

ORDINANCE NO. 1072

AN ORDINANCE OF THE CITY OF NEWPORT, WASHINGTON, ANNEXING CERTAIN REAL PROPERTY TO SAID CITY, DESIGNATING THE ZONE OF THE ANNEXED PROPERTY, DIRECTING MODIFICATION OF THE OFFICIAL ZONING MAP AND FIXING THE EFFECTIVE DATE OF ANNEXATION.

WHEREAS, BNSF has provided notice to the City of its desire to commence annexation proceedings and has presented a Petition for Annexation and said property is more particularly described in Exhibit 1, which is attached hereto and incorporated herein by this reference, and

WHEREAS, following legal notice as required by law, BNSF's request was presented to the City Planning Commission which forwarded the Petition and related documents to the City Council with the recommendation that the Council approve the annexation request, and

WHEREAS, after notification as required by law, BNSF presented its request for annexation to the City Council, and the City Council indicated that it would look favorably upon the request, and

WHEREAS, BNSF and the City of Newport have executed an Annexation Agreement dated February 22, 2011 which is attached hereto as Exhibit 2 and incorporated herein by this reference, and

WHEREAS, the Annexation Agreement, including the proposed zoning classification within the property is acceptable to all parties,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWPORT, WASHINGTON DO ORDAIN AS FOLLOWS:

SECTION 1: DESCRIPTION OF ANNEXED PROPERTY:

The real property described in Exhibit 1, situated in Pend Oreille County, Washington, is hereby annexed to the City of Newport subject to the specific terms and conditions contained in the Annexation Agreement between BNSF and the City of Newport which is attached hereto as Exhibit 2 and incorporated herein in its entirety.

SECTION 2: ZONING:

The annexed property shall retain its present zoning, Industrial.

SECTION 3: MODIFICATION OF TEXT AND OFFICIAL MAP:

Pursuant to the City of Newport Development Regulations, Chapter 17.02, the text and official map of the City of Newport will be amended to include the property described above which has been annexed into the city, and in accordance with that Chapter, the Mayor and City Clerk shall promptly add the area annexed to the official map, designate the zoning Industrial and sign the amended map.

SECTION 4: DUTY OF CITY CLERK: The City Clerk is directed to provide: (1) the Pend Oreille County Auditor a certified copy of this ordinance, a map of the Property, related legal description including designated zoning, and request that the above be maintained on file in the office of the Auditor; and (2) a certified copy of this Ordinance to the Pend Oreille County Board of County Commissioners, pursuant to RCW 35A.14.140.

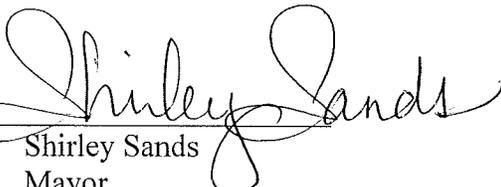
SECTION 5: SEVERABILITY:

If any part of this Ordinance is held by a court of competent jurisdiction to be unconstitutional or otherwise unenforceable, such finding shall not invalidate any other part of this Ordinance.

SECTION 6: EFFECTIVE DATE:

Pursuant to the City of Newport Development Regulations, Chapter 17.06.039(H), this annexation shall be final and conclusive 21 days following publication of the Notice of Decision, unless the original applicant or a party adversely affected by the decision makes proper application to a court of competent jurisdiction seeking to reverse or modify the annexation.

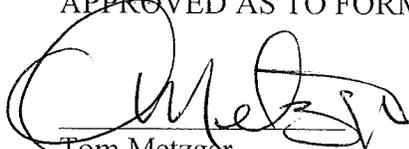
PASSED AND ADOPTED THIS 22 DAY OF February 2011.

