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SUPREME COURT OF THE STATE OF WASHINGTON

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ARTHUR LANE, JOHN ALLERTON and KENNETH GOROHOFF,

Appellants,

v.

PORT OF SEATTLE; KING COUNTY; BNSF RAILWAY COMPANY;  
GNP RLY, INC.; and CITY OF REDMOND,

Respondents.

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**BRIEF OF RESPONDENT CITY OF REDMOND**

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James E. Haney, WSBA #11053  
OGDEN MURPHY WALLACE, P.L.L.C.  
1601 Fifth Avenue, Suite 2100  
Seattle, WA 98101  
(206) 447-7000  
Attorneys for Respondent City of Redmond

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**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. RESPONSE TO ASSIGNMENTS OF ERROR.....	1
III. COUNTER-STATEMENT OF THE CASE.....	2
IV. ARGUMENT.....	8
A. <u>The Court’s Review in this Matter is De De Novo, but the Appellants Must Point to Specific Facts that Defeat the City’s Contentions</u> .....	8
B. <u>The Port’s Purchase of the Redmond Spur was Authorized under RCW 53.08.010 for Economic Development Purposes</u> .....	9
C. <u>The Rule in <i>State ex rel. Huggins v. Bridges</i> Does Not Apply Because the Port Has Express Authority to Buy Property for Economic Development Purposes</u> .....	18
D. <u>The Port of Seattle’s Authority to Engage in Economic Development Programs is Not Limited to Job Training and Placement</u> .....	19
E. <u>The Trial Court had Ample, Undisputed Evidence Before it Demonstrating the Economic Benefits of Acquiring the Redmond Spur</u> .....	23
V. CONCLUSION.....	25

## TABLE OF AUTHORITIES

Page

### Table of Cases

<i>Anica v. Wal-Mart Stores, Inc.</i> , 120 Wn. App. 481, 84 P.3d 1231 (2004).....	25
<i>Asotin County Port Dist. v. Clarkston Community Corp.</i> , 73 Wn.2d 72, 436 P.2d 470 (1968).....	9
<i>Brown v. Scott Paper Worldwide</i> , 143 Wn.2d 349, 359, 20 P.3d 921 (2001).....	22
<i>Humphrey Industries, Ltd. v. Clay Street Associates, LLC</i> , 170 Wn.2d 495, 242 P.3d 846 (2010).....	21
<i>Lallas v. Skagit County</i> , 167 Wn.2d 861, 225 P.3d 910 (2009).....	8
<i>National Electrical Contractors Ass'n. v. Riveland</i> , 138 Wn.2d 9, 978 P.2d 481 (1999).....	21-22
<i>Medical Lake v. Brown</i> , 63 Wn.2d 41, 385 P.2d 387 (1963).....	9
<i>Pepper v. J. J. Welcome Construction Co.</i> , 73 Wn. App. 523, 871 P.2d 601 (1994).....	8
<i>Petition of Port of Grays Harbor</i> , 30 Wn. App. 855, 638 P.2d 633 (1982).....	6
<i>Queets Band of Indians v. State</i> , 102 Wn.2d 1, 682 P.2d 909 (1984).....	22
<i>Seven Gables Corp. v. MGM/UA Entertainment Co.</i> , 106 Wn.2d 1, 721 P.2d 1 (1986).....	25

<i>State ex rel. Gorton v. Port of Walla Walla</i> , 81 Wn.2d 872, 505 P.2d 796 (1973).....	7
<i>State ex rel. Huggins v. Bridges</i> , 97 Wn.2d 553, 166 P. 780 (1978).....	18, 19
<i>State ex rel. Keeler v. Port of Peninsula</i> , 89 Wn.2d 764, 575 P.2d 713 (1978).....	10
<i>Summit-Waller Ass'n. v. Pierce County</i> , 77 Wn. App. 384, 895 P.2d 405 (1995).....	8, 25
<i>Tacoma v. Welcker</i> , 65 Wn.2d 677, 399 P.2d 330 (1965).....	9
<i>Tracfone Wireless, Inc. v. Dep't. of Revenue</i> , 170 Wn.2d 273, 242 P.3d 810 (2010).....	8
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982).....	8
<i>Young v. Key Pharm., Inc.</i> , 112 Wn. 2d 216, 770 P.2d 182 (1989).....	25

**Statutes**

Laws of 1985, ch. 125.....	20
Laws of 2010, ch. 195.....	20-22
RCW ch. 53.08.....	6
RCW 53.08.010.....	1, 2, 6, 7, 9, 10, 18, 19
RCW 53.08.245.....	2, 10, 19-23
RCW 53.08.290.....	1, 6, 18
16 U.S.C. §1247(d).....	4

**Other Authorities**

2010 House Bill Report, SHB 2651.....22-23

## **I. INTRODUCTION**

This case involves a claim by three taxpayers of the Port of Seattle who challenge the Port's authority to acquire railroad property in East King County commonly known as the "Eastside Rail Corridor" or "ERC." On December 9, 2011, the trial court granted summary judgment in this matter in favor of the Port, King County, BNSF Railway Company, and the City of Redmond, holding that Port's purchase of most of the ERC was authorized by RCW 53.08.290, and that the Port's purchase of a portion of the ERC known as the "Redmond Spur" was authorized by RCW 53.08.010. Having lost on summary judgment at the trial court level, the Appellants now appeal to this court, making the same legal arguments that were rejected by the trial court.

