TO 136TH ST NE', MARYSVILLE, WASHINGTON, DATED DECEMBER 26, 2006.
 ON FILE WITH THE PUBLIC WORKS DEPT., CITY OF MARYSVILLE, WA.



PREPARED BY RC 5/7/07
 RREASEXHIBIT.DWG
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5/17/2007