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December 22, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

By Electronic Filing

RE: STB Finance Docket No. 35407 **228522**
GNP RLY, INC. – ACQUISITION AND OPERATION EXEMPTION
– REDMOND SPUR AND WOODINVILLE SUBDIVISION

STB Docket No. AB-6 (SUB. NO. 463X) **228523**
BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION –
IN KING COUNTY, WA

STB Docket No. AB-6 (SUB. NO. 465X) **228524**
BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION –
IN KING COUNTY, WA

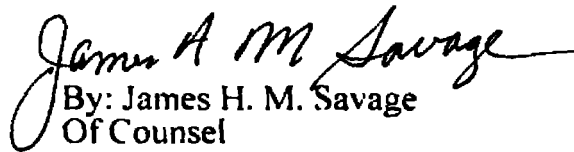
Dear Ms. Brown:

Petitioner GNP Rly, Inc. ("GNP") hereby submits for filing the accompanying Motion for Leave to File a Limited Reply to King County's Reply to Comments of GNP Supporters filed December 15, 2010, together with GNP's supporting Exhibits and Certificate of Service.

Please call the undersigned with any questions.

We thank the Board for its time and consideration.

Respectfully submitted,
Law Offices of John D. Heffner, PLLC


By: James H. M. Savage
Of Counsel

Attorneys for GNP Rly. Inc.

Enc.
cc: All parties (w/enc.)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35407

**GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
REDMOND SPUR AND WOODINVILLE SUBDIVISION**

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**BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA**

**MOTION OF GNP RLY INC. FOR LEAVE TO REPLY TO KING
COUNTY'S REPLY COMMENTS**

Submitted By:
John D. Heffner, PLLC
James H.M. Savage
Of Counsel
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Washington, D.C. 20006
(202) 296-3335

Counsel for Petitioner
GNP Rly Inc.

Dated: December 22, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35407

**GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
REDMOND SPUR AND WOODINVILLE SUBDIVISION**

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IN KING COUNTY, WA**

**MOTION OF GNP RLY INC. FOR LEAVE TO REPLY TO KING
COUNTY'S REPLY COMMENTS**

Petitioner GNP Rly, Inc. ("GNP") hereby files this Motion pursuant to 49 C.F.R. § 1117.1 seeking leave to file a limited reply to the December 15, 2010 reply of King County to the Comments filed by GNP Supporters in these proceedings and directing the Board's attention to the Mare Island Decisions,¹ for further leave to provide the Board and all parties with a Resolution of Support

¹ The "Mare Island" cases are: San Francisco Bay RR, Mare Island-Operation Exemption-California Northern RR, STB Finance Docket Nos. 33503 and 33505 (Service Date: Dec. 6, 2010) and San Francisco Bay RR, Mare Island-Petition for Emergency Service Order and Petition for Declaratory Order-Lennar Mare Island, LLC, STB Finance Docket No. 33560 (Service Date: Dec. 6, 2010)

received December 22, 2010 from the City of Snohomish, WA, and for oral argument.

GNP respectfully submits that the circumstances presented herein warrant the Board exercising its discretion in making a limited exception to the general rule set forth in 49 C.F.R. § 1104.13(C) that would otherwise operate to prohibit the filing of this reply to a reply. This request for the Board's exercise of discretion to permit GNP to file this limited reply would enable GNP to place the Shipper Support Statements in proper context, would allow GNP to distinguish the new cases cited as authority by King County, and would further ensure that the Board's decision herein is based on a complete and accurate record.

Granting this motion will not broaden the issues raised in these proceedings, and will neither prejudice any party, nor delay disposition of this proceeding.

This Board permits parties to a proceeding to file a reply to a reply when that submission " ... provides a more complete record, clarifies the arguments, will not prejudice any party, and does not unduly prolong the proceeding. It is within the Board's discretion to permit otherwise impermissible filings[.]", STB Docket No. AB-6 (Sub-No. 468X), BNSF Railway Company - Abandonment Exemption - In Kootenai County, ID, slip op. at 1 (Dated: November 27, 2009). Most recently, In Florida Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc., STB Finance Docket No. 35110 (Decided: Dec. 14,

2010) the Board granted objector leave to supplement the record by filing a limited response to allegations first asserted in Petitioner's reply. This case warrants similar treatment by the Board.

