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SURFACE
TRANSPORTATION BOARD

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

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



19 June 2004
by express service

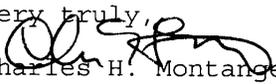
Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: BNSF -- Exemption -- MP 38.01 to
MP 39.00 in Snohomish, WA,
AB 6 (Sub-no. 422X)

Dear Mr. Williams:

Enclosed for filing please find the original and ten copies of comments and a "statement of willingness" invoking 16 U.S.C. § 1247(d) for filing on behalf of the City of Snohomish in the above-referenced proceeding. The "statement of willingness" is fee exempt, for the reasons stated in the comments.

As always, thank you for your assistance in this matter.

Very truly,

Charles H. Montange
for City of Snohomish

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Encls.

cc. counsel for BNSF (w/encl.)
Ann Caley (City of Snohomish) (w/encl.)

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BEFORE THE SURFACE TRANSPORTATION BOARD



TRAIL BOARD Burlington Northern and Santa Fe)
Railway Co. -- Exemption --) AB-6 (Sub-no. 422X)
in Snohomish, WA)

Comments,
Request for Public Use Condition,
and Railbanking and Fee Waiver Request

These comments are filed on behalf of the City of Snohomish (City) in response to the notice of exempt abandonment pursuant to 49 C.F.R. § 1152.50 tendered by Burlington Northern and Santa Fe Railway (BNSF) in the above-referenced proceeding. City is a unit of local government in Snohomish County, Washington. The 0.99 mile long abandonment at issue in this proceeding is within the City.

The rail line at issue in this proceeding has not been used for many years. There are no active or so far as City is aware potential shippers at this time. Most of the track and ties of which it had been comprised have been removed, although a substantial bridge across the Snohomish River remains intact.

At its north end, the line proposed for abandonment terminates where the Centennial Trail (an important rail trail in Snohomish County) commences. The south end of the abandonment is just south of the aforementioned bridge across the Snohomish River.

The line would make an excellent and much needed extension of the Centennial Trail into the City's downtown. In addition, the line if converted to trail use would serve as a link and connector to other trails the City is developing along the River waterfront.

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Ultimately, these trails will serve as connections to the King County trail system further south.¹ While City of Snohomish supports termination of current common carrier obligations on the line, City also supports imposition of conditions upon any exempt abandonment authorization consistent with encouraging and facilitating preservation of this rail corridor for continued public use, particularly for trail and open space purposes. In particular, the City seeks two public use conditions, as set forth below.

Public Use Condition Request

First Condition

As provided by 49 C.F.R. § 1152.28, City makes the following representations in support of issuance of the first public use condition which it seeks:

(i) Condition sought: City seeks an order barring BNSF from disposing of any interest in this property for 180 days from the effectiveness of any abandonment authorization, except for public use as a trail and public open space.

(ii) Public importance of condition: As indicated, the railroad line at issue in this case is the logical extension of the Centennial Trail, and would serve to connect that Trail with

¹ Indeed, BNSF has invited the Washington State Department of Transportation, which has referred the matter to the Puget Sound Regional Council, to express interest in acquisition of the entire Woodinville Subdivision from Snohomish south to Renton. See Everett Herald, p. 1, col.1, Dec. 5, 2003. If this entire Subdivision became available for rail with trail and/or railbanking/trail use, additional regional trail connections would be possible.

downtown Snohomish as well as with other components of the City's trail system, and with the regional trail system. No viable alternative exists which would serve this purpose, let alone serve this purpose so well.

(iii) Period of time for which the condition is sought: 180 days from the effective date of any abandonment authorization.

(iv) Reason for period of time: Based on past experience, at least 180 days is required to negotiate a corridor acquisition with BNSF, or to prepare for the filing of any necessary eminent domain proceedings.

Second Condition

City makes the following representations in support of issuance of the second public use condition which it seeks:

(i) Condition sought: a report by a third party expert (presumably a licensed civil engineer) concerning (a) the structural integrity of the bridge across the Snohomish River in the event of a severe earthquake and (b) the presence or absence of lead-based paint on said bridge.

