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June 24, 2013

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**VIA FEDERAL EXPRESS**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

234463  
234466  
ENTERED  
Office of Proceedings  
June 25, 2013  
Part of Public  
Record

Re: **Finance Docket No. 35731**  
**Ballard Terminal Railroad Company, L.L.C. -- Acquisition**  
**and Operation Exemption -- Woodinville Subdivision**

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

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of the **Reply of Ballard Terminal Railroad Company, L.L.C. to King County, Washington, City of Kirkland, Washington, and Puget Sound Regional Transit Authority's Replies to Motion for Preliminary Injunction**, dated June 24, 2013.

One extra copy of the Motion and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas C. Paschalis  
Attorney for Ballard Terminal Railroad  
Company, L.L.C.

TCP/pj  
Enclosures  
cc: Parties on Certificate of Service

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.  
-- ACQUISITION AND OPERATION EXEMPTION --  
WOODINVILLE SUBDIVISION

DOCKET NO. AB-6 (SUB-NO. 465X)

BNSF RAILWAY COMPANY  
-- ABANDONMENT EXEMPTION --  
IN KING COUNTY, WA

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**BALLARD TERMINAL RAILROAD COMPANY, L.L.C.'S REPLY TO KING  
COUNTY, WASHINGTON, CITY OF KIRKLAND, WASHINGTON, AND PUGET  
SOUND REGIONAL TRANSIT AUTHORITY'S REPLIES TO MOTION FOR  
PRELIMINARY INJUNCTION**

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**ATTORNEYS FOR BALLARD TERMINAL  
RAILROAD COMPANY, L.L.C.**

Dated: June 24, 2013

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PRELIMINARY INJUNCTION**

Ballard Terminal Railroad Company, LLC ("Ballard"), by and through counsel and pursuant to 49 C.F.R. § 1114.28, hereby files its reply to King County, Washington ("King County"), City of Kirkland, Washington ("Kirkland"), and Puget Sound Regional Transit Authority's ("Sound Transit's") replies to Ballard's Motion for Preliminary Injunction. As Ballard will explain, the testimony presented by Ballard's opponents in their respective briefs opposing a preliminary injunction does not accurately portray all testimony relevant to the issues of (1) shipper interest in freight service on the Woodinville-Bellevue line (hereinafter the "Line"); and (2) Ballard's status as a bona fide petitioner. To the contrary, Ballard's opponents have presented limited, one-sided testimony that only became available after Ballard filed its Motion for Preliminary Injunction. Ballard is filing this reply for the purpose of briefly demonstrating that record is not complete and to urge the Board to refrain from ruling on

Ballard's Motion for Preliminary Injunction until comments on Ballard's petitions and Ballard's reply thereto are filed. All filings pertinent to Ballard's petitions are likely to be made by the end of July.<sup>1</sup>

### **BACKGROUND**

As addressed in Ballard's motion for leave to file this reply, Ballard's opponents took four depositions after the filing of Ballard's Motion for Preliminary Injunction. The deponents were (1) Ballard General Manager Byron Cole; (2) Eastside Community Rail, L.L.C. ("Eastside") Managing Director Douglas Engle; (3) Wolford Trucking and Demolition, Inc. ("Wolford Trucking") owner Bobby Wolford; and (4) CalPortland Company ("CalPortland") Aggregate Sales Manager Michael Skrivan.

Eastside leases operating rights to Ballard on an adjacent section of track from Snohomish, Washington, to Woodinville, Washington. It has also partnered with Ballard for the purpose of planning freight operations on the Line, meeting with potential shippers, communicating with public entities, and undertaking financial and logistical planning necessary to resume freight operations on the Line. Thus, Mr. Engle and Mr. Cole provided testimony on a wide range of issues, including their communications with potential shippers, and the financial and logistical underpinnings for the planned reactivation of freight service on the Line. A significant amount of relevant testimony on these subjects were ignored or mischaracterized by Ballard's opponents in their respective reply briefs.

For their part, Mr. Wolford and Mr. Skrivan were deposed by Ballard opponents because they are shippers who submitted letters expressing their desire for the reactivation of freight service on the Line. In their depositions, they offered testimony on the construction

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<sup>1</sup> As of the date of this filing, there are no set dates for the filing of comments and replies. The previous date for filing of comments was June 18, while the reply deadline was July 18. However, those deadlines were stayed pending the resolution of a discovery dispute.

boom occurring in and around Bellevue area, their ability to procure contracts to haul spoils and aggregate to and from construction sites in Bellevue, and their willingness and ability to ship such materials by rail on the Line, among other things. In their respective replies, King County, Kirkland, and Sound Transit subjectively assert, by reference to isolated excerpts of testimony, that Mr. Wolford and Mr. Skrivan do not have actual interest in shipping on the Line and, despite being prominent construction-industry businesses that move materials throughout the area, would be incapable of accessing the Line and incapable of procuring contracts for construction projects in the Bellevue area. In order to reach this conclusion, King County, Kirkland, and Sound Transit ignore testimony and substitute their own business judgment for that of Mr. Wolford and Mr. Skrivan.

### ARGUMENT

In proceedings before the Board, when one party introduces portions of deposition testimony into the record, another party may introduce countervailing portions of such testimony. Specifically, 49 C.F.R. § 1114.28 provides:

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken . . . *[i]f only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts . . . .*

(Emphasis added). As King County, Kirkland, and Sound Transit have introduced portions of Mr. Cole, Mr. Engle, Mr. Wolford, and Mr. Skrivan's deposition testimony, Ballard is entitled to introduce additional testimony to clarify the record and further the Board's understanding of the facts of this matter.

In this brief, Ballard will cite certain misrepresentations set forth by its opponents to highlight the degree to which they have distorted the record by presenting testimony out of context. In the interests of pragmatism, however, Ballard asks that the Board refrain from ruling on the preliminary injunction until all filings relating to Ballard's petitions are complete, which will likely occur at the end of July. At that time, the Board will have all substantive legal and factual arguments in available to it, and Ballard, in its reply to comments, will be able to respond to all contentions and facts presented by its opponents.

**A. Byron Cole and Douglas Engle Testimony**

King County and Sound Transit incorrectly assert that Ballard does not have the money to perform "significant maintenance, despite several outstanding signal or crossing issues" on the Woodinville-Snohomish line that it currently operates.<sup>2</sup> This is not an accurate summary of Mr. Cole's testimony. Rather, Mr. Cole testified that though the track is not Class 1 level, "we don't skimp on the maintenance of the grade crossing gates, lights, masts and all that stuff."<sup>3</sup>

While King County, Sound Transit, and Kirkland cite testimony from early in Mr. Cole's deposition suggesting that Ballard operates in the red, Mr. Cole later clarified that Ballard is "about breaking even or maybe come out a little bit on the plus side."<sup>4</sup> Though Mr. Cole advised a bankruptcy court judge that Ballard's financial condition had been "precarious," Mr.

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<sup>2</sup> See Reply of King County, Washington and Central Puget Sound Regional Transit Authority to Ballard Terminal Railroad Company, L.L.C.'s Motion for Preliminary Injunction (hereinafter "King County & Sound Transit's Reply") at 11.

<sup>3</sup> See Cole Dep. Trans. at 211 (Exhibit 1 hereto).

<sup>4</sup> See Cole Dep. Trans. at 83 (Exhibit 2 hereto). Mr. Cole also underestimated Ballard's 2012 revenue, which was not \$500,000. Rather, it was \$631,903.42. See BTR 5-11, marked "Confidential" (Exhibit 3 hereto).

Cole testified at the time of this statement, Ballard was not getting paid for freight on the Woodinville-Snohomish segment due to the bankruptcy proceedings involving its former lessor.<sup>5</sup> Now that the bankruptcy proceedings have concluded, Ballard has control of billings and the situation is “quite a bit better.”<sup>6</sup> Ballard’s opponents, predictably, failed to cite such testimony.

Ballard’s opponents repeatedly cite testimony that Ballard currently owns no property along the Line in an attempt to discredit Ballard’s status as a bona fide petitioner. In so doing, however, they shy away from the obvious, common-sense explanation: Ballard and Eastside would be unwise to purchase property along the Line until the present uncertainty is resolved and Ballard actually procures reactivation rights.<sup>7</sup> As discussed at deposition, Ballard and Eastside, and their potential shippers have been identifying potentially viable sites for transload operations in Bellevue.<sup>8</sup> Bobby Wolford testified that once reactivation becomes a reality, Wolford Trucking will have no difficulty procuring contracts, while Byron Cole stressed that Ballard and Eastside will be capable of rapidly funding track upgrades.<sup>9</sup> Regarding the acquisition of funding for track upgrades, Ballard’s opponents paint a dire, unrealistic picture as to the prospects of obtaining state funding for track upgrades, as significant amount of money is being invested in railroad infrastructure at this time.<sup>10</sup>

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<sup>5</sup> See Cole Dep. Trans. at 225-226 (Exhibit 4 hereto).

<sup>6</sup> Id.

<sup>7</sup> See Cole Dep. Trans. at 105, 141 (Exhibit 5 hereto).

<sup>8</sup> See Wolford Dep. Trans. at 96-97 (Exhibit 6 hereto); Skrivan Dep. Trans. at 53 (Exhibit 7 hereto).

<sup>9</sup> See Wolford Dep. Trans. at 94 (Exhibit 8 hereto); Cole Dep. Trans. at 84 (Exhibit 9 hereto).

<sup>10</sup> See April 11, 2013 email from Washington State Department of Transportation to Byron Cole reflecting, among other things, \$92 million in funding for track upgrades (Exhibit 10 hereto).

Similarly, Ballard's opponents seek to chastise Ballard for its inability to obtain an easement from Kirkland, Sound Transit, and King County to operate over the Line. Kirkland goes so far as to disingenuously assert that it would "step aside" for a carrier with a "credible proposal" for the reactivation of freight service.<sup>11</sup> There is no doubt that the public entities opposing reactivation in these proceedings, particularly Kirkland, are openly hostile to the resumption of freight service. Byron Cole discussed efforts to appeal to these entities for support, to no avail.<sup>12</sup> Mr. Engle testified that Kirkland City Manager Kurt Triplett and King County Council Member Jane Hague recently paid a personal visit to one potential shipper whom Ballard and Eastside had been communicating with, and that subsequently "all communications ceased after those visits."<sup>13</sup> At this time, Ballard intends to issue written discovery to gather evidence relating to visits that King County and Kirkland representatives have made to discourage potential shippers from supporting Ballard and Eastside. It will also issue discovery to obtain information regarding public statements of Ms. Hague indicating that King County would never support freight reactivation on the Line.<sup>14</sup>

Finally, Ballard's opponents make dissonant assertions with respect to the potential for excursion trains to be run on the Line after reactivation. King County and Sound Transit claim that Mr. Cole disavowed knowledge or interest in running excursion trains, while

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<sup>11</sup> Kirkland Reply at 20.

<sup>12</sup> See Cole Dep. Trans. at 100-102 (Exhibit 11 hereto).

<sup>13</sup> See Engle Dep. Trans. at 42-43 (Exhibit 12 hereto).

<sup>14</sup> See ECRR 1000 (Exhibit 13 hereto), whereby Kathy Cox reports to Douglas Engle that Ms. Hague has stated that "freight is a non-starter."

Kirkland claimed that Mr. Cole testified that Ballard would happily run excursion trains.”<sup>15</sup> This incongruity stems from King County, Kirkland, and Sound Transit’s attempts to exaggerate the testimony in different ways. Due to the confusion promulgated by Ballard’s opponents, the substance of Mr. Engle and Mr. Cole’s testimony on excursion trains merits clarification and an accurate accounting.

As a preliminary matter, Mr. Cole and Mr. Engle both testified that other entities would actually run any excursion trains on the Line. In exchange for providing train crews and track, Ballard and Eastside would profit from such a venture in the form of revenue and track upgrades.<sup>16</sup>

More importantly, Kirkland stretches the truth when it hypothesizes that “freight service was never the foundation for a profitable business.”<sup>17</sup> The implication that freight was not part of Ballard and Eastside’s plan when Mr. Engle first approached Kirk Triplett about use of the Line is plainly false. Mr. Engle’s initial emails and communications relating to the Line specifically emphasized plans to provide freight service for Safeway and construction-industry businesses interested in shipping to and from the Bellevue area.<sup>18</sup> When Mr. Engle and Mr. Triplett subsequently, and briefly, discussed foregoing freight plans in light of Kirkland’s hostility toward such service, Mr. Engle described the loss of freight as a “huge give” that he

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<sup>15</sup> King County & Sound Transit Reply at 9; Kirkland Reply at 7-8. Kirkland, when quoting Mr. Cole’s testimony that he would say the “heck with freight,” failed to mention that his comment was made facetiously. See Cole Dep. Trans. at 225 (Exhibit 14 hereto).

<sup>16</sup> See Cole Dep. Trans. at 171-172 (Exhibit 15 hereto); Engle Dep. Trans. at 56-58, 131-133 (Exhibit 16 hereto).

<sup>17</sup> Kirkland’s Reply at 6.

<sup>18</sup> See Engle email to Triplett (dated November 7, 2012) and Engle email to Williams (dated October 17, 2012) (collectively Exhibit 17 hereto).

briefly entertained in an unrequited effort to be agreeable.<sup>19</sup> Overall, Ballard and Eastside have always attempted to work collaboratively with public bodies in order to support multiple uses of the right of way, including freight, excursion trains, transit, and trails. However, freight is Ballard and Eastside's area of expertise, and it is the centerpiece of Ballard and Kirkland's plans for reactivation.<sup>20</sup>

### **B. Bobby Wolford Testimony**

Throughout his deposition, Mr. Wolford testified consistent with his support letter that he wants reactivation the Line so that he can haul spoils from construction projects in Bellevue. He stated that reactivation would benefit his business because Wolford Trucking could haul spoils cheaper and more efficiently by rail.<sup>21</sup> He testified that there are numerous projects in Bellevue that he intends to bid on when they are let.<sup>22</sup> While Ballard's opponents emphasize the Bobby Wolford has not shipped by rail in the past, Mr. Wolford testified that he had discussed the construction of spur track at his facility previously, and that having a spur track installed by Eastside upon the reactivation of freight service on the Line is both feasible and highly advantageous to his operations.<sup>23</sup>

Mr. Wolford, during deposition, made a comment to the effect of "it's all gobblygook," which Kirkland misrepresents as pertaining to Mr. Wolford's estimate of the amounts of spoils that require hauling from Bellevue in forthcoming years. As his testimony

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<sup>19</sup> See Engle Dep. Trans. at 196-198 (Exhibit 18 hereto).

<sup>20</sup> See Exhibit 16.

<sup>21</sup> See Wolford Dep. Trans. at 134-135 (Exhibit 19 hereto); see also Eastside spoils hauling assessments (Exhibit 20 hereto).

<sup>22</sup> See Wolford Dep. Trans. at 92-94 (Exhibit 21 hereto).

<sup>23</sup> See Wolford Dep. Trans. at 70-76, 130-131 (Exhibit 22 hereto).

indicates, Mr. Wolford was clearly expressing frustration with the long, overbearing, and harassing tenor of his deposition questioning.<sup>24</sup> Mr. Wolford explained that hauling by rail is cheaper than by truck, and that his estimate for the amount of spoils coming out of Bellevue is based on his 42 years of industry experience and knowledge of projects in the Seattle area. He explained that he collaborated with Ernie Wilson on the language of the letter he submitted to the Board in support of freight reactivation in order to verify the accuracy of all statements therein.<sup>25</sup>

**C. Michael Skrivan Testimony**

Mr. Skrivan testified that his company, CalPortland, is one of the five largest shippers of aggregate materials in the United States, and in many years is number one.<sup>26</sup> He further indicated that it has over 25 percent of the market in the Pacific Northwest.<sup>27</sup> Just like Bobby Wolford, he always keeps abreast of the construction market by meeting with people and gathering information in order to apprise himself of opportunities to ship aggregate materials.<sup>28</sup> His estimate as to the amount of aggregate needed in the Bellevue area was based on his own personal knowledge of the projects and construction boom that he anticipates lasting for several years.<sup>29</sup> Mr. Skrivan reviewed and meticulously edited his letter before signing off on it.<sup>30</sup>

Mr. Skrivan emphasized that rail service to Bellevue (and elsewhere) would be advantageous and that rail service provides him shipping capabilities that his competitors do not

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<sup>24</sup> Id. at 92 (Exhibit 21 hereto).

<sup>25</sup> Id. at 33, 137-138 (Exhibit 23 hereto).

<sup>26</sup> See Skrivan Dep. Trans. at 66 (Exhibit 24 hereto).

<sup>27</sup> Id.

<sup>28</sup> Id. at 25-26 (Exhibit 25 hereto).

<sup>29</sup> Id. at 68-69 (Exhibit 26 hereto).

<sup>30</sup> Id. at 30-32 (Exhibit 27 hereto).

have and new opportunities to sell aggregate.<sup>31</sup> Specifically, offering rail shipping would place him in great stead with his customers.<sup>32</sup> While CalPortland does not need a spur track to get aggregate to the Line, Mr. Skrivan testified, under an agreement of confidentiality, that he is aware of a viable site to connect to rail.

Overall, both Mr. Skrivan and Mr. Wolford expressed strong support for reactivating freight service on the Line so that they may grow their existing business and participate in the Bellevue construction boom in the forthcoming years. Both advocated on behalf of rail service because having such shipping capabilities would be unique and particularly beneficial for their competitiveness in the construction market. Overall, their testimony left no doubt that they have the will, the resources, and wherewithal to utilize the Line when freight services commence upon reactivation.

### CONCLUSION

While Ballard understands its opponents' desire to "spin" the deposition testimony in their favor, King County, Kirkland, and Sound Transit have grossly exaggerated the extent to which such testimony supports their contentions that (1) Ballard has no shipper interest in; and (2) Ballard is not a bona fide petitioner. As demonstrated briefly, but not exhaustively, herein, the testimony offered by Ballard's opponents does not adequately reflect the state of the evidence gathered in this action. In light of the fact that all comments and replies on Ballard's petitions will be before the Board by the end of July, Ballard proposes that the Board rule on the injunction after that time. By then, all parties' substantive, comprehensive arguments on the

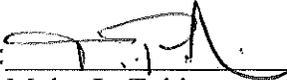
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<sup>31</sup> Id. at 20-21 (Exhibit 28 hereto).

<sup>32</sup> Id. at 41-51, marked "Confidential" (Exhibit 29 hereto).

merits of Ballard's petitions will be available to the Board, and it will be in a position to fully evaluate the contentions of all parties.

Respectfully submitted,

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

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**ATTORNEYS FOR BALLARD TERMINAL  
RAILROAD COMPANY, L.L.C.**

Dated: June 24, 2013

# EXHIBIT 1

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1 what they wanted to do and that's it. But I haven't been  
 2 up there to see.  
 3 Q. Mr. Cohen had asked you a lot of questions about  
 4 your maintenance of way over the freight segment?  
 5 A. This is all on that freight segment.  
 6 Q. Right. And I'm paraphrasing, you currently don't  
 7 have the funds to maintain the right of way to a level that  
 8 would get it to Class 1?  
 9 A. No, but we don't skimp on the maintenance on the  
 10 grade crossing gates, lights, masts and all that stuff.  
 11 Q. But you suggested that you prefer not to be  
 12 hanging by your fingernails on an expected level?  
 13 A. Yeah, yes.  
 14 Q. So if you're at that point, why didn't you just  
 15 raise your tariffs?  
 16 MR. MONTGOMERY: Object to the form. Object  
 17 to the extent it mischaracterizes earlier testimony.  
 18 THE WITNESS: Can I go?  
 19 MR. MONTGOMERY: Sure.  
 20 THE WITNESS: We're going to.  
 21 Q. (By Mr. Wagner) Okay.  
 22 A. They are still at GNP's initial tariff set forth  
 23 in like January 1, 2010.  
 24 Q. What do you intend to raise them to?  
 25 A. Burlington Northern takes about four and a half

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1 to six and a half percent a year, and has for about five  
 2 years, across the board on every commodity. It's way time  
 3 for us to do the same thing.  
 4 Q. One last set of questions. Mr. Wolford testified  
 5 that he had looked for trans-load facilities, possible  
 6 locations for trans-load facilities with Mr. Engle south of  
 7 NE 8th Street.  
 8 A. Okay.  
 9 Q. Are you aware of that?  
 10 A. Doug told me about that. And I've -- I parked  
 11 down there one day, because I couldn't find closer parking  
 12 on the day I was looking at the track structures and so  
 13 forth. And there is -- there could be some property, I  
 14 guess, available down there. It looked kind of like tight  
 15 spaces and small lots to me, but, you know, Doug and he are  
 16 long time residents of the Eastside and I'm from the other  
 17 side of Seattle here, so it's not something that I talked  
 18 to Wolford about, but I guess I should.  
 19 Q. So your petition only seeks to reactivate it to  
 20 the north side of NE 8th; is that correct?  
 21 A. As it stands now, that's -- yeah, I guess if we  
 22 could take another look at it and extend it down there. NE  
 23 8th is really, really busy street, and I imagine a lot of  
 24 people are happy the trains aren't running across there  
 25 anymore.

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1 Q. I imagine so.  
 2 MR. WAGNER: That's it. Thanks.  
 3 THE WITNESS: Okay.  
 4 MR. MARCUSE: I have a few questions.  
 5 MR. COHEN: Before you do, I need a very  
 6 short break, but I really need it.  
 7 (Recess taken from 5:36 to 5:41 p.m.)  
 8  
 9 EXAMINATION  
 10 BY MR. MARCUSE:  
 11 Q. Mr. Cole, I'm Andrew Marcuse with the King County  
 12 Prosecutor's Office representing King County. Thank you  
 13 for your patience today, and thank you for taking the time  
 14 to answer our questions fully.  
 15 A. Yeah.  
 16 Q. I think we've all learned a lot about railroads  
 17 today and I appreciate that. I respect it's very late in  
 18 the day. I will endeavor to keep my questions short and to  
 19 ask questions which I intend to be answerable with a yes or  
 20 no answer. How you choose to answer them is up to you.  
 21 A. That should make everybody laugh.  
 22 Q. I will keep them short as best I can.  
 23 A. I'll do my best with yes or no.  
 24 Q. I want to turn your attention very briefly back  
 25 to Exhibit 30, which is the lease and to the same paragraph

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1 that Mr. Cohen was asking about earlier, which is Page 7,  
 2 Paragraph 11.  
 3 A. "Right of First Refusal"?  
 4 Q. Yes, sir. I'm just going to read one sentence.  
 5 If you disagree with how I read it, please correct me.  
 6 There's a sentence in the middle there which says, "In  
 7 further consideration of this lease, in the event that  
 8 Byron Cole ceases to manage Ballard's day-to-day  
 9 operations, ECRR shall have the right, but not the  
 10 obligation, to acquire all of Ballard's operating and  
 11 ownership rights in the Woodinville-Bellevue Line, and the  
 12 assets thereon (milepost 23.8 to milepost 23.6)."  
 13 A. Mm-hm (answers affirmatively).  
 14 Q. So you see this lease Exhibit 30 is dated  
 15 April 26, 2013. Did Ballard have any rights in the  
 16 Woodinville-Bellevue segment of the line on April 26th?  
 17 MR. MONTGOMERY: Object to the extent it  
 18 calls for a legal conclusion.  
 19 THE WITNESS: The -- the reserve freight  
 20 easement, which I always thought was the most powerful and  
 21 valuable document in the whole deal, which is an easement  
 22 that covers the entire right of way that the Port owns from  
 23 certain milepost in Woodinville south Woodinville all the  
 24 way to the Snohomish River, is by far the most valuable  
 25 thing because it trumps everything.

# **EXHIBIT 2**

1 any beefs from the FRA when they do track inspections. It  
 2 exceeds the minimum standards and so forth.  
 3 I'd like it if we would be replacing some ties  
 4 next year.  
 5 Q. Do you have plans to do that?  
 6 A. No, kind of depends on the money. I tasked Doug  
 7 to go get some money from the state. It's there. Quit  
 8 spending it on Talgo trains. Get back to what you were  
 9 supposed to do, to support the short line network. They  
 10 had a plaque on the wall at one time that said, our job  
 11 here is to preserve the existing freight rail network in  
 12 the state of Washington. They've -- somebody threw out the  
 13 plaque, and it's not a very big piece of what they do these  
 14 days. They're all excited about the Talgos. And that's  
 15 another story.  
 16 Q. So is Ballard Terminal Railroad currently losing  
 17 money on the freight segment operation?  
 18 MR. MONTGOMERY: Objection; foundation.  
 19 THE WITNESS: We're about breaking even or  
 20 maybe come out a little bit on the plus side.  
 21 Q. (By Mr. Cohen) That's based on the comparison  
 22 between the cost you listed in Exhibit 26 and your  
 23 revenues?  
 24 A. Yeah, I mean, it's in -- you know, a big piece of  
 25 the cost picture is the diesel fuel, and things like that.

1 We don't have much control over them. But diesel fuel has  
 2 been sort of stable here for a while. Employees are happy  
 3 and we haven't given them a raise for a few years. So  
 4 there's a lot of pieces to the whole thing. I'm not giving  
 5 up on it.  
 6 We can -- but the other two railroads,  
 7 essentially Meeker, we can afford to carry this thing a  
 8 little bit. But please, let us go to Bellevue so we can  
 9 make some serious money and fix the whole damn thing. We  
 10 won't need any grant.  
 11 Q. We'll talk about Bellevue this afternoon.  
 12 A. I hope so.  
 13 Q. I just want to know your statement that your  
 14 breaking even or a little better is based on the summary of  
 15 costs shown on Exhibit 26?  
 16 MR. MONTGOMERY: Object to the form.  
 17 THE WITNESS: For this.  
 18 Q. (By Mr. Cohen) That's Exhibit 26 you're looking  
 19 at?  
 20 A. Yeah.  
 21 Q. Is the answer to my question yes?  
 22 MR. MONTGOMERY: Same objection.  
 23 THE WITNESS: Well, it doesn't have any  
 24 money in there for maintenance. It has maintenance on the  
 25 locomotive and the caboose. It doesn't have anything for

1 the track. But saying we have responsibility for the track  
 2 doesn't relieve Doug from the job of trying to find some  
 3 money so that I can get the job done.  
 4 Q. (By Mr. Cohen) Right.  
 5 A. So we'll see how it works.  
 6 Q. All right. So there's no money in these costs  
 7 for maintenance of --  
 8 A. No.  
 9 Q. -- track?  
 10 A. No.  
 11 Q. There's no money for payments to Ballard  
 12 Industrial Company, right?  
 13 A. Well, it doesn't -- yeah, it doesn't talk about  
 14 the income stream. But we are getting the full income  
 15 stream, nobody is stiffening it off, not Tom Payne and not  
 16 the bankruptcy trustee, so we're getting 100 percent of  
 17 that. I'll say, it's a big pain in the rear to collect.  
 18 It's a very obtuse -- it's made for giant railroads.  
 19 Q. And the income stream is, what was the number you  
 20 gave me?  
 21 A. So we get, right now, we get 446 --  
 22 Q. \$446 --  
 23 A. -- per car.  
 24 Q. -- per car, times 213 cars in 2012?  
 25 A. Yeah.

1 Q. All right. Is there any other income?  
 2 A. Oh, we've had people talk to us about storing  
 3 cars. We have a couple of great places to store cars. We  
 4 store cars on our other two railroads. So you can make  
 5 some money there.  
 6 Q. Is anybody paying you right now to --  
 7 A. Not at the moment.  
 8 Q. -- store cars?  
 9 A. I haven't had any. I've gotten a lot of calls  
 10 and I've been really too busy to hound them back to make  
 11 that happen. But that's an easy thing with no investment.  
 12 It's just empty cars that show up on the interchange and  
 13 you find a side track to park them on.  
 14 Q. So any other income?  
 15 A. Can't think of any other sources, actually,  
 16 beyond that.  
 17 Q. All right. And that cost estimate on Exhibit 26  
 18 doesn't include any payments to the Port?  
 19 A. Right.  
 20 MR. MONTGOMERY: Asked and answered.  
 21 Q. (By Mr. Cohen) Doesn't include any payments to  
 22 Eastside Community Rail?  
 23 MR. MONTGOMERY: Asked and answered.  
 24 Q. (By Mr. Cohen) Right?  
 25 A. That's correct.

