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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

PUBLIC VERSION

**COMMENTS OF KING COUNTY, WASHINGTON AND CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY IN RESPONSE TO BALLARD TERMINAL
RAILROAD COMPANY, LLC'S COMMENTS DATED DECEMBER 6, 2013**

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Dated: March 6, 2014

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Pursuant to the Board’s Order dated January 15, 2014, in Docket No. FD 35731 and Docket No. AB-6 (Sub-No. 465X) (Service Date January 14, 2014), King County, Washington, a political subdivision of the State of Washington (the “County”) and Central Puget Sound Regional Transit Authority (“Sound Transit”) file these joint comments on Ballard Terminal Railroad Company, L.L.C.’s (“BTR”) reply comments filed December 6, 2013 (the “December 6 Reply”), in the above-captioned dockets. BTR’s December 6 Reply does nothing to change the Board’s August 1, 2013 determination that BTR cannot show that it is a *bona fide* petitioner, and BTR’s Petitions should therefore be denied.

I. INTRODUCTION

BTR initiated these proceedings in April, 2013, in an effort to reactivate rail service on a portion of the former BNSF Woodinville Subdivision between MP 23.8 – MP 11.2 (the “Line”).

However, BTR does not own any interest in the Line or in the underlying right-of-way, nor does BTR possess any rights to use the Line or the underlying right of way, nor does BTR have a contract or option to obtain any rights to use the Line. Neither BTR nor any corporate predecessor has ever operated on the Line or had any authority to do so. BTR has no current customers on the Line, and none of BTR's current customers has requested that BTR provide service on the Line. Indeed, no potential customer has made any commitment to ship any quantity of goods on the Line and none of BTR's purported "shippers" have any rail facilities on or connected to the Line. BTR itself has no apparent working capital on hand and has no letter of credit or other commitment from any investor, lender or financier to fund any part of its proposal. In fact, BTR has not determined the cost of acquiring an interest in the Line, or replacing and rehabilitating the rails on the Line, or constructing spurs or other facilities for its putative "shippers," or taking any of the other steps necessary to initiate service on the Line.

Entirely lacking the property rights, money, and customers needed to actually initiate service on the Line, BTR launched this case with a kind of bet: If the Board would enjoin the City of Kirkland ("Kirkland") from salvaging the rails on the 5.75-mile portion of the Line in Kirkland, then money and shippers would materialize and would therefore justify, albeit retroactively, the injunction and, prospectively, granting BTR's Petitions. In fact, BTR candidly admitted that if the rails in Kirkland were removed, then its Petitions would be moot because it could not afford to replace the rails. Accordingly, BTR all but begged the Board to enjoin Kirkland's planned salvage as the only means to preserve BTR's hope of reactivation.

BTR lost that bet. Although Kirkland voluntarily refrained from removing the rails for a period of several months, BTR failed to produce evidence of genuine shipper demand or of its financial capability to initiate service. Accordingly, on August 1, 2013, the Board denied BTR's

request for a preliminary injunction to stop Kirkland's rail salvage, finding, among other things, that BTR's evidence of shipper demand and financial capacity was insufficient to show a likelihood of success that BTR was a *bona fide* petitioner.¹ By October 17, 2013, Kirkland had completed its salvage work on the 5.75-mile portion of the Line that it owns.

Like a desperate gambler who has lost too much to walk away from the table, BTR attempts in its December 6 Reply to go "all in" with a new bet: If the Board would just grant the Petitions, more still-unobtained money and shipper demand would somehow materialize, miraculously enabling BTR to afford the formerly-prohibitive cost of replacing the rails in Kirkland as well as the other (as-yet undetermined) costs of acquiring access to the Line and initiating service.² Going all-in, BTR proffered a number of new "support" letters that BTR claims show that shippers and financiers are "ready, willing, and able" to fund reactivation and ship on the Line.

But BTR's December 6 Reply was another bluff, because those letters demonstrate no such thing. None of the letters state that the "supporter" is "ready, willing, and able" to do anything. Discovery reveals that most of BTR's "supporters" disavow being "ready, willing and able" to do anything other than possibly consider a proposal once BTR provides a coherent business plan and precise details of its proposal, including proof that its service would be cost effective. BTR admits that it has not a single contract, or firm request, for service. BTR's estimates of future "car counts" are based on *an assumption* that rail service would be less costly than trucking and on *a further assumption* that each of BTR's purported "shippers" would

¹ *Ballard Terminal Railroad Co., LLC – Acquisition and Operation Exemption – Woodinville Subdivision – Verified Petition For Exemption Pursuant To 49 U.S.C. § 10502*, STB Finance Docket No. 35731 (STB Service Date August 1, 2013) ("August 1 Decision").

² See Deposition of Doug Engle, February 13, 2014 ("Engle 2014 Dep.") at 207:20-25, attached as Exhibit 1 (made decision to "go all in").

convert *all* of their present trucking to rail service. No one has actually done the math to see if either of those assumptions holds true.

Similarly, none of BTR's so-called "financial partners" have performed *any* thorough due diligence regarding BTR's proposal, or made any commitment to BTR, contingent or otherwise; and they certainly have not lent or invested any money for reactivation. Indeed, BTR has not so much as applied for a loan from the two banks it identifies, and BTR has not provided its other would-be financial "partners" with enough information for them to make any financial commitment.

Discovery has further revealed the reason BTR keeps doubling down on its bets despite the lack of support for its concept: BTR's true objective in this matter is not to establish freight service, but to use freight service as a pretext to advance the passenger excursion service and real estate development plans of Eastside Community Rail without the need to comply with state and local regulations. As discussed below, excursion service is a "cash cow," while freight service is expected to account for only an insignificant percentage of total revenues from the Line, and would not cover expected expenses. The Board has seen through that kind of bluff in the past, and nothing in BTR's December 6 Reply should lead to a different result here.

At bottom, BTR's December 6 Reply consists of equal parts factual puffery and legal sleight-of-hand. BTR misconstrues its support letters—at best, contingent expressions of possible future interest—to mean that those entities are "ready, willing, and able" to take specific and immediate action. BTR misrepresents the willingness of banks and other financiers to review a future BTR loan application or financing proposal as firm commitments to provide funding at levels BTR admitted was impossible just a few months ago. BTR's assertions strain credulity and simply fail to withstand the slightest scrutiny.

BTR also misconstrues the Board’s definition of *bona fide* petitioner by arguing that the Board should accept as adequate BTR’s unproven hopes to later obtain the money and shippers necessary to initiate service. As the Board made clear in the August 1 August 1 Decision, as well as earlier reactivation decisions going back to *Iowa Power*, a reactivation petitioner must produce hard evidence of financial capacity and shipper demand up-front, not just rosy future projections and hopes. Similarly, BTR suggests that the Board somehow bestows property rights in the Line when it grants reactivation authority, such that BTR need not demonstrate an independent ability to actually acquire those rights from the current owners. But the Board’s prior decisions foreclose BTR’s argument, and nothing in the Trails Act allows the Board to compel a property owner to convey an interest in real estate to a railroad interested in reactivating a line. In effect, BTR’s December 6 Reply concedes that BTR cannot meet the Board’s current standards and instead asks the Board to establish a new, much lower, bar for reactivation. As detailed below, BTR offers no principled legal reason to change the Board’s standard, and proffers no evidence that would justify a Board decision granting BTR’s Petitions.

II. BACKGROUND

King County and Sound Transit previously summarized the history of the Line, its railbanked status, the Regional Parties’ ongoing work to use the Line for important public purposes within the railbanking framework, and the procedural history of this matter, which history will not be repeated here. *See* Comments of King County and Central Puget Sound Regional Transit Authority to Ballard Terminal Railroad Company, LLC’s Petitions, filed October 17 2013, at 4-10 (the “October 17 Comment”).

BTR replied to those Comments in its December 6 Reply, which included new evidence, not previously submitted, ostensibly to demonstrate BTR’s financial and shipper support for its petitions. In its December 6 Reply, BTR acknowledged that it did not gather all of its support for

its petitions at the time of its initial filings, and stated that Kirkland’s desire to remove expeditiously the track on its portion of the Line had required BTR to file its initial petitions prior to gathering all of the reactivation support. *See* December 6 Reply at 11. BTR argued that the support shown in its December 6 Reply merited approval of its petitions. *Id.* at 13.

In an order issued January 15, 2014, the Board found that the new evidence in BTR’s December 6 Reply substantially constituted Ballard’s case-in-chief, and accepted that filing and treated it as a supplement to BTR’s initial petitions filed on April 2, 2013. January 15 Order at 3. The Board authorized limited discovery and required the Regional Parties to file any comments by March 6, 2014. *Id.* at 4. The parties subsequently conducted discovery and King County and Sound Transit now provide this Comment on BTR’s December 6 Reply.

III. ARGUMENT

As framed by the Board and discussed in the October 17 Comment, the central question in these Petitions is “under what circumstances will the Board grant a carrier’s request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does not own or have any other interest in the right of way?” 78 Fed. Reg. 24465, 24466 (Apr. 25, 2013). To even trigger that question, however, a petition for reactivation must first be made by a *bona fide* petitioner. In the context of a reactivation petition, a *bona fide* petitioner means a carrier that can demonstrate (1) that it has the financial resources to reinstate service, including acquisition of the necessary rights to use the Line; and (2) that there is genuine demand for the restoration of rail service on the Line. In its August 1 Decision, the Board found that BTR was unlikely to prevail on the merits based on the evidence presented in its Petitions and Motion for Injunction. The additional evidence BTR proffered in the December 6 Reply is unpersuasive and confirms the Board’s initial assessment. Accordingly, the Petitions should be denied because BTR is not a *bona fide* petitioner.

A. Discovery Confirms That BTR's Proposal Still Lacks Financial Support

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. See, e.g., Deposition of Byron Cole, dated February 12, 2014 (“Cole 2014 Dep.”), 38:10-41:24, attached as Exhibit 2; Undated Letter from B. Cole to M. Tobin, (1-page summary of BTR cash position for 2013), attached as Confidential Exhibit 3. It has not presented any letter of credit, commitment letter, or other evidence that it has access to the capital it would need to acquire access to the Line, replace the rails in Kirkland, rehabilitate the rails elsewhere on the Line, and otherwise fund the reactivation of service on the Line. BTR has not produced a current balance sheet or even a complete business plan for its proposed operation. See *Id.*³ The limited financial information that BTR has produced indicates that it is breaking even on all of its operations, and likely losing money on the Freight Segment, although BTR refused to state how much of its total revenue was from the Freight Segment. *Id.* The absence of evidence that BTR has the financial resources to initiate service on the Line is *prima facie* evidence that it lacks the financial capacity to be considered a *bona fide* petitioner.

Unable to demonstrate its true financial condition, BTR insists that others will provide the financial support it cannot supply itself. BTR's December 6 Reply states that

Financial support for Ballard's petitions comes from Watco Companies, LLC . . . Salmon Bay Sand and Gravel, a leading supplier of sand gravel and concrete products in the Northwest United States, American West [sic] Bank and Coastal Community Bank, two of the largest banks in the Northwest United States, and EB5 Partners, a leading U.S. investment house.

December 6 Reply at 4. The December 6 Reply goes on to claim that it has “extensive financial support from Watco, Salmon Bay Sand and Gravel, and banks, to reactivate the rail line and

³ See also Deposition of Greg Starup, dated February 6, 2014 (“Starup Dep.”), attached as Exhibit 4, at 26:13-17 (“I don't think he [Mr. Engle] even has provided a resume. He provided some documents that could be construed to be a portion of a business plan, but not a complete one. He did not provide any information that was asked for[.]” (emphasis added)).

reconstruct the missing trackage,” and that “[BTR] has the financial backing of various multi-million dollar companies and financial institutions.” December 6 Reply at 8-9. Discovery has revealed, however, that these assertions are untrue, and that BTR’s claims of financial support rest on wishful thinking rather than financial commitments.⁴

1. WATCO

The December 6 Reply claims that “Watco fully supports this project, has urged the STB to reactivate the rail line, and is ready, willing, and able to work with [BTR] for the movement of unit trains from the reactivated rail line to interchanges with the BNSF.” December 6 Reply at 8. But the plain text of WATCO’s letter says no such thing. In fact, although BTR asked WATCO to state that it was “ready, willing, and able” to participate, WATCO expressly refused to make that representation and carefully deleted all uses of the phrase “ready, willing, and able” from the draft support letter provided by BTR. *Compare* Email from D. Engle to M. Blazer, Nov. 4, 2013, attached as Exhibit 8, *to* Declaration of Declaration of Mark Blazer, February 14, 2014

⁴ In addition to the more blatant and substantive misrepresentations of the support letters detailed in this Comment, BTR’s December 6 Filing contains numerous “lesser” misrepresentations. Although of limited significance taken individually, taken together this type of puffery reveals an effort to inflate the extent of BTR’s support. For example, BTR described Salmon Bay Sand and Gravel as “one of the preeminent and largest sand and gravel companies in the northwest United States.” Dec. 6 Reply at 4. But, Mr. Nerdrum, Salmon Bay’s owner, stated that Salmon Bay is “not a leading supplier” of sand and gravel, and would be considered “probably a small supplier but we also sell a wide range of building materials and have other products.” Deposition of Paul Nerdrum, dated February 12, 2014 (“Nerdrum Dep.”), attached as Exhibit 5, at 44:14-45:2. Similarly, BTR describes the Coastal Community Bank and AmericanWest Bank as the “bankers” for BTR and ECR and as “two of the largest banks in the Northwest United States.” Dec. 6 Reply at 4, 5. But, Mr. Starup describes Coastal Community bank as a “community bank” and specifically denied that it is one of the largest banks in the Northwest or even in Washington State. Starup Dep., Ex. 4, at 45:22-46:12. Moreover, Coastal Community Bank is not a bank for either BTR or ECR or any of their principals. *Id.* at 55:1-13; 84:16-25; 85:1. AmericanWest Bank is not a bank for ECR. Deposition of Nathan Engman (AmericanWest Bank), dated February 6, 2014 (“Engman Dep.”), Attached as Exhibit 6, at 34:10-24. Finally, EB5 Partners is not a “leading US investment house.” *See* Dec. 6 Reply at 1. Mr. Daniel Behr, EB5’s principal, describes EB5 as a “business advisory” and made clear that EB5’s business model is not to invest its own capital in clients, but only to locate third-party investors. Deposition of Daniel Behr, February 12, 2014 (Behr. Dep.”), attached as Exhibit 7, at 18:5-19:20; 77:2-22. EB5 does not appear to underwrite stock or lend money to its clients. *Id.* EB5 Partners can only be called an “investment house” under the loosest understanding of the term, and there is no basis to suggest it is a “leading investment house,” as if it were a Goldman Sachs. This consistent pattern of not-always minor exaggerations exposes BTR’s efforts to create an illusion of financial support that does not exist and to lend gravitas to its proposal by association.

(“Blazer Dec.”) at ¶ 5, Ex. 1, attached as Exhibit 9. It is disingenuous at best for BTR to represent that WATCO is ready, willing and able to do anything at present.

Moreover, WATCO has made no commitments of any sort to BTR, financial or operational. Blazer Dec. at ¶ 7. Indeed, WATCO appears to have understood that BTR was suggesting there could be an opportunity to operate trains with only the possibility of investing in the operation. *Id.* at ¶ 3.⁵ WATCO considered BTR’s plan to be so ill-defined and contingent on future variables that it did not conduct any due diligence on BTR’s proposal. *Id.* at ¶ 8. WATCO would have to conduct, and be satisfied with, such due diligence before making any commitment to BTR. *Id.* at ¶ 9. Accordingly, Watco is not in a position to determine if BTR’s plan is viable or if genuine shipper demand exists. *Id.* at ¶¶ 8-11.

Further, WATCO would only participate in the proposal in any capacity if BTR were able to meet very specific requirements, including obtaining “pay or take agreements from shippers at stated car volumes, establishing customer’s level of financial participation in the costs of reactivating the Line, and negotiating operating and use agreements. *Id.* at ¶ 6. None of things has occurred and WATCO has made no commitments to BTR. *Id.* at ¶¶ 8-11.

2. Paul Nerdrum and Salmon Bay Sand and Gravel

BTR asserts that “Mr. Nerdrum has thrown his full financial support behind Ballard and this project, as detailed in the letter which he previously submitted in this proceeding.” December 6 Reply at 7. But the plain text of Mr. Nerdrum’s letter says no such thing. *See* December 6 Reply at 25-27 (letter from Mr. Nerdrum dated June 15, 2013). Further, BTR has not produced any sworn or written commitment from Mr. Nerdrum or Salmon Bay Sand and

⁵ Indeed, it appears that Mr. Engle attempted to entice WATCO’s support by suggesting that WATCO could take over all of BTR’s operations as early as April, 2014, when BTR’s current lease expires. *See, e.g.*, Email from D. Engle to M. Blazer, Nov. 12, 2013, attached as Confidential Exhibit 10; Email from D. Engle to M. Blazer, Nov. 26, 2013, attached as Exhibit 11. In his deposition, however, Mr. Engle denied any present intention to oust BTR. Engle 2014 Dep., Ex. 1, at 18:15-23.

Gravel to finance any part of BTR's proposal. That failure alone is sufficient to make BTR's representations about Mr. Nerdrum's financial resources irrelevant. *Cf. Ariz. & Cal. R.R.-Aban. Exemption-in San Bernardino and Riverside Counties, Cal.*, AB 1022 (Sub-No. 8209; No. 1X) (Service Date July 15, 2009) (rejecting offer of financial assistance supported only by assertions of financial resources of its owner).

More conclusively, Mr. Nerdrum provided sworn testimony that he has not made *any* firm financial commitment to BTR. In his deposition Mr. Nerdrum was asked if he offered to give BTR his full financial support and he replied that:

A. I think my words were probably Salmon Bay will do whatever we can to support Ballard in their efforts to rehabilitate these records [sic] and return it back to use.

.....

Q. Is that the same as your full financial support?

A. I wouldn't interpret it that way, no.

Nerdrum Dep., Ex. 5, at 30:10-23.

Mr. Nerdrum has made clear that neither he nor Salmon Bay Sand and Gravel have made any commitment to BTR for any specific amount, and that the amount of any investment would depend on "what its going to take when we get there." *Id.* at 31:6-22. The December 6 Reply materially misrepresents Mr. Nerdrum's letter and the degree and extent of his support.

3. Coastal Community Bank and AmericanWest Bank

BTR claims that Coastal Community Bank and "American West [sic] Bank" are the bankers for BTR and Eastside Community Rail LLC, and that "[e]ach of those banks stands ready, willing and able to financially participate in the restoration associated with the reactivation [of] the subject rail line." December 6 Reply at 8. First, BTR is not a customer of Coastal Community Bank and ECR is a customer of neither bank. See Footnote 4, *supra*. Second, neither bank stated that it was ready, willing, and able to participate in the reactivation.

In deposition, Mr. Engman, from AmericanWest Bank, stated only that he was willing to consider any application for a loan that BTR might submit. Engman Dep., Ex. 6, at 86:1-18. For his part, Mr. Starup made it clear that any commitment by Coastal Community Bank would depend on the completion of due diligence, but that BTR had not provided the information necessary to even begin that due diligence. Starup Dep., Ex. 4, at 26:10-17. Mr. Starup agreed that it would be “inaccurate” to state that BTR has extensive financial support from Coastal Community Bank. *Id.* at 48:9-12.

Representatives of both banks made clear that neither BTR nor ECR had submitted any application for a loan and thus they could not state whether each bank would or would not lend money to support reactivation or how much it might lend. Starup Dep., Ex. 4, at 10:10-13:6; 69:8-70:3. Indeed, Mr. Starup, from Coastal Community Bank, made it clear that Coastal would **not** extend credit to fund restoration work. *Id.* at 43:13-20. Likewise Mr. Engman was very careful to point out that AmericanWest has received no loan application and could not evaluate any aspect of the project until the bank understood the scope and scale of that project, but BTR had not presented enough information to allow it to begin. Engman Dep., Ex. 6, 85:5-6; 87:1-3. Coastal’s representative was even blunter in his assessment of ECR’s “business plan”:

He [Mr. Engle] provided some documents that could be construed to be a portion of a business plan, but not a complete one.

Without a current balance sheet, it’s kind of meaningless . . . [Y]eah, there are some numbers there, but they are inventions. I mean, anybody can put together numbers. Without knowing where they come from and the context in which they are used, this doesn’t have a lot of meaning. (Starup Dep., Ex. 4, 26:14-17; 74:12-19).

Moreover, even the stated “support” from Mr. Engman and Mr. Starup is of only limited potential value. Mr. Starup focusses on SBA-backed loans, which are limited to \$5,000,000, and Mr. Engman works with loans of \$500,000 or less. *Id.* at 43:23-25; Engman Dep., Ex. 6, at 18:7-

25, 107:8-25. Thus neither Mr. Engman nor Mr. Starup are in a position to commit their banks to the \$10 million that BTR has stated it needs merely to replace the rails in Kirkland, much less cover the full cost of reactivation including property acquisition and rail service.

4. EB5 Partners LLC

BTR claims that “financial support comes from . . . EB5 Partners,” Dec. 6 Reply at 1, “which sees opportunities associated with this rail line reactivation, and can locate additional financial support for the project, if necessary,” *id.* at 5. But, EB5 Partners has made no commitments to BTR regarding locating investors or raising capital. Behr Dep., Ex. 7, at 76:16-77:25. Nor has EB5 invested any of its own money in BTR. *Id.* at 77:6-11. EB5’s letter makes clear that its ability to locate investors depends on doing the due diligence necessary to make the “business case” for the project. Dec. 6 Reply at 31 (Aug. 31, 2013 Letter at 2). But that work has not been done and EB5 have not put together that business case. Behr Dep., Ex. 7, at 71:2-76:1. Indeed, BTR has not asked EB5 to locate investors or raise funds, and EB5 cannot promise that it will be able to locate investors when it is asked to do so. *Id.* at 69:24-71:5; 76:16-77:1;

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. EB5 has not determined BTR’s expected capital needs or the cost of acquiring access rights to the Line. Behr Dep., Ex. 7, at 71:12-22; 93:7-17. Nor has EB5 independently validated BTR’s estimates of shipper demand and expected volumes. *Id.* at 33:23-34:2 (no contact with General Mills or Safeway); 56:12-16 (no contacts with potential aggregates shippers); 30:3-33:22 (did not meet with potential shippers). Accordingly, EB5 is not in a position to state that BTR’s plan will justify the investment necessary to initiate service on the Line. In short, EB5 offers no definite financial support for BTR, and any future support it might offer is contingent on BTR completing its business plan and on EB5 locating investors willing to

invest in BTR's project. The fact that EB5 sees "opportunities" does not mean that financial support will materialize.⁶

B. Discovery Confirms That There Are No Genuine Requests For Service

The December 6 Reply asserts that "[a] multiplicity of shippers have requested service on the line, including General Mills, RJB Wholesale, CT Sales, Aggregates West, Wolford Trucking and Demolition, and CalPortland." *Id.* at 5. These assertions are also untrue. In fact, none of the so-called shippers have requested service or made any commitment to utilize BTR's services should they be available.

1. General Mills

General Mills is not located on the Line. Prior to 2008, it shipped flour to a Safeway bakery that is located on the Line. *See* October 17 Comment at 18-19. Safeway itself has not requested that flour be shipped by rail, and BTR's efforts to contact Safeway have been unavailing. Engle 2014 Dep., Ex. 1, at 104:25-106:20. Mr. Engle has not communicated with Safeway since mid-2013. *Id.* Consistent with the lack of a request, or apparent desire, from Safeway, General Mills' letter is a general, even vague, expression of "support" for reactivation, but cannot rationally be understood as a request for service. Emails produced by BTR show that General Mills carefully edited the draft letter proposed by Mr. Engle to remove any reference to being "ready, willing, and able" to receive service and to delete the word "request" from the letter. *Id.* at 113:21-115:16. *See also* Email from D. Engle to T. English, Aug. 17, 2013, attached as Exhibit 13. Again, BTR cannot assert that General Mills is "ready, willing, and able"

⁶ BTR has also insisted that various forms of public financing, in the form of grants and/or loans, are forthcoming. Dec 6 Reply at 56. But BTR cannot present any evidence that it has secured, or is likely to secure, any of those funds. The possibility of a state legislative grant depends on the approval of the Washington legislature and approval by the Governor, which votes and approval are entirely discretionary. Moreover, no state funds could be appropriated until the next biennial legislative session in 2015, which could appropriate funds for FY 2016 at the earliest. Similarly, BTR has not presented a shred of evidence to support its optimism in receiving any of the other discretionary grants or loans it mentions. The money may be "there," as Mr. Engle urges, but there is no evidence to suggest that BTR (or even ECR) will ever get a penny of it.

to request service when General Mills itself affirmatively refused to make that statement.

General Mills' so-called support is simply too vague and non-committal to be given any weight.

2. RJB Wholesale

RJB is the only entity identified in the December 6 Reply that is located on the Line and has even a colorable interest in service. However, RJB's letter is not on its face a request or commitment for service. RJB has not undertaken the due diligence to determine whether it would use rail service if it were available. Verified Statement of Nick Beck ("Beck Aff."), attached as Exhibit 14, at ¶¶ 6-7, 10-11. Nor has RJB committed to constructing a spur or making other improvements necessary to receive or send shipments by rail. *Id.* at ¶ 12. RJB has not received or requested a price quote for service. *Id.* at ¶ 7. RJB has never used rail service in Kirkland even when BNSF and its predecessors operated on the line. *Id.* at ¶ 6. RJB's support is of a general nature and appears to reflect an interest in exploring shipping options rather than committing to shipping by rail.

After signing the Verified Statement, Mr. Beck submitted a letter dated February 13, 2014, apparently at the request of BTR in an attempt to bolster the June 17, 2013 Letter and respond to the affidavit. In that light, the February 13 letter must be taken with a grain of salt. Moreover, taking the letter and affidavit as equally true, it is impossible to conclude that RJB has requested service given the unknowns regarding price, cost effectiveness, utility, or access.⁷ The bottom line is that there is no present demand for service or any plan for a rail access facility of any kind. Engle 2014 Dep., Ex. 1, at 189:10-12 ("His [Mr. Beck's] yard is not cohesive, is not

⁷ Neither Mr. Beck's letter, nor any of the support letters solicited by BTR can rationally be interpreted as a direct request for service or commitment to take any level of service. Even when the letters use buzz-phrases like "ready, willing, and able," the letters represent an expression of potential future interest with no present consequences or commitment. The letters are, at bottom, a risk free, no-cost way of expressing general support for rail service using "code words" BTR hopes will be persuasive, but without the kind of commitment by shippers or BTR that would demonstrate the genuine shipper demand needed to prove BTR's *bona fides*.

good to load and offload pipe.”); *Id.* at 190:5-9 (“It didn’t make sense to have drawings done or anything like that until we know whether or not it’s [reactivation] going to happen.”).

3. CT Sales

CT Sales is not located on the Line, and has never received rail service. Deposition of James House, dated Feb. 7, 2014 (“House Dep.”), attached as Exhibit 15, at 9:7-10:14. *See also*, Map showing location of CT Sales, attached as Exhibit 16. Although it is located adjacent to the Freight Segment in the unincorporated area of Maltby in Snohomish County, Washington, approximately several miles *north* of the Line, CT Sales lacks any facilities for receiving rail service. House Dep., Ex. 15, at 24:5-25 (no facilities). Moreover, when directly asked if CT Sales had requested service, its president Mr. House flatly denied it:

Q. Has CT Sales requested services on the line?

A. No.

Id. at 54:9-1. Furthermore, Mr. House agreed that he had not, to date, given “serious” consideration to shipping by rail. *Id.* 50:9-22.

Further, the use of the Line by CT Sales depends on CT Sales securing contracts from customers requiring delivery of finished products in Kirkland and Bellevue, just a few miles away from CT Sales by road. Mr. House acknowledges that there is no guarantee that any construction sites to which CT Sales may deliver would be near the Line or the conceptual “rail yard” that Mr. Engle envisions in Bellevue. *Id.* at 11:11-16; Deposition of Byron Cole, dated May 24, 2013 (“Cole 2013 Dep.”) at 126:16-19, attached as Exhibit 17 (“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.*”) (emphasis added.) Tellingly, *none* of CT Sales’ customers have requested delivery of their ordered product

by rail. House Dep., Ex. 15, at 35:4-6. CT Sales can in no way be considered a genuine customer, or even potential customer, on the Line.

Moreover, Mr. House made it clear that he would only commit to service after an “in depth” cost benefit analysis showing that rail was more cost effective than truck. *Id.* at 55:3-16. But, CT Sales has not done the due diligence to determine whether it would use rail service if it were available. *Id.* To the extent that CT Sales began to investigate the possibility of using rail to transport rebar from Oregon to Maltby using the Freight Segment (*not* the Line itself), it appears that the bare charge to ship a hundredweight of rebar by rail would be more than *twice* the charge to ship a hundredweight of rebar by truck. *Id.* at 22:10-24:4; Email from D Lauber to J. House, July 31, 2013, (\$2.71 per cwt for rail v. \$1.28 per cwt for truck), attached as Exhibit 18. And that bare charge fails to take into account the added cost to construct and maintain any sort of rail facility at CT Sales’ property, or the other costs of using rail service. While Doug Engle and ECR have made it clear that CT Sales and other shippers will have to participate in the cost to construct rail facilities, Engle 2014 Dep., Ex. 1, at 150:20-151:12, BTR has entered into no agreements regarding such facilities. In fact, BTR has suspended any such discussions and will make a decision on whether to serve CT Sales pending a further decision about how best to deploy its limited assets: “When the STB decision comes through, *we’re going to decide how we’re going to deploy our capital to get the highest rate of return. If that involves CT Sales, great, we want to jump on it.*” *Id.* at 150:1-5.

The lack of substance to CT Sales’ support is demonstrated by the fact that CT Sales is located on the operating Freight Segment and the bulk of shipments CT Sales likely would receive would be the *inbound* shipments of rebar stock that it currently receives by truck. Those shipments could be received without reactivating the Line; indeed CT Sales could not receive

those shipments over the Line because the Line south of CT Sales does not presently connect to a through line. House Dep., Ex. 15, at 41:17-42:22. If shipment by rail were truly cost-effective for CT Sales, or if BTR were truly capable of providing cost-effective service, one would expect CT Sales to already be a BTR customer—or to have been a BNSF customer in the past. Even though CT Sales could be served on the *current* operating Freight Segment, and despite BTR’s claims of cost-effectiveness, CT Sales does not receive service by rail and does not appear to have requested service by rail. BTR does not even list CT Sales as an “Operating Line Freight Customer;” rather, BTR lists CT Sales as a “Reactivation Freight Customer” for the Line. Dec. 6 Reply at 19 (table titled “STB Reactivation Letters Filed”).

BTR’s inaction further undermines the relevance of CT Sales. BTR has not taken the steps necessary to serve CT Sales’ existing shipments of inbound raw rebar from Oregon on the current operating Freight Segment. Yet, BTR somehow expects the Board to grant reactivation authority based on the theoretical possibility of serving CT Sales for job lots of future outbound, finished rebar product to construction sites in Bellevue or Kirkland. If BTR cannot or will not capitalize on *current* opportunities, BTR can hardly be considered a *bona fide* petitioner for *future* opportunities.

4. Aggregates West

Aggregates West is not located on the Line and does not have access to any rail line. Deposition of Scott Day (Aggregates West), dated February 7, 2014 (“Day Dep.”) at 22:19-23:18, 57:5-17, attached as Exhibit 19; Map showing Aggregates West Location, attached as Exhibit 20. Although BTR touts Aggregates West’s letter as requesting service, Mr. Scott Day, the Aggregates West employee who signed that letter, testified specifically that it was not. Day Dep., Ex. 19, at 23:13-25. Mr. Day described the letter as an expression of support in an effort to create a shipping option. *Id.* at 27:8-28:2. Aggregates West has no “clear desire” to ship on the

Line. *Id.* at 58:20-59:12. Mr. Day made it clear that any decision to use rail would depend on a close analysis of the costs of such service and on gaining access to a rail line. *Id.* at 27:8-28:5. That analysis has not been done. *Id.* at 30:9-20. Aggregates West has no rail facilities, none of its properties are located on or adjacent to any railroad line, and neither Aggregates West nor ECR have even bothered to identify a site for Aggregates West to load its products onto trains. *Id.* at 22:19-23:18. *See also* Engle 2014 Dep., Ex. 1, at 146:5-19, 147:13-19. Indeed, to the extent that Aggregates West previously used rail service at all, in other areas of western Washington, it no longer does so and has disposed of the facility it used. Day Dep., Ex. 19, at 21:14-22:24. No customers in Kirkland or Bellevue have ever asked Aggregates West to ship aggregate to them by rail. *Id.* at 31:3-17. Mr. Day testified that Aggregates West does not use rail service and that reactivation is not necessary for Aggregates West to conduct its business. *Id.* at 57:18-58:19.

Moreover, the “car counts” BTR attributes to Aggregates West are estimates from Mr. Engle based on his own assumptions about potential demand from future construction projects in Bellevue; they are not based on requests for service from Aggregates West. *Id.* at 44. Although Mr. Day believes Aggregates West could ship those volumes, its decision to do so would depend on actually getting customers and determining that shipping by rail was cost-effective. *Id.* at 30:9-20.⁸ As the Board found with CalPortland and Wolford Trucking, the possibility of future contracts that could (but may not) be serviced by rail is simply too contingent to demonstrate present demand for service. *See* August 1 Decision at 5 (“[t]he current record . . . does not support a conclusion that there is a demand to reactivate rail service over the Line.”).

⁸ *See especially* Day Dep., Ex. 19, at 30:15-20 (“Q. Have you undertaken any analysis to determine whether it would be cost-effective [to ship rock or sand into Bellevue]? A. No. I wouldn’t spend my time doing that until I knew exactly what the freight costs would be and things like that. I mean, I would need something more concrete to spend my time moving forward on something *than a hypothetical.*”). (Emphasis added.)

5. CalPortland and Wolford Trucking

The Board has already determined that CalPortland and Wolford Trucking and Demolition are not located on the Line and have not requested service. *See* August 1 Decision at 5. Moreover, CalPortland and Wolford's plans depend on securing contracts in the future related to construction projects that may or may not occur in the future. Neither entity has undertaken the due diligence to determine whether they would use rail service even if it were available. October 17 Comment at 15-18. BTR did not present any new information from CalPortland or Wolford Trucking. Accordingly, the Board's prior finding that neither is a genuine shipper remains valid.⁹

6. Other Entities

Just as it did in the December 6 Reply, BTR continues to solicit letters of support from new entities in the hope that the sheer number of "support" letters will mask the absence of any actual requests for service. For example, Woodinville Whiskey recently submitted a letter indicating, generally, that it thinks rail service would be of benefit and that it would be "ready, willing, and able" to use service if it were available and if it could somehow get access to the Line given the difficult terrain separating its facility and the Line. Letter from Orlin Sorensen to Cynthia T. Brown, dated February 13, 2014 (filed Feb. 20, 2014). As noted above, it is difficult to give much weight to this letter because there is no cost or downside to making such statements, even if there is only a low likelihood that the entity would ever use rail service. Certainly rail service is not essential for Woodinville Whiskey, and it remains to be seen if it would be cost effective. Moreover, the small volumes Woodinville Whiskey estimates it might

⁹ BTR also claims that there is demand from existing customers on the Freight Segment including Boise Cascade, Spectrum Glass and Matheus Lumber. Dec. 6 Reply at 19. But those businesses are not located on the Line and there is no evidence that any of those entities have requested service on the Line.

need – 1-2 cars a month – would hardly support the Line, or even contribute substantially to its revenues.

Woodinville Whiskey’s physical setting and recent activity at its site further shows that Woodinville Whiskey cannot be considered evidence of shipper demand. Woodinville Whiskey is located down a steep embankment almost 25-feet below the Line. It is unclear if a spur could be built into Woodinville Whiskey’s facility or if another means of off-loading and loading could be built. *See GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Finance Docket No. 35407, slip op. at 6 (Service Date June 15, 2011) (lack of access to line by would-be shippers undermines *bona fides* of petitioner). In the meantime, Woodinville Whiskey’s landlord has planted a number of fir trees on the embankment itself, with some as close as fifteen feet from the track centerline. Such plantings would further impair access to the Line. Indeed, Woodinville Whiskey’s landlord noted that a benefit of the plantings would be “to enhance future bike trail,” and would serve to screen unattractive industrial equipment (a “chiller”) from being seen from the Line. *See Application for Special Use Permit*, dated January 10, 2014 (seeking approval to plant trees), attached as Exhibit 21.

Given the steep slope, it is unclear, at best, if the site is physically capable of receiving service. Moreover, it is unclear if Woodinville Whiskey could secure permission from its landlord to remove those recently planted trees and make whatever other improvements that would be necessary to allow for service at the site. There is simply no way to understand Woodinville Whiskey’s letter as a genuine request for rail service.

These recent letters confirm BTR’s strategy of scurrying around to solicit general letters of support in a continuing last-ditch effort to create the illusion of genuine shipper demand and financial support that simply does not exist. As discovery has exposed, none of BTR’s evidence

of so-called shipper demand in fact demonstrates such support. BTR's repeated, empty attempts to show "new" support—and to unsuccessfully remedy shortcomings apparent when BTR first filed—serve only to burden the Board, and to impose undue burden and costs on the County and Sound Transit, all while failing to advance BTR's cause. Enough is enough. BTR has had ample opportunity to make its record. The Board should disregard any further late-submissions and decide the case on the record already submitted.

7. The Letters from Public Officials, Unions, and Other Non-Shippers Are Irrelevant

BTR also submitted a number of letters from state legislators, local government officials, unions, and other entities. *See generally* December 6 Reply at 49-53. These letters are not relevant to Board's determination whether BTR is a *bona fide* petitioner or whether appropriate circumstances exist to reactivate the Line. None of those entities are shippers, and most are not located on or even near the Line. None of the letters make a commitment of financial assistance. Many of the letters are unclear if they are supporting freight reactivation on the Line or other rail activities on other portions of the Woodinville Subdivision. At most the letters offer general support for the concept of increased rail activity. But that general support does not demonstrate that BTR has the financial capacity or necessary property rights to carry out the project or that there is genuine shipper demand. *See Norfolk Southern Ry. Co. – Petition for Exemption – In Baltimore City and Baltimore County, MD*, STB Docket No. AB 290 (Sub-No. 311X), slip op at 5 (Service Date May 4, 2010) (support letters from local jurisdiction do not demonstrate shipper demand).

C. BTR's Petitions Are A Pretext to Advance ECR's Excursion Train, Intended Land Speculation, and Extraction of Rents From Public Uses of the Corridor

As the County and Sound Transit previously explained in their October 17 Comments, ECR and Mr. Engle are using BTR and freight service as a cat's paw to advance ECR's long-

sought excursion train. *See* October 17 Comments at 54-58. That is further demonstrated in presentation documents prepared by Mr. Engle that tout the advantages of gaining immunity from state and local environmental and land use regulation to entice developers to “partner” with ECR. Engle 2014 Dep., Ex. 1, at 160:1-25. In those presentations Mr. Engle emphasized the need to obtain Board approval of freight service because “Freight enables federal rights. It provides massive leverage and carefully guarded power.” Eastside Community Rail, LLC PowerPoint at Slide 5, bullet 1 (emphasis in original), attached as Exhibit 22. Similarly, Mr. Engle offered his would-be “partners” the claimed “leverage of a federal railroad to accelerate entitlement process.” *Id.* at Slide 27 bullet 2. Mr. Engle further makes clear that those federal rights are needed to secure and promote the *excursion* service:

Inside the right of way, [railroads] have exclusive authority over states and have the power of eminent domain. Local regulations, ordinances and permitting are not required for railroad operations, including development of structures. *The critical point is the railroad must own the land to leverage these rights to minimize the entitlement process.*

The primary use of a \$30 million investment is to stabilize freight to maintain federal rights, *re-establish a proven and profitable excursion train*, and acquire right of way and adjacent land for immediate development.

Eastside Community Rail, Railroad Investment and Real Estate Opportunity, Oct. 1, 2013 (emphasis added), attached as Exhibit 23.

