

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND
OPERATION EXEMPTION – WOODINVILLE SUBDIVISION – VERIFIED PETITION
FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

**KIRKLAND'S EMERGENCY MOTION TO COMPEL DISCOVERY FROM
BALLARD TERMINAL RAILROAD, LLC AND EASTSIDE COMMUNITY RAIL, LLC**

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Dated: June 11, 2013

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ENTERED
Office of Proceedings
June 12, 2013
Part of
Public Record

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SURFACE TRANSPORTATION BOARD**

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Pursuant to 49 U.S.C. §§ 721(c) and (d) and 49 C.F.R. § 1114.31(a), the City of Kirkland, Washington (“Kirkland”) moves for (1) an order compelling Ballard Terminal Railroad Company, LLC (“Ballard”) to produce documents; and (2) a document subpoena to Eastside Community Rail, LLC (“ECR”) and its Managing Director, Doug Engle. Kirkland requests expedited consideration of this motion so that Kirkland can incorporate information from the requested documents into its comments on Ballard’s petitions for exemption, due June 18.¹

A. Ballard Terminal Railroad

On May 8 Kirkland served counsel for Ballard with a set of discovery requests. They included requests for the following four categories of documents:²

¹ See 78 Fed. Reg. 24,465, 24,466 (Apr. 25, 2013).

² See City of Kirkland’s First Set of Interrogatories and Requests For Production of Documents to Ballard Terminal Railroad Company, LLC (“Kirkland’s Requests to Ballard”) at 6, 7 (RFP Nos. 2, 4, 6, 10) (Ex. 1). All references to “Ex.” are to the exhibits filed herewith.

- A. All communications between Ballard and its agents and Doug Engle;³
- B. All communications related to the Line and the Freight Segment between Ballard and its agents and the Port of Seattle;⁴
- C. All communications related to the Line and the Freight Segment between Ballard and its agents and Kathy Cox;
- D. All Ballard financial statements, including internally prepared statements and statements prepared by an accounting firm.⁵

On the day of Byron Cole's deposition Ballard produced written objections to Kirkland's discovery requests, along with a handful of documents.⁶ In his deposition testimony Mr. Cole revealed that he withheld documents responsive to the above-referenced requests, and never searched for others.⁷ Ballard's written objections claimed that the requested documents are irrelevant to these proceedings.⁸ Kirkland wrote to Ballard counsel, enumerating the deficiencies

³ Byron Cole is the General Manager of Ballard Terminal Railroad. Doug Engle is the Managing Director of Eastside Community Rail.

⁴ The "Line" refers to the portion of the railbanked right of way between Woodinville and Bellevue, Washington that is the subject of Ballard's petitions. The "Freight Segment" refers to the contiguous rail line between Woodinville and Snohomish, Washington, that is leased by ECR from the Port of Seattle and, in turn, sub-leased to Ballard.

⁵ Kirkland limited its requests from the time period of January 1, 2008 through the present, which encompasses the time period when Ballard first proposed to operate rail service on the Freight Segment.

⁶ Ballard produced one partial financial statement for operations on the Freight Segment in 2012 and a statement of deposits and withdrawals in a checking account in 2012. Ballard did not produce any documents responsive to the other requests described in this motion.

⁷ See Transcript of Deposition upon Oral Examination of Byron Cole ("Cole Tr.") at 194:2-16 (communications with the Port), 236:7-237:20 (communications with Mr. Engle) (Ex. 2).

⁸ See Ballard Terminal Railroad Company, LLC's Response to City of Kirkland's First Requests for Production ("Ballard's Responses") at 3, 4, 5 (RFP Nos. 2, 4, 6, and 10) (Ex. 3). For each document request discussed in this motion, Ballard also objected that Kirkland's requests were vague and ambiguous, overly broad, and unduly burdensome. With respect to the request for communications with the Port of Seattle, Ballard also objected that Kirkland can obtain the documents from the Port. See *id.* at 5 (RFP No. 10).

in Ballard's response.⁹ Kirkland resolved to file this motion when Ballard's counsel declined to supplement Ballard's response.¹⁰

B. Eastside Community Rail and Doug Engle

ECR holds a long term freight easement on the Freight Segment, and leases the Freight Segment to Ballard. Mr. Engle is the Managing Director of ECR and a de facto partner with Ballard in efforts to secure financing and customers for rail service on the Line. Details about Mr. Engle's activities in support of Ballard appear at pages 6-8 of Kirkland's Reply to Ballard's Motion for Preliminary Injunction. They include the fact that Mr. Engle tried to recruit shippers for Ballard's operations in Bellevue, and negotiated with Kirkland and other cities in attempts to preserve the rails on the Line.

On May 9, 2013 Kirkland subpoenaed Mr. Engle to appear for deposition and to produce, among other documents, communications with Ballard and its agents, the Port, and Ms. Cox.¹¹ On the day before Mr. Engle's deposition ECR served Kirkland with written objections identical to those raised by Ballard,¹² along with a few documents responsive to the requests discussed herein. In his deposition testimony, Mr. Engle revealed that he withheld or failed to search for broad categories of documents enumerated in the subpoena.¹³

⁹ See Letter of May 29, 2013 from Hunter Ferguson to Thomas S. Paschalis (Ex. 4).

¹⁰ See Email of May 30, 2012 from Thomas S. Paschalis to Hunter Ferguson (Ex. 5). Ballard produced additional documents on June 3, 2013, but none of those documents was responsive to the document requests discussed in this motion.

¹¹ See Kirkland's Subpoena to Douglas Engle ("Engle Subpoena") at 4, 5 (Request Nos. 6, 9, 12) (Ex. 6).

¹² See Eastside Community Rail, LLC's Response to City of Kirkland's Document Requests ("ECR's Responses") at 3, 4, 5 (Request Nos. 6, 9, at 12) (Ex. 7).

¹³ See Transcript of Deposition upon Oral Examination of Douglas Engle ("Engle Tr.") at 47:24-48:5, 46:11-20, 47:4-17 (communications with Mr. Cole), 73:9-19 (communications with the Port), 51:17-53:21, 67:4-10 (communications with Ms. Cox) (Ex. 8).

Although Mr. Engle and ECR are key players in Ballard's business plans, neither is formally a party to these proceedings.¹⁴ On May 17 the Board ruled that only the Board has the authority to issue a subpoena to a non-party witness.¹⁵ Accordingly, Kirkland requests that the Board issue a subpoena to ECR for all communications related to the Line or Freight Segment between Mr. Engle and Ballard and its agents, the Port and its agents, and Ms. Cox.

Kirkland requests expedited consideration. Ballard and ECR/Engle have had more than a month to produce responsive materials. Both entities are represented by the same counsel. Comments on Ballard's petitions are due June 18. To enable Kirkland to incorporate the requested information into Kirkland's comments, Kirkland requests that the Board issue a ruling no later than June 14 and order Ballard and ECR/Engle to produce responsive documents at the Seattle office of Kirkland's counsel by 9:00 a.m. PDT on June 17.

ARGUMENT

The Board previously explained in these proceedings that "parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than in an informal proceeding."¹⁶ "[I]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."¹⁷ Relevance "means that

¹⁴ Mr. Engle testified that he considers himself/ECR to be a "party in interest" to these proceedings. *See id.* at 16:10-18.

¹⁵ *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731, slip op. at 3 n.4 (STB served May 17, 2013).

¹⁶ *See id.*, slip op. at 2 (citing 49 C.F.R. § 1142.1(a)(1)).

¹⁷ *Id.* (citing 49 C.F.R. § 1142.1(a)(2)).

the information might be able to affect the outcome of a proceeding.”¹⁸ Applying these principles here, an order compelling discovery and a subpoena are warranted.

A. Communications Between Byron Cole and Doug Engle

Communications between Mr. Cole and Mr. Engle are unquestionably relevant. Mr. Engle owns ECR, which recently entered into a lease with Ballard to fulfill ECR’s obligations to provide rail service on the Port-owned Freight Segment under an Operations & Maintenance (“O&M”) Agreement and lease with the Port.¹⁹ Mr. Engle and other ECR agents approached area stakeholders about the Line, recruited shippers, and prepared letters of support.²⁰ Mr. Engle also threatened the Port that Ballard would be forced to terminate operations on the Freight Segment if the Port did not help Ballard secure public funds to rehabilitate the Freight Segment.²¹ As Mr. Cole explained, “Doug and I have been joined at the hip for three years.”²²

Despite Mr. Engle’s role, he and Mr. Cole withheld virtually all communications between themselves. Even though Mr. Cole testified that he receives email from Mr. Engle and “save[s] all those,”²³ Ballard has not produced *any* communications with Mr. Engle. Mr. Cole has not even searched for responsive documents.²⁴ Mr. Engle believes he has saved somewhere between

¹⁸ *Id.* (citing *Waterloo Ry. – Adverse Aband. – Lines of Bangor and Aroostook R.R. and Van Buren Bridge Co. In Aroostook Cnty., Me.*, AB 124 (Sub-No.2) (STB served Nov. 14, 2003)).

¹⁹ *See Ballard Terminal Railroad Company, L.L.C. – Lease Exemption – Line of Eastside Community Rail, LLC*, STB Docket No. FD 35730 (STB served May 1, 2013) (“*Ballard Lease*”).

²⁰ *See* Email of Nov. 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9); Transcript of Deposition upon Oral Examination of Bobby Wolford (“Wolford Tr.”) at 27:5-8; 32:15-33:4 (Ex. 10); Transcript of Deposition upon Oral Examination of Michael Skrivan (“Skrivan Tr.”) at 19:20-20:5, 31:22-32:17, 39:8-17 (Ex. 11)

²¹ *See* Email from Doug Engle to Joe McWilliams (approx. date Mar. 28, 2013) (Ex. 12).

²² Cole Tr. at 157:10-11 (Ex. 2).

²³ *Id.* at 236:16-18.

²⁴ *Id.* at 237:7-20.

10 and 100 emails that he sent to Mr. Cole,²⁵ but he produced only one of these emails. When asked why he did not produce additional emails, Mr. Engle stated that he excluded or skipped “anything that had an attorney’s name on it” because he believed such communications are subject to the attorney-client privilege.²⁶

A communication between Mr. Engle and Mr. Cole is not privileged simply because it has an attorney’s name on it. For the privilege to attach to a particular communication, the party asserting the privilege must demonstrate (1) that he was a client; (2) that the attorney acted as a lawyer in connection with the document; (3) that the document relates to facts communicated for the purpose of a legal opinion; and (4) that the privilege has not been waived.²⁷ “[T]he mere fact that an attorney was involved in a communication does not automatically render the communication subject to the attorney-client privilege.”²⁸ The waiver issue has particular significance to Ballard and ECR, because Mr. Engle copied Kathy Cox on most of his e-mail relating to Ballard, and Ms. Cox is not a manager or agent of either company.²⁹

Ballard’s and ECR’s written objections – that Kirkland’s requests are vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seek information that is irrelevant and immaterial³⁰ – likewise have no merit. As explained above, ECR and Doug Engle are deeply involved in the promotion of Ballard’s plans for rail service on

²⁵ Engle Tr. at 47:24-48:5 (Ex. 8).

²⁶ *Id.* at 46:11-20, 47:4-17.

²⁷ *Maine v. U.S. Dep’t of Interior*, 298 F.3d 60, 71 (1st Cir. 2002).

²⁸ *United States v. Johnston*, 146 F.3d 785, 794 (10th Cir. 1998) (quoting *Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550-51 (10th Cir. 1995)).

²⁹ See Engle Tr. at 53:22-54:9, 65:22-66:17 (Ex. 8); Cole Tr. at 15:10-16, 19:8-10, 19:21-22 (Ex. 2)

³⁰ See Ballard’s Responses”) at 3, 4, 5 (RFP Nos. 2, 4, 6, and 10) (Ex. 3); ECR’s Responses at 3, 4, 5 (Request Nos. 6, 9, at 12) (Ex. 7).

the Line. Mr. Cole and Mr. Engle each testified that they have saved email communications from each other. Ballard and ECR/Engle have had ample time (more than a month) to produce responsive communications. Accordingly, Ballard and ECR should be directed to produce responsive communications between Mr. Cole and Mr. Engle. To the extent that either party claims a communication to be privileged, Ballard and ECR/Engle should be required to produce a log setting forth the specific facts for each document that establish each element of the privilege claimed.³¹

B. Communications with the Port

Neither Ballard nor Mr. Engle produced any communications between themselves and the Port. Mr. Cole testified that he did not search for any communications with the Port.³² Mr. Engle testified that he definitely has such communications but did not search for them “upon the advice of counsel” that they were “irrelevant.”³³

But communications with the Port are relevant. The Port-owned Freight Segment is critical to any operation on the Line because it provides the only means for in- and out-bound movement on the Line. The Port recently notified ECR that it is in material breach of the O&M Agreement for the Freight Segment for failing to provide proof of required insurance and for failing to pay quarterly fees.³⁴ It also questioned Ballard’s exemption notice for its lease with ECR filed with the Board, and as the Board noted, the Port’s approval of Ballard’s lease with

³¹ See *Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, STB Docket No. FD 35557, slip op. at 3 (STB served Mar. 19, 2012), *aff’d*, slip op. at 7-8 (STB served June 25, 2012); *S.E.C. v. Beach Hill Asset Mgmt., LLC*, 231 F.R.D. 134, 143 (S.D.N.Y. 2004).

³² See Cole Tr. 194:2-16 (Ex. 2).

³³ Engle Tr. 73:9-19 (Ex. 8).

³⁴ See Email of Apr. 18, 2013 from Sean Sullivan to Doug Engle (Ex. 13).

ECR concerning the Freight Segment is necessary for rail operations.³⁵ As Ballard's rights depend on this lease, and the Freight Segment is critical to any rail operations on the Line, the status of ECR's and Ballard's rights with respect to the Freight Segment is germane to whether Ballard has a bona fide freight service plan.

Ballard's and ECR's objection that Kirkland can obtain the requested communications from the Port³⁶ are without merit. The Board's discovery rules "follow generally those in the Federal Rules of Civil Procedure."³⁷ "Fed. R. Civ. P. 34 requires production of a document that is in the possession, custody or control of a party; the fact that the document may also be available from another source is irrelevant."³⁸ Therefore, Ballard and ECR must produce any responsive communications with the Port in their possession.

C. Communications With Kathy Cox

Ballard has not produced any communications with Ms. Cox. Mr. Engle testified that he had "lots" of responsive communications with Ms. Cox but, "upon advice of counsel," "did not do a thorough search of communique" because he believed such materials were "irrelevant."³⁹

³⁵ See *Ballard Lease*, *supra* note 19, slip op. at 2; see also *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407, slip op. at 6 (STB served June 15, 2011) (explaining that limitations on the operating rights of ECR's predecessor on the Freight Segment was a "factor . . . that also weigh[s] against a conclusion that GNP is a bona fide petitioner" to acquire the reactivation rights for the nearby Redmond Spur).

³⁶ See Ballard's Responses at 5 (RFP No. 10) (Ex. 3); ECR's Responses at 5 (Request No. 12) (Ex. 7).

³⁷ *Potomac Elec. Power Co. v. CSX Transp., Inc.*, 2 S.T.B. 290, 291 n.5 (1997). 49 C.F.R. § 1114.30(a)(1) requires production of documents in a party's possession.

³⁸ *Swindell Dressler Int'l Co. v. Travelers Cas. and Sur. Co.*, 827 F. Supp. 2d 498, 505 n.8 (W.D. Pa. 2011) (internal quotations and citation omitted).

³⁹ Engle Tr. at 51:17-53:21, 67:4-10 (Ex. 8).

This objection, too, has no merit. Ms. Cox intends to start an excursion train that would be operated by Ballard on the Line and Freight Segment.⁴⁰ She worked to encourage Ballard and WTD, to initiate legal proceedings regarding the Line.⁴¹ She is included on many of Doug Engle's e-mails relating to the promotion of rail service on the Line.⁴² Even if Ms. Cox had no involvement in Ballard's plans, her inclusion in an e-mail communication with Doug Engle or Byron Cole would waive any attorney-client privilege relating to that communication.

The Board has recognized that discovery is appropriate when a party claiming an interest in providing freight service might be "serving as a proxy for a third party."⁴³ In light of Ms. Cox's involvement, communications with her are likely to bear on whether Ballard has a bona fide plan to provide freight rail service and are thus discoverable.

D. Ballard's Financial Statements

Kirkland requested "all financial statements of Ballard's, including internally prepared statements and statements prepared by an accounting firm."⁴⁴ Byron Cole testified that Ballard uses an accounting firm to prepare its taxes, but Mr. Cole produced no communications between Ballard and the accountants, and nothing generated by the accountants.⁴⁵ Ballard produced only

⁴⁰ See *id.* at 56:3-11; Cole Tr. 172:14-21 (Ex. 2); Bill Sheets, "Activists want Snohomish-Bellevue rail line to stay," *The Everett Herald* (Feb. 11, 2013) (Ex. 14 at 1).

⁴¹ See Email of Mar. 5, 2013 from Doug Engle to Steve Thomsen of Snohomish County (Ex. 15 at 2) ("Kathy and Ernie [Wilson of ECR] are presently meeting with Byron Cole and Wolford regarding their interest in pursuing a federal injunction to stop Kirkland ASAP.").

⁴² See Email of Mar. 21, 2013 from Doug Engle to Bruce Agnew (Ex. 16); Email of Apr. 14, 2013 from Doug Engle to Les Rubstello (Ex. 17); Email of Apr. 4, 2013 from Doug Engle to Kathy Cox (Ex. 18); Email of Feb. 19, 2013 from Doug Engle to Richard Leahy (Ex. 19).

⁴³ *Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and Vanderburgh Counties, Ind.*, STB Docket No. AB 1065X, slip op. at 4 (STB served Feb. 11, 2011).

⁴⁴ Kirkland's Requests to Ballard at 6 (RFP No. 2) (Ex. 1).

⁴⁵ See Cole Tr. at 24:20-26:2 (Ex. 2).

two responsive documents: (1) a partial table of costs for operations on the Freight Segment in 2012 (2) an expense sheet for 2012 that, according to Mr. Cole, was provided to Ballard's accountant. Ballard produced no documents that show its revenues, and nothing that reveals whether Ballard is profitable or solvent, either generally or on the Woodinville Subdivision.

Ballard's financial status is deeply relevant to these proceedings. Mr. Cole's Verified Statement in support of Ballard's Petition For Exemption asserts that "We are a financially sound Class III carrier . . ." ⁴⁶ Yet Mr. Cole testified that Ballard does not earn enough revenue to maintain the Freight Segment, and Mr. Engle threatened the Port that freight operations could cease if the Port does not find public money to rehabilitate the Freight Segment. ⁴⁷ As the Board has declared ⁴⁸ and as Kirkland explained in its Reply to Ballard's Motion for Preliminary Injunction (at pages 26-30), Ballard must obtain the necessary property rights to access the Line in order to provide rail service. Mr. Cole speculated that Ballard has annual gross revenues of only \$500,000. ⁴⁹ Ballard's financial statements are material to both its ability to secure property rights on the Line and its ability to maintain the Freight Segment, the sole link between the Line and the national rail system. For these reasons, the financial statements that Ballard withheld are material to these proceedings.

⁴⁶ Verified Statement of Byron Cole at 4.

⁴⁷ See Email from Doug Williams to Joe McWilliams (approx date Mar. 28, 2013) (Ex. 12).

⁴⁸ See, e.g., *Saratoga and North Creek Railway, LLC – Operation and Exemption – Tahawus Line*, STB Docket NO. FD 35631, slip op. 3 (STB served Oct. 11, 2012) (citation omitted).

⁴⁹ See Cole Tr. at 56:7-57:2 (Ex. 2).

CONCLUSION

For the foregoing reasons, a ruling requiring Ballard and ECR to produce the above-discussed documents is appropriate. With comments on Ballard's petitions due on June 18, Kirkland needs these documents urgently. Accordingly, the following emergency relief is appropriate:

(1) An order compelling Ballard to produce all documents described in categories A, B, C, and D on page 2 above, along with a privilege log for any documents withheld as privileged, by 9:00 a.m. on June 17, 2013; and

(2) A subpoena directing Doug Engle and ECR to produce all communications between Mr. Engle and Ballard and its agents, the Port and its agents, and Ms. Cox, along with a privilege log for any documents withheld as privileged, by 9:00 a.m. on June 17, 2013.

Respectfully submitted,


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Counsel for the City of Kirkland, Washington

Dated: June 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing motion upon the following parties of record in the above-captioned proceedings by first class mail, unless noted otherwise, with postage prepaid and properly addressed:

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Hunter Ferguson

Dated this 11th day of June 2013

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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**

**THE CITY OF KIRKLAND'S
FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO BALLARD TERMINAL
RAILROAD COMPANY, LLC**

TO: Petitioner Ballard Terminal Railroad Company, LLC (“Ballard”)
AND TO: Myles L. Tobin and Tom Montgomery, counsel for Ballard Terminal Railroad Company, LLC

Pursuant to the rules of the Surface Transportation Board (“STB”) governing discovery, *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, the City of Kirkland, Washington (“Kirkland”), submits the following interrogatories and requests for production of documents and electronically stored information (collectively, “Discovery Requests”) to Petitioner Ballard Terminal Railroad Company, LLC. (“Ballard”). Pursuant to 49 C.F.R. §§ 1114.26(a), .27(a), and .30(b), these discovery requests must be answered in writing and under oath within 15 days after the date of service thereof. If Ballard cannot produce copies of the Documents and Electronically Stored Information (as those terms are defined below) as requested herein, Ballard

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 1**

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STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 is requested to produce such Documents and Electronically Stored Information for inspection
2 and copying by 9:00 a.m. on May 23, 2013, at the office of Stoel Rives LLP, 600 University
3 Street, Suite 3600, Seattle, Washington 98101, or at such other place as mutually agreed upon by
4 counsel. Inspection and copying will be conducted by counsel for Kirkland or its agents from
5 time to time until completion.

6 DEFINITIONS

7 1. Consistent with both the STB rules, 49 C.F.R. § 1114.30(a)(1) and the Federal
8 Rules of Civil Procedure, “Document and Electronically Stored Information” shall mean the
9 original, all copies, and all translations of any writing, drawings, graphs, charts, photographs,
10 phonograph records, tapes, video recordings, sound recordings, images, and other data or data
11 compilations stored in any medium (paper or other tangible format, as well as any electronic
12 format) from which information can be obtained. “Document and Electronically-Stored
13 Information” includes, for example (and not by way of limitation), email, paper documents,
14 photographs, microfilm, microfiche, computer tapes, computer printouts, spreadsheets,
15 calendars, appointment books, lists, tabulations, surveys, all other records kept by electronic,
16 photographic, or mechanical means, and things similar to the foregoing, however denominated.
17 “Document,” as used herein, shall also mean any tape or audible recording, any photograph or
18 motion picture or videotape and any non-identical copy of any document as previously defined
19 (e.g., any copy of a document as previously defined which differs from any other copy thereof
20 either by virtue of other material appearing thereon, such as handwriting or typewriting, or
21 otherwise). “Electronically Stored Information” includes without limitation email, voicemail,
22 documents, spreadsheets, calendars, and any other information existing in any electronic format
23 (e.g., Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav).

24 2. “Communication” shall mean any information transmitted from one person or
25 entity to another person or entity and includes, but is not limited to, email or letters and any
26 attachments or enclosures thereto, oral conversations and recordings thereof, voicemail, notes

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 2**

73809914.1 0021620-00004

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1 from oral conversations, and materials comprising a presentation, application, proposal, offer, or
2 acceptance. To “communicate” means to transmit such information, in any medium.

3 3. “Person” shall mean any natural person, firm, association, partnership, limited
4 liability partnership, proprietorship, corporation, company, limited liability company, or any
5 other business or legal entity, and includes any and all of such person’s directors, officers,
6 employees, agents, attorneys, accountants, consultants, and/or other representatives.

7 4. Each of the terms “refer to,” “relate to,” “relating to,” or “regarding” shall mean
8 and include any logical or factual connection with the matter identified or discussed. These
9 terms include all matters or things that in any way discuss, concern, are connected to, arise from,
10 reflect, summarize, evaluate, comment on, evidence, suggest, indicate, and/or otherwise tend to
11 prove or disprove the subject or object of the particular Discovery Request in which any of these
12 terms is used.

13 5. “Identify.”

14 a. “Identify,” when used in the context of identifying a natural person, means to
15 state the person’s (i) full name, (ii) present or last known business and residence addresses, (iii)
16 present or last known business, residence, and cellular telephone numbers, and (iv) present or
17 last known employer, job title or (if the job title is unknown to you) the nature or description of
18 the position occupied by the person.

19 b. “Identify,” when used in the context of identifying an entity, association,
20 partnership, or other organization (*e.g.*, a Person – as that term is defined herein – other than a
21 natural person) means to state (i) the organization’s full name, (ii) the address and telephone
22 number of its primary place of business; (iii) each address where the organization is located
23 where you have had contact with it that is or may be material to this matter; (iv) each telephone
24 number you have used to contact the organization; (v) the state of the organization’s formation,
25 and (vi) all known natural persons who own, operate, and/or control the organization to the best
26 of your knowledge, information, and belief and, with respect to each natural person with whom

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 3**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 either of you has had contact, the person's (A) full name, (B) present or last known business and
2 residence addresses, (C) present or last known business, residence, and cellular telephone
3 numbers, and (D) present or last known employer, job title or (if the job title is unknown to you)
4 the nature or description of the position occupied by the person.

5 c. "Identify," when used in the context of identifying a document, means to provide
6 sufficient information to permit unambiguous identification of the document, including, without
7 limitation, the document's (i) form (i.e., letter, memorandum, handwritten notes, typewritten
8 notes, report, analysis, etc.), (ii) title (if any), (iii) date, (iv) author, and (v) addressee or intended
9 recipient, if any, and (vi) current location.

10 d. "Identify," when used in the context of identifying a communication, means to
11 provide sufficient information to permit unambiguous identification of the communication,
12 including without limitation (i) the date of the communication, (ii) the manner in which the
13 communication took place (i.e., whether the communication took place through a meeting,
14 telephone conversation, letter, email, or other form of communication, the form of which you are
15 to specify), (iii) the location of the communication if the communication was in the form of a
16 telephone conversation or meeting, (iv) all parties or persons present at the time of such
17 communication or who participated, overheard, or may have overheard the communication if it
18 was oral, or who have seen or may have seen the communication if it was in writing, and (v) the
19 subject matter and substance of the communication.

