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October 17, 2013
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

STB Finance Docket No. 35731

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

EXHIBITS IN SUPPORT OF COMMENTS OF KING COUNTY, WASHINGTON AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY TO BALLARD TERMINAL RAILROAD COMPANY, LLC.'S PETITIONS

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Dated: October 17, 2013

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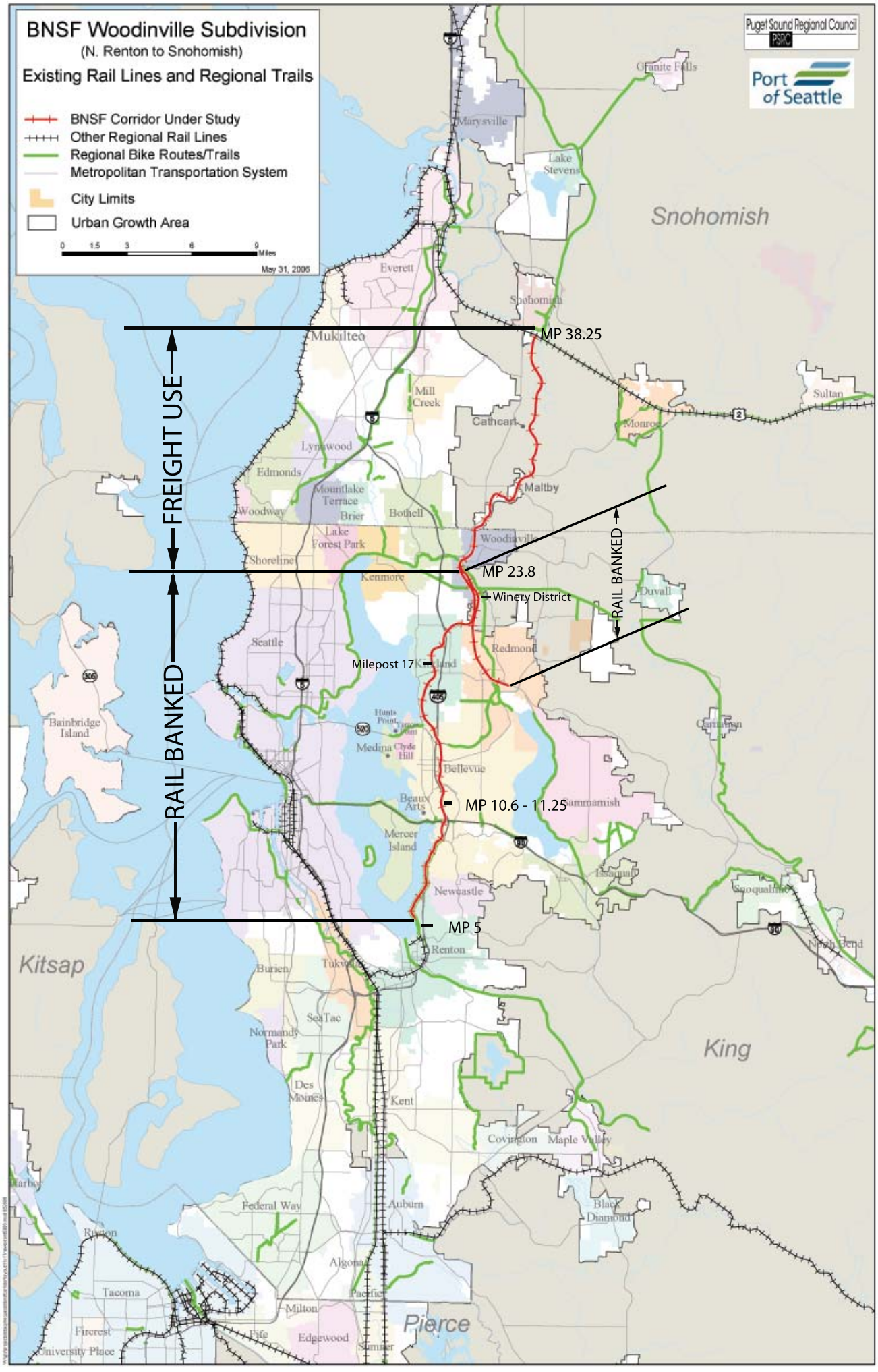

BNSF Woodinville Subdivision
(N. Renton to Snohomish)
Existing Rail Lines and Regional Trails
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Other Regional Rail Lines
Regional Bike Routes/Trails
Metropolitan Transportation System
City Limits
Urban Growth Area
0 1.5 3 6 9 Miles
May 31, 2006
Puget Sound Regional Council
PSRC
Port of Seattle
FREIGHT USE
RAIL BANKED
RAIL BANKED
MP 38.25
MP 23.8
Winery District
Milepost 17
MP 10.6 - 11.25
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Snohomish
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Woodinville
Shoreline
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Bainbridge Island
Hunts Point
Medina
Clyde Hill
Bellevue
Beaux Arts
Issaquah
Mercer Island
Newcastle
Renton
Tukwila
Burien
SeaTac
Normandy Park
Des Moines
Kent
Covington
Maple Valley
Federal Way
Auburn
Black Diamond
Algona
Pacific
Tacoma
Milton
Fircrest
University Place
Fife
Edgewood
Sumner

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

DOUGLAS ENGLE

Taken at 600 University Street, Suite 3600

Seattle, Washington

DATE: Wednesday, May 22, 2013

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

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MR. MONTGOMERY: Object to the extent it calls for a legal conclusion. Object to the form; foundation.

THE WITNESS: So you want me to answer?

MR. MONTGOMERY: I'm done. I think I'm done with my objections. If you give me some more time, I will come up with some more.

THE WITNESS: Do you want to repeat the question, please?

Q. (By Mr. Ferguson) Do you consider yourself to be a party in interest in the STB proceedings?

MR. MONTGOMERY: Object to form. Object to the extent it calls for a legal conclusion. Foundation.

THE WITNESS: Of course.

Q. (By Mr. Ferguson) Why?

MR. MONTGOMERY: Same objections.

THE WITNESS: Mr. Cole's objectives and my objectives are the same, and that is to maximize profit. It's the fundamental basis of the American dream.

Q. (By Mr. Ferguson) Are you represented by counsel in connection with preparing any materials for submission to the Surface Transportation Board?

MR. MONTGOMERY: Object to the form; foundation, extent it calls for a legal conclusion.

THE WITNESS: So, repeat the question again.

Kemper Development. Did have conversation or left two voice mails for Wright Runstad, and they were never returned.

So those would be the only two other contacts. Made two phone calls in to a person at Safeway, actually be more than two, but only had one conversation, and that went nowhere. And I don't recall how far back that was.

Q. (By Mr. Ferguson) Thanks for clarifying. The only -- you didn't have any written communications with Kemper Freeman?

A. I believe --

Q. Or narrow it a little more, you didn't have any e-mails with Kemper Freeman?

A. There were some e-mails with Bruce Nurse primarily.

Q. Did you search for Mr. Nurse?

A. I believe it's Tim Hill. I believe the e-mails -- I don't recall looking for Bruce Nurse particularly, now that you say that.

Q. And the other individual was Tim Hill, you said --

A. I believe --

Q. -- from Kemper?

A. -- that's his name. I think it's Tim, and I don't recall his last name. I think it's Hill.

Q. Do you recall, I just want to talk about e-mails right now.

A. Mm-hm (answers affirmatively).

Q. Do you recall searching for e-mails, either to or from Mr. Hill?

A. No.

Q. Do you recall searching for e-mails to or from anyone at Kemper Freeman?

MR. COHEN: It's Kemper Development.

Q. (By Mr. Ferguson) Kemper Development?

A. Those were the only two contacts we had. And all communication ceased after Jane Hague visited.

Q. When you say "Jane Hague visited," are you referring to a member of the King County Council?

A. Yes, she and Kurt Triplett.

Q. When you say they visited, visited what, visited you?

A. They -- it's my understanding that they both visited Kemper Development Company after we had made initial forays, and all communications ceased after those visits.

Q. Do you remember when that was?

A. January, February.

Q. Okay. How did you hear about that visit?

A. A person at Kemper advised us, and I don't recall

the person's name, advised us that Jane Hague had been. And Kurt Triplett personally told us that he had visited both Wright Runstad and Kemper Development.

Q. You said you left two voice mails for Wright Runstad. Did you leave them in a general inbox or did you leave them for someone specific?

A. Jessica Powers.

Q. You said those voice mails were never returned?

A. Correct.

Q. Okay. Did you attempt to communicate in any form or communicate in any form with anyone else at Wright Runstad?

A. No, she was the previous contact that I had a couple years ago.

Q. Through GNP?

A. Yes.

Q. Okay. So earlier I asked if you had any communications, any written communications. And you've produced what appear to be memos or letters that you've sent to Kemper. And we may talk about those later. But you didn't have any written communications with Wright Runstad?

MR. MONTGOMERY: Object to the form.

THE WITNESS: None that I recall. Simply, in this -- in the time period we're talking about, the two

voice mails that I left with Jessica. And prior to that, the communication I had had, meetings I had had were with GNP.

Q. (By Mr. Ferguson) Okay. To be clear, when I asked about any written communications with either Kemper or Wright Runstad, I'm referring to the period from August 2012 till present. You haven't had any written communications with Wright Runstad during that period?

A. Correct.

Q. Okay. Other than CalPortland and Wolford Trucking and Demolition, are you aware of any entity that has expressed an interest in receiving freight rail service on the line?

A. No.

Q. For Number 6 --

A. Can I take notes without it -- or are you going to ask for a copy of them when I'm done?

MR. MONTGOMERY: Mm-hm (answers affirmatively), don't take notes.

Q. (By Mr. Ferguson) Just the way it works. If you're -- I realize we're jumping around time frame, companies, e-mails, letters, memos. At any point, you can stop and say, Hold on, Hunter, I'm not clear. We really want to get clarity here for the record and none of this is intended, although it may have the effect of being

THE WITNESS: Eastside Community Rail has no employees.

Q. (By Mr. Ferguson) Okay. Is she an agent of Eastside Community Rail?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

THE WITNESS: There are no agreements between Ms. Cox and Eastside Community Rail or Marketing Philharmonic and Eastside Community Rail.

Q. (By Mr. Ferguson) Is she a shareholder of ECR?

A. No.

Q. Does she have a title connection with her involvement with ECR?

A. She, as we represent ourselves as in charge of the excursion train. And it might be helpful, sorry, but I brought it, might be helpful if we --

Q. We're going to come to the honeycomb, don't worry.

A. Well, if you would like to get your questions answered, this might be a faster, more expedient way to get that done.

Q. Okay. Let's do it.

MR. MONTGOMERY: Where's your set? Are you going to mark a set?

THE WITNESS: I just want to do the

have collaborated on works that we both hold. I think we have a common interest in getting it off the ground. And I believe that we have an understanding between us that that's her business. And my business is Eastside Community Rail. Her business is not freight. Her business is not real estate.

Q. (By Mr. Ferguson) Are you aware of an entity that will operate an excursion train?

A. We intend that operation to be formed in the future, once we have identified funding to upgrade the rail corridor to a passenger level of service.

Q. Okay. Do you intend for Ballard Terminal Railroad to use any of its existing or future rolling stock for the excursion train?

A. No.

Q. What about engineers and operating personnel, where will they come from for the excursion train?

A. I believe the most likely scenario is the engineer and conductor will be provided by Ballard Terminal --

Q. Okay.

A. -- Railroad. And the staffing would be provided by Bounty of Washington. The scheduling --

Q. When you say "staffing," you mean waiters, bartenders?

A. Yes.

Q. Busboys, expeditors, people that run a restaurant?

A. Yes.

Q. Okay.

A. And I believe that all the scheduling will be managed and maintained by Ballard Terminal.

Q. Coming back to Ms. Cox, does she have any financial interest in Eastside Community Rail?

A. No.

Q. She doesn't have a debt position in the company?

A. Only a moral obligation from GNP bankruptcy.

Q. Ms. Cox owes your company a moral obligation?

A. No, I owe her. I brought friends and family into GNP and I personally would like to pay those people back in the future. I consider that my moral obligation to those individuals that were good enough to give me some of their time in exchange for debt.

Q. How does ECR generate revenue?

A. Let me point it out so he can get it.

MR. MONTGOMERY: Sure.

MR. FERGUSON: Which page are you looking for?

THE WITNESS: Please find that page (indicating).

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

A. In answer -- response to your question as to how does ECR make its money, ECR makes its money based on a share of the revenue stream of the various activities inside the rail corridor. We have previously, in your package, in the documents I submitted, is a document that relates to the Surface Transportation Board's revenue adequacy rate of return, which over the last several years is about 11 percent.

So it is my intention to be able to offer more cost effective service to those entities using the right of way and make 11 percent margin on that business. For example, if this corridor is a hundred feet wide, for the purposes of this document, with freight only operating inside the corridor, all of the maintenance of way cost are the burden of Ballard Terminal Railroad.

If, for example, we were to add a trail to that, we believe that excluding the rail structure, which is why I resubmitted this, there is a sentence there that says "Trail expenses do not include rail structure costs," that the trail -- if the trail had 37 feet of the right of way, that for those general purposes of maintaining the right of way, keeping the weeds down, keeping the ditches clean, water flow, et cetera, that the trail would pay for its 37 feet of the right of way.

Now, then, if it was a trail only use, that the

user would be responsible also for 100 percent of the right of way cost and maintenance. So in the simple scenario, where there's freight and trail for the maintenance of way costs excluding railroad structure, the rails is only going to pay 63 percent and the trail is only going to pay 37 percent. The rail is always responsible for the rail structure costs.

So taking this to the next, which is the little table over here in the center to the right, after talking to KPNG, whatever allocation method you choose to pursue, you need to stick with it. So whether you use gross ton miles, gross vehicle miles, percent of revenue, percent of cost, whatever that is, you do it and you stick with it.

We decided, from an administrative standpoint, the easiest way to calculate, and the most consistent way to do this is gross vehicle miles. So for example, if freight constituted 50,000 vehicle miles in a year, and excursion constituted 150,000, and let's say some day in the future commuter was added into the mix, they would be the busiest at 300,000 miles, then that rail portion would get divvied up 10 percent to freight, 30 percent to excursion, 60 percent to commuter. What that would mean overall in the red numbers underneath net is that the freight would be paying 6 percent; excursion, 19; commuter, 38; trail, 37.

response to the discovery requests?

A. Yes, I did.

Q. And did you find anything?

A. I believe this is another one that my attorneys in Chicago objected to providing. I provided the documents. I would say that 80 percent of the conversation has been around a trail between Brightwater and Maltby.

Q. So you found documents, communications with representatives of Snohomish County, but some of those you haven't produced?

A. I believe there are some e-mails that exist, I haven't searched for them. But I believe there are some e-mails that exist between, it would be primarily Steve Thompson, Steve Dickson, would be my two primary contacts. And again, those have been primarily related to the trail.

MR. MONTGOMERY: Again, Eastside has made it clear, and I know you know this, that it objected to and didn't produce documents related to the freight segment.

Q. (By Mr. Ferguson) Do you have a contract with Snohomish County to construct a trail or maintenance of way road alongside the freight segment?

A. No.

Q. Do you have a contract with any other public agency to construct a maintenance of way road or a trail alongside the freight segment?

A. No.

Q. Number 16 asks for all communications related to the line or the freight segment with reps of the city of Snohomish. Have you had any written communications with Snohomish city reps since June 2011?

A. Given that you've already subpoenaed all of their e-mail, you would have that. Any other records have already been provided.

Q. That's not my question, though. Have you had communications with Snohomish County, excuse me, City of Snohomish representatives since June 2011?

A. Yes.

Q. Okay. When you searched for documents in response to Kirkland's discovery requests, did you search for communications with City of Snohomish reps?

A. No.

Q. Do you believe that you have in your possession, either hard copies, stored in a computer or an e-mail, communications with the City of Snohomish reps?

A. Not as it relates to e-mail.

Q. So do you believe you have hard copies of communications with City of Snohomish reps?

A. I don't understand your question.

Q. Okay. I'll rephrase it.

Maybe I misunderstood your answer, so I'm going

A. Yeah. Yes.

MR. MONTGOMERY: Sorry, again, object to the extent it relates to north of the segment at issue here.

Go ahead.

THE WITNESS: Yes, the difference between this and the 6.26 million that's floated around is the fact that there is 9 percent use tax in here. So if you took that out, it would be 6.26.

Q. (By Mr. Ferguson) Okay. Who is that funding going to? Who is this request going to be made to?

A. Well, the request was made to the state legislature, and --

Q. How was that request made?

A. Well, we were trying to figure that out when the Snohomish County Executive's office blew up.

Q. Do you know who made the request?

A. The guy who was supposed to make the request was involved in a research scandal.

Q. Do you know his name?

A. Kevin.

Q. Okay. And he was an official with Snohomish County?

A. He was on staff, yes.

Q. All right. Do you know if he or anyone else made a request for this funding?

A. We were never able to get it in to the proper form in the time frame required by the legislature. We missed the window.

Q. And this is a request you had made to the Washington Department of Transportation or did you make it to --

A. Under -- we made this directly with the legislature to get into the transportation budget, which it didn't get even as a line item zero. Okay, so it didn't even make any of the hurdles.

So, the department of -- after a phone call -- after a conversations with WSDOT, there were no -- we had missed the window for them and there was no opportunity to get funding in this legislative session through them either. So until 2015, there will be no state or WSDOT improvements made to the line.

Q. Okay. Mr. Engle, if we understood your testimony correctly, you said that some amount of maintenance needed to be done to keep freight moving; is that correct?

A. When I hear that back, that doesn't sound exactly right. There's always maintenance that needs to be done.

MR. FERGUSON: Can you find that in the answers and read that back, please.

Conscious of the time here, folks.

(Answer on Page 89, Lines 6 through 22

Rail's organization. If you look at Page 4 of Exhibit 19, the subpoena. We asked you for all versions of Eastside Community Rail's articles of incorporation, formation documents, corporate bylaws, annual reports and tax returns. And you produced to us a certificate of formation and an initial annual report.

Are there any other documents that reflect the corporate organization of ECR, other than those that you produced to us?

A. Nope.

Q. Eastside Community Rail a limited liability company, correct?

A. Yes.

Q. Is it a single member LLC?

A. Yes.

Q. Are you the only member?

A. Yes.

Q. Is there any other individual who has an interest in ECR?

MR. MONTGOMERY: Object to the form.

THE WITNESS: I would say there's a lot of people that have interest. But I would say --

Q. (By Mr. Ferguson) Financial statement in the company?

A. Nobody, other than the people that I owe money

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A. None other than compensation for their scheduling and crews.

Q. Okay. Did you have to provide any assurances to EB5 about the percentage of revenue ECR would take from the excursion train?

A. There were no assurances, no.

Q. Is there a barrier to running excursion service right now?

A. The track --

MR. MONTGOMERY: Sorry, object to the form and foundation.

Go ahead. Thank you.

THE WITNESS: The track, as classified by Ballard Terminal, is in excepted condition. Excepted condition does not allow you to run passenger operations, per Exhibit 25.

Q. (By Mr. Ferguson) So that's what -- there needs to be at least a $6.4 million investment, capital investment in the segment to bring it up to standard to run passenger service. If the number is wrong, correct me on the number.

A. I believe the number is less than that, like $5 million instead of 6, roughly to get it up to a Class 1 condition and you can operate passenger rail in a Class 1 condition.

Q. That's a slower rate of speed than a Class 2, correct?

A. Yes, it is.

Q. And there currently is no funding for that upgrade --

A. Correct.

Q. -- correct?

Okay. If I understood you correctly when we first discussed the EB5 agreement, I believe there's an option that EB5 holds; is that right?

A. Yes.

Q. Can you explain what that is?

A. Exhibit 21, Page 2, Section 4.

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion. The document speaks for itself.

Go ahead.

THE WITNESS: "Consideration."

An equity interest ownership equal to 15 percent of ECR, including equivalent ownership and any newly formed joint venture related to the assets acquired from GNP. Et cetera, et cetera.

Q. (By Mr. Ferguson) Okay. Has EB5 exercised that option?

A. No.

reflected here, at least, would accrue only once those acquisitions are made?