Consistent with the Board's numerous decisions exercising its discretion to permit such filings, the Board should permit GNP to file a reply in order to contextualize the shipper support statements criticized by King County, to distinguish the Mare Island cases, cited by King County, from the present proceedings, and to ensure that the Board has a complete and accurate record upon which to base its decision herein, and to provide the Board with a Resolution of Support received December 22, 2010 from the City of Snohomish, WA.

And, finally, GNP respectfully reminds the Board that this case involves a question of first impression-- reactivation of a rail trail where the railroad does not have an agreement with the property owner or the abandoning railroad, but also where the trail user, King County, appears to be unaware or perhaps disinterested in its responsibilities under the Trails Act. Accordingly, as the holder of a common carrier right, GNP requests the STB to hold oral argument to more fully probe these issues.

In anticipation of a favorable ruling on this Motion, GNP is hereby incorporating this Reply to the King County Reply together with this Motion.

DISCUSSION

I. King County's Reply Comments concede GNP's Economic Viability.

While Waste Management may not presently be a customer on the Woodinville Subdivision, it has the strong potential to become a very significant customer on the Freight Easement and its projected traffic would likely make GNP immediately profitable in its own right. King County's statement that this traffic is "potentially relevant to the viability of the existing freight operation" thus operates as an admission by King County that the pieces are in place for GNP's freight operations to become economically viable in the very near future.

Woodinville Lumber is a co-tenant in a business industrial park with other prospective GNP customers Drywall Distributors and Matheus Lumber. *See*, Deposition of Drywall Distributor's principal owner Scott McDonald at 8:6-11, annexed hereto as Exhibit A. King County's attempted parsing of each shipper's individual contribution to the overall volume of cars hauled by GNP is neither reasonable nor businesslike, particularly where, as here, multiple shippers are clustered in close proximity to one another; and will who will be served by the same switch engine and crew on the same day's run.

II. The Mare Island Decisions are Distinguishable.

Mare Island is distinguishable on several fronts. First, the rail property on Mare Island was owned by a developer, LMI, who had conveyed a portion of the rail property to the City of Vallejo. Once the former rail operator ceased providing service, the residual common carrier obligation reverted to LMI, which sought to contract for replacement service with a competitor of the Petitioner. The Board found that the Petitioner improperly sought to interfere with LMI's choice of operator, and rejected the petition.

Here, King County, a non-owner, holds the freight reactivation rights and the associated common carrier obligation seemingly hostage, in derogation of its obligations as Interim Trails User under the Trail Use Agreement. King County, states on page 1 of the Trail Use Agreement, "[T]he County acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated...and the County must make the...segments of the Subdivision available for such reactivation of freight service." *See*, Trail Use Agreement, annexed hereto as Exhibit B.

Second, the petitioner in Mare Island seeking an emergency service order does not appear to have any supporting shippers. GNP, in contrast, has the support

of several shippers, including some former BNSF customers, as well as support in other sectors of the community.

Third, whereas Mare Island involved two competing service providers, this proceeding involves a single service provider, GNP and a Trail User (King County) whose disclosed intentions do not indicate any interest or intent to permit reactivation of rail service. Significantly, Mare Island was not a rail trail case where the Board has emphasized the right to reactivate is not exclusive. *Infra*.

Fourth, Mare Island involved material misrepresentations by the petitioner both as to its status as an existing rail provider and that it had obtained or was about to reach a negotiated agreement with the property owner. GNP, on the other hand forthrightly indicates in its petition that “the parties have not yet reached an agreement.”

Fifth, unlike LMI in Mare Island, neither landowner here, the Port of Seattle, nor Redmond, has the right to deny GNP access to the Redmond Spur for the purpose of reactivating freight rail service. The Board must intervene to halt the County’s continuing violation of its obligation under the Trail Use Agreement to cooperate in freight reactivation, regardless of the identity of the reactivating carrier. Nor may the County arrogate to itself the Board’s exclusive jurisdiction to determine whether a particular carrier, here, GNP, is or is not fit to provide service.

