



600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

November 12, 2010

MATTHEW COHEN
Direct (206) 386-7569
mcohen@stoel.com

VIA E-Filing

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

**Re: GNP Rly, Inc. Petition for Exemption, STB Finance Docket No. 35407;
GNP Rly, Inc. Petition to Vacate NITU or Abandonment, STB Docket Nos. AB-6
(Sub. No. 463X) and AB-6 (Sub. No. 465X)**

Dear Ms. Brown:

Please find enclosed the City of Redmond's Reply to GNP Railway, Inc.'s Motion for Protective Order. Attached to Redmond's reply are supporting exhibits and a verified statement.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew Cohen', written over a horizontal line.

Matthew Cohen
Counsel for City of Redmond, Washington

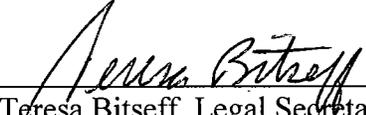
cc: Parties on the attached certificate of service (via: email and U.S. mail)

**Case Title: GNP RLY, INC.--ACQUISITION AND OPERATION
EXEMPTION--REDMOND SPUR AND WOODINVILLE SUBDIVISION
Docket No. 35407 and
STB Docket Nos. AB-6 (Sub No. 463X and Sub No. 465X)
CERTIFICATE OF SERVICE**

<u>Filed By</u>	<u>Address</u>	<u>Email</u>	<u>Filed For</u>
1. Matthew Cohen	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101 Tel: 206-386-7569 Fax: 206-386-7500	Mcohen@Stoel.Com	City Of Redmond WA
2. Hunter Ferguson	Stoel Rives Llp 600 University Street, Suite 3600 Seattle, WA 98101	Hoferguson@Stoel.Com	
3. Charles A. Spitulnik W. Eric Pilsk Allison I. Fultz	Kaplan Kirsch & Rockwell Llp 1001 Connecticut Avenue, Nw. Suite 800 Washington, DC 20036 Tel: (202) 955-5600	csputulnik@kaplankirsch.com epilsk@kaplankirsch.com afultz@kaplankirsch.com	King County, WA
4. Pete Ramels, Andrew Marcuse	Office of the Prosecuting Attorney Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 Tele:	pete.ramels@kingcounty.gov andrew.marcuse@kingcounty.gov	King County
5. John D. Heffner James H. M. Savage	Law Offices 1750 K Street, N.W., Suite 350 Washington, DC 20006 Tel: 202-296-3333 Fax: 202-296-3939	j.heffner@verizon.net jsavagelaw@aim.com	Gnp Rly Inc.
6. Denis Law	City Of Renton 1055 S Grady Way Renton, WA 98057 Tel: 425-430-6500	by U. S. Mail	City Of Renton
7. Isabel Safora Anne DeKoster	Port Of Seattle P. O. Box 1209 Seattle, WA 98111	safora.i@portseattle.org dekoster.a@portseattle.org	Port Of Seattle
8. Kevin Sheys	K&L Gates LLP 1601 K Street NW Washington, DC 20006 Tel: 202-778-9855 Fax: 202-778-9100	kevin.sheys@klgates.com	Port Of Seattle
9. Steve Sarkozy	City Of Bellevue P.O. Box 90012 Bellevue, WA 98009 Tel:	by U. S. Mail	City Of Bellevue
10. Kurt Triplett	City Of Kirkland 125 5Th Ave Kirkland, WA 98033 Tel:	by U. S. Mail	City Of Kirkland
11. Robert P. Vom Eigen	Foley & Lardner Llp 3000 K Street, N.W., Suite 500 Washington, DC 20007-5143 Tel: (202) 672-5300 Fax: (202) 672-5399	Rvomeigen@Foley.Com	Central Puget Sound Regional Transit Authority
12. Davit T. Rankin Kristy D. Clark	BNSF Railway PO Box 961039 Forth Worth, TX 76131-2828	david.rankin@bnsf.com kristy.clark@bnsf.com	BNSF

13 Karl Morell	Ball Janik LLP 1455 F Street NW, Suite 225 Washington, DC 2005 Tele: 202-638-3307 Fax: 202-783-6947	kmorell@billp.com	BNSF Railway Co
14 Jordan Wagner	401 S. Jackson St. Seattle, WA 98104	jordan.wagner@soundtransit.org	Sound Transit
15 Andrea C. Ferster	Rails-To-Rails Trails Conservancy 2121 Ward Court, N.W., 5th Floor Washington, DC 20037	aferstern@railstotrails.org	Rails-To-Rails Trails Conservancy
16 Jean M. Cerar	Issaquah Valley Trolley PO Box 695 Issaquah, WA 98027	info@issaquahhistory.org	Issaquah Valley Trolley

