



Dava Kaitala
General Director
Construction Permitting

BNSF Railway Company
P.O. Box 961051
Fort Worth, TX 76161-0051
2650 Lou Menk Drive, 2nd Fl.
Fort Worth, TX 76131-2830
Email: dava.kaitala@bnsf.com

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Ron Melin, Senior Environmental Planner
Cowlitz County
207 4th Ave. N.
Kelso, WA 98626
Email: MelinRco.cowlitz.wa.us; ShorelineComments@co.cowlitz.wa.us

Re: Comments on Shoreline Substantial Development Permit and Shoreline Conditional Use Permit for Millennium Bulk Terminals - Longview

To Whom It May Concern:

BNSF Railway Company (“BNSF”) provides the following comments regarding Millennium Bulk Terminals - Longview’s application for a Shoreline Substantial Development Permit (the “Project”). BNSF provides these comments so the Hearing Examiner will have a complete record on which to base decisions concerning the shoreline substantial development permit and the shoreline conditional use permit for the Project.

Background

By way of background, the public debate over this project has presented information about BNSF’s rail system that is incorrect, inaccurate, or misleading. In particular, the impacts of the project have frequently been overstated, including in the Environmental Impact Statement (“EIS”) for the Project that was produced by the Washington Department of Ecology and Cowlitz County. The EIS over-states and overestimates a number of analyses, and is misleading. An EIS as a disclosure document may be defensible from an adequacy of the analysis and scope perspective, but not for exercise of Washington State Environmental Policy Act (“SEPA”) substantive authority. BNSF initially appealed the EIS; however, when no other parties filed a timely appeal of the EIS, BNSF decided to withdraw its appeal to avoid delays in the permitting process.

The following comments are intended to correct these misstatements to enable the Hearing Examiner to make a full and fair decision on the merits. In particular, the comments below address the following issues and areas. BNSF reserves the right to provide more detailed analysis of each of these areas in the future:

1. BNSF’s Range of Operations
2. Impacts of the Project Related to BNSF’s System In General

3. Air Quality
4. Vehicle Transportation
5. Locomotive Noise
6. Rail Transportation and Capacity
7. Rail Safety
8. Tribal Resources
9. Coal Dust

Overview of Specific Comments

I. BNSF's Range of Operations

BNSF Railway operates as a common carrier and is one of North America's leading freight transportation companies operating on 32,500 route miles of track in 28 states and 3 Canadian provinces, as well as connections with Mexico and Canada. BNSF Railway employs more than 40,000 individuals and serves more than 40 ports.

BNSF is one of the top transporters of consumer goods, grain, industrial goods and low-sulfur coal that help feed, clothe, supply, and power American homes and businesses every day. BNSF and its employees have developed one of the most technologically advanced and efficient railroads in the industry. BNSF continuously works to improve the safety, service, energy, and environmental benefits we provide to our customers and the communities we serve.

The importance of trade-related employment to Washington's economy is difficult to overstate. In fact, trade represents almost one third of Washington's GDP. Nearly 40 percent of all jobs in Washington are tied to trade, according to the Washington Council on International Trade. Freight rail adds \$28.5 billion to Washington's economy each year, according to a report by Dr. Phil Romeo, a professor of economics at the University of Oregon and the former Chief Economist for California. More than 342,000 workers in this state depend on freight rail in some manner for their livelihood. In Washington alone, BNSF employs more than 3,700 people with a combined payroll of more than \$260 million.

II. Impacts of the Project related to BNSF's System In General

Importantly, BNSF's rail system is not part of the Project, and no permits are requested for any part of the BNSF rail system. BNSF has operated a rail line along the Columbia River Gorge for over 100 years, and will continue to do so whether the Project is built or not. BNSF does not need special permits for Project trains, and BNSF's systems and operations are not properly part of the environmental analysis for the Project. The Project consists of a transloading facility that will be built entirely in Cowlitz County and does not include BNSF's tracks nor locomotives in Washington or any other state. The Project will be served by BNSF trains, but those trains do not belong to the Project and are not operated by the Project—nor is BNSF's track infrastructure. As such, the Hearing Examiner should not consider the rail-related impacts discussed in the EIS, and should exercise discretion not to factor those impacts into the permit analysis.

Moreover, it is not at all clear that the Project will increase traffic along any of BNSF's routes in any predictable or measureable way. If the Project reaches full capacity, the terminal is expected to receive up to eight unit trains per day. Although it seems like an easy answer to say that a project adding eight trains to the system will automatically result in an increase of eight trains per day to overall rail traffic, this is a mistake and an oversimplification of BNSF's system.

Rail traffic is dynamic, not static or subject to precise prediction. BNSF has a diverse set of customers, each with variable schedules. BNSF operates in a freight market that is driven by global supply, commodity prices, and demand factors, none of which are subject to reliable prediction. BNSF competes with different modal freight choices, such as truck, airplane, pipeline, and boat, which themselves are influenced by factors such as highway congestion and fuel prices. Business shifts among modes and carriers based on price, service, speed, capacity, and reliability. These shifts can be meaningful and can have major impacts on our network volumes. Rail traffic also fluctuates based on population growth and resultant demand, energy and environmental concerns, and scheduling factors such as seasonality and weather events. These factors play out every day across the entire rail system in the United States.

The dynamic nature of BNSF's system makes it impossible to conclude with any certainty if or how much one single customer will result in a net change in rail traffic years from now as compared to current or historic volumes.

