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**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)**

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**

**THE CITY OF KIRKLAND’S COMMENTS ON BALLARD TERMINAL RAILROAD’S
SUPPLEMENT TO ITS PETITIONS FOR EXEMPTION
AND TO VACATE NOTICE OF INTERIM TRAIL USE**

PUBLIC VERSION

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CONFIDENTIAL VERSION

In evaluating contested petitions to preserve or reactivate rail service the Board requires the petitioner to show (1) that there is a credible demand for freight service, and (2) that the petitioner has the financial capability and the property rights to provide that service.¹ In its

¹ See, e.g., *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407, slip op. at 5-6 (STB served June 15, 2011) (“*GNPY Rly*”) (denying reactivation request because petitioner lacked the “necessary financial resources to provide freight rail service,” as well as the necessary contractual or property rights to access the right of way at issue, and because of “physical and financial obstacles to providing rail service” to potential customers); *Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In King County, WA, In the Matter of an Offer of Financial Assistance*, 3 S.T.B. 634, 641 (1998) (explaining that a valid offer of financial assistance (“OFA”) requires a genuine “inten[t] to provide rail service and . . . a real need for that service” and rejecting OFA for lack of credible freight demand and service plan), *aff’d sub nom. Redmond-Issaquah Railroad Preservation Ass’n v. S.T.B.*, 223 F.3d 1057 (9th Cir. 2000); *Norfolk Southern Railway Co. – Petition for Exemption – In Baltimore City and Baltimore County, MD*, STB docket No. AB-290 (Sub No. 311X), slip op. at 4-5 (STB served Apr. 5, 2010) (dismissing opposition to an abandonment petition where “forecasts for potential freight rail

August 1, 2013 decision denying Ballard Terminal Railroad's (BTR's) motion to enjoin rail salvage on the Line,² the Board made factual findings that BTR has not satisfied these criteria.³

Specifically, the Board found as follows:

- BTR lacks the financial resources to reinstitute rail service on the Line, to replace the rails in Kirkland or to pay appropriate compensation for use of the right of way.⁴ Its existing operations on the Freight Segment operate at a loss. BTR has demonstrated no reasonable prospect of additional funding.
- BTR demonstrated no credible demand for rail freight service on the Line.⁵

traffic . . . [were] too speculative to be given any significant weight"); *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, CO*, 4 S.T.B. 116, 119-20 (1999) (rejecting OFA for lack of credible freight service demand), *aff'd sub nom. Kulmer v. S.T.B.*, 236 F.3d 1255 (10th Cir. 2001); *Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, CO*, STB Docket No. AB-1014, slip op. at 7-12 (STB served May 23, 2008) (granting adverse abandonment application after finding railroad's "claims of potential freight rail traffic to be unsubstantiated"); *Norfolk and Western Railway Co. – Abandonment Exemption – In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 9-10 (STB served May 13, 1998) (granting abandonment application after finding opponent's "sudden discovery of a demand . . . in light of redevelopment project . . . [was] neither persuasive nor meritorious"); *see also Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*, STB Docket No. FD 35631, slip op. at 3 (STB served Oct. 11, 2012) (explaining, in context of operation exemption, that licensed carrier "must still have a valid property right" under state law "in order to initiate operations") (citing *Allegheny Valley R.R. – Petition for Declaratory Order – William Fiore*, STB Docket No. FD 35388, slip op. at 4 n.4 (STB served Apr. 25, 2011)).

² These comments refer to the 12 mile railbanked right of way between Bellevue and Woodinville on which BTR proposes to reactivate rail service as the "Line." The active rail line between Woodinville and Snohomish is the "Freight Segment." A map showing the Line and connected rail corridors is attached hereto as Appendix A. The term "Regional Parties" refers to Kirkland, King County, Washington, and the Central Puget Sound Regional Transit Authority. A "Confidential Version" of these comments with no redactions has been filed with the Board. A "Public Version," with redactions pursuant to the terms of the Protective Order entered in these proceedings, has been also been filed.

³ *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731 (STB served Aug. 1, 2013) (referred to hereinafter as the "August 1 Order").

⁴ *Id.*, slip op. at 5, 6.

⁵ *Id.*

- An injunction would harm the Regional Parties, by disrupting or delaying projects in which they have invested years and millions of dollars.⁶
- In light of BTR's failure to present "a concrete, realistic proposal to provide freight rail service on the Line,"⁷ the Board found that the public interest did not support Board intervention to delay rail salvage.⁸

On December 6, 2013, in the guise of a "Reply Statement" to comments filed by the Regional Parties, BTR submitted a new raft of delicately worded support letters from potential shippers, banks and investors.⁹ The Board noted that these submittals were untimely but accepted the evidence and gave the Regional Parties a short window in which to take discovery to test the merits of BTR's new assertions.¹⁰

On the basis of that discovery, the Board will find that every single finding on which the Board denied injunctive relief to BTR remains true today. BTR's assertions of rail freight demand misrepresent the positions of the purported shippers. BTR has no commitments of financial support, not even from its owner. The only material changes in the facts on the ground since the Board denied injunctive relief are these:

- Kirkland has completed rail salvage of the City's 5.75 miles of the Line, and opened a soft surface trail for public use.¹¹
- BTR has completed another year of unprofitable operations on the Freight Segment.¹²

⁶ *Id.*, slip op. at 6.

⁷ *Id.*, slip op. at 7.

⁸ *Id.*

⁹ See BTR's Reply to King County, Washington, City of Kirkland, Washington, and Puget Sound Regional Transit Authority's Opposition Comments, and the materials attached thereto (filed in the above-captioned dockets on Dec. 6, 2013) ("BTR's December 6 Reply").

¹⁰ See *Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, STB Docket No. FD 35731, slip op. at 3 (STB served Jan. 15, 2014) ("January 15 Order").

¹¹ See Section D, pages 36-39 *infra*.

¹² See pages 7-8 *infra*.

- The Port of Seattle issued a notice of default to BTR's lessor Eastside Community Rail ("ECR") for breach of the O&M agreement that grants ECR and BTR access to the Freight Segment. The parties have executed a settlement agreement and a stipulated judgment that requires ECR to cure various breaches of its contractual obligations to the Port. As of the filing date of these comments, it is not at all clear that ECR will satisfy the undertakings in the settlement agreement.¹³
- King County and Sound Transit have continued their efforts to plan for and implement public infrastructure projects on the Line.¹⁴

Immediately *after* the February 14 discovery cut-off BTR began filing additional submittals from "new" shippers and supplemental statements from companies who previously filed statements with the Board.¹⁵ Kirkland fully expects to see more of the same between now and BTR's reply comment deadline. The Board could once again extend the comment period and reopen discovery to enable the Regional Parties to inquire, for example, how BTR plans to deliver two carloads of barley a month to the Woodinville Whiskey Company, even though there is no spur connecting the distillery to the Line. Rather than forcing the parties to engage in a litigation version of Whac-A-Mole, Kirkland urges the Board to ignore all of these late-filed submittals.

¹³ See pages 8-10 *infra*.

¹⁴ See Section D *infra*.

¹⁵ See Letter of Feb. 13, 2014 from Orlin Sorenson of Woodinville Whiskey Co. to Cynthia T. Brown (STB docketed Feb. 20, 2014) ("Woodinville Whiskey Letter," Ex. 1); Letter of Feb. 13, 2014 from Nick Beck of RJB Wholesale, Inc. to Cynthia T. Brown (not docketed) ("RJB Feb. 13 Letter," Ex. 2). Unless indicated otherwise all references to "Ex." are to the numbered exhibits identified in the Verified Statement of Hunter Ferguson and filed herewith.

A. Eastside Community Rail Is the Real Party in Interest in These Proceedings.

Recent discovery confirmed that the real party in interest in these proceedings is ECR, not BTR. ECR is a limited liability company owned by Doug Engle and Daniel Behr.¹⁶ In the GNP bankruptcy ECR acquired GNP's rights and obligations under the O&M Agreement with the Port.¹⁷ BTR operates on the Freight Segment pursuant to a lease agreement with ECR.¹⁸ Doug Engle has no interest in or employment relationship with BTR,¹⁹ but Engle personally directed all aspects of the effort to reactivate rail service. Engle and his associate Ernie Wilson led the effort to find shippers for the Line.²⁰ Engle and Wilson ghost-wrote support letters for

¹⁶ See Transcript of Deposition upon Oral Examination of Douglas Engle on Feb. 13, 2014 at 9:10-13 ("Engle Tr. II," Ex. 3); EB5 Capital Partners.us, LLC's "Engagement Agreement for Eastside Community Rail, LLC," dated Sept. 17, 2012 at ¶ 4 ("EB5-ECR Engagement Agreement," Ex. 4 at 2-3); Transcript of Deposition upon Oral Examination on Daniel T. Behr on Feb. 12, 2014 at 26:21-27:7 ("Behr Tr.," Ex. 5).

¹⁷ See Stipulated Judgment ¶ A, docketed Feb. 25, 2014 in *Port of Seattle v. Eastside Community Rail, LLC*, No. 14-2-054866-6 SEA (King Cty. Super. Ct.) (Ex. 6 at 1).

¹⁸ See Lease Agreement between BTR and ECR, dated Apr. 26, 2013, § 1 ("Lease Agreement," Ex. 7 at 2).

¹⁹ See Transcript of Deposition upon Oral Examination of Byron Cole on Feb. 12, 2014 at 51:17-19, 103:5-13 ("Cole Tr. II," Ex. 8). The equity interest in BTR is held by Paul Nerdrum (99%) and Byron Cole (1%). See Transcript of Deposition upon Oral Examination of Paul Nerdrum on Feb. 12, 2014 at 10:15-11:2 ("Nerdrum Tr.," Ex. 9).

²⁰ See Cole Tr. II at 51:22-52:10 (Ex. 8) ("[H]e [Doug Engle] went and talked to each of these potential shippers."); *id.* at 55:1-7 ("Doug was the one who finally ran them [General Mills] to the ground."); *id.* at 60:8-24 (testifying that he "let Doug work on [General Millis] and that Doug estimated a car count for General Mills); *id.* at 59:10-18 (Safeway); *id.* at 91:10-16 (unnamed drywall distributor in Kirkland); see also Transcript of Deposition upon Oral Examination of Scott Day (Aggregates West) on Feb. 7, 2014 at 28:23-29:17 ("Day Tr.," Ex. 10) (Scott Day of Aggregates West spoke exclusively with Doug Engle and Ernie Wilson and had no contacts with Byron Cole or Paul Nerdrum.); Transcript of Deposition upon Oral Examination of James House (CT Sales) on Feb. 7, 2014 at 20:14-25, 47:5-18 ("House Tr.," Ex. 11) (Ernie Wilson and Doug Engle approached CT Sales; Mr. House had no contacts with Byron Cole or Paul Nerdrum.); Transcript of Deposition upon Oral Examination of Bobby Wolford (Wolford Trucking & Demolition) on May 16, 2013 at 15:5-21 ("Wolford Tr.," Ex. 12) ("Our go to guy was a man named Ernie Wilson."); Transcript of Deposition upon Oral Examination of Douglas Engle on May 22, 2013 at 202:2-203:2 ("Engle Tr. I," Ex. 13) (Ernie Wilson of ECR helped Bobby Wolford estimate shipping volumes.).

what BTR characterizes as interested shippers.²¹ Engle personally handled all efforts to raise capital from lenders and investors.²² Engle had all of the communications with WATCO about a possible joint venture.²³ Engle drafted letters to the Board signed by BTR principals.²⁴ Byron Cole observed that BTR is running the railroad for Doug Engle, as it previously did for GNP.²⁵

The principals of BTR, Byron Cole and Paul Nerdrum, could not answer questions about statements contained in the letters they signed and that BTR submitted in support of its December 6 filing.²⁶ When asked about BTR's business plan for reactivation, their universal

²¹ House Tr. at 27:13-20, 39:13-21 (Ex. 11); Email of Sept. 30, 2013 from Ernie Wilson to Doug Engle and James House (CT Sales) (Ex. 14); Email of Sept. 30, 2013 from Doug Engle to James House (CT Sales) (Ex. 15); Wolford Tr. at 32:15-33:4 (Ex. 12) (Ernie Wilson wrote Bobby Wolford's letter to the Board.); Email of Nov. 21, 2013 from Doug Engle to Greg Starup (Coastal Community Bank) (Ex. 16); Transcript of Deposition upon Oral Examination of Greg Starup (Coastal Community Bank) on Feb. 6, 2014 at 17:7-18:5 ("Starup Tr.," Ex. 17); Verified Statement of Nick Beck, President of RJB Wholesale, Inc. ¶¶ 14-18 (STB docketed Feb. 20, 2014 and filed herewith) (Ernie Wilson wrote RJB's letters to the Board.).

²² Cole Tr. II at 134:11-135:2 (Ex. 8) (*ECR*, not BTR, engaged EB5 Capital Partners and approached Coastal Community Bank); Behr Tr. at 51:2-16 (Ex. 5) (Doug Engle engaged EB5); Starup Tr. at 13:11-21 (Ex. 17) (Greg Starup of Coastal Community Bank never talked to Byron Cole or Paul Nerdrum). Byron Cole approached AmericanWest Bank, BTR's long time bank, about signing a support letter, but Cole did not seek a loan from AmericanWest Bank. *See* Transcript of Deposition upon Oral Examination of Nathan Engman (AmericanWest Bank) on Feb. 6, 2014 at 35:12-36:16, 63:2-14 ("Engman Tr.," Ex. 18).

²³ Cole Tr. II at 103:23-124:16, 144:7-12 (Ex. 8). Asked what role BTR had in mind for WATCO, Cole said, "I think you'd have to ask Doug Engle." *Id.* at 96:18-21 (Ex. 8).

²⁴ Nerdrum Tr. at 9:20-10:6 (Ex. 9); Cole Tr. II at 8:24-9:18, 143:4-24 ("If you waited for me to write all the letters . . . they wouldn't be written. . . . Doug is the guy to do it.") (Ex. 8).

²⁵ Cole Tr. II at 108:19-109:1 (Ex. 8).

²⁶ *Id.* at 47:18-48:14 (Byron Cole has no knowledge of the basis for the projected car counts in the Support Letter Log filed with the BTR's December 6 Reply) (Ex. 8); *see also* BTR's Support Letter Log, filed with BTR's December 6 Reply (Ex. 19). When asked why BTR had Doug Engle estimating traffic for a line BTR hopes to reactivate, Cole said, "Well, somebody has to have their name on the plea to reactivate. We're the railroad that STB already knows about." Cole Tr. II at 51:7-13 (Ex. 8).

refrain, is: Ask Doug Engle.²⁷ Engle, on the other hand, never told investors or shippers that he was trying to raise money for BTR. Engle sought funding for ECR to run an excursion train on the Line. When he thought it expedient, Engle also volunteered to terminate BTR's lease and bring in a bigger carrier to replace BTR.²⁸

B. BTR Lacks the Financial Resources to Reinstitute Rail Service.

BTR's December 6 Reply avers that BTR "has the financial backing of various multi-million dollar companies and financial institutions, and has all the support necessary to resurrect and reactivate this rail line."²⁹ In support of this statement BTR offers letters from BTR owner Paul Nerdrum, an officer of WATCO, two local bankers and from EB5 Capital Partners.³⁰

1. BTR Continues to Lose Money on the Freight Segment.

Before turning to these third party submittals, discovery provided an update on BTR's financial condition. In August the Board found, based on 2012 data, that BTR's operations on the Freight Segment lose money and are subsidized by revenues from BTR's two other short lines.³¹ In 2013 BTR moved [REDACTED] carloads on the Freight Segment (what BTR sometimes refers to as its "Eastside Freight Railroad" operation)³² – [REDACTED] more than in 2012.³³ BTR's total

²⁷ When Byron Cole was asked about the projected car counts in his December 5 letter to the Board he said, "I believe this is all Doug's work." Cole Tr. II at 49:19-22 (Ex. 8). *See also* Letter of Dec. 5, 2013 from Byron Cole to Cynthia T. Brown at 2 (filed with BTR's December 6 Reply) (Ex. 20); Cole Tr. II at 10:25-11:21 (confirming that one should "talk to Doug" about RailWorks' estimate of the cost to install tracks in Kirkland); Cole Tr. II at 82:1-11 ("[REDACTED]"); Cole Tr. II at 96:18-21, 98:9-16 (To understand WATCO's role "you'd have to ask Doug Engle." . . . "Doug [Engle] would know" if there was an agreement with WATCO regarding the Line.).

²⁸ See pages 12-13 *infra*.

²⁹ BTR's December 6 Reply at 5-6.

³⁰ BTR's December 6 Reply, attachments submitted as pages 18-29 of that filing.

³¹ *August 1 Order*, slip op. at 5.

³² Cole Tr. II at 35:18-24 (Ex. 8).

revenue from all railroad operations in 2013 was \$ [REDACTED].³⁴ BTR declined to disclose how much of this revenue came from its Eastside operations,³⁵ information the Board previously had ordered BTR to produce.³⁶ The best information available is a projection ECR owner Doug Engle made in February 2013 for an investment prospectus. It shows 2013 freight revenue of \$108,604 from 234 carloads of freight, and operating costs of \$125,514.³⁷

BTR appears poised to lose more money on the Freight Segment in 2014 than it did last year. On April 30, 2013 the Port of Seattle issued a notice of default to ECR for failure to meet its obligations under the O&M Agreement that authorizes ECR to operate on the Freight Segment.³⁸ On January 22, 2014 ECR and the Port executed a settlement agreement that requires ECR to provide the Port with proof of insurance coverage for standard railroad contingencies, to inspect bridges and trestles for “Priority 1 repairs,” to make those repairs or

³³ See BTR’s Responses to Kirkland’s First Requests for Production (Ex. 21 at 11).

³⁴ See Facsimile of Feb. 5, 2014 from Byron Cole to Myles Tobin (Ex. 22); *see also* Cole Tr. II at 33:17-34:2 (explaining that this fax details BTR’s “cash position” for 2013) (Ex. 8).

³⁵ Cole Tr. II. at 38:10-41:17 (Ex. 8). Mr. Cole testified that revenue information for the Eastside operation is “back in my office.” *Id.* at 40:20 (Ex. 8). Both during and following Cole’s deposition, Kirkland asked BTR to produce this information. It refused to do so. *See* Email of Mar. 3, 2014 from Tom Paschalis (BTR’s counsel) to Matthew Cohen (Kirkland’s counsel) (Ex. 23).

³⁶ The Board directed BTR to produce “financial statements in the form of summaries of its revenue, expenses and costs for 2011 and 2013 to date.” Order Granting Kirkland Motion To Compel Discovery at 7 (August 22, 2013). In its second set of document requests, Kirkland requested that BTR provide updated information for 2013. *See* Kirkland’s Second Set of Discovery Requests to BTR (RFP No. 24) (Jan. 17, 2014) (Ex. 24 at 6).

³⁷ *See* Email of Oct. 19, 2013 from Doug Engle to Greg Starup and the “Eastside Community Rail Income Statement 11 Feb 13” and “Eastside Community Rail Traffic Analysis as of 2013 Feb 6” attached thereto (Ex. 25 at 2, 3). The projections are for BTR’s Eastside line, notwithstanding the labels. ECR has no railroad operations.

³⁸ *See* Letter of Apr. 30, 2013 from Joe McWilliams (Port of Seattle) to ECR (Ex. 26 at 2).

cease operations,³⁹ and to replace the destroyed crossing signal on the Freight Segment that Kirkland mentioned in its September 30 comments.⁴⁰ On February 25 the Port and ECR entered a stipulated judgment in the King County Superior Court that confirms these commitments.⁴¹ ECR plans to pass all of these costs on to BTR.⁴²

During the recent depositions Kirkland asked ECR Managing Director Doug Engle about the status of ECR's negotiations with the Port. Engle refused to answer the question, claiming that the terms of ECR's settlement with the Port are not relevant to these proceedings.⁴³ Actually, ECR's compliance with the O&M Agreement is profoundly relevant to these proceedings. The Freight Segment is the only functioning rail connection between the Line and the national rail transportation system.⁴⁴ If the Port terminates the O&M Agreement BTR loses the ability to access the Line, as well as the Freight Segment. The money that BTR and will spend maintaining the Freight Segment, replacing crossing signals and upgrading insurance to

³⁹ BTR and ECR have yet to perform any maintenance on the Freight Segment, other than spraying for weeds. See Kirkland's Reply to BTR's Motion for Preliminary Injunction at 6 n.24 and accompanying text (filed in these dockets June 4, 2013). On December 13, 2013 Port of Seattle staff inspected the bridges and trestles on the Freight Segment and photographed the deterioration. See Email of December 20, 2013 from Bob Maruska to Elaine Spencer and attached photographs (Ex. 27).

⁴⁰ See Settlement Agreement between ECR and the Port of Seattle ¶ 7 (Jan. 22, 2014) (Ex. 6 at 11).

⁴¹ See Stipulated Judgment, docketed Feb. 25, 2014 in *Port of Seattle v. Eastside Community Rail, LLC*, No. 14-2-054866-6 SEA (King Cty. Super. Ct.) (Ex. 6).

⁴² ECR's solution to the deficiencies in its insurance coverage was to get BTR to upgrade its coverage. See May 10, 2013 Email from Doug Engle to Byron Cole (Ex. 26 at 1) ("Hi Byron, Per the attached default letter from the Port of Seattle, Ballard needs to do a couple of things for both of us to be in compliance . . . Ballard is required to carry the total insurance required in the O&M agreement per our agreement."). BTR recently paid the cost of replacing the signal crossing in Maltby. Cole Tr. II at 129:3-130:5 (Ex. 8). The Lease Agreement between ECR and BTR holds BTR responsible "at its sole expense" for maintaining the rail line. Lease Agreement, § 3(F) (Ex. 7 at 3).

⁴³ See Engle Tr. II at 60:5-22 (Ex. 3).

⁴⁴ See the map attached as Appendix A.

comply with the settlement agreement will aggravate its losses. For months Engle told the Port that ECR cannot afford the insurance required under ECR's settlement agreement with the Port.⁴⁵ The next few months will reveal whether ECR defaults on the commitments contained in that judgment.

2. No Banks or Investors Have Pledged Funds to Support Reactivation of Freight Service on the Line.

The first step in securing financial support for a venture is to estimate its cost. BTR previously told the Board that it could not afford the \$10 million cost of replacing the track in Kirkland.⁴⁶ BTR has no estimate of the cost of acquiring property rights to operate on the Line,⁴⁷ although Mr. Engle hopes to use eminent domain to acquire Kirkland's segment of the Line.⁴⁸ Messrs. Engle and Cole have not investigated the cost of installing spurs to serve the companies that they proclaim "ready, willing and able" to receive freight service on the Line.⁴⁹ They have no plan to finance the acquisition of property in Bellevue to support a transload facility for movement of building materials and demolition debris.⁵⁰ They have not estimated the cost of

⁴⁵ See, e.g., April 1, 2013 Email from Doug Engle to Joe McWilliams ("Spending 25% of revenues for insurance is insane! . . . I assure you, there are NO other railroads out there willing to take over freight operations with these line volumes . . .") (Ex. 28 at 1).

⁴⁶ *August 1 Order*, slip op. at 6.

⁴⁷ Cole Tr. II (Ex. 8) at 31:32:15; Engle Tr. I (Ex. 13) at 177:1-10.

⁴⁸ See ECR Business Prospectus Power Point Presentation (Sept. 27, 2013), slide 28 (Ex. 29 at 28).

⁴⁹ See, e.g., Engle Tr. II (Ex.3) at 74:16-75:3 (WATCO's survey of the Line in Bellevue did not include study of building spurs), 141:7-143:6 (CalPortland), 150:9-19 and 151:10-11 (CT Sales); Cole Tr. II (Ex. 8) at 58:6-7 (no communications with Aggregates West), 64:1-14 (Wolford Trucking & Demolition – "I've been busy with other projects."), 82:12-83:19 (CalPortland), 102:17-103:8 (RJB Wholesale), 103:14-22 (CT Sales); Verified Statement of Nick Beck ¶ 11 (RJB Wholesale).

⁵⁰ Engle Tr. II (Ex. 8) at 111:4-113:16; Cole Tr. II (Ex. 8) at 89:3-90:14 (uncertainty as to the location of a laydown yard).

repairing bridges and trestles on the Freight Segment to fulfill ECR's settlement agreement with the Port.⁵¹

BTR/ECR's position is that it would be premature to invest any effort in quantifying the cost of reactivating rail service until the Board grants BTR's petitions.⁵² BTR/ECR's position is perhaps best illustrated in its position vis-à-vis CT Sales, which is located on the Freight Segment and supposedly desires rail service: When asked whether anyone had told CT Sales that it could not receive rail service until the Board rules in these proceedings, Engle testified, "We have simply told them that, until the decision comes through, we don't know how we're

⁵¹ BTR/ECR share in the obligation to maintain the Freight Segment rail infrastructure in safe working order. *See* O&M Agreement § 3 (Ex. 30 at 8); Lease Agreement § 3(F) (Ex. 7 at 3). BTR/ECR have performed no maintenance other than spraying for weeds (*see* note 39 *supra*), even though the Freight Segment is in obvious need of repair. Indeed, according to Engle's representation to a Washington state legislator in the hope of securing public funding, the Freight Segment needs at least \$6.2 million in repairs to operate an excursion service. *See* Email of Mar. 28, 2013 from Doug Engle to Louis Moscoso (Ex. 31). But before BTR/ECR can upgrade tracks to provide intrastate passenger rail service, there are seemingly more basic safety repairs needed. After conducting a December 2013 inspection of the Freight Segment that revealed several instances of neglect and damage, including impact damage, deteriorating ties, and settlement of suspension beams on a rail bridge, the Port took the extraordinary step of demanding in an ongoing arbitration concerning ECR's breaches of the O&M that ECR contract with Osmove Railroad Services by March 1, 2014 to inspect this bridge and determine whether urgent repairs are needed. *See* Stipulated Judgment ¶ 6, Settlement Agreement ¶ 8 (Ex. 6 at 3-4, 11). ECR has not provided proof that has complied with this provision of the settlement agreement.

⁵² *See, e.g.*, BTR's December 6 Reply at 6-7; Cole Letter at 2 (Ex. 20 at 2); Engle Letter at 2, 3 (Ex. 32 at 2, 3); Engle Tr. II (Ex. 3) at 11:24-12:6 ("[T]he first step that we're all waiting for is the STB decision."), 14:3-10 ("The first step is to get through the STB decision, then we will undertake these activities" to determine financing and operations capabilities.), 74:16-75:3 (explaining that no rehabilitation or revenue analysis will be undertaken until there is "STB approval"), 25:9-17 ("Nobody is going to burn a lot of cycles figuring out what the running – the actual running of the railroad is going to look like and who needs to do what when and what support services have to be in place. It's premature to do that."), 101:6-102:5 (testifying that he and potential shippers would wait to study service feasibility until after an STB decision), 112:23-113:4 (developing a finance plan would be premature).

going to finance the rehabilitation and expansion of the line.”⁵³ Given that BTR and ECR have not quantified these costs, it is not surprising that Mr. Engle did not share them with any of the investors or banks that he tried to recruit to underwrite the venture.

Paul Nerdrum – Paul Nerdrum owns 99 percent of the equity interest in BTR.⁵⁴ BTR’s December 6 Reply declares that “Paul Nerdrum has thrown his full financial support behind BTR and this project.”⁵⁵ In his deposition, however, Mr. Nerdrum conceded that he does not know the cost of restoring freight operations on the Line,⁵⁶ that he has not committed his “full financial support” to the project,⁵⁷ and that he could not quantify any commitment to it: “I’d have to see what it’s going to take when we get there. I don’t have a hard answer for that yet.”⁵⁸

WATCO – BTR’s December 6 Reply declares that WATCO “fully supports this project, has urged the STB to reactivate the rail line, and is ready, willing and able to work with BTR for the movement of unit trains from the reactivated rail line to interchanges with the BNSF.”⁵⁹ This statement misrepresents WATCO’s position.

In the fall of 2013 Doug Engle contacted WATCO Vice President Mark Blazer in an attempt to lure WATCO to “step in and assume freight operations on the line.”⁶⁰ Engle told Blazer that “Byron Cole, their GM, is very near retirement.”⁶¹ Engle declared that “ECRR hired BTR on a one year term ending April 2014, to continue providing freight operations. I spoke

⁵³ Engle Tr. II at 148:10-149:22 (Ex. 3)

⁵⁴ Nerdrum Tr. (Ex. 9) at 10:15-19.

⁵⁵ BTR’s December 6 Reply at 4.

⁵⁶ Nerdrum Tr. (Ex. 9) at 28:6-9.

⁵⁷ *Id.* at 30:10-23.

⁵⁸ *Id.* at 31:14-17.

⁵⁹ BTR’s December 6 Reply at 5.

⁶⁰ Email of Nov. 12, 2013 from Doug Engle to Mark Blazer (Ex. 33 at 4).

⁶¹ Email of Nov. 26, 2013 from Doug Engle to Mark Blazer (Ex. 34 at 1)

with Byron on Saturday about transitioning his service to WATCO with general consensus that it needs to happen sometime sooner rather than later.”⁶²

Engle hoped for several things from WATCO. First, Engle sought “a big brother with investment money.”⁶³ Second, Engle thought WATCO’s support would enhance BTR’s credibility with the Board: “It is difficult to describe just how important this letter is to the reactivation effort.”⁶⁴ Third, Engle hoped that WATCO would provide operational support.⁶⁵

Engle ghosted a support letter to the Board for Blazer to sign. Engle’s draft stated that “WATCO is ready, willing and able to participate with its financial and other resources in making this line a success again.”⁶⁶ Blazer stripped this statement out of the letter, along with all other statements suggesting that WATCO was ready to invest in the venture.⁶⁷ Engle objected to the deletions, telling Blazer that “to have any impact with the STB, we must have the “ready, willing and able” included.”⁶⁸ The letter that Blazer ultimately signed not only omitted all “ready willing and able” statements but also inserted some shipper commitments that WATCO would require before Watco committed to participate.⁶⁹ On February 14 Mr. Blazer signed a declaration filed herewith that includes the following points:

⁶² *Id.* Byron Cole had no knowledge of the representations about his imminent retirement until confronted with them at his deposition. Cole Tr. II (Ex. 8) at 115:3-116:11.

⁶³ Email of Oct. 7, 2013 from Doug Engle to Mark Blazer (Ex. 35 at 2).

⁶⁴ Email of Nov. 12, 2013 from Doug Engle to Mark Blazer (Ex. 33 at 4).

⁶⁵ Engle said that BTR’s locomotive cannot haul more than ten cars, and that WATCO would bring a larger locomotive to the operation. Engle Tr. II (Ex. 3 at 22:14-24:21).

⁶⁶ *See* Declaration of Mark Blazer (“Blazer Dec.”) ¶ 5 and Exhibit 1 thereto, filed herewith.

⁶⁷ *Id.*

⁶⁸ Email of Nov. 4, 2013 from Doug Engle to Mark Blazer (Ex. 36 at 1)

⁶⁹ *See* Blazer Dec. ¶6 and WATCO Support Letter filed with BTR’s December 6 Reply at 18 (Ex. 37).

- WATCO has entered into no agreements with BTR nor committed in any way to participate in “Mr. Engle’s proposal.”⁷⁰
- WATCO has not committed to make any investment or to provide any financial assistance to reactivate the line.⁷¹
- WATCO has no independent knowledge of potential traffic volumes or revenues.⁷²
- “WATCO has not performed a site visit or done any of the due diligence regarding Mr. Engle, Ballard Terminal Railroad, or their plan that WATCO would have to do before making any commitment to participate in operations on the Line.”⁷³
- “WATCO has not confirmed whether Ballard Terminal Railroad has the financial capability to reactivate the Line or whether there is sufficient genuine shipper demand to justify the investment necessary to reactivate the Line.”⁷⁴

On this record, BTR made the false representations quoted above that WATCO is “ready, willing and able to work with BTR . . .”

AmericanWest Bank and Coastal Community Bank – BTR contends that each of these two local banks “stands ready, willing and able to financially participate “ in reactivation of the Line,⁷⁵ and that it has “extensive financial support” from both banks.⁷⁶ Both submitted

⁷⁰ Blazer Dec. ¶ 7.

⁷¹ *Id.*

⁷² *Id.* ¶¶ 6, 8

⁷³ *Id.* ¶ 9.

⁷⁴ *Id.* ¶ 10.

⁷⁵ BTR’s December 6 Reply at 5.

⁷⁶ *Id.* at 8.

support letters to the Board. Contrary to BTR's assertions, they do not state that they are "ready willing and able" to underwrite BTR's project⁷⁷

The Regional Parties deposed the bank managers who signed those letters: Nathan Engman for AmericanWest Bank and Greg Starup for Coastal Community Bank. When asked whether his letter reflected a promise by Coastal to offer financing, Starup replied, "Absolutely not."⁷⁸ Engman testified that his letter did not reflect a commitment by AmericanWest Bank to provide financial support.⁷⁹ According to Messrs. Engman and Starup, their letters reflect only a willingness to consider a loan application⁸⁰ – *if* BTR ever submits one.

Neither BTR nor ECR has submitted a loan application to either bank in connection with BTR's reactivation effort.⁸¹ On October 19, 2013 Doug Engle e-mailed Greg Starup stating, "It is important that we come to a general agreement on the structure and conditions for a SBA loan in the next couple of weeks."⁸² In response Starup sent Engle a checklist of information needed, including a business plan, and an estimate of project costs.⁸³ Engle replied three weeks later that

⁷⁷ See Letter of Nov. 21, 2013 from Greg Starup of Coastal Community Bank to Cynthia T. Brown and Letter of Nov. 22, 2012 from Nathan Engman of AmericanWest Bank to Cynthia T. Brown, submitted with BTR's December 6 Reply, and filed herewith as Ex. 38.

⁷⁸ Starup Tr. 24:14-16 (Ex. 17). Mr. Starup also corrected BTR's attorney that it made no commitment to participate in a financing package, clarifying that it was "capable of doing that; whether we choose to do so is a different matter." *Id.* 65:3-8.

⁷⁹ Engman Tr. 63:15-21, 65:14 (Ex. 18).

⁸⁰ Engman Tr. 78:21-79:17 (Ex. 18); Starup Tr. 23:4-16, 23:20-23, 24:17-20 (Ex. 17).

⁸¹ Engman Tr. 63:2-14 (Ex. 18); Starup Tr. 10:18-25 (Ex. 17)

⁸² Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Subject: ECRR – Overview 1 of 2) (Ex. 39).

⁸³ Email of Oct. 23, 2013 from Greg Starup to Doug Engle (Subject: Financing request) (Ex. 40).

there were “too many unknowns” to complete an SBA loan application, but perhaps Coastal would submit a support letter to the Board.⁸⁴

Doug Engle gave Greg Starup reams of pro-formas and PowerPoint presentations,⁸⁵ but Starup testified that there was no way to tell whether ECR’s projections were viable.⁸⁶ He said that the costs discussed by Engle were “in such general terms that I didn’t even bother to write it down because, when it’s at such a large range and without supporting documents, it really doesn’t have much meaning to me.”⁸⁷ In Starup’s view, there needs to be “a significant amount of equity injected into the company [ECR] before it was bankable,”⁸⁸ but Engle could not explain where ECR might receive an equity investment.⁸⁹ Engle provided no information about collateral⁹⁰ but did provide an excursion service plan for GNP Rly, Inc. – a plan that Starup considered “██████████.”⁹¹ Starup never even discussed a loan amount with Engle because it was unclear who the potential borrower might be.⁹²

Doug Engle maintains that his firm and the banks could not develop a financing package until the Board reactivates rail service.⁹³ Both bankers testified that nothing prevents them from

⁸⁴ Email of Nov. 22, 2013 from Doug Engle to Greg Starup (Subject: RE: Eastside Rail Corridor) (Ex. 41) Dep. Ex. 67.

⁸⁵ See, e.g., Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Subject: Re: ECRR – Wallace M.O.U. 2 of 2) (Ex. 25) Dep. Ex. 74; Starup Tr. 35:14-23, 38:22-39:21 (Ex. 17).

⁸⁶ Starup Tr. 19:13-20 (Ex. 17).

⁸⁷ *Id.* 29:13-20.

⁸⁸ *Id.* 40:23-41:11.

⁸⁹ *Id.* 51:2-8.

⁹⁰ *Id.* 85:16-86:5.

⁹¹ *Id.* 74:1-19.

⁹² *Id.* 44:9-17.

⁹³ Engle Letter at 3 (Ex. 32 at3); see also note 52 *supra*.

analyzing a loan application for preapproval or conditional approval.⁹⁴ Indeed, Engman testified AmericanWest would have been happy to review a loan application for conditional approval, but one was never submitted.⁹⁵ Starup similarly testified that while he was reluctant to invest resources in considering a request for preapproval, if he “got financial information on the principals of the company [ECR], I might do some evaluation of them.”⁹⁶

BTR’s statements about extensive financial support from banks are puffery. The support letters from the bankers offer no commitments beyond a willingness to consider loan applications that BTR/ECR have not submitted.

EB5 Capital Partners – EB5 is a “business advisory firm” that recruits investors for projects of interest.⁹⁷ BTR has no relationship with EB5.⁹⁸ ECR engaged EB5 in September 2012 to advise ECR in trying to acquire the Freight Segment from the GNP bankruptcy estate.⁹⁹ ECR at the time had no assets.¹⁰⁰ Engle gave EB5 a 15 percent equity interest in ECR as compensation for its services.¹⁰¹

EB5 has invested none of its own money in ECR.¹⁰² Nor has EB5 approached any investors to raise capital for ECR.¹⁰³ To do that EB5 principal Daniel Behr testified that EB5

⁹⁴ Engman Tr. 78:5-13; Starup Tr. 67:25-17, 86:6-87:3.

⁹⁵ Engman Tr. 60:14-18 (“I believe we could look at a financing package if we were making that assumption” that Ballard’s petition would be granted.”), 105:4-6, 114:23-118:11, 118:19-20:6.

⁹⁶ Starup Tr. 69:8-25.

⁹⁷ Behr Tr. at 18:5-19:7 (Ex. 5).

⁹⁸ Cole Tr. at 134:14-20 (Ex. 8).

⁹⁹ See EB5-ECR Engagement Agreement ¶1 (Ex. 4 at 1).

¹⁰⁰ *Id.* ¶ 4.

¹⁰¹ *Id.*

¹⁰² Behr. Tr. at 77:2-22 (Ex. 5).

¹⁰³ *Id.* at 69:24-70:21.

needs to know “what the traffic case is . . .” and ECR’s capital needs.¹⁰⁴ Mr. Behr testified that no outside investors have committed to invest any money in BTR or ECR: “They’re waiting for numbers.”¹⁰⁵

In short, EB5 *has not* invested any of its own money in reactivation of the Line and *has not* requested any commitments from other investors. EB5 has no estimate of what the project would cost.¹⁰⁶

Public Money – Every Doug Engle prospectus contains glib assurances that public money will flow freely to his project. ECR’s support letter attached to BTR’s December 6 Reply contains a segment headlined “The Money is there, waiting . . .”¹⁰⁷ It mentions a Small Business Administration loan, a Federal Railroad Administration RRIF loan, and a \$10 million state grant to rehabilitate the track.¹⁰⁸ Engle sent an email headed “FRA RRIF” to banker Greg Starup, in which he said: “This is how we will recap the railroad in 2 yrs. With a tiny bit of help from Sen. Murray, we will have no problems.”¹⁰⁹ Engle told Watco’s Mark Blazer, “We may be able to get the state to pay for the needed upgrades and track replacement.”¹¹⁰ In a September 2013 presentation for potential lenders, Engle mentioned a \$65 million line item in the state

¹⁰⁴ *Id.* at 70:16-72:22.

¹⁰⁵ *Id.* at 77:23-25.

¹⁰⁶ “As part of the business case, we would work with the principals on determining their capital needs to acquire Kirkland’s 5.75 mile portion of the corridor, should that option be necessary.” EB5 Support Letter at 2, filed with BTR’s December 6 Reply (Ex. 42 at 2).

¹⁰⁷ Engle Support Letter at 3, filed with BTR’s December 6 Reply (Ex. 32 at 3).

¹⁰⁸ BTR’s December 6 Reply at 53.

¹⁰⁹ Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Ex. 43).

¹¹⁰ Email of Dec. 10, 2013 from Doug Engle to Mark Blazer (Ex. 44).

transportation budget “next session,” a “\$10+M” state grant for track upgrades, a “State DOT rail loan,” a federal Small Business Administration loan, and an FRA RIFF loan.¹¹¹

BTR/ECR offer no evidence that any state or federal agency has actually committed any money to the Line, the Freight Segment, or to ECR’s reactivation plan.

Summary – BTR/ERC’s portrayal of broad financial support for its project is a house of cards. First, all of the outreach to investors and bankers was undertaken by Doug Engle, on behalf of ECR, not BTR. Doug Engle never told anyone that he seeks financing for BTR. Second, neither BTR nor ECR have attempted to estimate the cost of reactivating rail service, let alone recruiting funding for the project. Third, neither BTR nor ECR has applied for a loan or signed a financing agreement with anyone. Fourth, with the possible exception of members of Doug Engle’s family, no investor has agreed to commit any specific sum to the project. The sweeping assertion that BTR has investors “ready willing and able” to participate appears only in BTR’s pleadings. Even BTR’s owner Paul Nerdrum distanced himself from the assertion that his “full financial support” stands behind the project. When pressed on the lack of commitments in its finance plan BTR/ECR falls back on its universal response: No one will commit funds to the project until the Board reactivates rail service.¹¹²

C. BTR Presents No Credible Showing of Demand for Freight Service on the Line.

BTR’s December 6 Reply contends that “Extensive correspondence from a multiplicity of shippers” makes reactivation “absolutely necessary.”¹¹³ BTR attaches a December 5 letter from Byron Cole, who claims that within the first year of operation BTR expects to handle 3535

¹¹¹ See ECR Business Prospectus Power Point Presentation (Sept. 27, 2013), slide 23 (Ex. 29 at 24).

¹¹² See note 52 *supra*.

¹¹³ BTR’s December 6 Reply at 6.

carloads of freight and excursion service.¹¹⁴ For this figure Cole references a Support Letters Log¹¹⁵ attached to his letter that Cole did not draft, and that Cole cannot defend.¹¹⁶

The Support Letters Log is a handy summary of BTR/ECR's case on freight demand.

The 3535 carloads estimated by Doug Engle fall into four groups:

1. Businesses that have no access to rail service, regardless of whether the Board reactivates service on the Line -- CalPortland, Aggregates West;
2. Businesses currently located on the Freight Segment, that ship by rail today or could ship by rail tomorrow if BTR built a spur -- Boise Cascade, Spectrum Glass, Matheus Lumber, CT Sales, Wolford Trucking;
3. Businesses located on the Line that could receive freight in the event of reactivation, but which have never requested service or calculated the economic viability of receiving rail service -- Safeway, RJB, Woodinville Whiskey; and
4. The "Bounty of Washington Tasting Train."

The details that follow may remind the Board of the case presented by GNP Railway in its petition to reactivate rail service on the adjacent Redmond Spur.¹¹⁷ They should. The same two guys who walked the right of way in Redmond soliciting freight customers for GNP -- Doug Engle and Ernie Wilson -- repeated that performance for BTR/ECR.¹¹⁸

1. Businesses with No Access to Rail Service.

CalPortland – BTR's April petitions envision CalPortland shipping aggregates from a yard in Everett, Washington to a future transload facility and concrete batch plant in Bellevue.¹¹⁹

¹¹⁴ December 5 Cole Letter at 2 (Ex. 20), BTR's December 6 Reply at 17.

¹¹⁵ BTR's December 6 Reply at 19.

¹¹⁶ Cole Tr. 49 ("I believe this is all Doug's work."). Cole Tr. 71 (no knowledge of the basis for the CalPortland carload estimate).

¹¹⁷ See *GNP Rly*, cited in note 1 *supra*.

¹¹⁸ House Tr. at 28:17-29:16 (Ernie Wilson approached CT Sales for a support letter.)

¹¹⁹ Cole Tr. I: 133-134 (Ex. 45).

The Board found BTR's showing unpersuasive, noting that CalPortland is not located on the Line, has no contract to participate in local construction projects, and did not request rail service from BTR.¹²⁰ In light of these findings, the Regional Parties focused their recent discovery on whether CalPortland's plans have evolved since last spring. The answer is no. CalPortland has done nothing to connect its yard in Everett to the BNSF rail line that lies across a state highway from CalPortland's Everett plant.¹²¹ There is no indication that BTR or CalPortland contacted BNSF for permission to build a spur,¹²² estimated the cost of building a spur, or made any plans to build one.¹²³

At the south end of the Line in Bellevue, Doug Engle distributed a map to local bankers showing three construction materials companies including CalPortland delivering to a hypothetical transload facility in Bellevue.¹²⁴ Engle calls it the "Target Site."¹²⁵ BTR included a photograph of the Target Site and a map of its location in BTR's December 6 Reply.¹²⁶ The parcel identified Target Site is for sale, but Engle has not contacted the sellers or investigated the local zoning.¹²⁷ The King County Assessor lists the valuation of the property at \$3.5 million.¹²⁸

¹²⁰ *August 1 Order*, slip op. at 5.

¹²¹ Cole Tr. at 76:1-86:11 (Ex. 8); Aerial Map of CalPortland's Everett Yard (Ex. 46) (Dep. Ex. 113). Both this testimony and exhibit are designated as confidential pursuant to the Protective Order entered in these proceedings.

¹²² Cole Tr. at 80:11-24, 83:4-19 (Ex. 8).

¹²³ *Id.* at 71:23-72:16.

¹²⁴ "Bellevue Target Site.pdf" attached to the Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Ex. 39 at 4). A copy of this map showing the "Target Site" was also submitted with BTR's December 6 Reply (p. 69). *See also* Engle Tr. II (at 108:11-109:1 (confirming that maps are the same) (Ex. 3).

¹²⁵ *Id.*

¹²⁶ BTR's December 6 Reply at 71-72.

¹²⁷ Engle Tr. II at 111:4-112:6 (Ex. 3).

Had Doug Engle conducted any inquiries he would have learned that in 2009 the City of Bellevue rezoned all of the land on both sides of the rail line to a high density residential zone as part of the City's plan for the Spring District, a major urban redevelopment project.¹²⁹ All of the locations that Engle visualizes for a trans-load facility, including his "Target Site," fall within the rezoned "Bel-Red Subarea."¹³⁰ Bellevue made these changes to enable the construction of 5000 new residential units with easy access to Sound Transit's East Link light rail line.¹³¹ Industrial operations are no longer permitted uses within the Bel-Red Subarea. They are "inconsistent with the City's adopted vision for the Bel-Red Subarea, and could not be approved or established in this area."¹³² In particular, the parcel identified by Engle as the "Target Site" is zoned residential.¹³³

The changes in east Bellevue bear out BNSF's statements to the Board in support of its 2008 abandonment petition: "Land use around the Line is clearly moving away from freight applications, if not from industrial and low end commercial applications altogether."¹³⁴ When

¹²⁸ King County Assessor Info re Target Site Parcel (Ex. 47). Engle confirmed this parcel is the so-called Target Site. *See* testimony cited in note 126 *supra*.

¹²⁹ Verified Statement of Carol Helland, Director of the Land Use Division of the Development Services Department for the City of Bellevue, ¶¶ 3-4, filed herewith. The attached web link offers a map and video about the Spring District project: <http://www.thespringdistrict.com/>.

¹³⁰ *See* Bel-Red Subarea Map attached as Exhibit 1 to Helland Statement ¶ 4, and filed herewith.

¹³¹ *Id.* ¶¶ 3-4.

¹³² *Id.* ¶ 5.

¹³³ *Id.* ¶ 5.

¹³⁴ BNSF Petition for Exemption (August 11, 2008) at 13, filed in the above-captioned abandonment proceeding.

asked if a residential zoning designation for the Target Site would change his plans, Engle replied: “It probably would . . .”¹³⁵

In short, neither CalPortland nor BTR/ECR has done any work to solve the logistic and economic hurdles that led the Board to find in August that CalPortland is not a credible source of freight traffic for the Line.

Aggregates West – Aggregates West has a quarry near Monroe, Washington, a few miles from BNSF’s main line between Everett and Spokane.¹³⁶ Neither the Monroe quarry nor any other Aggregates facility has access to a rail line.¹³⁷ BTR’s Support Letters Log nevertheless estimates 300 cars a year from the Monroe quarry to the Target Site in Bellevue.¹³⁸ Doug Engle floated that number,¹³⁹ based on information from Aggregates manager Scott Day about the mass of material that Aggregates delivers to Seattle and Bellevue.¹⁴⁰ Mr. Day viewed Engle’s estimate as reasonable, *if* rail transportation was less expensive than trucking.¹⁴¹ Mr. Day had doubts, however, about whether shipping aggregates to Bellevue by rail would be competitive: “It does seem very expensive.”¹⁴² The road mileage from Aggregates’ yard to Bellevue is 24 miles.¹⁴³ To use rail Aggregates would need to load a truck at the Aggregates quarry, transfer it to a railcar

¹³⁵ Engle Tr. at 170:5-11 (Ex. 3).

¹³⁶ See Aerial Maps of Aggregates West Processing Facility (Ex. 48)

¹³⁷ Day Tr. at 22:22-23:18 (Ex. 10).

¹³⁸ See BTR’s Support Letters Log (Ex. 19).

¹³⁹ Day Tr. at 41:22-42:1 (Ex. 10).

¹⁴⁰ *Id.* at 42:4-21.

¹⁴¹ *Id.*

¹⁴² *Id.* at 101:7-8.

¹⁴³ *Id.* at 100:11-15.

at a “laydown yard” on the BNSF line in Monroe (that does not yet exist), unload it in Bellevue (at another laydown yard that does not exist) and then deliver it by truck to a job site.¹⁴⁴

Doug Engle had no information on shipping cost.¹⁴⁵ For these reasons, Aggregates regarded BTR/ECR’s overtures as speculative.¹⁴⁶ Scott Day testified that Engle never presented a “concrete plan” that would enable Aggregates to determine whether rail service from BTR would be cost effective.¹⁴⁷ In Mr. Day’s view, receiving rail service from BTR was only “conceptual.”¹⁴⁸

Aggregates gave BTR a short support letter because its managers welcomed any potential method of reducing their shipping costs: “This is a letter saying we support these guys if they can provide us a cheaper service than what we are doing.”¹⁴⁹ But Aggregates has not requested rail service from BTR (or any other carrier), never even requested a rate quote, and certainly has not made commitment to BTR to utilize rail service.¹⁵⁰ The only certainty is that it is *uncertain and speculative* whether Aggregates West would utilize rail service with BTR.¹⁵¹

¹⁴⁴ *Id.* at 97:3-23, 99:24-100:10, 102:5-6; *see also* Aerial Maps of Aggregates West’s Monroe Facility (Ex. 48), referenced in the preceding cited testimony.

¹⁴⁵ Day Tr. (Ex. 10) at 54:18-55:24, 87:2-88:1 (confirming that materials provided by Doug Engle were “just speculation”).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 55:18-56:10.

¹⁴⁸ *Id.* at 56:7-10.

¹⁴⁹ *Id.* at 27:23-28:2.

¹⁵⁰ *Id.* at 27:23-28:22.

¹⁵¹ *Id.* at 109:16-20.

2. **Businesses Located on the Freight Segment.**

Current Freight Customers – Doug Engle’s estimate of 3535 carloads of traffic on the Line in the first year after reactivation includes 240 carloads from three current Freight Segment customers – Boise Cascade, Spectrum Glass, and Matheus Lumber.¹⁵² These facilities, Boise Cascade, Spectrum Glass and Matheus Lumber, receive raw materials by rail from an interchange with BNSF at Snohomish.¹⁵³ None of this traffic listed in the Support Letters Log would travel on the Line even if service was reactivated.

Wolford Trucking – Doug Engle’s Support Letters Log lists two companies located adjacent to the Freight Segment – Wolford Trucking and CT Sales – that have never received freight service and have no spurs. He calls them “Reactivation Freight Customers.”¹⁵⁴ BTR/ECR claim 750 carloads in year one from Wolford.¹⁵⁵ BTR told the Board in April that Wolford would ship thousands of carloads of demolition debris from Bellevue construction projects to unspecified dump sites in Snohomish County. The Board noted that Wolford had no contracts and submitted a bid to salvage Kirkland’s tracks. The Board concluded that BTR failed to demonstrate a current demand for freight service.¹⁵⁶

In its December 6 Reply BTR submitted nothing new from Wolford, only a copy of his March 27 letter to the Board.¹⁵⁷ The recent round of discovery confirmed that BTR and ECR

¹⁵² See BTR’s Support Letters Log (Ex. 19). BTR’s actual 2013 number was appreciably lower – only [REDACTED] carloads. See note 32 and accompanying text *supra*.

¹⁵³ See the map attached as Appendix A. Matheus is located on the Redmond Spur, not the Line. It lacks a rail spur. It receives raw material at a warehouse on the Freight Segment, and delivers it by truck to Matheus’ yard. See Cole Tr. II 36:14-37:16 (Ex. 8).

¹⁵⁴ See BTR’s Support Letters Log (Ex. 19)

¹⁵⁵ *Id.*

¹⁵⁶ *August 1 Order*, slip op. at 5.

¹⁵⁷ BTR’s December 6 Reply at 45-47.

have no updates to Wolford's plans.¹⁵⁸ Byron Cole testified that Wolford would love to have a spur, and that Wolford's demand for rail service does not depend on reactivation of the Line.¹⁵⁹ Asked why BTR has not installed a spur for Wolford, Mr. Cole said, "I've been busy with other projects"¹⁶⁰ The only new information that bears on the viability of Wolford's business plan is Bellevue's rezone of the land that Wolford would need for a transload facility.¹⁶¹

CT Sales – CT Sales is a rebar fabricator located near Wolford on the Freight Segment. CT Sales has no spur, and, even though it needs a spur in order to receive rail service, there is no plan to build one, and no one has studied the requirements for doing so.¹⁶² Doug Engle projects 120 carloads of bar stock incoming to CT Sales in year one.¹⁶³ That number did not come from CT.¹⁶⁴ Doug Engle derived it by assuming that all of CT's bar stock would be delivered by rail.¹⁶⁵ BTR provided no information to CT about the cost of installing a spur¹⁶⁶ or a freight tariff.¹⁶⁷ The President of CT, Jim House, testified that until he knows the cost of rail service and the cost of installing a spur, he cannot express a view on his company's demand for rail

¹⁵⁸ Byron Cole testified that he has not spoken with Bobby Wolford since August. Cole Tr. at 62: 16-18 (Ex. 8). Doug Engle said that he has not looked at anything from Mr. Wolford since "last summer," and everything he received from Wolford had been produced to Kirkland. Engle Tr. II at 70:16-22 (Ex. 5).

¹⁵⁹ Cole Tr. II at 63:6-11 (Ex. 8).

¹⁶⁰ *Id.* at 64:1-5.

¹⁶¹ *See* pages 22-23 *supra*.

¹⁶² House Tr. at 24:5-24 (Ex. 11); Engle Tr. II at 150:9-19, 151:10-12 (Ex. 3).

¹⁶³ BTR's Support Letter Log (Ex. 19).

¹⁶⁴ House Tr. at 79:1-18 (Ex. 11).

¹⁶⁵ *Id.* at 81:18-82:1.

¹⁶⁶ *Id.* at 26:13-16.

¹⁶⁷ Engle Tr. II at 151:14-152:9 (testifying he doesn't know what the price would be ship materials to CT Sales via rail, even though CT Sales is located on the Freight Segment) (Ex. 3).

service.¹⁶⁸ As a result, CT has not requested service from BTR.¹⁶⁹ BTR's representation¹⁷⁰ that CT Sales requests service on the Line is wrong.

Even if CT did receive service from BTR, it would add nothing to traffic on the Line. Engle's 120 carloads consist entirely of *incoming* bar stock from Oregon.¹⁷¹ Rail service to CT would come from BTR's interchange point with BNSF at Snohomish.¹⁷² And Jim House would not speculate about whether customers with job sites in Bellevue might one day elect to receive rebar by rail.¹⁷³

But there is more to the CT story. As a potential freight customer on the Freight Segment, Doug Engle testified that CT could have rail service right now, "once we get the pricing loop closed."¹⁷⁴ Why hasn't this occurred? Engle replied: "When the STB decision comes through, *we're going to decide how we're going to deploy our capital to get the highest rate of return. If that involves CT Sales, great, we want to jump on it.*"¹⁷⁵ Until the Board rules, "we don't know how and when we're going to finance the rehabilitation and expansion of the

¹⁶⁸ House Tr. at 26:12-27:12 (no cost basis to invest in a spur), 55:3-16 (no decision to request rail service without an "in-depth cost analysis"), 62:16-63:2 (same), 79:19-80:3 (explaining to BTR's counsel that he did not know whether CT Sales would ship any particular amount via rail, only that some would be conceivable) (Ex. 11).

¹⁶⁹ *Id.* at 54: 9-10.

¹⁷⁰ BTR's December 6 Reply at 2.

¹⁷¹ Engle Tr. II at 148:6-9, 91:1-7, 94:2-13 (Ex. 3).

¹⁷² House Tr. at 75:4-22 (confirming that it is "not necessary to reactivate the line between Woodinville and Bellevue in order for [CT Sales] to receive material") (Ex. 11); *see also* map at Appendix A.

¹⁷³ Jim House said that CT currently delivers to one job site that could "conceivably" receive rebar by rail, and that it is "conceivable" that other customers might have similar capabilities in the future. House Tr. at 82:2-18 (Ex. 11).

¹⁷⁴ Engle Tr. II at 148:13-25 (Ex. 3). The "pricing loop" refers to a pricing agreement between BNSF and Union Pacific, whose line serves Cascade Steel. *Id.*

¹⁷⁵ *Id.* at 149:6-13 (emphasis added).

line.” Once the Board rules, “We’re going to have a bucket of money, and the question gets to be where do you deploy your bucket of money.”¹⁷⁶

In other words, BTR/ECR has no time or money today to cultivate freight traffic on a segment that BTR already serves. Even if the Board granted BTR’s petitions, BTR would not serve CT Sales unless BTR/ECR decided that serving a freight customer provides the highest return on BTR’s “bucket of money.” For reasons explained below,¹⁷⁷ service to CT Sales is unlikely to ever be a priority for BTR/ECR.

3. Businesses Located on the Line that Have Never Requested Service.

Safeway – BTR’s December 6 filing includes a three line letter from General Mills, declaring that “We currently deliver bulk truckloads of flour to a large customer [in Bellevue], and delivering by rail would be a large environmental and competitive benefit.”¹⁷⁸ The referenced customer is Safeway, which operates a bakery on the Line in Bellevue.¹⁷⁹ Until 2008 BNSF delivered flour to the Safeway bakery. Safeway submitted a letter in 2008 supporting BNSF’s abandonment petition.¹⁸⁰ Since 2008 Safeway’s Bellevue bakery has received flour by truck from transfer points in Seattle, one of which was served by BTR Terminal Railroad. In 2013 General Mills terminated service to the BTR location, and the railroad lost that business.¹⁸¹

¹⁷⁶ *Id.* at 149:23-150:5.

¹⁷⁷ See pages 33-36 *infra* (freight will not be BTR/ECR’s focus because excursion service is the “cash cow”).

¹⁷⁸ Letter of Sept. 26, 2013 from Brenda Mengelkoch to Cynthia T. Brown, filed with BTR’s December 6 Reply at 31 (“General Mills Letter,” Ex. 49).

¹⁷⁹ Engle Tr. II at 104:18-24 (Ex. 3).

¹⁸⁰ See Letter of Aug. 12, 2008 from Jerry Tidwell, Safeway Sr. VP for Supply Operations, to Cynthia T. Brown, filed in the above-captioned abandonment proceeding (Ex. 50).

¹⁸¹ Cole Tr. II at 56:3-10, 61:17-22 (Ex. 8).

Doug Engle asked Safeway for a support letter, which Safeway declined to provide.¹⁸² Mr. Engle then turned to General Mills. On August 16, 2013 Doug Engle emailed a draft support letter to General Mills manager Thomas English, along with a cover note in which he coached Mr. English on what the letter should say: “Key words for the STB are ‘ready, willing and able’ to take delivery. And, specifically ‘request service’ from BTR Terminal Railroad.”¹⁸³

On September 23 Engle wrote again to Mr. English. Engle cited tens of millions of dollars of financial support “coming in” but declared: “What we absolutely must have is General Mills support. . . . Otherwise the reactivation effort is dead.”¹⁸⁴ The following day Engle offered General Mills a 20 percent rebate on BTR’s portion of the shipping charges “if that will help with the letter.”¹⁸⁵

Two days later General Mills produced the letter contained in BTR’s December 6 Reply.¹⁸⁶ It does not state that General Mills is “ready, willing and able” to do anything, and it does not request service from BTR. It does not reveal how many cars General Mills would ship to Safeway if service was available. Doug Engle claims that his estimate of 225 cars a year comes from BTR’s record of cars handled by BTR when General Mills was shipping to Seattle’s BTR neighborhood.¹⁸⁷ BTR’s car count records reveal, however, that the BTR line handled ■ carloads of flour in 2012 and ■ in 2013 – not even ■ percent of Engle’s projections.¹⁸⁸ General

¹⁸² Engle Tr. II at 105:17-106:20 (Ex. 3).

¹⁸³ Email of Aug. 16, 2013 from Doug Engle to Thomas English (Ex. 51 at 1-2).

¹⁸⁴ Email of Sept. 23, 2013 from Doug Engle to Thomas English (Ex. 51 at 5-6).

¹⁸⁵ Email of Sept. 24, 2013 from Doug Engle to Thomas English (Ex. 52).

¹⁸⁶ See General Mills Letter (Ex. 49).

¹⁸⁷ Engle Tr. II at 81:12-22 (Ex. 3).

¹⁸⁸ See BTR’s Table of 2012 Year End Totals for Freight Operations on Its Line in the Ballard Neighborhood of Seattle (Ex. 21 at 14); BTR’s Table of 2013 Year End Totals for Freight Operations on Its Line in the Ballard Neighborhood of Seattle (Ex. 53 at 1).

Mills presents no information in its support letter on its contracts, if any, with Safeway.¹⁸⁹ BTR presents no information at all on Safeway's plans. Safeway's only statement in these proceedings is its 2008 letter supporting abandonment. On this record, it is not hard to understand why General Mills omitted from its support letter a request for rail service.

RJB Wholesale – RJB Wholesale distributes steel and PVC pipe from a small yard in Kirkland, adjacent to the Line. RJB has been doing business at this location since 1972,¹⁹⁰ but RJB has no spur, and has never requested rail service.¹⁹¹

RJB President Nick Beck's signature appears on two letters in 2013, one in 2014, and one verified statement filed in these dockets.¹⁹² The letters and the statement take conflicting positions on a number of points,¹⁹³ but the version of RJB's position that is most favorable to BTR is that RJB would welcome rail service for 30 to 40 carloads a year of pipe, if the cost to RJB of building a spur and shipping pipe was competitive with RJB's other options. For RJB, however, that condition may be difficult to satisfy. RJB's yard lies 8 to 12 feet below the level

¹⁸⁹ Before agreeing to provide a letter, Mr. English sought assurance from Doug Engle that he had not contacted any General Mills competitors "going into Safeway." Email of Sept. 24, 2013 from Thomas English to Doug Engle (Ex. 51 at 5).

¹⁹⁰ Verified Statement of Nick Beck (Feb. 5, 2014) ¶ 2 ("Beck Statement," filed in these dockets Feb. 10, 2014 and filed again herewith).

¹⁹¹ *Id.* at ¶¶ 6-12.

¹⁹² All of RJB's 2013 letters were written by Ernie Wilson, an agent of Eastside Community Rail. RJB's first letter was signed by Mr. Wilson for Nick Beck. The signature line on RJB's second letter reads "Nick Best." When Wilson apologized for the error, Mr. Beck replied: "I typed? I don't recall typing anything I just signed it." Beck Statement ¶¶ 14-18.

¹⁹³ For instance, Nick Beck's Verified Statement, signed on February 5, states that RJB does not know how many railcars it would receive if rail service was available. Beck Statement ¶ 13. His latest letter, signed eight days later and disclosed only after the discovery cut-off, says that Beck agrees with BTR's car estimate of 30-40 per annum. Beck Feb. 13 letter ¶ 4 (Ex. 2).

of the berm formerly occupied by the rail line.¹⁹⁴ There is a steep embankment and a ditch between the berm and RJB's yard.¹⁹⁵ No one has engineered the cost of building a spur or attempted to estimate its cost.¹⁹⁶ BTR and RJB have not discussed any allocation of the cost of building a spur.¹⁹⁷ RJB has not requested a price quote for rail service.¹⁹⁸ As a result RJB lacks the information to determine whether rail service would be less expensive than the shipping methods RJB has used for the last 42 years.

Woodinville Whiskey – On February 20 Woodinville Whiskey Company filed a letter with the Board stating that they might be interested in receiving by rail “a car or two of grain per month . . .” and perhaps glass products and wooden barrels.¹⁹⁹ The letter acknowledges that the Line and any future spur are uphill from the distillery, but “grain will naturally flow downhill facilitating movement to storage bins”²⁰⁰

Because the Whiskey Company's letter was filed a few days after discovery ended, the Regional Parties have had no opportunity to explore the facts underlying this letter. A site visit confirmed, however, that the Line runs 20 to 25 vertical feet above the building that houses the

¹⁹⁴ Beck Statement ¶ 8; Verified Statement of Aaron McDonald (Sept. 11, 2013) ¶¶8, 9, and exhibits 1, 2, and 3 attached thereto. (Mr. McDonald's Verified Statement was previously filed with the Board and is filed again herewith for the Board's convenience).

¹⁹⁵ Beck Statement ¶ 8; McDonald Statement ¶ 8.

¹⁹⁶ Beck Statement ¶ 11; Cole Tr. at 102:17-21 (Ex. 8). Byron Cole commented that “the railbed is higher than his yard, but it can all be reworked out.” Cole Tr. at 56:17-24. Nick Beck says, “I'm told a spur and load/unload area can readily be constructed inside the right of way, and RJB will partner with the railroad in its layout and construction.” Beck Feb. 13 Letter (Ex. 2). Doug Engle's solution is to “flatten” the right of way to reduce the grade differential. Engle Tr. II at 189:7-22 (Ex. 3).

¹⁹⁷ Beck Statement ¶ 12.

¹⁹⁸ Beck Statement ¶ 7.

¹⁹⁹ Woodinville Whiskey Letter (Ex. 1 at 1).

²⁰⁰ *Id.*

distillery.²⁰¹ The Whiskey Company does not own the building housing its distillery, and the building owner recently obtained a permit to landscape the steep slope between the Line and the building.²⁰²

There is no evidence that BTR and the Woodinville Whiskey have penciled out the cost of building a spur or a conveyance to move one or two carloads of grain a month down the hill. Neither does the support letter indicate that BTR has provided a rate quote to the distillery. In this respect the Whiskey Company resembles CT Sales and RJB: interested in having another shipping option, but unable to evaluate the economic viability of an investment in rail service.

The Board confronted a version of this issue three years ago in the GNP case, in which GNP presented support letters (solicited by Ernie Wilson) from businesses near the Redmond Spur location, that lacked the infrastructure to receive rail service. The Board observed that the petitioning carrier bears the burden of showing that rail service is economically viable for those shippers:

[A] number of the shippers that GNP indicates it would serve on the reactivated line presently do not have the facilities necessary to receive shipments by rail. GNP has not shown how it would overcome the physical and financial obstacles to providing freight service to these customers. Thus, there would remain significant questions about GNP's bona fides, even if GNP's insolvency were resolved.²⁰³

BTR/ECR have not even tried to meet this burden. Instead, they invite the Board to disrupt Kirkland's plans and expropriate Kirkland's property without subjecting BTR to the test of first demonstrating a credible demand for freight service.

²⁰¹ Verified Statement of Christian Knight ¶¶ 5, 6 and photographs showing elevation difference attached thereto as Exhibits A and B, all filed herewith.

²⁰² See Hollywood Garage LLC Application For Special Use Permit (Jan. 27, 2014), and site maps depicting landscaping plan attached thereto (Ex. 54).

²⁰³ *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) (“*GNP Rly*”).

4. The Bounty of Washington Tasting Train.

All efforts to ferret out BTR's business plan for the Line lead to Doug Engle and Eastside Community Rail.²⁰⁴ Fortunately, the record is replete with evidence of Mr. Engle's plans for the Line. The overwhelming driver behind those plans is to start an excursion train from Bellevue to Snohomish. The excursion train that Doug Engle tried to establish on the Redmond Spur for GNP Railway was called "The Tasting Train."²⁰⁵ Four years later on an adjoining rail line Engle calls his project "The Bounty of Washington Tasting Train."²⁰⁶

Excursion traffic comprises 1520 of the 3535 carloads (43 percent) that Engle projected in his Support Letters Log.²⁰⁷ But excursion traffic contributes far more than 43 percent of the anticipated revenue from reactivation of rail service. Excursion is the "cash cow" that drives the business plan.²⁰⁸ In October 2013 Engle gave Greg Starup of Coastal Community Bank "our confidential financial model, which is still the basis for our pro-forma statements today."²⁰⁹ It includes a spreadsheet that projects rail revenues from 2013 through 2022.²¹⁰ Engle optimistically projected freight revenue growing from \$108,364 in 2013 to \$165,742 in 2022. Excursion revenues grow from \$6.5 million in 2014 to \$13.2 million in 2022. For 2014 Engle

²⁰⁴ See pages 4-7 *supra*.

²⁰⁵ See the City of Redmond's Comments in Opp'n to the Reactivation Petition of GNP Rly, Inc., note 203, filed Nov. 11, 2010 in *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407.

²⁰⁶ ECR Business Prospectus PowerPoint Presentation (Sept. 27, 2013), slides 9-13 (Ex. 29 at 10-14).

²⁰⁷ BTR's Support Letter Log (Ex. 19).

²⁰⁸ Cole Tr. at 50:22-51:3 (Ex. 8); ECR Business Prospectus PowerPoint Presentation (Sept. 27, 2013), slides 6, 24 (Ex. 29 at 7, 25).

²⁰⁹ Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Ex. 25 at 1).

²¹⁰ "Eastside Community Rail Traffic Analysis as of 2013 Feb 6" (Ex. 25 at 2) The spreadsheet was prepared on February 19, 2013. It assumed that excursion service would begin in 2014.

projected that freight would generate *1.7 percent* of ECR's total revenues, declining to *1.3 percent* in 2022.

Mr. Engle also gave the banker a projected income statement for ECR.²¹¹ For 2013, the last year in which Engle assumed no excursion service, he projected losses of \$1.1 million. Mr. Engle projected that ECR would begin to show a profit only after excursion service took off.

Doug Engle's projections do not mention Ballard Terminal Railroad. Freight and passenger revenues are all estimated for ECR.²¹² Engle did include a line in his Income Statement called "Direct Operations Costs."²¹³ It may include payments to BTR for operating trains. This would be consistent with Byron Cole's observation that BTR is running the railroad for Doug Engle.²¹⁴ It is also consistent with Engle's representation to WATCO officer Mark Blazer that Byron Cole is ready to retire, and that the Lease Agreement between ECR and BTR is terminable each year.²¹⁵ All witnesses agreed that Doug Engle works for ECR, not BTR.²¹⁶ The unanswered question is whether BTR has any role on the Line other than serving as a vehicle for ECR to seek federal common carrier authority.

In all of his presentations to potential investors Engle has been perfectly clear that reestablishment of freight service is an essential element of ECR's plans. But ECR is not counting on freight to pay its bills. In presentations for lenders and investors, Engle delineated the role of freight service in his business plan:

²¹¹ "Eastside Community Rail Income Statement 11 Feb 13" (Ex. 25 at 3)

²¹² *See generally* Ex. 25.

²¹³ "Eastside Community Rail Income Statement 11 Feb 13" (Ex. 25 at 3)

²¹⁴ Cole Tr. I at 108:23-109:2 (Ex. 8).

²¹⁵ *See* pages 6-7 *supra*.

²¹⁶ Cole Tr. at 51:17-19 (Ex. 8).

- “Freight enables federal rights. It provides massive leverage and carefully guarded power.”²¹⁷
- “Railroads are granted their authorities under the Interstate Commerce Clause in the U.S. Constitution. Inside the right of way, they have exclusive authority over states and have the power of eminent domain. Local regulations, ordinances and permitting are not required for railroad operations, including development of structures. The critical point is the railroad must own the land to leverage these rights to minimize the entitlement process.”²¹⁸
- “Freight also enables access to 35-year low interest federal loans.”²¹⁹

Engle offered potential investors some specific applications of these principles. He noted that reactivation would enable ECR to exercise eminent domain authority to acquire the rail corridor in Kirkland from the City.²²⁰ ECR has plans to develop a hotel in Woodinville to serve excursion train passengers – “Railroad must own the land.”²²¹ Engle told Coastal Community Bank that ECR would refinance its loan with a Federal Railroad Administration RRIF loan in two years.²²²

In short, BTR/ECR’s business plan for the Line is identical to GNP’s plan for the Redmond Spur: Acquire federal common carrier authority, and use that authority to develop an excursion train “cash cow,” without the inconvenience of meeting local zoning or environmental

²¹⁷ ECR Business Prospectus PowerPoint Presentation (Sept. 27, 2013), slide 5 (Ex. 29 at 6). (emphasis in the original).

²¹⁸ See ECR’s “Railroad Investment and Real Estate Opportunity” Prospectus (Oct. 1, 2013), attached to Email of Oct. 18, 2013 from Doug Engle to Greg Starup (Ex. 39 at 11); see also Engle Tr. at 160:5-7 (“There are things that we can do as a railroad with the National Environmental Protection Agency processes that do not mandate us to go through SEPA or local requirements . . .”).

²¹⁹ ECR’s “Railroad Investment and Real Estate Opportunity” Prospectus (Oct. 1, 2013), attached to Email of Oct. 18, 2013 from Doug Engle to Greg Starup (Ex. 39 at 11)

²²⁰ ECR Business Prospectus PowerPoint Presentation (Sept. 27, 2013), slides 21, 28 (Ex. 29 at 22, 29)

²²¹ *Id.* slides 25, 28 (Ex. 29 at 26, 29).

²²² Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Subject: FRA RRIF) (Ex. 43).

protection standards. For this purpose it does not matter whether a potential shipper has any realistic prospect of using rail service. It is no problem that CalPortland and Aggregates West have no access to any rail line, or that Wolford Trucking, CalPortland, and Aggregates West have no hope of locating a trans-load facility in Bellevue's Spring District. Support letters from freight customers are a means to an end, and that end has nothing to do with moving freight on the Line.

Doug Engle's pursuit of support letters from businesses on the Line contrasts vividly with his approach to CT Sales, a potential freight customer located on the Freight Segment. When will BTR install a spur to serve CT Sales? "When the STB decision comes through, we're going to decide how we're going to deploy our capital to get the highest rate of return. If that involves CT Sales, great, we want to jump on it."²²³

D. The Regional Parties Continue to Develop Public Infrastructure Projects on the Railbanked Line.

In its *August 1 Order* the Board noted that the Regional Parties "have invested years and millions of dollars of public funding toward their interim trail use and other public projects in the area the Line traverses."²²⁴ In the months since the Board denied BTR's preliminary injunction request Kirkland, King County, and Sound Transit continue to invest resources in those projects, with material progress to show for their effort:

- In early October Kirkland completed salvage of the 5.75 miles of track on the City's segment of the Line.²²⁵ On October 27 Kirkland celebrated the opening of the corridor to public use with a walking tour attended by approximately 200 local citizens and political leaders.²²⁶

²²³ Engle Tr. II at 149:6-13 (Ex. 3).

²²⁴ *August 1 Order*, slip op. at 6.

²²⁵ Second Verified Statement of Kurt Triplett ¶ 5, filed herewith ("Second Triplett Statement").

²²⁶ *Id.* ¶ 6, and photographs of opening event attached as Exhibit A thereto.

- On August 6, 2013 King County voters approved a \$396 million parks and open space levy that included funding for planning and development of the Eastside Rail Corridor Regional Trail Project.²²⁷
- In October the County solicited proposals for master planning services for 15.6 miles of railbanked right of way in the Eastside Rail Corridor. The County is currently negotiating the final details of a \$1.3 million contract with the selected firm, Parametrix.²²⁸
- Also in October, the Eastside Rail Corridor Regional Advisory Council (RAC) issued its final report.²²⁹ The 230-page report describes the Eastside Rail Corridor this way:

The RAC members agree that the ERC is a once-in-a-generation opportunity. It must be planned with an appreciation for the regional legacy it will create. Our region has a long history of civic projects and decisions that endure for the benefit and use of future generations: cleaning up Lake Washington, protecting hundreds of thousands of acres of working forest land, acquiring development rights for farmland, and acquiring the Burke Gilman Trail and the East Lake Sammamish Trail. We have also been an international leader in innovation and strategic thinking: building airplanes to enhance worldwide mobility, changing the world's use of computers and retail experiences, becoming a renowned center for bio-tech research and higher education, and creating a new style of music. The purchase and development of the ERC has the potential to create a similar legacy, benefiting area residents for the next century and beyond. The first step in creating that legacy has been achieved by securing the corridor in public ownership.²³⁰

- On April 25, 2013, the Sound Transit Board selected the route, profiles, and station locations for the East Link Light Rail Project, including the route through the Eastside Rail Corridor.²³¹ In relevant part, the light rail alignment turns north into the ERC just south of the Line and continues to an elevated Hospital Station on the north side of NE 8th Street in Bellevue. The route

²²⁷ http://seattletimes.com/html/localnews/2021552354_elexkingcountyparksxml.html

²²⁸ Email of March 3, 2014 from Linda Sullivan, King County Parks & Rec., to Hunter Ferguson (Ex. 55).

²²⁹ *Creating Connections: Recommendations On the Eastside Rail Corridor From The Regional Advisory Council* (October 2013), available online at <http://www.kingcounty.gov/operations/erc-advisory-council/reports.aspx>.

²³⁰ *Id.* at 41.

²³¹ Verified Statement of Michael Harbour, Deputy CEO, Sound Transit ¶ 6, filed herewith (“Harbour Statement”).

turns east and off of the Line in a retained cut configuration between 120th and 124th Avenues.²³² The Project will include storage tracks in the right of way of the Line with lead tracks and light maintenance facilities adjacent to the Line.

- Sound Transit is also studying potential locations for a full maintenance facility. One option under review would occupy property to the east of the Line, including Doug Engle’s “Target Site.” It is the Sound Transit Board’s intent to complete the study by 2015.²³³
- Since the Board selected the route, Sound Transit has begun purchasing real property and entering into contracts for the design and implementation of the East Link Light Rail Project.²³⁴
- In 2011 Sound Transit acquired from the Port of Seattle a 1.1 mile segment of the ERC in Bellevue for the East Link project (the “Bellevue Mile”), along with easements for high-capacity transit throughout the remainder of the ERC. Sound Transit paid \$13,752,393 for these real property interests.²³⁵
- BTR seeks to reactivate freight rail service over the Bellevue Mile and has targeted locations for its own facilities or the facilities of future customers where Sound Transit seeks to build its light rail facilities. First, BTR would create a rail yard in the location that Sound Transit intends to construct its own storage track. Second, BTR plans to have its customers purchase property to the east of the Bellevue Mile to construct a concrete batch plant and laydown yard,²³⁶ which would have to be accessed by spurs that would cross Sound Transit’s light rail tracks. Third, BTR seeks to reactivate freight rail service to the exact location of Sound Transit’s Hospital Station, although it has not produced any shippers who need service at or through that location.²³⁷
- Sound Transit is proceeding with its East Link Project and is currently at 60 percent design of the track and station (*i.e.*, the Hospital Station) on the Bellevue Mile. Sound Transit intends to locate the transit track on the eastern

²³² *Id.*; Sound Transit’s website shows a map of the relevant part of the route: <http://www.soundtransit.org/Projects-and-Plans/East-Link-Extension/BTCHospital-segment-map>.

²³³ Harbour Statement ¶¶ 6, 9.

²³⁴ *Id.* ¶ 7.

²³⁵ *Id.* ¶ 8.

²³⁶ Engle Tr. II at 168:19-25 (discussing a laydown yard for Aggregates West) (Ex. 3).

²³⁷ Harbour Statement ¶ 9.

portion of the Bellevue Mile, while leaving the western portion for trail or future freight rail use.²³⁸

- Construction on both the track work in the Sound Transit-owned portion of the corridor and the Hospital Station projects is expected to start in 2016.²³⁹
- As of December 2013, Sound Transit has spent an estimated \$169 million out of its \$2.8 billion budget for the East Link Light Rail Project.²⁴⁰

The Regional Parties have planned all of their projects to preserve the railbanked right of way for future reactivation of rail service.²⁴¹ No amount of planning, however, could prevent enormous delays and incremental costs to the citizens of King County if the Regional Parties needed to revise their current projects to accommodate the “Bounty of Washington Tasting Train.”

E. BTR/ECR Have Not Satisfied Their Burden to Demonstrate a Credible Demand for Freight Service and a Realistic Plan to Provide It.

BTR’s petitions fail for two separate legal reasons. First, the main objective of these petitioners is to establish a local excursion train. The authorities granted to a common carrier railroad by the ICCTA are not available to support BTR’s business plan. Second, even if BTR had no goal in mind other than the reactivation of freight service on the Line, the Board requires more than hopes and dreams to vacate a NITU and disrupt the lawful plans of the Regional Parties. Doug Engle’s assurance that ECR will figure out how much money it needs and secure

²³⁸ *Id.* ¶ 10.

²³⁹ *Id.* ¶ 11.

²⁴⁰ *Id.* ¶ 12.

²⁴¹ For instance, Kirkland plans to build its interim trail on the railbed, but the permanent paved version of the Cross Kirkland Corridor will occupy the west edge of the right of way, to leave room for either a Sound Transit light rail line or reactivated freight service. *See* Second Triplett Statement ¶ 8. Sound Transit is designing its light rail facilities on the Bellevue Mile to permit it to share the corridor with a trail in the short term or a legitimate reactivated freight service in the future. *See* Harbour Statement ¶ 10.

commitments from lenders and shippers after the Board reactivates rail service does not satisfy the criteria the Board applies in reviewing contested rail reactivation petitions.

1. Board Precedent Does Not Support ECR's Attempt to Reactivate Rail Service to Run an Excursion Train on the Line.

The Board lacks jurisdiction over intra-state excursion trains.²⁴² Only by invoking federal common carrier regulation can BTR/ECR hope to establish an excursion business on property belonging to the Regional Parties, without their consent. To achieve this goal BTR/ECR seek to spin ECR's excursion business as an adjunct to rail freight operations.

The ICC faced this gambit 23 years ago. In *Napa Valley Wine Train*,²⁴³ an excursion train operator sought to invoke common carrier status in an attempt to preempt state and local regulation of its operations. The operator tried to invoke ICC jurisdiction through both the carriage of freight and interconnection to interstate passenger service. The Commission was not persuaded: "Wine Train acknowledges that the amount of freight traffic it has moved has not been large, but states that it has published interchange tariffs with SP and is soliciting more interstate traffic."²⁴⁴ The Commission concluded that "Wine Train's passenger service is (and will be) essentially local and that its freight operations are and will continue to be very minimal. Thus, we cannot conclude that Wine Train's service is an interstate operation in any respect."²⁴⁵

²⁴² The Board's jurisdiction over rail transportation does not extend to wholly intrastate passenger rail service. *Cuyahoga Falls & Hudson Rly. Co. v. Village of Silver Lake*, 122 Fed. Appx. 845, 847-48, 2005 WL 332424 at *3 (6th Cir. 2005); *Fun Trains, Inc.—Operation Exemption—Lines of CSX Transp., Inc. and Fla. Dep't of Transp.*, STB Finance Docket No. 33472, slip op. at 2-3, 1998 WL 92052 at *2 (STB served Mar. 5, 1998); *Napa Valley Wine Train, Inc.—Petition for Declaratory Order*, 7 I.C.C. 2d 954, 967, 1991 WL 166559 at *7 (1991); *Magner-O'Hara Scenic Rly. v. ICC*, 692 F.2d 441, 444-45 (6th Cir. 1982).

²⁴³ *Napa Valley Wine Train, Inc.—Petition for Declaratory Order*, 7 I.C.C. 2d 954, 1991 WL 166559 (1991).

²⁴⁴ 7 I.C.C. 2d at 965; 1991 WL 166559 at *6.

²⁴⁵ 7 I.C.C. 2d at 967-8, 1991 WL 166559 at *7.

The *Wine Train* decision highlights a broader proposition of great importance to this case: When presented with facts that call into question the credibility of the petitioner's plans for common carrier service, the Board will closely scrutinize the petition to guard against abuse of federal power. In *The Land Conservancy of Seattle and King County*,²⁴⁶ a non-carrier filed a notice of exemption to acquire and to provide rail service on the Redmond Spur.²⁴⁷ Three months later the Land Conservancy proposed to abandon service and railbank the right of way.²⁴⁸ The Board revoked the exemption, commenting that the record "raised serious questions regarding the propriety of the parties' use of the Board's procedures in this manner to accomplish their goals."²⁴⁹

In *Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In King County, WA, In the Matter of An Offer of Financial Assistance*,²⁵⁰ the Board rejected an OFA petition for the same line segment at issue in *The Land Conservancy*, finding that "the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service."²⁵¹ Looking behind the petitioner's allegations, the Board declared: "[W]e will not allow our jurisdiction to shield a railroad, or any other party seeking relief before us, from the legitimate processes of Federal, state or local law."²⁵²

²⁴⁶ *The Land Conservancy of Seattle and King County – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, 2 S.T.B. 673 (1997) ("*The Land Conservancy*")

²⁴⁷ 2 S.T.B. at 673.

²⁴⁸ *Id.* at 674.

²⁴⁹ *Id.* at 676–77.

²⁵⁰ 3 S.T.B. 634 (1998), *aff'd sub nom. Redmond-Issaquah Railroad Preservation Association v. Surface Transportation Board*, 223 F.3d 1057 (9th Cir. 2000).

²⁵¹ 3 S.T.B. at 640.

²⁵² *Id.* at 636. See also *The City of Chicago, Ill. – Adverse Abandonment -- Chicago Terminal R.R. in Chicago, ILL.*, STB Docket No. AB 1036, slip op. at 4 (Service Date June 16,

It is no coincidence that these decisions arose on the Eastside Rail Corridor.²⁵³ The high property values and changing land use patterns in the suburbs on the east side of Lake Washington²⁵⁴ encourage speculative real estate ventures, including attempts to invoke federal common carrier authorities to achieve collateral business objectives.

In this case, the evidence is overwhelming that Doug Engle is running the reactivation campaign, and that Mr. Engle's agenda is to start an excursion train. The relevant evidence includes the following points:

- BTR is losing money providing freight service on the Eastside Rail Corridor, and those losses likely will increase in 2014. ECR and BTR have invested nothing to maintain the Freight Segment. Conditions have degraded to the point where the Port of Seattle forced BTR to hire an engineering firm to evaluate the integrity of trestles and bridges and to address any safety risks identified by the engineers.
- BTR has no time or money to offer service to a potential freight customer (CT Sales) whose business adjoins the Freight Segment, and that could receive service of incoming raw materials today if it had a spur.
- BTR's representations about shipper interest on the Line are speculative, and BTR has done no spade work to gauge the economic viability of serving those potential customers. There are shippers located nowhere near the Line, shippers with no spur and no plans to build one, aggregate companies with no place to load or unload railcars in Bellevue and a trucker that has no place to load demolition debris in Bellevue, and no realistic plans to dispose of it.
- Doug Engle, who has no equity interest in BTR, has done all of the work to recruit support letters, and to attract shippers, lenders, investors and joint venture partners. BTR's owners have no knowledge of the basis for the carload counts on which BTR relies to show shipper support.

2010) and *CSX Corp. and CSX Transportation, Inc. – Adverse Abandonment Application -- Canadian National Railway Co. and Grand Trunk Western Railroad Inc.*, STB Docket No. AB-31 (Sub-No. 38), Slip op. at 6 (Service Date January 28, 2002).

²⁵³ *The Land Conservancy*, and *BNSF King County* involved the Redmond Spur, which links to the Line at Woodinville. So did the *GNP Rly* matter, note 203 *supra*.

²⁵⁴ As Kirkland previously pointed out in its June 11, 2013 Reply to BTR's Motion for Preliminary Injunction (notes 7-12 and accompanying text) filed in these proceedings, BNSF sought and obtained abandonment authority for the Line for this very reason.

- Neither BTR nor ECR has done any work to estimate the cost of reactivating rail service on the Line. They have not researched the cost of acquiring property rights to operate on the Line, of restoring the track that Kirkland salvaged, of locating a transload facility in Bellevue, or of building rail spurs for potential shippers. Neither BTR nor ECR has spoken with the owner of the “Target Site,” or investigated its zoning. The effort has been to produce credible support letters, not to analyze the economic viability of providing freight service on the Line.
- Engle’s proposals to secure financing do not mention BTR. ECR hired EB5. ECR prepared pro formas for Coastal Community Bank. Those pro formas show ECR providing both freight and passenger service.
- Engle’s financial projections for lenders show excursion service accounting for more than 98 percent of ECR’s revenues at all times between now and 2022. They emphasize the scale and profitability of the “cash cow” excursion service, and describe freight as a vehicle to “enable federal rights.” Engle’s pro-formas show ECR losing money on freight service in 2013.
- Engle offered to terminate BTR’s lease and to arrange for Byron Cole’s retirement “sooner rather than later,” if Watco would lend its financial strength and credibility to the venture.
- BTR’s name is on the reactivation pleadings because “We’re the railroad that STB already knows about.”²⁵⁵

The decisions cited above hold that the Board will look behind the allegations in a petition to scrutinize the economic viability of a rail freight reactivation claim. The Board need not look very far behind BTR’s December 6 Reply to find that ECR is the real party in interest here, and that ECR’s business plan is to use federal common carrier authorities to develop an excursion train. Board precedent does not support that agenda.

2. Vague and Conditional Expressions of Interest by Shippers and Lenders Are No Substitute for Probative Evidence Documenting a Demand for Freight Service and the Financial Capability to Provide It.

In a host of cases the Board has outlined the burdens facing a petitioner seeking to reactivate rail service on a railbanked right of way. The petitioner must demonstrate a current

²⁵⁵ Cole Tr. II at 51:7-13 (Ex. 8).

and credible demand for freight service, and the petitioner must show that it has the financial resources to provide that service.²⁵⁶ The Board's most recent application of these principles was in the case at bar. In its *August 1 Order* the Board denied BTR's motion for a preliminary injunction for three reasons: (1) BTR failed to provide "probative support" for its freight service estimates, (2) BTR "does not appear to be in a financial position to reinstitute service" and (3) the public interest did not support disruption of Kirkland's plans to develop the corridor as a trail.²⁵⁷

In analyzing BTR's motion the Board relied on its 2011 decision in *GNP Rly Inc.*²⁵⁸ GNP, represented by Doug Engle and Ernie Wilson, walked the right of way looking for freight customers, just as Engle and Wilson did here. They persuaded a number of companies to file support letters expressing interest in freight service. In reviewing that evidence the Board stated:

[A] number of the shippers that GNP indicates it would serve on the reactivated line presently do not have the facilities necessary to receive shipments by rail. GNP has not shown how it would overcome the physical and financial obstacles to providing freight service to these customers.²⁵⁹

In denying BTR's request for a preliminary injunction, the Board found that BTR, like GNP before it, did not show how it would overcome the obstacles to providing freight service to its prospective customers.²⁶⁰ BTR's December 6 Reply only reinforces these conclusions. The financial burden facing BTR is heavier now than it was in August. The tracks have been removed in Kirkland, and the Port is pressing ECR and BTR to fulfill their obligation to maintain

²⁵⁶ See the decisions summarized in footnote 1 to these comments.

²⁵⁷ *August 1 Order*, slip op. at 5-7.

²⁵⁸ *Id.*, slip op. at 2 n.4 (noting that GNP was not a bona fide petitioner because it "did not have the necessary financial resources to provide rail service on the rail-banked line" claims of shipper interest were not credible due, in part, to lack of necessary rail facilities).

²⁵⁹ *GNP Rly*, slip op. at 6.

²⁶⁰ *August 1 Order*, slip op. at 5-6.

the Freight Segment. In the face of these burdens, BTR presents no evidence of financial support and no credible plans to serve shippers on the Line. Meanwhile, the Regional Parties continue to invest enormous resources in the development on the Line of trails, transit lines and other public infrastructure projects, while protecting the potential for future rail reactivation.²⁶¹

BTR/ECR's answer to the omissions in its case in chief is that "reactivation must be the first step in reviving rail service to Bellevue."²⁶² The Board's precedent is clear, however. Before the Board will allow any petitioner to disrupt the plans of public entities that have invested millions of dollars and years of effort in developing lawful projects on a railbanked corridor, the petitioner must demonstrate "a concrete, realistic proposal to provide freight service on the Line."²⁶³

BTR is no closer to meeting these requirements than it was in August.

Respectfully submitted,


Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 386-7569
mcohen@stoel.com
hoferguson@stoel.com

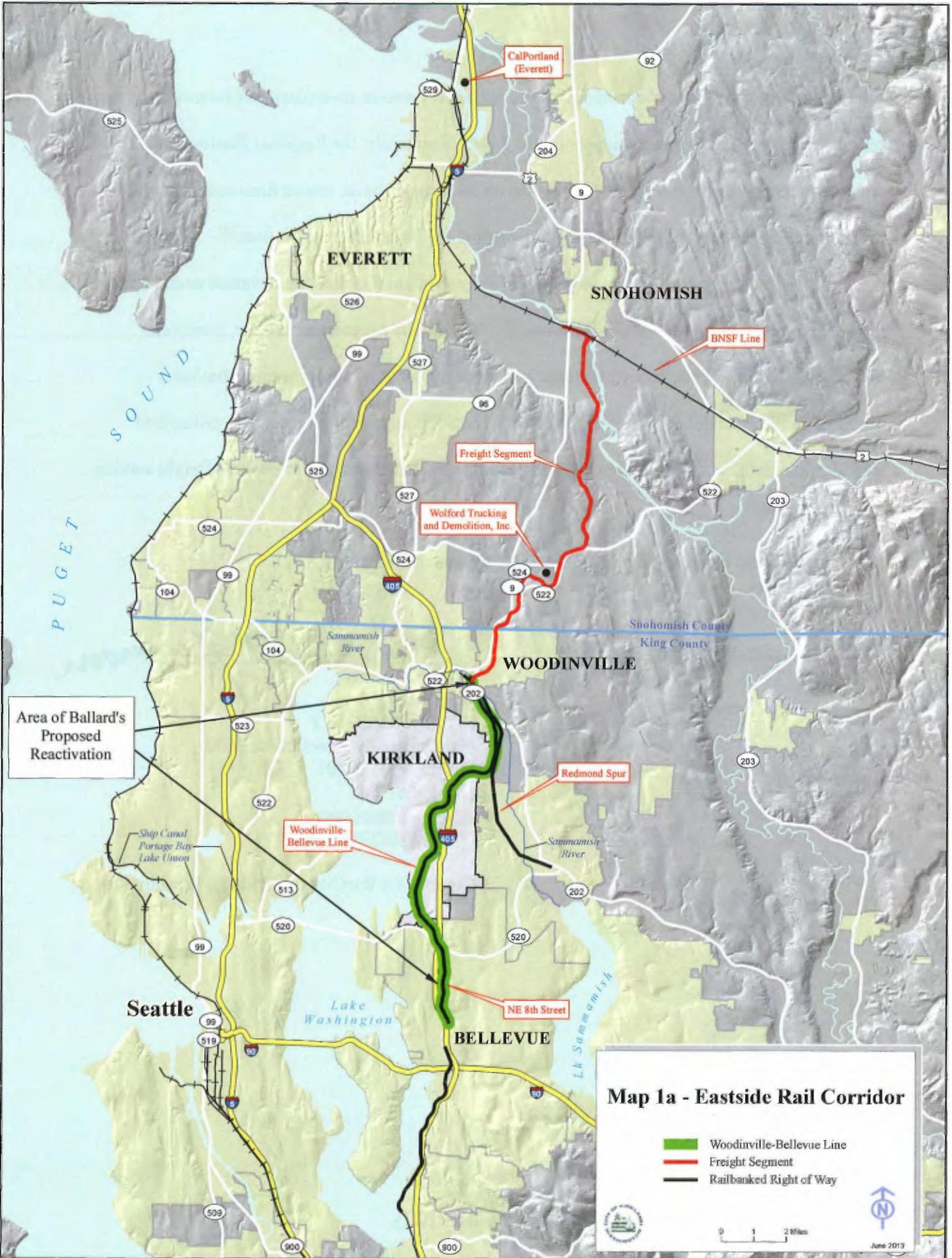
Counsel for the City of Kirkland, Washington

Dated: March 6, 2014

²⁶¹ See Section D above.

²⁶² Cole Support Letter at 2 (Ex. 20).

²⁶³ August 1 Order, slip op. at 7.



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**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**

CERTIFICATE OF SERVICE

Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 386-7569
mcohen@stoel.com
hoferguson@stoel.com

Counsel for the City of Kirkland, Washington

Dated: March 6, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the following materials upon all parties of record in these proceedings via email the following: 1) Public Version of The City of Kirkland’s Comments on Ballard Terminal Railroad’s Supplement to its Petitions for Exemption and to Vacate Notice of Interim Trail Use, 2) Confidential Version of The City of Kirkland’s Comments on Ballard Terminal Railroad’s Supplement to its Petitions for Exemption and to Vacate Notice of Interim Trail Use, and the following verified statements or declaration and exhibits attached thereto: 3) Verified Statement of Michael Harbour, 4) Second Verified Statement of Christian McKnight, 5) Second Verified Statement of Kurt Triplett, 6) Verified Statement of Nick Beck, 7) Verified Statement of Carol Helland, 8) Verified Statement of Aaron McDonald, 9) Declaration of Mark Blazer, and 10) the Verified Statement of Hunter Ferguson,

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>	Service by: <input type="checkbox"/> hand delivery via messenger <input type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile
Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: <input type="checkbox"/> hand delivery via messenger <input type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile

<p>Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i></p>	<p>Service by: <input type="checkbox"/> hand delivery via messenger <input type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>
<p>Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County</i></p>	<p>Service by: <input type="checkbox"/> hand delivery via messenger <input type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>


 Hunter Ferguson

Dated this 6th day of March, 2014.

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
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**BALLARD TERMINAL RAILROAD COMPANY, L.L.C. – ACQUISITION AND
OPERATION EXEMPTION –WOODINVILLE SUBDIVISION – VERIFIED PETITION
FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

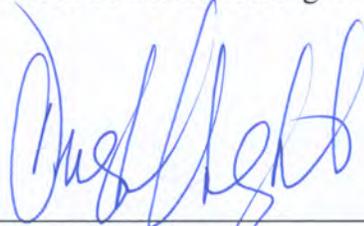
SECOND VERIFIED STATEMENT OF CHRISTIAN KNIGHT

I, Christian Knight, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. I am currently employed as a Neighborhood Services Coordinator in the Capital Improvement Program of the City of Kirkland.
3. On February 28, 2014, I visited the location of Woodinville Whiskey Company's distillery, which fronts a portion of the railbanked right-of-way that is the subject of these proceedings.
4. Exhibit A to this statement is a photograph I took of the view of the rail bed from the distillery's parking lot. Exhibit B is a photograph I took of the view of the parking lot from the rail bed.

5. As these photographs show, the distillery location is significantly below the elevation of the rail bed, which is located atop a steep berm that is supported by a rockery retaining wall on the edge of the distillery's parking lot.

6. Using stationary objects such as cars and buildings as points of reference, I estimated that the elevation of the rail bed is between 20 and 25 feet higher than the elevation of the parking lot.



CHRISTIAN KNIGHT

Dated: March 5, 2014

Place: Kirkland

STATE OF WASHINGTON

COUNTY OF KING

On this day personally appeared before me Christian Knight, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this 5th day of March, 20 14.

Oskar Rey

Notary Public residing at Seattle WA

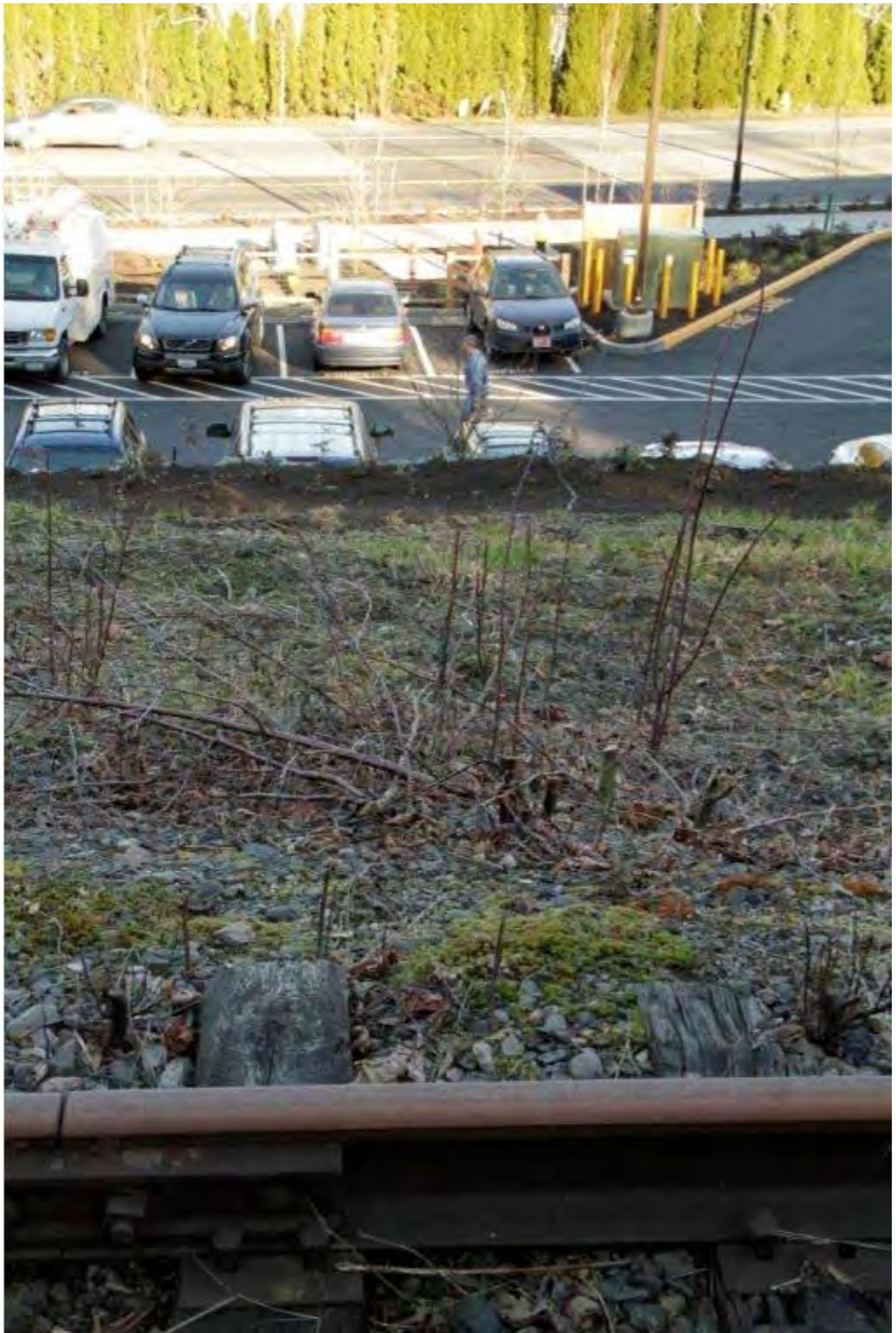
Printed Name: Oskar Rey

My Commission Expires:
1-25-2016





Knight Exhibit A



VERIFIED STATEMENT OF MICHAEL HARBOUR, DEPUTY CEO,
OF THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

1. My name is Michael Harbour, and I am the Deputy Chief Executive Officer of the Central Puget Sound Regional Transit Authority ("Sound Transit").
2. Sound Transit was created by the Pierce, King, and Snohomish Counties through action of their respective county councils in accordance with RCW 81.112.030. Sound Transit is authorized to plan, construct, and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region. Chap 81.112 RCW. Sound Transit carried nearly 30.3 million riders in 2013 on its regional bus, commuter rail, and light rail services.
3. In general elections held within the Sound Transit district on November 5, 1996 and November 8, 2008, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region. Sound Transit's 2008 voter-approved plan ("ST2") included light rail (i.e., East Link project) and possible commuter rail over and across the Woodinville Subdivision. The East Link project has a budget of \$2.8 billion and is expected to carry 50,000 people per day by 2030.
4. In November 2009, consistent with ST2, Sound Transit entered into a Memorandum of Understanding with King County, Washington; the Port of Seattle; the City of Redmond, Washington; the Cascade Water Alliance; and Puget Sound Energy, Inc. (collectively, the "Public Partners"), to purchase interests in the Woodinville Subdivision and Redmond Spur ("MOU").
5. Since the Port of Seattle purchased the Woodinville Subdivision and Redmond Spur from BNSF in 2009, the Public Partners have been working together to plan for the full utilization of the corridors for the benefit of their respective tax and rate payers subject, of course, to the interim trail use or the freight use by a legitimate freight rail operation willing to pay fair market value for the property interest that would permit freight operations.
6. On April 25, 2013, the Sound Transit Board selected the route, profiles, and station locations for the East Link Light Rail Project, including the relevant selection of the light-rail route through the former BNSF corridor. In relevant part, the light rail alignment turns north into the former BNSF Railway corridor and continues to an elevated Hospital Station on the north side of NE 8th Street with entrances also on the north side of NE 8th Street. The route turns east into the Bel-Red corridor in a retained cut configuration between 120th and 124th Avenues. The Project will include storage tracks in the former BNSF rail corridor north of NE 12th Street with lead tracks and light maintenance facilities adjacent to the corridor. The location of a full maintenance facility is under study as a separate project, including the needs for the extension to downtown Redmond. It is the Board's intent to complete the study by 2015.

