

BEFORE THE SURFACE TRANSPORTATION BOARD

305407

GNP RLY, INC. – ABANDONMENT EXEMPTION – ) AB 1316X  
IN KING COUNTY, WA )

ENTERED  
Office of Proceedings  
September 29, 2022  
Part of  
Public Record

SNOHOMISH COUNTY’S COMMENTS  
ON  
“APPEAL OF DIRECTOR’S DECISION”  
FILED BY GNP RLY, INC., AND CITY OF WOODINVILLE  
AND  
MOTION TO CORRECT ERROR

For the reasons stated herein, Snohomish County (“SnoCo”), a legal subdivision of the State of Washington, supports the relief sought in the Appeal filed by GNP Rly, Inc. (“GNP”) and City of Woodinville (“City”) in this proceeding. The Appeal involves the Director’s decision served September 14, 2022, in which the Director, without taking comment or developing a record, sua sponte (without any party or commenter so requesting) imposed an indefinite stay in a two-year out of service abandonment proceeding for previously unannounced reasons and without an adequate rationale.

Standing, Participation as a Party, Intervention

The Director’s action on September 14, 2022 in AB 1316X adversely impacts the interests of SnoCo in obtaining appropriate remedies against claimants [including inter alia Eastside Community Rail (“ECR”), various Engles, and GNP] to the “BNSF retained freight rail easement” in the extension into Snohomish

County of the “Line” at issue in AB 1316X. SnoCo is the owner<sup>1</sup> of all relevant underlying interests in said extension, including track, ties and improvements, but not including the BNSF retained freight rail easement. The Director’s decision, as explained herein, unlawfully and indefinitely deprives SnoCo of otherwise available remedies either to determine the BNSF retained freight rail easement extinguished or to preserve the line pursuant to the federal railbanking statute (16 U.S.C. 1247(d)) in Snohomish County. In addition, the Director’s decision results in a continued unlawful state law trespass by the owner of the BNSF retained freight rail easement on SnoCo’s track and ties, without compensation, liability protection, or any form of consent.<sup>2</sup>

One key remedy thwarted by the Director in the September 14 decision is a potential adverse abandonment proceeding by SnoCo to clear any and all claimants to the BNSF retained freight rail easement off of Snohomish County’s property.

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<sup>1</sup> Snohomish County – Declaratory Order, F.D. 35830, served March 2, 2015 (determines SnoCo does not need prior Board authorization to acquire approx. MP 26.38 to approx. MP 38.25 from Port). A copy of SnoCo’s deed from the Port is attached as Exhibit A.

<sup>2</sup> ECR caused the termination of a compensation and operating agreement and ECR and GNP have failed to enter into any agreement to compensate SnoCo for use of its track and ties. ECR and GNP have ignored the user fees which SnoCo has billed to them. Any occupation of the County’s property without County’s agreement is a state law trespass but for STB preemption arising from STB’s failure to enforce its abandonment and transfer regulations, as most recently manifest in the Director’s September 14 Decision. See generally Thomas Teigen Declaration attached as Exhibit D, para. 3.

Such a proceeding would render the Director's apparent reference to state court of issues both irrelevant and moot. Moreover, the Director Decision has a number of milepost errors which directly and adversely impact SnoCo's property. SnoCo thus clearly has standing to participate and to intervene in this proceeding, and any judicial review proceedings that may result. If a formal motion to intervene is required, SnoCo so moves. GNP RLY, Inc. has consented to intervention. See attached Exhibit B.

Before proceeding to commenting on the Appeal, SnoCo first makes the following Motion to Correct.

#### Motion to Correct

The referenced Director decision refers to the line at issue in AB 1316X as "between milepost 23.8 to milepost 26.58 in Woodinville" (Decision, p. 1, first sentence) and later claims that GNP "confirmed that the correct milepost number of the Line's northern endpoint is 26.58" (Decision at p. 1, end of second paragraph, citing GNP Supplement 1, April 19, 2022, at 2.). The Director is in error. The correct northern endpoint is Milepost 26.38, and this is in fact what GNP confirmed in its Supplement filed April 19, 2022. Moreover, the Snohomish/King County line is at Milepost 26.38. Snohomish County owns the rail corridor from MP 26.38 north to MP 38.25. No one has yet sought abandonment of MP 26.38 to MP 26.58 and GNP confirmed that to the STB on

April 19. This repeated error by the Director on p.1 of the Director Decision must be corrected. SnoCo so moves.

There are two additional and related errors in the second paragraph of page 2 of the Director Decision that must be corrected. The Director Decision states that the line in Woodinville is MP 23.8 to MP 26.58 and as so described “comprises part [sic] of the Line GNP is seeking to abandon through its notice of exemption....”

As previously indicated, the correct milepost at the north end of the AB 1316X abandonment/railbanking is not MP 26.58; it is 26.38. In addition, MP 23.8 to MP 26.38 constitutes the entirety of the “Line” in Woodinville, not “part” of it. City of Woodinville is the underlying owner<sup>3</sup> of the entire Woodinville segment that GNP has proposed for abandonment and consented to railbanking in AB 1316X.

Suggesting that GNP and Woodinville are railbanking only a part of the Woodinville portion of the line is erroneous.

Although all of the property at issue in AB 1316X is in King County, the Director, apparently misled by confusion over mileposts, framed her decision to impact SnoCo in Snohomish County, for MP 26.38 to MP 26.58 is in Snohomish County. SnoCo accordingly moves to correct the Decision by substituting 26.38 for 26.58 wherever 26.58 appears on page two of the Director Decision and to

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<sup>3</sup> City of Woodinville – Petition for Declaratory Order, F.D. 35905, served Oct. 7, 2015 (determines City of Woodinville does not need prior Board authorization to acquire MP 23.8 to 26.38 from Port).

substitute “the entirety” for “part” where the word “part” appears in the second full paragraph of p. 2 of the Decision.

In sum, STB should desist from attempting to suggest that AB 1316X includes any portion of the BNSF retained freight rail easement in Snohomish County, or from doing anything which adversely impacts SnoCo’s right to railbanking relief as to the entirety of its rail corridor from MP 26.38 (Snohomish/King County line) north to end at MP 38.25 (near City of Snohomish).