Even assuming BNSF's system is static and the Project will add eight trains per day to a static system, such an increase would be insignificant in comparison to overall traffic. . In the 30 years from 2010 to 2040, the State of Washington is expected to grow annual truck volumes by 6.4 million trucks to 15.8 million. This increase in truck traffic adds highway congestion that increases vehicle idling time producing more vehicle emissions, and more traffic means longer commutes that reduces citizen productivity. A more sustainable outcome is moving that freight to rail to cut fuel used and greenhouse gas emissions by two thirds. The net shift to rail is occurring, although the timing or amount of that shift in the future cannot be predicted with any certainty.

The length and weight of a unit train is not significantly different than the length or weight of other trains that routinely travel on the BNSF system. As a result, unit trains that would serve the Project would not have unique impacts on the BNSF system.

The difference in treatment of this project compared to other rail projects also cannot be ignored. The most blatant example is the September 2007 Programmatic Environmental Assessment ("EA") of passenger rail projects moving between Vancouver, B.C., Seattle, and Portland.¹ These projects would add 10 trains per day to BNSF's system, and were handled in an EA, which specifically noted "...an EA has been prepared for this program as the impacts do not warrant an EIS." The EA also contains a long section detailing Washington State's treatment of the passenger rail program under the State Environmental Policy Act and the National Environmental Policy Act. It is also important to note that Washington Department of Transportation gave BNSF the State's 2016 Environmental Excellence Award in the execution of

¹ See <https://www.wsdot.wa.gov/NR/rdonlyres/3B84DD70-5569-48FE-BB33-A637193A17F7/0/PNWRCPProgramEnvironmentalAssessment.pdf> (last visited October 6, 2017).

the project that was covered by that EA. This same project won the prestigious Hay Award from the American Railway Engineering and Maintenance of Way Association. As these facts clearly illustrate, Washington State has determined that adding trains pulled by diesel locomotives to an already established rail corridor has no significant negative impacts on the human environment. In fact, the EA addressed the net benefits of rail including the lower environmental footprint that results when shifting people (and goods) from the highways to rail.

The Hearing Examiner would not be well-served by considering impacts that are derived from a faulty assumption of net increase in rail traffic. Such an increase is simply not predictable with any certainty. Impacts that fall into this category, and that would not be a proper basis for a permit decision, include rail capacity, locomotive noise, vehicle traffic, air quality, and access to tribal fishing sites. In addition, BNSF has demonstrated a history of increasing capacity on its rail system as increasing customer demands and traffic warrant such expansions. The Hearing Examiner should look closely at how the State has treated its own passenger rail projects in this regard, and the Hearing Examiner should limit the review to those impacts traditionally considered by the State for rail projects. Relying on incorrect statements in the EIS for decision making is not only unfair, but is by definition an arbitrary and capricious action.

III. Air Quality

The air quality analysis in the EIS is misleading. It greatly overstates the air quality impacts for the Project and for rail transportation in general.

Rail is the most environmentally preferred method of moving the nation's land freight. One train can carry as much freight as several hundred trucks. It would have taken approximately 5.6 million additional trucks to handle the 100.8 million tons of freight that originated in, terminated in, or moved through Washington by rail in 2012. (Source AAR: https://www.aar.org/Style%20Library/railroads_and_states/dist/data/pdf/Washington%202012.pdf).

According to the Association of American Railroads (AAR) (<https://www.aar.org/>), trains move the same ton of freight more than three times as far as trucks per gallon of fuel. This efficiency produces more than two-thirds fewer CO₂ emissions per ton mile than trucks. Diesel emissions have been extensively analyzed and are federally regulated by the Environmental Protection Agency (EPA). In fact, the existing EPA standard for locomotives, called Tier 4, were tightened in 2015.

The EIS does not account for these and many other specific factors noted below in analyzing air quality impacts associated with the Project. Specifically, the EPA requires all newly manufactured and all remanufactured locomotives that were originally manufactured after 1972 to comply with increasingly stringent emission standards and to be equipped with idle reduction technology that automatically shuts down locomotives if they are left idling unnecessarily. Importantly, the EIS did not consider that idling reduction technology is required by federal law and instead assumed that all locomotives present would run continuously for any time that the locomotives were at the facility. This is one of many false and misleading statements in the EIS that result in a gross overstatement of rail emissions and impacts.

BNSF has the newest and cleanest freight locomotive fleet in North America. Nearly 40 percent of BNSF's fleet has been replaced in the last 10 years. The resulting reduction in average locomotive emissions are 14 percent in carbon dioxide and almost half in particulate emissions through the end of 2016.

The idling control program is expected to eventually reduce NOx, volatile organic compounds (VOCs), and particulate matter emissions from locomotive idling by approximately 90 percent as well as significantly reduce locomotive smoke emissions and exhaust odors. These measures will reduce future locomotive emissions compared with both past and some present locomotive emissions.

More than ninety eight percent (98%) of BNSF's locomotives, including all high horse power (HHP) locomotives that are used in our over the road and heavy haul fleets, are equipped with an Automatic Emission Shutdown System (AESS) which automatically shuts down a locomotive not in use to reduce idling emissions.

In addition to idle control technology, improvements in operations and maintenance practices also have had an impact on the inherent fuel efficiency of rail. BNSF, which has the industry's newest and most fuel-efficient fleet of road locomotives, is able to move one ton of freight almost 500 miles on a single gallon of fuel.

