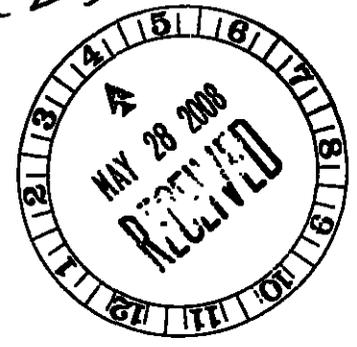


BEFORE THE
SURFACE TRANSPORTATION BOARD

2.22520



FINANCE DOCKET NO 35128

THE PORT OF SEATTLE
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
THE PORT OF SEATTLE
PURSUANT TO 49 C.F.R. § 1150.31**

ENTERED
Office of Public Records

JUN - 4 2008

Part of
Public Record

Kevin M Sheys
Janie Sheng
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street, NW
Washington, D C 20006
(202) 778-9000

Attorneys for The Port of Seattle

Dated: May 28, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35128

THE PORT OF SEATTLE
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
THE PORT OF SEATTLE
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C F R § 1150 31 et seq , the Port of Seattle (the "Port"), a municipal corporation of the State of Washington and a non-carrier, hereby files this Verified Notice of Exemption to acquire from BNSF Railway Company ("BNSF") certain right-of-way and trackage located in King County and Snohomish County in Washington (the "Subject Line") BNSF will retain an exclusive and permanent easement for freight operations on the Subject Line ¹ The Port will not conduct, or acquire the right or obligation to conduct, any rail freight operations on the Subject Line

Simultaneously with this Verified Notice of Exemption, the Port is filing in this docket a motion to dismiss this Notice The Port is utilizing this procedure to obtain a jurisdictional determination regarding its common carrier status on the Subject Line

See State of Maine, Department of Transportation – Acquisition and Operation

Exemption – Maine Central Railroad Company, 8 I C C 2d 835 (1991)

¹ Simultaneously with the closing of this transaction, BNSF will transfer the freight easement to a third party operator who will have secured separate Board exemption or approval to acquire the freight easement and who will then have the exclusive right to conduct freight operations over the Subject Line

In accordance with the requirements of 49 C F R § 1150 33, the Port states as follows

49 C.F.R. § 1150.32(e)
ADVANCE NOTICE

The Port will not conduct any freight operations on the Subject Line and therefore the prospective annual freight revenue of the Port will not exceed \$5 million

Accordingly, the requirements of 49 C F R § 1150 32(e) do not apply to this transaction

49 C.F.R. § 1150.33(a)
NAME AND ADDRESS OF APPLICANT

The full name and address of the applicant is as follows

Port of Seattle
Legal Department
2711 Alaskan Way
Seattle, WA 98121
ATTN General Counsel

49 C.F.R. § 1150.33(b)
APPLICANT'S REPRESENTATIVE

The Port's representative to whom correspondence regarding this transaction should be addressed is as follows

Kevin M Sheys
Kirkpatrick & Lockhart Preston Gates Ellis LLP
1601 K Street, NW
Washington, D C 20006
(202) 778-9000

49 C.F.R. § 1150.33(c)
STATEMENT CONCERNING AGREEMENT

Pursuant to a Purchase and Sale Agreement by and between, inter alia, the Port and BNSF, BNSF will convey to the Port the right-of-way, track and other property and

assets associated with the Subject Line, subject to a retained permanent and exclusive freight railroad operating easement

49 C.F.R. § 1150.33(d)
OPERATION OF THE PROPERTY

The Port is acquiring the Subject Line to preserve it as a rail and transportation corridor. The Port will not acquire any freight operating rights. As noted above, BNSF will retain an exclusive freight operating easement and simultaneously with the closing of this transaction, convey it to a third party operator. That third party operator will secure separate Board exemption or approval and operate freight common carrier service on the Subject Line.