I certify that I have this day sent to the parties of record as set forth above via email/pdf and U. S. Mail the following: (1) Cover letter of Nov. 12, 2010 from Matthew Cohen to Cynthia T. Brown; (2) The City of Redmond's Reply to GNP Rly Inc.'s Motion for Protective Order, and (3) The Verified Statement of Carolyn Hope in Support of The City of Redmond's Reply.



 Teresa Bitseff, Legal Secretary
 STOEL RIVES LLP
 Dated: Friday, November 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**THE CITY OF REDMOND'S REPLY TO
GNP RLY INC.'S MOTION FOR PROTECTIVE ORDER**

STOEL RIVES LLP

Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 386-7569 (tel)
(206) 386-7500 (fax)
mcohen@stoel.com
hoferguson@stoel.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**THE CITY OF REDMOND’S REPLY TO
GNP RLY INC.’S MOTION FOR PROTECTIVE ORDER**

On October 27, 2010, GNP Rly, Inc. (“GNP”) moved for a protective order to govern the production and use of confidential business information in the above-captioned dockets. The City of Redmond is sensitive to GNP’s concerns about disclosure of proprietary information, and has no objection to entry of a protective order. In fact, Redmond and King County voluntarily filed public and confidential versions of their comments on GNP’s Petition For Exemption in

order to protect the confidentiality of GNP's proposal to BNSF and the Port of Seattle to provide freight service to shippers on the Woodinville Subdivision.¹

Redmond does object, however, to two features of GNP's proposed protective order. First, Redmond joins in King County's request that the order not prohibit disclosure of information to City employees. As King County points out, the rationale for denial of information to managers of a party – to protect commercially sensitive data from competitors – does not exist here.² In the course of promoting its scheme to run an excursion train between Redmond and Snohomish, GNP made its proprietary information available to the staff of local governments in the Puget Sound area that agreed to execute a non-disclosure agreement drafted by GNP. Redmond executed GNP's Mutual Nondisclosure Agreement.³ GNP subsequently shared with Redmond managers the documents that it now proposes to designate "Highly Confidential," including its RRIF loan application to the Federal Railroad Administration.⁴ Redmond is willing to protect the confidentiality of those materials in filings with the Board, as Redmond did in its comments on GNP's Petition. But it is too late for GNP to ask that Redmond staff be prohibited from seeing those materials. GNP already shared them with Redmond

¹ City of Redmond's Comments In Opposition To GNP Railway Petitions For Exemption And To Vacate Notices of Interim Trail Use, filed in these dockets on November 9, 2010.

² Reply of King County, Washington To Motion of GNP Rly, Inc. For Protective Order ("King County Reply") at 3, filed in these dockets on November 9, 2010.

³ Verified Statement of Carolyn Hope In Support of City of Redmond Reply To GNP Rly Motion For Protective Order ("Hope Statement") ¶ 2. The executed Mutual Nondisclosure Agreement is Ex. A to Ms. Hope's statement.

⁴ *Id.* ¶ 3. GNP gave Redmond one copy of its RRIF application but stated that it considered the application confidential and that Redmond was not permitted to copy the application. *Id.*

managers to promote its own interests, pursuant to the terms of a nondisclosure agreement that GNP proposed to Redmond.

For this reason, Redmond joins in King County's request that the form of the order authorize disclosure of "Highly Confidential" information to employees of a party, not just outside counsel and outside consultants as proposed by GNP.

The other problem with GNP's form of order is that the Port of Seattle and possibly other public agencies in the Puget Sound area have received multiple Washington Public Records Act requests for information about GNP's business plan and operations on the Woodinville Subdivision and the Redmond Spur.⁵ In response to these requests the Port and perhaps other public agencies have produced to third parties its contracts with GNP, and other documents that disclose GNP proprietary information may be produced in the future.