A number of factors impact fuel efficiency, including the age of the fleet, network fluidity, technological solutions, freight commodity mix, and operating and maintenance practices. Because fuel efficiency is influenced by various factors, BNSF also measures the energy used by determining fuel used per gross ton mile. Gross ton miles are the weight of the train, excluding the locomotive, multiplied by the miles the train has traveled. In 2014, BNSF averaged 833 gross ton miles on a single gallon of diesel, which is a 10 percent improvement from a decade earlier when gross ton miles on a single gallon of diesel were 757.

At the end of 2014, BNSF had 92 ultra-low-emission locomotives in use for switching operations inside its rail yards. By using these ultra-low-emission locomotives, BNSF reduces nitrogen dioxide and particulate matter emissions from locomotives by 80 to 90 percent at facilities that use them and improves fuel efficiency by 25 percent compared to older switch engines.

The Final EIS contains false and inflammatory statements reaching conclusions about the relationship between environmental exposure to diesel exhaust and cancer are false and are unsupported by scientific data. The fact that these false and inflammatory claims were not contained in any of the drafts made available for public review and comment should raise eyebrows, particularly because few of these statements have any basis in science.

As a threshold matter, the future exposures assumed by EIS are biased, wildly speculative, over-conservative, and should have been made available for study and comment. The EIS relies on the World Health Organization ("WHO") listing of diesel particulate matter as a carcinogen, which is based on studies of heavy occupational exposures to underground miners who used old or traditional diesel technology. The WHO noted that it lacked evidence to find

new technology diesel (NTD) had the same effects as traditional diesel (TD). Today's North American locomotive fleets, including those that would serve this facility, use ultra-low sulfur diesel, not traditional diesel. In addition, some studies of railroad employees report that they "did not observe any consistent increase in lung cancer risks for [railroad] shopworkers," despite the fact that shopworkers had the highest exposures to diesel particulate matter of any class of railroad worker. See *Inhal Toxicol.* 2012 Jun; 24(s1): 1–45.

Finally, the EIS statement attempts to predict cancer risk as a result of extremely low environmental exposures by extrapolating from controversial occupational studies, without any confirming evidence. To make this extrapolation, the EIS assumes that any exposure to diesel exhaust increases cancer risk, when no scientifically valid studies have ever identified a carcinogen that can cause cancer at any level, no matter how low. If that were a valid model, low levels of radiation exposure from flying or routine medical procedures would be condemned by EIS. The change made by the Washington Department of Ecology in the final EIS is simply not supported by any sound science nor established risk management practices.

In short, the EIS does not account for these and many other factors in analyzing air quality impacts associated with the Project. Unlike the agency's press releases, the analysis in the final EIS does not suggest that the locomotives and trains serving the project are different in any way from other trains in service or suggest that air quality would be in any way uniquely affected as a result. The analysis in the final EIS is misleading and, ultimately, incorrect. Actual air quality impacts associated with the project would be far less, and the Hearing Examiner should take that into account in evaluating how to utilize the information contained in the EIS.

IV. Vehicle Transportation

Traffic impacts are overstated as well. The length of a unit train is not significantly different than the length of other trains that routinely travel on the BNSF system. As a result, unit trains serving the Project would not cause unique crossing delays. In general, the road crossing gate down times listed in the EIS are minimal and not atypical in rail-served communities across the country, especially for the number of trains anticipated by this project.

Added traffic (if any) also will not unduly impact fire and police response times. BNSF has the ability to "split" a train in case a crossing is blocked and an emergency vehicle needs to pass. Moreover, BNSF has a team that concentrates on eliminating at-grade crossings to improve traffic conditions and working with communities that are interested in grade-separating crossings.

A new improvement to allow swift access by emergency responders to rail information is a secure mobile device application called AskRail created by BNSF and the other Class I railroads. See <https://askrail.us/>. It provides first responders immediate access to accurate real time data about individual rail cars on a train, which can help emergency responders make informed decisions about how to respond on the scene of an emergency. AskRail is available only to emergency response planners and first responders and is not for public use. It does not replace current communication channels, but is intended as a real-time supplement to the existing process.

In sum, traffic impacts are exaggerated in the EIS and BNSF already takes measures to prevent unreasonable delays at grade crossings.

V. Locomotive Noise

The EIS also overstates noise impacts. Locomotive noise is regulated by the Federal Government, and BNSF diligently complies with all applicable regulations. The FRA Train Horn Rule governs train horns and quiet zones along the tracks and minimizes noise in rail-adjacent communities to the extent safety allows. In addition, BNSF is committed to working with communities that wish to establish quiet zones and regularly assists these communities with their quiet zone applications to the FRA. Given that horns are a critical element of rail safety, BNSF has learned it is best to approach quiet zones on a case-by-case basis rather than impose them on communities that may not want them.

Train horn use is regulated by the federal government. The use of either train or an automated horn system, known as wayside horns, is determined through a diagnostic conducted by the Road Authority, FRA, and BNSF. The installation and use is governed by the FRA Train Horn Rule <https://www.fra.dot.gov/Page/P0105>. Accordingly, BNSF does not determine where or when Wayside horns are installed. Section IV. Part 9 Subsection 9 of the FRA's Grade Crossing Safety Handbook (<https://www.fra.dot.gov/Page/P0040>) states that:

A crossing bell is an audible warning device used to supplement other active traffic control devices. A bell is most effective as a warning to pedestrians and bicyclists. When used, the bell is usually mounted on top of one of the signal support masts. The bell is usually activated whenever the flashing light signals are operating. Bell circuitry may be designed so that the bell stops ringing when the lead end of the train reaches the crossing. When gates are used, the bell may be silenced when the gate arms descend to within 10 degrees of the horizontal position. Silencing the bell when the train reaches the crossing or when the gates are down may be desired to accommodate residents of suburban areas.