49 C.F.R. § 1150.33(e)
SUMMARY OF THE TRANSACTION

BNSF will transfer to the Port all of its right, title and interest in the right-of-way, trackage and other property and physical assets constituting the Subject Line, and extending between approximately milepost 23.8 (north of Woodinville) and approximately milepost 38.25 (Snohomish), in King County and Snohomish County, Washington. The Subject Line is a total of approximately 14.45 route miles. The transfer is subject to BNSF's reservation of an exclusive freight rail operating easement on the Subject Line. The Port will not acquire the right to operate rail freight service on the Subject Line.²

² Pursuant to the same Purchase and Sale Agreement, the Port will acquire BNSF's right, title and interest in the right-of-way, trackage and other property and physical assets between the southern endpoint of the Subject Line at milepost 23.8 and milepost 23.45, together with the Redmond Spur between milepost 0.0 and approximately milepost 7.3 (Redmond). The Redmond spur connects with the Subject Line at milepost 23.8. Pursuant to a separate agreement, BNSF will donate to the Port its right, title and interest in the right-of-way, trackage and other property and physical assets on the rail

The name and address of the party transferring the Subject Line is as follows

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131

The Port plans to consummate acquisition of the Subject Line on or after
September 30, 2008

49 C.F.R. § 1150.33(f)
MAP

A map indicating the area served by the Subject Line, including origins, termini, stations, cities and counties, is attached hereto as Exhibit A

49 C.F.R. § 1150.33(g)
CERTIFICATION OF CLASS III STATUS

The Port will not conduct any freight operations and therefore the projected freight revenues of the rail line involved in this transaction will not exceed those that would qualify the Port as a Class III rail carrier. A certificate complying with the provisions of 49 C F R § 1150 33(g) is attached hereto as Exhibit B

49 C.F.R. Part 1105
ENVIRONMENTAL/HISTORIC PRESERVATION DATA

Under 49 C F R § 1105 6(c)(2), the proposed acquisition of assets by the Port is exempt from environmental reporting requirements. The Port's acquisition of the Subject Line will not result in significant changes in carrier operations (i.e., changes which exceed the thresholds established in 49 C F R § 1105 7(e)(4) or (5))

line between milepost 23.45 and milepost 5 in Renton, Washington. The sale/donation of the right-of-way and trackage identified in this footnote will not be operated by the third party operator and is not the subject of this Notice. It will be the subject of separate filings in AB-6 (Sub-Nos 463, 464 and 465)

Under 49 C F R § 1105 8(b)(1), the proposed acquisition of assets by the Port also is exempt from historic preservation reporting requirements Further STB approval is required to abandon any freight service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older

