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February 4, 2010

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

ENTERED  
Office of Proceedings

FEB 05 2010

Part of  
Public Record

**Re: STB Docket No. AB-6 (Sub-No. 463X), BNSF Railway Company –  
Abandonment Exemption – In King County, WA**

Dear Ms. Brown:

On September 8, 2008, BNSF Railway Company (“BNSF”) filed a notice of exemption under 49 CFR 1152 Subpart F – Exempt Abandonments to abandon a 7.30-mile rail line located between milepost 0.0, at Woodinville, and milepost 7.30, at Redmond, King County, WA (the “Rail Line”).

The Notice of Exemption was served and published on September 26, 2008, and the exemption became effective on October 28, 2008. By Decision and Notice of Interim Trail Use or Abandonment (“NITU”) served October 27, 2008, the proceeding was reopened and the exemption was made subject to environmental and historic preservation conditions, as well as an NITU. Subsequent decisions extended the NITU and the consummation date of the abandonment, removed the historic preservation condition and modified the environmental condition. In STB Finance Docket No. 35148, *King County, WA – Acquisition Exemption – BNSF Railway Company* (not printed), served September 18, 2009, the Surface Transportation Board (“Board”) authorized the transfer to King County, WA (“King County”) of BNSF’s reactivation rights on the Rail Line.

This letter is to advise the Board that, on December 18, 2009, BNSF consummated the sale of the real property and physical assets of the Rail Line to the Port of Seattle, entered into a Trail Use Agreement with King County and transferred the reactivation rights with respect to the Rail Line to King County. Attached is the Verification of Susan Odom certifying compliance with the Board’s requirement that the transferee agree to comply with the environmental conditions imposed by the Board.



Please acknowledge receipt of this letter by date-stamping the enclosed extra copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Ten (10) additional copies of this letter are attached for the Board's use and distribution.

Sincerely,

A handwritten signature in black ink that reads "David Rankin". The signature is written in a cursive style with a large initial "D".

David T. Rankin  
Senior General Attorney

cc: Washington Utilities and Transportation Commission  
Victoria Rutson, Chief, SEA  
Peter Rickershauser  
Dean Wise  
Dennis Eytcheson  
Susan Odom  
Dalen Wintermute  
Steve Kuzma  
Rail Services Update

**VERIFICATION AND CERTIFICATION**

I, Susan Odom, being duly sworn depose and state that, as Manager Network Strategy in the Network Development department of BNSF Railway Company ("BNSF"), I am authorized to make this verification, and that I have personal knowledge of the facts asserted herein and the facts are true and accurate as stated to the best of my knowledge, information, and belief.

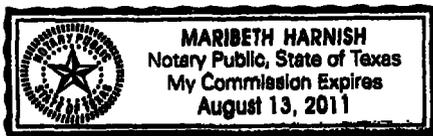
I hereby certify that the photocopied pages attached as Exhibit A are excerpts from the Seventh Amendment to the Purchase and Sale Agreement between BNSF, the Port of Seattle ("Buyer") and King County, WA ("Seventh Amendment").

Section 8 of the Seventh Amendment sets forth the salvage conditions imposed by the Surface Transportation Board in STB Docket No. AB-6 (Sub-No. 463X). Page 5 of the Seventh Amendment is the signatory page which evidences the Buyer's acceptance of the salvage conditions.

The foregoing certification is made on behalf of BNSF by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned.

Susan Odom  
Susan Odom  
Manager Network Strategy

Subscribed and sworn to before me this 2nd day of February, 2010.



Maribeth Harnish  
Notary Public

My commission expires: 8-13-11

**EXHIBIT A**

## SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made and entered into as of this 17 day of December 2009, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

### RECITALS

A. On May 12, 2008, BNSF, the Port and the County entered into: (i) a Purchase and Sale Agreement, as amended, ("North Agreement") whereby the Port agreed to acquire portions of BNSF's property known as the Woodinville Subdivision ("Subdivision"); and (ii) a Donation Agreement, as amended, whereby BNSF agreed to donate to the Port other portions of the Subdivision. The County desires to use the Railbanked Portion of the Subdivision for public trail and other transportation purposes. At Closing, the Port will grant the County a Public Multipurpose Easement for the County's use of the Railbanked and Wilburton Portions of the Subdivision.

B. At the Port's request and pursuant to the First, Second, Third, Fourth, Fifth and Sixth Amendments to Purchase and Sale Agreement and the First, Second, Third, Fourth, Fifth and Sixth Amendments to Donation Agreement, the parties previously extended the Closing Date of the North Agreement and of the Donation Agreement to March 31, 2009, June 30, 2009, July 8, 2009, July 15, 2009, July 22, 2009 and December 15, 2009 respectively.

NOW, THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. The definition of Closing Date in Section 1.1 of the North Agreement is amended to read as follows:

Closing Date shall be December 18, 2009.