A. Correct.

Q. There are ongoing maintenance costs for the existing rail infrastructure?

A. Correct.

Q. And Ballard covers those?

A. Correct.

Q. Does ECR own any real property between Snohomish and Bellevue?

A. It owns the permanent freight easement between Snohomish and Woodinville.

Q. Does it own title to any land?

A. No.

Q. Has it attempted to acquire title to any land since June 2011, any point between Woodinville and Bellevue?

A. No.

Q. Does ECR have a deal with Woodinville to convey any rights to an easement for its bridge project?

A. When I get a deposit, we will enter those discussions.

Q. How much is the deposit that you have to have?

A. I don't know yet. It will be based on the appraisal.

between Woodinville and Snohomish?

A. Any portion of the Eastside rail corridor.

Q. Is your relationship with Ballard defined by any written agreement?

A. Just the lease agreement.

Q. Okay. Is there any, are there any other oral agreements that you have with Ballard that --

A. As I previously mentioned, I have a couple of debts with him. I have a scheduling and crew understanding with him, as it relates to the excursion train. That's, I think, the extent of it.

Q. Okay. So is the only written agreement that defines your business relationship with Ballard, then, the lease agreement, and this is the lease agreement that you and Mr. Cole signed last month?

A. Yes, it is.

Q. Okay. The court reporter has marked as Exhibit 30 a copy of the lease agreement. Mr. Engle, do you know if the Port of Seattle has given its approval as to the terms of this lease agreement?

A. The Port of Seattle has issues with this agreement. Or with the O&M agreement.

Q. Which O&M agreement, is this the O&M agreement between GNP and the Port that ECR assumed?

A. Yes.

understanding that before this lease agreement can become effective, the STB has to have approved this lease through whatever procedure it might do so?

A. Yes. And in the meantime, the interim lease is in effect.

Q. And that would be the interim operating agreement --

A. Yes.

Q. -- signed back in September?

A. Yes.

Q. Okay. So do you know whether this lease agreement is actually in effect at the moment?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

THE WITNESS: I thought about it a couple times this week already, but I keep forgetting to find out what the status is. I've been distracted with another matter.

Q. (By Mr. Ferguson) Have you talked to Mr. Cole about whether this is now the agreement that governs the business relationship between ECR and BTR?

A. I believe we are both acting as if it is the lease agreement between us. We are simply waiting for the rubber stamp from the STB.

Q. Are you expecting to receive some sort of notice

Q. Are any payments being made to Eastside Community Rail?

A. Nope.

Q. Have any been made to Eastside Community Rail?

A. Yes, I believe that I received a payment from the trustee, which I immediately signed over to Ballard Terminal for deposit only.

Q. Okay. Turning to Page 4 under Section 4 titled "Lease Compensation," this, again, is in the lease agreement Exhibit 30. Subpart B states that "Ballard shall pay to ECRR a lease payment of $10 per loaded car."

Is that the term providing for the $10 per car payment that you referenced earlier in which you hope will be reconciled at the end of the year?

A. Yes.

Q. Okay. Subpart C provides Ballard shall pay the Port fees required to be paid by ECRR to the Port as set forth in sections of the O&M agreement, that's the $10 payment that you referenced that Ballard is supposed to pay to the Port?

A. Yes.

Q. Do you know if there are any other payments, other than that $10 per car payment owing to the Port under the O&M agreement?

A. Any other payments? These are the only two

MR. MONTGOMERY: Object to the form.

Q. (By Mr. Ferguson) 2008?

MR. MONTGOMERY: Same objection.

THE WITNESS: Yes.

Q. Okay. Well, why wasn't there an effort to try to run freight on the line in those years?

A. In 2008, Burlington Northern was still operating the line and was in the process of selling it to Seattle, Port of Seattle, King County, and the same time driving shippers offline. So it wanted, as a demand of King County, wanted all the shippers off the line from Bellevue to Woodinville. And Redmond to Woodinville.

Q. Okay. But the shippers you're talking about, CalPortland and Bobby Wolford, they're not on the line, right?

A. The line is defined?

Q. As from Woodinville to Bellevue.

A. Correct. They are not on the line.

Q. Okay. And their business is concerned with moving in aggregate materials and moving out dirt and other materials?

A. Yes.

Q. So then, and construction had been ongoing, you agreed earlier, correct?

A. Yes.

Q. So then why wasn't, say, an offer of financial assistance made to step in and continue to provide freight rail service in 2008?

A. Because we believed the Port of Seattle, and we believed King County that they really wanted rails and trails, which turned out to be a bad assumption.

Q. Were you in a position to make a payment, I mean had you considered making an OFA to BNSF in 2008?

A. In 2009, yes. To purchase the entire corridor.

Q. When you say the entire corridor, you mean the entire Woodinville subdivision, all 40 plus miles of it?

A. Yes.

Q. How much were you willing to pay at that point?

MR. MONTGOMERY: Can we define who "we" is? Object to the form. It might be helpful.

Q. (By Mr. Ferguson) I guess ECR didn't exist then?

A. Correct.

Q. It would have been GNP Railway, Inc.?

A. Yes.

Q. How much was GNP Railway, Inc. prepared to pay at that point?

A. 81 million.

Q. And was that to be financed in a partnership with Ballard Terminal Railroad?

A. Ballard Terminal would have still been the

freight operator. I'm not sure, you're asking me to speculate on the terms of that. We had --

Q. No, I'm not asking you to speculate. I didn't ask you directly, so I'll ask it now. What was the source of the $81 million that you just referenced?

A. The Federal Railroad Administration.

Q. In the form of a grant?

A. In the form of a loan, low interest loan.

Q. So the FRA, you thought, was going to make a loan of $81 million to GNP to buy the asset from BNSF?

A. Yes, using the dirt, the fee as collateral.

Q. Okay. And did you ever step forward with -- did you ever make that offer to BNSF?

A. Yes, we did. And I believe that's the only reason the Port of Seattle eventually stepped up and closed the deal.

Q. Did you explore getting any moneys above and beyond 81 million?

A. Our loan package, I believe, at that time, was 140 million, or something like that. I don't recall exactly.

Q. Okay. Do you have any estimate as to what the value of the real estate constituting the line is between Woodinville and Bellevue?

A. 7 million be my guess, maybe eight.

their situations have changed. And I haven't gone to them and asked them for their continued interest. And I, quite frankly, would feel really bad if somebody picked up the phone and called them and they're like, yeah, we talked about it, but I'm sure as hell not doing that right now. Kind of blah, blah, I'm not asking them to do it right now, so I'm just...

Q. You don't need to say any more about it.

A. Thank you.

Q. Moving back to the business plan, the last paragraph in this first page.

A. Mm-hm (answers affirmatively).

Q. States that, "Given the track's publicly rehabilitated, Bounty of Washington tasting train will represent more than 90 percent of ESCR's income."

Is that an accurate projection of the proportion of revenue you expect to be generated from the excursion train?

A. Versus the freight on the existing operating line, yes.

Q. So is this business plan, this projection limited to the freight segment running between Woodinville and Snohomish?

A. Yes, it is.

Q. That amount does not account for any revenues,

almost entirely excursion.

Q. So your one begins only upon the receipt of funding to rehabilitate the line to move from excepted class to either Class 1 or Class 2?

A. Yes.

Q. Okay. Does this contemplate the running of an excursion train on the line from Woodinville to Bellevue?

A. No.

Q. Do you have plans, though, to run an excursion train, if you receive funding and if Ballard accesses the line from Woodinville to Bellevue, to run an excursion train south of Woodinville?

A. It's my understanding that Kathy and the wineries would love to get to Bellevue.

Q. Do you know if any track upgrades will be necessary on that 12-mile segment from Woodinville to Bellevue to run a passenger excursion train?

A. Yes, they would be.

Q. And what would the funding source for that be?

A. Given we're presently waiting until the 2015 legislative session, I would suspect that it will be a combination of sources significantly dependent upon the state and local interest.

Q. So the earliest that an excursion train can run from Woodinville to Bellevue would be at least after the

2015 legislative session?

A. Correct.

Q. Will, if Ballard accesses the line between Woodinville and Bellevue, do you expect ECR to have any responsibilities for maintaining the right of way on that line?

A. Not until there's additional services required on the line, or inside the right of way.

Q. Do you have any understanding of how Ballard will be able to maintain the operating costs for that line in addition to its obligations to maintain the freight segment?

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

THE WITNESS: And as pointed out by Chuck Bromley from Boise Cascade, it's all about line density. It's all about the number of cars on the line. And any increases in traffic make your fixed costs go down proportional to each car. So the more cars we get on the line, the easier it is for -- to maintain the line and make a buck.

Q. (By Mr. Ferguson) Okay. Looking at the graph titled "Daily" -- or staying with "Revenue" for a second. This freight revenue line, is that a flat line?

A. It pretty much -- it's taking the existing

A. Yes.

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

A. Try that again.

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

A. Yes.

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

MR. MONTGOMERY: Objection; foundation.

THE WITNESS: Yes, that we both would be.

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

(Exhibit Number 32 marked.)

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

In the e-mail that reads from your Comcast

account to Kurt Triplett and Mr. Yang, did you write this message?

A. Yes.

Q. Under bullet point number 1, it reads, "The railroad drops its freight plans and therefore reactivation to pursue this process."

Would you please explain what this sentence means?

A. That if Kirkland was willing to allow the excursion train to the south Kirkland Park & Ride, that we would drop freight plans, which was a huge give on our part.

Q. Why would it be a huge give, as you put it?

A. Because I believe there's 50,000 carloads that could be moved out of Kirkland or out of Bellevue.

Q. Why would you give that up, then?

A. Trying to come to a mutually satisfactory agreement.

Q. To just then allow the excursion train to run on the line between Woodinville and Bellevue?

A. Yes.

Q. Who is Ernie Wilson?

A. Ernie Wilson is a rail fan.

Q. How do you know Mr. Wilson?

A. We were looking at redeveloping our condominium

E X A M I N A T I O N

BY MR. MONTGOMERY:

Q. Following up on one of Mr. Marcuse's questions. I believe long, long ago, this morning, when Mr. Ferguson asked you a question about whether or not Eastside Community Rail and Ballard Terminal Railroad had a joint defense agreement. Do you remember that question?

A. Yes.

Q. You answered no; is that right?

A. I believe so.

Q. Why did you answer no?

A. Because Number 1, we're not defendants of anything, and, Number 2, we don't have a written agreement to that end.

Q. Did Eastside Community Rail retain Fletcher Sippel to assist it with the federal court case and/or the STB application, to the extent you needed help and advice?

A. Yes.

Q. Did Eastside Community Rail retain Montgomery Scarp for the same purposes?

A. Yes.

Q. Is it your understanding that communications, written or verbal, between you as Eastside Community Rail and anyone at Fletcher Sippel, the lawyer from Fletcher Sippel, are confidential?

A. Yes.

Q. Is it your expectation and understanding that any communications related to representation with personnel at Montgomery Scarp are confidential?

A. Yes.

Q. Is it your understanding that Ballard Terminal Railroad retained Fletcher Sippel for the purposes of assisting with the federal court action and the STB proceeding?

A. Yes.

Q. Is it your understanding that Ballard Terminal Railroad retained Montgomery Scarp for the same purposes?

A. Yes.

Q. Would you expect communications between individuals at Ballard Terminal Railroad such as Mr. Cole and either Fletcher Sippel or Montgomery Scarp to be confidential?

A. Yes.

Q. Would you expect communications among yourself, Mr. Cole and attorneys either at Fletcher Sippel or Montgomery Scarp to be confidential?

A. Yes.

Q. Would you expect communications among all four of us to be confidential?

A. Yes.

Q. I probably am the only person in the room who didn't understand this. I just want to make it clear. Exhibit 33 which was the discussion about a million dollar deal where Woodinville would acquire land in fee and freight easement, do you remember that bunch of testimony?

A. Yes.

Q. And again, I think I'm the only person who misunderstood this. Were you talking about, in any hypothetical offer, giving up entire rights for freight to transit there or something different?

A. I have only an expectation of conveying our rights in some manner for Woodinville to construct their bridge on the area of the corridor that they require to build their bridge, that's it. Just that. And I don't know how that's going to be conveyed.

Q. Would you expect freight service to terminate past that point?

A. No. Again, I think my best analogy is it's like blocking one lane of the freeway.

Q. And one more question, a very small point and I don't know if I can find the exhibits, so maybe I'll describe it. There's an exhibit with four graphs in color, the upper left quadrant had a bunch of yellow and the upper right quadrant related to passengers, correct?

A. Yes.

Q. I don't know the exhibit number.

MR. MONTGOMERY: Does anybody know the exhibit number?

THE WITNESS: Yes, it's on the front here. 6.

Q. (By Mr. Montgomery) It says "daily ridership" in the upper right quadrant; is that correct?

A. No.

Q. What is it supposed to be?

A. Annual ridership.

MR. MONTGOMERY: I have no further questions. Thank you.

THE WITNESS: Four years of that being --

MR. MONTGOMERY: They know.

MR. FERGUSON: I have a couple follow-ups.

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

BY MR. FERGUSON:

Q. Mr. Engle, in the past six months, have you received any communications from Fletcher Sippel attorney or Montgomery and Scarp attorney that also included any individual that was not a Fletcher & Sippel attorney or staff or Montgomery and Scarp attorney and staff?

A. Try that again. I think I got it.

Q. Have you ever had a conference with Myles Tobin

where Byron Cole was a participant in?

A. Yes.

Q. Have you ever received e-mails from Myles Tobin which Byron Cole was copied on?

A. Yes.

Q. Have you sent any e-mails to Myles Tobin that you copied Byron Cole on?

A. Yes.

Q. And is the same true for attorneys from Montgomery and Scarp?

A. Yes.

Q. Okay.

MR. FERGUSON: I don't have anything further. Thank you for patiently sitting through the day.

MR. MONTGOMERY: Are we off the record.

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

(Signature was reserved.)

CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing deposition of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That, according to CR 30(e), the witness was given the opportunity to examine, read and sign the deposition after same was transcribed, unless indicated in the record that the review was waived;

That all objections made at the time of said examination have been noted by me;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the witness coming before me was duly sworn or did affirm to tell the truth;

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made at the time of the foregoing examination and said transcript was prepared pursuant to the Washington Administrative Code 308-14-124 preparation guidelines;

Katie J Nelson

Katie J. Nelson, CCR, RPR,
Certified Court Reporter 2971 for
the State of Washington residing at
Redmond, Washington. My CCR
certification expires on 10/22/13.

STARKOVICH REPORTING SERVICES
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Wednesday, May 22, 2013

To: Emily Finnegan
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606

Re: Surface Transportation Board
Deposition of: DOUGLAS ENGLE
Date Taken: Wednesday, May 22, 2013

PLEASE TAKE NOTICE THAT:

Enclosed are two forms: "Affidavit" and a "Correction Sheet." Instruct the deponent to review the deposition, record any corrections on the Correction Sheet, and sign the Affidavit before a Notary Public. Return both forms to this office for their inclusion in the original transcript and distribution to other parties. The transcript will be forwarded to the appropriate party: June 24, 2013.

Thank you for your assistance in obtaining signature.

By: Katie J. Nelson, RPR, CCR, CCR No. 2971

cc: HUNTER FERGUSON, ANDREW MARCUSE, JORDAN WAGNER, TOM MONTGOMERY

A F F I D A V I T

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I have read my within deposition, and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the "CORRECTIONS" flyleaf page hereof.

_____
DOUGLAS ENGLE

SUBSCRIBED AND SWORN to before me

this_____ day of _____, 2013.

_____
NOTARY PUBLIC in and for
the State of _____,
residing at _____.
My commission expires
_____.

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C O R R E C T I O N   S H E E T

PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

PAGE	LINE	CORRECTION AND REASON

EXHIBIT 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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

STB Finance Docket No. 35407

GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502

VERIFIED STATEMENT OF SUSAN ODOM

REGARDING PETITIONS OF GNP RLY INC.

I, Susan Odom, do swear and affirm the following to the best of my personal knowledge:

1. I am the Manager of Network Strategies for the BNSF Railway Company. My responsibilities include managing various aspects of railroad acquisitions and dispositions for the Network Strategy team at BNSF. I have been employed by BNSF since January 2007. My work address is BNSF Railway Company, 2500 Lou Menk Drive - AOB3, Fort Worth, TX 76131.

2. I am familiar with the Woodinville Subdivision and the Redmond Spur as a result of my work for BNSF as the Manager of Network Strategies.

3. On or about August 1, 2008, on behalf of Port of Seattle, BNSF prepared and distributed to various short line operators Request for Quote documents to provide common carrier rail freight service and passenger excursion service on the Woodinville Subdivision between Woodinville, WA and Snohomish, WA. A true and correct copy of excerpts from the RFQ for the Eastside Rail Corridor issued by BNSF on August 1, 2008 is attached hereto as Exhibit A.

4. BNSF received two responses to the RFQ. One of the proposals entailed a joint venture between GNP Rly. Inc. (GNP) and Ballard Terminal Railroad LLC (BTR). GNP and BTR proposed that GNP would operate and maintain the rail line, BTR would provide freight service to customers located between Woodinville and Snohomish Junction (located on BNSF's Scenic Subdivision) and GNP and other operators would provide excursion service.

5. According to archived BNSF traffic reports Building Specialties was the last company to receive rail freight service from BNSF on the Redmond Spur. The volume of traffic received by Building Specialties was 290 cars in 2000, seven cars in 2005 and three cars in 2006. The last freight movement on the Redmond Spur was the pick-up of an empty car from Building Specialties on March 21, 2006.

6. In 2003 BNSF analyzed the future business prospects for the Redmond Spur and concluded that the line should be targeted for abandonment when the lone shipper (Building Specialties) no longer ships via rail. The Redmond Spur was targeted for abandonment because freight volumes were low relative to the cost of providing service, and because the area featured high real estate values.

7. BNSF has not entered into any shipper agreements with any customer on the Redmond Spur in order to end service pursuant to BNSF's desire to abandon the line.

8. A true and correct copy of a traffic report for the Redmond Spur covering the period 2000-2006 is attached hereto as Exhibit B.

9. BNSF archived track charts indicate that Building Specialties is located at approximately MP 5.4 on the Redmond Spur. An 800 foot industrial track served Building Specialties from a switch located at MP 5.4. The 1.9 miles of the Redmond Spur between that switch and the south terminus of the line at MP 7.3 traverse an urbanized area with high density residential and commercial development, many grade level street crossings and high real estate values. At the time BNSF filed for permission to abandon the Redmond Spur, there were no known prospective freight customers.

10. At one time the industrial track serving Building Specialties crossed 151st Ave. N.E. in Redmond to serve an additional customer on the east side of 151st, a seafood processing plant owned by Universal Seafoods.

11. In 1978 BNSF predecessor Burlington Northern entered into an Industrial Track Agreement (ITA) with Drywall Supply Inc. (former tenant of the building currently lease by Building Specialties) and Universal Seafoods (which appears to be at the same location as UniSea, Inc.), covering maintenance and operation of the industrial track serving both facilities. A true and correct copy of the ITA is attached hereto as Exhibit C. To the best of my knowledge, Universal Seafoods subsequently dismantled the portion of the industrial track traversing its property to expand a parking lot. BNSF records show no shipments to or from Universal Seafoods between 2000 and 2006. Building Specialties received its last rail car in early 2006 and the final empty car was picked up from Building Specialties on March 21, 2006. On April 23, 2007 BNSF notified both former customers that, pursuant to the terms of the

contract, it was terminating the ITA, effective May 23, 2007. A true and correct copy of those notices is attached hereto as Exhibit D. Neither company protested this decision.

12. The Steeler, Inc. property does not appear to have frontage on the Redmond Spur. BNSF has no record of providing any service to the Steeler, Inc. property. BNSF has no record of an industry track serving this location, and to the best of my knowledge there is currently no industry track in place. Drywall Distributors is located at approximately MP 0.96 of the Redmond Spur. BNSF has no record of providing any service to Drywall Distributors on the Redmond Spur. BNSF has no record of the existence of an industry track serving this location, and to the best of my knowledge there is currently no industry track in place.

13. The standard business practice in the railroad industry is for the shipping customer to pay for installation of any switch device or industry track that is needed to serve its business. BNSF regularly installs switch devices and industry tracks for this purpose. BNSF's current estimated cost to design and construct an industry track turnout with a hand thrown switch is $160,000. Such estimate would include the construction of approximately 160 feet of track necessary to extend beyond the clearance point of the main line servicing the industry track. The clearance point is that point at which two trains can pass without hitting. Additional track beyond the clearance point is necessary to serve the customer, the length of which is based on the customer's needs and available space. BNSF estimates the installation costs of such additional industry track at $300 per track-foot.

