

BEFORE THE SURFACE TRANSPORTATION BOARD

Eastside Community Rail, LLC –	)	300738
Acquisition and Operation Exemption –	) F.D. 35692	
GNP RLY, Inc.	)	ENTERED
		Office of Proceedings
		June 11, 2020
		Part of
Ballard Terminal Railroad Company, LLC	)	Public Record
-- Lease Exemption --	) F.D. 35730	
Eastside Community Rail, LLC	)	

REPLY to BALLARD TERMINAL COMPANY LETTER SUPPORTING
REVOCATION OF
EASTSIDE COMMUNITY RAIL and
BALLARD TERMINAL RAILROAD COMPANY LICENSES
and
NOTICE OF RECENT DEVELOPMENTS

I. REVOCATION of ECR and BTRC LICENSES

For the reasons stated below, Snohomish County (“County” or “SnoCo”) concurs with the conclusion in Ballard Terminal Railroad Company’s (“BTRC’s”) letter pleading (Letter, J. Brower for BTRC to Cynthia Brown for STB, dated and filed June 8, 2020, in F.D. 35692 and F.D. 35730) that “the [Surface Transportation Board] has ample information to determine and grant [SnoCo’s] requested relief, finding Eastside Community Rail’s exemption void ab initio.”

SnoCo also concurs in BTRC's assessment that BTRC's exemption should also be revoked, as "one depends upon the other." Consistent with BTRC's letter pleading, SnoCo hereby again confirms its request that the Surface Transportation Board ("STB" or "Board") promptly revoke ab initio (1) the acquisition and operation exemption license in F.D. 35692 which STB granted to Eastside Community Railroad ("ECR") pursuant to 49 C.F.R. 1150.31, et seq., and (2) the lease exemption license in F.D. 35730 which STB granted Ballard Terminal Railroad Company ("BTRC") pursuant to 49 C.F.R. 1150.41, et seq.

ECR's "verified notice" on which the STB license in F.D. 35692 contained false or misleading information certified by ECR's owner, Douglas Engle. As the D.C. Circuit stated in Snohomish County v. STB, 954 F.3d 290, 302 (2020):

"The record before the Board contain[s] ample evidence of potential misleadingness, notably the omissions and inconsistencies in Engle's account that the County and others flagged."

As summarized below, BTRC's "verified notice" on which the STB license in F.D. 35730 is based in essence reiterated/relied upon the bogus or misleading information certified by Engle.

49 C.F.R. 1150.32(d) & 1150.42(c) provide that licenses based on false or misleading information are "void ab initio." In addition, the pertinent licensing

orders issued by STB likewise on their face provide that the licenses must be voided ab initio if the “verified notice” underlying the licensed contains “false or misleading information.” See STB Notice in F.D. 35692, served Nov. 23, 2012, slip op. p.2 (also 77 Fed. Reg. 70207, Nov. 23, 2012); STB Notice in F.D. 35730, served April 28, 2013, slip op. p.2 (also 78 Fed. Reg. 23331, April 18, 2013).

The relevant regulations authorize petitions to revoke on the basis of false or misleading information at any time. They do not require that the petitioning party show that the railroad making the false or misleading information knew it to be false or misleading or otherwise fraudulent. BTRC’s assertion that it did not know that ECR/Engle had made false statements when BTRC relied upon them is thus irrelevant. As to ECR/Engle, in the circumstances of this case, it seems clear that the person (Douglas Engle) certifying to ECR’s notice knew or should have known that he was certifying to false or misleading information because he was intimately involved in the very actions making the ECR notice false or misleading. He so admitted this in his pleadings below.¹ Knowingly certifying false information to a government agency is customarily considered a perjury.

¹ Engle, after acknowledging the deed from GNP to Earl Engle and Joanne Engle, stated that “GNP did not follow-through on reversing the title changes in KingCo or SnoCo, which was not my concern at the time.” Douglas Engle’s “Reply to Snohomish County” in F.D. 35692, 8/14/2018, at 6.

These proceedings test whether STB will enforce its orders and regulations or instead tolerate and in effect encourage misrepresentations by railroads to the agency.

Summary of Proceedings to Date and Renewal of Requests to Revoke

On July 12, 2018, the County petitioned the Surface Transportation Board (STB) to revoke ab initio the ECR and BTRC licenses as required by the pertinent regulations and the plain language of STB's pertinent licenses. Douglas Engle replied, essentially admitting misrepresentations to this Board (see, e.g., note 1 supra). He compounded this admission with numerous contradictory statements, and claiming additional conveyances (none of which were recorded or apparently even delivered) of what supposedly is ECR's rail line to and from various parties. Engle's "shell game defense" in effect amounted to a series of admissions of repeated and unlawful failures to comply with STB pre-transfer approval regulations, and misleading and/or contradictory statements to STB not only in F.D. 35692 but also in other STB proceedings.² Other parties also replied. City of Woodinville supported the relief sought by SnoCo.

² STB in fact acknowledged ECR's contradictory statements and failures to comply with STB regulations in its decision below. Decision in F.D. 35692 and 35730, served Dec. 18, 2018, at p. 8 (noting that Engle's pleadings in this and other proceedings professed all manner of transfers of rail property without required STB pre-authorization).

Because this Board is required to respond to petitions within 90 days (49 U.S.C. 10502(d)) but evidently was not prepared to do so, it instituted a proceeding but did not seek to set a briefing schedule or otherwise provide for additional procedures. Decision in F.D. 35692 and F.D. 35730, served Sept. 24, 2018. The Board denied SnoCo's petitions to revoke in a decision in the above docket served December 13, 2018. The Board contended that it could not determine that ECR's representations were false, because the Board felt the matter a title dispute. The Board claimed it did not resolve title disputes,³ and indicated SnoCo should obtain

³ The Board, of course, resolves title disputes for rail regulatory purposes all the time, as did its predecessor before it. The agency and its predecessor (the Interstate Commerce Commission or "ICC") have adjudicated such matters for various federal rail regulatory purposes for decades. Examples include "offers of financial assistance" ("OFA's") (49 U.S.C. 10904), feeder line applications (49 U.S.C. 10907) and alternative rail service. See, e.g., PYCO Industries, Inc. – Feeder Line Application – Lines of South Plains Switching, Ltd. Co., F.D. 34890, served August 31, 2007, slip at 15-19. See also South Plains Switching, Ltd. Co. – Compensation for Use of Facilities in Alternative Rail Service – West Texas and Lubbock Railway Co., F.D. 35111, served Dec. 15, 2008 (agency also makes similar evaluations in alternative rail service cases). STB has well-established procedures for evaluating claims about ownership of a rail line by a railroad. In assigning value to rail lines in such proceedings, the agency first determines which parcels in the right of way are owned by the railroad in fee and which in easement (or no record title, which the agency treats as an easement) based on title reports and such other expert testimony as is offered. The agency values easements at zero, so the distinction between fee and easement is important and well-developed in STB case law. See Chicago & N.W. Transp. Co. – Abandonment ("C&NW"), 363 ICC 956, 959 (1981) (ICC accepts valuation based on appraisal only of parcels conveyed by warranty or quitclaim deeds, and assigns no value to easements and no record title parcels), aff'd sub nom, Chicago & N.W. Transp. Co. v. U.S., 678 F.2d 665, 670 (7th Cir. 1982) (land held by railroad as easement by adverse possession valued at zero); Iowa Terminal R.R. v. ICC, 853 F.2d 965, 969 (D.C.

a state court judgment, or perhaps seek reopening the bankruptcy proceeding, to show that Douglas Engle made a false representation in his “notice.” SnoCo petitioned for reconsideration on the ground that STB regulation preempted state court quiet title litigation, that SnoCo was not a creditor which could reopen a stale bankruptcy proceeding, and that SnoCo was not the wrong-doer and should not be burdened with additional legal proceedings in other and perhaps multiple tribunals in any event. STB denied reconsideration by Decision served May 17, 2019.

On petitions for review, the D.C. Circuit vacated the Board’s decision denying revocation and remanded for further consideration. The Court of Appeals indicated that the Board had ignored the County’s arguments that the ECR verified notice was misleading. As already indicated, the Court observed that there was ample evidence that Mr. Engle/ECR made misleading statements to the Board. 954 F.3d 302. The Court indicated that it need not consider whether the Board erred in claiming that the County failed to show falsehoods “because the Board’s reasons do not in any event support its denial of the separate claim that the notices

Cir. 1988) (even land held in fee subject to donation agreement is valued at zero). In making valuation decisions, the agency always relies on evidence of title submitted by the parties. In the event of a title dispute, the agency does not dismiss the proceeding, and refer the parties to state courts when some party makes an unverified claim like Engle did here. The agency resolves the issue based on the best evidence presented (title reports and recorded deeds). E.g., Chicago & N.W. Transp. Co. – Abandonment (“C&NW”), 363 ICC 956, 959 (1981).

of exemption were misleading.” Id. The Board noted that Engle failed to disclose (among other things) a “publicly recorded” transfer of the freight rail easement to members of his family, and that his Reply to SnoCo’s petition was internally inconsistent.” Id. The Court noted the concurring opinion which indicated that STB erred in finding that the County had failed to show outright falsehood in the Engle/ECR notice of exemption. The concurring opinion also stated that STB effectively left the County remediless notwithstanding the fact that the actions of Engle/ECR were unlawful. Id. citing 954 F.3d at 304-06 (concurring opinion). The mandate issued on May 19, 2020. The matter is now again in STB jurisdiction.

Snohomish County hereby renews its request that this Board promptly (1) revoke ab initio the exemption for acquisition and operation granted ECR for the reasons previously expressed and noted by the D.C. Circuit and the concurring opinion as based on false and/or misleading information, and (2) also revoke ab initio the lease exemption granted BTRC, for it relies on the same false or misleading claims by ECR in the ECR exemption.

As shown in SnoCo’s filings to date, upon SnoCo’s acquisition of the Port of Seattle’s interest in the rail line from the Port, SnoCo commissioned an expert examination of ECR’s claim of title in the rail line, including a title report. The examination revealed the false or at the very least misleading representations

which ECR (and BTRC) made to STB, and the title report in essence confirmed that STB had been misled. This does not require a determination as to title. It simply requires looking at what was said, and what was omitted, as confirmed by what actually happened.

In ECR's notice for acquisition and operation in F.D. 35692 filed November 7, 2012, Mr. Engle certified to STB (Notice at p. 8) that ECR was acquiring GNP RLY's ("GNP's") "line of railroad" (Notice p. 1) between Snohomish City (in Snohomish County) and Woodinville (in King County) from GNP's bankrupt estate. SnoCo in its Petition to Revoke argued, inter alia, that this notice was false. In Washington state, an easement is an interest in real property⁴ and interests in real property for all purposes relevant here may only be conveyed by a deed conforming to statutory requirements.⁵ Since ECR never received any deed to said line from GNP,⁶ ECR never conformed to the planned acquisition set forth in its verified notice, which is the only plan for which it received STB authority. This is not a matter of determining title, but looking at what was said to be the

⁴ Kesinger v. Logan, 113 Wn.2d 320, 326, 779 P.2d 263, 266 (WA Sup. Ct. 1989).