20 6. "You," "your," or "Ballard" means and includes Ballard Terminal Railroad
21 Company, LLC. and all agents, related entities, owners, affiliates, representatives, attorneys and
22 any other person who, or entity that, is affiliated with, has acted, and/or is acting for or on behalf
23 of Ballard.

24 7. The "Line" means any part of the railbanked segment of the Woodinville
25 Subdivision running between milepost 23.8 in Woodinville, Washington, and approximately
26 milepost 11.25 in Bellevue, Washington.

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 4**

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(206) 354-0900

1 **REQUESTS FOR PRODUCTION**

2 **RFP NO. 1:** Please produce all versions of your articles of incorporation, corporate by-
3 laws, annual reports, and tax returns.

4 **RESPONSE:**

5

6 **RFP NO. 2:** Please provide all financial statements of Ballard's, including internally
7 prepared statements and statements prepared by an accounting firm.

8 **RESPONSE:**

9

10 **RFP NO. 3:** Please produce all communications between you and any potential shipper
11 on the Line, including but not limited to CalPortland Company and Wolford Trucking and
12 Demolition, Inc., and any representatives or agents thereof.

13 **RESPONSE:**

14

15 **RFP NO. 4:** Please produce all communications between you and Douglas Engle.

16 **RESPONSE:**

17

18 **RFP NO. 5:** Please produce all communications related to the Line or Freight Segment
19 between you and representatives of EB5 Capital Partners.us, LLC, including but not limited to
20 Daniel T. Behr and Douglas C. Olds.

21 **RESPONSE:**

22

23 **RFP NO. 6:** Please produce all communications related to the Line or Freight Segment
24 between you and officers, employees, or other representatives of Marketing Philharmonic,
25 including but not limited to Kathy Cox.

26

1 **RESPONSE:**

2
3 **RFP NO. 7:** Please produce all communications related to the Line or Freight Segment
4 between you and officers, employees, or other representatives of Wright Runstad & Company.

5 **RESPONSE:**

6
7 **RFP NO. 8:** Please produce all communications related to the Line or Freight Segment
8 between you and officers, employees, or other representatives of the organization known as the
9 Eastside TRailway Alliance.

10 **RESPONSE:**

11
12 **RFP NO. 9:** Please produce all communications between you and BNSF Railway
13 Company related to the Line or Freight Segment, including any communications regarding
14 interchanges to the Line or the Freight Segment.

15 **RESPONSE:**

16
17 **RFP NO. 10:** Please produce all communications related to the Line or Freight Segment
18 between you and officers, employees, or other representatives of the Port of Seattle.

19 **RESPONSE:**

20
21 **RFP NO. 11:** Please produce all communications related to the Line or Freight Segment
22 between you and members of the King County Council and their staff.

23 **RESPONSE:**

24
25
26
**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 7**

73809914.1 0021620-00004

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1 **RFP NO. 12:** Please produce all communications related to the Line or Freight Segment
2 between you and officers, employees, or other representatives of the Central Puget Sound
3 Regional Transit Authority (a/k/a Sound Transit).

4 **RESPONSE:**

5

6 **RFP NO. 13:** Please produce all communications related to the Line or Freight Segment
7 between you and officers, employees, or other representatives of Snohomish County,
8 Washington.

9 **RESPONSE:**

10

11 **RFP NO. 14:** Please produce all communications related to the Line or Freight Segment
12 between you and officers, employees, or other representatives of the City of Snohomish,
13 Washington.

14 **RESPONSE:**

15

16 **RFP NO. 15:** Please produce all communications related to the Line or Freight Segment
17 between you and officers, employees, or other representatives of the City of Woodinville,
18 Washington.

19 **RESPONSE:**

20

21 **RFP NO. 16:** Please produce all versions of your business plan(s) to provide or support
22 freight or passenger service on the Line, the Freight Segment, or both, and all documents related
23 to such plan(s).

24 **RESPONSE:**

25

26

1 **RFP NO. 17:** Please produce all documents related to estimated costs to reactivate rail
2 service on the Line, including without limitation the cost of repairing track, ties, signals, and
3 switches.

4 **RESPONSE:**

5

6 **RFP NO. 18:** Please produce all documents related to discussions or negotiations with
7 the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property
8 rights necessary to use the Line for rail service.

9 **RESPONSE:**

10

11 **RFP NO. 19:** Please produce all documents referring or relating to your past, current,
12 and/or prospective contractual and/or business relationship with Eastside Community Rail, LLC,
13 including but not limited to lease agreements and operating agreements between the two entities.

14 **RESPONSE:**

15

16 **RFP NO. 20:** Please produce all documents related to any request(s) for funds from the
17 State of Washington to maintain or improve the Line or the Freight Segment.

18 **RESPONSE:**

19

20 **RFP NO. 21:** Please produce all documents that show traffic volume and revenues from
21 traffic volume on the Freight Segment.

22 **RESPONSE:**

23

24 **RFP NO. 22:** Please produce all documents showing projected freight rail traffic and
25 revenue on the Line, if freight rail service on the Line is reinstated.

26 **RESPONSE:**

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 9**

73809914.1 0021620-00004

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
(206) 354-0900

1 DATED: May 8, 2013.

2 STOEL RIVES LLP

3
4 

5 Matthew Cohen, WSBA No. 11232
6 mcohen@stoel.com
7 Hunter Ferguson, WSBA No. 41485
8 hoferguson@stoel.com

9 Attorneys for the City of Kirkland, Washington

10 **ANSWERS & RESPONSES DATED:** _____

11 BY: _____

12 ITS: _____

13 LOCATION: _____

14 _____, being first duly sworn, on oath deposes and says:

15 That ___ is the _____ of Ballard Terminal Railroad Company LLC, in the
16 above cause of action; has read the foregoing Interrogatories and Requests for Production of
17 Documents and the Answers and Responses thereto and has reviewed the documents produced,
18 knows the contents thereof, and believes the answers to the Interrogatories and responses to the
19 Requests to be true and the documents produced complete.

20 _____
Signature

21 _____
Print Name

22 SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2013.

23 Signature: _____

24 Name (Print): _____

25 NOTARY PUBLIC in and for the State of
Washington, residing at _____

26 My appointment expires: _____

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO BALLARD TERMINAL
RAILROAD COMPANY, LLC - 10**

73809914.1 0021620-00004

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ATTORNEYS
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(206) 354-0900

1 **STATEMENT OF ATTORNEY**

2 The undersigned hereby states that he is the attorney for the party answering the above
3 propounded Interrogatories and responding to the Request for Production of Documents, and that
4 all objections, if any, set forth in response to said Interrogatories and Requests were made by the
5 undersigned and that a motion for protective order was filed with the STB as required by 49
6 C.F.R. § 1114.21(c).

7 DATED this ____ day of _____, 2013.

8 _____, counsel for
9 Petitioner Ballard Terminal Railroad Company LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned
3 persons by First Class Mail on May 8, 2013:

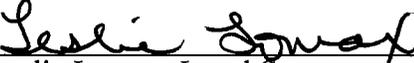
4 Pete Ramels
5 Andrew Marcuse
6 Office of the Prosecuting Attorney—Civil Division
7 W400 King County Courthouse
8 516 Third Avenue
9 Seattle, WA 98104
10 *Attorneys for King County*

11 Charles A. Spitulnik
12 W. Eric Pilsk
13 Allison Fultz
14 Kaplan Kirsch & Rockwell LLP
15 1001 Connecticut Avenue, NW, Suite 800
16 Washington, DC 20036
17 *Attorneys for King County*

18 Craig Watson
19 General Counsel
20 Port of Seattle
21 Pier 69
22 PO Box 1209
23 Seattle, WA 98111

24 Jordan Wagner
25 Central Puget Sound Regional
26 Transit Authority
401 S. Jackson Street
Seattle, WA 98104

DATED at Seattle, WA this 8th day of May, 2013

21 
22 _____
23 Leslie Lomax, Legal Secretary
24 STOEL RIVES

BEFORE THE SURFACE TRANSPORTATION BOARD

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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)
)

DEPOSITION UPON ORAL EXAMINATION

 OF
 BYRON COLE

Taken at 600 University Street, Suite 3600

 Seattle, Washington

DATE: Friday, May 24, 2013

 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

Page 14

1 Q. And in your personal and business life, do you
2 use e-mail?
3 A. Yes. I mean, I have a computer in the railroad
4 office, which is located in West Seattle. And I have one
5 in a nice home office, all with the same data on it. And I
6 check e-mails every morning as soon as I get up.
7 Q. Do you send any e-mails?
8 A. Occasionally. I delete a lot of e-mails, who
9 doesn't.
10 Q. Mr. Engle suggested that e-mail is not your
11 favorite form of communication?
12 A. Well, he likes to tease me about that. I mean,
13 after all, we're at least a generation apart.
14 Q. Right.
15 A. He's a really nice guy and grew up with e-mail
16 and all the other wonders in the digital world.
17 Q. Right.
18 A. I have learned enough to be able to use the
19 thing, to open it -- the things.
20 Q. Do you use e-mail in conducting any
21 communications for Ballard Terminal Railroad?
22 A. Oh, yes.
23 Q. Ballard is a limited liability company?
24 A. Yes.
25 Q. You're incorporated as such?

Page 15

1 A. Yes.
2 Q. Okay. And are there any shareholders other
3 than -- you are a shareholder, correct?
4 A. Right.
5 Q. And Paul Nerdrum is a shareholder?
6 A. He's the other one.
7 Q. There's only two?
8 A. There's only two from the beginning, unchanged to
9 present times.
10 Q. Okay. Is there any form of ownership interest in
11 Ballard Terminal Railroad, other than as a shareholder?
12 A. No.
13 Q. So no one has any stake in that operation, other
14 than you and Paul Nerdrum?
15 A. Right. I guess, if and when one of us were
16 expired, we'd probably flow to, you know, the relation.
17 Q. Okay. And do you and Mr. Nerdrum own equal
18 shares in the company?
19 A. No.
20 Q. How is that, what's the allocation?
21 A. Mr. Nerdrum has 99 percent. I have all of the
22 rest. 1 percent.
23 Q. But you're the general manager?
24 A. Mm-hm (answers affirmatively).
25 Q. Sounds like he's getting a great deal.

Page 16

1 MR. MONTGOMERY: Objection. There's no
2 question.
3 MR. COHEN: There's no question. I withdraw
4 it.
5 THE WITNESS: It was a choice that we --
6 MR. MONTGOMERY: There's no question. Wait
7 for a question, please.
8 Q. (By Mr. Cohen) That's fine. In addition to
9 being a shareholder, do you get a salary from Ballard
10 Terminal Railroad?
11 A. The short answer is no.
12 Q. So all of the income that you receive from your
13 participation in Ballard Terminal Railroad is in the form
14 of -- are there dividends?
15 A. No.
16 Q. So do you receive any compensation from your
17 involvement with Ballard Terminal Railroad?
18 A. I need to consult with my --
19 MR. MONTGOMERY: I'm going to object on
20 relevance grounds at this point, whether they're customers
21 from freight service to Bellevue to Woodinville doesn't
22 fall on these lines.
23 MR. COHEN: So noted.
24 THE WITNESS: Can we whisper?
25 Q. (By Mr. Cohen) So --

Page 17

1 MR. MONTGOMERY: We cannot.
2 Go ahead.
3 MR. COHEN: Thank you, Mr. Montgomery.
4 Q. (By Mr. Cohen) So, my question was, do you
5 receive any compensation from Ballard Terminal Railroad of
6 any kind for your role in the company?
7 A. I do. But I guess you're going to have to guess
8 what it is. I can't say anything about it.
9 Q. Well --
10 MR. MONTGOMERY: Just answer the question.
11 He asked you a question and the answer is?
12 THE WITNESS: I do.
13 MR. MONTGOMERY: There you go.
14 Q. (By Mr. Cohen) What form does that compensation
15 take?
16 A. I have another company called Ballard Industrial
17 Company. And they have a contract with Ballard Terminal
18 Railroad Company, LLC. And we send them a bill once a
19 month.
20 Q. And what services does Ballard Industrial Company
21 perform for Ballard Terminal Railroad?
22 A. All of the management. All of the technical
23 expertise. All of the construction rehabilitation, tracks,
24 expertise. That kind of thing. It's a management
25 contract.

Page 18

1 Q. Okay. And has that contract, how long has that
2 contract been in effect?
3 A. Since day one.
4 Q. So Ballard Industrial Company bills Ballard
5 Terminal Railroad for your management services?
6 A. Right.
7 Q. I see. Is Ballard Industrial Company a
8 corporation?
9 A. Yes.
10 Q. Washington corporation?
11 MR. MONTGOMERY: I'm sorry, I'm sorry. I'm
12 just going to object on the grounds of relevance.
13 Are you a business lawyer? I'm sure this is very
14 interesting, but doesn't have anything to do with the STB
15 proceedings, as far as I'm aware.
16 MR. COHEN: So noted. Thank you.
17 Q. (By Mr. Cohen) Is Ballard Industrial Company a
18 Washington corporation?
19 A. It is.
20 Q. Ballard Industrial Company bills Ballard Terminal
21 Railroad monthly for your management services?
22 A. Right.
23 Q. Does Ballard Industrial Company include any
24 employees or managers other than you?
25 A. My spouse.

Page 19

1 Q. Anyone else?
2 A. No.
3 Q. So what were Ballard Industrial Company's 2012
4 billings to Ballard Terminal Railroad?
5 A. I don't know off the top of my head.
6 Q. Your best estimate.
7 A. \$60,000.
8 Q. Okay. Does Ballard Terminal Railroad have
9 officers?
10 A. Just Paul Nerdrum and myself.
11 Q. And you're the general manager. What's his
12 title?
13 A. Well, in the state of Washington, over these
14 years, they've jumped around a bit with what they called
15 the principals of LLCs and at first they were managing
16 members, but now they're general managers. So we just
17 rolled with that punch, so I guess the official title would
18 be general manager for each of us.
19 Q. You're both general manager?
20 A. Yes.
21 Q. Are there directors?
22 A. No.
23 Q. Okay. Mr. Cole, I've seen statements that
24 Ballard Terminal Railroad operates three freight railroads.
25 Let me identify an exhibit.

Page 20

1 A. Okay.
2 MR. MONTGOMERY: Are we looking at an
3 exhibit?
4 MR. COHEN: It's 26.
5 MR. MONTGOMERY: Thank you.
6 Q. (By Mr. Cohen) Mr. Cole, I'm going to show you
7 Exhibit 26. This document was used in Mr. Engle's
8 deposition.
9 A. Yes.
10 Q. All right. Could you identify that exhibit for
11 me?
12 A. Well, these are the costs to operate the railroad
13 on the Eastside. And we were the partners with the
14 scoundrel at GNP. So we have been operating that line
15 since 11th of January, 2010. That was the first day
16 Burlington Northern allowed GNP to get on the railroad.
17 Q. Did you prepare this statement?
18 A. My wife actually typed it up.
19 Q. Okay. But you supplied the data for it?
20 A. Yes, yes. She does the books, writes the checks.
21 I certainly --
22 Q. It lists --
23 A. -- checked it over.
24 Q. I'm sorry. Didn't mean to --
25 A. I just say, she did all the work, but I checked

Page 21

1 it over to see if any omissions or errors or anything.
2 Q. You provided this statement to Myles Tobin's
3 firm?
4 I'll tell you that it was produced to us by
5 Mr. Tobin's firm.
6 A. Okay. I think I might have sent it off to them,
7 yeah.
8 Q. I see that it refers to three railroads in red at
9 the top?
10 A. Yeah, that's our business card. That's what they
11 look like.
12 Q. Okay. And then there's a line just below that
13 refers to those three railroads as subsidiaries of Ballard
14 Terminal Railroad Company, LLC. Do you see that?
15 MR. MONTGOMERY: Pause please and wait.
16 Thank you. Go ahead.
17 THE WITNESS: They're wholly owned
18 subsidiaries of BTR, LLC, as this is a common thing among
19 the 550 short line railroads that there are in the United
20 States today.
21 Q. (By Mr. Cohen) All right. But, is each of those
22 three railroads an independent business entity?
23 MR. MONTGOMERY: Objection; form and
24 foundation.
25 THE WITNESS: Well, they're in three

Page 22

1 different counties. And with three different sets of
2 customers, and we acquired them at three different times.
3 Again, this is a common way that short line railroads are
4 grown. Some people have 50 short lines. It's nothing
5 unusual about it. It's the business model that works the
6 best, and giving them individual names is done so that the
7 producers of machinery back on the Eastern half of the
8 country can look up in the giant handbook of all railroads
9 and pick out who can unload his machinery from his railcar
10 closest to where it really needs to go so he doesn't have
11 to run it by truck.
12 Q. So my question is, is Eastside Freight Railroad a
13 corporation?
14 A. It's just a business name at the moment. The
15 three names have been, you know, perfected at Olympia to
16 the extent that they need to be. They're all registered
17 trademarks.
18 Q. As in trademarks?
19 A. Mm-hm (answers affirmatively).
20 Q. But is there an independent corporate form to
21 Eastside Freight Railroad?
22 A. No, they're just, as it says, they're doing
23 business as.
24 Q. They're all elements of the business of Ballard
25 Terminal Railroad?

Page 23

1 A. Yeah.
2 Q. Okay. Do any of the three railroads shown in red
3 on Exhibit 26 pay taxes? Are they taxpayers?
4 A. We just do one financial report and one tax
5 return for the LLC.
6 Q. Okay. And the LLC being Ballard Terminal
7 Railroad Company, LLC?
8 A. Right.
9 Q. Okay. And what were the 2012 total revenues of
10 Ballard Terminal Railroad Company, LLC?
11 A. Well, I think somewhere in my briefcase I may
12 have.
13 MR. MONTGOMERY: My --
14 THE WITNESS: A --
15 MR. MONTGOMERY: Let me cut him off. My
16 understanding is, I'm not sure, I don't want to mislead
17 you, but I believe that's in what's coming. I think that's
18 what coming is the most recent year's numbers. So you're
19 obviously welcome to test his memory, but if you want to
20 skip by that and see what comes, it's up to you.
21 THE WITNESS: I believe that too.
22 MR. MONTGOMERY: Okay.
23 Q. (By Mr. Cohen) Mr. Cole, did you bring any
24 documents with you today?
25 A. No.

Page 24

1 Q. Okay.
2 MR. COHEN: So, Mr. Montgomery, you're
3 referring to a document production that the Fletcher Sippel
4 firm is planning to produce later today?
5 MR. MONTGOMERY: I don't know if I told you
6 on or off the record, doesn't matter. I think it's my
7 understanding, Fletcher Sippel, this morning, hopes or
8 intends to e-mail to Mr. Ferguson and Mr. Ferguson's
9 assistant some production.
10 MR. COHEN: Okay.
11 MR. MONTGOMERY: I believe, as I said, the
12 2000 numbers are in there. I could be wrong, but I believe
13 they are.
14 MR. COHEN: Okay.
15 Q. (By Mr. Cohen) Well, I'll tell you, I need to
16 cover certain ground in order to prepare for subsequent
17 questions in this deposition, so I'm just going to ask you
18 for your best estimates right now subject to confirmation
19 when and if documents show up.
20 Does Ballard Terminal Railroad maintain financial
21 statements?
22 MR. MONTGOMERY: Object to the form.
23 THE WITNESS: Well, we do enough over the
24 course of the year to be able to satisfy our tax
25 preparation company for, you know, somebody -- a firm

Page 25

1 that's been in Seattle for a long time, and does a good
2 job. We've never been audited by the IRS. For 16 years,
3 that's -- I don't know if that's remarkable, but I feel
4 good about it. We're not -- we've used them every year
5 since we started.
6 Q. (By Mr. Cohen) What firm is that?
7 A. I can't tell you right now. I don't know the
8 name.
9 Q. Is it an accounting firm?
10 A. Yeah.
11 Q. Who is the lead that you deal with at that
12 accounting firm?
13 A. I can't remember her name either.
14 Q. Okay. Do you, as Ballard Terminal Railroad,
15 maintain financial statements that you supply to the
16 accounting firm in order to enable them to prepare your tax
17 returns?
18 MR. MONTGOMERY: Object to the form.
19 Go ahead. Thank you. I'm sorry. I was done. I
20 appreciate that.
21 THE WITNESS: So, one of the pieces of paper
22 that's coming from Chicago is a copy of the summary sheet
23 for the preparation work that we do to make it relatively
24 easy for the tax accounting firm to figure out how much
25 taxes we have to pay. And so, I'm giving you that sheet.

Page 26

1 I guess we have to wait here till it flies across the
2 country.

3 Q. (By Mr. Cohen) Okay.

4 MR. MONTGOMERY: Mr. Cole, I'd encourage you
5 to listen to the question asked and answer the asked
6 question, if you would.

7 THE WITNESS: I thought I was.

8 Q. (By Mr. Cohen) So I'll try to proceed without
9 that information for now and hope that it shows up soon.

10 A. Okay.

11 Q. Is Ballard Terminal Railroad's fiscal year the
12 calendar year?

13 A. It is.

14 MR. COHEN: I'm going to ask the reporter to
15 mark an exhibit.

16 THE COURT REPORTER: It's going to be 36.
17 (Exhibit Number 36 marked.)

18 Q. (By Mr. Cohen) Mr. Cole, showing you what's been
19 marked as Exhibit 36, I will advise you that this is a set
20 of discovery requests that my firm served on your lawyers
21 seeking information about Ballard Terminal Railroad. And I
22 want to ask you some questions about the status of your
23 response to certain of those information requests.

24 So I'm going to ask you to turn to -- let me ask
25 first, have you seen this document before?

Page 27

1 A. I don't think so.

2 Q. Your lawyers did not furnish it to you?

3 MR. MONTGOMERY: Hold on a second.
4 Objection; foundation.

5 Q. (By Mr. Cohen) Did your lawyers provide it?

6 A. This is a thing for Doug Engle, he's the guy
7 doing most of the stuff. This -- I'm not out there
8 duplicating what Doug is doing.

9 Q. So you have never seen this document?

10 A. I didn't say I haven't seen it. I haven't acted
11 on it.

12 Q. Tell me if you have seen this document before?

13 A. I don't know. Possibly. I don't know. I've
14 never felt that I had to do something like this. So I
15 don't think I've ever seen that.

16 Q. That would mean, then, that you have not
17 personally searched for any of the information and
18 documents requested in this document?

19 MR. MONTGOMERY: Object to the form; assumes
20 facts not in evidence.

21 Go ahead.

22 THE WITNESS: Doug and I talk on the phone
23 quite a bit and if he has things that he needs help with, I
24 try to help him out, strategize and we work together. But
25 I haven't settled down with this thing and gone to work on

Page 28

1 it. I spent most of my last four days standing at a new
2 piece of dirt that we're developing on gravel trucks that
3 we're to unload.

4 Q. Do you recall when you first saw the document?

5 A. I don't.

6 Q. But you have seen it prior to today?

7 A. Well, I don't know. A lot of these things look
8 alike. I get more stuff, frankly, than I can read every
9 day. When I drive to Meeker and get out of the house at 6
10 o'clock in the morning, and I don't get home till 8 o'clock
11 at night or something like that, I don't spend a lot of
12 time trying to see what came to my e-mail that day. This
13 is not a big company with people sitting around hoping
14 something will show up on their screen.

15 Q. Okay. Aside from this discovery request, Mr.
16 Cole, has anyone asked you to search your files or your
17 computer for documents responsive to the City of Kirkland's
18 discovery requests?

19 MR. MONTGOMERY: Object to the form. And
20 also, object to the extent that it implicates the
21 attorney-client privilege, so I'll instruct him not to
22 answer with regard to any communications that he may have
23 had with his lawyers.

24 MR. COHEN: So, Mr. Montgomery, you're
25 instructing him not to answer a question that inquires what

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1 efforts he's made to respond to a discovery request.

2 MR. MONTGOMERY: That's a different question
3 than you asked.

4 MR. COHEN: I'll try again.

5 Q. (By Mr. Cohen) Have you engaged, Mr. Cole, in
6 any efforts to gather information from your files or your
7 computer to respond to the City of Kirkland's discovery
8 requests?

9 A. I haven't done -- I haven't spent any time on
10 projects like that. Seemed to me like it would be Doug
11 Engle's company that would be doing that stuff. We -- we
12 don't -- we don't run the trains south of Woodinville.

13 Q. Would you read the title of that pleading?

14 A. It's addressed to us.

15 Q. Read it out loud, please.

16 A. STB Finance Docket Number 35 --

17 Q. You don't need to read --

18 A. -- 731 -- that's reading it out loud.

19 Q. The pleading is the title on the right side of
20 the vertical bar there.

21 A. City of Kirkland's First Set of Interrogatories
22 and Requests For Production to Ballard Terminal Railroad
23 Company, LLC.

24 MR. MONTGOMERY: I have a question for you,
25 before you ask if you don't mind, I don't know what kind of

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1 would we have any profit.
2 Q. Fair enough. During 2012, Eastside was not
3 paying anything to Eastside Community Rail?
4 MR. MONTGOMERY: Object to the form.
5 THE WITNESS: I can address?
6 MR. MONTGOMERY: I'm sorry?
7 THE WITNESS: I can address?
8 MR. MONTGOMERY: Yes, I'm just interposing
9 an objection. You can answer if you can.
10 THE WITNESS: So there was a lot of
11 people -- well, there was a number of short line
12 conglomerates, people with a lot more short lines than we
13 have, bigger ones, more of them, that came to look this
14 thing over, to see what might be done, and with the trustee
15 and so forth. But they saw the same things that we see and
16 that Doug Engle's group sees, is problems we're going
17 through right now is part of it, they can easily figure an
18 excursion train can make a lot of money. But the place to
19 start it is Bellevue. Well, how is it going, not good. So
20 a lot of people have looked at this thing.
21 But our costs are, you know, pretty typical. I'm
22 not alarmed.
23 Q. (By Mr. Cohen) That's fine. What I want to know
24 right now is, you weren't making any payments to Eastside
25 Community Rail in 2012?