14. BNSF has no record of any local traffic serving customers over the 1.8 miles of the Woodinville Subdivision between approximately MP 23.8 and 22. BNSF has no record of any sidetracks along this stretch that would have served customers. A true and correct copy of the track charts showing no sidetracks along this stretch is attached hereto as Exhibit E. To the

best of my knowledge, the section of track between MP 22 and 23.8 was used for moving overhead traffic only.

15. BTR commenced freight service between MP 23.8 and MP 38.25 of the Woodinville Subdivision on January 11, 2010. BTR interchanges cars with BNSF at the Snohomish Junction (near MP 38), where the cars are then hauled on the BNSF Scenic Subdivision line. A true and correct copy of GNP/BNSF interchange records for this stretch of track from January through July, 2010 is attached hereto as Exhibit F.

16. A true and correct copy of BNSF shipping records for the Woodinville Subdivision between Snohomish Junction and Woodinville from January 2008 through October 2009 is attached hereto as Exhibit G.

17. On December 18, 2009 BNSF conveyed to GNP a permanent freight easement over the Woodinville Subdivision between approximately MP 23.8 and 38.25. GNP paid BNSF a nominal consideration of $10 for this easement.

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

Executed on November 5, 2010

Susan Odom

Susan Odom

EXHIBIT 3A

Request for Quote

Project

The Eastside Rail Corridor consists of a 33-mile rail corridor between Renton and Snohomish and a 7-mile rail spur between Woodinville and Renton, Washington. BNSF Railway and the Port of Seattle have entered into a sale and donation agreement in which the Port will purchase the corridor later this year. A portion of the corridor will be railbanked for use as a trail. However, the section between Woodinville and Snohomish will remain in use for freight rail service. Prior to the close of the BNSF/Port transaction, a third party operator (TPO) will be chosen to serve freight customers in an arrangement that would allow the TPO to operate an excursion train as well. Details of the Port's acquisition and future plans can be found on the Port's Web site at http://www.portseattle.org/business/realestate/eastsiderail.shtml.

This Request for Quote will be used by BNSF to select a competent, qualified TPO to provide common carrier rail freight service and passenger excursion train service on the rail line. The successful bidder will be the one who presents the most viable rental package to the Port of Seattle, subject to BNSF's evaluation of the soundness of the bid. (See Selection Process below.)

BNSF Project Contact

Jerry A. Pinkepank
Transport Specialty Group of Washington
jerryp@uptime.org

(206) 324-4650 phone

Schedule

Bid Package Distributed Bidders	Aug 1, 2008
Pre-Bid Forum including Hyrail tour	Aug 13-14, 2008
Bid Preparation / TPO Due Diligence	Aug 15-Sep 14, 2008
Submission Due Date	***5 pm CDT*, Monday, Sep 15, 2008**
Notification of Bid Award	Sep 19, 2008

Submission Requirements

1. **Statement** Provide a statement of your commitment to execute the contracts included in Sections 2-5 of the attached RFQ Fact Book substantially in the form provided, including your willingness to accept the $400 (with escalation provisions) per car compensation outlined on the Freight Easement Sale Agreement cover page. In addition, a statement of your readiness to assume all freight operations no sooner than January 2, 2009 is required. A sample statement is attached. Any substantial reservations to any of the agreements should be stated here.

2. **Experience** Provide a brief summary of your company's experience in freight railroading and/or excursion train operation. Include marketing publications, if available. Please note that experience with both types of operation will carry emphasis in BNSF's selection process (see below).

3. **Business Plan** Provide a business plan, preferably in Excel spreadsheet format, itemizing sources and uses of cash for the 10-year term, projecting operating expenses according to the four customary categories – Maintenance of Way and Structures, Maintenance of Equipment, Transportation and General and Administration.

4. **Staff** Provide a list of key personnel who will be assigned to this operation including qualifications and/or resumes and/or a specific plan for the hiring dates, training period and availability for service of operating personnel. In essence, we will need to see realistic, credible evidence of your ability to begin operations on Jan 2.

5. **Financials** Provide D-U-N-S Number and/or current Dun & Bradstreet Report or current (not less than three months old) certified financial reports prepared by an independent accounting firm.

6. **Insurance** Provide a current sample insurance policy evidencing coverage for the following:
   a. Railroad (General) Liability
   b. Pollution Liability

7. **Safety** Provide FRA Accident/Incident Reports for the past three years.

8. **Equipment List** Provide information on the locomotive(s) to be used in performing freight service and attest to same being equipped with alignment control couplers.

9. **Proposed Fee** Provide a proposed annual license fee to be paid to the Port of Seattle.

Selection Process

Bid packages should be complete, containing all requested information in items 1 thru 9 above. BNSF will review the information presented and select the winning TPO based on the following factors:

1. Experience and expertise with *both* freight and excursion train operations
2. Safety
3. Financial stability and insurability
4. Business plan
5. Statement of willingness to accept terms, as provided, of all associated agreements
6. Proposed license fee

PRIVILEGED AND CONFIDENTIAL

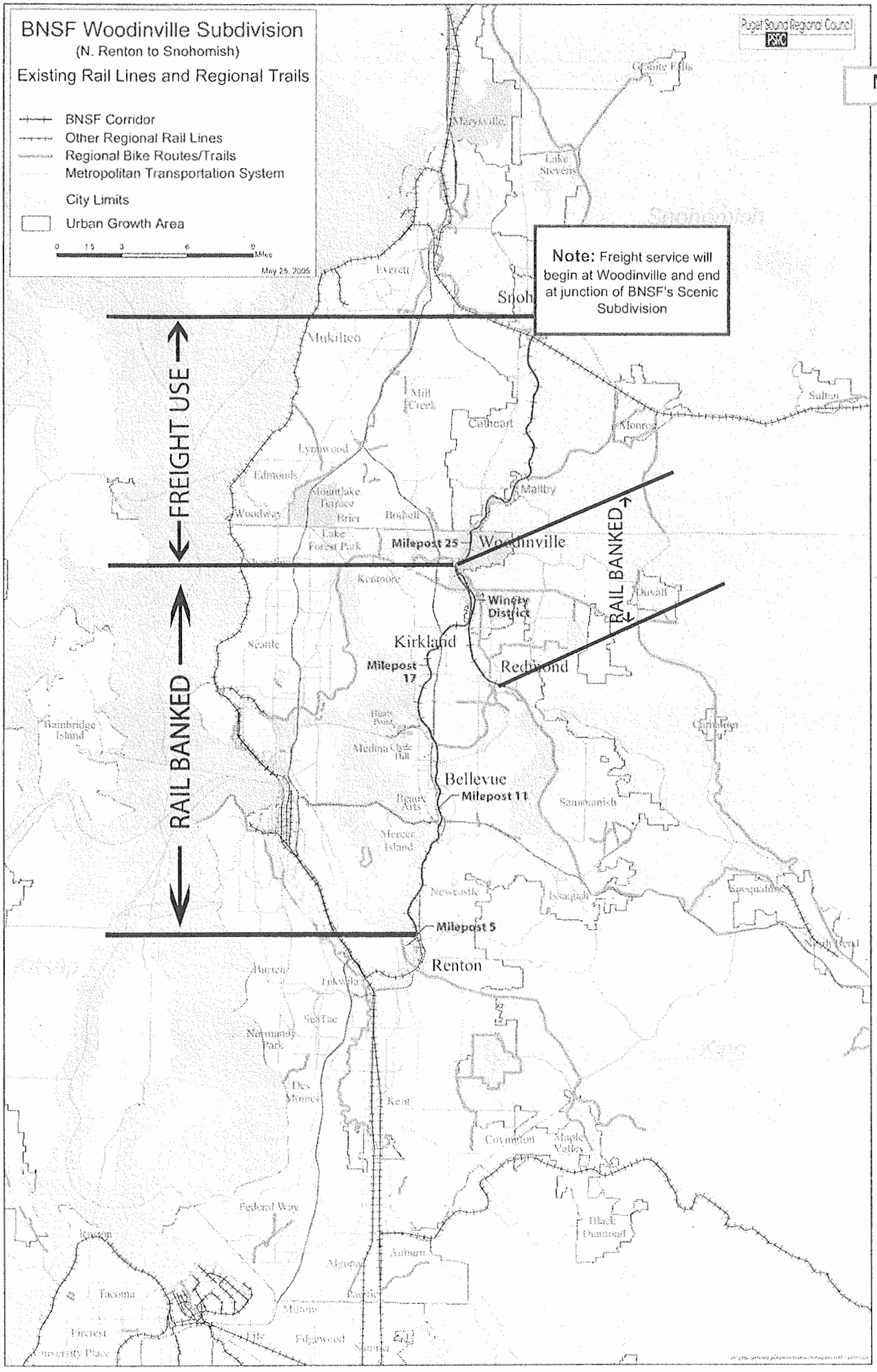
PREPARED IN COOPERATION WITH THE PORT OF SEATTLE, WA

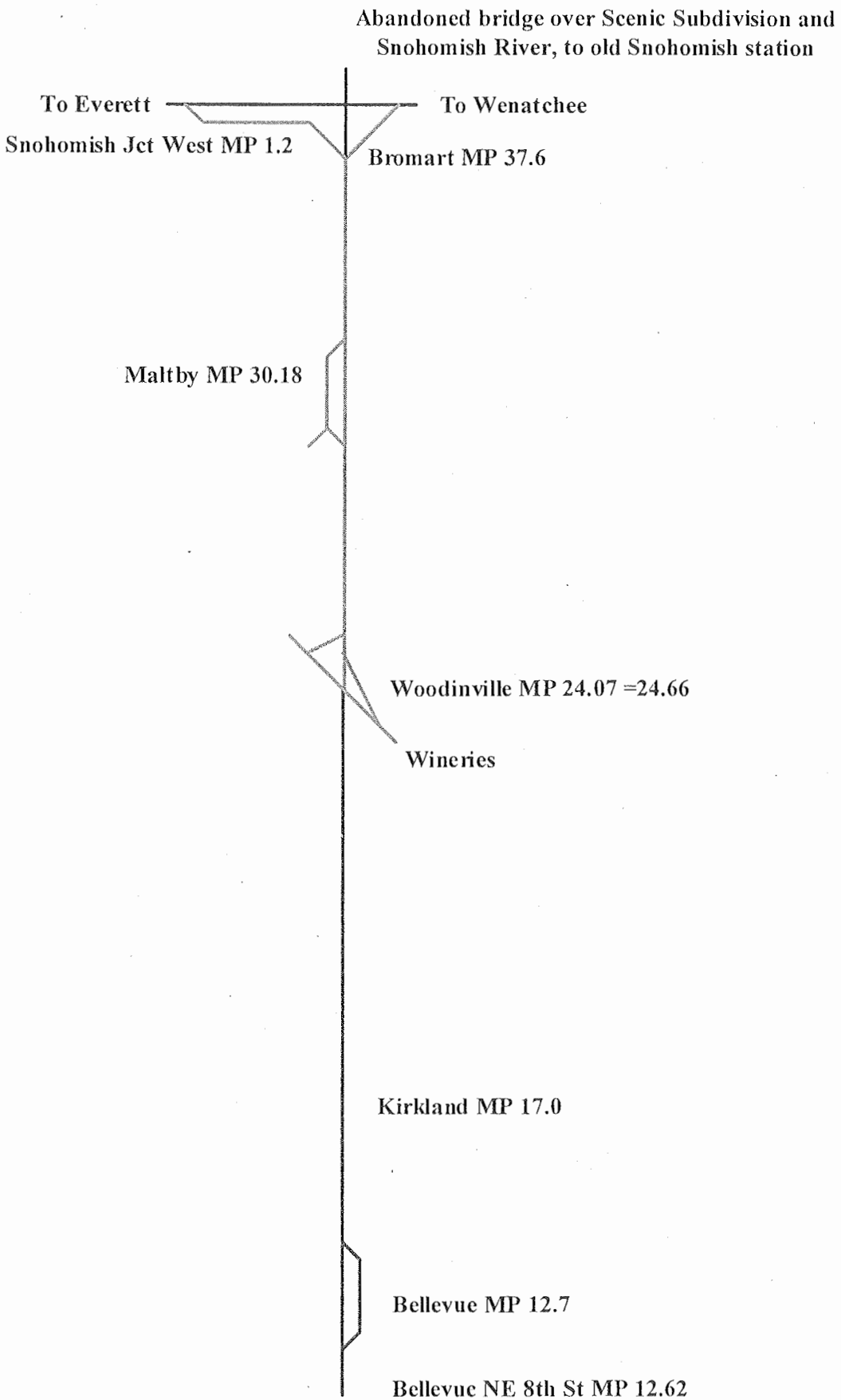
REQUEST FOR PROPOSAL
FACT BOOK
TO PURCHASE BNSF RAILWAY COMPANY'S RAIL FREIGHT EASEMENT BETWEEN WOODINVILLE AND SNOHOMISH, WASHINGTON

Data contained in this booklet is subject to a signed confidentiality agreement and is to be used solely to assist a potential buyer in evaluation of the rail line. BNSF believes this is a fair representation of the proposed sale, but does not warrant the accuracy of the information herein. The buyer should inspect the property, perform their own due diligence, and arrive at their own conclusions concerning the physical condition of the rail line and the future potential of business associated with the rail line.

The actual rights conveyed to the buyer will be governed by the terms of the signed contract.

A copy of the bidder's individual Confidentially and Non-Disclosure Agreement was inserted here.


BNSF Woodinville Subdivision
(N. Renton to Snohomish)
Existing Rail Lines and Regional Trails
BNSF Corridor
Other Regional Rail Lines
Regional Bike Routes/Trails
Metropolitan Transportation System
City Limits
Urban Growth Area
0 1.5 3 6 9 Miles
May 25, 2005
Puget Sound Regional Council
PSRC
Maps
Note: Freight service will begin at Woodinville and end at junction of BNSF's Scenic Subdivision
FREIGHT USE
RAIL BANKED
RAIL BANKED
Milepost 25
Woodinville
Milepost 17
Kirkland
Redmond
Milepost 11
Bellevue
Milepost 5
Renton
Everett
Mukilteo
Seattle
Tacoma
Bainbridge Island
Winery District


Abandoned bridge over Scenic Subdivision and
Snohomish River, to old Snohomish station
To Everett
To Wenatchee
Snohomish Jct West MP 1.2
Bromart MP 37.6
Maltby MP 30.18
Woodinville MP 24.07 =24.66
Wineries
Kirkland MP 17.0
Bellevue MP 12.7
Bellevue NE 8th St MP 12.62

License

RAILROAD RIGHT OF WAY LICENSE

by and between

THE PORT OF SEATTLE

and

[THIRD PARTY OPERATOR]

_____, 2008

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RAILROAD RIGHT OF WAY LICENSE

THIS RAILROAD RIGHT OF WAY LICENSE ("License") is made this ___ day of _____, 2008 ("Effective Date"), between the PORT OF SEATTLE, a Washington municipal corporation ("Port ") and [THIRD PARTY OPERATOR], a _____ corporation ("TPO").

RECITALS

A. Pursuant to the Purchase and Sale Agreement and the Donation Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), both dated as of _____, 200__ (the " Acquisition Agreements") Port acquired BNSF's right, title and interest in BNSF's railroad right of way (i) from milepost 5.0 in Renton, Washington to and including the railroad bridge at milepost _____ in Snohomish County, Washington, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur") (together, the "Woodinville Subdivision"), as shown on and described in **Exhibit A** attached hereto and incorporated herein.

B. Port and TPO have entered into an Operations and Maintenance Agreement (the "O&M Agreement") setting forth their respective rights and obligations with respect to freight rail operations, Excursion Rail Service, and maintenance on portions of the Woodinville Subdivision from milepost 23.8 in Woodinville, King County, Washington north to milepost ____ in Snohomish, Snohomish County, Washington (the "Corridor"), as described in **Exhibit B** attached hereto and incorporated herein.

C. TPO also desires the right to use and operate the Excursion Spur, a portion of the Woodinville Subdivision and further described below, for Excursion Rail Service (as defined in Section 1.4 below).

D. Port is willing to grant TPO the right to use and operate the Excursion Spur in the manner described in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this License and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Section 1. Definitions.

For the purposes of this License, the following terms shall have the following meanings:

1.1 "Additions and Alterations" means any improvements constructed by or on behalf of either party on the Corridor after the Effective Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 "Automatic Warning Devices" means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 "Environmental Law" means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, license, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Excursion Spur, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendment or regulations promulgated thereunder.

1.4 "Excursion Rail Service" means the deployment and operation of trains using the facilities for purposes other than hauling common carrier freight or in service other than freight rail operations over and on the Excursion Spur. This could include but not be limited to dinner train operations.

1.5 "Excursion Spur" means (i) that portion of the Woodinville Subdivision from milepost 23.8 in Woodinville south to milepost 11.9 in Bellevue and (ii) that portion of the Redmond Spur from milepost 0.0 in Woodinville south to milepost 1.86 in Woodinville, Washington.

1.6 "Facilities" means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support hereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.7 "Hazardous Materials" means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Excursion Spur and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Excursion Spur causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.8 "Invoice" is defined in Section 10.1.

1.9 "Loss" or "Losses" means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expense (including, without limitation, costs of investigation, defense, expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Excursion Rail Service on the Excursion Spur.

1.10 "Multipurpose Easement" means that certain easement between Port and King County, a home rule charter county and political subdivision of the State of Washington ("County") pursuant to which the County acquired certain rights on those portions of the Woodinville Subdivision from (i) milepost 23.8 in Woodinville south to milepost 5.0 in Renton, and (ii) the Redmond Spur, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

1.11 "O&M Agreement" has the meaning set forth in Recital B.

1.12 "Purchase Agreement" has the meaning set forth in Recital A.

1.13 "Term" has the meaning set forth in Section 6.

Section 2. TPO's Rights and Obligations.

2.1 Subject to transportation uses permitted by the Port as provided in Section 2.5, TPO shall have the exclusive right and obligation to provide, by itself and/or by or through any entity designated by TPO, Excursion Rail Service on and over the Excursion Spur.

2.2 TPO shall have the exclusive authority to manage, direct and control all activities related to the provision of Excursion Rail Service on the Excursion Spur, including, without limitation, the operation of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Excursion Spur.

TPO shall employ and discharge all personnel required to perform TPO's Excursion Rail Service, shall comply with all governmental laws, rules, regulations and orders applicable to TPO's Excursion Rail Service, and shall pay all real property taxes separately levied on TPO's rights under this License and for all utilities consumed by TPO in carrying out TPO's Excursion Rail Service. All equipment and materials required for TPO's Excursion Rail Service shall be provided by TPO at the sole cost and expense of entities other than Port except as provided in this License.

2.3 TPO acknowledges and agrees that the County is the grantee under the Multipurpose Easement. TPO agrees that it shall, at all times, cooperate fully with the County to accommodate any trail uses on the Excursion Spur adjacent to the Excursion Spur Facilities.

2.4 TPO or its designee shall have the right to use existing trackage in the Excursion Spur for performing Excursion Rail Service as described in this Section.

2.5 TPO acknowledges and agrees that, consistent with Section 3, the Port may permit certain transportation uses on the Excursion Spur (e.g.commuter rail service) during the Term that are not inconsistent with TPO's rights under this License. TPO shall cooperate with the Port's permitted transportation users to ensure the accommodation of such uses on the Excursion Spur.

2.6 In addition to all other rights granted to TPO under this License, TPO shall have the right to utilize the Excursion Spur between milepost 0.0 in Woodinville and milepost ___ for all head and tail operations necessary for TPO's freight rail operations under the O & M Agreement

Section 3. Port's Rights and Obligations.

3.1 Port shall have the right to use the Excursion Spur and to grant easements, licenses or permits affecting the Excursion Spur as long as such use, easements, licensees or permits do not interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

Section 4. Maintenance, Repair and Replacement Obligations.

4.1 General Maintenance, Repair and Replacement Obligations.

(a) Except as otherwise provided in this License, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all rail traction electrification, signal systems, trackage, properties and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade

crossings, located within the Excursion Spur, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Excursion Spur.