Quiet Zones are established through the FRA Train Horn rule as outlined at <https://www.fra.dot.gov/Page/P0104>. BNSF participates in the diagnostics and review conducted by the road authority, the State DOT and the regional FRA representative. Crossing treatments and recommendations are determined through the diagnostic and calculations provided through the Train Horn Rule.

In 2005, in response to a Congressional mandate, the FRA issued a Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings: <https://www.fra.dot.gov/Page/P0105>. Under the new rule, local governments may establish quiet zones or continue existing quiet zones—if they are willing to take remedial steps to address risk—based on a calculation of potential risk at the crossing. In many instances, the rule makes these designations subject to FRA review, approval and ongoing oversight.

Remedial steps may include crossing closure, grade separation, full-width crossing gates with an approved median divider, full-width gates and lights at crossings on a one-way street, temporary closure (for nighttime quiet zones only) or four quadrant gates. The rule also allows

for an automated horn system, commonly wayside horns, at the crossing as a substitute for the train horn, if this provision is approved by the Federal Highway Administration. BNSF works with communities wishing to establish quiet zones and regularly reviews their quiet zone applications to the FRA.

Federal regulations governing train noise more than adequately address the concerns raised by opponents of the Project. These rules establish a comprehensive regime for ensuring rail does not have a disproportionately negative impact on rail-served communities. Even at full build-out, it is not anticipated that noise or vibration will be greater than what is typically experienced on BNSF's system. Thus, locomotive noise and vibration should not be a basis for denial of the permits at issue for this Project.

VI. Rail Transportation and Capacity

The final EIS acknowledges that there should no capacity limitations until 2028—more than 10 years out. Washington's GMA, in contrast, aims to have infrastructure improvements planned only 6 years out. As a consequence, the final EIS and 401 Certification Denial overstate the Project's potential to strain rail capacity. BNSF has adequate capacity in the near and long term to accommodate current and future traffic growth in Washington. Despite assertions to the contrary, there is no looming regional capacity issue. Long-term forecast such as the 2011 Marine cargo Forecasts & Rail Capacity Study and the 2006 WSDOT Capacity Study made assumptions about growth, but are not actual predictions of when and where growth will occur. The economy and the marketplace are the key drivers of changes in freight volumes.

The 2006 WSDOT capacity study which was conducted during BNSF's all-time volume record, was quickly thrown out of date by the Great Recession and is inconsistent with what has actually happened since then. In the 2011 Marine Cargo Forecasts & Rail Capacity Study, the conclusion is that capacity is sufficient for growth along most routes today. The two routes where potential capacity constraints are forecast under high-growth scenarios – Pasco to Vancouver and Everett to Blaine – would not experience constraint with existing capacity until after 2020, according to the study. The study indicated these potential issues are remediated with modest upgrades.

Rail improvements are made financially possible only by increased rail volume. The system ensures that the necessary private capital to refresh BNSF's physical infrastructure and capacity becomes available as necessary to provide adequate levels of service along rail lines. Therefore, BNSF invests in capacity improvements when actual traffic demand justifies the investment. Freight demand driven by the marketplace and the economy determine when that demand actually occurs. While BNSF plans on a multi-year basis, BNSF reviews and approves capital investments on an annual basis. We have invested for a long time on that basis, including in the State of Washington, and will continue to do so. It is the best way to ensure that capacity expansion investments are made in response to actual market needs.

All freight capacity expansion needed on BNSF's right of way is paid for by the railroad. We have invested more than \$53 billion of our own private capital on our network since 2000. In 2015, we invested another \$6 billion across our network, with \$1 billion of that capital being invested in expansion and maintenance on the Northern Corridor alone, more than any other part

of the network. BNSF has continued to make these improvements to its lines that have resulted in improved system-wide train velocity over the last few years.

BNSF’s history of investment in the Pacific Northwest demonstrates BNSF’s commitment to this important region. BNSF regularly invests more than \$125 million annually in Washington alone in order to maintain and improve freight rail capacity. In 2015, BNSF invested nearly \$200 million in Washington, and BNSF expects to make a similar capital investment this year. Moreover, during the last nine years, BNSF has invested approximately \$1.5 billion in Washington, and since 2013, BNSF has invested approximately \$3.5 billion to maintain and add capacity improvements in the Northern Corridor.

The three existing BNSF rail routes through Washington have available capacity and offer flexibility in ensuring network fluidity. In fact, to provide more capacity to move goods in and out of Washington, we invested more than \$150 million in the mid-1990’s to reopen the Stampede Pass Route. Shown below and Figures 2 through 5 is an overview of the 2015 capital projects across our system, including in Washington:

- Started construction of double track from Ferndale to Custer totaling nearly seven miles.
- Reconfiguring the Bayside and Delta rail yards located in Everett to improve efficiency and provide more capacity.
- Continuing to work through permitting and right-of-way issues involving the replacement of the Washougal River Bridge in Camas.
- BNSF's maintenance program in Washington included 1,011 miles of track surfacing and undercutting work, and the replacement of nearly 50 miles of rail and close to 203,000 ties, as well as signal upgrades for federally mandated positive train control (PTC).