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1 A. Okay. Well, it wasn't until -- it wasn't until
2 about the 1st of October that Eastside Community Rail began
3 to close on the takeover of the GNP assets, and gradually
4 worked the trustee out of the picture and then take that
5 over.
6 And so during 2012, we got a couple of payments
7 from the trustee, but finally on the 1st of October, we
8 were able to go directly to the shippers and begin
9 collecting that money. But it's such a convoluted process
10 that in terms of actually receiving any cash, I'm not sure
11 we got a dime until after the first of the year. The
12 railroad billing is a nightmare.
13 Q. So there were no payments to Eastside Community
14 Rail in 2012?
15 A. So, and we didn't -- I didn't pay them the \$10
16 per car, and I didn't pay the Port.
17 Q. I was going to ask you that next.
18 A. The Port has called me once and said, Byron,
19 you're getting behind on paying the 10 bucks a car.
20 I need to write them a check. It's not onerous.
21 If you had 20 cars a month, it's 200 bucks is the total.
22 Q. So this number here doesn't reflect payments to
23 the Port either?
24 A. No.
25 Q. But you owe that money to the Port?

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1 A. We do, yes.
2 Q. All right.
3 A. And to Doug.
4 Q. I don't see here any allowance for taxes?
5 A. We generally don't end up with -- with income tax
6 to pay.
7 Q. Ballard Terminal Railroad doesn't pay income tax?
8 A. Well, an LLC, it's -- I don't do the tax prep.
9 We give them the raw data, but most years, there's a loss.
10 Q. Okay. Does that include 2012?
11 A. I think so.
12 Q. How about 2011?
13 A. I think so.
14 Q. Okay. How about property tax, does Ballard
15 Terminal Railroad pay property tax to anybody?
16 A. No. We don't. We have a long-term franchise on
17 the real estate underlying our Ballard line, which it's
18 owned by the City of Seattle. But we own the tracks.
19 And our line in Puyallup, we have an easement,
20 railroad easement in perpetuity, we don't pay any taxes on
21 that. And we own the rails and ties at that structure.
22 Q. So --
23 A. And --
24 Q. So you're telling me that Ballard Terminal
25 Railroad in 2012 paid no taxes to any government

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1 enterprise?
2 A. It's possible. I don't know for sure.
3 Q. Okay.
4 MR. MONTGOMERY: Can we take a break
5 reasonably soon?
6 MR. COHEN: Right.
7 MR. MONTGOMERY: Get through your
8 questioning.
9 MR. COHEN: Couple questions and then we
10 will take a break.
11 Q. (By Mr. Cohen) I don't see, on Exhibit 26, any
12 allowance for a return on Ballard's capital investment in
13 this business.
14 A. Well, I wasn't worried about it. I was trying to
15 figure out how big a loss we were going to have.
16 Q. So would it be accurate to say that the summary
17 of costs on Exhibit 26 is really a summary of your variable
18 costs, your incremental costs of providing service as
19 opposed to a fully allocated cost that includes overhead
20 and capital investment so on?
21 A. Yeah.
22 MR. MONTGOMERY: Object to the form and
23 foundation.
24 Q. (By Mr. Cohen) Do you understand the question?
25 A. Well, sort of, more or less. I just want to find

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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.

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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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<p>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</p>	<p>1 where there's about, at least ten warehouses that use -- 2 that are right there to be served by rail, in some cases 3 the sidings are still there even. What's inside of them, 4 indoor basketball courts and all kinds of adaptive reuses. 5 Q. Mr. Cole, we're going to get out of here at some 6 point today if you would just focus on -- 7 A. I'm answering your question. Have we talked to 8 other trans-loaders, to other people who would be 9 interested, the answer is yes. If you want to settle that, 10 that's it. 11 Q. I want to know about the shippers interested in 12 restoring rail service to serve businesses on the 13 Woodinville-Bellevue segment, the line. That, as I said -- 14 A. That's the guys I've been talking about. 15 Q. Who are they? 16 A. I'm not giving you the names. 17 Q. You're going to have to. 18 A. I don't know that I do. 19 Q. Okay. 20 MR. COHEN: Mr. Montgomery, you should -- I 21 won't address this to you. 22 MR. MONTGOMERY: Thank you. 23 Q. (By Mr. Cohen) I'm afraid, Mr. Cole, that if you 24 don't share that information -- I can't even advise you. 25 Who are the names of the shippers you've been</p>
<p style="text-align: right;">Page 107</p> <p>1 lowest possible rates because the rails are cheaper than 2 the trucks by a factor of about 25 percent. And so that is 3 a business called trans-loading, to get the product out of 4 the railcars onto the ground or into a warehouse and send 5 the boxcar, empty boxcar back to Burlington Northern. And 6 then call the customer, Okay, your stuff has landed here, 7 safe, no damage, and they make a deal to -- as to what the 8 delivery schedule would be for the product. Maybe it's one 9 chunk and it all goes on one truck or maybe it's something 10 else. They dole it out month after month. 11 So I have two of those. We have two quite active 12 trans-loaders on our line in Puyallup. And I've talked to 13 those people about possible opportunity in Bellevue or 14 Woodinville or Maltby. And those guys are always, their 15 ears perk up. And they're little guys, like us, in most 16 cases. And these people with, you know, some limits on 17 their finances. They like the idea of them having another 18 one of these distribution center reloads, trans-loading 19 facility. 20 And so, it's hard for them to get too excited 21 when all we are is in court, and we're the little guys 22 against people with money they haven't counted yet. So you 23 can only get them so excited about it, all right. 24 But those people, if we are able to make a deal 25 to get down to Bellevue, it goes right through Totem Lake</p>	<p style="text-align: right;">Page 109</p> <p>1 talking to about providing service on the 2 Woodinville-Bellevue segment? Name all of them. 3 A. Do I have to do this? These guys are already 4 busy with their businesses, they're not big-time operators 5 like Boeing or something. They don't need to be given a 6 bumpy ride by people who don't want them to come to 7 Kirkland and Bellevue. What do I do here? 8 MR. MONTGOMERY: I can't instruct you not to 9 answer. It's your call. 10 THE WITNESS: I don't know. What happens to 11 me if I don't answer? You're shaking your head, what does 12 that mean? 13 Q. (By Mr. Cohen) Mr. Cole, you made a 14 representation to the Surface Transportation Board that 15 Ballard Terminal Railroad is in active discussions with 16 several shippers interested in restoring rail service via 17 the Woodinville-Bellevue line segment. You mentioned two 18 of them. We're going to talk about them shortly. I want 19 to know if there are any others, and if so, who they are? 20 A. I get calls from people in Portland, from people 21 in Longview, from people in Spokane, they're often small 22 trucking companies that have their toe in the trans-loading 23 operation somewhere in those cities. I get -- it isn't 24 like I get the call every day, but I get calls for those 25 kind of people wondering about opportunities that might be</p>

<p style="text-align: right;">Page 110</p> <p>1 on our lines, our three lines here in the Northwest part of 2 the state. And I've made some notes on a couple of those 3 phone conversations. 4 But some of them I talk to and say, Well, these 5 things are a possibility, why don't we try to get together 6 sometime, drive up here and I'll show you what we've got 7 and see if there's land that can be developed that would 8 work that we already control. That's what's going on today 9 down there where they dumped another, I don't know, 200 10 tons of rock on the acre parcel without me being there. 11 I -- I -- doesn't seem right to me that they 12 should come under whatever pressure you guys will apply to 13 them just because they suggested they had an interest in 14 trans-loading opportunity in the Northwest. 15 Q. Okay. So you're not willing to provide those 16 names? 17 A. I'm afraid of what you would do to them. And it 18 could end up that they say, Well, that guy Cole, he just -- 19 we were pestered to death and subpoenaed and so forth and 20 so on. They're not going to like that. Can you make some 21 kind of a pledge that you'll just talk to them and be nice 22 and not give them a bunch of guff and make them be sitting 23 in this chair next week? 24 Q. I can't give you that assurance. 25 A. Then that's not a very good deal. What kind of</p>	<p style="text-align: right;">Page 112</p> <p>1 it was just a confirmation that somehow the nation's 2 network for moving all these freight cars to the place 3 they're really supposed to go to hadn't screwed up and 4 reverted back to something from ten months ago or 5 something. It was true, it came. 6 So that was my -- that was the extent of my talk 7 with General Mills back in Great Falls, Montana. It was 8 just about the fact that there was cars destined for 9 Ballard again where we would unload them into pressure 10 differential stainless steel truck trailers and truck them 11 to the Safeway bakery. 12 Q. This was a conversation about service to Ballard? 13 A. That's right. They were showing up in the 14 morning on the Ballard, here's the inbound cars. It's 15 like, huh, the pipeline is flowing again. 16 Q. Okay. 17 A. And it was. That went on for a while. It was 18 since ceased again, and again with no call from Safeway 19 either way and no call from General Mills. We're not 20 getting any cars right now. I don't know what their 21 criteria is. 22 Q. So you are not currently considering any proposal 23 from General Mills to ship freight to or from any location 24 on the line? 25 A. We're not. But if we were successful in getting</p>
<p style="text-align: right;">Page 111</p> <p>1 justice is this? How does this work? 2 Q. Okay. You answered an interrogatory stating that 3 you had spoken with General Mills? 4 MR. MONTGOMERY: Objection to the extent it 5 mischaracterizes the interrogatory. 6 Q. (By Mr. Cohen) Do you recall that answer? 7 MR. MONTGOMERY: Same objection. 8 THE WITNESS: I actually haven't spoken to 9 General Mills. 10 MR. FERGUSON: It's Exhibit 37. 11 THE WITNESS: I spoke to them a couple of 12 years ago when, to our surprise, the stream of flour 13 carrying, pressure differential cars, all of a sudden came 14 to life again. And I'm looking on -- we get a daily report 15 every morning at 3:30, all the cars in North America that 16 are inbound to our three railroads. It's broken up by the 17 three railroads. Sometimes I print them off. 18 But anyway, there was -- I see General Mills. I 19 called them up. I said, Hey, what is going on? The 20 pipeline of flour back to the Safeway bakery in Bellevue is 21 open again? And the guy said, Yes. I said, Well, that's a 22 nice pleasant surprise. And he said, Yeah, he said, we got 23 the contract back. Something to that effect. It was not a 24 long conversation. It was the manager of the mill or 25 something, I guess. I don't know for sure who it was, but</p>	<p style="text-align: right;">Page 113</p> <p>1 opened for freight, I imagine that Safeway would 2 immediately hook up with General Mills and start sending 3 the cars directly there, that would be the cheapest way to 4 get the flour to their bakery. Great Falls, Montana does 5 not compete well with flour by truck compared to flour by 6 rail. 7 Q. Does General Mills have a business operation on 8 the line? 9 A. No, all they would be doing is selling the flour 10 to Safeway and that's a transaction that takes place with 11 Richmond, California. Richmond, that's where the Safeway 12 regional, you know. 13 Q. So General Mills is not a perspective shipper on 14 the line? 15 A. No, I didn't say that. I think if we were able 16 to gain access to the use of the line, that Safeway will 17 see that and look at what the freight rates used to be and 18 see that that's the cheapest opportunity. Beats trucking 19 and it beats rail to Ballard, for example, and trucking 20 over to the bakery at night. And so they would see that, 21 Hey, this is good news and hook back up with General Mills. 22 Q. And when you say "Safeway would hook back up with 23 General Mills" -- 24 A. Well, I think there's been times when they bought 25 flour from General Mills' competitors.</p>

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1 Spokane. And it would be a great roadbed and commuter
2 trains or whatever could run 90 miles an hour on it. It
3 would be the same as Burlington Northern's main line all
4 the way to Chicago.
5 And so there's no way to build it old. We do not
6 do that. If we're rebuilding track, and we've done it in
7 Ballard and we've done it on our Meeker line, build it to
8 today's modern standards.
9 Q. Is that \$10 million estimate based on particular
10 assumptions about the cost of ties, the cost of rail?
11 A. I believe that Doug put that number together
12 after talking with RailWorks as to what they thought it
13 would be, because they do much work around the country.
14 The guy can just go to the filing cabinet, pull the drawer
15 open and look for some quote.
16 Q. Where did you get the number?
17 A. I got it from Doug.
18 Q. Got it from Doug?
19 A. I'm pretty sure it came from RailWorks. At this
20 stage, are we quibbling over whether it's 12 million or 10
21 or anything? It's not really relevant. It's a pot full,
22 it's way more than building what's out there today.
23 Q. Let me ask you to look at Exhibit 37, which is
24 your answers to the interrogatories.
25 A. Here we go. First one out of the box.

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1 Q. Bottom of Page 2, Interrogatory Number 4.
2 A. That's the same question.
3 Q. It's the same question. If you flip to Page 3,
4 you will see your answer.
5 A. Yeah. Well --
6 MR. MONTGOMERY: Is there --
7 THE WITNESS: I was more forthright with
8 you.
9 MR. MONTGOMERY: Wait for a question,
10 please.
11 Q. (By Mr. Cohen) So, your answer was "without
12 waiving this objection, see ECR 893."
13 See that?
14 A. I see it.
15 Q. Did you review ECR 893 before you signed this
16 pleading?
17 A. I don't think so.
18 Q. Let me show it to you.
19 MR. COHEN: Mark this one as an exhibit.
20 THE COURT REPORTER: It's going to be 41.
21 (Exhibit Number 41 marked.)
22 Q. (By Mr. Cohen) Mr. Cole, can you read that?
23 A. Well, could you have used any smaller print.
24 Q. I didn't choose it. We have one that is blown up
25 a little bit if your counsel will stipulate to -- is this

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1 the same document?
2 MR. FERGUSON: Yes, it is --
3 MR. MONTGOMERY: Isn't it a page in a
4 previous exhibit? It's in there somewhere.
5 MR. FERGUSON: Can we go off the record for
6 a second.
7 MR. MONTGOMERY: Sure.
8 (Discussion held off the record.)
9 (Exhibit Number 42 marked.)
10 Q. (By Mr. Cohen) The question is, Mr. Cole, you
11 indicated in your interrogatory answer that the basis for
12 your \$10 million estimate to reinstall the rails is ECR
13 893.
14 MR. MONTGOMERY: Object to the extent it
15 mischaracterizes the interrogatory responses.
16 THE WITNESS: So what the heck is the EC 3,
17 or whatever it is. What is that? When you say I'm
18 referencing --
19 Q. (By Mr. Cohen) I'm going to show you.
20 Exhibit 41, will you look at Exhibit 41? You need 41. All
21 right. If you will look at the bottom, bottom right corner
22 of that exhibit, you will see a number stamp.
23 A. Yeah.
24 Q. All right. Would you read that, please?
25 A. It's ECR triple ought 893.

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1 Q. So this is the document that your interrogatory
2 answer represents is the basis for your calculation of the
3 \$10 million estimate. Have you ever seen this document
4 before?
5 MR. MONTGOMERY: Hold on a second. Object
6 to the form and object to the extent it mischaracterizes
7 the interrogatory response.
8 Go ahead.
9 THE WITNESS: I don't think so. I think
10 this is Doug Engle's work. But Doug and I have been joined
11 at the hip for three years. And we think pretty much
12 alike. And he's got this, this -- based on this is what's
13 really the most important, and that's RailWorks. And so, I
14 would have done the same thing. I would look at the
15 RailWorks quote and say, Well, okay, let's see what this
16 would be if we do this.
17 Q. (By Mr. Cohen) And how do you know that this
18 document is based on RailWorks?
19 A. Well, something here that made me think of it.
20 Because it talks about the Woodinville wye and blah, blah,
21 blah, so much money to get this far. RailWorks total, it
22 says right there.
23 Q. Mm-hm (answers affirmatively).
24 A. So it's RailWorks' footprint all over it. That's
25 okay. RailWorks does nationwide, they probably do a

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1 A. Yeah, going out and beating the bushes and
2 getting more trans-load business and whatever else we can
3 do.
4 Q. Is what you're making up on the other two
5 railroads losses on this one?
6 A. Yeah. Like not getting paid. Yes.
7 Q. I wanted to call your attention to Paragraph 1 on
8 Page 2.
9 A. Of which document?
10 Q. The lease agreement. What is it? Exhibit 30.
11 A. Paragraph 1.
12 Q. Paragraph 1.
13 A. This little line?
14 Q. Yes.
15 A. I'd say --
16 MR. MONTGOMERY: Wait for a question. Read
17 it, I guess.
18 Q. (By Mr. Cohen) Yes, please read it. And let me
19 know when you have.
20 A. Okay. So all --
21 MR. MONTGOMERY: Please wait for a question.
22 THE WITNESS: All right.
23 Q. (By Mr. Cohen) My question is this, it sounds to
24 me reading Paragraph 1, that Eastside Community Rail is
25 basically turning over this line to you to operate a

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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 to what your issue is.

2 Q. (By Mr. Cohen) What is there you don't
3 understand about communications related to the line or
4 freight segment between you and officers, employees,
5 representatives of the Port of Seattle?

6 A. I don't know of any issues, other than what I
7 told you.

8 Q. Doesn't ask about issues. It asks about
9 communications. Communications is also a defined term in
10 this discovery requests. It means any kind of electronic
11 or written --

12 A. I don't.

13 Q. -- communications.
14 Did you search for any communications in your
15 records?

16 A. No.

17 Q. Thank you.

18 A. May I say anything else?

19 MR. MONTGOMERY: He asked a question, you
20 answered it.

21 Q. (By Mr. Cohen) A follow-up question on that last
22 one, Mr. Cole, have you seen Exhibit 36 before today?

23 MR. MONTGOMERY: Oh, boy, asked and
24 answered.

25 MR. COHEN: So I honestly don't remember

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1 what his answer was. And if you want, we can go back and
2 try to get the --

3 MR. MONTGOMERY: No, that's fine.

4 MR. COHEN: -- reporter to find it.

5 MR. MONTGOMERY: That's fine. It's fine.

6 MR. COHEN: Mr. Montgomery, do you recall
7 the answer?

8 MR. MONTGOMERY: I do.

9 MR. COHEN: What did he say?

10 MR. MONTGOMERY: First he said no, then he
11 said possibly, and then he said a variety of other things.

12 MR. COHEN: I see.

13 Q. (By Mr. Cohen) Okay. So, forgive me if I'm
14 asking you to repeat yourself, but have you seen this
15 Exhibit 36 before today?

16 A. I don't think so.

17 Q. Okay.

18 MR. MONTGOMERY: Don't you remember that was
19 my speech about having to leave here and come back in
20 because the no answer, but anyway, we had a long go-around
21 about that.

22 THE WITNESS: When was this thing produced?
23 It all gets to be a blur.

24 MR. MONTGOMERY: What's that?

25 THE WITNESS: It all gets to be a blur.

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1 MR. MONTGOMERY: It does get to be a blur.

2 Q. (By Mr. Cohen) Mr. Cole, does Ballard Terminal
3 Railroad have any investment in Eastside Community Rail?

4 A. Well, we've loaned them some money.

5 Q. We're not talking about GNP, we're talking about
6 Eastside Community Rail.

7 A. We have loaned Eastside some money. It was part
8 of the settlement of the GMC -- GNP bankruptcy. There was
9 some funds that would have come directly to us from the
10 trustee. And Doug asked me if he could borrow them. And I
11 said, I guess that would be all right.

12 Q. How much money?

13 A. I can speak?

14 MR. MONTGOMERY: Of course, I'm sorry, I
15 wasn't going to object.

16 THE WITNESS: Seems like it was \$29,000 or
17 something like that.

18 Q. (By Mr. Cohen) Is that secured by a promissory
19 note?

20 A. At the moment it's secured by a handshake.

21 Q. Mr. Engle reviewed a document yesterday that
22 suggested that the amount of your loan might be \$39,000?

23 A. Oh, well, maybe that's it. There's only one. I
24 remember him now actually talking about it. I don't
25 remember exactly what he said but --

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1 Q. There is no --

2 A. -- acknowledged it.

3 Q. There is no paper recording the amount of that
4 loan?

5 A. No.

6 MR. MONTGOMERY: Object to the form.

7 Q. (By Mr. Cohen) The answer is no?

8 A. No, but that should be between me and him,
9 whatever we wants to do and we're comfortable with. How
10 can anybody pass judgment on it?

11 Q. Did you loan him the money by writing a check?

12 A. No. I let the bankruptcy trustee send, make out
13 a check to him instead of me.

14 Q. So Eastside Community Rail instead of --

15 A. Or Doug, I'm not sure. I didn't ever see the
16 check.

17 Q. All right. Other than that loan, does Ballard
18 have any investment in Eastside Community Rail?

19 MR. MONTGOMERY: Object to the form. I'm
20 done.

21 THE WITNESS: Well, Doug has said that after
22 some period of time, he hoped to be able to repay the
23 initial batch of creditors who were stiffed by Tom Payne at
24 GNP. And we were -- we were the victims of the biggest
25 stiff because we ran the trains for two years and never got

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1 A. This is the thing that the front of it reads like
2 the operations -- operating agreement from the Port, right?
3 Why? Why?
4 Q. My question is what have you done to search for
5 documents in your custody that are responsive to that
6 request?
7 A. So, Number 1, I -- you guys got our articles of
8 incorporation, our corporate bylaws and didn't get annual
9 reports, and you didn't get tax returns. So you got some.
10 Q. And what did you do --
11 A. You got them today.
12 Q. When did you search for those documents?
13 A. I searched for them yesterday and I found them
14 and I faxed them last night to Chicago.
15 Q. Why did you wait till last night --
16 A. I was too busy.
17 Q. Too busy?
18 A. I spent last week spending money on rock and
19 gravel and bulldozers and a vibrating compacter and a guy
20 on an excavator and three dump trucks a day making a
21 routine run from the pit to our development site. And I
22 was out there from about 6:30 in the morning till about
23 6:00 at night. And that had been in my plan for a long
24 time, and we did it, and it's done. First cars are going
25 in there this weekend.

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1 Q. What did you do to locate financial statements
2 and when did you do it?
3 A. I haven't done anything on the financial
4 statements. But what I gave you today, this morning or
5 last night, what I sent to Chicago, is a year-end summary
6 for 2012 that shows where the money went. And this is the
7 document that we produce every year for our tax preparation
8 retained outfit. And it works for them to produce our
9 annual tax return. That's the most elaborate thing that we
10 do.
11 Q. Are there other financial statements?
12 A. No, we don't care about all the things that
13 somebody else might care about. These are tiny businesses.
14 Q. So you have produced everything you have in the
15 way of financial statements?
16 A. Yes.
17 Q. Request for Production Number 4 asks for all
18 communications between you and Doug Engle.
19 A. That would be -- that's --
20 MR. MONTGOMERY: Let him ask a question,
21 please.
22 Q. (By Mr. Cohen) What have you done to produce
23 those documents?
24 MR. MONTGOMERY: Are you going to go through
25 these one by one because you know he's produced some and

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1 you know he has to do others? Are you going to go through
2 them one by one? It is very late.
3 MR. COHEN: I don't actually think I will be
4 going through all of them, but I want to get a sense. I
5 thought I understood where he was at, but his response to
6 your question made me wonder so I'm exploring a little bit.
7 Q. (By Mr. Cohen) What did you do to find
8 communications between you and Doug Engle?
9 A. Most of these communications are one way, Doug
10 sending me an e-mail. We talk on the phone a lot. I don't
11 try to take notes, I don't think he does either. It's
12 pretty easy to pick up the phone and get ahold of the other
13 guy. We talk on the phone about things that we need to do
14 or haven't done or whatever a lot and we don't make any
15 written record of them.
16 Sometimes I get e-mails from Doug, I'm copied on
17 e-mails that he sends to lots of different people, I save
18 all those, but I don't necessarily react to them at all.
19 Other than the phone call, he said, Did you see my e-mail?
20 I say, Yeah, I read it and we talk about it maybe. This
21 isn't a company where it's take a letter war and I'm going
22 to dictate it to you or something. We're really small.
23 Q. I hear you.
24 A. We don't do that.
25 Q. What did you do to search for and locate the

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1 e-mail the Doug Engle sent to you and any e-mail that you
2 might have sent to Doug Engle?
3 A. Well, I just turned on my computer and looked
4 through there to see what there was, but I don't think it
5 was anything that's very earth shaking. What are you
6 trying to find?
7 Q. Did you look for e-mail to produce to Kirkland in
8 response to Request for Production Number 4?
9 A. I don't understand why Kirkland needs to know
10 what Doug and I are talking about.
11 Q. Not my question, Mr. Cole. Did you look for the
12 e-mail between you and Doug Engle?
13 A. The --
14 Q. All of the e-mail between you and Doug Engle
15 incoming, outgoing?
16 A. And how far back?
17 Q. January 1, 2008.
18 MR. MONTGOMERY: Have you done that yet, yes
19 or no.
20 THE WITNESS: No.
21 MR. MONTGOMERY: Okay.
22 Q. (By Mr. Cohen) Thank you.
23 A. I'm not sure they exist.
24 Q. So, Mr. Cole, I'm going to instruct you that you
25 should take all necessary efforts to ensure that you don't

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1 destroy any of that e-mail, any of the documents requested
 2 in this request for production, so that you don't
 3 accidentally lose any of it, accidentally or intentionally,
 4 between now and the end of this case, understood?
 5 MR. MONTGOMERY: Do you mean, does he
 6 understand your words?
 7 MR. COHEN: Yes.
 8 THE WITNESS: I hear what you're saying.
 9 MR. MONTGOMERY: Good. That's fine.
 10 Q. (By Mr. Cohen) One last question, are you
 11 keeping up with Jerry Johnson since his retirement?
 12 A. Yeah. He's a pretty good guy.
 13 Q. He is a good guy.
 14 A. I mean, he got started with the first two
 15 railroads and he was the guy that called and said, Hey,
 16 you've won on the dubious prize of being the last people
 17 standing for the Eastside line. And then he retired.
 18 Q. Right. Where is he living today?
 19 A. I think he's moving up to St. Paul, and he's got
 20 an, I don't know, at least one contract to do things for
 21 the Australian National Railways.
 22 Q. Okay.
 23 MR. COHEN: Thank you. No further
 24 questions.
 25 MR. MONTGOMERY: Let's mark these. Can we?