(b) Notwithstanding the provisions of subparagraph (a) above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

4.2 Remedies.

(a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this License, and such failure results in an imminent and substantial danger to human health or safety or to property, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below, and shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.

(b) In the event that TPO or Port discovers any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Telephone Contact: _____ Telephone No. _____

TPO Telephone Contact: _____ Telephone No. _____

4.3 Grade Crossing Reconstruction. The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between TPO's tracks and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

Section 5. Construction of Additions and Alterations.

5.1 Design and Construction Standards. The design and construction of any Additions and Alterations on the Excursion Spur shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow its customary safety procedures and shall use reasonable efforts to perform work on Additions and Alterations at such times in such manner as not to materially interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

5.2 Design Review. In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with

respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to Section 13.9. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

5.3 Grade Separation Projects. In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

Section 6. Effective Date and Term of the License.

6.1 The initial term of this License shall expire on the 10th anniversary of the Effective Date. So long as TPO is not in default with respect to a material term or condition of this License, TPO may elect to continue this License for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. (the "Term"). Notwithstanding the foregoing, this License shall terminate sixty (60) days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this License, which default has not been cured on or prior to such 60th day. In the event the O&M Agreement is terminated under Section 12.2 thereof, TPO may, with Port's written approval and so long as TPO is not in default under this License or the O & M Agreement, continue to provide Excursion Rail Service over the Corridor and the Excursion Spur. In such event, this License will be amended to include the Corridor in the expanded Excursion Spur.

6.2 TPO may terminate this License by giving Port not less than sixty (60) days' notice of termination. Upon such termination, TPO shall have no further right under this License to use the Excursion Spur.

Section 7. Access.

7.1 Port may enter upon the Excursion Spur and/or use the Facilities located on the Excursion Spur, provided that the exercise of such rights by Port shall not materially interfere with Excursion Rail Service of TPO or its designees.

7.2 Reciprocal Access and Notice Rights. Subject to the procedures set forth below, and to be in compliance with all applicable rules and regulations of the Federal Railroad Administration where applicable, the parties shall have the following reciprocal access rights:

(a) In addition to its access rights under Section 7.1, Port may enter upon the Excursion Spur for the purposes set forth in Sections 4.1 and 4.2.

(b) In the event of an emergency of any kind, Port may enter upon the Excursion Spur (i) to warn TPO's trains by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon TPO's tracks, or (ii) in the event of a wreck or derailment of train or equipment, to clear the train, equipment or other debris from TPO's tracks. Port shall provide immediate notice of such events to TPO's dispatcher by radiotelephone.

(c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Excursion Spur for the purpose of apprehending the suspect.

(d) TPO may enter upon the Woodinville Subdivision for the purposes set forth in Section 2 and Section 4.

(e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours prior telephonic notice of any entry onto the Excursion Spur, and shall not enter upon the Excursion Spur until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.

(f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Excursion Spur within twenty feet (20') of the track center of the Excursion Spur shall be subject to the notice and flagging requirements under subparagraph (e) above, unless the parties agree to an alternative procedure.

(g) No Hazardous Materials may be brought by TPO on to the Excursion Spur.

(h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion) on the Excursion Spur, TPO shall give Port prompt notice of such event,

and at its sole cost and expense, clean or remediate the Excursion Spur and any affected portion of the Woodinville Subdivision to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Excursion Spur. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The provisions of this Section 7.2(h) are in addition to and not in limitation of the provisions of Section 8 hereof, except that the provisions of Sections 8.2(a) and (b) shall govern Losses with respect to personal injury (including bodily injury and death).

Section 8. Liability.

8.1 Assumption of Responsibility.

(a) Except as otherwise expressly provided in this Section 8, TPO shall assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Excursion Spur, or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.

(b) TPO shall indemnify, hold harmless and defend Port from any and all Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Port Property, including the Excursion Spur.

(c) The allocation of responsibility for Losses under this Section 8 applies only to Losses proximately caused by incidents occurring on or adjacent to the Excursion Spur or the Woodinville Subdivision, and arising out of TPO's presence on the Excursion Spur, or on the Woodinville Subdivision.

(d) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 8 including, without limitation, salaries or wages and associated benefits of,

and out-of-pocket expenses incurred by or with respect to, employees of either part engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

8.2 Allocation of Responsibilities.

(a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in subsection (a)(i) or Section 8.3. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Excursion Spur (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

(i) If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.

(b) Persons Other Than Invitees. Except as provided in Section 8.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

(c) Unenforceability. If any of the provisions of this Section 8.2 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 8.2, those provisions shall be deemed to exclude the indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 8.2 if both parties were negligent.

8.3 Excluded Conduct. "Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, which such conduct is alleged in a properly field complaint by a plaintiff or plaintiffs as the basis for an award of

exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible or and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a part asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

8.4 Scope of Indemnification. In any case where a party is required under the provisions of this Section 8 to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entitles from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

8.5 Procedure.

(a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 8, the indemnified party shall, within thirty (3) days after actual notice of such claim or demand cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 8 except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 8 without either providing the indemnifying party with a full release with respect to such liability or

obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditions or delayed.

(b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this License, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this License, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this License. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this License, by bound by the final judgment of the court in such action.

(c) Subject to the provisions of Section 8.5(a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 8, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this Section 8 and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expense arising as a result of such proceeding.

(d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 12 of this License.

8.6 Compliance With Laws. Both parties shall comply with all applicable federal state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Excursion Spur results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defense (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

8.7 Delay/Interruption of Service. Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 8.2(a)(i).

8.8 No Limitation on Risk Allocation. The provisions of this Section 8 shall apply notwithstanding the provisions of Section 9. In no event shall the indemnification provisions of this Section 8 be limited to the insurance coverage required under Section 9.

8.9 Statutory Defenses. All statutory defense and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this License.

Section 9. Insurance.

9.1 TPO Insurance.

(a) TPO shall obtain and maintain general liability insurance written on an "occurrence" basis, with minimum limits of [_____] Dollars ($_____) per occurrence. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current Best's Insurance Guide Rating of at least A, or equivalent, and which is a carrier admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insurance to an amount not to exceed [_____] Dollars ($_____), provided that total coverage limits (self-insurance plus excess liability insurance) are at least [_____] Dollars ($_____) per occurrence, provided, however, that this sentence shall not inure to the benefit of TPO's successors or assigns absent the reasonable written consent of Port. In the event Port does not reasonably consent to self-insurance by a successor or assign of TPO, the self-insured amount for such successor or assign shall not exceed [_____] Dollars ($_____). The foregoing policy limits shall be adjusted by the parties every three (3) years to reflect industry standards liability claim trends and market conditions. In any event, however, the total coverage (self-insurance plus excess liability) shall not be less than [_____] Dollars ($_____). The foregoing self-insurance limit shall not exceed ___ percent (__%) of the total coverage limits (self-insurance plus excess liability insurance) maintained by TPO; provided, however, that the foregoing self-insurance limit may be increased by up to an additional ___ percent (___%) of the total coverage limits if TPO provides adequate security acceptable to and approved by Port for the increased self-insurance amount over and above the initial ___ percent (___%) limit.

(b) TPO's insurance shall be primary with respect to its obligations under this License and with respect to the interests of Port and County as additional insureds. TPO shall provide Port with evidence that it has named the Port and County as additional insureds under TPO's policy. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it.

(c) TPO's insurance shall be maintained for the full term of this License and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured.

(d) Prior to the Effective Date, TPO shall provide Port with certified copies of its policies, as well as certificates of insurance and endorsements evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.

(e) All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than Port, and none are intended to be waived with respect to parties other than Port by TPO by the acquisition of insurance by TPO or under this License.

9.2 Failure to Maintain Insurance. A failure of TPO to maintain the insurance required by this Section 9 shall not relieve TPO of any of its liabilities or obligations under this License.

9.3 Waiver of Subrogation. Every policy of insurance required under this Section 9 to be held by TPO shall include a waiver of all rights of subrogation against Port.

Section 10. Compensation and Billing.

10.1 Invoices. Any Invoice or Invoices submitted to the parties under this License ("Invoice or Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and nay reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

10.2 Audit. So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of

this License shall at all reasonable times by open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this License is funded in whole or in party by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

10.3 Supporting Documentation. Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

10.4 Fees. TPO shall pay Port $____ in compensation for use of the Excursion Spur. This amount shall escalate _____.

Section 11. Coordination.

11.1 Coordination Committee. Port and TPO shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this License. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

Section 12. Binding Arbitration.

12.1 Controversies Subject to Arbitration. Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this License that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 12. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

12.2 Selection of Arbitrator. In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to

arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. (In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy.) The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

12.3 Expedited Arbitration Schedule.

(a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 12.2, an expedited arbitration procedure as set forth in this Section 12.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be imported in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

(b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five-day period, each party shall within two (2) days select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

(c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

(d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections

12.1 and 12.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

12.4 Pending Resolution. During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this License, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

12.5 Cost of Arbitration. Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 13. Miscellaneous Provisions.

13.1 Binding Successors; Assignment. This License shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this License without the prior written consent of the Port, which consent may not be unreasonably withheld, denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this License freely.

13.2 Notices. Except as otherwise expressly provided in this License, all notices and other communications under this License shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the applicable telecopy number listed below and the transmission is confirmed by mail as provided under (b) below which is deposited on the first business day after the transmission, or (c) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

POS: PORT OF SEATTLE
[ADDRESS]
Telephone No. _____
Telecopy:_____

TPO: [THIRD PARTY OPERATOR]
[ADDRESS]
Telephone No. _____

Telecopy:_____

13.3 Headings. The section and subsection headings in this License are for convenience only and shall not be used in its interpretation or considered part of this License.

13.4 Integration, Amendment, and Waiver. This License controls all the rights and obligations of TPO and Port as to the operation of the Excursion Rail Service on the Excursion Spur. The O&M Agreement controls all the rights and obligations of TPO and Port as to the operation of freight rail service and Excursion Rail Service on the Corridor. This License is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this License shall be binding unless executed in writing by both of the parties. No waiver of any provision of this License shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.5 Counterparts. This License may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

13.6 Governing Law. This License shall be construed and interpreted in accordance with the laws of Washington State.

13.7 Time of Essence. Time is of the essence of each and every provision of this License.

13.8 Not for the Benefit of Others. This License and each and every provision herein are for the exclusive benefit of the parties to this License and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties to this License.

13.9 Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this License, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this License, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding in addition to any other relief to which it or they may be entitled.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this License effective as of the Effective Date.

PORT OF SEATTLE
a Washington Municipal Corporation

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

[THIRD PARTY OPERATOR],
a _____ corporation

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
) **ss.**
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of the PORT OF SEATTLE, a Washington Municipal Corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

(SEAL)

STATE OF WASHINGTON)
) **ss.**
COUNTY OF _____)

On _____, 200__, before me, a Notary Public in and for said County and State, personally appeared _____, of [THIRD PARTY OPERATOR], a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

(SEAL)

Exhibit A

Purchase and Sale Agreement

Exhibit B

Operations and Maintenance Agreement

Maltby and Woodinville, WA Traffic
July, 2006 through June, 2007
July, 2007 through June, 2008

Sum of Units					Year	
Station	Customer	STCC Description	STCC Code	Originated or Terminated	July, 2006 - June, 2007	July, 2007 - June, 2008
MALTBY, WA (065608)	BLUELINX CORP	ORINTD STR	2499110	Terminated		2
	BLUELINX CORP Total					2
	BOISE CASCADE CORP	FC,PNL,CST	3271945	Terminated	1	44
		LBR TIMBER	2421184	Terminated		2
		ORINTD STR	2499110	Terminated	95	123
		PLASTIC LU	3071906	Terminated	24	25
	BOISE CASCADE CORP Total				120	194
	DUNNLBR	PLASTIC LU	3071906	Terminated	1	5
	DUNNLBR Total				1	5
	FOREST CITY TRADING GROUP	ORINTD STR	2499110	Terminated		3
	FOREST CITY TRADING GROUP Total					3
	LUMBERMENS MERCHANDISING C	ORINTD STR	2499110	Terminated		1
	LUMBERMENS MERCHANDISING C Total					1
	MATHEULBR	PLASTIC LU	3071906	Terminated		2
	MATHEULBR Total					2
	PLYWOOSUPPLY	BIRCH LUMB	2421130	Terminated	1	
		BMS,ETC,OT	2439120	Terminated	9	3
		ORINTD STR	2499110	Terminated	19	8
		PLASTIC LU	3071906	Terminated	2	4
	PLYWOOSUPPLY Total				31	15
	RICHMOINTFP	ORINTD STR	2499110	Terminated		1
	RICHMOINTFP Total					1
	WELCO LUMBER COMPANY INC	LBR TIMBER	2421184	Terminated	1	
	WELCO LUMBER COMPANY INC Total				1	
MALTBY, WA (065608) Total					**153**	**223**

Traffic/Revenue

Maltby and Woodinville, WA Traffic
July, 2006 through June, 2007
July, 2007 through June, 2008

WOODINVILLE, WA (065614)	AFA FOREST PRODUCTS INC	ORINTD STR	2499110	Terminated		1
	AFA FOREST PRODUCTS INC Total					1
	BLUELINX CORP	BOARDS,FLA	2429948	Terminated	1	
		CNCR COP W	3271940	Terminated		11
		LBR TIMBER	2421184	Terminated	22	19
		ORINTD STR	2499110	Terminated	79	36
		PLYWOOD	2432158	Terminated	11	11
		ROOFING PP	2952190	Terminated		5
		SIDING,EXT	2499906	Terminated	3	
	BLUELINX CORP Total				116	82
	BNSF Ry / Boeing	CARS, RAIL	3742214	Originated		1
	BNSF Ry / Boeing Total					1
	BOISE CASCADE CORP	BDS PNLS O	3271941	Terminated		4
		FC,PNL,CST	3271945	Terminated	1	9
		GYPSUM WAL	3275440	Terminated	2	
		LBR TIMBER	2421184	Terminated		2
		ORINTD STR	2499110	Terminated	27	21
		PLASTIC LU	3071906	Terminated	1	1
		POLES FBRG	3071967	Terminated	2	
	BOISE CASCADE CORP Total				33	37
	FOREST CITY TRADING GROUP	ORINTD STR	2499110	Terminated	11	3
	FOREST CITY TRADING GROUP Total				11	3
	LUMBERMENS MERCHANDISING C	ORINTD STR	2499110	Terminated		8
	LUMBERMENS MERCHANDISING C Total					8
	MATHEULBR	ORINTD STR	2499110	Terminated	34	
	MATHEULBR Total				34	
	PLYWOOSUPPLY	BIRCH LUMB	2421130	Terminated	2	
		BMS,ETC,OT	2439120	Terminated	3	6
	PLYWOOSUPPLY Total				5	6
	SPECTRGLASS	SAND,INDUS	1441315	Terminated	90	88
		SDM CARBON	2812322	Terminated	35	34
	SPECTRGLASS Total				125	122
	VANDERMEER FOREST PRODUCTS	ORINTD STR	2499110	Terminated	1	
	VANDERMEER FOREST PRODUCTS Total				1	
	WOODINLBR	ORINTD STR	2499110	Terminated	67	22
	WOODINLBR Total				67	22
	WOODTOINDUSA	BMS,ETC,OT	2439120	Terminated		1
	WOODTOINDUSA Total					1
WOODINVILLE, WA (065614) Total					**392**	**283**
Grand Total					**545**	**506**

EXHIBIT 4

Confidential Information Filed Separately Under Seal

EXHIBIT 5

RAILROAD RIGHT OF WAY LICENSE
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.

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RAILROAD RIGHT OF WAY LICENSE

THIS RAILROAD RIGHT OF WAY LICENSE ("License") is entered into as of the 18 day of DECEMBER, 2009 ("Execution Date"), between the Port of Seattle, a Washington municipal corporation ("Port ") and GNP Rly. Inc., a Washington corporation ("TPO").

RECITALS

A. Pursuant to the Purchase and Sale Agreement and the Donation Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), both dated as of May 12, 2008 (together, the "Acquisition Agreements") Port acquired BNSF's right, title and interest in BNSF's railroad right of way (i) from milepost 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.25 in Snohomish County, Washington, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur") (together, the "Port Property").

B. Port and TPO have entered into an Operations and Maintenance Agreement ("O&M Agreement") setting forth their respective rights and obligations with respect to Freight Rail Service, Excursion Rail Service, and maintenance on portions of the Woodinville Subdivision from milepost 23.8 in Woodinville, King County, Washington north to milepost 38.25 in Snohomish, Snohomish County, Washington ("Corridor"), as described in **Exhibit A** attached hereto and incorporated herein.

C. TPO also desires the right to use and operate the Excursion Spur, a portion of the Woodinville Subdivision and further described below, for Excursion Rail Service (as defined in Section 1.6 below).

D. Upon acquisition of the Corridor by the Port, the Excursion Spur, along with the railroad right of way (i) from milepost 5.0 in Renton, Washington to milepost 23.8 in Woodinville, Washington, and (ii) within the Redmond Spur, was "railbanked." King County ("County") was approved as an Interim Trail User by the Surface Transportation Board ("STB") for the purpose of railbanking, and County is accordingly subject to certain legal obligations related to the Excursion Spur, which are referred to herein as the "Railbanking Obligations." The Railbanking Obligations consist of those obligations imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), the Notice of Interim Trail Use ("NITU") related to the Excursion Spur issued by the STB and any conditions or requirements imposed related thereto; the Trail Use Agreement ("TUA") entered into between BNSF and County related to the Excursion Spur under which County agreed to accept, exercise, and fulfill all of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR"). To carry out the Railbanking Obligations, County has been granted by the Port a Public Multipurpose Easement dated 12/18/09 and recorded under recorded number 20091218001538 under which County acquired certain rights on the Excursion Spur and the other portions of the Corridor

subject to railbanking, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

E. Port is willing to grant TPO the right to use and operate the Excursion Spur in the manner described in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this License and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Section 1. Definitions.

1.1 Additions and Alterations - Means any improvements constructed by or on behalf of either party on the Excursion Spur after the Execution Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 Automatic Warning Devices - Means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 Corridor is defined in Recital B.

1.4 Environmental Law - Means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, license, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Excursion Spur, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendment or regulations promulgated thereunder.

1.5 Excluded Conduct - Is defined in Section 8.4.

1.6 Excursion Rail Service - Means the deployment and operation of trains using the facilities for excursion passenger service and not for commuter rail passenger service or any other service, except for head and tail operations as referred to Section 1.11.

1.7 Excursion Spur - Means that portion of the Redmond Spur from milepost 0.0 in Woodinville south to milepost 2.5 in Woodinville, Washington.

1.8 Execution Date - Means the date on which this License is executed and becomes effective.

1.9 Facilities - Means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, buildings and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.10 FRA - Means the Federal Railroad Administration.

1.11 Freight Rail Service - Means only (a) the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor and (b) the head and tail operations associated therewith and conducted on the Excursion Spur in accordance with this License, and no other freight service.

1.12 Hazardous Materials - Means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Excursion Spur and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Excursion Spur causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.13 Invoice - Is defined in Section 10.1.

1.14 Loss or Losses - Means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expense (including, without limitation, costs of investigation, defense, expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Excursion Rail Service on the Excursion Spur.

1.15 Multipurpose Easement - Means that certain easement between Port and King County, a home rule charter county and political subdivision of the State of Washington ("County") pursuant to which the County acquired certain rights on those portions of the Woodinville Subdivision from (i) milepost 23.8 in Woodinville south to milepost 5.0 in Renton, and (ii) the

Redmond Spur, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

1.16 O&M Agreement - Has the meaning set forth in Recital B.

1.17 Port Property - Means the rights-of-way acquired by Port from BNSF under the Deed that are subject to TPO's rights under this Agreement; provided, that if Port transfers individual parcel(s) to third parties not affiliated with Port, and the transferred parcel(s) do not remain subject to this Agreement as provided in Section 13.8, such individual parcel(s) shall not be deemed "Port Property."

1.18 Track - Means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Excursion Spur.

Section 2. TPO's Rights and Obligations.

2.1 Subject to transportation uses permitted or performed by the Port as provided in Section 3, TPO shall have the exclusive right and obligation to provide, by itself and/or by or through any entity designated by TPO, Excursion Rail Service on and over the Excursion Spur.

