BURiFUNSTON
MUMFORD
attorneys@law

PHILIP BURI
PHILIP@BURIFUNSTON.COM

October 22, 2012

GPT/BNSF Custer Spur EIS Co-Lead Agencies
c/o CH2MHill
1100 112th Avenue NE, Suite 400
Bellevue, WA 98004

Re: Scoping for Rail Impacts, Gateway Pacific Terminal

To The Co-Lead Agencies:

I represent Communitywise Bellingham, a non-profit dedicated to providing independent information regarding the proposed Gateway Pacific Terminal. The Gateway Terminal will add 18 train trips to the 12 or 13 that currently travel the rail line through Whatcom County. In 2006, the Washington State Transportation Commission identified a choke point between Bow and Ferndale that limits the number of trains to 15 trips. To qualify for a major project permit, the Terminal's developer must explain how it will double capacity on the rail line for 15 additional train trips. The Transportation Commission found only one viable proposal -- constructing a rail siding through south Bellingham.

Communitywise Bellingham requests that the environmental impact statement: (1) examine the reasonable range of alternatives for increasing rail capacity through Whatcom County, Washington; (2) analyze the effects of building, maintaining and operating a rail siding through Bellingham; (3) identify the significant adverse impacts from this active rail siding on Bellingham's waterfront businesses, adjacent neighborhoods, community health, shorelands, marine resources, recreation areas, traffic, and emergency response times; (4) identify any measures that might minimize or mitigate the effects of constructing the siding and doubling rail capacity between Bow and Ferndale; and (5) estimate the costs of mitigation and identify who should bear these expenses.

I. Whatcom County Must Conduct Special Review Of A Major Development

The Gateway Pacific Terminal is a major development under the Whatcom County Code. As a consequence, the County must conduct "special review of those projects or developments that because of their magnitude and impact will

tend to affect the public at large." WCC 20.88.010. The Terminal is an archetype of a major development.

One aspect of this "special review" is careful scrutiny of the Terminal's impacts on essential facilities, including the rail line that runs through the City of Bellingham and Whatcom County. Under WCC 20.88.130, the Terminal's developer must prove that this major project:

> (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.
>
> (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

Rail service is an essential facility for the Terminal. And the County has a responsibility to ensure adequate capacity exists, even for infrastructure like private rail lines. For example, under its Comprehensive Plan, the County identifies rail service as a critical part of the County's transportation system.

> Whatcom County's transportation system is a network of structures – highways, arterial streets, rural roads, rail, marine, airport, bikeways, ferries, and many other facilities. At the same time, the transportation system is a link among land use patterns, population growth, economic opportunities, energy consumption, environmental stress, and other facets of Whatcom County growth. *The Growth Management Act requires the county to plan for the future of both network and linkage aspects of the transportation system.*

Comprehensive Plan, Chapter 6 at 6-3 (emphasis added).

As proposed, the Gateway Terminal will overwhelm the current capacity for rail traffic between Bow and the Custer Spur. Furthermore, by not detailing a solution to this problem, the Terminal will impose uncompensated requirements for public expenditures on the City of Bellingham and Whatcom County to mitigate the effects of additional rail traffic. The project description is incomplete without a specific proposal for increasing rail capacity between Bow and the Custer Spur.

II. A Rail Choke Point Currently Exists Between Bow And Ferndale

In December 2006, the Washington State Transportation Commission released its *Statewide Rail Capacity and System Needs Study*. The purposes of the study were to:

- Assess rail needs in the State;
- Determine the State's interest in the rail system;
- Develop policies to govern the State's participation in the rail system; and
- Develop a plan for managing the rail lines, railcars, and service rights owned by the State.

(Rail Capacity Study at 1). The Commission concluded that the rail system in general is nearing capacity, and that "some half dozen sections are chronic choke points, causing delays that ripple across the entire Washington State and Pacific Northwest rail system." (Rail Capacity Study at 3).

<u>A critical choke point now exists between Bow and Ferndale</u>. (Rail Capacity Study at 24; Figure 4) (attached).

The problem is that only one track runs between Bow and Ferndale. This means that only one train can run the entire stretch at a time.

