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**Before the
Surface Transportation Board**

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Docket No. FD 36263

**VERIFIED PETITION OF THE CITY AND COUNTY OF DENVER
FOR DECLARATORY ORDER**

**JOINT MOTION OF
THE CITY AND COUNTY OF DENVER
AND
DENVER ROCK ISLAND RAILROAD
TO DISMISS THE PETITION**

Dated: October 22, 2019

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**JOINT MOTION OF
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TO DISMISS THE PETITION**

The City and County of Denver (the “City”), a political subdivision of the State of Colorado, and the Denver Rock Island Railroad Company, a Class III short line rail carrier (“DRIR”) (collectively, the “Parties”), hereby jointly file this Motion to Dismiss the Verified Petition for a Declaratory Order (“Petition”) filed in this proceeding on December 12, 2018, with respect to the City’s proposed consolidation and relocation of the lines of railroad known as the “River Corridor” and “National Western Drive Corridor” (the “Lines”) to a new right-of-way (the “New Corridor”) on the National Western Center Campus in the City and County of Denver, Colorado. The City and DRIR have engaged in mediation under the auspices of this Board and have resolved the concerns raised by DRIR. The Parties’ interests are now aligned.

Under the agreed upon revised plan, the consolidation and relocation of the Lines to the New Corridor will allow for more efficient, safer rail operations by (a) segregating rail traffic from other uses on the National Western Center Campus, including through plantings and landscaping, (b) eliminating uncontrolled, indiscriminate access to the tracks, (c) creating a grade-separated vehicular and pedestrian crossing at Bette Cram Drive, (d) restricting additional pedestrian crossings to an underpass or private controlled at-grade crossing at the northern

portion of the site, and an overpass to the RTD station, and (e) creating a controlled at-grade vehicular crossing at Race Court at the northern end of the site. Furthermore, the Parties believe that there will be no detriment to DRIR's shippers during the construction phase of the project because DRIR's service will continue to operate and DRIR will not switch over to the new track until the new construction and relocation is complete. DRIR will be able to operate on at least one of the existing Lines at all times during construction of the New Corridor. Thereafter, DRIR expects to be able to provide even more reliable service to its customers, since the New Corridor will be segregated from adjacent uses and the at-grade crossings will be controlled and reduced in number.

During mediation, the Parties agreed on an amended track layout, as shown on **Exhibit A** hereto, within the general right-of-way previously shown on Exhibit C to the Petition. The agreed-upon track configuration replaces DRIR's existing track on the National Western Center campus through construction of approximately 13,200 linear feet of clear track. Accordingly, all existing track being removed from the National Western Center campus will be replaced **on** the National Western Center campus, within the region bounded by the current south and north connection points of the Lines. This amended layout will contain the relocation within an even smaller geographic region than the City proposed in the Petition. The nature of the consolidation project is, consistent with the proposal in the Petition, merely the relocation of existing facilities that will not extend the physical length of the line, will allow DRIR to serve the same route and the same shippers, and will not open up new traffic routes or permit DRIR to expand into new territory.

Because both the City and DRIR have agreed on (a) the schedule for construction of the New Corridor, DRIR's cutover to the New Corridor, and subsequent demolition of the Lines, and

(b) terms and conditions to govern the operations and maintenance of the New Corridor, DRIR will be able to serve its shippers without undue interruption and the interests of those shippers will remain protected. Accordingly, the City and DRIR respectfully request that the Board dismiss the City's Petition because the proposed track relocation is not within the Board's regulatory authority.¹

Respectfully submitted,



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Counsel for the City and County of Denver

Dated: October 22, 2019

¹ If the Board believes dismissal is inappropriate, the Parties respectfully request the expedited issuance of a decision confirming that the proposed consolidation of the Lines into the New Corridor is a relocation project not subject to this Board's jurisdiction.