2.2 TPO shall have the exclusive authority to manage, direct and control all activities related to the provision of Excursion Rail Service on the Excursion Spur, including, without limitation, the operation of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Excursion Spur; provided, that TPO shall not transport or store on the Excursion Spur or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs"). *Notwithstanding* the foregoing, TPO is prohibited from using the Excursion Spur at any time for the purpose of setting out or picking up rail cars.

2.3 TPO shall employ and discharge all personnel required to perform TPO's Excursion Rail Service, shall comply with all governmental laws, rules, regulations and orders applicable to TPO's Excursion Rail Service, and shall pay all real property taxes separately levied on TPO's rights under this License and for all utilities consumed by TPO in carrying out TPO's Excursion Rail Service. All improvements, equipment and materials required for TPO's Excursion Rail Service shall be provided by TPO at the sole cost and expense of entities other than Port except as provided in this License.

2.4 Subject to the rights of and coordination with the Port and those entities that the Port may authorize to provide transportation uses on the Excursion Spur pursuant to Section 3 and with County with regard to any then current or future trail use, and solely at the expense of entities other than the Port, TPO may modify, construct, maintain, replace and remove the Tracks upon and across the Excursion Spur as may be necessary in order to operate in accordance with this License, provided that TPO may not change the location of the Tracks.

a) In the event that construction of any Tracks requires the construction of new Facilities, or modifications to, existing Facilities, such construction or modifications shall be at the expense of entities other than Port.

b) The design, construction, modification or removal of any Tracks and any new, or modified Facilities necessitated thereby, shall not unreasonably interfere with the rights the Port may exercise or grant under Section 3.1 and 3.2 of this License and that the County may exercise with regard to any then current or future trail use, shall result in the location of any modified Facilities being unchanged and the condition of any modified Facilities being of equal or better condition and functionality than such Facilities were prior to the modification, and shall be subject to Port's prior review and written approval.

2.5 TPO acknowledges and agrees that the County is the grantee under the Multipurpose Easement and that this license is subject to and incorporates herein by this reference the terms of the Multipurpose Easement as set forth in Section 1.4 of that Easement. In the event that County acquires from Port additional rights, title and interests in the Excursion Spur, the incorporated terms of the Multipurpose Easement shall survive the expiration or extinguishment of the Multipurpose Easement through the doctrine of merger, provided that (a)if no "Trail Area" has been established under the Multipurpose Easement, then County may designate a Trail Area of sufficient size to accommodate a regional trail under generally applicable trail development standards as described in Section 2.1.1 of the Multipurpose Easement and provided further that (b) TPO shall be the beneficiary of the rights of "TPO" under such Multipurpose Easement that affect the Transportation Use and that apply to TPO's rights and responsibilities under this License. TPO agrees that it shall, at all times, cooperate fully with the County to accommodate any trail uses on the Excursion Spur adjacent to the Excursion Spur Facilities, and shall comply with all Railbanking Obligations.

2.6 TPO or its designee shall have the right to use existing Tracks in the Excursion Spur for performing Excursion Rail Service as described in this Section.

2.7 TPO acknowledges and agrees that, consistent with Section 3, the Port may itself perform or grant rights to or enter into agreements with one or more third parties for certain non-freight, passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License, that are not inconsistent with TPO's rights under this License. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Excursion Spur.

2.8 In addition to all other rights granted to TPO under this License, TPO shall have the right to utilize the Excursion Spur between milepost 0.0 in Woodinville and milepost 1.0 for all head and tail operations necessary for TPO's Rail Freight Service under the O & M Agreement, but shall have no right to operate other common carrier or contract freight rail service on the Excursion Spur.

Section 3. Port's Rights and Obligations.

3.1 Port shall have the right to use the Excursion Spur and to grant easements, licenses or permits affecting the Excursion Spur as long as such use, easements, licensees or permits do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License. TPO shall cooperate with any entity granted such easements, licenses or permits to ensure accommodation of the uses authorized by such easements, licenses or permits so long as such uses do not unreasonably interfere with or

create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.2 Port shall have the right to itself provide or grant rights to or contract with third parties for certain non-freight, passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License so long as such uses do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.3 Port, at Port's election, may perform a semi-annual joint inspection of the Excursion Spur by representatives of the Port upon reasonable advance notice for the first two (2) years, and annual joint inspections thereafter. Appropriate representatives from both Port and the TPO shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Excursion Spur, at its election, at any time during the term of this License so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 7.5; (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Excursion Spur; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Excursion Spur; (4) TPO will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with TPO to minimize any interference with TPO's operations on the Excursion Spur. The Port may request, at its sole discretion, that the inspections be performed by an authorized FRA inspector, whose findings shall be binding on the Port and the TPO.

3.4 In the event the TPO fails to or is unable to perform any work it is required to perform under this License, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section 10.1.

Section 4. Maintenance, Repair and Replacement Obligations.

4.1 General Maintenance, Repair and Replacement Obligations.

a) Except as otherwise provided in this License, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all Tracks and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Excursion Spur, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Excursion Spur.

b) Notwithstanding the provisions of subparagraph (a) above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

day period, each party shall within two (2) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. Otherwise, the two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 12.1 and 12.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

12.4 Pending Resolution - During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this License, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

12.5 Cost of Arbitration - Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 13. Miscellaneous Provisions.

13.1 Binding Successors; Assignment - This License shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this License without the prior written consent of the Port, which consent may not be unreasonably withheld, denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this License freely. If Port desires to assign its rights and obligations under this License or to convey its right, title and interest in the Excursion Spur, then TPO and the potential assignee or acquiring entity shall negotiate in good faith to revise the terms of this License to address their respective interests.

13.2 Notices - Except as otherwise expressly provided in this License, all notices and other communications under this License shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or (b) at the earlier of actual receipt or the third business day following deposit in the United States

mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Port: Port of Seattle
P. O. Box 1209
Real Estate Division
Seattle, WA 98111
Attention: Joe McWilliams
Telephone No. 206-728-3722

If delivered:
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

TPO: GNP Rly. Inc.
403 Garfield Street #20
Tacoma, WA 98444
Attention: Thomas Payne
Telephone No. 253-459-9702

13.3 Headings - The section and subsection headings in this License are for convenience only and shall not be used in its interpretation or considered part of this License.

13.4 Integration, Amendment, and Waiver - This License controls all the rights and obligations of TPO and Port as to the operation of the Excursion Rail Service on the Excursion Spur. The O&M Agreement controls all the rights and obligations of TPO and Port as to the operation of freight rail service and Excursion Rail Service on the Corridor. This License is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this License shall be binding unless executed in writing by both of the parties. No waiver of any provision of this License shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.5 Counterparts - This License may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

13.6 Governing Law - This License shall be construed and interpreted in accordance with the laws of Washington State and/or federal law where applicable, and the parties shall be entitled to all remedies in law and equity as provided for thereunder.

13.7 Time of Essence - Time is of the essence of each and every provision of this License.

13.8 Changes to Port Property - Any parcel transferred by the Port to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in connection with the rail operations intended by this License shall be deemed removed from the Excursion Spur or Port Property as applicable.

13.9 Not for the Benefit of Others - This License and each and every provision herein are for the exclusive benefit of the parties to this License and County and not for the benefit of any third party, except County. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties to this License.

13.10 Attorneys' Fees - If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this License, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this License, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding in addition to any other relief to which it or they may be entitled.

13.11 TPO Operating Data - In the event of termination of TPO's operations, TPO shall, at the Port's request and expense, provide to the Port or the Port's designee all data associated with TPO's operations on the Excursion Spur, including, but not limited to, car tracing, identification and rates, and accounting records. Provided, that in the event TPO's operations terminate as a result of TPO transferring its rights to another operator, with the Port's consent, such operating data shall be transferred by TPO to its successor at TPO's cost or that of TPO's successor.

13.12 Removal of TPO's Property - Upon termination of this License, TPO shall have ninety days from the date of termination to remove all of TPO's personal property and trade fixtures, so long as such removal does not damage the Excursion Spur or Port Property. If damage results to the Excursion Spur or to Port Property as a result of TPO's activities under this Section 13.12, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Excursion Spur or Port Property to as good condition as they were prior to TPO's removal activities, normal wear and tear excepted. If TPO fails to remove any of the personal property and trade fixtures within the time authorized under this Section, the Port may remove TPO's property at TPO's expense, subject to offset by any net proceeds received by the Port from the sale of TPO's property. TPO's obligation to (i) restore the Port for any damage to the Excursion Spur or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this License. All other property or improvements placed on the Excursion Spur or Port Property by TPO during the term of the License that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this License.

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

13.14 Railbanking Conditions - As part of the approvals for railbanking the Excursion Spur, the STB conditioned its approval concerning salvage activities and archaeological remains, which conditions must be complied with by TPO. TPO agrees that:

(a) Prior to beginning any salvage activities,

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

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

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

13.15 Encumbrances - TPO may pledge or otherwise encumber its rights under this license to secure its obligations under any loan agreement or similar or related document; provided, however, that notice of such pledge is provided to Port, and that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns as licensor hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this License effective as of the Execution Date.

PORT OF SEATTLE
a Washington municipal corporation

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

GNP RLY. INC.
a Washington corporation

By: Thomas Payne Chairman & C.O.O.
Name: THOMAS PAYNE
Title: CHAIRMAN & C.O.O.

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On Dec. 17, 2009, before me, a Notary Public in and for said County and State, personally appeared Joy Yoshitani, of the Port of Seattle, a Washington municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

JULIE KATHRYN THOMAS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 1-22-11

(SEAL)

Julie Kathryn Thomas
Printed Name
Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of Washington, residing at Bothell, Wa
My commission expires 1-22-11

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On 12/8, 2009, before me, a Notary Public in and for said County and State, personally appeared Thomas Pierce, of GNP Rly. Inc., a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

STEPHANI A. OWENS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES APRIL 29, 2013

(SEAL)

Stephani A. Owens
Printed Name
Stephani A Owens
NOTARY PUBLIC in and for the State of Washington, residing at Edmonds
My commission expires 4-29-2013

EXHIBIT 6

Port of Seattle

P.O. Box 1209
Seattle, WA 98111-1209
Tel: (206) 787-3000

www.portseattle.org

December 2, 2010

Via E-Filing

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

Re: *GNP Railway, Inc.—Acquisition and Operation Exemption—Redmond Spur and Woodinville Subdivision*, STB Docket No. FD-35407;
BNSF Railway Company—Abandonment Exemption—In King County, WA, STB Docket No. AB-6 (Sub.-No. 463X);
BNSF Railway Company—Abandonment Exemption—In King County, WA, STB Docket No. AB-6 (Sub.-No. 465X)

Dear Ms. Brown:

On August 24, 2010, GNP Railway, Inc. filed a Petition to Vacate Notice of Interim Trail Use or Abandonment in STB Docket Nos. AB-6 (Sub.-No. 463X) and AB-6 (Sub-No. 465X) and a Verified Petition for Exemption Pursuant to 49 U.S.C. 10502 in STB Docket No. FD-35407. On or around November 9, 2010, the City of Redmond, Washington; King County, Washington; BNSF Railway Company; the Central Puget Sound Regional Transit Authority; and the Rails-to-Trails Conservancy all submitted comments in the above-captioned proceedings opposing the GNP petitions.

The Port of Seattle respectfully requests that the Board deny the GNP petitions because GNP does not have the necessary legal rights to operate freight trains over the lines at issue in these proceedings.

Through its petitions, GNP seeks to vacate two Notices of Interim Trail Use covering a total of 9.1 miles of railbanked right-of-way in King County on the former BNSF Redmond Spur, between mileposts 0.0 and 7.3, and the former BNSF Woodinville Subdivision, between mileposts 22.0 and 23.8 (collectively, the "Lines"). GNP also seeks authorization to acquire the residual common carrier rights for the Lines from King County and to restore freight rail service on the Lines.

As set forth in detail in the King County Comments, the Port, BNSF, and King County executed a complex set of agreements (pursuant to authority obtained from the Board), through which BNSF conveyed title to the Lines to the Port, the Lines were railbanked with King County acting

as interim trail user, and BNSF conveyed to King County the right to reinstitute service over the Lines.[1] *See* King County Comments at 5-11.[2]

As part of these transactions, the Port granted to GNP a license (the "License") to provide passenger excursion service over a portion of the Lines (the Redmond Spur between mileposts 0.0 and 2.5, the "Excursion Spur") and limited head and tail operations over a portion of the Excursion Spur (between mileposts 0.0 and 1.0). *See id.* at 17-19 and Exhibit 18. The License specifically and unambiguously prohibits GNP from providing "common carrier or contract freight rail service on the Excursion Spur," *id.* at Exhibit 18, Section 2.8, and from "setting out or picking up rail cars," *id.* at Exhibit 18, Section 2.8. The Port does not plan on granting GNP any property rights to operate freight service on the Lines, and King County and Redmond have asserted that they similarly do not plan on granting any such rights to GNP. *Id.* at 31.

As argued persuasively in the opposition comments cited herein, the Board must deny the GNP petitions because GNP not only lacks the legal right to operate freight service on the Lines, but has expressly agreed not to provide such freight service. *See* King County Comments at 39-43; Redmond Comments at 23-25; Rails-to-Trails Comments at 2-6; Sound Transit Comments at 7-9. The opposition comments expertly analyze long-standing Board precedent establishing that the Board will not grant a carrier's request to vacate a NITU and permit reactivation of rail service when that carrier does not own or have any other interest in the right of way at issue.

In the instant scenario, of course, GNP not only has no legal authority to operate freight service, but has proactively agreed with the Port not to operate such service on the Lines. Because GNP cannot establish this necessary element, the Port respectfully requests the Board to deny the GNP petitions.

Respectfully submitted,

Tay Yoshitani
Chief Executive Officer, the Port of Seattle

cc: All parties of record

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[1] These transactions included rail lines and property in addition to the Lines, but for the purposes of this letter, I only discuss the effects of the transactions on the Lines at issue in this proceeding.

[2] In July 2010, the Port conveyed to Redmond title to the southerly 3.9 miles of the Redmond Spur (between mileposts 3.4 and 7.3), subject to the rights of King County as interim trail user and holder of reactivation rights over this segment. *See* Redmond Comments at 14.

EXHIBIT 7

GNP Rly Inc.

9 December 2009

Mr. Craig Watson, General Counsel
and
Mr. Joe McWilliams, Managing Director, Real Estate
Port of Seattle
Pier 69
2711 Alaskan Way
Seattle, WA 98121

Re. BNSF Corridor.

Gentlemen;

At our meeting yesterday with the Port and King County, we agreed we would proceed to closing under the present documents if those document were revised to reflect only:

(a) That GNP's scope of operation under the License Agreement (as reflected in the definition of "Excursion Spur" in Section 1.7) would be extended on the Redmond Spur to MP 3.39 (NE 124th St.), and

(b) That GNP shall provide freight service general liability insurance with a minimum limit of $5 million per occurrence (as reflected in Section 9 of the License and Section 8 of the O&M Agreement), and

(c) That the fees payable to the Port and subsequently to the County upon assignment of the License (as reflected in Section 9 of the O&M Agreement and Section 10 of the License) would be adjusted to the levels proposed in our letter of 25 November 2009.

You requested that we provide the Port with GNP's justification of these revisions.

In your e-mail to us of 20 November 2009, the Port advised GNP as follows:

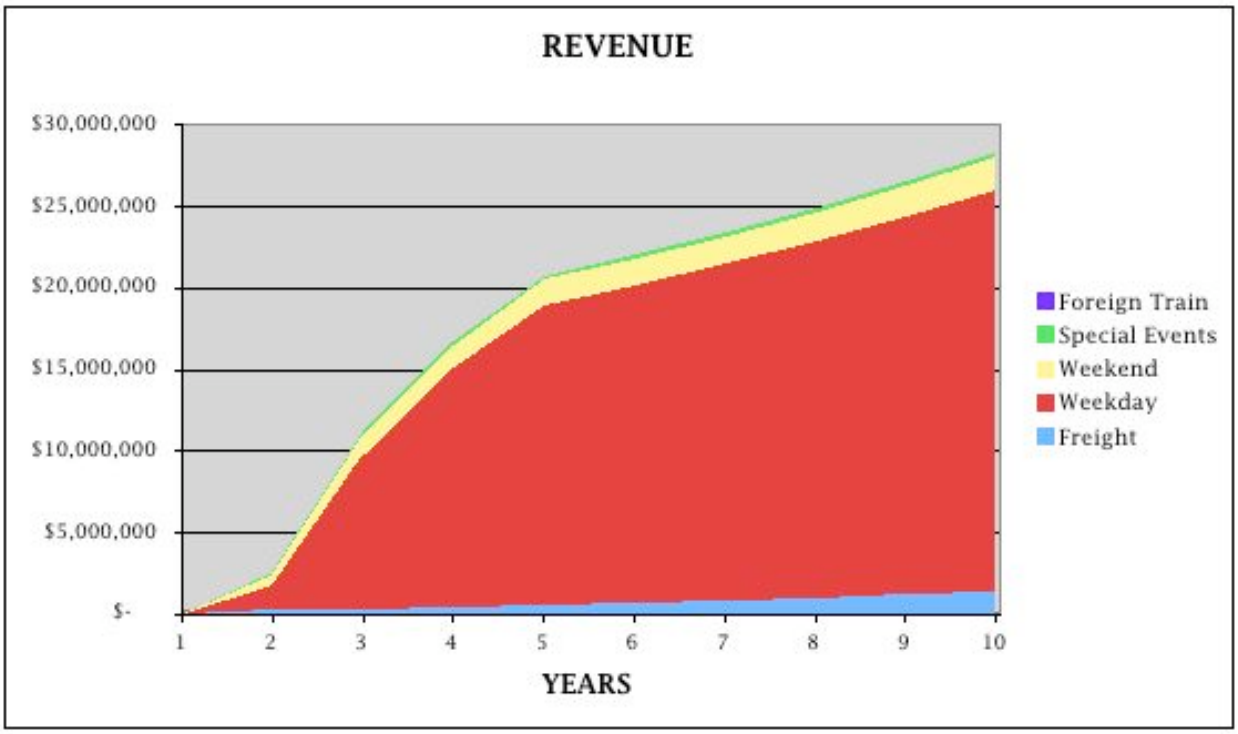
> "You also need to give consideration to the limitations of expansion of excursion train service; given the dynamic nature of the ongoing negotiations with respect to the ultimate ownership of the corridor south of milepost 23.8, the Port will not be in a position to grant excursion service beyond what is already contemplated in the documents."

This advice to GNP led us to conclude that the present discussions between the Port and King County, Cascade Water Alliance, Puget Sound Energy, Sound Transit and the City of Redmond could have material adverse change effects on GNP's business plan. At today's meeting those concerns were proven to have been justified.

The current License agreement contemplates the extension of GNP's rights under the agreement to MP 11.9 in Bellevue, (Expanded Excursion Spur) after suitable public process and

discussion. At our meeting yesterday, King County advised that neither King County nor Sound Transit, as the proposed new owners of certain segments of the Corridor south of M.P. 23.8 in the city of Bellevue, would likely ever grant the extension of those rights to GNP.

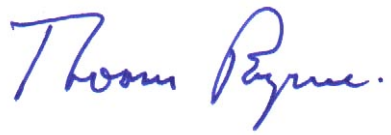
When GNP made its proposal in 2008, it reasonably had hoped for an opportunity to work with the Port to gain the right to provide weekday excursion rail service between Bellevue and Snohomish. The new deal structure in which King County and Sound Transit become the fee owners of the corridor south of MP 23.8 makes this substantially less likely. This material adverse change will reduce GNP's revenues by approximately 80%. The following graph showing GNP's projected revenue assuming an opportunity to provide weekday excursion rail service between Bellevue and Snohomish. The projected revenue from weekday excursion rail service is shown in red. Without this opportunity, GNP revenues will be reduced by that substantial amount. Additionally, opportunities to expand the freight business on the line will be limited. This will reduce the amount of revenue from freight (shown in blue) GNP may reasonably expect.



GNP has reconsidered this business opportunity in light this adverse material change made by the Port and the dramatic reduction in reasonably expected revenue. As we said in yesterday's meeting, GNP has concluded that, even with this material adverse change, it will have a viable business operating excursion and freight rail service on the limited line, with the changes we discussed to the scope of the Excursion Spur, the amount of freight insurance and the fees.