By:   
Shirley Sands  
Mayor

ATTEST:

  
Nickole Schutte  
City Clerk/Treasurer

APPROVED AS TO FORM:

  
Tom Metzger  
City Attorney

Ex 1

**PETITION FOR ANNEXATION OF AN ADDITIONAL 450 SQUARE FEET OF BNSF PROPERTY TO THE CITY OF NEWPORT**

WHEREAS, all BNSF Railway Company ("BNSF") trackage passing through the City of Newport (the "City") is already a part of the City, and

WHEREAS, to facilitate City improvements, the City desires to annex an additional 450 square feet of BNSF's property, specifically a piece of property 1 foot wide and 450 long which is legally described in Exhibit "A" and shown on Exhibit "B", a map, both of which are attached hereto and incorporated herein by this reference, and

WHEREAS, the annexation process is most efficient when initiated by the landowner, and

WHEREAS, in return for BNSF's request for annexation, the City agrees to provide fire services to BNSF's line from the southern City boundary, which currently does not have city fire protection, to the southern terminus of the BNSF line without cost to BNSF and to enter into an Annexation Agreement attached hereto as Exhibit "C". The City specifically represents that this annexation will not affect line speed limits or hours of operation and will have no affect on BNSF's taxation.

THEREFORE, based upon a consideration of all of the facts, the promises contained herein, and the Annexation Agreement, BNSF, the owner of the 450 square feet legally described in Exhibit "A", hereby requests annexation of that property to the City.

BNSF Railway Company

By: James A. Ball

Print Name: James A. Ball

Title: Senior Manager - Land Revenue Management

Date: 9/7/2010

JAMES A. SEWELL & ASSOCIATES, LLC

Consulting Engineers, Land Surveyors & Land Use Planners

Spokane  
9 South Washington, Suite 310  
Spokane, Washington 99201  
(509) 747-5794  
(509) 747-5798 Fax

Newport  
600 4th Street West  
Newport, Washington 99156  
(509) 447-3626  
(208) 437-2641  
(509) 447-2112 Fax

Sandpoint  
1205 West Highway 2, Suite 101  
Sandpoint, Idaho 83864  
(208) 263-4160  
Fax (208) 263-5229

\*Civil Engineering \*Electrical Engineering \*Land Surveying \*Building Inspection \*Land Use Planning

NEWPORT ANNEXATION LEGAL DESCRIPTION FOR  
ONE FOOT STRIP OF BNSF RR RIGHT OF WAY  
FEBRUARY 18, 2010

A strip of land being a portion of the Burlington Northern Santa Fe Railway Company (formerly the Great Northern Railroad) right of way located within Section 24, Township 31 North, Range 45 E, W.M., Pend Oreille County, Washington. Said strip of land being more particularly described as follows:

Said strip of land being 1.0 feet wide lying Northerly of and adjoining the Southerly right of way line of said Burlington Northern Santa Fe Railway Company. Said strip beginning at a point on said Southerly right of way line of said railroad 10 feet Southwesterly of the intersection of said Southerly right of way line of said railroad with the Westerly line of the Southeast Quarter of said Section 24; thence Northeasterly, along said Southerly right of way line of said railroad, 450 feet, more or less, to a point on said Southerly right of way line which is 10 feet Northeasterly of the intersection of said Southerly right of way line with the Northerly line of the Southeast Quarter of said Section 24, and the terminus of this strip of land.

