

SETTLEMENT AGREEMENT

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THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of the date below by and among THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF"); SNOHOMISH COUNTY, a political subdivision of the State of Washington ("County"); and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION ("WSDOT"); hereinafter collectively "the Parties."

WHEREAS, BNSF filed a petition (Docket No. TR-010194) with the Washington Utilities and Transportation Commission ("WUTC") for authority to close the at-grade railroad/highway crossing at 156th Street NE in Snohomish County, Washington ("Crossing"); and,

WHEREAS, the County opposed the closure and, on October 11-12, 2001, the cases for BNSF, the County, WUTC Staff, Intervenor WSDOT, and comments of the public, were presented to Administrative Law Judge Marjorie Schaer. The matter is now awaiting briefing and a decision by the WUTC; and,

WHEREAS, the parties now desire to settle this matter by stipulating to an order for closure and providing for the construction by the County of certain improvements that will be beneficial to public safety in the general vicinity of the Crossing.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained to be kept, observed and performed, the Parties agree as follows.

1. **Closure.** The County will withdraw its opposition to the closure of the Crossing. The Parties will request that the WUTC issue an order consistent with this Agreement authorizing permanent closure of the Crossing. The WUTC order shall provide direction as to the proper disposition of the existing railroad signals and gates at the Crossing and provide further that:
 - a. BNSF will have complete discretion regarding the actual timing for the physical closure of the Crossing not earlier than June 16, 2002 (the close of school in the vicinity) subject to all other applicable terms and conditions of this Agreement; and
 - b. BNSF will have full authority at the time of the closure of the Crossing to close the roadway across the railroad and to remove roadway and other material, but BNSF will not construct any elements of the siding across the area occupied by the Crossing until after the Crossing is physically closed by BNSF.
2. **Monetary Payments to Snohomish County.** Subject to the conditions set forth in Section 7 of this Agreement, the County will be paid Four Hundred Thousand Dollars (\$400,000) to perform work in the vicinity of the Crossing as described in Section 3

of this Agreement. Payment of that Four Hundred Thousand Dollars (\$400,000) sum to the County shall be construed as satisfying any and all obligations of BNSF and Intervenor WSDOT associated with the Crossing closure.

3. **Projects.** The work of the County referenced in Section 2 of this Agreement may include the following projects, but the County reserves the right to modify and/or delete any of the following projects so that the overall costs do not exceed \$400,000:
 - a. **Traffic Signals.** The County will coordinate with WSDOT for the construction of a strain wire traffic signal with turn pockets at the intersection of SR-531 (172nd St. NE) and 27th Ave. NE. It is anticipated that the strain wire signal and turn pockets will ultimately be replaced with expanded facilities as part of WSDOT's longer range plans for SR-531, but such work is not part of this agreement and it is not the intent of this agreement to bind any of the parties to any additional contributions or obligations associated with additional or future improvements to SR 531 or the intersection of SR-531 and 27th Ave. NE. The parties agree that this signal has independent utility with or without the proposed closure.
 - b. **Signage and Public Notice.** The County will post "No Outlet" or "Dead End" signs at locations deemed appropriate by the County in the vicinity of the Crossing.
 - c. **New Radius.** The County will acquire the necessary property rights and permits and will construct a new turn radius in the intersection of 23rd Ave. NE and 156th St. NE.
 - d. **Gates.** The County will erect one (1) locked steel gate at or near the east side of the new intersection to be constructed at 23rd Ave. NE and 156th St. NE. BNSF will provide fencing or other suitable barriers on the right-of-way line on both sides of the Crossing.
 - e. **Cul-de-Sac.** The County will acquire the necessary property rights and permits and will construct a cul-de-sac on the east side of the Crossing.

The County will fully account for expenditures made in accordance with all applicable laws and regulations. If the foregoing projects can be completed for less than \$400,000, the County may apply any surplus balance to other appropriate safety improvements associated with the impacts of the Crossing closure. In that event, the County will use due diligence to utilize any such surplus for Section 130-eligible work.

4. **Manner of Payment.** The Section 2 payment obligations to the County shall be funded from a combination of funding sources including monies paid by BNSF or by WSDOT as administrator of the 23 USC Section 130 ("Section 130") Federal Highway Administration program that shall never exceed Four Hundred Thousand Dollars (\$400,000) in the aggregate and shall be satisfied in the following manner

once all applicable preconditions set forth in Section 7 of this Agreement have been satisfied:

- a. Up to Two Hundred Fifty Thousand Dollars (\$250,000) of Section 130 funds will be paid upon a reimbursable basis for the County's work on Section 3 projects. The County will prioritize its Section 3 projects to assure maximum eligibility for Section 130 funding and will exercise all due diligence to assure that Section 130 funds will be made available to permit project completion in a timely manner for any, or all, of the Section 3 work under this Agreement. The County shall be entitled to conduct work for Section 3 projects immediately upon receipt of a notice to proceed from the administrator of the 23 USC Section 130 Federal Highway Administration program under a Local Agency Agreement, subject to the priority schedule set forth in Section 5 below;
- b. One Hundred Fifty Thousand Dollars (\$150,000) shall be paid directly by BNSF to the County promptly upon satisfaction of applicable conditions contained in Section 7 of this Agreement.
- c. Should there be any shortfall below the Two Hundred Fifty Thousand Dollars (\$250,000) of Section 130 funds referenced in Subsection 4.a. of this Agreement, then BNSF shall be obligated to pay the amount of that shortfall (never to exceed Two Hundred Fifty Thousand Dollars (\$250,000)).

5. Priority of County Expenditures. The County shall be obligated to expend all of the Four Hundred Thousand Dollars (\$400,000) in funding described in Sections 2 and 4 of this Agreement in the following order of priority:

- a. First, for design and permitting activities relating to any, or all, Section 3 Projects and for construction of the Section 3.a. traffic light Project;
 - b. Second, for construction of any, or all, of the remaining Section 3. b. through e. Projects; and
 - c. Third, to any safety improvements in the Crossing area that may be funded with surplus proceeds as authorized under Section 3 of this Agreement.
- 6. Emergency Access.** In the event of a "catastrophic" (24 hrs. or more) shutdown of vehicular and rail traffic at the 172nd at-grade crossing due to a derailment or other railroad emergency, BNSF will provide temporary alternate access across the railroad right-of-way as near to 172nd as reasonable, safe and feasible. This might include the temporarily filling in of the former crossing at 156th to allow passage of vehicles while 172nd is out of service, if that is the most reasonable, safe and feasible temporary measure available under the circumstances. This obligation to provide temporary alternate access across the railroad right-of-way shall become null and void in the event that a grade separated crossing is constructed at or between 152nd St. NE and SR 531.

7. Contingencies and Conditions.

- a. **WUTC.** The Parties recognize that the WUTC, when it formally acts, may or may not decide the case consistent with the terms of this Agreement. In addition to the other conditions precedent herein, the Parties agree that the terms of this Agreement are contingent upon the entry of a final, non-appealed order by the WUTC that does not materially modify, add to, or subtract from the terms of this Agreement, or unduly burden any party hereto.
- b. **Timing for BNSF Payments.** The BNSF payment obligations described in Subsections 4.a. and c. of this Agreement shall become operative and binding at the earliest of:
- i. Issuance of all essential permits and approvals by cognizant agencies necessary for the closure of the Crossing and construction of the new siding without appeal by any person, entity, or party under applicable federal, WUTC, or other laws or rules. "Essential permits and approvals" under this subsection include, but are not limited to, a Determination of Non-Significance, all final permits or actions related to BNSF's "JARPA" application, and all required final action on any modifications or other determinations any state or federal agency may make after notification of the intent of the parties to construct the projects listed above; or, in the alternative,
 - ii. If, after June 16, 2002, BNSF elects to physically close the Crossing before issuance of all essential permits and approvals by cognizant agencies necessary for the construction of the new siding.
- c. **Section 130 Funding-Noninterference with the Timely Completion of BNSF Siding Construction Work.** The parties shall perform the terms of this Agreement in such a manner that BNSF will be able to build its siding project and close and remove the Crossing without delays. Commencement or completion of the work identified in Section 3 above shall not be a condition precedent to the closure of the Crossing. Even though the parties expect that Section 130 funds will be available for completion of Section 3 projects in a timely manner, the availability, or unavailability, of Section 130 funding shall never operate to delay the construction of the siding. If, however, unforeseen events associated with the pursuit of Section 130 funding for some, or all, of the Section 3 projects will delay or prevent the timely completion of BNSF's siding construction project in the 2002 construction season, then BNSF may elect to directly fund some or all of the Section 3 work pursuant to Section 4.c. in lieu of the County's applying for or obtaining Section 130 funding for such work.
- d. **Section 130 Funding-Noninterference with the Timely Completion of Traffic Light Work.** As stated in Section 7.c. of this Agreement, the parties expect that

Section 130 funds will be available in a timely manner and will not create delays in or prevent construction of any Section 3 project(s). If, however, through no fault of the County, the County's applying for or attempting to use Section 130 funds to finance construction of Subsection 3.a. work will delay or prevent completion of such Subsection 3.a. work by August 31, 2002, then:

- i. The County shall be relieved of its obligation to seek Section 130 supplemental funding for the unfunded portion of such work; and
- ii. BNSF shall be obligated under Subsection 4.c. to fund any portion of the Section 3.a. work that has not been funded by Subsection 4.a. and/or 4.b. payments, subject to the \$400,000 total payment limit for all projects from all sources.

SIGNED by duly authorized persons for the Parties this _____ day of January, 2002.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Attest:

Jill Scheffler
Witness

APPROVED AS TO FORM 1/10/02
Weikel

[Signature]
By:
Asst Vice President Engineering Services
Title

SNOHOMISH COUNTY

Attest:

Laura Nelson
(Clerk)

for County Executive
[Signature]
By:
GARY WEIKEL
Deputy Executive
Title

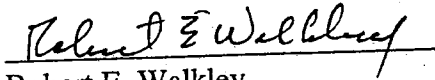
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

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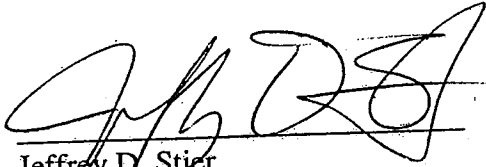
[Signature]
(Title)
Rail Op & Technical Expert

[Signature]
By:
Director, Public Transportation & Reg
Title

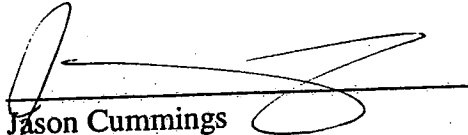
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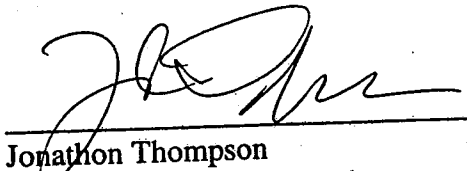
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