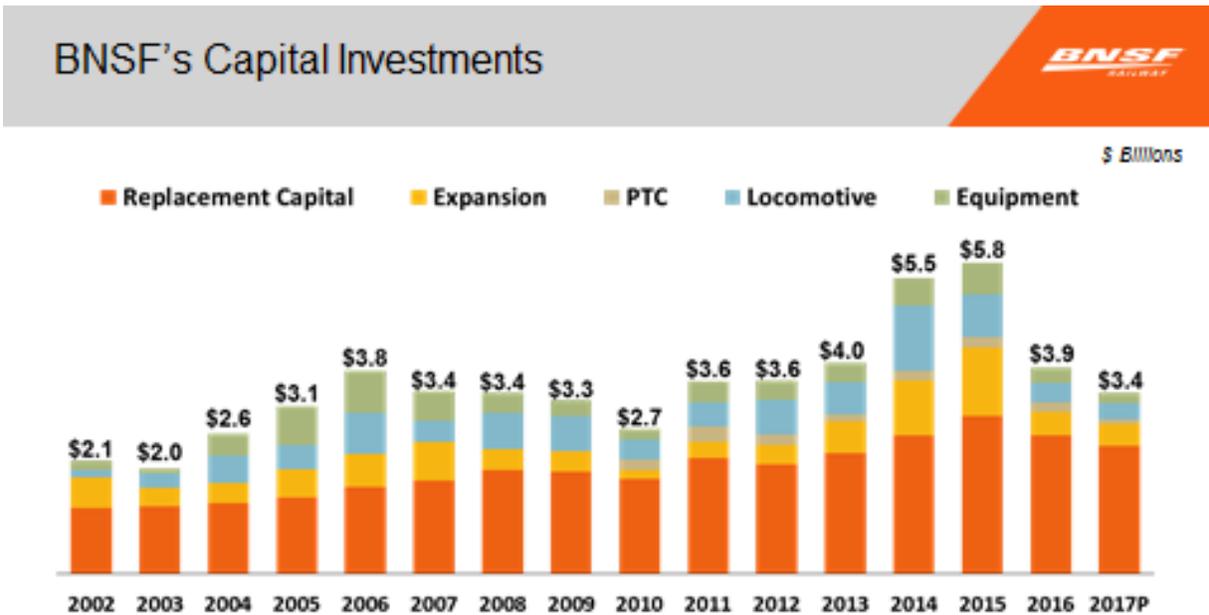


Figure 1

BNSF's 2015 \$6 Billion Capital Plan

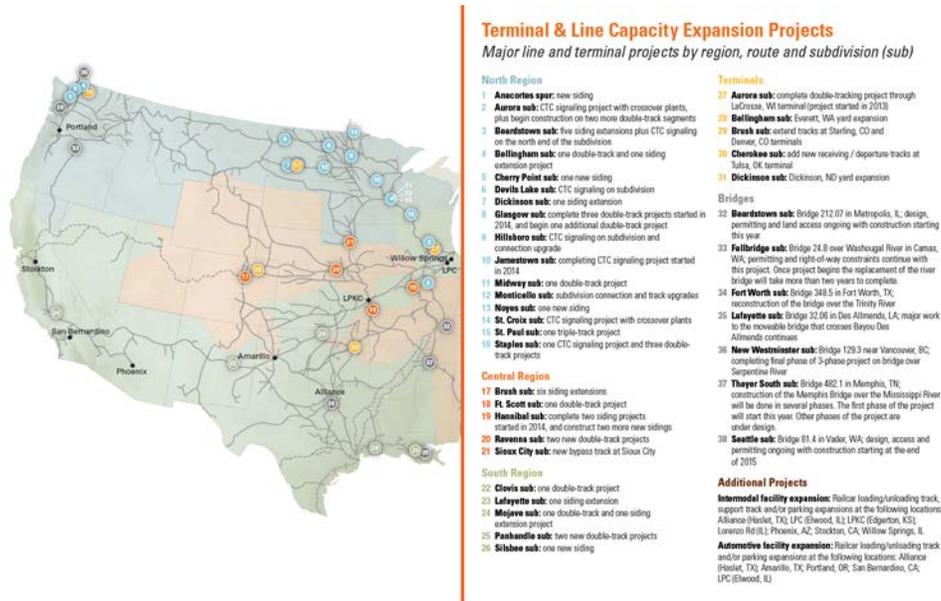


Figure 2

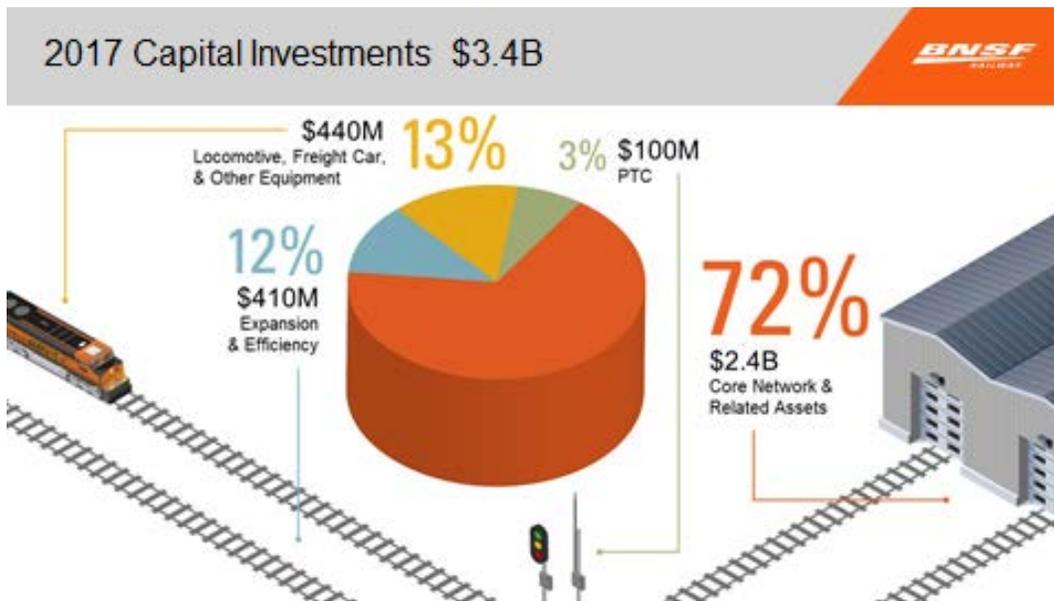


Figure 3

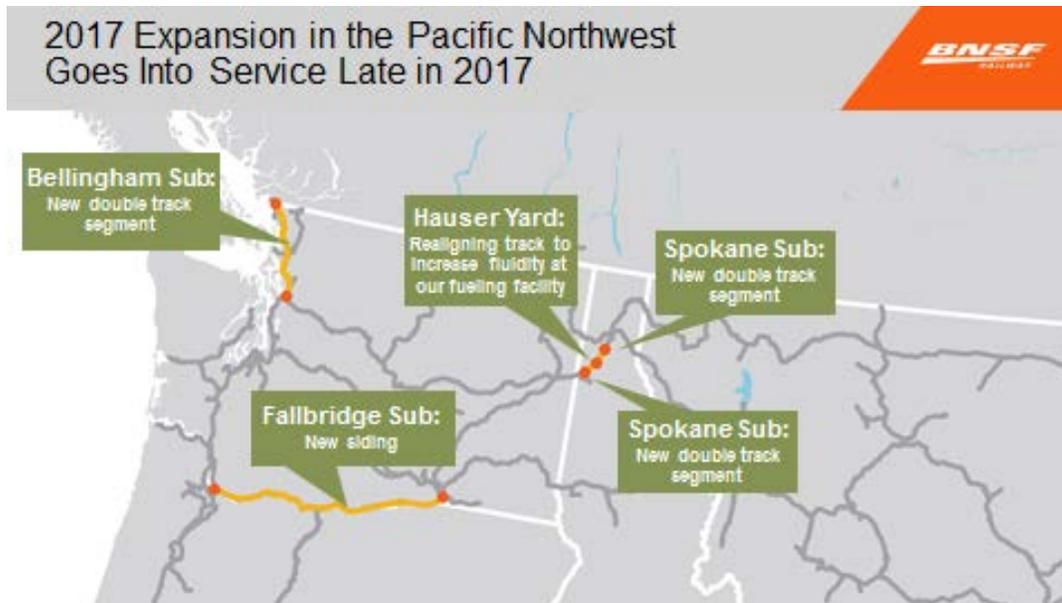


Figure 4

The EIS’s analysis of rail capacity impacts underestimates the fact that BNSF always has, and always will, invest and expand to meet capacity needs. Nor does it show that this project will actually result in a measurable increase in traffic, let alone an increase that would strain capacity. In summary, there are no capacity constraints on the BN lines; MBT-L’s shipments are within the existing capacity; and any future constraints will be addressed by BNSF.

VII. Rail Safety

The EIS also overstates the Project’s potential to negatively impact rail safety. Safety is an integral part of BNSF’s culture, and BNSF takes extraordinary measures to ensure that its rail lines are as safe as possible. BNSF believes that every accident and injury is preventable. Operating free of accidents and injuries has long been part of BNSF’s vision and our focus has been on preventing accidents in the first place.

Rail is the safest mode of land transportation for freight in general, including for energy commodities, and is getting safer every year. According to the FRA, the rail industry as a whole has reduced employee injury rates, train accident rates, and grade crossing collision rates by 80 percent or more since 1980. The FRA named 2013 and 2014 as the safest in U.S. history for American freight railroads, including BNSF, and the rail industry has reduced hazardous material train accident rates by 91% since 1980. This record setting safety record continued in 2015. According to the U.S. Department of Transportation’s (“USDOT”) Draft National Freight Strategic Plan (October 2015, pg. 6):