The Mutual Nondisclosure Agreement that GNP drafted and signed with various Puget Sound area governments including Redmond exempts information in the public domain, and information subject to disclosure under state or federal freedom of information laws, including the Washington Public Records Act, RCW ch. 42.56.⁶ Redmond and other parties that have signed GNP's nondisclosure agreement should not be exposed to the risk of violating a Board protective order for their use of information that is already in the public domain. Accordingly, Redmond proposes to add to the form of order that King County filed as Appendix A to its Reply

⁵ See, e.g., the Public Records Act requests to the Port attached as Exhibit 1 to this reply.

⁶ Mutual Nondisclosure Agreement ¶ 1, Ex. A to Hope Statement.

the following paragraph, borrowed from the protective order approved by the Board in *Cargill, Incorporated v. BNSF Railway Company*:⁷

Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in this proceeding.

With this addition Redmond supports the form of order proposed by King County in its Reply. Appendix A shows King County’s proposed order with the above-quoted paragraph added.

November 12, 2010

STOEL RIVES LLP



Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 386-7569 (tel)
(206) 386-7500 (fax)
mcohen@stoel.com
hoferguson@stoel.com
Attorneys for the City of Redmond, Washington

⁷ *Cargill, Incorporated v. BNSF Railway Company – Motion For Protective Order*, STB Docket No. NOR 42120 (Service Date June 24, 2010).

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.
 - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) “GNP” means GNP Rly, Inc.
 - (e) “Highly Confidential” means information or documents containing shipper-specific rate or cost data, trackage rights compensation levels, or other competitively sensitive or proprietary information.
 - (f) “King County” means King County, Washington.
 - (g) “Public Entity Party” means any of King County or any other party to this proceeding that is a state, local, or regional governmental entity or authority.

(h) “Proceedings” means those before the Surface Transportation Board (“the Board”) concerning any directly related proceedings covered by STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), and any related proceedings before the Board, and any judicial review proceedings arising from the same or from any related proceedings before the Board.

(i) “STB” means the U.S. Surface Transportation Board.

2. If any Public Entity Party, as a party to these Proceedings, determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then that party may designate and stamp such Confidential Information and Documents as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If GNP as a party to these Proceedings, or any person acting on behalf and at the direction of GNP, determines that any part of a document he or she submits, discovery request he or she propounds, discovery response he or she produces, transcript of a deposition or hearing in which he or she participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then such party may designate and stamp such Confidential Information and Documents as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”. Each

such party shall include with his or her information or documents a public certification to the Board describing the confidential nature of the information or documents so designated. Unless any Public Entity Party or the Board objects to such certification, any information or documents so designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be handled as provided for hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. In the event that a party determines that additional individuals need access to “Highly Confidential” documents, the party must notify the opposing party: (1) identifying the individual or individuals to whom the party would like to disclose “HIGHLY CONFIDENTIAL” documents, and (2) identifying the “HIGHLY CONFIDENTIAL” documents to be disclosed, after which the opposing party has 24 hours either to consent or to object to the additional disclosure. If the opposing party objects to the additional disclosure, the “HIGHLY CONFIDENTIAL” documents will not be disclosed until the objection is resolved either by agreement of the parties or by the STB.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the STB to adjudicate such challenges.

7. Designated Material received in discovery must be kept either in the office of outside counsel or in the office of the Counsel of any Public Entity Party, may not be copied, and may not be used for any purposes, including without limitation any business, commercial, or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings. Notwithstanding the foregoing, any Designated Material that was in the possession of any party or publicly available to any party prior to the commencement of this proceeding may be retained and used for the purposes for which it was received by or available to that Public Entity Party.

8. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the STB and retained by counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands. Notwithstanding the foregoing, any Designated Material that was in the possession of any party prior to the commencement of this proceeding or publicly available to any party may be retained and used for the purposes for which it was received by or available to that party and such Designated Materials need not be returned or destroyed.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the STB unless the pleading or other document is submitted under seal pursuant to the rules of this Board.

10. No party may present or otherwise use any Designated Material at a hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits

and other documents containing or reflecting such Designated Material to the STB to whom relevant authority has been lawfully delegated by the STB, and has accompanied such submission with a written request that the STB: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

11. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in this Protective Order.

12. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1 -- 5 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of any relevant provision of the ICC Termination Act of 1995.

13. All parties must comply with all of the provisions of this Protective Order unless the STB determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

15. Information that is publicly available or obtained outside of the Proceedings from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in these Proceedings.

16. Any party filing with the Board a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pleading in these Proceedings shall simultaneously file a public version of the pleading.

EXHIBIT A

CONFIDENTIALITY UNDERTAKING

I, _____, have read the Protective Order served on _____, 2010, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any documents or information marked as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X). I further agree not to disclose any Confidential Information, Confidential Documents, Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Date: _____

70383881.2 0058059-00001

HELSELL
FETTERMAN

February 1, 2010



David F. Jurca
Attorney At Law
EMAIL: djurca@helsell.com
DIRECT DIAL: 206-689-2140

Vanessa Ressler, Records Program Manager
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

Re: Public Records Act request regarding acquisition of Eastside Rail
Corridor

Dear Ms. Ressler:

Pursuant to the Public Records Act, RCW ch. 42.56, we are submitting this request for public records¹ (including but not limited to emails or other electronic or computer readable information) relating to the acquisition of the Eastside Rail Corridor involving Burlington Northern Santa Fe (BNSF), the Port of Seattle, King County and other entities. Please provide us with all public records regarding (1) all agreements executed on or about December 21, 2009, by which the Port of Seattle acquired the Eastside Rail Corridor; and (2) all agreements or memoranda of understanding executed from July 1, 2009, through the present regarding the Port's sale or donation of any section of or easement upon the Eastside Rail Corridor to any other entity.

¹ "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. . .

RCW 42.56.010(2) (emphasis added). Further, the PRA defines "writing" as follows:

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW 42.56.010(3) (emphasis added).

Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200 TEL: 206.292.1144
Seattle, WA 98154-1154 FAX: 206.340.0902

WWW.HELSELL.COM

Exhibit 1

- - - Ms. Vanessa Ressler, Records Program Manager

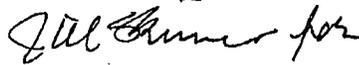
February 1, 2010

Page 2

If the Port refuses to make available for inspection and copying any of the records requested above, please provide a statement of the specific exemption upon which the Port relies to withhold each record (or part thereof), together with an explanation of how the exemption applies to the record withheld, as required by RCW 42.56.210(3).

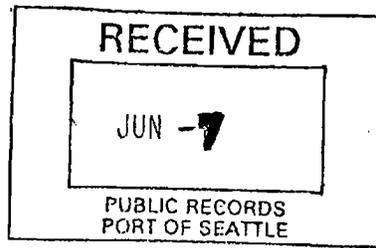
We look forward to your prompt response. Please let me know by phone (206-689-2140) or email (djurca@helsell.com) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above. We will pay reasonable copying costs, pursuant to RCW 42.56.120; however, if the number of pages of documents to be provided pursuant to this request exceeds one thousand, please let me know before you incur the expense of copying them for me, so that I can reconsider whether to request copies or, instead, make other arrangements to inspect them.

Very truly yours,



David F. Jurca

June 4, 2010



HELSELL
FETTERMAN

Jill R. Skinner
Attorney At Law
EMAIL: jkskinner@helsell.com
DIRECT DIAL: 206-689-2177

Vanessa Ressler, Records Program Manager
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

Re: Public Records Act request regarding acquisition of Eastside Rail
Corridor

Dear Ms. Ressler:

Pursuant to the Public Records Act, RCW ch. 42.56, we are submitting this request for public records¹ (including but not limited to emails or other electronic or computer readable information) relating to the acquisition of the Eastside Rail Corridor involving Burlington Northern Santa Fe (BNSF), the Port of Seattle, King County and other entities. Please provide us with all public records regarding (1) all valuations or appraisals of the Eastside Rail Corridor or any portion thereof performed by P G P. Valuation, Inc.; (2) all IRS Forms 8283 prepared and/or executed by the Port, King County, and/or BNSF involving the Eastside Rail Corridor or any portion thereof; (3) all resolutions passed by the Port Commission involving the Eastside Rail Corridor or any portion thereof; (4) all audio or video recordings of the Georgetown Community Council meeting of March 26, 2007; (5) all opinions of Port counsel given to BNSF or King County regarding the Port's purchase of the Eastside Rail Corridor; (6) all contracts or agreements executed between GNP Rly, Inc., and any other freight rail entity regarding the Eastside Rail Corridor or any portion thereof; and (7) all contracts

¹ "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. . .

RCW 42.56.010(2) (emphasis added). Further, the PRA defines "writing" as follows:

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW 42.56.010(3) (emphasis added).

Vanessa Ressler
June 4, 2010
Page 2

or agreements regarding the Eastside Rail Corridor executed between any of the following entities: Port of Seattle, Sound Transit, City of Redmond, Puget Sound Energy, Inc., or Cascade Water Alliance.

If the Port refuses to make available for inspection and copying any of the records requested above, please provide a statement of the specific exemption upon which the Port relies to withhold each record (or part thereof), together with an explanation of how the exemption applies to the record withheld, as required by RCW 42.56.210(3).

We look forward to your prompt response. Please let me know by phone (206-689-2177) or email (jskinner@helsell.com) if you have any questions about this request, or if you believe we may be able to simplify your task in responding to this request by clarifying any of the items above. We will pay reasonable copying costs, pursuant to RCW 42.56.120; however, if the number of pages of documents to be provided pursuant to this request exceeds one thousand, please let me know before you incur the expense of copying them for me, so that I can reconsider whether to request copies or, instead, make other arrangements to inspect them.

Very truly yours,



Jill R. Skinner

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**VERIFIED STATEMENT OF CAROLYN HOPE
IN SUPPORT OF
THE CITY OF REDMOND’S REPLY TO
GNP RLY INC.’S MOTION FOR PROTECTIVE ORDER**

I, Carolyn J. Hope, being competent to make this statement and having personal knowledge of the matters set forth herein, do swear and affirm the following:

1. I am a Senior Park Planner in the Parks Planning Division of the Parks and Recreation Department for the City of Redmond, Washington. Redmond is a municipal corporation located within King County, Washington. I have served in this capacity since January 20, 2009. I am responsible for park and trail acquisition, easements, planning and development as well as policy making and strategic planning. As part of my employment, I have

also been involved with Redmond's acquisition of a segment of the Redmond Spur and meetings concerning the use of the railbanked corridor. My work address is City of Redmond, 15670 NE 85th Street, P.O. Box 97010, Redmond, Washington 98073-9710.

2. On April 25, 2010 the City of Redmond and GNP Railway, Inc. entered into a "Mutual Nondisclosure Agreement," which was drafted by GNP. GNP principals told me that they would share with the City GNP proprietary information, including GNP's business plan and application for a RRIF loan, only upon execution of this agreement. A copy of the executed agreement is attached hereto as **Exhibit A**.

3. Pursuant to the Mutual Nondisclosure Agreement, GNP provided information and documents to Redmond managers about its business plan to operate an excursion train on the Redmond Spur. Among other documents, GNP provided Redmond with a copy of its RRIF loan application to the Federal Railway Administration and allowed Redmond managers to retain the loan application for staff review for two weeks. GNP did not allow Redmond to make copies of the RRIF application. To the best of my knowledge, City staff did not make any copies of the application, and returned it to GNP at an agreed time.

I declare under penalty of perjury that the foregoing is true and correct.



CAROLYN J. HOPE
Dated: 11/12/10
Place: Redmond, WA

70384846.1 0058059-00001

MUTUAL NONDISCLOSURE AGREEMENT

This **MUTUAL NONDISCLOSURE AGREEMENT** ("Agreement") is made as of April 15, 2010 ("Effective Date") between GNP Rly Inc., a Washington Corporation with principal offices at 403 Garfield Street, #20, Tacoma, WA. 98444 ("GNP") and the City of Redmond, PO Box 97010, Redmond, WA 98073 ("City of Redmond").

1. DEFINITION.

"Confidential Information":

The term "Confidential Information" means nonpublic information that disclosing party ("Disclosing Party") designates as being confidential or which under the circumstances surrounding disclosure the receiving party ("Receiving Party") should know is treated as confidential by the Disclosing Party. Confidential Information includes, without limitation, nonpublic information related to released or unreleased Disclosing Party documentation, specifications, business policies, financial information, infrastructure designs, know-how, trade secrets, designs, ideas, methods, processes, studies, plans, or other information received from others which Disclosing Party is obligated to treat as confidential. Confidential Information disclosed to Receiving Party by a Disclosing Party, its related entities and/or agents is covered by this Agreement. "Confidential information" shall not include information which:

- (i) is obtained by Receiving Party from the public domain without breach of this Agreement and independently of Receiving Party's knowledge of any Confidential Information;
- (ii) was lawfully and demonstrably in the possession of Receiving Party prior to its receipt from Disclosing Party;
- (iii) is independently developed by Receiving Party without use of or reference to the Confidential Information; or
- (iv) becomes known by Receiving Party from a third party independently of Receiving Party's knowledge of the Confidential Information and is not subject to an obligation of confidentiality.
- (v) is not exempt from disclosure under State or Federal Freedom of Information laws, including but not limited to RCW Chapter 42.56.

