

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

18 April 2019

247613

247615

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

ENTERED
Office of Proceedings
April 25, 2019
Part of
Public Record

Re: STB Docket F.D. 36295
Snohomish County -
Petition for a Declaratory Order
Terminating Modified Rail Certificate
And
STB Docket F.D. 35151
GNP Rly Inc. - Modified Rail Certificate -
in Snohomish County

For filing 18 April 2019

Dear Ms. Brown:

Enclosed for e-filing in F.D. 36295 please find on behalf of Snohomish County, Washington ("County"), a fee-exempt unit of government, a Petition for Declaratory Order Terminating Modified Rail Certificate. The County also requests filing in F.D. 35151 as an owner notice of termination in the event STB determines such relief applicable. I attach hereto a colorized version of the map set forth in the Petition for the benefit of the Board. By my signature below, I certify service on representatives of GNP Rly, Inc., Eastside Community Rail, LLC, the estate of Thomas Payne, and Ballard Terminal Railroad Company by USPS, first class or equivalent, on this date addressed as per the letters of Feb 28 and April 1, 2019, exhibits to the Petition.

FILING FEE WAIVED

Thank you for your assistance in this matter.

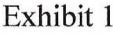
Very truly,

A handwritten signature in blue ink, appearing to read 'Ch. Montange', written over the printed name.

Charles H. Montange
Counsel for Snohomish County

Att: Map
Encls.

cc. Counsel for GNP, ECR, Payne estate, BTRC



BEFORE THE SURFACE TRANSPORTATION BOARD

Snohomish County -)
) F.D. 36295
Petition for a Declaratory Order)

GNP Rly Inc. -)
Modified Rail Certificate -) F.D. 35151
In Snohomish County, WA)

PETITION FOR DECLARATORY ORDER
TERMINATING MODIFIED RAIL CERTIFICATE

Snohomish County hereby petitions this Board for a declaratory order determining that the modified rail certificate embodied in GNP Rly, Inc. - Modified Rail Certificate - in Snohomish County, WA, F.D. 35151, served August 10, 2008, is terminated.

Summary

The modified certificate in question applies to a short segment (MP 39.1 to 39.3) of a previously abandoned line of railroad. Snohomish County had previously acquired the abandoned line and converted it into a trail (the Centennial Trail) which currently runs from the City of Shohomish north to the Skagit County line. The short segment subject to the modified certificate is located between approximately Pine Street and 10th Avenue in the City of Snohomish. (A map showing

the location of the segment relative to a subsequent abandonment by BNSF Railway (MP 39 to 38.25) and the BNSF mainline (MP 38.0) is set forth at the end of this Petition.)

The modified certificate was based on a "Running Rights and Railway Operations Agreement" ("RR Agreement") dated May 23, 2008, for operation of freight and passenger services on MP 39.1 to MP 39.3. The RR Agreement provided various grounds for termination, including failure to operate a commuter service as provided in the RR Agreement. GNP Rly, either by itself or through a successor, has utterly failed to provide any rail service over MP 39.1 to MP 39.3, let alone commuter service. Verified Statement of Tom Tiegen, attached ("Tiegen V.S."); Verified Statement of Tom Stowe, attached ("Stowe V.S.") at p. 4. Indeed, it would cost in excess of \$15 million to restore or to replace a rail bridge necessary to reach MP 39.1 to MP 39.3, and insolvent GNP and its non-operating successors utterly lack resources to maintain the freight segment to the south of MP 38 into Woodinville,¹ much less fund a bridge for rail passengers. Stowe V.S. at p. 6. There are no rail shippers, or any rail use, of any alleged rail properties north of MP 38.25 (or north

¹ Indeed, the lessee for GNP's non-operating successor which does operate the freight segment of the track (MP 38 south to Woodinville) indicated a need for financial assistance to maintain the track for continued operations in Letter, Mr. Brower (BTRC) to Ms. Brown (STB), filed in F.D. 35692, August 7, 2018, at p. 2.

of MP 38, the intersection with the BNSF mainline). In sum, the RR Agreement is, and has been, the epitome of dead expectations, and the County has terminated it.

In addition, M.P. 39.1 to 39.3 is severed from the interstate rail network by an intervening BNSF abandonment of trackage from M.P. 38.25 to M.P. 39, which BNSF duly consummated, and the bulk of that line was sold to City of Snohomish or reverted to the City or to underlying fee owners. Stowe V.S. at p. 6. City of Snohomish has paved it over as an extension of the County's Centennial Trail. In short, the Board under its precedent lacks jurisdiction inter alia to grant or to continue modified rail certificates over MP 39.1 to MP 39.3.

Unfortunately, Eastside Community Rail, LLC, which apparently claims to be the successor to insolvent GNP Rly, has indicated it will not file a notice of termination of the modified rail certificate as provided in 49 C.F.R. 1150.24. In accordance with STB precedent in such situations, Snohomish County seeks a declaratory order of termination.

Snohomish County is also filing this pleading in F.D. 35151 as a Notice of Termination under 49 C.F.R. 1150.24 in the event the Board is prepared to allow the County directly to terminate the modified rail certificate.

Applicable Law

This Board has discretionary authority under 5 USC 554(e) and 49 USC 1321 to issue a declaratory order to eliminate controversy or remove uncertainty in a matter related to this Board's subject matter jurisdiction. See The State of South Dakota - Petition for a Declaratory Order, F.D. 36096, served June 14, 2017, at p. 1 ("State of South Dakota").

The applicable regulations provide for termination of modified rail certificates upon filing a 60-day termination notice by the operator with this Board. 49 C.F.R. 1150.24. This Board has permitted "a state/line owner to file the 60-day termination notice on behalf of the operator where the operator no longer exists as an entity. E.g., S.D. Ry - NITU & Termination of Modified Rail Certificate, F.D. 31874, served July 17, 2007, slip op. at 2.

In some cases, the state/line owner properly desires the modified rail certificate terminated but the operator refuses or otherwise fails to cooperate. This Board has held that "[b]ecause the modified certificate program is intended to offer a simple, streamlined approach for continuing operations on rail lines slated for abandonment, the Board believes that states should be allowed to seek the removal of an operator who declines to file the 60-day termination notice with the Board." State of South Dakota, supra, slip at 3. This Board has

indicated that where a railroad claiming operating authority under a modified rail certificate refuses or fails to terminate its modified certificate, the appropriate remedy for the government owning the rail corridor in question is a petition for a declaratory order terminating the modified rail certificate. State of South Dakota, supra, p.3 ("[t]he Board finds that a declaratory order proceeding is an appropriate mechanism for seeking to remove a modified certificate operator when that operator does not affirmatively consent").

The duration of service to be provided by a modified certificate operator "may be determined in the contract between the [government entity] and the operator." State of South Dakota, supra, at 3, citing 49 C.F.R. 1150.24. Where the State terminates the operating agreement (a lease) consistent with its terms (in that situation "expiry of the lease"), and the proposed termination of the modified rail certificate would "not result in any adverse impact on shippers or the community," STB orders termination of the modified rail certificate operating rights. State of South Dakota, supra, at 3.

In addition, the Board has indicated that it loses jurisdiction over a line of railroad that is severed from connection to the interstate rail system. E.g., RLTD Railway Corp. - Abandonment Exemption - in Leelanau County, MI, AB-457X,

served Oct. 30, 1997, slip at 6: "because the Leelanau Line previously had been severed from the interstate rail network, the ICC lost jurisdiction over the property many years before the [abandonment exemption process was invoked]." STB's result was upheld in RLTD Railway Corp. v. STB, 166 F.3d 808, 812 (agency does not have jurisdiction over lines entirely in one state "that are no longer part of the national rail system"). The Board has indicated that system connectivity is relevant for jurisdiction for modified rail certificates. E.g., Beaufort Railroad Co. - Modified Rail Certificate, F.D. 34943, served March 19, 2008, slip at 9 & n.26 (citing RLTD v. STB, supra, 166 F.3d 808, but finding no severance).

This Board regulates the abandonment of freight rail lines in the United States by granting abandonment authorizations. 49 U.S.C. 10903. For a line actually to be abandoned, the railroad must exercise ("consummate") its abandonment authority to remove the line from the Board's jurisdiction. Angeles A. Zorzi et al - Pet for Dec. Order, F.D. 36016, served Jan. 31, 2017, slip at 4. Pursuant to a regulation adopted in 1996, "railroads are ... required to demonstrate their intent to consummate abandonment authority by filing a 'notice of consummation' with the agency, typically within one year of being granted abandonment authority. ... The filing of a notice of consummation ... signifies that the railroad has exercised the authority granted and

intends the property to be removed from the national rail transportation network." Angeles A. Zorzi, supra, slip at 4. This Board grants extensions to the one-year notice of consummation deadline upon railroad request. E.g., BNSF - Ab. Ex. - in Snohomish County, WA, AB 6-422X served July 7, 2005; id., served December 28, 2005; id., served June 21, 2006; id., served December 14, 2006; and id., served December 18, 2007 (the latter two extensions were for one year).

Facts

1. STB authorized an abandonment exemption for a portion of the old "Sumas Branch" from MP 39.1 (approximately the intersection of the line with Pine Street in the City of Snohomish) to MP 47.11 (end of line in Hartford) in Burlington Northern Railroad Co. - Exemption - Abandonment in Snohomish County, WA, AB 6-280X, served March 3, 1986 (1986 ICC Lexis 409). According to that decision, the last use of the line from MP 39 north was in June of 1984, when Burlington Northern (BN) closed the line for maintenance. Evidently the line was reopened in March 1985, but there was no traffic, and no shipper opposed the abandonment. 1986 Lexis 409 at p. *1-

*2. Snohomish County purchased the segment in question from BN in 1990. The line is not railbanked (16 U.S.C. 1247(d)). A portion of the segment was comprised of easements or base fees,

and the County has acquired underlying fee interests from relevant landowners. Stowe V.S. at 2.

2. Trail planning commenced in 1989, and the County soon after purchase incorporated the property into its popular Centennial Trail, which encompasses the rest of the old Sumas Branch of the Northern Pacific all the way to the Skagit County border. Stowe V.S. at p. 6.

3. There has been no railroad engine or car on any portion of MP 39.0 to MP 47.11 since 1984 (approximately 35 years) and essentially all rail and track have been removed for almost that period of time. Stowe V.S. at 6.

4. BNSF filed a two-year out-of-service abandonment application for MP 39 in City of Snohomish to MP 38 (roughly the south side of the Snohomish River at intersection with the BNSF east-west mainline) on June 15, 2004. Burlington Northern and Santa Fe Railway - Abandonment Exemption - in Snohomish County, WA, AB 6-422X (notice of exemption in STB e-library, filings). The Board authorized abandonment and initially imposed a trail use/railbanking condition by decision served August 3, 2004. The trail use/railbanking condition was extended several times, and then dropped. As already indicated (see p. 7 supra), BNSF subsequently sought and obtained multiple extensions of the one-year notice of consummation period. On July 23, 2008, BNSF

filed a letter consummating abandonment of MP 38.25 to MP 39 with the Board.² Stowe V.S. at p. 4. This withdrew that segment of trackage from the interstate rail network. See Stowe V.S. at 5 (para 10). City of Snohomish terminated the rail franchise for the railroad to use city streets and alleys for the line, and acquired remaining portions of the line from BNSF by deed. Stowe Verified Statement at p. 5 (para 11) citing City Attorney determination. The bulk of the trackage was removed, and the right of way paved for a City-owned extension of the Centennial Trail from Pine Street to approximately Commercial Street (paved portion stops at First Street). Stowe V.S. at pp. 5-6. The segment of track from MP 38.25 to MP 38 basically encompasses the old railroad bridge over the Snohomish River. Due to the nature of the bridge, it is unsafe for any use, including rail use, and would cost in excess of \$15,000,000 to repair or to replace. Stowe V.S. at p. 8. The map at the end of this Petition shows the relative locations of the various mileposts and line segments referenced above in the City of Snohomish. Based on BNSF's certification in its 2004 notice of exemption, there has been no traffic over MP 38 to MP 39 since at least June 15, 2002, a period of roughly 17 years. No railroad has

² This letter is available in STB's e-library, filings.
[https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b8525748d0067d81f/\\$FILE/222997.PDF](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b8525748d0067d81f/$FILE/222997.PDF)

used, or given the condition of the bridge during the relevant period, could use the line north of MP 38 for any purpose (including switching or car storage) since at least June of 2002 per BNSF's certification for its notice of exemption.

5. GNP Rly, Inc. and the County entered into a "Running Rights and Railway Operations Agreement" ("RR Agreement") dated May 23, 2008, for operation of freight and passenger services on MP 39.1 to MP 39.3. Article 9 of the RR Agreement expressly sets forth grounds under which the County may unilaterally terminate the agreement.³ On the basis of the RR Agreement, GNP applied for a modified rail certificate. In its application for the modified rail certificate, GNP indicated that the proposed modified rail certificate for MP 39.1 to 39.3 was part of a larger network of operations which would extend south to Woodinville over property to be acquired by the Port of Seattle. GNP acknowledged that the only connection to the interstate rail network for its proposed operation was over BNSF's MP 39 to MP 38. GNP represented that MP 39 to MP 38 had been authorized for abandonment but the abandonment had not been consummated and the line might yet be acquired by a public authority. GNP filing of

³ GNP attached a copy of the RR Agreement to its application for a modified rail certificate, and the entire application is available with GNP's filing in the STB e-library, filings. A copy of the RR Agreement is also attached to the Verified Statement of Thomas Stowe, filed herewith.

July 14, 2008, at p. 5. This Board authorized modified certificate operations in GNP Rly, Inc. - Modified Rail Certificate, F.D. 35151, served August 12, 2008. But, as already noted, BNSF by letter dated July 18, 2008, and filed with STB on July 21, 2008, had already consummated abandonment of MP 38.25 to MP 39.0. Thus, at the time STB issued the modified rail certificate (August 12, 2008), the agency lacked jurisdiction to do so because BNSF's July 2008 letter severed the property from any connection to the interstate rail system.⁴ The information on which the Board acted was no longer accurate as to connectivity to the interstate rail network by the time the Board acted.⁵

6. GNP Rly subsequently acquired a freight rail easement (only) from BNSF for MP 38.25 (north bank of Snohomish River) to MP 23.80 (Woodinville) pursuant to this Board's authorization in GNP Rly - Acquisition and Operation Exemption - BNSF, F.D. 35213, served Feb. 13, 2009. GNP Rly per its then-officer Douglas Engle deeded the freight easement to relatives of said Douglas Engle⁶ several days before entering an involuntary

⁴ While the property was subsequently acquired (by reversion or deed) by the City of Snohomish, the City converted the property into a trail. Stowe V.S. at pp. 5-6

⁵ In BNSF - Abandonment Exemption - in King County, WA, AB 6-465X, served August 29, 2008, the Board acknowledged that abandonment had already been consummated on MP 38.25 to MP 39.