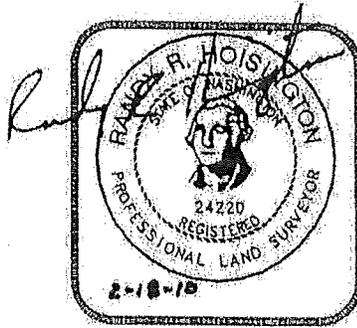
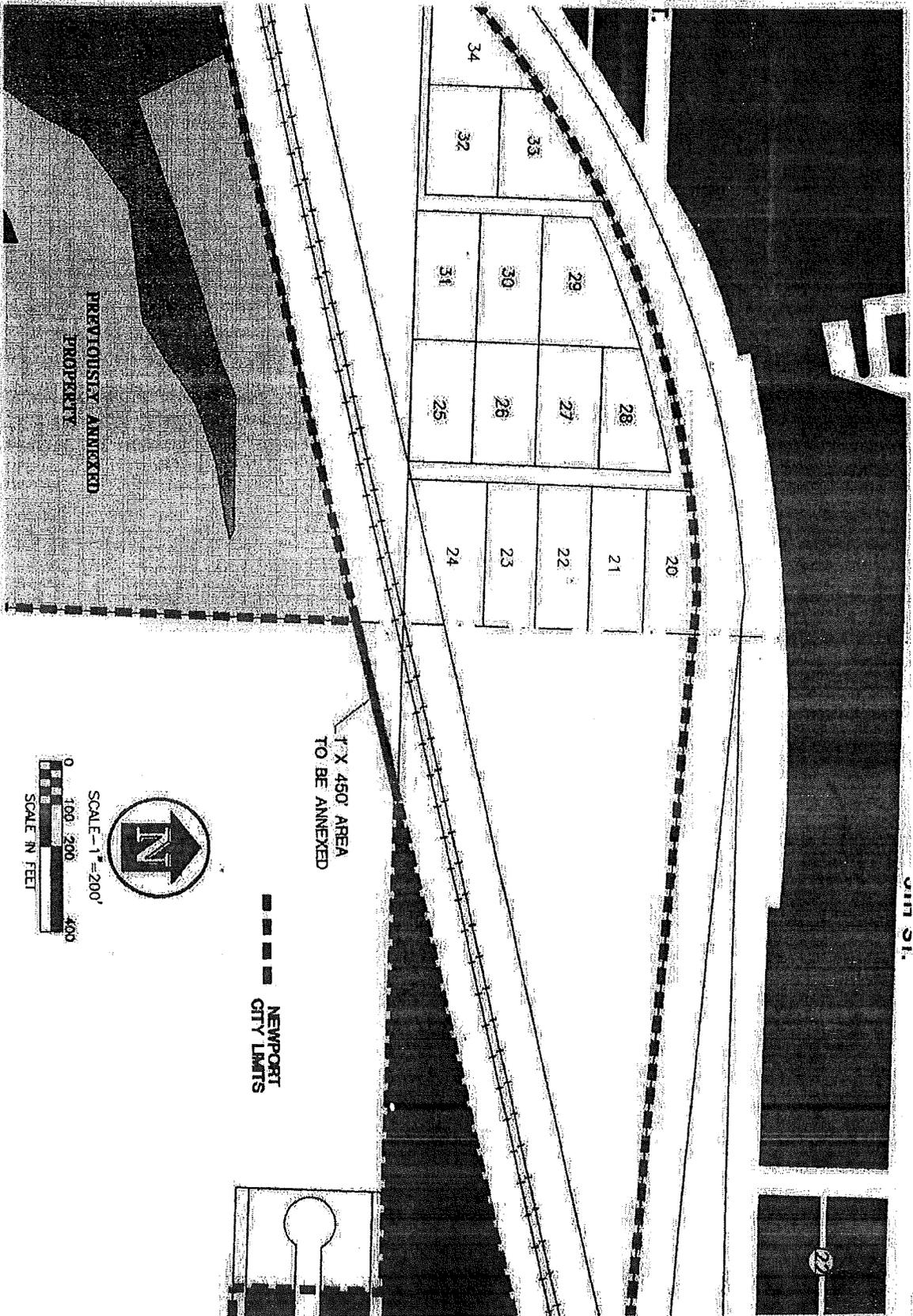


EXHIBIT B-



T X 450' AREA  
TO BE ANNEXED

NEWPORT  
CITY LIMITS



SCALE - 1" = 200'  
0 100 200 400  
SCALE IN FEET

PREVIOUSLY ANNEXED  
PROPERTY

CITY ST.

22

Ex 2

ANNEXATION AGREEMENT  
(NEWPORT, WA)

NP 2011-07

2011  
22<sup>nd</sup> day of February, 2011, by the CITY OF NEWPORT, a municipal subdivision of the State of Washington (the "City"), and BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF").

RECITALS

A. BNSF owns and/or operates a railway corridor between Dover, Idaho (milepost 1408.1) and the City (milepost 1433) (the "Railway Corridor"). The Railway Corridor is depicted on Exhibit A, which is attached to this Agreement.

B. Some of the Railway Corridor, including but not limited to approximately 450 square feet of property legally described in Exhibit B-1 and depicted on Exhibit B-2, both of which are attached to this Agreement (the "Property"), lies outside of the City limits.

C. The City desires to annex the Property to ensure continuous City limits from the existing City limits to another piece of property the City previously annexed (the "Previously Annexed Property"). The existing City limits, the Property and the Previously Annexed Property are depicted on Exhibit B-2, which is attached to this Agreement.

D. Pursuant to that certain Easement dated February 2, 1998, BNSF granted to the Port of Pend Oreille, a municipal corporation (the "Port"), an exclusive easement to operate rail service over the Railway Corridor. The Port has no objection to the proposed annexation of the Property.