**EXHIBIT 3**  
**“Redacted”**

# EXHIBIT 4

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1 went on hold for a whole year. And all of 2009 went by and  
 2 we finally started running the first train in January of  
 3 2010. And been doing it since.  
 4 Q. Okay.  
 5 A. That's the story.  
 6 Q. So let me add it up, you've been working in or  
 7 around railroads for 14, 26 -- 19 --  
 8 A. Nineteen --  
 9 Q. '70.  
 10 A. Till now.  
 11 Q. That would be 43 years?  
 12 A. I guess so, yeah. 30 and 13. Look, still got  
 13 all these fingers.  
 14 Q. Mr. Cole, did you expect that your communication  
 15 with your lawyers would be confidential?  
 16 A. Yes.  
 17 Q. Did you expect that your communication with your  
 18 lawyers and Eastside Community Rail would be confidential?  
 19 A. Yes.  
 20 Q. Do you think you could make operating freight on  
 21 the Woodinville to Bellevue line profitable?  
 22 A. It depends how many of the elements that we -- we  
 23 get come to fruition. But, yes, the business model is  
 24 pretty darn good from the spoils transportation and  
 25 aggregate inbound. Those are two pretty big deals. And

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1 so, I think that the line could be profitable.  
 2 MR. MONTGOMERY: See, I'm flipping past page  
 3 after page.  
 4 Q. (By Mr. Montgomery) Just very small point,  
 5 response to something Mr. Cohen asked you, have you tried  
 6 to contact General Mills recently?  
 7 A. No.  
 8 Q. Has somebody at your company?  
 9 A. James. I asked my operations manager to call  
 10 them, because his job is to talk to -- to the shippers, the  
 11 receivers, to Burlington Northern, Where's the cars, when  
 12 will they be here? All those things. And so it's right  
 13 down his alley. And he tried a couple times, and I don't  
 14 think he -- I don't remember getting any feedback from him  
 15 at all as to what was going on. I think people left us  
 16 messages and no one returned his call, so it didn't yield  
 17 anything.  
 18 Q. Based on your 43 years being in or around the  
 19 railroad business, did you think the \$10 million estimate  
 20 to replace the five plus miles track if Kirkland pulled it  
 21 out is reasonable?  
 22 A. It seems like it is. It seems like it is. I  
 23 think if we did it in today's market, we might not be able  
 24 to buy used rail, for example. We might have to buy new  
 25 rail. But if we did, and -- if the thing was all ripped

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1 out, then probably use concrete ties and maybe even run  
 2 welded rail. And would go together faster using those two  
 3 things. And so, even though they cost a little bit more,  
 4 it's a better deal. I think it's somewhere in the  
 5 ballpark.  
 6 Q. Mr. Cohen was asking you questions about an  
 7 e-mail by Mr. Engle that talked about the freight business  
 8 keeping it or not keeping it. And asked you, I believe, if  
 9 you would abandon the freight line. Do you remember that  
 10 line of questions?  
 11 A. I said, Woopie, if we can make enough money with  
 12 the excursion train, is that what you're talking about?  
 13 Q. Yes, you said, quote, I'd probably say the heck  
 14 with the whole freight business. Do you remember that?  
 15 A. Yeah, I think it would be fun to just roll in the  
 16 dough.  
 17 Q. Let the record reflect, you're laughing mightily  
 18 now. Were you being facetious?  
 19 A. I was essentially. It's getting to be a long day  
 20 then, it's even longer now. I don't -- I don't see that  
 21 script anywhere.  
 22 Q. Just to make sure the record is clear and it  
 23 probably is, I may have not caught it. But in your letter  
 24 to Judge Lynch, which was Exhibit 38, Mr. Cohen was asking  
 25 you about the comment that your financial position becomes

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1 more precarious every day. At that point in time, were you  
 2 not getting paid?  
 3 A. Yeah.  
 4 Q. Why is that?  
 5 A. Well, I mean we had two railroads, the Ballard  
 6 Terminal and the Meeker Southern, they were running  
 7 normally and producing income above expenses. But the  
 8 freight business over here between Woodinville and  
 9 Snohomish was just a drain because we weren't, for most of  
 10 three years, we weren't getting any money. And then the  
 11 bankruptcy judge took over, at least we started getting  
 12 paid some, but he never was able to pay us the full amount.  
 13 Q. Or timely?  
 14 A. Or timely, yeah, I got about maybe three total  
 15 payments from him. He's a nice guy, I didn't take him to  
 16 task for it. He had a thankless job. He was probably glad  
 17 when it was done.  
 18 But now, we have control of that. We do the  
 19 invoicing and the payments are made directly to us, so  
 20 that's quite a bit better. It's still a cumbersome system.  
 21 We should become a handling carrier, I'm trying to address  
 22 that with Burlington Northern. Takes forever to get paid,  
 23 I mean like 60 days.  
 24 Q. It's predictable?  
 25 A. It's predictable?

# **EXHIBIT 5**

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1 I had hoped sometime maybe we can make a deal  
 2 with Redmond to put the tracks back. The tracks are all in  
 3 a big pile behind a cyclone fence in downtown Redmond, so  
 4 are the signals.  
 5 Q. So Sound Transit also owns a little more than a  
 6 mile of the line. Have you approached --  
 7 A. I didn't know that.  
 8 Q. I'm sorry?  
 9 A. I don't know that that's the case. Where would  
 10 that be, sort of?  
 11 Q. Just north of NE 8th. So --  
 12 A. Is that outside the city limits of Redmond, we're  
 13 talking?  
 14 Q. We're talking about the line --  
 15 A. Okay.  
 16 Q. -- between Woodinville and Bellevue, right.  
 17 Have you approached Sound Transit about buying a  
 18 freight easement on their segment of the line?  
 19 A. No. But if -- I mean, first thing is to see what  
 20 happens here with Kirkland. And if we're successful there,  
 21 then, yes, I would go and try to make some contacts and see  
 22 what their plans are. I've always -- all I know is what is  
 23 in the Times paper, drawings from time to time and some  
 24 text, and the timeline for that is a few years down the  
 25 road.

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1 So that doesn't mean we shouldn't try to see what  
 2 kind of a deal could be negotiated, by any means, but it  
 3 does mean that it's not, like, an emergency at the moment.  
 4 Q. So you have not approached King County, Sound  
 5 Transit or Kirkland in efforts to acquire a freight  
 6 easement?  
 7 A. Well, Doug Engle has tried it. And it's not --  
 8 sometimes when Doug puts together these meetings, I attend.  
 9 And sometimes I don't. But he's worked hard, harder than I  
 10 have, to try to make those things happen.  
 11 Q. But he's not with Ballard Terminal Railroad, is  
 12 he?  
 13 A. I'm not sure that makes that much difference.  
 14 Q. Well, it's Ballard that's seeking to reactivate  
 15 rail service, correct?  
 16 A. That's right. We are people with the NPC and  
 17 ends.  
 18 Q. What are those?  
 19 A. Those are the rights to run short lines.  
 20 Q. Right. And so you have made no effort to acquire  
 21 property rights on the line?  
 22 A. Is that a bad thing, from your view?  
 23 Q. I'm just asking the question. You've made --  
 24 A. I haven't, but today while we've been sitting  
 25 here, I've probably spent 10,000 bucks on gravel that I

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1 don't know where it went because I wasn't down there at  
 2 Meeker, so I got lots of things to do. I can't put all my  
 3 effort into this Eastside project. But I'm here and doing  
 4 this because this is one of the most key steps right now.  
 5 The track would be gone if we hadn't done this. I'd be  
 6 looking at in a pile at NK down by Puyallup and buying it  
 7 back to use on our other railroads.  
 8 Q. So has Ballard reserved any money that you could  
 9 use to acquire property interest in the line?  
 10 A. I haven't, but if I could make a deal to get  
 11 property interest in the line, I think that the  
 12 fund-raising would not be that hard.  
 13 Q. Okay.  
 14 A. But it's no sense worrying about funds. The  
 15 first thing we have to do is to stop Kirkland from ripping  
 16 the tracks up. We were like -- we only got it stopped  
 17 about one day before it would have been tearing into. We  
 18 do business with NK, I know those guys. They're good guys,  
 19 they have good quality used track. This didn't allow them  
 20 to stockpile anymore in Tacoma.  
 21 Q. Okay. Let me refer you to Exhibit 40, that's  
 22 your verified statement.  
 23 A. Yeah.  
 24 Q. And on Page 2 of Exhibit 40 --  
 25 A. Okay.

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1 Q. -- bottom of the page, you state, "We have been  
 2 engaged in active discussions with several shippers  
 3 interested in restoring rail service via the  
 4 Woodinville-Bellevue line segment."  
 5 You see that statement?  
 6 A. I see that.  
 7 Q. So I'm going to ask you about CalPortland and Bob  
 8 Wolford in a minute. I know about those two.  
 9 A. Okay.  
 10 Q. Tell me about all the others. Who else have you  
 11 been engaged in active discussions with?  
 12 A. We're not talking about hundreds, but on our  
 13 other lines, we have some trans-loaders. Trans-loader is  
 14 someone who has a warehouse or an open yard, hard surfaced  
 15 yard, maybe a security fence around it, and has a rail  
 16 siding where stuff from all over the country can be shipped  
 17 by rail, which is cheaper per mile than by truck. Can be  
 18 shipped by rail into the Puget Sound region, unloaded from  
 19 the railcars, warehoused inside or outside, depending on  
 20 the needs of the product, and then delivered the last few  
 21 miles. In the trucker's view, the last few miles is at  
 22 least 150, if not 200 miles. That's a short haul for them  
 23 these days on the freeways.  
 24 So customer whose product is in the train gets it  
 25 moved 95 percent of the way across the country at the

1 a key player in this whole thing. And we get along really  
2 well. Look, there's no sense both of us making these calls  
3 and we don't -- I certainly don't have enough time to make  
4 them all. I'm happy to have him pursue these things, he  
5 has good judgment.

6 Q. (By Mr. Cohen) So from the trans-loading  
7 facility that doesn't exist yet --

8 A. In --

9 Q. -- in Bellevue?

10 A. In Bellevue.

11 Q. Yes. Aggregate would then go to a ready-mix  
12 plant that does exist somewhere else in Bellevue?

13 A. I would say somebody that knows the ready-mix  
14 market there would be able to tell you where they all were,  
15 just like some alcoholic can tell you where every tavern is  
16 in Ballard. But all -- but all of the ready-mix companies,  
17 you think of them as having the trucks with the drums and  
18 all this, but they also have just plain dump trucks and  
19 dump trucks with trailers. Because they have to get the  
20 aggregate somehow. So they're sending out an empty truck  
21 and it goes all the way to Glacier down on the Duwamish  
22 River, and you get 30 tons in the truck and 30 tons in the  
23 trailer and drives back on the same roads we all use to get  
24 to Bellevue, and it's not much fun. He's lucky to get  
25 three trips in a day.

1 in. So their costs to gather this piece of traffic is  
2 pretty darn low.

3 And then they would say, all right, let's see  
4 where it is. We'll figure out a rate and tell you it's so  
5 much a carload to get to Snohomish. And then we would just  
6 use our existing tariff to haul it to Woodinville and  
7 figure out what it's going to cost us to actually get over  
8 the next hill to Bellevue.

9 It's a little premature to ask about rates down  
10 to the last penny, but I imagine Doug has figured it out.  
11 Even if he just used the number that doubled the rate we  
12 have now, because we're doubling the distance, we got a  
13 hill on both of those to go over. Runs up the fuel bill, I  
14 can tell you that. So --

15 Q. Any written communications between Ballard and  
16 CalPortland about the service you're describing?

17 A. No. Doug may -- well, at least there was this  
18 letter done and I'm not sure if they have any other e-mails  
19 or not.

20 Q. Okay. Ballard doesn't have an off-loading  
21 facility in Bellevue?

22 A. How would we have one? How would we -- we can't  
23 get there. We're trying.

24 Q. And CalPortland doesn't have an off-loading  
25 facility in Bellevue?

1 And so they see it as a 10-block run to the  
2 ready-mix plant. They say, holy cow, this is a pretty good  
3 deal. I think that part of it would be, if there's  
4 ready-mix elements, sand and two or three sizes of gravel,  
5 available right in downtown, I can't imagine that they're  
6 going to drive to Harbor Island anymore or up the Duwamish  
7 River.

8 Q. So has CalPortland asked Ballard Terminal  
9 Railroad for a rate quote to run from their Everett  
10 facility to Bellevue?

11 A. Well, we wouldn't be operating that -- that  
12 train. This would come -- there would be a Burlington  
13 Northern link, and I'm pretty sure by now, that Doug has  
14 worked with the Burlington Northern, they know about this  
15 scheme. We told them about it. They were interested in  
16 it. I'm pretty sure there wouldn't be a tariff in the  
17 standard computer program for that product between those  
18 two originations and destination. So Burlington Northern  
19 is going to have to think for a few minutes what they can  
20 do it for.

21 But there's a local train out of Everett that  
22 runs up the line to Marysville and, heck, it goes clear out  
23 to Anacortes and back every day. So it could drop off and  
24 pick up easy. It's going right by there. It's like five  
25 minutes to reach in there and switch empties out and loads

1 MR. MONTGOMERY: Asked and answered.

2 THE WITNESS: I don't know. They have a  
3 conventional truck served yard where they unload trucks and  
4 then a front-end loader pushes them into the ends or  
5 something. And then other people's trucks come there and  
6 get loaded up. You can see that's a complete waste, isn't  
7 it. I mean if that's --

8 Q. (By Mr. Cohen) Yes. So let me clarify,  
9 CalPortland doesn't have an off-loading facility on the  
10 line in Bellevue?

11 A. Right. I don't know if they have one at all. It  
12 may very well be that the Cadman and other ready-mix people  
13 just drive all the way -- they have choices. They have  
14 CalPortland and right next to them is another cement  
15 company. What the heck is the name of it? Anyway, there's  
16 about three places you can buy rock, the aggregate's right  
17 there in a cluster on the Duwamish between Spokane Street  
18 and First Avenue South bridges. So I imagine most of those  
19 places, bring your own trucks, figuring that's somehow  
20 cheaper, or they contract the trucks.

21 Q. Do you know where the aggregate that CalPortland  
22 would be shipping by barge to Everett would be coming from?

23 A. Somewhere on the rim of Puget Sound.

24 Q. It's a big place?

25 A. It is. I have no idea where they get it from.

# **EXHIBIT 6**

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1 currently targeting?  
 2 A. That I'm aware of, no, but my estimator would  
 3 know. You have to understand my role in my company. I  
 4 work in the yard.  
 5 Q. Just to clarify, is your company currently  
 6 working on a project for 520?  
 7 A. Subcontracted, I believe. I'm not sure. I have  
 8 20 trucks, they work every day, there's different  
 9 contractors. Again, my superintendent and estimator would  
 10 know.  
 11 Q. Is your estimator -- who are you referring to  
 12 when you refer to your estimator?  
 13 A. Scott Miller, Ollie, Jack, that's my group that  
 14 runs my company.  
 15 Q. So three individuals?  
 16 A. Yes.  
 17 Q. Okay. When you refer to your superintendent, who  
 18 are you referring to?  
 19 A. Scott Miller, estimator.  
 20 Q. So is it accurate that you yourself do not know  
 21 whether your company --  
 22 A. That's accurate, yes.  
 23 Q. Let me finish, please.  
 24 Is it accurate that you yourself do not know  
 25 whether your company is working on a project on 520?

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1 A. That's an accurate. Yes.  
 2 Q. Okay. For the project that you referenced on  
 3 I-405, that the -- what was the contractor's name again?  
 4 A. Merlino. You just asked if there's current  
 5 construction on 405, yes, Merlino has a huge contract.  
 6 Q. Do you know where the construction is taking  
 7 place?  
 8 A. It's like at 116th, north. I don't know exactly  
 9 where, no. It's on 405, though. It's public record. We  
 10 subcontract to him sometimes.  
 11 Q. But not for this project that's currently  
 12 underway?  
 13 A. I don't know where my trucks go. I have  
 14 dispatchers that dispatch them. Possibly working for him.  
 15 Q. All right. Can you describe to me, if you were  
 16 to, if your company were to work on removing spoils from  
 17 construction projects on 405, by rail, where would the  
 18 railcars go?  
 19 A. Where would they stage? In Bellevue.  
 20 Q. Do you know where in Bellevue?  
 21 A. We have a place in mind. We haven't nailed it  
 22 down yet because we're not sure of the rail.  
 23 Q. What is that place?  
 24 A. It's over by Home Depot. By Mutual Materials.  
 25 Q. Do you have an address?

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1 A. Not in my head. I don't know. I could drive you  
 2 there. I don't know the address.  
 3 Q. Do you have a cross street in mind where the Home  
 4 Depot is?  
 5 A. It's about four blocks from NE 8th.  
 6 Q. Okay. And is that property adjacent to the rail  
 7 line?  
 8 A. Yes. There's a rail line on it, of course.  
 9 Q. Okay. Do you know who owns this property?  
 10 A. No.  
 11 Q. Does your company own this property?  
 12 A. No, Doug Engle was going to secure all this. As  
 13 soon as we know the rail's stand, we'll fine tune all this.  
 14 Q. So do you know if Doug Engle owns the property?  
 15 A. No, he doesn't own the property.  
 16 Q. Do you know if Eastside Community Rail owns the  
 17 property?  
 18 A. No. It's some other property owner. We would do  
 19 a sublease to them.  
 20 Q. Do you know if Ballard Terminal Railroad owns  
 21 this property?  
 22 A. No, they don't own the property.  
 23 Q. Does Byron Cole own this property?  
 24 A. No.  
 25 Q. Do you know what this property is currently being

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1 used for?  
 2 A. No. Doug Engle knows. He's the one that brought  
 3 it up.  
 4 Q. Do you know how large a piece of property this  
 5 is?  
 6 A. No.  
 7 Q. Have you ever seen this property?  
 8 A. No. I know the general area it's in.  
 9 Q. Okay. I want to give you what's been marked as  
 10 Exhibit 9.  
 11 A. It's not on here.  
 12 Q. What is not on here? We're referencing  
 13 Exhibit 9.  
 14 A. The staging area, if that's what you're going to  
 15 ask me.  
 16 Q. I was. Do you know --  
 17 MR. WAGNER: Off the map.  
 18 THE WITNESS: It's south of here.  
 19 Q. (By Mr. Ferguson) It's -- when you say south of  
 20 here, you mean it is south of NE 8th?  
 21 A. South of your map, yes, doesn't pertain, sir.  
 22 (Speaking to himself)  
 23 THE COURT REPORTER: Sorry, you have to  
 24 speak up if I'm going to get this down.  
 25 MS. ALVORD: It's okay.

# **EXHIBIT 7**

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1 across. You can see the Home Depot down, I believe --  
 2 Q. Would you put a red X by it.  
 3 A. I believe it's right in this area here  
 4 (indicating).  
 14:13:44 5 Q. Right where 520, 520 and 405?  
 6 A. Right.  
 7 Q. When you say "rail switchyard," what does  
 8 that mean?  
 9 A. I don't know. That's my interpretation of  
 14:13:53 10 it. I'm not a rail expert.  
 11 Q. That's why I'm asking what do you think it  
 12 is?  
 13 A. There's a lot of warehouses in there that are  
 14 not being used and there's a lot of rail lines going  
 14:14:04 15 in and out of and there's a lot of different switches.  
 16 Q. Why do you say it's grossly underused?  
 17 A. A lot of abandoned warehouses and property in  
 18 there, so it looks like there could be some  
 19 opportunities.  
 14:14:17 20 Q. Looking at this map of the line, does this  
 21 help you determine whether or not to your knowledge  
 22 CalPortland owns any property along the line?  
 23 A. It really doesn't help me, because I'm not  
 24 involved in that part of our business. I just don't  
 14:14:41 25 know land.

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1 Q. I'm going to follow up with the same kind of  
 2 question, but are you aware of any land that  
 3 CalPortland leases along the rail line?  
 4 A. I am not.  
 14:14:51 5 Q. Or any agreements to make use of any land  
 6 along the line?  
 7 A. I am not.  
 8 Q. Okay. In connection with your consideration  
 9 of what Eastside Rail is proposing, do you know if you  
 14:15:03 10 or anyone else at CalPortland has looked at locations  
 11 where aggregate or other materials could be off-loaded  
 12 from a train onto trucks for delivery to a customer?  
 13 MR. STONE: Object to the form of the  
 14 question.  
 14:15:16 15 Q. Let me back up and ask you this: One of the  
 16 things you said was that the rail could provide an  
 17 opportunity for CalPortland to sell aggregate.  
 18 A. Correct.  
 19 Q. I assume that the aggregate would be  
 14:15:29 20 transported from one of CalPortland's facility down  
 21 the line to someplace, and then I assume that it would  
 22 have to be removed from railcars to be delivered to  
 23 the customer's site. Is that a fair assumption?  
 24 A. Yes.  
 14:15:43 25 Q. My question is whether you or anyone at

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1 CalPortland to your knowledge looked at where you  
 2 might be able to transload the material from the  
 3 railcars to trucks or however else they were going to  
 4 be delivered to the customer.  
 14:15:57 5 A. No.  
 6 Q. And then the other thing you mentioned in the  
 7 letters was the excavation spoils coming out of the  
 8 projects. Did you look at any locations where those  
 9 spoils could be transloaded from trucks, or whatever,  
 14:16:14 10 onto railcars to be transported out of the area?  
 11 MR. STONE: Object to the form of the  
 12 question, reference to the letters.  
 13 Q. This is the March 25th and March 19th, 2013,  
 14 letters that we previously marked.  
 14:16:30 15 MR. STONE: Do you want to look at these  
 16 letters?  
 17 A. I've only had one involvement with Mr. Tom  
 18 Payne and the Eastside corridor project on 520 that we  
 19 did not get involvement with. He told me he could  
 14:16:46 20 create a loading location in that same area near 520  
 21 and 405 in that switchyard that he could secure to  
 22 bring spoils, get them on railcars, and get them up to  
 23 Snohomish. That's my only conversation I've had with  
 24 somebody that it was possible.  
 14:17:08 25 Q. Okay. Go ahead.

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1 A. So that just opened my mind up to the  
 2 possibility.  
 3 Q. That was Tom Payne told you that in the 2010  
 4 timeframe?  
 14:17:18 5 A. In that area. I'm not good with exact dates;  
 6 so...  
 7 Q. Did Mr. Engle or Mr. Wilson make any similar  
 8 representations to you in the course of your  
 9 conversations in late 2012 or 2013?  
 14:17:34 10 A. Nothing specific, no.  
 11 Q. Other than hearing that from Mr. Payne, have  
 12 you done any work to verify that there really is space  
 13 to do that kind of work, to do the transloading?  
 14 A. No. Just walking in that area with  
 14:17:50 15 Mr. Payne.  
 16 Q. Okay.  
 17 (Exhibit-57 marked.)  
 18 Q. I've handed you what we've marked as  
 19 Exhibit-57. This is an email. The top of the chain  
 14:18:19 20 appears to be from you to Mr. Engle dated April 14,  
 21 2013. Do you recognize this email?  
 22 A. I think it's in response to me not being able  
 23 to make a meeting in Everett.  
 24 Q. Okay. The second email down from Mr. Engle  
 14:18:39 25 to you also dated April 14 -- I'm sorry. The second



# **EXHIBIT 8**

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1 the Surface Transportation Board?  
 2 A. I believe that was his intent.  
 3 Q. When you say "his," who do you mean?  
 4 A. Ernie.  
 5 Q. Okay.  
 6 A. He's better at writing letters than me.  
 7 Q. But that is your signature on the last page?  
 8 A. Yeah.  
 9 Q. Okay. If you turn to Page 2 of this letter,  
 10 please. It's Page 29 on the lower right-hand corner. The  
 11 middle page. Referencing the first sentence of the first  
 12 full paragraph on this letter, would you read that first  
 13 sentence out loud?  
 14 A. "There are several major highway and secondary  
 15 roadway projects scheduled in the area of Bellevue,  
 16 Washington over the course of several years. These  
 17 projects, plus multiple new high-rise buildings, will  
 18 necessitate export of hundreds of thousands of cubic yards  
 19 of excavated materials, building demolition waste and  
 20 roadway grading spoils."  
 21 Q. Continue please.  
 22 A. "We are currently targeting projects on 405, 520  
 23 in the 2013, '14 construction seasons. A future light rail  
 24 system with a tunnel and 'cuts' within one mile of the  
 25 railroad will also require substantial movements of

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1 spoils."  
 2 That's going on currently on Highway 522 right  
 3 now. They're removing spoils that could be utilizing  
 4 railroad now.  
 5 Q. We'll come to it. If you could finish reading  
 6 the paragraph.  
 7 A. "We estimate the volume of these projects at over  
 8 three million cubic yards of construction spoils over the  
 9 next several years."  
 10 Q. Thank you.  
 11 MR. MONTGOMERY: Did you skip a sentence?  
 12 THE WITNESS: It's all gobbledygook. Who  
 13 cares.  
 14 Q. (By Mr. Ferguson) When you say it's  
 15 gobbledygook, what do you mean?  
 16 A. You're overbearing. All of this is gobbledygook  
 17 to me. I'm a cut and dry guy, just want the railroad left  
 18 in so we can save the taxpayers some money transporting  
 19 dirt.  
 20 Q. Okay. You've said in this letter that you are  
 21 currently targeting projects on I-405 and SR520 for the  
 22 2013 and 2014 construction seasons?  
 23 A. Yes.  
 24 Q. Is that correct?  
 25 A. That's correct.

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1 Q. Are there particular projects that you are  
 2 targeting?  
 3 A. Not yet, they haven't been let. The contracts  
 4 haven't been let, but when they do, we'll be there to  
 5 service them if the rail is there.  
 6 Q. When you say you're targeting projects, what do  
 7 you mean?  
 8 A. They're in the future, when the contract is let,  
 9 we will bid on it.  
 10 Q. Are there particular projects that you have in  
 11 mind, though?  
 12 A. Moving spoils out of the -- by Lincoln Square is  
 13 our biggest one in Bellevue.  
 14 Q. But is there a particular highway project that  
 15 you are specifically planning to bid on?  
 16 A. We'll give prices to all of them. Right now,  
 17 they're not let yet.  
 18 Q. But how do you -- do you know whether there are  
 19 any projects planned?  
 20 A. According to the papers, I read them, you read  
 21 them, yes, there's big projects in the works for the city  
 22 of Bellevue.  
 23 Q. For I-405, are there particular areas where  
 24 construction is to take place that you are considering  
 25 bidding on?

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1 A. Merlino just got a huge contract for 405. We  
 2 would give him dirt prices if we had a rail.  
 3 Q. Merlino, you said?  
 4 A. Merlino Construction just did a huge, I don't  
 5 know how many million project for 405. It's still going  
 6 on.  
 7 Q. Merlino is a contractor?  
 8 A. Merlino Construction, yeah.  
 9 Q. Has Merlino Construction approached you about  
 10 working with it on a highway project?  
 11 A. No, because we don't have our rail in place yet.  
 12 Q. Are there any other projects on I-405 other than  
 13 the contract that Merlino has that you are targeting?  
 14 A. I'd have to talk to my superintendent and  
 15 estimator. It's not my -- I don't run that part of my  
 16 company.  
 17 Q. Are there projects on 520 that your company is  
 18 targeting?  
 19 A. Yeah, we work with Scarsella Construction,  
 20 they're currently doing one on 520.  
 21 Q. You are currently working on a project for  
 22 highway 520?  
 23 A. Scarsella Construction is, and we subcontract to  
 24 them, yes.  
 25 Q. Are there other projects on 520 that you are

# EXHIBIT 9

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1 any beefs from the FRA when they do track inspections. It  
 2 exceeds the minimum standards and so forth.  
 3 I'd like it if we would be replacing some ties  
 4 next year.  
 5 Q. Do you have plans to do that?  
 6 A. No, kind of depends on the money. I tasked Doug  
 7 to go get some money from the state. It's there. Quit  
 8 spending it on Talgo trains. Get back to what you were  
 9 supposed to do, to support the short line network. They  
 10 had a plaque on the wall at one time that said, our job  
 11 here is to preserve the existing freight rail network in  
 12 the state of Washington. They've -- somebody threw out the  
 13 plaque, and it's not a very big piece of what they do these  
 14 days. They're all excited about the Talgos. And that's  
 15 another story.  
 16 Q. So is Ballard Terminal Railroad currently losing  
 17 money on the freight segment operation?  
 18 MR. MONTGOMERY: Objection; foundation.  
 19 THE WITNESS: We're about breaking even or  
 20 maybe come out a little bit on the plus side.  
 21 Q. (By Mr. Cohen) That's based on the comparison  
 22 between the cost you listed in Exhibit 26 and your  
 23 revenues?  
 24 A. Yeah, I mean, it's in -- you know, a big piece of  
 25 the cost picture is the diesel fuel, and things like that.

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1 We don't have much control over them. But diesel fuel has  
 2 been sort of stable here for a while. Employees are happy  
 3 and we haven't given them a raise for a few years. So  
 4 there's a lot of pieces to the whole thing. I'm not giving  
 5 up on it.  
 6 We can -- but the other two railroads,  
 7 essentially Meeker, we can afford to carry this thing a  
 8 little bit. But please, let us go to Bellevue so we can  
 9 make some serious money and fix the whole damn thing. We  
 10 won't need any grant.  
 11 Q. We'll talk about Bellevue this afternoon.  
 12 A. I hope so.  
 13 Q. I just want to know your statement that your  
 14 breaking even or a little better is based on the summary of  
 15 costs shown on Exhibit 26?  
 16 MR. MONTGOMERY: Object to the form.  
 17 THE WITNESS: For this.  
 18 Q. (By Mr. Cohen) That's Exhibit 26 you're looking  
 19 at?  
 20 A. Yeah.  
 21 Q. Is the answer to my question yes?  
 22 MR. MONTGOMERY: Same objection.  
 23 THE WITNESS: Well, it doesn't have any  
 24 money in there for maintenance. It has maintenance on the  
 25 locomotive and the cabooses. It doesn't have anything for

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1 the track. But saying we have responsibility for the track  
 2 doesn't relieve Doug from the job of trying to find some  
 3 money so that I can get the job done.  
 4 Q. (By Mr. Cohen) Right.  
 5 A. So we'll see how it works.  
 6 Q. All right. So there's no money in these costs  
 7 for maintenance of --  
 8 A. No.  
 9 Q. -- track?  
 10 A. No.  
 11 Q. There's no money for payments to Ballard  
 12 Industrial Company, right?  
 13 A. Well, it doesn't -- yeah, it doesn't talk about  
 14 the income stream. But we are getting the full income  
 15 stream, nobody is stiffening it off, not Tom Payne and not  
 16 the bankruptcy trustee, so we're getting 100 percent of  
 17 that. I'll say, it's a big pain in the rear to collect.  
 18 It's a very obtuse -- it's made for giant railroads.  
 19 Q. And the income stream is, what was the number you  
 20 gave me?  
 21 A. So we get, right now, we get 446 --  
 22 Q. \$446 --  
 23 A. -- per car.  
 24 Q. -- per car, times 213 cars in 2012?  
 25 A. Yeah.

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1 Q. All right. Is there any other income?  
 2 A. Oh, we've had people talk to us about storing  
 3 cars. We have a couple of great places to store cars. We  
 4 store cars on our other two railroads. So you can make  
 5 some money there.  
 6 Q. Is anybody paying you right now to --  
 7 A. Not at the moment.  
 8 Q. -- store cars?  
 9 A. I haven't had any. I've gotten a lot of calls  
 10 and I've been really too busy to hound them back to make  
 11 that happen. But that's an easy thing with no investment.  
 12 It's just empty cars that show up on the interchange and  
 13 you find a side track to park them on.  
 14 Q. So any other income?  
 15 A. Can't think of any other sources, actually,  
 16 beyond that.  
 17 Q. All right. And that cost estimate on Exhibit 26  
 18 doesn't include any payments to the Port?  
 19 A. Right.  
 20 MR. MONTGOMERY: Asked and answered.  
 21 Q. (By Mr. Cohen) Doesn't include any payments to  
 22 Eastside Community Rail?  
 23 MR. MONTGOMERY: Asked and answered.  
 24 Q. (By Mr. Cohen) Right?  
 25 A. That's correct.