> At any time, a train must have exclusive occupancy of the track on which is it located as well as the track in front of the train that is within stopping distance. Thus, it may be necessary for a train to have exclusive right to several miles of track at any time. On main lines, the signal system determines the amount of track ahead of the train that the train must occupy. On a single track line, a train must occupy the segment of line between sidings exclusively as well.

(TSM Study at 6-7). Communitywise Bellingham commissioned Transportation Safety Management to study whether the current rail lines could handle the increased traffic from the proposed terminal.

TSM concluded that the current line could handle only 15 train trips per day -- three more than exist now.

> Travel time for a freight train through the capacity-limiting segment between Bow and Ferndale is 48 minutes. That generates a theoretical capacity of 31 trains per day (24 hours / 0.8 hours), which is a practical capacity of 15 trains. Previous to the current

> economic downturn, normal traffic on the line would regularly reach 12 trains per day, including the four Amtrak trains. Thus, any expected increase in normal traffic, freight or passenger, would require additional infrastructure.

(TSM Study at 14). This confirms the Rail Capacity Study, which concluded that the Bow to Ferndale segment had a capacity of 14 train trips per day. (Rail Capacity Study at 22; Figure 3).

The rail lines between Bow and Ferndale run at or near practical capacity today. As described in the next section, the Terminal's developer must somehow find capacity for an *additional 18 trips per day.*

III. The Terminal Will Overwhelm Existing Rail Capacity

On February 28, 2011, the Terminal's developer submitted its Project Information Document, relying on it to meet the County's requirements for a major project permit. The Document specifically addressed the question of railroad capacity as required under WCC 20.88.130(5). In the original Document, the developer disclosed that the Terminal will generate 18 additional train trips along the Bow to Ferndale segment.

> At full operational capacity, up to 9 trains (18 train movements) per day may use the terminal. Most trains serving the Terminal are anticipated to be approximately 8,500 feet long. Although the Terminal would be designed to have the capacity to stage trains up to 8,500 feet, initially trains would be no more than 7,000 feet long. *The overall rail system has adequate capacity to handle the rail needed for the Terminal, though improvements are proposed to the Custer Spur by BNSF Railway to accommodate the future, local rail needs within the Cherry Point Industrial Area.*

(Original Public Information Document § 5.6.3 at 5-128) (emphasis added). The italicized statement is inaccurate. There is not adequate capacity. The railroad corridor through Bellingham is already operating at or near capacity. There is no additional room to serve even the 10 train movements a day planned for the first phase of the Terminal's operation.

Tacitly acknowledging this lack of capacity, on March 5, 2012, the Terminal's developer submitted a revised final Public Information Document, deleting all references to the project's effects on rail service. Rather than address the rail choke point, the revised Document states only:

> The Washington State Transportation Plan identifies shortages of rail capacity as a limitation in providing the level of service

> necessary to meet expected growth within the state transportation network.

(Revised Public Information Document § 5.10.2 at 5-101). This is an understatement. As detailed above, the Rail Capacity Study found a lack of additional capacity *on the segment between Bow and Ferndale.* This is critical to the Terminal's operation.

Furthermore, the revised Document implies that no additional work is necessary on the line.

> No interdependent projects have been identified on the BNSF Railway's mainline—Bellingham Subdivision, or any other portion of BNSF Railway's infrastructure. BNSF Railway would be the permitting applicant for any needed permits to complete improvements on the Custer Spur. BNSF Railway would rely on this document to provide disclosure of potential effects under the requirements of NEPA and SEPA.

(Revised Public Information Document § 4.3.5 at 4-34). Yet the Terminal cannot operate without a solution to the rail choke point.

Under WCC 20.88.130(5), essential rail facilities do not currently exist for the proposed Terminal. The developer must double the capacity of the current rail line to make the Terminal operational.

IV. The Proponent Must Show How It Will Double Existing Rail Capacity

To date, the Terminal's developer has not identified how it will find capacity for 18 additional train trips. Past Washington State studies, however, have identified specific projects for increasing capacity in this corridor.