7. Since the Board selected the route, Sound Transit has begun purchasing real property and entering into contracts for the design and implementation of the East Link Light Rail Project and purchasing real property.
8. In 2012, Sound Transit purchased from the Port of Seattle for \$13,752,393 the following: a) a 1.1 mile segment of the former BNSF corridor located in the City of Bellevue for construction and operation of the East Link project (the "Bellevue Mile"), and b) easements for high-capacity transit throughout the remainder of the former BNSF corridor.
9. Sound Transit is participating in these proceedings because BTR seeks to reactivate freight rail service over the Bellevue Mile and has literally targeted locations for its own facilities or the facilities of future customers where Sound Transit seeks to build its light rail facilities. First, BTR would create a rail yard in the location that Sound Transit intends to construct its own storage track. Second, BTR plans to have its customers purchase property to the east of the Bellevue Mile to construct a concrete batch plant and laydown yard, which would have to be accessed by spurs that cross Sound Transit's light rail tracks. Third, BTR seeks to reactivate freight rail service to the exact location of Sound Transit's Hospital Station, although it has not produced any shippers or customers who need the service at or through that location. Sound Transit is designing its light rail facilities on the Bellevue Mile to permit it to share the corridor with a trail in the short term or a legitimate reactivated freight service in the future.
10. Sound Transit is proceeding with its East Link Light Rail Project and is currently at 60 percent design of the track and station (i.e., the Hospital Station) on the Bellevue Mile. Sound Transit intends to locate on the eastern portion of the Bellevue Mile, while leaving the western portion for trail or future freight rail use.
11. Construction on both the track work in the Sound Transit-owned portion of the Bellevue Mile and the Hospital Station projects are expected to start in 2016.
12. As of December 2013, Sound Transit has spent an estimated \$169 million out of its \$2.8 billion budget for the East Link Light Rail Project.

VERIFICATION

State of Washington

County of King

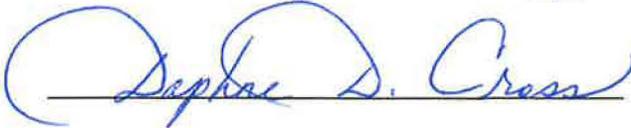
SS:

Michael Harbour being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.



Michael Harbour
Deputy Chief Executive Officer
Central Puget Sound Regional
Transit Authority

Subscribed and sworn to before me this 4th day of March 2014.



Notary Public of the State of Washington.

My Commission expires 9-29-14



**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**

SECOND VERIFIED STATEMENT OF KURT TRIPLETT

I, Kurt Triplett, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. I hold the office of City Manager for the City of Kirkland (“Kirkland”) and have served in this capacity since June 28, 2010. Before assuming this position, I served as Chief of Staff to King County Executive Ron Sims from July 2003 to April 2009 and then as Interim King County Executive from May 2009 to November 2009.
3. I previously submitted a Verified Statement dated June 4, 2013 in these proceedings. This Second Verified Statement supplements my first Verified Statement and provides testimony on events that transpired after I signed my Verified Statement dated June 4, 2013.
4. Kirkland solicited bids for removal of rail infrastructure from the Cross Kirkland Corridor (“CKC”) in February 2003. Kirkland subsequently awarded the salvage contract to

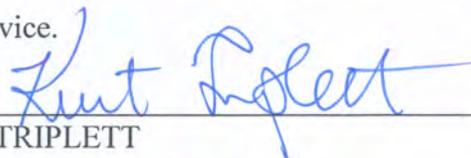
A&K Railroad Materials, Inc. ("A&K"). Kirkland entered into the salvage contract with A&K on April 26, 2013 and immediately suspended performance of the contract pending the Surface Transportation Board's ruling on the Ballard Terminal Railroad Co., LLC ("Ballard") request for an injunction prohibiting salvage of the rails.

5. After the Surface Transportation Board denied Ballard's injunction request on August 1, 2013, Kirkland lifted the suspension of the rail salvage contract and instructed A&K to proceed with rail salvage on the CKC. The salvage work was substantially complete by October 2013.

6. On October 27, 2013, Kirkland celebrated the opening of the CKC to public use with a walking tour that was attended by approximately 200 political leaders and local citizens. Almost 100 people walked the full 5.75 mile length of the CKC. True and accurate photographs of the event are attached hereto as Exhibit A.

7. The CKC is currently used by the public as a trail. In addition, Kirkland has designed and plans to construct this spring an "Interim Trail" on the rail bed. The Interim Trail will be a packed gravel trail approximately 10 feet wide and will be used by the public over the next several years while Kirkland plans and designs a permanent trail.

8. Kirkland has already begun the master planning process for a permanent trail on the CKC. The permanent trail will be paved and will be located on or near the edge of the CKC. Kirkland will locate its permanent trail on the edge of the CKC in order to leave room for a Sound Transit light rail line or reactivated freight service.


KURT TRIPLETT

Dated: 3/5/14

Place: Kirkland City Hall

STATE OF WASHINGTON

COUNTY OF KING

On this day personally appeared before me Kurt Triplett, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this 5th day of March, 2014.

Oskar Rey

Notary Public residing at Seattle WA

Printed Name: Oskar Rey

My Commission Expires:

1-25-2016









**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

VERIFIED STATEMENT OF CAROL HELLAND

I, Carol Helland, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. I am the Director of the Land Use Division of the Development Services

Department (“*DSD*”) for the City of Bellevue, Washington. I have held this position since August 6, 2001. As such, I am responsible for all land use permitting decisions, including use classifications, by the City of Bellevue. Prior to becoming the Land Use Director, I was the Legal Planner for the Department of Planning and Community Development of the City between 1996 -2001, and an attorney practicing predominately in areas of land use and environmental law with Hillis Clark Martin and Peterson between 1994-1996. As the Legal Planner, one of my primary job functions was to prepare formal and informal interpretations of the Bellevue Land Use Code to ensure consistent and predictable administration of the code by the Land Use Division staff, and to draft code amendments for application by the City. As the Director of the Land Use Division, I have been delegated the authority to interpret the LUC, including the

specific authority to determine if particular proposed use is either included or excluded in a particular use category. This determination is made based on the operation of the proposed use and on my interpretation of the Standard Land Use Coding Manual, the Standard Industrial Classification Manual and the North American Industry Classification System. As a result, I am responsible for ensuring that the Bellevue Land Use Code is properly interpreted and applied appropriately to applications, permits, and approvals issued under the terms of the Land Use Code.

3. In 2006, Bellevue initiated expansive revisions to its Comprehensive Plan, in particular the Bel-Red planning area, to accommodate a growing urban population. These revisions included rezoning the areas on either side of the railroad right-of-way between Highway 520 to the North and NE 8th Street. to the South known as the Bel-Red Subarea to allow for dense mixed-use residential development expected to include 5,000 new residential dwelling units by 2030. A map depicting the Bel-Red Subarea is attached hereto as **Exhibit 1**.

4. To implement the revisions to Comprehensive Plan, in 2009, the City adopted new development regulations, including allowed uses, commonly known as the Bel-Red Overlay District. Properties immediately adjacent to the railroad right-of-way were rezoned from light industrial to mixed-use residential development focused around future light rail service by Sound Transit. This rezoning is part of a long-term plan that will dramatically change this area from past light industrial use to dense mixed-use residential to meet the needs of expected population growth.

5. The parcel outlined in purple in the map attached hereto as **Exhibit 2** is zoned Bel-Red Residential (BR-R). Neither a concrete batch plant nor a freight transload facility are allowed in the BR-R, which allows only residential uses and those uses compatible with a

residential neighborhood. These industrial uses are inconsistent with the City's adopted vision for the Bel-Red Subarea, and could not be approved or established in this area.

Carol Helland
Carol Helland

Dated: 3/5/14

Place: Bellevue, Washington

STATE OF WASHINGTON

COUNTY OF KING

On this day personally appeared before me Carol V. Helland., to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this 5th day of March, 2014.

Sharon L. Taylor

Notary Public residing at Everett, WA

Printed Name: Sharon L. Taylor

My Commission Expires:

4-19-17





CITY OF BELLEVUE

Bel-Red Subarea

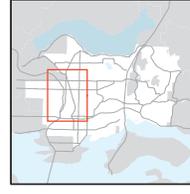
- T Planned Light Rail Stations
- Planned Park Facilities
- Planned New Streets
- Planned New Trail Connections
- Riparian Greenway Opportunity Areas

Bel-Red Zoning

- BR-Commercial Residential (BR-CR)
- BR-General Commercial (BR-GC)
- 9BR-MO
- BR-Medical Office-1 (BR-MO-1)
- BR-Office Residential (BR-OR)
- BR-Office Residential-1 (BR-OR-1)
- BR-Office Residential-2 (BR-OR-2)
- BR-Office Residential Transition (BR-ORT)
- BR-Residential (BR-R)
- BR-Residential Commercial-1 (BR-RC-1)
- BR-Residential Commercial-2 (BR-RC-2)
- BR-Residential Commercial-3 (BR-RC-3)
- Medical Institutional (MI)

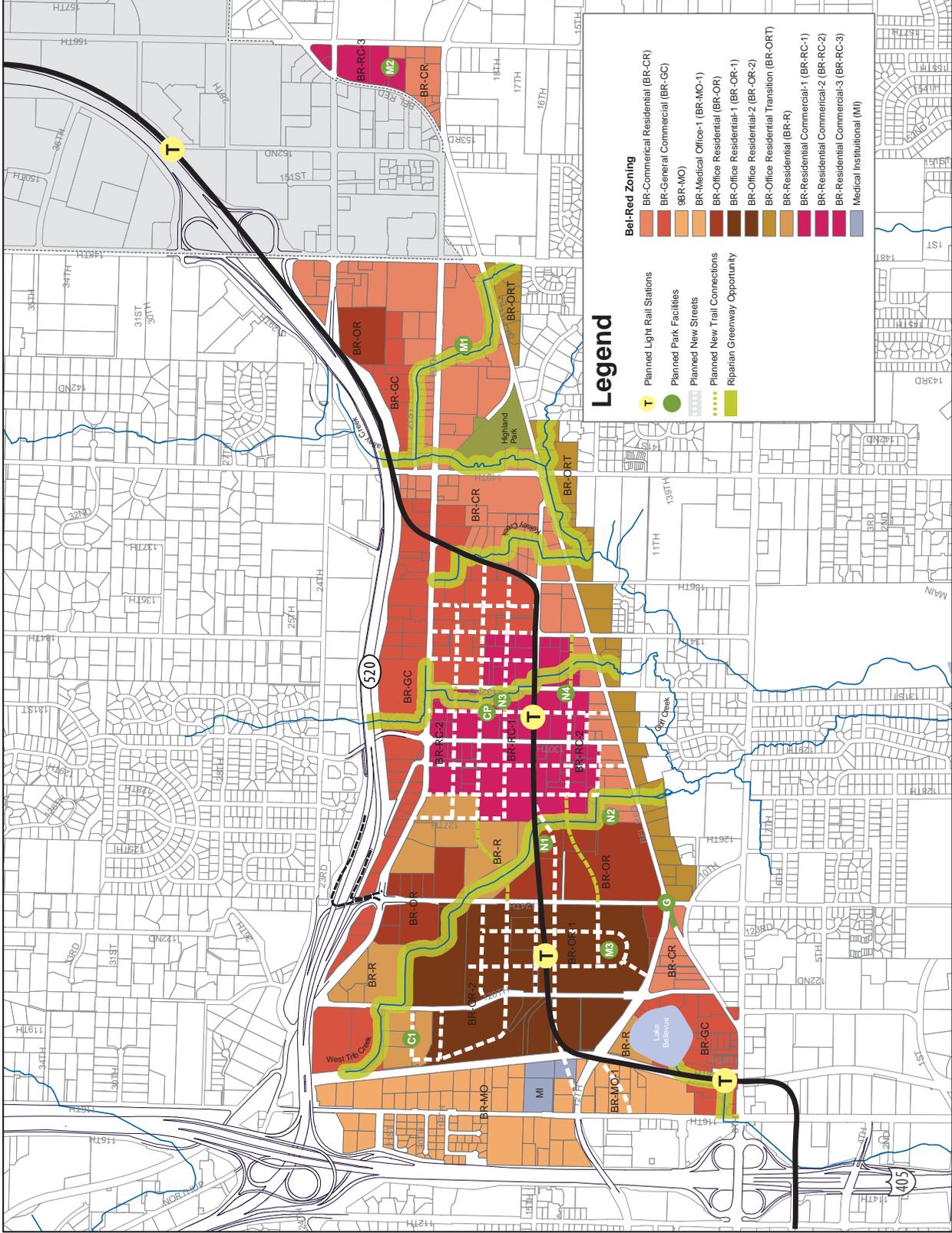
Subarea plan adopted 2/17/2009 Ordinance No:5655
 Zoning adopted 5/18/2009 Ordinance No:5874

For more information contact:
Paul Inghram
 Phone: 425-452-4070
 E-mail: pingham@bellevuewa.gov



Location Within City

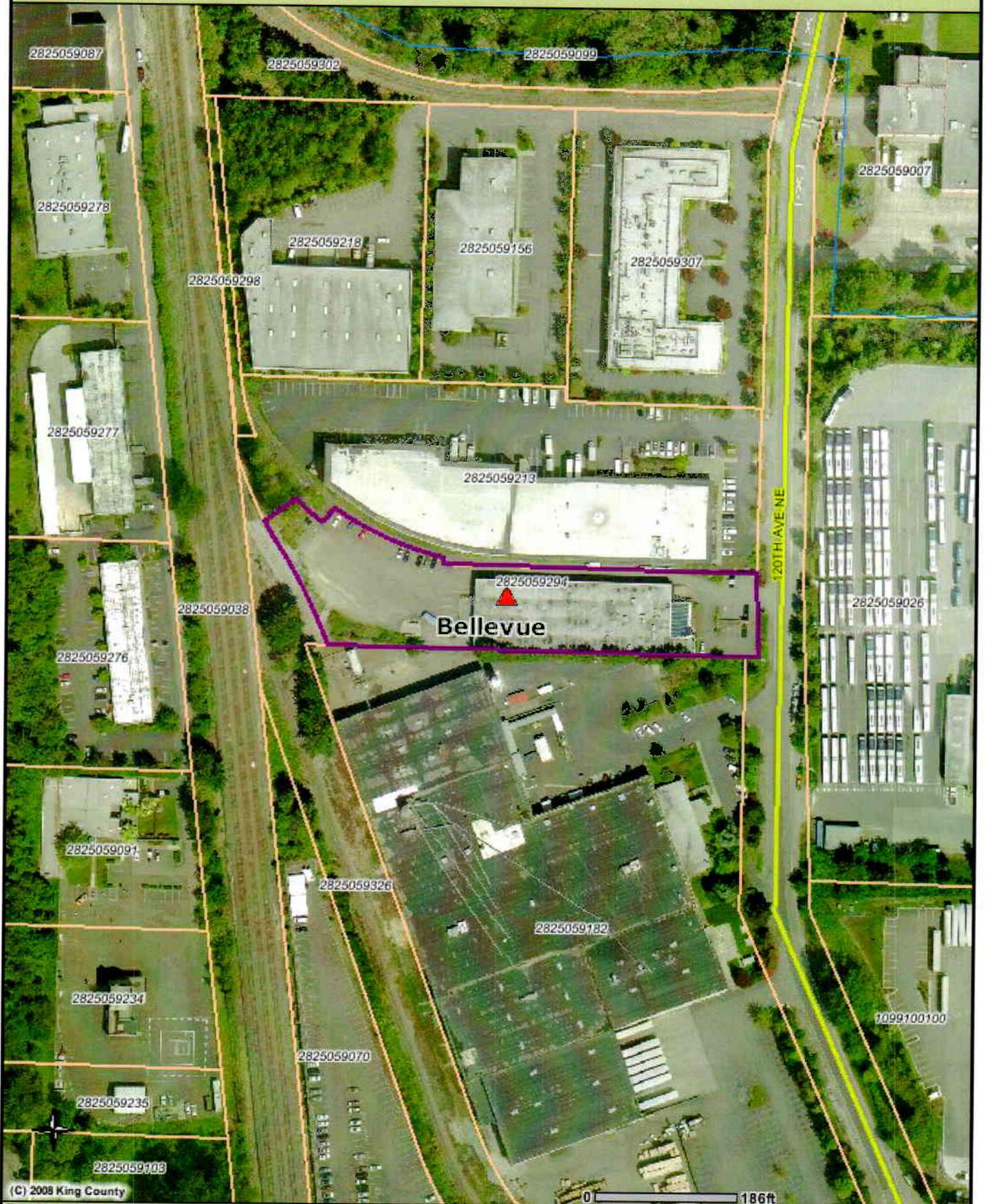
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Legend

- T Planned Light Rail Stations
 - Planned Park Facilities
 - Planned New Streets
 - Planned New Trail Connections
 - Riparian Greenway Opportunity
-
- BR-Commercial Residential (BR-CR)
 - BR-General Commercial (BR-GC)
 - 9BR-MO
 - BR-Medical Office-1 (BR-MO-1)
 - BR-Office Residential (BR-OR)
 - BR-Office Residential-1 (BR-OR-1)
 - BR-Office Residential-2 (BR-OR-2)
 - BR-Office Residential Transition (BR-ORT)
 - BR-Residential (BR-R)
 - BR-Residential Commercial-1 (BR-RC-1)
 - BR-Residential Commercial-2 (BR-RC-2)
 - BR-Residential Commercial-3 (BR-RC-3)
 - Medical Institutional (MI)

iMAP



(C) 2008 King County

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Date: 2/10/2014

Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)



King County

**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**

VERIFIED STATEMENT OF NICK BECK

I, Nick Beck, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. I am the President of RJB Wholesale, Inc. (“**RJB**”), which my parents formed in 1972. I have worked at RJB full-time since 1989 and became company president approximately four to five years ago.
3. RJB’s main office, warehouse, and storage and receiving yard are located at 12418 NE 124th St., Kirkland, Washington 98034, on the southeast side of the railroad right-of-way that is the subject of these proceedings (the “**Line**”). RJB has conducted business at this location since its formation. The attached map (**Exhibit 1**) shows the location of RJB’s facilities and its property boundaries outlined in red.
4. RJB supplies steel and PVC pipe, related hardware, and other construction materials such as well-drilling supplies to customers in the western United States.
5. RJB primarily receives its products in one of two ways. Materials are shipped by rail to a location south of Seattle such as Auburn or Puyallup, Washington and then carried by

VERIFIED STATEMENT OF NICK BECK – 1

truck to RJB's Kirkland yard. Or materials are shipped by vessel to the Port of Seattle or the Port of Tacoma and then carried by truck to RJB's yard. Products ordered by customers are shipped from RJB's facility via truck.

6. To my knowledge no one for RJB has ever requested rail service to or from RJB's Kirkland facility. RJB would welcome another shipping option, but the tight space in our yard and cost of building a rail spur, siding, or other rail facility necessary for service have prevented us from pursuing this option.

7. To my knowledge no one for RJB has ever requested a price quote for rail service to or from RJB's facility. Nor I am aware of any study, analysis, or investigation of the cost of rail service to or from RJB's facility.

8. There is a relatively steep embankment and ditch that run the length of the property boundaries between the Line and RJB's facility. The elevation of the rail bed is approximately 8 to 12 feet higher than the elevation of RJB's yard.

9. There is no spur track, rail siding, or other facility providing rail access to RJB's yard. In order for RJB's yard to receive rail service, a spur track, siding, or other facility would need to be built connecting RJB's yard to the Line.

10. RJB does not have a plan to construct a spur track, siding, or other rail facility, and I am not aware of any plan to construct a spur track, siding, or other facility for rail access to RJB's yard.

11. No one for RJB has performed any investigation, study, or analysis concerning the construction of a spur track, siding, or other rail facility connecting RJB's yard to the Line, and I am not aware of any such investigation, study, or analysis.

12. RJB has not made any commitment to pay for, or participate in the financing of, the construction of a spur track, siding, or other facility for rail service to its yard.

13. If RJB were able to receive rail service at its Kirkland yard, I do not know how many railcars it would receive on an annual basis.

14. At some point during the first two weeks of June 2013, Ernie Wilson of Eastside Community Rail asked me if I would sign a letter in support of Ballard Terminal Railroad's petition to reactivate rail service on the Line. Mr. Wilson presented me with an initial draft of a letter and then a revised draft based on some information provided by my staff and me. I approved the content of the revised draft, and Mr. Wilson indicated that he would sign the letter on my behalf. It is my understanding that he submitted the letter attached hereto as **Exhibit 2** to the Surface Transportation Board.

On July 1, 2013, I received an email from Barbara Sadler explaining that the Surface Transportation Board had received the letter in Exhibit 2 and that in order for the letter to appear on the Board's online docket for these proceedings I would need to notify all parties of record included on the service list attached to Ms. Sadler's email. I alerted Mr. Wilson to Mrs. Sadler's correspondence. Neither Mr. Wilson nor anyone else for Ballard Terminal Railroad or Eastside Community Rail instructed me to notify the parties of record of the letter dated June 17, 2013 filed with the Board. After further correspondence with both Ms. Sadler and Mr. Wilson, I did not notify the parties on the service list of the later dated June 17, 2013.

15. On August 8, 2013, I received another email from Mr. Wilson, explaining that the Board had denied Ballard Terminal Railroad's request for an injunction and that Ballard planned to request reconsideration on the ground that the Board failed to mention RJB. Mr. Wilson further requested that I sign another letter that he promised to draft stating that RJB would participate in the financing and construction of a rail spur into RJB's yard. A true and correct copy of Mr. Wilson's email of August 8, 2013 is attached hereto as **Exhibit 3**.

16. Again, RJB has never promised or agreed to participate in the construction or financing of a rail spur, siding, or other facility connecting its yard to the Line.

17. Mr. Wilson then presented me with multiple drafts of a supplemental letter to the Board that I requested he revise because I did not agree with some of the statements he wrote about the City of Kirkland. While I support having the availability of rail service as a shipping option, I also support Kirkland's efforts to develop its section of the Line into a trail. After Mr.

Wilson further revised this supplemental letter, I signed the last page and emailed a scanned copy of the signature page to him. A true and correct copy of this email to Mr. Wilson is attached as **Exhibit 4**. It is my understanding that the letter attached hereto as **Exhibit 5** was then submitted to the Board.

18. Mr. Wilson later informed me that my “typed name” on this letter was misspelled as “Best” instead of “Beck.” I then pointed out to Mr. Wilson that I hadn’t typed anything but, rather, just signed the signature page. A true and correct copy of this email exchange with Mr. Wilson is attached as **Exhibit 6**.



Nick Beck

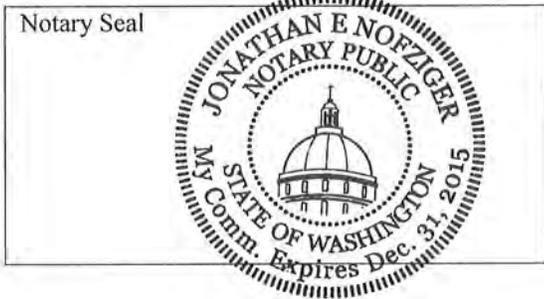
Dated: 2/5/14

Place: Kirkwood

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this 5th day of February 2014, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Nick Beck, the PRESIDENT of RJB WHOLESALC, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/she is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same as his/her voluntary act and deed on behalf of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.



Jonathan Noeziger
(Signature of Notary)

My Commission Expires: 12/31/15

EXHIBIT 1

RJB Wholesale site



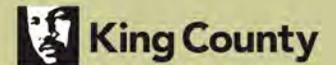
(C) 2008 King County

COMMENTS: Attachment to letter to STB supporting reactivation of Woodinville Subdivision from Woodinville to Bellevue

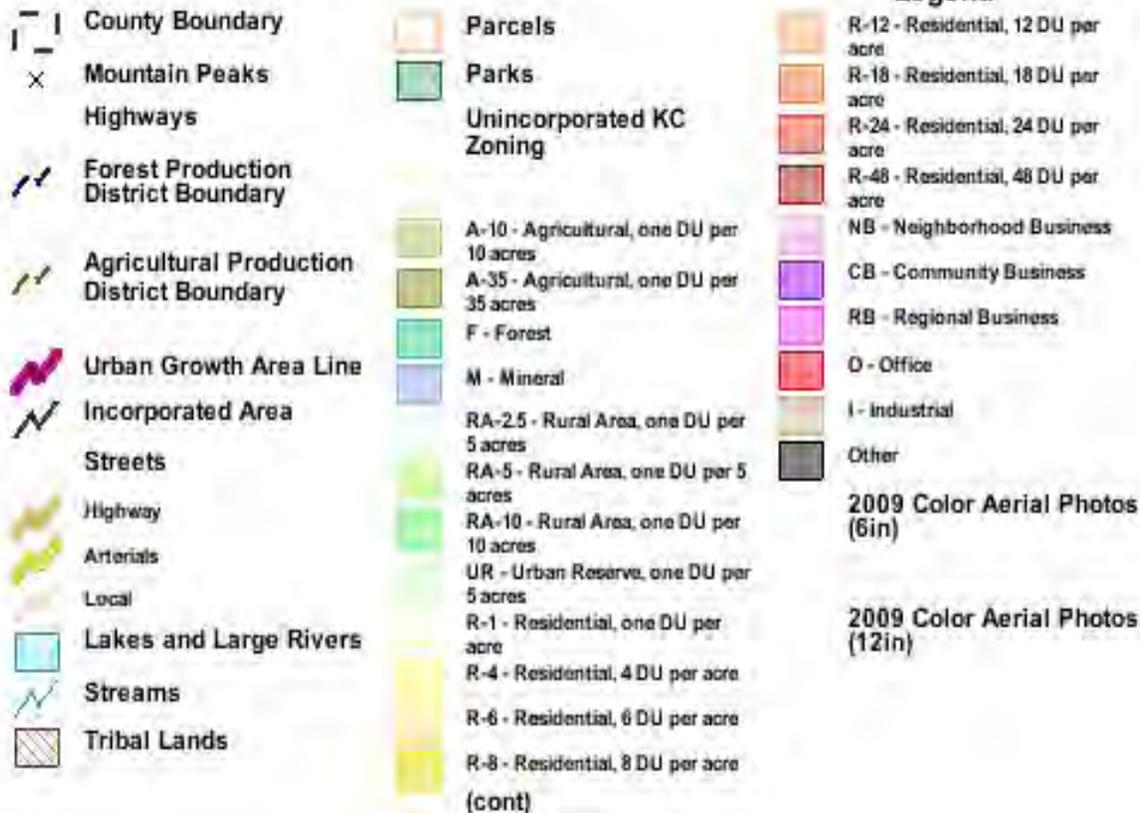
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Date: 6/13/2013

Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)



RJB Wholesale site



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Date: 6/13/2013 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)

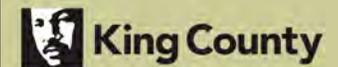
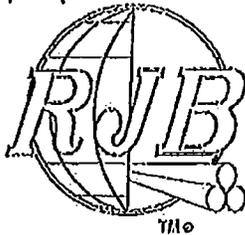


EXHIBIT 2



17 June 2013

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

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

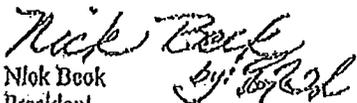
Dear Ms. Brown,

RJB Wholesale Inc., established in 1973, is the Western United States leading supplier of steel and PVC pipe to the wholesale distributor market. Our complete line of fittings meets the needs of a diverse group of industries. Additionally, RJB Wholesale supplies a full line of water well casing and drilling products. In 2012 our gross revenue exceeded \$15 million. Please refer to our Web-site at <www.RJBWholesale.com>. Our company headquarters site, including warehouses and storage yard, adjoins the southerly right-of-way line (railroad east) of BNSF Railway's former Woodinville Subdivision, just east of 124th Ave. NE, in Kirkland, Washington.

We recently became aware that Ballard Terminal Railroad is attempting to save these tracks and resume freight service on the line. So, we are writing to the Surface Transportation Board in support of Ballard's above-captioned petition to reactivate the Woodinville Subdivision between Woodinville and Bellevue, Washington. We support this reactivation because we would like to start using that rail line for receiving our product inventory, and possibly for shipping completed orders to customers. Last year we sold and distributed about 10,000 tons of pipe and other materials. Much of our bulk product is initially shipped from the manufacturer by rail, but it must currently be trans-loaded to one of our flatbed trucks in either Kent or Puyallup. Last year, we received about 26 rail cars of product. We expect 2-3 carloads per month going forward. To bring this material to our Kirkland yard, RJB trucks make over 90 trips to the trans-load sites annually, taking on average 2.5-3 hours each. Considering the constant congested traffic conditions in King County, it would save us a lot of money to be able to have those same rail cars of pipe delivered directly to our Kirkland yard. Obviously, that would make our business more competitive. It would also help us do our part towards reducing local traffic congestion and air pollution. Surely preserving and using the existing railroad infrastructure has a much higher economic return to our region than removing it and turning it into yet another expensive trail, as the City of Kirkland proposes.

We respectfully request that the STB grant Ballard's petition to reactivate this segment of rail line. We would be happy to answer any question you may have about our operations and our interest in shifting to freight delivery by rail to our facility.

Sincerely,

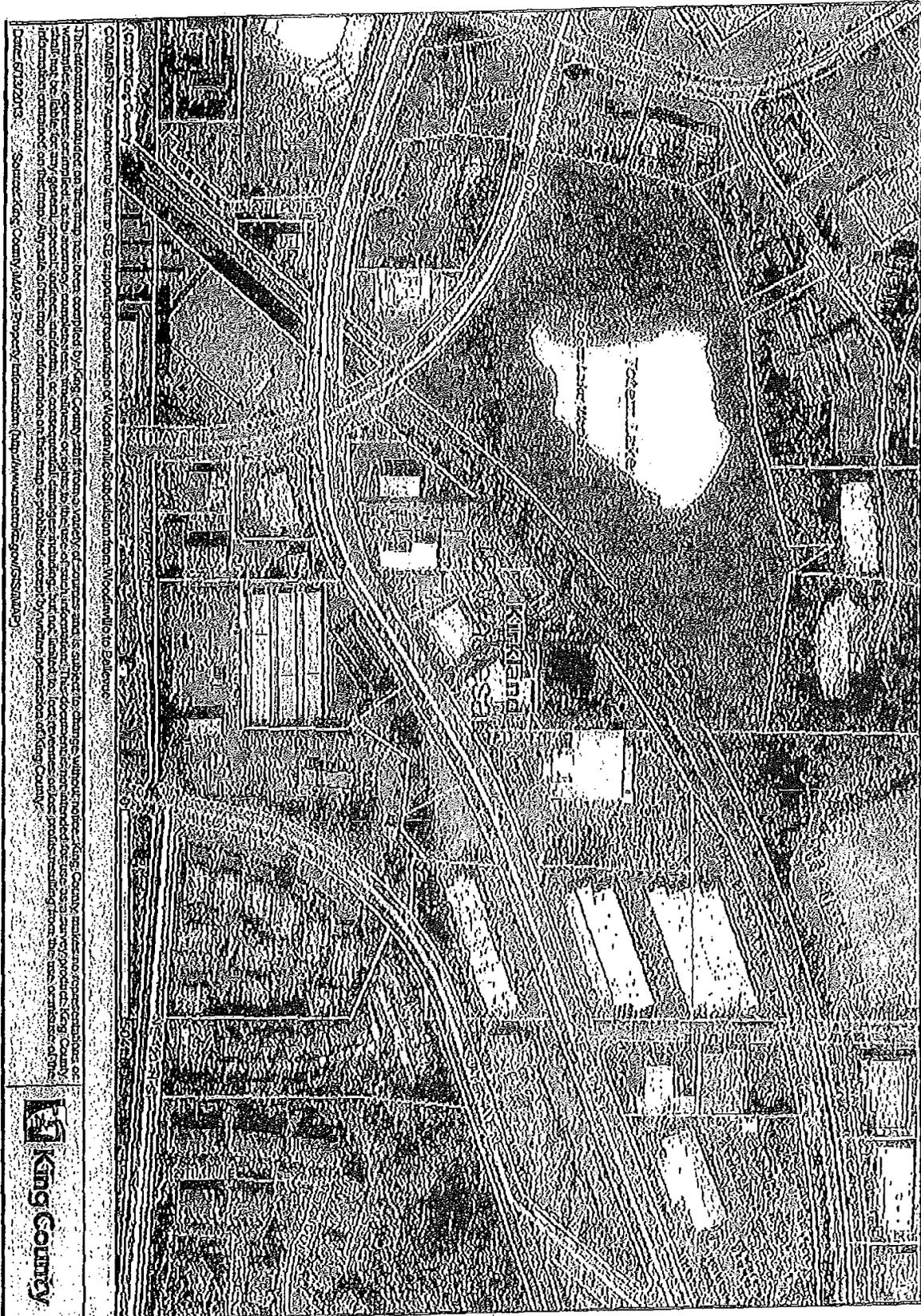

Nick Beek
President
Enclosure: Site Map, RJB Wholesale

PIPE

(425) 823-1444
FAX (425) 821-7393

P. O. BOX 2040
12410 N.E. 124TH ST.
KIRKLAND, WASHINGTON 98003

RJB Wholesale site



WOOD COUNTY, WISCONSIN
COMMENTS: Amendment to annex the STB property of roadwork of Wood County, Wisconsin from Wood County to Palatine
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Date: 6/12/2018
Source: King County, MAPS - Property Information (<http://www.kingcounty.gov/IS/MAAP/>)



EXHIBIT 3

From: ewilson@spiretech.com
Sent: Thursday, August 08, 2013 5:48 PM
To: Nick Beck
Cc: doug.engle@escrail.org
Subject: Railroad reactivation through Kirkland

Importance: High

Hi Nick-

I understand you are out of town this week, but I need to inform you of the latest developments in the rail battle.

We had a setback last week when the STB declined to issue an injunction to keep Kirkland from removing the tracks through town, without deciding the reactivation petition. However, there is provision to request 'reconsideration', and that is what we are doing. One of the grounds for that is in the event of material error by the Board. We think the fact that they failed to mention your company and potential rail service to you is such an error.

So we need to send another letter to STB. Based on what the STB said in this decision, we need to make sure they know that, while you don't have a rail spur into your property now, you want one and fully expect to participate in financing its construction. I can put together the letter, including whatever points you would like to make, but it would be helpful to talk with you first. Any chance you could call me tomorrow? We are trying to get letters in ASAP, because we expect Kirkland's contractor to start removing the tracks as soon as next week.

Thanks.

Ernie

H 425-869-8899 M 509-430-9350

EXHIBIT 4

From: Nick Beck <nick@rjbwholesale.com>
Sent: Tuesday, August 20, 2013 10:19 PM
To: ewilson@spiretech.com; Ernest F. Wilson <ernie.wilson@EsCRail.org>
Subject: Fwd:
Attachments: 20130820143450452.pdf; ATT00001.htm

Sent from my iPad

Begin forwarded message:

From: <mfp@rjbwholesale.com>
Date: August 20, 2013, 2:34:50 PM PDT
To: Nick Beck <nick@rjbwholesale.com>

This E-mail was sent from "RICOHMP161" (Aficio MP 161).

Scan Date: 08.20.2013 14:34:50 (-0700)
Queries to: mfp@rjbwholesale.com

low interest rates and negligible inflation of construction costs, this appears unlikely, too. Besides, people are already walking along the tracks today. And trails co-exist with trains in freight rail corridors in many locales. We don't see any real harm to the City from a slight delay in your overall decision regarding reactivation vs. track removal. On the contrary, we see real harm to local industry's freight mobility from the threatened loss of rail service, which Kirkland falsely claims isn't feasible.

The potential 'harm' to King County and Sound Transit is even harder to quantify. Nothing in Ballard's reactivation proposal would substantially interfere with those agencies' plans. Ballard has made clear that they support 'Rails with Trails', and so do we. Consider also that an intact Woodinville Subdivision rail line offers the possibility of future (circa 2023) commuter trains feeding customers to Sound Transit in Bellevue. What is the real harm to other interested parties? We submit that there isn't any. Where is the proof of the parties' claim, restated by the Board, that they have "invested years and millions of dollars of public funding toward their interim trail use and other public projects in the area the Line traverses"? King County only consummated their purchase of a portion of the Line's right-of-way this year. They still have not completely paid for it, and don't expect to for a few years. King County also doesn't yet have a Master Plan or trail design for their part of the corridor. We submit that the Board erred in giving credence to their arguments.

We appreciate that a case such as this presents the Board with many competing interests and arguments. However, it appears to us that Ballard's request for authority to reinstate freight rail service on this Line and expand its service territory is sound, and comes from a bona fide and solvent rail operator. Considering the extreme financial barrier to entry that would be posed by prior removal of the rail assets, it is vital for the STB to protect them during these proceedings. Shouldn't that be the Board's default position on these matters? For the reasons stated herein, we therefore respectfully request that the STB grant this petition for reconsideration of its August 1st decision in this matter, and immediately enjoin Kirkland from instituting any further salvage operations on or along the Line, pending the Board's final action on Ballard's Acquisition and Operation Exemption request.

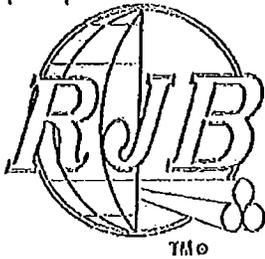
Thank you for your consideration of our petition and of our interest in obtaining freight rail service from Ballard Terminal Railroad into our trackside facility in Kirkland.

Sincerely,



Nick Best
President

EXHIBIT 5



20 August 2013

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

PETITION FOR RECONSIDERATION

**REF: STB FINANCE DOCKET NO. 36731/ Docket No. AB 6(Sub-No. 465X)
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION**

Dear Ms. Brown,

RJB Wholesale, Inc.(RJB), hereby notifies the Board that we are petitioning for reconsideration of the Board's decision of 7 August denying Ballard Terminal Railroad Company's (Ballard) request for an injunction to prevent the City of Kirkland, Wash., from salvaging 6.75 miles of track over which Ballard is seeking authority to reinstitute freight rail service. We allege that the Board erred in not considering the impact on RJB of removing the rails which adjoin our facility, when we have previously stated to STB our interest in obtaining freight rail service from Ballard over these very tracks. It is inconceivable to us that the Board would even consider allowing the rails to be removed by Kirkland prior to the Board's full consideration of the reactivation request and circumstances. We further allege that it was error for the Board to partially base its decision on Kirkland's unsubstantiated claims of possible harm from further delay of the decision on the requested injunction. Contrary to the Board's conclusion, we believe that Ballard has in fact demonstrated adequate support for delaying a ruling on its preliminary injunction request, or alternatively, granting the injunction immediately.

In June, we wrote to the Board in support of Ballard's proposed rail line reactivation and expressed our interest in receiving our product inventory by rail. The Board in its decision failed to mention us as a 'prospective shipper', even though our business is located on the Line and is a 'conventional' rail customer. Our current product volume exceeds 10,000 tons/year. As we pointed out, most of our pipe already ships from factories by rail, requiring additional cost to transload to our trucks for delivery to our distribution yard. So, the Board is in error in stating (on P. 6) that the record fails to show that there actually are "...customers 'ready willing and able' to use freight rail service". We are such a customer, in an industrial zone, yet Kirkland never inquired about our potential use of the adjacent rails. While we may not have a rail spur into our facility today, we are quite ready and financially able to participate in the cost of such an improvement to our facility. In fact, we would welcome that opportunity to upgrade our distribution operations with rail shipping.

Regarding Kirkland's claim of financial and other harms that would befall it if they were required to wait to begin salvage operations, it seems questionable to us. Kirkland is located in an area of the Pacific Northwest with a temperate, marine climate. We are a construction-related business. Low technology construction activity, such as rail salvage, can be conducted virtually year-round here. Considering that the City went through a public bidding process to select a salvage contractor, we are quite sure that the chosen firm would gladly extend their offer a few months in order to hold on to the rail removal contract, which would be quite lucrative to them. The Board also repeats Kirkland's claim that a "delay in proceeding with these plans will result in costs to the City's taxpayers..." In today's climate of extremely

RJB Petition to Reconsider
STB Dockets PD 35731 & AB 6 (Sub-No., 465X)
P. 2

low interest rates and negligible inflation of construction costs, this appears unlikely, too. Besides, people are already walking along the tracks today. And trails co-exist with trains in freight rail corridors in many locales. We don't see any real harm to the City from a slight delay in your overall decision regarding reactivation vs. track removal. On the contrary, we see real harm to local industry's freight mobility from the threatened loss of rail service, which Kirkland falsely claims isn't feasible.

The potential 'harm' to King County and Sound Transit is even harder to quantify. Nothing in Ballard's reactivation proposal would substantially interfere with those agencies' plans. Ballard has made clear that they support 'Rails with Trails', and so do we. Consider also that an intact Woodinville Subdivision rail line offers the possibility of future (circa 2023) commuter trains feeding customers to Sound Transit in Bellevue. What is the real harm to other interested parties? We submit that there isn't any. Where is the proof of the parties' claim, restated by the Board, that they have "invested years and millions of dollars of public funding toward their interim trail use and other public projects in the area the Line traverses"? King County only consummated their purchase of a portion of the Line's right-of-way this year. They still have not completely paid for it, and don't expect to for a few years. King County also doesn't yet have a Master Plan or trail design for their part of the corridor. We submit that the Board erred in giving credence to their arguments.

We appreciate that a case such as this presents the Board with many compelling interests and arguments. However, it appears to us that Ballard's request for authority to reinstate freight rail service on this Line and expand its service territory is sound, and comes from a bona fide and solvent rail operator. Considering the extreme financial barrier to entry that would be posed by prior removal of the rail assets, it is vital for the STB to protect them during these proceedings. Shouldn't that be the Board's default position on these matters? For the reasons stated herein, we therefore respectfully request that the STB grant this petition for reconsideration of its August 1st decision in this matter, and immediately enjoin Kirkland from instituting any further salvage operations on or along the Line, pending the Board's final action on Ballard's Acquisition and Operation Exemption request.

Thank you for your consideration of our petition and of our interest in obtaining freight rail service from Ballard Terminal Railroad into our trackside facility in Kirkland.

Sincerely,



Nick Best
President

EXHIBIT 6

From: Nick Beck <nick@rjbwholesale.com>
Sent: Wednesday, August 21, 2013 2:57 PM
To: ewilson@spiretech.com
Subject: RE: #2 Re: FW:

I typed? I don't recall typing anything I just signed it

-----Original Message-----

From: ewilson@spiretech.com [<mailto:ewilson@spiretech.com>]
Sent: Wednesday, August 21, 2013 2:48 PM
To: Nick Beck
Subject: #2 Re: FW:
Importance: High

Nick-

I just realized that your typed name on the letter is 'Best', instead of Beck. I don't know how that got by us, but I apologize for the error.

Maybe you could fix that before printing out our file copy.

Ernie

>

>

> -----Original Message-----

> From: mfp@rjbwholesale.com [<mailto:mfp@rjbwholesale.com>]
> Sent: Wednesday, August 21, 2013 10:16 AM
> To: Nick Beck
> Subject:

>

> This E-mail was sent from "RICOHMP161" (Aficio MP 161).

>

> Scan Date: 08.21.2013 10:16:07 (-0700) Queries to:

> mfp@rjbwholesale.com

>

**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**

CERTIFICATE OF SERVICE

Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 386-7569
mcohen@stoel.com
hoferguson@stoel.com

Counsel for the City of Kirkland, Washington

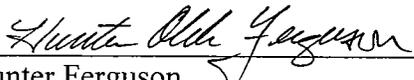
Dated: February 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of 1) Letter from Hunter Ferguson to the Surface Transportation Board, 2) Verified Statement of Nick Beck, and 3) Certificate of Service upon the following parties by first class mail with postage prepaid and properly addressed:

<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>Service by: <input type="checkbox"/> hand delivery via messenger <input checked="" type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>
<p>Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i></p>	<p>Service by: <input type="checkbox"/> hand delivery via messenger <input checked="" type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>
<p>Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i></p>	<p>Service by: <input type="checkbox"/> hand delivery via messenger <input checked="" type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>
<p>Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i></p>	<p>Service by: <input type="checkbox"/> hand delivery via messenger <input checked="" type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>

<p>Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County</i></p>	<p>Service by:</p> <p><input type="checkbox"/> hand delivery via messenger <input checked="" type="checkbox"/> mailing with postage prepaid <input checked="" type="checkbox"/> copy via email <input type="checkbox"/> facsimile</p>
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Hunter Ferguson

Dated this 10th day of February, 2014.

**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**

DECLARATION OF MARK BLAZER

I, Mark Blazer, being competent to make this statement and having personal knowledge of the matters set forth herein, do swear and affirm the following:

1. My name is Mark Blazer. I am Senior Vice President – Strategic Development West Region for WATCO Companies, L.L.C., a position I have held since 2003.
2. I first became familiar with the plan to reactivate freight rail service on a portion of the former BNSF Woodinville Subdivision in approximately 2011, when Mr. Doug Engle contacted me about the possibility of WATCO operating freight and excursion trains on a portion of the Woodinville Subdivision. Based on the information Mr. Engle presented, there did not appear to be enough freight traffic to warrant consideration by WATCO, and WATCO as a general matter was not interested in operating excursion trains.

3. I had no further contact with Mr. Engle, or anyone else, about freight operations on the Line until approximately October, 2013, when Mr. Engle contacted me and presented me with new traffic projections on the portion of the Woodinville Subdivision between Woodinville and Bellevue, Washington (the "Line"), which were much higher than the projections he had indicated before. He expressed to me that there could be an opportunity for WATCO to come in as the operator of the Line, which I understood could require WATCO investing in the reactivated Line.
4. Based on the numbers he presented, I agreed that WATCO would be interested in further discussions to see if the plan was a genuine opportunity for WATCO and agreed to provide a general letter of support to the STB.
5. Mr. Engle prepared an initial draft of the letter for my review. I carefully edited the draft to make clear that WATCO had not made any commitment to Ballard Terminal Railroad, Eastside Community Rail, or Mr. Engle regarding WATCO's investment or participation in any potential service on the Line. A true and correct copy of my edited version of the first draft of the letter is attached as Exhibit 1.
6. I further intended to make clear that any potential participation by WATCO was contingent on a number of factors, including verifying customer commitment by requiring take or pay agreements associated with car volumes, establishing the customers' level of financial participation associated with the upfront cost of reactivating this Line, and negotiating operating and use agreements. Moreover,

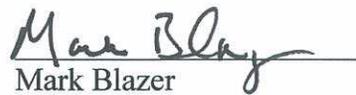
WATCO had (and to this day still has) no independent knowledge of any commitments for service by any shippers or customers on the Line.

7. Accordingly, WATCO has not entered into any agreement with Ballard Terminal Railroad nor has WATCO made any commitments to participate in any way in Mr. Engle's proposal and would not make any such commitment without first performing the required due diligence. In particular, WATCO has not made any commitment to make any investment or provide any financial assistance to reactivate the Line, including installing new rails and ballast or rehabilitating existing rail and ballast. Similarly, at this time WATCO has not made any commitments to bring new shippers or customers to the Line, nor has WATCO made any commitments to BNSF regarding the Line.
8. Because the Surface Transportation Board has not ruled on reactivating the Line and because the plan outlined by Mr. Engle was so preliminary and contingent on future variables, I did not think it worthwhile to make the investment of time and resources to perform any due diligence or to independently validate Mr. Engle's projections of traffic and revenue. Moreover, I have no independent knowledge of potential traffic volumes or revenue from operations on the Line. Nor have I performed the analysis necessary to determine if traffic and revenue projections are sufficient to justify the investment necessary to replace the track in Kirkland and otherwise restore the Line to a safe and usable condition.
9. WATCO has not performed a site visit or done any of the due diligence regarding Mr. Engle, Ballard Terminal Railroad, or their plan that WATCO would have to do before making any commitment to participate in operations on the Line.

WATCO has also not performed the analysis necessary to determine if Ballard Terminal Railroad's financial plan for reactivating the Line is viable.

10. WATCO has not confirmed whether Ballard Terminal Railroad has the financial capability to reactivate the Line or whether there is sufficient genuine shipper demand to justify the investment necessary to reactivate the Line.

I declare under penalty of perjury that the foregoing is true and correct.


Mark Blazer

Executed this 14 day of February, 2014 in Helena, MT

November 7, 2013

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

REF: STB FINANCE DOCKET NO. 35731

Dear Ms. Brown:

We support the reactivation of freight service between Woodinville and Bellevue, Washington. WATCO would like to impress upon the Board the importance of recognizing the reactivation process requires an incremental approach to reestablishing sustainable rail service on the line. Committed customers have stepped forward with written support to the Board. ~~We believe the next steps to reestablish rail service is to gage customer commitment by requiring take or pay agreements associated with car volumes, the customers level of financial participation associated with the upfront cost of reactivating this line and negotiate operating and use~~

~~a capital package, operating and use~~ agreements immediately following the Board's reactivation of the line.

~~WATCO participated in the 2008 BNSF bid process to provide rail service on this line, and we have stayed in contact with Doug Engle of Eastside Community Rail, the reserved freight easement owner since February 2011. Earlier this year we expressed our requirements to participate in operating the line, which were promising at the time. With additional shippers requesting service on the railbanked portion of the line, and their stated willingness to participate financially to have rail service, we now see an opportunity worth pursuing and participating in.~~

WATCO is prepared to work with Ballard to assume freight operations for the unit trains between Bellevue and the BNSF mainline in Snohomish, provided a supportive Board decision to reactivate the line. We expect no material issues in establishing shipping agreements and rates with the freight parties in this matter. ~~Further, WATCO is ready, willing and able to participate financially to replace the track recently removed in Kirkland and provide the necessary line maintenance to provide Class 1 rail service.~~

We ~~support a separate~~ understand that an excursion train business that will operate on the line. The expectation is that our crews will schedule and operate these trains to meet ~~the needs of our shippers and help~~ the excursion business ~~meet their~~ objectives. Incremental insurance requirements for passenger operations will be ~~the sole responsibility of the excursion train and will be paid through the income generated from passenger tickets. paid such operations and gross vehicle miles will be used to allocate capital, maintenance and overhead costs.~~ Additionally, we support rails and trails inside this right of way provided adequate safety precautions, insurance and use agreements ~~which are agreeable to both parties and the~~

Ms. Cynthia T. Brown
February 6, 2014
Page 2

appropriate rail to trails group takes full financial responsibility for all costs and all liability incurred in building a maintaining their trail. . For better or worse, financing, operating and use details cannot be established until a favorable Board reactivation decision is made because of the substantial effort and time required to complete this work with the many parties involved, given the risk of not knowing the reactivation outcome.

Critically, we understand the complexity and effort required to reestablish service on a railbanked line. Such capital investment and agreements cannot be developed without first knowing the Board's decision. ~~To be clear, WATCO is ready, willing and able to participate with its financial and other resources in making this line a success again.~~

Thank you for your consideration.

Very truly yours,

Mark Blazer
Senior Vice President - Strategic Development West Region

**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**

VERIFIED STATEMENT OF AARON MCDONALD

I, Aaron McDonald, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. In June 2000 I received a B.S. in Forest Engineering from the University of Washington. I have worked as an engineer since June 2000 and received my professional license in June 2007. Through my academic studies and professional work, I have received specialized education and training in terrain survey and mapping techniques, including the use of Geographic Information System (GIS) software and other tools.
3. For 8 years between June 2000 and October 2008, I was employed as a Forest Engineer for the Washington State Department of Natural Resources (“DNR”). As part of my job duties with DNR, I conducted surveys of terrain to support the design and construction of forest logging roads for timber sale operations. This work included evaluating terrain containing elevation differences.

VERIFIED STATEMENT OF AARON MCDONALD – 1

74562001.1 0021620-00004

4. Currently I am employed as a Project Engineer in the Public Works Department, Capital Projects Division, for the City of Kirkland ("Kirkland"). I have served in this capacity since October 2008.

5. One of my current responsibilities as a Project Engineer for Kirkland is to plan and supervise the salvage of rail infrastructure within the Cross Kirkland Corridor ("CKC"), which is the 5.75 mile segment of the railbanked right-of-way running between the cities of Woodinville and Bellevue, Washington that is owned by Kirkland. These responsibilities include coordinating and monitoring the work of A&K Railroad Materials, Inc. ("A&K"), which began salvage operations in August 2013. A&K began salvage operations at the northeastern end of the CKC at the intersection of the railbanked right-of-way and Slater Avenue NE (132nd Avenue NE) and has worked its way south along the CKC.

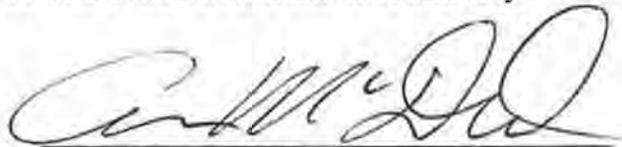
6. As of the morning of September 11, 2013, the tracks have been removed from rail bed along approximately 2.82 miles of the CKC, between Slater Avenue NE and NE 87th Street. Within this distance, all other track materials (e.g., joint bars, plates, anchors, and ties), except for ballast, have been completely removed from the rail bed along 1.16 miles of the CKC between Slater Avenue NE and NE 112th Street.

7. I have visited and observed the terrain of the section of the CKC adjacent to RJB Wholesale, Inc. ("RJB") and studied maps of the terrain in this area. RJB's facility is located in the vicinity of Totem Lake, a wetland area, near the northeastern end of the CKC where A&K commenced salvage work. All of the rail infrastructure has been removed from the section of the CKC adjacent to RJB's facility

8. Within this section of the CKC, the rail bed sits atop a fill that slopes downward into a drainage running adjacent to the frontage of the RJB facility and neighboring parcels. I

have investigated this area of the CKC along the frontage of the RJB facility and neighboring properties, and observed terrain conditions and elevation differences between the surface levels of the rail bed, the drainage, and RJB's facility. Using my own height, which is approximately 6 feet, and other objects as reference points and drawing on my professional experience, studies, and training, I estimate that There are points within the drainage that appear to be between as much as 12 to 14 feet below the surface elevation of the rail bed. I also estimate the elevation differences between the surface levels of the rail bed and the frontage of RJB's facility range between 8 and 12 feet.

9. After studying the terrain of the CKC adjacent to RJB's facility, I discussed my observations with Kirkland's GIS consultant and coordinated with him to create maps of this terrain using GIS software and data. These maps are labeled as **Exhibits 1, 2, and 3** to Kirkland's response to Ballard Terminal Railroad's Petition for Reconsideration. They depict: (1) the location of RJB's facility, the CKC, and the surrounding area; (2) the surface elevation of the CKC, RJB's facility, and adjacent properties using aerial imagery; and (3) the surface elevation of the CKC, RJB's facility, and adjacent properties without aerial imagery. Based on my observations, these maps accurately depict the location of the CKC and RJB's facility and the general elevation differences between the surface of the rail bed and RJB's facility.



AARON MCDONALD, P.E.

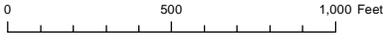
Dated: 9/11/13

Place: Kirkland, WA

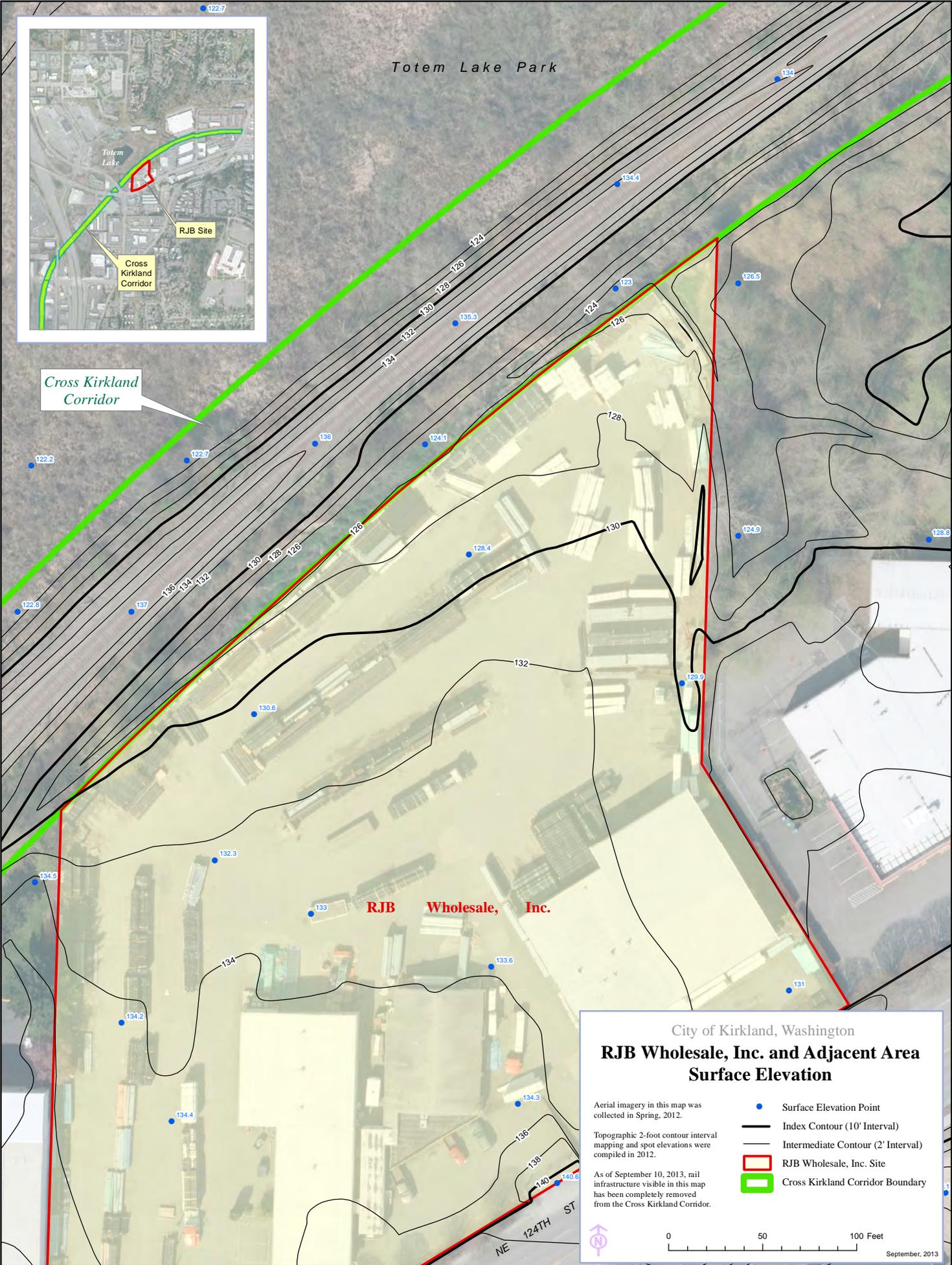


City of Kirkland, Washington
RJB Wholesale, Inc. and Surrounding Area

- RJB Wholesale, Inc. Site
- Cross Kirkland Corridor (Railbanked)



September, 2013



Totem Lake Park



Cross Kirkland Corridor

RJB Wholesale, Inc.

City of Kirkland, Washington
**RJB Wholesale, Inc. and Adjacent Area
 Surface Elevation**

Aerial imagery in this map was collected in Spring, 2012.

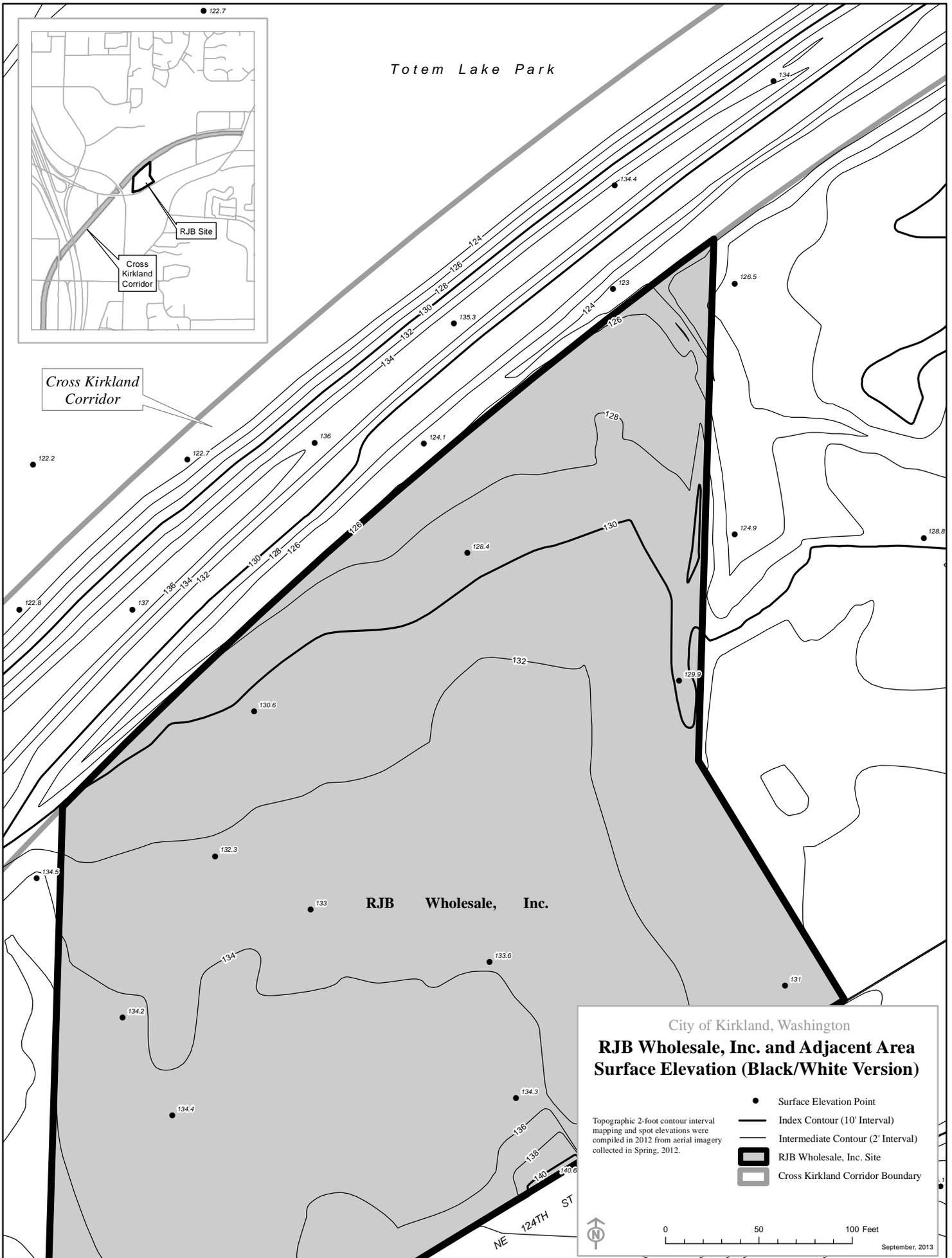
Topographic 2-foot contour interval mapping and spot elevations were compiled in 2012.

As of September 10, 2013, rail infrastructure visible in this map has been completely removed from the Cross Kirkland Corridor.

- Surface Elevation Point
- Index Contour (10' Interval)
- Intermediate Contour (2' Interval)
- ▭ RJB Wholesale, Inc. Site
- ▭ Cross Kirkland Corridor Boundary


0
50
100 Feet

September, 2013



**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**

**VERIFIED STATEMENT OF HUNTER FERGUSON
IN SUPPORT OF THE CITY OF KIRKLAND’S COMMENTS ON BALLARD
TERMINAL RAILROAD’S SUPPLEMENT TO ITS PETITIONS FOR EXEMPTION
AND TO VACATE NOTICE OF INTERIM TRAIL USE**

I, Hunter Ferguson, declare under penalty of perjury as follows:

1. I have personal knowledge of, and am competent to testify to, the following facts.
2. I am employed by the law firm of Stoel Rives LLP and am one of the attorneys representing the City of Kirkland, Washington (“Kirkland”) in these proceedings.
3. True and correct copies of the documents, or excerpts of documents, listed below are filed as exhibits in support of Kirkland’s Comments on Ballard Terminal Railroad’s Supplement to Its Petitions for Exemption and to Vacate Notice of Interim Trial Use. These materials were obtained through discovery in connection with this matter, through the public records searches and requests, from third parties, and from a related federal court proceeding:

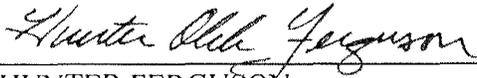
Ex.	Document
1	<p>Woodinville Whiskey Letter Letter of Feb. 13, 2014 from Orlin Sorenson of Woodinville Whiskey Co. to Cynthia T. Brown (STB docketed Feb. 20, 2014)</p>
2	<p>RJB Feb. 13 Letter Letter of Feb. 13, 2014 from Nick Beck of RJB Wholesale, Inc. to Cynthia T. Brown (not docketed)</p>
3	<p>Engle Tr. II Excerpts of Transcript of Deposition upon Oral Examination of Douglas Engle on Feb. 13, 2014 (Engle Tr. II)</p>
4	<p>EB5-ECR Engagement Agreement EB5 Capital Partners.us, LLC's "Engagement Agreement for Eastside Community Rail, LLC," dated Sept. 17, 2012</p>
5	<p>Behr Tr. (EB5) Excerpts of Transcript of Deposition upon Oral Examination on Daniel T. Behr on Feb. 12, 2014</p>
6	<p><i>Port of Seattle v. ECR Stipulated Judgment & Settlement Agreement</i> Stipulated Judgment, docketed Feb. 25, 2014 in <i>Port of Seattle v. Eastside Community Rail, LLC</i>, No. 14-2-054866-6 SEA (King Cty. Super. Ct.)</p>
7	<p>ECR-BTR Lease Agreement Lease Agreement between Ballard Terminal Railroad Company, LLC and Eastside Community Rail, LLC (Apr. 26, 2013)</p>
8	<p>Cole Tr. II Excerpts of Transcript of Deposition upon Oral Examination of Byron Cole on Feb. 12, 2014 (Cole Tr. II)</p>
9	<p>Nerdrum Tr. Excerpts of Transcript of Deposition upon Oral Examination of Paul Nerdrum on Feb. 12, 2014</p>

Ex.	Document
10	Day Tr. (Aggregates West) Excerpts of Transcript of Deposition upon Oral Examination of Scott Day (Aggregates West) on Feb. 7, 2014
11	House Tr. (CT Sales) Excerpts of Transcript of Deposition upon Oral Examination of James House (CT Sales) on Feb. 7, 2014
12	Wolford Tr. Excerpts of Transcript of Deposition upon Oral Examination of Bobby Wolford (Wolford Trucking & Demolition) on May 16, 2013
13	Engle Tr. I Excerpts of Transcript of Deposition upon Oral Examination of Douglas Engle on May 22, 2013 (Engle Tr. I)
14	Email of Sept. 30, 2013 from Ernie Wilson to Doug Engle and James House
15	Email of Sept. 30, 2013 from Doug Engle to James House
16	Email of Nov. 21, 2013 from Doug Engle to Greg Starup (Coastal Community Bank)
17	Starup Tr. (Coastal Community Bank) Excerpts of Transcript of Deposition upon Oral Examination of Greg Starup (Coastal Community Bank) on Feb. 6, 2014
18	Engman Tr. (AmericanWest Bank) Excerpts of Transcript of Deposition upon Oral Examination of Nathan Engman (AmericanWest Bank) on Feb. 6, 2014
19	BTR's Support Letter Log BTR's Support Letter Log, filed with BTR December 6 Reply
20	Cole Letter Letter of Dec. 5, 2013 from Byron Cole to Cynthia T. Brown, filed with BTR December 6 Reply

Ex.	Document
21	BTR's Responses to Kirkland's First Requests for Production CONFIDENTIAL IN PART
22	Facsimile of Feb. 5, 2014 from Byron Cole to Myles Tobin CONFIDENTIAL
23	Email of Mar. 3, 2014 from Tom Paschalis (BTR's counsel) to Matthew Cohen
24	Kirkland's Second Set of Discovery Requests to BTR (Jan. 17, 2014)
25	ECR Email to Coastal re Income & Traffic Email of Oct. 19, 2013 from Doug Engle to Greg Starup (Coastal Community Bank), and the "Eastside Community Rail Income Statement 11 Feb 13" and "Eastside Community Rail Traffic Analysis as of 2013 Feb 6" attached thereto
26	POS Default Notice to ECR Letter of Apr. 30, 2013 from Joe McWilliams (Port of Seattle) to ECR
27	Email with Photographs of Damaged Rail Bridge Email of Dec. 20, 2013 from Bob Maruska to Elaine Spencer and attached photographs
28	Email of Apr. 1, 2013 from Doug Engle to Joe McWilliams
29	ECR Business Prospectus Power Point Presentation (Sept. 27, 2013)
30	O&M Agreement: Port of Seattle – ECR
31	Email of Mar. 28, 2013 from Doug Engle to Luis Moscoso
32	Engle Letter Letter of Nov. 27, 2013 from Doug Engle to Cynthia T. Brown, filed with BTR's December 6 Reply
33	Email of Nov. 12, 2013 from Doug Engle to Mark Blazer CONFIDENTIAL IN PART
34	Email of Nov. 26, 2013 from Doug Engle to Mark Blazer

Ex.	Document
35	Email of Oct. 7, 2013 from Doug Engle to Mark Blazer
36	Email of Nov. 4, 2013 from Doug Engle to Mark Blazer
37	WATCO Support Letter Letter of Nov. 25, 2013 from Mark Blazer to Cynthia T. Brown, filed with BTR's December 6 Reply
38	Coastal Community Bank and American West Bank Support Letters Letters of Nov. 21, and Nov. 22, 2013 from Greg Starup and Nathan Engman to Cynthia T. Brown, filed with BTR's December 6 Reply
39	Engle Email to Coastal re "Target Site" Email of Oct. 19, 2013 from Doug Engle to Greg Starup with attachments
40	Coastal Email to Engle re Loan Application Requirements Email of Oct. 23, 2013 from Greg Starup to Doug Engle with attachments
41	Engle Email to Coastal Requesting Letter Email of Nov. 22, 2013 from Greg Starup to Doug Engle
42	EB5 Support Letter Letter of Aug. 21, 2013 from Daniel T. Behr to Cynthia T. Brown, filed with BTR's December 6 Reply
43	Engle Email to Coastal re RRIF Loan Email of Oct. 19, 2013 from Doug Engle to Greg Starup
44	Engle Email to WATCO re State Funding/Boeing Email of Dec. 10, 2013 from Doug Engle to Mark Blazer
45	Cole Tr. 1 Excerpts of Transcript of Deposition upon Oral Examination of Byron Cole on May 24, 2013 (Cole Tr. 1)
46	Map of CalPortland - Everett, Wash. CONFIDENTIAL

Ex.	Document
47	King County Assessor Info re Target Site Parcel King County Department of Assessments report re 1917 120th Ave. NE Bellevue, WA 98005
48	Aerial Maps of Aggregates Processing Facility
49	General Mills Support Letter Letter of Sept. 26, 2013 from Brenda Mengelkoch to Cynthia T. Brown, filed with BTR's December 6 Reply
50	Safeway Abandonment Support Letter Letter of Aug. 12, 2008 from Jerry Tidwell, Safeway Sr. VP for Supply Operations, to Cynthia T. Brown
51	Email of Aug. 16, 2013 from Doug Engle to Thomas English
52	Email of Sept. 24, 2013 from Doug Engle to Thomas English
53	BTR's Table of 2013 Year End Totals for Freight Operations on Its Line in the Ballard Neighborhood of Seattle CONFIDENTIAL
54	Hollywood Garage, LLC Application for Special Use Permit (January 27, 2014)39
55	Email of March 3, 2014 from Linda Sullivan, King County Parks & Rec., to Hunter Ferguson


 HUNTER FERGUSON

Dated: March 6, 2014

Place: Seattle, Washington

WOODINVILLE

— *handcrafted small-batch spirits* —

WHISKEY CO.



14509 Woodinville Redmond Rd. NE, Woodinville, WA 98072
tel: (425) 486-1199 | fax: (877) 733-4543
www.woodinvillewhiskeyco.com

February 13, 2014

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

235513
ENTERED
Office of Proceedings
February 20, 2014
Part of
Public Record

REF: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Please accept this letter in support of reactivating the rail line segment between Woodinville and Bellevue, Washington. We are a four year old, small batch distillery that is just now moving into a much larger, purpose-built facility located right alongside these tracks. We believe we could benefit from being able to receive our bulk materials by rail.

As a Washington craft distiller, all of our ingredients are sourced within the state. Our grain farmer and rickhouse are in Quincy, which is on the BNSF Railway east-west mainline. Although our expected volume of a car or two of grain per month is nominal today, we expect to continue our rapid production growth. Additionally, we will evaluate the rail delivery of our glass products and wooden barrels, which will add car volume.

We firmly believe that rail will be cost effective versus trucking because grain is already moved across Washington via rail, and this will eliminate the truck transfer and associated costs. Importantly, even if the costs are the same, rail is preferable because the use of rail cars would be consistent with our branding and image that we've worked hard at creating.

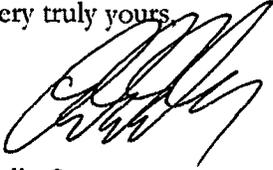
Given the line or a future spur is uphill from our adjacent facility, grain will naturally flow downhill facilitating movement to storage bins and reducing our handling costs. We recognize that direct service from the line may be used initially and that long-term, a spur will be needed. We plan on working with the

railroad in the layout and construction of a spur immediately north of our facility where there is more than ample space available.

We are ready, willing and able to execute a transportation agreement with the railroad upon reactivation of this line segment.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Orlin Sorensen', written in a cursive style.

Orlin Sorensen
President



Since 1972

12418 N.E. 124th ST.
P.O. Box 2849
Kirkland WA 98083
(425) 823-1444

February 13, 2014

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

REF: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Please accept this verified statement as my final words in support of reactivating the rail line segment between Woodinville and Bellevue, Washington.

1. There was never any outreach or public discussion regarding potential freight use in the rail corridor. Thus, I did not know freight rail service was a possibility.
2. I believe rails and trails are the best use of the Eastside Rail Corridor.
3. I'm told a spur and load/unload area can readily be constructed inside the right-of-way, and RJB will partner with the railroad in its layout and construction.
4. I understand and agree with the conservative car estimate of 30-40 *per annum* used by the railroad in its "STB Reactivation Letters Filed" log.
5. RJB will benefit from direct rail service, and I would like to have it as soon as possible.

Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink that reads 'Nick Beck'.

Nick Beck
President
RJB Wholesale

Date

2/13/14



Place

Kirkland

A handwritten signature in blue ink that reads 'Jonathan E. New'.

exp 12/31/15

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: February 13, 2014
 REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

STARKOVICH REPORTING SERVICES

206.323.0919

1 the scope of the December 6th filing and the January 31st
2 protective order.

3 MR. FERGUSON: I am asking about Mr. Engle's
4 representation at the deposition here today.

5 A. Nothing has changed.

6 Q. So is someone lending ECR funds to pay for
7 representation?

8 A. Existing member's family members continue to
9 support the effort.

10 Q. When you say members, are you referring to members
11 of the limited liability company?

12 A. I'm the only member of the limited liability
13 company.

14 MR. MARCUSE: Again, I just don't see the
15 relevance of this line of questioning.

16 MR. FERGUSON: Noted.

17 I am going to mark this as the next exhibit.

18 I believe this will be 124; is that correct?

19 THE REPORTER: Yes.

20 Exhibit 124 marked for
21 identification.)

22 Q. Mr. Engle, please take a look at what has been
23 marked as Exhibit 124. When you have had a chance to look
24 through it, I would like you to identify it, please.

25 A. It is a letter I drafted to the STB on November 27,

1 2013.

2 Q. If you would turn to page 59 of that document, and
3 this is the page number in the bottom center of the page, is
4 that your signature there in the left-hand margin?

5 A. Yes, it is.

6 Q. I would like you to look at page 52, please. In
7 the second paragraph of this page beginning, "Eastside
8 Community Rail Ballard Terminal, WATCO, and others," I want
9 to ask you about WATCO. WATCO is a Class II railroad,
10 correct?

11 A. Yes.

12 Q. You had communications with a representative or
13 representatives of WATCO in the fall of 2013 regarding the
14 reactivation effort, correct?

15 A. Yep.

16 Q. And you worked with a man named Mark Blazer at
17 WATCO to prepare a letter for submission to the STB, correct?

18 A. Correct.

19 Q. This letter has been previously marked as
20 Exhibit 115. I will hand it over to you. I would like you
21 to take a moment to look at that letter. Have you seen this
22 document before.

23 A. Yes.

24 Q. I will represent to you that this is the copy of
25 the letter that was included with Ballard Terminal Railroad's

1 December 6th filing to the STB.

2 A. Okay.

3 Q. Does this look like the letter that was part of
4 Ballard's reply on December 6th?

5 A. I believe so.

6 Q. Are you familiar with this letter's content?

7 A. Yes.

8 Q. Have there been any changes in WATCO's involvement
9 with the reactivation effort since the date of this letter
10 November 25th, 2013?

11 MR. PASCHALIS: I will object to the form.

12 A. No. They remain ready, willing, and able to
13 further develop the line.

14 Q. So, since the date of this letter, is it accurate
15 to say that no one from WATCO has had any communications with
16 you in which they have revised any of the statements made in
17 this letter?

18 A. I think the letter stands as is.

19 Q. Please listen to what I am asking. Since the date
20 of this letter, has anyone from WATCO had any communications
21 with you that revise any of the statements Mr. Blazer made in
22 this letter on behalf of WATCO?

23 A. No.

24 Q. Since the date of the letter, are you aware of any
25 action taken by WATCO to further its involvement in the

1 reactivation effort along the lines laid out in this letter?

2 MR. PASCHALIS: I will object to the form.

3 A. That they have taken additional actions? I think,
4 again, the letter stands. There's been no changes. I think
5 the first step that we're all waiting for is the STB
6 decision.

7 Q. Let's take a look here at this third paragraph
8 where the little Romanette numerals are, 1, 2, and 3; do you
9 see that?

10 MR. PASCHALIS: It is on page 1.

11 Q. Page 1 of the exhibit, page 18 in the bottom of the
12 document. WATCO says that, among the next steps in
13 reestablishing rail service are to gauge customer commitment
14 by requiring take or pay agreements associated with car
15 volumes. Are you aware whether WATCO has done anything to
16 gauge customer commitment along these lines?

17 A. I believe that is in the second general step that
18 they are looking for. The first step is reactivation of the
19 corridor, then they will commence with these activities.

20 Q. Mr. Engle, I would appreciate it if you would
21 listen to what I am asking you and answer that question. I
22 am asking you if you know if WATCO has done anything since
23 November 25th to gauge customer commitment by requiring take
24 or pay agreements associated with car volumes.

25 A. No, because it's a second step in their process,

1 their commitment.

2 Q. Thank you. Has Eastside Community Rail done

3 anything to gauge customer commitment by requiring take or

4 pay agreements associated with car volumes?

5 A. No, because, again, it's a second step. It would

6 be an inefficient use of time to do that today.

7 Q. Thank you. Looking at Romanette 2, do you know if

8 WATCO has done anything to establish the customer's level of

9 financial participation associated with the upfront cost of

10 reactivating this line?

11 A. I am not aware of anything because, again, this is

12 the second step.

13 Q. Has Eastside Community Rail done anything in regard

14 to the step described in Romanette 2?

15 A. Yes. We have talked with each of the shippers

16 about what would be required to load and unload materials

17 that would be shipped to them.

18 Q. Looking at Romanette 3, has WATCO done anything to

19 negotiate an operating and use agreement for anything with

20 respect to operations on either the freight segment or the

21 line?

22 MR. PASCHALIS: I will object as calls for

23 speculation.

24 A. Not that I'm aware of, because this is the second

25 step after the reactivation has been determined, and I think

1 WATCO is very clear that these activities will happen after

2 reactivation has been granted by the Surf. Board.

3 Q. So is it accurate then that you are not aware of

4 any kind of agreement concerning operations and use for

5 either the freight segment or the line between WATCO and

6 Eastside Community Rail?

7 A. That is not their intention in the letter; it's not

8 the intention of our agreement. The first step is to get

9 through the STB decision, then we will undertake these

10 activities.

11 Q. You just mentioned that you have an agreement with

12 WATCO; is that correct?

13 A. I think our agreement is based here on what they're

14 going to do and what we will do.

15 Q. Is there an agreement of any kind between WATCO and

16 Eastside Community Rail separate from this letter,

17 Exhibit 115?

18 A. No, just a verbal on how we're going to proceed

19 together.

20 Q. Can you describe to me the aspects of that verbal

21 agreement that you just referenced.

22 A. It looks just like this. No. 1, Surf. Board

23 reactivation. No. 2 --

24 Q. I need to interrupt you here to clarify. When you

25 say it looks just like this, what are you referring to?

1 A. Exhibit 115.

2 Q. Okay.

3 A. It says how WATCO will engage, and we will engage

4 with them in making sure that they have full access to the

5 customers and the shippers and see the opportunity. We plan

6 on working with them in that process to -- it's in our each

7 mutual benefit to partner and do this. And, until such time

8 as we figure out what financial resources -- or I shouldn't

9 even say financial -- until we determine what resources are

10 appropriate, then we are likely to have a written agreement,

11 and, until then, it's premature.

12 Q. You have been referring to Exhibit 115 as an

13 agreement, correct?

14 A. It's not an agreement. It outlines the process

15 that WATCO is committed to following.

16 Q. I am a little confused here. ECR and WATCO have an

17 agreement, or they do not?

18 A. Again, we have a verbal agreement. It's based on

19 our mutual expectations and understanding as expressed in

20 Exhibit 115.

21 Q. That verbal agreement is to do the things described

22 and listed in Exhibit 115, correct?

23 MR. MARCUSE: Objection; asked and answered.

24 A. Correct.

25 Q. What I am trying to find out is: Is there anything

1 about your verbal agreement with WATCO that is not covered in

2 Exhibit 115; can you tell me?

3 A. No. We have outlined our understanding of how we

4 are going to take our next step upon the ability to

5 reactivate here.

6 Q. So, to be clear, and forgive me if you think I have

7 already asked you this.

8 A. Three times.

9 Q. The entire understanding of your verbal agreement

10 is expressed in Exhibit 115?

11 MR. MARCUSE: Objection; asked and answered.

12 A. Yes.

13 Q. Okay, thank you. Mr. Engle, I would like to direct

14 your attention to what has previously been marked as

15 Exhibit 117. Can you identify this document for us, please.

16 A. An e-mail which I have sent to Mark Blazer and

17 Michael Pratt.

18 Q. And they are both with WATCO; is that right?

19 A. I believe so. I have --

20 Q. Sorry.

21 A. My memory of Mr. Pratt's position is not clear.

22 Q. Okay, but this is an e-mail that you sent that is

23 dated November 26th, 2013, correct?

24 A. Yes, it is.

25 Q. Take a look at the first paragraph of the e-mail,

1 place for him to get from West Seattle and me to get off
 2 I-90. So that's his spot; we meet there.
 3 Q. Okay. So we are talking about a Denny's or some
 4 other restaurant --
 5 A. A Denny's.
 6 Q. -- there in the Denny Regrade in downtown Seattle?
 7 A. Yep.
 8 Q. In the morning?
 9 A. Of course.
 10 Q. All right. You had breakfast?
 11 A. Of course.
 12 Q. All right. What did you all talk about?
 13 A. I am sure what we talked about was current status
 14 of things going on in general.
 15 Q. What do you mean by that?
 16 A. The Maltby crossing. How are we doing on getting
 17 Snohomish County at that point to get their barriers up.
 18 Q. So you were talking about railroad operations?
 19 A. We're talking about railroad operations; we're
 20 talking about what's happening in the case; we're talking
 21 about what's going to happen after Byron retires, because he
 22 is not Ballard Terminal Railroad. He is the general manager,
 23 but he is not Ballard Terminal. And so what's he doing, and,
 24 jeez, he's been out on the lobster boat again. There's some
 25 personal aspects and there's some business aspects.

1 Q. Has Mr. Cole told you when he plans to retire?
 2 A. It depends upon the week.
 3 Q. When you had this conversation the Saturday before
 4 or two Saturdays before November 26th, did he say he was
 5 going to retire at a particular time?
 6 A. No.
 7 Q. Did he have a time frame in mind?
 8 A. No.
 9 Q. Did he even say at that point that he was going to
 10 retire?
 11 A. Yes.
 12 Q. But he didn't say when?
 13 A. Didn't say when.
 14 Q. All right. What did you and Mr. Cole discuss
 15 specifically about WATCO?
 16 A. We have had --
 17 Q. At that meeting at the Denny's.
 18 A. I am confident that I introduced the concept of
 19 WATCO coming in and being there to handle larger trains, and
 20 I've kind of drawn the limit saying, as we phase into this
 21 relationship, ten cars or more would be handled by WATCO, and
 22 less than that would be handled by Ballard.
 23 Q. So stop right there. I think I understand what you
 24 are saying, but I am not sure. When you say ten cars or more
 25 would be handled by WATCO, what are you referring to?

1 A. Moving ten cars or more on the line at a time as a
 2 consist, as it's called. So moving ten cars or more would be
 3 the responsibility of WATCO personnel, and less than that, as
 4 we're currently doing, half a dozen or something, would
 5 continue to be handled by Ballard.
 6 Q. Okay. So, as an example, and this is just a
 7 hypothetical here, Spectrum Glass has a single car of sand
 8 that it wants delivered, under this arrangement that you are
 9 describing, Ballard Terminal Railroad would move that car
 10 from the Snohomish junction at the interchange of BNSF to
 11 Spectrum?
 12 A. You are accurate.
 13 Q. If Spectrum for some reason had ten or more cars of
 14 sand or whatever other material --
 15 A. Soot ash.
 16 Q. -- soot ash, the arrangement you are describing
 17 would be for WATCO to move the traffic?
 18 A. That is one concept of --
 19 Q. Okay.
 20 A. It's like the straw man, the starting point of
 21 discussions for how we would transition service between the
 22 two.
 23 Q. I understand that. I just wanted to make sure I
 24 got clear what you meant by ten cars. This concept that you
 25 have described, this possible arrangement that you discussed

1 with Mr. Cole at the Denny's at this Saturday in November, is
 2 this something that you and WATCO had discussed previously?
 3 A. No. Once WATCO had made their commitment, I
 4 stopped shopping for other partners and hooked my wagon with
 5 them as far as conceptually how would we move forward.
 6 Q. Right. Maybe I am not asking the question very
 7 well. What I am trying to understand is, is this arrangement
 8 transition between service exclusively by Ballard on the
 9 freight segment and WATCO's involvement, where WATCO would
 10 handle carloads above a certain number, is that arrangement
 11 something that you and WATCO representatives had discussed
 12 before your meeting with Mr. Cole?
 13 A. I don't recall; we may have; I don't recall. I
 14 remember that that was kind of the gestation period, the
 15 point in time that I was thinking how do you do this thing,
 16 you know, and then giving Ballard an opportunity to think
 17 about that. I mean, until the STB -- again, until the STB
 18 decision comes through, you don't know what you've got. The
 19 current locomotive has a certain amount of capacity to it,
 20 which takes it up to, I think ten would be about as much as
 21 you can run with Ballard's locomotive. And, if WATCO was to
 22 bring power onto the line, bring a locomotive onto the line,
 23 they would be bringing a larger locomotive and therefore have
 24 greater capacity. So, when you talk about resources and them
 25 bringing in resources --

1 Q. Let me stop you first.
 2 MR. PASCHALIS: He is entitled to finish, if
 3 you would like to. If you weren't done, continue.
 4 A. Let me just finish.
 5 Q. No, I just want to know why you are -- are you
 6 trying to apply something to the exhibit?
 7 MR. FERGUSON: I am not trying to interrupt
 8 him; I just want the record to be clear.
 9 A. I am touching 115. That the entire notion here is
 10 consistent. STB decision; evaluate what we've got; make a
 11 decision about how we're mutually, all of us, going to deploy
 12 resources to be successful. So the first things first, STB
 13 decision. Nobody is going to burn a lot of cycles figuring
 14 out what the running -- the actual running of the railroad is
 15 going to look like and who needs to do what when and what
 16 support services have to be in place. It's premature to do
 17 that. And so, yes, we talked, Byron and I talked
 18 conceptually. I talked with my partner, Byron, before I
 19 talked to WATCO about how we could do things. Byron is my
 20 partner; I love the man. He is a handshake man; he has got
 21 the world of integrity. He is what this region was built on,
 22 were guys like him, and right now he's just getting a little
 23 older, like we all do.
 24 Q. So the locomotive you are describing of Ballard's,
 25 is this the locomotive that Ballard took the loan from

1 AmericanWest Bank or Viking Bank to purchase?
 2 MR. PASCHALIS: I will object to the
 3 foundation.
 4 Q. Do you know?
 5 A. I have learned after the fact that that is indeed
 6 the same locomotive. I do not know the details around it.
 7 Q. I gather from what you are saying that its hauling
 8 capacity or power is less than the type of locomotive that
 9 WATCO could provide?
 10 MR. PASCHALIS: I will object to the form.
 11 A. Ballard is perfectly capable of financing
 12 additional equipment. The issue would become,
 13 hypothetically, that WATCO has surplus power that they could
 14 deploy on the line.
 15 Q. You mean like an extra locomotive?
 16 A. Extra locomotive.
 17 Q. Okay.
 18 A. And so therefore it would make better sense for the
 19 team to use what we already have rather than going out and
 20 acquiring something. And it's my understanding that WATCO
 21 regularly has surplus equipment that may be applicable to the
 22 planned use of this line, but that varies, and we have to
 23 wait and see what's going on when.
 24 Q. If I understood this right, you said that Mr. Cole
 25 is not Ballard Terminal Railroad; he is the general manager?

1 A. Mm-hmm.
 2 Q. And that you are confident that, if Mr. Cole ceased
 3 to be the general manager, that Ballard wouldn't miss a beat;
 4 is that the expression you used?
 5 A. Yeah, I think Ballard's operations would continue.
 6 Q. Mr. Forgette runs the show day to day?
 7 A. He runs the essential operations day to day.
 8 Q. Okay. So, if you have an understanding or if you
 9 know, can you explain why Ballard wouldn't just seek to
 10 expand its power capacity rather than bringing in another
 11 railroad as part of a potentially more complex transaction?
 12 A. I think it's too much speculation. I can't
 13 speculate on that.
 14 Q. Were there ever any discussions that you had with
 15 Mr. Cole or Mr. Forgette about the need to get an additional
 16 locomotive?
 17 A. Not with the current operations, no.
 18 Q. So this would just be for future operations?
 19 A. Given reactivation of the line, the power demands
 20 are going to change. It would be likely, for example, that
 21 Ballard's locomotive could be moved to Bellevue to be used as
 22 a switcher in the yard there with the General Mills plant and
 23 aggregate movements, et cetera, and that power on the line
 24 would be provided by new, heavier-duty -- I shouldn't say new
 25 -- new used, heavier-duty locomotives. You are just looking

1 at the best allocation of your asset resources.
 2 MR. FERGUSON: Wade, can you look back in the
 3 transcript to where the witness said something about hitching
 4 his wagon or his star to WATCO and read that testimony back
 5 to the witness, please.
 6 (The requested answer was
 7 read back.)
 8 Q. So have you reached out to any other railroad
 9 operators to become involved in the reactivation effort other
 10 than WATCO?
 11 A. I did earlier on.
 12 Q. Who was that?
 13 A. U.S. Rail Partners; Patriot Rail; even talked to
 14 Iowa Pacific again.
 15 Q. The first one, U.S. Rail Partners, is that the same
 16 thing as U.S. Rail Operations?
 17 A. I don't think so.
 18 Q. Do you remember when your conversations --
 19 A. Over a year ago.
 20 Q. So they occurred over a year ago?
 21 A. I would say several months ago, meaning more than
 22 six, but I can't be specific about that.
 23 Q. If I understand you correctly, you haven't had
 24 any -- well, let's try to deal with all three at once here,
 25 if you can do that. Patriot Rail, when did you talk to them?

REDACTED

1 very similar. Therefore, I have used the cost per mile as
 2 provided by RailWorks. I have used the cost per crossing, as
 3 provided by Northwest Signals. And the different crossings
 4 require different amounts of work, so I tried to extrapolate
 5 by using the most appropriate crossing as a reference point.
 6 Then you've got the estimate that RailWorks provided to
 7 replace or to put brand-new track down on an existing bed,
 8 which is what you have in Kirkland now even though the track
 9 is gone. So what would it cost there to put it in, and their
 10 cost estimate was \$1.1 million a mile. We had Bobby Wolford
 11 go out and give us an estimate of what it would take to rough
 12 in a trail through Kirkland, and that was only a couple
 13 million dollars.

14 So I am very comfortable, exceedingly comfortable,
 15 that we have been conservative in the numbers that we're
 16 using to estimate the amount of work to be done. And, again,
 17 we will not go through a detailed exercise until the
 18 reactivation rights have been granted. Then, we will go out
 19 and get competitive quotes to get the work done at the time
 20 the work is going to be done.

21 Q. This extrapolation that you performed, is there
 22 anything in writing that carried the studies from the freight
 23 segment over to the line?

24 A. There's nothing additional in writing that still
 25 exists, no.

1 Q. There is something that existed at one point in
 2 time?

3 A. Back of the envelope, piece of paper, scratched
 4 out, see about where we are; yeah, we're in the ballpark;
 5 done with it. As long as we're in the ballpark at this phase
 6 of the game; nobody is going in for financing based on that
 7 kind of an estimate.

8 Q. Is this work to bring the track on the line to a
 9 Class II level?

10 A. Yes. With the exception that the new track
 11 would -- I believe that's a Class IV level.

12 Q. The new track would be --

13 A. The replacement track through Kirkland. If you're
 14 going to put track down and it's all going to be new, then
 15 you might as well do it to a commuter level standard.

16 Q. Okay. Do you have anything in writing from
 17 Mr. Wolford on his estimates?

18 A. That was already submitted. I haven't had use or
 19 looked at anything from him since last summer.

20 Q. So, whatever Mr. Wolford provided to you, you
 21 produced to Kirkland?

22 A. Earlier, yes.

23 Q. And there is nothing else in terms of an estimate
 24 for his work?

25 A. No.

1 Q. Mr. Engle, I want to just try to clarify one thing.
 2 Since Kirkland pulled up the rails on its segment of the
 3 line, have you done any kind of a study specifically about
 4 what it would cost to put the rails back in to that segment?

5 MR. PASCHALIS: Objection; asked and answered.

6 A. I've already done -- answered your question. We
 7 did what was required to understand the cost to do that based
 8 on estimates from RailWorks, Osmose, and Northwest Signals,
 9 and we will not get specific bids for that work until we have
 10 the rights from the Surface Transportation Board.

11 Q. So do you stand by the earlier statements in
 12 Ballard's filings that it would cost at least \$10 million to
 13 put the tracks back in?

14 A. That is the number that we generally use, that it's
 15 going to take \$10 million to rehabilitate the existing track,
 16 for example, track that's in the Sound Transit area and the
 17 King County area, and it's about 6.1 million to put the track
 18 back down in Kirkland, and then it's a few hundred thousand
 19 dollars to get the signals right. So roughly \$10 million
 20 ballpark. Can I make a statement regarding --

21 MR. PASCHALIS: Don't. If you have anything
 22 to say, tell me.

23 (Discussion held off the record.)

24 Q. I would like to direct your attention back to
 25 Exhibit 125. This is your e-mail exchange with Mark Blazer

1 of WATCO. Take a look at page 2. Do you recall when you
 2 were testifying about the big brother with investment money?

3 A. Mm-hmm.

4 Q. When I asked you about that, you said it was
 5 because there would need to be rehabilitation work done in
 6 the Bellevue rail yard; do you recall that?

7 A. Yes.

8 Q. Have any studies been done to examine what specific
 9 rehabilitation work needs to be done in the Bellevue rail
 10 yard? Before you answer that, I want to be clear that we are
 11 talking about the same thing, the Bellevue rail yard.

12 A. There's only one.

13 Q. But it is the area -- in fact, let's --

14 A. Can we easily say behind Lowe's up to the Audi
 15 dealer?

16 Q. Well, I think I know what you are talking about
 17 there, but you have a map that you provided to Mr. Starup, I
 18 think, in Exhibit 70, which I just want to be clear about
 19 that. Look at the fourth page of Exhibit 70, please. This
 20 area of the line that is south of Highway 520 running towards
 21 Northeast Eighth, this map is depicting what you are
 22 referring to as the Bellevue rail yard, correct?

23 A. Yes, it is.

24 Q. Has any study been done specifically about what
 25 rehab work is required for the Bellevue rail yard?

1 A. We have walked this property extensively.
 2 Q. When you say we, who do you mean?
 3 A. Dan Behr; Byron Cole; myself. I believe that we
 4 even asked RailWorks to take a look at it. And who else has
 5 looked at it? Ernie has been out there.
 6 Q. Ernie Wilson?
 7 A. Ernie Wilson. We have looked this over. We see
 8 that there is some maintenance work that needs to be done,
 9 but nothing overwhelming. The switches are in good
 10 condition. Just a little TLC, and we're back in business.
 11 Q. Do you recall when you made these trips?
 12 A. About every other month.
 13 Q. So you had no problem walking out onto the
 14 right-of-way down there?
 15 A. No.
 16 Q. Have you walked out onto the right-of-way anywhere
 17 else along the line?
 18 A. Yes, regularly.
 19 Q. All right. You said Mr. Behr was part of these
 20 trips?
 21 A. He has made two particular site visits and taken
 22 hundreds of pictures of this area.
 23 Q. Has anyone within your group put anything in
 24 writing about what needs to be done as far as rehab work is
 25 concerned?

1 rehab work in the Bellevue rail yard?
 2 A. No one has made any specific commitment financially
 3 to this line.
 4 MR. FERGUSON: I think it is time for lunch.
 5 THE WITNESS: Okay.
 6 MR. PASCHALIS: Okay.
 7 (The noon recess was taken
 8 at 12:17 p.m.)
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1 MR. PASCHALIS: Who do you mean by within your
 2 group?
 3 Q. The individuals you just described. Let's run
 4 through them one by one here. Have you put anything in
 5 writing about the rehab work that needs to be done?
 6 A. No one has put anything in writing to the best of
 7 my knowledge.
 8 Q. That you are aware of?
 9 A. That I am aware of.
 10 Q. Has Mr. Blazer been out with you, or do you know if
 11 he as been out to the Bellevue rail yard in the past year?
 12 A. No. I believe that he has been out there; I just
 13 don't know when. It's probably more down the line of when
 14 the Port and BNSF had the operating rights up for bid, so
 15 probably six years, 2008.
 16 Q. Is it accurate that WATCO, that you are aware of,
 17 hasn't commissioned any kind of a study about what
 18 rehabilitation work would be required for the Bellevue yard?
 19 A. I think WATCO has been very clear. The first thing
 20 that happens is the STB approval; No. 2, we validate revenue
 21 and costs; and then, No. 3, we decide what kind of sources to
 22 deploy.
 23 Q. So they haven't made any commitment for any kind
 24 of -- looking back here at Exhibit 125, they haven't made a
 25 commitment of any investment money, to use your word, for

1 SEATTLE, WASHINGTON; THURSDAY, FEBRUARY 13, 2014
 2 1:12 P.M.
 3 --oOo--
 4
 5 MR. FERGUSON: Let's go back on.
 6
 7 EXAMINATION
 8 BY MR. FERGUSON:
 9 Q. Mr. Engle, who is Ernie Wilson?
 10 A. Ernie Wilson is a rail fan who looked me up and
 11 helps us out.
 12 Q. Is he working for ECR?
 13 A. No. I have no employees, including myself.
 14 Q. I understand that he has played a role in
 15 contacting shippers, potential shippers?
 16 A. Yes.
 17 Q. Is anyone paying him for this work?
 18 A. No.
 19 Q. Ballard is going to run the freight, or Ballard
 20 currently runs the freight, on the freight segment, right?
 21 A. The freight segment, the operating line, yes.
 22 Q. If the line between Woodinville and Kirkland is
 23 reactivated, Ballard would have some role, perhaps with some
 24 other business, in operating freight service on that line,
 25 correct?

1 A. Yes.
 2 Q. Can you identify it, please, for the record.
 3 A. It is a letter from General Mills supporting the
 4 restoration of rail service on the corridor.
 5 Q. There is no listing of annual car count projection
 6 in this letter, is there?
 7 A. No. Ballard Terminal actually handled their car
 8 movements in Ballard when they did the transfer from carload
 9 to trucks to have them deflored and trucked across 520 to
 10 the Safeway bakery. So we have firsthand experience with the
 11 volumes that General Mills has into the area.
 12 Q. I thought you just said that your car count
 13 estimate that you prepared for General Mills was based on a
 14 conversation with Tom English.
 15 A. Right, that's where the final figures -- so it
 16 started off with our knowledge of what happened in Ballard,
 17 and because those shipments were consolidated in Tacoma, I
 18 wanted to make sure that that experience was still
 19 consistent.
 20 Q. Do you have anything in writing from General Mills
 21 that provides an annual car count projection?
 22 A. No.
 23 Q. Okay.
 24 A. I have -- we have the old statements from Ballard
 25 Terminal. I guess they could have been dug up to verify

1 this, but I have no reason to not believe Ballard, nor when
 2 those numbers come up consistent with what Tom English told
 3 me.
 4 Q. Take a look at the railroad operations for RJB
 5 Wholesale; do you see that?
 6 A. Yes.
 7 Q. Explain how you derived these numbers, please.
 8 A. Those are conversations primarily developed between
 9 Nick Beck and Ernie Wilson and the -- with the pipe, you
 10 typically bulk out before you weight out, when it comes to
 11 transportation of pipe. And so, based on his current volumes
 12 in a down economy is where the 30 came from, and what he
 13 typically runs is the 40, would represent the 40 carloads,
 14 and that's based off of his truckload count.
 15 Q. For CT Sales, how did you derive these numbers?
 16 A. He told us how many truckloads he was getting
 17 between -- getting out of Oregon on average out of, I think
 18 it's Cascade Steel Mills. It excludes what he receives out
 19 of Nucor.
 20 Q. Do these numbers represent only incoming shipments
 21 to CT Sales?
 22 A. Yes. There is an upside to these numbers, which
 23 could represent having a bid opportunity, for him to bid on
 24 projects in Bellevue, bid on projects to the north, with rail
 25 access, but those are upside to those numbers. These are the

1 numbers of incoming steel.
 2 MR. FERGUSON: We are going to take a break
 3 and go off the record.
 4 (A brief recess was taken.)
 5 MR. FERGUSON: Back on.
 6 Q. Mr. Engle, I would like to go back to RJB, and I
 7 want to look at this 30 to 40 number here. So I can jog my
 8 memory, you said that this car count estimate represents the
 9 car counts for incoming product --
 10 A. Yes.
 11 Q. -- to RJB if it were to receive shipments by rail.
 12 A. Yes.
 13 Q. The 30 number is what you said was a low number in
 14 a down economy.
 15 A. It's a current. We're still not out of the
 16 recession, so --
 17 Q. And the 40 you described as an upside?
 18 A. Is a longer-term, yeah, more what their typical
 19 average is.
 20 Q. RJB currently doesn't receive rail service,
 21 correct?
 22 A. That's incorrect. They have rail service. Their
 23 pipe is brought in to Seattle. They send trucks over to pick
 24 it up off of railcars and bring them back -- and not Seattle,
 25 I'm sorry -- Puyallup, Kent Valley, Auburn, depending upon

1 where they do it.
 2 Q. So are these numbers then based on railcars that
 3 RJB's product is actually shipped on?
 4 A. That's my understanding from the conversations with
 5 Ernie and Nick.
 6 Q. Okay.
 7 A. And that it doesn't represent all of their volume.
 8 So, in other words, 30 carloads would represent, in the
 9 piping case, 2 1/2 truckloads.
 10 Q. Okay. Hold off on the truckloads for a second.
 11 Some of RJB's product, it is your understanding that it is
 12 shipped by rail to Puyallup or some point south of Seattle
 13 and then offloaded from a railcar and trucked up to RJB's
 14 yard in Kirkland?
 15 A. Absolutely.
 16 Q. So this number, 30, is it based on the number of
 17 railcars carrying shipments that are ultimately bound for
 18 RJB, or is it based on something else?
 19 A. I believe it's based on the number of truck runs
 20 that they make down to retrieve product and bring it back.
 21 Q. Okay.
 22 A. And then it's converted back to carloads. I am not
 23 sure that he has direct information of the number of
 24 carloads, railcar loads.
 25 Q. Where did you get the information about the number

1 A. You're assuming that car is coming in from the
2 south. What if the car is coming in from the north, from
3 Chicago? That means, as soon as it gets to Everett, it comes
4 straight down. I don't know where all the product comes
5 from, but I do know that BNSF's main line is Everett through
6 to Chicago. Union Pacific runs primarily up and down the
7 coast.

8 Q. So you are saying it is not possible then, for the
9 current arrangement that RJB has where some of its product is
10 shipped by rail to a point south of Seattle and then trucked
11 north, that it's not possible that that is a more
12 cost-effective option than having all the product shipped by
13 rail to RJB's yard?

14 A. I think it's highly unlikely, highly unlikely.

15 Q. That is what I want to get at. Your assessment of
16 the car counts is based on an assumption that RJB necessarily
17 would ship by rail to its facility.

18 A. They are already shipping by rail to the Puget
19 Sound area. They have said expressly that they would like
20 shipments directly to their yard.

21 Q. I understand they are shipping by rail to the Puget
22 Sound area already. My question was this: You are making
23 the assumption that they would ship by rail all the way to
24 their facility?

25 A. I was told directly by Nick Beck that he wants rail

1 service, and he would like it shipped directly to his yard.

2 Q. I thought Mr. Beck only spoke to Mr. Wilson.

3 A. I met Mr. Beck.

4 Q. When did you have this conversation with him?

5 A. I met Mr. Beck before he signed the letter, which I
6 guess is earlier in August or June.

7 Q. Mr. Engle, you said you met him in the summer of
8 last year, but when did Mr. Beck make that representation to
9 you that you claim he did?

10 A. At that meeting.

11 Q. Let's look at CT Sales, back on Exhibit 96, please.
12 How did you derive these numbers of 120 for initial and 155
13 for long-term?

14 A. Based on the number of rebar shipments that he was
15 receiving from out of state. They can ship approximately
16 30,000 pounds on a semi, and they can ship 100,000 pounds on
17 a railcar.

18 Q. Is that based on assumptions that CT Sales would
19 receive all of its rebar by rail?

20 A. No.

21 Q. Please explain the assumptions used in generating
22 that number.

23 MR. PASCHALIS: I will object to the form.

24 Q. Do you understand my question?

25 A. Not really.

1 Q. How did you come up with an initial car count of
2 120?

3 A. If I recall correctly, that was based on the amount
4 of material that they receive out of the Oregon mill.

5 Q. So is this car count based only on material
6 received out of Oregon?

7 A. I believe so.

8 Q. Who provided you with the information about what
9 was received out of Oregon?

10 A. Ernie.

11 Q. What were Ernie's numbers to you based on?

12 A. His work with Jim House.

13 Q. Did Mr. House provide something to Mr. Wilson in
14 writing about volumes received out of Oregon?

15 A. I don't know.

16 Q. How do you know if the information that Mr. Wilson
17 gave to you was accurate?

18 A. It is my understanding that he confirmed that with
19 Jim House.

20 Q. How do you have that understanding?

21 A. Ernie told me. And Jim House, when I met him, said
22 that he and Ernie had talked quite a bit about the volumes
23 and what it was they did.

24 Q. All right. I am going to hand you what has
25 previously been marked as Exhibit 93. Do you recognize the

1 letter attached to that e-mail?

2 A. Yes, I do.

3 Q. That is the letter submitted to the Board on behalf
4 of CT Sales, correct, in support of Ballard's position?

5 A. Yes.

6 Q. Are these the numbers about shipment volumes on
7 which your annual car count is based?

8 A. I don't recall. I would assume there is some
9 correlation here, yes.

10 Q. So, if it is not based on these numbers, is there
11 something else that your estimate could be based on?

12 A. I have less recollection of the CT Sales figures.
13 Let me just try and -- it would appear to me the numbers are
14 based more on a figure higher than the 8,300 tons and less
15 than the 14,000 tons. So it's in this range, yes. I think
16 it's incorrect in here that it would replace about 2 1/2
17 truckloads; it would actually replace 3 truckloads.

18 Q. You are saying that Mr. House's letter is
19 inaccurate in that regard?

20 A. Yes, I believe that's the case based on more recent
21 conversations about rebar handling on railroads.

22 Q. More recent conversations with whom, Mr. House?

23 A. Ballard. Talking with a couple of other people in
24 the railroad industry. That's where I came up with the
25 information that there is only 30,000 pounds on a typical

1 truckload of rebar, and, again, a carload on the rail is
2 100,000 pounds. Out of California they are only allowed to
3 carry 24,000 pounds of rebar on a truck.

4 Q. Is there anything out of California that is
5 relevant to the shipments to CT Sales?

6 MR. PASCHALIS: I will object to the extent
7 that it calls for a legal conclusion.

8 Q. Are you aware of CT Sales receiving shipments that
9 originate in California?

10 A. I am aware of the fact that CT Sales, like most
11 businesses, gets competitive prices on product from wherever
12 it deems reasonable. And, from a shipping analysis, we were
13 trying to figure out what is the most appropriate comparison
14 between truck -- a truckload of rebar and a train car full of
15 rebar and trying to understand the variables that would
16 influence rate. And that is why California is pertinent,
17 given that it is a potential supplier of CT Sales.

18 Q. But you are not aware of CT Sales in the past or
19 currently receiving any shipments originating out of
20 California?

21 A. Nope.

22 Q. So this number of 120 to 155, is it based on the
23 rebar stock that Mr. House says here in the letter marked
24 Exhibit 93 that is purchased directly from Cascade Steel
25 Rolling Mills in McMinville, Oregon?

1 A. Rephrase the question, please.

2 Q. The car count of 120 to 155, is that based on the
3 receipt of rebar stock from the Cascade Steel Rolling Mills
4 in McMinville, Oregon?

5 A. I believe so.

6 MR. PASCHALIS: Objection; asked and answered.

7 A. I believe so, yes.

8 Q. Is this car count based on the assumption that it
9 would be more cost-effective for CT Sales to receive this
10 rebar from Cascade Steel Rolling Mills by rail as opposed to
11 truck?

12 MR. PASCHALIS: Object to the form.

13 A. That's true.

14 Q. Okay. Are you aware of any studies showing that
15 delivery by these materials via rail is more cost-effective
16 than shipping it by truck?

17 A. For this particular instance, it's my understanding
18 that that loop did not get closed, that Jim House did not get
19 a completed number from Cascade Mills. He said he was going
20 to, but it's my understanding that he didn't, and so that
21 needs to be verified.

22 Q. So you do not know whether shipment by rail from
23 McMinville is cheaper than shipment by truck?

24 A. I cannot be absolutely sure of that.

25 Q. Mr. Engle, I think you said earlier that the

1 numbers in paragraph 2 of Mr. House's letter -- do you see
2 where he says, "Last year we processed and shipped about
3 8,300 tons, but this is still down from our high of about
4 14,000"?

5 A. Mm-hmm.

6 Q. Can you explain for me how we get from tons of
7 processed and shipped rebar to the car counts. I still am
8 not clear on this.

9 A. Take two zeroes off of the tons, and that will give
10 you your car count. So, in other words, last year --

11 Q. I am just not real sharp with numbers.

12 A. I doubt that.

13 Q. You should go look at my high school math class
14 grades.

15 A. So you would have 83-car loads, would be the
16 finished rebar that they did in a down year, and they went up
17 to 140 in a peak year.

18 Q. And that is because, again, as you said, that a
19 railcar can take 100 tons?

20 A. Yes.

21 Q. These car count numbers for CT Sales here in 96,
22 the 120 and the 155, they are for incoming shipments,
23 correct?

24 A. Yes.

25 Q. But the letter here, do you understand these

1 numbers of 8,300 and 14,000 to be for --

2 A. Finished.

3 Q. Finished.

4 A. For finished product going out.

5 Q. Okay.

6 A. And so two things that you need to be cognizant of,
7 and that is that no manufacturing facility, or very few that
8 I'm aware of, have 100 percent efficiency of what they bring
9 in versus what they ship. So, in other words, I may bring in
10 100 pounds, and I only produced 8 pounds of finished product,
11 because it has to be cut to length. It might be cut and
12 fabricated at an angle, and therefore I've got other scrap,
13 et cetera. You also need to take into account that not every
14 truckload is 100 percent full, just as every railcar is
15 likely to be 100 percent full.

16 So there are some inefficiencies that don't allow
17 you to -- inefficiencies, some realities, that don't allow you
18 to do perfect math from output, which is 14,000 tons, which
19 would be 140 fully loaded railcars of outputted item. If you
20 were able to fill every rail carry 100 percent full, that
21 would be 140. So, to assume even a 5 percent scrap rate, you
22 would be over 155 cars. So you have to take into account --
23 so outbound -- all I'm trying to say is that outbound
24 finished product does not equal inbound raw material.

25 Q. Right. But this car count number is an inbound

1 very familiar with the Bellevue market; they have been
2 serving it for years. And, if this is the information that
3 he provided me and he feels comfortable with it, then that's
4 what I put down. I certainly did not pull these out of my --
5 air, out of the air.

6 Q. All right. I want to look at this last item here
7 in the reactivation freight customers group, "Ready mix
8 concrete plant, letter pending." There are no annual car
9 count estimates for that row, correct?

10 A. Correct.

11 Q. Is ready mix concrete plant the name of a business?

12 A. No.

13 Q. This letter pending, can you just explain what this
14 row is referring to.

15 A. We had a conversation with Smokey Point Sand &
16 Gravel about putting in a smaller batch plant there and --

17 Q. Where?

18 A. Bellevue.

19 Q. In the yard?

20 A. In the yard area. And they ultimately came back
21 and decided that it was premature -- right when we were down
22 to the letter -- that it was just premature to do it until we
23 understood what the Surface Transportation Board was going to
24 do, because the next level of analysis for this -- in other
25 words, if I'm asking for car counts -- would be them doing a

1 much more detailed analysis, because they would have the
2 greatest capital investment, fixed costs, in order to make --
3 put a batch plant in. And it was their opinion to wait until
4 the Surface Transportation Board made a decision before they
5 would go any further with it.

6 Q. So in the productions that we received from your
7 counsel, I didn't see any communications with Smokey Point or
8 any documents from Smokey Point.

9 A. I think that we were -- we had conversations; we
10 met -- after many phone calls, we met for coffee; we sat down
11 and talked about it; he went back and talked to his Board,
12 and that's where it fell down.

13 Q. Okay. So you were not aware of any written
14 communications or other documents exchanged with Smokey
15 Point?

16 A. No.

17 Q. And I take it that Smokey Point has not provided
18 you with any letters to be submitted to the STB?

19 A. No, they have not. Again, it's this -- it's the
20 general -- when you get to a certain point, it becomes a
21 highly inefficient use of time to nail down what the
22 investment would be and how you would do that without knowing
23 that it's a real possibility. So we've had other people,
24 just conversations and stuff, and they're like let us know
25 what happens, and come back and see us.

1 MR. FERGUSON: I would like to go off to take
2 a short break.

3 (A brief recess was taken.)

4 Q. Mr. Engle, thanks for walking me through all those
5 car count calculations. I want to ask you now some other
6 questions about the businesses listed in Exhibit 96 as
7 potential reactivation freight customers. Let's start with
8 General Mills, and let's actually take a look at the letter
9 that was submitted. I believe this is Exhibit 131. First of
10 all, has General Mills made any commitment to Ballard or ECR
11 to ship flour by rail to any point in Bellevue?

12 A. Yes, they have asked.

13 Q. Is that commitment reflected in this letter?

14 A. "We currently deliver bulk truckloads of flour to a
15 large customer there," -- Safeway -- "and delivering by rail
16 would be a large environmental and competitive benefit."

17 MR. PASCHALIS: And you are reading from the
18 letter, for a sense of clarity.

19 THE WITNESS: And I'm reading from the letter.

20 Q. Do you take that to be a commitment to utilize rail
21 service by Ballard Terminal Railroad?

22 A. Absolutely.

23 Q. Is there anything other than this letter that
24 informs your belief that General Mills has made such a
25 commitment?

1 A. Because it will save them money. It will give them
2 a competitive benefit is their words.

3 Q. Is there any communication other than this letter
4 to ECR or Ballard reflecting such a commitment?

5 A. It's logically obvious that, yes, if they can avoid
6 the costs of sending trucks to Tacoma to bring flour back up
7 to the bakery, if they can avoid that cost, it gives them a
8 competitive advantage.

9 Q. Mr. Engle, we are going to get out of here tonight
10 if you just listen to my question carefully and answer it,
11 but I am going to have to go through these questions, and we
12 are going to try to complete this tonight.

13 What I am asking is: Other than this letter, is
14 there any other written communication that you are aware of
15 reflecting a commitment by General Mills to utilize rail
16 service from Ballard Terminal Railroad?

17 A. No.

18 Q. You said that a reference here to a large customer
19 is to Safeway?

20 A. Yes.

21 Q. Is that in reference to the Safeway bakery that is
22 just east of where the rail yard is in Ballard that we have
23 been discussing?

24 A. Yes, it is.

25 Q. Have you, on behalf of ECR or Ballard, had any

1 communications in the past year with Safeway regarding rail
 2 service to its Bellevue bakery?
 3 A. Yes.
 4 Q. Can you describe those conversations for me,
 5 please.
 6 A. The bakery plant manager is very interested in
 7 having rail service again.
 8 Q. Who is that?
 9 A. I don't recall the guy's name, but the plant
 10 manager was very interested in that. As it worked its way up
 11 to headquarters in Pleasanton, California, the legal team put
 12 a kibosh on any conversations because BNSF bought off -- when
 13 they abandoned the lines, they paid for Safeway's incremental
 14 costs of having their material shipped from Ballard for five
 15 years. After that five-year term was up, the shipments then
 16 moved down to Tacoma.

17 Q. Are you aware of any interest on the part of
 18 Safeway to receive deliveries to its Bellevue bakery by rail?

19 A. Yes, their plant manager was quite enthused about
 20 it.

21 Q. Do you know if that individual has the
 22 decision-making authority to receive shipments by rail?

23 A. Obviously, their attorneys do.

24 Q. So you do not know if the manager of the bakery has
 25 decision-making authority?

1 A. It was communicated to me that there was -- that
 2 until, I think it was -- their rail partner, which I took to
 3 be BNSF -- approved it, that Safeway corporate would not
 4 write a letter.

5 Q. Okay. Who communicated that to you?

6 A. That came via a conversation -- I only had one --
 7 with somebody in Pleasanton.

8 Q. Do you remember that person's name?

9 A. No, I don't, not off the top of my head. It was
 10 one of those nice, short conversations.

11 Q. Do you remember when roughly that conversation
 12 occurred?

13 A. Roughly, would be like May/June, maybe as late as
 14 July, but May/June, someplace in that last year.

15 Q. Either before or somewhere right around when you
 16 did your first deposition?

17 A. Yeah, someplace in that neck of the woods.

18 Q. And you are not aware of anything as to Safeway
 19 changing from when we did your first deposition?

20 A. Hm-mm.

21 Q. As to General Mills, is it your understanding that
 22 it could deliver bulk flour to the Safeway bakery without
 23 Safeway's approval, deliver by rail -- let me ask the
 24 question cleanly. Do you know whether General Mills can make
 25 deliveries by rail to Safeway's bakery in Bellevue without

1 Safeway's approval to do so?

2 A. I believe they can. They may have to park it --
 3 under the worst of circumstances, I guess you could park a
 4 truck across the street and run it back and forth inside the
 5 bakery, but that's kind of foolish.

6 Q. Do you think it is likely that General Mills would
 7 seek to deliver products to the Safeway bakery by rail
 8 without Safeway's request or approval to do so?

9 MR. PASCHALIS: Object; calls for speculation.

10 A. Given that the two rail lines, the spurs, go
 11 directly into their plants, they still exist, they are still
 12 operable, and there's a lower cost of handling, I think that
 13 it would be a low likelihood that Safeway would not want to
 14 reduce its operating costs. It's a lot easier to get flour
 15 out of a 10-inch hole than a 4-inch hole, move to a truck,
 16 and then dropped out again.

17 Q. I understand that. My question though is: In the
 18 scenario you described where you suppose General Mills could
 19 park a car across the street and then ferry back and forth,
 20 do you think it is likely that General Mills would seek to
 21 make deliveries by rail if Safeway did not request or approve
 22 its doing so?

23 MR. PASCHALIS: Object to the form; calls for
 24 speculation.

25 A. What if the world was flat? We wouldn't be here.

1 I don't think it's very likely at all. It's in both
 2 company's benefits to have the rail handling of materials,
 3 much the same way that it's the benefit to have rail handling
 4 of cement versus transferring to cars, because the material
 5 itself moves more efficiently and effectively through a
 6 10-inch hole in the bottom of a railcar than it does out of a
 7 4-inch hole in the bottom of a truck. There are cases in
 8 point where cement productions on Microsoft's buildings had
 9 to stop because they couldn't get the cement out of the
 10 trucks fast enough.

11 Q. Let's look back at Exhibit 124; this is your
 12 statement to the Board. Would you take a look at page 69;
 13 this is the map of the Bellevue yard. In the upper, right
 14 quadrant there are two rectangles, one with the name Safeway
 15 bakery, the other with the name General Mills. Does the
 16 Safeway bakery rectangle refer to the Safeway facility there?

17 A. This is not a very good image as reproduced.

18 Q. Well, let me ask this: I wanted to go with what
 19 your statement was, but we have a color map of this. Do you
 20 want to look at that instead?

21 A. I'm trying to find it.

22 Q. That is going to be in Exhibit 70.

23 A. It's Exhibit 70 and about page 4 or 5, I guess.

24 Q. And you will agree that this map is the same map
 25 that it is part of your statement?

1 A. Yes. Yes, I will agree to that.
 2 Q. So the Safeway bakery rectangle refers to the
 3 Safeway facility, right?
 4 A. Which is large, whited out on this background with
 5 kind of a pink background.
 6 Q. What I want to know is this: Does General Mills
 7 have plans to construct a facility near the Bellevue rail
 8 yard?
 9 A. I don't understand why that would be necessary or
 10 needed.
 11 Q. Okay. I'm not asking whether it would be necessary
 12 or needed; I just want to know if you know if they have plans
 13 to do so.
 14 A. I have no knowledge.
 15 Q. So then let's talk about the area below those two
 16 callouts called the Target site. Can you explain what this
 17 is, please.
 18 A. This is a piece of property owned by an investment
 19 company now, that that property has three railroad spurs that
 20 enter it, cross it, whatever, and would lend itself to a
 21 transload facility.
 22 Q. What is the investment company that owns this
 23 property?
 24 A. I don't recall. I've got the information. It's
 25 New York based; I remember that much.

1 Q. Is there anything other than a transload facility
 2 that you would seek to construct here?
 3 A. We would try to use the existing structure. Our
 4 intention is to use the existing structure there because it's
 5 got a rail spur that goes right up to a platform there, and
 6 that would give us a lot of possibilities. We have not
 7 elected to do a study or have written anything down relative
 8 to what we would do, but we have all looked at that and
 9 agreed that that is a great foothold.
 10 Q. You had mentioned a batch plant earlier.
 11 A. Yes.
 12 Q. For a company called Smokey Point; is that right?
 13 A. Well, that's one of the companies that we talked
 14 with.
 15 Q. Would the batch plant be located somewhere on this
 16 map that we are looking at here in Exhibit 70?
 17 A. Very likely.
 18 Q. Where?
 19 A. Don't know exactly.
 20 Q. Would it be located at the Target site?
 21 A. Potentially, indoors. We would want to keep the
 22 dust down for such a facility like that so that the Audi
 23 dealer that's located two sites to the south doesn't have to
 24 put up with dust.
 25 MR. FERGUSON: I would like to mark another

1 exhibit.
 2 Exhibit 134 marked for
 3 identification.)
 4 Q. Mr. Engle, this is information from the King County
 5 Department of Assessments. If you look at the second page,
 6 there is a map. There is a property boundary outlined in
 7 purple. Is that the property for the Target site that you
 8 have been referencing in Exhibit 70?
 9 A. Yes, it is.
 10 Q. Have you approached the owners of this property
 11 about purchasing it?
 12 A. No.
 13 Q. Are you aware of anyone else for Ballard or ECR who
 14 has done so?
 15 A. No.
 16 Q. Do you know if anyone has as part of the real
 17 estate development team that we discussed earlier?
 18 A. I believe there has been some research and contact
 19 done there.
 20 Q. So you think someone from that group has contacted
 21 the owners of this property?
 22 A. And found out who the new owners are, which is an
 23 investment group, again, and they're open to conversation on
 24 it, should we get the reactivation rights.
 25 Q. Wait, explain that last part. They are open to --

1 A. We are not going to call them back and bug them
 2 unless we get the reactivation rights. You're hearing the
 3 same thing from every single party, reactivation rights come
 4 first, then we'll get into some planning, studies,
 5 assessment, then we'll go get the resources necessary to
 6 execute that plan.
 7 Q. Take a look at the tax roll history table on the
 8 first page, please.
 9 A. Okay.
 10 Q. Do you see in the first column, the last row on the
 11 right, it says, "Taxable total for the year 2013"?
 12 A. Mm-hmm.
 13 Q. It looks like it is a little over \$3.4 million.
 14 A. Yeah.
 15 Q. Well, let me ask you this first of all: If I
 16 understood you earlier, you said that you had a sense of how
 17 much this property is worth; is that correct?
 18 A. Yeah, 3 1/2 to \$5 million because some improvements
 19 would have to be made, et cetera.
 20 Q. So you think it would cost somewhere between 3 1/2
 21 to \$5 million to acquire this property?
 22 A. Yes.
 23 Q. Do you have a particular entity in mind that would
 24 make that acquisition?
 25 A. I am not going to speculate on how this property

1 would be financed. I think it's incredibly premature to do
2 that. I am confident that this is a -- we would have
3 adequate collateral to be able to use this and have it be
4 financed. So we'll cross that bridge when we get there.

5 Q. The property itself, right?

6 A. Yes.

7 Q. I am not asking about the financing; I am just
8 asking about is there a particular entity that would be the
9 purchaser?

10 A. The railroad would be the purchaser.

11 Q. Is that Eastside Community Rail?

12 A. Eastside Community Rail would purchase that.

13 Q. Not Ballard?

14 A. Not Ballard.

15 Q. Not WATCO?

16 A. I don't believe WATCO, no.

17 Q. I want to look at some communications that you had
18 with folks at General Mills.

19 (Exhibit 135 marked for
20 identification.)

21 Q. Mr. Engle, the court reporter has handed you what
22 has been marked Exhibit 135, and it looks like this is an
23 e-mail thread between you and Tom English of General Mills.

24 A. Yes, it is.

25 Q. And James Forgette of Ballard is included on some

1 of the communications; is that right?

2 A. Yes.

3 Q. I would like you to take a look at the second page
4 here. The second line at the top you are making a reference
5 to a support letter that you are soliciting from General
6 Mills for the reactivation petition, correct?

7 A. Yes.

8 Q. You have written in the e-mail to Tom English, "Key
9 words for the STB are 'ready, willing, and able' to take
10 delivery."

11 A. Yes.

12 Q. Why? Why are those the key words?

13 A. Because I feel that, if they are truly committed to
14 doing this, that their statement as such is important.

15 Q. Okay. Why is it important?

16 A. Because I think it's important.

17 Q. Why do you think that?

18 A. Well, given that we're not asking anybody for a
19 transportation contract at this point, I think that those are
20 important words that express their desire to have rail
21 service.

22 Q. Take a look back at the General Mills letter. It
23 does not say they are ready, willing, and able in it, does
24 it, Exhibit 131?

25 A. No, but that's what your lawyers will do for you.

1 Q. Looking back at your e-mail on Exhibit 135 to Tom
2 English, you also say at the end of that e-mail dated
3 August 16, "And specifically 'request service' from Ballard
4 Terminal Railroad Company." Were you asking Mr. English
5 there to include in his letter a specific request for service
6 from Ballard?

7 A. Yes, I was.

8 Q. Why?

9 A. Because I thought it was important.

10 Q. Why did you think it was important?

11 A. For the same reason ready, willing, and able is
12 important.

13 Q. You thought that was necessary to reflect a demand
14 or commitment to using Ballard for rail service?

15 MR. PASCHALIS: I will object to the form.

16 A. I think it's important.

17 Q. I would like to look at another e-mail with
18 Mr. English. Mr. Engle, this is another e-mail that was
19 produced to us from ECR through your counsel. I want you to
20 look at the top of page 2. First, let's start at the bottom
21 here. September 24th, Mr. English sent you an e-mail asking
22 if you can provide a list of companies who will be referenced
23 in support to your letters to the STB. Your response is
24 above that, correct?

25 A. This is the bulk of them, yep.

1 Q. All right. You say, "Plus a drywall company in
2 Kirkland that is coming along."

3 A. Yes.

4 Q. I haven't seen in any of the documents or in your
5 support letter log reference to a drywall company in
6 Kirkland.

7 A. I would say that Stoel Rives has done a very good
8 job of dampening down any possible support for rail service
9 inside the city of Kirkland, and that the fact that they just
10 bought an additional building next to their existing building
11 on the railroad, we'll be talking with them again after the
12 reactivation. It's unprecedented the amount of energy that's
13 been put in to countering and suppressing potential rail
14 service on this line, unprecedented.

15 Q. Who are you talking about; what drywall company in
16 this e-mail here?

17 A. GTS Interior Supply, in the Parmac area of
18 Kirkland.

19 Q. Have you had any communications with GTS Interior
20 Supply about rail service?

21 A. I have not directly.

22 Q. Has Mr. Wilson?

23 A. Yes.

24 Q. Anything in e-mail?

25 A. I have nothing.

REDACTED

1 Q. (By Mr. Ferguson) For Aggregates West, would you
 2 explain to me what your understanding is of Aggregates West's
 3 ability to ship aggregate material by rail to Bellevue,
 4 assuming there were reactivation.
 5 A. They are ready to figure it out, and they believe
 6 there's a cost advantage. We believe there's a cost
 7 advantage, but, like anything else, you got to sit down and
 8 make sure that it's all there.
 9 Q. What do you mean, they're ready to figure it out?
 10 A. Like everybody else you've heard from, we're ready
 11 to sit down and put the effort in to make it work.
 12 Q. So this belief in a cost advantage, is it based on
 13 any study that has been done to this point?
 14 A. The spoils hauling study pretty clearly lays it
 15 out.
 16 Q. Is it based on anything that Aggregates West has
 17 done?
 18 A. Aggregates West has reviewed it. They get
 19 materials also via barge at times. It depends on what
 20 quarry, which mine, you're pulling out of and what the needs
 21 are at the other end.
 22 Q. Which mine did they --
 23 A. They have several mines and quarries that they have
 24 access to.
 25 Q. But do you know which ones they have access to by

1 barge?
 2 A. No, and at this point I don't know. I have to
 3 trust them that they say they've got the right materials at
 4 the right time, right place.
 5 Q. Do you know of any Aggregates West facility that
 6 has access to a rail line that could connect with a rail line
 7 operated by Ballard Terminal Railroad?
 8 A. That has access?
 9 Q. Are you aware of any Aggregates West facility that
 10 can ship presently any of its materials by rail?
 11 A. No.
 12 Q. So is it your understanding that Aggregates West
 13 would need to find an intermediate site, laydown yard, where
 14 it would truck material, which could then be loaded onto a
 15 railcar and then shipped to Bellevue?
 16 A. That's one possibility.
 17 Q. Have you done anything to identify a piece of
 18 property that could be used for such a laydown yard?
 19 A. We have not gone through that exercise. We both
 20 believe firmly that there are sites available that would lend
 21 itself to this activity.
 22 Q. Where are those sites?
 23 A. You've got sites up around where CalPortland is and
 24 then another piece of property to the south of the BN yard
 25 that we've identified.

1 Q. So, when you say sites up around where CalPortland
 2 is, are you referring to properties that could be a laydown
 3 yard?
 4 A. It doesn't have to be a laydown yard.
 5 Q. If I represented to you that that is what Mr. Day
 6 said that he would require in order to ship by rail, would
 7 you disagree with him?
 8 MR. PASCHALIS: I will object to you asking
 9 him to comment on another witness's testimony.
 10 A. We haven't got into the design or configuration of
 11 the service. We got further into it with CalPortland and
 12 deemed it possible.
 13 Q. But, for Aggregates West, you haven't identified a
 14 particular site that Aggregates West could use as an
 15 intermediate shipping point?
 16 A. They might be using the same site that CalPortland
 17 does; they work together.
 18 Q. But you don't know; is that accurate?
 19 A. That's accurate.
 20 Q. CT Sales is currently located on the freight
 21 segment or what you have been calling the operating line,
 22 right?
 23 A. Yes.
 24 Q. It is there in Maltby?
 25 A. Yes.

1 Q. Down the street from Bobby Wolford's yard, correct?
 2 A. Yes.
 3 Q. Is it your understanding that the property is
 4 adjacent to the railroad right-of-way?
 5 A. Yes.
 6 Q. You describe on Exhibit 96, if you want to look
 7 back at it, these estimated car counts to CT Sales as being
 8 incoming material.
 9 A. Yes.
 10 Q. Why can't CT Sales get rail service right now?
 11 A. They could.
 12 Q. Have they asked you for it?
 13 A. They would be interested in it once we get the
 14 pricing loop closed. I think that was an omission by Ernie
 15 not following up; me not following up; Jim House not
 16 following up. So we have a belief, we do not have a known
 17 fact, but they would bolster the overall economic viability
 18 of the railroad by having service on the line.
 19 Q. What is this pricing loop you are referring to?
 20 A. Because Cascade Steel Mills is located on a Union
 21 Pacific line, Union Pacific and Burlington Northern have to
 22 do their little handshake thing, and I don't -- they've got
 23 some -- there are some existing agreements between the two
 24 lines as to how cars are transferred between the two lines,
 25 and that just is not done overnight. At one point we heard

1 the transition point would be Fife, another point we heard it
2 would be down in Vancouver, and I don't think anybody at this
3 damn point is pushing really hard on that until we know what
4 we're going to do. We would like to put a spur into Bobby
5 Wolford; he's asking for one.

6 Q. I want to stick with CT Sales because I don't quite
7 understand what is going on there yet. We will come back to
8 Mr. Wolford.

9 A. What is going on there is pretty clear. When the
10 STB decision comes through, we're going to decide how we're
11 going to deploy our capital to get the highest rate of
12 return. If that involves CT Sales, great, we want to jump on
13 it. There happens to be three other pieces of property that
14 are also adjacent to the rail spur that would go in. They
15 might also have a benefit from having rail access. So,
16 before we get into that whole exercise, we're going to figure
17 out what we've got and how we're going to market it.

18 We've also talked with the Snohomish County
19 Economic Development Alliance that is very excited about
20 developing out Maltby as a rail-centric industrial area.
21 We're talking about now putting in an additional siding up in
22 Maltby.

23 Q. Are you aware of anyone for ECR who has
24 communicated to CT Sales that it cannot receive rail service
25 until the Board issues a reactivation decision?

1 A. We have simply told them that, until the decision
2 comes through, we don't know how and when we're going to
3 finance the rehabilitation and expansion of the line. We're
4 going to have a bucket of money, and the question gets to be
5 as where do you deploy your bucket of money.

6 Q. Does that include building a support spur into CT
7 Sales' yard?

8 A. Hopefully.

9 Q. Have you done any study to see what the
10 construction of a spur into CT Sales' yard is?

11 A. Do you think the world only operates under a study?
12 An average 300-foot --

13 Q. Would you answer my question, please.

14 A. An average 300-foot spur is \$300,000. That
15 includes a switch and 300 feet of track. Now then, do we
16 want to make that 300 feet to them, or would we back that up
17 and maybe want to make that 1,000 feet so that we can pick up
18 two additional properties? No, we haven't done a study to
19 figure that out.

20 Q. Has anyone for ECR or BTR asked CT Sales whether it
21 would like to purchase or pay for the construction of a spur?

22 A. We would expect all of our shippers, receivers,
23 customers, whatever, to participate in that.

24 Q. Are you aware of anyone for ECR or BTR who has
25 specifically asked CT Sales that?

1 A. I spoke to Jim House about that.

2 Q. What did you ask him?

3 A. Just said we'll have to figure out how we finance
4 this thing between us when the time comes.

5 Q. So you agree that, in order for CT Sales to receive
6 rail service, there has to be a siding, spur, or some other
7 way to bring cars into its yard?

8 MR. PASCHALIS: Objection; asked and answered.

9 A. What kind of a question is that?

10 Q. I just want to know, does CT Sales have to have a
11 spur built for it in order to receive rail service?

12 A. Yes.

13 MR. PASCHALIS: Objection; asked and answered.

14 Q. On the pricing loop, do I understand you correctly
15 that it is at least possible that it is unknown whether it
16 would be more cost-effective to ship from McMinville to
17 Maltby by rail, as opposed to truck?

18 A. Asked and answered.

19 MR. PASCHALIS: I will object on the basis of
20 asked and answered and on the basis of the form.

21 Q. Do you know whether it is --

22 A. Asked and answered.

23 MR. PASCHALIS: Same objections.

24 Q. Mr. Engle, I would ask you to answer the question,
25 please.

1 A. Again?

2 MR. PASCHALIS: What is the question?

3 A. The loop has not been closed. Jim House, Ernie
4 Wilson, or myself, we don't know for sure. Okay? So that's
5 the third time I've answered your question. I will not
6 answer it again.

7 MR. PASCHALIS: Let's move on.

8 Q. You don't know for sure what?

9 A. The prices.

10 Q. The assumption of these railcar counts on 96 here
11 was that it would be more cost-effective to receive inbound
12 shipments of rebar by rail than by truck, correct?

13 MR. PASCHALIS: I will object to the form and
14 object as asked and answered.

15 Q. The car counts were based on that assumption; is
16 that right?

17 MR. PASCHALIS: Object to the form and object
18 as asked and answered.

19 A. I've already answered your question.

20 MR. COHEN: Well, answer it again.

21 Q. So, in depositions, this is not how it works. You
22 have to answer.

23 MR. PASCHALIS: Hang on a second.

24 MR. FERGUSON: And, Mr. Paschalis, this is
25 improper while a question is pending for you to confer with

1 quite sure that one of those e-mails says here's background
2 information for our financing or for a loan.

3 Q. So is that a yes?

4 A. I'm sure you have it.

5 Q. Did you provide this document to Mr. Starup in
6 connection with an effort to obtain a loan from Coastal
7 Community Bank?

8 A. Obviously, and a host of other documents. And
9 we've provided the same information packet to a number of
10 other stakeholders.

11 Q. Is your answer "obviously" a yes?

12 A. Obviously, yes.

13 Q. Okay. So how much of a loan were you seeking from
14 Coastal Community Bank?

15 A. \$10 million is where we hope to end up, and that
16 will probably be done over two different loans.

17 Q. Would both of those be SBA loans?

18 A. Yes.

19 Q. \$5 million each?

20 A. Yes.

21 Q. Would you turn to page 29 of the PowerPoint,
22 please. If your loan amounts you are seeking, two different
23 loans of \$5 million apiece, what does this "\$500,000
24 immediate raise" refer to?

25 A. Interim requirements, meaning this is what we're

1 looking to raise before going in for the primary loan.

2 Q. So were you seeking to obtain these amounts from
3 Coastal Community Bank?

4 A. No.

5 Q. Mr. Engle, if you were not seeking a \$500,000 loan
6 from Coastal Community Bank, why did you provide this
7 information to the bank?

8 A. Transparency.

9 Q. Were you seeking this \$500,000 from someone else?

10 A. Yes.

11 Q. Who?

12 A. I forgot.

13 Q. Can we do anything to refresh your memory about who
14 you sought the \$500,000 from?

15 A. Probably not.

16 MR. PASCHALIS: I will object to the form.

17 Q. Probably not you said?

18 A. Yeah.

19 Q. Is it because it was long ago?

20 MR. PASCHALIS: I will object to the form. I

21 am not sure where you are going with this, but I suggest we
22 move on.

23 Q. Is it because there have been so many people?

24 MR. PASCHALIS: Again, I would object to the
25 form. And I don't think anything with respect to anyone

1 other than the people and entities listed in the December 6th
2 reply is relevant or within the scope of the Board's
3 protective order.

4 MR. FERGUSON: It is, Tom. Mr. Engle
5 specifically asked Mr. Starup to sign that letter based on,
6 communiqUT is the word he used, from the previous year.
7 Mr. Starup testified that he reviewed these materials as part
8 of his decision to write a letter, and I want to understand
9 what this document is for.

10 A. It's for raising money.

11 MR. PASCHALIS: I am not persuaded by any of
12 that reasoning, but, again, he does not know any way or does
13 not recall, so we can move on.

14 Q. Did you raise the 500,000?

15 A. Some of it.

16 Q. Really? Based on this material?

17 A. Absolutely.

18 Q. Okay. Do you remember who you got the money from?

19 A. Friends and family.

20 Q. So then you do remember who you presented this to
21 other than Mr. Starup?

22 A. I presented it to others.

23 MR. PASCHALIS: I will object to the form.

24 A. And I'm not going there.

25 Q. Okay. There are a couple other parts of this

1 document that I would like you to explain. Look at page 27,
2 please. Would you explain what the statement under No. 2
3 means, "The leverage of a federal railroad to accelerate
4 entitlement process."

5 A. There are things that we can do as a railroad with
6 the National Environmental Protection Agency processes that
7 do not mandate us to go through SEPA or local requirements,

8 as determined in a ruling by the Ninth District Court of
9 Appeals against Auburn and King County.

10 Q. Which things do you have in mind?

11 A. Jeez, if I need a parking garage for my employees
12 and others, then I'll put a parking garage up inside the
13 right-of-way because, guess what, that's part of my rail
14 works.

15 Q. Anything besides a parking garage for your
16 employees?

17 A. I've got to build a building to maintain my
18 vehicles; I've got to build an inspection pit; I need to be
19 able to clean and wash my vehicles. There's all kinds of
20 rail works that are possible inside the corridor.

21 Q. Anything else?

22 A. Lots of things; I just can't think of them all
23 right now.

24 Q. Do you think that whatever powers you have as a
25 federal railroad also applies to excursion train efforts?

1 there is going to be an acquisition of hotel land in
 2 Woodinville?
 3 MR. PASCHALIS: I will make the same
 4 objections and say that this is overbroad, unduly burdensome,
 5 and harassing yet again.
 6 A. It makes sense to have a hotel in Woodinville that
 7 has facilities that can be expanded slightly to support the
 8 expected passengers for an excursion train. The Temple
 9 family invested millions of dollars and lost that money in
 10 Renton when they pulled out. By putting it into a hotel and
 11 getting the synergy -- understand the word synergy -- so that
 12 a hotel and an excursion business can coexist. You get the
 13 benefits of joint parking; joint cooking facilities; joint
 14 gift shop; a waiting area that could be used as a ballroom;
 15 business conference center. You also create -- help to fill
 16 a void, since there's 5 to 600 bed count shortage in
 17 Woodinville, that we would help fill, and, oh, by golly,
 18 those people would be staying right there where the excursion
 19 train loads and unloads and goes for a ride. Now, don't you
 20 think that it makes sense for the railroad to have a vested
 21 concern in that? We're interested in owning the land; we
 22 don't want to own the hotel. But, by owning the land, we
 23 will have some influence into the design and layout and
 24 location of the hotel. I think that this makes a hell of a
 25 lot of sense, and any business person seems to pick it up

1 right away.
 2 Q. It says here, "Railroad must own the land."
 3 A. Absolutely.
 4 Q. Is there any other reason besides wanting to have
 5 influence over the design of the hotel that the railroad must
 6 own land?
 7 A. We're planning on putting --
 8 MR. PASCHALIS: Objections on the same basis.
 9 A. One of the considerations is to pull the track over
 10 to create a siding and have the loading and unloading of the
 11 excursion train be on that property versus having people
 12 cross the street to load onto the excursion train. If the
 13 excursion train was located on that property, then it would
 14 make life a lot easier for other people, and the only time it
 15 gets in the way of the trail, the only time it gets in the
 16 way of any other operations in the line is when it's pulling
 17 on or off, which would be twice a day, once getting on, once
 18 getting off. Then, at the end of the night, it pulls down to
 19 the inspection areas, where, every night, if you're moving
 20 people, you have to inspect every vehicle before it can go
 21 back out in service again the next day. That's why the
 22 railroad must own the land.
 23 MR. FERGUSON: I'm done. Thank you.
 24 MR. MARCUSE: Can we take a break,
 25 five minutes?

1 MR. PASCHALIS: Sure.
 2 (A brief recess was taken.)
 3 MR. MARCUSE: We are back on.
 4
 5 EXAMINATION
 6 BY MR. MARCUSE:
 7 Q. Mr. Engle, Andrew Marcuse from King County. I have
 8 two questions for you. I would like to direct your attention
 9 back to Exhibit 96, the table of reactivation letters filed.
 10 A. Yes.
 11 Q. In the left-hand column, as we have been discussing
 12 throughout the day, there is a heading there, "Reactivation
 13 freight customers." Eastside Community Rail and Ballard
 14 Terminal Railroad presently have no contract for service with
 15 any of those shippers; is that correct?
 16 A. That is correct.
 17 Q. And the letters of support that they filed with the
 18 STB on behalf of Ballard, those are not requests for service,
 19 are they?
 20 A. I believe they are requests for service.
 21 Q. Why do you believe that?
 22 A. They are asking for rail service. It may not be in
 23 the exact form of that, but they are saying that they would
 24 use the rail if it was available. It's a chicken-and-egg
 25 situation, I believe.

1 Q. Do any of the letters that have been submitted by
 2 these shippers with the STB request rail service at the
 3 present?
 4 A. I believe they all do.
 5 MR. MARCUSE: Okay, thank you.
 6
 7 EXAMINATION
 8 BY MR. WAGNER:
 9 Q. Mr. Engle, Jordan Wagner for Sound Transit. So in
 10 Exhibit 70, page 3, there was this diagram. I am talking
 11 about the page that has the Target site on it.
 12 A. Yes, sir.
 13 Q. Correct me if I am wrong, but I believe that you
 14 suggested that you might utilize the Target site, and, by
 15 you, I mean Ballard Terminal Railroad or Eastside Community
 16 Rail, as a transload facility, possibly a batch plant; is
 17 that correct?
 18 A. Yes, sir.
 19 Q. And Aggregates West has suggested that they may
 20 need a laydown yard in Bellevue?
 21 A. Yes.
 22 Q. If Aggregates West had a laydown yard, would you
 23 say that it would probably be within the area of the Target
 24 site?
 25 A. Most likely. We're also evaluating the -- we will

1 evaluate the option of owning some cars that could be used
2 for interim storage of materials that would be used in the
3 next week. So, rather than having to have a large laydown
4 facility, leave them in the cars until they're needed.

5 Q. So your plan would then be to store them on the
6 right-of-way?

7 A. Yes.

8 Q. So, with regard to a transload facility or a batch
9 plant in and around that Target site, do you happen to know
10 what the zoning is for that property or any other properties
11 around there?

12 A. I think it's all commercial. I'm not -- there's a
13 lot of work that has to be done on that particular front, and
14 none of us wanted to bite that apple off beforehand, so we
15 didn't.

16 Q. So you have not looked into what the zoning is?

17 A. Right. And I think that's one of the other reasons
18 why we didn't get it -- we didn't push the batch plant idea.
19 It may have been one of my crazier ideas.

20 Q. Might that be because there is a hospital and
21 medical zoned property across from the right-of-way?

22 MR. PASCHALIS: Objection; form.

23 A. I don't know. Our thought was, if we were going to
24 have any kind of a batch plant, would be to have indoor so
25 that we weren't generating dust. We are well aware of the

1 children's hospital over there and concerned about that. I
2 wouldn't want to do anything that would be disruptive to them
3 or disruptive to the Audi dealership given, it's my
4 understanding, one of the largest tax generators in Bellevue.

5 Q. If I told you that the Target site is zoned Bel-Red
6 residential, would that change any of your plans for using
7 the property?

8 A. It probably would, but I --

9 Q. How would it change it?

10 A. Well, if it was residential, you would have a hard
11 time using it for industrial.

12 Q. Do you know of any industrially zoned properties
13 along the line to Bellevue?

14 A. It's my understanding that all of this was zoned
15 industrial. So, if it's changed lately --

16 Q. Your understanding is that the property on
17 Exhibit 70, page 3, the section of track that the properties
18 to the east of the railroad right-of-way and north of 520, it
19 is your understanding that is industrially zoned property?

20 A. South of 520, yes.

21 MR. WAGNER: Thank you.

22 THE WITNESS: You're welcome.

23 ////

24 ////

25 ////

EXAMINATION

2 BY MR. PASCHALIS:

3 Q. Mr. Engle, I am going to ask you a few questions.

4 I will do my best to make it brief. We touched upon this a

5 little bit already, but what is the nature of Ballard

6 Terminal Railroad Company's and Eastside Community Rail's
7 business relationship?

8 A. I view it as the fundamental relationship to
9 operations on the line. If WATCO were to be utilized, the
10 extent of that utilization would be in partnership with
11 Ballard. So I don't see Ballard going anywhere regardless of
12 Byron's retirement or not.

13 Q. How would you characterize the strength of
14 Eastside's relationship with Ballard?

15 A. I would say it's very strong.

16 Q. How long have you and Byron Cole been working
17 together on railroad-related efforts?

18 A. Over five years.

19 Q. You have discussed this to some extent earlier, but
20 please go ahead and tell me how you describe the strength of
21 your relationship with Mr. Cole.

22 A. Byron is a handshake guy with a massive amount of
23 integrity. I love him like my father. The sad thing that is
24 happening with Mr. Cole right now happens to all of us as we
25 age, and that is his short-term memory is starting to be

1 impacted. It's sad to see that happening. My dad is a
2 couple years younger; I see that happening to him, too. And
3 I think that -- I think, like anybody at that age, you give
4 them a lot of grace and a lot of latitude that you might not
5 otherwise tolerate in a business relationship, but I think
6 that he means well, and I think that the company he has
7 developed will serve Eastside's needs for years to come.

8 Q. How would you describe your working relationship
9 with James Forgette?

10 A. Very good, but it's very operational in nature.

11 Byron keeps him in a pretty small box sometimes. I know
12 directly from the people at BNSF that they really respect him
13 and work well with him. Our customers all have had good
14 things to say about James, and I've heard that from the BNSF
15 local people, and I've heard that through Rail Link and RMI
16 and other rail suppliers. So I have a lot of confidence in
17 James's ability to keep Ballard running for years to come. I
18 also believe from my conversations with Paul Nerdrum that
19 he's talked with James about being able to take over as Byron
20 slows down.

21 Q. So does Eastside Community Rail anticipate
22 continuing its relationship, its business relationship with
23 Ballard, in the forthcoming years?

24 A. At this standpoint, I see it indefinite.

25 Q. You were asked some questions earlier about WATCO's

1 I think that's a good spot that where we're extending our
2 service and it getting the traffic up on the corridor, and
3 we -- it gives us time to have a cooperative conversation.

4 Q. Now, RJB is on the portion of the line that
5 currently is inactive for freight operations?

6 A. That's true.

7 Q. How has that fact affected how far you have gone in
8 your discussions with RJB regarding the construction of a
9 spur track or the means of accessing the line?

10 A. We brainstormed a number of ideas. His yard as it
11 exists today is not cohesive, is not good to load and offload
12 pipe; however, by using part of the right-of-way and not
13 having the spur in place, you could easily start moving pipe
14 as soon as you got there, and, again, in looking for what's a
15 long-term solution. If there was genuine dialogue and
16 cooperation going on or the intent to have that, one of the
17 alternate solutions that could be done there is that we
18 flatten the rail structure because you're going to have to go
19 back in and add the ballast anyway. So, if you flatten it
20 down, it wouldn't be 8 to 12 feet higher, it would be maybe
21 2 feet higher, and then you could bring dirt up next to it to
22 make loading and offloading easier. And that scenario works
23 for RJB, and they would have adequate access to at least one
24 railcar at a time, maybe two, but at least one railcar at a
25 time.

1 Q. So you have described several options for both
2 short short-term and long-term on how they would access the
3 line and be able to ship. Have you had those conversations
4 with RJB itself?

5 A. We brainstormed a number of things, but the
6 commitment that we made to each other was that we would
7 partner and cooperate in figuring it out. It didn't make
8 sense to have drawings done or anything like that until we
9 know whether or not it's going to happen.

10 Q. How soon after reactivation would you start the
11 process of having a detailed, comprehensive evaluation of
12 getting RJB access to the line?

13 A. Within 30 days with the intent of having service to
14 them this year.

15 Q. There was some discussion earlier about your
16 inspections of the area of the Bellevue yard; do you recall
17 that?

18 A. Yes.

19 Q. And the nature of rehab work that would need to be
20 done --

21 A. Yes.

22 Q. -- to make it usable to railroad operations.

23 A. Yes.

24 Q. And you had indicated that several other people had
25 also gone down there to take a look, as well.

1 A. Yes.

2 Q. You were asked about Mark Blazer; do you recall
3 that?

4 A. Yes.

5 Q. What was your answer?

6 A. I believe that Mark Blazer -- he told me that he is
7 familiar with the area. I believe that, during the bid
8 process of 2008, that he looked it over, physically was on
9 site there. So I think that -- and I know that he did the
10 high rail tour of the line, so he's familiar with the entire
11 line.

12 Q. We have discussed earlier that WATCO's
13 participation in freight operations is contingent on actually
14 getting the line reactivated.

15 A. Yes.

16 Q. So what is your understanding of whether or not
17 Mr. Blazer and WATCO would come out to that area and look and
18 evaluate it further if reactivation is successful?

19 A. I would imagine they would be out within 30 days to
20 start the process. I don't know how long their evaluation
21 process would take, but we would -- I would say it would take
22 90 days to put together an updated business plan to run the
23 numbers and to get an understanding of what's really
24 possible.

25 Q. Okay. So the wheels really start going in motion

1 after reactivation is granted?

2 A. Yes. Once the business plan is fleshed out, again,
3 give that 90 days, at that point I think we would be prepared
4 to go to the bank for particular financing.

5 Q. All right. Well, let's talk about the banks.

6 Let's start with Coastal Community Bank. Now, you've
7 testified that you had some conversation with Mr. Starup
8 about getting two SBA loans.

9 A. Yes.

10 Q. What is your understanding as to whether or not you
11 could apply for an SBA loan for rail reactivation activities
12 on the line at this point in time before the Board has made a
13 decision?

14 A. Not likely to happen. That said, once we acquire
15 the land in Woodinville, then we would be able to qualify for
16 an SBA loan, because we would have collateral, and the track
17 on the line would be collateral, as well.

18 Q. With respect to an application for funds to be used
19 in reactivation of the line itself, what would the effect be
20 on your ability to make an application with Coastal Community
21 Bank if Ballard obtains the reactivation rights?

22 A. I think that we're in a very likely situation to be
23 able to put financing together. In conversations that Greg
24 Starup and I had, we thought we can approach the problem a
25 couple of different ways, and both seem viable to me. For

1 AFFIDAVIT
2 STATE OF WASHINGTON)
) ss.
3 COUNTY OF KING)
4

5 I have read my within deposition, and the same is
6 true and correct, save and except for changes and/or
7 corrections, if any, as indicated by me on the
8 "CORRECTIONS" flyleaf page hereof.
9

10
11 DOUGLAS ENGLE

12
13 SUBSCRIBED AND SWORN to before me
14 this day of , 2014.
15

16
17 NOTARY PUBLIC in and for
the State of ,
18 residing at
My commission expires

19
20
21
22
23
24 STARKOVICH REPORTING SERVICES
25 206.323.0919

1 CERTIFICATE
2 STATE OF WASHINGTON)
) ss
3 COUNTY OF KING)
4

5 I, the undersigned Washington Certified Court
Reporter, pursuant to RCW 5.28.010, authorized to administer
6 oaths and affirmations in and for the State of Washington, do
hereby certify: That the foregoing deposition of the witness
7 named herein was taken stenographically before me and reduced
to a typed format under my direction;
8

9 That, according to CR 30(e), the witness was given
the opportunity to examine, read and sign the deposition
after same was transcribed, unless indicated in the record
10 that the review was waived;

11 That I am not a relative or employee of any
attorney or counsel or participant and that I am not
12 financially or otherwise interested in the action or the
outcome herein;
13

14 That the deposition, as transcribed, is a full,
true and correct transcript of the testimony, including
questions and answers and all objections, motions and
15 examinations and said transcript was prepared pursuant to the
Washington Administrative Code 308-14-135 preparation
16 guidelines.
17

18 Wade J. Johnson, Certified Court
Reporter 2574 for the State of Washington
19 residing at Seattle, Washington.
My CCR certification expires on 09/18/14.
20
21
22
23

24 STARKOVICH REPORTING SERVICES
25 206.323.0919

1 STARKOVICH REPORTING SERVICES
P.O. BOX 22884
2 SEATTLE, WASHINGTON, 98122
206.323.0919/FAX: 206.328.0632
3 info@starkovichreporting.com
4

5 February 16, 2014
6

7 To: THOMAS C. PASCHALIS
Fletcher & Sippel
8 29 North Wacker Drive, Suite 920
Chicago, Illinois 60606
9 tpaschalis@fletcher-sippel.com
10 Re: Ballard Terminal Railroad Co., LLC, Acquisition and
Exemption

11 Deposition of: DOUGLAS ENGLE
Date Taken: February 13, 2014
12 Cause No. 35731

13 PLEASE TAKE NOTICE THAT:

14 Enclosed are two forms: "Affidavit" and a "Correction Sheet."
Instruct the deponent to review the deposition, record any
15 corrections over his signature on the Correction Sheet, and
sign the Affidavit before a Notary Public. If there are
16 corrections, please furnish other counsel with copies.
Return both forms to this office for their inclusion in the
17 original transcript. The transcript will be forwarded to the
appropriate party
18

Thank you for your assistance in obtaining signature.

19 By: Wade J. Johnson, RPR

20
21
22 cc: Hunter Ferguson
Andrew Marcuse
23 Jordan Wagner
24

25 STARKOVICH REPORTING SERVICES
206.323.0919

1 STARKOVICH REPORTING SERVICES
P.O. BOX 22884
2 SEATTLE, WASHINGTON 98122
(206) 323-0919
3 FAX (206) 328-0632
info@starkovichreporting.com
4

5 CORRECTION SHEET

6 PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY PAGE
7 AND LINE NUMBER, AND THE REASON THEREFOR.

8 PAGE LINE CORRECTION AND REASON
9

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27 STARKOVICH REPORTING SERVICES
206.323.0919

September 17, 2012

Mr. Douglas Engle
Eastside Community Rail, LLC
1340 Lombard St, 606
San Francisco, CA 94109
Email: DEngle76@comcast.net

**ENGAGEMENT AGREEMENT
for
Eastside Community Rail, LLC**

Dear Doug,

This letter (this "Agreement") will outline the proposed terms and conditions whereby the recently formed entity, Eastside Community Rail, LLC ("ECR" or the "Company") retains and partners with EB5 Capital Partners.us, LLC ("EB5") to provide certain advisory services to assist with the growth, financing and development of ECR, including the acquisition of the assets of GNP Rly, Inc. Specifically, the services and terms will include:

1. EB5 Services

In consideration of the promises and agreements of EB5 contained herein, ECR engages EB5 to provide the following services (the "EB5 Services") on a best efforts basis in connection with the Company's desire to develop the ECR business including the acquisition of the assets and rights of the former GNP Rly, Inc. from the court appointed trustee (the "Transaction") :

- (a) Advise on the strategy, methods, structure and financing for ECR to execute the Transaction.
- (b) Assist the other ECR owners in sourcing the capital required for the Transaction (total capital needed for the Transaction is estimated at three hundred thousand (\$300,000) dollars).
- (c) Review existing ECR corporate documentation (formation, operating agreements, stock agreements, etc.), and advise of any deficiencies or any additional requirements.

2. Additional Services

If the Company requests that EB5 provide additional services not otherwise set forth in this Agreement, the Company and EB5 will enter into an additional written agreement that will set forth the nature and scope of services, appropriate compensation and other customary matters for such additional work.



3. Required by the Company

In order to enable EB5 to provide the EB5 Services, the Company agrees that it will:

- (a) Provide EB5 with all information and data concerning the Company and its products, services and markets (the "Information"), and on an ongoing basis promptly provide EB5 information with respect to any material development concerning the business, affairs, finances or future prospects of the Company;
- (b) Provide EB5 with access to designated officers, directors, employees, attorneys, independent accountants, advisors and consultants;
- (c) Comply with all federal and state securities laws, without limiting the foregoing, ensure that all information (a) made available to EB5 by the Company will be complete and correct in all material respects (as supplemented by the Company from time to time) and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made;
- (d) Ensure that any projections provided by it to EB5 will have been prepared in good faith and will be based upon assumptions which, in light of the circumstances under which they are made, are reasonable. The Company acknowledges and agrees that (i) in rendering its services hereunder, EB5 will be using and relying on the Information (and information available from public sources and other sources deemed suitable by EB5) without independent verification thereof by EB5 or independent appraisal by EB5 of any of the Company's assets, (ii) EB5 does not assume responsibility for the accuracy or completeness of the Information or any other information regarding the Company, and does not assume responsibility for attainment of any projections, and (iii) it will immediately notify EB5 if the Company has reason to believe that any information provided to EB5 has become materially inaccurate or misleading; and
- (e) Hold in confidence, and not disclose to any third person or entity except as necessary to enforce its rights under this Agreement, the terms of this Agreement.
- (f) While this Agreement remains in effect, the Company agrees that they will promptly inform EB5 in reasonable detail of any inquiries received by the Company concerning any potential business combination, capital formation or business sale.

4. Consideration

The Consideration (the "Consideration") for the services outlined in Section 1, are as follows:

- (a) An equity ownership interest equal to fifteen percent (15%) of ECR, including equivalent ownership in any newly formed joint venture related to the assets acquired from GNP



Rly, Inc. (if such an entity is formed). As ECR is a newly formed entity currently with no assets, the ownership will be transferred to EB5 at nominal or par value and evidenced by appropriate documentation.

5. Expenses

The Company agrees to reimburse EB5 upon request for all reasonable out-of-pocket expenses incurred in connection with the performance of the EB5 Services. From the date of this Agreement up to December 19, 2012, the only expenses to be incurred by EB5 would be related to travel and lodging. EB5 agrees not to incur any expenses related to this Agreement prior to December 19, 2012 without prior approval of ECR. After December 19, 2012 no expense shall exceed \$500 without the Company's prior consent, which consent shall not be unreasonably withheld or delayed. Out-of-pocket expenses may include, among other things: all travel, meals, entertainment, long distance telephone, facsimile, duplication, printing, courier, outside research reports and other similar expenses. Expenses will be billed monthly and are payable upon receipt.

6. Confidentiality

Each of EB5 and the Company understand that the terms contained herein are confidential and will not disclose them to any other parties except on a "need-to-know" basis to their respective current, future and prospective principals, officers, directors, shareholders, employees, lawyers, accountants, advisors, lenders and other agents, or as otherwise required by law.

7. Exclusivity

During the term of this Agreement, EB5 shall be the only provider to the Company of any of the EB5 Services as defined herein. The Company shall not obtain any of the EB5 Services from any person or entity or engage any person or entity to provide similar services other than EB5 during the Term. If the Company acquires the EB5 Services or any similar services from any person or entity other than EB5, EB5 shall be entitled to receive, in addition to any other remedies available to EB5, all fees as provided for in this Agreement as if EB5 had provided the EB5 Services, including, but not limited to the Consideration. EB5 understands that ECR may request that David Farmer provide certain introductions and/or other assistance in sourcing the capital necessary to complete the Transaction. EB5 hereby confirms that such assistance by David Farmer will be the lone exception to this Section 7; however such assistance will not impact the Consideration due to EB5.

8. No Solicitation of Employment

During the Term of the Agreement and for a period of two (2) years following the date of termination of the Agreement, neither the Company nor any of its officers, employees, contractors, consultants or agents will for any reason directly or indirectly solicit, induce or encourage any EB5 officer, employee, contractor, consultant or agent to terminate their relationship with EB5 and, directly or indirectly, as a principal, agent, contractor, consultant, employee, employer, partner or shareholder or in any other capacity, provide services to the Company.



During the Term of the Agreement and for a period of two (2) years following the date of termination of the Agreement, neither EB5 nor any of its officers, employees, contractors, consultants or agents will for any reason directly or indirectly solicit, induce or encourage any officer, employee, contractor, consultant or agent of the Company to terminate their relationship with the Company and, directly or indirectly, as a principal, agent, contractor, consultant, employee, employer, partner or shareholder or in any other capacity, provide services to EB5.

9. Non-Circumvention

The Company acknowledges by signing this Agreement that the identity of any potential investor or capital source introduced by EB5 to the Company, shall at all times remain confidential and proprietary to EB5. Specifically, the Company agrees that they will not contact in any manner, or respond to any attempted contact by an EB5 introduced potential investor or capital source, without the prior written permission from EB5. In the event that this Agreement is terminated and the Company ultimately receives any funding from a relationship or source introduced by EB5, then EB5 shall be entitled to compensation equal to six percent (6%) of the total amount of capital received, in addition to the Consideration stated in Section 4.

10. Fiduciary Relationship

The Company shall not, in any manner, assume or create any obligation or responsibility, express or implied, on behalf of or in the name of EB5 or its affiliates in any respect except as expressly permitted pursuant to this Agreement. EB5 shall not, in any manner, assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Company or its affiliates in any respect except as expressly permitted pursuant to this Agreement.

11. Indemnification

In order to induce EB5 to enter into this Agreement, the Company has agreed to the indemnification and contribution provisions set forth on Exhibit A attached hereto.

12. Terms and Termination of the Agreement

The "Term" of this Agreement will be as follows:

- (a) The EB5 Services would commence on or about September 1, 2012. Thereafter, the work will continue on as-needed, unless terminated per (b) or (c) below.
- (b) The EB5 Services will terminate thirty (30) days from the receipt by EB5 of written notice from the Company to EB5 that the EB5 Services are no longer required by the Company (a "Company Termination Event"); or



- (c) The EB5 Services will terminate thirty (30) days from the receipt by the Company of written notice from EB5 that EB5 will no longer provide advisory services to the Company (a "EB5 Termination Event");

13. Miscellaneous

This Agreement represents the entire agreement of the parties and supersedes any prior understandings and agreements and cannot be modified, nor can any rights of a party hereunder be waived, except by a written agreement signed by EB5 and the Company

If any sums due to EB5 hereunder are not paid when due, EB5 shall be entitled to recover its reasonable fees and expenses, including attorney fees, incurred in connection with its efforts to collect such sums.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, provided that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party.

This Agreement constitutes the product of the negotiation of the parties and will be interpreted in a neutral manner without regard to whether either party drafted any provision. Headings in this Agreement are for convenience only and do not limit or construe the contents hereof.

The parties believe the provisions contained in this Agreement are reasonable and fair in all respects, and are necessary to protect the interests of EB5 and the Company. However, in case any one or more of the provisions or parts of a provision contained in this Agreement are for any reason held to be illegal or unenforceable in any respect, such illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement, and this Agreement shall be reformed and construed so as to be legal and enforceable to the maximum extent permitted under law.

This Agreement is governed by and construed in accordance with the laws of the State of Illinois without application of conflict of laws principles. Any dispute arising out of this Agreement shall be resolved by arbitration in accordance with the rules then in force of the American Arbitration Association. Any such proceeding shall take place in Chicago, Illinois. In no event shall the arbitrators be authorized to award (a) punitive or exemplary damages or (b) consequential damages in an amount that exceeds the fees actually paid to EB5 hereunder. The Arbitrators shall have the right to allocate the costs of such arbitration, including reasonable attorney fees, between the parties. The arbitrators shall have the authority to abbreviate discovery, the length of written submissions, and the time allotted for oral arguments so as to expedite the conclusion of the arbitration. All such proceedings shall be conducted confidentially and the parties shall not disclose the outcome of any such arbitration. The decisions and awards of the arbitrator shall be final and binding, and may be enforced by either party in any court of competent jurisdiction.



This Agreement does not create, and will not be construed to create rights enforceable by any person or entity other than the Company, except as may result by application of the Indemnification provisions. The Company agrees that (i) EB5 is an independent contractor and is being retained solely to complete the EB5 Services, (ii) EB5 is not and will not be considered a fiduciary of the Company, any stockholder, or any person employed by, affiliated with, or holding any equity or debt interest in, the Company in any capacity, all of which duties to the extent existing are hereby expressly waived, and (iii) any advice rendered by EB5 does not constitute a recommendation to the Company, the Board of the Company, or any equity or debt holder of the Company with respect to any action that such equity or debt holder should or should not take.

Any notice required pursuant to or in connection with this Agreement will be delivered personally or sent by certified mail, return receipt requested, to Mr. Daniel Behr, in the case of the Company, unless notified in writing to the contrary. In the case of EB5, unless notified in writing to the contrary, the Company may contact either of EB5's Principals, Daniel T. Behr, or Douglas C. Olds, for any reason by phone at 1.847.951.7245 or 1.224.422.0772, respectively; by certified mail at 3145 Cherry Lane, Northbrook, Illinois 60062; or by e-mail at dtb@eb5capitalpartners.us or dco@eb5capitalpartners.us.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Please confirm your acceptance of the foregoing and your agreement with the terms hereof by signing and returning the enclosed copy of this Agreement to us. We thank you for the opportunity to submit this Agreement and look forward to working with you on the project.

For the Company:

For EB5 Capital Partners.us, LLC:

By: 

By: 

Name: Douglas Engle

Name: Daniel T. Behr

Title: MANAGER

Title: Principal

Date: 17 Sep '12

Date: September 17, 2012



Exhibit A

To
Engagement Agreement
Between
Eastside Community Rail, LLC
And
EB5 Capital Partners.us, LLC

In connection with the engagement of EB5 by the Company, the Company agrees to indemnify and hold harmless EB5 and each of its officers, employees, members, affiliates, controlling persons and agents (each, including EB5 an "Indemnified Person"), to the fullest extent permitted by law, from and against all judgments, losses, claims (whether or not valid), damages, costs, fees, expenses and liabilities, joint or several to which an Indemnified Person may become subject, relating to or arising out of (a) EB5's engagement or performance under the Agreement, (b) any act or omission of the Company, or (c) any actual or threatened suit, action, claim, proceedings or investigation (a "Claim") before any court, regulatory, administrative or other body relating to any or all of the foregoing. The Company shall not, in any event, be obligated to indemnify any Indemnified Person aforesaid in respect of any loss, claim, damage, liability or expense to the extent they are determined by a final judgment of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct on the part of that Indemnified Person.

The Company shall reimburse each Indemnified Person for all reasonable expenses, including reasonable attorneys' fees and disbursements, as they are incurred in connection with investigating, preparing for or defending any such Claim, whether or not such Indemnified Person is a party, the Claim results in any liability on the part of such Indemnified Person, or the Claim is initiated by the Company or any third party. If requested by any Indemnified Person, the Company shall advance such expenses upon receipt of an undertaking by such Indemnified Person to repay such advances if it shall ultimately be determined that such Indemnified Person was not entitled to be indemnified.

EB5 and the Indemnified Persons shall have no liability to the Company for any loss, claim, damage, liability or expense relating to or arising out of the activities contemplated by EB5's engagement, except to the extent such loss, claim, damage, liability or expense is found by a final judgment of a court of competent jurisdiction to have resulted from gross negligence or willful misconduct on the part of EB5 or the Indemnified Person.

If any Claim is made or instituted against any Indemnified Person in respect of which indemnification may be sought from the Company, such Indemnified Person must promptly notify the Company in writing about the Claim, but the omission to notify the Company will not relieve the Company from any liability except to the extent the Company shall have been materially prejudiced by such omission. No Indemnified Person is required to provide notice to the Company with respect to any Claim in which the Company is named a defendant. The Company may, at its option, timely assume the defense of any Claim against such Indemnified Person in respect of which indemnity may be sought hereunder, including, without limitation, the employment of counsel reasonably satisfactory to such Indemnified



Person and the payment of the fees and expenses of such counsel and necessary experts, in which event, except as provided below, the Company shall not be liable for the fees and expenses of any other counsel retained by such Indemnified Person in connection with such Claim. In any such Claim the defense of which the Company shall have assumed, any Indemnified Person shall have the right to participate and to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless the Company and such Indemnified Person have agreed in writing to the retention of such counsel; or the named parties to any such litigation or proceeding (including any impleaded parties) include the Company and such Indemnified Person and representation of both parties by the same counsel would, in the opinion of counsel to such Indemnified Person, be inappropriate due to actual or potential conflicts of interests between the Company and such Indemnified Person.

The Company shall not be liable for any settlement of any litigation or proceeding effected without its written consent; however; if settlement occurs with such consent or if there is a final judgment against the Indemnified Person after exhausting all appeals, then the Company agrees to indemnify, pursuant to the terms hereof, against any loss or liability by reason of such settlement or judgment. The Company may settle any claim, action or proceeding where indemnity may be sought hereunder without the written consent of EB5, provided that any such settlement includes an unconditional release of all of the Indemnified Parties.

If the foregoing indemnity is unavailable or insufficient for any reason to hold the Indemnified Person harmless, then the Company shall contribute to any amounts paid or payable by an Indemnified Person in such proportion as appropriately reflects the relative benefits to such Indemnified Person and to the Company in connection with the matters to which the Claim relates. If such allocation is judicially determined to be impermissible, then the Company shall contribute in such proportion as appropriately reflects the relative benefits and relative fault of the Company and such Indemnified Person, as well as any other equitable considerations. The aggregate liability of EB5 and any other Indemnified Person for contribution in connection with all Claims shall not exceed the amount of fees actually received by EB5 under the Agreement.

The indemnity, reimbursement and contribution obligations of the Company under this Exhibit are in addition to any rights that any Indemnified Person may have at common law or otherwise, shall survive any termination or amendment of the Agreement, and are binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company and each Indemnified Person.



1 BEFORE THE SURFACE TRANSPORTATION BOARD

2 STB FINANCE DOCKET NO. 35731)

3 BALLARD TERMINAL)

4 RAILROAD COMPANY, L.L.C.,)

5 - ACQUISITION AND EXEMPTION -)

6 WOODINVILLE SUBDIVISION)

7)

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

9 BNSF RAILWAY COMPANY)

10 - ABANDONMENT EXEMPTION -)

11 IN KING COUNTY, WA)

12

13 The deposition of DANIEL T. BEHR, taken in
 14 the above-entitled cause, before Gina M. Luordo, a
 15 notary public of Cook County, Illinois, on
 16 February 12, 2014, at 525 West Monroe Street,
 17 Chicago, Illinois, at the time of 10:20 a.m.,
 18 pursuant to Notice.

19

20

21

22

23

24 Reported By: Gina M. Luordo, CSR, RPR, CRR

25 License No.: 084-004143

1 some of the notes that you're reading from?
 2 A. These aren't notes. These are just -- I'm
 3 just using these as a punch list. Next?
 4 Q. Let me try to skip ahead, and I appreciate
 5 the detail. They are in the record, although, I
 6 didn't bring them today, the biographies that you
 7 had submitted through Eastside Community Rail, and
 8 I'm happy, if you want, to put that on the record.
 9 I really wanted to get more in your own words an
 10 overview of your professional experience.
 11 A. Okay. No surprise that due to my
 12 background in transportation and infrastructure, I
 13 became interested in finance. I ended up working
 14 for an investment banking firm downtown.
 15 Q. Downtown Chicago?
 16 A. Yes. I got my Series 7, had worked for
 17 them as vice president transportation and
 18 infrastructure, and that's the sector I selected
 19 because I know something about it, and I have the
 20 contacts. From there, it was not such a good time
 21 to be doing that. That was in '08. We all know
 22 what happened in '07, '08 through '10.
 23 And so after working with them on a number
 24 of projects, they decided to go back into the
 25 energy field whence they came. Then I continued

1 with one of the colleagues I met at the firm and
 2 formed our own firm.
 3 Q. Is that EB5?
 4 A. That's EB5 Capital Partners.
 5 Q. Again, just in very general terms, what is
 6 the nature of EB5's business?
 7 A. What we do is we're a business advisory
 8 firm. We will look at opportunities, and we will
 9 participate if we see that there are opportunities,
 10 potential opportunities. We've been successful,
 11 and in the process, we've established a freight
 12 forwarding company in Germany, which was profitable
 13 last year. We're establishing something in Denmark
 14 this year.
 15 We have established an international food
 16 import and export company where we have a plant in
 17 El Salvador, and we -- as of a couple of weeks ago,
 18 we have 16 products, 16 SKUs as they're called, in
 19 30 Walmart stores on the east coast. So where we
 20 see opportunities, we participate.
 21 Q. What do you mean by participate?
 22 A. Well, we take an equity position. We'll
 23 become part of the company, help them raise
 24 capital.
 25 Q. And how do you help raise capital other

1 than your own investment?
 2 A. We take a look at the -- we look at the
 3 potential of a company, and we look at what
 4 opportunities there are for expanding their
 5 business activities. So we look at that, and if
 6 we're excited, we think there's something there,
 7 we'll continue. Then we become involved.
 8 Q. Maybe I misunderstood. When I heard you
 9 say -- I thought I heard you say locate capital.
 10 Maybe I'm misreading it.
 11 My question was do you also -- in addition
 12 to investing yourself, which I think you said --
 13 A. We source capital is what we did.
 14 Q. That's where I was going. Who do you
 15 source it from?
 16 A. We have a number of contacts in various
 17 industry sectors that we speak with, and they're
 18 always on the lookout for opportunities, so we keep
 19 them apprised. We have a database of people that
 20 we can call upon.
 21 Q. I have seen the term EB5 used. In
 22 connection with some sort of -- and I don't know
 23 how this works, but investment-based immigration --
 24 A. That's how it started.
 25 Q. -- practices.

1 Can you explain that?
 2 A. Well, it's an investor leasing.
 3 Fundamentally the way it works is an investor will
 4 come in with, let's just say nominally, a million
 5 dollars. If they invest a million dollars in a
 6 venture and it's capital at risk and it generates
 7 10 jobs, 10 verifiable, not temporary jobs, not
 8 construction, nothing like that, but 10 verifiable
 9 jobs within two years of application, their green
 10 card, their conditional green card, which is issued
 11 immediately upon the investment, becomes permanent.
 12 And after five years, they can apply for
 13 citizenship.
 14 Q. You said that's how you started?
 15 A. That's how we started.
 16 Q. Are you still doing that?
 17 A. We're not really active in the EB5 space
 18 right now. We have found that conventional
 19 finance, more conventional transactions are easier
 20 and quicker to fruition. Anytime you're dealing
 21 with the government, you don't want to be involved.
 22 You won't get paid soon.
 23 Q. Okay. You referred to contacts you have
 24 if you need to go out to raise capital from others.
 25 Do you have a -- is there a pool of funds that you

1 former partner named Tom Payne whom I had also
2 known in railroad circles. It's a small incestuous
3 society. What he asked me to do was to write a
4 letter and to testify as to his character. I said
5 I couldn't get involved with that. What do you
6 have in mind or what are you trying to do? I
7 wanted to try to understand what was behind his
8 request.

9 He said well, he said that he was trying
10 to reactivate the railroad and kind of pick up the
11 pieces that Tom had -- Tom was involved. Things
12 were in disarray. There was a conflict between the
13 partners. There was financial misconduct on the
14 part of Tom Payne. I wasn't a party to that. I
15 didn't really know about it, and I wasn't going to
16 really get involved in that, so I declined. Then
17 he explained further that, you know, that was an
18 opportunity that was developing and would I look at
19 it further. It's a little hazy because it's some
20 time ago.

21 I said well, tell me a little bit more
22 about it. I said that I would be willing to look
23 at it a little further on a time basis, would
24 analyze it as a consultant. I would go in and take
25 a look at it and give him an outside opinion, a

1 dispassionate opinion. That's really how it all
2 started. It was all dispassionate. Personalities
3 and conflicts between people, I can't get involved
4 in that, but I can get involved if there are
5 opportunities.

6 So I went and I took a look at -- I took a
7 look at the line. I took a look at what traffic
8 they had and the potential for increased traffic.
9 There was a case to be made for that. And after
10 looking at it, I thought to myself there certainly
11 is and agreed to work a little bit further with him
12 on that.

13 Q. Let me stop you and just ask you --

14 A. That's how we met.

15 Q. Why don't we do this. Let me mark this as
16 Exhibit 3.

17 (Whereupon, BEHR Deposition
18 Exhibit No. 3 was marked for
19 identification.)

20 BY MR. PILSK:

21 Q. Mr. Behr, I've handed you what's been
22 marked as Exhibit 3. This is an engagement
23 agreement for Eastside Community Rail, LLC dated
24 September 17, 2012. Let me ask you to take a look
25 at it and see if you recognize it.

1 A. Yes, I recognize it.

2 Q. If you could look at Page 6, three pages
3 from the back, it's a bit of a poor copy, but is
4 that your signature?

5 A. It looks like it.

6 Q. Do you recall signing this agreement?

7 A. Yes.

8 Q. This is dated September 17, 2012. I first
9 want to ask you does this help place in time when
10 you first heard from Mr. Engel?

11 A. Well, this was after I had spoken to him
12 substantially after that. When I first spoke with
13 him was mid -- maybe it was the first or second
14 quarter. Beginning of the second quarter of 2011,
15 I believe, is when we first -- when we first
16 talked.

17 Q. Between the time you talked to him in the
18 first, second quarter of 2011 and this agreement
19 being signed in September 2012, what did you do for
20 or with Mr. Engel?

21 A. We went out, and there were two site
22 visits. There were site visits, and I conducted a
23 survey of the line.

24 Q. Let me stop you there. When you went on
25 each visit, where did you go?

1 A. The length of the line.

2 Q. From where to where roughly?

3 A. From Woodinville all the way down to
4 Bellevue. Actually, we went down to Renton and
5 looked at the entire line.

6 Q. And how did you do that?

7 A. By automobile.

8 Q. I'm sorry?

9 A. He drove.

10 Q. I'm sorry. Thank you. I couldn't hear.

11 Did you look at the line north of
12 Woodinville?

13 A. Well, there's -- oh, yes, all the way to
14 Snohomish. We did go to Snohomish, yes.

15 Q. Did you look at the spur that goes down
16 from Woodinville to Redmond?

17 A. Yes.

18 Q. You said it was by car. Did you get out
19 and walk any of the line?

20 A. Sure. Yes.

21 Q. Do you remember generally what spots or
22 areas or sections you walked? Let me back up. I'm
23 mainly interested in what I'm referring to as the
24 line between Woodinville and Bellevue.

25 A. Yes. You're talking about -- there are

1 A. Yes.
 2 Q. So I forgot the number already. 3,500 or
 3 more?
 4 A. No. No. It was 15,000 or under, but I
 5 don't have -- I don't remember the exact number.
 6 Q. That's fine. Was that billed on an hourly
 7 basis?
 8 A. Yes, I believe it was.
 9 Q. Other than that payment, what other
 10 compensation did you receive from Eastside
 11 Community Rail?
 12 A. Well, the compensation is coming in the
 13 form of equity because there wasn't any capital,
 14 and so we agreed to continue working taking an
 15 equity position.
 16 Q. That's what's set forth in Exhibit 3 in
 17 the engagement agreement?
 18 A. Hence the agreement, exactly.
 19 Q. And have you actually received shares or
 20 documentation of that equity interest?
 21 A. There's been acknowledgment, yes.
 22 Q. In what form?
 23 A. In the form of e-mails to that effect. I
 24 think there were some -- there was an LLC agreement
 25 that was sent. I don't know off the top of my

1 head.
 2 Q. Would those be among the documents that
 3 you cannot retrieve?
 4 A. Yes, I think so, but how is this relevant
 5 to traffic? I'm trying to understand. You know,
 6 development of traffic, isn't this about traffic?
 7 Q. Well, this deposition is about your work
 8 and relationship with ECR and Ballard and with the
 9 letter that you wrote on August 21. So up to now,
 10 it has been mostly background to understand the
 11 relationship and what's going on.
 12 A. Okay.
 13 Q. Then we'll talk about the letter in just a
 14 moment.
 15 A. Okay. Sure.
 16 Q. The August 21 letter. I think we're done
 17 with that letter for the moment.
 18 MR. PILSK: Why don't we just take a couple of
 19 minutes if you don't mind.
 20 (Whereupon, a short break was
 21 taken.)
 22 (Whereupon, BEHR Deposition
 23 Exhibit No. 5 was marked for
 24 identification.)
 25

1 BY MR. PILSK:
 2 Q. I'm going to hand you what we've marked as
 3 Exhibit 5, which is your August 21, 2013 letter.
 4 It appears to be from you to Ms. Cynthia Brown at
 5 the Surface Transportation Board?
 6 A. That's right.
 7 Q. Do you recognize this letter?
 8 A. Yes.
 9 Q. Is that your signature on the second page?
 10 A. It is.
 11 Q. When were you asked to -- were you asked
 12 to send this letter to the STB, or did you do this
 13 on your own?
 14 A. I was asked.
 15 Q. By who?
 16 A. By Doug.
 17 Q. And do you remember when he asked you?
 18 A. It must have been in that month.
 19 Q. August of 2013?
 20 A. Right.
 21 Q. Do you recall what he said why he needed
 22 the letter or why he wanted you to write the
 23 letter?
 24 A. I don't remember the exact discussion, but
 25 it was a request to send a letter as to, you know,

1 what my view -- what our view was of the line,
 2 what's our position, and so I said I would send
 3 that.
 4 Q. At that time, what did you understand was
 5 going on at the Surface Transportation Board with
 6 respect to the line?
 7 A. That whole thing is a moving target. That
 8 was a complex kaleidoscope. My understanding is
 9 that they were trying to secure the rights to
 10 reactivate the line and that portion of the line
 11 that your client, the City of Kirkland was
 12 opposing.
 13 Q. Just to be clear, I actually don't
 14 represent the City of Kirkland. I represent King
 15 County and Sound Transit, but we're aligned in this
 16 case with the City of Kirkland just to keep the
 17 record straight. I understand. King County also
 18 opposes the petition, but that's a matter of record
 19 as well.
 20 A. I see. Okay. Anyway, there was
 21 opposition to that, and so as a result of that
 22 opposition, he wanted to -- as part of the process,
 23 he asked me to write a letter as to what my
 24 position was on this in which I did.
 25 Q. Did you talk to anyone else other than

1 more to it. There has to be a marketing push. You
2 need to acquire equipment. And most importantly or
3 equally, I can't say mostly, but equally
4 importantly, they have to -- there's a lead time
5 involved in working on the infrastructure to accept
6 the train, so there is a business case to make for
7 that.

8 Q. But they haven't done that, correct?

9 A. No. They're focusing on freight, which is
10 really what they ought to be doing right now.

11 Q. Did Doug ever tell you why they didn't
12 start excursion service earlier before the tracks
13 had been removed?

14 A. No. I think there was always a focus on
15 continuing to serve the rail customers and to
16 develop that traffic concurrently as freight
17 service ramped up. They would be working -- there
18 would be other people that he was associated with
19 that would be working on the excursion train.

20 Q. Is that Kathy Cox?

21 A. Kathy Cox, yes, but the focus on our end
22 was freight. Rightfully that's where the focus
23 should be.

24 Q. Looking at the last paragraph of the
25 letter on the second page of the letter, you say

1 that you are -- I'm looking at the fourth line down
2 that begins EB5 Capital Partners.us is prepared to
3 become engaged by the principals in a business
4 advisory capacity to advise them on securing
5 finance to help make the Ballard Terminal Railroad
6 Company line to Bellevue a success.

7 What do you mean by prepare to become
8 engaged?

9 A. In other words, engage us, and we will
10 work.

11 Q. So as of now, you haven't been engaged to
12 do that work?

13 A. Well, yes, actually, we have. Well, what
14 they -- prepared to become engaged, we would look
15 for capital. We would start looking for capital.

16 Q. I guess what I'm asking you is you have
17 not yet been asked to do that?

18 A. No. They want us to raise the capital for
19 them. Our response to them is we need to know,
20 solidify for us, please, what the traffic case is,
21 and they've been doing that on an ongoing basis.

22 And we see that besides what they're telling us,
23 you know, what their traffic case is, there are
24 those other elements that I discovered

25 independently and what had been presented to me by

1 another short line operator.

2 Q. And that's the business case that you
3 refer to in this paragraph?

4 A. Right. Let's see. Wait a minute. Sure.
5 Yeah.

6 Q. So the business case depends first on
7 developing the traffic count that you referred to?

8 A. Traffic count, but traffic count -- also
9 nobody is going to make a commitment on anything
10 until they know that that line is re-connected, and
11 so that goes -- that goes hand in hand.

12 Q. Have you -- in the next -- in the rest of
13 that sentence, as part of the business case, we
14 would work with principals in determining their
15 capital needs to acquire Kirkland's 5.7-mile
16 portion of the corridor should that option be
17 necessary.

18 Have you evaluated the capital needed to
19 acquire that portion?

20 A. It depends on the specification, which is
21 developing right now. There are different
22 specifications, different scenarios that will
23 emerge, and part of that will be do you put sidings
24 in? Do you put a Y in? What are your operational
25 constraints? What level of track? What kind of

1 track condition do you need? I mean, that's
2 ongoing.

3 Q. So those issues haven't been resolved or
4 clarified?

5 A. Well, some have. Some haven't. You just
6 have to take a look at it. What you look it is the
7 needs of the customers, whatever the customer
8 needs. They will need siding. They will need an
9 additional track, maybe have a run-around track so
10 they can properly handle it. It depends on what
11 their operational needs are for each one of the
12 industries. You could have a stub-in track or a
13 run-around.

14 Q. I guess my basic question, though, is as
15 of now, you have not evaluated the capital needs
16 for acquiring the section across Kirkland?

17 A. There are scenarios that we're looking at
18 right now, and Doug is developing that, so that is
19 ongoing.

20 Q. Ongoing, but not completed?

21 A. No. It can't be completed until we --
22 it's a chicken and egg thing.

23 Q. Have you evaluated the capital needs for
24 acquiring either the operating rights or permission
25 to use the rest of the right-of-way?

1 A. Just what's in the letter.

2 Q. Is EB5 in the business of lending money
3 itself?

4 A. No. We are not the source of capital. We
5 help fund sources for capital.

6 Q. I mean this generically, but would the
7 opportunity that you said this line presents be the
8 kind of opportunity that EB5 itself would invest
9 in?

10 A. We're not the source. We don't do that.
11 That's not our business model.

12 Q. I misunderstood something you said
13 earlier. So you typically don't invest yourself?

14 A. Typically we become part of the company
15 and help build it. That's called -- in the
16 business, it's known as deal sponsorship, and we
17 become part of the company and help them grow and
18 help them spiral up their business. That's our
19 value added.

20 Q. Then you bring in investors from your
21 contacts and other sources to bring capital in?

22 A. Right.

23 Q. Have any outside investors made any kind
24 of commitment to invest in this operation yet?

25 A. No. They're waiting for numbers.

1 Q. You may have answered this earlier, but in
2 a -- let me strike that.

3 Have you made any contact with Boeing
4 about using the line?

5 A. I haven't, but there's a contact that I've
6 spoken to who is in the process of contacting them.
7 I need to make a call and find out if that's
8 happened.

9 Q. Who is that contact if I can ask?

10 A. That's proprietary.

11 Q. We do have a protective order in the case.

12 A. The answer is no to that question right
13 now.

14 Q. So the name would not leave this case. It
15 would be filed under seal. It would not be made
16 public.

17 A. The answer to the question is let me find
18 out what the status is first and see if he objects
19 to that. Relationships are delicate, and I don't
20 want to -- I'm not going to do that.

21 Q. I appreciate that. I'm just going to
22 state my piece, which is that we'll reserve the
23 right to file a motion to compel if we think we
24 need to. I understand your position. I'm not
25 trying to get in the way. I just want to state

1 that for the record, and we'll move on.

2 A. Okay.

3 Q. Are you aware of Eastside Community Rail
4 or Ballard, again, I'm not sure which is which, of
5 an effort to buy the section of the line north of
6 Woodinville to Snohomish from the port?

7 A. Am I aware of that?

8 Q. Yes.

9 A. Yes, I think there's something under way
10 on that.

11 Q. Is EB5 involved in that?

12 A. No. They've made us aware of that, but
13 that's not our focus right now. Our focus is on
14 the development, helping develop that traffic or
15 making a case for the emerging traffic so that
16 further finance can be sought.

17 Q. Are you aware of any plans by Eastside
18 Community Rail or Ballard to develop a hotel in
19 Woodinville?

20 A. They mentioned that.

21 Q. What have they said?

22 A. I've not delved into that because
23 that's -- we're focused on railroad operations,
24 freight. That's what we're interested in.

25 Q. And I take it that EB5 isn't involved in

1 that effort?

2 A. Not in the hotel side of this.

3 Q. Are you aware of an effort to acquire any
4 real estate in the Totem Lake area of Kirkland?

5 A. I think there was a mention of it. It's
6 not a focus right now.

7 Q. Doug Engel made a presentation, which I
8 think was given to one of the banks, Coastal
9 Community Bank, and I apologize. I don't have a
10 copy of the document, but the statement says Totem
11 Lake access allows for EB5 investment. Do you have
12 any understanding what that means?

13 A. EB5 in this context means that they would
14 seek foreign national investment. So yeah,
15 frequently EB5 finance is used for real estate.
16 Real estate is considered to be secure, and the
17 foreign nationals are comfortable with that.

18 Q. So let me ask you this. You, EB5 are not
19 involved in an effort by Ballard or Eastside
20 Community Rail to acquire real estate in the Totem
21 Lake area of Kirkland?

22 A. No, although, the Totem Lake area is a
23 good source of emerging traffic. We've identified
24 that as well.

25 MR. PILSK: Let's go off the record for a

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 I, GINA M. LUORDO, a notary public within
 5 and for the County of Cook County and State of
 6 Illinois, do hereby certify that heretofore,
 7 to-wit, on February 12, 2014, personally appeared
 8 before me, at 525 West Monroe Street, Suite 550,
 9 Chicago, Illinois, DANIEL BEHR, in a cause now
 10 pending and undetermined before the Surface
 11 Transportation Board, In Re: Ballard Terminal
 12 Railway Company, L.L.C. and BNSF Railway Company.
 13 I further certify that the said DANIEL
 14 BEHR was first duly sworn to testify the truth, the
 15 whole truth and nothing but the truth in the cause
 16 aforesaid; that the testimony then given by said
 17 witness was reported stenographically by me in the
 18 presence of the said witness, and afterwards
 19 reduced to typewriting by Computer-Aided
 20 Transcription, and the foregoing is a true and
 21 correct transcript of the testimony so given by
 22 said witness as aforesaid.
 23 I further certify that the signature to
 24 the foregoing deposition was not waived by counsel
 25 for the respective parties.

1
 2 ERRATA SHEET
 3 I, DANIEL T. BEHR, do hereby certify that I
 4 have read the foregoing transcript of my testimony, and
 5 further certify that it is a true and accurate record
 6 of my testimony (with the exception of the corrections
 7 listed below).
 8 PAGE LINE CORRECTION
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 Signed under the pains and penalties this _____
 22 day of _____, 2013.
 23
 24 _____
 25 DANIEL T. BEHR

1 I further certify that the taking of this
 2 deposition was pursuant to notice and that there
 3 were present at the deposition the attorneys
 4 hereinbefore mentioned.
 5 I further certify that I am not counsel
 6 for nor in any way related to the parties to this
 7 suit, nor am I in any way interested in the outcome
 8 thereof.
 9 IN TESTIMONY WHEREOF: I have hereunto set
 10 my hand and affixed my notarial seal this 17th day
 11 of February, 2014.
 12
 13
 14
 15
 16
 17 _____
 18 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
 19 LIC. NO. 084-004143
 20
 21
 22
 23
 24
 25

FILED
KING COUNTY, WASHINGTON

FEB 25 2014

DEPARTMENT OF
JUDICIAL ADMINISTRATION

EXP07

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PORT OF SEATTLE,

Plaintiff,

vs.

EASTSIDE COMMUNITY RAIL, LLC, a
Washington Limited Liability Company,

Defendant.

No. 14-2-054866-6 SEA

STIPULATED JUDGMENT

BACKGROUND

A. The Port of Seattle ("Port") entered into an Operations and Maintenance Agreement ("O&M Agreement") dated December 18, 2009 with GNP RLY, Inc. ("GNP"), under which GNP had certain rights and obligations related to the provision of freight rail service along a 14.45 mile corridor from Woodinville, King County, Washington to Snohomish, Snohomish County, Washington. Eastside Community Rail, LLC ("ECR") is the successor in interest to the rights and obligations of GNP under the O&M Agreement.

B. On June 25, 2013 the Port commenced an arbitration proceeding against ECR through the American Arbitration Association, seeking relief from certain breaches of the O&M Agreement by ECR. The parties selected John Ruhl to act as the arbitrator, and an arbitration hearing was set to begin on January 22, 2014.

STIPULATED JUDGMENT -- 1

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Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 C. On January 22, 2014, the parties entered into a Settlement Agreement, attached as
 2 Exhibit 1, hereto, which they agreed would be documented in the form of a stipulated judgment
 3 to be filed in Superior Court.

4 STIPULATION

5 Therefore, the parties stipulate that judgment shall be entered under RCW 7.04A.250 as
 6 follows, as if this was based on confirmation of an arbitration award.

7 1. ECR shall obtain and maintain at all times the following freight service general
 8 liability insurance:

9 a. \$5 million per occurrence,

10 b. The policy shall include general liability property damage and bodily injury
 11 coverage for operation of Freight Rail Service along with any related operation, maintenance and
 12 construction on or about the Corridor or Port Property, as those terms are defined in the O&M
 13 Agreement.

14 c. The policy shall also include pollution coverage whether incurred during
 15 operations or during maintenance and construction.

16 d. The policy shall include an endorsement providing automobile liability insurance
 17 of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or
 18 borrowed vehicles.

19 e. ECR shall provide evidence of insurance to the Port, showing the Port as an
 20 additional insured for the Freight Rail Service and the automobile insurance endorsement.

21 f. The policy will include no Port deductible.

22 g. The policy will provide that it is primary and non-contributory with respect to any
 23 coverage the Port may have.

24 h. The policy shall include a waiver of subrogation rights against the Port.
 25
 26

STIPULATED JUDGMENT -- 2

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1 2. ECR shall provide the Port with a certificate of insurance and copy of the
2 endorsements, reflecting that it has obtained the insurance described in paragraph 1 not later than
3 5 p.m. on January 27, 2014.

4 3. Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain
5 railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury
6 and property damage, naming the Port as an additional insured. Ballard can meet this obligation
7 using a claims made insurance coverage form provided that there has been continuity of coverage
8 and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail
9 corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal
10 Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance
11 complying with this obligation.

12 4. Should the Port not receive the endorsements and policy of insurance required by
13 paragraph 1 by March 15, or should the Port not agree that the certificate of insurance and
14 endorsement required by paragraph 2 comply with the requirements of paragraph 1 when it
15 receives the insurance policy and endorsement, or should the Port receive notice that any of the
16 insurance called for under this Agreement has been cancelled, the Port may procure insurance for
17 itself to provide the comparable coverage, and a supplemental judgment, in the form attached as
18 Exhibit 2, in the amount of the cost to the Port for such insurance shall be entered by the Court.
19 The cost to the Port shall be shown by a declaration from the Port in support of the amount. ECR
20 hereby waives notice of presentation of the supplemental judgment. Ballard and ECR shall
21 provide information as needed by the Port in order to apply for such coverage.

22 5. On or before February 21, 2014, ECR shall complete the replacement of the
23 automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby,
24 Washington.

25 6. ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or
26 another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to

STIPULATED JUDGMENT -- 3

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1 determine whether there are any Priority 1 repairs needed. The contract will require the report to
2 be provided to ECR and the Port by May 1, 2014. If any Priority 1 repairs are identified, ECR
3 shall cease any operation on the identified bridge or trestle until the repairs have been completed.
4

5 7. If ECR has not provided the Port with an executed contract for the bridge
6 inspection called for in paragraph 6 by March 1, 2014, the Port may, if it chooses, contract for
7 such an inspection. A supplemental judgment, in the form attached as Exhibit 3, in the amount
8 of the cost to the Port for such inspection shall be entered by the Court. The cost to the Port shall
9 be shown by a declaration from the Port in support of the amount. ECR hereby waives notice of
10 presentation of the supplemental judgment.

11 8. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs
12 identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 6
13 above.

14 9. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns
15 that were previously raised concerning the Agreement between ECR and Ballard. Between
16 February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with ECR
17 concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their
18 agreement to resolve those concerns.

19 10. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter
20 that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's
21 request for funding.
22
23
24
25
26

STIPULATED JUDGMENT -- 4

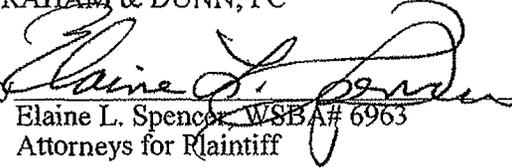
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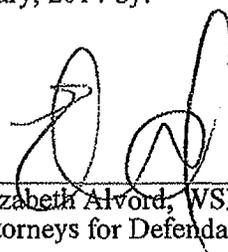
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Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1
2 Stipulated and Agreed to this 24th day of
3 February, 2014 by:

Stipulated and Agreed to this ___ day of
February, 2014 by:

4 GRAHAM & DUNN, PC

5
6 By 
Elaine L. Spencer, WSBA# 6963
7 Attorneys for Plaintiff

By 
Elizabeth Alvord, WSBA# 23571
Attorneys for Defendant

8
9
10 JUDGMENT

11 Based on the Stipulation of the parties, judgment is hereby entered as follows:

12
13 1. ECR shall obtain and maintain at all times the following freight service general
14 liability insurance:

15 a. \$5 million per occurrence,

16 b. The policy shall include general liability property damage and bodily injury
17 coverage for operation of Freight Rail Service along with any related operation, maintenance and
18 construction on or about the Corridor or Port Property, as those terms are defined in the O&M
19 Agreement.

20 c. The policy shall also include pollution coverage whether incurred during
21 operations or during maintenance and construction.

22 d. The policy shall include an endorsement providing automobile liability insurance
23 of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or
24 borrowed vehicles.

25 e. ECR shall provide evidence of insurance to the Port, showing the Port as an
26 additional insured for the Freight Rail Service and the automobile insurance endorsement.

f. The policy will include no Port deductible.

STIPULATED JUDGMENT -- 5

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1 g. The policy will provide that it is primary and non-contributory with respect to any
2 coverage the Port may have.

3 h. The policy shall include a waiver of subrogation rights against the Port.

4 2. ECR shall provide the Port with a certificate of insurance and copy of the
5 endorsements, reflecting that it has obtained the insurance described in paragraph 1 not later than
6 5 p.m. on January 27, 2014.

7 3. Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain
8 railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury
9 and property damage, naming the Port as an additional insured. Ballard can meet this obligation
10 using a claims made insurance coverage form provided that there has been continuity of coverage
11 and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail
12 corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal
13 Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance
14 complying with this obligation.

15 4. Should the Port not receive the endorsements and policy of insurance required by
16 paragraph 1 by March 15, or should the Port not agree that the certificate of insurance and
17 endorsement required by paragraph 2 comply with the requirements of paragraph 1 when it
18 receives the insurance policy and endorsement, or should the Port receive notice that any of the
19 insurance called for under this Agreement has been cancelled, the Port may procure insurance for
20 itself to provide the comparable coverage, and a supplemental judgment, in the form attached as
21 Exhibit 2, in the amount of the cost to the Port for such insurance shall be entered by the Court.
22 The cost to the Port shall be shown by a declaration from the Port in support of the amount. The
23 supplemental judgment may be entered without notice to ECR.

24 5. On or before February 21, 2014, ECR shall complete the replacement of the
25 automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby,
26 Washington.

STIPULATED JUDGMENT -- 6

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1 6. ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or
2 another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to
3 determine whether there are any Priority 1 repairs needed. The contract will require the report to
4 be provided to ECR and the Port by May 1, 2014. If any Priority 1 repairs are identified, ECR
5 shall cease any operation on the identified bridge or trestle until the repairs have been completed.

6 7. If ECR has not provided the Port with an executed contract for the bridge
7 inspection called for in paragraph 6 by March 1, 2014, the Port may, if it chooses, contract for
8 such an inspection. A supplemental judgment, in the form attached as Exhibit 3, in the amount
9 of the cost to the Port for such inspection shall be entered by the Court. The cost to the Port shall
10 be shown by a declaration from the Port in support of the amount. The supplemental judgment
11 may be entered without notice to ECR.

12 8. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs
13 identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 6
14 above.

15 9. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns
16 that were previously raised concerning the Agreement between ECR and Ballard. Between
17 February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with ECR
18 concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their
19 agreement to resolve those concerns.

20 10. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter
21 that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's
22 request for funding.