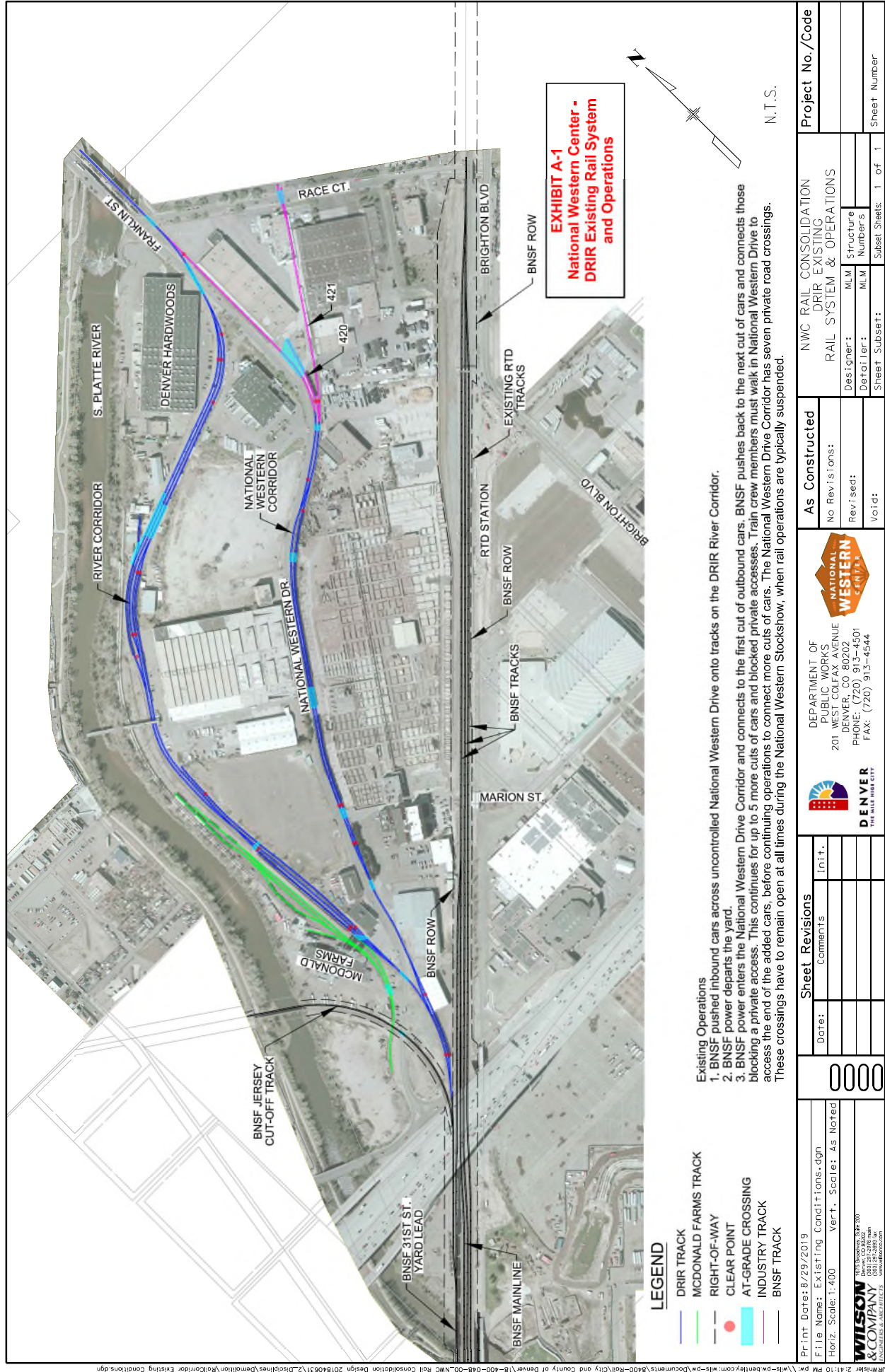
Exhibit A

Revised Track Layout

A-1 – National Western Center – DRIR Existing Rail System and Operations

A-2 – National Western Center – DRIR Proposed Rail System and Operations

[attached hereto]



Existing Operations

1. BNSF pushed inbound cars across uncontrolled National Western Drive onto tracks on the DRIR River Corridor.
2. BNSF power departs the yard.
3. BNSF power enters the National Western Drive Corridor and connects to the first cut of outbound cars. BNSF pushes back to the next cut of cars and connects those blocking a private access. This continues for up to 5 more cuts of cars and blocked private accesses. Train crew members must walk in National Western Drive to access the end of the added cars, before continuing operations to connect more cuts of cars. The National Western Drive Corridor has seven private road crossings. These crossings have to remain open at all times during the National Western Stockshow, when rail operations are typically suspended.

N.T.S.

Print Date: 8/29/2019		Sheet Revisions		As Constructed		NWC RAIL CONSOLIDATION		Project No./Code	
File Name: Existing Conditions.dgn		Date:		No Revisions:		DRIR EXISTING			
Horiz. Scale: 1"=400'		Comments		Revised:		RAIL SYSTEM & OPERATIONS			
Verif. Scale: As Noted		Init.		Void:		Designer:			
						Detailer:			
						MLM		MLM	
						Structure		Numbers	
						Sheet Subsets:		Sheet Sheets: 1 of 1	
								Sheet Number	