The 2006 comprehensive *Statewide Rail Capacity and System Needs Study* included a companion analysis of capacity projects for the 2006 *Amtrak Cascades Operating and Infrastructure Plan*. That plan was, in turn, the basis for the summary 2007 *Long-Range Plan for Amtrak Cascades*. To eventually accommodate 4 daily round trips and substantially faster (110 mph) trains on the Amtrak Cascades route to Vancouver, B.C, the plan recommended building a train siding in South Bellingham, effectively doubling the capacity of the line. As the TSM study describes,

> The optimum location for a siding to provide the required capacity would be as close as possible to half way (in travel time) between Bow and Ferndale. That location would have been somewhere south of Chuckanut Bay. It would have been very costly construction with potentially significant environmental

> consequences. The resulting inter-siding travel times would have been more than 20 minutes, still the longest inter-siding travel times on the line. The Bow-Ferndale segment would have twice the capacity, but would still limit capacity of the line to less than the other segments.
>
> The solution that was developed for the final plan, extending the Samish and South Bellingham sidings, provided the greatest benefit for the expenditure, would be less costly then a siding south of Chuckanut Bay, and have smaller environmental consequences than a siding south of Chuckanut Bay.

(TSM Study at 11).

The state studies recognized difficulties with this Bellingham siding and seriously examined alternatives. The first was rejected because it would not work,

> Extending the siding is difficult, but a new siding north of Bellingham does not meet the capacity requirement. It would extend the running time between meeting points (Samish and a new siding north of Bellingham) so they are similar to the current single track running time between Bow and South Bellingham, providing no capacity improvement.

(Amtrak Cascades Operating and Infrastructure Plan at 4-26).

The second alternative was rejected because of even greater costs and environmental impacts of two sidings required for the same capacity,

> Two sidings, one extending the existing South Bellingham siding southward and a new siding extending north from the north end of Bellingham yard would also provide the required capacity; however, it would require a new or expanded tunnel at the south end of the current South Bellingham siding, a causeway and bridge crossing Chuckanut Bay, and some extensive bridge and embankment construction north of Bellingham yard.

(Amtrak Cascades Operating and Infrastructure Plan at 4-27).

Communitywise Bellingham does not advocate any particular solution. But as past studies have established, any solution will be located in Whatcom County, will have a host of financial and environmental consequences, and will be well beyond the means of local jurisdictions to mitigate. This is not surprising given that the Terminal would add more traffic in a few years than normal growth created in the last 50.

V. Federal Law Limits Burlington Northern's Financial Responsibility for Mitigating Rail Impacts, Transferring the Cost to Local Taxpayers.

The Terminal's developers must identify how they intend to increase rail capacity through Bellingham, in part because it affects public funding for the necessary infrastructure. By failing to propose any solutions to the existing rail choke point, the Terminal's developers shift all financial responsibility to the public. Doubling train capacity through the Bellingham waterfront will have significant effect on the built environment.

A complicated web of federal statutes and regulations limit the amount class I railroads like Burlington Northern pay in mitigation. For example, under 23 CFR § 646.210(b)(3), the railroad is responsible for only 5% of the project costs to close an existing grade crossing with warning devices in place. If the railroad corridor through Bellingham becomes so congested that railroad crossings are impractical, the public, not the railroad, must foot a large proportion of the bill.

VI. The Environmental Impact Statement Must Carefully Examine The Full Range of Impacts From Doubling Rail Capacity Through Bellingham

At this early stage of the project, Communitywise Bellingham and other interested parties can only outline the potential impacts from the Terminal and its pressure on existing rail lines. The Terminal's developers and Burlington Northern have made analysis more difficult by refusing to disclose specific plans for accommodating the increased train traffic. However, even with the developer's vague statements, the potential detrimental impacts on Bellingham from a new, congested rail siding along the waterfront are obvious. These impacts include but are not limited to:

Economic:

