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BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern and Santa Fe)
Railway -- Exemption -- in Seattle) AB-6 (Sub-no. 402X)
(Sta. 258+07 to 267+00) in King)
County, WA)

ENTERED
Office of Proceedings
DEC 27 2002
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Public Record

Motion for Exemption
from OFA Provisions

Pursuant to 49 U.S.C. § 10502, City of Seattle hereby moves that this Board exempt the above-captioned notice of exemption proceeding from further regulation under 49 U.S.C. § 10904 ("offers of financial assistance" or "OFA's").¹

Facts

City of Seattle has been informed by counsel for Burlington Northern and Santa Fe Railway (BNSF) that BNSF will file, on or about December 26, 2002, a "notice of exemption" pursuant to 49 C.F.R. § 1152.50 in STB docket AB 6 (Sub-no. 402X) (hereinafter referenced as "this proceeding") relating to certain rail property along the south side of Seattle's Ship Canal, described as Sta. 258+07 to 267+00, and set forth in the map attached hereto as Exhibit One.

The property involved in this proceeding encompasses about two city blocks. The property is needed by the City of Seattle for an extension of the pre-existing Ship Canal Trail, and ultimately to serve as a link connecting Seattle's non-motorized transportation system to Seattle's Discovery Park as well as

¹ City of Seattle files this motion prior to the filing of the notice of exemption by BNSF in order to permit this Board to consider the relief sought in the motion prior to publishing a notice in the Federal Register applying 49 U.S.C. § 10904.

Seattle's Magnolia neighborhood. This extension is the top non-motorized transportation priority for acquisition in the City. See Declaration of Stuart Goldsmith (Exhibit Two), ¶ 4. The importance of the extension is underscored by a Letter from Seattle Mayor Nickels to STB Chairman Roger Nober, attached to Mr. Goldsmith's Declaration.² In the words of Mayor Nickels,

"This is the single most important trail in Seattle, if not the region, because it fills a critical missing link in a regional trail system stretching 30 miles into the suburbs of Seattle. Completing the Ship Canal Trail will re-connect sections of the city divided by a major arterial interchange that is an obstacle to pedestrians and bicyclists. It will make it possible for thousands of people to bicycle safely and conveniently to downtown Seattle and to waterfront destinations."

The only potential customer served by the segment of line at issue in this proceeding is Foss Maritime. Id. ¶ 5. Foss Maritime has entered into an agreement with City of Seattle in support of the trail extension. Id. ¶ 5 and attachment. The rail property is not in use for rail purposes and has not been used for rail purposes for many years. Id. ¶ 2. Under the Burke-Gilman Agreements between City of Seattle and BNSF, BNSF must make the property available for the consideration specified in the Agreements for trail use, and for railbanking at the City's option. Id. ¶ 2.

Seattle is serving and filing, coterminous with this Motion, a "statement of willingness" pursuant to 49 C.F.R. § 1152.29

² Counsel understands that the Mayor's letter has been sent directly to Chairman Nober. To ensure that the letter is part of the record of this proceeding, Mr. Goldsmith has attached it to his Declaration so that it will assuredly be served on the parties.

invoking 16 U.S.C. § 1247(d) for purposes of railbanking the rail line at issue here.

The City currently has funding to acquire this additional segment, plus additional property and rights from BNSF for the needed extension of the Ship Canal Trail. The City wishes to proceed as quickly and cost effectively as possible. The City is concerned that spurious OFA's may be filed, as they were in connection with the remainder of the Ship Canal Trail in BN-- Abandonment--between Interbay and Terry Avenue, AB-6 (Sub-no. 357X). See Declaration of Stuart Goldsmith, ¶ 6.

The City wishes to avoid the unnecessary delay, cost, and uncertainty which may arise should a spurious OFA be filed. The City is aware of no shipper or potential shipper which could employ the segment of rail line at issue in this proceeding. Id. ¶ 5.

Argument

Under 49 U.S.C. § 10502(a), this Board may exempt a transaction from a provision of §§ 10901 et seq. "whenever the Board finds that the application in whole or in part of a provision ... --

(1) is not necessary to carry out the rail transportation policy of [49 U.S.C.] section 10101 ...; and

(2) either --

(A) the transaction ... is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

The legislative history of section 10502 reveals a clear Congressional intent that STB should liberally use its exemption

authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, P.L. No. 96-448, 94 Stat. 1895, Congress encouraged STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong., 2d Sess. 105 (1980). See also Exemption from Regulation -- Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F.2d 1023 (D.C.Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, P.L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

Under this authority, STB and its predecessor have frequently exempted rail abandonments from OFA regulation, particularly where, as here, the property is required by a government agency for a transportation purpose and there are no shippers. Blue Mountain RR -- Abandonment Exemption -- in Whitman County, WA and Latah County, ID, AB 458X, served March 4, 1997; Norfolk and Western Rwy Co. -- Abandonment Exemption -- in Cincinnati, Hamilton County, OH, AB 290 (Sub-no. 184X), served May 13, 1998.

In the Blue Mountain case, the Board noted that exemptions from 49 U.S.C. 10904-95 "have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service." Here, the line is needed for an important public purpose and, given the lack of rail shipper interest, clearly is not needed for current freight rail purposes. An exemption from 49 U.S.C. §§ 10904 should be granted here. See also Southern Pacific Transportation Co. -- Discontinuance Exemption -- in Los Angeles County, CA, AB 12 (Sub-no. 172X), served Dec. 23, 1994; Missouri Pacific RR Co. -- Abandonment -- in Harris County, TX, AB-3 (Sub-no. 105X), served Dec. 22, 1992; Chicago & N.W. Trans. Co. -- Abandonment Exemption -- in Blackhawk County, IA, AB-1 (Sub-no. 226X), served July 14, 1989; Iowa Northern Railway Co.-- Abandonment -- in Blackhawk County, IA, AB 284 (Sub-no. 1X) served April 1, 1988.

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the dealing with spurious OFA's, expedite regulatory decisions, and reduce regulatory barriers to entry and exit [49 U.S.C. 10101(2) & (7)]. Granting this exemption accordingly will foster sound economic conditions and encourage more efficient management. 49 U.S.C. § 10101(3), (5) & (9).

Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation

of a sound rail transportation system are not affected because the public will not be deprived of any significant rail services. Alternative truck transportation is available on nearby City streets. In all events, the sole potential shipper has indicated it supports trail use. In any event, since railbanking is planned, the corridor will be preserved for possible future use.

The transaction is obviously of limited scope. The line is only a small fraction of a mile in length and previously served one shipper, who now supports trail use. For similar reasons, regulation is plainly not necessary to protect shippers from an abuse of market power.

Conclusion

For the reasons stated, this Board should exempt this proceeding from 49 U.S.C. § 10904.

Respectfully submitted,



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

Certificate of Service

I hereby certify that I caused copies of the foregoing motion without attachments to be served by fax upon Michael Smith, Esq. (and Brian Nettles) of Freeborn & Peters (for BNSF) at 312-360-6596, and with attachments by Express service to the same at 311 South Wacker Drive, Suite 3000, Chicago, IL 60606-6677, this 23d day of December 2002.

