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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

THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROAD, LLC'S MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Ballard Terminal Railroad Company, LLC ("Ballard") asks the Board to enjoin the City of Kirkland ("Kirkland") from salvaging the track and ties on a railbanked right of way that Kirkland owns, pending the Board's decision on Ballard's petitions to vacate a NITU order and reactivate rail service on a 12 mile right of way ("the Line") that includes Kirkland's segment.[1] The Board has authority under 49 U.S.C. 721(b)(4) to grant injunctive relief when necessary to prevent irreparable harm. The moving party must show that: (1) it will likely prevail on the merits, (2) it will suffer irreparable harm in the absence of an injunction, (3) the issuance of an injunction will not substantially harm other interested parties, and (4) the public interest supports granting an injunction.[2] In this case two dominant facts control the outcome of Ballard's motion. First and most important, Ballard presents no evidence of a current demand for rail freight service on the Line. Second, Ballard does not currently hold and has no plan to obtain the property rights required to provide rail service on the Line. For these reasons, salvage of the rails will cause Ballard no harm, and Ballard is unlikely to prevail on the merits of its reactivation petition.

Two years ago the Board considered petitions by GNP Railway, Inc. ("GNP") to vacate a NITU and reactivate rail service on the Redmond Spur, a seven mile segment that intersects the Line at Woodinville, Washington.[3] This case should be captioned "The Return of GNP." Ballard's partner here is the former CFO of the insolvent GNP. Like the Redmond Spur, the Line traverses neighborhoods of high property values where rail-dependent businesses can no

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[1] A map showing the Line and connected rail corridors is attached hereto as Appendix A.

[2] *See American Chemistry Council, the Chlorine Institute, Inc., the Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway and RailAmerica, Inc.*, STB Docket No. NOR 42129, slip op. at 4 (STB served May 4, 2012) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

[3] *See GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407 (STB served June 15, 2011).

longer afford to operate. Like Ballard, GNP masked its real plans for the corridor with assertions of demand for freight service. And like Ballard, GNP asked the Board to enjoin salvage of the track on the Redmond Spur. The Board denied GNP's motion, and it should reject Ballard's motion for the same reasons.

Kirkland has a contract on hold to salvage the rails on its segment of the Line. The work can occur in 2013 if Kirkland issues a notice to proceed by August 1, 2013. To meet this deadline, Kirkland asks the Board to rule expeditiously.

II. STATEMENT OF FACTS

A. BNSF Discontinued Rail Service On The Line For Lack Of Freight Demand.

The Line that is the subject of Ballard's petitions runs 12.6 miles between the cities of Bellevue and Woodinville, Washington.[4] Its north end connects to an active 14 mile segment ("the Freight Segment") that runs between Woodinville and the BNSF main line in the City of Snohomish, Washington.[5] To the south the Line terminates about 1.3 miles past the southerly end of the segment that Ballard proposes to reactivate.

In August 2008 BNSF Railway Company ("BNSF") petitioned for exemption to abandon the Line.[6] BNSF explained that freight traffic had "been declining steadily in recent years," and that there was insufficient freight demand to justify continued operation.[7] At the time, there were only two shippers on the Line, both of which supported the proposed abandonment.[8] BNSF

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[4] *See BNSF Railway Company – Abandonment Exemption – In King County, WA*, STB Docket No. AB-6 (Sub-No. 465X), slip op. at 1 (STB served Nov. 28, 2008) (referred to hereinafter as the "*NITU Order*"). Ballard proposes to reactive service on the northerly 11.2 miles of the 12.6 mile Line. *See* Ballard's Verified Petition For Exemption at 2; Appendices A and B to this brief.

[5] The maps attached hereto as Appendices A and B show the connections between the Freight Segment, the Line, and the railbanked segment south of the Line.

[6] *See NITU Order*, *supra* note 4, slip op. at 1.

[7] *See* BNSF's Petition for Exemption at 4, 5, 10 (Ex. 1). (All references to "Ex." herein are to the exhibits filed herewith in support of Kirkland's opposition.)

[8] *Id.* at 4.

explained that the loss of freight demand reflected fundamental changes in the land use and economy of East King County:

> The Line offers limited, if any, freight rail growth opportunities, even for a short line operator. Land use around the Line is clearly moving away from freight applications, if not from industrial and low-end commercial applications altogether. Land values along the right-of-way are in the $25-$40 per square foot range which is well beyond what a rail-oriented Pacific Northwest manufacturer or distributor would pay for real estate. Consequently, there is little chance of significantly increasing carload traffic on the Line.[9]

BNSF planned to sell the Line to the Port of Seattle (the "Port"), and to enter into a trail use agreement with King County.[10] In reviewing BNSF's petition, the Board observed that "[t]here are *no* other prospects for future rail traffic."[11] Based on these findings, the Board authorized BNSF to railbank or abandon the Line.[12]

To ensure that no potential opportunity to preserve rail service was overlooked, the Board invited any interested party to submit an Offer of Financial Assistance ("OFA").[13] Ballard and GNP considered filing an OFA but passed on that option.[14] No one filed an OFA within the time authorized by the NITU Order.

On December 18, 2009 BNSF conveyed the Line to the Port, subject to an easement and trail use agreement with King County. This conveyance was part of a larger transaction in which the Port acquired the Line plus adjoining segments from BNSF, for $81.4 million and other

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[9] *Id.* at 13.

[10] *See NITU Order*, *supra* note 4, slip op. at 2.

[11] *Id.* at 3 (emphasis added).

[12] *Id.* at 6.

[13] *See id* at 4, 7.

[14] *See* Transcript of Deposition upon Oral Examination of Douglas Engle ("Engle Tr.") at 174:1-175:1 (Ex. 2)

consideration.[15] The segments south of Woodinville were railbanked, with King County assuming the role of interim trail user.[16]

To ensure that shippers located on the Freight Segment would continue to receive rail service BNSF, with the Port's approval, selected Ballard and its then-business partner, GNP, to provide freight service on the Freight Segment.[17] GNP's creditors subsequently forced GNP into bankruptcy. Through the insolvency proceedings Ballard's current partner, Eastside Community Rail, LLC ("ECR") – which is owned by Douglas Engle, the former CFO of GNP – acquired GNP's freight easement over the Freight Segment, while Ballard continued to run the actual freight operations under contract with ECR.[18] The Board recently allowed Ballard to lease the Freight Segment from ECR.[19]

B. Ballard And ECR Commenced Efforts To Launch An Excursion Train.

Ballard commenced service on the Freight Segment on January 11, 2010. Traffic has declined steadily since that time, from 270 cars in 2010 to 213 cars in 2012.[20] Ballard lost money in 2011 and 2012 on gross revenues of $500,000 from all of three of its short lines.[21] The Ballard and Meeker lines, located in Seattle and Puyallup, Washington, respectively, underwrite the cost of Ballard's service on the Freight Segment.[22]

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[15] *See* Seventh Amendment to Purchase and Sale Agreement of December 17, 2009 between BNSF, the Port, and King County (Ex. 3).

[16] *See* Notice of Consummation of Trail Use Agreement (March 8, 2010) (Ex.4). The railbanked segments are depicted on the maps attached hereto as Appendices A and B.

[17] *See* Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 2-3 (Ex. 5).

[18] *See Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY, Inc.*, STB Docket No. FD 35692 (STB served Nov. 23, 2012).

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

[20] *See* Transcript of Deposition upon Oral Examination of Byron Cole ("Cole Tr.") at 46:11-47:9 (Ex. 6); Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 2-3 (Ex. 5).

[21] *See* Cole Tr. at 56:7-57:2 (Ex. 6).

[22] *See id.* at 84:1-8, 169:10-170:6, 226:5-12.

Because Ballard makes no money on the Freight Segment, Ballard has had no funds to invest in maintenance of the track. In January 2013 ECR prepared a funding request for presentation to members of the Washington State Legislature explaining that GNP completed little maintenance during its three years of ownership, "which has left the track in dire condition," and that the track was "in need of substantial rehabilitation to maintain any operations per the current freight operator Ballard."[23] Ballard performed no maintenance in 2012, and plans no maintenance in 2013, other than spraying for weeds.[24] As Byron Cole explained to the bankruptcy judge overseeing the dissolution of GNP:

> What is clear is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure. It is not realistic to forecast that huge increases in the amount of freight traffic are just around the bend.[25]

For Ballard and its partner, freight service was never the foundation for a profitable business. Ballard and ECR hope to rescue their investment in the Freight Segment by starting an excursion train from Bellevue to Snohomish, the "Bounty of Washington Tasting Train." According to ECR, "Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone."[26] In November 2012, Mr. Engle approached Kirkland City Manager Kurt Triplett about the excursion train and stated that the railroad "would drop its freight plans" if Kirkland would agree to facilitate the operation of an excursion train on the Line and, further, that "Byron" was investigating "upgrade options" for the rail infrastructure.[27] Mr.

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[23] *See* Eastside Community Rail, LLC's Eastside Rail Corridor Rehabilitation Proposal (January 28, 2013) at 1 (Ex. 7); Engle Tr. at 99:10-16, 100:3-10 (Ex. 2); Cole Tr. at 60:6-8, 62:25-63:3 (Ex. 6).

[24] Cole Tr. at 63:4-21, 70:17-71:8 (Ex. 6).

[25] Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 4 (Ex. 5).

[26] *See* Eastside Community Rail – Business Plan at 4 (Ex. 8).

[27] *See* Email of November 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9); Engle Tr. at 197:19-198:18 (Ex. 2); Verified Statement of Kurt Triplett at ¶¶ 10, 11.

Cole testified that he would probably say "the heck with the freight business too" if Ballard and ECR were able to run an excursion train in lieu of freight.[28]

Ballard's filings with the Board hardly mention ECR, and do not mention Doug Engle at all. But Mr. Engle, the former CFO of GNP, is the de facto general manager of the joint venture between Ballard and ECR. Engle recruited Ballard's two "shippers," CalPortland and Wolford Trucking.[29] Engle is paying a portion of Ballard's legal fees in this proceeding,[30] and Engle testified that he considers ECR a "party in interest" in this proceeding.[31] Engle tried to recruit other shippers for the Line.[32] Engle arranged for contractors to survey the Freight Segment to estimate the cost of rehabilitating the Line.[33] Engle, not Byron Cole, produced the spreadsheet that supports Cole's estimate of the cost of replacing the rails in Kirkland.[34] Engle looked for locations in Bellevue to site a trans-loading facility.[35] Engle approached suburban cities to plea

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[28] Cole Tr. at 163:9-164:14 (Ex. 6).

[29] Mr. Cole testified that he had no contacts with CalPortland, and that all of the contacts were between CalPortland and Doug Engle. *See* Cole Tr. 138:10-139:5 (Ex. 6). According to Mr. Cole, Doug Engel likely contacted BNSF to inquire about a possible interchange arrangement to carry freight from CalPortland's plant to the Freight Segment. *See id.* at 140:8-17, 141:9-11.

According to Bobby Wolford of Wolford Trucking & Demolition, Inc. ("WTD"), he has not discussed the provision of freight service with Ballard but, rather, communicated with Mr. Engle and other ECR representatives. *See* Transcript of Deposition upon Oral Examination of Bobby Wolford ("Wolford Tr.") at 15:5-16:8, 109:2-18 (Ex. 10). And according to Mr. Wolford, it was Doug Engle who was responsible for the estimate of excavation spoils included in Mr. Wolford's letter of support and for determining where such materials would be shipped. *See id.* at 100:9-12, 102:3-7.

[30] Engle Tr. at 9:16-21 (Ex. 2).

[31] *Id.* at 16:10-14.

[32] Cole Tr. 117:13-25 (Ex. 6).

[33] *Id.* at 73:7-74:3.

[34] *Id.* at 151:21-152:5, 154:9-155:17, 156:19-10, 158:13-16; Verified Statement of Byron Cole at 3 (Ex. 11); Ballard's Responses to Kirkland's Interrogatories at 2-3 (Ex. 12).

[35] *See* Email of Oct. 17, 2012 from Doug Engle to Michael Williams (explaining search for property that "could be used for a batch plant and intermodal site") (Ex. 13).

for support for the excursion train.[36] At Mr. Cole's direction, Engle lobbied for state money to rehabilitate the Freight Segment.[37] Byron Cole and Doug Engle both testified that Ballard would run the excursion train.[38] As Mr. Cole testified, "Doug Engle and I have been joined at the hip for three years."[39]

Ballard and ECR's excursion train plan faces two major obstacles. First, the excursion business requires proximity to population centers and the cruise ship terminals in Seattle. The Freight Segment runs only as far south as Woodinville.[40] The partners wanted to start their excursion train in Bellevue.[41] For this they needed access to the Line. Kirkland lies between Woodinville and Bellevue.[42] When Kirkland announced its plans to salvage the rails Doug Engle urgently requested a meeting with Kirkland City Manager Kurt Triplett. In that meeting, ECR offered that if Kirkland would delay track removal Ballard would "drop its freight plans and therefore reactivation to pursue this process . . . ."[43]

A second major obstacle to the "Bounty of Washington Tasting Train" is that the Freight Segment is in FRA "excepted" condition.[44] To carry passengers ECR told the Port that the line

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[36] *Id.* Additionally, Mr. Cole testified that Doug Engle arranged meetings with King County, Sound Transit and Kirkland to promote continued rail use of the Line. Mr. Cole did not always attend those meetings. When asked why Doug Engle made those arrangements when he did not work for Ballard, Mr. Cole responded, "I'm not sure that makes much difference." Cole Tr. 104: 4-13 (Ex. 6).

[37] *See id.* 74:5-22, 83:3-7 (Ex. 6).

[38] *See id.* Tr. 170:10-11, 171:10-172:4, 172:14-19 (Ex. 6); Engle Tr. at 57:7-58:7 (Ex. 2).

[39] Cole Tr. 157:10-11 (Ex. 6).

[40] *See* Appendix A.

[41] *See* Cole Tr. at 54:15-19 (Ex. 6)

[42] *See* Appendices A and B.

[43] *See* Email of Nov. 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9); Verified Statement of Kirkland City Manager Kurt Triplett ("Triplett Verified Statement") at ¶¶ 10, 11.

[44] *See* Letter of January 18, 2013 from RailWorks to Douglas Engle at 3-4 (Ex. 14); Cole Tr. at 62:16-24 (Ex. 6).

requires at least $6.26 million in renovation.[45] Between January and March of this year Doug Engle lobbied the Port of Seattle, which owns the Freight Segment, to pursue an appropriation from the Washington legislature to upgrade the Freight Segment to FRA Class 2 condition: "The track upgrade objective is required for a favorable excursion train experience . . . ."'[46] The Port's real estate director expressed reservations about whether the Port could invest public money in a project that would mainly benefit ECR and Ballard. Doug Engle responded as follows:

> The Port is simply maintaining its own asset, which the [GNP] bankruptcy process devalued beyond sustainable.
>
> ECRR can sustain maintenance if the track has material capital improvements -- $6.2M.
>
> If the track is not maintained, Ballard Terminal RR may cease operations, then the line would be abandoned – how would that look for the Port?
>
> *No, absolutely no other RR will come in and make this investment for the couple hundred cars of freight and excursion. The Temple's, Iowa Pacific Holdings and ECRR is telling the Port the same story, either invest in your infrastructure or it's dead.*[47]

ECR, Ballard and their allies did not persuade the 2013 Washington legislature to appropriate funds for the rehabilitation of the Freight Segment.[48] ECR, Ballard, and their allies also need funds to upgrade the track on the Line.[49] They hope to try again in 2015.[50]

Even if Ballard and ECR cannot start an excursion train on the Line, they have discovered a way to make money from it. The Freight Segment and the Line transect heavily

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[45] *See* Eastside Community Rail, LLC, "Eastside Rail Corridor Rehabilitation Proposal" (January 28, 2013) at 2 (Ex. 7).

[46] *See id.* at 1 (Ex. 7).

[47] E-mail of March 27, 2013 from Doug Engle to Port of Seattle Real Estate Director Joe McWilliams (emphasis added) (Ex. 15).

[48] *See* Engle Tr. at 90:9-91:16 (Ex. 2).

[49] *See id.* at 189:9-18.

[50] *See id.* at 190:19-190:2.

urbanized and rapidly growing areas of the Seattle suburbs. Utilities, cities and the Central Puget Sound Regional Transit Authority ("Sound Transit") have infrastructure development plans that cross the rail corridor, or that occupy edges of the rail corridor. In 2012, for example, the City of Woodinville approached ECR and the Port about acquiring property rights to one edge of the Freight Segment to widen a highway bridge. ECR holds a freight easement over the 14 mile Freight Segment, purchased from the GNP bankruptcy trustee for $175,000.[51] Doug Engle offered to sell Woodinville the property rights it needs for the bridge for $1 million, to be split equally between the Port and ECR.[52] Asked about this point at his deposition, Mr. Engle replied: "[I]f you're going to block one lane of my four lane road, and my opportunity in the future for that, then you are going to pay me."[53]

In the next two years public agencies and utilities will pursue many projects that cross or utilize parts of the Line. Kirkland and King County seek to build trails and other public infrastructure projects on their respective segments of the Line.[54] In 2015, Sound Transit will commence construction on its $2.8 billion East Link project to build a light rail line from Seattle through Bellevue to the Microsoft campus in Redmond.[55] To accommodate East Link Sound Transit purchased fee ownership of a one mile segment of the Line in Bellevue for $ 13.75 million, subject to King County's trail easement and subject to the requirements of the

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[51] *See* Bankruptcy Court Order Granting Motion for Approval of Sale of GNP's Assets to ECR, Case No. 11-40829-BDL (Ex. 16).

[52] *See* Email of Mar. 28, 2013 from Doug Engle to Woodinville City Manager Richard Leahy (Ex. 17); Engle Tr. at 207:16-20, 208:6-12 (Ex. 2).

[53] Engle Tr. 214:1-4.

[54] King County's purchase included segments beyond just the Line.

[55] *See* Sound Transit – East Link Extension – Project Phases, available at www.soundtransit.org (last viewed June 3, 2013).

railbanking statute.[56] The last mile of the Line that Ballard has petitioned the Board to reactivate overlaps Sound Transit's fee-owned mile of the Line.

C. Kirkland Acquired The CKC.

On April 13, 2012, Kirkland purchased from the Port a 5.75 mile-long segment of the Line known as the "Cross Kirkland Corridor" ("CKC").[57] The City plans to develop a trail on the corridor, as authorized by the Board's 2008 *NITU Order* for the Line.

Doug Engle tried repeatedly to persuade Kirkland managers to leave the rails in place so that ECR and Ballard could develop an excursion train on the Line.[58] Mr. Engle represented, as does Ballard, that the right of way could accommodate rails and trails.[59] Kirkland commissioned the engineering firm KPG to estimate the cost of building a trail alongside the tracks. The estimate came in at $17.3 million.[60] After careful review of ECR's proposal Kirkland decided to proceed with its plan to salvage the rails.[61]

Kirkland awarded the salvage contract to A&K Railroad Materials, Inc. Kirkland and A&K have executed the contract, but Kirkland suspended performance pending the Board's decision on Ballard's motion for a preliminary injunction.[62] A&K promised Kirkland that it will

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[56] King County Recording No. 20120411001174 ("High Capacity Transportation Easement Agreement," dated Apr. 11, 2012); King County Recording No. 20120411001173 ("Quit Claim Deed," dated Apr. 10, 2011). All "King County Recording" documents cited herein are publicly available on the King County Recorders Office website: http://146.129.54.93:8193/legalacceptance.asp?cabinet%3Dopr.

[57] *See* Triplett Verified Statement at ¶¶ 3, 4.

[58] *See id.* at ¶¶ 10, 11; Email of Nov. 16, 2012 between Doug Engle and Kurt Triplett (Ex. 9); Letter of Feb. 19, 2013 from Doug Engle to Kirkland Officials (ex. 18); Letter of Feb. 22, 2013 from Doug Engle to Kirkland Officials (Ex. 19); Email of Mar. 11, 2013 from Doug Engle to Kurt Triplett (Ex. 20) .

[59] *See* Triplett Verified Statement at ¶¶ 12, 13; Verified Statement of Byron Cole ("Cole Verified Statement) at 4 (Ex. 11).

[60] *See* Triplett Verified Statement at ¶ 14; KPG's "CKC Trail – Adjacent Maintenance Road Option" (Ex. 21).

[61] *See* Triplett Verified Statement at ¶ 14.

[62] *See id.* at ¶ 20; Cross Kirkland Corridor Rail Removal Project Contract between Kirkland and A&K Railroad Materials, Inc. (April 26, 2013) (Ex. 22).

commit to perform the contract during the 2013 construction season if Kirkland delivers a notice to proceed by August 1, 2013.[63]

D. Ballard's Phantom Shippers.

Ballard contends that "a demand for rail service has developed" on the Line.[64] Ballard identifies two purported shippers: CalPortland, a building materials supplier, and Wolford Trucking & Demolition, Inc. ("WTD"), a demolition contractor.[65] Neither company has a business on the Line. Nevertheless, Mr. Cole declares that "they are both ready, willing and able to utilize the Bellevue-Woodinville segment."[66] In letters of support attached to Ballard's petition, representatives of both companies offer expansive statements about highway and office projects that will require vast quantities of aggregate materials and generate huge amounts of demolition debris.[67] But neither requests rail service from Ballard to move these materials.

WTD's letter was written by ECR agent Ernie Wilson.[68] It recites that if rail service is restored on the Line WTD would use rail to move construction spoils from highway, transit and construction projects in Bellevue to disposal sites. The letter contains quantitative estimates about potential rail traffic and cost savings from shipment by rail. At his deposition, however, Mr. Wolford disavowed any knowledge about these projections:

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[63] *See* Triplett Verified Statement at ¶ 21.

[64] Ballard's Verified Petition For Exemption at 6.

[65] *See* Cole Verified Statement at 3 (Ex. 11). In support of Ballard's petition, Mr. Cole also averred that Ballard "has been engaged in active discussions with several shippers interested in restoring rail service" on the Line and that "discussions with several shippers are ongoing." *Id.* But at deposition, Mr. Cole refused to answer questions asking him to identify shippers engaged in these discussions, other than Ballard. *See* Cole Tr. at 105:21-110:24 (Ex. 6).

[66] Cole Verified Statement at 3.

[67] *See* Letter of Mar. 27, 2013 from WTD's Owner Bobby Wolford to Cynthia Brown at 2 ("WTD Letter") (Ex. 23); March 25, 2013 Letter from CalPortland Sales Manager Michael Skrivan to Cynthia Brown at 1 ("CalPortland Letter")(Ex. 24).

[68] Wolford Tr. at 32:24-33:6, 90:16-19 (Ex. 10).

- WTD's letter asserts that projects in Bellevue will generate three million cubic yards of construction spoils.[69] When asked the basis for this number Mr. Wolford replied: "Ask Doug Engle. I don't know."[70] Mr. Wolford testified that he had no role in the preparation of that estimate.[71] When asked to read the paragraph from his letter that contains the three million cubic yard estimate, Mr. Wolford said: "It's all gobbledygook. Who cares?"[72]

- Mr. Wolford's letter declares that "We are currently targeting projects on I-405 and SR 520 for the 2013 and 2014 construction seasons."[73] When asked if WTD has any contracts to haul excavation spoils for a project in Bellevue Mr. Wolford replied: "Not yet. We can't till we know the rail is going to be in."[74] When asked whether WTD is targeting specific projects Mr. Wolford replied, "They're in the future, when the contract is let, we will bid on it."[75]

- WTD owns no property in Bellevue, the area from where Mr. Wolford asserts WTD will haul excavation spoils.[76] Asked where along the Line WTD would locate a staging area to load construction spoils into rail cars Mr. Wolford said: "Mr. Engle is in charge of that, not me. He was going to show us where a staging area was after we make sure the rail is in."[77] Mr. Wolford added: "You find the location, I'll load the railcars."[78]

- When asked the destination for the construction spoils that his company would ship by rail Mr. Wolford first explained that they could be dumped off the side of gondola cars on the Freight Segment to create a nature trail in Snohomish County.[79] WTD produced no evidence that it had a contract to construct a nature trail. And he expressed no concern about environmental restrictions on dumping: "It's permissible because it's a federal – well, it's railroad. They have – you can

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[69] *See* WTD Letter at 2 (Ex. 23).

[70] Wolford Tr. at 102:3-7 (Ex. 10).

[71] *See id.* at 102:8-103:2

[72] *See id.* at 92:5-13.

[73] WTD Letter at 2 (Ex. 23).

[74] Wolford Tr. at 103:22-25 (Ex. 10).

[75] *See id.* at 93:1-9.

[76] *See id.* at 103:7-20; *see also* Map of the Line in Bellevue, Washington between Washington State Highway 520 and NE 8th St., the termination point of Ballard's reactivation petition (Ex. 25), referenced in the Wolford testimony cited in this footnote.

[77] Wolford Tr. at 103:12-17 (Ex. 10).

[78] *See id.* at 111:11-18.

[79] *See id.* at 99:18-21.

do anything you want on the railroad. They're not governed by rules like most people."[80]

- Mr. Wolford was not sure that a nature trail would require three million yards of construction spoils.[81] Asked what else WTD could do with the spoils, Mr. Wolford answered that they could go to "another dump site," but he did not know where: "Ask Mr. Engle, he knows."[82] Pressed on this point, Mr. Wolford mentioned two landfills near Monroe, Washington, but he did not know whether either has rail access.[83]

- Neither Ballard nor ECR has provided a rate quote to WTD to haul excavation spoils from Bellevue.[84] In fact, Mr. Wolford has not asked Ballard or ECR about the cost or feasibility of hauling construction spoils from Bellevue to any location.[85]

- With no information about what construction projects would supply excavation spoils to WTD, without a staging area in Bellevue, without a specific destination for the spoils or a rate quote from any rail carrier, Mr. Wolford nevertheless expressed complete confidence in his statement to the Board that with rail "our bid would be at least 15% less expensive to our clients than the trucking option."[86] Mr. Wolford's estimate assumed that the spoils could be dumped off the side of the rail line to build a nature trail: "There's a huge savings just in the dump fee alone would cover the cost of the 15 percent. We're not paying dump fees to build a nature trail."[87] If the nature trail was not a feasible disposal option, Mr. Wolford admitted that he had not explored the cost or feasibility of shipping spoils to a Snohomish County landfill, but asserted that his 15 percent savings estimate would still be valid: "Still hold true even though we're railing it a bit further. Once it's in a railcar, the extra few miles is nothing when you're hauling so many railcar loads."[88]

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[80] *See id.* at 105:17-23.

[81] *See id.* at 105:25-106:5.

[82] *See id.* at 106:6-9, 100:9-12.

[83] *See id.* at 76:22-78:6.

[84] *See id.* at 104:1-17, 112:4-12.

[85] *See id.* at 112:13-113:14.

[86] WTD Letter at 2 (Ex. 23).

[87] Wolford Tr. At 107:19-108:4 (Ex. 10).

[88] *See id.* at 106:6-106:21.

Ballard's other purported shipper, CalPortland, is a building materials supplier with operations in Seattle and Everett, but nothing on the Freight Segment or the Line. CalPortland's letter to the Board does not assert that CalPortland plans to use the Line. The letter, written by an attorney for Ballard and ECR[89] and signed by CalPortland Sales Manager Michael Skrivan, limits itself to broad assertions about the economic benefits to the region of restoring rail service on the Line.[90] CalPortland's business logistics explain why CalPortland declined to predict any use of the Line:

- CalPortland has no contracts to provide materials to construction projects in areas of Bellevue near the Line.[91]

- CalPortland has no business facility, nor does it own any property adjacent to the Line.[92] It has no lease or other agreement to use property along the Line.[93] Nor has it taken any steps to secure a location along the Line for transloading materials from rail cars to trucks for delivery to customers.[94]

- Cal Portland considered the possibility of shipping construction materials to Bellevue from its yard in Everett, Washington. BNSF could carry freight from Everett to an interchange point with Ballard at Snohomish.[95] But CalPortland has not inquired about the logistics of shipping aggregate from Everett to Bellevue.[96] Further, CalPortland has no rail access to its Everett yard.[97] It has no means to load materials onto freight cars for shipment on the Line to construction projects

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[89] *See* Email of Mar. 25, 2013 from Doug Engle to Michael Skrivan, including attachment of draft letter to Cynthia Brown (Ex. 26); Transcript of Deposition upon Oral Examination of Michael Skrivan ("Skrivan Tr.") at 31:2-7, 31:18-32:17 (Ex. 27).

[90] *See* CalPortland Letter (Ex. 24).

[91] *See* Skrivan Tr. 27:7-12, 35:9-11, 37:24-38:17, 62:7-11 (Ex. 27).

[92] *See id.* at 52:1-5.

[93] *See id.* at 54:1-7.

[94] *See id.* at 54:25-55:5.

[95] *See* Appendix A.

[96] *See* Skrivan Tr. at 40:5-9 (Ex. 27).

[97] *See* Email of May 1, 2013 from Michael Skrivan to Dough Engle (Ex. 28).

in Bellevue. CalPortland's witness Mr. Skrivan rejected as cost prohibitive[98] the construction of a spur between the Everett yard and the BNSF line.

- CalPortland has no need for rail service on the Line. According to Mr. Skrivan: "I deliver to my market now and I don't have rail."[99] In its communications with Ballard and ECR, CalPortland has never requested rail service.[100]

- CalPortland has not even determined whether it would utilize freight rail service if it secured the capacity to load materials onto rail cars, if it had the capacity to offload such materials, and if it had contracts to deliver materials for construction projects in Bellevue. As Mr. Skrivan explained, whether CalPortland would ship construction materials via rail would depend on "many variables."[101]

Other than WTD and CalPortland, Ballard has identified no demand for freight service on the Line.[102] Accordingly, Ballard will not suffer any harm as a result of Kirkland's salvage plan.[103]

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[98] *See id.*; Skrivan Tr. at 40:5-41:12 (Ex. 27)

[99] *See id.* 67:15-18.

[100] *See id.* at 27:7-29:2, 31:9-32:5.

[101] *See id.* 68:4-19.

[102] *See* ECR Business Plan (February 19, 2013) at 7 (Ex. 8); Engle Tr. at 44:10-14 (Ex. 2); Cole Tr. at 118:1-3; 122:10-123:5; 127:11-128-6 (Ex. 6).

[103] Ballard's reliance on the various authorities cited in its motion in support of its irreparable harm argument is misplaced. *See* Ballard's Motion for Preliminary Injunction at 9-11. In the cases cited by Ballard in which courts found instances of irreparable harm the moving party had an established contractual or property right, the continued violation of which would deprive that party of vital income or a reasonably certain business opportunity causing harm to its existing business. Here, Ballard has no right of any kind to access the Line, and it has not demonstrated that it will lose a reasonably certain business opportunity. As explained above, its claims of freight demand are highly speculative.

The unpublished order in *Gulf Coast Rural Rail Transportation District v. Southern Pacific Transportation Co.*, C.A. No. H-94-2749 (S.D. Tex. Aug. 31, 2004), on which Ballard also relies, is inapposite. There, a transportation district sought to enjoin the salvage by the railroad that had abandoned the subject line but had failed to commence salvage within 180 days of the ICC's exemption order authorizing abandonment. Based on that fact, the district court held that the line was no longer subject to the ICC's exclusive jurisdiction and that the district's state court condemnation action was not preempted. Hence an injunction was appropriate to allow the district to attempt to meaningfully exercise its eminent domain rights. The same situation does not obtain here.

E. A Preliminary Injunction Would Impose Costs On Kirkland And Defer The Ability Of Kirkland Residents To Use The CKC.

The Board's procedural schedule for processing Ballard's petitions shows a final decision by January 17, 2014. *See* 78 Fed. Reg. 24,465, 24,466 (April 25, 2013). If enjoined from commencing salvage until the Board issues a decision on Ballard's reactivation petitions, Kirkland will lose the 2013 construction season. As a result, Kirkland's intended use of the CKC and the public benefits from a trail will be delayed by at least a year. *Id.* The delay would cost Kirkland taxpayers about $500,000, including increased costs of maintaining the right of way, loss of a favorable salvage contract and the absence of any return on Kirkland's $5 million investment in the corridor. City Manager Kurt Triplett's declaration (¶ 22), filed herewith, documents these costs.

III. ARGUMENT

Ballard asks the Board to enjoin Kirkland from salvaging track and building a trail on 5.75 miles of railbanked right of way, so that Ballard can offer rail service to two illusory shippers who have no business presence on the Line and no concrete plans to ship freight on the Line. On this record, Ballard cannot show that denial of injunctive relief will cause Ballard any harm, let alone irreparable harm. Nor is Ballard likely to prevail on the merits of its reactivation request because the Board will not vacate a NITU absent a credible showing of freight demand.

Even if Ballard had customers lined up to ship freight on the Line, Ballard still could not demonstrate irreparable harm because it has no plan to obtain the property rights that Ballard needs to operate on the Line. As BNSF pointed out to the Board in 2008, the real property comprising the Line has a very high value. Ballard has no easement to use the Line, no reactivation right, and no plans or resources to acquire access to the line. The Board usually

does not concern itself with a carrier's property rights.[104] In this case, however, Ballard seeks a preliminary injunction. To qualify for injunctive relief under 49 U.S.C. 721 Ballard must show that salvage of the Line will cause Ballard irreparable harm. Ballard cannot show any harm from salvage and trail use of the CKC because Ballard has no plan or wherewithal to secure the property rights it would need to run trains on the Line.

A. Ballard Must Satisfy Each Element Of The *Holiday Tours* Test.

In reviewing a request for preliminary injunctive relief under 49 U.S.C. § 721(b)(4), the Board applies the four-part test articulated in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) ("*Holiday Tours*").[105] The moving party – here, Ballard – "must show that: (1) it is likely to succeed on the merits; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest."[106] "An injunction is an extraordinary remedy and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction."[107] The harm alleged by the requesting party must be concrete and

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[104] *See, e.g., Georgia Great Southern Division, South Carolina central Railroad Co., Inc. – Abandonment and Discontinuance Exemption – Between Albany and Dawson, In Terrell, Lee, and Dougherty Counties, GA*, 6 S.T.B. 902, 908 (2003); *Ballard Terminal Railroad Company, L.L.C. – Lease Exemption – Line of Eastside Community Rail, LLC*, STB Docket No. FD 35730, slip op. at 2 (STB served May 1, 2013).

[105] *See DeBruce Grain, Inc. v. Union Pacific Railroad Company*, 2 S.T.B. 773, 775 n.3 (1997) (citing *Holiday Tours*, 559 F.2d at 843); *Public Views on Major Rail Consolidation*, 4 S.T.B. 586, 589 (2000); *Railroad Salvage & Restoration, Inc. and G.F. Wideman International, Inc. – Petition for Investigation and for Emergency Relief under 49 U.S.C. 721(b)(4) – Security Deposit for Demurrage Charges, Missouri & Norhtern Arkansas Railroad Company, Inc.*, STB Docket No. 42107, slip op. at 2 (STB served June 30, 2008).

[106] *Arizona Public Service Co. & Pacificorp v. The Burlington Northern and Santa Fe Railway. Company*, STB Docket No. 42077, slip op. at 4-5 (STB served Oct. 14, 2003) (citation omitted)

[107] *American Chemistry Council, supra* note 2, slip op. at 4.

reasonably certain; merely possible future harm is speculative and does not warrant an injunction.[108]

The requesting party "carries the burden of persuasion on all of the elements required for [such] extraordinary relief."[109] As set forth below, Ballard has not satisfied any prong of the *Holiday Tours* test.

B. The Absence Of Any Rail Freight Demand Is Fatal To Ballard's Motion.

When BNSF petitioned to abandon rail service on the Line in 2008, it explained that "Land use around the Line is clearly moving away from freight applications, if not from industrial and low end commercial applications altogether."[110] In approving BNSF's abandonment application, the Board confirmed that there is no rail freight demand on the line[111] and reaffirmed that determination a year later.[112]

Since 2008 the trends cited by BNSF have only intensified. Land use along the Line, particularly in Kirkland, is increasingly oriented toward high property values, consisting largely of high-end commercial, mixed-use residential/retail, and retail.[113] The development projects in Bellevue are for the construction of mixed-use residential and commercial buildings, high-end

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[108] *Arizona Public Service Co.*, *supra* note 106, slip op. at 5-6 (denying injunctive relief because alleged harm was speculative).

[109] *BP Amoco Chemical Company v. Norfolk Southern Railway Company*, STB Docket No. 42093, slip op. at 4 (STB served June 3, 2005) (internal quotations and citations omitted); *see also Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42110, slip op. at 4 (STB served Dec. 18, 2008) (denying request for injunctive relief and explaining that "some showing of each of the *Holiday Tours* factors is necessary"); *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, STB Docket No. FD 35305, slip op. at 2 (STB served Nov. 5, 2010) ("A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief." (citation omitted)).

[110] BNSF Petition For Exemption at 13 (Ex. 1).

[111] *See NITU Order*, *supra* note 4, slip op. at 3.

[112] *See King County, WA – Acquisition Exemption – BNSF Railway Company*, STB docket No. 35148, slip op. at 4 (STB served Sept. 17, 2009) ("*King County Acquisition*").

[113] *See* Triplett Verified Statement at ¶ 7.

shopping centers, and large office buildings.[114] In Kirkland, tech firms such as Google are expanding their facilities, and Kirkland has upzoned the last few remaining light industrial properties to attract Class A office space.[115] It should come as no surprise, then, that no business along the Line has voiced a demand for freight rail service, either incoming or outgoing. A recent valuation of the Line estimates that its value is ***at least $37.5 million*** and that the salvage value of the rail infrastructure on the Line is another $3.18 million.[116] As discussed *infra*, there is no evidence that Ballard, which consistently operates at a loss on annual revenues of only $500,000, has the resources to acquire the necessary rights to operate on the Line or has a plan to do so.

Every railbanked right of way is subject to future restoration of rail service.[117] Kirkland is prepared to step aside in the unlikely event that a carrier submits a credible proposal for reactivation of freight service and holds the property rights required to occupy the Line.[118] The Board's decisions do not, however, require the owner of a railbanked right of way to step aside for an excursion train,[119] When presented with facts that call into question the credibility of the petitioner's plans for common carrier freight service, the Board takes a hard look at the bona fides of a carrier's plans. This issue can arise in several procedural contexts, including a petition to reactivate rail service on a railbanked right of way, a petition to exempt an abandonment from

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[114] *See* Verified Statement of Murray Brackett ("Brackett Verified Statement") at ¶ 5.

[115] *See* Triplett Verified Statement at ¶ 7.

[116] *See* Verified Statement of Murray Brackett at ¶ 4.

[117] *King County Acquisition*, *supra* note 112, slip op. at 3.

[118] *See* Triplett Verified Statement at ¶ 6.

[119] The Board's jurisdiction over rail transportation does not extend to wholly intrastate passenger rail service. *See, e.g.*, *Cuyahoga Falls & Hudson Rly. Co. v. Village of Silver Lake*, 122 F. App'x 845, 847-48 (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 (STB served Mar. 5, 1998); *Napa Valley Wine Train, Inc. Petition for Declaratory Order*, 7 I.C.C. 2d 954, 967 (1991); *Magner-O-Hara Scenic Rly. v. ICC*, 692 F.2d 441, 444-45 (6th Cir. 1982).

the OFA process, a motion to dismiss an OFA or an adverse abandonment application. In all of these contexts, the Board's decisions usually turn on whether the carrier or prospective carrier demonstrates a concrete demand for freight service.

Two years ago the Board denied GNP Railway's motion to enjoin rail salvage and rejected GNP's petitions to vacate a NITU and reactivate rail service on the Redmond Spur.[120] In holding that GNP was not a bona fide petitioner, the Board cited GNP's financial struggles, and the fact that GNP's shippers lacked the facilities necessary to receive shipments by rail. The Board noted that several of GNP's shippers had no rail sidings or connections to the rail line: "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."[121]

In *Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In King County, WA, In the Matter of An Offer of Financial Assistance*,[122] the Board rejected an OFA for a line segment that interconnects with the Line at Woodinville. The factual context was quite similar to this case. BNSF and King County sought to railbank an inactive corridor. The last remaining shipper supported abandonment. A group of neighbors formed a railroad (the Redmond-Issaquah Railroad Preservation Association or RIRPA) and secured letters of support from various "shippers" who attested that they would use rail service. The Board had no problem with the fact that RIRPA was a group of adjacent landowners, "as long as they were intending to provide rail service and there existed a real need for that service."[123] But the Board closely scrutinized the statements from the "shippers" and concluded that the prospect for future

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[120] *GNP*, *supra* note 3.

[121] *Id.*, slip op. at 6.

[122] 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).

[123] *Id.* at 641.

traffic on the line is "highly speculative."[124] RIRPA's shippers looked a lot like WTD and CalPortland – no history of rail shipments on the line, no facilities to receive or ship commodities by rail, no evidence that the shippers sought rate quotes for the service, no evidence that the cost of shipping by rail would be cost-competitive, no evidence that the prospective carrier had realistic plans to rehabilitate the track. The Board rejected RIRPA's OFA, and subsequently authorized trail use of the corridor.

RIRPA appealed from the Board's decision to the Ninth Circuit, contending that the OFA statute does not allow the Board to consider the likelihood of future rail service in evaluating an OFA application. The Court of Appeals rejected this contention, upholding the Board's authority to consider the prospect for future rail service in evaluating an OFA.[125]

In *Norfolk Southern Railway Company – Petition For Exemption – In Baltimore City and Baltimore County, MD*,[126] the carrier petitioned for an exemption from the OFA process to abandon a line to accommodate commuter rail service. The ubiquitous James Riffin opposed the OFA exemption, contending that there was demand for renewed freight operations on the line. Mr. Riffin argued that continued freight service would enable rail transport of vast quantities of solid waste to an incinerator. The Board granted the exemption, concluding that "the potential future traffic claimed by Riffin is too speculative to be entitled to much weight."[127] The Board's analysis of Riffin's incinerator shipments is instructive for this case:

> Riffin suggests that freight rail service to the potential new incinerator in Harford County would meet a public need. However, given the short distances involved, the fact that the MSW movements necessarily originate on trucks, and the fact that a rail interchange would be needed to complete the delivery of the MSW to the potential incinerator, which, if located on a rail line, would be on a different rail line, we have serious questions about the feasibility of an operation

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[124] *Id.*

[125] *Redmond-Issaquah R.R. Pres. Ass'n*, 223 F.3d at 1063.

[126] STB Docket No. AB-290 (Sub No. 311X) (STB served Apr. 5, 2010).

[127] *Id.*, slip op. at 5.

transloading the MSW from trucks to rail here. Presumably, that explains why neither NSR nor any of the public bodies involved with developing the new incinerator has sought to promote a rail option for the facility.[128]

Mr. Riffin's business case for freight service to the incinerator may be less speculative than Ballard's claims here:

- Ballard seeks to serve two "shippers," neither of which has any business operations on the Line.[129] One of those companies, WTD, submitted a bid to salvage the track for Kirkland.[130] Five days after Kirkland notified WTD that the City had selected a different salvage contractor WTD owner Bobby Wolford signed his letter to the Board.[131] The other shipper, CalPortland, has no rail spur at its Everett yard and no plans to build one.[132]

- WTD and CalPortland each aspire to move construction materials to and from large projects in Bellevue, but neither has secured contracts for such work.[133] Neither can identify the specific projects they hope to support or projects that require freight service.[134] Mr. Wolford is waiting to make inquiries until rail

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[128] *Id.*, slip op. at 6-7. Other Board decisions apply similar criteria in balancing applications to restore or preserve rail service against competing proposals for public use of an inactive rail corridor. *See, e.g.*, *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, CO*, 4 S.T.B. 116, 119-20 (1999) (finding absence of genuine freight demand), *aff'd sub nom. Kulmer v. Surface Transportation Board*, 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) ("closely" examining "alleged prospects for [freight] service" and finding such claims "to be unsubstantiated"); *Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 9-10 (STB served Mary 13, 1998) (examining claim of freight demand and finding it "neither persuasive nor meritorious").

[129] Wolford Tr. 103:7-20 (Ex. 10); Skrivan Tr. 52:1-5 (Ex. 27). Cole Tr. 142:8-11, 145:7-10, 146:9-13 (Ex. 6).

[130] Triplett Verified Statement at ¶ 18; WTD Bid for Cross Kirkland Corridor Rail Removal Project ("WTD Bid") (Ex. 29).

[131] Compare WTD Letter dated March 27, 2013 (Ex. 23) to Letter from Kirkland Purchasing Agent Barry Scott to WTD dated March 22, 2013 (WTD Bid, Ex. 29 at 13).

[132] Email of May 1, 2013 from Michael Skrivan to Douglas Engle (Ex. 28); Skrivan Tr. 40:5-12 (Ex. 27).

[133] Wolford Tr. 103:22-25 (Ex. 10); Skrivan Tr. 27:7-12, 35:9-11, 37:24-38:17, 62:7-11 (Ex. 27).

[134] Wolford Tr. 34:15-23, 93:1-9 (Ex. 10); Skrivan Tr. 35:25-36:18 (Ex. 27).

service on the Line is restored.[135] Ballard presents no contract or RFP from a developer or agency ready to engage either WTD or CalPortland to move construction materials to or from a project in Bellevue.[136]

- Neither WTD nor CalPortland has located a site on the Line to load or unload construction materials/spoils.[137] WTD is counting on Doug Engle to procure such a facility.[138]

- CalPortland's Everett yard has no connection to any rail line, and CalPortland has rejected as cost prohibitive the construction of a rail spur.[139] WTD has a yard on the Freight Segment, but it has no rail spur, and within the past decade WTD has not requested rail service at its yard or elsewhere.[140]

- Neither WTD nor CalPortland have asked Ballard for a rate quote to move construction materials from any point to or from Bellevue.[141] Nor has either business made such requests to another carrier.[142]

- WTD's preferred option for disposal of construction spoils loaded in Bellevue would be to dump them off the side of the Freight Segment, to create a "nature trail."[143] But WTD presented no evidence that anyone has engaged it, Ballard, or ECR to build a nature trail, or that the Port of Seattle (which owns the Freight Segment) supports this plan. WTD's Bobby Wolford did not know where WTD would dispose of the spoils if WTD cannot dump them on the right of way.[144]

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[135] Wolford Tr. 103:22-25 (Ex. 10).

[136] *Id.*; Skrivan Tr. 27:7-12, 28:6-11, 35:9-11, 62:7-11 (Ex. 27); Cole Tr. 149:5-7 (Ex. 6).

[137] Cole Tr. 142:8-11, 145:7-10 (Ex. 6); Skrivan Tr. 54:1-7, 54:25-55:5 (Ex. 27); Wolford Tr. 103:12-17, 110:2-111:18, 117:20-118:3 (Ex. 10).

[138] *Id.* at 110:1-111:10. Doug Engle has not had success in locating a transload facility. *See* Engle Tr. 140:17-20, 141:17-22 (Ex. 2).

[139] Skrivan Tr. 40:5-41:1 (Ex. 27); Email of May 1, 2013 from Michael Skrivan to Douglas Engle (Ex. 28).

[140] Engle Tr. at 157:1-6 (Ex. 2); Wolford Tr. 117:10-12, 130:14-131:24, 141:4-142:6 (Ex. 10).

[141] Cole Tr. 140:8-11, 140:9-10, 140:15-19, 146:14-18 (Ex. 6); Wolford Tr. 104:1-17; 112:4-12 (Ex. 10); Skrivan Tr. 27:7-29:2, 31:9-32:5 (Ex. 27).

[142] Wolford Tr. 24:18-25:1 (Ex. 10); Skrivan Tr. 40:5-9 (Ex. 27).

[143] Wolford Tr. 104:18-105:8, 107:19-108:4 (Ex. 10).

[144] *Id.* at 106:6-107:18.

Mr. Wolford mentioned two alternative disposal sites, but he did not know whether they have rail service.[145]

- Any shipment originating in Bellevue would need to traverse the Freight Segment. Ballard has conducted no maintenance work on the Freight Segment (other than spraying for weeds)[146] despite reports showing a rail line in grave need of maintenance.[147] Ballard has no plans or budget to maintain the Freight Segment. Rather, Ballard and ECR count on the Washington legislature to underwrite rehabilitation of the rail line,[148] a plan that the legislature has not embraced.

At most, Ballard's shipper letters show that CalPortland and WTD would consider using rail service if it were available and less expensive than trucking. The failure of CalPortland and WTD to take the basic steps and make the commitments necessary to obtain freight service make their stated interest in freight service and Ballard's corresponding claim of freight demand too speculative to be given any weight.[149] This showing does not establish a likelihood of success on the merits.[150] Nor does it demonstrate that the denial of injunctive relief would inflict irreparable

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[145] *Id.* At 76:22-78:6.

[146] *See* Cole Tr. 63:4-21, 70:17-71:8 (Ex. 6).

[147] Doug Engle testified that when ECR acquired control over the Freight Segment in late 2012 "we were aware that there was some maintenance that was going to be needed to done immediately to keep freight moving." Engle Tr. at 88:24-89:10 (Ex. 2).

[148] *Id.* at 89:10-90:12.

[149] *See Union Pacific Railroad Company – Discontinuance – In Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209), slip op. at 3 (STB served Jan. 2, 2008) (ignoring traffic projections in discontinuance proceeding where protesting shipper failed to take "basic step" of contacting carrier about rates and terms of service, had no history of shipments in three decades, and provided no evidence of contracts that established projected traffic).

[150] *Denver & Rio Grande Railway Historical Foundation*, *supra* note 128, slip op. at 12 (stating, in an adverse abandonment proceeding, that the "Board will not unquestioningly accept speculative claims of potential freight traffic."); *Norfolk Southern Railway Company – Petition For Exemption – In Baltimore City and Baltimore County, MD*, STB Docket No. AB 290 (Sub-No. 311X), slip op. at 6 (served May 4, 2010) (concluding that letters indicating that firms would consider using rail service if it were available and less expensive than trucking "do not constitute credible evidence of an overriding public need for continued rail service" and therefore do not establish a likelihood of success on the merits); *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track In New York, NY*, 8 I.C.C. 2d 773, 780-86 (1992) (finding lack of credibility, in adverse abandonment context, in claims of continued freight service demand and proposal where railroad had failed to acquire (continued . . .)

harm on Ballard. A carrier with no shippers awaiting service cannot be harmed by removal of the track, especially not when the right of way is preserved for future rail service under the railbanking program.[151]

C. Ballard's Failure To Offer Any Realistic Plan To Obtain Property Rights To The Line Is Fatal To Ballard's Irreparable Harm Showing.

In evaluating petitions to establish or reactivate rail service the Board often notes that exemption authority is permissive, but it does not absolve the carrier of the obligation to obtain property rights to access a line. Just last month, the Board denied the Port's request to stay Ballard's acquisition of operating rights to the Freight Segment over a contractual dispute. The Board noted, however, that "Ballard can only proceed with its transaction, and therefore exercise the exemption authority, once there is a lease agreement in effect . . ."[152] Last year, in *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*,[153] the Board commented: "Although the Board may issue Saratoga a license to operate as a common carrier, Saratoga must still have a valid property right under New York state law in order to initiate operations on the line."[154]

(. . . continued)
necessary lands for operations, establish certain demand for service, and failed to show adequate financial capacity to operate proposed service), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (1994).

[151] In *GNP*, *supra* note 3, the Board stated: "The Trails Act does not prohibit a trail sponsor from removing track or making changes to the ROW, *so long as the property remains available for reactivation of rail service."* Slip op. at 5 (emphasis added). The Board denied relief to GNP because the removal of track does not interfere with the primary goal of the Act, the preservation of rights of way for future rail service. *Id.*

[152] *Ballard Terminal Railroad*, *supra* note 19, slip op. at 2.

[153] STB Docket No. FD 35631 (served October 11, 2012)

[154] *Id.*, slip op. at 3 (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); *MVC Transp. – Acquis. Exemption – P&LE Properties*, STB Docket No. FD 34462, slip op. at 6 (Sub-No. 1) (STB served Oct. 20, 2004)).

The Line that Ballard hopes to seize is a profoundly valuable assemblage of real estate. BNSF appraised its net liquidation value at more than $243 million.[155] The Port of Seattle paid BNSF $81.4 million for the Line and some adjacent rights of way.[156] Kirkland's appraiser values the Line at more than $37 million.[157] Kirkland paid the Port $5 million for 5.75 miles of the Line.[158] Sound Transit paid the Port $13.7 million for one mile of the Line in Bellevue, plus a transit easement over the rest of the right of way.[159] King County paid the Port $15.8 for the Port's residual interest in the remaining segments of the Woodinville Subdivision, including the Line.

These valuations are reflective of the continuing trend in uses of land adjacent to the Line for high-end commercial and retail and mixed-use residential/retail. The expansion of Google's Kirkland's campus is emblematic of this trend: in 2004 Google opened a small office in Kirkland. Now it is in the process of building 180,000 square feet of office space where 1,000 employees will work – directly next to the Line.[160] If the past several years[161] are a reliable indicator, this trend will continue.

Ballard admittedly has no property interest in the Line.[162] It holds no rail easement, no reactivation rights nor any other authority to occupy the Line. At his deposition Byron Cole was asked whether Ballard needs a property interest in the Line to run trains on it. He responded:

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[155] *See* BNSF Petition for Exemption at 5 (Ex. 1).

[156] *See* Seventh Amendment to Purchase and Sale Agreement of December 17, 2009 between BNSF, the Port, and King County (Ex. 3).

[157] *See* Verified Statement of Murray Brackett at ¶ 4.

[158] *See* Verified Statement of Kurt Triplett at ¶ 4.

[159] *See* King County Recording No. 20120411001174 ("High Capacity Transportation Easement Agreement," dated April 11, 2012); King County Recording No. 20120411001173 ("Quit Claim Deed," dated April 10, 2011).

[160] *See* Brier Dudley, "Google boom: Kirkland campus to double," *Seattle Times*, Mar. 12, 2013 (Ex. 30).

[161] *See* Brackett Verified Statement at ¶ 5.

[162] *See* Cole Tr. 95:17-22 (Ex. 6).

"Well, we would only be able to do it if we had, you know, some paperwork, and we would have to see what the deal was."[163] Mr. Cole conceded that on the Freight Segment Ballard relies for operating rights on the freight easement held by ECR.[164] Follow up questions revealed that Ballard has no plan to acquire a freight easement on the Line,[165] that Ballard has approached none of the public entities that hold property rights in the Line about acquiring operating rights,[166] and that Ballard is waiting for the Board's decision to determine whether Ballard needs any property rights. [167]

Ballard's solution to the problem of no property rights is to ask the Board to "transfer all of the rail materials to it at net liquidation value."[168] Ballard cites no authority for this request, and Kirkland knows of none. Ballard urges the Board to grant this request by drawing an analogy to the Board's OFA procedure in the context of a proposed abandonment.[169] Assuming in the absence of any authority that such analogy is proper, Ballard cannot show that it would entitled to the benefits of this procedure. In the OFA context, an offeror must meet certain conditions, including demonstrating financial responsibility and, significantly, *making an offer*,[170] while also demonstrating a *genuine* demand for freight service.[171] Ballard has done

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[163] *See id.* at 98:10-17.

[164] *See id.* at 99:11-20.

[165] *See id.* at 100:1-16.

[166] *See id.* at 100:24-101:1, 101:24-25, 102:14-17, 103:17-19, 104:4-13. Mr. Cole testified that Doug Engle approached Kirkland, King County and Sound Transit in efforts to acquire a freight easement over the Line. *See id.* at 104:4-13. What Doug Engle actually offered to Kirkland was to forego freight service and rail reactivation if Kirkland would make the CKC available for an excursion train. *See* Verified Statement of Kurt Triplett at ¶¶ 10, 11; Email of Nov. 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9).

[167] *See* Cole Tr. at 100:1-7 (Ex. 6).

[168] *See* Ballard's Verified Petition For Exemption at 8.

[169] *See id.* at 9 ("Such a transfer is consistent with the Board's analogous authority in offer of financial assistance proceedings . . . .").

[170] *See generally* 49 C.F.R. § 1152.27.

[171] *See* notes 122 and 128, *supra*, and accompanying text.

none of these things. Ballard could have obtained the rail materials and the real estate in 2008 through an OFA, but passed on that opportunity. Even if the Board granted Ballard's request, however, Ballard would still need property rights to run trains on the Line.

Ballard is in no position to buy the property rights it needs to operate on this Line. In September 2012 Mr. Cole told a bankruptcy court judge that Ballard had not been paid for the freight it hauled for GNP, and that "Our financial position becomes more precarious every day."[172] Mr. Cole estimated Ballard's 2012 gross revenues from all three of its railroads at $500,000 and the Ballard usually operated at a loss.[173] Further, Mr. Cole testified that Ballard has reserved no money to acquire a property interest in the Line.[174]

In summary, Ballard has no plan and lacks the resources it would require to gain access to the Line. As noted above, the Board normally does not concern itself with a carrier's ability to secure the property rights required under state law to provide rail service, but when that carrier asks the Board to enjoin a trail sponsor's efforts to develop a trail as authorized by a NITU Order on grounds that rail salvage will cause the carrier "irreparable harm," the Board has and will consider the credibility of that claim.[175] In this case Kirkland's efforts to build a trail will cause Ballard no harm, because Ballard has no realistic plan to obtain either a property interest in the Line or shippers to use the Line.

D. A Preliminary Injunction Barring Kirkland From Salvaging The Rails Would Cause Substantial Harm to Kirkland And Be At Odds With The Public Interest.

The public interest in no way supports Ballard's request to freeze Kirkland's development of a trail on the CKC. Washington cities must weigh their capital investments in

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[172] *See* Letter from Byron Cole to Judge Brian D. Lynch (September 21, 2012) at 4 (Ex. 5).

[173] *See* Cole Tr. at 32:17-33:1, 56:7-13 (Ex. 6).

[174] *See id.* at 105:8-10.

[175] *Arizona Public Service Co.*, *supra* note 106, slip op. at 5-6 (allegations that rate differential will cause competitive injury are too speculative to constitute irreparable harm and to support injunctive relief).

parks and recreation carefully, and stand accountable to the voters for their choices among competing opportunities. Kirkland spent $5 million to acquire the CKC, with the goal of building a trail for the health and pleasure of its residents, and possibly, to support a commuter rail line at some point in the future.[176] A preliminary injunction would delay Kirkland's plans by one year, and cost Kirkland taxpayers about $500,000.[177] By contrast, Ballard has no investment in the Line, no property rights in the Line and no realistic prospects for attracting shippers. In weighing applications for injunctive relief the Board considers both the prospects for enhancement of rail service and impacts on other public infrastructure projects.[178] To allow Ballard to hold Kirkland's trail plans hostage to Ballard's speculative vision of building a rail freight business would send a discouraging message to every public entity contemplating an investment in a railbanked right of way. Ballard's preliminary injunction would delay by at least a year Kirkland's plan to improve the quality of life for its residents and increase Kirkland's cost of owning and maintaining the CKC, but it would not pave the way for establishment of rail service on the Line.

E. If The Board Grants Preliminary Injunctive Relief, Ballard Should Be Required To Post A Bond.

If the Board takes the extraordinary step of issuing a preliminary injunction, it should require Ballard to post a bond to guard against unwarranted harm to Kirkland's interests. Under 49 U.S.C. § 721(b)(4), the Board has the power to grant an "*appropriate* order" (emphasis added) to prevent irreparable harm and, as explained above, applies the same four-part test

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[176] *See* Triplett Verified Statement at ¶ 6.

[177] *See* Triplett Verified Statement at ¶¶ 20-22, and exhibits cited therein.

[178] *See, e.g., Roaring Fork Railroad Holding Authority, supra* note 128, 4 S.T.B. at 120 ("It would be inappropriate and unfair to wrest the right-of-way away from one person desiring to use it for a valid public purpose and give it to another person to be put to use for the identical public purpose."); *Denver & Rio Grande Railway Historical Foundation, supra* note 128, slip op. at 17-18 (concluding that development of public projects would serve public interest where there was no genuine freight demand); *Norfolk and Western Railway Company, supra* note 128, slip op. at 9 (considering proposed public uses for subject right-of-way).

utilized by federal courts under Fed. R. Civ. 65. As federal courts have recognized, a bond (1) discourages the moving party from seeking preliminary injunctive relief to which it is not entitled, (2) ensures that the moving party will bear the cost of an error in granting such relief, not the enjoined party, and (3) provides a wrongfully enjoining party a source of recovery and without further regard to the moving party's solvency.[179] The ICC exercised its equitable authority to require the posting of a bond in other contexts.[180] As bonds are recognized as appropriate condition of an injunction, the Board should not hesitate to require the posting of a bond if it grants Ballard's request.

As explained in Kurt Triplett's Verified Statement, filed herewith, if Kirkland's salvage plans are delayed, it faces the lost time value of its investment in the CKC, increased maintenance costs, and the risk of loss of a favorable contract and attendant costs. These costs are a proper basis for a bond.[181] The total of these costs is approximately $500,000. Accordingly, Ballard should be required to post a bond of no less than $500,000.

IV. CONCLUSION

For the reasons noted above, Kirkland urges the Board to deny Ballard's motion for a preliminary injunction. With due respect, Kirkland also urges the Board to rule promptly, so that Kirkland does not lose the 2013 construction season for salvage of the rails on the CKC. Ballard argues that by "volunteering to refrain from removing the rail assets during the pendency of the Board's consideration of Ballard's preliminary injunction petition," Kirkland conceded that its plans have no urgency.[182] Ballard is wrong. Kirkland waited because it had no choice. This

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[179] *See Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1037 (9th Cir. 1994); *Continuum Co. v. Incepts, Inc.*, 873 F.2d 801, 803 (5th Cir. 1989).

[180] *See, e.g., Chelsea Property Owners,* 8 I.C.C. 2d 773, 792 (1992), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714-15 (1994).

[181] *See Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 458-59 (7th Cir. 2010).

[182] Ballard Motion For Preliminary Injunction at 14 ("it may take months for the Board to decide this petition."). In arguments before a federal judge on Ballard's motion for a TRO Ballard counsel was less circumspect about the Board's ability to rule promptly:

(continued . . .)

Board has the authority to decide whether Kirkland may proceed with its salvage plans, and Ballard's motion framed that issue for the Board's decision. Kirkland asks the Board to rule promptly, so that Kirkland may take advantage of its favorable contract for salvage.

DATED: June 4, 2013.

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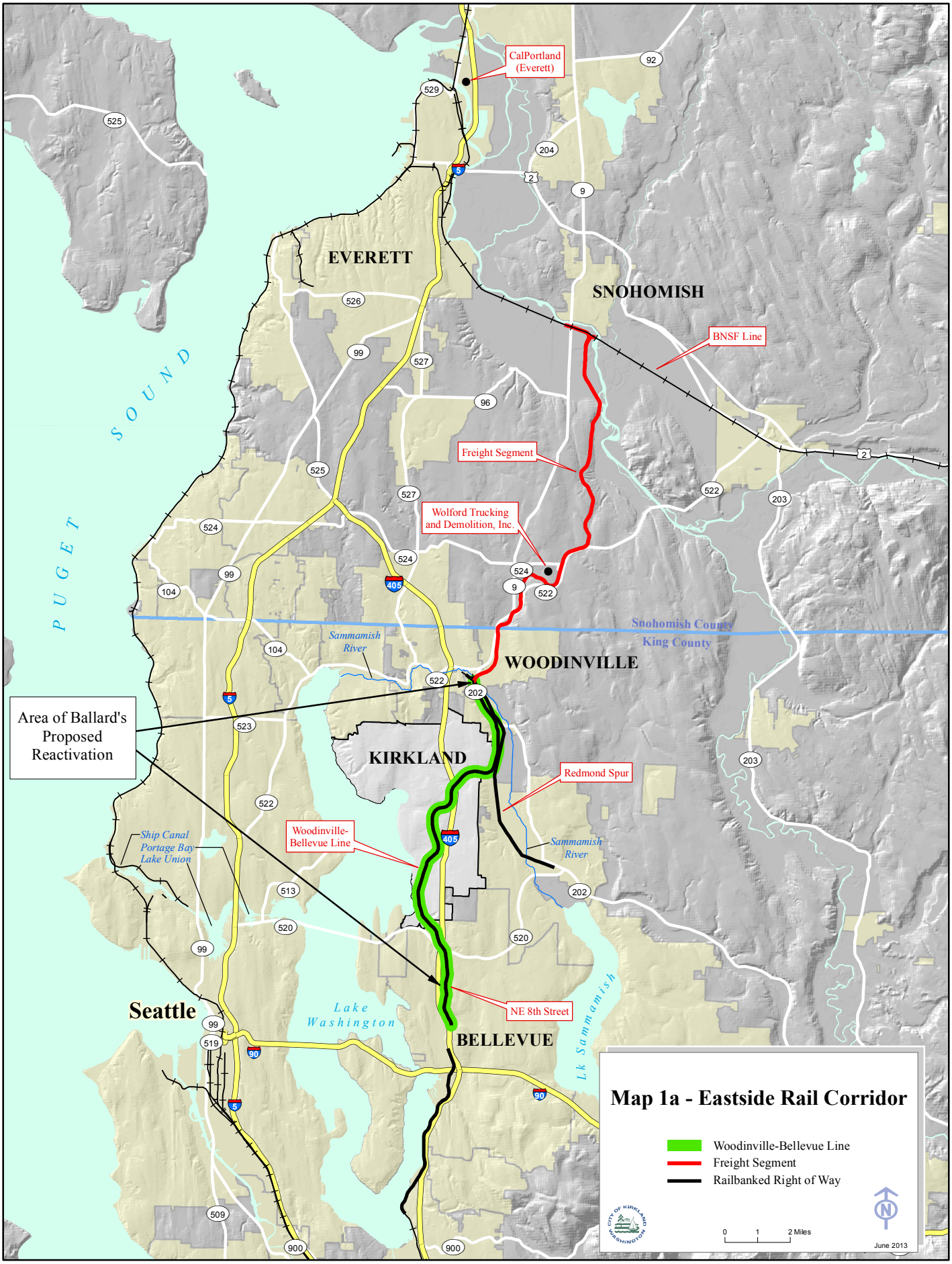
Attorneys for the City of Kirkland, Washington

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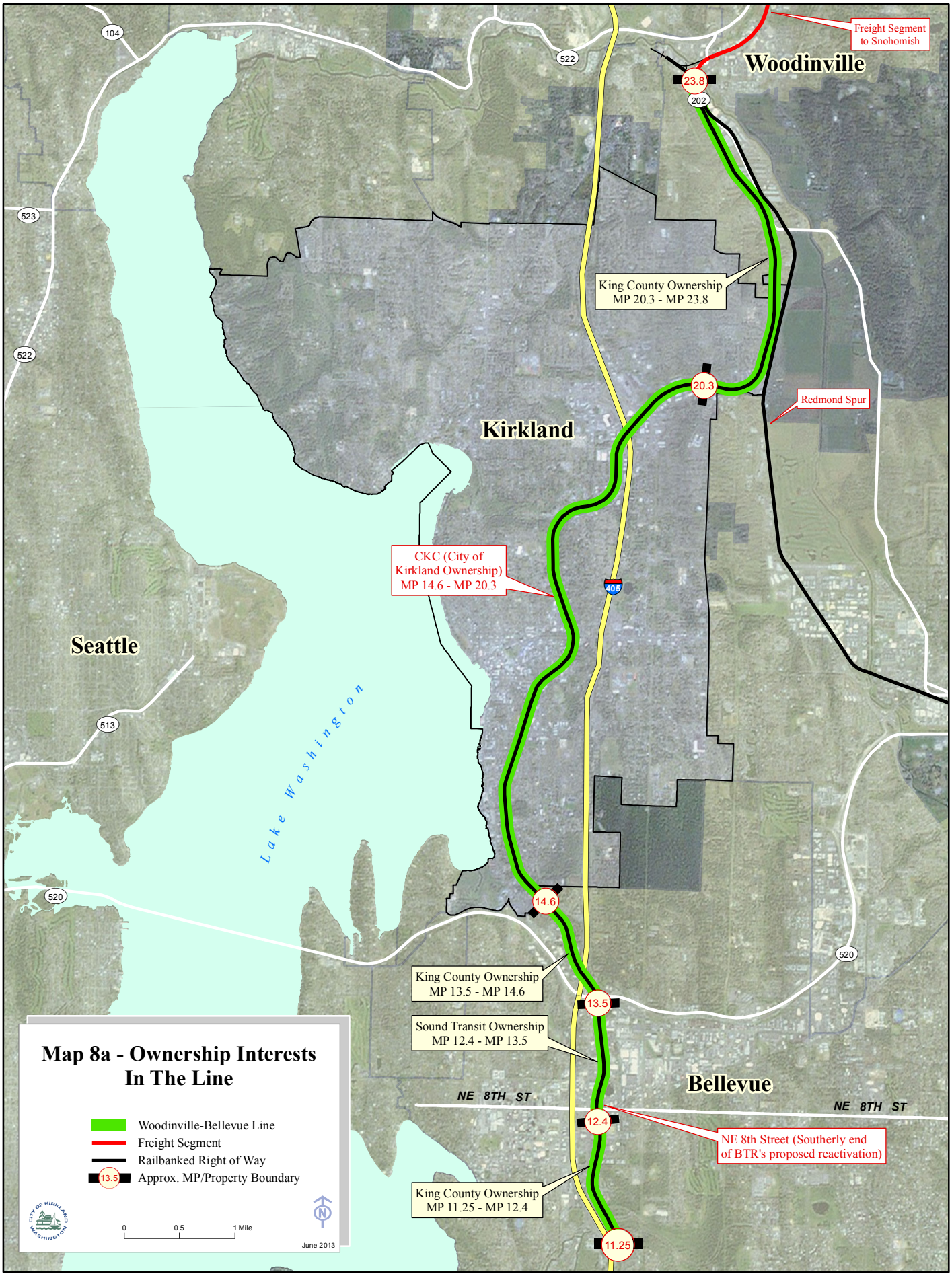
(. . . continued)

> And I'll be quite honest and pragmatic with Your Honor. [The] STB has a lot of fine qualities. They do a lot of very solid jurisdictional prudence. In the world of injunctive relief, they're not particularly expedient.

Verbatim Report of Proceedings Before The Hon. Marsha J. Pechman, United States District Judge (May 3, 2013), Tr. at 6 (Ex. 31).



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August 8, 2008

223244



Ms Anne K Quinlan, Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: ***STB Docket No. AB-6 (Sub-No. 465X)***
BNSF Railway Company Abandonment Exemption in King County, Washington

Dear Ms Quinlan

Enclosed for filing in STB Docket No AB-6 (Sub-No 465X) are the original and ten copies of BNSF Railway Company's Petition for Exemption under 49 U S C § 10502 for filing with the Surface Transportation Board in the above-referenced matter

Also enclosed is a check in the amount of $6,300 for the filing fee

FILED
AUG 11 2008
SURFACE
TRANSPORTATION BOARD

Sincerely,

Kristy D Clark
General Attorney

Enclosures As stated

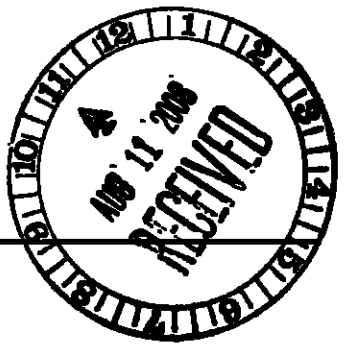
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TRANSPORTATION BOARD

BEFORE THE

SURFACE TRANSPORTATION BOARD



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

223244

PETITION FOR EXEMPTION

SURFACE TRANSPORTATION BOARD
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AUG 11 2008
SURFACE
TRANSPORTATION BOARD

Dated August 11, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U S C § 10502, from the prior approval requirements of 49 U S C § 10903-05, BNSF's abandonment of a 12 55-mile rail line located in King County, Washington

PROPOSED TRANSACTION

BNSF proposes to abandon its rail line located between Milepost 11 25 near Wilburton and Milepost 23 80, in Woodinville, King County, Washington (the "Line") The Line traverses U S Postal Service Zip Codes 98005, 98004, 98033, 98034, 98011 and 98072 A map of the Line is attached as Exhibit A

Based on information in BNSF's possession, the Line does not contain federally granted rights-of-way Any documentation in BNSF's possession will be made available to those requesting it.

STATEMENT OF FACTS

BNSF owns and operates a 12 55-mile rail line between the stations of Wilburton and Woodinville, Washington There are two shippers currently being served on the line Weyerhaeuser, Inc. ("Weyerhaeuser") and Safeway, Inc ("Safeway") Beginning in September 2008, Weyerhaeuser and Safeway will begin using an existing transload facility for their rail transportation needs Weyerhaeuser and Safeway understand the desirable social, political and economic impacts of the proposed abandonment to the community as a whole and have committed to supporting the abandonment

The Port of Seattle ("Port") and BNSF have entered into an agreement pursuant to which BNSF will donate to the Port the right-of-way, track, and other property and physical assets located on the portion of the Line between Milepost 11 25 and Milepost 23 45 Pursuant to a separate agreement, BNSF will sell to the Port the right-of-way, track, and other property and physical assets of the Line between Milepost 23 45 and Milepost 23 80 *See The Port of Seattle Acquisition Exemption – Certain Assets of BNSF Railway Company*, STB Finance Docket No 35128 (STB served June 20, 2008) BNSF has also agreed to rail-bank the Line with King County who will serve as the Interim Trail User for federal railbanking purposes[1] There are no current plans to remove the track structure as the Port is considering multiple possibilities for the Line's ultimate use

As the following table illustrates, the volume of traffic moving to and from the Line has been declining steadily in recent years

[1] The Environmental and Historic Reports filed in reference to and in support of this Petition for Exemption incorrectly stated that the Port intends to allow King County, WA to railbank a "portion of the Line "

YEAR	ANNUAL CARLOADS
2005	263
2006	244
2007	220
2008	127 (Projected)

Prior to 2008, operations on the Line were marginally profitable solely from an operational standpoint BNSF, however, has been experiencing huge economic losses by forgoing a more profitable alternative use of the assets associated with the Line Opportunity costs reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets Pursuant to *Abandonment Regulations – Costing*, 3 I C C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value ("NLV") of the Line, and (3) current income tax benefits (if any) resulting from the abandonment.

The NLV of the Line is **$243,660,000.00**, consisting of $660,000 for the net salvage value of the track, track materials and ties[2] and $243 million in real estate value Without taking into account working capital and the income tax consequences of the abandonment, BNSF is incurring annual opportunity costs of approximately **$36,500,268** [$243,660,000 (NLV) x 14 98 percent (current nominal rate of return)[3]]

Once the two customers on the Line start using the transload facilities to meet their shipping needs, the Line will no longer generate any freight revenues from traffic originating or terminating on the Line. The Line is stub-ended and no longer capable of handling overhead

[2] The net salvage value of the track and track materials is somewhat outdated and significantly below current values. Since this estimate was made, steel prices have spiked by 40 percent
[3] *See Railroad Cost of Capital – 2006*, STB Ex Parte No. 558 (Sub-No 10)(STB served Apr 15, 2008)

traffic [4] At the same time, BNSF will continue to incur certain on-branch avoidable costs, such as maintenance-of-way costs, property taxes and certain other general and administrative costs associated with the Line.

Maintenance-of-way and Structure costs will be at least $125,500 based on normalized maintenance levels necessary to maintain the Line in Class 1 operating conditions The Board and its predecessor have long recognized the appropriateness of considering normalized maintenance costs in instances of deferred maintenance *See Chicago and North Western Transp Co - Abandonment*, 366 I C C 373, 377 (1982) ("Normalized maintenance is the amount needed for economic and efficient operation over the long term. *** We have, in the past, applied normalized maintenance calculations to actual maintenance figures and found that costs for normalized maintenance when compared to actual maintenance expenditures are indicative of deferred maintenance and are to be given consideration in determining whether or not the public convenience and necessity permit abandonment of a line")

The normalized maintenance costs of $10,000 per mile being utilized by BNSF are conservative and based on the per-mile maintenance costs accepted by the Board and its predecessor in other abandonment proceedings. For example, the Board and its predecessor found as reasonable per-mile normalized maintenance costs of **$10,943** in STB Docket No AB-33 (Sub-No 156), *Union Pacific Railroad Company – Abandonment – In Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX* (not printed), served November 8, 2000, **$6,957** in STB Docket No AB-564 *Camas Prairie Railnet, Inc Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID* (not printed), served September 13, 2000, **$6,029** in STB Docket No.

[4] BNSF abandoned the 0 65-mile rail line immediately to the south of the Line in *BNSF Railway Company – Abandonment Exemption – in King County, WA*, STB Docket No AB-6 (Sub-No. 453)(STB served Nov 8 2006) The abandonment of that line was consummated as of March 7, 2008

AB-441 (Sub-No 2X), *SWKR Operating Co – Abandonment Exemption in Cochise County, AZ* (not printed), served February 14, 1997, slip op at 5 ("We know from extensive experience that $6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad ")

In summary, once the two on-Line customers start using the nearby transload facility, BNSF will incur annual operating losses in excess of $125,500 and incur forgone opportunity costs of approximately $36,500,268, for a total annual economic loss of approximately $36,625,768 Thus continued operation of the Line would impose an enormous economic burden on BNSF and on interstate commerce

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U S.C § 10502 from the applicable requirements of 49 U S C § 10903 to permit BNSF to abandon this 12 55-mile rail line

Under 49 U S C § 10502, the STB must exempt a transaction from regulation when it finds that· (1) regulation is not necessary to carry out the rail transportation policy of 49 U S C § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub L. No 96-448, 94 Stat 1895, Congress encouraged the STB's predecessor to use liberally the expanded exemption authority under former Section 10505

> The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress The conferees expect that, consistent with the policies of this Act, the

Commission will pursue partial and complete exemption from remaining regulation

H.R Rep. No 1430, 96th Cong 2d Sess 105 (1980) *See also Exemption From Regulation – Boxcar Traffic*, 367 I C C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp v United States*, 740 F 2d 1023 (D C Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub L No 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502 H R Rep 422, 104th Cong , 1st Sess 168-69 (1995)

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U S C § 10101(2) and (7)]. *See, e g , Norfolk & W Ry Co Abandonment Exem – Cinn , Hamilton County, OH*, 3 S T B 110 (1998), *Georgia Central Railroad, L P – Abandonment Exemption – In Chatham County, GA*, STB Docket No AB-367 (Sub-No 2X) (STB served Sept 17, 1997)("*Georgia Central*") By abandoning the Line, BNSF will be able to avoid the out-of-pocket expenses and enormous opportunity costs associated with retaining this Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management 49 U S C § 10101(5) and (9) *See, e g , Minnesota Northern Railroad, Inc Abandonment Exemption – In Red Lake and Polk Counties, MN*, STB Docket No AB-497 (Sub-No. 1X) (STB served Nov. 14, 1997), *Louisiana & Delta Railroad, Inc – Abandonment Exemption In Lafourche and Assumption Parishes, LA*, STB Docket No. AB-318 (Sub-No 4X) (STB served Aug. 26, 1997).

Other aspects of the rail transportation policy are not adversely affected For example, competition and the continuation of a sound rail transportation system are not affected as the only customers on the Line are Weyerhaeuser and Safeway Beginning in September 2008, Weyerhaeuser will begin shipping and Safeway will begin receiving rail shipments via a transload facility located approximately 10 miles from their respective warehouses Weyerhaeuser supports the abandonment and will be providing a letter stating the same Safeway likewise supports the abandonment and has committed to providing a letter of confirmation Copies of these letters will be forwarded upon receipt

B. This Transaction Is of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume *See, e g , Burlington Northern Railroad Company – Abandonment Exemption In Greene and Polk Counties, MO*, Docket No AB-6 (Sub-No 349X) (ICC served Aug 27, 1993), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL*, Docket No AB-347 (Sub-No 1X) (ICC served Jan 16, 1992).

The proposed transaction is clearly of limited scope BNSF is seeking to abandon a 12.55-mile line that traverses an area of high-end commercial and residential development with limited and declining demand for rail service in recent years. The limited geographic area involved and the limited past use of the Line demonstrate the limited scope of the proposed abandonment. *See, e g , Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA*, Docket No AB-397 (Sub-No 3X) (ICC served Feb 9, 1995)

C. This Transaction Will Not Result in an Abuse of Market Power

There are two shippers on the Line, both of whom have plans to use a nearby transload facility to meet their future transportation needs, and both support the abandonment. Therefore, regulation is not necessary to protect shippers from an abuse of market power *See, e g, CSX Transportation, Inc – Abandonment Exemption – In Guernsey County, OH*, STB Docket No AB-55 (Sub-No 576) (STB served Nov 22, 1999, *CSX Transportation, Inc – Abandonment Exemption – In Harrison County, WV*, STB Docket No AB-55 (Sub-No 563X) (STB served Sept 25, 1998), *Georgia Central*

Also, the communities along the Line have an adequate highway network capable of supporting motor carrier transportation For example, Interstate 405 runs largely parallel to the Line Transportation services are available from numerous motor carriers that serve the area Where, as here, few shippers utilize the line to be abandoned and they have adequate alternative transportation options available, there is no potential abuse of market power *See, e g, Norfolk Southern Railway Company – Abandonment Exemption -- In Franklin, Marion, and Winston Counties, AL*, Docket No AB-290 (Sub-No 123X) (ICC served May 3, 1995).

As explained below, there is very limited, if any, prospect for freight rail growth in the area given the very high land values along the Line Consequently, the Board should reject any speculation about future traffic as a basis for denying the proposed abandonment *See, e g, Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR*, STB Docket No AB-433X (STB served Apr. 16, 1997) ("*Idaho Northern*"), *Tennessee Railway Company – Abandonment Exemption – In Scott County, TN*,

STB Docket No 290 (Sub-No 260X) (STB served June 17, 2005 ("*Tennessee*");[5] *Burlington Northern Railroad Company – Abandonment Exemption Between Mesa and Basin City, Franklin County, WA*, STB Docket No AB-6 (Sub-No 370) (STB served Jan 27, 1997), *Norfolk and Western Railway Company – Abandonment Exemption – In Randolph, Macon, Adair, and Schuyler Counties, MO, and Davis, Appanoose, and Monroe Counties, IA*, Docket No. 290 (Sub-No 122X) (ICC served Sept. 17, 1993 0, *CSX Transportation, Inc – Abandonment Exemption – In Webster County*, Docket No AB-55 (Sub-No 413X) (ICC served May 29, 1992).

EXEMPTION FROM SECTIONS 10904 AND 10905 IS ALSO WARRANTED

BNSF has agreed to donate, in part, and to sell, in part, the physical assets of the Line to the Port who, according to public records, intends to leave all rail, track and track-related structures in place while a public process is used to evaluate the best use of the corridor. BNSF has also agreed to rail-bank the Line with the County who will serve as Interim Trail User for federal railbanking purposes The Port has stated publicly that it intends to instigate a multi-agency, regional process to plan and recommend appropriate uses for the railbanked property, including the location and size of the proposed trail and the possibility for future commuter service The sale and donation are scheduled to close by the end of 2008 or early 2009 Accordingly, BNSF seeks an exemption from 49 U S C §§ 10904-05 to expedite the sale and donation of the physical assets of the Line to the Port and to railbank the corridor with the County.

[5] Citing *Idaho Northern*, the Board, in *Tennessee*, noted that under its precedent "mere speculation about future traffic is not a sound basis upon which to deny an abandonment " *Tennessee*, slip op , at 4

The agreements reached between the County, Port and BNSF will allow the rail corridor to become publicly owned and will preserve what County officials consider to be a critical transportation corridor for the broadest range of possible public uses In particular, preservation of the contiguous corridor is considered crucial to resolving transportation problems, one of the Eastside area's biggest issues The plans, as constructed, are expected to support billions of dollars in economic activity in addition to creating a nationally significant hiking and biking trail

The Board and its predecessor have granted exemptions from Sections 10904 and 10905 when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail freight service As previously explained, by the fall of 2008, all local traffic will be moved off the Line and all former overhead traffic has already been re-routed Consequently, by the end of this year there will no longer be any demand for rail freight service along the Line. Reinstitution of rail freight service under Section 10904 would be incompatible with the County's and the Port's intended uses of the Line In addition, there is no need for a public use condition under Section 10905 because BNSF has already agreed to sell, in part, and donate, in part the Line to a public entity for multiple public uses.

The Board should grant the requested relief because the Line is needed for a valid public purpose (a public trail and potentially commuter rail) and there is no overriding public need for continued rail freight service along the Line Applying the offer of financial assistance requirements, in this instance, is not necessary to carry out the rail transportation policy Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S C. §§

10101(2) and (7)] As previously explained, regulation of this transaction is not necessary to protect shippers from an abuse of market power. The remaining two shippers on the Line have alternative rail-truck options available and support the abandonment.

The Line offers limited, if any, freight rail growth opportunities, even for a short line operator Land use around the Line is clearly moving away from freight applications, if not from industrial and low-end commercial applications altogether. Land values along the right-of-way are in the $25-40 per square foot range which is well beyond what a rail-oriented Pacific Northwest manufacturer or distributor would pay for real estate Consequently, there is little chance of significantly increasing carload traffic on the Line Furthermore, Interstate 405 which runs largely parallel to the Line is a significant transportation corridor, public and private Use of the Line as a complimentary transit corridor and/or as a hiking/biking trail has been planned for some time and is now made possible through the joint BNSF, Port, County agreements *See Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. 290 (Sub-No 293X) (STB served Nov 6, 2007)(exemption granted where line was needed for public transit corridor); *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No AB-409 (Sub-No 5X) (STB served July 17, 2008)(exemption granted where line was needed for mass transit), *Union Pacific Railroad Company – Abandonment Exemption – In Pima County, AZ*, STB Docket No AB-33 (Sub-No 141X) (STB served Feb 16, 2000)(exemption granted where line was needed for public projects including bike/pedestrian paths), *Doniphan, Kensett and Searcy Railway – Abandonment Exemption – In Searcy, White County, AR*, STB Docket No AB-558X (STB served May 6, 1999)(exemption granted where line was needed for construction project); *K&E Railway Company – Abandonment Exemption – In Alfalfa, Garfield,*

and Grant Counties, OK and Barber County, KS, STB Docket No AB-480X (STB served December 31, 1996)(exemption granted where segments of line were needed for flood control), *Union Pacific Railroad Company – Abandonment Exemption – In Kane County, IL*, STB Docket No AB-33 (Sub-No 105X) (STB served April 29, 1997 (exemption granted where right-of-way was needed for interim trail use), *Missouri Pacific Railroad – Abandonment and Discontinuance of Operations Exemption – In Houston, Harris County, TX*, STB Docket No. AB-3 (Sub-No 139X) (STB served December 31, 1996)(exemption granted where line was needed for expansion of warehouse and hiking and bike trail)

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C F.R §§ 1105 07 and 1105 08 were forwarded to the Board on June 24, 2008 The Certificate of Service for this Petition for Exemption is attached as Exhibit B

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit C.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R Co – Abandonment – Goshen, 360 I C C 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U S C §§ 10903-05 is not required to carry out the rail transportation policy set forth in 49 U.S C § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition and related abandonment request

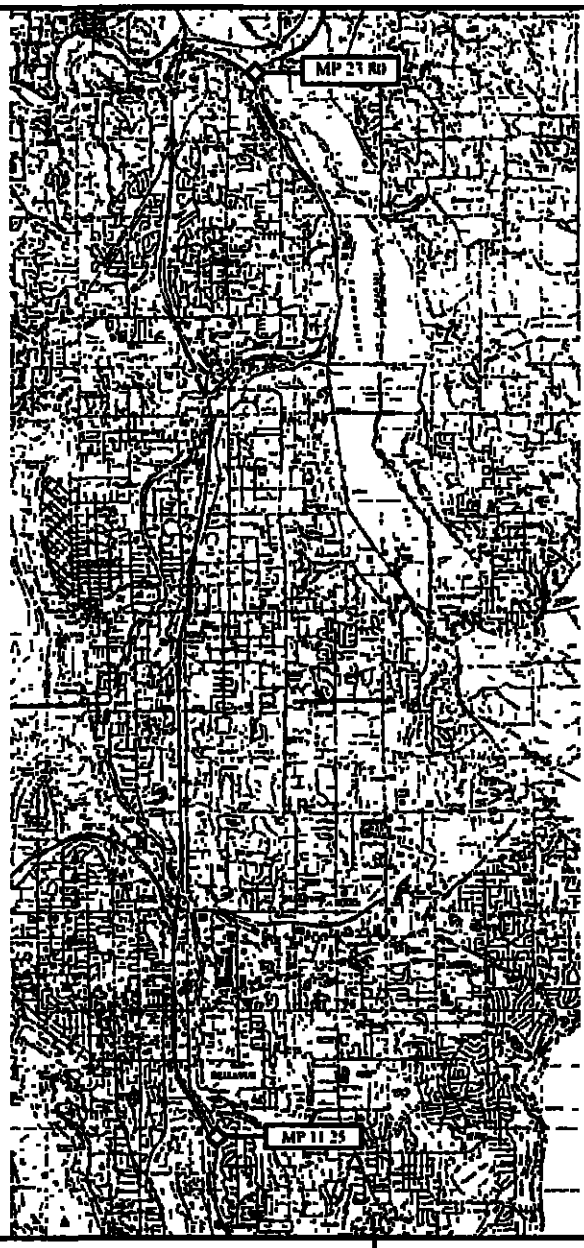
Respectfully submitted,



KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

Dated: August 11, 2008

EXHIBIT A



Woodinville Subdivision
King County, Washington

BNSF Line Segment 405
Milepost 11 25 to Milepost 23 80

STB Reference
AB-6, Sub 465X

Base map – United States Geological Survey
Bothell, Maltby, Kirkland and Redmond quadrangles
7 5-minute series

Map source dates 1979/07/01, 1980/07/01
DRG Creation Date 1997/04/09
DRG Coordinate System UTM
DRG Datum NAD27

EXHIBIT B

CERTIFICATE OF SERVICE

Pursuant to 49 C.F R. § 1152 60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No AB-6 (Sub-No 465X) was mailed via first class mail on August 8, 2008, to the following parties

State Public Service Commission

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504

Military Traffic Management Command

Military Traffic Management Control
ATTN. Railroads for National Defense
720 Thimble Shoals Blvd , #130
Newport News, VA 23606-2574

National Park Service

U S Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of Agriculture

U S Department of Agriculture
Chief of the Forest Service
4th Floor N W , Yates Building
201 14th Street, SW
Washington, DC 20250

Dated August 8, 2008

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

EXHIBIT C

SURFACE TRANSPORTATION BOARD

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

BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
KING COUNTY, WASHINGTON

On August 11, 2008, BNSF Railway Company (BNSF) filed with the Surface Transportation Board a petition under 49 U S.C. 10502 for exemption from the provision of 49 U S C 10903 for BNSF to abandon a line of railroad extending from Milepost 11 25 to Milepost 23 80, near Wilburton, Washington, which traverses U S. Postal Service Zip Code 98005, 98004, 98033, 98034, 98011 and 98072, a distance of 12 55 miles in King County, Washington The line will travel through the Wilburton, Bellevue, Kirkland and Woodinville stations

The line does not contain federally granted rights of way Any documentation in the railroad's possession will be made available promptly to those requesting it

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R Co – Abandonment – Goshen, 360 I C C 91 (1979)

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S C 10502(b) A final decision will be issued within 90 days (by November 8, 2008)

Any offer of financial assistance (OFA) under 49 C F R. 1152 27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,500 *See* 49 C F R 1002(f)(25) [6]

[6] BNSF is also seeking an exemption from the OFA procedures which, if granted, will preclude the filing of an OFA

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use

Any request for a public use condition under 49 C F.R 1152 28 and any request for trail use/rail banking under 49 C F.R 1152 29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register* Each trail use request must be accompanied by a $200 filing fee *See* 49 C.F R. 1002.2(f)(27)

All filings in response to this notice must refer to STB Docket No. AB-6 (Sub-No. 465X) and must be sent to (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S W , Washington, DC 20423-0001; and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, Texas 76131

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C F R Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis EAs in abandonment proceedings will normally be available within 60 days of the filing of the petition The deadline for submission of comments on the EA will generally be within 30 days of its service

Decided: _____ 2008

By the Board, David M Konschnik, Director, Office of Proceedings, Anne K Quinlan

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No AB-6 (Sub-No 465X) was published on July 2, 2008, in the *The Seattle Times*, a legal newspaper published daily in King and Snohomish counties, Washington as required by 49 C F.R § 1105.12

Dated· August 8, 2008

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

REVISED CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS

BNSF Railway Company ("BNSF"), by and through its authorized representative, Kristy Clark, certifies that on June 24, 2008, BNSF sent copies of the foregoing Environmental and Historic Reports by first class mail to the following agencies:

Ms. Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street S W
Washington, DC 20423-0001

Russell Holter
Dept. of Archaeology and Historic Preservation
1063 S Capitol Way, Suite 106
Olympia, WA 98501

Larry Gossett, Chair
Growth Management & Natural Resources Committee
Metropolitan King County Council
516 Third Avenue, Room 1200
Seattle, WA 98104

Tom Sibley
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

NOAA
National Geodetic Survey
VIA E-Mail NGS InfoCenter@noaa gov

Charles Natsuhara, Area Soil Scientist
Natural Resource Conservation Service
1011 East Main, Suite 106
Puyallup, WA 98372

Jim Green
Seattle District Corps of Engineers
P O Box 3755
Seattle, Washington 98124-3755

Loree' Randall
Shore Lands & Coastal Zone Mgmt.
PO Box 47600
Olympia, WA 98504-7600

Clifford J Villa, Assistant Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Karen Myers, Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Western WA Fish and Wildlife Office
510 Desmond Drive SE
Lacey, WA 98503

Gregory F Gress, Chief
Pacific Land Resources Program Center
U.S. National Park Service,
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, CA 94607

Gerald Shervey, PE
Washington Department of Ecology
NW Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Larry Fisher, Area Habitat Biologist
Washington Dept. of Fish & Wildlife
16018 Mill Creek Boulevard
Mill Creek, WA 98012

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504

The required cover letters (pursuant to 49 C F R 1105 11) are attached hereto BNSF has consulted with all appropriate agencies in preparing the reports

Kristy Clark

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

EXHIBITS REFERENCED

6	Document with cover sheet containing e-mail from Doug Engle to Kurt Triplett	143
8	Letter to Cynthia Brown dated March 27, 2013	201
11	Map identified Map 8	141

SEATTLE, WASHINGTON; Wednesday, May 22, 2013
9:17 A.M.
--o0o--

DOUGLAS ENGLE, deponent herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION

BY MR. FERGUSON:

Q. Good morning, Mr. Engle. My name is Hunter Ferguson. I represent the City of Kirkland. Have you had your deposition taken before?

A. Yes, I have.

Q. Okay. You probably aware of sort of the rules, how it works, I'm going to ask questions. I will ask for audible responses from you, head shakes and nods won't be picked up by the court reporter. I'll try to wait till the end of your answer so we don't talk over each other.

A. Mm-hm (answers affirmatively).

Q. Just be mindful of me doing the same and counsel, if they need to make objections, just so Katie has an easier time of writing everything down.

If you need to take a break at any time, we can do that, just not in the midst of a question or a series of questions. And if you don't understand a question or if

anything that I've asked is confusing, just tell me and I'll try to reword it for you.

A. Mm-hm (answers affirmatively).

Q. Okay. Let's start, are you represented by counsel?

A. Yes.

Q. Okay. Which law firm represents you?

A. Fletcher Sippel.

Q. Does the Montgomery Scarp firm also represent you?

A. Yes.

Q. Do you have an engagement letter with Fletcher Sippel?

A. Yes.

Q. Do you have an engagement letter with Montgomery Scarp?

A. Yes, I believe so.

Q. Do you recall signing an engagement letter with Montgomery Scarp?

A. I don't remember.

Q. Okay. Have you signed a letter with Montgomery Scarp in the past week?

A. No.

Q. Have you signed an engagement letter with Fletcher Sippel in the past week?

A. No.

Q. Do you know when you retained Fletcher Sippel to represent you?

A. Not exactly, over a month ago.

Q. Was it before or after Ballard filed its petition with the Surface Transportation Board?

A. I believe at the same time.

Q. Okay. Are you paying the legal fees to Fletcher Sippel?

MR. MONTGOMERY: Go ahead.

THE WITNESS: I am paying some of the legal fees to Fletcher Sippel, yes.

Q. (By Mr. Ferguson) Are you paying for your own representation?

A. Yes, I am.

Q. Are you paying legal fees for the representation of any other person or entity to Fletcher Sippel?

A. Yes.

Q. And what other entity are you paying for?

A. I am paying for Eastside Community Rail, and paying part of Ballard Terminal.

Q. Is anyone else underwriting, I guess, just back up here and clarify. Does Fletcher Sippel represent you personally?

MR. MONTGOMERY: Object to the extent it

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

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

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion. Object to the form; foundation.
THE WITNESS: So you want me to answer?
MR. MONTGOMERY: I'm done. I think I'm done with my objections. If you give me some more time, I will come up with some more.
THE WITNESS: Do you want to repeat the question, please?
Q. (By Mr. Ferguson) Do you consider yourself to be a party in interest in the STB proceedings?
MR. MONTGOMERY: Object to form. Object to the extent it calls for a legal conclusion. Foundation.
THE WITNESS: Of course.
Q. (By Mr. Ferguson) Why?
MR. MONTGOMERY: Same objections.
THE WITNESS: Mr. Cole's objectives and my objectives are the same, and that is to maximize profit. It's the fundamental basis of the American dream.
Q. (By Mr. Ferguson) Are you represented by counsel in connection with preparing any materials for submission to the Surface Transportation Board?
MR. MONTGOMERY: Object to the form; foundation, extent it calls for a legal conclusion.
THE WITNESS: So, repeat the question again.

Am I represented by counsel?
Q. (By Mr. Ferguson) For the purpose of preparing materials for submission to the Surface Transportation Board?
A. Yes.
MR. MONTGOMERY: Same, please, Mr. Engle.
THE WITNESS: I'm sorry, I thought you had already.
MR. MONTGOMERY: Same objections, please.
Q. (By Mr. Ferguson) So you are represented --
A. Yes.
Q. -- by counsel for the purpose of preparing materials for submission to the STB?
MR. MONTGOMERY: Same objections.
THE WITNESS: Yes.
Q. (By Mr. Ferguson) Okay. And is that Fletcher & Sippel that represented you --
MR. MONTGOMERY: Same objections.
Q. (By Mr. Ferguson) -- for those functions?
MR. MONTGOMERY: Same objections.
THE WITNESS: Yes.
Q. (By Mr. Ferguson) Okay. Are there any other lawyers that represent you in connection with the STB proceedings?
MR. MONTGOMERY: Same objections.

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

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

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

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

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

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

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

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

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

Q. (By Mr. Ferguson) With the pie chart?
A. Yes.
Q. Is that a stand-alone document or is that attached to something else?
A. It should be stand alone, but...
Q. Okay.
(Exhibit Number 23 marked.)
MR. WAGNER: Is that Bates stamped?
MR. MONTGOMERY: It's not. It was brought today.
MR. WAGNER: It was --
THE WITNESS: It was previously submitted.
MR. WAGNER: I've seen that in here (indicating).
THE WITNESS: I added --
MR. FERGUSON: Let's go off the record for a second.
(Discussion held off the record.)
MR. FERGUSON: Back on.
Q. (By Mr. Ferguson) Mr. Engle, the court reporter just handed you what's been marked as Exhibit 23. This is a document that you brought to the deposition this morning entitled "Eastside Community Rail Corridor Alignment Cost Sharing Example as of 2013 May 3."
Would you explain what this document is, please?

A. In answer -- response to your question as to how does ECR make its money, ECR makes its money based on a share of the revenue stream of the various activities inside the rail corridor. We have previously, in your package, in the documents I submitted, is a document that relates to the Surface Transportation Board's revenue adequacy rate of return, which over the last several years is about 11 percent.
So it is my intention to be able to offer more cost effective service to those entities using the right of way and make 11 percent margin on that business. For example, if this corridor is a hundred feet wide, for the purposes of this document, with freight only operating inside the corridor, all of the maintenance of way cost are the burden of Ballard Terminal Railroad.
If, for example, we were to add a trail to that, we believe that excluding the rail structure, which is why I resubmitted this, there is a sentence there that says "Trail expenses do not include rail structure costs," that the trail -- if the trail had 37 feet of the right of way, that for those general purposes of maintaining the right of way, keeping the weeds down, keeping the ditches clean, water flow, et cetera, that the trail would pay for its 37 feet of the right of way.
Now, then, if it was a trail only use, that the

user would be responsible also for 100 percent of the right of way cost and maintenance. So in the simple scenario, where there's freight and trail for the maintenance of way costs excluding railroad structure, the rails is only going to pay 63 percent and the trail is only going to pay 37 percent. The rail is always responsible for the rail structure costs.
So taking this to the next, which is the little table over here in the center to the right, after talking to KPNG, whatever allocation method you choose to pursue, you need to stick with it. So whether you use gross ton miles, gross vehicle miles, percent of revenue, percent of cost, whatever that is, you do it and you stick with it.
We decided, from an administrative standpoint, the easiest way to calculate, and the most consistent way to do this is gross vehicle miles. So for example, if freight constituted 50,000 vehicle miles in a year, and excursion constituted 150,000, and let's say some day in the future commuter was added into the mix, they would be the busiest at 300,000 miles, then that rail portion would get divvied up 10 percent to freight, 30 percent to excursion, 60 percent to commuter. What that would mean overall in the red numbers underneath net is that the freight would be paying 6 percent; excursion, 19; commuter, 38; trail, 37.

Q. What's the title of it?
A. The title of the spreadsheet is "Port of Seattle Capital Improvements to Eastside Rail Corridor."
Q. Okay. Let's go ahead and mark this so we can talk about it.
(Exhibit Number 24 marked.)
Q. (By Mr. Ferguson) Mr. Engle, the court reporter has just handed you what's been marked as Exhibit 24. It's the document you just referenced which you brought today entitled "Port of Seattle Capital Improvements to Eastside Rail Corridor."
Is this a document you prepared?
A. Yes, it is.
Q. Did anyone else help you prepare it?
A. Yes.
Q. Who?
A. It's based on information received from Railworks, Osmose, Northwest Signal, Byron Cole of Ballard Terminal and Ernie Wilson. Very little from Ernie. I think he reviewed it for math.
Q. Did you produce -- was this, so back up for a second. You made a spreadsheet based on information that you received or gathered from Railworks, Osmose, Northwest Signal, Mr. Cole and Mr. Wilson?
A. Correct.

Q. Was that information you received in the form of documents or was it received verbally?
A. Mr. Wilson did not provide input. He checked it. Checked the math for me. Want to make that straight first.
Q. You may have said that, I didn't hear you.
A. Just want to be straight. Railworks submitted the document. Osmose submitted the document. Northwest Signal presented documents. I believe those documents were all included in my submission, my response.
Q. Okay.
A. What -- the reason that I...
Q. What about Mr. Cole?
A. Mr. Cole?
Q. Did he receive?
A. Mr. Cole would have reviewed this, didn't receive anything from Mr. Cole. Mr. Cole does not e-mail. What Mr. Cole -- Mr. Cole was on this trip when we went down to Railworks and met with them about rehabbing the line. And so I wanted to make sure that we had captured -- so he was more of a technical review, if you will, of this document.
The reason that I produced this document for today is that in the electronic version of the spreadsheet, sometimes I group cells together that don't -- aren't necessarily exposed on the printout. And what I wanted to make sure was that these grouped cells were available for

discussion today.
Q. Okay. Is there an earlier version of this document or this spreadsheet that you produced in the materials that counsel gave to us on Tuesday?
A. Maybe, maybe not. Again, I don't keep a lot of drafts around.
Q. Okay.
A. I like iterating and updating. I might keep one version back, but that's it.
Q. Okay. Mr. Engle, why is the Port of Seattle's name included on this spreadsheet?
A. The original thinking was that since the Port of Seattle owned the fee, that is the Port of Seattle would have to accept any government money necessary to upgrade the tracks.
Q. Why?
A. Because that's the way it's done everywhere else but here.
Q. If it's not done that way here, why would they have to receive the money?
MR. MONTGOMERY: Foundation.
THE WITNESS: Because it is done that way here, they just don't want to.
Q. (By Mr. Ferguson) Under the O&M agreement between GNP and the Port of Seattle that ECR acquired

through the bankruptcy, isn't ECR contractually obligated to maintain and make any improvements to the freight segment?
MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.
THE WITNESS: Upon inspection, upon closing, or actually upon when we made the offer the end of September, we were aware that there was some amount of maintenance that was going to be needed to be done immediately to keep freight moving. In order to get the tracks up to a condition Class 1 or Class 2 that would enable passenger movements, or that would lower the ongoing maintenance costs for freight, a sizable amount of investment needed to be done. And as I said, that is typically -- this -- our proposal is typical for railroads around the country, is that the public entity do the necessary capital improvement and then the railroad maintains that for the duration of the agreement. The maintenance -- the ongoing maintenance cost would be roughly a million dollars a year, so we needed the capital improvement to be done to get to a level that we could actually maintain it.
Q. Okay. And when you're referencing, in the bottom row here, "Total Funding Request," total request is roughly 6.4 million; is that correct?

A. Yeah. Yes.
MR. MONTGOMERY: Sorry, again, object to the extent it relates to north of the segment at issue here.
Go ahead.
THE WITNESS: Yes, the difference between this and the 6.26 million that's floated around is the fact that there is 9 percent use tax in here. So if you took that out, it would be 6.26.
Q. (By Mr. Ferguson) Okay. Who is that funding going to? Who is this request going to be made to?
A. Well, the request was made to the state legislature, and --
Q. How was that request made?
A. Well, we were trying to figure that out when the Snohomish County Executive's office blew up.
Q. Do you know who made the request?
A. The guy who was supposed to make the request was involved in a research scandal.
Q. Do you know his name?
A. Kevin.
Q. Okay. And he was an official with Snohomish County?
A. He was on staff, yes.
Q. All right. Do you know if he or anyone else made a request for this funding?

A. We were never able to get it in to the proper form in the time frame required by the legislature. We missed the window.
Q. And this is a request you had made to the Washington Department of Transportation or did you make it to --
A. Under -- we made this directly with the legislature to get into the transportation budget, which it didn't get even as a line item zero. Okay, so it didn't even make any of the hurdles.
So, the department of -- after a phone call -- after a conversations with WSDOT, there were no -- we had missed the window for them and there was no opportunity to get funding in this legislative session through them either. So until 2015, there will be no state or WSDOT improvements made to the line.
Q. Okay. Mr. Engle, if we understood your testimony correctly, you said that some amount of maintenance needed to be done to keep freight moving; is that correct?
A. When I hear that back, that doesn't sound exactly right. There's always maintenance that needs to be done.
MR. FERGUSON: Can you find that in the answers and read that back, please.
Conscious of the time here, folks.
(Answer on Page 89, Lines 6 through 22

read by the reporter.)
Q. (By Mr. Ferguson) Do you know what maintenance needed to be done immediately to keep freight moving?
MR. MONTGOMERY: Object to the extent this calls for other than Bellevue to Woodinville.
THE WITNESS: Nothing extraordinary. Ties, spikes, bolts tightened, crossing work.
Q. (By Mr. Ferguson) Has --
A. Normal stuff.
Q. -- that work been done?
MR. MONTGOMERY: Same objection; foundation.
THE WITNESS: It's my understanding that Mr. Cole has maintained the right of way, has put money into the right of way, has maintained the right of way in an excepted level, which allows continued freight service. The only outstanding item that I am aware of at this time is a crossing signal in Maltby, that is -- needs some attention.
Q. (By Mr. Ferguson) Has there been any interruption to freight service since ECR acquired the rights to the freight segment?
MR. MONTGOMERY: Beyond the scope.
THE WITNESS: Not to my knowledge.
Q. (By Mr. Ferguson) Do you know who or what entity paid for the maintenance done that you just described?

A. No, I don't.
Q. Do you know if Ballard Terminal Railroad paid for it?
A. That would be my expectation, is that they've maintained the line per our operating agreement.
Q. Okay. When you say "our operating agreement," which agreement are you referring to?
A. The operating agreement between Ballard Terminal and Eastside Community Rail.
Q. Is that the interim operating agreement signed in September of 2012?
A. That would be the interim and the current lease.
Q. The current lease is the lease that you signed last month?
A. Yes.
Q. Okay. Number 20, I'd like to wrap up these and then break for lunch. Number 20, asks you to produce all documents related to discussions and negotiations between the Port, City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the line for rail service.
Did you search for documents responsive to this request?
A. Yes.
Q. And did you find any documents responsive to this

that you've made to fulfill any moral obligations to Mr. Cole or Ballard Terminal Railroad?

MR. MONTGOMERY: Object to the form.

Q. (By Mr. Ferguson) By moral obligations, I mean --

A. I personally feel -- I personally feel obligated to compensate Mr. Cole for much of his effort with, during the GNP time period. There is specifically 38 or $39,000 that I owe him per the bankruptcy closing that we've got a handshake on.

Q. Okay. Moving on to 22, we touched on this before, but just so our record is clear, are you aware of any written communications that have been submitted to either the state legislature or an executive agency to maintain or improve the freight segment or the line?

A. The only communication has been with documents that have already been used and submitted. There -- as it relates to the State of Washington WSDOT, I did not include blank forms that I downloaded from their website that were e-mailed to me to fill out for a loan application. I saved the files. I didn't do anything with them. I didn't submit them to you unless you really want them, I'd be -- they're forms.

Relative to the legislature, we gave them the funding request that I believe you have in the documents

that were transmitted on Tuesday that I -- excuse me for reaching here. That one (indicating).

Q. Okay. Let's go ahead and mark this as an exhibit so we're clear.

(Exhibit Number 25 marked.)

THE WITNESS: It's actually just a two pager.

Q. (By Mr. Ferguson) Mr. Engle, would you back up, and we can have Katie read your answer again if that would help. Would you please explain what has been marked as Exhibit 25, what is this document?

A. This was a document we used to articulate. And it could be one page, front and back, which is the length, to communicate the need for the 6.2 million the -- in order to rehabilitate the tracks to a normal -- to a passenger level.

MR. MONTGOMERY: Do you have copies of that, extra copies? Did you pass them out?

MR. FERGUSON: It's in your stapled packet.

MR. MONTGOMERY: Thank you -- I don't think I got a stapled packet.

MR. FERGUSON: You do. It's right in front of you.

MR. MONTGOMERY: Thank you.

MR. FERGUSON: Tom, I think it's the last

two pages.

MR. MONTGOMERY: Got it. Go ahead, thanks.

Q. (By Mr. Ferguson) So this is a document that was submitted to who, or was it ever submitted to anyone?

A. It actually didn't make it to Olympia, other than individual legislators who wanted to see it.

Q. Okay.

A. Again, we were too late to get into the transportation budget. So this is the closest thing I have to a request.

Q. Do you know if anyone from Snohomish County ever made request for funding to the legislature for track rehab?

MR. MONTGOMERY: Object to the extent it doesn't involve Bellevue to Woodinville.

THE WITNESS: I don't know.

Q. (By Mr. Ferguson) Looking at Item 23, back on the subpoena, Page 6, we requested all documents showing traffic volume and revenues from freight traffic on the freight segment, including services provided by Ballard, since 2009.

It's my understanding that Ballard actually started running freight operations in 2010; is that correct?

A. Yes, it is.

Q. Did you search for documents showing traffic volume and revenues since 2010 here?

A. No, the request for documents from 2011 forward. So I --

Q. Well, the request --

A. -- searched for documents.

Q. Okay.

A. Well, I am sorry.

Q. The request specified a time period unless specified otherwise. So take a look on Page 4, up at the top, Number 6 -- it's okay.

A. Sorry, I misinterpreted that.

Q. It's all right. So you didn't search for any documents showing you traffic or freight volume before June 30, 2011?

A. Correct.

Q. Okay. Do you think you might have any records showing movements on the freight segment between January 1, 2010, and June 30, 2011?

A. I likely do.

Q. Okay.

A. But not likely in electronic format.

Q. Hard copy?

A. Which means they're likely buried in the back of my garage that's a storage unit or possibly over at

reflected here, at least, would accrue only once those acquisitions are made?
A. Correct.
Q. There are ongoing maintenance costs for the existing rail infrastructure?
A. Correct.
Q. And Ballard covers those?
A. Correct.
Q. Does ECR own any real property between Snohomish and Bellevue?
A. It owns the permanent freight easement between Snohomish and Woodinville.
Q. Does it own title to any land?
A. No.
Q. Has it attempted to acquire title to any land since June 2011, any point between Woodinville and Bellevue?
A. No.
Q. Does ECR have a deal with Woodinville to convey any rights to an easement for its bridge project?
A. When I get a deposit, we will enter those discussions.
Q. How much is the deposit that you have to have?
A. I don't know yet. It will be based on the appraisal.

Q. Are you having the -- you're having certain property appraised?
A. The Port of Seattle is making an appraisal.
Q. Okay. Do you know when you're going to get that appraisal or when the Port of Seattle will get the appraisal?
A. Any time. It's due any time.
Q. Okay. Why are you requiring deposit before you go into negotiation?
A. Because I would like the next round of discussions to be productive.
Q. Okay. So you want them to have some skin in the game?
A. If we're going to talk about it, let's do it.
Q. Okay. Will this be a nonrefundable deposit?
MR. MONTGOMERY: Calls for speculation; foundation.
THE WITNESS: I really haven't thought about it.
Q. (By Mr. Ferguson) Okay. Other than the freight easement, does ECR have any assets?
A. Just the operating agreements.
Q. That would be the operating agreement, the license agreement with Ballard?
A. And the Port of Seattle and Snohomish County.

Q. Okay. Does ECR receive any payments from the Port of Seattle under the operating agreement?
A. No, we pay the Port of Seattle $10 a car. And Ballard Terminal, per our license agreement, is responsible to make those payments. So Ballard pays the port $10 a car and pays us $10 a car.
Q. You're not actually going to net any revenue from Ballard's freight movements, correct?
A. $10 a car.
Q. But you have to pay that over to the Port of Seattle?
A. No, he's responsible for paying the Port $10 and for paying me $10 to pay for the freight --
Q. So it's $20 total split halfway, 10 to you and 10 to the Port?
A. Yes, sorry.
Q. It's okay. Does ECR have any contracts to build any facilities at any point on the line between Woodinville and Bellevue?
A. It has no written contracts.
Q. Does it have some other kind of contract? Is there an oral contract?
A. With Bobby to help him get -- with Mr. Wolford to help him get a spur, which benefits Wolford, Ballard Terminal and me.

Q. Okay. We'll get to Wolford Trucking in a second. I'm asking specifically about the line between Woodinville and Bellevue, so not Maltby, the southern portion. And why don't we just go ahead and look at a map.
MR. MONTGOMERY: He actually wants to talk about the southern portion now.
Q. (By Mr. Ferguson) This has already been introduced as an exhibit. This has been previously marked as Exhibit 11.
Guys, I'm sorry, I thought I had copies for everyone, but I don't.
A. You can probably just tell me what you want.
MR. MONTGOMERY: Hunter, I have mine. If you want, I can share it with the --
THE WITNESS: Whatever, I've got it memorized.
Q. (By Mr. Ferguson) Looking at Exhibit 11 --
A. Yes.
Q. -- does ECR have any contracts, written or otherwise, to construct any facilities along the rail corridor?
A. We have no contracts.
MR. MONTGOMERY: When you say the rail corridor, do you mean rail corridor as depicted in 11 now or do you mean something else?

Q. Do you understand passenger operations to include excursion service?
A. Yes.
Q. Okay. So do you understand that to require Eastside Community Rail's consent in order for excursion service to be run on the line?
MR. MONTGOMERY: Object to the form; incomplete hypothetical.
THE WITNESS: I'm sorry, would you repeat the question?
Q. (By Mr. Ferguson) Sure. Based on this last sentence here, "No passenger operation be permitted on the Line without the mutual consent of both parties," do you understand that to require Eastside Community Rail to consent to the running of an excursion train on the line?
A. Yes.
Q. Okay. Above in that sub A, states that Ballard agrees during that, during the term it will provide, at its sole expense, train services to all current or future shippers on the line.
A. Under A? I'm sorry, I'm not with you. 3 A?
Q. Yes.
MR. MONTGOMERY: Is there a question? There's not a question.
I'm sorry, is there a question? I didn't hear

you.
MR. FERGUSON: No. Clarifying Mr. Engle's question that he didn't understand what I was referring to.
Q. (By Mr. Ferguson) Do you see what I'm referring to now?
A. Yes.
Q. Okay.
A. It makes sense to me.
Q. Part 3 A provides that Ballard agrees that during the term, it will provide, at its sole expense, train services to all current or future shippers on the line and all common responsibilities on the line.
Am I reading that accurately?
A. Yes.
Q. Do you know who the current shippers on the line are?
A. Yes.
Q. Who are they --
A. Excuse me, not with certainty.
Q. Who do you think they are?
MR. MONTGOMERY: Object to the extent this involves Woodinville to Snohomish.
THE WITNESS: I think the two largest equal large shippers are Boise Cascade and Spectrum Glass. And then there is some trans-load for Matheus Lumber, which is

silly, and -- given they're a mile away.
And then I think there's a couple of other people that Byron services, one I believe might be Steel Suds. And that's it, that I recall.
Q. (By Mr. Ferguson) Okay. This statement here that there's an obligation to provide service to future shippers, are you aware of any shippers on the line that might demand or ask for service in the future?
A. Yes. Wolford.
Q. Okay. And Mr. Wolford would require a spur at his yard to get service, correct?
A. That would be preferable.
Q. Okay. Is there another way he could receive service without a spur?
A. Yes.
Q. How?
A. It's already two tracks wide in that area.
Q. When you say "two tracks wide," you mean there are two sets of rails side by side?
A. Yes.
Q. So are you saying, then, that there could be a car left on the set of rails closest to his property while another train could pass by on the other set of rails alongside of it?
A. Yes. But not the preferable way to do it.

Q. Okay. Has Mr. Wolford ever asked ECR to receive rail service at its yard in Maltby?
A. He would prefer to have his own spur.
Q. But has he ever asked for rail service at his yard in Maltby?
A. Not yet.
Q. Okay. Under Section 3, Subparagraph F, it states that Ballard agrees that during the term, it will provide at its sole expense, "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."
Do you have an understanding of what that term requires Ballard to do?
A. Standard maintenance of way for a railroad, which has to do with the ties, ballast, connections, spikes, crossings. Number one priority for a rail is safety, and Ballard Terminal has a perfect safety record for every year of operation. So I trust him for that.
Q. Aren't these services and responsibilities you just described functions that ECR would perform as part of its vision to maintain the right of way?
A. In the future, yes.
Q. Okay. And when would ECR undertake those responsibilities?

Q. So then why wasn't, say, an offer of financial assistance made to step in and continue to provide freight rail service in 2008?
A. Because we believed the Port of Seattle, and we believed King County that they really wanted rails and trails, which turned out to be a bad assumption.
Q. Were you in a position to make a payment, I mean had you considered making an OFA to BNSF in 2008?
A. In 2009, yes. To purchase the entire corridor.
Q. When you say the entire corridor, you mean the entire Woodinville subdivision, all 40 plus miles of it?
A. Yes.
Q. How much were you willing to pay at that point?
MR. MONTGOMERY: Can we define who "we" is? Object to the form. It might be helpful.
Q. (By Mr. Ferguson) I guess ECR didn't exist then?
A. Correct.
Q. It would have been GNP Railway, Inc.?
A. Yes.
Q. How much was GNP Railway, Inc. prepared to pay at that point?
A. 81 million.
Q. And was that to be financed in a partnership with Ballard Terminal Railroad?
A. Ballard Terminal would have still been the

freight operator. I'm not sure, you're asking me to speculate on the terms of that. We had --
Q. No, I'm not asking you to speculate. I didn't ask you directly, so I'll ask it now. What was the source of the $81 million that you just referenced?
A. The Federal Railroad Administration.
Q. In the form of a grant?
A. In the form of a loan, low interest loan.
Q. So the FRA, you thought, was going to make a loan of $81 million to GNP to buy the asset from BNSF?
A. Yes, using the dirt, the fee as collateral.
Q. Okay. And did you ever step forward with -- did you ever make that offer to BNSF?
A. Yes, we did. And I believe that's the only reason the Port of Seattle eventually stepped up and closed the deal.
Q. Did you explore getting any moneys above and beyond 81 million?
A. Our loan package, I believe, at that time, was 140 million, or something like that. I don't recall exactly.
Q. Okay. Do you have any estimate as to what the value of the real estate constituting the line is between Woodinville and Bellevue?
A. 7 million be my guess, maybe eight.

Q. Okay. Is that based on any study or appraisal document?
A. That's based on the 5.75 miles that were acquired for $5 million last year.
Q. Okay. So are you just breaking it down in one to one proportional basis for the entire length of the line?
A. No, the value of the land that King County has from Kirkland down to the Wye, down to Woodinville, is appreciably less than the property going through residential Kirkland.
Q. Okay. And then the property that runs from Kirkland south end of the segment down to Bellevue, is that similar in nature in your view to the Kirkland segment?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It -- it has never been our intention to interfere with Sound Transit and East Link in any way. So the valuation of that land, I've never considered, because we have no interest in owning that land. What our interest is is to reactivate the freight between Bellevue and Woodinville, because we think there's an opportunity to make a profit.
Q. When you say "we," who are you referring to?
A. Ballard Terminal, CalPortland, Wolford Trucking, and we think there will be others that show up if it's reactivated.

Q. Okay. Have you seen or commissioned any appraisal or study of the real estate and track assets constituting the line between Woodinville in the north end and Bellevue where Ballard seeks to reactivate in the south end?
A. No.
Q. Are you aware of any plan to determine the value of that real estate along that section of the rail corridor?
A. No.
Q. Do you have an understanding of where in the southern end of the segment Ballard seeks to reactivate?
A. Yes.
Q. Where is the southern most point?
A. On the north side of NE 8th.
Q. You don't want to go south of NE 8th?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It's my understanding that Ballard wants to go to and not over NE 8th at this time.
MR. FERGUSON: Okay. Why don't we take another break. And reconvene in five minutes if that works for everyone.
(Recess taken from 4:37 to 4:45 p.m.)

E X A M I N A T I O N - (Continuing)

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excursion or otherwise, that might be received from activities on the segment between Bellevue and Woodinville?
A. That's correct.
Q. All right. Looking at Page 5.
A. Yes.
Q. Under Section 6, "Wolford spur."
A. Yes, sir.
Q. Refers to a new thousand foot spur that will be developed into Wolford Demolition and Trucking site in Maltby. If you've already answered that, apologize for asking it twice, but who or what is going to pay for the construction of a spur into Bobby Wolford's Maltby yard?
MR. MONTGOMERY: Object to the extent it relates to Woodinville to Snohomish. Object as asked and answered.
THE WITNESS: It's my expectation that it would be done during the rehabilitation, and that payment for that has yet to be determined. It's very likely to be something that would be split with Wolford.
Q. (By Mr. Ferguson) Okay. Turning to Page 7, this first paragraph under Section 7, "Possible Construction Spoils," reads that, "There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been

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identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking."
Do you disagree with any aspect of that statement I just read?
MR. MONTGOMERY: Object to the form.
THE WITNESS: As of the date written, the -- I don't think my statement, no other freight has been identified in Bellevue, that that statement is not correct. Clearly, it had been identified in years prior even. So I think I could have worded that sentence better. I think that I was addressing the spoils in the first sentence. And in the second sentence, I was contemplating things more consistent with the current operating line, meaning lumberyard, a steel factory, something to that effect, a typical shipper.
Q. (By Mr. Ferguson) Is the statement no other freight has been identified in Bellevue accurate as of today, if you exclude the possibility of hauling out construction spoils or hauling in aggregate material?
MR. MONTGOMERY: Asked and answered.
THE WITNESS: Yeah, I think that specific accounts have not been identified. General opportunity, we believe is there in the way of other businesses in the area that, if we were there, we could get some trans-load

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business in the region. But not being there, it doesn't constitute enough to worry about.
Q. (By Mr. Ferguson) Okay. No one -- no particular business, other than CalPortland or Bobby Wolford and excluding Kemper and Wright Runstad, no other business has asked ECR to provide freight rail service in or out of Bellevue?
A. Correct.
Q. Okay.
MR. MONTGOMERY: Slow down.
Q. (By Mr. Ferguson) If you would please turn to page with four graphs on them. It's labeled in the left-hand corner, "ECR Financial Detail 2013, February 11th."
A. Okay.
Q. Are these graphs that you created?
A. Yes, they are.
Q. I believe I have a copy that -- I can see what you're looking at.
A. (Indicating.)
Q. Okay. Could you walk me through each one of these, starting with the one labeled "Revenue," please.
A. Revenue depicts over the time period where we achieve funding and starts to go out over the next ten years in how the revenue growth would occur, and that is

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almost entirely excursion.
Q. So your one begins only upon the receipt of funding to rehabilitate the line to move from excepted class to either Class 1 or Class 2?
A. Yes.
Q. Okay. Does this contemplate the running of an excursion train on the line from Woodinville to Bellevue?
A. No.
Q. Do you have plans, though, to run an excursion train, if you receive funding and if Ballard accesses the line from Woodinville to Bellevue, to run an excursion train south of Woodinville?
A. It's my understanding that Kathy and the wineries would love to get to Bellevue.
Q. Do you know if any track upgrades will be necessary on that 12-mile segment from Woodinville to Bellevue to run a passenger excursion train?
A. Yes, they would be.
Q. And what would the funding source for that be?
A. Given we're presently waiting until the 2015 legislative session, I would suspect that it will be a combination of sources significantly dependent upon the state and local interest.
Q. So the earliest that an excursion train can run from Woodinville to Bellevue would be at least after the

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

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

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

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

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

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

A. No.

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

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

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

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

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

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

Q. (By Mr. Ferguson) Okay.

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

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

(Exhibit Number 31 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. FERGUSON:

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

A. Mm-hm (answers affirmatively).

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

A. Mm-hm (answers affirmatively).

Q. Do you recognize this e-mail?

A. Yes.

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

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

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

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

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

A. Yes.

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

MR. COHEN: 2012.

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

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

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

A. Yes.

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

A. Yes.

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

A. Try that again.

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

A. Yes.

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

MR. MONTGOMERY: Objection; foundation.

THE WITNESS: Yes, that we both would be.

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

(Exhibit Number 32 marked.)

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

In the e-mail that reads from your Comcast

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

and --
Q. This is your condominium at 832 Lake Street?
A. Very good memory, yes.
Q. Okay.
A. And so we needed a survey done of the stream that runs through it. And so I had hired him to do that. I had previously met him in Redmond a couple years ago, a few years ago. And so knowing that he was a surveyor and could do this work, I hired him to come in and do that, and I think we became much friendlier.
Q. Does he have a set of responsibilities in Eastside Community Rail's business operations?
MR. MONTGOMERY: Object to the form.
THE WITNESS: He helps me out as he has time. I think that's the extent of it. He'd like to see us be successful.
Q. (By Mr. Ferguson) Okay. Did he contribute, I can't remember, was he among the people who contributed funds to ECR for it to acquire the assets of GNP?
A. Yes, $10,000.
Q. Okay. Does he have a role in planning for the Bounty of Washington tasting train?
A. No, not really.
Q. And he's a surveyor by trade?
A. Yes.

Q. That's what Spire Tech is, is that a surveyor company?
MR. MONTGOMERY: Foundation.
THE WITNESS: I'm not familiar with Spire Tech, it sounds like something that he might have worked for in the past, but...
Q. (By Mr. Ferguson) Okay. Did Mr. Wilson have a role to play in putting together any of the materials in support of Ballard's lawsuit against the City of Kirkland or its petitions to the STB?
A. Yes.
Q. Can you describe what those functions were?
A. I believe that the primary work that he helped with relative to the STB reactivation effort was helping to refine the spoils moving opportunity.
Q. What do you mean by that, helping to refine?
A. The way that I model is to first get my arms around it, and then go through iterations of refining the quality of the analysis to the point where the variability and the results becomes less than 10 percent. When I get to that point, then I'm satisfied in sharing that assessment publicly.
Q. Can you describe concretely what is involved in this refinement process? Did Mr. Wilson do anything, for instance, like estimate the amount of cubic yards of dirt

that would come out of a construction site?
A. He's a lot better at estimating dirt volumes than I am.
Q. Is estimating dirt volumes something he would have done as part of this refinement process?
A. He and I used estimating -- used best guess estimates based on what we knew from Kemper and Lincoln Center, which was 250,000 cubic yards, and extrapolated that to other similar sized projects and what we knew about the Sound Transit tunnel through Bellevue, cut through Spring District, et cetera. So we belabored that.
Q. I want to hand you what's been previously marked as Exhibit 8. This is a letter signed by Bobby Wolford to Cynthia Brown of the Surface Transportation Board. Have you seen this letter before?
A. Yes.
Q. Did you see any drafts of it before Mr. Wolford signed it?
A. I don't recall. I may have. I may have, but I don't recall specifically seeing it, no.
Q. Is it your understanding that Mr. Wilson wrote this letter for Mr. Wolford to sign?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It was my understanding that Mr. Wilson drafted this based on conversations with

Q. These are all payments to the Port?
A. These all would have been -- no, alternatives that Woodinville had available to it in order to complete the bridge.
Q. By relocating the bridge in some fashion?
A. Yes.
Q. Okay. I understand.
A. So to start the negotiations, to try and help Woodinville to get this done, because we -- I think everybody in this room knows that the Port is trying to maximize the dollars it gets out of the corridor, that what we would do is come up with a number that would keep the Port engaged, that it was going to get some money, and that would be attractive to the City of Woodinville so that we could get some meaningful discussions underway.
So we chose a number that was 50 percent of Woodinville's lowest cost option, and the notion was, per the conversations with Joe McWilliams was that we could split the money, whatever that would be, and that why don't we go back to Woodinville with the number of $1 million because that would be half as much as their best priced option, and see if we could get into conversation.
Q. So Eastside Community Rail would split the million dollars with the Port, yes?
A. Yes.

Q. And your participation in this venture would be to convey to Woodinville an easement over a portion of the freight segment?
A. Yes.
Q. Remind me, remind me, Mr. Engle, how much did GNP pay for the entire freight segment?
A. $10.
Q. That's what I recall, but I wasn't sure.
I want to mash --
A. Ask how much the Port of Seattle paid, $450 million tax credit, plus $81 million, and the third party operator was a mandatory part of that. They had to give it away.
MR. COHEN: Let's mark one more.
(Exhibit Number 34 marked.)
Q. (By Mr. Cohen) So I'm going to show you, Mr. Engle, what's been marked as Exhibit 34, and I'm directing your attention to, looks like the next e-mail in that chain, this is from you to Richard Leahy, Cc Joe McWilliams, Bcc Kathy Cox, Ernie Wilson. You with me?
A. How come (indicating)? There's something on the back here. Is this on the back of yours.
MR. COHEN: No, that's probably my original. I'm sorry, the back is irrelevant. If you --
MR. MONTGOMERY: Hold on. Hold on.

MR. COHEN: You're welcome to it, if you want.
MR. MONTGOMERY: Let me agree, 34, we're only addressing the face page.
MR. COHEN: 34 is only the face page.
Q. (By Mr. Cohen) So I'm referring to the e-mail in the middle of the page that says: "Begin forwarded message."
A. Mm-hm (answers affirmatively).
Q. All right. So this is you, once again, trying to make this deal happen?
A. Yes.
Q. And the last e-mail was March 21st, now it's a week later, am I correct?
A. Yes. I'm sorry, it's actually two weeks later.
Q. Well, it was March, the e-mail we were looking at in Exhibit 33 was March 21st, and we're now talking March 28th, correct me if I'm wrong?
A. 21, 28, you're right. Where am I seeing, oh, it's the year, sorry. It's getting late.
Q. So this e-mail recites that you spoke with Joe today and they were waiting for -- and you would like to see something from the city. Joe is --
A. Mm-hm (answers affirmatively).
Q. -- Joe is Joe McWilliams?

A. Yes.
Q. I gather that the city had not yet responded to your million-dollar-split-the proceeds offer?
A. Correct.
Q. Okay. And then, you forwarded that e-mail to Les Rubstello, correct?
A. Yes.
Q. And who is Les Rubstello?
A. Council member for City of Woodinville.
Q. And he's a member of your Eastside TRailway Alliance?
A. Yes, but this -- that wasn't the reason for sending it to him. It's in his role, his capacity as council member.
Q. I see. And you're trying to enlist his help to make the deal happen?
MR. MONTGOMERY: Object to the form.
THE WITNESS: We had been advised at various government entities that sometimes the only way to get things done in the city of Woodinville is to go through the city council, because of difficulties in dealing with staff.
Q. (By Mr. Cohen) Right.
MR. COHEN: Okay. One more exhibit to mark.
(Exhibit Number 35 marked.)

want them to give up some compensation. And if you're going to block one lane out of my four-lane road, and my opportunity in the future for that, then you are going to pay me. That's a very natural real estate right that I would expect anybody in this room is going to stand up and fight for.

Number 2, when it comes to construction of the trail, we know that we can do it substantially at a lower cost than public entities can get it done inside the rail corridor

Q. Which trail are you talking about?

A. Any trail inside the corridor.

Q. I see.

A. We can do it faster and substantially cheaper than any public entity can.

Q. Is that because you're immune from state and local environmental law?

A. We are subject to the national environmental laws. We don't have to do the same kind of permitting that's required at state and local levels. We're still guardians of that national standards. I didn't make the rules, the federal government made those rules a long time ago, and put that in the constitution of the United States. I'm simply playing the rules of the hand that was dealt me.

So if I can do -- provide a service, less

expensively than you can buy that service elsewhere, we both win. And I think that's the fundamental nature of this country.

Q. I hope you're right.

MR. COHEN: I promised to keep it short. I'm going to stop here.

MR. MONTGOMERY: That's 19 minutes. Congratulations.

MR. COHEN: I did my best.

THE WITNESS: It was because I was long winded.

MR. FERGUSON: We don't have anymore questions at this time, but we're not going to conclude the dep because we believe there are other areas to explore that have not been produced through discovery requests.

MR. MONTGOMERY: Well, obviously we do not contend to that. This is your shot at him. I think you should take it and that will be that, but we've said our peace.

MR. FERGUSON: Okay.

MR. MARCUSE: Do you have any questions to ask, Mr. Wagner?

MR. WAGNER: A couple just based on the last line of questioning.

E X A M I N A T I O N

BY MR. WAGNER:

Q. I'm just trying to figure out what you think the nature of the value of your freight easement is with regard to the bridge easement. So your plan for the million dollars was to sell your freight easement, based on Exhibit 33, EsCR is promoting the option for Woodinville to acquire the line in fee and freight easement to advance its freight construction, so you would sell your freight easement to Woodinville?

A. I would sell that portion of the freight easement to Woodinville. I never expected to get $500,000. What my intention was, that I tried to make clear, was to begin the negotiations because they had been deadlocked for a year, where the Port of Seattle said 6.8, and Woodinville said 30,000.

Q. So when you mean your portion, you mean that, if I remember correctly, the City of Woodinville wanted to put a pillar or something down the middle of the right of way?

A. I think what they're doing, if I understand this correctly, is the corner of the bridge goes 25 feet deep into the 100-foot right of way, and would go across there. So they're physically -- this bridge is going to block 25 feet of the right of way and be very close to the bridge abutment for the existing rail bridge.

Q. So does this -- so did you believe that it materially interfered with your use of the corridor currently?

A. Not currently, potentially. And again, the potentially could be the STB reactivation, the potential for excursion. Sound Transit, as I'm aware, had written a letter. David Beal had written a letter saying it wouldn't be a problem for them. And consequently, based on that, and I just wanted to have a conversation with Mr. Beal to touch around that, we were willing, and are willing to give up our one lane of the road for Woodinville to construct this.

Now, it's my understanding as well, that appraisers have lovely little formulas that set the value of the land and then the value of the easement. And so as we were talking to Joe McWilliams, he knows a lot more about real estate, he was trying to help in the wording there, that, you know, there's a difference in value, there's this over the fence valuation thing.

So nobody was trying to hold up Woodinville. What we were trying to simultaneously do is have Woodinville recognize that $30,000 wasn't going to get them anywhere and that $6.8 million wasn't going to get them anywhere. And was to try and get a conversation started so Woodinville could carry on with its bridge and we could get

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

Q. I don't know the exhibit number.
MR. MONTGOMERY: Does anybody know the exhibit number?
THE WITNESS: Yes, it's on the front here. 6.
Q. (By Mr. Montgomery) It says "daily ridership" in the upper right quadrant; is that correct?
A. No.
Q. What is it supposed to be?
A. Annual ridership.
MR. MONTGOMERY: I have no further questions. Thank you.
THE WITNESS: Four years of that being --
MR. MONTGOMERY: They know.
MR. FERGUSON: I have a couple follow-ups.

F U R T H E R E X A M I N A T I O N

BY MR. FERGUSON:
Q. Mr. Engle, in the past six months, have you received any communications from Fletcher Sippel attorney or Montgomery and Scarp attorney that also included any individual that was not a Fletcher & Sippel attorney or staff or Montgomery and Scarp attorney and staff?
A. Try that again. I think I got it.
Q. Have you ever had a conference with Myles Tobin where Byron Cole was a participant in?
A. Yes.
Q. Have you ever received e-mails from Myles Tobin which Byron Cole was copied on?
A. Yes.
Q. Have you sent any e-mails to Myles Tobin that you copied Byron Cole on?
A. Yes.
Q. And is the same true for attorneys from Montgomery and Scarp?
A. Yes.
Q. Okay.
MR. FERGUSON: I don't have anything further. Thank you for patiently sitting through the day.
MR. MONTGOMERY: Are we off the record.

(The deposition concluded at 6:49 p.m.)
(Signature was reserved.)

C E R T I F I C A T E

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.

SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made and entered into as of this 17 day of December 2009, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

RECITALS

A. On May 12, 2008, BNSF, the Port and the County entered into: (i) a Purchase and Sale Agreement, as amended, ("North Agreement") whereby the Port agreed to acquire portions of BNSF's property known as the Woodinville Subdivision ("Subdivision"); and (ii) a Donation Agreement, as amended, whereby BNSF agreed to donate to the Port other portions of the Subdivision. The County desires to use the Railbanked Portion of the Subdivision for public trail and other transportation purposes. At Closing, the Port will grant the County a Public Multipurpose Easement for the County's use of the Railbanked and Wilburton Portions of the Subdivision.

B. At the Port's request and pursuant to the First, Second, Third, Fourth, Fifth and Sixth Amendments to Purchase and Sale Agreement and the First, Second, Third, Fourth, Fifth and Sixth Amendments to Donation Agreement, the parties previously extended the Closing Date of the North Agreement and of the Donation Agreement to March 31, 2009, June 30, 2009, July 8, 2009, July 15, 2009, July 22, 2009 and December 15, 2009 respectively.

NOW, THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. The definition of Closing Date in Section 1.1 of the North Agreement is amended to read as follows:

> Closing Date shall be December 18, 2009.

2. The first paragraph of Section 2 of the North Agreement is amended to read as follows:

> BNSF agrees to sell to Port, and Port agrees to purchase from BNSF, the Property. Port shall pay to BNSF $81,449,000 (EIGHTY ONE MILLION FOUR HUNDRED AND FOURTY-NINE THOUSAND DOLLARS) (the "Purchase Price"). The Purchase Price shall be paid as follows:

3. Section 3.4 of the North Agreement is amended by replacing the sum of $2,000,000 with the sum of $1,450,000.

Railbanking Requirements in Event of Abandonment. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Property, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority ("Railbanking Laws"), provided the Trail Use Applicant meets all requirements of the Railbanking Laws, including that the Trail Use Applicant agrees to a trail use agreement as required by the Railbanking Laws. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property ceases operations but fails within a reasonable period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor agency for a third-party abandonment and interim trail use over some or all of the Property on which operations have ceased. The holder of the freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property shall not oppose any such action by a Trail Use Applicant if the holder has ceased operations.

8. Section 14 of the North Agreement is further amended by adding the following as Section 14.19:

14.19 Port and its successors and assigns agree:

As to the Redmond Spur:

(a) Prior to beginning salvage activities,

(i) To consult with Washington Department of Ecology ("WDE") regarding possible impacts of abandonment activities on wetlands located along the line and to ensure compliance with the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") permitting requirements, and

(ii) To consult with the Army Corps of Engineers ("Corps") regarding possible impacts of abandonment activities to water bodies and wetlands, and to ensure compliance with Corps permitting requirements; and

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, Port shall immediately cease all work and notify the STB's Section of Environmental Analysis ("SEA"), interested Federally recognized tribes and the Washington State Historic Preservation Officer ("SHPO"), pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, Port, and any other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

9. Except as amended herein, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

10. Counterparts. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

BNSF RAILWAY COMPANY

By: _____
Name: Richard E. Weicher
Title: Vice President & General Counsel – Regulatory

PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name: Dow Constantine
Title: King County Executive

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

BNSF RAILWAY COMPANY

By: Richard E. Weicher
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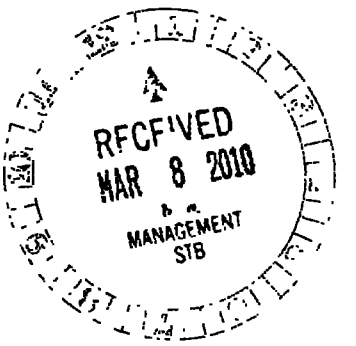
PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name:
Title:

KAPLAN KIRSCH ROCKWELL



March 8, 2010

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

Office
MAR 8
Public

226554

Re: *BNSF Railway Company - Abandonment Exemption – In King County, Washington*, Finance Docket No. AB-6 (Sub-No. 463X)
BNSF Railway Company - Abandonment Exemption – In King County, Washington, Finance Docket No. AB-6 (Sub-No. 464X) 226555
BNSF Railway Company - Abandonment Exemption – In King County, Washington, Finance Docket No. AB-6 (Sub-No. 465X) 226556

Dear Ms. Brown:

I am enclosing an original and ten (10) copies of the Notice of King County, Washington. of Consummation of Trail Use Agreement in the above referenced proceedings. An additional copy is enclosed for date stamp and return to our messenger. Please note that a compact disk is enclosed with this document.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles A. Spitulnik

Office

Enclosures

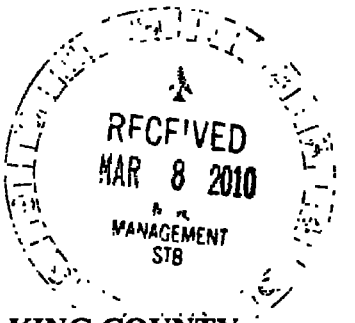
cc: All Parties of Record

Attorneys at Law
Denver • New York • Washington, DC

kaplan kirsch & Rockwell LLP
1001 Connecticut Ave., N.W.
Washington, DC 20036

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www.kaplankirsch.com

CONTAINS COLOR MAPS



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 463X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)

STB Docket No. AB-6 (Sub-No. 464X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 5.00 to MP 10.60)

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

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)

NOTICE OF CONSUMMATION OF TRAIL USE AGREEMENT

Communications with respect to this pleading should be addressed to:

Charles A. Spitulnik
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
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Washington, DC 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: afultz@kaplankirsch.com
Counsel for King County, Washington

Dated: March 8, 2010



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 463X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)

STB Docket No. AB-6 (Sub-No. 464X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 5.00 to MP 10.60)

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

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)

NOTICE OF CONSUMMATION OF TRAIL USE AGREEMENT

King County, Washington, a political subdivision of the State of Washington (the "County"), hereby submits this notice that the County has entered into a trail use agreement with the BNSF Railway Company ("BNSF"), the abandoning railroad, for the following segments (collectively, the "Line"): (a) the Redmond Spur, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-No. 463X), which extends from railroad milepost 0.00 in Woodinville, to railroad milepost 7.30, near Redmond, a distance of 7.30 miles in King County, Washington; (b) a segment of the Woodinville Subdivision extending from railroad milepost 5.00 in Kennydale, to railroad milepost 10.60, at Wilburton, a distance of 5.60 miles in King County, Washington, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-

No. 464X); and (c) a segment of the Woodinville Subdivision extending from railroad milepost 11.25 near Wilburton, to railroad milepost 23.80, near Woodinville, a distance of 12.55 miles in King County, Washington, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-No. 465X). A map of the Line is attached hereto as **Exhibit A**.

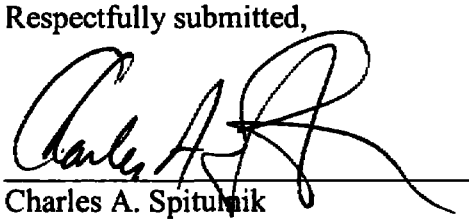
The Board issued a notice of interim trail use ("NITU") for each segment of the Line in Decisions (a) in AB-6 (Sub-No. 463X) and AB-6 (Sub-No. 464X) on October 27, 2008, and (b) in AB-6 (Sub-No. 465X) on November 28, 2008. The Board granted extensions of time to negotiate a trail use agreement on May 12, 2009, and November 3, 2009, in all three proceedings. The trail use negotiating period was most recently extended to April 20, 2010.

The Port of Seattle (the "Port") owns the real estate associated with the Line, which it acquired from BNSF on December 17, 2009. The Port has granted the County a public multipurpose easement over the Line to permit the County to exercise its railbanking authority.[1]

[1] In Finance Docket No. 35148, the Board granted King County's request to be permitted, as the trail sponsor, to acquire the right to reactivate freight rail service on the line, therefore divesting BNSF of any residual interest it would otherwise have retained as the abandoning railroad. *King County, WA – Acquisition Exemption – BNSF Ry. Co.*, STB Finance Docket No. 35148 (Service Date Sept. 18, 2009), slip op. at 3-4.

The County has executed a statement of willingness to assume financial responsibility in accordance with the requirements of 16 USC 1247(d) and 49 CFR 1152.29(a) ("SWAFR"). That statement was previously submitted to this Board on September 18, 2008.

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

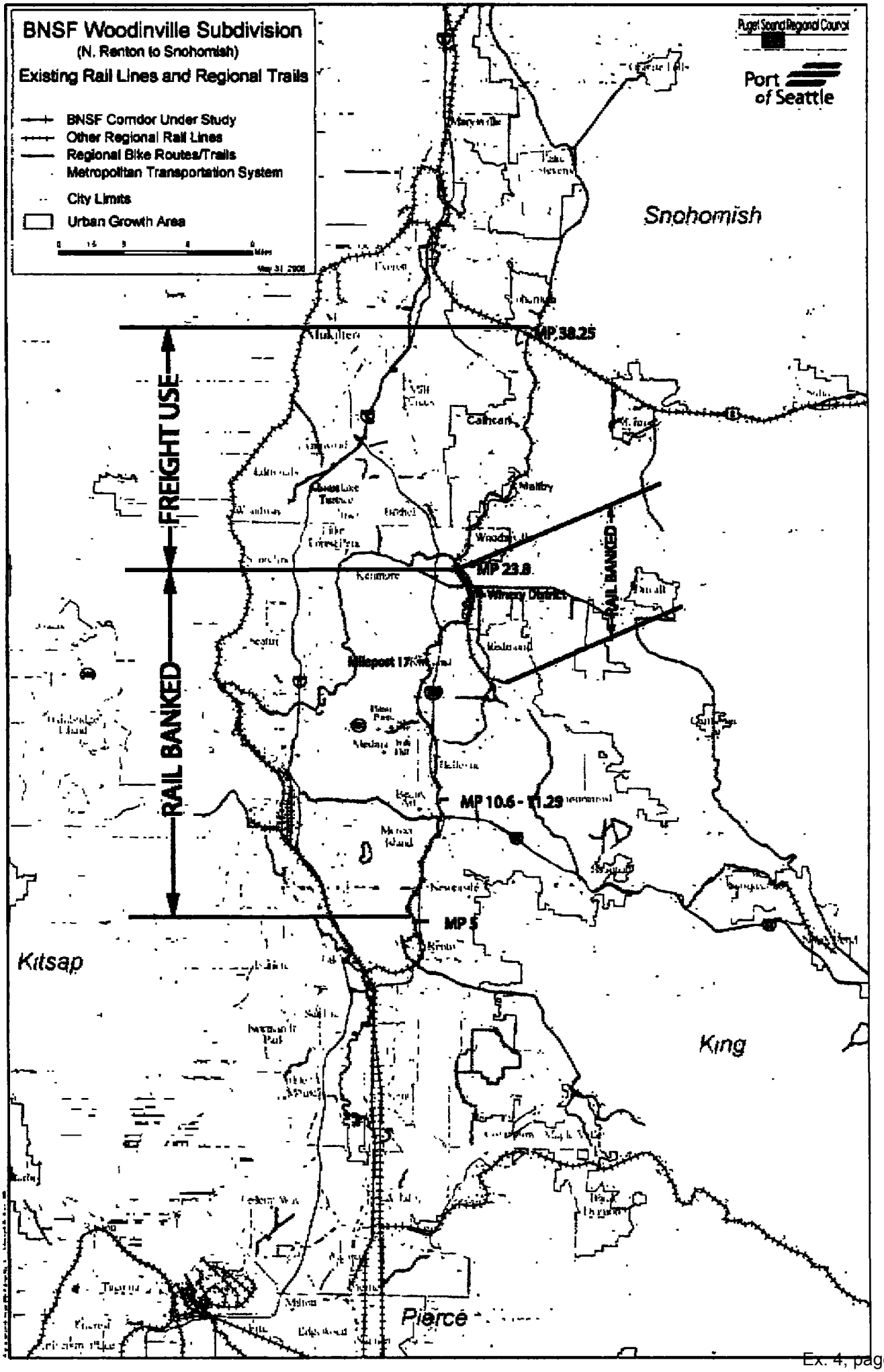
Counsel for King County, Washington

Dated: March 8, 2010

Exhibit A

Map of the Railbanked Portions of Woodinville Subdivision and Redmond Spur

[attached hereto]


BNSF Woodinville Subdivision
(N. Renton to Snohomish)
Existing Rail Lines and Regional Trails
BNSF Corridor Under Study
Other Regional Rail Lines
Regional Bike Routes/Trails
Metropolitan Transportation System
City Limits
Urban Growth Area
Puget Sound Regional Council
Port of Seattle
Snohomish
King
Kitsap
Pierce
MP 38.25
MP 23.8
MP 10.6 - 11.29
MP 5
FREIGHT USE
RAIL BANKED
RAIL BANKED
Mukilteo
Kenmore
Woodinville
Redmond
Issaquah
Newcastle
Renton
Tukwila
Kirkland
Bothell
Mercer Island
Bellevue
Maltby
Duvall
Carnation

CONTAINS COLOR MAPS

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing NOTICE OF KING COUNTY, WASHINGTON, OF CONSUMMATION OF TRAIL USE AGREEMENTS, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

Kristy D. Clark
General Attorney
BNSF Railway Company
2500 Lou Menk Drive
AOB-3
Fort Worth, TX 76131

Kevin M. Sheys
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attorney for the Port of Seattle

Karl Morell
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, DC 20005

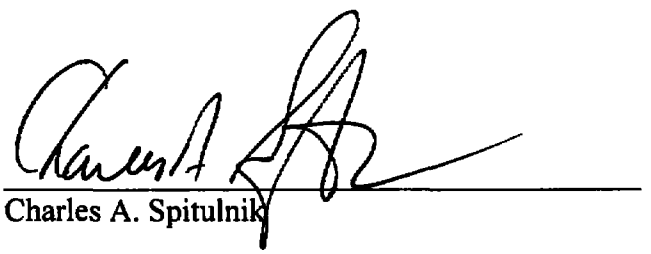
Attorneys for BNSF Railway Company

Tom Carpenter
International Paper
International Place I, 6400 Poplar Avenue
Memphis, TN 38197

And to:

Robert P. vomEigen
Foley & Lardner LLP
3000 K Street, N.W.
Suite 600
Washington, DC 20007-5109

Attorney for Sound Transit



Charles A. Spitulnik

Dated this 8th day of March, 2010

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**

FILED
2012 SEP 26 P 1:58
U.S. BANKRUPTCY COURT
W.D. OF WASHINGTON
BY DEP CLK

September 21, 2012

Judge Brian D. Lynch
United States Bankruptcy Court
Western District of Washington at Tacoma
1717 Pacific Avenue, Suite 2155
Tacoma, WA 95402
Reference: Bankruptcy No. 11-40829-BDL
Subject: Current Profile of Ballard Terminal Railroad Company,LLC , Today

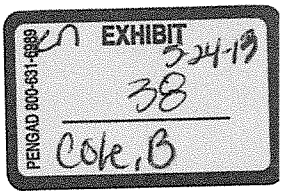
Judge Lynch:

Our company, Ballard Terminal Railroad Company, LLC (BTRC,LLC) was formed in 1996 by two Ballard businessmen who were part of a larger group of Ballard business owners who banded together to try to preserve the Burlington Northern Santa Fe (BNSF) branchline railroad that had run through the Ballard industrial district since 1893.

BNSF wanted to abandon the line, and had given public notice, even though it still had customers on it that used it every week. The city of Seattle was conflicted because the bicycle community wanted the tracks removed to make a bike trail, while the Industrial community strongly supported the retention of rail service. It took about 18 months of negotiations, but finally an agreement was reached between BNSF, the City of Seattle, and BTRC.

The city granted BTRC a renewable 30 year franchise to operate a common carrier railroad on city owned streets and other lands, and BNSF, through an intermediary, sold us the tracks. After a period of track rehabilitation, and acquiring a Certificate of Public Convenience and Necessity from the Surface Transportation Board, Ballard Terminal Railroad (BDTL) ran its first freight train in May of 1998. Over the intervening years, it has hauled a variety of commodities for more than a dozen different customers, generally operating two nights a week and Sunday, mid-day.

Acquisition of our second shortline started with an inquiry from the BNSF Shortline office, in Fort Worth, in mid 2000, inquiring as to our interest in expanding our operations. We responded affirmatively, and by November, 2000 BNSF had sold to us a railway easement in perpetuity, and all of the track, crossing signals, etc, on the 5 mile



line. This has turned out to be our best performing rail line, with quite an inventory of developable land, and we are very pleased that BNSF thought of us first when they decided to spin it off. Train operations take place 3 days a week.

On both of these railroads, we own the tracks, highway grade crossing signals, locomotive servicing facilities, etc. We also own four locomotives and two cabooses. We employ four people in train crew service to operate the trains, and three managers: an Operations Manager, an Office Manager, and a General Manager.

The managers are deeply involved in planning, scheduling, budgeting, and overseeing our daily train operations, track inspections, maintenance programs, safety programs, new industry track constructions, locomotive maintenance, marketing efforts to increase annual carloads handled, etc.

We continue to get along with the Federal Railway Administration (FRA), track inspectors, as well as the local WUTC Rail Office track Inspectors.

In the USA there are about 550 shortline railroads. Washington state has about 28 shortlines. We currently own two, and operate a third. The shortline industry has a trade association in Washington D.C. that looks out for our interests. One thing the American Shortline & Regional Railroad Association (ASLRRA) does is sponsor an annual recognition of shortline railroad safety programs. The gold standard for safe performance is winning the JAKE AWARD. Our company has had a zero incident rate for all 14 years we have been in business, and consistently wins "The JAKE AWARD with Distinction", for a zero accident/injury rate.

WHERE ARE WE TODAY?

In mid 2008, BTRC,LLC was selected by Burlington Northern Santa Fe railroad (BNSF) to be one of about ten shortline railroad companies offered an opportunity to bid on providing common carrier freight service on a 14 mile segment of BNSF's "eastside" rail network, in the Woodinville-Maltby-Snohomish area. The request for quote was a little different than usual, as there was also an obligation to establish a fairly robust Passenger Excursion Train over essentially the same route, to be in place shortly after taking over the freight business. As I recall, the RFQ was quite detailed and contained many conditions set forth by the Port of Seattle, who was planning to acquire both the tracks and the underlying real estate from the BNSF. The Port would become the new railroad's landlord.

We wanted to bid on the opportunity to own, operate, and develop the common carrier freight railroad. W e thought it would fit in nicely with the two railroads we already had, and we felt we new how to do it. The expense and effort of establishing a viable passenger excursion train however, was not something we were prepared to take on.

In discussing this issue with BNSF's shortline group there was a suggestion that we might explore the idea of making a joint bid with another shortline that had also been

favored with an invitation to bid. We approached Tom Payne, at GNP Railway, with this idea, and both companies agreed to submitting a joint bid. We jointly put the bid together and submitted it, and some time later were notified that we had been selected by both BNSF and Port of Seattle, as the winners.

Many months went by as the Nation adjusted to the economic crunch. Finally, in the late Fall of 2009, we got word from the BNSF and the Port, that we would be taking over the responsibility for freight train service, sometime in January of 2010. We ran our first freight train on January 11, 2010.

BTRC had used the 12 month delay to purchase a suitable used locomotive, rehabilitate it, paint it and move it up to Woodinville, where we put it in secure storage at one of the fenced rail served industries. We also arranged to lease a caboose and move it to Woodinville as well. In addition, we arranged to construct a fenced enclosure for the locomotive and caboose, in the wye junction at Woodinville, to protect them from vandalism.

Because GNP Railway seemed to be very short of cash at this start up, I decided not to begin billing GNP right away. After all, Tom was supposed to be our trusted partner in this venture. As it turned out we did not bill him until about February of 2011.

By that time it became apparent that GNP Railway was in serious trouble. I felt that BTRC,LLC could soldier on for a while, absorbing the costs of operating the Eastside Line. In the Fall of 2011, Perry Stacks was assigned to the job of being the GNP Railway trustee. Perry has worked hard at what must be a discouraging task He has found out that the monthly revenue stream produced by BTRC,LLC operating the line is not sufficient to pay the freight operator, pay for any amount of track or right of way maintenance, pay the trustee, pay for liability insurance, etc.

If we tally our true costs for running the trains, on a per car basis, we come up with about $380.00 per car. The amount we are out of pocket is about:

YR 2010	270 carloads	@	$380.00= $102,600	
YR 2011	235 carloads	@	$380.00= $ 89,300	
YR 2012	177 carloads	@	$380.00= $ 67,260	(9 MonthsThrough September)
	Total:682carloads	@	$380.00= $259,160	
Trustee P'ments:	63 carloads	@	$380.00= $(23,900)	
Unpaid balance owed				
BTRC,LLC	619 carloads	@	$380.00= $235,260	

As it has turned out, BTRC,LLC has done, and continues to do, what it originally had agreed to do, with the freight business, providing twice per week freight service to all customers on the line. On the other hand, GNP Railway has struggled in its efforts to develop an Excursion Train Business, and also struggled in its efforts to expand the portions of the Redmond branch line that we both would be allowed to operate on.

We hope you are able to approve Trustee Perry Stack's plan to sell the remaining assets of GNP Railway to Eastside Community Rail, LLC. I believe it is the only actual offer tendered in the 11 months that Mr. Stacks has been the Trustee.

We have known Doug Engle since the beginning of the BNSF bidding exercise in 2008. We are comfortable engaging in a contract with his new company, Eastside Community Rail, where we will file for a Certificate of Public Convenience and Necessity, operate the freight rail business, doing the marketing, and collecting the income and paying the bills.

BTRC,LLC, is way past the financial point where we should have stopped the train operations and the line would have been embargoed, and BNSF would have stopped serving the interchange tracks. This of course would have cut off service to the three active shippers on the line, Boise Cascade, Spectrum Glass, and Matheus Lumber.

As you can see we are currently out of pocket more than $235,000 over a 33 month period. That is an average of $360.00 per freight car handled on a round trip over the line. We don't generate that much free cash, above expenses, on the other two railroads we own. Our financial position becomes more precarious every day.

The shippers don't deserve a rail service interruption, or worse, a permanent suspension of rail service. Spectrum glass, for example, has a successful business in a factory that is basically immobile in Woodinville. Boise Cascade has a large investment in a substantial building materials distribution center, in Maltby. None of the shippers want an embargo, or abandonment.

Other than Doug Engle, I do not see a savior lurking nearby. Each time that Nick Temple(family owns a robust shortline in central Washington, and another near Vancouver, Washington, plus a complete dinner train) came up here, I had a meeting with him, or at least a follow up phone call. On his first trip, he was very upbeat. We took him and his party on the train (locomotive plus caboose), and toured the line from Woodinville to Snohomish and return. As time went on and he continued to make the rounds of the various mayors, city councils, the Port, Sound Transit, etc, he became more and more pessimistic about the opportunity for a viable excursion train to be operated. Finally he gave up on the project.

At the present time, we are part way through a similar exercise with another robust shortline company. The outcome there is not yet clear.

What is clear, is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure. It is not realistic to forecast that huge increases in the amount of freight traffic are just around the bend. If traffic could be increased 5 % to 10% a year, that would be above average for Washington shortlines.

One source of funding that has not been explored, as far as I know, by GNP, is the State of Washington Rail Office. This is a small division of Washington Department of Transportation,(WSDOT) They are tasked with the job of assisting the 29 shortlines in the state to qualify and apply for both low interest loans as well as some outright grants. Over the years, our company has been the recipiant of two zero interest loans with 15 year payback terms, and one modest, but very welcome, grant. I would be willing to help East Side Community Rail to apply for these programs.

Respectfully,

Byron D. Cole
Founder, and General Manager

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

lawyer you are and how you want to handle this, if I know what my client is saying is incorrect, I have an obligation to do and say something. Do you want to clean up the record now or do you want to clean it up later?

MR. COHEN: I welcome any information you can provide, Mr. Montgomery.

MR. MONTGOMERY: I don't want to -- I think he's confused. Like he said, they all look alike. Obviously, since Tom Paschalis is sending documents, they came from Mr. Cole and they came to Mr. Cole pursuant for looking for this stuff. We can take a break and I can clarify so he's not confused or we can -- however you want to handle it.

MR. COHEN: Let me finish my line of questions and then if you want, we can take a break.

Q. (By Mr. Cohen) So, Mr. Cole, did you search your files in your computer, either of them, for documents requested by the City of Kirkland?

A. I didn't, because we don't have a trove of interesting documents on our computer. There isn't, like, hundreds of thousands of juicy, interesting documents there.

Q. Okay.

A. Just doesn't exist.

Q. So picking up on Mr. Montgomery's point, how did

your Chicago lawyers get the documents that Mr. Montgomery represents will be furnished to us later today?

A. Well, I gathered up a few things yesterday.

Q. Yesterday?

A. And sent them off. I faxed them last night. Up through --

Q. To Chicago?

A. Yeah.

Q. All right.

A. But it's two or three things. It's not -- I have the feeling you think that we have an office full of people just generating e-mails, and we don't. We have one spouse paying bills, depositing incoming checks.

Q. Okay. So other than the information that you faxed to your Chicago law firm yesterday, you've not done any search to provide documents requested by Kirkland in this discovery request?

A. I guess not.

Q. Okay.

A. I'm not sure that anything exists.

Q. Okay. Do you need a break?

A. Yeah, I think so.

MR. MONTGOMERY: That's good.

MR. COHEN: Let's take one.

(Recess taken from 9:53 to 10:09 a.m.)

MR. COHEN: I'd like to mark another exhibit.

(Exhibit Number 37 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. COHEN:

Q. Mr. Cole, showing you what's been marked as Exhibit 37, is that your signature at the end of it?

A. It is.

Q. Did you review this document before you signed it?

A. I looked at it.

Q. And you signed it on May 2nd or 23rd? 23rd would be yesterday. Did you sign this yesterday?

A. Yeah.

Q. We'll come back to it.

Did I ask you for an estimate of aggregate revenues at Ballard Terminal Railroad, say, to make it precise, 2012, Ballard Terminal Railroad revenues?

A. I don't know if you asked me that or not.

Q. Well, if I did, I forgot, could you give me your best estimate of the 2012 revenues of Ballard Terminal Railroad?

A. Okay. So it isn't aggregate, it's earnings from the three railroads compiled together. And I think for

2012, it was around $500,000.

Q. That would be revenues, not net income?

A. No, it's not net by any means.

Q. Okay.

MR. MONTGOMERY: Unfortunately.

THE WITNESS: Yeah.

Q. (By Mr. Cohen) And how, what proportion of that revenue came from the Eastside?

A. Eastside.

Q. What did you call it?

A. Eastside Freight and Railroad.

Q. Yes, Eastside Freight and Railroad?

MR. FERGUSON: It's 26.

MR. COHEN: Thank you.

THE WITNESS: To get a clue here from this, the per car costs, and I can give you the per car revenue providing we were able to collect it all.

Q. (By Mr. Cohen) Well, you're turning the telescope backwards on me. Let's start, if you can tell me, of that roughly $500,000, how much of that revenue came from Eastside Freight Railroad operations?

A. We only began getting paid for our Eastside Freight operations -- we only began to get paid, got one payment from the bankruptcy trustee, and we find -- so we were not doing the billing, the bankruptcy trustee was

A. Okay.
Q. I have you moving 270 carloads in 2010, does that sound --
A. That's -- well, I don't know. I guess I'd like to see the document.
Q. Sure, let's do that.
A. It's probably my work on the document.
Q. Yep.
MR. MONTGOMERY: Thank you, Counselor.
(Exhibit Number 38 marked.)
Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 38. Do you recognize this document?
A. Well, it's got my name on the back of it, so...
Q. Your signature too?
A. That's what I mean.
Q. Yes.
A. Yes, I composed it.
Q. All right.
A. And so here's the list of the three years.
Q. Yes.
A. And so, I think it's accurate.
Q. Okay. So check me on this, it shows 270 carloads in 2010; 235 in 2011; 177 through September of 2012?
A. That's what it says, yes.
Q. Does that sound right to you?

A. Yes, I think it's -- I think those are the numbers.
Q. Okay. And if you would look at Exhibit 26, which I handed you a minute ago, you'll see a total 2012 number there of 213 cars, you see that?
A. I see that.
Q. Does that sound accurate to you?
A. Let's see here, yeah. Yeah, I think that's probably a correct...
Q. And do you have an estimate for 2013 year to date?
A. Well, these first three show a declining trend in traffic, and so I certainly hope it's reversed this year and we start to climb up a little bit out of the recession. So we have excellent year on our Meeker line this year. Record breaking.
Q. Really, I'm asking you, since I have no records for 2013, do you know what the traffic volume is, we'll say, through the end of April on the Eastside line?
A. Yeah, we -- we know, but I don't have it in my head here what it is.
Q. Okay.
A. But I can provide that for you.
Q. So you're showing something in the ballpark of a 10 percent decline in traffic each year since you began

operations. To what do you attribute that decline?
A. Well, the housing market has been in a gigantic slump and it's sort of coming out of it now. But I still get -- from my forest products industry years, the one trade journal that's still being published every month, and it's not over yet. And so that's the single biggest thing, because Boise Cascade is in building products. And our third shipper, that is Matheus Lumber, I couldn't remember it a while ago. And they're in the same boat.
And there was a cedar lumber wholesale outlet as well, and they folded up completely in the beginning of the first year when we started in 2010. They went bankrupt, so...
Q. I was going to ask you, are you down to three shippers on the Eastside line right now?
A. At the moment, but --
Q. Go ahead.
A. -- there's opportunities there to get some more industries.
Q. Have any of your current three shippers advised you of plans to increase or reduce traffic in 2013?
A. Well, I think -- I think the forest products, the building materials people, they're always hopeful that better times are coming. And so, you know, that's what they would say, it's a little better here.

Q. I'm really asking, have there been any, has anybody advised you, we are planning to increase traffic, reduce traffic, go out of business, amongst your three big shippers?
A. Well, Spectrum Glass apparently is doing quite well. And they bought a huge warehouse in Maltby.
Q. In Maltby?
A. Maltby.
Q. I'm sorry, Maltby?
A. Yes, top of the hill. Just to hold their finish product before it's shipped out to wherever all it goes. So they're enjoying good times, but they're not hooked to the building trades. Boise Cascade is firmly hooked to the housing and --
Q. Right.
A. -- and light commercial construction markets.
Q. But I'm not asking what you see coming based on changes in the economy. I'm asking, have any customers communicated to you that we're going to be having an increase in freight traffic or a decrease in freight traffic in the near future here?
A. No.
Q. Okay.
A. No. Boise is upbeat and Spectrum is upbeat. Matheus is soldiering on.

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

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

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

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

out where we are. And with Tom Payne running the thing, we weren't getting paid at all. This is way better now.

Q. Okay.

MR. COHEN: Let's take a break.

(Recess taken from 11:00 to 11:19 a.m.)

E X A M I N A T I O N - (Continuing)

BY MR. COHEN:

Q. You explained to me how Ballard gets compensated by its customers for shipments you provide. Do you have any contracts with customers?

A. We don't, that I can think of. You can kind of, kind of see, whether you might need to or not, like Spectrum Glass, they'll never move. I mean, it's like a steel mill. It's so much in the ground.

So we're confident they'll be using us forever, because it's a well-run company

Q. Okay. No contracts?

A. None.

Q. Okay.

A. I could say that we're working our way into leasing properties that we control to trans-loadings who are expanding, so there's a contract there, real estate contract.

Q. Have you completed any of those contracts?

A. You mean, did they come to an end?

Q. Do you have any leasing contracts in effect right now?

A. One, yeah.

Q. Tell me about that.

A. Okay. So that's where I was all week putting -- we had -- we cleared an acre of ground, cut down a bunch of trees, pulled out the stumps, dumped a bunch of rock to make it a hard surface for fork lifts and highway 18-wheeler trucks. And we already have a rail spur alongside it.

So we're putting together a piece of industrial property with access to the nation's rail network.

Q. On which rail line?

A. It's down at Meeker, Meeker down in Puyallup. So anyway, I've been working on that this week. My phone ringing was the gravel company, probably asking how much more rock do we want.

Q. Okay.

A. There's opportunities for things like that on the Eastside in Maltby, in downtown Woodinville. And if it goes down to Bellevue, there's like 12 vacant or nonrail used warehouses at Totem Lake, tracks are still there. Warehouse still there. Loading docks still there. Just full of things like badminton courts, adaptive reuse. We

could get that back because you can rent it for more to some trans-loader than the badminton guys will be able to pay.

Q. We may get into that later.

A. Okay.

Q. Let me show you Exhibit 25. This exhibit was used in Doug Engle's deposition.

A. Okay.

Q. This is a document under Eastside Community Rail letterhead. And it recites that the current track condition is excepted and in need of substantial rehab to maintain any operations per the current freight operator, Ballard Terminal Railroad.

You see that statement? Beginning of the second paragraph?

A. Here we are, okay. Just a minute. Well, I didn't write that.

Q. I'm going to get to that. Give me just a minute.

So the statement refers to what we've been calling the freight segment, yes?

MR. MONTGOMERY: Document speaks for itself; foundation.

THE WITNESS: Well, I guess it's the -- the segment from Woodinville to Snohomish.

Q. (By Mr. Cohen) That's what it says on the first

line.

A. Okay.

Q. My next question for you is, do you agree with that statement?

A. Probably not completely.

Q. Okay. So --

A. It's sort of right.

Q. All right. Why don't you, I'm referring really to the whole paragraph, the statement goes on to describe the rehab work that's required. Do you see that?

A. Yes.

Q. Why don't you tell me whether you agree with the representations in that paragraph, and if you don't, describe any disagreements you have with it. It's attributed to you, you know.

MR. MONTGOMERY: Object to the form.

Q. (By Mr. Cohen) Just the paragraph, I'm not asking about the whole document right now. But you can look at the whole document, if you want to.

A. I don't think I've seen this thing, but it's certainly been over the years since early 2008 when the Burlington Northern got this idea how to market this whole thing and began calling for short lines and so forth and so on. There's been zillion of opinions from short line operators like us as to what the condition of the track is

and the bridges and the grade crossings and the signals and all of the things. No one sees it exactly the same.

Most people think if you're going to have an excursion train, you need to get it at least to Class 1. And that's a federal -- federal handbook tells what it is. And you can make your train go out 15 miles an hour, I think that's enough speed for the excursion train. Other people would say, no, no, they have to go more like 25 miles an hour, so then you need to be -- put more money in your track to get to Class 2.

Most of the things that designate the classes are how bumpy the rails are, how good the gauge of the rails is, and how many good ties you have versus how many partially rotted or completely rotted or missing ties. It's not rocket science at all.

Q. All right. So referring again to the freight segment, Woodinville to Snohomish, do you agree with the statement that the current track condition is excepted?

A. Yes, it is excepted class. And that's a declaration that is made by whoever is the operator/owner.

Q. Well, you're the operator, right?

A. Yeah.

Q. So --

A. So it's excepted.

Q. All right. Do you agree that it requires

substantial rehabilitation to maintain any operations?

A. Well, yes, you can't do zero maintenance forever or, you know, you get to where you have no good ties.

Q. Did Ballard Terminal Railroad do any maintenance on the freight segment in 2012?

A. No, it inspected it a few times to see how it was doing.

Q. Have you done any maintenance so far in 2013?

A. Yes.

Q. Tell me about it.

A. We sprayed for weeds for the first time using a commercial professional spray outfit that does lots of work for Burlington Northern. They bought their hi-rail rig and sprayed up a storm from one end to another.

Q. Woodinville to Snohomish?

A. Yep, we went up the center of the wye until we came to a downed tree, to get up as close as we could to the bridge over Snohomish.

Q. Other than spraying for weeds, have you done any maintenance work so far in 2013?

A. No.

Q. Let me show you another document.

(Exhibit Number 39 marked.)

MR. COHEN: Katie, what exhibit?

THE COURT REPORTER: 39.

THE WITNESS: I like this. You get a little stamp on it. I'll have to try it to identify it.

Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 39, have you ever seen this report before?

Let me withdraw that question. Could you identify Exhibit 39?

A. Okay. So we use RailWorks as our primary track maintenance, new construction contractor and so forth, after two or three years of pecking around at somebody who might be cheaper or something. Anyway, they're the best. We use them virtually exclusively.

So I know who they are. And, so, I know that they were asked to take a look at the existing line from Woodinville to Snohomish, and make some assessment as to how much it would cost to bring it up to -- I think asked for -- I think Doug asked for a variety of things, as in how much to bring it from excepted track to Class 1 track. And then how much would it cost to jump from Class 1 to Class 2. And so, I don't know if they did that or not because I haven't actually seen the document, but I know they produced some answers to Kirkland.

Q. Have you seen this report before?

A. I don't think so, no.

Q. I see. And it sounds as if there was a visual

inspection conducted of the freight segment on January 15th, and you were along for that?

A. I think I was along on that.

Q. Yes, it mentions your name here.

Was that inspection performed via a hi-rail truck?

A. I believe it must have been, yeah.

Q. Yes.

A. Yeah. Yeah, they have four-door hi-rail.

Q. This reference to the Issaquah spur on Page 1, is the Issaquah spur there the same as the Redmond spur?

MR. MONTGOMERY: Foundation.

THE WITNESS: I -- I imagine. I mean, the line needs to go Woodinville to Redmond and down the east side of the lake to Issaquah and, heck, I can remember when it went all the way to North Bend.

Q. (By Mr. Cohen) Right. So they have an assessment here for the Issaquah spur between milepost 3.4 and 2.3, the Issaquah spur between milepost 2.3 and 0. What's the Woodinville wye?

MR. MONTGOMERY: Foundation.

THE WITNESS: Is it okay if I answer?

MR. MONTGOMERY: It is. Thank you. As always.

THE WITNESS: Okay. The Woodinville wye is

spend money up front right away to get to Class 2.
Q. So would still be necessary to spend some money to get to Class 1?
A. Some, yes. Because there's some stretches where there's not enough good ties in a row. Like a cluster --
Q. Right.
A. -- four or five in a row that are not good.
Q. Is Ballard Terminal Railroad planning to make that investment?
A. I don't think so. I think we need to find some investor to or a grant or loans. Over the years we've been in the business, we've had two interest free loans from the state of Washington and one small grant. A lot of people have been more successful and have had several large grants. So the word is down there at Olympia to look around and see if you can help out these guys.
Q. Are you planning any additional investment in 2013 in maintenance of the freight segment, other than the spraying for weeds that you've already done?
A. Well, I didn't see anything starting out at the Woodinville wye and going around all three legs and then walking, not in the same day, but walking the whole line all the way to the Snohomish bridge, I didn't see anything that would say we can't run another train until we've fixed this cluster of bad ties, I didn't see anything that bad.

I was quite surprised at how much pretty good darn rail there is that's probably a Class 2. There's a lot of welded rail.
And so, I'd say it's probably good for another year without maybe replacing any ties.
Q. So Ballard has no plans to do additional maintenance on the track freight segment in 2013?
A. Yeah, I don't -- I don't think it's necessary.
Q. Okay.
A. Mind you, we've only had this obligation since Doug bought the license. I mean, only -- before that it was Tom Payne's thing to do. He didn't have the money to do much.
Q. Right.
A. He did do -- they tightened all the track bolts at all the joints, all the track bolts. And some would break, he'd tighten them and put new ones in and things like that.
Q. We're going to get more of this later, but I gather that under your agreement with Eastside Community Rail, the responsibility for doing maintenance falls on Ballard, correct?
A. Well, that's what it says, yeah. I didn't help write that.
Q. We'll talk about that later.

One other question about Exhibit 39. Do you know who paid for the RailWorks analysis that's reflected in this report?
MR. MONTGOMERY: Assumes facts not in evidence.
THE WITNESS: I -- I have no idea.
MR. MONTGOMERY: Foundation.
Go ahead. I'm sorry. Just trying to get in my objection.
THE WITNESS: I thought you were done.
MR. MONTGOMERY: You took care of my second one for me, thank you. Did you get that? Assumes facts and foundation.
THE COURT REPORTER: I did.
THE WITNESS: I don't know, did they send a bill to somebody. Didn't send it to me. I would think they're hoping to be chosen to do the work eventually when it happens, and it would probably happen in stages. They never sent me a bill for inspecting jobs that I had for them, so I -- does somebody know that there was a bill tendered?
Q. (By Mr. Cohen) I don't, I guess I was --
A. I think they just did it and hope they get the job.
Q. I see. Did Ballard -- I'm sorry.

MR. MONTGOMERY: Just take a long time.
MR. COHEN: It's hard to be deposed and eat a donut at the same time.
MR. MONTGOMERY: Take your time asking the question and we'll be okay.
MR. COHEN: This one will be quick, though.
Q. (By MR. COHEN) Did Ballard engage RailWorks to do this inspection?
A. I suggested to Doug that -- I think they're the best outfit out here in this part of the country. And we use them virtually exclusively and have for many years. And so he did, and so --
Q. "He did" means Doug did?
A. Doug engaged them. As a matter of fact, he and I and Ernie, one of his assistants, did a car trip one day and went to the RailWorks headquarters in Chehalis. And when we got there, holy smokes, those guys gave us a tour of their shops and all of their equipment, and very cordial. And I mean, I already knew two or three of them for years and years.
But, anyway, so for them that worked out to being invited to come and check out the section of rail that we operate the trains on, so they did.
Q. Okay. But Doug was the --
A. Yeah.

Q. -- guy?
A. Doug was the guy who did the invitation. And they made the report and addressed it to Doug.
Q. I see. Thank you. Have some of that donut.
Referring you back to Exhibit 38, that's your letter to Judge Lynch. On the last page of that letter, you describe the state department of transportation grant program, you see that?
A. Where is it?
Q. Last page?
A. Last page.
Q. Of Exhibit 38.
A. Yeah.
Q. Just above your signature.
A. Okay. What's your question? I understand the paragraph.
Q. Right. My understanding is that someone applied for a grant to the state department of transportation to rehabilitate the freight segment. To your knowledge, is that true?
A. Well, wasn't me. I think it would be Doug. And you know, I encouraged him to do it. Some people fair very, very well. There's a huge imbalance in the state and the state of Pennsylvania. The state of Pennsylvania awards to every short line at the table, every year. I

don't think you even have to apply. But they're really into maintaining the short lines in a high state of good repair.
State of Washington is all about let's buy some more Talgo trains and let's bring Burlington Northern some money so they can put in more passing tracks so we can run those more Talgo trains, things like that.
The state rail office for short lines has dwindled to maybe two people down there. It used to be the dominant thing. It's just a little group that's part of transportation. Just a little group. There's not much for the short lines anymore.
Q. Do you know if someone, do you know if Doug applied for it --
A. I don't know.
Q. -- a grant?
A. I don't know. Yeah, I don't know either way.
Q. You've not been involved in that effort?
A. I wasn't, no. I encouraged him to nose around, but when you go to the state rail office, it's all about Talgos all the time.
Q. I hear you. There's something I don't understand. Given that under the lease agreement, the responsibility of maintaining that line is all Ballard, why would you expect Doug to go apply for grants?

MR. MONTGOMERY: Object to the form. Assumes facts.
THE WITNESS: Well, I got a full plate already with two other railroads. And he's -- he had the time and the inclination and the enthusiasm to go do it. I said, I got him some names of people that were still down there. And so he, you know, took the time to go do it. And I think he also talked to people in the legislature when he was down there. Had perhaps the better reception from them, because the rail office is not much about short lines anymore. It's -- sorry, it's not the way it should be. The Talgo trains should be funded from a completely different place.
Q. (By Mr. Cohen) Right. Do you know if a grant application was, in fact, filed?
A. I don't know --
Q. Okay.
A. -- either way.
Q. Turning to Page 4 of Exhibit 38. Am I correct that this letter was written in September 2012?
A. Whatever it says, yeah.
Q. So I'm looking --
MR. MONTGOMERY: Page 4. Okay, good. Yeah.
Q. (By Mr. Cohen) I'm looking at the last paragraph on Page 4?

A. Okay.
Q. The statement, "What is clear, is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure."
A. Mm-hm (answers affirmatively).
Q. That was your statement?
A. This is my letter, absolutely.
Q. And that was September 2012?
A. Mm-hm (answers affirmatively).
Q. Is that statement still true today?
A. It is. And some other things I said in there, too, I was in good form.
Q. It's a nice letter.
MR. MONTGOMERY: I'll object once again to this line of questioning to the extent that it applies to the Snohomish to Woodinville rather than Woodinville to Bellevue section.
MR. COHEN: Mr. Montgomery, if you want, I'm willing to note a continuing objection, if you --
MR. MONTGOMERY: That would be lovely, Mr. Cohen.
MR. COHEN: -- want to, inquiries about the freight segment.
MR. MONTGOMERY: That would be terrific.

say --
Q. (By Mr. Cohen) Go ahead.
A. -- that I've never tried to just keep going on the very borderline of one more tie. You know, federal inspector comes and looks and he says I think there's six -- you know, there's only four good ties in this segment. We gotcha. And with a spray can, and you got 30 days to pull that tie out and change it.
Pulling out individual ties is an expensive way of upgrading a track. It's better to bring in sort of a crew in to (indicating) change it out, not every tie, but changes the ones you need in a whole production line.
Q. My question for you is, how long can you postpone those tie replacements and still feel that you can safely run a freight railroad?
MR. MONTGOMERY: Objection; calls for speculation.
THE WITNESS: It's not an exact science. Some of it, Tom Payne did the simple thing when he took it over. He just said, Burlington Northern was calling this Class 2 track. We're calling it excepted, period. It's an administrative thing. Didn't even have to inspect it. He didn't want to. He just downgraded. So it doesn't mean that all of a sudden a bunch of ties failed, lowering it down, it was just that put it down there, not going to have

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

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

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

money.
Q. Do you happen to know how much BNSF sold the real estate for on this line?
A. Oh, yeah, it was 58 million bucks or something.
Q. More than that, Mr. Cole, but --
A. Okay.
Q. But look who bought it.
A. Yes. Is it anybody that has any fiscal responsibility? It's King County.
Q. So is it your view that Ballard Terminal Railroad could run trains on that line without acquiring a freight easement on it?
MR. MONTGOMERY: Object to the extent it calls for a legal conclusion; form.
THE WITNESS: Well, we would only be able to do it if we had -- you know, some paperwork, and we'd have to see what the deal was.
Q. (By Mr. Cohen) What kind of paperwork would you need?
MR. MONTGOMERY: Calls for speculation.
THE WITNESS: I don't know. It depends -- King County owns most of that line that Kirkland doesn't own. The chunk from Totem Lake down the hill to Woodinville, that belongs to King County. And the piece of the valley line that used to go to Redmond is owned by King

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

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

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

couldn't, and hardly did Doug Engle and any of his Eastside helpers. It's, like, you go to the council meetings and you sign up to speak and you get to have three minutes, maybe. And you sit there until the very last piece of the agenda after three hours of listening to them argue about if we're going to have a new dog kennel or something. And then there's like hardly any time. And the president of the council stands up and says, Well, we wouldn't be able to give you three minutes, could you each get by on two minutes. It's insulting. You can't seem to actually talk to anybody who is willing to just sit down and be square.

Q. So let's talk about King County.

A. Just as bad.

Q. Just wait a second. Have you made any offers to King County to buy a freight easement over their section of the line?

A. No. The one that's most logical for us would be to try to get some rights to operate our trains out of Woodinville down south down the valley towards Redmond. Redmond solved their problem quickly by ripping out all the tracks and signals that was inside their city limit in spite of the fact that there's three customers, not in downtown that they are so worried about, but on the outskirts of Redmond. There's the -- used to have rail service, would like to get it back.

I had hoped sometime maybe we can make a deal with Redmond to put the tracks back. The tracks are all in a big pile behind a cyclone fence in downtown Redmond, so are the signals.

Q. So Sound Transit also owns a little more than a mile of the line. Have you approached --

A. I didn't know that.

Q. I'm sorry?

A. I don't know that that's the case. Where would that be, sort of?

Q. Just north of NE 8th. So --

A. Is that outside the city limits of Redmond, we're talking?

Q. We're talking about the line --

A. Okay.

Q. -- between Woodinville and Bellevue, right.

Have you approached Sound Transit about buying a freight easement on their segment of the line?

A. No. But if -- I mean, first thing is to see what happens here with Kirkland. And if we're successful there, then, yes, I would go and try to make some contacts and see what their plans are. I've always -- all I know is what is in the Times paper, drawings from time to time and some text, and the timeline for that is a few years down the road.

So that doesn't mean we shouldn't try to see what kind of a deal could be negotiated, by any means, but it does mean that it's not, like, an emergency at the moment.

Q. So you have not approached King County, Sound Transit or Kirkland in efforts to acquire a freight easement?

A. Well, Doug Engle has tried it. And it's not -- sometimes when Doug puts together these meetings, I attend. And sometimes I don't. But he's worked hard, harder than I have, to try to make those things happen.

Q. But he's not with Ballard Terminal Railroad, is he?

A. I'm not sure that makes that much difference.

Q. Well, it's Ballard that's seeking to reactivate rail service, correct?

A. That's right. We are people with the NPC and ends.

Q. What are those?

A. Those are the rights to run short lines.

Q. Right. And so you have made no effort to acquire property rights on the line?

A. Is that a bad thing, from your view?

Q. I'm just asking the question. You've made --

A. I haven't, but today while we've been sitting here, I've probably spent 10,000 bucks on gravel that I

don't know where it went because I wasn't down there at Meeker, so I got lots of things to do. I can't put all my effort into this Eastside project. But I'm here and doing this because this is one of the most key steps right now. The track would be gone if we hadn't done this. I'd be looking at in a pile at NK down by Puyallup and buying it back to use on our other railroads.

Q. So has Ballard reserved any money that you could use to acquire property interest in the line?

A. I haven't, but if I could make a deal to get property interest in the line, I think that the fund-raising would not be that hard.

Q. Okay.

A. But it's no sense worrying about funds. The first thing we have to do is to stop Kirkland from ripping the tracks up. We were like -- we only got it stopped about one day before it would have been tearing into. We do business with NK, I know those guys. They're good guys, they have good quality used track. This didn't allow them to stockpile anymore in Tacoma.

Q. Okay. Let me refer you to Exhibit 40, that's your verified statement.

A. Yeah.

Q. And on Page 2 of Exhibit 40 --

A. Okay.

Q. -- bottom of the page, you state, "We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment."

You see that statement?

A. I see that.

Q. So I'm going to ask you about CalPortland and Bob Wolford in a minute. I know about those two.

A. Okay.

Q. Tell me about all the others. Who else have you been engaged in active discussions with?

A. We're not talking about hundreds, but on our other lines, we have some trans-loaders. Trans-loader is someone who has a warehouse or an open yard, hard surfaced yard, maybe a security fence around it, and has a rail siding where stuff from all over the country can be shipped by rail, which is cheaper per mile than by truck. Can be shipped by rail into the Puget Sound region, unloaded from the railcars, warehoused inside or outside, depending on the needs of the product, and then delivered the last few miles. In the trucker 's view, the last few miles is at least 150, if not 200 miles. That's a short haul for them these days on the freeways.

So customer whose product is in the train gets it moved 95 percent of the way across the country at the

lowest possible rates because the rails are cheaper than the trucks by a factor of about 25 percent. And so that is a business called trans-loading, to get the product out of the railcars onto the ground or into a warehouse and send the boxcar, empty boxcar back to Burlington Northern. And then call the customer, Okay, your stuff has landed here, safe, no damage, and they make a deal to -- as to what the delivery schedule would be for the product. Maybe it's one chunk and it all goes on one truck or maybe it's something else. They dole it out month after month.

So I have two of those. We have two quite active trans-loaders on our line in Puyallup. And I've talked to those people about possible opportunity in Bellevue or Woodinville or Maltby. And those guys are always, their ears perk up. And they're little guys, like us, in most cases. And these people with, you know, some limits on their finances. They like the idea of them having another one of these distribution center reloads, trans-loading facility.

And so, it's hard for them to get too excited when all we are is in court, and we're the little guys against people with money they haven't counted yet. So you can only get them so excited about it, all right.

But those people, if we are able to make a deal to get down to Bellevue, it goes right through Totem Lake

where there's about, at least ten warehouses that use -- that are right there to be served by rail, in some cases the sidings are still there even. What's inside of them, indoor basketball courts and all kinds of adaptive reuses.

Q. Mr. Cole, we're going to get out of here at some point today if you would just focus on --

A. I'm answering your question. Have we talked to other trans-loaders, to other people who would be interested, the answer is yes. If you want to settle that, that's it.

Q. I want to know about the shippers interested in restoring rail service to serve businesses on the Woodinville-Bellevue segment, the line. That, as I said --

A. That's the guys I've been talking about.

Q. Who are they?

A. I'm not giving you the names.

Q. You're going to have to.

A. I don't know that I do.

Q. Okay.

MR. COHEN: Mr. Montgomery, you should -- I won't address this to you.

MR. MONTGOMERY: Thank you.

Q. (By Mr. Cohen) I'm afraid, Mr. Cole, that if you don't share that information -- I can't even advise you.

Who are the names of the shippers you've been

talking to about providing service on the Woodinville-Bellevue segment? Name all of them.

A. Do I have to do this? These guys are already busy with their businesses, they're not big-time operators like Boeing or something. They don't need to be given a bumpy ride by people who don't want them to come to Kirkland and Bellevue. What do I do here?

MR. MONTGOMERY: I can't instruct you not to answer. It's your call.

THE WITNESS: I don't know. What happens to me if I don't answer? You're shaking your head, what does that mean?

Q. (By Mr. Cohen) Mr. Cole, you made a representation to the Surface Transportation Board that Ballard Terminal Railroad is in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. You mentioned two of them. We're going to talk about them shortly. I want to know if there are any others, and if so, who they are?

A. I get calls from people in Portland, from people in Longview, from people in Spokane, they're often small trucking companies that have their toe in the trans-loading operation somewhere in those cities. I get -- it isn't like I get the call every day, but I get calls for those kind of people wondering about opportunities that might be

on our lines, our three lines here in the Northwest part of the state. And I've made some notes on a couple of those phone conversations.

But some of them I talk to and say, Well, these things are a possibility, why don't we try to get together sometime, drive up here and I'll show you what we've got and see if there's land that can be developed that would work that we already control. That's what's going on today down there where they dumped another, I don't know, 200 tons of rock on the acre parcel without me being there.

I -- I -- doesn't seem right to me that they should come under whatever pressure you guys will apply to them just because they suggested they had an interest in trans-loading opportunity in the Northwest.

Q. Okay. So you're not willing to provide those names?

A. I'm afraid of what you would do to them. And it could end up that they say, Well, that guy Cole, he just -- we were pestered to death and subpoenaed and so forth and so on. They're not going to like that. Can you make some kind of a pledge that you'll just talk to them and be nice and not give them a bunch of guff and make them be sitting in this chair next week?

Q. I can't give you that assurance.

A. Then that's not a very good deal. What kind of

justice is this? How does this work?

Q. Okay. You answered an interrogatory stating that you had spoken with General Mills?

MR. MONTGOMERY: Objection to the extent it mischaracterizes the interrogatory.

Q. (By Mr. Cohen) Do you recall that answer?

MR. MONTGOMERY: Same objection.

THE WITNESS: I actually haven't spoken to General Mills.

MR. FERGUSON: It's Exhibit 37.

THE WITNESS: I spoke to them a couple of years ago when, to our surprise, the stream of flour carrying, pressure differential cars, all of a sudden came to life again. And I'm looking on -- we get a daily report every morning at 3:30, all the cars in North America that are inbound to our three railroads. It's broken up by the three railroads. Sometimes I print them off.

But anyway, there was -- I see General Mills. I called them up. I said, Hey, what is going on? The pipeline of flour back to the Safeway bakery in Bellevue is open again? And the guy said, Yes. I said, Well, that's a nice pleasant surprise. And he said, Yeah, he said, we got the contract back. Something to that effect. It was not a long conversation. It was the manager of the mill or something, I guess. I don't know for sure who it was, but

it was just a confirmation that somehow the nation's network for moving all these freight cars to the place they're really supposed to go to hadn't screwed up and reverted back to something from ten months ago or something. It was true, it came.

So that was my -- that was the extent of my talk with General Mills back in Great Falls, Montana. It was just about the fact that there was cars destined for Ballard again where we would unload them into pressure differential stainless steel truck trailers and truck them to the Safeway bakery.

Q. This was a conversation about service to Ballard?

A. That's right. They were showing up in the morning on the Ballard, here's the inbound cars. It's like, huh, the pipeline is flowing again.

Q. Okay.

A. And it was. That went on for a while. It was since ceased again, and again with no call from Safeway either way and no call from General Mills. We're not getting any cars right now. I don't know what their criteria is.

Q. So you are not currently considering any proposal from General Mills to ship freight to or from any location on the line?

A. We're not. But if we were successful in getting

opened for freight, I imagine that Safeway would immediately hook up with General Mills and start sending the cars directly there, that would be the cheapest way to get the flour to their bakery. Great Falls, Montana does not compete well with flour by truck compared to flour by rail.

Q. Does General Mills have a business operation on the line?

A. No, all they would be doing is selling the flour to Safeway and that's a transaction that takes place with Richmond, California. Richmond, that's where the Safeway regional, you know.

Q. So General Mills is not a perspective shipper on the line?

A. No, I didn't say that. I think if we were able to gain access to the use of the line, that Safeway will see that and look at what the freight rates used to be and see that that's the cheapest opportunity. Beats trucking and it beats railing to Ballard, for example, and trucking over to the bakery at night. And so they would see that, Hey, this is good news and hook back up with General Mills.

Q. And when you say "Safeway would hook back up with General Mills" --

A. Well, I think there's been times when they bought flour from General Mills' competitors.

Q. Can you give me specific locations where these hookups would occur?
A. I don't know. All I know is there was a time when, as far as we could tell, no General Mills flour was going to Safeway. We had lost the account from our trans-loading facility in Ballard. And they were still getting flour. And the only thing I could assume was that there was a flour mill somewhere that had made a more competitive bid and Safeway had decided to try them out for a year or a quarter or something, I don't know. I didn't ever -- it wasn't my business as to what they did. It would be nice if they would call us and say, Hey, Byron, we're stopping the pipeline to you guys forever or for a while or something, but we've never had those kind of phones calls.
Q. Okay. So General Mills has no business location on the line, correct?
A. Correct.
Q. And what you've been talking about is a supply arrangement from General Mills in Montana to Safeway in Ballard?
A. We had that for a number of years. Sort of on again off again. We have a small trans-load facility in Ballard. And they -- Safeway contracted with a trucking company that has the proper food grade pressure

differential modern truck-trailer rigs. And there's about 100 tons of flour in a railcar. There's about 32 tons of flour in a grossed out highway truck-trailer PD rig.
And so they would take about -- take four truckloads to empty out a car. And so that went on for a while. And it stopped and then it started again. It's been -- we have to take whatever they get. We don't refuse them.
Q. Forgive me, does this particular transaction or potential transaction have anything to do with rail service on the line?
A. Well, I think that if we can operate rail service on the existing line from Woodinville into Bellevue, that it just seems like Safeway would say that's cheaper than any other way. That's back like in the old days. And they would -- they would take it. But Safeway is -- is -- they don't always answer the phone.
Q. Well, I was going to ask you next about Safeway. Safeway has a bakery in Bellevue, right?
A. That's it, it's their regional bakery, industrial, bakery is another name it's called. It's big, because there's two tracks and you can put about four carloads right inside the building, slam the door.
Q. Okay.
A. It's big.

Q. And I understand that you had a conversation with Safeway about receiving rail freight service at their location in Bellevue?
A. I haven't this go around. When the service started to us, which was something that Burlington Northern arranged. When Burlington Northern quit running on the line, they made a deal with Safeway for alternate source for the flour. That was to ship the railcars from Great Falls, Montana, from milling company there to Ballard where they would be unloaded into these pressure differential trucks and trucked to the bakery.
Q. That wouldn't require rail service on the line?
MR. MONTGOMERY: Object to the form.
THE WITNESS: Well, that would have -- I mean, that's what we actually did. I mean, we did that for a couple of years. And then they quit doing it. And I don't know. I thought they just found some cheaper place to buy flour and it was within -- might have been Eastern Washington. So it was just, put it in a PD truck and it goes nonstop and they drive the truck inside the building, and, you know, that was cheaper.
Q. (By Mr. Cohen) Okay.
A. But maybe they didn't like the taste of the bread it made, I don't know.
Q. Doug Engle said yesterday that Safeway has

abandoned its operation in Ballard, is that your understanding?
A. In Ballard?
Q. Yes.
A. Well, the operation was -- there was no infrastructure. We haven't had any flour cars for, I don't know, a number of months, but the bakery is still running robustly, I think.
Q. You mean the bakery in Bellevue?
A. Yes. There's no bakery -- that's the only regional bakery in all of the state of Washington, that I know of.
Q. So have you had any recent conversations with Safeway about providing freight service to that bakery in Bellevue?
A. I haven't. But I believe that Doug has made -- I tracked down on their website, that the flour account's manager was a woman in California, Richmond, California. And it's right across the bay from Doug's house. So I suggested he pick up the cudgels and go talk to her.
And so I think the -- I think the answer I got from Doug was, I called that woman and she said she wasn't the account manager anymore, or something to that effect. And didn't offer who was the account manager. So we don't know anything about them at the moment.

Q. Okay. How about Wright Runstad, did you reach out to Wright Runstad?
A. No, they don't know me from Adam.
Q. Anybody else with Ballard Terminal Railroad reach out to Wright Runstad?
A. There isn't anybody other than my partner, who's in the sand and gravel business. He and the people that -- at CalPortland would know each other.
Q. Right. We'll get to them. How about Kemper Development, have you had any conversations with Kemper Development --
A. I haven't.
Q. -- about providing rail service to them on the line?
A. I haven't. All I know Kemper is what I read in the papers.
Q. So any other perspective shippers for service on the line other than CalPortland and Bobby Wolford?
A. I would like to somehow locate a trans-load facility, somewhere in that vicinity of the old Weyerhaeuser cardboard box plant and Safeway bakery's existing and seems like amazingly durable, long-lived bakery. Somewhere along in that string of warehouses, about five of which still have spurs that reach right into them. And so I think that 's right for a trans-load

facility be able -- for people to be able to get direct rail service with a short trucking dray for whatever their products are. And save some money, those are all low margin businesses.
And so I think there's an opportunity there somewhere to get into somebody's warehouse.
MR. MONTGOMERY: Where is that? I'm sorry, I didn't hear you.
THE WITNESS: In downtown Bellevue.
How about if we lease out the old box plant from you guys until you're ready to use it? I got all the track. I got all the ties and the rails that came out of there from the guy who got the contract to take it up. I've got them all in a pile down in Puyallup. I would put those back in a heartbeat and have direct rail service that goes inside the building. It would be a great trans-load. It's got truck access and floor that's rail dock high. And how long is it going to be before you need it?
MR. MONTGOMERY: For the record who is "you guys"?
THE WITNESS: Sound Transit.
MR. MONTGOMERY: Thank you.
Q. (By Mr. Cohen) Mr. Cole, have you made any efforts to locate a trans-load facility on the line, to develop one?

A. I've gone over there on Sunday mornings when things are quiet and parked my car and tramped around and tried to visualize what might work here and what looks like it's a vacant, newly vacated warehouse. Most warehouses are owned by people who just lease them out. And so most occupants are leasing, renting the warehouse, so they turn over from time to time. And so I go and look and see, is there some kind of business inside here, looks like there is and so forth and so on.
I think one way or another we could get a trans-load facility there, I think that would be a popular thing.
Q. Does Ballard hold or have an option on any property on which a trans-load facility would be built?
A. No, not yet.
Q. Have you talked to anybody about acquiring property for a trans-load facility?
A. Yeah, one of our employees who runs the train is a real estate broker, as it turns out. So he and I have chats. He's pretty knowledgeable and been on the Eastside a long time. So that answers, yes, to that extent. And he can save me some time. I don't have to learn things that he already knows.
Q. Has your employee, the real estate broker, contacted any of the owners of the property that you would

like to develop a trans-load facility on?
A. Not yet. I thought it was premature until we see. We were panicking here about Kirkland's just -- I don't know. It's just -- answering to the bike community, jumping through hoops that they want. And the bikers just don't think a trail feels good if there's still tracks next to it. They just don't like it. It's not good enough.
We've been through that on both of our railroads, which have trails built beside them on both our Meeker line and our Ballard line. We get along fine with the agencies that maintain -- built and maintain them, Pierce County Parks & Recreation in the south and Seattle Department of Transportation in Seattle. But whenever we're doing any work anywhere near the trail, we put up traffic cones, direct them off to one side. The first five bikers down there kick over the cones. These are adults.
Q. Have you had any e-mail or other written communications between Ballard and any perspective shipper?
A. Well, I get -- like I said, I get calls for trans-loading from all around the state. I get calls occasionally from Canada, calls from Northern California from people who are looking for places where they can make some money by setting up a trans-load that other people will want to use.
Q. These are the people you don't want to name?

A. Right.
Q. Okay. All right. But no written communications?
A. No. It's amazing, you can go a long way with the money of a handshake deal, a lot of times, but it's not a very complicated business, so...
Q. Okay. Does Ballard have any letters of support from any perspective shippers that you have not filed with the Surface Transportation Board?
A. Would you say that again?
Q. Yes. So you filed letters of support from CalPortland?
A. Mm-hm (answers affirmatively).
Q. And Bobby Wolford --
A. Right.
Q. -- Wolford Trucking?
Do you have any other letters, you or your counsel, letters of support for the reactivation of rail service on the line that you have not yet filed with the Surface Transportation Board?
A. I don't think that we have any. I can't speak for Doug. But I haven't tried very hard to do something like that. It was a pretty big step for us to decide to do this filing that brings me here today for a little outfit like us. And STB regulates us and -- I want to be careful that we don't poison the well with STB through some goofy

misstep. So I've just tried hard here to have good counsel and get it right the first time.
Q. So no other letters of support from perspective shippers that you're aware of?
A. I haven't tried to get them.
Q. Okay. Has any perspective shipper asked Ballard for a rate quote?
A. Well, people do that. But the answer in today's world for rate quotes is, go to your computer, dial up BNSF, rates are there. The rates for, unless you're Boise Cascade, where you can pick up the phone and call Fort Worth and get an account executive, an AVP, to talk to you about your rates from your 11 saw mills and 15 board plants and so forth, when Boise Cascade calls, the railroads listen.
Okay. But I get calls usually from much smaller companies. But they can do the same thing, the published rates are right there. You can see what the freight rate is in a 100-ton boxcar and just put in what the commodity and what the departure point is and what the destination is.
Q. Right. But since --
A. So they don't need to call me about rates. They can sit after dinner at their home computer and figure out if we could ship it to Ballard Terminal's facility at

Puyallup, freight rate seems to be, blah, blah, blah. On the other hand, if we shipped it to Woodinville or Maltby, the rate would be something else. The only thing they need from us is for me to tell them the rate from the interchange, from our interchange with Burlington Northern down to Maltby.
Q. My question is, has anybody asked you what the rate would be for a delivery on the line?
A. Well, I get them from time to time.
Q. From who?
A. Well, it's -- a lot of times it's people I don't even know. It's somebody in New England.
Q. Okay.
A. And he makes, I don't know, power takeoffs for jet turbine boats or something. And he's trying to see if shipping by rail in a boxcar is better for him than shipping by truck. And we're in this national directory of railroads, and that's where they get our number and we call and talk about it.
Q. Mr. Cole, I want to be careful. I'm asking you about the line between Woodinville and Bellevue, not your freight segment. Have you received calls from anyone asking for rate quote for service on the line?
A. Well, they usually never are that specific. In fact, I'd say they always are not that specific. One of

their first questions that they ask is where do you have trans-load facilities. I say -- now I say, Well, we have three railroads. So one place is Woodinville on this railroad we're working on here. And we have Ballard. And we have two trans-loaders on our Meeker line in Puyallup.
So I ask them, where are you trying to get to once you get it out of the boxcar. And then they tell me, Well, we're trying to get to the Port of Tacoma. Well, then, the logical thing is to send it to our Meeker Southern railroad, because it's only 10 miles to the first gate on the first dock. And they love that. That railroad is in a really good strategic spot.
And Port of Seattle, where, I don't know, I count the number of boats in the Port when I go home to West Seattle and there's only two in here for the last two or three days. Two freighters. That's not much.
Anyway, you know, the conversations are what could you do for us. Well, we have three railroads, what are you trying to do? Well, I want to get to the Port of Tacoma docks with my product I make. Well, then, the Meeker is the one to do it. Then we talk.
Sometimes it turns out to be traffic and sometimes it doesn't. I try and direct it. I don't have to invent the wheel, again, I give them the names and phone numbers of the two trans-loaders we have on that line.

They got telephone banks waiting for the phone to ring. When that rings and that guy calls, they have a knowledgeable guy with a proven track history, been in business for 30 years, and he can tell how much it will cost to unload the railcar and how much it will cost to dray it from there to the Port, which dock are you going, to, blah, blah, blah. In the end, we get paid 350 bucks for handling that boxcar.

Q. Have you --

A. That's the way business works.

Q. -- gotten any calls from anyone who is trying to deliver freight to Bellevue?

A. I don't think so. But sometimes, when I'm talking to these people, I say that there might -- you know, might be a possibility that we'd be in Bellevue sometime, but they, from the standpoint of looking for a trans-loading, they don't see a lot of difference between unloading in downtown Bellevue or unloading in downtown Woodinville. The few minutes of trucking. But if it was somebody, that said, well, I want to open up a gypsum board retail and wholesale outlet, Sheetrock, well, then it might make a difference to be downtown. That would be a close haul for a pot full of gypsum.

Q. Any calls from anyone trying to deliver freight to Kirkland?

A. I don't think I've ever gotten any. But Kirkland does have an industrial district up there by the tracks, and there's one spur up there, and there used to be some others. You can see where there used to be some other spurs. I suppose might be able to be put back if, again, the right tenant was inside the building.

Q. Any calls from any shippers seeking to move freight out of Bellevue?

MR. MONTGOMERY: You mean other than --

THE WITNESS: Other than the spoils people?

Q. (By Mr. Cohen) Right. Other than Bobby Wolford and CalPortland, we'll talk about them.

A. Bobby has a bunch of competitors. When these big giant basements are dug, there's, I don't know, I'll bet there must be a dozen truckers, or more than that maybe, that would be available for those things. I'm sure they'd partner up in partnerships that last as long as that excavation job is going, two or three of them get together and say, Look, together we can put 16 trucks on the road, three little guys and, you know, a few trucks. Wreckers are like that.

Q. Has Ballard Terminal Railroad had any conversations with any truckers seeking to move?

A. No. But, you know, if this goes the right way, I think phones will start to ring because Wolford is going to

have the best economic model and the other guys won't want to get left behind.

Q. I'll ask you about that. How about anybody trying to move freight out of Kirkland, any calls from shippers trying to move freight out of Kirkland?

A. No. The businesses look pretty small and a lot of what used to be -- I've walked the line a number of times. The buildings that are there and could be under lease or maybe they're owned, I haven't checked to see what they might be, but mostly they're the kind of a business that doesn't look like they need rail. You know, in-house television system installers and all kinds of things, but not something big like a distribution center for Sheetrock or plywood or roofing paper --

Q. Right. I'm sorry.

A. Well, roofing materials or something like that.

Q. Right. So let me ask you about CalPortland. Before this rail reactivation issue came up, did Ballard Terminal Railroad have a prior relationship with that company?

A. Boy, do we.

Q. Tell me about it.

A. So my partner has a business in Ballard, it's Salmon Bay Sand & Gravel Company. It's a ready-mix plant. And CalPortland is one of the major suppliers of the dry

bulk cement. We've got it set up to, it comes in by ship -- or the raw materials come in by ship and the ship goes up the Duwamish River. And CalPortland is located on the east shore of the Duwamish River at about Michigan Street. So they have an actual cement making plant there.

And so anyway, they make the products and they load 100 -- 112-ton capacity pressure differential railcars, that's the fat, fat ones. But they're way bigger than a tank car for gasoline or something like that. On the top is a walkway and hatches. It's a dry bolt thing with hatches on the top. They load those and they just come across town from on the Duwamish River to Ballard. Total is only 10 miles or something like that.

But the thing is when it gets to Ballard and we spot it at the batch plant, the piping on the railcar is that big around (indicating).

Q. You got to -- the court reporter can't pick that up.

A. Oh okay, 6 inches in diameter.

Q. Nice.

A. They can blow that car off, 112 tons, into the silo at the plant in about two and a half hours. If you try to bring that cement in the highway truck-trailer combination -- so there's 112 tons of cement being blown out of that thing in two and a half, three hours, if you do

been in attendance at one meeting, I think maybe Doug has had a second meeting with them, possibly. But they were pretty enthusiastic about the whole thing. It's not something they have thought of.

Q. Who was that meeting with?

A. It's with the marketing guy for ready-mix products. I don't know his name.

Q. When was the meeting?

A. Within the last month.

Q. Have any written communications from CalPortland about your plans?

A. I don't. Doug may.

Q. But Doug doesn't work for Ballard Terminal Railroad, you do.

A. We work closely.

MR. MONTGOMERY: Objection; argumentative.

THE WITNESS: I don't see that matters any. I mean, there's no sense both of us making these phone calls. Geez, it's hard enough for one or the other of us to keep all these balls up in the air.

Q. (By Mr. Cohen) If Doug Engle makes these inquiries, is he doing it as your agent?

MR. MONTGOMERY: Objection; form. Object to the extent it calls for a legal conclusion.

THE WITNESS: Well, he certainly sees us as

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

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

A. In --

Q. -- in Bellevue?

A. In Bellevue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. MONTGOMERY: Asked and answered.
THE WITNESS: I don't know. They have a conventional truck served yard where they unload trucks and then a front-end loader pushes them into the ends or something. And then other people's trucks come there and get loaded up. You can see that's a complete waste, isn't it. I mean if that's --
Q. (By Mr. Cohen) Yes. So let me clarify, CalPortland doesn't have an off-loading facility on the line in Bellevue?
A. Right. I don't know if they have one at all. It may very well be that the Cadman and other ready-mix people just drive all the way -- they have choices. They have CalPortland and right next to them is another cement company. What the heck is the name of it? Anyway, there's about three places you can buy rock, the aggregate's right there in a cluster on the Duwamish between Spokane Street and First Avenue South bridges. So I imagine most of those places, bring your own trucks, figuring that's somehow cheaper, or they contract the trucks.
Q. Do you know where the aggregate that CalPortland would be shipping by barge to Everett would be coming from?
A. Somewhere on the rim of Puget Sound.
Q. It's a big place?
A. It is. I have no idea where they get it from.

Q. All right.
A. These people generally use one place until it runs out. But in the meantime, for the last 25 years, they've had rights to mine at dozens of different places all around Puget Sound because they know that's their future.
Q. Okay. Let me ask you about Wolford Trucking and Demolition.
A. Okay.
Q. Your verified statement that you read a few minutes ago makes the same statement about Wolford Trucking as you did about CalPortland, that they are ready, willing and able to utilize the Bellevue-Woodinville segment?
A. I'd say that Bobby Wolford is --
MR. MONTGOMERY: Could you wait for a question.
THE WITNESS: Sorry.
MR. MONTGOMERY: Thanks.
Q. (By Mr. Cohen) What's the basis for that statement?
A. Well, I've met Wolford a number of times informally, I mean, you know, not -- maybe we had something to share with each other. But it wasn't a very big deal. But just met him at some of these evening meetings where you sign up and wait for three hours to speak for your

truncated two minutes. And somebody insults you by saying, Well, I'm sorry, you're the fourth person on this subject. We can't even speak --
Q. You shouldn't get started on that subject again.
A. I know, that really irritates me. That's one of the reasons I'm here today because I just ran out of patience.
Q. All right.
A. So he seems to me like quite a nice fellow, and quite a good businessman. And I'm very impressed with his protege that is really young and really sharp that will probably be taking over -- wouldn't be buying the company but --
Q. Who is that?
A. I can't think of his name, but he's an extremely smart young fellow.
Q. Is that Oliver Lewis?
A. Darn if I knew, I couldn't remember his name. I've met him two or three times. Anyway, I'd say the company is quite well run. And it's quite diversified. They bring in all sorts of things and sort through them and turn them into adaptive uses and take them to waste dump pits or whatever. I think if he says he can do it, he can do it.
He built, for Tom Payne, about a half mile of

trail that starts down at Brightwater and runs up to Wolford's place. I don't know how far that is.
Q. He told us about that.
A. He just did it.
MR. MONTGOMERY: So are you done?
THE WITNESS: Done.
Q. (By Mr. Cohen) To your knowledge, does Wolford have a loading facility or trans-loading facility on the line in Bellevue?
A. No, he wants us to put a spur in at his plant at the top of the hill at Maltby, which is just the level spot up there and then you start down into Brightwater and so forth. So he wants us to put a spur in. It's not really hinged to him going to downtown Bellevue. He just wants to have it there because of all the other things he's got going out there. And we're going to do that.
But he's been around so long and knows all these builders and developers so well, and they know him so well, that I would think if anybody could find a place to operate a reload, it would be like dump truck, dump on the ground, big front-end loader scoops up, turns, dumps into a gondola car, I see places there that could work. I haven't taken the time to see who owns them. But I see some surface asphalt areas next to warehouses that don't seem to have a tenant, for example, you might be able to lease the whole

darn thing.
Anyway, it looks like there could be a place somewhere where the railroad yard area is and the spurs to about a half dozen industries there.
Q. But Ballard Terminal Railroad is not --
A. I haven't made any overtures to anybody. Except Sound Transit, I would like to lease your old cardboard box building because it's ready to go.
Q. To your knowledge, Wolford hasn't made any arrangements to land a loading facility in Bellevue?
A. Yeah, I don't know of any. And he may have. Or he may be, you know, confident, if this things goes through, that will be simple.
Q. Okay. Has Wolford talked to Ballard Terminal Railroad about a rate to haul freight --
A. We haven't.
Q. -- from Bellevue?
A. Right, we haven't.
Q. Okay.
A. But he and Engle have talked about some rates. And I just haven't taken the time to analyze them and see if it works for us or not.
Q. Mr. Cole, do you know where the -- this would be construction debris that Wolford wants to haul out of Bellevue, do you know where its destination would be, where

does he want to ship it?
A. One of the things that we -- we have said, and Engle has said, is a lot of these spoils, as long as they're not contaminated, could be used to build the subgrade for a bike trail besides the rail tracks in the 12-mile segment from Woodinville down south to Bellevue. And we would use either side dump gondola cars, it's almost like a highway truck with a V shape just over the side, or this side of the tracks, then you put a Cat tractor in there and grade it out and so forth.
We could use it to build a bike trail.
Q. I think Wolford testified about that.
A. Yes, he did. I mean, that's a key part of this thing, it's like, Hey, look, Kirkland can have their trail, it just would be besides the existing rail track. Please learn to share the assets.
Q. So the idea is that the construction debris and dirt would never need to leave the railroad right of way, it would just get dumped off the side?
MR. MONTGOMERY: Objection; form; foundation.
Go ahead.
THE WITNESS: Okay. I think so. And the other -- the other type of way getting these things unloaded is they have trains now that are like gondola

cars, except they've cut the ends out and extended the sides, so they're all slip joints and they've extended the floor, so it's a slip joint and turns. And you make like a ten-car train and just put an excavator inside there, something with a -- can't get too big of one, because they're only like 9-foot-6 inside.
Anyway, you can unload -- you can put an excavator in, say, one end of your train, locomotives hook onto either end. Put an excavator in the end when you're filling this with the front-end loader on the ground, fill the whole thing up, but leave the excavator still sitting on the tin floor. You get to where you're going to unload, someone fires up the excavator, scoops, swings, dumps to the other side if you want to go to the other side of the tracks. Keeps working his way down till he's at the other end ten cars down. He hasn't had to get down of one gondola and into the next one because it's one big long snakey gondola car. Those trains can be leased complete with power.
Q. Do you have any of those cars?
A. Holy Moses, no. We're talking a million bucks or something for that thing. But if you have a good long --
MR. MONTGOMERY: Keep talking. Don't wait.
THE WITNESS: A good long period of time, on a big enough contract, easily fit into the rental scheme.

Holy smokes.
Q. (By Mr. Cohen) Do you know --
MR. MONTGOMERY: Are you done?
THE WITNESS: Done.
Q. (By Mr. Cohen) Do you know if Wolford has any contracts to build any trails alongside the right of way?
A. I'm pretty sure he does not at this point. But the part he did build is within our reserve freight easement, so it's like, this is a federally regulated job. I wouldn't say no seedling trees were damaged or something, but looks like pretty benign. You're free to go walk it.
Q. Would Ballard Terminal Railroad be willing to pay Wolford to move the demolition debris up the line to create a trail?
A. Well, the --
MR. MONTGOMERY: Incomplete hypothetical.
THE WITNESS: Yeah, there's a lot of -- a lot of ways the thing could be structured. But first, Wolford has to submit a bid to the builder of the high-rise that competes well with other truckers. Assuming he can do that, because he's -- while the trail is being built, he's got a real short haul. And there could be places in the trail where you actually don't bother to put it into the railcars, you just truck it.
But the rail is going to be able to put dirt in

places that are not reachable easily by truck. Because so much of that Kirkland area is on the side hill.

Q. Right.

A. So sort of cries out for these self-loading and unloading trains and so forth. I think he would have advantage in many of the bidding wars.

Q. If the material could not be disposed of to build a nature trail alongside the right of way, it would need to go to a landfill?

MR. MONTGOMERY: Foundation.

THE WITNESS: Well, there's a few other options, but yeah, the default would be a landfill somewhere. And I'd say Wolford is as well fitted with needs to spent rock quarries and so forth, places where you can legally take the clean spoils by truck, that it might be the -- those jobs just don't ever get in the railcar. Or maybe you load the railcar and they unload it up at, near the junction with Burlington Northern and they truck it from there or something up. Most of the sites are getting to be towards Stevens Pass up Highway 2.

Q. (By Mr. Cohen) And not on a rail line, right?

A. And not on rail, yeah. You know, we can get Burlington Northern to pick the cars up and take them to Gold Bar where there's a switch yard, and then they can unload up there. So it's a possibility, if it's an easy

thing for them to do. It's the Gold Bar turn train that picks up and delivers our cars to us. And so it would just be one more switch for them and haul them whatever number of miles that is to Gold Bar and set them out up there.

Q. You haven't explored the economics of that operation?

A. Well, I thought about what the freight rates might be to Wolford, yeah.

Q. Do you know what they would be?

A. Not off the top of my head.

Q. Have you supplied him with that information?

A. We've talked about it a little bit. But I have, you know, said, I got to look at this closer, Bobby. And it depends on how the loading is and how much we can actually put in the cars and so forth, and what it cost us to have a fleet of cars.

Q. Okay.

A. There's quite a few things there. But this thing -- kind of thing is going on around the country. This isn't the only town where people are thinking this.

Q. Let me ask you to look at Exhibit 40, that's your verified statement, Page 3.

A. I'm on Page 3.

Q. Okay. At the bottom of that page, you offer an estimate that if Kirkland removes the rails on the Kirkland

segment of the line, that "the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately $10 million."

You see that?

A. I see it.

Q. That's your estimate, right?

MR. MONTGOMERY: Object to the form.

THE WITNESS: Yeah. Well, it's at least a stab at an estimate. It's a huge -- it's a huge waste of a resource, because the signals, for example -- first of all, they're all these cantilevers and such, they're modern things and modern lights in them, all of that is up-to-date, as it is on all our other railroads. That stuff is state of the art. Gone to LED lights and computers in the bungalows and all this stuff. So to trash it all, we're going to have to pay brand-new price to get new stuff. So you'd have a million dollars in grade crossing gear if you just trash it.

Q. (By Mr. Cohen) So --

MR. MONTGOMERY: Are you done?

THE WITNESS: I guess so. This is a good number to start with.

Q. (By Mr. Cohen) Tell me how you developed that number.

A. Well, if you're starting from scratch, it's

getting really hard to buy any used rail, which is called relay rail. It just means it was here and somebody picks it up, was careful, didn't bend it, kink it, break it. They shipped it to somewhere else and we can buy it and reassemble it.

The price of steel has gotten so high that all of the relay wire that was around, people that owned it have all sent it to Asia. All we can buy nowadays is brand-new rail, which really costs a lot of money. We'd get the same size rail, but brand-new and it cost three or four times as much per yard as used stuff. So price of that is way up.

We would probably use concrete ties. They're 90 bucks apiece delivered to Bellevue or Seattle or any other place. We do use. Our little spavined railroad that everyone snickers about, we use concrete ties at both of the railroads we've got. And they actually -- they have a bigger footprint so you can load them up more, you don't have to use a track gauge because they're like toy train track, it all snaps together. And you get a beautiful job and you can keep the stuff around to get it lined up and have S turns and all this stuff.

So if that was the case and we somehow had the federal grant or something for couple million dollars a mile, we could put it all back together with 112 or 115-pound rail and use concrete ties that come from

Spokane. And it would be a great roadbed and commuter trains or whatever could run 90 miles an hour on it. It would be the same as Burlington Northern's main line all the way to Chicago.

And so there's no way to build it old. We do not do that. If we're rebuilding track, and we've done it in Ballard and we've done it on our Meeker line, build it to today's modern standards.

Q. Is that $10 million estimate based on particular assumptions about the cost of ties, the cost of rail?

A. I believe that Doug put that number together after talking with RailWorks as to what they thought it would be, because they do much work around the country. The guy can just go to the filing cabinet, pull the drawer open and look for some quote.

Q. Where did you get the number?

A. I got it from Doug.

Q. Got it from Doug?

A. I'm pretty sure it came from RailWorks. At this stage, are we quibbling over whether it's 12 million or 10 or anything? It's not really relevant. It's a pot full, it's way more than building what's out there today.

Q. Let me ask you to look at Exhibit 37, which is your answers to the interrogatories.

A. Here we go. First one out of the box.

Q. Bottom of Page 2, Interrogatory Number 4.

A. That's the same question.

Q. It's the same question. If you flip to Page 3, you will see your answer.

A. Yeah. Well --

MR. MONTGOMERY: Is there --

THE WITNESS: I was more forthright with you.

MR. MONTGOMERY: Wait for a question, please.

Q. (By Mr. Cohen) So, your answer was "without waiving this objection, see ECR 893."

See that?

A. I see it.

Q. Did you review ECR 893 before you signed this pleading?

A. I don't think so.

Q. Let me show it to you.

MR. COHEN: Mark this one as an exhibit.

THE COURT REPORTER: It's going to be 41.

(Exhibit Number 41 marked.)

Q. (By Mr. Cohen) Mr. Cole, can you read that?

A. Well, could you have used any smaller print.

Q. I didn't choose it. We have one that is blown up a little bit if your counsel will stipulate to -- is this

the same document?

MR. FERGUSON: Yes, it is --

MR. MONTGOMERY: Isn't it a page in a previous exhibit? It's in there somewhere.

MR. FERGUSON: Can we go off the record for a second.

MR. MONTGOMERY: Sure.

(Discussion held off the record.)

(Exhibit Number 42 marked.)

Q. (By Mr. Cohen) The question is, Mr. Cole, you indicated in your interrogatory answer that the basis for your $10 million estimate to reinstall the rails is ECR 893.

MR. MONTGOMERY: Object to the extent it mischaracterizes the interrogatory responses.

THE WITNESS: So what the heck is the EC 3, or whatever it is. What is that? When you say I'm referencing --

Q. (By Mr. Cohen) I'm going to show you. Exhibit 41, will you look at Exhibit 41? You need 41. All right. If you will look at the bottom, bottom right corner of that exhibit, you will see a number stamp.

A. Yeah.

Q. All right. Would you read that, please?

A. It's ECR triple ought 893.

Q. So this is the document that your interrogatory answer represents is the basis for your calculation of the $10 million estimate. Have you ever seen this document before?

MR. MONTGOMERY: Hold on a second. Object to the form and object to the extent it mischaracterizes the interrogatory response.

Go ahead.

THE WITNESS: I don't think so. I think this is Doug Engle's work. But Doug and I have been joined at the hip for three years. And we think pretty much alike. And he's got this, this -- based on this is what's really the most important, and that's RailWorks. And so, I would have done the same thing. I would look at the RailWorks quote and say, Well, okay, let's see what this would be if we do this.

Q. (By Mr. Cohen) And how do you know that this document is based on RailWorks?

A. Well, something here that made me think of it. Because it talks about the Woodinville wye and blah, blah, blah, so much money to get this far. RailWorks total, it says right there.

Q. Mm-hm (answers affirmatively).

A. So it's RailWorks' footprint all over it. That's okay. RailWorks does nationwide, they probably do a

hundred bids a day. They're the biggest outfit in North America. And they're really good. That's the good news.
Q. So --
A. They're not the most expensive out there.
Q. So --
A. So I don't think anything wrong with using that. This is what someone has told us they'd be willing to do a job for. He's adapting the parts of it that make sense on the segment from downtown Bellevue to the end of the holding at Woodinville. It's the best numbers we can get. Why would they start from nothing. I wouldn't start from nothing if I was him. This is the thing I'd go to too.
Q. So the bottom line is the $10 million estimate in your verified statement is not your personal estimate at all?
A. No.
Q. Okay.
A. That doesn't make it invalid --
Q. That's okay.
A. -- I'd say.
Q. Let me ask you to look at one more exhibit.
MR. FERGUSON: Let's take a three-minute break and make a copy of it.
MR. COHEN: Off the record a minute.
(Discussion held off the record.)

Q. (By Mr. Cohen) Mr. Cole, showing you what's been marked as Exhibit 32, could you take a minute and look at that document.
A. Okay.
Q. Let me know when you're ready to talk about it.
A. Okay. I will. It's going to be a minute or two. God, this is ancient history here. It's back in November 2012. I don't know anything about it. November we were just starting to get our arms around --
MR. MONTGOMERY: Would you wait for a question.
THE WITNESS: Oh, but you asked me.
Q. (By Mr. Cohen) Are you ready?
A. Yeah, ask me the question.
Q. Here's the question -- I want to ask you about Doug Engle's e-mail to Kurt Triplett and Sung Yang, that's the lower half of the page.
A. Yes.
Q. Doug testified two days ago that he made this proposal to Kirkland and to King County, and that in that proposal, as you can see in line one, he offered to drop the freight plans.
A. I see that.
Q. And therefore, reactivation as part of the deal?
A. Yes. He's going down a different path.

Q. He's going down a different path. And you were at the table for that testimony, right, you were here, you heard him testify?
A. Just two days ago?
Q. That's right.
A. Yeah.
Q. All right. And do you recall him saying that this was a big give on his part, but that he was willing to do it, if it would get the support of Kirkland and King County for excursion service?
A. I don't remember his exact words.
Q. Am I --
A. I don't think -- I'm not sure that I've ever seen this thing, so --
Q. Right.
A. -- I don't know much about it.
Q. My question is, in making that proposal, did he have your support as well?
A. I don't think --
MR. MONTGOMERY: Hold on a second. No objections, I mean, nothing, go ahead.
THE WITNESS: I don't really know anything about this. It's so long ago. I haven't heard. I didn't hear about it then and I haven't heard about it since, so it must be dead as a doornail.

Q. (By Mr. Cohen) So in offering to drop freight service and reactivation, Doug didn't first consult with you and get your buy-in to that proposal?
A. I don't recall.
MR. MONTGOMERY: I'm just going to object to the extent it asks you to comment on prior testimony which is improper. And document speaks for itself. Go ahead.
THE WITNESS: I don't remember anything about it.
Q. (By Mr. Cohen) You don't recall any conversation --
A. No.
Q. -- about this proposal?
A. I mean, we've had a lot of phone conversations. You know, he spends two-thirds of his time in San Francisco where he lives. Talk to him on the phone down here. Talk to him when he's up here. If this works, that's okay, too. It's like, this would be a scheme to get new track, I imagine, but on a fast track, not years and years later. But if a person is going to do this, I don't know. You have to get some pledge from the bikers because once that trail is built, boy, it's impossible to get rid of it.
Q. If you'd flip to the second page of that exhibit.

A. Mm-hm (answers affirmatively).
Q. Doug's e-mail says that you are contacting RailWorks for upgrade options; is that true?
A. Well, at that time, that's when we asked RailWorks to come and make their own independent assessment of the cost to upgrade the part the reserve freight easement covers from Woodinville to Snohomish, to get something that Tom Payne had done, I don't know what track contractor he used. Anyway, neither of us had any data on that, as far as I know. I certainly didn't have any. We had RailWorks come and we hi-railed the line with them and so forth and so on. Ultimately they produced some estimates.
Q. Right. And that --
A. So --
Q. -- effort by RailWorks was Exhibit 39?
A. I think so. Yeah.
Q. We talked about that this morning.
A. So they did a good job on that. I didn't have particularly any questions of, you know, that were very important about how they had reached those numbers, because we work with them all the time and bring them onto our other two railroads to do projects, and found they're the best, found they're the best guys in this part of the country.

Q. Seeing that reference, are you confident that you were not part of the planning of this proposal that Doug made?
A. Well, I tell you what, that's what I would say, but if you talk to Doug, he might say, Byron, don't you remember. You're telling me, Byron, don't you remember. I'm getting old. I don't remember everything. So I don't know. I just don't know what was going on.
Q. Let me ask you this, if Doug came to you today and said, Byron, let's make a proposal to Kirkland and King County to drop the rail reactivation request and pursue their support for an excursion train, would you support that process?
MR. MONTGOMERY: Objection; calls for speculation; incomplete hypothetical.
THE WITNESS: Well, I wouldn't just make an on-the-spot decision. But excursion train well outfitted and well operated, can make a lot of money. And I mean, I know the Temple family, the brothers, the dad, and I've known them for a long time. And they made a pot full. That restaurant on wheels was only outgrossed by the Space Needle restaurant for years and years and years.
Q. (By Mr. Cohen) The what was the -- the pot full of money on wheels was the Spirit of Washington dinner

train?
A. Yes, I say that. That thing grossed and netted more than any other restaurant except the Space Needle. It wasn't just this freaky thing. It's down working in mid California right now. They sold it. Anyway, I guess my nature on something like this would be to investigate it some more and see, you know, what it would really turn out to be. Money is money. If this thing would guarantee that wine tasting train or something could be operated -- I'm out here because the freight railroading is interesting to me. But I'm not adverse to making a pot full of money. I probably say, the heck with the freight business too. If we can run this dinner train a couple of round trips a day, let's do it. But it didn't happen and where did it go? It went down the manhole somewhere, right.
MR. COHEN: Do you guys want to take a short break.
MR. MONTGOMERY: Sure. I always like taking breaks.
THE WITNESS: That's fine.
(Recess taken from 3:46 to 4:00 p.m.)
MR. COHEN: Mr. Montgomery, we're going to be looking at Exhibit 30.
MR. MONTGOMERY: Thank you, sir.

E X A M I N A T I O N - (Continuing)
BY MR. COHEN:
Q. Mr. Cole, I want to show you what has been marked as Exhibit 30.
A. Okay.
Q. Would you identify that document for me?
A. Okay. This is the latest version of an agreement between us and Doug.
Q. Between us, excuse me, "us" is Ballard Terminal Railroad?
A. Uh-huh (answers affirmatively).
Q. And Doug, you mean Eastside Community Rail?
A. Yes. Sorry, I keep forgetting I'm speaking for the record.
Q. Thank you.
A. It's --
MR. MONTGOMERY: Did I miss a question?
MR. COHEN: I asked him to identify the agreement.
MR. MONTGOMERY: Yes, thank you.
THE WITNESS: So we had an interim agreement when we first were able to work with Perry Stacks and close the deal and get GNP out of the picture and Engle's group and our railroad, and so we made a simple one that was one page, a couple of pages. This is based on one of the

voluminous documents from the Port that was the guiding operating agreement with GNP. We were provided copies of all those things and so forth. It mimics that very good. It was basically designed to -- so we didn't have two sets of rules to try to stay on the right track with. So it's basically -- it's -- a lot of it is a boilerplate. But the boilerplate matches the Port's document as well. So it's fine.

Q. Do you know who drafted this agreement?

A. I think Doug did most of the work on it. Yeah.

Q. Were you represented by counsel in the negotiation of this agreement?

A. There wasn't any negotiation. It's fine, we had to have one. We need to have one. I could never get Tom to do, sign an agreement with me. He's a slippery snake.

Q. That would be Tom Payne?

A. Yeah.

MR. MONTGOMERY: Thank you for that clarification. He did look right at me.

THE WITNESS: Sorry about that. Geez, that's awful.

So anyway, it's good that it matches the Port and doesn't bring yet a third wiggle in the model that I have to adhere to. Because it matches what the Port required from way back in 2008.

Q. (By Mr. Cohen) And I see turning to Page 12 of this agreement that it was signed by you, that's your signature, right?

A. Yep.

Q. On April 26th?

A. Just now, recently, yep.

Q. Yep. Is this agreement currently in effect?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

THE WITNESS: I'm not sure if it has something in that it says when it goes into effect or not.

Q. (By Mr. Cohen) Well, it does, actually. Let me turn your attention to --

A. It's not an onerous agreement.

Q. Right. To Page 7. I'd like to ask you about -- really, what I want to ask you is whether it is your view that this agreement is currently in effect as governing the relationship between Ballard and Eastside Community Rail?

MR. MONTGOMERY: Object to the form. Object to the extent it calls for a legal conclusion.

Thank you.

THE WITNESS: I don't think there's much new in here, and I don't think it varies very much with the Port's similar document that we've been living with, apparently without any transgressions, since we started up

in January of 10, 2010.

Q. (By Mr. Cohen) What Port document are you referring to?

A. Oh, well, they made about seven of them.

Q. Yes.

A. So I honestly can't -- can't remember what it's called, but they have an operations agreement that laced Tom Payne's GNP, frankly like tied him to the tracks, and then it had all these conditions and so forth.

This sounds pretty darn similar to that. But it's not really onerous, so...

MR. COHEN: Would you mark that one.

(Exhibit Number 43 marked.)

Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 43, is this the Port agreement that you've been describing as the template for --

A. Yeah, I think so.

Q. -- the lease agreement?

A. I think so. You know, those things were, in 2008, when we were living with them, and trying to be the winning carrier to take over this wonderful thing, it's been a long time ago. The whole thing went dead for a year. Throw these in a cardboard box and nobody knew if the deal was ever going to go through. We had been told by telephone call backed up by letter, that Tom Payne with GNP

and Byron Cole with Ballard Terminal Railroad had won the competition. And then a year went by before we got to start running the railroad.

Q. Right.

A. So -- I haven't really looked at the thing very much since then. Started running it and we just ran. Never hardly hear a peep out of the Port ever. They never come to visit us, ask for a train ride, want to audit what we do, see if we're safe, nothing.

Q. So really, I want to go back to my last question, is it your understanding that the lease agreement between you -- between Ballard and Eastside Community Rail has taken effect?

MR. MONTGOMERY: Same objections I had.

THE WITNESS: Well, I'm not sure I want to hazard a guess. I'd have to talk to Doug.

Q. (By Mr. Cohen) Okay.

A. We've been running so long without getting paid by anybody, nobody would do this but me. And it's like, it's been 100 percent accident free, incident free, paid all the bills, and made up for that by working extra hard on our other two railroads. And have received no guff or guidance from the Port in all that time.

Q. When you say made it up by working extra hard on our other two railroads?

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

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

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

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

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

Q. Yes.
A. Yeah, it's an Association of American Railroads administered thing, but it's made for giant railroads and not short ones.
MR. MONTGOMERY: Thank you. I have no further questions.
MR. COHEN: I have a couple on redirect.

FURTHER EXAMINATION
BY MR. COHEN:
Q. Mr. Cole, you just mentioned that the situation is better now than when you were relying on GNP for payment and you said, in part, it's because we do the invoicing. Do you recall that?
A. Yes.
Q. So I thought you described to me this morning a system where most of your shippers, in fact, don't pay, don't get invoiced by you, because someone else is shipping goods to them and you ultimately get a payment through this national system, but you don't do any invoicing. Did I misunderstood what you were saying?
A. Well, there's a variety of business models here. And so, so -- Boise Cascade, in the wood products industry, the freight is paid by the saw mill that produced the lumber. And so, a bunch of their stuff comes from Canada.

That's why I made the joke about somebody talking French, "oui," it's like, I need to hand the phone to my wife.
So that business model is really cumbersome, because it involves the U.S. clearinghouse for all of these kinds of transactions. And then the Canadians are also partner to that, but it takes forever to get our money
Q. Do you do any invoicing?
A. We get on the phone and talk to these people when the money doesn't come. And it doesn't do any good to call the clearinghouse, it's all automated, and they don't know anything, but find out who was the originating entity. And I mean, we're courteous about it, but it takes prodding. Sometimes they're still sending stuff to GNP and so forth. And it's just a big pain.
And there's a much more streamlined way for us to get paid, and it's called being a handling carrier. That's what our two other railroads are. They're handling carriers. All we do is tally up at the end of the month, we had 27 cars on this line, and we know we get paid 355 bucks a car, and we send them an invoice for 35 times 350 bucks. And their contract says they have to pay it within 15 days.
Q. That's on your other two railroads?
A. Yeah, that works good. But my wife who writes all our checks hates this goofy railroad we've got here

that doesn't have very many cars and that has most obtuse -- our business model for collecting the money is what Burlington Northern and Union Pacific and CSX use. And it's really cumbersome. There's a huge lag in it. There's lag about every five steps.
Q. Is there invoices from Ballard Terminal Railroad to anybody?
A. Well, sometimes there finally gets to be invoices because it's -- we got some partial payment and you still owe us 105 bucks or something. And we go right to the saw mill or whoever it is that did it and we -- we pretty well get it all collected, but it's a huge time waster.
And every time I go to Fort Worth in the fall, we're invited down there, all the short lines that Burlington Northern gets along with and likes are invited every year to about a two and a half day, Here's what we're going to do to you next. And it's a good opportunity to be able to talk to AVPs and so forth that are right at the root of solving your problems. We have an excellent handler that's our designated go-to guy down there. And his boss takes care of all the handlers is an excellent guy too. We're really lucky. There's been some retirements and people that were left were really good and the people that filled those shoes were good. We have a good relationship with Burlington Northern.

destroy any of that e-mail, any of the documents requested in this request for production, so that you don't accidentally lose any of it, accidentally or intentionally, between now and the end of this case, understood?

MR. MONTGOMERY: Do you mean, does he understand your words?

MR. COHEN: Yes.

THE WITNESS: I hear what you're saying.

MR. MONTGOMERY: Good. That's fine.

Q. (By Mr. Cohen) One last question, are you keeping up with Jerry Johnson since his retirement?

A. Yeah. He's a pretty good guy.

Q. He is a good guy.

A. I mean, he got started with the first two railroads and he was the guy that called and said, Hey, you've won on the dubious prize of being the last people standing for the Eastside line. And then he retired.

Q. Right. Where is he living today?

A. I think he's moving up to St. Paul, and he's got an, I don't know, at least one contract to do things for the Australian National Railways.

Q. Okay.

MR. COHEN: Thank you. No further questions.

MR. MONTGOMERY: Let's mark these. Can we?

(Exhibit Number 45-46 marked.)

F U R T H E R E X A M I N A T I O N

BY MR. MONTGOMERY:

Q. Mr. Cole, does Exhibit 45 contain the documents that you gathered yesterday and sent to Chicago yesterday?

A. I think, to some extent, yeah.

MR. MONTGOMERY: I'm sorry, you gave them to me. I apologize, it's late. That's what you gave me this morning. I'm sorry, it's Ballard Terminal Railroad Company, LLC's response to City of Kirkland's first request for production.

Q. (By Mr. Montgomery) I just want you to tell me if the documents attached are the ones that you gathered this morning?

A. Yeah, I recognize them. I recognize the blacked out thing.

Q. Exhibit 46, are those the documents you gathered yesterday, I believe, and handed to me this morning? That's the other package. Is that a yes?

A. I'm trying to figure out what this one is. This certainly doesn't have anything to do with --

Q. Are those the documents you handed to me this morning?

A. I don't know. I thought it was, but... yeah, this is our LLC paperwork.

MR. MONTGOMERY: I have no further questions.

THE WITNESS: I'm baffled by this, it's really old.

MR. MONTGOMERY: Are you done?

THE WITNESS: Says BNSF is changing their --

MR. MONTGOMERY: Are you done?

MR. COHEN: I'm done. Thank you.

(The deposition concluded at 6:52 p.m.)

(Signature was reserved.)

C E R T I F I C A T E

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.

www.EsCRail.com

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)	

Proposal by Eastside Community Rail, LLC



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.

Linear Ft **F&I Rail**	Each **F&I Ties**	Tons **F&I Ballast**	Track Feet **Track Surfacing**	Track Feet **Ditching**	Track Feet **Vegetation Removal**	Track Feet **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.

Kurt Triplett

From:	Doug Engle <Doug.Engle@EsCRail.org>
Sent:	Monday, March 11, 2013 7:44 AM
To:	Kurt Triplett
Subject:	EsCR - Cross Kirkland Corridor
Attachments:	EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; STB Revenue Adequacy 9Oct12.pdf

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook





EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

Richard Leahy
Woodinville City Manager

Cc: Woodinville City Council

Re: Eastside Community Rail – Business Plan

1. Business Plan

This past December, Eastside Community Rail (EsCR) acquired the 14.45-mile freight operating easement from the federal Bankruptcy Court for the railroad between Woodinville and Snohomish, WA. EsCR will be operated as a non-profit serving for profit entities utilizing the corridor.

Three core values of transparency, integrity and accountability will guide EsCR in its planning, agreements and operations. EsCR has adopted the mission to help maximize the utilization and overall public benefit of the Eastside Rail Corridor (ERC). Our vision for the rail corridor is for multiple uses of rail, trail, utilities and other public benefits.

We intend on using the Eastside TRailway Alliance as a public advisory board for strategic input. EsCR will work in full cooperation with public entities along the rail corridor. We have also worked diligently to bring together a solid business executive board of directors representing fundamental areas of business.

EsCR creates value primarily by maintaining the operating line right of way (ROW) for rail operations such as freight, excursion and potentially future commuter use. For managing the maintenance of way (MOW), agreements and extensions, EsCR will collect a percentage of gross revenues to cover its direct costs and overhead. This frees the users of the rail corridor to focus on their main businesses. Best of breed partners will conduct the rail structure, bridge and crossing works. Eastside Community Rail would like to partner with the communities along the corridor to provide a MOW road that could be used for a public trail system that connects to a labyrinth of trails.

The main market opportunity lies first in re-establishing an excursion service between downtown Woodinville and Snohomish, which successfully operated on the line for 14 years and only stopped service when I-405 was widened, a bridge structure removed and BNSF sold the ROW to the Port of Seattle. Given the track is publically rehabilitated, the Bounty of Washington Tasting Train will represent more than 90 percent of EsCR's income.

Partnering with a developer to build a hotel in Woodinville next to the excursion platform is a high priority to enhance the experience. It is important that the railroad own the land to have input on design, kitchen capacity, guest waiting areas, a gift shop, other amenities and to fit within the long-term vision of the city.

Secondarily, freight traffic has waned from over 300 cars per year three years ago to just over 200, and car movements need to be bolstered to at least 400 annually. This can be accomplished with marketing and extensions to the operating line. EsCR has an operating agreement with Eastside Freight Service operated by Ballard Terminal Railroad, which has operated on the line for more than three years. Freight operations will help cover maintenance of way costs for the excursion operation.

Strategically, long-term extensions to the corridor are contemplated:

- Re-establish 3-miles of service from the Woodinville wye to Ste San Michelle, the heart of the Wine District
- In the north, develop a new 8-miles connection to Everett from Snohomish, which provides access to Amtrak service and the Canadian market
- Re-establish 12-miles of service from Woodinville to north Bellevue with additional access to the Seattle market and cruise ship passengers

Presently, there are public efforts under consideration to utilize a portion of the corridor for a public trail. EsCR supports this and is willing to construct a MOW road for such a use. Current estimates indicate that this can be done at considerable savings to the public. MOW costs for the road will be based on the width being utilized by the trail, excluding track structure costs.

There have been studies completed by Sound Transit and other groups affirming the viability of commuter rail on the line. This may be possible in the long-term in a public private partnership arrangement with EsCR. It is ECR's policy is to support, but not lead, community efforts to use the corridor for regional rail transit that is consistent with other public works.

Transit also opens the door to transit oriented developments along the ROW.

Financing

No private company will invest in publically owned rail infrastructure because it cannot be used as collateral to secure the investment. Until the portion of track owned by the Port of Seattle is upgraded, passenger service is not possible. The previous owners of the Spirit of Washington Dinner Train and Iowa Pacific Holdings concur on this point.

Therefore, EsCR and interested local governments are seeking $6.26 million from the state of Washington to improve the railroad. If this funding is secured, EsCR will bear the ongoing cost of maintaining the railroad, which is about $1.1 million annually.

Once the public infrastructure improvements are secured;

- the Port of Seattle will affirm a long-term agreement for excursion service,

- EsCR will secure $3 million in private investment,
- EsCR will secure a Small Business Administration loan of $3.5M, and
- EsCR will secure a $3.5M motive power and rolling stock capital lease.

Importantly, no EsCR financing activities can be completed until the public appropriation commitments have been achieved. This will be an iterative process over 90-days following public funding. Finally, detailed plans, drawings, etc. for capital assets will not be completed until track maintenance has been committed to.

2. Excursion Train Operations

The excursion train business is not a pipe dream or just any private venture, but based on a highly successful run that brought economic vitality to the region.

The Spirit of Washington Dinner Train ran on the Eastside Rail Corridor for 14 years with annual rate of 100,000 passengers, $10 million in revenue and created jobs and tourism business from Renton to Woodinville. The only reason they stopped running was due to the reconfiguration of I405 and thus eliminating their ability to get to their station in Renton. The Dinner Train was a train ride from Renton to Woodinville with a brief visit to Columbia Winery with outside catered meals with a few selections of wine offered on the train.

After dozens of interviews with stakeholders and analyzing the current state of dining, the Bounty of Washington: Tasting Train concept was formed. Localism is not a fad but a strong trend. Farmer's market are on an annual 10% growth trend, small plates offering at fine dining restaurants are the rage, and wine, beer, and other drinks tastings are popular. Thus, the Tasting train is flipping the Dinner train concept. Passengers will experience the best of what Washington offers, fresh seafood, grass-fed meat, and award-winning wines and beer on the train. With about 1000 wineries, breweries, and distilleries, it will be easy to rotate the flavors and their makers. After analyzing all of the excursion trains nationwide, we developed an algorithm for our pricing. We will price the experience from $55 to $125 depending on the beverage and potential guest chef. We have had conversations with some of the award-winning chefs in the area and they are eager to participate. We have estimated an average price of $85 and growing to a bit more than 100,000 passengers which is in line with previous Dinner Train results.

We will have additional revenue streams of promotional items and sponsorships. We will offer sponsorships of train car names along with customer take-home items such as the glasses. Certain ingredient items such as Washington Apples or Washington Pork will also be potential sponsors. We will be able to sell wine and other featured food items initially on board the train and later at our train stations.

Operationally we assumed a mid-range staffing level at one staff person per 16 people. Since service will be staggered per car, we can use some staff as expeditors to ensure

prompt service and reduce staffing needs. The participating wineries and breweries will provide staff for educational purposes that will move to each car. Other volunteers can provide historical and regional overviews of the area. We will start at the wine-focused Woodinville with a stop in the quaint beautiful river view town of Snohomish and back to Woodinville along a beautiful valley. Depending on the winery partner, winery tours will be included. We will have partnerships for winery tours for our guests who want to have an entire day of exploration. In addition, we plan to have a mid-week Tulalip special where guests will bus from the top-rated Tulalip Resort to Snohomish and make the trip to Woodinville.

Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone. Since the Tasting Train experience will rotate featured beverages and food, we expect locals to bring family and friends more often to enjoy their favorite wine or dining.

The rolling stock of seven cars, plus a baggage car, will be designed with a comfortable Northwest elegance more like a fine dining contemporary restaurant in Seattle rather than a stuffy old-fashioned look. We will mix the historic lore of train travel with contemporary style for an experience they will never forget on the Bounty of Washington: Tasting Train.

3. Train Movements

Currently, freight operates on the line two days per week in off-commuter hours. This is not expected to change at double the volumes in the future where trains may consist of ten cars. Presently, Boise Cascade and Spectrum Glass are the two biggest freight customers on the line. There is more freight business available if we can operate on the two miles of track down SR-202 toward Redmond that are currently not accessible or included. Eastside Freight Service has operated on the line for the past three years and is expected to continue into the future.

The Bounty of Washington excursion train is expected to operate year-round, excluding January when annual car maintenance will be conducted. The expected 400 annual trains will service both public (70%) and private passengers (30%), with overall volumes reaching 100,000+. The peak period will be the summer tourist season with expectations for bountiful holiday operations. The schedule will be oriented around evenings and two trips on weekends. Additional mid-week day trips may be developed to service Snohomish to Woodinville passengers seeking to spend the afternoon experiencing local Woodinville wines, brews and foods. Although the exact times have not been determined, trains are likely to start after 6:00 PM typically returning two hours later.

The freight operator, Eastside Freight Service, will continue to provide track clearances and train crews.

4. Railcar Storage and Maintenance

Freight operations will be very similar to today, and the addition of excursion service will require nightly railcar inspections. This will be conducted utilizing a 200' maintenance shop with a 100' pit in the area north of the wye near the warehouses.

Presently, the Eastside Freight Service locomotive and caboose are stored in a fenced "pen" at the wye. This will be moved provided access to the Wine District and/or Bellevue. The primary maintenance and railcar storage area will be in a fenced area at or very near the maintenance shop.

The exact location will be determined once Woodinville's SR-202 bridge planning is completed.

5. Platforms and Parking

Two platform types are being considered – raised wooden platform or stone/concrete pavers. The 900' platform will be on the north side of the tracks in Woodinville across from the fire station and post office, south of the NE 178th PL crossing.

A partially covered area will be constructed, including a portable ADA loading lift.

Paved diagonal parking for roughly 250 cars will be constructed inside the right of way with access points to the road every 100 yards. A barrier will be created between the parking and road to facilitate this configuration. Lighting and video camera's will also be installed.

We are hopeful that Snohomish and Woodinville will participate in the construction of platforms in both communities as public assets that reflect the experience they want for their visitors. Diverse public agency involvement is critical to securing future federal funding to extend the rail corridor and add a public trail alongside the track.

6. Capital Facilities

Snohomish Station

Initially, Snohomish Station will require a platform, covered areas, and ADA lift. In the future, restrooms and an enclosed visitor center will enhance the experience.

Wolford Spur

A new 1,000' spur will be developed into the Wolford Demolition and Trucking site in Maltby to support their business, process potential construction spoils business and initiate new trans-load freight business.

Woodinville Station
Initially, Snohomish Station will required parking, a platform, covered areas, and ADA lift. In the future, either a hotel or improvements similar to Snohomish will be required.

Woodinville Hotel
There are indications that the city has the need for at least one new hotel. EsCR has identified an opportunity to extend a hotel's normal business with expansions to help service the excursion train. These include

- Additional kitchen capacity
- Expanded waiting and conference area
- Excursion gift shop
- Coffee bar
- Restrooms
- Historical information
- Ticketing

Beyond the excursion train, the Woodinville Hotel will service Wine District tourism. When operating line extensions are completed, particularly to Everett and Amtrak, package deals will improve market awareness occupancy year around.

Maintenance Shop
A 200' maintenance facility is required to service the motive power and rolling stock. The site location will determine the maximum width inside the ROW. Long-term, an additional 100' of enclosed space may be added to facilitate nightly cleaning of equipment before the inspections.

The construction type will be 40' shipping containers along both sides, with a white "vinyl" roof over an arched metal structure. The inexpensive containers will be painted and provide secure storage of heavy tools, parts and equipment. The roof will be affixed to the containers.

A 100' heated concrete inspection pit will be installed with stair access at either end. Long-term, track mounted heavy lift equipment may be installed over the pit.

A 100' railcar wash area will be enclosed after the inspection pit with an oil and water separator.

Business Office
Initially, the current wye "shack" site will be maintained, painted and covered areas extended for MOW operations.

A new 20' x 35' multi-level business office will be built next to the shack for general, administrative, sales and marketing purposes. A covered watchman's look-out for the wye will be constructed atop this building. Long-term, the Woodinville Hotel may be the better site for these business activities, nearer the heart of the city and its business services.

7. Possible Construction Spoils

There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking.

The most likely train configuration is 17 sidedump cars moving twice a day, once in and once out, during peak construction periods. Such operations would be conducted around primary commuter hours. Train operations would be suspended when construction projects would not need the service.

8. Other Positive Civic Impacts

EsCR is willing to work with Woodinville to develop a new 134th Ave NE crossing and orchestrate train movements to minimize traffic congestion.

Overflow parking for civic events could be constructed on the south side of the tracks near 132nd Ave NE in Woodinville.

Park and ride transit parking should be explored at the Woodinville platform site since there may be only nominal conflict between the two needs.

A MOW road connecting the wye area to NE Woodinville should be explored for construction in the near term. Wolford has nearly completed one mile of base trail southwest of Maltby, which would make connecting to the Burke-Gilman trail available to more people.

Previously, Woodinville has expressed interest in widening the 131st Ave NE railroad bridge, which can be orchestrated with EsCR to consider trail and potential future track requirements.

Eastside Community Rail and the Bounty of Washington: Tasting Train provide these benefits;

- Enable a rolling billboard for Washington agriculture and viticulture by celebrating local food and beverages
- Showcase the beautiful valley, Snohomish River bridge and historic rail route
- Direct sales tax revenue of approximately $1 million a year (based on $10 million of annual revenue from Dinner train)
- Direct excursion train jobs of 80 and trade jobs of 240
- Indirect jobs and economic development (former excursion train brought $140 million in tourism dollars) Generate awareness of the benefits of Woodinville,

Snohomish and the entire Eastside. The Spirit of Washington: Dinner Train sparked the awareness of Woodinville as a wine district. The Bounty of Washington: Tasting Train can be the catalyst of awareness of King and Snohomish counties as a tourism and livable destination

- Remove trucks from the highways which greatly reduces roadway wear and tear, toxic pollution, and traffic congestion
- Allows for future passenger rail service
- Potential redundancy to the slide-prone BNSF/Sounder route
- ECR will maintain the track for the next 35 years
- Protects the Eastside Rail Corridor assets while allowing the infrastructure to be productive now. The track structure will be maintained for more cost effective upgrades in the future.

In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail

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Douglas Engle
Managing Director
Eastside Community Rail

Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $120 including coach service

Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting

5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: $110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: $75

Saturday and Sunday Afternoon (dependent on demand in Late fall to Early Spring, every weekend Late Spring to Early Fall)

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: $65, extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: $85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

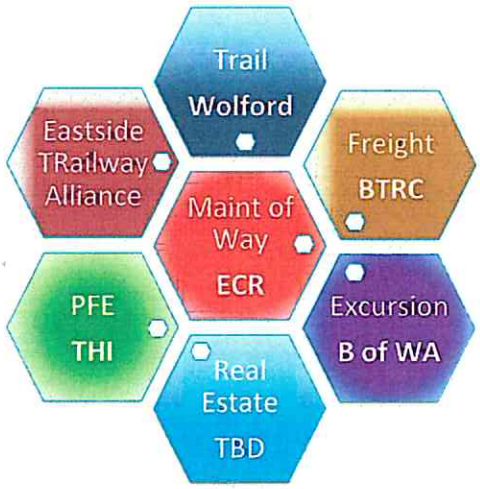
7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

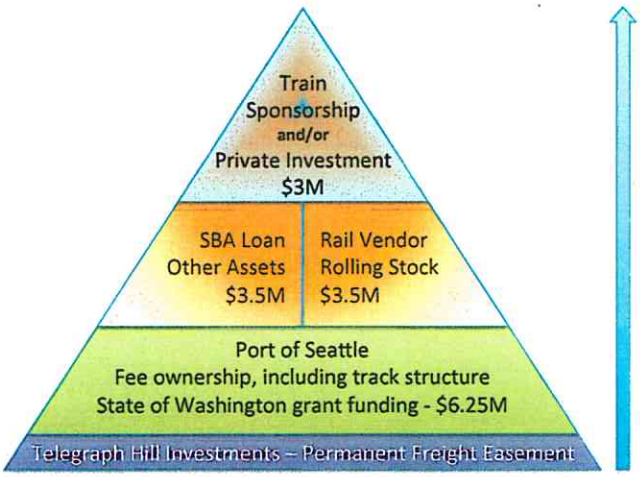
9:30 p.m. Arrive Woodinville

Base price: $85

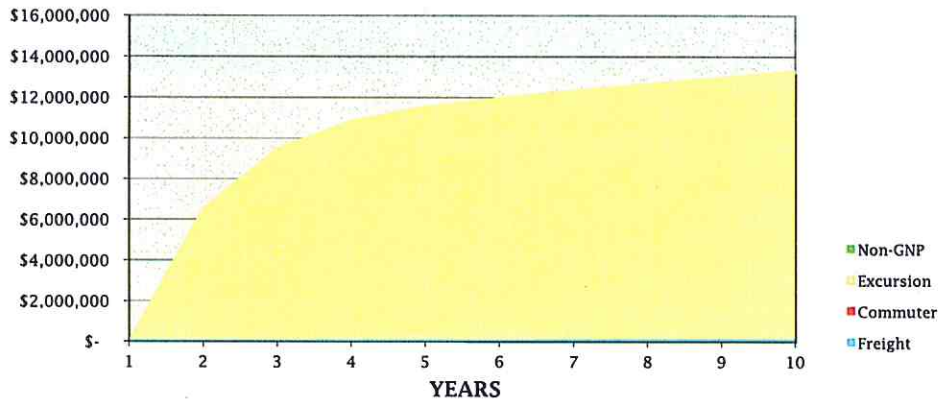
Organization



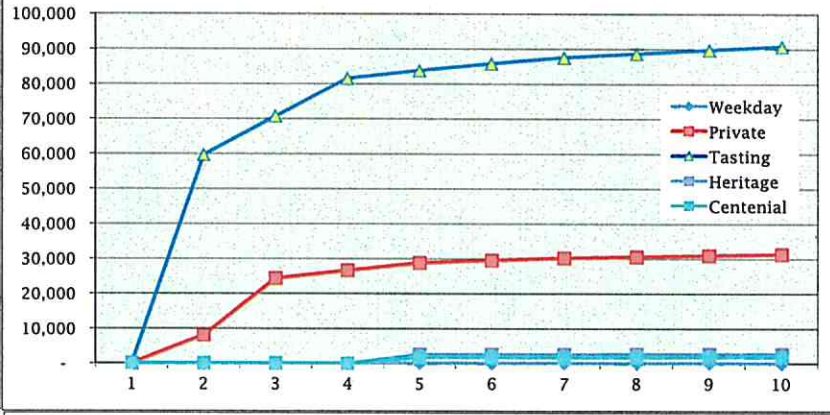
Financing Approach



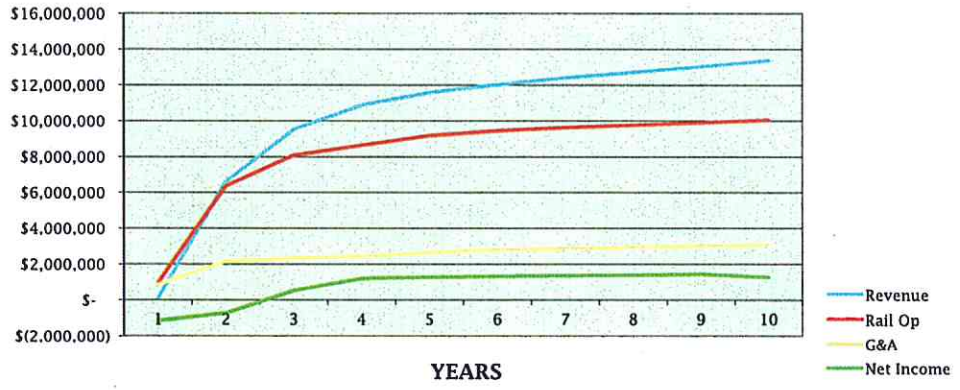
REVENUE



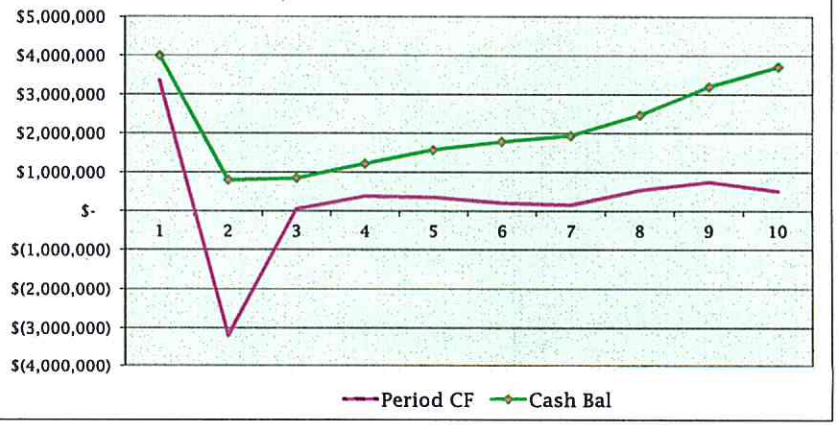
Daily Ridership



INCOME STATEMENT



Cash and Equivalents



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			
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
INITIAL OPERATIONS - Existing Track, Inspections & Planning, Excursion MP&RS
Round 1

Maintenance of Way	Unit	Track Miles / Description	15.6 / Quantity	Cost	28-Jan-13 Total
TOTAL RAIL				$ 4,400,353	
TOTAL SWITCHES				$ 230,000	
TOTAL SPURS & SIDINGS				$ 307,351	
TOTAL SIGNAL SYSTEMS COSTS		10		$ 227,368	
TOTAL MOW Road Planning				$ 256,740	
TOTAL Maintenance of Way					$ 5,421,812
Buildings, Bridges & Facilities (BB&F)					
TOTAL BRIDGES		11		$ 359,958	
TOTAL STATIONS		2		$ 1,290,626	
TOTAL MAINT. OF EQUIP. SHOP				$ 2,028,470	
TOTAL OFFICE				$ 318,308	
TOTAL Buildings, Bridges & Facilities (BB&F)					$ 3,997,362
Motive Power & Rolling Stock and MOW Vehicles					
Locomotive Startup Qty		2		$ 867,100	
Baggage Car & HEP Qty		2		$ 262,500	
Excursion Coach Startup Qty		7		$ 2,187,500	
Total Main of Way Equip & Vehicles		4		$ 219,650	
TOTAL MP&RS and MOW Vehicles					$ 3,536,750
TOTAL Business & Admin Assets					$ 351,095
TOTAL FIXED ASSETS - Round 1					**$ 13,307,019**

Total Assets		Life (yrs)		
MOW road (trail)	1.9%	10	$	256,740
Track	38.8%	35	$	5,165,072
BB&F	30.0%	30	$	3,997,362
Motive Power & Rolling Stock	26.6%	15	$	3,536,750
Business CapEx	2.6%	10	$	351,095
	100.0%	27.0	$	13,307,019

ANNUAL Fixed Asset Maintenance (yrs 1-3)		
TOTAL ANNUAL TRACK MAINT.	$	778,145
TOTAL ANNUAL BRIDGE MAINTENANCE	$	219,600
TOTAL FACILITIES MAINTENANCE	$	98,344
TOTAL ANNUAL MAINTENANCE		**$ 1,096,089**

Eastside Community Rail
TRAFFIC ANALYSIS
as of 2013 Feb 6

	Year 1 2013	Year 2 2014	Year 3 2015	Year 4 2016	Year 5 2017	Year 6 2018	Year 7 2019	Year 8 2020	Year 9 2021	Year 10 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%	14.3%	6.5%	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%	6.5%	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%	94.5%	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%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

Eastside Community Rail
INCOME STATEMENT
11-Feb-13

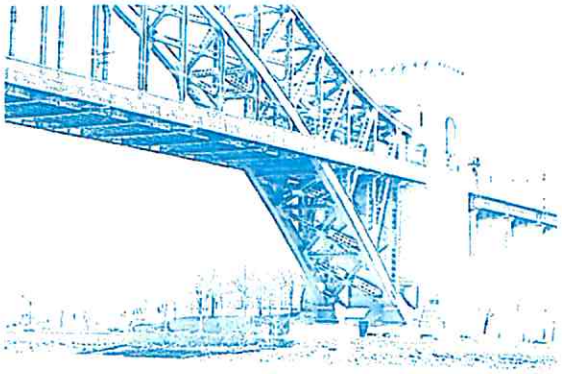
Business Case / Most Likely	Year 1 2013	Year 2 2014	Year 3 2015	Year 4 2016	Year 5 2017	Year 6 2018	Year 7 2019	Year 8 2020	Year 9 2021	Year 10 2022
REVENUE (see "Traffic" tab for detail)										
Common Carrier Freight	$ 108,364	$ 116,037	$ 122,504	$ 129,982	$ 135,290	$ 140,843	$ 146,651	$ 152,728	$ 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%	3.6%	3.2%	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**
		55.6%	53.4%	50.3%	50.0%	49.1%	48.2%	47.5%	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**
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
per mile	$ 2,808	$ 19,293	$ 21,268	$ 21,268	$ 21,268	$ 21,555	$ 21,847	$ 22,145	$ 22,449	$ 22,759
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		32.5%	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
% of Revenue		4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%
Other (Income), Exp & Taxes										
Net Income 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**	**$ 1,277,020**
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	9.5%
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

Eastside Community Rail

Monthly Percentage of Revenue

As of 2013 February 11

Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
0.1%	4.8%	5.9%	7.4%	10.3%	11.3%	11.3%	11.3%	9.3%	7.3%	8.2%	10.2%



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.

	Cost of Capital	Weight	**Weighted Average**
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%)

Kurt Triplett

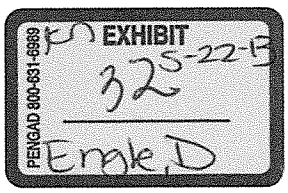
From: Kurt Triplett
Sent: Friday, November 16, 2012 11:04 AM
To: 'Doug Engle'; Yang, Sung
Subject: RE: Eastside Community Rail

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

Thanks again,

Kurt

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



Kurt/Sung,

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

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

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

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

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

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

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

Thank you for your consideration,

Doug

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

BEFORE THE SURFACE TRANSPORTATION BOARD

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

Q. (By Mr. Ferguson) Okay. Would you turn to Page 3, please? So we asked you to produce certain documents under these categories. And Ms. Alvord and I spoke yesterday and she said that you actually have some contracts that you've executed and that you're going to bring copies of those with you today. Do you have them with you?

MS. ALVORD: I can answer that question, if that's appropriate. I contacted the office to see if there were written contracts. What actually exists are invoices that substantiate the verbal contract that was made, and I'm having those e-mailed over.

MR. FERGUSON: Okay. Great.

Q. (By Mr. Ferguson) Mr. Wolford, did you review this Page 3 here entitled Attachment A when you received this document?

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

Q. Okay. Did you do anything to determine whether you had any documents that were responsive to these requests?

A. We found a bid that we put together for the removal of the railroad.

Q. Did you do anything else?

A. No.

Q. Did you look for any communications between you

or other employees or officers of Wolford Trucking and Ballard Terminal Railroad?

A. The one document that we found, which was the bid for the railroad removal is the only one I can find.

Q. But please listen to my question. Did you look and ask your employees -- did you ask your employees if they have any communications with Ballard Terminal Railroad?

A. Yes.

Q. And what did your employees tell you?

A. They said no.

Q. Did you --

A. Would that be Byron Cole, he's the Ballard Terminal Railroad. We haven't talked about anything, not much, about this project. Our go-to guy was a man named Ernie Wilson.

Q. Who is Mr. Wilson?

A. He is a retired surveyor.

Q. And when you say he was your go-to guy, is Mr. Wilson affiliated with a company?

A. The Eastside Rail.

Q. Have you ever met Mr. Wilson in person?

A. Yes, a couple times.

Q. Can you describe what he looks like, please?

A. Tall, thin guy with white hair.

Q. Does he have a goatee?

A. I think so.

Q. Okay. And you said he's with Eastside Community Rail?

A. Yes.

Q. Okay. Is that the company that Doug Engle is involved with?

A. Yes.

Q. Do you know what Mr. Wilson's role with Eastside Community rail is?

A. Not sure.

Q. Okay.

MR. FERGUSON: Let's go ahead and mark Exhibit 2.

(Exhibit Number 2 marked.)

Q. (By Mr. Ferguson) Mr. Wolford, do you recognize the document that's been marked as Exhibit 2?

MR. MONTGOMERY: Object to the form.

THE WITNESS: That right there?

MS. ALVORD: I think I can interject here and help. This is the response that I provided for your firm of the production of documents. So while he might be able to acknowledge the contents, he wouldn't be familiar with the cover sheet, for example.

Q. (By Mr. Ferguson) Let me ask a different

question.

Mr. Wolford, looking at that document, Exhibit 2 here, have you ever seen the first two pages of this document before today?

A. First two?

MS. ALVORD: Do you recognize this page or the second page that I signed?

THE WITNESS: No.

Q. (By Mr. Ferguson) Okay. Do you understand this is a collection of documents that your attorney prepared in response to the subpoena request?

A. Yes, but it's a wrong day. She requested March or something and these are the wrong ones.

MS. ALVORD: Yeah. We'll discuss that in a second. He's just saying that --

Q. (By Mr. Ferguson) Could you explain what you're just saying there, the wrong dates, what do you mean by that?

A. You requested a certain month and the ones we had handy weren't performance of that month.

MS. ALVORD: Okay. I can clarify. He's specifically referring to Response Number 5, and there were a couple of -- that particular question focused on projects they were targeting. And the information that was provided to us at the time we turned this in were -- there was like

Q. Okay. Can you describe what this bid is for, please?
A. This was a proposal to remove the rail for the City of Kirkland.
Q. And it's dated March 5, 2013?
A. Okay.
Q. When you say it's a proposal to remove the rail for the City of Kirkland, what do you mean by that? Is this in response to a request from Eastside Community rail?
A. No, a bid that came out for the City of Kirkland. We bid all jobs.
Q. Do you know why the document states that it is a proposal for Eastside Community rail?
A. I don't know why. They requested -- oh, no, this isn't for the removal of the rail. This is to build the nature trail alongside of the rail. Sorry, I think...
Q. Okay. Can you describe, what did Eastside Community Rail approach your company about constructing a trail?
A. They needed to know rough price of what it cost to construct a rail for the city.
MS. ALVORD: Not a rail.
THE WITNESS: Oh, or construct a nature trail along the rail. They needed to know that price, so we created them one.

Q. (By Mr. Ferguson) Okay.
A. This is a 20-foot trail, not an 8-foot trail like the city wants to do after they rip out the rail.
Q. (By Mr. Ferguson) Does the document in here state that it is a 20-foot trail?
A. I believe it does. But I don't know what was discussed. Yes, it does right here.
Q. Could you identify what you're pointing to, please?
A. It says, "Although I'm saying our clearing limits would be 20 feet wide, there could well be a few danger trees" within a 5-foot...
Q. And are you referencing the e-mail from Ernie Wilson to Oliver Lewis dated March 2nd?
A. Yes.
Q. Do you know if Ernie Wilson contacted Wolford Trucking and Demolition about constructing a trail alongside the rails in Kirkland?
A. That's what this is.
Q. Okay. And is the document entitled "Proposal for: East Side Community Rail" that is attached to this e-mail, is that in response to Mr. Wilson's e-mail?
A. Yes, I think it is.
Q. Mr. Wolford, if you turn your attention back to Attachment A in the subpoena, please. It's the other

document.
If you look at Item Number 3, please. Asked you to look for and produce communications between you or other employees of Wolford Trucking and Demolition with BNSF Railway Company about the provision of rail service to Wolford Trucking and Demolition. Did you search for such communications?
A. I didn't find any.
Q. But you did search for them?
A. What do you search? I asked a couple employees.
Q. Can you describe what you did, who you talked to?
A. Talked to Ollie about this because this was kind of his baby.
Q. I think you said earlier, but I've forgotten, when was Ollie hired?
A. Oh, I don't know. He's been with us four months, maybe, five months.
Q. Are you aware of any communications between you or other employees in BNSF?
A. BNSF, you mean the Burlington Northern Railroad?
Q. Yes.
A. No, I don't think any of my employees have talked to Burlington Railroad.
Q. They've never called Burlington about rate quotes?

A. Not to my knowledge.
Q. Would you have any reason, as part of your business, to use BNSF for --
A. In the future --
Q. -- carriage?
A. -- we've discussed that maybe have a siding in my yard and doing different commodities out of my yard in and out.
Q. Okay.
A. But they don't run the rail anymore. So we don't communicate with them.
Q. Have you communicated in the last six months with BNSF --
A. No.
Q. -- about any rates for the carriage of goods or materials?
A. I haven't, no.
Q. Do you know if anyone in your company, Wolford Trucking and Demolition has?
A. Not to my knowledge.
Q. When I refer to your company, do you understand that I'm referring to Wolford Trucking and Demolition, not your equipment business?
A. Mm-hm (answers affirmatively), yes.
Q. Okay. Looking at the attachments still, Item 4,

places it could come from.
Q. Does your business have any plans to devote funds to pay for the construction of the spur track?
A. No. Because I've already done a lot of work building a nature trail alongside the track, two miles of it. And I'm owed that.
Q. Why are you owed that?
A. Because I did so much work. I've got a lot of time, money and materials in building that two miles of trail.
Q. Do you have a contract with anyone for the construction of the spur track?
A. No. Not yet.
Q. The trail that you mentioned you had built, can you describe the trail and what you did to build it?
A. Yes. We put fill material and capped it with our recycled concrete so it's serviceable in the winter.
Q. And where is it located?
A. Right next to my property, and it goes for about a mile and a half or two.
Q. Within the railroad right of way?
A. Yes, of course. And in a city council meeting in Kirkland, we invited them all to come up and see this and see how it can be done and how wonderful it would be and they never showed up. They were invited in a city council

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

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

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

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

A. Yes, I can explain this.
Q. Okay. Go ahead, please.
A. Okay. The reason if the rail stays in there and we use the gondola cars, they haul like 60 yards per train load, one unit. And these are side dump kind of specialty equipment. We haul 20 yards in our truck, or 23 yards, maximum in a heavy-haul truck. So that would be our edge on the bidding. And these gondola cars, this material coming out of Bellevue is a clay base, it's kind of what they really need for the nature trail up in Snohomish. So we load it right there in Bellevue, keeps the pollution and the road wear and tear down, right, in the local -- we have a staging area on a site there. Rail it up there and side dump it, because it's not even accessible by truck in some places on the Snohomish place. So just be ideal to roll it up, put it there, and my bulldozer would place the material to build their 20-some miles of nature trail along the rail.
Q. Do you understand, though, that the Number 7 here in Attachment A was asking you for documents showing the basis for this statement that your bid would be 15 percent?
A. It's not in writing, but that's what we based our whole deal on here, that be about 15 percent less cost to the contractor because of the 60 yards versus the 20.
Q. So do you not have any documents --

A. No documents.
Q. -- to show this?
A. It's just what it is.
Q. Okay.
A. There's no documents because there's no bid yet. But when it comes out, this will be our edge using the rail.
Q. If they're -- so, are you saying, then, that -- let me rephrase that.
Do you not have any -- do you not have a study that calculates the cost differential between hauling by truck and hauling by rail?
A. It was an estimate. That's the estimated cost of the savings.
Q. And is the estimate not written down anywhere?
A. No, it's not written down.
Q. Okay. Would you turn, then, back to the second to last page in this Exhibit 2. Excuse me, Exhibit 1, that's your letter.
A. This one?
Q. Yes. Next page, though.
A. Last page.
Q. Second to last page.
A. Second to last page is this.
Q. Oh, my mistake. Page 29 at the bottom, I'm not

trying to confuse you.
A. 29?
Q. Yes. The second full paragraph here, would you read that out loud, please?
A. "In view of proximity of the" --
Q. Sorry, the paragraph beginning, "We need to have the rail line."
A. Oh, yes. "We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated our bid" would cost "15%," like I said, that was an estimate. That would be the savings to our clients in the trucking operation. And we would bid to another dirt contractor, actually we'd provide these prices. Big dirt contractors that get these usually hire trucks. I was involved in the Lincoln City -- the Lincoln Square excavation. At that time, we couldn't -- we were running trucks at night to keep the truck traffic down. And the dump site that we were dumping at in Snohomish wouldn't allow tailgates because they make noise banging, we had belly dumps that open up from the bottom and didn't make any noise.
And the railcar thing would be the same way. It would be quiet and would go night and day.
Q. Okay. And is this estimate that your bid would be 15 percent less expensive, is that only for transporting

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

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

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

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

A. Rail.
Q. -- material by rail?
A. I don't know.
Q. Do you know if Cadman has the capacity to receive material by rail?
A. I don't know.
Q. Okay. I think you told me this, but just maybe my memory is fuzzy. Your company currently delivers materials to both Red Cedar and Cadman?
A. Yes.
Q. Do you know where specifically those facilities are located?
A. Monroe.
Q. Do you know the addresses for them?
A. No.
Q. Do you know what streets they're on?
A. No.
Q. Are they on a highway?
A. No.
Q. Do you know, do you deal with a particular person at Red Cedar?
A. You have to understand, my office handles all this. I work in the yard. I run a loader in my yard. I hire professional people to run my office and my operations. I don't know the answers.

Q. It's okay if you don't, I just wanted to know if you do know.
A. No.
Q. Okay. I want to come back to your dealings with Doug Engle and Eastside Community Rail.
You said that before you dealt with Eastside Community Rail, you had business dealings with GNP Railway?
A. Yes.
Q. Can you describe the nature of those business dealings?
A. Basically, the service road we built, we called it a service road at that time, to service their railcars by truck. If a train broke down, they had a service road.
Q. Is the service road visible --
A. Yes, it --
Q. -- on any of these maps?
A. Yes.
Q. Okay. Can you mark and write on Exhibit 5, actually, would you turn to Exhibit 4, I think it shows a little bit wider area.
MS. ALVORD: I'm sorry, where are we? Four? Want your glasses?
THE WITNESS: (Witness complies.)
MS. ALVORD: I'm sorry, could you clarify what we are marking right now?

THE WITNESS: I think he wants to know the service road. Right there, to there. You can see where it ends and went this way too. Beautiful road.
Q. (By Mr. Ferguson) Can you mark on there and maybe use the felt tip, it's going to be easier to show up, would you mark on there and just indicate what you pointed to as the service road?
A. (Witness complies.)
Q. Maybe draw a line along --
A. It's obvious. That's the road I built.
Q. Okay.
A. It's there to there.
Q. And can you write with an arrow that that's the service road that you built, please?
A. (Witness complies.)
Q. Thank you. Okay.
Is that the only work you did for GNP?
A. Yes.
Q. Okay.
MR. FERGUSON: Let's mark the next exhibit. This will be 7.
(Exhibit Number 7 marked.)
Q. (By Mr. Ferguson) Mr. Wolford, have you seen this document before?
A. Oh, I think this was the loan to GNP.

MS. ALVORD: You need to speak up so she can hear you.
THE WITNESS: Yeah, I saw this once.
Q. (By Mr. Ferguson) Okay. I'll represent to you that this is a document from the claims registry from the bankruptcy court for the Western District of Washington in the bankruptcy case of GNP Railway.
A. Get these all the time.
Q. What are "these"? When you say you "get these all the time"?
A. Bankruptcy notices from flakes that go broke.
Q. Specifically from GNP?
A. This is one from GNP.
Q. Okay. And is the amount of your claim for $13,410.64?
A. Yes.
Q. Okay.
A. That's on page -- they never paid me back.
Q. If you turn to Page 2 of that document.
A. Mm-hm (answers affirmatively).
Q. Is that your signature there --
A. Yes.
Q. -- dated December 12, 2012?
A. Mm-hm (answers affirmatively), the stamp, not my signature.

wrote property boundary, if you can indicate that is Wolford's Trucking and Demolition property boundary, please.

A. It's not owned by Wolford Trucking. Does that matter? It's my operation. Huh?

Q. If that's where Wolford Trucking business is, that's fine.

Does the equipment company own the property?

A. No.

Q. Okay. All right. I'm going to hand you what the court reporter has marked as Exhibit 8. Mr. Wolford, do you recognize this document?

A. I've read this before.

Q. Okay. What is this document?

A. Generally talking about my company.

Q. Is this the letter that Ernie Wilson wrote that you signed for submission to the Surface Transportation Board?

A. I believe so.

Q. Okay. Is that your signature on the last page?

A. Yes.

Q. It's labeled Page Number 30?

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

Q. Okay. And did you write this? Excuse me, did you sign this letter for the purpose of submitting it to

the Surface Transportation Board?

A. I believe that was his intent.

Q. When you say "his," who do you mean?

A. Ernie.

Q. Okay.

A. He's better at writing letters than me.

Q. But that is your signature on the last page?

A. Yeah.

Q. Okay. If you turn to Page 2 of this letter, please. It's Page 29 on the lower right-hand corner. The middle page. Referencing the first sentence of the first full paragraph on this letter, would you read that first sentence out loud?

A. "There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of several years. These projects, plus multiple new high-rise buildings, will necessitate export of hundreds of thousands of cubic yards of excavated materials, building demolition waste and roadway grading spoils."

Q. Continue please.

A. "We are currently targeting projects on 405, 520 in the 2013, '14 construction seasons. A future light rail system with a tunnel and 'cuts' within one mile of the railroad will also require substantial movements of

spoils."

That's going on currently on Highway 522 right now. They're removing spoils that could be utilizing railroad now.

Q. We'll come to it. If you could finish reading the paragraph.

A. "We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years."

Q. Thank you.

MR. MONTGOMERY: Did you skip a sentence?

THE WITNESS: It's all gobbledygook. Who cares.

Q. (By Mr. Ferguson) When you say it's gobbledygook, what do you mean?

A. You're overbearing. All of this is gobbledygook to me. I'm a cut and dry guy, just want the railroad left in so we can save the taxpayers some money transporting dirt.

Q. Okay. You've said in this letter that you are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Are there particular projects that you are targeting?

A. Not yet, they haven't been let. The contracts haven't been let, but when they do, we'll be there to service them if the rail is there.

Q. When you say you're targeting projects, what do you mean?

A. They're in the future, when the contract is let, we will bid on it.

Q. Are there particular projects that you have in mind, though?

A. Moving spoils out of the -- by Lincoln Square is our biggest one in Bellevue.

Q. But is there a particular highway project that you are specifically planning to bid on?

A. We'll give prices to all of them. Right now, they're not let yet.

Q. But how do you -- do you know whether there are any projects planned?

A. According to the papers, I read them, you read them, yes, there's big projects in the works for the city of Bellevue.

Q. For I-405, are there particular areas where construction is to take place that you are considering bidding on?

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

Q. (By Mr. Ferguson) Mr. Wolford, this property that you've been referencing, do you know if it is north or south of the Home Depot?
A. Sir, you have to ask Doug Engle. You're going to see him next week. You ask him these questions. These aren't for me.
Q. This property that you've referenced that is near the Home Depot, what would it be used for?
A. Staging area to load trucks. The gondolas to go up the track that you want to rip out.
Q. Would this be called a trans-loading facility?
A. Yes, it would.
Q. Okay. And do you plan to run -- excuse me, do you know if, is your plan to have railcars run --
A. Staged.
Q. -- to that area?
A. Staged and loaded. They would go night and day.
Q. After the railcars go to that area, where would they go?
A. Up to Snohomish to build the trails to rail nature trail for people for Snohomish County.
Q. Okay. I'd like to hand you what's been marked as Exhibit 10. When you say dirt will go to Snohomish, what do you mean? Will it go to the city of Snohomish?
A. No. Another question for Doug Engle. I've never

been up there. I've just been told. That's -- there's 23 miles of road or trails we're going to build with these spoils out of Bellevue. I don't know the particulars, you'll have to ask Mr. Engle. He's involved in that. I'm not. I will be, if you don't rip the rail out.
Q. Let's take a look back at, looking back at Exhibit 10.
A. Okay.
Q. Is it your testimony that you do not know where the excavation spoils will be deposited?
A. Yes, that's my testimony. Ask Mr. Engle, he knows.
Q. So when you said earlier that the materials would be taken to Snohomish, were you incorrect?
A. No, it's some place along here. I don't know where. I've never been to this project. He's got the rapport with the people that want the spoils. I don't.
Q. But you would be involved in building the trail, correct?
A. Placing the spoils as the railcars come in and dump, our bulldozers would place the material, yes.
Q. Okay.
A. That's my only part of that project, placing the spoils.
Q. Looking at your letter to Ms. Brown, what's been

marked as Exhibit 8.
MS. ALVORD: Let's look at exactly Exhibit 8, not my copy.
MR. MONTGOMERY: Let the record reflect, it was also part of Exhibit 1, correct.
MS. ALVORD: Yes.
MR. MONTGOMERY: Is it not?
MR. FERGUSON: I'm sorry?
MR. MONTGOMERY: I said, it was also part of Exhibit 1, was it not?
MS. ALVORD: Exhibit 8.
MR. FERGUSON: Yes.
MR. MONTGOMERY: So let the record reflect, so there's no confusion because you did inquire of it earlier --
Q. (By Mr. Ferguson) So, Mr. Wolford --
MR. MONTGOMERY: -- as Exhibit 1.
Q. (By Mr. Ferguson) -- looking at the bottom of the first paragraph on Page 2 -- what are you looking at?
MS. ALVORD: I'm sorry, could you repeat that? Second paragraph of Page 2?
Q. (By Mr. Ferguson) Please turn to Page 2 of Exhibit 8. Looking at the last sentence of the first paragraph, "we estimate."
A. "We estimate the volume of these projects at over

three million cubic yards of construction spoils over the next several years."

Q. Okay. Where is this estimate of 3 million cubic yards come from?

A. Ask Doug Engle. I don't know.

Q. Did you sign this letter, Mr. Wolford?

A. He knows the projects. I don't.

Q. Did you sign --

A. Yes.

Q. -- this letter?

A. Yes, I signed this letter. This is an estimate.

Q. Did you testify earlier that you believed every statement in this letter was true?

A. Yes, I believe there's that amount of dirt too.

Q. On what basis do you have to believe that there is three million cubic yards?

A. Doug Engle knows all the projects. I don't know all of them. I just know the total and it sounded realistic to me.

Q. Have you done any calculations --

A. No.

Q. -- to determine whether --

A. I'm not an estimator.

Q. -- to determine whether three million cubic cards of construction spoils to be hauled over the next several

years?

A. That's a true statement and I signed it.

Q. Okay.

A. I'm not saying I will haul all of them, but that's the calculation of dirt coming out of the city of Bellevue in the next three years.

Q. Okay. Looking at exhibit, let's see, it's titled Map 9, I think it's Exhibit 9 there.

MR. FERGUSON: Elizabeth, you might want to get your Number 9 from him.

MS. ALVORD: This is mine, thank you.

Q. (By Mr. Ferguson) Okay. Mr. Wolford, do you know if you plan to use any of the property along the rail line between Highway 520 and NE 8th as a staging area?

A. It's a possibility. Mr. Engle is in charge of that, not me. He was going to show us where a staging area was after we make sure the rail is in.

Q. Okay. Do you or do any of your companies own any property visible on this map, Exhibit 9?

A. No. North of here in Kirkland, I own property on the rail.

Q. Okay. Do you have any contracts to haul excavation spoils for a project in Bellevue?

A. Not yet. We can't till we know the rail is going to be in.

Q. Have you asked Ballard Terminal Railroad for a quote about rates for hauling any excavation spoils from construction projects in Bellevue?

A. No. But my estimator may have talked to him about that.

Q. Has your estimator told you that he or she has obtained rates for hauling excavation spoils from Bellevue construction projects?

A. We did a calculation, I believe, and the 60-yard thing over the 20-yard thing of trucks was so much better, that's why the 15 percent savings.

Q. But has Ballard Terminal Railroad provided you with a rate to haul freight either by ton, by number of cars in use, on any measurement?

A. To me, not me personally, no.

Q. Do you know if it has to any of your employees?

A. No, I don't know for sure.

Q. Can you explain to me, then, how you came up with the estimate that in your letter to Ms. Brown, that your bid would be at least 15 percent less expensive to your clients than trucking options if you were to haul spoils using rail service?

A. Well, the dump fee would be tremendously different. Because they need the spoils on the trail. And then the amount of fuel and hours of trucking compared to

one locomotive putting up the road and the pollution, there's three reasons for you.

Q. When you say the dump fee would be different, what do you mean?

A. If we trucked it and dumped it to Red Cedar right now, that dump will be closed by then anyway. Pay so much a yard there where we could actually use the spoils up on the nature trail.

Q. You testified earlier that you don't know where the spoils would be dumped alongside the freight segment; is that correct?

A. On the -- up north?

Q. Yes.

A. There's 23 miles that will utilize it, I've been told. The exact place they start and finish, is that what you're asking? I don't know.

Q. Okay. Thank you. How do you know that spoils from Bellevue will be able to be dumped alongside the freight segment?

A. It's permissible because it's a federal -- well, it's railroad. They have -- you can do anything you want on the railroad. They're not governed by rules like most people. Where you place dirt like grading permits, they're all exempt from that.

Q. Let me ask the question a little differently. Do

you know if there's actually enough physical area to dump over three million cubic yards of spoils alongside the freight segment?
A. The calculations, maybe my estimator worked out. I don't personally know.
Q. If your company were not able to dump all of the spoils alongside the freight segment, what would you do with the spoils?
A. Probably go to another dump site.
Q. And where would that be?
A. I don't know. I explained to you. Dump sites close, they fill up, and they move out, out, out. Where would we ideally do it is rail it in our side cars, probably up to Cadman in Gold Bar because it's all rail, be perfect.
Q. But --
A. And they can take large volumes up there.
Q. Okay. Would your 15 percent savings rate still hold true?
A. Still hold true even though we're railing it a little further. Once it's in a railcar, the extra few miles is nothing when you're hauling so many railcar loads.
Q. Who would haul -- what carrier would haul the spoils if you weren't able to dump them in their entirety alongside the freight segment?

A. Ballard Railroad would haul them clear up to Gold Bar by rail.
Q. How could Ballard do that?
A. You're saying if the three million yards, I don't know the calculations. Maybe it will take it all. But it could go up to Gold Bar by Byron's railroad.
Q. Does Mr. -- does Ballard Terminal Railroad have operating rights to go to Gold Bar?
MS. ALVORD: Objection; calls for speculation.
THE WITNESS: I don't know. I'm not a railroad guy.
Q. (By Mr. Ferguson) Okay. Do you know whether there was --
A. There was talk about --
Q. -- interchange with BNSF to take spoils?
A. I don't know. I'm not a railroad guy. I don't know. You have to ask Byron. Byron would know.
Q. Would you agree that knowing the rate of hauling spoils is important for determining whether there is a cost savings to use rail as opposed to trucks?
MS. ALVORD: Well, objection, calls for speculation. Are you asking for his opinion?
Q. (By Mr. Ferguson) Do you misunderstand my question?

A. I went through that. There's a huge savings just in the dump fee alone would cover the cost of the 15 percent. We're not paying dump fees to build a nature trail. If we hauled it by truck, there's huge amounts of dump fees at a huge cost to the contractors.
Q. If you're unable to dump all of the construction spoils along the freight segment, what will be done with those spoils?
A. Let's find out if the three million yards will get up there first. The spoils will go some place else. They go to one of the dump fees, would be paid -- if you had to truck it, you mean? I said the alternative for rail is maybe take it clear up to Gold Bar, by rail. That would be the cheapest.
Q. Do you know how much it would cost --
A. No, I don't know --
Q. -- to take it to Gold Bar?
A. -- what it would cost. Doesn't matter. It's cheaper, way cheaper.
Q. Okay.
A. From Bellevue to Everett and then Cal -- those people have aggregate coming from Everett back, so this could be a round robin, we haul our dirt spoils up and aggregate back to Bellevue. Be ideal.
CalPortland, you'll talk to them next week, I

believe. Be double utilized, the railroad.
Q. Just to be clear, have you had any conversations with either a representative from Eastside Community Rail or Ballard Terminal Rail about hauling freight past Snohomish?
A. The dirt?
Q. Yes.
A. Well, yeah, we worked up these dirt prices with them using their rail.
Q. No, no, I'm asking something slightly different. Have you had a conversation or any communication with Ballard about hauling spoils to a destination past Snohomish, either east or west?
A. I haven't. Doug Engle has talked to the railroad guy, Byron, about that.
Q. Okay.
A. I haven't personally talked to Byron about this, no.
Q. Okay.
MR. FERGUSON: We'll take a quick five-minute break.
(Recess taken from 1:39 to 1:47 p.m.)
(Exhibit Number 12 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. FERGUSON:
Q. Mr. Wolford, if you'd take a look at the map that's marked as Exhibit 12, please. I'll represent to you that this is a copy of the Page 4026 of the Greater Seattle map book. The handwriting that says "Safeway" up at the top is mine. Can you identify on the map, even approximately, where the trans-loading facility would be placed, if you know?
A. I don't know.
MR. MONTGOMERY: Excuse me, let me think about that for a minute. Objection, mischaracterizing earlier testimony. Go ahead.
THE WITNESS: There was three sites discussed. All in the Bellevue area. Nothing has been fine tuned. We're not going to even approach the property people until we know the rail is going to be in. Why bother them.
Q. (By Mr. Ferguson) Could you indicate on the map with this blue pen, if you know, where those three sites are located?
A. I don't know where they are.
Q. Even approximately?
A. Ask Doug Engle. He's the one that secured them. He was talking about them.
Q. Okay. Are you familiar with the location of the

Home Depot you referenced earlier?
A. The general area, but I don't even know whose property it is. That was one discussed.
Q. Can you indicate on the map with the pen where the general area is of the Home Depot?
A. It was south of NE 8th, down by the Mutual Materials yard, that's all I know. I don't know where they are.
Q. Is it also south of NE 4th?
A. I don't know. Ask Doug Engle.
Q. Do you think it's between NE 8th and NE 4th?
MS. ALVORD: Object; asked and answered.
THE WITNESS: I don't know. One more time, I don't know. It's a general, we're discussing -- they said, Well, there's two or three or four areas we could possibly use for a site. And my contribution will be a loader to trans-load the dirt. You find the location, I'll load the railcars.
Q. (By Mr. Ferguson) Okay. When you say they discussed, who are they?
A. Doug Engle.
Q. Anyone else?
A. Maybe Ernie.
Q. Okay. Was Byron Cole a part of these discussions?

A. I don't think he -- he was there. I haven't met Byron that much. Couple brief -- well, at council meetings, I've met Byron.
Q. Okay. Have you ever asked Eastside -- have you ever asked Doug Engle or Eastside Community Rail for a rate to haul spoils out of Bellevue by rail?
A. Me personally, no.
Q. Do you know if anyone with your company --
A. I don't know.
Q. -- has asked Doug Engle or anyone else at Eastside Community Rail for a rate quote?
A. I don't know if they have.
Q. Looking back at Exhibit 9, please, do you know -- have you made any inquiries about acquiring any of the property along the rail corridor between Highway 520 and NE 8th?
A. No.
Q. Do you know if Doug Engle had made any inquiries to obtain property --
A. I don't know for sure.
Q. -- in that area?
A. No.
Q. Do you know --
A. I don't know.
Q. Do you know if his company, Eastside Community

Rail, has made any attempt to obtain property --
A. I don't --
Q. -- along that corridor?
A. -- know, no.
Q. What about for Byron Cole, do you know if he has made any attempt --
A. No.
Q. -- or inquiries to obtain property along the corridor?
A. I don't know. Ask Doug Engle.
Q. And do you know if Mr. Cole's company, Ballard Terminal Railroad, has made inquiries or attempted to obtain property along the corridor?
A. I don't know.
Q. Okay. You testified earlier that you own property in the city of Kirkland; is that correct?
A. Yes.
Q. Okay. Taking a look here at Exhibit 11 --
MR. MARCUSE: I'm sorry, is this 11?
MR. FERGUSON: No, sorry, this is 11. I'm sorry, this should be -- you marked the photocopy of the map as 12?
THE COURT REPORTER: Yes.
MR. MARCUSE: Thank you.
MS. ALVORD: I'm sorry, is there an extra

copy?
MR. MARCUSE: I'm sorry, I'm holding onto what is now 11.
MS. ALVORD: What's this one?
MR. MARCUSE: The reproduction of the map from the map book is 12.
MS. ALVORD: And this is 11?
MR. FERGUSON: Correct.
MR. MARCUSE: The one labeled as "Map 8 Railbanked Segments: Woodinville-Bellevue" is Exhibit 11.
Q. (By Mr. Ferguson) Do you know how many parcels in Kirkland that you own?
A. Four.
Q. Do you own them personally or does one of your companies own them?
A. Personally.
Q. Do you know the locations of those four --
A. Of course I do.
Q. -- properties?
Could you indicate on the map where they're located, please?
A. I need to know where the road comes from 405 down to the lake is.
Q. Or do you know the addresses?
A. Sure. One there. One there. One there. I'm

missing some. I recently sold one up here. Anyway, I'm a big taxpayer.
Q. So do you only own three properties, then, in Kirkland?
A. Yeah, it was four, I just sold one.
Q. Okay. Can you tell me the addresses of each three of those properties?
A. Sure, you want me to write it here?
Q. That would be fine.
A. This one is Cedar Street.
Q. Okay. So, just draw a line, just so the record is clear, I think I understand what you're doing, just draw a line to each X indicating what the address is for, please.
A. (Witness complies.)
Q. Are those residential properties?
A. Two are. One is commercial.
Q. Okay. The two residential properties, those are the ones that are located on the lake?
A. Yeah.
Q. Or near the lake?
A. Yeah. I do own another one, but only half of it. No big deal, I'm not on the tax record, another person is.
Q. The commercial property that is located on Cedar Street, what is that used for?

A. Storage.
Q. For your equipment business?
A. No. I rent it out now.
Q. Okay. Do you know who is currently occupying it?
A. The new storage facility there. Brand-new. I forget what they call themselves. Five-year lease there. But I pay big taxes in Kirkland.
Q. Do you know what the square footage of these properties is?
A. The dirt? Or the building?
MS. ALVORD: Can you clarify, do you mean all together?
THE WITNESS: This structure here is 1,100 square feet. The structure at my residence is 4,000 square feet. This is a small piece of commercial property on the rail up there.
Q. (By Mr. Ferguson) Do you know how big that commercial property is?
A. It's fairly small.
Q. Is it bigger than an acre?
A. Oh, God, no, it's just a postage stamp piece.
Q. Think it's about a half acre?
A. No, not even a quarter.
Q. Smaller than a quarter acre?
A. Yeah.

Q. Is it located on the rail line?
A. It is. Maybe we use that for a staging area. Little small. But then again, we'll need the rail. That's why I bought the property. Because it was on the rail. Now some guy from the City of Kirkland wants to rip it out, how rude.
Q. Is there a spur track going to your property on Cedar Street?
A. No.
Q. Have you ever asked for rail service to that property?
A. No.
Q. Mr. Wolford, whose name is that property on Cedar Street --
A. Mine.
Q. -- held?
A. Mine.
Q. Personally?
A. Yes.
Q. For the property on Cedar Street, do you have a plan to use that in moving demolition spoils from Bellevue?
A. It's a bit small for that.
Q. So do you -- you don't intend to use that as part of any hauling operation?
A. Possibly if they leave the rail in.

Q. What would you use it for?
A. Load a railcar there. Well, there's not room for a spur really there.
Q. Okay.
A. But if it's not very well used, they could just spot a car there while they loaded them and go down the track. Doesn't sound like it's going to have a lot of use anyway except for maybe a dinner train or to service the wineries. That's what we really need this rail left in for. I don't know what's -- what that question is. There's a huge group of people that want this rail left in for a dinner train to service the wineries.
Q. Can you tell me more about that? I thought this was about hauling freight.
A. That's my concern. As a taxpayer in the city of Kirkland, I got a huge problem with ripping the track out because of that, that was a wonderful thing, the dinner train and the winery.
Q. And --
A. You'll find out. There's another group coming at you.
Q. I'm curious to know what you know about the plan.
A. I've heard bits and pieces, but there's strong people that want -- you'll see later, that's all I can say.
Q. Is this the train that is referred to as Bounty

of Washington, have you heard that name before?
A. No, I never heard that name. Is that what they call themselves that service the winery?
Q. I'm asking you.
A. I don't know. I've just heard bits and pieces of it. They strongly want to leave the track in.
Q. Have you heard that running a dinner train or a wine train is important to the profitability of Ballard Terminal Railroad?
MR. MONTGOMERY: Objection; foundation.
THE WITNESS: They would be the one running the train, I believe.
Q. (By Mr. Ferguson) Okay. And is this a dinner train that would be run or managed by Doug Engle?
MR. MONTGOMERY: Foundation.
THE WITNESS: I don't know.
Q. (By Mr. Ferguson) Okay. Do you know if Doug Engle has any interest in running a dinner train?
A. I don't know. Ask him.
Q. I'm asking you.
A. I don't know.
Q. Okay.
A. Geez.
Q. When you say you've heard bits and pieces about the dinner train, who have you heard these bits and pieces

from?
A. A gal named Kathy that's kind of on Doug Engle's team. She's been talking to them.
Q. Is that Kathy Cox?
A. Yes.
Q. Do you know what she has told you?
A. She said they've strong interest in the wineries to run a train on this track.
Q. Okay.
A. That's what she's told me.
Q. Anyone else other than Ms. Cox has discussed this with you?
A. No.
Q. Okay.
A. Possibly Ernie, we were in the same meeting.
Q. Ernie Wilson?
A. Yeah.
Q. What meeting was this?
A. Just one we had.
Q. Who else was at that meeting?
A. That's all.
Q. Do you know when this meeting occurred?
A. Oh, in -- just at a place in Kirkland.
Q. Do you know when it occurred?
A. No, it was about two months ago.

Q. Do you know where it occurred?
A. Yeah, we were at a restaurant, at Milagro. I happened to run into them.
Q. Okay.
MR. FERGUSON: Let's go off the record and take another five-minute break.
MS. ALVORD: Okay.
(Recess taken from 2:02 to 2:12 p.m.)
(Exhibit Number 13 marked.)

E X A M I N A T I O N - (Continuing)
BY MR. FERGUSON:
Q. Mr. Wolford, if you take a look at what's been marked as Exhibit 12?
MS. ALVORD: 12? Do you mean 13?
MR. FERGUSON: I mean 13. I was reading upside down. Sorry. Thanks.
MS. ALVORD: Yes.
MR. MONTGOMERY: Which is 13?
MS. ALVORD: You don't have a copy?
MR. MONTGOMERY: I don't know.
THE WITNESS: God, my office does nice work. See, I told you, I wasn't even there when this was done. They are on it.
Q. (By Mr. Ferguson) Okay. Is this the promissory

EXAMINATION

BY MR. MARCUSE:

Q. I'm Andrew Marcuse. Just to clarify, Andrew Marcuse with the King County Prosecutor's Office, I'm in the civil division, I do land use and real estate law for the county, so I'm not a criminal prosecutor. We're not at the courthouse, for those of you who were on the call the other day with the STB.

You testified earlier that Bobby Wolford Trucking and Demolition facility is in Maltby in Snohomish County.

A. Mm-hm (answers affirmatively).

Q. And has it always been located in Maltby?

A. Yes.

Q. And during the time that you operated that business in Maltby, have you ever received rail service at that facility?

A. No.

Q. Did you ever ask BNSF Railway for a rail quote?

A. Yes, they subcontract all their spurs out. And Condon out of Spokane was -- I think we got some prices from them to throw a rail in there, or a spur. It was a long time ago, kind of a blur.

Q. So you asked BNSF for a quote on a spur to your facility?

A. We asked if it's possible. And they said, we'd

need some shipper support before we put it in. At that time, there was a lumber company that wanted to service it. Just an idea, throw a lot of things out, my mind never quits moving.

Q. Was a spur ever constructed?

A. No.

Q. When they said they needed shipper support, what did that mean to you?

A. To the Burlington Northern, they need -- well, I know what shipper support is. They need to know that it will really get utilized before they're going to put a spur in for me.

Q. So it was your understanding that they needed demand --

A. Yes.

Q. -- in order to put a spur in?

A. Right. At that time I really didn't have much. I had a potential, couple people that asked if I could do a rail. I said, Let me check into it, that's what I did.

Q. I think you said a moment ago that when this conversation occurred was a long time ago?

A. It was.

Q. Can you estimate approximately?

A. A long time ago, meaning 12 years ago maybe.

Q. 12 years ago?

A. Mm-hm (answers affirmatively).

Q. All right.

A. And then we've just been busy ever since and kind of put it on the back burner.

Q. Thank you.

EXAMINATION

BY MR. WAGNER:

Q. I'm Jordan Wagner from Sound Transit.

Earlier you testified about you and Byron Cole meeting with the City of Bellevue, do you recall that?

A. It was like a council meeting I attended and he was there, and Doug Engle was there and he listened and we put our input in to save the rail.

Q. So you testified at a public hearing?

A. Yes. Well, I didn't personally. Doug Engle did. He did the speaking and Byron Cole did the speaking, I didn't.

Q. Did you speak to anyone after the meeting?

A. After the meeting?

Q. From the City of Bellevue?

A. I think Doug Engle did. In the lobby, he talked to -- I heard him talking to some official there.

Q. Do you know who that official was?

A. I don't. Doug Engle does.

Q. Thank you.

MS. ALVORD: Okay. So just a short break.

MR. FERGUSON: Sure.

(Recess taken from 2:28 to 2:56 p.m.)

EXAMINATION

BY MS. ALVORD:

Q. Okay. Mr. Wolford, I'm showing you what's been previously marked as Exhibit 5.

MS. ALVORD: Do you guys all have that?

Q. (By Ms. Alvord) It's a map, called "Map 5 - Freight Segment." And what I want to draw your attention to is that portion of the map where you drew -- you wrote the word "spur track" and you drew a line. You see that there?

A. Yes.

Q. Is that a done deal --

A. No.

Q. -- that location of the spur track?

What does that line that you drew there represent?

A. Approximate of a thousand feet of -- it's promised to me to get a spur sometime. It may never happen. It might be blue sky. But I'm looking forward to having a spur in my yard.

That was a rough estimation, just by what we read in the paper.
Q. Mr. Ferguson asked you about that number, you said it sounded realistic. Why did you say that?
A. Because what Doug Engle has dug into, what the upcoming projects and kind of what the papers are saying, and the journal, construction journals, that's what we estimated.
Q. You participate in the estimation?
A. No.
Q. You said it sounds realistic. How long have you been hauling dirt around out of the eastside?
A. I've been in this business 42 years. I kind of know my dirt. I've watched projects through the years and I know volumes. It's a realistic estimate.
Q. If it hadn't been realistic in your mind, would you have signed the letter?
A. Probably not. If they would have said 12 million yards, I would have said no.
Q. If they said one million yards, you would have said?
A. Well...
THE COURT REPORTER: What was that answer?
MR. MONTGOMERY: Strike it.
THE WITNESS: No, just being funny.

Q. (By Mr. Montgomery) Why did you bid on getting the rails torn out if you want them to stay in?
A. My people bid that job. And when they said they were bidding, they said look what we're bidding today, look what popped up in the journal. I said, Put a number on it, let's throw a price at it.
Q. Do you think there's anything inconsistent with bidding on the project and wanting them to stay in?
A. That was just a business venture. It's the American way, what you do.
Q. What's your preference?
A. Oh, I want the rails in.
Q. I think that -- and why is that?
A. Oh, my gosh, they've been there for years, and they need to stay there to service -- well, Byron Cole's concern with his freight service. Benefit us hauling dirt. Benefit CalPortland hauling aggregate back into Bellevue. And the dinner train and the wine people really want it in too.
MR. MONTGOMERY: Speaking of that, would you, Ms. Nelson, please read back the answer that I asked you to read to me during the break.
(Answer on Page 118, Lines 5 through 12 read by the reporter.)
Q. (By Mr. Montgomery) When I was sitting down the

table from you and heard that answer, I wasn't sure what you were saying. Were you saying the only reason to leave the rails in is the dinner train?
A. I was trying to get to that topic real quick when I said that. I just wanted that out there, that the dinner train and the wineries are supportive of leaving the rail in as well.
Q. As well as?
A. As well as my use of hauling dirt on the rail.
Q. And others?
A. And others. There's talk that Safeway might want to haul their flour up that track for their bakery.
MR. MONTGOMERY: I don't have any further questions. Thank you, Mr. Wolford.
THE WITNESS: All right.
MR. MARCUSE: Can I ask one follow-up question, couple follow-up questions to Ms. Alvord's question.
MR. FERGUSON: Sure, then I'll have some.

FURTHER EXAMINATION
BY MR. MARCUSE:
Q. Mr. Wolford, a moment ago, you characterized the idea of a spur track on your current operation in Maltby as blue sky.

A. Hopefully I get it.
Q. Did you ever ask GNP Railway for a quote for service?
A. It's been so long, I inquired. And they referred me to Condon, it's a company in Spokane that does their sidings for them, to get a price. I even forget what it was.
Q. And did you ever ask Tom Payne or Doug Engle with GNP Railway for a quote for service?
A. Not a quote, but he said that because I built that, the trail I did build, in compensation, he'd get me a spur.
Q. Did he ever provide you with an estimate of the charges for freight service?
A. No. There's a base -- I know, I know that, like, Tom Payne got paid for every service that Byron Cole did, he runs the train. And there is a set price per -- he told me what it was, it escaped me.
Q. Have you ever asked Doug Engle for a quote for the rate for service?
A. No.
Q. Have you ever spoken with anyone else from Eastside Community Rail about a quote for service?
A. No. I need a spur first and that may not happen.
MR. MARCUSE: Thank you.

FURTHER EXAMINATION

BY MR. FERGUSON:

Q. In the last five years, have you asked any rail carrier for a quote for freight service to your facility in Maltby?

A. No. Why would I, I don't have a spur.

Q. The letter that Mr. Montgomery referenced earlier, your letter to Cynthia Brown that was written by Ernie Williams?

MS. ALVORD: Wilson.

MR. FERGUSON: Wilson, thank you.

Q. (By Mr. Ferguson) How did you receive a copy of the letter, or rather how did it get on your stationery?

A. He may come to my office and done this and then I signed it.

Q. Do you know how it got on your stationery?

A. Well, like I said, I just said he came to my office and used my stationery.

Q. You recall him doing that?

A. Yeah, because I signed it.

Q. Okay. Do you recall if Mr. Wilson typed this letter on a computer in your office?

A. I don't recall.

Q. Do you recall if he came --

A. I was out in the yard working when he did it and

I came in and signed it.

Q. Do you recall if he came with a computer --

A. No.

Q. -- himself with this letter typed on it?

A. No. Don't recall. I don't -- wouldn't know.

Q. Do you know if he e-mailed a document containing the words in this letter to anyone in your business?

A. I don't believe so.

Q. Take a look back at Exhibit 5. It's Map 5. You testified earlier that the line that you've drawn on that map indicating the possible location of the spur, that the spur track could go somewhere else, is that accurate?

A. Yes, but that's pretty much where it should go.

Q. Okay. Is there realistically any place where it could go?

A. It could go any place on the 10 acres, but there is where the grade is proper for it, for the rail, for a train to run. It's all flat there. That's why we drew it there.

Q. Okay.

A. That's a logical place for it.

Q. With respect to the dinner train that you mentioned earlier, have you ever heard anyone say that rail service to Bellevue would not be profitable in the absence of a dinner train?

A. Never heard anybody say that.

Q. Okay.

A. I know it was a nice thing to have a dinner train. I rode it myself from Renton to the winery.

Q. Okay.

A. Be a great thing for the city of Kirkland.

MR. FERGUSON: I don't have anything further. Thank you.

MR. MONTGOMERY: You sure?

MR. WAGNER: No, I'm not, but I'm going to let you go.

(The deposition concluded at 3:12 p.m.)

(Signature was reserved.)

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.

Exhibit B

VERIFIED STATEMENT OF BYRON COLE

Byron Cole, being duly sworn, deposes and states as follows:

My name is Byron Cole. I am the General Manager, and one of two founders. in1996, of the Ballard Terminal Railroad Company, LLC (BTRC,LLC) We are incorporated in the state of Washington. Our business address is:

Ballard Terminal Railroad Company, LLC

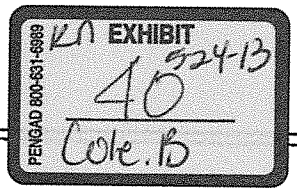
4725 Ballard Avenue NW, Seattle, WA 98107

We own and operate two Class III Common Carrier Shortline freight railroads: The Ballard Terminal Railroad (BDTL), in Seattle, and the Meeker Southern Railroad (MSN), about 10 miles East of Tacoma WA. In addition, we operate a third shortline, which we market as the Eastside Freight Railroad, under a contract with the Eastside Community Rail, LLC. All three railroads are portions of branchlines previously owned by BNSF Railway, and interchange only with BNSF.

The Ballard Terminal Railroad is in the Ballard Industrial district, in Seattle, and currently serves three customers and produces about 250 carloads per year. We started it up in 1998

The Meeker Southern Railroad, near Tacoma, is in a semi rural area, but only about 12 miles away from the booming Port of Tacoma. In 2012 we had our best year ever for traffic there MSN serves seven industries, is close to the largest deep water port on Puget sound, and has a thriving trans-load business.

Finally, since January, 2010, we have provided the twice weekly common carrier freight service over the 14 mile rail line between East Snohomish Junction and Woodinville, Washington as an agent for the company owning the operating rights and the track maintenance



obligation Initially, the owning rail carrier was GNP Rly. Inc , which purchased an operating easement over the line from BNSF in late 2009. Under contract to GNP-RLY, we began twice a week freight train operations over the 14 mile route on Jan11, 2010. When GNP-RLY went into bankruptcy, we continued the operating agency relationship with the Bankruptcy Trustee. The operating rights, and the track maintenance obligation contract, were recently purchased from the bankruptcy trustee, for the Snohomish-Woodinville line by Eastside Community Rail, LLC ("ECRR") and we have continued that agency relationship for them, for operations on the line pursuant to an Interim Operating Agreement. By separate Notice of Exemption, we shortly will lease the Snohomish-Woodinville line from ECRR.

In the Petition to which this Verified Statement is attached, BTRC, LLC proposes to reactivate the connecting rail line from milepost 23.8 at Woodinville to milepost 12.6 at Bellevue and vacate the Notice of Interim Trail Use with respect to that particular line segment

The Woodinville-Bellevue line was the subject of an abandonment exemption by BNSF During the course of that proceeding, BNSF entered into a Notice of Interim Trail Use with King County. BNSF also transferred its right to reactivate rail service on that line segment to King County. As ECRR's discussions with King County have made clear, this was akin to placing the "fox in the henhouse" as King County has absolutely no intention of restoring rail service to this line. Indeed, the underlying real estate and trackage was sold to the Port of Seattle and, in turn, a 5.75 mile section of the line was sold to the City of Kirkland.

We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. Those shippers would potentially be served by that segment, then via the ECRR owned Woodinville-Snohomish line to ultimate interchange with BNSF. While discussions with several shippers are ongoing, two shippers,

CalPortland and Wolford Trucking Company have filed support letters attached to this petition, as they are both ready, willing and able to utilize the Bellevue-Woodinville segment. Indeed, as they have both indicated, it is the location of the line to Bellevue which makes it opportune for their usage. The cities of Snohomish and Woodinville, as well as the County of Snohomish have also written letters supporting restoration of rail service.

Although the right to restore rail service was transferred from BNSF to King County, the discussions of ECRR with King County make it clear that the County has no interest whatsoever in restoring that rail service. Indeed, the City of Kirkland, which owns 5.75 miles of the Bellevue-Woodinville rail line has issued a request for proposed bids to remove the 5.75 miles of track which they own We have filed a request with the Federal Court in Seattle to issue a preliminary injunction preventing this removal of rail until such time as the Surface Transportation Board rules on our petition.

As part of our petition, we are requesting that the STB order the transfer of all of the rail materials to us at net liquidation value. Kirkland does not want restoration of rail service. In fact, its request for bids makes it clear that it believes restoration of rail service is not a good idea (see selected portions of Kirkland's Request for Rail Removal Bids attached to this statement as Exhibit 1) Kirkland recognizes, as we do, that removal of the 5.75 miles of rail will deal a severe blow to restoration of rail service Based on the bids that we have seen for removal of this rail, the net value of the rail materials to Kirkland is likely to be no more than $25,000 00, at best However, if the rail materials are removed in totality, we estimate that the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately $10.000,000 Consequently, if rail service is to be restored on this line, transfer of the rail assets is necessary, and is in the public interest.

We recognize that the right to reinstitute rail service under the Notice of Interim Trail Use was not transferred to Ballard. However, neither King County, nor Kirkland. have any interest in restoring rail service. And, as the Surface Transportation Board made clear in the Notice of Interim Trail Use, other entities could step forward and reactivate rail service.

To be clear, we understand that King County and Kirkland have interest in placing a trail on this right of way. WE HAVE ABSOLUTELY NO OBJECTION TO HAVING A TRAIL BE CONSTRUCTED BESIDE OUR RAIL LINE as BTRC,LLC has done on its other two lines.

We are the poster child for Rails with Trails! Both of our other railroads now have paved bike and /pedestrian trails constructed beside them. In both cases, we have participated and collaborated with the local jurisdictions on both the design, construction, and maintenance of the trails. This includes instances where we have provided clearing, filling and grading, including labor, equipment, and materials in some cases, for the trails Now, as time goes by, we also help with the ongoing maintenance of the trail surfaces, brush abatement, grade crossing maintenance, etc. ECRR's conversations with King County, Kirkland and others have made it clear, however, is that they want a trail. not a rail line while acknowledging the Line is railbanked.

We also are aware that GNP-RLY made a somewhat similar request for reactivation of rail service approximately three years ago GNP-RLY sought reactivation of the Redmond Spur (not at issue here) as well as milepost 23.8 to milepost 22, which is a small portion of the segment for which we are seeking reactivation here. The STB correctly did not reject the reactivation on its merits. Rather, the Board focused on the fact that GNP-RLY was financially unstable. In fact, GNP-RLY has since gone through bankruptcy and has ceased business.

Ballard Terminal Railroad, LLC is not GNP-RLY. We are a financially sound Class III carrier, formed in 1996, and now owning outright two shortlines, and operating a third, in the

State of Washington, serving multiple shippers. Our Co-founder is a senior partner in a very successful multi-generational construction materials business While our relationship with GNP-RLY, and now ECRR, has been that of an agency operator, we are now taking over full common carrier operations on the adjoining Woodinville – Snohomish line through the separate notice of exemption for lease and operation which we have filed with the Board The coexistence of rail operations with a trail on the Woodinville-Bellevue line segment is viable and ECRR has provided a proposal to Kirkland to build a trail next to the Line. We implore the Board to grant the relief requested and allow rail service to be restored.

I, Byron Cole, declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on March 28, 2013

Byron D Cole

Byron Cole

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731 **BALLARD TERMINAL** **RAILROAD COMPANY, L.L.C.** **—ACQUISITION AND EXEMPTION—** **WOODINVILLE SUBDIVISION** **STB DOCKET NO. AB-6 (SUB. NO. 465X)** **BNSF RAILWAY COMPANY** **—ABANDONMENT EXEMPTION—** **IN KING COUNTY, WA**	**BALLARD TERMINAL RAILROAD COMPANY, LLC'S ANSWERS TO CITY OF KIRKLAND'S FIRST SET OF INTERROGATORIES**

Ballard Terminal Railroad Company, LLC ("Ballard"), by and through its counsel, hereby answers the City of Kirkland's ("Kirkland's") First Set of Interrogatories as follows.

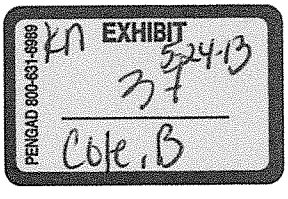
GENERAL OBJECTIONS

1. Ballard objects to Kirkland's interrogatories to the extent that they call for the disclosure of information protected by the attorney-client privilege.

2. Ballard objects to Kirkland's interrogatories to the extent that they call for the disclosure of information protected by the attorney work-product privilege.

3. Ballard objects to Kirkland's interrogatories 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 interrogatories to the extent that they call for information relating to the "Freight Segment," as defined in Definition 8 of Kirkland's interrogatories, on the basis that all such interrogatories are overly broad, unduly burdensome, seek information that is irrelevant or immaterial, are not sufficiently limited in scope, and are not reasonably calculated to lead to the discovery of admissible evidence.



5. Ballard objects to Definition 9 of Kirkland's interrogatories on the basis that the time period that Kirkland purports to be relevant is overly broad and not sufficiently limited with respect to time frame.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all potential shippers that you contacted or attempted to contact regarding the resumption of freight rail service on the Line.

ANSWER: CalPortland

Wolford Demolition and Trucking, Inc.

General Mills

INTERROGATORY NO. 2: Please identify all potential shippers that contacted you regarding the resumption of freight rail service on the Line.

ANSWER: See Ballard's answer to Interrogatory No. 1.

INTERROGATORY NO. 3: Please state the basis for your estimate, as represented in your STB filings, that reactivation of rail service on the Line "would translate to approximately 50,000 carloads of freight."

ANSWER: Ballard objects to Interrogatory No. 3 on the basis that it is vague and ambiguous. Subject to and without waiving this objection, see Skrivan and Wolford letters. The capacity of a freight car is 60 cubic yards. Thus, a demand to ship 3 million cubic yards of aggregate materials over the course of the next decade equates to 50,000 carloads of freight.

INTERROGATORY NO. 4: Please state the basis for your estimate, as represented in your STB filings, that it would cost $10 million to install rail tracks and ties in the 5.75 mile-long segment of the Line owned by Kirkland, if the existing rail infrastructure within this segment is removed.

ANSWER: Ballard objects to Interrogatory No. 4 on the basis that it is vague and ambiguous. Subject to and without waiving this objection, see ECR 893.

Dated May 23, 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

VERIFICATION

BYRON D. COLE, being first duly sworn on oath, state that he/she has read the foregoing Ballard Terminal Railroad Company, LLC's Answers to City of Kirkland's First Set of Interrogatories and further states that the responses set forth therein are true and correct to the best of his/her knowledge and belief.

Byron D Cole
Byron Cole

SUBSCRIBED AND SWORN TO before me this 23rd day of MAY, 2013.

Notary Public

Notary Public
State of Washington
BENJI IVY
MY COMMISSION EXPIRES
November 07, 2016

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 on May 23, 2013:

Hunter Ferguson
Stoel Rives LLP
600 University Street
Suite 3600
Seattle, Washington 98101
Attorney for City of Kirkland

Thomas C. Paschalis

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

Doug,

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

Mike

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

Good day Mike,

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

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

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

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

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

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

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

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

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

Truly yours,

Doug

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

RAILWORKS® TRACK SYSTEMS

January 18, 2013

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail, LLC
1340 Lombard St. #606
San Francisco, CA 94109

Subject: **East Side County Rail Rehabilitation Woodinville WA to Snohomish WA**
RailWorks Track Systems, Inc. (RailWorks) Budget Proposal

Mr. Engle,

On January 15th, 2013 RailWorks and The Eastside Freight Railroad conducted a joint visual inspection of the Issaquah Spur milepost (MP) 3.4-0.0, Woodinville Wye, Woodinville Subdivision MP 24.0-37.61, Snohomish Wye, and remaining track from the Snohomish Wye to Downtown Snohomish. During the inspection each segment of track described herein was hyrailed or walked. Inspection team consisted of Byron Cole (General Manager- Eastside Freight Railroad), George Riley (Project Engineer- RailWorks), and Richard Carney (Senior Project Manager- RailWorks). Included in this budget proposal is an assessment of the existing conditions, recommendations and budgetary pricing for your consideration.

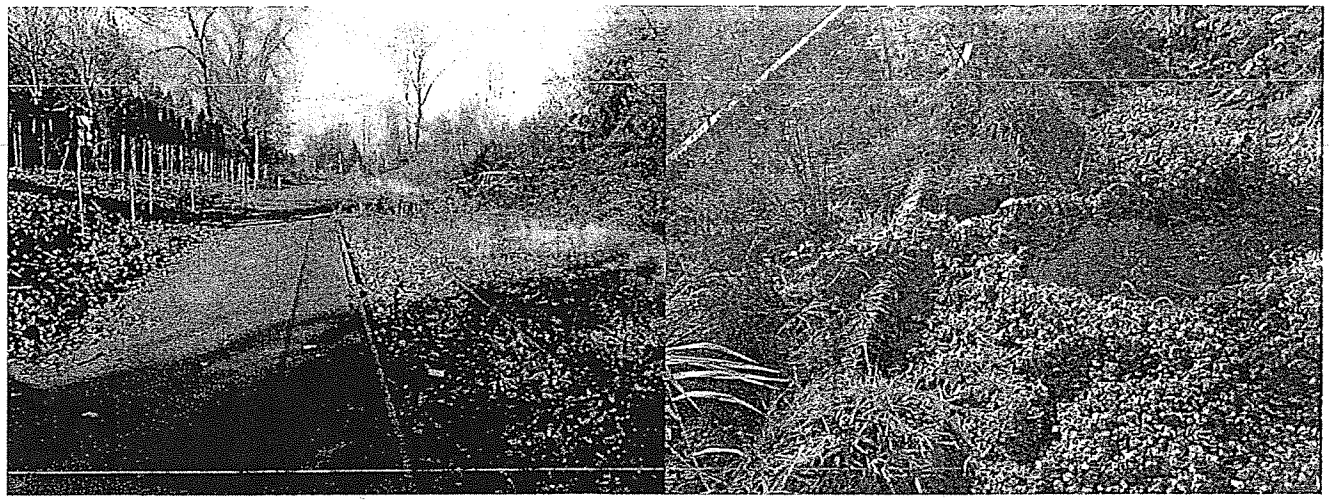
Issaquah Spur MP 3.4-2.3

Track in this segment is currently out of service and has not been operated on for several years as evident by the excessive amount of vegetation that has overgrown the line. Tie condition is poor and will not currently support the operation of trains. Top of rail profile, cross-level, and alignment (Track Surface) is marginal to poor by class 1 FRA standards. At MP 2.9 the track has been undermined by storm water runoff from adjacent property owners. Drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (90GN) are in fair condition to support class 1 operating speeds.

The following recommendations are based on rehabilitation of this segment of track to FRA class 1 standards for operation of local freight trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	880	Each	$130.00	$114,400.00
F&I Ballast	1,100	Tons	$30.00	$33,000.00
Track Surfacing	5,808	Track Feet	$2.25	$13,068.00
Ditching	5,808	Track Feet	$8.00	$46,464.00
Vegetation Removal	5,808	Track Feet	$5.00	$29,040.00
Cost Per Mile	**$214,520.00**		**Total**	**$235,972.00**

PENGAD 800-631-6989 KN EXHIBIT 39 5-24-13 Cole, B

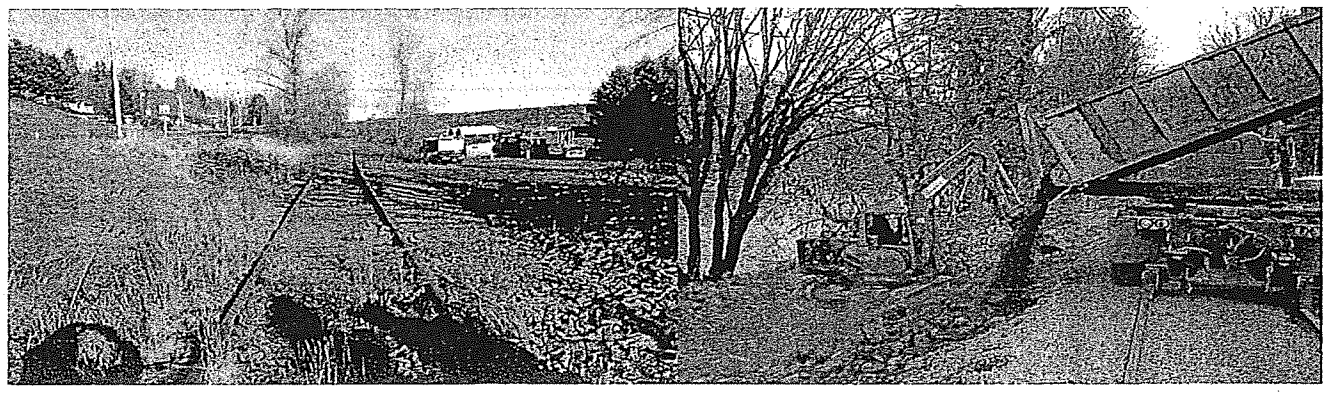


Issaquah Spur MP 2.3-0.0

Track in this segment is currently not in use or utilized in connection with operation of the Woodinville Wye. While some areas are overgrown with vegetation the majority of the track is relatively free of encroaching vegetation. Tie condition is marginal for operations of trains at class 1 speeds. Track Surface is marginal but meets class 1 FRA standards. The drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (115RE and 90GN) are in fair condition to support class 2 operating speeds.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	1,840	Each	$130.00	$239,200.00
F&I Ballast	2,300	Tons	$30.00	$69,000.00
Track Surfacing	12,144	Track Feet	$2.25	$27,324.00
Ditching	12,144	Track Feet	$5.00	$60,720.00
Vegetation Removal	12,144	Track Feet	$2.00	$24,288.00
Cost Per Mile	**$182,840.00**		**Total**	**$420,532.00**

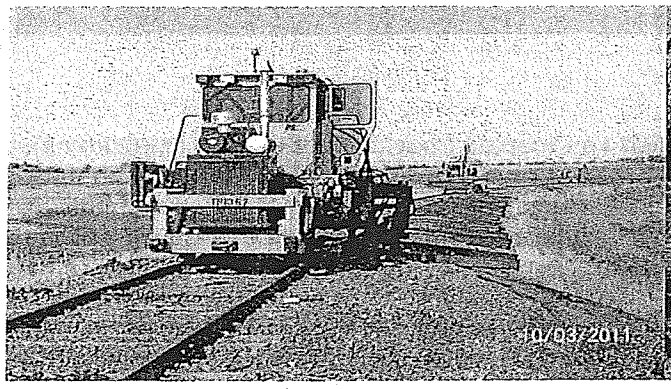


Woodinville Wye

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in marginal to fair condition to support class 2 operating speeds. The rail in the existing hi-side of the curve on the South leg of the Wye is curve worn to a point that the gage is near the limit of the standards.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Rail	800	Linear Feet	$58.00	$46,400.00
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	3,168	Track Feet	$2.25	$7,128.00
Cost Per Mile	**$222,320.48**		**Total**	**$133,928.00**



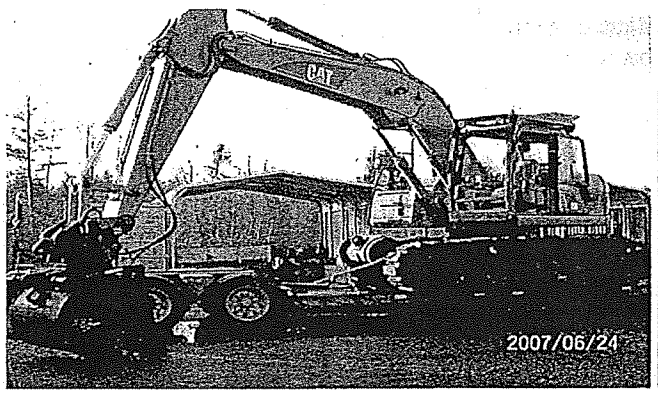


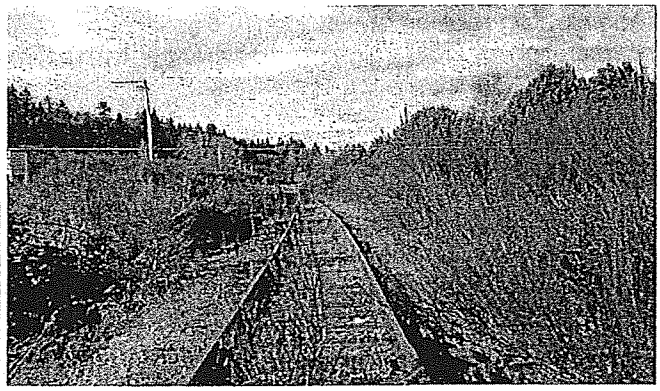
Woodinville Subdivision MP 24.0-37.61

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation in the operating envelope, however dense and unstable vegetation was observed throughout this segment within the right of way that has the potential to impact operations. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (112/115 RE) are in marginal to fair condition to support class 2 operating speeds. The rail in the existing curves in excess of 5 degrees at 15 locations is curve worn on the hi-side to a point that the gage is near the limit of the standards.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations. Additional quantities have been added for rehabilitation of 1 mile of passing sidings to FRA class 1 standards.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Rail	14,400	Linear Feet	$48.00	$691,200.00
F&I Ties	11,688	Each	$130.00	$1,519,440.00
F&I Ballast	14,610	Tons	$30.00	$438,300.00
Track Surfacing	77,141	Track Feet	$2.25	$173,567.25
Ditching	71,861	Track Feet	$8.00	$574,888.00
Vegetation Removal	71,861	Track Feet	$5.00	$359,305.00
Cost Per Mile	**$276,025.00**		**Total**	**$3,756,700.25**





Snohomish Wye

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in marginal to fair condition.

The following recommendations are based on rehabilitation of this segment of track to FRA class 1 standards for operation of local freight trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	3,168	Track Feet	$2.25	$7,128.00
Cost Per Mile	**$145,296.00**		**Total**	**$87,528.00**

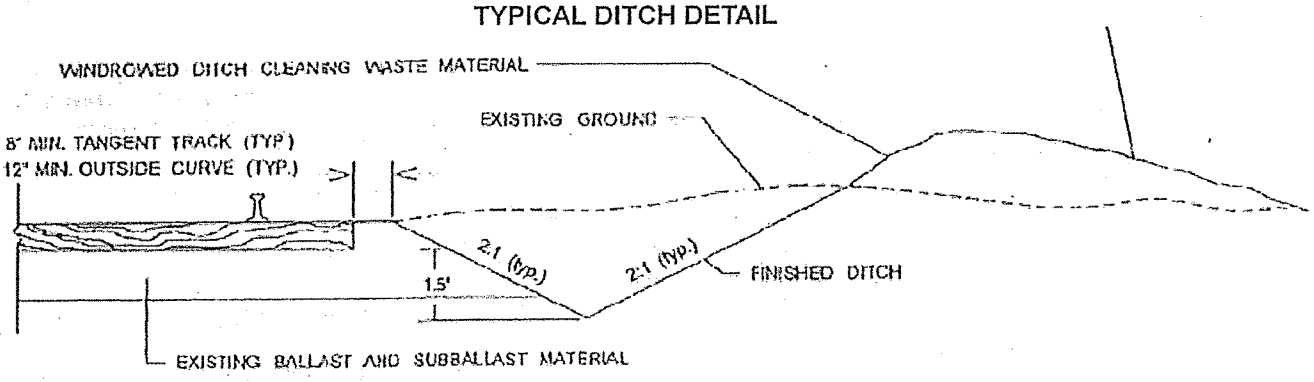
Remaining Track from the Snohomish Wye to the Snohomish River Bridge

Track in this segment is currently out of service and has not been operated on for several years as evident by the excessive amount of vegetation that has overgrown the line. Tie condition is poor and will not currently support the operation of trains. Track Surface is marginal to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in fair condition.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	2,112	Track Feet	$2.25	$4,752.00
Vegetation Removal	2,112	Track Feet	$10.00	$21,120.00
Cost Per Mile	**$265,680.00**		**Total**	**$106,272.00**

TYPICAL DITCH DETAIL



Remaining Track from the Snohomish River Bridge to Downtown Snohomish

The majority of this track has been removed and or paved over at the city streets. The following assumptions have been made: rehabilitate 1000 track feet; furnish and install 200 track feet with 10' wood ties, new rail and OTM; Furnish and install 146.25 track feet of concrete road crossing panels (3 @ 48.75); furnish and install 800 track feet with 8'6" ties #1 relay rail and OTM. New track construction considers demolition and excavation to sub-grade elevation.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	160	Each	$130.00	$20,800.00
F&I Ballast	200	Tons	$30.00	$6,000.00
Track Surfacing	1000	Track Feet	$2.25	$2,250.00
F&I 10' Wood Tie Track	200	Track Feet	$300.00	$60,000.00
F&I Concrete Grade Crossing	146.25	Track Feet	$300.00	$43,875.00
F&I 8'6" Wood Tie Track	800	Track Feet	$210.00	$168,000.00
Cost Per Mile	**$793,840.00**		**Total**	**$300,925.00**

Construct new track from Snohomish to Everett

Budget pricing considers new CWR and concrete tie track constructed to FRA class V standards. Sub-grade, bridges, culverts, railroad signals and road crossings have not been considered.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Track-CWR & 8'6" Concrete Ties	42,240	Track Feet	$195.00	$8,236,800.00
Cost Per Mile	**$1,029,600.00**		**Total**	**$8,236,800.00**

Clarifications:

- Prevailing Wages have not been considered.
- Operation of a rail flaw detection car is not required by the FRA for class 2 track, however RailWorks recommends this test be performed as part of any rehabilitation project that will result in operation of passenger trains. This service can be provided by RailWorks for $15,000.00 on the segments described herein.
- Railroad signal and crossing warning device upgrade and support have not been considered.
- Culvert and bridge repairs have not been considered.
- Road crossing improvements and upgrades to the public right of way have not been considered.
- Engineering, design, and as-built drawings have not been considered.
- F&I Rail considers new 115lb rail in 80' lengths with new spikes, anchors, joint bars, tie-plugs, bolts, nuts, washers and reuse of existing tie plates.
- F&I Ties considers new grade ties with new spikes, reuse of existing anchors, plates and offsite disposal of removed ties.
- Budget pricing based on average cost per unit with consideration that density of work will vary within each segment.
- Sales and use tax is not included.

Thank you for your consideration, if you have any questions or concerns please contact the undersigned.

Sincerely,

Richard Carney
Senior Project Manager
RailWorks Track Systems, Inc.
274 US Hwy 12
Chehalis, WA 98532
(360) 262-9444

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

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

Doug
mobile: +1.425.891.4223

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

All good questions, see the answers below

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

Joe,

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

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

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

How is this different than the Port building a cruise ship terminal, which supports a amall hand full of companies.
Isn't the Port's mission to help economic development, just like the cruise ship terminal?

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

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

The Port OWNS this asset, and it needs to be maintained beyond what ANY RR can or will do.
The only weird part is that the Port is dealing with a RR that has exclusive rights to works inside the corridor, which the Port surely must recognize with BNSF and UP.
I seem to remember a locomotive parked across a crossing at the Port, which stayed there for an extended period of time.
As I recall, the Port did work on that crossing, and BNSF wanted to remind the Port that BNSF does work inside its corridor, so the locomotive continued to sit there.
Even if the Port wants something done and pays for it, BNSF manages the work.

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

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

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

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

TEMPLES BROUGHT THE SAME POINT UP, AND MOST OTHER STATES HAVE GIFTING LAWS.
THIS IS NOT A GIFT IN ANY MANNER.
THE PORT IS SIMPLY MAINTAINING ITS OWN ASSET, WHICH THE BANKRUPTCY PROCESS DEVALUED BEYOND SUSTAINABLE.
ECRR CAN SUSTAIN MAINTENANCE IF THE TRACK HAS MATERIAL CAPITAL IMPROVEMENTS - $6.2M.
IF THE TRACK IS NOT MAINTAINED, BALLARD TERMINAL RR MAY CEASE OPERATIONS, THEN THE LINE WOULD BE ABANDONED - HOW WOULD THAT LOOK FOR THE PORT?
NO, ABSOLUTELY NO OTHER RR WILL COME IN AND MAKE THIS INVESTMENT FOR THE COUPLE HUNDRED CARS OF FREIGHT AND EXCURSION.
THE TEMPLE'S, IOWA PACIFIC HOLDINGS AND ECRR IS TELLING THE PORT THE SAME STORY, EITHER INVEST IN YOUR INFRASTRUCTURE OR ITS DEAD.

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

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

AGAIN, WE EXPECTED HELP FROM SNOCO ON THIS ISSUE AS WE DON'T HAVE THE EXPERIENCE, BUT WE ARE LEARNING FAST.
THE PORT'S PURCHASING DEPARTMENT WILL HAVE TO APPROVE THE SINGLE SOURCE NATURE OF THIS WORK, WHICH SHOULD NOT BE AN ISSUE AS ECRR IS A RR.
FURTHER, ECRR AS A NON-PROFIT RR, WHICH THE STATE LIKES, WILL MANAGE THE WORK, WHICH ENABLES OTHER USES - FREIGHT, EXCURSION, TRAIL (MAINTENANCE OF WAY ROAD), ETC.
THE STB REVENUE ADEQUACY RATE OF RETURN WILL BE APPLIED TO THE WORK GENERATING A MARGIN, WHICH WILL ENABLE FUTURE MAINTENANCE TO BE CONDUCTED BY ECRR, NOT THE PORT, AND WILL AMOUNT TO ABOUT $1M/YEAR.
THE STB RATE IS ABOUT AS ARM'S LENGTH AS WE CAN ALL GET TO A FAIR FIGURE.
WITHOUT A CAPITAL RESERVE IT WILL BE IMPOSSIBLE TO MAINTAIN THE TRACK GOING FORWARD.

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

Entered on Docket September 27, 2012

Below is the Order of the Court.

Brian D. Lynch
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In Re GNP RLY, INC., Debtor.	Case No. 11-40829-BDL ORDER GRANTING MOTION FOR APPROVAL OF SALE FREE AND CLEAR OF LIENS AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

THIS MATTER came on before the Court upon the Trustee's Motion for Approval of Sale Free and Clear of Liens and Assumption and Assignment of Executory Contracts (the "Motion"). The Motion requests that the Court enter an order authorizing the sale of the Estate's tangible and intangible assets, excluding cash and receivables, and the assumption and assignment of the Debtor's executory contracts and unexpired license agreement pursuant to the terms of a Purchase and Sale Agreement. The Court's oral ruling announced at the hearing is incorporated as findings of fact and conclusions of law pursuant to the provisions of Bankruptcy Rule 7052. It appearing, based on the Motion and the Declaration

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

of Perry A. Stacks, that the sale is in the best interest of the estate and its creditors under 11 U.S.C. §§ 105 and 363 and that the assumption and assignment of the Debtors executory contracts is also in the best interests of the estate and its creditors under 11 U.S.C. § 365, and the Motion was proposed in good faith, that the filed objections were resolved or overruled, and this order has been modified to address the concerns raised by the Port of Seattle, it is hereby

ORDERED that the Trustee is authorized to take any and all action to complete the transaction set forth in the Purchase and Sale Agreement which is attached as Exhibit "A" to the Trustee's Declaration, under terms and conditions substantially similar to those identified in Exhibit "A", without further Court Order; and it is further

ORDERED that the sale of the assets as identified in the Purchase and Sale Agreement shall be free and clear of all liens and encumbrances pursuant to 11 U.S.C. §§ 105 and 363 and that such liens shall attach to the proceeds of sale in the same order, extent, validity and priority as existed on the date of this bankruptcy filing; and it is further

ORDERED that the Trustee's assumption of the Debtor's executory contracts and unexpired license agreements and the assignment of such executory contracts and unexpired license agreements (the "Assumed and Assigned Contracts") to Purchaser is approved pursuant to 11 U.S.C. § 365; and it is further

ORDERED that the Debtor is not required to (i) cure any existing defaults that might exist under or with respect to the Assumed and Assigned Contracts or (ii) pay any cure amounts to the non-Debtor parties thereto as a condition precedent to the assumption and assignment of the Assumed and Assigned Contracts, without prejudice to the rights of the Port of Seattle to require the Purchaser to perform all of the Debtor's obligations under the Assumed and Assigned Contracts between it and the Debtor, including without limitation with respect to any defaults thereunder that might exist prior to the date of this Order; and it is further

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Telephone 206.622.1711

ORDERED that nothing in this Order permits, directly or indirectly, the further assignment, in whole or in part, of any of the Assumed and Assigned Contracts and the provisions of the Purchase and Sale Agreement approved by this Order shall be deemed modified to read "Eastside Community Rail LLC, ("Purchaser") on line 2 of the Purchase and Sale Agreement; and it is further

ORDERED that nothing in this Order shall affect or modify the Port of Seattle's rights under and pursuant to the provisions of Section 6.3 of the License Agreement; and it is further

ORDERED that the all the net proceeds shall be held in trust by the Trustee for distribution in accordance with further order of this Court.

/// End of Order///

Presented by

SCHWABE WILLIAMSON & WYATT P.C.

By_____
Richard G. Birinyi, WSBA # 9212
Special Counsel for the Trustee

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Seattle, WA 98101-4010
Telephone 206.622.1711

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of this _5th_ day of September, 2012 between Eastside Community Rail LLC, and/ or assigns, ("Purchaser") and Perry Stacks, ("Seller") solely in his capacity as Chapter 11 Trustee for GNP Rly, Inc., ("GNP) in the pending Chapter 11 bankruptcy, case 11-40829 ("the Bankruptcy").

Seller desires to sell to Purchaser and Purchaser desires to acquire upon the terms and conditions set forth herein the tangible and intangible assets of the business of GNP described below.

Seller desires to assign to Purchaser and Purchaser desires to assume upon the terms and conditions set forth herein, the rights and obligations of GNP pursuant to its executory contracts and unexpired license agreements related to the operation of the business of GNP described below.

In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereto agree:

1. **SALE AND PURCHASE OF ASSETS**. Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell, assign and convey to Purchaser and Purchaser shall purchase from Seller, all of Seller's right, title and interest in and to the "assets," as described below and in Exhibit "A" ("Assets"), free and clear of all liens, claims and encumbrances.

1.1 **Description of Assets.** The "Assets" are all assets in which GNP has an interest and which are used in connection with the operation of GNP Rly, Inc., including but not limited to:

1.1.1 All of GNP's rights and interests under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.2 All of GNP's rights and interests under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.3 All of GNP's rights and interests under the Running Rights and Railway Operations Agreement dated May 23, 2008, between GNP and Snohomish County;

1.1.4 All of GNP's rights and interests in all real property and easements described in those Quit Claim Deeds recorded under Snohomish County AF 20091218001535, 20091218001536, 20091218001537, 20091218001538, 20091218001539, 20091218001540 and King County AF 200912210438 and 20091220439.

1.1.5 All Intellectual Property controlled by GNP, know-how, goodwill, consultant works and any other property rights, relating to GNP's business, including but not limited to phone numbers and advertising; and

1.1.6 All furniture, equipment, inventory, maps and any other assets owned by GNP, as more particularly described in an attachment to this Agreement. The "Assets" shall not include any cash assets, accounts receivable or any other cash equivalent.

2. **ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LICENSES**. Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell assume and assign to Purchaser and Purchaser shall agree to perform all of Seller's obligations and duties under the executory contracts and unexpired licenses (the "Executory Contracts" necessary to the operation of Seller's buisniess as described below.

2.1 **Description of Contracts.** The "Executory Contracts" are all executory contracts and licenses which GNP requires for the operation of its business and necessary for the operation of GNP, including but not limited to:

2.1.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

2.1.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

3. **Liabilities and Obligations.** Purchaser assumes no liabilities, debts or obligations of GNP of any nature whatsoever, whether absolute, accrued, contingent or otherwise, or whether due or to become due, including any liability for taxes, other than the obligations under the Contracts, which include the following:

3.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

3.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

4. PURCHASE PRICE, EARNEST MONEY

4.1 The purchase price ("Purchase Price") for the Assets shall be One hundred seventy-five thousand and no/100 dollars, ($175,000.00) payable in cash at Closing together with the assumption of liabilities described herein.

4.2 Purchaser shall deposit $10,000.00 (the "Earnest Money") with the Trustee as earnest money on execution of this Agreement. Earnest money shall be credited to the Purchase Price at closing. In the event of default, the Earnest Money shall be applied as described in the sections of this Agreement related to defaults.

4.3 Purchaser shall deposit an additional $90,000.00 (the "Approval Payment") with the Trustee upon Bankruptcy Court approval of this Agreement. The Approval Payment shall be credited to the Purchase Price at closing. In the event of default, the Approval Payment shall be applied as described in the sections of this Agreement related to defaults.

5. COURT APPROVAL AND CLOSING.

5.1 **Court Approval**. The Seller shall promptly seek Court approval of this transaction.

5.2 **Operating Agreement after Court Approval and Prior to Closing**. Purchaser shall operate GNP's railroad line after Court approval of this Agreement until Closing and shall be fully liable for all costs and expenses of such operation during such time and shall be entitled to all revenue generated by the line during such time.

5.3 **Time and Location.** The Closing of the transaction contemplated by this Agreement (the "Closing") shall occur on or before 84 days after the entry of the Bankruptcy Court Order approving this Agreement, which shall in all events occur no later than December 19, 2012 ("Closing Date"). Conveyance, transfer, assignment and delivery of the Assets shall be by Trustee's bill of sale, certificates of transfer, endorsements, assignments and other instruments of transfer and conveyance in such form as Purchaser may request. Seller and Purchaser will from time to time after the Closing make such further conveyances, transfers, assignments and deliveries, and execute such further instruments and documents, as Purchaser deems reasonably necessary in order to effectuate and confirm the sale of the Assets and other transactions contemplated by this Agreement.

5.4 **Possession.** Purchaser shall take possession of the Assets described in paragraph 1.1 immediately upon Closing.

5.5 **Taxes and Fees.** Any transfer, sales, use or other tax payable pursuant to the sale of the Assets shall be paid by Purchaser, and Purchaser shall timely remit such tax to the applicable taxing authorities. Personal property taxes shall be pro-rated at Closing. The parties shall comply with RCW 82.32.140. If Purchaser is assessed any liability for Seller' taxes related to tax periods prior to the closing date which are not timely paid by Seller, Purchaser shall be entitled to either reduce the principal balance of the unpaid purchase price by the amount of such assessment(s) or to submit a claim for an administrative expense in the bankruptcy.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller makes no warranties to Purchaser other than those contained in an Order to be entered in the Bankruptcy approving the sale.

7. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser represents and warrants to Seller that as of Closing:

7.1 **Organization, Good Standing, Power, Etc.** Purchaser, or assigns (a) will be a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the State of Washington; and (b) has all requisite corporate power and authority to execute this Agreement and consummate the transactions contemplated herein.

7.2 **Authorization of Agreement and Enforceability.** Purchaser has taken all necessary and proper action, including approval by its managers or board of directors to authorize and approve this Agreement, its consummation and the performance by Purchaser of all terms and conditions hereof and this Agreement constitutes the valid and binding obligation of Purchaser fully enforceable in accordance with its terms.

7.3 **Effect of Agreement, Consents, Etc.** Other than approval by the Bankruptcy Court, Purchaser shall obtain any consent, authorization or approval or exemption by, or filing with, any governmental or public body or authority is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the taking of any action hereby contemplated.

7.4 **Effect of Agreement.** The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not, with or without the giving of notice or the lapse of time, or both: (a) knowingly violate any provision of law, statute, rule or regulation to which Purchaser is subject; (b) knowingly violate any judgment, order, writ or decree of any court, arbitrator or governmental agency applicable to Purchaser; (c) have any effect on any of the permits, licenses, orders or approvals of Purchaser or the ability of Purchaser to make use of such permits, licenses, orders or approvals; or (d) result in the breach of or conflict with any term, covenant, condition or provision of, result in the modification or termination of, constitute a default under, or result in the creation or imposition of, any lien, security interest, charge or encumbrance upon any of the properties or assets of Purchaser pursuant to any charter, bylaw, commitment, contract or other agreement or instrument, to which Purchaser is a party or by which any of its assets or properties is or may be bound or affected or from which Purchaser derives benefit.

7.5 **Disclosure of Financial Information.** Purchaser is relying solely and completely on Purchaser's own investigation of the financial condition of the company. To the extent Seller has provided Purchaser with any financial information, Purchaser expressly disclaims that Purchaser is relying on such information.

8. **INDEMNIFICATION.**

8.1 **Seller Indemnification for Administrative Expenses of Purchaser and "break-up fee".** In the event that after the execution of this offer the Court approves a sale of the assets to anyone other than Purchaser at a higher and better price or orders an auction of the Assets and the Assets are sold to another party for a higher and better offer, or in the event that a plan is confirmed which does not include a sale of the Assets to the Purchaser, and recognizing that the efforts of the Purchaser are beneficial to the

administration of the Estate and are necessary to the preservation of the Estate, the Trustee shall support the application of the Purchaser to the Bankruptcy Court for reimbursement of the Purchaser's actual fees and costs and expenses incurred in the preparation and pursuit of this offer and, in addition to its actual fees and costs, the Purchaser shall be entitled, subject to Court approval, to a "break-up fee" of ten percent of the eventual purchase price paid by such third party, not to exceed $28,000.00 and not less than $18,000.00. In addition, Seller shall, in applying to the Court to approve his sale to Purchaser, seek Court approval of a minimum overbid of $35,000 in excess of the price to be paid by Purchaser under this Agreement. Notwithstanding the foregoing, however, the Purchaser shall not be entitled to any reimbursement for its costs of operating the Debtor's line pursuant to the provisions of ¶ 5.2

9. **COVENANTS OF SELLER AND PURCHASER**.

9.1 **Access.** Seller shall give to Purchaser and its representatives, from and after the date of this Agreement, such access to the premises, employees, agents and consultants of Seller as is reasonable to enable Purchaser to inspect and evaluate the Seller's assets and the Seller will furnish all information reasonably requested by Purchaser.

10. GENERAL.

10.1 **Survival.** The representations, warranties, covenants and agreements set forth herein and the Disclosure Schedules shall survive Closing.

10.2 **Expenses, Etc.** Except as otherwise provided herein, whether or not the transactions contemplated by this agreement are consummated, each party hereto shall pay its own expenses and the fees and expenses of its counsel and accountants and other experts.

10.3 **Assignment.** Purchaser may not assign its rights under this Agreement without the prior written consent of the other parties hereto.

10.4 **Waivers.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

10.5 **Binding Effect; Benefits.** This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective permitted heirs, personal representatives, successors and assigns.

10.6 **Notices.** All notices, requests, demands and other communications which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or transmitted by facsimile or on receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made.

10.7 **Further Assurances.** Seller shall, from time to time, at the request of Purchaser, and without further consideration, execute and deliver such other instruments

and take such other actions as may be required to confer to Purchaser and its assignees the benefits contemplated by this Agreement.

10.8 **Entire Agreement; Amendment.** This Agreement (including the Exhibits and Disclosure Schedules hereto) and all other documents and agreements executed as of Closing constitute the entire agreement and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof and may not be amended, modified or terminated unless in a written instrument executed by the party or parties sought to be bound.

10.9 **Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

10.10 **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section, If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

10.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.12 **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision give any third party any right of subrogation or action against any party to this Agreement.

10.13 **Court Approval.** This offer is subject to the approval of the Bankruptcy Court.

10.14 **Time of the Essence/ Immediate approval required.** Purchaser's offer is dependent on the ability to close within thirty days (30) and the preservation of the going concern value of the business of GNP Rly, Inc. The time required for the approval of a disclosure statement and Plan of reorganization could result in the failure of the current business of Seller, rendering the assets of little value to Purchaser. Accordingly, Seller shall exercise his best efforts to obtain approval of this Agreement by motion rather than through the plan process. If Seller is unable to obtain approval on Motion within thirty days (30) of execution, Purchaser may withdraw this offer.

11. **DEFAULT AND ATTORNEY'S FEE**.

11.1 **Buyer's default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, Seller may terminate this Agreement and keep as liquidated damages the Earnest Money and the Approval Payment as the sole and exclusive remedy available to Seller for such failure.

11.2 **Seller's default.** In the event Seller fails, without legal excuse, to complete the sale of the Property, then Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover

any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

GNP RLY, INC.
a corporation

By_____

Perry Stacks, Chapter 11 Trustee

PURCHASER:

EASTSIDE COMMUNITY RAIL, LLC

By_____

Douglas Engle, Manager

ASSET LIST

THE ASSETS BEING ACQUIRED INCLUDE ALL OF THE NON-CASH ASSETS IN WHICHGNP RLY, INC. HAS AN INTEREST, EXCEPT ACCOUNTS, INCLUDING BUT NOT LIMITED TO:

CAR HIRE AGREEMENTS
INTERCHANGE AGREEMENT PER AAR RULES
OFFICE EQUIPMENT
RAILWAY SMALL TOOLS AND SAFETY SUPPLIES
OTHER TRACK MATERIAL
HYRAIL PICK-UP TRUCK
MAPS AND SOURCE CONTACT INFORMATION
COMMISSIONED AND OTHER DRAWINGS
CONSULTING WORKS, NOTES, RELATED CONTACTS AND ELECTRONIC FILES
ALL DOCUMENTS, NOTES, CORRESPONDENCE, REPORTS, FILES AND ANY OTHER FORM OF COMMUNICATIONS, INCLUDING ELECTRONIC MEDIA, PREPARED FOR, BY OR ON BEHALF OF OR RECEIVED BY THE DEBTOR
OPERATIONS MANUALS AND REFERENCE MATERIALS

Gmail by Google

Les Rubstello <psakayk@gmail.com>

Fwd: Woodinville SR-202 Bridge Addition

1 message

Doug Engle <Doug.Engle@escrail.org> Thu, Mar 28, 2013 at 4:18 PM
To: Les Rubstello <psakayk@gmail.com>

Just keeping you in the loop...
We really do need this to happen sooner than later.

Thank you for your continued support!

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Doug Engle <Doug.Engle@EsCRail.org>
Subject: Re: Woodinville SR-202 Bridge Addition
Date: 28 March 2013 3:03:38 PM PDT
To: Richard Leahy <RichardL@ci.woodinville.wa.us>
Cc: Joe McWilliams <McWilliams.J@portseattle.org>
Bcc: Kathy Cox <kathy.cox@escrail.org>, Ernie Wilson <ernie.wilson@escrail.org>

Hi Rich,

I spoke with Joe today about this, and we'd like to see something from the city expressing their interest in making this deal happen.
We need the specific land description and perhaps a letter of intent to get the ball moving.
The sooner this can happen, the better it will be at our end.

Thank you kindly,

Doug
mobile: +1.425.891.4223

PENGAD 800-631-6989 EXHIBIT 34 5-22-13 ENGLE

On 21 Mar 13, at 9:14 AM, Doug Engle <doug.engle@escrail.org> wrote:

Joe/Rich,

EsCR has promoted an option for Woodinville to acquire the land in fee and freight easement to advance its bridge construction for $1 million, split equally between the Port and EsCR.

I am not sure where we are in coming to agreement, although it is in all of our best interests to get this matter resolved sooner than later.
EsCR would like to conclude this matter as we have several other initiatives requiring our attention.

Please advise...

To: 'Doug.Engle@EsCRail.org'
Cc: Kurt Triplett; Phyllis Blower; David Godfrey; Pam Bissonnette
Subject: FW: EsCR - Cross Kirkland Corridor

Doug,

Thank you for spending time with us this morning to understand Kirkland's Plans for the CKC and provide us your concepts. I have incorporated answers to your questions and requests for information below. Please let me know if you need anything further.

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Monday, March 11, 2013 7:44 AM
To: Kurt Triplett
Subject: EsCR - Cross Kirkland Corridor

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
   - The City's adopted interest statement for the CKC can be found on the City's website under the Cross Kirkland Corridor at the following address: http://www.kirklandwa.gov/Assets/Public+Works/Public+Works+PDFs/Transportation/Final+Interest+Statement+Version+2.pdf
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
   - Current planned expenditure for all work associated with the preparation, design, and construction of the Interim Trail is $3.6M, and $199,000 for 2013-2014 maintenance.
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
   - Plans & specifications for preparation for the Interim Trail are currently on Kirkland's website; design of the Interim trail is in progress and not available for a several months; the rest will be developed as part of the CKC Master Plan; a copy of the CKC Master Plan RFP is attached
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
   - See answer to #3
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
   - See answer to #3
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
   - See answer to #2; grants limited to the preparation, design & construction of the Interim Trail.
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
   - The Interim Trail will be constructed by Kirkland for which it has grants and local funding; partnering with ECR is not part of Kirkland's plan at this time but there may be potential at a later time if ECR is successful in the north
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.
   - Bellevue in progress of providing; as of this date we don't have these requirements.

We have also provided your concept and costs to our design consultant to analyze and compare to our current plan, timeline and budget for the corridor. Please contact me if you have any further questions.
Pam Bissonnette

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

<RFQ.docx>

www.EsCRail.org

EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

To: Eastside TRailway Alliance

Cc: King County Council & City of Kirkland

Re: Eastside Rail Corridor – Kirkland Rail and Trail – **Trail Specification**

First order estimate of $2.87 million ($587k/mile).

Eastside Community Rail (EsCR) and Wolford Demolition and Trucking have been estimating the cost of construction of a new "primarily" 15' "base trail" 15' from the existing track with Eastside Freight Service acting as the authorized railroad.

> Length 4.86 miles, which excludes portions north of NE 124th St
> Trail Clearance: 20' =>0.05 Ac./sta.
> Trail Bed: crushed stone base course – 4" deep 15'-0" =>18.3 cy/sta.
> Trail Surface: crushed stone top course – 2" deep, 12'-0" =>8.9 cy/sta.

"Primarily," because corridor "pinch points" must be addressed in future development efforts of the Cross Kirkland Connector. The initial effort can be quickly constructed and utilized by the public by year-end 2014 – with city cooperation.

A "base trail" is the maintenance of way (MOW) road substructure that can either be immediately paved or paved with gravel added to the shoulders for walking, running or horse riding. Technically, the base trail is a road for use by the railroad in maintaining the right of way when needed.

Railroads are inspected monthly from the track by both rail-mounted vehicles and simply walking for visual inspection of the track structure. Unless there is an urgent need, maintenance work is scheduled weeks in advance.

Twenty feet of clearing is proposed as typical, as it is the most cost effective overall width for heavy equipment to develop the MOW road.

Although the minimum distance from the centerline of the track is 10'-6", EsCR proposes a standard separation of 15' and only utilize the minimum distance initially at pinch points. In either case, a drainage ditch will be constructed between the two.

The MOW road will undulate up and down along the track depending upon terrain.

EsCR believes that for two to four train movements a day at 15-20 MPH, a separating drainage ditch, and elevation differences, generally a fence between the track and MOW

road is not required. However, in segments where the trail is significantly above the railroad, a fence may be appropriate.

All trail crossings of the track will be perpendicular and protected by fencing, signage and other appropriate means as provided by the trail authority.

Grade crossings at streets are the city's responsibility.

Bridges are excluded from this estimate.

The public will provide insurance for the use of the MOW road as a trail.

The public will pay the railroad for maintenance of MOW road costs.

PSE utility needs have not been defined, yet are typically easily and willingly accommodated on either side of the track structure.



EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

22 February 2013

To: Eastside TRailway Alliance
Kirkland City Council

Cc: King County Council

Re: Eastside Rail Corridor – Cross Kirkland Corridor

We applaud Kirkland's vision in providing for dual use of the Eastside Rail Corridor and taking their regional responsibility seriously. We believe we have a win-win solution to provide near-term benefits while preserving the infrastructure for mid-term and long-term use for the greater good for the greatest number. Eastside Community Rail (EsCR) and Wolford Demolition and Trucking has a first cost estimate of constructing primarily 15' base trail 15' from the existing track as an alternative to Kirkland removing the track structure for use as an interim 8' gravel trail. Specifications are included in the attached first-order estimate of $2.9 million. We expect to have a second-order estimate, which we would like to discus with the city of Kirkland the week of March 8th.

Through our rail operator economies, we can provide a wider trail for less cost while preserving the legacy of Kirkland's history of rail. With this trail building solution there will not be any wasted in ground expenses without planning for the future. We can maximize tax payer dollars with using the $3.6 million already secured, including CMAQ funds, to provide the Cross Kirkland Corridor trail and keep the rails in place for potential near-term use by an excursion train and for use for future generations.

Our first-order estimate to utilize active rail to build a trail alongside the track structure is significantly less than Kirkland's budget. Thus, Kirkland will likely have several hundred thousand dollars still available for the trail amenities it wants. We would like to work cooperatively with Kirkland to ensure we meet the city's needs and provide for the best community asset for the state funds it received.

In summary, EsCR wants to provide Kirkland a non-profit service to more quickly utilize the corridor for rail and trail.

Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail

Kurt Triplett

From:	Doug Engle <Doug.Engle@EsCRail.org>
Sent:	Monday, March 11, 2013 7:44 AM
To:	Kurt Triplett
Subject:	EsCR - Cross Kirkland Corridor
Attachments:	EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; STB Revenue Adequacy 9Oct12.pdf

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

19 February 2013

Richard Leahy
Woodinville City Manager

Cc: Woodinville City Council

Re: Eastside Community Rail – Business Plan

1. Business Plan

This past December, Eastside Community Rail (EsCR) acquired the 14.45-mile freight operating easement from the federal Bankruptcy Court for the railroad between Woodinville and Snohomish, WA. EsCR will be operated as a non-profit serving for profit entities utilizing the corridor.

Three core values of transparency, integrity and accountability will guide EsCR in its planning, agreements and operations. EsCR has adopted the mission to help maximize the utilization and overall public benefit of the Eastside Rail Corridor (ERC). Our vision for the rail corridor is for multiple uses of rail, trail, utilities and other public benefits.

We intend on using the Eastside TRailway Alliance as a public advisory board for strategic input. EsCR will work in full cooperation with public entities along the rail corridor. We have also worked diligently to bring together a solid business executive board of directors representing fundamental areas of business.

EsCR creates value primarily by maintaining the operating line right of way (ROW) for rail operations such as freight, excursion and potentially future commuter use. For managing the maintenance of way (MOW), agreements and extensions, EsCR will collect a percentage of gross revenues to cover its direct costs and overhead. This frees the users of the rail corridor to focus on their main businesses. Best of breed partners will conduct the rail structure, bridge and crossing works. Eastside Community Rail would like to partner with the communities along the corridor to provide a MOW road that could be used for a public trail system that connects to a labyrinth of trails.

The main market opportunity lies first in re-establishing an excursion service between downtown Woodinville and Snohomish, which successfully operated on the line for 14 years and only stopped service when I-405 was widened, a bridge structure removed and BNSF sold the ROW to the Port of Seattle. Given the track is publically rehabilitated, the Bounty of Washington Tasting Train will represent more than 90 percent of EsCR's income.

Partnering with a developer to build a hotel in Woodinville next to the excursion platform is a high priority to enhance the experience. It is important that the railroad own the land to have input on design, kitchen capacity, guest waiting areas, a gift shop, other amenities and to fit within the long-term vision of the city.

Secondarily, freight traffic has waned from over 300 cars per year three years ago to just over 200, and car movements need to be bolstered to at least 400 annually. This can be accomplished with marketing and extensions to the operating line. EsCR has an operating agreement with Eastside Freight Service operated by Ballard Terminal Railroad, which has operated on the line for more than three years. Freight operations will help cover maintenance of way costs for the excursion operation.

Strategically, long-term extensions to the corridor are contemplated:

- Re-establish 3-miles of service from the Woodinville wye to Ste San Michelle, the heart of the Wine District
- In the north, develop a new 8-miles connection to Everett from Snohomish, which provides access to Amtrak service and the Canadian market
- Re-establish 12-miles of service from Woodinville to north Bellevue with additional access to the Seattle market and cruise ship passengers

Presently, there are public efforts under consideration to utilize a portion of the corridor for a public trail. EsCR supports this and is willing to construct a MOW road for such a use. Current estimates indicate that this can be done at considerable savings to the public. MOW costs for the road will be based on the width being utilized by the trail, excluding track structure costs.

There have been studies completed by Sound Transit and other groups affirming the viability of commuter rail on the line. This may be possible in the long-term in a public private partnership arrangement with EsCR. It is ECR's policy is to support, but not lead, community efforts to use the corridor for regional rail transit that is consistent with other public works.

Transit also opens the door to transit oriented developments along the ROW.

Financing

No private company will invest in publically owned rail infrastructure because it cannot be used as collateral to secure the investment. Until the portion of track owned by the Port of Seattle is upgraded, passenger service is not possible. The previous owners of the Spirit of Washington Dinner Train and Iowa Pacific Holdings concur on this point.

Therefore, EsCR and interested local governments are seeking $6.26 million from the state of Washington to improve the railroad. If this funding is secured, EsCR will bear the ongoing cost of maintaining the railroad, which is about $1.1 million annually.

Once the public infrastructure improvements are secured;

- the Port of Seattle will affirm a long-term agreement for excursion service,

- EsCR will secure $3 million in private investment,
- EsCR will secure a Small Business Administration loan of $3.5M, and
- EsCR will secure a $3.5M motive power and rolling stock capital lease.

Importantly, no EsCR financing activities can be completed until the public appropriation commitments have been achieved. This will be an iterative process over 90-days following public funding. Finally, detailed plans, drawings, etc. for capital assets will not be completed until track maintenance has been committed to.

2. Excursion Train Operations

The excursion train business is not a pipe dream or just any private venture, but based on a highly successful run that brought economic vitality to the region.

The Spirit of Washington Dinner Train ran on the Eastside Rail Corridor for 14 years with annual rate of 100,000 passengers, $10 million in revenue and created jobs and tourism business from Renton to Woodinville. The only reason they stopped running was due to the reconfiguration of I405 and thus eliminating their ability to get to their station in Renton. The Dinner Train was a train ride from Renton to Woodinville with a brief visit to Columbia Winery with outside catered meals with a few selections of wine offered on the train.

After dozens of interviews with stakeholders and analyzing the current state of dining, the Bounty of Washington: Tasting Train concept was formed. Localism is not a fad but a strong trend. Farmer's market are on an annual 10% growth trend, small plates offering at fine dining restaurants are the rage, and wine, beer, and other drinks tastings are popular. Thus, the Tasting train is flipping the Dinner train concept. Passengers will experience the best of what Washington offers, fresh seafood, grass-fed meat, and award-winning wines and beer on the train. With about 1000 wineries, breweries, and distilleries, it will be easy to rotate the flavors and their makers. After analyzing all of the excursion trains nationwide, we developed an algorithm for our pricing. We will price the experience from $55 to $125 depending on the beverage and potential guest chef. We have had conversations with some of the award-winning chefs in the area and they are eager to participate. We have estimated an average price of $85 and growing to a bit more than 100,000 passengers which is in line with previous Dinner Train results.

We will have additional revenue streams of promotional items and sponsorships. We will offer sponsorships of train car names along with customer take-home items such as the glasses. Certain ingredient items such as Washington Apples or Washington Pork will also be potential sponsors. We will be able to sell wine and other featured food items initially on board the train and later at our train stations.

Operationally we assumed a mid-range staffing level at one staff person per 16 people. Since service will be staggered per car, we can use some staff as expeditors to ensure

prompt service and reduce staffing needs. The participating wineries and breweries will provide staff for educational purposes that will move to each car. Other volunteers can provide historical and regional overviews of the area. We will start at the wine-focused Woodinville with a stop in the quaint beautiful river view town of Snohomish and back to Woodinville along a beautiful valley. Depending on the winery partner, winery tours will be included. We will have partnerships for winery tours for our guests who want to have an entire day of exploration. In addition, we plan to have a mid-week Tulalip special where guests will bus from the top-rated Tulalip Resort to Snohomish and make the trip to Woodinville.

Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone. Since the Tasting Train experience will rotate featured beverages and food, we expect locals to bring family and friends more often to enjoy their favorite wine or dining.

The rolling stock of seven cars, plus a baggage car, will be designed with a comfortable Northwest elegance more like a fine dining contemporary restaurant in Seattle rather than a stuffy old-fashioned look. We will mix the historic lore of train travel with contemporary style for an experience they will never forget on the Bounty of Washington: Tasting Train.

3. Train Movements

Currently, freight operates on the line two days per week in off-commuter hours. This is not expected to change at double the volumes in the future where trains may consist of ten cars. Presently, Boise Cascade and Spectrum Glass are the two biggest freight customers on the line. There is more freight business available if we can operate on the two miles of track down SR-202 toward Redmond that are currently not accessible or included. Eastside Freight Service has operated on the line for the past three years and is expected to continue into the future.

The Bounty of Washington excursion train is expected to operate year-round, excluding January when annual car maintenance will be conducted. The expected 400 annual trains will service both public (70%) and private passengers (30%), with overall volumes reaching 100,000+. The peak period will be the summer tourist season with expectations for bountiful holiday operations. The schedule will be oriented around evenings and two trips on weekends. Additional mid-week day trips may be developed to service Snohomish to Woodinville passengers seeking to spend the afternoon experiencing local Woodinville wines, brews and foods. Although the exact times have not been determined, trains are likely to start after 6:00 PM typically returning two hours later.

The freight operator, Eastside Freight Service, will continue to provide track clearances and train crews.

4. Railcar Storage and Maintenance

Freight operations will be very similar to today, and the addition of excursion service will require nightly railcar inspections. This will be conducted utilizing a 200' maintenance shop with a 100' pit in the area north of the wye near the warehouses.

Presently, the Eastside Freight Service locomotive and caboose are stored in a fenced "pen" at the wye. This will be moved provided access to the Wine District and/or Bellevue. The primary maintenance and railcar storage area will be in a fenced area at or very near the maintenance shop.

The exact location will be determined once Woodinville's SR-202 bridge planning is completed.

5. Platforms and Parking

Two platform types are being considered – raised wooden platform or stone/concrete pavers. The 900' platform will be on the north side of the tracks in Woodinville across from the fire station and post office, south of the NE 178th PL crossing.

A partially covered area will be constructed, including a portable ADA loading lift.

Paved diagonal parking for roughly 250 cars will be constructed inside the right of way with access points to the road every 100 yards. A barrier will be created between the parking and road to facilitate this configuration. Lighting and video camera's will also be installed.

We are hopeful that Snohomish and Woodinville will participate in the construction of platforms in both communities as public assets that reflect the experience they want for their visitors. Diverse public agency involvement is critical to securing future federal funding to extend the rail corridor and add a public trail alongside the track.

6. Capital Facilities

Snohomish Station

Initially, Snohomish Station will require a platform, covered areas, and ADA lift. In the future, restrooms and an enclosed visitor center will enhance the experience.

Wolford Spur

A new 1,000' spur will be developed into the Wolford Demolition and Trucking site in Maltby to support their business, process potential construction spoils business and initiate new trans-load freight business.

Woodinville Station

Initially, Snohomish Station will required parking, a platform, covered areas, and ADA lift. In the future, either a hotel or improvements similar to Snohomish will be required.

Woodinville Hotel

There are indications that the city has the need for at least one new hotel. EsCR has identified an opportunity to extend a hotel's normal business with expansions to help service the excursion train. These include

- Additional kitchen capacity
- Expanded waiting and conference area
- Excursion gift shop
- Coffee bar
- Restrooms
- Historical information
- Ticketing

Beyond the excursion train, the Woodinville Hotel will service Wine District tourism. When operating line extensions are completed, particularly to Everett and Amtrak, package deals will improve market awareness occupancy year around.

Maintenance Shop

A 200' maintenance facility is required to service the motive power and rolling stock. The site location will determine the maximum width inside the ROW. Long-term, an additional 100' of enclosed space may be added to facilitate nightly cleaning of equipment before the inspections.

The construction type will be 40' shipping containers along both sides, with a white "vinyl" roof over an arched metal structure. The inexpensive containers will be painted and provide secure storage of heavy tools, parts and equipment. The roof will be affixed to the containers.

A 100' heated concrete inspection pit will be installed with stair access at either end. Long-term, track mounted heavy lift equipment may be installed over the pit.

A 100' railcar wash area will be enclosed after the inspection pit with an oil and water separator.

Business Office

Initially, the current wye "shack" site will be maintained, painted and covered areas extended for MOW operations.

A new 20' x 35' multi-level business office will be built next to the shack for general, administrative, sales and marketing purposes. A covered watchman's look-out for the wye will be constructed atop this building. Long-term, the Woodinville Hotel may be the better site for these business activities, nearer the heart of the city and its business services.

7. Possible Construction Spoils

There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking.

The most likely train configuration is 17 sidedump cars moving twice a day, once in and once out, during peak construction periods. Such operations would be conducted around primary commuter hours. Train operations would be suspended when construction projects would not need the service.

8. Other Positive Civic Impacts

EsCR is willing to work with Woodinville to develop a new 134th Ave NE crossing and orchestrate train movements to minimize traffic congestion.

Overflow parking for civic events could be constructed on the south side of the tracks near 132nd Ave NE in Woodinville.

Park and ride transit parking should be explored at the Woodinville platform site since there may be only nominal conflict between the two needs.

A MOW road connecting the wye area to NE Woodinville should be explored for construction in the near term. Wolford has nearly completed one mile of base trail southwest of Maltby, which would make connecting to the Burke-Gilman trail available to more people.

Previously, Woodinville has expressed interest in widening the 131st Ave NE railroad bridge, which can be orchestrated with EsCR to consider trail and potential future track requirements.

Eastside Community Rail and the Bounty of Washington: Tasting Train provide these benefits;

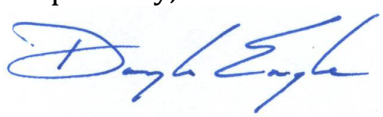
- Enable a rolling billboard for Washington agriculture and viticulture by celebrating local food and beverages
- Showcase the beautiful valley, Snohomish River bridge and historic rail route
- Direct sales tax revenue of approximately $1 million a year (based on $10 million of annual revenue from Dinner train)
- Direct excursion train jobs of 80 and trade jobs of 240
- Indirect jobs and economic development (former excursion train brought $140 million in tourism dollars) Generate awareness of the benefits of Woodinville,

Snohomish and the entire Eastside. The Spirit of Washington: Dinner Train sparked the awareness of Woodinville as a wine district. The Bounty of Washington: Tasting Train can be the catalyst of awareness of King and Snohomish counties as a tourism and livable destination

- Remove trucks from the highways which greatly reduces roadway wear and tear, toxic pollution, and traffic congestion
- Allows for future passenger rail service
- Potential redundancy to the slide-prone BNSF/Sounder route
- ECR will maintain the track for the next 35 years
- Protects the Eastside Rail Corridor assets while allowing the infrastructure to be productive now. The track structure will be maintained for more cost effective upgrades in the future.

In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

Respectfully,



Douglas Engle
Managing Director
Eastside Community Rail

Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $120 including coach service

Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting

5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: $110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: $75

Saturday and Sunday Afternoon (dependent on demand in Late fall to Early Spring, every weekend Late Spring to Early Fall)

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: $65, extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: $85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

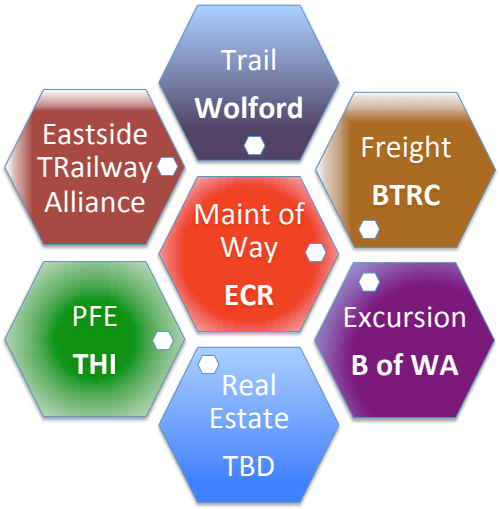
7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

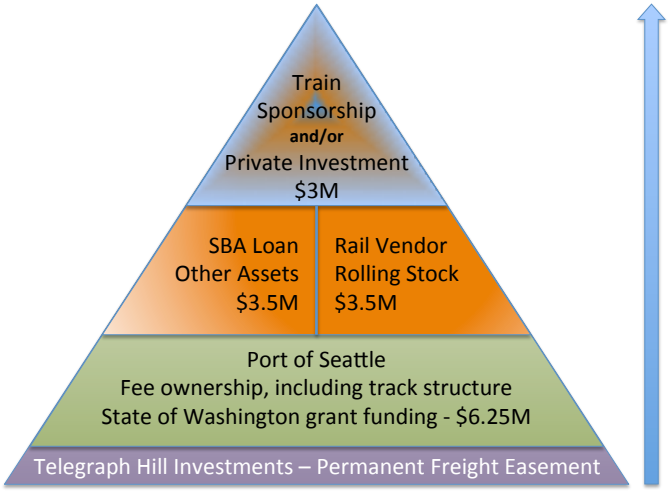
9:30 p.m. Arrive Woodinville

Base price: $85

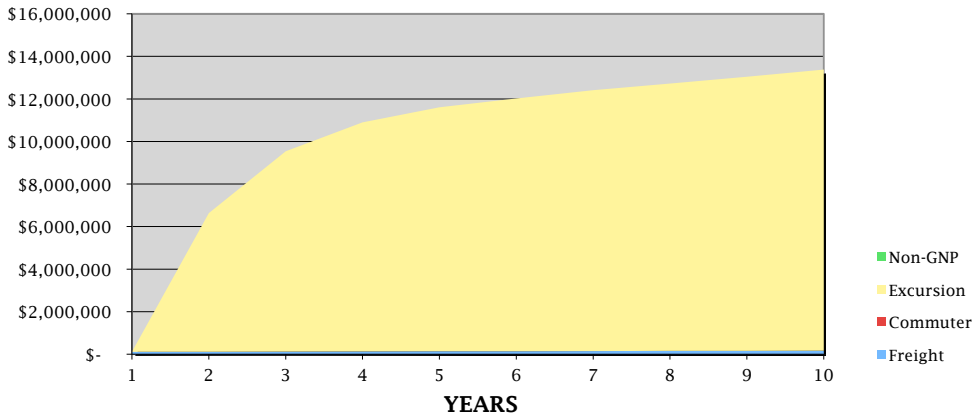
Organization



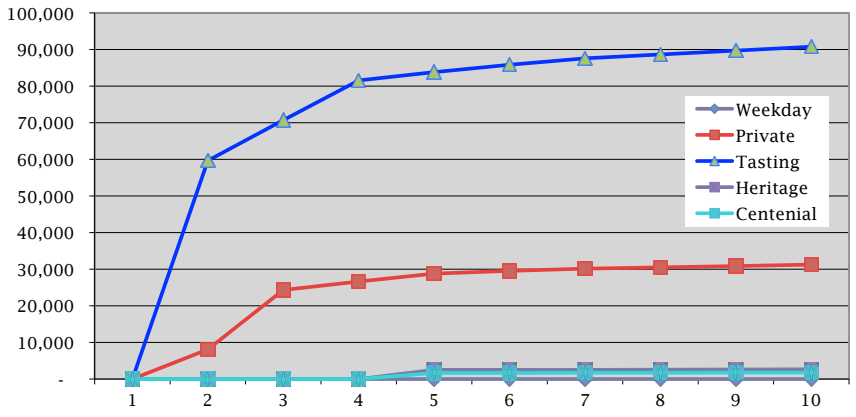
Financing Approach



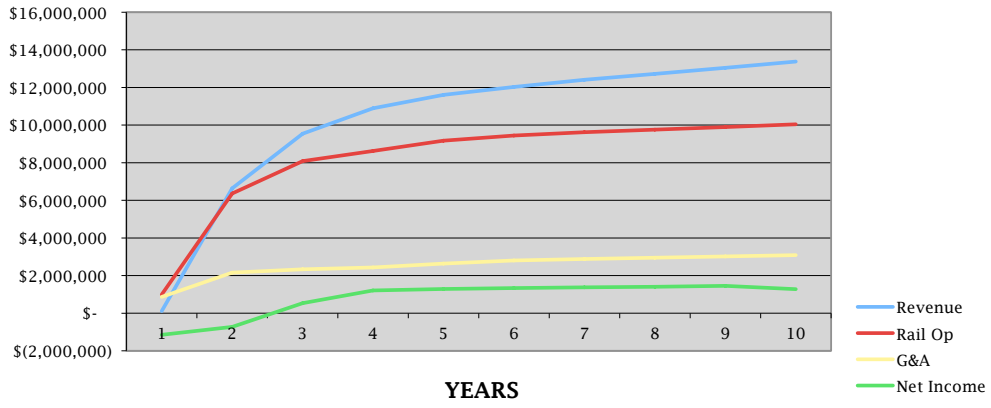
REVENUE



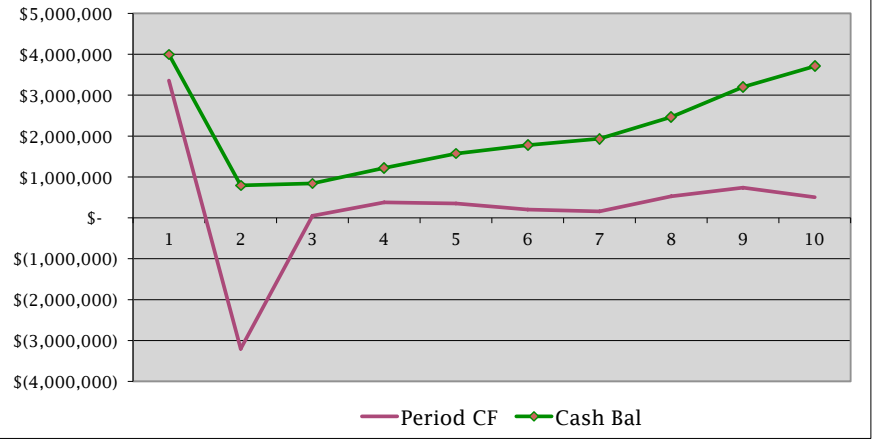
Daily Ridership



INCOME STATEMENT



Cash and Equivalents



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			
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
INITIAL OPERATIONS - Existing Track, Inspections & Planning, Excursion MP&RS
Round 1

Maintenance of Way	Unit	Track Miles / Description	15.6 / Quantity	Cost	28-Jan-13 Total
TOTAL RAIL				$ 4,400,353	
TOTAL SWITCHES				$ 230,000	
TOTAL SPURS & SIDINGS				$ 307,351	
TOTAL SIGNAL SYSTEMS COSTS		10		$ 227,368	
TOTAL MOW Road Planning				$ 256,740	
TOTAL Maintenance of Way					$ 5,421,812
Buildings, Bridges & Facilities (BB&F)					
TOTAL BRIDGES		11		$ 359,958	
TOTAL STATIONS		2		$ 1,290,626	
TOTAL MAINT. OF EQUIP. SHOP				$ 2,028,470	
TOTAL OFFICE				$ 318,308	
TOTAL Buildings, Bridges & Facilities (BB&F)					$ 3,997,362
Motive Power & Rolling Stock and MOW Vehicles					
Locomotive Startup Qty		2		$ 867,100	
Baggage Car & HEP Qty		2		$ 262,500	
Excursion Coach Startup Qty		7		$ 2,187,500	
Total Main of Way Equip & Vehicles		4		$ 219,650	
TOTAL MP&RS and MOW Vehicles					$ 3,536,750
TOTAL Business & Admin Assets					$ 351,095
TOTAL FIXED ASSETS - Round 1					**$ 13,307,019**

Total Assets		Life (yrs)		
MOW road (trail)	1.9%	10	$	256,740
Track	38.8%	35	$	5,165,072
BB&F	30.0%	30	$	3,997,362
Motive Power & Rolling Stock	26.6%	15	$	3,536,750
Business CapEx	2.6%	10	$	351,095
	100.0%	27.0	$	13,307,019

ANNUAL Fixed Asset Maintenance (yrs 1-3)		
TOTAL ANNUAL TRACK MAINT.	$	778,145
TOTAL ANNUAL BRIDGE MAINTENANCE	$	219,600
TOTAL FACILITIES MAINTENANCE	$	98,344
TOTAL ANNUAL MAINTENANCE		**$ 1,096,089**

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%	14.3%	6.5%	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%	6.5%	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%	94.5%	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%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

Eastside Community Rail
INCOME STATEMENT
11-Feb-13

Business Case	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%	3.6%	3.2%	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**
		55.6%	53.4%	50.3%	50.0%	49.1%	48.2%	47.5%	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**
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
per mile	$ 2,808	$ 19,293	$ 21,268	$ 21,268	$ 21,268	$ 21,555	$ 21,847	$ 22,145	$ 22,449	$ 22,759
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		32.5%	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
% of Revenue		4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%
Other (Income), Exp & Taxes										
Net Income 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**	**$ 1,277,020**
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	9.5%
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

Eastside Community Rail

Monthly Percentage of Revenue

As of 2013 February 11

Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
0.1%	4.8%	5.9%	7.4%	10.3%	11.3%	11.3%	11.3%	9.3%	7.3%	8.2%	10.2%



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.

	Cost of Capital	Weight	**Weighted Average**
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%)

ENGINEERS
ARCHITECTS
LANDSCAPE ARCHITECTS
SURVEYORS

KPG
TACOMA · SEATTLE

Job No. 12081	CKC Trail - Adjacent Maintenance Road Option	By	EEO	Chkd By	
Planning Estimate	City of Kirkland	Date	3/14/2013	Date	

CKC Trail - Adjacent Maintenance Road Option - Project Cost Estimate

Item #	Item	Quantity	Unit	Unit Price	Total Cost
1	Minor Change	1	FA	$25,000	$25,000
2	Resolution of Utility Conflicts	1	LS	$20,000	$20,000
3	Mobilization	1	LS	$699,200	$699,200
4	Project Temporary Traffic Control	1	LS	$349,600	$349,600
5	Erosion/Water Pollution Control	1	LS	$175,000	$175,000
6	Wetland Mitigation	1	LS	$300,000	$300,000
7	Clearing and Grubbing	1	LS	$112,000	$112,000
8	Excavation	26800	CY	$20	$536,000
9	Backfill	84000	TON	$15	$1,260,000
9	CSBC	10400	TON	$20	$208,000
10	CSTC	4200	TON	$20	$84,000
11	42" Chain Link Fencing	42000	LF	$12	$504,000
12	Road Crossings	1	LS	$500,000	$500,000
13	Relocation of RR Warning Signs & Util Bldgs @ Crossings	1	LS	$37,000	$37,000
14	Bollards	34	EA	$700	$23,800
15	Pedestrian Bridges	4000	SF	$350	$1,400,000
16	Unsuitable Foundation Excavation	560	CY	$40	$22,400
17	MSE Walls	86200	SF	$35	$3,017,000
18	Stream Crossings-Box Culvert (installed)	1500	LF	$400	$600,000
19	Addt'l Culverts to be extended (installed)	600	LF	$150	$90,000

Subtotal - Construction Cost	$9,963,000
Contingency	$2,988,900
Total Construction Cost	$12,951,900
Engineering	$1,554,300
Environmental/Permitting	$233,200
Construction Management	$1,942,800
City Administration	$647,600
TOTAL PROJECT COST	$17,329,800

ORIGINAL

CITY OF KIRKLAND
PUBLIC WORKS CONTRACT
Cross Kirkland Corridor Rail Removal Project
JOB NO. 15-13-PW

This agreement is made and entered into this 26TH day of APRIL, 2013, by and between **A&K Railroad Materials, Inc.,** hereinafter called the "Contractor" and the City of Kirkland, hereinafter called the "Owner."

WITNESSETH:

Whereas, pursuant to the invitation of the Owner extended through an officially published "Invitation to Bid," the Contractor did, in accordance therewith, file with the Owner a proposal containing an offer which was invited by said notice, and

Whereas, the Owner has heretofore determined that said offer was the lowest responsible bid submitted; now, therefore, it is agreed:

Section 1. That Contractor shall comply in every way with the requirements of those certain specifications entitled: "Cross Kirkland Corridor Rail Removal Project, JOB NO. 15-13-PW"

The further terms, conditions and covenants of the contract are set forth in the following contract documents which are hereby made a part of this agreement by actual attachment or by this reference thereto as follows:

A. Any Invitation To Bid, as published by the Owner.

B. Any Specifications prepared for this project by the Owner and named above by title.

C. Any detailed Plans listed and described in said Specifications, together with those which may be issued as supplements thereof.

D. The bid proposals submitted by the Contractor as to those items and/or alternatives accepted by the Owner.

E. Any change orders, additions or deletions, if any, issued by the Owner.

Section 2. In consideration of faithful compliance with the terms and conditions of this agreement, whether set forth herein or incorporated by reference, the Owner shall pay to the Contractor, at the times and in the manner provided in said specifications, the total sum of **($473,419.00) Four Hundred Seventy Three Thousand Four Hundred Nineteen 00/100** dollars which sum is subject, however, to increase or decrease in such proportion as the quantities named in said proposal are so changed, all as in said specifications and proposal provided.

In witness whereof, said Contractor and said Owner have caused this agreement to be executed on the day and year first written above.

A&K RAILROAD MATERIALS, INC.
CONTRACTOR (Firm Name)

Signature of authorized officer

Rocky Smith, Vice President Field Operations
Name and title of officer (print or type)

CC AKRAIM*195LD
WA Contractor's Registration Number

262,986-00
Industrial Insurance Account Number

409 023 557
Uniform Business Identification (UBI) Number

(801) 974-5484
Phone Number

(801) 956-0873
Fax Number

STATE OF ~~WASHINGTON~~ UTAH)
) SS
COUNTY OF ~~KING~~ Salt Lake)

On this day personally appeared before me Rocky Smith, VP Field Operations, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 29th day of March, 2013.

Notary Public in and for the
State of Utah, residing in

Salt Lake County

CITY OF KIRKLAND

BY: Marilynne Beard
Marilynne Beard, Assistant City Manager

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

FIRST ADDENDUM TO CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT PUBLIC WORKS CONTRACT

This FIRST ADDENDUM TO CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT PUBLIC WORKS CONTRACT (this "Addendum") is made and entered into as of MARCH 26 2013 (the "Effective Date") by and between A&K Railroad Materials, Inc. ("Contractor"), and the City of Kirkland, a Washington municipal corporation ("Owner").

RECITALS

A. Contractor submitted the lowest responsible bid on the Cross Kirkland Corridor Rail Removal Project, Job No. 15-13-PW ("Project").

B. The Project requires the Contractor to salvage rails, ties and other track material and pay the Owner for the salvage value of the rails, ties and other track materials, as set forth in the Contractor's bid documents.

C. The Contractor and the Owner are in the process of finalizing and executing the Cross Kirkland Corridor Rail Removal Project Public Works Contract ("Contract").

D. The Contractor and the Owner wish to clarify that, in the event of termination of the Contract pursuant to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction ("Standard Specs"), the Owner shall receive a credit for the salvage value of the rails, ties and other track materials removed by the Contractor prior to Contract termination.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree:

AGREEMENT

1. In the event of termination of the Contract pursuant to Section 1-08.10 of the Standard Specs, the Owner shall receive a credit for the salvage value of rails, ties and other track materials salvaged or removed by the Contractor prior to Contract termination. This credit shall be an offset to any payments due from Owner to Contractor under the Contract or resulting from Contract termination. In the event the salvage value of rails, ties and other track materials removed prior to Contract termination exceeds the amount of payments due from Owner to Contractor, the Contractor shall pay the difference to the Owner within 30 days of Contract termination.

2. Full Force and Effect. Except as modified herein, the Contract shall remain in full force and effect.

3. Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together

shall constitute one and the same instrument. Any party may execute this Addendum by facsimile signature and the other party shall be entitled to rely on such facsimile signature as evidence that this Addendum has been duly executed by such party.

IN WITNESS WHEREOF, Buyer and Seller have caused this Addendum to be executed on the dates set forth below, effective APRIL 26, 2013 as above written.

/
/
/

Signature page attached

CITY OF KIRKLAND,
a Washington municipal corporation

By: Marilynne Beard
Name: Marilynne Beard
Title: Deputy City Manager
Date: 4/26/13

Approved as to form:

_____
Assistant City Attorney

A&K RAILROAD MATERIALS, INC.

By: Rocky Smith
Its: Rocky Smith, Vice President Field Operations
Date: March 29, 2013

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A&K RAILROAD MATERIALS, INC.
P.O. BOX 30076
SALT LAKE CITY, UT 84130

INDIVIDUAL SURETY
KERN W. SCHUMACHER
14505 GERONIMO TRAIL
RENO, NEVADA 89521

OWNER (Name and Address):

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033

CONSTRUCTION CONTRACT
Date: APRIL 23, 2013
Amount: $ 473,419.00
Description (Name and Location): CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT. JOB NO. 15-13-PW
REMOVAL OF 5.81 MILES OF RAILROAD TRACK

BOND
Date (Not earlier than Construction Contract Date): APRIL 23, 2013
Amount: $ 473,419.00
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

Signature:
Name and Title: ROCKY SMITH
VICE PRESIDENT FIELD OPERATIONS

SURETY
(Surety Seal)

Signature:
Name and Title: KERN W. SCHUMACHER
INDIVIDUAL SURETY

(Any additional signatures appear on page 3)

State of UTAH } ss.
County of SALT LAKE

The foregoing instrument was acknowledged before me this 23RD day of APRIL, 20 13 by Kern W. Schumacher.

Lonnie Wallace
Notary Public

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

My commission expires November 3, 2016

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of the Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 DEFINITIONS

11.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

11.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

11.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

11.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)		(Seal)
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A&K RAILROAD MATERIALS, INC.
P.O. BOX 30076
SALT LAKE CITY, UT 84130

INDIVIDUAL SURETY
KERN W. SCHUMACHER
14505 GERONIMO TRAIL
RENO, NEVADA 89521

OWNER (Name and Address):

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033

CONSTRUCTION CONTRACT
Date: APRIL 23, 2013
Amount: $ 579,979.00
Description (Name and Location): CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT. JOB NO. 15-13-PW
REMOVAL OF 5.81 MILES OF RAILROAD TRACK

BOND
Date (Not earlier than Construction Contract Date): APRIL 23, 2013
Amount: $ 579,979.00
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Signature:
Name and Title: ROCKY SMITH
VICE PRESIDENT FIELD OPERATIONS

SURETY
(Surety Seal)
Signature:
Name and Title: KERN W. SCHUMACHER
INDIVIDUAL SURETY

(Any additional signatures appear on page 3)

State of UTAH } ss.
County of SALT LAKE

The foregoing instrument was acknowledged before me this 23RD day of APRIL,
20 13 by Kern W. Schumacher.

Lonnie Wallace
Notary Public

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

My commission expires November 3, 2016

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity whose labor, materials or equipment were furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

14 **DEFINITIONS**

14.1 Claimant: An individual or entity having a direct

contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

14.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

14.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)		(Seal)
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

WELLS FARGO

Commercial Banking
MAC U1228-09A
299 South Main Street, 9th Floor
P.O. Box 45490 (mailing)
Salt Lake City, UT 84145-0490

April 25, 2013

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

RE: A & K Railroad Materials Inc.

To Whom It May Concern:

Our customer, A & K Railroad Materials, Inc. who is owned by Kern Schumacher and Rhonda Nicoloff has requested that Wells Fargo Bank, N.A. ("Bank") supply you with information regarding its banking relationship with Bank. A & K has been a customer of Bank since November 1965. This relationship currently includes certain credit transactions, deposit accounts, cash and treasury management services, collections, and the like. The customer's relationship has performed satisfactorily according to Bank's internal, subjective standards. The current available balance of the customer's existing line of credit facility is over $16,000,000.00 as of the date of this letter, but such balance does not include any uncollected items and/or amounts that have not been posted to such account as of date hereof. The foregoing is not, and should not at any time or in any way be construed as a guaranty of future account balances.

This letter only pertains to Bank's experience with the customer and should not be considered reliable for general purposes unless other independent investigation confirms the information provided in this letter. This letter is confidential and may not be shared with any party, unless you are required to do so by law or with Bank's prior written consent. Bank does not have any obligation, will not take responsibility for, will not be required to, and does not undertake any duty to update you in the event Bank's assessment of the customer's relationship should change.

If you have any questions please feel free to give me a call at 801-246-1034 or email me at akagits@wellsfargo.com.

Sincerely,

WELLS FARGO BANK, N.A.

Senior Vice President and
Senior Relationship Manager

Together we'll go far



CITY OF KIRKLAND
CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF STATUTORY RETAINED PERCENTAGE
Cross Kirkland Corridor Rail Removal Project
JOB NO. 15-13-PW

Monies reserved under provisions of Chapter 60.28 RCW, at the option of the Contractor, shall be:

Select One

[ ] (1) Retained in a fund by the City. No interest will be earned on the retained percentage amount under this election.

[ ] (2) Retainage Bond

[ ] (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. (For the convenience of those Contractors choosing option (3) a City approved Form of Escrow Agreement is included on the next page and should be completed and submitted with the executed contract.)

The Contractor in choosing option (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

[X] (4) Deposited by the City in an interest-bearing account at the FDIC insured bank currently providing contracted banking services to the City of Kirkland. Interest on such account shall be paid to the contractor. Any fees incurred shall be the responsibility of the contractor.

CONTRACTOR:

Signature: _____

Print or Type Name: Jeff Galyean

Title: CFO

Date: 4/25/2013

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Marsh USA Inc. 600 Renaissance Center Suite 2100 Detroit, MI 48243 Attn: Raffles 00206 -00206-RAFF-13/14	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
A & K Railroad Materials, Inc. 1505 South Redwood Drive P.O. Box 30076 Salt Lake City, UT 84130	INSURER A : American Zurich Insurance Company	40142
	INSURER B : Zurich American Insurance Company	16535
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CHI-004650911-04 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
B	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X CONTRACTUAL LIABILITY ON A "AS NEEDED" BASIS GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			GLO3486463	04/01/2013	04/01/2014	EACH OCCURRENCE	$	1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$	500,000
							MED EXP (Any one person)	$	10,000
							PERSONAL & ADV INJURY	$	1,000,000
							GENERAL AGGREGATE	$	2,000,000
							PRODUCTS - COMP/OP AGG	$	2,000,000
								$	
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS			BAP3486462	04/01/2013	04/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$	1,000,000
							BODILY INJURY (Per person)	$	
							BODILY INJURY (Per accident)	$	
							PROPERTY DAMAGE (Per accident)	$	
								$	
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$	
							AGGREGATE	$	
								$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC3486511	04/01/2013	04/01/2014	X WC STATU-TORY LIMITS OTH-ER		
							E.L. EACH ACCIDENT	$	1,000,000
							E.L. DISEASE - EA EMPLOYEE	$	1,000,000
							E.L. DISEASE - POLICY LIMIT	$	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required)

City of Kirkland and its authorized agents are named as Additional Insured for General Liabilily & Auto Liability only, but only as respects to liability arising from the operations of the insured and where required by written contract. Workers' Compensation does not apply to monopolistic states (ND, OH, WA and WY), Puerto Rico or the Virgin Islands.

CERTIFICATE HOLDER

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

John C Hurley

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Any person or organization other than an Architect, Engineer or Surveyor, to whom or to which you are required to provide additional insured status in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.	**Any location or project where you have agreed, through written contract, agreement or permit, executed prior to loss, to provide additional insured coverage except where such contract or agreement is prohibited by law.**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Any person or organization other than an Architect Engineer or Surveyor, to whom or to which you are required to provide additional insured status in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.	**Any location or project where you have agreed, through written contract, agreement or permit, executed prior to the loss, to provide additional insured coverage except where such contract or agreement is prohibited by law.**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Copyright, ISO Properties, Inc., 2004

Client#: 3024 AKRAI

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/25/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Kathie Evans	
Moreton & Company - Utah 709 East South Temple Salt Lake City, UT 84102 801 531-1234	PHONE (A/C, No, Ext): 801 531-1234	FAX (A/C, No): 801-531-6117
	E-MAIL ADDRESS: kevans@moreton.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Navigators Insurance Company	
INSURED A & K Railroad Materials, Inc. P O Box 30076 Salt Lake City, UT 84130-0076	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE [ ] OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY [ ] PRO-JECT [ ] LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB [X] OCCUR			LA13EXC707440IV	04/01/2013	04/01/2014	EACH OCCURRENCE	$10,000,000
	[X] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$10,000,000
	DED [ ] RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						WC STATU-TORY LIMITS [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Kirkland is named as additional insured with respects to excess liability for the Cross Kirkland Corridor Rail Removal project. Excess policy is following-form to liability policy coverages and endorsements.

CERTIFICATE HOLDER

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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KATEV

Department of Labor and Industries
Prevailing Wage
(360) 902-5335
www.lni.wa.gov/TradesLicensing/PrevWage

STATEMENT OF INTENT TO PAY PREVAILING WAGES

Public Works Contract
$40.00 Filing Fee Required

- This form **must** be typed or printed in ink.
- **Fill in all blanks or the form will be returned for correction (see instructions).**
- Please allow a **minimum** of 10 working days for processing.
- Once approved, your form will be posted online at https://fortress.wa.gov/lni/pwiapub/SearchFor.asp

Intent ID # (Assigned by L&I)_____

Your Company Information		
Your Company Name: A&K Railroad Materials, Inc.		
Your Address: PO Box 30076		
City: Salt Lake City	State: UT	Zip+4: 84130
Your Contractor Registration Number: CC AKRAIM*195LD	Your UBI Number: 409 023 557	
Your Industrial Insurance Account Number: 262,986-00		
Your Email Address (required for notification of approval): RSmith@akrailroad.com	Your Phone Number: (801) 977-6305	

Additional Details	
Your Expected Job Start Date (mm/dd/yyyy): 4/15/13	
Job Site Address/Directions: 132nd Avenue NE South to 108th Avenue NE (MP 20.36 to MP 14.6)	

ARRA Funds
Does this project utilize American Recovery and Reinvestment Act (ARRA) funds? ☐ Yes ☒ No

Prime Contractor's Company Information	
Prime Contractor's Company Name: Same	Prime Contractor's Intent Number
Prime Contractor's Registration Number	Prime Contractor's UBI Number

Awarding Agency Information		
Project Name: Cross kirkland Corridor Rail Removal Project	Contract Number: 15-13-PW	
Awarding Agency: City of Kirkland		
Awarding Agency Address: 123 Fifth Avenue		
City: Kirkland	State: WA	Zip+4: 98033
Awarding Agency Contact Name: Aaron McDonald	Phone Number: (425) 587-3837	
County Where Work Will Be Performed	City Where Work Will Be Performed: Kirkland	

Contract Details		
Bid Due Date (**Prime Contractor's**): 3/15/13	Award Date (**Prime Contractor's**): 3/27/13	
Total Dollar Amount of **Your** Contract (including sales tax) or indicate time and materials, if applicable.	$579,979	☐ T&M

Weatherization or Energy Efficient Funds
Does this project utilize any weatherization or energy efficiency upgrade funds (ARRA or otherwise)? ☐ Yes ☒ No

Hiring Contractor's Company Information	
Hiring Contractor's Company Name	
Hiring Company's Contractor Registration Number	Hiring Contractors UBI Number

Employment Information					
Do you intend to use **ANY** subcontractors?	☐ Yes	☒ No	Will employees perform work on this project?	☒ Yes	☐ No
Will **ALL** work be subcontracted?	☐ Yes	☒ No	Do you intend to use apprentice employees?	☐ Yes	☒ No

Number of Owner/Operators who own at least 30% of the company who will perform work on this project: ☒ None (0) ☐ One (1) ☐ Two (2) ☐ Three (3)

Crafts/Trades/Occupations – (Do not list apprentices. They are listed on the Affidavit of Wages Paid only.) If an employee works in more than one trade, ensure that all hours worked in each trade are reported below. For additional crafts/trades/occupations please use Addendum A.	**Number of Workers**	**Rate of Hourly Pay**	**Rate of Hourly Usual ("Fringe") Benefits**
Laborers	8	$41.59	incl
Truck Driver	1	$47.91	incl
Boom Truck Driver	1	$48.92	incl
Loader/Excavator Operator	1	$51.28	incl

Signature Block

I hereby certify that I have read and understand the instructions to complete this form and that the information, including any addenda, are correct and that all workers I employ on this Public Works Project will be paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Department of Labor and Industries.

Print Name: Rocky Smith **Print Title:** VP Field Ops **Signature:** Rocky Smith **Date:** 3/29/13

For L&I Use Only

Approved by signature of the Department of Labor and Industries Industrial Statistician

NOTICE: If the prime contract is at a cost of over one million dollars ($1,000,000.00), RCW 39.04.370 requires you to complete the EHB 2805 (RCW 39.04.370) Addendum and attach it to your Affidavit of Wages of Paid when your work on the project concludes. This is only a notice. The EHB 2805 Addendum is not submitted with this Intent.

A & K Railroad Materials, Inc.
PO Box 30076
Salt Lake City, 84130 0076
Phone: (801) 974-5484
Fax: (801) 973-7393

March 28 2013 **37688**

11-24/1210

$ 40.00***

*** Forty and 00/100 US Dollar

PAY TO THE ORDER OF **WA DEPT. OF LABOR & INDUSTRIES**
PO Box 34022
Seattle, WA 98124 1022
US

Wells Fargo Bank
420 Montgomery Street
SAN FRANCISCO, CA 94104

Rhonda Nicolof

⑈037688⑈ ⑆121000248⑆0510172141⑈

Check 37688 Vendor 002051 03/28/2013
DEPT. OF LABOR & INDUSTRIES
WA DEPT. OF LABOR & INDUSTRIES PO Box 34022, Seattle, WA 98124 1022, US

Invoice number	Invoice Date	Gross amount	Cash discount	Payment amount
filing fee	03/29/2013	40.00	0.00	40.00
Total				40.00

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PO ZIP Code	Day of Delivery	Flat Rate Envelope
	☐ Next ☐ Second	☐
Date In Mo. Day Year	☐ 12 Noon ☐ 3 PM	Postage $
Time In ☐ AM ☐ PM	Military ☐ 2nd Day ☐ 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee / Insurance Fee
No Delivery ☐ Weekend ☐ Holiday	Acceptance Clerk Initials	Total Postage & Fees $

DELIVERY (POSTAL USE ONLY)

Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature
Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature
Delivery Date Mo. Day	Time ☐ AM ☐ PM	Employee Signature

☐ WAIVER OF SIGNATURE *(Domestic Only)* **Additional merchandise insurance is void if waiver of signature is requested.** I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY ☐ Weekend ☐ Holiday

Customer Signature

CUSTOMER USE ONLY
METHOD OF PAYMENT:
Express Mail Corporate Acct. No. X841407
Federal Agency Acct. No. or Postal Service Acct. No.

FROM: (PLEASE PRINT) PHONE (801, 974 5484

A&K RAILROAD MATERIALS
1505 S REDWOOD RD
PO BOX 30076
SALT LAKE CITY UT 84130-0076

TO: (PLEASE PRINT) PHONE ( )

Management Services
Department of Labor & Industries
Prevailing Wage Program
P.O. Box 44835
Olympia, WA 98504-4835

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You are making 3 copies. FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.com

EMS

27-/ 500 F:02 T:

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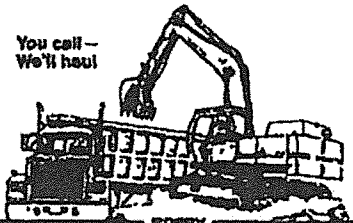
Ex. 22, page 20 of 20

EP-13F February 2002

Exhibit D

22014 West Bostian Rd.
Woodinville, WA 98072
(425) 827-7630/481-1800
FAX # (425) 486-6813

You call –
We'll haul



BOBBY
WOLFORD
TRUCKING AND DEMOLITION INC

- 40 / 50 yard Debris Trailers
- Lowboys
- Belly Dumps
- Track Hoes, Loaders & Dozers

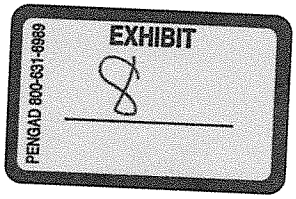
March 27, 2013

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

Dear Ms. Brown:

Bobby Wolford Trucking (BWT) was founded in 1972 to provide general demolition and trucking services, primarily to the real estate development industry. Since then we have added full recycling service for construction debris (such as concrete), land clearing debris, and the like. We are a Snohomish County certified "Intermediate Solid Waste Handling Facility" and processor of these materials. Our processing yard is located in Maltby (Snohomish County), alongside the BNSF railroad's former Woodinville line, now known locally as the Eastside Rail Corridor (ERC).

I am writing to stress the importance of restoring rail service to the next segment of the ERC, between Woodinville and Bellevue, Washington, a rail line that is currently inactive and rail-banked. We very much support continued freight use and enhancement of the entire ERC. In fact, we have started planning with the current railroad operator, Ballard Terminal Railroad (BTR), to construct a spur track from the main rail line directly into our recycling yard. This would allow us to both receive material to be recycled from up and down the corridor, as well as to economically ship out sorted and processed materials by rail to their final disposal point, e.g., land fills in southern Washington.



There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years These projects, plus multiple new high-rise buildings, will necessitate the export of hundreds of thousands of cubic yards of excavated materials, building demolition waste, and roadway grading spoils. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. A future light rail system with a tunnel and "cuts" are within one mile of the railroad, and will also require substantial movement of spoils and raw materials. Additionally, we anticipate ongoing construction projects in the future, on a regular basis. We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years.

We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated that our bid would be at least 15% less expensive to our clients than the trucking option. For us to provide competitive and viable bids, we need the rail intact and active.

We have consulted with Eastside Community Rail (ECRR), the owner of the rail freight easement in the corridor, about the logistics of moving large quantities of excavated material from construction projects in King County by rail for direct placement as road or trail base alongside their existing railroad embankment, mainly in Snohomish County. BWT has extensive experience hauling for excavation contractors. We agree with ECRR that using rail to replace thousands of long truck hauls to dump sites would greatly reduce traffic congestion and wear on the region's highways, and would obviously reduce air pollution from diesel exhaust, too. Since the ERC runs right through areas of King County where there will be many large construction projects, it makes sense to use rail cars to move excavated material out of and some bulk construction materials in to those project areas. In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of construction materials. Sole use of an already overburdened highway system, which is one of the worst in the country, via truck transportation is neither efficient, cost-effective nor particularly safe.

In conclusion, even though we are a trucking company, we see the benefit to all of us of maintaining a functioning, thriving railroad through the east side of both King and Snohomish Counties, and keeping our communities connected by rail to the rest of the country. We also support the multiple uses of this public corridor, like trails, or some form of passenger rail services, that so many other agencies are planning. The opportunity to utilize the Eastside Rail Corridor as a viable option for the movement of construction materials is very advantageous for this region of the Puget Sound We look forward to a strong future for economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will help CalPortland, Ballard Terminal Railroad, Eastside Community Rail and others provide service to the community in the most efficient manner possible. The resumption of rail service to Bellevue would also promote the responsible reduction of truck exhaust emissions and wear to the region's roads.

Thank you for considering our position to reactivate the rail corridor for our business and for the community

Very truly yours,

Bobby Wolford

Owner
Wolford Trucking and Demolition

Exhibit C

CALPORTLAND

March 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

Dear Ms Brown:

I would like to stress the importance of restoring rail service to the rail line segment between Woodinville and Bellevue, Washington via a rail line that is currently railbanked.

CalPortland is a major building materials and construction/services provider to the Western United States and Canada. We provide construction services and materials to a multitude of projects in the State of Washington generally, and in the area of Seattle, Washington, specifically.

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years which will necessitate the import of hundreds of thousands of cubic yards of construction aggregate materials to produce buildings, developments and roadways that are in strict accordance with all specifications for engineering parameters. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons Additionally, we anticipate ongoing projects in the future, on a regular basis.

In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient or very cost-effective.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will allow

Skrivan
EXHIBIT NO. 50
5-28-13 P. HAMILTON, RPR

CALPORTLAND

CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

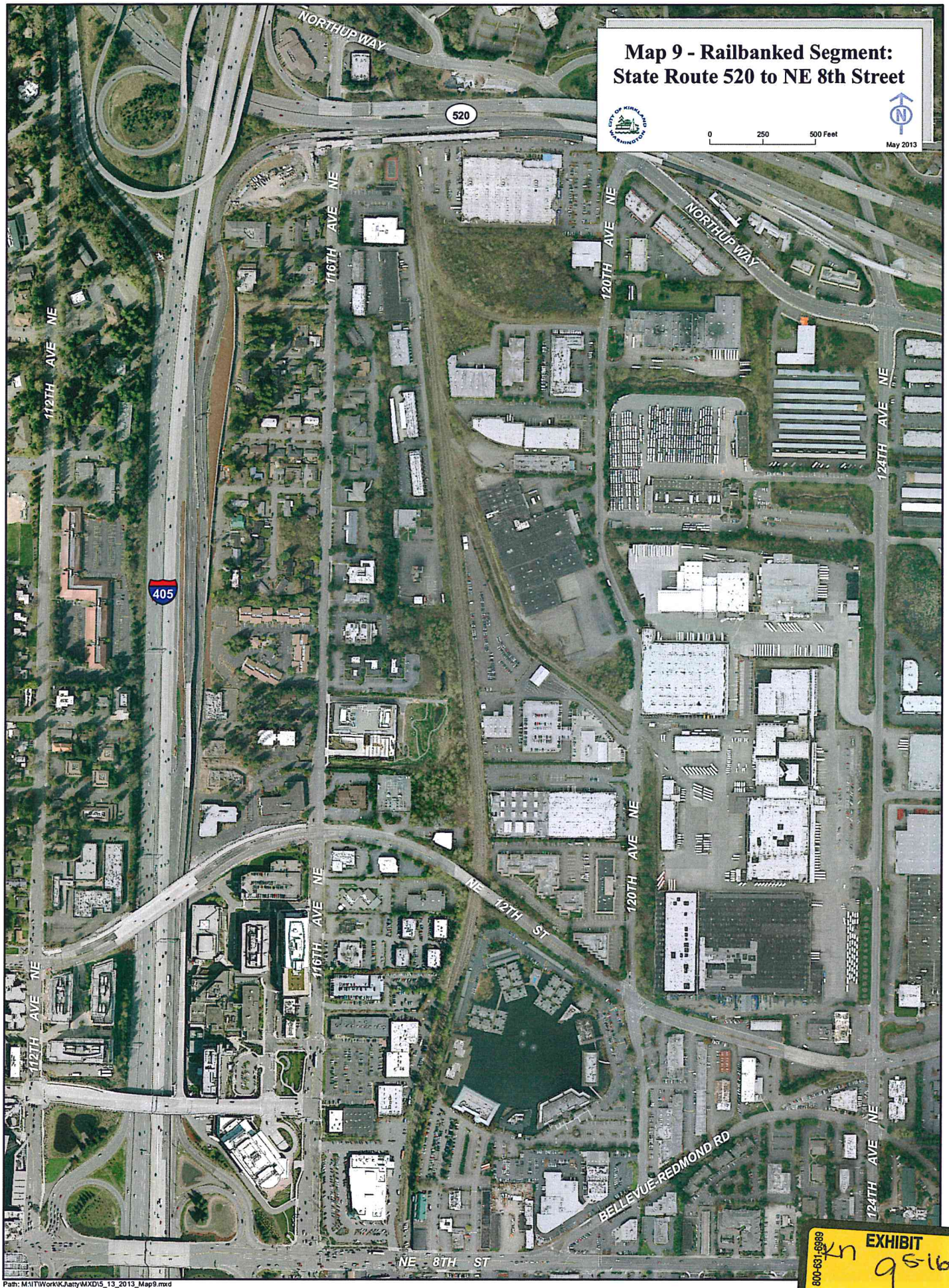


EXHIBIT
9 5-16-13
Wolford
PENGAD 800-631-6989

Michael Skrivan

From: Doug Engle [dengle76@comcast.net]
Sent: Monday, March 25, 2013 5:13 PM
To: Michael Skrivan
Subject: Fwd: Ballard
Attachments: 3-25-13 CalPortland Letter to Cynthia Brown.doc; ATT00001.htm

Mike,

Will you please take a look at this letter back from our attorney.
Can you sign off on this ASAP, please?

Skrivan
EXHIBIT NO. 51
5-28-13
P. HAMILTON, RPR

1

CAL006

CALPORTLAND

March 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

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In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient, cost-effective nor particularly safe.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the

market with the necessary construction material needs by allowing rail to be utilized will allow CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

BEFORE THE SURFACE TRANSPORTATION BOARD

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

(Contains Confidential Testimony)

Deposition Upon Oral Examination Of

MICHAEL R. SKRIVAN

May 28, 2013

300 Fifth Avenue, 1st Floor Conference Room

Seattle, Washington

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

29906/No. 2704

into the marketplace. And when you talk with contractors and truckers numbers start to be carried out, and part of my job is to forecast out for the future.

And so these are kind of what I was -- you know, I was kind of in the back of my mind, I've got to be ready for these kind of volumes coming up not -- maybe not this year or the next year, but in the next years. It's going to be coming down the road. That's just what I do. We talk. We try and stay abreast of the market and understand what the potential is, because by the time a job comes out and it's written on Builders Exchange, I'm dead if I don't know about it before that.

Q. Do you know why Mr. Engle wanted this letter from you?

A. Not exactly. He mentioned he had a meeting with City of Kirkland. He had a hearing or something with the City of Kirkland, so that was kind of what I thought it was for, showing his support.

Q. At the time you wrote this letter, were you still thinking primarily of being able to sell aggregate to Eastside Community Rail for use on the rail line, or were you thinking of other uses of the rail?

A. Oh, absolutely, that's my primary focus was to -- at least that was more finite to me. But like I mentioned earlier, I think kind of in the abstract I'm thinking, Okay, if I can make a friend that has a service that I can utilize that my competitors don't, that had my wheels turning also.

Q. At the time you wrote the March 19 letter, did you have any contracts to either remove any of the spoils from any of the projects you mentioned, the I-405 or SR520 projects, the excavated materials that are mentioned in the letter?

A. No contracts, no.

Q. Did you consider this letter to be a request from Eastside Community Rail to provide rail service to you?

A. No. Not a request to provide service, no.

Q. At the time you wrote this letter, did you, CalPortland, have a need for Eastside Community Rail to provide rail service for you?

MR. MONTGOMERY: Object to the form of the question.

A. Define "need."

Q. Did you need something moved by rail, you know, in the immediate future, foreseeable future looking forward from March 19?

MR. STONE: Object to the form of that question.

A. I see potential for my business, not -- I get my material where it needs to go now. Having another venue, another vehicle to do that, is a benefit to me.

Q. I understand. My only question was you didn't have a need for something to get moved right then when you wrote this letter on March 19.

MR. STONE: Object to the form of the question.

A. No, I didn't.

Q. Okay. You mentioned the February 1 meeting and then this letter, Exhibit-49, is dated March 19. Did you have any communications with Mr. Engle between February 1 and March 19?

A. Yeah. There was some email -- well, I went on vacation for one, and then when I got back from vacation we had some communication.

Q. What was the nature of that?

A. It was an email request -- not a request. He sent me a letter.

MR. STONE: He's talking about before, so between February 1 and March 19.

A. No.

Q. Before you wrote this, did you have any

communication?

A. No, I did not. I'm sorry.

Q. I think you testified he asked you to write the March 19 letter.

A. Correct. Asked me if I would.

Q. Right. Do you remember about how far in advance of March 19 he made that request?

A. I do not.

Q. Do you recall the conversation?

A. It would have been fairly close to -- I don't let things hang very long, so it would have probably been within a week or so, and I believe it was like a one-minute phone call, and it could have been a voicemail. I just don't really recall exactly. I knew he would like a letter.

Q. Other than that one communication, do you recall any other communication between you and Mr. Engle or anyone else on behalf of Eastside Community Rail between February 1 and March 19?

A. I think I asked him to define really what he wanted.

Q. Was that in a phone call or by phone?

A. I don't recall.

Q. Was it a meeting?

A. No, it wouldn't have been a meeting. I only

met with him face to face the once.
Q. Okay.
A. I don't recall meeting him any other time than the one time.
MR. PILSK: Why don't we mark this.
(Exhibit-50 marked.)
Q. Handing you what we've marked as Exhibit-50, and this is a letter dated March 25th, 2013. It appears to be from you, and this is to a Ms. Cynthia Brown at the Surface Transportation Board. Do you recognize this letter?
A. I do.
Q. Is that your signature on the second page?
A. It is.
Q. Were you asked to write this letter?
A. This was a letter -- I sent my letter to Doug.
Q. When you say "my letter," you mean the March 19 letter we marked as Exhibit-49?
A. Yes, the March 19 letter. When I went on vacation, when I came back, this letter was forwarded to me via email. Asked me to review and see if it met my satisfaction.
Q. Okay. Let's mark this as 51.

(Exhibit-51 marked.)
Q. Take a look at what I've marked as Exhibit-51. This is an email appears to be from Mr. Engle to you dated March 25th, and attached to it is a draft of what looks like the letter to Ms. Brown. Is this the email you just mentioned?
A. Correct.
Q. Is this the first time you'd seen, or you had heard of a request that you provide a letter after the March 19 letter?
A. Yes.
MR. STONE: Just note my objection. Form to the last question.
Q. No phone call or anything from Mr. Engle before this email?
A. Like I said, I was on vacation, so I don't think so. I don't recall.
Q. Prior to receiving this email, Exhibit-51, had you drafted, made a draft of the letter that's attached?
A. I don't understand the question.
Q. In other words, this is a -- Mr. Engle says, "look at this letter back from our attorney." Had you provided a draft of a letter either to Mr. Engle or to Mr. Engle's attorney before receiving this March 25th

email?
A. Just the March 19th letter.
Q. Did you know when you received this email who the attorney was or what attorney he was referring to?
A. I do not. I did not.
Q. What did you do when you received this email?
A. It was first day back and he had "ASAP" on it, so I reviewed it quickly. I did notice a couple of words that I wasn't comfortable with that I amended from the original letter, which is in the fourth paragraph, the last three words. It says "use of an already overburdened highway system via truck transportation is neither efficient," and I inserted "nor cost effective period," or "very cost effective period," and struck "nor particularly safe," because I don't agree that moving materials via truck is not particularly safe.
(Exhibit-52 marked.)
Q. Handing you what's been marked Exhibit-52, this is an email, top email in the chain from you to Mr. Engle dated March 26, and it appears, correct me if I'm wrong, this is transmitting your comments on the letter back to Mr. Engle.
A. Correct.
Q. You said and the text of the email says, "I

made one small change, Doug." You wrote that?
A. Yes, I did.
Q. And that was the only change you made to the letter?
A. That is the only change I made. I reviewed it very quickly.
Q. Between receiving the letter when you got back from vacation on March 25th and sending this out on March 26th, did you have any conversations with Mr. Engle about the letter?
A. I did not.
Q. Did you talk to the lawyer that Mr. Engle mentioned?
A. I did not.
Q. Did you ever talk to a lawyer who either you understood to be representing Mr. Engle or Eastside Community Rail?
A. Not that I recall. I think I had a voicemail, but I did not speak to anybody.
Q. Do you recall who that was from?
A. I do not.
Q. Or when you received that? Was it waiting for you when you got back --
A. It wasn't around this letter. The only other communication with an attorney from them was around

the time when Hunter and I were talking.
Q. About this deposition?
A. Yeah.
Q. Putting aside the deposition, you didn't talk to any lawyers representing Eastside Community Rail or Ballard about your letter to the STB?
A. No, I did not.
Q. Now, at the time you signed the March 25th letter, sort of the same series of questions I had about the March 19 letter: Did you consider this letter to be a request to Eastside Community Rail or to Ballard to provide rail service to CalPortland?
MR. STONE: Object to the form of the question.
A. Could you say that again, so I can listen.
Q. Sure. Did you consider this March 25th letter to be a request to Eastside Community Rail or to Ballard Rail to provide freight rail service to CalPortland?
MR. STONE: Object to the form of the question.
A. No, I did not.
Q. At the time that you wrote this letter, did you have an immediate, within the next three weeks, need for Eastside Rail or Ballard Rail to transport

material by rail?
A. No, I did not.
Q. Again, the March 25th letter also references projects -- I'm looking at the very end of the third paragraph. "We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons." Do you see that in the third paragraph?
A. Yes.
Q. Did CalPortland have any contracts for those jobs at the time you wrote the letter?
A. No contracts, no.
Q. Had they been bid yet? Had you submitted any bids?
A. We submitted a bid on a project on 405, but we had not been informed of any involvement.
Q. I'm sorry. When you say "not been informed of any involvement," what do you mean?
A. You put out a bid, you don't always get it, and you may not know till the project is actually a couple of weeks from taking delivery. A lot of contractors keep their cards very close to the vest.
Q. I see. You submitted it but didn't know whether it had been accepted or rejected yet.
A. No.
Q. Did your bids include an assumption that

CalPortland would use rail to deliver material?
A. Not in my bid, no.
Q. Okay. Did you discuss this March 25th letter with anyone else at CalPortland?
A. I did not.
Q. Now, the letter says that you were targeting these projects on I-405 and SR520 for the 2013 and 2014 construction seasons. When would you have to know that freight rail service was available to be able to take advantage of freight rail to serve those projects if you got the work; in other words, how much lead time would you need that there was freight service to be had in order to take advantage of it?
A. That's hard to say, because it depends on what kind of communication I get from a customer on his needs or wants. Sometimes I get six months' advanced notice, sometimes I get six hours. I mean, it's not an exact science.
Q. Okay. Has CalPortland signed any kind of a contract or agreement with Eastside Community Rail?
A. We have not.
Q. Any kind of contract or agreement with Ballard Terminal?
A. We had a material supply agreement with Ballard.

Q. What was that for?
A. To sell them ballast material for their rail needs. In order to be able to move forward with a formal quote, I had GNP set up with a credit account. So we submitted a credit application, and in order to get the credit application approved, we had to see that they were going to purchase some material from us, so I had them sign a material supply agreement.
Q. Who was it between? CalPortland and GNP?
A. GNP and Thomas Payne.
Q. My question was whether you had any contract with Eastside Community Rail.
A. No.
Q. Or with Ballard?
A. No.
Q. And the contract with GNP, about when was that? When did you enter into that?
A. I don't recall. If I had to guess, it would be in the 2010 range. I took over as aggregate sales manager in approximately January of 2010, so I wouldn't have been in a position to discuss any of that, but it would have been in that calendar year probably.
Q. Other than the I-405 and SR520 projects that are mentioned in the March 25th letter, are there any

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

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

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

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

A. I never asked Eastside Community Rail to look at installing a rail spur. I asked them to see where one would be that we could access, and the information I got back was the cost to put one on my site. I didn't request that information.
Q. Fair enough.
A. My role as sales manager for a construction material company, you are not only selling your product, you are selling information to your customer base, and finding a site that dovetails with my primary transportation option, which is barging, and the access to rail interests me. It gives me an option I haven't had.
The site was not available to me previously. Now that it's open, it affords me another conceptual option that I can bring to the table and keep information tightly, and that's why I'm so protective of it is, because this is something that I could bring to the table that my competitors couldn't and brings me more competitive in that market, because I can move it via barge, economically I can get it onto a rail, and I can -- up in the Everett market it's difficult to be competitive, because there's so many other land-based options that can move it by truck. If I can bring something new to the table, it

makes me a hero in my customers' eyes.
Q. As of today, those opportunities remain conceptual; is that correct?
A. That's correct.
Q. You have no -- there's no contracts to deliver material from this new facility, this potential facility in Everett, by rail to any customers?
A. No, we do not.
Q. Why don't we switch topics and take this out of the confidential designation.
(End of confidential testimony.)
* * *

Q. Turning now to the section of the line itself, the railroad line itself between Woodinville and Bellevue. Does CalPortland own any property along the rail line?
A. No, we do not, that I'm aware of.
Q. Let me take a minute.
(Exhibit-56 marked.)
Q. I've handed you what we've marked as Exhibit-56. I'll represent to you that the section of rail line that's highlighted or bounded in red is approximately the section of line we're talking about here between Woodinville and Bellevue on which Ballard is trying to reinstate service. Have you seen a map of that line before?
A. Just from articles in the newspapers depicting it.
Q. Are you familiar with this rail corridor at all?
A. Not with Eastside Rail, but I have been in -- there's -- I don't know want to call it abandoned because I think there's still some movement, but there is a grossly underutilized rail switchyard across I-405 in Bellevue that I have looked at.
Q. Do you know approximately where that is?
A. Just south of the Home Depot where 520 comes

across. You can see the Home Depot down, I believe --
Q. Would you put a red X by it.
A. I believe it's right in this area here (indicating).
Q. Right where 520, 520 and 405?
A. Right.
Q. When you say "rail switchyard," what does that mean?
A. I don't know. That's my interpretation of it. I'm not a rail expert.
Q. That's why I'm asking what do you think it is?
A. There's a lot of warehouses in there that are not being used and there's a lot of rail lines going in and out of and there's a lot of different switches.
Q. Why do you say it's grossly underused?
A. A lot of abandoned warehouses and property in there, so it looks like there could be some opportunities.
Q. Looking at this map of the line, does this help you determine whether or not to your knowledge CalPortland owns any property along the line?
A. It really doesn't help me, because I'm not involved in that part of our business. I just don't know land.

Q. I'm going to follow up with the same kind of question, but are you aware of any land that CalPortland leases along the rail line?
A. I am not.
Q. Or any agreements to make use of any land along the line?
A. I am not.
Q. Okay. In connection with your consideration of what Eastside Rail is proposing, do you know if you or anyone else at CalPortland has looked at locations where aggregate or other materials could be off-loaded from a train onto trucks for delivery to a customer?
MR. STONE: Object to the form of the question.
Q. Let me back up and ask you this: One of the things you said was that the rail could provide an opportunity for CalPortland to sell aggregate.
A. Correct.
Q. I assume that the aggregate would be transported from one of CalPortland's facility down the line to someplace, and then I assume that it would have to be removed from railcars to be delivered to the customer's site. Is that a fair assumption?
A. Yes.
Q. My question is whether you or anyone at

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

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

paragraph of that email, "We should have talked about this before, but we didn't," mentions "Ballard, ECRR and Wolford have all put money into the STB effort. We have two funded sources of money," et cetera, and then the last line, "Per the prior ECRR Legal Update email, is there an option to have CalPortland invest or providing a loan into making the reactivation happen?" And then your email in response says, "I will inquire, but I would be surprised if approved with the current economic conditions." I assume your response is in reference to the request to make a loan or investment; is that correct?
A. That's correct.
Q. Did you make that inquiry?
A. I did not.
Q. Do you have a sense of if you asked what the answer would be?
MR. MONTGOMERY: Objection. Speculation.
A. No, I really don't know what the response would be. It's my responsibility to filter that kind of information, and --
Q. You didn't think it was worth passing on?
A. No.
Q. Okay. Has there been any other follow-up discussions between you and Mr. Engle about the

seven-man rock like the size of this table. I just don't have a deposit that makes that. But everything smaller than that we do.

Q. What you would ship I suppose would depend on whether someone orders it?

A. That's correct.

Q. As of now you have no contracts that would require you to deliver any of that material by rail along the Eastside Community Rail lines; is that correct?

A. That's correct.

Q. If you can give me a minute, let me double-check things, but I think we're almost done.

(Discussion off record.)

Q. I've got nothing further remember. Thank you.

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

BY MR. MONTGOMERY:

Q. I'll ask you a few questions, if I may.

My name is Tom Montgomery and I represent Ballard Terminal Railroad.

Mr. Skrivan, how are you today?

A. Good. How are you?

Q. Fine. Just be aware the court reporter to your left is going to be trying --

A. And I talk soft.

Q. If you would be sure to belt it out, and I will try not to take much of your time.

Could you give me a general idea of your background in rocks? You personally.

A. Short?

Q. As long as you want it to be.

A. I started out in the construction business about 25 years ago with an asphalt contractor, and I was brought in because of my chemical background to operate a petroleum-contaminated soil recycling. That is my introduction as to how to handle material. We were taking material out of the ground from underground storage tanks; prep it for processing to remove the hydrocarbons from it. That's what I did for them. That was my introduction into the construction world.

That facility was purchased, along with me, and I stayed in that business for a couple years with the new company until we parted ways. We had a different idea of how to get paid, let's put it that way, as many partnerships dissolve from.

From that point I went into -- prior to CalPortland I was in the fuel sales business, and a good contractor friend and customer of mine that I

sold fuel to that operated a fleet of trucks, when a representative spot came open in Glacier Northwest, CalPortland's area here at DuPont, my contractor customer called me and said, You need to get ahold of these guys. You would be a perfect fit for that.

I made that call and two weeks later I had a new office in DuPont, and then I've been with CalPortland -- I'm bad with dates, but just ask my wife. I think this will be 13 years coming up. I'm either on my thirteenth year or 13 in December.

Q. Where is DuPont?

A. South of Tacoma between Tacoma and Olympia.

Q. You have been pushing rock, for lack of a better term, for about 13 years?

A. I started out as aggregate salesman at DuPont for about two and a half years. Because of my involvement in the fuel sales, I was on a committee for our full corporation, which is Washington, Oregon, California, and Nevada, and Arizona, on how -- we were looking at how to be a smarter company purchasing bulk products, fuel being a huge component of our business, and because of my intimate knowledge of how to purchase and how to sell fuel, I brought a plan together how we could save a lot of money, and I was brought to the wrong focus, I guess, from my

perspective, and so I was suggested that maybe I should take over a different division, so I was brought in to be Redi-Mix sales -- or a Redi-Mix dispatch manager and fleet manager, so the distribution of our Redi-Mix throughout Washington.

So you had under my control the dispatch, daily dispatchers, as well as at one point I think we had 188 Teamsters throughout Western Washington, and so that's my involvement with the labor end of this type of work dealing with different disciplinary actions and such.

And then in approximately 2009 we had some reduction in force, and, you know, the market was getting slower and we were consolidating different projects, different job titles and functions, and we reduced the sales staff of the aggregate sales, and then the current aggregate sales manager at that time had announced he was going to be retiring, so they brought me back into the aggregate sales, and because I've had management experience, it was a natural fit.

Q. When did you first start aggregate sales at all, some facet of aggregate sales, here?

A. My original 13 years.

Q. Have you always worked in the Northwest with regard to aggregate sales?

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

about spur, requiring use of a spur in one fashion or another. Is having a spur a requirement for CalPortland to use the Eastside Rail quarter that we've been here talking about today from Woodinville to Bellevue?
MR. PILSK: Objection. Foundation. Vague.
Q. Let me rephrase.
A. Yeah.
Q. Is a spur required for you to supply aggregate by rail down to the Woodinville-to-Bellevue line, assuming that it were in operation?
MR. PILSK: Same objection.
A. It would not be a requirement.
Q. It would be an advantage somehow. You don't have to have that; is that correct?
A. Correct. I deliver to my market now and I don't have rail.
Q. Exhibit-50, the letter that you wrote to Cynthia Brown, do you stand by this letter today?
A. Can you clarify that question?
Q. Yes. Do you still support rail service from Woodinville to Bellevue?
MR. PILSK: Objection. Vague.
Q. Go ahead, please.

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

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

S I G N A T U R E

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

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

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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

Michael Skrivan

From: Michael Skrivan
Sent: Wednesday, May 01, 2013 8:58 AM
To: 'Doug Engle'
Subject: RE: Potential rail spur for Everett aggregate yard

Doug, we are exploring potential alternate offloading locations that currently have a rail siding, the cost of a spur into the Everett facility at this time would be prohibitive. We think there could be a nearby site that may be an option, we are checking it out this week. Please call me regarding the request from the Kirkland city attorney for me to give a deposition regarding the letter of support that I provided to you. He is asking me to make four hours available, that is not going to work out well for me.

Michael Skrivan
Aggregate Sales Manager
Materials Group – Northwest Division
Glacier Northwest, Inc., DBA CalPortland Company
Mobile: 253-380-3720
mskrivan@calportland.com

CALPORTLAND

From: Doug Engle [mailto:Doug.Engle@escrail.org]
Sent: Tuesday, April 30, 2013 2:45 PM
To: Michael Skrivan
Cc: mmiddling@callportland.com; Ernest F. Wilson
Subject: Re: Potential rail spur for Everett aggregate yard

Mike,

The most important message is that CalPortland MUST initiate the spur request with BNSF.
We are happy to support the effort in any way we can.
Please keep me posted as we want your business!!

Cheers!

Doug
mobile: +1.425.891.4223

On 26 Apr 13, at 5:16 PM, Ernest F. Wilson <ernie.wilson@EsCRail.org> wrote:

Mike and Mike-
First, Doug and I would like to thank you once again for arranging for us to have a look at your operations in Everett. It was very useful to see it in person, and to be able to check out the surrounding area. We are sending this report to provide an overview of the process of establishing a new rail spur for your yard.

Skrivan
EXHIBIT NO. 53
5-28-13 P. HAMILTON, RPR

CAL023

We had a meeting with various BNSF managers in Seattle last week. We found that the railroad is open to providing service to your yard. We met Bonnie VanSickle, who is in charge of sales of 'Industrial Products', as they classify business opportunities like yours. There is another person who might need to be involved, Reeve Geary. He works in Economic Development, and Bonnie said she would brief him on your interest in gaining rail service to your yard. They also mentioned that there is already an ongoing business relationship between BNSF and CP, but did not know the individuals involved on either side. We can provide you the necessary contact information.

From an engineering perspective, I think it is feasible to construct a spur track from BNSF's north-south main line over to your yard, although there are challenges. In no particular order, here's what I see:

1. Proximity to Snohomish River RR bridge; we'll need to find out the minimum required distance between the bridge and a new turnout (switch);
2. Difference in elevation between BNSF rails and your yard and how to transition with minimum track grade;
3. Probable need for an overpass structure (and engineered fill) to cross over the street on the west side of SR 529;
4. Minimum clearances and other technical requirements for crossing under existing SR 529 bridge(s); and,
5. Potential wetlands issues.

The proposed route appears to cross only three other ownerships: BNSF Railway, State of Washington DOT (SR 529), and City of Everett (Ross Road). I do not know how open the two governmental entities are to railroad easements across their Rights-of-Way. BNSF would install the new turnout and take the track past their 'clearance point', say 15 feet or so east of their near rail. They might have to grant CP an easement or license to cross the balance of their 100' R-o-W, although it's more likely that there would just be some sort of operating agreement between the two companies, since BNSF would provide the car switching service.

So, it looks like it's now up to CalPortland to analyze the costs and benefits in order to determine if you want to proceed with preliminary planning for a spur. As a first rough estimate, I'd say this spur would cost in the neighborhood of $300-400K to complete. As you do your analysis, keep in mind that there could be inbound material shipments to your yard as well as outbound. For instance, we recently learned that Snohomish County is going to be reconfiguring the dikes on the easterly side of Smith Island, and will need tens of thousands of yards of suitable fill material for constructing the new dikes. Some of that dirt might well be excavation spoils from Bellevue, which could conceivably be delivered by rail to the island for a short truck haul to the dike sites.

I hope that you find this report helpful. Eastside Community Rail is not in a position to offer Civil Engineering services directly, but we would be interested in serving as your project managers/owners representatives to facilitate design and coordinate other pre-construction activities. Please let us know if you have questions on this report, or wish to discuss the spur idea further. I do have a few pictures of the vicinity that I can send, too, if you're interested.

Thank you for considering the possibility of becoming a shipper on our rail line. We appreciate your support of Eastside Community Rail.
Regards,

--
Ernie

Ernest F. Wilson, PLS
Eastside Community Rail
Right-of-Way/Development

425-869-8899 C 509-430-9350

CAL025

CITY OF KIRKLAND
INFORMATION FOR BIDDERS

Bidders must bid on all items contained in the proposal.

The omission or deletion of any bid item will be considered non-responsive and shall be cause for rejection of the bid.

Submit your proposal on the Bid Proposal and other forms which are enclosed, or make a copy of the required forms and submit these documents.

The following forms must be executed in full *with* submittal of the bid:

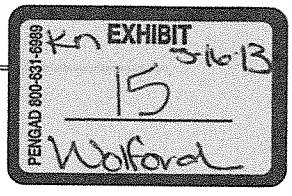
1. BIDDER RESPONSIBILITY CRITERIA CHECKLIST
2. SUBCONTRACTOR RESPONSIBILITY CRITERIA CHECKLIST
3. BID PROPOSAL
4. BID SCHEDULE: The lump sum or unit prices must be shown in the spaces provided on the bid schedule. Show total bid price in figures on the Proposal.

   The Proposal form must be completed in full, signed and dated.
5. BID BOND: A surety issued bid bond must be executed by the bidder and its surety company. The amount of the bid bond shall be not less than the greater of $5,000 or five percent (5%) of the total amount bid for Schedule A only and may be shown in dollars or on a percentage basis. (A cashier's or certified check payable to the City of Kirkland and issued for an amount not less than the greater of $5,000 or 5% of the total bid for Schedule A may be submitted in lieu of a bid bond.)
6. NONCOLLUSION AFFIDAVIT - Notarized
7. STATEMENT OF BIDDER'S QUALIFICATIONS: This form must be filled in and signed. The owner reserves the right to check all statements and to judge the adequacy of the bidder's qualifications.
8. SUBCONTRACTOR IDENTIFICATION LIST: This form must be completed for HVAC, plumbing, and electrical subcontractors if the bid amount exceeds $1,000,000.

The following forms are to be executed *after* the contract is awarded:

1. PUBLIC WORKS CONTRACT: This agreement is to be executed by the successful bidder.
2. PERFORMANCE AND PAYMENT BOND: To be executed by the successful bidder and its surety company. The Performance and Payment Bond applies to Schedule A of the Bid Schedule only.
3. RAIL SYSTEM AND OTM SALVAGE VALUE SECURITY: To be executed by the successful bidder based on bidders selection of an appropriate option acceptable to the City. Such security to be in the form of a cash deposit, Irrevocable Letter of Credit, Payment Bond, or other acceptable instrument guaranteeing payment of any credit to the City in the amount of the Schedule B Total as specified on the Bid Schedule.
4. CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF STATUTORY RETAINED PERCENTAGE and RETAINED PERCENTAGE ESCROW AGREEMENT

   To be executed by the successful bidder based on bidder's selection of option.
5. CERTIFICATES OF INSURANCE: To be executed by the successful bidder and by an acceptable insurance company. The City of Kirkland must be named as an additional insured.
6. STATEMENT(S) OF INTENT TO PAY PREVAILING WAGES: Affidavit certifying all employees of Contractor and Subcontractor shall be paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Washington State Department of Labor and Industries.



Page 7 Information for Bidders
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

CITY OF KIRKLAND
BIDDER RESPONSIBILITY CRITERIA

It is the intent of City to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required by the City to submit documentation demonstrating compliance with the criteria. The bidder must:

☑ 1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of bid submittal;

☑ 2. Have a current Washington Unified Business Identifier (UBI) number;

☑ 3. Have:

a. Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;

b. A Washington Employment Security Department number, as required in Title 50 RCW;

c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;

☑ 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

☑ 5. Meet the supplemental bidder qualification requirements as specified in Special Provision Section 1-02.1 Qualifications of Bidder.

Page 8 Bidder Responsibility Criteria
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

CITY OF KIRKLAND
SUBCONTRACTOR RESPONSIBILITY CRITERIA

☑ A. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

☑ B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

☑ 1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;

☑ 2. Have a current Washington Unified Business Identifier (UBI) number;

☑ 3. Have:

a) Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RC

b) A Washington Employment Security Department number, as required in Title 50 RCW;

c) A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;

d) An electrical contractor license, if required by Chapter 19.28 RCW;

e) An elevator contractor license, if required by Chapter 70.87 RCW.

☑ 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

Page 9 Subcontractor Responsibility Criteria
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CITY OF KIRKLAND
BID PROPOSAL

Cross Kirkland Corridor Rail Removal Project

Job No. 15-13-PW

To: Director of Finance
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this proposal are those named herein; that this proposal is in all respects fair and without fraud; that it is made without collusion with any official or employee of the City of Kirkland, hereinafter called the Owner; and that the proposal is made without any connection or collusion with any person making another proposal on this contract.

The bidder further declares that it has carefully examined the contract documents for the construction of the project; that it has personally inspected the site; that it has satisfied itself as to the quantities involved, including materials and equipment and conditions of work involved, including the fact that the description of the quantities of work materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the contract documents; and that this proposal is made according to the provisions and under the terms of the contract documents, which documents are hereby made a part of this proposal.

The bidder further agrees that it has exercised its own judgment regarding the interpretation of subsurface information and has utilized all data which it believes pertinent from the engineer-architect, owner, and other sources in arriving at its conclusions.

The bidder agrees to hold its bid proposal open for 45 days after the actual date of bid opening and to accept the provisions of the Instructions to Bidders regarding disposition of bid bond.

The bidder agrees that if this proposal is accepted, it will, within ten (10) calendar days after notification of acceptance, execute the contract with the Owner in the form of contract included in the contract documents, and will, at the time of execution of the contract, deliver to the Owner the Performance and Payment Bond, the Rail System and OTM Salvage Value Security, and all Certificates of Insurance required therein, and will, to the extent of its proposals, furnish all machinery, tools, apparatus, and other means of construction and do the work in the manner, in the time, and according to the methods as specified in the contract documents and required by the engineer or other project manager designated thereunder.

The bidder further agrees, if awarded the contract to complete the construction within the time specified in Section 1-08.5 of the Special Provisions.

In the event the bidder is awarded the contract and shall fail to complete the work within the time limit or extended time limit agreed upon as more particularly set forth in the contract documents, liquidated damages shall be paid to the Owner per the specifications contained in the contract documents.

The bidder further proposes to accept as full payment for the work proposed herein, the amounts computed under the provisions of the contract documents and based upon the lump sum and unit price amounts entered by the bidder for the various bid items included in the Bid Schedule. The bidder further agrees the lump sum and unit prices entered for the various bid items included in the Bid Schedule include all use taxes, overhead, profit, bond premiums, insurance premiums and all other miscellaneous and incidental expenses as well as all costs of materials, labor, tools and equipment required to perform and complete the work.

Page 10 Bid Proposal
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Basis of Award shall be the lowest responsible Bidder based on the lowest BASE BID price shown on the BID SCHEDULE, consisting of Schedule A plus Schedule B without Alternative 1.

If the BASE BID results in a credit to the Owner, the BASE BID shall be shown as a negative number. The undersigned bids and agrees to complete all construction of the **Cross Kirkland Corridor Rail Removal Project** for the following:

BASE BID *(in figures)*: $ 401,877.00

If the Alternative 1 Total results in a credit to the Owner, the Alternative 1 Total shall be shown as a negative number. Alternative 1 may or may not be included in the project.

Alternative 1 Total *(in figures)*: $ 5,000.00

Receipt of Addenda No(s). _____ is hereby acknowledged.

Bobby Wolford Trucking - Demo.
CONTRACTOR (Firm Name)

Robert Wolford
By

Name and title of person signing

Corporation
(Indicate whether Contractor is Partnership, Corporation, or Sole Proprietorship)

3-15-13
Date

BOBBYWT088CC
Washington State Contractor's Registration Number

421-559-00
Contractor's Industrial Insurance Account Number

603246-007
Employment Security Identification Number

600-620-859
Uniform Business Identification (UBI) Number

Contractor's Address:
22014 W. Bostian Rd

Woodinville, WA 98072

425-481-1800
Telephone Number

425-486-6613
Fax Number

jack@wolfordtrucking.com
EMAIL

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** Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for **Cross Kirkland Corridor Rail Removal Project.**

CITY OF KIRKLAND - BID SCHEDULE

Cross Kirkland Corridor Rail Removal Project: Job No. 15-13-PW

Note: Unit prices for all items, all extensions, and the total amount of the bid must be shown. All entries must be typed or entered in ink.

SCHEDULE A – RAIL SYSTEM & OTM REMOVAL COST						
Bid Item	Item	Spec Section	Qty	Unit	Unit Price	Amount
101	Minor Change	1-04	1	EQ. ADJ.	$15,000	$15,000
102	SPCC Plan	1-07.15	1	LS	$ 500.	$ 500.
103	Project Temporary Traffic Control	1-10	1	LS	$ 1000.	$ 1000.
104	Pedestrian Traffic Control	1-10	1	LS	$ 1000.	$ 1000.
105	Grade Ballast	2-05	1	LS	$ 5000.	$ 5000.
106	Inlet Protection	8-01	18	EA	$ 50.	$ 900.
107	Stabilized Construction Entrance	8-01	500	SY	$ 5.	$ 2500.
108	Wattle	8-01	33,470	LF	$ .10	$ 3347.
109	Erosion/Water Pollution Control	8-01	EST	FA	$5,000	$5,000
110	Seeding, Fertilizing, and Mulching	8-01	1	LS	$ 1500.	$ 1500.
111	High Visibility Fence	8-01	2,500	LF	$ 1.	$ 2500.
112	Remove Rail System & OTM	8-26	1	LS	$413630.	$ 413630.
					Schedule A Total	$ 451877.
SCHEDULE B – RAIL SYSTEM & OTM SALVAGE VALUE TO CITY						
201	Rail System & OTM Salvage Value –City Share (See Note 1 below)	8-26	1	EQ. ADJ.	$	$ -50000.
					Schedule B Total (See Note 1 below)	$ -50000.
					BASE BID (Schedule A + Schedule B)	$ 401877.

Note 1: The Schedule B Total is expected to be a negative number, representing monies owed to the City by the Contractor.

ALTERNATE 1						
A1	Extend Physical Completion Date to August 2, 2013 (See Note 2 below)		1	EQ. ADJ.	$	$ -5000.
					Alternative 1 Total (See Note 2 below)	$ -5000.

Note 2: A positive Amount indicates monies owed to the Contractor by the City. A negative Amount indicates monies owed to the City by the Contractor. It is anticipated that extending the Contract time will benefit the Contractor, resulting in the Alternative 1 Total being a negative number.

Page 12 Bid Schedule
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CITY OF KIRKLAND
NONCOLLUSION AFFIDAVIT

Cross Kirkland Corridor Rail Removal Project
Job No. 15-13-PW

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

The undersigned, being duly sworn, on oath deposes and says that the person(s), firm, association, partnership or corporation herein named has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

Wolfard Trucking & Demolition
Firm Name

Authorized Signature

Robert Wolfard
Type Name

President
Title

SUBSCRIBED AND SWORN to before me this 15th day of March, 2013

Barbara K. Stevenson
Notary Public in and for the State of Washington

Residing at Snohomish, WA

My Commission Expires 12/31/14

BARBARA K STEVENSON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12/31/2014

NOTICE TO ALL BIDDERS
To report bid rigging activities call: 1-800-424-9071
The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., ET. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Page 13 Noncollusion Affidavit
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

CITY OF KIRKLAND
STATEMENT OF BIDDER'S QUALIFICATIONS

Contractor Name: Bobby Wolford Trucking Contact: Jack Miller

Business Address: 22014 W. Bostian Rd, Woodinville, WA 98072

Business phone: 425-481-1800 Fax: 425-486-6613

Number of years the Contractor has been engaged in the construction business under the present firm name: 40

Describe the general character of work performed by your company: trucking & demolition

List five projects of a similar nature which Contractor has completed within the last 10 years. Include contract amount and contact information for references:

Project Name	Amount	Owner/Agency	Contact	Phone	Year Completed
Demo of Former NSD Bus Barn	350,000.	City of Bothell	Nduta Mwithi	425-806-6829	11/19/10
Mill Crk. Campus	108,000	Tastad Const.	Neil	360-760-9221	8/8/12
Azi Lee-Ph 2	48,000	Cascade View Inc.	Jeff	425-508-9618	8/8/12
Hillcrest Apts	49,500 -	Redhawk Grp.	Steve K.	206-282-3000	3/14/11
Talbott Place	41,500 -	Plats Plus	Brenden	425-508-1323	6/22/12

See also the supplemental bidder qualification requirements specified in Special Provision Section 1-02.1.

List major equipment anticipated to be used on this project; indicate whether Contractor-owned or to be leased from others:

Excavators, Dump Trucks, Wheel Loaders, Bulldozers, Spike Pulls,

Bank reference(s): Bank of America - Houghton Branch, Kirkland

Washington State Contractor Registration No.: BOBBYT088CC

Uniform Business Identification No.: 600 620 859

I certify that other contracts now in progress or hereafter obtained will not interfere with timely performance of the City of Kirkland project should I become the successful bidder.

Authorized Signature:

Print Name: Robert Wolford Title: President

Page 14 Statement of Bidder's Qualifications
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CITY OF KIRKLAND
SUBCONTRACTOR IDENTIFICATION FOR CONTRACTS IN EXCESS OF ONE MILLION DOLLARS ($1,000,000.00)

RCW 39.30.060 requires the following:

> "Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 ... shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time *[see note below]*, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid non-responsive and, therefore, void."

NOTE: The City of Kirkland has elected <u>not</u> to allow bidders to submit the information required by RCW 39.30.060 after the published bid submittal time. A proposal will be considered irregular and will be rejected if the bidder does not provide the above list as part of its proposal when submitting its bid.

Each bidder shall submit a list of:

1. HVAC, plumbing, and electrical subcontractors; and
2. The specific items of work those subcontractors will perform on the contract; and
3. The specific items of work that will be performed by the bidder on the contract.

Page 15 Subcontract Identification for Contracts in Excess of One Million Dollars
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CITY OF KIRKLAND
SUBCONTRACTOR IDENTIFICATION LIST

**REQUIRED IF BID AMOUNT EXCEEDS $1,000,000 (Reference RCW 39.30.060 RCW)*

Proposed Subcontractors and items of work to be performed:

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

- make additional pages if necessary -

Work to be performed by Prime Contractor:

Item Numbers: _____

Page 16
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CITY OF KIRKLAND
BIDDER'S CHECKLIST

1. Have you reviewed the Bidder Responsibility and Subcontractor Responsibility Criteria?

2. Have you enclosed a bid bond or certified check with your bid? (Must be $5,000 or 5% of the Schedule A Total, whichever is greater)

3. Have you entered a bid amount for all items and all schedules?

4. Do the written amounts of the proposal agree with the amounts shown in the figures?

5. Have you acknowledged receipt of addenda?

6. Has the proposal been properly completed and signed?

7. Have you completed the Statement of Bidder's Qualifications?

8. Have you completed the City of Kirkland Non-collusion Affidavit?

9. Have you completed the Subcontractor Identification List? (This is to be completed for HVAC, plumbing, and electrical subcontractors if the amount bid exceeds $1,000,000.)

10. Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for **Cross Kirkland Corridor Rail Removal Project.**

Page 17 Bidder's Checklist
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

Department of Labor and Industries
PO Box 44450
Olympia, WA 98504-4450

BOBBY WOLFORD TRKNG & SLVG INC

Reg: CC BOBBYWT088CC
UBI: 600-620-859

Registered as provided by Law as:
Construction Contractor
(CC01) - GENERAL

BOBBY WOLFORD TRKNG & SLVG INC
22014 WEST BOSTIAN ROAD
WOODINVILLE WA 98072

Effective Date: 2/3/1992
Expiration Date: 12/1/2013

March 22, 2013

Bobby Wolford Trucking & Demolition, Inc.
Attn: Robert Wolford, President
22014 W. Bostian Rd.
Woodinville, WA 98072

Dear Mr. Wolford,

The City of Kirkland is returning the enclosed cashier's check in the amount of $22,593.85 that was submitted by your company as a bid deposit for our Cross Kirkland Corridor Rail Removal Project, Job No. 15-13-PW.

Please contact me at 425-587-3123 if you have any questions regarding this matter.

Thank you for submitting your bid.

Sincerely,

Barry L. Scott, C.P.M.
Purchasing Agent

Enclosure

Bank of America Cashier's Check No. 1658200583

Notice to Purchaser - In the event that this check is lost, misplaced or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days. Void After 90 Days 91-170/1221 NAZ Date 03/15/13 12:37:19 PM

KIRKLAND
0002 0060103 0023

Pay BANK OF AMERICA TWO TWO FIVE NINE THREE 85 CTSCTS ***$22,593.8

To The Order Of CITY OF KIRKLAND

Remitter (Purchased By): BOBBY WOLFORD TRUCKING & DEMOLISHING

Bank of America, N.A.
PHOENIX, AZ

AUTHORIZED SIGNATURE

00-53-3364B 11-2010

⑈1658200583⑈ ⑆122101706⑆ 457002931694⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS

BOBBY WOLFORD TRUCKING
& DEMOLITION, INC.
22014 West Bostian Rd.
Woodinville, WA 98072

City of Kirkland
Cross Kirkland Corridor Rail Removal
15-13-PW

CITY OF KIRKLAND

Originally published March 12, 2013 at 9:41 PM | Page modified March 12, 2013 at 10:17 PM

Google boom: Kirkland campus to double

Google announced Tuesday that it's doubling the size of its campus in Kirkland, creating room to hire 1,000 more employees.

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Print

By Brier Dudley
Seattle Times senior technology reporter

The Seattle area is feeling lucky.

Google announced Tuesday that it's doubling the size of its campus in Kirkland, creating room to hire 1,000 more employees.

The project comes amid a remarkable surge of investment by tech companies in the Seattle market, including Amazon.com's enormous (and growing) Seattle campus, Microsoft's efforts to fill thousands of new positions, and a steady stream of tech giants following Google's footsteps to establish satellite engineering offices in the area.

Google's two new buildings are expected to open in 2015 on what's now a vacant lot below the three-building campus that it moved in to less than four years ago. Design work has just started, but the tentative plan is for a dramatic skybridge over a rail corridor through the site, joining the old and new buildings.

"We think that the opportunity here is really huge," said Chee Chew, a former Microsoft engineer who joined Google in 2007 and became director of its Kirkland site last year.

Public officials lauded the move in a media event at the campus Tuesday evening.

"It is something to celebrate — for all Washingtonians to celebrate," Gov. Jay Inslee said.

◄ PREV 1 of 4 NEXT ►



DLR GROUP

Google's planned expansion in Kirkland is shown in a rendering, looking west. Two new buildings are expected to open in 2015.

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"Having moved here from Silicon Valley in the 90's, I can say that this expansion by... (March 13, 2013, by ImagineThat) MORE

"Under WaterToo, California has a sales tax around the same percentage as ours AND a... (March 13, 2013, by marinevet) MORE

Read all **102** comments ► Post a comment ►

Google opened a small office in Kirkland in 2004 and rapidly grew into larger and larger spaces. Many of its recruits came from Microsoft and Amazon.com, but the site also drew employees from other companies and schools around the country and world.

Chew said Google has had double-digit job growth since it started hiring engineers in Kirkland. It's the third-largest engineering center — behind a 3,200 -employee New York office – for the Mountain View, Calif.-based search giant, which is approaching 40,000 employees overall.

Among products built in Kirkland are Google Voice, Google Talk and key portions of the Chrome browser and operating system.

ADVERTISING



The Kirkland team also built the Hangouts videoconferencing service on the Google+ social network and recently took ownership of the cloud-computing platform that Google is offering as a service to other companies, in competition with Amazon's Web services business and Microsoft's Azure platform.

Such high-profile projects, combined with the region's quality of life and Google's reputation as a good place to work, provide a steady flow of applicants to fill the campus.

"I get pinged every day for jobs at Google — every other week I'm referring somebody or connecting them to the right people," said Amit Fulay, a Microsoft veteran who left to join a startup that Google acquired in 2010, bringing him into the fold.

As head count at the Kirkland offices has grown, Google has been expanding its engineering and sales office in Seattle's Fremont neighborhood, which opened in 2006. Combined, the Seattle and Kirkland sites employ more than 1,000 people. About 60 percent are based in Kirkland.

The Kirkland campus tends to have older, more family-oriented employees while Fremont attracts more young employees and recent graduates, said Anna Cavendar, a 34-year-old software engineer in Kirkland, who builds features to make Hangouts more usable for hearing- and sight-impaired people.

Chew said the current three buildings on the Kirkland campus, at 747 Sixth St., will accommodate 1,000 employees when they fill up in the next few years. The plan is to have the new buildings — with 180,000 square feet of space — available in time to handle the growth Google expects to see in the area.

The project is in "pre-permit review" by the city of Kirkland, which is about to convert the rail corridor through the site into a trail. City Manager Kurt Triplett said the skybridge concept is fine as long as the structures are high enough to allow any future transit service on the corridor. Public access through the site will be maintained.

"We are over the moon" about Google's plans to expand in the city, Triplett said.

Dave Tomson, development manager at SRM, the site's owner and developer, said the two buildings will be joined by a covered atrium, giving them the look of a single structure. The buildings will have two stories with two floors of underground parking. Construction may begin in January.

Tomson said it's too soon to say how much the project will cost, but the investment will be more than the $47 million assessed value of the current, three-building campus.

The expansion isn't a complete surprise. Chew said in an interview last year that Google needed to find more space to grow. A previous Kirkland site director told The Seattle Times in 2007 that he expected the company would employ several thousand people here within a few years.

Broadly, the plan is to give Google room to "innovate and create" without worrying about any limitations, Chew said.

Existing teams will be able to continue expanding, and there will be room for new projects that could become huge, he explained.

The new Kirkland buildings will be Googley in other ways — with amenities that will likely make employees at most other companies drool. Employees are putting together a wish list, but it will be hard to raise the bar in Kirkland, where they already have a climbing wall, two kitchens, music jam rooms, espresso bars and motorboats "docked" indoors, serving as informal meeting rooms and work spaces.

"I think what it will be is something that's really fun and organic and the people feel really vested in," Chew said, adding that "we're in the 'no ideas are too stupid' phase."

Brier Dudley: 206-515-5687 or bdudley@seattletimes.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BALLARD TERMINAL RAILROAD COMPANY, LLC, a Washington limited liability company,	)	CASE NO. C13-00586MJP
Plaintiff,	)	SEATTLE, WASHINGTON May 3, 2013
v.	)	
CITY OF KIRKLAND, a Washington municipal corporation,	)	MOTION TO DISMISS
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MYLES TOBIN
THOMAS MONTGOMERY

For the Defendant: HUNTER FERGUSON
MATTHEW COHEN
OSKAR REY
STEWART ESTES

Reported by: NANCY L. BAUER, CCR, RPR
Federal Court Reporter
700 Stewart Street, Suite 17205
Seattle, WA 98101
(206) 370-8506
nancy_bauer@wawd.uscourts.gov

721, there's -- and I've read through this, and I've, frankly, been practicing for a long time in railroad law -- there is no exclusivity on jurisdiction. Your Honor, you and the STB have concurrent jurisdiction here, and either was an appropriate choice.

And I suppose since Your Honor is asking, I'll jump right into the first question, which Your Honor indicated, you know, is that the STB, under 721, not the appropriate way for plaintiff to seek enjoining salvaging of the track. And what I would say to Your Honor is, it is an appropriate way, but it is not the only appropriate way, and in this instance it's not the appropriate way.

And I'll be quite honest and pragmatic with Your Honor. STB has a lot of fine qualities. They do a lot of very solid jurisdictional prudence. In the world of injunctive relief, they're not particularly expedient.

Ballard has -- I'm sorry -- Kirkland has indicated to you that they were poised to pull this track. This court is in a much better position than the STB to -- in which to seek expedited relief.

THE COURT: Well, you say that, but what's in the record that would demonstrate that if you ask for accelerated review, they have a specific portion of the statute that deals with emergency issues.

MR. TOBIN: The best I can tell, Your Honor, is it's

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 8th day of May 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter

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: June 6, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing 1) The City of Kirkland's Reply to Ballard Terminal Railroad, LLC's Motion for Preliminary Injunction, 2) Verified Statement of Murray Brackett, 3) Verified Statement of Kurt Triplett, 4) Verified Statement of Hunter Ferguson, and 5) Certificate of Service upon the following parties of record in the above-captioned proceedings by first class mail with postage prepaid and properly addressed:

Pete Ramels
Andrew Marcuse
Office of the Prosecuting Attorney—Civil Division
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104
Attorneys for King County

Charles A. Spitulnik
W. Eric Pilsk
Allison Fultz
Kaplan Kirsch & Rockwell LLP
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Attorneys for King County

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Port of Seattle
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Seattle, WA 98111
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Myles L. Tobin, Esq.
Thomas J. Litwiler
Thomas C. Paschalis
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Attorneys for Ballard Terminal Railway LLC

Hunter Ferguson

Dated this 4th day of June, 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 MURRAY BRACKETT IN SUPPORT OF THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROAD COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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

1. I am a licensed Real Estate Appraiser in the State of Washington, and I hold the MAI designation from the Appraisal Institute. I am a Principal with the Firm Valbridge Property Advisors | Allen Brackett Shedd and have been appraising real estate in the King County area since 1985. I have previously prepared Appraisals

of the Woodinville Subdivision for use by King County in their efforts to acquire and evaluate the property. My analysis consisted of a Net Liquidation Value opinion of the entire line, with the latest valuation date being December 15, 2011. In the course of this work, I prepared allocated values for various stakeholder portions of the line, at the request of the stakeholders.

2. I have been requested by the City of Kirkland to provide a similar allocation for the line segment extending from NE 8th Street in Bellevue, to M.P. 23.8 in Woodinville, Washington. I have received permission from my previous client to utilize the prior file information and conclusions in this letter.

3. Given the relatively short time available for this assignment, it was agreed that my opinion would be limited to an allocation of the overall Net Liquidation Value as previously concluded, using the same methodology followed by the various stakeholders as they acquired their interests from the Port of Seattle. The conclusion presented, therefore, reflects the segment identified above, and consists essentially of a pro-rata allocation of the Net Liquidation Value as of December 15, 2011. It is noted that numerous assumptions were incorporated into the appraisal, including that the general character of the property was assumed to be identical to the form in which the Port of Seattle acquired the property in 2009. Thus, stakeholder acquisitions that have occurred subsequently, have been disregarded for analysis purposes. Other assumptions are contained within the actual appraisal document.

4. Based on my analysis, the allocated value of the segment described above, is $37,500,000, rounded, based on a total value conclusion of $80,000,000. The allocation excludes salvage value, though the overall conclusion reflected roughly $3.18 million in salvage value.

5. While I have not updated the date of value for this assignment, it is noteworthy that the general trends in the King County market have been positive for most property types since the date of value. The character of the neighborhood surrounding this corridor has been in transition for well over a decade, with commercial uses, mixed-use/residential, and single-family being developed in the areas surrounding this section of the corridor. Notable developments occurring

within the general vicinity include a new Google office complex in Kirkland, the 40+-acre Spring District mixed-use development in Bellevue, the approval of the East link light rail extension into Bellevue, as well as a general strengthening of the real estate market.

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



S. MURRAY BRACKETT, MAI
Dated: June 4, 2013
Place: Bellevue, Washington

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 KURT TRIPLETT IN SUPPORT OF THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROA COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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. On January 5, 2012, Kirkland and the Port of Seattle (the "Port") entered into a purchase and sale agreement for the Cross Kirkland Corridor ("CKC"), which is a 5.75 mile segment of the 12.55 mile railroad right-of-way running between the cities of Woodinville and Bellevue (the "Line"). Under the terms of the purchase and sale agreement, the Port conveyed to Kirkland its interests in the land comprising the CKC, along with its interests in the rail infrastructure and other personal property and fixtures in the CKC.

4. On April 13, 2012, Kirkland closed on its purchase of the CKC for $5 million.

5. The CKC connects eight of Kirkland's 13 neighborhoods and offers a unique opportunity to provide a regional transit corridor and a green pathway through a heavily urbanized area. With this potential in mind, Kirkland acquired the CKC with the plan of developing a multi-modal trail and transit corridor. The first phase of this plan is the development of an interim trail.

6. Kirkland officials and managers recognize that under the terms of the railbanking statute, every railbanked right-of-way remains subject to reactivation of freight service if a demand arises. Kirkland officials and managers further recognize that the Central Puget Sound Regional Transit Authority holds a transit easement over the entire length of the Line and might provide future commuter rail on the Line, alongside a trail.

7. Kirkland believes that there is no realistic demand for freight rail service in Kirkland or Bellevue today, or in the foreseeable future. I am not aware of any business located between Woodinville and Bellevue that has requested or displayed an interest in receiving freight rail service since 2008. During the past several years, the land use adjacent to the Line between Bellevue and Woodinville has steadily moved toward high-end commercial, mixed-use residential/retail, and retail. In 2008, for instance, Kirkland rezoned the Parmac light industrial zone to become Class A office space for the purpose of attracting high-end financial and tech companies. In addition, Google plans to build new campus next to the Line where more than a thousand employees will work.

8. Beginning in the spring of 2012, Kirkland staff evaluated various approaches to developing an interim trail, including both removal of the existing rail infrastructure and leaving the tracks and ties in place. Kirkland staff concluded that removing the rails and leaving the rail bed and ballast in place was the best approach, in part, because: (a) no rail operator had come forward with a plan to provide freight service on the Line, since BNSF Railway sold the Line to the Port in 2009; (b) rail removal would make development of interim trail easier and less expensive; (c) Sound Transit does not have a plan in the near term for providing commuter rail

service within the CKC; (d) removal would make vegetation and stormwater maintenance within the CKC easier and less expensive than with the rails in place; and (e) grant funding secured for the removal of the rails and development of an interim trail is available only through 2014.

9. On August 7, 2012, the Kirkland City Council voted unanimously to approve salvage of the rail infrastructure within the CKC beginning in spring 2013, thus allowing Kirkland residents to begin developing and using the CKC as an interim trail by summer 2013.

10. In the fall of 2012, Douglas Engle, a representative of Eastside Community Rail, LLC ("ECR"), contacted me to discuss the possibility of allowing his company to operate an "excursion" train within the CKC and urged me to delay Kirkland's salvage plans. On November 15, Mr. Engle and I met in person to discuss this proposed use for the CKC. During this meeting, Mr. Engle stated that ECR had acquired the rights and assets of his former company, GNP Railway, which was in bankruptcy, and would operate freight rail service with Ballard Terminal Railroad Company ("Ballard") on the 14 mile freight segment between the cities of Woodinville and Snohomish. In this meeting and in a subsequent email, Mr. Engle stated that ECR and its business partners would forgo reactivation of freight service through Kirkland, if Kirkland would allow ECR and its business partners to operate an excursion train on the Line between the cities of Snohomish and Bellevue. Mr. Engle did not articulate a specific plan for the freight service that ECR and its business partners would forgo. Mr. Engle represented that ECR could run an excursion train alongside a pedestrian-cycling trail and that an individual named "Byron" was investigating the cost and logistics of improving the rail infrastructure on the Line to support an excursion train. Mr. Engle further requested that Kirkland delay salvage by 90 days. I explained that Kirkland did not plan to commence salvage until late February, which was more than 90 days in the future, and therefore we would continue to pursue Kirkland's current plans. A true and correct copies of my email correspondence with Mr. Engle regarding these issues and our meeting is filed with Kirkland's reply as **Exhibit 9.**

11. On December 17, I met again with Mr. Engle regarding his proposal for ECR and its business partners to run an excursion train on the Line. He reiterated that ECR and its

business partners would not attempt to operate freight service if Kirkland agreed to allow an excursion train to run with the CKC. Mr. Engle did not, however, identify any specific plan for freight service that ECR and its business partners would not pursue.

12. In a letter dated February 19, 2013, Mr. Engle outlined a proposal, whereby ECR and Wolford Trucking and Demolition and would construct a "maintenance of way" road for ECR's excursion train alongside the existing tracks within the CKC for a cost of $2.87 million. ECR proposed that the maintenance of way road could function as a trail when not in use by ECR and that Kirkland would cover the cost of maintaining the road. A true and correct copy of Mr. Engle's February 19 letter is filed with Kirkland's reply as **Exhibit 18.**

13. In a letter dated February 22, 2013, Mr. Engle renewed ECR's proposal to run an excursion train on the CKC and his proposal for ECR and Wolford Trucking and Demolition to construct a trail alongside the existing rails. In particular, Mr. Engle proposed that ECR and Wolford Demolition and Trucking be allowed to use grant funding secured by Kirkland to develop a trail within the CKC alongside the existing rails. A copy of Mr. Engle's February 22 letter is filed with Kirkland's reply as **Exhibit 19**.

14. Kirkland staff, its engineering consultants, and I considered ECR's proposals to run an excursion train within the CKC and construct a maintenance of way road alongside the existing rails and concluded they were not financially or economically viable for Kirkland. Among other things, the proposals (a) did not include plans for bridge construction and street modifications, (b) contemplated filling in wetlands, (c) called for the trail to be placed at levels uneven with railroad grade in several places, (d) lacked a specific time line for construction, and (e) did not include adequate financing. Kirkland's engineering consultants estimated that ECR's proposed construction would cost more than $17 million, well above ECR's estimate of $2.87 million. A true and correct copy of this evaluation is filed with Kirkland's reply as **Exhibit 21**. In light of these flaws, I concluded that ECR's excursion train was incompatible with Kirkland's plan to develop an interim trail and with the possibility that Sound Transit might provide commuter rail service in the future.

15. On February 26, 2013, Kirkland solicited bids for the removal of the rail infrastructure within the CKC.

16. On March 11, 2013, I received a copy of ECR's public business plan from Mr. Engle, along with requests for information about Kirkland's plan to develop an interim trail. A true and correct copy of Mr. Engle's March 11 correspondence and ECR's business plan is filed with Kirkland's reply as **Exhibit 20**. With respect to the prospect of freight service on the Line, ECR's business plan stated: "There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conservations and some analysis. No other freight has been identified in Bellevue." ECR Business Plan at 7. In addition, ECR's business plan revealed that it did not have the capacity to run an excursion train because of the need to upgrade the existing rail infrastructure to accommodate passenger service. *See* ECR's Business Plan at 2. In light of these statements, I further concluded that it was appropriate to continue with plans for rail salvage and development of an interim trail.

17. Bids received for the Cross Kirkland Corridor Rail Removal Project were opened by Kirkland staff on March 15, 2013.

18. Among the bids received was one from "Bobby Wolford Trucking & Demolition, Inc." Wolford Trucking's bid was not selected. A true and correct copy of Wolford Trucking's bid, along with a notice dated March 22, 2013 returning Wolford Trucking's deposit is filed with Kirkland's reply as **Exhibit 29**.

19. After reviewing the bids, Kirkland awarded the salvage contract to A&K Railroad Materials, Inc. ("A&K"). Under the terms of A&K's bid, Kirkland stands to receive an estimated net benefit of $106,560 for the salvage value of the rails. This estimated benefit takes into account the contract price ($473,419) and the estimated salvage value of the rails.

20. Kirkland entered into the salvage contract with A&K on April 26, 2013, and immediately suspended performance. A true and correct copy of Kirkland's contract with A&K for rail salvage is filed with Kirkland's reply as **Exhibit 22**.

21. A&K has represented that it likely would be able to complete salvage operations during the 2013 construction season, if Kirkland provides a notice to proceed by August 1, 2013.

22. If Kirkland is unable to proceed with its plan to salvage the rails during the summer of 2013, it will both lose substantial expected benefits and incur several costs, including:

a. *Lost Investment in the CKC.* If Kirkland is unable to salvage the rails during 2013 construction season, its next opportunity to do so will be during the 2014 construction season. Trail development cannot start until salvage is complete. As a result, Kirkland's intended use of the CKC and the public benefits of a trail will be delayed by at least a year. Kirkland paid $5 million for the CKC. It recently borrowed $35 million with a simple annual interest rate of approximately 3.5 percent. Applying this interest rate to the purchase price, Kirkland will lose at least $175,000 over the next year on its investment in the CKC.

b. *Risk of Lost Contract Value.* If A&K is unable to perform work under the contract within the next six months, Kirkland risks losing its expected payment of $106,560 for the net salvage value of the rails. The possible future benefit from salvage, if any, is unknown and cannot be known until Kirkland solicits new bids in the spring of 2014 because salvage contractors prepare bids at points in time when they can reasonably predict the salvage value of steel.

c. *The Cost to Re-Bid the Salvage Contract.* If A&K is unable to salvage the rails within the next six months, Kirkland will have to solicit new salvage bids in the spring of 2014 at an estimated cost of $1,522.10.

d. *Increased Maintenance Costs within the CKC.* As the owner of the CKC, Kirkland is responsible for maintaining the right-of-way. In the absence of any rail traffic for several years, much of the vegetation within the CKC is now overgrown and must be removed. In addition, Kirkland must undertake excavation work in drainage ditches, where sediment and vegetation have accumulated, blocking the flow of stormwater. Kirkland had planned to begin this maintenance work by driving

maintenance vehicles and equipment on the gravel rail bed in the right-of-way as A&K completed salvage work. If the rail infrastructure is not salvaged, Kirkland instead will have to use rail-compatible vehicles and equipment to perform maintenance work and forgo the use of other equipment and tools. Based on price quotes provided by auto mechanics and maintenance equipment rental companies, these requirements will increase Kirkland's maintenances by an estimated $211,013.35:

WORK/EQUIPMENT	**COST-RAILS REMOVED**	**COST-RAILS IN PLACE**	**INCREASED COST**
Vegetation Maintenance Labor	$12,445	$71,120	$58,675
Rail-Compatible Vehicle Retrofit	N/A	$14,860	$14,860
Ditch Excavation Labor & Equipment	$90,910.40	$228,388.75	$137,478.35
TOTAL			**$211,013.35**

KURT TRIPLETT

Dated: 6/4/13

Place: Kirkland

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 REPLY TO BALLARD TERMINAL RAILROA COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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 listed below are filed as exhibits in support of Kirkland's Reply to Ballard Terminal Railroad, LLC's Motion for Preliminary Injunction. 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:

- **Exhibit 1:** BNSF Railway Company's Petition for Exemption for the Line, filed in STB Docket No. AB-6 (Sub-No. 465X) (Aug. 11, 2008);

- **Exhibit 2:** Excerpts of the Transcript of the Deposition Upon Oral Examination of Douglas Engle taken in these proceedings (May 22, 2013);

- **Exhibit 3:** Seventh Amendment to Purchase and Sale Agreement between BNSF Railway Company, the Port of Seattle, and King County, Washington (Dec. 17, 2009);

- **Exhibit 4:** King County, Washington's Notice of Interim Trail Use Agreement for the Line, filed in STB Docket No. AB-6 (Sub-No. 465X) (Mar. 8, 2010);

- **Exhibit 5**: Letter from Byron Cole to Judge Brian D. Lynch (Sept. 21, 2012);

- **Exhibit 6**: Excerpts of the Transcript of the Deposition Upon Oral Examination of Byron Cole taken in these proceedings (May 24, 2013);

- **Exhibit 7:** Eastside Community Rail, LLC's "Eastside Rail Corridor Rehabilitation Proposal" (Jan. 28, 2013);

- **Exhibit 8:** Email from Doug Engle to Kurt Triplett with Eastside Community Rail, LLC's Business Plan attached (Mar. 11, 2013);

- **Exhibit 9:** Email from Douglas Engle to Kurt Triplett (Nov. 16, 2013);

- **Exhibit 10:** Excepts of the Transcript of the Deposition upon Oral Examination of Bobby Wolford taken in these proceeding (May 16, 2013);

- **Exhibit 11:** Verified Statement of Bryon Cole, filed in STB Docket No. FD 35731 (March 28, 2013);

- **Exhibit 12:** Ballard Terminal Railroad Company, LLC's Answer to City of Kirkland's First Set of Interrogatories (May 23, 2103);

- **Exhibit 13:** Email from Michael Williams to Doug Engle (October 18, 2012);

- **Exhibit 14:** Letter from RailWorks to Douglas Engle (January 18, 2013);

- **Exhibit 15:** E-mail from Doug Engle to Port of Seattle Real Estate Director Joe McWilliams (March 27, 2013);

- **Exhibit 16:** Bankruptcy Court Order Granting Motion for Approval of Sale of GNP's Assets to ECR, Case No. 11-40829-BDL (September 27, 2012);

- **Exhibit 17:** Email from Doug Engle to Woodinville City Manager Richard Leahy (March 28, 2013);

- **Exhibit 18:** Letter from Doug Engle to Kirkland Officials (February 19, 2013);

- **Exhibit 19:** Letter from Doug Engle to Kirkland Officials (February 22, 2013);

- **Exhibit 20:** Email from Doug Engle to Kurt Triplett (March 11, 2013);
- **Exhibit 21:** KPG's "CKC Trail – Adjacent Maintenance Road Option" (March 14, 2013);
- **Exhibit 22:** Cross Kirkland Corridor Rail Removal Project Contract between Kirkland and A&K Railroad Materials, Inc. (April 26, 2013);
- **Exhibit 23:** Letter from Wolford Trucking & Demolition, Inc. Owner Bobby Wolford to Cynthia Brown (March 27, 2013);
- **Exhibit 24:** Letter from CalPortland Sales Manager Michael Skrivan to Cynthia Brown (March 25, 2013);
- **Exhibit 25:** Map of the Line in Bellevue, Washington between Washington State Highway 520 and NE 8th St., the termination point of Ballard's reactivation petition;
- **Exhibit 26:** Email from Doug Engle to Michael Skrivan, including attachment of draft letter to Cynthia Brown (Mar. 25, 2013);
- **Exhibit 27:** Excepts from the Transcript of Deposition upon Oral Examination of Michael Skrivan taken in these proceedings (May 28, 2013);
- **Exhibit 28:** Email from Michael Skrivan to Dough Engle (May 1, 2013);
- **Exhibit 29:** Wolford Trucking & Demolition, Inc.'s Bid for Cross Kirkland Corridor Rail Removal Project (March 15, 2013);
- **Exhibit 30:** Brier Dudley, "Google boom: Kirkland campus to double," *Seattle Times* (Mar. 12, 2013); and
- **Exhibit 31:** Excerpt of Transcript from Oral Argument on Ballard Terminal Railroad, LLC's Motion for Temporary Restraining Order against the City of Kirkland, Case No. 13-00586MJP (W.D. Wash. 2013) (May 3, 2013).

Hunter Ferguson

HUNTER FERGUSON

Dated: June 4, 2013

Place: Seattle, WA

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

THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROAD, LLC'S MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Ballard Terminal Railroad Company, LLC ("Ballard") asks the Board to enjoin the City of Kirkland ("Kirkland") from salvaging the track and ties on a railbanked right of way that Kirkland owns, pending the Board's decision on Ballard's petitions to vacate a NITU order and reactivate rail service on a 12 mile right of way ("the Line") that includes Kirkland's segment.[1] The Board has authority under 49 U.S.C. 721(b)(4) to grant injunctive relief when necessary to prevent irreparable harm. The moving party must show that: (1) it will likely prevail on the merits, (2) it will suffer irreparable harm in the absence of an injunction, (3) the issuance of an injunction will not substantially harm other interested parties, and (4) the public interest supports granting an injunction.[2] In this case two dominant facts control the outcome of Ballard's motion. First and most important, Ballard presents no evidence of a current demand for rail freight service on the Line. Second, Ballard does not currently hold and has no plan to obtain the property rights required to provide rail service on the Line. For these reasons, salvage of the rails will cause Ballard no harm, and Ballard is unlikely to prevail on the merits of its reactivation petition.

