



CITY OF KIRKLAND
Public Works Department
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Pam Bissonnette, Interim Public Works Director
Dave Snider, P.E., Capital Projects Manager
Kari Page, Cross Kirkland Corridor Coordinator

Date: February 6, 2014

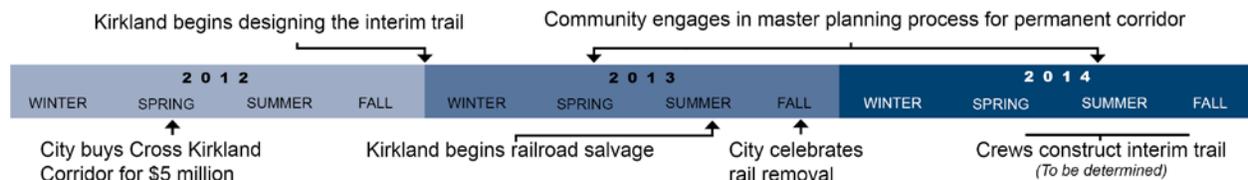
Subject: Cross Kirkland Corridor/Interim Trail Update

RECOMMENDATION:

It is recommended that City Council receives the latest update on the Cross Kirkland Corridor (CKC) and Interim Trail with new information being presented since their February 4 meeting. Council is also being updated on the proposed CKC use permit process and is being asked to provide any questions, concerns or comments they may have.

BACKGROUND DISCUSSION:

Since the City Council authorized the purchase of the CKC in December of 2011, the planning and coordination of activities surrounding the Corridor have been vigorous. In 2012: The CKC officially became Kirkland's; and State Senator Andy Hill secured \$2 million for the development of an interim trail. The Puget Sound Regional Council (PSRC) then gave Kirkland an additional \$1 million for the interim trail; and voters passed the Parks levy which included funding for the CKC. In 2013: Kirkland survived an injunction over the CKC and was able to remove the rails and ties, and re-grade the former rail bed into a rough but serviceable trail. The City hired the engineering firm of KPG to begin the design and permitting process for an interim trail, and also launched a Master Plan process with the help of the Berger Partnership. On October 27, 2013 the City hosted a community walk along the CKC that was attended by hundreds of people. In 2014: Kirkland hosted a symposium for creative exploration of advanced transit options for the 42-mile Cross Kirkland Corridor. The proceedings before the Surface Transportation Board regarding reactivation of the Eastside Rail Corridor (ERC) for freight will be concluded in the next few months. In addition, the Master Plan will be complete, the Interim Trail will be constructed, and a collaborative regional strategy will be developed for pursuing State and Federal funding for the development of the CKC and the ERC. The design of a pedestrian and bike bridge from the South Kirkland Park and Ride to the CKC will also be underway.



The following topics will be covered in this CKC update: 1) Interim Trail; 2) Increased Public Outreach and Participation; 3) Proposed Process for CKC Use Permit; 4) Advanced Transportation Symposium; and 5) Surface Transportation Board pending decision.

1. INTERIM TRAIL:

- A. Scope: To meet City Council's interest in making the corridor available as soon as practical and as approved by the City Council on August 7, 2012, an interim trail consisting of a compacted gravel path and other improvements will be constructed on the former rail bed. This will allow the maximum flexibility for future uses while offering reasonable non-motorized use quickly.

The design phase for the CKC Interim Trail began in April, 2013, and the final design is now approaching substantial completion. The improvements contained within the final design of the Interim Trail include:

- A finely crushed gravel path along the 5.75 mile-long CKC alignment matching the width of the former rail bed (8 to 10-feet wide) for use by walkers and bicyclists. The new trail will meet federal funding requirements for a shared use gravel path including ADA compliance achieved through careful specification of materials and proper construction methods.
- Roadway modifications at all street intersection locations to provide crossings that meet applicable guidelines, including enhanced street lighting and other improvements at crossings where needed.
- New signing and markings at street crossings and for parking regulation.
- Railing or fencing as required for safety or to protect sensitive areas. The railing will be a 48-inch tall turned-wood, three cross bar fence similar to that used in City parks and recreational areas. In many locations this will be sufficient to meet all needs, such as protection of sensitive areas, pedestrian fall protection, and additional trail widening. Upon inspection of the proposed railings/fencing areas, the designers determined that some sections would benefit from an additional level of user protection from fall hazards. Black vinyl coated chain-link fencing will be attached to the wood railing -- wood railing will also be used to prohibit vehicle access to the corridor.