23 Done in Open Court this ___ day of _____, 2014.

24 **CHAD ALLRED**

25 **FEB 24 2014**



26 **JUDGE/COURT COMMISSIONER**

STIPULATED JUDGMENT COURT COMMISSIONER

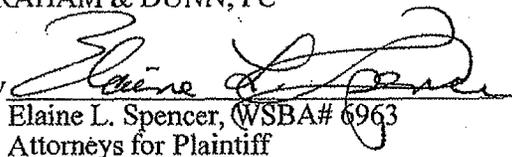
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Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

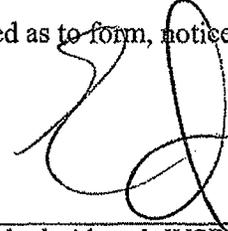
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Presented by:

Approved as to form, notice of presentation
waived:

GRAHAM & DUNN, PC

By 
Elaine L. Spencer, (WSBA# 6963)
Attorneys for Plaintiff

By 
Elizabeth Alvord, WSBA# 23571
Attorneys for Defendant

STIPULATED JUDGMENT -- 8

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Seattle, Washington 98121-1128
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Exhibit 1 to the Stipulated Judgment

Settlement Agreement

1. This Agreement is enforceable under CR 2.
2. It will be documented in the form of a stipulated judgment to be filed in Superior Court.
3. ECR shall obtain and maintain at all times the following freight service general liability insurance:
 - a. \$5 million per occurrence
 - b. The policy shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service along with any related operation, maintenance and construction on or about the Corridor and Port Property.
 - c. The policy shall also include pollution coverage whether incurred during operations or during maintenance or construction.
 - d. The policy shall include an endorsement providing automobile liability insurance of not less than \$1 million per occurrence for owned, non-owned, hired, leased, rented or borrowed vehicles.
 - e. ECR shall provide evidence of insurance to the Port, showing the Port as an additional insured for the Freight Rail Service and the automobile insurance endorsement.
 - f. The policy will include no Port deductible.
 - g. The policy will provide that it is primary and non-contributory with respect to any coverage the Port may have
 - h. The policy shall include a waiver of subrogation rights against the Port.
4. ECR shall provide the Port with a certificate of insurance and a copy of the endorsements, reflecting that it has obtained the insurance described in paragraph 3 not later than 5 p.m. on January 27, 2014.
5. Ballard Terminal Railroad Company, LLC ("Ballard") shall obtain and maintain railroad general liability insurance with a minimum of \$2 million per occurrence for bodily injury and property damage, naming the Port as an additional insured. Ballard can meet this obligation using a claims made insurance coverage form provided that there has been continuity of coverage and the retroactive date on the policy is equal to or prior to the day the Port purchased the rail corridor from BNSF. Ballard shall obtain and maintain coverage for liability under the Federal Employers' Liability Act. ECR shall provide the Port with evidence of Ballard's insurance complying with this obligation.
6. Should the Port not receive the certificate of insurance required by paragraph 4, or should the Port receive notice that any of the insurance called for under this Agreement has been cancelled, the Port may procure insurance for itself to provide the comparable coverage, and a supplemental judgment in the amount of the cost to the Port can be entered by the Port. Ballard and ECR shall provide information as needed by the Port in order to apply for such insurance.

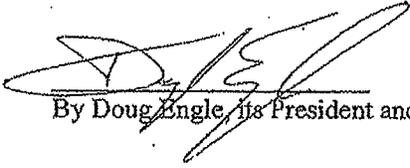
7. On or before February 21, 2014, ECR shall complete the replacement of the automatic warning device at the intersection of Yew Road and Broadway Avenue in Maltby.
8. ECR shall contract by March 1, 2014 with Osmose Railroad Services, HDR, or another recognized bridge inspection expert, to inspect the bridges and trestles on the Corridor to determine whether there are any Priority 1 repairs needed. The contract will require the report to be provided to ECR and the Port by May 1, 2014. If ECR has not provided the Port with such an executed contract by March 1, 2014, the Port may, if it chooses, contract for such an inspection, in which case judgment shall be entered against ECR for the cost incurred by the Port for the inspection. If any Priority 1 repairs are identified, ECR shall cease any operation on the identified bridge or trestle until the repairs have been completed.
9. On or before January 1, 2015, ECR shall complete all Priority 2 and 3 repairs identified in the June 24, 2010 Osmose Report or in the inspection required under paragraph 8 above.
10. Prior to February 1, 2014 the Port will provide to counsel for ECR the concerns that were previously raised concerning the Agreement between ECR and Ballard. Between February 1, 2014 and March 1, 2014 the Port will enter into good faith discussions with EC concerning the Port's concerns. Prior to March 1, 2014, ECR and Ballard will amend their agreement to resolve those concerns.
11. By February 1, 2014 the Port shall provide ECR with a letter similar to the letter that Snohomish County provided to the Surface Transportation Board in 2013, supporting ECR's request for funding.
12. The arbitrator will continue the arbitration hearing until April 1, 2014, and conduct such further preliminary hearings between the date of this Agreement and April 1, 2014 as the parties may request.
13. If there are any disagreements over the drafting of the stipulated judgment described in paragraph 2, they will be resolved by John Ruhl.

Agreed January 22, 2014.

Port of Seattle


By Isabel Safora, its Deputy General Counsel

Eastside Community Rail LLC

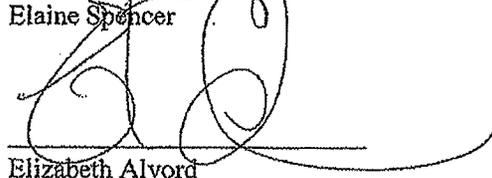


By Doug Angle, Its President and CEO

Approved:



Elaine Spencer



Elizabeth Alvord

Exhibit 2 to the Stipulated Judgment

Exhibit 2

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PORT OF SEATTLE,

Plaintiff,

vs.

EASTSIDE COMMUNITY RAIL LLC, a
Washington limited liability company,

Defendant.

No. []

SUPPLEMENTAL JUDGMENT

This Court entered a Stipulated Judgment on February __, 2014, providing in paragraph 4 that if the Port did not receive the endorsements and policy of insurance required by paragraph 1 by March 15, or if the Port did not agree that the certificate of insurance and endorsement required by paragraph 2 comply with the requirements of paragraph 1 when it receives the insurance policy and endorsement, or if the Port receives notice that any of the insurance called for under this Agreement has been cancelled, then the Port could procure insurance for itself to provide comparable coverage, and on five days' notice to ECR a supplemental judgment in the amount of the cost to the Port, should be entered in the amount of the cost to the Port of that insurance. The Port has now shown by declaration that it has incurred _____ in cost to procure insurance as provided for in paragraph 4 of the Stipulated Judgment. Now, therefore,

SUPPLEMENTAL JUDGMENT -- 1

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SUPPLEMENTAL JUDGMENT IS ENTERED in favor of the Port in the amount of

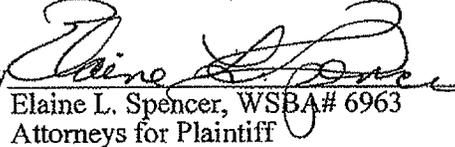
DATED this ____ day of _____, 2014.

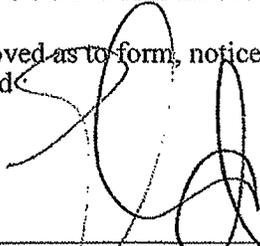
JUDGE/COURT COMMISSIONER

Presented by:

Approved as to form, notice of presentation
waived

GRAHAM & DUNN, PC

By 
Elaine L. Spencer, WSBA# 6963
Attorneys for Plaintiff


By _____
Elizabeth Alvord, WSBA# 23571
Attorneys for Defendant

SUPPLEMENTAL JUDGMENT -- 2

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

Exhibit 3 to the Stipulated Judgment

Exhibit 3

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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PORT OF SEATTLE,

Plaintiff,

vs.

EASTSIDE COMMUNITY RAIL LLC, a
Washington limited liability company,

Defendant.

No.

SUPPLEMENTAL JUDGMENT

This Court entered a Stipulated Judgment on February __, 2014, providing in paragraph 7 that if Defendant Eastside Community Rail LLC ("ECR") failed to provide the Port with an executed contract for the bridge inspection called for in paragraph 6 by March 1, 2014, the Port might, if it chose, contract for such an inspection, in which case on five days' notice to ECR a supplemental judgment in the amount of the cost to the Port, should be entered in the amount of the cost to the Port for that inspection. The Port has now shown by declaration that it has incurred _____ in cost to procure the inspection as provided for in paragraph 7 of the Stipulated Judgment. Now, therefore,

SUPPLEMENTAL JUDGMENT IS ENTERED in favor of the Port in the amount of _____.

SUPPLEMENTAL JUDGMENT -- 1

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Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

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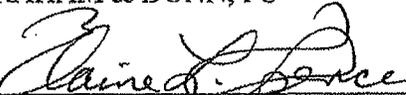
1 DATED this ____ day of _____, 2014.

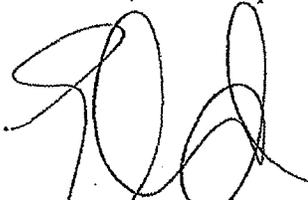
3 JUDGE/COURT COMMISSIONER

4 Presented by:

Approved as to form, notice of presentation
waived:

5 GRAHAM & DUNN, PC

6
7 By 
8 Elaine L. Spencer, WSBA# 6963
Attorneys for Plaintiff


By
Elizabeth Alvord, WSBA# 23571
Attorneys for Defendant

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SUPPLEMENTAL JUDGMENT -- 2

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LEASE AGREEMENT

This Lease Agreement (as it may be amended and in effect from time to time, (the “Agreement”) is made and entered into this 26th day of April, 2013 by and between Ballard Terminal Railroad Company, LLC (hereinafter “Ballard”) and Eastside Community Rail, LLC, (“ECRR”).

WHEREAS, ECRR has acquired an exclusive freight operating easement on a line of railroad extending from approximately milepost 23.8 in Woodinville to approximately milepost 38.25 in Snohomish, in King and Snohomish Counties, Washington (the “Line”); and

WHEREAS, subject to the terms of this Agreement, Ballard desires to lease the Line and ECRR is agreeable to the same; and

NOW, THEREFORE, the parties hereby agree as follows:

Definitions. As used herein, the following terms shall have the meanings indicated:

“AAR” shall mean the American Association of Railroads.

“Applicable Laws” shall mean all applicable federal, State of Washington and local laws, regulations and rules relating to the provision of the Services and the activities of Ballard relating to or conducted on the Line (including, without limitation, the Federal Locomotive Inspection Act, as amended, and the Federal Safety Appliance Act, as amended, the Federal Railroad Safety Act, as amended, all rules and regulations promulgated by the Federal Railroad Administration and the Surface Transportation Board, the Railroad Retirement Act, as amended, the Federal Employer’s Liability Act, as amended, the ICC Termination Act of 1995, as amended, and all rules promulgated by the AAR), as such laws, regulations and rules may be amended and in effect from time to time.

“FRA” shall mean the United States Federal Railroad Administration.

“Hazardous Materials” shall mean any of the following: asbestos; urea formaldehyde; petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products); ethanol; tetrachloroethylene; polychlorinated benzyls; polychlorinated biphenyls; biological hazards; nuclear fuel or materials; chemical, biological or medical wastes; radioactive materials; explosives; known carcinogens; and all dangerous, toxic or hazardous substances defined as hazardous or as pollutant or contaminant in, or the release or disposal of which is regulated by, any Applicable Laws.

“Maintenance Services” shall mean track and right of way maintenance services for the Line, to the extent required by, and in accordance with, this Agreement.

“Operational Agreements” shall mean all easements, crossing agreements, running rights agreements, interchange agreements, trackage agreements and other agreements and contracts affecting the use, occupancy or possession of the Line under which ECRR enjoys any rights or privileges which are pertinent to the Line or to Train Services and/or Maintenance Services in respect of the Line, as the same may be amended or modified and in effect from time to time.

“Person” shall mean any corporation, limited liability company, general or limited partnership, trust, government or governmental entity or political subdivision of any government, unincorporated association, individual or other entity.

“Lease Commencement Date” shall mean the date upon which this Agreement becomes effective pursuant to Section 10(a) hereof.

“Lease Termination Date” shall mean the earliest to occur of (a) the first (1st) anniversary of the Lease Commencement Date, subject to any renewals thereof, or (b) the date of termination of this Agreement pursuant to Sections 10(c) through Section 10(e).

“Services” shall mean the Train Services and Maintenance Services to be provided by Ballard on the Line pursuant to this Agreement.

“STB” shall mean the U.S. Surface Transportation Board.

“Term” shall mean the period commencing on and including the Lease Commencement Date and ending on and including the Lease Termination Date.

“Train Services” shall mean moving railroad cars on the Line pursuant to this Agreement.

1. Lease of Line. ECRR hereby leases to Ballard the Line upon the terms, covenants and conditions contained herein; provided, however, said Line shall be used by Ballard exclusively for railroad purposes and for no other purpose without the expressed written consent of ECRR. This lease shall be exclusive.

Ballard shall not permit or admit any third party to the use of all or any portion of the Line, nor under the guise of doing its own business, contract or make any agreement to handle as its own equipment over or upon the Line, or any portion thereof, the equipment of any such third party under a haulage or other similar arrangement, without the express written consent of ECRR; provided, however, that the foregoing shall not prevent Ballard, pursuant to run-through agreement with any railroad, from using the locomotives of another railroad as its own under this Agreement.

2. Port of Seattle Operations and Maintenance Agreement. The terms of that certain Operations and Maintenance Agreement, dated December 18, 2009, between the Port of Seattle and ECRR as successor in interest to GNP RLY, Inc. (“O&M Agreement”) is hereby incorporated herein by reference. Ballard agrees to be bound by and comply with ECRR’s

obligations under the terms of the O&M Agreement. In the event of a conflict between the terms of the O&M Agreement and the terms of this Agreement, the terms of the O&M Agreement shall govern.

3. Services. On and subject to the terms of this Agreement and in partial consideration for ECRR's lease of the Line to Ballard, Ballard agrees that during the Term it will provide at its sole expense:

(A) Train Services to all current or future shippers on the Line and all common carrier responsibilities on the Line; and

(B) All necessary equipment and manpower to provide two-day per week service (at least one switch per day) to all shippers/receivers on the Line. No passenger operations will be permitted on the Line without the mutual consent of both parties; and

(C) All clerical and administrative functions associated with Services on the Line, including, but not limited to, publication of Ballard rules and tariffs (Ballard shall set freight rates for its operations on the Line, billing and accounting services, car hire accounting, AAR and FRA reporting, waybill issuance, dispatching, and all other clerical and administrative functions normally associated with rail operations); and

(D) All equipment repair services normally associated with Handling Line responsibility; and

(E) All car supply, as may be necessary, as a supplement to those cars supplied by BNSF and the shippers/receivers; and

(F) Maintenance Services for the Line sufficient to maintain the track at FRA Excepted Class conditions at all times and notice to the FRA regarding said Maintenance Service responsibilities. All materials, improvements, and labor expended by Ballard in the performance of the Maintenance Services shall become a part of the Line. In the event that ECRR proposes to improve the condition of some or all of the line above FRA Excepted Class standards, then from and after the date of completing such improvements the Maintenance Services required of Line shall be sufficient to maintain such improved track at the improved level of condition. Ballard shall assume and be responsible for the inspection and maintenance of the tracks, track structure and roadbed of the Line, including rails, ballast, subgrade, ties, road crossings and crossing signals, bridges, culverts, overhead structures and retaining walls, under the following guidelines:

- (i) Ballard shall provide all necessary Routine Maintenance which shall be performed in a manner sufficient to maintain the Line to FRA Excepted Class track conditions. Routine Maintenance shall include those items identified in Schedule A. All materials and labor expended by Ballard in the performance of Routine Maintenance shall become a part of the Line. Should the Line be upgraded above FRA Excepted Class track standards, then Ballard shall perform Routine Maintenance to the upgraded standards. All

materials and labor expended by Ballard in the performance of Routine Maintenance to the upgraded standards shall become a part of the Line; and

- (ii) Ballard shall provide all necessary Heavy Maintenance (defined as maintenance in excess of the Routine Maintenance identified in Schedule A) and Capital Improvements necessary to maintain the line at FRA Excepted Class standards. Certain of the Heavy Maintenance and Capital Improvements will include non-removable items including, but not limited to, ties, ballast, switches, rail, bridge timber, power poles, signals, utility services or other items removal of which would impact the safety or continued operation of the Line. All materials and labor expended by Ballard in the performance of Heavy Maintenance and Capital Improvements, including, but not limited to, the non-removable items, shall become a part of the Line.
- (iii) Ballard shall be responsible for the cost and expense of clearing wrecks or otherwise clearing disabled equipment and rerailing equipment and the associated cost of repair and/or renewal of damaged trackage or adjacent properties resulting in connection with derailments on the Line.
- (iv) Ballard shall contract for and obtain any and all utility services required for operations on the Line, and shall be responsible for the continued maintenance and operation of those utility services.

4. Lease Compensation.

(A) Ballard will collect the entire interline (Handling Line) rate factor from BNSF (including, but not limited to, fuel surcharges) or the rate due and owing to Ballard by the shippers/receivers, as applicable; and

(B) Ballard shall pay to ECRR a lease payment of Ten Dollars (\$10.00) per loaded car; and

(C) Ballard shall pay to the Port of Seattle the fees required to be paid by ECRR to the Port of Seattle as set forth in sections 9.4(B), (C) and (D) of the O&M Agreement.

(D) Ballard shall be responsible for all car hire associated with rail movements on the Line and shall be entitled to establish reasonable, non-discriminatory demurrage and storage charges for shippers/receivers on the Line; provided, however, such charges shall be in accordance with Applicable Laws.

(E) Ballard shall not charge ECRR for Routine Maintenance, Heavy Maintenance, Capital Improvements, clerical and administrative services, equipment and derailment repairs, or any of the other Services identified in Section 3. The cost for those Services is deemed to be a part of Ballard's lease payment to ECRR as set forth in Sections 4(A)-(D); and

(F) Ballard shall pay ECRR for the charges set forth in Section 4 on a quarterly basis. Charges shall be due and payable within ninety (90) days of the applicable car movement; and

5. Indemnification. Ballard shall indemnify, protect, defend and save harmless ECRR, and its respective officers, directors, affiliates, agents, and employees (each an "ECRR Indemnitee") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, and attorneys' fees (collectively, the "Indemnified Liabilities"), incurred by the ECRR Indemnitees or any of them as a result of, or arising out of, or relating to:

(A) Services set forth in this Agreement, whether provided to ECRR or any shippers/receivers on the Line, by Ballard or any of its officers, directors, affiliates, agents or employees; and

(B) Acts or omissions arising out of and/or related to Ballard's lease of the Line, Ballard's performance of Train Services on the Line, whether negligent or otherwise, by Ballard or any of its officers, directors, affiliates, agents, or employees; and

(C) The use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Materials by Ballard or any of its officers, directors, affiliates, agents or employees; and

(D) Any violation of any Applicable Law by Ballard or any of its officers, directors, affiliates, agents or employees; and

(E) The breach of this Agreement or any failure by Ballard to perform any of its obligations pursuant to this Agreement in accordance with the requirements hereof;

except for any such Indemnified Liabilities arising on account of the applicable ECRR Indemnitee's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Ballard hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under Applicable Law.

6. Insurance. During the Term, Ballard shall, at its own cost and expense, obtain and maintain in force insurance covering its obligations under this Agreement as follows:

(a) Ballard shall provide all of the insurance coverage in the amounts and with the requirements set forth in Section 6 of the O&M Agreement.

- (b) Other Requirements.
 - (i) All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
 - (ii) Ballard waives and releases any right of recovery against ECRR for loss or damage to property of Ballard, its employees, licensees and invitees, resulting from any cause which would be coverable by “all risk” property insurance, whether or not such insurance is actually in effect, and whether or not the loss or damage is caused by the negligence of ECRR, its agents, employees or contractors. This waiver shall be binding on all insurers and other parties claiming by, through or under Ballard.
 - (iii) Ballard’s insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by ECRR and the Port of Seattle.
 - (iv) All policies required above shall include a severability of interest endorsement and shall name ECRR as an additional insured with respect to work performed under this Agreement and the Port of Seattle.

Ballard shall furnish ECRR with satisfactory evidence of such insurance, and with an endorsement from the issuer of the applicable insurance policies stating that the issuer shall furnish not less than thirty (30) days notice of any lapse or termination of, or material change in coverage under, such insurance. This requirement shall not, however, be deemed to make ECRR liable for payment of premiums or other charges in respect of any insurance which Ballard is obligated to obtain and keep in effect. The complete or partial failure or refusal of an insurance carrier, for any reason whatsoever, to protect and indemnify ECRR, or the inadequacy of the insurance coverage obtained by Ballard, shall not affect the obligation of Ballard to indemnify ECRR as provided in this Agreement.

7. Taxes. ECRR shall be responsible for all property taxes and similar assessments, attributable to the ownership of the Line. Ballard shall be responsible for all property taxes and similar assessments associated with the ownership of equipment used on the Line.

8. Financial Reporting. During the term of this Agreement, if so requested by ECRR, Ballard shall provide ECRR with a confidential copy of the Ballard federal income tax return within thirty (30) days of filing of such return. The purpose of providing such income tax return to ECRR shall be limited to determining that Ballard remains solvent and Ballard may elect to provide additional material in support of such a determination. ECRR agrees to keep such income tax return and any other financial material provided by Ballard, or its parent company, confidential and shall share it only with those professional persons that may have a legitimate need to view it, with the consideration that such professional persons shall also be bound by the same requirement of confidentiality.

9. IRS Tax Credit. ECRR shall be exclusively entitled to all credits available under the Qualified Railroad Track Maintenance Credit (Tax Credit), or successor credit programs, for all Routine Maintenance and Heavy Maintenance performed under this Agreement unless otherwise specified.

10. Term/Termination.

(A) This Agreement shall become effective on April 30, 2013, or one day after the STB has approved this Lease, whichever is later, or such other date as is mutually agreeable to the parties ("Lease Commencement Date") so long as prior thereto the STB has approved this Lease, pursuant to a Notice of Exemption, on terms acceptable to ECRR.

(B) Upon becoming effective under Section 10(A) above, this Agreement shall continue in full force and effect for a period of one (1) year from the Lease Commencement Date, except as otherwise provided in this Section 10. Unless earlier terminated pursuant to Sections 10 or 11, the term hereof shall extend from year to year (each year a "Renewal Term") unless either party has provided a notice of termination at least sixty days (60) prior to the end of the Initial Term or any Renewal Term.

(C) In the event of any substantial failure on the part of either party hereto to perform any of its obligations under this Agreement and its continuance in default for a period of fifteen (15) days after written notice of the default is given to such party by the other party in accordance with the notice provisions of this Agreement, the non-defaulting party shall have the right, at its option, to terminate this Agreement upon notice to the other party. Any such termination shall be without prejudice to the legal and equitable rights of the non-defaulting party in respect of such default by the other party.

(D) If there shall be filed by or against either party, in any court of competent jurisdiction, a petition in appointment of a receiver or trustee of all or a portion of a party's property, or if either party shall make an assignment for the benefit of creditors, and if execution shall be issued against a party, this Agreement, at the option of the other party, may be canceled and terminated without penalty, in which event neither party by virtue of any statute or of any order of any court shall treat this Agreement as an asset of the other party.

11. Right of First Refusal. In the event that Byron Cole ceases to manage Ballard's day-to-day operations, ECRR shall have the right, but not the obligation, to terminate this Agreement on thirty (30) days notice to Ballard. In further consideration of this Lease, in the event that Byron Cole ceases to manage Ballard's day-to-day operations, ECRR shall have the right, but not the obligation, to acquire all of Ballard's operating and ownership rights in the Woodinville-Bellevue Line, and the assets thereon (MP 23.8-MP 12.6); ECRR shall reimburse Ballard for the monetary amounts which Ballard paid for such rights and assets. Ballard shall cooperate in the filing of all documents necessary with the STB to terminate this Agreement or to establish with the STB ECRR's rights to lease and operate the other Ballard and Meeker Southern Rail Lines, as applicable.

12. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon parties hereto and their respective successors and assigns; provided that Ballard shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder (or delegate any of its duties hereunder), to any Person without obtaining the prior written consent of ECRR. Ballard agrees, however, that ECRR may assign its rights, interests and obligations hereunder to any purchaser of the Line.

13. Force Majeure. If either party hereto shall be prevented or delayed from punctually performing any obligations or satisfying any condition under this Agreement by any strike, lockout, labor dispute, unavailability of labor or materials, act of God, unusually inclement weather, unusual governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any condition caused by the other party, and which the affected party, by exercise of reasonable diligence, shall be unable to overcome, then the time to perform such obligation to satisfy such condition shall be extended on a day-for-day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this Section 13 shall, as a condition thereto, give notice to the other party in writing within five (5) days of the incident specifying with particularity the nature thereof, the reason therefore (if known), the date and time such incident occurred and an estimate of the period that such incident will delay the fulfillment of obligations of the affected party. Failure to give such notice within the specified time shall render; such delay invalid in extending the time for performing the obligations hereunder. This Section 13 shall not apply to the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose.

14. Waiver: Amendments. No delay on the part of either party hereto in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by ECRR and Ballard, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

15. Notices. Any notice required, given or made by any one party hereto to any other party hereto shall be in writing and shall be sent by facsimile transmission, overnight commercial carrier or hand delivery to the following addresses:

If to Ballard: Attn: General Manager
Ballard Terminal Railroad Company
4507 S.W. Oregon St.
Seattle, WA 98116
Phone (206) 782-1447
Email: ByronCole@comcast.net

If to ECRR: Attn: General Manager
Eastside Community Rail, LLC
1340 Lombard Street, #606
San Francisco, CA 94109
Phone (425) 891-4223
Email: DEngle76@comcast.net

16. No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the exclusive benefit of the parties to this Agreement and not for the benefit of any third Person. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either party to this Agreement.

17. Compliance with Applicable Laws. Ballard shall operate and maintain the Line in compliance with, and shall cause its operators and crews to be qualified in accordance with, all Applicable Laws relating to the operation and maintenance of the Line and operation of trains over the Line, including but not limited to the track safety standards set forth at 49 C.F.R. Par. 213, as amended from time to time, and all Applicable Laws respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while any such trains, locomotives, cars and equipment are being operated over or on the Line (including, but not limited to any width, height, weight or other restrictions or capacities of the Line). Ballard shall promptly remove from the Line and dispose of in a lawful manner any discarded or replaced property that Ballard has removed or replaced which constitutes hazardous materials under Applicable Laws. This does not include any materials or conditions that existed on the Line prior to the execution of this Agreement.

18. Responsibility for Operation. Except as otherwise expressly provided herein, Ballard shall be solely responsible for all costs, expenses, charges, obligations and liabilities of any nature or kind relating to or arising from the operation of its trains and engines over the Line during the Term of this Agreement but Ballard shall not be responsible for costs, expenses, charges, obligations and liabilities of any nature or kind relating to or arising from the ownership of the Line during the Term of this Agreement.

19. Ballard Employees. Ballard shall indemnify ECRR for any claims by Ballard employees.

20. Third-Party Access. Ballard shall not permit any third-party to utilize the Line without the prior written consent of ECRR.

21. Use of the Line. Ballard shall not utilize the Line for any purpose unrelated to Service on the Line without the prior written consent of ECRR.

22. Record Retention/Audit. Ballard shall retain all records associated with operations the Line for a period of three (3) years. ECRR shall have the right to audit such records for the purpose of confirming compliance with the terms of this Agreement, upon

reasonable notice to Ballard. Such audit shall be performed during normal business hours at the location where the applicable records are normally kept.

23. Environmental Liability and Indemnity. Ballard shall not create or permit any condition on the Line or any real property or improvements used in connection with the Line that could present a threat to human health or to the environment. Ballard shall be responsible for and shall indemnify and hold harmless ECRR from any suit, claim or Losses growing out of any damages alleged to have been caused in whole or in part by an unhealthy, hazardous or dangerous condition caused in whole or in part by, or created during Ballard's presence on and use of the Line or Ballard's violation of any Applicable Laws pertaining to Hazardous Materials, air, water (surface or groundwater), or noise pollution, and the storage, handling, use, transportation or disposal of any such Hazardous Materials. Ballard shall bear the expense of all practices or work, preventive or remedial, which may be required because of the condition or use of the Line during the Term. ECRR shall be responsible for, and shall indemnify and hold harmless Ballard from and against any environmental conditions caused or created by ECRR prior to the Effective Date of this Agreement. Ballard shall be responsible for, and shall indemnify and hold harmless ECRR from and against any environmental conditions caused or created by Ballard prior to the Effective Date of this Agreement. Ballard and ECRR each expressly agree that the indemnification and hold harmless obligations it hereby assumes shall survive the termination or expiration of this Agreement. Ballard and ECRR each agree that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the other party discovers, or reasonably should have discovered, any such health or environmental impairment, and Ballard and ECRR each hereby knowingly and voluntarily waive the benefit of any shorter limitation period. Ballard acknowledges that ECRR has provided Ballard with full access to inspect the Line. Ballard further acknowledges that ECRR makes no representations and warranties to Ballard concerning the existence of any Hazardous Materials on or near the Line, or compliance of the Line with any Applicable Laws.

24. Regulatory Approval. The parties acknowledge that the effectiveness of this Agreement is subject to Ballard acquiring approval of the lease of the Line from the STB.

26. Entire Agreement. This Agreement contains the entire understanding of the parties hereto as to the subject matter hereof and supersedes any and all oral and prior written understandings between the parties with respect to the subject matter of this Agreement.

27. Construction. All words, terms and phrases used in this Agreement which are not otherwise expressly defined herein shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the United States railroad industry. This Agreement is the result of mutual negotiations of the parties hereto, neither of which shall be considered the drafter for purposes of contract construction.

28. Governing Law Severability. This Agreement shall be a contract made under and governed by the internal laws of the State of Washington applicable to contracts made and to be performed entirely within such State. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such

provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

29. Headings. All article and section headings are inserted herein for the convenience of the parties only and are not part of the substance of this Agreement and shall not affect any construction or interpretation of this Agreement.

30. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their fully authorized representatives as of the day and year first above written.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their fully authorized representatives as of the day and year first above written.

BALLARD TERMINAL RAILROAD
COMPANY, LLC

By: Bryan D Cole
Title: GENERAL MANAGER
Date: APRIL 26, 2013

EASTSIDE COMMUNITY RAIL, LLC

By: [Signature]
Title: MANAGING DIRECTOR, ECRRL
Date: 26 April 2013

SCHEDULE A
ROUTINE MAINTENANCE

1. Vegetation Control, spraying the Line at least annually, clearing of vegetation obstructions at grade crossings, removal of downed trees encroaching on the track, bush-hogging of accessible areas in towns. Not included, debris removal dumped by third parties.
2. Signal Maintenance, electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring. Replacement of unusable heads, mast, cantileavers, electronic boards, bungalos, cabinets, gate mechanisms, underground wiring, or signal upgrades.
3. Grade Crossings, patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, re-driving lags, repair or replacement of cross-bucks.
4. Inspection, all FRA required track and bridge inspections, copies available for ECRR upon request.
5. Switches, inspection, lubrication and adjustment of all switches, replacement of loose or missing bolts and cotter pins, replacement of banners as required, respiking to gage, welding of points and frogs.
6. Derailments, rerailling of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Line may be used in the replacement if available, if not available Ballard must purchase material at its expense.
7. Joints and Broken Rails, repair all missing or failed bolts (for existing FRA class), replace broken joint bars, repair broken rails and pull-aparts (Line inventory may be used).
8. Ties and Gage Rods, respike ties to maintain FRA class, insert gage rods to hold gage.
9. Plates and Anchors, position loose plates and re-drive loose anchors.
10. Surface, spot jacking and tamping to meet FRA class track.
11. Interlocking plants, inspection and repair as specified in agreements, including welding and bolts.
12. Bridges, inspection, cleaning of drift, erosion control as practical, repair and replacement of existing walkway boards and handrails, preventing ballast erosion as practical. Replacement of piles, sills, caps, bents, stringers, deck board, sideboards, headwalls or other components.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring.

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

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Wednesday, February 12, 2014
 REPORTED BY:Katie J. Nelson, RPR, CCR

1 SEATTLE, WASHINGTON; Wednesday, February 12, 2014
2 9:01 A.M.
3 --o0o--
4 BYRON COLE, deponent herein, having been first
5 duly sworn on oath, was examined and
6 testified as follows:

8 EXAMINATION

9 BY MR. COHEN:

10 Q. All right. Mr. Cole, I'm Matt Cohen. I'm
11 counsel for the City of Kirkland along with my colleague,
12 Hunter Ferguson. At the end of the table here are Andy
13 Marcuse for King County, Jordan Wagner for Sound Transit.

14 This is a resumption of the deposition that we
15 began with you on May 24th. And you may recall we went
16 over the ground rules for a deposition at the beginning of
17 that session, but I'll just remind you of the ones I can
18 remember.

19 I'm going to be asking you questions, you're
20 going to be answering audibly, no head shaking, under oath,
21 under penalty of perjury. If you don't understand a
22 question, you should ask for clarification. If you answer
23 the question, I'm going to assume that you understood it.
24 We'll try not to talk over each other. Wait for the end of
25 a question before you answer it. And if you need a break,

1 just let me know, we'll take a break. No breaks in the
2 middle of a question. Got it?

3 A. Okay.

4 Q. All right.

5 MR. FERGUSON: Before you get going with the
6 questions when you e-mail that, would you copy Marina
7 Goodrich if you have her e-mail. If you don't, I'll just
8 forward it to her. It will be faster if you e-mail it
9 directly to Marina.

10 MR. PASCHALIS: Yes.

11 MR. FERGUSON: Okay.

12 Q. (By Mr. Cohen) I want to remind you of a couple
13 of definitions of terms that we used last time so that
14 we're talking about the same things. So when I use the
15 term the "freight segment" --

16 A. Yeah.

17 Q. -- that's the section of the Eastside Rail
18 corridor that is an active rail service between Woodinville
19 and Snohomish.

20 A. Okay.

21 Q. On which Ballard Terminal Railroad is currently
22 providing service.

23 A. Right.

24 Q. Yes?

25 A. Yes.

1 Q. And "the line," we use the term the line, that
2 refers to the railbank section of right of way between
3 Woodinville and Bellevue, all of it, not just the Kirkland
4 section. If I'm asking you about the Kirkland section,
5 we'll talk about the Kirkland section, okay?

6 A. Mm-hm (answers affirmatively).

7 Q. Thank you. Mr. Cole, are you still the general
8 manager of Ballard Terminal Railroad?

9 A. Just a minute. Say again.

10 Q. Are you still the general manager of Ballard
11 Terminal Railroad?

12 A. I am.

13 Q. And are there any other managers of Ballard?

14 A. We're a small company. I have an operations
15 manager who takes care of the daily details of watching as
16 many as three trains a day, one on each railroad. And
17 tying them back up at the end of the day and making all the
18 interfacing that's needed between us and our customers.
19 And between us and Burlington Northern, who's our source of
20 inbound cars and the people we interchange the outgoing
21 cars to. Inbound is both loads and empties. Outbound is
22 both loads and empties.

23 Q. Who is the operations manager?

24 A. His name is James Forgette, F-o-r-g-e-t-t-e.
25 He's been with us for most of our 16 years.

1 Q. Any other managers?

2 A. No. Well, we have an office manager, who is my
3 wife --

4 Q. Great.

5 A. -- Diane.

6 Q. Any other managers?

7 A. That's it.

8 Q. Okay. And are there still only two shareholders?

9 A. Right.

10 Q. You and Mr. Nerdrum?

11 A. Right.

12 MR. COHEN: Katie, you remember
13 N-e-r-d-r-u-m.

14 Q. (By Mr. Cohen) And does Mr. Nerdrum still own
15 99 percent of the stock of Ballard Terminal Railroad, LLC?

16 A. He does.

17 Q. And you own the other 1 percent?

18 A. Right.

19 Q. Okay. Mr. Cole, I'm going to show you a document
20 that was previously identified as an exhibit in this case.
21 It was discussed with another witness, but I've brought
22 courtesy copies of it for everybody, but it has been
23 marked.

24 Mr. Cole, showing you what has been marked as
25 Exhibit 63, can you identify that document for me?

1 A. No, I have to look at it a little bit. I
 2 recognize it.
 3 Q. What is it?
 4 A. Well, it's addressed to the STB, a joint effort
 5 with Doug Engle and myself to craft a strong letter trying
 6 to make sure that the STB is mindful of all the issues
 7 here. I'd say that's the main reason for -- we worked and
 8 revised this and so forth. This is what we came up with.
 9 Q. That's your signature at the end of it?
 10 A. Mm-hm (answers affirmatively).
 11 Q. And did you draft the letter?
 12 A. We both did. We -- I think my recollection is we
 13 started out, I started writing, he started writing and then
 14 we merged different paragraphs together until we had
 15 something we could agree on.
 16 Q. Okay. Anybody other than you and Doug work on
 17 this letter?
 18 A. No, I don't think so.
 19 Q. You see the statement in the third paragraph,
 20 "While we would have preferred that the 5.75 miles of
 21 trackage in Kirkland stay in place"? See that reference?
 22 A. I do.
 23 Q. Okay. This letter was written after the rails
 24 were salvaged in Kirkland?
 25 A. I believe so.

1 Q. Have you -- has Ballard estimated the cost of
 2 rebuilding the rail line in Kirkland?
 3 A. That was fairly horrific. Well, anyway, it got
 4 done. And we use a regional contractor here in the
 5 Northwest for virtually all of our track work, and so we
 6 contacted them to get a figure for replacing the 6-odd
 7 miles that were ripped out.
 8 Q. Is that RailWorks?
 9 A. Yep, it is.
 10 Q. And when did you contact them?
 11 A. Well, sometime before this is dated.
 12 Q. Before December 5th?
 13 A. Yeah.
 14 Q. But after the rails were removed?
 15 A. Yeah.
 16 Q. Okay.
 17 A. It's not okay, of course. It's terrible.
 18 Q. And did they give you an estimate of the cost to
 19 replace them?
 20 A. Yeah, I think it must be in here. I'm not sure.
 21 Yeah, they did. I mean, they're a huge outfit. Their
 22 headquarters in New York City a hundred floors up. But
 23 they're the best of the contractors and they're happy to
 24 have our three little railroads as part of their business.
 25 Q. And did they give you a written estimate of the

1 cost to rebuild the track in Kirkland?
 2 A. Well, I think so, but I don't know. Probably
 3 would have come to Doug.
 4 Q. Would have come to Doug?
 5 A. I think it would have.
 6 Q. You don't have a written estimate from RailWorks?
 7 A. I'm pretty sure I don't.
 8 Q. Do you know what that number was?
 9 A. No, I don't remember. But, you know, compared to
 10 the cost of rehabbing what was there, it's huge.
 11 Q. So in an earlier statement to the board when you
 12 filed your petition to reinstate rail service, you
 13 estimated that cost \$10 million. How did RailWorks'
 14 estimate compare with your initial statement to the board?
 15 A. I think that that was using some RailWorks
 16 guidelines as well.
 17 Q. So is the most recent RailWorks estimate higher
 18 or lower than 10 million?
 19 A. I don't know.
 20 Q. So if I wanted that information, talk to Doug?
 21 A. I guess so, yeah.
 22 Q. Did you not see it?
 23 A. As far as I know, I've seen pretty well
 24 everything that -- the elements to put in here. I went and
 25 watched the RailWorks crews, they're very cordial on their

1 first day of ripping up the track. Doesn't take them long.
 2 And the -- there is no need to do this thing in one day.
 3 It did because the word from Kirkland to -- it must be done
 4 now because we can't work in the winter is simply bologna.
 5 We -- this is a moderate climate. We can do anything any
 6 day of the year and we do.
 7 Q. Okay.
 8 MR. COHEN: Mr. Paschalis, if there is an
 9 estimate in writing from RailWorks of the cost of
 10 rebuilding the Kirkland segment of the rail line, I'm going
 11 to request that you produce it to us promptly in advance of
 12 Doug Engle's deposition. It's within the scope of the
 13 discovery request that we provided to your firm.
 14 MR. PASCHALIS: I'll find out.
 15 MR. COHEN: Thank you.
 16 Q. (By Mr. Cohen) So at this point, you don't
 17 recall the cost of that RailWorks estimated even, you know,
 18 to the nearest million dollars?
 19 A. Well, I think it was around 10 million, about 2
 20 million a mile. And those things depend on how many
 21 turnouts that we put back in, depends if you're using new
 22 rail or relay rail. Depends if you're using brand-new wood
 23 ties, brand-new concrete ties, halfway used up wood ties.
 24 Quite a few variables.
 25 Q. I understand. Did Ballard or Eastside specify to

1 line is still sitting in A&K's yard?
 2 A. No. I have no idea. It could have been sold,
 3 you know, all of it might have been sold to somebody or
 4 just bits and pieces here and there might have been sold.
 5 I don't have any idea.

6 Q. I see. And the reference to "as described by
 7 RailWorks in their estimate" in that sentence, you see
 8 that?

9 A. Which paragraph is it?

10 Q. Same sentence. Third paragraph.

11 A. "Much of the required track"?

12 Q. Yeah, that one.

13 A. Yeah.

14 Q. See, "as described by RailWorks in their
 15 estimate," first sentence, Mr. Cole, "much of the required
 16 track will be reclaimed from the existing line when it's
 17 rehabilitated for the excursion train as described by
 18 RailWorks in their estimate"?

19 A. So we've had them estimate several things, not
 20 only the Kirkland segment, but the whole line from
 21 Woodinville to the Burlington Northern section in
 22 Snohomish.

23 Q. Right.

24 A. So I'm not sure what we were talking about there.
 25 Might have been -- you'd think it would still be talking

1 about the Kirkland debacle.

2 Q. That's what I'm asking. That estimate that
 3 you're referring to there, was that the estimate they did
 4 earlier in 2013 for rehab of the freight segment, or was it
 5 the more recent estimate that you got from RailWorks to
 6 replace the Kirkland segment of the line?

7 A. I think it was that. I --

8 Q. The latter?

9 A. Yeah, neither -- we're not trying to get anything
 10 out of the STB on the line segment from Woodinville to the
 11 Burlington Northern connection at Snohomish. I mean,
 12 that's in a different category.

13 Q. Right. Let me see if I can help you here. I'm
 14 going to give you another exhibit that was introduced
 15 earlier when you and I last talked in May. So here's an
 16 estimate, Mr. Cole, that RailWorks provided to Eastside
 17 Community Rail in January of 2013. Do you recall this
 18 document?

19 A. It's not ringing any bells.

20 Q. Never seen this one before?

21 A. Well, it was written to Doug. I'm not sure if I
 22 did or not.

23 Q. I see.

24 A. But this -- this is the segment from downtown
 25 Woodinville to -- at least to the south end of the bridge

1 over the Snohomish River.

2 Q. Yes.

3 A. If not across the bridge, I don't know. But I
 4 don't recall ever seeing it, but I may have.

5 Q. Okay. So my question to you, is the reference to
 6 the estimate by RailWorks in the third paragraph on Page 2
 7 of Exhibit 63, was that referring to Exhibit 39, or is it a
 8 later estimate that you're talking about in Exhibit 63?

9 A. Well, they made this on January 18th. This is
 10 December 5th.

11 Q. Right.

12 A. I think this is probably just to get a current
 13 figure from a contractor we trust to have a baseline for
 14 what the 14-mile segment from Woodinville to Snohomish was
 15 going to take.

16 Q. The freight segment?

17 A. Yeah.

18 Q. Yes. That's what it appears to be.

19 My question is, when you refer to their --
 20 RailWorks' estimate in December, are you referring to this
 21 estimate or something later?

22 A. I'm not referring to anything. I don't -- is my
 23 name on here anywhere? It's from Richard Carney, that's an
 24 employee of RailWorks.

25 Q. I'm talking, it's your statement, Mr. Cole, in

1 your December 5th letter to the board, which is Exhibit 63.
 2 We're not done with that yet. So turn back to Exhibit 63.
 3 Yes, that letter.

4 A. Mm-hm (answers affirmatively).

5 Q. And Page 2, Paragraph 3, first sentence.

6 A. "Much of the required track"? This --

7 Q. That sentence.

8 A. -- where you're at?

9 Q. Right. It refers to an estimate by RailWorks.
 10 You see that?

11 A. Okay.

12 Q. All right. My question is, which estimate are
 13 you talking about in that letter?

14 A. I think it was probably the northern 14-mile
 15 section.

16 Q. Okay.

17 A. This is -- no -- things all go into a blur
 18 sometimes. We have three railroads to manage besides
 19 trying to extend this one south.

20 Q. So are you saying here that you are planning to
 21 use track and tie material salvaged from the freight
 22 segment to rebuild the Kirkland section of the line?

23 A. I don't think so. That doesn't make sense to me.
 24 The material that could come out of the 14-mile segment, I
 25 mean, if it's ties, we're not putting them back in

1 14 miles.
 2 Q. I understand.
 3 A. It's no more complicated than that.
 4 Q. You're not planning to perform the work described
 5 by RailWorks here for the freight service?
 6 A. I'm not sure what you're saying. What I'm trying
 7 to say is RailWorks is likely to get the work.
 8 Q. Right.
 9 A. At the time that we work on the line segment from
 10 Woodinville to the interchange at Snohomish, because I
 11 think they're the best.
 12 Q. Right.
 13 MR. PASCHALIS: I'd like to step in here.
 14 This is a subject that was covered in the previous round of
 15 discovery. I think it's beyond the scope of the
 16 December 6th pro -- sorry, the January 31st protective
 17 order, the January 6th filing of Ballard, so I think we
 18 should move on to additional questions.
 19 MR. COHEN: Well, your objection is noted,
 20 Mr. Paschalis. I want a straight answer out of Mr. Cole.
 21 THE WITNESS: I think I'm trying to give you
 22 a straight answer of what do you want.
 23 MR. PASCHALIS: He's given the answer.
 24 Q. (By Mr. Cohen) Mr. Cole, the work described in
 25 Exhibit 39, Ballard has no plan to perform it until such

1 time as you start excursion service?
 2 MR. PASCHALIS: Objection, same basis.
 3 THE WITNESS: I can think of an answer -- do
 4 I need to do that or what?
 5 Q. (By Mr. Cohen) You can answer.
 6 MR. PASCHALIS: Hang on a second. I'll
 7 interject on that. This has been asked and answered. So I
 8 don't think you need to go any further.
 9 MR. COHEN: So are you instructing him not
 10 to answer, Mr. Paschalis?
 11 MR. PASCHALIS: Yes.
 12 MR. COHEN: You're instructing him not to
 13 answer the question on what ground?
 14 MR. PASCHALIS: On the basis of asked and
 15 answered and on the basis that it exceeds the scope of the
 16 January 31st protective order.
 17 MR. COHEN: So, Mr. Paschalis, that's
 18 relevance objection. Are you instructing the witness not
 19 to answer on grounds of relevance?
 20 MR. PASCHALIS: On the grounds that the
 21 Surface Transportation Board has outlined the scope of
 22 permissible questioning and if your questions exceed that
 23 scope, then there will be an instruction not to answer.
 24 MR. COHEN: Really?
 25 MR. PASCHALIS: Yes.

1 MR. COHEN: We'll take that up with the
 2 board.
 3 Q. (By Mr. Cohen) So I'll move on. Mr. Cole, back
 4 to the line, the segment between Woodinville and Bellevue,
 5 has Ballard estimated the cost of acquiring property rights
 6 to run trains on the line?
 7 A. I haven't, no.
 8 Q. Do you assume that if you want to run trains on
 9 the line, you're going to need to acquire property rights?
 10 A. In some way, yes.
 11 Q. But you haven't made any estimate of the cost of
 12 doing that?
 13 A. Well, most of the planning that I have done has
 14 involved looking the site over and looking at the
 15 feasibility of having trail, at least on one side of the
 16 tracks, it's continuous. Because to some extent, that's
 17 kind of what we do, we have a trail besides our tracks at
 18 Meeker. And indeed, trail is being extended as I sit here
 19 today for another, I don't know, half a mile or so. And
 20 we're okay with it, if it's done right. And we insert
 21 ourselves into the designs and so forth so it is done
 22 correctly, and bikers can be safe and so forth and so on.
 23 And, so, I haven't obsessed on the property
 24 issues. I figured if -- if we help to build the trail on
 25 the southern segment here, that might be a pretty good

1 trade off with the City of Kirkland and Bellevue, to the
 2 extent that it extends that far.
 3 MR. PASCHALIS: Let me just interject, Mr.
 4 Cole. I don't think there was a question about a trail.
 5 So I'd encourage you to focus on the question asked --
 6 THE WITNESS: I thought --
 7 MR. PASCHALIS: -- and answer.
 8 THE WITNESS: -- basically the question --
 9 MR. PASCHALIS: The question was about
 10 property rights and that's --
 11 Q. (By Mr. Cohen) My question was, did you estimate
 12 the cost of acquiring --
 13 A. No.
 14 Q. -- property rights?
 15 A. No.
 16 Q. Okay.
 17 A. Who would I talk where they would talk to me
 18 back?
 19 Q. I'm sorry?
 20 A. Who would I talk to over there that would talk
 21 back to me? Nobody.
 22 MR. COHEN: Mr. Paschalis, the documents
 23 Bated-stamped BTR 551 through 553, is that the additional
 24 information you referenced earlier in the dialogue this
 25 morning?

1 MR. PASCHALIS: Correct. These are
2 documents that Byron provided to me yesterday and that we
3 are producing.

4 MR. COHEN: Okay. And this is all that
5 you're intending to produce today?

6 MR. PASCHALIS: Correct.

7 MR. COHEN: Okay. Let me take a short break
8 to take a look at this.

9 (Recess taken from 9:51 to 9:58 a.m.)

10 MR. COHEN: All right. We can go back on.

11
12 EXAMINATION - (Continuing)

13 BY MR. COHEN:

14 Q. Mr. Cole, I'm going to show you what's been
15 marked as -- sorry, this one needs to be marked.

16 (Exhibit Number 109 marked.)

17 Q. (By Mr. Cohen) Showing you what's been marked as
18 Exhibit 109, could you identify that for me?

19 A. Yes, it came from our office manager.

20 Q. Your signature at the end of it?

21 A. It is.

22 Q. What is it?

23 A. It says it's -- "The company's cash position for
24 2013 is as follows."

25 Q. You don't have to read it. It's the company's

1 cash position for 2013?

2 A. Mm-hm (answers affirmatively).

3 MR. COHEN: And, Katie, please mark this
4 document as well.

5 (Exhibit Number 110 marked.)

6 Q. (By Mr. Cohen) Mr. Cole, handing you what's been
7 marked as Exhibit 110, can you identify that for me?

8 A. Yeah. These are the -- this is for the Ballard
9 Terminal in Eastside Freight Railroad. This is Meeker
10 Southern.

11 Q. You can't say "this," because the record won't
12 show what you're referring to. The first page is what?

13 A. We have three railroads.

14 Q. Right.

15 A. This document is three pages long.

16 Q. Yes.

17 A. One railroad is described on each page.

18 Q. Thank you.

19 A. What is described is the number of revenue
20 carloads we handled.

21 Q. Thank you. For each line?

22 A. For each line. And for each line, the primary
23 commodities handled are shown in the -- along the top line
24 there.

25 Q. Okay.

1 A. In Ballard we haul a lot of dry bulk cement.

2 Sometimes intermittently haul flour and intermittently we
3 haul some fly ash, so forth, the other two railroads.

4 Q. The total carloads in 2013 for the Ballard line
5 was ^{REDACT}

6 A. Right.

7 Q. And was all of that carried for Salmon Bay?

8 A. No.

9 Q. Other shippers as well?

10 A. Well, if there was ten carloads of flour that
11 mysteriously arrived and we trans-loaded them into trucks

12 and those trucks went to the famous Safeway bakery in
13 Bellevue. They were hauled there by a contractor who's in

14 the flour trucking business and the flour originated in
15 Great Falls, Montana, Great Falls mill there. And there

16 was no contact between us and Safeway, thank you very much,
17 or, Here's what's coming. Nothing.

18 Q. And the second page --

19 A. Okay.

20 Q. -- of Exhibit 110, that is the total traffic on
21 the Eastside Freight Railroad in 2013?

22 A. Same thing, yes.

23 Q. ^{REDACT} carloads?

24 A. Right.

25 Q. How many shippers?

1 A. Well, we have two that -- Boise Cascade --

2 MR. PASCHALIS: The question was the number.

3 THE WITNESS: The number, how many shippers
4 are represented here. Oh, let's see, about four, I guess.

5 Q. (By Mr. Cohen) Who were the shippers?

6 A. Okay. So there are two that are -- not in
7 competition, but amazingly enough, they both ship about the
8 same number of cars generally.

9 The predominant shipper is Boise Cascade. They
10 haul building materials, distribution center on the line
11 with their own siding. So they received, the word
12 "plastic" there is plastic lumber actually. And the PCV is
13 particle board, oriented strand board --

14 MR. PASCHALIS: Mr. Cole, the question was
15 just to identify who are the four shippers.

16 THE WITNESS: Okay.

17 Q. (By Mr. Cohen) So Boise --

18 A. So Boise is one. The glass factory.

19 Q. Spectrum?

20 A. Spectrum is -- has the same carloads most years
21 as Boise. And they have two different commodities that
22 they ship. And then we have some smaller customers that
23 have a trans-loader that unloads the cars, and mostly it's
24 building products of some kind.

25 Q. And their names are what?

1 A. Matheu Lumber, it's M-a-t-h-e-u, something like
2 that. It's not Matheu with a "W." And they truck, because
3 they don't have -- they used to have onside delivery, a
4 line to Redmond...

5 Q. Redmond.

6 A. It runs today. The track is still there. And it
7 runs past their acreage and warehouse --

8 Q. Right.

9 A. -- and office.

10 MR. PASCHALIS: So, again, the question is
11 just the identity of the four shippers.

12 THE WITNESS: Okay. So Matheus is -- they
13 have a contract to have their stuff unloaded at a warehouse
14 that has...

15 Q. (By Mr. Cohen) On the freight segment?

16 A. Yeah. That wasn't...

17 Q. Who is the fourth one?

18 A. Let's see, we usually get a few cars a year from
19 the lumber distribution center that's -- I can't think of
20 the name. It's on the highway going around the north end
21 of Lake Washington.

22 Q. That's okay.

23 A. It's a good-size lumber company. I've never been
24 able to figure out why they only ship a few cars, because
25 they actually own the siding. Anyway, so there's four

1 different customers there altogether.

2 Q. And the third sheet on Exhibit 110 shows carloads
3 on the Meeker Southern Railroad?

4 A. Yep.

5 Q. 794 carloads?

6 A. Yep.

7 Q. I don't need to know all the shippers down there.

8 A. Yeah, that's a cash cow.

9 Q. Looks that way.

10 So turn to Exhibit 109, you have a statement here
11 that Ballard Terminal Railroad's count of freight cars
12 handled in 2013 totaled 1100 cars, do you see that?

13 A. For all three railroads together, produces 1100
14 cars. It's our biggest year ever.

15 Q. I was going to ask you to break out that number
16 for the Eastside Freight Railroad, but what you've produced
17 this morning --

18 A. It's here.

19 Q. Yes. In fact, what we requested was information
20 for the Eastside Freight Railroad on all the financial
21 issues, so I'm going to ask you to break out those figures
22 as well.

23 So for instance, total railroad operations
24 revenue, \$900,768, how much of that did you book on the
25 Eastside Freight Railroad?

1 A. Well, I can't tell you right offhand. But it's
2 not that hard to actually get that data. We have -- well,
3 I'll leave it at that.

4 Q. Can you reconstruct it here?

5 A. I think I'd be too slow. You don't want to spend
6 the rest of the day while I fiddle around with it, do you.

7 Q. I don't want to spend the rest of the day while
8 you fiddle around with it, but that's the information we
9 requested.

10 MR. COHEN: So, Mr. Paschalis, if you can
11 produce the information we requested, we'll be able to more
12 efficiently ask Mr. Cole about it. I'm making that request
13 of you, that you produce the operation and expense
14 information for the Eastside Freight Railroad.

15 MR. PASCHALIS: We'll look into it.

16 Q. (By Mr. Cohen) So, Mr. Cole, can you estimate
17 railroad operations revenue for the Eastside Freight
18 Railroad?

19 A. If I made a phone call or two, I suppose I could.

20 Q. We're going to take a break, why don't you make
21 that phone call.

22 A. Is that okay with you?

23 MR. PASCHALIS: Let's take a break. Let's
24 talk for a second.

25 (Recess taken from 10:10 to 10:16 a.m.)

1 MR. COHEN: Back on.

2 THE WITNESS: I couldn't get the answer,
3 so...

4 MR. PASCHALIS: So you made a call.

5 THE WITNESS: Yeah, I made a call, but it's
6 not as easy as I thought to come up with the answer, but...
7 we sort of live and die with the car counts.

8 Q. (By Mr. Cohen) I'm sorry?

9 A. I said we sort of live and die with the car
10 counts, because that's, by far, our primary income anyway.

11 Q. So who did you call?

12 A. My operations manager.

13 Q. Mr. Forgette?

14 A. Yep.

15 Q. And he didn't have that information available?

16 A. He's not at home.

17 Q. I see. And you don't personally have a basis to
18 estimate how much of the revenue came from the Eastside
19 Freight Railroad?

20 A. I do back in my office.

21 Q. Okay.

22 A. Yeah.

23 Q. I'm going to ask --

24 A. It's not happening right now.

25 Q. How about, I see total expenses paid, 900,000

1 plus dollars. I'm looking at Exhibit 109, you should have
 2 that in front of you, Mr. Cole.
 3 A. Mm-hm (answers affirmatively).
 4 Q. You see that?
 5 A. Mm-hm (answers affirmatively).
 6 Q. How much of that figure do you allocate to the
 7 Eastside Fright Railroad?
 8 A. I have no idea at this time of year.
 9 Q. This is for 2013?
 10 A. It's for 2013. I have no idea at this time of
 11 year, taxes, every year are on extensions of time. And so
 12 this is, we don't do them until the end of -- doesn't close
 13 till kids go back to school.
 14 Q. How did you come up with the \$900,000 for the
 15 entire Ballard Terminal Railroad?
 16 A. I got that by looking at our check register,
 17 tedious.
 18 Q. I see. I see.
 19 A. I thought it's better than nothing.
 20 Q. Of the \$900,000 expenses here, do any of those
 21 expenses include payments to the Ballard Industrial
 22 Company?
 23 A. Yes.
 24 Q. How much?
 25 A. I don't know. Don't know.

1 Q. Ballard Industrial Company is your --
 2 A. It's my company.
 3 Q. -- your company?
 4 A. Mm-hm (answers affirmatively).
 5 Q. And from your testimony last time, I understand
 6 that you, Ballard Industrial Company acts as a consultant
 7 to Ballard Terminal Railroad?
 8 A. Yeah.
 9 MR. PASCHALIS: I guess, I don't think
 10 Ballard Industrial was referenced in the December 6th
 11 reply. That's, again, ground that was covered previously.
 12 The purpose of reopening discovery was not to cover past
 13 ground. I ask, Mr. Cohen, that we move on from this line
 14 of questioning.
 15 MR. COHEN: Your objection is noted.
 16 Q. (By Mr. Cohen) So you don't know how much of the
 17 \$900,000 was paid to Ballard Industrial Company?
 18 A. Well, I certainly --
 19 MR. PASCHALIS: Same objection.
 20 THE WITNESS: Not up here.
 21 Q. (By Mr. Cohen) Okay.
 22 A. In this computer.
 23 Q. Do you know if any of the total expenses paid
 24 consisted of payments to the LLC members?
 25 A. Well --

1 MR. PASCHALIS: So do you know? Yes or no.
 2 THE WITNESS: Yeah, I guess I know.
 3 Q. (By Mr. Cohen) So I'm asking, were any of the
 4 payments, the \$900,000 in expenses, did any of that consist
 5 of payments to the LLC members?
 6 MR. PASCHALIS: I'm just going to interpose
 7 the same objection. I don't know how that's relevant to
 8 any of the issues we raised in the December 6th filing.
 9 Q. (By Mr. Cohen) You can answer the question.
 10 A. Some.
 11 Q. How much?
 12 A. Not very much. We have -- all of our train crew
 13 members are --
 14 MR. PASCHALIS: The question was about the
 15 members, and if you don't know what some was, then you can
 16 say that. If you do know, then you can say that, but --
 17 THE WITNESS: Right. Can he rephrase the
 18 question again or something?
 19 Q. (By Mr. Cohen) I'll restate the question, Mr.
 20 Cole. The question is, does any of the \$900,289.75 in
 21 expenses paid by Ballard Terminal Railroad, does any of
 22 that money include payments to the members of the LLC?
 23 MR. PASCHALIS: That's been asked and
 24 answered.
 25 Q. (By Mr. Cohen) Yes, that has been asked and

1 answered. And your answer was yes, not very much. And so
 2 I'm now asking you to quantify how much of that figure,
 3 what was paid to the members of the LLC in 2013?
 4 MR. PASCHALIS: I'm just going to -- I'm
 5 going to instruct the witness not to answer because that's
 6 beyond the scope, Mr. Cohen.
 7 MR. COHEN: So we're going to make a little
 8 record here, Mr. Paschalis. I'm looking at the board's
 9 discovery rules, specifically 49 CFR 1114.24 Depositions;
 10 procedures. And I'm looking at the line most of the way
 11 down to the end of the page, "Evidence objected to should
 12 be taken subject to the objections."
 13 If you are not interposing a privilege objection,
 14 Mr. Paschalis, you should not be instructing the witness
 15 not to answer. And I'm going to continue asking those
 16 questions. You may make your objections. If you instruct
 17 the witness not to answer, you are going to be subject to a
 18 sanctions motion and we will take it up with the board.
 19 MR. PASCHALIS: Noted.
 20 MR. COHEN: Thank you.
 21 Q. (By Mr. Cohen) So, Mr. Cole, how much of the
 22 \$900,000 paid out in expenses by Ballard Terminal Railroad
 23 in 2013 was paid to the LLC members?
 24 MR. PASCHALIS: Same instruction. I'll
 25 instruct the witness not to answer.

1 Q. (By Mr. Cohen) How much of the \$900,000 in
2 expenses paid by Ballard Terminal Railroad was for debt
3 service?

4 A. I don't know.

5 Q. But you could obtain that information if you
6 looked?

7 MR. PASCHALIS: Object to the form.

8 THE WITNESS: This isn't the time of year
9 when we tally things up in great detail to make our package
10 of information to our professional tax attorneys to turn
11 into a tax report. And we do it this way because this is
12 what works for our company. And so, I can't tell you that
13 at this time of year. I'm not really willing to plow
14 through it at this time of year.

15 Q. Okay.

16 MR. COHEN: So, Katie, can you mark this
17 one.

18 (Exhibit Number 111 marked.)

19 Q. (By Mr. Cohen) Mr. Cole, I'm showing you what's
20 been marked as Exhibit 111.

21 A. Okay.

22 Q. Did you ever see this document before?

23 A. I don't really recognize it.

24 Q. So, it indicates, Mr. Cole, that it's Ballard
25 Terminal Railroad Company's response to the City of

1 Kirkland's Second Set of Requests for Production. I will
2 tell you that it was served on us two days ago. And my
3 question is, to you, did you review the responses in this
4 document prior to production to us?

5 A. I've never seen this.

6 Q. Okay. So --

7 A. Am I supposed to have?

8 Q. So I gather, then, that you did not look for
9 documents in response to Kirkland's second request for
10 production of documents?

11 A. No.

12 Q. Turn to Page 3 of Exhibit 111, you see a line
13 there entitled RFP No. 24?

14 A. Yes.

15 Q. Read the sentence that follows --

16 A. The response?

17 Q. -- the question. "Consistent with the Board's
18 order."

19 A. You want me to read it out loud?

20 Q. Yep.

21 A. "Consistent with the Board's order of August 22nd
22 in this proceeding, please produce the summary of your
23 revenue, expenses and costs for the year 2013 for rail
24 operations on the Freight Segment."

25 I gave you what I have and what I'm willing to

1 take time to produce.

2 Q. And I gather you did not look for revenue,
3 expense and cost information for the year 2013 for rail
4 operations on the freight segment; is that correct?

5 A. Well, they're all in there somewhere.

6 Q. Thank you, Mr. Cole.

7 I'm going to show you what's been marked
8 previously as Exhibit 96. Have you ever seen that document
9 before, Exhibit 96?

10 A. I'd say no.

11 Q. If you look in the furthest column to the right,
12 you see there's a column that's labeled "annual car count"?

13 A. Right.

14 Q. And it contains figures for initial and long-term
15 freight traffic from -- and passenger traffic, I guess,
16 from a number of sources?

17 A. Right.

18 Q. Are you knowledgeable about the representations
19 in Exhibit 96 about the anticipated volume of freight
20 traffic?

21 A. Well, Doug puts together things like this fairly
22 often and I may or may not see all of them. And they're
23 not all identical, kind of depends what, you know, how he's
24 trying to organize these things. You know, I recognize the
25 reactivation, freight customers and so forth. And he's as

1 able and knowledgeable as I am about asking them what the
2 think they might have in the way of car counts. So I'm
3 trying to occupy the day-to-day strategies of the three
4 railroads and the most focus on our biggest one out in
5 Puyallup. So I imagine this is -- was done by Doug. I
6 don't know --

7 Q. So --

8 A. -- if that's true, but I'm guessing it was.

9 Q. So I was hoping to ask you questions today about
10 the basis for the car counts shown on Exhibit 96. Are you
11 knowledgeable about the basis for those numbers?

12 MR. PASCHALIS: Objection; asked and
13 answered.

14 THE WITNESS: I'd say I'm not.

15 Q. (By Mr. Cohen) Okay. Let me refer you back to
16 Exhibit 63, Mr. Cole. That's your December 5th letter to
17 the board.

18 MR. PASCHALIS: Keep going. It's right
19 here.

20 THE WITNESS: Bottom of the pile. All
21 right.

22 Q. (By Mr. Cohen) Page 2, top paragraph. Why don't
23 you read that paragraph?

24 A. (Witness complies.) Okay.

25 Q. I see estimates of traffic for excursion service

1 of 3535, right?

2 MR. PASCHALIS: Are you referring to
3 Exhibit 96?

4 MR. COHEN: I'm referring to Exhibit 63.

5 THE WITNESS: That looks like to me the 3535
6 includes both excursion service and the freight component.

7 Q. (By Mr. Cohen) You're right. I stand corrected.

8 And there is a long-term carload estimate of
9 6022, right?

10 A. I see it.

11 Q. You see that?

12 A. I do, yeah.

13 Q. Those are the same numbers that appear in
14 Exhibit 96?

15 A. Is it in here?

16 MR. PASCHALIS: Here you go.

17 THE WITNESS: I got it. It looks like the
18 same ones.

19 Q. (By Mr. Cohen) Right. I gather, then, that you
20 cannot explain the basis for the numbers in the first
21 paragraph on Page 2 of Exhibit 63?

22 A. I believe this is all Doug's work.

23 Q. It's all Doug's work?

24 A. Yep.

25 Q. Okay. But you signed that letter?

1 A. Yep.

2 Q. Okay. Can you explain to me, Mr. Cole, why Doug
3 Engle was engaged in estimating freight traffic for Ballard
4 Terminal Railroad in the event that you reactivated rail
5 service on the line?

6 A. Well, we have a -- you know, partnership
7 relationship here of common goals. He's the fellow that
8 owns the reserve freight easement, which is a goofy name,
9 but it's the right to operate freight trains and passenger
10 trains and any other kind of train commodity or rail
11 anything, in that corridor from Woodinville to Snohomish,
12 the 14 miles. That's a valuable thing. He's got it, no
13 one else does.

14 Q. But these estimates?

15 A. We want to stick with him, because we started out
16 being the freight rail operator for the scurrilous Tom
17 Payne.

18 Q. Scurrilous?

19 A. He's awful. We never got paid, over and over we
20 never got paid.

21 Q. Right.

22 A. So Doug is a regular guy. So we get paid. He's
23 a marketing guy and he is trying to -- to get the excursion
24 train running because the thing is a big cash cow, the old
25 one was.

1 Q. A what?

2 A. I said it's a cash cow, the Temples made a lot of
3 money running that thing.

4 Q. Right.

5 A. So he works on that. I wouldn't get anything
6 done because I've already got a full plate.

7 Q. But the estimate shown here are not for the
8 freight segment, they're for the line. So why did Ballard
9 Terminal Railroad have Doug Engle estimating freight
10 traffic for a line that you proposed to reactivate?

11 A. Well, somebody has to have their name on the plea
12 to reactivate. We're the railroad that STB already knows
13 about. We've had two other railroads with 16 years. But
14 he's the guy with the time on his hands to work all this
15 stuff. I would never get it done if I said, no, no, that's
16 all the stuff we have to do. So we'd never be anywhere.

17 Q. I see. In preparing the estimate, was he working
18 for Ballard Terminal Railroad?

19 A. No, he never works for us. He's his own company.

20 Q. Why did you --

21 A. We share phone calls and meetings and so forth.

22 Q. Why did you sign a letter to the board with
23 specific carload estimates in it if you can't personally
24 back them up?

25 MR. PASCHALIS: I'll object to that as

1 argumentative.

2 Q. (By Mr. Cohen) Please answer the question.

3 A. Holy smokes, people write letters all the time
4 and they don't do all the work that's contained in the
5 letter. We'd never get anything done.

6 Q. Okay.

7 A. He probably took more time doing it than I would
8 have. It's probably more accurate because he went and
9 talked to each of these potential shippers and talked to
10 them more than once.

11 Q. All right. That was my next question. Looking
12 at Exhibit 96, there's a list of companies that is under
13 the heading "reactivation freight customers." Do you see
14 that?

15 A. I do.

16 Q. It shows a list that starts with General Mills
17 and runs through ready-mix concrete plant?

18 A. Okay.

19 Q. All right. Did you personally talk to any of
20 those customers about their desire to ship freight on the
21 line, not the freight segment, but the line?

22 A. Okay. Well, I was at the CalPortland meeting in
23 Seattle, which was a very productive meeting. We moved a
24 long way ahead in a one-morning meeting. I've known Bobby
25 Wolford since we started running trains up here. It's

1 Wolford Trucking. And they've talked about having a spur
2 into their plant just because they're kind of a recycler.
3 They truck in from various places all kinds of stuff and
4 then they dump it miles and they sort it out and they sell
5 this. If there's brass scrap metal, you know, that's
6 something to sell and one thing another. Anyway, he's up
7 for having a spur, a rail spur, so he could ship the scrap
8 iron and things like that out.

9 So I know him.

10 Q. Did you talk to Mr. Wolford about shipping
11 freight on the line?

12 A. Yeah, on the existing line.

13 Q. No, not the existing line. On the line which
14 we've defined as the segment between Woodinville and
15 Bellevue?

16 A. Okay. His interest on that line is that he's one
17 of the truckers that bids on these jobs of trucking away
18 the spoils from the gigantic parking lot basements
19 underneath these high-rise buildings. And so he could beat
20 his competitors by doing a five-block truck haul to a rail
21 reload facility and load that mud into railroad cars and
22 we'd take it to Eastern Washington and dump it on some
23 farmer's field that can't get water any longer.

24 Q. Let me stop you.

25 A. That's the scheme.

1 MR. PASCHALIS: Mr. Cole, I think the
2 question is, in your discussions with Bobby Wolford, and
3 you described some of the things he wants to do, is he
4 seeking to do that shipping --

5 MR. COHEN: That actually isn't the
6 question.

7 MR. PASCHALIS: Go ahead and re-ask the
8 question.

9 Q. (By Mr. Cohen) I'm trying to figure out whether,
10 Mr. Cole, I should be inquiring with you about these
11 individual potential customers. And if you tell me that
12 you didn't talk to any of them, then I'm not going to spend
13 your time asking questions about them.

14 A. Well, I have talked to Bobby Wolford.

15 Q. You've talked to Bobby Wolford about his plans to
16 ship freight on the line, that's really all I'm asking so
17 far.

18 A. Well, two things. So, ship sorted recyclables,
19 if you will, from his existing yard --

20 Q. Yes.

21 A. -- which is, we serve it now.

22 Q. Yes. You I've talked to him about that
23 personally?

24 A. Yes, a number of times, and his Number 2 guy up
25 there as well.

1 Q. That's good. We've got CalPortland and Wolford.
2 Any other of these customers who you personally have talked
3 to about shipping freight on the line?

4 A. Well, I've tried talking with General Mills, the
5 flour guys back in Montana. And I've talked to them a
6 little bit, but Doug was the one who finally ran them to
7 the ground. They're the poor souls who send flour to

8 Safeway. Safeway does not have an easily accessed
9 organization. That's, you know, somebody that's -- they
10 have a regional headquarters in Richmond, California.
11 They -- there's a regional manager there, who's in charge
12 of bakeries and that means they're also in charge, then, of
13 feeding the bakery with flour. And so that's the regional
14 bakery that's there in -- in downtown Bellevue. And it's
15 still running just fine. But when the BN quit running
16 trains down there, they switched over to us in Ballard and
17 then we partnered with a trucking company that's -- that
18 can truck food grade powdered stuff, flour, and they came
19 and unloaded the railcars. Takes four truckloads to empty
20 the railcar. And then they ran those at night to the
21 bakery.

22 Q. You said a few minutes ago that you received ten
23 railcars a year for Safeway?

24 A. Well --

25 MR. PASCHALIS: Object as mischaracterizing

1 prior testimony.

2 Q. (By Mr. Cohen) You can correct it.

3 A. I think that there only was ten in 2013. But
4 there's not a word comes from Safeway about, oh, by the
5 way, this is the last one that's going to come to you. The
6 cars are now being unloaded in Seattle and the truck haul
7 is through way more traffic than would have just sticking
8 with us in Ballard. But maybe the rail rate was a little
9 lower and they saved a few bucks, I don't know. I didn't
10 follow up. It wasn't enough carloads to worry about.

11 Q. In any event, it sounds like you had some
12 discussion with General Mills?

13 A. Yeah, I did.

14 Q. We'll come back to that.

15 A. I scoped out the RJB site, but I haven't talked
16 to the manager.

17 Q. Okay. When you say you scoped out the site, you
18 visited the site?

19 A. Yeah, I walked a block on the railroad grade and
20 looked at his backyard to see what it would take for us to
21 put in a rail spur into his spot, which is what he wants.

22 Q. Okay.

23 A. The geography of it is -- the railbed is higher
24 than his yard, but it can be all reworked out. See, do

25 some filling in his backyard and so forth, so he can use

1 forklifts.
 2 And let's see, I was at the CalPortland meeting,
 3 the very first one. And I haven't been at other meetings,
 4 but that first one was a really good deal. We learned a
 5 whole lot about their -- how they run their business, and
 6 what we can do
 7 Q. I'll come back to that.
 8 A. Yeah.
 9 Q. How about CT Sales, CT Sales is not on the line,
 10 are they?
 11 A. It seems to me -- I haven't talked to those guys.
 12 But it seems to me like they're actually in upper Kirkland,
 13 along the line now ripped out. And I think maybe they have
 14 two facilities up there. I think they expanded out of one
 15 and into a second one or something. Doug knows more about
 16 it. He's contacted them. And none of this is rocket
 17 science to gain rail customers. You're talking with guys
 18 who have been truckers for years, they're not
 19 sophisticated. I mean, you're talking with people who have
 20 a welding shop or sheet metal forming shop, it's --
 21 Q. So --
 22 A. I'd like it --
 23 Q. You didn't talk to CT Sales?
 24 A. No, I haven't, but we have other rebar people on
 25 our line in Puyallup.

1 Q. Puyallup?
 2 A. Yeah -- we bring in tons of rebar. All the rebar
 3 that's going in these goofy floating rich parts comes to
 4 us, and it's trucked to wherever the docks are to build the
 5 concrete pontoons that don't float too good.
 6 Q. Did you talk to Aggregates West?
 7 A. I haven't talked to them.
 8 Q. And did you talk to ready-mix concrete plant, do
 9 you know who that is?
 10 A. No, no, this is ready-mix concrete plant to be
 11 named later.
 12 Q. To be named later?
 13 A. Yeah.
 14 Q. Who's going to name it?
 15 A. Well, it's a possibility that my partner would
 16 say the time is right for us to set up a batch plant in
 17 downtown Bellevue.
 18 Q. I see. Have you talked to -- this is
 19 Mr. Nerdrum?
 20 A. Yeah.
 21 Q. Have you talked to Mr. Nerdrum about setting up a
 22 batch plant in downtown Bellevue?
 23 A. Just a tiny bit. Just a tiny bit. It's not
 24 rocket science. It doesn't take forever to plot and scheme
 25 to do it. And you know, there's a gentlemanly cadre of

1 ready-mix plant operators. It's like, look, if you don't
 2 come and set up outside my back door, I'll stay away from
 3 your back door. Bellevue is for you guys and we're over
 4 here in North Seattle.
 5 So it's more gentlemanly than you might think.
 6 So I don't know, but...
 7 Q. Okay.
 8 A. The aggregates could come by rail instead of
 9 truck and that would save whoever did this money.
 10 Q. Right. So tell me about General Mills. You say
 11 you had a conversation with someone in Montana?
 12 A. Well, General Mills is -- the flour mills that
 13 serves that Safeway bakery is in Montana. And so, out of
 14 desperation, because couldn't get anybody from Safeway
 15 anywhere, either, the plant manager, has, like, no
 16 authority. And so he doesn't know anything. And then,
 17 Doug tried to approach the people at Richmond, California
 18 where it's supposed to be managed from.
 19 Q. The segue people?
 20 A. Yeah, and he didn't get anything there either.
 21 And so, then we shipped it over to talking to supplier who
 22 he has a real interest in having his flour still have a
 23 market. So that was, you know, made a little progress
 24 there. And tried to explain to him what was going on, what
 25 the opportunity was.

1 And they have a slick facility there, there's two
 2 tracks in, you can run the cement, the covered hopper car,
 3 90 tons of flour in it, right inside the building, slam the
 4 doors.
 5 Q. You're talking about Safeway in Bellevue?
 6 A. Yeah. It's dry, you got light, you got security,
 7 nobody can contaminate the stuff, so...
 8 Q. So who did you talk to at General Mills?
 9 A. I don't know his name. In fact, I'm not even
 10 sure -- I've probably got a scrap of paper somewhere with a
 11 note on it. But it's a thin file on that, because I let
 12 Doug work on that.
 13 Q. How long ago was that?
 14 A. We've been -- this whole thing dates for over a
 15 year.
 16 Q. Yeah.
 17 A. You know.
 18 Q. So do you know when you talked to the guy at
 19 General Mills?
 20 A. No, how is it important?
 21 Q. Do you know the basis for the car count of 225
 22 cars that's shown on Exhibit 96?
 23 A. I think that was probably Doug's estimate of what
 24 the flour car count would be if it was -- the supply wasn't
 25 interrupted. General Mills kept the contract and there

1 was, every week there was, you know, the same number of
2 cars, that that was something that would be reasonable.

3 When we had the account in Ballard, I think we
4 unloaded maybe, I don't know, three cars a week or
5 something like that, 150 cars a year. Could be that the
6 bakery runs on some kind of a -- a common flour to make all
7 their bread and things like that. But when it gets to the
8 sweet rolls and things, they buy smaller amounts of some
9 specialty flour, I don't know the business.

10 Q. Okay. That number didn't come from General
11 Mills?

12 A. I have an idea it came from Doug's conversation
13 with General Mills.

14 Q. We'll ask about that.

15 A. They could easily look back. Last year we
16 shipped this many; year before that, it was this.

17 Q. Okay. When did General Mills stop shipping by
18 rail to Ballard?

19 A. Sometime during '13.

20 Q. During 2013?

21 A. Yeah, I don't know. Roughly a year ago or ten
22 months ago or something like that. As usual, the cars just
23 stopped coming. We can see every day all our inbound cars
24 in North America. Three o'clock in the morning, we get a
25 list.

1 Q. And you said that instead of shipping them to
2 Ballard, General Mills is shipping by rail to Seattle?

3 A. Somewhere in Seattle they're being off loaded and
4 trucked from there to General Mills.

5 Q. I see. Do you know why they made that change?

6 A. I suppose that trucker underbid the trucker that
7 was our partner, would be my guess. Everybody is trying to
8 do it cheaper.

9 Q. Okay.

10 A. I don't think there's something nefarious under
11 the table.

12 Q. Okay. Wolford Trucking, so let me tell you that
13 we deposed Bobby Wolford last May and he told us all about
14 his plans.

15 A. Okay.

16 Q. My question is, have you had any conversations
17 with Wolford in recent months, say, since August?

18 A. I don't think so. It was a little, I think it
19 was in the late spring when I spent, oh, I don't know, I
20 think I was in there a couple of times trying to get a
21 firsthand idea of where a spur would work for him there.
22 Because his area is kind of on a big crown, muffin. And
23 all of that is above our track and the mainline that comes
24 past him. So we have to, you know, figure out what kind of
25 approach would work to get in there.

1 So one of the times I was there, he was there.
2 And one time he wasn't. He's got a young fellow who's --
3 boy, he's a crackerjack manager for his age. And I think
4 the place runs just fine when Wolford is not there. I
5 don't think he's got anything to worry about.

6 Q. So you haven't met with Wolford since August?

7 A. Yeah, something like that. Yeah. But as far as
8 I know, their plans are the same, they'd still like to have
9 a spur. The spur at their property is not dependent on us
10 getting a railroad to run all the way into downtown
11 Bellevue. But if it did run to Bellevue, he'd be one of

12 the guys going after -- he'd be able to underbid other
13 contractors hauling building spoils, because he'd have a 5
14 or 10-block run where he can dump into the railcars. The
15 other guys are, who knows, trucking it to Wenatchee or
16 something. I don't know where they go.

17 Q. So why haven't you already built a spur for
18 Mr. Wolford?

19 MR. PASCHALIS: I'll object to that as
20 ground that was covered in the previous deposition.

21 MR. COHEN: It's been six months since the
22 previous deposition, Mr. Paschalis. Mr. Cole just said
23 that Wolford's demand for rail service is not dependent on
24 reactivation of rail into Bellevue, so I'm following up on
25 that question.

1 Q. (By Mr. Cohen) Why haven't you already built a
2 spur for Mr. Wolford?

3 MR. PASCHALIS: Same objection. Go ahead.

4 THE WITNESS: Well, one, I've been busy with
5 other projects and so I don't -- I'm happy that he hasn't
6 come to me and said, Hey, we've taken on some new things
7 and we got to have a rail spur in here right now, we can
8 get one with the least planning, the cost of the doggone
9 thing is going to be higher.

10 So he seems comfortable with what he's got at the
11 moment.

12 Q. (By Mr. Cohen) What he's got is nothing?

13 A. Yeah, and it depends on -- he recycles a bunch of
14 different things.

15 Q. Right.

16 A. It kind of depends what he's doing now or what he
17 used to do or what he thinks he can do in the future and
18 that sort of thing. But I'll have to say, I haven't worked
19 hard to twist his arm to get him to commit and so forth. I
20 haven't taken the time to go up there and survey a route
21 that will go into his yard the way he wants. They
22 reorganized their yard this summer quite a bit. Instead of
23 piling this over there, and whatever is over there is now
24 down there. So I'm just happy that we're going to put that
25 thing in for him one of these days.

1 Q. (By Mr. Cohen) Okay. We'll get to that in a
2 minute.

3 So the plan, then, would be for Aggregates West
4 to supply aggregates to construction projects in Bellevue
5 out of their Marysville or Everett yard?

6 MR. PASCHALIS: I'm sorry, are we talking
7 about CalPortland or Aggregates West?

8 Q. (By Mr. Cohen) I'm sorry, I meant CalPortland.

9 A. Yeah, it would be a way for CalPortland to have a
10 pretty attractive price on their product, piled up on some
11 asphalt, you know, lot for ready access with a five-minute
12 run by dump truck to some construction site where they
13 need, especially -- the ballast rock is the highest grade
14 fill material you can use at a construction site, because
15 it's all broken faces, there's no round, it doesn't come
16 from round rock. It's shot rock out of the hillside.

17 There's lots of places where you want to use the very best
18 rock. It's about 2-inch minus pieces.

19 Q. So --

20 A. They thought that was a pretty nifty idea.

21 Q. And this is important, it would be delivered by
22 barge to Marysville?

23 A. Mm-hm (answers affirmatively).

24 Q. And then shipped by rail to Bellevue?

25 A. Mm-hm (answers affirmatively).

1 Q. Is that the plan?

2 A. Mm-hm (answers affirmatively).

3 THE COURT REPORTER: Can you say yes or no,
4 please.

5 THE WITNESS: Yes.

6 Q. (By Mr. Cohen) And we deposed CalPortland, I
7 think Mr. Skrivan in May, and he described this plan. And
8 I'm wondering if in your most recent conversation, there
9 was anything new that was not part of their thinking in
10 May?

11 A. I have -- that's the only time I have ever
12 attended a meeting. Doug may have made a bunch of
13 follow-up calls, and James Forgette calls CalPortland every
14 day several times to keep pushing those railcars up there.
15 It's gotten better recently. For a while, they were
16 struggling.

17 Q. So referring you to Exhibit 96, that car count
18 estimate?

19 A. Yeah.

20 Q. The 350 cars you have estimated for CalPortland,
21 you see that?

22 A. Is there more than one page?

23 Q. No, just one page.

24 A. Where's the 350? Oh, here we go.

25 Q. Yeah.

1 A. CalPortland, okay. It's only one carload a day.

2 Q. Do you know the basis for that estimate? Do you
3 know who prepared it?

4 A. No idea. It was something that this guy that we
5 spoke with that morning figured out. I mean, those guys
6 know all those numbers in their head. He can say, I think
7 we can probably get rid of about blah, blah, blah. They
8 know how much is in a truck-trailer load. You get about
9 33 tons in the most modern highway truck trailer. You get
10 100 tons of three trailer loads. When you're doing a
11 ballast program, we haul in by truck, because there's no
12 rail to the quarry we use. I just make mountains that are
13 three truck trailer loads high, and I know there's my
14 inventory, a hundred tons, a hundred tons, a hundred tons.

15 Q. Do you know if 350-ton number came from
16 CalPortland?

17 A. I suppose it did. Doug wouldn't have any idea.

18 Q. You don't know?

19 A. I don't know --

20 Q. Okay.

21 A. -- for sure, but I would guess that he was
22 getting his answer from them.

23 Q. Did CalPortland tell you when you met with them
24 most recently that they have purchased or leased any new
25 real estate in Everett or Marysville in order to make an

1 easier connection to the rail line?

2 A. Well, I -- as I recall the conversation, they
3 said they thought that just what they had, a rail spur
4 could be put in there. As I remember, it was like, here's
5 the mainline, this thing would veer off, this thing would
6 veer off.

7 Q. The court reporter can't show your hand
8 movements, Mr. Cole.

9 A. Yeah, I know. I don't know that much about what
10 they thought would be needed to put the spur in. And I
11 haven't followed up on it. I've been busy with things
12 that, you know, shorter term. As far as I know, they think
13 the overall idea is a good idea. We could probably --
14 sometimes the big railroads don't like putting a spur track
15 on their mainline, but we would probably be able to talk BN
16 in to doing it.

17 MR. COHEN: I'd like to mark an exhibit.
18 (Exhibit Number 112 marked.)

19 Q. (By Mr. Cohen) Mr. Cole, showing you what's been
20 marked as Exhibit 112. Do you recognize this letter?

21 A. It's got my signature on. I must have seen it
22 once. I know I didn't take the time to write it. I
23 imagine that Doug must have. He's about the only other guy
24 I talk to about this kind of stuff.

25 Q. So look at the last page of that letter.

REDACTED

REDACTED

1 MR. PASCHALIS: Let's wait for a question,
 2 Mr. Cole.
 3 Q. (By Mr. Cohen) So my question for you is, you
 4 see on the third page of Exhibit 103, there's a box labeled
 5 "target site"?
 6 A. Okay. Yeah.
 7 Q. Is that the property that you're talking about as
 8 a location where it would be feasible to deliver
 9 aggregates?
 10 A. It could be. It's -- I'm familiar with the
 11 building, because it used to belong to Weyerhaeuser who is
 12 a cardboard box plant. And we --
 13 (Cell phone interruption.)
 14 THE WITNESS: I was in the building. We
 15 talked about bringing in the raw material for the cardboard
 16 box plant. We have a cardboard box plant at the south end
 17 of our Meeker Southern line. And was trying to make it up
 18 there. And Weyerhaeuser went on strike, and then when they
 19 opened up, they ended up selling all their cardboard box
 20 plants to somebody else, another competitor. So I don't
 21 know. I think -- did Sound Transit buy that for a car
 22 shop?
 23 Q. (By Mr. Cohen) I can't answer and I don't know.
 24 A. So what 's your question?
 25 Q. I was really asking whether the property labeled

1 as the target site is where you had in mind as the location
 2 that CalPortland could deliver aggregates?
 3 A. Well, it could be. It could be. There's
 4 actually sites all along here. It's industrial park. The
 5 trackage -- the sidings spur tracks are still in place.
 6 Q. But you didn't have a particular property in mind
 7 when you were --
 8 A. Well, on the -- on the only meeting I've been to
 9 with CalPortland, we talked in much more generalities.
 10 We're getting to know each other and so forth. And so,
 11 there wasn't a lot of details. But this whole industrial
 12 area is basically pretty flat. And so there's -- there
 13 would be a multitude of places here to -- that would be
 14 suitable. It's not suitable on the west side.
 15 Q. Of the track?
 16 A. Of the track, in my view, looking at it. There's
 17 a lot of drainage, ditches and probably a bunch of piping
 18 on the west of the mainline track there. It looks pretty
 19 wet. This is all flat and water would participate over.
 20 Q. Okay. One second.
 21 MR. COHEN: We're going to a take break
 22 shortly, a lunch break.
 23 Q. (By Mr. Cohen) I'm going ask you one more --
 24 let's see here.
 25 Mr. Cole, back to your December 5th letter to the

1 board, Exhibit 63. You got that?
 2 A. Yes, I do.
 3 Q. On Page 2 of that letter, second paragraph?
 4 A. In Bellevue?
 5 Q. Yes. Last sentence in that paragraph, read that
 6 sentence for me.
 7 A. "There is a drywall distributor that has recently
 8 doubled its size in Kirkland with an existing spur that we
 9 plan on talking to next."
 10 Q. Who is that drywall distributor?
 11 A. I'm not too sure. This is something that Doug
 12 has taken the time to run to ground. We talked about it a
 13 little bit, but, you know, next step for me is, Doug, come
 14 with me, and let's go out there and park the car and wave
 15 our arms around and show me what you saw and how you saw
 16 it.
 17 Q. I gather you have not talked to that drywall --
 18 A. No --
 19 Q. -- distributor --
 20 A. -- I haven't.
 21 Q. -- since you wrote this letter?
 22 A. No.
 23 Q. Do you know if Doug has?
 24 A. Well, I don't know. He's had a lot more time to
 25 delve into all these things than I have.

1 MR. COHEN: Okay. This might be a good
 2 place to stop for lunch.
 3 MR. PASCHALIS: That's fine.
 4 MR. COHEN: Off the record a minute.
 5 MR. PASCHALIS: Yes, let's go off.
 6 (Recess taken from 12:05 1:29 p.m.)
 7 (Exhibit Number 114 marked.)
 8
 9 EXAMINATION - (Continuing)
 10 BY MR. COHEN:
 11 Q. Mr. Cole?
 12 A. Yes.
 13 Q. Showing you what's been marked as Exhibit 114?
 14 A. All right.
 15 Q. This is a document that was produced to us by
 16 counsel for Ballard Terminal Railroad two days ago. Ever
 17 seen it before?
 18 A. No, let's see here...
 19 Q. Would you read it?
 20 A. I'm reading.
 21 Q. Yes.
 22 A. Okay. I've read it.
 23 Q. So it appears to describe a meeting between
 24 representatives of Ballard and CalPortland that occurred
 25 early in January 2014. Do you know of any such meeting?

1 A. I do.

2 Q. Why don't you tell me what you know about that
3 meeting?

4 A. Not very exciting from your view. It was about
5 tardiness in CalPortland providing tri-bulk cement cars
6 loaded to our railroad in Ballard, the Ballard terminal.
7 And James is our operations manager, who is responsible for
8 that all working all the time. He got it fixed, we started
9 getting cars in and we got them every week. That's all it
10 was about.

11 Q. Did you attend this meeting?

12 A. I did not. I don't need to. This is his baby
13 and he's doing a great job.

14 Q. Did this meeting, to your knowledge, have
15 anything to do with the Eastside Rail corridor?

16 A. Not a thing.

17 Q. Okay. Thank you.

18 A. Tri-bulk.

19 Q. Would you turn to Exhibit 63 again, that's your
20 December 5th letter to the board. So are you looking at
21 Exhibit 63?

22 A. I am.

23 Q. Second paragraph on the first page begins, "We're
24 excited to work with the WATCO Companies"?

25 A. Right.

1 Q. Tell me what role Ballard envisions for WATCO on
2 the Eastside Rail corridor.

3 A. Well, they're a lot bigger short line than we
4 are. We have three short lines, they're, you know,
5 relatively small. WATCO is at the other end of the scale.
6 They have several thousand miles of short lines. And so
7 they have been around longer, they have a lot more money to
8 do things. And this was outreach to them to see if they
9 might be interested in this.

10 When Burlington Northern was trying to get out of
11 this piece of rail network, they sent tenders of interest
12 to us and to, I don't know, 8 or 10 other railroads. They
13 don't pick people that they don't like. So it's short
14 lines that they get along with well. So it was nice that
15 we made that cut. And I think WATCO might have been one.
16 But the rules between -- the Port of Seattle rules as
17 operating rules, what the deal would be, and between
18 Burlington Northern were long and extensive and complicated
19 and so forth and so on.

20 And so, in the end, interest in this thing
21 dwindled down until I believe us and our partner in that,
22 which was the GNP, in the organization, we were awarded it
23 by Burlington Northern. I think everybody else just said,
24 Oh, this is so badly -- we're not interested in it. I'm
25 not sure if WATCO was on that list or not. But they could

1 have been.

2 So it's under new management now. And so we
3 thought maybe they might be interested. So they have some
4 interest. So I'm not sure where it will lead to.

5 Q. So I think the documents you produced today said
6 that Ballard ran, you know, like 220 cars on the Eastside
7 Rail corridor in 2013, why do you need a bigger railroad to
8 manage that kind of operation?

9 A. Well, you get paid by the car. And so, more cars
10 you're able to handle across your railroad every year, the
11 more money you make, because you make a margin on this.
12 We're not doing it at any of the railroads at a loss. We
13 want to be bigger. We want to have more powers.

14 And so the car loadings on the Eastside line have
15 been pretty flat. I explained to you before, we have two
16 major shippers, and one steady smaller shipper and then a
17 couple others that only handle a few cars a year. But we
18 have sites where trans-loaders could come and go to a
19 trans-load facility and we put in a spur. In some cases
20 the spur is already there. So we have marketing to do to
21 bring more traffic. In reality -- that's a pretty
22 important part. It isn't something I push to the end of
23 the week. So does that answer what you asked me?

24 Q. No.

25 A. Try again.

1 Q. I'm trying to --

2 A. Why would we be doing this?

3 Q. Not why you're doing it, but what role you
4 envision for WATCO?

5 A. It could be all the way from WATCO buying
6 everybody out.

7 Q. Buying everybody meaning?

8 A. Doug, me, our company. It could be something
9 like that. Or it could be something where they just buy
10 the freight business and Doug is left to run the excursion
11 train business. There's lots of ways it could go. Could
12 be the other way around, WATCO says, Hey, we got a spare
13 excursion train that's not doing anything but gathering
14 dust, we'll bring that up and for that, we'll charge you
15 guys a fee or take a piece of the gate or something.
16 There's no -- it isn't some secret weird under-the-table
17 thing.

18 Q. So at the time that you wrote your December 5th
19 letter to the board, did you have a specific and defined
20 role in mind for WATCO?

21 A. I think you'd have to ask Doug Engle.

22 Q. You don't know?

23 A. I don't know that much detail on it.

24 Q. All right. Did he write the part of this letter
25 that --

1 A. He wrote --
 2 Q. -- makes representative --
 3 A. -- most of it. We put it all together.
 4 Q. How about the parts about WATCO?
 5 A. He did those.
 6 Q. Do you know anything about the statement in here,
 7 last statement in paragraph two, before completing their
 8 letter to the board, importantly WATCO conferred with BNSF
 9 regarding the shipping options available to and from this
 10 segment of the line?
 11 A. Well, it's the due diligence thing. They want to
 12 know some simple things from Burlington Northern, how many
 13 days a week are you going to serve our railroad that work
 14 with fresh cars, inbound cars. How many days -- and then
 15 usually the -- not only do they bring cars, but they take
 16 the ones that are outbound. And we have a joint use track,
 17 interchange track.
 18 So they wanted to know something about that.
 19 That's one good reason for calling Burlington Northern.
 20 Another good reason is to call the short line rail office
 21 and they talked to the AVP down there, and they say, This
 22 guy, Cole, is he nuts or does he know what he 's talking
 23 about. And they love us. So I don't have to worry about
 24 them, you know, raining on our parade.
 25 Q. Okay.

1 A. Because they -- I mean, that's why it dwindled
 2 down -- people said this whole thing back in the Tom Payne
 3 days, as just too many conditions here. The Port has got
 4 all the goofy conditions. And then the Burlington Northern
 5 had some. One of the worst things about this is the port
 6 only offered two 10-year terms for operating the railroad.
 7 Jesus, put a tie in the ground, it will last 50 years.
 8 We're not digging them up again.
 9 Q. Right. At the time that you wrote this letter,
 10 was there any kind of a completed agreement with WATCO
 11 about what they'd do on the line?
 12 A. I don't think so.
 13 Q. Is there today?
 14 A. Doug would know.
 15 Q. Is there today?
 16 A. I don't think so. Doug would know.
 17 Q. Okay.
 18 (Exhibit Number 115 marked.)
 19 Q. (By Mr. Cohen) Mr. Cole, showing you what's been
 20 marked as Exhibit 115, have you seen this document before?
 21 A. I don't know that I have. I don't think so. I'm
 22 sure Doug has seen it.
 23 Q. So if you look at the third paragraph.
 24 A. 1, 2, 3.
 25 Q. Read that paragraph for a second.

1 A. Okay.
 2 Q. So here is WATCO outlining the next steps in
 3 reestablishing rail service on the line.
 4 A. Well, at least in their view.
 5 Q. In their view, right?
 6 A. This is how they do it. Again, they're much
 7 bigger than we are. They can throw their weight around
 8 more.
 9 Q. I see three steps that they've outlined there.
 10 A. Yeah.
 11 Q. First they, and I'm just quoting, "First is to
 12 gauge customer commitment by requiring take or pay
 13 agreements associated with car volumes"?
 14 A. Yeah, so that's like, how many cars a week do you
 15 think you'd normally get? Well, we think we get three.
 16 Then, if they don't take them, WATCO exacts a penalty if
 17 they're only consistently taking one car a week. They
 18 write some kind of a contract on the -- of the track
 19 maintenance for the spur required to get into the property.
 20 It was based on doing 250 cars a year.
 21 We're way too small to play that game. We don't
 22 do it.
 23 Q. I was going to ask, does Ballard have any take or
 24 pay agreements --
 25 A. No.

1 Q. Let me finish -- with your customers on the
 2 freight segment?
 3 A. No, not on any of our three railroads do we do
 4 that.
 5 Q. And no take or pay agreements with any customers
 6 on the line?
 7 A. Hm-mm (answers negatively), not on any...
 8 Q. This would be future customers on the line?
 9 A. Yeah, no, we just haven't used that technique.
 10 Q. All right.
 11 A. It irritates people. And it doesn't necessarily
 12 mean you're going to get any carloads.
 13 Q. And has Ballard had any discussions with
 14 customers, this would be customers on the line, about their
 15 level of financial participation associated with the
 16 upfront cost of reactivating rail service?
 17 A. Well, you mean on the Eastside line?
 18 Q. On the line, on Woodinville to Bellevue.
 19 A. Okay. Really, the most -- the thing I usually
 20 talk about is the cost of putting in a spur to somebody's
 21 property. So we have two or three there that we've talked
 22 about today that that would need to have a spur to make it
 23 run smoothly for them and for us. So this -- the spurs
 24 take different geometry in different locations. And if you
 25 have -- if somebody says, Well, I'll take three cars a

1 week, is what I build them on, if you build them a three
 2 car siding that can hold that week's inbound shipment of
 3 goods.
 4 And so I just handle each one of the new
 5 industries as a unique thing. And I just figure out how
 6 long the siding needs to be and where it's going to be.
 7 And then we have to put in some culverts because it crosses
 8 two little streams or what the details are, grade crossing,
 9 goes across a county road maybe, or private road. Each one
 10 is unique.

11 But we have -- we recently had one company that
 12 turned down an opportunity to have their own siding instead
 13 of sharing siding. And it also had to do with building a
 14 really good terminal for loading waste motor oil with a big
 15 containment tank and actually a wall and roof building. So
 16 you don't fill your containment tank with water and then
 17 contaminate it with 5 gallons diesel fuel, and now you got
 18 two gallons of weak diesel and they turned it down

19 Q. Is this on the Eastside Rail corridor?
 20 A. No, it's down at Meeker. And they're going to
 21 be -- we're not going to be handling their stuff anymore.
 22 Q. My question relates to Watco's inquiry, have you
 23 talked to any of the perspective customers on the line,
 24 Woodinville to Bellevue, about their sharing in the cost of
 25 building a spur to serve their business?

1 A. Well, I've talked to, let's see, the bakery
 2 doesn't need anything. Their spur is in good shape, it's
 3 all there. No track is going to be moved. It can be used
 4 tomorrow if you could hook Bellevue to, you know,
 5 Woodinville.

6 The other ones that might move there are people
 7 might -- like the truckers that are in this hauling away,
 8 the surplus low-grade dirt that is in these basements that
 9 get excavated for really tall buildings. So those people
 10 don't need much of a facility, all they need is a place, a
 11 track surrounded by asphalt apron at track level so that
 12 the wheel loader can drive around, scope the dirt and dump
 13 it in the car.

14 So that stuff exists at Bellevue. I'm not saying
 15 we have the rights to it yet. But the fact systems are
 16 there

17 Q. Let's go at this a different way. Have you had
 18 any discussions with RJB about -- this is in Kirkland,
 19 about the cost of building a spur into their property and
 20 what they would pay for it?

21 A. I haven't -- I don't know RJB. All I know is a
 22 little bit of what Doug has talked to me about. But I'm
 23 sure, you know, I think they used to have a spur on one of
 24 their properties. And so maybe we could, you know, put
 25 another one in there. Some of those spurs only just got

1 yanked out a few months ago, which is, you know, it's
 2 heartbreaking if you're a small business and you see what
 3 could be done and you can't get the Surface Board to listen
 4 to you.

5 Q. So you've had no discussions with RJB?
 6 A. Is that bad?
 7 Q. Please, I'm not commenting, I'm just asking you.
 8 A. Okay, I haven't.
 9 Q. Do you know if anyone else at Ballard has?
 10 A. I would imagine Doug has talked to them.
 11 Q. We'll ask.

12 A. Which he's not a Ballard employee. We're
 13 business partners here in this thing.
 14 Q. Have you had any discussions with CT Sales about
 15 building a spur into their property?
 16 A. Let's see, I can't think where they are in the
 17 scheme of things.
 18 Q. I guess you said you hadn't talked to CT Sales at
 19 all?

20 A. Are they in Kirkland?
 21 Q. I don't know.
 22 A. Well, save the question, ask Doug.
 23 Q. We'll do that. Has Ballard negotiated any
 24 operating or use agreements with WATCO? I know you said
 25 you haven't signed any, but have you --

1 A. No, I haven't negotiated with them at all.
 2 Q. Anyone else with your company?
 3 A. No.
 4 Q. Okay.
 5 A. I think our only contact is Doug.
 6 Q. Mr. Cole, you've mentioned that Doug Cole may
 7 have had involvement in many of these various -- I'm sorry,
 8 Doug Engle. Is Mr. Engle authorized to conduct
 9 negotiations or make representations on behalf of Ballard
 10 Terminal Railroad?

11 A. Yeah, in that informal way. We didn't sign a
 12 contract. But I've known Doug now -- I met Doug when he
 13 was working with Tom Payne, when I was in the process of
 14 developing a relationship with Payne, and we finally, at
 15 Burlington Northern's urging, submitted the joint bid to
 16 the company.

17 MR. PASCHALIS: Can I ask that the question
 18 be repeated.

19 (Question on Page 104, Lines 6 through 10
 20 read by the reporter.)

21 MR. PASCHALIS: Okay. You can ask the next
 22 question.

23 Q. (By Mr. Cohen) Are you done with your answer?
 24 A. Yeah, I mean, I've known Doug long enough that he
 25 is who he is. He's a hard working guy. And if I saved all

1 of the most interesting parts of this venture for me to do,
 2 I'd go nuts because I don't have the time. I already got
 3 three railroads and we're looking at a fourth, although
 4 it's going to be hooked into the end of the third one.
 5 So you have to trust somebody and he probably
 6 does, I don't know. He's good or better job than I would
 7 do. It's not like I didn't know he was doing this
 8 Q. To your knowledge, has Ballard had any e-mail or
 9 other written communications with WATCO about their role on
 10 the Eastside Rail corridor?
 11 A. I haven't gotten anything from WATCO.
 12 Q. Sent anything to WATCO?
 13 A. And I haven't sent anything. James, my operation
 14 manager, that's not part of what he does. He's a
 15 day-to-day guy seven days a week.
 16 Q. So you're not aware of any e-mail or other
 17 communications with WATCO from or to Ballard?
 18 A. I think Doug would have done the only ones that
 19 were done.
 20 Q. Okay.
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 13 [BEGINNING OF CONFIDENTIAL SECTION]
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1 Q. (By Mr. Cohen) Okay.
2 (Exhibit Number 117 marked.)
3 MR. COHEN: So let me note that 117 is not a
4 confidential document and the confidentiality restrictions
5 do not apply to the questions that follow.
6 Q. (By Mr. Cohen) Mr. Cole, showing you what's been
7 marked as Exhibit 117. Could you read that e-mail and tell
8 me when you're done?
9 A. I'm done after the first sentence because I don't
10 want Doug to put me into the box quite yet.
11 Q. Read the whole thing. And let me know when
12 you're done.
13 A. Do you have the attached support log?
14 Q. I don't. Well, I think these are -- I'll just
15 say I don't.
16 Have you read the e-mail?
17 A. Almost.
18 Q. Okay.
19 A. I'm done.
20 Q. Okay. Were you copied on this e-mail?
21 A. No.
22 Q. Never seen it before?
23 A. No.
24 Q. Do you know who Michael Pratt is?
25 A. No.

1 Q. You already said you don't know Mark Blazer?
2 A. Nope.
3 Q. So Doug Engle says you're very near retirement,
4 is that true?
5 A. My wife would like me to retire. I figured I
6 could work long enough to see if this thing was either a
7 success or just growing up weeds. It's good to have a
8 challenge in your life, something to do. I don't get in my
9 wife's way inside the house sitting there watching TV.
10 Q. So do you have a plan to retire from Ballard
11 Terminal?
12 A. I'm not going to work forever. I don't know when
13 it is.
14 Q. You don't know?
15 A. I'm sticking with this because I'm a
16 stick-with-it guy. And I'm going to ride it out to see if
17 we can make this thing work. Maybe we can and maybe we
18 can't. It would be really helpful if the god damn Surface
19 Board wouldn't have let you rip up the track or your plans
20 to rip up the track. It doesn't make me think good things
21 about the government. There's only two agencies that
22 regulate us, FRA and the STB, and this is letting us --
23 MR. PASCHALIS: Mr. Cole, let's focus on the
24 questions you're being asked.
25 THE WITNESS: I was deadily focused on them.

1 MR. PASCHALIS: I understand.
2 Q. (By Mr. Cohen) So this e-mail was written on
3 November 26th?
4 A. I don't know. That's quite a while ago now.
5 Q. So Doug says, "I spoke with Byron Saturday about
6 transitioning his service to WATCO with general consensus
7 that it needs to happen sometime sooner than later."
8 Do you recall that conversation?
9 A. No, I'm not sure we had that.
10 Q. You don't recall that at all?
11 A. No.
12 Q. Saturday, November 23rd?
13 A. God, I don't have any idea. It was Thanksgiving.
14 Q. Have you --
15 A. I'm not in a position here working for Doug, so I
16 can run my own company as long as I choose to.
17 Q. Well, Doug says here that "ECRR," that's Eastside
18 Community Rail, "has hired Ballard" -- "hired Ballard on a
19 one year term ending April 2014 to continue providing
20 freight operations."
21 A. I don't know anything about that letter.
22 Q. Do you know, have you had any discussions with
23 Doug Engle about serving beyond April 2014?
24 A. Neither way.
25 Q. Has Ballard extended -- I'm sorry, has Eastside

1 MR. PASCHALIS: Okay.
2 (Exhibit Number 119 marked.)

3 Q. (By Mr. Cohen) Showing you what's been marked as
4 Exhibit 119, Mr. Cole. Can you identify that document for
5 me?

6 A. Well, it's about a crossing on Yew Way. Let's
7 see, what's the date on this thing? Ancient history. So
8 the short story is, last weekend we put in a brand-new
9 automatic crossing gate, three pairs of flashing lights,
10 35-foot long fiberglass gate arm to replace the one that
11 was wiped out quite a while ago.

12 Q. This happened last weekend?

13 A. The installation was completed last weekend,
14 yeah, I mean, Saturday, Sunday. And I think they got --
15 the crew often works Saturday, Sunday and Mondays, but I
16 think they were done in two days.

17 Q. Who paid for that work?

18 A. Me.

19 Q. You or Ballard Terminal Railroad?

20 A. Well, Ballard Terminal.

21 Q. And that work was done on February 8th and 9th,
22 2014?

23 A. Last Saturday and Sunday, if that's the 8th and
24 9th, that's it.

25 Q. What did it cost?

1 A. The replacement machine was about \$13,000. And
2 I'll probably get a bill from the signal maintainer, who is
3 a contractor, for, I don't know, 5,000 or something like
4 that. There's way more to the story of that goofy
5 intersection than us fixing the signal back.

6 Q. Are you planning to cover that cost as Ballard or
7 are you planning to seek reimbursement from somebody else?

8 A. I'd like to seek reimbursement from the county
9 for having such poorly striped and delineated and
10 barrierized intersection. The intersection should be
11 closed. And I actually asked for a WTC inspection of it as
12 it stands right now, because the painting is terrible.
13 It's all faded out. There's three stop bars that they
14 ground out, for goodness sake, with some kind of -- they
15 wanted to get rid of the paint, they ground it out with
16 some kind of abrasive lawn mower.

17 And we get along real well with Snohomish County
18 Public Works, but they're adamant about not striping it,
19 putting up an advance warning sign, redoing the three stop
20 bars. And so I'm asking the WTC rail office to help me out
21 there. It's too heavy a lifting for us.

22 Q. Did you make that request in writing?

23 A. No, I just phoned them.

24 Q. The county was asking that all this happen in
25 November, how come it has waited until February 8th?

1 A. Well, I don't know. No particularly good reason,
2 I guess. The knocking down of the crossing was a hit and
3 run with an 18 wheeler, and there, you know, there's no
4 police. It's unincorporated town, so nobody saw a thing.
5 I figured that because it was the county, the whole thing
6 should be on their shoulders. They thought railroad should
7 be responsible.

8 Q. Okay.

9 A. So anyway, I finally replaced the gate arm and,
10 you know, the whole mechanism. And so, that part is
11 working, but I said -- well, then your part is to at least
12 fix these three stop bars, fill them back in with the putty
13 or plastic or whatever you can use in the wintertime. And
14 they said, Oh, we can't do that. I said, Also, the fog
15 lines that go up the sides of the road are all disappeared
16 with cars running over them, there's nothing there. I said
17 that needs to be done.

18 Well, we'll put that on our list to do in first
19 of spring. We have to use this green -- environmentally
20 green paint and we can't use it when it's raining. That's
21 wonderful for Western Washington, right. So I'm not sure
22 what's going to happen there.

23 Q. In any event, are there now working signals and
24 crossing gates in both directions?

25 A. There's always been one in one direction.

1 Q. Right.

2 A. Only one got knocked down. But the other one,
3 new one is there. I haven't been up to see it yet, but the
4 report I got from our signal maintainer was that it was all
5 working perfect. And the problem is that the real -- the
6 most serious problem is there's no white painted -- only
7 12 inches wide and as wide as the lane is to tell the
8 driver where the heck the gate arm is going to come down so
9 it doesn't come down on the windshield of his car.

10 Q. Okay.

11 A. Those people don't -- I called around and I found
12 a painter that we use for our crosswalks on our Meeker
13 Southern line, the guy says, Heck, I'll come up there and
14 do it. It will only take me a few hours.

15 So, I wish Snohomish County Public Works would --
16 if I could get high enough up in the organization there, I
17 can just talk to the boss and say, Look, we have a problem
18 here, can you help me fix this and let's do it right.

19 Q. Okay. Hold on a second, Mr. Cole.

20 A. That's the story.

21 Q. Thank you.

22 MR. COHEN: I have no further questions.

23 THE WITNESS: Good.

24 MR. COHEN: Gentlemen, do you have anything?

25 MR. MARCUSE: Can we shake a short recess

1 and come back.
 2 MR. PASCHALIS: Yes.
 3 (Recess taken from 2:36 to 2:50 p.m.)
 4 MR. MARCUSE: Back on the record.
 5
 6 EXAMINATION
 7 BY MR. MARCUSE:
 8 Q. Mr. Cole, I'm Andrew Marcuse of King County. I
 9 had just very few follow-up questions. Can we show the
 10 witness what's been previously marked as Exhibit 62, which
 11 is the December 6th filing.
 12 MR. FERGUSON: So can we just go off for a
 13 second.
 14 (Discussion held off the record.)
 15 Q. (By Mr. Marcuse) So, Mr. Cole, you've been
 16 handed what is marked previously as Exhibit 62. If you
 17 could please turn to Page 5. You'll see there's a 5 in the
 18 center of the page and a little 8 at the bottom right-hand
 19 corner of the page.
 20 A. Okay.
 21 Q. Do you see there's two paragraphs in the middle
 22 there, the first full paragraph and the second full
 23 paragraph, one begins, "Also attached hereto," and the next
 24 one begins, "Finally Ballard has engaged."
 25 A. Okay.

1 Q. Could you please read those two and let me know
 2 when you're done reading.
 3 A. Okay.
 4 Q. Have you finished reading it?
 5 A. Just this batch, is it?
 6 MR. PASCHALIS: I believe that's what he
 7 asked you to read, yes.
 8 THE WITNESS: Just the two paragraphs?
 9 Q. (By Mr. Marcuse) Yes, sir.
 10 A. I read them.
 11 Q. To your knowledge, has Ballard Terminal Railroad
 12 engaged the services of EB5 Capital Partners?
 13 A. Well, I heard Doug talk about it.
 14 Q. Have you as a manager of BTR engaged EB5 Capital
 15 Partners?
 16 A. Not directly.
 17 Q. Has anyone else who was actually employed by
 18 Ballard Terminal Railroad engaged the services of EB5
 19 Capital Partners?
 20 A. I wouldn't think so.
 21 Q. Thank you. Have you communicated with anyone
 22 from Coastal Community Bank?
 23 A. No, I think that's Doug's bank.
 24 Q. Has anyone else that is directly employed by
 25 Ballard Terminal Railroad communicated with Coastal

1 Community Bank?
 2 A. I don't think so.
 3 Q. Have you communicated with anyone from
 4 AmericanWest Bank?
 5 A. Yes.
 6 Q. Can you please --
 7 A. That's our bank.
 8 Q. Can you please describe those communications?
 9 A. First of all, it used to be a bank under a
 10 different name, Viking Bank that's in Ballard. When we
 11 started our company, we tried to use the local industries
 12 and businesses because we were small, some of them were
 13 small. We've had an account at Viking Bank, which was
 14 recently bought out by AmericanWest. Some of the old
 15 managers are still there. And there's obviously some new
 16 people. Anyway, I had an appointment with one of the vice
 17 presidents there to see how our line of credit looked and
 18 if they needed to borrow some money, did they have some to
 19 borrow. It was a cordial thing. He wrote us a letter. I
 20 guess you probably have it somewhere.
 21 Q. Who wrote the letter?
 22 A. The banker.
 23 Q. Do you remember his name?
 24 A. Not offhand. It would be only one letter.
 25 Q. Did he write the letter?

1 A. Yeah. I said I have some time right now, he sat
 2 down and word processor and banged it out. I looked at it
 3 and offered a few changes and made those changes and we're
 4 done. I mean, he also took a few minutes to bring up our
 5 account on his computer, if we're paying our bills, we
 6 have. The locomotive we have here, purchased for 50,000
 7 bucks for Eastside Railroad and put some more, about
 8 another 50 of it of our own money. We're paying back on a
 9 \$50,000 line of credit. We're making the payment, he's
 10 happy. Told us we could borrow more money.
 11 Q. You said that you offered some suggestions for
 12 the letter; is that correct?
 13 A. Yeah. I can't remember what they were. It
 14 wasn't like changing the whole tone of the thing. I don't
 15 recall the details. It was not like he had to do a
 16 complete rewrite. It was, you know, save, that much
 17 (indicating).
 18 Q. Okay. I'd like to direct your attention back to
 19 that second paragraph on Page 5 in the last sentence, that
 20 first full paragraph, where it says, "Each of those banks
 21 stands ready willing and able to financially participate in
 22 the restoration associated with the reactivation of the
 23 subject railroad."
 24 Do you see that sentence?
 25 A. I see.

1 segment between -- with respect to the freight operations
2 on the segment between Snohomish and Woodinville, you guys
3 have a formal partnership, correct, or a formal agreement?

4 A. There might be a piece of paper. Yeah. I had
5 some very elaborate ones that came from Tom Payne, I mean,
6 pages and pages, and I rejected those with Tom.

7 Q. Let me ask you a question, is it fair --

8 A. Make one a lot simpler.

9 Q. It's fair to say that Eastside Community Rail
10 owns operating rights over the freight segment and that
11 Ballard operates that line, correct?

12 A. Yes. We provide the train service, we provide
13 the crews, we provide the mode of power, we provide the
14 caboose. And we also control the weeds that grow up along
15 the line seasonally. We spray in the spring and so forth
16 and so on. And there hasn't been very much track work to
17 do anything to -- it's excepted track, but it's very good
18 excepted track. So it's not like most of the ties are in
19 pretty good darn shape. For excepted track you only need a
20 few good ties per rail length.

21 Q. And excepted track is capable of having freight
22 operations?

23 A. Freight train operations, 10 miles an hour.

24 MR. COHEN: I'm going to object. Hold on,
25 Mr. Paschalis. You're leading the witness consistently.

1 You want to ask him questions, try not to lead him.

2 MR. PASCHALIS: Noted.

3 Q. (By Mr. Paschalis) So what kind of operations
4 are permissible on excepted track?

5 A. Okay. Well, first of all, only freight and not
6 passenger.

7 Q. Thank you. There was some discussion earlier
8 about communications with the shippers and the finances
9 that had been identified in this case?

10 A. Mm-hm (answers affirmatively).

11 Q. Do you remember that?

12 A. I do.

13 Q. And you described your communications with
14 certain shippers, do you recall that?

15 A. Yeah.

16 Q. And you had stated that Mr. Engle has
17 communications with other shippers and other entities that
18 are involved in this, is that accurate?

19 A. That is. He has reached out much more than I
20 have. I have a day job running the three railroads and he
21 doesn't, so he's got more time to do those kind of things.
22 It's fine with me.

23 Q. Are you comfortable with that arrangement?

24 A. Yeah.

25 Q. Okay.

1 A. If we didn't have a guy working as hard as Doug
2 works, we wouldn't make any forward progress at all. It's
3 a pretty big deal to stick together.

4 Q. And did you rely on Doug's reports of his efforts
5 when you drafted your letter to the STB dated December 5th,
6 Exhibit Number 63?

7 MR. COHEN: I think I'm going to object on
8 grounds that you're mischaracterizing the witness's
9 testimony. I believe he said that he and Doug Engle
10 drafted that letter.

11 THE WITNESS: Well --

12 MR. PASCHALIS: Can you repeat the question.

13 (Question on Page 143, Lines 4 through 6
14 read by the reporter.)

15 Q. (By Mr. Paschalis) That's in reference to the
16 letter you signed?

17 A. That's what this one is.

18 Q. So --

19 A. So if you waited for me to write all the
20 letters --

21 Q. That's not my question.

22 A. -- they wouldn't be written.

23 Q. That's not my question.

24 A. Doug is the guy to do it.

25 Q. The question is, did you rely on information

1 provided by Doug?

2 A. For this.

3 Q. Correct.

4 A. It's got more of his stuff in it than mine, but
5 I'm the guy that went to my bank, came away with a nice
6 letter, saying, Hey, go for it, we'll back you up.

7 Q. So did you rely on Doug for some of the
8 information?

9 A. Well, he's the guy who has contacted WATCO. It's
10 okay with me that he contacted WATCO. For that matter,
11 he's kept in closer contact with our friend in Chicago that
12 has the other short line interest there --

13 Q. Okay.

14 A. -- who I've known for a long time through Penwars
15 [phonetic], though, but he's a good egg and he has helpful
16 ideas for us. I don't know if I would have said I was
17 excited to work with WATCO companies. It takes more than
18 that to get me excited.

19 Q. In the first paragraph on Page 2, there are
20 projections for railcar counts. Do you see that?

21 A. 3535 here.

22 MR. COHEN: Mr. Paschalis, could you clarify
23 what document you're looking at.

24 MR. PASCHALIS: I'm looking at Page 2 of
25 Exhibit 63.

1 Q. Sure.
 2 MR. PASCHALIS: I think we are done. With
 3 respect to signature, you have the option to review the
 4 testimony to make sure that there's no errors in
 5 transcription and I would advise that we do that --
 6 THE WITNESS: Okay.
 7 MR. PASCHALIS: -- that you do that. With
 8 that, we're done. Thank you, Byron.
 9 THE WITNESS: Okay.
 10 MR. PASCHALIS: Off record now.
 11 (The deposition concluded at 4:00 p.m.)
 12 (Signature was reserved.)
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1 CERTIFICATE
 2 STATE OF WASHINGTON)
 3) ss
 4 COUNTY OF KING)
 5 I, the undersigned Washington Certified Court Reporter,
 6 pursuant to RCW 5.28.010, authorized to administer
 7 oaths and affirmations in and for the State of Washington,
 8 do hereby certify: That the foregoing deposition of the
 9 witness named herein was taken stenographically before me
 10 and reduced to a typed format under my direction;
 11 That, according to CR 30(e), the witness was given
 12 the opportunity to examine, read and sign the deposition
 13 after same was transcribed, unless indicated in the record
 14 that the review was waived;
 15 That all objections made at the time of said
 16 examination have been noted by me;
 17 That I am not a relative or employee of any attorney
 18 or counsel or participant and that I am not financially or
 19 otherwise interested in the action or the outcome herein;
 20 That the witness coming before me was duly sworn or
 21 did affirm to tell the truth;
 22 That the deposition, as transcribed, is a full, true
 23 and correct transcript of the testimony, including
 24 questions and answers and all objections, motions and
 25 exceptions of counsel made at the time of the foregoing
 examination and said transcript was prepared pursuant to
 the Washington Administrative Code 308-14-124 preparation
 guidelines;

 Katie J. Nelson, CCR, RPR,
 Certified Court Reporter 2971 for
 the State of Washington residing
 at Redmond, Washington. My CCR
 certification expires on 10/22/14.

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 8 Thursday, February 20, 2014
 9 To: THOMAS C. PASCHALIS
 10 FLETCHER & SIPPEL, LLC
 11 29 North Wacker Drive, Suite 920
 12 Chicago, Illinois 60606
 13
 14 Re: Ballard Terminal Railroad
 15 Deposition of: BYRON COLE
 16 Date Taken: Wednesday, February 12, 2014
 17
 18 PLEASE TAKE NOTICE THAT:
 19 Enclosed are two forms: "Affidavit" and a "Correction
 20 Sheet." Instruct the deponent to review the deposition,
 21 record any corrections on the Correction Sheet, and sign
 22 the Affidavit before a Notary Public. Return both forms to
 23 this office for their inclusion in the original transcript
 24 and distribution to other parties. The transcript will be
 25 forwarded to the appropriate party: _____
 Thank you for your assistance in obtaining signature.
 By: Katie J. Nelson, RPR, CCR, CCR No. 2971
 cc: Mr. Cohen, Mr. Ferguson, Mr. Wagner, Mr. Marcuse

1 AFFIDAVIT
 2 STATE OF WASHINGTON)
 3) ss.
 4 COUNTY OF KING)
 5 I have read my within deposition, and the same is
 6 true and correct, save and except for changes and/or
 7 corrections, if any, as indicated by me on the
 8 "CORRECTIONS" flyleaf page hereof.
 9 _____
 10 BYRON COLE
 11 SUBSCRIBED AND SWORN to before me
 12 this _____ day of _____, 2014.
 13
 14 _____
 15 NOTARY PUBLIC in and for
 16 the State of _____,
 17 residing at _____.
 18 My commission expires
 19 _____
 20
 21
 22
 23
 24
 25

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7 CORRECTION SHEET

8 PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY
9 PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

10	PAGE	LINE	CORRECTION AND REASON
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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
 PAUL NERDRUM

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600
 Seattle, Washington

DATE: Wednesday, February 12, 2014
 REPORTED BY:Katie J. Nelson, RPR, CCR
 CCR NO.: 2971

1 documents in your control relating to Ballard Terminal
 2 Railroad?
 3 A. As it relates to this matter? No.
 4 Q. Are there any agreements or contracts between
 5 Salmon Bay Sand & Gravel and Ballard?
 6 A. Salmon Bay and Ballard have an agreement for an
 7 M&O for Ballard Terminal Railroad.
 8 Q. M&O means what?
 9 A. Maintenance and operations.
 10 Q. Did you bring a copy of that with you today?
 11 A. That's the document I was looking for because I
 12 know one exists. I could not find it. So it may be in
 13 Byron's records.
 14 Q. And you have no documents relating to Ballard's
 15 proposal to reactivate rail service on the Eastside Rail
 16 corridor?
 17 A. No. None.
 18 Q. Okay.
 19 (Exhibit Number 121 marked.)

20 Q. (By Mr. Cohen) Mr. Nerdrum, showing you what's
 21 been marked as Exhibit 121, could you identify this
 22 document for me.
 23 A. It was a letter that I wrote to support Ballard's
 24 position on maintaining the freight rail service on the
 25 section of the line south of our freight segment.

1 Q. Did you draft the letter?
 2 A. I did not draft the letter.
 3 Q. Who did?
 4 A. Doug.
 5 Q. Doug Engle?
 6 A. Doug Engle.
 7 Q. But that is your signature at the end?
 8 A. That is correct.
 9 Q. Can you vouch for the statements made in the
 10 letter?
 11 A. I think they're all accurate.
 12 Q. You're the majority owner of Ballard Terminal
 13 Railroad?
 14 A. Correct.
 15 Q. I think Mr. Cole testified that you own
 16 99 percent of the equity interest; is that correct?
 17 A. That is correct.
 18 Q. And he owns the other one percent?
 19 A. That is correct.
 20 Q. Ballard is organized as an LLC?
 21 A. Correct.
 22 Q. And there are two members?
 23 A. Just two members.
 24 Q. You and Mr. --
 25 A. Byron --

1 Q. -- Mr. Cole?
 2 A. -- cole.
 3 Q. Did you have any railroad experience prior to the
 4 start up of Ballard Terminal Railroad?
 5 A. I did not.
 6 Q. There are three lines today, correct?
 7 A. Yes.
 8 Q. Are any of them profitable?
 9 A. Yes.
 10 Q. Which?
 11 A. Meeker Southern is the, probably the shining star
 12 of the three.
 13 Q. Are you making any money in Ballard?
 14 A. Probably just about a portion.
 15 Q. And how about on the freight segment?
 16 A. The Woodinville Snohomish segment?
 17 Q. Yes.
 18 A. Yeah, from year to year, we've had some years
 19 better than others, but lots of good opportunities there.
 20 Q. Opportunities or actual profits?
 21 A. We've had profits, but we look forward to
 22 increasing those, so that's the opportunities side of that.
 23 Q. Was the freight segment profitable in 2013?
 24 A. I don't know yet.
 25 Q. How about 2012?

1 A. I don't recall.
 2 Q. Let me show you what's been marked as
 3 Exhibit 109.
 4 MR. COHEN: Actually, I guess, Katie, I need
 5 to give him the real exhibit.
 6 Q. (By Mr. Cohen) Mr. Nerdrum, showing you
 7 Exhibit 109, have you seen that letter before?
 8 A. No, I have not.
 9 Q. It's the first time you've ever seen it?
 10 A. Correct.
 11 Q. So it represents that Ballard Terminal Railroad's
 12 total railroad operations revenue in 2013 was a little more
 13 than \$900,000?
 14 A. Yes.
 15 Q. That its expenses were a little more than
 16 \$900,000?
 17 A. Correct.
 18 Q. Do those numbers look right to you?
 19 A. Yeah, I'd say that looks right.
 20 Q. The term "railroad operations revenue," does that
 21 include all revenue that the railroad received from any
 22 source?
 23 A. I don't know. I would assume that it does. But
 24 I don't know.
 25

1 Q. What portion?
 2 A. When you said they're marginal. When we started
 3 the Ballard Terminal in Ballard, which was our first short
 4 line, we had two initial shippers on the line, which added
 5 more car volume. And those shippers were frozen fish
 6 product coming down from Alaska being trans-loaded to rail,
 7 and incoming furniture to a furniture sales company that
 8 was located in Ballard. And as they've gone away, it's
 9 become less viable.
 10 Q. Down to 114 cars?
 11 A. Correct.
 12 Q. And is Mr. Cole's characterization accurate that
 13 the operation of Ballard Terminal Railroad today in Ballard
 14 is mostly intended to protect Salmon Bay Sand & Gravel from
 15 bicycle traffic?
 16 MR. PASCHALIS: You said Cole but are
 17 referencing Mr. Engle?
 18 MR. COHEN: I'm sorry, I guess I am
 19 referencing Mr. Engle, thank you.
 20 THE WITNESS: No, I wouldn't agree that that
 21 is its sole existence. We rely heavily on the product we
 22 bring in by rail.
 23 Q. (By Mr. Cohen) Would you agree with Mr. Engle
 24 that he's developed a positive working relationship with
 25 you?

1 A. Yes.
 2 Q. Other than the meeting yesterday, when is the
 3 last time you saw Mr. Engle?
 4 A. I'm not sure when the last time I saw him was,
 5 maybe after the first of the year, but I talked to him over
 6 the phone once prior, excuse me, between then and our
 7 meeting last night.
 8 Q. About what?
 9 A. That I think it was a day or two after I was
 10 served with papers from your firm.
 11 Q. I see. Okay. So back to Exhibit 121.
 12 A. Okay.
 13 Q. Look at the first page. You have a series of
 14 representations there in the fourth paragraph about Salmon
 15 Bay Sand & Gravel. You see that?
 16 A. I do.
 17 Q. Then the last paragraph on the page begins,
 18 "BTRC, LLC is a viable business as well."
 19 Do you see that?
 20 A. I do.
 21 Q. What did you mean by that statement?
 22 A. Well, since our inception starting with no
 23 railroad experience, no equipment, no railroad knowledge,
 24 we have grown from one short line railroad operation to
 25 three short line railroad operations. And we own three

1 locomotives and we're moving a lot more freight. We have
 2 grown the asset base of the business over the 15 or 16
 3 years that we've been in business -- in business.
 4 Q. But you're still not making any money?
 5 MR. PASCHALIS: I'll object to form.
 6 Q. (By Mr. Cohen) If you'll look at --
 7 A. Yes.
 8 Q. Go ahead.
 9 A. Was that a question?
 10 MR. PASCHALIS: I don't think it was. Did
 11 you intend it to be a question?
 12 Q. (By Mr. Cohen) I think what I want is to know if
 13 you concur that the business didn't make any money last
 14 year.
 15 A. I -- we didn't take any money out of the
 16 business, but its assets continue to grow, so the value of
 17 your business continues to grow.
 18 Q. What assets did Ballard add last year?
 19 A. I don't know if we finished the build out of
 20 800 feet of additional track in our Meeker Southern line in
 21 2012 or 2013. But that would have been an asset that we
 22 grew, changed our rail crossing and added some additional
 23 trackage for customer unload.
 24 Q. Okay. If you look at Page 2 of your June 15,
 25 2013, letter, Exhibit 121, you state, "We expect no

1 difficulties in funding the necessary track rehabilitation
 2 for freight operations on the 12-mile Woodinville to
 3 Bellevue segment of the Eastside corridor."
 4 You see that statement?
 5 A. I do.
 6 Q. Have you estimated the cost of the necessary
 7 track rehabilitation for freight operations on that
 8 corridor?
 9 A. I have not.
 10 Q. So what's the foundation for that statement?
 11 A. Based on Byron's review of the 12 miles of track
 12 that was there. And what his thoughts were towards very
 13 minimal restoration or rejuvenation costs.
 14 Q. When you made this statement in June, you used
 15 the word "funding." Did you use that word to mean funding
 16 from the revenues or the assets of Salmon Bay Sand & Gravel
 17 or what did you mean by "funding"?
 18 A. Which paragraph?
 19 Q. First paragraph, Page 2, "We expect no
 20 difficulties in funding."
 21 A. I would say a combination of the two. We would
 22 first go out and look, as we had in the past, for
 23 rehabilitation funds, which are made available through the
 24 state of Washington for qualified short line operators
 25 and/or municipalities or others. And they can come either

1 in the form of loans that are usually low interest loans or
2 grants.

3 We haven't had any difficulty assessing the
4 funding for prior rehabilitative efforts, so we would go
5 out and look and see what the market had out there. And if
6 we were short, then we could see where else we could find
7 those funds.

8 Q. But at the time you signed this letter, you
9 didn't know what the cost of rehabilitating the line would
10 be?

11 A. Well, at the time, it was all in nearly an
12 excepted condition, which is just an FRA determination of
13 what level of quality the track is in. And for freight
14 rail purposes, excepted is adequate for us to be able to
15 deliver freight rail product with. And Byron's assessment
16 of it was going to require very little funding for the
17 rejuvenation of the line.

18 Q. Did he tell you how much?

19 A. I don't recall.

20 Q. You signed this statement without having a dollar
21 value in mind?

22 A. I probably did. I had developed a lot of faith
23 in his assessments over 15 years of him having managed the
24 Ballard Terminal Railroad operations.

25 Q. Okay. Let me try another statement on you.

1 Mr. Nerdrum, have you ever seen Exhibit 62
2 before?

3 A. Yes.

4 Q. So this is the statement that your lawyers filed
5 with the Surface Transportation Board on December 6th. I'd
6 like you to turn to Page 4 of that statement.

7 The paragraph that starts, "Ballard is a bona
8 fide petitioner."

9 A. Correct.

10 Q. You'll see most of the way through that paragraph
11 a statement that I'm quoting, "Mr. Nerdrum, has thrown his
12 full financial support behind Ballard and this project, as
13 detailed in the letter which he previously submitted in
14 this proceeding and which is again, also again attached
15 hereto."

16 Is that an accurate statement?

17 A. I think my words were probably, Salmon Bay will
18 do whatever we can to support Ballard in their efforts to
19 rehabilitate these records and return it back to use.

20 Q. Whatever you can?

21 A. Yes.

22 Q. Is that the same as your full financial support?

23 A. I wouldn't interpret it that way, no.

24 Q. Take a look at 112. If you look at Page 2 of
25 Exhibit 112.

1 A. Okay. Oops. I go Page 1 and then it goes to
2 Page 4.

3 Q. Well, it's Page 4 I want you to look at it. It's
4 actually Page 2 of the exhibit but it's part of a larger
5 filing.

6 So this is Mr. Cole speaking. And I'd like you
7 to look at the last line on that page. Referring to you,
8 "As he wrote in his letter, he expects to be able to
9 finance the reactivation of the additional 12 miles being
10 sought in this action."

11 Is that an accurate statement of your position?

12 A. Not in whole. To help finance would be accurate.
13 But not in whole.

14 Q. So what kind of help financing the reactivation
15 are you prepared to offer?

16 A. I'd have to see what it's going to take when we
17 get there. I don't have a hard answer for that yet.

18 Q. No commitment beyond help?

19 A. Well, that's a commitment, beyond that, I don't
20 know.

21 Q. You can't quantify it?

22 A. Correct.

23 Q. Okay. Back to your letter on Page 2, first full
24 paragraph, the one that says, "We expect no difficulties in
25 funding the necessary track rehabilitation."

1 A. Correct.

2 Q. Did you have a dollar value in mind when you made
3 that statement?

4 MR. PASCHALIS: Objection; asked and
5 answered.

6 THE WITNESS: I did not have.
7 (Exhibit Number 123 marked.)

8 Q. (By Mr. Cohen) Mr. Nerdrum --

9 MR. PASCHALIS: Let me stop right now since
10 this is an August 20th letter, I will go back to the
11 question regarding the conference that we had. What is
12 the, you know, relation that you intend to ask about?

13 MR. COHEN: I'm really wanting to ask him
14 whether a statement made in that letter represents his
15 position today.

16 Q. (By Mr. Cohen) And that is your signature at the
17 end of the Exhibit 123?

18 A. Correct.

19 Q. On Page 3 of that letter, middle paragraph, the
20 one that starts, If the rails come out?

21 A. Correct.

22 Q. Would you read that statement?

23 A. "If the rails come out, there is only a very slim
24 chance of them being restored. This is a very real harm,
25 especially when a short segment in the middle of a long

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
 SCOTT DAY

Taken at 123 Fifth Avenue
 Kirkland, Washington

DATE: February 7, 2014
 REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

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1 Monroe where they are also leasing -- well, actually, they
 2 are not leasing. They pay a royalty. They dredge the
 3 material out of there and pay a royalty to the owners that
 4 own the land there and then process it.
 5 Q. Any where else?
 6 A. I think they have a couple of other little places
 7 that they haven't developed up yet, but I really don't know.
 8 Q. When Aggregates West is going to make a delivery of
 9 material to a customer, does material come straight from the
 10 source point? So one of these pits that you have just
 11 listed, does it go straight from there to the customer's
 12 deliver site?
 13 A. Typically, yeah.
 14 Q. Are there any other facilities that Aggregates West
 15 uses as part of its business operations?
 16 A. They used to have a laydown yard in Everett
 17 where -- they were operating out of Lumi Island, their quarry
 18 out of there, but they closed that one down recently, and
 19 that actually has a rail spur on it. And they used to supply
 20 to Burlington Northern.
 21 Q. The railroad?
 22 A. Yeah, and stuff like that. So I know that they
 23 have had experience with rails and with barging and whatnot
 24 from Lumi, but I was not involved with the company at that
 25 time.

1 Q. So let me come back here. You said they formerly
 2 had this laydown yard in Everett, right?
 3 A. Yeah.
 4 Q. And that is where they had some sort of access to
 5 rail?
 6 A. Mm-hmm.
 7 Q. But you said that the company no longer has this
 8 site?
 9 A. No, they don't.
 10 Q. Can you explain to me what happened with the
 11 Everett yard.
 12 A. Yeah. Lumi Island just was not a moneymaker for
 13 them, and so they decided to close it down, and that's where
 14 they were barging the material into, and they just decided it
 15 wasn't a viable part of their company anymore, so they closed
 16 it. They were leasing that from some construction outfit, I
 17 think BDZ or somebody like that, right there in Everett.
 18 It's right off of --
 19 Q. So are you aware of any facility of Aggregates West
 20 that currently ships any material by rail?
 21 A. No, not right now.
 22 Q. Are you aware of any facility of Aggregates West
 23 that currently has access to a rail line to make shipments?
 24 A. No.
 25 Q. Are you aware of any facility of Aggregates West

1 that could access a rail line if it were to build a spur
 2 track?
 3 A. Can you repeat that question.
 4 Q. Do you know what a spur track is?
 5 A. Yeah.
 6 Q. Can you just explain so we make sure we are on the
 7 same page.
 8 A. A spur track is a track that comes off of a main
 9 line so that you can take it into a laydown yard and load up.
 10 Q. Sure.
 11 A. Truck, trains, or whatever.
 12 Q. We are on the same page then. So do you know of
 13 any facility of Aggregates West where, if it were to build a
 14 spur track -- what I am trying to ask is this: Is there a
 15 facility where there is a main railroad line running past it
 16 and all Aggregates West would need to do is build a spur
 17 track into one of its properties?
 18 A. No.
 19 MR. PASCHALIS: I will object to the form.
 20 Q. So let's look back at your letter here, 97,
 21 Exhibit 97. Do you have it?
 22 A. Yeah.
 23 Q. All right. Do you view this letter as a request to
 24 receive rail service from Ballard Terminal Railroad Company?
 25 A. No.

1 Q. What do you take this letter to be? What was your
 2 purpose in sending it to Mr. Hatch, who then sent it on to
 3 Mr. Engle?
 4 A. Just based on some conversations and some
 5 spreadsheets or whatever, just some numbers, after talking to
 6 Mr. Engle, he said, well, we could possibly get your
 7 materials from your Monroe or even Granite Falls site to
 8 downtown Bellevue a little cheaper than doing it with
 9 trucking and probably create a laydown yard there, which
 10 would be good business for Aggregates West to have a laydown
 11 yard in Bellevue and be able to get their materials downtown
 12 Bellevue or down in that area cheaper. So I said, obviously,
 13 if it's good for our business, we can get material moved from
 14 A to Z less expensively, it's good for everybody.
 15 Q. Okay. So I want to explore a couple of things you
 16 just said. If my memory or I didn't hear you correctly, just
 17 correct me. You said you looked at some spreadsheets.
 18 A. Well, just some numbers that I think I sent to you
 19 in the e-mails. They are just rough numbers of how much it
 20 may cost to move material from A to Z.
 21 Q. Those are numbers that Mr. Engle gave you; is that
 22 correct?
 23 A. Yes.
 24 Q. And the other piece of information, materials you
 25 referenced, those are all materials Mr. Engle provided to

1 you, correct?
 2 A. Yes.
 3 Q. You said earlier that none of Aggregates West
 4 facilities currently has access to a rail line for shipment,
 5 correct?
 6 A. Correct.
 7 Q. And that there was the prospect you thought of
 8 having a laydown yard in Bellevue.
 9 A. Yes.
 10 Q. So I am going to ask you about how we are going to
 11 get the materials from the various pits to Bellevue, but,
 12 first, I want to know, what is a laydown yard?
 13 A. A laydown yard is where you have a yard where you
 14 can store your materials and have trucks come pick them up
 15 from that point.
 16 Q. So is this just sort of an open space area, maybe
 17 there is a fence around it, where gravel is just piled up?
 18 A. Yep.
 19 MR. PASCHALIS: Object to the form.
 20 Q. Is that accurate?
 21 A. Yes.
 22 Q. There might be piles of sand in the laydown yard?
 23 A. Stockpiles, yes.
 24 Q. Some kind of entry point in and out for trucks or
 25 perhaps even a railcar to be unloaded?

1 A. Correct.
 2 Q. Okay. So you were talking about having a laydown
 3 yard in Bellevue?
 4 A. Yes.
 5 Q. Doug Engle raised the possibility of there being
 6 such a thing?
 7 A. Yes.
 8 Q. Did he ever present you with a plan about where
 9 such a laydown yard might be located?
 10 A. No. And, actually, I was just sitting here trying
 11 to remember the area that he was talking about. He said
 12 there is a potential of -- I really don't remember where it
 13 was, but it was at the end of the rail somewhere.
 14 Q. I think it might be in one of these e-mails, and we
 15 will get to it.
 16 A. Yeah, it probably is.
 17 Q. The thing I really want to know is: Was the vision
 18 of having -- since none of your yards currently has access to
 19 a rail service, correct?
 20 A. Correct.
 21 Q. How are you going to get materials to the laydown
 22 yard in Bellevue?
 23 A. You know, I really don't know. They would have
 24 to -- at the beginning of the line, they would have to create
 25 a place for us to deliver to, from Monroe or something. The

1 word "vision" is a pretty strong word. It was, conceptually,
 2 if I could get my material from Monroe to downtown cheaper --
 3 but I really don't know how that would work. We have never
 4 gotten that far into our discussions. So, I mean, the point
 5 is, if I could get my material from one place to another
 6 cheaper than putting it on a truck and driving it there, we
 7 would be interested, but --
 8 Q. Gotcha. I asked you earlier about Exhibit 97, if
 9 you considered this to be a request for rail service to
 10 Ballard Terminal Railroad, and your answer was no, correct?
 11 A. Yeah. I mean, I guess my thought is we support
 12 their request, right? I mean, in the sense that, in my
 13 personal opinion, if we could explore the option of being
 14 able to ship materials cheaper to -- I guess my thought was,
 15 if I can get products from one place to another cheaper than
 16 normal, it helps the entire community.
 17 Q. Right.
 18 A. Because I can sell materials cheaper for roads and
 19 different things like that, but that's not for me to say,
 20 right?
 21 Q. I don't know. I can't answer. That is one of the
 22 rules of the way this works, but I understand what you are
 23 saying. The question really is: This letter isn't a request
 24 for rail service, right?
 25 A. No. This is a letter saying we support these guys

1 if they can provide us a cheaper service than what we are
 2 currently doing.
 3 Q. Have you ever made a request to any other rail
 4 carrier to deliver material into downtown Bellevue by rail?
 5 A. No.
 6 Q. Has Aggregates West to your knowledge made a
 7 commitment to Ballard Terminal Railroad to utilize rail
 8 service provided by Ballard?
 9 A. No.
 10 Q. Well, let me ask you first of all: You, as sales
 11 manager, would you be the likely person to seek a rate quote
 12 from transportation carriers for your materials?
 13 A. Yes.
 14 Q. Have you ever asked Ballard for a rate quote for
 15 rail service?
 16 A. Well, when Doug and I started about it, I did ask
 17 him how much it would cost, and we did talk about -- I would
 18 have to sit down and do a whole lot of figuring, how am I
 19 going to get it from A to Z via truck because we don't have a
 20 spur into our yard, and then get it down there and then
 21 offloading it. So there is shipping and handling, and there
 22 is a lot that goes into moving material.
 23 Q. Let me just clear this up: Your conversations
 24 about rail service down into Bellevue, were they exclusively
 25 with Mr. Engle?

1 A. Yeah.
 2 Q. I am just trying to understand who it was you might
 3 have talked to.
 4 A. There was a guy before Mr. Engle, and I can't
 5 remember his name, Ed or --
 6 Q. Was his name Ernie Wilson?
 7 A. Ernie Wilson, yeah, that's right. So I spoke to
 8 him.
 9 Q. So you spoke to Ernie and Doug?
 10 A. Yeah.
 11 Q. Anyone else?
 12 A. No.
 13 Q. Did you ever talk to a man named Byron Cole?
 14 A. Not that I can recall.
 15 Q. Did you ever talk to a man by the name of Paul
 16 Nerdrum?
 17 A. I don't think so.
 18 Q. Did you ever talk to a woman named Kathy Cox?
 19 A. Maybe. I think so. When Doug and I were having
 20 coffee, I believe a lady named Kathy stopped in the coffee
 21 shop, but I am not sure.
 22 Q. Do you recall having a conversation with her about
 23 freight rail service?
 24 A. No.
 25 Q. So did you ever ask Doug for a tariff for Ballard

1 Terminal Railroad's freight rates?
 2 A. No.
 3 Q. Did he ever give you a rate based on tonnage for
 4 freight service?
 5 A. Yeah. I asked him what he thought it might be, and
 6 that's -- I think one of the e-mails I sent you kind of has
 7 on there what he thought that the cost of shipping material
 8 might be.
 9 Q. Okay. You mentioned earlier that there would be a
 10 lot of different factors for Aggregates West to consider
 11 whether or not it would be cost-effective to ship rock or
 12 sand into Bellevue, correct?
 13 MR. PASCHALIS: Object to the form.
 14 A. Yes.
 15 Q. Have you undertaken any analysis or study to
 16 determine whether it would be cost-effective to do so?
 17 A. No. I wouldn't spend my time doing that until I
 18 knew exactly what the freight costs would be and things like
 19 that. I mean, I would need something more concrete to spend
 20 my time moving forward on something than a hypothetical.
 21 Q. Do you know if Aggregates West currently has any
 22 contracts to provide aggregate materials to job sites in
 23 Bellevue?
 24 A. Oh, yeah, we ship to downtown Seattle; Bellevue;
 25 Kirkland. We ship to everywhere. I shipped nearly 30,000

1 tons last month, not to Bellevue, but Seattle, Bellevue, in
 2 these areas.
 3 Q. I want to ask you, though, specifically -- you
 4 mentioned Kirkland, you currently ship aggregates materials
 5 to locations within Kirkland?
 6 A. Yeah. I am shipping to the new Google site right
 7 now, and I am shipping to -- well, I don't have a list of my
 8 customers and contacts, but, yeah, I'm sure we've got
 9 several. And then we have a lot of random customers that
 10 just come and pick up material on a picked-up basis that I
 11 don't even know where the material is going.
 12 Q. Are there specifically customers in downtown
 13 Bellevue that you ship aggregates materials to?
 14 A. Yeah.
 15 Q. Have any of these customers ever asked for you to
 16 ship them aggregates materials by rail?
 17 A. No.
 18 Q. Have you performed any study to determine whether
 19 it would be more cost-effective to ship to any of these
 20 current customers by rail, as opposed to truck?
 21 A. No.
 22 Q. All right. I would like to look at some of the
 23 e-mails that Mr. Engle and you exchanged that you sent to me.
 24 I will try to proceed with these chronologically.
 25 MR. FERGUSON: Tom, the next exhibit we are

1 going to mark, which will be 100, is an e-mail from Mr. Engle
 2 to Mr. Day, dated Friday, September 17th, 2013, at 11:41 a.m.
 3 Exhibit 100 marked for
 4 identification.)
 5 MR. PASCHALIS: Give me a moment.
 6 MR. FERGUSON: Sure. Sure.
 7 MR. PASCHALIS: What was that date?
 8 MR. FERGUSON: September 27th, 11:41 a.m. The
 9 subject is, "Reactivation support."
 10 MR. PASCHALIS: Okay, got it.
 11 MR. FERGUSON: Are you ready to start again?
 12 MR. PASCHALIS: Are you talking to me?
 13 MR. FERGUSON: Yes.
 14 MR. PASCHALIS: Yes, go ahead.
 15 Q. Mr. Day, before we talk about this e-mail with
 16 these attachments that have been marked Exhibit 100, do you
 17 recall the circumstances in which you met Mr. Engle?
 18 A. I believe Ernie introduced us, and, I believe,
 19 originally, Ernie was asking about their rail in Snohomish,
 20 and I think they had to do some repairs, and they were
 21 talking about purchasing some aggregates possibly. I believe
 22 that -- it was a long time ago, but I think that's how I met
 23 them.
 24 Q. If I am understanding you correctly, you first met
 25 Mr. Wilson in the context of his asking whether Aggregates

1 are part of this exhibit, do you recall looking at this
 2 table?
 3 A. Yeah, I glanced at it.
 4 Q. So, over in the right-hand column, there are two
 5 columns under the heading, "Annual car count." Do you see
 6 that?
 7 A. Yes.
 8 Q. Then, down in the lower, left-hand corner, there
 9 are a number of companies under the row titled, "Reactivation
 10 freight customers"; do you see that?
 11 A. Yeah.
 12 Q. At the bottom of that list it states, "Aggregates
 13 West letter pending."
 14 A. Yeah.

15 Q. Then, if you follow that row over to the right-hand
 16 two columns, underneath "Annual car count," there are two
 17 numbers that read "300" under the column titled "Initial,"
 18 and "550" under the column titled "Long-term."
 19 A. Sure.
 20 Q. Do you have an understanding of what those numbers
 21 are?
 22 A. I think that was the amount of cars that Doug was
 23 saying that, a conservative number for how much aggregate we
 24 could ship to Bellevue. So, I believe, and if I remember
 25 right, I believe that a car holds 100 tons of material. So

1 300 cars would be 30,000 tons a year.
 2 Q. Sorry, I didn't mean to interrupt you.
 3 A. No, go ahead.
 4 Q. Are these numbers that you provided today
 5 Mr. Engle?
 6 A. No. No, they're not. Okay, so where these numbers
 7 came from, I'm not 100 percent sure, but I know that he had
 8 some sort of documentation or somebody came up with a number
 9 of how much material would be coming and going out of
 10 Bellevue at one point, because there's a lot of work that's
 11 coming up in Bellevue. There's going to be a lot of cranes
 12 in Bellevue, a lot of new work coming up. And he said,
 13 "Well, how much could you ship to downtown Bellevue?" I
 14 mean, I do 30 to 60,000 tons a month. I mean, 30,000 tons to
 15 Bellevue in a year, that's a pretty conservative number, if
 16 the shipping has got the right number on it and whatnot. It
 17 just depends on supply and demand and the amount you can sell
 18 your material for, right? So, if the shipping can be less
 19 and you can get a better share of the market because you can
 20 reduce the cost of your material, then, easily, I could sell
 21 30,000 tons a year, conceivably.
 22 Q. I understand conceivably, but do you right now have
 23 any contracts to necessarily ship this amount, 300 carfuls of
 24 material to Bellevue?
 25 MR. PASCHALIS: I will object to the form.

1 A. What does that mean? Just keep going?
 2 Q. He is just doing it for the record. You can
 3 answer.
 4 MR. PASCHALIS: You can answer, sir.
 5 A. Yes. Easily, I can ship that much material to
 6 Bellevue. It depends on my cost of shipping, whether I would
 7 do it through rail or not. I mean, we easily do that much
 8 material in Bellevue and Seattle. And, from the Bellevue
 9 area, you can branch out to Redmond; Seattle; Kirkland. So,
 10 if you can get the material down to downtown Bellevue cheaper
 11 than you could by trucking it, then you would have an
 12 advantage in the market. So, conceivably, if it was cheaper
 13 to get it to downtown Bellevue, I could easily sell that
 14 amount of material.
 15 Q. So then is it your understanding -- take a look at
 16 Exhibit 96. It is there to the right. I will represent to
 17 you that this is the reactivation letters filed table that
 18 was actually submitted with Ballard's filing. And you see
 19 down in the bottom, left-hand corner here where it mentions
 20 Aggregates West, and then, if you follow the row over to the
 21 right, it has an initial car count of 300 and a long-term car
 22 count of 550. And those numbers are the same as those that
 23 appear on the third page of Exhibit 102, correct?
 24 A. Yeah.
 25 Q. So we were just discussing how these numbers were

1 derived. Is it your understanding that these numbers are
 2 derived based on assumptions, although albeit in light of
 3 your current and past business performance, assumptions about
 4 total volume of materials shipped and then converting that to
 5 some sort off rail-car basis?
 6 MR. PASCHALIS: I will just object to the
 7 form. You can answer, Mr. Day.
 8 A. I'm not sure what you are asking. Can you repeat.
 9 Q. I am just trying to understand how we get from the
 10 volume of material you ship to any particular car count. I
 11 am just trying to understand where the number comes from.
 12 A. Well, like I said, I didn't come up with the
 13 number. It was basically, hypothetically, how much do you
 14 think you could ship down there. I mean, we send out I think
 15 320,000 tons out of the Monroe area to King County and
 16 Snohomish County in a year. It's not inconceivable that we
 17 would be able to send out 50 or 1,000 tons from downtown
 18 Bellevue out to anything within 20, 30 miles fairly easily.
 19 So, I mean, it's all hypothetical at this moment, right?
 20 But, if it was cheaper to get the material from A to Z and
 21 then you can send it out from there, that was the whole point
 22 right? I mean, you can sell to downtown Seattle and
 23 Bellevue, with all the work that's going on in the next few
 24 years, you could sell 500,000 tons, if you can get your price
 25 down low enough, right? I mean, this area, King County uses

1 the letter in Exhibit 104.

2 MR. WAGNER: The third page.

3 Q. Well, let's look at the letter that was actually
4 sent. Do you have 97 handy?

5 A. The one you told me to keep handy?

6 Q. Yes. There you go. Do you see at the bottom where
7 it says, "Copies: C. Hatch," and then copies to Senators
8 Murray and Cantwell?

9 A. You know, Chris put that on there. I don't know
10 why he would do that.

11 MR. FERGUSON: Let's mark the next exhibit
12 here. This is 105.

13 (Exhibit 105 marked for
14 identification.)

15 MR. PASCHALIS: Hunter, I would suggest that
16 we take a break some time soon.

17 MR. FERGUSON: Do you need one?

18 MR. PASCHALIS: Yes.

19 MR. FERGUSON: Why don't we do that right now.

20 MR. PASCHALIS: Fair enough.

21 MR. FERGUSON: We can go off.

22 (A brief recess was taken.)

23 MR. FERGUSON: Tom, are you ready to continue.

24 MR. PASCHALIS: Yeah, go back on.

25 MR. FERGUSON: Tom, you have the e-mail of

1 Friday, December 6th, 11:04 a.m., in front of you, marked as
2 105?

3 MR. PASCHALIS: I do.

4 Q. Mr. Day, would you just take a moment to review
5 this e-mail and the attachment to it, please. Have you had a
6 chance to review it?

7 A. Yes.

8 Q. Have you seen this e-mail? Have you read this
9 e-mail before?

10 A. Yes.

11 Q. Can you describe to me what you understand this
12 e-mail to be and also explain what the attachment to it is.

13 A. The attachment is a letter that I think Doug wanted
14 to -- if you look at the previous exhibit with our estimated
15 quantities that we could fill cars with, that he was hoping
16 that our letter would correspond with that, those numbers
17 that we talked about earlier.

18 Q. So, if you look in the letter here, page 2 of
19 exhibit, in the second paragraph, there is a letter at the
20 end of the paragraph there, which does not appear in the
21 letter marked Exhibit 97, which is the letter that was
22 submitted.

23 A. That's right.

24 Q. And that sentence reads, "We estimate a market of
25 between 300 and 600 railcars per year and more if a ready mix

1 plant is realized in Bellevue," correct?

2 A. Yeah.

3 Q. That wasn't ultimately put in the letter that was
4 provided to Mr. Engle by Chris and submitted to the Board,
5 correct?

6 A. Correct.

7 Q. Do you have a recollection of whether you got back
8 to Doug for his request here that his suggested revision be
9 added to the letter?

10 A. Yeah. I think, if I recall, I spoke to Chris about
11 it, and Chris said, I'll revise it, I'll look at it, and I'll
12 revise it if I want. I don't know. I don't think he ever
13 did. So I don't think that, until we had some solid numbers
14 of what our pricing would be and stuff, we could state
15 exactly what we could provide for that area. If it cost me
16 \$50 a ton to ship something on the rail, I certainly couldn't
17 sell that many cars.

18 Q. Earlier, you mentioned about how you received a lot
19 of information from Doug concerning rail reactivation. In
20 your view, has he ever presented you with a concrete plan
21 that would allow you as a business to determine whether you
22 could utilize rail service from Ballard Terminal Railroad?

23 MR. PASCHALIS: I will object to the form.

24 A. No. No, we haven't gotten that far.

25 Q. Based on your testimony today, do you think it is a

1 fair characterization to say that Aggregates West would
2 certainly welcome an additional shipping option, but that it
3 has not conducted any kind of a study to determine whether
4 rail service with Ballard Terminal Railroad would be
5 feasible?

6 A. No, we haven't conducted a study.

7 Q. Have you all made any kind of a determination
8 whether it would be cost-effective to use rail service with
9 Ballard Terminal Railroad?

10 A. No, it's conceptual.

11 MR. FERGUSON: I don't think I have any other
12 questions.

13

14 EXAMINATION

15 BY MR. MARCUSE:

16 Q. Just to repeat, I am Andrew Marcuse with King
17 County. I do real estate and environmental law for King
18 County.

19 A. Okay.

20 Q. I had a few follow-up questions. Earlier, in
21 speaking with Mr. Ferguson, you listed off the various
22 facilities that Aggregates West has. If I recall, you said
23 there were two pits up in Lynden, one in Monroe, possibly
24 two, and Granite Falls, and then there was the Lumi
25 operation, which is closed.

1 understood you correctly, you have said that Aggregates West
2 could very easily ship 30,000 tons to Snohomish and King
3 counties; is that right?

4 A. Yeah. Well, our annual. So last year -- last
5 month, and our slowest month of January, out of just the
6 Monroe pit alone, I did 26 to 28,000 tons. I haven't seen my
7 totals yet, but I believe it's around 28,000 tons. So almost
8 30,000 in one month, in January, my slowest month. I can do
9 up to 60,000, 70,000 a month. Out of both pits, I project to
10 sell about 350 out of Granite Falls and about -- probably
11 about 320 or so roughly out of Monroe.

12 Q. Okay. Per month?

13 A. 320,000 a year.

14 Q. 320,000 tons a year?

15 A. Yeah.

16 Q. Okay. All right. I am just trying to understand
17 where all of that goes because I have heard you say at
18 different points Bellevue, Seattle, sometimes you said King
19 or Snohomish counties. Do you have any sense of what amount
20 is actually going into the city of Bellevue?

21 A. I would have to sit and look at my projections for
22 the year, but the relevant areas I guess around -- if you had
23 a laydown yard in that area, would be my Google job in
24 Kirkland. I have Overlake Village that I'm starting to
25 supply material to; Spring District in Bellevue for a

1 customer of mine. You have the Link light rail projects that
2 are going on that we're starting to supply some stuff for
3 utilities and whatnot. There is a lot of projects in that
4 one little area.

5 Q. That is what I want to get a little more precise
6 about, that one little area. Are you referring to --

7 A. Seattle to Redmond to Kirkland, if you look at that
8 little triangle.

9 Q. That is what I want to ask about is getting
10 aggregates into Seattle. If you were to ship them to
11 Bellevue, to a yard there, and some had to go to Seattle, you
12 would have to truck them across Lake Washington, correct?

13 A. Yes.

14 Q. Do you know if the trucks that are used to ship
15 aggregate material are permitted to cross either of the
16 floating bridges across Lake Washington?

17 A. We probably wouldn't use the floating bridge. We
18 would probably go over 90. Well, that's a floating bridge,
19 but, yeah, of course, we send stuff across 90 all the time.

20 Q. You do send stuff across I-90?

21 A. Yeah. We don't use the toll bridge anymore.

22 Q. So you could go directly across the lake; you would
23 not have to go around --

24 A. Yeah.

25 Q. -- the 405 beltway?

1 A. No.

2 Q. Mr. Paschalis just asked you about whether you
3 thought it would make sense to do a study about whether it
4 would be cost-effective to utilize rail service into Bellevue
5 before there was a ruling from the Surface Transportation
6 Board; do you remember those questions?

7 A. Mm-hmm.

8 Q. Wouldn't you expect someone putting together a
9 serious business plan to come to you with a set of figures in
10 which you could make such an evaluation before there was a
11 decision from the Board, if they were serious about obtaining
12 your business?

13 MR. PASCHALIS: I will object to the form and
14 object as argumentative.

15 A. Well, certainly, if somebody wanted me to sign a
16 contract with them or for me to do any kind of research or
17 spend my valuable time on something, yeah, of course, I would
18 need some hard figures, and we would have to sit down with a
19 letter of intent and move forward from there.

20 Q. Have you received what you would consider to be any
21 of that information?

22 A. No.

23 Q. Is it fair to say that the materials you have
24 received so far from Doug Engle are just speculation about
25 what could be?

1 A. Yes.

2 MR. PASCHALIS: I will object to the form and
3 object as argumentative.

4 MR. FERGUSON: Tom, you should have the maps,
5 and, if you can print them out and let me know or ask your
6 assistant to because I have a couple other questions I can
7 ask Mr. Day before we get to the maps.

8 MR. PASCHALIS: Let me run out now because
9 they are printed out, and they are at an outside printer.

10 MR. FERGUSON: Okay, great.

11 MR. PASCHALIS: I will be back.

12 THE WITNESS: Are we off?

13 MR. FERGUSON: We are still on the record.

14 THE WITNESS: Are we? I was thinking about
15 that I-90 thing. When I'm shipping, I'm going down five.

16 THE REPORTER: We need to go off the record if
17 the other guy is not here.

18 MR. FERGUSON: Yes, we can go off.

19 (A brief recess was taken.)

20 MR. PASCHALIS: Okay, I have them.

21 MR. FERGUSON: Tom, we are back on. Let's
22 wait for Jordan to come back, Tom.

23 (A brief recess was taken.)

24 (Exhibits 106-108 marked for

25 identification.)

1 experience?
 2 A. Yeah, I think it does. Yes, it does.
 3 Q. Are you aware of anywhere depicted on this map up
 4 along Highway 2, where you think railroad parallels, where
 5 you could put a laydown yard in Monroe to offload aggregates
 6 to be loaded onto a railcar?
 7 A. No, not that I'm aware of.
 8 Q. Would you turn back to Exhibit 106, please.
 9 Looking at Highway 2, and the resolution isn't perfect here,
 10 but do you see a GRAY LINE that parallels the highway where
 11 it says "Stevens Pass" and then continues off to the
 12 northwest and continues on where the bend in the Skykomish
 13 River is?
 14 A. Yeah.
 15 Q. In your experience, the rail line follows that
 16 pathway going from the northwest down along Highway 2, up
 17 over Stevens Pass towards Leavenworth?
 18 A. Yes.
 19 Q. Are you aware of anywhere on this map where a
 20 laydown yard could be placed in order to accomplish this
 21 offloading of aggregates materials to be loaded onto a
 22 railcar?
 23 A. No. No. Goldbar isn't on here, is it? No. No.

24 MR. FERGUSON: I do not have any further
 25 questions. And then we are going to need to scan these.

1 MR. PASCHALIS: Would you mind going ahead and
 2 doing that now so I can take a look before we continue
 3 further.
 4 MR. FERGUSON: Let's go off the record.
 5 (A brief recess was taken.)
 6 MR. FERGUSON: So I don't have anything
 7 further. Unless Andy or Jordan does, we can turn it over to
 8 you.
 9 MR. PASCHALIS: Go ahead.
 10
 11 EXAMINATION
 12 BY MR. MARCUSE:
 13 Q. I just have one follow-up question. Mr. Day, you
 14 mentioned a little earlier that, you said your perspective
 15 was that the market for any given source or pit was sort of
 16 you put a pin on the pit and drew a 50-mile radius and for
 17 tracking purposes that was the market?
 18 A. Pretty much, yeah.
 19 Q. Then having a laydown yard somewhere else would
 20 give you another option for servicing places close to that
 21 yard?
 22 A. Yeah.
 23 Q. Is there anything stopping Aggregates West from
 24 establishing a laydown yard and servicing it with trucks?
 25 A. Well, for us, right now, it doesn't make sense

1 because our competitors have closer sources to bring in to
 2 their laydown yards. Cadman is already established in
 3 Redmond. CalPortland has stuff right there in Lake
 4 Washington, and they're able to barge their material in, so
 5 obviously it makes sense for them. But, for us to truck
 6 material, we would have to have a cheaper way to transport to
 7 create a laydown yard and be able to be competitive with our
 8 competition. The question is: Can you double handle the
 9 material and rail it and have it be cost-effective? I don't
 10 know.
 11 Q. That is the open question?
 12 A. That's the million dollars question I guess sitting
 13 here in the room.
 14 MR. MARCUSE: Thank you.
 15

EXAMINATION

17 BY MR. WAGNER:
 18 Q. Just to follow up a little bit on that, so the
 19 assumptions are, if you are going to do this sort of laydown
 20 facility and Monroe and Bellevue --
 21 MR. WAGNER: Sorry, Tom, can you hear me?
 22 MR. PASCHALIS: Yes, if you don't mind, speak
 23 up a little bit, please.

24 Q. So you would load a truck in Monroe at your
 25 facility, then you would empty the truck at a laydown in

1 Monroe, presumably near the railroad track, then you would
 2 load the train, and then unload the train in Bellevue at a
 3 laydown facility in Bellevue, and then load the truck, load a
 4 truck in Bellevue, and then unload the truck at a site?
 5 A. Yeah.
 6 Q. The work site.
 7 A. Yeah.
 8 Q. And this would be on property that presumably
 9 Aggregates West would buy or lease in Monroe and in Bellevue?
 10 A. Correct.
 11 Q. So I am going to represent to you that on Bing
 12 maps, I just typed in Monroe and Bellevue, Washington, and it
 13 says it is 24.1 miles between Monroe and Bellevue. Does that
 14 sound about right?
 15 A. Mm-hmm.
 16 Q. So, based on the distance from Monroe to Bellevue,
 17 is it likely the extra steps of unloading the truck at a new
 18 facility that you guys have to buy or lease in Monroe, then
 19 loading a train, paying for the train, unloading the train at
 20 another facility that you have to buy or lease in Bellevue,
 21 and then loading it again onto another truck, those are the
 22 added steps other than just loading the truck at your
 23 facility and delivering to a work site in Bellevue, does it
 24 seem likely that that would be cheaper than just loading it
 25 at your site and driving it to a site in Bellevue?

1 MR. PASCHALIS: I will object to the form.
 2 A. Well, first of all, I'm not sure, so the honest
 3 answer is I'm not sure. They do it all the time with barging
 4 and things like that where they're double and triple
 5 handling, like you're talking about. And it seems to work
 6 for CalPortland there right off of Lake Washington, the
 7 Kenmore area, and stuff like that. It does seem very
 8 expensive. We were shipping stuff from Lumi. You know, you
 9 load it onto a barge, you scoop it up, take it off the barge,
 10 put it in the pit, and then put it in the truck and take it
 11 to the place and unload it again. It does work if the
 12 shipping is cheap enough. It has worked with barging. The
 13 railroads obviously do it with their own material; they'll
 14 double handle it. There's a lot of ways to use conveyor
 15 systems to go right from the truck into a railcar or onto a
 16 barge or whatever. So there is just a lot of work that would
 17 go into coming up with what that cost would be. And so the
 18 honest answer is I don't know. Having a yard in Bellevue
 19 would be beneficial to us. People would come pick up their
 20 own material and stuff if we could get the cost point to
 21 where it's cheaper for them to go there instead of drive out
 22 to Redmond or go over to Kenmore. So that's the
 23 million-dollar question, right?
 24 Q. Are you aware of any properties in Bellevue that is
 25 zoned properly for you to be able to use as a laydown

1 facility?
 2 A. No.
 3 MR. PASCHALIS: I will object to the extent
 4 that that calls for a legal conclusion.
 5 A. I am not aware of any place that we could use as a
 6 laydown yard, no.
 7 MR. WAGNER: That is it.
 8 Tom?
 9 MR. PASCHALIS: Sure.
 10
 11 EXAMINATION
 12 BY MR. PASCHALIS:
 13 Q. When you first started discussing the point of
 14 shipping from your Monroe yard to Bellevue with Mr. Engle,
 15 you were aware certainly that the Monroe yard is not directly
 16 on a rail line, correct?
 17 A. Correct.
 18 Q. And yet, in discussing it with Mr. Engle, you
 19 didn't turn him away; you, in fact, continued communicating
 20 with him and had some discussions about how to do this,
 21 correct?
 22 A. Yeah.
 23 Q. So you understood that you did not need to be
 24 located exactly adjacent to a rail line in order to figure
 25 out a way to get your aggregates down to downtown Bellevue,

1 correct?
 2 A. Yeah.
 3 Q. There was some discussion about double loading, and
 4 I take that to mean having a laydown yard somewhere near the
 5 rail line in Monroe and then, of course, a laydown yard in
 6 Bellevue, correct?
 7 A. Yeah, where you would, instead of just loading it
 8 into a truck and taking it directly to a job site, you're
 9 taking it to -- you are loading it in a truck, taking it to
 10 the railroad, loading it into a railcar, loading it off a
 11 railcar and into a yard at Bellevue, which one of the
 12 discussions we had was about the possibility of having a
 13 concrete plant there, which would be -- that would mean your
 14 aggregate would go directly to the concrete, and then you're
 15 not double handling it. There's a lot of hypothetical
 16 possibilities. I've never heard of a place on the rail line
 17 that we could use, though, if that's what you're asking.
 18 Q. So, from what you are saying, there is a lot of
 19 options?
 20 A. I don't know options. Basically, the bottom line
 21 is, if you can figure out how to get the stuff onto a
 22 railcar, downtown Bellevue, for cheaper than I can truck it,
 23 then we're all ears.
 24 Q. Certainly. Certainly.
 25 A. But I don't know where you would do that from.

1 Q. Now, just simply with respect to double loading,
 2 you said some of your competitors engage in that practice,
 3 correct?
 4 A. Yeah.
 5 Q. I would then presume that they do that because they
 6 found it to be a cost-effective way to ship, correct?
 7 A. I would assume so. They do quite well at their
 8 yards, so --
 9 Q. So double loading, in and of itself, doesn't
 10 necessarily mean higher expense, correct?
 11 A. No, it does mean higher expense, but you can sell
 12 your aggregate for a higher price the further you get away
 13 from pits. So, again, you have to be able to figure out how
 14 to make it work and compete with the guy next door, right?
 15 Q. Just so I understand you correctly, you might have
 16 higher expenses, but also that might increase your market and
 17 your profits?
 18 A. Yes.
 19 Q. And that would be a good thing, correct?
 20 A. It would be a good thing if we could increase our
 21 profit, sure, and our markets.
 22 Q. Did I hear you say that there are competitors of
 23 yours that load onto the BNSF line that travels through
 24 Monroe?
 25 A. Yes, I believe so. I've seen the cars in Goldbar,

1 DAY/Ferguson

2 1 A. I haven't been in them. I have seen the cars
3 2 loaded with quarry rock near their facilities.

4 3 Q. But you do not actually have any personal knowledge
5 4 of their business operations?

6 5 A. No, I don't. I just made an assumption.

7 6 Q. Mr. Paschalis has asked you multiple questions
8 7 about whether you would have continued interest in exploring
9 8 the option of rail service if Ballard's reactivation petition
10 9 were granted; do you recall those questions?

11 10 A. Yep.

12 11 Q. Is it fair to say that it is just that, you are
13 12 interested in knowing whether there is a viable option for
14 13 rail service?

15 14 A. Yeah.

16 15 Q. Okay. Is it also fair to say that, even if
17 16 Ballard's petition for reactivation were granted, it is
18 17 uncertain whether Aggregates West could or would utilize such
19 18 rail service?

20 19 A. Yeah, it's uncertain.

21 20 MR. FERGUSON: No more questions.

22 21 MR. PASCHALIS: Anyone else?

23 22 MR. MARCUSE: I'm debating. No, I have
24 23 nothing further.

25 24 MR. FERGUSON: Mr. Wagner?

26 25 MR. WAGNER: I have none.

27

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1 DAY/Paschalis

2 1 MR. FERGUSON: None here, Tom.

3 2 E X A M I N A T I O N

4 3 BY MR. PASCHALIS:

5 4 Q. The only one I've got is: As you've testified to
6 5 previously, if the line is reactivated and there is a
7 6 cost-efficient proposal to ship through Ballard down to
8 7 Bellevue, you would be interested in doing so, correct?

9 8 A. Oh, through Ballard?

10 9 Q. Through Ballard to Bellevue.

11 10 A. Yes. If I could ship my material cheaper, I would.

12 11 MR. PASCHALIS: That is all I have.

13 12 MR. FERGUSON: All right. We are done here.

14 13 MR. PASCHALIS: Thank you very much for coming
15 14 in, Mr. Day.

16 15 THE WITNESS: Thank you.

17 16 (Signature waived.)

18 17 (Deposition concluded at 4:31 p.m.)

19 18

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28 STARKOVICH REPORTING SERVICES
206.323.0919

1 CERTIFICATE

2 STATE OF WASHINGTON)

) ss

3 COUNTY OF KING)

4

5 I, the undersigned Washington Certified Court
6 Reporter, pursuant to RCW 5.28.010, authorized to administer
7 oaths and affirmations in and for the State of Washington, do
8 hereby certify: That the foregoing deposition of the witness
9 named herein was taken stenographically before me and reduced
10 to a typed format under my direction;

11 That, according to CR 30(e), the witness was given
12 the opportunity to examine, read and sign the deposition
13 after same was transcribed, unless indicated in the record
14 that the review was waived;

15 That I am not a relative or employee of any
16 attorney or counsel or participant and that I am not
17 financially or otherwise interested in the action or the
18 outcome herein;

19 That the deposition, as transcribed, is a full,
20 true and correct transcript of the testimony, including
21 questions and answers and all objections, motions and
22 examinations and said transcript was prepared pursuant to the
23 Washington Administrative Code 308-14-135 preparation
24 guidelines.

25 Wade J. Johnson, Certified Court
Reporter 2574 for the State of Washington
residing at Seattle, Washington.
My CCR certification expires on 09/18/14.

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STARKOVICH REPORTING SERVICES
206.323.0919

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
 JAMES A. HOUSE

Taken at 123 Fifth Avenue
 Kirkland, Washington

DATE: February 7, 2014
 REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

STARKOVICH REPORTING SERVICES
 206.323.0919

1 A. Do I know who the owner is?
 2 Q. Yes.
 3 A. No.
 4 Q. Do you know what goes on there? Is there some type
 5 of business that is taking place there?
 6 A. I know there is a construction company who has
 7 trucks coming in and out of there.
 8 Q. Do you know what the name of that company is?
 9 MR. PASCHALIS: Objection; asked and answered.
 10 A. GLY, Gall Landau Young.
 11 Q. This parcel to the north and east of where you have
 12 drawn the black line, you will see that there appears to be
 13 three buildings and maybe a parking lot. Are you familiar
 14 with that property or the business that takes place there?
 15 A. Not very, no.
 16 Q. Do you know what it is? Do you know a name?
 17 A. No. To my recollection, I believe that's all
 18 rented.
 19 Q. But it is not part of the CT Sales business?
 20 A. Correct.
 21 Q. All right. Is this the only piece of property that
 22 CT Sales controls or operates to conduct its business?
 23 A. Yes.
 24 Q. You don't have a location anywhere else other than
 25 the one that you have drawn the black line around?

1 A. No.
 2 Q. How long has CT Sales' facility been located at
 3 this parcel identified in Exhibit 84?
 4 A. I believe since 2006.
 5 Q. Okay. You said that the company had been in
 6 operation since about 1982 or 1983, correct?
 7 A. That is correct, nineteen -- whatever it says
 8 there.
 9 Q. When you say whatever it says there, you are
 10 referring to your letter?
 11 A. The letter, yes.
 12 Q. Where was CT Sales located before this area on
 13 Exhibit 84?
 14 A. We were on Highway 9 where the current wastewater
 15 treatment plant is.
 16 Q. You are referring to the Brightwater wastewater
 17 treatment?
 18 A. Correct.
 19 Q. You said currently that you receive delivery of the
 20 raw product that you use by truck. If I am looking at this
 21 map correctly, though, it looks as though your parcel that
 22 you have outlined is adjacent to a railroad right of way,
 23 correct?
 24 A. Yes.
 25 Q. So is it fair to say then that your business's

1 property abuts or is next to an active railroad?
 2 A. I wouldn't know whether it's active or not.
 3 Q. Have you ever seen trains running up and down it?
 4 A. No.
 5 Q. Has CT Sales inquired about having delivery of its
 6 product to this yard via rail, as opposed to truck?
 7 A. Yes.
 8 Q. Do you know with whom or what business CT Sales has
 9 made such an inquiry?
 10 A. To Cascade Steel.
 11 Q. And can you tell me a little bit about that
 12 conversation or that inquiry.
 13 A. To my representative in Cascade Steel, I sent an
 14 e-mail asking what the cost would be to receive material by
 15 rail.
 16 Q. Do you remember about when you sent that e-mail?
 17 A. I think, just from researching it, that was in
 18 July.
 19 Q. Is this an e-mail that you produced in response to
 20 the city of Kirkland's document subpoena?
 21 A. You mean did I submit that e-mail?
 22 Q. Right. Did you send it to me?
 23 A. I believe so, yes.
 24 Exhibit 87 marked for
 25 identification.)

1 MR. FERGUSON: We are marking the next exhibit
 2 here as 87. This is an e-mail thread. The top e-mail line
 3 is from a gentleman named Dennis Lauber to Mr. House dated
 4 Wednesday, July 1st, 2013.
 5 MR. PASCHALIS: Got it.
 6 Q. Mr. House, if you could take just a moment to look
 7 this e-mail thread over. Do you recognize these series of
 8 e-mails here?
 9 A. Yes.
 10 Q. Is this the e-mail that you referenced just a
 11 moment ago where you said that you had sent an e-mail to a
 12 sales rep at Cascade Steel?
 13 A. Yes.
 14 Q. Can you describe what is going on here in this
 15 conversation. I guess we will start off by asking you what
 16 prompted you to e-mail, if you remember, Mr. Lauber on
 17 July 25th, there at the bottom of the thread.
 18 A. I had a discussion with Eastside Community Rail.
 19 Q. Do you remember who that discussion was with?
 20 A. No.
 21 Q. Do you think it was with a man named Ernie Wilson?
 22 A. I would guess so.
 23 Q. Do you think it was with a man named Doug Engle?
 24 A. It was one of those two. Those are the two that I
 25 have had discussions with.

1 Q. Okay. And so can you describe what those
2 discussions were.
3 A. I think the gist would have been trying to
4 determine a rate for bringing in material from McMinnville,
5 Oregon from Cascade Mills.
6 Q. Do you know if Mr. Engle or Mr. Wilson represented
7 that Eastside Community Rail would be the company that would
8 ship the material from McMinnville to your yard in
9 Woodinville?
10 A. Well, that's what we were exploring, yes.

11 Q. And so, after you had this conversation with
12 Mr. Engle or Mr. Wilson, what did you do?
13 A. I e-mailed my representative to see if he could
14 find a rate.
15 Q. And that is Dennis Lauber?
16 A. That is correct, Dennis Lauber from Cascade Steel.
17 Q. So it looks like you sent an e-mail to him, at
18 least one that is stamped July 25th; does that sound about
19 right to you based on your memory?
20 A. Not based on my memory, but based on the e-mail.
21 Q. And then it looks like Mr. Lauber responded in an
22 e-mail dated July 29th, saying that he is waiting to hear
23 from BNSF for a rate into Woodinville. Did you ever have a
24 telephone conversation with Mr. Lauber about this topic?
25 A. No.

1 Q. I don't want to just read the e-mail here, we can
2 all read it, but I am just curious to know whatever came of
3 this exchange.
4 MR. PASCHALIS: I will object to the form.
5 A. Nothing. This is as far as we have gotten.
6 Q. Can you explain why nothing ever came from it; is
7 there a reason why nothing ever further transpired?
8 A. As far as I know, he had made contact with Ernie,
9 and I haven't heard anything from Ernie.
10 Q. Okay. Let's look at that top line, the top e-mail,
11 the e-mail dated July 31st, time stamped 2:14 p.m. It reads,
12 "Jim" -- I take it, it is an e-mail addressed to you,
13 correct?
14 A. Correct.
15 Q. "Jim: I made contact with Ernie. He is going to
16 work on this from his end. I did get a rail rate to Eastside
17 Community Rail. The charge that far for rail is \$2.71 per
18 cwt. The trucking, including FSC to your facility, is about
19 \$1.28. We will see what Ernie can get done." Can you
20 explain what Jim means by that? Do you know what cwt is?
21 A. Per hundredweight.
22 Q. What is per hundredweight; is that a metric ton?
23 A. No, it's just the pounds divided by 100.
24 Q. So does that mean it would cost \$2.71 per
25 100 pounds to ship by rail from McMinnville to your yard?

1 A. I don't know.
2 Q. The next sentence where it says, "The trucking,
3 including FSC," do you know what FSC stands for?
4 A. Fuel surcharge.
5 Q. The trucking, including FSC to your facility, is
6 about \$1.28." Is that the same unit of measurement, 128 cwt;
7 do you think?
8 A. Correct. Yes, it is.
9 Q. So does that mean that the cost to ship by truck to
10 your facility is less expensive than the rate to ship by
11 rail?
12 A. The cost of -- well, no, it doesn't mean that.
13 Q. Do you have any understanding of what this means?
14 MR. PASCHALIS: Object to the form.
15 A. It means that a truckload of rebar, which you can
16 put maybe 30 tons on, can be shipped for \$1.28 a
17 hundredweight, but because he has a limitation on there, he
18 says, "the charge that far for rail," I don't know what he
19 means.
20 Q. Correct.
21 A. But you can put more reinforcing in a railcar.
22 Q. Have you ever done any follow-up investigation to
23 find out what Mr. Lauber meant by that sentence, "The charge
24 that far by rail is \$2.71 per hundredweight"?
25 A. I have not.

1 Q. Have you done any further investigation of any kind
2 to find out what the cost to ship your raw materials to the
3 Woodinville yard by rail would be?
4 A. I have not.
5 Q. Let's look back at Exhibit 84. This is the map of
6 the CT Sales yard that you drew the black outline around.
7 Does CT Sales have any way to receive freight rail service at
8 its yard that you are aware of?
9 MR. PASCHALIS: Object to the form.
10 A. Currently, no.
11 Q. Do you have any sense of what would be necessary in
12 order to receive freight rail service at the yard?
13 A. Not completely.
14 Q. When you say not completely, does that mean you
15 have some understanding of what might be necessary?
16 A. Yes.
17 Q. Can you describe that for us.
18 A. We would need a spur into the yard.
19 Q. By that, you mean a rail spur, correct?
20 A. Correct.
21 Q. Are you aware of any plan or study to construct a
22 rail spur into your yard?
23 MR. PASCHALIS: I will object to the form.
24 A. I am not aware of any plan or study.
25 Q. Have you asked anyone to investigate what it would

1 take to put a rail spur into the yard?
 2 A. I have had preliminary discussions with Ernie and
 3 Doug regarding a spur.
 4 Q. And can you describe those discussions for us.
 5 A. We looked at the property and kind of bantered
 6 about where a rail might -- a spur might go.
 7 Q. Has anyone provided you a cost estimate for the
 8 expense of constructing a spur into the yard?
 9 A. No.
 10 Q. Do you have any understanding of where the spur
 11 could go into the yard? Let me ask it a different way. Is
 12 there a location on the property where you think a spur could
 13 go?
 14 A. I don't know if could go; I have a location that I
 15 would like it to go.
 16 Q. Okay. When you say you don't know if it could go,
 17 is it just that you don't know whether it actually could be
 18 placed there, or is there some other -- I don't want to ask
 19 you multiple questions in a row. Can you explain what you
 20 mean when you say there is a place you would like it to go,
 21 but you don't know if it could go there.
 22 A. That would not be my expertise on where a rail line
 23 could come into the property.
 24 Q. Okay. Do you have a sense of who or what would be
 25 necessary in order to make that judgment?

1 A. No.
 2 Q. Do you think you would have to hire an engineer to
 3 examine the property to figure out if a spur could actually
 4 be placed where you would like it to be?
 5 MR. PASCHALIS: Objection; calls for
 6 speculation.
 7 A. Yeah, I have no idea.
 8 Q. Let me ask you this: Other than your conversations
 9 with Mr. Engle or Mr. Wilson, have you had any conversations
 10 outside CT Sales about constructing a rail spur into the
 11 yard?
 12 A. No.
 13 Q. Did Mr. Engle or Mr. Wilson provide you with any
 14 estimate of the cost of constructing a rail spur into the
 15 yard?
 16 A. No.
 17 Q. I gather from what you said earlier that CT Sales
 18 has not investigated the cost of constructing a rail spur
 19 into the yard?
 20 A. No, we have not.
 21 Q. And you are not aware of any kind of study about
 22 the cost of doing so?
 23 A. No.
 24 Q. Can you recall whether Mr. Wilson or Mr. Engle
 25 stated that Eastside Community Rail would cover of the cost

1 of building a spur into your yard?
 2 MR. PASCHALIS: Object to the form and
 3 foundation.
 4 A. They have never said that.
 5 Q. Do you know if anyone for Ballard Terminal Railroad
 6 has committed to covering the cost of building a spur into
 7 your yard?
 8 MR. PASCHALIS: Same objections.
 9 A. No, they have not.
 10 Q. Does CT Sales currently have any plan to cover the
 11 cost of putting a spur into its yard?
 12 A. We have no cost basis to make that decision.
 13 Q. Let's take a look at your letter again. This is
 14 Exhibit 83, please. Let me start with this: Did you write
 15 this letter?
 16 A. I started with a template.
 17 Q. Do you know who prepared the template? Do you know
 18 who you received the template from?
 19 A. I don't recall. I'm sure it would have been either
 20 Ernie or Doug.
 21 Q. Can you explain then sort of the context of why you
 22 received a template from Ernie or Doug?
 23 A. My understanding of what they were looking for is
 24 showing a viable client or a possible viable client along the
 25 rail line.

1 (Exhibits 88-89 marked for
 2 identification.)
 3 MR. FERGUSON: I want to mark the next two
 4 exhibits here. Tom, we have just marked the following
 5 documents as 88 and 89 respectively. The first is an e-mail
 6 dated September 30th, 2013, 7:30 p.m., from Ernie Wilson to
 7 Doug Engle and Mr. House, with an attachment, which is what
 8 appears to be the draft template of the letter that Mr. House
 9 signed. That is 88. And 89 is an e-mail from Mr. House to
 10 Dennis Lauber dated July 30th, 2:13 p.m., and that is a
 11 three-page document. Do you have those?
 12 MR. PASCHALIS: I do.
 13 Q. Mr. House, I will try to keep this chronological
 14 here. Looking at the e-mail where the top date on it is
 15 July 30th, that should be 88, correct?
 16 A. Eighty-nine.
 17 Q. That is 89. When you referenced your letter
 18 earlier, you said it was your understanding that Mr. Wilson
 19 or Mr. Engle was looking to show that there was a potential
 20 viable shipper; is that correct? Is that your understanding
 21 of what the letter was for?
 22 A. Customer was my word.
 23 Q. Customer, okay. So do you recall how you first
 24 came into contact with either Mr. Wilson or Mr. Engle?
 25 A. No.

1 Q. Looking at this e-mail here dated July 30th, this
2 is Exhibit 89 where you have written Mr. Lauber. You have
3 included in the top line an e-mail address for Ernie Wilson
4 and a telephone number. Do you recall why you did that?

5 A. I believe Dennis was working on the freight rates
6 for rail as my sales representative from Cascade Steel, and
7 Ernie was helping him do that, as far as I know.

8 Q. I am trying to understand how you came into contact
9 with Mr. Wilson. Is there anything that we can do to jog or
10 refresh your memory about that?

11 MR. PASCHALIS: I will object to the form.

12 A. Again, it is my understanding that they were
13 looking for possible customers on the line.

14 Q. Can you remember, did someone come to your business
15 in person to talk about this?

16 A. I believe that was the case.

17 Q. These e-mails are dated in July. Do you think you
18 had your first contact with Mr. Wilson or Mr. Engle shortly
19 before you sent these e-mails?

20 MR. PASCHALIS: Object to the form; calls for
21 speculation; asked and answered.

22 A. I do not recall honestly. I know -- yeah, I can't
23 recall.

24 Q. I am just trying to get a sense for the timing
25 here. Do you think it was before the 4th of July last year

1 that you first had contact with him?

2 MR. PASCHALIS: Same objections.

3 A. Yeah, again, I don't really recall. I think it was
4 spring, somewhere in there, maybe May.

5 Q. Okay.

6 A. Yeah, but --

7 Q. Looking then to the letter, Exhibit 83, and also
8 looking at Exhibit 88, the e-mail dated September 30th,
9 taking a look at the text of the e-mail where Ernie Wilson
10 says, "Hi, guys. Here is my draft of the letter for CT Sales
11 to send to STB supporting BTR's reactivation effort. I think
12 I've captured all the statistics that Jim gave me about the
13 business. I don't have a piece of CTS letterhead on hand, so
14 it's possible that some reformatting could be needed." Do
15 you recall giving Mr. Wilson statistics about CT Sales'
16 business?

17 A. I recall we had a visit where he asked some
18 statistics, yes.

19 Q. And, looking at Exhibit 83, do you see any
20 statistics from that conversation that are included in this
21 letter?

22 A. Yes.

23 Q. Can you identify those for us, please.

24 A. They all appear to be in the second paragraph, the
25 tonnage, the dollars, and the number of employees.

1 Q. Then, looking back at Exhibit 88, the attachment
2 here, this is what Mr. Wilson appears to be referring to, the
3 draft of the letter from CT Sales; is that your understanding
4 of what that is?

5 A. Yes.

6 Q. Do you recall whether you made any changes to this
7 draft letter compared to the one that you signed?

8 A. I believe that I did, but I do not recall.

9 Q. Would you take a moment to compare the two and note
10 any changes that you might have made from the draft to the
11 one that you signed.

12 A. Okay.

13 Q. Okay. Have you noticed any differences that you
14 made, or do you recall that you made any changes to it?

15 A. A slight change in paragraph 2 and a change to the
16 signature.

17 Q. Okay. What was the slight change in paragraph 2?

18 A. He has got we cut, band, and fabricate steel
19 reinforcing barrels, and I wrote we fabricate steel
20 reinforcing bars from straight mill stock.

21 Q. I want to look at the third sentence of the third
22 paragraph with you, the one beginning, "It is our
23 understanding"; do you see that? And this is on Exhibit 83,
24 the signed copy.

25 A. On 83, okay.

1 Q. So it reads, "It is our understanding that they
2 could ship product to us directly by rail via UP, BNSF, and
3 BTR with a savings in freight charges, as compared with
4 trucking." The they in that sentence is Cascade Steel
5 Rolling Mills, correct?

6 A. Yes.

7 Q. And in this sentence you say it is your
8 understanding that they could ship product to you with a
9 savings in freight charges, as compared with trucking; is
10 that an accurate paraphrasing of the sentence in your view?

11 A. Of this sentence, yes.

12 Q. Can you explain for us the basis for the statement
13 that you understood there could be a savings in freight
14 charges, as compared with trucking.

15 A. That was based on, again, the earlier conversation
16 between Ernie and Dennis.

17 Q. You mean Ernie Wilson of Eastside Community Rail?

18 A. Correct.

19 Q. And Dennis Lauber of Cascade Steel?

20 A. Cascade, right. So that was based on Ernie's
21 report of that.

22 Q. What did Ernie report to you from that
23 conversation? Were you part of that conversation?

24 A. No.

25 Q. So it is your understanding that Mr. Wilson had

1 letter dated October 3rd.
 2 MR. PASCHALIS: Okay, that is 91?
 3 MR. FERGUSON: Yes.
 4 MR. PASCHALIS: Okay, I have that.
 5 MR. FERGUSON: Okay. Ninety-two is an e-mail
 6 from Doug Engle to Mr. House, copying Ernie Wilson. The date
 7 is Monday, September 30th, 2013, time stamp of 8:57 p.m.
 8 MR. PASCHALIS: What is the time?
 9 MR. FERGUSON: Time is 8:57 p.m. The subject
 10 is, "Re: Letter supporting Ballard Terminal Railroad
 11 repetition."
 12 MR. PASCHALIS: Okay, I have that.
 13 MR. FERGUSON: The next one is 93. This one
 14 is an e-mail from Mr. House to Ernie Wilson dated Friday,
 15 October 11th, 2013, 3:04 p.m. The subject line is, "Forward
 16 letter supporting Ballard Terminal Railroad reactivation
 17 petition." And it is the top of an e-mail thread that spans
 18 over three pages, with an attachment of a letter dated
 19 October 1st.
 20 MR. PASCHALIS: Can you tell me the date and
 21 time of the initial e-mail once again.
 22 MR. FERGUSON: On the top you mean, correct?
 23 MR. PASCHALIS: The top e-mail.
 24 MR. FERGUSON: The date is Friday,
 25 October 11th, 2013, 3:04 p.m.

1 September 30th, 2013, 8:57 p.m. Do you see that in front of
 2 you?
 3 A. Yes.
 4 Q. Take a second to look at this e-mail, and, after
 5 you do, can you describe to us what your understanding of it
 6 to be.
 7 A. I don't know. It looks like this is from Doug and
 8 that he has made some red lines.
 9 Q. He has made some red lines to the draft letter that
 10 Mr. Wilson sent to you earlier on that day, September 30th;
 11 is that correct?
 12 A. I don't know. Do we have that one?
 13 Q. Yes. Take a look back at Exhibit 88. That is an
 14 e-mail from Ernie Wilson to Doug Engle and you with a draft
 15 letter.
 16 A. Oh, okay. So I got one from Ernie, and then Doug
 17 made the -- okay, that makes sense.
 18 Q. So is it your understanding that, after Mr. Wilson
 19 sent you the draft letter, that Mr. Engle then sent you a
 20 revised copy of that draft letter with some red-line edits?
 21 A. Yes.
 22 Q. I would like you to take a look at the red-line
 23 edits on page 2 of Exhibit 90. There is a sentence in the
 24 third paragraph, and with the edit it reads, "It is
 25 conceivable that we could also ship finished fabrications out

1 MR. PASCHALIS: Okay, I have that.
 2 MR. FERGUSON: Then the final exhibit marked
 3 in this batch, the top line e-mail is from Mr. Wilson to
 4 Mr. House, copying Mr. Engle, sent Friday, October 11th,
 5 2013, 11:25 p.m.
 6 MR. PASCHALIS: Okay, I have it.
 7 MR. FERGUSON: Okay, great. Just so everyone
 8 is efficient here, the order in which I want to go through
 9 these documents is as follows: I want to start with
 10 Exhibit 92, then turn to Exhibit 91, then go to Exhibit 90,
 11 then 93, then 94. As I am saying all of this, would it be
 12 better for everyone if we just remark these so they are in
 13 numerical order according to chron. order? Tom, is that
 14 going to be easier for you, or do you just want to proceed
 15 with the way you have marked them now?
 16 MR. PASCHALIS: I will do it either way. I
 17 will leave it up to you.
 18 MR. FERGUSON: Let's go off the record, take a
 19 five-minute break, and redo this. My apologies, Mr. House,
 20 and to everyone else for not being better organized.
 21 (A brief recess was taken.)
 22 MR. FERGUSON: We can go back on.
 23 Q. Mr. House, looking at what has been marked
 24 Exhibit 90, this is an e-mail from Doug Engle addressed to
 25 you, copying Ernie Wilson, dated and time stamped Monday,

1 to Bellevue and more distant customers by rail, although more
 2 research is needed." Do you have any customers for finished
 3 fabrications located in Bellevue?
 4 A. Well, that's two different questions. Do I have
 5 any job sites is what you mean.
 6 Q. That is what I mean, because a customer may not be
 7 where the job site is.
 8 A. Correct.
 9 Q. And you are not going to ship it to an office
 10 building; you are going to ship it to the job site, correct?
 11 A. Correct.
 12 Q. So do you have any job sites where you need to ship
 13 orders of finished fabrications in Bellevue?
 14 A. Do I have any job sites currently under
 15 construction in Bellevue?
 16 Q. Yes.
 17 A. I have not looked into that.
 18 Q. Let's take a look at this last sentence here. With
 19 the revisions it reads, "Meantime, please contact me with
 20 any -- and I am looking at Exhibit 90. It reads, with
 21 Mr. Engle's red-line edit, "Meantime, please contact me with
 22 any questions you may have about our operations or about how
 23 we believe our business economics would be improved by adding
 24 the ability to receive raw materials and ship product by
 25 rail." Do you see that?

1 Q. Did you understand Mr. Engle's request in this
2 e-mail here, Exhibit 93, to be a request that you backdate
3 this letter that you had dated initially as October 3rd?
4 A. Yes.
5 Q. And he asked you to date it October 1st?
6 A. Correct.
7 Q. But you don't know why?
8 A. I do not.
9 Q. But you did backdate the letter, October 1st,
10 correct?
11 A. Correct.
12 Q. Did it strike you as odd that Mr. Engle would ask
13 you to backdate a document that you had signed?
14 MR. PASCHALIS: I will object to the form.
15 A. He had actually asked me to write the letter in
16 July. Summer is our busy time, but he did not extend any
17 deadlines to me, and so I assumed there was a deadline that
18 he didn't pass onto me. And, since he had asked in July, I
19 didn't have a problem with getting it to him, because, if
20 there was a deadline, I would have got it by the deadline.
21 (Exhibit 95 marked for
22 identification.)
23 MR. FERGUSON: Tom, we are marking the
24 subpoena to CT Sales as 95.
25 MR. PASCHALIS: Okay.

1 Q. Mr. House, do you recognize this document that has
2 been marked as Exhibit 95?
3 A. Yes.
4 Q. Do you recognize this as the subpoena that was sent
5 to you, signed by me, requesting the production of documents
6 listed in Attachment A, page 3 of the subpoena? You probably
7 received this in the last couple of weeks.
8 A. Yes.
9 Q. And so here on page 3, there is a list of six
10 categories of documents. Could you just describe for us what
11 you did to search your records for documents responsive to
12 these requests.
13 A. I searched e-mail for any e-mails that I could find
14 regarding the rail, and I pulled up my spreadsheet for the
15 volume of material that I use to get my tonnage information.
16 Q. The e-mails that you sent to my law firm and
17 Mr. Paschalis, are you confident that those are all the
18 written communications that you have had with Mr. Engle and
19 Mr. Wilson responsive to the subpoena?
20 MR. PASCHALIS: I will object to the form and
21 to the extent it calls for a legal conclusion.
22 Go ahead, Mr. House.
23 A. I delete my e-mails when --
24 Q. I should rephrase that. All the communications
25 that you still have in your possession are stored in your

1 files or computers.
2 A. I don't know that. E-mails that have been deleted?
3 Are you referring -- I delete my e-mails when my box is full.
4 I don't know where those go.
5 Q. I asked you earlier if you had made a request for
6 rates from Ballard Terminal Railroad. Do you recall ever
7 having communications with a man named Byron Cole?
8 A. No.
9 Q. How about a man named Paul Nerdrum?
10 A. No.
11 Q. How about a woman named Kathy Cox?
12 A. No.
13 Q. In connection with this proceeding, is it accurate
14 to say the only people on behalf of Eastside Community Rail
15 or Ballard Terminal Railroad with whom you have had
16 communications are Mr. Wilson and Mr. Engle?
17 MR. PASCHALIS: Object to the form.
18 A. To my recollection, yes.
19 Q. Other than the e-mails that you provided to us, do
20 you recall whether Mr. Engle or Mr. Wilson ever provided you
21 with any hard copy documents concerning the railroad
22 reactivation effort?
23 A. No.
24 Q. They never gave you a business plan of any type?
25 A. No.

1 Q. Did they give you any kind of projections about
2 their own company's revenues and ability to provide rate
3 service?
4 A. Not that I recall.
5 Q. So, other than e-mails that you deleted, do you
6 think that there are any other materials in your records or
7 files that would be responsive to the document requests in
8 this subpoena?
9 MR. PASCHALIS: I will object to the extent
10 that it calls for a legal conclusion.
11 A. I don't think so.
12 MR. PASCHALIS: And to the extent it calls for
13 speculation.
14 A. No, I don't think there is any other documents that
15 I would have kept.
16 Q. There is nothing that you found when you looked for
17 documents that you thought might be responsive, but you
18 decided not to produce?
19 A. No, definitely not.
20 Q. So I would just like to tie off a few things here.
21 Have you made any kind of commitment to Ballard Terminal
22 Railroad or to Eastside Community Railroad to receive any
23 shipments by rail service?
24 A. No.
25 Q. Have you made any commitment to Ballard or Eastside

1 A. That is correct.
 2 Q. Is Eastside Community Rail a customer of yours?
 3 A. They are not.
 4 Q. Are Ballard Terminal Railroad a customer of yours?
 5 A. They are not.
 6 Q. I am curious, if they are not a customer of yours
 7 and you are not presently receiving rail service from them,
 8 why would you write this letter?
 9 A. For the possibility of somebody helping me get rail
 10 service.
 11 Q. Do you understand that your letter -- and when I
 12 say your letter, I mean the one that was actually submitted
 13 to the Board, Exhibit 83. When you wrote that, were you
 14 requesting rail service on behalf of CT Sales through that
 15 letter?
 16 A. No.
 17 MR. MARCUSE: I would like to show the witness
 18 what has previously been marked as Exhibit 62. That is the
 19 December 6th filing by Ballard Terminal Railroad to the STB.
 20 Do we have the official exhibit to show the witness, please.
 21 MR. FERGUSON: What is the number again?
 22 MR. MARCUSE: That is No. 62.
 23 Q. (By Mr. Marcuse) Mr. House, I will represent to you
 24 that this is a document that was submitted by Ballard
 25 Terminal Railroad to the Surface Transportation Board in this

1 matter, and if you could please turn to page 2 and read the
 2 first paragraph there.
 3 A. I don't even know what that word is. "A
 4 multiplicity" --
 5 Q. Yes, sir, that is the right paragraph.
 6 A. -- "of shippers have requested service on the line,
 7 including General Mills, RJB Wholesale, CT Sales, Aggregates
 8 West, Wolford Trucking & Demolition, and CalPortland."
 9 Q. Has CT Sales requested service on the line?
 10 A. No, we have not.
 11 Q. Thank you. Could you turn also to page 6 of that
 12 same document and the second full paragraph on that letter.
 13 It starts with, "General Mills."
 14 A. "General Mills, an internationally known company,
 15 is desirous of reestablishing rail service to its Safeway
 16 foods facility in Bellevue, which has a siding on the line.
 17 The same is true of RJB Wholesale and CT Sales, both of whom
 18 have direct access to the line."
 19 Q. Is CT Sales desirous of reestablishing rail service
 20 to Bellevue?
 21 A. Yeah.
 22 MR. PASCHALIS: I will just object.
 23 Go ahead, sir.
 24 A. Yes.
 25 Q. All right. Thank you. You testified earlier that

1 you are the president of CT Sales?
 2 A. Correct.
 3 Q. So you would be responsible for making a decision
 4 whether to request rail service to your facility?
 5 A. That is correct.
 6 Q. Have you made that decision at this point?
 7 A. No.
 8 Q. What process would CT Sales follow in order to make
 9 that decision?
 10 A. It would be an in-depth cost analysis.
 11 Q. Who would perform that cost analysis?
 12 A. Well, I would be in charge of it, but I would go
 13 out, just like anybody would, and figure out how to do that
 14 and assess the cost.
 15 Q. Have you taken affirmative steps towards that?
 16 A. No.
 17 MR. MARCUSE: Thank you. I have no further
 18 questions at this time.
 19
 20 EXAMINATION
 21 BY MR. PASCHALIS:
 22 Q. Mr. House, I have some questions. Before I get
 23 started, would you like a break, or would you like me to
 24 continue?
 25 A. No, I'm good. You can continue.

1 Q. Just a couple quick points. First of all, if I ask
 2 you any questions that you do not understand or you think you
 3 need clarification, please stop me and let me know, and I
 4 will be happy to reask the question. Second of all, since I
 5 am not in the room with you I can't really pick up visual
 6 cues as to when you are finished talking, so I will endeavor
 7 to have a lengthy pause before I ask the next question. If I
 8 inadvertently cut you off because I believe that you have
 9 finished, I apologize, and I will allow you to go ahead and
 10 complete your answer.
 11 A. Okay.
 12 Q. There was some testimony much earlier on about what
 13 exactly rebar, the product that you make, is; do you recall
 14 that?
 15 A. Sort of.
 16 Q. Okay. Well, then I will just ask you the question,
 17 and, if you discussed it to some extent already, it might be
 18 a little repetitive, but can you just kind of describe to me
 19 generally what rebar is and how it is used.
 20 A. Reinforcing steel. It basically comes in bars that
 21 we cut and shape to fit into concrete for a particular
 22 structure on a job site.
 23 Q. What kind of structures is rebar used on?
 24 A. For the most part, anything that has concrete.
 25 Q. So that could be any kind of construction project

1 bit, please.

2 A. Sure. Having, as it says here, 2 1/2 truckloads
3 per railcar. So, to unload one railcar off business hours is
4 less expensive than unloading 2 1/2 truckloads during
5 business hours. So that is one advantage to rail. As those
6 preliminary numbers, which I have not studied, came across,
7 it looks like the actual weight is a little higher to ship
8 per rail, so that's why the overall cost is, without doing an
9 in-depth study, is too hard to determine if trucking or rail
10 is the least expensive at this time.

11 Q. Sure. So there are factors other than pure cost
12 that would favor a desire to ship by rail, if I understand
13 you correctly?

14 A. Correct.

15 Q. I imagine, if you ship by rail, you wouldn't have
16 to do as much maintenance on the trucks?

17 A. That would be correct.

18 Q. Do you do a good amount of maintenance on the
19 trucks currently?

20 A. We do have a standing service person that does a
21 lot of upkeep to the trucks, yes.

22 Q. He keeps pretty busy?

23 A. Yes.

24 Q. Do you have a sense of how much products by railcar
25 you could ship or receive in any given year? Let me break

1 that up. Let's start with receive.

2 MR. FERGUSON: Objection; calls for
3 speculation.

4 A. I doubt that it would occur, but I could
5 conceivably receive all of my rebar by rail.

6 Q. How much raw rebar material do you currently
7 receive in the course of a given year?

8 A. Well, it's going to be fairly close to the amount
9 that we ship.

10 Q. Which in the most recent completed fiscal year was
11 about 8,300 tons?

12 A. Correct.

13 Q. So it is fair to estimate that you receive
14 approximately 8,300 tons in a given year?

15 A. Approximately.

16 Q. If you were capable of receiving all of that by
17 rail, you would be interested in doing so, wouldn't you?

18 A. I don't know yet.

19 Q. Contingent on your cost analysis?

20 A. Correct.

21 Q. And actually having rail service available to use,
22 correct?

23 A. Correct.

24 Q. If the cost analysis was favorable, in addition to
25 the other factors, then you would want to receive it by rail,

1 correct?

2 A. Yes.

3 Q. Now, I take it that you are currently aware, based
4 on many of the discussions that we have had today, that the
5 rail line between Bellevue and Woodinville is not currently
6 active?

7 A. That's my understanding.

8 Q. You were asked earlier whether or not you had made
9 any request for service of Ballard; do you recall that?

10 A. Yes.

11 Q. And, if you were to request service, part of that
12 would be for the purpose of receiving your raw rebar,
13 correct?

14 A. Correct.

15 Q. And that, in large part, comes from Oregon to the
16 south, correct?

17 A. Currently, the Oregon mill is my main supplier,
18 yes.

19 Q. What percentage of raw rebar do you get from
20 Oregon?

21 A. I haven't done an accurate analysis, but I would
22 guess 85 percent.

23 Q. So, in order to receive raw rebar from Oregon by
24 rail, you would need rail access to the south, correct?

25 A. I do not know that.

1 Q. Is it fair to say that the shortest route between
2 where your supply comes from and your plant is to the south?

3 MR. FERGUSON: Objection; vague; calls for
4 speculation.

5 A. McMinnville, Oregon is south. So I guess, yeah, as
6 the crow flies, that would be the straightest.

7 Q. Your letter, Exhibit 83, in the third paragraph,
8 where you in the first sentence reference the location of
9 Cascade Steel Rolling Mills, and then in the third sentence
10 you discuss the ability to ship directly via the UP, BNSF,
11 and BTR.

12 A. Okay.

13 Q. Is it your understanding that that shipment through
14 those three railroads would go through the line from Bellevue
15 up to your plant?

16 A. No, that was not my understanding.

17 Q. What was your understanding?

18 A. That it was coming from the north, from Snohomish,
19 for the receiving, and only on the outward shipping would it
20 go south.

21 Q. What is that understanding based on?

22 A. What I have been told from Ernie or Doug.

23 Q. Now, you said that you moved to your current
24 location around 2006; is that correct?

25 A. That's my recollection, yes.

1 to provide rail service to your Woodinville yard, correct?
 2 A. That is correct.
 3 MR. PASCHALIS: Objection; asked and answered.
 4 Q. And you have never asked any other rail carrier to
 5 deliver rail service to your Woodinville yard?
 6 MR. PASCHALIS: Objection. Well, go ahead.
 7 A. That is correct.
 8 Q. Mr. Paschalis asked you earlier whether, in order
 9 to receive shipments to your yard, specifically to receive
 10 shipments from the Cascade Steel mill, the rolling mill in
 11 McMinville, you would need to have service to the south of
 12 your facility. So, in other words, in order to receive
 13 shipment, would you need to have the rail line between
 14 Woodinville and Bellevue be reactivated; do you recall those
 15 questions?
 16 A. Yes.
 17 Q. If I recall your answer correctly, you said you
 18 weren't sure whether you would need to have rail service
 19 reactivated between Woodinville and Bellevue, correct?
 20 A. That is correct.
 21 Q. I want you to look at the bottom of this map here
 22 on Exhibit 3. Do you see where it says "Renton" at the very
 23 bottom of the page?
 24 A. Yes.
 25 Q. Are you familiar with the location of the city of

1 answered
 2 A. It was my understanding they are coming in from the
 3 north.
 4 Q. So, when you say that, it would go up the rail line
 5 on the western edge of this map that hugs Puget Sound, that
 6 goes up through Edmonds and Woodway, Mukilteo to Everett; is
 7 that correct?
 8 A. They weren't specific on how it was coming.
 9 Q. It was your understanding that it would come from
 10 the north, right?
 11 A. That was my understanding.
 12 MR. PASCHALIS: Objection; asked and answered.
 13 Q. So a question that I have is: If rail service
 14 could come from the north, is there any reason why your
 15 facility couldn't receive the raw materials of the rebar and
 16 the mesh by rail currently?
 17 A. My understanding is no. I can -- if I had a spur,
 18 could receive my material.
 19 Q. So then is it accurate to say that it is not
 20 necessary to reactivate the line between Woodinville and
 21 Bellevue in order for you to receive material?
 22 A. That is what I have been informed.
 23 Q. You mentioned earlier that some of your trucks
 24 don't go out fully loaded. Why is that?
 25 A. The job dictates how much bar goes out.

1 Renton?
 2 A. Yes.
 3 Q. You understand that this yellow line running to the
 4 west of the word "Renton" and going north, that is Interstate
 5 405?
 6 A. Yes.
 7 Q. Do you see the black line there that runs to the
 8 west and sort of parallels Interstate 405?
 9 A. Yes.
 10 Q. Do you see how it crosses Interstate 90 just to the
 11 east of the writing "Beaux Arts"?
 12 A. Yes.
 13 Q. Do you see a break in the black line along 405 and
 14 where it picks up again with a black line encircled in red
 15 near the city of Bellevue?
 16 A. Yes.
 17 Q. I will represent to you that that is an old railway
 18 line that BNSF used to operate, and that break is where the
 19 line was severed to build something called the Wilburton
 20 tunnel. Have you ever heard of the Wilburton tunnel?
 21 A. It sounds familiar.
 22 Q. Do you have any understanding then of how BNSF, UP,
 23 or Ballard Terminal Railroad, if you had a spur in your yard,
 24 would be able to deliver rail service to your facility?
 25 MR. PASCHALIS: I will object as asked and

1 Q. Do you have any sense of whether it would be
 2 cost-effective to your business to send out a shipment of
 3 fabricated rebar on a car or a flatbed railcar that was less
 4 than fully loaded?
 5 A. What was the question again?
 6 Q. Sometimes you have to send out less than fully
 7 loaded trucks, right?
 8 A. Right.
 9 Q. What I am trying to understand here is: Have you
 10 done any study of whether it would be cost-effective to send
 11 out fabricated rebar by rail in some way that was less than a
 12 full load?
 13 A. No, no analysis has been done.
 14 Q. Mr. Paschalis asked you earlier about customers
 15 that might be interested in receiving the fabricated rebar by
 16 rail; do you recall those questions?
 17 A. Yes.
 18 Q. And you said that it might be conceivable that some
 19 customers would be interested in receiving the finished goods
 20 by rail, right?
 21 A. Yes.
 22 Q. Do you know if any of your customers have the
 23 capacity to receive finished rebar by rail?
 24 A. There is normally unloading material on site to be
 25 able to offload from rail.

1 Q. What do you mean by that?
 2 A. You generally unload rebar using some hooks,
 3 cables, something like that, and they have equipment on the
 4 job site to move the rebar around that they can use to unload
 5 off a truck or a railcar.
 6 Q. But the job sites would need some type of equipment
 7 to do that, correct?
 8 A. For either a truck or a rail, yes.
 9 Q. Do you know if any of the job sites where you
 10 currently are delivering rebar have the equipment
 11 necessary -- let me back up here. Are there any job sites
 12 that you know of that have the capacity or the equipment to
 13 offload rebar by rail onto their job sites?
 14 MR. PASCHALIS: Asked and answered.
 15 A. Yes. As I just stated, every job site has the
 16 equipment to be able to offload material, and they can do it
 17 from either a truck bed or a railcar.
 18 Q. Are there any job sites between Woodinville and
 19 Bellevue that have that capacity to which you are currently
 20 making deliveries?
 21 A. All my job sites have that capacity. They all have
 22 equipment to offload off a trailer or a railcar.
 23 Q. Do you know if any of these job sites have access
 24 to the rail line between Woodinville and Bellevue?
 25 MR. PASCHALIS: Object to the form.

1 A. I have not done an analysis of all of our job
 2 sites, but I do know there is one we are shipping to in
 3 Kirkland, Toyota of Kirkland, at the old Graham Steel
 4 facility.
 5 Q. How much rebar are you shipping to them?
 6 A. I don't recall the tonnage of that job site, but it
 7 was one of our larger jobs.
 8 Q. Has it been completed?
 9 A. It is -- for us, it is virtually completed.
 10 Q. So you don't expect any additional shipments to
 11 them?
 12 A. Correct.
 13 Q. Or at least you don't have any current plans for
 14 additional shipments to them?
 15 A. That is correct.
 16 Q. And you haven't done a cost analysis about whether
 17 it would be efficient to ship less than a fully loaded
 18 railcar with rebar, correct?
 19 MR. PASCHALIS: Objection; asked and answered.
 20 A. That is correct.
 21 Q. I want to go back to this discussion that has taken
 22 place about Ernie Wilson's communications with Dennis Lauber
 23 of Cascade Steel Rolling Mills. Do you know whether those
 24 two actually spoke to each other?
 25 A. I do not know.

1 Q. And then, finally, I want to point your attention
 2 to what has been marked as Exhibit 96. This is a table filed
 3 with Ballard Terminal Railroad's December 6th petition to the
 4 Surface Transportation Board. I will represent to you that
 5 it includes a list of individuals or businesses that have
 6 sent in letters in some way in this proceeding. And it
 7 includes a series of columns, and, in the far right corner,
 8 it includes something called "Annual Car Count." Down on the
 9 lower, left-hand corner, under a heading entitled,
 10 "Reactivation Freight Customers," CT Sales, rebar
 11 fabrication, is listed as the third reactivation freight
 12 customer in that category; do you see that?
 13 A. Yes.
 14 Q. Now, if you follow the column over to the right, do
 15 you see where it says the numbers 120 and 155?
 16 A. Yes.
 17 Q. Are you familiar with those numbers?
 18 A. No.
 19 Q. Did you provide to Ernie Wilson or Doug Engle any
 20 kind of a count about the number of railcars that your
 21 business would send or receive rebar on?
 22 A. Other than the 8,300 tons from the fiscal year, no.
 23 Q. But that 8,300 tons, did you say earlier that it
 24 was conceivable that you could receive all of your rebar by
 25 rail?

1 A. Well, that's conceivable, yes.
 2 Q. But you do not know whether you would?
 3 A. No.
 4 MR. FERGUSON: I don't have any further
 5 questions. Thank you.
 6
 7 EXAMINATION
 8 BY MR. WAGNER:
 9 Q. Mr. House, would it be fair to say that you would
 10 consider the capital costs and maintenance costs of putting
 11 in a spur in deciding whether you would use rail instead of
 12 trucks to receive your straight rebar?
 13 A. Yes.
 14 Q. Do you use your own trucks to take delivery of
 15 straight rebar, or is it some third party or the mill who
 16 owns the trucks?
 17 A. It's a combination. From Cascade, they have a lot
 18 of their own trucking. We also incorporate a third party on
 19 our own for some loads. And then, from our local mill in
 20 West Seattle, we will-call, we pick up from there.
 21 Q. So you never pick up from Oregon with your own
 22 trucks; is that correct?
 23 A. Correct.
 24 Q. Now, you talked about an alternative for taking
 25 rail service, and that was to use the Boise Cascade site that

1 is like -- do you know how far the Boise Cascade site that
 2 you mentioned is from your current location?
 3 A. Not in distance. They are also in the Maltby area,
 4 before you get to Maltby Cafe, so south of Maltby Cafe.
 5 Q. Are they within a couple miles of your location?
 6 A. Yes.
 7 Q. So, if you used the Boise site, how would you get
 8 the straight rebar from the Boise site to your location?
 9 A. That would require trucks.
 10 MR. WAGNER: Okay. Andy?
 11 MR. MARCUSE: I have nothing further.
 12 MR. FERGUSON: Tom, we are all done here on
 13 this end.
 14 MR. PASCHALIS: Okay, just a couple more.

EXAMINATION

17 BY MR. PASCHALIS:

18 Q. In your letter, Exhibit No. 83, we have the number
 19 8,300 tons of finished rebar per year, and you had testified
 20 that that is about how much you receive in raw product and
 21 how much you ship out; do you recall that?
 22 A. Yes.
 23 Q. Are you aware of how many tons fits in a railcar?
 24 A. I believe I provided the information to Ernie
 25 and/or Doug of 30 tons fitting on a truck, and it is their

1 number to say 2 1/2 loads fit in a railcar.
 2 Q. You had just discussed with Mr. Ferguson a current
 3 customer who is able to or has the ability to -- strike that.
 4 You said you were aware of a current customer who has the
 5 ability to receive shipments by rail?
 6 MR. FERGUSON: Objection; mischaracterizes the
 7 witness's testimony.
 8 A. I have a customer that could conceivably receive
 9 his rebar by rail, yes.
 10 Q. Was it your testimony that the contract that you
 11 currently have is expiring sometime in the near future?
 12 A. That is correct.
 13 Q. But it is conceivable that you could get new
 14 contracts with this customer or other customers that have
 15 similar capabilities in the future?
 16 MR. FERGUSON: Object to the form; calls for
 17 speculation.
 18 A. Yes.

19 MR. PASCHALIS: That is all I have.

EXAMINATION

22 BY MR. WAGNER:

23 Q. Mr. House, I just want to go over that customer
 24 that you were just talking about. When you deliver rebar to
 25 a customer at a job site, do you deliver all of the rebar at

1 one time, or do you deliver it over a period of time?
 2 A. It varies depending on the size of the job.
 3 Q. So, on a big job, how do you deliver it?
 4 A. It goes by sections. I can have a large job and
 5 still make a non -- not a full truckload, because, first,
 6 they will put in a foundation, and maybe that's not a lot of
 7 the weight. Sometimes that's a lot of the weight and what's
 8 above it isn't much. So the job and how they pour the
 9 concrete and what stages they pour it dictates how we ship
 10 the bar.
 11 Q. Is that because most of the time they don't have a
 12 lot of storage on the site?
 13 A. That comes into play, yes.
 14 Q. And so is it fair to say that you are basically
 15 shipping it as they need it?
 16 A. Yes.
 17 MR. WAGNER: Okay, that is it.
 18 MR. FERGUSON: Tom, anything further?

EXAMINATION

21 BY MR. PASCHALIS:

22 Q. I just want to clarify one point with you,
 23 Mr. House. It is also conceivable, isn't it, for any
 24 customers who you have to the south of you who are not
 25 directly on the line, that shipments could be shipped by rail

1 and then the shipment can be completed by truck from that
 2 point on?
 3 A. That is conceivable.
 4 Q. Again, that would require a cost-benefit analysis
 5 to determine how you would ship, correct?
 6 A. Yes.
 7 MR. PASCHALIS: That is all I have.
 8
 9 EXAMINATION
 10 BY MR. FERGUSON:
 11 Q. Mr. House, I had a follow-up on that. I notice
 12 when Mr. Paschalis asked you that question, you kind of
 13 hesitated when you said it's conceivable, yes. I just want
 14 to know, how far of a distance is it, would you say, between
 15 your yard in Maltby, unincorporated Sno County outside
 16 Woodinville down to Bellevue?
 17 A. How far is it?
 18 Q. Yes, on the Highway. Ten miles?
 19 MR. PASCHALIS: I will object to the form.
 20 A. I don't know. Twenty miles.
 21 Q. My question for you is this: What kind of
 22 considerations, what factors would you consider whether it
 23 would make sense to ship rebar for a typical job site of
 24 yours only to then have to have it offloaded and then carried
 25 on further by truck to an area in Bellevue?

1 MR. PASCHALIS: I will object to the form.
 2 Q. Does that make sense to you as a businessman?
 3 MR. PASCHALIS: I will object to the form and
 4 argumentative.
 5 A. You would have to do a cost analysis. Certain
 6 things would have to line up for that to be a benefit.
 7 MR. FERGUSON: Okay, nothing further.
 8
 9 EXAMINATION
 10 BY MR. WAGNER:
 11 Q. Would you say that doing what Mr. Ferguson just
 12 described where you would ship product, finished product, to
 13 your customer by rail, then offload it by truck to be
 14 delivered to a site -- you told Mr. Paschalis that it was
 15 conceivable. Just as a businessman who is working in this
 16 field, would it be fair to say that that would seem unlikely
 17 that that would be the more affordable way to deliver product
 18 to Bellevue?
 19 MR. PASCHALIS: I will object to the form.
 20 A. It would be unlikely. It would have to be the
 21 right type of job.
 22 MR. WAGNER: Thank you.
 23 MR. FERGUSON: Nothing further on our end.
 24 MR. PASCHALIS: I have nothing. Thank you for
 25 coming in, Mr. House.

1 THE WITNESS: Thank you.
 2 MR. FERGUSON: Thank you.
 3 MR. MARCUSE: Off the record.
 4 (Signature waived.)
 5 (Deposition concluded at 12:19 p.m.)
 6
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1 CERTIFICATE
 2 STATE OF WASHINGTON)
) ss
 3 COUNTY OF KING)
 4
 5 I, the undersigned Washington Certified Court
 Reporter, pursuant to RCW 5.28.010, authorized to administer
 6 oaths and affirmations in and for the State of Washington, do
 hereby certify: That the foregoing deposition of the witness
 7 named herein was taken stenographically before me and reduced
 to a typed format under my direction;
 8
 9 That, according to CR 30(e), the witness was given
 the opportunity to examine, read and sign the deposition
 after same was transcribed, unless indicated in the record
 10 that the review was waived;
 11 That I am not a relative or employee of any
 attorney or counsel or participant and that I am not
 12 financially or otherwise interested in the action or the
 outcome herein;
 13
 14 That the deposition, as transcribed, is a full,
 true and correct transcript of the testimony, including
 questions and answers and all objections, motions and
 15 examinations and said transcript was prepared pursuant to the
 Washington Administrative Code 308-14-135 preparation
 16 guidelines.
 17
 18 Wade J. Johnson, Certified Court
 Reporter 2574 for the State of Washington
 19 residing at Seattle, Washington.
 My CCR certification expires on 09/18/14.
 20
 21
 22
 23
 24 STARKOVICH REPORTING SERVICES
 25 206.323.0919

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

1 Q. You mentioned that Oliver Lewis is involved in
 2 estimating?
 3 A. We're phasing him into that, yes.
 4 Q. Could you describe what you mean by being
 5 involved in estimating?
 6 A. That's his background. That's why we hired him.
 7 He's --
 8 Q. Okay.
 9 A. -- a sharp guy.
 10 Q. Can you explain what estimating, what he does
 11 when he is involved in estimating for your company?
 12 A. Puts together numbers for bids.
 13 Q. For bids that Wolford Trucking and Demolition is
 14 going to make?
 15 A. Projects, yes.
 16 Q. Okay. Okay.
 17 (Exhibit Number 1 marked.)
 18 Q. (By Mr. Ferguson) Mr. Wolford, the court
 19 reporter has just handed you an exhibit marked as Number 1.
 20 This is the subpoena that was issued to you. Do you
 21 recognize this document?
 22 A. That?
 23 MS. ALVORD: Yep, he's just asking if you
 24 recognize it.
 25 THE WITNESS: Yes.

1 Q. (By Mr. Ferguson) Okay. Would you turn to
 2 Page 3, please? So we asked you to produce certain
 3 documents under these categories. And Ms. Alvord and I
 4 spoke yesterday and she said that you actually have some
 5 contracts that you've executed and that you're going to
 6 bring copies of those with you today. Do you have them
 7 with you?
 8 MS. ALVORD: I can answer that question, if
 9 that's appropriate. I contacted the office to see if there
 10 were written contracts. What actually exists are invoices
 11 that substantiate the verbal contract that was made, and
 12 I'm having those e-mailed over.
 13 MR. FERGUSON: Okay. Great.
 14 Q. (By Mr. Ferguson) Mr. Wolford, did you review
 15 this Page 3 here entitled Attachment A when you received
 16 this document?
 17 A. Mm-hm (answers affirmatively), yes.
 18 Q. Okay. Did you do anything to determine whether
 19 you had any documents that were responsive to these
 20 requests?
 21 A. We found a bid that we put together for the
 22 removal of the railroad.
 23 Q. Did you do anything else?
 24 A. No.
 25 Q. Did you look for any communications between you

1 or other employees or officers of Wolford Trucking and
 2 Ballard Terminal Railroad?
 3 A. The one document that we found, which was the bid
 4 for the railroad removal is the only one I can find.
 5 Q. But please listen to my question. Did you look
 6 and ask your employees -- did you ask your employees if
 7 they have any communications with Ballard Terminal
 8 Railroad?
 9 A. Yes.
 10 Q. And what did your employees tell you?
 11 A. They said no.
 12 Q. Did you --
 13 A. Would that be Byron Cole, he's the Ballard
 14 Terminal Railroad. We haven't talked about anything, not
 15 much, about this project. Our go-to guy was a man named
 16 Ernie Wilson.
 17 Q. Who is Mr. Wilson?
 18 A. He is a retired surveyor.
 19 Q. And when you say he was your go-to guy, is
 20 Mr. Wilson affiliated with a company?
 21 A. The Eastside Rail.
 22 Q. Have you ever met Mr. Wilson in person?
 23 A. Yes, a couple times.
 24 Q. Can you describe what he looks like, please?
 25 A. Tall, thin guy with white hair.

1 Q. Does he have a goatee?
 2 A. I think so.
 3 Q. Okay. And you said he's with Eastside Community
 4 Rail?
 5 A. Yes.
 6 Q. Okay. Is that the company that Doug Engle is
 7 involved with?
 8 A. Yes.
 9 Q. Do you know what Mr. Wilson's role with Eastside
 10 Community rail is?
 11 A. Not sure.
 12 Q. Okay.
 13 MR. FERGUSON: Let's go ahead and mark
 14 Exhibit 2.
 15 (Exhibit Number 2 marked.)
 16 Q. (By Mr. Ferguson) Mr. Wolford, do you recognize
 17 the document that's been marked as Exhibit 2?
 18 MR. MONTGOMERY: Object to the form.
 19 THE WITNESS: That right there?
 20 MS. ALVORD: I think I can interject here
 21 and help. This is the response that I provided for your
 22 firm of the production of documents. So while he might be
 23 able to acknowledge the contents, he wouldn't be familiar
 24 with the cover sheet, for example.
 25 Q. (By Mr. Ferguson) Let me ask a different

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

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

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.

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.

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

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

1 A. Yes, I can explain this.
 2 Q. Okay. Go ahead, please.
 3 A. Okay. The reason if the rail stays in there and
 4 we use the gondola cars, they haul like 60 yards per train
 5 load, one unit. And these are side dump kind of specialty
 6 equipment. We haul 20 yards in our truck, or 23 yards,
 7 maximum in a heavy-haul truck. So that would be our edge
 8 on the bidding. And these gondola cars, this material
 9 coming out of Bellevue is a clay base, it's kind of what
 10 they really need for the nature trail up in Snohomish. So
 11 we load it right there in Bellevue, keeps the pollution and
 12 the road wear and tear down, right, in the local -- we have
 13 a staging area on a site there. Rail it up there and side
 14 dump it, because it's not even accessible by truck in some
 15 places on the Snohomish place. So just be ideal to roll it
 16 up, put it there, and my bulldozer would place the material
 17 to build their 20-some miles of nature trail along the
 18 rail.
 19 Q. Do you understand, though, that the Number 7 here
 20 in Attachment A was asking you for documents showing the
 21 basis for this statement that your bid would be 15 percent?
 22 A. It's not in writing, but that's what we based our
 23 whole deal on here, that be about 15 percent less cost to
 24 the contractor because of the 60 yards versus the 20.
 25 Q. So do you not have any documents --

1 A. No documents.
 2 Q. -- to show this?
 3 A. It's just what it is.
 4 Q. Okay.
 5 A. There's no documents because there's no bid yet.
 6 But when it comes out, this will be our edge using the
 7 rail.
 8 Q. If they're -- so, are you saying, then, that --
 9 let me rephrase that.
 10 Do you not have any -- do you not have a study
 11 that calculates the cost differential between hauling by
 12 truck and hauling by rail?
 13 A. It was an estimate. That's the estimated cost of
 14 the savings.
 15 Q. And is the estimate not written down anywhere?
 16 A. No, it's not written down.
 17 Q. Okay. Would you turn, then, back to the second
 18 to last page in this Exhibit 2. Excuse me, Exhibit 1,
 19 that's your letter.
 20 A. This one?
 21 Q. Yes. Next page, though.
 22 A. Last page.
 23 Q. Second to last page.
 24 A. Second to last page is this.
 25 Q. Oh, my mistake. Page 29 at the bottom, I'm not

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

1 that would come out of a construction site?
 2 A. He's a lot better at estimating dirt volumes than
 3 I am.
 4 Q. Is estimating dirt volumes something he would
 5 have done as part of this refinement process?
 6 A. He and I used estimating -- used best guess
 7 estimates based on what we knew from Kemper and Lincoln
 8 Center, which was 250,000 cubic yards, and extrapolated
 9 that to other similar sized projects and what we knew about
 10 the Sound Transit tunnel through Bellevue, cut through
 11 Spring District, et cetera. So we belabored that.
 12 Q. I want to hand you what's been previously marked
 13 as Exhibit 8. This is a letter signed by Bobby Wolford to
 14 Cynthia Brown of the Surface Transportation Board. Have
 15 you seen this letter before?
 16 A. Yes.
 17 Q. Did you see any drafts of it before Mr. Wolford
 18 signed it?
 19 A. I don't recall. I may have. I may have, but I
 20 don't recall specifically seeing it, no.
 21 Q. Is it your understanding that Mr. Wilson wrote
 22 this letter for Mr. Wolford to sign?
 23 MR. MONTGOMERY: Object to the form.
 24 THE WITNESS: It was my understanding that
 25 Mr. Wilson drafted this based on conversations with

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 EXAMINATION
 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?

CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing deposition of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That, according to CR 30(e), the witness was given the opportunity to examine, read and sign the deposition after same was transcribed, unless indicated in the record that the review was waived;

That all objections made at the time of said examination have been noted by me;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the witness coming before me was duly sworn or did affirm to tell the truth;

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made at the time of the foregoing examination and said transcript was prepared pursuant to the Washington Administrative Code 308-14-124 preparation guidelines;

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.

AFFIDAVIT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I have read my within deposition, and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the "CORRECTIONS" flyleaf page hereof.

DOUGLAS ENGLE

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2013.

NOTARY PUBLIC in and for the State of _____, residing at _____ My commission expires _____.

STARKOVICH REPORTING SERVICES
P.O. BOX 22884
SEATTLE, WASHINGTON 98122
(206) 323-0919
FAX (206) 328-0632
info@starkovichreporting.com

Wednesday, May 22, 2013

To: Emily Finnegan
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606

Re: Surface Transportation Board
Deposition of: DOUGLAS ENGLE
Date Taken: Wednesday, May 22, 2013

PLEASE TAKE NOTICE THAT:

Enclosed are two forms: "Affidavit" and a "Correction Sheet." Instruct the deponent to review the deposition, record any corrections on the Correction Sheet, and sign the Affidavit before a Notary Public. Return both forms to this office for their inclusion in the original transcript and distribution to other parties. The transcript will be forwarded to the appropriate party: _____.

Thank you for your assistance in obtaining signature.

By: Katie J. Nelson, RPR, CCR, CCR No. 2971

cc: HUNTER FERGUSON, ANDREW MARCUSE, JORDAN WAGNER, TOM MONTGOMERY

STARKOVICH REPORTING SERVICES
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CORRECTION SHEET

PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

PAGE LINE CORRECTION AND REASON

Table with 3 columns: PAGE, LINE, CORRECTION AND REASON. Contains multiple rows of blank lines for corrections.

From: James House <jim@ctsalesinc.net>
Sent: Monday, February 03, 2014 10:54 AM
To: Lomax, Leslie D.; Thomas Paschalis
Subject: FW: Letter supporting Ballard Terminal RR reactivation petition
Attachments: CT Sales to STB.docx

Importance: High

James A House
CT Sales, Inc
(425) 483-0101

-----Original Message-----

From: ewilson@spiretech.com [mailto:ewilson@spiretech.com]
Sent: Monday, September 30, 2013 7:30 PM
To: dengle76@comcast.net; James House
Subject: Letter supporting Ballard Terminal RR reactivation petition
Importance: High

Hi guys-

Here is my draft of a letter for CT Sales to send to STB supporting BTR's reactivation effort. I think I've captured all the statistics that Jim gave me about the business. I don't have a piece of CTS letterhead on hand, so it's possible that some re-formatting could be needed.

If everyone's in agreement, or even if Jim would like to make any edits, we are close to being able to send this on to Ballard's attorneys for filing, as well as e-filing with STB. I think Jim's office can handle this without my presence, Doug, if you want to give them all of the necessary addresses. Please remember to copy me with the final version.

I have a dentist appointment mid-morning tomorrow, so I'm hoping that the two of you can wrap this up. Let me know if you have a question.

Thanks,

Ernie
425-869-8899

Exhibit 88 Date 2/7/14
Witness House
Wade J. Johnson 323-0919

30 September 2013

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

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

Our company, CT Sales, Inc. has offices and a fab shop located alongside the tracks of the former BNSF Woodinville Subdivision, currently served by Ballard Terminal Railroad (BTR). We are writing to urge the Board to preserve and enhance the freight rail service along this line by granting BTR's pending petition to extend their operations south of Woodinville by reactivating that rail-banked line to Bellevue.

CT Sales has existed in its present form since about 1981. We cut, bend and fabricate steel reinforcing bars (re-bar) from straight mill stock to meet the specifications of various concrete construction projects in the region. Last year we processed and shipped about 8300 tons of finished re-bar, but this is still down from our high of about 14,000 tons in 2007. This year we will do about \$10M in business. We employ roughly 20 people in family-wage jobs.

Much of our bar stock is purchased directly from Cascade Steel Rolling Mills in McMinnville, Oregon. That mill is served by the Union Pacific Railroad. It is our understanding that they could ship product to us directly by rail via UP, BNSF & BTR, with a savings in freight charges as compared with trucking. We estimate that each rail car of re-bar would replace about 2.5 truckloads. It is conceivable that we could also ship finished fabrications out to more distant customers by rail, although more research is needed on that. In any event, we are actively pursuing the possibility of receiving re-bar by rail, which would help us bolster the revenue picture for BTR, while lowering our cost of goods sold. The fact that we would also be helping to reduce truck congestion on I- 5 between Oregon and Washington is a plus.

We hope that the STB will see fit to grant Ballard's petition to reactivate freight rail service into Bellevue. Meantime, please feel free to contact me with any question you may have about our operations, or about how we believe our business economics would be improved by adding the ability to ship product by rail.

Sincerely,

Jim House
President

From: James House <jim@ctsalesinc.net>
Sent: Monday, February 03, 2014 10:55 AM
To: Lomax, Leslie D.; Thomas Paschalis
Subject: FW: Letter supporting Ballard Terminal RR reactivation petition
Attachments: CT Sales to STB REDLINE.docx; ATT00001.htm; 2013Sep30 CT Sales to STB.docx; ATT00002.htm

Importance: High

James A House
CT Sales, Inc
(425) 483-0101

From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Monday, September 30, 2013 8:57 PM
To: James House
Cc: Ernie Wilson
Subject: Re: Letter supporting Ballard Terminal RR reactivation petition
Importance: High

Thank you, Jim and Ernie,

I made a couple of minor changes in the REDLINE version.

Exhibit 90 Date 2/7/14
Witness House
Wade J. Johnson 323-0919

30 September 2013

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

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ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

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We hope that the STB will see fit to grant Ballard's petition to reactivate freight rail service into Bellevue. Meantime, please contact me with any question you may have about our operations, or about how we believe our business economics would be improved by adding the ability to receive raw materials and ship product by rail.

Deleted: feel free to

Sincerely,

Jim House
President

30 September 2013

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
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REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

Our company, CT Sales, Inc. has offices and a fab shop located alongside the tracks of the former BNSF Woodinville Subdivision, currently served by Ballard Terminal Railroad (BTR). We are writing to urge the Board to preserve and enhance the freight rail service along this line by granting BTR's pending petition to extend their operations south of Woodinville by reactivating that rail-banked line to Bellevue.

CT Sales has existed in its present form since 1981. We cut, bend and fabricate steel reinforcing bars (re-bar) from straight mill stock to meet the specifications of various concrete construction projects in the region. Last year we processed and shipped about 8,300 tons of finished re-bar, but this is still down from our high of about 14,000 tons in 2007. This year we will do about \$10M in business. We employ roughly 20 people in family-wage jobs.

Much of our bar stock is purchased directly from Cascade Steel Rolling Mills in McMinnville, Oregon. That mill is served by the Union Pacific Railroad. It is our understanding that they could ship product to us directly by rail via UP, BNSF & BTR, with a savings in freight charges as compared with trucking. We estimate that each rail car of re-bar would replace about 2.5 truckloads. Receiving rebar via rail will allow us to more easily handle longer lengths for construction projects. It is conceivable that we could also ship finished fabrications out to Bellevue and more distant customers by rail, although more research is needed. In any event, we are actively pursuing receiving re-bar by rail, which would help us bolster the revenue picture for BTR, while lowering our cost of goods sold. The fact that we would also be helping to reduce air pollution and truck congestion on I- 5 between Oregon and Washington is a plus.

We hope that the STB will see fit to grant Ballard's petition to reactivate freight rail service into Bellevue. Meantime, please contact me with any question you may have about our operations, or about how we believe our business economics would be improved by adding the ability to receive raw materials and ship product by rail.

Sincerely,

Jim House
President

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Thursday, November 21, 2013 10:47 AM
To: Greg Starup
Subject: Eastside Rail Corridor
Attachments: Coastal Community Bank 2013Nov21.doc; ATT00007.htm

Importance: High

Good day Greg,

We are really struggling in the time we have to put the kinds or legal structures in place to "pre-qualify" for a STB loan.

There are just too many unknowns, people and variables in play.

On the favorable side we are expecting a letter of support immanently from a major national railroad, which is why I am writing to you today.

Would you consider a limited letter of support based on communique this year and documents we have already provided.

Something down the line of the attached?

We really have a sense of urgency and time is of the essence, so Coastal's support would be of material value to us.

Best regards and thank you for the consideration,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

Exhibit 66 Date 2/6/14
Witness Starup
Wade J. Johnson 323-0919

November 21, 2013

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

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Coastal Community Bank is a preferred lender for the Small Business Administration. The bank has been in discussions with Eastside Community Rail, LLC working with Ballard Terminal Railroad Company since January this year to provide capital loans for equipment and other works on the Eastside Rail Corridor. The railroad has broad community support as described in the many letters previously submitted to the Surface Transportation Board, which we have reviewed.

Our bank has \$XXX in assets and has been steadily growing for the past XX years. We are fully capable of participating in a \$10 million financing package for the reactivation of the Eastside Rail Corridor. However, until the Board makes a reactivation decision, it is nearly impossible to know what that financing package and entity structure should actually be as there are many options to consider.

Given the line currently starts in Snohomish, a Woodinville terminus versus Bellevue is very significant. This also impacts the three rail use alternatives of freight, excursion and commuter. Understanding the freight customer mix and land requirements for aggregates, spoils removal and concrete production add further complexity. Additionally, transit oriented development has material financial impacts. The Board's action to preserve rail service on this line must be in place before Coastal Community Bank can make any definitive commitments.

I would like to impress upon the Board the importance of restoring rail service between Woodinville and Bellevue, Washington. We are ready, willing and able to help make the Eastside line to Bellevue a success with these railroad companies.

Thank you for your understanding.

Ms. Cynthia T. Brown
February 6, 2014
Page 2

Sincerely,

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
 GREG STARUP

Taken at 600 University, Suite 3600
 Seattle, Washington

DATE: February 6, 2014
 REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

STARKOVICH REPORTING SERVICES
 206.323.0919

1 segment of that railroad corridor between Woodinville and
2 Bellevue. Are you familiar with that rail corridor,
3 generally speaking, in connection with your communications
4 with Mr. Engle?

5 MR. PASCHALIS: Object to the form.

6 A. Generally speaking, I am familiar with that
7 corridor and the area that is under request to be
8 reactivated.

9 Q. You understand that Ballard Terminal Railroad is
10 the entity that is seeking authorization from the Surface
11 Transportation Board to reactivate rail service on the
12 section of the corridor between Woodinville and Bellevue; is
13 that your understanding?

14 A. I do not have a clear understanding of the
15 relationship between the two entities, Ballard Terminal
16 Railroad and Eastside Community Rail. I believe that I
17 misspoke; that's not the exact name of it. I have an
18 understanding that they are somehow connected, either by
19 ownership or affiliation of other sorts, and that that
20 combined entity or the individuals that are principals or
21 have controlling interests somehow within that structure that
22 is who is requesting the reactivation.

23 Q. So, if I use the terms "reactivation proposal" or
24 "reactivation request," do you understand that I am referring
25 to the subject matter of this administrative proceeding for

1 the Surface Transportation Board, and it is referring to that
2 potential to reactivate rail service on the portion of the
3 line between Woodinville and Bellevue?

4 A. I understand that.

5 Q. And, when I refer to the bank, instead of saying
6 Coastal Community Bank every single time, I am referring to
7 Coastal Community, your bank, the bank you work with, unless
8 I specify something else; is that okay with you?

9 A. That is fine with me; I understand that.

10 Q. Has the bank made a loan to Ballard Terminal
11 Railroad Company, LLC, in connection with a proposal to
12 reactivate rail service on the corridor between Woodinville
13 and Bellevue?

14 A. No.

15 Q. Has the bank ever made a loan of any kind to
16 Ballard Terminal Railroad?

17 A. No.

18 Q. Has Ballard Terminal Railroad ever applied to
19 Coastal Community Bank for a loan?

20 A. No.

21 Q. Has the bank provided any other type of financing
22 to Ballard Terminal Railroad in connection with the effort to
23 reactivate rail service on the line between Woodinville and
24 Bellevue?

25 A. No.

1 MR. PASCHALIS: Object to the form.

2 A. No.

3 Q. Do you know if Ballard Terminal Railroad has ever
4 sought any type of financing from the bank in connection with
5 its effort to reactivate rail service on the corridor between
6 Woodinville and Bellevue?

7 A. Can you define the term "sought."

8 Q. Do you know if anyone for Ballard Terminal Railroad
9 has approached the bank -- well, I will be specific with each
10 one. This is going to sound repetitive, but I want to be
11 precise here. Has anyone from Ballard Terminal Railroad
12 applied for a loan or any other type of financing for an
13 effort to reactivate rail service between Woodinville and
14 Bellevue?

15 A. No.

16 Q. Are you aware of anyone from Ballard Terminal
17 Railroad who has spoken to anyone at the bank about the
18 possibility of obtaining financing for reactivation of rail
19 service between Woodinville and Bellevue?

20 A. Yes.

21 Q. And who is that?

22 A. Doug Engle.

23 Q. Did he approach you?

24 A. Yes.

25 Q. Do you recall when he first approached you?

1 A. I would have to refer to my notes and e-mails, all
2 of which you have copies of.

3 Q. Yes. We will get to those.

4 A. Okay.

5 Q. Do you recall if Mr. Engle represented that he was
6 an agent for Ballard Terminal Railroad?

7 MR. PASCHALIS: I will object to the extent
8 that that calls for a legal conclusion.

9 A. I do not recall him representing anyone other than
10 himself and Eastside Community Rail.

11 Q. Okay. Is it your understanding that Mr. Engle is
12 an owner of Ballard Terminal Railroad?

13 A. I do not know if he is an owner, and I do not have
14 evidence or any documentation of his ownership in any of the
15 entities being discussed.

16 Q. So, moving back to Eastside Community Rail for a
17 second here, the first question I asked you is whether the
18 bank had extended a loan to Eastside Community Rail -- and,
19 if it is all right with you I will call it ECR for short --
20 extended a loan to ECR for an effort to reactivate rail
21 service on the line between Woodinville and Bellevue, and you
22 answered no, correct?

23 A. Correct.

24 Q. Has anyone for ECR submitted an application for a
25 loan in connection with an effort to reactivate rail service

1 between Woodinville and Bellevue?
 2 A. No.
 3 Q. Has anyone for ECR sought from the bank any other
 4 type of financing besides a loan in connection with a
 5 reactivation effort?
 6 A. No.
 7 Q. But has someone from ECR approached you or anyone
 8 else at the bank about the possibility of obtaining financing
 9 for a reactivation effort between Woodinville and Bellevue?
 10 A. Yes.
 11 Q. Just to tie this off, and this is going to make
 12 this go a lot faster: Have you ever had communication of any
 13 kind with a man named Byron Cole?
 14 A. No, I do not believe that I have. I do not
 15 recognize that name.
 16 Q. Okay. Do you know if you have had communication of
 17 any kind with a man named Paul Nerdrum? And I will get more
 18 specific here: Do you know if you have had communication
 19 with Mr. Nerdrum in connection with efforts to obtain
 20 financing for rail reactivation?
 21 A. I do not believe I have. I know I have heard that
 22 name, but I do not know in what context I have heard that
 23 name.
 24 Q. Okay. Have you had any communications of the type
 25 I am discussing with a person named Ernie Wilson?

1 A. No, I have not.
 2 Q. Have you had any such communications with a person
 3 named Kathy Cox?
 4 A. The name Kathy Cox, I believe that she was
 5 represented as a tour operator in connection with Eastside
 6 Community Rail. And, if that is the same person, then I have
 7 had discussions with her together with Mr. Engle.
 8 Q. In person?
 9 A. In person.
 10 Q. That is who I am referring to, and that was my next
 11 question, is what type of communications? And they have been
 12 limited to in-person discussions?
 13 A. Yes.
 14 Q. Is it accurate to say then that the only people you
 15 are aware of either for ECR or Ballard Terminal with whom you
 16 have had conversations about financing for rail reactivation
 17 are Mr. Engle and Ms. Cox?
 18 A. That is accurate.
 19 Q. Okay, great. So let's look at Exhibit 64. We
 20 identified this earlier as a letter you signed, and I will
 21 represent to you this exhibit is something that was included
 22 as part of a filing that Ballard Terminal Railroad made to
 23 the Surface Transportation Board on December 6th of last
 24 year. You will see on the bottom two page numbers, one in
 25 the center, 21, and 24, and those are page numbers that were

1 part of the packet, because I take it that the letter that
 2 you provided did not have page numbers on it, correct?
 3 A. That is correct.
 4 Q. So, if you would take a moment to just reread the
 5 letter. I suspect you have reread it a couple times in the
 6 last week, but, if you could just take a moment to reread it
 7 here, and then I would discuss it with you.
 8 A. Very well. I have finished reading the letter.
 9 Q. Okay, great. Now, do you recall whether the
 10 circumstances around which this letter came into being?
 11 A. Yes, I do.
 12 Q. Could you describe those for us, please.
 13 A. Mr. Engle asked me if I would write a letter of
 14 support for the reactivation of the rail corridor. He
 15 provided me with a suggested letter, which I read and told
 16 him that I would have to make some edits to that, and I did
 17 make some edits to that, and the resulting letter is one that
 18 we felt as a bank that would be appropriate.
 19 MR. FERGUSON: I would like to mark this as
 20 the next exhibit. This will be 66.
 21 (Exhibit 66 marked for
 22 identification.)
 23 MR. PASCHALIS: Wouldn't it be 65?
 24 MR. FERGUSON: No. Sorry, Tom, we did not
 25 tell you the subpoena to Mr. Starup is 65. Sixty-six is the

1 e-mail dated November 21st, 2013, from Mr. Engle to
 2 Mr. Starup, subject line, "Eastside Rail Corridor." So just
 3 let me know when you have had a chance to locate that.
 4 MR. PASCHALIS: Give me a minute here. What
 5 is the date?
 6 MR. FERGUSON: November 21st.
 7 MR. PASCHALIS: Does it start, "Good day,
 8 Greg"?
 9 MR. FERGUSON: Yes, it does.
 10 MR. PASCHALIS: I believe I have it. Is it a
 11 three-page document?
 12 MR. FERGUSON: Yes. It has the cover e-mail
 13 that starts off, "Good day, Greg." The last sentence is, "We
 14 really have a sense of urgency, and time is of the essence,"
 15 and it goes on. And then it has an attachment, which is a
 16 draft or what appears to be a draft of the letter that was
 17 eventually submitted to the Board. Is that what you have?
 18 MR. PASCHALIS: Yes.
 19 MR. FERGUSON: Okay, great.
 20 (Exhibit 67 marked for
 21 identification.)
 22 MR. FERGUSON: And then, Tom, we have also
 23 marked as Exhibit 67 Mr. Starup's reply to that e-mail. The
 24 date on that document is Friday, November 22nd. The body of
 25 the e-mail is "Doug, hope this helps," and then it is a copy

1 of the signed letter.

2 MR. PASCHALIS: And that is also three pages
3 long?

4 MR. FERGUSON: Yes.

5 MR. PASCHALIS: Okay, you can proceed.

6 MR. FERGUSON: Thank you.

7 Q. Looking at Exhibit 66, Mr. Starup, this is a copy
8 of an e-mail where the from line reads "Doug Engle," sent on
9 Thursday, November 21st, to you, with the subject line,
10 "Eastside Rail Corridor," and it says there is an attachment,
11 Coastal Community Bank 2013 November 21st dot doc. Is this
12 the e-mail that Mr. Engle sent to you that had the draft of
13 the letter that you eventually signed and was provided to the
14 STB?

15 A. Yes.

16 Q. Then, if you look at Exhibit 67, this is a copy of
17 an e-mail from you to Mr. Engle dated the following day,
18 November 22nd?

19 A. Yes.

20 Q. Which has an attachment which is what appears to be
21 the final copy of the letter with your signature; is that
22 correct?

23 A. That is correct.

24 Q. So, looking at the draft letter that is part of
25 Exhibit 66 and the final letter bearing your signature that

1 was submitted to the Board that is Exhibit 64, can you tell
2 me what about the draft letter that you didn't feel
3 comfortable signing. To back up, you mentioned earlier that
4 you made some revisions so the bank could feel comfortable
5 signing the letter of support, correct?

6 A. Yes.

7 Q. What is it about the draft letter that you weren't
8 comfortable with?

9 A. The paragraph that is the fourth --

10 Q. Just to be clear, you're looking at the draft
11 letter in Exhibit 66?

12 A. I am looking at the draft letter, Exhibit 66, the
13 fourth paragraph, the first -- the sentence begins, "I would
14 like to impress upon the Board the importance of restoring
15 rail service." And I replaced it with "Once we have
16 sufficient information, a large part of which will be heavily
17 impacted by the Board's decision on the matter, we are ready,
18 willing, and able to determine specifically what assistance
19 we can offer." In other words, the point of this letter that
20 I wrote and signed is that, without the decision of the
21 Board, we cannot move forward with any financing package with
22 the borrower. We could not have a complete application.

23 Q. Why is that?

24 A. Because we feel that, based upon the sorts of
25 representations that were being made, which were very general

1 in terms, that, without their ability to be able to use that
2 corridor, it was unlikely that -- based upon what they were
3 representing, that it could be viable. In other words, their
4 plan contained the use of that corridor as a major part of
5 the revenue generation.

6 Q. Okay.

7 A. And, again, it was so general, you know, very
8 difficult to determine anything concrete, but, what could be
9 determined is that a decision must be made, one way or the
10 other. Now, if a decision were made in the negative, then
11 that would mean that we would have to look at it in a totally
12 different manner.

13 Q. Okay. I am trying to understand what is it about
14 the decision of the Board that would impact your ability to
15 evaluate a request for financing to operate rail service.
16 Can you expand on your earlier answer.

17 A. It was clear that the application would contain
18 projections of revenue that would be dependent upon being
19 able to use that corridor. So, without a decision, there is
20 no way to know if those projections were viable or not.

21 Q. In your work with the bank -- and actually this is
22 a perfect opportunity to ask you -- can you just explain sort
23 of generally what it is you do at the bank.

24 A. I am manager of the bank's Small Business
25 Administration lending department. I work with other lenders

1 within the bank to structure SBA loans. I'm part of credit
2 administration, so that means that I have a certain approval
3 authority as well as recommending authority.

4 Q. Do you deal only with SBA loans?

5 A. Almost exclusively at this point, yes. And USDA
6 guaranteed, other government guaranteed loans.

7 Q. Agricultural loans, that sort of thing?

8 A. It could be, yeah.

9 Q. The communications that you had with Mr. Engle, and
10 we are going to get into those in more detail in a little
11 while, were they always about an SBA loan?

12 A. The assumption I believe is that because of the
13 start-up nature of this venture, that it would have to be an
14 SBA loan. And, before there was ever an application, there
15 would have to be a number of things that occurred, one of
16 which we felt was this.

17 Q. Did you ever discuss any other type of financing
18 with Mr. Engle or Ms. Cox?

19 A. No.

20 Q. So you never discussed having the bank provide
21 equity financing?

22 A. No. He may have asked, but, no.

23 Q. Understood. So, when you evaluate an SBA loan or
24 when you evaluate a request or when you are having a
25 discussion with someone about an SBA loan, have you ever

1 engaged in an analysis to either see if you could grant
 2 conditional approval for an SBA loan, in other words,
 3 approval for the loan conditioned upon some event or
 4 occurrence or some other criteria that would have to be met?
 5 MR. PASCHALIS: I will object to the form.
 6 A. Yes, I have granted conditional approvals.
 7 Generally, those conditions are of the nature such as
 8 verification of value, an appraisal, verification of some
 9 other thing, you know, title insurance, lien searches, things
 10 of that nature, generally fundamental issues, such as
 11 understanding what income stream are going to be needed for
 12 the application in order to evaluate the request.
 13 Q. Are you of the view that you would not have been
 14 able to engage in the type of analysis needed for conditional
 15 approval without a final decision of the Surface
 16 Transportation Board here?
 17 A. I would have to say yes. No, I would not be able
 18 to -- I could not envision any kind of provisional approval
 19 with such a fundamental question outstanding. Aside from the
 20 prudence of it, it's a matter of efficiency and time, as
 21 well. We would not go through the analysis procedure on such
 22 a speculative factor.
 23 Q. Apart from the prudence and the investment of time
 24 and other resources, in terms of the information that you
 25 would need to give conditional or preapproval -- by

1 information, I mean information about the business itself,
 2 revenue stream; income; securitization; guarantee
 3 information -- is there anything about the absence of a
 4 Surface Transportation Board decision that would prevent you
 5 from analyzing that information?
 6 A. Well, I think it would be very difficult for the
 7 subject entity to be able to get into any kinds of
 8 conditional commitments of business, for example, arranging
 9 potential freight hauls, unless they did have some sort of
 10 authority.
 11 Q. What makes you think that would be difficult for --
 12 and let's keep it focused here on Ballard Terminal Railroad
 13 and ECR. What would make it difficult for them to be able to
 14 accurately represent those commitments or projections of rail
 15 traffic?
 16 MR. PASCHALIS: I will object to the extent
 17 that calls for speculation.
 18 Q. Well, you just said you think it would be difficult
 19 for them to get it.
 20 A. Yes, I do.
 21 Q. Why do you think that?
 22 A. Because I cannot imagine any business making any
 23 kind of a commitment when there may not be any real ability
 24 for them to be able to perform. I think that they have to
 25 have some sort of a chance of performing, and, without

1 authority to operate on a certain corridor -- I mean, even
 2 the fact that it's got to be built out again, that's another
 3 question
 4 Q. So, looking back at the letter that you signed,
 5 Exhibit 64, this last sentence reads, "Once we have
 6 sufficient information, a large part of which will be heavily
 7 impacted by the Board's decision on this matter, we are
 8 ready, willing, and able to determine specifically what
 9 assistance we can offer to help make the Eastside line to
 10 Bellevue a success with these railroad companies." Can you
 11 tell me what you mean by saying, "we are ready, willing, and
 12 able to determine specifically what assistance we can offer
 13 to help make the line a success."
 14 A. It means that we are willing -- we are ready, we
 15 are willing to accept application, and you have other
 16 communication regarding what an application may consist of.
 17 Q. Right.
 18 A. To analyze that and to verify that data and then
 19 determine what it is that we may or may not be able to do.
 20 Q. We will get to that second part in a moment. I
 21 want to be clear about something, though. When it says, "we
 22 are ready, ready to determine, specifically what assistance
 23 we can offer, you do not mean there that there is a pending,
 24 completed application that you are ready to review?
 25 MR. PASCHALIS: I will object to the form;

1 asked and answered.
 2 A. It means that we are willing to consider an
 3 application once we get the information that we need.
 4 Q. Okay, but, to be clear, no application has been
 5 submitted?
 6 MR. PASCHALIS: Asked and answered.
 7 A. That is the case.
 8 Q. And then, once an application is submitted -- and
 9 we will talk in a second about what will consist of that
 10 application -- I understand from your testimony that you
 11 would then be ready, willing, and able to determine what
 12 assistance you could offer based on that application?
 13 A. That would be correct.
 14 Q. But this statement does not reflect a promise to
 15 offer financing of any type, does it?
 16 A. Absolutely not.
 17 Q. Is it fair to say that it is simply a statement
 18 that you would consider the merits of the financing
 19 application?
 20 A. That is correct.
 21 MR. FERGUSON: Let's mark another exhibit
 22 here. Tom, what I am going to mark is the full copy of that
 23 e-mail from October 23rd that has the checklist of items.
 24 MR. PASCHALIS: Okay. There is a two-page
 25 e-mail that has from Mr. Starup for Mr. Engle, right?

1 A. Right. Yes.
 2 Q. So the stack of e-mails, and we need to look at
 3 each one, but I am trying to get a sense of your familiarity
 4 with these documents. I will represent to you that
 5 Ms. Anderson and the bank provided them to us as part of the
 6 response to the documents subpoena. Take a look at
 7 Exhibit 68 again, please. This is your e-mail to Doug of
 8 October 23rd, which contains the checklist of items for SBA
 9 loan application. Do you recall reading or reviewing the
 10 contents of e-mails from Doug between October 19th, which are
 11 these e-mails, Exhibits 70 through 80, before you sent this
 12 e-mail concerning the SBA checklist?
 13 A. I would have looked at these, and I do recall
 14 seeing these documents. There was no substantive analysis of
 15 them, because there was basic information in here that we
 16 still needed.
 17 Q. And by "here," could you be specific what you are
 18 referring to.
 19 A. Well, I am referring to financial information in
 20 terms of the existing companies and the entities that --
 21 Q. Sorry. You are referring to the SBA checklist,
 22 correct?
 23 A. Yes, I am, yeah.
 24 Q. And so do you recall if you sent him the checklist
 25 as a result of receiving these e-mails marked 70 through 80?

1 Are those e-mails that he sent to you what prompted you to
 2 send him this SBA checklist?
 3 A. Apparently so. As I mentioned before, I send this
 4 out to every borrower when there is discussions about
 5 applying for a loan so that they are clear as to exactly what
 6 I expect to see and the form in which I wish to see it, that
 7 I need to see it.
 8 Q. If I already asked you this, forgive me. Well,
 9 actually, let's do this: Will you take just a few minutes
 10 here to look at the cover e-mails of these exhibits just so
 11 you have a sense of what this stack is, and then we will
 12 address each of them in turn.
 13 A. Okay.
 14 MR. PASCHALIS: Hunter, let me interject for a
 15 moment with respect to Exhibit 74. I would like that to get
 16 marked confidential, and, if you have any specific questions
 17 about it, I would like to have those marked confidential, as
 18 well.
 19 MR. FERGUSON: Certainly. Okay.
 20 Tom, are you organized?
 21 MR. PASCHALIS: Yes. Go ahead.
 22 Q. So now that you have had a chance to quickly glance
 23 at these e-mails, and they have numerous attachments, just to
 24 get ordered here in clarity, do you recall receiving some or
 25 all of these documents from Mr. Engle?

1 A. Yes.
 2 Q. Do you recall whether you reviewed their contents
 3 before you sent the e-mail October 23rd with the SBA
 4 checklist?
 5 A. I reviewed the contents to determine that it was
 6 not the information that I really needed to see because a lot
 7 of it was not pertaining to the specific -- let me rephrase
 8 that. Some of it was relating to prior companies that Doug
 9 owned, GNY or whatever it was.
 10 Q. Okay. Let's get specific here for the record if it
 11 is possible.
 12 A. Okay. Well, then let's go through each document.
 13 Q. The reason I am asking that is I am trying to
 14 determine whether we need to go through each document.
 15 A. Okay.
 16 Q. Can you say this: Are you confident in your memory
 17 that you reviewed these e-mails and determined they didn't
 18 contain the information you would need to consider an SBA
 19 loan application?
 20 A. Yes. And what I was looking for specifically was
 21 personal balance sheet information.
 22 Q. When you say personal, what do you mean?
 23 A. I mean the individual principals of the company.
 24 Q. And that would be Mr. Engle?
 25 A. That would be Mr. Engle and -- well, first of all,

1 the structure of the company, what's the ownership, and what
 2 percentages and articles of incorporation or operating
 3 agreement or other entity documents that would describe to me
 4 exactly what the company comprised of in terms of ownership
 5 and control.
 6 Q. Okay.
 7 A. Okay.
 8 Q. Let me ask you a hypothetical question: Would it
 9 matter to you if an LLC was noted as inactive by the
 10 Washington Secretary of State for purposes of an SBA loan
 11 application?
 12 A. Well, there are cases in which an LLC might be
 13 inactive for a period of time, but it would be a requirement
 14 that it be in good standing prior to a loan being made, yes.
 15 Q. Okay.
 16 A. Okay. Otherwise it's not an entity, and we would
 17 not be able to lend to it.
 18 Q. How would you describe the degree of care to which
 19 you reviewed this information that Mr. Engle sent to you?
 20 MR. PASCHALIS: Object to the form.
 21 A. I guess I am not exactly understanding what you
 22 would like to know.
 23 Q. Right. Did you study the contents of these
 24 e-mails, would you say, with the same degree of care that you
 25 would give to a complete SBA loan application?

1 A. No.
 2 Q. All right.
 3 A. No. I gave them a quick overview to determine if
 4 it was information that would be -- that would answer my
 5 initial questions, which I was describing, the structure of
 6 the entities, the ownership, the financial condition and
 7 wherewithal of the owners as well as the existing financial
 8 condition of the entity, the operating performance of the
 9 entity and if -- what was very clear in looking at this is
 10 that there needed to be a significant amount of equity
 11 injected into the company before it was bankable.

12 Q. Do you understand that the segment of the line that
 13 Ballard Terminal Railroad working with ECR between
 14 Woodinville and Bellevue is owned in segments by King County,
 15 Kirkland, and Sound Transit?

16 A. Yeah.

17 Q. Do you understand that there is a roughly
 18 5 3/4-mile section of that approximately 12-mile-long line
 19 where the rails and tracks have been pulled up?

20 MR. PASCHALIS: Objection; form; foundation.

21 A. That was my understanding, is that, if the rails
 22 had not been pulled, that it was eminent.

23 Q. I will represent to you that the tracks -- and we
 24 can go ahead and look at this map that you have here. This
 25 is on page 3 of Exhibit 70. It is a map that is entitled,

1 "Eastside Rail Corridor, ECR, ownership." I will represent
 2 to you that the purple section of this map where the word
 3 "Kirkland" is in purple, that all of the rails, ties, and
 4 other track material, like joints and bolts, have been
 5 completely removed from a 5.75-mile section.
 6 MR. PASCHALIS: Is there a question?
 7 MR. FERGUSON: There is about to be.
 8 Q. Would it matter to the bank in an application for
 9 an SBA loan that the property over which ECR and Ballard
 10 would seek to do business is owned by Kirkland, King County,
 11 and Sound Transit?

12 MR. PASCHALIS: I will object to the form.

13 A. It may or may not matter. It would depend upon the
 14 relationship between those entities and whether there were
 15 any agreements for operating.

16 Q. Would it matter to the bank that ECR or Ballard
 17 have no rights, contractual, property, or otherwise, to
 18 access the line between Woodinville and Bellevue?

19 MR. PASCHALIS: I will object to the form and
 20 calls for speculation.

21 A. It would -- well, to me that's connected with the
 22 reason for the letter, is to get to whether or not the entity
 23 would have any access. And it would be connected because, I
 24 mean, obviously, if there's -- there would have to be some
 25 sort of operating agreement, some lease agreement, or

1 something like that.

2 Q. So, in order to extend a loan, you would require
 3 the applicant to demonstrate that it has right in some way to
 4 actually conduct its business on the property?

5 A. If revenues were --

6 MR. PASCHALIS: If I may, I will object to the
 7 form, and I will object on the basis of asked and answered.

8 A. If revenues were considered from that particular
 9 operation and those revenues were germane in the underwriting
 10 of the loan, yes, it would be required, yeah. It just
 11 depends on the nature of -- and that's where we were trying
 12 to get to, trying to understand.

13 Q. Did Mr. Engle represent to you that he, either on
 14 behalf of ECR or Ballard Terminal, was seeking financing to
 15 reinstall the tracks in this purple area owned by the city of
 16 Kirkland, on this map we are looking at, page 3 on
 17 Exhibit 70?

18 A. There were a number of improvements that would have
 19 to be made; I understood that, and I represented to him that
 20 we would not be financing those improvements.

21 Q. Did you all talk dollar amounts about how big of a
 22 loan Mr. Engle was seeking?

23 A. The statutory limit of an SBA loan is \$5 million.
 24 That's the upper limit. So anything beyond that would be
 25 beyond the scope of what we would be interested in doing.

1 And, in fact, it would be somewhat dependent upon the size of
 2 the company and the amount of equity that was injected into
 3 the company.

4 Q. Can you speak more to that. What would be
 5 required? Do you have any idea, or is it so highly
 6 contextual that you cannot really speak to it?

7 A. It is very contextual, but, generally, 30 percent
 8 equity in a start-up is not overly conservative.

9 Q. Did you and Mr. Engle ever talk numbers? Did you
 10 have an impression about that he wanted to seek the full SBA
 11 loan limit of 5 million?

12 A. No, we never really got to that point.

13 Q. Why not?

14 A. Why not? Because I still had questions about who
 15 the borrower was going to be, what the borrowing would be
 16 for, but, moreover, what is the ownership, and what was the
 17 equity of the company. We never got there.

18 Q. So then, if the bank would not make a loan for the
 19 purpose of reinstalling tracks, what would you consider
 20 making the loan for?

21 A. Well, perhaps for real estate to construct a
 22 terminal; perhaps for rolling stock.

23 Q. Would you be able to extend an SBA loan for the
 24 purpose of acquiring an easement over the line between
 25 Woodinville and Bellevue?

1 67, and that has the first draft of the support letter that
2 you ultimately wrote or signed and then the revised version
3 that you did submit. So let's go back and take a look at
4 those for just a moment. So, in the second paragraph of that
5 letter, in the second sentence --

6 MR. PASCHALIS: Which one?

7 MR. MARCUSE: So we are looking at Exhibit 66
8 and 67. These are the draft and the signed versions of the
9 November 21, 2013, letter of support.

10 MR. PASCHALIS: Sure. Go ahead.

11 Q. So, in the second paragraph, in the second
12 sentence, in the draft letter, so that is Exhibit 66, page 2,
13 "We are fully capable of participating in a \$10 million
14 financing package for reactivation of the Eastside Rail
15 Corridor." In the version you signed, it reads, "We are
16 fully capable of participating in a multimillion dollar
17 financing package for reactivation of the Eastside Rail
18 Corridor."

19 A. Yes.

20 Q. You testified earlier that the limits of the SBA
21 program are \$5 million.

22 A. That is correct.

23 Q. Did you have that limit in mind when you made this
24 edit?

25 A. Absolutely.

1 Q. Was there any other basis for this edit?

2 A. I did not want to pin down to any particular dollar
3 amount.

4 Q. Also, early on, again, you mentioned that one of
5 the challenges you faced in evaluating this proposal is that
6 you said they were so general it was hard to be concrete
7 about what they wanted to do and what that meant for you as a
8 lender. When you said "they," did you mean Doug Engle and
9 Kathy Cox?

10 A. Yes. And Kathy really didn't have any financial
11 discussions with me. Hers were marketing and all that soft
12 stuff.

13 Q. You testified earlier that there wasn't anyone else
14 that you spoke with from the railroad?

15 A. No.

16 Q. That has correct?

17 A. Yes.

18 Q. And the proposal, I take it, would have been Doug
19 Engle. Could you describe a little bit more what proposal he
20 was articulating to you.

21 A. In terms of financing? We never got to a specific
22 proposal as far as what was needed to be financed. You know,
23 we had discussions about what would need to be precursor to
24 that, and bringing the equity structure to the table that was
25 appropriate, that was what was needed. That is what is

1 needed.

2 Q. Did he describe to you what it was they hoped to
3 do, what was their business model? What was their plan as he
4 described it to you?

5 MR. PASCHALIS: I will interpose to say
6 objection; asked and answered.

7 A. They were somehow going to get equity, and I did
8 not know how, and they could not tell me how.

9 Q. Let me ask my question differently: What were they
10 planning to do in the --

11 A. Oh, operational.

12 Q. Yes, operational. Thank you. That has a good
13 word. What were they planning to do operationally?

14 A. They were planning to transport freight and people.

15 Q. You said several times, you characterized -- and
16 tell me if I have got this wrong -- but I heard you
17 characterize the proposal as a start-up. I will represent to
18 you that Ballard Terminal Railroad is currently operating
19 freight between Woodinville and Snohomish, and Ballard
20 Terminal Railroad operates two other lines. So I am curious
21 why you characterize this as a start-up.

22 A. Okay, now I do recall that they -- that Ballard
23 does do some freight. I guess the level of expansion is so
24 great that it would be considered to be a start-up. And,
25 quite frankly, laying new tracks, that's getting to be a

1 start-up.

2 Q. My last question, if we could go back to Exhibit 62
3 again, and this is a previous exhibit.

4 A. Okay.

5 Q. So I would like to draw your attention to the first
6 page of this exhibit and very last two lines where it says,
7 "AmericanWest Bank and Coastal Community Bank, two of the
8 largest banks in the northwest United States," and it goes on
9 from there. Is it correct you testified earlier that Coastal
10 Community Bank is not one of the two largest banks in the
11 northwest United States?

12 A. No, certainly not. We happen to be one of the
13 fastest growing banks in the United States, but certainly not
14 one of the largest.

15 Q. Just a moment. I am pushing the paper around here.
16 I am trying to find a document. Did Mr. Engle ever provide
17 you with a copy of Eastside Community Rail's financials?

18 A. No.

19 MR. MARCUSE: I would like to introduce one
20 other exhibit. Tom, what we are looking at here is an e-mail
21 chain between Mr. Starup and Mr. Engle dated January 17th
22 with the time stamp at the top of 9:13 a.m. it is a two-page
23 e-mail string, and the first words of the top e-mail are,
24 "That would be fine."

25 MR. PASCHALIS: Was that part of what has been

1 contained in that letter is accurate, correct?
 2 A. Yes.
 3 Q. The second sentence of paragraph 2, which reads,
 4 "We are fully capable of participating in a
 5 multi-million-dollar financing package for reactivation of
 6 the Eastside Rail Corridor," is true, correct?
 7 A. We are capable of doing that; whether we choose to
 8 is a different matter.
 9 Q. Sure. Going on to the next sentence, which
 10 reference the Board's reactivation decision, whether or not
 11 you chose to hinges significantly on that decision, correct?
 12 A. In order for us to determine what we might be able
 13 to do, if anything, then that was a decision that needed to
 14 be made.
 15 Q. Okay. So you are not capable of even making a
 16 determination until the Board rules on the reactivation
 17 decision?
 18 A. We're not willing to move forward with an
 19 application until the Board makes a decision. We felt it was
 20 that important.
 21 Q. In the last sentence, there has a reference to the
 22 Board's decision on this matter, and then you say, in the
 23 aftermath of that -- and I am paraphrasing, so correct me if
 24 you think that has incorrect -- that, in the aftermath of the
 25 Board's decision, you, you being Coastal Community Bank,

1 would be ready, willing, and able to determine specifically
 2 what assistance that you can offer?
 3 A. Yes.
 4 Q. That has accurate, correct?
 5 A. Yes.
 6 Q. I take it, since you said you primarily deal with
 7 SBA loans, it is common for you to deal with small
 8 businesses, new businesses, or expanding businesses?
 9 A. That is correct.
 10 Q. And, as part of your evaluation, you would take a
 11 look at the financial information, the purpose of the loan,
 12 and the factors that you described and then make a
 13 determination on the loan, correct?
 14 A. Yes.
 15 Q. And, based on the language of your letter, you are
 16 interested in working with Ballard and Eastside if they are
 17 able to obtain those reactivation rights, correct?
 18 A. We will certainly entertain an application, yes.
 19 Q. You had mentioned the importance of collateral in
 20 loans in general and in SBA loans specifically, and I just
 21 want to get some clarification. When you say the word
 22 collateral in this context, would that include tangible
 23 assets and accounts receivable?
 24 A. It may, yes.
 25 Q. Is there anything else it would include?

1 A. It could also include intangible assets.
 2 Q. And what do you mean by that?
 3 A. I mean rights to operate; trademarks; those assets
 4 that are not tangible, but that may have value; licenses to
 5 operate.
 6 Q. In terms of the tangible assets, would that include
 7 things like land?
 8 A. Yes.
 9 Q. And railcars?
 10 A. Yes.
 11 Q. And rolling stock, like you said?
 12 A. Yes.
 13 Q. And perhaps track?
 14 A. Yes.
 15 Q. Now, you said, way back when, quite a while ago,
 16 that in this particular instance you couldn't grant any kind
 17 of conditional approval based on the circumstances of this
 18 pending reactivation procedure; do you recall that?
 19 A. Yes, I do recall that.
 20 Q. And you also characterize it as an inefficient use
 21 of time to even start any evaluation of a loan to Ballard or
 22 Eastside while this STB proceeding is pending; do you recall
 23 that?
 24 A. Yes.
 25 Q. So it is fair to say that, at this point in time,

1 with the reactivation proceeding pending, Ballard cannot get
 2 conditionally approved for any SBA loan through your bank?
 3 MR. FERGUSON: Objection; mischaracterizes the
 4 witness's testimony; mischaracterizes the facts established
 5 by the witness's testimony.
 6 A. Could you repeat the question again.
 7 MR. PASCHALIS: Can I ask the court reporter
 8 to do that, please.
 9 (The previous question was
 10 read back.)
 11 A. I will say that it is highly unlikely. I would
 12 have to say, since I am making the decisions, that is
 13 correct. I make that decision that we are not going to do an
 14 SBA loan for them until they get conditional approval, or
 15 not. If they do not get conditional approval that will
 16 satisfy a major question. We will look at it a whole lot
 17 differently then.
 18 Q. And, in any event, the point is that the evaluation
 19 will begin after this STB proceeding occurs, correct, and is
 20 resolved?
 21 A. And after the appropriate documents have been
 22 submitted to me for application.
 23 Q. Sure. Now, with respect to the application itself,
 24 I am just curious, because you indicated that it would be an
 25 inefficient use of time to start evaluating any loan for

1 Eastside at this time, is the same true for obtaining the
2 application documents that are outlined on the first page of
3 Exhibit 68?

4 A. I am not sure I understand.

5 MR. FERGUSON: Objection; vague; calls for
6 speculation.

7 A. I don't understand the question

8 Q. Would you start looking and evaluating any
9 application documents submitted to you on behalf of Ballard
10 or Eastside while the STB proceeding is still pending, or
11 would it be more appropriate to wait until after the Board
12 has ruled?

13 MR. FERGUSON: Same objections.

14 A. I am going to kind of think out loud here. If I
15 got financial information on the principals of the company, I
16 might do some evaluation of them. I might do some evaluation
17 on the company's balance sheet in terms of -- but, without
18 some sort of concrete proposal, I don't really have anywhere
19 to go with it. And so that evaluation then is as of a
20 particular point in time; once the decision occurs, it will
21 be a different time, and I would probably have to do it all
22 over again. So I might look at it, but I am not going to
23 really do any hard evaluation until we have a pathway to go
24 forward, some sort of a concrete request. And, without that
25 decision, there is really no way to have a concrete request.

1 Q. Okay. So it is fair to say that you wouldn't do a
2 full review of the application documents submitted to you
3 until the Board rules anyway?

4 MR. FERGUSON: Objection; vague.

5 A. That is correct.

6 Q. You had mentioned when you were discussing some of
7 the communications between yourself and Doug Engle that there
8 was a lot of verbal discussions; is that accurate?

9 A. A fair number of verbal discussions; perhaps not as
10 many as we would have had we had a real application.

11 Q. Sure. Let me try to ask a better question. So
12 with respect to what he was trying to accomplish with this
13 loan, you guys communicated, in large part, verbally; is that
14 accurate to say?

15 A. Yes. However, I would clarify something. We don't
16 have a loan application. When you say this loan, there is no
17 loan, there is no application.

18 Q. Thank you. Okay, I will rephrase appropriately.
19 In any event, in your discussions with him, you said he had
20 showed you some charts, and you had indicated that charts can
21 be somewhat meaningless, and you prefer numerical
22 projections; do you recall that?

23 A. Yes, I did.

24 Q. And that is an accurate paraphrasing of your
25 testimony?

1 A. It is an accurate paraphrasing of my testimony.

2 Q. Looking at these exhibits, 70 through 80, and I
3 don't necessarily think we need to go through each of these
4 individually, but there are some numbers that are being
5 thrown in here and being crunched, and I would just simply
6 ask whether that reflects an effort on the part of Doug Engle
7 to provide you with some numerical projections?

8 A. Okay. Let's look at Exhibit 74.

9 Q. Before we do, sir, I would like to have this
10 portion of the testimony designated as confidential.

11 MR. PASCHALIS: Counsel?

12 MR. FERGUSON: Yes. The document has been
13 marked that way, and it has a confidential stamp on the
14 bottom. I am fine with that if everyone else is.

15 MR. WAGNER: Sound Transit is.

16 MR. MARCUSE: Yes.

17 MR. FERGUSON: Tom, I do not want to talk
18 about the document, I just want to explain to Mr. Starup what
19 the protective order means and what it means for his
20 transcript; is that okay with you?

21 MR. PASCHALIS: Yes. Go ahead, Hunter.

22 MR. FERGUSON: So there is a protective order
23 in place in this case, and what that basically allows the
24 parties to do is exchange proprietary, sensitive, or some
25 kind of confidential information. In this context we are

1 talking about financial statements and that sort of thing.
2 If any of this information is used in a filing with the STB,
3 whether it is testimony that you might give here today or a
4 reference to a document itself that has been designated as
5 confidential, it will basically be filed under seal. So you
6 are free to speak here, but you are bound not to discuss the
7 content of these documents or your testimony about them to
8 the extent that it reveals information that is confidential
9 with anyone outside the room.

10 THE WITNESS: Very good.

11 MR. PASCHALIS: And we as attorneys have
12 similar restrictions on how we are able to use this
13 information that is confidential, as well.

14 THE WITNESS: And we as a bank, being given
15 this by private individuals, are under similar sort of
16 restrictions.

17 MR. FERGUSON: We are all mum's the word here.

18 Q. (By Mr. Paschalis) With that being said, you wanted
19 to reference Exhibit 74, sir, so please go ahead.

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[BEGINNING OF CONFIDENTIAL TESTIMONY]

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[END OF CONFIDENTIAL DESIGNATION]

REDACTED

1 Q. So the only question I have: It is fair to say
2 that Mr. Engle has endeavored to provide you with some
3 projections, but you, at the right time, would ask for
4 further numbers and further clarification as you get further
5 along in the application and evaluation process?
6 A. That is correct.
7 Q. Now, you mentioned in your discussion with
8 Mr. Ferguson that loaning to start-up companies involves a
9 little bit more risk; do you recall that?
0 A. Yes.
1 Q. And that is an accurate statement?
2 A. Yes, it is.
3 Q. Would it be beneficial for an entity attempting to
4 procure an SBA loan to have partnered with a business in the
5 same industry which has operated for 15 years?
6 A. Yes, more than likely; not necessarily, but more
7 than likely.
8 Q. It would likely improve their chances of getting a
9 loan?
0 A. It certainly may.
1 Q. And would that fact reduce the prospects of getting
2 a loan in any way?
3 A. I suppose it could. I guess it depends on the
4 strength of the existing company; what participation that
5 company has. It is possible that it could be a detriment;

1 A. That's correct, not a customer.
 2 Q. You testified earlier that you have written letters
 3 of support for other customers in the past, and they
 4 sometimes give you text, and then you adjust it and then sign
 5 the letter?
 6 A. Yes.
 7 Q. What prompted you to write a letter of support for
 8 a person or an entity that is not currently a customer?
 9 A. They are a potential client, and it may have
 10 economic benefit to the areas in which we serve.

11 MR. MARCUSE: I have no further questions.

12 MR. PASCHALIS: Hunter?

13

14 EXAMINATION

15 BY MR. FERGUSON:

16 Q. There was some discussion earlier during
 17 Mr. Paschalis's questioning about whether the provision of
 18 collateral would enhance a loan application; do you recall
 19 those questions?

20 A. Yes.

21 Q. Has Mr. Engle presented to you any information
 22 about what potentially would be collateral for an SBA
 23 application to Coastal Community Bank?

24 A. No, because we have not reached a concrete loan
 25 proposal. Typically, for a -- an asset that is acquired with

1 loan proceeds will always be considered to be collateral or
 2 will always be taken as collateral. In addition, if the
 3 value is insufficient on a margin basis, which the bank
 4 determines, additional collateral may be sought and in most
 5 cases is.

6 Q. Okay. Your decision to hold off on evaluating any
 7 loan application as part of an effort to reactivate rail
 8 service, is that based on any law or federal regulation
 9 governing SBA loans?

10 A. No.

11 Q. Is it based on any bank policy? Is there a policy
 12 that explicitly proscribes the --

13 A. Not explicitly.

14 Q. Let me finish the question so we know what we are
 15 not being explicit about. Is there a bank policy that
 16 explicitly proscribes you from considering a business plan or
 17 application here without a favorable decision for Ballard
 18 from the STB?

19 A. Okay. State the question again.

20 Q. Sure.

21 MR. FERGUSON: Actually, can you just read it
 22 back. No, let me rephrase, because I will try to simplify it
 23 here.

24 Q. Is there a bank policy that explicitly proscribes
 25 you from reviewing all the information you otherwise would

1 need to make a decision about a loan to ECR in the absence of
 2 an STB decision?

3 A. No, there is not a policy; however, practice and
 4 procedure require that a complete submission be presented for
 5 underwriting. We use a separate department for underwriting.
 6 And, without a complete package, it will not be considered.
 7 So practice or procedure proscribes that particular --

8 Q. But in your experience has Coastal Community Bank
 9 ever engaged in an analysis for conditional approval or
 10 preapproval of an SBA loan without all necessary required
 11 information?

12 A. Only to the extent that the condition for approval
 13 is some sort of report, such as an appraisal report or a
 14 verification of an asset or some other sort of
 15 well-identified condition. When it's a fundamental issue,
 16 effectively, we don't have a loan application until that
 17 fundamental issue is answered.

18 Q. You said earlier, if I understood you correctly,
 19 that you saw that the reactivation effort described to you by
 20 Mr. Engle was of some potential benefit; is that accurate, or
 21 did you say that he was just a potential client?

22 A. Say the question again.

23 Q. Is my memory correct that, in response to some
 24 questions by Mr. Marcuse, that you said that you saw the rail
 25 reactivation effort described by Mr. Engle would be of some

1 potential benefit?

2 A. A potential benefit to the economy of Snohomish
 3 County, potentially, yes. And, in terms of the envisioned --
 4 as I understand his vision, it would be certainly a benefit
 5 to his business.

6 MR. FERGUSON: I do not have anything further.

7 MR. PASCHALIS: Nor do I.

8 MR. FERGUSON: Okay. Mr. Starup, on behalf of
 9 everyone, thank you greatly for taking the time out of your
 10 day and making the trip down here. We appreciate you coming
 11 in.

12 MR. PASCHALIS: Do you want to go over
 13 signature?

14 MR. FERGUSON: I will let Wade take care of
 15 that.

16 (Signature reserved.)

17 (Deposition concluded at 5:41 p.m.)

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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
 NATHAN ENGMAN

Taken at 600 University, Suite 3600
 Seattle, Washington

DATE: February 6, 2014
 REPORTED BY: Wade J. Johnson, RPR
 CCR No.: 2574

STARKOVICH REPORTING SERVICES
 206.323.0919

1 Q. When you joined the bank, was Ballard part of your
2 portfolio that you took over?

3 A. No. Ballard came to my portfolio in May of 2012 to
4 the best of my recollection. And the reason I know that or
5 reason that was the case or I believe the deadline is because
6 we switched over from Viking systems over to AmericanWest
7 Bank systems in May of 2012. So that is when they
8 transferred data and transferred loan officers and
9 transferred whatever. It could have been June or July, but
10 it was all right around the summer of 2012.

11 Q. Okay. You said that you have had experience
12 reviewing Ballard's business plans?

13 A. I have looked at their file, so I couldn't tell you
14 what I looked at at this time, but I have looked at their
15 file, and I've looked at their online profile.

16 Q. Do you know if Ballard was with Viking or
17 AmericanWest before the merger?

18 A. Viking.

19 Q. Or the acquisition. Viking?

20 A. Sorry, I keep on jumping the gun.

21 Q. No. Maybe they didn't merge; maybe it was
22 acquired. It doesn't matter.

23 You mentioned that Mr. Nerdrum is an established
24 customer, and I take it that his company, Salmon Bay Sand &
25 Gravel, is also a customer?

1 A. I need to ask Craig that question, but I can answer
2 it.

3 Q. Okay. Are you familiar with a company called
4 Eastside Community Rail, LLC?

5 A. I've seen it, but I cannot say why. I can't say if
6 it was in your documents or if it is in my own portfolio at
7 this time.

8 Q. It was in the documents.

9 A. Okay.

10 Q. Is Eastside Community Rail, LLC, part of your
11 portfolio?

12 A. I don't know.

13 MR. PASCHALIS: Can you clarify as to what
14 documents you are referring to for my edification.

15 MR. FERGUSON: I know it was in the subpoena.

16 MR. PASCHALIS: The subpoena is what you're
17 referring to?

18 MR. FERGUSON: Yes.

19 MR. PASCHALIS: Okay, thank you.

20 A. I do not believe that Eastside Rail is a customer,
21 a lending customer or otherwise, of mine.

22 Q. Does the bank have a relationship with a gentleman
23 named Doug Engle?

24 A. I do not know.

25 Q. A gentleman named Ernie Wilson?

1 A. I can find all this out, but I do not know.

2 Q. Do you know if it has a relationship with someone
3 named Kathy Cox?

4 A. I do not know.

5 MR. FERGUSON: We have been going for a little
6 bit. Why don't we take a five-minute break, bathroom; water;
7 whatever you need to do.

8 THE WITNESS: Sure.

9 (A brief recess was taken.)

10 (Exhibits 59-60 marked for
11 identification.)

12 Q. Mr. Engman, if you would take a look at what has
13 been marked as Exhibit 60.

14 A. Sixty, is that right here? Okay.

15 Q. This is a letter dated November 22nd, 2013,
16 addressed to Cynthia Brown at the Surface Transportation
17 Board. Is that your signature at the bottom, left-hand
18 corner?

19 A. It is.

20 Q. I will represent to you that this is the letter
21 that was included in a filing made by Ballard Terminal
22 railroad to the Surface Transportation Board on December 6th.
23 The page numbers you see at the bottom are paginations that
24 are part of Ballard's filing. Would you describe the context
25 in which this letter came to be.

1 MR. PASCHALIS: Object to the form.

2 A. All right. By context, you want me to walk you
3 through what happened and how I wrote -- how I came to write
4 the letter; is that correct?

5 Q. Well, that's actually a good point. Did you write
6 the letter?

7 A. Yes. Ultimately, I am the one that typed it out.
8 It was written in conjunction with Byron. He asked me for
9 information to be included, such as the last paragraph. I
10 was happy to do it. There were other things that he wanted
11 me to put in there that I was not comfortable saying because
12 I did not have a firsthand knowledge of what he was asking
13 for. And then there were other pieces in there that, such as
14 information on the bank, which I knew, and as well as, the
15 first paragraph is a summary of who they were and how I had a
16 relationship with them.

17 Q. Okay. So probably the most straightforward way is
18 to start as close to the beginning as we can. I don't know
19 what happened, so, if you can, just walk me through.

20 A. Sure.

21 Q. The letter is dated November 22nd. I think you
22 said earlier you think the conversations and the drafting all
23 took place over the course of a day or two days; is that
24 right?

25 A. I am confident that the entire conversation

1 Ballard, Byron, Paul, et cetera.
 2 Q. Who might be in the et cetera; do you know?
 3 A. Well, that's a complicated question. If you wanted
 4 to guarantee the loan, Mr. Ferguson, you could put yourself
 5 on the hook for that. I don't think that's going to happen,
 6 but I couldn't speculate to who would also want to step
 7 forward to support the loan, but, technically, anyone, as far
 8 as I am aware, could do that.
 9 Q. Okay. All right. How are you feeling?
 10 A. I'm fine.
 11 Q. Do you need a break or anything?
 12 A. I'm fine for now. I actually parked until
 13 7:00 p.m. just in case. I hope to God that's not the case,
 14 but --
 15 MR. PASCHALIS: How much longer do you think
 16 you have, Hunter?
 17 MR. FERGUSON: I cannot say. We will finish
 18 up when we finish. Do you need a break, Tom?
 19 MR. PASCHALIS: No, but I would like to keep
 20 to the three-hour window that we have conferred upon
 21 previously.
 22 MR. FERGUSON: I am not sure what you are
 23 referring to.
 24 MR. PASCHALIS: You know how that was subject
 25 to the discovery motion and that that is in the January 31st

1 decision that the Board entered. I think that is part of one
 2 of your exhibits.
 3 MR. FERGUSON: Can you point me to a statement
 4 where the deposition is limited to three hours, please, by an
 5 order of the Board. I don't anticipate it going longer than
 6 three hours, but I would like to know what you are referring
 7 to.
 8 MR. PASCHALIS: I am very glad to hear that.
 9 MR. FERGUSON: I also don't want to take up
 10 time doing this needless exercise, unless you can point me
 11 directly to where the Board has limited the deposition to
 12 three hours.
 13 MR. PASCHALIS: Well, you read the Board
 14 ordered pretty closely.
 15 MR. FERGUSON: Tom, let's dispense with the
 16 delay here.
 17 MR. PASCHALIS: You know that the Board has
 18 asked us to work together to keep these within the three-hour
 19 parameter. Go ahead.
 20 MR. FERGUSON: I am asking, if you believe
 21 there is a hard limit, I just want you to tell us where it
 22 is.
 23 MR. PASCHALIS: Hunter, go ahead and ask your
 24 question. You are the one that didn't want to waste time on
 25 these matters.

1 MR. FERGUSON: Thank you.
 2 Q. Mr. Engman, coming back here to the types of
 3 information that you would need to extend a loan -- let me
 4 first of all just try to get some basics clarified here. Has
 5 Ballard made a request for a loan to AmericanWest Bank?
 6 A. No.
 7 Q. When I say has it made a request, I am referring
 8 to, when Mr. Cole came in to see you in connection with the
 9 letter dated November 22nd, did he make a request for a loan?
 10 A. No.
 11 Q. Since that date, between November 22nd and the
 12 present, has Ballard or anyone for Ballard made a request for
 13 a loan to Ballard?
 14 A. No.
 15 Q. Do you view this letter here that you signed as a
 16 commitment on behalf of the bank to make a loan to Ballard?
 17 A. No.
 18 Q. Has the bank made a commitment for any other type
 19 of financial support to Ballard in connection with this
 20 letter?
 21 A. No.
 22 Q. When Mr. Cole came in to speak to you about the
 23 letter, did he describe what project a financing package
 24 would support?
 25 MR. PASCHALIS: Object to the form.

1 A. Can you restate that.
 2 Q. Sure. When he came in to ask you for the letter,
 3 did he describe to you why he wanted it?
 4 A. He said, to the best of my recollection, that he
 5 would like a character reference letter for the organization
 6 of Ballard Transfer -- I keep on saying Ballard Transfer --
 7 Ballard Terminal, so that the Board that is -- let me take
 8 that back -- so Ms. Brown would know that they had an
 9 extensive history with our bank, and that I should -- and
 10 that he asked me to support him in the acquisition of --
 11 strike acquisition -- in the submission of this proposal for
 12 it to be looked at and weighed according to its merits. He
 13 then said, if it did go through, that he would be coming back
 14 to talk about financing, but that that would not happen until
 15 the Board made its decision, which also is part of the reason
 16 why I have included that sentence that we talked about
 17 earlier.
 18 Q. So this statement here -- I am looking again at
 19 Exhibit 60, the second sentence of the second paragraph, "We
 20 are fully capable of participating in a financing package for
 21 the reactivation of the Eastside Rail Corridor."
 22 A. Sure.
 23 Q. Was that a sentence that you wrote?
 24 A. That is a sentence, I believe, that was jointly
 25 written.

1 Q. Is that something that Mr. Cole asked you to
 2 include?
 3 A. I know that he asked me to use the terminology of
 4 "Eastside Rail Corridor." The fact that we're fully capable
 5 of participating in a financing package for anything is about
 6 as vanilla as anything else that I could come up with. We do
 7 financing packages. We do loans up to \$80 million where our
 8 commitment is \$5 million. So, to me, I did not expect the
 9 loan to be greater than \$80 million that he would need, and
 10 so I was hedging my bets between a request of \$10,000 up to
 11 \$80 million, knowing that, as long as it fell in that piece,
 12 it was something that we could look at and that we were
 13 capable of financing, assuming that everything else pencilled
 14 2009. This was not a commitment to do a loan; it was that we
 15 have done -- we have done participation loans in the past; we
 16 are currently doing participation loans.
 17 Q. A club deal?
 18 A. I don't know all the jargon, but to --
 19 Q. But where multiple banks might be part of a lender
 20 group?
 21 A. Multiple banks, exactly. And so I felt comfortable
 22 saying that, if all the other conditions are met, cash flow,
 23 collateral, business plan, strength of the guarantors, that
 24 we would be able to participate in a loan that -- the largest
 25 one I've seen us do is 80 million, but that doesn't mean

1 that's the largest one we could do. It's just that we could
 2 do a finance -- we could do a participation loan, or we could
 3 do it by ourselves, depending on the situation.
 4 Q. So the 80 million is one that the bank is
 5 responsible for the extension of that entire principal, or is
 6 that 80 million something that the bank has participated in
 7 with other lenders?
 8 A. That's correct, the latter.
 9 Q. Do you know what the largest amount of principal
 10 that AmericanWest has extended?
 11 A. I do not.
 12 Q. Do you think it is in excess of 10 million?
 13 MR. PASCHALIS: I will object on the basis of
 14 calls for speculation and asked and answered.
 15 A. I couldn't answer that. If it did come to me, I
 16 would have referred it to a gentleman in our bank who has
 17 done these participation loans in the past, and he would
 18 answer that. I have heard various conversations of
 19 10 million, but I cannot recall any loan that we've done
 20 because I don't do those loans.
 21 Q. To your knowledge, has AmericanWest Bank ever
 22 extended a principal loan amount in excess of \$10 million?
 23 A. Not to my knowledge, but, again, I don't do -- I
 24 don't personally do participation loans. I only know this,
 25 frankly, because one of the lenders who does them messed up

1 when he scanned his documents to himself and scanned them to
 2 me.
 3 MR. PASCHALIS: So, just to be clear, you have
 4 no knowledge whether or not that is the case?
 5 MR. FERGUSON: Mr. Paschalis, would you wait
 6 to ask your questions when I am done with my examination,
 7 please.
 8 MR. PASCHALIS: But, if you don't mind, I
 9 would just like to clarify that, if you don't mind, Hunter.
 10 MR. FERGUSON: Well, I would prefer a little
 11 order here to this. If you need to seek clarification now,
 12 but, in general, I would like you to wait until the end, as
 13 the typical course is concerned. So go ahead and seek
 14 clarification.
 15 MR. PASCHALIS: Did you hear the question,
 16 Mr. Engman?
 17 THE WITNESS: I did. I have no knowledge,
 18 aside from a document that I've seen, that we do
 19 participation loans, as well as conversations that I've heard
 20 that we would participate in participation loans, that would
 21 give me any dollar amount that has a maximum or minimum
 22 capacity.
 23 MR. PASCHALIS: Thank you.
 24 Q. When Mr. Cole met with you, did you have a
 25 discussion about what information he would need to provide in

1 any request for a loan in connection with reactivation of the
 2 Eastside Rail Corridor?
 3 A. I can't definitively remember that. I can say
 4 that, if he would have asked me, I would have told him, at a
 5 minimum, it would have about two years tax returns for any
 6 guarantors as well as the corporation or corporations
 7 involved, it would have been profit and loss as well as
 8 balance statement, it would have been a debt schedule, it
 9 would have been personal financial statements of those
 10 guarantors, an accounts receivable aging report, and, most
 11 likely, an accounts payable aging report.
 12 Q. When you say an accounts receivable aging report,
 13 what are you referring to?
 14 A. Sorry. Any objections?
 15 Q. Go ahead and answer.
 16 A. So accounts receivable, different businesses are
 17 going to operate on different accounting principles. There
 18 is the cash basis, and there is the accrual basis. If you're
 19 on the cash basis, you record information as far as profits
 20 when you get the check. If you're on accrual, you are going
 21 to go ahead and record that profit when you bill. So some
 22 businesses, and a lot of businesses, are going to have
 23 accounts receivable, meaning they're going to have people
 24 that owe them money, and they're going to have what's
 25 determined as a net 30, net 15, net 60, which means they're

1 A. I do. I just wanted to make sure you were okay. I
 2 thought you were going to say something else. Yes, I believe
 3 I have an understanding, yes.
 4 Q. So what was its purpose? What did you mean when
 5 you signed your name to this letter?
 6 A. What I thought I was signing is that Ballard
 7 Terminal had a previous lending relationship with
 8 AmericanWest Bank and a depository relationship going back 18
 9 years -- well, at the time, 17 years, almost to the beginning
 10 of Viking Bank. We had -- we have, based upon the strength
 11 of the guarantors, or the signers, I should say, on the
 12 checking account as well as the guarantors on the loan, that
 13 we would be interested in exploring a financing package with
 14 Ballard Terminal. However -- and I clearly didn't do this
 15 well enough -- at this time we do not have any documentation
 16 in order to make such a recommendation or decision on that,
 17 and we are not going to have the ability to do that until the
 18 Board makes a decision, because we don't have any
 19 documentation in order to make a loan decision.
 20 Q. So let me stop you right there. What you need to
 21 make a loan decision is you need documents from Ballard,
 22 correct?
 23 A. Yes, I do.
 24 Q. Okay.
 25 A. I also would need to know the scope of the project.

1 And this is probably where I would involve Craig Moore -- not
 2 for today's conversation, but if I was dealing with a
 3 conversation about eminent domain, because I've heard the
 4 words, but that's it
 5 Q. Is there any policy at the bank that would require
 6 you to first have a decision from the Surface Transportation
 7 Board in hand in order to make a decision about the financing
 8 application?
 9 A. There is no policy.
 10 Q. Has any superior of yours told you, in order to
 11 make a financing application, you would need a decision from
 12 the Surface Transportation Board?
 13 A. No.
 14 Q. In your experience, have you ever given conditional
 15 approval for a loan application or financing request?
 16 MR. PASCHALIS: Object to the form.
 17 A. Yes.
 18 Q. And that would be for a loan application?
 19 A. Sorry. Yes.
 20 MR. PASCHALIS: Asked and answered.
 21 Q. I did not mean to interrupt your flow. I stopped
 22 you on that one sentence. You were explaining what it is
 23 that you thought this letter would mean. If you can
 24 continue.
 25 A. Sure. Let's see if I can remember where I was.

1 That our bank was -- I wanted to convey that our bank was
 2 capable of participating in a loan if it was large, but,
 3 since I didn't know the scope and I didn't know what was
 4 going to be offered up as collateral and what would be
 5 required, it may be that I just needed to write a letter or I
 6 needed to assure the signers that they had sufficient capital
 7 in order to do what they wanted or that they had private
 8 equity, as you mentioned earlier, and that they were going to
 9 have to be able to facilitate it that way. And we as a bank
 10 wanted to be involved, but really couldn't be involved until
 11 they would provide -- until they -- and I mean by they
 12 Ballard Transfer.
 13 Q. You mean Ballard Terminal?
 14 A. Damn.
 15 Q. It is okay.
 16 A. From here on out, if I say Ballard Transfer, I mean
 17 Ballard Terminal, but --
 18 Q. Fair enough. We all have to define the word. Keep
 19 going.
 20 A. Anyway, but that I needed to know what the scope of
 21 the project would look like before I knew how to proceed.
 22 Before I knew which documents to ask for, I need to know what
 23 they wanted to do ultimately. And Mr. Cole told me that he
 24 wouldn't know what that would look like until after the --
 25 until Ms. Brown and Office of Proceedings or Surface

1 Transportation Board made a decision on what ultimately that
 2 looked like.
 3 Q. Did Mr. Cole ever tell you that the tracks, part of
 4 the tracks on the Eastside Rail Corridor, have been pulled
 5 up?
 6 A. He did.
 7 Q. Did he tell you that he believes it might cost as
 8 much as \$10 million to reinstall them?
 9 A. He did not.
 10 Q. All right. Based on what you know about the
 11 principals and their account information -- I am not asking
 12 you to disclose to me what that is -- but, based on what you
 13 know, would the bank be in a position to extend a loan by
 14 itself to Ballard for \$47 1/2 million?
 15 A. I'm sorry, could you give me that number again.
 16 Q. 47 1/2 million.
 17 MR. PASCHALIS: Objection; calls for
 18 speculation.
 19 A. I don't know the answer to that question.
 20 Q. Would the bank be in a position to extend a loan to
 21 Ballard, based on what you know about the accounts, for
 22 \$37 1/2 million?
 23 MR. PASCHALIS: Objection; foundation; calls
 24 for speculation.
 25 A. I can answer that I wouldn't know the answer to any

Ballard Terminal Railroad Co.
STB Reactivation Letters Filed
 As of 2013 November 30

PARTY		Reactivation		*=Opposition	Annual Car Count	
		rail & trail	transit & trail	Excursion Support	Initial	long-term
Government						
Washington State Legislature (2 Board letters)	state	X		Yes		
Port of Seattle (dropped its opposition)	county	?	-	?		
Puget Sound Engery (no opposition)	regional	?	-	?		
Sound Transit*	regional		X	?		
King County*	county		X	?		
Snohomish County	county	X		Yes		
City of Kirkland*	city		X	?		
City of Snohomish	city	X		Yes		
City of Woodinville	city	X		Yes		
Non-Governmental Organizations						
Brotherhood of Locomotive Engineers and Trainmen	regional	X		Yes		
United Transportation Union	regional	X		Yes		
Cascadia Center (West Coast transportation)	regional	X		Yes		
Economic Alliance of Snohomish County	county	X		Yes		
All Aboard Washington (rail advocacy)	state	X		Yes		
Taste of Washington (petition)	state	-		Yes		
Master Builders Association	regional	X		Yes		
Eastside Rail Now! (rail advocacy)	local	X		Yes		
Excursion Businesses						
Ste Michelle Wineries	global	X		Yes		
Gallo Wines (dba Columbia Winery)	national	X		Yes		
Bounty of Washington Tasting Train	local	X		Yes	1,520	2,112
Financial Support for Reactivation						
WATCO - Railroad	national	X	-	?		
American West Bank	regional	X	-	Yes		
Coastal Community Bank (S.B.A. Preferred Lender)	national	X	-	Yes		
EB5 Capital Partners.us	niche	X		Yes		
Paul Nerdrum	local	X		Yes		
Reactivation Freight Customers						
General Mills (flour)	national	X		Yes	225	250
RJB Wholesale (piping)	local	X		Yes	30	40
CT Sales (rebar fabrication)	local	X		Yes	120	155
Wolford Trucking and Demolition	local	X		Yes	750	2,000
CalPortland (aggregates)	regional	X		Yes	350	600
Aggregates West	regional	X		Yes	300	550
Ready-Mix Concrete Plant (letter pending)	regional	-		-		
					1,775	3,595
Operating Line Freight Customers						
Boise Cascade	national	X		Yes	95	120
Spectrum Glass	regional	X		Yes	95	120
Matheus Lumber	national	X		Yes	50	75
					240	315
Total Railcar Traffic		28	3	28	3,535	6,022

**BALLARD TERMINAL RAILROAD
EASTSIDE FREIGHT RAILROAD
MEEKER SOUTHERN RAILROAD**

Subsidiaries of:

**Ballard Terminal Railroad Company, LLC
4725 Ballard Avenue NW
Seattle, WA 98107**

Office: (206) 782-1447 Fax: (206) 782-7724

December 5, 2013

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

REF: STB FINANCE DOCKET NO. 35731
ACQUISTION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

Ballard Terminal Railroad Company, LLC's (Ballard) primary owner and Salmon Bay Sand and Gravel owner, Paul Nerdrum owns several acres of property and facilities along Seattle's ship canal, home of the Alaskan fishing fleet and supporting facilities. His seven-figure resources have made Ballard a success to date, and his pledge to continue this support should not be taken lightly by the Board. Further, our bank of 16-years, AmericanWest Bank, is capable and willing to support our reactivation effort given a favorable Board decision.

We are excited to work with WATCO Companies. This arrangement allows Ballard to do what we do best and brings in a much larger partner to handle the vastly larger car traffic in and out of Bellevue. They have the resources and knowhow to make this a success, while we know the local lay of the land. Before completing their letter to the Board, importantly, WATCO conferred with BNSF regarding the shipping options available to and from this segment of the line.

While we would have preferred that the 5.75 miles of trackage in Kirkland stay in place, our financial partnerships with WATCO, Salmon Bay Sand and Gravel, and our bank enable us to replace that segment of the trackage and other necessary reconstruction.

In the "Support Letters Log," we have submitted carload estimates based on the information provided by the supporting freight shippers. The "Initial" column represents what we expect to achieve within the first full year of operation after all freight customers and the excursion service have come online – 3,535. These are broken out by customer and project as to what these parties believe their long-term annual carloads will be – 6,022. None of our group want or expect these figures to be "pie in the sky." It will take a detailed plan, hard work and coordination to achieve them. We are committed to this.

In Bellevue, we will be delivering cars for General Mills on the same pre-existing spur that was used six years ago. The spoils, aggregates and potential ready-mix plant will also utilize three existing sidings and spurs along with an existing concrete building used specifically for rail service back in the day and initially have the option of loading on the ex-BNSF small rail yard with little work. RJB will need a standard short siding inside the right of way. CT Sales will also need a short siding primarily inside the right of way with about 100 yards of track inside their property. Woldford Trucking is also requesting a new spur, and we are likely to add a siding for car handling and storage. We plan to construct these spurs and sidings as soon as possible after reactivation approval. There is a drywall distributor that has recently doubled its size in Kirland with an existing spur that we plan on talking to next.

Much of the required track will be reclaimed from the existing line when it is rehabilitated for the excursion train as described by RailWorks in their estimate. Required ballast will be purchased from our partners. The ground work will be done by Woldford. However, until this work is completed, we can temporarily use the existing track and right of way to load and unload, again with little interim work. The important matter is to get service started, which benefits everyone.

As with our other two shortlines, businesses generally are not willing to sign contracts for service until that service is actually available – whether it is trans-loading, a new spur, siding or other facility. New service first, contracts second is the norm. Unfortunately, we can't establish service agreements without the Board's decision to reactivate the line.

The crossing situation in Maltby, which was raised by Kirland is a red herring. This is about properly fixing a crossing gate arm assembly that has twice been destroyed by trucks that verred off the main roadway and ran completely over the gates and lights signal assembly. This past week, Snohomish County took the first step by putting 70' of barricades up that we mutually deemed safe in case of a head-on automobile collision with the barricades. Our signals contractor is now going to mount a new signal. This was not a financial matter, and the work underway is to be completed by year end.

The Board needs to understand that reactivation must be the first step in reviving rail service to Bellevue. Freight customer's have continued surfacing these past months with news of our efforts. The financing is simply waiting for the Board's decision to reactivate this line. We look forward to swiftly returning all rail services on this segment of the Eastside Rail Corridor.

Thank you for your thoughtful consideration.

Regards,

Byron D Cole

Byron Cole
General Manager

BEFORE THE SURFACE TRANSPORTATION BOARD

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

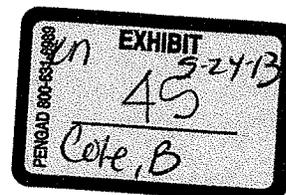
BALLARD TERMINAL
RAILROAD COMPANY, LLC'S,
RESPONSE TO CITY OF
KIRKLAND'S FIRST REQUESTS
FOR PRODUCTION

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

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.

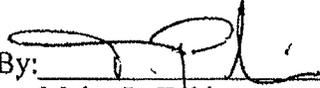
RESPONSE: Ballard objects to Request No. 21 on the basis that it is overly broad, unduly burdensome, is not sufficiently limited in time or scope, and seeks information that is irrelevant and immaterial. Subject to and without waiving this objection, see documents produced.

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 Skrivan and Wolford letters attached to Ballard's Petition to Vacate and documents produced by Eastside.

Dated May 24, 2013

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 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
Seattle, Washington 98101
Attorney for City of Kirkland



Thomas C. Paschalis

REDACTED

REDACTED

CONFIDENTIAL BTR000002

REDACTED

CONFIDENTIAL BTR000003

REDACTED

CONFIDENTIAL BTR000004

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CONFIDENTIAL BTR000011



BALLARD TERMINAL RAILROAD
EASTSIDE FREIGHT RAILROAD
MEEKER SOUTHERN RAILROAD

Subsidiaries of:

Ballard Terminal Railroad Company, LLC
4725 Ballard Avenue NW
Seattle, WA 98107

Office: (206) 782-1447 Fax: (206) 782-7724

Myles L. Tobin
Fletcher & Sippel LLC
29 N Wacker Drive, Ste. 920
Chicago IL 60606-2832

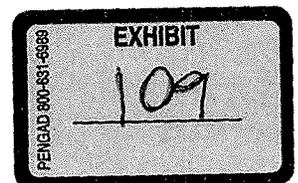
Myles,

REDACTED

Regards,

Byron Cole

Byron Cole, General Manager,
Ballard Terminal Railroad Company, LLC



Cohen, Matthew

From: Thomas Paschalis <tpaschalis@fletcher-sippel.com>
Sent: Monday, March 03, 2014 11:43 AM
To: Cohen, Matthew
Cc: Myles Tobin
Subject: RE: missing documents

Matthew – Regarding issue 1, Ballard has no additional responsive documents. Regarding issue 2, the 2013 financial summary that Ballard produced provides the information required by the Board in its August 22 order.

From: Cohen, Matthew [<mailto:MCOHEN@stoel.com>]
Sent: Monday, February 24, 2014 10:44 AM
To: Thomas Paschalis
Cc: Eric Pilsk (epilsk@kaplankirsch.com); Wagner, Jordan; Marcuse, Andrew (Andrew.Marcuse@kingcounty.gov); cspitulnik@kaplankirsch.com; Hinz, Adam C.; Lomax, Leslie D.; Ferguson, Hunter O.
Subject: missing documents

Tom, during the deposition of Byron Cole I asked you to find and produce two documents that Kirkland requested in its second set of discovery requests: (1) any written estimate from Railworks of the cost rebuilding the Kirkland segment of the Eastside Rail Corridor and (2) a 2013 statement of revenue and expenses for Ballard's Eastside Freight Railroad. You replied that you would find out whether Railworks prepared an estimate of the cost to rebuild the Kirkland segment, Cole Dep.Tr. 12, and that you would "look into" the availability of a 2013 revenue and expense statement for the Eastside Freight Railroad. Cole Dep.Tr. 39. As you may recall the Board directed Ballard to produce the latter information in its August 22 order compelling discovery.

We request that you produce these documents immediately, so that Kirkland can use them in drafting comments due on March 6.

Matthew Cohen

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101-4109
Direct: (206) 386-7569 | Mobile: (206) 714-1671
mcohen@stoel.com | www.stoel.com

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

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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

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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26
**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:**
6

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:**
12

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:**
18

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:**
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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:**

5

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:**

10

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:**

15

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

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 8**

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:**

13
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:**

18
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**

ANSWERS & RESPONSES

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DATED: _____ BY: _____

ITS: _____ LOCATION: _____

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

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

Signature

Print Name

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

Signature: _____
Name (Print): _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My appointment expires: _____

STATEMENT OF ATTORNEY

The undersigned hereby states that he is the attorney for the party answering the above propounded Interrogatories and responding to the Request for Production of Documents, and that 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).

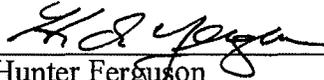
DATED this ____ day of _____, 2013.

_____, counsel for
Petitioner Ballard Terminal Railroad Company LLC

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 _____
7 Hunter Ferguson

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 12:39 PM
To: Greg Starup
Subject: Re: ECRR - Wallace M.O.U. 2 of 2
Attachments: GNP_Financial_Detail_FINAL_7Dec10.xls; ATT00226.htm;
ECR_ASSETS_Financial_Detail_2013Feb11.pdf; ATT00227.htm;
ECR_Financial_Summary_2013Feb11.pdf; ATT00228.htm;
ECR_GRAPHS_Financial_Detail_2013Feb11.pdf; ATT00229.htm;
ECR_INC_STMT_Financial_Detail_2013Feb11.pdf; ATT00230.htm;
ECR_MON_TRAFFIC_Financial_Detail_2013Feb11.pdf; ATT00231.htm;
ECR_REHAB_Financial_Detail_2013Feb11.pdf; ATT00232.htm;
ECR_TRAFFIC_Financial_Detail_2013Feb11.pdf; ATT00233.htm; EsCRail_Intro_2013Feb10.pdf; ATT00234.htm

This is our confidential financial model, which is still the basis of our pro-forma statements today. The Excel model was developed by me and analyzed by the parties in the first email. The first tabs provide the financial summary that you are likely most interested in. Each tab to the right gets into increasingly greater detail.

The notarized/verified statements should bring significant comfort to the bank as to the level of analysis we've gone through.

The Excel model and other summary reports are attached.

Doug
mobile: +1.425.891.4223

Exhibit 74 Date 2/6/14
Witness Starup
Wade J. Johnson 323-0919

DRAFT FOR DISCUSSION PURPOSES

Eastside Community Rail
TRAFFIC ANALYSIS
as of 2013 Feb 6

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Revenue										
Total Freight Revenue	\$ 108,364	\$ 116,037	\$ 122,504	\$ 129,982	\$ 135,290	\$ 140,843	\$ 146,651	\$ 152,728	\$ 159,087	\$ 165,742
Annual Growth Rate		7.1%	5.6%	6.1%	4.1%	4.1%	4.1%	4.1%	4.2%	4.2%
Total Freight Car Count	234	246	255	265	270	276	281	287	292	298
Avg Revenue/Car	\$ 463	\$ 472	\$ 481	\$ 491	\$ 501	\$ 511	\$ 522	\$ 533	\$ 544	\$ 556
Total Freight Car Miles (one-way)	2,645	2,778	2,875	2,990	3,050	3,110	3,173	3,236	3,301	3,367
EXCURSION PASSENGER SERVICE										
Private Train	\$ -	\$ 809,486	\$ 2,475,633	\$ 2,762,849	\$ 3,049,803	\$ 3,191,593	\$ 3,321,662	\$ 3,430,378	\$ 3,543,340	\$ 3,660,725
Tasting Train	\$ -	\$ 5,240,112	\$ 6,270,449	\$ 7,306,895	\$ 7,583,477	\$ 7,840,206	\$ 8,076,021	\$ 8,253,184	\$ 8,434,251	\$ 8,619,308
Heritage Train	\$ -	\$ -	\$ -	\$ -	\$ 40,823	\$ 41,094	\$ 41,986	\$ 42,899	\$ 43,831	\$ 44,783
Centennial Trail Special	\$ -	\$ -	\$ -	\$ -	\$ 28,842	\$ 29,517	\$ 31,009	\$ 32,576	\$ 34,222	\$ 35,952
Total Misc. Revenue	\$ -	\$ 471,916	\$ 673,154	\$ 697,550	\$ 765,203	\$ 780,988	\$ 797,253	\$ 814,010	\$ 831,277	\$ 849,067
Excursion Revenue	\$ -	\$ 6,521,514	\$ 9,419,236	\$ 10,767,295	\$ 11,468,147	\$ 11,883,398	\$ 12,267,931	\$ 12,573,047	\$ 12,886,921	\$ 13,209,835
Annual Growth Rate		44.4%	44.4%	14.3%	6.3%	3.6%	3.2%	2.5%	2.5%	2.5%
Excursion Summary										
Total Passengers	-	67,753	94,999	108,184	116,821	119,552	121,938	123,422	124,925	126,446
Avg Passenger Revenue/Train	\$ -	\$ 96.25	\$ 99.15	\$ 99.53	\$ 98.17	\$ 99.40	\$ 100.61	\$ 101.87	\$ 103.16	\$ 104.47
Total Excursion Trains	-	272	380	380	411	419	423	425	428	430
Avg Revenue/Train	\$ -	\$ 23,976	\$ 24,787	\$ 28,335	\$ 27,903	\$ 28,367	\$ 29,005	\$ 29,555	\$ 30,119	\$ 30,696
Total Excursion Car Miles (one-way)	-	35,080	49,009	49,009	53,007	54,028	54,549	54,865	55,182	55,502
Total Non-ECR Train Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL REVENUE	\$ 108,364	\$ 6,637,551	\$ 9,541,740	\$ 10,897,277	\$ 11,603,437	\$ 12,024,240	\$ 12,414,582	\$ 12,725,775	\$ 13,046,008	\$ 13,375,577
Annual Growth Rate		6025.3%	43.8%	14.2%	6.3%	3.6%	3.2%	2.5%	2.5%	2.5%
INDIRECT COST ALLOCATION										
Common Carrier Freight	100.0%	7.3%	5.5%	5.7%	5.4%	5.4%	5.5%	5.6%	5.6%	5.7%
Common Carrier Passenger	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Excursion	0.0%	92.7%	94.5%	94.3%	94.6%	94.6%	94.3%	94.4%	94.4%	94.3%
Non-ECR Trains & Non-Ops Rev	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

DRAFT FOR DISCUSSION PURPOSES

**Eastside Community Rail
INCOME STATEMENT**

11-Feb-13

<i>Business Case</i>	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Most Likely	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022

REVENUE (see "Traffic" tab for detail)										
Common Carrier Freight	\$ 108,364	\$ 116,037	\$ 122,504	\$ 129,982	\$ 135,290	\$ 140,843	\$ 146,651	\$ 152,728	\$ 159,087	\$ 165,742
Common Carrier Passenger	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Excursions	\$ -	\$ 6,521,514	\$ 9,419,236	\$ 10,767,295	\$ 11,468,147	\$ 11,883,398	\$ 12,267,931	\$ 12,573,047	\$ 12,886,921	\$ 13,209,835
Non-ECR Trains	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue	\$ 108,364	\$ 6,637,551	\$ 9,541,740	\$ 10,897,277	\$ 11,603,437	\$ 12,024,240	\$ 12,414,582	\$ 12,725,775	\$ 13,046,008	\$ 13,375,577
Annual Growth Rate		43.8%	14.2%	6.5%	3.2%	2.5%	2.5%	2.5%	2.5%	2.5%

Rail Operating Costs

1. Direct Operations Costs										
TOTAL DIRECT TRANSPORTATION	\$ 2,463	\$ 3,692,981	\$ 5,097,067	\$ 5,486,072	\$ 5,802,487	\$ 5,903,130	\$ 5,988,160	\$ 6,044,902	\$ 6,102,566	\$ 6,161,171
		55.0%	53.4%	50.3%	50.0%	49.1%	48.2%	47.3%	46.8%	46.1%

2. Rail Admin Costs - indirect

TOTAL ADMIN COSTS	\$ 69,125	\$ 223,083	\$ 334,105	\$ 376,451	\$ 402,923	\$ 405,615	\$ 413,728	\$ 422,002	\$ 430,442	\$ 439,051
		3.4%	3.5%	3.5%	3.5%	3.4%	3.3%	3.3%	3.3%	3.3%

3. Maintenance of Way and Structures - indirect

TOTAL MOW and STRUCTURES	\$ 40,573	\$ 278,778	\$ 307,327	\$ 307,327	\$ 307,327	\$ 311,467	\$ 315,689	\$ 319,996	\$ 324,389	\$ 328,869
per mile	\$ 2,808	\$ 19,293	\$ 21,268	\$ 21,268	\$ 21,268	\$ 21,555	\$ 21,847	\$ 22,145	\$ 22,449	\$ 22,759
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%

4. Maintenance of MP&RS (equipment) - indirect

TOTAL MP&RS - Equipment	\$ 13,353	\$ 17,804	\$ 17,804	\$ 17,804	\$ 17,804	\$ 18,160	\$ 18,523	\$ 18,894	\$ 19,271	\$ 19,657
		0.3%	0.2%	0.2%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%
TOTAL RAIL OPERATING COSTS	\$ 125,514	\$ 4,212,646	\$ 5,756,303	\$ 6,187,655	\$ 6,530,541	\$ 6,638,373	\$ 6,736,100	\$ 6,805,794	\$ 6,876,668	\$ 6,948,748
% of Revenue		63.5%	60.3%	56.8%	56.3%	55.2%	54.3%	53.5%	52.7%	52.0%

Corp Sales, Gen & Admin Expenses - indirect

TOTAL Corp G&A EXPENSES	\$ 864,011	\$ 2,155,085	\$ 2,332,469	\$ 2,434,612	\$ 2,639,022	\$ 2,805,253	\$ 2,884,880	\$ 2,951,251	\$ 3,019,412	\$ 3,089,416
% of Revenue		31.5%	24.4%	22.3%	22.7%	23.3%	23.2%	23.2%	23.1%	23.1%

Gross Margin (EBITDA)

\$ (881,161)	\$ 269,821	\$ 1,452,968	\$ 2,275,010	\$ 2,433,874	\$ 2,580,615	\$ 2,793,602	\$ 2,968,730	\$ 3,149,928	\$ 3,337,413	\$ 3,524,928
	4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%	25.0%

Other (Income), Exp & Taxes

Net Income (Loss)	\$ (1,150,653)	\$ (725,295)	\$ 530,220	\$ 1,207,869	\$ 1,286,400	\$ 1,335,559	\$ 1,373,853	\$ 1,408,931	\$ 1,448,786	\$ 1,488,020
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%
Period Cash Flow	\$ 3,359,656	\$ (3,202,413)	\$ 49,241	\$ 378,193	\$ 351,135	\$ 205,141	\$ 159,223	\$ 527,629	\$ 737,142	\$ 506,118
Cash Balance	\$ 3,996,481	\$ 794,067	\$ 843,308	\$ 1,221,501	\$ 1,572,636	\$ 1,777,777	\$ 1,937,000	\$ 2,464,628	\$ 3,201,770	\$ 3,707,888

From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Friday, May 10, 2013 10:33 AM
To: Byron Cole
Cc: Joe McWilliams
Subject: Port Quarterly Payments

Hi Byron,

Per the attached default letter from the Port of Seattle, Ballard need's to do a couple of things for both of us to be in compliance.

First, per our agreement and the O&M agreement with the Port, the 4th quarter 2012 and 1st quarter 2013 payments are past due.

As you recall, we must pay \$10 for each railcar moved on the line.

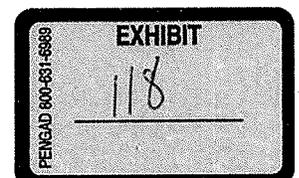
The Port must be paid within 30-days of each quarter end.

Please make these payments immediately.

Second, please make sure that both the Port and ECRR are listed as additional insured parties on Ballard's railroad insurance policy.

Ballard is required to carry the total insurance required in the O&M agreement per our agreement.

Please have the insurance company provide this information via a copy of Ballard's policy by May 20th.





P.O. Box 1209
Seattle, WA 98111-1209
Tel: (206) 787-3000

www.portseattle.org

April 30, 2013

Eastside Community Rail, LLC
1340 Lombard Street, #606
San Francisco, CA 94109

Re: Default - Operations and Maintenance Agreement between Port of Seattle and Eastside Community Rail, LLC (as successor to GNP RLY, INC.)

Notice is hereby given that Eastside Community Rail, LLC ("ECR") is in default with respect to two material terms and conditions of the Operations and Maintenance Agreement December 18, 2009 ("O and M Agreement") relating to the use of that certain rail Corridor described therein.

Specifically, ECR has failed to comply with the provisions of the O and M Agreement in Section 8, Insurance, for failure to provide evidence of the required insurance coverage, and in Section 9, Compensation and Billing, for failure to pay the Port the quarterly fees associated with the quarterly volume of freight cars.

Failure to cure the above described defaults within 60 days of the effective date of this Notice shall cause the O and M Agreement to terminate.

If you should have any questions, please don't hesitate to contact me at (206) 787-3722.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe McWilliams".

Joe McWilliams
Managing Director, Real Estate Division

BTR 000373

From: Safora, Isabel
Sent: Thursday, February 27, 2014 12:07 PM
To: Ressler, Vanessa
Subject: FW: Bridge 34.3 Photo's
Attachments: Bridge 34.3 Site Visit 12-13-13.pdf

Isabel R. Safora
Deputy General Counsel
Port of Seattle
P. O. Box 1209
Seattle, WA 98111
safora.i@portseattle.org
206-787-3216

This message contains information which may be confidential and privileged. Unless you are the addressee, or are authorized to receive this message on behalf of the addressee, you may not use, copy, or disclose this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail and delete this message. Thank you.

From: Maruska, Bob
Sent: Friday, December 20, 2013 9:55 AM
To: espencer@grahamdunn.com
Cc: Safora, Isabel; Sullivan, Sean
Subject: Bridge 34.3 Photo's

Elaine,

Attached is a PDF file with some of the photos we took on the site visit on December 13, 2013. They are in PDF format due to email file size limitations.

In all I have about 150 photos (many duplicates) that are available but these are a good representation of the conditions we found in the field.

Let me know if you need anything else.

Thanks,
Bob Maruska

East Side Rail Corridor

Bridge 34.3

A site visit was conducted on December 13, 2013 by Port staff Sean Sullivan and Bob Maruska to perform a visual inspection of the bridge. The following photos were taken at that time:

Span 2 Looking Southwest



Bottom side of stringers shown. East set of stringers (3) in the foreground.

East Stringer Looking South from North Abutment



Looking South between East and West Stringers



East inside Stringer Splice at North Pile Cap of Span 2 Looking Southeast



Span 2 Stringer Impact Damage Looking Southwest



Span 2 West Stringer Damage and Timber Decay Looking South



Span 2 West Stringer Impact Damage Looking Southeast



Top of West Inside Stringer Impact Damage at Bottom Looking West



Tie Deterioration at North Span near Abutment



Split Tie at Bolted Connection to West Stringer



Multiple Deteriorated Ties at North Abutment Looking Southeast



Utility Trench Deterioration under Span 2 Looking Northwest



Utility Trench Settlement under Span 2 Looking West



Span 2 Looking Northwest Clearance Marking and Utility Crossing Corridor



Loomis, Sharman

From: Doug Engle [Doug.Engle@EsCRail.org]
Sent: Monday, April 01, 2013 9:50 AM
McWilliams, Joe
Miller, Melinda; Sullivan, Sean
subject: Re: Brightwater-Maltby

Joe,

Shall we make this simple as we've both been dancing with the crazy thing for way too long, and I seriously appreciate your efforts to make something work.

However;

- We, ECRR, does not have automobiles, so why do we need insurance?
- We don't have employees, so why do we need insurance?
- We are not operating any trains so why do we need pollution insurance?
- Spending 25% of revenues for insurance is insane!

At this point, I really don't care, so let's pick a path and move forward.

We have three choices:

1. Let's renegotiate the agreements.
2. Figure out how to transfer the agreements to Ballard as all ECRR owns is a freight easement, **OR**
3. Shut the damn line down, which ought to go over well in the press for all of us.

The Port and GNP have decimated the potential of this line, yet the Port never wanted this mess to begin with - its just a rotten situation.

How many third-party entities providing the same perspective will it take before the Port or public puts enough money into the line to keep it operable.

I assure you, there are NO other railroads out there willing to take over freight operations with these line volumes or introduce an excursion train without publicly funded upgrades to the track.

Without a healthy operating railroad, good luck getting SnoCo to buy the corridor for \$1M per mile, especially since Kirkland paid far less for prime real estate.

ECRR is trying to find a way to make this work for all the parties involved and even help the Port sell its remaining interests sooner than later.

ECRR, like the Port, is only putting cash out on this line.

So pick a number above and let's get to it.

Seriously,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail

425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

On 1 Apr 13, at 9:09 AM, "Sullivan, Sean" <Sullivan.S@portseattle.org> wrote:

Doug,

Before we start looking at the prospect for future meetings, we need to get ECR's O & M Agreement with the Port squared away.

Insurance

We did have a chance to re-review the insurance requirements contained in the O & M Agreement with our risk management group. The level/types of coverage required by the agreement were confirmed to be structured appropriately for the rights/responsibilities provided for under this agreement.

So we need to have ECR's insurance coverage brought into compliance with the requirements of the Agreement as soon as possible, and have you submit a copy of the updated policy and/or other appropriate certificates of coverage. Some deficiencies noted include, but may not be limited to, the following;

1. ECR does not have the pollution coverage required by the Agreement.
2. ECR has not provided documentation indicating they have commercial automobile coverage.
3. ECR needs to increase the minimum limits of their rail general liability policy of insurance from \$2 million per occurrence to \$5 million per occurrence.

ECR shall notify the Port of their determination as to the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, or any federal laws that pertain to workers compensation coverage for railroad employees and operator: In the event Federal Employer's Liability Act is the applicable coverage under this agreement, ECR shall provide the Port with evidence of coverage. If Title 51 of the Revised Code of Washington applies to this Agreement, ECR shall submit a current employer liability certificate issued by the Washington State Department of Labor and Industries that shows the status of the ECR worker compensation account.

We need your UBI number and State Worker Compensation Account Number (if applicable).

ECR shall also provide, as may be required by the terms of the O & M Agreement, Washington State Stop gap employer's liability insurance in amounts and form as set forth in the agreement.

Ballard Terminal Railroad Company needs to provide the appropriate additional insured endorsement.

Ballard Shortlines Agreement

As previously requested, please provide a copy of the ECR/Ballard Shortlines Agreement.

Fees

The quarterly payment of fees required by the O & M Agreement are currently due and payable.

Please provide an ETA on when the appropriate insurance, Ballard Shortline Agreement and the outstanding fees, will be delivered to the Port. As you know, the Port first brought the issue of insurance deficiencies to ECR's attention on February 11, 2013.

Thanks,

Sean Sullivan
Port of Seattle

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Date: Thursday, March 28, 2013 3:16 PM
To: Steve Thomsen; Jack Molver; Stephen Dickson; Ernie Wilson; Jack Miller; Sullivan, Sean
Subject: Brightwater-Maltby

Would Friday morning, say 10:00, April 12th work to meet at Wolford's in Maltby to look at the maintenance of way road and discuss next steps?

Please advise...

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 12:16 PM
To: Greg Starup
Subject: ECRR - Overview 2 of 2
Attachments: ECRR Financing 2013Sep27.pdf; ATT00052.htm

Exhibit 80 Date 2/6/14
Witness Starup
Wade J. Johnson 323-0919

INTRODUCING

ECRR

Eastside
Community
Rail, LLC

27 September 2013

BRIDGING THE GAP

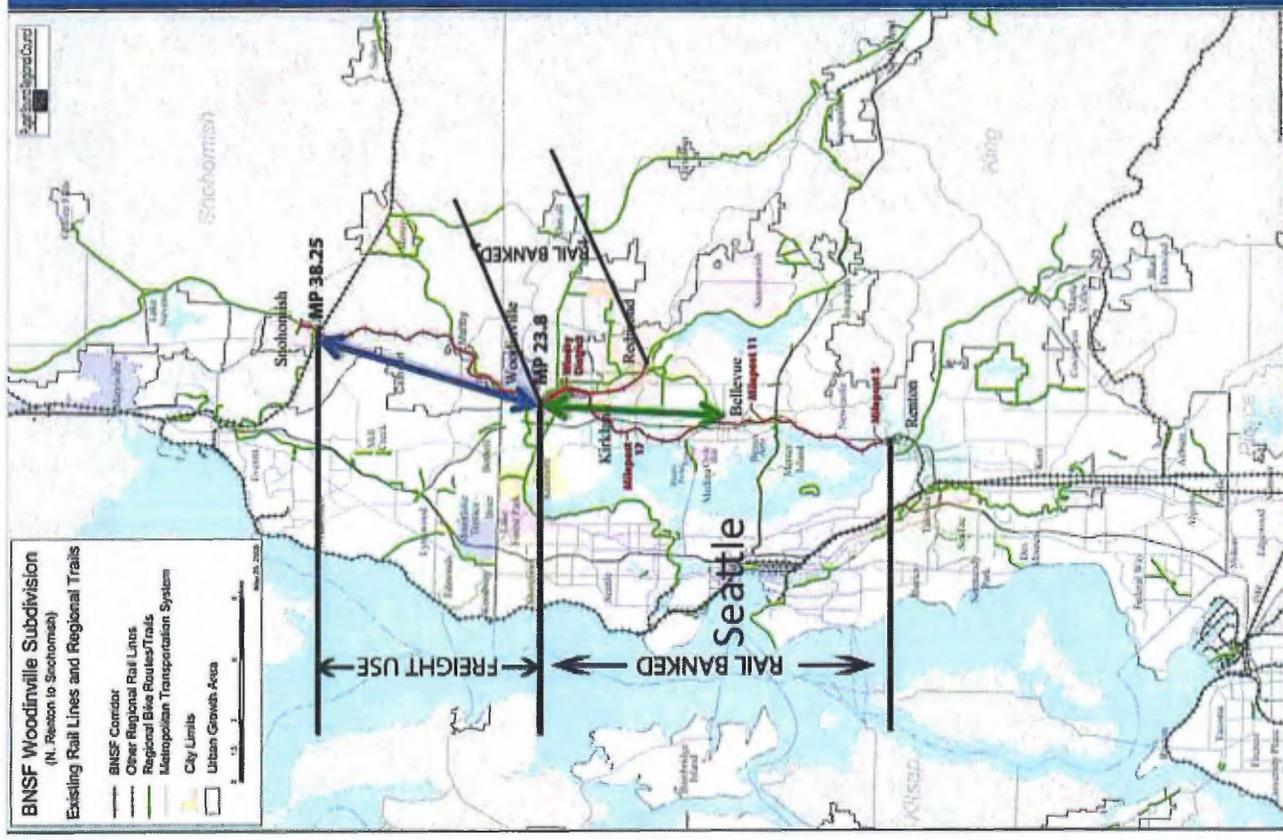
Introduction

- Who is ECRR
- Business Model
 - freight and excursion
- Stakeholders
- Maintenance of Way
- Legal Matters
- Financing Approach
- Strategy
- Offer

Eastside Community Rail (ECRR)

ECRR is a federal railroad that owns the rights to the Woodinville freight easement acquired from BNSF, milepost 38.25 to 23.8.

ECRR and Ballard Terminal Railroad Co are pursuing reactivation of the Woodinville to Bellevue segment via the Surface Transportation Board in WA D.C.



Why reactivation to Bellevue?

1. Affluent globally diverse population based on expanding technology industry
2. Economic center of Seattle's Eastside region
3. Expanding city core, including many large private construction projects (*MSFT alone has over 3M sqft*)
4. Access to Seattle market and cruise ships

Therefore, many freight, excursion, transit and development opportunities are already there.

Business Objectives

1. Freight enables federal rights
 - It provides massive leverage and carefully guarded power
 - Extending the rail right of way is critical, long-term
2. Develop recurring business at 11% margin
 - ECRR builds and maintains projects inside the right of way
 - A public trail starts as a RR maintenance of way road
 - Long-term commuter service is likely
3. Re-Establish the Spirit of Washington Dinner Train
 - Previous owners have come back twice wanting to do this
 - Iowa Pacific Holdings wanted this in 2012
 - Our business plan is for a “Bounty of Washington Tasting Train”
4. However, Transit Oriented Development (TOD) is *the primary* long-term rail opportunity
 - Therefore, continue extending the rail right of way...

... *alternatively*

1. *Freight is the only must have.*
 - Ballard Terminal Railroad Co. (BTRC) is our freight partner
 - ECRR and BTRC possess federal operating rights
2. *Everybody wants **trails**, two currently pending*
 - ECRR will build and maintain them for 11% margin
3. *A rail **excursion** service is a cash cow*
 - Proven 15-yr, \$10M annual revenue, profitable business
4. *Commuter will happen, only how and when*
 - Utilize self-propelled coaches on a single track, *not* light rail
 - ECRR builds-out the line and maintains it
5. *Development opportunities already exist on the operating line today in Woodinville.*
 - Therefore, continue extending the rail right of way...

Freight Customers

- | Operating Line | Woodinville-Bellevue |
|------------------------------------------|-----------------------------|
| • Boise Cascade | • Wolford Trucking |
| • Spectrum Glass | • CalPortland |
| • Matheus Lumber | • RJB (pipe) Wholesale |
| • CT Sales (rebar fabrication – pending) | • Freight Transloader |
| | • General Mills |
| | • Aggregates West (pending) |
| | • GTS Drywall (potential) |

Large Construction Projects

3 million cubic yards of construction spoils to remove
(over a football field sized Sears Tower)

- Lincoln Center 2
- Main St Gateway Ctr
- Bellevue Park II Apts
- Bellevue at Main
- Bellevue Center
- Alley 111
- Alamo Manhattan
- GRE Bellevue
- Rockefeller Bell. Tower
- Marriott Hotel
- *Many others in process*
- Google Phase II
- Park Place redevelop't
- SOMA Towers
- Pacific Regent
- Spring District
- Bellevue-Redmond Rd expansion
- East Link Light Rail
 - Tunnel and ditches
- I-405 widening
- SR-522 HOV & transit

BOUNTY OF WASHINGTON



TASTING TRAIN



RELATED PAGES

- Event Strategy
- Upcoming Special Events
- Important Information
- The Fair Experience
- Grape Escape & Ales on Rails Excursions
- Excursion Programs

Home » Excursions » Ales on Rails Excursions & Wine on Rails Excursions

Grape Escape & Ales on Rails Excursions

2013 "Grape Escape" Wine-Tasting Excursions & "Ales on Rails" Beer-Tasting Excursions

"Grape Escape" Wine-Tasting Excursions
 Each trip is 2 hours in length and travels through Cuyahoga Valley National Park. While on board, you will be introduced to 5 different wines, and each is served with a chef prepared hors d'oeuvres. You will learn of each wine's characteristics such as the body, aroma, bouquet and finish.
 (Vegetarian selections can be prepared - if you need that option, just call our office and let us know!)

Everyone receives a CVSR Commemorative Tasting Glass.

Ticket Options include:

Couch Seating: \$27 per person
 Seats on groups of 2 using 2

Premium Seating: \$77 & \$50 per person
 Seats on the Emerson Car. The First Class section offers comfortable, rickety seats and the



Excursion Train

A Large Opportunity

- Nationwide there are 110 scenic railroads
- Cruise ship passengers: 435,000 annual boardings
- 9.9 million overnight visitors in King County
- Nearly 100 wineries, breweries and distillers in Woodinville with worldwide visitors
- In King County \$570 million spent in Entertainment, \$1.2 billion in Food Service, an additional \$106 million in other, and \$200 million in Snohomish County
- ECRR “figures” on the same “Dinner Train” ridership, although the market has nearly doubled

Sources: Seattle Convention and Visitor's Bureau, U.S. Tourism Board, Dun and Bradstreet, Rail USA

Washington Winery Study

Summary

Emailed an online survey using the AYTM.com survey service to 460 wineries with valid email addresses.

Washington wineries overwhelmingly support the Bounty of Washington Tasting Train.

- 92% want to participate with 77% wanting to participate more than 2 days a year
- 98% believe the Tasting Train will promote Washington Wine
- 93% want more information and even 69% will write letters to support public funding
- 80% of Woodinville wineries believe starting in Kirkland will help their business
- 70% believe the Tasting Train will have more customers than the 100,000 annual customers the Dinner Train had

Tourism Stakeholder Insights

City of Snohomish
Snohomish County
Snohomish Tourism Board
Historic Downtown Snohomish
Snohomish Historical Society
Redmond Chamber of Commerce
Washington Wine Commission
Woodinville Wine Country
Columbia Winery
Delille Cellars
Bookwalter Wines
Ste. Michelle Wine Estates
Tulalip Resort
Seattle Convention and Visitor's Bureau
Holland America
Princess Cruises
Grayline Bus Tours

Public Support for this rail line

- WA State Legislators
 - New rail caucus formed (R), (D), legislature and senate
 - Transportation budget line item next session for \$65M
 - Proposed Railroad Partnership Act
- Snohomish County
 - Freight business
 - Excursion and tourism
 - Rails with trails
- City of Woodinville
- City of Snohomish
- Cascadia Center
- Wine, tourism, construction and other industries

Rail Stakeholders



Stakeholders – *working together*

- ECRR – central rail orchestration and extensions
- BTRC – freight service and excursion support
- Eastside TRailway Alliance
 - group of public bodies; counties, cities and NGO’s
- Wolford Trucking – Bellevue construction projects
 - demolition, spoils hauling, and trail construction
- CalPortland & Aggregates West – aggregates, concrete, ballast, etc.
- Fletcher & Sippel LLC – STB legal counsel in Chicago
- Real Estate Development Team – *needed next*
- Bounty of Washington Tasting Train – following
- Future public transit – TBD

Maintenance of Way

Shared Costs = Lower Operating Cost

Best of Breed Partners to provide services

- CalPortland & Aggregates West – substructure materials
- TBD – substructure build
- Railworks – track structure
- Osmose – bridge maintenance
- NW Signal – crossings

#1 RR Revenue Premise...

Sound Transit = 100% + high capital and overhead requirements

Width	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	

Trail only expenses not shared with rail ops. Rail only expenses shared amongst rail operations only.

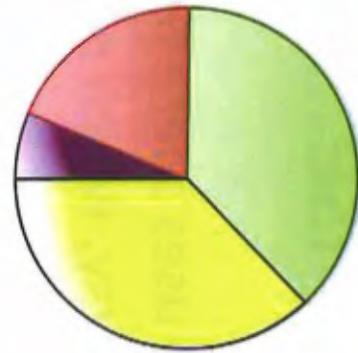


Trail expenses do not include rail structure costs.

Trail 37%	Rail 63%
------------------	-----------------

Net	Gross Vehicle Miles
6%	Freight 50,000 10%
19%	Excursion 150,000 30%
38%	Commuter 300,000 60%
63%	TOTAL 500,000 100%

Cost Sharing = Lower Operating Costs



- Freight
- Excursion
- Commuter
- Trail

ECRR is a zero-sum entity, with excess year-end funds added to the ECRR capital sinking fund.

#1 Premise... why?

1. Multiple uses share the cost of maintaining the right of way, *which makes it less expensive for all.*
2. Rail services are based on gross vehicle miles.
3. Trail is based on effective width.
4. ECRR thrives when rail services are profitable.
5. ECRR would rather make an 11% margin on its works for 35-years than plan for “homeruns.”
 - “Homeruns” are major projects like rehabilitating the track or building a maintenance of way road (trail).
 - “Getting on base” is the maintenance required to sustain these investments in a quality manner to bring people back.

Legal Matters

with Ballard Terminal Railroad Company...

- Federal action *pending* at STB to reactivate Woodinville-Bellevue segment
- *Following*, file for STB reactivation of Woodinville to Wine District segment

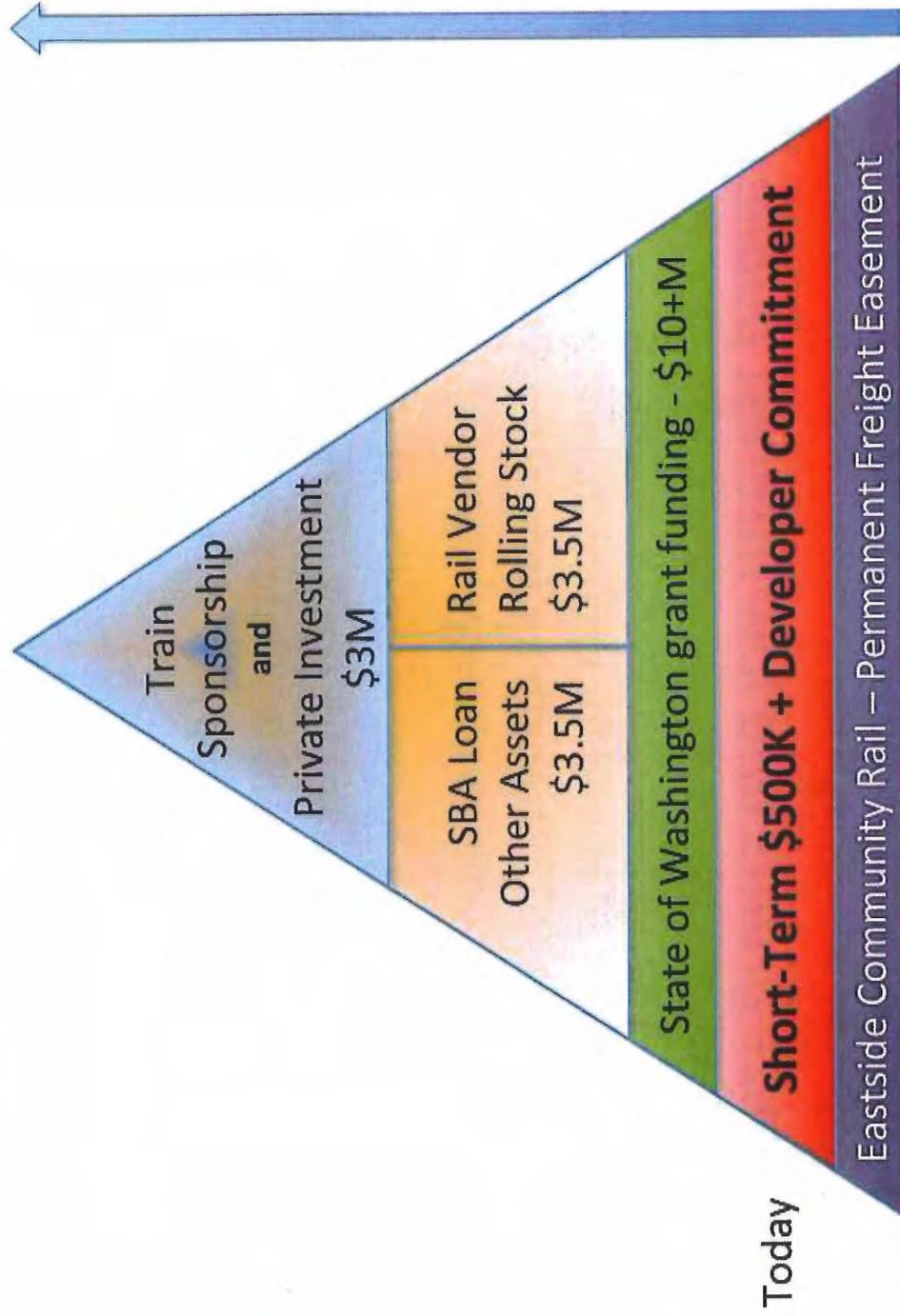
Legal Costs

back of the envelope... 100:1 ROI

Along with Ballard Terminal Railroad Co...

- The STB rejected Port of Seattle interference with ECRR and BTRC agreement.
- Obtaining reactivation rights increases regional power, returns, and minimizes long-term “process” overhead
- Likely will have to use eminent domain powers to acquire needed lands... *location, location, location*
- We will protect our federal railroad rights.

Financing Approach



Financing Approach

Key capital assumption:

Maximize grants and low interest public money

1. Developer partner/investor
 - a. Provides 1st Round for excursion, land and development
 - b. Improves STB strength for federal legal actions
 - c. Increases political stature – state and local
2. Public funding focus is on the state
 - a. \$10+M state grant for track upgrades
 - b. State legislation to facilitate public private partnerships – Railroad Partnership Act
 - c. State DOT rail loan
3. Federal loans
 - a. Small Business Administration (SBA)
 - b. Federal Railroad Administration (FRA) – Railroad Rehabilitation and Improvement Financing (RRIF) Program

Strategic Priorities

1. Grow the freight business... *in process*
2. Extend corridor mileage... *first action pending*
 - a. Woodinville – **Bellevue** (pending at STB)
 - b. Woodinville Wye – Wine District (next)
 - c. Extend rail right of way to Everett (5-10 years)
 - d. *Other long-range possibilities north, south and east*
3. Financing
 - a. **\$500K immediate**
 - b. **\$30M over 5-yrs**
4. Support trail and other uses = *cash flow*
5. Re-establish excursion service = *cash cow*
6. Pursue immediate real estate opportunities...

Strategic Plan by Year

Year 1 – 2014

1. Construct trails
 - ✧ Generates cash and goodwill
 - ✧ Snohomish County (funded)
 - ✧ Kirkland (or they lose the money)
2. Seek state *Railroad Partnership Act*
3. Fix track to Bellevue and general Maintenance of Way (MOW)
4. Start Bellevue freight service
 - ✧ Acquire side-dump cars
5. Initiate excursion train business
 - ✧ Track to Class 1 (15 m.p.h.)
 - ✧ Order rolling stock
 - ✧ Capital facilities
 - ✧ Business launch activities

Year 2 – 2015

1. Launch excursion train
 - ✧ Cash flow positive in one year
 - ✧ State funded track upgrades to Class 2 (30 m.p.h.)
 - ✧ Service to wineries
2. Expand freight services
3. Expand trail efforts
 - ✧ King County, SnoCo, Kirkland, Woodinville and state
4. Construct parking then hotel
 - ✧ Utilize RR authorities
5. Pursue TOD opportunities

Year 3 – 2016

1. Expand rail services
2. Expand trail efforts
 - ✧ King County, SnoCo and state
3. Pursue TOD opportunities

Questions?

Offer slides follow...

Developer/Partner Offer

1. ECRR offers exclusive development rights on ECRR property along right of way.
2. The leverage of a federal railroad to accelerate entitlement process.
3. Access to 35-year low interest public railroad financing via RRIF.

Developer Requirements

Debt Financing and Guarantees

(Proposed Railroad Partnership Act may change requirements)

\$30M over 5 years for real estate development, including:

1. Freight Maintenance of Way - **\$8.0M** initial
 - ✧ State may fund/grant at \$10+M
2. Excursion train capital startup costs - **\$3.0M**
 - ✧ Cash requirement over first 3-yrs
3. SBA loan guarantee - **\$3.5M**
 - ✧ Requirement over 5-7 yrs
4. Rolling stock capital lease guarantee - **\$3.5M**
 - ✧ Plus freight side-dump cars TBD
 - ✧ 5-yr capital lease to buy option
5. Woodinville hotel land acquisition and hotel development
6. Acquire, via a railroad's eminent domain, Kirkland's 5.75 mile x 100' portion of the rail corridor (paid \$5.0M in 2012)

Interim Requirements

\$500K immediate raise

Debt Financing

- 20% first year lift to face amount
- 8% annual interest remaining four years

Uses

1. STB and Legal Fees - \$125K
2. Initial Public Relations - \$100K
3. Maintenance of Way - \$100K
4. Working Capital - \$175K

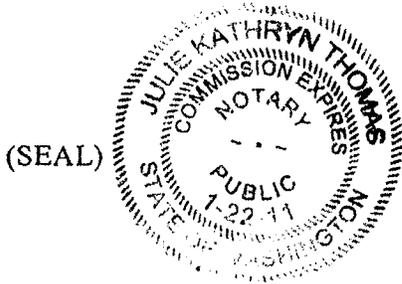
\$500K Repayment Sources - prioritized

1. Developer 1st Round Investment – *primary plan*
2. Snohomish County Trail – *funded*
3. Woodinville Bridge Easement – *funded*
4. Kirkland Trail – *funded pending STB reactivation decision*
5. Totem Lake access allows for EB5 investment – *pending favorable STB reactivation decision*
6. WA State DOT Rail Office Loan – *in plan for 2015*
 - Typically a no or low interest loan, needs legislative approval
7. FRA RRIF loan – *requires investor 2014-15*
 - 35-yr low interest loan, one-year to process with support
8. Another RR
 - Exit plan if no development investor

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On Dec. 17, 2009, before me, a Notary Public in and for said County and State, personally appeared Jay Yoshitani of the Port of Seattle, a Washington municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

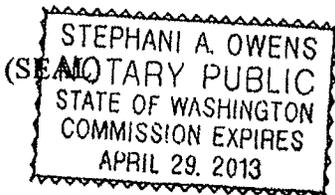


Julie Kathryn Thomas
Printed Name
Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of
Washington, residing at Bothell, Wa
My commission expires 1-22-11

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On 12-18, 2009, before me, a Notary Public in and for said County and State, personally appeared Thomas Pague of GNP Rly. Inc., a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Stephani A. Owens
Printed Name
Stephani A. Owens
NOTARY PUBLIC in and for the State of
Washington, residing at Everett
My commission expires 4-29-2013

12.18 Encumbrances.

TPO may pledge or otherwise encumber its rights under this Agreement to secure its obligations under any loan agreement or similar or related document; provided, however, that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Execution Date.

PORT OF SEATTLE,
a Washington municipal corporation

By: [Signature]
Name: _____
Title: _____

GNP RLY. INC.,
a Washington corporation

By: [Signature]
Name: Thomas Payne
Title: Chairman & C.O.O.

12.16 TPO Operating Data.

In the event of termination of TPO's operations, TPO shall, at the Port's request and expense, provide to the Port or the Port's designee all data associated with TPO's operations on the Corridor, including, but not limited to, car tracing, shipper identification and rates, and accounting records. Provided, that in the event TPO's operations terminate as a result of TPO transferring its rights to another operator, with the Port's consent, such operating data shall be transferred by TPO to its successor at TPO's cost or that of TPO's successor.

12.17 Removal of TPO's Property.

Upon termination of this Agreement, TPO shall have ninety days from the date of termination to remove all of TPO's personal property and trade fixtures, so long as such removal does not damage the Corridor or Port Property. If damage results to the Corridor or to Port Property as a result of TPO's activities under this Section 12.17, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Corridor or Port Property to as good condition as they were prior to TPO's removal activities, normal wear and tear excepted. If TPO fails to remove any of the personal property and trade fixtures within the time authorized under this Section, the Port may remove TPO's property at TPO's expense, subject to offset by any net proceeds received by the Port from the sale of TPO's property. TPO's obligation to (i) restore the Port for any damage to the Corridor or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this Agreement. All other property or improvements placed on the Corridor or Port Property by TPO during the term of the Agreement that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this Agreement.

12.11 Time of Essence.

Time is of the essence of each and every provision of this Agreement.

12.12 Agreement Runs with Land; Recordation.

This Agreement is made for the benefit of the Corridor and shall run with the land, except that any parcel transferred by the Port to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in connection with the rail operations intended by this Agreement shall be deemed removed from the Corridor or Port Property as applicable. This Agreement shall bind and inure to the benefit of the parties' respective successors in interest in the Corridor to the extent stated in the prior sentence. This Agreement shall be recorded, and each party, upon request of the other party, agrees to execute a document in recordable form evidencing the removal of any parcel from the Corridor or the Port Property.

12.13 Not for the Benefit of Others.

This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party, except that the provisions related to railbanking in Section 12.4 are for the benefit of the County. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto, except for the rights of the County under Section 12.4.

12.14 Attorneys' Fees.

If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.15 Regulatory Requirements.

If any governmental agency imposes any requirement on either or both of Port and TPO which Port can reasonably demonstrate would not have been imposed but for TPO's use of the Corridor for TPO's Freight Rail Service or Excursion Rail Service, the entire cost of compliance shall be borne solely by TPO, including, without limitation, costs and expenses for construction and maintenance of improvements, relocation of Facilities, implementation of safety procedures, and the filing of or participation in regulatory proceedings. Both parties shall reasonably cooperate to ensure compliance with all such governmental requirements. Notwithstanding the foregoing sentence, TPO's cooperation shall not include any modification to, or restriction of, its operations in the Corridor; provided, however, that TPO's cooperation may include modifications to the Facilities to the extent such modifications do not restrict TPO's operations, and subject to TPO's obligation to bear all costs and expenses thereof.

Port: Port of Seattle
P. O. Box 1209
Real Estate Division
Seattle, WA 98111
Telephone No. 206-728-3722

If delivered:
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

TPO: GNP Rly. Inc.
403 Garfield Street #20
Tacoma, WA 98444
Attention: Thomas Payne
Telephone No. 253-459-9702

12.7 Headings.

The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

12.8 Integration, Amendment, and Waiver.

This Agreement controls all the rights and obligations of TPO and Port as to the operation of Freight Rail Service and Excursion Rail Service on the Corridor. (The License controls all the rights and obligations of TPO and Port as to the operation of Excursion Rail Service on the Excursion Spur and Extended Excursion Spur, if applicable). This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.9 Counterparts.

This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

12.10 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of Washington State and/or federal law, where applicable.

(2) terminate all the rights of TPO, or that of a permitted successor or assign, to provide Freight Rail Service over the Corridor under this Agreement. Notwithstanding the previous sentence, after the termination of this Agreement under this Section, TPO may, with Port's approval, continue to provide Excursion Rail Service over the Corridor. In all events, TPO shall remain liable for all accrued or continuing obligations under this Agreement, and all obligations required upon termination and surrender of the Corridor.

12.3 Offers of Financial Assistance ("OFA").

In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if TPO receives an OFA with respect thereto, TPO shall promptly notify Port, Port (or its designee) shall submit its own OFA and TPO shall accept the OFA submitted by Port (or its designee) for the offer amount of \$1.

12.4 Railbanking.

In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if Port, King County ("County"), or the designee of either of them timely files with the STB a Statement of Willingness to Assume Financial Responsibility ("SWAFR") meeting the requirements of the STB's regulations, TPO shall file with the STB: (i) an expression of willingness to enter into a railbanking/trail use agreement; (ii) a statement that TPO and Port, or TPO and County, or TPO and such designee, have entered into such an agreement; and (iii) a request that the STB issue a Notice of Interim Trail Use ("NITU") or a Certificate of Interim Trail Use ("CITU") (as appropriate). Upon the effective date of each such NITU or CITU, TPO shall transfer to Port (or Port's designee) TPO's right to restart freight rail service on the portion of the Corridor that is the subject of the SWAFR.

12.5 Binding Successors: Assignment.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this Agreement without the prior written consent of Port, which consent may not be unreasonably denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this Agreement freely.

12.6 Notices.

Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or (b) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 11.1 and 11.2 and; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

11.4 Pending Resolution.

During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

11.5 Cost of Arbitration.

Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

SECTION 12. Term and Termination.

12.1 Term.

The initial term of this Agreement shall expire on the 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this Agreement, TPO may elect to continue this Agreement for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. *Notwithstanding* the foregoing, this Agreement shall terminate 60 days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this Agreement, which default has not been cured on or prior to such 60th day.

12.2 Termination for Abandonment.

In the event that TPO, or a permitted successor or assign, lawfully abandons, discontinues or otherwise lawfully ceases to provide Freight Rail Service on the Corridor by obtaining any necessary authority or exemption from the Surface Transportation Board ("STB"), Port may choose to (1) terminate this Agreement upon ninety (90) days written notice to TPO; or

SECTION 11. Binding Arbitration.

11.1 Controversies Subject to Arbitration.

Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11.2 Selection of Arbitrator.

In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

11.3 Expedited Arbitration Schedule.

a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 11.2, an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five (5) day period, each party shall within two (2) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. Otherwise, the two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

follows: b) A quarterly fee based on the TPO's traffic volume calculated as

\$10.00 per loaded freight car; and

\$.10 per excursion passenger carried. For purposes of this Section 9.4, the term "excursion passengers" shall include passengers carried by another operator pursuant to a contract with TPO; and

5% of gross miscellaneous revenue, including but not limited to, car storage revenue.

c) Additional Fee: TPO represents and warrants that its written application for RRIF financing, which it has heretofore submitted to the FRA, expressly anticipates using a portion of the RRIF funds to pay the Additional Fee described herein, and that 45 USC §822(b)(1), provides that RRIF funds may be used to (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; (B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or (C) develop or establish new intermodal or railroad facilities." Upon TPO receiving documentation from the FRA acknowledging receipt of any required credit risk premium payment by TPO and approving the disbursement of RRIF loan financing to TPO for the Additional Fee, an additional fee of Nine Hundred Ninety Thousand Dollars (\$990,000.00) shall be payable to the Port within thirty (30) days of said disbursement; This fee shall be in addition to the fees and payments required under Section 9.4 b):

d) All fees payable by TPO under Sections 9.4 b) shall be payable at the end of the quarter following the quarter during which the fees accrued. For example, fees for Quarter 1 (January-March) shall be payable at the end of Quarter 2 (April-June), or on June 30th. Notwithstanding the foregoing, any fees owed at the termination or expiration of the Agreement shall be paid to the Port within 30 days of said expiration or termination.

e) When submitting payments to the Port under Sections 9.4 b), TPO shall include a statement of its traffic and passenger volumes, including all car counts and tonnages in support of the amount of the fees.

f) All fees referenced in this Section 9.4 are the same and are not in addition to the fees payable under Section 10.4 of the License.

SECTION 10. Coordination.

10.1 Coordination Committee.

Port and TPO shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

SECTION 9. Compensation and Billing.

9.1 Invoices.

Any Invoice or Invoices submitted to the parties under this Agreement ("Invoice" or "Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

9.2 Audit.

So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

9.3 Supporting Documentation.

Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

9.4 Fees.

9.4 Fees. TPO shall pay the Port:

- a) A fee of Ten Thousand Dollars (\$10,000.00) payable on the closing of the transaction between the Port and BNSF referenced in Recital A; and

TPO shall also provide the Port with Washington State Stop Gap employers' liability insurance. This shall be in an amount of One Million Dollars (\$1,000,000) per accident and One Million Dollars (\$1,000,000) per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary general liability policies identified in Sections 8.1 and 8.2. To the extent applicable, there shall be no exclusions relative to railroad workers or workers covered under the Federal Employers' Liability Act.

8.8 Primary Insurance.

TPO's insurance shall be primary with respect to its obligations under this Agreement and non-contributory with respect to any coverage the Port may have.

8.9 Maintaining Insurance Requirements.

TPO's insurance requirements shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured, including the Port.

8.10 Statutory Defenses.

All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than the Port, and none are intended to be waived by TPO with respect to parties other than the Port by the acquisition of insurance by TPO or under this Agreement.

8.11 Failure to Maintain Insurance.

A failure of TPO to maintain the insurance required by this Section 8 shall not relieve TPO of any of its liabilities or obligations under this Agreement.

8.12 Waiver of Subrogation.

Every policy of insurance required under this Agreement to be held by TPO shall include a waiver of all rights of subrogation against the Port.

8.13 Other Insurance.

TPO shall require that all of its contractors and sub-subcontractors carry a railroad protective liability policy with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and with an aggregate policy limit of no less than Six Million Dollars (\$6,000,000). Said policy shall name the Port as an additional insured.

8.3 Automobile Coverage.

TPO shall maintain general automobile liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage shall extend to all owned, non-owned, hired, leased, rented, or borrowed vehicles. The policy shall contain a waiver of subrogation in favor of the Port.

8.4 Evidence of Insurance.

Prior to the Execution Date, and annually thereafter, TPO shall forward evidence of insurance as required in this Section including evidence of the Port's status as an additional insured for the Freight Rail Service and Excursion Rail Service policies; and a written copy of the waiver of subrogation for the automobile liability policy. Upon request from the Port, TPO shall forward certified copies, within 30 days of the request from the Port, of any binders, policies, and declarations of insurance that is required by this Agreement.

8.5 No Port Deductible.

No policies obtained by TPO for this Agreement shall contain a deductible obligation for the Port. If the policy is issued with a deductible option, the TPO shall be liable for all deductibles, as well as any applicable allocated loss adjustment expenses if applicable. All costs incurred by a program of self-insurance, including self-insurance as identified in Sections 8.1 and 8.2 are to be borne by TPO.

8.6 Additional Documentation – Self Insurance.

If self-insurance is utilized for a portion of the coverage permitted in Sections 8.1 and 8.2, evidence must be provided to the Port of the TPO's net worth, a copy of the most recent audited financials, and a written description of the self-insurance program. This must be submitted with the other documentation required in Section 8.4.

8.7 Applicability of Workers' Compensation.

TPO is fully responsible for ascertaining the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, as well any federal laws that pertain to workers compensation coverage for railroad employees and operators, such as the Federal Employers' Liability Act (FELA). TPO shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self insurer. In the event FELA is the applicable coverage under this Agreement, TPO shall provide the Port with evidence of coverage. An insurance certificate shall be additionally required to show evidence of other applicable worker compensation coverage.

a) In the event Title 51 of the Revised Code of Washington applies to this Agreement, TPO shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of TPO worker compensation account prior to the Execution Date of this Agreement. TPO shall list here their UBI Number 602-672-764 and their State Worker Compensation Account Number

b) The policy required under this Section 8.1 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate.

c) The policy limits required under this Section 8.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

8.2 Excursion Rail Service Coverage.

TPO shall obtain and maintain general liability insurance with an excursion/passenger endorsement, and written on an "occurrence" basis, with minimum limits of Twenty-five Million Dollars (\$25,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count is 50 or less; and Fifty Million Dollars (\$50,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count exceeds 50. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of Port.

a) The policy required under this Section 8.2 shall include general liability property damage and bodily injury coverage for operation of Excursion Rail Service along with any related operation, maintenance, and construction, on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Six Million Dollars (\$ 6,000,000) in the aggregate.

b) The policy required under this Section 8.2 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Six Million Dollars (\$6,000,000) in the aggregate.

c) The policy limits required under this Section 8.2 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

7.8 Delay/Interruption of Service.

Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 7.3 i.

7.9 No Limitation on Risk Allocation.

The provisions of this Section 7 shall apply notwithstanding the provisions of Section 8. In no event shall the indemnification provisions of this Section 7 be limited to the insurance coverage required under Section 8.

7.10 Statutory Defenses.

All statutory defenses and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this Agreement.

7.11 Survival.

The provisions of this Section 7 shall survive the termination or expiration of this Agreement.

SECTION 8. Insurance.

8.1 Freight Rail Service Coverage.

TPO shall obtain and maintain freight service general liability insurance written on an "occurrence" basis, with minimum limits of Five Million Dollars (\$5,000,000) per occurrence. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed One Million Dollars (\$1,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of the Port.

a) The policy required under this Section 8.1 shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service along with any related operation, maintenance, and construction on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Five Million Dollars (\$ 5,000,000) in the aggregate.

indemnifying party from any liability which it may have to the indemnified party under this except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed.

b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this Agreement, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

c) Subject to the provisions of Section 7.6 a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this , the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to of this Agreement.

7.7 Compliance with Laws.

Both parties shall comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Corridor results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 7.3, if both parties were negligent.

7.4 Excluded Conduct.

"Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, where such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

7.5 Scope of Indemnification.

a) In any case where a party is required under the provisions of this to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto.

b) TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

c) TPO shall indemnify, hold harmless and defend Port from any and all Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Corridor and the Port Property.

7.6 Procedure.

a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this , the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the

7.2 Assumption of Responsibility.

a) Except as otherwise expressly provided in this , TPO will assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Corridor or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.

b) The allocation of responsibility for Losses under this applies only to Losses proximately caused by incidents occurring on or adjacent to the Corridor or Port Property, and arising out of TPO's presence on the Corridor, or on Port Property.

c) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this , including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

7.3 Allocation of Responsibilities.

a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in Section 7.3 a) i and Section 7.4. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Corridor (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

i. If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.

b) Persons Other Than Invitees. Except as provided in Section 7.4, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

c) Unenforceability. If any of the provisions of this Section 7.3 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 7.3, those provisions shall be deemed to

provisions of this Section 6.1 h) are in addition to and not in limitation of the provisions of hereof, and shall survive the termination of this Agreement.

SECTION 7. Liability.

7.1 Hazardous Materials and Environmental Liability.

a) If the performance of this Agreement creates any solid or Hazardous Materials (e.g., the removal of any materials from the trains that require disposal), said Hazardous Materials shall be properly disposed of in accordance with federal, state and local laws, at the expense of the TPO. In no event shall the Port be identified as the generator of the Hazardous Materials. The TPO shall notify the Port of any such Hazardous Materials and the Port shall receive a copy of the results of any tests conducted on the wastes. The TPO shall hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or other penalties arising from the disposal of any Hazardous Materials created by the performance of this Agreement, regardless of the absence of negligence or other malfeasance by TPO. This provision shall survive the termination or expiration of this Agreement.

b) At no time during the term of this Agreement shall the TPO or its designee, without first obtaining the written consent of the Port, maintain, treat, dispose of, store or have on the Corridor and/or Port Property, or permit any other party to have, maintain, treat, dispose of, or store on the Corridor and/or Port Property, anything which is classified by federal, state or local laws as Hazardous Materials or which requires a permit for the storage, treatment, disposal, handling or maintenance of it from any government authority. This excludes (1) transport or storage of materials by or on rail as long as said transport or storage complies with all Environmental Laws, including the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, and Sections 2.1 c) and 6.1 g) of this Agreement, and (2) petroleum products, lubricants, antifreeze and such other materials that may be normally consumed in the daily operations of a railroad. Any permits required in compliance with this provision and all federal, state or local laws shall be obtained at TPO's sole cost.

c) The TPO further agrees to indemnify and hold Port harmless from all costs, expenses, liabilities, demands, claims, causes of action at law or in equity whatsoever arising from its, or any of its contractors, agents or invitees', treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property during the term of this Agreement, including, but not limited to, the cost of clean-up, environmental damage assessments, defense and reasonable attorney's fees. The Port agrees to cooperate in the prosecution and collection of all costs, expenses, liabilities, demands, and claims, associated with any treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property, including, but not limited to, the cost of clean-up, environmental assessments, defense and reasonable attorney's fees, prior to occupancy by the TPO, against any identified responsible party.

d) The provisions of Sections 7.2 through 7.6 shall in no way limit or reduce the application, enforceability or effect of this Section 7.1.

SECTION 6. Access.

6.1 Reciprocal Access and Notice Rights.

Subject to the procedures set forth below, and to be in compliance with all applicable rules and regulations of the FRA, the parties shall have the following reciprocal access rights:

- a) Port may enter upon the Corridor for the purposes set forth in Sections 2.2 and 3.2.
- b) In the event the Port becomes aware of or is notified of an emergency of any kind, Port shall provide immediate notice of such events to TPO's duty officer at the contact number set forth in Section 3.2.
- c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Corridor for the purposes of apprehending the suspect.
- d) TPO may enter upon the Port Property for the purposes set forth in this Agreement.
- e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours' prior telephonic notice of any entry onto the Corridor, and shall not enter upon the Corridor until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.
- f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Corridor within twenty feet (20') of the track center of the Corridor shall be subject to the notice and flagging requirements under subparagraph above, unless the parties agree to an alternative procedure.
- g) Hazardous Materials may be brought by TPO onto the Corridor only to the extent necessary for the purposes for which entry is allowed under Section 7.1, and in all events in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, TPO shall not transport, bring onto, or store on the Corridor or Port Property any THIs or PHIs.
- h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion), TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate Port's property to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Corridor. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The

SECTION 4. Construction of Additions and Alterations.

4.1 Design and Construction Standards.

The design and construction of any Additions and Alterations on the Corridor shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow its customary safety procedures and shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to materially interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

4.2 Design Review.

In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to . Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

4.3 Grade Separation Projects.

In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

SECTION 5. Operations.

5.1 TPO's Operations.

TPO shall have exclusive authority to manage, direct and control all activities on the Corridor to provide Freight Rail Service, and Excursion Rail Service, including, without limitation, the operations of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Corridor.

SECTION 3. Maintenance, Repair and Replacement Obligations.

3.1 General Maintenance, Repair and Replacement Obligations.

a) Except as otherwise provided in this Agreement, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all Tracks and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Corridor, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Corridor.

b) Notwithstanding the provisions of Section 3.1 above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

c) The TPO shall allow the Port to conduct inspections of the Corridor as provided in Section 2.2 b).

3.2 Remedies.

a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this Agreement, and such failure results in an imminent and substantial danger to human health or safety or to property, Port shall promptly notify TPO and the FRA. If TPO fails to perform its maintenance obligations, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below. Port shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.

b) In the event that TPO or Port discovers, or receive notice of, any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Duty Officer Telephone No.: _____

TPO Duty Officer Telephone No.: _____

3.3 Grade Crossing Reconstruction.

The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between the tracks used by TPO and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

Freight Rail Service authorized under this Agreement. Prior to commencement of Freight Rail Service by Ballard Shortlines on the Corridor, TPO shall provide for the Port's approval a copy of the signed agreement between TPO and Ballard Shortlines for such operations. The agreement between TPO and Ballard Shortlines shall incorporate and be subject to all of the terms and provisions of this Agreement.

h) TPO acknowledges and agrees that, consistent with Section 2.2, Port may enter into agreements with one or more third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, that are not inconsistent with TPO's rights under this Agreement and do not materially interfere with TPO's right and obligation to operate Freight Rail Service on the Corridor. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Corridor.

2.2 Port's Rights and Obligations.

a) Port expressly declines to assume any obligation to provide common carrier freight rail service on the Corridor. Neither Port nor any person or entity other than TPO (or its permitted successors or assigns) shall be permitted to provide any type of freight rail service on the Corridor.

b) Port, at Port's election, may perform a semi-annual joint inspection of the Corridor by representatives of the Port upon reasonable advance notice for the first two (2) years, and annual joint inspections thereafter. Appropriate representatives from both Port and the TPO shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Corridor, at its election, at any time during the term of the Agreement so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 6.1 e); (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Corridor; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Corridor; (4) TPO will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with TPO to minimize any interference with TPO's operations on the Corridor. The Port may request, at its sole discretion, that the inspections be performed by an authorized FRA inspector, whose findings shall be binding on the Port and the TPO.

c) In the event the TPO fails to or is unable to perform any work it is required to perform under this Agreement, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, (as approved by Port under Section 2.1 above, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section .

d) Port shall have the right to contract with third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, and to grant easements, licenses or permits affecting the Corridor as long as such use, easements, licenses or permits do not interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Corridor under the terms of this Agreement.

1.18 "Port Property" means the rights-of-way acquired by Port from BNSF under the Deed that are subject to TPO's rights under this Agreement; provided, that if Port transfers individual parcel(s) to third parties not affiliated with Port, and the transferred parcel(s) do not remain subject to this Agreement as provided in Section 12.12, such individual parcel(s) shall not be deemed "Port Property."

1.19 "Track" means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Corridor.

1.20 "TPO" is defined in the preamble.

SECTION 2. Rail Service.

2.1 TPO's Rights and Obligations.

TPO shall have the exclusive right and obligation (subject to TPO's unfettered right to abandon or discontinue Freight Rail Service) to provide, by itself and/or by or through any entity designated by TPO and approved by the Port, Freight Rail Service and/or Excursion Rail Service on and over the Corridor. TPO, and/or its designee, shall also have the right to:

a) Modify, construct, maintain, replace, remove and operate the Tracks upon and across the Corridor in order to fulfill common carrier obligations to existing and prospective shippers and receivers of freight, at the expense of entities other than Port.

b) Perform any work prescribed by any FRA inspector.

c) Use existing Tracks in the Corridor for switching cars to or from industries served by industry tracks, which use includes setting out or picking up cars; provided, that TPO shall not transport or store on the Corridor or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs").

d) In the event that construction of any Tracks or TPO's operations requires the construction of new Port Facilities, or modifications to, or relocations of Port's existing Facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Port.

e) The design, construction, modification or removal of any Tracks and any new, modified or relocated Port Facilities necessitated thereby, shall be subject to Port's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

f) Use existing Tracks in the Corridor for performing Excursion Rail Service described in Sections 1.9 and 5.1. TPO or its designee shall commence Excursion Rail Service on the Corridor no later than six (6) months after the Execution Date, unless TPO and the Port agree, in writing, to a later date.

g) The parties acknowledge that TPO intends to designate Ballard Terminal Railroad Company, LLC. ("Ballard Shortlines") as the entity that will conduct the

1.9 "Excursion Rail Service" means the deployment and operation of trains using the facilities for excursion passenger service and not for commuter rail passenger service or any other service.

1.10 "Execution Date" means the date on which this Agreement is executed and becomes effective.

1.11 "Facilities" means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), Additions and Alterations, drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, buildings and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.12 "FRA" means the Federal Railroad Administration.

1.13 "Freight Rail Service" means only (a) the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor and (b) the head and tail operations associated therewith and conducted on the Excursion Spur in accordance with the License, and no other freight service.

1.14 "Hazardous Materials" means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Corridor and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Corridor causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.15 "Invoice" is defined in Section 9.1.

1.16 "Loss" or "Losses" means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death of or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Freight Rail Service or Excursion Rail Service on the Corridor.

1.17 "Port" is defined in the preamble.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. Definitions.

1.1 “Additions and Alterations” means any improvements constructed by or on behalf of either party on the Corridor after the Execution Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 “Automatic Warning Devices” means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 “BNSF” is defined in Recital A.

1.4 “Corridor” means the portion of rail line to which TPO acquired certain rights pursuant to the Easement, located between milepost 23.8 in Woodinville, King County, Washington to milepost 38.25 in Snohomish, Snohomish County, Washington.

1.5 “Deed” is defined in Recital A.

1.6 “Easement” is defined in Recital A.

1.7 “Environmental Laws” means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, licenses, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Corridor, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendments or regulations promulgated thereunder.

1.8 “Excluded Conduct” is defined in Section 7.4.

**OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.**

This Operations and Maintenance Agreement (the "Agreement") is entered into as of the 18 day of DECEMBER, 2009 ("Execution Date"), between the PORT OF SEATTLE, a Washington Municipal Corporation ("Port"), and GNP RLY. INC., a Washington corporation ("TPO").

Recitals

A. Pursuant to the Purchase and Sale Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), dated May 12, 2008, as amended; Port acquired certain rights-of-way from BNSF ("Port Property") and BNSF reserved for itself certain freight easement rights under the Quitclaim Deed ("Deed") to the Port; and

B. BNSF has conveyed its freight easement rights to TPO by quit claim deed dated of even date herewith ("Easement"). The Easement gives TPO the right to operate on a portion of the Port Property (as defined in Section 1.4 below, the "Corridor"), and

C. TPO intends to use the Corridor to provide Freight Rail Service and Excursion Rail Service (defined below); and

D. Pursuant to a Railroad Right-of-Way License Agreement ("License") between Port dated of even date herewith, attached hereto and incorporated herein as **Exhibit A**, TPO intends to use the Excursion Spur (as defined in the License) to provide Excursion Rail Service on the Excursion Spur, which is "railbanked" as set forth more fully in Recital D of the License.

E. The parties desire to set forth in this Agreement their respective rights and obligations with respect to TPO's use of the Corridor and adjacent Port Property for Freight Rail Service and related activities.

F. The TPO has been qualified by the Surface Transportation Board ("STB") and is willing to provide railroad freight transportation service to the public upon the terms and conditions contained herein.

G. The TPO intends to work in partnership with local governments, economic development authorities, shippers and Class 1 railroads to develop innovative and efficient operating and shipping methods and improvements in order to provide competitive rail service for the region's rail shippers.

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OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.

EXHIBIT
3-24-13
43
Cole, B

From: [Doug Engle](#)
To: [Luis Moscoso](#)
Cc: [Miller, Melinda](#); [Sullivan, Sean](#); [Safora, Isabel](#); [Gallagher, Clare](#); [Merritt, Mike](#); [McWilliams, Joe](#); [Kathy Cox](#)
Subject: URGENT Fwd: RR funding request
Date: Thursday, March 28, 2013 2:44:41 PM
Attachments: [ECR_REHAB_Financial_Detail_2013Feb11.pdf](#)
[ATT00001.htm](#)
Importance: High

Good day Luis,

We are seeking a letter from the Port of Seattle so they can accept the state funding of capital repairs to the Woodinville-Snohomish rail line. Please see Joe McWilliam's email below.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

Begin forwarded message:

From: Doug Engle <Doug.Engle@EsCRail.org>
Subject: **Re: funding request**
Date: 28 March 2013 2:36:13 PM PDT
To: "McWilliams, Joe" <McWilliams.J@portseattle.org>
Cc: "Miller, Melinda" <Miller.M@portseattle.org>, "Sullivan, Sean" <Sullivan.S@portseattle.org>, "Safora, Isabel" <Safora.I@portseattle.org>, "Gallagher, Clare" <Gallagher.C@portseattle.org>, "Merritt, Mike" <Merritt.M@portseattle.org>

This is all we have... \$6.2 million based on the attached.
That's it... plus all of the support letters.

Eastside Community Rail
Woodinville-Snohomish Maintenance of Way
 11-Feb-13

MAIN TRACK - MP 23.80 to 38.25 + into Snohomish

	Unit	Cost	Units	Qty	Total	Avg Cost & Quote Date
Railworks						
Segment	Milage	\$/mile	Track Total	Rail Flaw Detection	Segment Total	
Woodinville Wye	0.6	\$ 222,320	\$ 133,928	\$ 0	\$ 133,928	21-Jan-13
Woodinville Subdivision 24.0-37.61	13.6	\$ 276,025	\$ 3,756,700	\$ 15,000	\$ 3,771,700	
Snohomish Wye	0.6	\$ 145,296	\$ 87,528	\$ 0	\$ 87,528	
Snohomish Wye to Sno River Br	0.4	\$ 265,680	\$ 106,272	\$ 0	\$ 106,272	
Sno River Br into Snohomish	0.4	\$ 793,840	\$ 300,925	\$ 0	\$ 300,925	
Railworks Total		\$ 1,703,161	\$ 4,385,353	\$ 15,000	\$ 4,400,353	
Contingency				0%	\$ 0	
Total Track Requirement	15.6				\$ 4,400,353	\$ 282,184
Protected Crossings						
	10			Hours	Amount	
Relay Certifications				22	\$ 3,572	
Rail Bonding Inspections				10	\$ 1,799	
So. Maltby Gate Replacement				28	\$ 35,472	
Batteries and Crossing Arms				344	\$ 186,525	
Subtotal				404	\$ 227,368	
Contingency				0%	\$ 0	
Total Protected Crossings					\$ 227,368	\$ 22,737
Bridges - MP 23.8 to 38.0						
	11			Bridges		
Osrose Inspection		\$ 92,500	11		\$ 92,500	\$ 8,409
Osrose Priority 2 Repairs		\$ 200,668	5		\$ 200,668	\$ 40,134
Osrose Priority 3 Repairs		\$ 66,790	4		\$ 66,790	\$ 16,698
Sub-Total					\$ 359,958	
Contingency				0%	\$ 0	
Total Bridges					\$ 359,958	\$ 32,723
TOTAL MOW	15.6				\$ 4,987,679	\$ 319,848

Eastside Community Rail		20.3%	\$ 1,269,673	\$ 81,421
ECR Program Management		67%		
Insurance and Bonding		1.3%	\$ 66,835	
Program Management		2.7%	\$ 133,670	
Construction Management & Inspection		4.0%	\$ 200,505	
Engineering Services During Construction		1.3%	\$ 66,835	
OH Expenses		2.0%	\$ 99,754	
ECR Program Management			\$ 567,598	
ECR STB Revenue Adequacy Return		11.22%	\$ 702,075	
Use Tax		0.00%	\$ 0	
TOTAL FUNDING REQUEST	15.6		\$ 6,257,352	\$ 401,269



EASTSIDE COMMUNITY RAIL BRIDGING THE GAP

November 27, 2013

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

REF: STB FINANCE DOCKET NO. 35731
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

I am the owner of the reserved freight easement for the operating line on the Eastside Rail Corridor between Woodinville and Snohomish, Washington. We support and have helped finance the reactivation effort by Ballard Terminal Railroad Company, LLC. I have an MBA with over 30-years of business experience, and I am a Certified Business Intermediary (broker) where objectively determining the value of business is everything. I have been working on the Eastside Rail Corridor for six full years now, first working to save the rail infrastructure before the Port of Seattle acquired the corridor from BNSF, then to maximize the corridor potential for all stakeholders – not just the railroad. I have my life savings and tremendous opportunity cost invested in this effort.

There is a unique opportunity for communities, businesses and railroads to come together to and get what they want and provide a significant service to all the stakeholders' party to this reactivation effort. All stakeholders, including those who oppose reactivation.

1. Sound Transit will save money during construction of their East Link light rail project with favorable environmental benefits, while the railroad has pledged to work cooperatively with them to “not get in their way” during construction. Additionally, the potential of a north-south rail commuter line outside their taxing district in a public-private partnership will increase their ridership significantly.
2. King County will have a partner in constructing the long desired trail safely alongside the rail 90+% inside the rail corridor. The misguided interests who believe the only way forward is to remove the track for a trail-only solution today, substantially underestimate the future cost of adding rail back for regionally desired commuter rail transit and rebuilding the trail. Re-establishing the 15-year operating excursion train service will provide jobs and increase tax revenues while synergistically supporting tourism, the state's fourth largest industry.

3. Kirkland says they want rail transit and a trail, which they estimate to cost \$110 million for 5.75 miles. We have solid estimates that the cost to re-construct the track, replace crossings signals, and construct a maintenance of way road as a trail in the immediate future is but 1/3 this figure, a huge savings to the tax-payers, which can be done in years, not decades.

Eastside Community Rail, Ballard Terminal Railroad, WATCO and other supports need the Board's decision to reactivate this corridor to move forward. No business, financial institution or railroad can move any further forward without first getting this approval. All of the elements for success are here – now. We implore the Board to reactivate this segment of a preserved interstate rail corridor for use today.

SUMMARY

Support continues to grow...

The "Support Letter Log" clearly demonstrates that there has been a steady and increasing support for the railroad's reactivation effort. Most important is WATCO, a Class 2 railroad who sought out BNSF approval before submitting their letter. Ballard will continue to provide smaller car service, and WATCO will assume unit train freight operations.

One clear question the Board should be asking is why no other party has joined the three opposing reactivation? Not one. Not the bicycle clubs, nor the trail-only groups, nor the neighborhood groups, not even a single citizen. Why? Simply, because there is a very small group of local politicians that want their way, and they are not open to honest transparent public discussion.

Three government organizations take issue with freight reactivation. Publically they support it while their actions with the Board are otherwise. However, their actions have only galvanized the majority of citizens and stakeholders that understand the value of this rail corridor. Please note that the state is now taking up the issue in support of reactivation and financial support to rehabilitate the line along with other three local governments, two labor unions, and six other non-governmental organizations. There are now 30 parties supporting reactivation and only three opposing it.

Beyond WATCO resources, financial support has continued forward from the owner of Ballard and Salmon Bay Sand and Gravel, to two banks and one railroad specific capital group. We are also in discussions with private equity groups with an emphasis on infrastructure development with collateral focus. However, until the Board reactivates the line no commitments are possible from any financial institution.

Six potential customers are looking for rail service and have submitted letters of support. Additionally, we are in active dialogue to have a ready-mix plant to establish in Bellevue in an existing facility previously served by rail. The rail infrastructure still exists. Since plant, property and equipment are involved, no formal support will be made until the Board's reactivation decision.

The excursion train business is a broadly supported business, proven over 15-years, and a readily financeable opportunity that helps to reduce the maintenance overhead of freight operations. Please review the prior submission from Kathy Cox of Marketing Philharmonics.

The Money is there, waiting...

Waiting for a Board decision is the unanimous position. Is it “the chicken or the egg?” In the financial world, there is understandably substantial uncertainty regarding the STB reactivation process. Further, there is significant effort required to develop a financing package, let alone three; freight, excursion and real estate development, all of which stand on their own, but require reactivation to start and realize the synergies to grow based on the freight railroad business.

The extensive and detailed freight and excursion businesses are based on a financial model and plan that has been reviewed and verified by two third parties to this matter. The best strategy and plans mean nothing without execution. Strong financial partners will make this possible.

The Small Business Administration, state, WATCO, private equity group, local bank (working capital) will all be involved in the financing package, which adds more dimensions. Such a financing package is not uncommon. It simply has to be worked through the process a step at a time matching interests, deliverables and expected outcomes. Finally, a FRA RRIF loan will be used to consolidate debt and acquisitions with a long-term 35-year low interest loan, which will provide on-going stability and predictability for the railroad.

The first step after reactivation is determining the state’s financial commitment, if any, and putting the freight operations package together with a mind toward the excursion service, which lowers maintenance of way overhead. Simultaneously, the excursion business will be completing their business and financial plan. Meanwhile the real estate development team will initiate their long-term planning, although two sizeable sites have been preliminarily evaluated. A broad group of stakeholders are ready, willing and able to execute their portion of the business opportunity based on freight rail reactivation to Bellevue.

The state may provide a \$10 million grant to rehabilitate the track since it is on public property. A \$10M SBA loan is expected for the excursion service and some freight facilities. WATCO and private equity will complete the package, but the amount is impossible to determine today. The consensus first step for financing any of this is the Board’s reactivation decision.

Freight Rail Business Plan: Construction Supply Chain Via Rail

The essence of the freight business plan is simple. The railroad will facilitate the development of a supply chain system utilizing the railroad to avoid the heavily congested roadways. A newly released “TomTom Traffic Index” shows Seattle has the 4th worst traffic in the country. Spoils removal, aggregates, cement, rebar, lumber, drywall can all be delivered more cost effectively while reducing

air pollution, reducing traffic congestion and utilizing less diesel fuel. A Bellevue rail yard site has been identified with three spurs serving this rail ready facility. (see EXHIBIT)

Bellevue construction projects in the previously submitted “Spoils Hauling Analysis” clearly demonstrate the savings and environmental benefits. There is a major project across the street from the Bellevue rail yard. The RAC Final Report states; “North of the East Link Hospital Station, the City of Bellevue is planning for an increase of 10,000 jobs and 5,000 housing units over the next 15 years in the BelRed area, which includes the 36-acre Spring District.” According to the Bellevue city manager and Ray LaHood, the Eastside is the largest urban redevelopment area in the county.

Please note that this immediate area is home to Microsoft, Nintendo, Expedia, AT&T Wireless, T-Mobile and Google is on the line with Boeing having multiple facilities on or near the line. Sound Transit and Bellevue have identified TOD opportunities along the rail corridor (see EXHIBIT). Note that East Link “Temporary Construction Staging” is outside the rail corridor (see EXHIBIT). This region is a high-growth area that will continue long into the future. Construction logistics are critical, and the railroad can readily help with a free flow of goods and relatively small footprint in Bellevue by stakeholders executing this plan.

Environmental Benefits are Clear

Our calculations from the “Spoils Hauling Analysis” (see EXHIBIT) have not been disputed, and there is a desire to generate actual data as a benchmark. By utilizing rail to remove three million cubic yards of spoils the equivalent size of the Sear Tower in Chicago with a footprint the size of a football field, there are:

- cost advantages versus truck alone
- fuel savings
- air quality improvements
- reductions in traffic congestion
- reductions in road wear

This is well articulated in the Cascadia Letter to the City of Bellevue (see EXHIBIT). Please note that Bellevue has not opposed reactivation.

TomTom Traffic Index Shows the Worst, Best Cities for Traffic in the U.S. and Around the World

TomTom today released the sixth edition of its TomTom Traffic Index, the world’s most accurate barometer of traffic congestion in 169 cities across six continents. The full report and country/city data can be viewed today at www.tomtom.com/TrafficIndex.

In the U.S., the report examines traffic in 53 metropolitan areas with a population of more than 800,000, and found that Los Angeles continues to be the most congested city in the U.S., with traffic at an all-time high since the study’s inception. TomTom estimates that 8 work days (64 hours) are lost worldwide to traffic congestion. U.S. cities have a max. average loss (based on Los Angeles) of 92 hours, or 11.5 days.

The TomTom Traffic Index compares travel times during non-congested hours (free flow) with

travel times in peak hours. Based on these comparisons, TomTom Traffic Index reports that the top ten most congested U.S. cities, ranked by overall Traffic Level, in Q2 2013 were:

1. Los Angeles: Traffic increased two percent to its highest levels seen in last six years 2. San Francisco: Moved up from third place in Q1 3. Honolulu: Moved down from second place in Q1 4. **Seattle: Ranking remained the same.** 5. San Jose: Ranking remained the same 6. Washington, DC: Ranking remained the same 7. New York: New to the Top 10 in 2013; up from #11 8. Portland: New to the Top 10 in 2013; up from #12 9. Boston: New to the Top 10 in 2013; up from #21. 10. Chicago

The Board must consider the environmental impacts and benefits of utilizing freight rail via this corridor versus trucks on heavily congested roadways.

Railbanking

Publically, the region fully acknowledges their railbanking responsibilities, although their personal statements of “freight is a non-starter” and “we will never allow you south of Woodinville” reveal the politicians from three government agencies true intentions. However, 30 parties have stepped forward to support reactivation, while no others have stepped forward to oppose it.

Although acknowledging their railbanking and environmental responsibilities, these agencies failed to provide or allow any hearing of rail potential did not live up to railbanking responsibilities, is not providing stewardship of an interstate asset, and these governmental entities should be held to account by the Board by allowing freight reactivation.

There is interstate commerce to be realized with reactivation; lumber from Canada and other states, aggregates from Canada and local quarries, cement from the Far East, sand and soda ash from the Rocky Mountain states, drywall from the southwest, and rebar from Oregon.

A bona fide shortline railroad with 16-years of experience on three lines has brought in WATCO a Class 2 railroad with resources to operate the expected unit trains required with reactivation.

Financiers, banks and individuals have stated their ability and intention to support the railroad with reactivation – once that Board decision has been made. All of the elements are here today for success, but all first require a favorable Board decision. There is no other way forward.

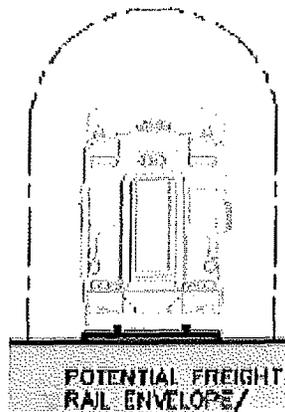
BOARD OPTION

1. STB grants reactivation to begin freight operations on the railbanked segment within 24-months.
2. King Co, Sound Transit, Kirkland and other parties shall cooperate fully with the RR in its reactivation efforts. Any lack of cooperation or delays by the opposing parties shall be grounds to restart the 24-month period.

REBUTTAL

Sound Transit

First, there is far less than a mile of overlap with Sound Transit where East Link primarily is elevated. Sound Transit has planned to allow freight rail in its short East Link overlap within the rail corridor. The railroad plans to occasionally use this overlap for tail end movements. From Sound Transit's "Hospital Station Memo Draft.pdf" a picture is worth a thousand words (see EXHIBIT).



As demonstrated in Sound Transit's discovery response, although the agency owns a "high capacity easement" there is no plan, approval or funding to utilize this rail corridor in the future. And even when these are obtained, it is a regional consensus that it will take decades before any construction might occur. The routing in discussion is for a new right of way east of I-405 through Kirkland, which will cross this rail corridor once and skips Woodinville.

Sound Transit's Link system is double tracked everywhere. Sound Transit exposed their true intention to not use the corridor in a memo to Woodinville by declaring there is no need to double track an existing railroad bridge needed to access the downtown area (see EXHIBIT). Despite repeated requests for discussion on this matter, Sound Transit refused to return calls or answer emails earlier this year before litigation on this matter began.

Kirkland

Kirkland's city manager and former interim King County Executive, where he assumed responsibilities from Ron Simms, has led this "pet project" to remove the rail as quickly as possible with the help of others he brought from King Co. This was accomplished without open public dialogue. Rail interests were never allowed to discuss ideas with the city's economic development

committee or transportation commission even before litigation. See the email (EXHIBIT) as an example, which came shortly after Kirkland's city manager presented to the regional TRailways Alliance.

Kirkland's failed to respond to the discovery requests other than their Urban Land Institute Study that can be publically obtained in higher quality resolution as a single document.

Kirkland has failed to substantiate any of their figures and estimates provided to the Board.

Officially agreeing to plan for freight rail use of the rail corridor, yet excluding railroads with interest in using the corridor from those discussions or plans is hypocrisy at its finest.

King County

First, King County has not even paid the Port of Seattle for its portion of the corridor, has no funded trail plans let alone construction funds, yet curiously holds the freight reactivation rights.

As sworn by Pam Bissonnette, former King County representative for the acquisition of the corridor, now working for the City of Kirkland, at the signing of the BNSF sale to the Port of Seattle; "we will never allow you south of Woodinville." Please do not forget that Jane Hague, King County Councilmember and lead of the Regional Advisory Council, declared, "freight is a non-starter." These statements from King County leadership should provide the Board clear insight as to their intentions to never allow freight on the corridor, despite their commitment to the railbanking provisions.

KC ERC RAC

King County Eastside Rail Corridor Regional Advisory Council

A select group of "owners", including Puget Sound Energy with a utility easement, but excludes Ballard and Eastside Community Rail who owns the reserved freight easement, the Port of Seattle who is divesting itself completely of the Eastside Rail Corridor, Snohomish County where 14 miles of the corridor exist and is purchasing this segment from the Port, and the City of Snohomish where the final segment exists, which they own.

The select group of owners is King County (leading entity), Kirkland, Sound Transit, Redmond, and Puget Sound Energy (PSE). Notice that Redmond, PSE and the Port of Seattle have not joined in objecting to the reactivation request by Ballard. Those other interested agencies where the corridor runs through their boundaries and support rail and trails have been excluded.

Fundamentally, the reactivation opposition have all publically agreed and planned for potential reactivation of this railbanked rail corridor for freight use. Their drawings, statements and report bear witness to this fact.

Creating Connections

Recommendations on Eastside Rail Corridor from Regional Advisory Council

"The goal for the RAC is that it will be a multiuse corridor that would be able to accommodate trail, high-capacity transit, and utility use, as well as freight use if the railbanked portion of the corridor is ever reactivated for freight.

"The ERC's southern portion was "railbanked" for possible resumption of interstate freight service under the federal National Trails Act, and is subject to the legal obligations imposed by it.

"Just north of NE 8th Street, Sound Transit is designing a segment of the East Link light rail line and the Hospital Station. Due to a pinch point on the corridor in this area, Sound Transit will be purchasing additional property to provide space for the station and light rail tracks. Coordinating multiple uses in the station area will be challenging.

"To address a 30-foot pinch point in the station area, Sound Transit plans to purchase additional property for the station." King County or Bellevue will also have to acquire land to facilitate a trail. Reactivation of the rail corridor has little to do the ability to have light rail above, utilize the existing freight railroad, and develop a trail."

Comparative Regional Trails

As identified in the "RAC Recommendations Appendix" the national comparison trails have primarily freight rail with trails (see below). The important consideration here is that for some reason, even knowing the success of rails and trails throughout the world, having representatives from the select group of regional trails present their stories to the RAC and "technical group", these local politicians want a trail-only corridor and oppose reactivation, even though they publically say otherwise.

SMART

"The **Sonoma Marin Area Rail Transit (SMART)** corridor will be a 70-mile, multiuse freight, passenger rail and trail connection along Highway 101 north of San Francisco."

Santa Cruz

"The 31-mile long **Coastal Rail Trail** in Santa Cruz, California, is being planned as a multiuse corridor with freight and future passenger rail service alongside a bike and pedestrian pathway on the Pacific Coast."

Portland's Springwater Corridor

"Where a trail and freight rail share the corridor RAC members learned that other multiuse trails around the country generate heavy use throughout the year. For example, in Portland's Springwater Corridor, where a trail and freight rail share the corridor, it is estimated that 1 million people per year use the trail."

Minneapolis St. Paul

Hiawatha LRT (Blue Line) & SW LRT (Green Line) – Minneapolis, MN

Light rail, recreational trail, and freight

West Rail Line, Denver

Light rail trains, bike/pedestrian trail, and utilities

In conclusion, there is a viable railroad opportunity here, today, that allows the interests of all the parties involved to be realized. A regional trail that will connect over 170 miles of existing trails, an excursion train expanding state tourism, and real estate development will all be based on re-establishing freight on this rail corridor. Even WATCO recognizes that the next step forward is a Board decision to reactivate this corridor.

Thank you kindly for your careful consideration of this fundamentally sound opportunity.

Very truly yours,



Douglas Engle
Managing Director
Eastside Community Rail, LLC

Cindy Davied

From: Mark Blazer
Sent: Wednesday, October 16, 2013 5:30 PM
To: Doug Engle
Cc: Gary Johnson (rrman1949@gmail.com)
Subject: RE: Eastside Rail Corridor Update

Doug,

Would you be available for a call tomorrow? Gary and I are open in the morning. Would 10am Pacific Time work for you?

Let me know and I will send out a call in number.

Mark

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Friday, October 11, 2013 10:05 AM
To: Mark Blazer
Cc: Gary Johnson (rrman1949@gmail.com)
Subject: Re: Eastside Rail Corridor Update
Importance: High

One additional confidential thought, Byron Cole at Ballard Terminal Railroad Company is likely to be retiring soon.

Their Meeker Southern line in Puyallup is doing well with the Port of Tacoma.

The actual Ballard operations are marginal and the operations are more to protect Salmon Bay Sand and Gravel from bicycle traffic.

I have developed a positive working relationship with Paul Nerdrum, the primary owner of BTRC and Salmon Bay.

There is a viable path forward to wrap all three lines together, including the Eastside.

Doug
mobile: +1.425.891.4223

On 11 Oct 13, at 8:48 AM, Doug Engle <doug.engle@escrail.org> wrote:

Mark/Gary,

Monday works for me.

The attached spoils hauling analysis is the basis for our optimism of moving spoils out of Bellevue. Additionally, we are talking to a ready-mix company about a batch plant at a "Target Site" on the attached map. This site would also facilitate initial transload operations.

<ECRR Spoils Hauling comparative analysis - 2013July19.pdf>

Doug
mobile: +1.425.891.4223

On 10 Oct 13, at 5:50 PM, Mark Blazer <mblazer@watcocompanies.com> wrote:

Gary,

Please review for a call on Monday, if that will work for you.

Doug- thank you for the opportunity. I will review this weekend and discuss with Gary the first of the week. We will get back to you ASAP.

Mark

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Monday, October 07, 2013 11:24 AM
To: Mark Blazer
Subject: Eastside Rail Corridor Update
Importance: High

Good Day Mark,

Well we've got matters well set to reactivate to Bellevue with plenty of freight, but now we need a big brother with investment money.

Is Watco game?

Please call me and let's discuss if you have any interest.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

<ECRR Investment Summary 2013Oct1.pdf><Ballard Customer Locations.pdf><2013
STB Support Letter Log.pdf>

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

REDACTED

REDACTED

Cindy Davied

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Tuesday, November 26, 2013 1:20 PM
To: Mark Blazer; Michael R Pratt
Subject: Ballard Terminal RR & ECRR
Attachments: 2013 STB Support Letter Log.pdf; ATT00001.htm; Ballard Customer Locations.pdf; ATT00002.htm; ECR Proposal OpLine 2013Jan28.pdf; ATT00003.htm; ECRR Spoils Hauling comparative analysis - 2013July19.pdf; ATT00004.htm

Importance: High

Mark/Mike,

Although Ballard has been operating the line for the past four years, Byron Cole, their GM, is very near retirement.

ECRR has hired Ballard on a one-year term ending April 2014, to continue providing freight operations.

I spoke with Byron Saturday about transitioning his service to WATCO with general consensus that it needs to happen sometime sooner than later.

Attached is additional information on our reactivation efforts to get from Woodinville to Bellevue. We are hoping to get a ready-mix plant into Bellevue to be served by rail, but a letter may come too late as real estate and capital equipment needs are still in flux. Last week, we received two bank letters of support for the reactivation.

The state rail caucus is expected to complete a letter of support by the December 5th deadline. We have legislation in the Office of Program Research to help shortlines get better financing and \$10M to rehab the line.

Importantly, the Port of Seattle originally had taken a position in this matter, but withdrew from their position all together. Snohomish County continues to be a major supporter of getting to Bellevue, and we are working with them to construct a trail along the railway. As you can see from the attached "support log", we continue to gain support while the detractors have had nobody join them... not even the Cascade Bicycle Club.

We anxiously await a letter from Watco supporting our reactivation effort even though the details will have to be worked out following the STB decision.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail

Cindy Davied

From: Mark Blazer
Sent: Wednesday, October 16, 2013 5:30 PM
To: Doug Engle
Cc: Gary Johnson (rrman1949@gmail.com)
Subject: RE: Eastside Rail Corridor Update

Doug,

Would you be available for a call tomorrow? Gary and I are open in the morning. Would 10am Pacific Time work for you?

Let me know and I will send out a call in number.

Mark

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Friday, October 11, 2013 10:05 AM
To: Mark Blazer
Cc: Gary Johnson (rrman1949@gmail.com)
Subject: Re: Eastside Rail Corridor Update
Importance: High

One additional confidential thought, Byron Cole at Ballard Terminal Railroad Company is likely to be retiring soon.

Their Meeker Southern line is Puyallup is doing well with the Port of Tacoma.

The actual Ballard operations are marginal and the operations are more to protect Salmon Bay Sand and Gravel from bicycle traffic.

I have developed a positive working relationship with Paul Nerdrum, the primary owner of BTRC and Salmon Bay.

There is a viable path forward to wrap all three line together, including the Eastside.

Doug
mobile: +1.425.891.4223

On 11 Oct 13, at 8:48 AM, Doug Engle <doug.engle@escrail.org> wrote:

Mark/Gary,

Monday works for me.

The attached spoils hauling analysis is the basis for our optimism of moving spoils out of Bellevue. Additionally, we are talking to a ready-mix company about a batch plant at a "Target Site" on the attached map. This site would also facilitate initial transload operations.

<ECRR Spoils Hauling comparative analysis - 2013July19.pdf>

Doug
mobile: +1.425.891.4223

On 10 Oct 13, at 5:50 PM, Mark Blazer <mblazer@watcocompanies.com> wrote:

Gary,

Please review for a call on Monday, if that will work for you.

Doug- thank you for the opportunity. I will review this weekend and discuss with Gary the first of the week. We will get back to you ASAP.

Mark

From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Monday, October 07, 2013 11:24 AM
To: Mark Blazer
Subject: Eastside Rail Corridor Update
Importance: High

Good Day Mark,

Well we've got matters well set to reactivate to Bellevue with plenty of freight, but now we need a big brother with investment money.
Is Watco game?

Please call me and let's discuss if you have any interest.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

<ECRR Investment Summary 2013Oct1.pdf><Ballard Customer Locations.pdf><2013
STB Support Letter Log.pdf>
Best regards,

Doug

Cindy Davied

From: Mark Blazer
Sent: Monday, November 04, 2013 10:31 AM
To: Doug Engle
Cc: Gary Johnson
Subject: RE: Emailing: Mark -response to Redlines Doug Engle WATCO 2013Nov1 GJ Comments.docx

Doug,

Put in your final redlines and we will review. As we discussed, the letter is a draft, we would still need to get authorization and sign off from our legal dept. before we would execute.

Stefan works in the Midwest but I have no problem with you contacting him or anyone else in Watco Companies, L.L.C.

Mark

From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Monday, November 04, 2013 9:15 AM
To: Mark Blazer
Cc: Gary Johnson
Subject: Re: Emailing: Mark -response to Redlines Doug Engle WATCO 2013Nov1 GJ Comments.docx

Mark,

Most edits are fine, but to have any impact with the STB, we must have the "ready, willing and able" included. Otherwise, the letter is too soft.

Specifically, the section at the end of the third main paragraph, which does not quantify a dollar amount or obligation - just that WATCO is prepared "if" the conditions are met.

Separately, Myles Tobin our attorney knows Stefan Loeb, and is willing to make the contact if it is OK with you.

Please advise.

Thank you kindly for the consideration.

Doug
mobile: +1.425.891.4223

On 4 Nov 13, at 7:40 AM, Mark Blazer <mblazer@watcocompanies.com> wrote:

Doug,

Gary and I worked on a response to your letter. I have attached a draft redline for your review. I am traveling this week but you can give a call on my cell phone.

Thanks,

Mark

Your message is ready to be sent with the following file or link attachments:

Mark -response to Redlines Doug Engle WATCO 2013Nov1 GIJ Comments.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

<Mark -response to Redlines Doug Engle WATCO 2013Nov1 GIJ Comments.docx>



Watco Companies, L.L.C.

www.watcocompanies.com

November 25, 2013

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

REF: STB FINANCE DOCKET NO. 35731

Dear Ms. Brown:

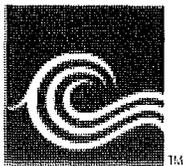
We support the reactivation of freight service between Woodinville and Bellevue, Washington. WATCO would like to impress upon the Board that the reactivation process requires an incremental approach to reestablish sustainable rail service on the line. Committed customers have provided written support for this reactivation to the Board.

WATCO has been mindful of this opportunity since our participation in the 2008 BNSF and Port of Seattle bid to provide rail service on this line. Earlier this year we expressed our requirements to participate in operating the line. With additional shippers requesting service on the railbanked portion of the line, and their stated willingness to participate financially to secure rail service, we determined that is an opportunity worth pursuing and participating in.

We believe the next steps in reestablishing rail service are to (i) gage customer commitment by requiring take or pay agreements associated with car volumes (ii) establish the customers' level of financial participation associated with the upfront cost of reactivating this line and (iii) negotiate operating and use agreements following the Board's reactivation of the line.

WATCO is prepared to work with Ballard to assume freight operations for the unit trains between Bellevue and the BNSF mainline in Snohomish, provided a supportive Board decision to reactivate the line is obtained. We expect no material issues in establishing shipping agreements and rates with the freight parties in this matter.

We understand that an excursion train business will operate also on the line. The expectation is that our crews will schedule and operate these trains to meet the needs of our shippers and help the excursion business meet their objectives. Incremental insurance requirements for passenger operations will be the sole responsibility of the excursion train and will be paid through the income generated from passenger tickets. Additionally, we support rails and trails inside this right of way provided adequate safety precautions, insurance



November 21, 2013

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

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Coastal Community Bank is a preferred lender for the Small Business Administration. The bank has been in discussions with Eastside Community Rail, LLC working with Ballard Terminal Railroad Company since January this year, to provide capital loans for equipment and other works on the Eastside Rail Corridor. The railroad has broad community support as described in the many letters previously submitted to the Surface Transportation Board, which we have reviewed.

Our bank has \$370 million in assets and has been steadily growing for the past 3 years. We are fully capable of participating in a multi-million dollar financing package for the reactivation of the Eastside Rail Corridor. However, until the Board makes a reactivation decision, it is nearly impossible to know what that financing package and entity structure should actually be as there are many options to consider.

Given the line currently starts in Snohomish, a Woodinville terminus versus Bellevue is very significant. This also impacts the three rail use alternatives of freight, excursion and commuter. Understanding the freight customer mix and land requirements for aggregates, spoils removal and concrete production add further complexity. Additionally, transit oriented development has material financial impacts. The Board's action to preserve rail service on this line must be in place before Coastal Community Bank can make any definitive commitments.

Once we have sufficient information, a large part of which will be heavily impacted by the Board's decision on this matter, we are ready, willing and able to determine specifically what assistance we can offer to help make the Eastside line to Bellevue a success with these railroad companies.

Thank you for your understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Starup", written over a white background.

Greg Starup
Vice President,
Manager of SBA Lending
425-258-5299



November 22, 2013

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

RE: STB FINANCE DOCKET NO 35731
BALLARD TERMINAL RAILROAD COMPANY LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

AmericanWest Bank has provided financial services to Ballard Terminal Railroad Company, LLC (BTRC) since 1996. The Bank has provided BTRC capital loans for equipment and other works in the past which have always been paid as agreed. We want to continue to help BTRC grow.

Our bank has \$4 billion in assets and has been rapidly expanding for the past 3 years with additional capital to deploy to reach our goal of being a \$7-\$8 Billion bank within the next few years. We are fully capable of participating in a financing package for the reactivation of the Eastside Rail Corridor. However, it would be nearly impossible to know what the full scope of the financing package would look like until the Board makes a decision on whether to reactivate the corridor and what limitations or requirements it asks for. Therefore, before AmericanWest Bank can make definitive commitments, the Board would need to act to preserve rail service on this line.

We urge you to consider BTRC's proposal for reactivation of freight rail service over the "Kirkland" segment of the former BNSF Woodinville Subdivision. Reactivation of this line segment would also open opportunities for establishing commuter rail service & excursion train service over the 25 mile Snohomish-Woodinville-Bellevue line.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Engman", written over a horizontal line. The signature is stylized and somewhat cursive.

Nathan Engman

VP & Community Bank Manager

Ballard Branch
2237 NW 57th St.
Seattle, WA 98107

(206) 784-2200
(206) 784-6650 fax
AmericanWest Bank

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 12:15 PM
To: Greg Starup
Subject: ECRR - Overview 1 of 2
Attachments: 2013 STB Support Letter Log.pdf; ATT00190.htm; Ballard Customer Locations.pdf; ATT00191.htm; Bellevue Target Site.pdf; ATT00192.htm; ECR Proposal OpLine 2013Jan28.pdf; ATT00193.htm; ECRR 500K Debt Summary 2013Sep27.pdf; ATT00194.htm; ECRR Investment Summary 2013Oct1.pdf; ATT00195.htm; ECRR Spoils Hauling comparative analysis - 2013July19.pdf; ATT00196.htm; STB Revenue Adequacy 9Oct12.pdf; ATT00197.htm

Good day Greg,

Thank you for your time yesterday.

I hope that you appreciate the tremendous progress we've made since we first met.

I am sending you a series of emails that address specific areas of the excursion and freight train businesses.

As you recall, separately, we have people interested in the development aspects along the right of way. We have willing sellers in Woodinville that will allow us to execute on both a base of operations for the excursion train and development aspects.

Critically, we have an action before the Surface Transportation Board (STB) that require demonstration of financial feasibility for this rail project.

It is important that we come to a general agreement on the structure and conditions for a SBA loan in the next couple of weeks.

Of course, feel free to call me with any questions or comments so we can accomplish this.

Attached are overview documents concerning ECRR and freight that we spoke to yesterday.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

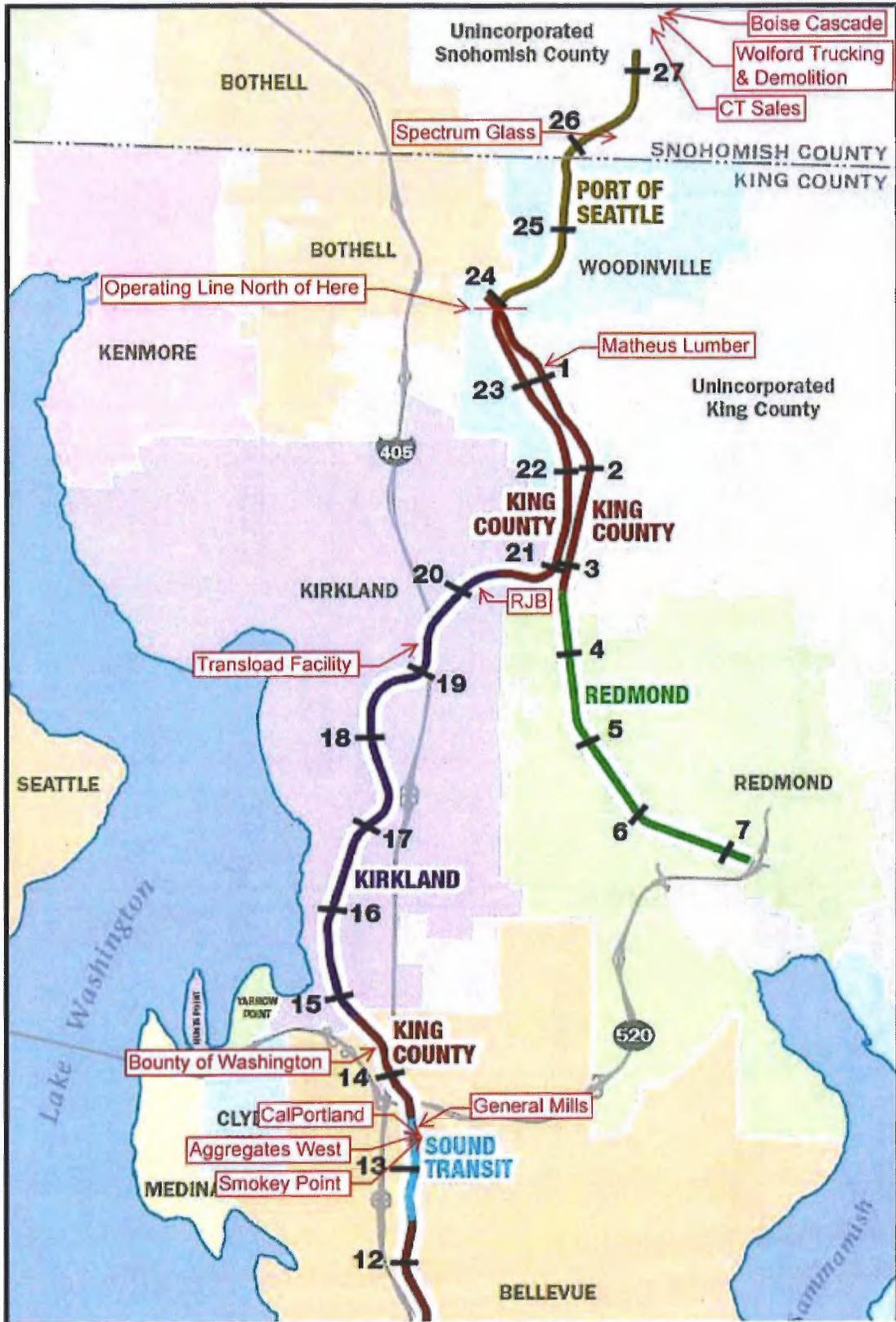
Bounty of Washington: Tasting Train Facebook

Ballard Terminal Railroad Co.
STB Reactivation Letters Filed
As of 2013 September 30

PARTY	Reactivation	*= Opposition		Annual Car Count		
		rail & trail	transit & trail	Excursion Support	Initial	long-term
Government						
Washington Legislatures	state	X		Yes		
Sound Transit*	regional		X	?		
King County*	county		X	Yes		
Snohomish County	county	X		Yes		
Kirkland*	city		X	?		
Snohomish	city	X		Yes		
Woodinville	city	X		Yes		
Non-Governmental Organizations						
All Aboard Washington (rail advocacy)	state	X		Yes		
Taste of Washington (petition)	state	-		Yes		
Cascadia Center (West Coast transportation)	regional	X		Yes		
Master Builders Association	regional	X		Yes		
Economic Alliance of Snohomish County	county	X		Yes		
Eastside Rail Now! (rail advocacy)	local	X		Yes		
Businesses						
Ste Michelle Wineries	global	X		Yes		
Gallo Wines (dba Columbia Winery)	national	X		Yes		
Bounty of Washington Tasting Train	local	X		Yes	1,520	2,112
Financing Committed to this Project						
EB5 Capital Partners.us	global	X		Yes		
American West Bank (no letter)	regional	-	-	-		
Small Business Administration (no letter)	national	-	-	-		
Paul Nerdrum	local	X		Yes		
Reactivation Freight Customers						
General Mills (flour)	national	X		Yes	225	250
RJB Wholesale (piping)	local	X		Yes	30	40
CT Sales (rebar fabrication)	local	X		Yes	120	155
Wolford Trucking and Demolition	local	X		Yes	750	2,000
CalPortland (aggregates)	regional	X		Yes	350	600
Aggregates West (letter pending)	regional	X		Yes	300	550
					1,775	3,595
Operating Line Freight Customers						
Boise Cascade	national	X		Yes	95	120
Spectrum Glass	regional	X		Yes	95	120
Matheus Lumber	national	X		Yes	50	75
					240	315
Total Railcar Traffic		23	3	25	3,535	6,022

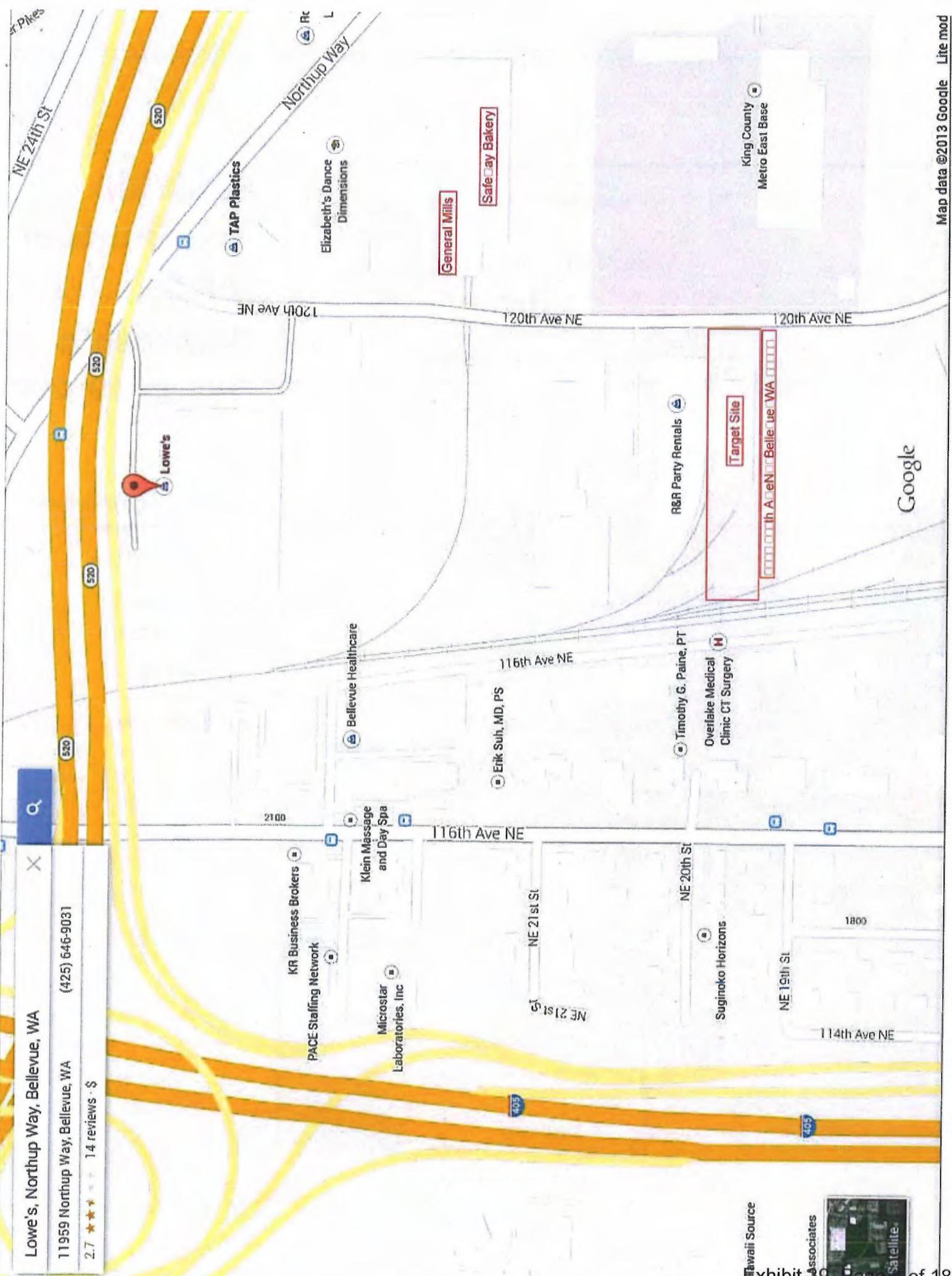
Eastside Rail Corridor (ERC) Ownership

February 19, 2013



- Legend**
- Corridor Property Owners**
 - Port of Seattle
 - King County
 - Kirkland
 - Redmond
 - Sound Transit
 - Freeway
 - Lake
 - 1 Mile Marker

X
 Lowe's, Northrup Way, Bellevue, WA
 11959 Northrup Way, Bellevue, WA (425) 646-9031
 2.7 ★★☆☆ 14 reviews · \$



Google

Hawaii Source
 associates
 Satellite



EASTSIDE COMMUNITY RAIL BRIDGING THE GAP

Eastside Rail Corridor Rehabilitation Proposal

2013 January 28

In January 2013, Eastside Community Rail, LLC (ECR) began pursuing rehabilitation of the Eastside Rail Corridor from **Woodinville to Snohomish**, which is owned by the Port of Seattle (Port) and known as the “operating line.” Most recently, GNP Rly owned the operating rights for three years and completed little maintenance of way (MOW). During the last years of BNSF’s ownership, only essential MOW was undertaken, which has left the track in dire condition.

Current track condition is “Excepted” and in need of substantial rehabilitation to maintain any operations per the current freight operator Ballard Terminal Railroad Company (BTRC). The required rehabilitation work primarily involves replacing ties, adding ballast, replacing some rail and resurfacing the remaining rail. The right of way must also have vegetation cleared, ditches restructured, and ballast “shoulders” rebuilt. Additionally, the bridges and crossings need to be maintained, relays certified and improved to current standards for passenger traffic.

The track upgrade objective is required for a favorable excursion train experience: ***“The quality of the train ride will not spill red wine during normal operations.”***

For an excursion service to effectively operate, the track structure, which is owned by the Port, must be upgraded to a Class 2 condition.

Track type	Freight train	Passenger
Excepted	<10 mph (16 km/h)	not allowed
Class 1	10 mph (16 km/h)	15 mph (24 km/h)
Class 2	25 mph (40 km/h)	30 mph (48 km/h)
Class 3	40 mph (64 km/h)	60 mph (97 km/h)
Class 4	60 mph (97 km/h)	80 mph (129 km/h)
Class 5	80 mph (129 km/h)	90 mph (145 km/h)
Class 6	110 mph (177 km/h)	
Class 7	125 mph (201 km/h)	
Class 8	160 mph (257 km/h)	
Class 9	200 mph (322 km/h)	

Three firms with ECR and BTRC have recently completed inspections and completed cost estimates to meet the track upgrade objective. Railworks is a national track maintenance company with a regional office in Chehalis. They have done extensive work for Sound Transit and other railways in the area. Osmose has inspected and maintained the bridges in the Woodinville Subdivision for over a decade. NW Signal Maintenance maintains crossing signals throughout the region, including works with Sound Transit. This is the most thorough track, bridge and crossing inspections and estimating work completed since the Port's acquisition.

Prior estimates did not account for any rail replacement, rail resurfacing, nor the extensive ditch, drainage, ballast and vegetation work required for safe operations. A prior estimate of \$2 million to rehabilitate the operating line to a Class 1 condition and carry passengers and limits speeds to 15 M.P.H., did not include bridges, crossings, vegetation control or ditch works, nor does it meet the service design of an excursion train.

All work can be completed in 2013 to allow excursion operations to begin in 2014. Osmose normally mobilizes its crews for west coast work every few years, and 2013 is fortunately one of those years. Off years are possible, but have a higher mobilization cost and a longer lead-time. The bridgework must be completed before passenger operations can begin.

Once rehabilitated, Eastside Community Rail will maintain the line for the balance of its license agreement with the Port of Seattle.

Operating Line – Woodinville to Snohomish

Characteristics and Rehabilitation Estimate

- The operating line is 14.45 miles. New track and rehabilitation in the city of Snohomish is also required yielding a total of **15.6 miles** of track work.
- There are **10 protected crossings** that need to have upgrade and maintenance work completed to current standards.
- Importantly for passenger traffic, there are **11 bridges** requiring inspection and maintenance work.

<u>Linear Ft</u> F&I Rail	<u>Each</u> F&I Ties	<u>Tons</u> F&I Ballast	<u>Track Feet</u> Track Surfacing	<u>Track Feet</u> Ditching	<u>Track Feet</u> Vegetation Removal	<u>Track Feet</u> Other
15,200	13,288	16,610	86,589	71,861	73,973	1,146

The total cost of the operating line rehabilitation by Eastside Community Rail for the Port of Seattle and Snohomish County is **\$6.26 million**, which is **\$401,269 per mile**, and does not include use or other taxes.

Eastside Community Rail, LLC
Woodinville-Snohomish Maintenance of Way
 27-Jan-13

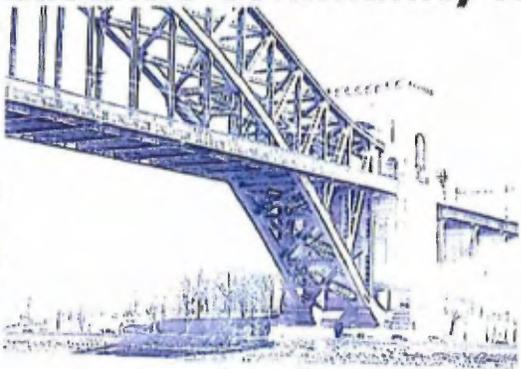
MAIN TRACK - MP 23.80 to 38.25 + into Snohomish

	Unit	Cost	Units	Qty	Total	Avg Cost & Quote Date
Railworks						
Segment	Milage	\$/mile	Track Total	Rail Flaw Detection	Segment Total	
Woodinville Wye	0.6	\$ 222,320	\$ 133,928	\$ 0	\$ 133,928	21-Jan-13
Woodinville Subdivision 24.0-37.61	13.6	\$ 276,025	\$ 3,756,700	\$ 15,000	\$ 3,771,700	
Snohomish Wye	0.6	\$ 145,296	\$ 87,528	\$ 0	\$ 87,528	
Snohomish Wye to Sno River Br	0.4	\$ 265,680	\$ 106,272	\$ 0	\$ 106,272	
Sno River Br into Snohomish	0.4	\$ 793,840	\$ 300,925	\$ 0	\$ 300,925	
Railworks Total		\$ 1,703,161	\$ 4,385,353	\$ 15,000	\$ 4,400,353	
Contingency				0%	\$ 0	
Total Track Requirement	15.6				\$ 4,400,353	\$ 282,184
Protected Crossings						
	10			Hours	Amount	
Relay Certifications				22	\$ 3,572	
Rail Bonding Inspections				10	\$ 1,799	
So. Maltby Gate Replacement				28	\$ 35,472	
Batteries and Crossing Arms				344	\$ 186,525	
Subtotal				404	\$ 227,368	
Contingency				0%	\$ 0	
Total Protected Crossings					\$ 227,368	\$ 22,737
Bridges - MP 23.8 to 38.0						
	11			Bridges		
Osmose Inspection		\$ 92,500	11		\$ 92,500	\$ 8,409
Osmose Priority 2 Repairs		\$ 200,668	5		\$ 200,668	\$ 40,134
Osmose Priority 3 Repairs		\$ 66,790	4		\$ 66,790	\$ 16,698
Sub-Total					\$ 359,958	
Contingency				0%	\$ 0	
Total Bridges					\$ 359,958	\$ 32,723
TOTAL MOW	15.6				\$ 4,987,679	\$ 319,848

Eastside Community Rail			20.3%	\$ 1,269,673	\$ 81,421
ECR Program Management			67%		
Insurance and Bonding			1.3%	\$ 66,835	
Program Management			2.7%	\$ 133,670	
Construction Management & Inspection			4.0%	\$ 200,505	
Engineering Services During Construction			1.3%	\$ 66,835	
OH Expenses			2.0%	\$99,754	
ECR Program Management				\$ 567,598	
ECR STB Revenue Adequacy Return			11.22%	\$ 702,075	
Use Tax			0.00%	\$ 0	
TOTAL FUNDING REQUEST	15.6			\$ 6,257,352	\$ 401,269

Eastside Community Rail

Bridging the Gap



27 September 2013

\$500,000 HIGH YIELD DEBT OPPORTUNITY

Minimum Subscription Amount of \$10,000

60 months maximum term, 20% step-up in principal, 8% annual interest rate

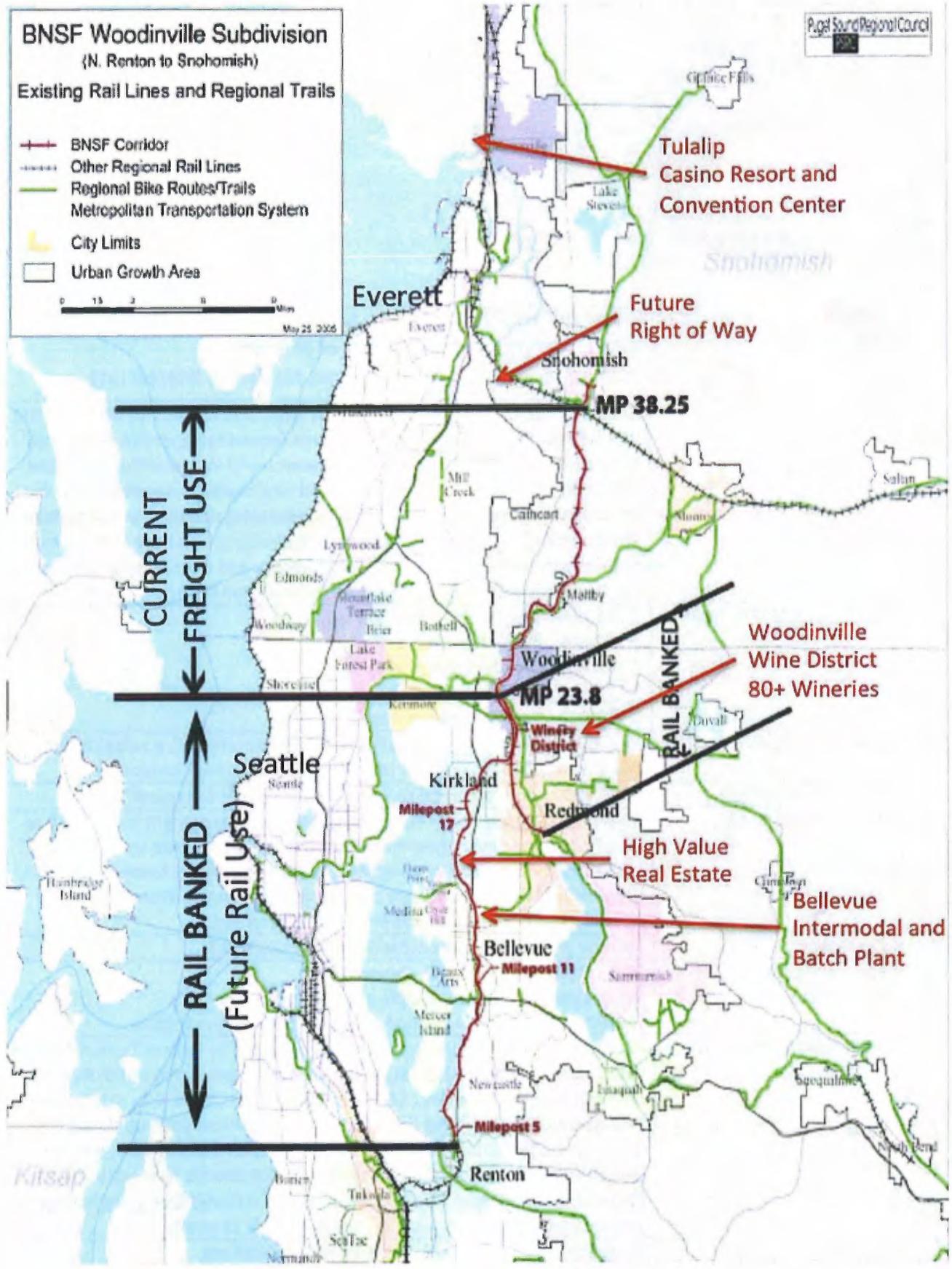
PROJECT	Continue freight and re-start passenger excursion rail service in the Seattle, WA area (see attached map). ECRR owns federal rail operating rights on the 14-mile rail corridor between Snohomish and Woodinville, WA. Over \$500,000 in debt has been invested, and new capital is needed to provide working capital necessary to complete federal legal actions at the Surface Transportation Board, continue freight operations, and raise the first round of development funding. Broad public agency and private freight support has been achieved with emphasis on an excursion train.
PROJECT CAPITAL USES	<p>\$ 125,000 STB, federal and other legal fees</p> <p>\$ 100,000 Public Relations</p> <p>\$ 100,000 Maintenance of Way</p> <p>\$ 175,000 Working capital and operating expenses</p> <p>\$ 500,000 Total Capital Needed</p>
COLLATERAL AVAILABLE	Real estate lien against "Woodinville Freight Easement", a valuable and transferable right to operate freight traffic on the rail corridor.
CAPITAL INVESTED	\$500,000 in debt attached to "Woodinville Freight Easement"
REPAYMENT PLAN	60-month term on Note. The primary source of repayment is intended to be a first round development investment. Capital can also be repaid with cash flow and/or other funding sources such as building funded public projects for two trails and sale of a bridge easement to Woodinville. Any missed quarterly interest payments will be accrued.
CLOSING	As soon as possible, but before September 30, 2013
HIGH RETURN POTENTIAL	<p>20% principal step-up at investment</p> <p>8% annual interest on principle and step-up</p> <p>Projected annualized return of 10.3% over the five-year term</p>
ADDITIONAL PROJECT ATTRIBUTES	Freight rail service on the line has been operated by Ballard Terminal RR Co (BTRC) since January 2010. ECRR has an agreement in place with BTRC to continue servicing the line. ECRR has been in discussion with existing and new potential users of the line and believes sufficient pent-up demand exists for freight volumes to grow substantially CY 2013 and beyond. As freight volumes grow to support the line, ECRR intends to re-establish the high-margin passenger excursion service (e.g. a dinner train), replicating a service that profitably ran on the line for nearly 15 years.
CONTACT	Doug Engle, 425-891-4223, Doug.Engle@EsCRail.org

BNSF Woodinville Subdivision
(N. Renton to Snohomish)

Existing Rail Lines and Regional Trails

-  BNSF Corridor
-  Other Regional Rail Lines
-  Regional Bike Routes/Trails
-  Metropolitan Transportation System
-  City Limits
-  Urban Growth Area

0 1.5 3 4.5 6 Miles
May 25, 2006





EASTSIDE COMMUNITY RAIL BRIDGING THE GAP

1 October 2013

RAILROAD INVESTMENT and REAL ESTATE OPPORTUNITY

Eastside Community Rail (ECRR) owns the reserved freight easement for 14-miles of operating track 30-minutes northeast of Seattle, WA as granted by the federal Surface Transportation Board (STB). A petition to reactivate an additional 12-miles between Bellevue and Woodinville is currently before the STB. The Washington State Legislature is currently looking at providing track upgrade funding and other works for \$10-65 million and legislation for state guarantees of federal railroad loans.

Improving freight mobility is important to the state, and underlies the federal authorities of a railroad. An excursion train will leverage the nearly 100 wineries in Woodinville and has extensive tourism potential while generating sales taxes. Several real estate projects have been identified. A rail commuter service will be on this line in 5-10 years, which makes transit oriented development the primary opportunity.

Freight currently operates on the line and several additional customers have been identified and written letters of support for reactivation. This will enable the freight operations to be profitable and sustainable long-term with \$1-2M in revenues. Freight also enables access to 35-year low interest federal loans.

A recent excursion train profitably operated on this line for 15-years generating over \$10M in revenue. A bridge was removed with the I-405 widening in Bellevue, the Port of Seattle purchased the right of way from BNSF, and the Dinner Train was forced to cease operations. Wineries, tourism groups and investors generating "overwhelming support" have vetted statewide research for a new format Bounty of Washington Tasting Train. The Port of Seattle recently invested in cruise ship terminals, which have generated 435,000 annual boarding's. The Tasting Train should be able to add 20% of these passengers to nearly double the Dinner Train's counts. Revenues are expected to be \$10-15 million annually.

Railroads are granted their authorities under the Interstate Commerce Clause in the U. S. Constitution. Inside the right of way, they have exclusive authority over states and have the power of eminent domain. Local regulations, ordinances and permitting are not required for railroad operations, including development of structures. The critical point is the railroad must own the land to leverage these rights to minimize the entitlement process.

The primary use of a \$30 million investment is to stabilize freight to maintain federal rights, re-establish a proven and profitable excursion train, and acquire right of way and adjacent land for immediate development. Today, a letter of credit will secure first right of refusal after this next legislative session to secure these opportunities.

Contact: Douglas Engle, Managing Director | +1-425-891-4223 | Doug.Engle@EsCRail.org

DRAFT for Discussion Purposes Only

DRAFT for Discussion Purposes Only



Ballard Terminal Railroad Company and Eastside Community Rail

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

May 2013

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

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

Trucking Assumptions. One of the biggest problems to solve when disposing of excavation spoils by truck is legal dumping. At this time, there are few qualified, large disposal sites anywhere near Bellevue. For purposes of this study, it was assumed that the nearest sites of reasonable capacity are in the vicinity of Monroe, Washington, about 25 miles away. Consequently, a round trip (cycle) by conventional dump truck and trailer from an excavation site in downtown Bellevue of 2 hours 30 minutes (2.5 hrs), including tipping time, was estimated by ECRR's trucking consultant, *Bobby Wolford Trucking* (Wolford). Dumpsite operators currently charge \$4-6 per ton for disposal space; this analysis uses \$4/CY.

The other factor to consider is the excavation contractor's desired daily production volume, which determines the number of trucks needed on the job. BWT stated that a large building excavation project would target removing 2000 cubic yards per day. Given a capacity of 24 CY/truck and trailer combination, 83 truck loads per day would be needed to move this volume. This calculation assumes an eight-hour workday, that translates to just over 9 trucks per hour, or just over 6 minutes per truck loading time. Since each truck could only complete three round trips per day, 27-28 trucks would be needed in the contractor's fleet, without allowing for breakdowns or other interruptions, to keep the excavator busy. The included spreadsheet shows the resulting extended costs in 2013 for removing 3,250,000 CY, roughly equivalent to all of the expected Bellevue excavations over the next decade. For reference, a quarter-block building excavation about 45 feet deep would generate a little over 250K CY of spoils, e.g. Lincoln Center.

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

For purposes of this analysis, it was estimated that a truck (tractor) and side-dump trailer of 23 CY capacity could complete a round trip every 24 minutes, or 0.4 hours. The trucks would simply create a windrow of material alongside the stationary rail cars. A large wheel loader would then transfer the material into the side-dump rail cars. See picture 1.

In order to meet the 2K CY/day production volume stated above, it would be necessary to load and remove two trains of 1K CY each, or 17 side-dump cars of 60 CY capacity each. That means that there would have to be 50 truck cycles per trainload, or 100 per day. However, due to the short cycle time, each truck could make up to 20 trips per day. Therefore, as few as five trucks could keep the excavator busy; versus 27-28 truck-trailer combinations.

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

Analysis. Using the assumptions outlined, local costs for trucking were obtained from Wolford in Maltby, who removed spoils from Lincoln Center. Trucking costs were \$120/hr for dump truck and trailer combinations, and \$110/hr for tractor and side-dump trailer. These rates include operator, fuel, insurance, overhead and profit; there is no per mile charge. From their experience, a conversion factor of 1.3 tons/CY was used to calculate dump fees, based on \$4/CY. The truck trips needed was calculated, and the rates above applied to develop gross cost figures for each alternative. In the trucking case, cost was added for supervision/dispatch and a 10% contingency. These unit costs may be low as demand has been relatively flat from 2008-2012, but is expected to increase sharply as more projects start.

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

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

**Eastside Community Rail
Bellevue Spoils Hauling Comparison**

as of 2013 July 12

Conventional Truck Disposal Option

Assumptions: Reference site in NE quadrant of Bellevue Way and NE 4th St., Bellevue
 Area: 2.95 acres, excavated to average depth of 45 ft.
 Dirt volume in place: 5,782,590 cu. ft.= 214,170 cy
 Swell factor 20%, yields 257,004 cy on trucks; USE 250K cy
 Total est. Bellevue spoils vol. 3,000,000 CY
 Capacity, dump truck & trailer 24 CY
 Daily production 2000 CY
 Unit weight of 1 cy spoils, loaded 1.30 tons
 Disposal site: vicinity of Monroe; approx. 50 mi. R/T
 Est. roundtrip travel + dump: 2 h 30 m= 2.5 hr

	Quantity	Units	Time	Rate	Totals	
Trucks	125,000	trips	2.5	\$ 120	\$ 37,500,000	
Tipping fee	3,000,000	CY		\$ 4	\$ 12,000,000	
Supervision	1,500	days		\$ 200	\$ 300,000	Dispatch, etc.
subtotal					\$ 49,800,000	
Contingency				10%	\$ 4,980,000	
Total	Trks/Day	83			\$ 54,780,000	\$ 18.26 /CY

WSST 9.50% \$ 5,204,100

Rail & Trail Disposal Option

Assumptions: Quantities, production same as above
 Capacities, side dump truck trailer: 23 cy, side dump rail car 60 cy
 Transload site: alongside railroad tracks south of NE 8th St.
 Est. roundtrip travel + dump: 0 h 24 m= 0.4 hr
 Transload equipment e.g., CAT 966H wheel loader w/5 cy side dump bucket
 2 trainloads per day to RR access road sites in vicinity Maltby

	Quantity	Units	Time	Rate	Totals	
Trucks	130,435	trips	0.4	\$ 110	\$ 5,739,130	Single vs double
Transloading cost	600,000	cycles	0.02	\$ 110	\$ 1,320,000	End loader
Load site preparation	8	LS		\$ 8,500	\$ 68,000	Mobilize, clear
Site maintenance	1,500	days	8	\$ 36	\$ 432,000	Laborer
Water truck	1,500		8	\$ 110	\$ 1,320,000	Dust control
Water	1,500	days		\$ 8	\$ 12,000	Per day
Supervision	1,500	days		\$ 200	\$ 300,000	Trucking
Train crew	1,500	days	12	\$ 73	\$ 1,314,000	Crew hours w/ dumping
Locomotive	1	each	120	\$ 4,500	\$ 540,000	Mon. lease, GP38
Loco. Operation	1,500	days	12	\$ 36	\$ 648,000	
Locomotive fuel	1,500		460	\$ 4	\$ 2,760,000	Incl. Lubricants
Side dump cars	17	cars	77	\$ 3,900	\$ 5,105,100	Monthly lease
Security, rail equip.	300	weeks		\$ 2,500	\$ 750,000	Overnight, wknd
ECR Direct	1,500	days		\$ 1,458	\$ 2,187,000	Managers
ECR Indirect OH	1,500	days		10.0%	\$ 2,249,523	Incl MOW
subtotal					\$ 24,744,753	
Contingency				10%	\$ 2,474,475	
STB RARR				11.22%	\$3,053,997	
Total	Trns/Day	2		\$ 594	\$ 30,273,226	\$ 10.09 /CY

WSST 9.50% \$ 2,875,956

Potential savings, rail over trucking: \$ 24,506,774 44.7%

**Bellevue Projects
Construction Spoils**
as of 2013 July 12

#	Project	Address	Developer	Permit #	Start Date	Parking Floors	loaded vol/wt soil swell CF/CY	CY	Loaded Vol. (CY)	Load Wt. (tons)	railcars/consyst		Trucks
											CY/truck-trailer	CY/railcar	
1	Bellevue Park II Apts.	88 102 nd Ave. NE	Canterra Dev. Group, 111-119405GD	11-119405GD		3 lev.		22,000	26,400	35,640	440	1,100	
2	Bellevue at Main	15 Bellevue Way SE	SRM (CBA?)	13-109737GD		2 lev.		81,300	97,560	131,706	1,626	4,065	
3	Alley 111	11011 NE 9 th St.	Alley III-LLC	12-126956GD		3 lev.		29,640	35,568	48,017	593	1,482	
4	Alamo Manhattan Main St.	10505 Main St.	AMMS, LLC	13-106069GD	Jul-13	319		39,330	47,196	63,715	787	1,967	
5	Lincoln Square Expansion	410 Bellevue Way NE	KDC	12-132832GD		6 lev.		385,000	462,000	623,700	7,700	19,250	
6	Bellevue Center	10833 NE 8 th St.	Beacon Cap. Partners	13-112826BV/GC		7 lev.		216,000	259,200	349,920	4,320	10,800	
7	Bellevue Apts.	204 111 th Ave. NE	LiHi Bellevue LLC	13-105956G				3,062	3,674	4,960	61	153	
8	GRE Bellevue	2070 NE Bel-Red Rd	GRE*Bel-Red LLC	13-107208GD		2-3 le.		90,000	108,000	145,800	1,800	4,500	
Total Spoils								866,332	1,039,598	1,403,458	17,327	43,317	

City of Bellevue Review Issued

The Summit, Bldg. C	320 108 th Ave. NE	Bentall	200,000
Pacific Regent Ph. II	919 109 th Ave. NE	Sunrise Devel.	
?NE 4 th St. Extension?		COB	

Bellevue Projects under Construction (Q1 2013)

SOMA Towers Ph. I	200 106 th Ave. NE	Su Development	300,000
Park Metro	11017 NE 12 th St.	Evergreen Pt. Devel.	
Marriott Hotel	200 110 th Ave. NE	Marriott	
SR-520 Eastside Transit & HOV	10819 NE 37 th PL		13-113220GD
SR-520 Eastside Transit & HOV	10700 Northrup Way		13-113218GD

Large Bellevue Projects Pipeline (Q1 2013)

415 Office Bldg.	415 106 th Ave. NE	Schnitzer NW	1,500,000
Bellevue Cadillac	1001 106 th Ave. NE	UDR	
Bellevue Sq. SE Cor. Expan.	701 Bellevue Way NE	KDC	
103 rd Ave. Apts.	1025 103 rd Ave. NE	HSL Properties	
Rockefeller Bellevue Tower, Ph. I	10605 NE 8 th ST.	NBBJ (arch.)	
Main Street Gateway Center	10328 Main St.		
East Link Light Rail		Sound Transit	
Bellevue-Redmond Road corridor		Bellevue	
Spring District		Wright Runstad	

Bellevue Spoils

3,062,000 CY

27 CF/CY

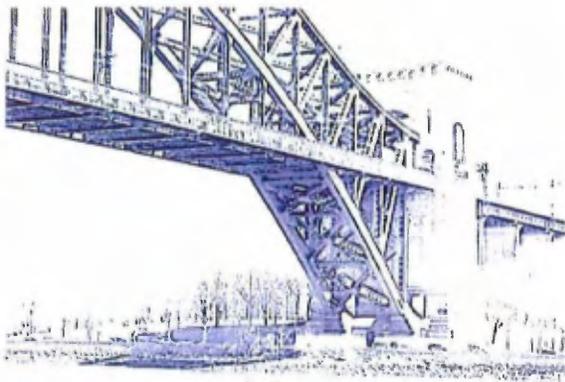
82,674,000 CF

Avg Story Ht of Columbia Ctr	10.8 ft		
Building	133 floors		
U.S. Football Field			
Width	53.33 yds		
Width	160 ft		
Length, incl end zones	360 ft		
1 U.S. Football Field =	57,600 sq ft		
	Height of Field		1,435 ft
Landmark Buildings			
Sears Tower, including spires	Height in US Football Fields		adj
Chicago, IL	1,450 ft		
	1.0 ea.		
Columbia Center	937 ft		
Seattle, WA	1.5 ea.		
Lincoln Ctr	450 ft		
Bellevue, WA	3.2 ea.		
			# of Stadiums 1.8 ea.

http://en.wikipedia.org/wiki/CenturyLink_Field

Rank	Building	City	Country	Height (m)	Height (ft)	Floors	Built
1	Burj Khalifa	Dubai	UAE	828	2,717	163	2010
2	Makkah Royal Clock Tower Hotel	Mecca	Saudi Arabia	601	1,971	120	2012
3	One World Trade Center	New York City	USA	541	1,776	104	2013
4	Taipei 101	Taipei	Taiwan	509	1,670	101	2004
5	Shanghai World Financial Center	Shanghai	China	492	1,614	101	2008
6	International Commerce Centre	Hong Kong	Hong Kong	484	1,588	118	2010
7	BELLEVUE SPOILS (in Football Fields)	Bellevue	USA	437	1,435	133	2014
7	Petronas Tower 1	Kuala Lumpur	Malaysia	452	1,483	88	1998
7	Petronas Tower 2	Kuala Lumpur	Malaysia	452	1,483	88	1998
10	Willis Tower (Formerly Sears Tower)	Chicago	USA	442	1,450	110	1973
111	Columbia Center	Seattle	USA	285	937	87	1985

http://en.wikipedia.org/wiki/List_of_tallest_buildings_in_the_world



Eastside Community Rail

Bridging the Gap

9 October 2012

Cost Plus Pricing Policy

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

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

Surface Transportation Board – Revenue Adequacy

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

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

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

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

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

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

Historic Rates and ECR's Weighted Average

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

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

From: Greg Starup
Sent: Wednesday, October 23, 2013 5:06 PM
To: Doug Engle
Subject: Financing request
Attachments: 2012 - Personal Financial Statement - CCB.xls; Application Data Sheet NEWEST 03 2012.doc; Business Debt Schedule.xls; projection.xls

Hi Doug,
Here is an outline of the documentation I need to move forward. Give me a call if you have any questions.

CHECKLIST OF ITEMS FOR SBA LOAN APPLICATION

1. Business Loan Application Data Sheet (form attached).
2. Current business Income Statement and Balance Sheet, (as-of within 60 days), signed and dated.
3. Current aging of A/R and A/P, as of the date of the statements submitted above.
4. Current Debt Schedule, as of the date of the financial statements above (form attached).
5. Three years of business tax returns, signed and dated.
6. *Business Plan with one year of monthly cash-flow projections along with assumptions.
7. **Total Project Costs including tenant improvements, inventory, equipment, working capital, soft costs, etc. Outline what costs you have already put into the project as of this date and, if possible, include copies of cancelled checks and invoices for items that you have already purchased. Include any and all back up information such as contractor's bid/estimate, equipment supplier's invoice, etc.
8. Resume of each owner and key management personnel.
9. Current Personal Financial Statement less than 60 days old for each principal (20% owned or more) of the business (form attached); include account statements for cash and marketable securities shown on statement;
10. Three years personal income tax returns for each principal, signed & dated by taxpayer (including all schedules and K-1's)
11. If any owner owns any affiliate companies we will need disclosure on the affiliate(s) as well (three years tax returns, YTD interim financial statement, business debt schedule);
12. Copy of Leases, operating authority, etc..
13. Legal formation documents (i.e. Articles of Inc./By-laws, Articles of Organization/Operating Agreement, etc.);
14. Copy of Master Business License and city business license (if applicable);

*Business Plan needs to address management/industry experience, concept/product, competition, project costs, equity, projections WITH assumptions. It does not need to be extremely long but needs to be concise and adequately describe the business

**Submit project costs if loan will be used for capital improvements, construction or acquisition, or some other one-time project costs.

Exhibit 68 Date 2/6/14
Witness Starup
Wade J. Johnson 323-0819

Greg Starup, Vice President
Senior Relationship Manager
SBA Lending Manager
(425) 258-5299 Everett Office
(425) 870-5706 Cell Phone
(425) 257-0521 Fax Number



2817 Colby Ave. Everett, WA 98201

gstarup@coastalbank.com



Please consider the environment before printing this email

Coastal Community Bank's agreement and commitment to lend money is contingent on the Bank's final underwriting approval and proper documentation. Commitments to lend money must be in writing and signed by an authorized Coastal Community Bank representative. Any loan terms addressed in this email are subject to change and final documentation. Nothing contained in this email is to be considered a commitment to lend money or extend credit.

Individual Financial Statement and Application



Name _____ Date of Birth _____
 Address _____ Zip Code _____

Loan Amt Requested: _____ Purpose of loan: _____

Applicant is applying for this loan: CHECK AS APPLICABLE

- Individually, without a co-signer or guaranty of a relative or other person(s) or entity.
- Jointly, with the co-signature or guaranty of one or more persons or entities (including any existing guarantors).

NAMES OF OTHER PERSON(S) AND ENTITY(IES)

PLEASE INDICATE OR PROVIDE EXPLANATION RELATING TO ANY ASSETS OWNED JOINTLY OR BY A TRUST OR LIABILITIES OWED WITH OTHERS. (ATTACH SCHEDULES AND EXPLANATORY NOTES IF NECESSARY.)

STATEMENT OF FINANCIAL CONDITION OF _____ (DATE): _____

Assets		Amount	Liabilities		Amount
Cash	Schedule A >		Notes & Loans Payable (Other Than RE)	Schedule G >	
Stocks & Bonds & Tax Refunds	Schedule B >		Insurance Loans	Schedule C >	
Insurance	Schedule C >		Taxes Owed	Schedule H >	
Accounts & Notes Receivable	Schedule D >		Accounts & Bills Payable		
Real Estate	Schedule E >		Credit Cards		
Other			Real Estate Notes & Contracts Payable	Schedule E >	
Other Assets	Schedule F >		Other Liabilities	Schedule I >	
Total Assets			Total Liabilities		
		(Difference between Total Assets and Total Liabilities)		Net Worth	

Re-cap of Income and Expenses

Annual Income for Year	Annual Expenses for Year	Contingent Liabilities
Salary or Wages	Property Tax & Assessments	As Endorser
Dividends or Interest	Fed. & State Income Tax	As Guarantor
Rental (Gross Income)	Real Estate Loan Payments	For Taxes
Business (Net Income)	Payments on Contracts/Notes	Other (Describe):
Other Income (NOTE: Alimony, child support or separate maintenance payment income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)	Estimated Living Expenses	
Describe:	Other:	
Total Income	Total Expense	Total

Schedule A Cash, Location and Status of Bank Accounts							
CK/CD'S/SV	Bank Name	Balance	Interest Rate	Date CD Matures	Pledged?	Loan Balance	Maturity Date
Total						Total	

Schedule G Notes And Loans Payable To Banks And Others							
Payable To	Address	Collateral	Person(s) Liable	Maturity Date	How Payable		Balance
						per month	
						per month	
						per	
						per	
						per	
						per	
						per	
						per	
						per	
						per	
Total							

Schedule H Accounts And Bills Payable (Including Bank Cards)						
Payable To	Acct. Number	Persons Liable		How Payable		Balance
					month	
					per	
					per	
					per	
					per	
					per	
Total						

Schedule I Other Liabilities					
Payable To	Person Liable	Collateral	How Payable		Balance
				month	
				per	
Total					

If applicant resides in a community property state, please complete the following concerning marital status:

Applicant is: Married Separated Unmarried (including single, divorced, and widowed)
 Co-Applicant, if any, is: Married Separated Unmarried (including single, divorced, and widowed)

Applicant Info.	Social Security No.		Driver's License Number		Issue Date	Expiration Date	Home Phone	
	Birthdate	Occupation		Name of Employer		No. of Years	Business Phone	
	Amount of alimony, child support and separate maintenance payment income. NOTE: Alimony, child support or separate maintenance payment income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.							
	Name and address of payer of any alimony, child support or separate maintenance payment income disclosed above as source of repayment.							
	Alimony, child support, separate maintenance received under: <input type="checkbox"/> Court Order <input type="checkbox"/> Written Agreement <input type="checkbox"/> Oral Agreement							
	Income (salary, pension, social security, dividends, interest, etc.) Source: _____ \$ _____ per month							
	Number of Dependents _____ Ages _____							
	Have you established a trust? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Revocable <input type="checkbox"/> Irrevocable							
	Name(s) of Trustee(s) _____							
	Have you made a will? <input type="checkbox"/> Yes <input type="checkbox"/> No Name(s) of personal representative _____							
Have you guaranteed or endorsed the notes of any other person? <input type="checkbox"/> Yes <input type="checkbox"/> No Do you have any other contingent liabilities? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Have you been adjudged bankrupt in the last 7 years or made any assignments for creditors? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Are you presently under indictment, on parole or probation, or have you ever been convicted, placed on pretrial diversion, or placed on any form of probation for any criminal offense other than a minor vehicle violation? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Names of References:				Addresses:				
Co-App Info.	Social Security No.		Driver's License Number		Issue Date	Expiration Date	Home Phone	
	Birthdate	Occupation		Name of Employer		No. of Years	Business Phone	
	Amount of alimony, child support and separate maintenance payment income. NOTE: Alimony, child support or separate maintenance payment income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.							
	Name and address of payer of any alimony, child support or separate maintenance payment income disclosed above as source of repayment.							
	Alimony, child support, separate maintenance received under: <input type="checkbox"/> Court Order <input type="checkbox"/> Written Agreement <input type="checkbox"/> Oral Agreement							
	Income (salary, pension, social security, dividends, interest, etc.) Source: _____ \$ _____ per month							
	Have you ever borrowed from any other branch of this institution? _____ Name _____ Location _____ Date _____							
	Number of Dependents _____ Ages _____							
	Have you established a trust? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Revocable <input type="checkbox"/> Irrevocable							
	Name(s) of Trustee(s) _____							
Have you made a will? _____ Name(s) of personal representative _____								
Have you guaranteed or endorsed the notes of any other person? <input type="checkbox"/> Yes <input type="checkbox"/> No Do you have any other contingent liabilities? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Have you been adjudged bankrupt in the last 7 years or made any assignments for creditors? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Are you presently under indictment, on parole or probation, or have you ever been convicted, placed on pretrial diversion, or placed on any form of probation for any criminal offense other than a minor vehicle violation? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Names of References:				Addresses:				
Signatures	I/We hereby affirm that the foregoing information contained in this financial statement is presented for the purpose of obtaining credit as of the date indicated and is true, complete and correct. I/We understand Lender is relying on this statement of my financial condition in making loan(s) to me/us. Lender is authorized to make any investigation of my/our credit or employment status whether directly or through any agency employed by Lender for that purpose. Lender may disclose to any other interested parties Lender's experience with this account. I/We agree to inform the Lender immediately of any matter which will cause any significant change in my/our financial condition. I/We understand that Lender will retain this financial statement whether or not credit is granted. I/We understand that Federal law requires the Bank to obtain and verify information that identifies me/us and may ask for my/our driver's license and other identifying documents.							
	Applicant's Signature _____ Date _____				Co-Applicant's Signature _____ Date _____			
	Consent: (If you are relying on income from a person who is not an applicant above, please have that person complete this section so that we may verify their credit.) I authorize Lender to make any investigation of my credit either directly or through any agency employed by Lender for that purpose in connection with this credit application.							
	Signature _____ Date _____				Social Security Number _____			

Business Loan Application Data Sheet



To be initiated by *the applicant(s)* at the time of application for EVERY request for new credit, renewals, refinancing and significant changes to existing credit.

Name(s) of Applicant(s)	Date of Application
Purpose: <input type="checkbox"/> Business	Borrower Initial(s)

Amount Requested	Product Requested	Collateral Offered	Proceeds of Business Credit to be used for:
	<input type="checkbox"/> Term Loan <input type="checkbox"/> Draw Down LOC <input type="checkbox"/> Revolving LOC		

Property Type: Res. 1-4 Family Res. 5+ Family Construction – Residential
 Mixed Use All Other Abundance of Caution
 OWNER OCCUPIED NON-OWNER OCCUPIED

Names of Persons as Guarantor, Borrower, Co-Borrower	Role (e.g. Guarantor, Borrower, Co-Borrower)	Reason (e.g. owner, officer)	Initials

Persons Offered as Guarantors Subsequent to Initial Application:

Name	Role (e.g. Guarantor, Borrower, Co-Borrower)	Reason (e.g. owner, officer)	Initials

Acknowledgement:

Federal Regulatory Requirements compel banks to identify the intentions of individuals as they pertain to their roles in the application for business credit. **The Equal Credit Opportunity Act and Regulation B prohibit banks from requiring spouses not involved in the business to guarantee business debt.** However, banks may require all business owners and principals of the business to guarantee business debt, regardless of marital status. In addition, spouses and individuals not related to the business may be volunteered as guarantors by the applicant in response to a bank’s request for additional financial support.

RIGHT TO RECEIVE COPY OF APPRAISAL. You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application

Initials provided above are an acknowledgement that each person listed is an owner or principal of the business, or has been requested by the applicant to guarantee the proposed debt. Initials provided expressly state business purpose investment – and/or loan application request.

BANK USE ONLY:

Please check if application was withdrawn. Comment on reason application was withdrawn below and send all documentation to loan servicing.

Date of Withdrawal: _____ Loan Officer: _____

Please check if application was declined. Mark all applicable boxes below as reasons application was declined and send all documentation to loan servicing.

Date of Decline: _____

Loan Officer: _____

Date: _____

Second Review: _____

Date: _____

REASONS FOR DENIAL

Mark applicable boxes (no more than 4)

- Insufficient number of credit references**
- Unable to verify credit references**
- No credit report file**
- Bankruptcy**
- Collection action or judgment**
- Garnishment or attachment**
- Number of recent inquiries on credit bureau report**
- Limited credit experience**
- Poor credit performance with us**
- Delinquent past or present credit obligations with others**
- Unacceptable type of credit references provided**
- Excessive current obligations in relation to income**
- Unable to verify income**
- Income insufficient for amount of credit requested**
- Incomplete application**
- Unable to verify employment**
- Insufficient length of employment**
- Temporary or irregular employment**
- Unable to verify residence**
- Too short a period of residence**
- Temporary residence**
- Value or type of collateral insufficient**
- Credit not granted to any applicant on terms requested**
- Other**

ADVERSE FILES PACKET

<input type="checkbox"/> Reason for Denial Form (page 3 of Application Data Sheet)	<ul style="list-style-type: none"> ▪ Identify reason(s) for denial ▪ Document reason for withdrawn – include RM initials, date, reason on form ▪ Support Documentation for reason of denial (income, appraisal, credit) ▪ Evidence of secondary review (Dave Lerner, Pam Hammond, Bridget Gunn)
<input type="checkbox"/> Conversation Log (page 2 of Application Data Sheet)	<ul style="list-style-type: none"> ▪ TELL A STORY ▪ Evidence of Date of Application ▪ Evidence of Date of Complete Application ▪ Evidence of Date of Decline
<input type="checkbox"/> Notes/Email Communication	<ul style="list-style-type: none"> ▪ Correspondence with Borrower ▪ Evidence of when information was obtained/delivered to/from the Borrower
<input type="checkbox"/> Application Data Sheet	<ul style="list-style-type: none"> ▪ Date of Application ▪ Name of Applicant (Borrower) ▪ Amount Requested ▪ Product Requested ▪ Collateral Offered (HMDA Reportable?) ▪ Proceeds of Credit to be used for ▪ Names of Persons as Guarantor/Borrower/Co-Borrower ▪ Terms and Condition Letter (signed/dated by Borrower)
If applicable, please include the following information:	
<input type="checkbox"/> Government Monitoring Information Form	<ul style="list-style-type: none"> ▪ HMDA Reportable Loans – used for purchase, refinance, and home improvement ▪ Complete for all Borrowers (do not complete for Guarantors)
<input type="checkbox"/> Transaction Information Sheet	<ul style="list-style-type: none"> ▪ Identify terms/conditions of the loan
<input type="checkbox"/> Credit Report	<ul style="list-style-type: none"> ▪ Business/Personal ▪ Authorization to pull credit report
<input type="checkbox"/> Financial Statements	<ul style="list-style-type: none"> ▪ Business/Personal
<input type="checkbox"/> Tax Returns	<ul style="list-style-type: none"> ▪ Business/Personal
<input type="checkbox"/> Customer Information	<ul style="list-style-type: none"> ▪ Personal Identification (CIP) ▪ Business License ▪ Articles of Corporation/LLC Agreement or Partnership ▪ Bylaws/Minutes
<input type="checkbox"/> Appraisal	<ul style="list-style-type: none"> ▪ Property Evaluation ▪ Environmental Studies (Phase I/Phase II) ▪ Tax Assessor ▪ DOT/Title

ONE YEAR MONTHLY PROJECTION OF INCOME AND EXPENSES -PERIOD FROM _____ TO _____

Date	1st Month	2nd Month	3rd Month	4th Month	5th Month	6th Month	7th Month	8th Month	9th Month	10th Month	11th Month	12th Month	TOTAL	% of Income	
SALES															
Sales 1														\$0	#DIV/0!
Sales 2														\$0	#DIV/0!
Less Cost of Goods Sold														\$0	#DIV/0!
Gross Profit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	#DIV/0!
EXPENSES															
Salaries - owners														\$0	#DIV/0!
Wages - others														\$0	#DIV/0!
Rent - real estate														\$0	#DIV/0!
Rent - equipment														\$0	#DIV/0!
Maintenance/Repairs														\$0	#DIV/0!
Supplies														\$0	#DIV/0!
Telephone														\$0	#DIV/0!
Other Utilities														\$0	#DIV/0!
Taxes/licenses														\$0	#DIV/0!
Advertising/Promotion														\$0	#DIV/0!
Insurance														\$0	#DIV/0!
Auto/Delivery/Travel														\$0	#DIV/0!
Accounting/Legal/Prof Fees														\$0	#DIV/0!
Depreciation/Amortization														\$0	#DIV/0!
Interest														\$0	#DIV/0!
Outside Services														\$0	#DIV/0!
Other: Security														\$0	#DIV/0!
Other:														\$0	#DIV/0!
Other:														\$0	#DIV/0!
Other:														\$0	#DIV/0!
TOTAL EXPENSES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	#DIV/0!
Outside Income														\$0	
NET PROFIT	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	#DIV/0!
Add Back: Depreciation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interest	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Beginning Cash	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Loan Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative Cash Flow Positive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Mod factor
Sales
Cost of goods
Wages
Expenses

ONE YEAR MONTHLY PROJECTION OF INCOME AND EXPENSES - PERIOD FROM 2011 Jun TO 2012 May

Date	1st Month	2nd Month	3rd Month	4th Month	5th Month	6th Month	7th Month	8th Month	9th Month	10th Month	11th Month	12th Month	TOTAL	% of Income
SALES														
1 Sales 1		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2 Sales 2		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3 Less Cost of Goods Sold		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4 Gross Profit		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
EXPENSES														
7 Salaries - owners		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
8 Wages - others		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
9 Rent - real estate		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
10 Rent - equipment		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
11 Maintenance/Repairs		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
12 Supplies		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
13 Telephone		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
14 Other Utilities		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
15 Taxes/licenses		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
16 Advertising/Promotion		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
17 Insurance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
18 Auto/Delivery/Travel		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
19 Accounting/Legal/Prof Fees		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
20 Depreciation/Amortization		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
21 Interest existing loans		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
22 Outside Services		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
23 Other Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
24 Other sponsorship		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
25 Other Health insurance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
26 Other Travel		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
27 Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
28 TOTAL EXPENSES		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
Outside Income														\$0
NET PROFIT		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!

Mod factor
Sales
Cost of goods
Wages
Expenses

ONE YEAR MONTHLY PROJECTION OF INCOME AND EXPENSES - PERIOD FROM 2011 Jun TO 2012 May

Date	1st Month	2nd Month	3rd Month	4th Month	5th Month	6th Month	7th Month	8th Month	9th Month	10th Month	11th Month	12th Month	TOTAL	% of Income
SALES														
1 Sales 1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2 Sales 2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3 Less Cost of Goods Sold	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4 Gross Profit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5														
EXPENSES														
6														
7 Salaries - owners	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
8 Wages - others	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
9 Rent - real estate	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
10 Rent - equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
11 Maintenance/Repairs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
12 Supplies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
13 Telephone	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
14 Other Utilities	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
15 Taxes/licenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
16 Advertising/Promotion	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
17 Insurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
18 Auto/Delivery/Travel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
19 Accounting/Legal/Prof Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
20 Depreciation/Amortization	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
21 Interest existing loans	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
22 Outside Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
23 Other Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
24 Other sponsorship	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
25 Other Health Insurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
26 Other Travel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
27 Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0 #DIV/0!
28 TOTAL EXPENSES	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5 #DIV/0!
Outside Income														\$0
NET PROFIT	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	-\$5 #DIV/0!

From: Greg Starup <gstarup@coastalbank.com>
Sent: Friday, November 22, 2013 6:02 PM
To: Doug Engle
Subject: RE: Eastside Rail Corridor
Attachments: CCB support ltr 11-2013.pdf

Doug,
Hope this helps

Greg Starup, Vice President
Senior Relationship Manager
SBA Lending Manager
(425) 258-5299 Everett Office
(425) 870-5706 Cell Phone
(425) 257-0521 Fax Number



2817 Colby Ave. Everett, WA 98201

gstarup@coastalbank.com

Please consider the environment before printing this email

Coastal Community Bank's agreement and commitment to lend money is contingent on the Bank's final underwriting approval and proper documentation. Commitments to lend money must be in writing and signed by an authorized Coastal Community Bank representative. Any loan terms addressed in this email are subject to change and final documentation. Nothing contained in this email is to be considered a commitment to lend money or extend credit.

From: Doug Engle [<mailto:Doug.Engle@EsCRail.org>]
Sent: Thursday, November 21, 2013 10:47 AM
To: Greg Starup
Subject: Eastside Rail Corridor
Importance: High

Good day Greg,

We are really struggling in the time we have to put the kinds or legal structures in place to "pre-qualify" for a STB loan.

There are just too many unknowns, people and variables in play.

On the favorable side we are expecting a letter of support immanently from a major national railroad, which is why I am writing to you today.

Would you consider a limited letter of support based on communique this year and documents we have already provided.

Something down the line of the attached?

We really have a sense of urgency and time is of the essence, so Coastal's support would be of material value to us.

Best regards and thank you for the consideration,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

The information in this message is intended only for the addressee or the addressee's authorized agent. This message may contain information that is privileged, confidential or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or that person's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by return e-mail or destroy any copies of this message.



November 21, 2013

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

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

Coastal Community Bank is a preferred lender for the Small Business Administration. The bank has been in discussions with Eastside Community Rail, LLC working with Ballard Terminal Railroad Company since January this year, to provide capital loans for equipment and other works on the Eastside Rail Corridor. The railroad has broad community support as described in the many letters previously submitted to the Surface Transportation Board, which we have reviewed.

Our bank has \$370 million in assets and has been steadily growing for the past 3 years. We are fully capable of participating in a multi-million dollar financing package for the reactivation of the Eastside Rail Corridor. However, until the Board makes a reactivation decision, it is nearly impossible to know what that financing package and entity structure should actually be as there are many options to consider.

Given the line currently starts in Snohomish, a Woodinville terminus versus Bellevue is very significant. This also impacts the three rail use alternatives of freight, excursion and commuter. Understanding the freight customer mix and land requirements for aggregates, spoils removal and concrete production add further complexity. Additionally, transit oriented development has material financial impacts. The Board's action to preserve rail service on this line must be in place before Coastal Community Bank can make any definitive commitments.

Once we have sufficient information, a large part of which will be heavily impacted by the Board's decision on this matter, we are ready, willing and able to determine specifically what assistance we can offer to help make the Eastside line to Bellevue a success with these railroad companies.

Thank you for your understanding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Starup', written over a white background.

Greg Starup
Vice President,
Manager of SBA Lending
425-258-5299

EB5 Capital Partners.us, LLC

3146 Chevy Lane • Northbrook, IL 60062 • Tel: 847-981-7245 • (ll)@eb5capitalpartners.us • 224-422-0772 • (cc)@eb5capitalpartners.us

August 21, 2013

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

REF: STB FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, LLC.

ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

In connection with evaluating the investment opportunity of the Eastside Rail Corridor, I discovered that there is substantial potential for a viable transload business, construction materials and spools hauling, as well as incubating additional carload freight traffic, as a result of emerging demand in the area.

Assets, in the form of a three track yard, located behind Lowe's and the International Paper facilities exist to support substantial transload operations in Bellevue, augmented by the ease of the adding an access and maintenance of way road along most of this rail corridor, further facilitating existing and new rail traffic.

This area has substantial in-place rail infrastructure, in the form of switches and rail sidings into buildings, offering the option of rail to shippers that would no longer exist, if the line were severed.

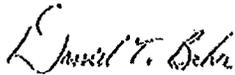
In addition, due to the demographic and market attributes of the area, the line offers substantial opportunity to re-establish a previously proven and commercially successful excursion train, further increasing the line's economic viability and value to both its existing and future rail shippers.

EB5 Capital Partners.us, LLC

3145 Chony Lane • Northbrook, IL 60062 • Tel: 847-961-7215 • dlb@eb5capitalpartners.us • 224-422-0772 dco@eb5capitalpartners.us

I would like to impress upon the Board the importance of restoring rail service between Woodinville and Bellevue, Washington, which is currently "rail-banked". After conducting two onsite inspections of the line and learning of the existing and emerging rail traffic opportunities, EB5 Capital Partners.us is prepared to become engaged by the principals, in a business advisory capacity, to advise them on securing finance to help make the Ballard Terminal Railroad Company line to Bellevue a success. As part of the business case, we would work with the principals on determining their capital needs to acquire Kirkland's 5.75-mile portion of the corridor, should that option be necessary. Ensuring that this portion of the line is preserved and operable is crucial to and further enhances the business case for an economically viable and important rail asset to the area.

Very truly yours,



Daniel T. Behr
Principal -- EB5 Capital Partners.us, LLC.



From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 3:08 PM
To: Greg Starup
Subject: FRA RRIF

Just Google it...
This is how we will recap the railroad in 2 yrs.
With a tiny bit of help from Sen.Murray, we will have no problems.
Hence our desire to settle the STB action and move forward with a strong political alliance.

Doug Engle
ECRR
Sent while mobile...

Cindy Davied

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Tuesday, December 10, 2013 12:33 PM
To: Mark Blazer
Subject: Fwd: Boeing-STB Support Letter
Attachments: Boeing to STB 2013Dec10.doc; ATT00001.htm

Importance: High

Mark,

I need to trust that you will keep this between us for now as it may not come to fruition. We have a Chicago inside track to the senior executive level at Boeing. The conversation finally got far enough along that yesterday, I was asked to draft a letter. I don't know if we will be successful or not, but if we are, the dynamics of reactivation will change dramatically. We may be able to get the state to pay for the needed upgrades and track replacement. Since we are partnering, I want you to know.

I am having dinner with Steve Salzman tonight in SF.
Any insights?

Cheers!

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Doug Engle <dengle76@comcast.net>
Subject: Boeing-STB Support Letter
Date: 10 December 2013 at 10:00:40 AM PST
To: Myles Tobin <mtobin@fletcher-sippel.com>, Dan Behr <dtb@eb5capitalpartners.us>

Exhibit 127 Date 2/13/14
Witness Engle
Wade J. Johnson 323-0919

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

1 A. Period.
 2 Q. That's your statement, correct?
 3 A. Yes.
 4 Q. What's the basis for that statement as regards
 5 CalPortland, and I'm particularly interested in the "ready,
 6 willing and able" part?
 7 MR. MONTGOMERY: Object to the form.
 8 THE WITNESS: So CalPortland has a barge
 9 terminal in Marysville.
 10 Q. (By Mr. Cohen) It's Everett, isn't it?
 11 A. Well, it's actually closer to Marysville, I'd
 12 say, but it's on the north shore of the estuary that is the
 13 Snohomish River. Anyway, it's next to rail. The reason
 14 they have it there is it's a place where they have a barge
 15 terminal. So all of these aggregate companies, some day
 16 they'll all be gone. But right now there's aggregate from
 17 places around all of Puget Sound and up into Canada where
 18 you can go from the beach right into the barge and then it
 19 stays in the barge until it gets to the batch plant.
 20 That's one of the legs up that Salmon Bay Sand & Gravel has
 21 got, south end of its plant is on the beach.
 22 So they bring in barge loads of aggregate there.
 23 They would like to have that aggregate in downtown Bellevue
 24 because that's where the ready-mix plants are. They have
 25 their own ready-mix plants. They don't have one in

1 Bellevue, that I know of, but they might build one or buy
 2 somebody else's. They see us as a way to get aggregate,
 3 rock, sand, pea gravel, parts used to make ready-mix
 4 cement, concrete, they see us as a key to that. And so
 5 what they would have to do, and they've already gotten
 6 some, at least horseback estimates on how much would it
 7 cost to have Burlington Northern -- their main line to
 8 Canada goes right past their barge --
 9 Q. BNSF's main line to Canada?
 10 A. Yes. They would put in a switch there and the
 11 spur, so that they could bring in empty gondola cars or
 12 covered hopper cars, whatever, and dump their barges there.
 13 If it's big piles there, conveyor built things to offload
 14 them. And then load railcars there and let the Burlington
 15 Northern pick them up and haul them to Snohomish junction,
 16 set them out on our line, we'd haul them down through
 17 Woodinville and on down to Bellevue where they would set up
 18 some kind of a distribution yard for aggregate products.
 19 There's two or three batch plants there. I don't
 20 think they're trying to take over the ready-mix concrete
 21 business, although this would give them a heck of a leg up.
 22 Because those other people are trucking in a long tedious
 23 truck line to get into the heart of Bellevue these days,
 24 with the terrible traffic.
 25 Q. So --

1 A. So anyway, that's what they're angling for, is to
 2 set up a place where they can empty out carloads of sand
 3 and two or three or four types of gravel. And then feed it
 4 by truck to these batch plants that are in some cases only
 5 a few blocks away.
 6 Q. In Bellevue, you mean?
 7 A. In Bellevue.
 8 Q. Let me see if I have this straight. So
 9 CalPortland has an aggregate yard in Everett with a barge
 10 receiving capability there, right?
 11 A. Yeah, if you want to call it Everett. I think
 12 they actually refer to it as Marysville, but --
 13 Q. All right.
 14 A. -- anyway, it's there on the north shore of the
 15 estuary that is the Snohomish River.
 16 Q. That's fine. That facility does not currently
 17 receive rail service?
 18 A. It's right -- going right by the side of them.
 19 But it's just a place where they move from barges to piles
 20 to highway trucks and then they do their distribution. So
 21 they well -- well, look --
 22 Q. Okay. So the first thing they need to do is
 23 build a rail spur to the BNSF main line?
 24 A. Well, yeah, it's not the main line to Chicago.
 25 This is the main line to Canada.

1 Q. Right.
 2 A. So we had a meeting with Burlington Northern,
 3 they're pretty cool with that. They're not like no, no,
 4 no, we have too many trains, we couldn't handle another
 5 peddler freight. They said, Why not.
 6 Q. Okay. So if CalPortland built that spur, that
 7 would get them to the BNSF main line to Canada?
 8 A. Mm-hm (answers affirmatively).
 9 Q. And from there, BNSF would ship aggregate by rail
 10 to the Snohomish junction?
 11 A. Mm-hm (answers affirmatively).
 12 Q. Where you would pick it up, Ballard Terminal
 13 Railroad, and you would ship it to a trans-load facility in
 14 Bellevue?
 15 A. Well, it may just be a dump on the ground or dump
 16 into bins. And then the Cadmans, and I don't know, I can't
 17 think of the names of the other ready-mix plants, they
 18 would come up with their trucks and get loaded up, be a
 19 front-end loader or whatever. I mean, you handle the sand
 20 different than you handle the pea gravel and different than
 21 you handle the round rock for conventional ready-mix.
 22 Q. Do you have --
 23 A. But there would be a yard with those different
 24 products and the trucks would queue up and get loaded.
 25 Q. This is a for a trans-loading facility that

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PENGAD 800-631-6888
EXHIBIT
113

55

REDACTED

King County Department of Assessments

Fair, Equitable, and Understandable Property Valuations

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Department of Assessments
500 Fourth Avenue,
Suite ADM-AS-0708,
Seattle, WA 98104

Office Hours:
Mon - Fri
8:30 a.m. to 4:30 p.m.

TEL: 206-296-7300
FAX: 206-296-5107
TTY: 206-296-7888

Send us mail

- New Search
- Property Tax Bill
- Map This Property
- Glossary of Terms
- Area Report
- Property Detail

PARCEL

Parcel Number	282505-9294
Name	JTN PROPERTIES
Site Address	1917 120TH AVE NE 98005
Legal	1 LOT B BELLEVUE BLA #02-127108LW REC #20020624900005 SD BLA BEING POR OF S 1/2 OF NW 1/4 OF NW 1/4 & N 1/2 OF SW 1/4 OF NW 1/4 LY E OF RR IN SD STR

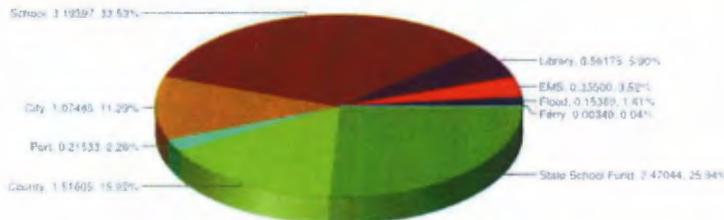
BUILDING 1

Year Built	1990
Building Net Square Footage	28832
Construction Class	MASONRY
Building Quality	AVERAGE
Lot Size	72929
Present Use	Warehouse
Views	N
Waterfront	



TOTAL LEVY RATE DISTRIBUTION

Tax Year: 2014 Levy Code: 0330 Total Levy Rate: \$9.52457 Total Senior Rate: \$6.21059



34.79% Voter Approved

Click here to see levy distribution comparison by year.

TAX ROLL HISTORY

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2013	2014	2,552,500	886,800	3,439,300	2,552,500	886,800	3,439,300
2012	2013	2,552,500	759,400	3,311,900	2,552,500	759,400	3,311,900
2011	2012	2,552,500	555,400	3,107,900	2,552,500	555,400	3,107,900
2010	2011	2,917,100	934,000	3,851,100	2,917,100	934,000	3,851,100
2009	2010	2,917,100	1,530,800	4,447,900	2,917,100	1,530,800	4,447,700
2008	2009	2,917,100	1,780,100	4,697,200	2,917,100	1,780,100	4,697,200
2007	2008	1,021,000	2,961,900	3,982,900	1,021,000	2,961,900	3,982,900
2006	2007	875,100	2,296,400	3,171,500	875,100	2,296,400	3,171,500
2005	2006	729,200	2,154,000	2,883,200	729,200	2,154,000	2,883,200
2004	2005	729,200	1,456,100	2,185,300	729,200	1,456,100	2,185,300
2003	2004	729,200	1,456,100	2,185,300	729,200	1,456,100	2,185,300
2002	2003	729,200	1,468,800	2,195,000	729,200	1,468,800	2,195,000
2001	2002	738,700	1,540,500	2,279,200	738,700	1,540,500	2,279,200
2000	2001	738,700	1,540,500	2,279,200	738,700	1,540,500	2,279,200
1999	2000	664,800	1,220,000	1,884,800	664,800	1,220,000	1,884,800
1998	1999	664,800	1,220,000	1,884,800	664,800	1,220,000	1,884,800
1997	1998	0	0	0	664,800	888,300	1,553,600
1996	1997	0	0	0	664,800	888,800	1,553,600

Reference Links:

King County Taxing Districts Codes and Levies (PDF)

King County Tax Links

Property Tax Advisor

Washington State Department of Revenue (External link)

Washington State Board of Tax Appeals (External link)

Board of Appeals/Equalization

Districts Report

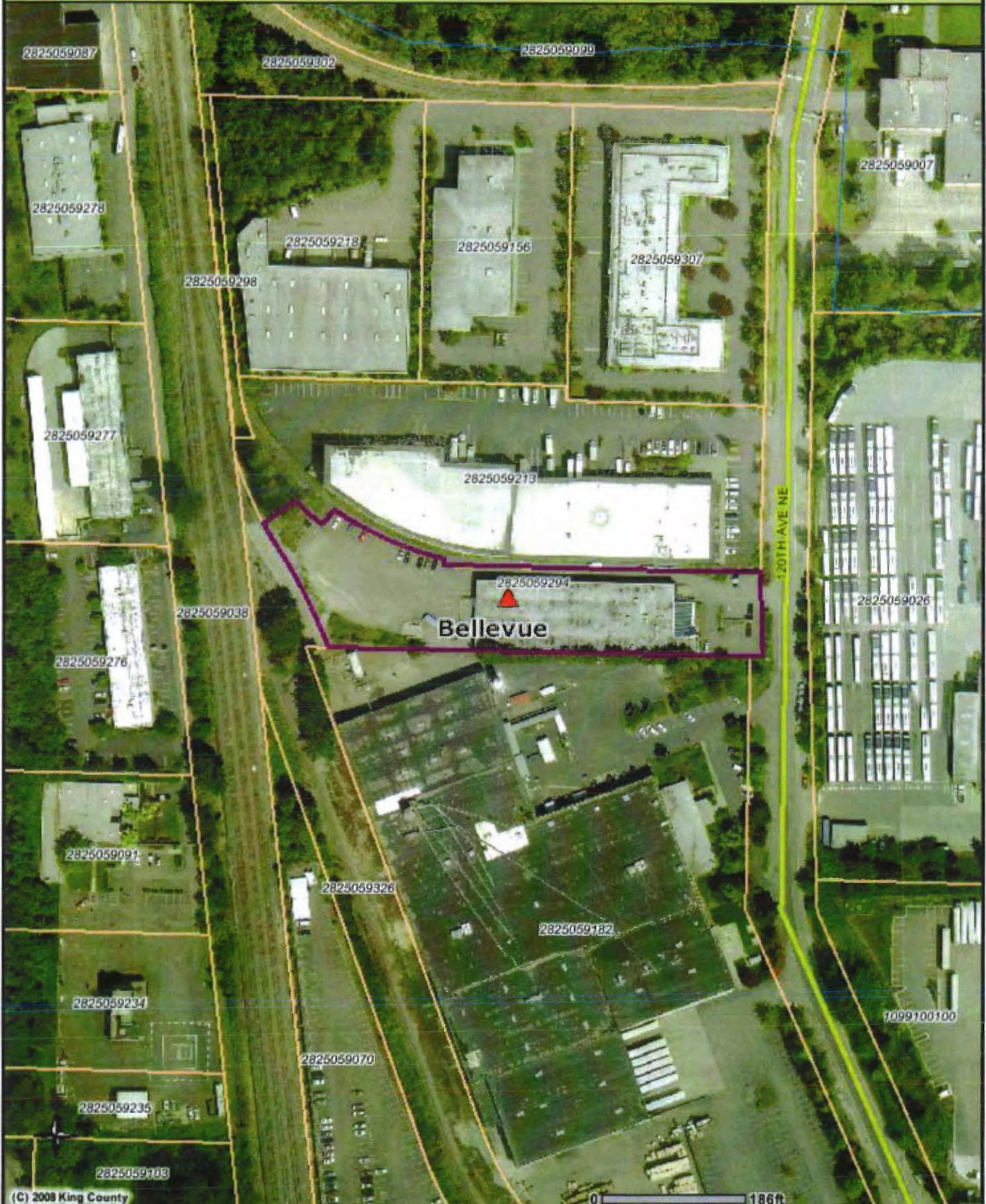
iMap

Recorder's Office

Scanned images of surveys and other map documents

Exhibit 134 Date 2/13/14
Witness Engle
Wade J. Johnson 323-0919

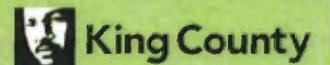
iMAP



(C) 2008 King County

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Date: 2/19/2014 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/iMAP>)





18016 177th Ave SE
 Monroe, WA 98272

Directions Search nearby more

Maps Labs - Help
 Google Maps - ©2014 Google - Terms of Use - Privacy

Exhibit 106 Date 2/7/14
 Witness Day
 Wade J. Johnson 323-0919



Aggregates Vest
crossing Area SP

Exhibit 107 Date 2/7/14
Witness Day
Wade J. Johnson 323-0919



.....
GENERAL MILLS

September 26, 2013

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

REF: STB FINANCE DOCKET NO. 35731
BALLARD TERMINAL RAILROAD COMPANY, LLC
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown:

I am writing in support of requests to restore rail service direct to Bellevue, Washington. We currently deliver bulk truckloads of flour to a large customer there, and delivering by rail would be a large environmental and competitive benefit.

Thank you for your consideration.

Very truly yours,

Brenda Mengelkoch

Bakery Flour Sales Supervisor
General Mills

223661

SAFeway 

August 12, 2008

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W.
Washington, DC 20423

Re: STB Docket No. AB-6 (Sub-No. 465X), BNSF Railway Company –
Abandonment Exemption – In King County, Washington

Dear Acting Secretary Quinlan:

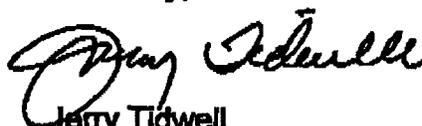
Safeway supports the proposed abandonment by BNSF Railway Company ("BNSF") in this proceeding of the 12.55-mile rail line located between Milepost 11.25, at Wilburton, and Milepost 23.80, in Woodinville, in King County, Washington (the "Line").

Safeway has two facilities on the Line and has used BNSF's services to ship food and packaging products over the Line. Safeway has agreed to start using a local transloader, located about 10 miles from our facilities, to meet our shipping needs commencing in September 2008. Once the transload operations commence, Safeway will no longer need the Line to transport its products

The abandonment of the Line will not result in an abuse of market power because the local transloader will provide Safeway with alternative transportation services. Safeway will continue select alternative service options based on their overall benefit to our facilities.

Accordingly, Safeway supports the proposed abandonment by BNSF of the Line. Safeway respectfully urges the Board expeditiously to grant the requested exemption in this proceeding.

Sincerely,



Jerry Tidwell
Senior Vice President
Supply Operations

Safeway Inc.
3918 Stonemage Mall Road
Pleasanton, CA 94588-3229

From: Thomas English Thomas.English@genmills.com
Subject: RE: Ballard Terminal contact
Date: 19 August 2013 at 10:09 AM
To: Doug Engle Doug.Engle@EsCRail.org

Doug,

Is there a case number that I can pull off the STB website?

*Thanks
Tom*

thomas.english@genmills.com
Office: 763-764-3769
Cell: 612-910-7079
(Please note new cell)



From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Saturday, August 17, 2013 12:28 PM
To: Thomas English
Cc: James Forgette
Subject: Re: Ballard Terminal contact
Importance: High

Here is a well written letter and map from another shipper on the line who wants service as an example of what's needed.

Doug
mobile: +1.425.891.4223

On 16 Aug 13, at 12:41 PM, Doug Engle <doug.engle@escrail.org> wrote:

Tom,

Thank you VERY much for taking my call.
An executed letter received by the 20th is very important and please copy us on it via PDF.

Exhibit 135 Date 2/13/14
Witness Engle
Wade J. Johnson 323-0919

The fact that Safeway previously had service is important.
Key words for the STB are "ready, willing and able" to take delivery.
And, specifically "request service" from Ballard Terminal Railroad Co.

<STB Template 2013Aug7.doc>

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

See **More** from James Forgette

From: Thomas English Thomas.English@genmills.com
Subject: RE: Eastside RR Status Update
Date: 24 September 2013 at 1:08 PM
To: Doug Engle Doug.Engle@EsCRail.org

E-mail has been received.

*Thanks
Tom*

thomas.english@genmills.com
Office: 763-764-3769
Cell: 612-910-7079
(Please note new cell)



From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Tuesday, September 24, 2013 3:02 PM
To: Thomas English
Subject: Re: Eastside RR Status Update

Please acknowledge receipt ASAP.

Doug
mobile: +1.425.891.4223

On 24 Sep 13, at 1:00 PM, Doug Engle <Doug.Engle@EsCRail.org> wrote:

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Doug Engle <Doug.Engle@EsCRail.org>
Subject: Re: Eastside RR Status Update
Date: 24 September 2013 12:57:02 PM PDT

Exhibit 136 Date _____
Witness _____
Yvonne J. Johnson 323-0919

To: Thomas English <Thomas.English@genmills.com>

This is the bulk of them.

Plus a drywall company in Kirkland that is coming along and a letter of credit for \$10M.

<EB5 Partners to STB 2013Aug21.pdf>

<Snohomish County Eastside Rail Corridor Position March 21 2013.pdf>

<3-25-13 CalPortland Letter to Cynthia Brown.doc>

<6-15-13 Support Letter From Paul Nerdrum.pdf>

<AAWA 13 Ltr STB WDVS C 05-21.pdf>

<Boise Cascade ESCR 2013Mar.pdf>

<CalPortland Eastside Community Rail Letter.pdf>

<Eastside Rail Corridor Support Letter.pdf>

<Economic Alliance of Snohomish County - Letter of Support - Eastside Rail Corridor to STB.pdf>

<ECR Support Columbia Winery.pdf>

<Google support Mar10.pdf>

<Master Builders Assoc 228035.pdf>

<RJB Letter to STB.pdf>

<Snohomish ltr - Eastside Rail.pdf>

<Spectrum 2013-05-01-Eastside Rail Support Letter.pdf>

<SteMichellesupportltr.docx>

<TasteWAsupportletter.pdf>

<Wolford react support ltr.pdf>

<Woodinvilleletter.pdf>

Doug

mobile: +1.425.891.4223

On 24 Sep 13, at 11:40 AM, Thomas English <Thomas.English@genmills.com> wrote:

Doug,

Legal has asked if you could provide a list of your supporters.

Can you provide a list of companies who will be referenced in support to your letter(s) to the STB?

Thanks

Tom

thomas.english@genmills.com

Office: 763-764-3769

Cell: 612-910-7079

(Please note new cell)

<image001.png>

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]

Sent: Tuesday, September 24, 2013 12:54 PM

To: Thomas English

Subject: Re: Eastside RR Status Update

Absolutely not.

That is not how we work.

Doug

mobile: +1.425.891.4223

*Common carrier?
price discrimination?
discount to everyone?
or rail contract?*

On 24 Sep 13, at 10:53 AM, Thomas English <Thomas.English@genmills.com> wrote:

Good afternoon Doug,

~~Have you contacted any vendors who would be General Mills competitors going into Safeway?~~
I will need to forward your reply to the General Mills legal department.

Thanks

Tom

thomas.english@genmills.com

Office: 763-764-3769

Cell: 612-910-7079

(Please note new cell)

<image001.png>

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]

Sent: Monday, September 23, 2013 10:27 AM

To: Thomas English

Subject: Eastside RR Status Update

Tom,

We have enough support now to get \$10+ million from the state to upgrade the tracks, and we have private investment potential coming in between \$10-30M for other upgrades and the excursion train.

What we must absolutely must have is General Mills support.

Knowing that General Mills will get the letter this week will allow us to proceed, but we need to know today which direction this is going. Otherwise, the reactivation effort is dead.

I look forward to your update.

Sincerely, we are in General Mills hands.

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

From: **Thomas English** Thomas.English@genmills.com 
Subject: **RE: Eastside RR Status Update**
Date: 26 September 2013 at 6:12 AM
To: Doug Engle Doug.Engle@EsCRail.org

Good morning,

I will have a letter for you shortly.

Thanks
Tom

thomas.english@genmills.com

Office: 763-764-3769

Cell: 612-910-7079

(Please note new cell)



From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Tuesday, September 24, 2013 10:16 AM
To: Thomas English
Subject: Re: Eastside RR Status Update
Importance: High

Thank you, Tom.

This is critically important to us.

We are in the final process of becoming a handling carrier for BNSF.

We can offer General Mills a two year 20% discount on our portion.

I believe our portion of the rate is roughly \$500/car.

The rebate to General Mills would be \$100/car if that will help with the letter.

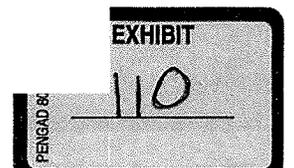
Truly yours,

Doug
mobile: +1.425.891.4223

[See More](#) from Thomas English

REDACTED

CONFIDENTIAL BTR 000551



REDACTED

CONFIDENTIAL BTR 000552

REDACTED

CONFIDENTIAL BTR 000553

JAN 27 2014

APPLICATION FOR SPECIAL USE PERMIT

Applicant Name: Hollywood Garage, LLC c/o Point 32 Kim On

Organization/Company Name: Point 32

Mailing Address: 1501 Madison Ave, Suite 400

City: Seattle, WA Zip: 98122 Telephone: (Day) 206 404 9541 (Eve) —

E-mail address: Kovr@point32.com Fax: —

Location of proposed use/alteration (include vicinity map, showing cross-streets):
14508 Woodinville Redmond Rd.
Woodinville, WA 98072

Parcel Number: 3405100000 - ction: — Township: — Range: — Kroll Page: —

Precise description of proposed use/alteration (Be specific, attach additional pages if necessary)
Plant trees on KC property adjacent to
14508 Woodinville - Redmond Road property

Proposed start date and end date of project: Begin Jan 8 2014 End Jan 8, 2014

Public Private Is the proposed use/alteration for public or private purposes?

Yes No Is the proposed use/alteration for commercial purposes?

Yes No Does the proposed use/alteration provide a mutual benefit for King County?

If yes, please explain. Planting trees will help minimize blackberry & invasive plants in lot near vacant strip of land. Will also enhance future lake trail.

Yes No Are there any Local, County, State or Federal permit applications pending?

If yes, please list permit or application numbers: —

Yes No Are there any known sensitive areas, drainage features, erosion problems or unique site conditions in or near the proposed use?

If yes, please explain. —

Signature of Applicant: [Signature] Date: 1.10.14

County Use Only	Date Received:	Reviewer:	Permit #:
	<input type="checkbox"/> Parks <input type="checkbox"/> Water and Land Resources <input type="checkbox"/> Wastewater Treatment <input type="checkbox"/> Transit <input type="checkbox"/> Road Services <input type="checkbox"/> Solid Waste <input type="checkbox"/> Other	<input type="checkbox"/> Private Use <input type="checkbox"/> Commercial Use <input type="checkbox"/> Utility Use <input type="checkbox"/> Mutual Benefit	<input type="checkbox"/> Temporary Use <input type="checkbox"/> Long-term Use

To Jesus

12.4.13

Vin Train

Design
Pencil
Stamps

JAN 27 2014

Working For Jesus, Inc.

GRAHAM BARA

1200 12th Avenue
Seattle, Washington 98101
206.452.8822

GERLACH
ARCHITECTS
1000 1st Avenue
Seattle, WA 98101
206.461.1111

PERMIT
SET

**Hollywood
Garage**
1500 WOODMAN ALEXANDER RD
WOODVILLE, WA 98072

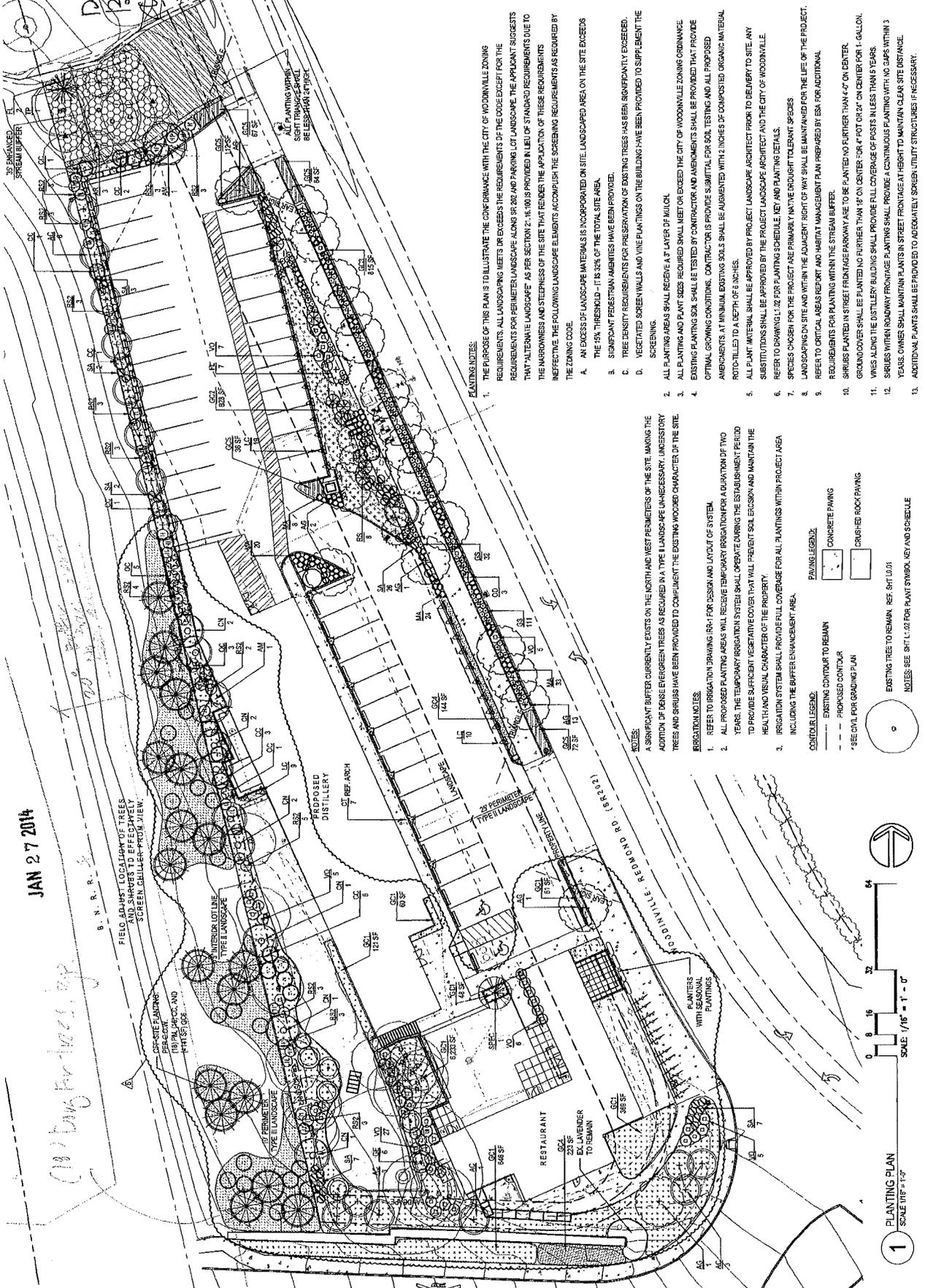
Project No. 1017

Date: MAY 25, 2012
Revised: MAY 20, 2013
Scale: 1/16" = 1'-0"

Sheet Name: PLANTING PLAN

Sheet: L1.01

Exhibit 54, Page 3 of 3



- PLANTING NOTES:**
- THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE CONFORMANCE WITH THE CITY OF WOODVILLE ZONING REQUIREMENTS. ALL LANDSCAPING MEETS OR EXCEEDS THE REQUIREMENTS OF THE CODE EXCEPT FOR THE REQUIREMENTS FOR PERIMETER LANDSCAPE ALONGS SR 202 AND PARKING LOT LANDSCAPE. THE APPLICANT SUGGESTS THAT "ALTERNATE LANDSCAPE" AS PER SECTION 2.16.100 IS PROVIDED IN LIEU OF STANDARD REQUIREMENTS DUE TO THE MATURITY AND STEEPNESS OF THE SITE THAT RENDER THE APPLICATION OF THESE REQUIREMENTS INEFFECTIVE. THE FOLLOWING LANDSCAPE ELEMENTS ACCOMPLISH THE SCREENING REQUIREMENTS AS REQUIRED BY THE ZONING CODE.
 - AN EXCESS OF LANDSCAPE MATERIALS IS INCORPORATED ON SITE. LANDSCAPED AREA ON THE SITE EXCEEDS THE 5% THRESHOLD - IT IS 52% OF THE TOTAL SITE AREA.
 - STANDARD PESTICIDE TREATMENTS HAVE BEEN PROVIDED.
 - THE DENSITY REQUIREMENTS FOR PRESERVATION OF EXISTING TREES HAS BEEN SIGNIFICANTLY EXCEEDED.
 - VEGETATED SCREEN WALLS AND VINE PLANTINGS ON THE BUILDING HAVE BEEN PROVIDED TO SUPPLEMENT THE SCREENING.
 - ALL PLANTING AREAS SHALL RECEIVE A 2" LAYER OF MULCH.
 - EXISTING PLANTING SOIL SHALL BE TESTED BY CONTRACTOR AND AMENDMENTS SHALL BE PROVIDED THAT PROVIDE OPTIMAL GROWING CONDITIONS. CONTRACTOR IS PROVIDED SUBMITTAL FOR SOIL TESTING AND ALL PROPOSED AMENDMENTS AT MINIMUM EXISTING SOILS SHALL BE AUGMENTED WITH 2 INCHES OF COMPOSTED ORGANIC MATERIAL ROT-TILLED TO A DEPTH OF 6 INCHES.
 - ALL PLANT MATERIAL SHALL BE APPROVED BY PROJECT LANDSCAPE ARCHITECT PRIOR TO DELIVERY TO SITE. ANY SUBSTITUTIONS SHALL BE APPROVED BY THE PROJECT LANDSCAPE ARCHITECT AND THE CITY OF WOODVILLE REFER TO DRAWING L1.02 FOR PLANTING SCHEDULE, KEY AND PLANTING DETAILS.
 - SPECIES CHOSEN FOR THE PROJECT ARE PRIMARILY NATIVE DROUGHT TOLERANT SPECIES.
 - LANDSCAPING ON SITE AND WITHIN THE ADJACENT RIGHT OF WAY SHALL BE MAINTAINED FOR THE LIFE OF THE PROJECT.
 - REFER TO CRITICAL AREA REPORT AND HABITAT MANAGEMENT PLAN PREPARED BY ESA FOR ADDITIONAL REQUIREMENTS FOR PLANTING WITHIN THE STREAM BUFFER.
 - SHRUBS PLANTED IN STREET FRONTAGE PARKWAY ARE TO BE PLANTED NO FURTHER THAN 4'-0" ON CENTER. GROUND COVER SHALL BE PLANTED NO FURTHER THAN 18" ON CENTER FOR 4" POT OR 24" ON CENTER FOR 1-GALLON.
 - VINES ALONG THE DISTILLERY BUILDING SHALL PROVIDE FULL COVERAGE OF PASTIS IN LESS THAN 8 YEARS.
 - AREAS WITHIN ROADWAY FRONTAGE PLANTING SHALL PROVIDE COVERAGE OF PASTIS WITH NO GAPS WITHIN 3 YEARS. OWNERS SHALL MAINTAIN PLANTING IN STREET FRONTAGE AT HEIGHT TO MAINTAIN CLEAR SITE DISTANCE.
 - ADDITIONAL PLANTS SHALL BE PROVIDED TO ADEQUATELY SCREEN UTILITY STRUCTURES IF NECESSARY.

- ERIGATION NOTES:**
- A SIGNIFICANT BUFFER CURRENTLY EXISTS ON THE NORTH AND WEST PERIMETERS OF THE SITE. MAKING THE ADDITION OF DENSE EVERGREEN TREES AS REQUIRED IN A TYPE II LANDSCAPE UNNECESSARY. UNDESIRABLE TREES AND SHRUBS HAVE BEEN PROVIDED TO COMPLEMENT THE EXISTING WOODED CHARACTER OF THE SITE.
- ERIGATION NOTES:**
- REFER TO IRRIGATION DRAWING IRR-1 FOR DESIGN AND LAYOUT OF SYSTEM.
 - ALL PROPOSED PLANTING AREAS WILL RECEIVE TEMPORARY IRRIGATION FOR A DURATION OF TWO YEARS. THE TEMPORARY IRRIGATION SYSTEM SHALL OPERATE DURING THE ESTABLISHMENT PERIOD TO PROVIDE SUFFICIENT VEGETATIVE COVER THAT WILL PREVENT SOIL EROSION AND MAINTAIN THE HEALTH AND VISUAL CHARACTER OF THE PROPERTY.
 - IRRIGATION SYSTEM SHALL PROVIDE FULL COVERAGE FOR ALL PLANTINGS WITHIN PROJECT AREA INCLUDING THE BUFFER ENHANCEMENT AREA.

PAVING LEGEND:

- CONCRETE PAVING
- CRUSHED ROCK PAVING

CONTOUR LEGEND:

- EXISTING CONTOUR TO REMAIN
- PROPOSED CONTOUR
- SEE CIVIL FOR GRADING PLAN

EXISTING TREE TO REMAIN - REF. SHT. L1.01

NOTES: SEE SHT. L1.02 FOR PLANT SYMBOL KEY AND SCHEDULE

SCALE: 1/16" = 1'-0"

1 PLANTING PLAN
SCALE 1/16" = 1'-0"

From: Sullivan, Linda-DNRP [<mailto:Linda-DNRP.Sullivan@kingcounty.gov>]
Sent: Monday, March 03, 2014 3:54 PM
To: Ferguson, Hunter O.
Cc: Marcuse, Andrew
Subject: RE: King County's Trail Planning Contract

That is correct, with this clarification: The work we are planning covers the 15.6 miles of county-owned, railbanked right of way in the ERC between Woodinville and Renton, including Bellevue.

LINDA J. SULLIVAN, PMP
PROJECT MANAGER, EASTSIDE RAIL CORRIDOR TRAIL MASTER PLANNING PROJECT
KING COUNTY PARKS
DEPARTMENT OF NATURAL RESOURCES AND PARKS
E-MAIL: LINDA-DNRP.SULLIVAN@KINGCOUNTY.GOV

PLEASE NOTE MY NEW PHONE NUMBER: 206.477.4533

From: Ferguson, Hunter O. [<mailto:HOFERGUSON@stoel.com>]
Sent: Monday, March 03, 2014 3:47 PM
To: Sullivan, Linda-DNRP
Subject: King County's Trail Planning Contract

Good afternoon, Linda.

I understand you might be able to provide me with information about the County's plan to contract with an outside firm to plan for development of a trail on the railbanked right-of-way of the Eastside Rail Corridor between Woodinville and Bellevue.

Is it correct to say that the County is currently finalizing a \$1.28 million contract with the selected firm, Parametrix?

Thank you.

-Hunter Ferguson

Hunter Ferguson

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