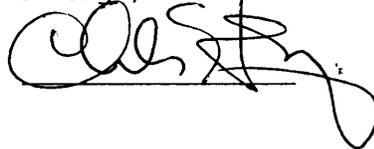
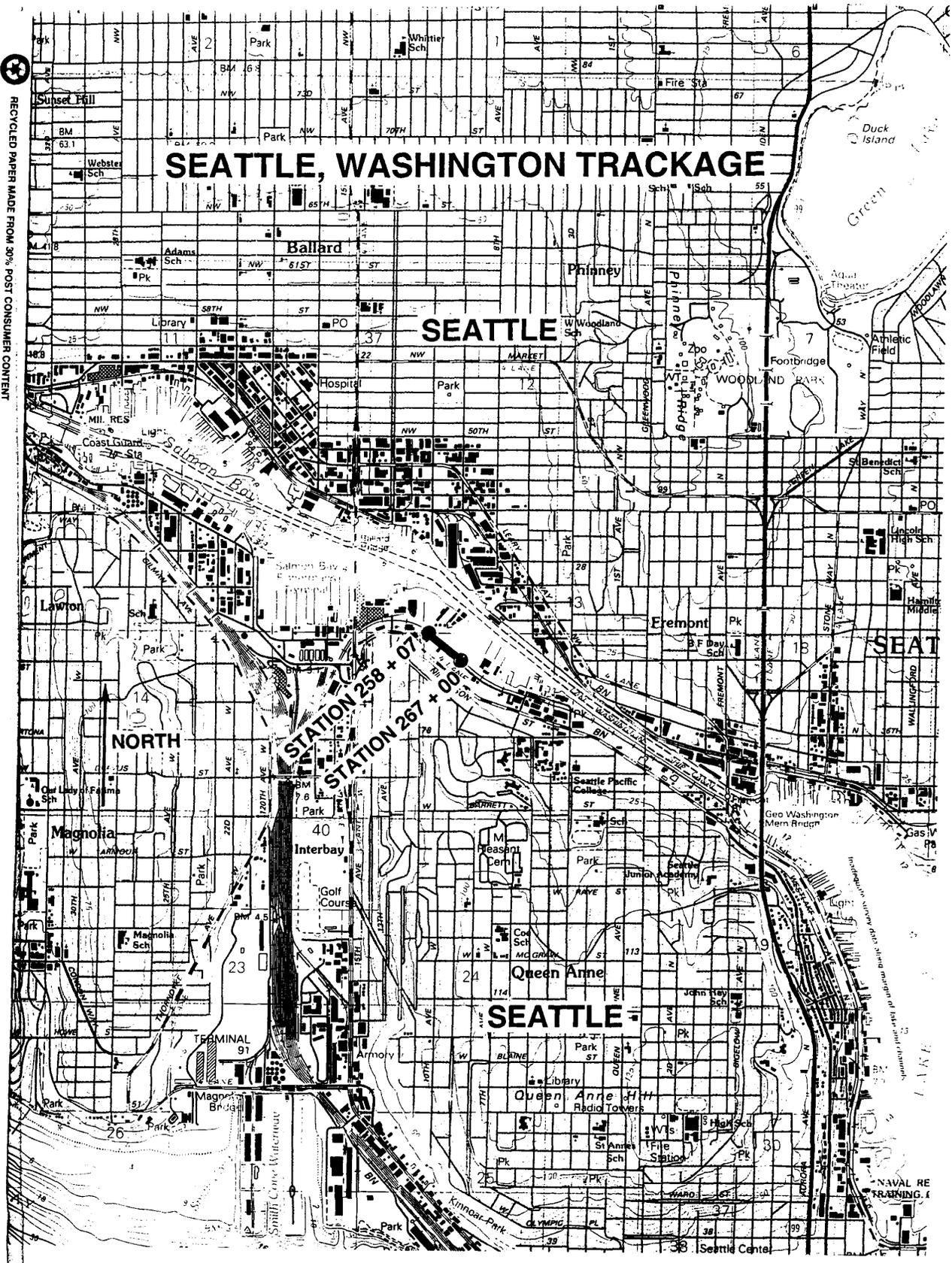


Exhibit One



RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTENT

SEATTLE, WASHINGTON TRackage



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Seattle Center

Exhibit Two

BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern and Santa Fe)
Railway -- Exemption -- in Seattle) AB-6 (Sub-no. 402X)
(Sta. 258+07 to 267+00) in King)
County, WA)

Declaration of Stuart Goldsmith

I, Stuart Goldsmith, state and declare as follows:

1. I am an employee of the Seattle Department of Transportation and the Project Coordinator for extension of the Ship Canal Trail on the south side of the Ship Canal in the City of Seattle.

2. In settlement of claims relating to property currently encompassed in Seattle's Burke-Gilman Trail (which includes a trail along the north side of the Ship Canal to and through the University of Washington and then along Lake Washington into King County), City of Seattle and Burlington Northern Railroad (now the BNSF) entered into a series of agreements called the Burke-Gilman Agreements. Among other things, the agreements call for the railroad to convey to the City (for consideration set forth in the Burke-Gilman Agreements) certain rail lines once they are no longer required for current rail purposes. At the election of the City, the lines may be railbanked under 16 U.S.C. § 1247(d). The segment of rail line at issue in this proceeding is one of the rail lines covered by the Burke-Gilman Agreements. This segment has not been employed for rail purposes for many years, and is no longer required for such purposes. The City has advised BNSF that the City desires railbanking of the segment as soon as possible.