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1 (Exhibit Number 45-46 marked.)
 2
 3 FURTHER EXAMINATION
 4 BY MR. MONTGOMERY:
 5 Q. Mr. Cole, does Exhibit 45 contain the documents
 6 that you gathered yesterday and sent to Chicago yesterday?
 7 A. I think, to some extent, yeah.
 8 MR. MONTGOMERY: I'm sorry, you gave them to
 9 me. I apologize, it's late. That's what you gave me this
 10 morning. I'm sorry, it's Ballard Terminal Railroad
 11 Company, LLC's response to City of Kirkland's first request
 12 for production.
 13 Q. (By Mr. Montgomery) I just want you to tell me
 14 if the documents attached are the ones that you gathered
 15 this morning?
 16 A. Yeah, I recognize them. I recognize the blacked
 17 out thing.
 18 Q. Exhibit 46, are those the documents you gathered
 19 yesterday, I believe, and handed to me this morning?
 20 That's the other package. Is that a yes?
 21 A. I'm trying to figure out what this one is. This
 22 certainly doesn't have anything to do with --
 23 Q. Are those the documents you handed to me this
 24 morning?
 25 A. I don't know. I thought it was, but... yeah,

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1 this is our LLC paperwork.
 2 MR. MONTGOMERY: I have no further
 3 questions.
 4 THE WITNESS: I'm baffled by this, it's
 5 really old.
 6 MR. MONTGOMERY: Are you done?
 7 THE WITNESS: Says BNSF is changing their --
 8 MR. MONTGOMERY: Are you done?
 9 MR. COHEN: I'm done. Thank you.
 10
 11 (The deposition concluded at 6:52 p.m.)
 12 (Signature was reserved.)
 13
 14
 15
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1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4) ss
 5 COUNTY OF KING)
 6)
 7 I, the undersigned Washington Certified Court Reporter,
 8 pursuant to RCW 5.28.010, authorized to administer
 9 oaths and affirmations in and for the State of Washington,
 10 do hereby certify: That the foregoing deposition of the
 11 witness named herein was taken stenographically before me
 12 and reduced to a typed format under my direction;
 13 That, according to CR 30(e), the witness was given
 14 the opportunity to examine, read and sign the deposition
 15 after same was transcribed, unless indicated in the record
 16 that the review was waived;
 17
 18 That all objections made at the time of said
 19 examination have been noted by me;
 20 That I am not a relative or employee of any attorney
 21 or counsel or participant and that I am not financially or
 22 otherwise interested in the action or the outcome herein;
 23 That the witness coming before me was duly sworn or
 24 did affirm to tell the truth;
 25
 26 That the deposition, as transcribed, is a full, true
 27 and correct transcript of the testimony, including
 28 questions and answers and all objections, motions and
 29 exceptions of counsel made at the time of the foregoing
 30 examination and said transcript was prepared pursuant to
 31 the Washington Administrative Code 308-14-124 preparation
 32 guidelines;
 33
 34 _____
 35 Katie J. Nelson, CCR, RPR,
 36 Certified Court Reporter 2971 for
 37 the State of Washington residing
 38 at Redmond, Washington. My CCR
 39 certification expires on 10/22/13.
 40
 41
 42
 43
 44
 45

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**

**BALLARD TERMINAL
RAILROAD COMPANY, LLC'S,
RESPONSE TO CITY OF
KIRKLAND'S FIRST REQUESTS
FOR PRODUCTION**

Ballard Terminal Railroad Company, LLC ("Ballard"), by its attorneys, hereby responds to City of Kirkland's ("Kirkland's") document requests as follows:

GENERAL OBJECTIONS

1. Ballard objects to Kirkland's document requests to the extent that they call for documents protected from disclosure by the attorney-client privilege.
2. Ballard objects to Kirkland's document requests to the extent that they call for the production documents that are protected from disclosure by the attorney-work product privilege.

3. Ballard objects to Kirkland's document requests to the extent that they impose any obligations on Ballard beyond those permitted under the Code of Federal Regulations and the United States Code.

4. Ballard objects to Kirkland's document requests to the extent that they call for documents relating to the "Freight Segment," as defined in Definition 5 of Kirkland's document requests, on the basis that all such requests are overly broad, unduly burdensome, seek information that is irrelevant or immaterial, and are not sufficiently limited in scope.

5. Ballard objects to Definition 9 of Kirkland's document requests on the basis that the time period that Kirkland purports to be relevant is overly broad.

6. Ballard objects to Kirkland's document requests on the basis that the time frame outlined by Kirkland for Ballard's production of the requested documents is unreasonably short, unduly burdensome, and fails to conform the discovery policies enumerated in 49 C.F.R. § 1114.

7. Ballard objects to Kirkland's requests for "communications" to the extent that Kirkland defines "communications" to include unrecorded oral conversations in Definition 2 of Kirkland's document requests.

REQUESTS

RFP NO. 1: Please produce all versions of your articles of incorporation, corporate by-laws, annual reports, and tax returns.

RESPONSE: Ballard objects to Request No. 1 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving these objections, see documents produced. Investigation continues.

RFP NO. 2: Please provide all financial statements of Ballard's, including internally prepared statements and statements prepared by an accounting firm.

RESPONSE: Ballard objects to Request No. 2 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited with respect to time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced.

RFP NO. 3: Please produce all communications between you and any potential shipper on the Line, including but not limited to CalPortland Company and Wolford Trucking and Demolition, Inc., and any representatives or agents thereof.

RESPONSE: Ballard objects to Request No. 3 on the basis that it is vague, overly broad, and unduly burdensome. Subject to and without waiving this objection, investigation continues.

RFP NO. 4: Please produce all communications between you and Douglas Engle.

RESPONSE: Ballard objects to Request No. 4 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 5: Please produce all communications related to the Line or Freight Segment between you and representatives of EB5 Capital Partners.us, LLC, including but not limited to Daniel T. Behr and Douglas C. Olds.

RESPONSE: Ballard objects to Request No. 5 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 6: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox.

RESPONSE: Ballard objects to Request No. 6 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 7: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Wright Runstad & Company.

RESPONSE: Ballard objects to Request No. 7 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with Wright Runstad & Company.

RFP NO. 8: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the organization known as the Eastside TRailway Alliance.

RESPONSE: Ballard objects to Request No. 8 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with the Eastside TRailway Alliance.

RFP NO. 9: Please produce all communications between you and BNSF Railway Company related to the Line or Freight Segment, including any communications regarding interchanges to the Line or the Freight Segment.

RESPONSE: Ballard objects to Request No. 9 on the basis that it is overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with BNSF concerning the Line.

RFP NO. 10: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Ballard objects to Request No.10 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from the Port of Seattle.

RFP NO. 11: Please produce all communications related to the Line or Freight Segment between you and members of the King County Council and their staff.

RESPONSE: Ballard objects to Request No.11 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from King County.

RFP NO. 12: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Central Puget Sound Regional Transit Authority (a/k/a Sound Transit).

RESPONSE: Ballard objects to Request No.12 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Ballard

further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, the requested documents are readily obtainable from Sound Transit.

RFP NO. 13: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Snohomish County, Washington.

RESPONSE: Ballard objects to Request No. 13 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with Snohomish County concerning the Line.

RFP NO. 14: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Snohomish, Washington.

RESPONSE: Ballard objects to Request No. 14 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Ballard has no documents embodying communications with the City of Shohomish concerning the Line.

RFP NO. 15: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Woodinville, Washington.

RESPONSE: Ballard objects to Request No. 15 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks

information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 16: Please produce all versions of your business plan(s) to provide or support freight or passenger service on the Line, the Freight Segment, or both, and all documents related to such plan(s).

RESPONSE: Ballard objects to Request No. 16 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced by Eastside Community Rail, LLC (“Eastside”).

RFP NO. 17: Please produce all documents related to estimated costs to reactivate rail service on the Line, including without limitation the cost of repairing track, ties, signals, and switches.

RESPONSE: See documents produced by Eastside.

RFP NO. 18: Please produce all documents related to discussions or negotiations with the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the Line for rail service.

RESPONSE: Ballard objects to Request No. 18 on the basis that documents pertaining to negotiations with Kirkland are readily obtainable from Kirkland’s own files. Ballard further objects on the basis documents pertaining to negotiations with King County and the Port of Seattle are readily obtainable from those entities, as they are unified with Kirkland for the purposes of these proceedings.

RFP NO. 19: Please produce all documents referring or relating to your past, current, and/or prospective contractual and/or business relationship with Eastside Community Rail, LLC, including but not limited to lease agreements and operating agreements between the two entities.

RESPONSE: Ballard objects to Request No. 19 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, investigation continues.

RFP NO. 20: Please produce all documents related to any request(s) for funds from the State of Washington to maintain or improve the Line or the Freight Segment.

RESPONSE: Ballard objects to Request No. 20 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced by Eastside. Ballard has no documents relating to requests for funds from the state of Washington to maintain or improve the Line.

RFP NO. 21: Please produce all documents that show traffic volume and revenues from traffic volume on the Freight Segment.

RESPONSE: Ballard objects to Request No. 21 on the basis that it is overly broad, unduly burdensome, is not sufficiently limited in time or scope, and seeks information that is irrelevant and immaterial. Subject to and without waiving this objection, see documents produced.

RFP NO. 22: Please produce all documents showing projected freight rail traffic and revenue on the Line, if freight rail service on the Line is reinstated.

RESPONSE: See Skriwan and Wolford letters attached to Ballard's Petition to Vacate and documents produced by Eastside.

Dated May 24, 2013

Respectfully submitted,

By:  _____

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29 North Wacker Drive
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**ATTORNEYS BALLARD TERMINAL
RAILROAD COMPANY, LLC**

ATTORNEY CERTIFICATION OF SERVICE

I, Thomas C. Paschalis, an attorney-at-law of the State of Illinois, hereby certify that I served a copy of the foregoing document to the following person by electronic mail and first-class mail on May 24, 2013:

Hunter Ferguson
Stoel Rives LLP
600 University Street
Suite 3600
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Attorney for City of Kirkland



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May 29, 2013

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VIA EMAIL

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**Re: *Ballard Terminal Railroad Company, LLC – Acquisition and Exemption –
Woodinville Subdivision, STB Finance Docket No. 35731***

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

Dear Tom:

This letter follows up on our earlier communications about the responses of Ballard Terminal Railroad Company, LLC (“Ballard”) and Eastside Community Rail, LLC (“ECR”) to the discovery requests of the City of Kirkland (“Kirkland”). Upon reviewing the documents produced by Ballard and ECR and the deposition testimony of Byron Cole and Douglas Engle, we believe that certain answers of Mr. Cole and the document productions of Ballard and ECR are deficient. Below is a list identifying certain discovery responses, by question or request, that are deficient and which Ballard and ECR, respectively, have an obligation to supplement.

BALLARD

Mr. Cole’s Refusal to Identify Shippers Interested in Restoring Rail Service. In his verified statement filed with the Board (pages 2-3), Mr. Cole declared, “We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. Those shippers would potentially be served by that segment, then via the ECRR owned Woodinville-Snohomish line to ultimate interchange with BNSF. While discussions with several shippers are ongoing, two shippers, CalPortland and Wolford Trucking Company have filed support letters attached to this petition, as they are both ready, willing and able to utilize the Bellevue-Woodinville segment.” During his deposition, Mr. Cole refused to identify the shippers other than CalPortland and Wolford Trucking & Demolition, Inc. with which Ballard has communicated regarding the reactivation of rail service on the railbanked corridor between



Thomas C. Paschalis
May 29, 2013
Page 2

the cities of Woodinville and Bellevue, Washington (the “Line”). *See* Cole Dep. Tr. at 105:21-111:1. Because Ballard’s petitions are based, in part, on the above-quoted statements of Mr. Cole, the identity of the shippers referenced by Mr. Cole is relevant to the issue of whether there is a demand for freight service on the Line. Further, Kirkland is not aware of any reason why Ballard may withhold such information. Accordingly, Kirkland requests that Ballard identify the unnamed shippers referenced in Mr. Cole’s verified statement and any other shippers with which it has communicated regarding the reactivation of rail service on the Line.

RFP NO. 3: Please produce all communications between you and any potential shipper on the Line, including but not limited to CalPortland Company and Wolford Trucking and Demolition, Inc., and any representatives or agents thereof. In addition, to providing an answer to the above-referenced question posed at Mr. Cole’s deposition, Kirkland requests that Ballard produce copies of all written communications between it and any potential shipper on the Line, as previously requested. Such communications are likewise relevant to the issue of whether there is a demand for freight service on the Line.

RFP NO. 4: Please produce all communications between you and Douglas Engle. As Mr. Engle and ECR have played a principal role in Ballard’s efforts to reactivate rail service on the Line, communications with Mr. Engle are pertinent to the issues raised in Ballard’s petitions and, at the very least, are likely to lead to information affecting the outcome of the proceedings. These communications are therefore discoverable. At deposition, Mr. Cole testified that he has received email communications from Mr. Engle and that he “save[s] all those” communications. Cole Dep. Tr. 236:7-22. Despite the relevance of Ballard’s communications with Mr. Engle and Mr. Cole’s testimony that he possesses such communications, Ballard has not produced any materials responsive to this discovery request. There is no basis to withhold such communications, and Kirkland requests that Ballard produce responsive materials in accordance with the deadline specified below.

RFP NO. 6: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox. Similar to Mr. Engle, Kathy Cox has played a principal role in the planning for reactivation of rail service on the Line. As the attached email indicates, Ms. Cox and Mr. Cole have communicated, and Ballard has not asserted that it does not have written communications with Ms. Cox. Yet Ballard has not produced any communications with Ms. Cox. Given Ms. Cox’s role in Ballard’s efforts to reactivate rail service, communications between Ballard and her are, at the very least, likely to lead to information affecting the outcome of the proceedings and are therefore discoverable.



Thomas C. Paschalis
May 29, 2013
Page 3

RFP NO. 10: Please produce all communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle. Nor has Ballard produced any communications with the Port of Seattle (the “Port”). A critical issue as to whether Ballard may successfully operate freight rail service between Woodinville and Bellevue is whether Ballard is fulfilling the obligations set forth under the Port’s and ECR’s O&M Agreement for the Freight Segment between Woodinville and Snohomish that are incorporated into Ballard’s lease agreement with ECR. The requested communications are therefore discoverable. If Ballard possesses such communications, it has an obligation to produce them, irrespective of whether Kirkland may obtain copies of such communications from another source.

ECR

6. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Ballard Terminal Railroad Company, LLC, including but not limited to Byron Cole and Paul Nerdrum. As both Mr. Engle and Mr. Cole have testified, ECR and individuals with email addresses ending in “escrail.org” (e.g., Mr. Engle, Ernie Wilson, and Ms. Cox) have been integrally involved in Ballard’s effort to reactivate rail service on the Line. Mr. Engle and Mr. Wilson made contact with potential shippers on the line and included Mr. Cole in at least some of those communications (*see, e.g.*, ECR000017-18). Given the involvement of Mr. Engle and others working on behalf of ECR, communications between Mr. Engle and other ECR representatives on the one hand and Mr. Cole and other representatives of Ballard on the other hand are pertinent to the issues raised in Ballard’s petitions and are therefore discoverable. ECR and Mr. Engle have produced very few documents responsive to this request, and Mr. Engle indicated that he possesses additional communications responsive to this request. Indeed, Mr. Engle testified that he located email communications to and from Byron Cole but that any such communication “that had an attorney’s name on it” was not produced. *See* Engle Dep. Tr. 45:4-47:14. The mere inclusion of an attorney’s name or simply copying an attorney on a communication is not a sufficient basis to assert the attorney-client privilege. Kirkland requests the production of all communications between Mr. Engle and representatives of Ballard and specifically requests the production of emails referenced by Mr. Engle in the above-cited testimony, unless such emails were sent to or received from counsel for the purpose of requesting or receiving legal advice, as required for assertion of the attorney-client privilege.

9. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox. Again, Ms. Cox has been actively involved in the efforts and planning of Ballard



Thomas C. Paschalis
May 29, 2013
Page 4

to reactivate rail service on the Line, both through her involvement in the Eastside TRailway Alliance and ECR. Mr. Engle testified that Ms. Cox represents herself as part of ECR and specifically “in charge of the excursion train” that Ballard would operate pursuant to the terms of the lease agreement between ECR and Ballard. *See* Engle Dep. Tr. 54:12-16, 132:16-23, 192:21-193:2. Further, Mr. Engle testified that he possesses “lots” of communications with Ms. Cox *See id.* 51:17-53:21, 67:4-17. Despite Ms. Cox’s involvement in efforts to reactivate rail service on the Line and Mr. Engle’s testimony that he possesses “lots” of communications responsive to this request, neither ECR nor Mr. Engle has produced any communications with Ms. Cox. Given Ms. Cox’s involvement and business interest in reactivation of rail service on the Line, communications between Mr. Engle or other representatives of ECR (including Ernie Wilson) and Ms. Cox are likely to contain information relevant to Ballard’s petitions and are therefore discoverable. There is no basis to withhold these communications.

12. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle. Neither ECR nor Mr. Engle has produced any communications with the Port. Whether ECR is fulfilling its obligations under its O&M Agreement with the Port is critical to whether Ballard, as ECR’ lessee, may operate rail service on the Freight Segment and, in turn, on the Line. Thus, the requested communications are relevant to the issues raised by Ballard’s petitions. In addition, Mr. Engle testified that he has communications with the Port that are responsive to this request. *See* Engle Dep. Tr. at 73:9-16. There is no basis to withhold these materials, irrespective of whether Kirkland may obtain copies of such communications from another source.

Kirkland’s requests for documents in the above-listed categories are limited by the time periods specified in the discovery requests served on both Ballard and ECR. Further, Kirkland reminds Ballard, ECR, and Mr. Engle that any communications responsive to the above-listed requests must be produced, unless such communications were addressed to counsel for the purpose of obtaining legal advice or received from counsel in response to a request for legal advice. If Ballard or ECR asserts the attorney-client privilege as a basis for withholding responsive communications, Kirkland requests that they each compile and produce a privilege log providing the following information for each communication: the date, the author(s), and all recipients, including individuals copied or blind copied on such communications.

In light of the briefing schedule set by the STB, we ask that Ballard and ECR supplement their earlier productions and produce all documents responsive to the above-listed requests in accordance with the instructions in Kirkland’s discovery requests no later than **2:00 p.m. on June 3, 2013**. This date is 25 days after Kirkland’s discovery requests were served on both Ballard and ECR and provides ample time to fully respond to Kirkland’s requests. By requesting



Thomas C. Paschalis
May 29, 2013
Page 5

production of all responsive documents in the above-listed categories, Kirkland does not waive its requests for the production of documents in other categories enumerated in the discovery requests served on Ballard and ECR.

Additionally, because the above-requested documents were not produced in advance of Mr. Engle's and Mr. Cole's depositions and because Mr. Cole refused to answer questions about shippers during his deposition, it may be necessary to resume their depositions, depending on the responses to the above requests. We ask that Mr. Engle and Mr. Cole cooperate in scheduling continued depositions, if necessary. Please let us know Mr. Engle's and Mr. Cole's availability for continued depositions between June 4 and 14.

If you would like to discuss Kirkland's discovery requests, please call me. In any event, would you let me know by **5:00 p.m. on May 30, 2013** whether Ballard and ECR will provide the above-requested answers and materials, please? Thank you.

Sincerely,

Hunter Ferguson

Enclosure

Copy: Counsel of Record



Les Rubstello <psakayk@gmail.com>

FW: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session

2 messages

Kathy Cox <kathy@marketingphilharmonic.com>

Mon, Mar 4, 2013 at 8:02 PM

Reply-To: kathy@marketingphilharmonic.com

To: Bruce Agnew <bagnew@discovery.org>, Karen Guzak <Karen@karenguzak.com>, Les Rubstello <psakayk@gmail.com>, Elizabeth Churchill <echurchill@discovery.org>, ewilson@spiretech.com, Doug Engle <Doug.Engle@escrail.org>, Loren Herrigstad <lbhrgstd@isomedia.com>

ETA Team,

I am glad I am on the City of Kirkland alerts system. I just got this notice. The City Council is discussing the corridor tomorrow night! There is time for public comments at the beginning of the Council meeting. Please refer to the document in the link. The ETA is mentioned. Bruce, Kirkland is quoting you with the \$1 million a mile but that does not include crossings, etc. which is an issue since they will be removing and paving them. Is there a way you can clarify your figure?

Can we discuss tomorrow about who could attend and how to best portray our views?

http://www.kirklandwa.gov/Assets/City+Council/Council+Packets/030513/3a_StudySession.pdf

Best,

Kathy Cox

Sent: Mon, Mar 4, 2013 4:18 pm

Subject: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session



CROSS KIRKLAND
CORRIDOR

March 4, 2013

Dear Cross Kirkland Corridor Subscriber,

The Kirkland City Council will be receiving an update on the Cross Kirkland Corridor during a study session on Tuesday, March 5, 2013. The staff memo has been posted online and contains a great deal of information regarding the rail removal, construction of the interim trail, maintenance and operations issues, the Corridor Master Plan and regional issues.

The session begins at 6 p.m. at Kirkland City Hall. Study sessions are intended for the City Council to receive and discuss information in details. Public comment is not provided for; however you address the City Council at the beginning of the regular Council meeting following this session at 7:30 p.m. in the City Council Chambers. You can also watch the meeting live online at www.kirklandwa.gov or on cable television, Comcast Channel 21 or Frontier Channel 31. The meeting video will be archived on the City's On-Demand webpage.

Thank you for your continued interest in the Cross Kirkland Corridor. Please contact David Godfrey, Public Works Department at 425-587-3865 or dgodfrey@kirklandwa.gov should you have specific questions.

For general inquiries about the Cross Kirkland Corridor, contact

David Godfrey
Transportation Engineering Manager
Public Works Department
123 5th Ave.
Kirkland WA, 98033
425-587-3865
DDgodfrey@kirklandwa.gov

To make your business connection, contact

Ellen Miller-Wolfe
Economic Development Manager
City Manager's Office
123 5th Ave.
Kirkland WA, 98033
425-587-3014
EMiller-Wolfe@kirklandwa.gov

To make your neighborhood connection, contact

Kari Page
Neighborhood Outreach Coordinator
City Manager's Office
123 5th Ave.
Kirkland WA, 98033
425-587-3011
kpage@kirklandwa.gov

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Doug Engle <Doug.Engle@escrail.org> Tue, Mar 5, 2013 at 9:46 AM
To: Steve Thomsen <steve.thomsen@co.snohomish.wa.us>, Stephen Dickson <spwspd@co.snohomish.wa.us>, Peter Camp <Peter.Camp@co.snohomish.wa.us>, Stephanie Wright <stephanie.wright@snoco.org>, Dave Somers <dave.somers@co.snohomish.wa.us>, Karen Guzak <karen@karenguzak.com>, Les Rubstello <psakayk@gmail.com>, Larry Bauman <bauman@ci.snohomish.wa.us>
Cc: Kathy Cox <kathy.cox@escrail.org>, Ernie Wilson <ewilson@spiretech.com>

In an effort to keep you all informed, Kirkland, with less than 24-hours notice and after letting the bid to remove the rails this past Friday is having a study session tonight. We will have representation there, including Bobby Wolford who is a Kirkland resident. Kathy, Bobby and Byron will also be at the ETP meeting Friday to make statements.

Here is what the team is up to:

- Kathy and Ernie are presently meeting with Byron Cole and Wolford regarding their interest in pursuing a federal injunction to stop Kirkland ASAP.
- There is a separate EIS lawsuit that may be pursued as well since Kirkland did not do one.

- Lloyd Fiem of All Aboard Washington is meeting with WSDOT this morning to determine the necessary process to stop Kirkland until the state rail plan is completed later this year. Kathy is heading down Thursday morning to meet with Rep. Moscoso.

We URGENTLY need three letters from Snohomish County for team legal and financial actions:

1. Letter asking Kirkland to hold off until the state rail plan and King Co processes are complete
2. Letter supporting \$6.2M in track rehab
3. Letter asking for Bellevue construction spoils for construction of a trail

Kathy, Ernie and I will be in Everett from 8:30 to 2:30 next Wed. March 13 if we want to meet.

Best regards,

Doug

mobile: +1.425.891.4223

Begin forwarded message:

From: "Kathy Cox" <kathy@marketingphilharmonic.com>

Subject: FW: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session

Date: 4 March 2013 8:02:53 PM PST

To: "Bruce Agnew" <bagnew@discovery.org>, "Karen Guzak" <Karen@KarenGuzak.com>, "Les Rubstello" <psakayk@gmail.com>, "Elizabeth Churchill" <echurchill@discovery.org>, <ewilson@spiretech.com>, "Doug Engle" <Doug.Engle@EsCRail.org>, "Loren Herrigstad" <lbhrgstd@isomedia.com>

Reply-To: <kathy@marketingphilharmonic.com>

[Quoted text hidden]

[Quoted text hidden]

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From: Thomas Paschalis [tpaschalis@fletcher-sippel.com]
Sent: Thursday, May 30, 2013 5:46 AM
To: Ferguson, Hunter O.
Cc: Cohen, Matthew; Charles A. Spitulnik; Eric Pilsk; Allison Fultz; pete.ramels@kingcounty.gov; andrew.marcuse@kingcounty.gov; 'Wagner, Jordan' (jordan.wagner@soundtransit.org); Safora, Isabel [Safora.I@portseattle.org] (Safora.I@portseattle.org); Myles Tobin; Thomas J. Litwiler
Subject: Re: Discovery Responses of Ballard and ECR

Hunter - We are not producing Doug or Byron a second time. Byron is in the process of searching for additional documents to complete Ballard's production, as you are aware.

I'll look over your specific contentions when back in the office later today, but suffice it to say that Eastside's discovery responses are complete and Ballard's will be when we get out any remaining docs.

Sent from my iPhone

On May 29, 2013, at 9:37 PM, "Ferguson, Hunter O." <HOFERGUSON@stoel.com> wrote:

Good evening, Tom.

Attached is a letter concerning Ballard's and ECR's responses to Kirkland's discovery requests. In light of the schedule set by the STB, we've asked for a response to the attached letter by 5:00 p.m. tomorrow, May 30. If you have any questions, please let me know. Thanks.

-Hunter

Hunter Ferguson

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101-4109

Direct: (206) 386-7514 | Cell: (206) 200-9384 | Fax: (206) 386-7500

hoferguson@stoel.com | www.stoel.com

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<2013-05-29 Ltr.pdf>

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7 BEFORE THE SURFACE TRANSPORTATION BOARD
8

9
10 **STB FINANCE DOCKET NO. 35731**
11 **BALLARD TERMINAL**
12 **RAILROAD COMPANY, L.L.C.**
13 **—ACQUISITION AND EXEMPTION—**
14 **WOODINVILLE SUBDIVISION**

15
16 **STB DOCKET NO. AB-6 (SUB. NO. 465X)**
17 **BNSF RAILWAY COMPANY**
18 **—ABANDONMENT EXEMPTION—**
19 **IN KING COUNTY, WA**

SUBPOENA DUCES TECUM TO
DOUGLAS ENGLE TO TESTIFY IN
A DEPOSITION AND PRODUCE
DOCUMENTS IN A PROCEEDING
BEFORE THE SURFACE
TRANSPORTATION BOARD

DATE: May 22, 2013

TIME: 9:00 a.m.

20
21
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To: Douglas Engle
1340 Lombard Street, #606 240 Lombard Street, #936
San Francisco, CA 94109 San Francisco, CA 94111

Pursuant to the rules of the Surface Transportation Board (“STB”) governing discovery, see 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, YOU ARE HEREBY COMMANDED to appear at the offices of STOEL RIVES LLP, 600 University Street, Suite 3600, Seattle, Washington, 98101, at 9:00 a.m. on **May 22, 2013**, then and there to testify at the request of the City of Kirkland, Washington (“Kirkland”), in the above-entitled matters, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by Kirkland’s attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s (“Ballard”) for exemption from regulation under 49 U.S.C. § 10902 to

SUBPOENA TO DOUGLAS ENGLE - 1

1 reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the
2 “Line”) and to partially vacate the NITU Order issued for the Line. Your testimony shall be
3 subject to continuance or adjournment from time to time or place to place until completed and is
4 to be taken for the reason that you will give evidence relevant to Ballard’s petitions. Your
5 testimony will be recorded by verbatim transcript.

6 YOUR ARE ALSO COMMANDED to produce the items described in Attachment A by
7 9:00 a.m. on **May 20, 2013** to the offices of Stoel Rives LLP, 600 University Street, Suite 3600,
8 Seattle, WA 98101, or at such time and place as the attorneys for Kirkland and you agree.

9
10 DATED: May 9, 2013.

11 STOEL RIVES LLP

12 

13 Matthew Cohen, WSBA No. 11232

mcohen@stoel.com

14 Hunter Ferguson, WSBA No. 41485

hoferguson@stoel.com

15 Attorneys for the City of Kirkland, Washington
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SUBPOENA TO DOUGLAS ENGLE - 2

1 **ATTACHMENT A**

2 **DEFINITIONS**

3 1. "Documents" shall mean the original, all copies, and all translations of any
4 writing, drawings, graphs, sound recordings, images, and other data or data compilations stored
5 in any medium (paper or other tangible format, as well as any electronic format) from which
6 information can be obtained. "Documents" include, for example (and not by way of limitation),
7 paper documents, photographs, microfilm, microfiche, email, computer tapes, computer
8 printouts, spreadsheets, calendars, appointment books, lists, tabulations, surveys, all other
9 records kept by electronic, photographic or mechanical means, and things similar to the
10 foregoing, however denominated. "Documents," as used herein, shall also mean any tape or
11 audible recording, any photograph or motion picture or videotape and any non-identical copy of
12 any document as previously defined (e.g., any copy of a document as previously defined which
13 differs from any other copy thereof by virtue of other material appearing thereon, such as
14 handwriting or typewriting, or otherwise). "Documents" also include without limitation email,
15 voicemail, spreadsheets, calendars, and any other information existing in any electronic format
16 (e.g., Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav).

17 2. "Communication" shall mean any information transmitted from one person or
18 entity to another person or entity and includes, but is not limited to, email or letters and any
19 attachments or enclosures thereto, oral conversations and recordings thereof, voicemail, notes
20 from oral conversations, and materials comprising a presentation, application, proposal, offer, or
21 acceptance. To "communicate" means to transmit such information, in any medium.

22 3. "Related to" shall mean any logical or factual connection with the matter
23 identified or discussed. This term includes all matters or things that in any way discuss, are
24 connected to, arise from, reflect, summarize, evaluate, comment on, and/or tend to prove or
25 disprove the subject or object of the particular discovery request in which this term is used.

1 9. All communications related to the Line or Freight Segment between you and
2 officers, employees, or other representatives of Marketing Philharmonic, including but not
3 limited to Kathy Cox.

4 10. All communications related to the Line or Freight Segment between you and
5 officers, employees, or other representatives of Wright Runstad & Company.

6 11. All communications related to the Line or Freight Segment between you and
7 members or other representatives of the organization known as the Eastside TRailway Alliance.

8 12. All communications related to the Line or Freight Segment between you and
9 officers, employees, or other representatives of the Port of Seattle.

10 13. All communications related to the Line or Freight Segment between you and
11 members of the King County Council or their staff.

12 14. All communications related to the Line or Freight Segment between you and
13 officers, employees, or other representatives of the Central Puget Sound Regional Transit
14 Authority (a/k/a Sound Transit).

15 15. All communications related to the Line or Freight Segment between you and
16 officers, employees, or other representatives of Snohomish County, Washington.

17 16. All communications related to the Line or Freight Segment between you and
18 officers, employees, or other representatives of the City of Snohomish, Washington.

19 17. All communications related to the Line or Freight Segment between you and
20 officers, employees, or other representatives of the City of Woodinville, Washington.

21 18. All versions of Eastside Community Rail, LLC's business plan(s) to provide
22 freight or passenger service on the Line, the Freight Segment, or both, and all documents
23 related to such plan(s), including but not limited to financial projections, proposals, worksheets,
24 or other financial analyses.

25 19. All documents related to estimated costs to reactivate rail service on the Line,
26 including without limitation the cost of repairing track, ties, signals, and switches.

 20. All documents related to discussions or negotiations with the Port of Seattle, the
City of Kirkland, and/or King County regarding obtaining the property rights necessary to use
the Line for rail service.

 21. All documents referring or relating to Eastside Community Rail, LLC's past,
current, and/or prospective contractual and/or business relationship with Ballard Terminal
Railroad Company, LLC, including but not limited to lease agreements and operating agreements
between the two entities.

1 22. All documents related to any request(s) for funds from the State of Washington to
2 maintain or improve the Line or the Freight Segment.

3 23. All documents that show traffic volume and revenues from freight traffic on the
4 Freight Segment, including service provided by Ballard Terminal Railroad Company, LLC since
5 2009.

6 24. All financial statements of Ballard Terminal Railroad Company, LLC since 2008.

7 25. All documents showing projected freight rail traffic and revenue on the Line, if
8 freight rail service on the Line were reinstated pursuant to any plan of Eastside Community Rail,
9 LLC.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned
3 persons by First Class Mail on May 9, 2013:

4 Pete Ramels
5 Andrew Marcuse
6 Office of the Prosecuting Attorney—Civil Division
7 W400 King County Courthouse
8 516 Third Avenue
9 Seattle, WA 98104
10 *Attorneys for King County*

11 Charles A. Spitulnik
12 W. Eric Pilsk
13 Allison Fultz
14 Kaplan Kirsch & Rockwell LLP
15 1001 Connecticut Avenue, NW, Suite 800
16 Washington, DC 20036
17 *Attorneys for King County*

18 Isabel Safora
19 Deputy General Counsel
20 Port of Seattle
21 PO Box 1209
22 Seattle, WA 98111

23 Jordan Wagner
24 Central Puget Sound Regional
25 Transit Authority
26 401 S. Jackson Street
Seattle, WA 98104

Myles L. Tobin, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832

Tom Montgomery
Montgomery Scarp
1218 3rd Ave, Suite 2700
Seattle, WA 98101-3237

23 DATED at Seattle, WA this 9th day of May 2013

24 
25 Leslie Lomax, Legal Secretary
26 STOEL RIVES

SUBPOENA TO DOUGLAS ENGLE - 7

BEFORE THE SURFACE TRANSPORTATION BOARD

**STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.
—ACQUISITION AND EXEMPTION—
WOODINVILLE SUBDIVISION**

**EASTSIDE COMMUNITY RAIL,
LLC'S RESPONSE TO CITY OF
KIRKLAND'S DOCUMENTS
REQUESTS**

**STB DOCKET NO. AB-6 (SUB. NO. 465X)
BNSF RAILWAY COMPANY
—ABANDONMENT EXEMPTION—
IN KING COUNTY, WA**

Eastside Community Rail, LLC (“Eastside”), by its attorneys, hereby responds to City of Kirkland’s (“Kirkland’s”) document requests as follows:

GENERAL OBJECTIONS

1. Eastside objects to Kirkland’s document requests to the extent that they call for documents protected from disclosure by the attorney-client privilege.
2. Eastside objects to Kirkland’s document requests to the extent that they call for the production documents that are protected from disclosure by the attorney-work product privilege.
3. Eastside objects to Kirkland’s document requests to the extent that they impose any obligations on Eastside beyond those permitted under the Code of Federal Regulations and the United States Code.
4. Eastside objects to Kirkland’s document requests to the extent that they call for documents relating to the “Freight Segment,” as defined in Definition 5 of Kirkland’s document requests, on the basis that all such requests are overly broad, unduly burdensome, seek

information that is irrelevant or immaterial, are not sufficiently limited in scope, and are not reasonably calculated to lead to the discovery of admissible evidence.

5. Eastside objects to Definition 6 of Kirkland's document requests on the basis that the time period that Kirkland purports to be relevant is overly broad and not sufficiently limited with respect to time frame.

6. Eastside objects to Kirkland's document requests on the basis that the time frame outlined by Kirkland for Eastside's production is unreasonably short, unduly burdensome, and fails to conform the discovery policies outlined in the Code of Federal Regulations.

7. Eastside objects to Kirkland's requests for "communications" to the extent that Kirkland, in Definition 2, defines "communications" to include unrecorded oral conversations.

REQUESTS

1. All versions of Eastside Community Rail, LLC's articles of incorporation, formation documents, corporate by-laws, annual reports, and tax returns.

RESPONSE: ECR objects to Request No. 1 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, see documents produced.

2. All financial statements of Eastside Community Rail, LLC, including internally prepared statements prepared by an accounting firm.

RESPONSE: ECR objects to Request No. 2 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

3. All versions of Telegraph Hill Investments, LLC's articles of incorporation, formation documents, corporate by-laws, annual reports, and tax returns.

RESPONSE: ECR objects to Request No. 3 on the basis that it is overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

4. All financial statements of Telegraph Hill Investments, LLC, including internally prepared statements and any statements prepared by an accounting firm.

RESPONSE: ECR objects to Request No. 4 on the basis that it is overly broad, unduly burdensome, seeks information that is irrelevant or immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

5. All communications between you and any potential shipper on the Line, including but not limited to CalPortland Company and Wolford Trucking and Demolition, Inc., and any representatives or agents thereof.

RESPONSE: ECR objects to Request No. 5 on the basis that it is vague, overly broad, and unduly burdensome. Subject to and without waiving this objection, see documents produced.

6. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Ballard Terminal Railroad Company, LLC, including but not limited to Byron Cole and Paul Nerdrum.

RESPONSE: Eastside objects to Request No. 6 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for written communications relating to the Line.

7. All communications related to the Line or Freight Segment between you and officers, employees, or representatives of EB5 Capital Partners.us. LLC, including but not limited to Daniel T. Behr and Douglas C. Olds.

RESPONSE: Eastside objects to Request No. 7 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks

information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for written communications relating to the Line.

8. All communications related to the Line or Freight Segment between you and officers, employees, or representatives of Wallace Properties, Inc., including but not limited to Robert Wallace and Kevin Wallace.

RESPONSE: Eastside objects to Request No. 8 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Eastside has no documents responsive to this request.

9. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Marketing Philharmonic, including but not limited to Kathy Cox.

RESPONSE: Eastside objects to Request No. 9 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documents relating to freight shipping on the Line.

10. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Wright Runstad & Company.

RESPONSE: Eastside objects to Request No. 10 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, Eastside is not in possession of written documents responsive to this request.

11. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Eastside objects to Request No.11 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on

the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from the Port of Seattle.

12. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the Port of Seattle.

RESPONSE: Eastside objects to Request No.12 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from the Port of Seattle.

13. All communications related to the Line or Freight Segment between you and members of the King County Council or their staff.

RESPONSE: Eastside objects to Request No.13 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from King County.

14. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Central Puget Sound Regional Transit Authority (a/k/a Sound Transit).

RESPONSE: Eastside objects to Request No.14 on the basis that it is vague and ambiguous, overly broad, and seeks information that is irrelevant or immaterial. Eastside further objects on the basis that all public entities listed on the service list attached to Kirkland's document requests are unified for the purposes of this proceeding and, thus, responsive documents are readily obtainable from Sound Transit.

15. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of Snohomish County, Washington.

RESPONSE: Eastside objects to Request No. 15 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produce for documented communications with respect to the Line.

16. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Snohomish, Washington.

RESPONSE: Eastside objects to Request No. 16 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documented communications with respect to the Line.

17. All communications related to the Line or Freight Segment between you and officers, employees, or other representatives of the City of Woodinville, Washington.

RESPONSE: Eastside objects to Request No. 17 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced for documented communications with respect to the Line.

18. All versions of Eastside Community Rail, LLC's business plan(s) to provide freight or passenger service on the Line, the Freight Segment, or both, and all documents related to such plan(s), including but not limited to financial projections, proposals, worksheets, or other financial analyses.

RESPONSE: Eastside objects to Request No. 18 on the basis that it is vague and ambiguous, overly broad, unduly burdensome, not sufficiently limited in time or scope, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced pertaining to the Line.

19. All documents related to estimated costs to reactivate rail service on the Line, including without limitation the cost of repairing track, tie, signals and switches.

RESPONSE: See documents produced.

20. All documents related to discussions or negotiations with the Port of Seattle, the City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the Line for rail service.

RESPONSE: Eastside objects to Request No. 20 on the basis that documents pertaining to negotiations with Kirkland are readily obtainable from Kirkland's own files. Eastside further objects on the basis documents pertaining to negotiations with King County and the Port of Seattle are readily obtainable from those entities, as they are unified with Kirkland for the purposes of these proceedings.

21. All documents referring or relating to Eastside Community Rail, LLC's past, current, and/or prospective contractual and/or business relationship with Ballard Terminal Railroad Company, LLC, including but not limited to lease agreements and operating agreements between the two entities.

RESPONSE: Eastside objects to Request No. 21 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, see documents produced.

22. All documents related to any request(s) for funds from the State of Washington to maintain or improve the Line or the Freight Segment.

RESPONSE: Eastside objects to Request No. 22 on the basis that it is overly broad, unduly burdensome, and seeks information that is irrelevant or immaterial. Subject to and without waiving this objection, communications with State of Washington regarding the Line have primarily been verbal. See also documents produced.

23. All documents that show traffic volumes and revenues from freight traffic on the Freight Segment, including service provided by Ballard Terminal Railroad Company, LLC since 2009.

RESPONSE: Eastside objects to Request No. 23 on the basis that it is overly broad, unduly burdensome, is not sufficiently limited in time or scope, and seeks information that is irrelevant and immaterial.

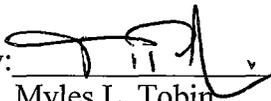
24. All financial statements of Ballard Terminal Railroad Company, LLC since 2008.

RESPONSE: Eastside objects to Request No. 24 on the basis that this Request is better directed toward Ballard.

25. All documents showing projected freight rail traffic and revenue on the Line, if freight rail service on the Line were reinstated pursuant to any plan of Eastside Community Rail, LLC.

RESPONSE: See documents produced.

Respectfully submitted,

By: 
Myles L. Tobin
Thomas J. Litwiler
Thomas C. Paschalis
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

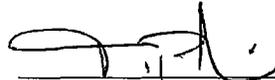
**ATTORNEYS FOR EASTSIDE COMMUNITY
RAIL, LLC**

Dated: May 20, 2013

ATTORNEY CERTIFICATION OF SERVICE

I, Thomas C. Paschalis, an attorney-at-law of the State of Illinois, hereby Certify under penalty of perjury that I served a copy of the foregoing document to the following persons by FedEx Standard Overnight on May 20, 2013:

Hunger Ferguson
Stoel Rivers LLP
600 University St.
Suite 3600
Seattle, WA 98101
Attorney for City of Kirkland



Thomas C. Paschalis

BEFORE THE SURFACE TRANSPORTATION BOARD

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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)
)

DEPOSITION UPON ORAL EXAMINATION
 OF
 DOUGLAS ENGLE

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Wednesday, May 22, 2013
 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

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1 A. Yes.
2 Q. Okay. Was Ballard Terminal Railroad represented
3 by different counsel in the context of the forming of the
4 lease agreement?
5 MR. MONTGOMERY: Objection to the extent it
6 calls for a legal conclusion. Objection; foundation.
7 Objection; beyond the scope. Objection; relevance.
8 THE WITNESS: I don't know.
9 Q. (By Mr. Ferguson) Do you know if the Fletcher &
10 Sippel firm represented Ballard in the lease agreement
11 transactions?
12 MR. MONTGOMERY: Same objections.
13 THE WITNESS: I don't know.
14 Q. (By Mr. Ferguson) Did you deal with any lawyers
15 on the lease agreement transaction, other than Fletcher &
16 Sippel?
17 A. I personally only dealt with Fletcher & Sippel.
18 Q. Okay. I'm just trying to understand for what
19 purposes you've retained counsel.
20 MR. FERGUSON: I'll go ahead and mark this
21 as an exhibit, Katie, please.
22 (Exhibit Number 16 marked.)
23 Q. (By Mr. Ferguson) Mr. Engle, the court reporter
24 has marked as Exhibit 16 a letter that my office received
25 from Tom Paschalis on Monday, May 20th. Have you seen a

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1 copy of this letter before today?
2 A. No.
3 Q. Do you recall signing an engagement letter
4 specifically for the purpose of representation for
5 discovery in the STB proceedings?
6 A. No.
7 Q. But you said earlier, you testified earlier that
8 you did sign an engagement letter with Fletcher & Sippel?
9 A. Yes.
10 Q. And you believe that was before Ballard filed its
11 petitions with the Surface Transportation Board?
12 A. Yes.
13 Q. And was that engagement letter solely for the
14 purpose of negotiating the lease agreement with Ballard?
15 MR. MONTGOMERY: I'm going to object. I'm
16 going to instruct him not to answer. At this point, you're
17 getting into the communication between counsel and its
18 client. And also scope, relevance, harassment. It's
19 beyond the scope of the proceedings. And I'm going to
20 leave it at that.
21 MR. FERGUSON: Are you instructing the
22 witness not to answer?
23 MR. MONTGOMERY: That's what I just said.
24 Q. (By Mr. Ferguson) Mr. Engle, are you a party in
25 interest in the STB proceedings?

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1 MR. MONTGOMERY: Object to the extent it
2 calls for a legal conclusion. Object to the form;
3 foundation.
4 THE WITNESS: So you want me to answer?
5 MR. MONTGOMERY: I'm done. I think I'm done
6 with my objections. If you give me some more time, I will
7 come up with some more.
8 THE WITNESS: Do you want to repeat the
9 question, please?
10 Q. (By Mr. Ferguson) Do you consider yourself to be
11 a party in interest in the STB proceedings?
12 MR. MONTGOMERY: Object to form. Object to
13 the extent it calls for a legal conclusion. Foundation.
14 THE WITNESS: Of course.
15 Q. (By Mr. Ferguson) Why?
16 MR. MONTGOMERY: Same objections.
17 THE WITNESS: Mr. Cole's objectives and my
18 objectives are the same, and that is to maximize profit.
19 It's the fundamental basis of the American dream.
20 Q. (By Mr. Ferguson) Are you represented by counsel
21 in connection with preparing any materials for submission
22 to the Surface Transportation Board?
23 MR. MONTGOMERY: Object to the form;
24 foundation, extent it calls for a legal conclusion.
25 THE WITNESS: So, repeat the question again.

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1 Am I represented by counsel?
2 Q. (By Mr. Ferguson) For the purpose of preparing
3 materials for submission to the Surface Transportation
4 Board?
5 A. Yes.
6 MR. MONTGOMERY: Same, please, Mr. Engle.
7 THE WITNESS: I'm sorry, I thought you had
8 already.
9 MR. MONTGOMERY: Same objections, please.
10 Q. (By Mr. Ferguson) So you are represented --
11 A. Yes.
12 Q. -- by counsel for the purpose of preparing
13 materials for submission to the STB?
14 MR. MONTGOMERY: Same objections.
15 THE WITNESS: Yes.
16 Q. (By Mr. Ferguson) Okay. And is that Fletcher &
17 Sippel that represented you --
18 MR. MONTGOMERY: Same objections.
19 Q. (By Mr. Ferguson) -- for those functions?
20 MR. MONTGOMERY: Same objections.
21 THE WITNESS: Yes.
22 Q. (By Mr. Ferguson) Okay. Are there any other
23 lawyers that represent you in connection with the STB
24 proceedings?
25 MR. MONTGOMERY: Same objections.

<p style="text-align: right;">Page 46</p> <p>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</p>	<p style="text-align: right;">Page 48</p> <p>1 or with anyone else's name in your inbox that you skipped? 2 A. Again, I would say none from Mr. Cole. 3 Q. Okay. 4 A. To, I don't know. But I would think more than 5 ten. Less than a hundred, I really don't know. 6 Q. Mr. Engle, I don't know if you've received what's 7 called a hold notice from your attorneys, but I would 8 direct you, do not delete, and to remove your automatic 9 deletion setting from your inbox and to preserve all 10 e-mails that are potentially responsive to the discovery 11 requests issued by Kirkland. 12 Looking at Number 7, All communications related 13 to the line or freight segment with representatives of EB5 14 Capital Partners, including but not limited to Dan Behr and 15 Douglas Olds. 16 Did you search your e-mail for communications 17 with those individuals? 18 A. Yes, but communication in 2013 would be very 19 limited. 20 Q. Have you had any written communications with Mr. 21 Behr or Mr. Olds or anyone else from EB5 in 2013? 22 A. Not that I recall. The situation with them is 23 what I would call dormant. 24 Q. Okay. And we have an executed agreement between 25 you and Mr. Behr and his company. Were there any written</p>
<p style="text-align: right;">Page 47</p> <p>1 question in that round and Mr. Engle's response, please. 2 (Question and Answer on Page 46, Lines 11 3 through 14 read by the reporter.) 4 Q. (By Mr. Ferguson) So did you find e-mails to or 5 from Mr. Cole that also included an attorney's name in the 6 e-mail? 7 A. Yes, and when I say attorneys, I'm talking about 8 Montgomery or somebody from Fletcher Sippel. 9 Q. Okay. 10 A. Only. 11 Q. And when you encountered those e-mails, what did 12 you do with them? 13 A. I believe what I typically did was just skip 14 them. 15 Q. Okay. Why did you skip them? 16 A. I believe they're subject to client-attorney 17 privilege. 18 Q. Do you have a joint -- does your company, 19 Eastside Community Rail, have a joint representation 20 agreement with Ballard Terminal Railroad? 21 MR. MONTGOMERY: Objection to the extent it 22 calls for a legal conclusion. Beyond the scope. 23 THE WITNESS: No. 24 Q. (By Mr. Ferguson) Okay. Do you have a sense of 25 how many e-mails that you had either to or from Byron Cole</p>	<p style="text-align: right;">Page 49</p> <p>1 communications leading up to that agreement or in the wake 2 of it? 3 A. There -- I gave you the agreements that we have, 4 that's it. 5 Q. Do you recall, I mean, e-mail back and forth 6 about the contract at all? 7 A. That would have -- the contract is dated 2012, 8 isn't it, or 2011? 9 Q. I think it's October of last year. 10 A. Okay. So no, I've answered that. I have no 11 e-mails prior to 2013 or 2012 that haven't been provided. 12 Q. Right. My question was slightly different, 13 though. Do you recall whether you did e-mail, not whether 14 you have them, but whether you did e-mail or have any other 15 written communications with Mr. Behr or Mr. Olds or anyone 16 from their office leading up to the agreement or 17 afterwards? 18 A. I'm sure that we -- I'm positive that there were 19 e-mails that led up to that agreement. 20 Q. Okay. And do you know if you saved any of those 21 as PDFs? 22 A. Why would I? 23 Q. Is that a no? 24 A. No. 25 Q. Okay. Did you look for any communications?</p>

Page 50	Page 52
<p>1 A. Yes.</p> <p>2 Q. And you didn't find any?</p> <p>3 A. Correct.</p> <p>4 Q. You described the agreement, and we'll go ahead</p> <p>5 and get it out so you have it as reference.</p> <p>6 (Exhibit Number 21 marked.)</p> <p>7 Q. (By Mr. Ferguson) Mr. Engle, is this the</p> <p>8 agreement that you've just referenced between Eastside</p> <p>9 Community Rail and EB5 Capital Partners.us, LLC, what's</p> <p>10 been marked as Exhibit 21.</p> <p>11 A. Yes. Yes, it is.</p> <p>12 Q. We will probably address this later, but you just</p> <p>13 described this as dormant.</p> <p>14 What did you mean by that?</p> <p>15 A. For the purposes of the next round of</p> <p>16 fund-raising, we need to have a broader financing package</p> <p>17 put in place.</p> <p>18 Q. We'll come back to this.</p> <p>19 Looking back at Exhibit 19. Number 8, we asked</p> <p>20 for All communications between -- when I refer to all</p> <p>21 communication, I'm referring to them as they've been</p> <p>22 limited by the subpoenas discovery requests.</p> <p>23 Communications relating to the line or the freight segment,</p> <p>24 whether you've called up someone for some other purpose,</p> <p>25 that's not what we're asking about.</p>	<p>1 constituted communications with Kathy Cox?</p> <p>2 A. I submitted what I have.</p> <p>3 MR. FERGUSON: Could you read back the</p> <p>4 previous question and answer.</p> <p>5 (Question and Answer on Page 51, Lines 17</p> <p>6 through 24 read by the reporter.)</p> <p>7 Q. (By Mr. Ferguson) So did you identify any</p> <p>8 communications in which Kathy Cox was a party?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any communications that you</p> <p>11 have, either to or from Kathy Cox or in which she is</p> <p>12 included as a recipient?</p> <p>13 A. Yes.</p> <p>14 Q. And have you produced those to Kirkland?</p> <p>15 A. No.</p> <p>16 Q. Can you describe what those communications are?</p> <p>17 A. A wide variety, including, do you want to go</p> <p>18 boating in August.</p> <p>19 Q. Okay. Any communications referencing the Bounty</p> <p>20 of Washington tasting train?</p> <p>21 MR. MONTGOMERY: Object to the form.</p> <p>22 THE WITNESS: Lots.</p> <p>23 Q. (By Mr. Ferguson) Any communications relating to</p> <p>24 the Eastside TRailway Alliance?</p> <p>25 MR. MONTGOMERY: Object to the form.</p>
<p>Page 51</p> <p>1 Communications with reps of Wallace Properties,</p> <p>2 including Robert and Kevin Wallace. Have you had any</p> <p>3 communications with them since June of 2011?</p> <p>4 A. The only communication I've had is with Kevin</p> <p>5 Wallace after a March Eastside Transportation Partner</p> <p>6 meeting, I saw him after the meeting and said hi, chatted</p> <p>7 for a few minutes about this, that and the next thing. And</p> <p>8 we went our own ways.</p> <p>9 Q. That was March of this year?</p> <p>10 A. Yes.</p> <p>11 Q. And you said Eastside Transportation Partnership,</p> <p>12 not Eastside TRailways Alliance; is that correct?</p> <p>13 A. Correct. ETP.</p> <p>14 Q. You have any written communications with either</p> <p>15 of the Wallaces?</p> <p>16 A. No.</p> <p>17 Q. All right. Number 9 asked you for all</p> <p>18 communications with reps of Marketing Philharmonic,</p> <p>19 included but not limited to Kathy Cox.</p> <p>20 Did you search your e-mail for -- did you search</p> <p>21 your records, including your e-mail, for communications to</p> <p>22 or from Kathy Cox?</p> <p>23 A. I collected the documents and did not do a</p> <p>24 thorough search of communique upon advise of counsel.</p> <p>25 Q. Do you recall documents that you found that</p>	<p>Page 53</p> <p>1 THE WITNESS: Lots.</p> <p>2 Q. (By Mr. Ferguson) Any communications relating to</p> <p>3 the freight segment?</p> <p>4 MR. MONTGOMERY: Same objection.</p> <p>5 THE WITNESS: That would be surprising.</p> <p>6 Q. (By Mr. Ferguson) I don't understand what you</p> <p>7 mean. Do you have any communications from or to Ms. Cox</p> <p>8 that reference the freight segment?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any communications --</p> <p>11 A. Lots. And I would say lots.</p> <p>12 Q. What did you mean when you said "that would be</p> <p>13 surprising"?</p> <p>14 A. I'm sorry, I misinterpreted your question.</p> <p>15 Q. Oh, did you think I asked if you didn't have any?</p> <p>16 A. Yes. Sorry.</p> <p>17 Q. Okay. That would be surprising.</p> <p>18 And do you have any communications from or to</p> <p>19 Ms. Cox referencing the line between Woodinville and</p> <p>20 Bellevue?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is Ms. Cox an employee of Eastside</p> <p>23 Community Rail?</p> <p>24 MR. MONTGOMERY: Object to the extent it</p> <p>25 calls for a legal conclusion.</p>

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1 THE WITNESS: Eastside Community Rail has no
2 employees.
3 Q. (By Mr. Ferguson) Okay. Is she an agent of
4 Eastside Community Rail?
5 MR. MONTGOMERY: Object to the extent it
6 calls for a legal conclusion.
7 THE WITNESS: There are no agreements
8 between Ms. Cox and Eastside Community Rail or Marketing
9 Philharmonic and Eastside Community Rail.
10 Q. (By Mr. Ferguson) Is she a shareholder of ECR?
11 A. No.
12 Q. Does she have a title connection with her
13 involvement with ECR?
14 A. She, as we represent ourselves as in charge of
15 the excursion train. And it might be helpful, sorry, but I
16 brought it, might be helpful if we --
17 Q. We're going to come to the honeycomb, don't
18 worry.
19 A. Well, if you would like to get your questions
20 answered, this might be a faster, more expedient way to get
21 that done.
22 Q. Okay. Let's do it.
23 MR. MONTGOMERY: Where's your set? Are you
24 going to mark a set?
25 THE WITNESS: I just want to do the

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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 So what it is, it's an allocation, a cost
2 allocation model, where each public benefit in the corridor
3 pays its share of the maintenance cost. And by setting
4 this up and managing it, it becomes less costly for each
5 one of the entities. And at the same time, I can make the
6 federal rate of return out of it for managing and taking
7 care of those functions.
8 There's a significant amount of work that goes in
9 to maintaining the right of way, including crossings, you
10 know. Beyond the vegetation, there's coordinating, let's
11 say, that somebody wants to have a sewer line that cuts
12 across the right of way, that work has to be coordinated.
13 The trail would have to be maintained. Those kinds of
14 things.
15 So after extensive amount of work, looking at
16 this, quite frankly over the last five years, this model
17 offers the lowest cost solution for all users of the
18 corridor. And additionally, the way we do this -- because
19 one of the things that I started was involved in
20 starting -- you may have heard of software as a service.
21 While the rest of the world was getting warm and fuzzy with
22 us back in '98 and '99, I was quietly putting together
23 programs. And my first two rollouts were Ford and General
24 Motors, Ford globally. I know annuity models, and I know
25 utility based pricing models, how they work and how to

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1 drive the cost out of them.
2 So with this, we get the maximum public benefit
3 that, for example, the east -- the King County's Eastside
4 Rail Corridor Regional Advisory Committee has discussed.
5 And rather than putting layers of management and
6 maintenance and coordinating who does what, in the areas
7 that Eastside Community Rail owns the freight easement and
8 therefore owns the operation inside the corridor, this is
9 how we can add value and substantially lower costs for
10 everyone.
11 So that's how Eastside Community Rail plans on
12 managing money. And we can do that because we're going to
13 have very low overhead. I'm not picking on Sound Transit
14 here, but Sound Transit has got buildings of people
15 planning and trying to get things done. We're going to
16 have a handful of people, so we think this is a very
17 economic model.
18 Q. Is your revenue stream, then, to be paid by
19 every, whatever the users might be, every user of the
20 corridor?
21 A. Yes, that's my intention.
22 Q. So maintain the infrastructure and to cut back
23 the vegetation?
24 A. To maintain the right of way.
25 Q. Okay. Does Eastside Community Rail have a

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1 current revenue stream?
2 A. Yes.
3 Q. And what comprises that revenue stream?
4 A. Our agreement with Ballard Terminal rail, as it
5 exists today, I get \$10 a car moved. Eastside Community
6 Rail gets \$10 per car moved.
7 Q. Is that the only source of revenue for Eastside
8 Community Rail?
9 A. Today, yes.
10 Q. And do you know how many cars have moved over the
11 freight segment in the year 2013?
12 MR. MONTGOMERY: I'm going to object to the
13 extent this constitutes discovery with regard to the
14 freight segment.
15 THE WITNESS: No, I don't.
16 Q. (By Mr. Ferguson) Do you know if it's more than
17 a hundred?
18 MR. MONTGOMERY: Same objection.
19 THE WITNESS: No, I don't.
20 Q. (By Mr. Ferguson) Do you know how much revenue
21 you've received from Ballard in 2013?
22 MR. MONTGOMERY: Same objection.
23 THE WITNESS: None this far. We anticipate
24 squaring the books up at year-end. Even though it is set
25 up for quarterly payment, we'll square up at year-end.

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1 Q. (By Mr. Ferguson) Did you receive any revenue
2 from Ballard in 2012? By you, I mean Eastside Community
3 Rail?
4 MR. MONTGOMERY: Same objection.
5 THE WITNESS: Eastside Community Rail closed
6 on the deal with the bankruptcy court December 19th so I
7 technically didn't own it in 2012, other than a week.
8 Q. (By Mr. Ferguson) But didn't you have agreements
9 with Ballard that you executed in June and then again in
10 August, and an interim operating agreement that called for
11 Eastside Community Rail to be paid a percentage of the cars
12 moved by Ballard?
13 A. Yes.
14 Q. And were you paid pursuant to any of those
15 agreements?
16 A. We haven't squared that up yet.
17 Q. You haven't received any revenues from Ballard
18 for cars moved in 2012?
19 A. No, because we wanted to wait until we had our
20 long-term operating agreement put together. It's not going
21 to be much money, and I'm not overly concerned about it.
22 Q. Okay. So does Kathy Cox have any
23 responsibilities for managing or running the business of
24 Eastside Community Rail?
25 A. No.

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<p>1 Q. Do you know why she has a business card that has 2 Eastside Community Rail listed on it?</p> <p>3 A. We felt that from a marketing perspective, which 4 she is an expert at, that it was better when we met with 5 people, that we went under -- went in under one umbrella.</p> <p>6 Q. Is that also why she has an ESCRail.org e-mail 7 address?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So Ms. Cox is not an employee of Eastside 10 Community Rail, correct?</p> <p>11 A. Correct.</p> <p>12 Q. She's not an officer of Eastside Community Rail, 13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. I didn't ask you this earlier, but is she a 16 director of Eastside Community Rail?</p> <p>17 A. No.</p> <p>18 Q. And she doesn't have a debt position in the 19 company?</p> <p>20 A. The only debt owed Marketing Philharmonic or 21 Kathy Cox is a moral obligation that I have.</p> <p>22 Q. You personally, but Eastside Community Rail 23 doesn't have any contract with Kathy Cox or Marketing 24 Philharmonic?</p> <p>25 A. Correct.</p>	<p>1 EXAMINATION - (Continuing)</p> <p>2 BY MR. FERGUSON:</p> <p>3 Q. Looking back at exhibit -- subpoena is 19?</p> <p>4 A. Yes.</p> <p>5 Q. Number 10, just to confirm, you testified earlier 6 that you haven't had any written communications with anyone 7 from Wright Runstad during the relevant time period?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you don't have any written 10 communications --</p> <p>11 A. Correct.</p> <p>12 Q. -- to or from Wright Runstad?</p> <p>13 All communications related to the line or freight 14 segment between you and members or other representatives of 15 the Eastside TRailway Alliance.</p> <p>16 Did you search for any communications to or from 17 members of the Eastside TRailway Alliance?</p> <p>18 A. Not specifically, no.</p> <p>19 Q. Okay. Did you search for communications to or 20 from Karen Guzak?</p> <p>21 A. No, I did not specifically, no, I didn't.</p> <p>22 Q. How about Peter Camp?</p> <p>23 A. Yes, I did.</p> <p>24 Q. And did you --</p> <p>25 A. But that's under Snohomish County, Number 15.</p>
Page 67	Page 69
<p>1 Q. There's no promissory note from Eastside 2 Community Rail to Kathy Cox or Marketing Philharmonic?</p> <p>3 A. As previously answered, correct.</p> <p>4 Q. Okay. Why then would you not produce 5 communications to or from Kathy Cox in response to the 6 discovery requests?</p> <p>7 A. It's irrelevant to freight reactivation on the 8 corridor.</p> <p>9 Q. But you have these communications?</p> <p>10 A. Yes.</p> <p>11 Q. What have you done to preserve them, if anything?</p> <p>12 A. Nothing.</p> <p>13 Q. Have you --</p> <p>14 A. Per your previous statement, I will go in and 15 change my e-mail account settings. Per my conversation 16 yesterday with Hunter Ferguson, excuse me, Tom Paschalis, 17 will --</p> <p>18 MR. MONTGOMERY: Hold on.</p> <p>19 THE WITNESS: -- sorry. Tom Paschalis, I 20 will preserve those e-mails.</p> <p>21 Q. (By Mr. Ferguson) Okay.</p> <p>22 MR. MONTGOMERY: Time for a break sometime 23 soon?</p> <p>24 MR. FERGUSON: Yes, we can take a break now. 25 (Recess taken from 11:25 to 11:37 a.m.)</p>	<p>1 Q. Okay.</p> <p>2 A. Pete Camp, I don't consider as a member of the 3 TRailway Alliance.</p> <p>4 Q. Who do you consider to be a member of the 5 TRailway Alliance?</p> <p>6 A. I would say that the co-chairs are Karen Guzak 7 and Les Rubstello. A supporting player is Bruce Agnew and 8 the Cascadia Center. I think that Kathy Cox probably 9 spends more time on that than she does Eastside Community 10 Rail. And I am happy to provide status information as I 11 can.</p> <p>12 Q. I don't understand what you mean by that last 13 statement, you're happy to provide status information as 14 you can. Provide it to Kirkland?</p> <p>15 A. To provide status information to the TRailway 16 Alliance.</p> <p>17 Q. So are you saying you consider yourself to be a 18 member of the TRailway Alliance as well?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. But not as it relates to freight.</p> <p>22 Q. Anyone else, is there anyone else who you 23 consider to be a member of the TRailway Alliance?</p> <p>24 A. Not what I would consider the leadership. So...</p> <p>25 Q. Go ahead.</p>

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1 A. So those are the five people that I would
2 consider at the -- concerned about the use of the corridor
3 primarily from Bellevue north to Snohomish.
4 Q. What about Stephanie Weber?
5 A. I believe I've only met Stephanie once. I've
6 seen her at -- no, maybe two or three times. Once at an
7 All Aboard Washington meeting. Once at a TRailway Alliance
8 meeting. And I think once at a Kirkland City Council
9 meeting.
10 Q. But you have received and sent e-mails to and you
11 received them from Stephanie Weber, correct?
12 A. I haven't searched for those, no.
13 Q. No, but I'm asking if you recall if you have
14 received or sent e-mails to Stephanie Weber?
15 A. Not specifically to or from.
16 Q. She has been included in communications you have
17 sent to other members of the Eastside TRailway Alliance?
18 A. Not necessarily, no. Unless I did a reply all
19 and she happened to be on it, it wasn't intentional.
20 Q. Is there a membership list of -- is there a list
21 of the members of the Eastside TRailway Alliance?
22 A. Not yet.
23 Q. Do you have a list serve -- if you wanted to
24 convene a meeting of the Eastside TRailway Alliance, let's
25 say we're meeting on June 1st, who would you send an e-mail

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1 to to invite to participate in that meeting?
2 A. Bruce Agnew coordinates that.
3 Q. Why did you decide to limit your search of
4 e-mails only to leaders of the Eastside TRailway Alliance
5 as opposed to members or other representatives?
6 A. As I previously said, there is not a member list.
7 Q. Okay. Is Ernie Wilson involved in the Eastside
8 TRailway Alliance?
9 A. He attends meetings.
10 Q. Do you consider him to be a member of the
11 Eastside TRailway Alliance?
12 A. As I previously answered, there is no membership
13 list.
14 Q. I'm not asking if there's a list, I'm asking if
15 you consider him to with a member of the Eastside TRailway
16 Alliance?
17 MR. MONTGOMERY: Object to the form.
18 THE WITNESS: I would consider him to be
19 just as much of a member as Kirkland David Godfrey is,
20 since he attends every meeting as well.
21 Q. (By Mr. Ferguson) Would you look back at
22 Exhibit 17, please.
23 A. Okay.
24 Q. Is this an e-mail to individuals who you
25 consider, at least some of who, to be members of the

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1 Eastside TRailway Alliance?
2 A. I believe that Will Knedlik has come to one,
3 perhaps two meetings. I believe Byron has come to one,
4 perhaps two meetings. And Ernie has been to every meeting.
5 Kathy has been to every meeting. Bruce has been to every
6 meeting. Karen has been to every meeting. Les has been to
7 every meeting.
8 Q. Has David Godfrey been to every meeting?
9 A. Yes.
10 Q. He's been to every meeting of the Eastside
11 TRailway Alliance?
12 A. To the best of my recollection, yes.
13 Q. So then, did you search for e-mails to or from
14 Ernie Wilson --
15 A. No.
16 Q. -- in response to Number 11?
17 A. No.
18 Q. But you consider him to be a member of the
19 Eastside TRailway Alliance, correct?
20 MR. MONTGOMERY: Asked and answered.
21 Q. (By Mr. Ferguson) Do you consider Ernie Wilson
22 to be a member of the Eastside TRailway Alliance?
23 A. There is no membership list for the Eastside
24 TRailway Alliance.
25 Q. Are you aware that Ernie Wilson receives

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1 communications about the Eastside TRailway Alliance
2 activities?
3 A. He may receive that e-mail directly from Kathy.
4 He may receive that e-mail from Cascadia Center. He may
5 receive such an e-mail from me.
6 Q. And just to clarify, I think you answered this
7 earlier, but you didn't search for e-mail to or from Ernie?
8 A. That is correct.
9 Q. Okay. Moving on to Number 12, did you search for
10 communications related to the line or the freight segment
11 between you and representatives of the Port of Seattle?
12 A. No.
13 Q. Have you had communications with representatives
14 of the Port of Seattle related to the line or the freight
15 segment?
16 A. Yes.
17 Q. And why didn't you search for them?
18 A. Upon advice of counsel, they were seen as
19 irrelevant to reactivation of the line.
20 Q. Moving on to Number 13, have you had
21 communications related to the line or the freight segment
22 with members of King County Council or other staff?
23 A. Again, I searched -- I have had phone calls.
24 Q. Listen to what I'm asking. I'm just asking if
25 you've had communications.

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1 Q. I probably am the only person in the room who
 2 didn't understand this. I just want to make it clear.
 3 Exhibit 33 which was the discussion about a million dollar
 4 deal where Woodinville would acquire land in fee and
 5 freight easement, do you remember that bunch of testimony?
 6 A. Yes.
 7 Q. And again, I think I'm the only person who
 8 misunderstood this. Were you talking about, in any
 9 hypothetical offer, giving up entire rights for freight to
 10 transit there or something different?
 11 A. I have only an expectation of conveying our
 12 rights in some manner for Woodinville to construct their
 13 bridge on the area of the corridor that they require to
 14 build their bridge, that's it. Just that. And I don't
 15 know how that's going to be conveyed.
 16 Q. Would you expect freight service to terminate
 17 past that point?
 18 A. No. Again, I think my best analogy is it's like
 19 blocking one lane of the freeway.
 20 Q. And one more question, a very small point and I
 21 don't know if I can find the exhibits, so maybe I'll
 22 describe it. There's an exhibit with four graphs in color,
 23 the upper left quadrant had a bunch of yellow and the upper
 24 right quadrant related to passengers, correct?
 25 A. Yes.

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1 Q. I don't know the exhibit number.
 2 MR. MONTGOMERY: Does anybody know the
 3 exhibit number?
 4 THE WITNESS: Yes, it's on the front here.
 5 6.
 6 Q. (By Mr. Montgomery) It says "daily ridership" in
 7 the upper right quadrant; is that correct?
 8 A. No.
 9 Q. What is it supposed to be?
 10 A. Annual ridership.
 11 MR. MONTGOMERY: I have no further
 12 questions. Thank you.
 13 THE WITNESS: Four years of that being --
 14 MR. MONTGOMERY: They know.
 15 MR. FERGUSON: I have a couple follow-ups.
 16
 17 FURTHER EXAMINATION
 18 BY MR. FERGUSON:
 19 Q. Mr. Engle, in the past six months, have you
 20 received any communications from Fletcher Sippel attorney
 21 or Montgomery and Scarp attorney that also included any
 22 individual that was not a Fletcher & Sippel attorney or
 23 staff or Montgomery and Scarp attorney and staff?
 24 A. Try that again. I think I got it.
 25 Q. Have you ever had a conference with Myles Tobin

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1 where Byron Cole was a participant in?
 2 A. Yes.
 3 Q. Have you ever received e-mails from Myles Tobin
 4 which Byron Cole was copied on?
 5 A. Yes.
 6 Q. Have you sent any e-mails to Myles Tobin that you
 7 copied Byron Cole on?
 8 A. Yes.
 9 Q. And is the same true for attorneys from
 10 Montgomery and Scarp?
 11 A. Yes.
 12 Q. Okay.
 13 MR. FERGUSON: I don't have anything
 14 further. Thank you for patiently sitting through the day.
 15 MR. MONTGOMERY: Are we off the record.
 16
 17 (The deposition concluded at 6:49 p.m.)
 18 (Signature was reserved.)
 19
 20
 21
 22
 23
 24
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1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4) ss
 5 COUNTY OF KING)
 6)
 7 I, the undersigned Washington Certified Court Reporter,
 8 pursuant to RCW 5.28.010, authorized to administer
 9 oaths and affirmations in and for the State of Washington,
 10 do hereby certify: That the foregoing deposition of the
 11 witness named herein was taken stenographically before me
 12 and reduced to a typed format under my direction;
 13 That, according to CR 30(e), the witness was given
 14 the opportunity to examine, read and sign the deposition
 15 after same was transcribed, unless indicated in the record
 16 that the review was waived;
 17
 18 That all objections made at the time of said
 19 examination have been noted by me;
 20 That I am not a relative or employee of any attorney
 21 or counsel or participant and that I am not financially or
 22 otherwise interested in the action or the outcome herein;
 23 That the witness coming before me was duly sworn or
 24 did affirm to tell the truth;
 25
 26 That the deposition, as transcribed, is a full, true
 27 and correct transcript of the testimony, including
 28 questions and answers and all objections, motions and
 29 exceptions of counsel made at the time of the foregoing
 30 examination and said transcript was prepared pursuant to
 31 the Washington Administrative Code 308-14-124 preparation
 32 guidelines;
 33
 34 _____
 35 Katie J. Nelson, CCR, RPR,
 Certified Court Reporter 2971 for
 the State of Washington residing
 at Redmond, Washington. My CCR
 certification expires on 10/22/13.

Kurt Triplett

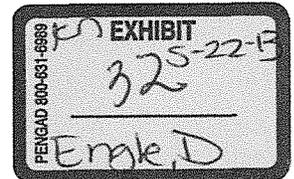
From: Kurt Triplett
Sent: Friday, November 16, 2012 11:04 AM
To: 'Doug Engle'; Yang, Sung
Subject: RE: Eastside Community Rail

Doug – I also appreciate the time we spent together and the attempt at a recap. I agree there is a POTENTIAL win-win here. There are also many pitfalls and obstacles. Also, even though it was a positive meeting and we did discuss each of these points, for Sung's benefit I need to say that the recap is more specific and implies a greater sense of agreement than what was discussed. For example, I did say we had never done a statistically valid survey. I did not say we would do one. How I recall we left it was that I would think hard about what you are proposing, that I would think about a potential framework agreement that I would give to you for review, and if you could agree to it, we would shop it with the Kirkland Councilmembers. That agreement would likely include many of the points you make below, but it might not include them all and I might include other elements as well. I am committed to exploring this in good faith and will get back to you soon. I am happy to arrange a follow-up meeting after Thanksgiving to continue our discussions.

Thanks again,

Kurt

From: Doug Engle [<mailto:dengle76@comcast.net>]
Sent: Friday, November 16, 2012 6:29 AM
To: Kurt Triplett; Yang, Sung
Subject: Eastside Community Rail
Importance: High



Kurt/Sung,

Thank you both for your time yesterday.

We believe that there is room here to create a win-win situation provided enough time to get facts on the table. Attached is a brief regarding our partners in Chicago who have 17 pieces of rolling stock that we can use for the excursion train.

To summarize yesterday's emerging opportunity, the main deal points are:

1. The railroad drops its freight plans and therefore reactivation to pursue this process
2. Our focus will be on real estate development and excursion to the So. Kirkland P&R with the primary depot in Totem Lake
3. Kirkland delays track removal 60-days to the end of March to provide mutual time to investigate the opportunity
4. The railroad will cooperate fully in dual use and lead efforts to implement rail and trail in a timeline consistent with Kirkland's existing plans
5. A mutually satisfactory project plan to develop these options will be agreed to with monthly management updates
6. City staff will cooperate fully investigating viable options
7. The railroad will fully cooperate in providing the city information, excluding limited confidential information that need not be public
8. A statistically valid survey will be completed regarding the corridor use, primarily of Kirkland residents
9. We agree to a final City Council decision on the matter

Additionally, we would ask the county to allow the railroad use of the portions of the corridor that provide access to Kirkland and the wine district in Woodinville. Further, the county can facilitate this process by identifying funding sources for the development of a trail at the north end along the right of way constant with Kirkland's design.

Provided the above process is acceptable and we agree that starting the excursion service in 2014 is desirable, then we should explore grant opportunities with the Port to improve the track structure for excursion operations. To this end, I've already called Osmose this morning to get them moving on bridge inspections and upgrades and Byron is contacting Railworks for upgrade options. If improvements are made to the "property," consistent with existing agreements, the railroad will maintain them.

Needless to say, time is of the essence, and we hope that we can make a decision based on factual options.

Can we meet the week after Thanksgiving to discuss this further, please?
Tuesday afternoon through Friday are available for me as I can shift most things for such a meeting.

Thank you for your consideration,

Doug

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

BEFORE THE SURFACE TRANSPORTATION BOARD

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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)
)

DEPOSITION UPON ORAL EXAMINATION
 OF
 BOBBY WOLFORD

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Thursday, May 16, 2013
 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

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1 you were asked to produce all proposals, cost estimates or
2 agreements for the provision of rail service to Wolford,
3 your company, by either Ballard or ECR, Eastside Community
4 Rail, including any maps, diagrams, schematics or
5 blueprints depicting plans for the construction of a spur
6 track at any of Wolford's facilities.
7 A. We never formalized that. That's -- it's been
8 promised to me that we get a spur in the future. Because
9 I've done so much work building a trail already on that, on
10 the rail that adjoins our commercial property.
11 Q. So you're not aware that any of the documents
12 described in Item 4 here exist?
13 A. No.
14 Q. You've never seen --
15 A. No.
16 Q. -- an architectural drawing for a spur track?
17 A. One day we laid out a plot map of my property and
18 we said where the spur would be, that was just with a
19 finger, we just pointed.
20 Q. Can you tell me who you met with to do that?
21 A. This was before Doug Engle had the lease with the
22 railroad, it was a guy named Tom, had the lease prior to
23 him. We discussed it with him, and then Doug Engle had
24 promised it as well, a spur.
25 Q. Was that Tom Payne?

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1 A. Yeah, Tom Payne.
2 Q. Do you know when this conversation occurred with
3 Tom Payne?
4 A. Probably three years ago, I don't know when.
5 Q. Did I understand you correctly that you had a
6 subsequent conversation about the spur track with Doug
7 Engle?
8 A. Yes.
9 Q. Do you know when you had that conversation?
10 A. Within the last two months.
11 Q. Okay. Have you talked about this spur track with
12 anyone else?
13 A. No.
14 Q. Okay.
15 A. Something that was promised to me as a property
16 owner.
17 Q. And who made the promise to you?
18 A. Tom Payne initially.
19 Q. And did Doug Engle then make the same promise?
20 A. Yes.
21 Q. And can you describe the nature of the promise or
22 the promised transaction?
23 MR. MONTGOMERY: Object to the form.
24 MS. ALVORD: You can answer. You can
25 answer.

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1 THE WITNESS: Nature --
2 MS. ALVORD: Can you restate the question?
3 Q. (By Mr. Ferguson) Sure.
4 A. When is it going to happen? What do you mean?
5 Q. Sure, when is it going to happen?
6 A. I don't know, in the future.
7 Q. Did he give you any kind of --
8 A. Time frame.
9 Q. -- guess as of time frame?
10 A. Not really.
11 Q. Did I understand you correctly that you said it
12 was promised to you because of work you've done in the
13 past?
14 A. Yes.
15 Q. Okay. Did Mr. Engle state to you who would pay
16 for the cost of constructing the spur track?
17 A. He said Snohomish County was going to kick in
18 some money for that.
19 Q. Did he say how much?
20 A. No.
21 Q. Did he give you an estimate about how much the
22 spur track would cost to build?
23 A. No, never went that far.
24 Q. Did he tell you that Snohomish County would cover
25 the full cost of building the spur track?

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1 A. He said with the money that came from building
2 their trail along their 20 some miles of rail, there would
3 be money to get me a spur, in my yard.
4 Q. So he said that money that would be appropriated
5 to build a trail would be used to build a spur track into
6 your facility?
7 A. I think that's where the funds were coming, or he
8 was going to sell an easement to the City of Redmond and
9 money would come. They mentioned that too, that it may
10 come from there.
11 Q. Okay. Do you have confidence that Snohomish
12 County will actually cover the cost of the spur track?
13 MS. ALVORD: Objection; calls for
14 speculation.
15 You can answer the question.
16 Q. (By Mr. Ferguson) I'm just asking if you have
17 confidence that Snohomish County will pay for the spur
18 track?
19 MR. MONTGOMERY: Object to form as well.
20 THE WITNESS: It's blue sky, but I hope so.
21 Q. (By Mr. Ferguson) So you are confident that
22 Snohomish County will pay for it?
23 A. Or the money -- Doug Engle said the money could
24 come from the easement he's selling to the City of Redmond
25 for a bridge or something. Or Snohomish County. Two

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1 places it could come from.

2 Q. Does your business have any plans to devote funds

3 to pay for the construction of the spur track?

4 A. No. Because I've already done a lot of work

5 building a nature trail alongside the track, two miles of

6 it. And I'm owed that.

7 Q. Why are you owed that?

8 A. Because I did so much work. I've got a lot of

9 time, money and materials in building that two miles of

10 trail.

11 Q. Do you have a contract with anyone for the

12 construction of the spur track?

13 A. No. Not yet.

14 Q. The trail that you mentioned you had built, can

15 you describe the trail and what you did to build it?

16 A. Yes. We put fill material and capped it with our

17 recycled concrete so it's serviceable in the winter.

18 Q. And where is it located?

19 A. Right next to my property, and it goes for about

20 a mile and a half or two.

21 Q. Within the railroad right of way?

22 A. Yes, of course. And in a city council meeting in

23 Kirkland, we invited them all to come up and see this and

24 see how it can be done and how wonderful it would be and

25 they never showed up. They were invited in a city council

Page 31

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.

Page 32

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.

Page 33

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

Page 142

1 FURTHER EXAMINATION
 2 BY MR. FERGUSON:
 3 Q. In the last five years, have you asked any rail
 4 carrier for a quote for freight service to your facility in
 5 Maltby?
 6 A. No. Why would I, I don't have a spur.
 7 Q. The letter that Mr. Montgomery referenced
 8 earlier, your letter to Cynthia Brown that was written by
 9 Ernie Williams?
 10 MS. ALVORD: Wilson.
 11 MR. FERGUSON: Wilson, thank you.
 12 Q. (By Mr. Ferguson) How did you receive a copy of
 13 the letter, or rather how did it get on your stationery?
 14 A. He may come to my office and done this and then I
 15 signed it.
 16 Q. Do you know how it got on your stationery?
 17 A. Well, like I said, I just said he came to my
 18 office and used my stationery.
 19 Q. You recall him doing that?
 20 A. Yeah, because I signed it.
 21 Q. Okay. Do you recall if Mr. Wilson typed this
 22 letter on a computer in your office?
 23 A. I don't recall.
 24 Q. Do you recall if he came --
 25 A. I was out in the yard working when he did it and

Page 143

1 I came in and signed it.
 2 Q. Do you recall if he came with a computer --
 3 A. No.
 4 Q. -- himself with this letter typed on it?
 5 A. No. Don't recall. I don't -- wouldn't know.
 6 Q. Do you know if he e-mailed a document containing
 7 the words in this letter to anyone in your business?
 8 A. I don't believe so.
 9 Q. Take a look back at Exhibit 5. It's Map 5. You
 10 testified earlier that the line that you've drawn on that
 11 map indicating the possible location of the spur, that the
 12 spur track could go somewhere else, is that accurate?
 13 A. Yes, but that's pretty much where it should go.
 14 Q. Okay. Is there realistically any place where it
 15 could go?
 16 A. It could go any place on the 10 acres, but there
 17 is where the grade is proper for it, for the rail, for a
 18 train to run. It's all flat there. That's why we drew it
 19 there.
 20 Q. Okay.
 21 A. That's a logical place for it.
 22 Q. With respect to the dinner train that you
 23 mentioned earlier, have you ever heard anyone say that rail
 24 service to Bellevue would not be profitable in the absence
 25 of a dinner train?

Page 144

1 A. Never heard anybody say that.
 2 Q. Okay.
 3 A. I know it was a nice thing to have a dinner
 4 train. I rode it myself from Renton to the winery.
 5 Q. Okay.
 6 A. Be a great thing for the city of Kirkland.
 7 MR. FERGUSON: I don't have anything
 8 further. Thank you.
 9 MR. MONTGOMERY: You sure?
 10 MR. WAGNER: No, I'm not, but I'm going to
 11 let you go.
 12 (The deposition concluded at 3:12 p.m.)
 13 (Signature was reserved.)
 14
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Page 145

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4) ss
 5 COUNTY OF KING)
 6)
 7 I, the undersigned Washington Certified Court Reporter,
 8 pursuant to RCW 5.28.010, authorized to administer
 9 oaths and affirmations in and for the State of Washington,
 10 do hereby certify: That the foregoing deposition of the
 11 witness named herein was taken stenographically before me
 12 and reduced to a typed format under my direction;
 13 That, according to CR 30(e), the witness was given
 14 the opportunity to examine, read and sign the deposition
 15 after same was transcribed, unless indicated in the record
 16 that the review was waived;
 17
 18 That all objections made at the time of said
 19 examination have been noted by me;
 20 That I am not a relative or employee of any attorney
 21 or counsel or participant and that I am not financially or
 22 otherwise interested in the action or the outcome herein;
 23 That the witness coming before me was duly sworn or
 24 did affirm to tell the truth;
 25
 26 That the deposition, as transcribed, is a full, true
 27 and correct transcript of the testimony, including
 28 questions and answers and all objections, motions and
 29 exceptions of counsel made at the time of the foregoing
 30 examination and said transcript was prepared pursuant to
 31 the Washington Administrative Code 308-14-124 preparation
 32 guidelines;
 33
 34 _____
 35 Katie J. Nelson, CCR, RPR,
 Certified Court Reporter 2971 for
 the State of Washington residing
 at Redmond, Washington. My CCR
 certification expires on 10/22/13.

BEFORE THE SURFACE TRANSPORTATION BOARD

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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,)

(Contains Confidential Testimony)

Deposition Upon Oral Examination Of

MICHAEL R. SKRIVAN

May 28, 2013

300 Fifth Avenue, 1st Floor Conference Room

Seattle, Washington

REPORTED BY: PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR

29906/No. 2704

Page 18

1 being done without the use of rail?
2 MR. STONE: Object to the form of the
3 question.
4 A. I don't know.
5 MR. STONE: Calls for speculation.
6 Q. Just as a general matter, I'm going to ask
7 questions. From time to time your attorney may
8 object. You might want to pause a little bit before
9 you answer to let him make his objection. Then you
10 can go ahead and answer, unless he instructs you not
11 to.
12 A. All right.
13 MR. MONTGOMERY: I'm assuming I don't need
14 to object also or join the objections in order for
15 them to be valid to me as well. If you want me to
16 join.
17 MR. PILSK: I'll stipulate this: If you
18 have a different objection, you should make it, but
19 you don't need to repeat. Absolutely not.
20 MR. MONTGOMERY: Yes.
21 Q. After your communications with Mr. Payne back
22 in 2010, when was the next time that you heard of
23 Eastside Rail, Eastside Community Rail's efforts to
24 put rail in between, this time between Woodinville and
25 Bellevue?

Page 19

1 MR. STONE: Object to the form of the
2 question.
3 Q. Let me strike that. Instead of saying "next
4 time," when did you learn of Eastside Community Rail's
5 efforts to reactivate rail service between Woodinville
6 and Bellevue?
7 A. I don't know of an exact time. It was pretty
8 close to the time that they came in and introduced
9 themselves to where I believe my Eastside sales rep
10 had saw an article in the paper -- he lives in
11 Kirkland -- saw an article in the paper and forwarded
12 me a, Guess what? You know, the rail thing might not
13 be dead, because I thought it was dead.
14 Q. I'm trying to put a date on this. Was this
15 in 2012? 2013?
16 A. If I had to guess, and I am speculating on
17 the date, it's somewhere in the end of 2012, you know,
18 the fourth quarter of 2012 into the early part of
19 2013.
20 Q. When was the first time that you talked to
21 the folks from Eastside Community Rail themselves?
22 A. It was probably about a week before our
23 meeting where they called up and said, Could we meet?
24 And I looked at my schedule and that's what I had
25 available.

Page 20

1 Q. Just the call to ask for a meeting was the
2 first communication?
3 A. Correct.
4 Q. Do you remember who called you?
5 A. Doug Engle.
6 Q. What did you talk about on the phone?
7 A. It was basically arranging a meeting. I'm a
8 busy guy. I don't have a lot of time for small talk
9 with somebody I don't know.
10 Q. Understood. At that time did he tell you
11 anything in particular about the project?
12 A. No, nothing at all. He just told me that he
13 was -- he knew of my involvement with GNP and he was
14 introducing himself as the continuation of that
15 entity.
16 Q. After that call, was there any other
17 communications before your meeting?
18 A. No.
19 Q. Tell me about the meeting. You told me who
20 was there. What was the discussion?
21 A. It was really informal. We talked about
22 potential, what ifs. Really open-ended. What they
23 were planning on doing. Who they were. I'd never --
24 I'd known of Ballard. I just knew that they did some
25 of the contract work on the rail line for Mr. Payne,

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
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
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
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
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
25 this rail line in. I'm just looking at it that's an

<p style="text-align: right;">Page 30</p> <p>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. 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 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. 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? 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. 25</p>	<p style="text-align: right;">Page 32</p> <p>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? 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 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 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, 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. 25 Q. You said and the text of the email says, "I</p>
<p style="text-align: right;">Page 31</p> <p>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 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 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 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 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 25 Mr. Engle's attorney before receiving this March 25th</p>	<p style="text-align: right;">Page 33</p> <p>1 made one small change, Doug." You wrote that? 2 A. Yes, I did. 3 Q. And that was the only change you made to the 4 letter? 5 A. That is the only change I made. I reviewed 6 it very quickly. 7 Q. Between receiving the letter when you got 8 back from vacation on March 25th and sending this out 9 on March 26th, did you have any conversations with 10 Mr. Engle about the letter? 11 A. I did not. 12 Q. Did you talk to the lawyer that Mr. Engle 13 mentioned? 14 A. I did not. 15 Q. Did you ever talk to a lawyer who either you 16 understood to be representing Mr. Engle or Eastside 17 Community Rail? 18 A. Not that I recall. I think I had a 19 voicemail, but I did not speak to anybody. 20 Q. Do you recall who that was from? 21 A. I do not. 22 Q. Or when you received that? Was it waiting 23 for you when you got back -- 24 A. It wasn't around this letter. The only other 25 communication with an attorney from them was around</p>

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1 other projects that you would be targeting or aware of
2 on behalf of CalPortland in the area that would be
3 served by the line between Woodinville and Bellevue?
4 A. Firm projects that are out on the street?
5 Q. Yes.
6 A. No. There's a lot of rumors.
7 Q. And then are there, whether you call them
8 rumors or potential projects, those are other projects
9 you might -- are you targeting them?
10 A. Absolutely.
11 Q. I take it there are potential projects. You
12 have no contracts?
13 A. Correct.
14 Q. There's no need for CalPortland to use rail
15 service or any other kind of transportation service
16 for those projects; is that correct?
17 A. Not today.
18 (Exhibit-53 marked.)
19 Q. Let me hand you what we've marked as
20 Exhibit-53. This is an email chain. The top email at
21 the top of the page appears to be from you to
22 Mr. Engle dated May 1st, 2013. Do you recognize that?
23 A. Yes.
24 Q. Do you recognize this as an email you wrote?
25 A. Yes, I do.

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1 Q. Let me ask you first. Between March 25th
2 when you wrote the letter to Ms. Brown of the STB and
3 May 1, did you have any conversations with Mr. Engle
4 about the rail project?
5 A. Not that I recall, direct conversation with
6 Doug, other than trying to set up a meeting in Everett
7 to see what the potential was up there.
8 Q. Okay. What about anyone else? Mr. Cole, did
9 you have any conversations --
10 A. I have not had a conversation with Mr. Cole
11 since the initial meeting on February 1.
12 Q. Anyone else who you understood to be
13 connected with Eastside Community Rail? Mr. Wilson,
14 Ernie Wilson?
15 A. Yeah, I think Ernie was also in the chain
16 trying to set up a meeting. They were very interested
17 in seeing our facility in Everett.
18 Q. Other than communications about seeing the
19 facility in Everett, any other communications with
20 anyone from Eastside Community Rail?
21 A. Not that I recall, no.
22 Q. Now, what did you understand their interest
23 was in seeing the facility in Everett?
24 A. They wanted to know proximity to a rail spur
25 or how we could get material to a rail line, and I

Page 40

1 said I didn't have any idea of where -- you know, I'm
2 just not that familiar with rail in that area, and
3 that, you know, if they looked at our facility and
4 there was a potential there, to let me know.
5 Q. Okay. Had you or someone on your staff made
6 any efforts to find out if there were rail service
7 available between Woodinville and Bellevue how would
8 you get material onto that line?
9 A. No, we didn't.
10 Q. And then looking at this email, through the
11 first and second line you say, "the cost of a spur
12 into the Everett facility at this time would be cost
13 prohibitive." Is that correct?
14 A. That's correct.
15 Q. How did you determine that?
16 A. We weren't going to spend any money to put a
17 rail spur in.
18 Q. Did you talk to anyone else at CalPortland
19 about that?
20 A. No.
21 Q. Didn't need to?
22 A. I didn't need to.
23 Q. I have to ask. Why didn't you feel you
24 needed to talk to anyone about that?
25 A. That kind of an expenditure at our facility

Page 41

1 up there at this time I wouldn't, I wouldn't recoup
2 it. There's other opportunities for me to be able to
3 access that without me spending any money.
4 Q. Did you have an estimate of how much it would
5 cost to put in the spur?
6 A. In this letter from Ernie Wilson, he
7 mentioned a 3 to \$400,000 figure.
8 Q. And that was the only numbers that you had?
9 A. Yes.
10 Q. And that was more than enough to say for you
11 no thank you?
12 A. 3 to 4,000 would be.
13 Q. From your point of view -- strike that.
14 The email says, "We think there could be a
15 nearby site that may be an option, we are checking it
16 out this week." What site was that?
17 A. I would consider that proprietary for my
18 business. I know of a site that I could utilize for
19 that. I don't want my competitors to know of it.
20 Q. Is it a site that CalPortland currently owns?
21 A. No.
22 Q. Did you check out that site?
23 A. We did.
24 Q. And is it a viable option?
25 A. It definitely is.

SIGNATURE

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I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof. Signed in.....WA on the.....day of....., 2012.

.....
MICHAEL R. SKRIVAN
Taken: May 28, 2013
PEGGY FRITSCHY HAMILTON, RPR,
CSR, CLR

CERTIFICATE

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)
I, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of MICHAEL R. SKRIVAN was taken before me on May 28, 2013 and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this date: May 30, 2013.

\\S\ PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR
Court Reporter in and for the State of Washington, residing at Seattle. License expires 07-02-12.

To: McWilliams, Joe
Cc: Miller, Melinda; Sullivan, Sean; Kathy Cox; Safora, Isabel; Merritt, Mike
Attachments: STB Revenue Adequacy 9Oct12.pdf; ATT00001.htm

First, thank you everyone for working on this matter.
Please see my COMMENTS below.

Doug
mobile: +1.425.891.4223

On 28 Mar 13, at 8:15 AM, "McWilliams, Joe" <McWilliams.J@portseattle.org> wrote:

All good questions, see the answers below

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Wednesday, March 27, 2013 10:24 AM
To: McWilliams, Joe
Cc: Miller, Melinda; Sullivan, Sean; Kathy Cox; Safora, Isabel
Subject: Re: Taste Washington Support Letter

Joe,

How is this a conduit to ECR any more than Boise Cascade, Spectrum Glass or others?
\We are managing the work by qualified vendors, which the Port would hire out anyway.

The Port as a public authority/agency is not at all like the private companies. We are subject to a myriad of laws that would not affect the decisions of a private company in any way. As you note below, we asked for a formal written ask of what our role would be in December for exactly these reasons....as a public agency it is paramount that we do nothing that would be in violation of the extending public credit laws or the constitutional prohibition against gifting public funds for private purpose....we knew four months ago this was a hurdle to clear and that's why we asked you to figure out what the protocol was and what role you wanted us to play so we could vet the strategy. Isabel was very clear about needing to know what you wanted us to do; she needs to know under what authority we could accept the money, transfer it as you ask, and then know we weren't violating any statutes.

TOTALLY UNDERSTOOD THAT THE PORT IS PUBLIC.
THE PORT ALSO HAS A CHARTER TO PROMOTE FREIGHT AND OTHER ECONOMIC DEVELOPMENT.
WE WERE EXPECTING TO GET YOU THIS INFORMATION FROM THE SNOHOMISH COUNTY EXEC'S OFFICE, BUT AS YOU KNOW, THERE WAS A FAIR AMOUNT OF TURMOIL THERE, WHICH ADVERSELY IMPACTED TIMING, AND FRANKLY THIS IS OUR FIRST TIME THROUGH THIS.

How is this different than the Port building a cruise ship terminal, which supports a small hand full of companies.

Isn't the Port's mission to help economic development, just like the cruise ship terminal?

Because we built the cruise terminal for our own purposes with our own money; we weren't using anyone else's money or any grants.

WE ARE LEARNING ABOUT THE COLOR OF MONEY... FAIR POINT.

The Port OWNS this asset, and it needs to be maintained beyond what ANY RR can or will do.

The only weird part is that the Port is dealing with a RR that has exclusive rights to works inside the corridor, which the Port surely must recognize with BNSF and UP.

I seem to remember a locomotive parked across a crossing at the Port, which stayed there for an extended period of time.

As I recall, the Port did work on that crossing, and BNSF wanted to remind the Port that BNSF does work inside its corridor, so the locomotive continued to sit there.

Even if the Port wants something done and pays for it, BNSF manages the work.

I am not familiar at all with this condition so cannot address it one way or the other.

INSIDE THE RAIL CORRIDOR, THE RAILROAD DOES ALL THE WORK AS IT HAS ALL THE LIABILITY AND RIGHTS TO DO SO.

According to David Simpson who was working with Iowa Pacific, this is standard process around the country and a requirement for them to make an offer.

What might be legal an appropriate elsewhere is of little concern; Washington state has laws unlike any other state with regard to the public gifting issues.

TEMPLES BROUGHT THE SAME POINT UP, AND MOST OTHER STATES HAVE GIFTING LAWS.

THIS IS NOT A GIFT IN ANY MANNER.

THE PORT IS SIMPLY MAINTAINING ITS OWN ASSET, WHICH THE BANKRUPTCY PROCESS DEVALUED BEYOND SUSTAINABLE.

ECRR CAN SUSTAIN MAINTENANCE IF THE TRACK HAS MATERIAL CAPITAL IMPROVEMENTS - \$6.2M.

IF THE TRACK IS NOT MAINTAINED, BALLARD TERMINAL RR MAY CEASE OPERATIONS, THEN THE LINE WOULD BE ABANDONED - HOW WOULD THAT LOOK FOR THE PORT?

NO, ABSOLUTELY NO OTHER RR WILL COME IN AND MAKE THIS INVESTMENT FOR THE COUPLE HUNDRED CARS OF FREIGHT AND EXCURSION.

THE TEMPLE'S, IOWA PACIFIC HOLDINGS AND ECRR IS TELLING THE PORT THE SAME STORY, EITHER INVEST IN YOUR INFRASTRUCTURE OR ITS DEAD.

Why is this now becoming an issue when we raised it in December and have been talking about it ever since?

To the contrary, for the record this is not now becoming an issue; we asked for this in December as you acknowledged here and in your email from Monday and we covered it again as recently as our last meeting. While it may look arbitrary it is not; we knew this was an issue from the beginning and that's why we brought it up...we still need to know how the money would flow, what the requirements would be for us to accept it and transfer it to you, what the state's oversight role would be and what compliance obligations we would incur, and under what legal authority we can take the funds.

AGAIN, WE EXPECTED HELP FROM SNOCO ON THIS ISSUE AS WE DON'T HAVE THE EXPERIENCE, BUT WE ARE LEARNING FAST.

THE PORT'S PURCHASING DEPARTMENT WILL HAVE TO APPROVE THE SINGLE SOURCE NATURE OF THIS WORK, WHICH SHOULD NOT BE AN ISSUE AS ECRR IS A RR.

FURTHER, ECRR AS A NON-PROFIT RR, WHICH THE STATE LIKES, WILL MANAGE THE WORK, WHICH ENABLES OTHER USES - FREIGHT, EXCURSION, TRAIL (MAINTENANCE OF WAY ROAD), ETC.

THE STB REVENUE ADEQUACY RATE OF RETURN WILL BE APPLIED TO THE WORK GENERATING A MARGIN, WHICH WILL ENABLE FUTURE MAINTENANCE TO BE CONDUCTED BY ECRR, NOT THE PORT, AND WILL AMOUNT TO ABOUT \$1M/YEAR.

THE STB RATE IS ABOUT AS ARM'S LENGTH AS WE CAN ALL GET TO A FAIR FIGURE.

WITHOUT A CAPITAL RESERVE IT WILL BE IMPOSSIBLE TO MAINTAIN THE TRACK GOING FORWARD.

THIS IS THE BASIC PLAN WE HAVE WITH SNOCO FOR THE TRAIL FROM BRIGHTWATER TO SNOHOMISH.

From: Doug Engle [Doug.Engle@EsCRail.org]
Sent: Tuesday, April 23, 2013 10:26 AM
To: Sullivan, Sean
Subject: Re: Insurance/Quarterly Payment

We want the lease agreement with Ballard to include 100% of the insurance requirements of the Port. Myles Tobin is working to this end.

Doug
mobile: +1.425.891.4223

On 23 Apr 13, at 9:25 AM, "Sullivan, Sean" <Sullivan.S@portseattle.org> wrote:

Doug, can you please update me on these two important issues ?

Thanks,

Sean Sullivan
Port of Seattle

From: Sullivan, Sean
Sent: Thursday, April 18, 2013 12:55 PM
To: Doug Engle (Doug.Engle@EsCRail.org)
Cc: Miller, Melinda; McWilliams, Joe
Subject: Insurance/Quarterly Payment

Doug,

We received a notice of cancellation of ECR's insurance effective 2/19/13. The failure to provide evidence of complaint insurance represents a breach of a material term or condition of the O & M Agreement. Please let us know when appropriate insurance coverage (that which is required by the Agreement) will be procured and proof of insurance will be sent to the Port.

We have also yet to receive the quarterly fee that was due on March 31, 2013. This also represents a breach of a material term or condition of the Agreement.

Please let me how and when you propose to cure these breaches.

Thanks,

Sean Sullivan
Port of Seattle

Activists want Snohomish-Bellevue rail line to stay

By [Bill Sheets](#), Herald Writer

SNOHOMISH -- A group of rail activists, public officials and business owners are pushing to prevent a section of the rail line that runs from Snohomish to Bellevue from being torn out.

The city of Kirkland is planning to take out a 5¾-mile section of the rail line to install a recreational trail.

Kirkland officials say they plan to eventually rebuild the tracks, but rail advocates are skeptical and say the possibilities should be studied first.

"We just want them to wait," said Snohomish Mayor Karen Guzak, a member of the rail group.

Railroad cars, rather than trucks, could be used to haul away debris from large construction projects planned on the Eastside in the near future, including a light rail tunnel in downtown Bellevue, advocates say.

A new rail company is running freight on the line, and it ultimately could be used for commuter rail or weekend wine tours, according to proponents.

The group calls itself the Eastside TRailway Alliance, with the capital "TR" signifying a dual purpose.

"We can have both rails and trails," Guzak said.

The Port of Seattle paid \$81 million in 2009 for the rail line to preserve it for public use. The purchase was part of an agreement between King County, Sound Transit, the city of Redmond, Puget Sound Energy and Cascade Water Alliance.

Kirkland bought part of the line for \$5 million. So far, Kirkland officials are sticking with their plan to build a trail. "It allows people to start using the corridor but doesn't lock us into any particular alignment (for future rail) by doing that," said David Godfrey, transportation engineering manager for Kirkland.

Rail removal could begin as soon as April, Godfrey said. Construction on the trail could begin later this year and parts of it could be open next year.

After the port bought the rail line, a company, GNP Railway, formed and leased the 11-miles of track between Snohomish and Woodinville with plans to run a tourist train.

The idea never panned out and the company went bankrupt.

One of the GNP partners, Doug Engle, formed a new company called Eastside Community Rail that he said already runs freight from Snohomish to Woodinville via Everett.

The company hopes to run a weekend excursion train at least to the wineries of Woodinville, and to Kirkland, said Kathy Cox, one of the partners.

The rail advocacy group, about 40 people, wrote a letter to the city of Bellevue touting the benefits of using

the rail line to haul away construction debris -- including cost savings and reduced pollution from fewer truck trips -- in hopes that Bellevue can influence Kirkland to hold off on its plan to remove the tracks.

They're hoping a six-month study can be done to show the benefit of waiting, said Bruce Agnew, director of the [Cascadia Center](#), a Seattle-based transportation study and rail advocacy group. Agnew is a member of the rail alliance.

Engle has told the rail advocacy group his trains could haul away construction debris, cutting costs and pollution for Bellevue. Rail advocates say some of the pavement remnants could be ground up and used to start building trails along the tracks.

They've also floated the idea of a commuter rail line between Everett and Snohomish, though no studies have been made, Guzak said. The BNSF Railway owns the freight tracks between the two cities, also used by Amtrak.

The rails between Snohomish and Bellevue are in good enough shape to carry freight trains but would have to be upgraded to carry passengers, advocates say. This would cost about \$6 million for the stretch between Snohomish and Woodinville, Cox said.

"The public needs to protect its assets and make them usable," she said.

Agnew said the group is pushing the port to seek grant money to upgrade the tracks. Developers along the rail line could potentially pitch into a pool for tracks and trails, he said.

Godfrey said it won't cost any more to wait and build new tracks than it will to upgrade the current ones. It would be more expensive, he said, to build a trail alongside the current tracks than to use the railbed.

The [\\$18 billion tax package for Sound Transit](#) voters approved in 2008 included \$50 million for improvements to the Eastside rail corridor. The money, though, was redirected to projects on the Eastside because of two factors, spokeswoman Kimberly Reason said.

First, sales tax revenue fell off when the economy tanked right about the time of the 2008 ballot measure. Also, for funds to be available, a deadline of Dec. 11, 2011, was set for any interested parties to put together an operation agreement, and that didn't happen, Reason said.

The tracks run all the way to Renton, near the Boeing plant. The Spirit of Washington Dinner Train ran on the line between Renton and Woodinville from 1992 to 2007. The train ceased operations when the state Department of Transportation took out a section of track south of downtown Bellevue to expand I-405. That track has not been replaced.

In the dream scenario, a Boeing employee who lives in Snohomish and works in Renton could take the train to work, Agnew said.

Now, the section of track between Renton and Woodinville is unused. "It's just sitting there," Agnew said.

Bill Sheets: 425-339-3439; sheets@heraldnet.com.

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From: Wright, Stephanie
Sent: Wednesday, March 06, 2013 12:52 PM
To: Somers, Dave
Subject: FW: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Orange Category

Dave,

Could you call me tomorrow after your flight lands...and before my takes off to discuss the items requested below by Doug Engle. They would also like to meet next Wednesday, and I won't be around, are you available?

Stephanie

PS—Happy pre birthday since I won't be around Friday.

Stephanie Wright
Snohomish County Councilmember
District #3
M/S #609, 3000 Rockefeller Avenue
Everett, WA 98201-4046
425-388-3494

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From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Tuesday, March 05, 2013 9:47 AM
To: Thomsen, Steven; Dickson, Stephen; Camp, Peter; Wright, Stephanie; Somers, Dave; Karen Guzak; Les Rubstello; Larry Bauman
Cc: Kathy Cox; Ernie Wilson
Subject: Fwd: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session
Importance: High

In an effort to keep you all informed, Kirkland, with less than 24-hours notice and after letting the bid to remove the rails this past Friday is having a study session tonight.

We will have representation there, including Bobby Wolford who is a Kirkland resident. Kathy, Bobby and Byron will also be at the ETP meeting Friday to make statements.

Here is what the team is up to:

- Kathy and Ernie are presently meeting with Byron Cole and Wolford regarding their interest in pursuing a federal injunction to stop Kirkland ASAP.
- There is a separate EIS lawsuit that may be pursued as well since Kirkland did not do one.
- Lloyd Flem of All Aboard Washington is meeting with WSDOT this morning to determine the necessary process to stop Kirkland until the state rail plan is completed later this year. Kathy is heading down Thursday morning to meet with Rep. Moscoso.

We URGENTLY need three letters from Snohomish County for team legal and financial actions:

1. Letter asking Kirkland to hold off until the state rail plan and King Co processes are complete
2. Letter supporting \$6.2M in track rehab
3. Letter asking for Bellevue construction spoils for construction of a trail

Kathy, Ernie and I will be in Everett from 8:30 to 2:30 next Wed. March 13 if we want to meet.

Best regards,

Doug

mobile: +1.425.891.4223

Begin forwarded message:

From: "Kathy Cox" <kathy@marketingphilharmonic.com>
Subject: FW: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session
Date: 4 March 2013 8:02:53 PM PST
To: "Bruce Agnew" <bagnew@discovery.org>, "Karen Guzak" <Karen@KarenGuzak.com>, "Les Rubstello" <psakayk@gmail.com>, "Elizabeth Churchill" <echurchill@discovery.org>, <ewilson@spiretech.com>, "Doug Engle" <Doug.Engle@EsCRail.org>, "Loren Herrigstad" <lbhrgstd@isomedia.com>
Reply-To: <kathy@marketingphilharmonic.com>

ETA Team,

I am glad I am on the City of Kirkland alerts system. I just got this notice. The City Council is discussing the corridor tomorrow night! There is time for public comments at the beginning of the Council meeting. Please refer to the document in the link. The ETA is mentioned. Bruce, Kirkland is quoting you with the \$1 million a mile but that does not include crossings, etc. which is an issue since they will be removing and paving them. Is there a way you can clarify your figure?

Can we discuss tomorrow about who could attend and how to best portray our views?

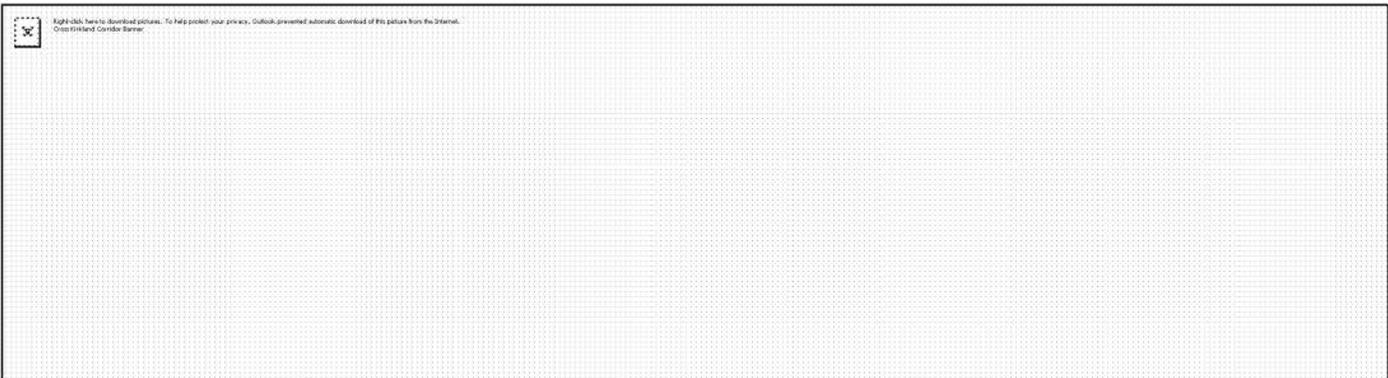
http://www.kirklandwa.gov/Assets/City+Council/Council+Packets/030513/3a_StudySession.pdf

Best,

Kathy Cox

Sent: Mon, Mar 4, 2013 4:18 pm

Subject: Cross Kirkland Corridor Update: City Council to discuss CKC at Tuesday, March 5 Study Session



March 4, 2013

Dear Cross Kirkland Corridor Subscriber,

The Kirkland City Council will be receiving an update on the Cross Kirkland Corridor during a study session on Tuesday, March 5, 2013. The staff memo has been posted online and contains a great deal of information regarding the rail removal, construction of the interim trail, maintenance and operations issues, the Corridor Master Plan and regional issues.

The session begins at 6 p.m. at Kirkland City Hall. Study sessions are intended for the City Council to receive and discuss information in details. Public comment is not provided for; however you address the City Council at the beginning of the regular Council meeting following this session at 7:30 p.m. in the City Council Chambers. You can also watch the meeting live online at www.kirklandwa.gov or on cable television, Comcast Channel 21 or Frontier Channel 31. The meeting video will be archived on the City's On-Demand webpage.

Thank you for your continued interest in the Cross Kirkland Corridor. Please contact David Godfrey, Public Works Department at 425-587-3865 or dgodfrey@kirklandwa.gov should you have specific questions.

For general inquiries about the Cross Kirkland Corridor, contact

David Godfrey
Transportation Engineering Manager
Public Works Department
123 5th Ave.
Kirkland WA, 98033
425-587-3865
DGodfrey@kirklandwa.gov

To make your business connection, contact

Ellen Miller-Wolfe
Economic Development Manager
City Manager's Office
123 5th Ave.
Kirkland WA, 98033
425-587-3014
EMiller-Wolfe@kirklandwa.gov

To make your neighborhood connection, contact

Kari Page
Neighborhood Outreach Coordinator
City Manager's Office
123 5th Ave.
Kirkland WA, 98033
425-587-3011
kpage@kirklandwa.gov

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Les Rubstello <psakayk@gmail.com>

Fwd: Snohomish County Position Statement

4 messages

Doug Engle <dengle76@comcast.net>

Thu, Mar 21, 2013 at 12:41 PM

To: Les Rubstello <psakayk@gmail.com>, Karen Guzak <karen@karenguzak.com>, Bruce Agnew <bagnew@discovery.org>, Byron Cole <byroncole@comcast.net>
Cc: Kathy Cox <kathy.cox@escrail.org>, Ernie Wilson <ernie.wilson@escrail.org>, James Forgette <jrforgette@hotmail.com>

Peter really did an outstanding job.
One more in the right direction...

Doug
mobile: +1.425.891.4223
Skype: dengle58

Begin forwarded message:

From: "Camp, Peter" <Peter.Camp@co.snohomish.wa.us>
Subject: Snohomish County Position Statement
Date: 21 March 2013 12:35:51 PM PDT
To: "Kathy S. Cox (kathy@marketingphilharmonic.com)" <kathy@marketingphilharmonic.com>, "Douglas Engle (dengle76@comcast.net)" <dengle76@comcast.net>

FYI

Peter Camp

Snohomish County
Executive Director
Direct: 425.388.3123
Mobile: 425.754.8068
Fax: 425.388.3434

Peter.Camp@co.snohomish.wa.us

All emails and attachments sent to or from Snohomish County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW Chap. 42.56).

2 attachments



image001.jpg
4K

Snohomish County Eastside Rail Corridor Position March 21 2013.pdf
1011K

Les Rubstello <psakayk@gmail.com>
To: "Les Rubstello" <lrubstello@ci.lynnwood.wa.us>

Thu, Mar 21, 2013 at 12:43 PM

[Quoted text hidden]

Peter Camp
 Snohomish County
 Executive Director
 Direct: 425.388.3123
 Mobile: 425.754.8068
 Fax: 425.388.3434
Peter.Camp@co.snohomish.wa.us

All emails and attachments sent to or from Snohomish County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW Chap. 42.56).

2 attachments



image001.jpg
4K

Snohomish County Eastside Rail Corridor Position March 21 2013.pdf
1011K

Les Rubstello <psakayk@gmail.com>
Draft To: richardl@ci.woodinville.wa.us

Thu, Mar 21, 2013 at 12:48 PM

----- Forwarded message -----
 From: "Les Rubstello" <psakayk@gmail.com>
 Date: Mar 21, 2013 12:43 PM
 Subject: Fwd: Snohomish County Position Statement
 [Quoted text hidden]

2 attachments



image001.jpg
4K

 **Snohomish County Eastside Rail Corridor Position March 21 2013.pdf**
1011K

Les Rubstello <psakayk@gmail.com>
To: richardl@ci.woodinville.wa.us, LindaF@ci.woodinville.wa.us

Thu, Mar 21, 2013 at 12:52 PM

Please share with the rest of the Council.
Les

----- Forwarded message -----
From: "Les Rubstello" <psakayk@gmail.com>
Date: Mar 21, 2013 12:43 PM
Subject: Fwd: Snohomish County Position Statement
[Quoted text hidden]

2 attachments



image001.jpg
4K

 **Snohomish County Eastside Rail Corridor Position March 21 2013.pdf**
1011K



Les Rubstello <psakayk@gmail.com>

Fwd: Follow up on public workshop idea

3 messages

Doug Engle <Doug.Engle@escrail.org>

Sun, Apr 14, 2013 at 1:52 PM

To: Les Rubstello <psakayk@gmail.com>

Cc: Bruce Agnew <bagnew@discovery.org>, Karen Guzak <karen@karenguzak.com>

Les,

How does June 1st look to you?

Doug

mobile: +1.425.891.4223

Begin forwarded message:

From: Bruce Agnew <bagnew@discovery.org>**Subject: Re: Follow up on public workshop idea****Date:** 14 April 2013 12:05:35 PM PDT**To:** Doug Engle <Doug.Engle@EsCRail.org>, Karen Guzak <Karen@KarenGuzak.com>**Cc:** "<kathy@marketingphilharmonic.com>" <kathy@marketingphilharmonic.com>, Ann Stanton <stanton@ci.snohomish.wa.us>, Larry Bauman <bauman@ci.snohomish.wa.us>

Karen

Doug and I had a good meeting with Rep. Luis Moscoso Saturday at All Aboard. He is putting together the rail caucus of bi-partisan legislators.

He wants to dovetail his morning rail caucus field trip to visit the Everett- Snohomish – Woodinville BNSF/Eastside rail line with our lunch/PM Woodinville workshop so his legislators can participate with our session.

Important to nail down date... June 1 works for him – but Kathy had conflict (Doug – did u check with her?)

Other Saturdays in June have different conflicts I recall.

We need to check with Les on his schedule, too.

Venue is also a challenge with June weddings.

Bruce

From: Doug Engle <Doug.Engle@EsCRail.org>**Date:** Sunday, April 14, 2013 11:26 AM**To:** Karen Guzak <karen@karenguzak.com>

Cc: Bruce Agnew <bagnew@discovery.org>, Kathy Cox <kathy@marketingphilharmonic.com>, Ann Stanton <stanton@ci.snohomish.wa.us>, Larry Bauman <bauman@ci.snohomish.wa.us>
Subject: Re: Follow up on public workshop idea

Getting the rail caucus there and up to speed will be very important. I will talk to Sam Anderson about MBA support.

Doug Engle
ECRR
Sent while mobile...

On Apr 12, 2013, at 11:19 AM, "Karen Guzak" <Karen@KarenGuzak.com> wrote:

I like it....high powered folks providing leadership! Getting them invested and involved is good politics.
KG

From: Bruce Agnew [mailto:bagnew@discovery.org]
Sent: Friday, April 12, 2013 10:59 AM
To: Karen Guzak
Cc: kathy@marketingphilharmonic.com; 'Ann Stanton'; 'Larry Bauman'; Doug Engle
Subject: Re: Follow up on public workshop idea

Karen

I agree with you about Woodinville in June and Snohomish in September.

Below are some agenda items we should share (in addition to a recommended date) with Les.

Kathy is looking into a venue.

Eastside TRailway Alliance

Date? - Sat. June 15, 2013

12:30 – Box lunches

Welcome by co-chairs Les Rubstello and Karen Guzak

Presentation "**Bounty of Washington**" -

Moderator - Kathy Cox

Woodinville Winery Association

Brewer

Foodie

1:30: "**Rails and Trails can work together**" - Sonoma Marin (SMART) presentation
Elected leader and Nippon Sharyo DMU rep.

PM Sessions could be concurrent or consecutive

2:00 – A - **Trails connect sustainable communities**

Moderator - Tom Tiegen – Sno Co.

Mike Deller – Trust for Public Lands

Ron Sher - Cascade Bicycle Club Board and developer

Joann Grist – Washington Wildlife and Recreation Coalition

Gene Duvernoy, Forterra

Urban Land Institute/Kirkland – Totem Lake redevelopment

3:30 – 3:45 Break

3:45 B – **Rail - Moving Goods, Creating Jobs and Cleaning our Air**

Moderator: Kathy Lambert, King County Council

Peter Camp - Snohomish County Executive's office

Boise Cascade

Doug Engle ECR and Cal Portland

Troy McLelland, Snohomish County Economic Alliance

5:00 – 7 PM Hosted "Bounty of Washington" Reception with remarks by Snohomish and Woodinville leaders

Special Guest" Lynn Peterson, WSDOT Secretary

From: Karen Guzak <karen@karenguzak.com>

Date: Thursday, April 11, 2013 5:06 PM

To: Ann Stanton <stanton@ci.snohomish.wa.us>, Bruce Agnew <bagnew@discovery.org>

Cc: Kathy Cox <kathy@marketingphilharmonic.com>, Larry Bauman <bauman@ci.snohomish.wa.us>, Doug Engle <dengle76@comcast.net>

Subject: RE: Follow up on public workshop idea

A September workshop in Snohomish might work better...in line with the 125th anniversary of the Snohomish Rail line...celebrating both our rail history and our rail future.

June might be a good time to do something in Woodinvilleperhaps looking more closely at their maps and their opportunities/challenges - especially regarding the wineries and rail connections south. We want to keep the Woodinville/Snohomish connections – even early marketing efforts (prior to the Tasting Train) can start to raise awareness of the local foods and wines. If HWY 9 is nearly complete this summer, that will facilitate our joint efforts to bring folks to our part of the county.

Also, by June, we will know more about the Snohomish County's efforts with the Port of Seattle, and Mayor Stephanson may have more information also.

As we get PSRC up to speed, they may have more perspective also. So, I'm in favor of a June meeting....let's just be clear about our purpose.

Karen Guzak

Mayor, City of Snohomish

guzak@ci.snohomish.wa.us

phone 360-568-1000

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Snohomish City Council Values:

Respect.

Community.

Responsible Stewardship.

Excellence in Leadership.

Regional Perspective.

Respect for the Decision-Making Process

From: Ann Stanton [mailto:stanton@ci.snohomish.wa.us]

Sent: Thursday, April 11, 2013 4:11 PM

To: Bruce Agnew (bagnew@discovery.org)

Cc: 'kathy@marketingphilharmonic.com'; [CC] Karen Guzak - To karen@karenguzak.com; Larry Bauman

Subject: Follow up on public workshop idea

Bruce,

Thank you for your participation today. You have a great deal of information to offer local agencies like ours.

Just to follow up on your after-meeting question (to Karen, Kathy and me) of whether to hold a public workshop in Snohomish on approximately the afternoon of the first or second Saturday of June, it is my recollection that, during the meeting itself, the general concurrence was that it is much too soon for such a workshop. There is too much still unknown about any next steps for such a workshop to be productive.

Hope you recover quickly from the effects of your recent plane travel!

Ann Stanton

Project Manager

City of Snohomish

116 Union Avenue

Snohomish, WA 98290 2943

Direct: 360 282-3195

stanton@ci.snohomish.wa.us

Les Rubstello <psakayk@gmail.com>

Sun, Apr 14, 2013 at 4:47 PM

To: Doug Engle <Doug.Engle@escrail.org>

Cc: Karen Guzak <karen@karenguzak.com>, Bruce Agnew <bagnew@discovery.org>

June 1 works for me. I'm sure there are no weddings planned at Woodinville city hall. I will check.

[Quoted text hidden]

Doug Engle <Doug.Engle@escrail.org>

Sun, Apr 14, 2013 at 9:03 PM

To: Les Rubstello <psakayk@gmail.com>

Lol !!

Doug Engle

ECRR

Sent while mobile...

[Quoted text hidden]



Les Rubstello <psakayk@gmail.com>

Re: items for agenda - STB Support Letter

2 messages

Doug Engle <dengle76@comcast.net>

Thu, Apr 4, 2013 at 1:00 PM

To: kathy@marketingphilharmonic.com

Cc: Elizabeth Churchill <echurchill@discovery.org>, Bruce Agnew <bagnew@discovery.org>, Karen Guzak <guzak@ci.snohomish.wa.us>, Les Rubstello <psakayk@gmail.com>, Loren Herrigstad <lbhrgstd@isomedia.com>

All,

I am not sure where you all want to handle the injunction and STB filing discussion or at all, but we've never intentionally dodged the topic before.

Ballard will need our support in front of the STB, and we have about 30-days to pull additional letters together.

We need letters from as many government agencies, economic development, chambers of commerce, etc.

ECRR is working the private business side as well.

Quantity and letterhead is as important as what is said on one page.

STB support letters addressed to:

Ms. Cynthia T. Brown

Chief, Section of Administration

Office of Proceedings

Surface Transportation Board

395 E Street, S.W., Room 1034

Washington, DC 20423-0001

Doug

mobile: +1.425.891.4223

Skype: dengle58

On 16 Feb 13, at 9:31 AM, Kathy S. Cox <kathy@marketingphilharmonic.com> wrote:

ETA team,

I think it would help gain attendance if the invitees would know the outcomes of the meeting and also participate in those outcomes.

Sample outcomes could be:

1. Sign a support letter for public funding to rehabilitate the Woodinville to Snohomish portion of the track
2. Sign a support letter to retain the rails
3. Develop a process to produce a plan for the Eastside Rail Corridor

What do you think?

Best,

<image001.jpg>

Kathy S. Cox
 President and Conductor
 Marketing Philharmonic
 Office: 425-822-3925
 Cell: 425-503-7393
kathy@marketingphilharmonic.com
 Visit us at www.marketingphilharmonic.com

<image002.jpg><image003.png>

Immediate Past President

Converse about harmonious results at
[The Marketing Philharmonic Blog](#)

Connect with me
[Linked In](#)
[Twitter](#)

Please consider the environment before printing, storing, forwarding or responding to this email.

From: Elizabeth Churchill [mailto:echurchill@discovery.org]
Sent: Friday, February 15, 2013 4:18 AM
To: Bruce Agnew; Karen Guzak; Les Rubstello
Cc: Loren Herrigstad; Doug Engle; Kathy Cox
Subject: Re: items for agenda

Bruce and company,

I would like to send out another emailer about the Feb 21 event today but It would be best if I could include a formal agenda. There are only 2 people registered for the meeting so far – some are likely waiting to see the agenda. Also please remember to register yourselves for the meeting so I can prepare the name tags.

Can you let me know if the agenda below is approved to use for the emailer or if there is a more recent version. If you get the agenda to me by noon PST I can get the emailer out today.

Thanks

Liz

On 2/11/13 3:50 PM, "Bruce Agnew" <bagnew@discovery.org> wrote:

OK co-chairs

Here is my go at an agenda:

Co-chairs update (Karen and Les)

Eastside Trailway Mission - (reminder for new attendees) (slides, maps on tripods and recent news coverage)

Olympia outreach for state track funding for Woodinville-Snohomish section – Karen

Eastside Transportation Partnership briefing – Karen (with Kathy Lambert?)

Woodinville City Council meeting – Les (might be good to have Woodinville city map with zoning/infrastructure investments around potential station available)

Snohomish County tourism partnership? - Dave Somers, SNO CO Council

Support letter for Eastside TRailway from Sno Co Economic Development Alliance – Troy McLelland or Patrick Pierce

Eastside Commuter Rail update – Doug and Kathy

CMAQ federal funding for northern track improvements through PSRC – Bruce

Letter to EPA and Puget Sound Clean Air Agency seeking funding for construction material haul study and pilot project for use of LNG locomotive vs. diesel powered (letter in draft stage)

(include slides of LNG prototype locomotives used by BNSR, CN and Metrolink in LA. - Bruce and Loren (All Aboard WA)

Preparation of materials to submit to King County Council's Eastside Regional Rail meeting on March 6 – Bruce

Eastside Rail Now update to Bellevue City Council and ETP – Will Knedlik

Background handout:

Rails with Trails presentation, Sonoma Marin rail and trail update

General discussion with interested parties -

(Tulalip Tribes, City of Bothell, U.W. and Cascadia College, Snohomish B.I.K.E.S., equestrian groups?)

Karen Guzak <Karen@karenguzak.com>
To: Doug Engle <dengle76@comcast.net>, kathy@marketingphilharmonic.com

Thu, Apr 4, 2013 at 2:25 PM

Cc: Elizabeth Churchill <echurchill@discovery.org>, Bruce Agnew <bagnew@discovery.org>, Larry Bauman <bauman@ci.snohomish.wa.us>, Les Rubstello <psakayk@gmail.com>, Loren Herrigstad <lbhrgstd@isomedia.com>, Ann Stanton <stanton@ci.snohomish.wa.us>, Peter Camp <peter.camp@co.snohomish.wa.us>

This is an important discussion, and an update on the injunction is appropriate...also a request for letters of support.

I'll have to go back to my Council to get authorization to support the STB action to stop Kirkland from removing the rails...also our City Attorney will have to weigh in. As you recall, we did send a letter to Kirkland some time ago requesting that they keep the rails, so I imagine we will support the legal effort to stop Kirkland.

I'm going to CC Larry, Ann, and Peter with this reply so that have a chance to think about it before the meeting tonight.

See you tonight.

Karen Guzak

From: Doug Engle [mailto:dengle76@comcast.net]
Sent: Thursday, April 04, 2013 1:01 PM
To: kathy@marketingphilharmonic.com
Cc: Elizabeth Churchill; Bruce Agnew; Karen Guzak; Les Rubstello; Loren Herrigstad
Subject: Re: items for agenda - STB Support Letter

All,

I am not sure where you all want to handle the injunction and STB filing discussion or at all, but we've never intentionally dodged the topic before.

Ballard will need our support in front of the STB, and we have about 30-days to pull additional letters together.

We need letters from as many government agencies, economic development, chambers of commerce, etc.

ECRR is working the private business side as well.

Quantity and letterhead is as important as what is said on one page.

STB support letters addressed to:

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Doug
mobile: +1.425.891.4223
Skype: dengle58

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Tuesday, February 19, 2013 3:03 PM
To: Richard Leahy
Cc: Les Rubstello; Karen Guzak; Kathy Cox
Subject: Eastside Community Rail - Business Plan
Attachments: EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; 4.
_Discussion_of_Eastside_Rail_Corridor_.pdf; ATT04988.txt

Importance: High

Rich,

The attached business plan has been conformed to meet the requirements set forth at the last city council meeting. We look forward to our Thursday 9:30 meeting to review this in further detail, including the proprietary and confidential detailed financial model. Would you be so kind as to print copies for the council tonight as we will be providing 3-minute updates addressing this.