This Board, in STB Finance Docket No. 35148, King County, WA—
Acquisition Exemption—BNSF Railway Company (Decided: September 17,
2009), has already enunciated the controlling rule of law:

[A] railbanked line is not abandoned, but remains part of the national rail system, albeit temporarily unused for railroad operations. An interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service.[Footnote omitted] If and when a railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail sponsor must step aside. Georgia Great Southern; 16 U.S.C. 1247(d).

It is also well settled that the Board's role in rail banking/interim trail use is essentially ministerial. That is, the Board only looks to see if the trail sponsor meets the statutory and regulatory requirements to be a trail sponsor, that the railroad agrees to trail use, and that nothing occurs that would preclude a railroad's right to reassert control over the ROW at some future time to revive rail service. [Cites omitted]

The threshold issue in this case is whether it is permissible under the Trails Act for a trail sponsor to acquire from a railroad the right to reactivate rail service over a railbanked line even if there is no evidence that the trail sponsor intends to exercise that right. AAW asserts that King County's petition is inconsistent with the Trails Act because neither King County nor the Port have plans (or are likely) to restart rail service. But as previously noted, *the right to reactivate a railbanked line is not an exclusive right*. See, e.g., Iowa Power. While the parties' agreement would transfer to King County BNSF's opportunity to provide rail service, *it would not preclude any other service provider from seeking Board authorization to restore active rail service on all or parts of the railbanked segments in the future if King County does not exercise its right to reinstate rail service*. See 16 U.S.C. 1247(d); Georgia Great Southern. Accordingly, regardless of the parties' intentions, *a bona fide petitioner, under appropriate circumstances, may request the NITU to be vacated to permit reactivation of the line for continued rail service*. E.g., R.J. Corman; Georgia Great Southern[.]

[Emphasis supplied.]

King County, having failed to exercise its right to reactivate service, or to cooperate in the reactivation of service by GNP, a *bona fide* Petitioner.

Accordingly, the Board should require King County to relinquish its status as Interim Trail User, insofar, at least, as that use is inconsistent with GNP's right to reactivate freight service.

III. GNP has Substantial Community Support for its Rail Initiatives.

The County of Snohomish's Resolution of Support for GNP's initiative, is highly significant insofar as that it demonstrates that there is formal County support for reactivation of service by GNP, including multiple public entities (Cities of Snohomish and Woodinville). Snohomish County is the county upon which the portion of the Line north of Woodinville lies. *See*, Resolution of Support, annexed hereto as Exhibit C.

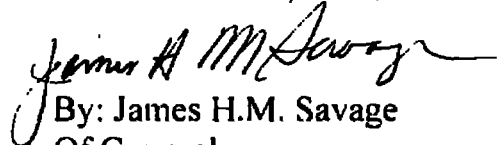
CONCLUSION

For the foregoing reasons and based upon the above cited authority, GNP respectfully requests that the Board grant its Motion for leave to file a limited reply to the reply filed December 15, 2010 by King County to the Comments of GNP's supporters and to direct the Board's attention to the Mare Island Decisions.

GNP hereby requests oral argument.

Submitted By:

John D. Heffner, PLLC


By: James H.M. Savage
Of Counsel

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Washington, D.C. 20006
(202) 296-3335

Counsel for Petitioner
GNP Rly Inc.

Dated: December 22, 2010

CERTIFICATE OF SERVICE

I, James H. M. Savage, hereby certify that a copy of the foregoing Motion of GNP for leave to file a limited reply to the reply comments filed December 15, 2010 by King County was served by first-class United States mail or electronic mail upon the following persons:

Matthew Cohen *
Hunter Ferguson
Stoel Rives LLP
600 University Street, Site 3600
Seattle, WA 98101

Robert vom Eigen *
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007-5143

Kurt Triplett
City of Kirkland
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Kirkland, WA 98033

Jean M. Cerar
Issaquah Valley Trolley
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Issaquah, WA 98052

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Port of Seattle
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Washington, DC 20036

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City of Bellevue Manager
P.O. Box 90012
Bellevue, WA 98009

*Electronic service.