3. The City of Seattle has an extensive bicycle transportation network. One major element of that network is the Ship Canal Trail. That Trail interconnects with the Burke-Gilman Trail at the Fremont Bridge. The Ship Canal Trail has already been developed or is in construction from a couple hundred yards east of Eng. Station 267+00 all the way to the base of Lake Union. (East of the Fremont Bridge it is known as the Westlake Trail, as most of it runs along the west side of Lake Union). The City of Seattle acquired that property from BNSF pursuant to railbanking and other orders entered by this Board's

predecessor, the Interstate Commerce Commission, in BN -- Abandonment -- between Interbay and Terry Avenue, AB-6 (Sub-no. 357X), in 1994. The segment of rail line involved in this case will interconnect with and extend the Ship Canal Trail as acquired by the City in consequence of proceedings in AB-6 (Sub-no. 357X).

4. City transportation officials regard completion of the Ship Canal Trail as the single most important project for increasing bicycle transportation in Seattle. Completion of the trail will fill a critical missing link in Seattle's bicycle transportation system and re-connect communities currently divided by an arterial interchange that is a major obstacle for pedestrians and bicyclists. Acquisition of the segment of line involved in this proceeding addresses that link in a very direct fashion. The City has assigned a high priority to working with BNSF not only to railbank the segment involved in this proceeding, but also to acquire from BNSF sufficient rights to extend the Ship Canal Trail all the way to property owned by the City just beyond the 15th Avenue (Ballard) Bridge. When completed, the Ship Canal Trail will make it possible to bicycle from suburbs to downtown Seattle and waterfront destinations almost entirely on trails. (See Mayoral letter attached).

5. I have personally engaged in numerous conversations over the years with adjacent landowners to the segment of rail line involved in this proceeding, and with other adjacent landowners who may be affected by an extension of the Ship Canal Trail. Foss Maritime, which owns property surrounding the segment of line involved in this proceeding, has indicated support for the extension, as well as support for an exemption from the "offer of financial assistance" provisions of the ICC Termination Act. I attach hereto a copy of a contract and signed agreement, along with relevant exhibits, between Foss Maritime and the City of Seattle. The contract provides as follows: "FMC acknowledges that the City seeks to establish a trail pursuant to 16 U.S.C § 1247(d) on a portion of BNSF rail corridor (described in Exhibit C). FMC supports such trail establishment." Property described in Exhibit C of Foss-City Agreement encompasses property at issue in this proceeding. Other adjacent landowners have expressed support for extending the trail. I am aware of no shipper or potential shipper who opposes

cessation of rail service on this segment, or who opposes interim trail use of this segment by the City. I am similarly aware of no entity or individual which needs or would use this segment for current freight rail purposes.

6. In BN -- Abandonment -- between Interbay and Terry Avenue, AB-6 (Sub-no. 357X), certain parties filed spurious "offers of financial assistance" (OFA's) to thwart the City's acquisition of the rail property for interim trail and railbanking purposes. ICC ultimately dismissed the OFA's. The dismissals were upheld on judicial review in SLSER v. ICC, D.C. Cir. nos. 94-1341 & 1456. Because there are no potential shippers interested in actual continued rail use of this segment of the line at this time, the City sees no reason why the costs and burdens of spurious OFA's should be imposed in this proceeding. Because of the public importance of this trail, and because of the lack of any shipper need for continued service to this segment, City of Seattle through its Department of Transportation accordingly requests that this Board exempt this proceeding from 49 U.S.C. § 10904 (OFA's) and issue an immediately effective order authorizing the application of 16 U.S.C. § 1247(d) to the rail line at issue herein. In further support of this exemption, the evidence supports the conclusion that application of the OFA statute is unnecessary to effectuate any federal transportation policy set forth in 49 U.S.C. § 10101. Moreover, the transaction is of limited scope, and regulation by application of the OFA statute is not needed to protect shippers from the abuse of market power.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.



Executed on December 20, 2002.