#### Support for Appeal

##### A.

The Director Decision of September 14 appears predicated on the notion that a title dispute still exists as to a portion of the Line at issue in AB 1316X, while at the same time suggesting that the dispute involves property in Snohomish County. But the Director Decision erred in positing that milepost 23.8 to milepost 26.58 is at issue in this proceeding. AB 1316X only encompasses property from MP 23.8 to MP 26.38, which is entirely in King County and which constitutes the entire BNSF retained freight rail easement in King County. It follows that any title dispute in Snohomish County (i.e., north of MP 26.38) is utterly irrelevant to AB 1316X. To reiterate, the entirety of what is before STB in AB 1316X is in King County.

There is no justification for any further delay in resolving AB 1316X. To the contrary, further delay violates federal rail transportation policy “to require fair and expeditious regulatory decisions when regulation is required” and “to provide for expeditious handling and resolution of all proceedings required or permitted to be brought under [the ICC Termination Act].” 49 U.S.C. 10101(2) & (15).

No one has sought the sua sponte stay that the Director has imposed in AB 1316X by the September 14 Decision. On the face of the decision, it appears based on an erroneous concept of the Line at issue in AB 1316X and, being unsought by any party to or in the proceeding, neither serves any legitimate purpose nor has any basis in the record.

## B.

The Director of the Office of Proceeding errs generally in attempting to shuffle the kind of violation of STB regulations that underlies her decision to state courts to resolve in quiet title proceedings. In a complex transaction in 2009, the Port of Seattle purchased from BNSF the so-called “Eastside Corridor,” acquiring the segment from MP 23.8 in Woodinville north to MP 38.25 near City of Snohomish (the so-called freight rail segment) subject to the “BNSF retained freight rail easement.” See Exhibit C (Snohomish County version of the relevant deed). BNSF then transferred the BNSF retained freight rail easement to GNP RLY, Inc., which went bankrupt. During bankruptcy, one Douglas Engle as an officer of

GNP, surreptitiously deeded the BNSF retained freight rail easement (basically, GNP's sole asset) to his father Earl and his then-wife Joanne and actually recorded the deeds. He then as an officer of a new entity (Eastside Community Rail or "ECR") applied for a license to acquire the assets of GNP, which he had already secretly deeded to his relatives. He followed this up with various purported but unrecorded transfers between his relatives, himself and others, none of which were brought to the attention of STB for licensing purposes. As a result, ECR, Douglas Engle, Earl Engle, Douglas's former wife Joanne, GNP RLY, Inc., NW Signal and possibly others have claimed some form of title to all or portions of the BNSF retained freight rail easement. Again, all this confusion as to claimants arises because Douglas Engle, operating essentially simultaneously on behalf of STB's licensee GNP and STB's licensee ECR, unlawfully (i.e., without any authority first being obtained from STB) passed out deeds to the easement or parts of the easement like hotcakes to and among his relatives, and then followed that up with a series of instruments purporting to further convey the property among his companies or relatives. Many and perhaps all these subsequent instruments were never recorded and in some cases were partly or wholly unsigned and with no evidence of delivery. Again, the various grantors and grantees arranged by Engle for his surreptitious transfers never sought much less received STB's prior

authorization as required by law for any of this. In short, railroad management (Douglas Engle) flagrantly violated federal rail transportation law.

It is STB's duty to "encourage honest and efficient management of railroads" (49 U.S.C. 10101(8)) and not pass the buck to state courts to sort out the train wrecks resulting from failure of STB licensees to know the law, to speak the truth to STB, and to comply with STB regulations. When Snohomish County initially moved to revoke ECR's acquisition license due to ECR's (multiple) misrepresentations as to title to the BNSF retained freight rail easement, the Board initially declined to sort the matter out, deferring to state courts (or perhaps bankruptcy court) for a remedy, if anyone had standing to seek relief there and if there was a remedy. But the D.C. Circuit properly indicated that STB's failure to provide relief was not justified on the record, vacated the agency's decision, and remanded the case to STB.<sup>4</sup>

On remand, the Board then determined that ECR's authority to acquire what was thought to be a railroad easement (namely, the BNSF retained freight rail easement) belonging to GNP was unlawful due to misrepresentations attested by ECR's Douglas Engle as to who held title to BNSF retained freight rail easement.<sup>5</sup>

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<sup>4</sup> Snohomish County v. Surface Transportation Board, 954 F.3d 290 (D.C. Cir. 2020).

<sup>5</sup> Eastside Community Rail – Acq. Ex. – GNP RLY, Inc., F.D. 35692, served Dec. 22, 2020.

Although the Board expected ECR then to cooperate in rectifying the situation, ECR/Engle did not. The Board accordingly voided the spurious deeds purporting to transfer the property out of GNP, directing Engle to issue deeds to GNP and otherwise leave GNP in peace not only as the sole licensee and but also as owner of the BNSF retained freight rail easement.<sup>6</sup>

Given the D.C. Circuit decision, and the two subsequent STB actions recounted above, the Director is violating the law in refusing to act on GNP RLY's AB 1316X "notice of exemption" until state court quiet title proceedings, especially in the wrong county, are completed. Given the D.C. Circuit and subsequent STB decisions, there literally is nothing left for the Board to defer over to Washington State Courts in Snohomish County or for that matter King County for an advisory opinion. STB already made the necessary decisions. See 49 U.S.C. 10501(b) (federal preemption). ECR and Engle and its/his transferees simply do not have title. To the extent the BNSF retained freight rail easement exists, it belongs to GNP.

The Director's indefinite stay in AB 1316X pending Washington State Court title litigation in Snohomish County amounts to a blockade against further regulatory action to abandon or railbank the extension in Snohomish County of the

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<sup>6</sup> Eastside Community Rail – Acq. Ex. – GNP RLY, Inc., F.D. 35692, served Sept. 29, 2021.