The City of Redmond joins in and incorporates by reference the Briefs and arguments of the Respondents Port of Seattle, King County, and BNSF Railway Company. The City writes separately to address issues specific to the Redmond Spur, a portion of which the City now owns.

## **II. RESPONSE TO ASSIGNMENTS OF ERROR**

The trial court correctly granted the summary judgment motions filed by Respondents Port of Seattle, King County, BNSF Railway Company, and the City of Redmond. With respect to the Redmond Spur,

the trial court held that the Port's purchase of the Spur was authorized by RCW 53.08.010, which grants a port district the authority to "acquire by purchase... all lands, property, property rights, leases, or easements necessary for its purposes." The trial court reasoned that the development of the Spur as envisioned by the City would create economic development within the City limits and the limits of the port district and that it was therefore reasonable for the Port to determine that the purchase was necessary for the Port's purposes. CP 4928 - 29. Given this ruling, the City would formulate the issue before the Court relating to the Redmond Spur as follows:

Did the trial court correctly hold that the purchase of the Redmond Spur was authorized by RCW 53.08.010, where economic development has been expressly declared to be a public purpose of port districts under RCW 53.08.245 and where the undisputed evidence is that development of the Spur as envisioned by the City of Redmond would promote economic development in the City's downtown core and foster the City and the region's economic growth?

### **III. COUNTER-STATEMENT OF THE CASE**

The ERC is a 42-mile long rail corridor that stretches from the City of Renton in the south to the City of Snohomish in the north and that includes a 7.3-mile long rail "spur" between the City of Woodinville and

the City of Redmond commonly known as “the Redmond Spur.” CP 1396. The Port of Seattle acquired the ERC from BNSF Railway Company on December 21, 2009. CP 1398. While the acquisition was a single transaction, its component parts were set forth in two interdependent agreements entered into on May 12, 2008: a purchase and sale agreement under which Port would acquire the northern portion of the ERC (north of milepost 23.45 in Woodinville and including the Redmond Spur) for \$107 million (later renegotiated to \$81 million), CP 1446 - 1515; and a donation agreement under which the Port would acquire the southern portion of the ERC (from milepost 23.45 in Woodinville south to milepost 5.0 in Renton) as a donation from BNSF, CP 1517 - 78. The purchase and sale agreement and the donation agreement were each structured so that the purchase of the northern portion would not close unless the donation of the southern portion closed, and vice versa. CP 1459; CP 1530.

The Port’s acquisition of the ERC was the culmination of years of work by a number of public agencies, including the Port of Seattle, King County, the City of Redmond, and Sound Transit, aimed at preserving the corridor for possible future freight rail use while providing current uses that would benefit all residents and taxpayers of the Port and the other agencies involved. On November 5, 2009, following the execution of the



purchase and sale agreement and donation agreement but before the closing of the transaction, the Port, King County, Sound Transit, the City of Redmond, Puget Sound Energy, and Cascade Water Alliance entered into a Memorandum of Understanding under which each agency expressed its commitment to acquire an interest in the ERC from the Port and to develop that interest for regional, not just local, benefit. CP 1397; CP 1437 - 41. With respect to the Redmond Spur, the parties agreed that (1) the City of Redmond would purchase fee title to that portion the Spur lying within the City limits from the Port, (2) that the Spur would be “railbanked” under 16 U.S.C. §1247(d) and that a regional trail would be constructed by the City or by King County on the Spur, (3) that the City of Redmond would grant utility easements within the Spur to Puget Sound Energy and Cascade Water Alliance, (4) that the City would grant an easement for high capacity light rail transit within the Spur to Sound Transit, and (5) that all uses of the Spur would remain subject to the potential reactivation of the rail line for freight rail service at some point in the future. CP 1439.

On June 22, 2010, the City of Redmond purchased that portion of the Redmond Spur located within the Redmond city limits from the Port for \$10 million. CP 2348. The portion of the Redmond Spur purchased by the City is 3.89 miles long and runs from the end of King County’s

East Lake Sammamish Trail right-of-way, just west of the SR 520/SR 202 Interchange and Bear Creek, to Northeast 124th Street. *Id.* This portion of the Spur is located entirely within the boundaries of King County and entirely within the boundaries of the Port of Seattle. While the portion purchased by the City was less than the entirety of the Redmond Spur, the remainder of this Brief will refer to the portion acquired by the City as the Redmond Spur for ease of reference.