E. As an accommodation to the City, BNSF has filed a Petition for Annexation of an Additional 450 Square Feet of BNSF Property to the City of Newport dated September 7, 2010 (the "Petition"). The Petition is attached to this Agreement as Exhibit C.

F. The City desires to annex the Property and BNSF is amenable to such annexation, subject to the terms and conditions contained in this Agreement.

G. "City" is used throughout this Agreement to refer to the municipal corporation entering into this Agreement and the geographic location, as applicable.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, BNSF and the City agree as follows:

1. Condition to Annexation. The annexation of the Property is conditioned on (a) the execution of this Agreement by both BNSF and the City, and (b) approval by the City Administrator, City Council or both as necessary to bind the City to the terms of this Agreement.

2. City Obligations. In consideration of BNSF allowing the Property to be annexed into the City, the City agrees to the following:

2.1 The City shall provide fire protection services to the Property.

2.2 The City shall not impose any speed limits on the track that runs through the Property (the "Track") nor limit the hours of railway operations on, over and across the Track.

2.3 The City will not levy or assess any taxes, assessments or impositions on the Property, on the personal property of BNSF or the Port located on the Property, or on the business operations conducted by BNSF and the Port on the Property, including, without limitation, real property, excise or transfer, ad valorem, sale or use, or business and operations taxes, assessments or impositions.

2.4 The City will not require BNSF or the Port to install any additional railway crossings or signals on the Property; *provided, however*, that nothing in this Agreement will alleviate the obligation of BNSF and the Port to comply with federal regulations, including those imposed by the Surface Transportation Board or the Federal Railroad Administration.

2.5 The City will not condition its acceptance of the annexation of the Property on completion of any utility, street, sidewalk or other improvements.

2.6 The City will not require any zone change to the Property as a condition of the acceptance of the annexation.

2.7 The City will not impose any restrictions or limitations on BNSF's or the Port's ability to construct improvements on the Property, including, without limitation, setback landscaping or screening requirements, nor will the City require BNSF or the Port to go through any design review process for any structure to be constructed on the Property.

2.8 The City will pay all costs, fees and expenses related to the annexation of the Property, including all costs, fees and expenses necessary to satisfy any condition imposed by the City as part of its acceptance of the annexed Property.

3. City Representations and Warranties. The City represent and warrants to BNSF the following:

3.1. The Property has been platted if required by and in accordance with all City platting requirements.

3.2 The City Council has indicated the City's intent to approve the annexation by letter dated September 7, 2010, which is attached to this as Exhibit D.

4. Miscellaneous.

4.1 Invalidity. If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement for each party remain valid, binding, and enforceable.

4.2 Governing Law. The laws of the State of Washington shall govern this Agreement.

4.3 Notices. If a party desires to send a notice related to this Agreement, such communication shall be in writing and shall become effective when delivered by hand, by a nationally recognized overnight courier service or by e-mail transmission (as long as receipt of such e-mail transmission may be verified) to the respective party at such address as such party may from time to time designate by notice duly given in accordance with the provisions of this Section 4.5 to the other party. Until further notice, the following addresses and telephone numbers shall be used for all such notices:

If to the BNSF: Corporate Real Estate Development  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, TX 76161  
E-mail: [james.ball@bnsf.com](mailto:james.ball@bnsf.com)

If to the City: Newport City Clerk  
200 S. Washington Ave.  
Newport, WA 99156  
E-mail: [clerk@newport-wa.org](mailto:clerk@newport-wa.org)

4.4 Entire Agreement. This Agreement (together with any appendices or exhibits attached hereto) constitutes the final agreement between the parties concerning the subject matter herein. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

4.5 Recitals/Exhibits. The Recitals are incorporated into the body of this Agreement as if fully set forth herein, and the Exhibits are incorporated into this Agreement by this reference.

4.6 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and when taken together shall constitute one document.