City of Seattle
Gregory J. Nickels
Mayor

December 19, 2002

Honorable Roger Nober
Chairman
Surface Transportation Board
1920 K Street
Washington, D.C. 20530

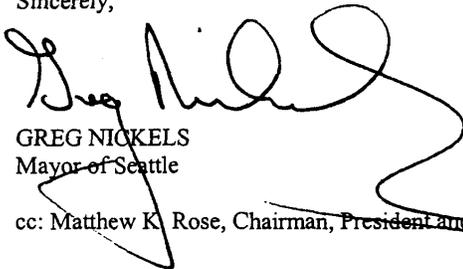
Dear Mr. Nober:

On behalf of the City of Seattle, I want to express our strong support for railbanking the trackage which Burlington Northern Sante Fe is preparing to abandon. Once railbanked, and in conjunction with additional right of way we intend to acquire from BNSF, we will be able to complete the Ship Canal Trail. This is the single most important trail project in Seattle, if not the region, because it fills a critical missing link in a regional trail system stretching 30 miles into the suburbs of Seattle. Completing the Ship Canal Trail will re-connect sections of the city divided by a major arterial interchange that is an obstacle to pedestrians and bicyclists. It will make it possible for thousands of people to bicycle safely and conveniently to downtown Seattle and to waterfront destinations. In recognition of this trail's importance to our urban transportation system and its potential to bolster bicycle transportation, it is included in Seattle's Comprehensive Plan and the Transportation Strategic Plan.

In addition, this section of track is covered in the Burke-Gilman Trail Agreements signed in 1989 between the City and BNSF. Under these agreements, the property is to be made available for public use as a trail once BNSF has decided it no longer needs this trackage for rail operations. The City appreciates BNSF's cooperation in this regard.

In short, the City of Seattle is solidly behind railbanking this section of track and converting it to a trail for interim public use.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Matthew K. Rose, Chairman, President and CEO, BNSF Railway

600 Fourth Avenue, 12th Floor, Seattle, Washington 98104-1873

Tel: (206) 684-4000, TDD: (206) 684-8811, Fax: (206) 684-5360, Email: mayors.office@ci.seattle.wa.us

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Agreement

This is an agreement ("**Agreement**") between The City of Seattle (a municipal corporation of the State of Washington) ("**City**"), Foss Maritime Company (a Washington Corporation) and FRC/BN Ewing Street LLC (a Washington Limited Liability Company). Foss Maritime Company and FRC/BN Ewing Street LLC ("**FRC**") will be referred to jointly as "**FMC**" herein. The purpose of this Agreement is to expedite the closing of a transaction between Burlington Northern and Santa Fe Grantor Company and/or Burlington Northern and Santa Fe Railway ("**BNSF**") and FMC evidenced by that certain Real Estate Purchase and Sale Agreement dated June 27, 2002 ("**Foss/BNSF REPSA**"), and to formalize FMC's support of the extension of the City's South Ship Canal Trail. FMC acknowledges that the City seeks to establish a trail pursuant to 16 U.S.C. § 1247(d) on a portion of BNSF rail corridor (described in **Exhibit C**). FMC supports such trail establishment.

In consideration of the mutual promises contained herein, the parties agree as follows:

1. Foss Support of Abandonment; Trail.

1.1 General. Conditioned on the conveyance of the "Property" (as defined in the Foss/BNSF REPSA) to FRC in accordance with the terms of the Foss/BNSF REPSA, FMC promises and agrees (upon request by counsel for the City in any proceeding before the Surface Transportation Board ("**STB**")) in a timely fashion (a) to support any adverse abandonment application filed by the City (or, if BNSF initiates an abandonment proceeding, to support the granting of abandonment authority), subject to railbanking under 16 U.S.C. § 1247(d) by STB for the BNSF railroad right of way between approximately Eighth Avenue West and approximately West Ewing Place, by supplying a letter in the form attached as **Exhibit A** and by not acting contrary to said letter; (b) to support railbanking by the City of said right of way in any such abandonment proceeding, by supplying a letter in the form attached as **Exhibit A** and by not acting contrary to said letter; (c) to support an exemption from "offer of financial assistance" (OFA) procedures (49 U.S.C. § 10904) in any such abandonment proceeding, by supplying a letter in the form attached as **Exhibit A** and by not acting contrary to said letter; and (d) to oppose any OFA if an OFA exemption is not granted by STB, and if an OFA is filed, by supplying a letter in the form attached as **Exhibit B** and by not acting contrary to said letter.

1.2 Definition. "**Timely fashion**" as used in the fourth line of **Section 1.1** shall mean within the time period allowed by STB procedures for the particular action in question, or in conjunction with a filing made by the City if the City requests, provided the City has requested FMC assistance sufficiently in advance of any of such dates to permit FMC to meet any time limitations.

1.3 Expiration of Covenant. The covenant and agreement set forth in **Section 1.1** shall expire on the ten (10) year anniversary of the execution of this Agreement.