- B. Schedule Delay: As reported to City Council at their March 5 and September 17, 2013 Study Sessions, the Interim Trail design and environmental work was to have been completed in 2013, with trail construction being done in spring, 2014. In an attempt to achieve that schedule City staff and the design consultant worked diligently to complete all necessary environmental documentation, required studies, modeling, and analysis in accordance with State Environmental Policy Act (RCW 43.21C), SEPA Rules (WAC 197-11), as well as all appropriate federal regulations required of the federal funding made available to the Project.

As the environmental permitting phase has progressed, a number of unforeseen circumstances occurred and, as a result, the originally anticipated completion schedule has been adversely impacted.

The following issues have resulted in impacts to the current schedule for completion of the Interim Trail:

- Pending legal action and Surface Transportation Board (STB) ruling (see Section 5 below for more information on STB) resulting in the Project being prevented from federal paperwork submission while awaiting resolution.
- Resolution of internal interpretations of existing codes related to the Cross Kirkland Corridor, specifically on design elements and sensitive areas (i.e. wetlands, streams) protection.
- Additional coordination with the Muckleshoot Tribe resulting in SEPA document submittal delay.
- Recent questions raised by the State Historic Preservation Office (SHPO) and the WSDOT Local Programs office, which approve federally funded projects for advertisement/construction, on the Section 106 Archeological & Historic Preservation Documentation.

Section 106 – February 4 information

The City's contracted legal representatives and environmental consultants originally concluded that Section 106 consultation requirements were met when BNSF Railway received all the federal permissions necessary to officially abandon the rail corridor. Even so, when the City first began planning for the rail salvage portion of the project, our consultant reviewed the official state repository of archeological investigations, to which all documents pertaining to known or potential historic properties are to be posted. Finding no such documentation, the consultant initiated discussions and scheduled a field review of the Project site with the state Local Programs representative as per established protocols. The Local Programs representative did not produce any additional documents and, based on his field visit, concluded that no special conditions, historic structures, or artifacts were present on the site. At that time the City received direction to monitor all work and, if any known or suspected historic or archeological items were discovered, suspend the work and notify the appropriate state agencies for further direction.

As the City moved forward with the design, permitting and SEPA processes, including the Section 106 submittal for the Interim Trail, WSDOT Local Programs expressed concern that rail salvage may have occurred without additional consultation between the City and SHPO, as they believe was required. In response, City staff and its consultants reviewed all pertinent and related documents and essentially re-confirmed the original conclusion that the Section 106 consultation requirement for abandonment and salvage actions had been previously removed by the STB, the ultimate federal jurisdictional body. Consequently, no additional consultation with SHPO occurred prior to initiating salvage activity. Regardless, the City and its consultants pursued immediate discussions with our Local Programs office and with SHPO staff, moving quickly to provide information, identify solutions, and resolve this matter in the most expedient manner possible.

Please see the attached signed letter from the City to SHPO that provides more detail and fully describes the City's position on this matter (Attachment A).

Section 106 - Update

On Wednesday, February 5th, City staff received confirmation that SHPO office staff was in receipt of the letter (Attachment A) and that the City's explanation was found to be acceptable. Further, the SHPO staff response indicated that they had concluded that their agency does not view the salvage/removal of the rails and associated appurtenances as significantly diminishing the integrity of the resource or of those elements of the alignment that are considered character-defining features of its National Register of Historic Places (NRHP) eligibility. SHPO staff went on to say that they look forward to Kirkland's development of the corridor as a pedestrian trail.

- C. Timeline: Having now favorably satisfied recent questions from SHPO staff with respect to the Section 106 matter, the current project schedule now shows contractor advertisement, the bid opening and contract verification being completed by mid-April, followed by a City Council contract award action for construction at their May 6th meeting. Following a contract award in May, construction would begin in June with completion in mid to late October, 2014.
- D. Budget: The Interim Trail Project continues to be at or under the approved budget of \$3.6 million.

2. INCREASED PUBLIC OUTREACH AND PARTICIPATION:

There is a significant public appetite for information and updates on all things related to the Cross Kirkland Corridor. As can be seen by the length of each Council update on the CKC, a multitude of issues and developments surround the Corridor each day/week. To embrace the public's desire for information, staff is increasing the level of communication and public involvement for the Corridor in the following ways:

- A. Newsletter and Brown Bag Lunch: Starting in January, there will be a monthly update that will be sent to the CKC list serve subscribers and posted to the CKC webpage. Two weeks after each update is published, CKC Team members will host a brown bag lunch at City Hall, along the Corridor, or at a park adjacent to the Corridor to give the public an opportunity to ask questions, suggest improvements and learn more about the issues surrounding the Corridor. The [January newsletter](#) was distributed on January 18 announcing the first brown bag lunch on January 27 at 12:00 p.m. in the City Council Chambers. Over two dozen people attended the first brown bag lunch. The next brown bag lunch is scheduled for February 24 at 12:00 p.m. in the City Council Chambers.
- B. Embracing community ideas: The passion for the Corridor is spreading as the community uncovers more of this gem, and as additional people discover the trail for the first time. Staff recognizes the importance of the community's pride of ownership and grass roots participation in the planning of the Corridor. To that end, there are several small improvements suggested by the public that are underway even before the construction of the Interim Trail.
 - Connection to Kirkland Middle School: Last month staff met on the Corridor with parents from Kirkland Middle School (KMS) and Kirkland Greenways to discuss ways to improve bicycle access from KMS to the Corridor at the southern end of



Bicycle Runnel Example

Crestwoods Park. As a result, the Parks Department is lining up a volunteer to install "bicycle runnels" (i.e. bike wheel trough) along the side of the steps that were built by volunteers last year. Another meeting is being scheduled to investigate a connection at the north end of Crestwoods Park.

- Connection to Lakeview Elementary School: SRM Development (property owners of the Google campus) and City staff met with the Lakeview Elementary School Principal and parents to discuss options for connecting the CKC to Lakeview Elementary School. As a result, SRM Development (SRM) has offered to construct a temporary trail from the CKC to Lakeview Elementary School along their construction fence at the southern end of the Phase II Google Campus. The temporary trail is scheduled to be complete in February. SRM has also proposed a permanent trail and landscaping at this location in their final plan (to be constructed by June of 2015). This CKC connection enables children from both the Everest and Central Houghton Neighborhoods to bypass the busy Houghton Shopping Center area to reach Lakeview Elementary School via the CKC.
- The City Manager took seven members of the LWSD staff and Superintendent Dr. Pierce on a tour of the Corridor on January 24 to share the community's vision of the corridor and learn more about how it can help improve safety of children walking and biking to and from school.
- Connection to Terrace Park: Also as a result of talks with Lakeview Elementary School parents, the Parks Department worked with a volunteer and Rotary to connect the CKC to Terrace Park. The City paid for materials while volunteers built the steps. That project is complete.
- Master Plan: Last month, the City Manager walked a portion of the Corridor with the Highlands Neighborhood Chair to hear concerns related to a mixed use trail through "Highlands Pass" (and other areas of the Corridor where a secondary trail is not specified in the Master Plan). Based on those concerns and the concerns of others, the Master Plan will now show a divided trail in this area. The City's consultant will continue to look at other areas of the Plan to best recommend how the trail can evolve over time and address the safety concerns as they develop.
- Wayfinding Signs: The Highlands Neighborhood has requested to use their 2014 Neighborhood Matching Grant funding to build two wayfinding signs. One will be at the top of 100th Street Stairs in Cotton Hill Park directing pedestrians to the Corridor. The other will be on the Corridor directing users to Crestwoods Park. There will also be a separate overall wayfinding signage plan developed after the Interim Trail has been built and the community has had time to use the trail and provide input into the Plan.



Terrace Park Steps



Wayfinding Sign Example

- Milepost Markers: As requested by emergency services personnel, as well as through resident recommendations, milepost markers will be installed along the corridor for both geographic locating and reporting, as well as for exercise purposes.
- Railroad Signage and Equipment at Crossings at Slater Avenue/CKC and 108th Avenue NE/CKC: In response to requests from Kirkland residents and the City of Kirkland, the County gave the City permission to place "Tracks Out of Service" signs in both directions of the crossing arm masts on Slater Avenue. The signs were installed in December. The County also announced they would be removing the signage and equipment from other crossings along the Eastside Rail Corridor. The signage and equipment on 108th Avenue NE is located within Bellevue's City limits. The County's timeline for removal is not known at this time.
- Grassroots Celebration of Interim Trail: Staff will be forming a community "CKC Celebration Team" for the Interim Trail celebration expected later this year. The goal is to capture the community's passion for the CKC by creating a grassroots event planned and implemented by the community.
- Mutt Mitt Dispenser: There is a problem with dog waste and litter along the Corridor. The Adopt a Trail volunteers are being contacted to solicit help with possible mutt mitt dispensers and disposal locations along the Corridor. The goal is to have a dispenser and disposal location every mile by the time the Interim Trail opens.



Milepost Marker Example

3. PROCESS FOR CKC USE PERMIT:

The City recognizes and embraces the potential for the CKC to stimulate economic development from one end of Kirkland to the other. The development process will likely result in requests for temporary access or privately funded amenities on or near the Corridor. As demonstrated with SRM's development for the Google expansion, requests to use the CKC (either short or long term) will benefit from a public notification process as well as formal review by Kirkland staff and other ERC owners. Further, the CKC ownership is shared with Sound Transit, King County, and Puget Sound Energy, each of which own substantial easement and use permits in the CKC and ERC. Kirkland is required by these ownership interests to consult with these agencies on our own developments, as well as those the City issues permits for.

Staff is proposing the following two processes for evaluating public and private use requests of the CKC. Mowing, gravel restoration, tree trimming, fence maintenance, ditch maintenance and signage would be exempt from the permitting process. See **Attachment B** for a flow chart showing the decision making processes.

A. Two proposed types of CKC Use Permits

- Type A: Type A CKC Use Permit would be for short-term use involving temporary access, special events, or maintenance. Since the activity is short term and doesn't involve modifications to the surface or installation of any physical structure, the project would only go through review by the City's Development Review staff (as

with right-of-way use permits). Final approval authority of Type A permits is proposed to be the Cross Kirkland Corridor Coordinator (Kari Page).

- Type B: Type B CKC Use Permit would be for surface and subsurface modifications and physical or aerial structures. Type B may also include longer term surface access (such as crossing the Corridor for access to private property). Other examples include franchise utility cable or wires, wastewater pipes, "purple-pipe", watermains, or transit facilities. Type B CKC use applications will include notification and consultation of other ERC owners (with a 30-day comment period). Simultaneous notification will go to the general public and City Council. If the proposal involves another development permit (such as building or clearing and grading permit), there may be public notice, comment, and involvement opportunities as part of these other processes. Type B permits also require review/approval by the City's Development Review staff (as with right-of-way use permit). The CKC Service Team may review these requests to expedite the process and increase efficiencies of interdepartmental review and coordination. Final approval of Type B permits is proposed to be by the City Manager.

D. Projects currently in review

Four projects are moving forward and pending the CKC Use Permit application process (beyond the Interim Trail) – each is in different stages of internal and external review and some have not yet submitted the CKC Use Permit application:

- Puget Sound Energy 115 kV transmission line: *CKC Use Permit application has not yet been submitted.* Puget Sound Energy is proposing to construct approximately 4.5 miles of new 115 kV transmission line from their Sammamish substation in Redmond (9221 Willows Road NE) to intersect an existing 115 kV line that crosses NE 124th Street south of their Juanita substation in Kirkland (10910 NE 132nd Street). A portion (between 7,000 and 9,800 lineal feet) of the project will occupy a segment of the Cross Kirkland Corridor (as per the South Rail Line Easement and Reciprocal Coordination and Cooperation Covenant Agreement). The alignment has the transmission line running along the Cross Kirkland Corridor from approximately 135th Avenue NE/124th Avenue NE to just west of I405. In August of 2013, the City of Kirkland responded to the initial Notice of Construction from PSE with concerns about:
 - The placement of poles relative to the planned CKC grade separated crossing at the NE 124th Street and Totem Lake Boulevard intersection.
 - The City's desire to have the poles placed as near to the edge of the Corridor as possible.
 - The need for ongoing coordination with regard to pole design, SEPA, and access for construction that we will continue to discuss with PSE and resolve as their design and the City's trail design continues to be refined.

The City and PSE are continuing to meet to work out specific alignment and pole placement details related to these concerns. PSE has been responsive, and the schematic alignment of the proposed transmission line is as follows (from east to west):

- The line will be on the north side of the Corridor east of Totem Lake Park and will be placed as close as possible to the north edge (given constraints of sensitive areas and required separation of electric lines from adjoining development).
- The line shifts to the south side of the Corridor at Totem Lake Park until it reaches the freeway and will be placed as close as possible to the south edge (given constraints of sensitive areas and required separation of electric lines from adjoining development).
- The line then crosses over the freeway and continues in City right-of-way and easements to the Juanita substation, as identified in the route selection process.

The discussions with PSE will continue moving into specifics regarding the NE 124th Street/Totem Lake Boulevard intersection. In addition to coordination with the proposed CKC overpass at NE 124th Street, the PSE lines will need to avoid the Seattle City Light (SCL) transmission lines and the SCL tower near the Discount Tire Store. The City has moved ahead with schematic layouts of the overpass and PSE is reviewing their alignment options with SCL. Staff and PSE will be meeting again in the next month to continue this dialogue to ensure that all parties' interests can be accommodated at this challenging intersection.