Recent trends show impressive improvements in freight rail safety. There was a 27 percent increase in freight ton-miles for all surface modes between 1990 and 2011, but freight-related fatalities across all modes declined by 33% over that same period.

The USDOT also notes that total rail fatalities have decreased by over 37% from 1980 to 2013. And although even one fatality is too many, this tremendous improvement in rail safety cannot be ignored, especially as rail shipments have been increasing over this same time period.

We have made this remarkable safety progress in partnership with our employees and by continually investing in new technologies that help make the railroad safer and more efficient. Our philosophy is that we must prevent incidents from happening, mitigate their severity, and mobilize effective, efficient response. We believe our progress in all three areas: prevention, mitigation and response enhance our commitment to continually improving safety on our network.

BNSF operates under a number of federal laws that govern our operations. These laws and regulations, as well as BNSF's own voluntary safety and prevention measures, make rail transportation the safest mode for transporting industrial goods in the United States.

BNSF prioritizes safety and the maintenance of its railroad network and makes significant investments in railroad safety and infrastructure. In 2015 alone, BNSF invested \$6 billion in support of its rail maintenance and expansion programs. Nearly 50% of our 2015 capital plan was spent on replacing and maintaining existing infrastructure. In Washington, we have invested more than \$1 billion in our infrastructure over the past six years.