AB 1316X Line. This thwarts the D.C. Circuit's decision in Snohomish County v. Surface Transportation Board, 954 F.3d 290 (2020). The Director's September 14 ruling again shirks responsibility to enforce STB regulations by making relief dependent on the outcome of a state court proceeding brought by GNP not just against ECR but also Snohomish County. STB should police its regulated industry by enforcing its regulations as it started to do in Eastside Community Rail, supra, F.D. 35692, served Dec. 22, 2020 and id. served Sept. 29, 2021, rather than refer Snohomish County (or Woodinville) to state courts to seek relief for misconduct by ECR and Douglas Engle as to which Snohomish County (and Woodinville) are innocent. In short, the Director's Decision (and inaction in AB 1316X) violates the D.C. Circuit decision and must be reversed, withdrawn and/or overruled. SnoCo thus joins in the GNP/Woodinville appeal from the Director's Decision.

C.

At page 2 (final paragraph) of its September 14 decision in AB 1316X, the Director notes that Douglas Engle/ECR has sought administrative reconsideration in the proceeding in which ECR's license was revoked. (The Director cites Eastside Community Rail – Acq. & Op. Exemption – GNP RLY, Inc., F.D. 35692, slip op at 3-4, slip at 3-4, served March 8, 2022.) The Director claims her stay in AB 1316X is justified as somehow consistent with staying further proceedings in the revocation matter. But that decision as construed by the Director in AB

1316X now itself thwarts the D.C. Circuit's decision in Snohomish County v. STB, supra.

The gravamen of Mr. Engle's motion for reconsideration (filed November 1, 2021) at issue in F.D. 35692, served March 8, 2022, is that he intended to file a new notice of exemption (or some sort of paper) remedying the deficiencies that resulted in the revocation of the ECR acquisition license.<sup>7</sup> Mr. Engle stated that ECR had heretofore lacked the resources to prepare the papers (see note 7).<sup>8</sup> He apparently still lacks resources for he has not done anything meaningful since, except default in the superfluous quiet title action GNP filed in King County.<sup>9</sup> More importantly, it is impossible for Mr. Engle to remedy his misrepresentations because he cannot re-write the past<sup>10</sup>; he simply misrepresented the truth (as STB determined and the D.C. Circuit concurred), so there is no new paper he can file that will solve his problem. But more to the point, Mr. Engle has been telling the Board he will come up with his magic bullet (paper) for over 18 months (see

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<sup>7</sup> ECR "Response and/or Petition for Reconsideration" in F.D. 35692, filed Nov. 1, 2021.

<sup>8</sup> ECR first indicated it was going to "correct" its papers in F.D. 35692 in a comment filed February 5, 2021, which is over 18 months ago.

<sup>9</sup> Evidently GNP and Woodinville have sought to placate the agency's efforts to evade enforcing its own regulations by filing a quiet title in King County, but the effort has been going on for some years now, apparently still in vain, notwithstanding a default judgment entered against ECR/Engle, which proves Snohomish County's point that the issues arising from Engle are for STB to resolve, not a state court.

<sup>10</sup> The arrow of time only runs in one direction, except in science fiction.

document cited in note 8 *supra*), and nothing has been filed. In essence, Mr. Engle petitioned for delay to file, and still has not filed, and the rationale for any further stay for him to file is exhausted. Engle never justified any deferral of anything to a state court. He certainly never appeared in AB 1316X to advocate a delay, or for anything else for that matter. Again, the Director Decision of September 14 serves only to thwart the D.C. Circuit's ruling in Snohomish County, *supra*.

Mr. Engle did complain in his November 1, 2021 filing that he had made a \$175,000 investment in acquiring the assets of GNP. However, he supplied no proof of this investment, and more to the point, any loss he sustained is a result of his own misconduct in dealing with regulated property.<sup>11</sup> Moreover, Douglas Engle (as an officer of GNP) deeded the BNSF retained freight rail easement out of GNP and into the hands of his father and then-wife (apparently without the knowledge of any other parties) before Mr. Engle (as an officer of ECR) purchased the no-longer-existing assets of GNP. It is passing strange for him to claim a right to compensation for something he knew at the time was not there and therefore

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<sup>11</sup> The Supreme Court has instructed that "[c]ontracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but, when contracts deal with a subject-matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." [Norman v. Baltimore & Ohio R.R. Co., 294 U.S. 240, 307-08, 79 L. Ed. 885, 55 S. Ct. 407 \(1935\)](#) (quoted in [Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 223-24, 89 L. Ed. 2d 166, 106 S. Ct. 1018 \(1986\)](#)).

worthless when he allegedly purchased it. Indeed, it is beyond passing strange; it sounds like someone seeking a reward for conduct in the nature of grifting and chicanery. Why STB should honor surreptitious and evasive conduct like this by ordering an indefinite halt to its otherwise applicable and properly invoked licensing processes amounts to cooperating with Engle in abuse of the integrity of the agency's regulatory processes.

D.

In addition, events have rendered meaningless and irrelevant the kind of referral to Washington State courts that the Director seems to want. In point of fact, neither ECR nor GNP has operated the Line at issue in AB 1316X nor its extension into Snohomish County for rail purposes. The one-time operator/lessee for GNP and later ECR (Ballard Terminal Railroad Company or "BTRC") agreed to revocation of its license, and pulled its equipment off the Line at issue in AB 1316X and the extension into Snohomish County well over two years ago. There is no sign that any shipper – certainly any shipper with sufficient business to justify operational and rehabilitation costs – seeks service on the Line at issue in AB 1316X, nor its extension in Snohomish County, at this point in time. The line appears no longer viable (substantial rehabilitation is needed, on top of operating costs, see Exhibit D, para 2, referencing RL Banks report). Certainly no claimant to the BNSF retained freight rail easement has offered SnoCo any credible plan to

restore freight rail service in any portion of the railroad corridor to date. See Exhibit D at para 2.