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Redmond, WA 98052

Dean Kattler
Waste Management of WA, Inc.
13225 N.E. 126th Place
Kirkland, WA 98034

Andrea C. Ferster *
Rails-To-Rails Trails Conservancy
2121 Ward Court, NW, 5th Floor
Washington, DC 20037

Paul Zimmer
Eastside Rail Now
P.O. Box 3524
Bellevue, WA 98009


James H. M. Savage

Dated: December 22, 2010

EXHIBIT A

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1 Q. To Mr. Snow?
 2 A. Yes.
 3 Q. Drywall is a corporation, is that correct?
 4 A. Yes.
 5 Q. And how long have you -- who owned Drywall
 6 before you purchased it?
 7 A. John Snow, Jr.
 8 Q. So that's who you purchased it from?
 9 A. (Nods head)
 10 Q. And he owned 100 percent then, so he sold
 11 100 percent to you, now you're selling 10 percent back
 12 to his father?
 13 A. To his son.
 14 Q. So his son. Okay. How long have you worked
 15 at Drywall Distributors?
 16 A. Since July -- August -- July-August 2001.
 17 Q. And briefly, before I forget, can you
 18 briefly describe your educational background?
 19 A. Three or four years at Lutheran Bible
 20 Institute, multiple junior colleges, and failed to
 21 complete at the University of Washington.
 22 Q. What did you study there?
 23 A. Everything.
 24 Q. Everything? Okay.
 25 A. General classes. I was going to be a

1 Gypsum.
 2 Q. And these are two manufacturing concerns?
 3 A. Uh-huh.
 4 Q. Okay.
 5 (Exhibit I marked)
 6 Q. Mr. McDonald, the court reporter has handed
 7 you what's been marked as Exhibit I to your
 8 deposition. Take a look at that and tell me if you
 9 can identify it, please.
 10 A. That is Drywall Distributors and Woodinville
 11 Lumber and Matthews Lumber.
 12 Q. Does that look like an aerial photo of
 13 the --
 14 A. Yes.
 15 Q. Is this facility that we see here in Exhibit
 16 I, is this the only facility for Drywall Distributors?
 17 A. Yes, it is.
 18 Q. How long has it been there, to your
 19 knowledge?
 20 A. I think John Snow bought this property in
 21 the mid-'90s.
 22 Q. They own the property, I take it?
 23 A. Yes.
 24 Q. Is there any business connections with
 25 Woodinville Lumber?

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Page 9

1 missionary early, kind of got burned out on school.
 2 Q. So you did not take a degree, even though it
 3 sounds like you spent a lot of time in college?
 4 A. Correct.
 5 Q. Sounds like you started working at Drywall
 6 about the same time you purchased it, correct?
 7 A. Correct.
 8 Q. And what prompted you to purchase Drywall?
 9 A. Well, I worked in the manufacturing of
 10 gypsum materials since 1983 up and down the coast and
 11 in Canada. And Drywall Distributors had been a
 12 customer, and he was looking for an exit plan and I
 13 was looking to take a chance.
 14 Q. And Drywall Distributors is not a
 15 manufacturer, is that correct?
 16 A. Correct.
 17 Q. And if you can, you've indicated that you
 18 worked in gypsum materials since 1983. Can you
 19 briefly summarize what that involved?
 20 A. I started with Domtar Gypsum in 1983 through
 21 1996. They were purchased by Georgia-Pacific in 1996.
 22 I took a two-week paycheck and also worked for a
 23 company then called James Hardie Gypsum in Seattle.
 24 Q. And then from '96 on you did --
 25 A. '96 to 2001 I worked for James Hardie

1 A. Zero.
 2 Q. They're just another business concern that
 3 happens to be close to you?
 4 A. Yes.
 5 Q. No joint ownership or anything like that?
 6 A. Zero.
 7 Q. What is it that Drywall Distributors does at
 8 this facility?
 9 A. We purchase and sell gypsum, steel studs,
 10 insulation, sometime a little lumber, from
 11 manufacturers or other distributors, and then resell
 12 to general contractors, subcontractors, and a little
 13 bit at retail.
 14 Q. Looking at Exhibit I, there is in the
 15 southeast corner a building.
 16 A. This is where you're talking?
 17 Q. Yes. What is that building used for?
 18 A. It's warehousing gypsum materials.
 19 Q. And then to the north of that building
 20 there's, it looks like another one or two buildings --
 21 A. This here?
 22 Q. -- another building with the same color
 23 roof. Yes, here. What is that used for?
 24 A. The newer roof is for gypsum materials. The
 25 rusted roof kind of right adjoining it is my