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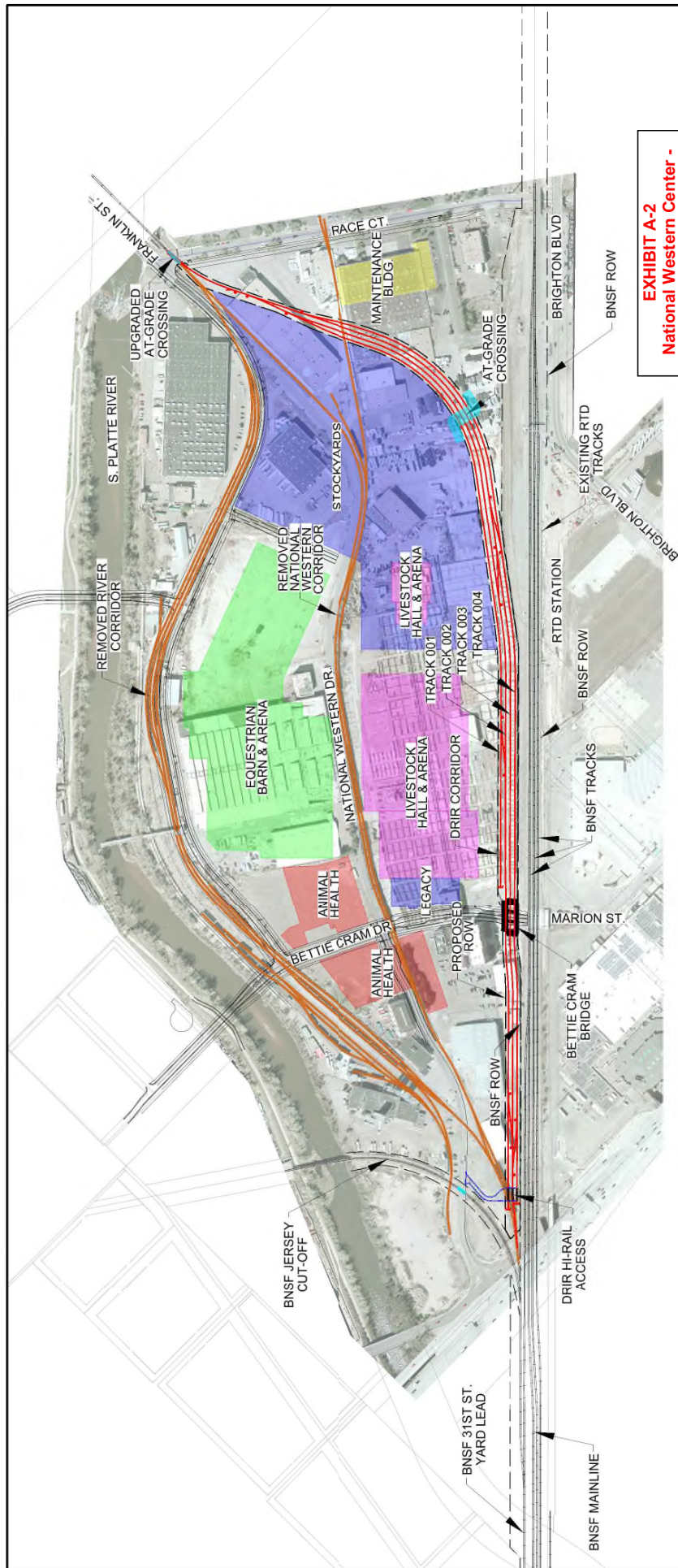
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NATIONAL WESTERN CENTER

Project No. 2019-0001

Sheet No. 0001



LEGEND

- EXISTING TRACK
- PROPOSED TRACK
- REMOVE TRACK
- RIGHT-OF-WAY
- AT-GRADE CROSSING
- ACCESS ROAD

EXHIBIT A-2 National Western Center - DRIR Proposed Rail System and Operations

- Proposed Operations Plan - use of 0.8% or less grade only
1. BNSF pulls/shoves up to 45 inbound cars on Track 004 (7 north of private crossing to remain unblocked year round).
 2. BNSF pulls up to 50 outbound cars from Track 002 (Track 003 used as runaround if pulling inbound).
 3. If BNSF has more than 45 inbound cars, an additional 45 inbound cars can be pulled/shoved on Track 002 (7 north, 38 south).
 4. If there are more than 90 inbound cars, up to another 45 cars can be shovled on Track 002.
 5. DRIR starts pulling cars from any track to go north, but would typically start with any inbound cars on Track 003, then 004, and then 002.
 6. If Track 002 or 004 is clear return to step 1 for shove operation, for pull in operation, Track 003 would also need to be clear before starting step 1.
 7. Track 001 as configured is available for drir shuffling of cars alternative to configure as a parallel ladder and provide up to 32 more cars for inbound or outbound storage.

The proposed configuration provides for storing 90 cars with Track 003 being utilized fully as a runaround track. reconfiguring Track 001 would allow for 122 cars. communication between DRIR and BNSF will be required to understand the number of inbound and outbound cars and the tracks which are open/occupied.

N.T.S.

With documented average deliveries of 18 cars, there should not be a reason for bnsf to have to break a train for deliveries.

Print Date: 8/29/2019		Sheet Revisions		As Constructed		NWC RAIL CONSOLIDATION DRIR PROPOSED RAIL SYSTEM & OPERATIONS		Project No./Code	
File Name: RailCorridor Proposed.dgn		Date:	Comments	Init.	No Revisions:	Revised:	Void:	Designer:	MLM
Horiz. Scale: 1:400	Ver. Scale: As Noted							Detailer:	MLM
WILSON & COMPANY ENGINEERS & ARCHITECTS								Sheet Subst:	1 of 1
Sheet Number		Sheet Subst:		Sheet Sheets:		Sheet Number		Sheet Number	

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Motion to Dismiss of the City and County of Denver and Denver Rock Island Railroad Company to be served by first class mail, properly addressed and with postage prepaid, upon the following:

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Dated: October 22, 2019