– CONFIDENTIAL INFORMATION REDACTED –

It seems clear, therefore, that, ECR is using BTR's Petitions as a pretext to use the preemptive effect of the ICCTA as a shield to advance both an excursion operation and a real estate development scheme along the corridor using land it does not even own.¹⁰ This is a clear abuse of the Board's authority. *See The City of Chicago, Ill. – Adverse Abandonment – Chicago Terminal R.R. in Chicago, ILL.*, STB Docket No. AB 1036, slip op. at 4, n.8 (Service Date June 16, 2010) (citing *Kansas City Pub. Serv. Freight Operation – Exemption – Aban. in Jackson Cnty., MO*, 7 I.C.C.2d 216 (1990) and *CSX Corp. and CSX Transp., Inc. – Adverse Abandonment Application – Canadian Nat'l Ry. and Grand Trunk W. R.R.*, AB 31 (Sub-No. 38) (Service Date Feb. 1, 2002) (the Board will “not allow its jurisdiction to be used to shield a line from the legitimate processes of state law where no overriding federal interest exists.”).

Discovery further reveals that ECR intends to leverage its operating authority on the Line into a mechanism for Mr. Engle to extract rents from public entities for public uses of the corridor, such as road or street improvements (Engle 2014 Dep., Ex. 1, 64:13-25) and trail maintenance charges (Deposition of Doug Engle, Dated May 22, 2013 (“Engle 2013 Dep.”), attached as Exhibit 25, at 60:16-24, 61:1-6. Ultimately, Mr. Engle envisions that his role might be that of a passive investor. Engle 2014 Dep., Ex. 1, at 175:20-22. But these grand plans will come to naught if ECR cannot run its excursion train to Bellevue and use BTR's federal freight-rail status as a shield against local land-use regulations. October 17 Comment at 52-54; Cole 2014 Dep., Ex. 2, at 49:7-9 (“[H]e [Mr. Engle] is trying to – to get the excursion train running because the thing is a big cash cow.”); *see also* Engle 2014 Dep., Ex. 1, at 160:2-9; Ex. 20

¹⁰ *See* Engle 2014 Dep., Ex. 1, at 41:7-16; 119-20; 122:1-15; 164-165 (describing development plans).

(Eastside Community Rail, LLC PowerPoint) at slide 27 bullet 2 (“The leverage of a federal railroad to accelerate entitlement process.”). ECR is betting on utilizing BTR’s Board-granted interstate freight-rail reactivation authority to enable these parochial non-freight endeavors, none of which merit Board action or attention. October 17 Comment at 54-55.¹¹

D. BTR’s December 6 Reply Mis-States The Legal Test For Reactivation

As the County and Sound Transit explained in their October 17 Comments, Board (and ICC) precedent dating back to *Iowa Power* makes clear that a railbanked line cannot be reactivated unless the reactivating railroad can demonstrate that it has all the legal rights, financial capacity, and shipper demand necessary to justify vacating the NITU. *See* October 17 Comment at 26-30 (summarizing decisions). That is particularly true when the petitioner has no ownership interest in the line and no history of operations on the line. As the Board made clear in its August 1 Decision, a reactivation petitioner with no prior operating authority in a line must show that it is a *bona fide* petitioner by demonstrating that there is genuine demand for service and that it has the financial capacity to carry out the reactivation, including acquiring necessary rights to use the line. August 1 Decision at 4, 5. As explained in Parts III.A and B *supra*, BTR’s proffered evidence does not meet that standard and its petitions should be denied.

Implicitly recognizing that it cannot meet the Board’s test for a *bona fide* petitioner, BTR attempts restate that test to eliminate those elements that BTR finds problematic. BTR seems to argue that its mere status as a Class III railroad on other lines and its optimistic opinions about future funding and right-of-way acquisition on this Line are all that is required to show that it is a

¹¹ Citing *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 (Service Date Mar. 5, 55 1998); *Napa Valley Wine Train, Inc. – Petition for Declaratory Order*, 7 I.C.C. 2d 954, 968-69 (1991); *Magner-O’Hara Scenic Ry. v. I.C.C.*, 692 F.2d 441, 444-45 (6th Cir. 1982).

“*bona fide*” petitioner for purposes of reactivation. To bolster that position, BTR tries to argue that the Board lacks the authority to question certain of BTR’s *bona fides*.

BTR’s argument fails at the most basic level, however, because the fact that BTR is a rail carrier operating in other locations does not magically transform it into a *bona fide* petitioner on *this* Line that automatically meets the standards the Board has articulated. Moreover, BTR’s arguments fail because they rest on misleadingly selective readings of the law and Board precedent, and because they are foreclosed by other Board decisions directly on point.

1. Trail Uses Are Not Subject to “Automatic” Termination Whenever a Petitioner Requests Reactivation

BTR argues that the national rail policy accords no weight to trail use, and that “in standard rails-to-trails railbanking scenarios, reactivation of rail service by the underlying rail carrier is virtually automatic *regardless* of the size of the railroad desiring that reactivation.” Dec. 6 Reply at 2-3 (emphasis in the original). BTR then cites the standard language that the decision to *grant* a NITU is ministerial in nature, and cites a string of cases involving decisions to grant a NITU. *Id.* at 3. From that BTR seems to argue that the decision to *vacate* a NITU is also ministerial, arguing that interim trail use is subject to “being cut off at any time by the reinstitution of rail service.” *Id.* at 3. From those premises, BTR concludes that the Board cannot question “whether a third party should be entitled to reactivate service on the subject line” because, it asserts, BTR has an automatic right to do so. *Id.* BTR’s December 6 Reply is a textbook example of argument by misdirection. Each step in BTR’s line of argument is incorrect and rests on a serious misstatement of the law.

As a threshold matter, BTR’s legal argument fails for the simple reason that it outright ignores the Board’s definition of *bona fide* petitioner set forth in its August 1 Decision, *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB

Finance Docket No. 35407 (Service Date June 15, 2011), and the other cases cited by the Board and the Regional Parties. Indeed, BTR fails to respond at all to the legal analysis in the October 17 Comments that demonstrated the lack of merit to BTR's Petitions. Instead, BTR ignores the Board's rule and the legal arguments to which it ostensibly was replying, and blithely argues for a new standard as if the Board had never addressed the issue before.

In any event, none of BTR's specific arguments hold up under scrutiny. First, there is no question that trail use is a legitimate and important use of a rail corridor. *See, e.g., Presault v. ICC*, 494 U.S. 1 (1990). The Trails Act "is the culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails." *Id.* at 5. The Trail Act itself directs the STB to "encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs." 16 U.S.C. § 1247(d). The Trails Act describes the important public purposes served by trail use as a means of preserving rail corridors. *Id.* Accordingly, promotion and preservation of trail uses is part of the STB's mission, and BTR's selective citation of statutes does not undo Congress' direction. *Presault v. ICC*, 494 U.S. 1, 19 ("Congress apparently believed that every line is a potentially valuable national asset that merits preservation even if no future rail use for it is currently foreseeable. Given the long tradition of congressional regulation of railroad abandonments . . . that is a judgment that Congress is entitled to make.").

Second, nothing in the Act or any of the decisions cited by BTR states that reactivation is "virtually automatic," or that the decision to vacate a NITU is ministerial whenever a railroad requests reactivation. The cases BTR cites discuss only that the decision to *grant* a NITU is ministerial; no case holds or suggests that *vacating* a NITU is a ministerial act, particularly when the petitioner has no property, access, or operating rights in the line. Moreover, BTR's argument

again ignores Board precedent. In decisions stretching back to *Iowa Power*, the Board (and the ICC before it) has made clear that it will scrutinize carefully requests for reactivation to insure that the request is *bona fide* and that all entities with a stake in the line consent. *Iowa Power* at 867-68 (reactivation and vacation of the NITU conditioned on the petitioner (1) having obtained all necessary I.C.C. authority to operate on that line, (2) being in a position to provide active rail service, and (3) having obtained the consent of the abandoning railroad.) *See also R.J. Corman R.R. Co. /Pennsylvania Lines, Inc. – Constr. and Operation Exemption – In Clearfield County, PA*, STB Finance Docket No. 35116, slip op. at 5 (Service Date July 27, 2009) (a Class III carrier may reactivate a railbanked line by obtaining authority to acquire the line pursuant to Section 10902 (or an exemption) and by terminating the trail use agreement). *See also BG & CM R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 34398, slip op. at 3 (Service Date Oct. 17, 2003) (new operator approved under Section 10502 after acquisition of property from abandoning railroad); *see also* the August 1 Decision at 4 (“Where a challenge to a party’s request to reactivate is raised . . . it is appropriate for us to look closely at whether the right-of-way proposed to be reactivated would likely support rail service.”). Granting operating authority, whether by exemption or otherwise, is not ministerial or automatic. Accordingly, when an entity lacks operating authority on a line, the Board is not automatically required to grant such authority or to vacate an existing NITU.

Third, this is not a “standard” reactivation case because BTR and its corporate predecessor are strangers to the Line, with no current or historical rights in the right-of-way or operating authority on the Line. The Board has made clear in this proceeding, and in the prior *GNP Rly.* proceeding, that it will carefully scrutinize a petition for reactivation by a new entrant in order to assure that the petitioner is “*bona fide*.” That inquiry requires the Board to consider

whether a reactivation petitioner has the shipper support necessary to support its reactivation request and whether it has the financial capacity to carry out its proposal, including acquiring any rights in the line. August 1 Decision at 5; *GNP Rly, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision*, STB Finance Docket No. 35407, slip op. at 5 (Service Date June 15, 2011) (GNP Railway was not a “*bona fide*” petitioner because it was in bankruptcy and unable to meet any financial obligations of a carrier, and because its purported shippers lacked the facilities to receive rail service). Those decisions make clear that the Board will carefully scrutinize reactivation requests. August 1 Decision at 4. There is nothing “ministerial” or “automatic” about that review, and BTR cannot evade scrutiny by simply by ignoring Board precedent and relying on inapposite authority regarding the creation of a NITU.

Fourth, although it is true that a NITU is “subject to being cut off at any time by the reinstitution of rail service,” that does not excuse a reactivation petitioner from having to meet the standards for reactivation. The NITU is “subject” to termination only when a petitioner meets all conditions of reactivation. As describe above, termination is only proper when a petitioner meets its burden of proving that it is *bona fide* and meets the other preconditions of reactivation. The phrase “subject to being cut off” does not override decades of Board precedent defining the circumstances under which reactivation will be approved.

2. BTR Must Meet the Board’s “*Bona Fide*” Petitioner Standard, and King County and Sound Transit Are Entitled To Argue That BTR Is Not a *Bona Fide* Petitioner

Apparently unable to respond directly to the substance of the comments from King County and Sound Transit, BTR seeks to dismiss their opposition as irrelevant because trail sponsorship is subject to termination on reactivation. Dec. 6 Reply at 8-9. But King County is not arguing that the mere fact of its opposition to BTR’s petitions is in itself sufficient reason to deny the petitions. Rather, the County and Sound Transit argue that BTR’s Petitions should be

denied because BTR fails to meet the Board’s standards for granting reactivation, primarily because BTR is not a *bona fide* petitioner. As the Board made clear in the August 1 Decision, when affected entities – like the current trail sponsors and owners of the Line – raise questions regarding the *bona fides* of a petitioner, the Board will “look closely” at the matter and decide for itself whether the petitioner is *bona fide* or not. August 1 Decision at 4.

3. BTR Cannot Implement Its Plan Without Access Rights To The Line, and The Board Has Jurisdiction To Consider Whether BTR Can Obtain Those Rights As A Precondition Of Granting The Petitions

As the Board recognized in the August 1 Decision, a critical element of BTR’s burden of proof is demonstrating that it can acquire the rights it needs to use the Line. Rather than make that showing, BTR attempts again to rewrite Board precedent by arguing that *Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. – Abandonment & Discontinuance Exemption – Between Albany & Dawson, in Terrell, Lee, & Dougherty Counties, Ga.*, 6 STB 902 (2003), precludes the Board from considering the issue of how BTR will acquire access rights because the Trails Act does not authorize the Board to adjudicate disputes about compensation between a reactivating railroad and the trail sponsor. Dec. 6 Reply at 10. This argument misstates and misapplies *Georgia Great Southern*.

Georgia Great Southern involved a reactivation request by the corporate successor to the abandoning railroad. The reactivating railroad *already held* the reactivation right and had operating authority. *Id.* at 903. There was no issue regarding the railroad’s *bona fides*. The key issue for the Board was whether the railroad had to compensate the trail sponsor for the right-of-way, which was owned by the trail sponsor. The Board held that that question of compensation was a contractual matter between the parties that was not a prerequisite to granting reactivation authority. *Id.* at 906-908. Moreover, implicit in *Georgia Great Southern* was the notion that

issues of compensation could have been addressed in the agreement between the abandoning railroad and the trail sponsor.

That case did not present, and the Board did not address, the issues presented here: whether a NITU can be vacated at the request of a railroad that does not have any access or property rights in the right-of-way in the absence of proof that the petitioner will be able to acquire access rights, particularly where the *bona fides* of the reactivating railroad have been questioned. The fact that the Board lacked jurisdiction to resolve a compensation dispute does not stand for the proposition, as BTR implies here, that the Board may not consider whether a reactivation petitioner has the financial means to acquire necessary right-or-way as part of a “*bona fide* petitioner” analysis.

As the Board recognized in its August 1 Decision (slip op. at 5), when a petitioning carrier does not hold property rights to a line it seeks to reactivate and doubts exist as its *bona fides*, as is the case with BTR here, the reactivation petitioner must demonstrate that it has, or can obtain, the property rights necessary to carry out service before it can obtain reactivation authority. That rule follows from a long line of Board and ICC decisions on how to address petitions by entities that lack any rights to use a line. *See generally*, October 17 Comment at 29-30.¹² That rule is appropriate for new entrants because, unlike in *Georgia Great Southern*, there was no opportunity for the parties to negotiate the economic terms of reactivation at the time the terms of trail use were negotiated.

¹² *See also*, *BG & CM R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 34398, slip op. at 3 (Service Date Oct. 17, 2003) (new operator approved under Section 10502 after acquisition of property from abandoning railroad); *Saratoga and North Creek Ry., LLC – Operation Exemption – Tahawus Line*, STB Finance Docket No. 35631, slip op. at 4 (Service Date Oct. 11, 2012) (noting that a carrier must have property rights to use a line, in addition to Board authority, to begin operations); *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 35245, slip op. at 6 (Service Date Sept. 15, 2009), *petition for review docketed*, No. 09-1277 (D.C. Cir. Nov. 12, 2009) (failure to obtain a cognizable possessory interest in a line of railroad rendered him incapable of exercising the authority granted to him to acquire and operate the line).

Unlike the situation in *Georgia Great Southern*, the question of whether BTR can acquire access rights to use the Line cannot be resolved outside of these proceedings for two reasons. First, the parties never had an opportunity to negotiate the issue of compensation because BTR was not a party to the transfer from BNSF. Second, and more fundamentally, the Board's decision in this case does not itself compel the transfer of those rights.¹³ Accordingly, BTR must show both that it has the funds, or access to the funds, necessary to acquire the rights and that it has a plan to acquire those rights. Without such a showing, BTR cannot possibly be considered a *bona fide* petitioner because it lacks the fundamental property right to use the Line.

Finally, to underscore the extraordinary nature of BTR's petition, it is important to keep in mind that in virtually every context in which a new entrant seeks authority to operate on a line, the Board requires proof that the applicant has acquired, or has the right to acquire, the necessary property rights *before* granting the requested relief. For example, in short line exemption petitions, the Board requires a petitioner to provide details about necessary private agreements in its petition so the Board can be assured that an agreement is, or will be, in place, before granting the requested authority. 49 C.F.R. § 1150.43(c).¹⁴

¹³ The Board has no authority to force an owner to convey any property rights to an entity like BTR, which has no interest in the right-of-way. *See In re Chicago, Milwaukee, St. Paul and Pacific R.R. Co.*, 882 F.2d 1188, 1191 (7th Cir. 1989) (affirming Board's determination that its grant of authority to acquire and operate a line is "merely permissive," does not require the transfer of the line, and does not affect the rights and remedies of the parties to the transaction in the event of a dispute). Even obtaining operating authority does not confer access rights.

¹⁴ Similarly, STB's feeder line regulations require an applicant to demonstrate financial responsibility, including proof of its ability to acquire the line and to cover expenses associated with providing services over the line for at least the first 3 years of operation. *See* 49 CFR § 1151.3(a)(3). The Board has rejected applications when an applicant only alludes to several possible sources of income without showing that such funding would be likely:

But MCRS has not established that it has any financial resources of its own and does not show where or how it would otherwise obtain these funds. Applicant alludes to several possible sources of income, including the RRIF loan program and a number of Federal, state, and local mass transit and freight grant programs. The mere existence of these programs does not represent a committed source of funds for MCRS, and MCRS has failed to show that funding would be likely for its proposal. Applicant also claims that future funding needs would be satisfied from public and private sources or commercial loans, but it has failed to provide any details regarding these sources.

Similarly, in the context of offers of financial assistance, the Board requires an offeror to make an initial showing that it is a “financially responsible person” by demonstrating that it has the funds, or sufficient credit, to make a *bona fide* offer of assistance to the abandoning railroad. *See* 49 U.S.C. § 10904(f) and 49 C.F.R. § 1152.27(g), (h). If an offeror is unable to make that threshold showing, the Board will deny the request. *See Union Pac. R.R.-Aban.-in New Madrid, Scott, and Stoddard Counties, Mo.*, AB 33 (Sub-No. 261) (Service Date July 30, 2009) (failure to provide a verified assurance from a third party from which the offeror intended to secure the needed funds); *Union Pac. R.R.-Aban. Exemption-in Lassen County, Cal., and Washoe County, Nev.*, AB 33 (Sub-No. 230X) (Service Date Sept. 19, 2008) (vague and unsubstantiated assurance of its ability to fund, or to obtain funding, to purchase a line and operate a line was insufficient). An OFA will also be rejected if there is insufficient evidence of genuine demand and need for freight rail service. *See Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In King County, WA, In the Matter of an Offer of Financial Assistance*, 3 S.T.B. 634, 641 (1998), *aff’d sub nom. Redmond-Issaquah Railroad Preservation Ass’n v. S.T.B.*, 223 F.3d 1057 (9th Cir. 2000).

As demonstrated above, BTR cannot meet even that relatively low standard because it lacks the funds or committed credit to acquire the necessary access rights to the right-of-way, and refuses to disclose the true state of its finances in connection with its plans. Engle 2014 Dep., Ex. 1, at 120:6-7 (“I have no intention of turning over any further confidential information to this goat rodeo.”); 122:9-10 (“I’m not about to fully pursue any financing until this matter is resolved, because I’m sick and tired of having my finances sifted through[.]”). Further, it seems clear that BTR has not begun serious planning on initiating service. For example, BTR has not

Forty Plus Found./Manhattan Cent. Ry. Sys., LLC--Feeder Line Acquisition--the Manhattan Highline, 34606, 2005 WL 156801 at *2-3 (S.T.B. Jan. 24, 2005). BTR’s statements of its financial capabilities are very similar to MCRS’s, and should be deemed inadequate for reactivation purposes for the same reasons.

developed plans to construct spurs to potential customers. *See, supra*, 13-20. BTR has not contacted property owners about purchasing property BTR would need for its putative transload facility. Engle 2014 Dep., Ex. 1, at 111:4-112:6. Nor has BTR provided any plan, business plan, or other details regarding its proposed operation.

Because BTR has **no** property rights in the Line, BTR **must** demonstrate not only how it will obtain those rights **but also** that it can afford to acquire them. *Georgia Great Southern* does not excuse BTR from any part of its burden of proof, and the unsupported assertions of financial capacity in the December 6 Reply and BTR's other submittals are patently insufficient to satisfy that burden.

4. The Board Should Reject BTR's Plea For Board Approval Prior To Demonstrating Financial Capability And Genuine Shipper Requests For Service

In a final attempt to justify its radical departure from Board precedent, BTR argues that it needs operating authority before it can meet the Board's *bona fide* petitioner standard because lenders, investors, and shippers are unable to make any commitments without a Board grant of operating authority. *See, e.g.*, December 6 Reply at 17 (Letter from Byron Cole dated December 5, 2013). To support this assertion, BTR can be expected to present additional testimonial evidence that shippers and investors are waiting for the Board's decision to make any commitment.

On its face this argument fails because it is little more than a cleverly-worded admission that BTR presently cannot meet the Board's standards. BTR bluntly seeks to invert the Board's current rule – prove capability in order to obtain authority – because BTR cannot prove its capability to carry out its plan. But other than self-interest, BTR offers no policy justification for such a reversal of long-standing precedent. Indeed, other railroads *have* met the Board's test and successfully obtained reactivation authority, see *Iowa Power*, and there is nothing to suggest that

the Board's current standard improperly limits reactivation across the nation. As the County and Sound Transit demonstrated in the October 17 Comments, the Board's test for reactivation rests on sound policy grounds and there is no reason to adopt a new rule or policy.

Moreover, BTR's plea fails to hold up even on its own terms. If BTR's business case were as strong as BTR argues – if customer and market demand truly existed as BTR claims – then BTR would be able to make a solid business case to investors and lenders that would induce them to make financing commitments – no doubt conditioned on obtaining Board authority and meeting other milestones. As shown above, however, none of that has happened. To the contrary, BTR's own actions demonstrate that it lacks sufficient financial resources and shipper demand to justify considering it a *bona fide* petitioner:

- BTR has not produced a balance sheet or any other meaningful information about its financial capability to carry out its proposal.
- BTR does not consider itself to be a *bona fide* applicant for credit at its own bank, deeming it “premature” to even submit an application.¹⁵
- BTR lacks the equipment needed to move any meaningful volume of freight at one time.¹⁶
- Mr. Nerdrum, one of BTR's own principals, is unwilling to make any commitment to invest.
- BTR has not made the investment necessary to take advantage of existing opportunities on its existing operating line to increase freight, such as building a spur to CT Sales.
- BTR has not made any effort to acquire the rights it needs to access and use the Line.
- BTR lacks the information necessary to produce a complete business plan.
- BTR has not obtained a firm commitment for service from any would-be shipper.

If BTR is unwilling or unable obtain commitments from its own owners, bankers and other so-called supporters, and is unwilling or unable to invest in itself or execute those elements of its

¹⁵ Engle 2014 Dep., Ex. 1, at 119:21-120:1.

¹⁶ Engle 2014 Dep., Ex. 1, at 175:3-8; 23:1-5 (BTR's locomotives on the Freight Segment not capable of hauling more than 10 cars).

plan that are within its power to do now, the Board cannot reasonably consider BTR to be *bona fide* for reactivation purposes.

The fact is that BTR’s “plan” is no more than a gossamer-thin fabric of speculation and desire. There is nothing tangible about the plan; it exists only on paper, in spreadsheets and tables based on unproven assumptions and populated with speculative numbers; in glossy PowerPoint presentations filled with conceptual drawings, and pictures of other railroads; and in quasi-prospectuses better suited to a high-pressure real-estate investment seminar.¹⁷ BTR’s purported freight traffic volumes (*see* December 6 Reply at 19) are based on an *assumption* that freight rail service is less expensive than trucking, and on a further assumption that *all* of its putative “shippers” (none of whom have ever used freight rail on the Line) would shift *all* of their current and historical trucking to freight rail.¹⁸

The Board’s reactivation precedent does not favor the imaginative hyperbole of entrepreneurial ardor over clearly articulated Trails Act goals and objectives backed by dearly-bought property rights. As the Board has made clear in this case, and in other cases, the Board requires a reactivation petitioner to make an initial showing that it has the financial resources and shipper demand necessary to ensure that it can put its plan into effect. BTR failed to meet that test when it submitted its Petitions in April 2013, and despite multiple opportunities to do so over the past 12 months BTR still has not met the threshold test required of a *bona fide* petitioner.

¹⁷ *See, e.g.*, Exhibit 23 (respectively titled “\$500,000 HIGH YIELD DEBT OPPORTUNITY” dated September 27, 2013; and “RAILROAD INVESTMENT and REAL ESTATE OPPORTUNITY,” dated October 1, 2013) (emphasis in the original).

¹⁸ *See, e.g.*, Engle 2014 Dep., Ex. 1, at 94:8-13 (“Q. Is this car count based on the assumption that it would be more cost-effective for CT Sales to receive this rebar from Cascade Steel Rolling Mills by rail as opposed to truck?” [Objection as to form] A. *That’s true.*”) (emphasis added); 153:25-154:4 (“[W]e used *conservative estimates* in putting our numbers together . . . [W]e have an *assumption* that we will get that traffic and be able to move it.” (emphasis added); *see generally id.* at 152-154.

The Board should not change its rule, or lower its standards, just because BTR cannot meet that test.

IV. CONCLUSION

Nothing in BTR's December 6 filing changes the fact that there is no present demand for service on the Line, there are no contracts for service on the Line, none of BTR's purported shippers on the Line have any rail facilities there, and that BTR lacks the financial support and property rights necessary to actually provide service on the Line. Despite multiple opportunities over almost a year, BTR has failed to prove that it has the wherewithal to carry out its plan. It cannot be considered a *bona fide* petitioner for reactivation and its Petitions should be denied. The time has come for the Board to finally and firmly put BTR's creative but wholly unsupported plan to rest.

Respectfully submitted,



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Dated: March 6, 2014

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the COMMENTS OF KING COUNTY, WASHINGTON AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY TO BALLARD TERMINAL RAILROAD COMPANY, LLC'S PETITIONS (**Public Version**) and SUPPORTING EXHIBITS (**Public Version**) upon the following parties of record by email and by overnight delivery, fees prepaid and properly addressed:

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Dated this 6th Day of March, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

PUBLIC VERSION

**EXHIBITS IN SUPPORT OF
COMMENTS OF KING COUNTY, WASHINGTON AND CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY IN RESPONSE TO BALLARD TERMINAL
RAILROAD COMPANY, LLC'S COMMENTS DATED DECEMBER 6, 2013**

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Dated: March 6, 2014

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EXHIBIT 1

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: February 13, 2014

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

1 place for him to get from West Seattle and me to get off
2 I-90. So that's his spot; we meet there.

3 Q. Okay. So we are talking about a Denny's or some
4 other restaurant --

5 A. A Denny's.

6 Q. -- there in the Denny Regrade in downtown Seattle?

7 A. Yep.

8 Q. In the morning?

9 A. Of course.

10 Q. All right. You had breakfast?

11 A. Of course.

12 Q. All right. What did you all talk about?

13 A. I am sure what we talked about was current status
14 of things going on in general.

15 Q. What do you mean by that?

16 A. The Maltby crossing. How are we doing on getting
17 Snohomish County at that point to get their barriers up.

18 Q. So you were talking about railroad operations?

19 A. We're talking about railroad operations; we're
20 talking about what's happening in the case; we're talking
21 about what's going to happen after Byron retires, because he
22 is not Ballard Terminal Railroad. He is the general manager,
23 but he is not Ballard Terminal. And so what's he doing, and,
24 jeez, he's been out on the lobster boat again. There's some
25 personal aspects and there's some business aspects.

1 Q. Has Mr. Cole told you when he plans to retire?

2 A. It depends upon the week.

3 Q. When you had this conversation the Saturday before
4 or two Saturdays before November 26th, did he say he was
5 going to retire at a particular time?

6 A. No.

7 Q. Did he have a time frame in mind?

8 A. No.

9 Q. Did he even say at that point that he was going to
10 retire?

11 A. Yes.

12 Q. But he didn't say when?

13 A. Didn't say when.

14 Q. All right. What did you and Mr. Cole discuss
15 specifically about WATCO?

16 A. We have had --

17 Q. At that meeting at the Denny's.

18 A. I am confident that I introduced the concept of
19 WATCO coming in and being there to handle larger trains, and
20 I've kind of drawn the limit saying, as we phase into this
21 relationship, ten cars or more would be handled by WATCO, and
22 less than that would be handled by Ballard.

23 Q. So stop right there. I think I understand what you
24 are saying, but I am not sure. When you say ten cars or more
25 would be handled by WATCO, what are you referring to?

1 A. Moving ten cars or more on the line at a time as a
2 consist, as it's called. So moving ten cars or more would be
3 the responsibility of WATCO personnel, and less than that, as
4 we're currently doing, half a dozen or something, would
5 continue to be handled by Ballard.

6 Q. Okay. So, as an example, and this is just a
7 hypothetical here, Spectrum Glass has a single car of sand
8 that it wants delivered, under this arrangement that you are
9 describing, Ballard Terminal Railroad would move that car
10 from the Snohomish junction at the interchange of BNSF to
11 Spectrum?

12 A. You are accurate.

13 Q. If Spectrum for some reason had ten or more cars of
14 sand or whatever other material --

15 A. Soot ash.

16 Q. -- soot ash, the arrangement you are describing
17 would be for WATCO to move the traffic?

18 A. That is one concept of --

19 Q. Okay.

20 A. It's like the straw man, the starting point of
21 discussions for how we would transition service between the
22 two.

23 Q. I understand that. I just wanted to make sure I
24 got clear what you meant by ten cars. This concept that you
25 have described, this possible arrangement that you discussed

1 Q. Which yard?

2 A. The Bellevue yard has not been used --

3 Q. You are talking about the area between Highway 520,
4 Northup Way, and Eighth Avenue to the south?

5 A. Yes, the only rail yard in Bellevue, that hasn't
6 been used actively since 2008, and that there is going to
7 have to be rehabilitation. I'm not sure exactly how much,
8 but we know there is going to have to be some rehabilitation.
9 And you're not going to want to put in, obviously, more than
10 what is required to support the business, but somebody that
11 can come in and offer us a second opinion and provide
12 resources if they are necessary.

13 Q. So, when you are talking about the need for
14 rehabilitation, are you referring to that segment of the line
15 only between Northup Way and Eighth Avenue to the south, or
16 are you talking about -- well, answer that if I was clear
17 with you.

18 A. In particular, the entire line always needs
19 maintenance; it's just the nature of the beast. Just like
20 any other roads out there, they always need maintenance. The
21 question is how much maintenance would be required in order
22 to meet the kinds of operations that we're looking at.

23 Q. Okay. Then let's -- go ahead.

24 A. And can I have just two minutes to relieve my
25 coffee rental.

1 of the operating line that are for sale or have been for sale
2 that look quite complementary to our long-term business plan.

3 Q. Is it near the wye where BTR's locomotive is kept
4 in the pen?

5 A. That's one area from an operational standpoint, not
6 this kind of development that we're talking about.

7 Q. What kind of development are you talking about?

8 A. Commercial; residential.

9 Q. Can you be more specific?

10 A. Not really, no.

11 Q. What does commercial or residential real estate
12 development have to do with the operation of a railroad?

13 A. We believe that developments near a future railroad
14 station will have increased land values once those operations
15 begin. It's pretty well proven around the world. As a
16 matter of fact, that's how Hong Kong pays for their rail.

17 Q. I would like to put some maps in front of you so we
18 have an idea what we are talking about here.

19 (Exhibit 128 marked for
20 identification.)

21 Q. Mr. Engle, I am going to hand you a Sharpie, and I
22 am I am going to represent to you that this is a map I
23 created, using Google mapping software, of Woodinville. This
24 shows a relatively wide area. On this map, I would like you
25 to mark where in Woodinville, and I have some maps that go

1 property?

2 A. No.

3 Q. Last time we talked, we talked about bridge
4 easement; do you remember that?

5 A. Yes.

6 Q. Has Woodinville and Eastside Community Rail reached
7 any agreement about an easement for a bridge expansion
8 project?

9 A. No.

10 Q. Come back to the bridge easement, because it is in
11 several of the materials you have provided to folks in
12 connection with the materials submitted with the December 6th
13 filing. I do not understand. You said something about a
14 settlement with the Port; what are you referring to?

15 A. I don't know what it has to do with this
16 reactivation matter.

17 Q. Well, you just mentioned it.

18 A. And it has nothing to do with this reactivation
19 matter.

20 MR. PASCHALIS: So I will object based on the
21 scope of the question exceeding the protective order that has
22 been entered in this case.

23 MR. FERGUSON: Mr. Paschalis, there is a
24 nexus. Your objection is improper. I will explain the nexus
25 to you, and I would like you to reconsider your instruction

1 Q. (By Mr. Ferguson) I would like you to take a look
2 at what has previously been marked as Exhibit 70. Do you
3 recognize this e-mail?

4 A. Yes, I do.

5 Q. Can you identify it for us, please.

6 A. An e-mail that I sent to Greg Starup on
7 October 19th with attachments.

8 Q. Let's look at one of those attachments. I want you
9 to turn to the attachment that is titled, "500,000 high-yield
10 debt opportunity." It is about midway through the packet.
11 Are you with me?

12 A. Yep.

13 Q. All right. I have a question for you about this
14 section under "Repayment plan." There is a statement -- I am
15 going to paraphrase this here, and I want you to tell me if
16 it is accurate. Capital can also be repaid with cash flow,
17 under funding sources, such as, for instance, sale of a
18 bridge easement to Woodinville. Are you with me?

19 A. Mm-hmm.

20 Q. Have I accurately paraphrased the manner in which
21 capital can be repaid?

22 A. There's a variety of ways.

23 Q. But the sale of a bridge easement to Woodinville is
24 one of those ways?

25 A. It's one of many ways.

1 A. Rephrase the question, please.

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

5 A. I believe so.

6 MR. PASCHALIS: Objection; asked and answered.

7 A. I believe so, yes.

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

12 MR. PASCHALIS: Object to the form.

13 A. That's true.

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

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

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

24 A. I cannot be absolutely sure of that.

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

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

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

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

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

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

17 A. No.

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

20 A. Yes.

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

24 A. Yes, it is.

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

1 communications in the past year with Safeway regarding rail
2 service to its Bellevue bakery?

3 A. Yes.

4 Q. Can you describe those conversations for me,
5 please.

6 A. The bakery plant manager is very interested in
7 having rail service again.

8 Q. Who is that?

9 A. I don't recall the guy's name, but the plant
10 manager was very interested in that. As it worked its way up
11 to headquarters in Pleasanton, California, the legal team put
12 a kibosh on any conversations because BNSF bought off -- when
13 they abandoned the lines, they paid for Safeway's incremental
14 costs of having their material shipped from Ballard for five
15 years. After that five-year term was up, the shipments then
16 moved down to Tacoma.

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

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

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

23 A. Obviously, their attorneys do.

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

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

5 Q. Okay. Who communicated that to you?

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

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

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

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

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

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

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

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

20 A. Hm-mm.

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

1 Safeway's approval to do so?

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

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

9 MR. PASCHALIS: Object; calls for speculation.

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

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

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

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

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

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

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

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

21 A. I'm trying to find it.

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

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

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

1 Q. Is there anything other than a transload facility
2 that you would seek to construct here?

3 A. We would try to use the existing structure. Our
4 intention is to use the existing structure there because it's
5 got a rail spur that goes right up to a platform there, and
6 that would give us a lot of possibilities. We have not
7 elected to do a study or have written anything down relative
8 to what we would do, but we have all looked at that and
9 agreed that that is a great foothold.

10 Q. You had mentioned a batch plant earlier.

11 A. Yes.

12 Q. For a company called Smokey Point; is that right?

13 A. Well, that's one of the companies that we talked
14 with.

15 Q. Would the batch plant be located somewhere on this
16 map that we are looking at here in Exhibit 70?

17 A. Very likely.

18 Q. Where?

19 A. Don't know exactly.

20 Q. Would it be located at the Target site?

21 A. Potentially, indoors. We would want to keep the
22 dust down for such a facility like that so that the Audi
23 dealer that's located two sites to the south doesn't have to
24 put up with dust.

25 MR. FERGUSON: I would like to mark another

1 exhibit.

2 (Exhibit 134 marked for
3 identification.)

4 Q. Mr. Engle, this is information from the King County
5 Department of Assessments. If you look at the second page,
6 there is a map. There is a property boundary outlined in
7 purple. Is that the property for the Target site that you
8 have been referencing in Exhibit 70?

9 A. Yes, it is.

10 Q. Have you approached the owners of this property
11 about purchasing it?

12 A. No.

13 Q. Are you aware of anyone else for Ballard or ECR who
14 has done so?

15 A. No.

16 Q. Do you know if anyone has as part of the real
17 estate development team that we discussed earlier?

18 A. I believe there has been some research and contact
19 done there.

20 Q. So you think someone from that group has contacted
21 the owners of this property?

22 A. And found out who the new owners are, which is an
23 investment group, again, and they're open to conversation on
24 it, should we get the reactivation rights.

25 Q. Wait, explain that last part. They are open to --

1 A. We are not going to call them back and bug them
2 unless we get the reactivation rights. You're hearing the
3 same thing from every single party, reactivation rights come
4 first, then we'll get into some planning, studies,
5 assessment, then we'll go get the resources necessary to
6 execute that plan.

7 Q. Take a look at the tax roll history table on the
8 first page, please.

9 A. Okay.

10 Q. Do you see in the first column, the last row on the
11 right, it says, "Taxable total for the year 2013"?

12 A. Mm-hmm.

13 Q. It looks like it is a little over \$3.4 million.

14 A. Yeah.

15 Q. Well, let me ask you this first of all: If I
16 understood you earlier, you said that you had a sense of how
17 much this property is worth; is that correct?

18 A. Yeah, 3 1/2 to \$5 million because some improvements
19 would have to be made, et cetera.

20 Q. So you think it would cost somewhere between 3 1/2
21 to \$5 million to acquire this property?

22 A. Yes.

23 Q. Do you have a particular entity in mind that would
24 make that acquisition?

25 A. I am not going to speculate on how this property

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

5 Q. The property itself, right?

6 A. Yes.

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

10 A. The railroad would be the purchaser.

11 Q. Is that Eastside Community Rail?

12 A. Eastside Community Rail would purchase that.

13 Q. Not Ballard?

14 A. Not Ballard.

15 Q. Not WATCO?

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

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

19 (Exhibit 135 marked for
20 identification.)

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

24 A. Yes, it is.

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

1 of the communications; is that right?

2 A. Yes.

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

7 A. Yes.

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

11 A. Yes.

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

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

15 Q. Okay. Why is it important?

16 A. Because I think it's important.

17 Q. Why do you think that?

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

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

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

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

7 A. Yes, I was.

8 Q. Why?

9 A. Because I thought it was important.

10 Q. Why did you think it was important?

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

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

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

16 A. I think it's important.

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

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

1 that we will utilize to finance railroad operations, that
2 will be in conjunction with other banks; investment capital;
3 private equity.

4 Q. Okay. You have just made reference to an SBA loan;
5 is that different from a letter of credit?

6 A. That's what it -- if you prequalify for a loan, you
7 get letter of credit, just like you would if you wanted to go
8 buy a house. You prequalify. What do they give you? A
9 letter of credit.

10 Q. How far did you get in applying for that letter of
11 credit?

12 A. You know, given that the bank has cut off all
13 communication until this is done, I would like to really
14 thank you for interfering with my matters that go outside of
15 this reactivation effort, because this had everything to do
16 with what we were doing in Woodinville and Maltby.

17 MR. COHEN: See if you can get him to answer
18 your question.

19 Q. Would you, please.

20 A. What's your question.

21 Q. How far along did you get in applying for a letter
22 of credit?

23 A. When I got the list of requirements for the letter
24 of credit, we gave them all the background information, and
25 we decided not to fill out the letter of credit because it

1 would be an inefficient use of time.

2 Q. Why would it be inefficient if you could obtain a
3 letter of credit saying that you would have financial support
4 of \$10 million?

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

6 A. I have no intention of turning over any further
7 confidential financial information to this goat rodeo.

8 Q. Let's move on to page 3 of this e-mail thread.
9 Take a look at your bottom e-mail, Monday, September 23rd, to
10 Tom English; do you see that? Mr. Engle, I would ask you to
11 please look at Exhibit 136, page 3. It is Bates numbered ECR
12 2105.

13 A. Okay, what?

14 Q. You say, "Tom, we have enough support now to get
15 10 million plus from the state to upgrade the tracks, and we
16 have private investment potential coming in between 10 and
17 30 million for other upgrades in the excursion train." Is
18 this a representation to General Mills about the financial
19 backing that ECR has as part of the reactivation effort?

20 A. Not as part of the reactivation effort.

21 Q. What is that financial backing for then?

22 A. It's for the -- primarily, going around the
23 upgrades for the operation of the excursion train, is where
24 we would start in real estate development starting in
25 Woodinville.

1 Q. Okay. And then you say, "We have private
2 investment potential coming in between 10 to \$30 million for
3 other upgrades."

4 A. Yes.

5 Q. Who is providing that private investment?

6 A. We've talked to a number -- I have talked to
7 private equity groups, I have talked to real estate
8 developers, and the bottom line is we have a financeable deal
9 here. The question is: What do we have? And I'm not about
10 to fully pursue any financing until this matter is resolved,
11 because I'm sick and tired of having my finances sifted
12 through in the manner in which they have.