3 (Pages 6 to 9)

SEATTLE DEPOSITION REPORTERS, LLC

www.seadep.com

(206) 622-6661 * (800) 657-1110 FAX: (206) 622-6236

EXHIBIT B

TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement") is made as of December 13, 2009, by and between BNSF Railway Company, a Delaware corporation ("BNSF"), and King County, Washington, a political subdivision and body corporate and politic of the State of Washington ("County") (each, individually, a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, BNSF is the owner of that certain real estate known as the "Woodinville Subdivision", located in King County, Washington, and Snohomish County, Washington (the "Woodinville Subdivision" or "Subdivision") and conducts rail operations over the Subdivision from the City of Renton, Washington to the City of Snohomish, Washington; and

WHEREAS, the Port of Seattle ("Port") has negotiated with BNSF a purchase and sale agreement pursuant to which the Port intends to acquire the Subdivision, and the County is a party to those agreements and has contributed to the purchase price for the purpose of railbanking a portion of the Subdivision; and

WHEREAS, the Port does not desire to take on any rail operating responsibility with respect to the Subdivision, and, accordingly, BNSF sought abandonment of its rail common carrier obligation on three segments of the Subdivision, and will transfer its rail operating responsibility on the remainder to a short line operator; and

WHEREAS, the County desires to convert three segments of the Subdivision to public trail use and potentially other public purposes, and, accordingly, the County and BNSF desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by the County; and

WHEREAS, the Parties acknowledge that any railbanking, trail use or other public purpose proposed by the County, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"); and

WHEREAS, the Parties acknowledge that STB authorization has been obtained upon the issuance of a Notice of Interim Trail Use ("NITU") for each segment of the Subdivision being abandoned by BNSF in accordance with the Board's rules and procedures; and

WHEREAS, the Parties acknowledge that the County has applied for, obtained and is the holder of the NITUs, and, further, the County acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the three segments of the Subdivision and the County must make the three segments of the Subdivision available for such reactivation of freight service; and

WHEREAS, subject to the request of the Port or other requests for service reactivation, the Parties intend that the County is also obtaining the right and obligation to permit or effect reactivation,

which has been approved by the STB, and pursuant thereto to permit the person requesting reactivation to take such steps as may be required to permit or effect that reactivation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the County's contribution to the purchase price of the Subdivision and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the County agree as follows:

AGREEMENT

1. RAIL LINES BEING RAILBANKED

The segments of the Subdivision being railbanked are located: (a) between milepost 5 and milepost 10.6; (b) between milepost 11.25 and milepost 23. 90; and (c) between milepost 0.0 and milepost 7.3 of the Redmond Spur (collectively the "Railbanked Segments") A map of the Subdivision with an indication of the three Railbanked Segments is attached hereto as Exhibit B.

2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, authorization by the STB of the County's trail use will be referred to herein as the "NITUs".

(c) Pursuant to 49 C.F.R. 1152.29, the County assumes the following obligations in respect to the Railbanked Segments in accordance with the Statement of Willingness to Assume Financial Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR"), the form of which is attached to this Agreement as Exhibit A, and otherwise in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Railbanked Segments; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Railbanked Segments; and (iii) all other obligations arising under the NITUs, the SWAFR, and/or the Railbanking Legislation as it applies to the Railbanked Segments.

(d) BNSF hereby transfers to the County the right and/or obligation to permit reactivation of the Railbanked Segments for rail service. King County has obtained authorization for the transfer of BNSF's right to restart rail service from the Surface Transportation Board.

(e) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of the County to initiate interim trail use along the Railbanked Segments.

