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**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

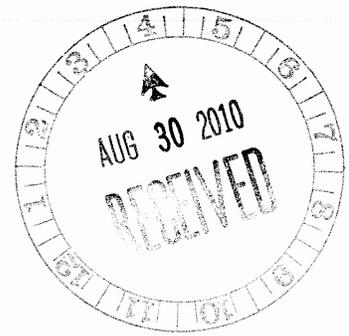
www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

KARL MORELL

kmorell@dc.bjllp.com

August 30, 2010



Hand Delivered

**ENTERED**  
**Office of Proceedings**

AUG 30 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 20423-0001

Re: STB Finance Docket No. 35415, BNSF Railway Company and Union Pacific Railroad Company – Joint Relocation Project Exemption – In Lincoln, NE

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. 1180.2(d)(5) and a check covering the \$2,400 filing fee.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

**FILED**

AUG 30 2010

Sincerely yours,

Karl Morell

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

AUG 30 2010

**SURFACE  
TRANSPORTATION BOARD**

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35415



BNSF RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY  
--JOINT RELOCATION PROJECT EXEMPTION--  
IN LINCOLN, NE

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(5)

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**TRANSPORTATION BOARD**

Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive, # 1920  
Chicago, Illinois 60606  
(312) 777-2055

Attorney for:  
Union Pacific Railroad Company

Kristy D. Clark  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive AOB-3  
Fort Worth, Texas 76131

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorneys for:  
BNSF Railway Company

**FEE RECEIVED**

AUG 30 2010

**SURFACE**  
**TRANSPORTATION BOARD**

Dated: August 30, 2010

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35415

BNSF RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY  
--JOINT RELOCATION PROJECT EXEMPTION--  
IN LINCOLN, NE

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(5)



BNSF Railway Company (“**BNSF**”) and Union Pacific Railroad Company (“**UP**”) jointly file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(5), for a joint relocation project in the City of Lincoln, Lancaster County, Nebraska (the “**City**” or “**Lincoln**”). The joint relocation project will not disrupt service to shippers.

In support of this Notice of Exemption, BNSF and UP submit the following information as required by 49 C.F.R. § 1180.4(g):

Section 1180.6(a)

- (1) A description of the proposed transaction.
  - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.

The joint relocation project will facilitate the redevelopment of the West Haymarket District and Downtown Lincoln. In order to strengthen the long-term economic viability of these areas of Lincoln, the City has plans to construct entertainment, recreation, lodging, offices, retail and other supporting facilities (the “**West Haymarket Project**”). The West Haymarket Project

will convert about 400 acres of underutilized property and will, when completed, include an approximately 16,000-seat arena, an ice center facility, a new hotel, public plazas, retail and office buildings and condominiums.

The West Haymarket Project is a multi-phased project which requires the acquisition and redevelopment of certain real property, including property owned by BNSF and UP. As part of the West Haymarket Project, BNSF will be removing certain yard, side and industry tracks that are no longer needed by BNSF and selling the underlying real estate to the City. No prior approval from the Board is required for the removal of these tracks. *See* 49 U.S.C. § 10906; *Battaglia Distributing Co., v. Burlington Northern*, 2 S.T.B. 323 (1997); STB Finance Docket No. 35161, *Joseph R. Fox – Petition For Declaratory Order* (not printed), served May 18, 2009. The UP will not be removing any trackage, but as part of this Joint Relocation Project a portion of the previously abandoned but never salvaged Jamaica Industrial Lead from Milepost 56.50 to Milepost 56.68 on the UP's Lincoln Subdivision will be utilized.<sup>1</sup>

BNSF will also be relocating certain north-south main line tracks that traverse the West Haymarket Project area. The relocated main lines will be moved a short distance to the west of the existing lines and will run essentially parallel to the existing lines. The relocation of these lines does not involve another carrier and thus does not come within the ambit of 49 C.F.R. § 1180.2(d)(5)<sup>2</sup>. Also, the relocation of these main lines will not impact service to shippers,<sup>3</sup>

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<sup>1</sup> The Surface Transportation Board (“Board”) authorized the abandonment of the Jamaica Industrial Lead by decision having a service date of September 30, 2003 in STB Docket No. AB-33 (Sub-No. 207X). The abandonment authorization was from Milepost 56.43 to Milepost 57.00 and was consummated by UP by notice filed with the Board on January 6, 2004.

<sup>2</sup> The main line tracks being relocated also handle Amtrak passenger trains. BNSF does not believe that the relocation of those tracks is a joint, as opposed to a single carrier, relocation project. Should the Board disagree, BNSF respectfully urges the Board to also include the relocation of those tracks within the ambit of this proceeding. The two BNSF main lines that handle Amtrak trains and are being moved are located between mileposts 59.0 and 60.2 in Lincoln.

enable BNSF to develop new territory or traffic, establish more competition or otherwise change existing competitive situations, or affect BNSF's revenues or operating expenses. Consequently, this portion of the West Haymarket Project falls outside the scope of the Board's jurisdiction.

*See Missouri Pac. R. Co. Trustee Construction*, 282 I.C.C. 388 (1952); *City of Detroit v. Canadian National Ry. Co., et al*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995).

In order to accommodate the early phases of the West Haymarket Project, BNSF and UP will jointly relocate tracks over which they both currently operate or have authority to operate. BNSF owns a rail line beginning south of Sun Valley Boulevard (near UP milepost 56.50) which crosses Salt Creek and continues into a wye a short distance east of Salt Creek. The east leg of the wye (Track 460) extends in an easterly direction to a connection with a BNSF main line which, in turn, connects with the Omaha, Lincoln & Beatrice Railway and extends beyond to Omaha, NE. The west leg of the wye (Track 324) extends in an easterly and then southerly direction to BNSF's Hobson Yard in Lincoln. The BNSF track traversing Sun Valley Boulevard and Salt Creek and the existing east and west wye tracks are illustrated on Exhibit 1 in green.

UP has overhead trackage rights over the east leg of the wye between BNSF milepost 0.65 and BNSF milepost 56.92. *See* STB Finance Docket No. 33404, *Union Pacific Railroad Company – Trackage Rights Exemption – The Burlington Northern and Santa Fe Railway Company*, served June 3, 1997; STB Finance Docket No. 30868 (Sub-No. 1), *Union Pacific*

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<sup>3</sup> The City of Lincoln is acquiring property from one former and one current shipper as part of the West Haymarket Project. The City has indicated that these shippers will be relocated from their present locations before the tracks used to serve them are relocated in the later phases of the project development. However, should a later phase of the West Haymarket Project require additional approval from the Surface Transportation Board (the "**Board**"), BNSF and/or UP will obtain such approval, or appropriate exemption, prior to undertaking such transaction.

*Railroad Company – Amendment of Trackage Rights Exemption – BNSF Railway Company* (not printed), served July 20, 2006. UP leases: (1) the BNSF line near Sun Valley Boulevard (beginning near UP milepost 56.50) to the beginning point of the wye at BNSF milepost 0.62 (the “**Sun Valley Segment**”); and (2) the west leg of the BNSF wye from BNSF milepost 0.62 to BNSF milepost 59.4. The joint relocation project involves abandoning the Sun Valley Segment and relocating the existing wye tracks a short distance to the south. The underlying real estate will be conveyed to the City. BNSF will remove the tracks on the Sun Valley Segment and UP will reconstruct its essentially parallel line which has previously been abandoned. The new UP line will be located between UP milepost 56.50 and UP milepost 56.68 a short distance east of Salt Creek and crossing over Salt Creek using an existing UP bridge (“**UP Track**”). The UP Track will be owned and maintained by UP. BNSF will be granted trackage rights over the UP Track.

The new east wye will be located between new BNSF milepost 0.0 and BNSF milepost 59.24 where it will connect with BNSF’s number 1 mainline (“**New East Wye**”). The New East Wye will be owned and maintained by BNSF. UP will be granted trackage rights over the New East Wye. The new west wye will be located between new milepost BNSF 0.0 and BNSF milepost 59.55 where it will connect with BNSF’s number 1 mainline (“**New West Wye**”). The New West Wye will be owned and maintained by BNSF. UP’s lease of the existing west wye and the Sun Valley Segment will be terminated. UP will retain existing operating rights incidental to interchange to Hobson Yard which includes the New West Wye. The UP Track, the New East Wye and the New West Wye are illustrated on Exhibit 1 in red.