2. OBLIGATION OF NON-DISCLOSURE.

Receiving Party agrees that Confidential Information shall be used only by the Receiving Party for purposes of evaluating a business relationship between them. Receiving Party shall not use or disclose Confidential Information for five (5) years following the date of disclosure by Disclosing Party, except as provided for by this Agreement or in accordance with judicial or other governmental order (provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent). Receiving Party shall safeguard the Confidential Information with no less care (and in no event less than a reasonable degree of care) than the Receiving Party takes to protect its own confidential information. Receiving Party may only disclose Confidential Information to Receiving Party's employees or consultants on a need-to-know basis. Receiving Party shall make this nondisclosure agreement known to such employees and consultants. Receiving Party

shall not make or have made any partial or complete copies of any of the Confidential Information either on a stand alone basis or commingled with any other information without the express authorization of Disclosing Party, and any legends used by Disclosing Party shall be reproduced in all such copies.

3. NOTICE OF DISCLOSURE.

Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of the Confidential Information or any other breach of this Agreement by Receiving Party, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.

4. OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION.

All partial or complete copies of any of the Confidential Information, made in accordance with this Agreement, if any, are and shall remain the property of Disclosing Party. Upon the request by either party at any time, the Receiving Party shall return all tangible items, including but not limited to, originals, copies, reproductions and summaries bearing or disclosing any of the Confidential Information. Or at Disclosing Party's option, and consistent with public records retention laws, certify destruction of the same.

5. INJUNCTIVE RELIEF.

Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive and other equitable relief (without bond and without the necessity of showing actual monetary damages) as may be deemed proper by a court.

6. INSPECTION.

Disclosing Party may visit Receiving Party's premises, with reasonable prior notice and during normal business hours, to review Receiving Party's compliance with the terms of this Agreement.

7. MISCELLANEOUS.

- (a) By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under Disclosing Party patents, copyrights, trademarks, or trade secret information.
- (b) ANY CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS DONE SO ON AN "AS-IS" BASIS AND EACH PARTY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES THEREFOR, INCLUDING WITHOUT LIMITATION WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, NONINFRINGEMENT AND ANY IMPLIED INDEMNITIES.
- (c) If Receiving Party is requested or required to disclose any Confidential Information under a subpoena, court order, statute, law, rule, regulations or other similar requirement (a "Legal Requirement"), Receiving Party will, to the extent not precluded by law, provide prompt notice of such Legal Requirement to Disclosing Party so Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this

Agreement. If Disclosing Party is not successful in obtaining a protective order or other appropriate remedy and Receiving Party is legally compelled to disclose such Confidential Information, or if Disclosing Party waives compliance with the provisions of this Agreement in writing, Receiving Party may disclose, without liability hereunder, such Confidential Information in accordance with, but solely to the extent necessary to comply with the Legal Requirement.

- (d) Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns. Neither party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the other party's prior written approval.
- (e) This Agreement may be signed in counter-parts and exchanged by fax. Each such copy will be deemed an original.
- (f) Any notices required under this Agreement shall be in writing and delivered by personal delivery, facsimile or electronic-mail transmission or be certified or registered mail, return receipt requested and shall be deemed given upon the earlier of personal delivery, five (5) days after deposit in the mail or upon acknowledgement of receipt by the receiving party. Notices shall be sent to the attention of "Legal" at the addresses appearing in the opening paragraph of this Agreement, or such other address as either party may specify in writing.
- (g) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, its agents, or employees, but only be an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- (h) This Agreement shall be governed and construed under the laws of the State of Washington without regard to its conflict of laws principles. The parties consent to exclusive jurisdiction by the state and federal courts sitting in King County, Washington. If any provision of this Agreement is held to be invalid or unenforceable to any extent in any context, it shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts, and the validity and force of the remainder of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first set forth above.

GNP Rly Inc.

The City of Redmond

By:

By:

Name: _____

Name: Jane Clark

Title:

Title:

DEPUTY CITY ADMINISTRATOR