Under the circumstances, if this were solely a matter of Washington State law, the BNSF retained freight rail easement would be deemed extinguished. It is not used for any rail purpose. Its owner, whoever that may now be, not only has never owned any of the rail, ties, tracks, ballast, bridges or other improvements necessary to operate on the easement, but at this point no longer has any state law right to use those improvements. Since the line is unused, and the salvage alienated, the easement under state law is either extinguished or would be in a quiet title in the event of contest. In that case, ECR/Engle and for that matter GNP owns nothing to compensate. In short, whatever Engle claims to have paid is for something that is now valueless. Engle's only employment for the line is for hold-up value for so long as STB arbitrarily refuses to advance proceedings to railbank the property. This is something called a "regulatory rent," and amounts to misuse of governmental processes to obtain a ransom, which is a kind of grifting. Use of STB regulation not to serve the public interest but instead for ransom extraction in the rail abandonment context is usually controlled (although at considerable cost) by filing adverse abandonment proceedings. The adverse abandonment remedy was specifically made applicable (at state law) here through the covenant running with the land relating to abandonment/railbanking set forth in Exhibit C,

unnumbered pp. 15-16. Ironically, because of the Director's September 14 indefinite refusal to process AB 1316X, that remedy -- which was supposed to apply at both state and federal levels per the covenant in Exhibit C -- is forestalled. It is as if the Director is preventing a state law covenant from functioning by denying the federal avenues necessary for the state law covenant to be applied.

The purpose of STB regulation as set forth in national rail transportation policy is not to assist grifters from extracting ransom payments from underlying land owners like Woodinville and Snohomish County or to interfere needlessly with state law covenants and contracts. To reiterate, if state law applies, the issue is not whether ECR or GNP or some Engle relative owns the BNSF retained freight rail easement; it instead is that the rail easement is extinguished but for continued STB regulation, and that the relevant state law deeds and contracts now require that the entire line be railbanked. It is the height of irony that the Director has engineered a situation in which she refers the parties to state courts when the very referral is prohibiting the result required under state (and federal) law. STB therefore should promptly reconsider its September 14 Director Decision, which is rife with errors that must be corrected anyway, and clear the path (1) for City of Woodinville and GNP to railbank the Line at issue in AB 1316X and (2) for SnoCo subsequently to file an adverse abandonment application against GNP, ECR and

anyone claiming the BNSF retained freight rail easement in Snohomish County so that SnoCo can obtain appropriate railbanking relief as well.

E.

The relevant governing deed in Snohomish County is the deed from BNSF to Port of Seattle attached as Exhibit C. Under that deed, BNSF conveyed all of its interests in the railroad corridor (including passenger rights, track and ties) that is germane in Snohomish County to the Port of Seattle, reserving only a raw freight rail easement. The deed contained a “railbanking covenant” (see Exhibit C, at unnumbered pp. 15-16), providing that if BNSF or any of its successors or assigns ceased rail operations over the easement, or any portion thereof, then it would be obligated to seek STB abandonment authority and was further obligated to railbank the line or any portion thereof on request. Moreover, if the owner of the freight rail easement simply sat on the line, then any party interested in the line could file an adverse abandonment proceeding at STB, and the owner of the easement was obligated to cooperate. Additionally, if any party sought to railbank the line, the owner of the easement was obligated to cooperate. No further compensation is required under this covenant. And the railbanking covenant expressly “runs with the land.” See first unnumbered substantive page of Exhibit C. It is applicable to all successors to BNSF in connection with the BNSF retained freight rail easement, and for the benefit of the Port’s successors as well. As already indicated, the

Director's Decision is actually thwarting the intention of the state law covenant manifest in Exhibit C to require the holder of the BNSF retained freight rail easement to do exactly what GNP and Woodinville are attempting to do in AB 1316X – railbank that segment of the Line.

Since no claimant to the freight rail easement has operated on the Snohomish County portion of the rail corridor, nor presented a viable plan to do so, for over two years (see Exhibit D, Teigen Declaration, para 2), SnoCo wishes to obtain full use of its property as provided in the BNSF to Port deed, to which SnoCo is the Port's successor in Snohomish County. See id., para 2. In particular, SnoCo intends to seek the remedy provided in the "railbanking covenant" as soon as STB removes the unwarranted blockages preventing SnoCo from doing so.

Because of STB preemption, a state court cannot determine the BNSF retained freight rail easement extinguished (as it otherwise is). But the Director's September 14 decision wrongfully also holds up all abandonment/railbanking proceedings and thus prevents the state law covenant from applying. The Director, while asking for a state court to apply state law, is at the same time precluding that, both because preemption prevents easement extinguishment and because the Director is preventing full enforcement of the railbanking covenant in the BNSF to Port deed. Under the "stranded segment doctrine," SnoCo cannot even initiate an adverse abandonment proceeding against its portion of the rail corridor occupied

by the unused BNSF retained freight rail easement: the Director's September 14 decision wrongfully fails to allow GNP's abandonment/railbanking proceeding in AB 1316X to progress so that segment, which should be railbanked by now, would be stranded. This bizarre result wrongfully deprives SnoCo of the lawful remedies otherwise applicable in situations like this.<sup>12</sup>

The Director Decision at heart rests on the misassumption that the crux issue is whether ECR (or Douglas Engle or a current or past member of his family) or GNP owns the BNSF retained freight rail easement at state law. As SnoCo has already indicated, this amounts to abnegation (contrary to Snohomish County v. STB, supra) of the agency's responsibilities, but also to a failure to recognize that the crux of the case is really that the easement no longer exists if this in fact were a state law issue.<sup>13</sup> In short, Engle without even making an appearance in AB 1316X appears to have tied STB up in knots over issues that are moot or irrelevant.

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<sup>12</sup> SnoCo posits that it could file an adverse abandonment proceeding against all claimants to the BNSF retained freight rail easement and aimed at the entire rail corridor in both Snohomish County and Woodinville (King County), but this seems a waste of resources since AB 1316X is pending. Moreover, given the Director's fallacious fixation on who owns what at state law as between ECR and GNP due to the misconduct of ECR's manager Engle while he was an officer at GNP and in his subsequent role at ECR, the Director, unless her September 14 decision is reversed, would presumably hold any adverse abandonment hostage.

<sup>13</sup> One is reminded of the limerick entitled "Two Cats of Kilkenny" who "fought" and "fit ... till there weren't any."

