

E1-18309



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cc "Clark, Kristy D" <Kristy.Clark@BNSF.com>, "Sims, John A"  
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<Susan.Odom@BNSF.com>, "esievert@greatfallsmt.net"  
bcc  
Subject STB Docket No. AB-6 (Sub-No. 445X); BNSF Railway  
Company - Abandonment Exemption - in Cascade County,  
MT

Mr. Navecky,

Please reference STB decision served on November 7, 2006, in the above-referenced docket. Specifically, Condition No. 3, in which it references that BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way until the section 106 process has been completed. BNSF has been involved in extensive discussions with both the Montana State Historic Preservation Office and the City of Great Falls regarding this section 106 process and we have all agreed to the terms outlined in the attached Memorandum of Agreement below.

Please review and make any necessary changes and advise as to what the next steps are so that we can have all parties execute the agreement and allow BNSF to move forward with salvaging the line. If you have any questions or would like to discuss further, please contact me at (817) 352-2376 or Kristy Clark at (817) 352-3456.

Regards.

**John A. Sims, CP**  
**Paralegal**  
**BNSF Railway Company**  
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Great Falls MOA 081010.doc

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE SURFACE TRANSPORTATION BOARD,**  
**CITY OF GREAT FALLS, MONTANA,**  
**MONTANA STATE HISTORIC PRESERVATION OFFICE**  
**(MONTANA HISTORICAL SOCIETY)**  
**AND**  
**BNSF RAILWAY COMPANY**

**REGARDING BNSF RAILWAY COMPANY'S**  
**ABANDONMENT EXEMPTION**  
**IN CASCADE COUNTY, MONTANA**  
**STB DOCKET NO. AB-6 (Sub-No. 445X)**  
**SHPO PROJECT # 2006051510**

**WHEREAS**, the Surface Transportation Board (the “STB”), the lead Federal Agency, has received a Verified Notice of Exemption under 49 C.F.R § 1152.50 from BNSF Railway Company (BNSF) to abandon a 1.67-mile out-of-service line of railroad between BNSF mile post 194.61 and mile post 196.28 in Great Falls, Cascade County, Montana; and

**WHEREAS**, the STB in consultation with the Montana Historical Society, the Montana State Historic Preservation Office (the “SHPO”) has determined that the proposed project is an undertaking that may have an adverse effect upon historic properties included in, or eligible for, inclusion in the National Register of Historic Places; and,

**WHEREAS**, the STB, the Section of Environmental Analysis (the “SEA”) recommended a condition for the proposed abandonment that BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or have been listed in the National Register of Historic Places, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f), has been completed; and

**WHEREAS**, BNSF, the project proponent, on behalf of the STB, is in consultation with the City of Great Falls Office of Historic Preservation (the “City”) and SHPO, pursuant to Part 800 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act; and

**WHEREAS**, the SEA has consulted with the SHPO, the City and BNSF regarding ways to avoid, minimize or mitigate an adverse effect to the rail line pursuant to Section 36 CFR 800.6; and,

**WHEREAS**, the SHPO has agreed to the suggested measures that will serve to mitigate possible adverse effect; and

**WHEREAS**, pursuant to 36 CFR § 800.6 (c) (2), the STB has invited the SHPO, the City and BNSF to be signatories to this Memorandum of Agreement (“MOA”); and

**WHEREAS**, the STB intends to use the provisions of this MOA to address applicable requirements of Section 106 of the National Historic Preservation Act.

**NOW, THEREFORE**, SEA and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

*[remainder of page intentionally left blank]*

## **STIPULATIONS**

### **I. MEASURES TO COMPLY WITH SECTION 106**

The STB, in consultation with BNSF, will ensure that the following measures are carried out:

- (1) BNSF, as agreed, will provide the City with an easement over railroad property at approximately mile post \_\_\_ for a pedestrian bridge along 25<sup>th</sup> Street North.
- (2) BNSF, as agreed, will charge no fee for the easement.
- (3) BNSF will fund research and creation of interpretive signage related to area railroad history, in an amount not to exceed \$6,000.
- (4) In the event BNSF assigns or conveys its interests in the easement area to any other party, BNSF shall require that the conditions of sections (1) and (2) and the terms of this MOA shall be assigned and assumed by the acquiring entity and the conditions shall be imposed upon the conveyance, and such condition shall run with the land until satisfied.

### **II. DISPUTE RESOLUTION**

Should any party to this Agreement object within thirty (30) days after receipt to any contracts or reports, or other documents provided for review pursuant to this Agreement, or to the manner in which this Agreement is being implemented, the STB shall consult with the objecting party to resolve the objection. If the STB determines that the objection cannot be resolved, the STB will request the comments of the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR §800.6(b). Any Council comment provided in response to such a request shall be taken into account by the STB with reference only to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain unchanged.

### **III. AMENDMENTS AND NONCOMPLIANCE**

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the

MOA, any signatory may terminate the agreement in accordance with the stipulations.

#### **IV. TERMINATION**

Execution of this MOA by the STB, the SHPO, the City and BNSF, and its subsequent submission to the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the Council for the purposes of the National Historic Preservation Act. Execution and submission of the MOA, and implementation of its terms, evidences that the STB has afforded the Council an opportunity to comment on the proposed action relating to the line, and that STB has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the National Historic Preservation Act (Title 16 USC Section 470(f)).

#### **SURFACE TRANSPORTATION BOARD**

By: \_\_\_\_\_  
Victoria Rutson  
Chief, Section of Environmental Analysis

Date: \_\_\_\_\_

#### **MONTANA STATE HISTORIC PRESERVATION OFFICE**

By: \_\_\_\_\_  
Mark Baumler  
State Historic Preservation Officer

Date: \_\_\_\_\_

#### **CITY OF GREAT FALLS**

By: \_\_\_\_\_  
Ellen Sievert  
City-County Historic Preservation Officer

Date: \_\_\_\_\_

#### **BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Kristy Clark  
General Attorney

Date: \_\_\_\_\_