# **EXHIBIT 10**

**From:** Washington State Department of Transportation  
**Sent:** Thursday, April 11, 2013 4:06 PM  
**To:** byroncole@comcast.net  
**Subject:** WSDOT Rail Monthly Highlights



View the Rail Monthly Highlights online at [www.wsdot.wa.gov/Rail](http://www.wsdot.wa.gov/Rail)

#### In This Issue

- Amtrak Cascades on-time performance was 75 percent in March
- Amtrak Cascades notifies customers of schedule adjustments for rail construction
- WSDOT Rail Division partners with WSDOT Public Transportation in Seattle for morning train inspections
- Benton-Franklin Council of Governments invites Rail Division to hold mini-workshop on the State Rail Plan development in Kennewick
- State-funded rail loan project nearing completion at the Port of Longview

#### **Amtrak Cascades on-time performance was 75 percent in March**

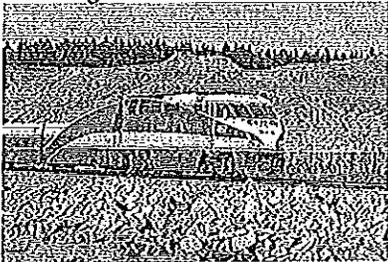
In March 2013, Amtrak Cascades trains had an average on-time performance of 75 percent, based on preliminary data provided by Amtrak. Causes of delays included freight train interference and slower train speeds through areas undergoing track maintenance.

### **Amtrak Cascades notifies customers of schedule adjustments for rail construction**

Some adjustments to Amtrak Cascades schedules are in place to make room on the rails for construction work between Nisqually and Vancouver, Wash. The work is part of WSDOT's \$92 million federally funded track replacement and upgrade work. The schedule adjustment began March 17 and will likely remain in effect until the end of summer. WSDOT worked with Amtrak to issue schedule change notices to passengers, plus posted the information and updated schedules on Amtrak.com and AmtrakCascades.com. A few trains will depart five to 10 minutes earlier than the original schedule and a number of trains will arrive 10 to 30 minutes later. Amtrak has also updated its train reservation system so customers will be fully informed when purchasing tickets.

### **WSDOT Rail Division partners with WSDOT Public Transportation in Seattle for morning train inspections**

WSDOT Rail is working with its partners at WSDOT's Seattle Public Transportation Division to conduct interior and exterior cleaning inspections of Amtrak Cascades trains at Seattle's King Street Station. WSDOT Public Transportation has an office near King Street Station, and one staff member per weekday will perform the work. This intra-department effort is intended to ensure WSDOT's service delivery partners Amtrak and Talgo are cleaning the trains in a manner that meets state of Washington and customer expectations before the morning trains depart for Portland and Vancouver, B.C. The pilot program will run from April 1 to June 30, and data gathered by the inspection team will be shared with Amtrak and Talgo and used to enforce contractual cleaning requirements.



*Amtrak Cascades train speeds through the route near Steilacoom*

### **Rail Division conducts mini-workshop on the State Rail Plan development with Benton Franklin council of Governments in Kennewick**

WSDOT's Rail and Freight Systems divisions teamed up in late March to host a stakeholder briefing and mini-workshop for the Benton-Franklin Council of Governments in Kennewick. WSDOT region planning staff, rail and freight staff, and BFCOG staff presented information, answered questions and facilitated break-out groups for 36 interested participants. During the workshop, participants reviewed previously identified needs and provided feedback contributing to the further development of the State Rail Plan. All participants who attended the mini-workshop were interested in freight rail.



*Participants share input at the stakeholder workshop in Kennewick*

### **State-funded rail loan project nearing completion at the Port of Longview**

Work is nearly complete at the Port of Longview on a second loop track capable of accommodating 110-car unit trains from the BNSF Railway Co. and Union Pacific Railroad mainlines into and out of the port. Crews are waiting for favorable weather to excavate an area of asphalt to place rails, ties and ballast. Funding for the project was made possible by an \$875,000 loan from the state-funded Freight Rail Investment Bank. Construction on the 2,700-foot section of new track will be complete by early summer 2013.



*New track area in the foreground at Port of Longview (picture looking east)*

### **Customer Compliment**

Jane G. rode an Amtrak Cascades train between Seattle and Bellingham and sent a heartfelt customer compliment commending the quick response and assistance from the crew when her husband experienced a medical emergency. Jane was grateful for the crew's swift response in getting her husband immediate medical attention on the train and making it possible for Jane to transport her husband to see his own doctor.

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# EXHIBIT 11

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1 County. Those railroads run for two, three miles only a  
 2 hundred feet apart. One is way up the side of the hill. I  
 3 don't know. The railroads we've got, we didn't have to pay  
 4 a lot of money to get long-term operating rights on the  
 5 dirt, the underlying dirt.  
 6 Q. (By Mr. Cohen) If --  
 7 A. And we -- in both cases, we acquired the rails  
 8 for nominal --  
 9 Q. Right.  
 10 A. -- amount of money.  
 11 Q. So you testified this morning that first GNP and  
 12 then Eastside Community Rail acquired the permanent freight  
 13 easement for the freight segment, right?  
 14 A. Right, yes.  
 15 Q. And you rely in running trains on the fact that  
 16 Eastside Community Rail holds that easement, right?  
 17 MR. MONTGOMERY: Object to the form.  
 18 Go ahead. Thank you.  
 19 THE WITNESS: That's true. I don't lose  
 20 sleep over it.  
 21 Q. (By Mr. Cohen) I'm glad you don't?  
 22 A. I mean, it's -- I accept the fact that they're in  
 23 the position to be able to have the reserve freight  
 24 easement. I worry more about the Port by far than Doug  
 25 Engle.

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1 Q. So do you believe that in order to run freight on  
 2 the line between Woodinville and Bellevue, you would need  
 3 an easement or other property right to get onto the  
 4 property?  
 5 A. It kind of depends on what the STB does. On  
 6 being able to -- it would all be -- you know, for us all to  
 7 see after the STB findings were published.  
 8 Q. So Ballard has no present plan to acquire a  
 9 property interest? And by a property interest, I mean a  
 10 freight easement or any other kind of property interest in  
 11 the line?  
 12 A. I don't think so. I didn't mean to say that.  
 13 Q. Oh, you do have a plan?  
 14 A. I'm saying it wouldn't be unusual that we had a  
 15 freight easement or something. There's a number of  
 16 different ways these things can go.  
 17 In City of Seattle, we have a franchise, a  
 18 30-year franchise that's renewable. It's the same kind of  
 19 a document, virtually the same language, maybe the  
 20 identical language that Union Pacific and Burlington  
 21 Northern have for all parts of the industrial district in  
 22 Seattle, that they don't own, never have, and never will  
 23 need to.  
 24 Q. Have you requested such a franchise from any of  
 25 the entities that own the real property?

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1 A. No, we're trying to. I haven't gotten anything  
 2 from the Kirkland people in spite of going to more meetings  
 3 and community gatherings and feel-good sessions in downtown  
 4 Seattle and over on the Eastside.  
 5 MR. MONTGOMERY: Keep talking. Just keep  
 6 answering. Go ahead, keep going.  
 7 THE WITNESS: But not a good audience with  
 8 anybody at Kirkland who said, you know, you guys are right,  
 9 we don't actually need to rip the track up, it's 100-foot  
 10 wide, you guys have made us offers that we've read where  
 11 the trail can be on one side or the other side and you  
 12 would help to construct the trail, we didn't see it that  
 13 way a while ago, but now we're interested in talking turkey  
 14 about it. That's what I want to see. That has to be the  
 15 next step. I'm not worried about the contract language at  
 16 all. We're so far away from that, it's the people in  
 17 Kirkland who don't want to share.  
 18 Q. (By Mr. Cohen) So you know that Kirkland paid  
 19 \$5 million for the Kirkland section of the line?  
 20 A. Mm-hm (answers affirmatively), it did. Did  
 21 Kirkland know it was railbanked and how the railbanking  
 22 works and how getting things out of railbanking and back to  
 23 use works? All we're doing is doing that.  
 24 Q. In your discussions with Kirkland, did you --  
 25 A. I didn't have any discussions with Kirkland. I

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1 couldn't, and hardly did Doug Engle and any of his Eastside  
 2 helpers. It's, like, you go to the council meetings and  
 3 you sign up to speak and you get to have three minutes,  
 4 maybe. And you sit there until the very last piece of the  
 5 agenda after three hours of listening to them argue about  
 6 if we're going to have a new dog kennel or something. And  
 7 then there's like hardly any time. And the president of  
 8 the council stands up and says, Well, we wouldn't be able  
 9 to give you three minutes, could you each get by on two  
 10 minutes. It's insulting. You can't seem to actually talk  
 11 to anybody who is willing to just sit down and be square.  
 12 Q. So let's talk about King County.  
 13 A. Just as bad.  
 14 Q. Just wait a second. Have you made any offers to  
 15 King County to buy a freight easement over their section of  
 16 the line?  
 17 A. No. The one that's most logical for us would be  
 18 to try to get some rights to operate our trains out of  
 19 Woodinville down south down the valley towards Redmond.  
 20 Redmond solved their problem quickly by ripping out all the  
 21 tracks and signals that was inside their city limit in  
 22 spite of the fact that there's three customers, not in  
 23 downtown that they are so worried about, but on the  
 24 outskirts of Redmond. There's the -- used to have rail  
 25 service, would like to get it back.

# **EXHIBIT 12**

1 A. Yes, I met Mike in Everett when looking at a  
 2 barge to rail opportunity. I don't recall having any  
 3 direct communication with him.  
 4 Q. Do you know what his last name is?  
 5 A. I don't recall. It starts with an M.  
 6 Q. Okay. Did you search for e-mails between you and  
 7 representatives of Wolford?  
 8 A. Yes, I did. I don't recall ever getting an  
 9 e-mail from anyone at Wolford that was -- Bobby doesn't  
 10 e-mail at all. And -- and I don't recall getting an e-mail  
 11 from Jack or --  
 12 Q. Oliver Lewis?  
 13 A. Ollie, no.  
 14 Q. Was there any e-mail from Mike Skrivan?  
 15 A. Very -- was there an e-mail from Mike Skrivan?  
 16 There was, I believe I produced it. I don't recall  
 17 receiving an e-mail from Mike in quite a while.  
 18 Q. Did you produce all of the e-mail that you  
 19 received from Mike Skrivan that you found?  
 20 A. That I have.  
 21 Q. In your mail account?  
 22 A. Yes.  
 23 Q. Okay. And this can get cumbersome in the wording  
 24 here, it has to be clear for the record. But when I'm  
 25 asking you about e-mail, I'm asking you about e-mail that

1 you either received or that you sent. So when I'm asking  
 2 if you searched for e-mail -- I should back up here. When  
 3 you searched for e-mail, did you search only your inbox or  
 4 did you search the sent items too?  
 5 A. I searched both. But again, sent items are only  
 6 30 days old. Inbox, yes, I would have searched for  
 7 everything from Mike.  
 8 Q. Okay.  
 9 A. And again, I don't keep drafts. So if a draft  
 10 e-mail was sent to me, and it had then become the official  
 11 draft or the final, I very likely would have deleted the  
 12 preceding e-mails.  
 13 Q. Are there any other potential shippers on the  
 14 line, by that I'm referring to the rail segment between  
 15 Woodinville and Bellevue that Ballard is seeking to  
 16 reactivate, are there any other shippers other than  
 17 CalPortland and Wolford who you've communicated with about  
 18 using the line?  
 19 A. No.  
 20 MR. MONTGOMERY: Can you ask -- you mean  
 21 writing, or at all? I'm only asking because you're looking  
 22 at request for production.  
 23 THE WITNESS: I want to go back.  
 24 MR. MONTGOMERY: Go ahead.  
 25 THE WITNESS: Did have conversations with

1 Kemper Development. Did have conversation or left two  
 2 voice mails for Wright Runstad, and they were never  
 3 returned.  
 4 So those would be the only two other contacts.  
 5 Made two phone calls in to a person at Safeway, actually be  
 6 more than two, but only had one conversation, and that went  
 7 nowhere. And I don't recall how far back that was.  
 8 Q. (By Mr. Ferguson) Thanks for clarifying. The  
 9 only -- you didn't have any written communications with  
 10 Kemper Freeman?  
 11 A. I believe --  
 12 Q. Or narrow it a little more, you didn't have any  
 13 e-mails with Kemper Freeman?  
 14 A. There were some e-mails with Bruce Nurse  
 15 primarily.  
 16 Q. Did you search for Mr. Nurse?  
 17 A. I believe it's Tim Hill. I believe the  
 18 e-mails -- I don't recall looking for Bruce Nurse  
 19 particularly, now that you say that.  
 20 Q. And the other individual was Tim Hill, you  
 21 said --  
 22 A. I believe --  
 23 Q. -- from Kemper?  
 24 A. -- that's his name. I think it's Tim, and I  
 25 don't recall his last name. I think it's Hill.

1 Q. Do you recall, I just want to talk about e-mails  
 2 right now.  
 3 A. Mm-hm (answers affirmatively).  
 4 Q. Do you recall searching for e-mails, either to or  
 5 from Mr. Hill?  
 6 A. No.  
 7 Q. Do you recall searching for e-mails to or from  
 8 anyone at Kemper Freeman?  
 9 MR. COHEN: It's Kemper Development.  
 10 Q. (By Mr. Ferguson) Kemper Development?  
 11 A. Those were the only two contacts we had. And all  
 12 communication ceased after Jane Hague visited.  
 13 Q. When you say "Jane Hague visited," are you  
 14 referring to a member of the King County Council?  
 15 A. Yes, she and Kurt Triplett.  
 16 Q. When you say they visited, visited what, visited  
 17 you?  
 18 A. They -- it's my understanding that they both  
 19 visited Kemper Development Company after we had made  
 20 initial forays, and all communications ceased after those  
 21 visits.  
 22 Q. Do you remember when that was?  
 23 A. January, February.  
 24 Q. Okay. How did you hear about that visit?  
 25 A. A person at Kemper advised us, and I don't recall

1 the person's name, advised us that Jane Hague had been.  
 2 And Kurt Triplett personally told us that he had visited  
 3 both Wright Runstad and Kemper Development.  
 4 Q. You said you left two voice mails for Wright  
 5 Runstad. Did you leave them in a general inbox or did you  
 6 leave them for someone specific?  
 7 A. Jessica Powers.  
 8 Q. You said those voice mails were never returned?  
 9 A. Correct.  
 10 Q. Okay. Did you attempt to communicate in any form  
 11 or communicate in any form with anyone else at Wright  
 12 Runstad?  
 13 A. No, she was the previous contact that I had a  
 14 couple years ago.  
 15 Q. Through GNP?  
 16 A. Yes.  
 17 Q. Okay. So earlier I asked if you had any  
 18 communications, any written communications. And you've  
 19 produced what appear to be memos or letters that you've  
 20 sent to Kemper. And we may talk about those later. But  
 21 you didn't have any written communications with Wright  
 22 Runstad?  
 23 MR. MONTGOMERY: Object to the form.  
 24 THE WITNESS: None that I recall. Simply,  
 25 in this -- in the time period we're talking about, the two

1 voice mails that I left with Jessica. And prior to that,  
 2 the communication I had had, meetings I had had were with  
 3 GNP.  
 4 Q. (By Mr. Ferguson) Okay. To be clear, when I  
 5 asked about any written communications with either Kemper  
 6 or Wright Runstad, I'm referring to the period from  
 7 August 2012 till present. You haven't had any written  
 8 communications with Wright Runstad during that period?  
 9 A. Correct.  
 10 Q. Okay. Other than CalPortland and Wolford  
 11 Trucking and Demolition, are you aware of any entity that  
 12 has expressed an interest in receiving freight rail service  
 13 on the line?  
 14 A. No.  
 15 Q. For Number 6 --  
 16 A. Can I take notes without it -- or are you going  
 17 to ask for a copy of them when I'm done?  
 18 MR. MONTGOMERY: Mm-hm (answers  
 19 affirmatively), don't take notes.  
 20 Q. (By Mr. Ferguson) Just the way it works. If  
 21 you're -- I realize we're jumping around time frame,  
 22 companies, e-mails, letters, memos. At any point, you can  
 23 stop and say, Hold on, Hunter, I'm not clear. We really  
 24 want to get clarity here for the record and none of this is  
 25 intended, although it may have the effect of being

1 confusing, for that I apologize. If anything is unclear,  
 2 just stop me. Okay.  
 3 A. Will do, thank you.  
 4 Q. For Number 6, you were asked to search in the  
 5 relevant time period, June 30, 2011, to the present, for  
 6 All communications related to the Line or the Freight  
 7 Segment between you and officers and employees or reps of  
 8 Ballard Terminal Railroad Company, including but not  
 9 limited to Mr. Cole and Mr. Nerdrum.  
 10 Did you search for communications with those  
 11 individuals?  
 12 A. I only met Paul once over lunch. I've had no  
 13 other communication with him.  
 14 Q. Okay.  
 15 A. I have spoken with -- met with, James Forgette,  
 16 who is the trainmaster, but outside of 99 percent  
 17 operational issues, for example, Snohomish County calling  
 18 me up and saying you got an issue with a crossing or Port  
 19 of Seattle calling up and saying you got an issue with a  
 20 crossing or we want to come out and do utility work, which  
 21 I then forward off to James or Byron to take care of. So  
 22 Byron -- James would be 99 percent that or just answering a  
 23 status question or two.  
 24 Then that would mean the only other communication  
 25 that I've had is with Byron. And Byron, honestly, I don't

1 remember the last time I received an e-mail from Byron.  
 2 I've copied him on legal communique that's come back from  
 3 perhaps Mr. Montgomery or Mr. Tobin's office. And other  
 4 than that, I've tried to, as in Exhibit 17, I've copied him  
 5 occasionally on items, but as far as initiating a  
 6 conversation with Byron, it's almost exclusively via phone.  
 7 MR. MONTGOMERY: Can you read back the  
 8 question.  
 9 (Question on Page 45, Lines 4 through 9  
 10 read by the reporter.)  
 11 Q. (By Mr. Ferguson) So when you performed your  
 12 search, did you search in your inbox, any folders you might  
 13 have, as well as your sent items, for any communications to  
 14 or from Byron Cole?  
 15 A. Yes.  
 16 Q. And did you find any?  
 17 A. Yes.  
 18 Q. And have you produced those?  
 19 A. To the best of my knowledge, yes. With the  
 20 exclusion of anything that had an attorney's name on it.  
 21 Q. And why would you have excluded communication to  
 22 or from Byron Cole with an attorney's name on it?  
 23 MR. MONTGOMERY: Object to the form. I  
 24 believe it mischaracterizes earlier testimony. Objection.  
 25 MR. FERGUSON: Would you read back the first

# EXHIBIT 13

Kathy Cox <kathy@marketingphilharmonic.com>  
To: "Doug Engle" <Doug.Engle@EsCRail.org>  
Reply-To: <kathy@marketingphilharmonic.com>  
Jane Hague

2 June 2013 12:31 PM



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Jane Hague meeting: February 8<sup>th</sup>, 2013 at 10 a.m. at the Bellevue Harbor Club. Attendees with Karen Guzak and Kathy Cox.

We were discussing the potential moving of construction goods from Bellevue, Jane said "Freight is a non-starter".

Best,

Kathy Cox

ECR001000

# EXHIBIT 14

1 went on hold for a whole year. And all of 2009 went by and  
2 we finally started running the first train in January of  
3 2010. And been doing it since.

4 Q. Okay.

5 A. That's the story.

6 Q. So let me add it up, you've been working in or  
7 around railroads for 14, 26 -- 19 --

8 A. Nineteen --

9 Q. '70.

10 A. Till now.

11 Q. That would be 43 years?

12 A. I guess so, yeah. 30 and 13. Look, still got  
13 all these fingers.

14 Q. Mr. Cole, did you expect that your communication  
15 with your lawyers would be confidential?

16 A. Yes.

17 Q. Did you expect that your communication with your  
18 lawyers and Eastside Community Rail would be confidential?

19 A. Yes.

20 Q. Do you think you could make operating freight on  
21 the Woodinville to Bellevue line profitable?

22 A. It depends how many of the elements that we -- we  
23 get come to fruition. But, yes, the business model is  
24 pretty darn good from the spoils transportation and  
25 aggregate inbound. Those are two pretty big deals. And

1 out, then probably use concrete ties and maybe even run  
2 welded rail. And would go together faster using those two  
3 things. And so, even though they cost a little bit more,  
4 it's a better deal. I think it's somewhere in the  
5 ballpark.

6 Q. Mr. Cohen was asking you questions about an  
7 e-mail by Mr. Engle that talked about the freight business  
8 keeping it or not keeping it. And asked you, I believe, if  
9 you would abandon the freight line. Do you remember that  
10 line of questions?

11 A. I said, Woopie, if we can make enough money with  
12 the excursion train, is that what you're talking about?

13 Q. Yes, you said, quote, I'd probably say the heck  
14 with the whole freight business. Do you remember that?

15 A. Yeah, I think it would be fun to just roll in the  
16 dough.

17 Q. Let the record reflect, you're laughing mightily  
18 now. Were you being facetious?

19 A. I was essentially. It's getting to be a long day  
20 then, it's even longer now. I don't -- I don't see that  
21 script anywhere.

22 Q. Just to make sure the record is clear and it  
23 probably is, I may have not caught it. But in your letter  
24 to Judge Lynch, which was Exhibit 38, Mr. Cohen was asking  
25 you about the comment that your financial position becomes

1 so, I think that the line could be profitable.

2 MR. MONTGOMERY: See, I'm flipping past page  
3 after page.

4 Q. (By Mr. Montgomery) Just very small point,  
5 response to something Mr. Cohen asked you, have you tried  
6 to contact General Mills recently?

7 A. No.

8 Q. Has somebody at your company?

9 A. James. I asked my operations manager to call  
10 them, because his job is to talk to -- to the shippers, the  
11 receivers, to Burlington Northern, Where's the cars, when  
12 will they be here? All those things. And so it's right  
13 down his alley. And he tried a couple times, and I don't  
14 think he -- I don't remember getting any feedback from him  
15 at all as to what was going on. I think people left us  
16 messages and no one returned his call, so it didn't yield  
17 anything.

18 Q. Based on your 43 years being in or around the  
19 railroad business, did you think the \$10 million estimate  
20 to replace the five plus miles track if Kirkland pulled it  
21 out is reasonable?

22 A. It seems like it is. It seems like it is. I  
23 think if we did it in today's market, we might not be able  
24 to buy used rail, for example. We might have to buy new  
25 rail. But if we did, and -- if the thing was all ripped

1 more precarious every day. At that point in time, were you  
2 not getting paid?

3 A. Yeah.

4 Q. Why is that?

5 A. Well, I mean we had two railroads, the Ballard  
6 Terminal and the Meeker Southern, they were running  
7 normally and producing income above expenses. But the  
8 freight business over here between Woodinville and  
9 Snohomish was just a drain because we weren't, for most of  
10 three years, we weren't getting any money. And then the  
11 bankruptcy judge took over, at least we started getting  
12 paid some, but he never was able to pay us the full amount.

13 Q. Or timely?

14 A. Or timely, yeah, I got about maybe three total  
15 payments from him. He's a nice guy, I didn't take him to  
16 task for it. He had a thankless job. He was probably glad  
17 when it was done.

18 But now, we have control of that. We do the  
19 invoicing and the payments are made directly to us, so  
20 that's quite a bit better. It's still a cumbersome system.  
21 We should become a handling carrier, I'm trying to address  
22 that with Burlington Northern. Takes forever to get paid,  
23 I mean like 60 days.

24 Q. It's predictable?

25 A. It's predictable?

# **EXHIBIT 15**

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1 railroad as Ballard sees fit.  
 2 Is that your understanding as well?  
 3 MR. MONTGOMERY: Object to the form.  
 4 THE WITNESS: Pretty much. On the other  
 5 hand, we know how to do it and have been doing it for  
 6 whatever it is, 16 years, no accidents, no incidents, et  
 7 cetera. And not to say that Doug couldn't do it. He  
 8 hasn't tried to do it. His interests are, you know, not  
 9 quite the same as mine are, which is okay.  
 10 Q. (By Mr. Cohen) You see the statement in here  
 11 that says the "Line shall be used by Ballard exclusively  
 12 for railroad purposes"?  
 13 A. Right, well, so?  
 14 MR. MONTGOMERY: Do you see it?  
 15 THE WITNESS: I see it. I read it twice.  
 16 Q. (By Mr. Cohen) Okay. Do you read that statement  
 17 to include excursion trains?  
 18 MR. MONTGOMERY: Object to the extent it  
 19 calls for a legal conclusion.  
 20 THE WITNESS: We're not going to fund,  
 21 finance, build, acquire an excursion train and the pieces  
 22 of power to run it ever. It's way too expensive for us.  
 23 Q. (By Mr. Cohen) For "us," meaning Ballard?  
 24 A. Ballard.  
 25 Q. Yes.

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1 A. But Doug and I have agreed long ago, and it's  
 2 reaffirmed over and over, that we will provide engineers,  
 3 conductors, on those trains to operate them safely. Our  
 4 own people. We'll do that. And I think in the end, it  
 5 will turn out, the passenger trains have to be inspected  
 6 from underneath on short intervals. And so there needs to  
 7 be a facility for that. And there needs to be people that  
 8 know what they're looking at with a flashlight under there.  
 9 I think that will probably fall to us too. It has never  
 10 shown up in any of these documents, nor has it shown up in  
 11 the Port documents. It would probably be that. We're the  
 12 people that would train somebody to have those skills or  
 13 hire them or contract them out.  
 14 Q. Really all I want, though, is do you understand  
 15 this agreement to authorize Ballard to run excursion trains  
 16 on -- this is the freight segment?  
 17 A. Yeah, and that's the way the writing was in the  
 18 Port's original document from 2008, and so that's not --  
 19 it's not changed. There's a lot of years that have gone by  
 20 here without there being this train, so I hope we're  
 21 getting closer to there being one.  
 22 Q. Would Ballard need Eastside Community Rail's  
 23 position to run an excursion train on the freight segment?  
 24 A. We would --  
 25 MR. MONTGOMERY: Hold on, I'm sorry.

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1 MR. COHEN: That's the question. You got  
 2 it.  
 3 MR. MONTGOMERY: I'm trying to digest.  
 4 Object to the extent it calls for legal conclusion.  
 5 Q. (By Mr. Cohen) I'm asking under this agreement,  
 6 Mr. Cole, would Ballard need Eastside Community Rail's  
 7 permission to run an excursion train on the freight  
 8 segment?  
 9 MR. MONTGOMERY: Same objection.  
 10 THE WITNESS: I'd have to read it more  
 11 carefully. But I just don't think I would do that. And  
 12 I -- I don't think a successor to me would do that. I  
 13 can't -- short line railroading is not some wild west  
 14 thing. It's made up of people with their heads screwed on  
 15 straight. And they're better businessmen, they make more  
 16 money. I -- that would be quite bizarre. I don't know of  
 17 any -- you know, thing around the country where that has  
 18 happened. There's quite a few excursion trains and they're  
 19 generally at least crewed from the cab, not in the dining  
 20 cars, but the actual train crew, the conductor and the  
 21 engineer, are generally employees of the railroad.  
 22 Q. (By Mr. Cohen) Right.  
 23 A. So that's -- we're following the most traveled  
 24 path on these things.  
 25 Q. Okay. Would you turn to Page 4 of the lease

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1 agreement. I want to ask you about the lease compensation  
 2 terms.  
 3 A. Okay.  
 4 Q. So, as best I can understand this document, it  
 5 appears to me that Ballard's sole obligation to pay  
 6 anything here to Eastside Community Rail is that you're  
 7 going to pay Eastside \$10 a car and you're going to pay  
 8 Eastside's \$10 a car fee to the Port?  
 9 A. Mm-hm (answers affirmatively).  
 10 Q. Am I getting it right?  
 11 A. That's it.  
 12 Q. So Eastside is leasing you their rail line?  
 13 A. Mm-hm (answers affirmatively).  
 14 Q. You're going to pay them \$10 a car?  
 15 A. (Witness nods head affirmatively.)  
 16 Q. What's in it for them?  
 17 MR. MONTGOMERY: Objection; form and  
 18 foundation.  
 19 THE WITNESS: Can I --  
 20 MR. MONTGOMERY: Go ahead.  
 21 THE WITNESS: We're going to run the freight  
 22 railroad, which is a federal obligation that they have.  
 23 We're going to do it safely and not have it be something  
 24 that the STB is always dropping in on us because we're  
 25 chiseling on this or that or the other thing.

# **EXHIBIT 16**

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1 honeycomb, that's all.  
 2 MR. FERGUSON: Katie, would you mark this as  
 3 22, I think we are.  
 4 (Exhibit Number 22 marked.)  
 5 Q. (By Mr. Ferguson) Okay. Go ahead.  
 6 A. Eastside Community Rail --  
 7 Q. And for the record, you're referring to what's  
 8 been marked as Exhibit 22?  
 9 A. Exhibit 22.  
 10 Q. This is a document you've prepared?  
 11 A. Yes, it is.  
 12 Q. Okay. Would you please explain what it is,  
 13 please?  
 14 A. Eastside Community Rail, I view our company's  
 15 function as being administering and maintaining the right  
 16 of way. Companies like Wolford Equipment, Ballard Terminal  
 17 Railroad, the Bounty of Washington, some day, are all  
 18 separate entities. The trail will be Kirkland, King  
 19 County, Snohomish County, whomever. This is a conceptual  
 20 drawing of how we would like life to be once things are  
 21 fleshed out here.  
 22 We expect that at some point in the future, there  
 23 to be some real estate business, we'll figure that out when  
 24 we get there. And all of the interest in Telegraph Hills,  
 25 which no longer exists, is around what to do with legal

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1 holdings, and that's probably to separate and put as a  
 2 separate entity.  
 3 So while Ms. Cox is interested in getting the  
 4 excursion train is going is so she can get her company  
 5 formed and off the ground. So we're working together to  
 6 get that to happen.  
 7 Q. What is her company?  
 8 A. Her company today is Marketing Philharmonic. And  
 9 she intends, when the public funding to upgrade the rail  
 10 infrastructure is put in place, she expects to own, manage,  
 11 the Bounty of Washington excursion train.  
 12 Q. Is there a corporate entity known as Bounty of  
 13 Washington tasting train?  
 14 MR. MONTGOMERY: Foundation.  
 15 THE WITNESS: No, but I believe there's a  
 16 domain name.  
 17 Q. (By Mr. Ferguson) We have a Facebook page,  
 18 that's correct, right?  
 19 A. Yes.  
 20 Q. Okay. Are you aware of any corporate entity that  
 21 exists right now that holds any property that includes  
 22 business plan or intellectual property or any assets that  
 23 might constitute the excursion train?  
 24 MR. MONTGOMERY: Object to the form.  
 25 THE WITNESS: I would say that Kathy and I

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1 have collaborated on works that we both hold. I think we  
 2 have a common interest in getting it off the ground. And I  
 3 believe that we have an understanding between us that  
 4 that's her business. And my business is Eastside Community  
 5 Rail. Her business is not freight. Her business is not  
 6 real estate.  
 7 Q. (By Mr. Ferguson) Are you aware of an entity  
 8 that will operate an excursion train?  
 9 A. We intend that operation to be formed in the  
 10 future, once we have identified funding to upgrade the rail  
 11 corridor to a passenger level of service.  
 12 Q. Okay. Do you intend for Ballard Terminal  
 13 Railroad to use any of its existing or future rolling stock  
 14 for the excursion train?  
 15 A. No.  
 16 Q. What about engineers and operating personnel,  
 17 where will they come from for the excursion train?  
 18 A. I believe the most likely scenario is the  
 19 engineer and conductor will be provided by Ballard  
 20 Terminal --  
 21 Q. Okay.  
 22 A. -- Railroad. And the staffing would be provided  
 23 by Bounty of Washington. The scheduling --  
 24 Q. When you say "staffing," you mean waiters,  
 25 bartenders?

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1 A. Yes.  
 2 Q. Busboys, expeditors, people that run a  
 3 restaurant?  
 4 A. Yes.  
 5 Q. Okay.  
 6 A. And I believe that all the scheduling will be  
 7 managed and maintained by Ballard Terminal.  
 8 Q. Coming back to Ms. Cox, does she have any  
 9 financial interest in Eastside Community Rail?  
 10 A. No.  
 11 Q. She doesn't have a debt position in the company?  
 12 A. Only a moral obligation from GNP bankruptcy.  
 13 Q. Ms. Cox owes your company a moral obligation?  
 14 A. No, I owe her. I brought friends and family into  
 15 GNP and I personally would like to pay those people back in  
 16 the future. I consider that my moral obligation to those  
 17 individuals that were good enough to give me some of their  
 18 time in exchange for debt.  
 19 Q. How does ECR generate revenue?  
 20 A. Let me point it out so he can get it.  
 21 MR. MONTGOMERY: Sure.  
 22 MR. FERGUSON: Which page are you looking  
 23 for?  
 24 THE WITNESS: Please find that page  
 25 (indicating).

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1 Mr. Engle, if you could turn back to Exhibit 21.  
 2 A. Mm-hm (answers affirmatively).  
 3 Q. This is the agreement with BB5.  
 4 A. Mm-hm (answers affirmatively), yes.  
 5 Q. It's correct that EB5 holds an option with ECR,  
 6 and I guess, hold that question for a second.  
 7 Did EB5 also make a contribution to ECR?  
 8 A. Not yet.  
 9 Q. And why didn't it, if there's a reason, or why  
 10 hasn't it?  
 11 A. We need to get further down the path in  
 12 establishing an excursion business before private equity is  
 13 appropriate.  
 14 Q. Okay. When you say "we," do you mean ECR or do  
 15 you mean --  
 16 A. ECR.  
 17 Q. -- a separate entity?  
 18 A. ECR needs to get further down the path in the  
 19 maintenance of way for the railroad before it can attract  
 20 private equity.  
 21 Q. Okay. But ECR isn't -- ECR doesn't have any  
 22 plans to run an excursion train?  
 23 A. No, but it's my job to make sure that the track  
 24 is in condition to run an excursion train.  
 25 Q. And so, then, how will ECR benefit from having an

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1 excursion train run?  
 2 A. They will contribute to the maintenance of way  
 3 costs, and I will get an 11 percent margin on the business.  
 4 That's the gross amount, that's not the net amount.  
 5 Q. ECR is going to take 11 percent of the gross  
 6 revenues of any excursion train?  
 7 A. Less the maintenance costs. Up to 50 percent.  
 8 It gets complicated.  
 9 Q. Do you have a contract for that?  
 10 A. No.  
 11 Q. That's just an agreement between you and Kathy  
 12 Cox?  
 13 MR. MONTGOMERY: Object to the form.  
 14 THE WITNESS: It's a general agreement as to  
 15 how we're doing this, yes.  
 16 Q. (By Mr. Ferguson) Agreement with whom, who is  
 17 involved in the agreement?  
 18 A. Kathy Cox.  
 19 Q. Anyone else?  
 20 A. No, other than Byron who has agreed to provide an  
 21 engineer and conductor.  
 22 Q. Okay.  
 23 A. And scheduling.  
 24 Q. Do you know if Ballard is going to take any  
 25 percentage of excursion train revenues?

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1 A. None other than compensation for their scheduling  
 2 and crews.  
 3 Q. Okay. Did you have to provide any assurances to  
 4 EB5 about the percentage of revenue ECR would take from the  
 5 excursion train?  
 6 A. There were no assurances, no.  
 7 Q. Is there a barrier to running excursion service  
 8 right now?  
 9 A. The track --  
 10 MR. MONTGOMERY: Sorry, object to the form  
 11 and foundation.  
 12 Go ahead. Thank you.  
 13 THE WITNESS: The track, as classified by  
 14 Ballard Terminal, is in excepted condition. Excepted  
 15 condition does not allow you to run passenger operations,  
 16 per Exhibit 25.  
 17 Q. (By Mr. Ferguson) So that's what -- there needs  
 18 to be at least a \$6.4 million investment, capital  
 19 investment in the segment to bring it up to standard to run  
 20 passenger service. If the number is wrong, correct me on  
 21 the number.  
 22 A. I believe the number is less than that, like  
 23 \$5 million instead of 6, roughly to get it up to a Class 1  
 24 condition and you can operate passenger rail in a Class 1  
 25 condition.

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1 Q. That's a slower rate of speed than a Class 2,  
 2 correct?  
 3 A. Yes, it is.  
 4 Q. And there currently is no funding for that  
 5 upgrade --  
 6 A. Correct.  
 7 Q. -- correct?  
 8 Okay. If I understood you correctly when we  
 9 first discussed the EB5 agreement, I believe there's an  
 10 option that EB5 holds; is that right?  
 11 A. Yes.  
 12 Q. Can you explain what that is?  
 13 A. Exhibit 21, Page 2, Section 4.  
 14 MR. MONTGOMERY: Object to the extent it  
 15 calls for a legal conclusion. The document speaks for  
 16 itself.  
 17 Go ahead.  
 18 THE WITNESS: "Consideration."  
 19 An equity interest ownership equal to 15 percent  
 20 of ECR, including equivalent ownership and any newly formed  
 21 joint venture related to the assets acquired from GNP. Et  
 22 cetera, et cetera.  
 23 Q. (By Mr. Ferguson) Okay. Has EB5 exercised that  
 24 option?  
 25 A. No.

# **EXHIBIT 17**

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**From:** Williams, Michael [michael.williams@soundtransit.org]  
**Sent:** Thursday, October 18, 2012 4:04 PM  
**To:** Doug Engle  
**Cc:** Dave Farmer  
**Subject:** RE: Eastside Community Rail (ECR)

Doug,

Thanks for the up-date. I will pass this information along to others within Sound Transit for review.

Mike

---

**From:** Doug Engle [mailto:dengle76@comcast.net]  
**Sent:** Wednesday, October 17, 2012 11:27 AM  
**To:** Williams, Michael  
**Cc:** Dave Farmer  
**Subject:** Eastside Community Rail (ECR)

Good day Mike,

Thank you again for your time this past Wed.  
It was a pleasure meeting you and Don to discuss the situation in Bellevue.  
Attached is the ECR Policy on rates of return and a presentation summarizing much of what we told you about ECR during our meeting.  
"Peaceful Coexistence" is what we desire in all our business.

After several meetings last week, we believe that new doors are opening to ECR with its intentions of getting to Bellevue from Woodinville.  
Excursion operations to the So. Kirkland P&R are being viewed as a real benefit in attracting people from the Seattle area to "Wine Country".

Per our discussion, you were interested to understand Bellevue's perspective on the situation, particularly regarding the Sound Transit operations facility in Bellevue.  
I don't think there is any question, but the International Paper site is the best in that general area of Bellevue/Redmond.  
Given Sound Transit does not have the funding to get to Redmond, nor the approval to get to Kirkland, I am not sure how a legitimate argument can be waged otherwise.  
That said, the businesses that will be displaced are an economic hit to Bellevue.  
Perhaps there is a compromise to be had on this particular point to make matters more acceptable.  
We see a way forward with complementary business development opportunities to replace some of those economic losses.

Overall, Bellevue is favorable regarding ECR removing spoils via rail over trucks.  
We have initiated discussions with King County and have a first draft Cooperation Agreement to reactivate the railroad from Woodinville to Bellevue.  
Our early discussion with some Kirkland council members indicate there is room for negotiations.  
Obviously nothing is settled or agreed to with any of the parties we have spoken with, but we are getting our arms around the situation and taking steps forward.

After our discussions Wed., we approached the situation with Bellevue and King County focusing on the west side of the tracks, which could be used for a batch plant and intermodal site.  
Bellevue's fire training facility could be moved, there is a vacant lot next to it to the south and a site for sale providing access to 116th Ave NE.  
We see a way to stay out of Sound Transit's way and still service construction needs with this configuration.  
However, we need to have a one-way road in and one-way out access roads at either end of the operations property to 120th Ave NE.  
This is a small accommodation by Sound Transit, but a critical one for our business plan to succeed.

Since Safeway is still receiving flower in Ballard via rail, and we intend to discuss returning this service directly to Bellevue, Thus, the tracks at the very south edge of the operations facility should remain, and the access road built to the north of the railroad spur.

ECR would like to salvage the track south of NE 8th to the next crossing at SE 1st St. The track would be used for the switching yard at the Bellevue Intermodal Yard. The removal also helps Bellevue with its desired extension of NE 4th St. ECR would like to use the track bed to create a gated gravel service road with a crossing at NE 8th St for access to the Bellevue Intermodal Yard. Bellevue would have to synch the lights to allow the trucks to cross at the appropriate time. An additional service road along the track would need to be created from NE 8th Ave to the Intermodal site along the west side of the track, since the track may be used to receive or build the daily trains (switching and car movements). In any case, ECR will work with Sound Transit to minimize any conflicts.

An interesting factoid is during Lincoln Center's construction, a truck-trailer of spoils left the site every 17 minutes for nine months. The environmental, economic and traffic impact of utilizing rail should not be underestimated for East Link.

In summary, ECR would like Sound Transit's support to accomplish the above plan. How do you suggest we proceed in making this a reality?

Truly yours,

Doug

Douglas Engle  
Managing Director  
Eastside Community Rail, LLC  
425-891-4223

---

**From:** Kurt Triplett [KTriplett@kirklandwa.gov]  
**Sent:** Wednesday, November 07, 2012 7:53 AM  
**To:** Oskar Rey; Robin Jenkinson  
**Subject:** Fwd: Eastside Rail Corridor Reactivation  
**Attachments:** ECR Intro 21Oct12.pptx; ATT00001.htm; STB Revenue Adequacy 9Oct12.pdf; ATT00002.htm

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI.

Sent from my iPhone

Begin forwarded message:

**From:** Doug Engle <dengle76@comcast.net>  
**Date:** November 7, 2012 6:50:50 AM PST  
**To:** Kurt Triplett <KTriplett@kirklandwa.gov>, Joan McBride <jmcbride@kirklandwa.gov>  
**Cc:** Kathy Cox <kathy@marketingphilharmonic.com>, David Farmer <dave@mgmtspecialists.com>  
**Subject:** Eastside Rail Corridor Reactivation

Good Day,

I hope that your election results were met with much satisfaction!

In preparation for our next Thursday meeting, I have attached a brief PowerPoint presentation introducing Eastside Community Rail (ECR). We did try to get this meeting on the calendar before the elections to no avail.

ECR intends to reactivate the line between Woodinville and Bellevue as soon as possible for freight and excursion service.

We have freight business coming together in Bellevue, including Safeway who's 5-yr service buyout is coming to an end.

Safeway continues to receive their bakery flour in Ballard via rail and trucking it to their Bellevue bakery.

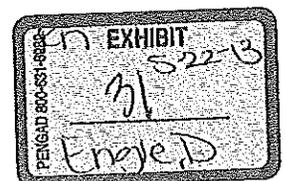
Additionally, there are very large construction projects where rail service can reduce truck traffic, favor the environment, and provide substantial costs savings.

ECR supports trails with rails, and we would like to help Kirkland still achieve its Cross Kirkland Connector.

With a little cooperation, the trail could be connected at either end.

ECR's financing partner out of Chicago has 17 pieces of rolling stock available for the excursion train.

We are also evaluating Totem Lake as an excursion depot and a station at the So. Kirkland P&R.

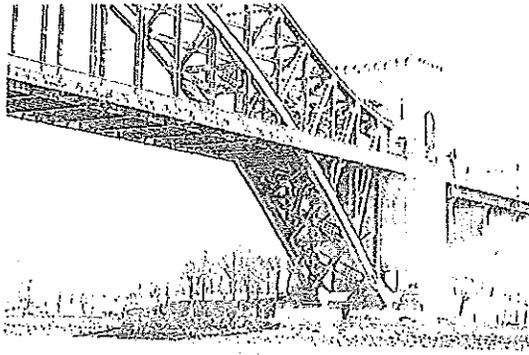


We are asking the city to enter into good faith negotiations for a rail and trail solution through Kirkland and to not disturb the track structure any further.  
Please note at this time, that ECR is not formally notifying the city via legal letter in hopes of successful good faith negotiations.

There is a win-win to be had here that will better serve Kirkland's long-term interests by working together.

Best wishes,

Douglas Engle  
Managing Director  
Eastside Community Rail, LLC  
425-891-4223



# Eastside Community Rail

Bridging the Gap

9 October 2012

## Cost Plus Pricing Policy

Eastside Community Rail, LLC (ECR) requires that the return it earns for rail operations and projects is the rate set by the Surface Transportation Board (STB) for “revenue adequacy” of the railroad industry. ECR will use a 4-year weighted average to reasonably minimize fluctuations in the rate. This federal rate is the most independent and impartial means available to establish fair and reasonable “cost plus” pricing.

ECR expects to have a substantially lower overhead rate and cost structure than local governmental agencies or large private firms. ECR will support public works inside the rail corridor to the extent possible that do not conflict with rail operations or existing agreements. ECR will not enter into any agreement that infringes on its rights or authorities as a federal railroad.

## Surface Transportation Board – Revenue Adequacy

“The annual determination of revenue adequacy is made in accordance with standards and procedures developed after passage of the Staggers Rail Act of 1980, which substantially deregulated railroads. A main goal of Staggers was to restore the railroad industry to a return on investment that would at least match its cost of investment capital.”

“In Railroad Cost of Capital—2010, EP 558 (Sub-No. 14) (STB served Oct. 3, 2011), we determined that the 2010 railroad industry cost of capital was 11.03%. By comparing this figure to the 2010 ROI data obtained from the carriers’ Annual Report R-1 Schedule 250 filings, we have calculated a revenue adequacy figure for each of the Class I freight railroads that were in operation as of December 31, 2010.”

**DECISION FOUND THAT ONE CLASS I RAILROAD (UNION PACIFIC RAILROAD COMPANY) ACHIEVED REVENUE ADEQUACY FOR THE YEAR 2010, IN ACCORDANCE WITH THE BOARD'S STANDARDS AND PROCEDURES DEVELOPED TO MAKE THAT DETERMINATION.**

Following is STB's summary of the Returns on investment for all Class I railroads in 2010:

BNSF Railway Company	9.22%
CSX Transportation, Inc.	10.85%
Grand Trunk Corporation Consolidated*	9.21%
Kansas City Southern Railway Company	9.77%
Norfolk Southern Railway Company	10.96%
Soo Line Railroad Company*	8.01%
Union Pacific Railroad Company	11.54%

\*(Including all Canadian and U.S. affiliates)

## Historic Rates and ECR’s Weighted Average

In Railroad Cost of Capital, STB Ex Parte No. 558, each year the Board determines the rail industry's after-tax cost of capital. ECR will apply annual weights to determine the “Weighted Average” to be used when pricing its works for public projects or operations.

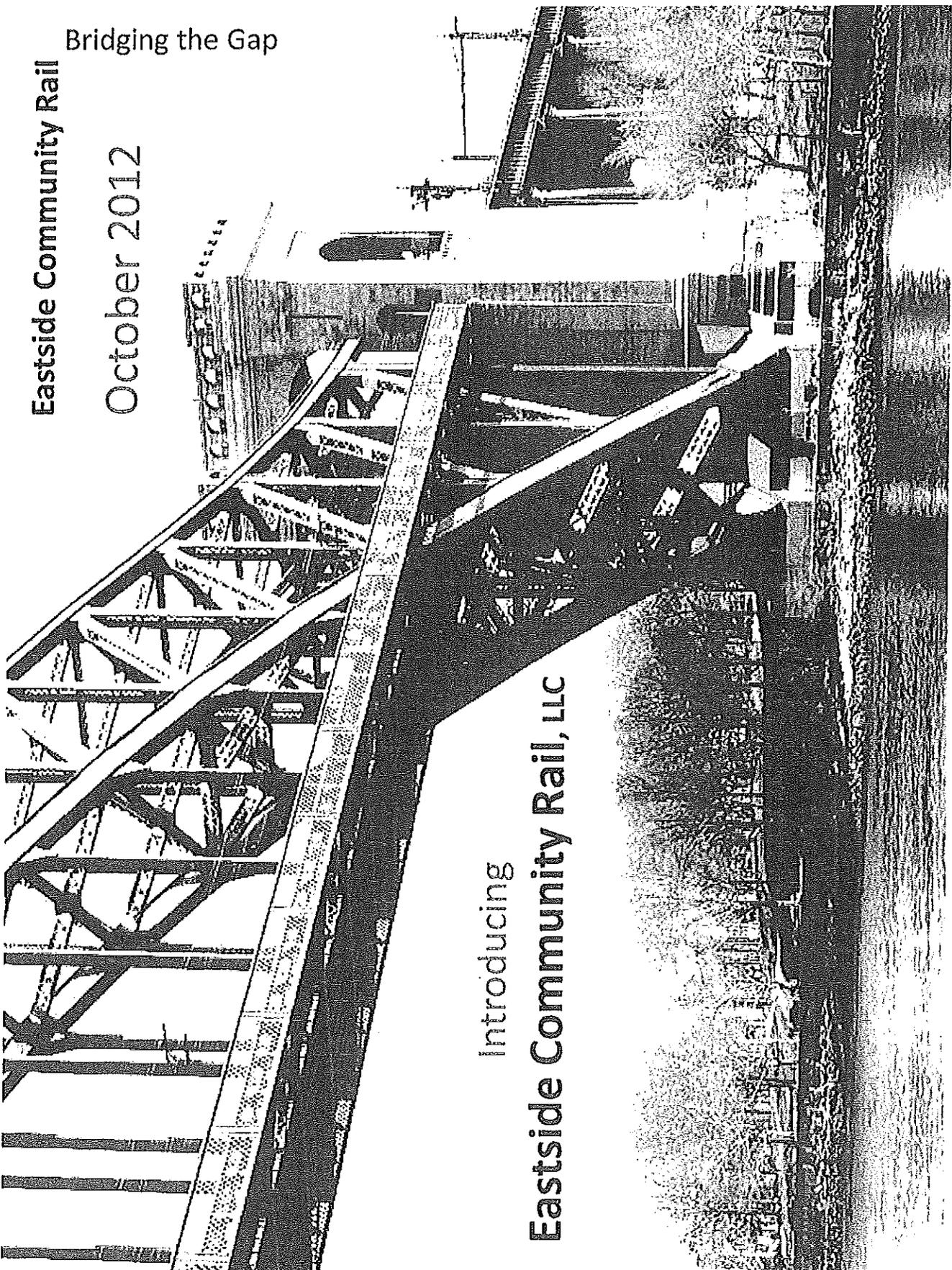
<u>Cost of Capital</u>	<u>Weight</u>	<u>Weighted Average</u>
2010 11.03%	40%	11.02%
2009 10.43%	30%	
2008 11.75%	20%	
2007 11.33%	10%	
2006 9.94%	0%	(5-yr Avg = 10.90%)

**Eastside Community Rail**

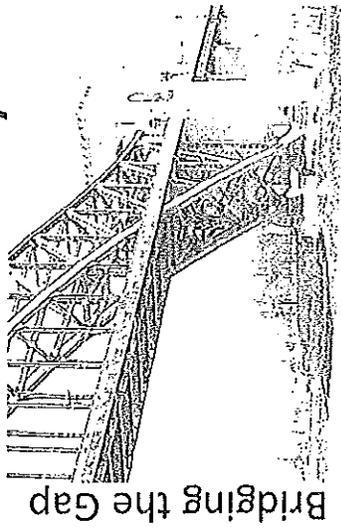
**Bridging the Gap**

**October 2012**

Introducing  
**Eastside Community Rail, LLC**

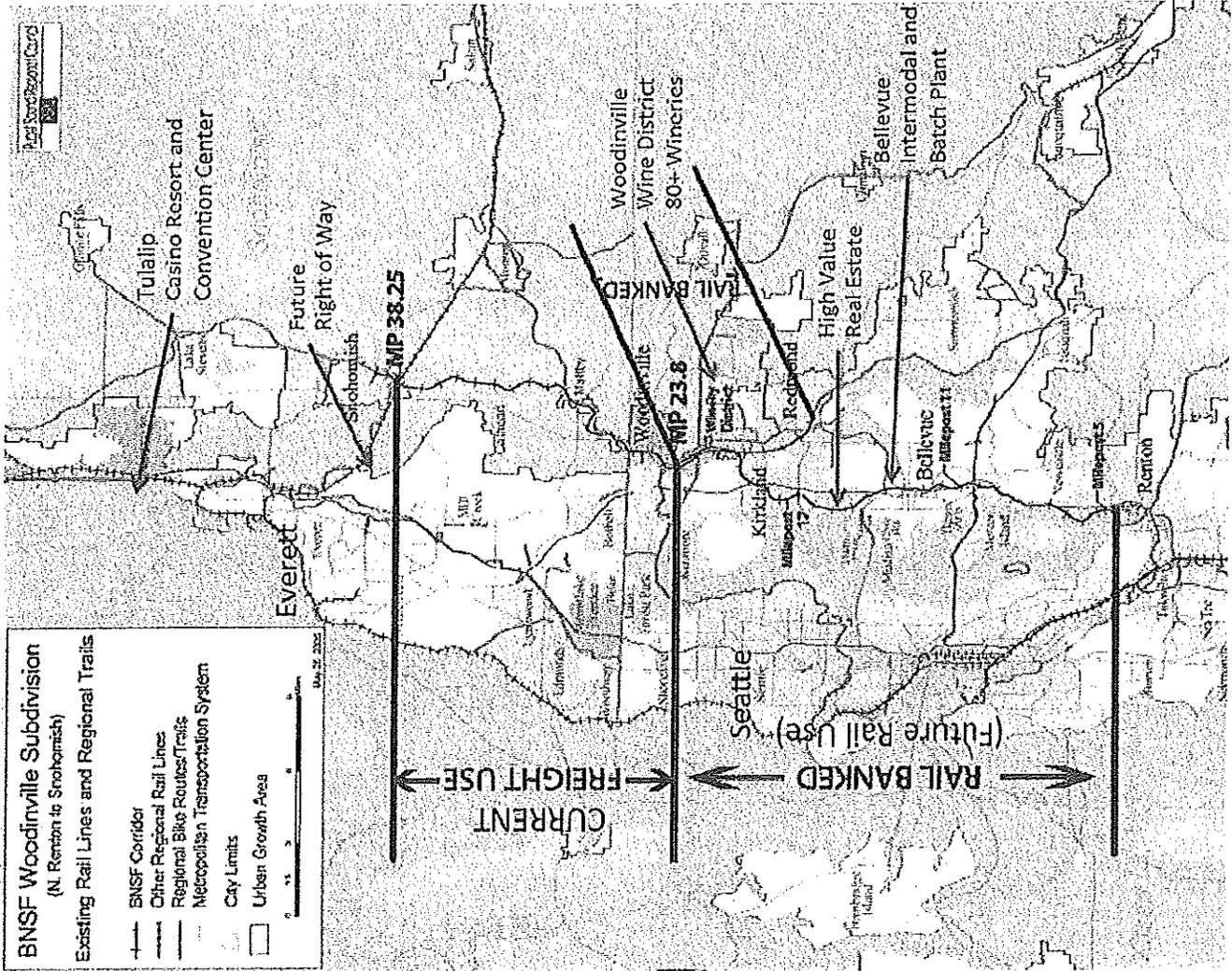


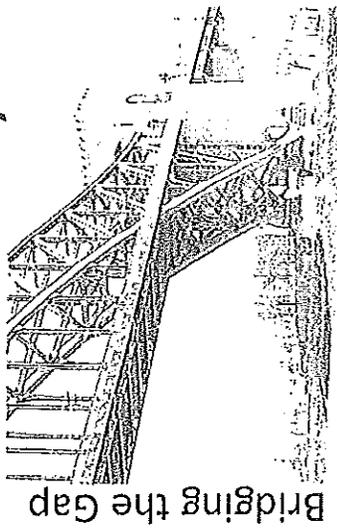
# Eastside Community Rail



Bridging the Gap

ECR is a federal railroad that owns the Woodinville Freight Easement acquired from BNSF milepost 38.25 to 23.8.

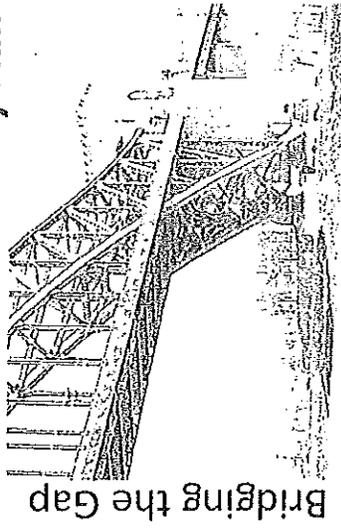




## Mission Statement

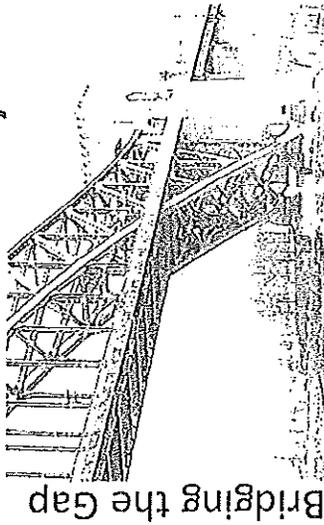
ECR's mission is to help maximize the utilization and overall public benefit of the Eastside Rail Corridor and reasonably profit from its efforts.

Eastside Community Rail



## Core Values

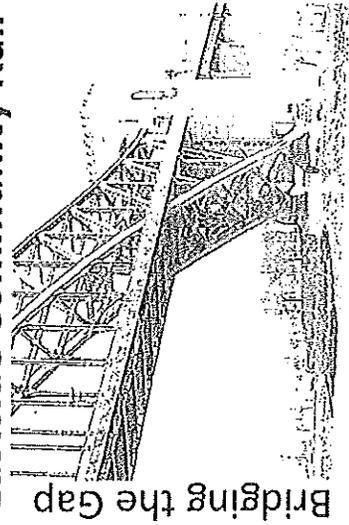
- Transparency
- Integrity
- Accountability



## Strategic Priorities

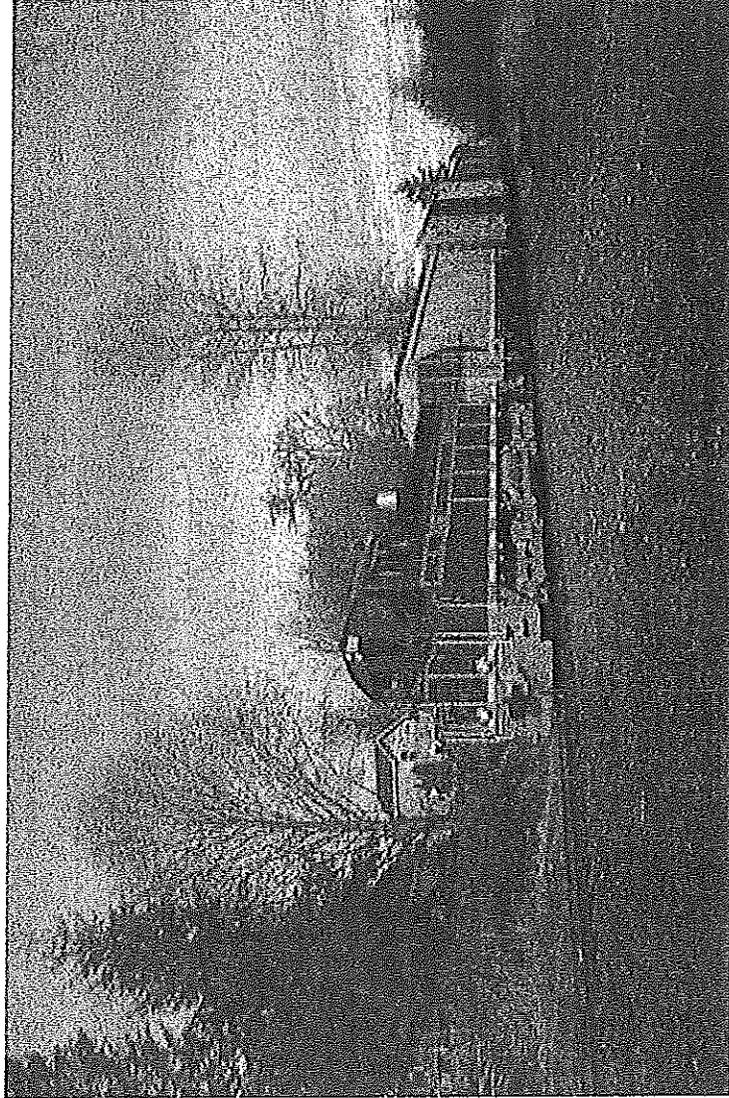
1. MUST grow the freight business
2. Re-establish excursion service
3. Extend corridor mileage
4. Pursue real estate opportunities
  - Intermodal
  - Bellevue batch plant
  - Transit Oriented Development
5. Support trail, transit and other uses

Eastside Community Rail

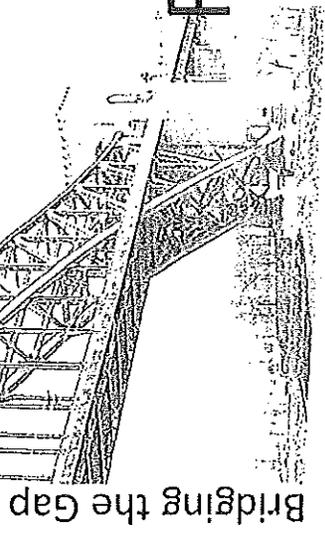


Bridging the Gap

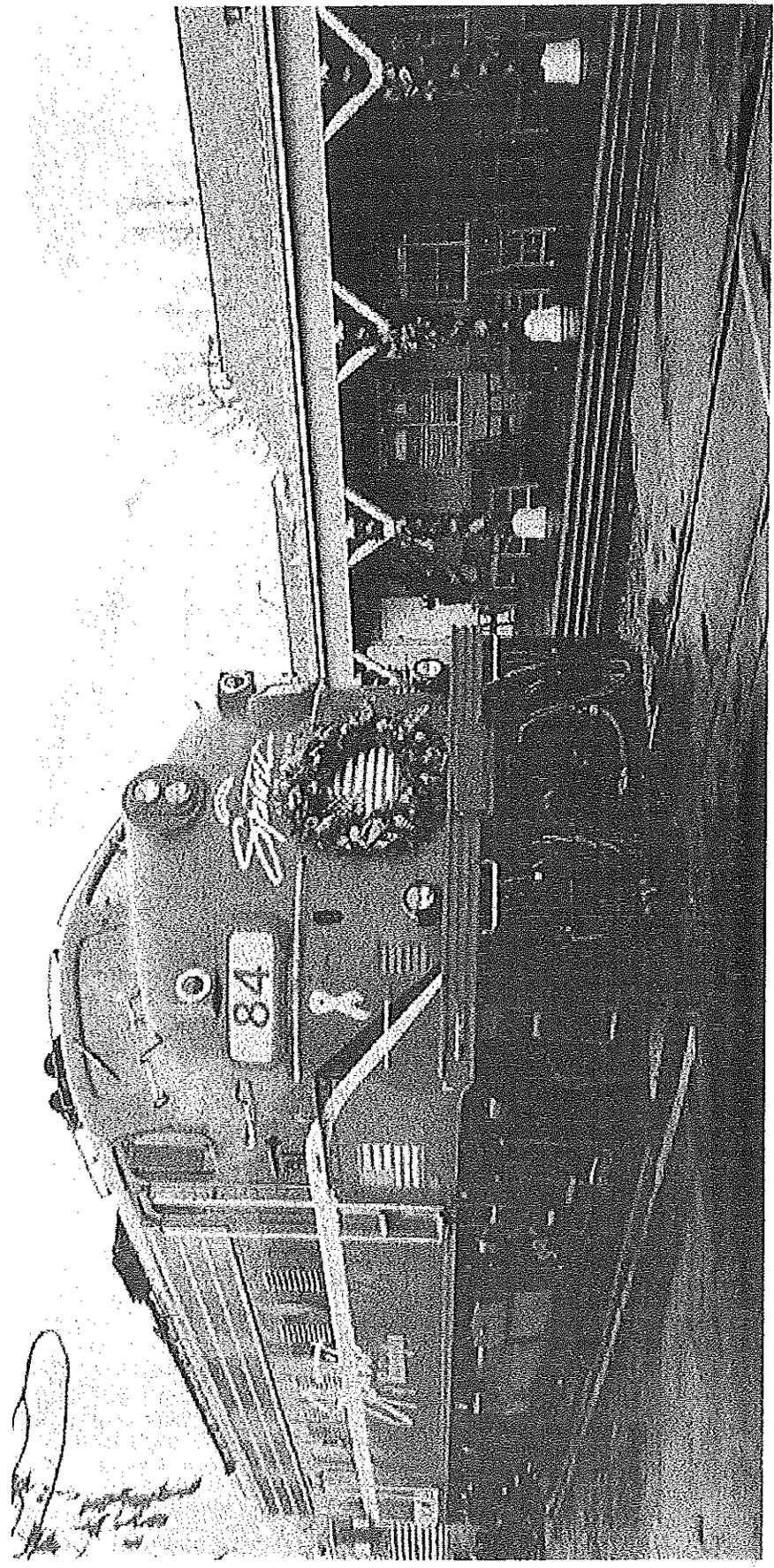
# Double the Freight Business



**Eastside Community Rail**

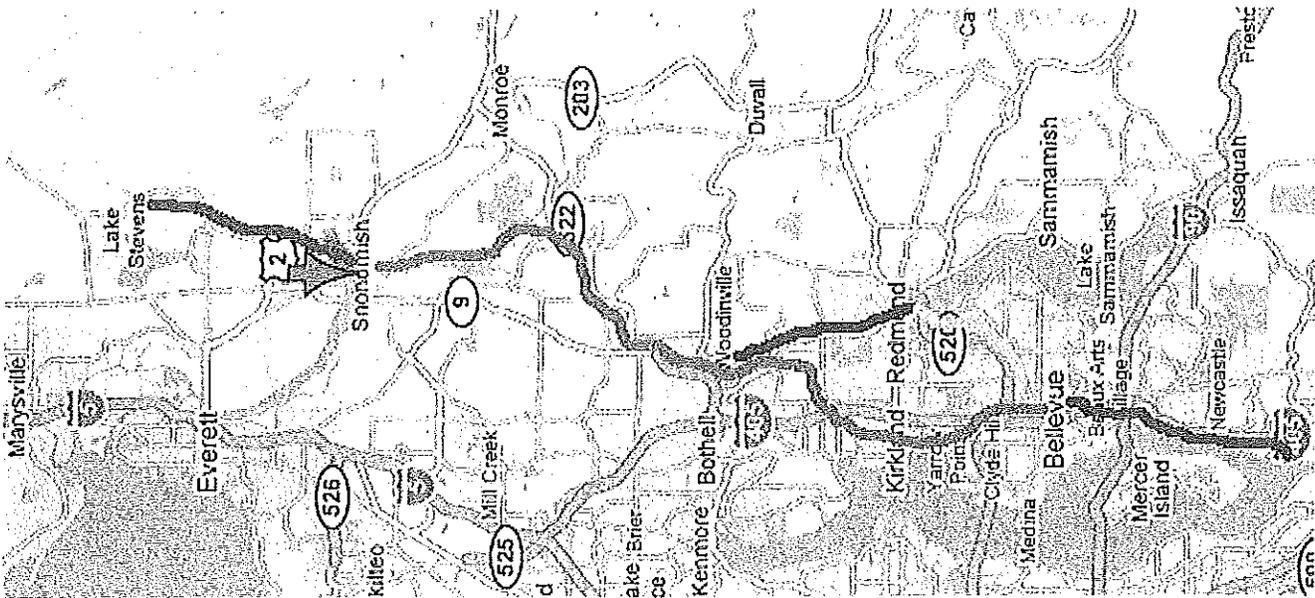
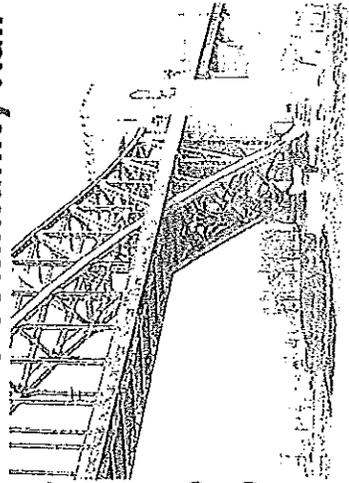


**Re-Introduce Excursion Train**



# Eastside Community Rail

Bridging the Gap

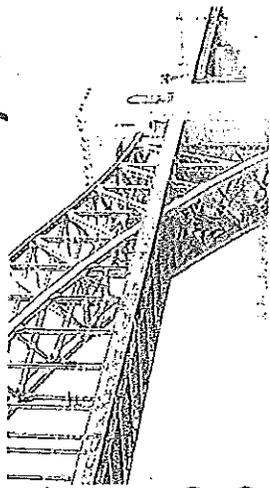


## Acquire Extensions

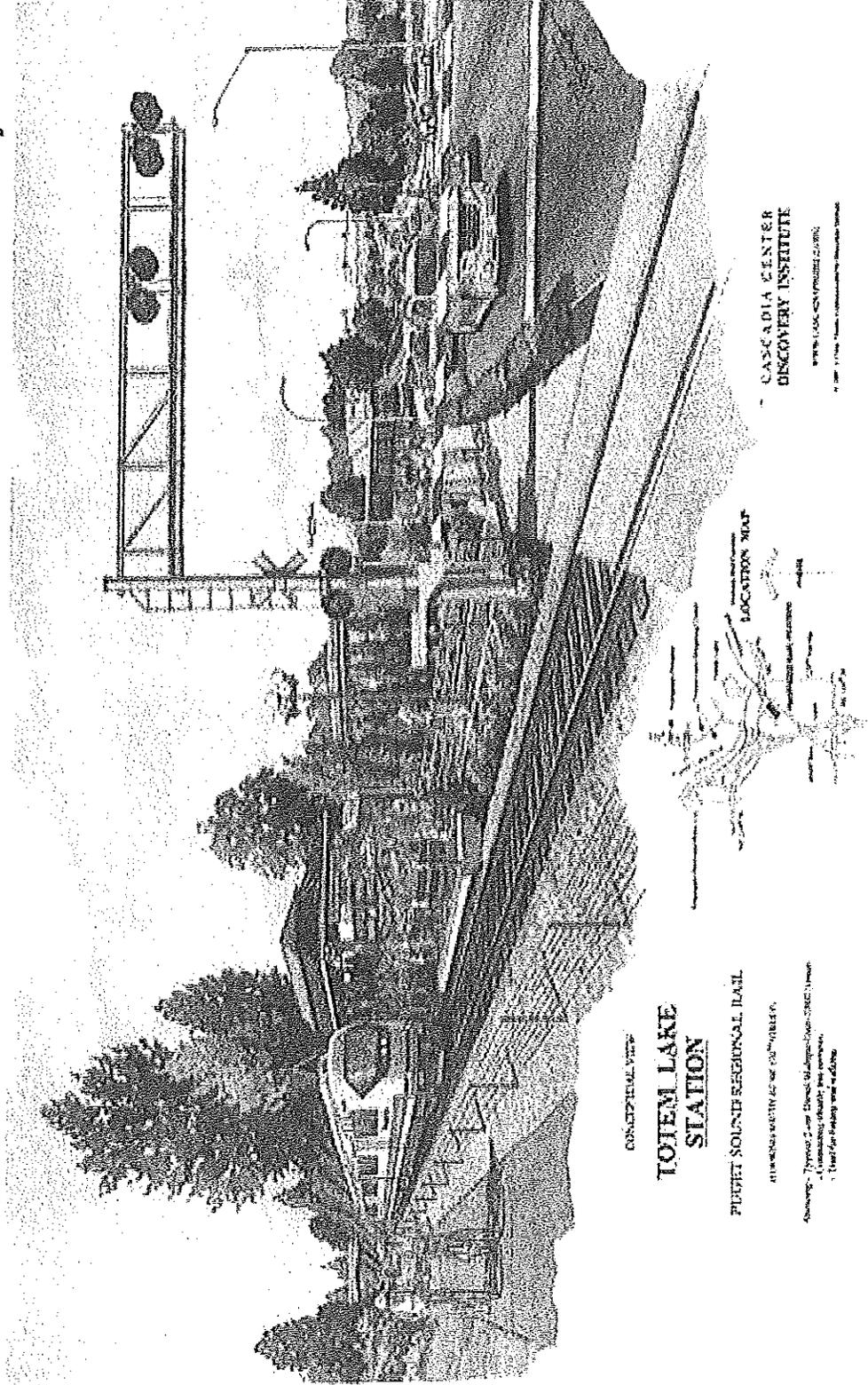
1. Woodinville to Bellevue
2. Woodinville to NE 124<sup>th</sup> St
3. Snohomish to Everett

**Eastside Community Rail**

Bridging the Gap



**We support Trails with Rails,  
Cascadia Center's "Railway."**



CONCEPTUAL VIEW

**TOTEM LAKE  
STATION**

PLUETT SOUND REGIONAL RAIL

ARCHITECTURE BY GUNDEL & GUNDEL

Ownership: TriMet  
 Construction: 2011-2012  
 Construction Cost: \$10.5 million

LOCATION MAP

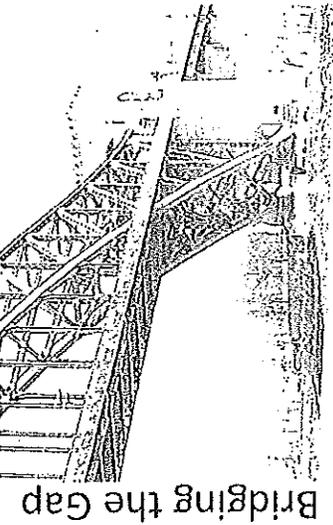


CASCADIA CENTER  
 DISCOVERY INSTITUTE

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Eastside Community Rail



## Trails with Rails

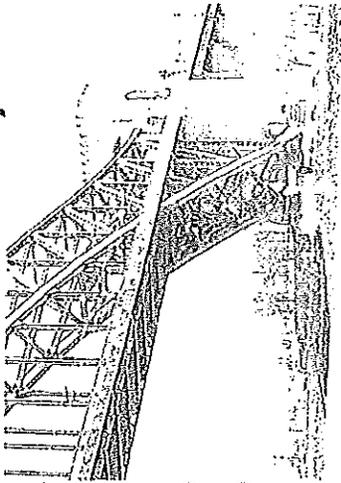
ECR's policy is to fully support, but not lead, community efforts to utilize the corridor for regional trail development...

PROVIDED

the existing track structure remains.

Eastside Community Rail

Bridging the Gap

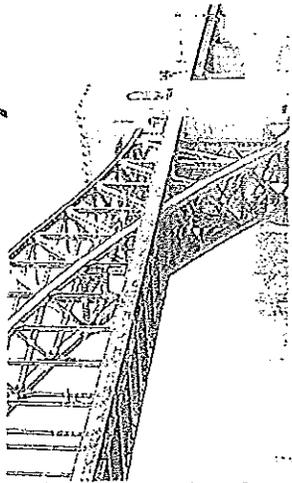


## Commuter Rail Transit

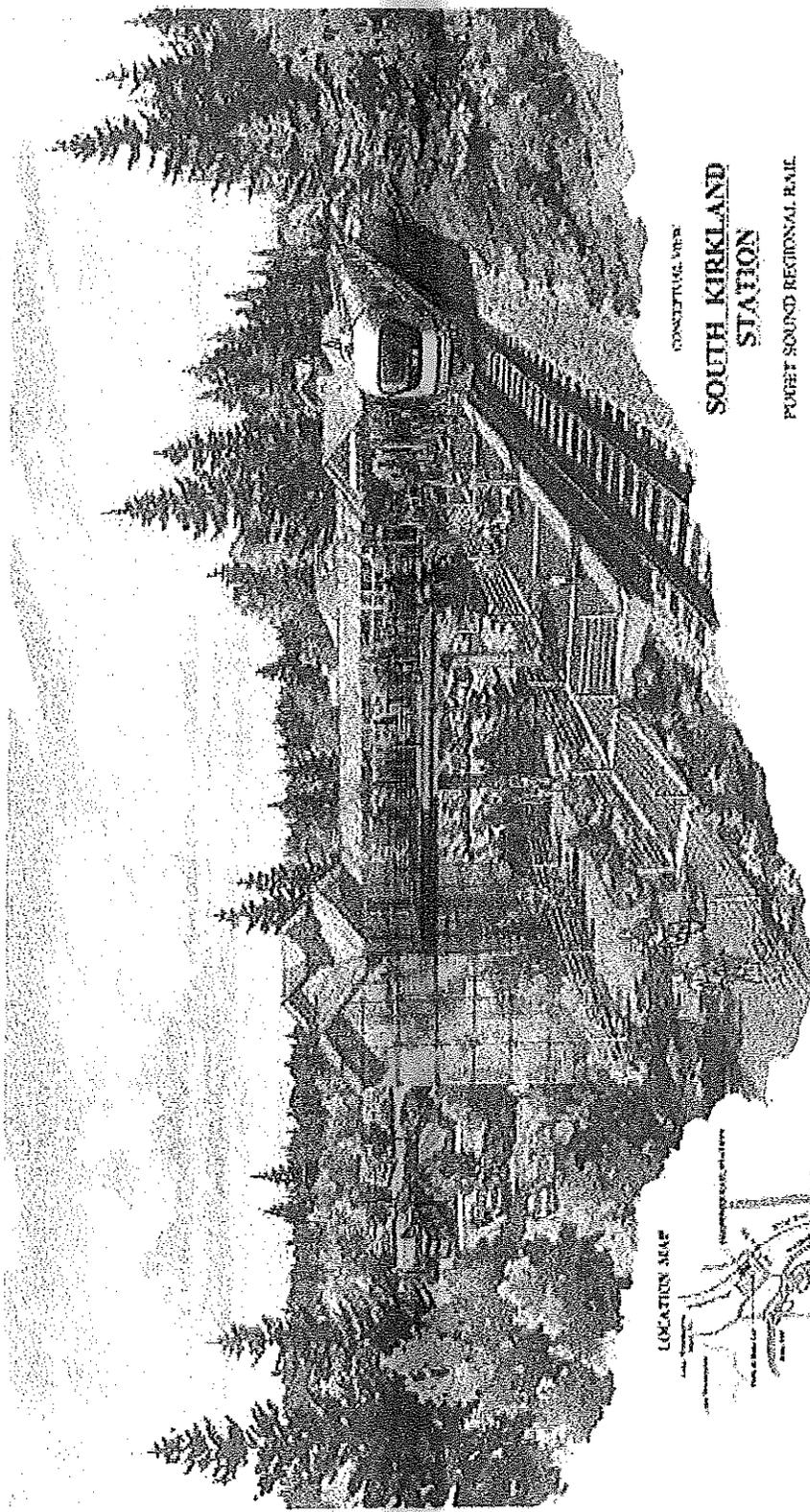
ECR's policy is to fully support, but not lead community efforts to utilize the corridor for commuter rail transit with connections to Sounder, Amtrak and other local transit systems.

**Eastside Community Rail**

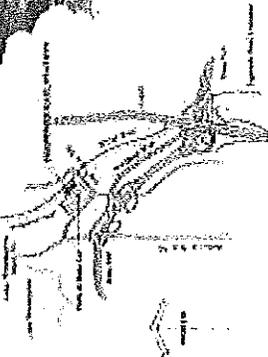
Bridging the Gap



**So. Kirkland Park and Ride**  
 (potential excursion station)



LOCATION MAP



CONCEPTUAL ART

**SOUTH KIRKLAND  
 STATION**

POUGH SOUND REGIONAL RAIL

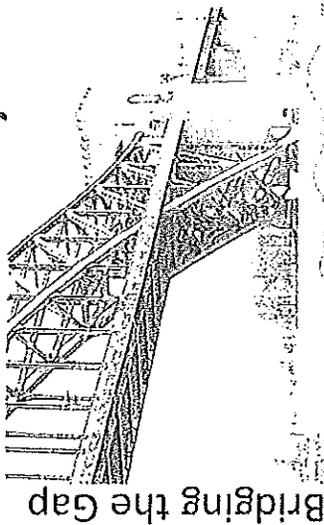
CHANGING WORLDS OF THE  
 SOUTH KIRKLAND REGIONAL RAIL

Shoreline, TriPoint, South Island, and the  
 Port of Kirkland and South  
 Island and Everett are the primary locations for  
 the station.

**CASCADIA CENTER  
 DISCOVERY INSTITUTE**

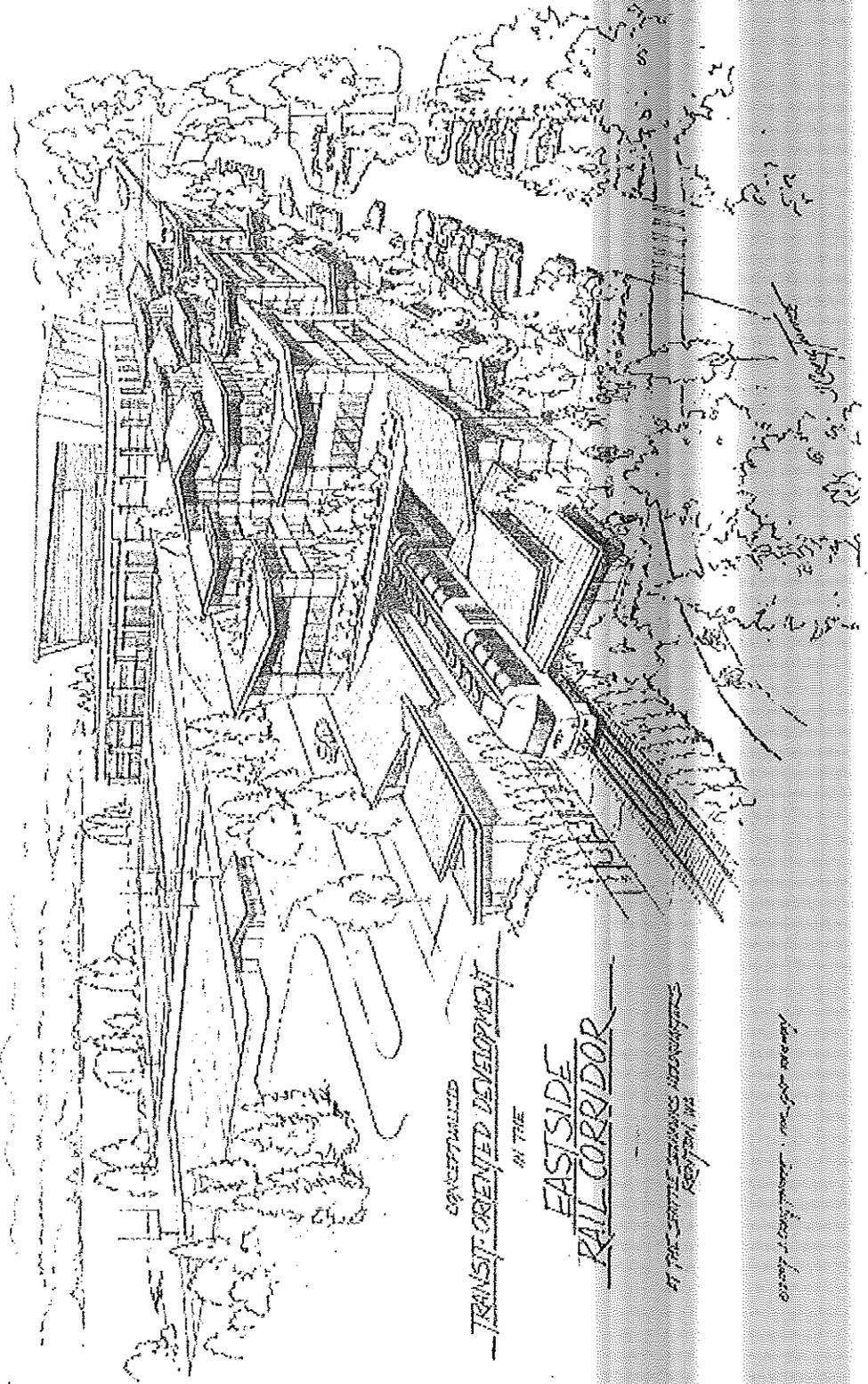
www.cascadiacenter.org  
 © 2011 Cascadia Center Discovery Institute

# Eastside Community Rail



Bridging the Gap

# Transit Oriented Development (inside corridor example)

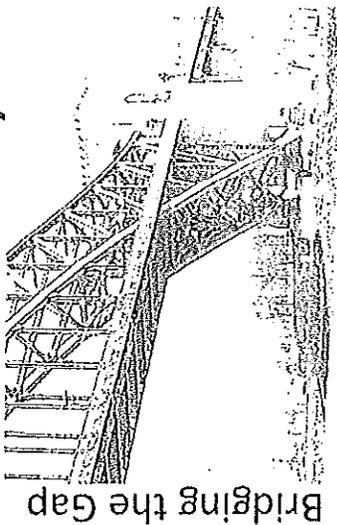


CONCEPTUAL  
TRANSIT-ORIENTED DEVELOPMENT  
IN THE  
EASTSIDE  
RAIL CORRIDOR

AT THE CAPITOL SQUARES ADMINISTRATION  
BETHESDA, MD

© 2007, Georgetown University

Eastside Community Rail



## Business Model

ECR's policy is to reasonably price its works.

(Direct Cost + Allocated Overhead)

X

STB Revenue Adequacy Rate\*

=

Public Price

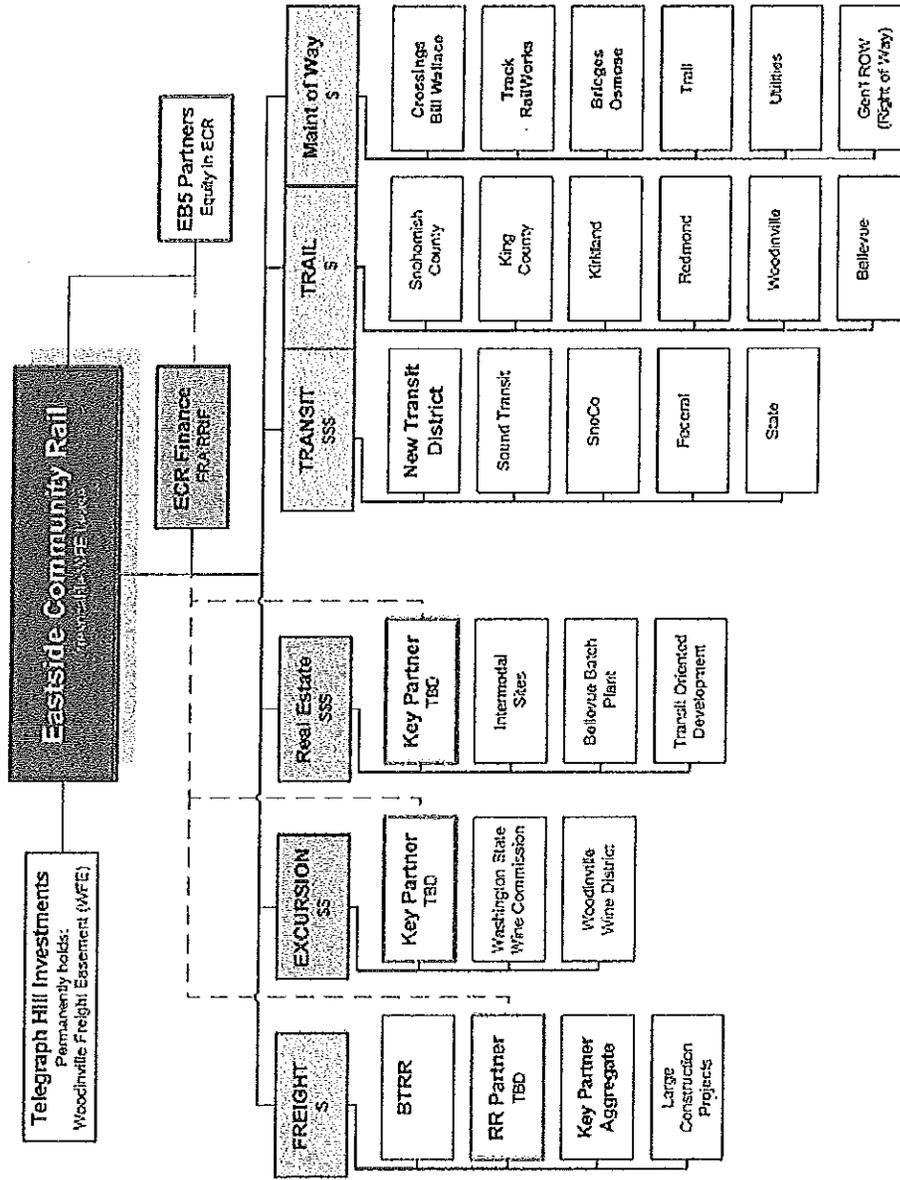
\*see ECR's Surface Transportation Board's Revenue Adequacy policy

# Eastside Community Rail

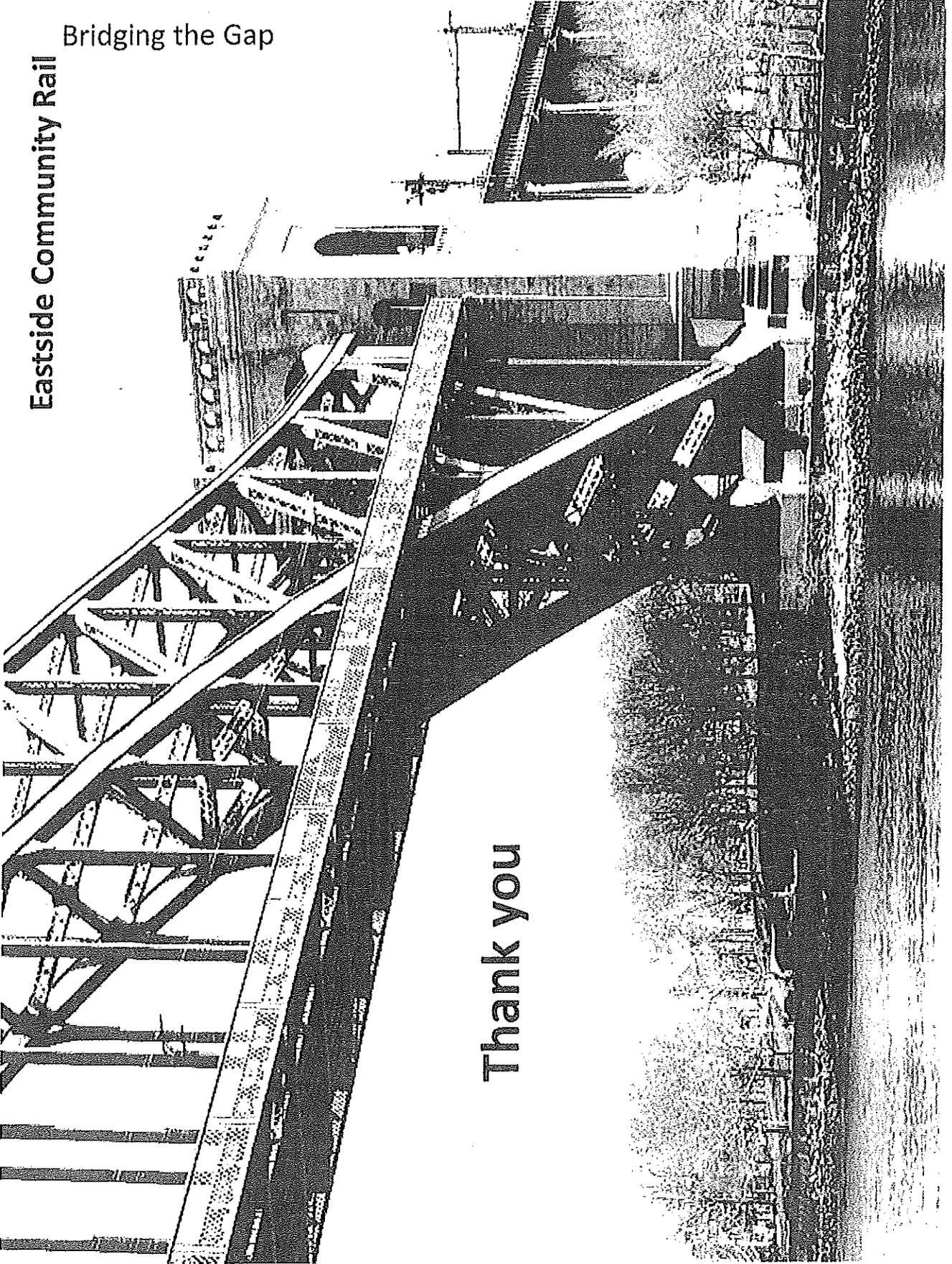


Bridging the Gap

## How we are organized...



**Eastside Community Rail**  
Bridging the Gap



**Thank you**

# **EXHIBIT 18**

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1 MR. FERGUSON: We're done with that line of  
 2 questioning, so let's just take a couple-minute break,  
 3 figure out where we are and reconvene.  
 4 (Recess taken from 5:22 to 5:29 p.m.)  
 5 (Exhibit Number 31 marked.)  
 6  
 7 EXAMINATION - (Continuing)  
 8 BY MR. FERGUSON:  
 9 Q. Mr. Engle, I've just handed you what's been  
 10 marked as Exhibit 31.  
 11 A. Mm-hm (answers affirmatively).  
 12 Q. The bottom part of this document, it reads that  
 13 there's e-mail from you to Kurt Triplett Joan McBride,  
 14 copied to Kathy Cox and David Farmer dated November 7,  
 15 2012?  
 16 A. Mm-hm (answers affirmatively).  
 17 Q. Do you recognize this e-mail?  
 18 A. Yes.  
 19 Q. And the e-mail references a brief PowerPoint  
 20 presentation introducing ECR. Are those the documents that  
 21 are attached to this exhibit?  
 22 A. Mm-hm (answers affirmatively), yes.  
 23 Q. In the first, on the first page here, the second,  
 24 or I guess the third paragraph, it reads, "ECR intends to  
 25 reactivate the line between Woodinville and Bellevue as

Page 196

1 soon as possible for freight and excursion service. We  
 2 have freight business coming together in Bellevue,  
 3 including Safeway who's 5 year service buyout is coming to  
 4 an end. Safeway continues to receive their bakery flour in  
 5 Ballard via rail and trucking it to their Bellevue bakery.  
 6 Additionally, there are very large construction projects  
 7 where rail service can reduce truck traffic, favor the  
 8 environment, and provide substantial cost savings."  
 9 Did you write this paragraph that I just read in  
 10 this e-mail to Kurt Triplett?  
 11 A. Yes.  
 12 Q. Okay. In November of 2007, was it ECR's  
 13 intention to reactivate the line between Woodinville and  
 14 Bellevue?  
 15 MR. COHEN: 2012.  
 16 Q. (By Mr. Ferguson) Excuse me, 2012?  
 17 A. That was our initial intention coming in to our  
 18 business planning.  
 19 Q. Okay. Was it your intention to reactivate  
 20 freight service in partnership with Ballard Terminal  
 21 Railroad, similar to the agreement, operating agreement you  
 22 have with Ballard for the freight segment?  
 23 A. Yes.  
 24 Q. So you were going to have Ballard actually run  
 25 the cars on the line between Woodinville and Bellevue?

Page 197

1 A. Yes.  
 2 Q. Okay. Do you know whether you had any  
 3 conversations with Mr. Cole that you would approach the  
 4 City of Kirkland about running freight before this e-mail  
 5 went out?  
 6 A. Try that again.  
 7 Q. Sure. Do you recall having any conversations  
 8 with Mr. Cole about running, about his company running  
 9 freight on the Woodinville-Bellevue line before you  
 10 e-mailed Kurt Triplett on November 7th?  
 11 A. Yes.  
 12 Q. Okay. And was he aware that you would be  
 13 contacting the City of Kirkland and other public agencies  
 14 and private businesses?  
 15 MR. MONTGOMERY: Objection; foundation.  
 16 THE WITNESS: Yes, that we both would be.  
 17 Q. (By Mr. Ferguson) Okay. Thank you.  
 18 (Exhibit Number 32 marked.)  
 19 Q. (By Mr. Ferguson) Mr. Engle, what's been marked  
 20 as Exhibit 32 has just been handed to you. This is an  
 21 e-mail thread starting with a message from Kurt Triplett to  
 22 you dated November 16th. Below that is an e-mail from you  
 23 to Kurt Triplett and Sung Yang of King County of the same  
 24 date.  
 25 In the e-mail that reads from your Comcast

Page 198

1 account to Kurt Triplett and Mr. Yang, did you write this  
 2 message?  
 3 A. Yes.  
 4 Q. Under bullet point number 1, it reads, "The  
 5 railroad drops its freight plans and therefore reactivation  
 6 to pursue this process."  
 7 Would you please explain what this sentence  
 8 means?  
 9 A. That if Kirkland was willing to allow the  
 10 excursion train to the south Kirkland Park & Ride, that we  
 11 would drop freight plans, which was a huge give on our  
 12 part.  
 13 Q. Why would it be a huge give, as you put it?  
 14 A. Because I believe there's 50,000 carloads that  
 15 could be moved out of Kirkland or out of Bellevue.  
 16 Q. Why would you give that up, then?  
 17 A. Trying to come to a mutually satisfactory  
 18 agreement.  
 19 Q. To just then allow the excursion train to run on  
 20 the line between Woodinville and Bellevue?  
 21 A. Yes.  
 22 Q. Who is Ernie Wilson?  
 23 A. Ernie Wilson is a rail fan.  
 24 Q. How do you know Mr. Wilson?  
 25 A. We were looking at redeveloping our condominium

# **EXHIBIT 19**

Page 131

1 need some shipper support before we put it in. At that  
 2 time, there was a lumber company that wanted to service it.  
 3 Just an idea, throw a lot of things out, my mind never  
 4 quits moving.  
 5 Q. Was a spur ever constructed?  
 6 A. No.  
 7 Q. When they said they needed shipper support, what  
 8 did that mean to you?  
 9 A. To the Burlington Northern, they need -- well, I  
 10 know what shipper support is. They need to know that it  
 11 will really get utilized before they're going to put a spur  
 12 in for me.  
 13 Q. So it was your understanding that they needed  
 14 demand --  
 15 A. Yes.  
 16 Q. -- in order to put a spur in?  
 17 A. Right. At that time I really didn't have much.  
 18 I had a potential, couple people that asked if I could do a  
 19 rail. I said, Let me check into it, that's what I did.  
 20 Q. I think you said a moment ago that when this  
 21 conversation occurred was a long time ago?  
 22 A. It was.  
 23 Q. Can you estimate approximately?  
 24 A. A long time ago, meaning 12 years ago maybe.  
 25 Q. 12 years ago?

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1 A. Mm-hm (answers affirmatively).  
 2 Q. All right.  
 3 A. And then we've just been busy ever since and kind  
 4 of put it on the back burner.  
 5 Q. Thank you.  
 6  
 7 EXAMINATION  
 8 BY MR. WAGNER:  
 9 Q. I'm Jordan Wagner from Sound Transit.  
 10 Earlier you testified about you and Byron Cole  
 11 meeting with the City of Bellevue, do you recall that?  
 12 A. It was like a council meeting I attended and he  
 13 was there, and Doug Engle was there and he listened and we  
 14 put our input in to save the rail.  
 15 Q. So you testified at a public hearing?  
 16 A. Yes. Well, I didn't personally. Doug Engle did.  
 17 He did the speaking and Byron Cole did the speaking, I  
 18 didn't.  
 19 Q. Did you speak to anyone after the meeting?  
 20 A. After the meeting?  
 21 Q. From the City of Bellevue?  
 22 A. I think Doug Engle did. In the lobby, he talked  
 23 to -- I heard him talking to some official there.  
 24 Q. Do you know who that official was?  
 25 A. I don't. Doug Engle does.

Page 133

1 Q. Thank you.  
 2 MS. ALVORD: Okay. So just a short break.  
 3 MR. FERGUSON: Sure.  
 4 (Recess taken from 2:28 to 2:56 p.m.)  
 5  
 6 EXAMINATION  
 7 BY MS. ALVORD:  
 8 Q. Okay. Mr. Wolford, I'm showing you what's been  
 9 previously marked as Exhibit 5.  
 10 MS. ALVORD: Do you guys all have that?  
 11 Q. (By Ms. Alvord) It's a map, called "Map 5 -  
 12 Freight Segment." And what I want to draw your attention  
 13 to is that portion of the map where you drew -- you wrote  
 14 the word "spur track" and you drew a line. You see that  
 15 there?  
 16 A. Yes.  
 17 Q. Is that a done deal --  
 18 A. No.  
 19 Q. -- that location of the spur track?  
 20 What does that line that you drew there  
 21 represent?  
 22 A. Approximate of a thousand feet of -- it's  
 23 promised to me to get a spur sometime. It may never  
 24 happen. It might be blue sky. But I'm looking forward to  
 25 having a spur in my yard.

Page 134

1 Q. Even though you drew that there, is it possible  
 2 the spur could be located elsewhere?  
 3 A. Yes.  
 4 Q. Or maybe not even located there at all?  
 5 A. Possibility.  
 6 Q. All right. I want to ask you, you've testified  
 7 and verbally on the record as well as in your letter of  
 8 support that accompanied the petition for reactivation of  
 9 the railroad, that you estimated approximately 15 percent  
 10 savings by using rail versus truck?  
 11 A. That's very conservative. It's probably way more  
 12 than that.  
 13 Q. Can you tell us about that, why is that a  
 14 conservative estimate?  
 15 A. Okay. The spoils, if we were going to the local  
 16 dumps around by truck would cost \$4 to 6 a yard, say it was  
 17 \$4 a yard.  
 18 Q. To dump?  
 19 A. To dump. That's a fee that gets charged back.  
 20 The savings -- all this dirt, and that's the right type of  
 21 dirt, it's a clay based. All Bellevue is kind of a clay  
 22 based material, it's ideal for building the trails to rails  
 23 in Snohomish County. Imagine no dump fees at \$4 a yard.  
 24 Three million yards, that's \$12 million. That will pay to  
 25 run the locomotive day and night, that savings alone.

Page 135

1 Q. Okay.

2 A. Plus the wear and tear on all the trucks, and the

3 roads and the pollution and the dust, and all that goes

4 away when you run it by rail.

5 Q. Anything else?

6 A. The fuel savings is huge.

7 Q. Anything else?

8 A. You got one locomotive chugging up there versus

9 30 trucks polluting the air.

10 Q. Is there a difference in the amount of spoils a

11 railcar can carry versus a truck?

12 A. Huge. I think it's 65 plus yards. A truck hauls

13 24.

14 Q. Okay.

15 A. And many railcars with side dumps.

16 Q. Okay.

17 A. Could even build the trail in Kirkland by side

18 dump.

19 Q. So those are the reasons, some of the reasons

20 that you used to come up with your conservative estimate --

21 A. Yeah.

22 Q. -- of 15 percent?

23 A. Yeah.

24 Q. Okay.

25 MS. ALVORD: All right. Thank you. That's

Page 136

1 all I have.

2 MR. FERGUSON: Okay.

3

4 EXAMINATION

5 BY MR. MONTGOMERY:

6 Q. Mr. Wolford, Tom Montgomery on behalf of Ballard

7 Terminal Railroad. I do have a couple of questions, or a

8 few myself, follow-up questions. With regard to the letter

9 that's Exhibit 8, that you signed?

10 A. Yes.

11 Q. You testified earlier, I believe, that Ernie

12 Wilson wrote it?

13 A. Yes.

14 Q. Could you tell us a little bit more about how the

15 letter came to be, did he write it without talking to you

16 and send it to you and say --

17 A. No. We discussed all this and he put it in very

18 cordial form. Everything he put in there I agreed to,

19 that's why I signed it. And he did a great job writing the

20 letter, better than I could.

21 Q. Do you do a lot of writing?

22 A. No, or reading.

23 Q. So he offered to write it?

24 A. Yes.

25 Q. You accepted the offer?

Page 137

1 A. Yes.

2 Q. And he wrote it after you talked?

3 A. Yes.

4 Q. In the letter, there's a statement says "We" --

5 on Page 2?

6 MS. ALVORD: Just a moment, Tom, we're just

7 going to get that here.

8 MR. MONTGOMERY: You're not going to need to

9 look at it, but that's okay.

10 MS. ALVORD: All right. Oh, here.

11 Q. (By Mr. Montgomery) You have it, Mr. Wolford?

12 A. Yes.

13 Q. The second page which also has a Number 29 on the

14 lower right-hand corner?

15 A. Yes.

16 Q. At the end of the first paragraph, it says,

17 "We" -- are you there?

18 MS. ALVORD: No. Just a moment. That's a

19 different copy. Do you want to do yours? There you go.

20 Q. (By Mr. Montgomery) Can you read that statement

21 out loud? "We estimate."

22 A. "Additionally, we anticipate."

23 "We estimate volume of these projects at over

24 three million yards of cubic spoils in the next several

25 years."

Page 138

1 That was a rough estimation, just by what we read

2 in the paper.

3 Q. Mr. Ferguson asked you about that number, you

4 said it sounded realistic. Why did you say that?

5 A. Because what Doug Engle has dug into, what the

6 upcoming projects and kind of what the papers are saying,

7 and the journal, construction journals, that's what we

8 estimated.

9 Q. You participate in the estimation?

10 A. No.

11 Q. You said it sounds realistic. How long have you

12 been hauling dirt around out of the eastside?

13 A. I've been in this business 42 years. I kind of

14 know my dirt. I've watched projects through the years and

15 I know volumes. It's a realistic estimate.

16 Q. If it hadn't been realistic in your mind, would

17 you have signed the letter?

18 A. Probably not. If they would have said 12 million

19 yards, I would have said no.

20 Q. If they said one million yards, you would have

21 said?

22 A. Well...

23 THE COURT REPORTER: What was that answer?

24 MR. MONTGOMERY: Strike it.

25 THE WITNESS: No, just being funny.

# EXHIBIT 20

RECEIVED  
MAY 13 2013  
Steel Rives LLP

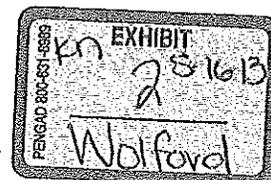
BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731  
BALLARD TERMINAL  
RAILROAD COMPANY, L.L.C.  
ACQUISITION AND EXEMPTION  
WOODINVILLE SUBDIVISION  
STB DOCKET NO. AB-6 (SUB.NO. 465X)  
BNSF RAILWAY COMPANY  
ABANDONMENT EXEMPTION  
IN KING COUNTY, WA

BOBBY WOLFORD'S RESPONSES TO  
SUBPOEN DUCES TECUM

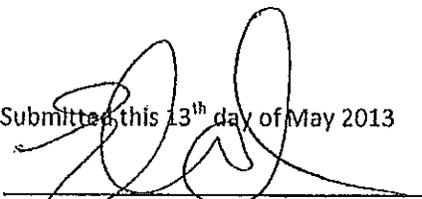
RESPONSES

- 1) Response to request for production # 1.  
See attached "Analysis of comparative costs..."
- 2) Response to request for production # 2.  
See attached emails and Proposal
- 3) Response to request for production # 3.  
No responsive documents exist
- 4) Response to request for production # 4.  
No currently known documents exist; however, in the event such documents are recovered Mr. Wolford will supplement
- 5) Response to request for production # 5.  
The following list comprises the response to this request:
  - Mikelo – provided verbal hauling quote
  - Chandler Homes – provided verbal hauling quote / Contract Executed
  - Elk Heights– provided verbal hauling quote
  - Halstrom Construction – provided verbal hauling quote / Contract Executed
  - R & R Excavation – provided verbal hauling quote / Contract Executed
  - Dan D. Simmons/ Buchan Homes – provided verbal hauling quote



- 6) Response to request for production # 6.  
See response to production #1

Submitted this 13<sup>th</sup> day of May 2013

By: 

Elizabeth Alvord, WSBA #23571  
Attorney for Bobby Wolford

**RESPONSE TO REQUEST FOR PRODUCTION #1**

# *Ballard Terminal Railroad Company and Eastside Community Rail*

## *Analysis of comparative cost of hauling excavation spoils, Truck vs. Railroad*

April 2013

**Summary.** Eastside Community Rail (ECRR), established in 2012, leased freight rail operations to Ballard Terminal Railroad Company (BTRC) along the northern third of the Burlington Northern Santa Fe Railway's (BNSF) former Woodinville Subdivision, which ran from Renton to Snohomish, Washington. This line, now locally known as the 'Eastside Rail Corridor' (corridor), was railbanked by BNSF circa 2009 and acquired by the Port of Seattle. The Port still owns the segment between Snohomish and Woodinville, and has sold off the remainder of their acquisition to various governmental entities.

After taking control of the freight service on the Snohomish-Woodinville rail line, ECRR began a search for additional freight customers in order to enhance the line's viability. One opportunity that appeared is in Bellevue. It became clear that massive amounts of excavation spoils and demolition materials would be generated by various private and public projects in and around Bellevue over the coming decade. *Further, CalPortland sees an opportunity to transfer aggregate directly from barges to railcars in Everett for Bellevue delivery as a lower cost alternative, but beyond this analysis.* BTRC and ECRR's current spoils only volume estimate is three million cubic yards. In a case of serendipity, there is also a need for a large quantity of fill material to construct a maintenance-of-way road/trail alongside of the currently operating rail segment, centered on Maltby. BTRC and ECRR therefore modeled spoils hauling scenarios to compare the cost of hauling and disposal via conventional trucking with the cost of doing so by rail. This analysis lays out the assumptions underlying the modeling and highlights the benefits of the rail option.

**Trucking Assumptions.** One of the biggest problems to solve when disposing of excavation spoils by truck is legal dumping. At this time, there are few qualified, large disposal sites anywhere near Bellevue. For purposes of this study, it was assumed that the nearest sites of reasonable capacity are in the vicinity of Monroe, Washington, about 25 miles away. Consequently, a round trip (cycle) by conventional dump truck and trailer from an excavation site in downtown Bellevue of 2 hours 30 minutes (2.5 hrs), including tipping time, was estimated by ECRR's trucking consultant, *Bobby Wolford Trucking* (Wolford). Dumpsite operators currently charge \$3-6 per ton for disposal space; this analysis uses \$3/ton.

The other factor to consider is the excavation contractor's desired daily production volume, which determines the number of trucks needed on the job. BWT stated that a large building excavation project would target removing 2000 cubic yards per day. Given a capacity of 30 CY/truck and trailer combination, 67 truck loads per day would be needed to move this volume. This calculation assumes an eight-hour workday, that translates to just over 8 trucks per hour, or just over 7 minutes per truck loading time. Since each truck could only complete three round trips per day, 22-23 trucks would be needed in the contractor's fleet, without allowing for breakdowns or other interruptions, to keep the excavator busy. The included spreadsheet shows the resulting extended costs in 2013 for removing 3,250,000 CY, roughly equivalent to all of the expected Bellevue excavations over the next decade. For reference, a quarter-block building excavation about 45 feet deep would generate a little over 250K CY of spoils, e.g. Lincoln Center.

**Railroad Assumptions.** The excavation job design would be different from the trucking approach. Basically, a string of rail cars would be spotted on the rail line near (<2 miles) the excavation site, and trucks would make a short cycle between the job site and railroad.

For purposes of this analysis, it was estimated that a truck (tractor) and side-dump trailer of 20 CY capacity could complete a round trip every 24 minutes, or 0.4 hours. The trucks would simply create a windrow of material alongside the stationary rail cars. A large wheel loader would then transfer the material into the side-dump rail cars. See picture 1.

In order to meet the 2K CY/day production volume stated above, it would be necessary to load and remove two trains of 1K CY each, or 17 side-dump cars of 60 CY capacity each. That means that there would have to be 50 truck cycles per trainload, or 100 per day. However, due to the short cycle time, each truck could make up to 20 trips per day. Therefore, as few as five trucks could keep the excavator busy; versus 22-23 truck-trailer combinations.

In the rail alternative, there typically would not be a fixed dumpsite for the spoils, and no dump fees. By using side-dump cars, the spoils could be placed wherever needed along the corridor for maintenance-of-way road construction, trail creation, embankment reinforcement, and so on. For estimating, the trains were assumed to run to Maltby. Nonetheless, a fixed trans-load site could be used, e.g., to supply Snohomish River dike construction materials. See pictures 2,3.

**Analysis.** Using the assumptions outlined, local costs for trucking were obtained from Woldford in Maltby, who removed spoils from Lincoln Center. Trucking costs were \$120/hr for dump truck and trailer combinations, and \$110/hr for tractor and side-dump trailer. These rates include operator, fuel, insurance, overhead and profit; there is no per mile charge. From their experience, a conversion factor of 1.3 tons/CY was used to calculate dump fees, based on \$3/ton. The truck trips needed was calculated, and the rates above applied to develop gross cost figures for each alternative. In the trucking case, cost was added for supervision/dispatch and a 20% contingency. These unit costs may be low as demand has been relatively flat from 2008-2012, but is expected to increase sharply as more projects start (>contingency).

The rail alternative was approached a little differently since there was no 'everything included' hourly rate available. Instead, individual components, such as crew time, locomotive cost, rail car leases, supervision, overhead and profit were estimated and totaled. There are certain unique costs for the railroad trans-load site, also, e.g., site preparation and maintenance, overnight security for the railroad equipment, etc. Finally, since the railroad transportation would be managed by BTRC, supervision, overhead and profit items were also added. (Note that the railroad's profit would be computed at the STB's 'Revenue Adequacy Rate of Return', about 11%.) All of these items are computed and totaled in the spreadsheet.

**Conclusions.** As can be seen in this spreadsheet, moving large quantities of spoils out of the Bellevue area by rail would be considerably less expensive than doing so by truck. However, this analysis only considers the direct costs. Indirect benefits, such as reduced wear and congestion on the state's highways, reduced air pollution and consequent reduced health impacts, and lessened in-city traffic accident potential from elimination of 'extended reach' dump truck trailers, are significant. Another benefit is that the rail line remains viable for any and all other uses, such as importing bulk construction materials. Unfortunately, estimation of the value of those benefits, which are considerable, is beyond the scope of this report.

Bellevue Projects  
 Construction Spoils - *rough estimates*

	Gu estimates cy	60 railcars	cy/railcar Trucks
Lincoln Center 2	250,000	4,167	
Spring District	1,000,000	16,667	
I-405	300,000	5,000	
SR-520	200,000	3,333	
East Link light rail	600,000	10,000	
Bel-Red Corridor	250,000	4,167	
SRO	200,000	3,333	
Project 1	150,000	2,500	
Project 2	150,000	2,500	
Project 3	150,000	2,500	
<b>Total Spoils</b>	<b>3,250,000</b>	<b>54,167</b>	<b>108,333</b>

**Eastside Community Rail  
Bellevue Spoils Hauling Comparison**  
as of 2013 April

Conventional Truck Disposal Option

Assumptions: Reference site in NE quadrant of Bellevue Way and NE 4th St., Bellevue  
 Area: 2.95 acres, excavated to average depth of 45 ft.  
 Dirt volume in place: 5,782,590 cu. ft.= 214,170 cy  
 Swell factor 20%, yields 257,004 cy on trucks; USE 250K cy  
 Total est. Bellevue spoils vol. 3,250,000 cy (Tab 3)  
 Capacity, dump truck & trailer 30 cy  
 Daily production 2,000 cy  
 Unit weight of 1 cy spoils, loaded 1.30 tons  
 Disposal site: vicinity of Monroe; approx. 50 mi. RT  
 Est. roundtrip travel + dump: 2 h 30 m= 2.5 hr

	Quantity	Units	Time	Rate	Totals	
Trucks	108,333	trips	2.5	\$ 120	\$ 32,500,000	
Tipping fee	4,225,000	tons		\$ 3	\$ 12,675,000	
Supervision	1,625	min. days		\$ 200	\$ 325,000	Dispatch, etc.
subtotal					\$ 45,500,000	
Contingency				20%	\$ 9,100,000	
Profit				11.22%	\$ 6,126,120	
<b>Total</b>	<b>Trks/Day</b>	<b>67</b>			<b>\$ 60,726,120</b>	<b>\$ 18.68 /cy</b>
WSST				9.50%	\$ 5,768,981	

Rail & Trail Disposal Option

Assumptions: Quantities, production same as above  
 Capacities, side dump truck trailer: 20 cy, side dump rail car 60 cy  
 Transload site: alongside railroad tracks south of NE 8th St.  
 Est. roundtrip travel + dump: 0 h 24 m= 0.4 hr  
 Transload equipment e.g., CAT 966H wheel loader w/5 cy side dump bucket  
 2 trainloads per day to RR access road sites in vicinity Maltby

	Quantity	Units	Time	Rate	Totals	
Trucks	162,500	trips	0.40	\$ 110	\$ 7,150,000	Single vs double
Transloading cost	650,000	cycles	0.02	\$ 110	\$ 1,430,000	End loader
Load site preparation	10	LS		\$ 8,500	\$ 85,000	Mobilize, clear
Site maintenance	1,625	days	8	\$ 36	\$ 473,850	Laborer
Water truck	1,625		8	\$ 110	\$ 1,430,000	Dust control
Water	1,625			\$ 8,500	\$ 0	Dust control
Supervision	1,625	days		\$ 200	\$ 325,000	Trucking
Train crew	1,625	days	12	\$ 73	\$ 1,421,550	Incl. Dumping (Crew hours)
Locomotive	1	each	16	\$ 4,500	\$ 72,000	Monthly lease, e.g., GP38
Locomotive Fuel	1,625	days		\$ 1,840	\$ 2,990,000	Incl. lubricants
Loco. Operation	1,625	days	12	\$ 36	\$ 710,775	
Side dump cars	17	cars	77	\$ 3,900	\$ 5,130,357	Monthly lease
Security, rail equip.	325	weeks		\$ 2,500	\$ 812,500	Overnight, wknd
ECRR Direct	1,625	days		\$ 1,458	\$ 2,369,250	Management
ECRR Indirect OH				10%	\$ 2,440,028	
subtotal					\$ 26,840,310	
Contingency				15%	\$ 4,026,047	
STB RARR				11.22%	\$ 3,463,205	
<b>Total</b>	<b>Trns/Day</b>	<b>2</b>			<b>\$ 34,329,562</b>	<b>\$ 10.56 /cy</b>
WSST				9.50%	\$ 3,261,308	

Potential savings, rail over trucking: \$ 26,396,558 43.5%

# **EXHIBIT 21**

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1 the Surface Transportation Board?  
 2 A. I believe that was his intent.  
 3 Q. When you say "his," who do you mean?  
 4 A. Ernie.  
 5 Q. Okay.  
 6 A. He's better at writing letters than me.  
 7 Q. But that is your signature on the last page?  
 8 A. Yeah.  
 9 Q. Okay. If you turn to Page 2 of this letter,  
 10 please. It's Page 29 on the lower right-hand corner. The  
 11 middle page. Referencing the first sentence of the first  
 12 full paragraph on this letter, would you read that first  
 13 sentence out loud?  
 14 A. "There are several major highway and secondary  
 15 roadway projects scheduled in the area of Bellevue,  
 16 Washington over the course of several years. These  
 17 projects, plus multiple new high-rise buildings, will  
 18 necessitate export of hundreds of thousands of cubic yards  
 19 of excavated materials, building demolition waste and  
 20 roadway grading spoils."  
 21 Q. Continue please.  
 22 A. "We are currently targeting projects on 405, 520  
 23 in the 2013, '14 construction seasons. A future light rail  
 24 system with a tunnel and 'cuts' within one mile of the  
 25 railroad will also require substantial movements of

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1 spoils."  
 2 That's going on currently on Highway 522 right  
 3 now. They're removing spoils that could be utilizing  
 4 railroad now.  
 5 Q. We'll come to it. If you could finish reading  
 6 the paragraph.  
 7 A. "We estimate the volume of these projects at over  
 8 three million cubic yards of construction spoils over the  
 9 next several years."  
 10 Q. Thank you.  
 11 MR. MONTGOMERY: Did you skip a sentence?  
 12 THE WITNESS: It's all gobbledygook. Who  
 13 cares.  
 14 Q. (By Mr. Ferguson) When you say it's  
 15 gobbledygook, what do you mean?  
 16 A. You're overbearing. All of this is gobbledygook  
 17 to me. I'm a cut and dry guy, just want the railroad left  
 18 in so we can save the taxpayers some money transporting  
 19 dirt.  
 20 Q. Okay. You've said in this letter that you are  
 21 currently targeting projects on I-405 and SR520 for the  
 22 2013 and 2014 construction seasons?  
 23 A. Yes.  
 24 Q. Is that correct?  
 25 A. That's correct.