It is no longer relevant whether ECR or GNP possess title. What is relevant is that if title is quieted, it must be quieted at this time in SnoCo as to the rail corridor in Snohomish County, for SnoCo is the owner of the underlying rail corridor (see note 1). But SnoCo does NOT wish the time and expense of pursuing a quiet title (that is barred anyway by STB preemption) because SnoCo wishes to see the property railbanked. It must be railbanked per the state law covenant. STB needs to get on with railbanking. The Director's postponement of the state law relief to which the parties are entitled pending state court resolution of issues that are moot or irrelevant is counterproductive and indeed nonsensical. In particular, the remedy SnoCo ultimately seeks and to which it is entitled under state law and federal law is railbanking per Exhibit C at pp. 15-16 and 16 U.S.C. 1247(d). This remedy cannot be accorded by state courts; it is a remedy accorded by STB. The Director's September 14 decision amounts to thwarting state law under which SnoCo could assert unencumbered title, as well as SnoCo's state law contract/property remedy (the covenant) under which SnoCo could require railbanking and obtain title pursuant to 16 U.S.C. 1247(d). We repeat: the Washington State courts cannot rectify this situation; relief is in the hands of STB.

In sum, staying AB 1316X -- which arises solely in King County -- until a state court in Snohomish County determines whether ECR or GNP own property that no longer exists at state law, and which should be immediately railbanked by STB

(regardless who is the proper claimant to the BNSF retained freight rail easement) -  
- makes no sense and is arbitrary and capricious in the fullest sense. See Exhibit C, pp. 15-16. It also violates federal rail transportation policy and amounts to thwarting the D.C. Circuit's decision in Snohomish County v. STB, supra.

### Conclusion

For the reasons stated above, SnoCo supports (as an interested party and intervenor) and joins the GNP/Woodinville Appeal and requests that the Appeal be immediately granted. Snohomish County wishes to move forward with use of the railroad corridor it purchased from the Port pursuant to Snohomish County – Declaratory Order, supra, note 1. Accord, Teigen Declaration, Exhibit D at para 3 (p.4). The County intends to railbank the entire asset pursuant to the railbanking covenant in the BNSF-Port deed (Exhibit C). The County should not be forced to tolerate state law trespass on its premises by GNP, ECR, or any other individual or entity to whom or to which Douglas Engle has purported unlawfully to transfer the BNSF retained freight rail easement. The applicable deed covenants at this point require all claimants to pursue abandonment proceedings, and provide that the County itself must be allowed to pursue adverse abandonment proceedings. Moreover, whoever the claimant to the easement, that entity must cooperate with the County in railbanking for the Snohomish County extension of the Line at issue in AB 1316X. State court proceedings are an unwarranted and arbitrary diversion

in the circumstances here. The County is now entitled to railbanking of its portion of the rail corridor regardless who owns what in the BNSF retained freight rail easement and should be allowed to bring an adverse abandonment proceeding without being precluded by the Board's "stranded segment" doctrine, which would be applicable by reason of the erroneous Director Decision of September 14 in AB 1316X. As a corollary, Woodinville is entitled to railbanking of its portion. Further delay is unjustified, arbitrary and capricious, and contrary to law.

Certificate of Service. By my signature below, I certify service by email attachment upon all parties of record by electronic mail addressed to [matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com) and [jsavagelaw@aim.com](mailto:jsavagelaw@aim.com) as provided on the docket sheet published on the STB website for AB 1315X on September 29, 2022.

Respectfully submitted,  
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Counsel for Snohomish County

For filing: September 29, 2022

Attachments:

Exhibit A (Port to Snoco deed)  
Exhibit B (GNP Rly consent)  
Exhibit C (BNSF to Port deed, as recorded in Snohomish County)  
Exhibit D (Teigen Declaration)

## Exhibit A

Port to Snohomish County Deed

1098613

**Return Address:**

Snohomish County Property Manager  
 3000 Rockefeller Avenue  
 Mail Stop 404  
 Everett, WA 98201-4046



201603250418 11 PGS  
 03/25/2016 2:36pm \$83.00  
 SNOHOMISH COUNTY, WASHINGTON

No. 8644761 3/25/2016 2:22 PM 10.00  
 Thank you for your payment.  
 PAT

**Document Title(s) (or transactions contained therein):**

- Quit Claim Deed

**Reference Number(s) of Documents assigned or released:** N/A  
 (on page \_\_\_ of documents(s))

**Grantor(s) (Last name first, then first name and initials):**

- Port of Seattle, a municipal corporation of the State of Washington

**Grantee(s) (Last name first, then first name and initials):**

- Snohomish County, a political subdivision of the State of Washington

**Legal description (abbreviated: i.e. lot, block, plat or section, township, range)**

Snohomish County: Ptn BNSF Railway Company's Snohomish to Woodinville, Washington Branch Line right-of-way lying within the following:  
 SW ¼ Sec.18,T28N,R.6E; LOT 4 & 5, BLK 2, Snohomish City Eastern Part, VOL 1 PG 7; GOVT LOT 1 & 2, & NW ¼ SEC19,T28N,R6E; NE ¼ & SE ¼ SEC24,T28N,R5E; NE ¼ SEC25,T28N,R5E; GOVT LOT 1, 2, 3, 5 & 6 SEC30, T28N,R6E; GOVT LOT 3, 4, 8 & SW ¼ & NW ¼ SEC31,T28N,R6E; PTN TR 139 Plat of Cathcart; GOVT LOT 4, 5, 6 & 7 SEC6,T27N,R6E; GOVT LOT 1, 2, 3, & 4 & SW ¼ of SEC7,T27N,R6E; NE ¼ of SEC12,T27N,R5E; GOVT LOT 2, 3 & 4 & NW ¼ of SEC18,T27N,R6E; GOVT LOT 1 & 2 SEC19,T27N,R6E; NE ¼, SW ¼, & SE ¼ of SEC24,T27N,R5E; NW ¼ & SW ¼, SEC25,T27N,R5E; SEC26,T27N,R5E; NW ¼ of SEC35,T27N,R5E; NE ¼, SE ¼, SW ¼ SEC 34,T27N,R5E.

**Assessor's Property Tax Parcel/Account Number**

0000000000100

## QUIT CLAIM DEED

The Grantor, PORT OF SEATTLE, a municipal corporation of the State of Washington, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration paid in hand, hereby conveys and quitclaims to the Grantee, SNOHOMISH COUNTY, a political subdivision of the State of Washington, certain real property located in Snohomish County, Washington, as more fully described on Exhibit A (the "Property"), subject to matters of record, and together with any interest therein which the Grantor may hereafter acquire.

DATED March 17, 2016.

PORT OF SEATTLE, a municipal corporation of the  
State of Washington

By Theodore J. Fick  
Name: Theodore J. Fick  
Title: Chief Executive Officer

SNOHOMISH COUNTY:  
ACCEPTED AND APPROVED

Marcia King 3/24/16  
Snohomish County Executive

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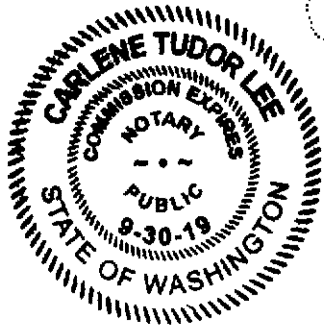
STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this 17<sup>th</sup> day of March, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Theodore J. Fick, to me known to be the person who signed as Chief Executive Officer of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly ~~elected~~, qualified and acting as said officer or member of the municipal corporation, and that he was authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Carlene Tudor Lee  
(Signature of Notary)

Carlene Tudor Lee  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle  
My appointment expires: 9-30-19

**EXHIBIT A**  
**SNOHOMISH COUNTY**

**DESCRIPTION OF PROPERTY**

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) City of Snohomish (MP 38.3) to Snohomish County King County line (MP 26.384), 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, Washington, more particularly described as follows, to-wit

That portion of that certain 60.0 foot wide Branch Line right of way being 30.0 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 Auditor, 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 Auditor; 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 Government Lot 4, Section 18, Township 28 North, Range 6 East, W.M., bounded Northeasterly by the Southwesterly Bank of the Snohomish River, and bounded Southwesterly by a line parallel with and distant 50.0 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 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 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, 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 centerline 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 0.08 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 0.08 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 (0.08) 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 150.0 feet and 183.0 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 25.0 feet and 50.0 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 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 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 50.0 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 50.0 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 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 150.0 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 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E1/2E1/2 Section 24, the E1/2NE1/4 Section 25, all in Township 28 North, Range 5 East, W. M., bounded Northerly by the East line of said E1/2E1/2 Section 24, and bounded Southerly by the East line of said E1/2NE1/4 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 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 110.0 foot wide Branch Line right of way, being 60.0 feet Westerly and 50.0 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 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 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 2.0 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, 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 Grinier and Alice Grinier 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, 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, 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ E $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ SE $\frac{1}{4}$  Section 24, **EXCEPTING THEREFROM**, that portion of said 200.0 foot wide Station Ground property lying Northwesterly of a line concentric with and distant 25.0 feet Northwesterly 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 $\frac{1}{2}$ 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 Northwesterly of a line concentric with and distant 25.0 feet Northwesterly 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

91<sup>st</sup> Avenue SE with Yew Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91<sup>st</sup> 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 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 NE  $\frac{1}{4}$ SW  $\frac{1}{4}$  Section 26; also,

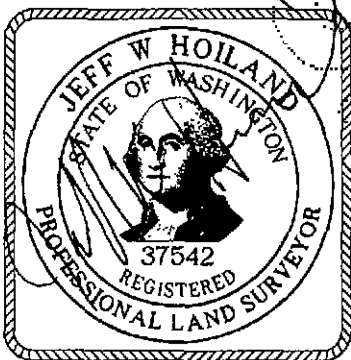
That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 26, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 35, all in Township 27 North, Range 5 East, W.M.; bounded on the East by the East line of said W $\frac{1}{2}$ 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.



2/25/2016

## Exhibit B

James H. M. Savage, Esq. <[jsavagelaw@aol.com](mailto:jsavagelaw@aol.com)>  
To:[c.montange@frontier.com](mailto:c.montange@frontier.com)  
Cc:[matthew.cohen@stoel.com](mailto:matthew.cohen@stoel.com),[jeff@haggardganson.com](mailto:jeff@haggardganson.com)  
Wed, Sep 28 at 10:25 AM  
Charles-

GNP consents to Snohomish County's intervention in AB 1316X for the purpose of filing a letter in support of the pending appeal.

James H. M. Savage, Esq.  
22 Rockingham Court  
Germantown, MD 20874  
Tel. (908) 361-7097  
Fax (301) 972-5743  
[jsavagelaw@aim.com](mailto:jsavagelaw@aim.com)

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Exhibit C

BNSF to Port Deed

As Recorded in Snohomish County

Contains “Railbanking Requirements in the Event of Abandonment”

(unnumbered pages 15-16 at end of document)<sup>1</sup>

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<sup>1</sup> Unnumbered first page of the deed proper indicates that the “Railbanking Requirements in the Event of Abandonment ... shall be covenants running with the land” binding on BNSF, the Port and their respective successors and assigns ....” Note that the deed also provides that the BNSF retained freight rail easement is subject to the covenant.

226603

After Recording Return To:  
 Port of Seattle, Legal Department  
 PO Box 1209  
 Seattle, WA 98111  
 Attn: Isabel R Safora



200912210438 16 PGS  
 12/21/2009 2:41pm \$77.00  
 SNOHOMISH COUNTY, WASHINGTON

Quit Claim Deed  
 Woodinville North  
 Freight Portion

226604

PNWT W-20611-9

Grantor: BNSF Railway Company

Grantee: Port of Seattle

Abbreviated Legal:

000000000000100 JOP

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

788,886.32

12/21/2009 2:16 PM

Thank you for your payment.  
 GERI

No. 5388698

Thank you for your payment.  
 GERI

788,886.32

12/21/2009 2:16 PM

Thank you for your payment.  
 GERI

No. 5388698

Thank you for your payment.  
 GERI

After Recording Return To:  
Port of Seattle, Legal Department  
P. O. Box 1209  
Seattle, WA 98111  
Attn: Isabel R. Safora

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

**QUIT CLAIM DEED**

Woodinville North  
Freight Portion

PNWT 10-20611-9

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

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

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Grantee, the Property, situated in the County of King, State of Washington, together with all after acquired title of the Grantor therein.

EXCEPTING AND RESERVING THEREFROM, an exclusive easement for freight rail purposes for Grantor and its successors and assigns, subject to the covenant for Railbanking Requirements in the Event of Abandonment set forth herein.

Port and BNSF are parties to that certain Purchase and Sale Agreement dated as of May 12, 2008, as amended, concerning the Property. Port 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 in Exhibit B, are incorporated herein by reference (with all references to Port and/or County together therein deemed to be references to Port only) and that all these provisions shall be covenants running with the land that are enforceable by Port, BNSF and their respective successors and assigns. Port and BNSF for themselves and their respective successors and assigns hereby further covenant and agree that the provisions of the Railbanking Requirements in Event of Abandonment, also required by the Purchase and Sale Agreement and attached hereto in Exhibit B are incorporated herein by reference and shall be covenants running with the land that are enforceable by the parties identified therein, and their respective successors and assigns, and are for the benefit of the Property and the other portions of the Washington Branch Line and Redmond Spur Right of Ways being acquired by Port from BNSF by deeds dated as of the date set forth herein.

[Remainder of Page Intentionally Left Blank]

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

BNSF RAILWAY COMPANY

By *David R. Rindin*  
Its: Senior General Attorney

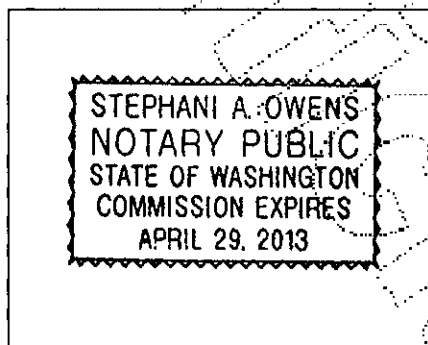
PORT OF SEATTLE

By *Elizabeth T. ...*  
Its

STATE OF Washington )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that David T. Rankin 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 Senior General Attorney of BNSF Railway Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12-17-09



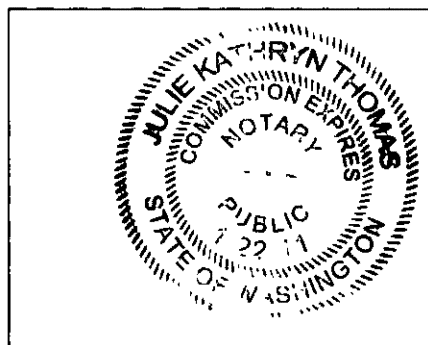
Stephani A. Owens  
Notary Public  
Print Name Stephani A Owens  
My commission expires 4-29-2013

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Jay Yashitani 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 CEO of the Port of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Dec. 17, 2009



Julie Kathryn Thomas  
Notary Public  
Print Name Julie Kathryn Thomas  
My commission expires 1-22-11

(Use this space for notarial stamp/seal)

**Exhibit A to Deed for Freight Portion**

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 60.0 foot wide Branch Line right of way being 30.0 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 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 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 50.0 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 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 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, 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 150.0 feet and 183.0 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 25.0 feet and 50.0 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 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 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 50.0 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 50.0 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 400 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 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 150.0 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 100.0 foot wide Branch Line right of way, in the Town of Bromart, Snohomish County, Washington, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the E $\frac{1}{2}$ E $\frac{1}{2}$  Section 24, the E $\frac{1}{2}$ 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 $\frac{1}{2}$ NE $\frac{1}{4}$  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 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 110.0 foot wide Branch Line right of way, being 60.0 feet Westerly and 50.0 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 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 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 2.0 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 Grinier and Alice Grinier 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  $E\frac{1}{2}NW\frac{1}{4}$  Section 18, Government Lots 1 and 2 Section 19, all in Township 27 North, Range 6 East, W. M., the  $E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}$  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  $W\frac{1}{2}SE\frac{1}{4}$  Section 24, Township 27 North, Range 5 East, W. M., bounded Easterly and Westerly by the East and West lines of said  $W\frac{1}{2}SE\frac{1}{4}$  Section 24, **EXCEPTING THEREFROM**, that portion of said 200.0 foot wide Station Ground property lying Northwesterly of a line concentric with and distant 25.0 feet Northwesterly 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  $E\frac{1}{2}SW\frac{1}{4}$  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 Northwesterly of a line concentric with and distant 25.0 feet Northwesterly 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 91<sup>st</sup> Avenue SE with Yew

Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91<sup>st</sup> 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 S½SE¼ and the SE¼SW¼ 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 SE¼SE¼ 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.

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## 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 S½N½, and the E½SW¼ Section 3, the NW¼ 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 NW¼ 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 E½SW¼ 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 26, 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. 198512191094, **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 (SE¼ of NE¼) of Section Nine (9), Township Twenty-six (26) North, Range Five (5) East, W.M., described by metes and bounds as follows: Beginning at the point where the southeasterly line of the present right of way of the Northern Pacific

Railway intersects the south line of the said Southeast quarter of the Northeast quarter (SE/4 of NE/4) and running thence east along the south line of said Southeast quarter of the Northeast quarter (SE/4 of NE/4) a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision; thence running northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch a distance of 400 feet, more or less, to a point in the southeasterly line of the present right of way of the Northern Pacific Railway, thence southwesterly along said right of way line to point of beginning; containing 0.32 acres, more or less."

A 100 foot wide strip of land lying in the N/2 of the SE/4 of Section 9, Township 26 North, Range 5 East, W. M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Deeds, Page 48, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A. J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of Deeds, Page 211, records of records of King County, Washington, said 100 foot wide strip being described as follows:

That certain 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of Deeds, Page 539, records of King County, Washington, said 0.03 acre tract being described in said deed for reference as follows:

"That certain triangular portion of the northeast quarter of southeast quarter (NE¼ of SE¼) of section nine (9) in township twenty-six (26) north of range five (5) east of the Willamette Meridian, lying easterly of and between the rights of way of the Northern Pacific Railway Company for its Snoqualmie Branch and its Lake Washington Belt Line and westerly of a line parallel with and distant twenty-five (25) feet easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises, containing three hundredths (0.03) acres, more or less."; 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 that portion of the N½SE¼ of Section 9, Township 26 North, Range 5 East, W. M., King County, Washington lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, records of said County.

Exhibit B to Deed for Freight Portion

COVENANTS

Section 6. Condition of Property.

(a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the **"Condition of the Property"**).