22nd IN WITNESS WHEREOF, the undersigned, have signed this Agreement on this  
day of February, 2010 2011

**BNSF:** BNSF RAILWAY COMPANY, a Delaware corporation  
By: James A. Ball  
Print Name: James A. Ball  
Its: Senior Manager - Land Revenue Management

**CITY:** CITY OF NEWPORT, WASHINGTON, a municipal corporation  
By: Shirley Sands  
Print Name: SHIRLEY SANDS  
Its: Mayor

APPROVED AS TO FORM:

Tom Metzger  
Tom Metzger, City Attorney

THE PORT HEREBY CONSENTS TO  
THE ANNEXATION OF THE PROPERTY:

PORT OF PEND OREILLE, a municipal corporation

By: Kelly J Driver  
Print Name: Kelly J Driver  
Its: Manager

Date: 02-25-11

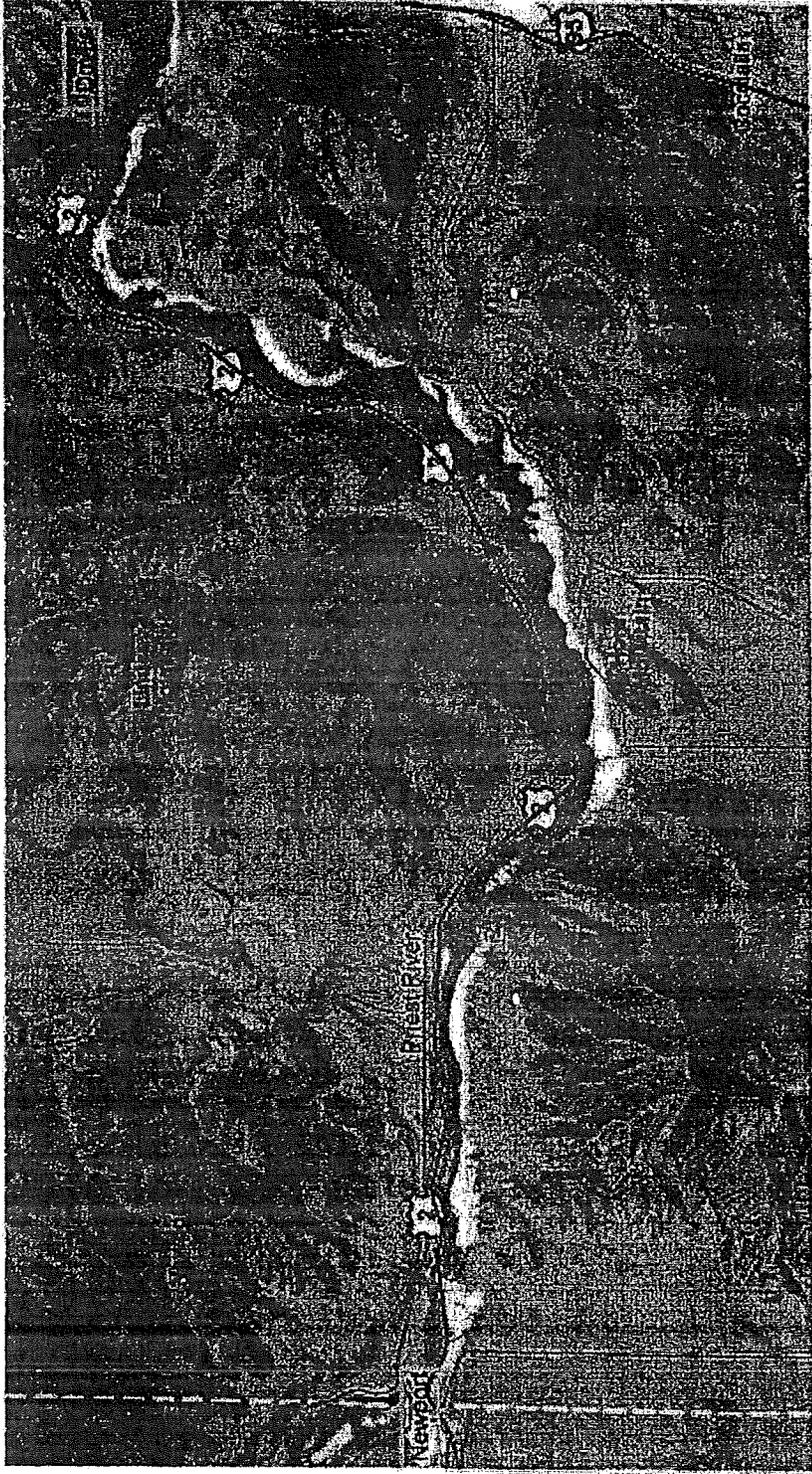


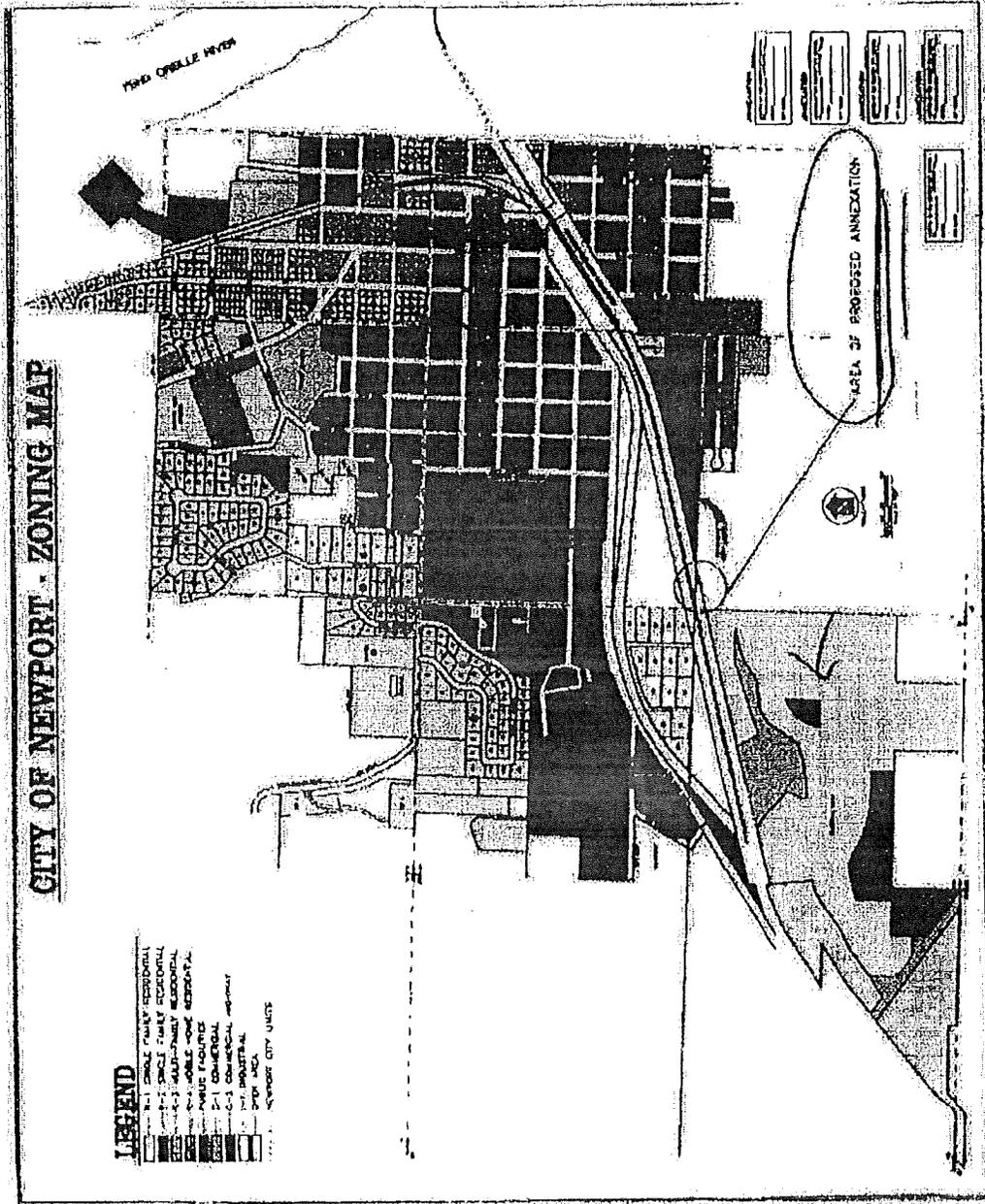
Exhibit A

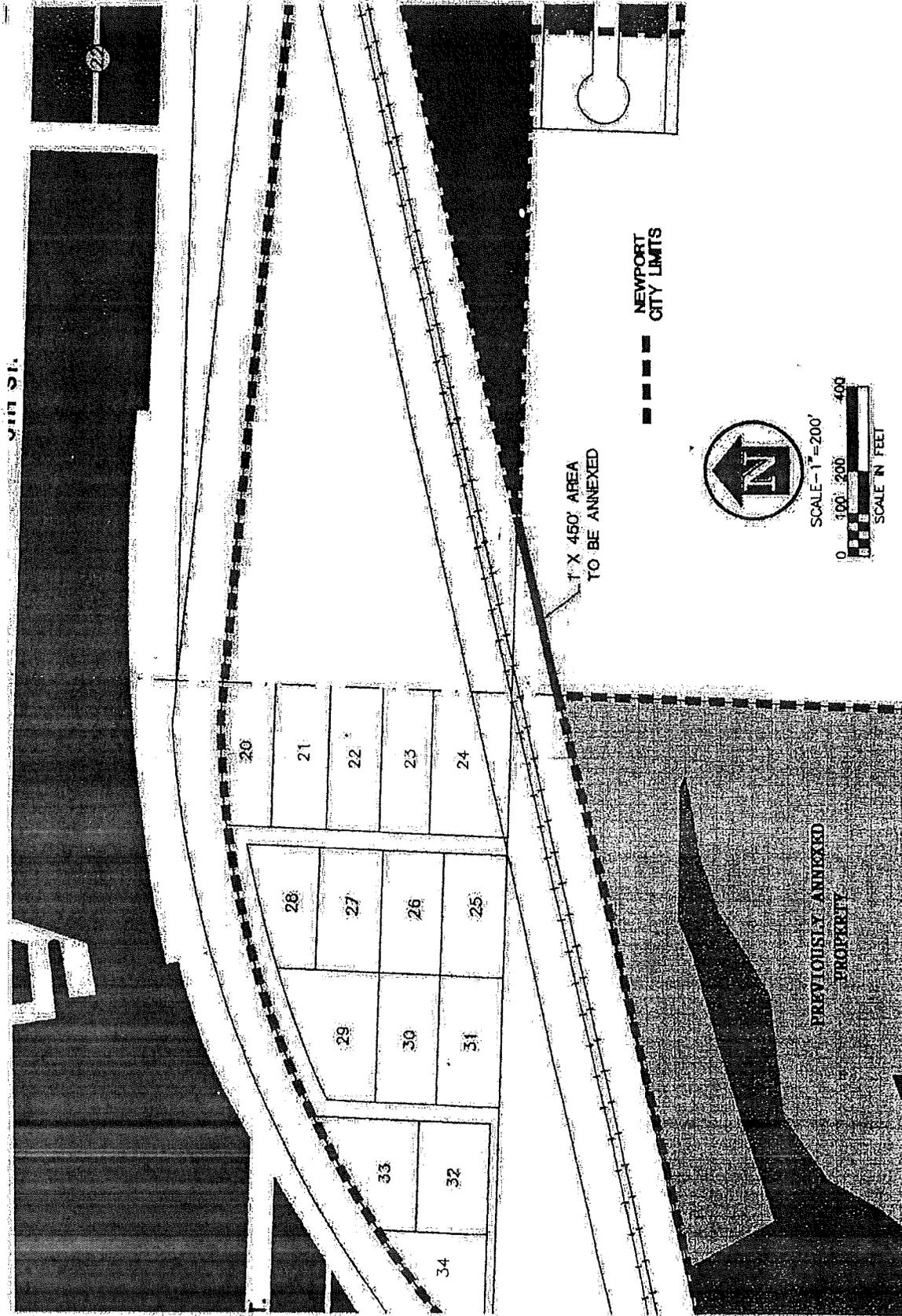
EXHIBIT B-1  
Legal Description of Property

NEWPORT ANNEXATION LEGAL DESCRIPTION FOR  
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FEBRUARY 18, 2010

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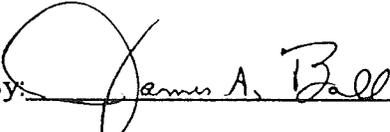
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THEREFORE, based upon a consideration of all of the facts, the promises contained herein, and the Annexation Agreement, BNSF, the owner of the 450 square feet legally described in Exhibit "A", hereby requests annexation of that property to the City.

BNSF Railway Company

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

Print Name: James A. Ball

Title: Senior Manager - Land Revenue Management

Date: 9/7/2010