13 Q. What private equity groups did you talk to about
14 this?

15 A. I don't remember.

16 MR. PASCHALIS: I will object to the extent
17 that anyone not listed in the December 6th filing exceeds the
18 scope of the protective order in this case.

19 MR. FERGUSON: Tom, I think you should
20 reconsider that objection because the General Mills letter is
21 part of the December 6th filing, and these are communications
22 that Mr. Engle had with General Mills to solicit that letter,
23 and Mr. Engle has said that he thought it was important to
24 provide this information to General Mills as part of that
25 solicitation. It therefore certainly relates to evidence

1 barge?

2 A. No, and at this point I don't know. I have to
3 trust them that they say they've got the right materials at
4 the right time, right place.

5 Q. Do you know of any Aggregates West facility that
6 has access to a rail line that could connect with a rail line
7 operated by Ballard Terminal Railroad?

8 A. That has access?

9 Q. Are you aware of any Aggregates West facility that
10 can ship presently any of its materials by rail?

11 A. No.

12 Q. So is it your understanding that Aggregates West
13 would need to find an intermediate site, laydown yard, where
14 it would truck material, which could then be loaded onto a
15 railcar and then shipped to Bellevue?

16 A. That's one possibility.

17 Q. Have you done anything to identify a piece of
18 property that could be used for such a laydown yard?

19 A. We have not gone through that exercise. We both
20 believe firmly that there are sites available that would lend
21 itself to this activity.

22 Q. Where are those sites?

23 A. You've got sites up around where CalPortland is and
24 then another piece of property to the south of the BN yard
25 that we've identified.

1 Q. So, when you say sites up around where CalPortland
2 is, are you referring to properties that could be a laydown
3 yard?

4 A. It doesn't have to be a laydown yard.

5 Q. If I represented to you that that is what Mr. Day
6 said that he would require in order to ship by rail, would
7 you disagree with him?

8 MR. PASCHALIS: I will object to you asking
9 him to comment on another witness's testimony.

10 A. We haven't got into the design or configuration of
11 the service. We got further into it with CalPortland and
12 deemed it possible.

13 Q. But, for Aggregates West, you haven't identified a
14 particular site that Aggregates West could use as an
15 intermediate shipping point?

16 A. They might be using the same site that CalPortland
17 does; they work together.

18 Q. But you don't know; is that accurate?

19 A. That's accurate.

20 Q. CT Sales is currently located on the freight
21 segment or what you have been calling the operating line,
22 right?

23 A. Yes.

24 Q. It is there in Maltby?

25 A. Yes.

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

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

8 A. Hopefully.

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

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

13 Q. Would you answer my question, please.

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

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

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

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

1 A. I spoke to Jim House about that.

2 Q. What did you ask him?

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

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

8 MR. PASCHALIS: Objection; asked and answered.

9 A. What kind of a question is that?

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

12 A. Yes.

13 MR. PASCHALIS: Objection; asked and answered.

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

18 A. Asked and answered.

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

21 Q. Do you know whether it is --

22 A. Asked and answered.

23 MR. PASCHALIS: Same objections.

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

1 A. Again?

2 MR. PASCHALIS: What is the question?

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

7 MR. PASCHALIS: Let's move on.

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

9 A. The prices.

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

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

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

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

19 A. I've already answered your question.

20 MR. COHEN: Well, answer it again.

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

23 MR. PASCHALIS: Hang on a second.

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

1 the client unless you are inserting a privilege objection.

2 Q. So, Mr. Engle, I will ask you the question again:
3 Exhibit 96, the car counts for CT Sales --

4 A. And I'll gladly answer your question.

5 MR. PASCHALIS: Same objections.

6 MR. FERGUSON: I have not even asked my
7 question yet, so please stop interrupting until I get it out,
8 for the court reporter.

9 MR. PASCHALIS: Go ahead and ask it, and then
10 I will make my objections.

11 Q. Exhibit 96, do you have it in front of you?

12 A. Yes.

13 Q. Do you see the car count estimates for CT Sales,
14 120 to 155?

15 A. The ones we've discussed multiple times already?

16 Q. Do you see them on the exhibit?

17 A. We've seen them many times, yes.

18 Q. Are they based on the assumption that it would be
19 more cost-effective to ship inbound rebar to CT Sales'
20 facility by rail than by truck?

21 MR. PASCHALIS: Object to the form; object to
22 asked and answered.

23 A. What the hell do you think they would be doing on
24 here if we didn't expect that we could move them? We used --
25 again, we used conservative estimates in putting our numbers

1 together. You have asked that question before; it is now
2 answered for at least the third time. Yes, it's on here
3 because we have an assumption that we will get that traffic
4 and be able to move it. It may not be moved in the first
5 year; it might be moved in some period immediately
6 thereafter.

7 Q. I'm not asking if the assumption --

8 MR. PASCHALIS: Let's move on now.

9 Q. I am not asking if the assumption is that you will
10 get it; I am asking if the assumption is that it is cheaper
11 to ship it by rail than by truck.

12 MR. PASCHALIS: Objection; asked and answered.
13 You do not need to answer again. We have been here and done
14 that.

15 Q. Mr. Engle, please answer my question; it is a
16 simple yes or no. Is the assumption that these car count
17 estimates for CT Sales, is it based on the assumption that it
18 is cheaper to ship from McMinville to CT Sales' Maltby
19 facility by rail than by truck?

20 A. Asked and answered at least three times.

21 MR. PASCHALIS: Object to the form; asked and
22 answered. You do not need to answer.

23 Q. Okay. AmericanWest Bank, have you had any
24 communications with anyone from AmericanWest Bank?

25 A. No.

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

5 A. There are things that we can do as a railroad with
6 the National Environmental Protection Agency processes that
7 do not mandate us to go through SEPA or local requirements,
8 as determined in a ruling by the Ninth District Court of
9 Appeals against Auburn and King County.

10 Q. Which things do you have in mind?

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

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

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

21 Q. Anything else?

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

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

1 124.

2 A. What page again? I'm sorry.

3 Q. Page 53. The last paragraph before the heading,
4 "Freight rail business."

5 A. Mm-hmm.

6 Q. Do you see the second sentence that reads, "A
7 \$10 million SBA loan is expected for the excursion service
8 and some freight facilities"?

9 A. Mm-hmm.

10 Q. That sentence is included in this statement in
11 support of Ballard's reactivation petition, correct?

12 A. Yes.

13 Q. Is that a reference to the \$10 million SBA loan
14 that you are hoping to obtain from Coastal Community Bank?

15 A. I expect to get that, yes.

16 Q. I would like to return to Exhibit 80, page 25,
17 No. 6. What do you need to acquire hotel land in Woodinville
18 for?

19 MR. PASCHALIS: I am going to object as beyond
20 the scope; I am going to object as asked and answered; I am
21 going to object as harassing, irrelevant, and improper. You
22 do not need to answer.

23 Q. Mr. Engle, you have not been instructed not to
24 answer, so I would like you to answer my question. Why is
25 there a statement in here that as part of the strategic plan

1 there is going to be an acquisition of hotel land in
2 Woodinville?

3 MR. PASCHALIS: I will make the same
4 objections and say that this is overbroad, unduly burdensome,
5 and harassing yet again.

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

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1 Q. And specifically there was testimony with respect
2 to the size of various consists.

3 A. Yes. I, arbitrarily, as an example for discussion,
4 chose ten, since I think the largest train movements we've
5 had on the operating line today have been several, but not
6 ten. And I don't believe that the current locomotive is
7 capable of moving ten cars, loaded cars, up and down the
8 Maltby hill. So that's where we're going to need new power,
9 and, if it's WATCO's power that comes in, would they want to
10 use Ballard's crews? That would be up to WATCO; that would
11 be up to Ballard to sort out.

12 What I'm concerned about is that we have a
13 competent, safe freight operation on the line that's growing,
14 providing great service to our customers. That's the
15 foundation of the entire business. I've been asked if I
16 would be willing to step out of the picture, and that's a
17 possibility, too, that Eastside Community Rail steps out of
18 the picture. So there's any number of things that could
19 transpire over the course of this year.

20 Q. What do you mean by step out of the picture?

21 A. Where I'm not in any kind of a management role, I
22 am more of a passive investor, something to that effect.

23 Q. So that has to do with your level of control and
24 not leaving this project altogether?

25 MR. FERGUSON: Objection; leading.

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1 I think that's a good spot that where we're extending our
2 service and it getting the traffic up on the corridor, and
3 we -- it gives us time to have a cooperative conversation.

4 Q. Now, RJB is on the portion of the line that
5 currently is inactive for freight operations?

6 A. That's true.

7 Q. How has that fact affected how far you have gone in
8 your discussions with RJB regarding the construction of a
9 spur track or the means of accessing the line?

10 A. We brainstormed a number of ideas. His yard as it
11 exists today is not cohesive, is not good to load and offload
12 pipe; however, by using part of the right-of-way and not
13 having the spur in place, you could easily start moving pipe
14 as soon as you got there, and, again, in looking for what's a
15 long-term solution. If there was genuine dialogue and
16 cooperation going on or the intent to have that, one of the
17 alternate solutions that could be done there is that we
18 flatten the rail structure because you're going to have to go
19 back in and add the ballast anyway. So, if you flatten it
20 down, it wouldn't be 8 to 12 feet higher, it would be maybe
21 2 feet higher, and then you could bring dirt up next to it to
22 make loading and offloading easier. And that scenario works
23 for RJB, and they would have adequate access to at least one
24 railcar at a time, maybe two, but at least one railcar at a
25 time.

ENGLE/Paschalis

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1 Q. So you have described several options for both
2 short short-term and long-term on how they would access the
3 line and be able to ship. Have you had those conversations
4 with RJB itself?

5 A. We brainstormed a number of things, but the
6 commitment that we made to each other was that we would
7 partner and cooperate in figuring it out. It didn't make
8 sense to have drawings done or anything like that until we
9 know whether or not it's going to happen.

10 Q. How soon after reactivation would you start the
11 process of having a detailed, comprehensive evaluation of
12 getting RJB access to the line?

13 A. Within 30 days with the intent of having service to
14 them this year.

15 Q. There was some discussion earlier about your
16 inspections of the area of the Bellevue yard; do you recall
17 that?

18 A. Yes.

19 Q. And the nature of rehab work that would need to be
20 done --

21 A. Yes.

22 Q. -- to make it usable to railroad operations.

23 A. Yes.

24 Q. And you had indicated that several other people had
25 also gone down there to take a look, as well.

ENGLE/Paschalis

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1 MR. PASCHALIS: I am, yes.

2 MR. FERGUSON: Okay.

3

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

5 BY MR. PASCHALIS:

6 Q. So, around this period of time, was that around the
7 time that Kirkland started removing the tracks?

8 A. Yes.

9 Q. Hadn't Ballard filed a motion for reconsideration
10 of the denial of the preliminary injunction?

11 MR. FERGUSON: Mr. Paschalis, I will object
12 that this is improper and has no rebuttal quality or anything
13 to do with what I just asked.

14 MR. PASCHALIS: Thank you.

15 Q. Go ahead.

16 A. It's my opinion, and that of some others I know,
17 that, when the tracks came out, it kind of galvanized the
18 awareness of the value of the corridor beyond just a trail,
19 that's it.

20 Q. Okay. So all I wanted to find out is whether or
21 not the tracks having come out affected your thoughts on the
22 reactivation efforts around the time that you were talking to
23 General Mills.

24 A. I think, at that point, it was the decision to go
25 all-in, so we did.

EXHIBIT 2

BEFORE THE SURFACE TRANSPORTATION BOARD

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

DEPOSITION UPON ORAL EXAMINATION

OF

BYRON COLE

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600
Seattle, Washington

DATE: Wednesday, February 12, 2014

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

1 different customers there altogether.

2 Q. And the third sheet on Exhibit 110 shows carloads
3 on the Meeker Southern Railroad?

4 A. Yep.

5 Q. 794 carloads?

6 A. Yep.

7 Q. I don't need to know all the shippers down there.

8 A. Yeah, that's a cash cow.

9 Q. Looks that way.

10 So turn to Exhibit 109, you have a statement here
11 that Ballard Terminal Railroad's count of freight cars
12 handled in 2013 totaled 1100 cars, do you see that?

13 A. For all three railroads together, produces 1100
14 cars. It's our biggest year ever.

15 Q. I was going to ask you to break out that number
16 for the Eastside Freight Railroad, but what you've produced
17 this morning --

18 A. It's here.

19 Q. Yes. In fact, what we requested was information
20 for the Eastside Freight Railroad on all the financial
21 issues, so I'm going to ask you to break out those figures
22 as well.

23 So for instance, total railroad operations
24 revenue, \$900,768, how much of that did you book on the
25 Eastside Freight Railroad?

1 A. Well, I can't tell you right offhand. But it's
2 not that hard to actually get that data. We have -- well,
3 I'll leave it at that.

4 Q. Can you reconstruct it here?

5 A. I think I'd be too slow. You don't want to spend
6 the rest of the day while I fiddle around with it, do you.

7 Q. I don't want to spend the rest of the day while
8 you fiddle around with it, but that's the information we
9 requested.

10 MR. COHEN: So, Mr. Paschalis, if you can
11 produce the information we requested, we'll be able to more
12 efficiently ask Mr. Cole about it. I'm making that request
13 of you, that you produce the operation and expense
14 information for the Eastside Freight Railroad.

15 MR. PASCHALIS: We'll look into it.

16 Q. (By Mr. Cohen) So, Mr. Cole, can you estimate
17 railroad operations revenue for the Eastside Freight
18 Railroad?

19 A. If I made a phone call or two, I suppose I could.

20 Q. We're going to take a break, why don't you make
21 that phone call.

22 A. Is that okay with you?

23 MR. PASCHALIS: Let's take a break. Let's
24 talk for a second.

25 (Recess taken from 10:10 to 10:16 a.m.)

1 MR. COHEN: Back on.

2 THE WITNESS: I couldn't get the answer,

3 so...

4 MR. PASCHALIS: So you made a call.

5 THE WITNESS: Yeah, I made a call, but it's
6 not as easy as I thought to come up with the answer, but...
7 we sort of live and die with the car counts.

8 Q. (By Mr. Cohen) I'm sorry?

9 A. I said we sort of live and die with the car
10 counts, because that's, by far, our primary income anyway.

11 Q. So who did you call?

12 A. My operations manager.

13 Q. Mr. Forgette?

14 A. Yep.

15 Q. And he didn't have that information available?

16 A. He's not at home.

17 Q. I see. And you don't personally have a basis to
18 estimate how much of the revenue came from the Eastside
19 Freight Railroad?

20 A. I do back in my office.

21 Q. Okay.

22 A. Yeah.

23 Q. I'm going to ask --

24 A. It's not happening right now.

25 Q. How about, I see total expenses paid, 900,000

1 plus dollars. I'm looking at Exhibit 109, you should have
2 that in front of you, Mr. Cole.

3 A. Mm-hm (answers affirmatively).

4 Q. You see that?

5 A. Mm-hm (answers affirmatively).

6 Q. How much of that figure do you allocate to the
7 Eastside Fright Railroad?

8 A. I have no idea at this time of year.

9 Q. This is for 2013?

10 A. It's for 2013. I have no idea at this time of
11 year, taxes, every year are on extensions of time. And so
12 this is, we don't do them until the end of -- doesn't close
13 till kids go back to school.

14 Q. How did you come up with the \$900,000 for the
15 entire Ballard Terminal Railroad?

16 A. I got that by looking at our check register,
17 tedious.

18 Q. I see. I see.

19 A. I thought it's better than nothing.

20 Q. Of the \$900,000 expenses here, do any of those
21 expenses include payments to the Ballard Industrial
22 Company?

23 A. Yes.

24 Q. How much?

25 A. I don't know. Don't know.

1 of 3535, right?

2 MR. PASCHALIS: Are you referring to
3 Exhibit 96?

4 MR. COHEN: I'm referring to Exhibit 63.

5 THE WITNESS: That looks like to me the 3535
6 includes both excursion service and the freight component.

7 Q. (By Mr. Cohen) You're right. I stand corrected.
8 And there is a long-term carload estimate of
9 6022, right?

10 A. I see it.

11 Q. You see that?

12 A. I do, yeah.

13 Q. Those are the same numbers that appear in
14 Exhibit 96?

15 A. Is it in here?

16 MR. PASCHALIS: Here you go.

17 THE WITNESS: I got it. It looks like the
18 same ones.

19 Q. (By Mr. Cohen) Right. I gather, then, that you
20 cannot explain the basis for the numbers in the first
21 paragraph on Page 2 of Exhibit 63?

22 A. I believe this is all Doug's work.

23 Q. It's all Doug's work?

24 A. Yep.

25 Q. Okay. But you signed that letter?

EXHIBIT 3

Confidential Information Filed Separately Under Seal

EXHIBIT 4

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2014-0206 Starup, Greg (Coastal Co

mmunity Bank)

2/6/2014 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 1 BEFORE THE SURFACE TRANSPORTATION BOARD 2 STB FINANCE DOCKET NO. 35731) 3 BALLARD TERMINAL) 4 RAILROAD COMPANY, L.L.C.) 5 -ACQUISITION AND EXEMPTION-) 6 WOODINVILLE SUBDIVISION) 7) 8 STB DOCKET NO. AB-6 (SUB. NO. 465X)) 9 BNSF RAILWAY COMPANY) 10 -ABANDONMENT EXEMPTION-) 11 IN KING COUNTY, WA) 12) 13 Deposition Upon Oral Examination 14 of 15 GREG STARUP 16 Taken at 600 University, Suite 3600 17 Seattle, Washington 18 19 DATE: February 6, 2014 20 REPORTED BY: Wade J. Johnson, RPR 21 CCR No.: 2574 22 23 24 STARKOVICH REPORTING SERVICES 25 206.323.0919	Page 3 1 GREG STARUP -- FEBRUARY 6, 2014 2 I N D E X 3 EXAMINATION BY: PAGE 4 Mr. Ferguson 5 5 Mr. Marcuse 48 6 Mr. Paschalis 58 7 Mr. Marcuse 84 8 Mr. Ferguson. 85 9 * * * 10 11 EXHIBITS FOR IDENTIFICATION: 12 Number PAGE 13 64 Letter from Greg Starup to Cynthia Brown, 14 11/21/13. 5 15 65 Subpoena to Coastal Community Bank to Testify in a 16 Deposition and Produce Documents in a Proceeding 17 Before the Surface Transportation Board 5 18 66 E-mail from Doug Engle to Greg Starup, 19 11/21/13 15 20 67 E-mail from Greg Starup to Doug Engle, 21 11/22/13 16 22 68 E-mail from Greg Starup to Doug Engle, 23 10/23/13 25 24 69 E-mail from Greg Starup to Doug Engle, 25 01/18/13 30 26 70 E-mail from Doug Engle to Greg Starup, 27 10/19/13, 12:15 p.m. 35 71 E-mail from Doug Engle to Greg Starup, 10/19/13, 12:20 p.m. 35 (Index continued next page.) STARKOVICH REPORTING SERVICES 206.323.0919
Page 2 1 STARUP 2 A P P E A R A N C E S 3 4 FOR BALLARD TERMINAL THOMAS C. PASCHALIS (Telephonic) 5 RAILWAY, L.L.C. and Fletcher & Sippel 6 EASTSIDE COMMUNITY 29 North Wacker Drive, Suite 920 7 RAIL Chicago, Illinois 60606 8 tpaschalis@fletcher-sippel.com 9 FOR THE CITY OF HUNTER FERGUSON 10 KIRKLAND: Stoel Rives 11 600 University Street, Suite 3600 12 Seattle, Washington 98101 13 hoferguson@stoel.com 14 FOR KING COUNTY: ANDREW MARCUSE 15 Senior Deputy Prosecuting Attorney 16 Civil Division 17 W400 King County Courthouse 18 516 Third Avenue 19 Seattle, Washington 98104 20 andrew.marcuse@kingcounty.gov 21 FOR SOUND TRANSIT: JORDAN WAGNER 22 Union Station 23 401 South Jackson Street 24 Seattle, Washington 98104 25 jordan.wagner@soundtransit.org --oOo-- STARKOVICH REPORTING SERVICES 206.323.0919	Page 4 1 GREG STARUP -- FEBRUARY 6, 2014 2 I N D E X 3 EXHIBITS FOR IDENTIFICATION: 4 Number PAGE 5 72 E-mail from Doug Engle to Greg Starup, 6 10/19/13, 12:25 p.m. 35 7 73 E-mail from Doug Engle to Greg Starup, 8 10/19/13, 12:32 p.m. 35 9 74 E-mail from Doug Engle to Greg Starup, 10 10/19/13, 12:39 p.m. 35 11 75 E-mail from Doug Engle to Greg Starup, 12 10/19/13, 12:42 p.m. 35 13 76 E-mail from Doug Engle to Greg Starup, 14 10/19/13, 12:50 p.m. 35 15 77 E-mail from Doug Engle to Greg Starup, 16 10/19/13, 12:55 p.m. 35 17 78 E-mail from Doug Engle to Greg Starup, 18 10/19/13, 12:58 p.m. 35 19 79 E-mail from Doug Engle to Greg Starup, 20 10/19/13, 3:08 p.m. 35 21 80 E-mail from Doug Engle to Greg Starup, 22 10/19/13, 12:16 p.m. 35 23 81 E-mail from Greg Starup to Doug Engle, 24 01/17/14 53 25 82 One-page Document, Handwritten Notes by Greg Starup 56 * * * STARKOVICH REPORTING SERVICES 206.323.0919

Page 9 1 segment of that railroad corridor between Woodinville and 2 Bellevue. Are you familiar with that rail corridor, 3 generally speaking, in connection with your communications 4 with Mr. Engle? 5 MR. PASCHALIS: Object to the form. 6 A. Generally speaking, I am familiar with that 7 corridor and the area that is under request to be 8 reactivated. 9 Q. You understand that Ballard Terminal Railroad is 10 the entity that is seeking authorization from the Surface 11 Transportation Board to reactivate rail service on the 12 section of the corridor between Woodinville and Bellevue; is 13 that your understanding? 14 A. I do not have a clear understanding of the 15 relationship between the two entities, Ballard Terminal 16 Railroad and Eastside Community Rail. I believe that I 17 misspoke; that's not the exact name of it. I have an 18 understanding that they are somehow connected, either by 19 ownership or affiliation of other sorts, and that that 20 combined entity or the individuals that are principals or 21 have controlling interests somehow within that structure that 22 is who is requesting the reactivation. 23 Q. So, if I use the terms "reactivation proposal" or 24 "reactivation request," do you understand that I am referring 25 to the subject matter of this administrative proceeding for	Page 11 1 MR. PASCHALIS: Object to the form. 2 A. No. 3 Q. Do you know if Ballard Terminal Railroad has ever 4 sought any type of financing from the bank in connection with 5 its effort to reactivate rail service on the corridor between 6 Woodinville and Bellevue? 7 A. Can you define the term "sought." 8 Q. Do you know if anyone for Ballard Terminal Railroad 9 has approached the bank -- well, I will be specific with each 10 one. This is going to sound repetitive, but I want to be 11 precise here. Has anyone from Ballard Terminal Railroad 12 applied for a loan or any other type of financing for an 13 effort to reactivate rail service between Woodinville and 14 Bellevue? 15 A. No. 16 Q. Are you aware of anyone from Ballard Terminal 17 Railroad who has spoken to anyone at the bank about the 18 possibility of obtaining financing for reactivation of rail 19 service between Woodinville and Bellevue? 20 A. Yes. 21 Q. And who is that? 22 A. Doug Engle. 23 Q. Did he approach you? 24 A. Yes. 25 Q. Do you recall when he first approached you?
Page 10 1 the Surface Transportation Board, and it is referring to that 2 potential to reactivate rail service on the portion of the 3 line between Woodinville and Bellevue? 4 A. I understand that. 5 Q. And, when I refer to the bank, instead of saying 6 Coastal Community Bank every single time, I am referring to 7 Coastal Community, your bank, the bank you work with, unless 8 I specify something else; is that okay with you? 9 A. That is fine with me; I understand that. 10 Q. Has the bank made a loan to Ballard Terminal 11 Railroad Company, LLC, in connection with a proposal to 12 reactivate rail service on the corridor between Woodinville 13 and Bellevue? 14 A. No. 15 Q. Has the bank ever made a loan of any kind to 16 Ballard Terminal Railroad? 17 A. No. 18 Q. Has Ballard Terminal Railroad ever applied to 19 Coastal Community Bank for a loan? 20 A. No. 21 Q. Has the bank provided any other type of financing 22 to Ballard Terminal Railroad in connection with the effort to 23 reactivate rail service on the line between Woodinville and 24 Bellevue? 25 A. No.	Page 12 1 A. I would have to refer to my notes and e-mails, all 2 of which you have copies of. 3 Q. Yes. We will get to those. 4 A. Okay. 5 Q. Do you recall if Mr. Engle represented that he was 6 an agent for Ballard Terminal Railroad? 7 MR. PASCHALIS: I will object to the extent 8 that that calls for a legal conclusion. 9 A. I do not recall him representing anyone other than 10 himself and Eastside Community Rail. 11 Q. Okay. Is it your understanding that Mr. Engle is 12 an owner of Ballard Terminal Railroad? 13 A. I do not know if he is an owner, and I do not have 14 evidence or any documentation of his ownership in any of the 15 entities being discussed. 16 Q. So, moving back to Eastside Community Rail for a 17 second here, the first question I asked you is whether the 18 bank had extended a loan to Eastside Community Rail -- and, 19 if it is all right with you I will call it ECR for short -- 20 extended a loan to ECR for an effort to reactivate rail 21 service on the line between Woodinville and Bellevue, and you 22 answered no, correct? 23 A. Correct. 24 Q. Has anyone for ECR submitted an application for a 25 loan in connection with an effort to reactivate rail service

Page 25 1 MR. WAGNER: Sixty-one? This one? 2 MR. FERGUSON: No. I want the full thing. 3 Tom, I think it's going to be longer than two pages. 4 MR. PASCHALIS: The e-mail is two pages, and 5 then it has attachments. 6 MR. FERGUSON: That sounds right. 7 MR. PASCHALIS: And the first attachment is 8 individual financial statements and application. 9 MR. FERGUSON: Yes. 10 MR. PASCHALIS: Okay, I have that. 11 (Exhibit 68 marked for 12 identification.) 13 Q. Mr. Starup, the court reporter has just handed you 14 what has been marked as Exhibit 68. This is a copy of an 15 e-mail from you to Mr. Engle dated October 23rd, 5:06 p.m., 16 the subject line, "Financing Request." If you could take a 17 moment just to review the e-mail. Also attached to this are 18 the attachments to this e-mail. We received this from 19 Ms. Anderson in the compliance department of the bank. 20 A. Yes, I am familiar with the e-mail and with the 21 attachments, and it is what I sent. 22 Q. Okay, great. So can you describe for me why you 23 sent this e-mail to Mr. Engle. 24 A. I sent him the e-mail because I wanted him to know 25 what I would expect for a complete application for financing.	Page 27 1 Well, let me back up here. When I say rely on, when you 2 decided to revise the letter that Mr. Engle sent to you and 3 then sign it, do you recall, in the time period between when 4 you got the e-mail from Mr. Engle and when you sent him a 5 signed letter the following day, in that roughly 31-hour 6 period -- I am saying that because the e-mail you received 7 from Mr. Engle is time stamped 10:47, and your reply to him 8 is a little bit after 6:00 p.m. the next day -- can you 9 recall looking at any particular piece of information 10 concerning ECR? 11 A. No, I don't recall. 12 Q. Do you recall looking at any particular piece of 13 information concerning Ballard Terminal Railroad? 14 A. No, I don't recall. 15 Q. So then can you describe to me whether your revised 16 letter, was it based on anything that you knew about ECR? 17 A. It was based on the discussions that Doug Engle had 18 with me in terms of the potential for freight revenue and 19 what we could see could be some economic benefit to Snohomish 20 County. 21 Q. Did he have conversations with you about a proposal 22 to run what is sometimes known as an excursion service or 23 wine train? 24 A. Yes, he also had that. 25 Q. So your decision to write the letter at this time,
Page 26 1 We had discussed in general terms the possibility of 2 financing. And it is my practice to provide this very same 3 thing to almost anyone who makes an inquiry such as that so 4 that there is no mistake or misunderstanding what may or may 5 not be considered to be an application. 6 Q. I will ask you a broad question about the checklist 7 here of 14 items. Has Doug Engle provided any of the items 8 here to you as part of a loan application in connection with 9 the reactivation of rail service? 10 A. I am going to briefly review this, because I do not 11 believe he has provided any of this information, with the 12 exception of some general information about the company and 13 their plans, but the information was -- he may have -- I 14 don't think he even has provided a resume. He provided some 15 documents that could be construed to be a portion of a 16 business plan, but not a complete one. He did not provide 17 any information that was asked for on the attached forms. 18 Q. And that has all the attachments, correct? 19 A. That's all of the attachments, outside of his name. 20 Q. Switching back to Exhibit 64, which is the letter 21 to the Surface Transportation Board, do you have a 22 recollection of whether you have relied on any particular 23 documents in deciding to revise and sign the letter? 24 A. I did not rely on any particular document. 25 Q. Was there a more general collection of documents.	Page 28 1 is it fair to say it was based just on your general 2 understanding of what Mr. Engle had conveyed to you? 3 A. Yes. 4 Q. What do you understand the proposal to reactivate 5 rail service that Mr. Engle has discussed with you, what do 6 you understand it to be? 7 A. What was represented to me is that the city of 8 Kirkland had obtained rights to the corridor and wished to 9 use it as a trail, rails-to-trail type of project, and that 10 rails were being removed, and that it would remove it from 11 potential use as either freight or passenger service. He 12 explained that it could be that Sound Transit would find 13 benefit in that corridor, as well, and that certainly there 14 was demand for freight service that could connect with BNSF 15 at Everett. 16 Q. Did he discuss with you at all the prospect of 17 running an excursion train, as well? 18 A. Yes, he did. 19 Q. What did he tell you about that? 20 A. That there was potential demand for excursion 21 service between Woodinville and Snohomish and particularly 22 with the wineries in the Woodinville area and Snohomish in 23 terms of its quaintness and so forth as well as the potential 24 for tours and so forth arranged through Tulalip. 25 Q. You are talking about the Tribe, the casino?

Page 41 1 A. No. 2 Q. All right. 3 A. No. I gave them a quick overview to determine if 4 it was information that would be -- that would answer my 5 initial questions, which I was describing, the structure of 6 the entities, the ownership, the financial condition and 7 wherewithal of the owners as well as the existing financial 8 condition of the entity, the operating performance of the 9 entity and if -- what was very clear in looking at this is 10 that there needed to be a significant amount of equity 11 injected into the company before it was bankable. 12 Q. Do you understand that the segment of the line that 13 Ballard Terminal Railroad working with ECR between 14 Woodinville and Bellevue is owned in segments by King County, 15 Kirkland, and Sound Transit? 16 A. Yeah. 17 Q. Do you understand that there is a roughly 18 5 3/4-mile section of that approximately 12-mile-long line 19 where the rails and tracks have been pulled up? 20 MR. PASCHALIS: Objection; form; foundation. 21 A. That was my understanding, is that, if the rails 22 had not been pulled, that it was eminent. 23 Q. I will represent to you that the tracks -- and we 24 can go ahead and look at this map that you have here. This 25 is on page 3 of Exhibit 70. It is a map that is entitled,	Page 43 1 something like that. 2 Q. So, in order to extend a loan, you would require 3 the applicant to demonstrate that it has right in some way to 4 actually conduct its business on the property? 5 A. If revenues were -- 6 MR. PASCHALIS: If I may, I will object to the 7 form, and I will object on the basis of asked and answered. 8 A. If revenues were considered from that particular 9 operation and those revenues were germane in the underwriting 10 of the loan, yes, it would be required, yeah. It just 11 depends on the nature of -- and that's where we were trying 12 to get to, trying to understand. 13 Q. Did Mr. Engle represent to you that he, either on 14 behalf of ECR or Ballard Terminal, was seeking financing to 15 reinstall the tracks in this purple area owned by the city of 16 Kirkland, on this map we are looking at, page 3 on 17 Exhibit 70? 18 A. There were a number of improvements that would have 19 to be made; I understood that, and I represented to him that 20 we would not be financing those improvements. 21 Q. Did you all talk dollar amounts about how big of a 22 loan Mr. Engle was seeking? 23 A. The statutory limit of an SBA loan is \$5 million. 24 That's the upper limit. So anything beyond that would be 25 beyond the scope of what we would be interested in doing.
Page 42 1 "Eastside Rail Corridor, ECR, ownership." I will represent 2 to you that the purple section of this map where the word 3 "Kirkland" is in purple, that all of the rails, ties, and 4 other track material, like joints and bolts, have been 5 completely removed from a 5.75-mile section. 6 MR. PASCHALIS: Is there a question? 7 MR. FERGUSON: There is about to be. 8 Q. Would it matter to the bank in an application for 9 an SBA loan that the property over which ECR and Ballard 10 would seek to do business is owned by Kirkland, King County, 11 and Sound Transit? 12 MR. PASCHALIS: I will object to the form. 13 A. It may or may not matter. It would depend upon the 14 relationship between those entities and whether there were 15 any agreements for operating. 16 Q. Would it matter to the bank that ECR or Ballard 17 have no rights, contractual, property, or otherwise, to 18 access the line between Woodinville and Bellevue? 19 MR. PASCHALIS: I will object to the form and 20 calls for speculation. 21 A. It would -- well, to me that's connected with the 22 reason for the letter, is to get to whether or not the entity 23 would have any access. And it would be connected because, I 24 mean, obviously, if there's -- there would have to be some 25 sort of operating agreement, some lease agreement, or	Page 44 1 And, in fact, it would be somewhat dependent upon the size of 2 the company and the amount of equity that was injected into 3 the company. 4 Q. Can you speak more to that. What would be 5 required? Do you have any idea, or is it so highly 6 contextual that you cannot really speak to it? 7 A. It is very contextual, but, generally, 30 percent 8 equity in a start-up is not overly conservative. 9 Q. Did you and Mr. Engle ever talk numbers? Did you 10 have an impression about that he wanted to seek the full SBA 11 loan limit of 5 million? 12 A. No, we never really got to that point. 13 Q. Why not? 14 A. Why not? Because I still had questions about who 15 the borrower was going to be, what the borrowing would be 16 for, but, moreover, what is the ownership, and what was the 17 equity of the company. We never got there. 18 Q. So then, if the bank would not make a loan for the 19 purpose of reinstalling tracks, what would you consider 20 making the loan for? 21 A. Well, perhaps for real estate to construct a 22 terminal; perhaps for rolling stock. 23 Q. Would you be able to extend an SBA loan for the 24 purpose of acquiring an easement over the line between 25 Woodinville and Bellevue?