2. Quitclaim Deeds.

2.1 Exhibit C Property. Upon the later of (a) the conveyance of the "Property" (as defined in the Foss/BNSF REPSA) to FRC in accordance with the terms of the Foss/BNSF REPSA or (b) the City's acquisition from BNSF of the BNSF corridor described in **Exhibit C** attached hereto and incorporated herein, FMC promises and agrees to deliver to the City a quitclaim deed in statutory form conveying all FMC's interests, including after acquired interests, to the City in respect to the property described in **Exhibit C**, subject, however, to the BNSF/Foss Easement (as defined in **Exhibit F** attached hereto) or the Substitute Crossing Easement (as defined in **Section 4** below), whichever is then in effect, and the right to use and maintain (consistent with the use and maintenance provisions of the Substitute Crossing Agreement) all utility facilities (such as water, side sewer, gas, electrical and telephone lines) existing as of the date hereof and benefiting the "Property" and other property currently owned by FMC and described in **Exhibit H** attached hereto and incorporated herein. FMC warrants that it has not conveyed, and will not convey prior to the delivery of the aforementioned quitclaim deed, any interests

which it may have in the property described in **Exhibit C** that are inconsistent with the foregoing covenant. The City will bear all excise taxes and recording fees for such deed.

2.2 Existing Trail Property. Upon the later of (a) the conveyance of the "Property" (as defined in the Foss/BNSF REPSA) to FRC in accordance with the terms of the Foss/BNSF REPSA or (b) the recordation of a crossing easement ("**East Easement**") in the same general form as the Substitute Crossing Easement (as defined in Section 4 below) affecting the area depicted as "**Easement 8**" on the Duane Hartman drawing dated 06/07/02 annexed to the Foss/BNSF REPSA as Exhibit C, FMC promises and agrees to deliver to the City a quitclaim deed in statutory form conveying all FMC's interests, including after acquired interests, to the City in respect to the twenty-one foot wide trail area depicted on the Duane Hartman drawing dated 06/07/02 (annexed to the Foss/BNSF REPSA as Exhibit C) as "Existing 21' City of Seattle Trail and legally described in **Exhibit D** attached hereto and incorporated herein, subject, however, to the East Easement and the right to use and maintain (consistent with the use and maintenance provisions of the Substitute Crossing Agreement) all utility facilities (such as water, side sewer, gas, electrical and telephone lines) existing as of the date hereof and benefiting the "Property" and other property currently owned by FMC and described in **Exhibit H**. FMC warrants that it has not conveyed, and will not convey prior to the delivery of the aforementioned quitclaim deed, any interests which it may have in the property described in **Exhibit D** that are inconsistent with the foregoing covenant. The City will bear all excise taxes and recording fees for such deed.

3. Amendment of Foss/BNSF REPSA. Promptly following the execution of this Agreement, FMC will execute and submit to BNSF for execution by BNSF an amendment to the Foss/BNSF REPSA in the form annexed hereto as **Exhibit E**.

4. Substitution of New Crossing Easement Upon City's Acquisition of Rail Corridor. Upon the City's written notice to FMC of the pendency of the City's acquisition of the property described in **Exhibit C**, FMC will execute, acknowledge and deliver to the City a Crossing Easement Agreement in the form annexed hereto as **Exhibit F** ("**Substitute Crossing Easement**"). The City is authorized to record the Substitute Crossing Easement at such time as (a) the City has executed and acknowledged the document and (b) the property described in **Exhibit C** has been conveyed to the City by BNSF. Section 9 of the Substitute Crossing Agreement expressly causes the Substitute Crossing Agreement to supersede the easement between BNSF and FMC (the form of which is annexed to the Foss/BNSF REPSA as "Exhibit D"). FMC covenants and agrees to deliver to the City such further instrument and certificates, in each case in recordable form, to further evidence the termination of the easement between BNSF and FMC (the form of which is annexed to the Foss/BNSF REPSA as "Exhibit D").