The proposed joint relocation project will not disrupt service to shippers. There are no shippers located on the Sun Valley Segment, the existing east wye or the existing west wye.

Also, the construction of the UP Track, the New East Wye and New West Wye will not involve an expansion of service by BNSF or UP into a new territory. The UP Track, the New East Wye and the New West Wye will simply preserve BNSF's and UP's ability to serve existing customers in the area. Accordingly, the proposed joint relocation project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5).

The Board will exercise jurisdiction over the abandonment or construction component of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Also, line relocation projects may embrace trackage rights. *See D.T.&I.R.--Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, lease and trackage rights components of this relocation project require no separate approval or exemption since the project will not disrupt service to shippers, expand BNSF's and UP's service into a new territory, or alter the existing competitive situation.

The name and business address of Applicants are as follows:

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

Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

BNSF's representatives:

Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Kristy D. Clark  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131

UP's representative:

Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive  
Chicago, Illinois 60606  
(312) 777-2055

(ii) The proposed time schedule for consummation of the proposed transaction.

The transaction will be consummated sometime after the effective date of this  
Notice of Exemption.

(iii) The purpose sought to be accomplished by the proposed transaction.

The joint relocation project will facilitate the redevelopment of the West  
Haymarket District and Downtown Lincoln.

(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is  
situated.

The relocation project is located in the State of Nebraska.

BNSF is situated in the States of Alabama, Arizona, Arkansas, California,  
Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi,  
Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma,  
Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and  
Wyoming.

UP is situated in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

(a)(6) Map.

A map illustrating the existing wye tracks, the UP Tracks the New East Wye Track and the New West Wye Track is attached as Exhibit 1.

(a)(7)(ii) Agreement.

A copy of the Memorandum of Understanding between BNSF and UP governing this relocation project is attached as Exhibit 2. BNSF and UP are currently contemplating modifying existing trackage rights agreements rather than entering into new agreements. BNSF and UP will file those modified agreements in this docket once they have been drafted and executed.

BNSF and UP are agreeable to the labor protection conditions imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

This action will not significantly affect either the quality of the human environment or energy conservation. Environmental impacts associated with trackage rights generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c) and the proposed transactions are exempt from historic reporting requirements under 49 C.F.R. § 1105.8(b). The incidental abandonment and construction of new tracks are transactions which are not subject to the Board's jurisdiction in this proposed relocation project.

Respectfully submitted,



Mack H. Shumate, Jr.  
Senior General Attorney  
101 North Wacker Drive, # 1920  
Chicago, Illinois 60606  
(312) 777-2055