3. TERMINATION OF NITU

It is the understanding and intent of the parties that all right and/or obligation to permit reactivation of the Railbanked Segments for rail service has been transferred by BNSF to County and that BNSF no longer retains any such right or obligation. If notwithstanding this the STB receives a request from BNSF that rail service be restored on all or portion(s) of the Railbanked Segments, the County agrees that it will make its interest in the corresponding portion(s) of the Railbanked Segments available for such restoration and BNSF will compensate the County for such interests and any improvements that have been made by the County on the Railbanked Segments at their then fair market value. If (a) the

County, after the date of this Agreement, has removed any railroad tracks or any railroad equipment or supporting apparatus within the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF, or (b) any equipment or improvements ("Post-Railbanking Installations") installed on the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF after the date of this Agreement would prevent or otherwise impede the restoration of rail service, then BNSF will either restore any required railroad infrastructure or remove any Post-Railbanking Installations at its sole expense, and will undertake at its sole expense any work necessary to restore rail service on the portion(s) of the Railbanked Segments. In the event of a request to reactivate service on any Railbanked Segment(s) pursuant to such a request by BNSF and of the receipt of any required approvals by the STB, the County will cause the NITUs to be vacated on the subject Railbanked Segment(s), in whole or in part, and will file at the STB any required notice and/or other information as may be necessary at that time.

4. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to County at:

County
King County Office of the Executive
701 Fifth Avenue
Suite 3210
Seattle, WA 98104
ATTN: Chief of Staff

With an additional copy to:

Office of the King County Prosecuting Attorney
Civil Division
400 King County Courthouse
516 Third Avenue
Seattle, WA 98102
ATTN: Chief Civil Deputy

or to BNSF at:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
ATTN: Rick Weicher
Fax No.: 312-850-5677

With an additional copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: David Rankin

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

5. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "BNSF" and "County" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

(f) No Waiver. Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

(g) Assignability. The County may assign this Agreement at its discretion, subject to regulatory requirements for transfer of the NITUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(k) Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF AND THE COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either Party; and the Parties hereby agree to submit to the personal jurisdiction of said courts.

(l) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(m) Authorization. BNSF represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. The County represents and warrants that it has obtained all necessary legislative approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the County's Charter or code, and will not constitute a material breach of any contract by which the County is bound.

(n) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: Richard E. Weicher
Name: Richard E. Weicher
Title: Vice President & General Counsel - Regulatory

KING COUNTY

By: Dow Constantine
Name: Dow Constantine
Title: King County Executive

EXHIBIT A
To Trail Use Agreement
Form of Statement of Willingness to Assume Financial Responsibility

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, King County, a political subdivision and body corporate and politic of the State of Washington (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from: (1) railroad milepost 5.0 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 10.60, near _____ (Station name), a distance of 5.6 miles in King County, Washington; (2) railroad milepost 11.25 on the Woodinville Subdivision near _____ (Station Name), to railroad milepost 23.8, near _____ (Station name), a distance of _____ miles in King County, Washington; and (3) railroad milepost 0.0 on the Redmond Spur near _____ (Station Name), to railroad milepost 7.3, near _____ (Station name), a distance of 7.3 miles in King County, Washington. The right-of-way described in item (1) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 464X). The right-of-way described in item (2) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 465X). The right-of-way described in item (3) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 463X).

King County acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

EXHIBIT B
To Trail Use Agreement

Map of Three Railbanked Segments
(Attached)