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomsoever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, **"BNSF Parties"**) from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, **"Losses"**), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any

person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

#### Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "**Identified Condition**") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion.) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "**Cure**") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to

Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to or otherwise cure (collectively "**Remediate**" or "**Remediation**") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

Railbanking Requirements in Event of Abandonment. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Property, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority ("Railbanking Laws"), provided the Trail Use Applicant meets all requirements of the Railbanking Laws, including that the Trail Use Applicant agrees to a trail use agreement as required by the Railbanking Laws. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property ceases operations but fails within a reasonable

period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor agency for a third-party abandonment and interim trail use over some or all of the Property on which operations have ceased. The holder of the freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property shall not oppose any such action by a Trail Use Applicant if the holder has ceased operations.

Exhibit D

Declaration of Thomas Teigen

Director,

Snohomish County Department of Conservation and Natural Resources

BEFORE THE SURFACE TRANSPORTATION BOARD

GNP RLY, INC. – ABANDONMENT EXEMPTION – ) AB 1316X  
IN KING COUNTY, WA )

DECLARATION OF THOMAS TEIGEN  
IN SUPPORT OF SNOHOMISH COUNTY’S  
COMMENTS AND MOTION TO CORRECT

I, Thomas Teigen, make this declaration in support of Snohomish County’s Comments and Motion to Correct (“Comments”) filed in the above-captioned proceeding. Snohomish County’s interests are directly and adversely impacted by the decision of the Surface Transportation Board (STB) Director served September 14, 2022, and I confirm that Snohomish County strongly urges that that Decision be reconsidered by the entire Board and reversed, vacated, and/or overturned, so that anticipated railbanking proceedings connected with all portions of BNSF’s former line from Milepost 38.25 (near City of Snohomish) to and through Milepost 26.38 (Snohomish/King County line) all the way to Milepost 23.8 (end of line near Woodinville) by Snohomish County and/or others may be expedited and facilitated.

1. I am the Director of Snohomish County’s Department of Conservation and Natural Resources. Per records maintained by the County, BNSF Railway sold the

Port of Seattle certain property between Milepost 26.38 (Snohomish/King County line) and Milepost 38.25 (near City of Snohomish) in Snohomish County, including all track and ties, subject to a retained freight rail easement (“BNSF retained freight rail easement”). A copy of the relevant deed in Snohomish County is attached as Exhibit C to the Comments. The Port subsequently deeded this property to Snohomish County. A copy of the relevant deed is attached as Exhibit B to the Comments. Snohomish County’s interests in the rail corridor have been assigned to my Department for administration. This Declaration is based on my personal knowledge and information assembled by my staff in our official capacities.

2. No entity has used the BNSF retained freight rail easement for freight rail (or any rail) on the identified line (per milepost numbers) purposes for over two years. Despite inquiry on our behalf, no entity (including ECR or GNP) has presented a viable plan for restoration of freight rail operations on the line. The RL Banks rail consulting firm advised Snohomish County in a report dated September 12, 2019, that the “cost to cure” deficiencies in the Snohomish County portion of the line so that it could be operated in Class I status was \$1,646,300. Since the track has not received maintenance since the date of the report, costs are likely now higher. Eastside Community Rail professes lack of money to even make filings, let alone fix the rail line. GNP has made no known effort to fix the rail line. There is thus

no sign of future use. To my understanding, two things follow: (a) under state law, the unused BNSF retained freight rail easement would automatically extinguish, but for STB preemption; (b) under the railbanking covenant found in the BNSF to Port deed, the holder of the easement is obligated to seek STB abandonment authorization and at our request to cooperate in railbanking the rail corridor. If the holder of the easement fails to seek STB abandonment authorization, then it must cooperate in an adverse abandonment application proceeding filed by us and as well as in railbanking. In light of the lack of rail use for over two years, the County has determined that railbanking must immediately be pursued. This has the advantage of mooted any need to resolve title disputes because regardless who owns the BNSF retained freight rail easement, any interest in such easement must be transferred to Snohomish County for railbanking per the covenant without additional compensation. Snohomish County plans to incorporate the property into a trail system extending north through the City of Snohomish and south into Woodinville and King County and to preserve the corridor for future freight and passenger transit purposes. In all events, the public will thus finally be able to draw benefit from its substantial investment in purchasing the property from BNSF via the Port.

3. The County suffers significant burdens from the current condition of limbo suffered by the property. First, the RL Banks rail consulting firm determined the

Net Liquidation Value of the track and ties owned by the County in the rail corridor as of September 12, 2019 was \$1,243,000. I am informed that track salvage values have substantially increased in the interval. The one-time purported owner of the BNSF retained freight rail easement (Eastside Community Rail) caused the operating agreement authorizing use of the County's track to expire, and both it and its successor GNP RLY, Inc. have failed to negotiate a replacement agreement. The County has billed a user fee to putative holders of the BNSF retained freight rail easement for tying up any use of the track. Neither has paid one cent. To my understanding, it follows that any user of the track would in trespass at state law, at least but for STB preemption. It further follows that STB preemption should be removed so the County can obtain compensation for use of its assets. The failure of the holder of the BNSF freight rail easement to maintain or to replace the operating agreement for the track not only deprives the County of compensation for its assets, but also unfairly exposes the County to liability for injuries and exposes the County to additional maintenance costs associated with vegetation control and culvert clearing due to deficiencies in railroad maintenance arising from non-use. In order to obtain use of its property, the County needs and requests STB promptly to process all abandonment/ railbanking authorization requests filed in connection with the rail corridor at issue in AB 1316 and its extension in Snohomish County. I am aware of no reason for

delay. Given that the line has not been used for freight rail in over two years, the County intends to railbank the line, including by adverse abandonment action if needed but in any case under the authority and by the procedures of the Surface Transportation Board.

4. The Snohomish/King County line is Milepost 26.38. The Director Decision of September 14 erroneously and repeatedly states it as Milepost 26.58, which is in Snohomish County. STB should correct this error.

I, Thomas Teigen, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this Declaration in support of Snohomish County at the Surface Transportation Board.

Executed on: 29 September 2022

Tom Teigen, Director, DCNR

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Signature: Tom Teigen 9/29/2022  
Tom Teigen 9/29/2022 (Sep 29, 2022 10:25 PDT)

Email: tom.teigen@co.snohomish.wa.us