Attorney for:  
Union Pacific Railroad Company

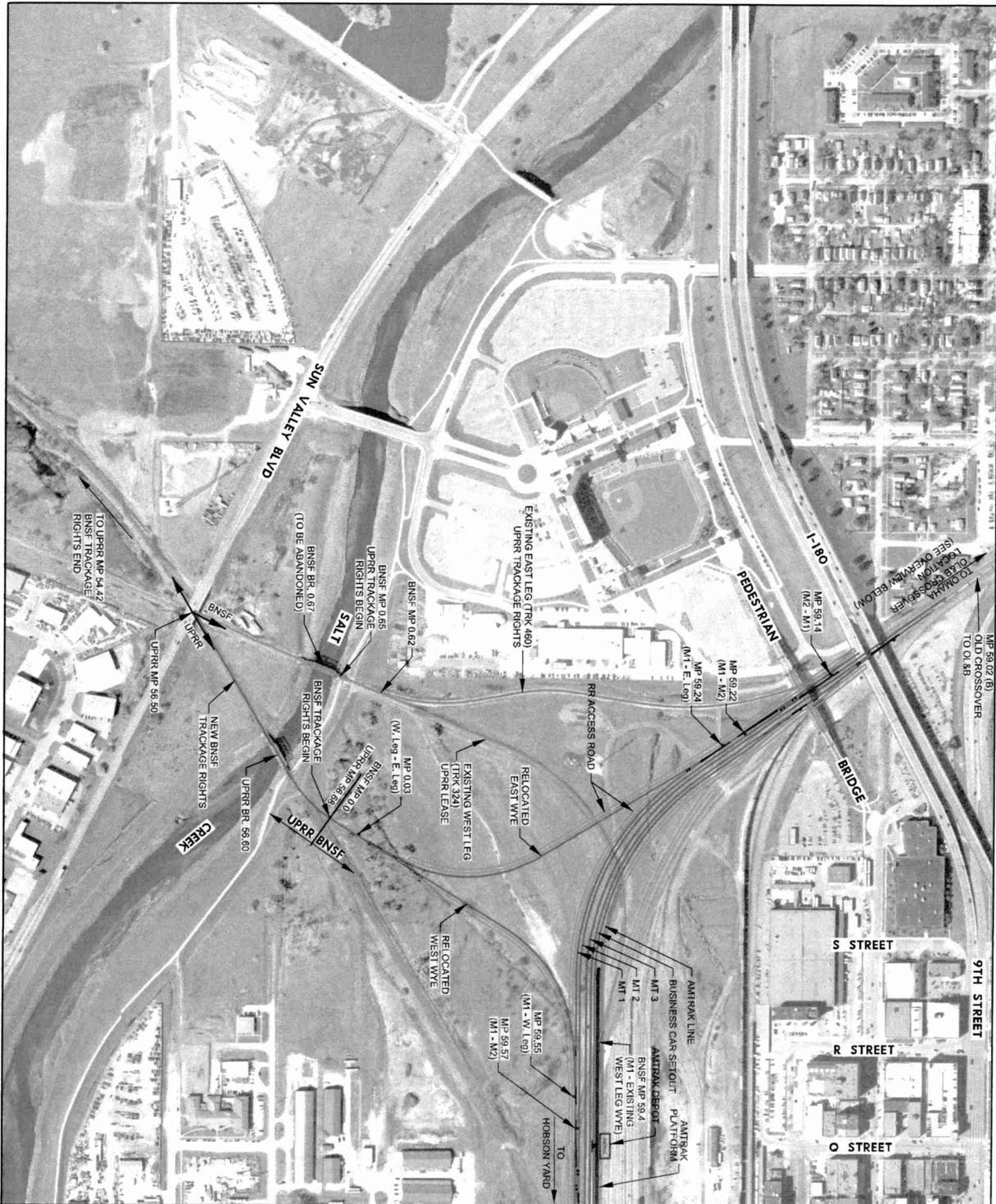
Kristy D. Clark  
General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive AOB-3  
Fort Worth, Texas 76131

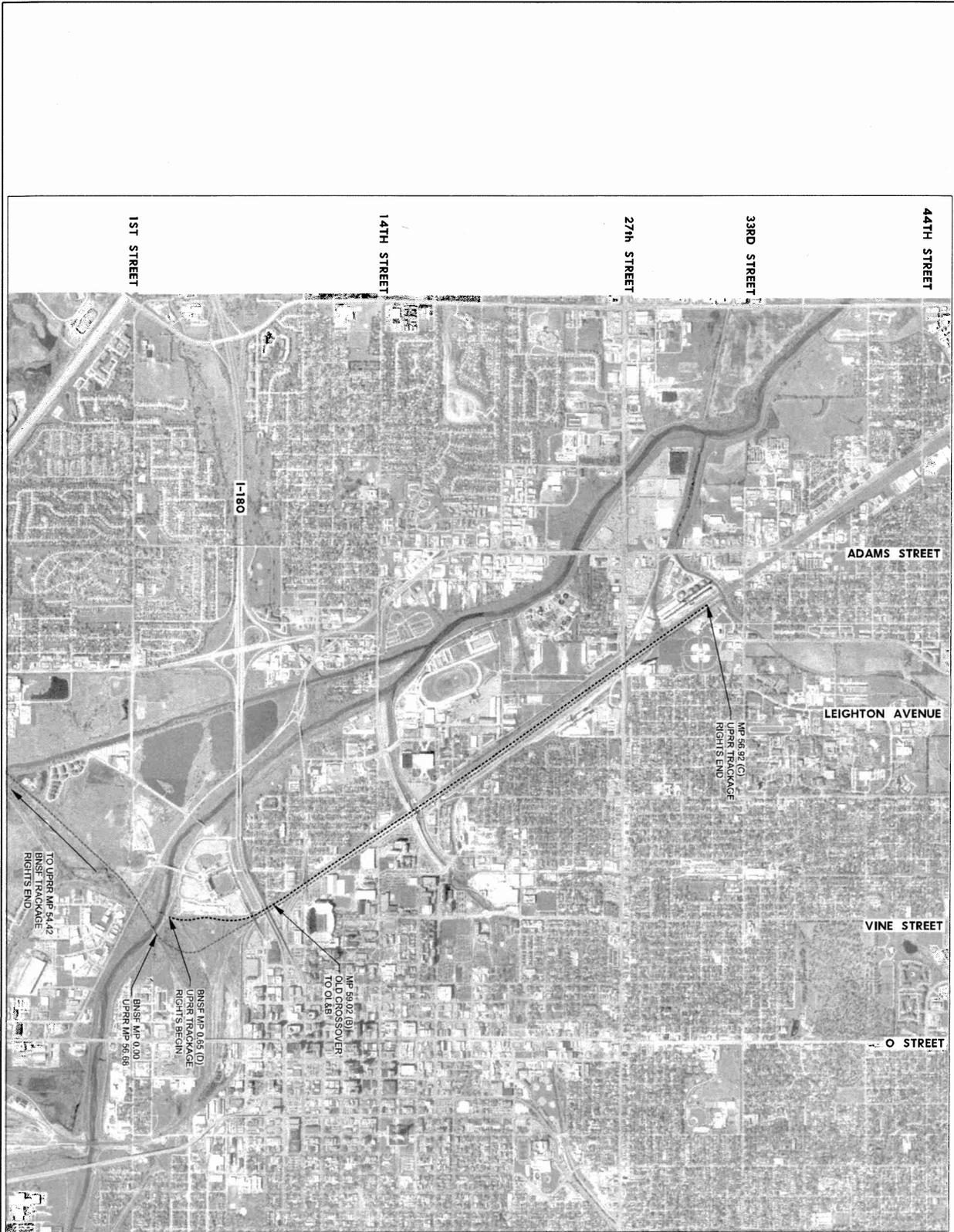
KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorneys for:  
BNSF Railway Company

Dated: August 30, 2010

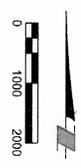
# EXHIBIT 1





**LEGEND**

- ..... EXISTING UPRR TRACKAGE RIGHTS
- ..... NEW BNSF TRACKAGE RIGHTS
- ..... NEW UPRR TRACKAGE RIGHTS



**Memorandum of Understanding between  
BNSF Railway Company and Union Pacific Railroad Company**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** is entered into this 22nd day of February, 2010 (the **“MOU Effective Date”**), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, (hereinafter called **“BNSF”**), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter called **“UP”**).

**RECITALS:**

- A. The City of Lincoln desires to develop property owned by BNSF in Lincoln, Nebraska (the **“BNSF Property”**), into a civic center, hotel, offices, parking and a shopping development (hereinafter the **“Haymarket Project”**).
- B. UP has trackage rights over certain BNSF railroad tracks under an agreement dated April 25, 1997 (**“UP Trackage Rights Agreement”**). UP has also leased certain BNSF railroad tracks under a lease agreement dated May 1, 2003 (the **“Lease”**). The trackage under the UP Trackage Rights Agreement and Lease are located on BNSF Property.
- C. BNSF has trackage rights over certain UP railroad tracks under an agreement dated June 27, 1974 (**“BNSF Trackage Rights Agreement”**).
- D. This MOU confirms the intent of UP and BNSF to cooperate with the City of Lincoln in the development of the Haymarket Project, including, without limitation, (i) amending existing trackage rights agreements between UP and BNSF at the discretion of the parties; and (ii) negotiating the terms and conditions of new trackage rights agreements as necessary to facilitate the Haymarket Project, subject to the terms and conditions of this MOU.
- E. This MOU is entered into in order to facilitate further discussion and negotiation of transactions contemplated herein and is subject to (i) the City of Lincoln obtaining all necessary approvals and full funding for the Haymarket Project and (ii) further negotiations between UP and BNSF that result in new trackage rights agreements and amendments of existing trackage rights agreements which are mutually agreeable to both UP and BNSF at their respective sole and absolute discretion.
- F. This MOU is not intended to be **“all inclusive”** but is instead an outline of some, but not all, of the terms and transactions necessary to permit UP and BNSF to cooperate in the development of the Haymarket Project. The final documents or agreements necessary to complete the terms or transactions set forth herein may cover additional matters not addressed by this MOU and may, after further negotiations, reflect changes to the terms summarized below.