BNSF's Risk Reduction Program

BNSF has a broad-based, multi-level risk reduction program to reduce incident risk on our railroad. This multi-layered risk reduction program is designed to ensure that all commodities are handled in a safe and damage-free manner. The aspects of this program are highlighted below.

Employee Training and Compliance

As stated above, BNSF's employees share the vision of an injury and accident-free workplace and are trained on exposure and risk identification. They look out for one another—reinforcing positive safety behavior by acknowledging when people are working safely and expressing concern when someone puts themselves or others at risk.

There is nothing is more important than returning home safely in all of the communities in which we live and operate. BNSF's safety focus is built on a culture of compliance and commitment and uses a robust compliance oversight process, including both direct and remote operations testing, to monitor rules compliance. Employees are trained on a comprehensive set of safety rules and practices based on Federal requirements, industry recommendations, and BNSF-specific safety initiatives. In addition, BNSF conducts operational tests and audits to verify that employees are working safely and in compliance with all company rules, policies, instructions, and procedures.

Record Capital Investments

Record capital investments are being made in the railroad to help create a safer and more reliable physical plant. Through the end of 2015, BNSF reinvested more than \$50 billion into its equipment and its network and infrastructure work that helps to maintain train traffic fluidity and capacity expansion projects intended to meet customers' freight shipment demands. BNSF spent a record \$6 billion for the capital expenditure program in 2015, which was the third consecutive year of record investment in BNSF network and infrastructure.

In addition to these capital improvements, BNSF implements comprehensive inspection processes as discussed below, that ensures safety by identifying potential problems before they can lead to unsafe conditions on the rail network.

Track Inspections

BNSF inspects its tracks more frequently than required by the FRA to ensure they are safe. Most key routes on BNSF are inspected up to four times per week, more than twice the inspection frequency required by the FRA, and our busiest main lines can be inspected daily. These inspections include routine visual inspections by track inspectors and inspections with specially equipped rail cars that use ultrasonic and other advanced technology to look for flaws in the rail and to test track geometry, as discussed in further detail below.

Track inspections on BNSF main lines occur by a hy-rail vehicle, which rides on the rails. In addition to the normal hy-rail inspections, on-foot inspections of all turn-outs on the main lines and yard tracks are required at least monthly. Supervisors are also required to make regular train rides over their assigned territories.

BNSF employs track inspectors who are chartered by the FRA to comply with FRA regulations. These inspectors record track conditions and update data following each inspection, which is provided to the FRA.

Grade Crossing Safety

Promoting grade-crossing safety is an essential part of our operation and culture. Our network includes just over 25,800 grade crossings, including approximately 17,200 public and 8,700 private and pedestrian at-grade crossings.

In addition, BNSF has more than 3,700 public grade separations and 650 private and pedestrian grade separations, including one of the lowest highway-railroad grade crossing collision rates in the rail industry. Since BNSF's merger in 1995, the rate of grade crossing collisions has declined about 68 percent – from 5.3 per million train miles in 1995 to a rate of 1.7 per million train miles in 2013.

Trains cannot stop quickly. A 100-car freight train traveling at 55 miles per hour on the main line will need more than a mile to stop once the train is set into emergency braking. When vehicle drivers or pedestrians violate traffic laws at grade crossings, or trespass onto railroad right of way, they are putting themselves and the train crews in danger.

In recent years, we've invested an average of \$95 million annually on grade-crossing maintenance, improvements, and safety programs. Our initiatives include community education and awareness, train crew education and testing, crossing closures, new safety technology, vegetation control, and track and signal inspection and maintenance.

For the past several years, BNSF has invested an average of approximately \$95 million annually on grade crossing maintenance, improvements, and safety programs. BNSF's expenditures include community education and awareness, train crew education and testing, crossing closures, new safety technology, vegetation control, and track and signal inspection and maintenance. To accomplish these educational and program activities, BNSF has 17 grade crossing safety managers and 9 public projects manager. The amount spent on grade-crossing safety includes an annual average of approximately \$20 million to maintain grade-crossing road surfaces.

Federal and State Regulation of Rail Safety

Rail safety is also highly regulated by both the state and federal governments, further ensuring that rail is as safe as possible. The 1973 Highway Rail Safety Act created a partnership to be built between the federal government, state government, local agencies and the railroads. Congress established guidelines for evaluating grade crossings, and the Federal Government would provide a funding mechanism for railroad-highway upgrades. In addition, the federal government created an inventory database of each crossing within the United States, available at <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx>. There is also an app for mobile devices, <https://www.fra.dot.gov/Page/P0703>.

The Highway Rail Safety Act required each state Department of Transportation (DOT) to create a ranking system, review that ranking system of all public crossings within the state on an annual basis and provide information to maintain the national inventory that is maintained by the FRA. This Act also placed the responsibility for determining the adequacy of the crossing warning devices on each state (DOT), based on the priority of ranking system they created.

The railroads participate in diagnostics requested by the Department of Transportation, provide railroad information and provide a workforce to install, and then maintain the crossing warning devices that the particular state DOT deems to be adequate for that crossing. The Federal government provides the funding to the agencies that can be used for the installation and upgrading of traffic control devices and crossings. This information can be obtained through the FRA crossing database mentioned above. All crossing incidents and trespasser incidents on BNSF are sent to the FRA.