- *Current waterfront businesses:* The siding would intermittently block access to the Alaska Ferry Terminal and adjacent businesses as well as maritime industry access to the boat launch at the Padden Creek lagoon. It would permanently block direct vehicle access to Woods Coffee located in Boulevard Park. The locomotives' southern idling area would be located in close proximity to the Chrysalis Hotel, possibly decreasing the hotel's appeal with increased rail noise and exhaust levels.
- *Redevelopment of the Georgia Pacific site:* The siding would result in closure of vehicle access via Wharf Street to redevelopment of Georgia Pacific site. This represents a barrier to access for all forms of the site's redevelopment including light industries near the Port's International Terminal. It eliminates a logical route for Bellingham and regional vehicular access to the waterfront including the beach at the base of Wharf Street, planned new parks at the south of the site and the wide park

promenades along the waterway leading to Central Avenue. This can be mitigated, but it would take a carefully designed and costly structure to accommodate the many challenges this closure presents.

Health:

- Coal trains will have three leading and two trailing diesel locomotives. The train indicated on CWB's map[1] is to scale and shows approximate locations of engines in a typical situation. The locomotives would idle at the siding for periods of time, producing exhaust beyond what a passing train may emit. Note that regardless of precise location on this active siding, diesel emissions will be adjacent to parks and population centers. Exposure to diesel particulate matter has shown to cause severe health impacts.[2] Two recent studies show greater exposure linked to steadily higher cancer rates.[3]

Marine:

- A waterfront siding would increases the amount of time that the surface area of coal on a 150-car unit train (1.7 acres of surface area) will be exposed to rain and draining leachates onto the roadbed along the waterfront. Studies from coal piles have documented adverse affects on terrestrial and aquatic life. Studies have established that coal dust events increase during acceleration, deceleration, and passing an oncoming train — they are at a maximum when trains are accelerating between 15 and 30 miles per hour. With this siding, all of these conditions will be present on a routine basis.

Recreation:

- The siding would result in the permanent closure of vehicle access from Bayview Drive at Boulevard Park as well as pedestrian access from the South Bay Trail at the north end of the park.
- The siding would be built on the waterside of tracks requiring riprap fill into the bay in several locations, including the highly utilized beaches at Boulevard Park.

Emergency response time and traffic:

- The siding can be expected to impact the frequency and duration of traffic closures at F and C Streets, key access points for Holly Street. A Gibson

[1] http://www.communitywisebellingham.org/wp-content/uploads/2012/05/Waterfron-Impacts-Map.pdf

[2] http://www.coaltrainfacts.org/whatcom-docs-new-research-augments-concerns

[3] http://www.cnn.com/2012/06/12/health/diesel-fumes-cancer/index.html?hpt=hp_bn12

Traffic Consultants' study detailed the potential increase in city traffic and delay time for emergency responders. Footnote

- These traffic delays may also delay emergency response times, affected residents' health and safety.

Other potential impacts and possible mitigation opportunities are detailed in the CWB report, "Gateway Pacific Terminal Train Impacts on the Bellingham Waterfront."[4]

VII. Location Of the Rail Siding Affects Future Studies

The Terminal's developers and Burlington Northern must disclose their plans for a South Bellingham siding or alternative rail infrastructure before Whatcom County can adequately examine the environmental and community impacts from the proposed Terminal. For example, an expanded rail corridor will alter restoration plans for Padden Creek and lagoon, create safety hazards through Bellingham's waterfront developments, and will require expensive mitigation that the public must fund.

Therefore, it is essential that both Burlington Northern and the Terminal's developers reveal exactly how they will route rail traffic through Whatcom County. This must be a core section of the EIS to fully analyze the impacts from this project. All infrastructure required to address the requisite near doubling of the current rail line's present capacity needs to be addressed in the EIS process. Failure to consider such infrastructure could profoundly skew later studies.

Communitywise Bellingham respectfully requests the Co-Lead Agencies to require the developer of the Gateway Pacific Terminal to disclose how it will double rail capacity between Bow and Ferndale. Without this disclosure, the County, the City of Bellingham and the public cannot adequately review the project and its long-term consequences.

Sincerely,

BURI FUNSTON MUMFORD, PLLC

Philip J. Buri

[4] http://www.communitywisebellingham.org/wp-content/uploads/2012/05/MAP-TEXT-PRDSWJD-V2.pdf