Subject to the aforementioned contingencies and recognizing that further mutually agreeable negotiations between UP and BNSF will be required, the parties will proceed to cooperate in the Haymarket Project as follows:

**TERMS:**

- 1) BNSF agrees to amend the UP Trackage Rights Agreement to relocate UP trackage rights on and over BNSF trackage to be constructed southeast of Salt Creek which will connect UP's Lincoln Subdivision to BNSF's Ravenna Subdivision mainline at approximately BNSF mile post 0.4. BNSF agrees to have sufficient crossovers installed on its mainline to allow UP to access the Omaha, Lincoln and Beatrice Railroad pursuant to the UP Trackage Rights Agreement. BNSF agrees that UP will incur no additional trackage rights expense as a result of the relocation of its trackage rights as provided herein.
- 2) BNSF also agrees to amend the Lease by deleting certain of its provisions related to UP's lease of BNSF's "Horn Track". All other provisions of the Lease will remain in effect.
- 3) UP agrees to amend the BNSF Trackage Rights Agreement to include UP's reconstructed Lincoln Subdivision trackage from Sun Valley Boulevard to a point southeast of Salt Creek as part of BNSF's trackage rights. UP shall continue to own and maintain its Salt Creek Bridge. The relocated trackage rights will connect to BNSF's Ravenna Subdivision mainline at approximately BNSF mile post 0.5, which will be constructed at the end of UP's right of way. UP agrees that BNSF will incur no additional trackage rights expense as a result of the relocation of its trackage rights as provided herein.
- 4) UP also agrees to amend the BNSF Trackage Rights Agreement and grant BNSF the right to construct a connection, at a future date to be determined at BNSF's sole discretion, off UP's Lincoln Subdivision at approximately UP mile post 56.5, to allow BNSF to re-establish access to BNSF customers who are currently not utilizing rail service. The cost of such connection will be at BNSF's sole expense.

It is expressly understood that if (i) the City of Lincoln is unable to obtain all necessary approvals and agreements and full funding for the Haymarket Project and/or (ii) the parties are unable to reach agreement on and complete any of the additional documents and agreements contemplated herein needed to facilitate the Haymarket Project within one (1) year of the MOU Effective Date, this MOU shall automatically terminate without any further obligation by any party.

The parties hereto have caused their duly authorized representatives to execute this MOU on the dates set forth in the signature blocks below to be effective as of the MOU Effective Date.

**BNSF RAILWAY COMPANY**

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

VERIFICATION

STATE OF NEBRASKA                    )  
  )  
COUNTY OF LANCASTER                )     ss.

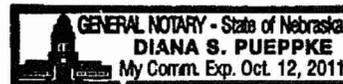
I, , being duly sworn depose and state that I am Gerald Maczuga of BNSF Railway Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Gerald Maczuga

SUBSCRIBED AND SWORN TO before me this 27 day of August, 2010, in the County of Lancaster, State of Nebraska.

My Commission Expires: Oct. 12, 2011

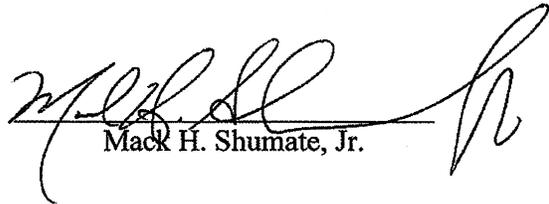
Diana S. Pueppke  
Notary Public



VERIFICATION

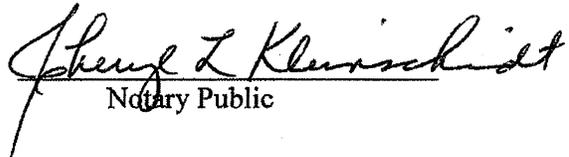
STATE OF ILLINOIS                    )  
  )  
COUNTY OF COOK                    )        ss.

I, Mack H. Shumate, Jr., being duly sworn depose and state that I am Senior General Attorney of Union Pacific Railroad Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

  
Mack H. Shumate, Jr.

SUBSCRIBED AND SWORN TO before me this 30th day of August, 2010, in the County of Cook, State of Illinois.

My Commission Expires: 6-15-11

  
Notary Public