Since acquiring the Redmond Spur, the City of Redmond has invested more than \$20 million in developing a master plan for the Spur, constructing new street crossings across the railroad tracks, constructing a major stormwater trunk line to serve the City's entire Downtown area, and making various other improvements in anticipation of the future construction of a regional trail, a linear park, and Sound Transit's East Link light rail project. CP 2347 - 2384. These investments have all been made with a singular goal in mind: to use the Redmond Spur as a catalyst for revitalizing Downtown Redmond, thereby stimulating economic growth in that part of the City and enabling the City to accommodate the commercial and residential growth that the City and the region have chosen to allocate to this area.

On July 15, 2010, the Appellant taxpayers filed a lawsuit in King County Superior Court seeking rescission of the Port's purchase of the

northern portion of the ERC, including its purchase of the Redmond Spur. CP 1 - 30. The Appellants specifically did not challenge the Port's acquisition of the southern portion of the ERC. CP 3. Because rescission of the Port's purchase of the northern portion of the ERC would necessarily divest the City of its title to the Spur, the City of Redmond has been named as a party in this action and has opposed the Appellants in their efforts to obtain relief.

By agreement, all parties in this case filed cross-motions for summary judgment in September and October, 2011. On December 9, 2011, three weeks after hearing one-half day of oral argument, the trial court entered a 23-page order on cross-motions for summary judgment. CP 4917 - 39. The trial court granted the motions of the Port, the County, BNSF, and the City, and denied the motion of the Appellants. The trial court held that RCW 53.08.290 gave the Port authority to acquire all of the ERC with the exception of the Redmond Spur. *Id.* With respect to the Spur, the trial court held that:

This [the court's ruling concerning RCW 53.08.290] does not mean, however, that the Port's purchase of the Spur was unlawful. RCW 53.08.290 is not the only authority under which the Port could acquire that property. RCW Ch. 53.08 grants ports broad discretion to promote trade and commerce by acquiring and developing land. *E.g., Petition of Port of Grays Harbor*, 30 Wn. App. 855, 860, 638 P.2d 633 (1982). Under RCW 53.08.010, the Port may acquire any land within its boundaries which it deems

“necessary for its purposes,” including land for which the Port may have no specific identified plan. *State ex rel. Gorton v. Port of Walla Walla*, 81 Wn.2d 872, 877, 505 P.2d 796 (1973). The Port’s mission is to “invest public resources to advance trade and commerce, promote industrial growth, stimulate economic development and create jobs.” POS Motion at p. 5.

The City of Redmond has spent a considerable sum of money to incorporate the Redmond Spur into its urban development plans to ensure future economic growth within that city. Moreover, commuter or light rail systems have the potential to reduce traffic congestion on area highways, including those adjacent to port facilities, thereby facilitating the movement of freight throughout the region, including into or out of the Port’s harbor facilities. Given the record before the court, it was reasonable for the port commission to conclude that purchasing the Redmond Spur would advance trade and commerce, promote industrial growth and stipulate (sic) economic development, and was thus “necessary for its purposes” under RCW 53.08.010. The Court concludes that the Port had the authority under RCW 53.08.010 to acquire the Redmond Spur even though the spur is not being used as a rail line to move cargo.

(Footnote omitted). CP 4928 - 29.

In this appeal, the Appellants challenge both the trial court’s ruling on the Port’s acquisition of the Spur and the trial court’s ruling on the Port’s acquisition of the remainder of northern portion of the ERC. For the reasons set forth in this Brief, as well as the Response Briefs of the Port of Seattle, King County, and BNSF Railway Company, the appeal must be denied.

#### IV. ARGUMENT

A. The Court's Review in this Matter is De Novo, but the Appellants Must Point to Specific Facts that Defeat the City's Contentions.

The standard of review for this Court is well-settled:

A court reviews a grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Lallas v. Skagit County*, 167 Wn.2d 861, 864, 225 P.3d 910 (2009); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.

*Tracfone Wireless, Inc. v. Dep't. of Revenue*, 170 Wn.2d 273, 280-81, 242 P.3d 810 (2010). While the presence of disputed material facts precludes summary judgment, *Pepper v. J. J. Welcome Construction Co.*, 73 Wn. App. 523, 529, 871 P.2d 601 (1994), in order to defeat a motion for summary judgment "the nonmoving party... must set forth specific facts that sufficiently rebut the moving party's contentions." *Summit-Waller Ass'n. v. Pierce County*, 77 Wn. App. 384, 396, 895 P.2d 405 (1995). In this case, as will be shown by this Brief and the Briefs of Respondents Port of Seattle, King County, and BNSF Railway Company, the Appellants have failed to set forth any facts actually rebutting the contentions made by the Respondents regarding the Redmond Spur and summary judgment was properly granted in the Respondents' favor.

B. The Port's Purchase of the Redmond Spur was Authorized under RCW 53.08.010 for Economic Development Purposes.

The trial court correctly held that the Port's purchase of the Redmond Spur was authorized by RCW 53.08.010. That statute provides that a port district may "acquire by purchase, for cash... all lands, property, property rights, leases, or easements necessary for its purposes." The term "necessary," as used in this statute, does not mean absolute necessity or indispensability, but means only "reasonable necessity, under the circumstances of the particular case." *Asotin County Port Dist. v. Clarkston Community Corp.*, 73 Wn.2d 72, 75, 436 P.2d 470 (1968) (quoting *Tacoma v. Welcker*, 65 Wn.2d 677, 683, 399 P.2d 330 (1965)). A determination by a public agency that land is necessary for its purposes is ordinarily conclusive on the court, and may be overturned only if the opposing party proves actual fraud or such arbitrary and capricious conduct as would constitute constructive fraud. *Tacoma v. Welcker*, *supra*, 65 Wn.2d at 684; *Medical Lake v. Brown*, 63 Wn.2d 41, 45, 385 P.2d 387 (1963). The Appellants have made no such allegation of fraud or constructive fraud in this case with respect to acquisition of the Redmond Spur under RCW 53.08.010 and so the remainder of this Brief concentrates on the Port's legal authority to acquire the Spur under that statute.

The trial court correctly found that the Port's authority to acquire the Spur under RCW 53.08.010 was rooted in the Port's authority to engage in economic development. The state legislature has expressly declared economic development activity to be a public purpose of port districts. At the time the Port entered into the purchase and sale agreement for the northern portion of the ERC in May 2008, and at the time the transaction closed in December 2009, RCW 53.08.245 provided in its entirety as follows:

It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development.

Under the plain wording of this statute, port districts have broad authority to engage in economic development activities. While a port district must, absent other statutory authority, exercise these powers wholly within the limits of the district, *State ex rel. Keeler v. Port of Peninsula*, 89 Wn.2d 764, 767-78, 575 P.2d 713 (1978), no other limitations on this economic development authority have been imposed by the legislature and port districts are therefore free to exercise this authority in the manner deemed most appropriate by them.

The Port of Seattle has recognized the central importance of its economic development authority to its overall core functions by adopting the following as part of its Mission Statement:

The Port of Seattle is a public agency whose primary mission shall be to invest public resources to advance trade and commerce, promote industrial growth, stimulate economic development, and create jobs.

CP 1391. Consistent with this mission, the Port has and is engaged in numerous economic development activities within its boundaries and sees itself as “a primary ‘engine’ of the Puget Sound economy.” *Id.* And the Port’s acquisition and subsequent sale of the Redmond Spur to the City of Redmond fits this mission to a tee, given the direct link between the City’s plans for redeveloping the Spur and the region’s economic growth.

The undisputed evidence in this case is that acquisition and redevelopment of the Redmond Spur as envisioned and undertaken by the City of Redmond is a key component of the City’s economic future and the economic future of the region, including that of the Port. Downtown Redmond has been designated as a “regional growth center” or “urban center” under the King County Countywide Planning Policies and the Puget Sound Regional Council’s Vision 2040. CP 2354. More than 6,000 new residents and 4,000 new workers are expected to come to Downtown Redmond by 2020. CP 2351. In preparation for this growth, developers



have already completed approximately 1,500 new residential units in Downtown. *Id.*

Redeveloping the Redmond Spur will add pedestrian, transit, and business connections that will accommodate this growth and unite Downtown Redmond. CP 2351. The Redmond Spur cuts through the heart of Downtown Redmond, crosses the Sammamish River, and then turns north through the Sammamish Valley. CP 2348. The Redmond Spur severs at least half a dozen streets in Downtown Redmond, impeding the movement of pedestrians and automobiles between the northern and southern halves of downtown. *Id.* This lack of connectivity has split Redmond's downtown into two separate areas altogether, and has led to a mix of downtown uses (mostly one-story retail structures with surface parking) that are all oriented away from the Spur and that do not fit the City's and the region's vision of dense urban development befitting a regional growth/urban center. CP 2348; CP 2351. The City's acquisition and development of the Redmond Spur will resolve these connectivity problems and result in a revitalization of Downtown Redmond. CP 2349. The severed streets will be connected, the two halves of Downtown will be united, and a number of aesthetic, recreational, and infrastructure improvements will be made that will in turn stimulate additional development and economic growth. *Id.*

It is for this reason that acquisition and development of the Redmond Spur has long been a goal for the City of Redmond. Over the last 15 years, the City has adopted several amendments to its comprehensive plan to support possible uses of the Spur, including: developing a regional trail; improving the Spur's aesthetic appeal through development of park and art amenities; accommodating Sound Transit's East Link light rail project; providing better transportation connections between existing and future streets; providing for utility needs (such as a downtown stormwater trunk line); and accommodating regional utility needs like King County's reclaimed wastewater line and Puget Sound Energy's transmission facilities. CP 2349 - 50.

Since the City's purchase in 2010, the City has created a master plan for the "Redmond Central Connector," as the Spur is now called. *Id.* The master plan has resulted in two distinct components for redevelopment of the Spur: (1) the Infrastructure Alignment Plan, which identifies different infrastructural elements to be located within the corridor in order to facilitate its long-term development; and (2) a master plan design that provides for the development of a regional trail and linear park intended to activate and revitalize Downtown Redmond. *Id.*

Economic growth and the economic vitality of Downtown Redmond is a primary objective of the Redmond Central Connector Plan.

In addition to the 6,000 new residents and 4,000 new workers that will come to Redmond by 2020, the City expects that up to 50,000 users per month will use the Redmond Central Connector during peak seasons and that the Connector will become a year-round destination that will attract tens of thousands more people to Redmond's downtown businesses and cultural attractions. CP 2351. By bringing people to Downtown Redmond, by making significant aesthetic improvements in Downtown, by increasing access to trails, parks, and art, by improving transportation alternatives, and by uniting the two halves of Downtown Redmond, the City expects that the Redmond Central Connector will spur economic growth within the City and encourage the development of dining, shopping, recreating, working and living options. *Id.*

Development of the Redmond Spur according to the Redmond Central Connector master plan will also contribute to economic growth through the construction of a \$6 million stormwater trunk line within the Spur right-of-way serving over 250 acres of land in Downtown Redmond. CP 2352. This trunk line, which carries stormwater runoff from Downtown properties to a regional treatment facility near the Sammamish River, enables property owners in the Downtown core to utilize 100 percent of their land for commercial and residential development, rather than reserving large portions of their land for stormwater detention and

treatment facilities. CP 2353. This trunk line thus directly translates into greater square footage and less development cost for properties in the Downtown, a key advantage for those developing in this area.

Economic development will also be stimulated by construction of Sound Transit's East Link light rail project within the Redmond Spur. The East Link Project will originate in Downtown Seattle and then travel east across Lake Washington via Interstate 90 to Mercer Island, Downtown Bellevue, the Overlake area, and Downtown Redmond. CP 2353. Currently, Downtown Redmond has approximately 5,000 residents and 12,000 employees. CP 2354. Over the next 20 years, the City expects its residential and employment populations to grow 67 percent and 37 percent, respectively. *Id.* The East Link project will enable the City to accommodate these increases and to support the associated economic growth without causing a total breakdown of the already congested SR-520, I-90, and I-405. *Id.* This will benefit not only the region as a whole, but the Port specifically. As pointed out by the Port's Chief Executive Officer, Tay Yoshitani, in a declaration submitted by the Port of Seattle in support of its motion for summary judgment,

The Port's ability to continue as the region's economic engine depends substantially on ensuring that the infrastructure for the Port's activities and operations has sufficient capacity. One of the most important components

of that infrastructure is transportation corridors such as the ERC.

...

The Port views the ERC as an important option for increasing future capacity as existing transportation corridors become more stressed. For example, the ERC could serve as a major corridor for future north-south freight and/or passenger service. If light rail or other rail transportation were developed to use the ERC, the Corridor would reduce the need for passengers to rely on north-south transportation such as I-405 or I-5, freeing up capacity on those routes for freight transportation...

(Footnotes omitted). *Id.* With respect to light rail, Mr. Yoshitani specifically noted in a footnote that “Sound Transit already has begun planning to use a portion of the ERC in the City of Redmond for the ‘East Link Project,’” thus acknowledging the link between the Redmond Spur redevelopment and the freight transportation needs of the Port and the region.

Finally, economic development will be stimulated by construction of the regional trail within the Redmond Spur. According to the “Economic Impact Assessment of the BNSF Corridor Scenarios,” completed for the Puget Sound Regional Council in January 2007:

Regional trails can encourage economic development as a result of several factors. A trail may bring tourists to an area. It may bring pedestrians and bicycle traffic through commercial areas, and it offers alternative commuting options and additional capacity to support employment centers.

A trail may draw locals and tourists to see the sights and visit the commercial districts, which spurs business along the corridor. A study of three trails across the country, located in Iowa, Florida, and California, showed that users of trails spent, per person per day, an average of \$9.21 in Iowa, \$11.02 in Florida, and \$3.97 in California, as a result of their visit to the trails. These trails also attracted tourists to the region. The “new money” brought into the local counties annually by the visitors was calculated to be \$630,000, \$400,000, and \$294,000 for Iowa, Florida, and California, respectively. (Moore, et al., 1992)...

A trail also increases pedestrian and bicycle traffic through commercial areas, which may increase sales and can bring a sense of vitality to an area, making it a more desirable location for businesses. Because of this increased traffic, businesses may also be encouraged to open their storefronts to the trail, changing the use and value of properties in the area. This would obviously depend greatly on whether or not rail traffic runs adjacent to the trail, and if so, how frequently...

Regional trails also offer alternative ways to commute and additional capacity to support commuters, offering an advantage over other areas and encouraging growth.

CP 923.

As should be evident from the above, acquisition and redevelopment of the Redmond Spur is very important for the economic growth of the City and the region. Without the Port stepping forward to buy the ERC, and particularly the Redmond Spur, this economic growth would not be possible and the opportunity to acquire the ERC would have been lost forever. The evidence presented to the trial court amply

demonstrated that the Port's purchase of the Spur was justified under the economic development authority and property acquisition power granted to the Port by RCW 53.08.245 and 53.08.010. As the trial court said,

Given the record before the Court, it was reasonable for the port commissioners to conclude that purchasing the Redmond Spur would advance trade and commerce, promote industrial growth and stipulate (sic) economic development, and was thus "necessary for its purposes" under RCW 53.08.010.

CP 4929. This Court should uphold the summary judgment granted by the trial court.

C. The Rule in *State ex rel. Huggins v. Bridges* Does Not Apply Because the Port Has Express Authority to Buy Property for Economic Development Purposes.

The Appellants make three arguments in opposition to the trial court's holding that RCW 53.08.010 authorized the Port's purchase of the Redmond Spur. First, the Appellants argue that the Port has no express authority to purchase railroad property other than that found in RCW 53.09.290 and that, absent such authority, the purchase of the Redmond Spur was prohibited under *State ex rel. Huggins v. Bridges*, 97 Wn.2d 553, 166 P. 780 (1917). *Appellants Brief* at 27 - 28. The Appellants are incorrect.

In *Huggins*, the issue before this Court was whether the statutes governing port districts granted the Port of Seattle authority to construct

and operate a railway as a common carrier. 97 Wn.2d at 556. This Court answered in the negative, holding that such a power was neither expressly granted by the port district statutes nor clearly implied therein. *Id.* at 558.

In this case, by contrast, the port district statutes clearly and unequivocally gave the Port of Seattle the authority to buy the Redmond Spur for its economic development potential. RCW 53.08.010 provides that a port district can “acquire by purchase... all property necessary for its purposes” and RCW 53.08.245 provides that “it shall be in the public purpose for all port districts to engage in economic development programs.” The undisputed evidence in this matter is that the City of Redmond’s redevelopment of the Spur will foster economic development within the boundaries of the Port of Seattle. Because there is clear authority for the Port’s purchase of the Spur in RCW 53.08.010 and 53.08.245, the Appellants’ reliance on *Huggins* is misplaced.

D. The Port of Seattle’s Authority to Engage in Economic Development Programs is Not Limited to Job Training and Placement.

The Appellants next argue that RCW 53.08.245 “strictly limits” the Port’s economic development authority to engaging in job training and placement programs for its tenants and customers. *Appellants’ Brief* at 28 - 29. This argument fails for three reasons.



First, the language Appellants rely on in RCW 53.08.245 relating to job training and placement programs was not added to the statute until June 10, 2010, more than two years after the Port entered into the purchase and sale agreement for the ERC and nearly six months after the sale was closed. At the time the Port agreed to purchase the ERC and at the time the purchase closed, RCW 53.08.245 read in its entirety as follows:

It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development.

Laws of 1985, ch. 125, § 1. In 2010, the Legislature amended RCW 53.08.245 make the language quoted above into subsection (1) of the statute and to add a new subsection (2) reading as follows:

(2)(a) Economic development programs may include those programs for job training and placement, preapprenticeship training or educational programs associated with port tenants, customers, and local economic development related to port activities that are sponsored by a port, operated by a nonprofit entity and are in existence on the effective date of this section.

(b) As a contract condition, a sponsoring port must require any nonprofit entity that operates programs such as those described in (a) of this subsection to submit annually quantitative information on program outcomes including: The number of workers trained, recruited, and placed in jobs; the types of jobs and range of compensation; the number and types of businesses that are served; and any other tangible benefits realized by the port, the workers, businesses, and the public.

Laws of 2010, ch. 195, § 1. For obvious reasons, language that was added to the statute after the Port acquired the ERC can have no bearing on whether the statute authorized the acquisition at the time it occurred. At the time the purchase and sale agreement was entered into and at the time the sale closed, RCW 53.08.245 provided broad authority to the Port of Seattle to engage in economic development and that authority was unfettered by any language concerning job training and placement. The Appellants' argument that the "job training and placement" language of RCW 53.08.245 puts "strict limits" on the Port's authority to engage in economic is not consistent with history of the statute as it applies to the facts of this case.

Second, even if the language on job training and placement programs had been in the statute at the time the Port of Seattle purchased the ERC, it is clear that the language does not limit a port district's economic development activities to such programs. The current RCW 53.08.245 merely says that a port district's economic development activities "may include" job training and placement programs. "The term 'may' in a statute has a permissive or discretionary meaning," *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 170 Wn.2d 495, 511, 242 P.3d 846 (2010)(quoting *National Electrical Contractors Ass'n. v.*

*Riveland*, 138 Wn.2d 9, 28, 978 P.2d 481 (1999)), and the term “include” in a statute is a term of enlargement, not a term of limitation. *Brown v. Scott Paper Worldwide*, 143 Wn.2d 349, 359, 20 P.3d 921 (2001), *Queets Band of Indians v. State*, 102 Wn.2d 1, 4, 682 P.2d 909 (1984). Thus, the plain language of the current RCW 53.08.245(2) does not limit a port district’s authority to engage in economic development activities, but in fact enlarges that authority by resolving any doubt that the term economic development is broad enough to include job training and placement programs.

Finally, even if the “job training and placement” language of RCW 53.08.245 had existed at the time the Port purchased the ERC, the history of that language demonstrates that it was not intended as a limitation on the Port’s general economic development authority. According to the House Bill Report on SHB 2651 (which became Laws of 2010, ch. 195):

This bill is an effort to clarify the authority of ports to sponsor programs like Port Jobs, a private non-profit organization whose mission is to link disadvantage people with training, education, and employment opportunities. A recent draft state audit of the Port of Seattle has raised the question of whether these programs fall under “economic development,” especially those related to pre-apprenticeships and skills training projects. Not all ports want to become involved in these activities, so the substitute bill was drafted more narrowly than the original to resolve the state audit issues and meet the ports’ concerns. Over the years, Port Jobs has placed more than 10,000 people into jobs at SeaTac through “Airport Jobs”

and has operated other projects offering construction apprenticeship opportunities, education and training, and career enhancement. Port Jobs makes the port and its workers more competitive.

As this legislative history makes clear, the intent of the 2010 amendment to RCW 53.08.245 was not to place “strict limits” on a port district’s authority to engage in general economic development, but merely to resolve the state auditor’s question about the “Port Jobs” program and to clarify that job training and placement programs are within the broad economic development authority of ports. The Appellants’ argument to the contrary ignores the legislative history of the statute.

E. The Trial Court had Ample, Undisputed Evidence Before it Demonstrating the Economic Development Benefits of Acquiring the Redmond Spur.

The final argument raised by the Appellants in opposition to the trial court’s ruling on the Redmond Spur is that “the trial court did not specifically explain *how* buying the Redmond Spur furthered the Port’s mission to advance trade and commerce.” *Appellant’s Brief* at 28. The Appellants’ argument completely ignores the evidence before the trial court.

As pointed out in Section IV(B) of this Brief, *supra*, there was ample evidence before the trial court concerning the way in which the acquisition and redevelopment of the Redmond Spur would foster

economic development and economic growth within the City of Redmond and the Port of Seattle. All of the evidence cited above in Section IV(B) comes from three sources: (1) the Declaration of Robert G. Odle, Planning Director for the City of Redmond, which the City submitted in support of its motion for summary judgment, CP 2347 - 83; (2) the Declaration of Tay Yoshitani, Chief Executive Officer of the Port of Seattle, which the Port submitted in support of its motion for summary judgment, CP 1389 - 2063; and (3) the "Economic Impact Assessment of the BNSF Corridor Scenarios," which was part of the BNSF Corridor Preservation Study attached as Exhibit A to the Declaration of Andi Markley, which the Appellants submitted in support of their motion for summary judgment, CP 733 - 1126. Each of these documents was specifically acknowledged by the trial court as having been reviewed and considered by the court in making its ruling in this case. CP 4817 - 19. Given that fact, the Appellants' argument that the trial court's ruling was flawed because it did not describe in specific detail which pieces of this evidence it was relying on is absurd. The trial court obviously relied on the evidence before it in the declarations described above.

Finally, it must be pointed out that the Appellants submitted no evidence whatsoever to rebut the proposition that acquisition of the Redmond Spur would stimulate economic development within the City

and the port district. In order “to withstand a motion for summary judgment, the nonmoving party... must set forth specific facts that sufficiently rebut the moving party’s contentions.” *Summit-Waller Ass’n. v. Pierce County, supra*, 77 Wn. App. at 396. *Accord, Young v. Key Pharm., Inc.*, 112 Wn. 2d 216, 225-26, 770 P.2d 182 (1989); *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986); *Anica v. Wal-Mart Stores, Inc.*, 120 Wn. App. 481, 487, 84 P.3d 1231 (2004). Here, the Appellants presented no evidence to rebut the contentions of the City, the Port, King County, and BNSF regarding the economic development purposes of the transaction and summary judgment was therefore properly granted.

## V. CONCLUSION

For all of the reasons set forth above and in the Briefs of the Respondents Port of Seattle, King County, and BNSF Railway Company, the Port of Seattle had authority to buy the northern portion of the ERC, including the Redmond Spur. Specifically regarding the Spur, the Port had authority under RCW 53.08.010 to acquire all property “necessary for its purposes” and its purposes clearly included economic development under RCW 53.08.245. The undisputed evidence in the record shows that the redevelopment of the Redmond Spur as envisioned by the City will result in economic growth both within the City of Redmond and within the

Port of Seattle. This Court should uphold the judgment of the trial court and affirm the summary judgment granted to the Respondents.

Respectfully submitted this 7th day of June, 2012.

OGDEN MURPHY WALLACE, P.L.L.C.

By       /s/ James E. Haney        
James E. Haney, WSBA #11058  
Attorneys for City of Redmond

## CERTIFICATE OF SERVICE

Gloria J. Zak, states and declares as follows:

1. On the 7th day of June, 2012, I provided **Brief of Respondent**

**City of Redmond** via e-mail and US regular mail to the following:

Plaintiffs' Attorney

David F. Jurca, DJurca@helsell.com  
Bradley H. Bagshaw, BBagshaw@helsell.com  
Colette Kostelec, CKostelec@helsell.com  
Joanne Burt, JBurt@helsell.com  
Andrea Grad, AGrad@helsell.com  
Kyna Gonzalez, kgonzalez@helsell.com  
Kay Stewart, kstewart@helsell.com  
Helsell Fetterman  
1001 Fourth Avenue, Suite 4200  
P.O. Box 21846  
Seattle, WA 98111-3846

GNP RLY Attorney

Lori M. Bemis, lmb@mcgavick.com  
McGavick Graves  
1102 Broadway, Suite 500  
Tacoma, WA 98401

King County Attorney

David N. Bruce, dbruce@jetcitylaw.com  
Duncan Manville, DManville@jetcitylaw.com  
Denise Colvin, DColvin@jetcitylaw.com  
Savitt Bruce & Willey, LLP  
1425 Fourth Avenue, Suite 800  
Seattle, WA 98101

BNSF Attorney

Paul J. Lawrence, paul.lawrence@pacificlawgroup.com  
Gregory J. Wong, greg.wong@pacificlawgroup.com  
Katie Dillon, Katie.dillon@pacificlawgroup.com  
PACIFICA LAW GROUP  
1191 Second Avenue, Suite 2100  
Seattle, WA 98101

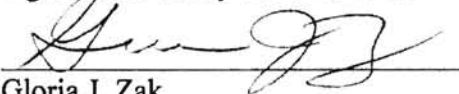


**Co-Counsel for BNSF**  
**Maurice L. Brimmage, Jr.**  
**Lacy M. Lawrence**  
**HAYNES & BOONE, LLP**  
**2323 Victory Avenue, Suite 700**  
**Dallas TX 75219**  
**marty.brimmage@haynesboone.com**  
**lacy.lawrence@haynesboone.com**  
**Debbie.noel@haynesboone.com**

**Port of Seattle Attorney**  
Timothy G. Leyh, timl@dhlt.com  
Randall Thomsen, randallt@dhlt.com  
Linda Bledsoe, LindaB@dhlt.com  
Susie Clifford, susiec@dhlt.com  
Danielson Harrigan Leyh & Tollefson, LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
Phone: 206-623-1700

I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 7th day of June, 2012.

  
Gloria J. Zak

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Attached is Brief of Respondent City of Redmond; a hard copy follows via regular mail to counsel only.

Gloria Zak, Legal Asst to James E. Haney

**Gloria J. Zak, Municipal Department Legal Assistant**



Ogden Murphy Wallace P.L.L.C.  
1601 Fifth Ave., Suite 2100 Seattle, WA 98101  
phone: 206.447.7000 | fax: 206.447.0215  
[gzak@omwlaw.com](mailto:gzak@omwlaw.com) | [omwlaw.com](http://omwlaw.com)

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