49 C.F.R. § 1150.34
CAPTION SUMMARY

A caption summary in the appropriate form is attached hereto as Exhibit C

Respectfully submitted,

By 

Kevin M. Sheys

Janie Sheng

Kirkpatrick & Lockhart

Preston Gates Ellis LLP

1601 K Street, NW

Washington, D C 20006

(202) 778-9000

**ATTORNEYS FOR
THE PORT OF SEATTLE**

Dated: May 28, 2008

Finance Docket No 35128

Subject Line is
MP 38 25 to MP 23 8

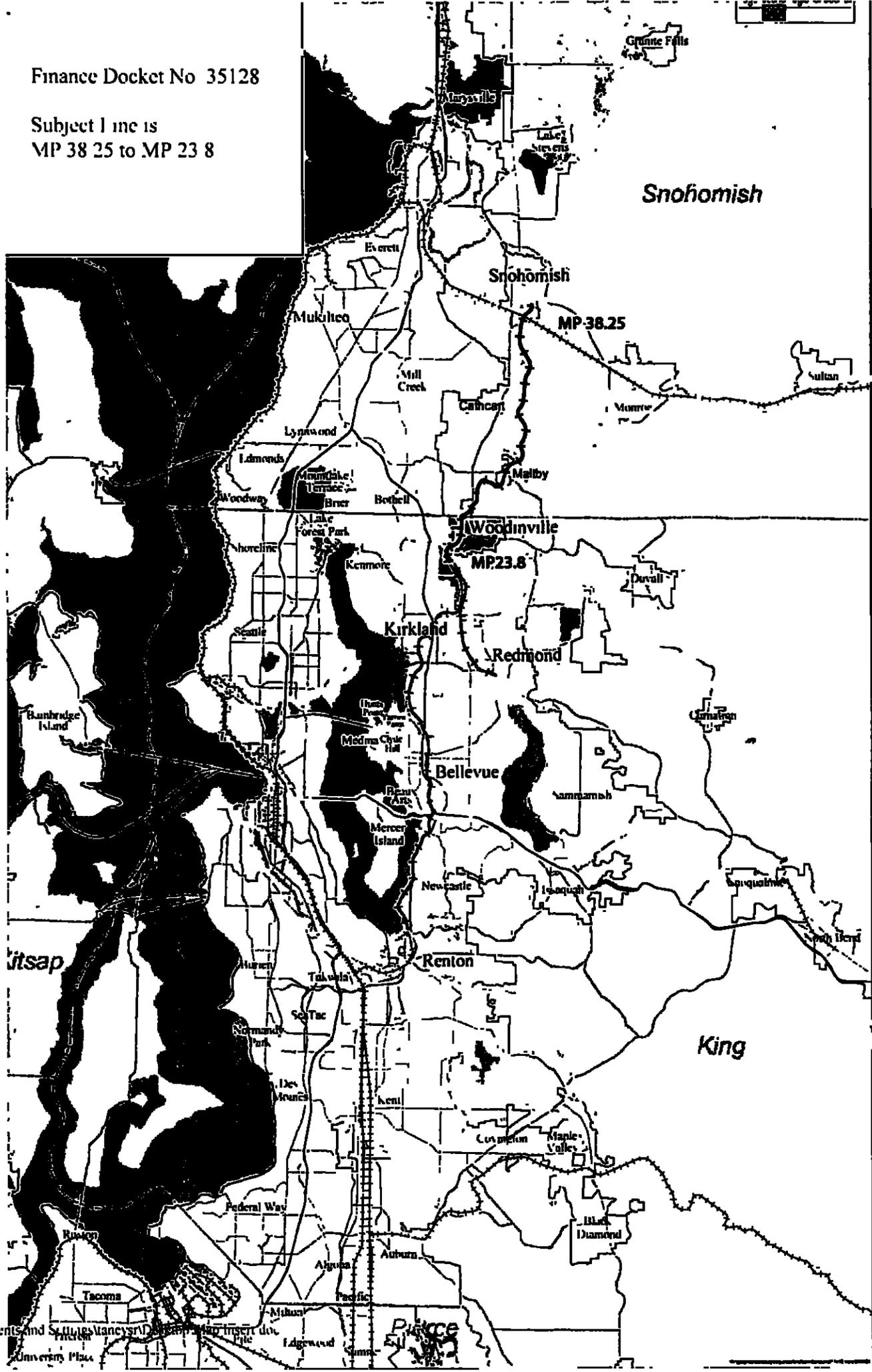


EXHIBIT B

CERTIFICATION

STATE OF WASHINGTON)
)
COUNTY OF KING) SS.

Craig R Watson, being duly sworn, deposes and says that he is the General Counsel of the Port of Seattle, and that to the best of his knowledge, information and belief

The Port of Seattle's projected freight revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier



Craig R Watson

SUBSCRIBED AND SWORN to
Before me this 27th day
Of May, 2008


Notary Public

My Commission expires 2/6/10



Exhibit C

CAPTION SUMMARY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO 35128

**THE PORT OF SEATTLE
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF BNSF RAILWAY COMPANY**

The Port of Seattle has filed a Verified Notice of Exemption under 49 C F R § 1150.31 to acquire from BNSF Railway Company certain right-of-way and trackage between approximately milepost 23.8 (north of Woodinville) and approximately milepost 38.25 (Snohomish), totaling approximately 14.45 route miles, located in King County and Snohomish County in Washington.

This Notice is filed under § 1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten (10) copies of all pleadings referring to STB Finance Docket No. 35128 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, NW, Washington, D.C. 20006, (202) 778-9000.

Simultaneously with this Verified Notice of Exemption, the Port is filing in this docket a motion to dismiss this Notice. The Port is utilizing this procedure to obtain a jurisdictional determination regarding its common carrier status on the Subject Line. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I C C 2d 835 (1991)

VERIFICATION

STATE OF WASHINGTON)
)
COUNTY OF KING) SS

Craig R Watson, being duly sworn, deposes and says that he is the General Counsel of the Port of Seattle, and that he has read the foregoing Notice of Exemption and that to best of his knowledge, information and belief, believes the facts asserted therein and that the same are true as stated



Craig R Watson

SUBSCRIBED AND SWORN to
Before me this 27th day
Of May, 2008



Notary Public



My Commission expires 2/6/10