⁵ RCW 64.04.010 (statute of frauds requires conveyance of interests of land be by deed); Key Design, Inc. v. Moser, 138 Wn.2d 875, 881, 983 P.2d 653, 657 (1999) (statute of frauds is interpreted strictly).

⁶ See T. Stowe Declaration p. 3, lines 3-5 [hereinafter Stowe Dec. (first)] Petition to Revoke in F.D. 35692, 7/12/2018.

acquisition plan, and what actually happened. Moreover, the County demonstrated that Mr. Engle (as an officer of GNP) previously had conveyed GNP's "line of railroad" to his father Earl and then-wife Joanne by recorded deed.⁷ No deed was ever recorded reconveying the property from them to GNP.⁸ A title company independently confirmed record title has been in the hands of Earl Engle and Joanne Engle at all relevant times, not in GNP or ECR.⁹ Under the circumstances, Mr. Engle's certification that his railroad (ECR) would receive a line of railroad from GNP was false information. He admitted this to STB, but STB "overlooked" the admission. See note 1 supra. Again, this is obvious from merely reading what was said to STB and what actually happened. One does not need a title determination by a state court to conclude what was said by Engle/ECR was false.

⁷ See, e.g., Stowe Dec. (first) p. 2, lines 1-8 and Ex. 2 to the Dec.

⁸ The record is bereft of any evidence that GNP's trustee in bankruptcy was ever informed of the deed out. To the contrary, Earl Engle and Joanne Engle filed claims in bankruptcy against the bankrupt estate without disclosing the deed out. Stowe Dec. (first) p. 3, lines 8-13 and Ex. 3 to the Dec. STB in its Decision served December 18, 2018, references Douglas Engle claims (contradicted elsewhere in his pleadings) about arranging a deed back to GNP from Joanne and Earl Engle, as well as a partially executed form of deed from Joanne and Earl Engle to GNP, but that deed was defective under Washington law, it was never recorded, and there is no evidence it was ever delivered to the bankrupt estate. Second Declaration of T. Stowe, paras 6&7, pp. 3-4, filed with Reply to Douglas Engle on behalf of Snohomish County, filed Aug. 29, 2018 in F.D. 35692. Engle may have prepared the deed as protection if his deed out was timely discovered (it was not), but by his own admission he never used (delivered) it. To the contrary, Engle indicates he elected "not to follow through with reversing title changes." See note 1 supra. STB seems to have inexplicably ignored Engle's admission.

⁹ Stowe Dec. (first) Exhibit 7.

More should not be needed, but in addition to all of this, the Engle family treated the rail line as owned by them personally (per the deed from GNP to Earl and Joanne Engle) and not by ECR.¹⁰ ECR in representing it was acquiring the line from GNP may as well have represented to STB it was acquiring the Brooklyn Bridge, the Lincoln Memorial, and/or the Vatican from GNP. There was no deed, and the property did not belong to GNP at any relevant time in the first place.

As an additional and separate argument, STB's regulations provide that notices are invalid if based on misleading information. Information can be misleading if material but omitted. Rail Switching Services, Inc. – Op. Ex. – Pemiscot County Port Authority, F.D. 35685, served Jan. 8, 2013, p. 4. Information is material if

¹⁰ As explained by City of Woodinville in its reply filed 8/23/2018 at pp. 5-6 supporting SnoCo:

“Mr. Engle presents no evidence that his relatives ever conveyed the Freight Easement to GNP. To the contrary, Mr. Engle suggests that he and his father retained the Freight Easement as late as 2017. Exhibit 4 to the Engle Reply purports to be a December 2017 quitclaim deed from ‘Earl Engle and Doug Engle’ conveying a ‘portion’ of the Freight Easement to a company called NW Signal Maintenance. In Mr. Engle’s words: ‘In October 2017 my father and I sold the freight easement to NW Signal ... while I maintain passenger rights.’ Engle Reply at 6. This would be the same Freight Easement that Mr. Engle insists his father and wife conveyed back to GNP in 2011. Mr. Engle also refers to a parking space lease agreement of October 2017, in which ‘Doug Engle’ (not ECR) purports to lease part of the line to a business that is not a shipper.

“In short, the Engle Reply corroborates the County’s documented and verified showing that ECR holds no property interest in the freight easement. The County’s assertion that ECR misled the Board in contending that ECR acquired sufficient property interests from the estate of GNP to lawfully operate a common carrier railroad is undisputed.”

the transaction would not otherwise have qualified for the exemption. Id. The fact that record title was never in GNP's hands at any relevant time for conveyance to ECR [especially when that fact was the direct result of actions of ECR's principal (Douglas Engle) while he worked for GNP] would obviously have disqualified the transaction from eligibility for the exemption. This Board revoked the license granted to Black Hills Transportation ("BHT") on the ground that it had failed to disclose possible lack of ownership of the railroad property in the entity over which BHT contracted to operate. Black Hills Transportation d/b/a Deadwood, B H & W Railroad – Modified Rail Certificate, F.D. 34924, served Jan. 27, 2010 (revoking license ab initio because applicant failed to reveal claims that rail line had already reverted to adjoining landowners and this was misleading by omission). See also Petition to Revoke at pp. 6-8. Again, simply based on the omission of key facts, and without any title determination, the ECR notice was obviously and materially misleading.

The issue is even broader: if Engle had revealed the missing information, this Board would have immediately notified the Engle family that it needed this Board's pre-authorization for the transfer from Earl and Joanne Engle (accord, STB Decision in F.D. 35692 and 35730, served Dec. 18, 2018, slip at 8), and that ECR would need to file a notice of exemption to acquire the rail easement from Earl and Joanne Engle, or to lease it from them, unless ECR intended to operate it

on their behalf as an agent or contract operator. In all events, the Board would not have authorized the exemption. (Indeed, it could not lawfully have done so for such an action would violate its regulations.)

In short, the conclusion is inescapable that the verified notice of ECR was misleading by omitting the fact that GNP had conveyed the rail line to Earl and Joanne Engle and that GNP lacked record title at the time of alleged transfer to ECR. Indeed, GNP lacked title at any relevant time for, as Mr. Engle has informed this Board, he did not consider it necessary to “reverse the title changes.” See note 1 supra. None of this requires any title determination. It just requires recognition of the relevant statements and facts in the record.

Furthermore, Mr. Engle indicates in his earlier pleading (again, see note 1 supra) that he felt that it did not matter whether ECR got the property from GNP because he desired Engle family control of the property in accordance with the deed he earlier arranged from GNP to his father and then-wife. This amounted to an alternative plan of acquisition (Engle or his family would own or control the rail line directly, rather than ECR, and he and his family would do so via the undisclosed deed he arranged from GNP to his father and then-wife). This alternative plan of acquisition is much different from what ECR/Engle portrayed in ECR’s notice of acquisition, and it embodied violation by evasion of multiple STB regulations requiring the Board’s pre-authorization for transfers of rail property as

well as who was acquiring (and from whom) the relevant rail property. The violations included the initial transfer from GNP to Earl and Joanne Engle, and then any later agreement for control over the rail line by Douglas, and also any later transfer to Douglas Engle, and any agreement for ECR to operate the railroad for one or more of the Engle family. If revealed to STB, this alternative plan (which by Engle's statements and subsequent actions is what he actually implemented) surely would have resulted in denial of the exemption and the necessity for alternative administrative license proceedings. Accord, Decision in F.D. 35692, served Dec. 18, 2018, at p. 8. To reiterate, the ECR notice if not misleading in failing to disclose GNP's lack of title must be viewed as misleading in failing to disclose Engle's ultimate and unlawful plan to obtain control using Earl and Joanne as his modality.

It is not necessary for SnoCo to show this conduct was done by Engle with knowledge, although Engle admits he did it intentionally. See note 1 supra. The fact that Engle acted with knowledge makes the situation all the more troubling. This Board, after all, is charged with operating under a national rail policy calling for "honest and efficient management of railroads." 49 U.S.C. 10101(9). Moreover, the Board in this very proceeding confirmed that it has "inherent authority to protect the integrity of [its] regulatory processes ... and to prevent or remedy a misuse of those processes." Decision in F.D. 35692 served Dec. 18,

2018, slip at 8-9. Surely concealment of transfers requiring STB pre-authorization is an attack on the integrity of the Board's processes, rendering the ECR use of 49 C.F.R. 1150.31 et seq. and BTRC use of 49 C.F.R. 1150.41 et seq. a misuse of those processes. Failure to revoke the exemptions in F.D. 35692 and F.D. 35730 amounts to an invitation to the rail industry to ignore STB regulatory requirements and to engage in gifting instead. Presumably Congress has made STB regulation preemptive because the agency will cause the regulated industry to conform to it, not ignore it.

II. NOTIFICATION OF RECENT DEVELOPMENTS

Since the Board's decisions in these proceedings, there have been several germane developments that (a) confirm Snohomish County's arguments, (b) cause ECR and BTRC now to be in state law trespass, and (c) amount to an ownership change of GNP RLY, Inc., which is the party Snohomish County expects will hold the common carrier obligation if the ECR and BTRC licenses are revoked. These matters could not have been brought to the Board's attention before because they have all occurred since this matter has been under judicial review. To the extent a motion is required, Snohomish County moves that these additional developments be included in the record.

A. Further Confirmation by Engle that He Mised STB in 2012 and Again in his Reply Filings in the Revocation

On December 16, 2019, Douglas Engle on behalf of ECR recorded a remarkable document (attached as Exhibit A), taking the form of a partially executed quitclaim deed for the freight rail easement (rail line) at issue in this proceeding purportedly from “GNP RLY, Inc., EARL L. ENGLE, and DOUGLAS E. ENGLE” to “EASTSIDE COMMUNITY RAIL, LLC.”

The most remarkable feature of this purported deed, signed by Douglas and Earl Engle, is the “recitals” on p. 2. The recitals among other things indicate that the reason for the 12/16/2019 deed is that Joanne Engle (“JME”) and Earl Engle (ELE) legally held title to the rail line. See third “Whereas” recital on p. 2 of deed. Douglas Engle in the 12/16/2019 deed says the deed was necessary because Earl and Joanne were “the two largest creditors” and on behalf of GNP he used the rail line as “collateral,” evidently in the form of deeding the relevant property to them from GNP. This is an admission that GNP per Douglas Engle deeded the rail line to his relatives before GNP went into bankruptcy. Douglas Engle executed the 12/16/2019 deed containing the recital before a notary. It is therefore an acknowledged admission by Mr. Engle that he misled the Board in indicating otherwise in ECR’s 2012 notice of exemption, and in his replies to SnoCo’s

Petition to Revoke, which this Board read to mean Engle disputed SnoCo's contentions.¹¹

The recitals also state that Douglas Engle (DEE) "assumed" Joanne Engle's (JME's) rights in a divorce settlement. 12/16/2019 deed, fourth "whereas" recital. The recital confirms that at all points prior to December 16, 2019, ECR did not have title to the rail line. Instead, it was "owned" by members of the Engle family (Earl and Joanne or Earl and Douglas) according to Douglas Engle and ECR's own statements and actions. The ECR notice in 2012 thus had to be misleading if not outright false. No other conclusion is possible. And no title determination is necessary to support this conclusion; it is manifest in what the record shows as facts and admissions.

STB regulations (and applicable federal statutes) require transfers of property interests to be pre-authorized by STB. None of these transfers set forth in the "recitals" were pre-authorized. They are therefore all unlawful. The same situation applies to the December 16, 2019 deed itself.

¹¹ In addition, the fourth "whereas" recital asserts that Joanne and ELE (presumably Earl Engle) entered into an agreement to convey their interests back to GNP "prior to the trustee [in bankruptcy] taking control of GNP, but the 12/16/2019 deed confirms that neither Joanne nor Earl in fact conveyed their interests back to GNP. If they had, then Douglas Engle could not claim an interest in a divorce settlement, and the entire 12/16/2019 deed is meaningless for neither he nor Earl would have any interest in the rail line to convey. See also note 1 supra.

The deed is also remarkably corrupt under Washington law. Since Washington State requires transfers of real property to be by deed,¹² and since Douglas Engle (as the recitals make clear) never received a deed from Joanne for her interest in the rail line, Douglas Engle never held an interest in the rail line. The deed cannot convey Joanne's record interest to ECR. She neither executed it nor supplied an acknowledgement.

The sixth "whereas" recital further claims that NW Signal and ECR completed a quitclaim deed for a portion of the right of way, and that this will be "respected within this Deed," whatever that means. Snohomish County conjectures that the reference to a NW Signal/ECR deed is a reference to an unrecorded deed from Earl and Douglas (not ECR) to NW Signal set forth in Engle Reply Exhibit 4, filed 8/14/2018 in F.D. 35692. The "recitals" then say that "to perfect the legal transfer of the Reserved Freight Rail Easement to ECR from GNP," Joanne/Douglas and Earl to ECR, the "parties" agree that this deed conveys the "complete and legitimate transfer of all freight rail interests in the Corridor to ECR." This is an impossibility in the circumstances, calling into question the entire deed. First, the deed purports to "respect" a prior conveyance of the Engle family to NW Signal (presumably Engle Reply Exhibit 4). Second, Joanne Skievaski (formerly Joanne Engle) is not a party to the 12/16/2019 deed, nor is GNP RLY, Inc. Neither GNP

¹² P. 7 *supra* and notes 4 and 5.

nor Kevin Kucera nor NW Signal executed the deed, although it is made out for execution by Mr. Kucera on behalf of GNP. The deed thus cannot purport to commit GNP, NW Signal, Kevin Kucera or Douglas Engle's former wife Joanne to transfer any interests any of them hold to ECR. Moreover, STB did not authorize the purported transfer of rail property as embodied in the deed. Since at least one key "party" (GNP) did not execute the instrument, the whole instrument is arguably is a nullity, especially since it cannot accomplish its stated purpose in the final "whereas" clause.¹³ But this Board need not make any determination as to the validity of the deed. The validity of the 2019 deed itself is irrelevant to whether ECR/Engle made misrepresentations to STB in 2012, other than as evidence that ECR/Engle admit to the misrepresentations. As the recitals in the deed make clear, they clearly are now admitting to misrepresentations. The deed corroborates that Douglas Engle deeded out the relevant property and never "undid" this action during the bankruptcy proceeding. He instead misled STB in 2012, and again in his reply to SnoCo's Petition to Revoke in 2018. He did not reveal key and material facts to this Board. ECR's license in F.D. 35692 must therefore be

¹³ For the record, the deed has a number of other defects under state law. It does not define terms (e.g., "DEE" or ELE"), it does not indicate any actual consideration, it is not signed by all the grantors, and contains no severance clause providing for it to be effective for those grantors who did sign. Moreover, the date of an acknowledgement before a notary is required by RCW 42.45.130(b) but none is given in the deed acknowledgements, and the form of acknowledgement does not conform to that specified in RCW 42.45.140.

revoked ab initio. The BTRC license, which rests on Engle's misrepresentations, also must be revoked.

B. Expiration of O&M Agreement.

As previously demonstrated in these proceedings, BNSF originally transferred the entire line, including track and ties, to the Port, reserving only a raw freight rail easement to operate over the Port's assets in question. Freight operations were governed by an Operating and Maintenance ("O&M") Agreement. See The Port of Seattle – Acq. Exemption – Certain Assets of BNSF Railway Company, FD. 35218, served Oct. 27, 2008 (explaining inter alia that the railroad's use of the Port's assets was governed by the O&M agreement and discussing many of its terms). See also Stowe Verified Statement (first), Exhibit 11 (BNSF to Port deed). The O&M was assignable. BNSF subsequently transferred the reserved raw freight rail easement (an interest in land) to GNP. See GNP – Acq. & Op. Exempt. – BNSF Railway Company, F.D. 35213, served Feb. 13, 2009. GNP's use of the Port's track and ties continued to be governed by the O&M, which in effect was a 10-year lease of the Port's track and tie and other assets, renewable upon timely notice by the railroad, and otherwise expiring on December 18, 2019. Snohomish County subsequently acquired the Port's interests in the SnoCo portion of the line, subject to the O&M. GNP assigned its rights and obligations under the O&M to ECR. Among the railroad obligations assigned to ECR were (a) the

obligation to maintain the track and ties, (b) to insure for accidents, (c) to be responsible for toxic spills, and (d) to pay rent at the (heavily discounted) rate of \$10/carload.

Douglas Engle intentionally (by non-renewal) terminated the O&M on December 18, 2019. Since December 18, 2019, ECR and BTRC accordingly have no right under to state law to use or to occupy the County's track, ties, and other property in the right of way corridor at issue in this proceeding. The Board is not a proper forum for resolution of contract disputes, but it is an abuse of the Board's processes for railroads to trespass on property without state law right while hiding behind this agency's preemptive jurisdiction. Yet ECR and BTRC are trespassers at state law, and are hiding behind this agency's preemptive jurisdiction to continue their trespass. Since ECR's license (and a fortiori BTRC's license) are predicated on false or misleading license applications, this agency should promptly revoke ECR and BTRC so the County can use self-help and other state law remedies to evict them from the premises.

Because the County was forewarned that Engle intended to terminate the O&M, it necessarily took action to reserve its rights. The County by letter dated 7 October 2019 provided ECR and BTRC a 30-day notice to cure, indicating that they would need an agreement with the County for use of the County's rail, ties and other assets in the right of way when the O&M terminated, and in the absence

of an agreement, that the County would charge a fee based on the appraised value of the track and ties (\$1,243,000 based on a recent appraisal by R.L. Banks and Associates) multiplied by 12.22% (STB's most recent calculation of railroad cost of capital). This amounted to \$12,657.88 per month. The County otherwise reserved its rights. See Letter, Montange (as attorney for SnoCo) to Mr. Douglas Engle (for ECR), Joshua Brower (attorney for BTRC) and Kevin Kucera (as general manager for GNP), dated 7 October 2019 (attached as Exhibit B, but without the appraisal).

Mr. Engle evaded all attempts at negotiation. Negotiations with BTRC were unproductive. The County effective December 18, 2019, began charging ECR and BTRC \$12,657.88 per month for use of the County's assets. See Letter, Montange (as attorney for SnoCo) to Mr. Douglas Engle (for ECR), Mr. Kevin Kucera (for GNP) and Mr. Joshua Brower (for BTRC), dated November 20, 2019 (attached as Exhibit C) (indicating that in light of the failure to cure, the use fee was imposed as of midnight December 19, 2019). Neither ECR nor BTRC has paid. BTRC appears to claim the duty is on ECR (which terminated the O&M, thus incurring the charge) and ECR has said nothing.

The County, of course, cannot engage in self-help to remove the trespassers so long as they hold STB licenses, nor may the County pursue trespass relief in state court, due to federal preemption. The County will not interfere with ECR or

BTRC discharge of the common carrier obligation even if they are in trespass, due to the STB licenses they continue to hold. Nonetheless, rail operations by trespassers (but for the STB's preemptive jurisdiction) that use the County's property impose serious burdens on the County. First, the trespassers are using at least \$1,243,000 in County assets with trivial-to-no compensation to the County, while protesting they lack revenue to afford maintenance or rehabilitation. Second, the County is exposed to liability in tort for spills and accidents arising from ECR/BTRC uses. Since the County is no longer in privity of contract with ECR, and has never been in privity of contract with BTRC (except insofar as ECR obligated BTRC to conform to the terms of the O&M Agreement to the extent binding on ECR), the County can no longer rely on insurance policies covering BTRC or ECR. Both trespassers are thus operating on County property without providing liability protection to the County.¹⁴ This imposes an onerous and unwarranted risk and burden on the County and its taxpayers. This is especially unfair to the County since the ECR and BTRC licenses are based on false and misleading representations to the STB and the STB regulations state that they are therefore void ab initio. This unwarranted risk and burden, and the railroad's trespass use of the County's assets, would be eliminated if this Board revoked the

¹⁴ See email from Snohomish County Risk Management, June 10, 2020 attached as Exhibit D.

ECR acquisition and operating license, and the BTRC lease license. STB should revoke both licenses. The agency's regulations and the licenses themselves so require.

C. GNP RLY and the Common Carrier Obligation

STB authorized ECR to obtain rail property and the federal common carrier obligation from GNP. When this Board revokes the ECR and BTRC licenses, then the federal common carrier obligation logically returns to GNP RLY, Inc.

Prior to the filing on June 8, 2020, BTRC's sole germane filing below expressed reservations concerning whether GNP would be able to discharge common carrier obligations. Letter, Joshua Brower (for BTRC) to C. Brown (STB), dated August 7, 2018 in F.D. 35692, p. 2. Brower stated GNP was long defunct, had been "discharged" in bankruptcy, and lacked staff and equipment. There have been recent developments germane to the complaints raised by BTRC concerning GNP.

First, GNP RLY was not dissolved, sold, or transferred at the conclusion of the bankruptcy proceeding in which it was the debtor, but continued to exist under the ownership of Thomas Payne. It is therefore not "long defunct" as BTRC's 2018 letter suggested. To the contrary, GNP's manager (Mr. Kucera) has evidently been negotiating with ECR not only to acquire an interest in the rail line (see Engle

Reply Exhibit 4, *supra*) but also, according to both Engle and Kucera, the entire rail line. In particular, Mr. Engle previously represented to this Board that he and his father Earl owned the rail line (not ECR), and that they sold the rail line to Mr. Kucera (who in addition to being General Manager of GNP also owns NW Signal) in 2017.¹⁵ Kevin Kucera acknowledged that a sales contract existed but intimated it had not been consummated.¹⁶

Second Mr. Engle represented that NW Signal (Mr. Kucera) intended to purchase GNP from Mr. Payne, but Mr. Payne died, and the matter was caught up in Payne's estate. See Engle Reply in F.D 35692, filed August 14, 2018, at p. 4. Mr. Engle additionally represented to the Board that he anticipated NW Signal becoming owner of ECR's interest in the line, and to provide electrical service training on the line, consistent with continued freight rail use. *Id.* at 16.¹⁷

By email dated April 11, 2020, Snohomish County was informed by counsel (John Sullivan) for the Payne Estate that the Payne Estate had transferred all shares in GNP to Kevin Kucera. See Exhibit D (email dated April 11, 2020 and

¹⁵ Engle Reply in FD 35692, *supra*, at p. 6.

¹⁶ Letter, Kevin Kucera on behalf of NW Signal to D. Brown in F.D. 35692, Sept. 4, 2018, at p. 2 (first bullet point).

¹⁷ For example, Mr. Engle expressed hope that BTRC could continue to operate the line for NW Signal. Engle Reply at 16. Mr. Engle also provided a copy of an unrecorded deed to at least a portion of the freight rail easement to NW Signal. Engle Reply, supra, Exhibit 4.

attachments). In short, GNP is now owned and under the management of Kevin Kucera.

BTRC noted that GNP had been discharged in bankruptcy. But nothing precludes a company which has been discharged in bankruptcy from continuing in, or re-entering a business, and discharged companies seem to do so frequently under new management. Because Mr. Kucera was general manager for GNP and had evidently contracted to acquire the line, and was seeking to own GNP, SnoCo has kept him informed of SnoCo's position resulting from ECR's termination of the O&M Agreement well in advance of his acquisition of GNP. See Exhibits B & C.

BTRC's point that GNP lacks equipment and has never operated on the line is irrelevant. GNP in the past, like other railroads, relied on agents (contract operators) or lessees (e.g., BTRC). GNP presumably could do so again, as Mr. Engle projected it would, under its new management.

Unfortunately, this does not resolve the property "confusion" created by Douglas Engle to date. First, GNP never held an interest in the track and ties other than through the lease provisions of the O&M Agreement. Any rights under the O&M expired on December 18, 2019. GNP therefore will need a written agreement with SnoCo covering use of the County's track and ties or it will be in

trespass at state law, just as are ECR and BTRC today, should it become common carrier on the line again. There are also insurance and liability issues arising from GNP operations using County property without an agreement with the County.

See note 14, supra.

In addition, there is the question of ownership of the freight rail easement originally reserved by BNSF. Ordinarily when STB issues an order revoking an acquisition license, it orders the purported acquiring party (here ECR) to reconvey the property acquired to the originating railroad (here GNP). Unfortunately, it is not clear whether ECR owns any interest in the freight rail easement due to Douglas Engle's multiple levels of false, misleading and inconsistent representations, failures to obtain required STB transfer licenses, and failures to comply with state law deed requirements in order to transfer interests in land (which include railroad easements). Thus, while SnoCo anticipates that STB will order ECR to reconvey upon revocation, SnoCo is filing a motion herewith to require Douglas Engle to obtain quitclaim reconveyances to GNP of all interests held by his father Earl Engle or his ex-wife Joanne Engle (now Joanne Skievaski) as well as himself and anyone else he has claimed that he, his father, or ECR has transferred an interest. Alternatively, this Board could void the deed out of GNP by Engle to his father and ex-wife for failure to obtain this Board's authorization.

Without title to freight rail easement in GNP, it again will simply be another trespasser on the County's property.

ECR has advised the County that it needs financial assistance to keep the line going, and that BTRC intends to "abandon" its service on the line. BTRC likewise has already indicated to this Board that BTRC needs financial assistance from the County to maintain and to repair the tracks. Indeed, BTRC stated that without such assistance "respectfully requests it be released from any common carrier obligations...." Letter, Joshua Brower (for BTRC) to C. Brown (STB), dated August 7, 2018 in F.D. 35692, at p. 2. Snohomish County has informed BTRC it will not subsidize BTRC operations as BTRC requests, and certainly not for so long as Mr. Engle and/or ECR remain licensees on the line.¹⁸

¹⁸ Snohomish County of course does not wish to expose BTRC to continued losses any more than it wishes to expose itself to continued (uninsured) liability for the line and continued deterioration of its assets for lack of maintenance under BTRC's management. Thus, SnoCo understands BTRC's support for revocation of its own operating (leasing) license from STB.

If BTRC wishes to continue to operate on the line notwithstanding revocation of ECR and BTRC licenses, then BTRC may continue to operate on the line as a contract carrier for GNP as suggested by Engle. Of course, BTRC would have to enter into a contract with GNP for that purpose. In candor, GNP may itself now be concerned about the viability of freight rail operations on the line, especially in light of the covid epidemic. But current or future common carrier licensees may surcharge the line and/or seek abandonment authority to protect themselves from losses. In the event of an abandonment proceeding, the County (as the County has repeatedly stated) intends to acquire the Snohomish County portion under the railbanking statute (and the County understands that Woodinville intends so to acquire its portion). SnoCo upon acquisition of the property under the railbanking

In its 2018 pleading, BTRC suggests that the County (and Woodinville) be deemed common carriers if the ECR and BTRC licenses are revoked. BTRC states that at least SnoCo and Woodinville own the right of way, track and ties.

Presumably BTRC also feels SnoCo and Woodinville have deeper pockets. 2018 Letter, J. Brower to C. Brown, supra, at 2. But Snohomish County (similar to the Port) acquired its interest in the line pursuant to a Board order determining that SnoCo would not thereby become a common carrier subject to Board jurisdiction. Snohomish County – Pet. Dec. Order, F.D. 35830, served March 5, 2015.

Woodinville is in a similar situation. It is hard to see how the common carrier obligation would redound to SnoCo or Woodinville in the circumstances.¹⁹

statute intends to seek state rehabilitation grants and an operator under modified PCN procedures for rail with trail operations. If by some quirk this agency allows abandonment but not railbanking, SnoCo will immediately arrange for an operator under modified PCN procedures as it is entitled under this Board's regulations. BTRC can still seek to negotiate an operating agreement for that purpose with the County. BTRC currently operates in the Ballard District of Seattle on a railbanked rail line pursuant to a modified PCN based on an operating agreement with City of Seattle. SnoCo reserves the right to enter into operating agreements with other companies in lieu of BTRC.

¹⁹ SnoCo notes that ECR and BTRC claim to be losing money so as to be unable to perform maintenance or rehabilitation. In the circumstances, a well-managed common carrier would surcharge the line to cover all relevant costs, and if shippers were unprepared to pay the resulting surcharge, then the carrier would file for abandonment or discontinuance and not seek a free ride from the County or a payment to allow the County to obtain grants to rehabilitate the line.

The County reserves the right to petition for (adverse) abandonment and discontinuance authority once this agency pursuant to the D.C. Circuit's remand clarifies who in fact has common carrier authority on the line: ECR, BTRC, GNP, someone else. STB administers who has the federal common carrier authority and termination of that authority, but must act in accordance with statutes and regulations. Since it is clear that ECR (and a fortiori BTRC) authority should be voided ab initio, the common carrier authority presumably will reside in GNP. To move forward, Snohomish County wishes the agency would indicate the entity lawfully holding the common carrier obligation. If that entity remains in trespass, the County reserves the right to file adverse abandonment/discontinuance proceedings as needed to remove STB preemption, and should such authority be granted, to obtain trespass relief via self-help or judicial proceedings, and to take other actions necessary to preserve this property for legitimate rail and railbanking purposes. The County wishes to comply with STB requirements. The County desires that STB insist that railroads which it licenses in Snohomish County do so as well.

It is the understanding of Snohomish County that Mr. Kucera (owner of GNP) is interested in operating a signal school on the Snohomish County portion of the line, consistent with rail and railbanking/trail uses. The County of course will entertain negotiations to that end should GNP become common carrier on the line,

should the necessary property interests be reconveyed to GNP, and should GNP reach an agreement with the County for use of the County's track and ties.

Conclusion

As BTRC indicates, citing the D.C. Circuit decision in Snohomish County v. STB, supra, ECR and a fortiori BTRC made false or misleading representations of material facts, or by omitting material facts, in their license applications in F.D. 35692 and 35730 respectively. Both licenses must accordingly be revoked.

Respectfully submitted,
/s/ Charles H. Montange
Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
Attorney for Snohomish County

Exhibit A – December 16, 2019 deed

Exhibit B – Letter, C. Montange to ECR, et al, dated Oct. 9, 2019 (w/o encl.)

Exhibit C – Letter, C. Montange to ECR, et al, dated Nov. 20, 2019.

Exhibit D – Email, J. Sullivan to C. Montange, dated April 11, 2020, with attachments.

Exhibit E – Email, Snohomish County Risk Manager Sheila Barker to Kye Iris (SnoCo), June 10, 2020

Certificate of Service

The undersigned certifies service of the foregoing inclusive of all exhibits on all parties of record (or their representatives) in F.D. 35692 and F.D. 35730 by placing a copy in the U.S. Mail (or other express service), next business day delivery, on June 11, 2020, including specifically:

Douglas Engle
4117 S. Lamonte
Spokane, WA 99203 (ECR/Douglas Engle)

Charles A. Spitulnik, Esq.
Allison I. Fultz, Esq.
Kaplan Kirsch Rockwell
1001 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036 (for King County)

Joshua Brower, Esq.
506 2nd Ave. Suite 1400
Seattle, WA 98104 (for BTRC)

Matthew Cohen, Esq.
Hunter Ferguson, Esq.
Stoel Rives LLP
600 University St., Suite 3600
Seattle, WA 98101 (for Woodinville)

David Rossmiller, Esq.
Betts Patterson Mines
111 SW 5th Ave, Suite 3650
Portland, OR 97204

(for GNP Rly/NW Signal/ K. Kucera)

Richard Welsh
227 Bellevue Way NE PMB 719
Bellevue, WA 98004

(Richard Welsh)

Myles Tobin
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875

(no longer represents
any party but is still on STB service
list)

/s/ Charles H. Montange

**NO EXCISE TAX
REQUIRED**

DEC 16 2019

After Recording Return To:
Eastside Community Rail, LLC
Attn: Douglas Engle
4117 S. Lamonte St.
Spokane, WA 99203

KIRKE SIEVERS, Snohomish County Treasurer
By KIRKE SIEVERS



201912160049 14 PGS
12/16/2019 9:27am \$116.50
SNOHOMISH COUNTY, WASHINGTON

**QUIT CLAIM DEED
WOODINVILLE FREIGHT EASEMENT**

Grantor: GNP RLY, INC., EARL L. ENGLE, and DOUGLAS E. ENGLE

Grantee: EASTSIDE COMMUNITY RAIL, LLC

Abbreviated Legal Description: Portions of the Washington Branch Line and Redmond Spur
Right of Ways (the "Rail Corridor"):

SW 1/4 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, and 8, and SW 1/4 and NW 1/4 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 and 2 of 19-27-6
NE of 12-27-5
NE, SW, and SE of 24-27-5
Gvt 4 of 31-27-5
NW and SW of 25-27-5
NE, NW, and SW of 26-27-5
NW of 35-27-5
NE, SE, and SW of 34-27-5
In Snohomish County, State of Washington

After Recording Return To:
Eastside Community Rail, LLC
Attn: Douglas Engle
4117 S. Lamonte St.
Spokane, WA 99203

**QUIT CLAIM DEED
WOODINVILLE FREIGHT EASEMENT**

Grantor: GNP RLY, INC., EARL L. ENGLE, and DOUGLAS E. ENGLE

Grantee: EASTSIDE COMMUNITY RAIL, LLC

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

RECITALS

WHEREAS, GNP acquired the Freight Easement for the Eastside Rail Corridor ("Corridor") from BNSF as part of a BNSF sale of the 42-mile Rail Corridor to the Port of Seattle ("Port") completed on December 18, 2009; recorded in the real estate records of King County, Washington as instrument #20091218001536, and in the real estate records of Snohomish County, Washington as instrument #200912210438; and

WHEREAS, GNP, via an involuntary bankruptcy ruling, transferred all property, including the Freight Easement to ECR who remains the rightful owner and in possession of the freight rail corridor since December 12, 2012; and

WHEREAS, The Freight Easement was used by GNP as collateral with the two largest creditors, Joanne M. Engle ("JME") and ELE who's names are still legally on the title, which requires this Quit Claim Deed; and

WHEREAS, JME and DEE subsequently divorced and DEE assumed all of JME's rights to the railroad; and

WHEREAS, JME and ELE executed an agreement on October 24, 2011 to transfer the easement back to GNP prior to the trustee taking control of GNP; and

WHEREAS, NW Signal and ECR completed a quit claim deed for a portion of the "we" in Woodinville on December 18, 2017. The quit claim deed and agreement will be respected within this Deed; and

WHEREAS, in order to perfect the legal transfer of the Reserved Freight Easement to ECR from GNP, JME/DEE and ELE to ECR, all parties agree that this Quit Claim Deed is the complete and legitimate transfer of all freight rail interests in the Corridor to ECR;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby recognized between the parties, and with the intent to perfect the legal transfer of the Freight Easement to ECR from all known parties, the undersigned agree as follows:

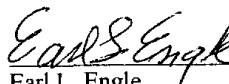
Grantors GNP RLY, INC., a Washington corporation, EARL L. ENGLE, and DOUGLAS E. ENGLE convey, and quit claim to Grantee EASTSIDE COMMUNITY RAIL, LLC, a Washington limited liability company, all of their right, title and interest in and to the Reserved Freight Easement, together with all after acquired title.

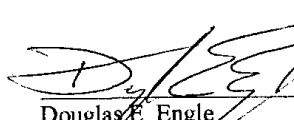
IN WITNESS WHEREOF, the parties have executed this Deed on the date affixed next to the party's signature.

GRANTORS:

GNP Rly, Inc.

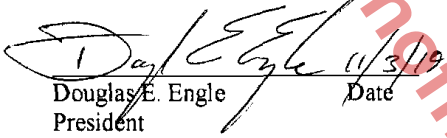
Kevin Kucera Date
President
Address: _____

 11/3/19
Earl L. Engle Date
4117 S. Lamonte St.
Spokane, WA 99203

 11/3/19
Douglas E. Engle Date
4117 S. Lamonte St.
Spokane, WA 99203

GRANTEE:

Eastside Community Rail, LLC


Douglas E. Engle
President
4117 S. Lamonte St.
Spokane, WA 99203

Date

//

//

//

//

ACKNOWLEDGMENTS ON FOLLOWING PAGES

//

//

//

//

//

//

//

//

//

//

//

ACKNOWLEDGMENTS

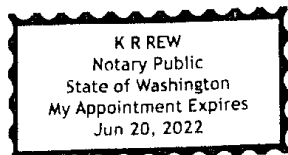
STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public, personally appeared Kevin Kucera, the _____ of GNP Rly, Inc., and personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the company that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, by authority of corporate resolution or other corporation, and on oath stated that he/she is authorized to execute said instrument and in fact executed said instrument on behalf of the company.

Notary Public in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

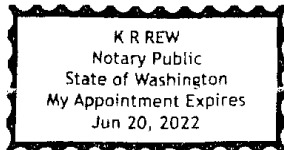
I certify that I know or have satisfactory evidence that Douglas E. Engle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for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



K R REW
K R REW
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

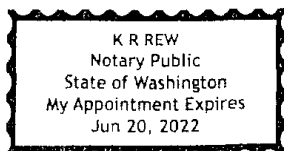
I certify that I know or have satisfactory evidence that Earl L. Engle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the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



K R Rew
K R Rew
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

On this 3rd day of November, 2019, before me, the undersigned, a Notary Public, personally appeared Douglas E. Engle, and personally known to me or proved to me on the basis of satisfactory evidence to be President of Eastside Community Rail, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be his or her free and voluntary act and deed and the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, by authority of statute, its articles of organization, its operating agreement, or by company resolution, and on oath stated that he or she is authorized to execute said instrument and in fact executed said instrument on behalf of the limited liability company.



K R Rew
K R Rew
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

EXHIBIT A
Legal Description

Unofficial Document

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 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 E $\frac{1}{2}$ E $\frac{1}{4}$ 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 $\frac{1}{4}$ 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 $E\frac{1}{4}SW\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Northerly by the East line of said $SW\frac{1}{4}$ Section 24 and bounded Southerly by the South Line of said $SW\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion lying 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 91st Avenue SE with Yew

Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91st Avenue SE, and about 100 feet Southwesterly of the North-South quarter line of said Section 24, as measured along said Main Track centerline; also,

That portion of that certain 200.0 foot wide Maltby Station Ground property, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ Section 25; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Westerly by the North and West lines of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25; also.

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 26, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and bounded on the West by the West line of said NE $\frac{1}{4}$ Section 26; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 27 North, Range 5 East, W. M., bounded Easterly by the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, and bounded Westerly by the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ 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.

KING COUNTY

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

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 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 (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) 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

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

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

7 October 2019

By Prepaid Registered Mail

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

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

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

Re: Thirty Day Notice to Cure - Agreement for Use of
County Property after December 18, 2019

Gentlemen:

This letter and notice are on behalf of Snohomish County. This letter relates to the rail line between approximately MP 38.25 (near City of Snohomish) and approximately MP 26.38 (Snohomish/King County line) in Snohomish County, WA. The underlying property interests

and passenger rail rights in the line, as well as all track, ties, and other track materials from MP 38.25 to MP 26.38 belong to Snohomish County. The line in question is part of the Woodinville Subdivision, which also includes the county line (approximately MP 26.38 to approximately MP 23.8, owned by Woodinville. It is the County's understanding that Eastside Community Rail (ECR) claims a raw freight rail easement as successor to GNP Rly, Inc., but lacks any record title, or for that matter any title at all, in the rail line above identified. Ballard Terminal Railroad Company (BTRC) operates the rail line under a lease from ECR. Because ECR lacks any title, much less record title, Snohomish County must view ECR and BTRC as trespassers on the relevant line. GNP Rly Inc. also lacks any title in the line.¹ Record title in the line resides in Joanne and Earl Engle. Douglas Engle claims to be the successor to the Joanne Engle interest but has presented no instrument (at least no actually signed instrument) purporting to transfer the Joanne Engle interest.

Without prejudice to the above position, ECR and BTRC (and any and all Engles claiming an interest in the line) are bound to operate the line pursuant to an Operating and Maintenance Agreement with effective date on or about December 18, 2009 ("Agreement"). That agreement provides that ECR (and its assignee BTRC)²

¹ This letter is being provided to GNP's general manager to the extent that he and/or any other entity under his management or control claims an interest in the rail line.

² The Agreement by its terms also applies to and binds any Engle claiming an interest in the freight rail easement. None of the transfers to any Engle which have been referenced by Douglas Engle in his various filings with STB complied with the requirements of the

must inspect, maintain, and repair the line in accordance with all governmental requirements, and laws and regulations, which of course include Federal Rail Administration (FRA) regulations. See Agreement para 3.1. The Agreement also requires, among other things, that ECR provide insurance for accidents to the benefit inter alia of Snohomish County (e.g., pp. 13-16), indemnify the County for environmental releases (e.g., p. 9), compensate the County for use of its property (pp. 17-18), and allow the County access to the rail line for inspections and to make necessary repairs at ECR (or its assignee BTRC) expense where ECR and BTRC fail to make the repairs. E.g., pp. 5 & 6.

The Agreement by its terms expires on or about December 18, 2019, unless ECR provides written notice to the County of an intention to renew at least one year before the expiration date. Such written notice was thus required to be made on or before December 18, 2018.³ Agreement para 12.1.⁴ ECR has repeatedly advised and assured the County that it is not renewing the Agreement. E.g., Email, Engle (ECR) to Teigen (County), May 1, 2018 ("Rest assured, the O&M will not be extended beyond the 10-year term, which will allow the railway to obtain normal railway financing for its future operations"). ECR has not provided any notice to extend or to renew the Agreement. It is now too late

Agreement. Snohomish County reserves all rights, including but not limited to rights to damages for breach, to the rampant non-compliance with the Agreement by the various members or past members of the Engle family.

³ The Agreement could also be terminated at any time if the County gives notice to ECR of a default in a material term or condition not cured within sixty (60) days.

⁴ The Agreement could also be terminated by abandonment.

for ECR or any assignee of ECR, or any member of the Engle family claiming an interest in the freight rail easement, to extend the Agreement.

Please take note that any party purporting to use the rail line at issue for rail purposes needs an agreement with Snohomish County governing use of the County's property in the rail line devoted to rail purposes. The agreement must address liability, insurance, environmental, inspection, safety and compensation issues.

Leaving aside (but without prejudice to assert a claim for) real property interests owned by the County in the rail line, the County owns rail, ties, and other track material used by ECR (and its assignee BTRC) in providing rail service. R.L. Banks & Associates (RLBA) inspected that property this past summer. RLBA has prepared a report, enclosed herewith, valuing the track, ties and other track material of the portion of the line between MP 38.25 and the county line to the extent used by ECR (and its assignee BTRC).⁵ The RLBA valuation for the trackage used by ECR/BTRC in Snohomish County is \$1,243,000. A copy of the RLBA valuation is enclosed.⁶

⁵ ECR and BTRC do not use or operate over the trestle over inter alia the Snohomish River from roughly MP 37.9 (as estimated by the RLBA inspector) to MP 38.25. The RLBA valuation thus ended with the wye tracks to the BNSF mainline at approximately MP 37.9 rather than MP 38.25.

⁶ The RLBA inspector estimates that the county line is at MP 26.37 than 26.38 as used in most relevant pleadings filed at, and decisions issued by, STB, but Snohomish County is assured that this is immaterial.

On September 30, 2019, the Surface Transportation Board published a decision calculating the railroad cost of capital for 2018 to be 12.22%. The County is owner of rail assets (track, tie, and other track material) valued at \$1,243,000. Applying STB's calculated cost of capital (12.22%), the County is entitled to a return of .1222 times \$1,243,000 equals \$151,894.60 per year. Because this calculation omits (among other things) any return for the County's real property in the line, or other risks associated with rail operation on County property, this is the absolute minimum to which the County is entitled by reason of occupancy of the line by ECR/BTRC/one or more Engles.

Should ECR (or its assignee BTRC) continue to occupy or use the line for rail service between approximately MP 37.9 (intersection with BNSF mainline City of Snohomish) and the Snohomish/King County line in Snohomish County, WA, after December 18, 2019, then they must obtain from the County a new agreement for any such occupancy or use. The agreement must address all the issues identified above (compensation for County's rail assets, insurance, liability for environmental releases, maintenance of way, and so on). Moreover, any individual or entity which wishes to seek an agreement must also provide the County with proof in the form of recorded deeds and a title report showing chain of title that the individual or entity is the record title owner of the property and thus not a trespasser. Furthermore, the individual or entity claiming title and seeking an agreement must show that it has obtained, or will obtain, a legitimate STB license to acquire and/or operate the rail line based on the title that individual or entity has obtained or in short order will in fact obtain. In short, Snohomish County wishes to ensure that future rail claimants are not trespassers or otherwise making false

and/or fraudulent assertions with respect to the property and ownership of the property.

Because of the urgency of the situation, Snohomish County requests a proposal from ECR (or its assignee BTRC) (or any other individual or entity) which can show a legitimate chain of title and which can conform to STB licensing requirements by Friday, November 6, 2019. Alternatively, County requests that ECR seek abandonment authority from the STB, and that BTRC seek discontinuance authority by that date. In the event ECR seeks abandonment authority and BTRC seeks discontinuance authority, the County will request railbanking of the corridor pursuant to 16 USC 1247(d) and is prepared to negotiate an operating agreement with BTRC or any other qualified party to provide rail service under a modified certificate of public convenience and necessity (49 C.F.R. 1150.21, et seq.) over the County-owned rail line.⁷

Should ECR (or its assignees, including but not limited to BTRC and relevant members of the Engle family) not comply with the foregoing, the County will assert a claim against ECR (and its assignees) at the rate of $\$151,894.60/12 = \12657.88 per month, plus the monthly cost for liability insurance for the

⁷ Snohomish County notes that there has been no rail service on the rail line north of the BNSF mainline for over a decade. That portion should long since have been abandoned and railbanked under the Agreement using STB notice of exemption processes set forth in 49 CFR 1152.50. The County reserves all rights to sue for damages for failure to seek such abandonment (or, in the case of BTRC, discontinuance) authority for this segment of the line unless such measures are agreed upon by ECR/BTRC and the County prior to expiration of the Agreement.

trespassing rail use, plus the cost (1) for any repairs made by the County or (2) for accidents or environmental spills for which the County bears any burden that arise from the trespassing rail use, plus all other costs and charges incurred by the County in connection with the trespassing rail use.

Snohomish County will seek a lien on the property of ECR (and any assignee using the line) for the relevant amounts unless payment is made within 30 days of billing. Snohomish County reserves the right to increase the monthly charge in the event of non-payment, and to impose a late fee in the amount of 1% per month for unpaid bills. Snohomish County also reserves the right to file one or more adverse abandonment applications against ECR and any members of the Engle family with record title in the freight rail easement, or any members of the Engle family which Douglas Engle has asserted to STB own the freight rail easement. Snohomish County also reserves the right to file one or more adverse discontinuance applications against BTRC (or any other assignee of operating rights of ECR) should that entity assert a claim to the line but fail to reach an agreement with the County providing for operations over the rail line subsequent to December 18, 2019. Again, the County is entitled to protect itself against trespass, at least by receipt of its costs, including opportunity costs such as return on its rail investment. Snohomish County otherwise reserves all rights.

This letter is without prejudice to any STB or judicial proceedings filed by the County in connection with ECR and BTRC, and nothing herein should be construed contrary to the County's position in such litigation. This letter should be construed as consistent with all future litigation instituted or

pursued by the County in any forum against ECR, BTRC, or any member(s) of the Engle family now or in the future.

Very truly,



Charles H. Montange
Counsel for Snohomish County

Encl.

cc. Sean Reay, Esq.

Deputy Pros. Attorney, Snohomish County (by email)
(w/encl.)

Douglas Engle and Earl Engle (by registered mail to
4117 S Lamonte St., Spokane, WA 99203) (w/encl.)

Joanne Engle (by registered mail to last known address:
240 Lombard St., Suite 936, San Francisco, CA 94111)⁸
(w/encl.)

⁸ The address for Joanne Engle is derived from documents filed by Douglas Engle in STB proceedings involving the rail line at issue in this proceeding. If Douglas Engle knows of a more recent address, Snohomish County hereby requests that he furnish such address, for Joanne Engle is a record title owner of the raw freight rail easement and as such is not in compliance with the Agreement, FRA regulations, or STB regulations, and must also obtain an agreement for use of the County's assets after December 18, 2019.

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

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

20 November 2019

By Prepaid Registered Mail and/or Email Attachment

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

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

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

Re: Follow up on Thirty Day Notice to Cure - Agreement
for Use of County Property after December 18, 2019

Gentlemen:

This letter and notice are on behalf of Snohomish County. This letter relates to the rail line between approximately MP 38.25 (near City of Snohomish) and approximately MP 26.38 (Snohomish/King County line) in Snohomish County, WA. The underlying property interests

and passenger rail rights in the line, as well as all track, ties, and other track materials from MP 38.25 to MP 26.38 belong to Snohomish County. The line in question is part of the Woodinville Subdivision, which also includes the county line (approximately MP 26.38) to approximately MP 23.8, owned by Woodinville.

On behalf of Snohomish County, I forwarded to you a Thirty Day Notice to Cure dated October 7, 2019, relating to an agreement for use of County Property after December 18, 2019. That letter stated, among other things,

"Should ECR (or its assignee BTRC) continue to occupy or use the line for rail service between approximately MP 37.9 (intersection with BNSF mainline City of Snohomish) and the Snohomish/King County line in Snohomish County, WA, after December 18, 2019, then they must obtain from the County a new agreement for any such occupancy or use. The agreement must address all the issues identified above (compensation for County's rail assets, insurance, liability for environmental releases, maintenance of way, and so on). Moreover, any individual or entity which wishes to seek an agreement must also provide the County with proof in the form of recorded deeds and a title report showing chain of title that the individual or entity is the record title owner of the property and thus not a trespasser. Furthermore, the individual or entity claiming title and seeking an agreement must show that it has obtained, or will obtain, a legitimate STB license to acquire and/or operate the rail line based on the title that individual or entity has obtained or in short order will in fact obtain. In short, Snohomish County wishes to ensure that future rail claimants are not

trespassers or otherwise making false and/or fraudulent assertions with respect to the property and ownership of the property."

The letter further stated,

"Because of the urgency of the situation, Snohomish County requests a proposal from ECR (or its assignee BTRC) (or any other individual or entity) which can show a legitimate chain of title and which can conform to STB licensing requirements by Friday, November 6, 2019. Alternatively, County requests that ECR seek abandonment authority from the STB, and that BTRC seek discontinuance authority by that date. In the event ECR seeks abandonment authority and BTRC seeks discontinuance authority, the County will request railbanking of the corridor pursuant to 16 USC 1247(d) and is prepared to negotiate an operating agreement with BTRC or any other qualified party to provide rail service under a modified certificate of public convenience and necessity (49 C.F.R. 1150.21, et seq.) over the County-owned rail line. [Footnote omitted.]"

The letter warned that County would impose a user fee of \$12,657.88 per month, plus the monthly cost for liability insurance for the trespassing rail use, plus the cost (1) for any repairs made by the County or (2) for accidents or environmental spills for which the County bears any burden that arise from the trespassing rail use, plus all other costs and charges incurred by the County in connection with the trespassing rail use.

Eastside Community Rail (ECR), its record owners, and its claimants did not provide a proposal in response to the notice to cure. In addition, they have

evaded all proposed meeting dates, and failed to supply their relevant documents to the County for audit per the O&M Agreement (which expires December 18, 2019 due to the actions inactions of ECR and Douglas Engle).

On November 19, 2019, the undersigned on behalf of Snohomish County advised ECR and Douglas Engle by email, copies to attorneys for BTRC and City of Woodinville, that Snohomish County was imposing a user fee of \$12,657.88 per month for all use by ECR, its owners or its agents of the County's property (described more fully in the first paragraph) payable on the 19th day of each month, in advance. The specific terms and payment conditions set forth in the email are as follows:

"Per the County's October 7, 2019, notice to cure, please be advised that effective upon the expiration of the O&M Agreement, which we shall take to be midnight, December 18, 2019, Eastside Community Rail, and any agent or claimant or record title owner to the freight rail easement within Snohomish County shall be liable for payment to Snohomish County for any use of -- or under -- the freight rail easement in the monthly amount of \$ 12,657.88 due and owing on the 19th day of each month, in advance.

"Please deliver (U.S. Mail postage pre-paid is acceptable, but the check should be mailed three business days in advance of due date to be considered timely) the ECR or the personal checks of any record owner or claimant to Snohomish County, Att: Kye Iris, Park Property Administrator, Snohomish County Parks Recreation and Tourism, 6705 Puget Park Drive, Snohomish, WA 98296.

"The County reserves the right to impose a late payment fee of 1%/month (not prorated on a daily basis) for any payment received more than three business days overdue. The County reserves the right to impose an additional fee for any costs it incurs if a check is returned for insufficient funds. The County otherwise reserves all rights, including the right to place liens on the property (if any) of ECR and of owners of or claimants to the freight rail easement, and to seek other relief and damages. The County shall hold ECR, record title owners Earl Engle and your ex-wife Joanne, and you as claimant personally liable for any damages or injuries that occur arising from use of the County's property."

On behalf of the County, I hereby formerly reiterate those terms and conditions. The County reserves all rights to seek further relief. Nothing herein should be construed to prejudice the County's rights to further relief.

Very truly,



Charles H. Montange
Counsel for Snohomish County

Encl.

cc. Sean Reay, Esq.
Deputy Pros. Attorney, Snohomish County (by email)
(w/encl.)

Douglas Engle and Earl Engle (by registered mail to
4117 S Lamonte St., Spokane, WA 99203) (w/encl.)

Joanne Engle [Address unknown, but requested from and
not provided by Douglas Engle]¹

¹ The County requests Douglas Engle and ECR to inform Joanne Engle and all record title holders and/or claimants of this letter and the imposition of the user fee.

EXHIBIT D

RE: probate of Tom Payne estate (GNP Rly)

From: John Sullivan (jsullivan@dljlaw.com)
To: c.montange@frontier.com
Date: Saturday, April 11, 2020, 1:49 PM PDT

Originally sent yesterday.

Charles:

I did receive this and your voicemail of a few days ago. I needed to await direction from my client as well as Kevin Kucera, which I have now received.

On March 9, 2020, Amelia Birch, as Personal Representative of the estate of Thomas Payne, her father, assigned the outstanding shares of GNP RLY INC., all of which had been owned by Mr. Payne and his estate, to Kevin Kucera, in consideration of his assuming liability for payment of all administrative expenses of the estate. Kevin signed a Receipt and Waiver, which we filed with the court in the probate proceeding.

Kevin asked me to let you know that as "the new owner of the GNP Rly [he] is in a historical archival review and will be more than interested in working with Sno Co to fulfill common goals specifically to the good of the public."

I am attaching copies of the Assignment Separate from Certificate, as well as the Receipt and Waiver. It would be appropriate to communicate directly with Mr. Kucera regarding GNP RLY.

If you have any other questions or concerns related to the probate estate do not hesitate to contact me.

Best regards,

JOHN J. SULLIVAN,

ATTORNEY

LYONS | SULLIVAN

10655 NE 4TH STREET, SUITE 704

BELLEVUE, WA 98004

425-451-2400 TEL 425-451-7385 FAX

WWW.DLJSLAW.COM

-

Confidentiality Notice

This email transmission is intended only for the addressee named above. It contains information that is privileged, confidential, or otherwise protected from use and disclosure. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, or dissemination of this transmission or the taking of any action in reliance on its contents or other use is strictly prohibited. If you have received this transmission in error, please destroy the original and notify us by telephone immediately. Thank you for your cooperation

From: C. Montange <c.montange@frontier.com>
Sent: Tuesday, April 7, 2020 1:19 PM
To: John Sullivan <jsullivan@DLJSLAW.COM>
Cc: Sean Reay <sean.reay@snoco.org>
Subject: probate of Tom Payne estate

This is to confirm a telephone call I placed to you today. I remain counsel for Snohomish County. We last were in touch about 16 months ago at which time I was informed you were counsel for the Tom Payne estate, which "owned" GNP Rly, an entity with no assets. I had noted that my client Snohomish County was pursuing legal remedies against Eastside Community Railroad (headed by Douglas Engle), to which GNP's assets had ostensibly been transferred. I indicated that GNP might end up as the holder of federal common carrier obligations in the so-called "freight rail segment" of the Woodinville Subdivision (Snohomish to Woodinville) if the County were successful in its quest for remedies. I wished to consult about that with GNP. The consultation was essentially held in abeyance while the Payne estate pursued probate remedies.

Because of a recent court decision, it is now important to know the status of probate of the estate, for GNP may end up as holder of federal common carrier obligations as I earlier conjectured. My client will wish to consult with the estate, if it is still owner of GNP, or with the person or entity to whom the estate has lawfully conveyed GNP. Would you please call me at your earliest convenience. I wish to ascertain if the estate still owns GNP. If the estate still owns GNP, I wish to discuss STB remedies and mutual cooperation. If the estate has transferred ownership of GNP to some other person or entity, I request identification of that entity and a copy of the documents of transfer. My land line number is 206-546-1936. Thank you.

Charles Montange



Assignment Separate from Certificate [EXECUTED] 030920.pdf
419.3kB



Receipt Kucera 031620.pdf
581.3kB

**ASSIGNMENT SEPARATE FROM CERTIFICATE
GNP RLY INC.**

FOR VALUE RECEIVED, in the form of the payment by Kevin Kucera of the all of the administrative expenses of the Estate of Thomas Payne, Cause No. 19-4-00068-3 SEA in the Superior Court of the State of Washington in and for King County (the "Estate") from commencement to completion, Amelia Birch, Personal Representative of the Estate, does hereby irrevocably, assign and transfer unto Kevin Kucera, all of the shares of common stock of and in GNP RLY INC., a Washington corporation, ("Corporation"), which such assigned and transferred shares are all of the Estate's and Thomas Payne's entire right, title and interest in all shares standing in their names on the books of Corporation, and represents one hundred percent (100%) of interest and ownership in the Corporation, and do hereby irrevocably constitute and appoint Kevin Kucera as attorney-in-fact to transfer the said interest on the books of said Corporation.

Dated this 9 day of March, 2020.

SHAREHOLDER:


Amelia Birch, Personal Representative
Estate of Thomas Payne, Deceased

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

In the Matter of the Estate of:

THOMAS PAYNE,

Deceased.

Cause No.: 19-4-00068-3 SEA

RECEIPT, RELEASE, AND WAIVER OF
NOTICE OF FILING DECLARATION OF
COMPLETION OF PROBATE

RCW 11.76.050, 11.68.110

The undersigned: (a) acknowledges receipt from the Personal Representative of the above-captioned estate of the Notice of Appointment and Pendency of Probate and Last Will & Testament of Thomas Payne; (b) acknowledges receipt from the Personal Representative of all of the property of the estate to which he or she is entitled; (c) waives, releases, and forever discharges Amelia Birch, both individually and in her capacity as Personal Representative of the Estate of Thomas Payne, from any and all claims, demands, causes of action, damages, and liabilities of any type or nature, known or unknown; (d) waives notice of the filing of a Declaration of Completion of

RECEIPT AND WAIVER

LYONS | SULLIVAN

10655 NE 4TH STREET, SUITE 704

BELLEVUE, WASHINGTON 98004

PH (425) 451-2400

KK
3/16/2021

1 Probate in this estate; and (e) acknowledges that the Personal Representative does not intend to
2 submit a formal accounting to the court for approval.
3

4 Dated the 16th day of March, 2020 at King County, Washington.

5
6 
Kevin Kucera, Beneficiary

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23 RECEIPT AND WAIVER

24 **LYONS | SULLIVAN**
25 10655 NE 4TH STREET, SUITE 704
BELLEVUE, WASHINGTON 98004
PH (425) 451-2400

From: Barker, Sheila <Sheila.Barker@co.snohomish.wa.us>
Sent: Wednesday, June 10, 2020 10:50 AM
To: Iris, Kye <Kye.Iris@co.snohomish.wa.us>
Subject: BTRC

The current insurance documentation provided by BTRC does not cover the County for BTRC's liability because there is no current contract between the two parties.

Sheila Barker, ARM, MPA | *County Risk Manager*

Snohomish County Finance | Risk Management

3000 Rockefeller Ave., M/S 610 | Everett, WA 98201

Office: (425) 388-3726 | Mobile: (425) 508-9502 | Sheila.Barker@SnoCo.org

NOTICE: All emails and attachments sent to and from Snohomish County are public records

and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56).

BEFORE THE SURFACE TRANSPORTATION BOARD

Eastside Community Rail, LLC –)
Acquisition and Operation Exemption –) F.D. 35692
GNP RLY, Inc.)

Ballard Terminal Railroad Company, LLC)
-- Lease Exemption --) F.D. 35730
Eastside Community Rail, LLC)

MOTION CONCERNING RECONVEYANCING

Snohomish County hereby moves for supplementation of the order this Board generally makes requiring reconveyance of property from the recipient railroad (here Eastside Community Rail (ECR)) to the originating railroad (here GNP) which it generally makes when it revokes an acquisition license.

As summarized in Snohomish County's (SnoCo's) Reply to Ballard Terminal Company's (BTRC's) Letter supporting revocation (hereinafter, "Reply"), and as explained by BTRC, Snohomish County has demonstrated entitlement to an order revoking the acquisition license this Board granted to ECR in F.D. 35692. If that license is revoked, then so must be the license granted BTRC in F.D. 35730, which is dependent on ECR's license.

Ordinarily when this agency revokes an acquisition license, it requires the purported acquiring railroad (here ECR) to reconvey the rail property to the

originating railroad (here GNP). See, e.g., The Land Conservancy of Seattle & King County – Acquisition & Operation Exemption -- BNSF, F.D. 33389, served Sept. 26, 1997, slip op. at 3.

Unfortunately, Douglas Engle has muddied title to the underlying rail line, purporting to distribute all interests to his father Earl and his then-wife Joanne by recorded deed in 2011 (prior to GNP's bankruptcy), and then subsequently claiming to own the line personally along with his father Earl after his divorce from Joanne. He also has claimed an entity called Telegraph Hill Investments owned the property and that he deeded some portion of it to NW Signal. What is clear is ECR never owned any part of the rail line. See Reply at 1-14, incorporated herein. Then, on December 16, 2019 Engle purported to record a deed (Exhibit A) from Earl and himself to ECR, but that deed is insufficient to re-collect all the interests in the rail line. Douglas had none to convey, and the deed has deficiencies which call it into question even as to Earl's possible interests. In sum, the 2019 deed confirms that something more is required in this troublesome situation to ensure that the underlying freight rail easement (the rail line) is reconveyed to GNP. See Reply at 14 et seq., incorporated herein.

To ensure that the Board accomplishes the purpose intended by the reconveyance order than accompanies revocation of an acquisition license (i.e. restoration of the property to the originating railroad), the Board can simply void

the January 2011 deed from GNP to Earl and Joanne. That deed was issued without STB authorization and was part of a scheme involving evasion of this Board's authority over transfer of rail lines. The Board's precedent supports voiding deeds issued in evasion of its authority. In Pyco Industries – Feeder Line Application – Lines of South Plains Switching, Ltd. Co., F.D. 34890, served August 3, 2006, slip op. at 6, this Board found that South Plains Switching (SAW) was attempting to evade the Board's authority over the sale of rail property by a transfer of certain leases, agreements and land to an allied entity, called Choo-Choo. The Board voided the transfers. As this Board has said, "persons who engage in such abuses [should not] be allowed to profit from them." SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria and Western Railway between La Harpe and Peoria, F.D. 33995, served Oct. 17, 2002, slip at 19.