- SRM Public Improvements on the CKC: *CKC Use Permit application has been submitted for preliminary review of the schematic design before construction drawings are developed.* Process Type B has begun with notification to the ERC owners, the public and City Council. SRM has submitted a schematic showing proposed public improvements to the CKC between the existing and new Google buildings along the Corridor. These improvements are shown in **Attachment C**. The Type B CKC Use Permit process is underway to review this schematic. A more robust review will take place after construction drawings and formal application has been submitted later this year. All CKC improvements by SRM in the Corridor will be available for use by the general public. The exception to this is the surface crossing for cars across the CKC that links the new building to the old building. That crossing is for Google employees only, but it can also be used by City employees on official business such as Police, Fire or Inspectors.

SRM anticipates the construction of the Google buildings and the public improvements to be complete by June 2015. The number of Google employees is expected to increase from 800 to approximately 1,800.

- South Kirkland TOD CKC Multi-Modal Bridge: *CKC Use Permit application has not been submitted.* As part of the 2013-2018 Amended CIP process, staff created a new CIP project to study, design and construct an access bridge between the recently completed new parking garage at the South Kirkland Park & Ride/Transit Center and the CKC. As approved by City Council on December 10, 2013, the South Kirkland Transit Oriented Development /Cross Kirkland Corridor Multi-Modal Connection Phase 1 Project (NM 0084) also provides for the design and construction of a stair, elevator tower, and pedestrian bridge for providing ADA compliant pedestrian access between the King County Parking Garage and the CKC. The Project is currently funded through a \$1.3 million State Appropriations budget item being administered by the State Department of Commerce.

Since being approved by City Council in December, City staff has met with King County staff to begin the process of establishing an inter-agency coordination action plan with both KC Metro operations as well as the KC Construction Services Group, including securing the required property rights. City staff has also begun the consultant selection process for starting the engineering, design and permitting phase as soon as possible. Since the Amended CIP adoption, staff has learned that the Project will receive an additional \$150,000 in funding through a recent King County Budget Adjustment. An Interlocal Agreement with King County will be necessary to take receipt of these funds. We are proposing this as a joint project with King County. The Project may also receive another \$200,000 through a State Appropriations budget clarification during the current State Legislative Session, with that final determination being made during the on-going State Legislative Session. With these two additional external funding sources, the total project budget could increase to \$1.65 million. Staff will return to City Council with a revised project funding matrix once all external funding amounts and sources are established.

The proposed schedule for the TOD Bridge Project presently shows the engineering and design phase running through 2014 and into the first quarter of 2015. The construction phase is being planned for the summer of 2015 and a more complete construction schedule will be established once a preferred design and the choice of construction materials and methods are more fully developed.

- The Decant Expansion Project: *CKC Use Permit has not been submitted for this project.* Kirkland's Decant Expansion Project will increase the capacity of the City's existing facility to help handle the additional maintenance load resulting from annexation. The existing decant facility is located in the Maintenance Center yard. In order to expand this building, it is necessary to do an administrative lot-line consolidation (between the Maintenance Center and the west property line of the CKC) to meet building setback requirements in the City's code. The decant facility will be expanded by;
 - adding additional detention/settlement vaults and ultrasonic flow meters to allow for an increase in the permitted daily discharge of waste water from storm system cleaning,
 - adding water quality improvements to surface water leaving the site and entering the storm system,
 - increasing the capacity of the solids settling structure for materials cleaned from the storm system, and
 - adding a temporary dry storage facility along the property line separating the CKC and the Maintenance Center.



This project will also construct a temporary dry storage facility on the CKC parcel. This facility will be constructed such that it could be dis-mantled at a later date and

removed from the CKC if necessary. The dry storage will incorporate a green roof of drought-resistant plantings and a "Living Wall" of plantings to camouflage the structure side facing the CKC.

The project is fully funded in the approved CIP with a combination of City funds and a Department of Ecology Stormwater grant for 75% of the estimated \$1.26 million project cost.

4. ADVANCED TRANSPORTATION SYMPOSIUM

Transportation futurists, planners and decision makers gathered for a day of creative exploration about advanced transit options for the Cross Kirkland Corridor with possible application to the 42-mile Eastside Rail Corridor and other transit-challenged suburban locations. The event was held at Kirkland Google Campus, on Saturday, February 8th.

Advanced transportation includes manually operated and automated vehicles running on tires, rail, guide way, and/or cable. Previously implemented at airports, college campuses and major cities, these systems could be adapted to connect suburban residents to employment centers, schools, hospitals, shopping and recreation areas as well as to traditional transit hubs. Proponents note that these advanced technologies are energy-efficient, less costly to operate than traditional transportation systems with designs scaled to people and neighborhoods. The results of the Symposium could guide Kirkland's input and cooperative planning with Sound Transit during their corridor study on the eastside, or potentially with other interests that might provide alternative transportation modes on the CKC.

Regional transportation leaders, internationally-recognized developers of advanced transit, and cities considering deployment of these systems were invited to share their visions. Hosted by Google, the Advanced Transportation Symposium was sponsored by the City of Kirkland, Keller Williams Eastside, Nytec, Inc., PACE Engineering, Inc. and SRM Development, LLC.

5. SURFACE TRANSPORTATION BOARD

On January 15, 2014, the federal Surface Transportation Board (STB) issued a decision in which it authorized additional discovery and requested additional briefing from the City, King County, Sound Transit and Ballard Terminal Railway Co. (Ballard). The parties had anticipated a STB ruling on the merits by January 17, 2014, but the decision contemplates additional proceedings before the STB before a final ruling on the merits.

The STB noted that Ballard provided new information about potential new shippers in a reply brief filed on December 6, 2013. The City, King County and Sound Transit (collectively, the "Regional Entities") objected to this information because it was raised for the first time in a reply brief. The Regional Entities asserted that the STB should disregard the new shipper information because it should have been included in Ballard's original petition, which was filed in April, 2013. Alternatively, the Regional Entities argued that the new shipper information was vague and did not constitute evidence of actual shipper demand for freight rail service.

The STB agreed that the new information should have been submitted earlier by Ballard. However, instead of dismissing Ballard's reactivation request, the STB allowed the

Regional Entities additional time to take discovery and fully respond to the new information provided by Ballard. The additional discovery is to be complete by February 14, 2014. Additional briefing from the Regional Entities is due on March 6, 2014 and Ballard's response to that briefing is due on March 21, 2014. The STB will issue a final decision "as soon as practicable" after that.

In essence, the January 15 STB decision is a procedural ruling that simply delays the date of a final ruling on the merits. The decision does not affect the City's ability to engage in planning or construction of trail improvements.

Attachment A: Draft letter to SHPO
Attachment B: CKC Permit Process Flow Chart
Attachment C: Proposed SRM CKC Improvements



January 31, 2014

Allyson Brooks, Ph.D.
State Historic Preservation Officer
Department of Archaeology & Historic Preservation
PO Box 48343
Olympia, WA 98504-8343

Re: Eastside Rail Corridor—City of Kirkland Rail Salvage Activity in Kirkland, WA

Dear Dr. Brooks:

I am writing with respect to discussions that have been taking place between the City of Kirkland ("City") and the State Historic Preservation Office (SHPO) regarding the City's rail salvage activity along the portion of the Eastside Rail Corridor known as the Cross Kirkland Corridor ("CKC"). SHPO has expressed concern regarding the City's salvage of railroad tracks and ties on the CKC and has questioned whether the City properly consulted with SHPO with respect to its salvage operations. I would like to explain why the City believed it had authority to proceed with salvage operations without further authorization from SHPO and propose a meeting between SHPO and City officials to address SHPO concerns. The City is eager to resolve any misunderstandings regarding its salvage operations and is willing to take the necessary steps to ensure that the remaining work on the trail is eligible for FHWA funding as well as addressing SHPO's concerns.

In August 2008, BNSF Railway Company ("BNSF") applied to the STB for authority to abandon the Eastside Rail Corridor. BNSF explained to the STB that it planned to sell the Line to the Port of Seattle and to enter into a trail use agreement with King County under the federal railbanking program. In response, King County sought issuance of a NITU (Notice of Interim Trail Use) order from the STB that would allow for the railbanking of the portion of the Eastside Rail Corridor south of Woodinville.

In reviewing BNSF's petition, the STB observed that "[t]here are no other prospects for future rail traffic." Based on these findings, the Board authorized BNSF to railbank or abandon the Line. In its November 28, 2008 decision ("NITU Order"), the STB included a condition requiring BNSF to:

- (1) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way that are eligible for listing or listed in the National Register until the completion of the section 106 process of the NHPA;
- (2) report back to SEA [STB Section of Environmental Analysis] regarding any consultations with the SHPO and the public;
- (3) be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of track and ties) until the section 106

process has been completed and the Board has removed this condition; and (4) consult with the WDFW [Department of Fish & Wildlife] and the [Muckleshoot] Tribe regarding the fish barriers.

SHPO subsequently submitted a letter to the STB dated February 26, 2009 stating that it "concur[s] with the Surface Transportation Board's recommendation that the proposed abandonment of the BNSF right-of-way between Woodinville and Wilburton will have 'NO ADVERSE EFFECT' on National Register eligible or listed historic and cultural resources." Based on that submission, the STB removed the condition requiring consultation with SHPO on March 25, 2009:

SEA [STB's Section of Environmental Analysis] has received an e-mail with an attached letter, from the SHPO, both dated February [2]6, 2009. In this correspondence, the SHPO reiterates its belief that the proposed abandonment of the BNSF right-of-way between Woodinville and Wilburton will have no adverse effect on historic properties or cultural resources listed in or eligible for inclusion in the National Register. Therefore, based on the information provided, SEA recommends that the section 106 condition be removed. Accordingly, the proceeding will be reopened and the previously imposed section 106 condition will be removed. The condition regarding tribal concerns over fish passage barriers remains a condition of the abandonment.

BNSF sold the Eastside Rail Corridor to the Port of Seattle in December 2009. In April 2012, the Port of Seattle subsequently sold the City the approximately 5.75 mile portion of the Eastside Rail Corridor in Kirkland that is now known as the CKC.

When the City acquired the CKC, it began to plan for development of an Interim Trail on the CKC. It quickly became clear that the best and most cost-effective approach was to remove the rails and ties and install a gravel trail over the existing rail bed. Other options, such as installing a trail beside the existing rails, were ruled out because of the steep grades along the rails in many portions of the CKC.

In the process of researching the required process for removing the rails on the CKC, the City reviewed the STB rulings previously described. The City also confirmed that the STB has exclusive jurisdiction over matters relating to the regulation of railroads, including the preservation of rail corridors for future use. The City also discovered STB decisions and case law which stated that rail salvage is within the exclusive jurisdiction of the STB and not subject to state or local preclearance processes. As a result, the City concluded that the issuance of a NITU authorizes the abandoning railroad, or its successor, to salvage rail materials in accordance with the issued NITU Order.

In reviewing the NITU Order, the City noted the Section 106 condition along with the condition that consultation take place with the Muckleshoot and WDFW prior to rail salvage. The City discovered that the Section 106 condition was removed by the STB in its March 25, 2009 Order. The City also discovered that there was no record of any consultation with the Muckleshoot Tribe or WDFW, so it met with and had productive

discussions with representatives of the Muckleshoot Tribe prior to commencing with rail salvage. It also informed WDFW of its rail salvage plans and offered to consult with WDFW on more than one occasion. WDFW acknowledged the City's communications but never requested consultation or followed up with any substantive concerns. I emphasize that point, because had the City believed that additional consultation with SHPO was required, it would have had discussions with SHPO as it did with the Muckleshoot and offered to do with WDFW.

It also appears that the August 8, 2007 Archaeological Investigations Northwest ("AIN") Historic Inventory Report (which contained pedestrian survey information for the Eastside Rail Corridor) has not been available on the SHPO website until quite recently. City Public Works staff and its consultants checked the SHPO website prior to commencing rail salvage and the AIN report did not appear. Moreover, prior to salvage, one of the City's consultants did a pedestrian survey of the CKC with Trevin Taylor, an Environmental Engineer with the Washington Department of Transportation and did not see any historic preservation issues with respect to the rail salvage along the CKC as long as the City maintained compliance with the conditions of the STB conditions as well as providing WSDOT with such documentation.

In retrospect, I can see how the AIN report and the portions of the October 10, 2008 STB Environmental Assessment seem unclear with respect to the scope of environmental review. And the purpose of this letter is to explain why the City believes it has acted in good faith--not to revisit what the STB did or should have done. I have refrained from providing citations to case law and STB decisions but I am more than happy to provide copies of any additional documentation you may need upon request.

The implementation of the CKC Interim Trail is an important priority for the Kirkland City Council. City staff and I look forward to meeting with you and SHPO staff to discuss resolution of this issue at your earliest convenience. City staff will contact you to make meeting arrangements—we are more than happy to meet at your offices in Olympia if that is your preference. I would also like to take this opportunity to extend the City's appreciation for all the assistance Mr. Steiner provided over the last few weeks to help the City understand the issues that it needs to address. Please let me know if you have any questions about this letter.

Sincerely,



Oskar Rey
Assistant City Attorney

cc: Kurt Triplett, City Manager
Pam Bissonnette, Interim Public Works Director
Dave Snider, Capital Projects Manager
Aaron McDonald, Project Engineer
Matthew Sterner, M.A., Transportation Archaeologist
Ross Widener

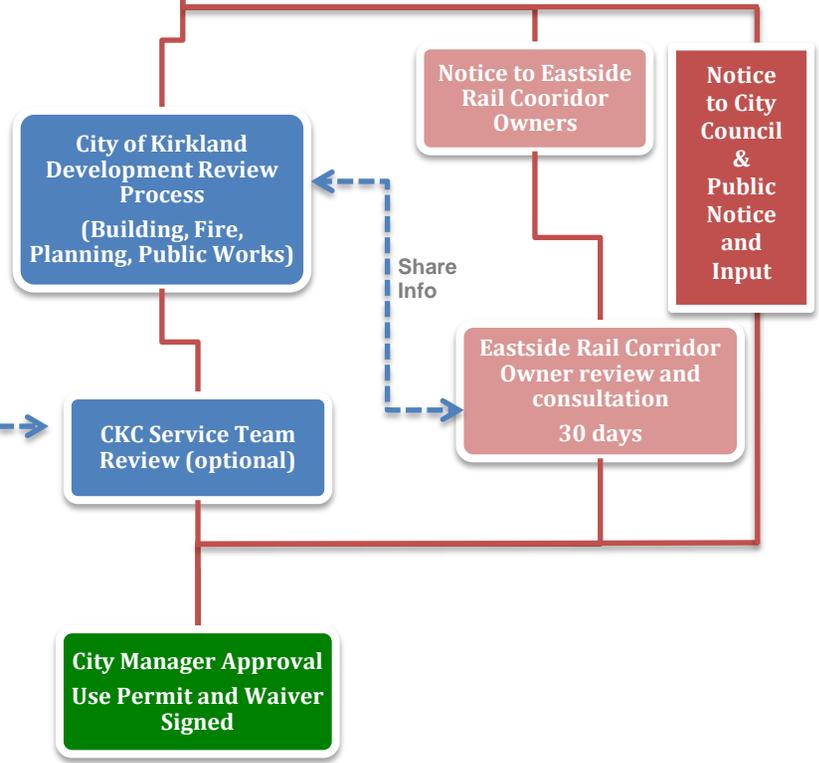
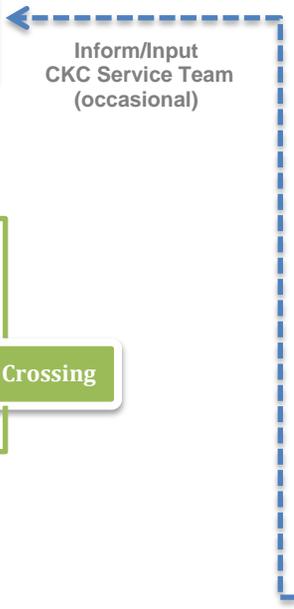
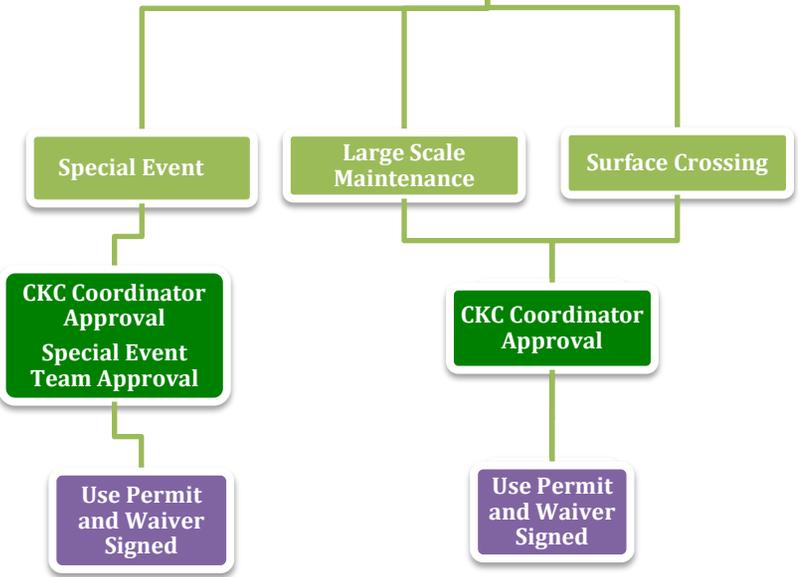
**Cross Kirkland Corridor (CKC)
Use Application
CKC Coordinator**

- EXAMPLES:**
- Temporary access to property via corridor
 - Special Events
 - Temporary private access path to corridor
 - Large scale maintenance
- EXEMPT FROM PERMIT:**
- Regular maintenance, adopt a trail work

- EXAMPLES:**
- Land Use
 - Building
 - Clearing and Grading
 - Demolition
 - ROW
 - Land Surface Modification
 - Special Use
 - Seating and amenities within setback or in corridor

**TYPE A
Adjacent to CKC
Short term surface access**

**TYPE B
Surface modification
Subsurface structure
Physical structure
Aerial structure
Long term surface access**





1 RIGHT OF WAY PLAN
1" = 30'