(ii) Public importance of condition: BNSF has urged the City to accept the bridge across the River as a condition to reaching an agreement with the City, but based on a summary report indicating that the kind of bridge in question "freezes up" when it is unused (as this bridge now has been for lack of traffic) and thus is subject to catastrophic failure in an earthquake, the City is concerned that the bridge would not survive a moderate to severe earthquake. Although BNSF has denied that the bridge poses

an earthquake hazard, BNSF has provided no back-up evidence, even though it has continued to insist that City accept the Bridge. A possible solution to this problem is for BNSF to supply an expert opinion on which City may rely that the Bridge will not be subject to catastrophic failure in the event of an earthquake. Similarly, the Bridge poses a substantial liability to the City hindering a transaction to the extent it may contain lead-based paint. BNSF has not provided any opinion on which City may rely that the Bridge does not contain such paint. If BNSF were to provide the information requested in reliable form, then both the public and BNSF would benefit, and it may be possible to preserve the bridge. Otherwise, the City will not be in a position to acquire the bridge, and, should BNSF refuse otherwise to deal, City would have to resort to state law remedies at eminent domain.

(iii) Period of time for which the condition is sought: This Board should require the information to be supplied within 60 days of the entry of an order requiring the provision of such information.

(iv) Reason for period of time: BNSF presumably has the information in hand, or reasonably available. In any event, prompt provision of the information is necessary to permit the parties to complete an agreement (or take other appropriate actions) within the time span of the basic 180 day public use condition also sought by the City.

Railbanking and Fee Waiver Request

The City tenders herewith a "statement of willingness" for

the issuance of Notice of Interim Trail Use ("NITU") to permit acquisition of this line under 16 U.S.C. § 1247(d).

(i) Fee waiver. Pursuant to 49 C.F.R. § 1002.2(e)(1), filing fees are waived for an application which is filed by a state or local government entity. Since City is a local government entity, § 1002.2(e)(1) is applicable, and no fees need be paid for the filing of the "statement of willingness" tendered herewith.

(ii) Severance issues. As indicated in the context of City's second public use condition request, City does not intend to acquire the bridge across the Snohomish River unless City is supplied with a reliable expert opinion indicating that the bridge will not catastrophically fail in the event of an earthquake and that the bridge does not contain lead-based paint. If the City does not acquire the Bridge, BNSF presumably would be required to remove the bridge for liability and other reasons.

If the bridge were removed, the rail line could not be reactivated for future rail service unless a new bridge were constructed.² In this event, parties hostile to corridor preservation under 16 U.S.C. §1247(d) may take the position that a severance of any railbanked line from the interstate rail system

² City estimates that replacement of the bridge for rail purposes may cost more than a half million dollars, and perhaps more than one million dollars. City believes that if the Bridge has "frozen up" already, it might already have to be replaced for rail purposes if abandonment were not granted. The bridge is not necessary for a trail, unless BNSF were to convey line south of the bridge to the City for trail purposes. BNSF does not propose abandonment of the line south of the bridge at this time.

has occurred, so as to render this rail line ineligible for railbanking. If this Board agrees that removal of the Bridge would constitute a severance disqualifying the rail line north of the Bridge from railbanking, then this Board should condition issuance of any NITU upon preservation of the Bridge. In this fashion, the parties and the public will understand the terms of applicability of 16 U.S.C. § 1247(d) and will be able to avoid any unlawful conduct or imprudent action and mis-reliance. In determining whether preservation of the bridge is necessary in order to regulate the line under § 1247(d), it is germane to note that (as BNSF notes at p.2 of its Environmental Report), the segment at issue in this proceeding connects to the Centennial Trail on the north side of Snohomish. The Centennial Trail (which is located on the former extension of the rail line at issue here northward into Skagit County) is owned by local governments, and to the best of City's understanding, is intact and continuous all the way to Arlington, to a point of connection with the BNSF (i.e., the interstate network). In short, even if the bridge across the Snohomish River were removed, the segment in City of Snohomish at issue in this proceeding could be reconnected with the interstate rail network via reactivation for rail purposes of the Centennial Trail. The entirety of the Centennial Trail to the point of interconnection with active BNSF track is, however, not formally railbanked under 16 U.S.C. § 1247(d).

Respectfully submitted,

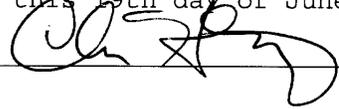


Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
for City of Snohomish

Att: "statement of willingness"

Certificate of Service

I hereby certify service of this Comment and the attached "statement of willingness" upon Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606-6677 (counsel for BNSF) by express delivery (Federal Express) no later than Tuesday, June 22, 2004, this 19th day of June 2004.



BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern and Santa Fe)
Railway Co. -- Exemption --) AB-6 (Sub-no. 422X)
in Snohomish, WA)

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, City of Snohomish (interim Trail User), is willing to assume full responsibility for management of, for any legal liability arising out 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 owned and operated by Burlington Northern and Santa Fe Railway Company (Railroad). The property extends from MP 38.01 to MP 39.00 in the City of Snohomish, a distance of approximately 0.99 miles in Snohomish County, WA. The right of way is part of a line proposed for abandonment in Docket AB-6 (Sub-no. 422X).

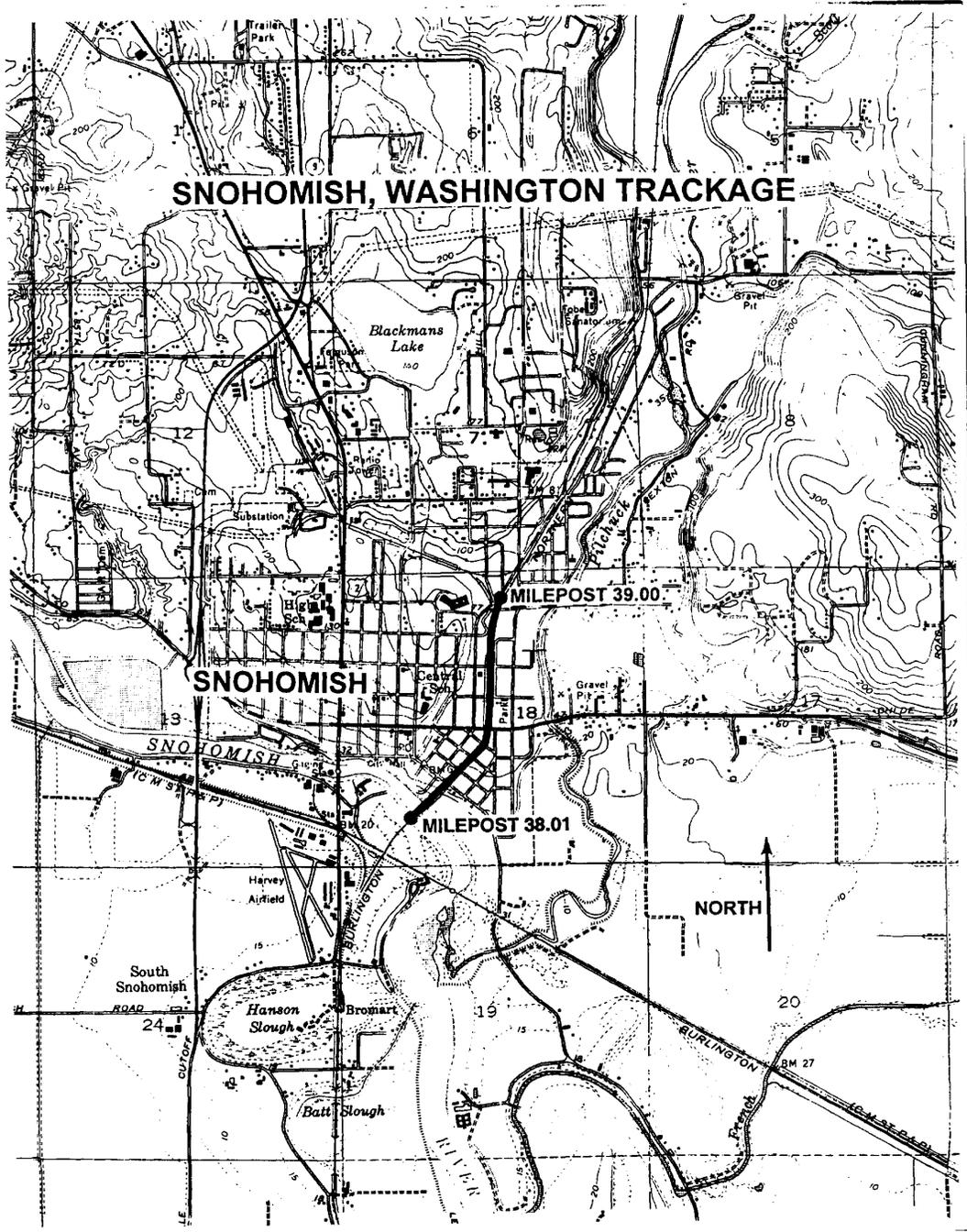
A map depicting the property is attached.

City of Snohomish acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Board.


Name: Larry Bauman
Title: City Manager
City of Snohomish
116 Union Ave.
Snohomish, Washington 98290
(360) 568-3115
fax: 360-568-1375

Of counsel: Charles H. Montange
426 NW 162d St.
Seattle, Washington 98177
(206) 546-1936

cc. Michael A. Smith
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677
counsel for BNSF



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South Snohomish

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Batt Slough

Harvel Airfield

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