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4 UTILITIES AND TRANSPORTATION COMMISSION  
STATE OF WASHINGTON  
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6 CITY OF WOODINVILLE, a Washington )  
municipal corporation, )  
7 Plaintiff, )  
8 vs. )  
9 EASTSIDE COMMUNITY RAIL and BALLARD )  
TERMINAL RAILROAD COMPANY, both )  
10 Washington limited liability companies, )  
11 Defendant. )

Dockets: TR-143902 and TR-143903

KING COUNTY'S BRIEF TO  
CLARIFY CERTAIN POINTS OF  
FACT

12  
13 **I. Introduction.**

14 King County submits this brief to clarify a point of fact in the responsive brief filed by  
15 Eastside Community Rail and Ballard Terminal Railroad on October 2, 2015 ("Ballard's  
16 Response"), and in so doing to form a more complete and accurate record in these proceedings.  
17 To the extent that submittal of this brief deviates from the Commission's ordinary briefing  
18 process, King County respectfully requests that the Commission exercise its administrative  
discretion to grant King County leave to file this brief.

19 **II. The City acquired NE 195<sup>th</sup> Street and NE 190<sup>th</sup> Street upon incorporation in 1993.**

20 Page 2 of Ballard's Response states that "[t]he 195<sup>th</sup> street crossing in Woodinville is  
21 totally the responsibility of the 'Agency,' King County." A copy of a document apparently  
22 dating from 1989 is attached to Ballard's Response as the first eleven pages of Exhibit B,  
23 purporting to be a copy of an agreement between King County and BNSF Railway Company and  
relating to the intersection of 195<sup>th</sup> Street and the Woodinville Subdivision rail line in  
Woodinville, Washington. The remainder of Exhibit B purports to be a copy of an easement

1 from BNSF Railway Company to King County for a road crossing for 195<sup>th</sup> Street where it  
2 crosses the Woodinville Subdivision within the City of Woodinville, Washington (the "City").  
3 See Ballard Response at Exhibit B. Exhibit C appears to be similar to Exhibit B, but is dated  
4 from 1991 and purports to address the intersection of the railroad line and NE 190<sup>th</sup> Street in the  
5 City. See Ballard Response at Exhibit C.<sup>1</sup>

6 It is a matter of public record that the City of Woodinville incorporated effective March  
7 31, 1993. See Declaration of Andrew Marcuse, attached hereto, at Exhibit A (City of  
8 Woodinville Resolution No. 31). The locations where the Woodinville Subdivision rail line  
9 intersects with NE 195<sup>th</sup> Street and NE 190<sup>th</sup> Street are within the City's incorporated limits. See  
10 Marcuse Dec. Exhibit B (illustration of City of Woodinville streets and boundaries).

11 **III. The City's incorporation relieved King County of responsibility for NE 195<sup>th</sup> Street  
12 and NE 190<sup>th</sup> Street within the City.**

13 By law, all county roads within a newly-incorporated city become city streets as of the  
14 official date of incorporation. See RCW 35.02.180; see also RCW 36.75.010(4), (6) (defining  
15 "city street" to mean "every highway or part thereof, located *within* the limits of incorporated  
16 cities and towns," and defining "county road" to mean "every highway or part thereof, *outside*  
17 the limits of incorporated cities and towns and which has not been designated as a state  
18 highway") (italics added).

19 As a result, and consistent with RCW 35.02.180, from and after the effective date of  
20 incorporation NE 195<sup>th</sup> Street and NE 190<sup>th</sup> Street became city streets within the City, and King  
21 County was relieved of any responsibility to maintain those streets within the City, including

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22 <sup>1</sup> It is unclear whether Exhibits B and C to Ballard's Response are properly before the  
23 Commission, because Ballard's Response does not lay any evidentiary foundation for those  
exhibits, such as a declaration or other affidavit demonstrating that those exhibits are true and  
correct copies of the documents that they purport to represent. However, for purposes of this  
brief only, King County will assume for the sake of argument that the exhibits are what they  
appear to be and that they are admissible to establish the facts asserted in Ballard's Response.

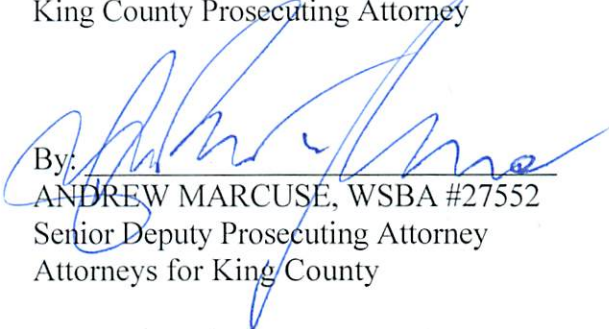
1 adjacent to the Woodinville Subdivision railroad crossings at NE 195<sup>th</sup> and NE 190<sup>th</sup>.<sup>2</sup> See RCW  
2 81.53.090.<sup>3</sup>

3 **IV. King County does not own 195<sup>th</sup> Street or 190<sup>th</sup> Street in the City and has no duty to**  
4 **maintain them or any railroad crossings over them.**

5 These streets have been City property for over twenty-two years. King County expresses  
6 no opinion as to whether Ballard Terminal Railroad, Eastside Community Rail, the City, or some  
7 other entity is required to maintain the NE 195<sup>th</sup> Street railroad crossing, the NE 190<sup>th</sup> Street  
8 railroad crossing, or any other railroad crossing within the City, including the crossings at issue  
9 in these proceedings. King County merely desires to clarify for the record that King County  
10 presently has no duty to maintain NE 195<sup>th</sup> Street or NE 190<sup>th</sup> Street in the City, or to maintain  
11 any railroad crossing located upon those streets within the City.

12 DATED this 15<sup>th</sup> day of October, 2015.

13 DANIEL T. SATTERBERG  
14 King County Prosecuting Attorney

15   
16 By: Andrew Marcuse  
17 ANDREW MARCUSE, WSBA #27552  
Senior Deputy Prosecuting Attorney  
Attorneys for King County

18 <sup>2</sup> While King County may provide road maintenance services to the City on a contract basis (see  
19 generally RCW 35.77.020-.040; see also  
20 <http://www.kingcounty.gov/depts/transportation/roads/contract-cities.aspx> (visited October 8,  
21 2015; listing cities for which King County provides road-related services on a contract basis,  
22 including the City), as explained in the main text of this brief, from and after the date of  
23 incorporation roads within city limits belong to the City, not King County.

<sup>3</sup> See also *Olson v. City of Bellevue*, 93 Wn. App. 154, 163-64, 968 P.2d 894 (Div. I 1998)  
(adopting rule that “[w]here a municipality annexes a roadway from another municipality, the  
annexed municipality’s potential liability for any unsafe conditions in the roadway ends after the  
annexing municipality has been afforded a reasonable opportunity to discover and remedy the  
unsafe conditions;” determining that a nearly two-year period had afforded city a reasonable  
opportunity to discover the alleged unsafe condition at issue in that case).