Two years ago the Board considered petitions by GNP Railway, Inc. ("GNP") to vacate a NITU and reactivate rail service on the Redmond Spur, a seven mile segment that intersects the Line at Woodinville, Washington.[3] This case should be captioned "The Return of GNP." Ballard's partner here is the former CFO of the insolvent GNP. Like the Redmond Spur, the Line traverses neighborhoods of high property values where rail-dependent businesses can no

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[1] A map showing the Line and connected rail corridors is attached hereto as Appendix A.

[2] *See American Chemistry Council, the Chlorine Institute, Inc., the Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway and RailAmerica, Inc.*, STB Docket No. NOR 42129, slip op. at 4 (STB served May 4, 2012) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

[3] *See GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407 (STB served June 15, 2011).

longer afford to operate. Like Ballard, GNP masked its real plans for the corridor with assertions of demand for freight service. And like Ballard, GNP asked the Board to enjoin salvage of the track on the Redmond Spur. The Board denied GNP's motion, and it should reject Ballard's motion for the same reasons.

Kirkland has a contract on hold to salvage the rails on its segment of the Line. The work can occur in 2013 if Kirkland issues a notice to proceed by August 1, 2013. To meet this deadline, Kirkland asks the Board to rule expeditiously.

II. STATEMENT OF FACTS

A. BNSF Discontinued Rail Service On The Line For Lack Of Freight Demand.

The Line that is the subject of Ballard's petitions runs 12.6 miles between the cities of Bellevue and Woodinville, Washington.[4] Its north end connects to an active 14 mile segment ("the Freight Segment") that runs between Woodinville and the BNSF main line in the City of Snohomish, Washington.[5] To the south the Line terminates about 1.3 miles past the southerly end of the segment that Ballard proposes to reactivate.

In August 2008 BNSF Railway Company ("BNSF") petitioned for exemption to abandon the Line.[6] BNSF explained that freight traffic had "been declining steadily in recent years," and that there was insufficient freight demand to justify continued operation.[7] At the time, there were only two shippers on the Line, both of which supported the proposed abandonment.[8] BNSF

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[4] *See BNSF Railway Company – Abandonment Exemption – In King County, WA*, STB Docket No. AB-6 (Sub-No. 465X), slip op. at 1 (STB served Nov. 28, 2008) (referred to hereinafter as the "*NITU Order*"). Ballard proposes to reactive service on the northerly 11.2 miles of the 12.6 mile Line. *See* Ballard's Verified Petition For Exemption at 2; Appendices A and B to this brief.

[5] The maps attached hereto as Appendices A and B show the connections between the Freight Segment, the Line, and the railbanked segment south of the Line.

[6] *See NITU Order*, *supra* note 4, slip op. at 1.

[7] *See* BNSF's Petition for Exemption at 4, 5, 10 (Ex. 1). (All references to "Ex." herein are to the exhibits filed herewith in support of Kirkland's opposition.)

[8] *Id.* at 4.

explained that the loss of freight demand reflected fundamental changes in the land use and economy of East King County:

> The Line offers limited, if any, freight rail growth opportunities, even for a short line operator. Land use around the Line is clearly moving away from freight applications, if not from industrial and low-end commercial applications altogether. Land values along the right-of-way are in the $25-$40 per square foot range which is well beyond what a rail-oriented Pacific Northwest manufacturer or distributor would pay for real estate. Consequently, there is little chance of significantly increasing carload traffic on the Line.[9]

BNSF planned to sell the Line to the Port of Seattle (the "Port"), and to enter into a trail use agreement with King County.[10] In reviewing BNSF's petition, the Board observed that "[t]here are *no* other prospects for future rail traffic."[11] Based on these findings, the Board authorized BNSF to railbank or abandon the Line.[12]

To ensure that no potential opportunity to preserve rail service was overlooked, the Board invited any interested party to submit an Offer of Financial Assistance ("OFA").[13] Ballard and GNP considered filing an OFA but passed on that option.[14] No one filed an OFA within the time authorized by the NITU Order.

On December 18, 2009 BNSF conveyed the Line to the Port, subject to an easement and trail use agreement with King County. This conveyance was part of a larger transaction in which the Port acquired the Line plus adjoining segments from BNSF, for $81.4 million and other

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[9] *Id.* at 13.

[10] *See NITU Order*, *supra* note 4, slip op. at 2.

[11] *Id.* at 3 (emphasis added).

[12] *Id.* at 6.

[13] *See id* at 4, 7.

[14] *See* Transcript of Deposition upon Oral Examination of Douglas Engle ("Engle Tr.") at 174:1-175:1 (Ex. 2)

consideration.[15] The segments south of Woodinville were railbanked, with King County assuming the role of interim trail user.[16]

To ensure that shippers located on the Freight Segment would continue to receive rail service BNSF, with the Port's approval, selected Ballard and its then-business partner, GNP, to provide freight service on the Freight Segment.[17] GNP's creditors subsequently forced GNP into bankruptcy. Through the insolvency proceedings Ballard's current partner, Eastside Community Rail, LLC ("ECR") – which is owned by Douglas Engle, the former CFO of GNP – acquired GNP's freight easement over the Freight Segment, while Ballard continued to run the actual freight operations under contract with ECR.[18] The Board recently allowed Ballard to lease the Freight Segment from ECR.[19]

B. Ballard And ECR Commenced Efforts To Launch An Excursion Train.

Ballard commenced service on the Freight Segment on January 11, 2010. Traffic has declined steadily since that time, from 270 cars in 2010 to 213 cars in 2012.[20] Ballard lost money in 2011 and 2012 on gross revenues of $500,000 from all of three of its short lines.[21] The Ballard and Meeker lines, located in Seattle and Puyallup, Washington, respectively, underwrite the cost of Ballard's service on the Freight Segment.[22]

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[15] *See* Seventh Amendment to Purchase and Sale Agreement of December 17, 2009 between BNSF, the Port, and King County (Ex. 3).

[16] *See* Notice of Consummation of Trail Use Agreement (March 8, 2010) (Ex.4). The railbanked segments are depicted on the maps attached hereto as Appendices A and B.

[17] *See* Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 2-3 (Ex. 5).

[18] *See Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY, Inc.*, STB Docket No. FD 35692 (STB served Nov. 23, 2012).

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

[20] *See* Transcript of Deposition upon Oral Examination of Byron Cole ("Cole Tr.") at 46:11-47:9 (Ex. 6); Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 2-3 (Ex. 5).

[21] *See* Cole Tr. at 56:7-57:2 (Ex. 6).

[22] *See id.* at 84:1-8, 169:10-170:6, 226:5-12.

Because Ballard makes no money on the Freight Segment, Ballard has had no funds to invest in maintenance of the track. In January 2013 ECR prepared a funding request for presentation to members of the Washington State Legislature explaining that GNP completed little maintenance during its three years of ownership, "which has left the track in dire condition," and that the track was "in need of substantial rehabilitation to maintain any operations per the current freight operator Ballard."[23] Ballard performed no maintenance in 2012, and plans no maintenance in 2013, other than spraying for weeds.[24] As Byron Cole explained to the bankruptcy judge overseeing the dissolution of GNP:

> What is clear is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure. It is not realistic to forecast that huge increases in the amount of freight traffic are just around the bend.[25]

For Ballard and its partner, freight service was never the foundation for a profitable business. Ballard and ECR hope to rescue their investment in the Freight Segment by starting an excursion train from Bellevue to Snohomish, the "Bounty of Washington Tasting Train." According to ECR, "Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone."[26] In November 2012, Mr. Engle approached Kirkland City Manager Kurt Triplett about the excursion train and stated that the railroad "would drop its freight plans" if Kirkland would agree to facilitate the operation of an excursion train on the Line and, further, that "Byron" was investigating "upgrade options" for the rail infrastructure.[27] Mr.

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[23] *See* Eastside Community Rail, LLC's Eastside Rail Corridor Rehabilitation Proposal (January 28, 2013) at 1 (Ex. 7); Engle Tr. at 99:10-16, 100:3-10 (Ex. 2); Cole Tr. at 60:6-8, 62:25-63:3 (Ex. 6).

[24] Cole Tr. at 63:4-21, 70:17-71:8 (Ex. 6).

[25] Letter of Sept. 21, 2012 from Byron Cole to Judge Brian D. Lynch at 4 (Ex. 5).

[26] *See* Eastside Community Rail – Business Plan at 4 (Ex. 8).

[27] *See* Email of November 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9); Engle Tr. at 197:19-198:18 (Ex. 2); Verified Statement of Kurt Triplett at ¶¶ 10, 11.

Cole testified that he would probably say "the heck with the freight business too" if Ballard and ECR were able to run an excursion train in lieu of freight.[28]

Ballard's filings with the Board hardly mention ECR, and do not mention Doug Engle at all. But Mr. Engle, the former CFO of GNP, is the de facto general manager of the joint venture between Ballard and ECR. Engle recruited Ballard's two "shippers," CalPortland and Wolford Trucking.[29] Engle is paying a portion of Ballard's legal fees in this proceeding,[30] and Engle testified that he considers ECR a "party in interest" in this proceeding.[31] Engle tried to recruit other shippers for the Line.[32] Engle arranged for contractors to survey the Freight Segment to estimate the cost of rehabilitating the Line.[33] Engle, not Byron Cole, produced the spreadsheet that supports Cole's estimate of the cost of replacing the rails in Kirkland.[34] Engle looked for locations in Bellevue to site a trans-loading facility.[35] Engle approached suburban cities to plea

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[28] Cole Tr. at 163:9-164:14 (Ex. 6).

[29] Mr. Cole testified that he had no contacts with CalPortland, and that all of the contacts were between CalPortland and Doug Engle. *See* Cole Tr. 138:10-139:5 (Ex. 6). According to Mr. Cole, Doug Engel likely contacted BNSF to inquire about a possible interchange arrangement to carry freight from CalPortland's plant to the Freight Segment. *See id.* at 140:8-17, 141:9-11.

According to Bobby Wolford of Wolford Trucking & Demolition, Inc. ("WTD"), he has not discussed the provision of freight service with Ballard but, rather, communicated with Mr. Engle and other ECR representatives. *See* Transcript of Deposition upon Oral Examination of Bobby Wolford ("Wolford Tr.") at 15:5-16:8, 109:2-18 (Ex. 10). And according to Mr. Wolford, it was Doug Engle who was responsible for the estimate of excavation spoils included in Mr. Wolford's letter of support and for determining where such materials would be shipped. *See id.* at 100:9-12, 102:3-7.

[30] Engle Tr. at 9:16-21 (Ex. 2).

[31] *Id.* at 16:10-14.

[32] Cole Tr. 117:13-25 (Ex. 6).

[33] *Id.* at 73:7-74:3.

[34] *Id.* at 151:21-152:5, 154:9-155:17, 156:19-10, 158:13-16; Verified Statement of Byron Cole at 3 (Ex. 11); Ballard's Responses to Kirkland's Interrogatories at 2-3 (Ex. 12).

[35] *See* Email of Oct. 17, 2012 from Doug Engle to Michael Williams (explaining search for property that "could be used for a batch plant and intermodal site") (Ex. 13).

for support for the excursion train.[36] At Mr. Cole's direction, Engle lobbied for state money to rehabilitate the Freight Segment.[37] Byron Cole and Doug Engle both testified that Ballard would run the excursion train.[38] As Mr. Cole testified, "Doug Engle and I have been joined at the hip for three years."[39]

Ballard and ECR's excursion train plan faces two major obstacles. First, the excursion business requires proximity to population centers and the cruise ship terminals in Seattle. The Freight Segment runs only as far south as Woodinville.[40] The partners wanted to start their excursion train in Bellevue.[41] For this they needed access to the Line. Kirkland lies between Woodinville and Bellevue.[42] When Kirkland announced its plans to salvage the rails Doug Engle urgently requested a meeting with Kirkland City Manager Kurt Triplett. In that meeting, ECR offered that if Kirkland would delay track removal Ballard would "drop its freight plans and therefore reactivation to pursue this process . . . ."[43]

A second major obstacle to the "Bounty of Washington Tasting Train" is that the Freight Segment is in FRA "excepted" condition.[44] To carry passengers ECR told the Port that the line

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[36] *Id.* Additionally, Mr. Cole testified that Doug Engle arranged meetings with King County, Sound Transit and Kirkland to promote continued rail use of the Line. Mr. Cole did not always attend those meetings. When asked why Doug Engle made those arrangements when he did not work for Ballard, Mr. Cole responded, "I'm not sure that makes much difference." Cole Tr. 104: 4-13 (Ex. 6).

[37] *See id.* 74:5-22, 83:3-7 (Ex. 6).

[38] *See id.* Tr. 170:10-11, 171:10-172:4, 172:14-19 (Ex. 6); Engle Tr. at 57:7-58:7 (Ex. 2).

[39] Cole Tr. 157:10-11 (Ex. 6).

[40] *See* Appendix A.

[41] *See* Cole Tr. at 54:15-19 (Ex. 6)

[42] *See* Appendices A and B.

[43] *See* Email of Nov. 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9); Verified Statement of Kirkland City Manager Kurt Triplett ("Triplett Verified Statement") at ¶¶ 10, 11.

[44] *See* Letter of January 18, 2013 from RailWorks to Douglas Engle at 3-4 (Ex. 14); Cole Tr. at 62:16-24 (Ex. 6).

requires at least $6.26 million in renovation.[45] Between January and March of this year Doug Engle lobbied the Port of Seattle, which owns the Freight Segment, to pursue an appropriation from the Washington legislature to upgrade the Freight Segment to FRA Class 2 condition: "The track upgrade objective is required for a favorable excursion train experience . . . ."'[46] The Port's real estate director expressed reservations about whether the Port could invest public money in a project that would mainly benefit ECR and Ballard. Doug Engle responded as follows:

> The Port is simply maintaining its own asset, which the [GNP] bankruptcy process devalued beyond sustainable.
>
> ECRR can sustain maintenance if the track has material capital improvements -- $6.2M.
>
> If the track is not maintained, Ballard Terminal RR may cease operations, then the line would be abandoned – how would that look for the Port?
>
> *No, absolutely no other RR will come in and make this investment for the couple hundred cars of freight and excursion. The Temple's, Iowa Pacific Holdings and ECRR is telling the Port the same story, either invest in your infrastructure or it's dead.*[47]

ECR, Ballard and their allies did not persuade the 2013 Washington legislature to appropriate funds for the rehabilitation of the Freight Segment.[48] ECR, Ballard, and their allies also need funds to upgrade the track on the Line.[49] They hope to try again in 2015.[50]

Even if Ballard and ECR cannot start an excursion train on the Line, they have discovered a way to make money from it. The Freight Segment and the Line transect heavily

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[45] *See* Eastside Community Rail, LLC, "Eastside Rail Corridor Rehabilitation Proposal" (January 28, 2013) at 2 (Ex. 7).

[46] *See id.* at 1 (Ex. 7).

[47] E-mail of March 27, 2013 from Doug Engle to Port of Seattle Real Estate Director Joe McWilliams (emphasis added) (Ex. 15).

[48] *See* Engle Tr. at 90:9-91:16 (Ex. 2).

[49] *See id.* at 189:9-18.

[50] *See id.* at 190:19-190:2.

urbanized and rapidly growing areas of the Seattle suburbs. Utilities, cities and the Central Puget Sound Regional Transit Authority ("Sound Transit") have infrastructure development plans that cross the rail corridor, or that occupy edges of the rail corridor. In 2012, for example, the City of Woodinville approached ECR and the Port about acquiring property rights to one edge of the Freight Segment to widen a highway bridge. ECR holds a freight easement over the 14 mile Freight Segment, purchased from the GNP bankruptcy trustee for $175,000.[51] Doug Engle offered to sell Woodinville the property rights it needs for the bridge for $1 million, to be split equally between the Port and ECR.[52] Asked about this point at his deposition, Mr. Engle replied: "[I]f you're going to block one lane of my four lane road, and my opportunity in the future for that, then you are going to pay me."[53]

In the next two years public agencies and utilities will pursue many projects that cross or utilize parts of the Line. Kirkland and King County seek to build trails and other public infrastructure projects on their respective segments of the Line.[54] In 2015, Sound Transit will commence construction on its $2.8 billion East Link project to build a light rail line from Seattle through Bellevue to the Microsoft campus in Redmond.[55] To accommodate East Link Sound Transit purchased fee ownership of a one mile segment of the Line in Bellevue for $ 13.75 million, subject to King County's trail easement and subject to the requirements of the

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[51] *See* Bankruptcy Court Order Granting Motion for Approval of Sale of GNP's Assets to ECR, Case No. 11-40829-BDL (Ex. 16).

[52] *See* Email of Mar. 28, 2013 from Doug Engle to Woodinville City Manager Richard Leahy (Ex. 17); Engle Tr. at 207:16-20, 208:6-12 (Ex. 2).

[53] Engle Tr. 214:1-4.

[54] King County's purchase included segments beyond just the Line.

[55] *See* Sound Transit – East Link Extension – Project Phases, available at www.soundtransit.org (last viewed June 3, 2013).

railbanking statute.[56] The last mile of the Line that Ballard has petitioned the Board to reactivate overlaps Sound Transit's fee-owned mile of the Line.

C. Kirkland Acquired The CKC.

On April 13, 2012, Kirkland purchased from the Port a 5.75 mile-long segment of the Line known as the "Cross Kirkland Corridor" ("CKC").[57] The City plans to develop a trail on the corridor, as authorized by the Board's 2008 *NITU Order* for the Line.

Doug Engle tried repeatedly to persuade Kirkland managers to leave the rails in place so that ECR and Ballard could develop an excursion train on the Line.[58] Mr. Engle represented, as does Ballard, that the right of way could accommodate rails and trails.[59] Kirkland commissioned the engineering firm KPG to estimate the cost of building a trail alongside the tracks. The estimate came in at $17.3 million.[60] After careful review of ECR's proposal Kirkland decided to proceed with its plan to salvage the rails.[61]

Kirkland awarded the salvage contract to A&K Railroad Materials, Inc. Kirkland and A&K have executed the contract, but Kirkland suspended performance pending the Board's decision on Ballard's motion for a preliminary injunction.[62] A&K promised Kirkland that it will

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[56] King County Recording No. 20120411001174 ("High Capacity Transportation Easement Agreement," dated Apr. 11, 2012); King County Recording No. 20120411001173 ("Quit Claim Deed," dated Apr. 10, 2011). All "King County Recording" documents cited herein are publicly available on the King County Recorders Office website: http://146.129.54.93:8193/legalacceptance.asp?cabinet%3Dopr.

[57] *See* Triplett Verified Statement at ¶¶ 3, 4.

[58] *See id.* at ¶¶ 10, 11; Email of Nov. 16, 2012 between Doug Engle and Kurt Triplett (Ex. 9); Letter of Feb. 19, 2013 from Doug Engle to Kirkland Officials (ex. 18); Letter of Feb. 22, 2013 from Doug Engle to Kirkland Officials (Ex. 19); Email of Mar. 11, 2013 from Doug Engle to Kurt Triplett (Ex. 20) .

[59] *See* Triplett Verified Statement at ¶¶ 12, 13; Verified Statement of Byron Cole ("Cole Verified Statement) at 4 (Ex. 11).

[60] *See* Triplett Verified Statement at ¶ 14; KPG's "CKC Trail – Adjacent Maintenance Road Option" (Ex. 21).

[61] *See* Triplett Verified Statement at ¶ 14.

[62] *See id.* at ¶ 20; Cross Kirkland Corridor Rail Removal Project Contract between Kirkland and A&K Railroad Materials, Inc. (April 26, 2013) (Ex. 22).

commit to perform the contract during the 2013 construction season if Kirkland delivers a notice to proceed by August 1, 2013.[63]

D. Ballard's Phantom Shippers.

Ballard contends that "a demand for rail service has developed" on the Line.[64] Ballard identifies two purported shippers: CalPortland, a building materials supplier, and Wolford Trucking & Demolition, Inc. ("WTD"), a demolition contractor.[65] Neither company has a business on the Line. Nevertheless, Mr. Cole declares that "they are both ready, willing and able to utilize the Bellevue-Woodinville segment."[66] In letters of support attached to Ballard's petition, representatives of both companies offer expansive statements about highway and office projects that will require vast quantities of aggregate materials and generate huge amounts of demolition debris.[67] But neither requests rail service from Ballard to move these materials.

WTD's letter was written by ECR agent Ernie Wilson.[68] It recites that if rail service is restored on the Line WTD would use rail to move construction spoils from highway, transit and construction projects in Bellevue to disposal sites. The letter contains quantitative estimates about potential rail traffic and cost savings from shipment by rail. At his deposition, however, Mr. Wolford disavowed any knowledge about these projections:

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[63] *See* Triplett Verified Statement at ¶ 21.

[64] Ballard's Verified Petition For Exemption at 6.

[65] *See* Cole Verified Statement at 3 (Ex. 11). In support of Ballard's petition, Mr. Cole also averred that Ballard "has been engaged in active discussions with several shippers interested in restoring rail service" on the Line and that "discussions with several shippers are ongoing." *Id.* But at deposition, Mr. Cole refused to answer questions asking him to identify shippers engaged in these discussions, other than Ballard. *See* Cole Tr. at 105:21-110:24 (Ex. 6).

[66] Cole Verified Statement at 3.

[67] *See* Letter of Mar. 27, 2013 from WTD's Owner Bobby Wolford to Cynthia Brown at 2 ("WTD Letter") (Ex. 23); March 25, 2013 Letter from CalPortland Sales Manager Michael Skrivan to Cynthia Brown at 1 ("CalPortland Letter")(Ex. 24).

[68] Wolford Tr. at 32:24-33:6, 90:16-19 (Ex. 10).

- WTD's letter asserts that projects in Bellevue will generate three million cubic yards of construction spoils.[69] When asked the basis for this number Mr. Wolford replied: "Ask Doug Engle. I don't know."[70] Mr. Wolford testified that he had no role in the preparation of that estimate.[71] When asked to read the paragraph from his letter that contains the three million cubic yard estimate, Mr. Wolford said: "It's all gobbledygook. Who cares?"[72]

- Mr. Wolford's letter declares that "We are currently targeting projects on I-405 and SR 520 for the 2013 and 2014 construction seasons."[73] When asked if WTD has any contracts to haul excavation spoils for a project in Bellevue Mr. Wolford replied: "Not yet. We can't till we know the rail is going to be in."[74] When asked whether WTD is targeting specific projects Mr. Wolford replied, "They're in the future, when the contract is let, we will bid on it."[75]

- WTD owns no property in Bellevue, the area from where Mr. Wolford asserts WTD will haul excavation spoils.[76] Asked where along the Line WTD would locate a staging area to load construction spoils into rail cars Mr. Wolford said: "Mr. Engle is in charge of that, not me. He was going to show us where a staging area was after we make sure the rail is in."[77] Mr. Wolford added: "You find the location, I'll load the railcars."[78]

- When asked the destination for the construction spoils that his company would ship by rail Mr. Wolford first explained that they could be dumped off the side of gondola cars on the Freight Segment to create a nature trail in Snohomish County.[79] WTD produced no evidence that it had a contract to construct a nature trail. And he expressed no concern about environmental restrictions on dumping: "It's permissible because it's a federal – well, it's railroad. They have – you can

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[69] *See* WTD Letter at 2 (Ex. 23).

[70] Wolford Tr. at 102:3-7 (Ex. 10).

[71] *See id.* at 102:8-103:2

[72] *See id.* at 92:5-13.

[73] WTD Letter at 2 (Ex. 23).

[74] Wolford Tr. at 103:22-25 (Ex. 10).

[75] *See id.* at 93:1-9.

[76] *See id.* at 103:7-20; *see also* Map of the Line in Bellevue, Washington between Washington State Highway 520 and NE 8th St., the termination point of Ballard's reactivation petition (Ex. 25), referenced in the Wolford testimony cited in this footnote.

[77] Wolford Tr. at 103:12-17 (Ex. 10).

[78] *See id.* at 111:11-18.

[79] *See id.* at 99:18-21.

do anything you want on the railroad. They're not governed by rules like most people."[80]

- Mr. Wolford was not sure that a nature trail would require three million yards of construction spoils.[81] Asked what else WTD could do with the spoils, Mr. Wolford answered that they could go to "another dump site," but he did not know where: "Ask Mr. Engle, he knows."[82] Pressed on this point, Mr. Wolford mentioned two landfills near Monroe, Washington, but he did not know whether either has rail access.[83]

- Neither Ballard nor ECR has provided a rate quote to WTD to haul excavation spoils from Bellevue.[84] In fact, Mr. Wolford has not asked Ballard or ECR about the cost or feasibility of hauling construction spoils from Bellevue to any location.[85]

- With no information about what construction projects would supply excavation spoils to WTD, without a staging area in Bellevue, without a specific destination for the spoils or a rate quote from any rail carrier, Mr. Wolford nevertheless expressed complete confidence in his statement to the Board that with rail "our bid would be at least 15% less expensive to our clients than the trucking option."[86] Mr. Wolford's estimate assumed that the spoils could be dumped off the side of the rail line to build a nature trail: "There's a huge savings just in the dump fee alone would cover the cost of the 15 percent. We're not paying dump fees to build a nature trail."[87] If the nature trail was not a feasible disposal option, Mr. Wolford admitted that he had not explored the cost or feasibility of shipping spoils to a Snohomish County landfill, but asserted that his 15 percent savings estimate would still be valid: "Still hold true even though we're railing it a bit further. Once it's in a railcar, the extra few miles is nothing when you're hauling so many railcar loads."[88]

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[80] *See id.* at 105:17-23.

[81] *See id.* at 105:25-106:5.

[82] *See id.* at 106:6-9, 100:9-12.

[83] *See id.* at 76:22-78:6.

[84] *See id.* at 104:1-17, 112:4-12.

[85] *See id.* at 112:13-113:14.

[86] WTD Letter at 2 (Ex. 23).

[87] Wolford Tr. At 107:19-108:4 (Ex. 10).

[88] *See id.* at 106:6-106:21.

Ballard's other purported shipper, CalPortland, is a building materials supplier with operations in Seattle and Everett, but nothing on the Freight Segment or the Line. CalPortland's letter to the Board does not assert that CalPortland plans to use the Line. The letter, written by an attorney for Ballard and ECR[89] and signed by CalPortland Sales Manager Michael Skrivan, limits itself to broad assertions about the economic benefits to the region of restoring rail service on the Line.[90] CalPortland's business logistics explain why CalPortland declined to predict any use of the Line:

- CalPortland has no contracts to provide materials to construction projects in areas of Bellevue near the Line.[91]

- CalPortland has no business facility, nor does it own any property adjacent to the Line.[92] It has no lease or other agreement to use property along the Line.[93] Nor has it taken any steps to secure a location along the Line for transloading materials from rail cars to trucks for delivery to customers.[94]

- Cal Portland considered the possibility of shipping construction materials to Bellevue from its yard in Everett, Washington. BNSF could carry freight from Everett to an interchange point with Ballard at Snohomish.[95] But CalPortland has not inquired about the logistics of shipping aggregate from Everett to Bellevue.[96] Further, CalPortland has no rail access to its Everett yard.[97] It has no means to load materials onto freight cars for shipment on the Line to construction projects

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[89] *See* Email of Mar. 25, 2013 from Doug Engle to Michael Skrivan, including attachment of draft letter to Cynthia Brown (Ex. 26); Transcript of Deposition upon Oral Examination of Michael Skrivan ("Skrivan Tr.") at 31:2-7, 31:18-32:17 (Ex. 27).

[90] *See* CalPortland Letter (Ex. 24).

[91] *See* Skrivan Tr. 27:7-12, 35:9-11, 37:24-38:17, 62:7-11 (Ex. 27).

[92] *See id.* at 52:1-5.

[93] *See id.* at 54:1-7.

[94] *See id.* at 54:25-55:5.

[95] *See* Appendix A.

[96] *See* Skrivan Tr. at 40:5-9 (Ex. 27).

[97] *See* Email of May 1, 2013 from Michael Skrivan to Dough Engle (Ex. 28).

in Bellevue. CalPortland's witness Mr. Skrivan rejected as cost prohibitive[98] the construction of a spur between the Everett yard and the BNSF line.

- CalPortland has no need for rail service on the Line. According to Mr. Skrivan: "I deliver to my market now and I don't have rail."[99] In its communications with Ballard and ECR, CalPortland has never requested rail service.[100]

- CalPortland has not even determined whether it would utilize freight rail service if it secured the capacity to load materials onto rail cars, if it had the capacity to offload such materials, and if it had contracts to deliver materials for construction projects in Bellevue. As Mr. Skrivan explained, whether CalPortland would ship construction materials via rail would depend on "many variables."[101]

Other than WTD and CalPortland, Ballard has identified no demand for freight service on the Line.[102] Accordingly, Ballard will not suffer any harm as a result of Kirkland's salvage plan.[103]

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[98] *See id.*; Skrivan Tr. at 40:5-41:12 (Ex. 27)

[99] *See id.* 67:15-18.

[100] *See id.* at 27:7-29:2, 31:9-32:5.

[101] *See id.* 68:4-19.

[102] *See* ECR Business Plan (February 19, 2013) at 7 (Ex. 8); Engle Tr. at 44:10-14 (Ex. 2); Cole Tr. at 118:1-3; 122:10-123:5; 127:11-128-6 (Ex. 6).

[103] Ballard's reliance on the various authorities cited in its motion in support of its irreparable harm argument is misplaced. *See* Ballard's Motion for Preliminary Injunction at 9-11. In the cases cited by Ballard in which courts found instances of irreparable harm the moving party had an established contractual or property right, the continued violation of which would deprive that party of vital income or a reasonably certain business opportunity causing harm to its existing business. Here, Ballard has no right of any kind to access the Line, and it has not demonstrated that it will lose a reasonably certain business opportunity. As explained above, its claims of freight demand are highly speculative.

The unpublished order in *Gulf Coast Rural Rail Transportation District v. Southern Pacific Transportation Co.*, C.A. No. H-94-2749 (S.D. Tex. Aug. 31, 2004), on which Ballard also relies, is inapposite. There, a transportation district sought to enjoin the salvage by the railroad that had abandoned the subject line but had failed to commence salvage within 180 days of the ICC's exemption order authorizing abandonment. Based on that fact, the district court held that the line was no longer subject to the ICC's exclusive jurisdiction and that the district's state court condemnation action was not preempted. Hence an injunction was appropriate to allow the district to attempt to meaningfully exercise its eminent domain rights. The same situation does not obtain here.

E. A Preliminary Injunction Would Impose Costs On Kirkland And Defer The Ability Of Kirkland Residents To Use The CKC.

The Board's procedural schedule for processing Ballard's petitions shows a final decision by January 17, 2014. *See* 78 Fed. Reg. 24,465, 24,466 (April 25, 2013). If enjoined from commencing salvage until the Board issues a decision on Ballard's reactivation petitions, Kirkland will lose the 2013 construction season. As a result, Kirkland's intended use of the CKC and the public benefits from a trail will be delayed by at least a year. *Id.* The delay would cost Kirkland taxpayers about $500,000, including increased costs of maintaining the right of way, loss of a favorable salvage contract and the absence of any return on Kirkland's $5 million investment in the corridor. City Manager Kurt Triplett's declaration (¶ 22), filed herewith, documents these costs.

III. ARGUMENT

Ballard asks the Board to enjoin Kirkland from salvaging track and building a trail on 5.75 miles of railbanked right of way, so that Ballard can offer rail service to two illusory shippers who have no business presence on the Line and no concrete plans to ship freight on the Line. On this record, Ballard cannot show that denial of injunctive relief will cause Ballard any harm, let alone irreparable harm. Nor is Ballard likely to prevail on the merits of its reactivation request because the Board will not vacate a NITU absent a credible showing of freight demand.

Even if Ballard had customers lined up to ship freight on the Line, Ballard still could not demonstrate irreparable harm because it has no plan to obtain the property rights that Ballard needs to operate on the Line. As BNSF pointed out to the Board in 2008, the real property comprising the Line has a very high value. Ballard has no easement to use the Line, no reactivation right, and no plans or resources to acquire access to the line. The Board usually

does not concern itself with a carrier's property rights.[104] In this case, however, Ballard seeks a preliminary injunction. To qualify for injunctive relief under 49 U.S.C. 721 Ballard must show that salvage of the Line will cause Ballard irreparable harm. Ballard cannot show any harm from salvage and trail use of the CKC because Ballard has no plan or wherewithal to secure the property rights it would need to run trains on the Line.

A. Ballard Must Satisfy Each Element Of The *Holiday Tours* Test.

In reviewing a request for preliminary injunctive relief under 49 U.S.C. § 721(b)(4), the Board applies the four-part test articulated in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) ("*Holiday Tours*").[105] The moving party – here, Ballard – "must show that: (1) it is likely to succeed on the merits; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest."[106] "An injunction is an extraordinary remedy and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction."[107] The harm alleged by the requesting party must be concrete and

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[104] *See, e.g., Georgia Great Southern Division, South Carolina central Railroad Co., Inc. – Abandonment and Discontinuance Exemption – Between Albany and Dawson, In Terrell, Lee, and Dougherty Counties, GA*, 6 S.T.B. 902, 908 (2003); *Ballard Terminal Railroad Company, L.L.C. – Lease Exemption – Line of Eastside Community Rail, LLC*, STB Docket No. FD 35730, slip op. at 2 (STB served May 1, 2013).

[105] *See DeBruce Grain, Inc. v. Union Pacific Railroad Company*, 2 S.T.B. 773, 775 n.3 (1997) (citing *Holiday Tours*, 559 F.2d at 843); *Public Views on Major Rail Consolidation*, 4 S.T.B. 586, 589 (2000); *Railroad Salvage & Restoration, Inc. and G.F. Wideman International, Inc. – Petition for Investigation and for Emergency Relief under 49 U.S.C. 721(b)(4) – Security Deposit for Demurrage Charges, Missouri & Norhtern Arkansas Railroad Company, Inc.*, STB Docket No. 42107, slip op. at 2 (STB served June 30, 2008).

[106] *Arizona Public Service Co. & Pacificorp v. The Burlington Northern and Santa Fe Railway. Company*, STB Docket No. 42077, slip op. at 4-5 (STB served Oct. 14, 2003) (citation omitted)

[107] *American Chemistry Council, supra* note 2, slip op. at 4.

reasonably certain; merely possible future harm is speculative and does not warrant an injunction.[108]

The requesting party "carries the burden of persuasion on all of the elements required for [such] extraordinary relief."[109] As set forth below, Ballard has not satisfied any prong of the *Holiday Tours* test.

B. The Absence Of Any Rail Freight Demand Is Fatal To Ballard's Motion.

When BNSF petitioned to abandon rail service on the Line in 2008, it explained that "Land use around the Line is clearly moving away from freight applications, if not from industrial and low end commercial applications altogether."[110] In approving BNSF's abandonment application, the Board confirmed that there is no rail freight demand on the line[111] and reaffirmed that determination a year later.[112]

Since 2008 the trends cited by BNSF have only intensified. Land use along the Line, particularly in Kirkland, is increasingly oriented toward high property values, consisting largely of high-end commercial, mixed-use residential/retail, and retail.[113] The development projects in Bellevue are for the construction of mixed-use residential and commercial buildings, high-end

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[108] *Arizona Public Service Co.*, *supra* note 106, slip op. at 5-6 (denying injunctive relief because alleged harm was speculative).

[109] *BP Amoco Chemical Company v. Norfolk Southern Railway Company*, STB Docket No. 42093, slip op. at 4 (STB served June 3, 2005) (internal quotations and citations omitted); *see also Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42110, slip op. at 4 (STB served Dec. 18, 2008) (denying request for injunctive relief and explaining that "some showing of each of the *Holiday Tours* factors is necessary"); *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, STB Docket No. FD 35305, slip op. at 2 (STB served Nov. 5, 2010) ("A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief." (citation omitted)).

[110] BNSF Petition For Exemption at 13 (Ex. 1).

[111] *See NITU Order*, *supra* note 4, slip op. at 3.

[112] *See King County, WA – Acquisition Exemption – BNSF Railway Company*, STB docket No. 35148, slip op. at 4 (STB served Sept. 17, 2009) ("*King County Acquisition*").

[113] *See* Triplett Verified Statement at ¶ 7.

shopping centers, and large office buildings.[114] In Kirkland, tech firms such as Google are expanding their facilities, and Kirkland has upzoned the last few remaining light industrial properties to attract Class A office space.[115] It should come as no surprise, then, that no business along the Line has voiced a demand for freight rail service, either incoming or outgoing. A recent valuation of the Line estimates that its value is ***at least $37.5 million*** and that the salvage value of the rail infrastructure on the Line is another $3.18 million.[116] As discussed *infra*, there is no evidence that Ballard, which consistently operates at a loss on annual revenues of only $500,000, has the resources to acquire the necessary rights to operate on the Line or has a plan to do so.

Every railbanked right of way is subject to future restoration of rail service.[117] Kirkland is prepared to step aside in the unlikely event that a carrier submits a credible proposal for reactivation of freight service and holds the property rights required to occupy the Line.[118] The Board's decisions do not, however, require the owner of a railbanked right of way to step aside for an excursion train,[119] When presented with facts that call into question the credibility of the petitioner's plans for common carrier freight service, the Board takes a hard look at the bona fides of a carrier's plans. This issue can arise in several procedural contexts, including a petition to reactivate rail service on a railbanked right of way, a petition to exempt an abandonment from

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[114] *See* Verified Statement of Murray Brackett ("Brackett Verified Statement") at ¶ 5.

[115] *See* Triplett Verified Statement at ¶ 7.

[116] *See* Verified Statement of Murray Brackett at ¶ 4.

[117] *King County Acquisition*, *supra* note 112, slip op. at 3.

[118] *See* Triplett Verified Statement at ¶ 6.

[119] The Board's jurisdiction over rail transportation does not extend to wholly intrastate passenger rail service. *See, e.g.*, *Cuyahoga Falls & Hudson Rly. Co. v. Village of Silver Lake*, 122 F. App'x 845, 847-48 (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 (STB served Mar. 5, 1998); *Napa Valley Wine Train, Inc. Petition for Declaratory Order*, 7 I.C.C. 2d 954, 967 (1991); *Magner-O-Hara Scenic Rly. v. ICC*, 692 F.2d 441, 444-45 (6th Cir. 1982).

the OFA process, a motion to dismiss an OFA or an adverse abandonment application. In all of these contexts, the Board's decisions usually turn on whether the carrier or prospective carrier demonstrates a concrete demand for freight service.

Two years ago the Board denied GNP Railway's motion to enjoin rail salvage and rejected GNP's petitions to vacate a NITU and reactivate rail service on the Redmond Spur.[120] In holding that GNP was not a bona fide petitioner, the Board cited GNP's financial struggles, and the fact that GNP's shippers lacked the facilities necessary to receive shipments by rail. The Board noted that several of GNP's shippers had no rail sidings or connections to the rail line: "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."[121]

In *Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In King County, WA, In the Matter of An Offer of Financial Assistance*,[122] the Board rejected an OFA for a line segment that interconnects with the Line at Woodinville. The factual context was quite similar to this case. BNSF and King County sought to railbank an inactive corridor. The last remaining shipper supported abandonment. A group of neighbors formed a railroad (the Redmond-Issaquah Railroad Preservation Association or RIRPA) and secured letters of support from various "shippers" who attested that they would use rail service. The Board had no problem with the fact that RIRPA was a group of adjacent landowners, "as long as they were intending to provide rail service and there existed a real need for that service."[123] But the Board closely scrutinized the statements from the "shippers" and concluded that the prospect for future

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[120] *GNP*, *supra* note 3.

[121] *Id.*, slip op. at 6.

[122] 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).

[123] *Id.* at 641.

traffic on the line is "highly speculative."[124] RIRPA's shippers looked a lot like WTD and CalPortland – no history of rail shipments on the line, no facilities to receive or ship commodities by rail, no evidence that the shippers sought rate quotes for the service, no evidence that the cost of shipping by rail would be cost-competitive, no evidence that the prospective carrier had realistic plans to rehabilitate the track. The Board rejected RIRPA's OFA, and subsequently authorized trail use of the corridor.

RIRPA appealed from the Board's decision to the Ninth Circuit, contending that the OFA statute does not allow the Board to consider the likelihood of future rail service in evaluating an OFA application. The Court of Appeals rejected this contention, upholding the Board's authority to consider the prospect for future rail service in evaluating an OFA.[125]

In *Norfolk Southern Railway Company – Petition For Exemption – In Baltimore City and Baltimore County, MD*,[126] the carrier petitioned for an exemption from the OFA process to abandon a line to accommodate commuter rail service. The ubiquitous James Riffin opposed the OFA exemption, contending that there was demand for renewed freight operations on the line. Mr. Riffin argued that continued freight service would enable rail transport of vast quantities of solid waste to an incinerator. The Board granted the exemption, concluding that "the potential future traffic claimed by Riffin is too speculative to be entitled to much weight."[127] The Board's analysis of Riffin's incinerator shipments is instructive for this case:

> Riffin suggests that freight rail service to the potential new incinerator in Harford County would meet a public need. However, given the short distances involved, the fact that the MSW movements necessarily originate on trucks, and the fact that a rail interchange would be needed to complete the delivery of the MSW to the potential incinerator, which, if located on a rail line, would be on a different rail line, we have serious questions about the feasibility of an operation

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[124] *Id.*

[125] *Redmond-Issaquah R.R. Pres. Ass'n*, 223 F.3d at 1063.

[126] STB Docket No. AB-290 (Sub No. 311X) (STB served Apr. 5, 2010).

[127] *Id.*, slip op. at 5.

transloading the MSW from trucks to rail here. Presumably, that explains why neither NSR nor any of the public bodies involved with developing the new incinerator has sought to promote a rail option for the facility.[128]

Mr. Riffin's business case for freight service to the incinerator may be less speculative than Ballard's claims here:

- Ballard seeks to serve two "shippers," neither of which has any business operations on the Line.[129] One of those companies, WTD, submitted a bid to salvage the track for Kirkland.[130] Five days after Kirkland notified WTD that the City had selected a different salvage contractor WTD owner Bobby Wolford signed his letter to the Board.[131] The other shipper, CalPortland, has no rail spur at its Everett yard and no plans to build one.[132]

- WTD and CalPortland each aspire to move construction materials to and from large projects in Bellevue, but neither has secured contracts for such work.[133] Neither can identify the specific projects they hope to support or projects that require freight service.[134] Mr. Wolford is waiting to make inquiries until rail

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[128] *Id.*, slip op. at 6-7. Other Board decisions apply similar criteria in balancing applications to restore or preserve rail service against competing proposals for public use of an inactive rail corridor. *See, e.g.*, *Roaring Fork Railroad Holding Authority – Abandonment Exemption – In Garfield, Eagle, and Pitkin Counties, CO*, 4 S.T.B. 116, 119-20 (1999) (finding absence of genuine freight demand), *aff'd sub nom. Kulmer v. Surface Transportation Board*, 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) ("closely" examining "alleged prospects for [freight] service" and finding such claims "to be unsubstantiated"); *Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 9-10 (STB served Mary 13, 1998) (examining claim of freight demand and finding it "neither persuasive nor meritorious").

[129] Wolford Tr. 103:7-20 (Ex. 10); Skrivan Tr. 52:1-5 (Ex. 27). Cole Tr. 142:8-11, 145:7-10, 146:9-13 (Ex. 6).

[130] Triplett Verified Statement at ¶ 18; WTD Bid for Cross Kirkland Corridor Rail Removal Project ("WTD Bid") (Ex. 29).

[131] Compare WTD Letter dated March 27, 2013 (Ex. 23) to Letter from Kirkland Purchasing Agent Barry Scott to WTD dated March 22, 2013 (WTD Bid, Ex. 29 at 13).

[132] Email of May 1, 2013 from Michael Skrivan to Douglas Engle (Ex. 28); Skrivan Tr. 40:5-12 (Ex. 27).

[133] Wolford Tr. 103:22-25 (Ex. 10); Skrivan Tr. 27:7-12, 35:9-11, 37:24-38:17, 62:7-11 (Ex. 27).

[134] Wolford Tr. 34:15-23, 93:1-9 (Ex. 10); Skrivan Tr. 35:25-36:18 (Ex. 27).

service on the Line is restored.[135] Ballard presents no contract or RFP from a developer or agency ready to engage either WTD or CalPortland to move construction materials to or from a project in Bellevue.[136]

- Neither WTD nor CalPortland has located a site on the Line to load or unload construction materials/spoils.[137] WTD is counting on Doug Engle to procure such a facility.[138]

- CalPortland's Everett yard has no connection to any rail line, and CalPortland has rejected as cost prohibitive the construction of a rail spur.[139] WTD has a yard on the Freight Segment, but it has no rail spur, and within the past decade WTD has not requested rail service at its yard or elsewhere.[140]

- Neither WTD nor CalPortland have asked Ballard for a rate quote to move construction materials from any point to or from Bellevue.[141] Nor has either business made such requests to another carrier.[142]

- WTD's preferred option for disposal of construction spoils loaded in Bellevue would be to dump them off the side of the Freight Segment, to create a "nature trail."[143] But WTD presented no evidence that anyone has engaged it, Ballard, or ECR to build a nature trail, or that the Port of Seattle (which owns the Freight Segment) supports this plan. WTD's Bobby Wolford did not know where WTD would dispose of the spoils if WTD cannot dump them on the right of way.[144]

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[135] Wolford Tr. 103:22-25 (Ex. 10).

[136] *Id.*; Skrivan Tr. 27:7-12, 28:6-11, 35:9-11, 62:7-11 (Ex. 27); Cole Tr. 149:5-7 (Ex. 6).

[137] Cole Tr. 142:8-11, 145:7-10 (Ex. 6); Skrivan Tr. 54:1-7, 54:25-55:5 (Ex. 27); Wolford Tr. 103:12-17, 110:2-111:18, 117:20-118:3 (Ex. 10).

[138] *Id.* at 110:1-111:10. Doug Engle has not had success in locating a transload facility. *See* Engle Tr. 140:17-20, 141:17-22 (Ex. 2).

[139] Skrivan Tr. 40:5-41:1 (Ex. 27); Email of May 1, 2013 from Michael Skrivan to Douglas Engle (Ex. 28).

[140] Engle Tr. at 157:1-6 (Ex. 2); Wolford Tr. 117:10-12, 130:14-131:24, 141:4-142:6 (Ex. 10).

[141] Cole Tr. 140:8-11, 140:9-10, 140:15-19, 146:14-18 (Ex. 6); Wolford Tr. 104:1-17; 112:4-12 (Ex. 10); Skrivan Tr. 27:7-29:2, 31:9-32:5 (Ex. 27).

[142] Wolford Tr. 24:18-25:1 (Ex. 10); Skrivan Tr. 40:5-9 (Ex. 27).

[143] Wolford Tr. 104:18-105:8, 107:19-108:4 (Ex. 10).

[144] *Id.* at 106:6-107:18.

Mr. Wolford mentioned two alternative disposal sites, but he did not know whether they have rail service.[145]

- Any shipment originating in Bellevue would need to traverse the Freight Segment. Ballard has conducted no maintenance work on the Freight Segment (other than spraying for weeds)[146] despite reports showing a rail line in grave need of maintenance.[147] Ballard has no plans or budget to maintain the Freight Segment. Rather, Ballard and ECR count on the Washington legislature to underwrite rehabilitation of the rail line,[148] a plan that the legislature has not embraced.

At most, Ballard's shipper letters show that CalPortland and WTD would consider using rail service if it were available and less expensive than trucking. The failure of CalPortland and WTD to take the basic steps and make the commitments necessary to obtain freight service make their stated interest in freight service and Ballard's corresponding claim of freight demand too speculative to be given any weight.[149] This showing does not establish a likelihood of success on the merits.[150] Nor does it demonstrate that the denial of injunctive relief would inflict irreparable

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[145] *Id.* At 76:22-78:6.

[146] *See* Cole Tr. 63:4-21, 70:17-71:8 (Ex. 6).

[147] Doug Engle testified that when ECR acquired control over the Freight Segment in late 2012 "we were aware that there was some maintenance that was going to be needed to done immediately to keep freight moving." Engle Tr. at 88:24-89:10 (Ex. 2).

[148] *Id.* at 89:10-90:12.

[149] *See Union Pacific Railroad Company – Discontinuance – In Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209), slip op. at 3 (STB served Jan. 2, 2008) (ignoring traffic projections in discontinuance proceeding where protesting shipper failed to take "basic step" of contacting carrier about rates and terms of service, had no history of shipments in three decades, and provided no evidence of contracts that established projected traffic).

[150] *Denver & Rio Grande Railway Historical Foundation*, *supra* note 128, slip op. at 12 (stating, in an adverse abandonment proceeding, that the "Board will not unquestioningly accept speculative claims of potential freight traffic."); *Norfolk Southern Railway Company – Petition For Exemption – In Baltimore City and Baltimore County, MD*, STB Docket No. AB 290 (Sub-No. 311X), slip op. at 6 (served May 4, 2010) (concluding that letters indicating that firms would consider using rail service if it were available and less expensive than trucking "do not constitute credible evidence of an overriding public need for continued rail service" and therefore do not establish a likelihood of success on the merits); *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track In New York, NY*, 8 I.C.C. 2d 773, 780-86 (1992) (finding lack of credibility, in adverse abandonment context, in claims of continued freight service demand and proposal where railroad had failed to acquire (continued . . .)

harm on Ballard. A carrier with no shippers awaiting service cannot be harmed by removal of the track, especially not when the right of way is preserved for future rail service under the railbanking program.[151]

C. Ballard's Failure To Offer Any Realistic Plan To Obtain Property Rights To The Line Is Fatal To Ballard's Irreparable Harm Showing.

In evaluating petitions to establish or reactivate rail service the Board often notes that exemption authority is permissive, but it does not absolve the carrier of the obligation to obtain property rights to access a line. Just last month, the Board denied the Port's request to stay Ballard's acquisition of operating rights to the Freight Segment over a contractual dispute. The Board noted, however, that "Ballard can only proceed with its transaction, and therefore exercise the exemption authority, once there is a lease agreement in effect . . ."[152] Last year, in *Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line*,[153] the Board commented: "Although the Board may issue Saratoga a license to operate as a common carrier, Saratoga must still have a valid property right under New York state law in order to initiate operations on the line."[154]

(. . . continued)
necessary lands for operations, establish certain demand for service, and failed to show adequate financial capacity to operate proposed service), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (1994).

[151] In *GNP*, *supra* note 3, the Board stated: "The Trails Act does not prohibit a trail sponsor from removing track or making changes to the ROW, *so long as the property remains available for reactivation of rail service."* Slip op. at 5 (emphasis added). The Board denied relief to GNP because the removal of track does not interfere with the primary goal of the Act, the preservation of rights of way for future rail service. *Id.*

[152] *Ballard Terminal Railroad*, *supra* note 19, slip op. at 2.

[153] STB Docket No. FD 35631 (served October 11, 2012)

[154] *Id.*, slip op. at 3 (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); *MVC Transp. – Acquis. Exemption – P&LE Properties*, STB Docket No. FD 34462, slip op. at 6 (Sub-No. 1) (STB served Oct. 20, 2004)).

The Line that Ballard hopes to seize is a profoundly valuable assemblage of real estate. BNSF appraised its net liquidation value at more than $243 million.[155] The Port of Seattle paid BNSF $81.4 million for the Line and some adjacent rights of way.[156] Kirkland's appraiser values the Line at more than $37 million.[157] Kirkland paid the Port $5 million for 5.75 miles of the Line.[158] Sound Transit paid the Port $13.7 million for one mile of the Line in Bellevue, plus a transit easement over the rest of the right of way.[159] King County paid the Port $15.8 for the Port's residual interest in the remaining segments of the Woodinville Subdivision, including the Line.

These valuations are reflective of the continuing trend in uses of land adjacent to the Line for high-end commercial and retail and mixed-use residential/retail. The expansion of Google's Kirkland's campus is emblematic of this trend: in 2004 Google opened a small office in Kirkland. Now it is in the process of building 180,000 square feet of office space where 1,000 employees will work – directly next to the Line.[160] If the past several years[161] are a reliable indicator, this trend will continue.

Ballard admittedly has no property interest in the Line.[162] It holds no rail easement, no reactivation rights nor any other authority to occupy the Line. At his deposition Byron Cole was asked whether Ballard needs a property interest in the Line to run trains on it. He responded:

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[155] *See* BNSF Petition for Exemption at 5 (Ex. 1).

[156] *See* Seventh Amendment to Purchase and Sale Agreement of December 17, 2009 between BNSF, the Port, and King County (Ex. 3).

[157] *See* Verified Statement of Murray Brackett at ¶ 4.

[158] *See* Verified Statement of Kurt Triplett at ¶ 4.

[159] *See* King County Recording No. 20120411001174 ("High Capacity Transportation Easement Agreement," dated April 11, 2012); King County Recording No. 20120411001173 ("Quit Claim Deed," dated April 10, 2011).

[160] *See* Brier Dudley, "Google boom: Kirkland campus to double," *Seattle Times*, Mar. 12, 2013 (Ex. 30).

[161] *See* Brackett Verified Statement at ¶ 5.

[162] *See* Cole Tr. 95:17-22 (Ex. 6).

"Well, we would only be able to do it if we had, you know, some paperwork, and we would have to see what the deal was."[163] Mr. Cole conceded that on the Freight Segment Ballard relies for operating rights on the freight easement held by ECR.[164] Follow up questions revealed that Ballard has no plan to acquire a freight easement on the Line,[165] that Ballard has approached none of the public entities that hold property rights in the Line about acquiring operating rights,[166] and that Ballard is waiting for the Board's decision to determine whether Ballard needs any property rights. [167]

Ballard's solution to the problem of no property rights is to ask the Board to "transfer all of the rail materials to it at net liquidation value."[168] Ballard cites no authority for this request, and Kirkland knows of none. Ballard urges the Board to grant this request by drawing an analogy to the Board's OFA procedure in the context of a proposed abandonment.[169] Assuming in the absence of any authority that such analogy is proper, Ballard cannot show that it would entitled to the benefits of this procedure. In the OFA context, an offeror must meet certain conditions, including demonstrating financial responsibility and, significantly, *making an offer*,[170] while also demonstrating a *genuine* demand for freight service.[171] Ballard has done

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[163] *See id.* at 98:10-17.

[164] *See id.* at 99:11-20.

[165] *See id.* at 100:1-16.

[166] *See id.* at 100:24-101:1, 101:24-25, 102:14-17, 103:17-19, 104:4-13. Mr. Cole testified that Doug Engle approached Kirkland, King County and Sound Transit in efforts to acquire a freight easement over the Line. *See id.* at 104:4-13. What Doug Engle actually offered to Kirkland was to forego freight service and rail reactivation if Kirkland would make the CKC available for an excursion train. *See* Verified Statement of Kurt Triplett at ¶¶ 10, 11; Email of Nov. 16, 2012 from Doug Engle to Kurt Triplett (Ex. 9).

[167] *See* Cole Tr. at 100:1-7 (Ex. 6).

[168] *See* Ballard's Verified Petition For Exemption at 8.

[169] *See id.* at 9 ("Such a transfer is consistent with the Board's analogous authority in offer of financial assistance proceedings . . . .").

[170] *See generally* 49 C.F.R. § 1152.27.

[171] *See* notes 122 and 128, *supra*, and accompanying text.

none of these things. Ballard could have obtained the rail materials and the real estate in 2008 through an OFA, but passed on that opportunity. Even if the Board granted Ballard's request, however, Ballard would still need property rights to run trains on the Line.

Ballard is in no position to buy the property rights it needs to operate on this Line. In September 2012 Mr. Cole told a bankruptcy court judge that Ballard had not been paid for the freight it hauled for GNP, and that "Our financial position becomes more precarious every day."[172] Mr. Cole estimated Ballard's 2012 gross revenues from all three of its railroads at $500,000 and the Ballard usually operated at a loss.[173] Further, Mr. Cole testified that Ballard has reserved no money to acquire a property interest in the Line.[174]

In summary, Ballard has no plan and lacks the resources it would require to gain access to the Line. As noted above, the Board normally does not concern itself with a carrier's ability to secure the property rights required under state law to provide rail service, but when that carrier asks the Board to enjoin a trail sponsor's efforts to develop a trail as authorized by a NITU Order on grounds that rail salvage will cause the carrier "irreparable harm," the Board has and will consider the credibility of that claim.[175] In this case Kirkland's efforts to build a trail will cause Ballard no harm, because Ballard has no realistic plan to obtain either a property interest in the Line or shippers to use the Line.

D. A Preliminary Injunction Barring Kirkland From Salvaging The Rails Would Cause Substantial Harm to Kirkland And Be At Odds With The Public Interest.

The public interest in no way supports Ballard's request to freeze Kirkland's development of a trail on the CKC. Washington cities must weigh their capital investments in

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[172] *See* Letter from Byron Cole to Judge Brian D. Lynch (September 21, 2012) at 4 (Ex. 5).

[173] *See* Cole Tr. at 32:17-33:1, 56:7-13 (Ex. 6).

[174] *See id.* at 105:8-10.

[175] *Arizona Public Service Co.*, *supra* note 106, slip op. at 5-6 (allegations that rate differential will cause competitive injury are too speculative to constitute irreparable harm and to support injunctive relief).

parks and recreation carefully, and stand accountable to the voters for their choices among competing opportunities. Kirkland spent $5 million to acquire the CKC, with the goal of building a trail for the health and pleasure of its residents, and possibly, to support a commuter rail line at some point in the future.[176] A preliminary injunction would delay Kirkland's plans by one year, and cost Kirkland taxpayers about $500,000.[177] By contrast, Ballard has no investment in the Line, no property rights in the Line and no realistic prospects for attracting shippers. In weighing applications for injunctive relief the Board considers both the prospects for enhancement of rail service and impacts on other public infrastructure projects.[178] To allow Ballard to hold Kirkland's trail plans hostage to Ballard's speculative vision of building a rail freight business would send a discouraging message to every public entity contemplating an investment in a railbanked right of way. Ballard's preliminary injunction would delay by at least a year Kirkland's plan to improve the quality of life for its residents and increase Kirkland's cost of owning and maintaining the CKC, but it would not pave the way for establishment of rail service on the Line.

E. If The Board Grants Preliminary Injunctive Relief, Ballard Should Be Required To Post A Bond.

If the Board takes the extraordinary step of issuing a preliminary injunction, it should require Ballard to post a bond to guard against unwarranted harm to Kirkland's interests. Under 49 U.S.C. § 721(b)(4), the Board has the power to grant an "*appropriate* order" (emphasis added) to prevent irreparable harm and, as explained above, applies the same four-part test

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[176] *See* Triplett Verified Statement at ¶ 6.

[177] *See* Triplett Verified Statement at ¶¶ 20-22, and exhibits cited therein.

[178] *See, e.g., Roaring Fork Railroad Holding Authority, supra* note 128, 4 S.T.B. at 120 ("It would be inappropriate and unfair to wrest the right-of-way away from one person desiring to use it for a valid public purpose and give it to another person to be put to use for the identical public purpose."); *Denver & Rio Grande Railway Historical Foundation, supra* note 128, slip op. at 17-18 (concluding that development of public projects would serve public interest where there was no genuine freight demand); *Norfolk and Western Railway Company, supra* note 128, slip op. at 9 (considering proposed public uses for subject right-of-way).

utilized by federal courts under Fed. R. Civ. 65. As federal courts have recognized, a bond (1) discourages the moving party from seeking preliminary injunctive relief to which it is not entitled, (2) ensures that the moving party will bear the cost of an error in granting such relief, not the enjoined party, and (3) provides a wrongfully enjoining party a source of recovery and without further regard to the moving party's solvency.[179] The ICC exercised its equitable authority to require the posting of a bond in other contexts.[180] As bonds are recognized as appropriate condition of an injunction, the Board should not hesitate to require the posting of a bond if it grants Ballard's request.

As explained in Kurt Triplett's Verified Statement, filed herewith, if Kirkland's salvage plans are delayed, it faces the lost time value of its investment in the CKC, increased maintenance costs, and the risk of loss of a favorable contract and attendant costs. These costs are a proper basis for a bond.[181] The total of these costs is approximately $500,000. Accordingly, Ballard should be required to post a bond of no less than $500,000.

IV. CONCLUSION

For the reasons noted above, Kirkland urges the Board to deny Ballard's motion for a preliminary injunction. With due respect, Kirkland also urges the Board to rule promptly, so that Kirkland does not lose the 2013 construction season for salvage of the rails on the CKC. Ballard argues that by "volunteering to refrain from removing the rail assets during the pendency of the Board's consideration of Ballard's preliminary injunction petition," Kirkland conceded that its plans have no urgency.[182] Ballard is wrong. Kirkland waited because it had no choice. This

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[179] *See Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1037 (9th Cir. 1994); *Continuum Co. v. Incepts, Inc.*, 873 F.2d 801, 803 (5th Cir. 1989).

[180] *See, e.g., Chelsea Property Owners,* 8 I.C.C. 2d 773, 792 (1992), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714-15 (1994).

[181] *See Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 458-59 (7th Cir. 2010).

[182] Ballard Motion For Preliminary Injunction at 14 ("it may take months for the Board to decide this petition."). In arguments before a federal judge on Ballard's motion for a TRO Ballard counsel was less circumspect about the Board's ability to rule promptly:

(continued . . .)

Board has the authority to decide whether Kirkland may proceed with its salvage plans, and Ballard's motion framed that issue for the Board's decision. Kirkland asks the Board to rule promptly, so that Kirkland may take advantage of its favorable contract for salvage.

DATED: June 4, 2013.

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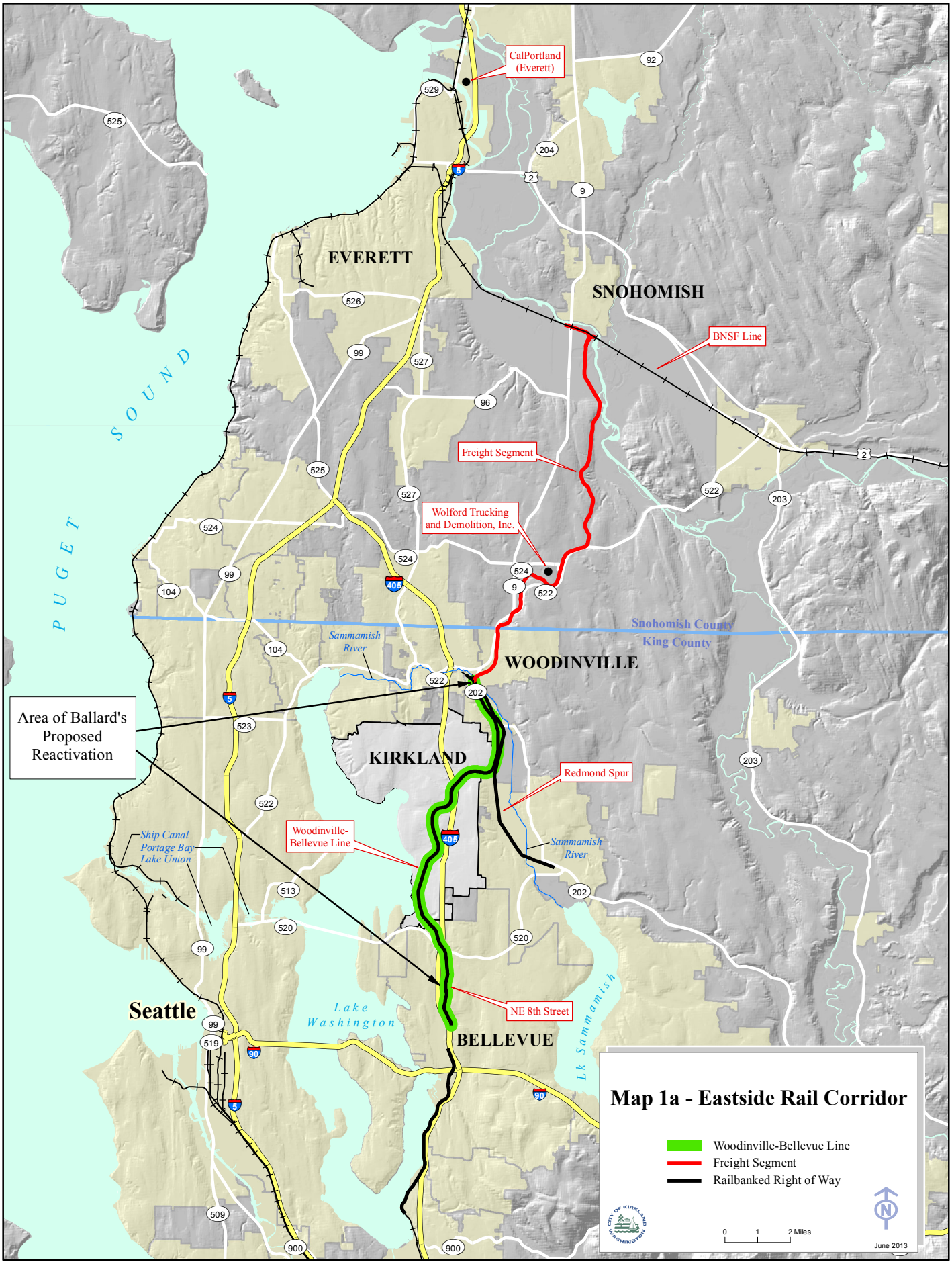
Attorneys for the City of Kirkland, Washington

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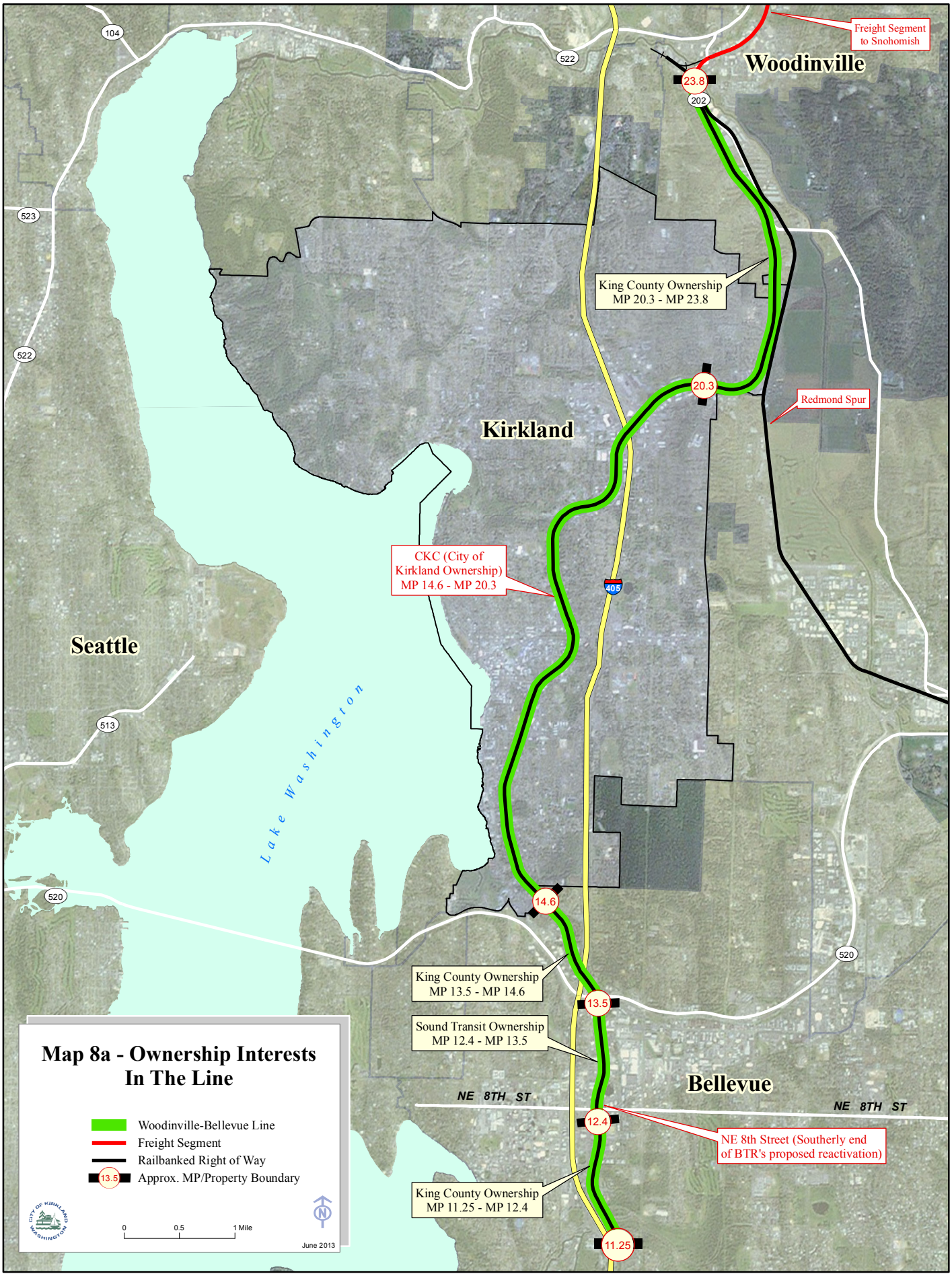
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> And I'll be quite honest and pragmatic with Your Honor. [The] STB has a lot of fine qualities. They do a lot of very solid jurisdictional prudence. In the world of injunctive relief, they're not particularly expedient.

Verbatim Report of Proceedings Before The Hon. Marsha J. Pechman, United States District Judge (May 3, 2013), Tr. at 6 (Ex. 31).



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August 8, 2008

223244



Ms Anne K Quinlan, Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: ***STB Docket No. AB-6 (Sub-No. 465X)***
BNSF Railway Company Abandonment Exemption in King County, Washington

Dear Ms Quinlan

Enclosed for filing in STB Docket No AB-6 (Sub-No 465X) are the original and ten copies of BNSF Railway Company's Petition for Exemption under 49 U S C § 10502 for filing with the Surface Transportation Board in the above-referenced matter

Also enclosed is a check in the amount of $6,300 for the filing fee

FILED
AUG 11 2008
SURFACE
TRANSPORTATION BOARD

Sincerely,

Kristy D Clark
General Attorney

Enclosures As stated

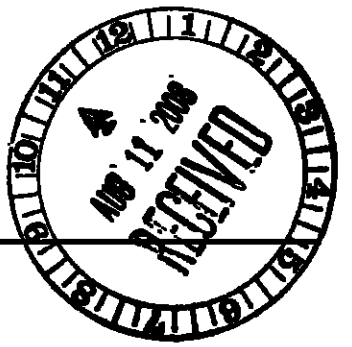
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BEFORE THE

SURFACE TRANSPORTATION BOARD



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

223244

PETITION FOR EXEMPTION

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TRANSPORTATION BOARD

Dated August 11, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U S C § 10502, from the prior approval requirements of 49 U S C § 10903-05, BNSF's abandonment of a 12 55-mile rail line located in King County, Washington

PROPOSED TRANSACTION

BNSF proposes to abandon its rail line located between Milepost 11 25 near Wilburton and Milepost 23 80, in Woodinville, King County, Washington (the "Line") The Line traverses U S Postal Service Zip Codes 98005, 98004, 98033, 98034, 98011 and 98072 A map of the Line is attached as Exhibit A

Based on information in BNSF's possession, the Line does not contain federally granted rights-of-way Any documentation in BNSF's possession will be made available to those requesting it.

STATEMENT OF FACTS

BNSF owns and operates a 12 55-mile rail line between the stations of Wilburton and Woodinville, Washington There are two shippers currently being served on the line Weyerhaeuser, Inc. ("Weyerhaeuser") and Safeway, Inc ("Safeway") Beginning in September 2008, Weyerhaeuser and Safeway will begin using an existing transload facility for their rail transportation needs Weyerhaeuser and Safeway understand the desirable social, political and economic impacts of the proposed abandonment to the community as a whole and have committed to supporting the abandonment

The Port of Seattle ("Port") and BNSF have entered into an agreement pursuant to which BNSF will donate to the Port the right-of-way, track, and other property and physical assets located on the portion of the Line between Milepost 11 25 and Milepost 23 45 Pursuant to a separate agreement, BNSF will sell to the Port the right-of-way, track, and other property and physical assets of the Line between Milepost 23 45 and Milepost 23 80 *See The Port of Seattle Acquisition Exemption – Certain Assets of BNSF Railway Company*, STB Finance Docket No 35128 (STB served June 20, 2008) BNSF has also agreed to rail-bank the Line with King County who will serve as the Interim Trail User for federal railbanking purposes[1] There are no current plans to remove the track structure as the Port is considering multiple possibilities for the Line's ultimate use

As the following table illustrates, the volume of traffic moving to and from the Line has been declining steadily in recent years

[1] The Environmental and Historic Reports filed in reference to and in support of this Petition for Exemption incorrectly stated that the Port intends to allow King County, WA to railbank a "portion of the Line "

YEAR	ANNUAL CARLOADS
2005	263
2006	244
2007	220
2008	127 (Projected)

Prior to 2008, operations on the Line were marginally profitable solely from an operational standpoint BNSF, however, has been experiencing huge economic losses by forgoing a more profitable alternative use of the assets associated with the Line Opportunity costs reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets Pursuant to *Abandonment Regulations – Costing*, 3 I C C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value ("NLV") of the Line, and (3) current income tax benefits (if any) resulting from the abandonment.

The NLV of the Line is **$243,660,000.00**, consisting of $660,000 for the net salvage value of the track, track materials and ties[2] and $243 million in real estate value Without taking into account working capital and the income tax consequences of the abandonment, BNSF is incurring annual opportunity costs of approximately **$36,500,268** [$243,660,000 (NLV) x 14 98 percent (current nominal rate of return)[3]]

Once the two customers on the Line start using the transload facilities to meet their shipping needs, the Line will no longer generate any freight revenues from traffic originating or terminating on the Line. The Line is stub-ended and no longer capable of handling overhead

[2] The net salvage value of the track and track materials is somewhat outdated and significantly below current values. Since this estimate was made, steel prices have spiked by 40 percent
[3] *See Railroad Cost of Capital – 2006*, STB Ex Parte No. 558 (Sub-No 10)(STB served Apr 15, 2008)

traffic [4] At the same time, BNSF will continue to incur certain on-branch avoidable costs, such as maintenance-of-way costs, property taxes and certain other general and administrative costs associated with the Line.

Maintenance-of-way and Structure costs will be at least $125,500 based on normalized maintenance levels necessary to maintain the Line in Class 1 operating conditions The Board and its predecessor have long recognized the appropriateness of considering normalized maintenance costs in instances of deferred maintenance *See Chicago and North Western Transp Co - Abandonment*, 366 I C C 373, 377 (1982) ("Normalized maintenance is the amount needed for economic and efficient operation over the long term. *** We have, in the past, applied normalized maintenance calculations to actual maintenance figures and found that costs for normalized maintenance when compared to actual maintenance expenditures are indicative of deferred maintenance and are to be given consideration in determining whether or not the public convenience and necessity permit abandonment of a line")

The normalized maintenance costs of $10,000 per mile being utilized by BNSF are conservative and based on the per-mile maintenance costs accepted by the Board and its predecessor in other abandonment proceedings. For example, the Board and its predecessor found as reasonable per-mile normalized maintenance costs of **$10,943** in STB Docket No AB-33 (Sub-No 156), *Union Pacific Railroad Company – Abandonment – In Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX* (not printed), served November 8, 2000, **$6,957** in STB Docket No AB-564 *Camas Prairie Railnet, Inc Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID* (not printed), served September 13, 2000, **$6,029** in STB Docket No.

[4] BNSF abandoned the 0 65-mile rail line immediately to the south of the Line in *BNSF Railway Company – Abandonment Exemption – in King County, WA*, STB Docket No AB-6 (Sub-No. 453)(STB served Nov 8 2006) The abandonment of that line was consummated as of March 7, 2008

AB-441 (Sub-No 2X), *SWKR Operating Co – Abandonment Exemption in Cochise County, AZ* (not printed), served February 14, 1997, slip op at 5 ("We know from extensive experience that $6,000 per mile/per year is a reasonable figure for maintenance by a Class III railroad ")

In summary, once the two on-Line customers start using the nearby transload facility, BNSF will incur annual operating losses in excess of $125,500 and incur forgone opportunity costs of approximately $36,500,268, for a total annual economic loss of approximately $36,625,768 Thus continued operation of the Line would impose an enormous economic burden on BNSF and on interstate commerce

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U S.C § 10502 from the applicable requirements of 49 U S C § 10903 to permit BNSF to abandon this 12 55-mile rail line

Under 49 U S C § 10502, the STB must exempt a transaction from regulation when it finds that· (1) regulation is not necessary to carry out the rail transportation policy of 49 U S C § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub L. No 96-448, 94 Stat 1895, Congress encouraged the STB's predecessor to use liberally the expanded exemption authority under former Section 10505

> The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress The conferees expect that, consistent with the policies of this Act, the

Commission will pursue partial and complete exemption from remaining regulation

H.R Rep. No 1430, 96th Cong 2d Sess 105 (1980) *See also Exemption From Regulation – Boxcar Traffic*, 367 I C C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp v United States*, 740 F 2d 1023 (D C Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub L No 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502 H R Rep 422, 104th Cong , 1st Sess 168-69 (1995)

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U S C § 10101(2) and (7)]. *See, e g , Norfolk & W Ry Co Abandonment Exem – Cinn , Hamilton County, OH*, 3 S T B 110 (1998), *Georgia Central Railroad, L P – Abandonment Exemption – In Chatham County, GA*, STB Docket No AB-367 (Sub-No 2X) (STB served Sept 17, 1997)("*Georgia Central*") By abandoning the Line, BNSF will be able to avoid the out-of-pocket expenses and enormous opportunity costs associated with retaining this Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management 49 U S C § 10101(5) and (9) *See, e g , Minnesota Northern Railroad, Inc Abandonment Exemption – In Red Lake and Polk Counties, MN*, STB Docket No AB-497 (Sub-No. 1X) (STB served Nov. 14, 1997), *Louisiana & Delta Railroad, Inc – Abandonment Exemption In Lafourche and Assumption Parishes, LA*, STB Docket No. AB-318 (Sub-No 4X) (STB served Aug. 26, 1997).

Other aspects of the rail transportation policy are not adversely affected For example, competition and the continuation of a sound rail transportation system are not affected as the only customers on the Line are Weyerhaeuser and Safeway Beginning in September 2008, Weyerhaeuser will begin shipping and Safeway will begin receiving rail shipments via a transload facility located approximately 10 miles from their respective warehouses Weyerhaeuser supports the abandonment and will be providing a letter stating the same Safeway likewise supports the abandonment and has committed to providing a letter of confirmation Copies of these letters will be forwarded upon receipt

B. This Transaction Is of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume *See, e g , Burlington Northern Railroad Company – Abandonment Exemption In Greene and Polk Counties, MO*, Docket No AB-6 (Sub-No 349X) (ICC served Aug 27, 1993), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL*, Docket No AB-347 (Sub-No 1X) (ICC served Jan 16, 1992).

The proposed transaction is clearly of limited scope BNSF is seeking to abandon a 12.55-mile line that traverses an area of high-end commercial and residential development with limited and declining demand for rail service in recent years. The limited geographic area involved and the limited past use of the Line demonstrate the limited scope of the proposed abandonment. *See, e g , Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA*, Docket No AB-397 (Sub-No 3X) (ICC served Feb 9, 1995)

C. This Transaction Will Not Result in an Abuse of Market Power

There are two shippers on the Line, both of whom have plans to use a nearby transload facility to meet their future transportation needs, and both support the abandonment. Therefore, regulation is not necessary to protect shippers from an abuse of market power *See, e g, CSX Transportation, Inc – Abandonment Exemption – In Guernsey County, OH*, STB Docket No AB-55 (Sub-No 576) (STB served Nov 22, 1999, *CSX Transportation, Inc – Abandonment Exemption – In Harrison County, WV*, STB Docket No AB-55 (Sub-No 563X) (STB served Sept 25, 1998), *Georgia Central*

Also, the communities along the Line have an adequate highway network capable of supporting motor carrier transportation For example, Interstate 405 runs largely parallel to the Line Transportation services are available from numerous motor carriers that serve the area Where, as here, few shippers utilize the line to be abandoned and they have adequate alternative transportation options available, there is no potential abuse of market power *See, e g, Norfolk Southern Railway Company – Abandonment Exemption -- In Franklin, Marion, and Winston Counties, AL*, Docket No AB-290 (Sub-No 123X) (ICC served May 3, 1995).

As explained below, there is very limited, if any, prospect for freight rail growth in the area given the very high land values along the Line Consequently, the Board should reject any speculation about future traffic as a basis for denying the proposed abandonment *See, e g, Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR*, STB Docket No AB-433X (STB served Apr. 16, 1997) ("*Idaho Northern*"), *Tennessee Railway Company – Abandonment Exemption – In Scott County, TN*,

STB Docket No 290 (Sub-No 260X) (STB served June 17, 2005 ("*Tennessee*");[5] *Burlington Northern Railroad Company – Abandonment Exemption Between Mesa and Basin City, Franklin County, WA*, STB Docket No AB-6 (Sub-No 370) (STB served Jan 27, 1997), *Norfolk and Western Railway Company – Abandonment Exemption – In Randolph, Macon, Adair, and Schuyler Counties, MO, and Davis, Appanoose, and Monroe Counties, IA*, Docket No. 290 (Sub-No 122X) (ICC served Sept. 17, 1993 0, *CSX Transportation, Inc – Abandonment Exemption – In Webster County*, Docket No AB-55 (Sub-No 413X) (ICC served May 29, 1992).

EXEMPTION FROM SECTIONS 10904 AND 10905 IS ALSO WARRANTED

BNSF has agreed to donate, in part, and to sell, in part, the physical assets of the Line to the Port who, according to public records, intends to leave all rail, track and track-related structures in place while a public process is used to evaluate the best use of the corridor. BNSF has also agreed to rail-bank the Line with the County who will serve as Interim Trail User for federal railbanking purposes The Port has stated publicly that it intends to instigate a multi-agency, regional process to plan and recommend appropriate uses for the railbanked property, including the location and size of the proposed trail and the possibility for future commuter service The sale and donation are scheduled to close by the end of 2008 or early 2009 Accordingly, BNSF seeks an exemption from 49 U S C §§ 10904-05 to expedite the sale and donation of the physical assets of the Line to the Port and to railbank the corridor with the County.

[5] Citing *Idaho Northern*, the Board, in *Tennessee*, noted that under its precedent "mere speculation about future traffic is not a sound basis upon which to deny an abandonment " *Tennessee*, slip op , at 4

The agreements reached between the County, Port and BNSF will allow the rail corridor to become publicly owned and will preserve what County officials consider to be a critical transportation corridor for the broadest range of possible public uses In particular, preservation of the contiguous corridor is considered crucial to resolving transportation problems, one of the Eastside area's biggest issues The plans, as constructed, are expected to support billions of dollars in economic activity in addition to creating a nationally significant hiking and biking trail

The Board and its predecessor have granted exemptions from Sections 10904 and 10905 when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail freight service As previously explained, by the fall of 2008, all local traffic will be moved off the Line and all former overhead traffic has already been re-routed Consequently, by the end of this year there will no longer be any demand for rail freight service along the Line. Reinstitution of rail freight service under Section 10904 would be incompatible with the County's and the Port's intended uses of the Line In addition, there is no need for a public use condition under Section 10905 because BNSF has already agreed to sell, in part, and donate, in part the Line to a public entity for multiple public uses.

The Board should grant the requested relief because the Line is needed for a valid public purpose (a public trail and potentially commuter rail) and there is no overriding public need for continued rail freight service along the Line Applying the offer of financial assistance requirements, in this instance, is not necessary to carry out the rail transportation policy Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S C. §§

10101(2) and (7)] As previously explained, regulation of this transaction is not necessary to protect shippers from an abuse of market power. The remaining two shippers on the Line have alternative rail-truck options available and support the abandonment.

The Line offers limited, if any, freight rail growth opportunities, even for a short line operator Land use around the Line is clearly moving away from freight applications, if not from industrial and low-end commercial applications altogether. Land values along the right-of-way are in the $25-40 per square foot range which is well beyond what a rail-oriented Pacific Northwest manufacturer or distributor would pay for real estate Consequently, there is little chance of significantly increasing carload traffic on the Line Furthermore, Interstate 405 which runs largely parallel to the Line is a significant transportation corridor, public and private Use of the Line as a complimentary transit corridor and/or as a hiking/biking trail has been planned for some time and is now made possible through the joint BNSF, Port, County agreements *See Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. 290 (Sub-No 293X) (STB served Nov 6, 2007)(exemption granted where line was needed for public transit corridor); *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No AB-409 (Sub-No 5X) (STB served July 17, 2008)(exemption granted where line was needed for mass transit), *Union Pacific Railroad Company – Abandonment Exemption – In Pima County, AZ*, STB Docket No AB-33 (Sub-No 141X) (STB served Feb 16, 2000)(exemption granted where line was needed for public projects including bike/pedestrian paths), *Doniphan, Kensett and Searcy Railway – Abandonment Exemption – In Searcy, White County, AR*, STB Docket No AB-558X (STB served May 6, 1999)(exemption granted where line was needed for construction project); *K&E Railway Company – Abandonment Exemption – In Alfalfa, Garfield,*

and Grant Counties, OK and Barber County, KS, STB Docket No AB-480X (STB served December 31, 1996)(exemption granted where segments of line were needed for flood control), *Union Pacific Railroad Company – Abandonment Exemption – In Kane County, IL*, STB Docket No AB-33 (Sub-No 105X) (STB served April 29, 1997 (exemption granted where right-of-way was needed for interim trail use), *Missouri Pacific Railroad – Abandonment and Discontinuance of Operations Exemption – In Houston, Harris County, TX*, STB Docket No. AB-3 (Sub-No 139X) (STB served December 31, 1996)(exemption granted where line was needed for expansion of warehouse and hiking and bike trail)

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C F.R §§ 1105 07 and 1105 08 were forwarded to the Board on June 24, 2008 The Certificate of Service for this Petition for Exemption is attached as Exhibit B

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit C.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R Co – Abandonment – Goshen, 360 I C C 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U S C §§ 10903-05 is not required to carry out the rail transportation policy set forth in 49 U.S C § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition and related abandonment request

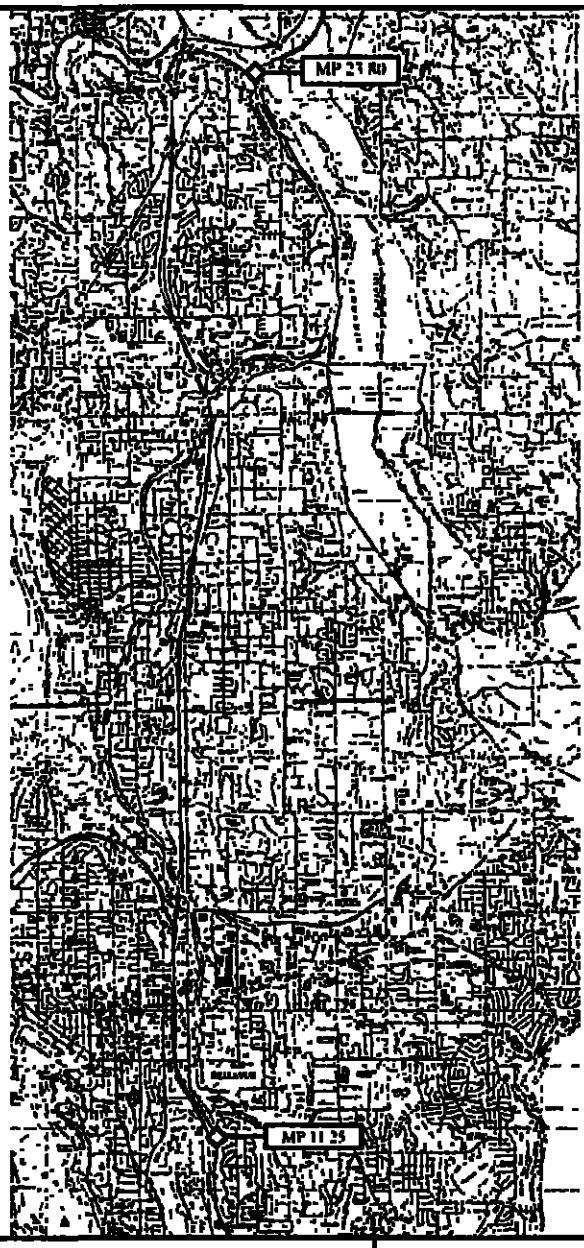
Respectfully submitted,



KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

Dated: August 11, 2008

EXHIBIT A



Woodinville Subdivision
King County, Washington

BNSF Line Segment 405
Milepost 11 25 to Milepost 23 80

STB Reference
AB-6, Sub 465X

Base map – United States Geological Survey
Bothell, Maltby, Kirkland and Redmond quadrangles
7 5-minute series

Map source dates 1979/07/01, 1980/07/01
DRG Creation Date 1997/04/09
DRG Coordinate System UTM
DRG Datum NAD27

EXHIBIT B

CERTIFICATE OF SERVICE

Pursuant to 49 C.F R. § 1152 60(d), the undersigned hereby certifies that the Petition for Exemption in STB Docket No AB-6 (Sub-No 465X) was mailed via first class mail on August 8, 2008, to the following parties

State Public Service Commission

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504

Military Traffic Management Command

Military Traffic Management Control
ATTN. Railroads for National Defense
720 Thimble Shoals Blvd , #130
Newport News, VA 23606-2574

National Park Service

U S Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of Agriculture

U S Department of Agriculture
Chief of the Forest Service
4th Floor N W , Yates Building
201 14th Street, SW
Washington, DC 20250

Dated August 8, 2008

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

EXHIBIT C

SURFACE TRANSPORTATION BOARD

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

BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
KING COUNTY, WASHINGTON

On August 11, 2008, BNSF Railway Company (BNSF) filed with the Surface Transportation Board a petition under 49 U S.C. 10502 for exemption from the provision of 49 U S C 10903 for BNSF to abandon a line of railroad extending from Milepost 11 25 to Milepost 23 80, near Wilburton, Washington, which traverses U S. Postal Service Zip Code 98005, 98004, 98033, 98034, 98011 and 98072, a distance of 12 55 miles in King County, Washington The line will travel through the Wilburton, Bellevue, Kirkland and Woodinville stations

The line does not contain federally granted rights of way Any documentation in the railroad's possession will be made available promptly to those requesting it

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R Co – Abandonment – Goshen, 360 I C C 91 (1979)

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S C 10502(b) A final decision will be issued within 90 days (by November 8, 2008)

Any offer of financial assistance (OFA) under 49 C F R. 1152 27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,500 *See* 49 C F R 1002(f)(25) [6]

[6] BNSF is also seeking an exemption from the OFA procedures which, if granted, will preclude the filing of an OFA

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use

Any request for a public use condition under 49 C F.R 1152 28 and any request for trail use/rail banking under 49 C F.R 1152 29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register* Each trail use request must be accompanied by a $200 filing fee *See* 49 C.F R. 1002.2(f)(27)

All filings in response to this notice must refer to STB Docket No. AB-6 (Sub-No. 465X) and must be sent to (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 395 E Street, S W , Washington, DC 20423-0001; and (2) Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, Texas 76131

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C F R Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis EAs in abandonment proceedings will normally be available within 60 days of the filing of the petition The deadline for submission of comments on the EA will generally be within 30 days of its service

Decided: _____ 2008

By the Board, David M Konschnik, Director, Office of Proceedings, Anne K Quinlan

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in STB Docket No AB-6 (Sub-No 465X) was published on July 2, 2008, in the *The Seattle Times*, a legal newspaper published daily in King and Snohomish counties, Washington as required by 49 C F.R § 1105.12

Dated· August 8, 2008

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

REVISED CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS

BNSF Railway Company ("BNSF"), by and through its authorized representative, Kristy Clark, certifies that on June 24, 2008, BNSF sent copies of the foregoing Environmental and Historic Reports by first class mail to the following agencies:

Ms. Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street S W
Washington, DC 20423-0001

Russell Holter
Dept. of Archaeology and Historic Preservation
1063 S Capitol Way, Suite 106
Olympia, WA 98501

Larry Gossett, Chair
Growth Management & Natural Resources Committee
Metropolitan King County Council
516 Third Avenue, Room 1200
Seattle, WA 98104

Tom Sibley
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

NOAA
National Geodetic Survey
VIA E-Mail NGS InfoCenter@noaa gov

Charles Natsuhara, Area Soil Scientist
Natural Resource Conservation Service
1011 East Main, Suite 106
Puyallup, WA 98372

Jim Green
Seattle District Corps of Engineers
P O Box 3755
Seattle, Washington 98124-3755

Loree' Randall
Shore Lands & Coastal Zone Mgmt.
PO Box 47600
Olympia, WA 98504-7600

Clifford J Villa, Assistant Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Karen Myers, Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Western WA Fish and Wildlife Office
510 Desmond Drive SE
Lacey, WA 98503

Gregory F Gress, Chief
Pacific Land Resources Program Center
U.S. National Park Service,
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, CA 94607

Gerald Shervey, PE
Washington Department of Ecology
NW Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Larry Fisher, Area Habitat Biologist
Washington Dept. of Fish & Wildlife
16018 Mill Creek Boulevard
Mill Creek, WA 98012

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504

The required cover letters (pursuant to 49 C F R 1105 11) are attached hereto BNSF has consulted with all appropriate agencies in preparing the reports

Kristy Clark

KRISTY CLARK
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

EXHIBITS REFERENCED

6	Document with cover sheet containing e-mail from Doug Engle to Kurt Triplett	143
8	Letter to Cynthia Brown dated March 27, 2013	201
11	Map identified Map 8	141

SEATTLE, WASHINGTON; Wednesday, May 22, 2013
9:17 A.M.
--o0o--

DOUGLAS ENGLE, deponent herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION

BY MR. FERGUSON:

Q. Good morning, Mr. Engle. My name is Hunter Ferguson. I represent the City of Kirkland. Have you had your deposition taken before?

A. Yes, I have.

Q. Okay. You probably aware of sort of the rules, how it works, I'm going to ask questions. I will ask for audible responses from you, head shakes and nods won't be picked up by the court reporter. I'll try to wait till the end of your answer so we don't talk over each other.

A. Mm-hm (answers affirmatively).

Q. Just be mindful of me doing the same and counsel, if they need to make objections, just so Katie has an easier time of writing everything down.

If you need to take a break at any time, we can do that, just not in the midst of a question or a series of questions. And if you don't understand a question or if

anything that I've asked is confusing, just tell me and I'll try to reword it for you.

A. Mm-hm (answers affirmatively).

Q. Okay. Let's start, are you represented by counsel?

A. Yes.

Q. Okay. Which law firm represents you?

A. Fletcher Sippel.

Q. Does the Montgomery Scarp firm also represent you?

A. Yes.

Q. Do you have an engagement letter with Fletcher Sippel?

A. Yes.

Q. Do you have an engagement letter with Montgomery Scarp?

A. Yes, I believe so.

Q. Do you recall signing an engagement letter with Montgomery Scarp?

A. I don't remember.

Q. Okay. Have you signed a letter with Montgomery Scarp in the past week?

A. No.

Q. Have you signed an engagement letter with Fletcher Sippel in the past week?

A. No.

Q. Do you know when you retained Fletcher Sippel to represent you?

A. Not exactly, over a month ago.

Q. Was it before or after Ballard filed its petition with the Surface Transportation Board?

A. I believe at the same time.

Q. Okay. Are you paying the legal fees to Fletcher Sippel?

MR. MONTGOMERY: Go ahead.

THE WITNESS: I am paying some of the legal fees to Fletcher Sippel, yes.

Q. (By Mr. Ferguson) Are you paying for your own representation?

A. Yes, I am.

Q. Are you paying legal fees for the representation of any other person or entity to Fletcher Sippel?

A. Yes.

Q. And what other entity are you paying for?

A. I am paying for Eastside Community Rail, and paying part of Ballard Terminal.

Q. Is anyone else underwriting, I guess, just back up here and clarify. Does Fletcher Sippel represent you personally?

MR. MONTGOMERY: Object to the extent it

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

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

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion. Object to the form; foundation.
THE WITNESS: So you want me to answer?
MR. MONTGOMERY: I'm done. I think I'm done with my objections. If you give me some more time, I will come up with some more.
THE WITNESS: Do you want to repeat the question, please?
Q. (By Mr. Ferguson) Do you consider yourself to be a party in interest in the STB proceedings?
MR. MONTGOMERY: Object to form. Object to the extent it calls for a legal conclusion. Foundation.
THE WITNESS: Of course.
Q. (By Mr. Ferguson) Why?
MR. MONTGOMERY: Same objections.
THE WITNESS: Mr. Cole's objectives and my objectives are the same, and that is to maximize profit. It's the fundamental basis of the American dream.
Q. (By Mr. Ferguson) Are you represented by counsel in connection with preparing any materials for submission to the Surface Transportation Board?
MR. MONTGOMERY: Object to the form; foundation, extent it calls for a legal conclusion.
THE WITNESS: So, repeat the question again.

Am I represented by counsel?
Q. (By Mr. Ferguson) For the purpose of preparing materials for submission to the Surface Transportation Board?
A. Yes.
MR. MONTGOMERY: Same, please, Mr. Engle.
THE WITNESS: I'm sorry, I thought you had already.
MR. MONTGOMERY: Same objections, please.
Q. (By Mr. Ferguson) So you are represented --
A. Yes.
Q. -- by counsel for the purpose of preparing materials for submission to the STB?
MR. MONTGOMERY: Same objections.
THE WITNESS: Yes.
Q. (By Mr. Ferguson) Okay. And is that Fletcher & Sippel that represented you --
MR. MONTGOMERY: Same objections.
Q. (By Mr. Ferguson) -- for those functions?
MR. MONTGOMERY: Same objections.
THE WITNESS: Yes.
Q. (By Mr. Ferguson) Okay. Are there any other lawyers that represent you in connection with the STB proceedings?
MR. MONTGOMERY: Same objections.

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

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

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

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

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

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

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

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

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

Q. (By Mr. Ferguson) With the pie chart?
A. Yes.
Q. Is that a stand-alone document or is that attached to something else?
A. It should be stand alone, but...
Q. Okay.
(Exhibit Number 23 marked.)
MR. WAGNER: Is that Bates stamped?
MR. MONTGOMERY: It's not. It was brought today.
MR. WAGNER: It was --
THE WITNESS: It was previously submitted.
MR. WAGNER: I've seen that in here (indicating).
THE WITNESS: I added --
MR. FERGUSON: Let's go off the record for a second.
(Discussion held off the record.)
MR. FERGUSON: Back on.
Q. (By Mr. Ferguson) Mr. Engle, the court reporter just handed you what's been marked as Exhibit 23. This is a document that you brought to the deposition this morning entitled "Eastside Community Rail Corridor Alignment Cost Sharing Example as of 2013 May 3."
Would you explain what this document is, please?

A. In answer -- response to your question as to how does ECR make its money, ECR makes its money based on a share of the revenue stream of the various activities inside the rail corridor. We have previously, in your package, in the documents I submitted, is a document that relates to the Surface Transportation Board's revenue adequacy rate of return, which over the last several years is about 11 percent.
So it is my intention to be able to offer more cost effective service to those entities using the right of way and make 11 percent margin on that business. For example, if this corridor is a hundred feet wide, for the purposes of this document, with freight only operating inside the corridor, all of the maintenance of way cost are the burden of Ballard Terminal Railroad.
If, for example, we were to add a trail to that, we believe that excluding the rail structure, which is why I resubmitted this, there is a sentence there that says "Trail expenses do not include rail structure costs," that the trail -- if the trail had 37 feet of the right of way, that for those general purposes of maintaining the right of way, keeping the weeds down, keeping the ditches clean, water flow, et cetera, that the trail would pay for its 37 feet of the right of way.
Now, then, if it was a trail only use, that the

user would be responsible also for 100 percent of the right of way cost and maintenance. So in the simple scenario, where there's freight and trail for the maintenance of way costs excluding railroad structure, the rails is only going to pay 63 percent and the trail is only going to pay 37 percent. The rail is always responsible for the rail structure costs.
So taking this to the next, which is the little table over here in the center to the right, after talking to KPNG, whatever allocation method you choose to pursue, you need to stick with it. So whether you use gross ton miles, gross vehicle miles, percent of revenue, percent of cost, whatever that is, you do it and you stick with it.
We decided, from an administrative standpoint, the easiest way to calculate, and the most consistent way to do this is gross vehicle miles. So for example, if freight constituted 50,000 vehicle miles in a year, and excursion constituted 150,000, and let's say some day in the future commuter was added into the mix, they would be the busiest at 300,000 miles, then that rail portion would get divvied up 10 percent to freight, 30 percent to excursion, 60 percent to commuter. What that would mean overall in the red numbers underneath net is that the freight would be paying 6 percent; excursion, 19; commuter, 38; trail, 37.

Q. What's the title of it?
A. The title of the spreadsheet is "Port of Seattle Capital Improvements to Eastside Rail Corridor."
Q. Okay. Let's go ahead and mark this so we can talk about it.
(Exhibit Number 24 marked.)
Q. (By Mr. Ferguson) Mr. Engle, the court reporter has just handed you what's been marked as Exhibit 24. It's the document you just referenced which you brought today entitled "Port of Seattle Capital Improvements to Eastside Rail Corridor."
Is this a document you prepared?
A. Yes, it is.
Q. Did anyone else help you prepare it?
A. Yes.
Q. Who?
A. It's based on information received from Railworks, Osmose, Northwest Signal, Byron Cole of Ballard Terminal and Ernie Wilson. Very little from Ernie. I think he reviewed it for math.
Q. Did you produce -- was this, so back up for a second. You made a spreadsheet based on information that you received or gathered from Railworks, Osmose, Northwest Signal, Mr. Cole and Mr. Wilson?
A. Correct.

Q. Was that information you received in the form of documents or was it received verbally?
A. Mr. Wilson did not provide input. He checked it. Checked the math for me. Want to make that straight first.
Q. You may have said that, I didn't hear you.
A. Just want to be straight. Railworks submitted the document. Osmose submitted the document. Northwest Signal presented documents. I believe those documents were all included in my submission, my response.
Q. Okay.
A. What -- the reason that I...
Q. What about Mr. Cole?
A. Mr. Cole?
Q. Did he receive?
A. Mr. Cole would have reviewed this, didn't receive anything from Mr. Cole. Mr. Cole does not e-mail. What Mr. Cole -- Mr. Cole was on this trip when we went down to Railworks and met with them about rehabbing the line. And so I wanted to make sure that we had captured -- so he was more of a technical review, if you will, of this document.
The reason that I produced this document for today is that in the electronic version of the spreadsheet, sometimes I group cells together that don't -- aren't necessarily exposed on the printout. And what I wanted to make sure was that these grouped cells were available for

discussion today.
Q. Okay. Is there an earlier version of this document or this spreadsheet that you produced in the materials that counsel gave to us on Tuesday?
A. Maybe, maybe not. Again, I don't keep a lot of drafts around.
Q. Okay.
A. I like iterating and updating. I might keep one version back, but that's it.
Q. Okay. Mr. Engle, why is the Port of Seattle's name included on this spreadsheet?
A. The original thinking was that since the Port of Seattle owned the fee, that is the Port of Seattle would have to accept any government money necessary to upgrade the tracks.
Q. Why?
A. Because that's the way it's done everywhere else but here.
Q. If it's not done that way here, why would they have to receive the money?
MR. MONTGOMERY: Foundation.
THE WITNESS: Because it is done that way here, they just don't want to.
Q. (By Mr. Ferguson) Under the O&M agreement between GNP and the Port of Seattle that ECR acquired

through the bankruptcy, isn't ECR contractually obligated to maintain and make any improvements to the freight segment?
MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.
THE WITNESS: Upon inspection, upon closing, or actually upon when we made the offer the end of September, we were aware that there was some amount of maintenance that was going to be needed to be done immediately to keep freight moving. In order to get the tracks up to a condition Class 1 or Class 2 that would enable passenger movements, or that would lower the ongoing maintenance costs for freight, a sizable amount of investment needed to be done. And as I said, that is typically -- this -- our proposal is typical for railroads around the country, is that the public entity do the necessary capital improvement and then the railroad maintains that for the duration of the agreement. The maintenance -- the ongoing maintenance cost would be roughly a million dollars a year, so we needed the capital improvement to be done to get to a level that we could actually maintain it.
Q. Okay. And when you're referencing, in the bottom row here, "Total Funding Request," total request is roughly 6.4 million; is that correct?

A. Yeah. Yes.
MR. MONTGOMERY: Sorry, again, object to the extent it relates to north of the segment at issue here.
Go ahead.
THE WITNESS: Yes, the difference between this and the 6.26 million that's floated around is the fact that there is 9 percent use tax in here. So if you took that out, it would be 6.26.
Q. (By Mr. Ferguson) Okay. Who is that funding going to? Who is this request going to be made to?
A. Well, the request was made to the state legislature, and --
Q. How was that request made?
A. Well, we were trying to figure that out when the Snohomish County Executive's office blew up.
Q. Do you know who made the request?
A. The guy who was supposed to make the request was involved in a research scandal.
Q. Do you know his name?
A. Kevin.
Q. Okay. And he was an official with Snohomish County?
A. He was on staff, yes.
Q. All right. Do you know if he or anyone else made a request for this funding?

A. We were never able to get it in to the proper form in the time frame required by the legislature. We missed the window.
Q. And this is a request you had made to the Washington Department of Transportation or did you make it to --
A. Under -- we made this directly with the legislature to get into the transportation budget, which it didn't get even as a line item zero. Okay, so it didn't even make any of the hurdles.
So, the department of -- after a phone call -- after a conversations with WSDOT, there were no -- we had missed the window for them and there was no opportunity to get funding in this legislative session through them either. So until 2015, there will be no state or WSDOT improvements made to the line.
Q. Okay. Mr. Engle, if we understood your testimony correctly, you said that some amount of maintenance needed to be done to keep freight moving; is that correct?
A. When I hear that back, that doesn't sound exactly right. There's always maintenance that needs to be done.
MR. FERGUSON: Can you find that in the answers and read that back, please.
Conscious of the time here, folks.
(Answer on Page 89, Lines 6 through 22

read by the reporter.)
Q. (By Mr. Ferguson) Do you know what maintenance needed to be done immediately to keep freight moving?
MR. MONTGOMERY: Object to the extent this calls for other than Bellevue to Woodinville.
THE WITNESS: Nothing extraordinary. Ties, spikes, bolts tightened, crossing work.
Q. (By Mr. Ferguson) Has --
A. Normal stuff.
Q. -- that work been done?
MR. MONTGOMERY: Same objection; foundation.
THE WITNESS: It's my understanding that Mr. Cole has maintained the right of way, has put money into the right of way, has maintained the right of way in an excepted level, which allows continued freight service. The only outstanding item that I am aware of at this time is a crossing signal in Maltby, that is -- needs some attention.
Q. (By Mr. Ferguson) Has there been any interruption to freight service since ECR acquired the rights to the freight segment?
MR. MONTGOMERY: Beyond the scope.
THE WITNESS: Not to my knowledge.
Q. (By Mr. Ferguson) Do you know who or what entity paid for the maintenance done that you just described?

A. No, I don't.
Q. Do you know if Ballard Terminal Railroad paid for it?
A. That would be my expectation, is that they've maintained the line per our operating agreement.
Q. Okay. When you say "our operating agreement," which agreement are you referring to?
A. The operating agreement between Ballard Terminal and Eastside Community Rail.
Q. Is that the interim operating agreement signed in September of 2012?
A. That would be the interim and the current lease.
Q. The current lease is the lease that you signed last month?
A. Yes.
Q. Okay. Number 20, I'd like to wrap up these and then break for lunch. Number 20, asks you to produce all documents related to discussions and negotiations between the Port, City of Kirkland, and/or King County regarding obtaining the property rights necessary to use the line for rail service.
Did you search for documents responsive to this request?
A. Yes.
Q. And did you find any documents responsive to this

that you've made to fulfill any moral obligations to Mr. Cole or Ballard Terminal Railroad?

MR. MONTGOMERY: Object to the form.

Q. (By Mr. Ferguson) By moral obligations, I mean --

A. I personally feel -- I personally feel obligated to compensate Mr. Cole for much of his effort with, during the GNP time period. There is specifically 38 or $39,000 that I owe him per the bankruptcy closing that we've got a handshake on.

Q. Okay. Moving on to 22, we touched on this before, but just so our record is clear, are you aware of any written communications that have been submitted to either the state legislature or an executive agency to maintain or improve the freight segment or the line?

A. The only communication has been with documents that have already been used and submitted. There -- as it relates to the State of Washington WSDOT, I did not include blank forms that I downloaded from their website that were e-mailed to me to fill out for a loan application. I saved the files. I didn't do anything with them. I didn't submit them to you unless you really want them, I'd be -- they're forms.

Relative to the legislature, we gave them the funding request that I believe you have in the documents

that were transmitted on Tuesday that I -- excuse me for reaching here. That one (indicating).

Q. Okay. Let's go ahead and mark this as an exhibit so we're clear.

(Exhibit Number 25 marked.)

THE WITNESS: It's actually just a two pager.

Q. (By Mr. Ferguson) Mr. Engle, would you back up, and we can have Katie read your answer again if that would help. Would you please explain what has been marked as Exhibit 25, what is this document?

A. This was a document we used to articulate. And it could be one page, front and back, which is the length, to communicate the need for the 6.2 million the -- in order to rehabilitate the tracks to a normal -- to a passenger level.

MR. MONTGOMERY: Do you have copies of that, extra copies? Did you pass them out?

MR. FERGUSON: It's in your stapled packet.

MR. MONTGOMERY: Thank you -- I don't think I got a stapled packet.

MR. FERGUSON: You do. It's right in front of you.

MR. MONTGOMERY: Thank you.

MR. FERGUSON: Tom, I think it's the last

two pages.

MR. MONTGOMERY: Got it. Go ahead, thanks.

Q. (By Mr. Ferguson) So this is a document that was submitted to who, or was it ever submitted to anyone?

A. It actually didn't make it to Olympia, other than individual legislators who wanted to see it.

Q. Okay.

A. Again, we were too late to get into the transportation budget. So this is the closest thing I have to a request.

Q. Do you know if anyone from Snohomish County ever made request for funding to the legislature for track rehab?

MR. MONTGOMERY: Object to the extent it doesn't involve Bellevue to Woodinville.

THE WITNESS: I don't know.

Q. (By Mr. Ferguson) Looking at Item 23, back on the subpoena, Page 6, we requested all documents showing traffic volume and revenues from freight traffic on the freight segment, including services provided by Ballard, since 2009.

It's my understanding that Ballard actually started running freight operations in 2010; is that correct?

A. Yes, it is.

Q. Did you search for documents showing traffic volume and revenues since 2010 here?

A. No, the request for documents from 2011 forward. So I --

Q. Well, the request --

A. -- searched for documents.

Q. Okay.

A. Well, I am sorry.

Q. The request specified a time period unless specified otherwise. So take a look on Page 4, up at the top, Number 6 -- it's okay.

A. Sorry, I misinterpreted that.

Q. It's all right. So you didn't search for any documents showing you traffic or freight volume before June 30, 2011?

A. Correct.

Q. Okay. Do you think you might have any records showing movements on the freight segment between January 1, 2010, and June 30, 2011?

A. I likely do.

Q. Okay.

A. But not likely in electronic format.

Q. Hard copy?

A. Which means they're likely buried in the back of my garage that's a storage unit or possibly over at

reflected here, at least, would accrue only once those acquisitions are made?
A. Correct.
Q. There are ongoing maintenance costs for the existing rail infrastructure?
A. Correct.
Q. And Ballard covers those?
A. Correct.
Q. Does ECR own any real property between Snohomish and Bellevue?
A. It owns the permanent freight easement between Snohomish and Woodinville.
Q. Does it own title to any land?
A. No.
Q. Has it attempted to acquire title to any land since June 2011, any point between Woodinville and Bellevue?
A. No.
Q. Does ECR have a deal with Woodinville to convey any rights to an easement for its bridge project?
A. When I get a deposit, we will enter those discussions.
Q. How much is the deposit that you have to have?
A. I don't know yet. It will be based on the appraisal.

Q. Are you having the -- you're having certain property appraised?
A. The Port of Seattle is making an appraisal.
Q. Okay. Do you know when you're going to get that appraisal or when the Port of Seattle will get the appraisal?
A. Any time. It's due any time.
Q. Okay. Why are you requiring deposit before you go into negotiation?
A. Because I would like the next round of discussions to be productive.
Q. Okay. So you want them to have some skin in the game?
A. If we're going to talk about it, let's do it.
Q. Okay. Will this be a nonrefundable deposit?
MR. MONTGOMERY: Calls for speculation; foundation.
THE WITNESS: I really haven't thought about it.
Q. (By Mr. Ferguson) Okay. Other than the freight easement, does ECR have any assets?
A. Just the operating agreements.
Q. That would be the operating agreement, the license agreement with Ballard?
A. And the Port of Seattle and Snohomish County.

Q. Okay. Does ECR receive any payments from the Port of Seattle under the operating agreement?
A. No, we pay the Port of Seattle $10 a car. And Ballard Terminal, per our license agreement, is responsible to make those payments. So Ballard pays the port $10 a car and pays us $10 a car.
Q. You're not actually going to net any revenue from Ballard's freight movements, correct?
A. $10 a car.
Q. But you have to pay that over to the Port of Seattle?
A. No, he's responsible for paying the Port $10 and for paying me $10 to pay for the freight --
Q. So it's $20 total split halfway, 10 to you and 10 to the Port?
A. Yes, sorry.
Q. It's okay. Does ECR have any contracts to build any facilities at any point on the line between Woodinville and Bellevue?
A. It has no written contracts.
Q. Does it have some other kind of contract? Is there an oral contract?
A. With Bobby to help him get -- with Mr. Wolford to help him get a spur, which benefits Wolford, Ballard Terminal and me.

Q. Okay. We'll get to Wolford Trucking in a second. I'm asking specifically about the line between Woodinville and Bellevue, so not Maltby, the southern portion. And why don't we just go ahead and look at a map.
MR. MONTGOMERY: He actually wants to talk about the southern portion now.
Q. (By Mr. Ferguson) This has already been introduced as an exhibit. This has been previously marked as Exhibit 11.
Guys, I'm sorry, I thought I had copies for everyone, but I don't.
A. You can probably just tell me what you want.
MR. MONTGOMERY: Hunter, I have mine. If you want, I can share it with the --
THE WITNESS: Whatever, I've got it memorized.
Q. (By Mr. Ferguson) Looking at Exhibit 11 --
A. Yes.
Q. -- does ECR have any contracts, written or otherwise, to construct any facilities along the rail corridor?
A. We have no contracts.
MR. MONTGOMERY: When you say the rail corridor, do you mean rail corridor as depicted in 11 now or do you mean something else?

Q. Do you understand passenger operations to include excursion service?
A. Yes.
Q. Okay. So do you understand that to require Eastside Community Rail's consent in order for excursion service to be run on the line?
MR. MONTGOMERY: Object to the form; incomplete hypothetical.
THE WITNESS: I'm sorry, would you repeat the question?
Q. (By Mr. Ferguson) Sure. Based on this last sentence here, "No passenger operation be permitted on the Line without the mutual consent of both parties," do you understand that to require Eastside Community Rail to consent to the running of an excursion train on the line?
A. Yes.
Q. Okay. Above in that sub A, states that Ballard agrees during that, during the term it will provide, at its sole expense, train services to all current or future shippers on the line.
A. Under A? I'm sorry, I'm not with you. 3 A?
Q. Yes.
MR. MONTGOMERY: Is there a question? There's not a question.
I'm sorry, is there a question? I didn't hear

you.
MR. FERGUSON: No. Clarifying Mr. Engle's question that he didn't understand what I was referring to.
Q. (By Mr. Ferguson) Do you see what I'm referring to now?
A. Yes.
Q. Okay.
A. It makes sense to me.
Q. Part 3 A provides that Ballard agrees that during the term, it will provide, at its sole expense, train services to all current or future shippers on the line and all common responsibilities on the line.
Am I reading that accurately?
A. Yes.
Q. Do you know who the current shippers on the line are?
A. Yes.
Q. Who are they --
A. Excuse me, not with certainty.
Q. Who do you think they are?
MR. MONTGOMERY: Object to the extent this involves Woodinville to Snohomish.
THE WITNESS: I think the two largest equal large shippers are Boise Cascade and Spectrum Glass. And then there is some trans-load for Matheus Lumber, which is

silly, and -- given they're a mile away.
And then I think there's a couple of other people that Byron services, one I believe might be Steel Suds. And that's it, that I recall.
Q. (By Mr. Ferguson) Okay. This statement here that there's an obligation to provide service to future shippers, are you aware of any shippers on the line that might demand or ask for service in the future?
A. Yes. Wolford.
Q. Okay. And Mr. Wolford would require a spur at his yard to get service, correct?
A. That would be preferable.
Q. Okay. Is there another way he could receive service without a spur?
A. Yes.
Q. How?
A. It's already two tracks wide in that area.
Q. When you say "two tracks wide," you mean there are two sets of rails side by side?
A. Yes.
Q. So are you saying, then, that there could be a car left on the set of rails closest to his property while another train could pass by on the other set of rails alongside of it?
A. Yes. But not the preferable way to do it.

Q. Okay. Has Mr. Wolford ever asked ECR to receive rail service at its yard in Maltby?
A. He would prefer to have his own spur.
Q. But has he ever asked for rail service at his yard in Maltby?
A. Not yet.
Q. Okay. Under Section 3, Subparagraph F, it states that Ballard agrees that during the term, it will provide at its sole expense, "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."
Do you have an understanding of what that term requires Ballard to do?
A. Standard maintenance of way for a railroad, which has to do with the ties, ballast, connections, spikes, crossings. Number one priority for a rail is safety, and Ballard Terminal has a perfect safety record for every year of operation. So I trust him for that.
Q. Aren't these services and responsibilities you just described functions that ECR would perform as part of its vision to maintain the right of way?
A. In the future, yes.
Q. Okay. And when would ECR undertake those responsibilities?

Q. So then why wasn't, say, an offer of financial assistance made to step in and continue to provide freight rail service in 2008?
A. Because we believed the Port of Seattle, and we believed King County that they really wanted rails and trails, which turned out to be a bad assumption.
Q. Were you in a position to make a payment, I mean had you considered making an OFA to BNSF in 2008?
A. In 2009, yes. To purchase the entire corridor.
Q. When you say the entire corridor, you mean the entire Woodinville subdivision, all 40 plus miles of it?
A. Yes.
Q. How much were you willing to pay at that point?
MR. MONTGOMERY: Can we define who "we" is? Object to the form. It might be helpful.
Q. (By Mr. Ferguson) I guess ECR didn't exist then?
A. Correct.
Q. It would have been GNP Railway, Inc.?
A. Yes.
Q. How much was GNP Railway, Inc. prepared to pay at that point?
A. 81 million.
Q. And was that to be financed in a partnership with Ballard Terminal Railroad?
A. Ballard Terminal would have still been the

freight operator. I'm not sure, you're asking me to speculate on the terms of that. We had --
Q. No, I'm not asking you to speculate. I didn't ask you directly, so I'll ask it now. What was the source of the $81 million that you just referenced?
A. The Federal Railroad Administration.
Q. In the form of a grant?
A. In the form of a loan, low interest loan.
Q. So the FRA, you thought, was going to make a loan of $81 million to GNP to buy the asset from BNSF?
A. Yes, using the dirt, the fee as collateral.
Q. Okay. And did you ever step forward with -- did you ever make that offer to BNSF?
A. Yes, we did. And I believe that's the only reason the Port of Seattle eventually stepped up and closed the deal.
Q. Did you explore getting any moneys above and beyond 81 million?
A. Our loan package, I believe, at that time, was 140 million, or something like that. I don't recall exactly.
Q. Okay. Do you have any estimate as to what the value of the real estate constituting the line is between Woodinville and Bellevue?
A. 7 million be my guess, maybe eight.

Q. Okay. Is that based on any study or appraisal document?
A. That's based on the 5.75 miles that were acquired for $5 million last year.
Q. Okay. So are you just breaking it down in one to one proportional basis for the entire length of the line?
A. No, the value of the land that King County has from Kirkland down to the Wye, down to Woodinville, is appreciably less than the property going through residential Kirkland.
Q. Okay. And then the property that runs from Kirkland south end of the segment down to Bellevue, is that similar in nature in your view to the Kirkland segment?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It -- it has never been our intention to interfere with Sound Transit and East Link in any way. So the valuation of that land, I've never considered, because we have no interest in owning that land. What our interest is is to reactivate the freight between Bellevue and Woodinville, because we think there's an opportunity to make a profit.
Q. When you say "we," who are you referring to?
A. Ballard Terminal, CalPortland, Wolford Trucking, and we think there will be others that show up if it's reactivated.

Q. Okay. Have you seen or commissioned any appraisal or study of the real estate and track assets constituting the line between Woodinville in the north end and Bellevue where Ballard seeks to reactivate in the south end?
A. No.
Q. Are you aware of any plan to determine the value of that real estate along that section of the rail corridor?
A. No.
Q. Do you have an understanding of where in the southern end of the segment Ballard seeks to reactivate?
A. Yes.
Q. Where is the southern most point?
A. On the north side of NE 8th.
Q. You don't want to go south of NE 8th?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It's my understanding that Ballard wants to go to and not over NE 8th at this time.
MR. FERGUSON: Okay. Why don't we take another break. And reconvene in five minutes if that works for everyone.
(Recess taken from 4:37 to 4:45 p.m.)

E X A M I N A T I O N - (Continuing)

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excursion or otherwise, that might be received from activities on the segment between Bellevue and Woodinville?
A. That's correct.
Q. All right. Looking at Page 5.
A. Yes.
Q. Under Section 6, "Wolford spur."
A. Yes, sir.
Q. Refers to a new thousand foot spur that will be developed into Wolford Demolition and Trucking site in Maltby. If you've already answered that, apologize for asking it twice, but who or what is going to pay for the construction of a spur into Bobby Wolford's Maltby yard?
MR. MONTGOMERY: Object to the extent it relates to Woodinville to Snohomish. Object as asked and answered.
THE WITNESS: It's my expectation that it would be done during the rehabilitation, and that payment for that has yet to be determined. It's very likely to be something that would be split with Wolford.
Q. (By Mr. Ferguson) Okay. Turning to Page 7, this first paragraph under Section 7, "Possible Construction Spoils," reads that, "There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been

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identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking."
Do you disagree with any aspect of that statement I just read?
MR. MONTGOMERY: Object to the form.
THE WITNESS: As of the date written, the -- I don't think my statement, no other freight has been identified in Bellevue, that that statement is not correct. Clearly, it had been identified in years prior even. So I think I could have worded that sentence better. I think that I was addressing the spoils in the first sentence. And in the second sentence, I was contemplating things more consistent with the current operating line, meaning lumberyard, a steel factory, something to that effect, a typical shipper.
Q. (By Mr. Ferguson) Is the statement no other freight has been identified in Bellevue accurate as of today, if you exclude the possibility of hauling out construction spoils or hauling in aggregate material?
MR. MONTGOMERY: Asked and answered.
THE WITNESS: Yeah, I think that specific accounts have not been identified. General opportunity, we believe is there in the way of other businesses in the area that, if we were there, we could get some trans-load

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business in the region. But not being there, it doesn't constitute enough to worry about.
Q. (By Mr. Ferguson) Okay. No one -- no particular business, other than CalPortland or Bobby Wolford and excluding Kemper and Wright Runstad, no other business has asked ECR to provide freight rail service in or out of Bellevue?
A. Correct.
Q. Okay.
MR. MONTGOMERY: Slow down.
Q. (By Mr. Ferguson) If you would please turn to page with four graphs on them. It's labeled in the left-hand corner, "ECR Financial Detail 2013, February 11th."
A. Okay.
Q. Are these graphs that you created?
A. Yes, they are.
Q. I believe I have a copy that -- I can see what you're looking at.
A. (Indicating.)
Q. Okay. Could you walk me through each one of these, starting with the one labeled "Revenue," please.
A. Revenue depicts over the time period where we achieve funding and starts to go out over the next ten years in how the revenue growth would occur, and that is

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almost entirely excursion.
Q. So your one begins only upon the receipt of funding to rehabilitate the line to move from excepted class to either Class 1 or Class 2?
A. Yes.
Q. Okay. Does this contemplate the running of an excursion train on the line from Woodinville to Bellevue?
A. No.
Q. Do you have plans, though, to run an excursion train, if you receive funding and if Ballard accesses the line from Woodinville to Bellevue, to run an excursion train south of Woodinville?
A. It's my understanding that Kathy and the wineries would love to get to Bellevue.
Q. Do you know if any track upgrades will be necessary on that 12-mile segment from Woodinville to Bellevue to run a passenger excursion train?
A. Yes, they would be.
Q. And what would the funding source for that be?
A. Given we're presently waiting until the 2015 legislative session, I would suspect that it will be a combination of sources significantly dependent upon the state and local interest.
Q. So the earliest that an excursion train can run from Woodinville to Bellevue would be at least after the

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

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

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

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

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

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

A. No.

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

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

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

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

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

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

Q. (By Mr. Ferguson) Okay.

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

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

(Exhibit Number 31 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. FERGUSON:

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

A. Mm-hm (answers affirmatively).

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

A. Mm-hm (answers affirmatively).

Q. Do you recognize this e-mail?

A. Yes.

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

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

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

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

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

A. Yes.

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

MR. COHEN: 2012.

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

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

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

A. Yes.

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

A. Yes.

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

A. Try that again.

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

A. Yes.

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

MR. MONTGOMERY: Objection; foundation.

THE WITNESS: Yes, that we both would be.

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

(Exhibit Number 32 marked.)

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

In the e-mail that reads from your Comcast

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

and --
Q. This is your condominium at 832 Lake Street?
A. Very good memory, yes.
Q. Okay.
A. And so we needed a survey done of the stream that runs through it. And so I had hired him to do that. I had previously met him in Redmond a couple years ago, a few years ago. And so knowing that he was a surveyor and could do this work, I hired him to come in and do that, and I think we became much friendlier.
Q. Does he have a set of responsibilities in Eastside Community Rail's business operations?
MR. MONTGOMERY: Object to the form.
THE WITNESS: He helps me out as he has time. I think that's the extent of it. He'd like to see us be successful.
Q. (By Mr. Ferguson) Okay. Did he contribute, I can't remember, was he among the people who contributed funds to ECR for it to acquire the assets of GNP?
A. Yes, $10,000.
Q. Okay. Does he have a role in planning for the Bounty of Washington tasting train?
A. No, not really.
Q. And he's a surveyor by trade?
A. Yes.

Q. That's what Spire Tech is, is that a surveyor company?
MR. MONTGOMERY: Foundation.
THE WITNESS: I'm not familiar with Spire Tech, it sounds like something that he might have worked for in the past, but...
Q. (By Mr. Ferguson) Okay. Did Mr. Wilson have a role to play in putting together any of the materials in support of Ballard's lawsuit against the City of Kirkland or its petitions to the STB?
A. Yes.
Q. Can you describe what those functions were?
A. I believe that the primary work that he helped with relative to the STB reactivation effort was helping to refine the spoils moving opportunity.
Q. What do you mean by that, helping to refine?
A. The way that I model is to first get my arms around it, and then go through iterations of refining the quality of the analysis to the point where the variability and the results becomes less than 10 percent. When I get to that point, then I'm satisfied in sharing that assessment publicly.
Q. Can you describe concretely what is involved in this refinement process? Did Mr. Wilson do anything, for instance, like estimate the amount of cubic yards of dirt

that would come out of a construction site?
A. He's a lot better at estimating dirt volumes than I am.
Q. Is estimating dirt volumes something he would have done as part of this refinement process?
A. He and I used estimating -- used best guess estimates based on what we knew from Kemper and Lincoln Center, which was 250,000 cubic yards, and extrapolated that to other similar sized projects and what we knew about the Sound Transit tunnel through Bellevue, cut through Spring District, et cetera. So we belabored that.
Q. I want to hand you what's been previously marked as Exhibit 8. This is a letter signed by Bobby Wolford to Cynthia Brown of the Surface Transportation Board. Have you seen this letter before?
A. Yes.
Q. Did you see any drafts of it before Mr. Wolford signed it?
A. I don't recall. I may have. I may have, but I don't recall specifically seeing it, no.
Q. Is it your understanding that Mr. Wilson wrote this letter for Mr. Wolford to sign?
MR. MONTGOMERY: Object to the form.
THE WITNESS: It was my understanding that Mr. Wilson drafted this based on conversations with

Q. These are all payments to the Port?
A. These all would have been -- no, alternatives that Woodinville had available to it in order to complete the bridge.
Q. By relocating the bridge in some fashion?
A. Yes.
Q. Okay. I understand.
A. So to start the negotiations, to try and help Woodinville to get this done, because we -- I think everybody in this room knows that the Port is trying to maximize the dollars it gets out of the corridor, that what we would do is come up with a number that would keep the Port engaged, that it was going to get some money, and that would be attractive to the City of Woodinville so that we could get some meaningful discussions underway.
So we chose a number that was 50 percent of Woodinville's lowest cost option, and the notion was, per the conversations with Joe McWilliams was that we could split the money, whatever that would be, and that why don't we go back to Woodinville with the number of $1 million because that would be half as much as their best priced option, and see if we could get into conversation.
Q. So Eastside Community Rail would split the million dollars with the Port, yes?
A. Yes.

Q. And your participation in this venture would be to convey to Woodinville an easement over a portion of the freight segment?
A. Yes.
Q. Remind me, remind me, Mr. Engle, how much did GNP pay for the entire freight segment?
A. $10.
Q. That's what I recall, but I wasn't sure.
I want to mash --
A. Ask how much the Port of Seattle paid, $450 million tax credit, plus $81 million, and the third party operator was a mandatory part of that. They had to give it away.
MR. COHEN: Let's mark one more.
(Exhibit Number 34 marked.)
Q. (By Mr. Cohen) So I'm going to show you, Mr. Engle, what's been marked as Exhibit 34, and I'm directing your attention to, looks like the next e-mail in that chain, this is from you to Richard Leahy, Cc Joe McWilliams, Bcc Kathy Cox, Ernie Wilson. You with me?
A. How come (indicating)? There's something on the back here. Is this on the back of yours.
MR. COHEN: No, that's probably my original. I'm sorry, the back is irrelevant. If you --
MR. MONTGOMERY: Hold on. Hold on.

MR. COHEN: You're welcome to it, if you want.
MR. MONTGOMERY: Let me agree, 34, we're only addressing the face page.
MR. COHEN: 34 is only the face page.
Q. (By Mr. Cohen) So I'm referring to the e-mail in the middle of the page that says: "Begin forwarded message."
A. Mm-hm (answers affirmatively).
Q. All right. So this is you, once again, trying to make this deal happen?
A. Yes.
Q. And the last e-mail was March 21st, now it's a week later, am I correct?
A. Yes. I'm sorry, it's actually two weeks later.
Q. Well, it was March, the e-mail we were looking at in Exhibit 33 was March 21st, and we're now talking March 28th, correct me if I'm wrong?
A. 21, 28, you're right. Where am I seeing, oh, it's the year, sorry. It's getting late.
Q. So this e-mail recites that you spoke with Joe today and they were waiting for -- and you would like to see something from the city. Joe is --
A. Mm-hm (answers affirmatively).
Q. -- Joe is Joe McWilliams?

A. Yes.
Q. I gather that the city had not yet responded to your million-dollar-split-the proceeds offer?
A. Correct.
Q. Okay. And then, you forwarded that e-mail to Les Rubstello, correct?
A. Yes.
Q. And who is Les Rubstello?
A. Council member for City of Woodinville.
Q. And he's a member of your Eastside TRailway Alliance?
A. Yes, but this -- that wasn't the reason for sending it to him. It's in his role, his capacity as council member.
Q. I see. And you're trying to enlist his help to make the deal happen?
MR. MONTGOMERY: Object to the form.
THE WITNESS: We had been advised at various government entities that sometimes the only way to get things done in the city of Woodinville is to go through the city council, because of difficulties in dealing with staff.
Q. (By Mr. Cohen) Right.
MR. COHEN: Okay. One more exhibit to mark.
(Exhibit Number 35 marked.)

want them to give up some compensation. And if you're going to block one lane out of my four-lane road, and my opportunity in the future for that, then you are going to pay me. That's a very natural real estate right that I would expect anybody in this room is going to stand up and fight for.

Number 2, when it comes to construction of the trail, we know that we can do it substantially at a lower cost than public entities can get it done inside the rail corridor

Q. Which trail are you talking about?

A. Any trail inside the corridor.

Q. I see.

A. We can do it faster and substantially cheaper than any public entity can.

Q. Is that because you're immune from state and local environmental law?

A. We are subject to the national environmental laws. We don't have to do the same kind of permitting that's required at state and local levels. We're still guardians of that national standards. I didn't make the rules, the federal government made those rules a long time ago, and put that in the constitution of the United States. I'm simply playing the rules of the hand that was dealt me.

So if I can do -- provide a service, less

expensively than you can buy that service elsewhere, we both win. And I think that's the fundamental nature of this country.

Q. I hope you're right.

MR. COHEN: I promised to keep it short. I'm going to stop here.

MR. MONTGOMERY: That's 19 minutes. Congratulations.

MR. COHEN: I did my best.

THE WITNESS: It was because I was long winded.

MR. FERGUSON: We don't have anymore questions at this time, but we're not going to conclude the dep because we believe there are other areas to explore that have not been produced through discovery requests.

MR. MONTGOMERY: Well, obviously we do not contend to that. This is your shot at him. I think you should take it and that will be that, but we've said our peace.

MR. FERGUSON: Okay.

MR. MARCUSE: Do you have any questions to ask, Mr. Wagner?

MR. WAGNER: A couple just based on the last line of questioning.

E X A M I N A T I O N

BY MR. WAGNER:

Q. I'm just trying to figure out what you think the nature of the value of your freight easement is with regard to the bridge easement. So your plan for the million dollars was to sell your freight easement, based on Exhibit 33, EsCR is promoting the option for Woodinville to acquire the line in fee and freight easement to advance its freight construction, so you would sell your freight easement to Woodinville?

A. I would sell that portion of the freight easement to Woodinville. I never expected to get $500,000. What my intention was, that I tried to make clear, was to begin the negotiations because they had been deadlocked for a year, where the Port of Seattle said 6.8, and Woodinville said 30,000.

Q. So when you mean your portion, you mean that, if I remember correctly, the City of Woodinville wanted to put a pillar or something down the middle of the right of way?

A. I think what they're doing, if I understand this correctly, is the corner of the bridge goes 25 feet deep into the 100-foot right of way, and would go across there. So they're physically -- this bridge is going to block 25 feet of the right of way and be very close to the bridge abutment for the existing rail bridge.

Q. So does this -- so did you believe that it materially interfered with your use of the corridor currently?

A. Not currently, potentially. And again, the potentially could be the STB reactivation, the potential for excursion. Sound Transit, as I'm aware, had written a letter. David Beal had written a letter saying it wouldn't be a problem for them. And consequently, based on that, and I just wanted to have a conversation with Mr. Beal to touch around that, we were willing, and are willing to give up our one lane of the road for Woodinville to construct this.

Now, it's my understanding as well, that appraisers have lovely little formulas that set the value of the land and then the value of the easement. And so as we were talking to Joe McWilliams, he knows a lot more about real estate, he was trying to help in the wording there, that, you know, there's a difference in value, there's this over the fence valuation thing.

So nobody was trying to hold up Woodinville. What we were trying to simultaneously do is have Woodinville recognize that $30,000 wasn't going to get them anywhere and that $6.8 million wasn't going to get them anywhere. And was to try and get a conversation started so Woodinville could carry on with its bridge and we could get

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

Q. I don't know the exhibit number.
MR. MONTGOMERY: Does anybody know the exhibit number?
THE WITNESS: Yes, it's on the front here. 6.
Q. (By Mr. Montgomery) It says "daily ridership" in the upper right quadrant; is that correct?
A. No.
Q. What is it supposed to be?
A. Annual ridership.
MR. MONTGOMERY: I have no further questions. Thank you.
THE WITNESS: Four years of that being --
MR. MONTGOMERY: They know.
MR. FERGUSON: I have a couple follow-ups.

F U R T H E R E X A M I N A T I O N

BY MR. FERGUSON:
Q. Mr. Engle, in the past six months, have you received any communications from Fletcher Sippel attorney or Montgomery and Scarp attorney that also included any individual that was not a Fletcher & Sippel attorney or staff or Montgomery and Scarp attorney and staff?
A. Try that again. I think I got it.
Q. Have you ever had a conference with Myles Tobin where Byron Cole was a participant in?
A. Yes.
Q. Have you ever received e-mails from Myles Tobin which Byron Cole was copied on?
A. Yes.
Q. Have you sent any e-mails to Myles Tobin that you copied Byron Cole on?
A. Yes.
Q. And is the same true for attorneys from Montgomery and Scarp?
A. Yes.
Q. Okay.
MR. FERGUSON: I don't have anything further. Thank you for patiently sitting through the day.
MR. MONTGOMERY: Are we off the record.

(The deposition concluded at 6:49 p.m.)
(Signature was reserved.)

C E R T I F I C A T E

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.

SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SEVENTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made and entered into as of this 17 day of December 2009, by and between BNSF RAILWAY COMPANY ("BNSF"), the PORT OF SEATTLE, a municipal corporation of the State of Washington ("Port") and KING COUNTY, a political subdivision of the State of Washington ("County").

RECITALS

A. On May 12, 2008, BNSF, the Port and the County entered into: (i) a Purchase and Sale Agreement, as amended, ("North Agreement") whereby the Port agreed to acquire portions of BNSF's property known as the Woodinville Subdivision ("Subdivision"); and (ii) a Donation Agreement, as amended, whereby BNSF agreed to donate to the Port other portions of the Subdivision. The County desires to use the Railbanked Portion of the Subdivision for public trail and other transportation purposes. At Closing, the Port will grant the County a Public Multipurpose Easement for the County's use of the Railbanked and Wilburton Portions of the Subdivision.

B. At the Port's request and pursuant to the First, Second, Third, Fourth, Fifth and Sixth Amendments to Purchase and Sale Agreement and the First, Second, Third, Fourth, Fifth and Sixth Amendments to Donation Agreement, the parties previously extended the Closing Date of the North Agreement and of the Donation Agreement to March 31, 2009, June 30, 2009, July 8, 2009, July 15, 2009, July 22, 2009 and December 15, 2009 respectively.

NOW, THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. The definition of Closing Date in Section 1.1 of the North Agreement is amended to read as follows:

> Closing Date shall be December 18, 2009.

2. The first paragraph of Section 2 of the North Agreement is amended to read as follows:

> BNSF agrees to sell to Port, and Port agrees to purchase from BNSF, the Property. Port shall pay to BNSF $81,449,000 (EIGHTY ONE MILLION FOUR HUNDRED AND FOURTY-NINE THOUSAND DOLLARS) (the "Purchase Price"). The Purchase Price shall be paid as follows:

3. Section 3.4 of the North Agreement is amended by replacing the sum of $2,000,000 with the sum of $1,450,000.

Railbanking Requirements in Event of Abandonment. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Property, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority ("Railbanking Laws"), provided the Trail Use Applicant meets all requirements of the Railbanking Laws, including that the Trail Use Applicant agrees to a trail use agreement as required by the Railbanking Laws. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If the holder of the reserved freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property ceases operations but fails within a reasonable period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor agency for a third-party abandonment and interim trail use over some or all of the Property on which operations have ceased. The holder of the freight easement or its successor, assignee or designee or other entity carrying out common carrier freight service on the Property shall not oppose any such action by a Trail Use Applicant if the holder has ceased operations.

8. Section 14 of the North Agreement is further amended by adding the following as Section 14.19:

14.19 Port and its successors and assigns agree:

As to the Redmond Spur:

(a) Prior to beginning salvage activities,

(i) To consult with Washington Department of Ecology ("WDE") regarding possible impacts of abandonment activities on wetlands located along the line and to ensure compliance with the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") permitting requirements, and

(ii) To consult with the Army Corps of Engineers ("Corps") regarding possible impacts of abandonment activities to water bodies and wetlands, and to ensure compliance with Corps permitting requirements; and

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, Port shall immediately cease all work and notify the STB's Section of Environmental Analysis ("SEA"), interested Federally recognized tribes and the Washington State Historic Preservation Officer ("SHPO"), pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, Port, and any other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

9. Except as amended herein, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

10. Counterparts. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

BNSF RAILWAY COMPANY

By: _____
Name: Richard E. Weicher
Title: Vice President & General Counsel – Regulatory

PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name: Dow Constantine
Title: King County Executive

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Purchase and Sale Agreement as of the date first written above.

BNSF RAILWAY COMPANY

By: Richard E. Weicher
Name: Richard E. Weicher
Title: Vice President & General Counsel – Regulatory

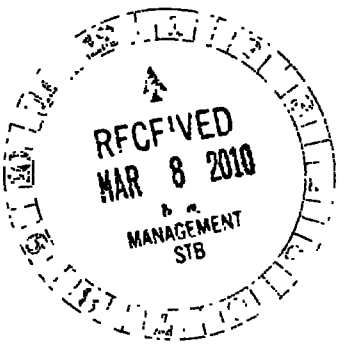
PORT OF SEATTLE

By: _____
Name: Tay Yoshitani
Title: Chief Executive Officer

KING COUNTY

By: _____
Name:
Title:

KAPLAN KIRSCH ROCKWELL



March 8, 2010

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

Office
MAR 8
Public

226554

Re: *BNSF Railway Company - Abandonment Exemption – In King County, Washington*, Finance Docket No. AB-6 (Sub-No. 463X)
BNSF Railway Company - Abandonment Exemption – In King County, Washington, Finance Docket No. AB-6 (Sub-No. 464X) 226555
BNSF Railway Company - Abandonment Exemption – In King County, Washington, Finance Docket No. AB-6 (Sub-No. 465X) 226556

Dear Ms. Brown:

I am enclosing an original and ten (10) copies of the Notice of King County, Washington. of Consummation of Trail Use Agreement in the above referenced proceedings. An additional copy is enclosed for date stamp and return to our messenger. Please note that a compact disk is enclosed with this document.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles A. Spitulnik

Office

Enclosures

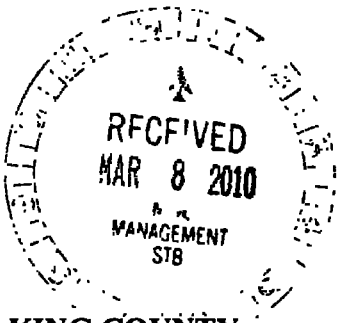
cc: All Parties of Record

Attorneys at Law
Denver • New York • Washington, DC

kaplan kirsch & Rockwell LLP
1001 Connecticut Ave., N.W.
Washington, DC 20036

tel: (202) 955-5600
fax: (202) 955-5615
www.kaplankirsch.com

CONTAINS COLOR MAPS



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 463X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)

STB Docket No. AB-6 (Sub-No. 464X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 5.00 to MP 10.60)

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

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)

NOTICE OF CONSUMMATION OF TRAIL USE AGREEMENT

Communications with respect to this pleading should be addressed to:

Charles A. Spitulnik
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: afultz@kaplankirsch.com
Counsel for King County, Washington

Dated: March 8, 2010



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 463X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)

STB Docket No. AB-6 (Sub-No. 464X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 5.00 to MP 10.60)

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

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)

NOTICE OF CONSUMMATION OF TRAIL USE AGREEMENT

King County, Washington, a political subdivision of the State of Washington (the "County"), hereby submits this notice that the County has entered into a trail use agreement with the BNSF Railway Company ("BNSF"), the abandoning railroad, for the following segments (collectively, the "Line"): (a) the Redmond Spur, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-No. 463X), which extends from railroad milepost 0.00 in Woodinville, to railroad milepost 7.30, near Redmond, a distance of 7.30 miles in King County, Washington; (b) a segment of the Woodinville Subdivision extending from railroad milepost 5.00 in Kennydale, to railroad milepost 10.60, at Wilburton, a distance of 5.60 miles in King County, Washington, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-

No. 464X); and (c) a segment of the Woodinville Subdivision extending from railroad milepost 11.25 near Wilburton, to railroad milepost 23.80, near Woodinville, a distance of 12.55 miles in King County, Washington, the subject of a request for abandonment in Docket No. STB AB-6 (Sub-No. 465X). A map of the Line is attached hereto as **Exhibit A**.

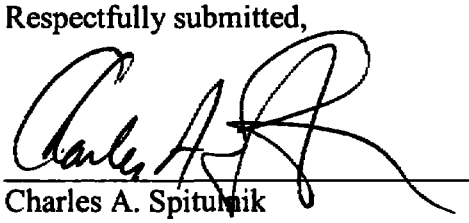
The Board issued a notice of interim trail use ("NITU") for each segment of the Line in Decisions (a) in AB-6 (Sub-No. 463X) and AB-6 (Sub-No. 464X) on October 27, 2008, and (b) in AB-6 (Sub-No. 465X) on November 28, 2008. The Board granted extensions of time to negotiate a trail use agreement on May 12, 2009, and November 3, 2009, in all three proceedings. The trail use negotiating period was most recently extended to April 20, 2010.

The Port of Seattle (the "Port") owns the real estate associated with the Line, which it acquired from BNSF on December 17, 2009. The Port has granted the County a public multipurpose easement over the Line to permit the County to exercise its railbanking authority.[1]

[1] In Finance Docket No. 35148, the Board granted King County's request to be permitted, as the trail sponsor, to acquire the right to reactivate freight rail service on the line, therefore divesting BNSF of any residual interest it would otherwise have retained as the abandoning railroad. *King County, WA – Acquisition Exemption – BNSF Ry. Co.*, STB Finance Docket No. 35148 (Service Date Sept. 18, 2009), slip op. at 3-4.

The County has executed a statement of willingness to assume financial responsibility in accordance with the requirements of 16 USC 1247(d) and 49 CFR 1152.29(a) ("SWAFR"). That statement was previously submitted to this Board on September 18, 2008.

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

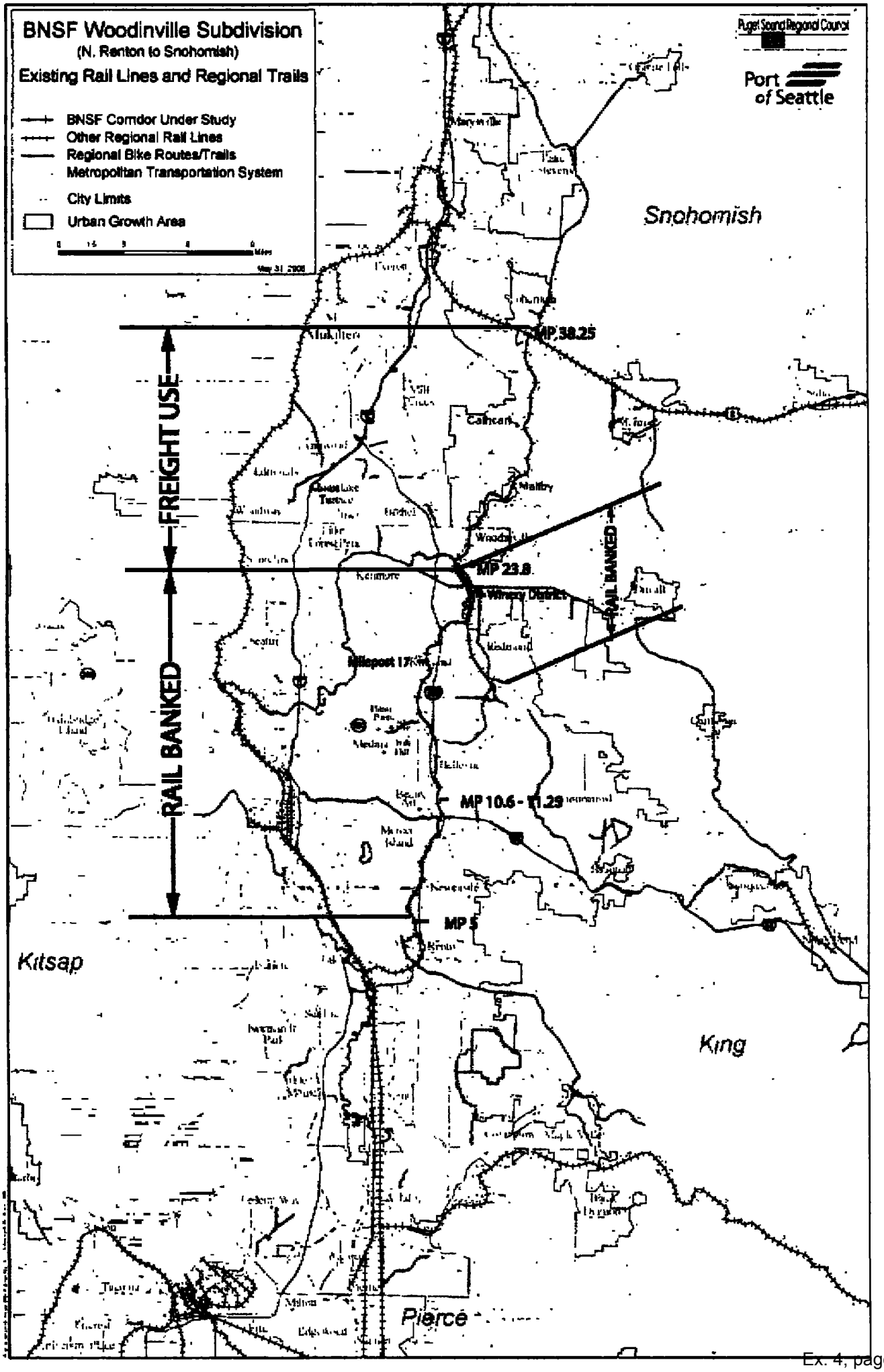
Counsel for King County, Washington

Dated: March 8, 2010

Exhibit A

Map of the Railbanked Portions of Woodinville Subdivision and Redmond Spur

[attached hereto]


BNSF Woodinville Subdivision
(N. Renton to Snohomish)
Existing Rail Lines and Regional Trails
BNSF Corridor Under Study
Other Regional Rail Lines
Regional Bike Routes/Trails
Metropolitan Transportation System
City Limits
Urban Growth Area
Puget Sound Regional Council
Port of Seattle
Snohomish
King
Kitsap
Pierce
MP 38.25
MP 23.8
MP 10.6 - 11.29
MP 5
FREIGHT USE
RAIL BANKED
RAIL BANKED
Mukilteo
Kenmore
Woodinville
Redmond
Issaquah
Newcastle
Renton
Tukwila
Kirkland
Bothell
Mercer Island
Bellevue
Maltby
Duvall
Carnation

CONTAINS COLOR MAPS

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing NOTICE OF KING COUNTY, WASHINGTON, OF CONSUMMATION OF TRAIL USE AGREEMENTS, upon the following parties of record in this proceeding by first class mail with postage prepaid and properly addressed:

Kristy D. Clark
General Attorney
BNSF Railway Company
2500 Lou Menk Drive
AOB-3
Fort Worth, TX 76131

Kevin M. Sheys
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attorney for the Port of Seattle

Karl Morell
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, DC 20005

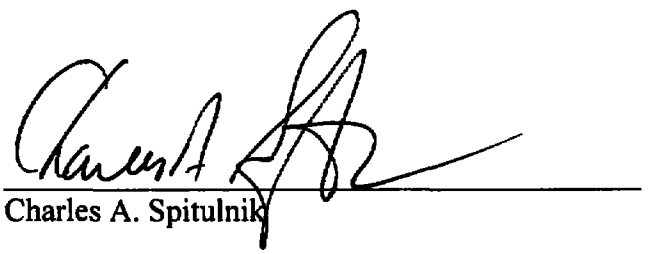
Attorneys for BNSF Railway Company

Tom Carpenter
International Paper
International Place I, 6400 Poplar Avenue
Memphis, TN 38197

And to:

Robert P. vomEigen
Foley & Lardner LLP
3000 K Street, N.W.
Suite 600
Washington, DC 20007-5109

Attorney for Sound Transit



Charles A. Spitulnik

Dated this 8th day of March, 2010

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**

FILED
2012 SEP 26 P 1:58
U.S. BANKRUPTCY COURT
W.D. OF WASHINGTON
BY DEP CLK

September 21, 2012

Judge Brian D. Lynch
United States Bankruptcy Court
Western District of Washington at Tacoma
1717 Pacific Avenue, Suite 2155
Tacoma, WA 95402
Reference: Bankruptcy No. 11-40829-BDL
Subject: Current Profile of Ballard Terminal Railroad Company,LLC , Today

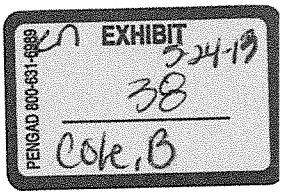
Judge Lynch:

Our company, Ballard Terminal Railroad Company, LLC (BTRC,LLC) was formed in 1996 by two Ballard businessmen who were part of a larger group of Ballard business owners who banded together to try to preserve the Burlington Northern Santa Fe (BNSF) branchline railroad that had run through the Ballard industrial district since 1893.

BNSF wanted to abandon the line, and had given public notice, even though it still had customers on it that used it every week. The city of Seattle was conflicted because the bicycle community wanted the tracks removed to make a bike trail, while the Industrial community strongly supported the retention of rail service. It took about 18 months of negotiations, but finally an agreement was reached between BNSF, the City of Seattle, and BTRC.

The city granted BTRC a renewable 30 year franchise to operate a common carrier railroad on city owned streets and other lands, and BNSF, through an intermediary, sold us the tracks. After a period of track rehabilitation, and acquiring a Certificate of Public Convenience and Necessity from the Surface Transportation Board, Ballard Terminal Railroad (BDTL) ran its first freight train in May of 1998. Over the intervening years, it has hauled a variety of commodities for more than a dozen different customers, generally operating two nights a week and Sunday, mid-day.

Acquisition of our second shortline started with an inquiry from the BNSF Shortline office, in Fort Worth, in mid 2000, inquiring as to our interest in expanding our operations. We responded affirmatively, and by November, 2000 BNSF had sold to us a railway easement in perpetuity, and all of the track, crossing signals, etc, on the 5 mile



line. This has turned out to be our best performing rail line, with quite an inventory of developable land, and we are very pleased that BNSF thought of us first when they decided to spin it off. Train operations take place 3 days a week.

On both of these railroads, we own the tracks, highway grade crossing signals, locomotive servicing facilities, etc. We also own four locomotives and two cabooses. We employ four people in train crew service to operate the trains, and three managers: an Operations Manager, an Office Manager, and a General Manager.

The managers are deeply involved in planning, scheduling, budgeting, and overseeing our daily train operations, track inspections, maintenance programs, safety programs, new industry track constructions, locomotive maintenance, marketing efforts to increase annual carloads handled, etc.

We continue to get along with the Federal Railway Administration (FRA), track inspectors, as well as the local WUTC Rail Office track Inspectors.

In the USA there are about 550 shortline railroads. Washington state has about 28 shortlines. We currently own two, and operate a third. The shortline industry has a trade association in Washington D.C. that looks out for our interests. One thing the American Shortline & Regional Railroad Association (ASLRRA) does is sponsor an annual recognition of shortline railroad safety programs. The gold standard for safe performance is winning the JAKE AWARD. Our company has had a zero incident rate for all 14 years we have been in business, and consistently wins "The JAKE AWARD with Distinction", for a zero accident/injury rate.

WHERE ARE WE TODAY?

In mid 2008, BTRC,LLC was selected by Burlington Northern Santa Fe railroad (BNSF) to be one of about ten shortline railroad companies offered an opportunity to bid on providing common carrier freight service on a 14 mile segment of BNSF's "eastside" rail network, in the Woodinville-Maltby-Snohomish area. The request for quote was a little different than usual, as there was also an obligation to establish a fairly robust Passenger Excursion Train over essentially the same route, to be in place shortly after taking over the freight business. As I recall, the RFQ was quite detailed and contained many conditions set forth by the Port of Seattle, who was planning to acquire both the tracks and the underlying real estate from the BNSF. The Port would become the new railroad's landlord.

We wanted to bid on the opportunity to own, operate, and develop the common carrier freight railroad. W e thought it would fit in nicely with the two railroads we already had, and we felt we new how to do it. The expense and effort of establishing a viable passenger excursion train however, was not something we were prepared to take on.

In discussing this issue with BNSF's shortline group there was a suggestion that we might explore the idea of making a joint bid with another shortline that had also been

favored with an invitation to bid. We approached Tom Payne, at GNP Railway, with this idea, and both companies agreed to submitting a joint bid. We jointly put the bid together and submitted it, and some time later were notified that we had been selected by both BNSF and Port of Seattle, as the winners.

Many months went by as the Nation adjusted to the economic crunch. Finally, in the late Fall of 2009, we got word from the BNSF and the Port, that we would be taking over the responsibility for freight train service, sometime in January of 2010. We ran our first freight train on January 11, 2010.

BTRC had used the 12 month delay to purchase a suitable used locomotive, rehabilitate it, paint it and move it up to Woodinville, where we put it in secure storage at one of the fenced rail served industries. We also arranged to lease a caboose and move it to Woodinville as well. In addition, we arranged to construct a fenced enclosure for the locomotive and caboose, in the wye junction at Woodinville, to protect them from vandalism.

Because GNP Railway seemed to be very short of cash at this start up, I decided not to begin billing GNP right away. After all, Tom was supposed to be our trusted partner in this venture. As it turned out we did not bill him until about February of 2011.

By that time it became apparent that GNP Railway was in serious trouble. I felt that BTRC,LLC could soldier on for a while, absorbing the costs of operating the Eastside Line. In the Fall of 2011, Perry Stacks was assigned to the job of being the GNP Railway trustee. Perry has worked hard at what must be a discouraging task He has found out that the monthly revenue stream produced by BTRC,LLC operating the line is not sufficient to pay the freight operator, pay for any amount of track or right of way maintenance, pay the trustee, pay for liability insurance, etc.

If we tally our true costs for running the trains, on a per car basis, we come up with about $380.00 per car. The amount we are out of pocket is about:

YR 2010	270 carloads	@	$380.00= $102,600	
YR 2011	235 carloads	@	$380.00= $ 89,300	
YR 2012	177 carloads	@	$380.00= $ 67,260	(9 MonthsThrough September)
	Total:682carloads	@	$380.00= $259,160	
Trustee P'ments:	63 carloads	@	$380.00= $(23,900)	
Unpaid balance owed				
BTRC,LLC	619 carloads	@	$380.00= $235,260	

As it has turned out, BTRC,LLC has done, and continues to do, what it originally had agreed to do, with the freight business, providing twice per week freight service to all customers on the line. On the other hand, GNP Railway has struggled in its efforts to develop an Excursion Train Business, and also struggled in its efforts to expand the portions of the Redmond branch line that we both would be allowed to operate on.

We hope you are able to approve Trustee Perry Stack's plan to sell the remaining assets of GNP Railway to Eastside Community Rail, LLC. I believe it is the only actual offer tendered in the 11 months that Mr. Stacks has been the Trustee.

We have known Doug Engle since the beginning of the BNSF bidding exercise in 2008. We are comfortable engaging in a contract with his new company, Eastside Community Rail, where we will file for a Certificate of Public Convenience and Necessity, operate the freight rail business, doing the marketing, and collecting the income and paying the bills.

BTRC,LLC, is way past the financial point where we should have stopped the train operations and the line would have been embargoed, and BNSF would have stopped serving the interchange tracks. This of course would have cut off service to the three active shippers on the line, Boise Cascade, Spectrum Glass, and Matheus Lumber.

As you can see we are currently out of pocket more than $235,000 over a 33 month period. That is an average of $360.00 per freight car handled on a round trip over the line. We don't generate that much free cash, above expenses, on the other two railroads we own. Our financial position becomes more precarious every day.

The shippers don't deserve a rail service interruption, or worse, a permanent suspension of rail service. Spectrum glass, for example, has a successful business in a factory that is basically immobile in Woodinville. Boise Cascade has a large investment in a substantial building materials distribution center, in Maltby. None of the shippers want an embargo, or abandonment.

Other than Doug Engle, I do not see a savior lurking nearby. Each time that Nick Temple(family owns a robust shortline in central Washington, and another near Vancouver, Washington, plus a complete dinner train) came up here, I had a meeting with him, or at least a follow up phone call. On his first trip, he was very upbeat. We took him and his party on the train (locomotive plus caboose), and toured the line from Woodinville to Snohomish and return. As time went on and he continued to make the rounds of the various mayors, city councils, the Port, Sound Transit, etc, he became more and more pessimistic about the opportunity for a viable excursion train to be operated. Finally he gave up on the project.

At the present time, we are part way through a similar exercise with another robust shortline company. The outcome there is not yet clear.

What is clear, is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure. It is not realistic to forecast that huge increases in the amount of freight traffic are just around the bend. If traffic could be increased 5 % to 10% a year, that would be above average for Washington shortlines.

One source of funding that has not been explored, as far as I know, by GNP, is the State of Washington Rail Office. This is a small division of Washington Department of Transportation,(WSDOT) They are tasked with the job of assisting the 29 shortlines in the state to qualify and apply for both low interest loans as well as some outright grants. Over the years, our company has been the recipiant of two zero interest loans with 15 year payback terms, and one modest, but very welcome, grant. I would be willing to help East Side Community Rail to apply for these programs.

Respectfully,

Byron D. Cole
Founder, and General Manager

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

lawyer you are and how you want to handle this, if I know what my client is saying is incorrect, I have an obligation to do and say something. Do you want to clean up the record now or do you want to clean it up later?

MR. COHEN: I welcome any information you can provide, Mr. Montgomery.

MR. MONTGOMERY: I don't want to -- I think he's confused. Like he said, they all look alike. Obviously, since Tom Paschalis is sending documents, they came from Mr. Cole and they came to Mr. Cole pursuant for looking for this stuff. We can take a break and I can clarify so he's not confused or we can -- however you want to handle it.

MR. COHEN: Let me finish my line of questions and then if you want, we can take a break.

Q. (By Mr. Cohen) So, Mr. Cole, did you search your files in your computer, either of them, for documents requested by the City of Kirkland?

A. I didn't, because we don't have a trove of interesting documents on our computer. There isn't, like, hundreds of thousands of juicy, interesting documents there.

Q. Okay.

A. Just doesn't exist.

Q. So picking up on Mr. Montgomery's point, how did

your Chicago lawyers get the documents that Mr. Montgomery represents will be furnished to us later today?

A. Well, I gathered up a few things yesterday.

Q. Yesterday?

A. And sent them off. I faxed them last night. Up through --

Q. To Chicago?

A. Yeah.

Q. All right.

A. But it's two or three things. It's not -- I have the feeling you think that we have an office full of people just generating e-mails, and we don't. We have one spouse paying bills, depositing incoming checks.

Q. Okay. So other than the information that you faxed to your Chicago law firm yesterday, you've not done any search to provide documents requested by Kirkland in this discovery request?

A. I guess not.

Q. Okay.

A. I'm not sure that anything exists.

Q. Okay. Do you need a break?

A. Yeah, I think so.

MR. MONTGOMERY: That's good.

MR. COHEN: Let's take one.

(Recess taken from 9:53 to 10:09 a.m.)

MR. COHEN: I'd like to mark another exhibit.

(Exhibit Number 37 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. COHEN:

Q. Mr. Cole, showing you what's been marked as Exhibit 37, is that your signature at the end of it?

A. It is.

Q. Did you review this document before you signed it?

A. I looked at it.

Q. And you signed it on May 2nd or 23rd? 23rd would be yesterday. Did you sign this yesterday?

A. Yeah.

Q. We'll come back to it.

Did I ask you for an estimate of aggregate revenues at Ballard Terminal Railroad, say, to make it precise, 2012, Ballard Terminal Railroad revenues?

A. I don't know if you asked me that or not.

Q. Well, if I did, I forgot, could you give me your best estimate of the 2012 revenues of Ballard Terminal Railroad?

A. Okay. So it isn't aggregate, it's earnings from the three railroads compiled together. And I think for

2012, it was around $500,000.

Q. That would be revenues, not net income?

A. No, it's not net by any means.

Q. Okay.

MR. MONTGOMERY: Unfortunately.

THE WITNESS: Yeah.

Q. (By Mr. Cohen) And how, what proportion of that revenue came from the Eastside?

A. Eastside.

Q. What did you call it?

A. Eastside Freight and Railroad.

Q. Yes, Eastside Freight and Railroad?

MR. FERGUSON: It's 26.

MR. COHEN: Thank you.

THE WITNESS: To get a clue here from this, the per car costs, and I can give you the per car revenue providing we were able to collect it all.

Q. (By Mr. Cohen) Well, you're turning the telescope backwards on me. Let's start, if you can tell me, of that roughly $500,000, how much of that revenue came from Eastside Freight Railroad operations?

A. We only began getting paid for our Eastside Freight operations -- we only began to get paid, got one payment from the bankruptcy trustee, and we find -- so we were not doing the billing, the bankruptcy trustee was

A. Okay.
Q. I have you moving 270 carloads in 2010, does that sound --
A. That's -- well, I don't know. I guess I'd like to see the document.
Q. Sure, let's do that.
A. It's probably my work on the document.
Q. Yep.
MR. MONTGOMERY: Thank you, Counselor.
(Exhibit Number 38 marked.)
Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 38. Do you recognize this document?
A. Well, it's got my name on the back of it, so...
Q. Your signature too?
A. That's what I mean.
Q. Yes.
A. Yes, I composed it.
Q. All right.
A. And so here's the list of the three years.
Q. Yes.
A. And so, I think it's accurate.
Q. Okay. So check me on this, it shows 270 carloads in 2010; 235 in 2011; 177 through September of 2012?
A. That's what it says, yes.
Q. Does that sound right to you?

A. Yes, I think it's -- I think those are the numbers.
Q. Okay. And if you would look at Exhibit 26, which I handed you a minute ago, you'll see a total 2012 number there of 213 cars, you see that?
A. I see that.
Q. Does that sound accurate to you?
A. Let's see here, yeah. Yeah, I think that's probably a correct...
Q. And do you have an estimate for 2013 year to date?
A. Well, these first three show a declining trend in traffic, and so I certainly hope it's reversed this year and we start to climb up a little bit out of the recession. So we have excellent year on our Meeker line this year. Record breaking.
Q. Really, I'm asking you, since I have no records for 2013, do you know what the traffic volume is, we'll say, through the end of April on the Eastside line?
A. Yeah, we -- we know, but I don't have it in my head here what it is.
Q. Okay.
A. But I can provide that for you.
Q. So you're showing something in the ballpark of a 10 percent decline in traffic each year since you began

operations. To what do you attribute that decline?
A. Well, the housing market has been in a gigantic slump and it's sort of coming out of it now. But I still get -- from my forest products industry years, the one trade journal that's still being published every month, and it's not over yet. And so that's the single biggest thing, because Boise Cascade is in building products. And our third shipper, that is Matheus Lumber, I couldn't remember it a while ago. And they're in the same boat.
And there was a cedar lumber wholesale outlet as well, and they folded up completely in the beginning of the first year when we started in 2010. They went bankrupt, so...
Q. I was going to ask you, are you down to three shippers on the Eastside line right now?
A. At the moment, but --
Q. Go ahead.
A. -- there's opportunities there to get some more industries.
Q. Have any of your current three shippers advised you of plans to increase or reduce traffic in 2013?
A. Well, I think -- I think the forest products, the building materials people, they're always hopeful that better times are coming. And so, you know, that's what they would say, it's a little better here.

Q. I'm really asking, have there been any, has anybody advised you, we are planning to increase traffic, reduce traffic, go out of business, amongst your three big shippers?
A. Well, Spectrum Glass apparently is doing quite well. And they bought a huge warehouse in Maltby.
Q. In Maltby?
A. Maltby.
Q. I'm sorry, Maltby?
A. Yes, top of the hill. Just to hold their finish product before it's shipped out to wherever all it goes. So they're enjoying good times, but they're not hooked to the building trades. Boise Cascade is firmly hooked to the housing and --
Q. Right.
A. -- and light commercial construction markets.
Q. But I'm not asking what you see coming based on changes in the economy. I'm asking, have any customers communicated to you that we're going to be having an increase in freight traffic or a decrease in freight traffic in the near future here?
A. No.
Q. Okay.
A. No. Boise is upbeat and Spectrum is upbeat. Matheus is soldiering on.

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

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

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

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

out where we are. And with Tom Payne running the thing, we weren't getting paid at all. This is way better now.

Q. Okay.

MR. COHEN: Let's take a break.

(Recess taken from 11:00 to 11:19 a.m.)

E X A M I N A T I O N - (Continuing)

BY MR. COHEN:

Q. You explained to me how Ballard gets compensated by its customers for shipments you provide. Do you have any contracts with customers?

A. We don't, that I can think of. You can kind of, kind of see, whether you might need to or not, like Spectrum Glass, they'll never move. I mean, it's like a steel mill. It's so much in the ground.

So we're confident they'll be using us forever, because it's a well-run company

Q. Okay. No contracts?

A. None.

Q. Okay.

A. I could say that we're working our way into leasing properties that we control to trans-loadings who are expanding, so there's a contract there, real estate contract.

Q. Have you completed any of those contracts?

A. You mean, did they come to an end?

Q. Do you have any leasing contracts in effect right now?

A. One, yeah.

Q. Tell me about that.

A. Okay. So that's where I was all week putting -- we had -- we cleared an acre of ground, cut down a bunch of trees, pulled out the stumps, dumped a bunch of rock to make it a hard surface for fork lifts and highway 18-wheeler trucks. And we already have a rail spur alongside it.

So we're putting together a piece of industrial property with access to the nation's rail network.

Q. On which rail line?

A. It's down at Meeker, Meeker down in Puyallup. So anyway, I've been working on that this week. My phone ringing was the gravel company, probably asking how much more rock do we want.

Q. Okay.

A. There's opportunities for things like that on the Eastside in Maltby, in downtown Woodinville. And if it goes down to Bellevue, there's like 12 vacant or nonrail used warehouses at Totem Lake, tracks are still there. Warehouse still there. Loading docks still there. Just full of things like badminton courts, adaptive reuse. We

could get that back because you can rent it for more to some trans-loader than the badminton guys will be able to pay.

Q. We may get into that later.

A. Okay.

Q. Let me show you Exhibit 25. This exhibit was used in Doug Engle's deposition.

A. Okay.

Q. This is a document under Eastside Community Rail letterhead. And it recites that the current track condition is excepted and in need of substantial rehab to maintain any operations per the current freight operator, Ballard Terminal Railroad.

You see that statement? Beginning of the second paragraph?

A. Here we are, okay. Just a minute. Well, I didn't write that.

Q. I'm going to get to that. Give me just a minute.

So the statement refers to what we've been calling the freight segment, yes?

MR. MONTGOMERY: Document speaks for itself; foundation.

THE WITNESS: Well, I guess it's the -- the segment from Woodinville to Snohomish.

Q. (By Mr. Cohen) That's what it says on the first

line.

A. Okay.

Q. My next question for you is, do you agree with that statement?

A. Probably not completely.

Q. Okay. So --

A. It's sort of right.

Q. All right. Why don't you, I'm referring really to the whole paragraph, the statement goes on to describe the rehab work that's required. Do you see that?

A. Yes.

Q. Why don't you tell me whether you agree with the representations in that paragraph, and if you don't, describe any disagreements you have with it. It's attributed to you, you know.

MR. MONTGOMERY: Object to the form.

Q. (By Mr. Cohen) Just the paragraph, I'm not asking about the whole document right now. But you can look at the whole document, if you want to.

A. I don't think I've seen this thing, but it's certainly been over the years since early 2008 when the Burlington Northern got this idea how to market this whole thing and began calling for short lines and so forth and so on. There's been zillion of opinions from short line operators like us as to what the condition of the track is

and the bridges and the grade crossings and the signals and all of the things. No one sees it exactly the same.

Most people think if you're going to have an excursion train, you need to get it at least to Class 1. And that's a federal -- federal handbook tells what it is. And you can make your train go out 15 miles an hour, I think that's enough speed for the excursion train. Other people would say, no, no, they have to go more like 25 miles an hour, so then you need to be -- put more money in your track to get to Class 2.

Most of the things that designate the classes are how bumpy the rails are, how good the gauge of the rails is, and how many good ties you have versus how many partially rotted or completely rotted or missing ties. It's not rocket science at all.

Q. All right. So referring again to the freight segment, Woodinville to Snohomish, do you agree with the statement that the current track condition is excepted?

A. Yes, it is excepted class. And that's a declaration that is made by whoever is the operator/owner.

Q. Well, you're the operator, right?

A. Yeah.

Q. So --

A. So it's excepted.

Q. All right. Do you agree that it requires

substantial rehabilitation to maintain any operations?

A. Well, yes, you can't do zero maintenance forever or, you know, you get to where you have no good ties.

Q. Did Ballard Terminal Railroad do any maintenance on the freight segment in 2012?

A. No, it inspected it a few times to see how it was doing.

Q. Have you done any maintenance so far in 2013?

A. Yes.

Q. Tell me about it.

A. We sprayed for weeds for the first time using a commercial professional spray outfit that does lots of work for Burlington Northern. They bought their hi-rail rig and sprayed up a storm from one end to another.

Q. Woodinville to Snohomish?

A. Yep, we went up the center of the wye until we came to a downed tree, to get up as close as we could to the bridge over Snohomish.

Q. Other than spraying for weeds, have you done any maintenance work so far in 2013?

A. No.

Q. Let me show you another document.

(Exhibit Number 39 marked.)

MR. COHEN: Katie, what exhibit?

THE COURT REPORTER: 39.

THE WITNESS: I like this. You get a little stamp on it. I'll have to try it to identify it.

Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 39, have you ever seen this report before?

Let me withdraw that question. Could you identify Exhibit 39?

A. Okay. So we use RailWorks as our primary track maintenance, new construction contractor and so forth, after two or three years of pecking around at somebody who might be cheaper or something. Anyway, they're the best. We use them virtually exclusively.

So I know who they are. And, so, I know that they were asked to take a look at the existing line from Woodinville to Snohomish, and make some assessment as to how much it would cost to bring it up to -- I think asked for -- I think Doug asked for a variety of things, as in how much to bring it from excepted track to Class 1 track. And then how much would it cost to jump from Class 1 to Class 2. And so, I don't know if they did that or not because I haven't actually seen the document, but I know they produced some answers to Kirkland.

Q. Have you seen this report before?

A. I don't think so, no.

Q. I see. And it sounds as if there was a visual

inspection conducted of the freight segment on January 15th, and you were along for that?

A. I think I was along on that.

Q. Yes, it mentions your name here.

Was that inspection performed via a hi-rail truck?

A. I believe it must have been, yeah.

Q. Yes.

A. Yeah. Yeah, they have four-door hi-rail.

Q. This reference to the Issaquah spur on Page 1, is the Issaquah spur there the same as the Redmond spur?

MR. MONTGOMERY: Foundation.

THE WITNESS: I -- I imagine. I mean, the line needs to go Woodinville to Redmond and down the east side of the lake to Issaquah and, heck, I can remember when it went all the way to North Bend.

Q. (By Mr. Cohen) Right. So they have an assessment here for the Issaquah spur between milepost 3.4 and 2.3, the Issaquah spur between milepost 2.3 and 0. What's the Woodinville wye?

MR. MONTGOMERY: Foundation.

THE WITNESS: Is it okay if I answer?

MR. MONTGOMERY: It is. Thank you. As always.

THE WITNESS: Okay. The Woodinville wye is

spend money up front right away to get to Class 2.
Q. So would still be necessary to spend some money to get to Class 1?
A. Some, yes. Because there's some stretches where there's not enough good ties in a row. Like a cluster --
Q. Right.
A. -- four or five in a row that are not good.
Q. Is Ballard Terminal Railroad planning to make that investment?
A. I don't think so. I think we need to find some investor to or a grant or loans. Over the years we've been in the business, we've had two interest free loans from the state of Washington and one small grant. A lot of people have been more successful and have had several large grants. So the word is down there at Olympia to look around and see if you can help out these guys.
Q. Are you planning any additional investment in 2013 in maintenance of the freight segment, other than the spraying for weeds that you've already done?
A. Well, I didn't see anything starting out at the Woodinville wye and going around all three legs and then walking, not in the same day, but walking the whole line all the way to the Snohomish bridge, I didn't see anything that would say we can't run another train until we've fixed this cluster of bad ties, I didn't see anything that bad.

I was quite surprised at how much pretty good darn rail there is that's probably a Class 2. There's a lot of welded rail.
And so, I'd say it's probably good for another year without maybe replacing any ties.
Q. So Ballard has no plans to do additional maintenance on the track freight segment in 2013?
A. Yeah, I don't -- I don't think it's necessary.
Q. Okay.
A. Mind you, we've only had this obligation since Doug bought the license. I mean, only -- before that it was Tom Payne's thing to do. He didn't have the money to do much.
Q. Right.
A. He did do -- they tightened all the track bolts at all the joints, all the track bolts. And some would break, he'd tighten them and put new ones in and things like that.
Q. We're going to get more of this later, but I gather that under your agreement with Eastside Community Rail, the responsibility for doing maintenance falls on Ballard, correct?
A. Well, that's what it says, yeah. I didn't help write that.
Q. We'll talk about that later.

One other question about Exhibit 39. Do you know who paid for the RailWorks analysis that's reflected in this report?
MR. MONTGOMERY: Assumes facts not in evidence.
THE WITNESS: I -- I have no idea.
MR. MONTGOMERY: Foundation.
Go ahead. I'm sorry. Just trying to get in my objection.
THE WITNESS: I thought you were done.
MR. MONTGOMERY: You took care of my second one for me, thank you. Did you get that? Assumes facts and foundation.
THE COURT REPORTER: I did.
THE WITNESS: I don't know, did they send a bill to somebody. Didn't send it to me. I would think they're hoping to be chosen to do the work eventually when it happens, and it would probably happen in stages. They never sent me a bill for inspecting jobs that I had for them, so I -- does somebody know that there was a bill tendered?
Q. (By Mr. Cohen) I don't, I guess I was --
A. I think they just did it and hope they get the job.
Q. I see. Did Ballard -- I'm sorry.

MR. MONTGOMERY: Just take a long time.
MR. COHEN: It's hard to be deposed and eat a donut at the same time.
MR. MONTGOMERY: Take your time asking the question and we'll be okay.
MR. COHEN: This one will be quick, though.
Q. (By MR. COHEN) Did Ballard engage RailWorks to do this inspection?
A. I suggested to Doug that -- I think they're the best outfit out here in this part of the country. And we use them virtually exclusively and have for many years. And so he did, and so --
Q. "He did" means Doug did?
A. Doug engaged them. As a matter of fact, he and I and Ernie, one of his assistants, did a car trip one day and went to the RailWorks headquarters in Chehalis. And when we got there, holy smokes, those guys gave us a tour of their shops and all of their equipment, and very cordial. And I mean, I already knew two or three of them for years and years.
But, anyway, so for them that worked out to being invited to come and check out the section of rail that we operate the trains on, so they did.
Q. Okay. But Doug was the --
A. Yeah.

Q. -- guy?
A. Doug was the guy who did the invitation. And they made the report and addressed it to Doug.
Q. I see. Thank you. Have some of that donut.
Referring you back to Exhibit 38, that's your letter to Judge Lynch. On the last page of that letter, you describe the state department of transportation grant program, you see that?
A. Where is it?
Q. Last page?
A. Last page.
Q. Of Exhibit 38.
A. Yeah.
Q. Just above your signature.
A. Okay. What's your question? I understand the paragraph.
Q. Right. My understanding is that someone applied for a grant to the state department of transportation to rehabilitate the freight segment. To your knowledge, is that true?
A. Well, wasn't me. I think it would be Doug. And you know, I encouraged him to do it. Some people fair very, very well. There's a huge imbalance in the state and the state of Pennsylvania. The state of Pennsylvania awards to every short line at the table, every year. I

don't think you even have to apply. But they're really into maintaining the short lines in a high state of good repair.
State of Washington is all about let's buy some more Talgo trains and let's bring Burlington Northern some money so they can put in more passing tracks so we can run those more Talgo trains, things like that.
The state rail office for short lines has dwindled to maybe two people down there. It used to be the dominant thing. It's just a little group that's part of transportation. Just a little group. There's not much for the short lines anymore.
Q. Do you know if someone, do you know if Doug applied for it --
A. I don't know.
Q. -- a grant?
A. I don't know. Yeah, I don't know either way.
Q. You've not been involved in that effort?
A. I wasn't, no. I encouraged him to nose around, but when you go to the state rail office, it's all about Talgos all the time.
Q. I hear you. There's something I don't understand. Given that under the lease agreement, the responsibility of maintaining that line is all Ballard, why would you expect Doug to go apply for grants?

MR. MONTGOMERY: Object to the form. Assumes facts.
THE WITNESS: Well, I got a full plate already with two other railroads. And he's -- he had the time and the inclination and the enthusiasm to go do it. I said, I got him some names of people that were still down there. And so he, you know, took the time to go do it. And I think he also talked to people in the legislature when he was down there. Had perhaps the better reception from them, because the rail office is not much about short lines anymore. It's -- sorry, it's not the way it should be. The Talgo trains should be funded from a completely different place.
Q. (By Mr. Cohen) Right. Do you know if a grant application was, in fact, filed?
A. I don't know --
Q. Okay.
A. -- either way.
Q. Turning to Page 4 of Exhibit 38. Am I correct that this letter was written in September 2012?
A. Whatever it says, yeah.
Q. So I'm looking --
MR. MONTGOMERY: Page 4. Okay, good. Yeah.
Q. (By Mr. Cohen) I'm looking at the last paragraph on Page 4?

A. Okay.
Q. The statement, "What is clear, is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure."
A. Mm-hm (answers affirmatively).
Q. That was your statement?
A. This is my letter, absolutely.
Q. And that was September 2012?
A. Mm-hm (answers affirmatively).
Q. Is that statement still true today?
A. It is. And some other things I said in there, too, I was in good form.
Q. It's a nice letter.
MR. MONTGOMERY: I'll object once again to this line of questioning to the extent that it applies to the Snohomish to Woodinville rather than Woodinville to Bellevue section.
MR. COHEN: Mr. Montgomery, if you want, I'm willing to note a continuing objection, if you --
MR. MONTGOMERY: That would be lovely, Mr. Cohen.
MR. COHEN: -- want to, inquiries about the freight segment.
MR. MONTGOMERY: That would be terrific.

say --
Q. (By Mr. Cohen) Go ahead.
A. -- that I've never tried to just keep going on the very borderline of one more tie. You know, federal inspector comes and looks and he says I think there's six -- you know, there's only four good ties in this segment. We gotcha. And with a spray can, and you got 30 days to pull that tie out and change it.
Pulling out individual ties is an expensive way of upgrading a track. It's better to bring in sort of a crew in to (indicating) change it out, not every tie, but changes the ones you need in a whole production line.
Q. My question for you is, how long can you postpone those tie replacements and still feel that you can safely run a freight railroad?
MR. MONTGOMERY: Objection; calls for speculation.
THE WITNESS: It's not an exact science. Some of it, Tom Payne did the simple thing when he took it over. He just said, Burlington Northern was calling this Class 2 track. We're calling it excepted, period. It's an administrative thing. Didn't even have to inspect it. He didn't want to. He just downgraded. So it doesn't mean that all of a sudden a bunch of ties failed, lowering it down, it was just that put it down there, not going to have

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

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

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

money.
Q. Do you happen to know how much BNSF sold the real estate for on this line?
A. Oh, yeah, it was 58 million bucks or something.
Q. More than that, Mr. Cole, but --
A. Okay.
Q. But look who bought it.
A. Yes. Is it anybody that has any fiscal responsibility? It's King County.
Q. So is it your view that Ballard Terminal Railroad could run trains on that line without acquiring a freight easement on it?
MR. MONTGOMERY: Object to the extent it calls for a legal conclusion; form.
THE WITNESS: Well, we would only be able to do it if we had -- you know, some paperwork, and we'd have to see what the deal was.
Q. (By Mr. Cohen) What kind of paperwork would you need?
MR. MONTGOMERY: Calls for speculation.
THE WITNESS: I don't know. It depends -- King County owns most of that line that Kirkland doesn't own. The chunk from Totem Lake down the hill to Woodinville, that belongs to King County. And the piece of the valley line that used to go to Redmond is owned by King

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

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

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

couldn't, and hardly did Doug Engle and any of his Eastside helpers. It's, like, you go to the council meetings and you sign up to speak and you get to have three minutes, maybe. And you sit there until the very last piece of the agenda after three hours of listening to them argue about if we're going to have a new dog kennel or something. And then there's like hardly any time. And the president of the council stands up and says, Well, we wouldn't be able to give you three minutes, could you each get by on two minutes. It's insulting. You can't seem to actually talk to anybody who is willing to just sit down and be square.

Q. So let's talk about King County.

A. Just as bad.

Q. Just wait a second. Have you made any offers to King County to buy a freight easement over their section of the line?

A. No. The one that's most logical for us would be to try to get some rights to operate our trains out of Woodinville down south down the valley towards Redmond. Redmond solved their problem quickly by ripping out all the tracks and signals that was inside their city limit in spite of the fact that there's three customers, not in downtown that they are so worried about, but on the outskirts of Redmond. There's the -- used to have rail service, would like to get it back.

I had hoped sometime maybe we can make a deal with Redmond to put the tracks back. The tracks are all in a big pile behind a cyclone fence in downtown Redmond, so are the signals.

Q. So Sound Transit also owns a little more than a mile of the line. Have you approached --

A. I didn't know that.

Q. I'm sorry?

A. I don't know that that's the case. Where would that be, sort of?

Q. Just north of NE 8th. So --

A. Is that outside the city limits of Redmond, we're talking?

Q. We're talking about the line --

A. Okay.

Q. -- between Woodinville and Bellevue, right.

Have you approached Sound Transit about buying a freight easement on their segment of the line?

A. No. But if -- I mean, first thing is to see what happens here with Kirkland. And if we're successful there, then, yes, I would go and try to make some contacts and see what their plans are. I've always -- all I know is what is in the Times paper, drawings from time to time and some text, and the timeline for that is a few years down the road.

So that doesn't mean we shouldn't try to see what kind of a deal could be negotiated, by any means, but it does mean that it's not, like, an emergency at the moment.

Q. So you have not approached King County, Sound Transit or Kirkland in efforts to acquire a freight easement?

A. Well, Doug Engle has tried it. And it's not -- sometimes when Doug puts together these meetings, I attend. And sometimes I don't. But he's worked hard, harder than I have, to try to make those things happen.

Q. But he's not with Ballard Terminal Railroad, is he?

A. I'm not sure that makes that much difference.

Q. Well, it's Ballard that's seeking to reactivate rail service, correct?

A. That's right. We are people with the NPC and ends.

Q. What are those?

A. Those are the rights to run short lines.

Q. Right. And so you have made no effort to acquire property rights on the line?

A. Is that a bad thing, from your view?

Q. I'm just asking the question. You've made --

A. I haven't, but today while we've been sitting here, I've probably spent 10,000 bucks on gravel that I

don't know where it went because I wasn't down there at Meeker, so I got lots of things to do. I can't put all my effort into this Eastside project. But I'm here and doing this because this is one of the most key steps right now. The track would be gone if we hadn't done this. I'd be looking at in a pile at NK down by Puyallup and buying it back to use on our other railroads.

Q. So has Ballard reserved any money that you could use to acquire property interest in the line?

A. I haven't, but if I could make a deal to get property interest in the line, I think that the fund-raising would not be that hard.

Q. Okay.

A. But it's no sense worrying about funds. The first thing we have to do is to stop Kirkland from ripping the tracks up. We were like -- we only got it stopped about one day before it would have been tearing into. We do business with NK, I know those guys. They're good guys, they have good quality used track. This didn't allow them to stockpile anymore in Tacoma.

Q. Okay. Let me refer you to Exhibit 40, that's your verified statement.

A. Yeah.

Q. And on Page 2 of Exhibit 40 --

A. Okay.

Q. -- bottom of the page, you state, "We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment."

You see that statement?

A. I see that.

Q. So I'm going to ask you about CalPortland and Bob Wolford in a minute. I know about those two.

A. Okay.

Q. Tell me about all the others. Who else have you been engaged in active discussions with?

A. We're not talking about hundreds, but on our other lines, we have some trans-loaders. Trans-loader is someone who has a warehouse or an open yard, hard surfaced yard, maybe a security fence around it, and has a rail siding where stuff from all over the country can be shipped by rail, which is cheaper per mile than by truck. Can be shipped by rail into the Puget Sound region, unloaded from the railcars, warehoused inside or outside, depending on the needs of the product, and then delivered the last few miles. In the trucker 's view, the last few miles is at least 150, if not 200 miles. That's a short haul for them these days on the freeways.

So customer whose product is in the train gets it moved 95 percent of the way across the country at the

lowest possible rates because the rails are cheaper than the trucks by a factor of about 25 percent. And so that is a business called trans-loading, to get the product out of the railcars onto the ground or into a warehouse and send the boxcar, empty boxcar back to Burlington Northern. And then call the customer, Okay, your stuff has landed here, safe, no damage, and they make a deal to -- as to what the delivery schedule would be for the product. Maybe it's one chunk and it all goes on one truck or maybe it's something else. They dole it out month after month.

So I have two of those. We have two quite active trans-loaders on our line in Puyallup. And I've talked to those people about possible opportunity in Bellevue or Woodinville or Maltby. And those guys are always, their ears perk up. And they're little guys, like us, in most cases. And these people with, you know, some limits on their finances. They like the idea of them having another one of these distribution center reloads, trans-loading facility.

And so, it's hard for them to get too excited when all we are is in court, and we're the little guys against people with money they haven't counted yet. So you can only get them so excited about it, all right.

But those people, if we are able to make a deal to get down to Bellevue, it goes right through Totem Lake

where there's about, at least ten warehouses that use -- that are right there to be served by rail, in some cases the sidings are still there even. What's inside of them, indoor basketball courts and all kinds of adaptive reuses.

Q. Mr. Cole, we're going to get out of here at some point today if you would just focus on --

A. I'm answering your question. Have we talked to other trans-loaders, to other people who would be interested, the answer is yes. If you want to settle that, that's it.

Q. I want to know about the shippers interested in restoring rail service to serve businesses on the Woodinville-Bellevue segment, the line. That, as I said --

A. That's the guys I've been talking about.

Q. Who are they?

A. I'm not giving you the names.

Q. You're going to have to.

A. I don't know that I do.

Q. Okay.

MR. COHEN: Mr. Montgomery, you should -- I won't address this to you.

MR. MONTGOMERY: Thank you.

Q. (By Mr. Cohen) I'm afraid, Mr. Cole, that if you don't share that information -- I can't even advise you.

Who are the names of the shippers you've been

talking to about providing service on the Woodinville-Bellevue segment? Name all of them.

A. Do I have to do this? These guys are already busy with their businesses, they're not big-time operators like Boeing or something. They don't need to be given a bumpy ride by people who don't want them to come to Kirkland and Bellevue. What do I do here?

MR. MONTGOMERY: I can't instruct you not to answer. It's your call.

THE WITNESS: I don't know. What happens to me if I don't answer? You're shaking your head, what does that mean?

Q. (By Mr. Cohen) Mr. Cole, you made a representation to the Surface Transportation Board that Ballard Terminal Railroad is in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. You mentioned two of them. We're going to talk about them shortly. I want to know if there are any others, and if so, who they are?

A. I get calls from people in Portland, from people in Longview, from people in Spokane, they're often small trucking companies that have their toe in the trans-loading operation somewhere in those cities. I get -- it isn't like I get the call every day, but I get calls for those kind of people wondering about opportunities that might be

on our lines, our three lines here in the Northwest part of the state. And I've made some notes on a couple of those phone conversations.

But some of them I talk to and say, Well, these things are a possibility, why don't we try to get together sometime, drive up here and I'll show you what we've got and see if there's land that can be developed that would work that we already control. That's what's going on today down there where they dumped another, I don't know, 200 tons of rock on the acre parcel without me being there.

I -- I -- doesn't seem right to me that they should come under whatever pressure you guys will apply to them just because they suggested they had an interest in trans-loading opportunity in the Northwest.

Q. Okay. So you're not willing to provide those names?

A. I'm afraid of what you would do to them. And it could end up that they say, Well, that guy Cole, he just -- we were pestered to death and subpoenaed and so forth and so on. They're not going to like that. Can you make some kind of a pledge that you'll just talk to them and be nice and not give them a bunch of guff and make them be sitting in this chair next week?

Q. I can't give you that assurance.

A. Then that's not a very good deal. What kind of

justice is this? How does this work?

Q. Okay. You answered an interrogatory stating that you had spoken with General Mills?

MR. MONTGOMERY: Objection to the extent it mischaracterizes the interrogatory.

Q. (By Mr. Cohen) Do you recall that answer?

MR. MONTGOMERY: Same objection.

THE WITNESS: I actually haven't spoken to General Mills.

MR. FERGUSON: It's Exhibit 37.

THE WITNESS: I spoke to them a couple of years ago when, to our surprise, the stream of flour carrying, pressure differential cars, all of a sudden came to life again. And I'm looking on -- we get a daily report every morning at 3:30, all the cars in North America that are inbound to our three railroads. It's broken up by the three railroads. Sometimes I print them off.

But anyway, there was -- I see General Mills. I called them up. I said, Hey, what is going on? The pipeline of flour back to the Safeway bakery in Bellevue is open again? And the guy said, Yes. I said, Well, that's a nice pleasant surprise. And he said, Yeah, he said, we got the contract back. Something to that effect. It was not a long conversation. It was the manager of the mill or something, I guess. I don't know for sure who it was, but

it was just a confirmation that somehow the nation's network for moving all these freight cars to the place they're really supposed to go to hadn't screwed up and reverted back to something from ten months ago or something. It was true, it came.

So that was my -- that was the extent of my talk with General Mills back in Great Falls, Montana. It was just about the fact that there was cars destined for Ballard again where we would unload them into pressure differential stainless steel truck trailers and truck them to the Safeway bakery.

Q. This was a conversation about service to Ballard?

A. That's right. They were showing up in the morning on the Ballard, here's the inbound cars. It's like, huh, the pipeline is flowing again.

Q. Okay.

A. And it was. That went on for a while. It was since ceased again, and again with no call from Safeway either way and no call from General Mills. We're not getting any cars right now. I don't know what their criteria is.

Q. So you are not currently considering any proposal from General Mills to ship freight to or from any location on the line?

A. We're not. But if we were successful in getting

opened for freight, I imagine that Safeway would immediately hook up with General Mills and start sending the cars directly there, that would be the cheapest way to get the flour to their bakery. Great Falls, Montana does not compete well with flour by truck compared to flour by rail.

Q. Does General Mills have a business operation on the line?

A. No, all they would be doing is selling the flour to Safeway and that's a transaction that takes place with Richmond, California. Richmond, that's where the Safeway regional, you know.

Q. So General Mills is not a perspective shipper on the line?

A. No, I didn't say that. I think if we were able to gain access to the use of the line, that Safeway will see that and look at what the freight rates used to be and see that that's the cheapest opportunity. Beats trucking and it beats railing to Ballard, for example, and trucking over to the bakery at night. And so they would see that, Hey, this is good news and hook back up with General Mills.

Q. And when you say "Safeway would hook back up with General Mills" --

A. Well, I think there's been times when they bought flour from General Mills' competitors.

Q. Can you give me specific locations where these hookups would occur?
A. I don't know. All I know is there was a time when, as far as we could tell, no General Mills flour was going to Safeway. We had lost the account from our trans-loading facility in Ballard. And they were still getting flour. And the only thing I could assume was that there was a flour mill somewhere that had made a more competitive bid and Safeway had decided to try them out for a year or a quarter or something, I don't know. I didn't ever -- it wasn't my business as to what they did. It would be nice if they would call us and say, Hey, Byron, we're stopping the pipeline to you guys forever or for a while or something, but we've never had those kind of phones calls.
Q. Okay. So General Mills has no business location on the line, correct?
A. Correct.
Q. And what you've been talking about is a supply arrangement from General Mills in Montana to Safeway in Ballard?
A. We had that for a number of years. Sort of on again off again. We have a small trans-load facility in Ballard. And they -- Safeway contracted with a trucking company that has the proper food grade pressure

differential modern truck-trailer rigs. And there's about 100 tons of flour in a railcar. There's about 32 tons of flour in a grossed out highway truck-trailer PD rig.
And so they would take about -- take four truckloads to empty out a car. And so that went on for a while. And it stopped and then it started again. It's been -- we have to take whatever they get. We don't refuse them.
Q. Forgive me, does this particular transaction or potential transaction have anything to do with rail service on the line?
A. Well, I think that if we can operate rail service on the existing line from Woodinville into Bellevue, that it just seems like Safeway would say that's cheaper than any other way. That's back like in the old days. And they would -- they would take it. But Safeway is -- is -- they don't always answer the phone.
Q. Well, I was going to ask you next about Safeway. Safeway has a bakery in Bellevue, right?
A. That's it, it's their regional bakery, industrial, bakery is another name it's called. It's big, because there's two tracks and you can put about four carloads right inside the building, slam the door.
Q. Okay.
A. It's big.

Q. And I understand that you had a conversation with Safeway about receiving rail freight service at their location in Bellevue?
A. I haven't this go around. When the service started to us, which was something that Burlington Northern arranged. When Burlington Northern quit running on the line, they made a deal with Safeway for alternate source for the flour. That was to ship the railcars from Great Falls, Montana, from milling company there to Ballard where they would be unloaded into these pressure differential trucks and trucked to the bakery.
Q. That wouldn't require rail service on the line?
MR. MONTGOMERY: Object to the form.
THE WITNESS: Well, that would have -- I mean, that's what we actually did. I mean, we did that for a couple of years. And then they quit doing it. And I don't know. I thought they just found some cheaper place to buy flour and it was within -- might have been Eastern Washington. So it was just, put it in a PD truck and it goes nonstop and they drive the truck inside the building, and, you know, that was cheaper.
Q. (By Mr. Cohen) Okay.
A. But maybe they didn't like the taste of the bread it made, I don't know.
Q. Doug Engle said yesterday that Safeway has

abandoned its operation in Ballard, is that your understanding?
A. In Ballard?
Q. Yes.
A. Well, the operation was -- there was no infrastructure. We haven't had any flour cars for, I don't know, a number of months, but the bakery is still running robustly, I think.
Q. You mean the bakery in Bellevue?
A. Yes. There's no bakery -- that's the only regional bakery in all of the state of Washington, that I know of.
Q. So have you had any recent conversations with Safeway about providing freight service to that bakery in Bellevue?
A. I haven't. But I believe that Doug has made -- I tracked down on their website, that the flour account's manager was a woman in California, Richmond, California. And it's right across the bay from Doug's house. So I suggested he pick up the cudgels and go talk to her.
And so I think the -- I think the answer I got from Doug was, I called that woman and she said she wasn't the account manager anymore, or something to that effect. And didn't offer who was the account manager. So we don't know anything about them at the moment.

Q. Okay. How about Wright Runstad, did you reach out to Wright Runstad?
A. No, they don't know me from Adam.
Q. Anybody else with Ballard Terminal Railroad reach out to Wright Runstad?
A. There isn't anybody other than my partner, who's in the sand and gravel business. He and the people that -- at CalPortland would know each other.
Q. Right. We'll get to them. How about Kemper Development, have you had any conversations with Kemper Development --
A. I haven't.
Q. -- about providing rail service to them on the line?
A. I haven't. All I know Kemper is what I read in the papers.
Q. So any other perspective shippers for service on the line other than CalPortland and Bobby Wolford?
A. I would like to somehow locate a trans-load facility, somewhere in that vicinity of the old Weyerhaeuser cardboard box plant and Safeway bakery's existing and seems like amazingly durable, long-lived bakery. Somewhere along in that string of warehouses, about five of which still have spurs that reach right into them. And so I think that 's right for a trans-load

facility be able -- for people to be able to get direct rail service with a short trucking dray for whatever their products are. And save some money, those are all low margin businesses.
And so I think there's an opportunity there somewhere to get into somebody's warehouse.
MR. MONTGOMERY: Where is that? I'm sorry, I didn't hear you.
THE WITNESS: In downtown Bellevue.
How about if we lease out the old box plant from you guys until you're ready to use it? I got all the track. I got all the ties and the rails that came out of there from the guy who got the contract to take it up. I've got them all in a pile down in Puyallup. I would put those back in a heartbeat and have direct rail service that goes inside the building. It would be a great trans-load. It's got truck access and floor that's rail dock high. And how long is it going to be before you need it?
MR. MONTGOMERY: For the record who is "you guys"?
THE WITNESS: Sound Transit.
MR. MONTGOMERY: Thank you.
Q. (By Mr. Cohen) Mr. Cole, have you made any efforts to locate a trans-load facility on the line, to develop one?

A. I've gone over there on Sunday mornings when things are quiet and parked my car and tramped around and tried to visualize what might work here and what looks like it's a vacant, newly vacated warehouse. Most warehouses are owned by people who just lease them out. And so most occupants are leasing, renting the warehouse, so they turn over from time to time. And so I go and look and see, is there some kind of business inside here, looks like there is and so forth and so on.
I think one way or another we could get a trans-load facility there, I think that would be a popular thing.
Q. Does Ballard hold or have an option on any property on which a trans-load facility would be built?
A. No, not yet.
Q. Have you talked to anybody about acquiring property for a trans-load facility?
A. Yeah, one of our employees who runs the train is a real estate broker, as it turns out. So he and I have chats. He's pretty knowledgeable and been on the Eastside a long time. So that answers, yes, to that extent. And he can save me some time. I don't have to learn things that he already knows.
Q. Has your employee, the real estate broker, contacted any of the owners of the property that you would

like to develop a trans-load facility on?
A. Not yet. I thought it was premature until we see. We were panicking here about Kirkland's just -- I don't know. It's just -- answering to the bike community, jumping through hoops that they want. And the bikers just don't think a trail feels good if there's still tracks next to it. They just don't like it. It's not good enough.
We've been through that on both of our railroads, which have trails built beside them on both our Meeker line and our Ballard line. We get along fine with the agencies that maintain -- built and maintain them, Pierce County Parks & Recreation in the south and Seattle Department of Transportation in Seattle. But whenever we're doing any work anywhere near the trail, we put up traffic cones, direct them off to one side. The first five bikers down there kick over the cones. These are adults.
Q. Have you had any e-mail or other written communications between Ballard and any perspective shipper?
A. Well, I get -- like I said, I get calls for trans-loading from all around the state. I get calls occasionally from Canada, calls from Northern California from people who are looking for places where they can make some money by setting up a trans-load that other people will want to use.
Q. These are the people you don't want to name?

A. Right.
Q. Okay. All right. But no written communications?
A. No. It's amazing, you can go a long way with the money of a handshake deal, a lot of times, but it's not a very complicated business, so...
Q. Okay. Does Ballard have any letters of support from any perspective shippers that you have not filed with the Surface Transportation Board?
A. Would you say that again?
Q. Yes. So you filed letters of support from CalPortland?
A. Mm-hm (answers affirmatively).
Q. And Bobby Wolford --
A. Right.
Q. -- Wolford Trucking?
Do you have any other letters, you or your counsel, letters of support for the reactivation of rail service on the line that you have not yet filed with the Surface Transportation Board?
A. I don't think that we have any. I can't speak for Doug. But I haven't tried very hard to do something like that. It was a pretty big step for us to decide to do this filing that brings me here today for a little outfit like us. And STB regulates us and -- I want to be careful that we don't poison the well with STB through some goofy

misstep. So I've just tried hard here to have good counsel and get it right the first time.
Q. So no other letters of support from perspective shippers that you're aware of?
A. I haven't tried to get them.
Q. Okay. Has any perspective shipper asked Ballard for a rate quote?
A. Well, people do that. But the answer in today's world for rate quotes is, go to your computer, dial up BNSF, rates are there. The rates for, unless you're Boise Cascade, where you can pick up the phone and call Fort Worth and get an account executive, an AVP, to talk to you about your rates from your 11 saw mills and 15 board plants and so forth, when Boise Cascade calls, the railroads listen.
Okay. But I get calls usually from much smaller companies. But they can do the same thing, the published rates are right there. You can see what the freight rate is in a 100-ton boxcar and just put in what the commodity and what the departure point is and what the destination is.
Q. Right. But since --
A. So they don't need to call me about rates. They can sit after dinner at their home computer and figure out if we could ship it to Ballard Terminal's facility at

Puyallup, freight rate seems to be, blah, blah, blah. On the other hand, if we shipped it to Woodinville or Maltby, the rate would be something else. The only thing they need from us is for me to tell them the rate from the interchange, from our interchange with Burlington Northern down to Maltby.
Q. My question is, has anybody asked you what the rate would be for a delivery on the line?
A. Well, I get them from time to time.
Q. From who?
A. Well, it's -- a lot of times it's people I don't even know. It's somebody in New England.
Q. Okay.
A. And he makes, I don't know, power takeoffs for jet turbine boats or something. And he's trying to see if shipping by rail in a boxcar is better for him than shipping by truck. And we're in this national directory of railroads, and that's where they get our number and we call and talk about it.
Q. Mr. Cole, I want to be careful. I'm asking you about the line between Woodinville and Bellevue, not your freight segment. Have you received calls from anyone asking for rate quote for service on the line?
A. Well, they usually never are that specific. In fact, I'd say they always are not that specific. One of

their first questions that they ask is where do you have trans-load facilities. I say -- now I say, Well, we have three railroads. So one place is Woodinville on this railroad we're working on here. And we have Ballard. And we have two trans-loaders on our Meeker line in Puyallup.
So I ask them, where are you trying to get to once you get it out of the boxcar. And then they tell me, Well, we're trying to get to the Port of Tacoma. Well, then, the logical thing is to send it to our Meeker Southern railroad, because it's only 10 miles to the first gate on the first dock. And they love that. That railroad is in a really good strategic spot.
And Port of Seattle, where, I don't know, I count the number of boats in the Port when I go home to West Seattle and there's only two in here for the last two or three days. Two freighters. That's not much.
Anyway, you know, the conversations are what could you do for us. Well, we have three railroads, what are you trying to do? Well, I want to get to the Port of Tacoma docks with my product I make. Well, then, the Meeker is the one to do it. Then we talk.
Sometimes it turns out to be traffic and sometimes it doesn't. I try and direct it. I don't have to invent the wheel, again, I give them the names and phone numbers of the two trans-loaders we have on that line.

They got telephone banks waiting for the phone to ring. When that rings and that guy calls, they have a knowledgeable guy with a proven track history, been in business for 30 years, and he can tell how much it will cost to unload the railcar and how much it will cost to dray it from there to the Port, which dock are you going, to, blah, blah, blah. In the end, we get paid 350 bucks for handling that boxcar.

Q. Have you --

A. That's the way business works.

Q. -- gotten any calls from anyone who is trying to deliver freight to Bellevue?

A. I don't think so. But sometimes, when I'm talking to these people, I say that there might -- you know, might be a possibility that we'd be in Bellevue sometime, but they, from the standpoint of looking for a trans-loading, they don't see a lot of difference between unloading in downtown Bellevue or unloading in downtown Woodinville. The few minutes of trucking. But if it was somebody, that said, well, I want to open up a gypsum board retail and wholesale outlet, Sheetrock, well, then it might make a difference to be downtown. That would be a close haul for a pot full of gypsum.

Q. Any calls from anyone trying to deliver freight to Kirkland?

A. I don't think I've ever gotten any. But Kirkland does have an industrial district up there by the tracks, and there's one spur up there, and there used to be some others. You can see where there used to be some other spurs. I suppose might be able to be put back if, again, the right tenant was inside the building.

Q. Any calls from any shippers seeking to move freight out of Bellevue?

MR. MONTGOMERY: You mean other than --

THE WITNESS: Other than the spoils people?

Q. (By Mr. Cohen) Right. Other than Bobby Wolford and CalPortland, we'll talk about them.

A. Bobby has a bunch of competitors. When these big giant basements are dug, there's, I don't know, I'll bet there must be a dozen truckers, or more than that maybe, that would be available for those things. I'm sure they'd partner up in partnerships that last as long as that excavation job is going, two or three of them get together and say, Look, together we can put 16 trucks on the road, three little guys and, you know, a few trucks. Wreckers are like that.

Q. Has Ballard Terminal Railroad had any conversations with any truckers seeking to move?

A. No. But, you know, if this goes the right way, I think phones will start to ring because Wolford is going to

have the best economic model and the other guys won't want to get left behind.

Q. I'll ask you about that. How about anybody trying to move freight out of Kirkland, any calls from shippers trying to move freight out of Kirkland?

A. No. The businesses look pretty small and a lot of what used to be -- I've walked the line a number of times. The buildings that are there and could be under lease or maybe they're owned, I haven't checked to see what they might be, but mostly they're the kind of a business that doesn't look like they need rail. You know, in-house television system installers and all kinds of things, but not something big like a distribution center for Sheetrock or plywood or roofing paper --

Q. Right. I'm sorry.

A. Well, roofing materials or something like that.

Q. Right. So let me ask you about CalPortland. Before this rail reactivation issue came up, did Ballard Terminal Railroad have a prior relationship with that company?

A. Boy, do we.

Q. Tell me about it.

A. So my partner has a business in Ballard, it's Salmon Bay Sand & Gravel Company. It's a ready-mix plant. And CalPortland is one of the major suppliers of the dry

bulk cement. We've got it set up to, it comes in by ship -- or the raw materials come in by ship and the ship goes up the Duwamish River. And CalPortland is located on the east shore of the Duwamish River at about Michigan Street. So they have an actual cement making plant there.

And so anyway, they make the products and they load 100 -- 112-ton capacity pressure differential railcars, that's the fat, fat ones. But they're way bigger than a tank car for gasoline or something like that. On the top is a walkway and hatches. It's a dry bolt thing with hatches on the top. They load those and they just come across town from on the Duwamish River to Ballard. Total is only 10 miles or something like that.

But the thing is when it gets to Ballard and we spot it at the batch plant, the piping on the railcar is that big around (indicating).

Q. You got to -- the court reporter can't pick that up.

A. Oh okay, 6 inches in diameter.

Q. Nice.

A. They can blow that car off, 112 tons, into the silo at the plant in about two and a half hours. If you try to bring that cement in the highway truck-trailer combination -- so there's 112 tons of cement being blown out of that thing in two and a half, three hours, if you do

been in attendance at one meeting, I think maybe Doug has had a second meeting with them, possibly. But they were pretty enthusiastic about the whole thing. It's not something they have thought of.

Q. Who was that meeting with?

A. It's with the marketing guy for ready-mix products. I don't know his name.

Q. When was the meeting?

A. Within the last month.

Q. Have any written communications from CalPortland about your plans?

A. I don't. Doug may.

Q. But Doug doesn't work for Ballard Terminal Railroad, you do.

A. We work closely.

MR. MONTGOMERY: Objection; argumentative.

THE WITNESS: I don't see that matters any. I mean, there's no sense both of us making these phone calls. Geez, it's hard enough for one or the other of us to keep all these balls up in the air.

Q. (By Mr. Cohen) If Doug Engle makes these inquiries, is he doing it as your agent?

MR. MONTGOMERY: Objection; form. Object to the extent it calls for a legal conclusion.

THE WITNESS: Well, he certainly sees us as

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

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

A. In --

Q. -- in Bellevue?

A. In Bellevue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. MONTGOMERY: Asked and answered.
THE WITNESS: I don't know. They have a conventional truck served yard where they unload trucks and then a front-end loader pushes them into the ends or something. And then other people's trucks come there and get loaded up. You can see that's a complete waste, isn't it. I mean if that's --
Q. (By Mr. Cohen) Yes. So let me clarify, CalPortland doesn't have an off-loading facility on the line in Bellevue?
A. Right. I don't know if they have one at all. It may very well be that the Cadman and other ready-mix people just drive all the way -- they have choices. They have CalPortland and right next to them is another cement company. What the heck is the name of it? Anyway, there's about three places you can buy rock, the aggregate's right there in a cluster on the Duwamish between Spokane Street and First Avenue South bridges. So I imagine most of those places, bring your own trucks, figuring that's somehow cheaper, or they contract the trucks.
Q. Do you know where the aggregate that CalPortland would be shipping by barge to Everett would be coming from?
A. Somewhere on the rim of Puget Sound.
Q. It's a big place?
A. It is. I have no idea where they get it from.

Q. All right.
A. These people generally use one place until it runs out. But in the meantime, for the last 25 years, they've had rights to mine at dozens of different places all around Puget Sound because they know that's their future.
Q. Okay. Let me ask you about Wolford Trucking and Demolition.
A. Okay.
Q. Your verified statement that you read a few minutes ago makes the same statement about Wolford Trucking as you did about CalPortland, that they are ready, willing and able to utilize the Bellevue-Woodinville segment?
A. I'd say that Bobby Wolford is --
MR. MONTGOMERY: Could you wait for a question.
THE WITNESS: Sorry.
MR. MONTGOMERY: Thanks.
Q. (By Mr. Cohen) What's the basis for that statement?
A. Well, I've met Wolford a number of times informally, I mean, you know, not -- maybe we had something to share with each other. But it wasn't a very big deal. But just met him at some of these evening meetings where you sign up and wait for three hours to speak for your

truncated two minutes. And somebody insults you by saying, Well, I'm sorry, you're the fourth person on this subject. We can't even speak --
Q. You shouldn't get started on that subject again.
A. I know, that really irritates me. That's one of the reasons I'm here today because I just ran out of patience.
Q. All right.
A. So he seems to me like quite a nice fellow, and quite a good businessman. And I'm very impressed with his protege that is really young and really sharp that will probably be taking over -- wouldn't be buying the company but --
Q. Who is that?
A. I can't think of his name, but he's an extremely smart young fellow.
Q. Is that Oliver Lewis?
A. Darn if I knew, I couldn't remember his name. I've met him two or three times. Anyway, I'd say the company is quite well run. And it's quite diversified. They bring in all sorts of things and sort through them and turn them into adaptive uses and take them to waste dump pits or whatever. I think if he says he can do it, he can do it.
He built, for Tom Payne, about a half mile of

trail that starts down at Brightwater and runs up to Wolford's place. I don't know how far that is.
Q. He told us about that.
A. He just did it.
MR. MONTGOMERY: So are you done?
THE WITNESS: Done.
Q. (By Mr. Cohen) To your knowledge, does Wolford have a loading facility or trans-loading facility on the line in Bellevue?
A. No, he wants us to put a spur in at his plant at the top of the hill at Maltby, which is just the level spot up there and then you start down into Brightwater and so forth. So he wants us to put a spur in. It's not really hinged to him going to downtown Bellevue. He just wants to have it there because of all the other things he's got going out there. And we're going to do that.
But he's been around so long and knows all these builders and developers so well, and they know him so well, that I would think if anybody could find a place to operate a reload, it would be like dump truck, dump on the ground, big front-end loader scoops up, turns, dumps into a gondola car, I see places there that could work. I haven't taken the time to see who owns them. But I see some surface asphalt areas next to warehouses that don't seem to have a tenant, for example, you might be able to lease the whole

darn thing.
Anyway, it looks like there could be a place somewhere where the railroad yard area is and the spurs to about a half dozen industries there.
Q. But Ballard Terminal Railroad is not --
A. I haven't made any overtures to anybody. Except Sound Transit, I would like to lease your old cardboard box building because it's ready to go.
Q. To your knowledge, Wolford hasn't made any arrangements to land a loading facility in Bellevue?
A. Yeah, I don't know of any. And he may have. Or he may be, you know, confident, if this things goes through, that will be simple.
Q. Okay. Has Wolford talked to Ballard Terminal Railroad about a rate to haul freight --
A. We haven't.
Q. -- from Bellevue?
A. Right, we haven't.
Q. Okay.
A. But he and Engle have talked about some rates. And I just haven't taken the time to analyze them and see if it works for us or not.
Q. Mr. Cole, do you know where the -- this would be construction debris that Wolford wants to haul out of Bellevue, do you know where its destination would be, where

does he want to ship it?
A. One of the things that we -- we have said, and Engle has said, is a lot of these spoils, as long as they're not contaminated, could be used to build the subgrade for a bike trail besides the rail tracks in the 12-mile segment from Woodinville down south to Bellevue. And we would use either side dump gondola cars, it's almost like a highway truck with a V shape just over the side, or this side of the tracks, then you put a Cat tractor in there and grade it out and so forth.
We could use it to build a bike trail.
Q. I think Wolford testified about that.
A. Yes, he did. I mean, that's a key part of this thing, it's like, Hey, look, Kirkland can have their trail, it just would be besides the existing rail track. Please learn to share the assets.
Q. So the idea is that the construction debris and dirt would never need to leave the railroad right of way, it would just get dumped off the side?
MR. MONTGOMERY: Objection; form; foundation.
Go ahead.
THE WITNESS: Okay. I think so. And the other -- the other type of way getting these things unloaded is they have trains now that are like gondola

cars, except they've cut the ends out and extended the sides, so they're all slip joints and they've extended the floor, so it's a slip joint and turns. And you make like a ten-car train and just put an excavator inside there, something with a -- can't get too big of one, because they're only like 9-foot-6 inside.
Anyway, you can unload -- you can put an excavator in, say, one end of your train, locomotives hook onto either end. Put an excavator in the end when you're filling this with the front-end loader on the ground, fill the whole thing up, but leave the excavator still sitting on the tin floor. You get to where you're going to unload, someone fires up the excavator, scoops, swings, dumps to the other side if you want to go to the other side of the tracks. Keeps working his way down till he's at the other end ten cars down. He hasn't had to get down of one gondola and into the next one because it's one big long snakey gondola car. Those trains can be leased complete with power.
Q. Do you have any of those cars?
A. Holy Moses, no. We're talking a million bucks or something for that thing. But if you have a good long --
MR. MONTGOMERY: Keep talking. Don't wait.
THE WITNESS: A good long period of time, on a big enough contract, easily fit into the rental scheme.

Holy smokes.
Q. (By Mr. Cohen) Do you know --
MR. MONTGOMERY: Are you done?
THE WITNESS: Done.
Q. (By Mr. Cohen) Do you know if Wolford has any contracts to build any trails alongside the right of way?
A. I'm pretty sure he does not at this point. But the part he did build is within our reserve freight easement, so it's like, this is a federally regulated job. I wouldn't say no seedling trees were damaged or something, but looks like pretty benign. You're free to go walk it.
Q. Would Ballard Terminal Railroad be willing to pay Wolford to move the demolition debris up the line to create a trail?
A. Well, the --
MR. MONTGOMERY: Incomplete hypothetical.
THE WITNESS: Yeah, there's a lot of -- a lot of ways the thing could be structured. But first, Wolford has to submit a bid to the builder of the high-rise that competes well with other truckers. Assuming he can do that, because he's -- while the trail is being built, he's got a real short haul. And there could be places in the trail where you actually don't bother to put it into the railcars, you just truck it.
But the rail is going to be able to put dirt in

places that are not reachable easily by truck. Because so much of that Kirkland area is on the side hill.

Q. Right.

A. So sort of cries out for these self-loading and unloading trains and so forth. I think he would have advantage in many of the bidding wars.

Q. If the material could not be disposed of to build a nature trail alongside the right of way, it would need to go to a landfill?

MR. MONTGOMERY: Foundation.

THE WITNESS: Well, there's a few other options, but yeah, the default would be a landfill somewhere. And I'd say Wolford is as well fitted with needs to spent rock quarries and so forth, places where you can legally take the clean spoils by truck, that it might be the -- those jobs just don't ever get in the railcar. Or maybe you load the railcar and they unload it up at, near the junction with Burlington Northern and they truck it from there or something up. Most of the sites are getting to be towards Stevens Pass up Highway 2.

Q. (By Mr. Cohen) And not on a rail line, right?

A. And not on rail, yeah. You know, we can get Burlington Northern to pick the cars up and take them to Gold Bar where there's a switch yard, and then they can unload up there. So it's a possibility, if it's an easy

thing for them to do. It's the Gold Bar turn train that picks up and delivers our cars to us. And so it would just be one more switch for them and haul them whatever number of miles that is to Gold Bar and set them out up there.

Q. You haven't explored the economics of that operation?

A. Well, I thought about what the freight rates might be to Wolford, yeah.

Q. Do you know what they would be?

A. Not off the top of my head.

Q. Have you supplied him with that information?

A. We've talked about it a little bit. But I have, you know, said, I got to look at this closer, Bobby. And it depends on how the loading is and how much we can actually put in the cars and so forth, and what it cost us to have a fleet of cars.

Q. Okay.

A. There's quite a few things there. But this thing -- kind of thing is going on around the country. This isn't the only town where people are thinking this.

Q. Let me ask you to look at Exhibit 40, that's your verified statement, Page 3.

A. I'm on Page 3.

Q. Okay. At the bottom of that page, you offer an estimate that if Kirkland removes the rails on the Kirkland

segment of the line, that "the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately $10 million."

You see that?

A. I see it.

Q. That's your estimate, right?

MR. MONTGOMERY: Object to the form.

THE WITNESS: Yeah. Well, it's at least a stab at an estimate. It's a huge -- it's a huge waste of a resource, because the signals, for example -- first of all, they're all these cantilevers and such, they're modern things and modern lights in them, all of that is up-to-date, as it is on all our other railroads. That stuff is state of the art. Gone to LED lights and computers in the bungalows and all this stuff. So to trash it all, we're going to have to pay brand-new price to get new stuff. So you'd have a million dollars in grade crossing gear if you just trash it.

Q. (By Mr. Cohen) So --

MR. MONTGOMERY: Are you done?

THE WITNESS: I guess so. This is a good number to start with.

Q. (By Mr. Cohen) Tell me how you developed that number.

A. Well, if you're starting from scratch, it's

getting really hard to buy any used rail, which is called relay rail. It just means it was here and somebody picks it up, was careful, didn't bend it, kink it, break it. They shipped it to somewhere else and we can buy it and reassemble it.

The price of steel has gotten so high that all of the relay wire that was around, people that owned it have all sent it to Asia. All we can buy nowadays is brand-new rail, which really costs a lot of money. We'd get the same size rail, but brand-new and it cost three or four times as much per yard as used stuff. So price of that is way up.

We would probably use concrete ties. They're 90 bucks apiece delivered to Bellevue or Seattle or any other place. We do use. Our little spavined railroad that everyone snickers about, we use concrete ties at both of the railroads we've got. And they actually -- they have a bigger footprint so you can load them up more, you don't have to use a track gauge because they're like toy train track, it all snaps together. And you get a beautiful job and you can keep the stuff around to get it lined up and have S turns and all this stuff.

So if that was the case and we somehow had the federal grant or something for couple million dollars a mile, we could put it all back together with 112 or 115-pound rail and use concrete ties that come from

Spokane. And it would be a great roadbed and commuter trains or whatever could run 90 miles an hour on it. It would be the same as Burlington Northern's main line all the way to Chicago.

And so there's no way to build it old. We do not do that. If we're rebuilding track, and we've done it in Ballard and we've done it on our Meeker line, build it to today's modern standards.

Q. Is that $10 million estimate based on particular assumptions about the cost of ties, the cost of rail?

A. I believe that Doug put that number together after talking with RailWorks as to what they thought it would be, because they do much work around the country. The guy can just go to the filing cabinet, pull the drawer open and look for some quote.

Q. Where did you get the number?

A. I got it from Doug.

Q. Got it from Doug?

A. I'm pretty sure it came from RailWorks. At this stage, are we quibbling over whether it's 12 million or 10 or anything? It's not really relevant. It's a pot full, it's way more than building what's out there today.

Q. Let me ask you to look at Exhibit 37, which is your answers to the interrogatories.

A. Here we go. First one out of the box.

Q. Bottom of Page 2, Interrogatory Number 4.

A. That's the same question.

Q. It's the same question. If you flip to Page 3, you will see your answer.

A. Yeah. Well --

MR. MONTGOMERY: Is there --

THE WITNESS: I was more forthright with you.

MR. MONTGOMERY: Wait for a question, please.

Q. (By Mr. Cohen) So, your answer was "without waiving this objection, see ECR 893."

See that?

A. I see it.

Q. Did you review ECR 893 before you signed this pleading?

A. I don't think so.

Q. Let me show it to you.

MR. COHEN: Mark this one as an exhibit.

THE COURT REPORTER: It's going to be 41.

(Exhibit Number 41 marked.)

Q. (By Mr. Cohen) Mr. Cole, can you read that?

A. Well, could you have used any smaller print.

Q. I didn't choose it. We have one that is blown up a little bit if your counsel will stipulate to -- is this

the same document?

MR. FERGUSON: Yes, it is --

MR. MONTGOMERY: Isn't it a page in a previous exhibit? It's in there somewhere.

MR. FERGUSON: Can we go off the record for a second.

MR. MONTGOMERY: Sure.

(Discussion held off the record.)

(Exhibit Number 42 marked.)

Q. (By Mr. Cohen) The question is, Mr. Cole, you indicated in your interrogatory answer that the basis for your $10 million estimate to reinstall the rails is ECR 893.

MR. MONTGOMERY: Object to the extent it mischaracterizes the interrogatory responses.

THE WITNESS: So what the heck is the EC 3, or whatever it is. What is that? When you say I'm referencing --

Q. (By Mr. Cohen) I'm going to show you. Exhibit 41, will you look at Exhibit 41? You need 41. All right. If you will look at the bottom, bottom right corner of that exhibit, you will see a number stamp.

A. Yeah.

Q. All right. Would you read that, please?

A. It's ECR triple ought 893.

Q. So this is the document that your interrogatory answer represents is the basis for your calculation of the $10 million estimate. Have you ever seen this document before?

MR. MONTGOMERY: Hold on a second. Object to the form and object to the extent it mischaracterizes the interrogatory response.

Go ahead.

THE WITNESS: I don't think so. I think this is Doug Engle's work. But Doug and I have been joined at the hip for three years. And we think pretty much alike. And he's got this, this -- based on this is what's really the most important, and that's RailWorks. And so, I would have done the same thing. I would look at the RailWorks quote and say, Well, okay, let's see what this would be if we do this.

Q. (By Mr. Cohen) And how do you know that this document is based on RailWorks?

A. Well, something here that made me think of it. Because it talks about the Woodinville wye and blah, blah, blah, so much money to get this far. RailWorks total, it says right there.

Q. Mm-hm (answers affirmatively).

A. So it's RailWorks' footprint all over it. That's okay. RailWorks does nationwide, they probably do a

hundred bids a day. They're the biggest outfit in North America. And they're really good. That's the good news.
Q. So --
A. They're not the most expensive out there.
Q. So --
A. So I don't think anything wrong with using that. This is what someone has told us they'd be willing to do a job for. He's adapting the parts of it that make sense on the segment from downtown Bellevue to the end of the holding at Woodinville. It's the best numbers we can get. Why would they start from nothing. I wouldn't start from nothing if I was him. This is the thing I'd go to too.
Q. So the bottom line is the $10 million estimate in your verified statement is not your personal estimate at all?
A. No.
Q. Okay.
A. That doesn't make it invalid --
Q. That's okay.
A. -- I'd say.
Q. Let me ask you to look at one more exhibit.
MR. FERGUSON: Let's take a three-minute break and make a copy of it.
MR. COHEN: Off the record a minute.
(Discussion held off the record.)

Q. (By Mr. Cohen) Mr. Cole, showing you what's been marked as Exhibit 32, could you take a minute and look at that document.
A. Okay.
Q. Let me know when you're ready to talk about it.
A. Okay. I will. It's going to be a minute or two. God, this is ancient history here. It's back in November 2012. I don't know anything about it. November we were just starting to get our arms around --
MR. MONTGOMERY: Would you wait for a question.
THE WITNESS: Oh, but you asked me.
Q. (By Mr. Cohen) Are you ready?
A. Yeah, ask me the question.
Q. Here's the question -- I want to ask you about Doug Engle's e-mail to Kurt Triplett and Sung Yang, that's the lower half of the page.
A. Yes.
Q. Doug testified two days ago that he made this proposal to Kirkland and to King County, and that in that proposal, as you can see in line one, he offered to drop the freight plans.
A. I see that.
Q. And therefore, reactivation as part of the deal?
A. Yes. He's going down a different path.

Q. He's going down a different path. And you were at the table for that testimony, right, you were here, you heard him testify?
A. Just two days ago?
Q. That's right.
A. Yeah.
Q. All right. And do you recall him saying that this was a big give on his part, but that he was willing to do it, if it would get the support of Kirkland and King County for excursion service?
A. I don't remember his exact words.
Q. Am I --
A. I don't think -- I'm not sure that I've ever seen this thing, so --
Q. Right.
A. -- I don't know much about it.
Q. My question is, in making that proposal, did he have your support as well?
A. I don't think --
MR. MONTGOMERY: Hold on a second. No objections, I mean, nothing, go ahead.
THE WITNESS: I don't really know anything about this. It's so long ago. I haven't heard. I didn't hear about it then and I haven't heard about it since, so it must be dead as a doornail.

Q. (By Mr. Cohen) So in offering to drop freight service and reactivation, Doug didn't first consult with you and get your buy-in to that proposal?
A. I don't recall.
MR. MONTGOMERY: I'm just going to object to the extent it asks you to comment on prior testimony which is improper. And document speaks for itself. Go ahead.
THE WITNESS: I don't remember anything about it.
Q. (By Mr. Cohen) You don't recall any conversation --
A. No.
Q. -- about this proposal?
A. I mean, we've had a lot of phone conversations. You know, he spends two-thirds of his time in San Francisco where he lives. Talk to him on the phone down here. Talk to him when he's up here. If this works, that's okay, too. It's like, this would be a scheme to get new track, I imagine, but on a fast track, not years and years later. But if a person is going to do this, I don't know. You have to get some pledge from the bikers because once that trail is built, boy, it's impossible to get rid of it.
Q. If you'd flip to the second page of that exhibit.

A. Mm-hm (answers affirmatively).
Q. Doug's e-mail says that you are contacting RailWorks for upgrade options; is that true?
A. Well, at that time, that's when we asked RailWorks to come and make their own independent assessment of the cost to upgrade the part the reserve freight easement covers from Woodinville to Snohomish, to get something that Tom Payne had done, I don't know what track contractor he used. Anyway, neither of us had any data on that, as far as I know. I certainly didn't have any. We had RailWorks come and we hi-railed the line with them and so forth and so on. Ultimately they produced some estimates.
Q. Right. And that --
A. So --
Q. -- effort by RailWorks was Exhibit 39?
A. I think so. Yeah.
Q. We talked about that this morning.
A. So they did a good job on that. I didn't have particularly any questions of, you know, that were very important about how they had reached those numbers, because we work with them all the time and bring them onto our other two railroads to do projects, and found they're the best, found they're the best guys in this part of the country.

Q. Seeing that reference, are you confident that you were not part of the planning of this proposal that Doug made?
A. Well, I tell you what, that's what I would say, but if you talk to Doug, he might say, Byron, don't you remember. You're telling me, Byron, don't you remember. I'm getting old. I don't remember everything. So I don't know. I just don't know what was going on.
Q. Let me ask you this, if Doug came to you today and said, Byron, let's make a proposal to Kirkland and King County to drop the rail reactivation request and pursue their support for an excursion train, would you support that process?
MR. MONTGOMERY: Objection; calls for speculation; incomplete hypothetical.
THE WITNESS: Well, I wouldn't just make an on-the-spot decision. But excursion train well outfitted and well operated, can make a lot of money. And I mean, I know the Temple family, the brothers, the dad, and I've known them for a long time. And they made a pot full. That restaurant on wheels was only outgrossed by the Space Needle restaurant for years and years and years.
Q. (By Mr. Cohen) The what was the -- the pot full of money on wheels was the Spirit of Washington dinner

train?
A. Yes, I say that. That thing grossed and netted more than any other restaurant except the Space Needle. It wasn't just this freaky thing. It's down working in mid California right now. They sold it. Anyway, I guess my nature on something like this would be to investigate it some more and see, you know, what it would really turn out to be. Money is money. If this thing would guarantee that wine tasting train or something could be operated -- I'm out here because the freight railroading is interesting to me. But I'm not adverse to making a pot full of money. I probably say, the heck with the freight business too. If we can run this dinner train a couple of round trips a day, let's do it. But it didn't happen and where did it go? It went down the manhole somewhere, right.
MR. COHEN: Do you guys want to take a short break.
MR. MONTGOMERY: Sure. I always like taking breaks.
THE WITNESS: That's fine.
(Recess taken from 3:46 to 4:00 p.m.)
MR. COHEN: Mr. Montgomery, we're going to be looking at Exhibit 30.
MR. MONTGOMERY: Thank you, sir.

E X A M I N A T I O N - (Continuing)
BY MR. COHEN:
Q. Mr. Cole, I want to show you what has been marked as Exhibit 30.
A. Okay.
Q. Would you identify that document for me?
A. Okay. This is the latest version of an agreement between us and Doug.
Q. Between us, excuse me, "us" is Ballard Terminal Railroad?
A. Uh-huh (answers affirmatively).
Q. And Doug, you mean Eastside Community Rail?
A. Yes. Sorry, I keep forgetting I'm speaking for the record.
Q. Thank you.
A. It's --
MR. MONTGOMERY: Did I miss a question?
MR. COHEN: I asked him to identify the agreement.
MR. MONTGOMERY: Yes, thank you.
THE WITNESS: So we had an interim agreement when we first were able to work with Perry Stacks and close the deal and get GNP out of the picture and Engle's group and our railroad, and so we made a simple one that was one page, a couple of pages. This is based on one of the

voluminous documents from the Port that was the guiding operating agreement with GNP. We were provided copies of all those things and so forth. It mimics that very good. It was basically designed to -- so we didn't have two sets of rules to try to stay on the right track with. So it's basically -- it's -- a lot of it is a boilerplate. But the boilerplate matches the Port's document as well. So it's fine.

Q. Do you know who drafted this agreement?

A. I think Doug did most of the work on it. Yeah.

Q. Were you represented by counsel in the negotiation of this agreement?

A. There wasn't any negotiation. It's fine, we had to have one. We need to have one. I could never get Tom to do, sign an agreement with me. He's a slippery snake.

Q. That would be Tom Payne?

A. Yeah.

MR. MONTGOMERY: Thank you for that clarification. He did look right at me.

THE WITNESS: Sorry about that. Geez, that's awful.

So anyway, it's good that it matches the Port and doesn't bring yet a third wiggle in the model that I have to adhere to. Because it matches what the Port required from way back in 2008.

Q. (By Mr. Cohen) And I see turning to Page 12 of this agreement that it was signed by you, that's your signature, right?

A. Yep.

Q. On April 26th?

A. Just now, recently, yep.

Q. Yep. Is this agreement currently in effect?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

THE WITNESS: I'm not sure if it has something in that it says when it goes into effect or not.

Q. (By Mr. Cohen) Well, it does, actually. Let me turn your attention to --

A. It's not an onerous agreement.

Q. Right. To Page 7. I'd like to ask you about -- really, what I want to ask you is whether it is your view that this agreement is currently in effect as governing the relationship between Ballard and Eastside Community Rail?

MR. MONTGOMERY: Object to the form. Object to the extent it calls for a legal conclusion.

Thank you.

THE WITNESS: I don't think there's much new in here, and I don't think it varies very much with the Port's similar document that we've been living with, apparently without any transgressions, since we started up

in January of 10, 2010.

Q. (By Mr. Cohen) What Port document are you referring to?

A. Oh, well, they made about seven of them.

Q. Yes.

A. So I honestly can't -- can't remember what it's called, but they have an operations agreement that laced Tom Payne's GNP, frankly like tied him to the tracks, and then it had all these conditions and so forth.

This sounds pretty darn similar to that. But it's not really onerous, so...

MR. COHEN: Would you mark that one.

(Exhibit Number 43 marked.)

Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 43, is this the Port agreement that you've been describing as the template for --

A. Yeah, I think so.

Q. -- the lease agreement?

A. I think so. You know, those things were, in 2008, when we were living with them, and trying to be the winning carrier to take over this wonderful thing, it's been a long time ago. The whole thing went dead for a year. Throw these in a cardboard box and nobody knew if the deal was ever going to go through. We had been told by telephone call backed up by letter, that Tom Payne with GNP

and Byron Cole with Ballard Terminal Railroad had won the competition. And then a year went by before we got to start running the railroad.

Q. Right.

A. So -- I haven't really looked at the thing very much since then. Started running it and we just ran. Never hardly hear a peep out of the Port ever. They never come to visit us, ask for a train ride, want to audit what we do, see if we're safe, nothing.

Q. So really, I want to go back to my last question, is it your understanding that the lease agreement between you -- between Ballard and Eastside Community Rail has taken effect?

MR. MONTGOMERY: Same objections I had.

THE WITNESS: Well, I'm not sure I want to hazard a guess. I'd have to talk to Doug.

Q. (By Mr. Cohen) Okay.

A. We've been running so long without getting paid by anybody, nobody would do this but me. And it's like, it's been 100 percent accident free, incident free, paid all the bills, and made up for that by working extra hard on our other two railroads. And have received no guff or guidance from the Port in all that time.

Q. When you say made it up by working extra hard on our other two railroads?

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

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

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

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

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

Q. Yes.
A. Yeah, it's an Association of American Railroads administered thing, but it's made for giant railroads and not short ones.
MR. MONTGOMERY: Thank you. I have no further questions.
MR. COHEN: I have a couple on redirect.

FURTHER EXAMINATION
BY MR. COHEN:
Q. Mr. Cole, you just mentioned that the situation is better now than when you were relying on GNP for payment and you said, in part, it's because we do the invoicing. Do you recall that?
A. Yes.
Q. So I thought you described to me this morning a system where most of your shippers, in fact, don't pay, don't get invoiced by you, because someone else is shipping goods to them and you ultimately get a payment through this national system, but you don't do any invoicing. Did I misunderstood what you were saying?
A. Well, there's a variety of business models here. And so, so -- Boise Cascade, in the wood products industry, the freight is paid by the saw mill that produced the lumber. And so, a bunch of their stuff comes from Canada.

That's why I made the joke about somebody talking French, "oui," it's like, I need to hand the phone to my wife.
So that business model is really cumbersome, because it involves the U.S. clearinghouse for all of these kinds of transactions. And then the Canadians are also partner to that, but it takes forever to get our money
Q. Do you do any invoicing?
A. We get on the phone and talk to these people when the money doesn't come. And it doesn't do any good to call the clearinghouse, it's all automated, and they don't know anything, but find out who was the originating entity. And I mean, we're courteous about it, but it takes prodding. Sometimes they're still sending stuff to GNP and so forth. And it's just a big pain.
And there's a much more streamlined way for us to get paid, and it's called being a handling carrier. That's what our two other railroads are. They're handling carriers. All we do is tally up at the end of the month, we had 27 cars on this line, and we know we get paid 355 bucks a car, and we send them an invoice for 35 times 350 bucks. And their contract says they have to pay it within 15 days.
Q. That's on your other two railroads?
A. Yeah, that works good. But my wife who writes all our checks hates this goofy railroad we've got here

that doesn't have very many cars and that has most obtuse -- our business model for collecting the money is what Burlington Northern and Union Pacific and CSX use. And it's really cumbersome. There's a huge lag in it. There's lag about every five steps.
Q. Is there invoices from Ballard Terminal Railroad to anybody?
A. Well, sometimes there finally gets to be invoices because it's -- we got some partial payment and you still owe us 105 bucks or something. And we go right to the saw mill or whoever it is that did it and we -- we pretty well get it all collected, but it's a huge time waster.
And every time I go to Fort Worth in the fall, we're invited down there, all the short lines that Burlington Northern gets along with and likes are invited every year to about a two and a half day, Here's what we're going to do to you next. And it's a good opportunity to be able to talk to AVPs and so forth that are right at the root of solving your problems. We have an excellent handler that's our designated go-to guy down there. And his boss takes care of all the handlers is an excellent guy too. We're really lucky. There's been some retirements and people that were left were really good and the people that filled those shoes were good. We have a good relationship with Burlington Northern.

destroy any of that e-mail, any of the documents requested in this request for production, so that you don't accidentally lose any of it, accidentally or intentionally, between now and the end of this case, understood?

MR. MONTGOMERY: Do you mean, does he understand your words?

MR. COHEN: Yes.

THE WITNESS: I hear what you're saying.

MR. MONTGOMERY: Good. That's fine.

Q. (By Mr. Cohen) One last question, are you keeping up with Jerry Johnson since his retirement?

A. Yeah. He's a pretty good guy.

Q. He is a good guy.

A. I mean, he got started with the first two railroads and he was the guy that called and said, Hey, you've won on the dubious prize of being the last people standing for the Eastside line. And then he retired.

Q. Right. Where is he living today?

A. I think he's moving up to St. Paul, and he's got an, I don't know, at least one contract to do things for the Australian National Railways.

Q. Okay.

MR. COHEN: Thank you. No further questions.

MR. MONTGOMERY: Let's mark these. Can we?

(Exhibit Number 45-46 marked.)

F U R T H E R E X A M I N A T I O N

BY MR. MONTGOMERY:

Q. Mr. Cole, does Exhibit 45 contain the documents that you gathered yesterday and sent to Chicago yesterday?

A. I think, to some extent, yeah.

MR. MONTGOMERY: I'm sorry, you gave them to me. I apologize, it's late. That's what you gave me this morning. I'm sorry, it's Ballard Terminal Railroad Company, LLC's response to City of Kirkland's first request for production.

Q. (By Mr. Montgomery) I just want you to tell me if the documents attached are the ones that you gathered this morning?

A. Yeah, I recognize them. I recognize the blacked out thing.

Q. Exhibit 46, are those the documents you gathered yesterday, I believe, and handed to me this morning? That's the other package. Is that a yes?

A. I'm trying to figure out what this one is. This certainly doesn't have anything to do with --

Q. Are those the documents you handed to me this morning?

A. I don't know. I thought it was, but... yeah, this is our LLC paperwork.

MR. MONTGOMERY: I have no further questions.

THE WITNESS: I'm baffled by this, it's really old.

MR. MONTGOMERY: Are you done?

THE WITNESS: Says BNSF is changing their --

MR. MONTGOMERY: Are you done?

MR. COHEN: I'm done. Thank you.

(The deposition concluded at 6:52 p.m.)

(Signature was reserved.)

C E R T I F I C A T E

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.

www.EsCRail.com

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)	

Proposal by Eastside Community Rail, LLC



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.

Linear Ft **F&I Rail**	Each **F&I Ties**	Tons **F&I Ballast**	Track Feet **Track Surfacing**	Track Feet **Ditching**	Track Feet **Vegetation Removal**	Track Feet **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.

Kurt Triplett

From:	Doug Engle <Doug.Engle@EsCRail.org>
Sent:	Monday, March 11, 2013 7:44 AM
To:	Kurt Triplett
Subject:	EsCR - Cross Kirkland Corridor
Attachments:	EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; STB Revenue Adequacy 9Oct12.pdf

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook





EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

Richard Leahy
Woodinville City Manager

Cc: Woodinville City Council

Re: Eastside Community Rail – Business Plan

1. Business Plan

This past December, Eastside Community Rail (EsCR) acquired the 14.45-mile freight operating easement from the federal Bankruptcy Court for the railroad between Woodinville and Snohomish, WA. EsCR will be operated as a non-profit serving for profit entities utilizing the corridor.

Three core values of transparency, integrity and accountability will guide EsCR in its planning, agreements and operations. EsCR has adopted the mission to help maximize the utilization and overall public benefit of the Eastside Rail Corridor (ERC). Our vision for the rail corridor is for multiple uses of rail, trail, utilities and other public benefits.

We intend on using the Eastside TRailway Alliance as a public advisory board for strategic input. EsCR will work in full cooperation with public entities along the rail corridor. We have also worked diligently to bring together a solid business executive board of directors representing fundamental areas of business.

EsCR creates value primarily by maintaining the operating line right of way (ROW) for rail operations such as freight, excursion and potentially future commuter use. For managing the maintenance of way (MOW), agreements and extensions, EsCR will collect a percentage of gross revenues to cover its direct costs and overhead. This frees the users of the rail corridor to focus on their main businesses. Best of breed partners will conduct the rail structure, bridge and crossing works. Eastside Community Rail would like to partner with the communities along the corridor to provide a MOW road that could be used for a public trail system that connects to a labyrinth of trails.

The main market opportunity lies first in re-establishing an excursion service between downtown Woodinville and Snohomish, which successfully operated on the line for 14 years and only stopped service when I-405 was widened, a bridge structure removed and BNSF sold the ROW to the Port of Seattle. Given the track is publically rehabilitated, the Bounty of Washington Tasting Train will represent more than 90 percent of EsCR's income.

Partnering with a developer to build a hotel in Woodinville next to the excursion platform is a high priority to enhance the experience. It is important that the railroad own the land to have input on design, kitchen capacity, guest waiting areas, a gift shop, other amenities and to fit within the long-term vision of the city.

Secondarily, freight traffic has waned from over 300 cars per year three years ago to just over 200, and car movements need to be bolstered to at least 400 annually. This can be accomplished with marketing and extensions to the operating line. EsCR has an operating agreement with Eastside Freight Service operated by Ballard Terminal Railroad, which has operated on the line for more than three years. Freight operations will help cover maintenance of way costs for the excursion operation.

Strategically, long-term extensions to the corridor are contemplated:

- Re-establish 3-miles of service from the Woodinville wye to Ste San Michelle, the heart of the Wine District
- In the north, develop a new 8-miles connection to Everett from Snohomish, which provides access to Amtrak service and the Canadian market
- Re-establish 12-miles of service from Woodinville to north Bellevue with additional access to the Seattle market and cruise ship passengers

Presently, there are public efforts under consideration to utilize a portion of the corridor for a public trail. EsCR supports this and is willing to construct a MOW road for such a use. Current estimates indicate that this can be done at considerable savings to the public. MOW costs for the road will be based on the width being utilized by the trail, excluding track structure costs.

There have been studies completed by Sound Transit and other groups affirming the viability of commuter rail on the line. This may be possible in the long-term in a public private partnership arrangement with EsCR. It is ECR's policy is to support, but not lead, community efforts to use the corridor for regional rail transit that is consistent with other public works.

Transit also opens the door to transit oriented developments along the ROW.

Financing

No private company will invest in publically owned rail infrastructure because it cannot be used as collateral to secure the investment. Until the portion of track owned by the Port of Seattle is upgraded, passenger service is not possible. The previous owners of the Spirit of Washington Dinner Train and Iowa Pacific Holdings concur on this point.

Therefore, EsCR and interested local governments are seeking $6.26 million from the state of Washington to improve the railroad. If this funding is secured, EsCR will bear the ongoing cost of maintaining the railroad, which is about $1.1 million annually.

Once the public infrastructure improvements are secured;

- the Port of Seattle will affirm a long-term agreement for excursion service,

- EsCR will secure $3 million in private investment,
- EsCR will secure a Small Business Administration loan of $3.5M, and
- EsCR will secure a $3.5M motive power and rolling stock capital lease.

Importantly, no EsCR financing activities can be completed until the public appropriation commitments have been achieved. This will be an iterative process over 90-days following public funding. Finally, detailed plans, drawings, etc. for capital assets will not be completed until track maintenance has been committed to.

2. Excursion Train Operations

The excursion train business is not a pipe dream or just any private venture, but based on a highly successful run that brought economic vitality to the region.

The Spirit of Washington Dinner Train ran on the Eastside Rail Corridor for 14 years with annual rate of 100,000 passengers, $10 million in revenue and created jobs and tourism business from Renton to Woodinville. The only reason they stopped running was due to the reconfiguration of I405 and thus eliminating their ability to get to their station in Renton. The Dinner Train was a train ride from Renton to Woodinville with a brief visit to Columbia Winery with outside catered meals with a few selections of wine offered on the train.

After dozens of interviews with stakeholders and analyzing the current state of dining, the Bounty of Washington: Tasting Train concept was formed. Localism is not a fad but a strong trend. Farmer's market are on an annual 10% growth trend, small plates offering at fine dining restaurants are the rage, and wine, beer, and other drinks tastings are popular. Thus, the Tasting train is flipping the Dinner train concept. Passengers will experience the best of what Washington offers, fresh seafood, grass-fed meat, and award-winning wines and beer on the train. With about 1000 wineries, breweries, and distilleries, it will be easy to rotate the flavors and their makers. After analyzing all of the excursion trains nationwide, we developed an algorithm for our pricing. We will price the experience from $55 to $125 depending on the beverage and potential guest chef. We have had conversations with some of the award-winning chefs in the area and they are eager to participate. We have estimated an average price of $85 and growing to a bit more than 100,000 passengers which is in line with previous Dinner Train results.

We will have additional revenue streams of promotional items and sponsorships. We will offer sponsorships of train car names along with customer take-home items such as the glasses. Certain ingredient items such as Washington Apples or Washington Pork will also be potential sponsors. We will be able to sell wine and other featured food items initially on board the train and later at our train stations.

Operationally we assumed a mid-range staffing level at one staff person per 16 people. Since service will be staggered per car, we can use some staff as expeditors to ensure

prompt service and reduce staffing needs. The participating wineries and breweries will provide staff for educational purposes that will move to each car. Other volunteers can provide historical and regional overviews of the area. We will start at the wine-focused Woodinville with a stop in the quaint beautiful river view town of Snohomish and back to Woodinville along a beautiful valley. Depending on the winery partner, winery tours will be included. We will have partnerships for winery tours for our guests who want to have an entire day of exploration. In addition, we plan to have a mid-week Tulalip special where guests will bus from the top-rated Tulalip Resort to Snohomish and make the trip to Woodinville.

Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone. Since the Tasting Train experience will rotate featured beverages and food, we expect locals to bring family and friends more often to enjoy their favorite wine or dining.

The rolling stock of seven cars, plus a baggage car, will be designed with a comfortable Northwest elegance more like a fine dining contemporary restaurant in Seattle rather than a stuffy old-fashioned look. We will mix the historic lore of train travel with contemporary style for an experience they will never forget on the Bounty of Washington: Tasting Train.

3. Train Movements

Currently, freight operates on the line two days per week in off-commuter hours. This is not expected to change at double the volumes in the future where trains may consist of ten cars. Presently, Boise Cascade and Spectrum Glass are the two biggest freight customers on the line. There is more freight business available if we can operate on the two miles of track down SR-202 toward Redmond that are currently not accessible or included. Eastside Freight Service has operated on the line for the past three years and is expected to continue into the future.

The Bounty of Washington excursion train is expected to operate year-round, excluding January when annual car maintenance will be conducted. The expected 400 annual trains will service both public (70%) and private passengers (30%), with overall volumes reaching 100,000+. The peak period will be the summer tourist season with expectations for bountiful holiday operations. The schedule will be oriented around evenings and two trips on weekends. Additional mid-week day trips may be developed to service Snohomish to Woodinville passengers seeking to spend the afternoon experiencing local Woodinville wines, brews and foods. Although the exact times have not been determined, trains are likely to start after 6:00 PM typically returning two hours later.

The freight operator, Eastside Freight Service, will continue to provide track clearances and train crews.

4. Railcar Storage and Maintenance

Freight operations will be very similar to today, and the addition of excursion service will require nightly railcar inspections. This will be conducted utilizing a 200' maintenance shop with a 100' pit in the area north of the wye near the warehouses.

Presently, the Eastside Freight Service locomotive and caboose are stored in a fenced "pen" at the wye. This will be moved provided access to the Wine District and/or Bellevue. The primary maintenance and railcar storage area will be in a fenced area at or very near the maintenance shop.

The exact location will be determined once Woodinville's SR-202 bridge planning is completed.

5. Platforms and Parking

Two platform types are being considered – raised wooden platform or stone/concrete pavers. The 900' platform will be on the north side of the tracks in Woodinville across from the fire station and post office, south of the NE 178th PL crossing.

A partially covered area will be constructed, including a portable ADA loading lift.

Paved diagonal parking for roughly 250 cars will be constructed inside the right of way with access points to the road every 100 yards. A barrier will be created between the parking and road to facilitate this configuration. Lighting and video camera's will also be installed.

We are hopeful that Snohomish and Woodinville will participate in the construction of platforms in both communities as public assets that reflect the experience they want for their visitors. Diverse public agency involvement is critical to securing future federal funding to extend the rail corridor and add a public trail alongside the track.

6. Capital Facilities

Snohomish Station

Initially, Snohomish Station will require a platform, covered areas, and ADA lift. In the future, restrooms and an enclosed visitor center will enhance the experience.

Wolford Spur

A new 1,000' spur will be developed into the Wolford Demolition and Trucking site in Maltby to support their business, process potential construction spoils business and initiate new trans-load freight business.

Woodinville Station
Initially, Snohomish Station will required parking, a platform, covered areas, and ADA lift. In the future, either a hotel or improvements similar to Snohomish will be required.

Woodinville Hotel
There are indications that the city has the need for at least one new hotel. EsCR has identified an opportunity to extend a hotel's normal business with expansions to help service the excursion train. These include

- Additional kitchen capacity
- Expanded waiting and conference area
- Excursion gift shop
- Coffee bar
- Restrooms
- Historical information
- Ticketing

Beyond the excursion train, the Woodinville Hotel will service Wine District tourism. When operating line extensions are completed, particularly to Everett and Amtrak, package deals will improve market awareness occupancy year around.

Maintenance Shop
A 200' maintenance facility is required to service the motive power and rolling stock. The site location will determine the maximum width inside the ROW. Long-term, an additional 100' of enclosed space may be added to facilitate nightly cleaning of equipment before the inspections.

The construction type will be 40' shipping containers along both sides, with a white "vinyl" roof over an arched metal structure. The inexpensive containers will be painted and provide secure storage of heavy tools, parts and equipment. The roof will be affixed to the containers.

A 100' heated concrete inspection pit will be installed with stair access at either end. Long-term, track mounted heavy lift equipment may be installed over the pit.

A 100' railcar wash area will be enclosed after the inspection pit with an oil and water separator.

Business Office
Initially, the current wye "shack" site will be maintained, painted and covered areas extended for MOW operations.

A new 20' x 35' multi-level business office will be built next to the shack for general, administrative, sales and marketing purposes. A covered watchman's look-out for the wye will be constructed atop this building. Long-term, the Woodinville Hotel may be the better site for these business activities, nearer the heart of the city and its business services.

7. Possible Construction Spoils

There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking.

The most likely train configuration is 17 sidedump cars moving twice a day, once in and once out, during peak construction periods. Such operations would be conducted around primary commuter hours. Train operations would be suspended when construction projects would not need the service.

8. Other Positive Civic Impacts

EsCR is willing to work with Woodinville to develop a new 134th Ave NE crossing and orchestrate train movements to minimize traffic congestion.

Overflow parking for civic events could be constructed on the south side of the tracks near 132nd Ave NE in Woodinville.

Park and ride transit parking should be explored at the Woodinville platform site since there may be only nominal conflict between the two needs.

A MOW road connecting the wye area to NE Woodinville should be explored for construction in the near term. Wolford has nearly completed one mile of base trail southwest of Maltby, which would make connecting to the Burke-Gilman trail available to more people.

Previously, Woodinville has expressed interest in widening the 131st Ave NE railroad bridge, which can be orchestrated with EsCR to consider trail and potential future track requirements.

Eastside Community Rail and the Bounty of Washington: Tasting Train provide these benefits;

- Enable a rolling billboard for Washington agriculture and viticulture by celebrating local food and beverages
- Showcase the beautiful valley, Snohomish River bridge and historic rail route
- Direct sales tax revenue of approximately $1 million a year (based on $10 million of annual revenue from Dinner train)
- Direct excursion train jobs of 80 and trade jobs of 240
- Indirect jobs and economic development (former excursion train brought $140 million in tourism dollars) Generate awareness of the benefits of Woodinville,

Snohomish and the entire Eastside. The Spirit of Washington: Dinner Train sparked the awareness of Woodinville as a wine district. The Bounty of Washington: Tasting Train can be the catalyst of awareness of King and Snohomish counties as a tourism and livable destination

- Remove trucks from the highways which greatly reduces roadway wear and tear, toxic pollution, and traffic congestion
- Allows for future passenger rail service
- Potential redundancy to the slide-prone BNSF/Sounder route
- ECR will maintain the track for the next 35 years
- Protects the Eastside Rail Corridor assets while allowing the infrastructure to be productive now. The track structure will be maintained for more cost effective upgrades in the future.

In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail

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Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail

Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $120 including coach service

Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting

5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: $110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: $75

Saturday and Sunday Afternoon (dependent on demand in Late fall to Early Spring, every weekend Late Spring to Early Fall)

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: $65, extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: $85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

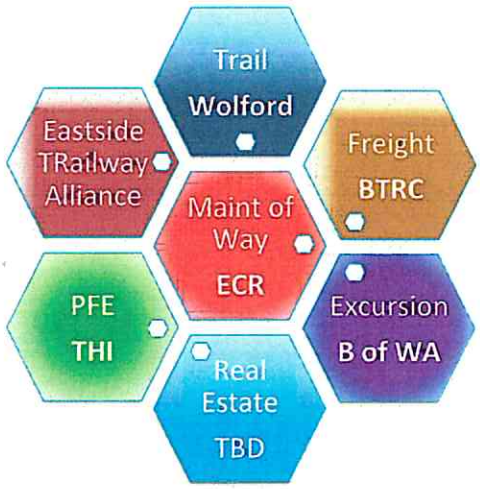
7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

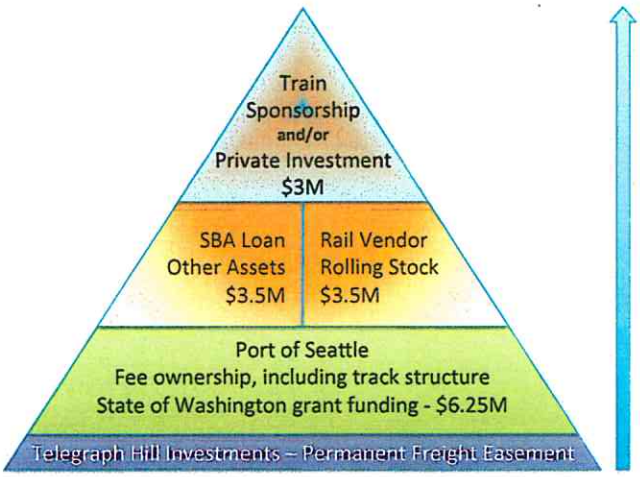
9:30 p.m. Arrive Woodinville

Base price: $85

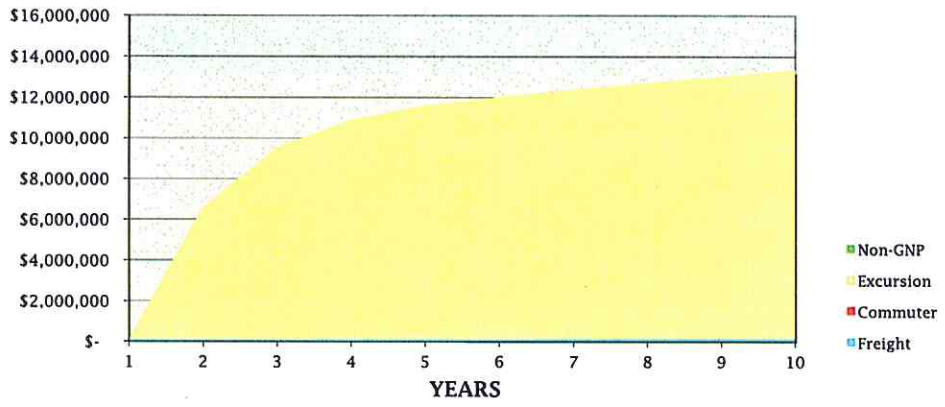
Organization



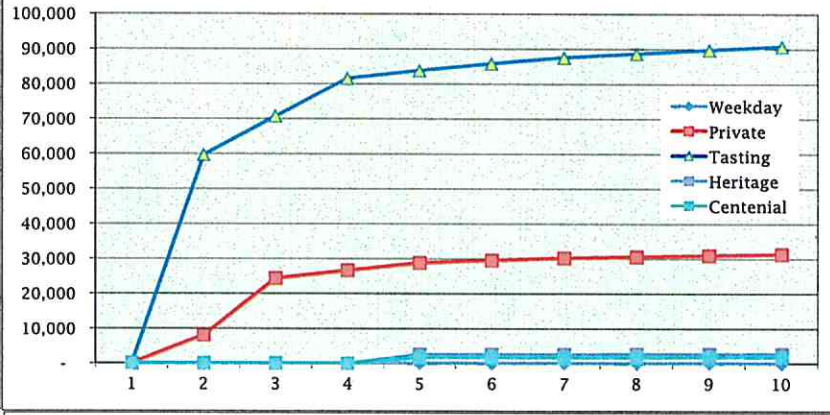
Financing Approach



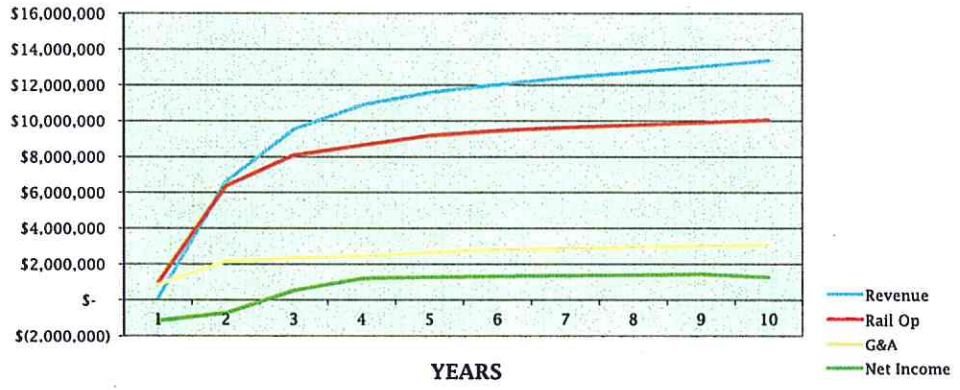
REVENUE



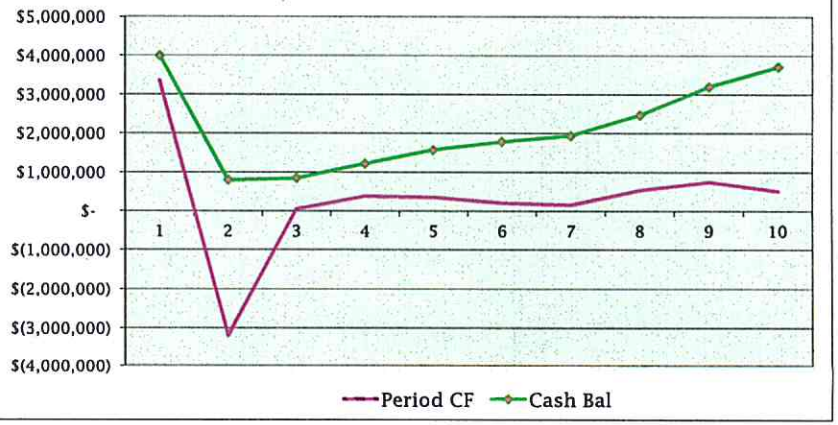
Daily Ridership



INCOME STATEMENT



Cash and Equivalents



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			
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
INITIAL OPERATIONS - Existing Track, Inspections & Planning, Excursion MP&RS
Round 1

Maintenance of Way	Unit	Track Miles / Description	15.6 / Quantity	Cost	28-Jan-13 Total
TOTAL RAIL				$ 4,400,353	
TOTAL SWITCHES				$ 230,000	
TOTAL SPURS & SIDINGS				$ 307,351	
TOTAL SIGNAL SYSTEMS COSTS		10		$ 227,368	
TOTAL MOW Road Planning				$ 256,740	
TOTAL Maintenance of Way					$ 5,421,812
Buildings, Bridges & Facilities (BB&F)					
TOTAL BRIDGES		11		$ 359,958	
TOTAL STATIONS		2		$ 1,290,626	
TOTAL MAINT. OF EQUIP. SHOP				$ 2,028,470	
TOTAL OFFICE				$ 318,308	
TOTAL Buildings, Bridges & Facilities (BB&F)					$ 3,997,362
Motive Power & Rolling Stock and MOW Vehicles					
Locomotive Startup Qty		2		$ 867,100	
Baggage Car & HEP Qty		2		$ 262,500	
Excursion Coach Startup Qty		7		$ 2,187,500	
Total Main of Way Equip & Vehicles		4		$ 219,650	
TOTAL MP&RS and MOW Vehicles					$ 3,536,750
TOTAL Business & Admin Assets					$ 351,095
TOTAL FIXED ASSETS - Round 1					**$ 13,307,019**

Total Assets		Life (yrs)		
MOW road (trail)	1.9%	10	$	256,740
Track	38.8%	35	$	5,165,072
BB&F	30.0%	30	$	3,997,362
Motive Power & Rolling Stock	26.6%	15	$	3,536,750
Business CapEx	2.6%	10	$	351,095
	100.0%	27.0	$	13,307,019

ANNUAL Fixed Asset Maintenance (yrs 1-3)		
TOTAL ANNUAL TRACK MAINT.	$	778,145
TOTAL ANNUAL BRIDGE MAINTENANCE	$	219,600
TOTAL FACILITIES MAINTENANCE	$	98,344
TOTAL ANNUAL MAINTENANCE		**$ 1,096,089**

Eastside Community Rail
TRAFFIC ANALYSIS
as of 2013 Feb 6

	Year 1 2013	Year 2 2014	Year 3 2015	Year 4 2016	Year 5 2017	Year 6 2018	Year 7 2019	Year 8 2020	Year 9 2021	Year 10 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%	14.3%	6.5%	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%	6.5%	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%	94.5%	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%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

Eastside Community Rail
INCOME STATEMENT
11-Feb-13

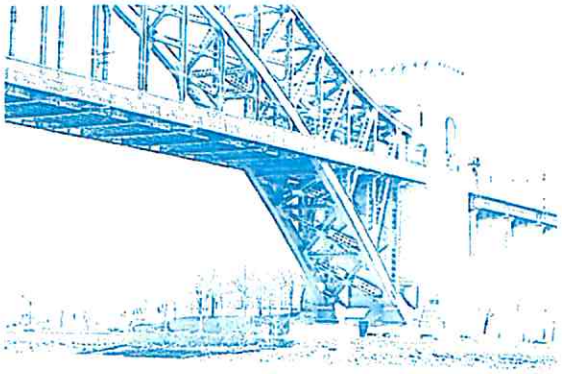
Business Case / Most Likely	Year 1 2013	Year 2 2014	Year 3 2015	Year 4 2016	Year 5 2017	Year 6 2018	Year 7 2019	Year 8 2020	Year 9 2021	Year 10 2022
REVENUE (see "Traffic" tab for detail)										
Common Carrier Freight	$ 108,364	$ 116,037	$ 122,504	$ 129,982	$ 135,290	$ 140,843	$ 146,651	$ 152,728	$ 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%	3.6%	3.2%	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**
		55.6%	53.4%	50.3%	50.0%	49.1%	48.2%	47.5%	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**
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
per mile	$ 2,808	$ 19,293	$ 21,268	$ 21,268	$ 21,268	$ 21,555	$ 21,847	$ 22,145	$ 22,449	$ 22,759
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		32.5%	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
% of Revenue		4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%
Other (Income), Exp & Taxes										
Net Income 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**	**$ 1,277,020**
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	9.5%
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

Eastside Community Rail

Monthly Percentage of Revenue

As of 2013 February 11

Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
0.1%	4.8%	5.9%	7.4%	10.3%	11.3%	11.3%	11.3%	9.3%	7.3%	8.2%	10.2%



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.

	Cost of Capital	Weight	**Weighted Average**
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%)

Kurt Triplett

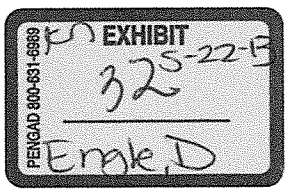
From: Kurt Triplett
Sent: Friday, November 16, 2012 11:04 AM
To: 'Doug Engle'; Yang, Sung
Subject: RE: Eastside Community Rail

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

Thanks again,

Kurt

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



Kurt/Sung,

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

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

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

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

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

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

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

Thank you for your consideration,

Doug

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

Exhibit B

VERIFIED STATEMENT OF BYRON COLE

Byron Cole, being duly sworn, deposes and states as follows:

My name is Byron Cole. I am the General Manager, and one of two founders. in1996, of the Ballard Terminal Railroad Company, LLC (BTRC,LLC) We are incorporated in the state of Washington. Our business address is:

Ballard Terminal Railroad Company, LLC

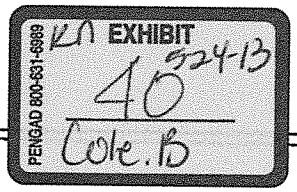
4725 Ballard Avenue NW, Seattle, WA 98107

We own and operate two Class III Common Carrier Shortline freight railroads: The Ballard Terminal Railroad (BDTL), in Seattle, and the Meeker Southern Railroad (MSN), about 10 miles East of Tacoma WA. In addition, we operate a third shortline, which we market as the Eastside Freight Railroad, under a contract with the Eastside Community Rail, LLC. All three railroads are portions of branchlines previously owned by BNSF Railway, and interchange only with BNSF.

The Ballard Terminal Railroad is in the Ballard Industrial district, in Seattle, and currently serves three customers and produces about 250 carloads per year. We started it up in 1998

The Meeker Southern Railroad, near Tacoma, is in a semi rural area, but only about 12 miles away from the booming Port of Tacoma. In 2012 we had our best year ever for traffic there MSN serves seven industries, is close to the largest deep water port on Puget sound, and has a thriving trans-load business.

Finally, since January, 2010, we have provided the twice weekly common carrier freight service over the 14 mile rail line between East Snohomish Junction and Woodinville, Washington as an agent for the company owning the operating rights and the track maintenance



obligation Initially, the owning rail carrier was GNP Rly. Inc , which purchased an operating easement over the line from BNSF in late 2009. Under contract to GNP-RLY, we began twice a week freight train operations over the 14 mile route on Jan11, 2010. When GNP-RLY went into bankruptcy, we continued the operating agency relationship with the Bankruptcy Trustee. The operating rights, and the track maintenance obligation contract, were recently purchased from the bankruptcy trustee, for the Snohomish-Woodinville line by Eastside Community Rail, LLC ("ECRR") and we have continued that agency relationship for them, for operations on the line pursuant to an Interim Operating Agreement. By separate Notice of Exemption, we shortly will lease the Snohomish-Woodinville line from ECRR.

In the Petition to which this Verified Statement is attached, BTRC, LLC proposes to reactivate the connecting rail line from milepost 23.8 at Woodinville to milepost 12.6 at Bellevue and vacate the Notice of Interim Trail Use with respect to that particular line segment

The Woodinville-Bellevue line was the subject of an abandonment exemption by BNSF During the course of that proceeding, BNSF entered into a Notice of Interim Trail Use with King County. BNSF also transferred its right to reactivate rail service on that line segment to King County. As ECRR's discussions with King County have made clear, this was akin to placing the "fox in the henhouse" as King County has absolutely no intention of restoring rail service to this line. Indeed, the underlying real estate and trackage was sold to the Port of Seattle and, in turn, a 5.75 mile section of the line was sold to the City of Kirkland.

We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. Those shippers would potentially be served by that segment, then via the ECRR owned Woodinville-Snohomish line to ultimate interchange with BNSF. While discussions with several shippers are ongoing, two shippers,

CalPortland and Wolford Trucking Company have filed support letters attached to this petition, as they are both ready, willing and able to utilize the Bellevue-Woodinville segment. Indeed, as they have both indicated, it is the location of the line to Bellevue which makes it opportune for their usage. The cities of Snohomish and Woodinville, as well as the County of Snohomish have also written letters supporting restoration of rail service.

Although the right to restore rail service was transferred from BNSF to King County, the discussions of ECRR with King County make it clear that the County has no interest whatsoever in restoring that rail service. Indeed, the City of Kirkland, which owns 5.75 miles of the Bellevue-Woodinville rail line has issued a request for proposed bids to remove the 5.75 miles of track which they own We have filed a request with the Federal Court in Seattle to issue a preliminary injunction preventing this removal of rail until such time as the Surface Transportation Board rules on our petition.

As part of our petition, we are requesting that the STB order the transfer of all of the rail materials to us at net liquidation value. Kirkland does not want restoration of rail service. In fact, its request for bids makes it clear that it believes restoration of rail service is not a good idea (see selected portions of Kirkland's Request for Rail Removal Bids attached to this statement as Exhibit 1) Kirkland recognizes, as we do, that removal of the 5.75 miles of rail will deal a severe blow to restoration of rail service Based on the bids that we have seen for removal of this rail, the net value of the rail materials to Kirkland is likely to be no more than $25,000 00, at best However, if the rail materials are removed in totality, we estimate that the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately $10.000,000 Consequently, if rail service is to be restored on this line, transfer of the rail assets is necessary, and is in the public interest.

We recognize that the right to reinstitute rail service under the Notice of Interim Trail Use was not transferred to Ballard. However, neither King County, nor Kirkland. have any interest in restoring rail service. And, as the Surface Transportation Board made clear in the Notice of Interim Trail Use, other entities could step forward and reactivate rail service.

To be clear, we understand that King County and Kirkland have interest in placing a trail on this right of way. WE HAVE ABSOLUTELY NO OBJECTION TO HAVING A TRAIL BE CONSTRUCTED BESIDE OUR RAIL LINE as BTRC,LLC has done on its other two lines.

We are the poster child for Rails with Trails! Both of our other railroads now have paved bike and /pedestrian trails constructed beside them. In both cases, we have participated and collaborated with the local jurisdictions on both the design, construction, and maintenance of the trails. This includes instances where we have provided clearing, filling and grading, including labor, equipment, and materials in some cases, for the trails Now, as time goes by, we also help with the ongoing maintenance of the trail surfaces, brush abatement, grade crossing maintenance, etc. ECRR's conversations with King County, Kirkland and others have made it clear, however, is that they want a trail. not a rail line while acknowledging the Line is railbanked.

We also are aware that GNP-RLY made a somewhat similar request for reactivation of rail service approximately three years ago GNP-RLY sought reactivation of the Redmond Spur (not at issue here) as well as milepost 23.8 to milepost 22, which is a small portion of the segment for which we are seeking reactivation here. The STB correctly did not reject the reactivation on its merits. Rather, the Board focused on the fact that GNP-RLY was financially unstable. In fact, GNP-RLY has since gone through bankruptcy and has ceased business.

Ballard Terminal Railroad, LLC is not GNP-RLY. We are a financially sound Class III carrier, formed in 1996, and now owning outright two shortlines, and operating a third, in the

State of Washington, serving multiple shippers. Our Co-founder is a senior partner in a very successful multi-generational construction materials business While our relationship with GNP-RLY, and now ECRR, has been that of an agency operator, we are now taking over full common carrier operations on the adjoining Woodinville – Snohomish line through the separate notice of exemption for lease and operation which we have filed with the Board The coexistence of rail operations with a trail on the Woodinville-Bellevue line segment is viable and ECRR has provided a proposal to Kirkland to build a trail next to the Line. We implore the Board to grant the relief requested and allow rail service to be restored.

I, Byron Cole, declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on March 28, 2013

Byron D Cole

Byron Cole

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

Q. (By Mr. Ferguson) Okay. Would you turn to Page 3, please? So we asked you to produce certain documents under these categories. And Ms. Alvord and I spoke yesterday and she said that you actually have some contracts that you've executed and that you're going to bring copies of those with you today. Do you have them with you?

MS. ALVORD: I can answer that question, if that's appropriate. I contacted the office to see if there were written contracts. What actually exists are invoices that substantiate the verbal contract that was made, and I'm having those e-mailed over.

MR. FERGUSON: Okay. Great.

Q. (By Mr. Ferguson) Mr. Wolford, did you review this Page 3 here entitled Attachment A when you received this document?

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

Q. Okay. Did you do anything to determine whether you had any documents that were responsive to these requests?

A. We found a bid that we put together for the removal of the railroad.

Q. Did you do anything else?

A. No.

Q. Did you look for any communications between you

or other employees or officers of Wolford Trucking and Ballard Terminal Railroad?

A. The one document that we found, which was the bid for the railroad removal is the only one I can find.

Q. But please listen to my question. Did you look and ask your employees -- did you ask your employees if they have any communications with Ballard Terminal Railroad?

A. Yes.

Q. And what did your employees tell you?

A. They said no.

Q. Did you --

A. Would that be Byron Cole, he's the Ballard Terminal Railroad. We haven't talked about anything, not much, about this project. Our go-to guy was a man named Ernie Wilson.

Q. Who is Mr. Wilson?

A. He is a retired surveyor.

Q. And when you say he was your go-to guy, is Mr. Wilson affiliated with a company?

A. The Eastside Rail.

Q. Have you ever met Mr. Wilson in person?

A. Yes, a couple times.

Q. Can you describe what he looks like, please?

A. Tall, thin guy with white hair.

Q. Does he have a goatee?

A. I think so.

Q. Okay. And you said he's with Eastside Community Rail?

A. Yes.

Q. Okay. Is that the company that Doug Engle is involved with?

A. Yes.

Q. Do you know what Mr. Wilson's role with Eastside Community rail is?

A. Not sure.

Q. Okay.

MR. FERGUSON: Let's go ahead and mark Exhibit 2.

(Exhibit Number 2 marked.)

Q. (By Mr. Ferguson) Mr. Wolford, do you recognize the document that's been marked as Exhibit 2?

MR. MONTGOMERY: Object to the form.

THE WITNESS: That right there?

MS. ALVORD: I think I can interject here and help. This is the response that I provided for your firm of the production of documents. So while he might be able to acknowledge the contents, he wouldn't be familiar with the cover sheet, for example.

Q. (By Mr. Ferguson) Let me ask a different

question.

Mr. Wolford, looking at that document, Exhibit 2 here, have you ever seen the first two pages of this document before today?

A. First two?

MS. ALVORD: Do you recognize this page or the second page that I signed?

THE WITNESS: No.

Q. (By Mr. Ferguson) Okay. Do you understand this is a collection of documents that your attorney prepared in response to the subpoena request?

A. Yes, but it's a wrong day. She requested March or something and these are the wrong ones.

MS. ALVORD: Yeah. We'll discuss that in a second. He's just saying that --

Q. (By Mr. Ferguson) Could you explain what you're just saying there, the wrong dates, what do you mean by that?

A. You requested a certain month and the ones we had handy weren't performance of that month.

MS. ALVORD: Okay. I can clarify. He's specifically referring to Response Number 5, and there were a couple of -- that particular question focused on projects they were targeting. And the information that was provided to us at the time we turned this in were -- there was like

Q. Okay. Can you describe what this bid is for, please?
A. This was a proposal to remove the rail for the City of Kirkland.
Q. And it's dated March 5, 2013?
A. Okay.
Q. When you say it's a proposal to remove the rail for the City of Kirkland, what do you mean by that? Is this in response to a request from Eastside Community rail?
A. No, a bid that came out for the City of Kirkland. We bid all jobs.
Q. Do you know why the document states that it is a proposal for Eastside Community rail?
A. I don't know why. They requested -- oh, no, this isn't for the removal of the rail. This is to build the nature trail alongside of the rail. Sorry, I think...
Q. Okay. Can you describe, what did Eastside Community Rail approach your company about constructing a trail?
A. They needed to know rough price of what it cost to construct a rail for the city.
MS. ALVORD: Not a rail.
THE WITNESS: Oh, or construct a nature trail along the rail. They needed to know that price, so we created them one.

Q. (By Mr. Ferguson) Okay.
A. This is a 20-foot trail, not an 8-foot trail like the city wants to do after they rip out the rail.
Q. (By Mr. Ferguson) Does the document in here state that it is a 20-foot trail?
A. I believe it does. But I don't know what was discussed. Yes, it does right here.
Q. Could you identify what you're pointing to, please?
A. It says, "Although I'm saying our clearing limits would be 20 feet wide, there could well be a few danger trees" within a 5-foot...
Q. And are you referencing the e-mail from Ernie Wilson to Oliver Lewis dated March 2nd?
A. Yes.
Q. Do you know if Ernie Wilson contacted Wolford Trucking and Demolition about constructing a trail alongside the rails in Kirkland?
A. That's what this is.
Q. Okay. And is the document entitled "Proposal for: East Side Community Rail" that is attached to this e-mail, is that in response to Mr. Wilson's e-mail?
A. Yes, I think it is.
Q. Mr. Wolford, if you turn your attention back to Attachment A in the subpoena, please. It's the other

document.
If you look at Item Number 3, please. Asked you to look for and produce communications between you or other employees of Wolford Trucking and Demolition with BNSF Railway Company about the provision of rail service to Wolford Trucking and Demolition. Did you search for such communications?
A. I didn't find any.
Q. But you did search for them?
A. What do you search? I asked a couple employees.
Q. Can you describe what you did, who you talked to?
A. Talked to Ollie about this because this was kind of his baby.
Q. I think you said earlier, but I've forgotten, when was Ollie hired?
A. Oh, I don't know. He's been with us four months, maybe, five months.
Q. Are you aware of any communications between you or other employees in BNSF?
A. BNSF, you mean the Burlington Northern Railroad?
Q. Yes.
A. No, I don't think any of my employees have talked to Burlington Railroad.
Q. They've never called Burlington about rate quotes?

A. Not to my knowledge.
Q. Would you have any reason, as part of your business, to use BNSF for --
A. In the future --
Q. -- carriage?
A. -- we've discussed that maybe have a siding in my yard and doing different commodities out of my yard in and out.
Q. Okay.
A. But they don't run the rail anymore. So we don't communicate with them.
Q. Have you communicated in the last six months with BNSF --
A. No.
Q. -- about any rates for the carriage of goods or materials?
A. I haven't, no.
Q. Do you know if anyone in your company, Wolford Trucking and Demolition has?
A. Not to my knowledge.
Q. When I refer to your company, do you understand that I'm referring to Wolford Trucking and Demolition, not your equipment business?
A. Mm-hm (answers affirmatively), yes.
Q. Okay. Looking at the attachments still, Item 4,

places it could come from.
Q. Does your business have any plans to devote funds to pay for the construction of the spur track?
A. No. Because I've already done a lot of work building a nature trail alongside the track, two miles of it. And I'm owed that.
Q. Why are you owed that?
A. Because I did so much work. I've got a lot of time, money and materials in building that two miles of trail.
Q. Do you have a contract with anyone for the construction of the spur track?
A. No. Not yet.
Q. The trail that you mentioned you had built, can you describe the trail and what you did to build it?
A. Yes. We put fill material and capped it with our recycled concrete so it's serviceable in the winter.
Q. And where is it located?
A. Right next to my property, and it goes for about a mile and a half or two.
Q. Within the railroad right of way?
A. Yes, of course. And in a city council meeting in Kirkland, we invited them all to come up and see this and see how it can be done and how wonderful it would be and they never showed up. They were invited in a city council

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

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

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

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

A. Yes, I can explain this.
Q. Okay. Go ahead, please.
A. Okay. The reason if the rail stays in there and we use the gondola cars, they haul like 60 yards per train load, one unit. And these are side dump kind of specialty equipment. We haul 20 yards in our truck, or 23 yards, maximum in a heavy-haul truck. So that would be our edge on the bidding. And these gondola cars, this material coming out of Bellevue is a clay base, it's kind of what they really need for the nature trail up in Snohomish. So we load it right there in Bellevue, keeps the pollution and the road wear and tear down, right, in the local -- we have a staging area on a site there. Rail it up there and side dump it, because it's not even accessible by truck in some places on the Snohomish place. So just be ideal to roll it up, put it there, and my bulldozer would place the material to build their 20-some miles of nature trail along the rail.
Q. Do you understand, though, that the Number 7 here in Attachment A was asking you for documents showing the basis for this statement that your bid would be 15 percent?
A. It's not in writing, but that's what we based our whole deal on here, that be about 15 percent less cost to the contractor because of the 60 yards versus the 20.
Q. So do you not have any documents --

A. No documents.
Q. -- to show this?
A. It's just what it is.
Q. Okay.
A. There's no documents because there's no bid yet. But when it comes out, this will be our edge using the rail.
Q. If they're -- so, are you saying, then, that -- let me rephrase that.
Do you not have any -- do you not have a study that calculates the cost differential between hauling by truck and hauling by rail?
A. It was an estimate. That's the estimated cost of the savings.
Q. And is the estimate not written down anywhere?
A. No, it's not written down.
Q. Okay. Would you turn, then, back to the second to last page in this Exhibit 2. Excuse me, Exhibit 1, that's your letter.
A. This one?
Q. Yes. Next page, though.
A. Last page.
Q. Second to last page.
A. Second to last page is this.
Q. Oh, my mistake. Page 29 at the bottom, I'm not

trying to confuse you.
A. 29?
Q. Yes. The second full paragraph here, would you read that out loud, please?
A. "In view of proximity of the" --
Q. Sorry, the paragraph beginning, "We need to have the rail line."
A. Oh, yes. "We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated our bid" would cost "15%," like I said, that was an estimate. That would be the savings to our clients in the trucking operation. And we would bid to another dirt contractor, actually we'd provide these prices. Big dirt contractors that get these usually hire trucks. I was involved in the Lincoln City -- the Lincoln Square excavation. At that time, we couldn't -- we were running trucks at night to keep the truck traffic down. And the dump site that we were dumping at in Snohomish wouldn't allow tailgates because they make noise banging, we had belly dumps that open up from the bottom and didn't make any noise.
And the railcar thing would be the same way. It would be quiet and would go night and day.
Q. Okay. And is this estimate that your bid would be 15 percent less expensive, is that only for transporting

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

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

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

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

A. Rail.
Q. -- material by rail?
A. I don't know.
Q. Do you know if Cadman has the capacity to receive material by rail?
A. I don't know.
Q. Okay. I think you told me this, but just maybe my memory is fuzzy. Your company currently delivers materials to both Red Cedar and Cadman?
A. Yes.
Q. Do you know where specifically those facilities are located?
A. Monroe.
Q. Do you know the addresses for them?
A. No.
Q. Do you know what streets they're on?
A. No.
Q. Are they on a highway?
A. No.
Q. Do you know, do you deal with a particular person at Red Cedar?
A. You have to understand, my office handles all this. I work in the yard. I run a loader in my yard. I hire professional people to run my office and my operations. I don't know the answers.

Q. It's okay if you don't, I just wanted to know if you do know.
A. No.
Q. Okay. I want to come back to your dealings with Doug Engle and Eastside Community Rail.
You said that before you dealt with Eastside Community Rail, you had business dealings with GNP Railway?
A. Yes.
Q. Can you describe the nature of those business dealings?
A. Basically, the service road we built, we called it a service road at that time, to service their railcars by truck. If a train broke down, they had a service road.
Q. Is the service road visible --
A. Yes, it --
Q. -- on any of these maps?
A. Yes.
Q. Okay. Can you mark and write on Exhibit 5, actually, would you turn to Exhibit 4, I think it shows a little bit wider area.
MS. ALVORD: I'm sorry, where are we? Four? Want your glasses?
THE WITNESS: (Witness complies.)
MS. ALVORD: I'm sorry, could you clarify what we are marking right now?

THE WITNESS: I think he wants to know the service road. Right there, to there. You can see where it ends and went this way too. Beautiful road.
Q. (By Mr. Ferguson) Can you mark on there and maybe use the felt tip, it's going to be easier to show up, would you mark on there and just indicate what you pointed to as the service road?
A. (Witness complies.)
Q. Maybe draw a line along --
A. It's obvious. That's the road I built.
Q. Okay.
A. It's there to there.
Q. And can you write with an arrow that that's the service road that you built, please?
A. (Witness complies.)
Q. Thank you. Okay.
Is that the only work you did for GNP?
A. Yes.
Q. Okay.
MR. FERGUSON: Let's mark the next exhibit. This will be 7.
(Exhibit Number 7 marked.)
Q. (By Mr. Ferguson) Mr. Wolford, have you seen this document before?
A. Oh, I think this was the loan to GNP.

MS. ALVORD: You need to speak up so she can hear you.
THE WITNESS: Yeah, I saw this once.
Q. (By Mr. Ferguson) Okay. I'll represent to you that this is a document from the claims registry from the bankruptcy court for the Western District of Washington in the bankruptcy case of GNP Railway.
A. Get these all the time.
Q. What are "these"? When you say you "get these all the time"?
A. Bankruptcy notices from flakes that go broke.
Q. Specifically from GNP?
A. This is one from GNP.
Q. Okay. And is the amount of your claim for $13,410.64?
A. Yes.
Q. Okay.
A. That's on page -- they never paid me back.
Q. If you turn to Page 2 of that document.
A. Mm-hm (answers affirmatively).
Q. Is that your signature there --
A. Yes.
Q. -- dated December 12, 2012?
A. Mm-hm (answers affirmatively), the stamp, not my signature.

wrote property boundary, if you can indicate that is Wolford's Trucking and Demolition property boundary, please.

A. It's not owned by Wolford Trucking. Does that matter? It's my operation. Huh?

Q. If that's where Wolford Trucking business is, that's fine.

Does the equipment company own the property?

A. No.

Q. Okay. All right. I'm going to hand you what the court reporter has marked as Exhibit 8. Mr. Wolford, do you recognize this document?

A. I've read this before.

Q. Okay. What is this document?

A. Generally talking about my company.

Q. Is this the letter that Ernie Wilson wrote that you signed for submission to the Surface Transportation Board?

A. I believe so.

Q. Okay. Is that your signature on the last page?

A. Yes.

Q. It's labeled Page Number 30?

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

Q. Okay. And did you write this? Excuse me, did you sign this letter for the purpose of submitting it to

the Surface Transportation Board?

A. I believe that was his intent.

Q. When you say "his," who do you mean?

A. Ernie.

Q. Okay.

A. He's better at writing letters than me.

Q. But that is your signature on the last page?

A. Yeah.

Q. Okay. If you turn to Page 2 of this letter, please. It's Page 29 on the lower right-hand corner. The middle page. Referencing the first sentence of the first full paragraph on this letter, would you read that first sentence out loud?

A. "There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of several years. These projects, plus multiple new high-rise buildings, will necessitate export of hundreds of thousands of cubic yards of excavated materials, building demolition waste and roadway grading spoils."

Q. Continue please.

A. "We are currently targeting projects on 405, 520 in the 2013, '14 construction seasons. A future light rail system with a tunnel and 'cuts' within one mile of the railroad will also require substantial movements of

spoils."

That's going on currently on Highway 522 right now. They're removing spoils that could be utilizing railroad now.

Q. We'll come to it. If you could finish reading the paragraph.

A. "We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years."

Q. Thank you.

MR. MONTGOMERY: Did you skip a sentence?

THE WITNESS: It's all gobbledygook. Who cares.

Q. (By Mr. Ferguson) When you say it's gobbledygook, what do you mean?

A. You're overbearing. All of this is gobbledygook to me. I'm a cut and dry guy, just want the railroad left in so we can save the taxpayers some money transporting dirt.

Q. Okay. You've said in this letter that you are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Are there particular projects that you are targeting?

A. Not yet, they haven't been let. The contracts haven't been let, but when they do, we'll be there to service them if the rail is there.

Q. When you say you're targeting projects, what do you mean?

A. They're in the future, when the contract is let, we will bid on it.

Q. Are there particular projects that you have in mind, though?

A. Moving spoils out of the -- by Lincoln Square is our biggest one in Bellevue.

Q. But is there a particular highway project that you are specifically planning to bid on?

A. We'll give prices to all of them. Right now, they're not let yet.

Q. But how do you -- do you know whether there are any projects planned?

A. According to the papers, I read them, you read them, yes, there's big projects in the works for the city of Bellevue.

Q. For I-405, are there particular areas where construction is to take place that you are considering bidding on?

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

Q. (By Mr. Ferguson) Mr. Wolford, this property that you've been referencing, do you know if it is north or south of the Home Depot?
A. Sir, you have to ask Doug Engle. You're going to see him next week. You ask him these questions. These aren't for me.
Q. This property that you've referenced that is near the Home Depot, what would it be used for?
A. Staging area to load trucks. The gondolas to go up the track that you want to rip out.
Q. Would this be called a trans-loading facility?
A. Yes, it would.
Q. Okay. And do you plan to run -- excuse me, do you know if, is your plan to have railcars run --
A. Staged.
Q. -- to that area?
A. Staged and loaded. They would go night and day.
Q. After the railcars go to that area, where would they go?
A. Up to Snohomish to build the trails to rail nature trail for people for Snohomish County.
Q. Okay. I'd like to hand you what's been marked as Exhibit 10. When you say dirt will go to Snohomish, what do you mean? Will it go to the city of Snohomish?
A. No. Another question for Doug Engle. I've never

been up there. I've just been told. That's -- there's 23 miles of road or trails we're going to build with these spoils out of Bellevue. I don't know the particulars, you'll have to ask Mr. Engle. He's involved in that. I'm not. I will be, if you don't rip the rail out.
Q. Let's take a look back at, looking back at Exhibit 10.
A. Okay.
Q. Is it your testimony that you do not know where the excavation spoils will be deposited?
A. Yes, that's my testimony. Ask Mr. Engle, he knows.
Q. So when you said earlier that the materials would be taken to Snohomish, were you incorrect?
A. No, it's some place along here. I don't know where. I've never been to this project. He's got the rapport with the people that want the spoils. I don't.
Q. But you would be involved in building the trail, correct?
A. Placing the spoils as the railcars come in and dump, our bulldozers would place the material, yes.
Q. Okay.
A. That's my only part of that project, placing the spoils.
Q. Looking at your letter to Ms. Brown, what's been

marked as Exhibit 8.
MS. ALVORD: Let's look at exactly Exhibit 8, not my copy.
MR. MONTGOMERY: Let the record reflect, it was also part of Exhibit 1, correct.
MS. ALVORD: Yes.
MR. MONTGOMERY: Is it not?
MR. FERGUSON: I'm sorry?
MR. MONTGOMERY: I said, it was also part of Exhibit 1, was it not?
MS. ALVORD: Exhibit 8.
MR. FERGUSON: Yes.
MR. MONTGOMERY: So let the record reflect, so there's no confusion because you did inquire of it earlier --
Q. (By Mr. Ferguson) So, Mr. Wolford --
MR. MONTGOMERY: -- as Exhibit 1.
Q. (By Mr. Ferguson) -- looking at the bottom of the first paragraph on Page 2 -- what are you looking at?
MS. ALVORD: I'm sorry, could you repeat that? Second paragraph of Page 2?
Q. (By Mr. Ferguson) Please turn to Page 2 of Exhibit 8. Looking at the last sentence of the first paragraph, "we estimate."
A. "We estimate the volume of these projects at over

three million cubic yards of construction spoils over the next several years."

Q. Okay. Where is this estimate of 3 million cubic yards come from?

A. Ask Doug Engle. I don't know.

Q. Did you sign this letter, Mr. Wolford?

A. He knows the projects. I don't.

Q. Did you sign --

A. Yes.

Q. -- this letter?

A. Yes, I signed this letter. This is an estimate.

Q. Did you testify earlier that you believed every statement in this letter was true?

A. Yes, I believe there's that amount of dirt too.

Q. On what basis do you have to believe that there is three million cubic yards?

A. Doug Engle knows all the projects. I don't know all of them. I just know the total and it sounded realistic to me.

Q. Have you done any calculations --

A. No.

Q. -- to determine whether --

A. I'm not an estimator.

Q. -- to determine whether three million cubic cards of construction spoils to be hauled over the next several

years?

A. That's a true statement and I signed it.

Q. Okay.

A. I'm not saying I will haul all of them, but that's the calculation of dirt coming out of the city of Bellevue in the next three years.

Q. Okay. Looking at exhibit, let's see, it's titled Map 9, I think it's Exhibit 9 there.

MR. FERGUSON: Elizabeth, you might want to get your Number 9 from him.

MS. ALVORD: This is mine, thank you.

Q. (By Mr. Ferguson) Okay. Mr. Wolford, do you know if you plan to use any of the property along the rail line between Highway 520 and NE 8th as a staging area?

A. It's a possibility. Mr. Engle is in charge of that, not me. He was going to show us where a staging area was after we make sure the rail is in.

Q. Okay. Do you or do any of your companies own any property visible on this map, Exhibit 9?

A. No. North of here in Kirkland, I own property on the rail.

Q. Okay. Do you have any contracts to haul excavation spoils for a project in Bellevue?

A. Not yet. We can't till we know the rail is going to be in.

Q. Have you asked Ballard Terminal Railroad for a quote about rates for hauling any excavation spoils from construction projects in Bellevue?

A. No. But my estimator may have talked to him about that.

Q. Has your estimator told you that he or she has obtained rates for hauling excavation spoils from Bellevue construction projects?

A. We did a calculation, I believe, and the 60-yard thing over the 20-yard thing of trucks was so much better, that's why the 15 percent savings.

Q. But has Ballard Terminal Railroad provided you with a rate to haul freight either by ton, by number of cars in use, on any measurement?

A. To me, not me personally, no.

Q. Do you know if it has to any of your employees?

A. No, I don't know for sure.

Q. Can you explain to me, then, how you came up with the estimate that in your letter to Ms. Brown, that your bid would be at least 15 percent less expensive to your clients than trucking options if you were to haul spoils using rail service?

A. Well, the dump fee would be tremendously different. Because they need the spoils on the trail. And then the amount of fuel and hours of trucking compared to

one locomotive putting up the road and the pollution, there's three reasons for you.

Q. When you say the dump fee would be different, what do you mean?

A. If we trucked it and dumped it to Red Cedar right now, that dump will be closed by then anyway. Pay so much a yard there where we could actually use the spoils up on the nature trail.

Q. You testified earlier that you don't know where the spoils would be dumped alongside the freight segment; is that correct?

A. On the -- up north?

Q. Yes.

A. There's 23 miles that will utilize it, I've been told. The exact place they start and finish, is that what you're asking? I don't know.

Q. Okay. Thank you. How do you know that spoils from Bellevue will be able to be dumped alongside the freight segment?

A. It's permissible because it's a federal -- well, it's railroad. They have -- you can do anything you want on the railroad. They're not governed by rules like most people. Where you place dirt like grading permits, they're all exempt from that.

Q. Let me ask the question a little differently. Do

you know if there's actually enough physical area to dump over three million cubic yards of spoils alongside the freight segment?
A. The calculations, maybe my estimator worked out. I don't personally know.
Q. If your company were not able to dump all of the spoils alongside the freight segment, what would you do with the spoils?
A. Probably go to another dump site.
Q. And where would that be?
A. I don't know. I explained to you. Dump sites close, they fill up, and they move out, out, out. Where would we ideally do it is rail it in our side cars, probably up to Cadman in Gold Bar because it's all rail, be perfect.
Q. But --
A. And they can take large volumes up there.
Q. Okay. Would your 15 percent savings rate still hold true?
A. Still hold true even though we're railing it a little further. Once it's in a railcar, the extra few miles is nothing when you're hauling so many railcar loads.
Q. Who would haul -- what carrier would haul the spoils if you weren't able to dump them in their entirety alongside the freight segment?

A. Ballard Railroad would haul them clear up to Gold Bar by rail.
Q. How could Ballard do that?
A. You're saying if the three million yards, I don't know the calculations. Maybe it will take it all. But it could go up to Gold Bar by Byron's railroad.
Q. Does Mr. -- does Ballard Terminal Railroad have operating rights to go to Gold Bar?
MS. ALVORD: Objection; calls for speculation.
THE WITNESS: I don't know. I'm not a railroad guy.
Q. (By Mr. Ferguson) Okay. Do you know whether there was --
A. There was talk about --
Q. -- interchange with BNSF to take spoils?
A. I don't know. I'm not a railroad guy. I don't know. You have to ask Byron. Byron would know.
Q. Would you agree that knowing the rate of hauling spoils is important for determining whether there is a cost savings to use rail as opposed to trucks?
MS. ALVORD: Well, objection, calls for speculation. Are you asking for his opinion?
Q. (By Mr. Ferguson) Do you misunderstand my question?

A. I went through that. There's a huge savings just in the dump fee alone would cover the cost of the 15 percent. We're not paying dump fees to build a nature trail. If we hauled it by truck, there's huge amounts of dump fees at a huge cost to the contractors.
Q. If you're unable to dump all of the construction spoils along the freight segment, what will be done with those spoils?
A. Let's find out if the three million yards will get up there first. The spoils will go some place else. They go to one of the dump fees, would be paid -- if you had to truck it, you mean? I said the alternative for rail is maybe take it clear up to Gold Bar, by rail. That would be the cheapest.
Q. Do you know how much it would cost --
A. No, I don't know --
Q. -- to take it to Gold Bar?
A. -- what it would cost. Doesn't matter. It's cheaper, way cheaper.
Q. Okay.
A. From Bellevue to Everett and then Cal -- those people have aggregate coming from Everett back, so this could be a round robin, we haul our dirt spoils up and aggregate back to Bellevue. Be ideal.
CalPortland, you'll talk to them next week, I

believe. Be double utilized, the railroad.
Q. Just to be clear, have you had any conversations with either a representative from Eastside Community Rail or Ballard Terminal Rail about hauling freight past Snohomish?
A. The dirt?
Q. Yes.
A. Well, yeah, we worked up these dirt prices with them using their rail.
Q. No, no, I'm asking something slightly different. Have you had a conversation or any communication with Ballard about hauling spoils to a destination past Snohomish, either east or west?
A. I haven't. Doug Engle has talked to the railroad guy, Byron, about that.
Q. Okay.
A. I haven't personally talked to Byron about this, no.
Q. Okay.
MR. FERGUSON: We'll take a quick five-minute break.
(Recess taken from 1:39 to 1:47 p.m.)
(Exhibit Number 12 marked.)

E X A M I N A T I O N - (Continuing)

BY MR. FERGUSON:
Q. Mr. Wolford, if you'd take a look at the map that's marked as Exhibit 12, please. I'll represent to you that this is a copy of the Page 4026 of the Greater Seattle map book. The handwriting that says "Safeway" up at the top is mine. Can you identify on the map, even approximately, where the trans-loading facility would be placed, if you know?
A. I don't know.
MR. MONTGOMERY: Excuse me, let me think about that for a minute. Objection, mischaracterizing earlier testimony. Go ahead.
THE WITNESS: There was three sites discussed. All in the Bellevue area. Nothing has been fine tuned. We're not going to even approach the property people until we know the rail is going to be in. Why bother them.
Q. (By Mr. Ferguson) Could you indicate on the map with this blue pen, if you know, where those three sites are located?
A. I don't know where they are.
Q. Even approximately?
A. Ask Doug Engle. He's the one that secured them. He was talking about them.
Q. Okay. Are you familiar with the location of the

Home Depot you referenced earlier?
A. The general area, but I don't even know whose property it is. That was one discussed.
Q. Can you indicate on the map with the pen where the general area is of the Home Depot?
A. It was south of NE 8th, down by the Mutual Materials yard, that's all I know. I don't know where they are.
Q. Is it also south of NE 4th?
A. I don't know. Ask Doug Engle.
Q. Do you think it's between NE 8th and NE 4th?
MS. ALVORD: Object; asked and answered.
THE WITNESS: I don't know. One more time, I don't know. It's a general, we're discussing -- they said, Well, there's two or three or four areas we could possibly use for a site. And my contribution will be a loader to trans-load the dirt. You find the location, I'll load the railcars.
Q. (By Mr. Ferguson) Okay. When you say they discussed, who are they?
A. Doug Engle.
Q. Anyone else?
A. Maybe Ernie.
Q. Okay. Was Byron Cole a part of these discussions?

A. I don't think he -- he was there. I haven't met Byron that much. Couple brief -- well, at council meetings, I've met Byron.
Q. Okay. Have you ever asked Eastside -- have you ever asked Doug Engle or Eastside Community Rail for a rate to haul spoils out of Bellevue by rail?
A. Me personally, no.
Q. Do you know if anyone with your company --
A. I don't know.
Q. -- has asked Doug Engle or anyone else at Eastside Community Rail for a rate quote?
A. I don't know if they have.
Q. Looking back at Exhibit 9, please, do you know -- have you made any inquiries about acquiring any of the property along the rail corridor between Highway 520 and NE 8th?
A. No.
Q. Do you know if Doug Engle had made any inquiries to obtain property --
A. I don't know for sure.
Q. -- in that area?
A. No.
Q. Do you know --
A. I don't know.
Q. Do you know if his company, Eastside Community

Rail, has made any attempt to obtain property --
A. I don't --
Q. -- along that corridor?
A. -- know, no.
Q. What about for Byron Cole, do you know if he has made any attempt --
A. No.
Q. -- or inquiries to obtain property along the corridor?
A. I don't know. Ask Doug Engle.
Q. And do you know if Mr. Cole's company, Ballard Terminal Railroad, has made inquiries or attempted to obtain property along the corridor?
A. I don't know.
Q. Okay. You testified earlier that you own property in the city of Kirkland; is that correct?
A. Yes.
Q. Okay. Taking a look here at Exhibit 11 --
MR. MARCUSE: I'm sorry, is this 11?
MR. FERGUSON: No, sorry, this is 11. I'm sorry, this should be -- you marked the photocopy of the map as 12?
THE COURT REPORTER: Yes.
MR. MARCUSE: Thank you.
MS. ALVORD: I'm sorry, is there an extra

copy?
MR. MARCUSE: I'm sorry, I'm holding onto what is now 11.
MS. ALVORD: What's this one?
MR. MARCUSE: The reproduction of the map from the map book is 12.
MS. ALVORD: And this is 11?
MR. FERGUSON: Correct.
MR. MARCUSE: The one labeled as "Map 8 Railbanked Segments: Woodinville-Bellevue" is Exhibit 11.
Q. (By Mr. Ferguson) Do you know how many parcels in Kirkland that you own?
A. Four.
Q. Do you own them personally or does one of your companies own them?
A. Personally.
Q. Do you know the locations of those four --
A. Of course I do.
Q. -- properties?
Could you indicate on the map where they're located, please?
A. I need to know where the road comes from 405 down to the lake is.
Q. Or do you know the addresses?
A. Sure. One there. One there. One there. I'm

missing some. I recently sold one up here. Anyway, I'm a big taxpayer.
Q. So do you only own three properties, then, in Kirkland?
A. Yeah, it was four, I just sold one.
Q. Okay. Can you tell me the addresses of each three of those properties?
A. Sure, you want me to write it here?
Q. That would be fine.
A. This one is Cedar Street.
Q. Okay. So, just draw a line, just so the record is clear, I think I understand what you're doing, just draw a line to each X indicating what the address is for, please.
A. (Witness complies.)
Q. Are those residential properties?
A. Two are. One is commercial.
Q. Okay. The two residential properties, those are the ones that are located on the lake?
A. Yeah.
Q. Or near the lake?
A. Yeah. I do own another one, but only half of it. No big deal, I'm not on the tax record, another person is.
Q. The commercial property that is located on Cedar Street, what is that used for?

A. Storage.
Q. For your equipment business?
A. No. I rent it out now.
Q. Okay. Do you know who is currently occupying it?
A. The new storage facility there. Brand-new. I forget what they call themselves. Five-year lease there. But I pay big taxes in Kirkland.
Q. Do you know what the square footage of these properties is?
A. The dirt? Or the building?
MS. ALVORD: Can you clarify, do you mean all together?
THE WITNESS: This structure here is 1,100 square feet. The structure at my residence is 4,000 square feet. This is a small piece of commercial property on the rail up there.
Q. (By Mr. Ferguson) Do you know how big that commercial property is?
A. It's fairly small.
Q. Is it bigger than an acre?
A. Oh, God, no, it's just a postage stamp piece.
Q. Think it's about a half acre?
A. No, not even a quarter.
Q. Smaller than a quarter acre?
A. Yeah.

Q. Is it located on the rail line?
A. It is. Maybe we use that for a staging area. Little small. But then again, we'll need the rail. That's why I bought the property. Because it was on the rail. Now some guy from the City of Kirkland wants to rip it out, how rude.
Q. Is there a spur track going to your property on Cedar Street?
A. No.
Q. Have you ever asked for rail service to that property?
A. No.
Q. Mr. Wolford, whose name is that property on Cedar Street --
A. Mine.
Q. -- held?
A. Mine.
Q. Personally?
A. Yes.
Q. For the property on Cedar Street, do you have a plan to use that in moving demolition spoils from Bellevue?
A. It's a bit small for that.
Q. So do you -- you don't intend to use that as part of any hauling operation?
A. Possibly if they leave the rail in.

Q. What would you use it for?
A. Load a railcar there. Well, there's not room for a spur really there.
Q. Okay.
A. But if it's not very well used, they could just spot a car there while they loaded them and go down the track. Doesn't sound like it's going to have a lot of use anyway except for maybe a dinner train or to service the wineries. That's what we really need this rail left in for. I don't know what's -- what that question is. There's a huge group of people that want this rail left in for a dinner train to service the wineries.
Q. Can you tell me more about that? I thought this was about hauling freight.
A. That's my concern. As a taxpayer in the city of Kirkland, I got a huge problem with ripping the track out because of that, that was a wonderful thing, the dinner train and the winery.
Q. And --
A. You'll find out. There's another group coming at you.
Q. I'm curious to know what you know about the plan.
A. I've heard bits and pieces, but there's strong people that want -- you'll see later, that's all I can say.
Q. Is this the train that is referred to as Bounty

of Washington, have you heard that name before?
A. No, I never heard that name. Is that what they call themselves that service the winery?
Q. I'm asking you.
A. I don't know. I've just heard bits and pieces of it. They strongly want to leave the track in.
Q. Have you heard that running a dinner train or a wine train is important to the profitability of Ballard Terminal Railroad?
MR. MONTGOMERY: Objection; foundation.
THE WITNESS: They would be the one running the train, I believe.
Q. (By Mr. Ferguson) Okay. And is this a dinner train that would be run or managed by Doug Engle?
MR. MONTGOMERY: Foundation.
THE WITNESS: I don't know.
Q. (By Mr. Ferguson) Okay. Do you know if Doug Engle has any interest in running a dinner train?
A. I don't know. Ask him.
Q. I'm asking you.
A. I don't know.
Q. Okay.
A. Geez.
Q. When you say you've heard bits and pieces about the dinner train, who have you heard these bits and pieces

from?
A. A gal named Kathy that's kind of on Doug Engle's team. She's been talking to them.
Q. Is that Kathy Cox?
A. Yes.
Q. Do you know what she has told you?
A. She said they've strong interest in the wineries to run a train on this track.
Q. Okay.
A. That's what she's told me.
Q. Anyone else other than Ms. Cox has discussed this with you?
A. No.
Q. Okay.
A. Possibly Ernie, we were in the same meeting.
Q. Ernie Wilson?
A. Yeah.
Q. What meeting was this?
A. Just one we had.
Q. Who else was at that meeting?
A. That's all.
Q. Do you know when this meeting occurred?
A. Oh, in -- just at a place in Kirkland.
Q. Do you know when it occurred?
A. No, it was about two months ago.

Q. Do you know where it occurred?
A. Yeah, we were at a restaurant, at Milagro. I happened to run into them.
Q. Okay.
MR. FERGUSON: Let's go off the record and take another five-minute break.
MS. ALVORD: Okay.
(Recess taken from 2:02 to 2:12 p.m.)
(Exhibit Number 13 marked.)

E X A M I N A T I O N - (Continuing)
BY MR. FERGUSON:
Q. Mr. Wolford, if you take a look at what's been marked as Exhibit 12?
MS. ALVORD: 12? Do you mean 13?
MR. FERGUSON: I mean 13. I was reading upside down. Sorry. Thanks.
MS. ALVORD: Yes.
MR. MONTGOMERY: Which is 13?
MS. ALVORD: You don't have a copy?
MR. MONTGOMERY: I don't know.
THE WITNESS: God, my office does nice work. See, I told you, I wasn't even there when this was done. They are on it.
Q. (By Mr. Ferguson) Okay. Is this the promissory

EXAMINATION

BY MR. MARCUSE:

Q. I'm Andrew Marcuse. Just to clarify, Andrew Marcuse with the King County Prosecutor's Office, I'm in the civil division, I do land use and real estate law for the county, so I'm not a criminal prosecutor. We're not at the courthouse, for those of you who were on the call the other day with the STB.

You testified earlier that Bobby Wolford Trucking and Demolition facility is in Maltby in Snohomish County.

A. Mm-hm (answers affirmatively).

Q. And has it always been located in Maltby?

A. Yes.

Q. And during the time that you operated that business in Maltby, have you ever received rail service at that facility?

A. No.

Q. Did you ever ask BNSF Railway for a rail quote?

A. Yes, they subcontract all their spurs out. And Condon out of Spokane was -- I think we got some prices from them to throw a rail in there, or a spur. It was a long time ago, kind of a blur.

Q. So you asked BNSF for a quote on a spur to your facility?

A. We asked if it's possible. And they said, we'd

need some shipper support before we put it in. At that time, there was a lumber company that wanted to service it. Just an idea, throw a lot of things out, my mind never quits moving.

Q. Was a spur ever constructed?

A. No.

Q. When they said they needed shipper support, what did that mean to you?

A. To the Burlington Northern, they need -- well, I know what shipper support is. They need to know that it will really get utilized before they're going to put a spur in for me.

Q. So it was your understanding that they needed demand --

A. Yes.

Q. -- in order to put a spur in?

A. Right. At that time I really didn't have much. I had a potential, couple people that asked if I could do a rail. I said, Let me check into it, that's what I did.

Q. I think you said a moment ago that when this conversation occurred was a long time ago?

A. It was.

Q. Can you estimate approximately?

A. A long time ago, meaning 12 years ago maybe.

Q. 12 years ago?

A. Mm-hm (answers affirmatively).

Q. All right.

A. And then we've just been busy ever since and kind of put it on the back burner.

Q. Thank you.

EXAMINATION

BY MR. WAGNER:

Q. I'm Jordan Wagner from Sound Transit.

Earlier you testified about you and Byron Cole meeting with the City of Bellevue, do you recall that?

A. It was like a council meeting I attended and he was there, and Doug Engle was there and he listened and we put our input in to save the rail.

Q. So you testified at a public hearing?

A. Yes. Well, I didn't personally. Doug Engle did. He did the speaking and Byron Cole did the speaking, I didn't.

Q. Did you speak to anyone after the meeting?

A. After the meeting?

Q. From the City of Bellevue?

A. I think Doug Engle did. In the lobby, he talked to -- I heard him talking to some official there.

Q. Do you know who that official was?

A. I don't. Doug Engle does.

Q. Thank you.

MS. ALVORD: Okay. So just a short break.

MR. FERGUSON: Sure.

(Recess taken from 2:28 to 2:56 p.m.)

EXAMINATION

BY MS. ALVORD:

Q. Okay. Mr. Wolford, I'm showing you what's been previously marked as Exhibit 5.

MS. ALVORD: Do you guys all have that?

Q. (By Ms. Alvord) It's a map, called "Map 5 - Freight Segment." And what I want to draw your attention to is that portion of the map where you drew -- you wrote the word "spur track" and you drew a line. You see that there?

A. Yes.

Q. Is that a done deal --

A. No.

Q. -- that location of the spur track?

What does that line that you drew there represent?

A. Approximate of a thousand feet of -- it's promised to me to get a spur sometime. It may never happen. It might be blue sky. But I'm looking forward to having a spur in my yard.

That was a rough estimation, just by what we read in the paper.
Q. Mr. Ferguson asked you about that number, you said it sounded realistic. Why did you say that?
A. Because what Doug Engle has dug into, what the upcoming projects and kind of what the papers are saying, and the journal, construction journals, that's what we estimated.
Q. You participate in the estimation?
A. No.
Q. You said it sounds realistic. How long have you been hauling dirt around out of the eastside?
A. I've been in this business 42 years. I kind of know my dirt. I've watched projects through the years and I know volumes. It's a realistic estimate.
Q. If it hadn't been realistic in your mind, would you have signed the letter?
A. Probably not. If they would have said 12 million yards, I would have said no.
Q. If they said one million yards, you would have said?
A. Well...
THE COURT REPORTER: What was that answer?
MR. MONTGOMERY: Strike it.
THE WITNESS: No, just being funny.

Q. (By Mr. Montgomery) Why did you bid on getting the rails torn out if you want them to stay in?
A. My people bid that job. And when they said they were bidding, they said look what we're bidding today, look what popped up in the journal. I said, Put a number on it, let's throw a price at it.
Q. Do you think there's anything inconsistent with bidding on the project and wanting them to stay in?
A. That was just a business venture. It's the American way, what you do.
Q. What's your preference?
A. Oh, I want the rails in.
Q. I think that -- and why is that?
A. Oh, my gosh, they've been there for years, and they need to stay there to service -- well, Byron Cole's concern with his freight service. Benefit us hauling dirt. Benefit CalPortland hauling aggregate back into Bellevue. And the dinner train and the wine people really want it in too.
MR. MONTGOMERY: Speaking of that, would you, Ms. Nelson, please read back the answer that I asked you to read to me during the break.
(Answer on Page 118, Lines 5 through 12 read by the reporter.)
Q. (By Mr. Montgomery) When I was sitting down the

table from you and heard that answer, I wasn't sure what you were saying. Were you saying the only reason to leave the rails in is the dinner train?
A. I was trying to get to that topic real quick when I said that. I just wanted that out there, that the dinner train and the wineries are supportive of leaving the rail in as well.
Q. As well as?
A. As well as my use of hauling dirt on the rail.
Q. And others?
A. And others. There's talk that Safeway might want to haul their flour up that track for their bakery.
MR. MONTGOMERY: I don't have any further questions. Thank you, Mr. Wolford.
THE WITNESS: All right.
MR. MARCUSE: Can I ask one follow-up question, couple follow-up questions to Ms. Alvord's question.
MR. FERGUSON: Sure, then I'll have some.

FURTHER EXAMINATION
BY MR. MARCUSE:
Q. Mr. Wolford, a moment ago, you characterized the idea of a spur track on your current operation in Maltby as blue sky.

A. Hopefully I get it.
Q. Did you ever ask GNP Railway for a quote for service?
A. It's been so long, I inquired. And they referred me to Condon, it's a company in Spokane that does their sidings for them, to get a price. I even forget what it was.
Q. And did you ever ask Tom Payne or Doug Engle with GNP Railway for a quote for service?
A. Not a quote, but he said that because I built that, the trail I did build, in compensation, he'd get me a spur.
Q. Did he ever provide you with an estimate of the charges for freight service?
A. No. There's a base -- I know, I know that, like, Tom Payne got paid for every service that Byron Cole did, he runs the train. And there is a set price per -- he told me what it was, it escaped me.
Q. Have you ever asked Doug Engle for a quote for the rate for service?
A. No.
Q. Have you ever spoken with anyone else from Eastside Community Rail about a quote for service?
A. No. I need a spur first and that may not happen.
MR. MARCUSE: Thank you.

FURTHER EXAMINATION

BY MR. FERGUSON:

Q. In the last five years, have you asked any rail carrier for a quote for freight service to your facility in Maltby?

A. No. Why would I, I don't have a spur.

Q. The letter that Mr. Montgomery referenced earlier, your letter to Cynthia Brown that was written by Ernie Williams?

MS. ALVORD: Wilson.

MR. FERGUSON: Wilson, thank you.

Q. (By Mr. Ferguson) How did you receive a copy of the letter, or rather how did it get on your stationery?

A. He may come to my office and done this and then I signed it.

Q. Do you know how it got on your stationery?

A. Well, like I said, I just said he came to my office and used my stationery.

Q. You recall him doing that?

A. Yeah, because I signed it.

Q. Okay. Do you recall if Mr. Wilson typed this letter on a computer in your office?

A. I don't recall.

Q. Do you recall if he came --

A. I was out in the yard working when he did it and

I came in and signed it.

Q. Do you recall if he came with a computer --

A. No.

Q. -- himself with this letter typed on it?

A. No. Don't recall. I don't -- wouldn't know.

Q. Do you know if he e-mailed a document containing the words in this letter to anyone in your business?

A. I don't believe so.

Q. Take a look back at Exhibit 5. It's Map 5. You testified earlier that the line that you've drawn on that map indicating the possible location of the spur, that the spur track could go somewhere else, is that accurate?

A. Yes, but that's pretty much where it should go.

Q. Okay. Is there realistically any place where it could go?

A. It could go any place on the 10 acres, but there is where the grade is proper for it, for the rail, for a train to run. It's all flat there. That's why we drew it there.

Q. Okay.

A. That's a logical place for it.

Q. With respect to the dinner train that you mentioned earlier, have you ever heard anyone say that rail service to Bellevue would not be profitable in the absence of a dinner train?

A. Never heard anybody say that.

Q. Okay.

A. I know it was a nice thing to have a dinner train. I rode it myself from Renton to the winery.

Q. Okay.

A. Be a great thing for the city of Kirkland.

MR. FERGUSON: I don't have anything further. Thank you.

MR. MONTGOMERY: You sure?

MR. WAGNER: No, I'm not, but I'm going to let you go.

(The deposition concluded at 3:12 p.m.)

(Signature was reserved.)

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.

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731 **BALLARD TERMINAL** **RAILROAD COMPANY, L.L.C.** **—ACQUISITION AND EXEMPTION—** **WOODINVILLE SUBDIVISION** **STB DOCKET NO. AB-6 (SUB. NO. 465X)** **BNSF RAILWAY COMPANY** **—ABANDONMENT EXEMPTION—** **IN KING COUNTY, WA**	**BALLARD TERMINAL RAILROAD COMPANY, LLC'S ANSWERS TO CITY OF KIRKLAND'S FIRST SET OF INTERROGATORIES**

Ballard Terminal Railroad Company, LLC ("Ballard"), by and through its counsel, hereby answers the City of Kirkland's ("Kirkland's") First Set of Interrogatories as follows.

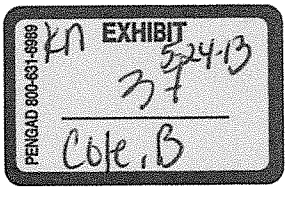
GENERAL OBJECTIONS

1. Ballard objects to Kirkland's interrogatories to the extent that they call for the disclosure of information protected by the attorney-client privilege.

2. Ballard objects to Kirkland's interrogatories to the extent that they call for the disclosure of information protected by the attorney work-product privilege.

3. Ballard objects to Kirkland's interrogatories 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 interrogatories to the extent that they call for information relating to the "Freight Segment," as defined in Definition 8 of Kirkland's interrogatories, on the basis that all such interrogatories are overly broad, unduly burdensome, seek information that is irrelevant or immaterial, are not sufficiently limited in scope, and are not reasonably calculated to lead to the discovery of admissible evidence.



5. Ballard objects to Definition 9 of Kirkland's interrogatories on the basis that the time period that Kirkland purports to be relevant is overly broad and not sufficiently limited with respect to time frame.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all potential shippers that you contacted or attempted to contact regarding the resumption of freight rail service on the Line.

ANSWER: CalPortland

Wolford Demolition and Trucking, Inc.

General Mills

INTERROGATORY NO. 2: Please identify all potential shippers that contacted you regarding the resumption of freight rail service on the Line.

ANSWER: See Ballard's answer to Interrogatory No. 1.

INTERROGATORY NO. 3: Please state the basis for your estimate, as represented in your STB filings, that reactivation of rail service on the Line "would translate to approximately 50,000 carloads of freight."

ANSWER: Ballard objects to Interrogatory No. 3 on the basis that it is vague and ambiguous. Subject to and without waiving this objection, see Skrivan and Wolford letters. The capacity of a freight car is 60 cubic yards. Thus, a demand to ship 3 million cubic yards of aggregate materials over the course of the next decade equates to 50,000 carloads of freight.

INTERROGATORY NO. 4: Please state the basis for your estimate, as represented in your STB filings, that it would cost $10 million to install rail tracks and ties in the 5.75 mile-long segment of the Line owned by Kirkland, if the existing rail infrastructure within this segment is removed.

ANSWER: Ballard objects to Interrogatory No. 4 on the basis that it is vague and ambiguous. Subject to and without waiving this objection, see ECR 893.

Dated May 23, 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

VERIFICATION

BYRON D. COLE, being first duly sworn on oath, state that he/she has read the foregoing Ballard Terminal Railroad Company, LLC's Answers to City of Kirkland's First Set of Interrogatories and further states that the responses set forth therein are true and correct to the best of his/her knowledge and belief.

Byron D Cole
Byron Cole

SUBSCRIBED AND SWORN TO before me this 23rd day of MAY, 2013.

Notary Public

Notary Public
State of Washington
BENJI IVY
MY COMMISSION EXPIRES
November 07, 2016

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 on May 23, 2013:

Hunter Ferguson
Stoel Rives LLP
600 University Street
Suite 3600
Seattle, Washington 98101
Attorney for City of Kirkland

Thomas C. Paschalis

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

Doug,

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

Mike

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

Good day Mike,

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

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

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

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

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

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

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

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

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

Truly yours,

Doug

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

RAILWORKS® TRACK SYSTEMS

January 18, 2013

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail, LLC
1340 Lombard St. #606
San Francisco, CA 94109

Subject: **East Side County Rail Rehabilitation Woodinville WA to Snohomish WA**
RailWorks Track Systems, Inc. (RailWorks) Budget Proposal

Mr. Engle,

On January 15th, 2013 RailWorks and The Eastside Freight Railroad conducted a joint visual inspection of the Issaquah Spur milepost (MP) 3.4-0.0, Woodinville Wye, Woodinville Subdivision MP 24.0-37.61, Snohomish Wye, and remaining track from the Snohomish Wye to Downtown Snohomish. During the inspection each segment of track described herein was hyrailed or walked. Inspection team consisted of Byron Cole (General Manager- Eastside Freight Railroad), George Riley (Project Engineer- RailWorks), and Richard Carney (Senior Project Manager- RailWorks). Included in this budget proposal is an assessment of the existing conditions, recommendations and budgetary pricing for your consideration.

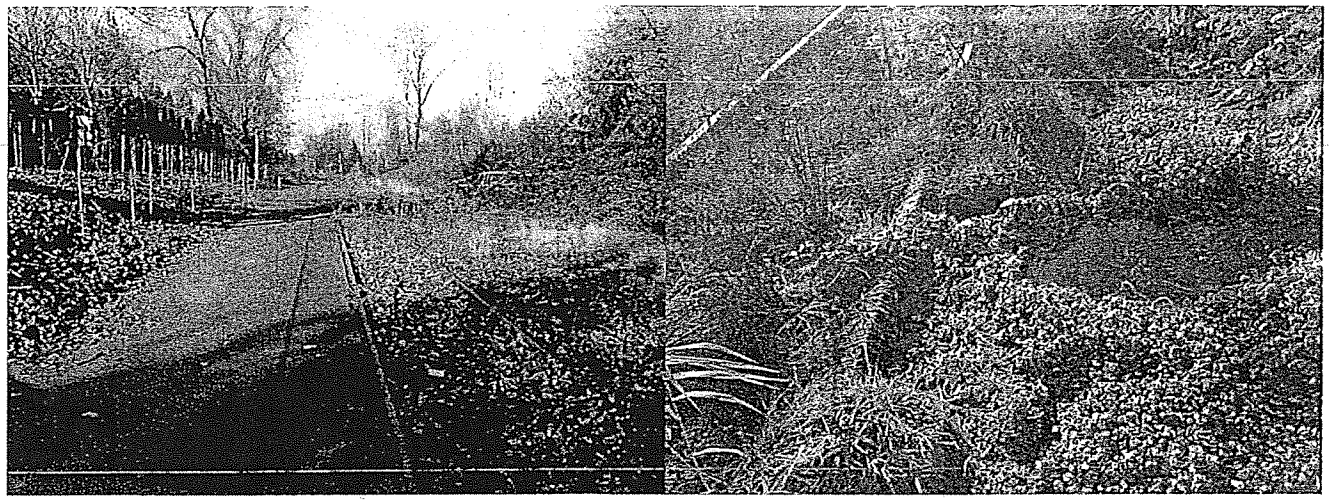
Issaquah Spur MP 3.4-2.3

Track in this segment is currently out of service and has not been operated on for several years as evident by the excessive amount of vegetation that has overgrown the line. Tie condition is poor and will not currently support the operation of trains. Top of rail profile, cross-level, and alignment (Track Surface) is marginal to poor by class 1 FRA standards. At MP 2.9 the track has been undermined by storm water runoff from adjacent property owners. Drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (90GN) are in fair condition to support class 1 operating speeds.

The following recommendations are based on rehabilitation of this segment of track to FRA class 1 standards for operation of local freight trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	880	Each	$130.00	$114,400.00
F&I Ballast	1,100	Tons	$30.00	$33,000.00
Track Surfacing	5,808	Track Feet	$2.25	$13,068.00
Ditching	5,808	Track Feet	$8.00	$46,464.00
Vegetation Removal	5,808	Track Feet	$5.00	$29,040.00
Cost Per Mile	**$214,520.00**		**Total**	**$235,972.00**

PENGAD 800-631-6989 KN EXHIBIT 39 5-24-13 Cole, B

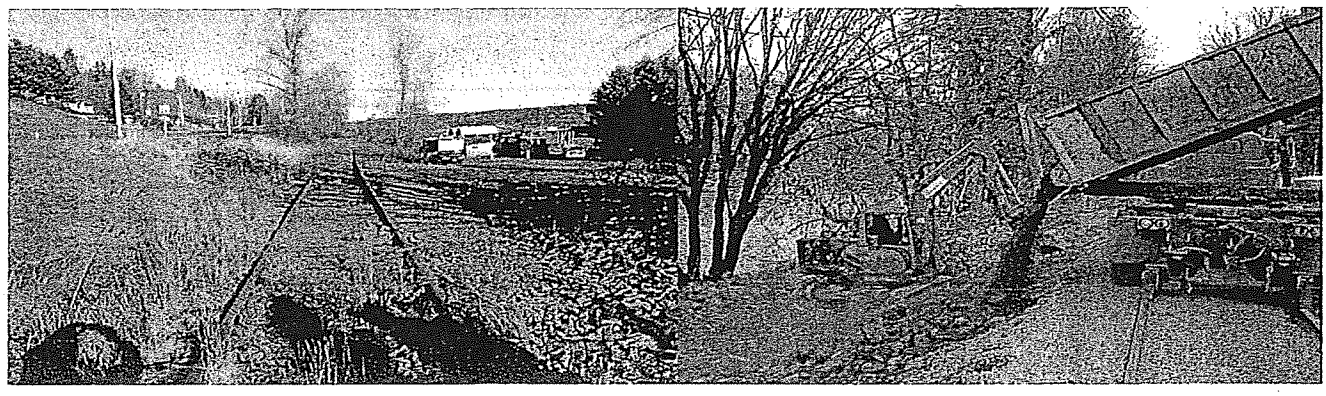


Issaquah Spur MP 2.3-0.0

Track in this segment is currently not in use or utilized in connection with operation of the Woodinville Wye. While some areas are overgrown with vegetation the majority of the track is relatively free of encroaching vegetation. Tie condition is marginal for operations of trains at class 1 speeds. Track Surface is marginal but meets class 1 FRA standards. The drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (115RE and 90GN) are in fair condition to support class 2 operating speeds.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	1,840	Each	$130.00	$239,200.00
F&I Ballast	2,300	Tons	$30.00	$69,000.00
Track Surfacing	12,144	Track Feet	$2.25	$27,324.00
Ditching	12,144	Track Feet	$5.00	$60,720.00
Vegetation Removal	12,144	Track Feet	$2.00	$24,288.00
Cost Per Mile	**$182,840.00**		**Total**	**$420,532.00**

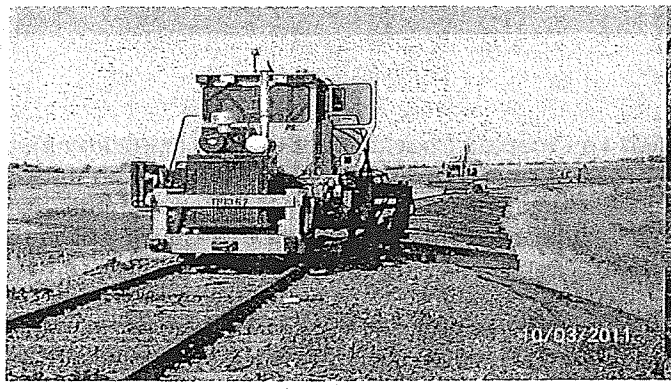


Woodinville Wye

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in marginal to fair condition to support class 2 operating speeds. The rail in the existing hi-side of the curve on the South leg of the Wye is curve worn to a point that the gage is near the limit of the standards.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Rail	800	Linear Feet	$58.00	$46,400.00
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	3,168	Track Feet	$2.25	$7,128.00
Cost Per Mile	**$222,320.48**		**Total**	**$133,928.00**



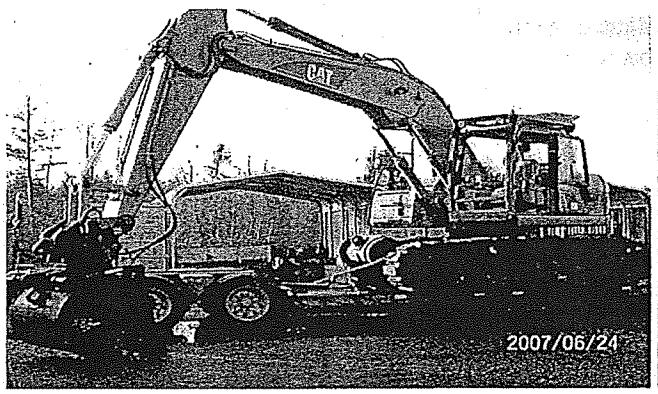


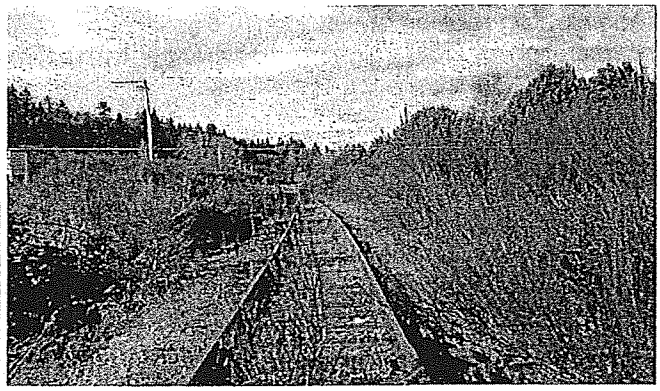
Woodinville Subdivision MP 24.0-37.61

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation in the operating envelope, however dense and unstable vegetation was observed throughout this segment within the right of way that has the potential to impact operations. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is poor to marginal with lateral and cross drainage silted-in and overgrown with vegetation. Existing rail and fasteners (112/115 RE) are in marginal to fair condition to support class 2 operating speeds. The rail in the existing curves in excess of 5 degrees at 15 locations is curve worn on the hi-side to a point that the gage is near the limit of the standards.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations. Additional quantities have been added for rehabilitation of 1 mile of passing sidings to FRA class 1 standards.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Rail	14,400	Linear Feet	$48.00	$691,200.00
F&I Ties	11,688	Each	$130.00	$1,519,440.00
F&I Ballast	14,610	Tons	$30.00	$438,300.00
Track Surfacing	77,141	Track Feet	$2.25	$173,567.25
Ditching	71,861	Track Feet	$8.00	$574,888.00
Vegetation Removal	71,861	Track Feet	$5.00	$359,305.00
Cost Per Mile	**$276,025.00**		**Total**	**$3,756,700.25**





Snohomish Wye

Track in this segment is currently in service and operated as excepted track. While the track structure meets FRA class 1 standards, conditions were observed that were at or near the limit of the standards. The track is relatively free of encroaching vegetation. Tie condition is marginal to fair by class 1 FRA standards. Track Surface is fair to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in marginal to fair condition.

The following recommendations are based on rehabilitation of this segment of track to FRA class 1 standards for operation of local freight trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	3,168	Track Feet	$2.25	$7,128.00
Cost Per Mile	**$145,296.00**		**Total**	**$87,528.00**

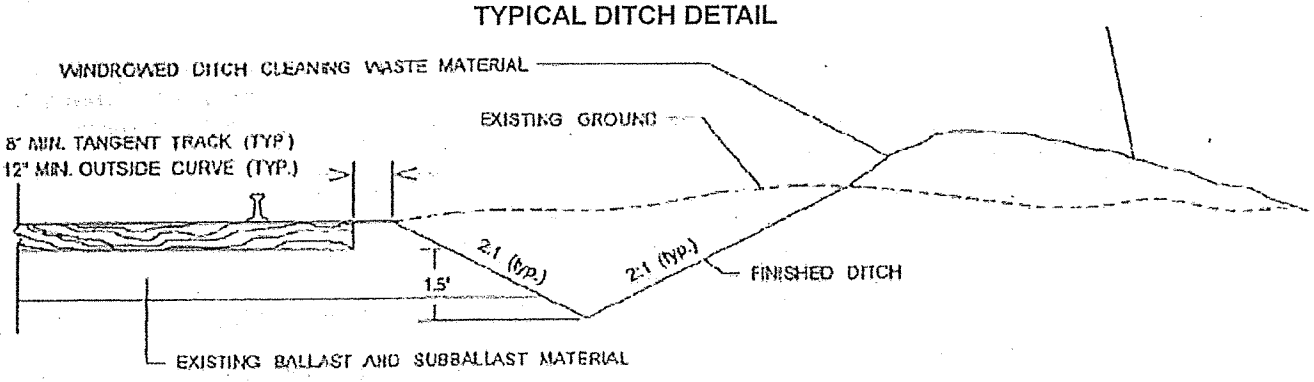
Remaining Track from the Snohomish Wye to the Snohomish River Bridge

Track in this segment is currently out of service and has not been operated on for several years as evident by the excessive amount of vegetation that has overgrown the line. Tie condition is poor and will not currently support the operation of trains. Track Surface is marginal to class 1 standards. Drainage is fair with the majority of the track on an existing fill. Existing rail and fasteners (112/115 RE) are in fair condition.

The following recommendations are based on rehabilitation of this segment of track to FRA class 2 standards for operation of local freight and passenger trains. These recommendations would restore the track to a state maintainable for continued operations.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	480	Each	$130.00	$62,400.00
F&I Ballast	600	Tons	$30.00	$18,000.00
Track Surfacing	2,112	Track Feet	$2.25	$4,752.00
Vegetation Removal	2,112	Track Feet	$10.00	$21,120.00
Cost Per Mile	**$265,680.00**		**Total**	**$106,272.00**

TYPICAL DITCH DETAIL



Remaining Track from the Snohomish River Bridge to Downtown Snohomish

The majority of this track has been removed and or paved over at the city streets. The following assumptions have been made: rehabilitate 1000 track feet; furnish and install 200 track feet with 10' wood ties, new rail and OTM; Furnish and install 146.25 track feet of concrete road crossing panels (3 @ 48.75); furnish and install 800 track feet with 8'6" ties #1 relay rail and OTM. New track construction considers demolition and excavation to sub-grade elevation.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Ties	160	Each	$130.00	$20,800.00
F&I Ballast	200	Tons	$30.00	$6,000.00
Track Surfacing	1000	Track Feet	$2.25	$2,250.00
F&I 10' Wood Tie Track	200	Track Feet	$300.00	$60,000.00
F&I Concrete Grade Crossing	146.25	Track Feet	$300.00	$43,875.00
F&I 8'6" Wood Tie Track	800	Track Feet	$210.00	$168,000.00
Cost Per Mile	**$793,840.00**		**Total**	**$300,925.00**

Construct new track from Snohomish to Everett

Budget pricing considers new CWR and concrete tie track constructed to FRA class V standards. Sub-grade, bridges, culverts, railroad signals and road crossings have not been considered.

Description	Quantity	Unit Measure	Unit Price	Total
F&I Track-CWR & 8'6" Concrete Ties	42,240	Track Feet	$195.00	$8,236,800.00
Cost Per Mile	**$1,029,600.00**		**Total**	**$8,236,800.00**

Clarifications:

- Prevailing Wages have not been considered.
- Operation of a rail flaw detection car is not required by the FRA for class 2 track, however RailWorks recommends this test be performed as part of any rehabilitation project that will result in operation of passenger trains. This service can be provided by RailWorks for $15,000.00 on the segments described herein.
- Railroad signal and crossing warning device upgrade and support have not been considered.
- Culvert and bridge repairs have not been considered.
- Road crossing improvements and upgrades to the public right of way have not been considered.
- Engineering, design, and as-built drawings have not been considered.
- F&I Rail considers new 115lb rail in 80' lengths with new spikes, anchors, joint bars, tie-plugs, bolts, nuts, washers and reuse of existing tie plates.
- F&I Ties considers new grade ties with new spikes, reuse of existing anchors, plates and offsite disposal of removed ties.
- Budget pricing based on average cost per unit with consideration that density of work will vary within each segment.
- Sales and use tax is not included.

Thank you for your consideration, if you have any questions or concerns please contact the undersigned.

Sincerely,

Richard Carney
Senior Project Manager
RailWorks Track Systems, Inc.
274 US Hwy 12
Chehalis, WA 98532
(360) 262-9444

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

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

Doug
mobile: +1.425.891.4223

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

All good questions, see the answers below

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

Joe,

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

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

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

How is this different than the Port building a cruise ship terminal, which supports a amall hand full of companies.
Isn't the Port's mission to help economic development, just like the cruise ship terminal?

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

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

The Port OWNS this asset, and it needs to be maintained beyond what ANY RR can or will do.
The only weird part is that the Port is dealing with a RR that has exclusive rights to works inside the corridor, which the Port surely must recognize with BNSF and UP.
I seem to remember a locomotive parked across a crossing at the Port, which stayed there for an extended period of time.
As I recall, the Port did work on that crossing, and BNSF wanted to remind the Port that BNSF does work inside its corridor, so the locomotive continued to sit there.
Even if the Port wants something done and pays for it, BNSF manages the work.

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

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

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

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

TEMPLES BROUGHT THE SAME POINT UP, AND MOST OTHER STATES HAVE GIFTING LAWS.
THIS IS NOT A GIFT IN ANY MANNER.
THE PORT IS SIMPLY MAINTAINING ITS OWN ASSET, WHICH THE BANKRUPTCY PROCESS DEVALUED BEYOND SUSTAINABLE.
ECRR CAN SUSTAIN MAINTENANCE IF THE TRACK HAS MATERIAL CAPITAL IMPROVEMENTS - $6.2M.
IF THE TRACK IS NOT MAINTAINED, BALLARD TERMINAL RR MAY CEASE OPERATIONS, THEN THE LINE WOULD BE ABANDONED - HOW WOULD THAT LOOK FOR THE PORT?
NO, ABSOLUTELY NO OTHER RR WILL COME IN AND MAKE THIS INVESTMENT FOR THE COUPLE HUNDRED CARS OF FREIGHT AND EXCURSION.
THE TEMPLE'S, IOWA PACIFIC HOLDINGS AND ECRR IS TELLING THE PORT THE SAME STORY, EITHER INVEST IN YOUR INFRASTRUCTURE OR ITS DEAD.

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

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

AGAIN, WE EXPECTED HELP FROM SNOCO ON THIS ISSUE AS WE DON'T HAVE THE EXPERIENCE, BUT WE ARE LEARNING FAST.
THE PORT'S PURCHASING DEPARTMENT WILL HAVE TO APPROVE THE SINGLE SOURCE NATURE OF THIS WORK, WHICH SHOULD NOT BE AN ISSUE AS ECRR IS A RR.
FURTHER, ECRR AS A NON-PROFIT RR, WHICH THE STATE LIKES, WILL MANAGE THE WORK, WHICH ENABLES OTHER USES - FREIGHT, EXCURSION, TRAIL (MAINTENANCE OF WAY ROAD), ETC.
THE STB REVENUE ADEQUACY RATE OF RETURN WILL BE APPLIED TO THE WORK GENERATING A MARGIN, WHICH WILL ENABLE FUTURE MAINTENANCE TO BE CONDUCTED BY ECRR, NOT THE PORT, AND WILL AMOUNT TO ABOUT $1M/YEAR.
THE STB RATE IS ABOUT AS ARM'S LENGTH AS WE CAN ALL GET TO A FAIR FIGURE.
WITHOUT A CAPITAL RESERVE IT WILL BE IMPOSSIBLE TO MAINTAIN THE TRACK GOING FORWARD.

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

Entered on Docket September 27, 2012

Below is the Order of the Court.

Brian D. Lynch
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In Re GNP RLY, INC., Debtor.	Case No. 11-40829-BDL ORDER GRANTING MOTION FOR APPROVAL OF SALE FREE AND CLEAR OF LIENS AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

THIS MATTER came on before the Court upon the Trustee's Motion for Approval of Sale Free and Clear of Liens and Assumption and Assignment of Executory Contracts (the "Motion"). The Motion requests that the Court enter an order authorizing the sale of the Estate's tangible and intangible assets, excluding cash and receivables, and the assumption and assignment of the Debtor's executory contracts and unexpired license agreement pursuant to the terms of a Purchase and Sale Agreement. The Court's oral ruling announced at the hearing is incorporated as findings of fact and conclusions of law pursuant to the provisions of Bankruptcy Rule 7052. It appearing, based on the Motion and the Declaration

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

of Perry A. Stacks, that the sale is in the best interest of the estate and its creditors under 11 U.S.C. §§ 105 and 363 and that the assumption and assignment of the Debtors executory contracts is also in the best interests of the estate and its creditors under 11 U.S.C. § 365, and the Motion was proposed in good faith, that the filed objections were resolved or overruled, and this order has been modified to address the concerns raised by the Port of Seattle, it is hereby

ORDERED that the Trustee is authorized to take any and all action to complete the transaction set forth in the Purchase and Sale Agreement which is attached as Exhibit "A" to the Trustee's Declaration, under terms and conditions substantially similar to those identified in Exhibit "A", without further Court Order; and it is further

ORDERED that the sale of the assets as identified in the Purchase and Sale Agreement shall be free and clear of all liens and encumbrances pursuant to 11 U.S.C. §§ 105 and 363 and that such liens shall attach to the proceeds of sale in the same order, extent, validity and priority as existed on the date of this bankruptcy filing; and it is further

ORDERED that the Trustee's assumption of the Debtor's executory contracts and unexpired license agreements and the assignment of such executory contracts and unexpired license agreements (the "Assumed and Assigned Contracts") to Purchaser is approved pursuant to 11 U.S.C. § 365; and it is further

ORDERED that the Debtor is not required to (i) cure any existing defaults that might exist under or with respect to the Assumed and Assigned Contracts or (ii) pay any cure amounts to the non-Debtor parties thereto as a condition precedent to the assumption and assignment of the Assumed and Assigned Contracts, without prejudice to the rights of the Port of Seattle to require the Purchaser to perform all of the Debtor's obligations under the Assumed and Assigned Contracts between it and the Debtor, including without limitation with respect to any defaults thereunder that might exist prior to the date of this Order; and it is further

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
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1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

ORDERED that nothing in this Order permits, directly or indirectly, the further assignment, in whole or in part, of any of the Assumed and Assigned Contracts and the provisions of the Purchase and Sale Agreement approved by this Order shall be deemed modified to read "Eastside Community Rail LLC, ("Purchaser") on line 2 of the Purchase and Sale Agreement; and it is further

ORDERED that nothing in this Order shall affect or modify the Port of Seattle's rights under and pursuant to the provisions of Section 6.3 of the License Agreement; and it is further

ORDERED that the all the net proceeds shall be held in trust by the Trustee for distribution in accordance with further order of this Court.

/// End of Order///

Presented by

SCHWABE WILLIAMSON & WYATT P.C.

By_____
Richard G. Birinyi, WSBA # 9212
Special Counsel for the Trustee

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of this _5th_ day of September, 2012 between Eastside Community Rail LLC, and/ or assigns, ("Purchaser") and Perry Stacks, ("Seller") solely in his capacity as Chapter 11 Trustee for GNP Rly, Inc., ("GNP) in the pending Chapter 11 bankruptcy, case 11-40829 ("the Bankruptcy").

Seller desires to sell to Purchaser and Purchaser desires to acquire upon the terms and conditions set forth herein the tangible and intangible assets of the business of GNP described below.

Seller desires to assign to Purchaser and Purchaser desires to assume upon the terms and conditions set forth herein, the rights and obligations of GNP pursuant to its executory contracts and unexpired license agreements related to the operation of the business of GNP described below.

In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereto agree:

1. **SALE AND PURCHASE OF ASSETS**. Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell, assign and convey to Purchaser and Purchaser shall purchase from Seller, all of Seller's right, title and interest in and to the "assets," as described below and in Exhibit "A" ("Assets"), free and clear of all liens, claims and encumbrances.

1.1 **Description of Assets.** The "Assets" are all assets in which GNP has an interest and which are used in connection with the operation of GNP Rly, Inc., including but not limited to:

1.1.1 All of GNP's rights and interests under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.2 All of GNP's rights and interests under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc, dated on or about Dec. 18, 2009;

1.1.3 All of GNP's rights and interests under the Running Rights and Railway Operations Agreement dated May 23, 2008, between GNP and Snohomish County;

1.1.4 All of GNP's rights and interests in all real property and easements described in those Quit Claim Deeds recorded under Snohomish County AF 20091218001535, 20091218001536, 20091218001537, 20091218001538, 20091218001539, 20091218001540 and King County AF 200912210438 and 20091220439.

1.1.5 All Intellectual Property controlled by GNP, know-how, goodwill, consultant works and any other property rights, relating to GNP's business, including but not limited to phone numbers and advertising; and

1.1.6 All furniture, equipment, inventory, maps and any other assets owned by GNP, as more particularly described in an attachment to this Agreement. The "Assets" shall not include any cash assets, accounts receivable or any other cash equivalent.

2. **ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LICENSES**. Subject to approval of the Bankruptcy Court, on the terms and subject to the conditions of this Agreement, at Closing, as defined below in ¶ 5.3, Seller shall sell assume and assign to Purchaser and Purchaser shall agree to perform all of Seller's obligations and duties under the executory contracts and unexpired licenses (the "Executory Contracts" necessary to the operation of Seller's buisniess as described below.

2.1 **Description of Contracts.** The "Executory Contracts" are all executory contracts and licenses which GNP requires for the operation of its business and necessary for the operation of GNP, including but not limited to:

2.1.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

2.1.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

3. **Liabilities and Obligations.** Purchaser assumes no liabilities, debts or obligations of GNP of any nature whatsoever, whether absolute, accrued, contingent or otherwise, or whether due or to become due, including any liability for taxes, other than the obligations under the Contracts, which include the following:

3.1 GNP's obligations and duties under the Railroad Right of Way License between Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009

3.2 GNP's obligations and duties under the Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc., dated on or about Dec. 18, 2009.

4. PURCHASE PRICE, EARNEST MONEY

4.1 The purchase price ("Purchase Price") for the Assets shall be One hundred seventy-five thousand and no/100 dollars, ($175,000.00) payable in cash at Closing together with the assumption of liabilities described herein.

4.2 Purchaser shall deposit $10,000.00 (the "Earnest Money") with the Trustee as earnest money on execution of this Agreement. Earnest money shall be credited to the Purchase Price at closing. In the event of default, the Earnest Money shall be applied as described in the sections of this Agreement related to defaults.

4.3 Purchaser shall deposit an additional $90,000.00 (the "Approval Payment") with the Trustee upon Bankruptcy Court approval of this Agreement. The Approval Payment shall be credited to the Purchase Price at closing. In the event of default, the Approval Payment shall be applied as described in the sections of this Agreement related to defaults.

5. COURT APPROVAL AND CLOSING.

5.1 **Court Approval**. The Seller shall promptly seek Court approval of this transaction.

5.2 **Operating Agreement after Court Approval and Prior to Closing**. Purchaser shall operate GNP's railroad line after Court approval of this Agreement until Closing and shall be fully liable for all costs and expenses of such operation during such time and shall be entitled to all revenue generated by the line during such time.

5.3 **Time and Location.** The Closing of the transaction contemplated by this Agreement (the "Closing") shall occur on or before 84 days after the entry of the Bankruptcy Court Order approving this Agreement, which shall in all events occur no later than December 19, 2012 ("Closing Date"). Conveyance, transfer, assignment and delivery of the Assets shall be by Trustee's bill of sale, certificates of transfer, endorsements, assignments and other instruments of transfer and conveyance in such form as Purchaser may request. Seller and Purchaser will from time to time after the Closing make such further conveyances, transfers, assignments and deliveries, and execute such further instruments and documents, as Purchaser deems reasonably necessary in order to effectuate and confirm the sale of the Assets and other transactions contemplated by this Agreement.

5.4 **Possession.** Purchaser shall take possession of the Assets described in paragraph 1.1 immediately upon Closing.

5.5 **Taxes and Fees.** Any transfer, sales, use or other tax payable pursuant to the sale of the Assets shall be paid by Purchaser, and Purchaser shall timely remit such tax to the applicable taxing authorities. Personal property taxes shall be pro-rated at Closing. The parties shall comply with RCW 82.32.140. If Purchaser is assessed any liability for Seller' taxes related to tax periods prior to the closing date which are not timely paid by Seller, Purchaser shall be entitled to either reduce the principal balance of the unpaid purchase price by the amount of such assessment(s) or to submit a claim for an administrative expense in the bankruptcy.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller makes no warranties to Purchaser other than those contained in an Order to be entered in the Bankruptcy approving the sale.

7. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser represents and warrants to Seller that as of Closing:

7.1 **Organization, Good Standing, Power, Etc.** Purchaser, or assigns (a) will be a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the State of Washington; and (b) has all requisite corporate power and authority to execute this Agreement and consummate the transactions contemplated herein.

7.2 **Authorization of Agreement and Enforceability.** Purchaser has taken all necessary and proper action, including approval by its managers or board of directors to authorize and approve this Agreement, its consummation and the performance by Purchaser of all terms and conditions hereof and this Agreement constitutes the valid and binding obligation of Purchaser fully enforceable in accordance with its terms.

7.3 **Effect of Agreement, Consents, Etc.** Other than approval by the Bankruptcy Court, Purchaser shall obtain any consent, authorization or approval or exemption by, or filing with, any governmental or public body or authority is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the taking of any action hereby contemplated.

7.4 **Effect of Agreement.** The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby will not, with or without the giving of notice or the lapse of time, or both: (a) knowingly violate any provision of law, statute, rule or regulation to which Purchaser is subject; (b) knowingly violate any judgment, order, writ or decree of any court, arbitrator or governmental agency applicable to Purchaser; (c) have any effect on any of the permits, licenses, orders or approvals of Purchaser or the ability of Purchaser to make use of such permits, licenses, orders or approvals; or (d) result in the breach of or conflict with any term, covenant, condition or provision of, result in the modification or termination of, constitute a default under, or result in the creation or imposition of, any lien, security interest, charge or encumbrance upon any of the properties or assets of Purchaser pursuant to any charter, bylaw, commitment, contract or other agreement or instrument, to which Purchaser is a party or by which any of its assets or properties is or may be bound or affected or from which Purchaser derives benefit.

7.5 **Disclosure of Financial Information.** Purchaser is relying solely and completely on Purchaser's own investigation of the financial condition of the company. To the extent Seller has provided Purchaser with any financial information, Purchaser expressly disclaims that Purchaser is relying on such information.

8. **INDEMNIFICATION.**

8.1 **Seller Indemnification for Administrative Expenses of Purchaser and "break-up fee".** In the event that after the execution of this offer the Court approves a sale of the assets to anyone other than Purchaser at a higher and better price or orders an auction of the Assets and the Assets are sold to another party for a higher and better offer, or in the event that a plan is confirmed which does not include a sale of the Assets to the Purchaser, and recognizing that the efforts of the Purchaser are beneficial to the

administration of the Estate and are necessary to the preservation of the Estate, the Trustee shall support the application of the Purchaser to the Bankruptcy Court for reimbursement of the Purchaser's actual fees and costs and expenses incurred in the preparation and pursuit of this offer and, in addition to its actual fees and costs, the Purchaser shall be entitled, subject to Court approval, to a "break-up fee" of ten percent of the eventual purchase price paid by such third party, not to exceed $28,000.00 and not less than $18,000.00. In addition, Seller shall, in applying to the Court to approve his sale to Purchaser, seek Court approval of a minimum overbid of $35,000 in excess of the price to be paid by Purchaser under this Agreement. Notwithstanding the foregoing, however, the Purchaser shall not be entitled to any reimbursement for its costs of operating the Debtor's line pursuant to the provisions of ¶ 5.2

9. **COVENANTS OF SELLER AND PURCHASER**.

9.1 **Access.** Seller shall give to Purchaser and its representatives, from and after the date of this Agreement, such access to the premises, employees, agents and consultants of Seller as is reasonable to enable Purchaser to inspect and evaluate the Seller's assets and the Seller will furnish all information reasonably requested by Purchaser.

10. GENERAL.

10.1 **Survival.** The representations, warranties, covenants and agreements set forth herein and the Disclosure Schedules shall survive Closing.

10.2 **Expenses, Etc.** Except as otherwise provided herein, whether or not the transactions contemplated by this agreement are consummated, each party hereto shall pay its own expenses and the fees and expenses of its counsel and accountants and other experts.

10.3 **Assignment.** Purchaser may not assign its rights under this Agreement without the prior written consent of the other parties hereto.

10.4 **Waivers.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

10.5 **Binding Effect; Benefits.** This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective permitted heirs, personal representatives, successors and assigns.

10.6 **Notices.** All notices, requests, demands and other communications which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or transmitted by facsimile or on receipt after dispatch by certified or registered first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made.

10.7 **Further Assurances.** Seller shall, from time to time, at the request of Purchaser, and without further consideration, execute and deliver such other instruments

and take such other actions as may be required to confer to Purchaser and its assignees the benefits contemplated by this Agreement.

10.8 **Entire Agreement; Amendment.** This Agreement (including the Exhibits and Disclosure Schedules hereto) and all other documents and agreements executed as of Closing constitute the entire agreement and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof and may not be amended, modified or terminated unless in a written instrument executed by the party or parties sought to be bound.

10.9 **Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

10.10 **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section, If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

10.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.12 **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision give any third party any right of subrogation or action against any party to this Agreement.

10.13 **Court Approval.** This offer is subject to the approval of the Bankruptcy Court.

10.14 **Time of the Essence/ Immediate approval required.** Purchaser's offer is dependent on the ability to close within thirty days (30) and the preservation of the going concern value of the business of GNP Rly, Inc. The time required for the approval of a disclosure statement and Plan of reorganization could result in the failure of the current business of Seller, rendering the assets of little value to Purchaser. Accordingly, Seller shall exercise his best efforts to obtain approval of this Agreement by motion rather than through the plan process. If Seller is unable to obtain approval on Motion within thirty days (30) of execution, Purchaser may withdraw this offer.

11. **DEFAULT AND ATTORNEY'S FEE**.

11.1 **Buyer's default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, Seller may terminate this Agreement and keep as liquidated damages the Earnest Money and the Approval Payment as the sole and exclusive remedy available to Seller for such failure.

11.2 **Seller's default.** In the event Seller fails, without legal excuse, to complete the sale of the Property, then Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover

any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

GNP RLY, INC.
a corporation

By_____

Perry Stacks, Chapter 11 Trustee

PURCHASER:

EASTSIDE COMMUNITY RAIL, LLC

By_____

Douglas Engle, Manager

ASSET LIST

THE ASSETS BEING ACQUIRED INCLUDE ALL OF THE NON-CASH ASSETS IN WHICHGNP RLY, INC. HAS AN INTEREST, EXCEPT ACCOUNTS, INCLUDING BUT NOT LIMITED TO:

CAR HIRE AGREEMENTS
INTERCHANGE AGREEMENT PER AAR RULES
OFFICE EQUIPMENT
RAILWAY SMALL TOOLS AND SAFETY SUPPLIES
OTHER TRACK MATERIAL
HYRAIL PICK-UP TRUCK
MAPS AND SOURCE CONTACT INFORMATION
COMMISSIONED AND OTHER DRAWINGS
CONSULTING WORKS, NOTES, RELATED CONTACTS AND ELECTRONIC FILES
ALL DOCUMENTS, NOTES, CORRESPONDENCE, REPORTS, FILES AND ANY OTHER FORM OF COMMUNICATIONS, INCLUDING ELECTRONIC MEDIA, PREPARED FOR, BY OR ON BEHALF OF OR RECEIVED BY THE DEBTOR
OPERATIONS MANUALS AND REFERENCE MATERIALS

Gmail by Google

Les Rubstello <psakayk@gmail.com>

Fwd: Woodinville SR-202 Bridge Addition

1 message

Doug Engle <Doug.Engle@escrail.org> Thu, Mar 28, 2013 at 4:18 PM
To: Les Rubstello <psakayk@gmail.com>

Just keeping you in the loop...
We really do need this to happen sooner than later.

Thank you for your continued support!

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Doug Engle <Doug.Engle@EsCRail.org>
Subject: Re: Woodinville SR-202 Bridge Addition
Date: 28 March 2013 3:03:38 PM PDT
To: Richard Leahy <RichardL@ci.woodinville.wa.us>
Cc: Joe McWilliams <McWilliams.J@portseattle.org>
Bcc: Kathy Cox <kathy.cox@escrail.org>, Ernie Wilson <ernie.wilson@escrail.org>

Hi Rich,

I spoke with Joe today about this, and we'd like to see something from the city expressing their interest in making this deal happen.
We need the specific land description and perhaps a letter of intent to get the ball moving.
The sooner this can happen, the better it will be at our end.

Thank you kindly,

Doug
mobile: +1.425.891.4223

PENGAD 800-631-6989 EXHIBIT 34 5-22-13 ENGLE

On 21 Mar 13, at 9:14 AM, Doug Engle <doug.engle@escrail.org> wrote:

Joe/Rich,

EsCR has promoted an option for Woodinville to acquire the land in fee and freight easement to advance its bridge construction for $1 million, split equally between the Port and EsCR.

I am not sure where we are in coming to agreement, although it is in all of our best interests to get this matter resolved sooner than later.
EsCR would like to conclude this matter as we have several other initiatives requiring our attention.

Please advise...

To: 'Doug.Engle@EsCRail.org'
Cc: Kurt Triplett; Phyllis Blower; David Godfrey; Pam Bissonnette
Subject: FW: EsCR - Cross Kirkland Corridor

Doug,

Thank you for spending time with us this morning to understand Kirkland's Plans for the CKC and provide us your concepts. I have incorporated answers to your questions and requests for information below. Please let me know if you need anything further.

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Monday, March 11, 2013 7:44 AM
To: Kurt Triplett
Subject: EsCR - Cross Kirkland Corridor

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
   - The City's adopted interest statement for the CKC can be found on the City's website under the Cross Kirkland Corridor at the following address: http://www.kirklandwa.gov/Assets/Public+Works/Public+Works+PDFs/Transportation/Final+Interest+Statement+Version+2.pdf
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
   - Current planned expenditure for all work associated with the preparation, design, and construction of the Interim Trail is $3.6M, and $199,000 for 2013-2014 maintenance.
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
   - Plans & specifications for preparation for the Interim Trail are currently on Kirkland's website; design of the Interim trail is in progress and not available for a several months; the rest will be developed as part of the CKC Master Plan; a copy of the CKC Master Plan RFP is attached
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
   - See answer to #3
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
   - See answer to #3
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
   - See answer to #2; grants limited to the preparation, design & construction of the Interim Trail.
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
   - The Interim Trail will be constructed by Kirkland for which it has grants and local funding; partnering with ECR is not part of Kirkland's plan at this time but there may be potential at a later time if ECR is successful in the north
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.
   - Bellevue in progress of providing; as of this date we don't have these requirements.

We have also provided your concept and costs to our design consultant to analyze and compare to our current plan, timeline and budget for the corridor. Please contact me if you have any further questions.
Pam Bissonnette

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

<RFQ.docx>

www.EsCRail.org

EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

To: Eastside TRailway Alliance

Cc: King County Council & City of Kirkland

Re: Eastside Rail Corridor – Kirkland Rail and Trail – **Trail Specification**

First order estimate of $2.87 million ($587k/mile).

Eastside Community Rail (EsCR) and Wolford Demolition and Trucking have been estimating the cost of construction of a new "primarily" 15' "base trail" 15' from the existing track with Eastside Freight Service acting as the authorized railroad.

> Length 4.86 miles, which excludes portions north of NE 124th St
> Trail Clearance: 20' =>0.05 Ac./sta.
> Trail Bed: crushed stone base course – 4" deep 15'-0" =>18.3 cy/sta.
> Trail Surface: crushed stone top course – 2" deep, 12'-0" =>8.9 cy/sta.

"Primarily," because corridor "pinch points" must be addressed in future development efforts of the Cross Kirkland Connector. The initial effort can be quickly constructed and utilized by the public by year-end 2014 – with city cooperation.

A "base trail" is the maintenance of way (MOW) road substructure that can either be immediately paved or paved with gravel added to the shoulders for walking, running or horse riding. Technically, the base trail is a road for use by the railroad in maintaining the right of way when needed.

Railroads are inspected monthly from the track by both rail-mounted vehicles and simply walking for visual inspection of the track structure. Unless there is an urgent need, maintenance work is scheduled weeks in advance.

Twenty feet of clearing is proposed as typical, as it is the most cost effective overall width for heavy equipment to develop the MOW road.

Although the minimum distance from the centerline of the track is 10'-6", EsCR proposes a standard separation of 15' and only utilize the minimum distance initially at pinch points. In either case, a drainage ditch will be constructed between the two.

The MOW road will undulate up and down along the track depending upon terrain.

EsCR believes that for two to four train movements a day at 15-20 MPH, a separating drainage ditch, and elevation differences, generally a fence between the track and MOW

road is not required. However, in segments where the trail is significantly above the railroad, a fence may be appropriate.

All trail crossings of the track will be perpendicular and protected by fencing, signage and other appropriate means as provided by the trail authority.

Grade crossings at streets are the city's responsibility.

Bridges are excluded from this estimate.

The public will provide insurance for the use of the MOW road as a trail.

The public will pay the railroad for maintenance of MOW road costs.

PSE utility needs have not been defined, yet are typically easily and willingly accommodated on either side of the track structure.



EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

22 February 2013

To: Eastside TRailway Alliance
Kirkland City Council

Cc: King County Council

Re: Eastside Rail Corridor – Cross Kirkland Corridor

We applaud Kirkland's vision in providing for dual use of the Eastside Rail Corridor and taking their regional responsibility seriously. We believe we have a win-win solution to provide near-term benefits while preserving the infrastructure for mid-term and long-term use for the greater good for the greatest number. Eastside Community Rail (EsCR) and Wolford Demolition and Trucking has a first cost estimate of constructing primarily 15' base trail 15' from the existing track as an alternative to Kirkland removing the track structure for use as an interim 8' gravel trail. Specifications are included in the attached first-order estimate of $2.9 million. We expect to have a second-order estimate, which we would like to discus with the city of Kirkland the week of March 8th.

Through our rail operator economies, we can provide a wider trail for less cost while preserving the legacy of Kirkland's history of rail. With this trail building solution there will not be any wasted in ground expenses without planning for the future. We can maximize tax payer dollars with using the $3.6 million already secured, including CMAQ funds, to provide the Cross Kirkland Corridor trail and keep the rails in place for potential near-term use by an excursion train and for use for future generations.

Our first-order estimate to utilize active rail to build a trail alongside the track structure is significantly less than Kirkland's budget. Thus, Kirkland will likely have several hundred thousand dollars still available for the trail amenities it wants. We would like to work cooperatively with Kirkland to ensure we meet the city's needs and provide for the best community asset for the state funds it received.

In summary, EsCR wants to provide Kirkland a non-profit service to more quickly utilize the corridor for rail and trail.

Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail

Kurt Triplett

From:	Doug Engle <Doug.Engle@EsCRail.org>
Sent:	Monday, March 11, 2013 7:44 AM
To:	Kurt Triplett
Subject:	EsCR - Cross Kirkland Corridor
Attachments:	EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; STB Revenue Adequacy 9Oct12.pdf

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

19 February 2013

Richard Leahy
Woodinville City Manager

Cc: Woodinville City Council

Re: Eastside Community Rail – Business Plan

1. Business Plan

This past December, Eastside Community Rail (EsCR) acquired the 14.45-mile freight operating easement from the federal Bankruptcy Court for the railroad between Woodinville and Snohomish, WA. EsCR will be operated as a non-profit serving for profit entities utilizing the corridor.

Three core values of transparency, integrity and accountability will guide EsCR in its planning, agreements and operations. EsCR has adopted the mission to help maximize the utilization and overall public benefit of the Eastside Rail Corridor (ERC). Our vision for the rail corridor is for multiple uses of rail, trail, utilities and other public benefits.

We intend on using the Eastside TRailway Alliance as a public advisory board for strategic input. EsCR will work in full cooperation with public entities along the rail corridor. We have also worked diligently to bring together a solid business executive board of directors representing fundamental areas of business.

EsCR creates value primarily by maintaining the operating line right of way (ROW) for rail operations such as freight, excursion and potentially future commuter use. For managing the maintenance of way (MOW), agreements and extensions, EsCR will collect a percentage of gross revenues to cover its direct costs and overhead. This frees the users of the rail corridor to focus on their main businesses. Best of breed partners will conduct the rail structure, bridge and crossing works. Eastside Community Rail would like to partner with the communities along the corridor to provide a MOW road that could be used for a public trail system that connects to a labyrinth of trails.

The main market opportunity lies first in re-establishing an excursion service between downtown Woodinville and Snohomish, which successfully operated on the line for 14 years and only stopped service when I-405 was widened, a bridge structure removed and BNSF sold the ROW to the Port of Seattle. Given the track is publically rehabilitated, the Bounty of Washington Tasting Train will represent more than 90 percent of EsCR's income.

Partnering with a developer to build a hotel in Woodinville next to the excursion platform is a high priority to enhance the experience. It is important that the railroad own the land to have input on design, kitchen capacity, guest waiting areas, a gift shop, other amenities and to fit within the long-term vision of the city.

Secondarily, freight traffic has waned from over 300 cars per year three years ago to just over 200, and car movements need to be bolstered to at least 400 annually. This can be accomplished with marketing and extensions to the operating line. EsCR has an operating agreement with Eastside Freight Service operated by Ballard Terminal Railroad, which has operated on the line for more than three years. Freight operations will help cover maintenance of way costs for the excursion operation.

Strategically, long-term extensions to the corridor are contemplated:

- Re-establish 3-miles of service from the Woodinville wye to Ste San Michelle, the heart of the Wine District
- In the north, develop a new 8-miles connection to Everett from Snohomish, which provides access to Amtrak service and the Canadian market
- Re-establish 12-miles of service from Woodinville to north Bellevue with additional access to the Seattle market and cruise ship passengers

Presently, there are public efforts under consideration to utilize a portion of the corridor for a public trail. EsCR supports this and is willing to construct a MOW road for such a use. Current estimates indicate that this can be done at considerable savings to the public. MOW costs for the road will be based on the width being utilized by the trail, excluding track structure costs.

There have been studies completed by Sound Transit and other groups affirming the viability of commuter rail on the line. This may be possible in the long-term in a public private partnership arrangement with EsCR. It is ECR's policy is to support, but not lead, community efforts to use the corridor for regional rail transit that is consistent with other public works.

Transit also opens the door to transit oriented developments along the ROW.

Financing

No private company will invest in publically owned rail infrastructure because it cannot be used as collateral to secure the investment. Until the portion of track owned by the Port of Seattle is upgraded, passenger service is not possible. The previous owners of the Spirit of Washington Dinner Train and Iowa Pacific Holdings concur on this point.

Therefore, EsCR and interested local governments are seeking $6.26 million from the state of Washington to improve the railroad. If this funding is secured, EsCR will bear the ongoing cost of maintaining the railroad, which is about $1.1 million annually.

Once the public infrastructure improvements are secured;

- the Port of Seattle will affirm a long-term agreement for excursion service,

- EsCR will secure $3 million in private investment,
- EsCR will secure a Small Business Administration loan of $3.5M, and
- EsCR will secure a $3.5M motive power and rolling stock capital lease.

Importantly, no EsCR financing activities can be completed until the public appropriation commitments have been achieved. This will be an iterative process over 90-days following public funding. Finally, detailed plans, drawings, etc. for capital assets will not be completed until track maintenance has been committed to.

2. Excursion Train Operations

The excursion train business is not a pipe dream or just any private venture, but based on a highly successful run that brought economic vitality to the region.

The Spirit of Washington Dinner Train ran on the Eastside Rail Corridor for 14 years with annual rate of 100,000 passengers, $10 million in revenue and created jobs and tourism business from Renton to Woodinville. The only reason they stopped running was due to the reconfiguration of I405 and thus eliminating their ability to get to their station in Renton. The Dinner Train was a train ride from Renton to Woodinville with a brief visit to Columbia Winery with outside catered meals with a few selections of wine offered on the train.

After dozens of interviews with stakeholders and analyzing the current state of dining, the Bounty of Washington: Tasting Train concept was formed. Localism is not a fad but a strong trend. Farmer's market are on an annual 10% growth trend, small plates offering at fine dining restaurants are the rage, and wine, beer, and other drinks tastings are popular. Thus, the Tasting train is flipping the Dinner train concept. Passengers will experience the best of what Washington offers, fresh seafood, grass-fed meat, and award-winning wines and beer on the train. With about 1000 wineries, breweries, and distilleries, it will be easy to rotate the flavors and their makers. After analyzing all of the excursion trains nationwide, we developed an algorithm for our pricing. We will price the experience from $55 to $125 depending on the beverage and potential guest chef. We have had conversations with some of the award-winning chefs in the area and they are eager to participate. We have estimated an average price of $85 and growing to a bit more than 100,000 passengers which is in line with previous Dinner Train results.

We will have additional revenue streams of promotional items and sponsorships. We will offer sponsorships of train car names along with customer take-home items such as the glasses. Certain ingredient items such as Washington Apples or Washington Pork will also be potential sponsors. We will be able to sell wine and other featured food items initially on board the train and later at our train stations.

Operationally we assumed a mid-range staffing level at one staff person per 16 people. Since service will be staggered per car, we can use some staff as expeditors to ensure

prompt service and reduce staffing needs. The participating wineries and breweries will provide staff for educational purposes that will move to each car. Other volunteers can provide historical and regional overviews of the area. We will start at the wine-focused Woodinville with a stop in the quaint beautiful river view town of Snohomish and back to Woodinville along a beautiful valley. Depending on the winery partner, winery tours will be included. We will have partnerships for winery tours for our guests who want to have an entire day of exploration. In addition, we plan to have a mid-week Tulalip special where guests will bus from the top-rated Tulalip Resort to Snohomish and make the trip to Woodinville.

Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone. Since the Tasting Train experience will rotate featured beverages and food, we expect locals to bring family and friends more often to enjoy their favorite wine or dining.

The rolling stock of seven cars, plus a baggage car, will be designed with a comfortable Northwest elegance more like a fine dining contemporary restaurant in Seattle rather than a stuffy old-fashioned look. We will mix the historic lore of train travel with contemporary style for an experience they will never forget on the Bounty of Washington: Tasting Train.

3. Train Movements

Currently, freight operates on the line two days per week in off-commuter hours. This is not expected to change at double the volumes in the future where trains may consist of ten cars. Presently, Boise Cascade and Spectrum Glass are the two biggest freight customers on the line. There is more freight business available if we can operate on the two miles of track down SR-202 toward Redmond that are currently not accessible or included. Eastside Freight Service has operated on the line for the past three years and is expected to continue into the future.

The Bounty of Washington excursion train is expected to operate year-round, excluding January when annual car maintenance will be conducted. The expected 400 annual trains will service both public (70%) and private passengers (30%), with overall volumes reaching 100,000+. The peak period will be the summer tourist season with expectations for bountiful holiday operations. The schedule will be oriented around evenings and two trips on weekends. Additional mid-week day trips may be developed to service Snohomish to Woodinville passengers seeking to spend the afternoon experiencing local Woodinville wines, brews and foods. Although the exact times have not been determined, trains are likely to start after 6:00 PM typically returning two hours later.

The freight operator, Eastside Freight Service, will continue to provide track clearances and train crews.

4. Railcar Storage and Maintenance

Freight operations will be very similar to today, and the addition of excursion service will require nightly railcar inspections. This will be conducted utilizing a 200' maintenance shop with a 100' pit in the area north of the wye near the warehouses.

Presently, the Eastside Freight Service locomotive and caboose are stored in a fenced "pen" at the wye. This will be moved provided access to the Wine District and/or Bellevue. The primary maintenance and railcar storage area will be in a fenced area at or very near the maintenance shop.

The exact location will be determined once Woodinville's SR-202 bridge planning is completed.

5. Platforms and Parking

Two platform types are being considered – raised wooden platform or stone/concrete pavers. The 900' platform will be on the north side of the tracks in Woodinville across from the fire station and post office, south of the NE 178th PL crossing.

A partially covered area will be constructed, including a portable ADA loading lift.

Paved diagonal parking for roughly 250 cars will be constructed inside the right of way with access points to the road every 100 yards. A barrier will be created between the parking and road to facilitate this configuration. Lighting and video camera's will also be installed.

We are hopeful that Snohomish and Woodinville will participate in the construction of platforms in both communities as public assets that reflect the experience they want for their visitors. Diverse public agency involvement is critical to securing future federal funding to extend the rail corridor and add a public trail alongside the track.

6. Capital Facilities

Snohomish Station

Initially, Snohomish Station will require a platform, covered areas, and ADA lift. In the future, restrooms and an enclosed visitor center will enhance the experience.

Wolford Spur

A new 1,000' spur will be developed into the Wolford Demolition and Trucking site in Maltby to support their business, process potential construction spoils business and initiate new trans-load freight business.

Woodinville Station

Initially, Snohomish Station will required parking, a platform, covered areas, and ADA lift. In the future, either a hotel or improvements similar to Snohomish will be required.

Woodinville Hotel

There are indications that the city has the need for at least one new hotel. EsCR has identified an opportunity to extend a hotel's normal business with expansions to help service the excursion train. These include

- Additional kitchen capacity
- Expanded waiting and conference area
- Excursion gift shop
- Coffee bar
- Restrooms
- Historical information
- Ticketing

Beyond the excursion train, the Woodinville Hotel will service Wine District tourism. When operating line extensions are completed, particularly to Everett and Amtrak, package deals will improve market awareness occupancy year around.

Maintenance Shop

A 200' maintenance facility is required to service the motive power and rolling stock. The site location will determine the maximum width inside the ROW. Long-term, an additional 100' of enclosed space may be added to facilitate nightly cleaning of equipment before the inspections.

The construction type will be 40' shipping containers along both sides, with a white "vinyl" roof over an arched metal structure. The inexpensive containers will be painted and provide secure storage of heavy tools, parts and equipment. The roof will be affixed to the containers.

A 100' heated concrete inspection pit will be installed with stair access at either end. Long-term, track mounted heavy lift equipment may be installed over the pit.

A 100' railcar wash area will be enclosed after the inspection pit with an oil and water separator.

Business Office

Initially, the current wye "shack" site will be maintained, painted and covered areas extended for MOW operations.

A new 20' x 35' multi-level business office will be built next to the shack for general, administrative, sales and marketing purposes. A covered watchman's look-out for the wye will be constructed atop this building. Long-term, the Woodinville Hotel may be the better site for these business activities, nearer the heart of the city and its business services.

7. Possible Construction Spoils

There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking.

The most likely train configuration is 17 sidedump cars moving twice a day, once in and once out, during peak construction periods. Such operations would be conducted around primary commuter hours. Train operations would be suspended when construction projects would not need the service.

8. Other Positive Civic Impacts

EsCR is willing to work with Woodinville to develop a new 134th Ave NE crossing and orchestrate train movements to minimize traffic congestion.

Overflow parking for civic events could be constructed on the south side of the tracks near 132nd Ave NE in Woodinville.

Park and ride transit parking should be explored at the Woodinville platform site since there may be only nominal conflict between the two needs.

A MOW road connecting the wye area to NE Woodinville should be explored for construction in the near term. Wolford has nearly completed one mile of base trail southwest of Maltby, which would make connecting to the Burke-Gilman trail available to more people.

Previously, Woodinville has expressed interest in widening the 131st Ave NE railroad bridge, which can be orchestrated with EsCR to consider trail and potential future track requirements.

Eastside Community Rail and the Bounty of Washington: Tasting Train provide these benefits;

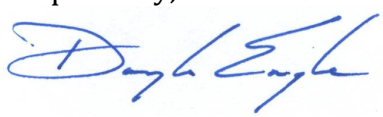
- Enable a rolling billboard for Washington agriculture and viticulture by celebrating local food and beverages
- Showcase the beautiful valley, Snohomish River bridge and historic rail route
- Direct sales tax revenue of approximately $1 million a year (based on $10 million of annual revenue from Dinner train)
- Direct excursion train jobs of 80 and trade jobs of 240
- Indirect jobs and economic development (former excursion train brought $140 million in tourism dollars) Generate awareness of the benefits of Woodinville,

Snohomish and the entire Eastside. The Spirit of Washington: Dinner Train sparked the awareness of Woodinville as a wine district. The Bounty of Washington: Tasting Train can be the catalyst of awareness of King and Snohomish counties as a tourism and livable destination

- Remove trucks from the highways which greatly reduces roadway wear and tear, toxic pollution, and traffic congestion
- Allows for future passenger rail service
- Potential redundancy to the slide-prone BNSF/Sounder route
- ECR will maintain the track for the next 35 years
- Protects the Eastside Rail Corridor assets while allowing the infrastructure to be productive now. The track structure will be maintained for more cost effective upgrades in the future.

In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

Respectfully,



Douglas Engle
Managing Director
Eastside Community Rail

Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $120 including coach service

Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting

5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: $110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: $75

Saturday and Sunday Afternoon (dependent on demand in Late fall to Early Spring, every weekend Late Spring to Early Fall)

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: $65, extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: $85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

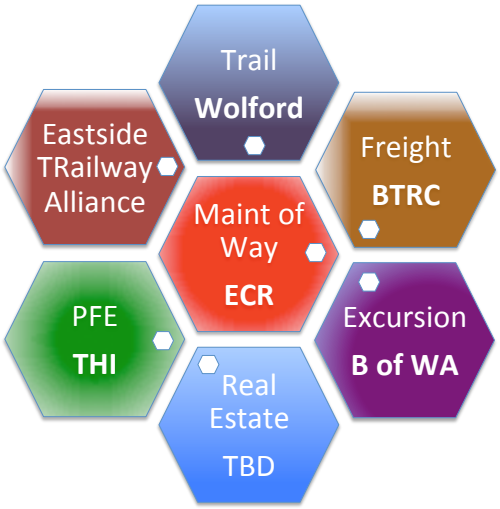
7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

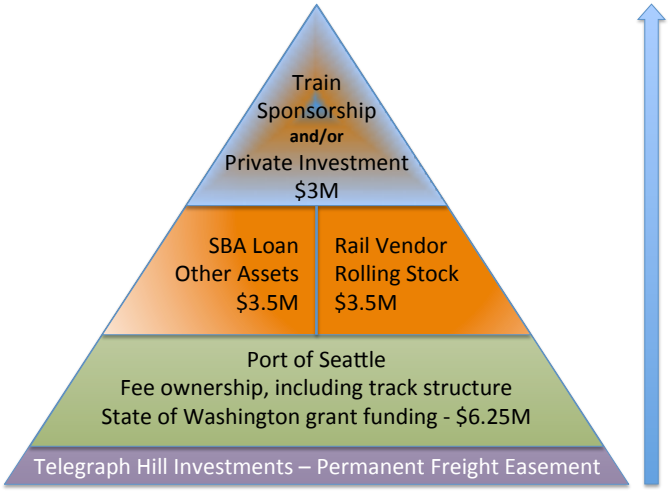
9:30 p.m. Arrive Woodinville

Base price: $85

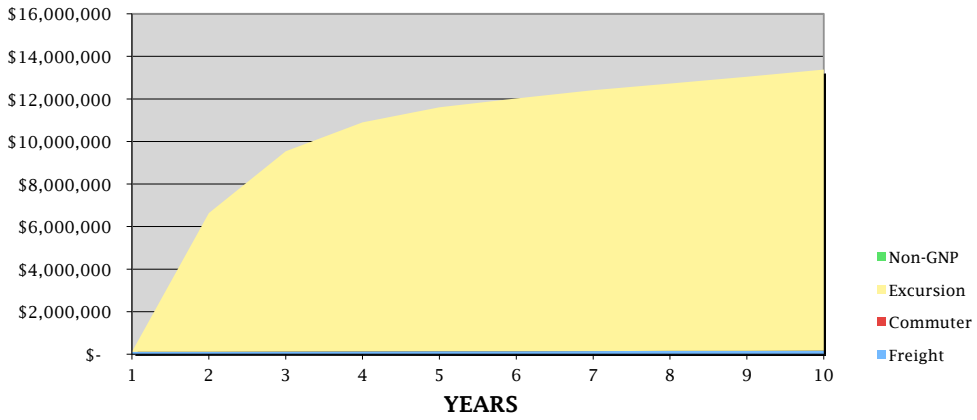
Organization



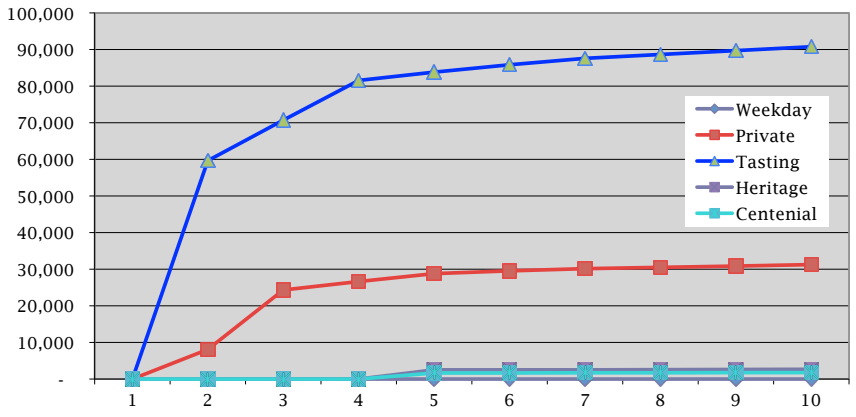
Financing Approach



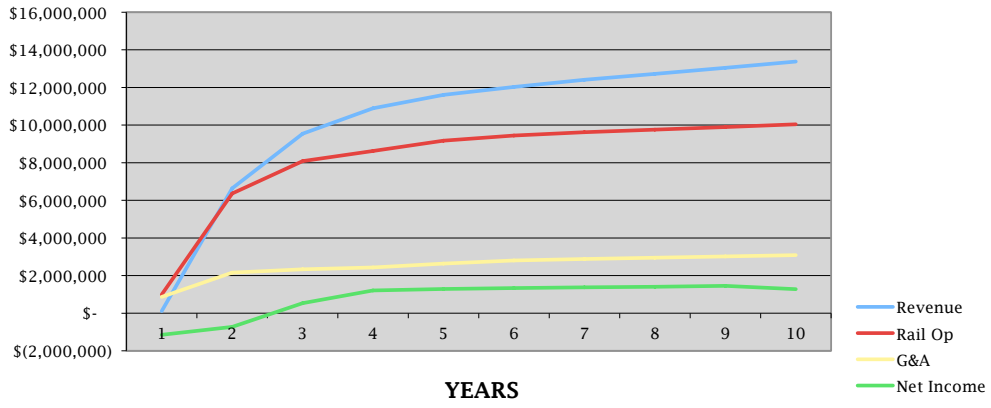
REVENUE



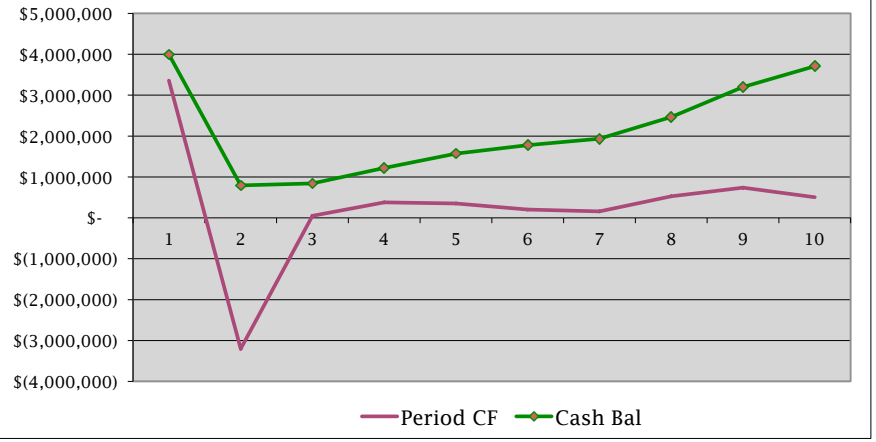
Daily Ridership



INCOME STATEMENT



Cash and Equivalents



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			
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
INITIAL OPERATIONS - Existing Track, Inspections & Planning, Excursion MP&RS
Round 1

Maintenance of Way	Unit	Track Miles / Description	15.6 / Quantity	Cost	28-Jan-13 Total
TOTAL RAIL				$ 4,400,353	
TOTAL SWITCHES				$ 230,000	
TOTAL SPURS & SIDINGS				$ 307,351	
TOTAL SIGNAL SYSTEMS COSTS		10		$ 227,368	
TOTAL MOW Road Planning				$ 256,740	
TOTAL Maintenance of Way					$ 5,421,812
Buildings, Bridges & Facilities (BB&F)					
TOTAL BRIDGES		11		$ 359,958	
TOTAL STATIONS		2		$ 1,290,626	
TOTAL MAINT. OF EQUIP. SHOP				$ 2,028,470	
TOTAL OFFICE				$ 318,308	
TOTAL Buildings, Bridges & Facilities (BB&F)					$ 3,997,362
Motive Power & Rolling Stock and MOW Vehicles					
Locomotive Startup Qty		2		$ 867,100	
Baggage Car & HEP Qty		2		$ 262,500	
Excursion Coach Startup Qty		7		$ 2,187,500	
Total Main of Way Equip & Vehicles		4		$ 219,650	
TOTAL MP&RS and MOW Vehicles					$ 3,536,750
TOTAL Business & Admin Assets					$ 351,095
TOTAL FIXED ASSETS - Round 1					**$ 13,307,019**

Total Assets		Life (yrs)		
MOW road (trail)	1.9%	10	$	256,740
Track	38.8%	35	$	5,165,072
BB&F	30.0%	30	$	3,997,362
Motive Power & Rolling Stock	26.6%	15	$	3,536,750
Business CapEx	2.6%	10	$	351,095
	100.0%	27.0	$	13,307,019

ANNUAL Fixed Asset Maintenance (yrs 1-3)		
TOTAL ANNUAL TRACK MAINT.	$	778,145
TOTAL ANNUAL BRIDGE MAINTENANCE	$	219,600
TOTAL FACILITIES MAINTENANCE	$	98,344
TOTAL ANNUAL MAINTENANCE		**$ 1,096,089**

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%	14.3%	6.5%	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%	6.5%	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%	94.5%	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%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

Eastside Community Rail
INCOME STATEMENT
11-Feb-13

Business Case	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%	3.6%	3.2%	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**
		55.6%	53.4%	50.3%	50.0%	49.1%	48.2%	47.5%	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**
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
per mile	$ 2,808	$ 19,293	$ 21,268	$ 21,268	$ 21,268	$ 21,555	$ 21,847	$ 22,145	$ 22,449	$ 22,759
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		32.5%	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
% of Revenue		4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%
Other (Income), Exp & Taxes										
Net Income 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**	**$ 1,277,020**
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	9.5%
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

Eastside Community Rail

Monthly Percentage of Revenue

As of 2013 February 11

Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
0.1%	4.8%	5.9%	7.4%	10.3%	11.3%	11.3%	11.3%	9.3%	7.3%	8.2%	10.2%



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.

	Cost of Capital	Weight	**Weighted Average**
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%)

ENGINEERS
ARCHITECTS
LANDSCAPE ARCHITECTS
SURVEYORS

KPG
TACOMA · SEATTLE

Job No. 12081	CKC Trail - Adjacent Maintenance Road Option	By	EEO	Chkd By	
Planning Estimate	City of Kirkland	Date	3/14/2013	Date	

CKC Trail - Adjacent Maintenance Road Option - Project Cost Estimate

Item #	Item	Quantity	Unit	Unit Price	Total Cost
1	Minor Change	1	FA	$25,000	$25,000
2	Resolution of Utility Conflicts	1	LS	$20,000	$20,000
3	Mobilization	1	LS	$699,200	$699,200
4	Project Temporary Traffic Control	1	LS	$349,600	$349,600
5	Erosion/Water Pollution Control	1	LS	$175,000	$175,000
6	Wetland Mitigation	1	LS	$300,000	$300,000
7	Clearing and Grubbing	1	LS	$112,000	$112,000
8	Excavation	26800	CY	$20	$536,000
9	Backfill	84000	TON	$15	$1,260,000
9	CSBC	10400	TON	$20	$208,000
10	CSTC	4200	TON	$20	$84,000
11	42" Chain Link Fencing	42000	LF	$12	$504,000
12	Road Crossings	1	LS	$500,000	$500,000
13	Relocation of RR Warning Signs & Util Bldgs @ Crossings	1	LS	$37,000	$37,000
14	Bollards	34	EA	$700	$23,800
15	Pedestrian Bridges	4000	SF	$350	$1,400,000
16	Unsuitable Foundation Excavation	560	CY	$40	$22,400
17	MSE Walls	86200	SF	$35	$3,017,000
18	Stream Crossings-Box Culvert (installed)	1500	LF	$400	$600,000
19	Addt'l Culverts to be extended (installed)	600	LF	$150	$90,000

Subtotal - Construction Cost	$9,963,000
Contingency	$2,988,900
Total Construction Cost	$12,951,900
Engineering	$1,554,300
Environmental/Permitting	$233,200
Construction Management	$1,942,800
City Administration	$647,600
TOTAL PROJECT COST	$17,329,800

ORIGINAL

CITY OF KIRKLAND
PUBLIC WORKS CONTRACT
Cross Kirkland Corridor Rail Removal Project
JOB NO. 15-13-PW

This agreement is made and entered into this 26TH day of APRIL, 2013, by and between **A&K Railroad Materials, Inc.,** hereinafter called the "Contractor" and the City of Kirkland, hereinafter called the "Owner."

WITNESSETH:

Whereas, pursuant to the invitation of the Owner extended through an officially published "Invitation to Bid," the Contractor did, in accordance therewith, file with the Owner a proposal containing an offer which was invited by said notice, and

Whereas, the Owner has heretofore determined that said offer was the lowest responsible bid submitted; now, therefore, it is agreed:

Section 1. That Contractor shall comply in every way with the requirements of those certain specifications entitled: "Cross Kirkland Corridor Rail Removal Project, JOB NO. 15-13-PW"

The further terms, conditions and covenants of the contract are set forth in the following contract documents which are hereby made a part of this agreement by actual attachment or by this reference thereto as follows:

A. Any Invitation To Bid, as published by the Owner.

B. Any Specifications prepared for this project by the Owner and named above by title.

C. Any detailed Plans listed and described in said Specifications, together with those which may be issued as supplements thereof.

D. The bid proposals submitted by the Contractor as to those items and/or alternatives accepted by the Owner.

E. Any change orders, additions or deletions, if any, issued by the Owner.

Section 2. In consideration of faithful compliance with the terms and conditions of this agreement, whether set forth herein or incorporated by reference, the Owner shall pay to the Contractor, at the times and in the manner provided in said specifications, the total sum of **($473,419.00) Four Hundred Seventy Three Thousand Four Hundred Nineteen 00/100** dollars which sum is subject, however, to increase or decrease in such proportion as the quantities named in said proposal are so changed, all as in said specifications and proposal provided.

In witness whereof, said Contractor and said Owner have caused this agreement to be executed on the day and year first written above.

A&K RAILROAD MATERIALS, INC.
CONTRACTOR (Firm Name)

Signature of authorized officer

Rocky Smith, Vice President Field Operations
Name and title of officer (print or type)

CC AKRAIM*195LD
WA Contractor's Registration Number

262,986-00
Industrial Insurance Account Number

409 023 557
Uniform Business Identification (UBI) Number

(801) 974-5484
Phone Number

(801) 956-0873
Fax Number

STATE OF ~~WASHINGTON~~ UTAH)
) SS
COUNTY OF ~~KING~~ Salt Lake)

On this day personally appeared before me Rocky Smith, VP Field Operations, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 29th day of March, 2013.

Notary Public in and for the
State of Utah, residing in

Salt Lake County

CITY OF KIRKLAND

BY: Marilynne Beard
Marilynne Beard, Assistant City Manager

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

FIRST ADDENDUM TO CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT PUBLIC WORKS CONTRACT

This FIRST ADDENDUM TO CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT PUBLIC WORKS CONTRACT (this "Addendum") is made and entered into as of MARCH 26 2013 (the "Effective Date") by and between A&K Railroad Materials, Inc. ("Contractor"), and the City of Kirkland, a Washington municipal corporation ("Owner").

RECITALS

A. Contractor submitted the lowest responsible bid on the Cross Kirkland Corridor Rail Removal Project, Job No. 15-13-PW ("Project").

B. The Project requires the Contractor to salvage rails, ties and other track material and pay the Owner for the salvage value of the rails, ties and other track materials, as set forth in the Contractor's bid documents.

C. The Contractor and the Owner are in the process of finalizing and executing the Cross Kirkland Corridor Rail Removal Project Public Works Contract ("Contract").

D. The Contractor and the Owner wish to clarify that, in the event of termination of the Contract pursuant to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction ("Standard Specs"), the Owner shall receive a credit for the salvage value of the rails, ties and other track materials removed by the Contractor prior to Contract termination.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree:

AGREEMENT

1. In the event of termination of the Contract pursuant to Section 1-08.10 of the Standard Specs, the Owner shall receive a credit for the salvage value of rails, ties and other track materials salvaged or removed by the Contractor prior to Contract termination. This credit shall be an offset to any payments due from Owner to Contractor under the Contract or resulting from Contract termination. In the event the salvage value of rails, ties and other track materials removed prior to Contract termination exceeds the amount of payments due from Owner to Contractor, the Contractor shall pay the difference to the Owner within 30 days of Contract termination.

2. Full Force and Effect. Except as modified herein, the Contract shall remain in full force and effect.

3. Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together

shall constitute one and the same instrument. Any party may execute this Addendum by facsimile signature and the other party shall be entitled to rely on such facsimile signature as evidence that this Addendum has been duly executed by such party.

IN WITNESS WHEREOF, Buyer and Seller have caused this Addendum to be executed on the dates set forth below, effective APRIL 26, 2013 as above written.

/
/
/

Signature page attached

CITY OF KIRKLAND,
a Washington municipal corporation

By: Marilynne Beard
Name: Marilynne Beard
Title: Deputy City Manager
Date: 4/26/13

Approved as to form:

_____
Assistant City Attorney

A&K RAILROAD MATERIALS, INC.

By: Rocky Smith
Its: Rocky Smith, Vice President Field Operations
Date: March 29, 2013

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A&K RAILROAD MATERIALS, INC.
P.O. BOX 30076
SALT LAKE CITY, UT 84130

INDIVIDUAL SURETY
KERN W. SCHUMACHER
14505 GERONIMO TRAIL
RENO, NEVADA 89521

OWNER (Name and Address):

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033

CONSTRUCTION CONTRACT
Date: APRIL 23, 2013
Amount: $ 473,419.00
Description (Name and Location): CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT. JOB NO. 15-13-PW
REMOVAL OF 5.81 MILES OF RAILROAD TRACK

BOND
Date (Not earlier than Construction Contract Date): APRIL 23, 2013
Amount: $ 473,419.00
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

Signature:
Name and Title: ROCKY SMITH
VICE PRESIDENT FIELD OPERATIONS

SURETY
(Surety Seal)

Signature:
Name and Title: KERN W. SCHUMACHER
INDIVIDUAL SURETY

(Any additional signatures appear on page 3)

State of UTAH } ss.
County of SALT LAKE

The foregoing instrument was acknowledged before me this 23RD day of APRIL, 20 13 by Kern W. Schumacher.

Lonnie Wallace
Notary Public

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

My commission expires November 3, 2016

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of the Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 DEFINITIONS

11.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

11.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

11.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

11.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)		(Seal)
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A&K RAILROAD MATERIALS, INC.
P.O. BOX 30076
SALT LAKE CITY, UT 84130

INDIVIDUAL SURETY
KERN W. SCHUMACHER
14505 GERONIMO TRAIL
RENO, NEVADA 89521

OWNER (Name and Address):

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033

CONSTRUCTION CONTRACT
Date: APRIL 23, 2013
Amount: $ 579,979.00
Description (Name and Location): CROSS KIRKLAND CORRIDOR RAIL REMOVAL PROJECT. JOB NO. 15-13-PW
REMOVAL OF 5.81 MILES OF RAILROAD TRACK

BOND
Date (Not earlier than Construction Contract Date): APRIL 23, 2013
Amount: $ 579,979.00
Modifications to this Bond: ☒ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Signature:
Name and Title: ROCKY SMITH
VICE PRESIDENT FIELD OPERATIONS

SURETY
(Surety Seal)
Signature:
Name and Title: KERN W. SCHUMACHER
INDIVIDUAL SURETY

(Any additional signatures appear on page 3)

State of UTAH } ss.
County of SALT LAKE

The foregoing instrument was acknowledged before me this 23RD day of APRIL,
20 13 by Kern W. Schumacher.

Lonnie Wallace
Notary Public

LONNIE WALLACE
Notary Public State of Utah
My Commission Expires on:
November 3, 2016
Comm. Number: 660577

My commission expires November 3, 2016

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity whose labor, materials or equipment were furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

14 **DEFINITIONS**

14.1 Claimant: An individual or entity having a direct

contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

14.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

14.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)		(Seal)
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

WELLS FARGO

Commercial Banking
MAC U1228-09A
299 South Main Street, 9th Floor
P.O. Box 45490 (mailing)
Salt Lake City, UT 84145-0490

April 25, 2013

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

RE: A & K Railroad Materials Inc.

To Whom It May Concern:

Our customer, A & K Railroad Materials, Inc. who is owned by Kern Schumacher and Rhonda Nicoloff has requested that Wells Fargo Bank, N.A. ("Bank") supply you with information regarding its banking relationship with Bank. A & K has been a customer of Bank since November 1965. This relationship currently includes certain credit transactions, deposit accounts, cash and treasury management services, collections, and the like. The customer's relationship has performed satisfactorily according to Bank's internal, subjective standards. The current available balance of the customer's existing line of credit facility is over $16,000,000.00 as of the date of this letter, but such balance does not include any uncollected items and/or amounts that have not been posted to such account as of date hereof. The foregoing is not, and should not at any time or in any way be construed as a guaranty of future account balances.

This letter only pertains to Bank's experience with the customer and should not be considered reliable for general purposes unless other independent investigation confirms the information provided in this letter. This letter is confidential and may not be shared with any party, unless you are required to do so by law or with Bank's prior written consent. Bank does not have any obligation, will not take responsibility for, will not be required to, and does not undertake any duty to update you in the event Bank's assessment of the customer's relationship should change.

If you have any questions please feel free to give me a call at 801-246-1034 or email me at akagits@wellsfargo.com.

Sincerely,

WELLS FARGO BANK, N.A.

Senior Vice President and
Senior Relationship Manager

Together we'll go far



CITY OF KIRKLAND
CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF STATUTORY RETAINED PERCENTAGE
Cross Kirkland Corridor Rail Removal Project
JOB NO. 15-13-PW

Monies reserved under provisions of Chapter 60.28 RCW, at the option of the Contractor, shall be:

Select One

[ ] (1) Retained in a fund by the City. No interest will be earned on the retained percentage amount under this election.

[ ] (2) Retainage Bond

[ ] (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. (For the convenience of those Contractors choosing option (3) a City approved Form of Escrow Agreement is included on the next page and should be completed and submitted with the executed contract.)

The Contractor in choosing option (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

[X] (4) Deposited by the City in an interest-bearing account at the FDIC insured bank currently providing contracted banking services to the City of Kirkland. Interest on such account shall be paid to the contractor. Any fees incurred shall be the responsibility of the contractor.

CONTRACTOR:

Signature: _____

Print or Type Name: Jeff Galyean

Title: CFO

Date: 4/25/2013

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Marsh USA Inc. 600 Renaissance Center Suite 2100 Detroit, MI 48243 Attn: Raffles 00206 -00206-RAFF-13/14	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
A & K Railroad Materials, Inc. 1505 South Redwood Drive P.O. Box 30076 Salt Lake City, UT 84130	INSURER A : American Zurich Insurance Company	40142
	INSURER B : Zurich American Insurance Company	16535
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CHI-004650911-04 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
B	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X CONTRACTUAL LIABILITY ON A "AS NEEDED" BASIS GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			GLO3486463	04/01/2013	04/01/2014	EACH OCCURRENCE	$	1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$	500,000
							MED EXP (Any one person)	$	10,000
							PERSONAL & ADV INJURY	$	1,000,000
							GENERAL AGGREGATE	$	2,000,000
							PRODUCTS - COMP/OP AGG	$	2,000,000
								$	
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS			BAP3486462	04/01/2013	04/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$	1,000,000
							BODILY INJURY (Per person)	$	
							BODILY INJURY (Per accident)	$	
							PROPERTY DAMAGE (Per accident)	$	
								$	
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$	
							AGGREGATE	$	
								$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC3486511	04/01/2013	04/01/2014	X WC STATU-TORY LIMITS OTH-ER		
							E.L. EACH ACCIDENT	$	1,000,000
							E.L. DISEASE - EA EMPLOYEE	$	1,000,000
							E.L. DISEASE - POLICY LIMIT	$	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required)

City of Kirkland and its authorized agents are named as Additional Insured for General Liabilily & Auto Liability only, but only as respects to liability arising from the operations of the insured and where required by written contract. Workers' Compensation does not apply to monopolistic states (ND, OH, WA and WY), Puerto Rico or the Virgin Islands.

CERTIFICATE HOLDER

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

John C Hurley

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Any person or organization other than an Architect, Engineer or Surveyor, to whom or to which you are required to provide additional insured status in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.	**Any location or project where you have agreed, through written contract, agreement or permit, executed prior to loss, to provide additional insured coverage except where such contract or agreement is prohibited by law.**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

Copyright, ISO Properties, Inc., 2004

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Any person or organization other than an Architect Engineer or Surveyor, to whom or to which you are required to provide additional insured status in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.	**Any location or project where you have agreed, through written contract, agreement or permit, executed prior to the loss, to provide additional insured coverage except where such contract or agreement is prohibited by law.**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Copyright, ISO Properties, Inc., 2004

Client#: 3024 AKRAI

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/25/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Kathie Evans	
Moreton & Company - Utah 709 East South Temple Salt Lake City, UT 84102 801 531-1234	PHONE (A/C, No, Ext): 801 531-1234	FAX (A/C, No): 801-531-6117
	E-MAIL ADDRESS: kevans@moreton.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Navigators Insurance Company	
INSURED A & K Railroad Materials, Inc. P O Box 30076 Salt Lake City, UT 84130-0076	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE [ ] OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY [ ] PRO-JECT [ ] LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB [X] OCCUR			LA13EXC707440IV	04/01/2013	04/01/2014	EACH OCCURRENCE	$10,000,000
	[X] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$10,000,000
	DED [ ] RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						WC STATU-TORY LIMITS [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Kirkland is named as additional insured with respects to excess liability for the Cross Kirkland Corridor Rail Removal project. Excess policy is following-form to liability policy coverages and endorsements.

CERTIFICATE HOLDER

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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KATEV

Department of Labor and Industries
Prevailing Wage
(360) 902-5335
www.lni.wa.gov/TradesLicensing/PrevWage

STATEMENT OF INTENT TO PAY PREVAILING WAGES

Public Works Contract
$40.00 Filing Fee Required

- This form **must** be typed or printed in ink.
- **Fill in all blanks or the form will be returned for correction (see instructions).**
- Please allow a **minimum** of 10 working days for processing.
- Once approved, your form will be posted online at https://fortress.wa.gov/lni/pwiapub/SearchFor.asp

Intent ID # (Assigned by L&I)_____

Your Company Information		
Your Company Name: A&K Railroad Materials, Inc.		
Your Address: PO Box 30076		
City: Salt Lake City	State: UT	Zip+4: 84130
Your Contractor Registration Number: CC AKRAIM*195LD	Your UBI Number: 409 023 557	
Your Industrial Insurance Account Number: 262,986-00		
Your Email Address (required for notification of approval): RSmith@akrailroad.com	Your Phone Number: (801) 977-6305	

Additional Details	
Your Expected Job Start Date (mm/dd/yyyy): 4/15/13	
Job Site Address/Directions: 132nd Avenue NE South to 108th Avenue NE (MP 20.36 to MP 14.6)	

ARRA Funds
Does this project utilize American Recovery and Reinvestment Act (ARRA) funds? ☐ Yes ☒ No

Prime Contractor's Company Information	
Prime Contractor's Company Name: Same	Prime Contractor's Intent Number
Prime Contractor's Registration Number	Prime Contractor's UBI Number

Awarding Agency Information		
Project Name: Cross kirkland Corridor Rail Removal Project	Contract Number: 15-13-PW	
Awarding Agency: City of Kirkland		
Awarding Agency Address: 123 Fifth Avenue		
City: Kirkland	State: WA	Zip+4: 98033
Awarding Agency Contact Name: Aaron McDonald	Phone Number: (425) 587-3837	
County Where Work Will Be Performed	City Where Work Will Be Performed: Kirkland	

Contract Details		
Bid Due Date (**Prime Contractor's**): 3/15/13	Award Date (**Prime Contractor's**): 3/27/13	
Total Dollar Amount of **Your** Contract (including sales tax) or indicate time and materials, if applicable.	$579,979	☐ T&M

Weatherization or Energy Efficient Funds
Does this project utilize any weatherization or energy efficiency upgrade funds (ARRA or otherwise)? ☐ Yes ☒ No

Hiring Contractor's Company Information	
Hiring Contractor's Company Name	
Hiring Company's Contractor Registration Number	Hiring Contractors UBI Number

Employment Information					
Do you intend to use **ANY** subcontractors?	☐ Yes	☒ No	Will employees perform work on this project?	☒ Yes	☐ No
Will **ALL** work be subcontracted?	☐ Yes	☒ No	Do you intend to use apprentice employees?	☐ Yes	☒ No

Number of Owner/Operators who own at least 30% of the company who will perform work on this project: ☒ None (0) ☐ One (1) ☐ Two (2) ☐ Three (3)

Crafts/Trades/Occupations – (Do not list apprentices. They are listed on the Affidavit of Wages Paid only.) If an employee works in more than one trade, ensure that all hours worked in each trade are reported below. For additional crafts/trades/occupations please use Addendum A.	**Number of Workers**	**Rate of Hourly Pay**	**Rate of Hourly Usual ("Fringe") Benefits**
Laborers	8	$41.59	incl
Truck Driver	1	$47.91	incl
Boom Truck Driver	1	$48.92	incl
Loader/Excavator Operator	1	$51.28	incl

Signature Block

I hereby certify that I have read and understand the instructions to complete this form and that the information, including any addenda, are correct and that all workers I employ on this Public Works Project will be paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Department of Labor and Industries.

Print Name: Rocky Smith **Print Title:** VP Field Ops **Signature:** Rocky Smith **Date:** 3/29/13

For L&I Use Only

Approved by signature of the Department of Labor and Industries Industrial Statistician

NOTICE: If the prime contract is at a cost of over one million dollars ($1,000,000.00), RCW 39.04.370 requires you to complete the EHB 2805 (RCW 39.04.370) Addendum and attach it to your Affidavit of Wages of Paid when your work on the project concludes. This is only a notice. The EHB 2805 Addendum is not submitted with this Intent.

A & K Railroad Materials, Inc.
PO Box 30076
Salt Lake City, 84130 0076
Phone: (801) 974-5484
Fax: (801) 973-7393

March 28 2013 **37688**

11-24/1210

$ 40.00***

*** Forty and 00/100 US Dollar

PAY TO THE ORDER OF **WA DEPT. OF LABOR & INDUSTRIES**
PO Box 34022
Seattle, WA 98124 1022
US

Wells Fargo Bank
420 Montgomery Street
SAN FRANCISCO, CA 94104

Rhonda Nicolof

⑈037688⑈ ⑆121000248⑆0510172141⑈

Check 37688 Vendor 002051 03/28/2013
DEPT. OF LABOR & INDUSTRIES
WA DEPT. OF LABOR & INDUSTRIES PO Box 34022, Seattle, WA 98124 1022, US

Invoice number	Invoice Date	Gross amount	Cash discount	Payment amount
filing fee	03/29/2013	40.00	0.00	40.00
Total				40.00

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PO ZIP Code	Day of Delivery	Flat Rate Envelope
	☐ Next ☐ Second	☐
Date In Mo. Day Year	☐ 12 Noon ☐ 3 PM	Postage $
Time In ☐ AM ☐ PM	Military ☐ 2nd Day ☐ 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee / Insurance Fee
No Delivery ☐ Weekend ☐ Holiday	Acceptance Clerk Initials	Total Postage & Fees $

DELIVERY (POSTAL USE ONLY)

Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature
Delivery Attempt Mo. Day	Time ☐ AM ☐ PM	Employee Signature
Delivery Date Mo. Day	Time ☐ AM ☐ PM	Employee Signature

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NO DELIVERY ☐ Weekend ☐ Holiday

Customer Signature

CUSTOMER USE ONLY
METHOD OF PAYMENT:
Express Mail Corporate Acct. No. X841407
Federal Agency Acct. No. or Postal Service Acct. No.

FROM: (PLEASE PRINT) PHONE (801, 974 5484

A&K RAILROAD MATERIALS
1505 S REDWOOD RD
PO BOX 30076
SALT LAKE CITY UT 84130-0076

TO: (PLEASE PRINT) PHONE ( )

Management Services
Department of Labor & Industries
Prevailing Wage Program
P.O. Box 44835
Olympia, WA 98504-4835

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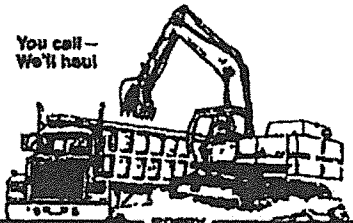
Ex. 22, page 20 of 20

EP-13F February 2002

Exhibit D

22014 West Bostian Rd.
Woodinville, WA 98072
(425) 827-7630/481-1800
FAX # (425) 486-6813

You call –
We'll haul



BOBBY
WOLFORD
TRUCKING AND DEMOLITION INC

- 40 / 50 yard Debris Trailers
- Lowboys
- Belly Dumps
- Track Hoes, Loaders & Dozers

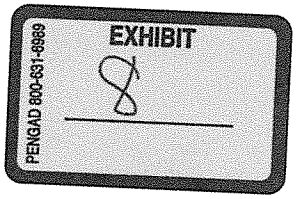
March 27, 2013

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

Dear Ms. Brown:

Bobby Wolford Trucking (BWT) was founded in 1972 to provide general demolition and trucking services, primarily to the real estate development industry. Since then we have added full recycling service for construction debris (such as concrete), land clearing debris, and the like. We are a Snohomish County certified "Intermediate Solid Waste Handling Facility" and processor of these materials. Our processing yard is located in Maltby (Snohomish County), alongside the BNSF railroad's former Woodinville line, now known locally as the Eastside Rail Corridor (ERC).

I am writing to stress the importance of restoring rail service to the next segment of the ERC, between Woodinville and Bellevue, Washington, a rail line that is currently inactive and rail-banked. We very much support continued freight use and enhancement of the entire ERC. In fact, we have started planning with the current railroad operator, Ballard Terminal Railroad (BTR), to construct a spur track from the main rail line directly into our recycling yard. This would allow us to both receive material to be recycled from up and down the corridor, as well as to economically ship out sorted and processed materials by rail to their final disposal point, e.g., land fills in southern Washington.



There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years These projects, plus multiple new high-rise buildings, will necessitate the export of hundreds of thousands of cubic yards of excavated materials, building demolition waste, and roadway grading spoils. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. A future light rail system with a tunnel and "cuts" are within one mile of the railroad, and will also require substantial movement of spoils and raw materials. Additionally, we anticipate ongoing construction projects in the future, on a regular basis. We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years.

We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated that our bid would be at least 15% less expensive to our clients than the trucking option. For us to provide competitive and viable bids, we need the rail intact and active.

We have consulted with Eastside Community Rail (ECRR), the owner of the rail freight easement in the corridor, about the logistics of moving large quantities of excavated material from construction projects in King County by rail for direct placement as road or trail base alongside their existing railroad embankment, mainly in Snohomish County. BWT has extensive experience hauling for excavation contractors. We agree with ECRR that using rail to replace thousands of long truck hauls to dump sites would greatly reduce traffic congestion and wear on the region's highways, and would obviously reduce air pollution from diesel exhaust, too. Since the ERC runs right through areas of King County where there will be many large construction projects, it makes sense to use rail cars to move excavated material out of and some bulk construction materials in to those project areas. In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of construction materials. Sole use of an already overburdened highway system, which is one of the worst in the country, via truck transportation is neither efficient, cost-effective nor particularly safe.

In conclusion, even though we are a trucking company, we see the benefit to all of us of maintaining a functioning, thriving railroad through the east side of both King and Snohomish Counties, and keeping our communities connected by rail to the rest of the country. We also support the multiple uses of this public corridor, like trails, or some form of passenger rail services, that so many other agencies are planning. The opportunity to utilize the Eastside Rail Corridor as a viable option for the movement of construction materials is very advantageous for this region of the Puget Sound We look forward to a strong future for economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will help CalPortland, Ballard Terminal Railroad, Eastside Community Rail and others provide service to the community in the most efficient manner possible. The resumption of rail service to Bellevue would also promote the responsible reduction of truck exhaust emissions and wear to the region's roads.

Thank you for considering our position to reactivate the rail corridor for our business and for the community

Very truly yours,

Bobby Wolford

Owner
Wolford Trucking and Demolition

Exhibit C

CALPORTLAND

March 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

Dear Ms Brown:

I would like to stress the importance of restoring rail service to the rail line segment between Woodinville and Bellevue, Washington via a rail line that is currently railbanked.

CalPortland is a major building materials and construction/services provider to the Western United States and Canada. We provide construction services and materials to a multitude of projects in the State of Washington generally, and in the area of Seattle, Washington, specifically.

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years which will necessitate the import of hundreds of thousands of cubic yards of construction aggregate materials to produce buildings, developments and roadways that are in strict accordance with all specifications for engineering parameters. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons Additionally, we anticipate ongoing projects in the future, on a regular basis.

In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient or very cost-effective.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will allow

Skrivan
EXHIBIT NO. 50
5-28-13 P. HAMILTON, RPR

CALPORTLAND

CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

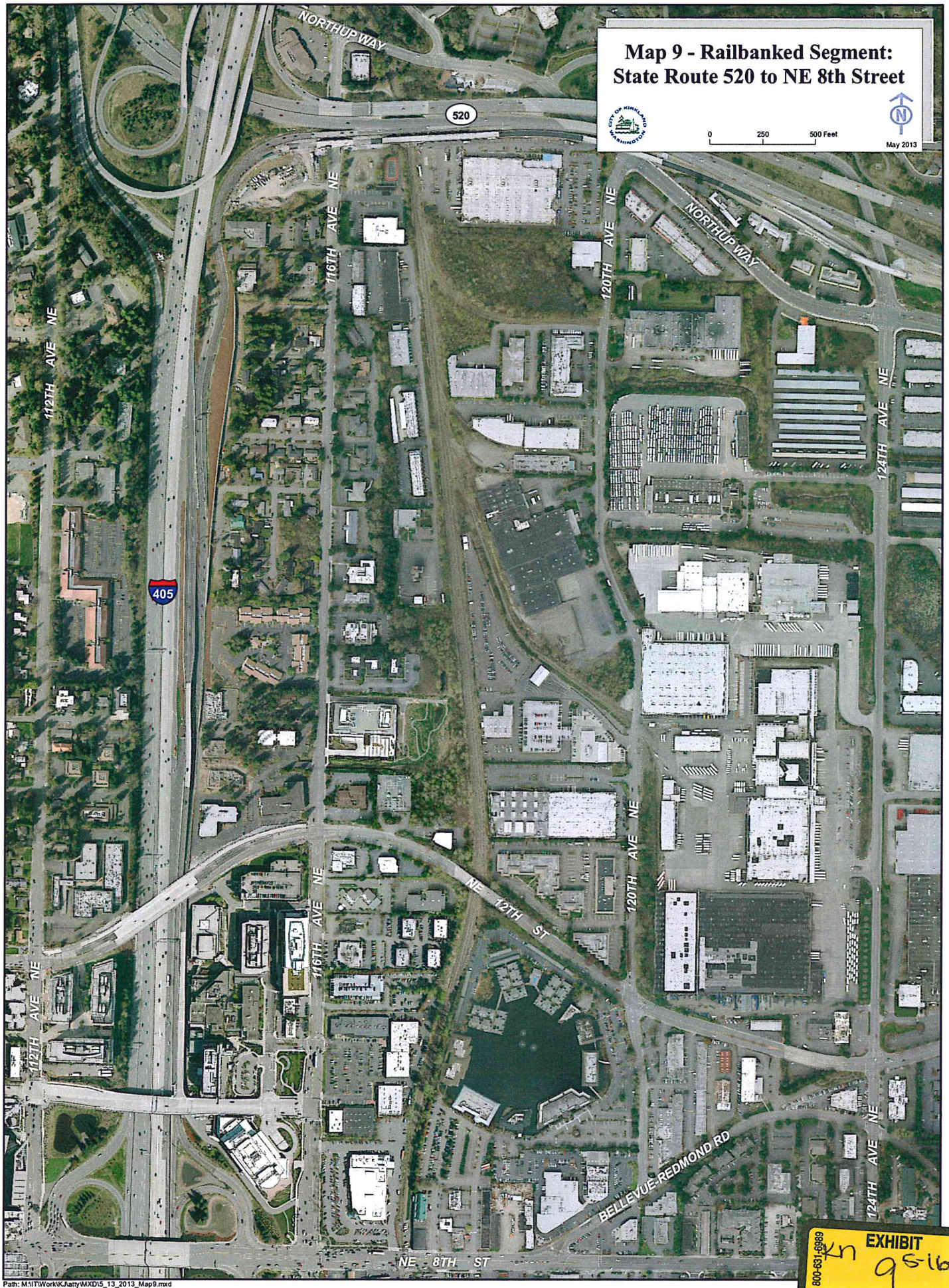


EXHIBIT
9 5-16-13
Wolford
PENGAD 800-631-6989

Michael Skrivan

From: Doug Engle [dengle76@comcast.net]
Sent: Monday, March 25, 2013 5:13 PM
To: Michael Skrivan
Subject: Fwd: Ballard
Attachments: 3-25-13 CalPortland Letter to Cynthia Brown.doc; ATT00001.htm

Mike,

Will you please take a look at this letter back from our attorney.
Can you sign off on this ASAP, please?

Skrivan
EXHIBIT NO. 51
5-28-13
P. HAMILTON, RPR

1

CAL006

CALPORTLAND

March 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

Dear Ms. Brown:

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In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient, cost-effective nor particularly safe.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the

market with the necessary construction material needs by allowing rail to be utilized will allow CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

BEFORE THE SURFACE TRANSPORTATION BOARD

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

(Contains Confidential Testimony)

Deposition Upon Oral Examination Of

MICHAEL R. SKRIVAN

May 28, 2013

300 Fifth Avenue, 1st Floor Conference Room

Seattle, Washington

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

29906/No. 2704

into the marketplace. And when you talk with contractors and truckers numbers start to be carried out, and part of my job is to forecast out for the future.

And so these are kind of what I was -- you know, I was kind of in the back of my mind, I've got to be ready for these kind of volumes coming up not -- maybe not this year or the next year, but in the next years. It's going to be coming down the road. That's just what I do. We talk. We try and stay abreast of the market and understand what the potential is, because by the time a job comes out and it's written on Builders Exchange, I'm dead if I don't know about it before that.

Q. Do you know why Mr. Engle wanted this letter from you?

A. Not exactly. He mentioned he had a meeting with City of Kirkland. He had a hearing or something with the City of Kirkland, so that was kind of what I thought it was for, showing his support.

Q. At the time you wrote this letter, were you still thinking primarily of being able to sell aggregate to Eastside Community Rail for use on the rail line, or were you thinking of other uses of the rail?

A. Oh, absolutely, that's my primary focus was to -- at least that was more finite to me. But like I mentioned earlier, I think kind of in the abstract I'm thinking, Okay, if I can make a friend that has a service that I can utilize that my competitors don't, that had my wheels turning also.

Q. At the time you wrote the March 19 letter, did you have any contracts to either remove any of the spoils from any of the projects you mentioned, the I-405 or SR520 projects, the excavated materials that are mentioned in the letter?

A. No contracts, no.

Q. Did you consider this letter to be a request from Eastside Community Rail to provide rail service to you?

A. No. Not a request to provide service, no.

Q. At the time you wrote this letter, did you, CalPortland, have a need for Eastside Community Rail to provide rail service for you?

MR. MONTGOMERY: Object to the form of the question.

A. Define "need."

Q. Did you need something moved by rail, you know, in the immediate future, foreseeable future looking forward from March 19?

MR. STONE: Object to the form of that question.

A. I see potential for my business, not -- I get my material where it needs to go now. Having another venue, another vehicle to do that, is a benefit to me.

Q. I understand. My only question was you didn't have a need for something to get moved right then when you wrote this letter on March 19.

MR. STONE: Object to the form of the question.

A. No, I didn't.

Q. Okay. You mentioned the February 1 meeting and then this letter, Exhibit-49, is dated March 19. Did you have any communications with Mr. Engle between February 1 and March 19?

A. Yeah. There was some email -- well, I went on vacation for one, and then when I got back from vacation we had some communication.

Q. What was the nature of that?

A. It was an email request -- not a request. He sent me a letter.

MR. STONE: He's talking about before, so between February 1 and March 19.

A. No.

Q. Before you wrote this, did you have any

communication?

A. No, I did not. I'm sorry.

Q. I think you testified he asked you to write the March 19 letter.

A. Correct. Asked me if I would.

Q. Right. Do you remember about how far in advance of March 19 he made that request?

A. I do not.

Q. Do you recall the conversation?

A. It would have been fairly close to -- I don't let things hang very long, so it would have probably been within a week or so, and I believe it was like a one-minute phone call, and it could have been a voicemail. I just don't really recall exactly. I knew he would like a letter.

Q. Other than that one communication, do you recall any other communication between you and Mr. Engle or anyone else on behalf of Eastside Community Rail between February 1 and March 19?

A. I think I asked him to define really what he wanted.

Q. Was that in a phone call or by phone?

A. I don't recall.

Q. Was it a meeting?

A. No, it wouldn't have been a meeting. I only

met with him face to face the once.
Q. Okay.
A. I don't recall meeting him any other time than the one time.
MR. PILSK: Why don't we mark this.
(Exhibit-50 marked.)
Q. Handing you what we've marked as Exhibit-50, and this is a letter dated March 25th, 2013. It appears to be from you, and this is to a Ms. Cynthia Brown at the Surface Transportation Board. Do you recognize this letter?
A. I do.
Q. Is that your signature on the second page?
A. It is.
Q. Were you asked to write this letter?
A. This was a letter -- I sent my letter to Doug.
Q. When you say "my letter," you mean the March 19 letter we marked as Exhibit-49?
A. Yes, the March 19 letter. When I went on vacation, when I came back, this letter was forwarded to me via email. Asked me to review and see if it met my satisfaction.
Q. Okay. Let's mark this as 51.

(Exhibit-51 marked.)
Q. Take a look at what I've marked as Exhibit-51. This is an email appears to be from Mr. Engle to you dated March 25th, and attached to it is a draft of what looks like the letter to Ms. Brown. Is this the email you just mentioned?
A. Correct.
Q. Is this the first time you'd seen, or you had heard of a request that you provide a letter after the March 19 letter?
A. Yes.
MR. STONE: Just note my objection. Form to the last question.
Q. No phone call or anything from Mr. Engle before this email?
A. Like I said, I was on vacation, so I don't think so. I don't recall.
Q. Prior to receiving this email, Exhibit-51, had you drafted, made a draft of the letter that's attached?
A. I don't understand the question.
Q. In other words, this is a -- Mr. Engle says, "look at this letter back from our attorney." Had you provided a draft of a letter either to Mr. Engle or to Mr. Engle's attorney before receiving this March 25th

email?
A. Just the March 19th letter.
Q. Did you know when you received this email who the attorney was or what attorney he was referring to?
A. I do not. I did not.
Q. What did you do when you received this email?
A. It was first day back and he had "ASAP" on it, so I reviewed it quickly. I did notice a couple of words that I wasn't comfortable with that I amended from the original letter, which is in the fourth paragraph, the last three words. It says "use of an already overburdened highway system via truck transportation is neither efficient," and I inserted "nor cost effective period," or "very cost effective period," and struck "nor particularly safe," because I don't agree that moving materials via truck is not particularly safe.
(Exhibit-52 marked.)
Q. Handing you what's been marked Exhibit-52, this is an email, top email in the chain from you to Mr. Engle dated March 26, and it appears, correct me if I'm wrong, this is transmitting your comments on the letter back to Mr. Engle.
A. Correct.
Q. You said and the text of the email says, "I

made one small change, Doug." You wrote that?
A. Yes, I did.
Q. And that was the only change you made to the letter?
A. That is the only change I made. I reviewed it very quickly.
Q. Between receiving the letter when you got back from vacation on March 25th and sending this out on March 26th, did you have any conversations with Mr. Engle about the letter?
A. I did not.
Q. Did you talk to the lawyer that Mr. Engle mentioned?
A. I did not.
Q. Did you ever talk to a lawyer who either you understood to be representing Mr. Engle or Eastside Community Rail?
A. Not that I recall. I think I had a voicemail, but I did not speak to anybody.
Q. Do you recall who that was from?
A. I do not.
Q. Or when you received that? Was it waiting for you when you got back --
A. It wasn't around this letter. The only other communication with an attorney from them was around

the time when Hunter and I were talking.
Q. About this deposition?
A. Yeah.
Q. Putting aside the deposition, you didn't talk to any lawyers representing Eastside Community Rail or Ballard about your letter to the STB?
A. No, I did not.
Q. Now, at the time you signed the March 25th letter, sort of the same series of questions I had about the March 19 letter: Did you consider this letter to be a request to Eastside Community Rail or to Ballard to provide rail service to CalPortland?
MR. STONE: Object to the form of the question.
A. Could you say that again, so I can listen.
Q. Sure. Did you consider this March 25th letter to be a request to Eastside Community Rail or to Ballard Rail to provide freight rail service to CalPortland?
MR. STONE: Object to the form of the question.
A. No, I did not.
Q. At the time that you wrote this letter, did you have an immediate, within the next three weeks, need for Eastside Rail or Ballard Rail to transport

material by rail?
A. No, I did not.
Q. Again, the March 25th letter also references projects -- I'm looking at the very end of the third paragraph. "We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons." Do you see that in the third paragraph?
A. Yes.
Q. Did CalPortland have any contracts for those jobs at the time you wrote the letter?
A. No contracts, no.
Q. Had they been bid yet? Had you submitted any bids?
A. We submitted a bid on a project on 405, but we had not been informed of any involvement.
Q. I'm sorry. When you say "not been informed of any involvement," what do you mean?
A. You put out a bid, you don't always get it, and you may not know till the project is actually a couple of weeks from taking delivery. A lot of contractors keep their cards very close to the vest.
Q. I see. You submitted it but didn't know whether it had been accepted or rejected yet.
A. No.
Q. Did your bids include an assumption that

CalPortland would use rail to deliver material?
A. Not in my bid, no.
Q. Okay. Did you discuss this March 25th letter with anyone else at CalPortland?
A. I did not.
Q. Now, the letter says that you were targeting these projects on I-405 and SR520 for the 2013 and 2014 construction seasons. When would you have to know that freight rail service was available to be able to take advantage of freight rail to serve those projects if you got the work; in other words, how much lead time would you need that there was freight service to be had in order to take advantage of it?
A. That's hard to say, because it depends on what kind of communication I get from a customer on his needs or wants. Sometimes I get six months' advanced notice, sometimes I get six hours. I mean, it's not an exact science.
Q. Okay. Has CalPortland signed any kind of a contract or agreement with Eastside Community Rail?
A. We have not.
Q. Any kind of contract or agreement with Ballard Terminal?
A. We had a material supply agreement with Ballard.

Q. What was that for?
A. To sell them ballast material for their rail needs. In order to be able to move forward with a formal quote, I had GNP set up with a credit account. So we submitted a credit application, and in order to get the credit application approved, we had to see that they were going to purchase some material from us, so I had them sign a material supply agreement.
Q. Who was it between? CalPortland and GNP?
A. GNP and Thomas Payne.
Q. My question was whether you had any contract with Eastside Community Rail.
A. No.
Q. Or with Ballard?
A. No.
Q. And the contract with GNP, about when was that? When did you enter into that?
A. I don't recall. If I had to guess, it would be in the 2010 range. I took over as aggregate sales manager in approximately January of 2010, so I wouldn't have been in a position to discuss any of that, but it would have been in that calendar year probably.
Q. Other than the I-405 and SR520 projects that are mentioned in the March 25th letter, are there any

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

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

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

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

A. I never asked Eastside Community Rail to look at installing a rail spur. I asked them to see where one would be that we could access, and the information I got back was the cost to put one on my site. I didn't request that information.
Q. Fair enough.
A. My role as sales manager for a construction material company, you are not only selling your product, you are selling information to your customer base, and finding a site that dovetails with my primary transportation option, which is barging, and the access to rail interests me. It gives me an option I haven't had.
The site was not available to me previously. Now that it's open, it affords me another conceptual option that I can bring to the table and keep information tightly, and that's why I'm so protective of it is, because this is something that I could bring to the table that my competitors couldn't and brings me more competitive in that market, because I can move it via barge, economically I can get it onto a rail, and I can -- up in the Everett market it's difficult to be competitive, because there's so many other land-based options that can move it by truck. If I can bring something new to the table, it

makes me a hero in my customers' eyes.
Q. As of today, those opportunities remain conceptual; is that correct?
A. That's correct.
Q. You have no -- there's no contracts to deliver material from this new facility, this potential facility in Everett, by rail to any customers?
A. No, we do not.
Q. Why don't we switch topics and take this out of the confidential designation.
(End of confidential testimony.)
* * *

Q. Turning now to the section of the line itself, the railroad line itself between Woodinville and Bellevue. Does CalPortland own any property along the rail line?
A. No, we do not, that I'm aware of.
Q. Let me take a minute.
(Exhibit-56 marked.)
Q. I've handed you what we've marked as Exhibit-56. I'll represent to you that the section of rail line that's highlighted or bounded in red is approximately the section of line we're talking about here between Woodinville and Bellevue on which Ballard is trying to reinstate service. Have you seen a map of that line before?
A. Just from articles in the newspapers depicting it.
Q. Are you familiar with this rail corridor at all?
A. Not with Eastside Rail, but I have been in -- there's -- I don't know want to call it abandoned because I think there's still some movement, but there is a grossly underutilized rail switchyard across I-405 in Bellevue that I have looked at.
Q. Do you know approximately where that is?
A. Just south of the Home Depot where 520 comes

across. You can see the Home Depot down, I believe --
Q. Would you put a red X by it.
A. I believe it's right in this area here (indicating).
Q. Right where 520, 520 and 405?
A. Right.
Q. When you say "rail switchyard," what does that mean?
A. I don't know. That's my interpretation of it. I'm not a rail expert.
Q. That's why I'm asking what do you think it is?
A. There's a lot of warehouses in there that are not being used and there's a lot of rail lines going in and out of and there's a lot of different switches.
Q. Why do you say it's grossly underused?
A. A lot of abandoned warehouses and property in there, so it looks like there could be some opportunities.
Q. Looking at this map of the line, does this help you determine whether or not to your knowledge CalPortland owns any property along the line?
A. It really doesn't help me, because I'm not involved in that part of our business. I just don't know land.

Q. I'm going to follow up with the same kind of question, but are you aware of any land that CalPortland leases along the rail line?
A. I am not.
Q. Or any agreements to make use of any land along the line?
A. I am not.
Q. Okay. In connection with your consideration of what Eastside Rail is proposing, do you know if you or anyone else at CalPortland has looked at locations where aggregate or other materials could be off-loaded from a train onto trucks for delivery to a customer?
MR. STONE: Object to the form of the question.
Q. Let me back up and ask you this: One of the things you said was that the rail could provide an opportunity for CalPortland to sell aggregate.
A. Correct.
Q. I assume that the aggregate would be transported from one of CalPortland's facility down the line to someplace, and then I assume that it would have to be removed from railcars to be delivered to the customer's site. Is that a fair assumption?
A. Yes.
Q. My question is whether you or anyone at

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

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

paragraph of that email, "We should have talked about this before, but we didn't," mentions "Ballard, ECRR and Wolford have all put money into the STB effort. We have two funded sources of money," et cetera, and then the last line, "Per the prior ECRR Legal Update email, is there an option to have CalPortland invest or providing a loan into making the reactivation happen?" And then your email in response says, "I will inquire, but I would be surprised if approved with the current economic conditions." I assume your response is in reference to the request to make a loan or investment; is that correct?
A. That's correct.
Q. Did you make that inquiry?
A. I did not.
Q. Do you have a sense of if you asked what the answer would be?
MR. MONTGOMERY: Objection. Speculation.
A. No, I really don't know what the response would be. It's my responsibility to filter that kind of information, and --
Q. You didn't think it was worth passing on?
A. No.
Q. Okay. Has there been any other follow-up discussions between you and Mr. Engle about the

seven-man rock like the size of this table. I just don't have a deposit that makes that. But everything smaller than that we do.

Q. What you would ship I suppose would depend on whether someone orders it?

A. That's correct.

Q. As of now you have no contracts that would require you to deliver any of that material by rail along the Eastside Community Rail lines; is that correct?

A. That's correct.

Q. If you can give me a minute, let me double-check things, but I think we're almost done.

(Discussion off record.)

Q. I've got nothing further remember. Thank you.

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

BY MR. MONTGOMERY:

Q. I'll ask you a few questions, if I may.

My name is Tom Montgomery and I represent Ballard Terminal Railroad.

Mr. Skrivan, how are you today?

A. Good. How are you?

Q. Fine. Just be aware the court reporter to your left is going to be trying --

A. And I talk soft.

Q. If you would be sure to belt it out, and I will try not to take much of your time.

Could you give me a general idea of your background in rocks? You personally.

A. Short?

Q. As long as you want it to be.

A. I started out in the construction business about 25 years ago with an asphalt contractor, and I was brought in because of my chemical background to operate a petroleum-contaminated soil recycling. That is my introduction as to how to handle material. We were taking material out of the ground from underground storage tanks; prep it for processing to remove the hydrocarbons from it. That's what I did for them. That was my introduction into the construction world.

That facility was purchased, along with me, and I stayed in that business for a couple years with the new company until we parted ways. We had a different idea of how to get paid, let's put it that way, as many partnerships dissolve from.

From that point I went into -- prior to CalPortland I was in the fuel sales business, and a good contractor friend and customer of mine that I

sold fuel to that operated a fleet of trucks, when a representative spot came open in Glacier Northwest, CalPortland's area here at DuPont, my contractor customer called me and said, You need to get ahold of these guys. You would be a perfect fit for that.

I made that call and two weeks later I had a new office in DuPont, and then I've been with CalPortland -- I'm bad with dates, but just ask my wife. I think this will be 13 years coming up. I'm either on my thirteenth year or 13 in December.

Q. Where is DuPont?

A. South of Tacoma between Tacoma and Olympia.

Q. You have been pushing rock, for lack of a better term, for about 13 years?

A. I started out as aggregate salesman at DuPont for about two and a half years. Because of my involvement in the fuel sales, I was on a committee for our full corporation, which is Washington, Oregon, California, and Nevada, and Arizona, on how -- we were looking at how to be a smarter company purchasing bulk products, fuel being a huge component of our business, and because of my intimate knowledge of how to purchase and how to sell fuel, I brought a plan together how we could save a lot of money, and I was brought to the wrong focus, I guess, from my

perspective, and so I was suggested that maybe I should take over a different division, so I was brought in to be Redi-Mix sales -- or a Redi-Mix dispatch manager and fleet manager, so the distribution of our Redi-Mix throughout Washington.

So you had under my control the dispatch, daily dispatchers, as well as at one point I think we had 188 Teamsters throughout Western Washington, and so that's my involvement with the labor end of this type of work dealing with different disciplinary actions and such.

And then in approximately 2009 we had some reduction in force, and, you know, the market was getting slower and we were consolidating different projects, different job titles and functions, and we reduced the sales staff of the aggregate sales, and then the current aggregate sales manager at that time had announced he was going to be retiring, so they brought me back into the aggregate sales, and because I've had management experience, it was a natural fit.

Q. When did you first start aggregate sales at all, some facet of aggregate sales, here?

A. My original 13 years.

Q. Have you always worked in the Northwest with regard to aggregate sales?

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

about spur, requiring use of a spur in one fashion or another. Is having a spur a requirement for CalPortland to use the Eastside Rail quarter that we've been here talking about today from Woodinville to Bellevue?
MR. PILSK: Objection. Foundation. Vague.
Q. Let me rephrase.
A. Yeah.
Q. Is a spur required for you to supply aggregate by rail down to the Woodinville-to-Bellevue line, assuming that it were in operation?
MR. PILSK: Same objection.
A. It would not be a requirement.
Q. It would be an advantage somehow. You don't have to have that; is that correct?
A. Correct. I deliver to my market now and I don't have rail.
Q. Exhibit-50, the letter that you wrote to Cynthia Brown, do you stand by this letter today?
A. Can you clarify that question?
Q. Yes. Do you still support rail service from Woodinville to Bellevue?
MR. PILSK: Objection. Vague.
Q. Go ahead, please.

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

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

S I G N A T U R E

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

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

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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

Michael Skrivan

From: Michael Skrivan
Sent: Wednesday, May 01, 2013 8:58 AM
To: 'Doug Engle'
Subject: RE: Potential rail spur for Everett aggregate yard

Doug, we are exploring potential alternate offloading locations that currently have a rail siding, the cost of a spur into the Everett facility at this time would be prohibitive. We think there could be a nearby site that may be an option, we are checking it out this week. Please call me regarding the request from the Kirkland city attorney for me to give a deposition regarding the letter of support that I provided to you. He is asking me to make four hours available, that is not going to work out well for me.

Michael Skrivan
Aggregate Sales Manager
Materials Group – Northwest Division
Glacier Northwest, Inc., DBA CalPortland Company
Mobile: 253-380-3720
mskrivan@calportland.com

CALPORTLAND

From: Doug Engle [mailto:Doug.Engle@escrail.org]
Sent: Tuesday, April 30, 2013 2:45 PM
To: Michael Skrivan
Cc: mmiddling@callportland.com; Ernest F. Wilson
Subject: Re: Potential rail spur for Everett aggregate yard

Mike,

The most important message is that CalPortland MUST initiate the spur request with BNSF.
We are happy to support the effort in any way we can.
Please keep me posted as we want your business!!

Cheers!

Doug
mobile: +1.425.891.4223

On 26 Apr 13, at 5:16 PM, Ernest F. Wilson <ernie.wilson@EsCRail.org> wrote:

Mike and Mike-
First, Doug and I would like to thank you once again for arranging for us to have a look at your operations in Everett. It was very useful to see it in person, and to be able to check out the surrounding area. We are sending this report to provide an overview of the process of establishing a new rail spur for your yard.

Skrivan
EXHIBIT NO. 53
5-28-13 P. HAMILTON, RPR

CAL023

We had a meeting with various BNSF managers in Seattle last week. We found that the railroad is open to providing service to your yard. We met Bonnie VanSickle, who is in charge of sales of 'Industrial Products', as they classify business opportunities like yours. There is another person who might need to be involved, Reeve Geary. He works in Economic Development, and Bonnie said she would brief him on your interest in gaining rail service to your yard. They also mentioned that there is already an ongoing business relationship between BNSF and CP, but did not know the individuals involved on either side. We can provide you the necessary contact information.

From an engineering perspective, I think it is feasible to construct a spur track from BNSF's north-south main line over to your yard, although there are challenges. In no particular order, here's what I see:

1. Proximity to Snohomish River RR bridge; we'll need to find out the minimum required distance between the bridge and a new turnout (switch);
2. Difference in elevation between BNSF rails and your yard and how to transition with minimum track grade;
3. Probable need for an overpass structure (and engineered fill) to cross over the street on the west side of SR 529;
4. Minimum clearances and other technical requirements for crossing under existing SR 529 bridge(s); and,
5. Potential wetlands issues.

The proposed route appears to cross only three other ownerships: BNSF Railway, State of Washington DOT (SR 529), and City of Everett (Ross Road). I do not know how open the two governmental entities are to railroad easements across their Rights-of-Way. BNSF would install the new turnout and take the track past their 'clearance point', say 15 feet or so east of their near rail. They might have to grant CP an easement or license to cross the balance of their 100' R-o-W, although it's more likely that there would just be some sort of operating agreement between the two companies, since BNSF would provide the car switching service.

So, it looks like it's now up to CalPortland to analyze the costs and benefits in order to determine if you want to proceed with preliminary planning for a spur. As a first rough estimate, I'd say this spur would cost in the neighborhood of $300-400K to complete. As you do your analysis, keep in mind that there could be inbound material shipments to your yard as well as outbound. For instance, we recently learned that Snohomish County is going to be reconfiguring the dikes on the easterly side of Smith Island, and will need tens of thousands of yards of suitable fill material for constructing the new dikes. Some of that dirt might well be excavation spoils from Bellevue, which could conceivably be delivered by rail to the island for a short truck haul to the dike sites.

I hope that you find this report helpful. Eastside Community Rail is not in a position to offer Civil Engineering services directly, but we would be interested in serving as your project managers/owners representatives to facilitate design and coordinate other pre-construction activities. Please let us know if you have questions on this report, or wish to discuss the spur idea further. I do have a few pictures of the vicinity that I can send, too, if you're interested.

Thank you for considering the possibility of becoming a shipper on our rail line. We appreciate your support of Eastside Community Rail.
Regards,

--
Ernie

Ernest F. Wilson, PLS
Eastside Community Rail
Right-of-Way/Development

425-869-8899 C 509-430-9350

CAL025

CITY OF KIRKLAND
INFORMATION FOR BIDDERS

Bidders must bid on all items contained in the proposal.

The omission or deletion of any bid item will be considered non-responsive and shall be cause for rejection of the bid.

Submit your proposal on the Bid Proposal and other forms which are enclosed, or make a copy of the required forms and submit these documents.

The following forms must be executed in full *with* submittal of the bid:

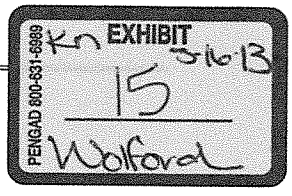
1. BIDDER RESPONSIBILITY CRITERIA CHECKLIST
2. SUBCONTRACTOR RESPONSIBILITY CRITERIA CHECKLIST
3. BID PROPOSAL
4. BID SCHEDULE: The lump sum or unit prices must be shown in the spaces provided on the bid schedule. Show total bid price in figures on the Proposal.

   The Proposal form must be completed in full, signed and dated.
5. BID BOND: A surety issued bid bond must be executed by the bidder and its surety company. The amount of the bid bond shall be not less than the greater of $5,000 or five percent (5%) of the total amount bid for Schedule A only and may be shown in dollars or on a percentage basis. (A cashier's or certified check payable to the City of Kirkland and issued for an amount not less than the greater of $5,000 or 5% of the total bid for Schedule A may be submitted in lieu of a bid bond.)
6. NONCOLLUSION AFFIDAVIT - Notarized
7. STATEMENT OF BIDDER'S QUALIFICATIONS: This form must be filled in and signed. The owner reserves the right to check all statements and to judge the adequacy of the bidder's qualifications.
8. SUBCONTRACTOR IDENTIFICATION LIST: This form must be completed for HVAC, plumbing, and electrical subcontractors if the bid amount exceeds $1,000,000.

The following forms are to be executed *after* the contract is awarded:

1. PUBLIC WORKS CONTRACT: This agreement is to be executed by the successful bidder.
2. PERFORMANCE AND PAYMENT BOND: To be executed by the successful bidder and its surety company. The Performance and Payment Bond applies to Schedule A of the Bid Schedule only.
3. RAIL SYSTEM AND OTM SALVAGE VALUE SECURITY: To be executed by the successful bidder based on bidders selection of an appropriate option acceptable to the City. Such security to be in the form of a cash deposit, Irrevocable Letter of Credit, Payment Bond, or other acceptable instrument guaranteeing payment of any credit to the City in the amount of the Schedule B Total as specified on the Bid Schedule.
4. CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF STATUTORY RETAINED PERCENTAGE and RETAINED PERCENTAGE ESCROW AGREEMENT

   To be executed by the successful bidder based on bidder's selection of option.
5. CERTIFICATES OF INSURANCE: To be executed by the successful bidder and by an acceptable insurance company. The City of Kirkland must be named as an additional insured.
6. STATEMENT(S) OF INTENT TO PAY PREVAILING WAGES: Affidavit certifying all employees of Contractor and Subcontractor shall be paid no less than the Prevailing Wage Rate(s) as determined by the Industrial Statistician of the Washington State Department of Labor and Industries.



Page 7 Information for Bidders
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

CITY OF KIRKLAND
BIDDER RESPONSIBILITY CRITERIA

It is the intent of City to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required by the City to submit documentation demonstrating compliance with the criteria. The bidder must:

☑ 1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of bid submittal;

☑ 2. Have a current Washington Unified Business Identifier (UBI) number;

☑ 3. Have:

a. Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;

b. A Washington Employment Security Department number, as required in Title 50 RCW;

c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;

☑ 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

☑ 5. Meet the supplemental bidder qualification requirements as specified in Special Provision Section 1-02.1 Qualifications of Bidder.

Page 8 Bidder Responsibility Criteria
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

CITY OF KIRKLAND
SUBCONTRACTOR RESPONSIBILITY CRITERIA

☑ A. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

☑ B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

☑ 1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;

☑ 2. Have a current Washington Unified Business Identifier (UBI) number;

☑ 3. Have:

a) Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RC

b) A Washington Employment Security Department number, as required in Title 50 RCW;

c) A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;

d) An electrical contractor license, if required by Chapter 19.28 RCW;

e) An elevator contractor license, if required by Chapter 70.87 RCW.

☑ 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

Page 9 Subcontractor Responsibility Criteria
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CITY OF KIRKLAND
BID PROPOSAL

Cross Kirkland Corridor Rail Removal Project

Job No. 15-13-PW

To: Director of Finance
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this proposal are those named herein; that this proposal is in all respects fair and without fraud; that it is made without collusion with any official or employee of the City of Kirkland, hereinafter called the Owner; and that the proposal is made without any connection or collusion with any person making another proposal on this contract.

The bidder further declares that it has carefully examined the contract documents for the construction of the project; that it has personally inspected the site; that it has satisfied itself as to the quantities involved, including materials and equipment and conditions of work involved, including the fact that the description of the quantities of work materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the contract documents; and that this proposal is made according to the provisions and under the terms of the contract documents, which documents are hereby made a part of this proposal.

The bidder further agrees that it has exercised its own judgment regarding the interpretation of subsurface information and has utilized all data which it believes pertinent from the engineer-architect, owner, and other sources in arriving at its conclusions.

The bidder agrees to hold its bid proposal open for 45 days after the actual date of bid opening and to accept the provisions of the Instructions to Bidders regarding disposition of bid bond.

The bidder agrees that if this proposal is accepted, it will, within ten (10) calendar days after notification of acceptance, execute the contract with the Owner in the form of contract included in the contract documents, and will, at the time of execution of the contract, deliver to the Owner the Performance and Payment Bond, the Rail System and OTM Salvage Value Security, and all Certificates of Insurance required therein, and will, to the extent of its proposals, furnish all machinery, tools, apparatus, and other means of construction and do the work in the manner, in the time, and according to the methods as specified in the contract documents and required by the engineer or other project manager designated thereunder.

The bidder further agrees, if awarded the contract to complete the construction within the time specified in Section 1-08.5 of the Special Provisions.

In the event the bidder is awarded the contract and shall fail to complete the work within the time limit or extended time limit agreed upon as more particularly set forth in the contract documents, liquidated damages shall be paid to the Owner per the specifications contained in the contract documents.

The bidder further proposes to accept as full payment for the work proposed herein, the amounts computed under the provisions of the contract documents and based upon the lump sum and unit price amounts entered by the bidder for the various bid items included in the Bid Schedule. The bidder further agrees the lump sum and unit prices entered for the various bid items included in the Bid Schedule include all use taxes, overhead, profit, bond premiums, insurance premiums and all other miscellaneous and incidental expenses as well as all costs of materials, labor, tools and equipment required to perform and complete the work.

Page 10 Bid Proposal
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Basis of Award shall be the lowest responsible Bidder based on the lowest BASE BID price shown on the BID SCHEDULE, consisting of Schedule A plus Schedule B without Alternative 1.

If the BASE BID results in a credit to the Owner, the BASE BID shall be shown as a negative number. The undersigned bids and agrees to complete all construction of the **Cross Kirkland Corridor Rail Removal Project** for the following:

BASE BID *(in figures)*: $ 401,877.00

If the Alternative 1 Total results in a credit to the Owner, the Alternative 1 Total shall be shown as a negative number. Alternative 1 may or may not be included in the project.

Alternative 1 Total *(in figures)*: $ 5,000.00

Receipt of Addenda No(s). _____ is hereby acknowledged.

Bobby Wolford Trucking - Demo.
CONTRACTOR (Firm Name)

Robert Wolford
By

Name and title of person signing

Corporation
(Indicate whether Contractor is Partnership, Corporation, or Sole Proprietorship)

3-15-13
Date

BOBBYWT088CC
Washington State Contractor's Registration Number

421-559-00
Contractor's Industrial Insurance Account Number

603246-007
Employment Security Identification Number

600-620-859
Uniform Business Identification (UBI) Number

Contractor's Address:
22014 W. Bostian Rd

Woodinville, WA 98072

425-481-1800
Telephone Number

425-486-6613
Fax Number

jack@wolfordtrucking.com
EMAIL

Page 11
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** Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for **Cross Kirkland Corridor Rail Removal Project.**

CITY OF KIRKLAND - BID SCHEDULE

Cross Kirkland Corridor Rail Removal Project: Job No. 15-13-PW

Note: Unit prices for all items, all extensions, and the total amount of the bid must be shown. All entries must be typed or entered in ink.

SCHEDULE A – RAIL SYSTEM & OTM REMOVAL COST						
Bid Item	Item	Spec Section	Qty	Unit	Unit Price	Amount
101	Minor Change	1-04	1	EQ. ADJ.	$15,000	$15,000
102	SPCC Plan	1-07.15	1	LS	$ 500.	$ 500.
103	Project Temporary Traffic Control	1-10	1	LS	$ 1000.	$ 1000.
104	Pedestrian Traffic Control	1-10	1	LS	$ 1000.	$ 1000.
105	Grade Ballast	2-05	1	LS	$ 5000.	$ 5000.
106	Inlet Protection	8-01	18	EA	$ 50.	$ 900.
107	Stabilized Construction Entrance	8-01	500	SY	$ 5.	$ 2500.
108	Wattle	8-01	33,470	LF	$ .10	$ 3347.
109	Erosion/Water Pollution Control	8-01	EST	FA	$5,000	$5,000
110	Seeding, Fertilizing, and Mulching	8-01	1	LS	$ 1500.	$ 1500.
111	High Visibility Fence	8-01	2,500	LF	$ 1.	$ 2500.
112	Remove Rail System & OTM	8-26	1	LS	$413630.	$ 413630.
					Schedule A Total	$ 451877.
SCHEDULE B – RAIL SYSTEM & OTM SALVAGE VALUE TO CITY						
201	Rail System & OTM Salvage Value –City Share (See Note 1 below)	8-26	1	EQ. ADJ.	$	$ -50000.
					Schedule B Total (See Note 1 below)	$ -50000.
					BASE BID (Schedule A + Schedule B)	$ 401877.

Note 1: The Schedule B Total is expected to be a negative number, representing monies owed to the City by the Contractor.

ALTERNATE 1						
A1	Extend Physical Completion Date to August 2, 2013 (See Note 2 below)		1	EQ. ADJ.	$	$ -5000.
					Alternative 1 Total (See Note 2 below)	$ -5000.

Note 2: A positive Amount indicates monies owed to the Contractor by the City. A negative Amount indicates monies owed to the City by the Contractor. It is anticipated that extending the Contract time will benefit the Contractor, resulting in the Alternative 1 Total being a negative number.

Page 12 Bid Schedule
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CITY OF KIRKLAND
NONCOLLUSION AFFIDAVIT

Cross Kirkland Corridor Rail Removal Project
Job No. 15-13-PW

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

The undersigned, being duly sworn, on oath deposes and says that the person(s), firm, association, partnership or corporation herein named has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

Wolfard Trucking & Demolition
Firm Name

Authorized Signature

Robert Wolfard
Type Name

President
Title

SUBSCRIBED AND SWORN to before me this 15th day of March, 2013

Barbara K. Stevenson
Notary Public in and for the State of Washington

Residing at Snohomish, WA

My Commission Expires 12/31/14

BARBARA K STEVENSON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 12/31/2014

NOTICE TO ALL BIDDERS
To report bid rigging activities call: 1-800-424-9071
The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., ET. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Page 13 Noncollusion Affidavit
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CITY OF KIRKLAND
STATEMENT OF BIDDER'S QUALIFICATIONS

Contractor Name: Bobby Wolford Trucking Contact: Jack Miller

Business Address: 22014 W. Bostian Rd, Woodinville, WA 98072

Business phone: 425-481-1800 Fax: 425-486-6613

Number of years the Contractor has been engaged in the construction business under the present firm name: 40

Describe the general character of work performed by your company: trucking & demolition

List five projects of a similar nature which Contractor has completed within the last 10 years. Include contract amount and contact information for references:

Project Name	Amount	Owner/Agency	Contact	Phone	Year Completed
Demo of Former NSD Bus Barn	350,000.	City of Bothell	Nduta Mwithi	425-806-6829	11/19/10
Mill Crk. Campus	108,000	Tastad Const.	Neil	360-760-9221	8/8/12
Azi Lee-Ph 2	48,000	Cascade View Inc.	Jeff	425-508-9618	8/8/12
Hillcrest Apts	49,500 -	Redhawk Grp.	Steve K.	206-282-3000	3/14/11
Talbott Place	41,500 -	Plats Plus	Brenden	425-508-1323	6/22/12

See also the supplemental bidder qualification requirements specified in Special Provision Section 1-02.1.

List major equipment anticipated to be used on this project; indicate whether Contractor-owned or to be leased from others:

Excavators, Dump Trucks, Wheel Loaders, Bulldozers, Spike Pulls,

Bank reference(s): Bank of America - Houghton Branch, Kirkland

Washington State Contractor Registration No.: BOBBYT088CC

Uniform Business Identification No.: 600 620 859

I certify that other contracts now in progress or hereafter obtained will not interfere with timely performance of the City of Kirkland project should I become the successful bidder.

Authorized Signature:

Print Name: Robert Wolford Title: President

Page 14 Statement of Bidder's Qualifications
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CITY OF KIRKLAND
SUBCONTRACTOR IDENTIFICATION FOR CONTRACTS IN EXCESS OF ONE MILLION DOLLARS ($1,000,000.00)

RCW 39.30.060 requires the following:

> "Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 ... shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time *[see note below]*, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid non-responsive and, therefore, void."

NOTE: The City of Kirkland has elected <u>not</u> to allow bidders to submit the information required by RCW 39.30.060 after the published bid submittal time. A proposal will be considered irregular and will be rejected if the bidder does not provide the above list as part of its proposal when submitting its bid.

Each bidder shall submit a list of:

1. HVAC, plumbing, and electrical subcontractors; and
2. The specific items of work those subcontractors will perform on the contract; and
3. The specific items of work that will be performed by the bidder on the contract.

Page 15 Subcontract Identification for Contracts in Excess of One Million Dollars
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CITY OF KIRKLAND
SUBCONTRACTOR IDENTIFICATION LIST

**REQUIRED IF BID AMOUNT EXCEEDS $1,000,000 (Reference RCW 39.30.060 RCW)*

Proposed Subcontractors and items of work to be performed:

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

Subcontractor Name: _____
Item Numbers: _____

- make additional pages if necessary -

Work to be performed by Prime Contractor:

Item Numbers: _____

Page 16
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CITY OF KIRKLAND
BIDDER'S CHECKLIST

1. Have you reviewed the Bidder Responsibility and Subcontractor Responsibility Criteria?

2. Have you enclosed a bid bond or certified check with your bid? (Must be $5,000 or 5% of the Schedule A Total, whichever is greater)

3. Have you entered a bid amount for all items and all schedules?

4. Do the written amounts of the proposal agree with the amounts shown in the figures?

5. Have you acknowledged receipt of addenda?

6. Has the proposal been properly completed and signed?

7. Have you completed the Statement of Bidder's Qualifications?

8. Have you completed the City of Kirkland Non-collusion Affidavit?

9. Have you completed the Subcontractor Identification List? (This is to be completed for HVAC, plumbing, and electrical subcontractors if the amount bid exceeds $1,000,000.)

10. Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for **Cross Kirkland Corridor Rail Removal Project.**

Page 17 Bidder's Checklist
Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale

Department of Labor and Industries
PO Box 44450
Olympia, WA 98504-4450

BOBBY WOLFORD TRKNG & SLVG INC

Reg: CC BOBBYWT088CC
UBI: 600-620-859

Registered as provided by Law as:
Construction Contractor
(CC01) - GENERAL

BOBBY WOLFORD TRKNG & SLVG INC
22014 WEST BOSTIAN ROAD
WOODINVILLE WA 98072

Effective Date: 2/3/1992
Expiration Date: 12/1/2013

March 22, 2013

Bobby Wolford Trucking & Demolition, Inc.
Attn: Robert Wolford, President
22014 W. Bostian Rd.
Woodinville, WA 98072

Dear Mr. Wolford,

The City of Kirkland is returning the enclosed cashier's check in the amount of $22,593.85 that was submitted by your company as a bid deposit for our Cross Kirkland Corridor Rail Removal Project, Job No. 15-13-PW.

Please contact me at 425-587-3123 if you have any questions regarding this matter.

Thank you for submitting your bid.

Sincerely,

Barry L. Scott, C.P.M.
Purchasing Agent

Enclosure

Bank of America Cashier's Check No. 1658200583

Notice to Purchaser - In the event that this check is lost, misplaced or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days. Void After 90 Days 91-170/1221 NAZ Date 03/15/13 12:37:19 PM

KIRKLAND
0002 0060103 0023

Pay BANK OF AMERICA TWO TWO FIVE NINE THREE 85 CTSCTS ***$22,593.8

To The Order Of CITY OF KIRKLAND

Remitter (Purchased By): BOBBY WOLFORD TRUCKING & DEMOLISHING

Bank of America, N.A.
PHOENIX, AZ

AUTHORIZED SIGNATURE

00-53-3364B 11-2010

⑈1658200583⑈ ⑆122101706⑆ 457002931694⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS

BOBBY WOLFORD TRUCKING
& DEMOLITION, INC.
22014 West Bostian Rd.
Woodinville, WA 98072

City of Kirkland
Cross Kirkland Corridor Rail Removal
15-13-PW

CITY OF KIRKLAND

Originally published March 12, 2013 at 9:41 PM | Page modified March 12, 2013 at 10:17 PM

Google boom: Kirkland campus to double

Google announced Tuesday that it's doubling the size of its campus in Kirkland, creating room to hire 1,000 more employees.

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By Brier Dudley
Seattle Times senior technology reporter

The Seattle area is feeling lucky.

Google announced Tuesday that it's doubling the size of its campus in Kirkland, creating room to hire 1,000 more employees.

The project comes amid a remarkable surge of investment by tech companies in the Seattle market, including Amazon.com's enormous (and growing) Seattle campus, Microsoft's efforts to fill thousands of new positions, and a steady stream of tech giants following Google's footsteps to establish satellite engineering offices in the area.

Google's two new buildings are expected to open in 2015 on what's now a vacant lot below the three-building campus that it moved in to less than four years ago. Design work has just started, but the tentative plan is for a dramatic skybridge over a rail corridor through the site, joining the old and new buildings.

"We think that the opportunity here is really huge," said Chee Chew, a former Microsoft engineer who joined Google in 2007 and became director of its Kirkland site last year.

Public officials lauded the move in a media event at the campus Tuesday evening.

"It is something to celebrate — for all Washingtonians to celebrate," Gov. Jay Inslee said.

◄ PREV 1 of 4 NEXT ►



DLR GROUP

Google's planned expansion in Kirkland is shown in a rendering, looking west. Two new buildings are expected to open in 2015.

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"Having moved here from Silicon Valley in the 90's, I can say that this expansion by... (March 13, 2013, by ImagineThat) MORE

"Under WaterToo, California has a sales tax around the same percentage as ours AND a... (March 13, 2013, by marinevet) MORE

Read all **102** comments ► Post a comment ►

Google opened a small office in Kirkland in 2004 and rapidly grew into larger and larger spaces. Many of its recruits came from Microsoft and Amazon.com, but the site also drew employees from other companies and schools around the country and world.

Chew said Google has had double-digit job growth since it started hiring engineers in Kirkland. It's the third-largest engineering center — behind a 3,200 -employee New York office – for the Mountain View, Calif.-based search giant, which is approaching 40,000 employees overall.

Among products built in Kirkland are Google Voice, Google Talk and key portions of the Chrome browser and operating system.

ADVERTISING



The Kirkland team also built the Hangouts videoconferencing service on the Google+ social network and recently took ownership of the cloud-computing platform that Google is offering as a service to other companies, in competition with Amazon's Web services business and Microsoft's Azure platform.

Such high-profile projects, combined with the region's quality of life and Google's reputation as a good place to work, provide a steady flow of applicants to fill the campus.

"I get pinged every day for jobs at Google — every other week I'm referring somebody or connecting them to the right people," said Amit Fulay, a Microsoft veteran who left to join a startup that Google acquired in 2010, bringing him into the fold.

As head count at the Kirkland offices has grown, Google has been expanding its engineering and sales office in Seattle's Fremont neighborhood, which opened in 2006. Combined, the Seattle and Kirkland sites employ more than 1,000 people. About 60 percent are based in Kirkland.

The Kirkland campus tends to have older, more family-oriented employees while Fremont attracts more young employees and recent graduates, said Anna Cavendar, a 34-year-old software engineer in Kirkland, who builds features to make Hangouts more usable for hearing- and sight-impaired people.

Chew said the current three buildings on the Kirkland campus, at 747 Sixth St., will accommodate 1,000 employees when they fill up in the next few years. The plan is to have the new buildings — with 180,000 square feet of space — available in time to handle the growth Google expects to see in the area.

The project is in "pre-permit review" by the city of Kirkland, which is about to convert the rail corridor through the site into a trail. City Manager Kurt Triplett said the skybridge concept is fine as long as the structures are high enough to allow any future transit service on the corridor. Public access through the site will be maintained.

"We are over the moon" about Google's plans to expand in the city, Triplett said.

Dave Tomson, development manager at SRM, the site's owner and developer, said the two buildings will be joined by a covered atrium, giving them the look of a single structure. The buildings will have two stories with two floors of underground parking. Construction may begin in January.

Tomson said it's too soon to say how much the project will cost, but the investment will be more than the $47 million assessed value of the current, three-building campus.

The expansion isn't a complete surprise. Chew said in an interview last year that Google needed to find more space to grow. A previous Kirkland site director told The Seattle Times in 2007 that he expected the company would employ several thousand people here within a few years.

Broadly, the plan is to give Google room to "innovate and create" without worrying about any limitations, Chew said.

Existing teams will be able to continue expanding, and there will be room for new projects that could become huge, he explained.

The new Kirkland buildings will be Googley in other ways — with amenities that will likely make employees at most other companies drool. Employees are putting together a wish list, but it will be hard to raise the bar in Kirkland, where they already have a climbing wall, two kitchens, music jam rooms, espresso bars and motorboats "docked" indoors, serving as informal meeting rooms and work spaces.

"I think what it will be is something that's really fun and organic and the people feel really vested in," Chew said, adding that "we're in the 'no ideas are too stupid' phase."

Brier Dudley: 206-515-5687 or bdudley@seattletimes.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BALLARD TERMINAL RAILROAD COMPANY, LLC, a Washington limited liability company,	)	CASE NO. C13-00586MJP
Plaintiff,	)	SEATTLE, WASHINGTON May 3, 2013
v.	)	
CITY OF KIRKLAND, a Washington municipal corporation,	)	MOTION TO DISMISS
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MYLES TOBIN
THOMAS MONTGOMERY

For the Defendant: HUNTER FERGUSON
MATTHEW COHEN
OSKAR REY
STEWART ESTES

Reported by: NANCY L. BAUER, CCR, RPR
Federal Court Reporter
700 Stewart Street, Suite 17205
Seattle, WA 98101
(206) 370-8506
nancy_bauer@wawd.uscourts.gov

721, there's -- and I've read through this, and I've, frankly, been practicing for a long time in railroad law -- there is no exclusivity on jurisdiction. Your Honor, you and the STB have concurrent jurisdiction here, and either was an appropriate choice.

And I suppose since Your Honor is asking, I'll jump right into the first question, which Your Honor indicated, you know, is that the STB, under 721, not the appropriate way for plaintiff to seek enjoining salvaging of the track. And what I would say to Your Honor is, it is an appropriate way, but it is not the only appropriate way, and in this instance it's not the appropriate way.

And I'll be quite honest and pragmatic with Your Honor. STB has a lot of fine qualities. They do a lot of very solid jurisdictional prudence. In the world of injunctive relief, they're not particularly expedient.

Ballard has -- I'm sorry -- Kirkland has indicated to you that they were poised to pull this track. This court is in a much better position than the STB to -- in which to seek expedited relief.

THE COURT: Well, you say that, but what's in the record that would demonstrate that if you ask for accelerated review, they have a specific portion of the statute that deals with emergency issues.

MR. TOBIN: The best I can tell, Your Honor, is it's

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 8th day of May 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter

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
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Counsel for the City of Kirkland, Washington

Dated: June 6, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing 1) The City of Kirkland's Reply to Ballard Terminal Railroad, LLC's Motion for Preliminary Injunction, 2) Verified Statement of Murray Brackett, 3) Verified Statement of Kurt Triplett, 4) Verified Statement of Hunter Ferguson, and 5) Certificate of Service upon the following parties of record in the above-captioned proceedings by first class mail with postage prepaid and properly addressed:

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Hunter Ferguson

Dated this 4th day of June, 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 MURRAY BRACKETT IN SUPPORT OF THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROAD COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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

1. I am a licensed Real Estate Appraiser in the State of Washington, and I hold the MAI designation from the Appraisal Institute. I am a Principal with the Firm Valbridge Property Advisors | Allen Brackett Shedd and have been appraising real estate in the King County area since 1985. I have previously prepared Appraisals

of the Woodinville Subdivision for use by King County in their efforts to acquire and evaluate the property. My analysis consisted of a Net Liquidation Value opinion of the entire line, with the latest valuation date being December 15, 2011. In the course of this work, I prepared allocated values for various stakeholder portions of the line, at the request of the stakeholders.

2. I have been requested by the City of Kirkland to provide a similar allocation for the line segment extending from NE 8th Street in Bellevue, to M.P. 23.8 in Woodinville, Washington. I have received permission from my previous client to utilize the prior file information and conclusions in this letter.

3. Given the relatively short time available for this assignment, it was agreed that my opinion would be limited to an allocation of the overall Net Liquidation Value as previously concluded, using the same methodology followed by the various stakeholders as they acquired their interests from the Port of Seattle. The conclusion presented, therefore, reflects the segment identified above, and consists essentially of a pro-rata allocation of the Net Liquidation Value as of December 15, 2011. It is noted that numerous assumptions were incorporated into the appraisal, including that the general character of the property was assumed to be identical to the form in which the Port of Seattle acquired the property in 2009. Thus, stakeholder acquisitions that have occurred subsequently, have been disregarded for analysis purposes. Other assumptions are contained within the actual appraisal document.

4. Based on my analysis, the allocated value of the segment described above, is $37,500,000, rounded, based on a total value conclusion of $80,000,000. The allocation excludes salvage value, though the overall conclusion reflected roughly $3.18 million in salvage value.

5. While I have not updated the date of value for this assignment, it is noteworthy that the general trends in the King County market have been positive for most property types since the date of value. The character of the neighborhood surrounding this corridor has been in transition for well over a decade, with commercial uses, mixed-use/residential, and single-family being developed in the areas surrounding this section of the corridor. Notable developments occurring

within the general vicinity include a new Google office complex in Kirkland, the 40+-acre Spring District mixed-use development in Bellevue, the approval of the East link light rail extension into Bellevue, as well as a general strengthening of the real estate market.

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



S. MURRAY BRACKETT, MAI
Dated: June 4, 2013
Place: Bellevue, Washington

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 REPLY TO BALLARD TERMINAL RAILROA COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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 listed below are filed as exhibits in support of Kirkland's Reply to Ballard Terminal Railroad, LLC's Motion for Preliminary Injunction. 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:

- **Exhibit 1:** BNSF Railway Company's Petition for Exemption for the Line, filed in STB Docket No. AB-6 (Sub-No. 465X) (Aug. 11, 2008);

- **Exhibit 2:** Excerpts of the Transcript of the Deposition Upon Oral Examination of Douglas Engle taken in these proceedings (May 22, 2013);

- **Exhibit 3:** Seventh Amendment to Purchase and Sale Agreement between BNSF Railway Company, the Port of Seattle, and King County, Washington (Dec. 17, 2009);

- **Exhibit 4:** King County, Washington's Notice of Interim Trail Use Agreement for the Line, filed in STB Docket No. AB-6 (Sub-No. 465X) (Mar. 8, 2010);

- **Exhibit 5**: Letter from Byron Cole to Judge Brian D. Lynch (Sept. 21, 2012);

- **Exhibit 6**: Excerpts of the Transcript of the Deposition Upon Oral Examination of Byron Cole taken in these proceedings (May 24, 2013);

- **Exhibit 7:** Eastside Community Rail, LLC's "Eastside Rail Corridor Rehabilitation Proposal" (Jan. 28, 2013);

- **Exhibit 8:** Email from Doug Engle to Kurt Triplett with Eastside Community Rail, LLC's Business Plan attached (Mar. 11, 2013);

- **Exhibit 9:** Email from Douglas Engle to Kurt Triplett (Nov. 16, 2013);

- **Exhibit 10:** Excepts of the Transcript of the Deposition upon Oral Examination of Bobby Wolford taken in these proceeding (May 16, 2013);

- **Exhibit 11:** Verified Statement of Bryon Cole, filed in STB Docket No. FD 35731 (March 28, 2013);

- **Exhibit 12:** Ballard Terminal Railroad Company, LLC's Answer to City of Kirkland's First Set of Interrogatories (May 23, 2103);

- **Exhibit 13:** Email from Michael Williams to Doug Engle (October 18, 2012);

- **Exhibit 14:** Letter from RailWorks to Douglas Engle (January 18, 2013);

- **Exhibit 15:** E-mail from Doug Engle to Port of Seattle Real Estate Director Joe McWilliams (March 27, 2013);

- **Exhibit 16:** Bankruptcy Court Order Granting Motion for Approval of Sale of GNP's Assets to ECR, Case No. 11-40829-BDL (September 27, 2012);

- **Exhibit 17:** Email from Doug Engle to Woodinville City Manager Richard Leahy (March 28, 2013);

- **Exhibit 18:** Letter from Doug Engle to Kirkland Officials (February 19, 2013);

- **Exhibit 19:** Letter from Doug Engle to Kirkland Officials (February 22, 2013);

- **Exhibit 20:** Email from Doug Engle to Kurt Triplett (March 11, 2013);
- **Exhibit 21:** KPG's "CKC Trail – Adjacent Maintenance Road Option" (March 14, 2013);
- **Exhibit 22:** Cross Kirkland Corridor Rail Removal Project Contract between Kirkland and A&K Railroad Materials, Inc. (April 26, 2013);
- **Exhibit 23:** Letter from Wolford Trucking & Demolition, Inc. Owner Bobby Wolford to Cynthia Brown (March 27, 2013);
- **Exhibit 24:** Letter from CalPortland Sales Manager Michael Skrivan to Cynthia Brown (March 25, 2013);
- **Exhibit 25:** Map of the Line in Bellevue, Washington between Washington State Highway 520 and NE 8th St., the termination point of Ballard's reactivation petition;
- **Exhibit 26:** Email from Doug Engle to Michael Skrivan, including attachment of draft letter to Cynthia Brown (Mar. 25, 2013);
- **Exhibit 27:** Excepts from the Transcript of Deposition upon Oral Examination of Michael Skrivan taken in these proceedings (May 28, 2013);
- **Exhibit 28:** Email from Michael Skrivan to Dough Engle (May 1, 2013);
- **Exhibit 29:** Wolford Trucking & Demolition, Inc.'s Bid for Cross Kirkland Corridor Rail Removal Project (March 15, 2013);
- **Exhibit 30:** Brier Dudley, "Google boom: Kirkland campus to double," *Seattle Times* (Mar. 12, 2013); and
- **Exhibit 31:** Excerpt of Transcript from Oral Argument on Ballard Terminal Railroad, LLC's Motion for Temporary Restraining Order against the City of Kirkland, Case No. 13-00586MJP (W.D. Wash. 2013) (May 3, 2013).

Hunter Ferguson

HUNTER FERGUSON

Dated: June 4, 2013

Place: Seattle, WA

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 KURT TRIPLETT IN SUPPORT OF THE CITY OF KIRKLAND'S REPLY TO BALLARD TERMINAL RAILROA COMPANY, L.L.C.'S MOTION FOR PRELIMINARY INJUNCTION

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. On January 5, 2012, Kirkland and the Port of Seattle (the "Port") entered into a purchase and sale agreement for the Cross Kirkland Corridor ("CKC"), which is a 5.75 mile segment of the 12.55 mile railroad right-of-way running between the cities of Woodinville and Bellevue (the "Line"). Under the terms of the purchase and sale agreement, the Port conveyed to Kirkland its interests in the land comprising the CKC, along with its interests in the rail infrastructure and other personal property and fixtures in the CKC.

4. On April 13, 2012, Kirkland closed on its purchase of the CKC for $5 million.

5. The CKC connects eight of Kirkland's 13 neighborhoods and offers a unique opportunity to provide a regional transit corridor and a green pathway through a heavily urbanized area. With this potential in mind, Kirkland acquired the CKC with the plan of developing a multi-modal trail and transit corridor. The first phase of this plan is the development of an interim trail.

6. Kirkland officials and managers recognize that under the terms of the railbanking statute, every railbanked right-of-way remains subject to reactivation of freight service if a demand arises. Kirkland officials and managers further recognize that the Central Puget Sound Regional Transit Authority holds a transit easement over the entire length of the Line and might provide future commuter rail on the Line, alongside a trail.

7. Kirkland believes that there is no realistic demand for freight rail service in Kirkland or Bellevue today, or in the foreseeable future. I am not aware of any business located between Woodinville and Bellevue that has requested or displayed an interest in receiving freight rail service since 2008. During the past several years, the land use adjacent to the Line between Bellevue and Woodinville has steadily moved toward high-end commercial, mixed-use residential/retail, and retail. In 2008, for instance, Kirkland rezoned the Parmac light industrial zone to become Class A office space for the purpose of attracting high-end financial and tech companies. In addition, Google plans to build new campus next to the Line where more than a thousand employees will work.

8. Beginning in the spring of 2012, Kirkland staff evaluated various approaches to developing an interim trail, including both removal of the existing rail infrastructure and leaving the tracks and ties in place. Kirkland staff concluded that removing the rails and leaving the rail bed and ballast in place was the best approach, in part, because: (a) no rail operator had come forward with a plan to provide freight service on the Line, since BNSF Railway sold the Line to the Port in 2009; (b) rail removal would make development of interim trail easier and less expensive; (c) Sound Transit does not have a plan in the near term for providing commuter rail

service within the CKC; (d) removal would make vegetation and stormwater maintenance within the CKC easier and less expensive than with the rails in place; and (e) grant funding secured for the removal of the rails and development of an interim trail is available only through 2014.

9. On August 7, 2012, the Kirkland City Council voted unanimously to approve salvage of the rail infrastructure within the CKC beginning in spring 2013, thus allowing Kirkland residents to begin developing and using the CKC as an interim trail by summer 2013.

10. In the fall of 2012, Douglas Engle, a representative of Eastside Community Rail, LLC ("ECR"), contacted me to discuss the possibility of allowing his company to operate an "excursion" train within the CKC and urged me to delay Kirkland's salvage plans. On November 15, Mr. Engle and I met in person to discuss this proposed use for the CKC. During this meeting, Mr. Engle stated that ECR had acquired the rights and assets of his former company, GNP Railway, which was in bankruptcy, and would operate freight rail service with Ballard Terminal Railroad Company ("Ballard") on the 14 mile freight segment between the cities of Woodinville and Snohomish. In this meeting and in a subsequent email, Mr. Engle stated that ECR and its business partners would forgo reactivation of freight service through Kirkland, if Kirkland would allow ECR and its business partners to operate an excursion train on the Line between the cities of Snohomish and Bellevue. Mr. Engle did not articulate a specific plan for the freight service that ECR and its business partners would forgo. Mr. Engle represented that ECR could run an excursion train alongside a pedestrian-cycling trail and that an individual named "Byron" was investigating the cost and logistics of improving the rail infrastructure on the Line to support an excursion train. Mr. Engle further requested that Kirkland delay salvage by 90 days. I explained that Kirkland did not plan to commence salvage until late February, which was more than 90 days in the future, and therefore we would continue to pursue Kirkland's current plans. A true and correct copies of my email correspondence with Mr. Engle regarding these issues and our meeting is filed with Kirkland's reply as **Exhibit 9.**

11. On December 17, I met again with Mr. Engle regarding his proposal for ECR and its business partners to run an excursion train on the Line. He reiterated that ECR and its

business partners would not attempt to operate freight service if Kirkland agreed to allow an excursion train to run with the CKC. Mr. Engle did not, however, identify any specific plan for freight service that ECR and its business partners would not pursue.

12. In a letter dated February 19, 2013, Mr. Engle outlined a proposal, whereby ECR and Wolford Trucking and Demolition and would construct a "maintenance of way" road for ECR's excursion train alongside the existing tracks within the CKC for a cost of $2.87 million. ECR proposed that the maintenance of way road could function as a trail when not in use by ECR and that Kirkland would cover the cost of maintaining the road. A true and correct copy of Mr. Engle's February 19 letter is filed with Kirkland's reply as **Exhibit 18.**

13. In a letter dated February 22, 2013, Mr. Engle renewed ECR's proposal to run an excursion train on the CKC and his proposal for ECR and Wolford Trucking and Demolition to construct a trail alongside the existing rails. In particular, Mr. Engle proposed that ECR and Wolford Demolition and Trucking be allowed to use grant funding secured by Kirkland to develop a trail within the CKC alongside the existing rails. A copy of Mr. Engle's February 22 letter is filed with Kirkland's reply as **Exhibit 19**.

14. Kirkland staff, its engineering consultants, and I considered ECR's proposals to run an excursion train within the CKC and construct a maintenance of way road alongside the existing rails and concluded they were not financially or economically viable for Kirkland. Among other things, the proposals (a) did not include plans for bridge construction and street modifications, (b) contemplated filling in wetlands, (c) called for the trail to be placed at levels uneven with railroad grade in several places, (d) lacked a specific time line for construction, and (e) did not include adequate financing. Kirkland's engineering consultants estimated that ECR's proposed construction would cost more than $17 million, well above ECR's estimate of $2.87 million. A true and correct copy of this evaluation is filed with Kirkland's reply as **Exhibit 21**. In light of these flaws, I concluded that ECR's excursion train was incompatible with Kirkland's plan to develop an interim trail and with the possibility that Sound Transit might provide commuter rail service in the future.

15. On February 26, 2013, Kirkland solicited bids for the removal of the rail infrastructure within the CKC.

16. On March 11, 2013, I received a copy of ECR's public business plan from Mr. Engle, along with requests for information about Kirkland's plan to develop an interim trail. A true and correct copy of Mr. Engle's March 11 correspondence and ECR's business plan is filed with Kirkland's reply as **Exhibit 20**. With respect to the prospect of freight service on the Line, ECR's business plan stated: "There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conservations and some analysis. No other freight has been identified in Bellevue." ECR Business Plan at 7. In addition, ECR's business plan revealed that it did not have the capacity to run an excursion train because of the need to upgrade the existing rail infrastructure to accommodate passenger service. *See* ECR's Business Plan at 2. In light of these statements, I further concluded that it was appropriate to continue with plans for rail salvage and development of an interim trail.

17. Bids received for the Cross Kirkland Corridor Rail Removal Project were opened by Kirkland staff on March 15, 2013.

18. Among the bids received was one from "Bobby Wolford Trucking & Demolition, Inc." Wolford Trucking's bid was not selected. A true and correct copy of Wolford Trucking's bid, along with a notice dated March 22, 2013 returning Wolford Trucking's deposit is filed with Kirkland's reply as **Exhibit 29**.

19. After reviewing the bids, Kirkland awarded the salvage contract to A&K Railroad Materials, Inc. ("A&K"). Under the terms of A&K's bid, Kirkland stands to receive an estimated net benefit of $106,560 for the salvage value of the rails. This estimated benefit takes into account the contract price ($473,419) and the estimated salvage value of the rails.

20. Kirkland entered into the salvage contract with A&K on April 26, 2013, and immediately suspended performance. A true and correct copy of Kirkland's contract with A&K for rail salvage is filed with Kirkland's reply as **Exhibit 22**.

21. A&K has represented that it likely would be able to complete salvage operations during the 2013 construction season, if Kirkland provides a notice to proceed by August 1, 2013.

22. If Kirkland is unable to proceed with its plan to salvage the rails during the summer of 2013, it will both lose substantial expected benefits and incur several costs, including:

a. *Lost Investment in the CKC.* If Kirkland is unable to salvage the rails during 2013 construction season, its next opportunity to do so will be during the 2014 construction season. Trail development cannot start until salvage is complete. As a result, Kirkland's intended use of the CKC and the public benefits of a trail will be delayed by at least a year. Kirkland paid $5 million for the CKC. It recently borrowed $35 million with a simple annual interest rate of approximately 3.5 percent. Applying this interest rate to the purchase price, Kirkland will lose at least $175,000 over the next year on its investment in the CKC.

b. *Risk of Lost Contract Value.* If A&K is unable to perform work under the contract within the next six months, Kirkland risks losing its expected payment of $106,560 for the net salvage value of the rails. The possible future benefit from salvage, if any, is unknown and cannot be known until Kirkland solicits new bids in the spring of 2014 because salvage contractors prepare bids at points in time when they can reasonably predict the salvage value of steel.

c. *The Cost to Re-Bid the Salvage Contract.* If A&K is unable to salvage the rails within the next six months, Kirkland will have to solicit new salvage bids in the spring of 2014 at an estimated cost of $1,522.10.

d. *Increased Maintenance Costs within the CKC.* As the owner of the CKC, Kirkland is responsible for maintaining the right-of-way. In the absence of any rail traffic for several years, much of the vegetation within the CKC is now overgrown and must be removed. In addition, Kirkland must undertake excavation work in drainage ditches, where sediment and vegetation have accumulated, blocking the flow of stormwater. Kirkland had planned to begin this maintenance work by driving

maintenance vehicles and equipment on the gravel rail bed in the right-of-way as A&K completed salvage work. If the rail infrastructure is not salvaged, Kirkland instead will have to use rail-compatible vehicles and equipment to perform maintenance work and forgo the use of other equipment and tools. Based on price quotes provided by auto mechanics and maintenance equipment rental companies, these requirements will increase Kirkland's maintenances by an estimated $211,013.35:

WORK/EQUIPMENT	**COST-RAILS REMOVED**	**COST-RAILS IN PLACE**	**INCREASED COST**
Vegetation Maintenance Labor	$12,445	$71,120	$58,675
Rail-Compatible Vehicle Retrofit	N/A	$14,860	$14,860
Ditch Excavation Labor & Equipment	$90,910.40	$228,388.75	$137,478.35
TOTAL			**$211,013.35**

KURT TRIPLETT

Dated: 6/4/13

Place: Kirkland