With the changes contemplated in the first paragraph of this letter, we look forward to the closing of this transaction and successful GNP operations on the line.

Yours truly,



Thomas Payne
Chairman, Chief Operating Officer

EXHIBIT 8

King County

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

December 11, 2012

Motion 13801

Proposed No. 2012-0452.2

Sponsors Hague, Phillips, Ferguson, Patterson, Dunn and von Reichbauer

A MOTION establishing the Eastside Rail Corridor as a corridor of regional significance and declaring the criticality of the regional ownership partnership by establishing the Eastside Rail Corridor regional advisory council to immediately initiate a regional planning process.

WHEREAS, the Eastside Rail Corridor ("the ERC") is a forty-two-mile corridor that extends from Renton to Snohomish and from Woodinville to Redmond, and

WHEREAS, the ERC creates a direct contiguous land use and transportation connection through the communities of Renton, Bellevue, Kirkland, Redmond, Woodinville, Snohomish county and King County, and

WHEREAS, the first time acquisition of the ERC was studied was by the Puget Sound Regional Council, leading to the original vision of potential uses. In May 2007, the Puget Sound Regional Council completed a technical study of the ERC identifying desirable potential uses and examining their general impacts, the comparative costs of such potential uses and the legal or institutional issues associated with preserving or acquiring the ERC. Based on this study, the BNSF corridor advisory committee recommended, for the ERC portion south of Woodinville, that, among other uses, an interim regional multipurpose trail be developed, and

WHEREAS, the region, through the Puget Sound Regional Council has established land use and transportation plans to guide the integrated and managed growth of the Puget Sound region, and

WHEREAS, the ERC is centrally located within the Puget Sound planning area, and

WHEREAS, these regional planning efforts have established, through Vision 2040, regional goals for the economy, housing, transportation, public services, development patterns and the environment, and

WHEREAS, the ERC provides an opportunity to connect jobs, housing and transportation across multiple communities, and

WHEREAS, King County has established policy emphasizing the critical importance of transportation dual-usage, transit and nonmotorized trail usage, to link the centers and cities of the Puget Sound region, and

WHEREAS, development of the ERC has the potential to meet future public transportation needs by providing regional livability connections to South, East and North King County through a series of biking, walking and hiking trails, and

WHEREAS, the ERC could also provide for a regional trail system that could extend into Snohomish and Skagit counties to the north, and Pierce county to the south, and

WHEREAS, the ERC is a regional utility corridor for the transmission of natural gas, electricity (and related facilities), water and wastewater, and

WHEREAS, King County has experience with other joint use corridors such as the Interurban Trail and the Tolt Corridor, and

WHEREAS, the ERC provides a trans-generational opportunity to support walkable, compact and connected communities through publically owned lands, and

WHEREAS, through dual-usage and trail sponsorship, King County has an opportunity to enhance and protect the environment through reduced greenhouse gas emissions and to improve public health through increased opportunities to bike and walk, and

WHEREAS, the ERC provides a regional opportunity to connect historically disadvantaged and geographically disparate communities and centers, and

WHEREAS, the ERC is now under public ownership, and

WHEREAS, King County is the interim trail sponsor, and

WHEREAS, King County is entering into a Purchase and Sale Agreement with the Port of Seattle for 15.6 miles of fee ownership in the southern portion of the ERC south of Woodinville and 3.6 miles of trail easement within the northern portion of the ERC north of Woodinville, contingent upon future financing, a Reciprocal Coordination and Cooperation Covenant Agreement with Puget Sound Energy, an Intergovernmental Land Transfer Agreement with the city of Redmond and a prospective Intergovernmental Land Transfer Agreement with the city of Kirkland, and

WHEREAS, Puget Sound Energy has purchased a utilities easement the length of the ERC, and

WHEREAS, Sound Transit has purchased 1.1 miles of fee ownership in Bellevue and a transit easement over the southern portion of the ERC, and

WHEREAS, the cities of Redmond and Kirkland have purchased in fee those portions of the ERC within their respective municipal boundaries, and

WHEREAS, Puget Sound Energy, Sound Transit, Redmond and King County were all a party to the November 5, 2009, Memorandum of Understanding, wherein dual usage was a guiding principle, and

WHEREAS, the city of Kirkland is in agreement with that guiding principle for the use of its property rights, and

WHEREAS, King County's dual usage policy identifies the critical importance of a comprehensive regional planning process, and

WHEREAS, this motion advances the goals of the county's Strategic Plan by encouraging vibrant, prosperous and sustainable communities and safeguarding and enhancing King County's natural resources environment, and

WHEREAS this motion further advances the goals of the county's Equity and Social Justice Initiative by supporting ongoing public access for all people to the ERC as a safe, clean and quality outdoor space and facility that will serve the interests of the citizens of the region, and

WHEREAS this legislation advances the adopted King County Comprehensive Plan by furthering economic development, housing, natural resources, utilities and transportation modalities, and

WHEREAS, the eastside of King County is the second largest economic engine in the state, and

WHEREAS, the most affordable housing is located in southern King County, and

WHEREAS, the economic recession has caused all levels of government to look toward creative financial partnerships, and

WHEREAS, the taxpayers of King County are the same taxpayers who support Sound Transit, and

WHEREAS, interim use of the ERC is subject to freight reactivation, and

WHEREAS, the high capacity transportation, regional trail and county wastewater facilities that are to be located in the ERC will be of significant public benefit and constitute essential public facilities. As essential public facilities, these transportation, trail and wastewater uses are subject to the requirements of the Growth Management Act, and

WHEREAS, the ERC will be a dual use transportation corridor, which is a corridor that will provide for the co-location of motorized public transportation facilities and regional trail facilities;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. Due to its regional role in connecting and supporting vibrant, livable and healthy communities for all, the ERC is hereby designated a corridor of regional significance.

B. The high capacity transportation, regional trail and county wastewater facilities that are to be located in the ERC will be of significant public benefit and constitute essential public facilities. As essential public facilities, these transportation, trail and wastewater uses are subject to the requirements of the Growth Management Act.

C. The Eastside Rail Corridor regional advisory council ("ERCRAC") is hereby established as a collaborative group to carry out a regional planning process to "coordinate planning and development activities to the extent possible to ensure effective use of the southern portion of the ERC and the Redmond Spur" as previously discussed in

that certain November 5, 2009, memorandum of understanding. The ERCRAC's regional planning process and guiding principles shall work to implement the regional dual use objectives consistent with any existing easements, covenants and other property interests of record that are applicable to the ERC.

D. The executive shall transmit by January 16, 2013, for council confirmation by motion, advisory council membership with the following executive-level representation:

1. Three King County councilmembers;

2. King County executive or the executive's designee;

3. One representative from the city of Redmond;

4. One representative from the city of Kirkland;

5. One representative from Puget Sound Energy; and

6. One representative from Sound Transit.

E. The King County executive and county councilmember representing the majority of the cities directly impacted by ERC development shall serve as co-chairs and shall convene the first meeting of the advisory council in February 2013.

F. A technical staff team shall be established by the advisory council to support the work of the advisory council.

G. A third-party facilitator who is not an employee of King County shall be hired by the county to lead the work of the advisory council based on the guidance of the co-chairs of the advisory council and the support of the interagency, technical-staff working group.

H. The goal of the advisory council is to oversee the partner planning process including implementing and coordinating the rail, trail and utility uses in the ERC,

coordinating with affected cities around local planning and development with the regional uses and overseeing the work of a technical staff work group.

I. Consistent with that goal, the advisory council will develop a charter and work plan with policy options identified for discussion by March 29, 2013. As part of their due diligence, the advisory council should review and consider previous studies of the ERC. The advisory council shall address both near-term and long-term recommendations including any needed changes to the county's countywide planning policies and present them to the King County executive by July 31, 2013.

J. The advisory council shall reach out to a broad-spectrum of stakeholders, including but not limited to representatives of regional partners, local governments in the ERC, community organizations, business owners, adjacent landowners, rail/trail advocates, public health agencies and citizens who are interested in the ERC's development.

K. The King County executive shall transmit these recommendations by motion to the council by August 30, 2013.

Motion 13801 was introduced on 11/26/2012 and passed by the Metropolitan King County Council on 12/10/2012, by the following vote:

Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague, Ms. Patterson, Ms. Lambert, Mr. Dunn and Mr. McDermott
No: 0
Excused: 1 - Mr. Ferguson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

Attachments: None

EXHIBIT 9

CITY OF BELLEVUE

Bel-Red Subarea

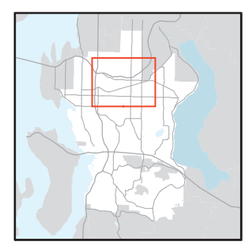
- T Planned Light Rail Stations
- Planned Park Facilities
- Planned New Streets
- Planned New Trail Connections
- Riparian Greenway Opportunity Areas

Bel-Red Zoning

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

Subarea plan adopted 2/17/2009 Ordinance No:**5858**
Zoning adopted 5/18/2009 Ordinance No:**5874**

For more information contact:
Paul Inghram
Phone: 425-452-4070
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Location Within City

The information on this map is a geographic representation derived from the City of Bellevue Geographic Information System. The City of Bellevue does not guarantee that the information on this map is accurate or complete. This map is provided on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. Any commercial use or sale of this map or portions thereof, is prohibited without express written authorization by the City of Bellevue. The City of Bellevue is not responsible for any damages arising from the use of information on this map. Use of this map is at user's risk. Users should verify the information before making project commitments.

Plot Date: 8/31/2009

Legend

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

Bel-Red Zoning

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

EXHIBIT 10

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

A P P E A R A N C E S

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tom@montgomeryscarp.com

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

(Exhibit Number 37 marked.)

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

BY MR. COHEN:

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

A. It is.

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

A. I looked at it.

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

A. Yeah.

Q. We'll come back to it.

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

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

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

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

2012, it was around $500,000.

Q. That would be revenues, not net income?

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

Q. Okay.

MR. MONTGOMERY: Unfortunately.

THE WITNESS: Yeah.

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

A. Eastside.

Q. What did you call it?

A. Eastside Freight and Railroad.

Q. Yes, Eastside Freight and Railroad?

MR. FERGUSON: It's 26.

MR. COHEN: Thank you.

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

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

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

billing for the work that we did. So we got paid one payment.

And when we actually, when Doug Engle completed the buyout of the -- of the GNP position, then we signed an agreement with Doug that we would essentially continue what we had been doing without getting paid, operating the common carrier freight business, but using the nationwide system for collecting, it's all based on, paid so much a car that you handle, a loaded car. And the system, it takes about three or -- three months before you get paid for something. If you did something in August, you don't get paid until Halloween.

So we got almost nothing from the, sort of, regular system, but we did get that one payment that came from Perry Stacks. Perry Stacks was the bankruptcy trustee.

So, you know, it's an unusual year. The year we're in now, we're doing all the billing and we're getting paid.

Q. Ballard Terminal Railroad is doing all the billing?

A. Yeah, so we'll get paid the right amount.

Q. So what were your -- well, I'll ask that, do you know the per car revenues in 2013, average?

A. Yeah, the amount we --

A. Okay.

Q. I have you moving 270 carloads in 2010, does that sound --

A. That's -- well, I don't know. I guess I'd like to see the document.

Q. Sure, let's do that.

A. It's probably my work on the document.

Q. Yep.

MR. MONTGOMERY: Thank you, Counselor.

(Exhibit Number 38 marked.)

Q. (By Mr. Cohen) So, Mr. Cole, showing you what's been marked as Exhibit 38. Do you recognize this document?

A. Well, it's got my name on the back of it, so...

Q. Your signature too?

A. That's what I mean.

Q. Yes.

A. Yes, I composed it.

Q. All right.

A. And so here's the list of the three years.

Q. Yes.

A. And so, I think it's accurate.

Q. Okay. So check me on this, it shows 270 carloads in 2010; 235 in 2011; 177 through September of 2012?

A. That's what it says, yes.

Q. Does that sound right to you?

A. Yes, I think it's -- I think those are the numbers.

Q. Okay. And if you would look at Exhibit 26, which I handed you a minute ago, you'll see a total 2012 number there of 213 cars, you see that?

A. I see that.

Q. Does that sound accurate to you?

A. Let's see here, yeah. Yeah, I think that's probably a correct...

Q. And do you have an estimate for 2013 year to date?

A. Well, these first three show a declining trend in traffic, and so I certainly hope it's reversed this year and we start to climb up a little bit out of the recession. So we have excellent year on our Meeker line this year. Record breaking.

Q. Really, I'm asking you, since I have no records for 2013, do you know what the traffic volume is, we'll say, through the end of April on the Eastside line?

A. Yeah, we -- we know, but I don't have it in my head here what it is.

Q. Okay.

A. But I can provide that for you.

Q. So you're showing something in the ballpark of a 10 percent decline in traffic each year since you began

operations. To what do you attribute that decline?

A. Well, the housing market has been in a gigantic slump and it's sort of coming out of it now. But I still get -- from my forest products industry years, the one trade journal that's still being published every month, and it's not over yet. And so that's the single biggest thing, because Boise Cascade is in building products. And our third shipper, that is Matheus Lumber, I couldn't remember it a while ago. And they're in the same boat.

And there was a cedar lumber wholesale outlet as well, and they folded up completely in the beginning of the first year when we started in 2010. They went bankrupt, so...

Q. I was going to ask you, are you down to three shippers on the Eastside line right now?

A. At the moment, but --

Q. Go ahead.

A. -- there's opportunities there to get some more industries.

Q. Have any of your current three shippers advised you of plans to increase or reduce traffic in 2013?

A. Well, I think -- I think the forest products, the building materials people, they're always hopeful that better times are coming. And so, you know, that's what they would say, it's a little better here.

Q. I'm really asking, have there been any, has anybody advised you, we are planning to increase traffic, reduce traffic, go out of business, amongst your three big shippers?

A. Well, Spectrum Glass apparently is doing quite well. And they bought a huge warehouse in Maltby.

Q. In Maltby?

A. Maltby.

Q. I'm sorry, Maltby?

A. Yes, top of the hill. Just to hold their finish product before it's shipped out to wherever all it goes. So they're enjoying good times, but they're not hooked to the building trades. Boise Cascade is firmly hooked to the housing and --

Q. Right.

A. -- and light commercial construction markets.

Q. But I'm not asking what you see coming based on changes in the economy. I'm asking, have any customers communicated to you that we're going to be having an increase in freight traffic or a decrease in freight traffic in the near future here?

A. No.

Q. Okay.

A. No. Boise is upbeat and Spectrum is upbeat. Matheus is soldiering on.

Confidential Information Filed Separately Under Seal

One other question about Exhibit 39. Do you know who paid for the RailWorks analysis that's reflected in this report?

MR. MONTGOMERY: Assumes facts not in evidence.

THE WITNESS: I -- I have no idea.

MR. MONTGOMERY: Foundation.

Go ahead. I'm sorry. Just trying to get in my objection.

THE WITNESS: I thought you were done.

MR. MONTGOMERY: You took care of my second one for me, thank you. Did you get that? Assumes facts and foundation.

THE COURT REPORTER: I did.

THE WITNESS: I don't know, did they send a bill to somebody. Didn't send it to me. I would think they're hoping to be chosen to do the work eventually when it happens, and it would probably happen in stages. They never sent me a bill for inspecting jobs that I had for them, so I -- does somebody know that there was a bill tendered?

Q. (By Mr. Cohen) I don't, I guess I was --

A. I think they just did it and hope they get the job.

Q. I see. Did Ballard -- I'm sorry.

MR. MONTGOMERY: Just take a long time.

MR. COHEN: It's hard to be deposed and eat a donut at the same time.

MR. MONTGOMERY: Take your time asking the question and we'll be okay.

MR. COHEN: This one will be quick, though.

Q. (By MR. COHEN) Did Ballard engage RailWorks to do this inspection?

A. I suggested to Doug that -- I think they're the best outfit out here in this part of the country. And we use them virtually exclusively and have for many years. And so he did, and so --

Q. "He did" means Doug did?

A. Doug engaged them. As a matter of fact, he and I and Ernie, one of his assistants, did a car trip one day and went to the RailWorks headquarters in Chehalis. And when we got there, holy smokes, those guys gave us a tour of their shops and all of their equipment, and very cordial. And I mean, I already knew two or three of them for years and years.

But, anyway, so for them that worked out to being invited to come and check out the section of rail that we operate the trains on, so they did.

Q. Okay. But Doug was the --

A. Yeah.

Q. -- guy?

A. Doug was the guy who did the invitation. And they made the report and addressed it to Doug.

Q. I see. Thank you. Have some of that donut.

Referring you back to Exhibit 38, that's your letter to Judge Lynch. On the last page of that letter, you describe the state department of transportation grant program, you see that?

A. Where is it?

Q. Last page?

A. Last page.

Q. Of Exhibit 38.

A. Yeah.

Q. Just above your signature.

A. Okay. What's your question? I understand the paragraph.

Q. Right. My understanding is that someone applied for a grant to the state department of transportation to rehabilitate the freight segment. To your knowledge, is that true?

A. Well, wasn't me. I think it would be Doug. And you know, I encouraged him to do it. Some people fair very, very well. There's a huge imbalance in the state and the state of Pennsylvania. The state of Pennsylvania awards to every short line at the table, every year. I

don't think you even have to apply. But they're really into maintaining the short lines in a high state of good repair.

State of Washington is all about let's buy some more Talgo trains and let's bring Burlington Northern some money so they can put in more passing tracks so we can run those more Talgo trains, things like that.

The state rail office for short lines has dwindled to maybe two people down there. It used to be the dominant thing. It's just a little group that's part of transportation. Just a little group. There's not much for the short lines anymore.

Q. Do you know if someone, do you know if Doug applied for it --

A. I don't know.

Q. -- a grant?

A. I don't know. Yeah, I don't know either way.

Q. You've not been involved in that effort?

A. I wasn't, no. I encouraged him to nose around, but when you go to the state rail office, it's all about Talgos all the time.

Q. I hear you. There's something I don't understand. Given that under the lease agreement, the responsibility of maintaining that line is all Ballard, why would you expect Doug to go apply for grants?

MR. MONTGOMERY: Object to the form. Assumes facts.

THE WITNESS: Well, I got a full plate already with two other railroads. And he's -- he had the time and the inclination and the enthusiasm to go do it. I said, I got him some names of people that were still down there. And so he, you know, took the time to go do it. And I think he also talked to people in the legislature when he was down there. Had perhaps the better reception from them, because the rail office is not much about short lines anymore. It's -- sorry, it's not the way it should be. The Talgo trains should be funded from a completely different place.

Q. (By Mr. Cohen) Right. Do you know if a grant application was, in fact, filed?

A. I don't know --

Q. Okay.

A. -- either way.

Q. Turning to Page 4 of Exhibit 38. Am I correct that this letter was written in September 2012?

A. Whatever it says, yeah.

Q. So I'm looking --

MR. MONTGOMERY: Page 4. Okay, good. Yeah.

Q. (By Mr. Cohen) I'm looking at the last paragraph on Page 4?

A. Okay.

Q. The statement, "What is clear, is that the operation of just the existing carload freight side of the business does not generate enough income to put any significant amount of money into the track structure."

A. Mm-hm (answers affirmatively).

Q. That was your statement?

A. This is my letter, absolutely.

Q. And that was September 2012?

A. Mm-hm (answers affirmatively).

Q. Is that statement still true today?

A. It is. And some other things I said in there, too, I was in good form.

Q. It's a nice letter.

MR. MONTGOMERY: I'll object once again to this line of questioning to the extent that it applies to the Snohomish to Woodinville rather than Woodinville to Bellevue section.

MR. COHEN: Mr. Montgomery, if you want, I'm willing to note a continuing objection, if you --

MR. MONTGOMERY: That would be lovely, Mr. Cohen.

MR. COHEN: -- want to, inquiries about the freight segment.

MR. MONTGOMERY: That would be terrific.

MR. COHEN: All right.

Q. (By Mr. Cohen) Do you agree with the statement that "It is not realistic to forecast that huge increases in the amount of freight traffic are just around the bend"?

A. Well, when we earlier here, we were talking about, you know, who were the customers that we have between Woodinville and Snohomish. And so, there's not very many, three active ones. And the good news is we haven't really lost any in the three years we've been running the line.