2. The first paragraph of Section 2 of the North Agreement is amended to read as follows:

BNSF agrees to sell to Port, and Port agrees to purchase from BNSF, the Property. Port shall pay to BNSF [REDACTED] DOLLARS) (the "Purchase Price"). The Purchase Price shall be paid as follows:

3. Section 3.4 of the North Agreement is amended by replacing the sum of \$ [REDACTED] with the sum of \$ [REDACTED].

4. The first sentence of Section 8.1(b) of the North Agreement is amended to read as follows:

BNSF will assign and transfer the retained Freight Easement to the TPO selected by BNSF at the Port's request and approved by the Port ("**Freight Easement Designee**") and named in the Freight Easement Sale Agreement at such time on or after Closing when the Freight Easement Designee: is ready to accept such assignment and transfer and assume the common carrier obligation on the Freight Portion; *provided*, if the Freight Easement Designee is not prepared to accept such assignment and transfer then BNSF shall continue to perform its common carrier obligations until such time as a new Freight Easement Designee is chosen in the manner as set forth in this Agreement or BNSF has obtained discontinuance or abandonment authority with respect to the common carrier obligation on the Freight Portion. Until a new Freight Easement Designee is so chosen or discontinuance or abandonment authority is obtained, no passenger rail or pedestrian, bike or other recreational uses will be allowed on the Freight Portion.

5. The first sentence of Section 8.2(c) of the North Agreement is deleted.

6. Section 14 of the North Agreement is amended by adding the following Section 14.18:

After deducting costs to bring the Freight Portion to a marketable condition, including any costs associated with Surface Transportation Board requirements, the Port, its successors or assigns shall pay to BNSF one-half not to exceed [REDACTED], of all consideration received by Port or its successors and assigns for conveyance or grant of any interest in, or right to use or occupy, any portion of the Freight Portion (described in Exhibit A to the Deed for Freight Portion) other than for conveyances or grants (a) arising out of the currently pending regional sale process by which the Port will convey certain interests in the corridor to a number of public and private stakeholders as memorialized in the Memorandum of Agreement dated November 5, 2009, for the purpose of recouping a portion of the Port's investment in the Freight Portion, or (b) for purposes of pedestrian or other recreational trail uses. Such amounts shall be paid within 30 days after receipt by the Port of consideration for such conveyance or grant and shall bear interest at a rate equal to [REDACTED] per annum until paid.

7. Exhibit B-1, the Form of Deed for Freight Portion shall be modified at Closing to incorporate the following covenant, which shall run with the land and be enforceable by the parties identified herein, and to which the exclusive easement for freight rail purposes shall be subject:

**Railbanking Requirements in Event of Abandonment.** If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Property, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority ("Railbanking Laws"), provided the Trail Use Applicant meets all requirements of the Railbanking Laws, including that the Trail Use Applicant agrees to a trail use agreement as required by the Railbanking Laws. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property ceases operations but fails within a reasonable period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor agency for a third-party abandonment and interim trail use over some or all of the Property on which operations have ceased. The holder of the freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property shall not oppose any such action by a Trail Use Applicant if the holder has ceased operations.

8. Section 14 of the North Agreement is further amended by adding the following as Section 14.19:

14.19 Port and its successors and assigns agree:

As to the Redmond Spur:

- (a) Prior to beginning salvage activities,
  - (i) To consult with Washington Department of Ecology ("WDE") regarding possible impacts of abandonment activities on wetlands located along the line and to ensure compliance with the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") permitting requirements, and

(ii) To consult with the Army Corps of Engineers ("Corps") regarding possible impacts of abandonment activities to water bodies and wetlands, and to ensure compliance with Corps permitting requirements; and

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, Port shall immediately cease all work and notify the STB's Section of Environmental Analysis ("SEA"), interested Federally recognized tribes and the Washington State Historic Preservation Officer ("SHPO"), pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, Port, and any other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

9. Except as amended herein, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

10. Counterparts. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

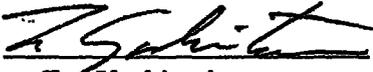
[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

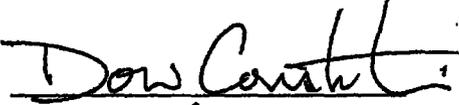
BNSF RAILWAY COMPANY

By: \_\_\_\_\_  
Name: Richard E. Weicher  
Title: Vice President & General Counsel – Regulatory

PORT OF SEATTLE

By:   
Name: Jay Yoshitani  
Title: Chief Executive Officer

KING COUNTY

By:   
Name: Dow Constantine  
Title: King County Executive

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

BNSF RAILWAY COMPANY

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

PORT OF SEATTLE

By: \_\_\_\_\_  
Name: Tay Yoshitani  
Title: Chief Executive Officer

KING COUNTY

By: \_\_\_\_\_  
Name:  
Title: