

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

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**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**

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**THE REGIONAL PARTIES' REPLY TO  
BTR AND ECR'S MOTION FOR PROTECTIVE ORDER  
AND REQUEST FOR SUBPOENA TO KATHY COX**

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Communications with respect to this pleading should be addressed to:

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Hunter Ferguson  
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Counsel for City of Kirkland, Washington

Counsel for King County, Washington and  
Central Puget Sound Regional Transit Authority

Dated: January 28, 2014

235375  
235376  
ENTERED  
Office of Proceedings  
January 28, 2014  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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BTR AND ECR'S MOTION FOR PROTECTIVE ORDER  
AND REQUEST FOR SUBPOENA TO KATHY COX**

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The Regional Parties reply to BTR and ECR's motion for a protective order as follows:

1. In its Reply of December 6, 2013, BTR presented new allegations about shippers and financial support that were not included in BTR's Petition of April 3, 2013.
2. Instead of rejecting these improperly submitted materials and inviting BTR to file a new petition, the Board, on January 15, 2014, accepted BTR's Reply and gave the Regional Parties a short interval (until February 14) to take discovery about BTR's new allegations.
3. The Regional Parties immediately sought discovery.
4. In the discovery orders previously entered in this matter (Orders of May 17 and Aug. 22, 2013) the Board recognized that discovery of a nonparty was warranted where the nonparty had expressed an interest in BTR's petition and BTR's petition rested on allegations about the nonparty. The Regional Parties' new discovery requests to nonparties and proposed form subpoenas seek information related to the statements included in letters submitted to the

Board on behalf of these nonparties, as well as BTR's representations about their demand for rail service or willingness to provide financial support to BTR. The Regional Parties should be permitted to take discovery of nonparties consistent with earlier discovery in this matter.

5. The Regional Parties seek discovery of several nonparties that were not included in BTR's April 3 Petition – where BTR was supposed to present its case-in-chief. The Regional Parties' earlier discovery efforts were driven by the content of that April 3 filing. Their new discovery requests are driven by BTR's December 6 filing.

6. With the exception of ECR, *none of the nonparties has objected* to the Regional Parties' request for issuance of subpoenas, and some have begun to produce documents voluntarily.

7. The requests to BTR (Exhibit 1) either seek information about the new allegations in BTR's December 6 Reply or are follow-up requests for materials that the Board previously ordered BTR to produce in the discovery order of August 22, 2013, but which BTR continues to withhold. For example, the Regional Parties request BTR's 2013 financial statement, records reflecting 2013 car movements on the Freight Segment, and communications between BTR and its newly identified shippers and financial supporters such as RJB Wholesale, Inc., CT Sales, Inc., Aggregates West, Coastal Community Bank, AmericanWest Bank, and WATCO Companies, LLC.

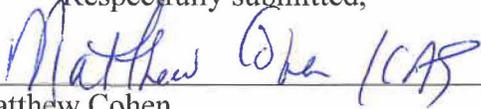
8. The Regional Parties inadvertently omitted Kathy Cox from their earlier filed motion for subpoenas, and hereby request that the Board issue the attached subpoena to Ms. Cox (Exhibit 2). Ms. Cox is believed to have information relevant to BTR's rail service plan. Doug Engle's deposition testimony (Exhibit 3) and emails produced by ECR (Exhibit 4) reveal that Ms. Cox has played an integral role in the development of BTR's rail service plan and strategy in

these proceedings. According to Mr. Engle, Ms. Cox would run the excursion train service featured prominently in BTR and ECR's plan. BTR and ECR do not deny that Ms. Cox has pertinent information. Their attempt to block the Regional Parties from taking discovery of her bolsters the Regional Parties' request to do so.

9. BTR and ECR's requests for shortened deposition time limits should be rejected. The Regional Parties have sought to schedule the non-party witnesses for short depositions, with as many as three witnesses in one day. The additional discovery will relate to matters that were not disclosed in BTR's initial petition and on which BTR affirmatively relies. Setting arbitrary time limits for completion of a deposition encourages stalling and obfuscation.

10. In conclusion, the Board has recognized, in prior discovery Orders and in the January 15 Order, that the Regional Parties are entitled to discovery to probe the bases of information presented by BTR. Despite the clear terms of the Board's Orders, BTR now attempts to avoid such discovery, apparently in the hopes of avoiding discovery of the weaknesses in its newly proffered allegations of support. In order to give effect to its January 15 Order regarding discovery, the Board should deny BTR's Motion for Protective Order and allow discovery to proceed. In order to complete discovery by the February 14 deadline, the Regional Parties respectfully request a prompt decision from the Board.

Respectfully submitted,



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Matthew Cohen  
Hunter Ferguson  
STOEL RIVES LLP  
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Email: mcohen@stoel.com  
Email: hoferguson@stoel.com

Counsel for City of Kirkland, Washington

Dated: January 28, 2014



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Charles A. Spitulnik  
W. Eric Pilsk  
Allison I. Fultz  
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1001 Connecticut Avenue, NW  
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Counsel for King County, Washington and  
Central Puget Sound Regional Transit Authority

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the of the foregoing “Regional Parties’ Reply to BTR and ECR’s Motion for Protective Order and Request for Subpoena to Kathy Cox” to be served upon counsel of record in this proceeding on January 28, 2014 via email and U.S. mail:



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W. Eric Pilsk

Dated: January 28, 2014

# EXHIBIT 1

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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**

**THE CITY OF KIRKLAND’S  
SECOND SET OF REQUESTS FOR  
PRODUCTION TO BALLARD  
TERMINAL RAILROAD  
COMPANY, LLC**

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

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

19 Pursuant to the rules of the Surface Transportation Board (“STB”) governing discovery,  
20 *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, the City of Kirkland, Washington  
21 (“Kirkland”), submits the following requests for production of documents and electronically  
22 stored information (collectively, “Discovery Requests”) to Petitioner Ballard Terminal Railroad  
23 Company, LLC. (“Ballard”). These discovery requests must be answered in writing and under  
24 by January 29, 2014 as requested in the motion served herewith but in no event later than 15  
25 days after the date of service hereof, pursuant to 49 C.F.R. §§ 1114.26(a), .27(a), and .30(b). If  
26 Ballard cannot produce copies of the Documents and Electronically Stored Information (as those

**KIRKLAND’S SECOND SET OF  
REQUESTS FOR PRODUCTION TO BALLARD - 1**

1 terms are defined below) as requested herein, Ballard is requested to produce such Documents  
2 and Electronically Stored Information for inspection and copying by 9:00 a.m. on January 27,  
3 2013, at the office of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington  
4 98101, or at such other place as mutually agreed upon by counsel. Inspection and copying will  
5 be conducted by counsel for Kirkland or its agents from time to time until completion. These  
6 discovery requests, along with Kirkland's First Interrogatories and Requests for Production, are  
7 continuing in nature and should be supplemented if information or material is discovered after  
8 the service of your responses to these requests.

### 9 DEFINITIONS

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

### KIRKLAND'S SECOND SET OF REQUESTS FOR PRODUCTION TO BALLARD - 2

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

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

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

16          5.       “Identify.”

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

22          b.       “Identify,” when used in the context of identifying an entity, association,  
23 partnership, or other organization (*e.g.*, a Person – as that term is defined herein – other than a  
24 natural person) means to state (i) the organization’s full name, (ii) the address and telephone  
25 number of its primary place of business; (iii) each address where the organization is located  
26 where you have had contact with it that is or may be material to this matter; (iv) each telephone

**KIRKLAND’S SECOND SET OF  
REQUESTS FOR PRODUCTION TO BALLARD - 3**

1 number you have used to contact the organization; (v) the state of the organization's formation,  
2 and (vi) all known natural persons who own, operate, and/or control the organization to the best  
3 of your knowledge, information, and belief and, with respect to each natural person with whom  
4 either of you has had contact, the person's (A) full name, (B) present or last known business and  
5 residence addresses, (C) present or last known business, residence, and cellular telephone  
6 numbers, and (D) present or last known employer, job title or (if the job title is unknown to you)  
7 the nature or description of the position occupied by the person.

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

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

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

**KIRKLAND'S SECOND SET OF  
REQUESTS FOR PRODUCTION TO BALLARD - 4**



1 h. No. 15 (5/1/2013 email between Doug Engle, Myles Tobin, Byron Cole, Tom  
2 Montgomery, Kathy Cox, and Ernie Wilson).

3 **RESPONSE:**

4  
5 **RFP NO. 24:** Consistent with the Board's Order of August 22, 2013 in this proceeding,  
6 please produce a summary of your revenue, expenses, and costs for the year 2013 for rail  
7 operations on the Freight Segment.

8 **RESPONSE:**

9  
10 **RFP NO. 25:** Please produce all Documents and Electronically-Stored Information  
11 reflecting the number of rail cars you moved for customers on the Freight Segment in 2013.

12 **RESPONSE:**

13  
14 **RFP NO. 26:** Please produce all Documents and Electronically Stored Information and  
15 all Communications that refer or relate to arbitration with the Port of Seattle over your  
16 compliance with the O&M and License agreements for the provision of rail service, including all  
17 communications with the Port over the need for or scheduling of arbitration proceedings.

18 **RESPONSE:**

19  
20 **RFP NO. 27:** To the extent not previously produced, please produce all  
21 Communications regarding rail service on the Line between any business you believe to be a  
22 potential shipper and you or your representatives or surrogates (including but not limited to your  
23 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

24 **RESPONSE:**

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**KIRKLAND'S SECOND SET OF  
REQUESTS FOR PRODUCTION TO BALLARD - 6**

1           **RFP NO. 28:** Please produce all Communications regarding rail service and financing  
2 between WATCO Companies, L.L.C. and you or your representatives or surrogates (including  
3 but not limited to your attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside  
4 Community Rail, LLC).

5           **RESPONSE:**

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7           **RFP NO. 29:** Please produce all Communications regarding financing of the rail  
8 reactivation plan at issue in this proceeding between AmericanWest Bank and you or your  
9 representatives or surrogates (including but not limited to your attorneys, Douglas Engle, Kathy  
10 Cox, Ernie Wilson, and Eastside Community Rail, LLC).

11          **RESPONSE:**

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13          **RFP NO. 30:** Please produce all Communications regarding financing of the rail  
14 reactivation plan at issue in this proceeding between Coastal Community Bank and you or your  
15 representatives or surrogates (including but not limited to your attorneys, Douglas Engle, Kathy  
16 Cox, Ernie Wilson, and Eastside Community Rail, LLC).

17          **RESPONSE:**

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19          **RFP NO. 34:** Please produce all Communications regarding rail service or financing of  
20 Ballard operations (including excursion trains) between EB5 Capital Partners.us, LLC and you or  
21 your representatives or surrogates (including but not limited to your attorneys, Douglas Engle,  
22 Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

23          **RESPONSE:**

1           **RFP NO. 35:** Please produce all Communications regarding rail service between General  
2 Mills and you or your representatives or surrogates (including but not limited to your attorneys,  
3 Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

4           **RESPONSE:**

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6           **RFP NO. 36:** Please produce all Communications regarding rail service between CT  
7 Sales, Inc. and you or your representatives or surrogates (including but not limited to your  
8 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).\

9           **RESPONSE:**

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11           **RFP NO. 37:** Please produce all Communications regarding rail service between RJB  
12 Wholesale, Inc. and you or your representatives or surrogates (including but not limited to your  
13 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

14           **RESPONSE:**

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16           **RFP NO. 38:** Please produce all Communications regarding rail service between  
17 Aggregates West and you or your representatives or surrogates (including but not limited to your  
18 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

19           **RESPONSE:**

20

21           **RFP NO. 39:** Please produce all Documents and Electronically-Stored Information and  
22 Communications reflecting a demand or request for rail service on the Line not encompassed  
23 within your response to another document request.

24           **RESPONSE:**

25

26

1           **RFP NO. 40:** Please produce all Documents and Electronically-Stored Information and  
2 Communications regarding any plan, study, or analysis for the construction of siding or switch  
3 tracks to provide rail service on the Line.

4           **RESPONSE:**

5  
6           **RFP NO. 41:** To the extent not encompassed in your response to another document  
7 request, please produce all Documents and Electronically-Stored Information and  
8 Communications reflecting a commitment or promise to provide financing in support of Your  
9 plan to provide rail service on the Eastside Rail Corridor, including any loan agreements,  
10 promissory notes, joint venture agreements, or instruments reflecting the conveyance or  
11 acquisition of an equity or debt position in Ballard.

12           **RESPONSE:**

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14           **RFP NO. 42:** Please produce all Documents and Electronically-Stored Information and  
15 Communications reflecting any valuation of the property rights to the Line necessary to carry out  
16 your rail service plan at issue in this proceeding.

17           **RESPONSE:**

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19           **RFP NO. 43:** To the extent not encompassed in your response to another document  
20 request, please produce all Documents and Electronically-Stored Information and  
21 Communications reflecting a commitment or promise to provide financing to acquire the  
22 property rights to the Line necessary to carry out your rail service plan at issue in this  
23 proceeding.

24           **RESPONSE:**

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**KIRKLAND'S SECOND SET OF  
REQUESTS FOR PRODUCTION TO BALLARD - 9**



1 **ANSWERS & RESPONSES**

2 DATED: \_\_\_\_\_ BY: \_\_\_\_\_

3 ITS: \_\_\_\_\_ LOCATION: \_\_\_\_\_

4  
5 \_\_\_\_\_, being first duly sworn, on oath deposes and says:

6 That \_\_\_ is the \_\_\_\_\_ of Ballard Terminal Railroad Company LLC, in the  
7 above cause of action; has read the foregoing Interrogatories and Requests for Production of  
8 Documents and the Answers and Responses thereto and has reviewed the documents produced,  
9 knows the contents thereof, and believes the answers to the Interrogatories and responses to the  
10 Requests to be true and the documents produced complete.

11 \_\_\_\_\_  
Signature

12 \_\_\_\_\_  
Print Name

13 SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2013.

14 Signature: \_\_\_\_\_

15 Name (Print): \_\_\_\_\_

16 NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_

17 My appointment expires: \_\_\_\_\_

18 **STATEMENT OF ATTORNEY**

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

22 DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

23  
24 \_\_\_\_\_, counsel for  
25 Petitioner Ballard Terminal Railroad Company LLC  
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing DISCOVERY REQUESTS were served on  
3 Counsel of Record in this proceeding by First Class Mail and Email on January 17, 2014:

4 DATED at Seattle, WA this 17th day of January 2013

5   
6 Hunter Ferguson

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# EXHIBIT 2

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**

**SUBPOENA TO KATHY COX TO  
TESTIFY IN A DEPOSITION AND  
PRODUCE DOCUMENTS IN A  
PROCEEDING BEFORE THE  
SURFACE TRANSPORTATION  
BOARD**

**DATE TO PRODUCE  
DOCUMENTS:  
January 29, 2014**

**DATE OF DEPOSITION:  
February 13, 2014 at 9:00 a.m.**

To: Kathy Cox  
1204 Kirkland Avenue  
Kirkland, WA 98033-6323  
Phone: (425) 827-3311  
Phone: (425) 822-3925

Kathy Cox  
Marketing Philharmonic  
218 Main Street  
Kirkland, WA 98033  
Phone: (425) 822-3925  
kathy@marketingphilharmonic.com  
kathy.com@escrail.org

Pursuant to 49 U.S.C. § 721(d), 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 FEBRUARY 13, 2014**, or such other place and time as the parties may agree, then and there to testify at the request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority (collectively, “the Regional Parties”), in the above-entitled matter, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by the Regional Parties’ attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s for exemption from regulation under 49 U.S.C. § 10902 to reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the “Line”) and to partially vacate the NITU Order issued for the Line.

Your testimony shall be subject to continuance or adjournment from time to time or place to place until completed and is to be taken for the reason that you will give evidence relevant to Ballard's petitions. Your testimony will be recorded by verbatim transcript.

YOUR ARE ALSO COMMANDED to produce the items described in Attachment A by **9:00 a.m. on JANUARY 29, 2014** to the offices of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101, or at such other time and place as the attorneys for the Regional Parties and you agree.

DATED: January \_\_, 2014.

STOEL RIVES LLP

---

Matthew Cohen, WSBA No. 11232

[mcohen@stoel.com](mailto:mcohen@stoel.com)

Hunter Ferguson, WSBA No. 41485

[hoferguson@stoel.com](mailto:hoferguson@stoel.com)

Attorneys for the City of Kirkland, Washington

## ATTACHMENT A

1. All communications and correspondence between you and representatives of Ballard Terminal Railroad Company, L.L.C. ("Ballard"), or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on a section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA (the "Line"), including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard representatives.
2. All communications and correspondence between you and representatives of Eastside Community Rail, L.L.C. ("ECR"), relating to Ballard's and ECR's proposals to reinstate rail service on the Line, including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard or ECR representatives.
3. All communications and correspondence between you and any potential shipper on the Line.
4. All documents, studies, plans, or analyses relating Ballard's and ECR's proposals to reactivate rail service on the Line.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned persons on January \_\_, 2014 in the manner noted below.

DATED at Seattle, WA this 17th day of January 2014.

\_\_\_\_\_  
Leslie Lomax, Stoel Rives LLP, Practice Assistant

Individual or Entity Served	Method of Service or Delivery
Kathy Cox 1204 Kirkland Avenue Kirkland, WA 98033-6323 Phone: (425) 827-3311 Phone: (425) 822-3925	X U.S. Mail __ Hand Delivery/Messenger __ Email __ Facsimile
Kathy Cox Marketing Philharmonic 218 Main Street Kirkland, WA 98033 Phone: (425) 822-3925 kathy@marketingphilharmonic.com kathy.com@escrail.org	X U.S. Mail __ Hand Delivery/Messenger X Email __ Facsimile
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<p>Charles A. Spitulnik  W. Eric Pilsk  Allison Fultz  Kaplan Kirsch &amp; Rockwell LLP  1001 Connecticut Avenue, NW, Suite 800  Washington, DC 20036  <i>Attorneys for King County and Sound Transit</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivery/Messenger  <input checked="" type="checkbox"/> Email  <input type="checkbox"/> Facsimile</p>
<p>Jordan Wagner  Jennifer Belk  Central Puget Sound Regional  Transit Authority  401 S. Jackson Street  Seattle, WA 98104  <i>Attorneys for Central Puget Sound Regional  Transit Authority</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivery/Messenger  <input checked="" type="checkbox"/> Email  <input type="checkbox"/> Facsimile</p>

# EXHIBIT 3

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             )  
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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

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

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

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

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?

1 A. I've turned over the documents that I have. I  
 2 actually did look for e-mails and didn't see any. And I  
 3 have had phone calls primarily in the fourth quarter 2012.  
 4 Oh --  
 5 Q. Let me ask this again because I'm a little bit  
 6 confused. Just listen to what I'm asking, please. Have  
 7 you had any written communications since June 2011 with  
 8 members of the King County Council or their staff?  
 9 A. Yes.  
 10 Q. And did you search for any of those written  
 11 communications?  
 12 A. Yes.  
 13 Q. And did you find any?  
 14 A. I don't believe that I found any e-mail  
 15 communication. I believe I found one document that I know  
 16 that was provided. And I just recalled that I had one  
 17 meeting with Larry Phillips and Kathy Cox, maybe March of  
 18 this year.  
 19 Q. Other than -- which document are you referring  
 20 to, if you can recall?  
 21 A. I don't recall off the top of my head. It would  
 22 have been a standard document that would, for example, be  
 23 in the business plan or that would be printout of a  
 24 PowerPoint. Nothing special.  
 25 Q. Okay. Have you had any written communications

1 during the relevant time period, which is again, June 2011,  
 2 to the present with representatives of Sound Transit?  
 3 A. Yes. In fourth quarter, I exchanged some e-mails  
 4 with Michael Williams regarding the East Link area as it  
 5 relates to the rail yard options that were before them.  
 6 Provided him some of the standard docs that we had  
 7 available to us at that time.  
 8 Since then, I saw Ric Ilgenfritz at one of the  
 9 King County ERC RAC meetings and said that we had been  
 10 trying to get ahold of David Beal to no avail. I tried  
 11 contacting David Beal directly. Rich Leahy, the city  
 12 manager of Woodinville asked David Beal to call me. Tom  
 13 Hansen of Woodinville asked David Beal to call me. David  
 14 Beal didn't want to call me. That's it.  
 15 Q. So other than those that you've described, you've  
 16 had no other written communications with Sound Transit?  
 17 A. Correct.  
 18 Q. With respect to Number 15, which asked for all  
 19 communications between you and representatives of Snohomish  
 20 County, you referenced Mr. Camp earlier.  
 21 A. Mm-hm (answers affirmatively).  
 22 Q. So it's correct that you have had written  
 23 communications with Snohomish County reps since June 2011?  
 24 A. Yes, it is.  
 25 Q. And did you search for those communications in

1 response to the discovery requests?  
 2 A. Yes, I did.  
 3 Q. And did you find anything?  
 4 A. I believe this is another one that my attorneys  
 5 in Chicago objected to providing. I provided the  
 6 documents. I would say that 80 percent of the conversation  
 7 has been around a trail between Brightwater and Maltby.  
 8 Q. So you found documents, communications with  
 9 representatives of Snohomish County, but some of those you  
 10 haven't produced?  
 11 A. I believe there are some e-mails that exist, I  
 12 haven't searched for them. But I believe there are some  
 13 e-mails that exist between, it would be primarily Steve  
 14 Thompson, Steve Dickson, would be my two primary contacts.  
 15 And again, those have been primarily related to the trail.  
 16 MR. MONTGOMERY: Again, Eastside has made it  
 17 clear, and I know you know this, that it objected to and  
 18 didn't produce documents related to the freight segment.  
 19 Q. (By Mr. Ferguson) Do you have a contract with  
 20 Snohomish County to construct a trail or maintenance of way  
 21 road alongside the freight segment?  
 22 A. No.  
 23 Q. Do you have a contract with any other public  
 24 agency to construct a maintenance of way road or a trail  
 25 alongside the freight segment?

1 A. No.  
 2 Q. Number 16 asks for all communications related to  
 3 the line or the freight segment with reps of the city of  
 4 Snohomish. Have you had any written communications with  
 5 Snohomish city reps since June 2011?  
 6 A. Given that you've already subpoenaed all of their  
 7 e-mail, you would have that. Any other records have  
 8 already been provided.  
 9 Q. That's not my question, though. Have you had  
 10 communications with Snohomish County, excuse me, City of  
 11 Snohomish representatives since June 2011?  
 12 A. Yes.  
 13 Q. Okay. When you searched for documents in  
 14 response to Kirkland's discovery requests, did you search  
 15 for communications with City of Snohomish reps?  
 16 A. No.  
 17 Q. Do you believe that you have in your possession,  
 18 either hard copies, stored in a computer or an e-mail,  
 19 communications with the City of Snohomish reps?  
 20 A. Not as it relates to e-mail.  
 21 Q. So do you believe you have hard copies of  
 22 communications with City of Snohomish reps?  
 23 A. I don't understand your question.  
 24 Q. Okay. I'll rephrase it.  
 25 Maybe I misunderstood your answer, so I'm going

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1 A. Yes.

2 Q. And do you know what its debt amount is as of

3 today, even if you've got a rough estimate?

4 A. 600.

5 Q. When is the last time you ran the numbers?

6 A. December 31st.

7 Q. Okay. But these debts continue to accrue

8 interest?

9 A. Yes.

10 Q. Do you have a document that shows an income

11 schedule for ECR or revenue schedule?

12 A. No.

13 Q. Is that because ECR has not had any revenue to

14 date?

15 A. ECR has accrued revenue from Ballard Terminal for

16 freight operations, but again, we'll reconcile that at the

17 end of the year. It's not material right now.

18 Q. You have a small accounts receivable?

19 A. Yes.

20 Q. Okay. Is there anything other than the \$10 per

21 train car from Ballard that could constitute revenue stream

22 for this year?

23 A. No, and I would like to add just one very simple

24 concept, debt is a lot cheaper than equity.

25 Q. Certainly is today in the current economic times.

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1 Mr. Engle, if you could turn back to Exhibit 21.

2 A. Mm-hm (answers affirmatively).

3 Q. This is the agreement with EB5.

4 A. Mm-hm (answers affirmatively), yes.

5 Q. It's correct that EB5 holds an option with ECR,

6 and I guess, hold that question for a second.

7 Did EB5 also make a contribution to ECR?

8 A. Not yet.

9 Q. And why didn't it, if there's a reason, or why

10 hasn't it?

11 A. We need to get further down the path in

12 establishing an excursion business before private equity is

13 appropriate.

14 Q. Okay. When you say "we," do you mean ECR or do

15 you mean --

16 A. ECR.

17 Q. -- a separate entity?

18 A. ECR needs to get further down the path in the

19 maintenance of way for the railroad before it can attract

20 private equity.

21 Q. Okay. But ECR isn't -- ECR doesn't have any

22 plans to run an excursion train?

23 A. No, but it's my job to make sure that the track

24 is in condition to run an excursion train.

25 Q. And so, then, how will ECR benefit from having an

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1 excursion train run?

2 A. They will contribute to the maintenance of way

3 costs, and I will get an 11 percent margin on the business.

4 That's the gross amount, that's not the net amount.

5 Q. ECR is going to take 11 percent of the gross

6 revenues of any excursion train?

7 A. Less the maintenance costs. Up to 50 percent.

8 It gets complicated.

9 Q. Do you have a contract for that?

10 A. No.

11 Q. That's just an agreement between you and Kathy

12 Cox?

13 MR. MONTGOMERY: Object to the form.

14 THE WITNESS: It's a general agreement as to

15 how we're doing this, yes.

16 Q. (By Mr. Ferguson) Agreement with whom, who is

17 involved in the agreement?

18 A. Kathy Cox.

19 Q. Anyone else?

20 A. No, other than Byron who has agreed to provide an

21 engineer and conductor.

22 Q. Okay.

23 A. And scheduling.

24 Q. Do you know if Ballard is going to take any

25 percentage of excursion train revenues?

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1 A. None other than compensation for their scheduling

2 and crews.

3 Q. Okay. Did you have to provide any assurances to

4 EB5 about the percentage of revenue ECR would take from the

5 excursion train?

6 A. There were no assurances, no.

7 Q. Is there a barrier to running excursion service

8 right now?

9 A. The track --

10 MR. MONTGOMERY: Sorry, object to the form

11 and foundation.

12 Go ahead. Thank you.

13 THE WITNESS: The track, as classified by

14 Ballard Terminal, is in excepted condition. Excepted

15 condition does not allow you to run passenger operations,

16 per Exhibit 25.

17 Q. (By Mr. Ferguson) So that's what -- there needs

18 to be at least a \$6.4 million investment, capital

19 investment in the segment to bring it up to standard to run

20 passenger service. If the number is wrong, correct me on

21 the number.

22 A. I believe the number is less than that, like

23 \$5 million instead of 6, roughly to get it up to a Class 1

24 condition and you can operate passenger rail in a Class 1

25 condition.

1 2015 legislative session?  
 2 A. Correct.  
 3 Q. Will, if Ballard accesses the line between  
 4 Woodinville and Bellevue, do you expect ECR to have any  
 5 responsibilities for maintaining the right of way on that  
 6 line?  
 7 A. Not until there's additional services required on  
 8 the line, or inside the right of way.  
 9 Q. Do you have any understanding of how Ballard will  
 10 be able to maintain the operating costs for that line in  
 11 addition to its obligations to maintain the freight  
 12 segment?  
 13 MR. MONTGOMERY: Foundation; calls for  
 14 speculation; incomplete hypothetical.  
 15 THE WITNESS: And as pointed out by Chuck  
 16 Bromley from Boise Cascade, it's all about line density.  
 17 It's all about the number of cars on the line. And any  
 18 increases in traffic make your fixed costs go down  
 19 proportional to each car. So the more cars we get on the  
 20 line, the easier it is for -- to maintain the line and make  
 21 a buck.  
 22 Q. (By Mr. Ferguson) Okay. Looking at the graph  
 23 titled "Daily" -- or staying with "Revenue" for a second.  
 24 This freight revenue line, is that a flat line?  
 25 A. It pretty much -- it's taking the existing

1 business and modestly growing it. For example, it doesn't  
 2 include introducing another lumberyard. It doesn't include  
 3 introducing Wolford. It doesn't include introducing any  
 4 other significant operation.  
 5 Q. This red square here that references commuter,  
 6 what does that refer to?  
 7 A. This financial model --  
 8 Q. Yes.  
 9 A. -- is set up to handle any of these lines of  
 10 business, and there's obviously no commuter in this  
 11 business plan. And even the graph --  
 12 Q. Is the red square just a placeholder?  
 13 A. Yes, it's a placeholder. And so is the green one  
 14 that says nonGNP. Should be nonECR.  
 15 Q. This isn't a -- there isn't a green line above  
 16 the yellow field?  
 17 A. Correct.  
 18 Q. Okay.  
 19 MR. MONTGOMERY: I haven't objected for a  
 20 while to the extent this does not involve Bellevue to  
 21 Woodinville, so I'll do that again.  
 22 Q. (By Mr. Ferguson) For daily ridership, this  
 23 graph, can you walk us through that, please?  
 24 A. Sure. Let's start with the legend. When we say  
 25 weekday, we're talking about a normal evening type of

1 excursion service. On weekends would be probably twice a  
 2 day on weekends.  
 3 Q. Is there a weekends listed in here?  
 4 A. No, there isn't. So it kind of falls under  
 5 weekday. Private would be the same as chartered, so we  
 6 expect a large portion of our business to be companies like  
 7 Microsoft, Expedia. Companies that want to have a team  
 8 meeting on the train. And want to go, you know, keep  
 9 everybody locked up off-site.  
 10 The Heritage and Centennial trains are -- the  
 11 Heritage train would be more of a docent type train talking  
 12 about the history of the area. And the cities would  
 13 provide those docents, and it would be a much lower ticket  
 14 price, family oriented, no alcohol being served, et cetera.  
 15 The Centennial train, we're thinking about  
 16 loading up as many bikes as we can throw in and taking  
 17 people up to the Centennial Trail and doing something like  
 18 that. And that would probably kick off after we've got the  
 19 cash flow break even, which is why you see the uptick  
 20 starting in year four.  
 21 Q. ECR isn't planning on running the excursion  
 22 train, correct?  
 23 A. Correct.  
 24 Q. Some other entity, Bounty of Washington, which  
 25 Kathy Cox expects to operate, is --

1 A. Yes.  
 2 Q. -- contending to run the excursion train?  
 3 So why did you come up with these numbers, then?  
 4 A. As the chief financial officer for GNP, I created  
 5 this model.  
 6 Q. Okay.  
 7 A. The ridership numbers and expectations were  
 8 created in 2010. And we were able, during the bankruptcy  
 9 process, to affirm numbers directly with the Temples for  
 10 what their ridership experience was. We also were able to,  
 11 Kathy, under a confidentiality agreement with Iowa Pacific,  
 12 was able to share her business plan, which -- or her  
 13 business concept, which they thought was the best they'd  
 14 ever seen.  
 15 And we know that from when the Temples stopped  
 16 operating in 2007, that the cruise ship business was not  
 17 reflected in the Temples' numbers. And since then, there  
 18 are 435,000 boardings a year in Seattle. And we've been  
 19 told by two vice presidents of marketing, one for Holland  
 20 America one for Princess Lines, that we should be able to  
 21 attract about 20 percent of that market.  
 22 So the Temples were running over a hundred  
 23 thousand, I believe 110 to 120 range per year. If we were  
 24 able to attract another 90,000, that means our ridership  
 25 should -- could, our market could be as high as 200,000

1 people a year. These numbers reflect growing the business  
2 to about 120,000 people, which is very conservative, but  
3 that's the way you do it with a proper ROI analysis, is  
4 make all of your assumptions conservative.

5 Q. Okay. Do any of these graphs factor in any rail  
6 movements on the line between Woodinville and Bellevue?

7 A. No.

8 Q. If there is no actual freight movement for Bobby  
9 Wolford to haul spoils out or for CalPortland to move  
10 aggregate material into Bellevue, are you aware of a viable  
11 business model to operate freight on the line between  
12 Woodinville and Bellevue?

13 MR. MONTGOMERY: Foundation; calls for  
14 speculation; incomplete hypothetical.

15 THE WITNESS: I am not aware of any other  
16 opportunities of those magnitudes.

17 Q. (By Mr. Ferguson) Are you aware of any freight  
18 shipping opportunities, other than Wolford or CalPortland,  
19 on the line between Woodinville and Bellevue?

20 MR. MONTGOMERY: Asked and answered a couple  
21 of times.

22 THE WITNESS: I believe that there is reason  
23 to believe that if the freight service was there, that a  
24 sustainable trans-load facility would be successful.

25 Q. (By Mr. Ferguson) Okay.

1 MR. FERGUSON: We're done with that line of  
2 questioning, so let's just take a couple-minute break,  
3 figure out where we are and reconvene.

4 (Recess taken from 5:22 to 5:29 p.m.)

5 (Exhibit Number 31 marked.)

6

7 EXAMINATION - (Continuing)

8 BY MR. FERGUSON:

9 Q. Mr. Engle, I've just handed you what's been  
10 marked as Exhibit 31.

11 A. Mm-hm (answers affirmatively).

12 Q. The bottom part of this document, it reads that  
13 there's e-mail from you to Kurt Triplett Joan McBride,  
14 copied to Kathy Cox and David Farmer dated November 7,  
15 2012?

16 A. Mm-hm (answers affirmatively).

17 Q. Do you recognize this e-mail?

18 A. Yes.

19 Q. And the e-mail references a brief PowerPoint  
20 presentation introducing ECR. Are those the documents that  
21 are attached to this exhibit?

22 A. Mm-hm (answers affirmatively), yes.

23 Q. In the first, on the first page here, the second,  
24 or I guess the third paragraph, it reads, "ECR intends to  
25 reactivate the line between Woodinville and Bellevue as

1 soon as possible for freight and excursion service. We  
2 have freight business coming together in Bellevue,  
3 including Safeway who's 5 year service buyout is coming to  
4 an end. Safeway continues to receive their bakery flour in  
5 Ballard via rail and trucking it to their Bellevue bakery.  
6 Additionally, there are very large construction projects  
7 where rail service can reduce truck traffic, favor the  
8 environment, and provide substantial cost savings."

9 Did you write this paragraph that I just read in  
10 this e-mail to Kurt Triplett?

11 A. Yes.

12 Q. Okay. In November of 2007, was it ECR's  
13 intention to reactivate the line between Woodinville and  
14 Bellevue?

15 MR. COHEN: 2012.

16 Q. (By Mr. Ferguson) Excuse me, 2012?

17 A. That was our initial intention coming in to our  
18 business planning.

19 Q. Okay. Was it your intention to reactivate  
20 freight service in partnership with Ballard Terminal  
21 Railroad, similar to the agreement, operating agreement you  
22 have with Ballard for the freight segment?

23 A. Yes.

24 Q. So you were going to have Ballard actually run  
25 the cars on the line between Woodinville and Bellevue?

1 A. Yes.

2 Q. Okay. Do you know whether you had any  
3 conversations with Mr. Cole that you would approach the  
4 City of Kirkland about running freight before this e-mail  
5 went out?

6 A. Try that again.

7 Q. Sure. Do you recall having any conversations  
8 with Mr. Cole about running, about his company running  
9 freight on the Woodinville-Bellevue line before you  
10 e-mailed Kurt Triplett on November 7th?

11 A. Yes.

12 Q. Okay. And was he aware that you would be  
13 contacting the City of Kirkland and other public agencies  
14 and private businesses?

15 MR. MONTGOMERY: Objection; foundation.

16 THE WITNESS: Yes, that we both would be.

17 Q. (By Mr. Ferguson) Okay. Thank you.

18 (Exhibit Number 32 marked.)

19 Q. (By Mr. Ferguson) Mr. Engle, what's been marked  
20 as Exhibit 32 has just been handed to you. This is an  
21 e-mail thread starting with a message from Kurt Triplett to  
22 you dated November 16th. Below that is an e-mail from you  
23 to Kurt Triplett and Sung Yang of King County of the same  
24 date.

25 In the e-mail that reads from your Comcast

1 Mr. Wolford.  
 2 Q. (By Mr. Ferguson) Okay. If you turn to Page 2  
 3 of the letter, it's marked Page 29 in the bottom right-hand  
 4 corner. The last sentence of the first paragraph reads,  
 5 "We estimate the volume of these projects at over 3 million  
 6 cubic yards of construction spoils over the next several  
 7 years."

8 Do you have an understanding of where that  
 9 estimate of 3 million cubic yards of construction spoils  
 10 came from?

11 A. As I said previously, we started with the Lincoln  
 12 Center estimate and extrapolated that to other projects,  
 13 then talked to Wolford's people. I believe, Ernie talked  
 14 to Jack Miller, in particular, and -- about the volumes,  
 15 and then talked to Bobby about it. And -- who confirmed  
 16 our estimate.

17 Q. So is this estimate of 3 million cubic yards  
 18 yours and Mr. Wilson's estimate?

19 MR. MONTGOMERY: Objection; foundation and  
 20 form.

21 THE WITNESS: I'd say in collaboration with  
 22 Bobby Wolford.

23 Q. (By Mr. Ferguson) Okay. So is it fair to say  
 24 that it's an estimate based on the work of both Eastside  
 25 Community Rail and Wolford Trucking and Demolition and

1 whoever its employees are?

2 A. Yes.

3 Q. Okay.

4 MR. FERGUSON: Mr. Cohen has a set of  
 5 questions he would like to ask specifically on behalf of  
 6 Kirkland.

7 MR. MONTGOMERY: You're going to have two  
 8 people doing questions?

9 MR. COHEN: I was looking through documents  
 10 while Hunter was presenting his testimony. I don't have  
 11 very much. The answer is yes.

12 MR. MONTGOMERY: Actually, this is like the  
 13 second time in my -- this is the second time, I remember  
 14 the first time. I remember the lawyers, they said exactly  
 15 what you said and two hours later --

16 MR. COHEN: Mr. Montgomery, I promise you we  
 17 won't be at my questions -- I'll promise 20 minutes, but I  
 18 think I can do better.

19 MR. MONTGOMERY: Go ahead.

20 MR. COHEN: Thank you.

21 THE WITNESS: I can second that.

22 MR. COHEN: Yes, I promise you as well.

23

24 E X A M I N A T I O N

25 BY MR. COHEN:

1 Q. Mr. Engle, I want to ask you a couple of  
 2 questions about your negotiations with Woodinville over the  
 3 sale of an easement to widen the SR202 bridge.

4 A. Yes.

5 Q. You refer to that a couple of times, I think it  
 6 was this morning.

7 A. Yes.

8 Q. And as I understand it, in order to complete that  
 9 project, Woodinville needed property rights from both  
 10 Eastside Community Rail and the Port?

11 A. Yes.

12 MR. MONTGOMERY: Would you please pause and  
 13 allow me time to think.

14 Thank you.

15 MR. COHEN: And I'm going to ask Katie to  
 16 mark an exhibit.

17 (Exhibit Number 33 marked.)

18 MR. COHEN: Is it 33?

19 THE COURT REPORTER: Yes.

20 Q. (By Mr. Cohen) Mr. Engle, I want to call your  
 21 attention to the second e-mail on this page, the one that  
 22 says, "Begin forwarded message" from you to Joe McWilliams,  
 23 Richard Leahy, Bcc, Kathy Cox and Ernie Wilson?

24 A. Yes.

25 Q. You with me?

1 And you are -- well, tell me what's going on in  
 2 that e-mail?

3 A. The Port of Seattle wanted \$6.8 million for the  
 4 easement.

5 Q. I'm sorry, 6 --

6 A. For fee.

7 Q. \$6.8 million from Woodinville?

8 A. For the fee.

9 Q. For the fee. To -- to acquire an interest in the  
 10 freight segment?

11 A. Correct.

12 Q. Okay.

13 A. And Kathy and I went down and met with Joe  
 14 McWilliams.

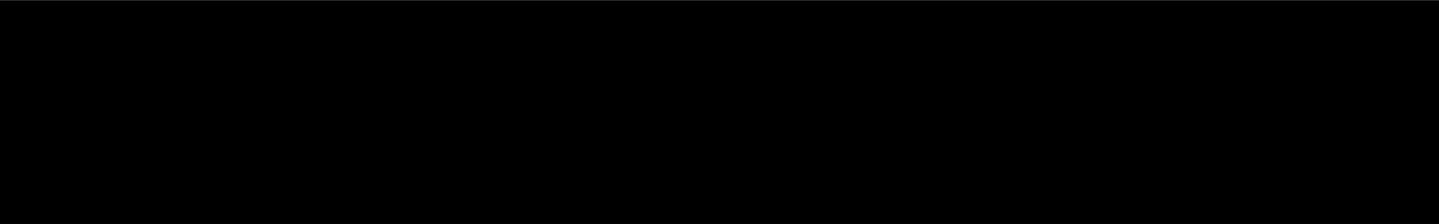
15 Q. Who is Joe McWilliams?

16 A. Joe McWilliams is the director of real estate for  
 17 the Port of Seattle. And with the intention of discussing  
 18 this, and I also believe accepting funds, public funds to  
 19 rehabilitate the track. One of the items was to get them  
 20 to move off of the 6.8 million to -- so Woodinville could  
 21 proceed with getting their bridge done.

22 It's my understanding, from Woodinville, that  
 23 they had an option of 6.8 million, another option was 6  
 24 million, and that to move their water pump station, sewage  
 25 pump station, that that was 2 million. So --

<p style="text-align: right;">Page 206</p> <p>1 Q. These are all payments to the Port?</p> <p>2 A. These all would have been -- no, alternatives</p> <p>3 that Woodinville had available to it in order to complete</p> <p>4 the bridge.</p> <p>5 Q. By relocating the bridge in some fashion?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. I understand.</p> <p>8 A. So to start the negotiations, to try and help</p> <p>9 Woodinville to get this done, because we -- I think</p> <p>10 everybody in this room knows that the Port is trying to</p> <p>11 maximize the dollars it gets out of the corridor, that what</p> <p>12 we would do is come up with a number that would keep the</p> <p>13 Port engaged, that it was going to get some money, and that</p> <p>14 would be attractive to the City of Woodinville so that we</p> <p>15 could get some meaningful discussions underway.</p> <p>16 So we chose a number that was 50 percent of</p> <p>17 Woodinville's lowest cost option, and the notion was, per</p> <p>18 the conversations with Joe McWilliams was that we could</p> <p>19 split the money, whatever that would be, and that why don't</p> <p>20 we go back to Woodinville with the number of \$1 million</p> <p>21 because that would be half as much as their best priced</p> <p>22 option, and see if we could get into conversation.</p> <p>23 Q. So Eastside Community Rail would split the</p> <p>24 million dollars with the Port, yes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. COHEN: You're welcome to it, if you</p> <p>2 want.</p> <p>3 MR. MONTGOMERY: Let me agree, 34, we're</p> <p>4 only addressing the face page.</p> <p>5 MR. COHEN: 34 is only the face page.</p> <p>6 Q. (By Mr. Cohen) So I'm referring to the e-mail in</p> <p>7 the middle of the page that says: "Begin forwarded</p> <p>8 message."</p> <p>9 A. Mm-hm (answers affirmatively).</p> <p>10 Q. All right. So this is you, once again, trying to</p> <p>11 make this deal happen?</p> <p>12 A. Yes.</p> <p>13 Q. And the last e-mail was March 21st, now it's a</p> <p>14 week later, am I correct?</p> <p>15 A. Yes. I'm sorry, it's actually two weeks later.</p> <p>16 Q. Well, it was March, the e-mail we were looking at</p> <p>17 in Exhibit 33 was March 21st, and we're now talking</p> <p>18 March 28th, correct me if I'm wrong?</p> <p>19 A. 21, 28, you're right. Where am I seeing, oh,</p> <p>20 it's the year, sorry. It's getting late.</p> <p>21 Q. So this e-mail recites that you spoke with Joe</p> <p>22 today and they were waiting for -- and you would like to</p> <p>23 see something from the city. Joe is --</p> <p>24 A. Mm-hm (answers affirmatively).</p> <p>25 Q. -- Joe is Joe McWilliams?</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. And your participation in this venture would be</p> <p>2 to convey to Woodinville an easement over a portion of the</p> <p>3 freight segment?</p> <p>4 A. Yes.</p> <p>5 Q. Remind me, remind me, Mr. Engle, how much did GNP</p> <p>6 pay for the entire freight segment?</p> <p>7 A. \$10.</p> <p>8 Q. That's what I recall, but I wasn't sure.</p> <p>9 I want to mash --</p> <p>10 A. Ask how much the Port of Seattle paid,</p> <p>11 \$450 million tax credit, plus \$81 million, and the third</p> <p>12 party operator was a mandatory part of that. They had to</p> <p>13 give it away.</p> <p>14 MR. COHEN: Let's mark one more.</p> <p>15 (Exhibit Number 34 marked.)</p> <p>16 Q. (By Mr. Cohen) So I'm going to show you,</p> <p>17 Mr. Engle, what's been marked as Exhibit 34, and I'm</p> <p>18 directing your attention to, looks like the next e-mail in</p> <p>19 that chain, this is from you to Richard Leahy, Cc Joe</p> <p>20 McWilliams, Bcc Kathy Cox, Ernie Wilson. You with me?</p> <p>21 A. How come (indicating)? There's something on the</p> <p>22 back here. Is this on the back of yours.</p> <p>23 MR. COHEN: No, that's probably my original.</p> <p>24 I'm sorry, the back is irrelevant. If you --</p> <p>25 MR. MONTGOMERY: Hold on. Hold on.</p>	<p style="text-align: right;">Page 209</p> <p>1 A. Yes.</p> <p>2 Q. I gather that the city had not yet responded to</p> <p>3 your million-dollar-split-the proceeds offer?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And then, you forwarded that e-mail to Les</p> <p>6 Rubstello, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And who is Les Rubstello?</p> <p>9 A. Council member for City of Woodinville.</p> <p>10 Q. And he's a member of your Eastside TRailway</p> <p>11 Alliance?</p> <p>12 A. Yes, but this -- that wasn't the reason for</p> <p>13 sending it to him. It's in his role, his capacity as</p> <p>14 council member.</p> <p>15 Q. I see. And you're trying to enlist his help to</p> <p>16 make the deal happen?</p> <p>17 MR. MONTGOMERY: Object to the form.</p> <p>18 THE WITNESS: We had been advised at various</p> <p>19 government entities that sometimes the only way to get</p> <p>20 things done in the city of Woodinville is to go through the</p> <p>21 city council, because of difficulties in dealing with</p> <p>22 staff.</p> <p>23 Q. (By Mr. Cohen) Right.</p> <p>24 MR. COHEN: Okay. One more exhibit to mark.</p> <p>25 (Exhibit Number 35 marked.)</p>

# EXHIBIT 4



---

**From:** Kathy Cox [<mailto:kathy.cox@escrail.org>]  
**Sent:** Tuesday, March 12, 2013 10:41 PM  
**To:** Byron Cole  
**Cc:** 'Doug Engle'; 'Ernest F. Wilson'  
**Subject:** Statement for King County Meeting

Byron,

Below and attached is your prepared statement for tomorrow's Eastside Rail Corridor Regional Advisory Council meeting. It starts promptly at 9 a.m. but public comments aren't until 10:40. The meeting is at the same place: the Selig building at 5<sup>th</sup> and Yesler (300 5<sup>th</sup> Ave.).

I would also like to schedule some time with you to discuss media preparations that will be upcoming.

Thanks for your support to make this corridor viable for multiple uses.

Best,

Kathy Cox  
Excursion Train Managing Director  
[kathy.cox@EsCRail.org](mailto:kathy.cox@EsCRail.org)  
office: 425-822-3925  
cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

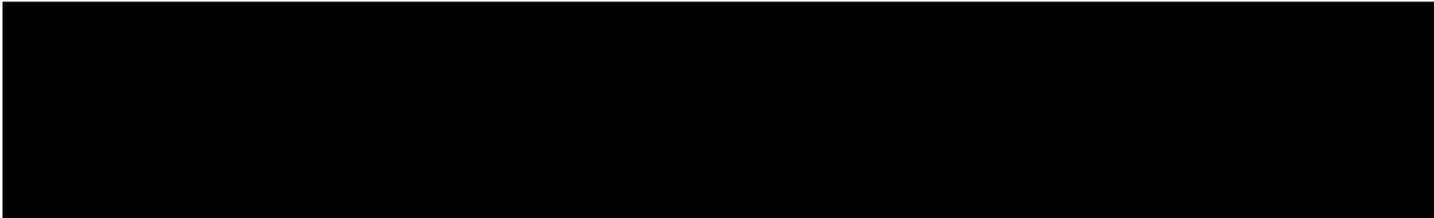
In the last Regional Advisory Council meeting I heard the Honorable Mayor McBride say that she took Kirkland's regional responsibility seriously and that Kirkland supports dual rail and trail use.

But in Kirkland's recently published rail removal specifications it states, "The demographics and location of this stretch of Railroad were never favorable to continue freight service or initiate additional passenger or commuter operations throughout the corridor. This memorandum gives both a synopsis and detailed

description of the Railroad materials on site throughout the Kirkland segment of the route."

We realize that Kirkland started their process three years ago. Things have changed. King County just finalized their portion of the purchase of the corridor. Traffic and carbon emissions are continuing to grow. And there has been a change in ownership in the rail rights but I have still been running the rail. We appreciate the we caught Kirkland at the last minute but we believe this corridor is viable for multiple uses that benefit the entire community right now not just when I am dead and gone. Although it is a compromise, we are willing to help lay a temporary trail on top of the existing rail so Kirkland residents can start enjoying their rail this summer, many months before the goal. Please let us work together to make the best use of this corridor.

Please contact me by Friday if you are interested.



---

**From:** Kathy Cox [<mailto:kathy.cox@escrail.org>]  
**Sent:** Friday, May 03, 2013 3:11 PM  
**To:** 'Byron Cole'  
**Cc:** 'Doug Engle'  
**Subject:** Statement

Byron,

If any media call you this is what we recommend you say,

The judge felt she didn't have the jurisdiction to address the order so she moved it to the Surface Transportation Board (STB). Kirkland has agreed to keep the tracks in place as long as we file a motion for an injunctive order to the STB by May 8<sup>th</sup>. Our filing is expected by May 8<sup>th</sup>."

Best,

Kathy

Kathy Cox <kathy.cox@escrail.org>  
To: Doug Engle  
RE: FW: Ballard Terminal Railroad Company v. City of Kirkland

7 May 2013 10:40 AM



Doug....this are my answers. If you agree I can send to Tom.

We could have Byron talk to Raechel and give him these emails.

Tom and Doug,

Below are my answers

---

**From:** Tom Montgomery [mailto:Tom@montgomeryscarp.com]  
**Sent:** Tuesday, May 07, 2013 10:26 AM  
**To:** 'Doug Engle'; kathy.cox@escrail.org  
**Cc:** Myles Tobin  
**Subject:** FW: FW: Ballard Terminal Railroad Company v. City of Kirkland

I will leave it to those closer to the action to decide whether and how to respond to Ms. Dawson's follow up questions.

---

**From:** Raechel Dawson [mailto:rdawson@kirklandreporter.com]  
**Sent:** Tuesday, May 07, 2013 10:21 AM  
**To:** Tom Montgomery  
**Subject:** Re: FW: Ballard Terminal Railroad Company v. City of Kirkland

Thank you for getting back to me Mr. Montgomery.

Are you able to tell me the main points you hope to address in the injunctive relief?

We want to keep the status quo with the rails intact until the STB makes a decision on reactivating the line. There would be \$10 million in damages if Kirkland removes the rail before the reactivation decision.

Also, forgive me for my ignorance, but I'd like to confirm if I have everything straight: Ballard filed a petition asking for carrier rights at the Snohomish - Woodinville line to the STB but also to acquire rail materials if Kirkland were to remove their rail materials in their 5.75 mile section.

Ballard Terminal Railroad already holds the freight lease from Snohomish to Woodinville from Eastside Community Rail. Ballard Terminal Railroad is petitioning to reactivate the line from Woodinville to Bellevue for the public interest of removing trucks and promoting commerce with new freight business.

In addition, Ballard TRC and Eastside Community Rail will now seek injunctive relief on the removal of the rails within the Cross Kirkland Corridor span, to be filed May 8.

The freight operator, Ballard TRC, is filing for injunctive relief not Eastside Community Rail.

Is the STB then going to consider both of these requests in accordance or separately? And is this injunctive relief going to be an appeal of the NITU STB decision, and if so, does that mean there is the potential of having rail removal completely dismissed all together or is Ballard simply seeking a temporary restraining order of rail removal?

We believe that the STB will consider the injunctive relief and the reactivation separately. The STB has already given the schedule for the reactivation decision which will be no later than January 2014. The injunctive relief would be to keep the status quo of retaining the rails until the reactivation decision.

If it's easier to speak over the phone, I'd be happy to call you at your convenience.