⁶ Deed, GNP per D. Engle to Engle relatives for freight easement is attached. This information was discovered by

bankruptcy proceeding.⁷ The bankruptcy court ultimately ordered the assets of GNP transferred to Eastside Community Rail (ECR), an entity under the control of Douglas Engle. However, the bankruptcy trustee never issued a deed to ECR for any property, presumably because there was no property left in GNP to deed. See text at note 6 supra. On November 6, 2012, ECR represented to STB in a pleading verified by Mr. Engle that ECR was buying the freight rail easement from MP 23.80 to MP 38.25 (Mr. Engle did not mention that he had already deeded that out of GNP to his relatives) along with other rights (including rights under the RR Agreement with Snohomish County) from GNP's bankruptcy trustee. See notice filed in Eastside Community Rail - Acquisition and Operation Exemption - GNP Rly, F.D. 35692 on November 6, 2012 (copy of filing available in STB e-library, filings). This Board granted ECR's application for an acquisition and operation exemption to acquire such rights as GNP possessed between MP 38.25 and MP 23.8 by a decision at Eastside Community Rail - Acquisition and Operation Exemption -

Snohomish County and provided this Board in connection with Snohomish County's petition to revoke the acquisition and operation exemption this Board granted to Douglas Engle's Eastside Community Rail. See Petition to Revoke and Verified Statement of Thomas Stowe filed on behalf of Snohomish County on July 12, 2018 in F.D. 35692.

⁷ STB's first mention of GNP's involuntary bankruptcy appears to be in connection with denying a stay in GNP Rly - Acq. and Op. Exemption - Redmond Spur and Woodinville Subdivision, F.D. 35407, served March 15, 2011.

GNP Rly, F.D. 35692, served November 23, 2012.⁸ The Board authority did not include any rights north of MP 38.25. (The GNP/County RR Agreement, of course, applied only to MP 39.1 and 39.3.)

7. As previously noted, the RR Agreement sets forth several grounds for Snohomish County unilaterally to terminate the agreement. One of the grounds (Article 9.3(b)) is failure of the railroad to operate commuter rail service as provided in Appendix B to the RR Agreement within five years of execution of the agreement. GNP and its successors have provided no rail service on MP 39.1 to MP 39.3, or any commuter service at all anywhere, and more than five years have now lapsed. Tiegen V.S. Likewise, Article 9.1 defines defaults to include insolvency, and GNP (as this Board has recognized) became insolvent, forced into involuntary bankruptcy by one of its officers. Article 9.2 authorizes the County to terminate in the event of default.. The officer (Douglas Engle) who forced the involuntary bankruptcy then purported to acquire the assets as Eastside Community Rail.⁹ Mr. Engle did not obtain the County's consent

⁸ As indicated, at the time of transfer, GNP had no known assets other than rail regulatory rights and the bankruptcy trustee never issued a deed.

⁹ Mr. Engle as an officer of GNP had deeded the assets to certain of his relatives before forcing GNP into involuntary bankruptcy, so he could not (and did not) in fact acquire any assets other than claimed regulatory rights from the bankruptcy proceeding.

to the change in ownership as required by Article 10.1, thus also authorizing the County to terminate.¹⁰

8. ECR represented to the Board that it was and intended to be a non-operating common carrier on the property, and either arrange for Ballard Terminal Railroad Company (BTRC) to act as its agent or to sublease the line. See Eastside Community Rail, supra, F.D. 35692, served Nov. 23, 2012, slip at 3 n.3. BTRC has never conducted any operations for ECR over the Snohomish Bridge, much less over MP 39.1 to 39.3. BTRC subsequently filed a lease exemption which this Board granted in BTRC - Lease Exemption - Line of Eastside Community Rail, F.D. 35730, served April 13, 2013. The lease exemption only applies to MP 23.8 to MP 38.25. Id. at p. 1. In sum, BTRC has no rights to operate north of MP 38.25, and ECR admits it is a non-operating entity. ECR as a non-operating entity has no capability to provide service on its own anywhere, and much less pursuant to the RR Agreement. BTRC has no rights under the RR Agreement.

9. By letter mailed February 28, 2019, the County per registered mail provided a 30-day notice of termination to all known possible claimants to the RR Agreement for MP 39.1 to MP 39.3 (copy attached). The entities notified included Eastside Community Rail (Mr. Engle), GNP Rly (per its general manager,

¹⁰ Stowe V.S. at p.3.

Kevin Kucera), and the Estate of Thomas Payne, the owner of the GNP Rly shell corporation. Mr. Engle responded combatively, claiming falsely that there were rail operations on the property. There are no such operations.¹¹ On April 1, again by registered mail (copy attached), the County provided a notice of termination of the RR Agreement. The County informed Mr. Engle that his comments were clearly false, and that if he persisted in making false statements and casting clouds on the County's title, the County reserved its rights to pursue remedies against him. The County requested that any claimants under the RR Agreement provide notice of termination of the modified rail certificate to this Board by April 12, 2019. None has done so.

Argument

A. Termination by Owner (Operator Silent or Opposed)

If the Board deems ECR to be the successor to GNP under the modified rail certificate, then the County acknowledges that ECR has indicated to the County an intent to contest the termination. In that event, under State of South Dakota, supra, this Board must issue a termination of the modified rail certificate at the request of the owner, Snohomish County, pursuant to a declaratory order proceeding. State of South

¹¹ Stowe V.S.; Tiegen V.S.

Dakota indicates that a state owner is entitled to a declaration of termination, notwithstanding operator opposition, if the State has terminated the underlying operating agreement and there is no harm to shippers. Snohomish County has terminated the underlying operating agreement by letters of February 28 and April 1, 2019.¹² The RR Agreement is a dead letter. GNP and its putative successors have never purported to provide rail service in accordance with it. There is no harm to shippers from termination of the modified certificate. There cannot possibly be harm to shippers because there have been no shippers or any other rail use of the line for 37 years. Under this Board's precedent, where -- as here -- the operating agreement is terminated and there is no adverse impact on shippers, the owner may terminate the certificate by declaratory order.

In further confirmation, Snohomish County also notes that ECR admits it is a non-operating entity, and its agent and/or lessee (BTRC) has no rights to operate north of MP 38.25 per this Board's order in F.D. 35730, served April 13, 2013. In short, there is no operating entity, nor operations, and nothing rail north of MP 38.25. Snohomish County hereby and for the

¹² In particular, Snohomish County has multiple grounds for lawful termination: failure of the operator to provide service as set forth in the agreement (or any service) on the track in question, insolvency, and failure to obtain consent of the County to a change in ownership.

reasons stated to the extent within its power terminates the modified rail service and requests confirmation by declaratory order.

B. Vacation for Severance

In all events, the modified rail certificate must be vacated because MP 39.1 to MP 39.3 was authorized for abandonment about a quarter century ago, that abandonment was consummated, and the property became a part of the County's Centennial Trail approximately three decades ago. By the time this Board granted a modified rail certificate for MP 39.1 to 39.3, BNSF had consummated abandonment of MP 38.25 to MP 39 by filing a letter of consummation in accordance with 49 C.F.R. 1152.29(e)(2) in July 2008. That notice, per the regulations, is "conclusive on the point of consummation" in the circumstances here (no barriers to consummation). Id. The BNSF consummation was evidently without protest by GNP. But it severed MP 39.1 to MP 39.3 from any connection with the interstate rail network.

Upon consummation, the abandoned segment from MP 38.25 to MP 39.1 reverted to City of Snohomish by extinguishment of franchises in the streets, and the remainder has otherwise been acquired by City of Snohomish or reverted to adjoining

landowners.¹³ City of Snohomish has removed the tracks and turned it into an extension of the Centennial Trail.¹⁴ This Board lacked jurisdiction over an abandoned segment of line (MP 39.1 to MP 39.3) that is severed from the interstate rail network by another intervening consummated abandonment, per RLTD, supra, at the time the modified certificate was issued, and certainly now, where time has only confirmed the severance. The Board therefore must vacate or terminate the modified rail certificate issued in this proceeding on this alternative basis.

C. Termination for Lack of Operator

Since this Board in its order in F.D. 35692, served Nov. 23, 2012, has not authorized ECR to acquire any rights in MP 39.1 to MP 39.3, ECR cannot speak for GNP for those rights. On the other hand, all rights of GNP were purportedly transferred to ECR by the bankruptcy court, so GNP itself cannot speak as to those rights. It appears that there is no longer a lawful operator extant for MP 39.1 to MP 39.3 duly licensed under the modified rail certificate. Moreover, ECR represents that it is non-operating. Its lessee elsewhere (i.e., BTRC) has no rights at all on MP 39.1 to MP 39.3. Accordingly, Snohomish County as underlying owner should be treated as the party to give notice

¹³ Stowe V.S. at pp. 5-6.

¹⁴ Id.

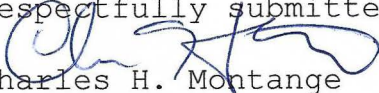
of termination under 49 C.F.R. 1150.24 and precedent such as S.D. Ry - NITU & Termination of Modified Rail Certificate, F.D. 31874, served July 17, 2007. Snohomish County hereby provides such notice (see coterminously filed notice in F.D. 35151). No person has used the rail line in 37 years. The Running Rights Agreement is, as we have said, a dead letter, and the County's Parks Department wants this cloud off of the County's premier trail facility. Tiegen V.S.

Conclusion

The modified rail certificate in this proceeding must be terminated or vacated for the reasons stated. The County as owner is entitled to a declaratory order of termination because it has given notice of termination of the underlying operating agreement for inter alia utter failure of any "operator" to provide even a glimmer of rail service as required by the operating agreement, and there are no shippers (and have been none) who could possibly be adversely impacted. In any event, the modified rail certificate must be terminated or vacated due to STB's lack of jurisdiction to grant or to enforce such a certificate due to intervening severance from the national rail system. Finally, as an additional alternative argument for relief, there is no "operator" properly licensed to perform under the modified rail certificate; the County hereby confirms

notice of termination of the modified certificate in the absence of an operator; and the County seeks confirmation from this Board of termination. The County's premier trail should not continue to be clouded by a modified rail certificate so bereft of performance or the possibility of performance by any entity possibly claiming some sort of regulatory right under that certificate.

Respectfully submitted,


Charles H. Montange

426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739

c.montange@frontier.com

Attorney for Snohomish County

Exhibits:

Map

Verified Statement of Tom Tiegen

Verified Statement of Tom Stowe

Attachments to Stowe V.S.: Running Rights Agreement
BNSF consummation letter

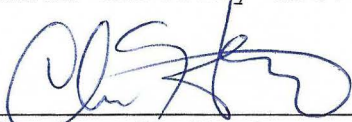
Deed, GNP (per Douglas Engle) to Engle relatives

Letter giving 30-day notice of termination, Feb. 28, 2019

Letter giving notice of termination, April 1, 2019

Certificate of Service

I hereby certify service by USPS, first class or equivalent, on this 18th day of April, 2019, upon GNP Rly, ECR, and BTRC to the representatives at the addresses provided for them in the Letters referenced directly above.



Charles H. Montange

Verified Statement of

Tom Tiegen

Director of Snohomish County Department
of Parks, Recreation and Tourism

1

BEFORE THE SURFACE TRANSPORTATION BOARD

COUNTY OF SNOHOMISH
STATE OF WASHINGTON

Termination of Modified Rail Certificate
Running Rights and Railway Operations Agreement
STB F.D. 35151

2

DECLARATION OF TOM TEIGEN

3

TOM TEIGEN makes the following declaration upon personal knowledge:

4

1. I am over 18 years of age and otherwise competent to testify in this matter.

5

2. I am making this declaration for filing with the Surface Transportation Board
("STB" or "Board") in support of Snohomish County's termination of the Running
Rights and Railway Operations Agreement dated May 23, 2008 "Running Rights
Agreement").

8

9

3. I am the Director of the Snohomish County Department of Parks, Recreation, and
Tourism. I have held this position since 2007. As Director, I possess supervisory
authority over all Snohomish County Parks, Recreation, and Tourism employees
and functions.

10

11

12

13

4. In my capacity as Director of the Snohomish County Department of Parks,
Recreation, and Tourism, I was directly involved in the negotiations between the
County and the Port of Seattle which led to the County's purchase of the former
BNSF and BN railroad corridor at issue in this matter ("Rail Corridor"). I have also
been directly involved in discussions with GNP and Eastside Community Rail
regarding the provision of rail service within the Rail Corridor. As a result of my
involvement as described above, I am knowledgeable regarding the history of the

14

15

16

17

18

19

1 Rail Corridor relevant to this matter and the provision of rail service within it since
2 the County's purchase from the Port of Seattle.

- 3 5. Based on my personal knowledge, discussions with other officials, and a
4 reasonable search and review of relevant County files and records, I can state that
5 there has been no commuter rail service, from any source or by any carrier, on the
6 on the stretch of Rail Corridor between milepost 39.1 and milepost 39.3 in
7 Snohomish County. Nor has Snohomish County received any plans for such
8 commuter service, including from GNP or Eastside Community Rail, at any time
9 since the inception of the Running Rights Agreement already in the record in this
10 matter.

11
12 **Pursuant to 28 USC 1746, I certify under penalty of perjury under the laws of the**
13 **United States of America that the foregoing is true and correct to the best of my**
14 **knowledge and belief.**

15
16 Signed this 16th day of April 2019 at Snohomish, Washington.

17 
18 TOM TEIGEN

Verified Statement of

Thomas P. Stowe

Senior Review Appraiser

Snohomish County Department of Public Works

Attaching Copies of the following:

Map,

Running Rights Agreement for MP 39.1 to 39.3

and

BNSF Abandonment Consummation Letter MP 38.25 to MP 39

1 BEFORE THE SURFACE TRANSPORTATION BOARD

COUNTY OF SNOHOMISH
STATE OF WASHINGTON

GNP Rly --Termination of Modified Rail Certificate
issued in F.D. 35151 and for use in
all related proceedings.

2 DECLARATION OF THOMAS P. STOWE

3 THOMAS P. STOWE makes the following declaration upon personal knowledge:

- 4 1. I am over 18 years of age and otherwise competent to testify in this matter.
- 5 2. I am the Senior Review Appraiser for Snohomish County Public Works Department.

6 I have held this position since September 6, 2016.

- 7 3. In my capacity as Senior Review Appraiser, I am the County Parks and Recreation
- 8 Department's project lead for research and analytics regarding its ownership of the
- 9 former BNSF and BN railroad corridors lying within Snohomish County. I am
- 10 making this declaration for filing with the Surface Transportation Board (STB or
- 11 Board) in support of Snohomish County's termination of the Modified Rail
- 12 Certificate that this Board issued in F.D. 35151 based on the Running Rights and
- 13 Railway Operations Agreement dated May 23, 2008 between GNP Rly and
- 14 Snohomish County relating to M.P. 39.1 to MP 39.3.

- 15 4. First, I wish to confirm the rail regulatory history relating to M.P. 39.1 to 39.3. In
- 16 1986 ICC Lexis 409, Interstate Commerce Commission, March 3, 1986, Docket No.
- 17 AB-6 (sub-No. 280X), Burlington Northern Railroad Company – Exemption –
- 18 Abandonment in Snohomish County, Washington, the ICC granted the petition of
- 19 Burlington Northern Railroad Company (BN), filed December 31, 1985, for an
- 20 exemption from the requirements of 49 U.S.C. 10903, et seq., for the abandonment

1 of its railroad line between the Snohomish (milepost 39.00) and Hartford (milepost
2 47.11), a distance of 8.11 miles in Snohomish County, WA. The exemption was
3 effective on April 14, 1986.

4 5. Snohomish County acquired Burlington Northern Railroad Company's (BN's)
5 interests as relevant here on July 13th, 1990 by quitclaim, recorded under Snohomish
6 County Auditor's File No. 9008280286. This deed was later re-recorded under AF
7 #9210200679 to correct the legal description. [No milepost marker numbers were
8 given in these deeds. Milepost marker numbers are taken from the Northern Pacific
9 Railway (NPR) maps and matched to the deeds' legal descriptions.] This portion of
10 the Washington Branch Line right of way started in the City of Snohomish
11 downtown at MP 39.1 and ended at the southern city line of the City of Arlington
12 MP 57.55, both in Snohomish County, Washington, a distance of 18.45 miles. The
13 southerly terminus of this line was legally described as the centerline of Pine Street,
14 according to the Fairground Addition to the Town of Snohomish, which is Station
15 2030+00 or MP39.1.

16 6. In 1989, the National Park Service Trail Concept Study and Trail Master Plan was
17 created for the future Centennial Trail. On November 16, 1991, Snohomish County
18 had a public ceremony for completion of the seven mile Centennial Trail from the
19 City of Snohomish north to the City of Lake Stevens. Tracks were removed and a
20 twelve foot wide paved trail was constructed over the former rail line, with a six foot
21 wide gravel equestrian trail adjacent. As of this date Snohomish County has paid all
22 known valid claims for reversionary rights for this vacated rail line.

23 In 1997, Snohomish County purchased the Nakashima property on the Snohomish/

1 Skagit County border as the north trailhead for the Centennial Trail which was
2 completed to this northern terminus in 2012.

3 7. There is no physical, anecdotal or documentary evidence of any rail use of any kind
4 on the rail corridor north of MP 39.1 (Pine Street) since acquisition by County in
5 1990, nor of any shipper on the former rail corridor.

6 8. On May 23rd, 2008, GNP Rly, Inc. and Snohomish County entered into a Running
7 Rights and Railway Operations Agreement. The Agreement affected only the
8 southern terminus of the County corridor from MP39.1 to MP39.3, which was
9 termed the "Joint Use Corridor." GNP agreed to construct, operate and maintain a
10 common carrier railway over the Joint Use Corridor, recognizing that there were no
11 existing rails and ties in the corridor, and GNP further agreed that it would obtain
12 County permission before damaging or demolishing any existing Trail. The County
13 maintained its rights to Trail Use of the corridor. GNP agreed to provide commuter
14 rail service within five years on the Joint Use Corridor to points south.

15 This Agreement was not assignable without prior written consent of the other party
16 (Item 10.1). The Agreement was also terminable in the event of insolvency.

17 Nonetheless, GNP entered involuntary bankruptcy in part through the actions of its
18 officer Douglas Engle. The insolvency constituted a default under Agreement (Item
19 9.1). Moreover, no written consent was granted from Snohomish County for the
20 transfer of GNP's assets by the bankruptcy trustee to ECR (Eastside Community
21 Rail) on September 5, 2012. In fact, the Snohomish County executive director, Peter
22 Camp on September 17, 2012 objected to the trustee's request for a Hearing on
23 Motion for Approval of Sale Free and Clear, Etc., Case No. 11-40829-BDL.

1 Additionally, GNP and ECR at no time have provided a Commuter Rail Service,
2 much less the operating Commuter Rail Service, which the Running Rights
3 Agreement indicates must be provided by the fifth anniversary of the Agreement
4 (Item 9.3) or the County may terminate the Agreement. There is no physical,
5 documented or anecdotal evidence that GNP has made any modifications to this
6 existing trail corridor for any rail purpose. There is and has been no commuter
7 service. The County through its attorney by letter dated February 28, 2019 provided
8 30 day notice of termination and by letter dated April 1, 2019 terminated the
9 Running Rights Agreement.

- 10 9. There is an additional abandonment proceeding relevant here to the issue of whether
11 STB continues to have jurisdiction. July 18, 2008, Kristy Clark, general attorney for
12 BNSF filed with the Board, 222997, a letter stating the following.

13 “BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR
14 1152 Subpart F – Exempt Abandonments to abandon and discontinuance service
15 over a 0.99-mile line of railroad between milepost 38 01 and milepost 39.00 in
16 Snohomish County, WA. Notice of the exemption was served and published in
17 the Federal Register on July 2, 2004 (69 FR 40470-71). The exemption became
18 effective on August 4, 2004.

19 “By decision served December 18, 2007, the STB granted BNSF’s request for an
20 extension of time to file a notice of consummation until December 31, 2008.

21 This letter is to advise the Board that BNSF is consummating the abandonment of
22 the subject line between milepost 38.25 and milepost 39.00, as of the date of this
23 letter. The remainder of the line is being retained for railroad purposes.

- 1 10. With this letter BNSF severed the former rail corridor covered by GNP's Running
2 Rights Agreement (MP39.1 to MP39.3) from the BNSF mainline, which is located at
3 approximately MP 38 according to the pertinent track charts..
- 4 11. On January 8th, 2009, BNSF Railway Company quitclaimed its interests in specific
5 legally described parcels that were portions of the Washington Branch Line between
6 MP38.25 and MP39.1 to the City of Snohomish under AF #200901150103. The
7 deed covered all of BNSF's interests in MP 38.25 to Pine Street, except for gaps
8 where the Line crossed at Second Street, Third Street, Fourth Street, 6th Street,
9 Lincoln Avenue, and Pine Avenue in the City. [No milepost marker numbers were
10 given in this deed. Milepost marker numbers are taken from the Northern Pacific
11 Railway (NPR) maps and matched to the deed's legal descriptions.]
- 12 In a June 6, 2005 opinion of the City of Snohomish attorney, Thom Graafstra,
13 "Concerning franchises, upon abandonment or discontinuance of the railroad's right
14 to operate a rail line or way, it is our opinion that the [sic] any franchise would
15 expire, or would be subject now to the City's power to revoke. Accordingly, it is our
16 conclusion that upon abandonment or discontinuance of the railroad's right to operate
17 a rail line or way, BNSF would have no property right or interest in a franchise. This
18 accords with our opinion that the City already has the right to use its existing street
19 rights of way for a public trail if it so desires."
- 20 12. On November 9, 2010, the City of Snohomish created a Centennial Trail Extension
21 Master Plan. On December 13, 2013, the City of Snohomish declared the Centennial
22 Trail Extension Project physically completed. The City constructed a paved trail
23 over the former rail line north of Second Street, removing the track; the City

1 constructed a paved trail over the former rail line south of Second Street adjacent to
2 the track which was left in place. The City blocked access to the trestle and bridge
3 over the Snohomish River south of First Street. Snohomish County has been advised
4 by civil engineers that the bridge is unsafe for rail or trail use, and that restoration of
5 the bridge, so it may safely be used for rail (or replacement of the bridge for that
6 purpose), will cost in excess of \$15,000,000. There is no indication in the files of
7 the County that GNP Rly (which has gone through involuntary bankruptcy and
8 apparently has no assets) or Eastside Community Rail LLC (a non-operating entity
9 with no known rail property interests or assets) has resources remotely sufficient to
10 restore any rail operation over the Snohomish River so as to reach the City of
11 Snohomish, even if there remained a rail corridor at the north end of the Bridge
12 within this Board's jurisdiction. MP 39.1 to MP 39.3 in all events is physically
13 severed from the Bridge by roughly $\frac{3}{4}$ mile of property used for trail and street
14 purposes and owned by the City of Snohomish and possibly by private landowners
15 claiming reversionary interests.

16 13. I prepared the map attached as Exhibit A showing relevant milepost numbers in
17 connection with the pertinent street grid of City of Snohomish. I also attach as
18 Exhibit B the Running Rights Agreement for MP 39.1 to MP 39.3, which is the
19 operating agreement for modified rail certificate purposes, which Snohomish County
20 has terminated.

1 Pursuant to 28 USC 1746, I certify under penalty of perjury under the laws of the United
2 States of America that the foregoing is true and correct to the best of my knowledge and
3 belief.

4 Signed this 17th day of April 2019 at Everett, Washington.

5 

6 _____
THOMAS P. STOWE

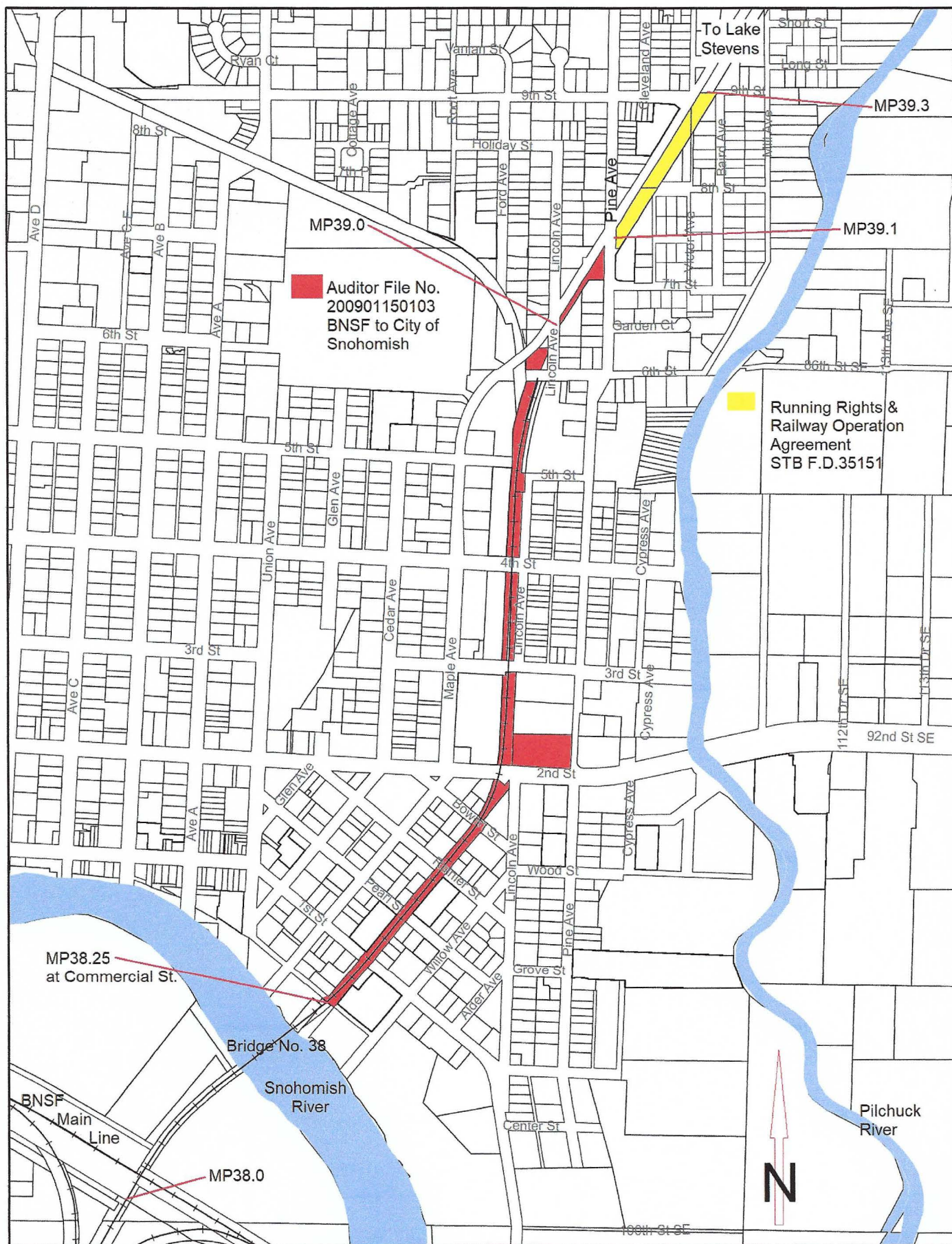


Exhibit 1



Kristy D. Clark
General Attorney

BNSF Railway Company
P O Box 961039
Fort Worth TX 76161
2500 Lou Menk Drive AOB-3
Fort Worth TX 76131-2828
(817) 352-3394
(817) 352-2397 fax

ENTERED
Office of Proceedings
JUL 21 2008
Part of
Public Record

222997



VIA UPS OVERNIGHT MAIL

July 18, 2008

Ms Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E Street S W
Washington, DC 20423-0001

RE: STB Docket No. AB-6 (Sub-No. 422X); BNSF Railway Company – Abandonment Exemption – in Snohomish County, WA

Dear Acting Secretary Quinlan

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F - Exempt Abandonments to abandon and discontinuance service over a 0.99-mile line of railroad between milepost 38.01 and milepost 39.00 in Snohomish, Snohomish County, WA. Notice of the exemption was served and published in the Federal Register on July 2, 2004 (69 FR 40470-71). The exemption became effective on August 4, 2004.

By decision served December 18, 2007, the STB granted BNSF's request for an extension of time to file a notice of consummation until December 31, 2008. This letter is to advise the Board that BNSF is consummating the abandonment of the subject line between milepost 38.25 and milepost 39.00, as of the date of this letter. The remainder of the line is being retained for railroad purposes.

Please acknowledge receipt of this letter by date-stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Ten (10) additional copies of this letter are enclosed for the Board's use and distribution.

If you have any questions, please contact me at (817) 352-2308.

Sincerely,

Kristy D. Clark
General Attorney

KC/js

cc Washington Utilities and Transportation Commission
Washington State Department of Transportation
Victoria Rutson, Chief, SEA
Peter Rickershauser
Jerome Johnson
Susan Odom
Dalen Wintermute
Steve Kuzma
Rail Services Update

RUNNING RIGHTS AND RAILWAY OPERATIONS AGREEMENT

THIS AGREEMENT is dated the 23rd day of May, 2008.

BETWEEN:

GNP Rly Inc.

a corporation incorporated under the laws of Washington
(hereinafter called "GNP")

of the first part

AND:

County of Snohomish

a political subdivision of the State of Washington
(hereinafter called "Snohomish County")

of the second part

WHEREAS GNP is a company, incorporated pursuant to the provisions of the laws of the State of Washington, and is, or shall soon become, qualified to operate railways;

AND WHEREAS Snohomish County is a political subdivision of the State of Washington and GNP represents that Snohomish County owns the real property more completely described in Appendix A, which real property GNP believes is suitable for use by a railway and over which GNP desires to operate a railway;

AND WHEREAS GNP desires to operate a railway over present and former railway lands, or other lands, personal property and rights of way purchased, leased, or otherwise acquired, leased or licensed by GNP for the acquisition, construction, operation and maintenance of a railway;

AND WHEREAS Snohomish County is willing to contract with GNP to allow GNP to construct, operate and maintain a railway on the property described in Appendix A on the terms and conditions contained in this Agreement.

NOW THEREFORE in consideration of the mutual covenants, representations, and promises contained herein, the parties hereby agree as follows:

ARTICLE 1	DEFINITIONS	4
ARTICLE 2	JOINT USE CORRIDOR.....	4
2.1	Track Use	4
2.2	Trail Use	5
ARTICLE 3	MAINTENANCE, OPERATION AND CONTROL.....	5
3.1	Control.....	5
(a)	Track Control.....	5
(b)	Trail Control.....	5
3.2	Rules Governing Operation	5
3.3	Compliance with Laws	5
3.4	Assistance to Disabled Trains	6
3.5	Clearing of Wrecks	6
3.6	Emergency Repairs	6
3.7	Investigations.....	6
3.8	Excursion Trains.....	7
ARTICLE 4	WARRANTIES AND DISCLAIMERS	7
4.1	By GNP... ..	7
4.2	By Snohomish County	7
ARTICLE 5	LIABILITY AND INDEMNITY	8
5.1	Liability.....	8
5.2	Notice of Claim	8
5.3	Waiver of Business Interruption Claim.....	8
ARTICLE 6	INSURANCE.....	8
6.1	Workers' Compensation Coverage.....	8
6.2	Liability Insurance.....	9
ARTICLE 7	COMPENSATION.....	10
7.1	Compensation.....	10
7.2	Changes in Rates	10
ARTICLE 8	TERM.....	11
8.1	Term	11
8.2	Removal of Property	11
ARTICLE 9	TERMINATION, REMEDIES, AND DISPUTE RESOLUTION	11
9.1	Defaults	11
9.2	Remedies	12
9.3	Without Default.....	12
9.4	Termination Upon Change of Control	13
9.5	Disputes.....	14
ARTICLE 10	GENERAL.....	15
10.1	Successors and Assigns	15
10.2	Counterparts.....	15
10.3	Notices	15
10.4	Interpretation	16
10.5	Modification	16
10.6	Waiver	16
10.7	Audits and Inspections	16
10.8	Compliance with Federal, State and Local Laws.....	17

10.9	Relationship of Parties.....	17
10.10	No Third Party Rights	17
10.11	Time of Essence.....	17
10.11	Further Instruments and Documents	17
ARTICLE 11	INTERPRETATION	17
11.1	Entire Agreement.....	17
11.2	Severability.....	17
11.3	Headings	18
11.4	Gender and Number.....	18
11.5	Proper Law	18
APPENDIX A	—Joint Use Corridor Map... ..	19
APPENDIX B	Timetable.	20

ARTICLE 1 DEFINITIONS

Where used in this Agreement or in any amendments hereto, the following terms shall have the following meanings:

- 1.1 "Agency" means the Surface Transportation Board or the Federal Railway Administration as well as any successor of the said Agency(ies);
- 1.2 "Agreement" means this Agreement as amended or supplemented from time to time and the expressions "Article" and "Paragraph" followed by a number or letter mean and refer to the specified Article or Paragraph of this Agreement; and
- 1.3 "Commuter Rail" shall mean short-haul rail passenger transportation in metropolitan and suburban areas, sometimes having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations, as defined by 49 U.S.C.A. § 24102(4) (2003).
- 1.4 "Joint Use Corridor" means those easements, rights of way, or other real property as described in Appendix A.
- 1.5 "Railway Track" means those tracks, roadbeds, rights-of-way, signals and other structures and mechanisms that are track-related or are required for the movement or control of motive power and rolling stock over the Joint Use Corridor (including all comprising the railway rights of way and lands more fully described in Appendix A annexed hereto), whether existing or to be constructed pursuant to this Agreement.
- 1.6 "Trail" shall mean a pedestrian or bicycle path on the Joint Use Corridor.

ARTICLE 2 JOINT USE CORRIDOR

2.1 Track Use

Subject to the terms of this Agreement, GNP will construct, operate, and maintain a common carrier railway over the Joint Use Corridor. GNP promises to take all reasonably necessary actions to commence operation of freight rail and Commuter Rail service promptly and expeditiously. If, and to the extent, that construction of a railway is necessary in the Joint Use Corridor (i.e., there are no existing rails and ties in the Joint Use Corridor), GNP will align and construct its railway in the Joint Use Corridor to allow dual use of the Joint Use Corridor for both railway and Trail uses. GNP further agrees that it will obtain Snohomish County's permission before damaging or demolishing any existing Trail and that GNP shall

replace or repair to current standards such damaged or demolished Trail at GNP's sole cost and expense.

2.2 Trail Use

Snohomish County may, subject to the terms of this Agreement, construct, operate and maintain a Trail over the Joint Use Corridor.

ARTICLE 3 MAINTENANCE, OPERATION AND CONTROL

3.1 Control

(a) Track Control

The construction, maintenance, repair, operation and renewal of the railway and its related works and undertakings on the Railway Track shall be under the direction and control of GNP.

(b) Trail Control

The construction, maintenance, repair, operation and renewal of the Trail and its related works and undertakings on the Joint Use Corridor, including, but not limited to, works separating the Railway Track from the Trail such as fences, barriers, and signs, shall be under the direction and control of Snohomish County. The construction, maintenance, repair, operation and renewal of the Trail shall be performed in a manner consistent with safe railway practice as reasonably determined by GNP.

3.2 Rules Governing Operation

All employees and contractors of GNP and Snohomish County shall, while on the Railway Track, be subject to the rules, regulations and orders of the Agency, and all employees and contractors shall move over the Railway Track under and in accordance with the orders of the superintendent, rail traffic controller or any other officer(s) of GNP having authority in matters relating to the movement of trains or in any way affecting the safe and proper performance and use of the Railway Track.

All employees of GNP engaged in or connected with the operations of GNP on or along the Railway Track shall be trained and qualified in accordance with the rules of the Agency. All conductors, locomotive engineers, trainmen and other employees of GNP who shall operate its trains, locomotives, cars and equipment over the Railway Track must be properly qualified for such operation.

3.3 Compliance with Laws

Notwithstanding paragraph 10.8 below, GNP shall at all times comply with the provisions of any and all laws and regulations, as well as any rules of any authority having jurisdiction respecting the operation, condition,

inspection and safety of GNP's trains. GNP shall also comply with any and all environmental and pollution laws and regulations applicable to its operations relating to this Agreement.

3.4 Assistance to Disabled Trains

If, by reason of any mechanical failure or for any other cause not resulting from a collision or derailment, a GNP train (or part thereof) becomes inoperative on the Railway Track and unable to proceed under its own power, or fails to maintain movement on the Railway Track, or, if in emergencies, crippled or otherwise defective cars are set out of a GNP train on the Railway Track, Snohomish County shall have the right, but not the obligation or duty, to furnish motive power or such other assistance as may be necessary to haul, help or push such train (or part thereof), or to move such disabled rolling stock, and GNP shall reimburse Snohomish County for costs incurred by Snohomish County in rendering such assistance, including applicable equipment rental rates, wages, overheads and any other charges which may be in effect as agreed between the parties at the time of rendering any such assistance.

3.5 Clearing of Wrecks

In the event of a GNP train (or part thereof) being derailed or in collision while upon the Railway Track, the derailed or damaged GNP equipment shall be picked up and removed by GNP. If GNP fails to timely pick up and remove the derailed or damaged equipment, Snohomish County may, at its sole option, pick and remove such equipment and GNP shall pay Snohomish County for such pick up and removal in accordance with paragraph 3.4.

3.6 Emergency Repairs

At the request of GNP, and subject to availability of labor, facilities, and qualifications, Snohomish County may, at its sole option, perform emergency repairs to a GNP train, including any of the rolling stock thereof set off en route (the "Emergency Repairs"). For the performance of the Emergency Repairs, GNP shall pay to Snohomish County:

- (i) for labor, at the fully burdened labor rate for each hour or part thereof expended by and for each Snohomish County employee; and
- (ii) for material used, at cost plus an overhead rate of twenty percent (20%).

3.7 Investigations

Snohomish County and GNP shall each have the right to investigate and report to the Agency or other authority having jurisdiction, all accidents or incidents occurring on the Railway Track that involve a GNP train.

Snohomish County shall provide GNP, and GNP shall provide Snohomish County with a copy of any report submitted to the Agency, or to any other authority having jurisdiction.

3.8 Excursion Trains

GNP shall allow excursion trains, such as the Washington Dinner Train, steam tour trains or other tourist oriented trains to be operated on the Railway Track upon reasonable and ordinary terms and conditions, provided that Commuter Rail service shall have precedence over excursion trains. For the purposes of this paragraph, "reasonable and ordinary terms and conditions" are those substantially similar to the Washington Dinner Train's prior agreement with BNSF.

ARTICLE 4 WARRANTIES AND DISCLAIMERS

4.1 By GNP

- (a) GNP warrants that it is, and will maintain itself during the term of this Agreement as, a Washington corporation in good standing, fully qualified and authorized pursuant to applicable law and industry practice to perform its responsibilities hereunder.
- (b) GNP warrants that it shall purchase up to Two Million Dollars of rolling stock and associated equipment within one (1) year of the commencement of this Agreement, subject only to the issuance of a certificate of public authority by the Surface Transportation Board to GNP in a form reasonably satisfactory to GNP that effects the purposes of this Agreement. GNP further warrants and represents that it has sufficient financial capacity to purchase Two Million Dollars of rolling stock and associated equipment within ninety days of the execution of this Agreement.
- (c) GNP intends to commence Commuter Rail operations within two years of the execution of this Agreement.

4.2 By Snohomish County

- (a) Snohomish County disclaims, and does not warrant, that it owns any property fit for railroad use. GNP has performed its own investigation and due diligence.
- (b) Snohomish County disclaims, and does not warrant, that GNP may construct, operate or maintain a railway over any property not owned by Snohomish County.
- (c) Snohomish County disclaims, and does not warrant, the fitness, suitability or condition of any property it owns for construction, maintenance or operation of a railway.

ARTICLE 5 LIABILITY AND INDEMNITY

5.1 Liability

- (a) Each party shall defend and indemnify the other party from any and all claims, suits and actions for injury, damage or loss to the extent of the indemnifying party's responsibility for such injury, damage or loss that arises out of, or relates to, this Agreement.
- (b) A party to this Agreement who is required to pay damages or an assessment under workers' compensation legislation, by reason of the injury or death of an employee of such party occurring on the Joint Use Corridor, shall have no claim against the other party hereto, for reimbursement for such payment, except to the extent that the injury or death was due solely to the negligence of the employee or employees of said other party.

5.2 Notice of Claim

In case a suit or suits or proceedings be commenced by any person or corporation against either party, for or on account of any loss, damage or injury for which the other party is liable under the provisions of this Agreement, the party so sued or proceeded against will give to the other party reasonable notice in writing of the pendency of such suit or proceeding, and thereupon the other party will assume the defense of such suit or proceeding and will save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto will be bound by any judgment against the other party unless it shall have had reasonable notice that it was so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified will be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

5.3 Waiver of Business Interruption Claim

Neither party hereto will under any circumstances have any cause of action against the other for loss or damage of any kind caused by, or resulting from, interruption or delay to its business or in respect of claims arising therefrom.

ARTICLE 6 INSURANCE

6.1 Workers' Compensation Coverage

With respect to all persons who work or perform labor on GNP trains or the Railway Track, GNP shall procure and maintain at all times coverage under Federal Employers' Liability Act (FELA), including, but not limited to, Railroad Liability Coverage and/or Washington State Workers' Compensation requirements, if necessary.

6.2 Liability Insurance

- (a) GNP shall comply with the following conditions and procure and keep in force during the term of this Agreement, at GNP's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to Snohomish County.
 - (i) Workers' Compensation Insurance or equivalent as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence.
 - (ii) Comprehensive Railroad Liability Insurance on an occurrence basis in an amount not less than \$5,000,000 per occurrence and at least \$10,000,000 in the annual aggregate. Coverage to include: Definition of Railroad Accident to include Unintended Fire & Explosion; Limited Contamination & Pollution directly resulting from a Railroad Accident; Evacuation Expenses included, Fire Suppression Expenses include; Deletion of the Passenger Exclusion (if any); premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
 - (iii) Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
- (b) The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to Snohomish County. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of GNP to furnish the required insurance during the term of this Agreement.
- (c) Upon written request by Snohomish County, the insurer or his/her agent will furnish a copy of any policy cited above, certified to be a true and complete copy of the original
- (d) Prior to commencing operations, GNP shall provide Snohomish County with a Certificate of Insurance acceptable to the Snohomish County Risk Manager evidencing the required insurance. GNP shall provide Snohomish County with either: (1) a true copy of an endorsement naming Snohomish County, its officers, employees and agents as Additional Insureds on the Comprehensive Railroad Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and

services provided under this Agreement and that providing that such insurance shall apply as primary insurance on behalf of such Additional Insureds; or (2) a true copy of the blanket additional insured clause from the policies. Receipt by Snohomish County of any certificate showing less coverage than required is not a waiver of GNP's obligations to fulfill the requirements.

- (e) GNP certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. GNP shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. GNP shall provide Snohomish County with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any construction, maintenance, or operation begins.
- (f) In case of the breach of any provision of this section, Snohomish County may, at its option and with no obligation to do so, provide and maintain at the expense of GNP, such types of insurance in the name of GNP, and with such insurers, as Snohomish County may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to GNP under this Agreement or may demand GNP to promptly reimburse Snohomish County for such cost.

ARTICLE 7 COMPENSATION

7.1 Compensation

GNP will pay to Snohomish County monthly, as total compensation with respect to the right to operate over the Railway Track herein granted, compensation calculated at the rate of **Fifty cents (USD\$0.50)** in lawful currency of the United States, per car, per mile actually travelled in each direction. GNP will supply car counts to Snohomish County monthly. Payments shall be made for each calendar quarter by the thirtieth day of the month following the end of the calendar quarter.

7.2. Changes in Rates

The rates in Article 7.1 shall be subject to increase or decrease annually on the basis of the percentage increase or decrease in the generally accepted Industrial Products Prices Index (Industrial Products Prices Index, item D694118 - Railway Rolling Stock Industry, published by Statistics Canada, or US equivalent). The rates shall be adjusted commencing 1 January 2009, based on the increase or decrease in such index between the end of December 2007 and the end of December 2008, and thereafter as of 1 January in each year, based on the increase or

decrease in the index for the end of December of the year compared to the index for the end of December of the immediately preceding year.

ARTICLE 8 TERM

8.1 Term

The rights of operation of GNP over the Railway Track as set forth in this Agreement shall be for an initial term of thirty-one (31) years, commencing 1 January 2008 and ending 31 December 2039, and may be renewed for an option period of an additional thirty-one (31) years with the mutual agreement of GNP and Snohomish County.

8.2 Removal of Property

Notwithstanding any rule of law or equity, the motive power and rolling stock of the railway, railway track, works, and any buildings, including equipment, accessories and appurtenances purchased or developed by GNP shall at all times remain the property of GNP notwithstanding that the same may be annexed or affixed to the said lands and shall at any time and from time to time be removable in whole or in part by GNP; provided, however, that if the removal of such property is not commenced and diligently prosecuted by GNP within three years of the termination or expiration of this Agreement, GNP relinquishes, waives, and quit claims all right, interest and title to such property to Snohomish County.

ARTICLE 9 TERMINATION, REMEDIES, AND DISPUTE RESOLUTION

9.1 Defaults

The occurrence of any one or more of the following events with respect to either party shall constitute an event of default ("Event of Default") by said party (the "Defaulting Party"):

- (i) if the party becomes, or is declared by any competent authority to be, insolvent or admits in writing its inability to pay its debts as they fall due or applies for any bankruptcy proceedings; or
- (ii) if all or any material part of the assets, revenue or capital stock of the party have been or shall be attached, seized, arrested or distrained upon or shall become subject to any order of court or process for execution and such attachment, seizure, arrest, distraint or process remains in effect; or
- (iii) if any person shall:
 - (a) successfully petition or apply to a court, tribunal or other body or authority for the appointment of any

administrator, receiver, liquidator, curator, trustee or other similar officer of the party or for all or any material part of the assets of the party, or

(b) apply for any bankruptcy proceedings in respect of the party and in any such event such action, petition, application or proceedings are not discharged or dismissed; or

(iv) a material breach by a party that remains uncured for at least sixty days after notice.

9.2 Remedies

If an Event of Default shall occur, the non-Defaulting Party at any time during the continuation thereof, at its option, may:

(i) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Defaulting Party of the applicable covenants of this Agreement or to recover damages for the breach thereof, or

(ii) by notice in writing to the Defaulting Party and without limiting the non-Defaulting Party in the exercise of any right or remedy which the non-Defaulting Party may have by reason of such default, terminate this Agreement.