Q. Except the cedar company, right?

A. Cedar guys, yeah. I mean, those people are -- made a colossal blunder, they spent a ton of money on a facility to store and display the cedar lumber, just the beginning of the crash. And an outfit back in Minnesota, anyway -- don't feel sorry for them, they got tons of money.

What -- where do you want me to go with this?

Q. I'm sorry, what I was really asking is your statement that it is not realistic to forecast that huge increases in freight traffic are just around the bend?

A. For the Woodinville to Snohomish line. But there are things we can do and, you know, this is written while things were still in limbo. It was Perry Stacks as the trustee, and a nice enough guy, but it wasn't clear what

was going to happen.

And there had been some bigger short line conglomerates sniffing around. I thought one of them might step forward or something. Be much better financed and able to make something happen. But if we're to be in a position to be able to do this long-term, and just setting aside Kirkland to Bellevue at the moment, there's things that can be done at Maltby. There is vacant industrial ground. And there's things that can be done at Woodinville to boost the freight up enough to, you know, the contacts with the trans-loading companies that are already on our line. We have four at Meeker --

Q. But Meeker is a different line?

A. It's a different line. It's five miles up Burlington Northern, former Transcontinental railway. It runs south and east out of Puyallup.

Q. I hear you.

A. Okay. So anyway, I think about them all every day, not just one or the other or the other. So there's opportunities on the freight branch that we're operating today to try to get some more customers there, too. But this thing to Bellevue is a completely different deal. And not going to be digging 10 million cubic yard excavation holes in the ground in downtown Woodinville any time soon.

Q. Save Bellevue. We'll get into that this

afternoon. I'm really, this is a statement you made about the freight segment?

A. Yes.

Q. I'm curious whether today, now it's what is it, seven, eight months later, that statement remains accurate?

MR. MONTGOMERY: I think that was asked and answered.

THE WITNESS: Well, I feel the same way as I did in the letter. It's -- there's, you know, the Port pretty well just wants to be done with the whole thing, they haven't been any help. If it was in Pennsylvania, we'd be awash in money. We'd have it long since by now, it would be Class 2 track. Because in Pennsylvania, they look at short lines differently than they do here. The Port is incredibly passive.

MR. MONTGOMERY: Keep talking if you have more to say. Don't worry about the whispering.

THE WITNESS: So this still reflects how I feel.

Q. (By Mr. Cohen) All right. That's fine.

Can you continue running freight indefinitely on the freight segment without putting some money into maintenance?

A. No. I don't think so.

Q. When will you need to start maintaining that

line?

MR. MONTGOMERY: Assumes facts not in evidence. Mischaracterizes earlier testimony to the extent it's reflective of it.

Go ahead.

THE WITNESS: Okay. This year we sprayed for weeds using a professional weed sprayer that has contracts with Burlington Northern and short lines in Idaho and Montana and so forth. And they're out here and they had two other ones and I had them do ours. And things are dying and so it looks like they were spraying more than water out the spray nozzle. I rode in the hi-rail rig with the guy and we did two rails in one day. And we did Woodinville one day, and the next day we did our other two.

So --

Q. (By Mr. Cohen) So you've explained you sprayed for weeds, but you also said, and correct me if I'm misstating your testimony, some ties need to be replaced?

A. There's some, yes. I wouldn't say there's zero. But the standards for excepted track, you only need about five good ties in 39 feet of track, which is a really low standard. But that's what the book says.

Q. Right. So --

MR. MONTGOMERY: Are you finished?

THE WITNESS: Well, no, I was going to

say --

Q. (By Mr. Cohen) Go ahead.

A. -- that I've never tried to just keep going on the very borderline of one more tie. You know, federal inspector comes and looks and he says I think there's six -- you know, there's only four good ties in this segment. We gotcha. And with a spray can, and you got 30 days to pull that tie out and change it.

Pulling out individual ties is an expensive way of upgrading a track. It's better to bring in sort of a crew in to (indicating) change it out, not every tie, but changes the ones you need in a whole production line.

Q. My question for you is, how long can you postpone those tie replacements and still feel that you can safely run a freight railroad?

MR. MONTGOMERY: Objection; calls for speculation.

THE WITNESS: It's not an exact science. Some of it, Tom Payne did the simple thing when he took it over. He just said, Burlington Northern was calling this Class 2 track. We're calling it excepted, period. It's an administrative thing. Didn't even have to inspect it. He didn't want to. He just downgraded. So it doesn't mean that all of a sudden a bunch of ties failed, lowering it down, it was just that put it down there, not going to have

any beefs from the FRA when they do track inspections. It exceeds the minimum standards and so forth.

I'd like it if we would be replacing some ties next year.

Q. Do you have plans to do that?

A. No, kind of depends on the money. I tasked Doug to go get some money from the state. It's there. Quit spending it on Talgo trains. Get back to what you were supposed to do, to support the short line network. They had a plaque on the wall at one time that said, our job here is to preserve the existing freight rail network in the state of Washington. They've -- somebody threw out the plaque, and it's not a very big piece of what they do these days. They're all excited about the Talgos. And that's another story.

Q. So is Ballard Terminal Railroad currently losing money on the freight segment operation?

MR. MONTGOMERY: Objection; foundation.

THE WITNESS: We're about breaking even or maybe come out a little bit on the plus side.

Q. (By Mr. Cohen) That's based on the comparison between the cost you listed in Exhibit 26 and your revenues?

A. Yeah, I mean, it's in -- you know, a big piece of the cost picture is the diesel fuel, and things like that.

We don't have much control over them. But diesel fuel has been sort of stable here for a while. Employees are happy and we haven't given them a raise for a few years. So there's a lot of pieces to the whole thing. I'm not giving up on it.

We can -- but the other two railroads, essentially Meeker, we can afford to carry this thing a little bit. But please, let us go to Bellevue so we can make some serious money and fix the whole damn thing. We won't need any grant.

Q. We'll talk about Bellevue this afternoon.

A. I hope so.

Q. I just want to know your statement that your breaking even or a little better is based on the summary of costs shown on Exhibit 26?

MR. MONTGOMERY: Object to the form.

THE WITNESS: For this.

Q. (By Mr. Cohen) That's Exhibit 26 you're looking at?

A. Yeah.

Q. Is the answer to my question yes?

MR. MONTGOMERY: Same objection.

THE WITNESS: Well, it doesn't have any money in there for maintenance. It has maintenance on the locomotive and the caboose. It doesn't have anything for

the track. But saying we have responsibility for the track doesn't relieve Doug from the job of trying to find some money so that I can get the job done.

Q. (By Mr. Cohen) Right.

A. So we'll see how it works.

Q. All right. So there's no money in these costs for maintenance of --

A. No.

Q. -- track?

A. No.

Q. There's no money for payments to Ballard Industrial Company, right?

A. Well, it doesn't -- yeah, it doesn't talk about the income stream. But we are getting the full income stream, nobody is stiffening it off, not Tom Payne and not the bankruptcy trustee, so we're getting 100 percent of that. I'll say, it's a big pain in the rear to collect. It's a very obtuse -- it's made for giant railroads.

Q. And the income stream is, what was the number you gave me?

A. So we get, right now, we get 446 --

Q. $446 --

A. -- per car.

Q. -- per car, times 213 cars in 2012?

A. Yeah.

Q. All right. Is there any other income?

A. Oh, we've had people talk to us about storing cars. We have a couple of great places to store cars. We store cars on our other two railroads. So you can make some money there.

Q. Is anybody paying you right now to --

A. Not at the moment.

Q. -- store cars?

A. I haven't had any. I've gotten a lot of calls and I've been really too busy to hound them back to make that happen. But that's an easy thing with no investment. It's just empty cars that show up on the interchange and you find a side track to park them on.

Q. So any other income?

A. Can't think of any other sources, actually, beyond that.

Q. All right. And that cost estimate on Exhibit 26 doesn't include any payments to the Port?

A. Right.

MR. MONTGOMERY: Asked and answered.

Q. (By Mr. Cohen) Doesn't include any payments to Eastside Community Rail?

MR. MONTGOMERY: Asked and answered.

Q. (By Mr. Cohen) Right?

A. That's correct.

Q. Doesn't include any return on your capital investment?

A. Nope.

Q. Turning to -- we're going to take a lunch break shortly.

MR. MONTGOMERY: Good, I need to go to the restroom.

MR. COHEN: Give me a couple more questions and we'll stop.

Q. (By Mr. Cohen) Turning back to Exhibit 38 --

A. Yes.

Q. -- Page 4.

A. Of Exhibit 38?

Q. Yes.

A. Fourth full paragraph.

Q. Okay.

A. "As you can see," is that the one?

Q. Last sentence. Read that sentence into the record for me.

A. "Our financial position becomes more precarious every day."

We can do this forever, can't we.

Q. Tell me what you meant by that statement to the bankruptcy judge?

A. Well, he's a pretty low-key guy. And there was

think that -- that area would be on his list as well. But what's Sound Transit -- you guys bought the rights to a big chunk there, did you not? Most of the yards? And the old building where the box factory, cardboard box factory, I think. I don't know what the actual value is. There's also a lot of drainage water flowing through there. There's two channels in the railroad -- it was actually built on field that's been brought in there, so it's a little higher. There's some pretty big ditches, and whatever is done, that water is going to want to keep moving.

Q. So you don't know the value of the real property?

A. I have -- no, it hasn't been -- it hasn't been available. Ask Burlington Northern. They might have numbers, because they have been thinking about getting rid of this land for so many years.

Q. Does Ballard own any real property interest in the line?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

Go ahead.

THE WITNESS: No.

Q. (By Mr. Cohen) Does Ballard have any plans to acquire a property interest in the line?

A. I'm not sure what you mean.

Q. So do you believe that in order to run freight on the line between Woodinville and Bellevue, you would need an easement or other property right to get onto the property?

A. It kind of depends on what the STB does. On being able to -- it would all be -- you know, for us all to see after the STB findings were published.

Q. So Ballard has no present plan to acquire a property interest? And by a property interest, I mean a freight easement or any other kind of property interest in the line?

A. I don't think so. I didn't mean to say that.

Q. Oh, you do have a plan?

A. I'm saying it wouldn't be unusual that we had a freight easement or something. There's a number of different ways these things can go.

In City of Seattle, we have a franchise, a 30-year franchise that's renewable. It's the same kind of a document, virtually the same language, maybe the identical language that Union Pacific and Burlington Northern have for all parts of the industrial district in Seattle, that they don't own, never have, and never will need to.

Q. Have you requested such a franchise from any of the entities that own the real property?

A. No, we're trying to. I haven't gotten anything from the Kirkland people in spite of going to more meetings and community gatherings and feel-good sessions in downtown Seattle and over on the Eastside.

MR. MONTGOMERY: Keep talking. Just keep answering. Go ahead, keep going.

THE WITNESS: But not a good audience with anybody at Kirkland who said, you know, you guys are right, we don't actually need to rip the track up, it's 100-foot wide, you guys have made us offers that we've read where the trail can be on one side or the other side and you would help to construct the trail, we didn't see it that way a while ago, but now we're interested in talking turkey about it. That's what I want to see. That has to be the next step. I'm not worried about the contract language at all. We're so far away from that, it's the people in Kirkland who don't want to share.

Q. (By Mr. Cohen) So you know that Kirkland paid $5 million for the Kirkland section of the line?

A. Mm-hm (answers affirmatively), it did. Did Kirkland know it was railbanked and how the railbanking works and how getting things out of railbanking and back to use works? All we're doing is doing that.

Q. In your discussions with Kirkland, did you --

A. I didn't have any discussions with Kirkland. I

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

Q. So let's talk about King County.

A. Just as bad.

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

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

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

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

A. I didn't know that.

Q. I'm sorry?

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

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

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

Q. We're talking about the line --

A. Okay.

Q. -- between Woodinville and Bellevue, right.

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

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

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

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

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

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

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

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

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

Q. What are those?

A. Those are the rights to run short lines.

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

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

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

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

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

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

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

Q. Okay.

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

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

A. Yeah.

Q. And on Page 2 of Exhibit 40 --

A. Okay.

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

You see that statement?

A. I see that.

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

A. Okay.

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

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

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

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

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

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

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

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

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

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

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

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

Q. Who are they?

A. I'm not giving you the names.

Q. You're going to have to.

A. I don't know that I do.

Q. Okay.

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

MR. MONTGOMERY: Thank you.

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

Who are the names of the shippers you've been

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

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

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

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

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

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

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

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

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

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

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

Q. I can't give you that assurance.

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

like to develop a trans-load facility on?

A. Not yet. I thought it was premature until we see. We were panicking here about Kirkland's just -- I don't know. It's just -- answering to the bike community, jumping through hoops that they want. And the bikers just don't think a trail feels good if there's still tracks next to it. They just don't like it. It's not good enough.

We've been through that on both of our railroads, which have trails built beside them on both our Meeker line and our Ballard line. We get along fine with the agencies that maintain -- built and maintain them, Pierce County Parks & Recreation in the south and Seattle Department of Transportation in Seattle. But whenever we're doing any work anywhere near the trail, we put up traffic cones, direct them off to one side. The first five bikers down there kick over the cones. These are adults.

Q. Have you had any e-mail or other written communications between Ballard and any perspective shipper?

A. Well, I get -- like I said, I get calls for trans-loading from all around the state. I get calls occasionally from Canada, calls from Northern California from people who are looking for places where they can make some money by setting up a trans-load that other people will want to use.

Q. These are the people you don't want to name?

They got telephone banks waiting for the phone to ring. When that rings and that guy calls, they have a knowledgeable guy with a proven track history, been in business for 30 years, and he can tell how much it will cost to unload the railcar and how much it will cost to dray it from there to the Port, which dock are you going, to, blah, blah, blah. In the end, we get paid 350 bucks for handling that boxcar.

Q. Have you --

A. That's the way business works.

Q. -- gotten any calls from anyone who is trying to deliver freight to Bellevue?

A. I don't think so. But sometimes, when I'm talking to these people, I say that there might -- you know, might be a possibility that we'd be in Bellevue sometime, but they, from the standpoint of looking for a trans-loading, they don't see a lot of difference between unloading in downtown Bellevue or unloading in downtown Woodinville. The few minutes of trucking. But if it was somebody, that said, well, I want to open up a gypsum board retail and wholesale outlet, Sheetrock, well, then it might make a difference to be downtown. That would be a close haul for a pot full of gypsum.

Q. Any calls from anyone trying to deliver freight to Kirkland?

A. I don't think I've ever gotten any. But Kirkland does have an industrial district up there by the tracks, and there's one spur up there, and there used to be some others. You can see where there used to be some other spurs. I suppose might be able to be put back if, again, the right tenant was inside the building.

Q. Any calls from any shippers seeking to move freight out of Bellevue?

MR. MONTGOMERY: You mean other than --

THE WITNESS: Other than the spoils people?

Q. (By Mr. Cohen) Right. Other than Bobby Wolford and CalPortland, we'll talk about them.

A. Bobby has a bunch of competitors. When these big giant basements are dug, there's, I don't know, I'll bet there must be a dozen truckers, or more than that maybe, that would be available for those things. I'm sure they'd partner up in partnerships that last as long as that excavation job is going, two or three of them get together and say, Look, together we can put 16 trucks on the road, three little guys and, you know, a few trucks. Wreckers are like that.

Q. Has Ballard Terminal Railroad had any conversations with any truckers seeking to move?

A. No. But, you know, if this goes the right way, I think phones will start to ring because Wolford is going to

have the best economic model and the other guys won't want to get left behind.

Q. I'll ask you about that. How about anybody trying to move freight out of Kirkland, any calls from shippers trying to move freight out of Kirkland?

A. No. The businesses look pretty small and a lot of what used to be -- I've walked the line a number of times. The buildings that are there and could be under lease or maybe they're owned, I haven't checked to see what they might be, but mostly they're the kind of a business that doesn't look like they need rail. You know, in-house television system installers and all kinds of things, but not something big like a distribution center for Sheetrock or plywood or roofing paper --

Q. Right. I'm sorry.

A. Well, roofing materials or something like that.

Q. Right. So let me ask you about CalPortland. Before this rail reactivation issue came up, did Ballard Terminal Railroad have a prior relationship with that company?

A. Boy, do we.

Q. Tell me about it.

A. So my partner has a business in Ballard, it's Salmon Bay Sand & Gravel Company. It's a ready-mix plant. And CalPortland is one of the major suppliers of the dry

in. So their costs to gather this piece of traffic is pretty darn low.

And then they would say, all right, let's see where it is. We'll figure out a rate and tell you it's so much a carload to get to Snohomish. And then we would just use our existing tariff to haul it to Woodinville and figure out what it's going to cost us to actually get over the next hill to Bellevue.

It's a little premature to ask about rates down to the last penny, but I imagine Doug has figured it out. Even if he just used the number that doubled the rate we have now, because we're doubling the distance, we got a hill on both of those to go over. Runs up the fuel bill, I can tell you that. So --

Q. Any written communications between Ballard and CalPortland about the service you're describing?

A. No. Doug may -- well, at least there was this letter done and I'm not sure if they have any other e-mails or not.

Q. Okay. Ballard doesn't have an off-loading facility in Bellevue?

A. How would we have one? How would we -- we can't get there. We're trying.

Q. And CalPortland doesn't have an off-loading facility in Bellevue?

darn thing.

Anyway, it looks like there could be a place somewhere where the railroad yard area is and the spurs to about a half dozen industries there.

Q. But Ballard Terminal Railroad is not --

A. I haven't made any overtures to anybody. Except Sound Transit, I would like to lease your old cardboard box building because it's ready to go.

Q. To your knowledge, Wolford hasn't made any arrangements to land a loading facility in Bellevue?

A. Yeah, I don't know of any. And he may have. Or he may be, you know, confident, if this things goes through, that will be simple.

Q. Okay. Has Wolford talked to Ballard Terminal Railroad about a rate to haul freight --

A. We haven't.

Q. -- from Bellevue?

A. Right, we haven't.

Q. Okay.

A. But he and Engle have talked about some rates. And I just haven't taken the time to analyze them and see if it works for us or not.

Q. Mr. Cole, do you know where the -- this would be construction debris that Wolford wants to haul out of Bellevue, do you know where its destination would be, where

Q. So this is the document that your interrogatory answer represents is the basis for your calculation of the $10 million estimate. Have you ever seen this document before?

MR. MONTGOMERY: Hold on a second. Object to the form and object to the extent it mischaracterizes the interrogatory response.

Go ahead.

THE WITNESS: I don't think so. I think this is Doug Engle's work. But Doug and I have been joined at the hip for three years. And we think pretty much alike. And he's got this, this -- based on this is what's really the most important, and that's RailWorks. And so, I would have done the same thing. I would look at the RailWorks quote and say, Well, okay, let's see what this would be if we do this.

Q. (By Mr. Cohen) And how do you know that this document is based on RailWorks?

A. Well, something here that made me think of it. Because it talks about the Woodinville wye and blah, blah, blah, so much money to get this far. RailWorks total, it says right there.

Q. Mm-hm (answers affirmatively).

A. So it's RailWorks' footprint all over it. That's okay. RailWorks does nationwide, they probably do a

hundred bids a day. They're the biggest outfit in North America. And they're really good. That's the good news.

Q. So --

A. They're not the most expensive out there.

Q. So --

A. So I don't think anything wrong with using that. This is what someone has told us they'd be willing to do a job for. He's adapting the parts of it that make sense on the segment from downtown Bellevue to the end of the holding at Woodinville. It's the best numbers we can get. Why would they start from nothing. I wouldn't start from nothing if I was him. This is the thing I'd go to too.

Q. So the bottom line is the $10 million estimate in your verified statement is not your personal estimate at all?

A. No.

Q. Okay.

A. That doesn't make it invalid --

Q. That's okay.

A. -- I'd say.

Q. Let me ask you to look at one more exhibit.

MR. FERGUSON: Let's take a three-minute break and make a copy of it.

MR. COHEN: Off the record a minute.

(Discussion held off the record.)

Q. (By Mr. Cohen) Mr. Cole, showing you what's been marked as Exhibit 32, could you take a minute and look at that document.

A. Okay.

Q. Let me know when you're ready to talk about it.

A. Okay. I will. It's going to be a minute or two. God, this is ancient history here. It's back in November 2012. I don't know anything about it. November we were just starting to get our arms around --

MR. MONTGOMERY: Would you wait for a question.

THE WITNESS: Oh, but you asked me.