**Raechel Dawson**  
Reporter  
Office: 425-822-9166, Ext 5052  
Internal: 36-5052  
Fax: 425-822-0141  
11630 Slater Avenue NE, Ste 9, Kirkland, WA 98034

ECR 001778

Kathy Cox <kathy.cox@escrail.org>

7 April 2013 10:39 AM



To: "Mark Miller" <ontheroadmark@yahoo.com>, "Bruce Agnew" <bagnew@discovery.org>, "Loren Herrigstad" <lbhrgstd@isomedia.com>, "Lloyd Flem" <washarp@q.com>, "Karen Guzak" <karen@karenguzak.com>, "Les Rubstello" <psakayk@gmail.com>, <stephaniemsweber@aol.com>  
Cc: "Doug Engle" <dengle2001@gmail.com>, "Byron Cole" <byroncole@comcast.net>, "Ernie Wilson" <ernie.wilson@escrail.org>  
RE: KIRO Report

---

Dear rail team,

Would any of you be willing to talk to Tim Haeck the KIRO reporter and present the other side of the story? The Burke-Gilman trail is not relevant at all. If you know of a more appropriate contact please let me know. I can contact the reporter to arrange it.

Due to legal constraints, Byron, Doug, Ernie and I should try to not comment.

Best,

Kathy Cox  
Excursion Train Managing Director  
kathy.cox@EsCRail.org  
office: 425-822-3925  
cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

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**From:** Mark Miller [mailto:ontheroadmark@yahoo.com]  
**Sent:** Saturday, April 06, 2013 9:58 PM  
**To:** Bruce Agnew  
**Cc:** Kathy Cox; Doug Engle  
**Subject:** Re: KIRO Report

Bruce,

The Tim Haeck, KIRO story, is disappointing because he did not present the other side of the story and appears to have published a press release.

Ron & Don are 3-7pm drive time commentators who I have listen to along w/ 88.5, 94.9, 570, 770, 1000, 1090, and the rest of the talk radio contingent.

In talking w/ the various media I would start w/ reporters and talk show hosts who are use to riding a commuter train in the US (NYC, CHI, PHI, DC, SFO, BOS) and/or have used them in major US cities. Europe is a different animal and not directly comparable.

My recollection is Dave Ross has presented the issue fairly in the past,

Medved is from PHI and went to Yale.

m

--- On Sat, 4/6/13, Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)> wrote:

From: Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)>  
Subject: Re: KIRO Report  
To: "Mark Miller" <[ontheroadmark@yahoo.com](mailto:ontheroadmark@yahoo.com)>  
Cc: "Kathy Cox" <[kathy.cox@escrail.org](mailto:kathy.cox@escrail.org)>, "Doug Engle" <[dengle2001@gmail.com](mailto:dengle2001@gmail.com)>, "Elizabeth Churchill" <[echurchill@discovery.org](mailto:echurchill@discovery.org)>  
Date: Saturday, April 6, 2013, 4:56 PM

Mark  
Thanks for all your help and joining us in Snohomish.

ECR 001795

Liz, if Mark is not already on list, please add him.  
Bruce

Sent from my iPhone

On Apr 6, 2013, at 1:17 PM, "Mark Miller" <[ontheroadmark@yahoo.com](mailto:ontheroadmark@yahoo.com)> wrote:

Bruce & Kathy

Going forward please put me on distribution for your trail/rail related material.

I physically spoke to Loren at AAW Oct-13th, WSDOT Oct-31st, and AAW Nov-3rd about volunteering ERC and have heard nothing.

m

--- On Sat, 4/6/13, Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)> wrote:

From: Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)>  
Subject: FW: KIRO Report  
To: "[ontheroadmark@yahoo.com](mailto:ontheroadmark@yahoo.com)" <[ontheroadmark@yahoo.com](mailto:ontheroadmark@yahoo.com)>, "[stephaniemsweber@aol.com](mailto:stephaniemsweber@aol.com)" <[stephaniemsweber@aol.com](mailto:stephaniemsweber@aol.com)>, "Jim Hamre" <[jimhamre@mindspring.com](mailto:jimhamre@mindspring.com)>, "Jim Cusick" <[jc\\_cusick@hotmail.com](mailto:jc_cusick@hotmail.com)>  
Date: Saturday, April 6, 2013, 12:33 PM

FYI  
Bruce

---

**From:** Kathy Cox <[kathy.cox@escrail.org](mailto:kathy.cox@escrail.org)>  
**Date:** Saturday, April 6, 2013 12:08 PM  
**To:** Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)>, Loren Herrigstad <[lbhrgstd@isomedia.com](mailto:lbhrgstd@isomedia.com)>, Lloyd Flem <[washarp@q.com](mailto:washarp@q.com)>  
**Cc:** "[dickburkhart@comcast.net](mailto:dickburkhart@comcast.net)" <[dickburkhart@comcast.net](mailto:dickburkhart@comcast.net)>, "[stephaniemsweber@aol.com](mailto:stephaniemsweber@aol.com)" <[stephaniemsweber@aol.com](mailto:stephaniemsweber@aol.com)>, 'Doug Engle' <[Doug.Engle@escrail.org](mailto:Doug.Engle@escrail.org)>, Karen Guzak <[karen@karenguzak.com](mailto:karen@karenguzak.com)>, 'Les Rubstello' <[psakayk@gmail.com](mailto:psakayk@gmail.com)>, 'Byron Cole' <[byroncole@comcast.net](mailto:byroncole@comcast.net)>  
**Subject:** RE: KIRO Report

Bruce, Loren and Lloyd,

Can you help find someone to dispute this report in the comments field and also comment in the string on this one? I just got off the phone with Byron and he said that Burke-Gilman trail was a completely different circumstance. First of all when the track was removed in the 1970s there was not even a railbanking status. Let alone that track was never used and no one disputed it moving to be a trail.

<http://mynorthwest.com/11/2244768/Railway-Ruckus?page=1#comments>

Also, you can listen to Ron and Don about the issue that was positive for Kirkland. <http://kiroradio.com/listen/9954492/> It starts at 10:43 and ends at 15:53. They asked for comments but I couldn't find them announce any comments.

I would like to offer to Ron and Don a different view from a rail expert such as one of you.

Please let me know what you think.

Best,

Kathy Cox

Excursion Train Managing Director

[kathy.cox@EsCRail.org](mailto:kathy.cox@EsCRail.org)

office: 425-822-3925

cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

---

**From:** Kathy Cox <[kathy.cox@escrail.org](mailto:kathy.cox@escrail.org)>

**Date:** Friday, April 5, 2013 8:01 PM

**To:** Bruce Agnew <[bagnew@discovery.org](mailto:bagnew@discovery.org)>, 'Doug Engle' <[Doug.Engle@escrail.org](mailto:Doug.Engle@escrail.org)>, Karen Guzak <[karen@karenguzak.com](mailto:karen@karenguzak.com)>, 'Les Rubstello' <[psakayk@gmail.com](mailto:psakayk@gmail.com)>, Loren Herrigstad <[lbhrgstd@isomedia.com](mailto:lbhrgstd@isomedia.com)>, Lloyd Flem <[washarp@q.com](mailto:washarp@q.com)>, 'Byron Cole' <[byroncole@comcast.net](mailto:byroncole@comcast.net)>

**Subject:** KIRO Report

<http://mynorthwest.com/108/2245342/Kirkland-not-first-to-turn-railway-into-trail>

This is a report that takes a more positive Kirkland spin. Who is this historian, Feliks Banel? The Burke Gilman trail/rail is a totally different circumstance. Bruce, Lloyd or Loren, do you have a good reply?

A friend told me Ron and Don asked for callers about the topic but I didn't get to hear it. Did any of you heard about it?

Best,

Kathy Cox

Excursion Train Managing Director

[kathy.cox@EsCRail.org](mailto:kathy.cox@EsCRail.org)

office: 425-822-3925

cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)