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1 Q. Are there particular projects that you are  
 2 targeting?  
 3 A. Not yet, they haven't been let. The contracts  
 4 haven't been let, but when they do, we'll be there to  
 5 service them if the rail is there.  
 6 Q. When you say you're targeting projects, what do  
 7 you mean?  
 8 A. They're in the future, when the contract is let,  
 9 we will bid on it.  
 10 Q. Are there particular projects that you have in  
 11 mind, though?  
 12 A. Moving spoils out of the -- by Lincoln Square is  
 13 our biggest one in Bellevue.  
 14 Q. But is there a particular highway project that  
 15 you are specifically planning to bid on?  
 16 A. We'll give prices to all of them. Right now,  
 17 they're not let yet.  
 18 Q. But how do you -- do you know whether there are  
 19 any projects planned?  
 20 A. According to the papers, I read them, you read  
 21 them, yes, there's big projects in the works for the city  
 22 of Bellevue.  
 23 Q. For I-405, are there particular areas where  
 24 construction is to take place that you are considering  
 25 bidding on?

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1 A. Merlino just got a huge contract for 405. We  
 2 would give him dirt prices if we had a rail.  
 3 Q. Merlino, you said?  
 4 A. Merlino Construction just did a huge, I don't  
 5 know how many million project for 405. It's still going  
 6 on.  
 7 Q. Merlino is a contractor?  
 8 A. Merlino Construction, yeah.  
 9 Q. Has Merlino Construction approached you about  
 10 working with it on a highway project?  
 11 A. No, because we don't have our rail in place yet.  
 12 Q. Are there any other projects on I-405 other than  
 13 the contract that Merlino has that you are targeting?  
 14 A. I'd have to talk to my superintendent and  
 15 estimator. It's not my -- I don't run that part of my  
 16 company.  
 17 Q. Are there projects on 520 that your company is  
 18 targeting?  
 19 A. Yeah, we work with Scarsella Construction,  
 20 they're currently doing one on 520.  
 21 Q. You are currently working on a project for  
 22 highway 520?  
 23 A. Scarsella Construction is, and we subcontract to  
 24 them, yes.  
 25 Q. Are there other projects on 520 that you are

# **EXHIBIT 22**

1 around what you believe to be the approximate property  
 2 boundary --  
 3 A. Yeah.  
 4 Q. -- of the facility?  
 5 A. Very easy. Right there.  
 6 Q. Okay.  
 7 MR. MONTGOMERY: You said that's 10 acres?  
 8 THE WITNESS: Yeah, 9.9.  
 9 MR. FERGUSON: Katie, mark that as 5,  
 10 please.  
 11 (Exhibit Number 5 marked.)  
 12 Q. (By Mr. Ferguson) So, Mr. Wolford, I've just  
 13 handed you a closer up copy of an aerial image map of your  
 14 facility. Can you draw the same property boundary line  
 15 around it on this map, too, please?  
 16 A. (Witness complies.)  
 17 Q. Take your time so you know where you're -- be  
 18 sure.  
 19 A. That's it.  
 20 Q. Okay. And do you own the property all the way up  
 21 to the railroad right of way or does your property  
 22 boundary?  
 23 A. It's 100 feet at one period, and it's 50 feet. I  
 24 think it's 50 feet here and then it goes to 100 feet right  
 25 about here. There's an easement right in here some place.

1 Q. Okay. So sounds like your company owns at least  
 2 part of that green strip?  
 3 A. Yeah.  
 4 Q. Okay. If you can, would you mark on there the  
 5 complete boundary so it's a completely closed off parcel?  
 6 MS. ALVORD: He wants you to draw that.  
 7 THE WITNESS: 50 feet here, I believe  
 8 100 feet here.  
 9 Q. (By Mr. Ferguson) Okay. Thank you.  
 10 Is that the facility where Tom Payne said to you  
 11 that a spur track could be built?  
 12 A. Yes, this area.  
 13 Q. And it's the same facility where Doug Engle also  
 14 said that a spur track could be built?  
 15 A. Yes.  
 16 MS. ALVORD: I'm sorry, where are we looking  
 17 now? I'm sorry.  
 18 THE WITNESS: Right here, proposed spur  
 19 would come right here.  
 20 Q. (By Mr. Ferguson) Okay. Could you mark on the  
 21 map with that pen?  
 22 A. There's one already here. We talked about  
 23 continuing this one to the yard.  
 24 Q. Could you mark on the map with the pen where you  
 25 think or where you have discussed in the past where the

1 spur track would go?  
 2 A. Right here, service the yard.  
 3 Q. Okay. And do you know how long the spur track  
 4 might be?  
 5 A. No. I don't know how many feet that is.  
 6 Q. Has anyone told you it would be a thousand feet  
 7 long?  
 8 A. No. Never been discussed. I don't know if it  
 9 goes short (inaudible).  
 10 THE COURT REPORTER: You have to speak up.  
 11 I'm sorry.  
 12 THE WITNESS: We'd never got that far with  
 13 the discussions of how far it will go into the yard.  
 14 Q. (By Mr. Ferguson) So you're not aware of how  
 15 long the spur track would be?  
 16 A. Hasn't been discussed yet.  
 17 MR. FERGUSON: I'd like to go ahead and mark  
 18 this as Exhibit 6.  
 19 (Exhibit Number 6 marked.)  
 20 Q. (By Mr. Ferguson) Mr. Wolford, would you turn to  
 21 the second page of this exhibit, please?  
 22 A. Six?  
 23 Q. Yes.  
 24 MS. ALVORD: I'm sorry, which page? Second  
 25 or sixth?

1 MR. FERGUSON: Second page.  
 2 MR. MONTGOMERY: This is exhibit?  
 3 MR. FERGUSON: Six.  
 4 MR. MONTGOMERY: Six, thank you.  
 5 Q. (By Mr. Ferguson) Do you recognize this page,  
 6 second page of this exhibit that we're looking at?  
 7 A. I don't think I've seen this, no.  
 8 Q. Okay. Could you turn to Page 5 of that document  
 9 there, you'll see down on the bottom right-hand corner, 5  
 10 of 11?  
 11 A. Mm-hm (answers affirmatively).  
 12 Q. Under Number 6, "Capital Facilities."  
 13 A. Mm-hm (answers affirmatively).  
 14 Q. Do you see where it says "Wolford Spur"?  
 15 A. Mm-hm (answers affirmatively).  
 16 Q. Have you ever seen this page before?  
 17 A. No, never seen this.  
 18 Q. Okay.  
 19 A. Who wrote that?  
 20 Q. I was just about to ask you that.  
 21 A. I don't know.  
 22 Q. Okay. So Doug Engle has never represented to you  
 23 that a thousand foot spur track will be built at your  
 24 facility?  
 25 A. We've never discussed how many feet. Just that

1 we'd get a spur into my yard. I don't know how many feet.  
 2 Q. Have you had any discussions about construction  
 3 of the spur track with Byron Cole?  
 4 A. No, I don't even know who will build the spur  
 5 track, probably a professional. I don't know if it will go  
 6 outside. Byron Cole doesn't build spur tracks, he runs a  
 7 railcar service.  
 8 Q. Okay. Looking back at the map, this is  
 9 Exhibit 5, it's the close-up map?  
 10 A. Mm-hm (answers affirmatively).  
 11 Q. Do you know in what direction railcars would have  
 12 to come into your facility?  
 13 A. Right here.  
 14 Q. So the railcars would have to come from the  
 15 north?  
 16 A. From the north going south into my facility, yes.  
 17 Q. Okay.  
 18 A. Just like the one does next door. See, there's  
 19 one right here for Boise Cascade and that goes through  
 20 Boise Cascade's plot onto my neighbor's property, and  
 21 there's talk that it could even continue there. It's all  
 22 in discussion now, whether build me one there or maybe  
 23 bring that one through, that would be an automatic. Maybe  
 24 that neighbor doesn't want that, I don't know.  
 25 Q. Have you had any discussions with Boise Cascade

1 about expanding its spur track onto your property?  
 2 A. No. Kind of looking at it like this, looks like  
 3 an automatic to bring it there. They said to build another  
 4 one wouldn't be that big of a deal because the property is  
 5 all -- the grade is all perfect.  
 6 Q. Who is they?  
 7 A. Tom Payne in the old days when I was talking to  
 8 him about it.  
 9 Q. Has Doug Engle said that it would be no problem  
 10 to build the track as well?  
 11 A. Well, that's what he's promising me some day  
 12 maybe.  
 13 Q. Okay. But --  
 14 A. Because it's -- never mind.  
 15 Q. But you haven't had any discussion, you  
 16 personally have not had any discussions with anyone from  
 17 Boise Cascade about expanding its track?  
 18 A. Nope, not yet.  
 19 Q. Okay. Is there a fence that separates your  
 20 company's property from Boise Cascade's?  
 21 A. Yes.  
 22 Q. Okay. So going back to where the railcars would  
 23 come from, they would have to come from the north, is that  
 24 correct?  
 25 A. Well, they chug up the track like this. Do you

1 understand how a spur works?  
 2 Q. No, explain it to me, please.  
 3 A. You go north and just back into it. You don't  
 4 have -- the train doesn't have to be coming this way all  
 5 the time.  
 6 Q. How would the train back into it?  
 7 A. You chug up here and put it in reverse and back  
 8 it up my spur rail.  
 9 Q. Okay. And do you have any sense of how much area  
 10 would be required from your property to accommodate a spur  
 11 track?  
 12 A. No. It's not my expertise.  
 13 Q. You said that your site is currently about 10  
 14 acres?  
 15 A. Mm-hm (answers affirmatively).  
 16 Q. Is that right?  
 17 A. Yes.  
 18 Q. The area on the map where you've drawn the line  
 19 for the spur track, is that land currently used for  
 20 anything by your business?  
 21 A. No.  
 22 Q. It looks like there's a structure of some sort?  
 23 A. That's my fuelling station. We're going to go  
 24 right by it. We can still utilize all the property, the  
 25 tracks are recessed in. It's like they're not even there.

1 It's still usable. It's not going to obstruct my  
 2 operations in my yard.  
 3 Q. Okay. Has Doug Engle said to you who might build  
 4 the spur track?  
 5 A. No.  
 6 Q. Has anyone represented to you when the spur track  
 7 would be built?  
 8 A. No.  
 9 Q. What would you use the spur track for?  
 10 A. The future use in my property, we could haul  
 11 anything. I mean, if I resell the property, it could be  
 12 used for lumberyard, many uses. For my thing, I could rail  
 13 garbage out of here at Eastern Washington, like Rabanco and  
 14 Waste Management. That might be advantageous. But then  
 15 again, we need this rail to make everything work, rail  
 16 they're trying to tear out, that I object to.  
 17 Q. Okay. We'll come to that in a second. I'm just  
 18 trying to understand what purpose, or how this spur track  
 19 would function going into your property.  
 20 A. Well, for trans-loading, freight could come out  
 21 of here and into my yard and be trans-loaded by truck.  
 22 This could be a staging facility. It would have a great  
 23 value someday if I have a spur. I'm living without it now.  
 24 Be like a luxury, be nice.  
 25 Q. Would you have to build a trans-loading facility

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1 on your yard?  
 2 A. If I had a spur in there, we load the railcars  
 3 from the side, so...  
 4 Q. So you're talking about a railcar that has a side  
 5 opening?  
 6 A. No, like a flat car or a gondola car, they're  
 7 loaded from the side of the trailer -- there's no real  
 8 loading facility. It's put a spur in there, just like all  
 9 the other ones.  
 10 Q. Do you store demolition waste on your property?  
 11 A. Yes.  
 12 Q. Currently?  
 13 A. Yes.  
 14 Q. And would you move some of that waste onto a  
 15 railcar; is that --  
 16 A. Yes.  
 17 Q. -- part of your vision?  
 18 A. Part of my vision, yes.  
 19 Q. How or maybe not how, would you plan to use this  
 20 spur in connection with disposing of demolition spoils or  
 21 excavation spoils from in and around the city of Bellevue?  
 22 A. Yes.  
 23 Q. How would the spur work for that?  
 24 A. The dirt that didn't go to the trail, and we  
 25 could haul into my yard and put dirt on the rail and

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1 continue to make the trail. I have dirt spoils from around  
 2 this area, Snohomish County and King County, maybe haul it  
 3 to my place here, load a railcar, chug up, because it will  
 4 take many yards of material up in Snohomish. That would be  
 5 advantageous.  
 6 Q. You're talking about bringing dirt from the  
 7 Bellevue area into your yard?  
 8 A. No, that dirt would go direct. Right to  
 9 Snohomish. But my truck, I own 20 trucks, they would haul  
 10 into my yard, and at night we'd load cars and it would go  
 11 up there as well.  
 12 Q. I'm asking specifically how the spur track into  
 13 your facility, how would it function in connection with  
 14 removing excavation spoils from Bellevue?  
 15 A. The Bellevue spoils go direct. Spoils from my  
 16 other jobs would -- I could utilize here in the yard. I  
 17 don't have the spur yet. If I had one, we'd create lots of  
 18 work for you.  
 19 Q. When you say the Bellevue spoils would go direct?  
 20 A. They go direct on the car right to Snohomish.  
 21 They wouldn't stop in my yard.  
 22 Q. If the spoils were not dumped between your yard  
 23 and Snohomish, do you know where they would go, if they  
 24 weren't dumped?  
 25 MR. MONTGOMERY: Object to the form.

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1 THE WITNESS: What spoils? Out of Bellevue?  
 2 Q. (By Mr. Ferguson) Yes.  
 3 A. It --  
 4 Q. So you've got --  
 5 A. It depends. The dump sites that are currently  
 6 being used will be full, so it may be going to Sultan or  
 7 Gold Bar by then, in two or three years.  
 8 Q. But I'm asking which dump sites?  
 9 MS. ALVORD: Do you know?  
 10 THE WITNESS: Currently, this month, there's  
 11 two dump sites in the Monroe area.  
 12 Q. (By Mr. Ferguson) Do you know what the names of  
 13 those are?  
 14 A. Red Cedar, Cadman.  
 15 Q. You said these dump sites are Red Cedar and  
 16 Cadman; is that correct? Cadman is spelled C-a-d-m-a-n?  
 17 A. M-a-n.  
 18 Q. M-a-n, thank you. Do you currently deposit  
 19 materials at these sites?  
 20 A. Yes.  
 21 Q. And how do you do that currently?  
 22 A. How do you do that? You drive the truck there  
 23 and dump and then you get billed.  
 24 Q. Do you know if Red Cedar has capacity to  
 25 receive --

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1 A. Rail.  
 2 Q. -- material by rail?  
 3 A. I don't know.  
 4 Q. Do you know if Cadman has the capacity to receive  
 5 material by rail?  
 6 A. I don't know.  
 7 Q. Okay. I think you told me this, but just maybe  
 8 my memory is fuzzy. Your company currently delivers  
 9 materials to both Red Cedar and Cadman?  
 10 A. Yes.  
 11 Q. Do you know where specifically those facilities  
 12 are located?  
 13 A. Monroe.  
 14 Q. Do you know the addresses for them?  
 15 A. No.  
 16 Q. Do you know what streets they're on?  
 17 A. No.  
 18 Q. Are they on a highway?  
 19 A. No.  
 20 Q. Do you know, do you deal with a particular person  
 21 at Red Cedar?  
 22 A. You have to understand, my office handles all  
 23 this. I work in the yard. I run a loader in my yard. I  
 24 hire professional people to run my office and my  
 25 operations. I don't know the answers.

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1 believe it, with the injunction on. He's way out of line.  
 2 Misuse of public funds, that's what this guy did.  
 3 Q. And you --  
 4 A. That's why I so strongly feel I'm joining the  
 5 fight to keep the rail in.  
 6 Q. But in submitting this bid, was it your desire to  
 7 do the work to salvage the rails?  
 8 A. We bid all public works jobs, or a lot of them.  
 9 Q. Let me ask the question again. In submitting the  
 10 bid, was it your intent to be awarded the contract to  
 11 salvage the rails?  
 12 A. It's part of the bid, the salvage was, yeah, to  
 13 salvage the rails. That's how we were going to get our  
 14 price competitive.  
 15 Q. Just listen to what I'm asking. In submitting  
 16 the bid, it was your intent to do the work to salvage the  
 17 rails?  
 18 A. Yes, we're going to sell them. That's part of  
 19 our bid price. It was every contractor's bid price.  
 20 Q. If you think it's important for the rails to stay  
 21 in place, why did you bid to salvage them and remove them?  
 22 A. That -- it's a contract, if somebody is going to  
 23 get it, might as well -- we just put in a price. We bid  
 24 lots of jobs, it's just another one. Very important for me  
 25 to leave the rails in. But this is a bid, this is

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1 business, sir. That's why.  
 2 Q. When did you -- do you recall when you first  
 3 thought of putting yourself in a position to bid for  
 4 contracts to haul away construction spoils in Bellevue?  
 5 A. When? What date?  
 6 Q. Roughly, yes.  
 7 A. It's been discussed for months.  
 8 Q. Did you have any discussions about hauling  
 9 excavation spoils in 2012?  
 10 A. Well, before this, it was all after January that  
 11 this has sparked up that we wanted to haul spoils that way.  
 12 Q. You didn't have any conversations with Doug  
 13 Engle --  
 14 A. In 2012, no.  
 15 Q. -- in 2012?  
 16 A. No, I don't believe so.  
 17 Q. What about Byron Cole?  
 18 A. No.  
 19 Q. Ernie Wilson?  
 20 A. No. It's all pretty recent, last three or four  
 21 months.  
 22 Q. Okay. So you said you were at least thinking  
 23 about hauling excavation spoils from Bellevue when you  
 24 authorized this bid to be submitted to salvage the rails?  
 25 A. Yes. That's just business. We bid lots of jobs.

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1 Q. Wouldn't salvage of the rails prevent you from  
 2 hauling excavation spoils by rail?  
 3 A. Oh my gosh, this thing they tried to ramrod  
 4 through, but when we saw -- what's your question? One more  
 5 time, what's your question, I just want to just answer your  
 6 question.  
 7 Q. Would salvaging the rails prevent you from  
 8 removing excavation spoils by rail?  
 9 A. Well, of course it would.  
 10 Q. Okay.  
 11 MR. FERGUSON: I think I'm finished.  
 12 THE WITNESS: Good. Finally.  
 13 MS. ALVORD: Can we just take a short break  
 14 and then we probably have some questions.  
 15 MR. FERGUSON: Sure.  
 16 MS. ALVORD: Okay.  
 17 MR. WAGNER: I have a couple of questions,  
 18 be really short.  
 19 MR. MARCUSE: Same, just a couple.  
 20 MR. MONTGOMERY: You guys want to go ahead  
 21 and get those done. Why don't you guys go.  
 22 MS. ALVORD: Are you ready now?  
 23 MR. WAGNER: Yes.  
 24 MS. ALVORD: Sure, go ahead.  
 25

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1 EXAMINATION  
 2 BY MR. MARCUSE:  
 3 Q. I'm Andrew Marcuse. Just to clarify, Andrew  
 4 Marcuse with the King County Prosecutor's Office, I'm in  
 5 the civil division, I do land use and real estate law for  
 6 the county, so I'm not a criminal prosecutor. We're not at  
 7 the courthouse, for those of you who were on the call the  
 8 other day with the STB.  
 9 You testified earlier that Bobby Wolford Trucking  
 10 and Demolition facility is in Maltby in Snohomish County.  
 11 A. Mm-hm (answers affirmatively).  
 12 Q. And has it always been located in Maltby?  
 13 A. Yes.  
 14 Q. And during the time that you operated that  
 15 business in Maltby, have you ever received rail service at  
 16 that facility?  
 17 A. No.  
 18 Q. Did you ever ask BNSF Railway for a rail quote?  
 19 A. Yes, they subcontract all their spurs out. And  
 20 Condon out of Spokane was -- I think we got some prices  
 21 from them to throw a rail in there, or a spur. It was a  
 22 long time ago, kind of a blur.  
 23 Q. So you asked BNSF for a quote on a spur to your  
 24 facility?  
 25 A. We asked if it's possible. And they said, we'd

1 need some shipper support before we put it in. At that  
 2 time, there was a lumber company that wanted to service it.  
 3 Just an idea, throw a lot of things out, my mind never  
 4 quits moving.  
 5 Q. Was a spur ever constructed?  
 6 A. No.  
 7 Q. When they said they needed shipper support, what  
 8 did that mean to you?  
 9 A. To the Burlington Northern, they need -- well, I  
 10 know what shipper support is. They need to know that it  
 11 will really get utilized before they're going to put a spur  
 12 in for me.  
 13 Q. So it was your understanding that they needed  
 14 demand --  
 15 A. Yes.  
 16 Q. -- in order to put a spur in?  
 17 A. Right. At that time I really didn't have much.  
 18 I had a potential, couple people that asked if I could do a  
 19 rail. I said, Let me check into it, that's what I did.  
 20 Q. I think you said a moment ago that when this  
 21 conversation occurred was a long time ago?  
 22 A. It was.  
 23 Q. Can you estimate approximately?  
 24 A. A long time ago, meaning 12 years ago maybe.  
 25 Q. 12 years ago?

1 A. Mm-hm (answers affirmatively).  
 2 Q. All right.  
 3 A. And then we've just been busy ever since and kind  
 4 of put it on the back burner.  
 5 Q. Thank you.  
 6  
 7 EXAMINATION  
 8 BY MR. WAGNER:  
 9 Q. I'm Jordan Wagner from Sound Transit.  
 10 Earlier you testified about you and Byron Cole  
 11 meeting with the City of Bellevue, do you recall that?  
 12 A. It was like a council meeting I attended and he  
 13 was there, and Doug Engle was there and he listened and we  
 14 put our input in to save the rail.  
 15 Q. So you testified at a public hearing?  
 16 A. Yes. Well, I didn't personally. Doug Engle did.  
 17 He did the speaking and Byron Cole did the speaking, I  
 18 didn't.  
 19 Q. Did you speak to anyone after the meeting?  
 20 A. After the meeting?  
 21 Q. From the City of Bellevue?  
 22 A. I think Doug Engle did. In the lobby, he talked  
 23 to -- I heard him talking to some official there.  
 24 Q. Do you know who that official was?  
 25 A. I don't. Doug Engle does.

1 Q. Thank you.  
 2 MS. ALVORD: Okay. So just a short break.  
 3 MR. FERGUSON: Sure.  
 4 (Recess taken from 2:28 to 2:56 p.m.)  
 5  
 6 EXAMINATION  
 7 BY MS. ALVORD:  
 8 Q. Okay. Mr. Wolford, I'm showing you what's been  
 9 previously marked as Exhibit 5.  
 10 MS. ALVORD: Do you guys all have that?  
 11 Q. (By Ms. Alvord) It's a map, called "Map 5 -  
 12 Freight Segment." And what I want to draw your attention  
 13 to is that portion of the map where you drew -- you wrote  
 14 the word "spur track" and you drew a line. You see that  
 15 there?  
 16 A. Yes.  
 17 Q. Is that a done deal --  
 18 A. No.  
 19 Q. -- that location of the spur track?  
 20 What does that line that you drew there  
 21 represent?  
 22 A. Approximate of a thousand feet of -- it's  
 23 promised to me to get a spur sometime. It may never  
 24 happen. It might be blue sky. But I'm looking forward to  
 25 having a spur in my yard.

1 Q. Even though you drew that there, is it possible  
 2 the spur could be located elsewhere?  
 3 A. Yes.  
 4 Q. Or maybe not even located there at all?  
 5 A. Possibility.  
 6 Q. All right. I want to ask you, you've testified  
 7 and verbally on the record as well as in your letter of  
 8 support that accompanied the petition for reactivation of  
 9 the railroad, that you estimated approximately 15 percent  
 10 savings by using rail versus truck?  
 11 A. That's very conservative. It's probably way more  
 12 than that.  
 13 Q. Can you tell us about that, why is that a  
 14 conservative estimate?  
 15 A. Okay. The spoils, if we were going to the local  
 16 dumps around by truck would cost \$4 to 6 a yard, say it was  
 17 \$4 a yard.  
 18 Q. To dump?  
 19 A. To dump. That's a fee that gets charged back.  
 20 The savings -- all this dirt, and that's the right type of  
 21 dirt, it's a clay based. All Bellevue is kind of a clay  
 22 based material, it's ideal for building the trails to rails  
 23 in Snohomish County. Imagine no dump fees at \$4 a yard.  
 24 Three million yards, that's \$12 million. That will pay to  
 25 run the locomotive day and night, that savings alone.

# **EXHIBIT 23**

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1 meeting to ride the caboose and see the rail.  
 2 Q. You said that the trail has crushed concrete on  
 3 the top of it?  
 4 A. On top, yeah, winterized it so you can go in the  
 5 winter.  
 6 Q. Are you aware of anyone who -- have you observed  
 7 people using the trail?  
 8 A. No. It's not for public access yet.  
 9 Q. Do you know, was it your idea to construct the  
 10 trail?  
 11 A. Tom Payne's.  
 12 Q. Tom Payne's. Do you know when you constructed  
 13 the trail?  
 14 A. Three years ago.  
 15 Q. If the trail isn't for public access, what is it  
 16 used for?  
 17 A. It's going to go the whole length of the rail.  
 18 Right now it's not, you know, it's private property.  
 19 People aren't allowed on it really.  
 20 Q. Who owns the property?  
 21 A. Port of Seattle.  
 22 Q. Are you aware of any activity on the trail?  
 23 A. No.  
 24 Q. If you take a look again at Attachment A under  
 25 Item 6.

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1 A. Mm-hm (answers affirmatively).  
 2 Q. We asked for all materials concerning the  
 3 construction projects that Wolford, your company, Wolford  
 4 Trucking and Demolition is, quote, "currently targeting as  
 5 stated in your March 27th, 2013, letter to Cynthia Brown,  
 6 including any invitations for bids, proposals for bids,  
 7 studies or estimates, and contracts."  
 8 A. These aren't out yet. In the next two years,  
 9 they'll be looking for bids to move dirt out of Bellevue.  
 10 Q. So are you saying that you haven't received any  
 11 invitations for bids?  
 12 A. Not yet.  
 13 Q. Okay.  
 14 A. But it's coming.  
 15 Q. If you turn to the second to last page of this  
 16 Exhibit 2, you'll see a Number 29 in the right-hand corner.  
 17 A. Mm-hm (answers affirmatively), yes.  
 18 Q. Okay. Is this part of the letter that you signed  
 19 that was sent to Cynthia Brown of the Surface  
 20 Transportation Board?  
 21 A. No. I didn't sign this, I don't believe. Did I?  
 22 This isn't the one that Ernie wrote? Oh, sorry. Oh, yeah,  
 23 that's part of the dirt removal, I'm sorry, yes --  
 24 Q. Did you just say that Ernie wrote this letter?  
 25 A. Yes.

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1 Q. That would be Ernie Wilson?  
 2 A. Yes.  
 3 Q. Of Eastside Community Rail?  
 4 A. Yes.  
 5 Q. He wrote this letter?  
 6 A. Yes. I read it and approved everything he wrote.  
 7 He did a great job.  
 8 Q. So, Mr. Wolford, if you take a look at the second  
 9 page of the letter you signed, first full paragraph, can  
 10 you read the sentence beginning with the words, "We are  
 11 currently"?"  
 12 A. Yes.  
 13 Q. Would you read it out loud?  
 14 A. We are currently targeting projects on 405 and  
 15 520 for the 2013, '14 construction seasons.  
 16 Q. Okay.  
 17 A. Yes.  
 18 Q. Turning back to the Attachment A in this exhibit,  
 19 so it's back towards the front.  
 20 A. Mm-hm (answers affirmatively).  
 21 Q. Do you understand what's numbered here as  
 22 Number 6 asking for all materials concerning the  
 23 construction projects that your company is, quote,  
 24 "currently targeting," do you understand that was in  
 25 reference to the sentence you just read in your letter to

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1 Cynthia Brown?  
 2 MR. MONTGOMERY: Object to the form.  
 3 THE WITNESS: Yes.  
 4 Q. (By Mr. Ferguson) Okay. I just want to make  
 5 sure that you understood what we were referencing in the  
 6 document request.  
 7 A. Yes.  
 8 Q. Okay. And you said that you haven't received any  
 9 invitations for bids --  
 10 A. Not yet.  
 11 Q. -- for these projects?  
 12 So are you aware of any invitations for bids for  
 13 these referenced projects? Are you aware -- let me  
 14 rephrase that, it's a little bit garbled.  
 15 Are you aware that any invitations for bids exist  
 16 for these projects you're currently targeting?  
 17 A. When they come out, then we give them prices. So  
 18 they're not let yet, they're not even out to bid yet. They  
 19 will.  
 20 Q. Okay. So does your company have any documents  
 21 for these projects that it's targeting?  
 22 A. Not yet because they're not out yet. They will  
 23 in the next two years.  
 24 Q. Okay. Thank you. Finally, looking at the  
 25 request that's under Number 7.

1 Q. Okay.

2 A. Plus the wear and tear on all the trucks, and the

3 roads and the pollution and the dust, and all that goes

4 away when you run it by rail.

5 Q. Anything else?

6 A. The fuel savings is huge.

7 Q. Anything else?

8 A. You got one locomotive chugging up there versus

9 30 trucks polluting the air.

10 Q. Is there a difference in the amount of spoils a

11 railcar can carry versus a truck?

12 A. Huge. I think it's 65 plus yards. A truck hauls

13 24.

14 Q. Okay.

15 A. And many railcars with side dumps.

16 Q. Okay.

17 A. Could even build the trail in Kirkland by side

18 dump.

19 Q. So those are the reasons, some of the reasons

20 that you used to come up with your conservative estimate --

21 A. Yeah.

22 Q. -- of 15 percent?

23 A. Yeah.

24 Q. Okay.

25 MS. ALVORD: All right. Thank you. That's

1 all I have.

2 MR. FERGUSON: Okay.

3

4 EXAMINATION

5 BY MR. MONTGOMERY:

6 Q. Mr. Wolford, Tom Montgomery on behalf of Ballard

7 Terminal Railroad. I do have a couple of questions, or a

8 few myself, follow-up questions. With regard to the letter

9 that's Exhibit 8, that you signed?

10 A. Yes.

11 Q. You testified earlier, I believe, that Ernie

12 Wilson wrote it?

13 A. Yes.

14 Q. Could you tell us a little bit more about how the

15 letter came to be, did he write it without talking to you

16 and send it to you and say --

17 A. No. We discussed all this and he put it in very

18 cordial form. Everything he put in there I agreed to,

19 that's why I signed it. And he did a great job writing the

20 letter, better than I could.

21 Q. Do you do a lot of writing?

22 A. No, or reading.

23 Q. So he offered to write it?

24 A. Yes.

25 Q. You accepted the offer?

1 A. Yes.

2 Q. And he wrote it after you talked?

3 A. Yes.

4 Q. In the letter, there's a statement says "We" --

5 on Page 2?

6 MS. ALVORD: Just a moment, Tom, we're just

7 going to get that here.

8 MR. MONTGOMERY: You're not going to need to

9 look at it, but that's okay.

10 MS. ALVORD: All right. Oh, here.

11 Q. (By Mr. Montgomery) You have it, Mr. Wolford?

12 A. Yes.

13 Q. The second page which also has a Number 29 on the

14 lower right-hand corner?

15 A. Yes.

16 Q. At the end of the first paragraph, it says,

17 "We" -- are you there?

18 MS. ALVORD: No. Just a moment. That's a

19 different copy. Do you want to do yours? There you go.

20 Q. (By Mr. Montgomery) Can you read that statement

21 out loud? "We estimate."

22 A. "Additionally, we anticipate."

23 "We estimate volume of these projects at over

24 three million yards of cubic spoils in the next several

25 years."

1 That was a rough estimation, just by what we read

2 in the paper.

3 Q. Mr. Ferguson asked you about that number, you

4 said it sounded realistic. Why did you say that?

5 A. Because what Doug Engle has dug into, what the

6 upcoming projects and kind of what the papers are saying,

7 and the journal, construction journals, that's what we

8 estimated.

9 Q. You participate in the estimation?

10 A. No.

11 Q. You said it sounds realistic. How long have you

12 been hauling dirt around out of the eastside?

13 A. I've been in this business 42 years. I kind of

14 know my dirt. I've watched projects through the years and

15 I know volumes. It's a realistic estimate.

16 Q. If it hadn't been realistic in your mind, would

17 you have signed the letter?

18 A. Probably not. If they would have said 12 million

19 yards, I would have said no.

20 Q. If they said one million yards, you would have

21 said?

22 A. Well...

23 THE COURT REPORTER: What was that answer?

24 MR. MONTGOMERY: Strike it.

25 THE WITNESS: No, just being funny.

# **EXHIBIT 24**

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1 perspective, and so I was suggested that maybe I  
 2 should take over a different division, so I was  
 3 brought in to be Redi-Mix sales -- or a Redi-Mix  
 4 dispatch manager and fleet manager, so the  
 14:32:09 5 distribution of our Redi-Mix throughout Washington.  
 6 So you had under my control the dispatch,  
 7 daily dispatchers, as well as at one point I think we  
 8 had 188 Teamsters throughout Western Washington, and  
 9 so that's my involvement with the labor end of this  
 14:32:32 10 type of work dealing with different disciplinary  
 11 actions and such.  
 12 And then in approximately 2009 we had some  
 13 reduction in force, and, you know, the market was  
 14 getting slower and we were consolidating different  
 14:32:49 15 projects, different job titles and functions, and we  
 16 reduced the sales staff of the aggregate sales, and  
 17 then the current aggregate sales manager at that time  
 18 had announced he was going to be retiring, so they  
 19 brought me back into the aggregate sales, and because  
 14:33:08 20 I've had management experience, it was a natural fit.  
 21 Q. When did you first start aggregate sales at  
 22 all, some facet of aggregate sales, here?  
 23 A. My original 13 years.  
 24 Q. Have you always worked in the Northwest with  
 14:33:25 25 regard to aggregate sales?

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1 A. Yes.  
 2 Q. Can you give me some sort of a measure,  
 3 thumbnail, to the STB if they read this, how  
 4 CalPortland is in this marketplace? One of the  
 14:33:36 5 biggest players? One of the medium size? Small?  
 6 A. We're one of the largest in North America.  
 7 On any given year we've been No. 1 and typically we're  
 8 in the top five in the United States in sand and  
 9 gravel.  
 14:33:54 10 Q. And how about in the Pacific Northwest, say?  
 11 A. Pacific Northwest, I would say we -- well, in  
 12 our forecast we are about 28 percent of the market.  
 13 We are the primary supplier in the market. We supply  
 14 Redi-Mix plants, asphalt plants, block-and-paver  
 14:34:20 15 plants. That is our primary function is being a very  
 16 specialized producer that can meet strict, stringent  
 17 specifications for producers.  
 18 Q. And all of the plants that you just described  
 19 that you supply to, can you supply to them in, say,  
 14:34:39 20 Washington from that Everett facility, or do you have  
 21 other facilities?  
 22 A. The Everett facility is one of the locations  
 23 that we supply from our DuPont facility as well. We  
 24 also are a marketer for another water-based facility.  
 14:34:56 25 Q. There was discussion earlier with Mr. Pilsk

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1 about spur, requiring use of a spur in one fashion or  
 2 another. Is having a spur a requirement for  
 3 CalPortland to use the Eastside Rail quarter that  
 4 we've been here talking about today from Woodinville  
 14:35:20 5 to Bellevue?  
 6 MR. PILSK: Objection. Foundation.  
 7 Vague.  
 8 Q. Let me rephrase.  
 9 A. Yeah.  
 10 Q. Is a spur required for you to supply  
 11 aggregate by rail down to the Woodinville-to-Bellevue  
 12 line, assuming that it were in operation?  
 13 MR. PILSK: Same objection.  
 14 A. It would not be a requirement.  
 14:35:46 15 Q. It would be an advantage somehow. You don't  
 16 have to have that; is that correct?  
 17 A. Correct. I deliver to my market now and I  
 18 don't have rail.  
 19 Q. Exhibit-50, the letter that you wrote to  
 20 Cynthia Brown, do you stand by this letter today?  
 21 A. Can you clarify that question?  
 22 Q. Yes. Do you still support rail service from  
 23 Woodinville to Bellevue?  
 24 MR. PILSK: Objection. Vague.  
 14:36:17 25 Q. Go ahead, please.

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1 A. In my opinion, it gives another option to  
 2 bring material into the market without utilizing the  
 3 roads.  
 4 Q. Do you have any experience with whether or  
 14:36:44 5 not rail transportation of aggregate is cheaper, more  
 6 expensive than, or the same as by truck?  
 7 A. It depends on distance. Distance from a  
 8 source to the job site is crucial in all aspects of  
 9 that. Rail, each railcar holds about 100 tons, so  
 14:37:11 10 that displaces three truck-and-trailer loads of  
 11 material. You can move material a greater distance in  
 12 volume than you can in small volume.  
 13 Q. So generally rail transportation is cheaper.  
 14 Is that what you would say?  
 14:37:27 15 A. If the location is close enough to the job  
 16 site required, or the area.  
 17 Q. What do you consider close enough? What do  
 18 you mean by "close enough," or would it vary?  
 19 A. There are so many variables, it's hard to  
 14:37:45 20 understand your question and define an answer for it.  
 21 Can you give me an, I'm sorry, specific?  
 22 Q. No. That's okay.  
 23 You made reference in the letter to  
 24 Ms. Brown of March 25th to projects into 2013 and  
 14:38:10 25 2014. Do you have any doubt there's going to be a

# **EXHIBIT 25**



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1 accuracy of the estimates of excavated material and  
 2 the 500,000 cubic yards of excavated material you  
 3 mentioned?  
 4 MR. STONE: Which letter?  
 13:29:35 5 Q. In the March 19 letter. You mentioned  
 6 500,000 tons in the December 3rd letter. It's cubic  
 7 yards of excavated material in the March 19 letter.  
 8 Did you do any work to verify or to come up with the  
 9 500,000 cubic yards' estimate in the March 19 letter?  
 13:29:54 10 MR. STONE: Object to the form of the  
 11 question.  
 12 A. What do you mean by "work"?  
 13 Q. In simple terms, did you just copy the  
 14 number --  
 13:30:00 15 A. No.  
 16 Q. -- from the December 3rd letter, or did you  
 17 reestimate the number?  
 18 A. No. These numbers are based off of what I  
 19 do. I meet with customers. I meet with property  
 13:30:10 20 owners. I meet -- I try and keep as close  
 21 information -- close to the information that's  
 22 floating in the marketplace for -- and, quite frankly,  
 23 jobs come up. You hear about them years before they  
 24 go, because there's a transaction of land. There's a  
 13:30:32 25 rumor of a building going up or a new entity moving

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1 into the marketplace. And when you talk with  
 2 contractors and truckers numbers start to be carried  
 3 out, and part of my job is to forecast out for the  
 4 future.  
 13:30:50 5 And so these are kind of what I was -- you  
 6 know, I was kind of in the back of my mind, I've got  
 7 to be ready for these kind of volumes coming up not --  
 8 maybe not this year or the next year, but in the next  
 9 years. It's going to be coming down the road. That's  
 13:31:08 10 just what I do. We talk. We try and stay abreast of  
 11 the market and understand what the potential is,  
 12 because by the time a job comes out and it's written  
 13 on Builders Exchange, I'm dead if I don't know about  
 14 it before that.  
 13:31:22 15 Q. Do you know why Mr. Engle wanted this letter  
 16 from you?  
 17 A. Not exactly. He mentioned he had a meeting  
 18 with City of Kirkland. He had a hearing or something  
 19 with the City of Kirkland, so that was kind of what I  
 13:31:39 20 thought it was for, showing his support.  
 21 Q. At the time you wrote this letter, were you  
 22 still thinking primarily of being able to sell  
 23 aggregate to Eastside Community Rail for use on the  
 24 rail line, or were you thinking of other uses of the  
 13:31:53 25 rail?

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1 A. Oh, absolutely, that's my primary focus was  
 2 to -- at least that was more finite to me. But like I  
 3 mentioned earlier, I think kind of in the abstract I'm  
 4 thinking, Okay, if I can make a friend that has a  
 13:32:07 5 service that I can utilize that my competitors don't,  
 6 that had my wheels turning also.  
 7 Q. At the time you wrote the March 19 letter,  
 8 did you have any contracts to either remove any of the  
 9 spoils from any of the projects you mentioned, the  
 13:32:25 10 I-405 or SR520 projects, the excavated materials that  
 11 are mentioned in the letter?  
 12 A. No contracts, no.  
 13 Q. Did you consider this letter to be a request  
 14 from Eastside Community Rail to provide rail service  
 13:32:40 15 to you?  
 16 A. No. Not a request to provide service, no.  
 17 Q. At the time you wrote this letter, did you,  
 18 CalPortland, have a need for Eastside Community Rail  
 19 to provide rail service for you?  
 13:32:50 20 MR. MONTGOMERY: Object to the form of the  
 21 question.  
 22 A. Define "need."  
 23 Q. Did you need something moved by rail, you  
 24 know, in the immediate future, foreseeable future  
 13:33:02 25 looking forward from March 19?

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1 MR. STONE: Object to the form of that  
 2 question.  
 3 A. I see potential for my business, not -- I get  
 4 my material where it needs to go now. Having another  
 13:33:20 5 venue, another vehicle to do that, is a benefit to me.  
 6 Q. I understand. My only question was you  
 7 didn't have a need for something to get moved right  
 8 then when you wrote this letter on March 19.  
 9 MR. STONE: Object to the form of the  
 13:33:33 10 question.  
 11 A. No, I didn't.  
 12 Q. Okay. You mentioned the February 1 meeting  
 13 and then this letter, Exhibit-49, is dated March 19.  
 14 Did you have any communications with Mr. Engle between  
 13:33:52 15 February 1 and March 19?  
 16 A. Yeah. There was some email -- well, I went  
 17 on vacation for one, and then when I got back from  
 18 vacation we had some communication.  
 19 Q. What was the nature of that?  
 13:34:05 20 A. It was an email request -- not a request. He  
 21 sent me a letter.  
 22 MR. STONE: He's talking about before, so  
 23 between February 1 and March 19.  
 24 A. No.  
 13:34:18 25 Q. Before you wrote this, did you have any

# **EXHIBIT 26**

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1 perspective, and so I was suggested that maybe I  
 2 should take over a different division, so I was  
 3 brought in to be Redi-Mix sales -- or a Redi-Mix  
 4 dispatch manager and fleet manager, so the  
 14:32:09 5 distribution of our Redi-Mix throughout Washington.  
 6 So you had under my control the dispatch,  
 7 daily dispatchers, as well as at one point I think we  
 8 had 188 Teamsters throughout Western Washington, and  
 9 so that's my involvement with the labor end of this  
 14:32:32 10 type of work dealing with different disciplinary  
 11 actions and such.  
 12 And then in approximately 2009 we had some  
 13 reduction in force, and, you know, the market was  
 14 getting slower and we were consolidating different  
 14:32:49 15 projects, different job titles and functions, and we  
 16 reduced the sales staff of the aggregate sales, and  
 17 then the current aggregate sales manager at that time  
 18 had announced he was going to be retiring, so they  
 19 brought me back into the aggregate sales, and because  
 14:33:08 20 I've had management experience, it was a natural fit.  
 21 Q. When did you first start aggregate sales at  
 22 all, some facet of aggregate sales, here?  
 23 A. My original 13 years.  
 24 Q. Have you always worked in the Northwest with  
 14:33:25 25 regard to aggregate sales?

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1 A. Yes.  
 2 Q. Can you give me some sort of a measure,  
 3 thumbnail, to the STB if they read this, how  
 4 CalPortland is in this marketplace? One of the  
 14:33:36 5 biggest players? One of the medium size? Small?  
 6 A. We're one of the largest in North America.  
 7 On any given year we've been No. 1 and typically we're  
 8 in the top five in the United States in sand and  
 9 gravel.  
 14:33:54 10 Q. And how about in the Pacific Northwest, say?  
 11 A. Pacific Northwest, I would say we -- well, in  
 12 our forecast we are about 28 percent of the market.  
 13 We are the primary supplier in the market. We supply  
 14 Redi-Mix plants, asphalt plants, block-and-paver  
 14:34:20 15 plants. That is our primary function is being a very  
 16 specialized producer that can meet strict, stringent  
 17 specifications for producers.  
 18 Q. And all of the plants that you just described  
 19 that you supply to, can you supply to them in, say,  
 14:34:39 20 Washington from that Everett facility, or do you have  
 21 other facilities?  
 22 A. The Everett facility is one of the locations  
 23 that we supply from our DuPont facility as well. We  
 24 also are a marketer for another water-based facility.  
 14:34:56 25 Q. There was discussion earlier with Mr. Pilsk

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1 about spur, requiring use of a spur in one fashion or  
 2 another. Is having a spur a requirement for  
 3 CalPortland to use the Eastside Rail quarter that  
 4 we've been here talking about today from Woodinville  
 14:35:20 5 to Bellevue?  
 6 MR. PILSK: Objection. Foundation.  
 7 Vague.  
 8 Q. Let me rephrase.  
 9 A. Yeah.  
 10 Q. Is a spur required for you to supply  
 11 aggregate by rail down to the Woodinville-to-Bellevue  
 12 line, assuming that it were in operation?  
 13 MR. PILSK: Same objection.  
 14 A. It would not be a requirement.  
 14:35:46 15 Q. It would be an advantage somehow. You don't  
 16 have to have that; is that correct?  
 17 A. Correct. I deliver to my market now and I  
 18 don't have rail.  
 19 Q. Exhibit-50, the letter that you wrote to  
 20 Cynthia Brown, do you stand by this letter today?  
 21 A. Can you clarify that question?  
 22 Q. Yes. Do you still support rail service from  
 23 Woodinville to Bellevue?  
 24 MR. PILSK: Objection. Vague.  
 14:36:17 25 Q. Go ahead, please.

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1 A. In my opinion, it gives another option to  
 2 bring material into the market without utilizing the  
 3 roads.  
 4 Q. Do you have any experience with whether or  
 14:36:44 5 not rail transportation of aggregate is cheaper, more  
 6 expensive than, or the same as by truck?  
 7 A. It depends on distance. Distance from a  
 8 source to the job site is crucial in all aspects of  
 9 that. Rail, each railcar holds about 100 tons, so  
 14:37:11 10 that displaces three truck-and-trailer loads of  
 11 material. You can move material a greater distance in  
 12 volume than you can in small volume.  
 13 Q. So generally rail transportation is cheaper.  
 14 Is that what you would say?  
 14:37:27 15 A. If the location is close enough to the job  
 16 site required, or the area.  
 17 Q. What do you consider close enough? What do  
 18 you mean by "close enough," or would it vary?  
 19 A. There are so many variables, it's hard to  
 14:37:45 20 understand your question and define an answer for it.  
 21 Can you give me an, I'm sorry, specific?  
 22 Q. No. That's okay.  
 23 You made reference in the letter to  
 24 Ms. Brown of March 25th to projects into 2013 and  
 14:38:10 25 2014. Do you have any doubt there's going to be a

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1 demand for aggregate beyond 2014?  
 2 A. I have no doubt at all.  
 3 Q. Mr. Pilsk asked you some questions about  
 4 transloaded areas along the rail corridor from  
 14:39:14 5 Woodinville to Bellevue. Do you remember those  
 6 questions?  
 7 A. Yes.  
 8 Q. Do you have any doubt that a transload  
 9 facility could be found if rail service were resumed  
 14:39:24 10 between Woodinville and Bellevue?  
 11 MR. PILSK: Objection. Speculation. Lack  
 12 of foundation.  
 13 Q. Based on your experience.  
 14 A. From what I saw in that area that I referred  
 14:39:39 15 to in that switchyard, there's a lot of space. It  
 16 doesn't take a lot of space to produce a transload and  
 17 off-load/reload area. In my opinion, it could be  
 18 accomplished.  
 19 MR. MONTGOMERY: I have no further  
 14:39:57 20 questions.  
 21 MR. PILSK: No further questions.  
 22 MR. STONE: We'll reserve.  
 23 (Deposition adjourned at 2:39 p.m.)  
 24 (Signature reserved.)  
 25 \* \* \*

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1 CERTIFICATE  
 2 STATE OF WASHINGTON )  
 3 ) ss.  
 4 COUNTY OF KING )  
 5 I, the undersigned Registered  
 6 Professional Reporter and Washington Certified Court  
 7 Reporter, hereby certify that the foregoing deposition  
 8 upon oral examination of MICHAEL R. SKRIVAN was taken  
 9 before me on May 28, 2013 and transcribed under my  
 10 direction;  
 11 That the witness was duly sworn by me  
 12 pursuant to RCW 5.28.010 to testify truthfully; that  
 13 the transcript of the deposition is a full, true, and  
 14 correct transcript to the best of my ability; that I  
 15 am neither attorney for, nor a relative or employee  
 16 of, any of the parties to the action or any attorney  
 17 or counsel employed by the parties hereto, nor  
 18 financially interested in its outcome.  
 19 IN WITNESS WHEREOF, I have hereunto set  
 20 my hand and seal this date: May 30, 2013.  
 21 \S PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR  
 22 Court Reporter in and for the State of  
 23 Washington, residing at Seattle. License expires  
 24 07-02-12.  
 25

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1 SIGNATURE  
 2  
 3  
 4  
 5 I declare under penalty of perjury  
 6 under the laws of the State of Washington that I have  
 7 read my within deposition, and the same is true and  
 8 accurate, save and except for changes and/or  
 9 corrections, if any, as indicated by me on the CHANGE  
 10 SHEET flyleaf page hereof. Signed in.....WA  
 11 on the.....day of....., 2012.  
 12  
 13  
 14  
 15 .....  
 16 MICHAEL R. SKRIVAN  
 17 Taken: May 28, 2013  
 18 PEGGY FRITSCHY HAMILTON, RPR,  
 19 CSR, CLR  
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# **EXHIBIT 27**

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1 communication?  
 2 A. No, I did not. I'm sorry.  
 3 Q. I think you testified he asked you to write  
 4 the March 19 letter.  
 13:34:26 5 A. Correct. Asked me if I would.  
 6 Q. Right. Do you remember about how far in  
 7 advance of March 19 he made that request?  
 8 A. I do not.  
 9 Q. Do you recall the conversation?  
 13:34:39 10 A. It would have been fairly close to -- I don't  
 11 let things hang very long, so it would have probably  
 12 been within a week or so, and I believe it was like a  
 13 one-minute phone call, and it could have been a  
 14 voicemail. I just don't really recall exactly. I  
 13:35:00 15 knew he would like a letter.  
 16 Q. Other than that one communication, do you  
 17 recall any other communication between you and  
 18 Mr. Engle or anyone else on behalf of Eastside  
 19 Community Rail between February 1 and March 19?  
 13:35:14 20 A. I think I asked him to define really what he  
 21 wanted.  
 22 Q. Was that in a phone call or by phone?  
 23 A. I don't recall.  
 24 Q. Was it a meeting?  
 13:35:28 25 A. No, it wouldn't have been a meeting. I only

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1 met with him face to face the once.  
 2 Q. Okay.  
 3 A. I don't recall meeting him any other time  
 4 than the one time.  
 13:35:52 5 MR. PILSK: Why don't we mark this.  
 6 (Exhibit-50 marked.)  
 7 Q. Handing you what we've marked as Exhibit-50,  
 8 and this is a letter dated March 25th, 2013. It  
 9 appears to be from you, and this is to a Ms. Cynthia  
 13:36:16 10 Brown at the Surface Transportation Board. Do you  
 11 recognize this letter?  
 12 A. I do.  
 13 Q. Is that your signature on the second page?  
 14 A. It is.  
 13:36:24 15 Q. Were you asked to write this letter?  
 16 A. This was a letter -- I sent my letter to  
 17 Doug.  
 18 Q. When you say "my letter," you mean the March  
 19 19 letter we marked as Exhibit-49?  
 13:36:43 20 A. Yes, the March 19 letter. When I went on  
 21 vacation, when I came back, this letter was forwarded  
 22 to me via email. Asked me to review and see if it met  
 23 my satisfaction.  
 24 Q. Okay. Let's mark this as 51.  
 13:36:54 25

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1 (Exhibit-51 marked.)  
 2 Q. Take a look at what I've marked as  
 3 Exhibit-51. This is an email appears to be from  
 4 Mr. Engle to you dated March 25th, and attached to it  
 13:37:19 5 is a draft of what looks like the letter to Ms. Brown.  
 6 Is this the email you just mentioned?  
 7 A. Correct.  
 8 Q. Is this the first time you'd seen, or you had  
 9 heard of a request that you provide a letter after the  
 13:37:37 10 March 19 letter?  
 11 A. Yes.  
 12 MR. STONE: Just note my objection. Form  
 13 to the last question.  
 14 Q. No phone call or anything from Mr. Engle  
 13:37:48 15 before this email?  
 16 A. Like I said, I was on vacation, so I don't  
 17 think so. I don't recall.  
 18 Q. Prior to receiving this email, Exhibit-51,  
 19 had you drafted, made a draft of the letter that's  
 13:38:03 20 attached?  
 21 A. I don't understand the question.  
 22 Q. In other words, this is a -- Mr. Engle says,  
 23 "look at this letter back from our attorney." Had you  
 24 provided a draft of a letter either to Mr. Engle or to  
 13:38:17 25 Mr. Engle's attorney before receiving this March 25th

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1 email?  
 2 A. Just the March 19th letter.  
 3 Q. Did you know when you received this email who  
 4 the attorney was or what attorney he was referring to?  
 13:38:31 5 A. I do not. I did not.  
 6 Q. What did you do when you received this email?  
 7 A. It was first day back and he had "ASAP" on  
 8 it, so I reviewed it quickly. I did notice a couple  
 9 of words that I wasn't comfortable with that I amended  
 13:38:52 10 from the original letter, which is in the fourth  
 11 paragraph, the last three words. It says "use of an  
 12 already overburdened highway system via truck  
 13 transportation is neither efficient," and I inserted  
 14 "nor cost effective period," or "very cost effective  
 13:39:12 15 period," and struck "nor particularly safe," because I  
 16 don't agree that moving materials via truck is not  
 17 particularly safe.  
 18 (Exhibit-52 marked.)  
 19 Q. Handing you what's been marked Exhibit-52,  
 13:39:42 20 this is an email, top email in the chain from you to  
 21 Mr. Engle dated March 26, and it appears, correct me  
 22 if I'm wrong, this is transmitting your comments on  
 23 the letter back to Mr. Engle.  
 24 A. Correct.  
 13:39:56 25 Q. You said and the text of the email says, "I

# **EXHIBIT 28**

Page 21

1 because they had to have movement on the rail to make  
 2 it viable, and then again as a sales manager they  
 3 piqued my interest when he, Ballard, explained to me  
 4 he had other rail lines, and the light goes off in my  
 13:24:38 5 head: There's other opportunities to sell aggregate.  
 6 That's kind of my focus through this whole thing. I  
 7 want to sell rocks.  
 8 Q. Understood. What did they -- I'm not sure if  
 9 it was Mr. Engle or Mr. Cole or Mr. Wilson at the  
 13:24:55 10 meeting. What did they describe their plan as?  
 11 A. You know, they were pretty -- I couldn't give  
 12 you a definite. I really didn't pay close attention.  
 13 I didn't see it as a -- I just didn't know them, so,  
 14 you know, immediately when I meet somebody I'm going  
 13:25:18 15 to do a little research after I listen to them and try  
 16 and understand more about them. That did not -- they  
 17 didn't come across as wanting anything from me other  
 18 than introducing themselves and here's what we're  
 19 trying to do, and to, Oh, by the way, we are having an  
 13:25:38 20 issue. They're trying to tear this rail line out.  
 21 Q. They did say that?  
 22 A. They did bring that up, and I don't recall  
 23 whether they requested any help in that regard. It  
 24 was all what ifs and here's what we could do if we had  
 13:26:01 25 this rail line in. I'm just looking at it that's an

Page 22

1 option that my competitors would not have if I had a  
 2 friendly relationship with a group that had a rail  
 3 line.  
 4 Q. How long was the meeting?  
 13:26:13 5 A. Knowing me, I'd say it's probably about 20  
 6 minutes.  
 7 Q. Did they give you any sense of a timetable of  
 8 when --  
 9 A. No.  
 13:26:21 10 Q. -- anything in particular was going to  
 11 happen?  
 12 A. No. I didn't get anything finite out of that  
 13 meeting.  
 14 Q. Okay. Did you leave with any asks from you  
 13:26:30 15 back to them?  
 16 MR. STONE: Object to the form of the  
 17 question.  
 18 Q. Were they supposed to get anything more to  
 19 you as a follow-up to the meeting, additional  
 13:26:40 20 information?  
 21 A. Well, yeah. I asked them when they were  
 22 going to be doing maintenance on their line, when they  
 23 were going to start -- I mean, and they were going to  
 24 get back to me and tell me quantities of what they  
 13:26:57 25 would need and then where they would need it so I

Page 23

1 could figure out what to price it and how to get it to  
 2 them type thing.  
 3 Q. Am I understanding you correct this is for  
 4 aggregate for ballast for their line?  
 13:27:11 5 A. That's what I kept asking about. That's all  
 6 I'd ever known for that group.  
 7 Q. Did they ever get back to you with that  
 8 information?  
 9 A. I don't think so.  
 13:27:23 10 Q. And you were the only CalPortland  
 11 representative at that meeting?  
 12 A. Yeah. I don't think Mike was in there. I  
 13 know he wasn't, no. There's only four of us; so...  
 14 (Exhibit-49 marked.)  
 13:27:55 15 Q. Handing you what we've marked as Exhibit-49,  
 16 it's a letter that appears to be from you to Mr. Doug  
 17 Engle dated March 14, 2013. Do you recognize this  
 18 document?  
 19 A. I do.  
 13:28:11 20 Q. Is that your signature?  
 21 A. It's my electronic signature, yes.  
 22 Q. Do you recall writing this letter?  
 23 A. I do.  
 24 Q. Were you asked to draft this letter?  
 13:28:21 25 A. Yeah. Yeah, Doug asked me. He was going to

Page 24

1 some meetings and asked if I would be willing to write  
 2 a letter that showed some support for their project.  
 3 Q. Did you draft this letter entirely, or were  
 4 you given a draft to work from --  
 13:28:39 5 A. No.  
 6 Q. -- from Mr. Engle or anyone else?  
 7 A. Not this letter, no.  
 8 Q. Let me ask you to look back for a second at  
 9 Exhibit-48, the December 3rd letter. It looks like --  
 13:28:50 10 just at the language. There's a lot of the language  
 11 from the December 3rd letter that is incorporated in  
 12 the March 19 letter.  
 13 MR. STONE: Objection.  
 14 Go ahead.  
 13:29:00 15 A. Um-hum.  
 16 Q. Did you use the December 3rd letter as a  
 17 model for the March 19 letter?  
 18 A. I did.  
 19 MR. STONE: Objection to the form of the  
 13:29:09 20 question.  
 21 Q. You can answer.  
 22 A. I did, because I'm not asked to do this very  
 23 often, so I'd done it once. I didn't want to reinvent  
 24 the wheel, so I used this as a starting template.  
 13:29:19 25 Q. Did you do anything to update or verify the

**EXHIBIT 29**  
**“Redacted”**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of June, 2013, a copy of the foregoing **Reply of Ballard Terminal Railroad Company, L.L.C. to King County, Washington, City of Kirkland, Washington, and Puget Sound Regional Transit Authority's Replies to Motion for Preliminary Injunction** was served by electronic mail upon:

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