Voiding the 2011 deed from GNP to Earl and Joanne Engle does not require any title determinations concerning who has title now; it moots that issue. It renders nugatory all subsequent conveyancing and purported transfers engineered by the Engle family. Since none of the transfers (including that of December 2019) were pursuant to required STB pre-authorization, they should be rendered ineffective anyway. See STB Decision in F.D. 35692 and 35730, served Dec. 18, 2018, slip op. at 8. Taking this action would result in what normally results when

an acquisition license is revoked: the rail line is restored to the originating railroad, here GNP.

As an alternative, this Board could require Douglas Engle to supply quitclaim deeds back to GNP from all possible claimants that he has referenced in the past filings with the Board. This list includes, but is not limited to, the following: Douglas Engle, Earl Engle, Joanne Skievaski (formerly Joanne Engle), ECR, NW Signal, NW Signal, and Telegraph Hill Investments. Again, this approach requires no title determinations. It simply re-establishes the freight easement in GNP, which is where it should be along with the common carrier obligation. In short, if the Board either voids the January 2011 deed, or orders reconveyances by quitclaim from all subsequent claimants, then the Board will have taken effective action to restore the property to the originating railroad, thus comporting with the national rail policy calling for “honest and efficient management of railroads” set forth in 49 C.F.R. 10101(9). In order to avoid state law trespass, GNP will still need to obtain an agreement from SnoCo and Woodinville for use of their track and ties (since Engle intentionally terminated the otherwise applicable Operating and Maintenance Agreement (“O&M”) relating thereto, as discussed in Reply at 19 et seq. But that is a much more manageable problem, and GNP management has evinced an interest in working with SnoCo toward a solution.

In conclusion, when STB revokes the ECR license in F.D. 35692, SnoCo requests that STB supplement the customary order requiring reconveyance with an order voiding the January 2011 GNP to Earl and Joanne Engle deed, or with an order requiring that ECR and Douglas Engle cause the reconveyance to GNP of all interests claimed by any other party that are based on his actions.

Respectfully submitted,

/s/ Charles H. Montange

Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
c.montange@frontier.com
Attorney for Snohomish County

Exhibit A – December 16, 2019 deed

Certificate of Service

The undersigned certifies service of the foregoing inclusive of all exhibits on all parties of record (or their representatives) in F.D. 35692 and F.D. 35730 by placing a copy in the U.S. Mail (or other express service), next business day delivery, on June 11, 2020, including specifically:

Douglas Engle
4117 S. Lamonte
Spokane, WA 99203 (ECR/Douglas Engle)

Charles A. Spitulnik, Esq.
Allison I. Fultz, Esq.
Kaplan Kirsch Rockwell
1001 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036 (for King County)

Joshua Brower, Esq.
506 2nd Ave. Suite 1400
Seattle, WA 98104 (for BTRC)

Matthew Cohen, Esq.
Hunter Ferguson, Esq.
Stoel Rives LLP
600 University St., Suite 3600
Seattle, WA 98101 (for Woodinville)

David Rossmiller, Esq.
Betts Patterson Mines
111 SW 5th Ave, Suite 3650
Portland, OR 97204 (for GNP Rly/NW Signal/ K. Kucera)

Richard Welsh
227 Bellevue Way NE PMB 719
Bellevue, WA 98004 (Richard Welsh)

Myles Tobin
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875 (no longer represents any party
but is still on STB service list)

/s/ Charles H. Montange

**NO EXCISE TAX
REQUIRED**

DEC 16 2019

After Recording Return To:
Eastside Community Rail, LLC
Attn: Douglas Engle
4117 S. Lamonte St.
Spokane, WA 99203

KIRKE SIEVERS, Snohomish County Treasurer
By KIRKE SIEVERS



201912160049 14 PGS
12/16/2019 9:27am \$116.50
SNOHOMISH COUNTY, WASHINGTON

**QUIT CLAIM DEED
WOODINVILLE FREIGHT EASEMENT**

Grantor: GNP RLY, INC., EARL L. ENGLE, and DOUGLAS E. ENGLE

Grantee: EASTSIDE COMMUNITY RAIL, LLC

Abbreviated Legal Description: Portions of the Washington Branch Line and Redmond Spur
Right of Ways (the "Rail Corridor"):

SW 1/4 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, and 8, and SW 1/4 and NW 1/4 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 and 2 of 19-27-6
NE of 12-27-5
NE, SW, and SE of 24-27-5
Gvt 4 of 31-27-5
NW and SW of 25-27-5
NE, NW, and SW of 26-27-5
NW of 35-27-5
NE, SE, and SW of 34-27-5
In Snohomish County, State of Washington

After Recording Return To:
Eastside Community Rail, LLC
Attn: Douglas Engle
4117 S. Lamonte St.
Spokane, WA 99203

**QUIT CLAIM DEED
WOODINVILLE FREIGHT EASEMENT**

Grantor: GNP RLY, INC., EARL L. ENGLE, and DOUGLAS E. ENGLE

Grantee: EASTSIDE COMMUNITY RAIL, LLC

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

RECITALS

WHEREAS, GNP acquired the Freight Easement for the Eastside Rail Corridor ("Corridor") from BNSF as part of a BNSF sale of the 42-mile Rail Corridor to the Port of Seattle ("Port") completed on December 18, 2009; recorded in the real estate records of King County, Washington as instrument #20091218001536, and in the real estate records of Snohomish County, Washington as instrument #200912210438; and

WHEREAS, GNP, via an involuntary bankruptcy ruling, transferred all property, including the Freight Easement to ECR who remains the rightful owner and in possession of the freight rail corridor since December 12, 2012; and

WHEREAS, The Freight Easement was used by GNP as collateral with the two largest creditors, Joanne M. Engle ("JME") and ELE who's names are still legally on the title, which requires this Quit Claim Deed; and

WHEREAS, JME and DEE subsequently divorced and DEE assumed all of JME's rights to the railroad; and

WHEREAS, JME and ELE executed an agreement on October 24, 2011 to transfer the easement back to GNP prior to the trustee taking control of GNP; and

WHEREAS, NW Signal and ECR completed a quit claim deed for a portion of the "we" in Woodinville on December 18, 2017. The quit claim deed and agreement will be respected within this Deed; and

WHEREAS, in order to perfect the legal transfer of the Reserved Freight Easement to ECR from GNP, JME/DEE and ELE to ECR, all parties agree that this Quit Claim Deed is the complete and legitimate transfer of all freight rail interests in the Corridor to ECR;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby recognized between the parties, and with the intent to perfect the legal transfer of the Freight Easement to ECR from all known parties, the undersigned agree as follows:

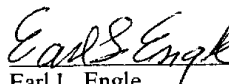
Grantors GNP RLY, INC., a Washington corporation, EARL L. ENGLE, and DOUGLAS E. ENGLE convey, and quit claim to Grantee EASTSIDE COMMUNITY RAIL, LLC, a Washington limited liability company, all of their right, title and interest in and to the Reserved Freight Easement, together with all after acquired title.

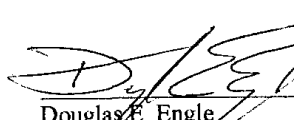
IN WITNESS WHEREOF, the parties have executed this Deed on the date affixed next to the party's signature.

GRANTORS:

GNP Rly, Inc.

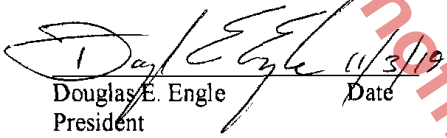
Kevin Kucera Date
President
Address: _____

 11/3/19
Earl L. Engle Date
4117 S. Lamonte St.
Spokane, WA 99203

 11/3/19
Douglas E. Engle Date
4117 S. Lamonte St.
Spokane, WA 99203

GRANTEE:

Eastside Community Rail, LLC


Douglas E. Engle
President
4117 S. Lamonte St.
Spokane, WA 99203

Date

//

//

//

//

ACKNOWLEDGMENTS ON FOLLOWING PAGES

//

//

//

//

//

//

//

//

//

//

//

ACKNOWLEDGMENTS

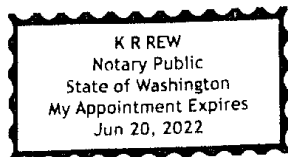
STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public, personally appeared Kevin Kucera, the _____ of GNP Rly, Inc., and personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the company that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, by authority of corporate resolution or other corporation, and on oath stated that he/she is authorized to execute said instrument and in fact executed said instrument on behalf of the company.

Notary Public in and for the State of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

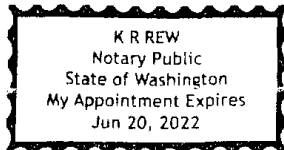
I certify that I know or have satisfactory evidence that Douglas E. Engle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for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



K R REW
K R REW
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

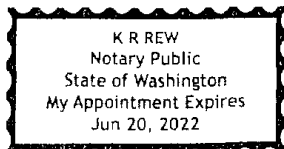
I certify that I know or have satisfactory evidence that Earl L. Engle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the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



K R Rew
K R Rew
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

On this 3rd day of November, 2019, before me, the undersigned, a Notary Public, personally appeared Douglas E. Engle, and personally known to me or proved to me on the basis of satisfactory evidence to be President of Eastside Community Rail, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be his or her free and voluntary act and deed and the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, by authority of statute, its articles of organization, its operating agreement, or by company resolution, and on oath stated that he or she is authorized to execute said instrument and in fact executed said instrument on behalf of the limited liability company.



K R Rew
K R Rew
Notary Public in and for the State of Washington
Residing at Spokane
My appointment expires: 6-20-22

EXHIBIT A
Legal Description

Unofficial Document

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 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 E $\frac{1}{2}$ E $\frac{1}{4}$ 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 $\frac{1}{4}$ 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 $E\frac{1}{4}SW\frac{1}{4}$ Section 24, Township 27 North, Range 5 East, W. M., bounded Northerly by the East line of said $SW\frac{1}{4}$ Section 24 and bounded Southerly by the South Line of said $SW\frac{1}{4}$ Section 24, **EXCEPTING THEREFROM**, that portion lying 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 91st Avenue SE with Yew

Way in the City of Maltby, Washington, as now located and constructed in a generally Southerly direction from 91st Avenue SE, and about 100 feet Southwesterly of the North-South quarter line of said Section 24, as measured along said Main Track centerline; also,

That portion of that certain 200.0 foot wide Maltby Station Ground property, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Southerly by the North and South lines of said NW $\frac{1}{4}$ Section 25; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, Township 27 North, Range 5 East, W. M., bounded Northerly and Westerly by the North and West lines of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25; also.

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ Section 26, all in Township 27 North, Range 5 East, W. M., bounded on the East by the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and bounded on the West by the West line of said NE $\frac{1}{4}$ Section 26; also

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 27 North, Range 5 East, W. M., bounded Easterly by the East line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, and bounded Westerly by the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26; also,

That portion of that certain 200.0 foot wide Branch Line right of way, being 100.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across the W $\frac{1}{2}$ 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.

KING COUNTY

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

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 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 (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) 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