Page 45 1 MR. PASCHALIS: I will object to the extent 2 that that calls for legal conclusion. 3 A. We might be able to do that, but that -- financing 4 an intangible, that might be a use of an SBA loan, but we 5 would probably prefer that that be funded by equity. 6 Q. Would you extend a loan for that intangible 7 property if it couldn't be secured by a lien? 8 MR. PASCHALIS: I will object to the form and 9 to the extent it calls for legal conclusion. 10 A. I guess I don't think I could -- if there were 11 truly an easement, it could be secured with a lien, I mean, 12 it could be liened. 13 Q. Okay. 14 A. Yeah. 15 Q. All right. 16 A. The value of that is a different question. 17 Q. Based on the information that Mr. Engle has 18 provided to you, have you done any independent research or 19 analysis of the rail service plan he has described to you or 20 presented to you? 21 A. No. 22 Q. I would like to hand you a couple of previously 23 marked exhibits. These are 62 and 63. Just out of 24 curiosity, how big of a bank is Coastal Community Bank? 25 A. We're just over 4 million in assets at this point.	Page 47 1 between Woodinville and Bellevue? 2 A. Well, I guess, if you considered that we may 3 participate in some way in the operation of the company, then 4 yes. If you view that to mean that we would directly fund a 5 particular component of the physical restoration, then 6 probably not. 7 Q. Is the bank ready right now to participate in the 8 operation of the company if the STB issued a favorable ruling 9 to Ballard? 10 A. The bank is ready to consider a request to do so. 11 Q. So I take that as a no, that it is not ready to 12 participate if the Board were to rule in favor of Ballard at 13 this time? 14 A. We do not have an approval. 15 MR. PASCHALIS: Objection; mischaracterizes 16 earlier testimony, form, and asked and answered. 17 A. We have not received an application, and we do not 18 have an approval, so, in that sense, we are not ready. 19 Q. If you could turn to page 8, the third to the last 20 paragraph beginning, "Well, time marches on"; do you see 21 that? 22 A. Yes. 23 Q. I want to look at the last sentence in that 24 paragraph. "Moreover, Ballard has extensive financial 25 support from WATCO, Salmon Bay Sand & Gravel, and banks to
Page 46 1 Q. I don't have a good sense for where that puts the 2 bank in terms of the marketplace for banks. Does that mean 3 you are one of the largest banks in the state? 4 A. No. 5 Q. Medium-sized? 6 A. No. 7 Q. What then? 8 A. We're a community bank. In terms of branches, ten 9 branches. Perhaps that is more meaningful. 10 Q. Sure. Would you ever describe yourself as one of 11 the largest banks in the Northwest? 12 A. No. 13 Q. If you look at Exhibit 62, would you turn to 14 page 5. It is the pagination in the middle of the bottom 15 page. I want you to look at the first full paragraph, 16 beginning, "Also." It reads, "Also attached hereto is 17 correspondence from Coastal Community Bank and AmericanWest 18 Bank, the bankers for Ballard and Eastside Community Rail, 19 LLC, a significant project supporter. Each of those banks 20 stands ready, willing, and able to financially participate in 21 the restoration associated with the reactivation of the 22 subject rail line." I want to focus on that last sentence. 23 Is it accurate to say that Coastal Community Bank is ready, 24 willing, and able to financially participate in the 25 restoration associated with the reactivation of the line	Page 48 1 reactivate the rail line and reconstruct the missing 2 trackage." Is it accurate to say that Ballard Terminal 3 Railroad has extensive financial support from Coastal 4 Community Bank to reactivate the rail line and reconstruct 5 missing trackage? 6 MR. PASCHALIS: I will object on the basis of 7 asked and answered and to the extent that that 8 mischaracterizes statements as to Coastal Community Bank. 9 Q. I am just asking you: Is it accurate to say that 10 Ballard Terminal Railroad has extensive financial support 11 from Coastal Community Bank to do anything? 12 A. At this point it is inaccurate to say that. 13 MR. FERGUSON: I don't think I have anything 14 further. 15 MR. WAGNER: I have no questions. 16 MR. MARCUSE: I just need a moment to look 17 back. 18 19 E X A M I N A T I O N 20 BY MR. MARCUSE: 21 Q. Just to reiterate, I am Andrew Marcuse with King 22 County. I work in the civil division of the prosecutor's 23 office. I work on real estate and other matters for King 24 County. I just have, I think, a couple of follow-up 25 questions. When we started we were looking at Exhibit 66 and

Page 69 1 Eastside at this time, is the same true for obtaining the 2 application documents that are outlined on the first page of 3 Exhibit 68? 4 A. I am not sure I understand. 5 MR. FERGUSON: Objection; vague; calls for 6 speculation. 7 A. I don't understand the question. 8 Q. Would you start looking and evaluating any 9 application documents submitted to you on behalf of Ballard 10 or Eastside while the STB proceeding is still pending, or 11 would it be more appropriate to wait until after the Board 12 has ruled? 13 MR. FERGUSON: Same objections. 14 A. I am going to kind of think out loud here. If I 15 got financial information on the principals of the company, I 16 might do some evaluation of them. I might do some evaluation 17 on the company's balance sheet in terms of -- but, without 18 some sort of concrete proposal, I don't really have anywhere 19 to go with it. And so that evaluation then is as of a 20 particular point in time; once the decision occurs, it will 21 be a different time, and I would probably have to do it all 22 over again. So I might look at it, but I am not going to 23 really do any hard evaluation until we have a pathway to go 24 forward, some sort of a concrete request. And, without that 25 decision, there is really no way to have a concrete request.	Page 71 1 A. It is an accurate paraphrasing of my testimony. 2 Q. Looking at these exhibits, 70 through 80, and I 3 don't necessarily think we need to go through each of these 4 individually, but there are some numbers that are being 5 thrown in here and being crunched, and I would just simply 6 ask whether that reflects an effort on the part of Doug Engle 7 to provide you with some numerical projections? 8 A. Okay. Let's look at Exhibit 74. 9 Q. Before we do, sir, I would like to have this 10 portion of the testimony designated as confidential. 11 MR. PASCHALIS: Counsel? 12 MR. FERGUSON: Yes. The document has been 13 marked that way, and it has a confidential stamp on the 14 bottom. I am fine with that if everyone else is. 15 MR. WAGNER: Sound Transit is. 16 MR. MARCUSE: Yes. 17 MR. FERGUSON: Tom, I do not want to talk 18 about the document, I just want to explain to Mr. Starup what 19 the protective order means and what it means for his 20 transcript; is that okay with you? 21 MR. PASCHALIS: Yes. Go ahead, Hunter. 22 MR. FERGUSON: So there is a protective order 23 in place in this case, and what that basically allows the 24 parties to do is exchange proprietary, sensitive, or some 25 kind of confidential information. In this context we are
Page 70 1 Q. Okay. So it is fair to say that you wouldn't do a 2 full review of the application documents submitted to you 3 until the Board rules anyway? 4 MR. FERGUSON: Objection; vague. 5 A. That is correct. 6 Q. You had mentioned when you were discussing some of 7 the communications between yourself and Doug Engle that there 8 was a lot of verbal discussions; is that accurate? 9 A. A fair number of verbal discussions; perhaps not as 10 many as we would have had we had a real application. 11 Q. Sure. Let me try to ask a better question. So 12 with respect to what he was trying to accomplish with this 13 loan, you guys communicated, in large part, verbally; is that 14 accurate to say? 15 A. Yes. However, I would clarify something. We don't 16 have a loan application. When you say this loan, there is no 17 loan, there is no application. 18 Q. Thank you. Okay, I will rephrase appropriately. 19 In any event, in your discussions with him, you said he had 20 showed you some charts, and you had indicated that charts can 21 be somewhat meaningless, and you prefer numerical 22 projections; do you recall that? 23 A. Yes, I did. 24 Q. And that is an accurate paraphrasing of your 25 testimony?	Page 72 1 talking about financial statements and that sort of thing. 2 If any of this information is used in a filing with the STB, 3 whether it is testimony that you might give here today or a 4 reference to a document itself that has been designated as 5 confidential, it will basically be filed under seal. So you 6 are free to speak here, but you are bound not to discuss the 7 content of these documents or your testimony about them to 8 the extent that it reveals information that is confidential 9 with anyone outside the room. 10 THE WITNESS: Very good. 11 MR. PASCHALIS: And we as attorneys have 12 similar restrictions on how we are able to use this 13 information that is confidential, as well. 14 THE WITNESS: And we as a bank, being given 15 this by private individuals, are under similar sort of 16 restrictions. 17 MR. FERGUSON: We are all mum's the word here. 18 Q. (By Mr. Paschalis) With that being said, you wanted 19 to reference Exhibit 74, sir, so please go ahead. 20 /// 21 /// 22 /// 23 /// 24 /// 25 ///

Page 73 1 2 3 4 5 6 7 8 9 10 11 12 [BEGINNING OF CONFIDENTIAL TESTIMONY] 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 75 1 2 3 4 5 6 7 8 9 10 11 12 [END OF CONFIDENTIAL DESIGNATION] 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 74 1 A. As an example of how I viewed these documents, 2 Exhibit 74 contains a draft for discussion purposes of a 3 combined P&L for GNP Railway. This starts out in 2011 and 4 goes out to 2020. Well, it's clearly a projection of GNP 5 Railway, an entity that I really don't know about, okay. So, 6 looking at freight traffic and excursion business, these are 7 some numbers that he has put together for what he is 8 expecting may or may not come to pass. We don't have 9 assumptions for them really. 10 Then we go to the charts and so forth and a lot of 11 numbers following that for various things, including he has 12 immediate cash requirements. But, without the context of the 13 current balance sheet, it's kind of meaningless. So this is 14 the reason why I say charts and stuff -- I was probably less 15 than accurate in saying that, yeah, there are some numbers 16 there, but they are inventions. I mean, anybody can put 17 together numbers. Without knowing where they come from and 18 the context in which they are used, this doesn't have a lot 19 of meaning. So that's why I made that statement. 20 Q. Fair enough. If you are finished with your 21 reference to Exhibit 74, we will go off of the confidential 22 designation. 23 A. Very good. Yes. 24 /// 25 ///	Page 76 1 Q. So the only question I have: It is fair to say 2 that Mr. Engle has endeavored to provide you with some 3 projections, but you, at the right time, would ask for 4 further numbers and further clarification as you get further 5 along in the application and evaluation process? 6 A. That is correct. 7 Q. Now, you mentioned in your discussion with 8 Mr. Ferguson that loaning to start-up companies involves a 9 little bit more risk; do you recall that? 10 A. Yes. 11 Q. And that is an accurate statement? 12 A. Yes, it is. 13 Q. Would it be beneficial for an entity attempting to 14 procure an SBA loan to have partnered with a business in the 15 same industry which has operated for 15 years? 16 A. Yes, more than likely; not necessarily, but more 17 than likely. 18 Q. It would likely improve their chances of getting a 19 loan? 20 A. It certainly may. 21 Q. And would that fact reduce the prospects of getting 22 a loan in any way? 23 A. I suppose it could. I guess it depends on the 24 strength of the existing company; what participation that 25 company has. It is possible that it could be a detriment;

EXHIBIT 5

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

PAUL NERDRUM

** Confidential Sections Enclosed **

Taken at 600 University Street, Suite 3600
Seattle, Washington

DATE: Wednesday, February 12, 2014

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

1 Q. What portion?

2 A. When you said they're marginal. When we started
3 the Ballard Terminal in Ballard, which was our first short
4 line, we had two initial shippers on the line, which added
5 more car volume. And those shippers were frozen fish
6 product coming down from Alaska being trans-loaded to rail,
7 and incoming furniture to a furniture sales company that
8 was located in Ballard. And as they've gone away, it's
9 become less viable.

10 Q. Down to 114 cars?

11 A. Correct.

12 Q. And is Mr. Cole's characterization accurate that
13 the operation of Ballard Terminal Railroad today in Ballard
14 is mostly intended to protect Salmon Bay Sand & Gravel from
15 bicycle traffic?

16 MR. PASCHALIS: You said Cole but are
17 referencing Mr. Engle?

18 MR. COHEN: I'm sorry, I guess I am
19 referencing Mr. Engle, thank you.

20 THE WITNESS: No, I wouldn't agree that that
21 is its sole existence. We rely heavily on the product we
22 bring in by rail.

23 Q. (By Mr. Cohen) Would you agree with Mr. Engle
24 that he's developed a positive working relationship with
25 you?

1 A. Yes.

2 Q. Other than the meeting yesterday, when is the
3 last time you saw Mr. Engle?

4 A. I'm not sure when the last time I saw him was,
5 maybe after the first of the year, but I talked to him over
6 the phone once prior, excuse me, between then and our
7 meeting last night.

8 Q. About what?

9 A. That I think it was a day or two after I was
10 served with papers from your firm.

11 Q. I see. Okay. So back to Exhibit 121.

12 A. Okay.

13 Q. Look at the first page. You have a series of
14 representations there in the fourth paragraph about Salmon
15 Bay Sand & Gravel. You see that?

16 A. I do.

17 Q. Then the last paragraph on the page begins,
18 "BTRC, LLC is a viable business as well."

19 Do you see that?

20 A. I do.

21 Q. What did you mean by that statement?

22 A. Well, since our inception starting with no
23 railroad experience, no equipment, no railroad knowledge,
24 we have grown from one short line railroad operation to
25 three short line railroad operations. And we own three

1 Mr. Nerdrum, have you ever seen Exhibit 62
2 before?

3 A. Yes.

4 Q. So this is the statement that your lawyers filed
5 with the Surface Transportation Board on December 6th. I'd
6 like you to turn to Page 4 of that statement.

7 The paragraph that starts, "Ballard is a bona
8 fide petitioner."

9 A. Correct.

10 Q. You'll see most of the way through that paragraph
11 a statement that I'm quoting, "Mr. Nerdrum, has thrown his
12 full financial support behind Ballard and this project, as
13 detailed in the letter which he previously submitted in
14 this proceeding and which is again, also again attached
15 hereto."

16 Is that an accurate statement?

17 A. I think my words were probably, Salmon Bay will
18 do whatever we can to support Ballard in their efforts to
19 rehabilitate these records and return it back to use.

20 Q. Whatever you can?

21 A. Yes.

22 Q. Is that the same as your full financial support?

23 A. I wouldn't interpret it that way, no.

24 Q. Take a look at 112. If you look at Page 2 of
25 Exhibit 112.

1 A. Okay. Oops. I go Page 1 and then it goes to
2 Page 4.

3 Q. Well, it's Page 4 I want you to look at it. It's
4 actually Page 2 of the exhibit but it's part of a larger
5 filing.

6 So this is Mr. Cole speaking. And I'd like you
7 to look at the last line on that page. Referring to you,
8 "As he wrote in his letter, he expects to be able to
9 finance the reactivation of the additional 12 miles being
10 sought in this action."

11 Is that an accurate statement of your position?

12 A. Not in whole. To help finance would be accurate.
13 But not in whole.

14 Q. So what kind of help financing the reactivation
15 are you prepared to offer?

16 A. I'd have to see what it's going to take when we
17 get there. I don't have a hard answer for that yet.

18 Q. No commitment beyond help?

19 A. Well, that's a commitment, beyond that, I don't
20 know.

21 Q. You can't quantify it?

22 A. Correct.

23 Q. Okay. Back to your letter on Page 2, first full
24 paragraph, the one that says, "We expect no difficulties in
25 funding the necessary track rehabilitation."

1 A. Correct.

2 Q. Did you have a dollar value in mind when you made
3 that statement?

4 MR. PASCHALIS: Objection; asked and
5 answered.

6 THE WITNESS: I did not have.

7 (Exhibit Number 123 marked.)

8 Q. (By Mr. Cohen) Mr. Nerdrum --

9 MR. PASCHALIS: Let me stop right now since
10 this is an August 20th letter, I will go back to the
11 question regarding the conference that we had. What is
12 the, you know, relation that you intend to ask about?

13 MR. COHEN: I'm really wanting to ask him
14 whether a statement made in that letter represents his
15 position today.

16 Q. (By Mr. Cohen) And that is your signature at the
17 end of the Exhibit 123?

18 A. Correct.

19 Q. On Page 3 of that letter, middle paragraph, the
20 one that starts, If the rails come out?

21 A. Correct.

22 Q. Would you read that statement?

23 A. "If the rails come out, there is only a very slim
24 chance of them being restored. This is a very real harm,
25 especially when a short segment in the middle of a long

1 MR. WAGNER: Thank you.

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

3 BY MR. MARCUSE:

4 Q. Mr. Nerdrum, my name is Andrew Marcuse. I'm a
5 deputy prosecuting attorney for King County. I do
6 environmental and real land use for the county, real
7 property law as well.

8 MR. MARCUSE: Can we show Mr. Nerdrum
9 Exhibit 62, which is the December 6th pleading?

10 Q. (By Mr. Marcuse) Could you please read just for
11 yourself, the first page of that document. And I'm going
12 to point you towards the last sentence on the first page.

13 A. Okay.

14 Q. Do you see where the last sentence there says,
15 "Salmon Bay Sand & Gravel, a leading supplier of sand and
16 gravel and concrete products in the Northwest United
17 States"?

18 A. I do.

19 Q. Is Salmon Bay Sand & Gravel a leading supplier of
20 sand, gravel and concrete products in the northwest United
21 States?

22 A. I would not say a leading supplier, no.

23 Q. How would you characterize its position in the
24 marketplace?

25 A. I would say we're probably a small supplier but

1 we also sell a wide range of building materials and have
2 other products.

3 Q. What is your official job title at Salmon Bay
4 Sand & Gravel?

5 A. I'm vice president of Salmon Bay Sand & Gravel.

6 Q. Who is the president of Salmon Bay Sand & Gravel?

7 A. The title is my father. He is president.

8 Q. And how is decision making carried out within
9 Salmon Bay Sand & Gravel?

10 A. We have a board of directors, my brother-in-law,
11 my father and myself are the current directors. And I act
12 as an executive capacity because my father is 87 years old
13 and doesn't come to work much any more.

14 Q. So you have a board of directors of three people?

15 A. Correct.

16 Q. And the board of directors would have to vote to
17 authorize any particular action or expenditure by Salmon
18 Bay Sand & Gravel?

19 A. We have some pretty good latitudes in that
20 regard.

EXHIBIT 6

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2014-0206 Engman, Nathan (Americ

anWest Bank)

2/6/2014 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 1 BEFORE THE SURFACE TRANSPORTATION BOARD 2 3 STB FINANCE DOCKET NO. 35731) 4 BALLARD TERMINAL) 5 RAILROAD COMPANY, L.L.C.) 6 -ACQUISITION AND EXEMPTION-) 7 WOODINVILLE SUBDIVISION) 8) 9 STB DOCKET NO. AB-6 (SUB. NO. 465X)) 10 BNSF RAILWAY COMPANY) 11 -ABANDONMENT EXEMPTION-) 12 IN KING COUNTY, WA) 13) 14 15 Deposition Upon Oral Examination 16 17 of 18 19 NATHAN ENGMAN 20 21 22 Taken at 600 University, Suite 3600 23 Seattle, Washington 24 25 DATE: February 6, 2014 26 REPORTED BY: Wade J. Johnson, RPR 27 CCR No.: 2574 28 29 STARKOVICH REPORTING SERVICES 30 206.323.0919	Page 3 1 NATHAN ENGMAN -- FEBRUARY 6, 2014 2 3 I N D E X 4 EXAMINATION BY: PAGE 5 Mr. Ferguson 4 6 Mr. Marcuse 91 7 Mr. Paschalis 92 8 Mr. Wagner 114 9 Mr. Ferguson 118 10 Mr. Paschalis. 124 11 Mr. Ferguson 126 12 * * * 13 EXHIBITS FOR IDENTIFICATION: 14 Number PAGE 15 58 Letter from Ashley Sargeant to Hunter Ferguson, 16 02/05/14 11 17 59 Subpoena to AmericanWest Bank to Testify in a 18 Deposition and Produce Documents in a Proceeding 19 Before the Surface Transportation Board. 35 20 60 Letter from Nathan Engman to Cynthia Brown, 21 11/22/13 35 22 61 E-mail from Greg Starup to Doug Engle, 23 10/23/13 69 24 62 Ballard Terminal Railroad Company, L.L.C.'s Reply 25 to King County, Washington, City of Kirkland, 26 Washington, and Puget Sound Regional Transit 27 Authority's Opposition Comments. 81 28 63 Letter from Byron Cole to Cynthia Brown, 29 12/05/13 81 30 * * * * 31 32 STARKOVICH REPORTING SERVICES 33 206.323.0919
Page 2 1 ENGMAN 2 3 A P P E A R A N C E S 4 5 FOR BALLARD TERMINAL THOMAS C. PASCHALIS (Telephonic) 6 RAILWAY, L.L.C. and Fletcher & Sippel 7 EASTSIDE COMMUNITY 29 North Wacker Drive, Suite 920 8 RAIL Chicago, Illinois 60606 9 tpaschalis@fletcher-sippel.com 10 11 FOR THE CITY OF HUNTER FERGUSON 12 KIRKLAND: Stoel Rives 13 600 University Street, Suite 3600 14 Seattle, Washington 98101 15 hoferguson@stoel.com 16 17 FOR KING COUNTY: ANDREW MARCUSE 18 Senior Deputy Prosecuting Attorney 19 Civil Division 20 W400 King County Courthouse 21 516 Third Avenue 22 Seattle, Washington 98104 23 andrew.marcuse@kingcounty.gov 24 25 FOR SOUND TRANSIT: JORDAN WAGNER 26 Union Station 27 401 South Jackson Street 28 Seattle, Washington 98104 29 jordan.wagner@soundtransit.org 30 31 --oOo-- 32 33 STARKOVICH REPORTING SERVICES 34 206.323.0919	Page 4 1 SEATTLE, WASHINGTON; THURSDAY, FEBRUARY 6, 2014 2 9:02 A.M. 3 --oOo-- 4 5 NATHAN ENGMAN, deponent herein, having been 6 first duly sworn on oath, was 7 examined and testified as 8 follows: 9 10 E X A M I N A T I O N 11 BY MR. FERGUSON: 12 Q. Good morning, Mr. Engman. Thank you for coming in. 13 A. Sure. 14 Q. We talked on the phone, but, again, I'm Hunter 15 Ferguson; I represent the city of Kirkland in this matter. I 16 would like to just start off by discussing the way the 17 deposition will proceed and lay out some ground rules. 18 A. Sure. 19 Q. Have you ever given a deposition before? 20 A. No, I have not. 21 Q. Okay. 22 A. I've seen them on TV a lot. 23 Q. There are some formalities to it. Everything is 24 going to be transcribed by Wade, the court reporter. 25 A. Sure.

Page 17 1 this with my boss. Did I talk about the actual content of 2 the deposition with him? I don't believe so, but I couldn't 3 say what I said or didn't say three or four weeks ago. 4 Q. Sure. Let me try to narrow it. Did you discuss 5 the content of the deposition, other than with me, with 6 anyone outside the bank? 7 A. No. 8 Q. So let's talk about your role in the bank and its 9 relationship with Ballard. 10 A. Excuse me. You mean Ballard or Ballard Terminal? 11 Q. Ballard Terminal. No, this is a good point. When 12 I use the term "Ballard" or "BTR," I am referring to Ballard 13 Terminal Railroad Company, LLC, not the neighborhood. 14 A. I understand. I will clarify if I have any 15 questions. BTR makes total sense to me. Ballard could refer 16 to a lot for me since I am domiciled in Ballard. I'll just 17 clarify if I have any questions. 18 Q. Sure. For the purposes of this deposition, if I 19 use the term "Ballard," and I can't speak for anyone else, 20 but it is referring to the railroad; it is not referring to 21 the neighborhood or any other business or anything else that 22 might use that name. Okay? But, if you are confused, 23 definitely seek clarification. 24 A. Just want to make sure I understand. 25 MR. PASCHALIS: And I will do the same unless	Page 19 1 Q. SBA, small business -- 2 A. Small Business Administration. Sorry. 3 Q. That is okay. 4 A. It's hard. 5 Q. Do you have any authority within the bank to make 6 decisions about -- well, I guess I should back up here. Does 7 your bank -- 8 A. I need a clarification. When you say do I have the 9 authority to make a decision, do you mean I have underwriting 10 capacity, or do you mean that I can process and originate a 11 loan? They are two different things. 12 Q. Can you explain the difference to me. 13 A. So I do not have any authority to make a commitment 14 on any loan of any kind. Every loan that I go ahead and I 15 originate, that I find, I develop, I have to gather financial 16 documents, typically, tax returns; interim financials; profit 17 and loss; balance sheet; accounts receivable; aging report; 18 debt schedule; personal financial statement; application. 19 For SBA there are additional forms, which I cannot recall, 20 4506-T is a government form. And I submit them all to the 21 appropriate banking center, so the CBC or the BBC, business 22 or consumer. At that point in time, credit is typically 23 pulled by them. 24 Q. Can I ask you a quick question? 25 A. Absolutely.
Page 18 1 otherwise specified; if I say Ballard, that will be intended 2 to mean Ballard Terminal Railroad Company, LLC. 3 A. Thank you. 4 Q. So what is your role at the bank? 5 A. I'm a community bank manager. 6 Q. And what does that entail? 7 A. I handle credits that -- when I mean credit, I mean 8 loans -- that are \$250,000 and under for what we refer to as 9 BBC credits, which stands for business banking center 10 credits, and any credit that is on what we refer to as the 11 consumer banking center credit center, CBC. I have a team of 12 seven people; they consist of tellers, which we refer to as 13 PBs or personal bankers, a senior personal banker, and an 14 assistant manager. My job is to develop business within the 15 Ballard neighborhood community as well as service the 16 existing needs of our current customers and to grow those 17 customers' deposits and loans appropriately. 18 Q. Do you have any responsibility for extending loans 19 in excess of \$250,000? 20 A. I do not. 21 Q. Do you have any authority to -- 22 A. Let me back up. I believe I can go to 350 if it's 23 an SBA loan. 24 Q. 350,000? 25 A. 350,000.	Page 20 1 Q. The CBC or BBC are centers within -- 2 A. Within AmericanWest Bank. 3 Q. -- AmericanWest Bank? 4 A. Sorry, I interrupted you again. Yes, they are 5 centers within AmericanWest Bank. We use CBC and BBC just 6 for our own personal ease, and, from now on, I will be 7 calling them CBC and BBC like you are using Ballard for 8 Ballard Terminal. 9 Q. Thank you. 10 A. So, if it goes to the BBC or the SBA department, 11 they will pull credit. They will do what is termed or 12 defined as "spread the loan," spread for the loan file, which 13 means work up a bunch of different statistics, including 14 debt-to-income ratio, global cash flow, essentially the 15 ability to repay the loan in full. Then we need to look at 16 other factors. So you have the primary source of repayment, 17 which is do they have the cash flow to pay it back with just 18 operating business. A secondary form of repayment is going 19 to be typically collateral, and then a tertiary form of 20 collateral is a personal guarantee or and/or personal assets. 21 At that point in time, I will typically take all 22 that information and give my recommendation at that point in 23 time to my decision-making underwriter. It will go either to 24 a decision-making underwriter or a junior underwriter, 25 depending upon loan size. And, based upon the spread, the

Page 33 1 Q. When you joined the bank, was Ballard part of your 2 portfolio that you took over? 3 A. No. Ballard came to my portfolio in May of 2012 to 4 the best of my recollection. And the reason I know that or 5 reason that was the case or I believe the deadline is because 6 we switched over from Viking systems over to AmericanWest 7 Bank systems in May of 2012. So that is when they 8 transferred data and transferred loan officers and 9 transferred whatever. It could have been June or July, but 10 it was all right around the summer of 2012. 11 Q. Okay. You said that you have had experience 12 reviewing Ballard's business plans? 13 A. I have looked at their file, so I couldn't tell you 14 what I looked at at this time, but I have looked at their 15 file, and I've looked at their online profile. 16 Q. Do you know if Ballard was with Viking or 17 AmericanWest before the merger? 18 A. Viking. 19 Q. Or the acquisition. Viking? 20 A. Sorry, I keep on jumping the gun. 21 Q. No. Maybe they didn't merge; maybe it was 22 acquired. It doesn't matter. 23 You mentioned that Mr. Nerdrum is an established 24 customer, and I take it that his company, Salmon Bay Sand & 25 Gravel, is also a customer?	Page 35 1 A. I can find all this out, but I do not know. 2 Q. Do you know if it has a relationship with someone 3 named Kathy Cox? 4 A. I do not know. 5 MR. FERGUSON: We have been going for a little 6 bit. Why don't we take a five-minute break, bathroom; water; 7 whatever you need to do. 8 THE WITNESS: Sure. 9 (A brief recess was taken.) 10 (Exhibits 59-60 marked for 11 identification.) 12 Q. Mr. Engman, if you would take a look at what has 13 been marked as Exhibit 60. 14 A. Sixty, is that right here? Okay. 15 Q. This is a letter dated November 22nd, 2013, 16 addressed to Cynthia Brown at the Surface Transportation 17 Board. Is that your signature at the bottom, left-hand 18 corner? 19 A. It is. 20 Q. I will represent to you that this is the letter 21 that was included in a filing made by Ballard Terminal 22 railroad to the Surface Transportation Board on December 6th. 23 The page numbers you see at the bottom are paginations that 24 are part of Ballard's filing. Would you describe the context 25 in which this letter came to be.
Page 34 1 A. I need to ask Craig that question, but I can answer 2 it. 3 Q. Okay. Are you familiar with a company called 4 Eastside Community Rail, LLC? 5 A. I've seen it, but I cannot say why. I can't say if 6 it was in your documents or if it is in my own portfolio at 7 this time. 8 Q. It was in the documents. 9 A. Okay. 10 Q. Is Eastside Community Rail, LLC, part of your 11 portfolio? 12 A. I don't know. 13 MR. PASCHALIS: Can you clarify as to what 14 documents you are referring to for my edification. 15 MR. FERGUSON: I know it was in the subpoena. 16 MR. PASCHALIS: The subpoena is what you're 17 referring to? 18 MR. FERGUSON: Yes. 19 MR. PASCHALIS: Okay, thank you. 20 A. I do not believe that Eastside Rail is a customer, 21 a lending customer or otherwise, of mine. 22 Q. Does the bank have a relationship with a gentleman 23 named Doug Engle? 24 A. I do not know. 25 Q. A gentleman named Ernie Wilson?	Page 36 1 MR. PASCHALIS: Object to the form. 2 A. All right. By context, you want me to walk you 3 through what happened and how I wrote -- how I came to write 4 the letter; is that correct? 5 Q. Well, that's actually a good point. Did you write 6 the letter? 7 A. Yes. Ultimately, I am the one that typed it out. 8 It was written in conjunction with Byron. He asked me for 9 information to be included, such as the last paragraph. I 10 was happy to do it. There were other things that he wanted 11 me to put in there that I was not comfortable saying because 12 I did not have a firsthand knowledge of what he was asking 13 for. And then there were other pieces in there that, such as 14 information on the bank, which I knew, and as well as, the 15 first paragraph is a summary of who they were and how I had a 16 relationship with them. 17 Q. Okay. So probably the most straightforward way is 18 to start as close to the beginning as we can. I don't know 19 what happened, so, if you can, just walk me through. 20 A. Sure. 21 Q. The letter is dated November 22nd. I think you 22 said earlier you think the conversations and the drafting all 23 took place over the course of a day or two days; is that 24 right? 25 A. I am confident that the entire conversation

Page 85 1 that sentence, do you count AmericanWest as among the banks 2 that is providing extensive financial support to reactivate 3 the rail line and reconstruct the missing trackage? 4 MR. PASCHALIS: Object to the form. 5 A. It depends on the size and the scope of the 6 application, which has not been presented as of today. 7 Q. So can you say that AmericanWest Bank has committed 8 to provide any financial support to reactivate the rail line 9 or reconstruct the missing trackage? 10 MR. PASCHALIS: Objection; asked and answered. 11 A. There has been no application at this time. I 12 cannot give formal -- besides the fact that I can't give 13 formal approvals, our underwriting teams will not give formal 14 approvals until that has occurred. 15 Q. So is it accurate then to say that AmericanWest has 16 not provided an assurance of extensive financial support to 17 reactivate the rail line and reconstruct the missing 18 trackage? 19 MR. PASCHALIS: Object to the form; asked and 20 answered. 21 A. I don't know how to answer that question. It 22 depends on the scope. 23 Q. I am asking you, right now, today, has the bank 24 committed to providing extensive financial support to 25 reactivate the rail line and reconstruct the missing	Page 87 1 A. There has been no informal or formal loan approval 2 of any kind, and I cannot do that until I receive a loan 3 application. 4 Q. Okay. 5 MR. PASCHALIS: Hunter, can we move on. I 6 mean, you have asked the same question many different ways, 7 and you have gotten the same response, and I don't think the 8 witness should be subjected to repeating himself over and 9 over again on the same question. 10 Q. So let's move on to Exhibit 63. This is a letter 11 dated December 5th from Mr. Cole to Ms. Brown at the Surface 12 Transportation Board. I actually don't have any questions on 13 that document. 14 Just to tie off something here, because no 15 application for a loan has been submitted, have you done any 16 kind of independent analysis of Ballard's -- of the project 17 that Mr. Cole described to you in reactivating part of the 18 Eastside Rail Corridor? 19 MR. PASCHALIS: Object to the form. 20 A. Minimal. 21 Q. What have you done? 22 A. Everything that I mentioned previously. Do I need 23 to be specific about that? 24 Q. If you could, please. 25 MR. PASCHALIS: Objection; asked and answered.
Page 86 1 trackage? 2 MR. PASCHALIS: Asked and answered. 3 A. You'd have to define for me what extensive 4 financial for is. 5 Q. Has the bank committed to providing any financial 6 support to reactivate the rail line and reconstruct the 7 missing trackage? 8 A. Depends on the size and the scope. 9 MR. PASCHALIS: Objection; asked and answered. 10 Q. No. Listen to what I am asking here. I am asking 11 has the bank committed to provide any financial support to 12 reactivate the rail line? 13 MR. PASCHALIS: Objection; asked and answered 14 several times, argumentative, and I would suggest that we 15 move on. 16 A. There has been no formal approvals, no informal 17 approvals of any kind at this time, but we still would like 18 to look at the loan application before we make that decision. 19 Q. And is the same true for reconstructing missing 20 trackage? 21 MR. PASCHALIS: Objection; foundation. 22 A. Until we have a loan process, until we receive a 23 loan application package, I cannot answer that question. 24 Q. I am just asking you: Have you made any commitment 25 to provide financial support?	Page 88 1 A. Again, I reviewed the information that was on file 2 with Precision. I looked at the strength, as I saw it, in 3 the guarantors of the loan that we have that is already 4 existing with us. And, based on that information, I felt 5 comfortable writing a letter that we would be in support of 6 some kind -- of some kind of loan. What that looks like, 7 again, I could not definitively address until a formal 8 application was given to us that would list the size and 9 scope of what the package looked like -- loan package request 10 I mean. 11 Q. Did you do anything else? 12 A. Not to my recollection. Not to my recollection. 13 MR. FERGUSON: I don't think I have any more 14 questions. Mr. Marcuse or Mr. Wagner might. We can also 15 take a break if you want to go to the bathroom or something. 16 I think they will be brief. And Mr. Paschalis might have 17 some follow-up with you. 18 THE WITNESS: Sure. 19 MR. FERGUSON: So do you want to take a 20 five-minute break? 21 THE WITNESS: I'm fine to carry on if you guys 22 are, but I'm okay taking a five-minute break, as well. 23 MR. MARCUSE: I might have one. 24 MR. FERGUSON: Do you want a couple minutes to 25 decide?

Page 105 1 work for whoever took it on. It would have taken probably 2 the better part of somewhere between two and four weeks in 3 order to get a decision, a lot of man-hours, and -- but, 4 again, I go back to we wouldn't have done any of it without 5 an application from you guys -- or from Ballard Terminal -- 6 because we didn't know the size and scope of the loan. 7 Q. Sure. And you would imagine that Ballard would 8 have to have some access to the line to make the evaluations 9 as to what kind of infrastructure is needed before they can 10 come to you with the size and the scope of the loan, correct? 11 A. I can't speculate to that, but I'll go again with 12 it depends on the size and scope of the loan as far as what 13 we would need to do. 14 Q. Sure. Fair enough. To draw an analogy, if you had 15 a bank customer come to you and say they wanted a loan to 16 rehabilitate a commercial building, but that customer didn't 17 own the building and it wasn't for sale, it equally wouldn't 18 make sense to undertake the effort to put together a 19 financing package for that rehabilitation, correct? 20 A. Again, we're making assumptions here. Rephrase the 21 question. What are you asking me to answer? 22 Q. I am giving you a hypothetical situation where one 23 of your customers tell you they want a loan to rehabilitate a 24 commercial building, but they don't own the commercial 25 building, and it's not for sale. My question is: Would it	Page 107 1 was not a -- I don't relish taking on something that is not 2 even possible. So I would say that, until I knew what the 3 size and scope was, I really didn't know how to proceed. 4 Q. Sure. Now, your personal area of authority is 5 for -- 6 A. I can stop you right there. I don't have any 7 decision-making authority to make any loans at all. 8 Q. Okay. Can you clarify what the limits are with 9 respect to the CBC and the BBC, which you had previously 10 discussed with Mr. Ferguson? 11 A. Sure. With board approval, there is no limitation 12 I have with the CBC. We have what we define as a front-end 13 guidance, meaning the largest loan amount we will do is 14 \$500,000 on the CBC, but I am -- well, I am confident we have 15 done loans in excess of \$1 million on the CBC for certain 16 customers. So we do make exceptions. I do not know the 17 maximum scope of that exception, but exceptions can be made. 18 That being said, the BBC has a limitation of 250 -- again, 19 let's go with front-end guidance, if we can all agree to 20 that. Front-end guidance of our policy says I'm supposed to 21 go to \$250,000 for a BBC loan and \$350,000 for an SBA loan, 22 but I've done bigger loans than that, just as an exception. 23 I did a \$449,000 loan last year, but, again, it depends on 24 the size; the scope; the strength; the request of the 25 customer.
Page 106 1 make sense to go through the efforts of putting together a 2 financial package for the rehabilitation on a building they 3 don't even own yet? 4 A. I would probably ask for more information before I 5 encouraged an application. I would really need to know the 6 size and scope. And, once I was given the size and scope, I 7 would most likely ask for a preapproval to go to the next 8 step. So, for example, using your hypothetical, I would -- 9 if he came in and he didn't know whether he was looking for a 10 \$1 million acquisition or a \$10 million acquisition or a 11 \$500,000 acquisition, it would be very difficult for me to 12 put a financing package together because I would not know 13 what the size and the scope of the loan were. And, 14 therefore, it would be virtually impossible, again, there's 15 the words again, to know really what that looks like until 16 that size and scope was defined by either the purchase and 17 sale agreement, by the customer, by some other person. 18 Someone would have to define the size and scope before I 19 would know exactly where we stand. 20 Q. Fair enough. And it would be the same case as with 21 the Ballard situation, that you probably would not love to 22 undertake all this effort before you know whether it is even 23 a feasible operation, correct? 24 A. I really don't like using words like "love." We 25 all have jobs, and we do them to the best of our ability. It	Page 108 1 Q. If Ballard were to approach you for a loan that 2 exceeded 250,000 and 350,000, and you evaluated that, you 3 would bring in additional members of your bank, correct? 4 A. I would. 5 Q. And then you would collectively evaluate the loan, 6 the collateral, the cash, the assets, and anything else you 7 had previously discussed, correct? 8 A. Most likely, yes. 9 Q. When I say you, I mean your bank, you and your 10 colleagues. 11 A. If you're asking me if the bank would, the answer 12 to that is yes. If you're asking whether I would, as soon as 13 I determined that it was over my threshold, I would probably 14 gracefully bow out at the time that it was determined by the 15 other party that, yes, indeed it was under their thresholds, 16 but, as the bank, yes, we would. 17 Q. Okay. So, in any event, if Ballard came in looking 18 for a loan of, let's say arbitrarily a million dollars or 19 more, the bank is capable of granting that loan and putting 20 staff on it that can evaluate that proposal, correct? 21 A. Depending upon the size and scope, we absolutely 22 have the ability to lend in excess of \$1 million. 23 Q. Sure. Now, you said that in some instances you 24 would evaluate a business plan and use that information to 25 help you determine whether or not you would be likely to

EXHIBIT 7

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35731)

BALLARD TERMINAL)

RAILROAD COMPANY, L.L.C.,)

- ACQUISITION AND EXEMPTION -)

WOODINVILLE SUBDIVISION)

)

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

BNSF RAILWAY COMPANY)

- ABANDONMENT EXEMPTION -)

IN KING COUNTY, WA)

The deposition of DANIEL T. BEHR, taken in
the above-entitled cause, before Gina M. Luordo, a
notary public of Cook County, Illinois, on
February 12, 2014, at 525 West Monroe Street,
Chicago, Illinois, at the time of 10:20 a.m.,
pursuant to Notice.

Reported By: Gina M. Luordo, CSR, RPR, CRR

License No.: 084-004143

1 with one of the colleagues I met at the firm and
2 formed our own form.

3 Q. Is that EB5?

4 A. That's EB5 Capital Partners.

5 Q. Again, just in very general terms, what is
6 the nature of EB5's business?

7 A. What we do is we're a business advisory
8 firm. We will look at opportunities, and we will
9 participate if we see that there are opportunities,
10 potential opportunities. We've been successful,
11 and in the process, we've established a freight
12 forwarding company in Germany, which was profitable
13 last year. We're establishing something in Denmark
14 this year.

15 We have established an international food
16 import and export company where we have a plant in
17 El Salvador, and we -- as of a couple of weeks ago,
18 we have 16 products, 16 SKUs as they're called, in
19 30 Walmart stores on the east coast. So where we
20 see opportunities, we participate.

21 Q. What do you mean by participate?

22 A. Well, we take an equity position. We'll
23 become part of the company, help them raise
24 capital.

25 Q. And how do you help raise capital other

1 than your own investment?

2 A. We take a look at the -- we look at the
3 potential of a company, and we look at what
4 opportunities there are for expanding their
5 business activities. So we look at that, and if
6 we're excited, we think there's something there,
7 we'll continue. Then we become involved.

8 Q. Maybe I misunderstood. When I heard you
9 say -- I thought I heard you say locate capital.
10 Maybe I'm misreading it.

11 My question was do you also -- in addition
12 to investing yourself, which I think you said --

13 A. We source capital is what we did.

14 Q. That's where I was going. Who do you
15 source it from?

16 A. We have a number of contacts in various
17 industry sectors that we speak with, and they're
18 always on the lookout for opportunities, so we keep
19 them apprised. We have a database of people that
20 we can call upon.

21 Q. I have seen the term EB5 used. In
22 connection with some sort of -- and I don't know
23 how this works, but investment-based immigration --

24 A. That's how it started.

25 Q. -- practices.

1 accomplished. We went down and took a look at it a
2 little closer.

3 Q. When did the first visit take place?

4 A. I think it was sometime in 2011.

5 Q. Other than Mr. Engel, who did you meet
6 with on your visit?

7 A. Byron Cole.

8 Q. Anyone else?

9 A. He introduced me to a few real estate
10 developers that I don't really remember and then
11 also Kathy Cox. I met her. We went out to dinner,
12 so I met Kathy Cox and her husband. I'm trying to
13 think who else. There was a -- Doug had an
14 attorney. Yes, he had an attorney there, too, and
15 I can't remember what his name was. This was
16 during the bankruptcy when he was trying to buy it
17 out of bankruptcy.

18 Q. This is your first visit?

19 A. That was my first visit.

20 Q. And your second visit, did you also look
21 at the line itself?

22 A. Sure.

23 Q. So you've driven and walked along the line
24 twice?

25 A. Yes.

1 Q. How long was the second visit?

2 A. Three days, four days maybe, three or
3 four. I would say three to four days. I would
4 have to look back over my records, but yes.

5 Q. And when was that?

6 A. That was sometime in 2012. I believe that
7 was in the summer of '12.

8 Q. And who did you meet with on that visit?

9 A. Byron Cole again. I believe it was the
10 bankruptcy trustee. Perry Stacks, I believe, was
11 his name.

12 Q. I'm sorry. Harry --

13 A. Perry Stacks. I can't remember. That's
14 it. That's who I remember right now. I can't
15 remember. I would have to -- I don't have the
16 notes.

17 Q. I was just going to ask you. When you
18 said you would have to look in your records, are
19 there any records that you could look at now?

20 A. Not anymore, and that's the problem, the
21 frailty of human memory.

22 Q. You touched on this a moment ago, but what
23 was the purpose of the second visit?

24 A. To look at the line with a little greater
25 detail. Traffic opportunities were emerging, and

1 it became more interesting. The line became more
2 interesting.

3 Q. What were some of those opportunities that
4 you saw as emerging?

5 A. In particular with the port, but not only
6 the port, but the area that I wanted to focus on --
7 first of all, Doug made me aware of some
8 opportunities with respect to new traffic up and
9 down the line, but also all the development that
10 was going on in Bellevue meant that there was a lot
11 of what are called spoils traffic. Do you know
12 what spoils traffic is?

13 Q. Yes.

14 A. There was spoils traffic, but when I
15 looked at the line, when I looked at that whole
16 Bellevue section, I saw something in addition to
17 that, which really caught my attention and got me
18 excited, and that was there is a section down in
19 Bellevue. It's really important in that there are
20 buildings that are already served by rail sidings,
21 and part of the traffic, turns out that there's a
22 bakery, a General Mills bakery that's rail served
23 or had been rail served where they get their wheat
24 in. And it turns out that that wheat is trucked in
25 from another location because it's no longer rail

1 served, but they prefer to be rail served.

2 Q. How do you know they prefer to it be rail
3 served?

4 A. Because that's information that I got from
5 Doug and also in his -- I think he had somebody
6 helping him that passed that on that they were
7 interested in that. And the other thing is that I
8 know generally that people who are involved in
9 high-volume baking, people who bring in volumes and
10 volumes of wheat prefer not to do it by truck in
11 general. There are exceptions, but in general,
12 they prefer to go by rail because it's less
13 expensive. It saves them money, and they have the
14 facility. It's set up already for rail, for
15 receipt of that by rail.

16 Other things that I saw there --

17 Q. Let me stop you. We can come back, but
18 you said there was someone else that Doug had with
19 him?

20 A. That was assisting.

21 Q. Was that Ernie Wilson?

22 A. I don't know. It could be.

23 Q. Did you, yourself talk to anyone at
24 General Mills --

25 A. No.

1 Q. -- or at Safeway?

2 A. No.

3 Q. I'm sorry. Go ahead. You said other
4 things you saw?

5 A. So other things that I saw were there were
6 a number of buildings, some vacant, one in
7 particular, the International Paper building, which
8 looked good because it had -- it was at one time
9 rail served. They had the switch. They had a
10 switch off the main or a lead off of the main line
11 that went into the building and was available. And
12 there were other buildings that had sidings going
13 into them. You can't have rail if you're not rail
14 served, and they were rail served. That didn't
15 hurt. That was on the east side of the railroad.

16 There was also a Lowe's close by, which I
17 thought had some potential, some traffic potential.
18 But on the west side of the railroad, I noticed
19 there was a lot of vacant land that was zoned
20 properly for transload for reload operations.

21 Q. Okay. This is on the -- I'm sorry --

22 A. That's on the west side. There's --

23 Q. But generally, is it the west side?

24 A. Of the right-of-way.

25 Q. Right, opposite, if you will, the

1 attractive to staging material. I also learned
2 that there was a shortage of quarry material. The
3 only way to efficiently get quarry material
4 aggregate in is by rail. You can do it by truck,
5 but it's like having a bucket brigade.

6 Q. When did you discover that?

7 A. It was just ongoing. It would be like a
8 bucket brigade. It would be enormously
9 inefficient, and the externalities associated with
10 all that truck traffic would have made and did make
11 the case for shipping by rail very attractive.

12 Q. Did you talk to anyone specifically about
13 shipping aggregates?

14 A. No, but Doug did, and Doug relayed the
15 results of his conversations with a number of
16 people.

17 Q. In the third paragraph -- I'm sorry. Let
18 me back up before I go to that.

19 You mentioned the three, if I'm counting
20 right, transload construction materials and spoils
21 hauling and incubating the additional freight load
22 traffic. Your evaluation process, was it -- was
23 there something different for each of those three
24 different kinds of traffic, or was this all the
25 process that you've been describing?

1 another short line operator.

2 Q. And that's the business case that you
3 refer to in this paragraph?

4 A. Right. Let's see. Wait a minute. Sure.
5 Yeah.

6 Q. So the business case depends first on
7 developing the traffic count that you referred to?

8 A. Traffic count, but traffic count -- also
9 nobody is going to make a commitment on anything
10 until they know that that line is re-connected, and
11 so that goes -- that goes hand in hand.

12 Q. Have you -- in the next -- in the rest of
13 that sentence, as part of the business case, we
14 would work with principals in determining their
15 capital needs to acquire Kirkland's 5.7-mile
16 portion of the corridor should that option be
17 necessary.

18 Have you evaluated the capital needed to
19 acquire that portion?

20 A. It depends on the specification, which is
21 developing right now. There are different
22 specifications, different scenarios that will
23 emerge, and part of that will be do you put sidings
24 in? Do you put a Y in? What are your operational
25 constraints? What level of track? What kind of

1 track condition do you need? I mean, that's
2 ongoing.

3 Q. So those issues haven't been resolved or
4 clarified?

5 A. Well, some have. Some haven't. You just
6 have to take a look at it. What you look it is the
7 needs of the customers, whatever the customer
8 needs. They will need siding. They will need an
9 additional track, maybe have a run-around track so
10 they can properly handle it. It depends on what
11 their operational needs are for each one of the
12 industries. You could have a stub-in track or a
13 run-around.

14 Q. I guess my basic question, though, is as
15 of now, you have not evaluated the capital needs
16 for acquiring the section across Kirkland?

17 A. There are scenarios that we're looking at
18 right now, and Doug is developing that, so that is
19 ongoing.

20 Q. Ongoing, but not completed?

21 A. No. It can't be completed until we --
22 it's a chicken and egg thing.

23 Q. Have you evaluated the capital needs for
24 acquiring either the operating rights or permission
25 to use the rest of the right-of-way?

1 A. I have at some point. I've looked at
2 that, yes.

3 Q. Have you determined Ballard's capital
4 needs for required rail equipment that they would
5 need to operate the freight service?

6 A. I know what they need.

7 Q. Have you put the numbers down on a formal
8 analysis for them?

9 A. Well, they already have partially what
10 they need. They have the locomotives. They have
11 access to the locomotives. It's a question of part
12 of it is do they -- does an industry or a customer
13 need their own cars? Do they need to lease it? Do
14 they need to acquire cars or cars or can be
15 supplied by the railroad? Every scenario is
16 different for every commodity.

17 Q. That hasn't been nailed down yet?

18 A. Until you determine commodity mix and --
19 what you need to do is determine that and the
20 traffic level and car turn. That's what would help
21 there, but even -- okay. With respect to rolling
22 stock, they really have what they need to continue
23 and get to -- getting locomotives is not very hard
24 at all. It's not difficult.

25 Q. My question was a little more focused.

1 Have you put together as part of making a business
2 case what the full capital needs would be to
3 reactivate the service, including whatever rolling
4 stock they need, including acquiring interests in
5 the right-of-way, including replacing and
6 rehabilitating the track?

7 A. I've done -- I've done portions of that,
8 but the problem is that it's a chicken-egg
9 scenario, which I'm sure you can understand. You
10 have to -- the traffic will develop, but you need
11 to connect that track. I believe there is
12 sufficient traffic to justify it, especially
13 concentrated in the Bellevue area. There's quite a
14 case to make for that.

15 Q. But you haven't put the hard numbers
16 together to make that case?

17 A. No, but you have a pretty good idea
18 through experience. You can eyeball something and
19 have a pretty good idea as to what makes sense.

20 Q. Is that where your analysis is right now?

21 A. It is -- we're enthusiastic and anticipate
22 a lot of traffic development.

23 Q. Do you have an understanding of what, and
24 I'm not sure actually if it's Ballard or ECR, but
25 what the overall financing plan is to reactivate

1 the rail service?

2 A. I have a broad idea. I don't have any of
3 the documents in front of me because of the problem
4 that I've had.

5 Q. What's your -- as best you can recall,
6 what is that understanding?

7 A. My understanding is that the capital would
8 come in. You would make a -- first declare to an
9 investor what would be needed, what you would use
10 the capital for and how you would allocate the
11 capital. Some of it would be for the
12 infrastructure, and some of it would be for market
13 development, for SG&A, sales, general and
14 administrative, and so you would have to hone that
15 down. I have an idea, but I'd work with Doug to
16 refine that to make a presentation to investors.
17 But before that, you have to come up with the
18 traffic projection, which we're working on with him
19 right now to make the business case.

20 Q. Do you have an understanding of what
21 Ballard's or -- either Ballard or Eastside
22 Community Rail's current financial resources are?

23 A. Actually, they're increasing, but I don't
24 have -- I don't have a clear idea on what else
25 needs to develop since I last spoke to Doug, but he

1 has developed some support.

2 Q. In your letter at the end, the last
3 sentence, you say ensuring that this portion of the
4 line is preserved and operable is crucial to and
5 further enhances the business case for an
6 economically viable and important rail asset in
7 this area.

8 A. Yes.

9 Q. What did you mean by that?

10 A. You have to connect to the Bellevue area
11 where a concentration of traffic will come.

12 Q. And if you can't connect, then the
13 opportunity is lost?

14 A. Well, it doesn't help, so it needs to be
15 re-connected.

16 Q. Other than what's spelled out in your
17 agreement with Eastside Community Rail, have you,
18 by you, I mean EB5, made any commitment to either
19 Eastside Community Rail or Ballard to secure
20 investors?

21 A. Just what's in the letter.

22 Q. Have you made any commitments or been
23 asked to raise -- let me ask it two ways.

24 Have you been asked to raise any specific
25 amount of money?

1 A. Just what's in the letter.

2 Q. Is EB5 in the business of lending money
3 itself?

4 A. No. We are not the source of capital. We
5 help fund sources for capital.

6 Q. I mean this generically, but would the
7 opportunity that you said this line presents be the
8 kind of opportunity that EB5 itself would invest
9 in?

10 A. We're not the source. We don't do that.
11 That's not our business model.

12 Q. I misunderstood something you said
13 earlier. So you typically don't invest yourself?

14 A. Typically we become part of the company
15 and help build it. That's called -- in the
16 business, it's known as deal sponsorship, and we
17 become part of the company and help them grow and
18 help them spiral up their business. That's our
19 value added.

20 Q. Then you bring in investors from your
21 contacts and other sources to bring capital in?

22 A. Right.

23 Q. Have any outside investors made any kind
24 of commitment to invest in this operation yet?

25 A. No. They're waiting for numbers.

1 A. I don't think that it would or wouldn't
2 be. It's just unknown right now.

3 Q. It just has to be done?

4 A. It just must be done. They need -- access
5 has to be effected to connect the remainder of the
6 line with the BNSF interchange in Snohomish.

7 Q. Do you know if Ballard can currently
8 afford to do any of those things?

9 A. Unknown because I don't know the costs,
10 and I don't know who is responsible at this point,
11 but the most important thing right now is to secure
12 STB authorization to re-connect the line to get the
13 rights to do that.

14 Q. Securing STD authorization doesn't
15 guarantee that Ballard will be able to go forward
16 with its plan, does it?

17 A. Nothing is guaranteed, but it's crucial.

18 Q. And so is being able to replace the
19 connection to the rails, correct?

20 A. That's right, but in order to do that, you
21 have to get STB approval, and that's the first
22 order of business.

23 MR. PILSK: Nothing further.

24 MR. TOBIN: I have nothing else.

25 MR. PILSK: Thank you for your time. I did get

EXHIBIT 8

Cindy Davied

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Monday, November 04, 2013 11:11 AM
To: Mark Blazer
Cc: Gary Johnson; Myles Tobin
Subject: Re: Emailing: Mark WATCO 2013Oct29.doc
Attachments: WATCO Engle 2013Nov4.doc; ATT00001.htm

Mark,

Here you go, I accepted the strike through's by removing them.
My comments are in blue.

It might be helpful to have Myles Tobin speak with your legal side to clarify the risks.
He can be reached at (312) 252-1500.

This is a no lose opportunity for WATCO.
A favorable decision from the STB says that WATCO is "ready, willing and able" to participate.
If we cannot make a deal, which is very unlikely, then WATCO can walk away.
But at least you have the first shot at this, and I seriously WANT to make a win-win deal.

If we don't get the STB decision, there is no deal to be made as the traffic volumes will be too low on the operating line today.

Doug
mobile: +1.425.891.4223

Exhibit 126 Date 2/13/14
Witness Engle
Wade J. Johnson 323-0919

November 7, 2013

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

REF: STB FINANCE DOCKET NO. 35731

Dear Ms. Brown:

We support the reactivation of freight service between Woodinville and Bellevue, Washington. WATCO would like to impress upon the Board the importance of recognizing the reactivation process requires an incremental approach to reestablishing sustainable rail service on the line. Committed customers have stepped forward with written support to the Board. WATCO is ready, willing and able to participate with its resources to replace the track recently removed in Kirkland and provide the necessary line maintenance to provide Class I rail service.

WATCO participated in the 2008 BNSF and Port of Seattle bid process to provide rail service on this line, and we have been mindful of the opportunity since. Earlier this year we expressed our requirements to participate in operating the line. With additional shippers requesting service on the railbanked portion of the line, and their stated willingness to participate financially to have rail service, we now see an opportunity worth pursuing and participating in. We believe the next steps to reestablish rail service is to gage customer commitment by requiring take or pay agreements associated with car volumes, the customers level of financial participation associated with the upfront cost of reactivating this line and negotiate operating and use agreements immediately following the Board's reactivation of the line.

WATCO is prepared to work with Ballard to assume freight operations for the unit trains between Bellevue and the BNSF mainline in Snohomish, provided a supportive Board decision to reactivate the line. We expect no material issues in establishing shipping agreements and rates with the freight parties in this matter.

We understand that an excursion train business that will operate on the line. The expectation is that our crews will schedule and operate these trains to meet the needs of our shippers and help the excursion business meet their objectives. Incremental insurance requirements for passenger operations will be the sole responsibility of the excursion train and will be paid through the income generated from passenger tickets. Additionally, we support rails and trails inside this right of way provided adequate safety precautions, insurance and use agreements which are agreeable to both parties and the appropriate rail to trails group takes full financial responsibility for all costs and all liability incurred in building a maintaining their trail.

Ms. Cynthia T. Brown
January 30, 2014
Page 2

For better or worse, financing, operating and use details cannot be established until a favorable Board reactivation decision is made because of the substantial effort and time required to complete this work with the many parties involved, given the risk of not knowing the reactivation outcome.

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

Thank you for your consideration.

Very truly yours,

Mark Blazer
Senior Vice President - ☐Strategic Development☐West Region

EXHIBIT 9

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

DECLARATION OF MARK BLAZER

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

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

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

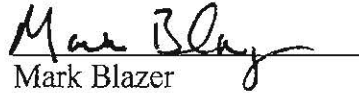
WATCO had (and to this day still has) no independent knowledge of any commitments for service by any shippers or customers on the Line.

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

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

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

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


Mark Blazer

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

November 7, 2013

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

REF: STB FINANCE DOCKET NO. 35731

Dear Ms. Brown:

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

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

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

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

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

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

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

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

Thank you for your consideration.

Very truly yours,

Mark Blazer
Senior Vice President - ☐ Strategic Development ☐ West Region

EXHIBIT 10

Confidential Information Filed Separately Under Seal

EXHIBIT 11

Cindy Davied

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Tuesday, November 26, 2013 1:20 PM
To: Mark Blazer, Michael R Pratt
Subject: Ballard Terminal RR & ECRR
Attachments: 2013 STB Support Letter Log.pdf; ATT00001.htm; Ballard Customer Locations.pdf; ATT00002.htm; ECR Proposal OpLine 2013Jan28.pdf; ATT00003.htm; ECRR Spoils Hauling comparative analysis - 2013July19.pdf; ATT00004.htm

Importance: High

Mark/Mike,

Although Ballard has been operating the line for the past four years, Byron Cole, their GM, is very near retirement.

ECRR has hired Ballard on a one-year term ending April 2014, to continue providing freight operations.

I spoke with Byron Saturday about transitioning his service to WATCO with general consensus that it needs to happen sometime sooner than later.

Attached is additional information on our reactivation efforts to get from Woodinville to Bellevue.

We are hoping to get a ready-mix plant into Bellevue to be served by rail, but a letter may come too late as real estate and capital equipment needs are still in flux.

Last week, we received two bank letters of support for the reactivation.

The state rail caucus is expected to complete a letter of support by the December 5th deadline.

We have legislation in the Office of Program Research to help shortlines get better financing and \$10M to rehab the line.

Importantly, the Port of Seattle originally had taken a position in this matter, but withdrew from their position all together.

Snohomish County continues to be a major supporter of getting to Bellevue, and we are working with them to construct a trail along the railway.

As you can see from the attached "support log", we continue to gain support while the detractors have had nobody join them... not even the Cascade Bicycle Club.

We anxiously await a letter from Watco supporting our reactivation effort even though the details will have to be worked out following the STB decision.

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail



EXHIBIT 12

Confidential Information Filed Separately Under Seal

EXHIBIT 13

From: Thomas English Thomas.English@genmills.com &
Subject: RE: Ballard Terminal contact
Date: 19 August 2013 at 10:09 AM
To: Doug Engle Doug.Engle@EsCRail.org

Doug,

Is there a case number that I can pull off the STB website?

*Thanks
Tom*

thomas.english@genmills.com
Office: 763-764-3769
Cell: 612-910-7079
(Please note new cell)



From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Saturday, August 17, 2013 12:28 PM
To: Thomas English
Cc: James Forgetting
Subject: Re: Ballard Terminal contact
Importance: High

Here is a well written letter and map from another shipper on the line who wants service as an example of what's needed.

Doug
mobile: +1.425.891.4223

On 16 Aug 13, at 12:41 PM, Doug Engle <doug.engle@escrail.org> wrote:

Tom,

Thank you VERY much for taking my call.
An executed letter received by the 20th is very important and please copy us on it via PDF.

Exhibit 135 Date 2/13/14
Witness Engle
Wade J. Johnson 323-0919

The fact that Safeway previously had service is important.
Key words for the STB are "ready, willing and able" to take delivery.
And, specifically "request service" from Ballard Terminal Railroad Co.

<STB Template 2013Aug7.doc>

Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

See **More** from James Forgette

From: **Thomas English** Thomas.English@genmills.com
Subject: RE: Eastside RR Status Update
Date: 24 September 2013 at 1:08 PM
To: Doug Engle Doug.Engle@EsCRail.org

E-mail has been received.

*Thanks
Tom*

thomas.english@genmills.com
Office: 763-764-3769
Cell: 612-910-7079
(Please note new cell)



From: Doug Engle [mailto:Doug.Engle@EsCRail.org]
Sent: Tuesday, September 24, 2013 3:02 PM
To: Thomas English
Subject: Re: Eastside RR Status Update

Please acknowledge receipt ASAP.

Doug
mobile: +1.425.891.4223

On 24 Sep 13, at 1:00 PM, Doug Engle <Doug.Engle@EsCRail.org> wrote:

Doug
mobile: +1.425.891.4223

Begin forwarded message:

From: Doug Engle <Doug.Engle@EsCRail.org>
Subject: Re: Eastside RR Status Update
Date: 24 September 2013 12:57:02 PM PDT

Exhibit 136 Date _____
Witness _____
Weda J. Johnson 323-0919
ECR 002103

To: Thomas English <Thomas.English@genmills.com>

This is the bulk of them.

Plus a drywall company in Kirkland that is coming along and a letter of credit for \$10M.

<EB5 Partners to STB 2013Aug21.pdf>

<Snohomish County Eastside Rail Corridor Position March 21 2013.pdf>

<3-25-13 CalPortland Letter to Cynthia Brown.doc>

<6-15-13 Support Letter From Paul Nerdrum.pdf>

<AAWA 13 Ltr STB WDVS C 05-21.pdf>

<Boise Cascade ESCR 2013Mar.pdf>

<CalPortland Eastside Community Rail Letter.pdf>

<Eastside Rail Corridor Support Letter.pdf>

<Economic Alliance of Snohomish County - Letter of Support - Eastside Rail Corridor to STB.pdf>

<ECR Support Columbia Winery.pdf>

<Google support Mar10.pdf>

<Master Builders Assoc 228035.pdf>

<RJB Letter to STB.pdf>

<Snohomish ltr - Eastside Rail.pdf>

<Spectrum 2013-05-01-Eastside Rail Support Letter.pdf>

<SteMichellesupportltr.docx>

<TasteWAsupportletter.pdf>

<Wolford react support ltr.pdf>

<Woodinvilleletter.pdf>

Doug

mobile: +1.425.891.4223

On 24 Sep 13, at 11:40 AM, Thomas English <Thomas.English@genmills.com> wrote:

Doug,

Legal has asked if you could provide a list of your supporters.

Can you provide a list of companies who will be referenced in support to your letter(s) to the STB?

Thanks
Tom

thomas.english@genmills.com

Office: 763-764-3769

Cell: 612-910-7079

(Please note new cell)

<image001.png>

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]

Sent: Tuesday, September 24, 2013 12:54 PM

To: Thomas English

Subject: Re: Eastside RR Status Update

Absolutely not.

That is not how we work.

Doug

mobile: +1.425.891.4223

*common carrier?
price discrimination?
discount to everyone?
or rail contract?*

On 24 Sep 13, at 10:53 AM, Thomas English <Thomas.English@genmills.com> wrote:

Good afternoon Doug,

~~Have you contacted any vendors who would be General Mills competitors going into Safeway?~~
I will need to forward your reply to the General Mills legal department.

Thanks

Tom

thomas.english@genmills.com

Office: 763-764-3769

Cell: 612-910-7079

(Please note new cell)

<image001.png>

From: Doug Engle [mailto:Doug.Engle@EsCRail.org]

Sent: Monday, September 23, 2013 10:27 AM

To: Thomas English

Subject: Eastside RR Status Update

Tom,

We have enough support now to get \$10+ million from the state to upgrade the tracks, and we have private investment potential coming in between \$10-30M for other upgrades and the excursion train.

What we must absolutely must have is General Mills support.

Knowing that General Mills will get the letter this week will allow us to proceed, but we need to know today which direction this is going. Otherwise, the reactivation effort is dead.

I look forward to your update.

Sincerely, we are in General Mills hands.

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

EXHIBIT 14

235444



ENTERED
Office of Proceedings
February 10, 2014
Part of
Public Record

600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

February 10, 2014

HUNTER FERGUSON
Direct (206) 386-7514
hoferguson@stoel.com

VIA ELECTRONIC FILING

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

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

Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision, STB Docket No. FD 35731

Dear Ms. Brown:

Attached for filing in the above-referenced proceedings is the Verified Statement of Nick Beck. Mr. Beck is the President of RJB Wholesale, Inc., a business cited by Ballard Terminal Railroad Company in its December 6, 2013 Reply as a prospective shipper on the railroad right-of-way that is the subject of these proceedings.

Very truly yours,

Hunter Ferguson
Attorney for the City of Kirkland

Enclosure

cc: Counsel for all parties of record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

VERIFIED STATEMENT OF NICK BECK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Nick Beck

Dated: 2/5/14

Place: Lakewood

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

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

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

Notary Seal



(Signature of Notary)

My Commission Expires: 12/31/15

EXHIBIT 1

RJB Wholesale site



(C) 2008 King County

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

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

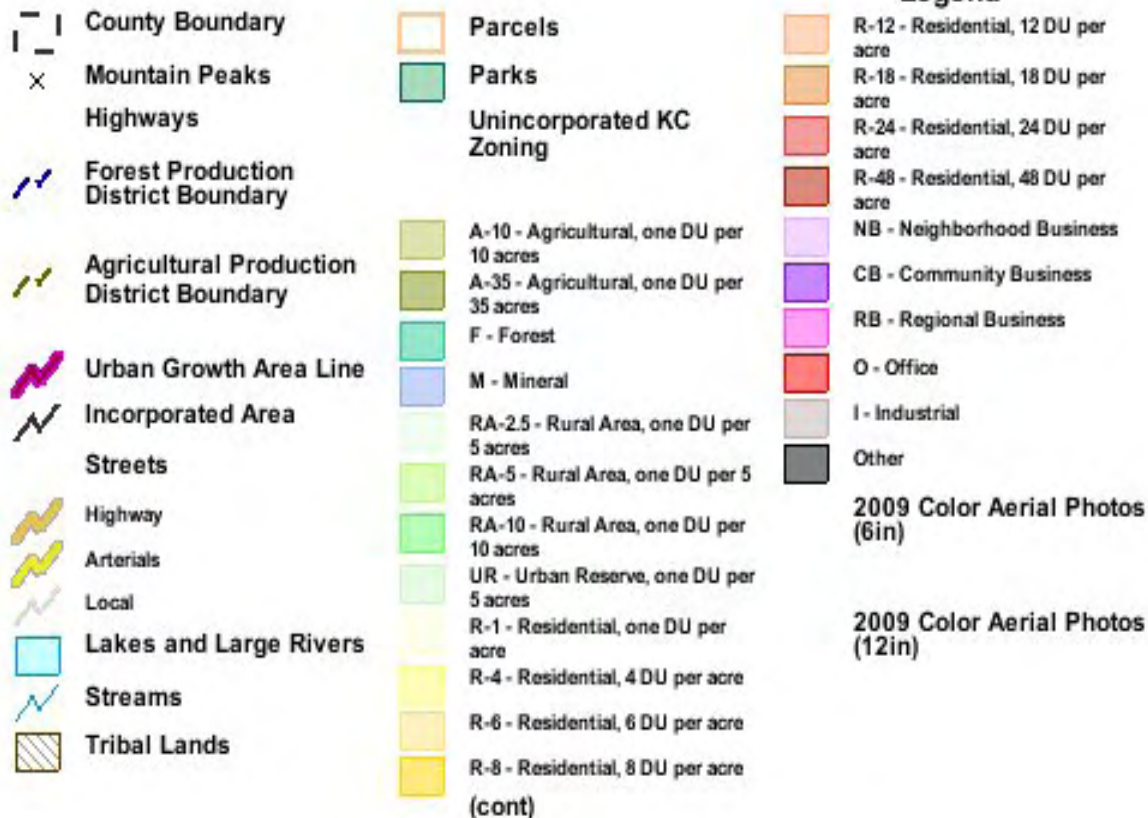
Date: 6/13/2013

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



King County

RJB Wholesale site



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 6/13/2013

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

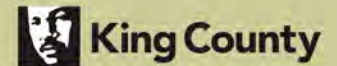
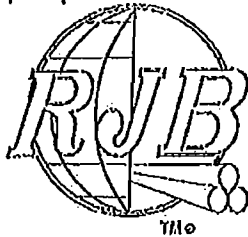


EXHIBIT 2



17 June 2013

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

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

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

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

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

Sincerely,

Nick Beek
Nick Beek
President
Enclosure: Site Map, RJB Wholesale

PIPE

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

P.O. BOX 2949
12410 N.E. 124TH ST.
KIRKLAND, WASHINGTON 98003

[illegible]

EXHIBIT 3

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

Importance: High

Hi Nick-

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

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

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

Thanks.

Ernie

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

EXHIBIT 4

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

Sent from my iPad

Begin forwarded message:

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

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

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

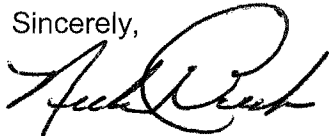
low interest rates and negligible inflation of construction costs, this appears unlikely, too. Besides, people are already walking along the tracks today. And trails co-exist with trains in freight rail corridors in many locales. We don't see any real harm to the City from a slight delay in your overall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

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

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

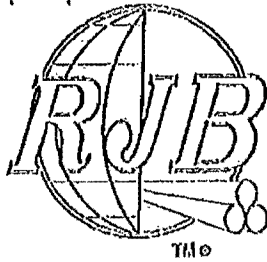
Thank you for your consideration of our petition and of our interest in obtaining freight rail service from Ballard Terminal Railroad into our trackside facility in Kirkland.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Best", written over a horizontal line.

Nick Best
President

EXHIBIT 5



20 August 2013

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

PETITION FOR RECONSIDERATION

REF: STB FINANCE DOCKET NO. 38731/ Docket No. AB 6(Sub-No. 465X)
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
ACQUISITION AND EXEMPTION, WOODINVILLE SUBDIVISION

Dear Ms. Brown,

RJB Wholesale, Inc.(RJB), hereby notifies the Board that we are petitioning for reconsideration of the Board's decision of 1 August denying Ballard Terminal Railroad Company's (Ballard) request for an injunction to prevent the City of Kirkland, Wash., from salvaging 6.76 miles of track over which Ballard is seeking authority to reinstitute freight rail service. We allege that the Board erred in not considering the impact on RJB of removing the rails which adjoin our facility, when we have previously stated to STB our interest in obtaining freight rail service from Ballard over these very tracks. It is inconceivable to us that the Board would even consider allowing the rails to be removed by Kirkland prior to the Board's full consideration of the reactivation request and circumstances. We further allege that it was error for the Board to partially base its decision on Kirkland's unsubstantiated claims of possible harm from further delay of the decision on the requested injunction. Contrary to the Board's conclusion, we believe that Ballard has in fact demonstrated adequate support for delaying a ruling on its preliminary injunction request, or alternatively, granting the injunction immediately.

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

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

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

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

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

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

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

Sincerely,



Nick Best
President

EXHIBIT 6

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

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

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

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

Nick-

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

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

Ernie

>

>

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

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

>

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

>

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

> mfp@rjbwholesale.com

>

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

CERTIFICATE OF SERVICE

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

Counsel for the City of Kirkland, Washington

Dated: February 10, 2014

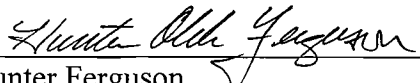
CERTIFICATE OF SERVICE

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

Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile

Charles A. Spitulnik
W. Eric Pilsk
Allison Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
Attorneys for King County

Service by:
☐ hand delivery via messenger
☒ mailing with postage prepaid
☒ copy via email
☐ facsimile



Hunter Ferguson

Dated this 10th day of February, 2014.

EXHIBIT 15

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2014-0207 House, James (C. T. Sale

s)

2/7/2014 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 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 JAMES A. HOUSE Taken at 123 Fifth Avenue Kirkland, Washington DATE: February 7, 2014 REPORTED BY: Wade J. Johnson, RPR CCR No.: 2574 STARKOVICH REPORTING SERVICES 206.323.0919	Page 3 JAMES A. HOUSE -- FEBRUARY 7, 2014 I N D E X EXAMINATION BY: PAGE Mr. Ferguson 5 Mr. Wagner. 51 Mr. Marcuse 52 Mr. Paschalis 55 Mr. Ferguson. 71 Mr. Wagner. 80 Mr. Paschalis 81 Mr. Wagner. 82 Mr. Paschalis 83 Mr. Ferguson. 84 Mr. Wagner. 85 * * * EXHIBITS FOR IDENTIFICATION: PAGE 83 Letter from James House to Cynthia Brown, 10/01/13. 8 84 Snohomish County Online Property Information Map. 11 85 Snohomish County Online Property Information Map. 11 86 Snohomish County Online Property Information Map. 11 (Index continued next page.) STARKOVICH REPORTING SERVICES 206.323.0919
Page 2 HOUSE A P P E A R A N C E S FOR BALLARD TERMINAL THOMAS C. PASCHALIS (Telephonic) RAILWAY, L.L.C. and Fletcher & Sippel EASTSIDE COMMUNITY 29 North Wacker Drive, Suite 920 RAIL Chicago, Illinois 60606 tpaschalis@fletcher-sippel.com FOR THE CITY OF HUNTER FERGUSON KIRKLAND: Stoel Rives 600 University Street, Suite 3600 Seattle, Washington 98101 hoferguson@stoel.com FOR KING COUNTY: ANDREW MARCUSE Senior Deputy Prosecuting Attorney Civil Division W400 King County Courthouse 516 Third Avenue Seattle, Washington 98104 andrew.marcuse@kingcounty.gov FOR SOUND TRANSIT: JORDAN WAGNER Union Station 401 South Jackson Street Seattle, Washington 98104 jordan.wagner@soundtransit.org --oOo-- STARKOVICH REPORTING SERVICES 206.323.0919	Page 4 JAMES A. HOUSE -- FEBRUARY 7, 2014 I N D E X EXHIBITS FOR IDENTIFICATION: Number PAGE 87 E-mail from Dennis Lauber to James House, 07/31/13 19 88 E-mail from James House to Leslie Lomax and Thomas Paschalis, 02/03/14 10:54 a.m. 27 89 E-mail from James House to Dennis Lauber, 07/30/13 27 90 E-mail from Doug Engle to James House, 09/30/13 35 91 E-mail from James House to Doug Engle, 10/03/13 35 92 E-mail from Ernie Wilson to James House, 10/11/13 35 93 E-mail from James House to Ernie Wilson, 10/11/13 35 94 E-mail from Ernie Wilson to James House, 10/11/13 11:25 p.m. 35 95 Amended Subpoena to CT Sales, Inc. to Testify in a Deposition and Produce Documents in a Proceeding Before the Surface Transportation Board. 45 96 Ballard Terminal Railroad Company STB Reactivation Letters Filed as of 2013 November 30 71 * * * * STARKOVICH REPORTING SERVICES 206.323.0919

Page 9 1 Transportation Board. The page numbers on the bottom are the 2 pagination scheme that Ballard applied to its pleading. Is 3 that your signature in the bottom, left-hand corner? 4 A. Yes, it is. 5 Q. Do you recognize this letter? 6 A. Yes, I do. 7 Q. Can you explain to me how CT Sales currently 8 receives the reinforced steel bars and the mesh that it uses 9 as part of its fabricating business. 10 A. From trucks and trucking. 11 Q. Where do the trucks come from? 12 A. Are you asking where the mills are located? 13 Q. Well, sure. Maybe just describe the supply chain, 14 as you understand it, to your company. 15 A. Well, we generally draw from two mills who make the 16 bar, Nucor in West Seattle, and Cascade Steel in McMinville, 17 Oregon, the majority at this time coming from Cascade. 18 Q. Your business is north of Woodinville, correct? 19 A. Correct. 20 Q. How does the material from McMinville, Oregon 21 travel to your facility? 22 A. By truck. 23 Q. All the way from Oregon? 24 A. Yes. 25 Q. It doesn't travel in any way on rail?	Page 11 1 A. The majority of the rebar is shipped on truck. We 2 do have some customers that pick up. 3 Q. When you say shipped on truck, does the company 4 have its own trucks that it uses for shipment? 5 A. Yes, we do. 6 Q. Can you tell me a little bit about where you are 7 shipping the fabricated rebar. Are there any particular 8 locations where you typically ship? I am trying to get a 9 sense of where your customers are. 10 MR. PASCHALIS: I will object to the form. 11 A. The majority of our customers are probably 12 Bellingham to Olympia. Well, the customers themselves aren't 13 necessarily there, but the job sites that we deliver to would 14 be like Bellingham to Olympia, west of the mountains, a 15 little bit over on the peninsula, and that's about it. 16 Q. Would you say it is fair to say you are shipping to 17 job sites throughout Western Washington? 18 A. Yes. 19 MR. FERGUSON: I would like to go ahead and 20 mark the next exhibits. This is going to be a series of 21 maps. 22 (Exhibits 84-86 marked for 23 identification.) 24 MR. FERGUSON: Tom, we are marking the 25 following maps as Exhibits 84 through 86: The file names
Page 10 1 A. No. 2 Q. Taking a look at your letter, on the third 3 paragraph, the second sentence says, "That mill" -- which is 4 referring to Cascade Steel Rolling Mills in McMinville -- 5 "That mill is served by the Union Pacific Railroad." So the 6 UP doesn't ship the material part of the way by rail to a 7 transload facility somewhere in the Seattle region, and then 8 it is then carried by truck to your yard; it just comes by 9 truck the entire distance? 10 MR. PASCHALIS: I will object to the form. 11 A. To me, that is correct. 12 Q. And the product coming from the Nucor plant in West 13 Seattle, how does that reach your yard? 14 A. By truck. 15 Q. And then, once the materials reach your facility, 16 what does CT Sales do with them? 17 A. We fabricate, in other words, we cut and bend out 18 of that stock material to fit whatever shape the concrete is 19 required for the job. 20 Q. And then, after you have customized the materials 21 according to whatever the specs are, what then happens; do 22 customers come to your yard to pick up the materials, or how 23 are they delivered? 24 MR. PASCHALIS: I will object to the form and 25 the foundation.	Page 12 1 that you have are Maps 1, 2, and 3, in that order. 2 MR. PASCHALIS: Okay. Let me double-check to 3 see if I have them. You are going to have to give me a 4 moment or two to print these out because that didn't get 5 done. 6 MR. FERGUSON: Okay. 7 MR. PASCHALIS: Just a moment, please. 8 MR. FERGUSON: Sure. We are happy to wait. 9 MR. PASCHALIS: It is three maps, correct? 10 MR. FERGUSON: That is right. 11 MR. PASCHALIS: I found them. It is what you 12 had named PDF Map No. 1 is 84; is that correct? 13 MR. FERGUSON: Right. So Maps 1, 2, 3, are 14 84, 85, 86, respectively. 15 MR. PASCHALIS: Okay, you can proceed. Thank 16 you. 17 MR. FERGUSON: Okay, great. 18 Q. (By Mr. Ferguson) Mr. House, if you will take a 19 look at Exhibit 84, this is a map, an aerial map with an 20 aerial photo, that I retrieved from the Snohomish County 21 Online Property website by plugging in the address for CT 22 Sales on the letterhead to the Surface Transportation Board 23 on Exhibit 83. There is a building with a red dot and a 24 yellow, highlighted parcel number; is that the CT Sales 25 facility north of Woodinville?

Page 21 1 Q. Okay. And so can you describe what those 2 discussions were. 3 A. I think the gist would have been trying to 4 determine a rate for bringing in material from McMinville, 5 Oregon from Cascade Mills. 6 Q. Do you know if Mr. Engle or Mr. Wilson represented 7 that Eastside Community Rail would be the company that would 8 ship the material from McMinville to your yard in 9 Woodinville? 10 A. Well, that's what we were exploring, yes. 11 Q. And so, after you had this conversation with 12 Mr. Engle or Mr. Wilson, what did you do? 13 A. I e-mailed my representative to see if he could 14 find a rate. 15 Q. And that is Dennis Lauber? 16 A. That is correct, Dennis Lauber from Cascade Steel. 17 Q. So it looks like you sent an e-mail to him, at 18 least one that is stamped July 25th; does that sound about 19 right to you based on your memory? 20 A. Not based on my memory, but based on the e-mail. 21 Q. And then it looks like Mr. Lauber responded in an 22 e-mail dated July 29th, saying that he is waiting to hear 23 from BNSF for a rate into Woodinville. Did you ever have a 24 telephone conversation with Mr. Lauber about this topic? 25 A. No.	Page 23 1 A. I don't know. 2 Q. The next sentence where it says, "The trucking, 3 including FSC," do you know what FSC stands for? 4 A. Fuel surcharge. 5 Q. The trucking, including FSC to your facility, is 6 about \$1.28." Is that the same unit of measurement, 128 cwt; 7 do you think? 8 A. Correct. Yes, it is. 9 Q. So does that mean that the cost to ship by truck to 10 your facility is less expensive than the rate to ship by 11 rail? 12 A. The cost of -- well, no, it doesn't mean that. 13 Q. Do you have any understanding of what this means? 14 MR. PASCHALIS: Object to the form. 15 A. It means that a truckload of rebar, which you can 16 put maybe 30 tons on, can be shipped for \$1.28 a 17 hundredweight, but because he has a limitation on there, he 18 says, "the charge that far for rail," I don't know what he 19 means. 20 Q. Correct. 21 A. But you can put more reinforcing in a railcar. 22 Q. Have you ever done any follow-up investigation to 23 find out what Mr. Lauber meant by that sentence, "The charge 24 that far by rail is \$2.71 per hundredweight"? 25 A. I have not.
Page 22 1 Q. I don't want to just read the e-mail here, we can 2 all read it, but I am just curious to know whatever came of 3 this exchange. 4 MR. PASCHALIS: I will object to the form. 5 A. Nothing. This is as far as we have gotten. 6 Q. Can you explain why nothing ever came from it; is 7 there a reason why nothing ever further transpired? 8 A. As far as I know, he had made contact with Ernie, 9 and I haven't heard anything from Ernie. 10 Q. Okay. Let's look at that top line, the top e-mail, 11 the e-mail dated July 31st, time stamped 2:14 p.m. It reads, 12 "Jim" -- I take it, it is an e-mail addressed to you, 13 correct? 14 A. Correct. 15 Q. "Jim: I made contact with Ernie. He is going to 16 work on this from his end. I did get a rail rate to Eastside 17 Community Rail. The charge that far for rail is \$2.71 per 18 cwt. The trucking, including FSC to your facility, is about 19 \$1.28. We will see what Ernie can get done." Can you 20 explain what Jim means by that? Do you know what cwt is? 21 A. Per hundredweight. 22 Q. What is per hundredweight; is that a metric ton? 23 A. No, it's just the pounds divided by 100. 24 Q. So does that mean it would cost \$2.71 per 25 100 pounds to ship by rail from McMinville to your yard?	Page 24 1 Q. Have you done any further investigation of any kind 2 to find out what the cost to ship your raw materials to the 3 Woodinville yard by rail would be? 4 A. I have not. 5 Q. Let's look back at Exhibit 84. This is the map of 6 the CT Sales yard that you drew the black outline around. 7 Does CT Sales have any way to receive freight rail service at 8 its yard that you are aware of? 9 MR. PASCHALIS: Object to the form. 10 A. Currently, no. 11 Q. Do you have any sense of what would be necessary in 12 order to receive freight rail service at the yard? 13 A. Not completely. 14 Q. When you say not completely, does that mean you 15 have some understanding of what might be necessary? 16 A. Yes. 17 Q. Can you describe that for us. 18 A. We would need a spur into the yard. 19 Q. By that, you mean a rail spur, correct? 20 A. Correct. 21 Q. Are you aware of any plan or study to construct a 22 rail spur into your yard? 23 MR. PASCHALIS: I will object to the form. 24 A. I am not aware of any plan or study. 25 Q. Have you asked anyone to investigate what it would

Page 33 1 some kind of a communication with Cascade Steel? 2 A. Correct. 3 Q. Do you know if it was on the telephone? 4 A. I do not. 5 Q. Do you know if it was over e-mail? 6 A. I do not. 7 Q. Okay. So did Mr. Wilson report to you -- or let me 8 back up. Did Mr. Lauber tell you what he and Mr. Wilson 9 discussed? 10 A. No. 11 Q. Did Mr. Wilson tell you what he discussed with 12 Mr. Lauber? 13 A. No. 14 Q. Did Mr. Wilson tell you anything about the 15 difference between shipping by rail versus truck? 16 A. Only the 2 1/2 truckloads, was his estimation. 17 Q. So are you assuming from that then that there would 18 be a cost savings for freight charges? 19 MR. PASCHALIS: Object to the form and calls 20 for speculation. 21 A. It is my -- yes, it is my assumption based on that. 22 Q. But it is not based on any study of rates to ship 23 by rail versus truck? 24 A. That is correct, that I had seen. 25 Q. Okay. Can you take a look at Exhibit 89, please.	Page 35 1 throughout the western region of Washington where you will 2 ship fabricated rebar, correct? 3 A. That is correct. 4 Q. Have any of your customers requested delivery of 5 their ordered product to a job site by rail? 6 A. No. 7 MR. FERGUSON: Let's mark a couple of more 8 exhibits. 9 (Exhibits 90-94 marked for 10 identification.) 11 MR. FERGUSON: Tom, Exhibit 90 is an e-mail 12 from Ernie Wilson to Mr. House dated Friday October 11th, 13 2013, time stamped 2:36 p.m. It is a one-page document. 14 MR. PASCHALIS: What was that date? 15 MR. FERGUSON: Friday, October 11th. 16 MR. PASCHALIS: And that is Engle to who? 17 MR. FERGUSON: It is from Ernie Wilson to 18 Mr. House, copying Doug. The time stamp is 2:36 p.m. 19 MR. PASCHALIS: Okay. I might need a few 20 moments to find that. What is the subject line? 21 MR. FERGUSON: "STB letter." 22 I am going to go ahead and mark a couple of 23 other ones here. 24 MR. PASCHALIS: Okay, I have got 90. 25 MR. FERGUSON: All right. We are going to
Page 34 1 It looks to me here like this is an e-mail thread over the 2 course of July 30th. On page 3 it starts with an e-mail from 3 Dennis Lauber to Christian Clay. And Dennis Lauber is your 4 sales rep at Cascade Steel, correct? 5 A. That is correct. 6 Q. Do you know who Christian Clay is? 7 A. No. 8 Q. If you look at page 1, at the bottom there is an 9 e-mail from Mr. Clay to Dennis Lauber and others, including 10 some e-mail addresses for BNSF.com, and it says "Christian 11 Clay is a senior account manager at BNSF Railway." I take it 12 that you have never had any communications with Mr. Clay 13 about rail service? 14 A. I have not. 15 Q. Have you contacted anyone at BNSF about rail 16 service to CT Sales' Woodinville yard? 17 A. I have not. 18 Q. Have you contacted anyone with the Union Pacific 19 Railroad about transporting materials for final delivery at 20 CT Sales' Woodinville yard? 21 A. Nope. 22 Q. Have you gotten a quote for delivery by rail to 23 your yard in Woodinville from Ballard Terminal Railroad? 24 A. No. 25 Q. It sounds like there are a lot of job sites	Page 36 1 mark a couple more here so we have these all in order 2 together. 3 Mr. House, may I see Exhibit 90, please. 4 Thank you. 5 Jordan, can I look at your 90. My papers are 6 out of order. Thank you. 7 This will be 93; this will be 94. 8 Tom, let me run through these next marked 9 exhibits with you. These are slightly out of chron. order, 10 my apologies. Exhibit 90, which I believe you retrieved on 11 your end, is an e-mail from Ernie Wilson to Jim House dated 12 Friday, October 11th, 2013, time stamped 2:36 p.m., subject 13 line, "STB letter." 14 MR. PASCHALIS: I have that. 15 MR.FERGUSON: Exhibit 91 is an e-mail. And, 16 on all of these, I am not providing the very top line e-mail 17 where Mr. House sent these messages to my assistant, Leslie 18 Lomax, and to you on Monday, February 3rd. You are clear on 19 that? 20 MR. PASCHALIS: Yes, I am. 21 MR. FERGUSON: The body of the document is an 22 e-mail from Mr. House to Doug Engle dated Thursday, 23 October 3rd, 2013, time stamped 2:36 p.m., subject line, 24 "Re: Letter supporting Ballard Terminal Railroad 25 reactivation petition." And that has an attachment of a

Page 41 1 A. Yes. 2 Q. And then please take a look at your final letter, 3 Exhibit 83, that last sentence. It reads the same as the 4 revision that Mr. Engle suggested; is that correct? 5 A. That is correct. 6 Q. What is your understanding that needs to be done in 7 order for your business to receive or ship raw materials by 8 rail? 9 A. I need to have a company that will do that, but, as 10 far as my end of it, I need a rail spur into the yard. 11 Q. And you currently do not have one? 12 A. Well, the other way that we can is we have 13 customers that we have worked with in the past, Boise Cascade 14 being one of them, that also has a rail spur. I have not 15 looked into being able to use them. But we do not currently 16 have a rail spur. 17 Q. Do you have an understanding of what this 18 proceeding before Surface Transportation Board involves? 19 A. I have an understanding. 20 Q. What is it? 21 A. You mean my understanding of the suit that's going 22 on? 23 Q. Yes. 24 A. Is to open the -- reopen the rail line. I don't 25 know the exact location of it, but basically going south from	Page 43 1 asks if you could finish up the letter today and send it to 2 us with a signed version on your letterhead. "We need to 3 have it in place when the STB opens for business again." Is 4 this a reference, to your understanding, to a letter that we 5 have been discussing, this draft letter to which Mr. Engle 6 made red-line changes? 7 A. This is in reference to my final letter, which I 8 had already sent to Doug, and Ernie did not get a copy. 9 Q. Okay. And is that the final letter that is on 10 Exhibit 91? 11 A. Eighty-three. 12 Q. Let's take a look at Exhibit 91, though. 13 A. Okay. 14 Q. On the bottom of the e-mail thread, a message from 15 Doug Engle to you, and it reads, "Thank you, Jim and Ernie. 16 I made a couple of minor changes in the red-line version." 17 And then above that there is an e-mail from you to Doug, 18 copying Mr. Wilson, dated Thursday, October 3rd, 2013, 2:36 19 p.m., and attached to this e-mail is a letter on CT Sales 20 stationery with that date of October 3rd. 21 A. Yes. 22 Q. Do you see that? 23 A. Yes. 24 Q. Is that accurate? 25 A. Yes, that is accurate.
Page 42 1 where I'm at. 2 Q. I will represent to you that the proceeding is on 3 behalf of Ballard Terminal Railroad. It is seeking to 4 reactivate rail service on the portion of the rail line 5 between Woodinville and Bellevue. Part of it runs through 6 the city of Kirkland. What I want to know is: Is it your 7 belief that your business, in order to receive rail service, 8 either coming in or going out, needs to have some sort of 9 resolution in the proceeding concerning the line between 10 Woodinville and Bellevue to the south? 11 MR. PASCHALIS: I will object to the form. 12 A. So, to reiterate what you are asking me, do I feel 13 that, in order to operate as we have been talking about by 14 rail, I need to have those lines reopened? Is that what you 15 are asking? 16 Q. No, but go ahead and tell us what you think about 17 that. Well, let me ask it a different way. Does anything 18 about the rail line between Woodinville and Bellevue affect 19 whether or not CT Sales can receive rail service at its yard 20 in Woodinville currently? 21 A. According to what I have heard from Ernie and Doug, 22 no. 23 Q. I want to look back at Exhibit No. 92. This looks 24 like an e-mail from Mr. Wilson to you on Friday, 25 October 11th, asking about a quick follow-up, and in it he	Page 44 1 Q. So do you think this is the letter that you sent to 2 Doug, but Ernie didn't have a copy for some reason? 3 A. That is correct. 4 Q. And then it looks like eight days later, on 5 October 11th, Ernie asked you to send a final copy of the 6 letter? This is Exhibit 92. 7 A. Yes. 8 Q. Okay. 9 A. And I was resending what I had already sent. 10 Q. Let's turn to Exhibit 93, please. Take a look at 11 the bottom of page 1. This is part of an e-mail thread, and 12 this portion is an e-mail from Mr. Engle to you, copying 13 Ernie. It's dated October 3rd, 2013, at 2:39 p.m., and it 14 reads, "Jim, a minor but important thing, will you please 15 change the date to the 1st just in case." Do you have an 16 understanding of what Mr. Engle was writing about there where 17 he asked you, "will you please change the date to the 1st 18 just in case"? 19 A. I did not know why he wanted me to do that. 20 Q. Did you understand that to be a request that you 21 change the date on your letter from October 3rd? Take a look 22 back at Exhibit 91. 23 A. Okay. 24 Q. That letter is dated October 3rd, correct? 25 A. Correct.

Page 53 1 A. That is correct. 2 Q. Is Eastside Community Rail a customer of yours? 3 A. They are not. 4 Q. Are Ballard Terminal Railroad a customer of yours? 5 A. They are not. 6 Q. I am curious, if they are not a customer of yours 7 and you are not presently receiving rail service from them, 8 why would you write this letter? 9 A. For the possibility of somebody helping me get rail 10 service. 11 Q. Do you understand that your letter -- and when I 12 say your letter, I mean the one that was actually submitted 13 to the Board, Exhibit 83. When you wrote that, were you 14 requesting rail service on behalf of CT Sales through that 15 letter? 16 A. No. 17 MR. MARCUSE: I would like to show the witness 18 what has previously been marked as Exhibit 62. That is the 19 December 6th filing by Ballard Terminal Railroad to the STB. 20 Do we have the official exhibit to show the witness, please. 21 MR. FERGUSON: What is the number again? 22 MR. MARCUSE: That is No. 62. 23 Q. (By Mr. Marcuse) Mr. House, I will represent to you 24 that this is a document that was submitted by Ballard 25 Terminal Railroad to the Surface Transportation Board in this	Page 55 1 you are the president of CT Sales? 2 A. Correct. 3 Q. So you would be responsible for making a decision 4 whether to request rail service to your facility? 5 A. That is correct. 6 Q. Have you made that decision at this point? 7 A. No. 8 Q. What process would CT Sales follow in order to make 9 that decision? 10 A. It would be an in-depth cost analysis. 11 Q. Who would perform that cost analysis? 12 A. Well, I would be in charge of it, but I would go 13 out, just like anybody would, and figure out how to do that 14 and assess the cost. 15 Q. Have you taken affirmative steps towards that? 16 A. No. 17 MR. MARCUSE: Thank you. I have no further 18 questions at this time. 19 20 E X A M I N A T I O N 21 BY MR. PASCHALIS: 22 Q. Mr. House, I have some questions. Before I get 23 started, would you like a break, or would you like me to 24 continue? 25 A. No, I'm good. You can continue.
Page 54 1 matter, and if you could please turn to page 2 and read the 2 first paragraph there. 3 A. I don't even know what that word is. "A 4 multiplicity" -- 5 Q. Yes, sir, that is the right paragraph. 6 A. -- "of shippers have requested service on the line, 7 including General Mills, RJB Wholesale, CT Sales, Aggregates 8 West, Wolford Trucking & Demolition, and CalPortland." 9 Q. Has CT Sales requested service on the line? 10 A. No, we have not. 11 Q. Thank you. Could you turn also to page 6 of that 12 same document and the second full paragraph on that letter. 13 It starts with, "General Mills." 14 A. "General Mills, an internationally known company, 15 is desirous of reestablishing rail service to its Safeway 16 foods facility in Bellevue, which has a siding on the line. 17 The same is true of RJB Wholesale and CT Sales, both of whom 18 have direct access to the line." 19 Q. Is CT Sales desirous of reestablishing rail service 20 to Bellevue? 21 A. Yeah. 22 MR. PASCHALIS: I will just object. 23 Go ahead, sir. 24 A. Yes. 25 Q. All right. Thank you. You testified earlier that	Page 56 1 Q. Just a couple quick points. First of all, if I ask 2 you any questions that you do not understand or you think you 3 need clarification, please stop me and let me know, and I 4 will be happy to reask the question. Second of all, since I 5 am not in the room with you I can't really pick up visual 6 cues as to when you are finished talking, so I will endeavor 7 to have a lengthy pause before I ask the next question. If I 8 inadvertently cut you off because I believe that you have 9 finished, I apologize, and I will allow you to go ahead and 10 complete your answer. 11 A. Okay. 12 Q. There was some testimony much earlier on about what 13 exactly rebar, the product that you make, is; do you recall 14 that? 15 A. Sort of. 16 Q. Okay. Well, then I will just ask you the question, 17 and, if you discussed it to some extent already, it might be 18 a little repetitive, but can you just kind of describe to me 19 generally what rebar is and how it is used. 20 A. Reinforcing steel. It basically comes in bars that 21 we cut and shape to fit into concrete for a particular 22 structure on a job site. 23 Q. What kind of structures is rebar used on? 24 A. For the most part, anything that has concrete. 25 Q. So that could be any kind of construction project

EXHIBIT 16

Show Overview Map ☐

View Property Information

Recent Sales:

- ☐ All Sales
☒ 2014 Sales
☐ 2013 Sales
☐ 2012 Sales

Find Parcel Number:

Go to

Locate Address

Map Action:

Zoom In	Zoom Out
Move Map	Full View
Refresh Map	Print Map
Previous Map	

Map Layers:

some layers disabled when zoomed out

- ☒ Color Aerial Photo
☒ Tax parcel numbers
☐ Street Address
☐ Benchmark Areas (by color)
☐ Benchmark Numbers
[find a specific benchmark area](#)
☒ City Names & Boundaries

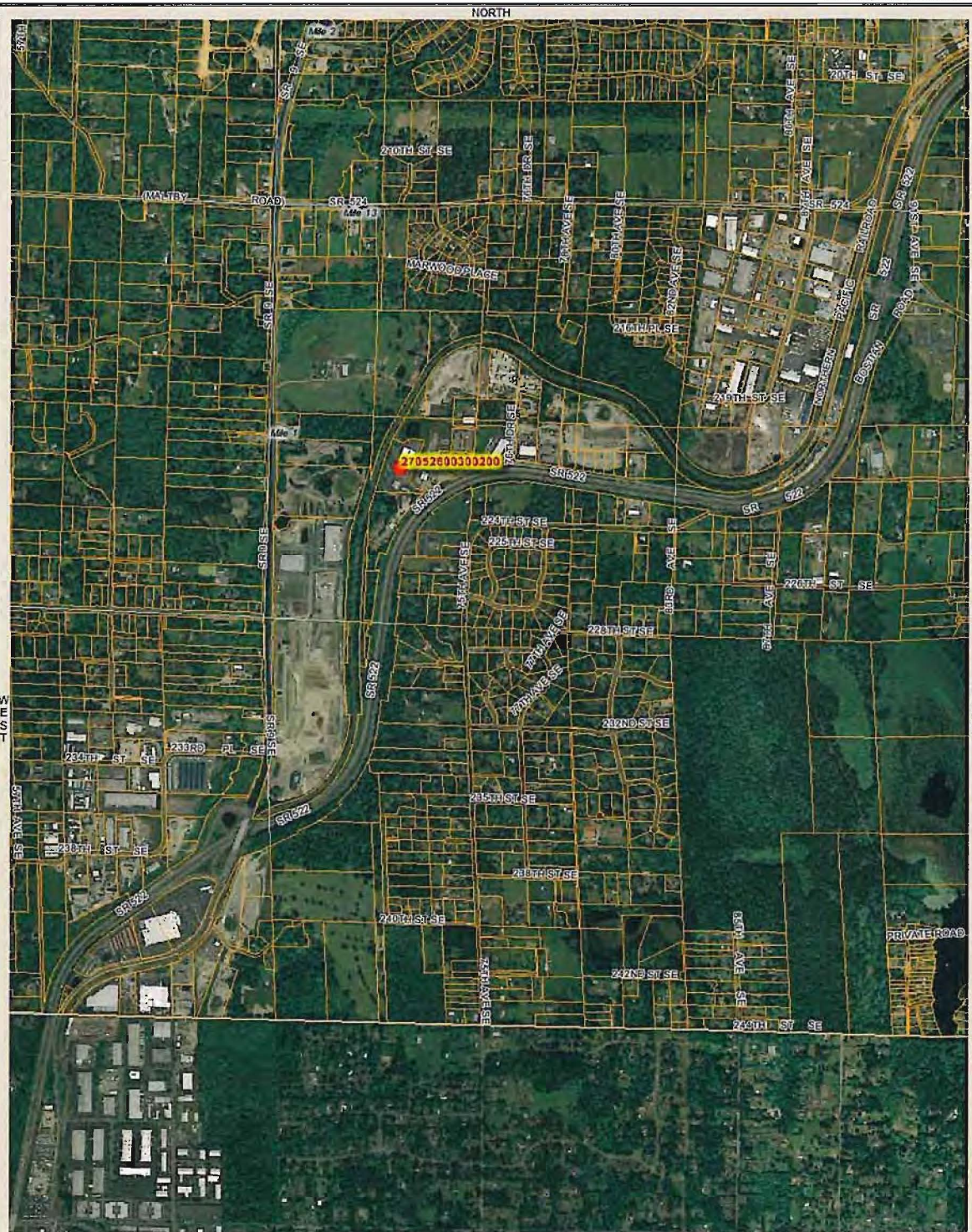


Exhibit 86 Date 2/7/14
Witness House
Wade J. Johnson 323-0919

SOUTH

EXHIBIT 17

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2013-0524 Cole, Byron 5/24/20
13 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 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	Page 3 BYRON COLE - Friday, May 24, 2013 I N D E X EXAMINATION BY: Page(s) Mr. Cohen 6 Mr. Wagner 204 Mr. Marcuse 213 Mr. Montgomery 218 *** FURTHER EXAMINATION BY: Page(s) Mr. Cohen 227 Mr. Montgomery 239 *** EXHIBITS FOR IDENTIFICATION: 36 City of Kirkland's First Set of 26 Interrogatories and Requests for Production to Ballard Terminal Railroad Company, LLC
Page 2 APPEARANCES FOR THE CITY OF KIRKLAND: MATTHEW COHEN HUNTER FERGUSON STOEL RIVES, LLP 600 University Street, Suite 3600 Seattle, Washington 98101 (206) 624-0900 mcohen@stoel.com hoferguson@stoel.com FOR KING COUNTY: ANDREW MARCUSE SENIOR DEPUTY PROSECUTING ATTORNEY CIVIL DIVISION KING COUNTY PROSECUTING ATTORNEY W400 King County Courthouse 516 Third Avenue Seattle, Washington 98104 (206) 477-1094 andrew.marcuse@kingcounty.gov FOR SOUND TRANSIT: JORDAN WAGNER SOUND TRANSIT 401 S. Jackson Street Seattle, Washington 98104 (206) 398-5000 jordan.wagner@soundtransit.org FOR BALLARD TERMINAL RAILWAY: TOM MONTGOMERY MONTGOMERY SCARP, PLLC 1218 Third Avenue, 27th Floor Seattle, Washington 98101 (206) 625-1801 tom@montgomeryscarp.com	Page 4 EXHIBITS - (Continuing) EXHIBITS FOR IDENTIFICATION 37 Ballard Terminal Railroad Company, LLC's 32 Answers to the City of Kirkland's First Set of Interrogatories 38 Letter from Byron Cole to Judge Lynch 46 dated September 21, 2012 39 Document from RailWorks dated January 63 18, 2013 40 Verified Statement of Byron Cole 91 41 Document entitled Eastside Community 155 Rail, LLC, Port of Seattle Capital Improvements to Eastside Rail Corridor 42 Eastside Community Rail, LLC, Port of 156 Seattle Capital Improvements to Eastside Rail Corridor 43 Operations and Maintenance Agreement 168 Between Port of Seattle and GNP 44 Petition for Stay of the Port of Seattle 185 45 Ballard Terminal Railroad Company, LLC's 239 Response to the City of Kirkland's First Requests for Production 46 Collection of documents submitted by 239 Ballard Terminal

Page 125 1 their first questions that they ask is where do you have 2 trans-load facilities. I say -- now I say, Well, we have 3 three railroads. So one place is Woodinville on this 4 railroad we're working on here. And we have Ballard. And 5 we have two trans-loaders on our Meeker line in Puyallup. 6 So I ask them, where are you trying to get to 7 once you get it out of the boxcar. And then they tell me, 8 Well, we're trying to get to the Port of Tacoma. Well, 9 then, the logical thing is to send it to our Meeker 10 Southern railroad, because it's only 10 miles to the first 11 gate on the first dock. And they love that. That railroad 12 is in a really good strategic spot. 13 And Port of Seattle, where, I don't know, I count 14 the number of boats in the Port when I go home to West 15 Seattle and there's only two in here for the last two or 16 three days. Two freighters. That's not much. 17 Anyway, you know, the conversations are what 18 could you do for us. Well, we have three railroads, what 19 are you trying to do? Well, I want to get to the Port of 20 Tacoma docks with my product I make. Well, then, the 21 Meeker is the one to do it. Then we talk. 22 Sometimes it turns out to be traffic and 23 sometimes it doesn't. I try and direct it. I don't have 24 to invent the wheel, again, I give them the names and phone 25 numbers of the two trans-loaders we have on that line.	Page 127 1 A. I don't think I've ever gotten any. But Kirkland 2 does have an industrial district up there by the tracks, 3 and there's one spur up there, and there used to be some 4 others. You can see where there used to be some other 5 spurs. I suppose might be able to be put back if, again, 6 the right tenant was inside the building. 7 Q. Any calls from any shippers seeking to move 8 freight out of Bellevue? 9 MR. MONTGOMERY: You mean other than -- 10 THE WITNESS: Other than the spoils people? 11 Q. (By Mr. Cohen) Right. Other than Bobby Wolford 12 and CalPortland, we'll talk about them. 13 A. Bobby has a bunch of competitors. When these big 14 giant basements are dug, there's, I don't know, I'll bet 15 there must be a dozen truckers, or more than that maybe, 16 that would be available for those things. I'm sure they'd 17 partner up in partnerships that last as long as that 18 excavation job is going, two or three of them get together 19 and say, Look, together we can put 16 trucks on the road, 20 three little guys and, you know, a few trucks. Wreckers 21 are like that. 22 Q. Has Ballard Terminal Railroad had any 23 conversations with any truckers seeking to move? 24 A. No. But, you know, if this goes the right way, I 25 think phones will start to ring because Wolford is going to
Page 126 1 They got telephone banks waiting for the phone to ring. 2 When that rings and that guy calls, they have a 3 knowledgeable guy with a proven track history, been in 4 business for 30 years, and he can tell how much it will 5 cost to unload the railcar and how much it will cost to 6 dray it from there to the Port, which dock are you going, 7 to, blah, blah, blah. In the end, we get paid 350 bucks 8 for handling that boxcar. 9 Q. Have you -- 10 A. That's the way business works. 11 Q. -- gotten any calls from anyone who is trying to 12 deliver freight to Bellevue? 13 A. I don't think so. But sometimes, when I'm 14 talking to these people, I say that there might -- you 15 know, might be a possibility that we'd be in Bellevue 16 sometime, but they, from the standpoint of looking for a 17 trans-loading, they don't see a lot of difference between 18 unloading in downtown Bellevue or unloading in downtown 19 Woodinville. The few minutes of trucking. But if it was 20 somebody, that said, well, I want to open up a gypsum board 21 retail and wholesale outlet, Sheetrock, well, then it might 22 make a difference to be downtown. That would be a close 23 haul for a pot full of gypsum. 24 Q. Any calls from anyone trying to deliver freight 25 to Kirkland?	Page 128 1 have the best economic model and the other guys won't want 2 to get left behind. 3 Q. I'll ask you about that. How about anybody 4 trying to move freight out of Kirkland, any calls from 5 shippers trying to move freight out of Kirkland? 6 A. No. The businesses look pretty small and a lot 7 of what used to be -- I've walked the line a number of 8 times. The buildings that are there and could be under 9 lease or maybe they're owned, I haven't checked to see what 10 they might be, but mostly they're the kind of a business 11 that doesn't look like they need rail. You know, in-house 12 television system installers and all kinds of things, but 13 not something big like a distribution center for Sheetrock 14 or plywood or roofing paper -- 15 Q. Right. I'm sorry. 16 A. Well, roofing materials or something like that. 17 Q. Right. So let me ask you about CalPortland. 18 Before this rail reactivation issue came up, did Ballard 19 Terminal Railroad have a prior relationship with that 20 company? 21 A. Boy, do we. 22 Q. Tell me about it. 23 A. So my partner has a business in Ballard, it's 24 Salmon Bay Sand & Gravel Company. It's a ready-mix plant. 25 And CalPortland is one of the major suppliers of the dry

EXHIBIT 18

James House

From: Dennis Lauber [dlauber@schn.com]
Sent: Wednesday, July 31, 2013 2:14 PM
To: James House
Subject: RE: Rail

Jim: I made contact with Ernie. He is going to work on this from his end.

I did get a rail rate to East Side Community rail.

The charge that far for rail is \$2.71 per cwt. The trucking including fsc to your facility is about \$1.28. We will see what Ernie can get done.

From: James House [mailto:jim@ctsalesinc.net]
Sent: Monday, July 29, 2013 1:02 PM
To: Dennis Lauber
Subject: RE: Rail

OK

James A House
CT Sales, Inc
(425) 483-0101

From: Dennis Lauber [mailto:dlauber@schn.com]
Sent: Monday, July 29, 2013 1:01 PM
To: James House
Subject: RE: Rail

Jim: I am waiting on the BNSF for a rate into Woodinville.

The cost of getting a car loaded from McMinnville so far is \$1.23 per cwt. That does not include the transit cost to Woodinville. Will let you know the total when I get it.

From: James House [mailto:jim@ctsalesinc.net]
Sent: Thursday, July 25, 2013 9:24 AM
To: Dennis Lauber
Subject: Rail

Heard from the rail guys again; so, I thought I'd send you an email so you had something in front of you.

James A House
CT Sales, Inc
(425) 483-0101

Exhibit 87 Date 2/7/14
Witness House
Wade J. Johnson 323-0919

EXHIBIT 19

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2014-0207 Day, Scott (Aggregates W
est)

2/7/2014 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 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 SCOTT DAY Taken at 123 Fifth Avenue Kirkland, Washington DATE: February 7, 2014 REPORTED BY: Wade J. Johnson, RPR CCR No.: 2574 STARKOVICH REPORTING SERVICES 206.323.0919	Page 3 SCOTT DAY -- FEBRUARY 7, 2014 INDEX EXAMINATION BY: PAGE Mr. Ferguson 5 Mr. Marcuse 56 Mr. Wagner. 60 Mr. Paschalis 63 Mr. Ferguson. 84 Mr. Marcuse 98 Mr. Wagner. 99 Mr. Paschalis. 102 Mr. Ferguson 108 Mr. Paschalis. 110 * * * EXHIBITS FOR IDENTIFICATION: Number PAGE 97 Letter from Scott Day to Cynthia Brown, 10/08/13 9 98 Amended Subpoena to Aggregates West, Inc. to Testify in a Deposition and Produce Documents in a Proceeding Before the Surface Transportation Board 9 99 Letter from Chris Hatch to Hunter Ferguson, 01/30/14 9 100 E-mail from Doug Engle to Scott Day, 09/27/13 32 (Index continued next page.) STARKOVICH REPORTING SERVICES 206.323.0919
Page 2 DAY APPEARANCES FOR BALLARD TERMINAL THOMAS C. PASCHALIS (Telephonic) RAILWAY, L.L.C. and Fletcher & Sippel EASTSIDE COMMUNITY 29 North Wacker Drive, Suite 920 RAIL Chicago, Illinois 60606 tpaschalis@fletcher-sippel.com FOR THE CITY OF HUNTER FERGUSON KIRKLAND: Stoel Rives 600 University Street, Suite 3600 Seattle, Washington 98101 hoferguson@stoel.com FOR KING COUNTY: ANDREW MARCUSE Senior Deputy Prosecuting Attorney Civil Division W400 King County Courthouse 516 Third Avenue Seattle, Washington 98104 andrew.marcuse@kingcounty.gov FOR SOUND TRANSIT: JORDAN WAGNER Union Station 401 South Jackson Street Seattle, Washington 98104 jordan.wagner@soundtransit.org --oOo-- STARKOVICH REPORTING SERVICES 206.323.0919	Page 4 SCOTT DAY -- FEBRUARY 7, 2014 INDEX EXHIBITS FOR IDENTIFICATION: Number PAGE 101 E-mail from Scott Day to Doug Engle, 10/01/13 35 102 E-mail from Doug Engle to Scott Day, 10/03/13 39 103 E-mail from Doug Engle to Scott Day, 10/06/13 45 104 E-mail from Scott Day to Doug Engle, 10/10/13 50 105 E-mail from Doug Engle to Scott Day, 10/06/13, 11:04 a.m. 53 106 Google Map for 18016 177th Avenue Southeast, Monroe, Washington 88 107 Google Map for 18016 177th Avenue Southeast, Monroe, Washington 88 108 Google Map for 18016 177th Avenue Southeast, Monroe, Washington 88 * * * * STARKOVICH REPORTING SERVICES 206.323.0919

Page 21 1 Monroe where they are also leasing -- well, actually, they 2 are not leasing. They pay a royalty. They dredge the 3 material out of there and pay a royalty to the owners that 4 own the land there and then process it. 5 Q. Any where else? 6 A. I think they have a couple of other little places 7 that they haven't developed up yet, but I really don't know. 8 Q. When Aggregates West is going to make a delivery of 9 material to a customer, does material come straight from the 10 source point? So one of these pits that you have just 11 listed, does it go straight from there to the customer's 12 deliver site? 13 A. Typically, yeah. 14 Q. Are there any other facilities that Aggregates West 15 uses as part of its business operations? 16 A. They used to have a laydown yard in Everett 17 where -- they were operating out of Lumi Island, their quarry 18 out of there, but they closed that one down recently, and 19 that actually has a rail spur on it. And they used to supply 20 to Burlington Northern. 21 Q. The railroad? 22 A. Yeah, and stuff like that. So I know that they 23 have had experience with rails and with barging and whatnot 24 from Lumi, but I was not involved with the company at that 25 time.	Page 23 1 that could access a rail line if it were to build a spur 2 track? 3 A. Can you repeat that question. 4 Q. Do you know what a spur track is? 5 A. Yeah. 6 Q. Can you just explain so we make sure we are on the 7 same page. 8 A. A spur track is a track that comes off of a main 9 line so that you can take it into a laydown yard and load up. 10 Q. Sure. 11 A. Truck, trains, or whatever. 12 Q. We are on the same page then. So do you know of 13 any facility of Aggregates West where, if it were to build a 14 spur track -- what I am trying to ask is this: Is there a 15 facility where there is a main railroad line running past it 16 and all Aggregates West would need to do is build a spur 17 track into one of its properties? 18 A. No. 19 MR. PASCHALIS: I will object to the form. 20 Q. So let's look back at your letter here, 97, 21 Exhibit 97. Do you have it? 22 A. Yeah. 23 Q. All right. Do you view this letter as a request to 24 receive rail service from Ballard Terminal Railroad Company? 25 A. No.
Page 22 1 Q. So let me come back here. You said they formerly 2 had this laydown yard in Everett, right? 3 A. Yeah. 4 Q. And that is where they had some sort of access to 5 rail? 6 A. Mm-hmm. 7 Q. But you said that the company no longer has this 8 site? 9 A. No, they don't. 10 Q. Can you explain to me what happened with the 11 Everett yard. 12 A. Yeah. Lumi Island just was not a moneymaker for 13 them, and so they decided to close it down, and that's where 14 they were barging the material into, and they just decided it 15 wasn't a viable part of their company anymore, so they closed 16 it. They were leasing that from some construction outfit, I 17 think BDZ or somebody like that, right there in Everett. 18 It's right off of -- 19 Q. So are you aware of any facility of Aggregates West 20 that currently ships any material by rail? 21 A. No, not right now. 22 Q. Are you aware of any facility of Aggregates West 23 that currently has access to a rail line to make shipments? 24 A. No. 25 Q. Are you aware of any facility of Aggregates West	Page 24 1 Q. What do you take this letter to be? What was your 2 purpose in sending it to Mr. Hatch, who then sent it on to 3 Mr. Engle? 4 A. Just based on some conversations and some 5 spreadsheets or whatever, just some numbers, after talking to 6 Mr. Engle, he said, well, we could possibly get your 7 materials from your Monroe or even Granite Falls site to 8 downtown Bellevue a little cheaper than doing it with 9 trucking and probably create a laydown yard there, which 10 would be good business for Aggregates West to have a laydown 11 yard in Bellevue and be able to get their materials downtown 12 Bellevue or down in that area cheaper. So I said, obviously, 13 if it's good for our business, we can get material moved from 14 A to Z less expensively, it's good for everybody. 15 Q. Okay. So I want to explore a couple of things you 16 just said. If my memory or I didn't hear you correctly, just 17 correct me. You said you looked at some spreadsheets. 18 A. Well, just some numbers that I think I sent to you 19 in the e-mails. They are just rough numbers of how much it 20 may cost to move material from A to Z. 21 Q. Those are numbers that Mr. Engle gave you; is that 22 correct? 23 A. Yes. 24 Q. And the other piece of information, materials you 25 referenced, those are all materials Mr. Engle provided to

Page 25 1 you, correct? 2 A. Yes. 3 Q. You said earlier that none of Aggregates West 4 facilities currently has access to a rail line for shipment, 5 correct? 6 A. Correct. 7 Q. And that there was the prospect you thought of 8 having a laydown yard in Bellevue. 9 A. Yes. 10 Q. So I am going to ask you about how we are going to 11 get the materials from the various pits to Bellevue, but, 12 first, I want to know, what is a laydown yard? 13 A. A laydown yard is where you have a yard where you 14 can store your materials and have trucks come pick them up 15 from that point. 16 Q. So is this just sort of an open space area, maybe 17 there is a fence around it, where gravel is just piled up? 18 A. Yep. 19 MR. PASCHALIS: Object to the form. 20 Q. Is that accurate? 21 A. Yes. 22 Q. There might be piles of sand in the laydown yard? 23 A. Stockpiles, yes. 24 Q. Some kind of entry point in and out for trucks or 25 perhaps even a railcar to be unloaded?	Page 27 1 word "vision" is a pretty strong word. It was, conceptually, 2 if I could get my material from Monroe to downtown cheaper -- 3 but I really don't know how that would work. We have never 4 gotten that far into our discussions. So, I mean, the point 5 is, if I could get my material from one place to another 6 cheaper than putting it on a truck and driving it there, we 7 would be interested, but -- 8 Q. Gotcha. I asked you earlier about Exhibit 97, if 9 you considered this to be a request for rail service to 10 Ballard Terminal Railroad, and your answer was no, correct? 11 A. Yeah. I mean, I guess my thought is we support 12 their request, right? I mean, in the sense that, in my 13 personal opinion, if we could explore the option of being 14 able to ship materials cheaper to -- I guess my thought was, 15 if I can get products from one place to another cheaper than 16 normal, it helps the entire community. 17 Q. Right. 18 A. Because I can sell materials cheaper for roads and 19 different things like that, but that's not for me to say, 20 right? 21 Q. I don't know. I can't answer. That is one of the 22 rules of the way this works, but I understand what you are 23 saying. The question really is: This letter isn't a request 24 for rail service, right? 25 A. No. This is a letter saying we support these guys
Page 26 1 A. Correct. 2 Q. Okay. So you were talking about having a laydown 3 yard in Bellevue? 4 A. Yes. 5 Q. Doug Engle raised the possibility of there being 6 such a thing? 7 A. Yes. 8 Q. Did he ever present you with a plan about where 9 such a laydown yard might be located? 10 A. No. And, actually, I was just sitting here trying 11 to remember the area that he was talking about. He said 12 there is a potential of -- I really don't remember where it 13 was, but it was at the end of the rail somewhere. 14 Q. I think it might be in one of these e-mails, and we 15 will get to it. 16 A. Yeah, it probably is. 17 Q. The thing I really want to know is: Was the vision 18 of having -- since none of your yards currently has access to 19 a rail service, correct? 20 A. Correct. 21 Q. How are you going to get materials to the laydown 22 yard in Bellevue? 23 A. You know, I really don't know. They would have 24 to -- at the beginning of the line, they would have to create 25 a place for us to deliver to, from Monroe or something. The	Page 28 1 if they can provide us a cheaper service than what we are 2 currently doing. 3 Q. Have you ever made a request to any other rail 4 carrier to deliver material into downtown Bellevue by rail? 5 A. No. 6 Q. Has Aggregates West to your knowledge made a 7 commitment to Ballard Terminal Railroad to utilize rail 8 service provided by Ballard? 9 A. No. 10 Q. Well, let me ask you first of all: You, as sales 11 manager, would you be the likely person to seek a rate quote 12 from transportation carriers for your materials? 13 A. Yes. 14 Q. Have you ever asked Ballard for a rate quote for 15 rail service? 16 A. Well, when Doug and I started about it, I did ask 17 him how much it would cost, and we did talk about -- I would 18 have to sit down and do a whole lot of figuring, how am I 19 going to get it from A to Z via truck because we don't have a 20 spur into our yard, and then get it down there and then 21 offloading it. So there is shipping and handling, and there 22 is a lot that goes into moving material. 23 Q. Let me just clear this up: Your conversations 24 about rail service down into Bellevue, were they exclusively 25 with Mr. Engle?

Page 29 1 A. Yeah. 2 Q. I am just trying to understand who it was you might 3 have talked to. 4 A. There was a guy before Mr. Engle, and I can't 5 remember his name, Ed or -- 6 Q. Was his name Ernie Wilson? 7 A. Ernie Wilson, yeah, that's right. So I spoke to 8 him. 9 Q. So you spoke to Ernie and Doug? 10 A. Yeah. 11 Q. Anyone else? 12 A. No. 13 Q. Did you ever talk to a man named Byron Cole? 14 A. Not that I can recall. 15 Q. Did you ever talk to a man by the name of Paul 16 Nerdrum? 17 A. I don't think so. 18 Q. Did you ever talk to a woman named Kathy Cox? 19 A. Maybe. I think so. When Doug and I were having 20 coffee, I believe a lady named Kathy stopped in the coffee 21 shop, but I am not sure. 22 Q. Do you recall having a conversation with her about 23 freight rail service? 24 A. No. 25 Q. So did you ever ask Doug for a tariff for Ballard	Page 31 1 tons last month, not to Bellevue, but Seattle, Bellevue, in 2 these areas. 3 Q. I want to ask you, though, specifically -- you 4 mentioned Kirkland, you currently ship aggregates materials 5 to locations within Kirkland? 6 A. Yeah. I am shipping to the new Google site right 7 now, and I am shipping to -- well, I don't have a list of my 8 customers and contacts, but, yeah, I'm sure we've got 9 several. And then we have a lot of random customers that 10 just come and pick up material on a picked-up basis that I 11 don't even know where the material is going. 12 Q. Are there specifically customers in downtown 13 Bellevue that you ship aggregates materials to? 14 A. Yeah. 15 Q. Have any of these customers ever asked for you to 16 ship them aggregates materials by rail? 17 A. No. 18 Q. Have you performed any study to determine whether 19 it would be more cost-effective to ship to any of these 20 current customers by rail, as opposed to truck? 21 A. No. 22 Q. All right. I would like to look at some of the 23 e-mails that Mr. Engle and you exchanged that you sent to me. 24 I will try to proceed with these chronologically. 25 MR. FERGUSON: Tom, the next exhibit we are
Page 30 1 Terminal Railroad's freight rates? 2 A. No. 3 Q. Did he ever give you a rate based on tonnage for 4 freight service? 5 A. Yeah. I asked him what he thought it might be, and 6 that's -- I think one of the e-mails I sent you kind of has 7 on there what he thought that the cost of shipping material 8 might be. 9 Q. Okay. You mentioned earlier that there would be a 10 lot of different factors for Aggregates West to consider 11 whether or not it would be cost-effective to ship rock or 12 sand into Bellevue, correct? 13 MR. PASCHALIS: Object to the form. 14 A. Yes. 15 Q. Have you undertaken any analysis or study to 16 determine whether it would be cost-effective to do so? 17 A. No. I wouldn't spend my time doing that until I 18 knew exactly what the freight costs would be and things like 19 that. I mean, I would need something more concrete to spend 20 my time moving forward on something than a hypothetical. 21 Q. Do you know if Aggregates West currently has any 22 contracts to provide aggregate materials to job sites in 23 Bellevue? 24 A. Oh, yeah, we ship to downtown Seattle; Bellevue; 25 Kirkland. We ship to everywhere. I shipped nearly 30,000	Page 32 1 going to mark, which will be 100, is an e-mail from Mr. Engle 2 to Mr. Day, dated Friday, September 17th, 2013, at 11:41 a.m. 3 (Exhibit 100 marked for 4 identification.) 5 MR. PASCHALIS: Give me a moment. 6 MR. FERGUSON: Sure. Sure. 7 MR. PASCHALIS: What was that date? 8 MR. FERGUSON: September 27th, 11:41 a.m. The 9 subject is, "Reactivation support." 10 MR. PASCHALIS: Okay, got it. 11 MR. FERGUSON: Are you ready to start again? 12 MR. PASCHALIS: Are you talking to me? 13 MR. FERGUSON: Yes. 14 MR. PASCHALIS: Yes, go ahead. 15 Q. Mr. Day, before we talk about this e-mail with 16 these attachments that have been marked Exhibit 100, do you 17 recall the circumstances in which you met Mr. Engle? 18 A. I believe Ernie introduced us, and, I believe, 19 originally, Ernie was asking about their rail in Snohomish, 20 and I think they had to do some repairs, and they were 21 talking about purchasing some aggregates possibly. I believe 22 that -- it was a long time ago, but I think that's how I met 23 them. 24 Q. If I am understanding you correctly, you first met 25 Mr. Wilson in the context of his asking whether Aggregates

Page 57 1 A. Yes. 2 Q. And that was processed coming out of a yard in 3 Everett, which is also no longer a part of Aggregates West? 4 A. That's correct. 5 Q. Aggregates West has no property or facilities in 6 Kirkland? 7 A. No. 8 Q. Aggregates West has no property or facilities in 9 Bellevue? 10 A. No, not that I know of. 11 Q. That you know of. To your knowledge, is Aggregates 12 West leasing any properties in Kirkland or Bellevue? 13 A. Not that I know of. 14 Q. To your knowledge, is Aggregates West pursuing the 15 leasing or purchase of any properties in Kirkland or 16 Bellevue? 17 A. Not that I know of. 18 Q. When we were discussing the aggregates market, you 19 said that you regularly ship something like 30,000 tons into 20 Bellevue and other places around the Puget Sound area; is 21 that correct? 22 A. Yeah, King and Snohomish. 23 Q. But Aggregates West doesn't use rail service to 24 move that product? 25 A. No.	Page 59 1 throughout the area, have all expressed a clear desire to 2 utilize the rail line for inbound shipment of aggregates 3 products and the outbound shipment of spoils from road 4 construction removal." To your knowledge, has Aggregates 5 West expressed a clear desire to utilize the rail line for 6 the inbound shipment of aggregates and the outbound shipment 7 of spoils? 8 A. We have a desire to use the cheapest shipping 9 methods possible. 10 Q. Have you made a determination that use of this rail 11 line would be the cheapest method possible for you? 12 A. No, I haven't done any research. 13 Q. In that same paragraph on that same page, I would 14 like to direct your attention to the fourth and fifth line 15 from the bottom. There is a sentence there that says, "Sites 16 have already been identified for use by these three 17 shippers"; do you see that sentence? 18 A. No. 19 Q. Sure, take your time. 20 A. Oh, okay. 21 Q. Have you identified a site for use by Aggregates 22 West? 23 A. No. I don't know what that means, "sites have been 24 identified by these three shippers." 25 MR. MARCUSE: I do not have any other
Page 58 1 MR. MARCUSE: Can we please show the witness 2 Exhibit 62, which is Ballard Terminal Railroad's December 6th 3 filing with the Surface Transportation Board. 4 MR. FERGUSON: Tom, have you got 62 handy? 5 MR. PASCHALIS: I do. You can go ahead. 6 Q. All right. Mr. Day, I will represent to you that 7 this is a document that Ballard Terminal Railroad filed with 8 the Surface Transportation Board. 9 A. Okay. 10 Q. If you look at what is marked as page 5 -- there is 11 a large page number in the bottom center of the page. 12 A. Okay. 13 Q. Page 6, excuse me. If you look at the first full 14 paragraph on page 6, the first sentence says "Extensive 15 correspondence from a multiplicity of shippers establishes 16 the reactivation of this rail line is absolutely necessary." 17 Is reactivation of the rail line necessary for Aggregates 18 West to conduct its current business? 19 A. No. 20 Q. I would like to direct your attention to the third 21 paragraph of that same page, which says, "CalPortland, one of 22 the largest aggregates shippers in the United States, 23 Aggregates West, a similarly large aggregates shipper, and 24 Wolford Trucking & Demolition, a local construction and 25 demolition heavily involved in construction projects	Page 60 1 questions. Thank you. 2 THE WITNESS: You're welcome. 3 4 E X A M I N A T I O N 5 BY MR. WAGNER: 6 Q. Mr. Day, again, I'm Jordan Wagner from Sound 7 Transit. Do you know of a company called Salmon Bay Sand & 8 Gravel? 9 A. Yes, I do. 10 Q. How do you know that company? 11 A. I just know of them. I know that they're down in 12 the Ballard area, the Shilshole Bay area. 13 Q. Would Salmon Bay be a potential customer for you 14 where you would ship aggregate? 15 A. I doubt it. From what I know about Salmon Bay, I 16 believe that they barge all of their material in from one of 17 their sites. I don't even know where their pits are, but I 18 think they barge all their material in, but I'm not sure. I 19 mean, I'll sell to anybody. 20 Q. Speaking of that, did anybody from Ballard Terminal 21 Railroad or Eastside Community Rail represent that they would 22 require your aggregate for any of their future work on the 23 railroad? 24 A. No. I mean, it would be the natural -- we were 25 hoping to sell our material for any railroad work if we were

EXHIBIT 20

Google

18016 177th Ave SE, Monroe, WA



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My places



18016 177th Ave SE
Monroe, WA 98272

Directions Search nearby more

Maps Labs - Help

Google Maps - ©2014 Google - Terms of Use - Privacy

Aggregates Vuest
crossing Area SP



Exhibit 107 Date 2/7/14
Witness Day
Wade J. Johnson 323-0919

EXHIBIT 21

JAN 27 2014

APPLICATION FOR SPECIAL USE PERMIT

Applicant Name: Hollywood Garage, LLC 40 Point 32 Kim OnOrganization/Company Name: Point 32Mailing Address: 1501 Madison Ave, Suite 400City: Seattle, WA Zip: 98122 Telephone: (Day) 206 404 9541 (Eve) —E-mail address: Korr@point32.com Fax: —Location of proposed use/alteration (include vicinity map, showing cross-streets): 14508 Woodinville Redmond Rd.Woodinville, WA 98072Parcel Number: 3405100000 - ction: — Township: — Range: — Kroll Page: —

Precise description of proposed use/alteration (Be specific, attach additional pages if necessary)

Plant trees on the property adjacent to
14508 Woodinville - Redmond Road propertyProposed start date and end date of project: Begin Jan 8 2014 End Jan 8, 2014☒ Public ☐ Private Is the proposed use/alteration for public or private purposes?☐ Yes ☒ No Is the proposed use/alteration for commercial purposes?☒ Yes ☐ No Does the proposed use/alteration provide a mutual benefit for King County?If yes, please explain. Planting trees will help minimize
blackberry invasive plants in otherwise vacant
strip of land. will also enhance future lake
trail.☐ Yes ☒ No Are there any Local, County, State or Federal permit applications pending?If yes, please list permit or application numbers: —☐ Yes ☒ No Are there any known sensitive areas, drainage features, erosion problems or unique site conditions in or near the proposed use?If yes, please explain. —Signature of Applicant: [Signature] Date: 1.10.14

County Use Only	Date Received:	Reviewer:	Permit #:
	☐ Parks ☐ Water and Land Resources ☐ Wastewater Treatment ☐ Transit ☐ Road Services ☐ Solid Waste ☐ Other	☐ Private Use ☐ Commercial Use ☐ Utility Use ☐ Mutual Benefit	☐ Temporary Use ☐ Long-term Use

TREES							
SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	DROUGHT TOLERANT	COMMENTS
	AG	19	AMELANCHIER X GRANDIFOLIA 'AUTUMN BRILLIANCE'	APPLE SERVICEBERRY	2" CAL.	NO	HIGH BRANCHING
	AM	2	ACER MACROPHYLLUM	BIGLEAF MAPLE	1 1/2" CAL.	YES	
	AC	15	ACER CIRCINATUM	VINE MAPLE	VARIES	NO	1 1/2" CALIPER OR 10-12" MULTI
	CH	10	CORNUS NUTALLII 'ED. WHITE WONDER'	PACIFIC DOGWOOD	1 1/2" CAL.	NO	
	FL	7	FRAXINUS LATIFOLIA	OREGON ASH	1 1/2" CAL.	NO	
	PM	18	PSEUDOTSUGA MENZIESII	DOUGLAS FIR	VARIES	YES	(9) 10-12'; (5) 8-10' (4) 6-8' (OFFSITE)
	SPEC	1	SPECIMEN TREE		TBD		SPECIES TO BE DETERMINED

TOTAL TREE CREDITS PROVIDED WITH NEW TREES = 1
(4) TREES OF 2" CALIPER OR GREATER PLANTED ON SITE AT 0.25 CREDITS PER TREE. 1 ADDITIONAL TREE CREDIT CALCULATED.

NOTES:
FOR PURPOSES OF THE TREE DENSITY CALCULATIONS, PROPOSED TREES 2 INCHES IN CALIPER OR GREATER PLANTED ON SITE HAVE BEEN ALLOCATED A CREDIT BASED UPON THE SIZE THAT THEY ARE PLANTED. SINCE THE EXISTING TREES TO BE RETAINED ON SITE EXCEED THE TREE DENSITY REQUIREMENTS THE CREDIT BASED UPON A PROJECTED 5 YEAR GROWTH SIZE IS NOT NECESSARY TO MEET THE REQUIREMENTS OF THE ORDINANCE.

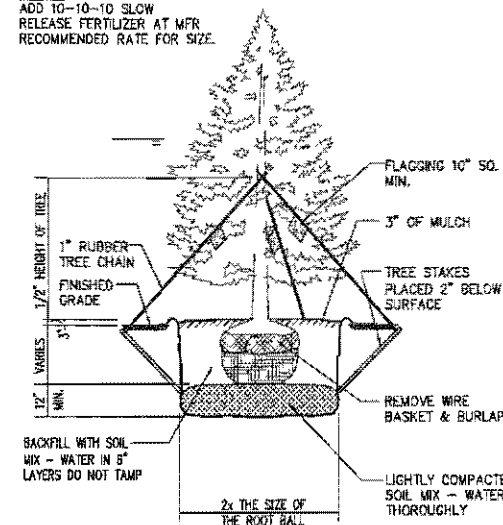
SHRUBS & VINES							
SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	DROUGHT TOLERANT	COMMENTS
	CC	31	CORYLUS CORNUTA	WESTERN HAZELNUT	2-GALLON	YES	
	GE	6	GARRYA ELIPTICA	SILK TASSEL BUSH	5-7' HIGH	YES	PROVIDED BY OWNER
	GS	143	GALTEHERIA SHALLON	SALAL	2-GALLON	YES	FOR PARKWAY (SEE ALSO GROUND COVER)
	MA	85	MAHONIA AQUIFOLIUM 'COMPACTUM'	OREGON GRAPE	2-GALLON	YES	
	OD	9	OSMANTHUS DELVAYI	DELVAY OSMANTHUS	5-GALLON	NO	
	OC	9	OEMLERIA CERASIFORMIS	INDIAN PLUM	1-GALLON	YES	
	RS	8	RUBUS SANGUINEUM 'WHITE ICICLE'	FLOWERING CURRANT	5-GALLON	NO	
	RS2	47	RUBUS SPECTABILIS	SALMONBERRY	1-GALLON	YES	
	SA	55	SYMPHORICARPOS ALBUS	SNOWBERRY	2-GALLON	YES	
	VO	36	VACCINIUM OVATUM	EVG. HUCKLEBERRY	5-GALLON	YES	
	LC	38	LONICERA CILIOSA	ORANGE HONEYSUCKLE	2-GALLON	NO	SCREEN WALL
	CT		CAMPISIS X TAGLIABUANA 'M. GALEN'	TRUMPET CREEPER	2-GALLON	YES	DISTILLERY PLANTING

GROUND COVERS							
SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	DROUGHT TOLERANT	COMMENTS
	GC1	7417 (SF)	GALTEHERIA SHALON POLYSTICHUM MUNITUM MAHONIA NERVOSA	SALAL WESTERN SWORD FERN CASCADE OREGON GRAPE	1-GALLON 1-GALLON 1-GALLON	YES YES YES	24" O.C. 24" O.C. 24" O.C. 50% OF AREA 25% OF AREA 25% OF AREA
	GC2	828 (SF)	CAREX 'ICE DANCE'	ICE DANCE SEDGE	1-GALLON	NO	12" O.C.
	GC3	815 (SF)	FRAGARIA CHILOENSIS	BEACH STRAWBERRY	1-GALLON	YES	24" O.C. UNDERPLANT PARKWAY PLANTING
	GC4	223 (SF)	LAVENDULA AGUSTIFOLIA PHLOMIS FRUTICOSA MIMULUS CARDINALIS	LAVENDER JERUSALEM SAGE SCARLET MONKEYFLOWER	1-GALLON 1-GALLON 1-GALLON	YES YES YES	18" O.C. 18" O.C. 18" O.C. 50% OF AREA 25% OF AREA 25% OF AREA
	GC5	351 (SF)	ARCTOSTAPHYLOS UVA URSI	KINKKONIK	1-GALLON	YES	18" O.C.
	GC6	4,141 (SF) (OFF-SITE)	POLYSTICHUM MUNITUM RUBUS PARVIFLORUS RUBUS SPECTABILIS	SWORD FERN THIMBLEBERRY SALMONBERRY	1-GALLON 1-GALLON 1-GALLON	YES YES YES	10" O.C. 10" O.C. 10" O.C. 40% OF AREA 20% OF AREA 40% OF AREA

1 MASTER PLANT SCHEDULE

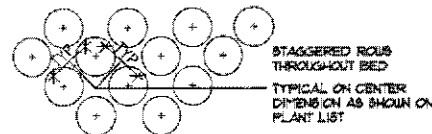
SCALE: NTS

NOTES:
ADD 10-10-10 SLOW RELEASE FERTILIZER AT MFR RECOMMENDED RATE FOR SIZE.



2 TYP. CONIFER TREE

SCALE: NTS



NOTE: SEE PLANTING PLANS FOR SHRUB AND GROUND COVER BED AREAS.
ROOTS SHALL BE STRAIGHT AND PARALLEL.

4 TYP. TRIANGULAR SPACING

SCALE: NTS

PLANTING ZONE 1

SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
	AR	3	ALNUS RUBRA	RED ALDER	1-GALLON	AS SHOWN
	FL	2	FRAXINUS LATIFOLIA	OREGON ASH	1-GALLON	AS SHOWN
	TP	1	THUJA PLICATA	WESTER RED CEDAR	1-GALLON	AS SHOWN

	PZ1	5	POLYSTICHUM MUNITUM	SWORD FERN	1-GALLON	10" O.C.
		6	RUBUS PARVIFLORUS	THIMBLEBERRY	1-GALLON	10" O.C.
		4	RUBUS SPECTABILIS	SALMONBERRY	1-GALLON	10" O.C.

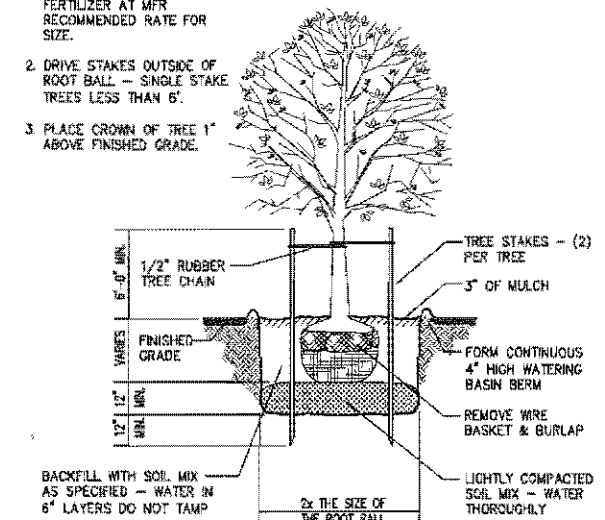
PLANTING ZONE 2

SYMBOL	KEY	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
	PZ2	5	ALNUS RUBRA	RED ALDER	1-GALLON	12" O.C.
		4	FRAXINUS LATIFOLIA	OREGON ASH	1-GALLON	12" O.C.
		8	ACER CIRCINATUM	VINE MAPLE	1-GALLON	4" O.C.
		17	POLYSTICHUM MUNITUM	SWORD FERN	1-GALLON	4" O.C.
		20	RUBUS PARVIFLORUS	THIMBLEBERRY	1-GALLON	4" O.C.
		20	RUBUS SPECTABILIS	SALMONBERRY	1-GALLON	4" O.C.
		18	SYMPHORICARPOS ALBUS	SNOWBERRY	1-GALLON	4" O.C.

6 ENHANCED BUFFER PLANT SCHEDULE

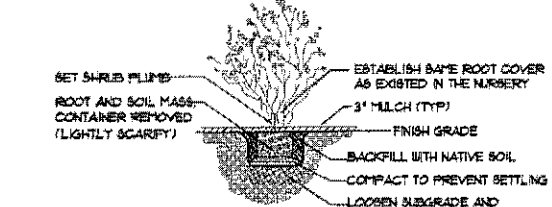
SCALE: NTS

NOTE:
1. ADD 10-10-10 SLOW RELEASE FERTILIZER AT MFR RECOMMENDED RATE FOR SIZE.
2. DRIVE STAKES OUTSIDE OF ROOT BALL - SINGLE STAKE TREES LESS THAN 6'.
3. PLACE CROWN OF TREE 1" ABOVE FINISHED GRADE.



3 TYP. DECIDUOUS TREE

SCALE: NTS



5 TYP. CONTAINER SHRUB

SCALE: NTS

1425 - 12th Avenue
Shadle, Washington 98122
206 323 3302

GRAHAM BABI

1507 W. 4th Avenue
Vancouver, WA 98660
206 441 5831
www.gerlach.com

GERLACH

PERMIT SET

Hollywood Garage

14508 WOODINVILLE REDKIND RD
WOODINVILLE, WA 98072

Project No. 1217

Date: NOV. 20, 2012

Revision: NOV. 20, 2013

Scale: AS NOTED

Sheet contents:

PLANTING DETAILS AND SCHEDULE

Sheet:

L1.02

JAN 27 2014

To JESS

12.4.13
Vn
train

Design
Pendu
trays

GRAHAM BABA

1429 - 13th Avenue
Seattle, Washington 98122
206.323.9332

1429 - 13th Avenue
Seattle, Washington 98122
206.323.9332

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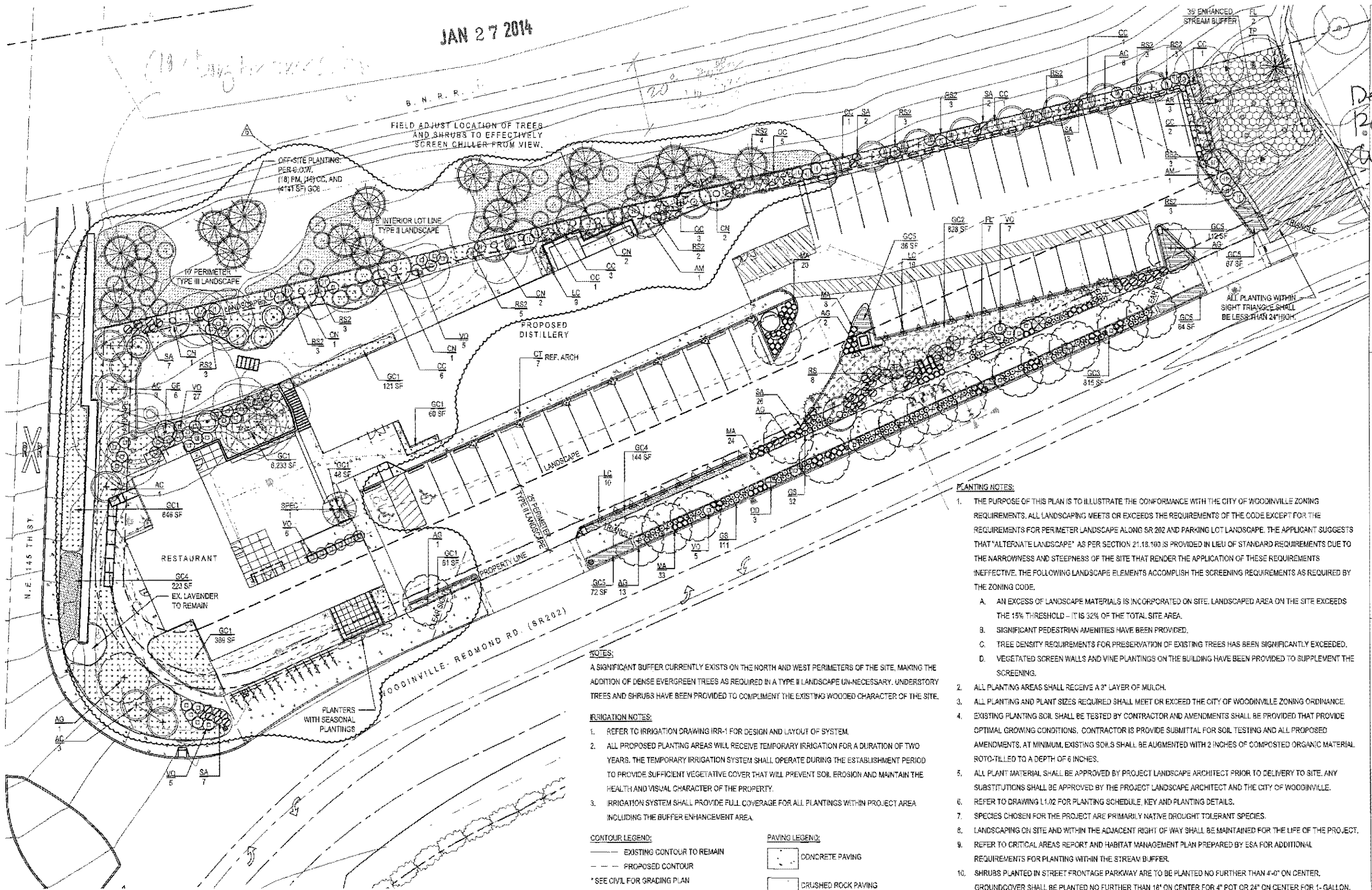
Hollywood
Garage
14505 WOODINVILLE-REDMOND RD
WOODINVILLE, WA 98072

Project No. 1217

Date: NOV. 26, 2012
Revision: NOV. 20, 2013
Scale: 1/16" = 1'-0"
Sheet contents:

PLANTING PLAN
Sheet:

L1.01



PLANTING NOTES:

1. THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE CONFORMANCE WITH THE CITY OF WOODINVILLE ZONING REQUIREMENTS. ALL LANDSCAPING MEETS OR EXCEEDS THE REQUIREMENTS OF THE CODE EXCEPT FOR THE REQUIREMENTS FOR PERIMETER LANDSCAPE ALONG SR 202 AND PARKING LOT LANDSCAPE. THE APPLICANT SUGGESTS THAT "ALTERNATE LANDSCAPE" AS PER SECTION 21.18.100 IS PROVIDED IN LIEU OF STANDARD REQUIREMENTS DUE TO THE NARROWNESS AND STEEPNESS OF THE SITE THAT RENDER THE APPLICATION OF THESE REQUIREMENTS INEFFECTIVE. THE FOLLOWING LANDSCAPE ELEMENTS ACCOMPLISH THE SCREENING REQUIREMENTS AS REQUIRED BY THE ZONING CODE.
 - A. AN EXCESS OF LANDSCAPE MATERIALS IS INCORPORATED ON SITE. LANDSCAPED AREA ON THE SITE EXCEEDS THE 15% THRESHOLD - IT IS 32% OF THE TOTAL SITE AREA.
 - B. SIGNIFICANT PEDESTRIAN AMENITIES HAVE BEEN PROVIDED.
 - C. TREE DENSITY REQUIREMENTS FOR PRESERVATION OF EXISTING TREES HAS BEEN SIGNIFICANTLY EXCEEDED.
 - D. VEGETATED SCREEN WALLS AND VINE PLANTINGS ON THE BUILDING HAVE BEEN PROVIDED TO SUPPLEMENT THE SCREENING.
2. ALL PLANTING AREAS SHALL RECEIVE A 3" LAYER OF MULCH.
3. ALL PLANTING AND PLANT SIZES REQUIRED SHALL MEET OR EXCEED THE CITY OF WOODINVILLE ZONING ORDINANCE.
4. EXISTING PLANTING SOIL SHALL BE TESTED BY CONTRACTOR AND AMENDMENTS SHALL BE PROVIDED THAT PROVIDE OPTIMAL GROWING CONDITIONS. CONTRACTOR IS PROVIDE SUBMITTAL FOR SOIL TESTING AND ALL PROPOSED AMENDMENTS. AT MINIMUM, EXISTING SOILS SHALL BE AUGMENTED WITH 2 INCHES OF COMPOSTED ORGANIC MATERIAL BOTO-TILLED TO A DEPTH OF 6 INCHES.
5. ALL PLANT MATERIAL SHALL BE APPROVED BY PROJECT LANDSCAPE ARCHITECT PRIOR TO DELIVERY TO SITE. ANY SUBSTITUTIONS SHALL BE APPROVED BY THE PROJECT LANDSCAPE ARCHITECT AND THE CITY OF WOODINVILLE.
6. REFER TO DRAWING L1.02 FOR PLANTING SCHEDULE, KEY AND PLANTING DETAILS.
7. SPECIES CHOSEN FOR THE PROJECT ARE PRIMARILY NATIVE DROUGHT TOLERANT SPECIES.
8. LANDSCAPING ON SITE AND WITHIN THE ADJACENT RIGHT OF WAY SHALL BE MAINTAINED FOR THE LIFE OF THE PROJECT.
9. REFER TO CRITICAL AREAS REPORT AND HABITAT MANAGEMENT PLAN PREPARED BY ESA FOR ADDITIONAL REQUIREMENTS FOR PLANTING WITHIN THE STREAM BUFFER.
10. SHRUBS PLANTED IN STREET FRONTAGE PARKWAY ARE TO BE PLANTED NO FURTHER THAN 4'-0" ON CENTER. GROUND COVER SHALL BE PLANTED NO FURTHER THAN 18" ON CENTER FOR 4" POT OR 24" ON CENTER FOR 1-GALLON.
11. VINES ALONG THE DISTILLERY BUILDING SHALL PROVIDE FULL COVERAGE OF POSTS IN LESS THAN 5 YEARS.
12. SHRUBS WITHIN ROADWAY FRONTAGE PLANTING SHALL PROVIDE A CONTINUOUS PLANTING WITH NO GAPS WITHIN 3 YEARS. OWNER SHALL MAINTAIN PLANTS IN STREET FRONTAGE AT HEIGHT TO MAINTAIN CLEAR SITE DISTANCE.
13. ADDITIONAL PLANTS SHALL BE PROVIDED TO ADEQUATELY SCREEN UTILITY STRUCTURES IF NECESSARY.

NOTES:

A SIGNIFICANT BUFFER CURRENTLY EXISTS ON THE NORTH AND WEST PERIMETERS OF THE SITE, MAKING THE ADDITION OF DENSE EVERGREEN TREES AS REQUIRED IN A TYPE II LANDSCAPE UN-NECESSARY. UNDERSTORY TREES AND SHRUBS HAVE BEEN PROVIDED TO COMPLEMENT THE EXISTING WOODED CHARACTER OF THE SITE.

IRRIGATION NOTES:

1. REFER TO IRRIGATION DRAWING IRR-1 FOR DESIGN AND LAYOUT OF SYSTEM.
2. ALL PROPOSED PLANTING AREAS WILL RECEIVE TEMPORARY IRRIGATION FOR A DURATION OF TWO YEARS. THE TEMPORARY IRRIGATION SYSTEM SHALL OPERATE DURING THE ESTABLISHMENT PERIOD TO PROVIDE SUFFICIENT VEGETATIVE COVER THAT WILL PREVENT SOIL EROSION AND MAINTAIN THE HEALTH AND VISUAL CHARACTER OF THE PROPERTY.
3. IRRIGATION SYSTEM SHALL PROVIDE FULL COVERAGE FOR ALL PLANTINGS WITHIN PROJECT AREA INCLUDING THE BUFFER ENHANCEMENT AREA.

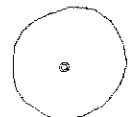
CONTOUR LEGEND:

- EXISTING CONTOUR TO REMAIN
- PROPOSED CONTOUR

* SEE CIVIL FOR GRADING PLAN

PAVING LEGEND:

- CONCRETE PAVING
- CRUSHED ROCK PAVING



EXISTING TREE TO REMAIN. REF. SHT L0.01

NOTES: SEE SHT L1.02 FOR PLANT SYMBOL KEY AND SCHEDULE

1 PLANTING PLAN
SCALE 1/16" = 1'-0"

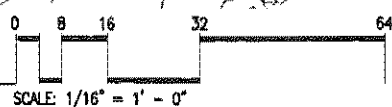


EXHIBIT 22

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 12:16 PM
To: Greg Starup
Subject: ECRR - Overview 2 of 2
Attachments: ECRR Financing 2013Sep27.pdf; ATT00052.htm

INTRODUCING

ECRR

Eastside
Community
Rail, LLC

27 September 2013

BRIDGING THE GAP

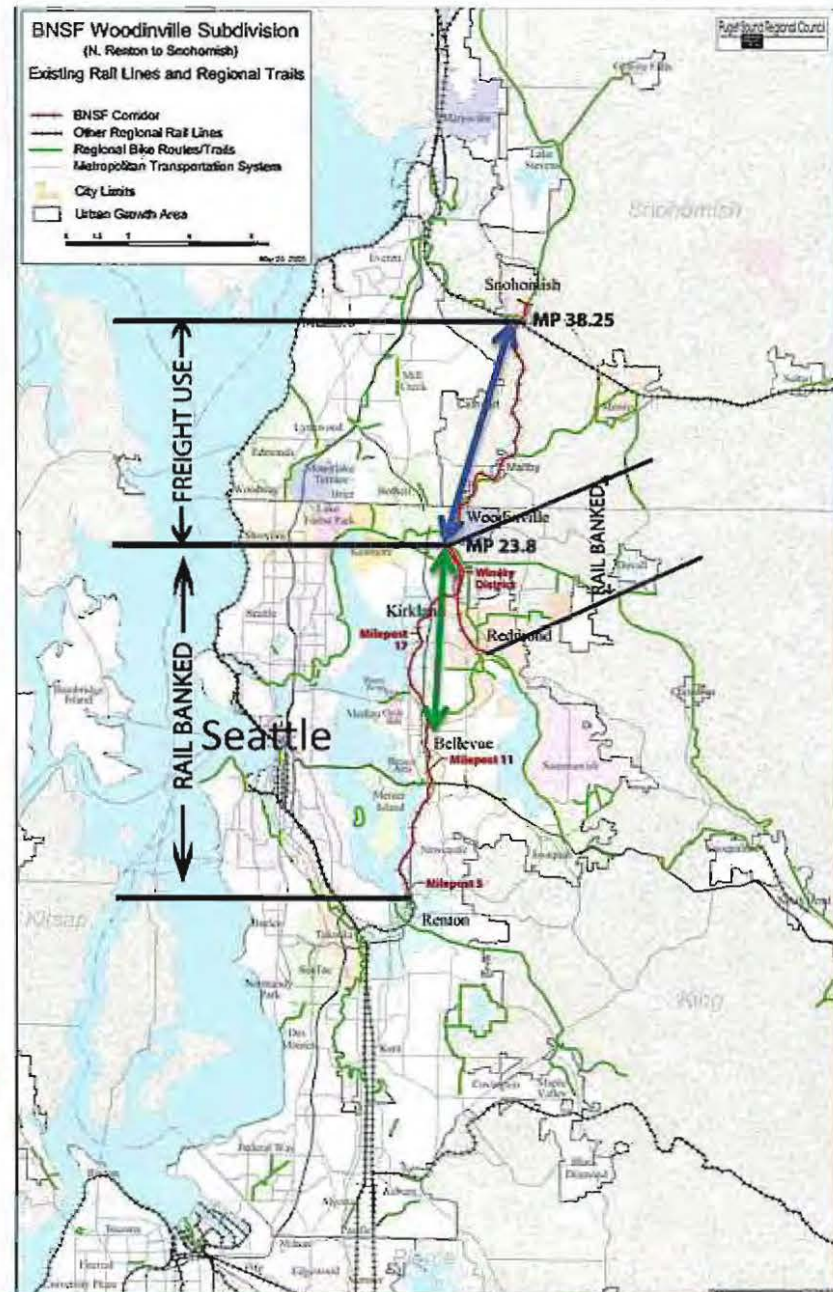
Introduction

- Who is ECRR
- Business Model
 - freight and excursion
- Stakeholders
- Maintenance of Way
- Legal Matters
- Financing Approach
- Strategy
- Offer

Eastside Community Rail (ECRR)

ECRR is a federal railroad that owns the rights to the Woodinville freight easement acquired from BNSF, milepost 38.25 to 23.8.

ECRR and Ballard Terminal Railroad Co are pursuing reactivation of the Woodinville to Bellevue segment via the Surface Transportation Board in WA D.C.



Why reactivation to Bellevue?

1. Affluent globally diverse population based on expanding technology industry
2. Economic center of Seattle's Eastside region
3. Expanding city core, including many large private construction projects (*MSFT alone has over 3M sqft*)
4. Access to Seattle market and cruise ships

Therefore, many freight, excursion, transit and development opportunities are already there.

Business Objectives

1. Freight enables federal rights

- It provides massive leverage and carefully guarded power
- Extending the rail right of way is critical, long-term

2. Develop recurring business at 11% margin

- ECRR builds and maintains projects inside the right of way
- A public trail starts as a RR maintenance of way road
- Long-term commuter service is likely

3. Re-Establish the Spirit of Washington Dinner Train

- Previous owners have come back twice wanting to do this
- Iowa Pacific Holdings wanted this in 2012
- Our business plan is for a “Bounty of Washington Tasting Train”

4. However, Transit Oriented Development (TOD) is *the* primary long-term rail opportunity

- Therefore, continue extending the rail right of way...

... alternatively

1. *Freight is the only must have.*

- Ballard Terminal Railroad Co. (BTRC) is our freight partner
- ECRR and BTRC possess federal operating rights

2. Everybody wants **trails**, two currently pending

- ECRR will build and maintain them for 11% margin

3. A rail **excursion** service is a cash cow

- Proven 15-yr, \$10M annual revenue, profitable business

4. *Commuter* will happen, only how and when

- Utilize self-propelled coaches on a single track, **not** light rail
- ECRR builds-out the line and maintains it

5. *Development* opportunities already exist on the operating line today in Woodinville.

- Therefore, continue extending the rail right of way...

Freight Customers

Operating Line

- Boise Cascade
- Spectrum Glass
- Matheus Lumber
- CT Sales (rebar fabrication – pending)

Woodinville-Bellevue

- Wolford Trucking
- CalPortland
- RJB (pipe) Wholesale
- Freight Transloader
- General Mills
- Aggregates West (pending)
- GTS Drywall (potential)

Large Construction Projects

3 million cubic yards of construction spoils to remove
(over a football field sized Sears Tower)

- Lincoln Center 2
- Main St Gateway Ctr
- Bellevue Park II Apts
- Bellevue at Main
- Bellevue Center
- Alley 111
- Alamo Manhattan
- GRE Bellevue
- Rockefeller Bell. Tower
- Marriott Hotel
- *Many others in process*
- Google Phase II
- Park Place redevelop't
- SOMA Towers
- Pacific Regent
- Spring District
- Bellevue-Redmond Rd expansion
- East Link Light Rail
 - Tunnel and ditches
- I-405 widening
- SR-522 HOV & transit

BOUNTY

OF WASHINGTON



TASTING TRAIN



RELATED PAGES

Event Spotlight

Upcoming Special Events

Important Information

The Polar Express

Grape Escape & Ales on Rails Excursions

Education Programs

**NEXT STOP
WINE
COUNTRY**

**THE GRAPE
ESCAPE
WINE TRAIN**



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Grape Escape & Ales on Rails Excursions

2013 "Grape Escape" Wine-Tasting Excursions & "Ales on Rails" Beer-Tasting Excursions

"Grape Escape" Wine-Tasting Excursions

Each trip is 2 hours in length and travels through Cuyahoga Valley National Park.

While on board, you will be introduced to 5 different wines, and each is served with a chef prepared hors d'oeuvres. You will learn of each wine's characteristics such as the body, aroma, bouquet and finish.

(Vegetarian selections can be prepared - if you need that option, just call our office and let us know!)

Everyone receives a CVSR Commemorative Tasting Glass.

Ticket Options include:

Coch Seat: \$57 per person
Seats in groups of 2 facing 2

Premium Seating: \$77 & \$90 per person
Seats in the Emerson Car. The First Class section offers comfortable, recling seats and the

STATION LOCATIONS



\$17
ADULT
\$12



Excursion Train

A Large Opportunity

- Nationwide there are 110 scenic railroads
- Cruise ship passengers: 435,000 annual boarding's
- 9.9 million overnight visitors in King County
- Nearly 100 wineries, breweries and distillers in Woodinville with worldwide visitors
- In King County \$570 million spent in Entertainment, \$1.2 billion in Food Service, an additional \$106 million in other, and \$200 million in Snohomish County
- ECRR "figures" on the same "Dinner Train" ridership, although the market has nearly doubled

Sources: Seattle Convention and Visitor's Bureau, U.S. Tourism Board, Dun and Bradstreet, Rail USA

Washington Winery Study Summary

Emailed an online survey using the AYTm.com survey service to 460 wineries with valid email addresses.

Washington wineries overwhelmingly support the Bounty of Washington Tasting Train.

- 92% want to participate with 77% wanting to participate more than 2 days a year
- 98% believe the Tasting Train will promote Washington Wine
- 93% want more information and even 69% will write letters to support public funding
- 80% of Woodinville wineries believe starting in Kirkland will help their business
- 70% believe the Tasting Train will have more customers than the 100,000 annual customers the Dinner Train had

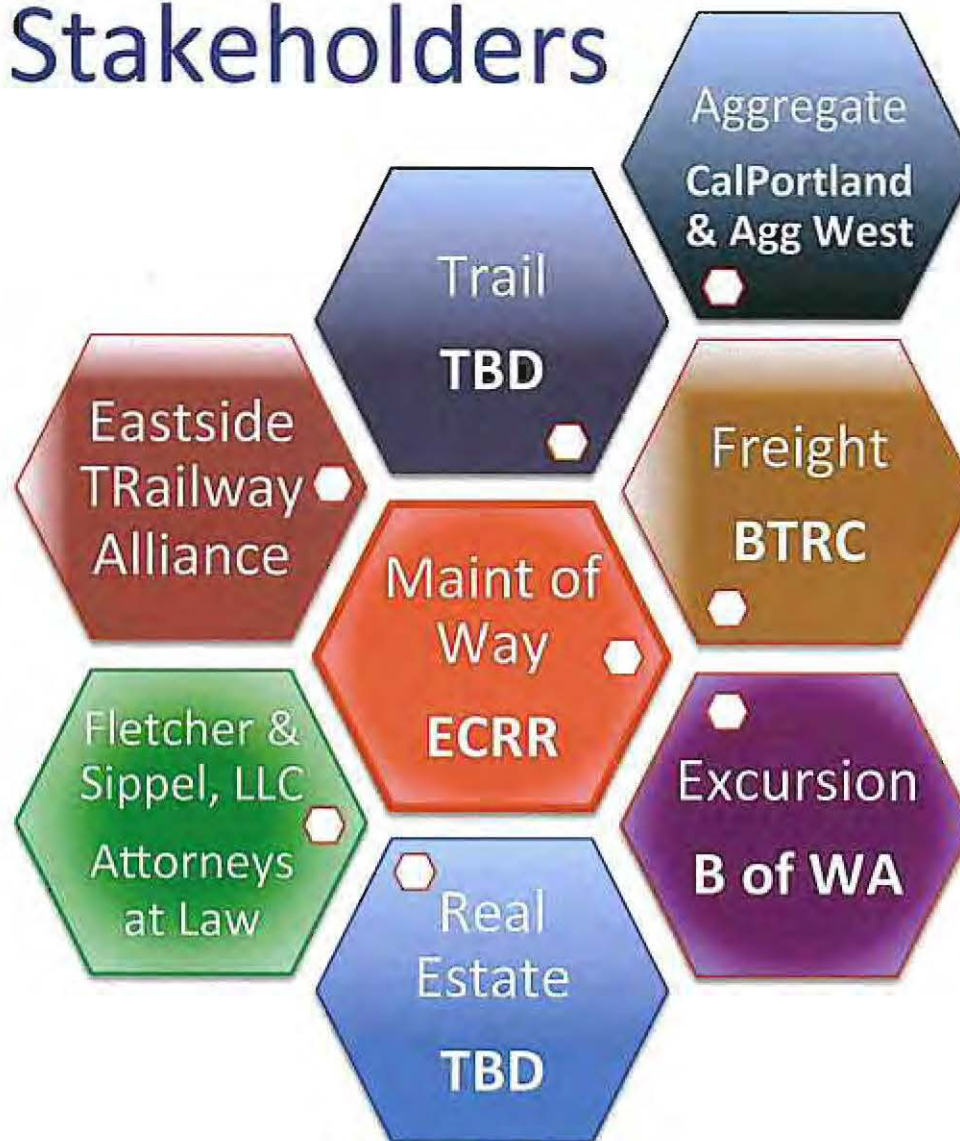
Tourism Stakeholder Insights

City of Snohomish
Snohomish County
Snohomish Tourism Board
Historic Downtown Snohomish
Snohomish Historical Society
Redmond Chamber of Commerce
Washington Wine Commission
Woodinville Wine Country
Columbia Winery
Delille Cellars
Bookwalter Wines
Ste. Michelle Wine Estates
Tulalip Resort
Seattle Convention and Visitor's Bureau
Holland America
Princess Cruises
Grayline Bus Tours

Public Support for this rail line

- WA State Legislators
 - New rail caucus formed (R), (D), legislature and senate
 - Transportation budget line item next session for \$65M
 - Proposed Railroad Partnership Act
- Snohomish County
 - Freight business
 - Excursion and tourism
 - Rails with trails
- City of Woodinville
- City of Snohomish
- Cascadia Center
- Wine, tourism, construction and other industries

Rail Stakeholders



Stakeholders – *working together*

- ECRR – central rail orchestration and extensions
- BTRC – freight service and excursion support
- Eastside TRailway Alliance
 - group of public bodies; counties, cities and NGO's
- Wolford Trucking – Bellevue construction projects
 - demolition, spoils hauling, and trail construction
- CalPortland & Aggregates West – aggregates, concrete, ballast, etc.
- Fletcher & Sippel LLC – STB legal counsel in Chicago
- Real Estate Development Team – *needed next*
- Bounty of Washington Tasting Train – following
- Future public transit – TBD

Maintenance of Way

Shared Costs = Lower Operating Cost

Best of Breed Partners to provide services

- CalPortland & Aggregates West – substructure materials
- TBD – substructure build
- Railworks – track structure
- Osmose – bridge maintenance
- NW Signal – crossings

#1 RR Revenue Premise...

Sound Transit = 100% + high capital and overhead requirements																			
Width																			
5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100

Trail only expenses not shared with rail ops.

Rail only expenses shared amongst rail operations only.

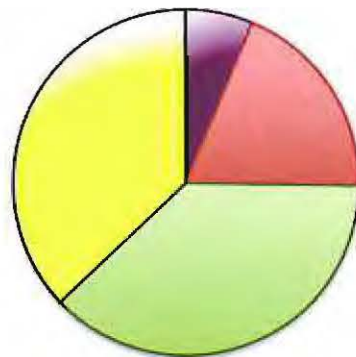


Trail expenses do not include rail structure costs.

Trail 37%	Rail 63%
-----------	----------

Net		Gross Vehicle Miles	
6%	Freight	50,000	10%
19%	Excursion	150,000	30%
38%	Commuter	300,000	60%
63%	TOTAL	500,000	100%

Cost Sharing = Lower Operating Costs



- Freight
- Excursion
- Commuter
- Trail

ECRR is a zero-sum entity, with excess year-end funds added to the ECRR capital sinking fund.

#1 Premise... why?

1. Multiple uses share the cost of maintaining the right of way, *which makes it less expensive for all.*
2. Rail services are based on gross vehicle miles.
3. Trail is based on effective width.
4. ECRR thrives when rail services are profitable.
5. ECRR would rather make an 11% margin on its works for 35-years than plan for “homeruns.”
 - “Homeruns” are major projects like rehabilitating the track or building a maintenance of way road (trail).
 - “Getting on base” is the maintenance required to sustain these investments in a quality manner to bring people back.

Legal Matters

with Ballard Terminal Railroad Company...

- Federal action *pending* at STB to reactivate Woodinville-Bellevue segment
- *Following*, file for STB reactivation of Woodinville to Wine District segment

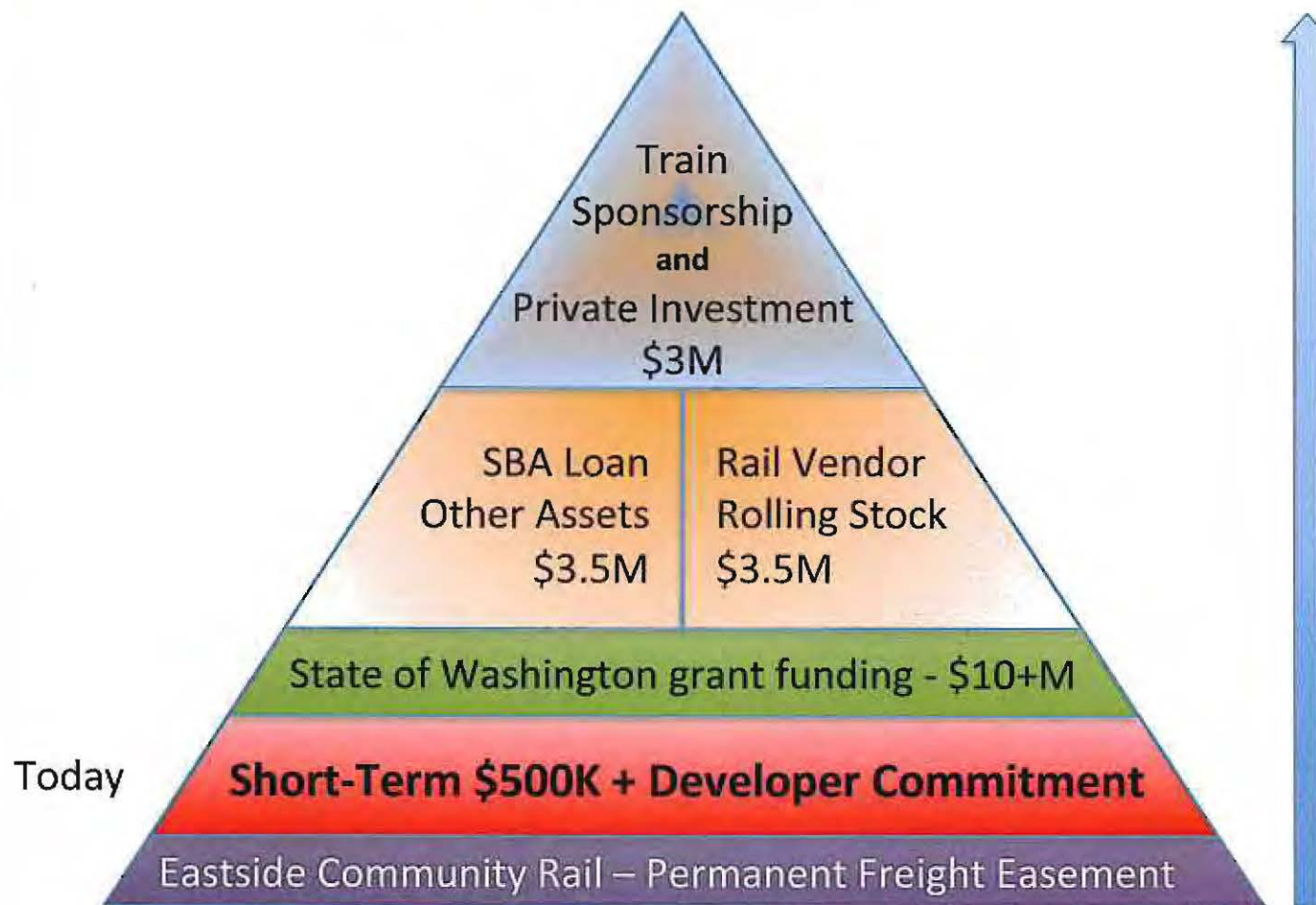
Legal Costs

back of the envelope... 100:1 ROI

Along with Ballard Terminal Railroad Co...

- The STB rejected Port of Seattle interference with ECRR and BTRC agreement.
- Obtaining reactivation rights increases regional power, returns, and minimizes long-term “process” overhead
- Likely will have to use eminent domain powers to acquire needed lands... *location, location, location*
- We will protect our federal railroad rights.

Financing Approach



Financing Approach

Key capital assumption:

Maximize grants and low interest public money

1. Developer partner/investor
 - a. Provides 1st Round for excursion, land and development
 - b. Improves STB strength for federal legal actions
 - c. Increases political stature – state and local
2. Public funding focus is on the state
 - a. \$10+M state grant for track upgrades
 - b. State legislation to facilitate public private partnerships – Railroad Partnership Act
 - c. State DOT rail loan
3. Federal loans
 - a. Small Business Administration (SBA)
 - b. Federal Railroad Administration (FRA) – Railroad Rehabilitation and Improvement Financing (RRIF) Program

Strategic Priorities

1. Grow the freight business... *in process*
2. Extend corridor mileage... *first action pending*
 - a. Woodinville – **Bellevue** (pending at STB)
 - b. Woodinville Wye – Wine District (next)
 - c. Extend rail right of way to *Everett (5-10 years)*
 - d. *Other long-range possibilities north, south and east*
3. Financing
 - a. **\$500K immediate**
 - b. **\$30M over 5-yrs**
4. Support trail and other uses = *cash flow*
5. Re-establish excursion service = *cash cow*
6. Pursue immediate real estate opportunities...

Strategic Plan by Year

Year 1 – 2014

1. Construct trails
 - ✧ Generates cash and goodwill
 - ✧ Snohomish County (funded)
 - ✧ Kirkland (or they lose the money)
2. Seek state *Railroad Partnership Act*
3. Fix track to Bellevue and general Maintenance of Way (MOW)
4. Start Bellevue freight service
 - ✧ Acquire side-dump cars
5. Initiate excursion train business
 - ✧ Track to Class 1 (15 m.p.h.)
 - ✧ Order rolling stock
 - ✧ Capital facilities
 - ✧ Business launch activities
6. Acquire hotel land in Woodinville
 - ✧ Railroad must own the land
7. Acquire Kirkland corridor segment
8. Pursue rail access to wineries

Year 2 – 2015

1. Launch excursion train
 - ✧ Cash flow positive in one year
 - ✧ State funded track upgrades to Class 2 (30 m.p.h.)
 - ✧ Service to wineries
2. Expand freight services
3. Expand trail efforts
 - ✧ King County, SnoCo, Kirkland, Woodinville and state
4. Construct parking then hotel
 - ✧ Utilize RR authorities
5. Pursue TOD opportunities

Year 3 – 2016

1. Expand rail services
2. Expand trail efforts
 - ✧ King County, SnoCo and state
3. Pursue TOD opportunities

Questions?

Offer slides follow...

Developer/Partner Offer

1. ECRR offers exclusive development rights on ECRR property along right of way.
2. The leverage of a federal railroad to accelerate entitlement process.
3. Access to 35-year low interest public railroad financing via RRIF.

Developer Requirements

Debt Financing and Guarantees

(Proposed Railroad Partnership Act may change requirements)

\$30M over 5 years for real estate development, including:

1. Freight Maintenance of Way - **\$8.0M** initial
 - ✧ State may fund/grant at \$10+M
2. Excursion train capital startup costs - **\$3.0M**
 - ✧ Cash requirement over first 3-yrs
3. SBA loan guarantee - \$3.5M
 - ✧ Requirement over 5-7 yrs
4. Rolling stock capital lease guarantee - \$3.5M
 - ✧ Plus freight side-dump cars TBD
 - ✧ 5-yr capital lease to buy option
5. Woodinville hotel land acquisition and hotel development
6. Acquire, via a railroad's eminent domain, Kirkland's 5.75 mile x 100' portion of the rail corridor (paid \$5.0M in 2012)

Interim Requirements

\$500K immediate raise

Debt Financing

- 20% first year lift to face amount
- 8% annual interest remaining four years

Uses

1. STB and Legal Fees - \$125K
2. Initial Public Relations - \$100K
3. Maintenance of Way - \$100K
4. Working Capital - \$175K

\$500K Repayment Sources - *prioritized*

1. Developer 1st Round Investment – *primary plan*
2. Snohomish County Trail – *funded*
3. Woodinville Bridge Easement – *funded*
4. Kirkland Trail – *funded pending STB reactivation decision*
5. Totem Lake access allows for EB5 investment – *pending favorable STB reactivation decision*
6. WA State DOT Rail Office Loan – *in plan for 2015*
 - Typically a no or low interest loan, needs legislative approval
7. FRA RRIF loan – *requires investor 2014-15*
 - 35-yr low interest loan, one-year to process with support
8. Another RR
 - Exit plan if no development investor

EXHIBIT 23

From: Doug Engle <Doug.Engle@EsCRail.org>
Sent: Saturday, October 19, 2013 12:15 PM
To: Greg Starup
Subject: ECRR - Overview 1 of 2
Attachments: 2013 STB Support Letter Log.pdf; ATT00190.htm; Ballard Customer Locations.pdf; ATT00191.htm; Bellevue Target Site.pdf; ATT00192.htm; ECR Proposal OpLine 2013Jan28.pdf; ATT00193.htm; ECRR 500K Debt Summary 2013Sep27.pdf; ATT00194.htm; ECRR Investment Summary 2013Oct1.pdf; ATT00195.htm; ECRR Spoils Hauling comparative analysis - 2013July19.pdf; ATT00196.htm; STB Revenue Adequacy 9Oct12.pdf; ATT00197.htm

Good day Greg,

Thank you for your time yesterday.

I hope that you appreciate the tremendous progress we've made since we first met.

I am sending you a series of emails that address specific areas of the excursion and freight train businesses.

As you recall, separately, we have people interested in the development aspects along the right of way. We have willing sellers in Woodinville that will allow us to execute on both a base of operations for the excursion train and development aspects.

Critically, we have an action before the Surface Transportation Board (STB) that require demonstration of financial feasibility for this rail project.

It is important that we come to a general agreement on the structure and conditions for a SBA loan in the next couple of weeks.

Of course, feel free to call me with any questions or comments so we can accomplish this.

Attached are overview documents concerning ECRR and freight that we spoke to yesterday.

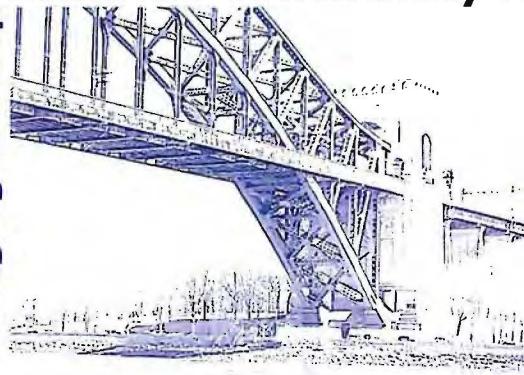
Best regards,

Doug

Douglas Engle, MBA, CBI
Managing Director
Eastside Community Rail
425-891-4223
Member IBBA

Bounty of Washington: Tasting Train Facebook

Eastside Community Rail



27 September 2013

\$500,000 HIGH YIELD DEBT OPPORTUNITY

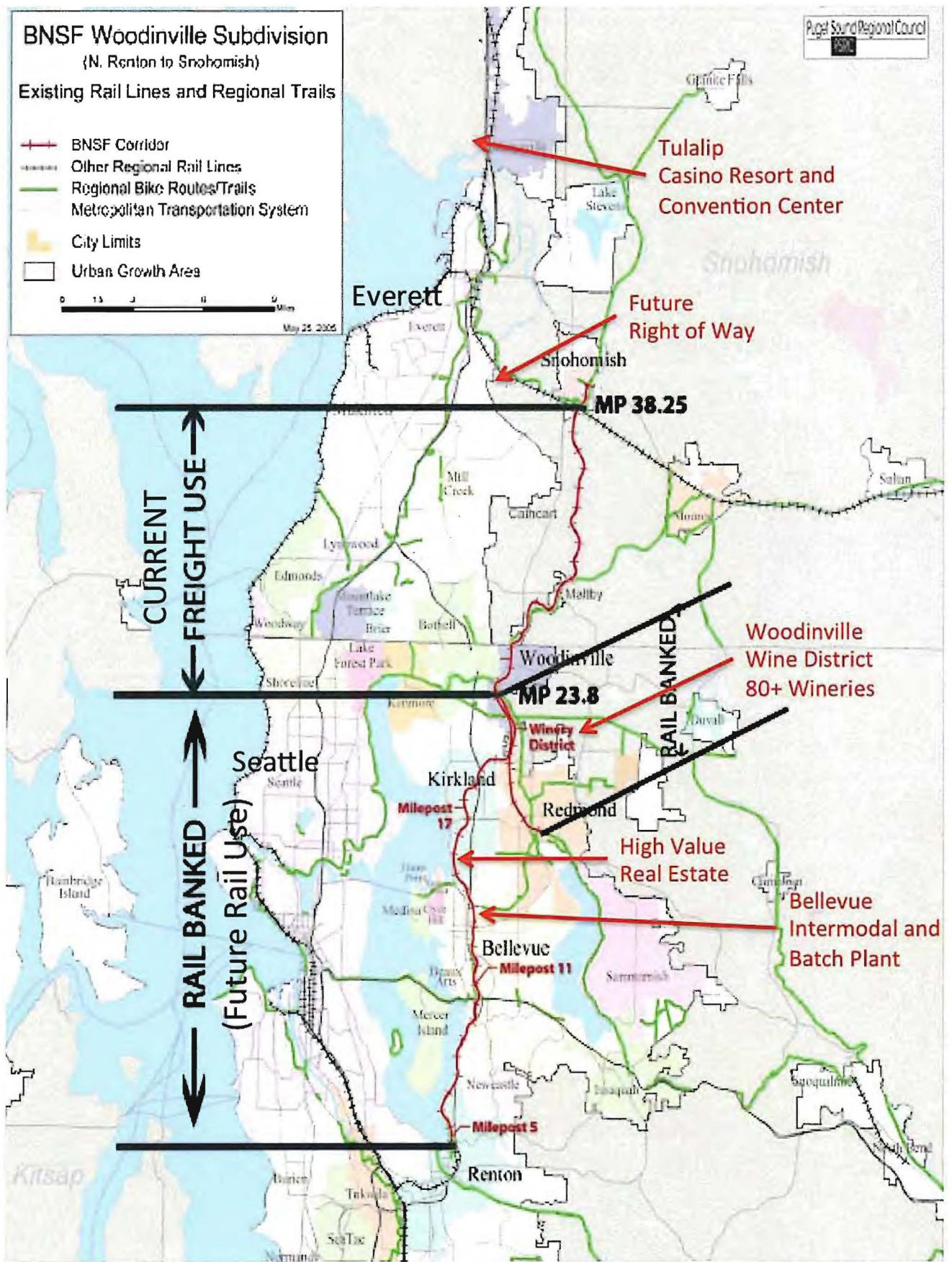
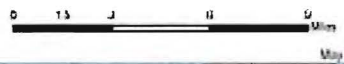
Minimum Subscription Amount of \$10,000

60 months maximum term, 20% step-up in principal, 8% annual interest rate

PROJECT	Continue freight and re-start passenger excursion rail service in the Seattle, WA area (see attached map). ECRR owns federal rail operating rights on the 14-mile rail corridor between Snohomish and Woodinville, WA. Over \$500,000 in debt has been invested, and new capital is needed to provide working capital necessary to complete federal legal actions at the Surface Transportation Board, continue freight operations, and raise the first round of development funding. Broad public agency and private freight support has been achieved with emphasis on an excursion train.
PROJECT CAPITAL USES	\$ 125,000 STB, federal and other legal fees \$ 100,000 Public Relations \$ 100,000 Maintenance of Way \$ 175,000 Working capital and operating expenses \$ 500,000 Total Capital Needed
COLLATERAL AVAILABLE	Real estate lien against "Woodinville Freight Easement", a valuable and transferable right to operate freight traffic on the rail corridor.
CAPITAL INVESTED	\$500,000 in debt attached to "Woodinville Freight Easement"
REPAYMENT PLAN	60-month term on Note. The primary source of repayment is intended to be a first round development investment. Capital can also be repaid with cash flow and/or other funding sources such as building funded public projects for two trails and sale of a bridge easement to Woodinville. Any missed quarterly interest payments will be accrued.
CLOSING	As soon as possible, but before September 30, 2013
HIGH RETURN POTENTIAL	20% principal step-up at investment 8% annual interest on principle and step-up Projected annualized return of 10.3% over the five-year term
ADDITIONAL PROJECT ATTRIBUTES	Freight rail service on the line has been operated by Ballard Terminal RR Co (BTRC) since January 2010. ECRR has an agreement in place with BTRC to continue servicing the line. ECRR has been in discussion with existing and new potential users of the line and believes sufficient pent-up demand exists for freight volumes to grow substantially CY 2013 and beyond. As freight volumes grow to support the line, ECRR intends to re-establish the high-margin passenger excursion service (e.g. a dinner train), replicating a service that profitably ran on the line for nearly 15 years.
CONTACT	Doug Engle, 425-891-4223, Doug.Engle@EsCRail.org

BNSF Woodinville Subdivision (N. Renton to Snohomish) Existing Rail Lines and Regional Trails

-  BNSF Corridor
-  Other Regional Rail Lines
-  Regional Bike Routes/Trails
-  Metropolitan Transportation System
-  City Limits
-  Urban Growth Area





EASTSIDE COMMUNITY RAIL BRIDGING THE GAP

1 October 2013

RAILROAD INVESTMENT and REAL ESTATE OPPORTUNITY

Eastside Community Rail (ECRR) owns the reserved freight easement for 14-miles of operating track 30-minutes northeast of Seattle, WA as granted by the federal Surface Transportation Board (STB). A petition to reactivate an additional 12-miles between Bellevue and Woodinville is currently before the STB. The Washington State Legislature is currently looking at providing track upgrade funding and other works for \$10-65 million and legislation for state guarantees of federal railroad loans.

Improving freight mobility is important to the state, and underlies the federal authorities of a railroad. An excursion train will leverage the nearly 100 wineries in Woodinville and has extensive tourism potential while generating sales taxes. Several real estate projects have been identified. A rail commuter service will be on this line in 5-10 years, which makes transit oriented development the primary opportunity.

Freight currently operates on the line and several additional customers have been identified and written letters of support for reactivation. This will enable the freight operations to be profitable and sustainable long-term with \$1-2M in revenues. Freight also enables access to 35-year low interest federal loans.

A recent excursion train profitably operated on this line for 15-years generating over \$10M in revenue. A bridge was removed with the I-405 widening in Bellevue, the Port of Seattle purchased the right of way from BNSF, and the Dinner Train was forced to cease operations. Wineries, tourism groups and investors generating "overwhelming support" have vetted statewide research for a new format Bounty of Washington Tasting Train. The Port of Seattle recently invested in cruise ship terminals, which have generated 435,000 annual boarding's. The Tasting Train should be able to add 20% of these passengers to nearly double the Dinner Train's counts. Revenues are expected to be \$10-15 million annually.

Railroads are granted their authorities under the Interstate Commerce Clause in the U. S. Constitution. Inside the right of way, they have exclusive authority over states and have the power of eminent domain. Local regulations, ordinances and permitting are not required for railroad operations, including development of structures. The critical point is the railroad must own the land to leverage these rights to minimize the entitlement process.

The primary use of a \$30 million investment is to stabilize freight to maintain federal rights, re-establish a proven and profitable excursion train, and acquire right of way and adjacent land for immediate development. Today, a letter of credit will secure first right of refusal after this next legislative session to secure these opportunities.

Contact: Douglas Engle, Managing Director | +1-425-891-4223 | Doug.Engle@EsCRail.org

DRAFT for Discussion Purposes Only

DRAFT for Discussion Purposes Only

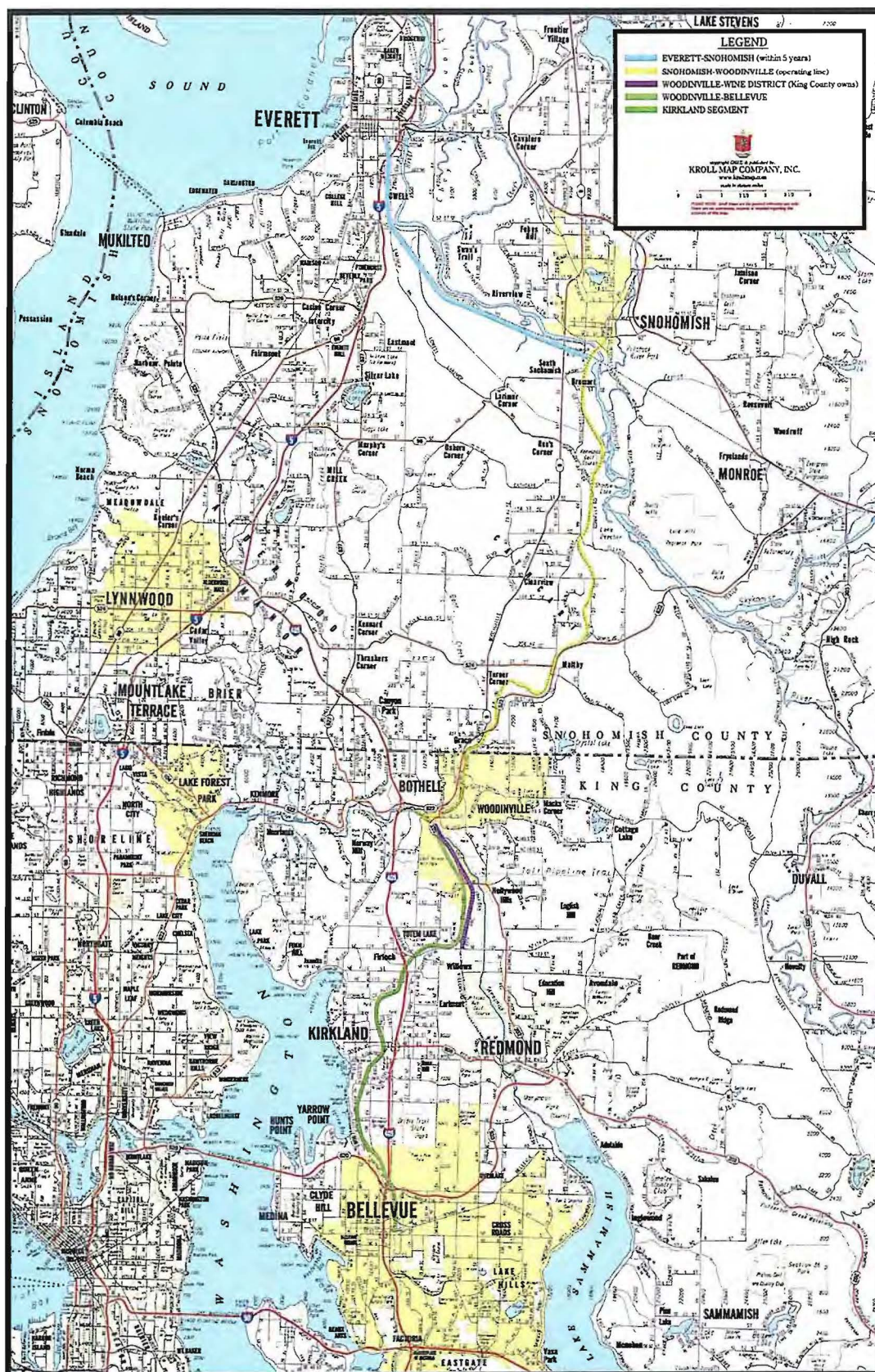


EXHIBIT 24

Confidential Information Filed Separately Under Seal

EXHIBIT 25

KIRKLAND_V_EASTSIDE_RAIL_CORRIDOR_0021620-00004 2013-0522 Engle, Douglas 5/22
/2013 12:00 PM

Condensed Transcript

Prepared by:

Adam Hinz
STOEL RIVES LLP

Friday, February 14, 2014

Page 1 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	Page 3 DOUGLAS ENGLE - Wednesday, May 22, 2013 I N D E X EXAMINATION BY: Page(s) Mr. Ferguson 7 Mr. Cohen 203 Mr. Wagner 216 Mr. Marcuse 225 Mr. Montgomery 232 *** FURTHER EXAMINATION BY: Page(s) Mr. Ferguson 235 *** EXHIBITS FOR IDENTIFICATION: Letter from Fletcher & Sippel dated May 20, 2013 14 E-mail string 19
Page 2 A P P E A R A N C E S FOR THE CITY OF KIRKLAND: HUNTER FERGUSON MATTHEW COHEN STOEL RIVES, LLP 600 University Street, Suite 3600 Seattle, Washington 98101 (206) 624-0900 hoferguson@stoel.com mcohen@stoel.com FOR KING COUNTY: ANDREW MARCUSE SENIOR DEPUTY PROSECUTING ATTORNEY CIVIL DIVISION KING COUNTY PROSECUTING ATTORNEY W400 King County Courthouse 516 Third Avenue Seattle, Washington 98104 (206) 477-1094 andrew.marcuse@kingcounty.gov FOR SOUND TRANSIT: JORDAN WAGNER SOUND TRANSIT 401 S. Jackson Street Seattle, Washington 98104 (206) 398-5000 jordan.wagner@soundtransit.org FOR THE WITNESS and BALLARD TERMINAL RAILWAY: TOM MONTGOMERY MONTGOMERY SCARP, PLLC 1218 Third Avenue, 27th Floor Seattle, Washington 98101 (206) 625-1801 tom@montgomeryscarp.com	Page 4 E X H I B I T S - (Continuing) EXHIBITS FOR IDENTIFICATION Letter from Michael Skrivan at CalPortland 26 Notice of Deposition 29 Eastside Community Rail, LLC's Response to City of Kirkland's Documents Requests 29 Engagement Agreement between EB5 Capital and Eastside Community Rail 50 Organizational honeycomb chart 55 Document entitled Eastside Community Rail Corridor Alignment Cost Sharing Example as of 2013 May 3 59 Document entitled Port of Seattle Capital Improvements to Eastside Rail Corridor 86 Document entitled Eastside Rail Corridor Rehabilitation Proposal 99 Document entitled Ballard Terminal Railroad Eastside Freight Railroad Meeker Southern Railroad 104 Document entitled Ballard Terminal Railroad Company and Eastside Community Rail, Analysis of comparative cost of hauling excavation spoils 107

Page 57 1 have collaborated on works that we both hold. I think we 2 have a common interest in getting it off the ground. And I 3 believe that we have an understanding between us that 4 that's her business. And my business is Eastside Community 5 Rail. Her business is not freight. Her business is not 6 real estate. 7 Q. (By Mr. Ferguson) Are you aware of an entity 8 that will operate an excursion train? 9 A. We intend that operation to be formed in the 10 future, once we have identified funding to upgrade the rail 11 corridor to a passenger level of service. 12 Q. Okay. Do you intend for Ballard Terminal 13 Railroad to use any of its existing or future rolling stock 14 for the excursion train? 15 A. No. 16 Q. What about engineers and operating personnel, 17 where will they come from for the excursion train? 18 A. I believe the most likely scenario is the 19 engineer and conductor will be provided by Ballard 20 Terminal -- 21 Q. Okay. 22 A. -- Railroad. And the staffing would be provided 23 by Bounty of Washington. The scheduling -- 24 Q. When you say "staffing," you mean waiters, 25 bartenders?	Page 59 1 Q. (By Mr. Ferguson) With the pie chart? 2 A. Yes. 3 Q. Is that a stand-alone document or is that 4 attached to something else? 5 A. It should be stand alone, but... 6 Q. Okay. 7 (Exhibit Number 23 marked.) 8 MR. WAGNER: Is that Bates stamped? 9 MR. MONTGOMERY: It's not. It was brought 10 today. 11 MR. WAGNER: It was -- 12 THE WITNESS: It was previously submitted. 13 MR. WAGNER: I've seen that in here 14 (indicating). 15 THE WITNESS: I added -- 16 MR. FERGUSON: Let's go off the record for a 17 second. 18 (Discussion held off the record.) 19 MR. FERGUSON: Back on. 20 Q. (By Mr. Ferguson) Mr. Engle, the court reporter 21 just handed you what's been marked as Exhibit 23. This is 22 a document that you brought to the deposition this morning 23 entitled "Eastside Community Rail Corridor Alignment Cost 24 Sharing Example as of 2013 May 3." 25 Would you explain what this document is, please?
Page 58 1 A. Yes. 2 Q. Busboys, expeditors, people that run a 3 restaurant? 4 A. Yes. 5 Q. Okay. 6 A. And I believe that all the scheduling will be 7 managed and maintained by Ballard Terminal. 8 Q. Coming back to Ms. Cox, does she have any 9 financial interest in Eastside Community Rail? 10 A. No. 11 Q. She doesn't have a debt position in the company? 12 A. Only a moral obligation from GNP bankruptcy. 13 Q. Ms. Cox owes your company a moral obligation? 14 A. No, I owe her. I brought friends and family into 15 GNP and I personally would like to pay those people back in 16 the future. I consider that my moral obligation to those 17 individuals that were good enough to give me some of their 18 time in exchange for debt. 19 Q. How does ECR generate revenue? 20 A. Let me point it out so he can get it. 21 MR. MONTGOMERY: Sure. 22 MR. FERGUSON: Which page are you looking 23 for? 24 THE WITNESS: Please find that page 25 (indicating).	Page 60 1 A. In answer -- response to your question as to how 2 does ECR make its money, ECR makes its money based on a 3 share of the revenue stream of the various activities 4 inside the rail corridor. We have previously, in your 5 package, in the documents I submitted, is a document that 6 relates to the Surface Transportation Board's revenue 7 adequacy rate of return, which over the last several years 8 is about 11 percent. 9 So it is my intention to be able to offer more 10 cost effective service to those entities using the right of 11 way and make 11 percent margin on that business. For 12 example, if this corridor is a hundred feet wide, for the 13 purposes of this document, with freight only operating 14 inside the corridor, all of the maintenance of way cost are 15 the burden of Ballard Terminal Railroad. 16 If, for example, we were to add a trail to that, 17 we believe that excluding the rail structure, which is why 18 I resubmitted this, there is a sentence there that says 19 "Trail expenses do not include rail structure costs," that 20 the trail -- if the trail had 37 feet of the right of way, 21 that for those general purposes of maintaining the right of 22 way, keeping the weeds down, keeping the ditches clean, 23 water flow, et cetera, that the trail would pay for its 24 37 feet of the right of way. 25 Now, then, if it was a trail only use, that the

Page 61 1 user would be responsible also for 100 percent of the right 2 of way cost and maintenance. So in the simple scenario, 3 where there's freight and trail for the maintenance of way 4 costs excluding railroad structure, the rails is only going 5 to pay 63 percent and the trail is only going to pay 6 37 percent. The rail is always responsible for the rail 7 structure costs. 8 So taking this to the next, which is the little 9 table over here in the center to the right, after talking 10 to KPNG, whatever allocation method you choose to pursue, 11 you need to stick with it. So whether you use gross ton 12 miles, gross vehicle miles, percent of revenue, percent of 13 cost, whatever that is, you do it and you stick with it. 14 We decided, from an administrative standpoint, 15 the easiest way to calculate, and the most consistent way 16 to do this is gross vehicle miles. So for example, if 17 freight constituted 50,000 vehicle miles in a year, and 18 excursion constituted 150,000, and let's say some day in 19 the future commuter was added into the mix, they would be 20 the busiest at 300,000 miles, then that rail portion would 21 get divvied up 10 percent to freight, 30 percent to 22 excursion, 60 percent to commuter. What that would mean 23 overall in the red numbers underneath net is that the 24 freight would be paying 6 percent; excursion, 19; commuter, 25 38; trail, 37.	Page 63 1 drive the cost out of them. 2 So with this, we get the maximum public benefit 3 that, for example, the east -- the King County's Eastside 4 Rail Corridor Regional Advisory Committee has discussed. 5 And rather than putting layers of management and 6 maintenance and coordinating who does what, in the areas 7 that Eastside Community Rail owns the freight easement and 8 therefore owns the operation inside the corridor, this is 9 how we can add value and substantially lower costs for 10 everyone. 11 So that's how Eastside Community Rail plans on 12 managing money. And we can do that because we're going to 13 have very low overhead. I'm not picking on Sound Transit 14 here, but Sound Transit has got buildings of people 15 planning and trying to get things done. We're going to 16 have a handful of people, so we think this is a very 17 economic model. 18 Q. Is your revenue stream, then, to be paid by 19 every, whatever the users might be, every user of the 20 corridor? 21 A. Yes, that's my intention. 22 Q. So maintain the infrastructure and to cut back 23 the vegetation? 24 A. To maintain the right of way. 25 Q. Okay. Does Eastside Community Rail have a
Page 62 1 So what it is, it's an allocation, a cost 2 allocation model, where each public benefit in the corridor 3 pays its share of the maintenance cost. And by setting 4 this up and managing it, it becomes less costly for each 5 one of the entities. And at the same time, I can make the 6 federal rate of return out of it for managing and taking 7 care of those functions. 8 There's a significant amount of work that goes in 9 to maintaining the right of way, including crossings, you 10 know. Beyond the vegetation, there's coordinating, let's 11 say, that somebody wants to have a sewer line that cuts 12 across the right of way, that work has to be coordinated. 13 The trail would have to be maintained. Those kinds of 14 things. 15 So after extensive amount of work, looking at 16 this, quite frankly over the last five years, this model 17 offers the lowest cost solution for all users of the 18 corridor. And additionally, the way we do this -- because 19 one of the things that I started was involved in 20 starting -- you may have heard of software as a service. 21 While the rest of the world was getting warm and fuzzy with 22 us back in '98 and '99, I was quietly putting together 23 programs. And my first two rollouts were Ford and General 24 Motors, Ford globally. I know annuity models, and I know 25 utility based pricing models, how they work and how to	Page 64 1 current revenue stream? 2 A. Yes. 3 Q. And what comprises that revenue stream? 4 A. Our agreement with Ballard Terminal rail, as it 5 exists today, I get \$10 a car moved. Eastside Community 6 Rail gets \$10 per car moved. 7 Q. Is that the only source of revenue for Eastside 8 Community Rail? 9 A. Today, yes. 10 Q. And do you know how many cars have moved over the 11 freight segment in the year 2013? 12 MR. MONTGOMERY: I'm going to object to the 13 extent this constitutes discovery with regard to the 14 freight segment. 15 THE WITNESS: No, I don't. 16 Q. (By Mr. Ferguson) Do you know if it's more than 17 a hundred? 18 MR. MONTGOMERY: Same objection. 19 THE WITNESS: No, I don't. 20 Q. (By Mr. Ferguson) Do you know how much revenue 21 you've received from Ballard in 2013? 22 MR. MONTGOMERY: Same objection. 23 THE WITNESS: None this far. We anticipate 24 squaring the books up at year-end. Even though it is set 25 up for quarterly payment, we'll square up at year-end.