5. Relinquishment by City of Right(s) to Acquire Property Described in Foss/BNSF REPSA.

5.1 General. Within seven (7) business days from (a) execution by all parties of this Agreement or (b) BNSF's execution of the REPSA Amendment, whichever event occurs last, the City promises and agrees to supply BNSF and Chicago Title Insurance Company, in writing, copy to FMC, a disclaimer of any and all rights to acquire the "Property" described in the Foss/BNSF REPSA, whether arising under the Trail Agreements or otherwise, which disclaimer shall also waive the City's right to contest the July 2, 2002, notice delivered to the City by BNSF as a proper invocation by or on behalf of BNSF of any right(s) under the Trail Agreements.

5.2 Form of Disclaimer. The disclaimer referred to in Section 5.1 shall be in the form annexed hereto as **Exhibit G**.

6. Miscellaneous.

6.1 Either party may sue the other for specific performance and damages for failure to act in accordance with the promises set forth in this Agreement, or for other relief as appropriate. In any suit arising out of this Agreement, the prevailing party, or the party which substantially prevails, shall

be awarded reasonable attorneys' fees and expenses of suit.

6.2 This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

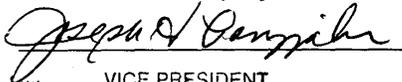
6.3 Time is of the essence in this Agreement.

6.4 This Agreement constitutes the entire agreement between the parties and supersedes any and all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof. This Agreement may only be modified by a writing signed by both parties.

6.5 In case any one or more of the provisions in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such holding shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

6.6 The provisions of this Agreement shall survive conveyance of the deeds and easements contemplated by this Agreement and the covenants and agreements contained herein shall not merge with such deeds and easements.

Foss Maritime Company


title: VICE PRESIDENT

City of Seattle


title: Director
November 4, 2002

FRC/BN Ewing Street LLC


title: PRESIDENT - FIRM

EXHIBITS:

- A -- form of letter to support abandonment authorization conditioned upon railbanking authorization, exemption from OFA
- B -- form of letter to oppose any OFA if filed, and to support dismissal of such OFA
- C -- description of Trail Property to be acquired by City from BNSF
- D -- description of existing City Trail property
- E -- form of Foss/BNSF REPSA amendment
- F -- form of Crossing Easement Agreement
- G -- form of Relinquishment/Waiver
- H -- description of property owned by FMC

EXHIBIT A

month day, year

Hon. Vernon Williams
Secretary
Surface Transportation Board
1920 K Street
Washington, D.C. 20530

Re: Burlington Northern & Santa Fe RR -- [type of abandonment proceeding] -- in King
County, WA, [STB docket number]

Dear Mr. Williams:

Foss Maritime Company and affiliated entities are the principal landowners adjacent to the line proposed for abandonment authorization in the above-captioned proceeding, and a former shipper. Foss Maritime accordingly supports the abandonment authorization sought in this proceeding.

Foss Maritime Company further supports the request by the City of Seattle that the line be railbanked for possible future rail reactivation and for interim trail use pursuant to 16 U.S.C. § 1247(d).

Foss Maritime Company also supports an exemption from the "offer of financial assistance" ("OFA") procedures (49 U.S.C. § 10904 and related regulations) in this proceeding, as permitted by 49 U.S.C. § 10502(a).

For the reasons stated, Foss Maritime Company supports an abandonment authorization, conditioned on railbanking of the line in this proceeding under 16 U.S.C. § 1247(d). Foss Maritime also supports an exemption from OFA procedures.

By my signature below, I certify service on representatives of the parties by U.S. Mail, postage pre-paid, first class.

Respectfully submitted,

title: _____

cc: Service List

Exhibit A

EXHIBIT C

Description of Trail Property (to be acquired by the City from BNSF)

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 21 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 50 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of 8th Avenue West (originally platted as Minor Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington, and bounded on the Northwest by the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established by said plat of Ross Addition to the City of Seattle;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 26 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by said production south of the Centerline of Jesse Avenue West, and bounded on the Northeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 165 feet northwesterly, as measured along said Main Track Centerline, from said production south of said Centerline of Jesse Avenue West;

situate in the City of Seattle, County of King, State of Washington.

Containing 27,289 Square Feet, More or Less

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East,

Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 35 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast and on the Northwest by lines drawn at right angles or radially from said Main Track Centerline and passing through respective points distant 165 feet northwesterly, as measured along said Main Track Centerline, and 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 11.0 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of said Centerline of Jesse Avenue West and bounded on the Northwest by the South margin of West Ewing Place, as said South margin was established by Ordinance 15923 of The City of Seattle;

containing an area of 5,576 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington.