



David T. Rankin  
Senior General Attorney

226406  
BNSF Railway Company  
P.O. Box 981039  
Fort Worth, TX 76161  
2500 Lou Menk Drive  
Fort Worth, TX 76161  
T: 817-352-2383  
F: 817-352-2398  
david.rankin@bnsf.com

February 4, 2010

ENTERED  
Office of Proceedings

FEB 05 2010

Part of  
Public Record



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

**Re: STB Docket No. AB-6 (Sub-No. 465X), BNSF Railway Company –  
Abandonment Exemption – In King County, WA**

Dear Ms. Brown:

On August 11, 2008, BNSF Railway Company (“BNSF”) filed a petition seeking an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 12.55-mile rail line located between milepost 11.25, near Wilburton, and milepost 23.80, in Woodinville, King County, WA (the “Rail Line”).

By Decision and Notice of Interim Trail Use or Abandonment (“NITU”) served November 28, 2008, the Surface Transportation Board (“Board”) granted the exemption. 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, and removed the historic preservation condition. In STB Finance Docket No. 35148, *King County, WA – Acquisition Exemption – BNSF Railway Company* (not printed), served September 18, 2009, the 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 donation 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 of the physical assets 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 T. Rankin". The signature is fluid and cursive, written over the printed name.

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 Donation Agreement between BNSF, the Port of Seattle ("Donee") and King County, WA ("Seventh Amendment").

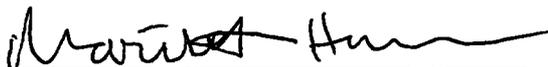
Section 2(3) of the Seventh Amendment sets forth the salvage condition imposed by the Surface Transportation Board in STB Docket No. AB-6 (Sub-No. 465X). Page 3 of the Seventh Amendment is the signatory page which evidences the Donee's acceptance of the salvage conditions.

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  
Manager Network Strategy

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



  
\_\_\_\_\_  
Notary Public  
My commission expires: 8-13-11

**EXHIBIT A**

## SEVENTH AMENDMENT TO DONATION AGREEMENT

THIS SEVENTH AMENDMENT TO DONATION 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 Donation Agreement, as amended, whereby BNSF agreed to donate to the Port portions of BNSF's property known as the Woodinville Subdivision ("Subdivision"); and (ii) a Purchase and Sale Agreement, as amended, for the Port's acquisition of other portions of the Subdivision ("North Agreement"). 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 Donation Agreement and the First, Second, Third, Fourth, Fifth and Sixth Amendments to Purchase and Sale Agreement, the parties previously extended the Closing Date of the Donation Agreement and of the North Agreement to March 31, 2009, June 30, 2009, July 8, 2009, July 15, 2009, July 22, 2009 and December 15, 2009 respectively.

C. The Port has requested, and the parties have agreed, to further extend the Closing Date of the Donation Agreement and of the North Agreement.

D. As part of the approvals contemplated by Section 8.1 of the Donation Agreement the STB conditioned its approval concerning salvage activities and archaeological remains, which conditions must be included in the Donation Agreement.

E. The Parties acknowledge that the Donation Agreement and the North Agreement are not the exclusive basis for BNSF to enter into agreements with others concerning transfer of ownership of the Subdivision, subject to the parties' rights and obligations under the Donation Agreement and the North Agreement.

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 Donation Agreement is amended to read as follows:

Closing Date. December 18, 2009.

2. The Donation Agreement is amended by adding the following as Section 14.17:

14.17 Port and its successors and assigns agree:

(1) As to the portion of the Property located between Milepost 5.00 and Milepost 10.60:

(a) Prior to beginning salvage activities,

(i) To consult with WDE regarding possible impacts of abandonment activities on wetlands located along the lines and to ensure compliance with NPDES permitting requirements and,

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

(3) As to the portion of the Property located between Milepost 11.25 and Milepost 23.80: To consult with the Washington Department of Fish and Wildlife and the Muckleshoot Indian Tribe Fisheries Division regarding fish barriers.

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

4. Counterparts. This Sixth 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.

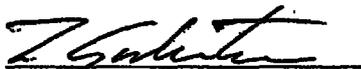
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IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Donation Agreement as of the date first written above.

**BNSF RAILWAY COMPANY**

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

**PORT OF SEATTLE**

By:   
Name: Tay 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 Donation 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: King County Executive