9.3 Without Default

(a) Either party may terminate this Agreement on the fifth anniversary of the date of the last to sign by giving written notice to the other party within thirty days before or after the fifth anniversary date if GNP is not then operating Commuter Rail service as described in Appendix B.

(b) Snohomish County may terminate this Agreement without fault or breach by GNP upon sixty days' written notice:

(i) If GNP does not diligently pursue the commencement of Commuter Rail service as described in Appendix B within two years of the anniversary date of this Agreement, subject to the receipt of requisite or necessary authorities; or

(ii) Upon payment of to GNP of

(a) the net salvage value of GNP's tangible physical assets used to provide rail service on the Joint Use Corridor, unless GNP continues to use such tangible physical assets for other operations not on the Joint Use Corridor owned by Snohomish County;

(b) any penalty which may be incurred by GNP for the early repayment of any financing related to the assets

of GNP used to provide rail service on the Joint Use Corridor that GNP is unable to use to provide rail service elsewhere than on the Joint Use Corridor owned by Snohomish County, and

- (c) An amount equal to five years of net profit allocable to GNP's operations over the Joint Rail Corridor owned by Snohomish County. Such net profit shall include only any net profit attributable and allocable to GNP's operations over property owned by Snohomish County and shall not include any net profit attributable and allocable to GNP's operations over property owned by others. Such net profit shall be based on GNP's actual profit for the preceding five years (or less during the first five years of this Agreement); or
- (iii) If Commuter Rail service ceases and does not restart within thirty days, or such other period as may be mutually agreed between the parties, unless such restart is delayed by an Act of God, in which case the thirty day period to restart shall be extended by such time as reasonably necessary to restore the damage to the Joint Use Corridor or GNP equipment caused by the Act of God; or
- (iv) If a governmental or quasi-governmental entity begins Commuter Rail service, Snohomish County may terminate this Agreement as regards GNP's Commuter Rail service, but not GNP's freight rail service or railway maintenance or operational control, in which case GNP shall be compensated as provided in paragraph 9.3(b)(ii), or
- (v) If GNP fails or refuses to cooperate with the reasonable requests of a governmental or quasi-governmental entity that desires to provide Commuter Rail service in Snohomish or King counties;
- (vi) If GNP fails or refuses to use diesel motor units for Commuter Rail service, rather than passenger cars and locomotives, when such units are economically feasible; or
- (vii) If GNP significantly reduces passenger rail service operations below the frequency and capacity described in Appendix B, except when service is reduced as a result of clear changes in demand for service.

9.4 Termination Upon Change of Control

- (a) If any person or entity different from the existing ownership of GNP, whether itself or in combination with others, acquires direct or indirect control of GNP, Snohomish County may terminate this

Agreement unless Snohomish County consents in writing to the change in control prior to its occurrence, which consent shall not be unreasonably withheld.

- (b) Refusal to grant its consent shall be deemed to be reasonable where the proposed controlling person(s) or entity(ies) are not satisfactory because of their financial standing, reputation, business experience, the type or quality of business it operates, or where any of the parties to this Agreement has reason to believe that the proposed assignee or transferee does not possess sufficient skills, expertise, or experience to offer, manage and operate railways or transportation oriented development.
- (c) When requesting a consent to a change of control, the party requesting the change of control shall advise the other party to this agreement in writing of the proposed transferee, and shall provide to such information as may be requested, including, without limitation, information concerning the principals of the proposed controlling ownership interest, and financial and business information concerning the proposed controlling ownership interest. The party requesting the change of control shall indicate the specific terms and conditions of the proposed change of control.
- (d) Snohomish County may condition its consent upon payment to the County of five percent (5%) of the economic value of the consideration paid by the proposed controlling ownership interest to acquire its controlling interest.

9.5 Disputes

- (a) Disputes shall be resolved by structured negotiation. If structured negotiation fails to resolve the dispute, the dispute may be resolved by a lawsuit in Snohomish County Superior Court under Washington law and procedure. Any time period stated herein may be modified by mutual agreement in writing of the parties. The dispute procedures are a condition precedent to the filing of any lawsuit.
- (b) Disputes shall be resolved at the lowest staff level possible. If a dispute is not resolved, either party may refer the dispute to senior management. Within ten (10) days after referral, each party shall designate one senior manager with authority to resolve the matter in dispute. Upon request, the parties' staff shall provide the senior management officials with one or more brief oral or written statement identifying:
 - (i) any material facts at issue (and agreed upon facts, if relevant);

- (ii) any specific provisions of the Agreement at issue;
- (iii) the basis for their positions and the consequences if their position is not accepted; and
- (iv) any alternatives they wish to recommend for consideration.

The senior management officials may jointly retain consulting engineers or other experts or facilitators to make recommendations to them.

- (e) If the senior management officials cannot reach agreement within twenty (20) days of receiving a referral, they may either initiate:
 - (i) a ten (10) day cooling off period; and/or
 - (ii) voluntary non-binding mediation by a mutually agreed-upon mediator.

The parties intend that any mediation process or any cooling off period followed by further negotiations be completed within fifty (50) days of senior management officials receiving the referral.

- (f) If the parties are still unable to resolve the dispute, either may sue in the Superior Court in Snohomish County under the laws of the state of Washington.

ARTICLE 10 GENERAL

10.1 Successors and Assigns

This Agreement shall not be assignable by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld), and this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns. Snohomish County may condition its consent upon payment to it of five percent of the economic value of the consideration paid for any assignment or transfer.

10.2 Counterparts

This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

10.3 Notices

Any notice or other writing required or permitted to be given hereunder shall effective either when delivered personally to the other party, the business day following the delivery by fax of such notice or writing, or three business days after being sent by prepaid registered mail:

(a) GNP Notice

In the case of a notice to GNP at:

GNP Rly Inc.
Attn: Thomas Payne, Chairman and C.O.O
c/o Montgomery Scarp MacDougall PLLC
Seattle Tower, 27th floor
1218 Third Avenue
Seattle, WA 98101
Ph: Thomas Payne: 253-459-9702
Tom Montgomery: 206-625-1801

(b) Snohomish County Notice

In the case of a notice to Snohomish County at:

County Executive
Snohomish County
3000 Rockefeller Ave.
Everett, WA 98201-4046

10.4 Interpretation

Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Each party acknowledges that the Agreement should not be strictly construed against one party or the other, but interpreted reasonably and fairly so as to give effect to the manifest intentions of the parties.

10.5 Modification

This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

10.6 Waiver

The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

10.7 Audits and Inspections

GNP shall retain and safeguard all records relating to its work for a period of six years. Such records shall include, but are not limited to, financial and operating records. At any time during normal business hours and as often as Snohomish County may deem necessary, GNP shall make available to Snohomish County (or the Washington State auditor) for Snohomish County's (or State Auditor's) examination all of GNP's records and documents with respect to all matters covered by this Agreement and, furthermore, GNP will permit Snohomish County to audit, examine and make copies, excerpts or transcripts from such records, and to make

audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

10.8 Compliance with Federal, State and Local Laws

GNP shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

10.9 Relationship of Parties

Snohomish County and GNP shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party.

10.10 No Third Party Rights

The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the parties hereto. None of the rights or obligations of the parties herein set forth is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or for the benefit of any third party. This Agreement does not create any legal duty by any of the parties, except such contractual duties between them as explicitly stated in the Agreement.

10.11 Time of Essence

Time shall be of the essence of this Agreement.

10.11 Further Instruments and Documents

The parties agree to execute such further instruments and documents, such as a lease, that may be reasonably necessary or required to effect the purposes of this Agreement.

ARTICLE 11 INTERPRETATION

11.1 Entire Agreement

This Agreement supersedes any and all oral or written agreements heretofore made relating to the subject matter hereof and constitutes the entire agreement of the parties relating to the subject matter hereof.

11.2 Severability

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

11.3 Headings

The Article and Paragraph headings contained in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope, meaning or intent of this Agreement or in any way affect the interpretation of this Agreement.

11.4 Gender and Number

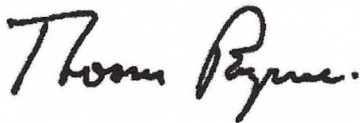
Words importing the singular shall include the plural and vice versa, words importing gender shall include all genders and words importing individuals shall include firms and corporations and vice versa.

11.5 Proper Law

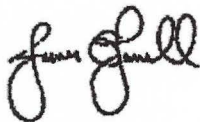
This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the laws of the United States applicable therein.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.

GNP Rly Inc

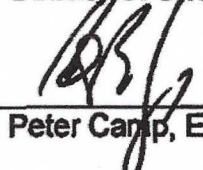


Thomas Payne
Chairman, C.O.O.

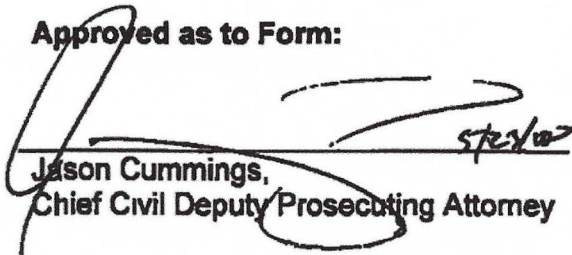


James O'Farrell,
President, C.E.O.

County of Snohomish


Peter Camp, Executive Director

Approved as to Form:


Jason Cummings,
Chief Civil Deputy Prosecuting Attorney

APPENDIX A—Joint Use Corridor Map



GNP/Snohomish County Running Rights and Railway Operations Agreement Appendix A

PREPARED BY SNOHOMISH COUNTY PUBLIC WORKS
SECTION 7, T. 28 N., R. 6 E., W.M.

ALL THAT PORTION OF
QUIT CLAIM DEED
AF# 8210200679, FROM
BNRR TO SNOHOMISH
COUNTY (SEE LEGAL
DESCRIPTION BELOW)
TRANSFERRED TO COUNTY
OCT. 20, 1992, LYING
NORTHEASTERLY OF THE
CENTERLINE OF PINE
AVENUE AND LYING
SOUTHWESTELY OF 8TH
STREET LYING EAST OF
MAPLE AVENUE, BEING
APPROXIMATELY 850' LONG
MORE OR LESS



Note: Right-of-Way shown is based on graphical
purposes only at this time. Thorough research
has not yet been conducted to verify the actual
location of this Right-of-Way.

Legal Description (portion contained within AF# 8210200679)

All that portion of said Railroad Company's 100.0 foot wide Branch Line right of way, being 50.0 feet wide on each side of said Railroad Company's Main Trunk centerline upon, over and across the SW $\frac{1}{4}$, SE $\frac{1}{4}$, and the NW $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ of said Section 7, and part of the N $\frac{1}{2}$, NW $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ of said Section 18, T28N, R6E; bounded on the Northernly side by the centerline of Oliver Street, according to the recorded plot of England & Elwell's Addition to the Town of Snohomish and bounded on the Southernly side by the centerline of Pine Street, according to the recorded plot of the Fairground Addition to the Town of Snohomish;

Printed May 21, 1998 - 2:00pm using P:\05-0000\log\05-0000-Corridor-Map-05-21-98.dwg Layout Name: 05-21-98.dwg

APPENDIX B Timetable

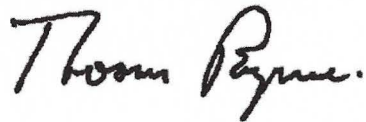
**GNP RAILWAY
DRAFT
TIME
TABLE**

**NUMBER
1**

**TO BE USED IN CONJUNCTION WITH SPECIAL INSTRUCTIONS IN EFFECT.
CURRENTLY IN EFFECT AS OF 0001, 15 MAY, 2008**

FOR THE GOVERNMENT OF EMPLOYEES ONLY. THIS TIMETABLE MAY BE CANCELLED, SUPERSEDED OR ANNULLED AT ANY TIME AT THE DISCRETION OF THE COMPANY. BE POSITIVE YOU HAVE THE CURRENT TIME TABLE AND LATEST SPECIAL INSTRUCTIONS. READ CAREFULLY THE SPECIAL INSTRUCTIONS AND CARRY A COPY FOR REFERENCE. CARRY A COPY OF THE OPERATING RULES.

ISSUED BY AUTHORITY OF:



DIRECTOR & CHIEF OPERATING OFFICER

WOODINVILLE SUBDIVISION

**Timetable for First Class Trains
(POST Rehabilitation)**

SOUTHBOUND –Read down

Station

NORTHBOUND – Read up

2	4	6	8	10	12			MP	1	3	5	7	9	11	
d0630	d0700	d0730	d0800	d0830	d0900		Snohomish	38.7	a1643	a1713	a1743	a1813	a1843	a1913	
a0641	a0711	a0741	a0811	a0841	a0911		Maltby	29.9	d1632	d1702	d1732	d1802	d1832	d1902	
d0644	d0714	d0744	d0814	d0844	d0914		5 5		a1629	a1659	a1729	a1759	a1829	a1859	
a0651	a0721	a0751	a0821	a0851	a0921		Woodinville	24.1	d1622	d1652	d1722	d1852	d1822	d1852	
d0654	d0724	d0754	d0824	d0954	d00924		7.1		a1619	a1649	a1719	a1749	a1819	a1849	
a0703	a0733	a0803	a0833	a0903	a0933		Kirkland	17.0	d1610	d1640	d1710	d1740	d1810	d1840	
d0706	d0736	d0806	d0836	d0906	d0936		4.4		a1607	a1637	a1707	a1737	a1807	a1837	
a0713	a0743	a0813	a0843	a0913	a0843		Bellevue	12.7	d1600	d1630	d1700	d1730	d1800	d1830	
							0 8								
							Wilburton	12.0							
							Scapa	4.3							
							Renton	3.0							
							Black River Jct.	0.0							

POST REHABILITATION

WOODINVILLE SUBDIVISION SPECIAL INSTRUCTIONS

1. Speed Regulations

Item 1(A) of the System Special Instructions applies

See Item 1 of the System Special Instructions for additional speed restrictions.

1(A) Maximum Speed Permitted	Passenger	Freight
MP	70	50

1(B) Speed – Permanent Restrictions
MP

Station	MP	Item	Speed	Degree	Minute
Snohomish	39.1	curve	30	6	40
		Curve, and			
		over bridge	30	3	30
Bromart	37.5	curve	70	2	
		curve	60	3	.03
		curve	40	6	
		curve	70	2	
		curve	30	7	
		curve	45	4	45
		bridge	70	1	
		curve	70	0	30
Cathcart	33.7	curve	60	3	
		curve	40	6	.06

		curve	45	4	45
		curve	50	4	10
		curve	45	4	.04
		curve	70	2	
		curve	55	3	46
		curve	60	3	10
		curve	45	5	.06
Maltby	30	curve	60	3	
		curve	45	5	12
		curve	60	3	
		curve	40	6	40
		curve	40	6	10
		curve	30	7	10
		curve	60	3	10
		curve	70	1	45
		curve	70	2	
		curve	50	4	.04
		curve	50	4	
		curve	30	10	30
		curve	40	6	32
		curve	30	8	28
		curve	30	6	48
		curve	40	6	.02
		curve	30	7	
		curve	70	2	
		curve	70	1	0.53
		curve	70	2	
		curve	70	2	.01
		curve	70	1	57
		curve	70	2	11
		curve	40	6	.06
Woodinville	24.3	curve	30	6	40
		curve	45	5	

Kirkland

17

curve	40	6	
curve	30	8	
curve	40	6	30
curve	45	5	
curve	40	5	30
curve	30	7	
curve	30	7	30
curve	45	4	8
curve	30	8	30
curve	50	4	
curve	45	4	18
curve	70	2	
curve	70	2	
curve	70	2	
curve	70	1	
curve	50	4	
curve	70	2	
curve	60	3	
curve	55	3	32
curve	55	3	30
curve	55	3	37
curve	70	2	
curve	50	3	38
curve	55	3	30
curve	55	3	21
curve	50	4	
curve	50	4	
curve	70	2	
curve	50	4	
curve	50	4	
curve	70	1	30
curve	50	4	
curve	60	3	

Bellevue	12.6	curve	70	2
		curve	60	3

Timetable for Freight Trains

SOUTHBOUND –Read down

Station

NORTHBOUND – Read up

<u>Length of Siding (Feet)</u>	<u>Station Nos.</u>		<u>MP</u>	<u>Notes</u>	<u>Distance from Snohomish Jct. W.</u>
		Snohomish	38.7	1.1 from Bromart	Not applicable
	02159	Snohomish Jct. W.	38.8	On lead; 1.2 mi.	
	65601	Bromart	37.6	Y	1.2
2,855	65608	Maltby	29.9		8.6
	65614	Woodinville	24.1	TUY	14.1
	65622	Kirkland	17.0		21.2
3,413	65626	Bellevue	12.7		25.6
	65627	Wilburton	12.0		26.4
	65634	Scopa	4.3		33.7
3,660	65637	Renton	3.0		35.8
	16004	Black River Jct.	0.0		38.8

**WOODINVILLE SUBDIVISION
SPECIAL INSTRUCTIONS**

Spur tracks, Junctions and Rly. crossings at grade

Spur Tracks:
Woodinville

Junctions:
Snohomish Jct W. 38.6
Black River Jct 0.0

Rly. Crossings at Grade: NIL

**WOODINVILLE SUBDIVISION
SPECIAL INSTRUCTIONS**

1. Speed Regulations

Item 1(A) of the System Special Instructions applies, except between MP 25.0 (Woodinville) and MP 37.0 (Bromart).

See Item 1 of the System Special Instructions for additional speed restrictions.

1(A) Maximum Speed Permitted	Passenger	Freight
MP		
MP 4.3 to 23.9	30	25
MP 23.9 to 37.0	25	25

1(B) Speed -- Permanent Restrictions		
MP		
0.0 to 1.2	10	10
2.2 to 4.3	10	10
4.3 to 7.4	25	10
7.4 to 7.5	10	10
7.5 to 8.9	25	25
11.5 to 11.7	10	10
11.7 to 12.9	25	25
14.3 to 17.7	25	25
18.8 to 19.7	25	25
19.7 to 19.8	10	10
19.8 to 22.4	25	25
23.7 to 25.2	10	10
37.0 to 37.6	10	10

1(C) Speed: Switches and turnouts	None
--	-------------

1(D) Speed -Other

On sidings	10	10
MP 19.7 to MP 19.8 over 124 th Street And 124 th Avenue crossings	10	10
ON bridge		
Bridge: 11.5Z cars greater than 134 tons	10	10
Bridge: 9.1 cars greater than 134 tons	10	10
Bridge: 11.5 cars greater than 134 tons	10	10
Bridge 23.9 cars greater than 134 tons	10	10
Bridge: 24.51 cars greater than 134 tons	10	10
Bridge: 34.3 cars greater than 134 tons	10	10
Bridge: 38 between Snohomish Jct. West\ And Snohomish:		
Six axle locomotives heavier than 175 tons	10	10
At Renton on Boeing Spur over Conlon Crossing (HER)	5	5

2. Bridge and Weight Restrictions
Maximum Gross Weight of Car

Snohomish Jct. West to Woodinville	143 tons, Restriction D.
Woodinville to Renton Jct.	134 tons, Restriction D.
Bromart to Snohomish	134 tons, Restriction D
Woodinville to Issaquah Line:	
Woodinville to MP 7.3X	134 tons, Restriction D

Bridge 38 between Bromart and Snohomish:\
Six axle derricks prohibited.

3. Type of Operation

TWC in effect:	Yes
MP 37.0 to 4 3	
MP 0.1X to MP 7.3X	
(Except in yard limits)	

4. G.C.O.R. Items:

Rule 6.19

When flagging is required	1 mile
Rule 6.28	

Rule 6.28 is in effect from Snohomish Jct. to Bromart (MP 1.2 to 37.0) and from Scopra to Renton Jct. (mp 4.3 to 9.5Z)

5. Trackside failed equipment (FED)

A. Protecting bridges, tunnels, and structures:	None
B. Other locations:	None

6. FRA Excepted Track

Yes

Black River Passing track	(4302)
Ealington Park	

Bellevue yard, excluding tracks 5098 and 5097
Woodinville to Redmond MP 1.8X to MP7.3

7. Special Conditions

Bellevue:

Do not leave cars between main track and gate at Safeway spur account descending track.

No switching is permitted on or access to NE 8th between the hours of 0700 to 0900 and 1600 to 1800 except on Sundays and legal holidays.

No side clearance to doors 1 and 2 at Safeway warehouse.

Wilburton Bridge

Walkway out of service MP 11.57 to 11.7

Renton

The use of fusees within the fenced limits of the Renton Boeing plant is prohibited.

Train Inspections

A member of the inbound crew on a through train operating cabooseless will give the outbound train a roll-by inspection and advise the outbound crew of the condition of the train, unless the outbound crew will not be immediately available or the inbound crew is relieved of duty.

Close clearance –

May exist on all, auxiliary tracks

Flash Flood Warnings

Refer to Item 33, System Special Instructions. The following locations have been identified as "critical areas" and are limited to restricted speed.

MP

2.0 to 2.2

21.0 to 23.5

32.0 to 38.2

MP 9.0X to 9.6X

Test Mile Locations

MP

6.0 to 7.0

Derails

The two derails between Airport Road crossing and Snohomish Jct West may be left in the off position unless protecting cars, engines or equipment.

Highway Grade Crossing Warning Devices

Each train must stop before entering the following crossings and permit a crewmember to dismount to flag highway traffic to a stop. The flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

MP 13.1 – Bellevue 128th Street

MP 0.1X to MP 7.0 X – All crossings with automatic warning systems.

Locations Approved for Active Drop Movements:

Rabanco – Renton Jct.

Dunn Lumber – Renton

Boeing – Boeing Siding

Locations Approved for Gravity Drop Movements

K&M meats – Renton
Air Products – Renton
Safeway – Renton
Western Craft – Bellevue
GTS/Coors – Kirkland
Boise Cascade – Mallby

STOP Signs

Stop signs protecting railroad crossing at Woodinville on the Woodinville to Redmond

Bicycle Path

Pedestrians, cyclists, skaters and skateboarders may be found at any time upon the pathways adjacent to the railway.

Upon observation of a trail user approaching the train, engine crews shall sound the bell, and whistle (if required), to ensure warning the trail user of the approach of the train.

Locations Not Shown as Stations

Name	Mile - Location	Car Capacity	Switch Opens
02158 Snohomish on Spur	1 1 from Bromart	45	Both
Spectrum Glass Spur	2 0 North of Woodinville	8	North
65805 Douglas Palmer on spur	5 3 North of Woodinville	14	North
65807 Redmond on spur	6.5 North of Woodinville	10	Both

EMERGENCY NUMBERS

Location

WASHINGTON

Washington State Patrol

Maple Valley Sheriff

Newcastle -Bellevue

Fire

425-452-6892

Police

800-283-7804

206 296 3883

425-649-4444

Woodinville Subdivision

Snohomish County

Maltby

Woodinville

Redmond

Kirkland

Bellevue

Renton

425-388-3557

425-388-3557

425-483-2131

425-388-3557

425-558-2200

425-452-6892

425-255-0931

206-296-3883

800-344-4080

206-296-3311

425-556-2500

425-587-3400

425-452-6917

425-430-7500

30-Day Notice of Termination of
Running Rights Agreement
(February 28, 2019 Letter)

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

28 Feb. 2019

By Prepaid Registered Mail

Eastside Community Rail

Att: Douglas Engle

4117 S Lamonte St.

Spokane, WA 99203

Mr. Kevin Kucera

General Manager

GNP Rly Inc.

14850 Lake Hills Blvd, Suite B2

Bellevue, WA 98007

Re: Thirty Day Notice of Termination and Termination

Gentlemen:

This letter and notice are on behalf of Snohomish County. GNP Rly Inc. ("GNP") entered into a Running Rights and Railway Operations Agreement dated May 23, 2008 ("Agreement"), with Snohomish County. On the basis that Agreement, GNP obtained a modified rail certificate, STB F.D. 35151, served August 13, 2008, for operation over property owned by Snohomish County between MP 39.1 and MP 39.3 in Snohomish City. Snohomish County intends to seek STB termination of the modified rail certificate. Assuming arguendo that Eastside Community Rail (ECR) and/or GNP and/or any assigns of either ECR or GNP claim rights to provide

rail service of any sort pursuant to the modified rail certificate issued in F.D. 35151, Snohomish County -- without admission that ECR, GNP or their assigns (if any), have any rights under the Agreement or otherwise -- states as follows:

The referenced Agreement authorizes Snohomish County to terminate the Agreement on a variety of grounds. GNP and its successors have more than fulfilled several grounds for termination. Snohomish County will focus on one here: the Agreement states as grounds for termination a failure by GNP or its successors to provide commuter rail service as described in Appendix B (of the Agreement) within five years of the anniversary of the signing (May 23, 2008) of the Agreement. See Agreement para. 9.3(a). GNP and its successors have never provided any rail service on the property, much less commuter rail service consistent with Appendix B of the Agreement. This letter is to notify all parties claiming or possibly claiming to have any rights under the Agreement that Snohomish County hereby provides 30-day notice of termination of the Agreement per paragraph 9.3(a). The Agreement shall be terminated, and deemed terminated without further notice, 30 days after this notification becomes effective. Pursuant to paragraph 10.3, this notice shall be effective three days after being sent by pre-paid registered mail. Snohomish County intends to seek termination of the modified rail certificate upon the effectiveness of this termination.

In addition, Snohomish County notes that BNSF obtained an abandonment authorization for MP 38.01 to MP 39.0 in STB docket AB 6-422X. Subsequent to execution of the Agreement, BNSF consummated abandonment on MP 38.25 to MP 39.0, effectively severing MP 39.1 to MP 39.3 from the interstate rail

network. Snohomish County accordingly reserves the right to seek termination of the modified rail certificate on, inter alia, the additional ground that STB no longer has authority over the segment in question due to severance.

To reiterate, please take note of this 30-day termination notice, and in addition, the notification herein that Snohomish County intends to seek termination of the modified rail certificate in STB F.D. 35151 upon conclusion of the notice period. The County requests your cooperation in these matters.

The undersigned certifies service of this letter and notice on all recipients (other than representatives of the government of Snohomish County) by pre-paid registered mail or equivalent U.S. Postal Service mail service on February 28, 2019.

Very truly,



Charles H. Montange

Counsel for Snohomish County

cc. John Sullivan, Esq.
Lyons Sullivan
10655 NE 4th St., Suite 704
Bellevue, WA 98001 (counsel for Payne estate)

Ballard Terminal Railroad Company
Att: Joshua Brower, Esq.
Brower Law Ps
506 2nd Ave., Suite 1400
Seattle, WA 98104

Sean Reay, Esq.
Deputy Pros. Attorney, Snohomish County (by email)

Termination of Running Rights Agreement
(April 1, 2019 Letter)

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

1 April 2019

By Prepaid Registered Mail

Eastside Community Rail
Att: Douglas Engle
4117 S Lamonte St.
Spokane, WA 99203

Mr. Kevin Kucera
General Manager
GNP Rly Inc.
14850 Lake Hills Blvd, Suite B2
Bellevue, WA 98007

Re: Thirty Day Notice of Termination and Termination

Gentlemen:

This letter and notice are on behalf of Snohomish County. GNP Rly Inc. ("GNP") entered into a Running Rights and Railway Operations Agreement dated May 23, 2008 ("Agreement"), with Snohomish County. On the basis of that Agreement, GNP obtained a modified rail certificate, STB F.D. 35151, served August 13, 2008, for operation over property owned by Snohomish County between MP 39.1 and MP 39.3 in Snohomish City. Snohomish County intends to seek STB termination of the modified rail certificate. Assuming arguendo that Eastside Community Rail (ECR) and/or GNP and/or any assigns of either ECR or GNP claim rights to provide

rail service of any sort pursuant to the modified rail certificate issued in F.D. 35151, Snohomish County -- without admission that ECR, GNP, or their assigns (if any), have any rights under the Agreement or otherwise -- states as follows:

Without admission, Snohomish County caused to be served on both addressees herein, and on the Estate of Thomas Payne and BTRC by their counsel, a 30-day notice of termination on February 28, 2019, as provided in the applicable 2008 Agreement underlying the modified PCN for MP 39.1 to 39.3 in STB F.D. 35151.

Pursuant to that Notice, Snohomish County hereby terminates the referenced 2008 Agreement for failure of GNP Rly or any successor or assign (let alone lawful successor or assign) inter alia to operate commuter rail service as provided in Appendix B to the 2008 Agreement within five years of the 2008 Agreement. See Agreement, Para 9.3(a). In addition, Snohomish County continues to observe that BNSF obtained an abandonment authorization for MP 38.01 to MP 39.0 in STB docket AB 6-422X. Subsequent to execution of the Agreement, BNSF consummated abandonment on MP 38.25 to MP 39.0, effectively severing MP 39.1 to MP 39.3 from the interstate rail network by letter filed with STB on July 21, 2008.

On March 29, 2019, the undersigned received from Snohomish County a copy of a letter written by Douglas Engle purporting to address the 30-day notice of termination ("March 29 Engle"). March 29 Engle purports to oppose the notice of termination on spurious grounds. The opposition is based on intentionally or recklessly false statements. Engle is hereby warned that if he continues to pursue objections so based, he is rendering himself liable for damages

for torts in the nature, inter alia, of clouding title and interfering with contract.

March 29 Engle states that GNP and Thomas Payne's Estate "have no standing in this matter." Assuming this true arguendo, it does not avail Mr. Engle or Eastside Community Rail ("ECR"). ECR never filed a notice of exemption to acquire and to operate MP 39.1 to MP 39.3 (the modified PCN property at issue, which is located between 7th and 10th Streets in Snohomish City), nor did ECR elsewhere receive authority of any sort from STB for such operations, nor did Snohomish County ever agree to assignment of any existing rights to ECR operating on the County-owned premises under the Running Rights Agreement, nor did Snohomish County elsewhere contract directly with ECR. Finally, since the segment in question is severed, STB would have lacked jurisdiction to issue a modified PCN to ECR for the segment in the first instance. In short, for a host of reasons, ECR clearly "lacks standing" in this matter.

March 29 Engle appears to claim that the Operating and Maintenance Agreement executed on or about December 19, 2009 ("OMA") between Port and GNP applies and requires arbitration. This claim is intentionally or recklessly false. The OMA clearly does not apply. The Port never owned MP 39.1 to MP 39.3 and could not (and did not) purport to enter into an agreement with GNP concerning that property. In addition, there is no provision in the Running Rights Agreement or any other agreement relating to MP 39.1 to MP 39.3 that provides for arbitration.

March 29 Engle asserts that MP 38.01 to 39.3 "has been consistently used for tail-end operations and car storage for both BNSF and ECR for over 10-years with no

issue." This is also an intentionally or recklessly false statement. There has been no operational track on MP 39.1 to 39.3 (part of the Centennial Trail) for over ten years, and for roughly as long as to MP 38.25 to MP 39.1.¹ Moreover, M.P. 38.25 to MP 39.1 and M.P. 39.1 to M.P. 39.3 can only be accessed via the rail bridge from M.P. 38.01 to M.P. 38.25. But there has been no operation over that bridge since before the filing of AB 6-422X, and this in part is because the bridge is unsafe for any use, rail or otherwise, without relatively massive rehabilitation or replacement. Contrary to the pure fabrication in March 29 Engle, neither BTRC nor BNSF nor any other rail carrier have used any portion of MP 38.25 to MP 39.3 at any time or for any purpose since well before the modified PCN for MP 39.1 to MP 39.3 was issued in 2008. Indeed, BTRC has never had rights to operate over such trackage, nor legal authority to so operate, and pursuant to BNSF's notice of exemption in AB 6-422X filed June 15, 2004, still accessible in the STB e-library, BNSF certified it had not used the property since June 15, 2002 if not before.

March 29 Engle states that "Port and BNSF never intended to sever the link to the Snohomish River Bridge, which ECR also has rights to." This statement is either irrelevant or intentionally or recklessly false. The March 29 Engle statement is irrelevant if Engle means a link from the bridge to the freight rail corridor from point of intersection with the BNSF mainline south to Woodinville. No one can claim there

¹ Indeed, the original application for a modified PCN in F.D. 35151 (available for public review in the STB e-library) states that BNSF abandoned this line in 1986 and that Snohomish County purchased it in 1992. This property has apparently not seen rail service for over 30 years.

is any severance of that link by reason of termination of the Running Rights Agreement or the appurtenant modified PCN. The March 29 Engle statement is intentionally or recklessly false if Engle is asserting that the Port and BNSF never intended a severance from MP 39.1 to the bridge. BNSF consummated abandonment on MP 38.25 to MP 39.1 per the attached document available to the public in STB's e-library by following this link:

[https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b85256eb4006a2c22/\\$FILE/211348.pdf](https://www.stb.gov/Filings/all_2000s.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/85257ca7006c955b85256eb4006a2c22/$FILE/211348.pdf). It is no longer under the jurisdiction of STB. Moreover, the County has found no recorded instrument conveying the property to the Port; to the contrary, the property in question is largely in City street right of way and, as shown in Google maps satellite views of the City of Snohomish, has been converted into an extension of the Centennial Trail, with all the track removed from 3rd to 7th Streets, and the remainder fragmented. The only deeds thus far found by the County relating to the former rail line north of MP 38.25 and south of MP 39.1 are post-abandonment conveyances of parcels to the City of Snohomish or to private individuals.

March 29 Engle states that there is no Appendix B nor Section 9.3(a) in the OMA. That is correct, but totally irrelevant, except to demonstrate that Mr. Engle is intentionally or recklessly misleading in his arguments. The 30-day notice of intent, and this notice of termination, do not apply to any property covered by the OMA. What the OMA contains or does not contain is thus irrelevant.

Mr. Engle is hereby requested and warned to cease making intentional, willfully blind, or reckless misrepresentations.

Snohomish County hereby demands that any railroad claiming rights under the terminated 2008 Agreement file with STB a notice of termination of the modified PCN granted in docket F.D. 35151 no later than April 12, 2019. If no notice is filed on or before that date, Snohomish County intends to file a notice for termination and/or to vacate for lack of jurisdiction, and reserves the right to take other measures as appropriate to protect its interests.

The undersigned certifies service of this letter and notice on all recipients (other than representatives of the government of Snohomish County) by pre-paid registered mail or equivalent U.S. Postal Service mail service on April 1, 2019.

Very truly,



Charles H. Montange
Counsel for Snohomish County

Copies (w/att) to:
John Sullivan, Esq.
Lyons Sullivan
10655 NE 4th St., Suite 704
Bellevue, WA 98001 (counsel for Payne estate)

Ballard Terminal Railroad Company
Att: Joshua Brower, Esq.
Brower Law Ps
506 2nd Ave., Suite 1400
Seattle, WA 98104

Sean Reay, Esq.
Deputy Pros. Attorney, Snohomish County (by email)

Deed

GNP (per Douglas Engle) to Earl Engle and Joanne Engle
(all of GNP's rights to Woodinville freight easement)

Recorded 1/25/201

After Recording Return To:

Joanne M Engle
240 Lombard St
Suite 936
San Francisco, CA 94111

Earl L Engle
4117 South Lamonte
Spokane, WA 99203



201101250441 13 PGS
01/25/2011 1:38pm \$74.00
SNOHOMISH COUNTY, WASHINGTON

10.00

425793

No. 5989658 1/25/2011 1:36 PM
Thank you for your payment.
PMT

QUIT CLAIM DEED
Woodinville Freight Easement

Grantor GNP Rly, Inc

Grantee: Earl L. Engle & Joanne M. Engle

Land Description See Exhibit A attached hereto and incorporated herein (the "Property", AKA "Woodinville Freight Easement").

PTN OF SEC 18, T2N 28, R2E, S4, ADDITIONAL LEGALS PG 5

TAX ID 000000000000100

WHEREAS, GNP Rly Inc. ("GNP") has conveyed to Earl L. Engle (53.9%) and Joanne M Engle (46.1%) ("Engle's") the Property pursuant a Settlement Agreement with each party, and

WHEREAS, GNP has entered into a Lease Agreement with Engle's for the Woodinville Freight Easement.

NOW, THEREFORE, GNP for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Engle's all of GNP's rights, title and interest in and to the Woodinville Freight Easement, together with all after acquired title of GNP therein

GNP and Engle's are parties to certain confidential business loan Agreements, a Settlement Agreement, and Lease Agreement concerning the sale of all rights to the Property for themselves and their respective successors

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the 24th day of January 2011.

Approved by:

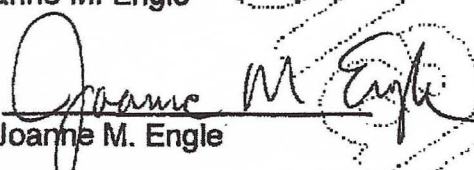
Earl L. Engle

By:


Earl L. Engle

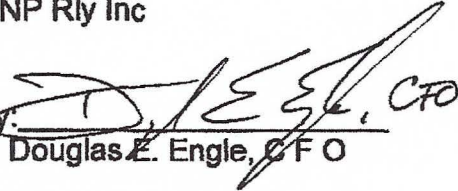
Joanne M. Engle

By:


Joanne M. Engle

GNP Rly Inc

By:


Douglas E. Engle, CFO

STATE OF WASHINGTON

COUNTY OF Spokane

I certify that I know or have satisfactory evidence that Earl L. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1/24/11

NOTARY PUBLIC Patricia J. Morford

Print Name: Patricia J. Morford

My commission expires: 5/15/14

PATRICIA J MORFORD
Notary Public
State of Washington
My Commission Expires
May 15, 2014

STATE OF WASHINGTON

COUNTY OF King

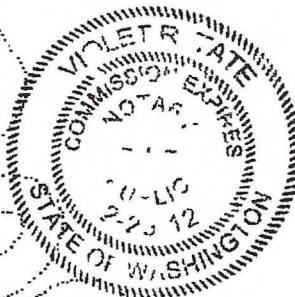
I certify that I know or have satisfactory evidence that Joanne M. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED 1-24-2011

NOTARY PUBLIC Violet R. Tate

Print Name: Violet R. Tate

My commission expires: 2-29-12



STATE OF WASHINGTON

COUNTY OF King

I certify that I know or have satisfactory evidence that Douglas E. Engle is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Chief Financial Officer and Treasurer of GNP Rly Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1-24-2011

NOTARY PUBLIC Andrew Jordan Amoranto

Print Name: Andrew Jordan Amoranto

My commission expires: 5-5-2014



After Recording Return To:

James Greenfield
Davis Wright Tremaine LLP
1201 Third Avenue,
Suite 2200
Seattle, WA 98101

EXHIBIT

PNW/T 10-20611-9

QUIT CLAIM DEED
Woodinville Freight Easement

Grantor BNSF RAILWAY COMPANY ("BNSF")

Grantee GNP Rly Inc ("TPO")

Legal Description: See Exhibit A attached hereto and incorporated herein (the "Property")

POT 10, 245 E.W.M., POT - 9-2015

WHEREAS, BNSF has conveyed to the Port of Seattle (the "Port") the Property pursuant to that certain Quit Claim Deed dated as of the date hereof and recorded in the real estate records of King County, Washington as instrument number 20091216001536 and in the real estate records of Snohomish County, Washington as instrument number 20091221; and

WHEREAS, BNSF reserved in said deed an exclusive easement for freight rail purposes over the Property (the "Reserved Freight Easement")

NOW, THEREFORE, BNSF, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to TPO all of BNSF's right, title and interest in and to the Reserved Freight Easement, together with all after acquired title of BNSF therein.

TPO and BNSF are parties to that certain Freight Easement Sale Agreement dated as of December 18, 2009 concerning the sale of the Reserved Freight Easement in and to the Property. TPO and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement attached hereto as Exhibit B, are incorporated herein by reference and shall be covenants running with the land that are enforceable by TPO, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF and TPO have executed this Deed as of the 18 day of December, 2009.

BNSF RAILWAY COMPANY

Said document(s) were filed for record by Pacific NW Title as accommodation only. It has not been examined as to proper execution or as to its effect upon title.

By [Signature]
Its: Senior General Attorney

GNP Rly Inc

By [Signature]
Its: Chairman, E.O.O.
Theresa Payne

226605

1,888.00

No. 5146007 8/31/2009 2:45 PM
Thank you for your payment.
SHELLEY

After Recording Return To:
James Greenfield
Davis Wright Tremaine LLP
1201 Third Avenue
Suite 2200
Seattle, WA 98101

200912210439 — CONFORMED COPY 13 PGS
12/21/2009 2:41pm \$74.00
SNOHOMISH COUNTY, WASHINGTON

COPY

Quit Claim Deed
Woodinville Freight Easement

PNWT 15-20611-9

Grantor BNSF Railway Company

Grantee: GNP Rly Inc

Abbreviated Legal:

000000000000100 10P

SW1/4 18-28-6
Lot 4 and 5 Block 2 Snohomish City Eastern Part Vol 1 page 7
Govt Lots 1 and 2, and the NW 1/4 of 19-28-6
NE and SE 24-28-5
NE 25-28-5
Govt 1,2,3,5, and 6 of 30-28-6
Govt 3,4,8 and SW1/4 and NW1/4 31-28-6
Pnt Lot 139 Cathcart 9X39
Gvt 4,5,6,7 of 6-27-6
Gvt 1,2,3,4, and the SW 1/4 of 7-27-6
Gvt 2,3,4 and NW 1/4 of 18-27-6
Gvt 1,2 of 19-27-6
NE of 12-27-5
NE, SW, SE of 24-27-5
Gvt 4 of 31-27-5
NW, SW of 25-27-5
NE, NW, SW of 26-27-5
NW of 35-27-5
NE, SE, SW of 34-27-5
In Snohomish County

Document

STATE OF Washington

COUNTY OF King

) ss

I certify that I know or have satisfactory evidence that Richard E. Weicher is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Vice President & General Counsel - Regulatory of BNSF Railway Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

David T. Rankin

Senior General Attorney

Dated 12-18-2009

STEPHANI A. OWENS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
APRIL 29, 2013

Stephani A. Owens
Notary Public

Print Name Stephani A. Owens

My commission expires 4-29-2013

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON

COUNTY OF King

) ss

I certify that I know or have satisfactory evidence that Thomas Payne is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Chairman O.O.O. of GNP Rly. Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

Dated 12-18-09

STEPHANI A. OWENS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
APRIL 29, 2013

Stephani A. Owens
Notary Public

Print Name Stephani A. Owens

My commission expires 4-29-2013

(Use this space for notarial stamp/seal)

EXHIBIT A

Legal Description of the Property

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Snohomish (MP 38 25) to Woodinville (MP 23 8), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across Snohomish County and King County, Washington, more particularly described as follows, to-wit:

SNOHOMISH COUNTY

That portion of that certain 600 foot wide Branch Line right of way being 300 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across State Street, as said street is shown on plat of Snohomish City Eastern Part, recorded as Instrument No 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington Auditor, lying southerly of the Easterly prolongation of the centerline of vacated Commercial Street, as said Commercial Street is shown on said plat, also

That portion of the Southerly half of vacated Commercial Street as said street is shown on the plat of Snohomish City Eastern Part, recorded as Instrument No 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington, vacated by ordinance No 354 of the City of Snohomish, State of Washington, passed May 16, 1911, described as follows:

Beginning at the northeast corner of Lot 5, Block 2 of said plat of Snohomish City Eastern Part, thence Westerly, along the northerly line of said Lot 5, a distance of 20 feet, more or less, to a point 50 feet distant westerly, when measured at right angles from the centerline of State Street, as said State Street is shown on said plat, thence Northerly, along a line 50 feet westerly from the center line of said State Street, 30 feet, more or less to the centerline of said Commercial Street; thence Easterly, along said centerline of Commercial Street, 20 feet, more or less to the northerly prolongation of the east line of said Lot 5, thence Southerly, along said northerly prolongation, 30 feet, more or less, to Point of Beginning, also,

Lots 4 and 5, of Block 2 as shown on plat of Snohomish City Eastern Part, recorded as Instrument No 187204125001 in Book 1, Page 7, records of the Snohomish County, Washington; also,

That portion of that certain 500 foot wide Branch Line right of way being 250 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4, Section 18, Township 28 North, Range 6 East, W M, bounded Northeasterly by the Southwesterly Bank of the Snohomish River, an bounded Southwesterly by a line parallel with and distant 500 feet Northeasterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed, together with all right, title and interest if any, to accommodate said railway company's facilities and operations over and across the Snohomish River; also

That portion of that certain 500 foot wide Branch Line right of way being 250 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4, Section 18, Township 28 North, Range 6 East, W M, bounded Northeasterly by a line parallel with and distant 1500 feet Southwesterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and

constructed, and bounded Southerly by the Southerly line of said Government Lot 4, also

A triangular shaped tract of land being that portion of Government Lot 4, Section 18, Township 28 North, Range 6 East, W M, bounded Northeasterly by a line parallel with and distant 150 0 feet Southwesterly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed, bounded Northwesterly by a line parallel with and distant 25 feet Easterly from, measured at right angles to said Railway Company's Branch Line right of way Main Track centerline as originally located and constructed and bounded Southerly by the Southerly line of said Government Lot 4, also

That certain 0 11 acre strip of land described in deed dated September 9, 1903 from J H Shadinger and Hattie E. Shadinger to Northern Pacific Railway Company recorded September 19 in Book 80, Page 296, records of Snohomish County, Washington, said 0 11 acre strip of land being described in said deed for reference as follows:

"A strip of land eighty (80) feet in width across that certain thirty-three (33) foot strip of land in Lot four (4), Section eighteen (18), Township twenty-eight (28) north, Range six (6) east, W M, which lies immediately south of, parallel with and contiguous to the right of way of the Great Northern Railway Company across said subdivision, said eighty (80) foot strip of land having for its east and west boundaries two lines that are parallel with and respectively distant twenty-six (26) feet on the northeasterly side and fifty-four (54) feet on the southwesterly side of the center line of the proposed track which is to connect the Great Northern Railway with the Northern Pacific Railway as the same is located, staked and constructed over and across said subdivision, containing 0 11 acres, more or less", also,

That certain 1 94 acre strip of land described in deed dated September 9, 1903 from Kate G. Ford, D A Ford, Ruth S Ford and D A Ford as sole executor to Northern Pacific Railway Company recorded September 19 in Book 80, Page 298, records of Snohomish County, Washington, said 1 94 acre strip of land being described in said deed for reference as follows:

"All that portion of Lot four (4), Section eighteen (18) and of Lot one (1) (or the northwest quarter of the northwest quarter) of Section nineteen (19), Township twenty-eight (28) north, Range six (6) east, W M, lying westerly of the Northern Pacific Railway Company's right of way and southerly of a line drawn parallel with and thirty-three (33) feet distant southerly from the south line of the Great Northern Railway Company's right of way and between lines drawn parallel with and respectively distant twenty-six (26) feet easterly from and fifty-four (54) feet westerly from the center line of the proposed track which is to connect the Northern Pacific Railway with the Great Northern Railway as the same is now located, staked out and to be constructed over and across said premises, said strip of land containing 1 94 acres, more or less", also;

That certain 08 acre strip of land described in deed dated April 25, 1908 from Robert Henry and Margaret R Henry to Northern Pacific Railway Company recorded June 1, 1908 in Book 110 of Deeds, Page 509, records of the County Auditor, Snohomish County, Washington, said 08 acre strip of land being described in said deed for reference as follows:

"A strip of land thirty (30) feet wide described as follows: Beginning at a point on the section line between Sections 18 and 19, Township 28 North, Range 6 East, Willamette Meridian, fifty-five (55) feet distant measured at right angles from the center line of the main track of the said Railway Company as the same is now located, constructed, maintained and operated through said sections; thence northeasterly on a line parallel with and fifty-five (55) feet distant from said center line one hundred ten (110) feet, more or less, to the south line of the Tacoma Power Company's right of way, thence southeasterly along the south line of said Tacoma Power Company's right of way thirty (30) feet to the westerly line of the

present right of way of said Northern Pacific Railway Company, which line at that point is twenty-five (25) feet from the center line of the main track of said Railway Company, thence southwesterly along said westerly line of the right of way one hundred ten (110) feet, more or less, to the point where said right of way widens to fifty (50) feet on each side of said center line, thence westerly twenty-five (25) feet to point of intersection with the above described section line, thence west along said section line five (5) feet, more or less, to place of beginning, said strip being situated in Lot four (4) Section eighteen (18) and Lot one (1) Section nineteen (19) all in Township twenty-eight (28) North, Range six (6) East, Willamette Meridian and containing eight hundredths (08) of an acre, more or less"; also,

That portion of said Railway Company's property in Government Lot 4, Section 18, Township 28 North, Range 6 East, W.M., Snohomish County, Washington, bounded Northeasterly and Southwesterly by two lines drawn parallel with and distant Southwesterly 1500 feet and 1830 feet, respectively, from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline as originally located and constructed and bounded Southeasterly and Northwesterly by two lines drawn parallel with and distant Northwesterly 250 feet and 500 feet, respectively, from, measured at right angles to said Railway Company's Branch Line Main Track centerline as now located and constructed, also,

That portion of that certain 1000 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 500 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Lots 1 and 2, Section 19, Township 28 North, Range 6 East, W.M., Snohomish County, Washington, bounded Northerly by the North line of said Section 19, and bounded Westerly by the West line of said Section 19, also,

That portion of said Railway Company's property in Lots 1 and 2, Section 19, Township 28 North, Range 6 East, W.M., Snohomish County, Washington, bounded as follows. Westerly by a line parallel with and distant 500 feet Easterly from, measured at right angles to said Railway Company's Branch Line Main Track centerline as now located and constructed; Northerly by the North line of said Section 19 and Easterly by the following described line.

Beginning at a point on a line parallel with and distant 500 feet Southerly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline, as originally located and constructed, opposite Station 512+68.45, said point of beginning being the point of a curve to the left having a radius of 621.20 feet; thence westerly, along the arc of said curve to the left and consuming a central angle of $90^{\circ}57'06''$, an arc distance of 986.10 feet to the point of tangency of said curve, said point of tangency being 125 feet easterly, when measured at right angles from Station 1963+97.51 on said Railway Company's Branch Line Main Track centerline; thence southerly, along a line drawn parallel and/or concentric with and 125 feet easterly, when measured at right angles and/or radially, from said Branch Line Main Track centerline, to a point opposite Station 1956+00 on said Railway Company's Branch Line Main Track centerline, thence westerly, along a line drawn radially with the centerline of said Railway Company's Branch Line Main Track centerline, a distance of 25 feet, thence southerly, along a line drawn concentric with and 100 feet easterly, when measured radially, from the centerline of said Railway Company's Branch Line Main Track centerline, to a point opposite Station 1953+00 on the centerline of said Railway Company's Branch Line Main Track centerline; thence westerly along a line drawn radially with the centerline of said Railway Company's Branch Line Main Track centerline, a distance of 25 feet, thence southerly, along a line drawn concentric with and 75 feet easterly, when measured radially from said Railway Company's Branch Line Main Track centerline to the west line of said Section 19, also being the terminus of the herein described line.

EXCEPTING THEREFROM, a strip of land 30 feet wide, the center line of which is 435 feet north, from and parallel with the East and West centerline of said Section 19, extending from the west line of

U
said Section 19 to the East boundary of said hereinabove described tract, **ALSO EXCEPTING THEREFROM**, that portion of said hereinabove described tract lying northerly of a line parallel with and distant 1500 feet Southerly from, measured at right angles to said Railway Company's (formerly Great Northern Railway Company) Everett to Spokane Main Track centerline, as originally located and constructed, also,

That portion of that certain 1000 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 500 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E $\frac{1}{2}$ E $\frac{1}{2}$ Section 24, the E $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, all in Township 28 North, Range 5 East, W M, bounded Northerly by the East line of said E $\frac{1}{2}$ E $\frac{1}{2}$ Section 24, and bounded Southerly by the East line of said E $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25; also,

That portion of that certain 1000 foot wide Branch Line right of way, being 500 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lots 1, 2, 3, 5, 6, of Section 30, Township 28 North, Range 6 East, W M, bounded Westerly by the West lines of said Lots 1 and 2 and bounded Southerly by the South line of said Lot 5; also,

That portion of that certain 1700 foot wide Branch Line right of way, being 600 feet Westerly and 500 feet Easterly of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 8 of Section 31, Township 28 North, Range 6 East, W M, bounded Northerly and Southerly by the North and South lines of said Lot 8, also,

That portion of that certain 2000 foot wide Branch Line right of way, being 1000 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 3, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 28 North, Range 6 East, W M, bounded Northerly by the North line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31, and bounded Southerly by the South line of said Government Lot 3 and its easterly prolongation; also,

That certain 20 acre tract of land described in deed dated April 13, 1918 from John S Eby to the Northern Pacific Railway Company, recorded April 20, 1918 in Volume 180 of Deeds, Page 451, records of Snohomish County, Washington, said tract being described in said deed for reference as follows

"That property of the grantor (being the north nine hundred forty-five and five tenths (945.5) feet, more or less, of the south eleven hundred forty-three and five tenths (1143.5) feet of the north-half of the southwest quarter (N $\frac{1}{2}$ of SW $\frac{1}{4}$) of section thirty-one (31) in Township twenty-eight (28) north of range six (6) east of the Willamette Meridian, west of the present right of way of said Railway Company lying between lines parallel with and distant respectively one hundred (100) and one hundred fifty (150) feet westerly from the center line of the present main track of said Railway Company, as the same is now constructed and operated over and across said section, also that portion of said N $\frac{1}{2}$ of SW $\frac{1}{4}$ lying between lines parallel with and distant respectively one hundred fifty (150) and two hundred (200) feet westerly from said above named main track center line and between a line parallel with and distant one hundred ninety-eight (198) feet northerly from the south line of said government subdivision and a line drawn at right angles to said main track center line at a point distant twenty-one hundred thirty-four and eight tenths (2134.8) feet northerly from its point intersection with the south line of said section 31, containing in all two (2) acres, more or less"; also,

That certain 0.35 acre tract of land described in deed dated March 25, 1918 from John Grimmer and Alice Grimmer to the Northern Pacific Railway Company, recorded April 10, 1918 in Volume 180 of Deeds, Page 401, records of Snohomish County, Washington, said tract being described in said deed for reference as follows

A strip of land of the Westerly side of and adjacent to the present two hundred (200) foot right of way of said Railway Company in the south six (6) acres (or the south one hundred ninety-eight (198) feet more or less, of the north-half of the southwest quarter ($N\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-one (31) in Township twenty-eight (28) north of range six (6) east of the Willamette Meridian, said strip of land being more particularly described as follows.

"Beginning at a point on the south line of said $N\frac{1}{2}$ of $SW\frac{1}{4}$, one hundred (100) feet distant westerly, measured at right angles, from the present main track of said Railway Company, as the same is now, constructed and operated over and across said section, thence northerly on a line parallel with and one hundred (100) feet distant westerly from said center line to the north line of the property of said grantors (being the north line of the south 198 feet, more or less of the above named government subdivision), thence west along said north line to a point two hundred (200) feet distant westerly, measured at right angles, from said main track center line; thence southeasterly in a straight line to a point on the south line of said above named government subdivision fifty-five (55) feet west of the point of beginning; thence east to the point of beginning, containing thirty-five hundredths ($35/100$) acres, more or less", also,

That certain tract of land described in deed dated December 15, 1937 from Ella L. Moulton to the Northern Pacific Railway Company recorded February 19, 1938 in Volume 238 of Deeds, Page 102, records of Snohomish County, Washington, said tract of land being described in said deed for reference as follows

"That portion of Tract No 139 as shown on the official plat of CATHCART on file and of record in the office of the Auditor of said County situate within the south half of southwest quarter ($S\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-one (31) in township twenty-eight (28) north of range six (6) east of the Willamette Meridian, lying easterly of a line parallel with and distant fifty (50) feet westerly measured at right angles, from the center line of the present main track of the Northern Pacific Railway Company as the same is now constructed and operated over and across said section thirty-one", also,

That portion of that certain 100 0 foot wide Branch Line right of way, being 50 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across Government Lot 4 in Section 31, Township 28 North, Range 6 East, W. M., Government Lots 4, 5, 6 and 7 in Section 6, Government Lots 1, 2, 3, 4 and the $SE\frac{1}{4}SW\frac{1}{4}$ Section 7, Government Lots 2, 3, 4 and the $E\frac{1}{4}NW\frac{1}{4}$ Section 18, Government Lots 1 and 2 Section 19, all in Township 27 North, Range 6 East, W. M., the $E\frac{1}{4}E\frac{1}{4}NE\frac{1}{4}$ Section 12, and the $SE\frac{1}{4}NE\frac{1}{4}$ and the $NE\frac{1}{4}SE\frac{1}{4}$ Section 24, all in Township 27 North, Range 5 East, W. M., bounded Northerly by the North line of said Government Lot 4 in Section 31, and bounded Southerly the West line of said $NE\frac{1}{4}SE\frac{1}{4}$ Section 24, also

That portion of that certain 200 0 foot wide Maltby Station Ground property, being 100 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the $W\frac{1}{4}SE\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Easterly and Westerly by the East and West lines of said $W\frac{1}{4}SE\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion of said 200 0 foot wide Station Ground property lying Northwesternly of a line concentric with and distant 25 0 feet Northwesternly from, measured radially to said Railway Company's Main Track centerline as now located and constructed; also

That portion of that certain 100 0 foot wide Maltby Station Ground property, being 50 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the $E\frac{1}{4}SW\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Northerly by the East line of said $SW\frac{1}{4}$ Section 24 and bounded Southerly by the South Line of said $SW\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion lying Northwesternly of a line concentric with and distant 25 0 feet Northwesternly from, measured radially to said Railway Company's Main Track centerline as originally

located and constructed, bounded Northeasterly by the East line of said SW $\frac{1}{4}$ Section 24, and bounded Southwesterly by the Easterly edge of the travelway of the Street connecting 91st Avenue SE with Yew Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91st Avenue SE, and about 100 feet Southwesterly of the North-South quarter line of said Section 24, as measured along said Main Track centerline, also,

That portion of that certain 200 0 foot wide Maltby Station Ground property, being 100 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W M, bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ Section 25; also

That portion of that certain 100 0 foot wide Branch Line right of way, being 50 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W M, bounded Northerly and Westerly by the North and West lines of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, also,

That portion of that certain 200 0 foot wide Branch Line right of way, being 100 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 26, all in Township 27 North, Range 5 East, W M, bounded on the East by the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and bounded on the West by the West line of said NE $\frac{1}{4}$ Section 26; also

That portion of that certain 100 0 foot wide Branch Line right of way, being 50 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 27 North, Range 5 East, W M, bounded Easterly by the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, and bounded Westerly by the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, also,

That portion of that certain 200 0 foot wide Branch Line right of way, being 100 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, all in Township 27 North, Range 5 East, W M, bounded on the East by the East line of said W $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, and bounded on the South by the South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, **EXCEPTING THEREFROM** that portion lying Westerly of a line parallel and/or concentric with and distant 50 0 feet Westerly from, measured at right angles and/or radially to said Railway Company's Main Track centerline as originally located and constructed, bounded on the North by the North line of said Section 35, and bounded on the South by a line radial to said Main Track centerline at a point 530.0 feet South of the North line of said Section 35, as measured along said Main Track centerline; also,

That portion of that certain 100 0 foot wide Branch Line right of way, being 50 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, all in Township 27 North, Range 5 East, W M, bounded on the North by the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34; also,

That portion of that certain 50 0 foot wide Branch Line right of way, being 25 0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, Township 27 North, Range 5 East, W M, bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, and bounded on the South by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, as measured along said Main Track centerline; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the S $\frac{1}{2}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34, Township 27 North, Range 5 East, W M, bounded on the North by a line radial to said Railway Company's Main Track centerline, as originally located and constructed, at a point distant 600 feet Southwesterly of said North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, as measured along said Main Track centerline, and bounded on the South by the South line of said Section 34, said line also being the South line of Snohomish County Washington

KING COUNTY

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the Lots 2, 3, the S $\frac{1}{2}$ N $\frac{1}{2}$, and the E $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, the NW $\frac{1}{4}$ Section 10, all in Township 26 North, Range 5 East, W M, bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said NW $\frac{1}{4}$ Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed, bounded on the North by the South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington, and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.0 feet Southerly from the North line of said E $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 28, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Page 556, records of King County, Washington, and that certain 100.0 foot wide strip of land described in deed dated June 14, 1887 from Mary B Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Book 41 of Deeds, Page 385, records of King County, Washington, lying in Section 9, Township 26 North, Range 5 East, W M, bounded on the East by the East line of said Section 9, and bounded on the West by a line drawn radially to said Railway Company's Main Track centerline, distant 1867.0 feet Easterly of the West line of said Section 9, also being the Easterly boundary of that certain Tract VIII described in deed dated December 19, 1985 from Burlington Northern Railroad Company to King County, recorded in the records of King County, Washington as Instrument No. 198512191894, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001158, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot strip of land, also,

That certain 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of Deeds, Page 89, records of King County Washington, said 0.32 acre tract being described in said deed for reference as follows.

"All that portion of the Southeast quarter of the Northeast quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Nine (9),