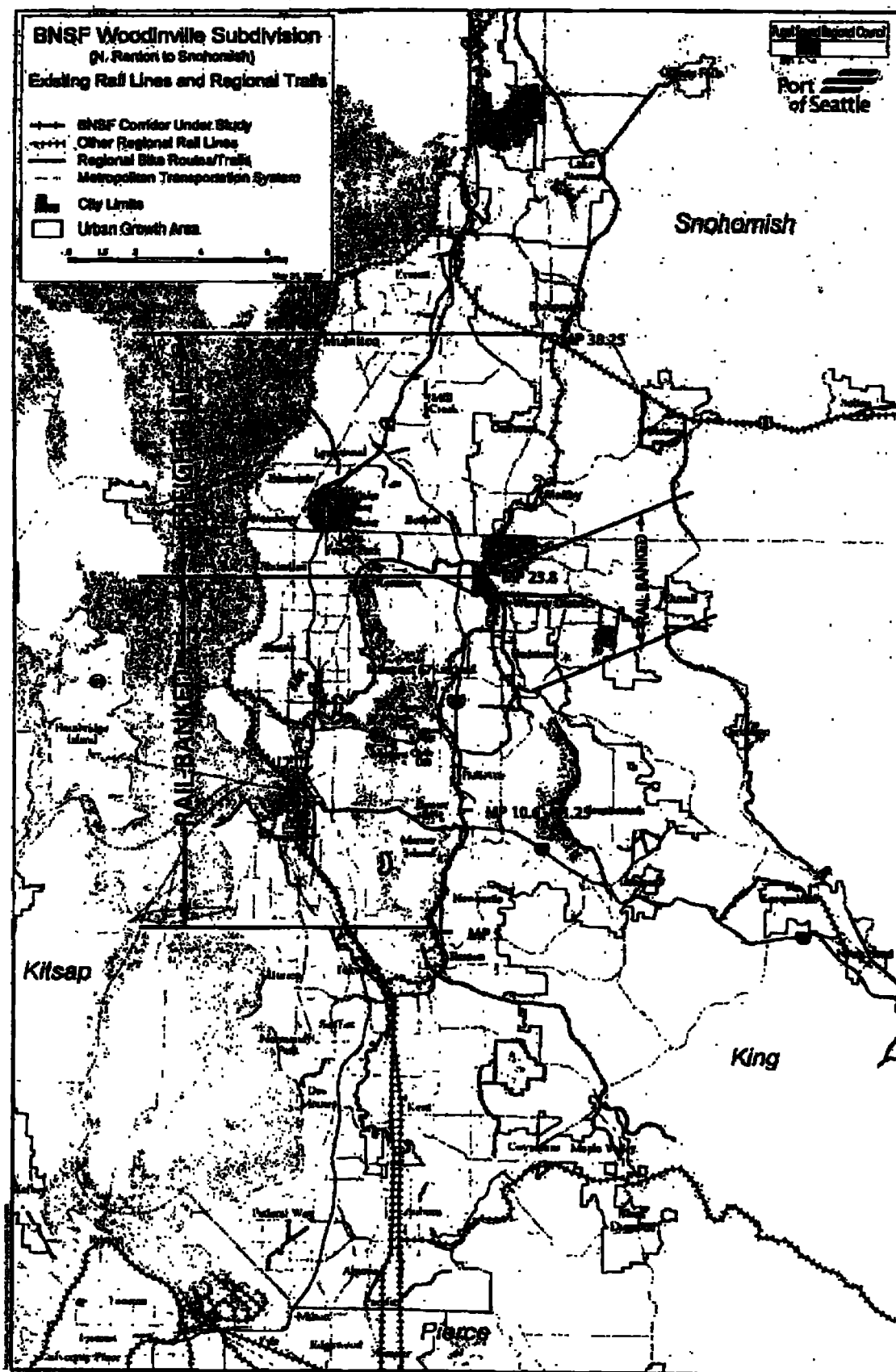


EXHIBIT C

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

RESOLUTION NO. 10-011

IN SUPPORT OF GNP RAILWAY'S PETITION TO REACTIVATE THE REDMOND
BRANCH OF THE SNOHOMISH-WOODINVILLE RAILWAY LINE

WHEREAS, on January 5, 2009, the Snohomish County Council and Snohomish County Executive jointly adopted Snohomish County Resolution 09-001 strongly supporting concurrent development of freight, passenger and excursion rail service and a bicycle and pedestrian trail on the Eastside Rail Corridor; and

WHEREAS, the Snohomish County Council supports the petition of GNP Railway to restore the rail line between Woodinville and Redmond to active operation, and

WHEREAS, the line is served through Snohomish County from the north; and

WHEREAS, Snohomish County is aware that GNP Railway has been authorized by the federal Surface Transportation Board to operate a rail line between Snohomish and Woodinville that was formerly owned and operated by BNSF Railway Company; and

WHEREAS, through their petition, GNP desires to reactivate the branch off the Snohomish-Woodinville line that extends to Redmond; and

WHEREAS, this service would serve many building supply, agricultural/vinicultural, and other commercial interests between Woodinville and Redmond, from Snohomish; and

WHEREAS, re-activating this service would assist in the re-invigoration of the local economy and create much-needed additional jobs; and

WHEREAS, this branch has been in the initial stages of being converted to recreational use as a rail trail.

NOW, THEREFORE, BE IT RESOLVED, that the Snohomish County Council urges the Surface Transportation Board to grant GNP's petition to reactivate this rail line.

PASSED this 13th day of December, 2010.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Chairperson

ATTEST.



Asst. Clerk of the Council

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