In summary, BNSF takes extraordinary measures to ensure safety along its rail lines, and the EIS does not take these measures into account in analyzing safety risks. The Project would not result in any appreciable decline in safety conditions, and any suggestion to the contrary in the EIS is incorrect.

VIII. Tribal Resources

BNSF works hard to preserve tribal resources and believes the EIS is inaccurate with respect to predicted impacts on tribes.

Throughout its system, BNSF's right-of-way travels through current tribal reservations and ceded territory. Many tribes, particularly in the Pacific Northwest, reserved hunting, fishing, and gathering rights on lands ceded to the Federal government by treaty. BNSF recognizes the treaty rights that tribes and their members possess to access these usual and accustomed areas for the purpose of exercising the right to hunt, fish, and gather pursuant to the treaties agreed to by the tribes and the federal government.

BNSF has initiated a policy regarding access across our railroad right-of-way for tribal members seeking to access usual and accustomed fishing and hunting grounds. BNSF's policy includes three essential components:

- It affirms the ability of tribal members to cross private property for those seeking treaty-supported fishing grounds;
- It seeks to better understand this special access; and
- It seeks to engage the relevant tribal governments and intertribal commissions to help ensure the safety of their members.

BNSF seeks collaboration with tribes and/or tribal organizations to educate their members about safe practices and procedures when approaching and crossing railroad rights-of-way. This policy is to:

- Establish, maintain, and promote communications between BNSF and tribes on issues related to access to usual and accustomed sites;
- Provide access to assist in the resolution and/or avoidance of conflicts; and
- Provide a process for implementing a joint outreach initiative to provide training on rail safety to tribal members accessing usual and accustomed sites across BNSF rights-of-way.

BNSF works regularly with tribes to identify and address concerns and would certainly work with any tribe who could not access Usual and Accustomed Places by the use of a public or private crossing or whose access was being abnormally or unreasonably delayed.

IX. Coal Dust

The EIS correctly concludes that there are no significant adverse impacts associated with coal dust. BNSF does not believe that coal or any commodity should be allowed to escape from shipping containers. Since 2005, BNSF has extensively researched both the impacts of coal dust escaping from coal cars loaded at Powder River Basin mines and effective methods of preventing the loss of coal dust from loaded trains. Our research and experience has shown coal dust to be an issue near mine-loading points in the Powder River Basin in Wyoming and Montana but not in Washington.

BNSF currently has in place a coal loading rule that addresses coal dust very effectively. Our coal loading rule is two-fold: first, coal must be loaded so that it utilizes a "bread loaf"

shape that helps reduce issues with wind; second, an approved topper agent must be applied. The topper agents are like a glue, and our testing shows that they effectively control coal dust.

The Surface Transportation Board (“STB”), the federal agency with oversight over rail industry practices, upheld BNSF’s coal-loading rule. When we first established the rule, several coal shippers challenged it in front of the STB. The STB’s approval is consistent with the agency’s past ruling that BNSF could require reasonable measures to be taken to reduce coal dust.

To add another layer to an already effective mitigation program, we opened a state-of-the-art re-spray facility at our Pasco rail yard in 2015. Now, all unit trains of coal traveling through Washington receive a second spray of an approved topper agent, further enhancing our coal dust program. This facility is a voluntary measure that was built in response to a request from Canada’s Port of Vancouver as part of its permitting process for coal export facilities located in British Columbia. This additional effort provides another level of redundancy to an already well-established mitigation process. BNSF is committed to addressing coal dust as an issue. We take this commitment very seriously, and this is why for nearly a decade we have been very proactive in our efforts to mitigate coal dust.

The re-spray center is located near our Pasco Rail Yard, and we have added additional rail capacity to accommodate trains running through our re-spray center. This location was selected because it best fits our operational needs. BNSF designed the facility with environmental and community issues in mind. As such, the entire re-spray center is enclosed, and there is no run-off from the re-spray. The coal is treated within a shed, helping to prevent the process from being a nuisance to our neighbors.

The re-spray center became operational in early 2015, and it is our expectation that all unit trains of coal traveling through the facility are treated. To date, nearly 1,000 coal trains have been sprayed since the facility opened.

Before any measures were adopted to control coal dust, BNSF estimated that as much as 500 pounds of coal dust per car could be lost in areas near coal mines in Wyoming and Montana. In the past, opponents of coal have misused this estimate. The key to this estimate is putting it into context. First, this estimate was made a decade ago—before BNSF issued its coal-loading rule and before mines began taking measures to prevent coal dust losses. Second, all of our research and experience has shown coal dust to be an issue near mine-loading points in the Powder River Basin but not nearly a thousand miles away in Washington. Last, this estimate it is merely that—an estimate. These estimates do not account for the benefits of spraying loads as outlined above, and certainly do not reflect foreseeable dust in the Project area. Such dust would be insignificant and discountable in view of the numbers of measures employed by BNSF to minimize dust.

X. Conclusion

The EIS overstates rail-related impacts, omits key analyses and data, and fails to take into account both the pervasive reach of federal regulation of rail and the proactive steps BNSF takes

on issues like air quality, train noise, and coal dust, among others. As such, the Hearing Examiner should not deny the Shoreline Substantial Development or the Shoreline Conditional Use Permit based upon inaccuracies contained in the EIS relating to rail transportation. To the contrary, publicly available information and information provided by the applicant and BNSF clearly show the Project adequately mitigates reasonably foreseeable environmental impacts. Given this, and the economic importance of this project to the Region the Hearing Examiner should grant these permits.

Sincerely,

Dava Kaitala
General Director, Construction Permitting