Q. (By Mr. Cohen) Are you ready?

A. Yeah, ask me the question.

Q. Here's the question -- I want to ask you about Doug Engle's e-mail to Kurt Triplett and Sung Yang, that's the lower half of the page.

A. Yes.

Q. Doug testified two days ago that he made this proposal to Kirkland and to King County, and that in that proposal, as you can see in line one, he offered to drop the freight plans.

A. I see that.

Q. And therefore, reactivation as part of the deal?

A. Yes. He's going down a different path.

Q. He's going down a different path. And you were at the table for that testimony, right, you were here, you heard him testify?

A. Just two days ago?

Q. That's right.

A. Yeah.

Q. All right. And do you recall him saying that this was a big give on his part, but that he was willing to do it, if it would get the support of Kirkland and King County for excursion service?

A. I don't remember his exact words.

Q. Am I --

A. I don't think -- I'm not sure that I've ever seen this thing, so --

Q. Right.

A. -- I don't know much about it.

Q. My question is, in making that proposal, did he have your support as well?

A. I don't think --

MR. MONTGOMERY: Hold on a second.

No objections, I mean, nothing, go ahead.

THE WITNESS: I don't really know anything about this. It's so long ago. I haven't heard. I didn't hear about it then and I haven't heard about it since, so it must be dead as a doornail.

Q. (By Mr. Cohen) So in offering to drop freight service and reactivation, Doug didn't first consult with you and get your buy-in to that proposal?

A. I don't recall.

MR. MONTGOMERY: I'm just going to object to the extent it asks you to comment on prior testimony which is improper. And document speaks for itself.

Go ahead.

THE WITNESS: I don't remember anything about it.

Q. (By Mr. Cohen) You don't recall any conversation --

A. No.

Q. -- about this proposal?

A. I mean, we've had a lot of phone conversations. You know, he spends two-thirds of his time in San Francisco where he lives. Talk to him on the phone down here. Talk to him when he's up here. If this works, that's okay, too. It's like, this would be a scheme to get new track, I imagine, but on a fast track, not years and years later.

But if a person is going to do this, I don't know. You have to get some pledge from the bikers because once that trail is built, boy, it's impossible to get rid of it.

Q. If you'd flip to the second page of that exhibit.

and Byron Cole with Ballard Terminal Railroad had won the competition. And then a year went by before we got to start running the railroad.

Q. Right.

A. So -- I haven't really looked at the thing very much since then. Started running it and we just ran. Never hardly hear a peep out of the Port ever. They never come to visit us, ask for a train ride, want to audit what we do, see if we're safe, nothing.

Q. So really, I want to go back to my last question, is it your understanding that the lease agreement between you -- between Ballard and Eastside Community Rail has taken effect?

MR. MONTGOMERY: Same objections I had.

THE WITNESS: Well, I'm not sure I want to hazard a guess. I'd have to talk to Doug.

Q. (By Mr. Cohen) Okay.

A. We've been running so long without getting paid by anybody, nobody would do this but me. And it's like, it's been 100 percent accident free, incident free, paid all the bills, and made up for that by working extra hard on our other two railroads. And have received no guff or guidance from the Port in all that time.

Q. When you say made it up by working extra hard on our other two railroads?

A. Yeah, going out and beating the bushes and getting more trans-load business and whatever else we can do.

Q. Is what you're making up on the other two railroads losses on this one?

A. Yeah. Like not getting paid. Yes.

Q. I wanted to call your attention to Paragraph 1 on Page 2.

A. Of which document?

Q. The lease agreement. What is it? Exhibit 30.

A. Paragraph 1.

Q. Paragraph 1.

A. This little line?

Q. Yes.

A. I'd say --

MR. MONTGOMERY: Wait for a question. Read it, I guess.

Q. (By Mr. Cohen) Yes, please read it. And let me know when you have.

A. Okay. So all --

MR. MONTGOMERY: Please wait for a question.

THE WITNESS: All right.

Q. (By Mr. Cohen) My question is this, it sounds to me reading Paragraph 1, that Eastside Community Rail is basically turning over this line to you to operate a

railroad as Ballard sees fit.

Is that your understanding as well?

MR. MONTGOMERY: Object to the form.

THE WITNESS: Pretty much. On the other hand, we know how to do it and have been doing it for whatever it is, 16 years, no accidents, no incidents, et cetera. And not to say that Doug couldn't do it. He hasn't tried to do it. His interests are, you know, not quite the same as mine are, which is okay.

Q. (By Mr. Cohen) You see the statement in here that says the "Line shall be used by Ballard exclusively for railroad purposes"?

A. Right, well, so?

MR. MONTGOMERY: Do you see it?

THE WITNESS: I see it. I read it twice.

Q. (By Mr. Cohen) Okay. Do you read that statement to include excursion trains?

MR. MONTGOMERY: Object to the extent it calls for a legal conclusion.

THE WITNESS: We're not going to fund, finance, build, acquire an excursion train and the pieces of power to run it ever. It's way too expensive for us.

Q. (By Mr. Cohen) For "us," meaning Ballard?

A. Ballard.

Q. Yes.

agreement. I want to ask you about the lease compensation terms.

A. Okay.

Q. So, as best I can understand this document, it appears to me that Ballard's sole obligation to pay anything here to Eastside Community Rail is that you're going to pay Eastside $10 a car and you're going to pay Eastside's $10 a car fee to the Port?

A. Mm-hm (answers affirmatively).

Q. Am I getting it right?

A. That's it.

Q. So Eastside is leasing you their rail line?

A. Mm-hm (answers affirmatively).

Q. You're going to pay them $10 a car?

A. (Witness nods head affirmatively.)

Q. What's in it for them?

MR. MONTGOMERY: Objection; form and foundation.

THE WITNESS: Can I --

MR. MONTGOMERY: Go ahead.

THE WITNESS: We're going to run the freight railroad, which is a federal obligation that they have. We're going to do it safely and not have it be something that the STB is always dropping in on us because we're chiseling on this or that or the other thing.

Q. (By Mr. Cohen) Well, this agreement --

A. I don't see anything wrong -- we're taking a big load off of Doug's shoulders. In ten years, he'll know plenty and be comfortable running his own freight railroad or something if he wants to. But right now, he's got a huge amount on his plate trying to find funding to put together an excursion train so he can make some serious money and it's a lot of work. What he needs is for the freight to just run day after day not being in the newspapers, not being on the news, not with calls from me, not from calls from the FRA, not with calls from the STB. That's what we can do. That's what we've been doing. And we're okay with continuing to do it, and he's allowing us to collect at least all the money that there is.

And there's -- I haven't seen anything in here about marketing but it will encourage me to do some of the low hanging for marketing. So I think this is okay.

Q. Well, really what I'm asking is, it seems great for Ballard, but it doesn't seem to give anything to Eastside Community Rail. And your response to that it relieves them of the obligation of running a freight railroad?

A. Yeah.

MR. MONTGOMERY: Stop. Object to the form. Foundation. Calls for speculation.

objection made by BTR in the responses that you have been served with. That, to some extent, the request seeks information that's irrelevant or immaterial. And further, that getting these documents is easier, it's more readily attainable from another party, that being Port of Seattle.

Also, interject that Mr. Cole is not done with his work of seeking and compiling documents in response to these discovery requests, which were served relatively short period of time and were burdensome both in the breath and the time required, or at least asked for production.

MR. COHEN: So noted. Thank you.

Q. (By Mr. Cohen) So, Mr. Cole, have you undertaken any efforts to search for documents, and that includes documents on your computer that are responsive to Request for Production Number 10?

MR. MONTGOMERY: Same objection.

THE WITNESS: We don't have any new lines of communication with the Port, except one thing, Port has been trying to help us to negotiate with the City of Woodinville, who wants to widen a road that today crosses our tracks at a pretty thin angle. And the road is normally a two-lane road, and the City of Redmond wants to make it a four-lane road.

And so, amazingly enough, Port's engineering department is helping us to visualize what the City of

Woodinville wants to do. And suggesting numbers that we should charge the City of Woodinville for perhaps reducing the ability to double track the line, the railroad line at that point in the future. This is sort of an amazing thing that's never happened in four years, where someone in the Port's engineering department offered to help us in negotiations with Woodinville. And actually Doug Engle has been doing most of the work on it. For one, he lives on that side of the lake and I don't.

And so, it's not really an acrimonious thing if Woodinville goes through with it. We'll get some money. I'm surprised that the Port put a couple of their engineers on it. Doug and I went, at their request, and met them in their office, and they're very cordial and went to great details to help us see what is on the drawings and so forth.

That's the only thing that I know of that's going on. As far as I know, there's nothing wrong with our insurance. This motivates me to make a call next week to talk to the insurance department at the Port and see what the true issue is.

Q. So I need to -- I'm sorry, I really want an answer to the question I asked you, which is, the time scope of this request goes back to January 1, 2008, that is on Page 5 of the discovery requests, which is Exhibit 36.

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So we've never -- reserve freight easement has never been in our hands. It was in GNP's, and it was probably the most valuable thing in the collection of assets, which was darn small, that GNP's trustee in bankruptcy had to offer. Doug bought the package. And we got the freight easement for that.

So we don't -- we don't have any -- we don't have any skin in the game anywhere on anything. So we don't -- the only asset we have that's sort of in place is a cyclone fence around our locomotive and caboose behind the bar and grill at the Woodinville wye. I mean that's the only kind of thing that's stuck into the real estate. We haven't replaced a single tie or anything that we could say, Well, we put in 500 cross ties a year or so ago. We haven't done anything like that. So I don't think -- I don't think we have any assets there

Q. (By Mr. Marcuse) Let me ask my question a slightly different way. Is it true that Ballard Terminal Railroad owns no property on the line south of milepost 23.8?

A. Where is 23.8?

Q. I will represent to you that milepost 23.81 is south of the Woodinville wye and marks the northern most extent of the railbanked segment of the corridor.

A. If you don't think that it's all railbanked, all

the way to Renton?

Q. I am asking you, does Ballard own any property on the Woodinville subdivision south of Woodinville?

A. No.

Q. Thank you.

A. Okay. Nor north of Woodinville.

Q. Thank you. To your knowledge, does CalPortland presently own any property on the line in Bellevue or Kirkland?

A. Well, you probably mean, not a piece of the right of way but facing on the right of way; is that true? When you say on the line, along the line?

Q. That's fine, yes.

A. Okay. Not -- I have no idea.

Q. Thank you. To your knowledge, does Wolford Trucking and Demolition own any property on or along the line south of Woodinville?

A. I think maybe they do.

Q. And where would that property be?

A. I think it's somewhere in upper Kirkland.

Q. What kind of property is that?

A. Zoning? I don't know. It looks to me like walking the line up there, it looks as though it's -- was -- has been industrial for many years. The actual occupants of the buildings, I'm sure have turned over a

more precarious every day. At that point in time, were you not getting paid?

A. Yeah.

Q. Why is that?

A. Well, I mean we had two railroads, the Ballard Terminal and the Meeker Southern, they were running normally and producing income above expenses. But the freight business over here between Woodinville and Snohomish was just a drain because we weren't, for most of three years, we weren't getting any money. And then the bankruptcy judge took over, at least we started getting paid some, but he never was able to pay us the full amount.

Q. Or timely?

A. Or timely, yeah, I got about maybe three total payments from him. He's a nice guy, I didn't take him to task for it. He had a thankless job. He was probably glad when it was done.

But now, we have control of that. We do the invoicing and the payments are made directly to us, so that's quite a bit better. It's still a cumbersome system. We should become a handling carrier, I'm trying to address that with Burlington Northern. Takes forever to get paid, I mean like 60 days.

Q. It's predictable?

A. It's predictable?

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing deposition of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That, according to CR 30(e), the witness was given the opportunity to examine, read and sign the deposition after same was transcribed, unless indicated in the record that the review was waived;

That all objections made at the time of said examination have been noted by me;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the witness coming before me was duly sworn or did affirm to tell the truth;

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made at the time of the foregoing examination and said transcript was prepared pursuant to the Washington Administrative Code 308-14-124 preparation guidelines;

Katie J Nelson

Katie J. Nelson, CCR, RPR,
Certified Court Reporter 2971 for
the State of Washington residing at
Redmond, Washington. My CCR
certification expires on 10/22/13.

STARKOVICH REPORTING SERVICES
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Wednesday, May 29, 2013

To: Thomas C. Paschalis
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606

Re: Surface Transportation Board
Deposition of: BYRON COLE
Date Taken: Friday, May 24, 2013

PLEASE TAKE NOTICE THAT:

Enclosed are two forms: "Affidavit" and a "Correction Sheet." Instruct the deponent to review the deposition, record any corrections on the Correction Sheet, and sign the Affidavit before a Notary Public. Return both forms to this office for their inclusion in the original transcript and distribution to other parties. The transcript will be forwarded to the appropriate party: July 1, 2013.

Thank you for your assistance in obtaining signature.

By: Katie J. Nelson, RPR, CCR, CCR No. 2971

cc: MATT COHEN, ANDREW MARCUSE, JORDAN WAGNER, TOM MONTGOMERY

A F F I D A V I T

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I have read my within deposition, and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the "CORRECTIONS" flyleaf page hereof.

_____
BYRON COLE

SUBSCRIBED AND SWORN to before me

this_____ day of _____, 2013.

_____

NOTARY PUBLIC in and for the State of _____, residing at _____. My commission expires _____.

STARKOVICH REPORTING SERVICES
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SEATTLE, WASHINGTON 98122
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info@starkovichreporting.com

C O R R E C T I O N S H E E T

PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

PAGE	LINE	CORRECTION AND REASON

EXHIBIT 11

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

Port of Seattle,	)	AAA No.
	)	
Claimant,	)	ARBITRATION DEMAND
	)	
vs.	)	
	)	
Eastside Community Rail LLC,	)	
	)	
Respondent.	)	
	)	

Pursuant to Section 11 of the OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN PORT OF SEATTLE AND GNP RLY, INC. the Port of Seattle hereby demands that the parties arbitrate the claims set forth below:

1. The Port of Seattle ("Port") is a Washington municipal corporation, organized under RCW Title 53. Its address is

Port of Seattle
Pier 69
2711 Alaskan Way
Seattle, WA 98121.

Pursuant to a Purchase and Sale Agreement between the Port and BNSF Railway Company dated May 12, 2008, as amended, the Port acquired certain rights-of-way from BNSF, including that portion of the rail line located between milepost 23.8 in Woodinville, King County, Washington and milepost 38.25 in Snohomish, Snohomish County, Washington ("the Corridor").

2. Eastside Community Rail LLC ("ECR") is the successor in interest to GNP RLY, Inc. under the Operations and Maintenance Agreement described below. Its address is believed to be:

Attn: General Manager
Eastside Community Rail LLC
1340 Lombard Street, #606
San Francisco, CA 94109

According to the Washington Secretary of State ECR's address is

Eastside Community Rail LLC
c/o Douglas Engle
826 Lake St. S
Kirkland, WA 98033.

3. Effective December 18, 2009 the Port entered into an OPERATIONS AND MAINTENANCE AGREEMENT BETWEEN PORT OF SEATTLE AND GNP RLY, INC, ("the O&M Agreement") with GNP RLY, INC. ("GNP"). The O&M Agreement gave GNP certain rights and obligations regarding the provision of "Freight Rail Service" on the Corridor.

4. Pursuant to an Asset Purchase Agreement effective December 17, 2012 between Eastside Community Rail LLC ("ECR") and Perry Stacks in his capacity as Chapter 11 Trustee in bankruptcy for GNP, ECR became the assignee of all of GNP's rights and obligations and duties under the O&M Agreement.

5. ECR thereafter had all the obligations that GNP had under the O&M Agreement. Those obligations will hereafter be referred to as ECR's obligations.

6. Section 2.1(g) of the O&M Agreement provides in part:

> The parties acknowledge that [ECR] intends to designate Ballard Terminal Railroad Company, LLC. ("Ballard Shortlines") as the entity that will conduct the Freight Rail Service authorized under this Agreement. Prior to commencement of Freight Rail Service by Ballard Shortlines on the Corridor, [ECR] shall provide for the Port's approval a copy of the signed agreement between [ECR] and Ballard Shortlines for such operations. The agreement between [ECR] and Ballard Shortlines shall incorporate and be subject to all of the terms and provisions of this Agreement.

(emphasis added).

7. Section 8.1 of the O&M Agreement provides:

> [ECR] shall obtain and maintain freight service general liability insurance written on an "occurrence" basis, with minimum limits of Five Million Dollars ($5,000,000) per occurrence. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current

A.M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. [ECR] may self-insure to an amount not to exceed One Million Dollars ($1,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of [GNP's] successors or assigns without the reasonable written consent of the Port.

a) The policy required under this Section 8.1 shall include general liability property damage and bodily injury coverage for operations of Freight Rail Service along with any related operation, maintenance and construction on or about the Corridor and Port Property by [ECR]. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars ($2,000,000) per occurrence for bodily injury and property damage, and Five Million Dollars ($5,000,000) in the aggregate.

b) The policy required under this Section 8.1 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars ($3,000,000) per occurrence, and Five Million Dollars ($5,000,000) in the aggregate.

c) The policy limits required under this Section 8.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

8. Section 2.1(f) of the O&M Agreement gives ECR the right and obligation to use the tracks in the Corridor for Excursion Rail Service. ECR has failed to commence Excursion Rail Service within the deadline provided in the O&M Agreement. Thus ECR's right to commence Excursion Rail Service has terminated. Section 8.2 of the O&M Agreement requires ECR to obtain and maintain general liability insurance with an excursion/passenger endorsement, and written on an "occurrence" basis, with minimum limits of twenty five million dollars and fifty million dollars in the aggregate for all Excursion Rail Service. Should ECR ever be permitted to commence Excursion Rail Service it will be essential that the required insurance be in place.

9. Section 8.3 of the O&M Agreement provides:

Automobile Coverage

[ECR] shall maintain general automobile liability insurance of not less than One Million Dollars ($1,000,0000) per occurrence, combined single limit for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage shall extend to all owned, non-owned, hired, leased, rented, or borrowed vehicles. The policy shall contain a waiver of subrogation in favor of the Port.

10. Section 8.4 of the O&M Agreement provides in part:

Evidence of Insurance

Prior to the Execution Date, and annually thereafter, [ECR] shall forward evidence of insurance as required in this Section including evidence of the Port's status as an additional insured for the Freight Rail Service and Excursion Rail Service policies; and a written copy of the waiver of subrogation for the automobile liability policy.

11. Section 8.6 of the O&M Agreement provides:

Additional Documentation – Self Insurance

If self-insurance is utilized for a portion of the coverage permitted in Sections 8.1 and 8.2, evidence must be provided to the Port of the [ECR's] net worth, a copy of the most recent audited financials, and a written description of the self-insurance program. This must be submitted with the other documentation required by Section 8.4.

12. Section 8.8 of the O&M Agreement provides in part:

Primary Insurance

[ECR's] insurance shall be primary with respect to its obligations under this Agreement and non-contributory with respect to any coverage the Port may have.

13. Section 8.9 of the O&M Agreement provides:

Maintaining Insurance Requirements

[ECR's] insurance requirements shall be maintained for the full term of this Agreement and shall not be permitted to expire or be cancelled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured, including the Port.

14. Section 8.12 of the O&M Agreement provides:

Waiver of Subrogation

Every policy of insurance required under this Agreement to be held by [ECR] shall include a waiver of all rights of subrogation against the Port.

15. Section 8.13 of the O&M Agreement provides

Other Insurance

> [ECR] shall require that all of its contractors and sub-subcontractors carry a railroad protective liability policy with minimum limits of Two Million Dollars ($2,000,000) per occurrence for bodily injury and property damage, and with an aggregate policy limit of no less than Six Million Dollars ($6,000,000). Said policy shall name the Port as an additional insured.

16. Section 11 of the O&M Agreement provides that all claims, disputes or controversies between the Port and [ECR] arising out of or concerning the interpretation, application, or implementation of the Agreement that cannot be resolved through negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules.

17. Section 12.14 of the O&M Agreement provides:

> If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

18. ECR, through its contractor Ballard Terminal Railroad Company, LLC, ("Ballard") is currently conducting freight rail service on the Corridor.

19. The Port obtained a copy of the agreement between ECR and Ballard but has not approved it. The Agreement between ECR and Ballard is not acceptable to the Port because it provides no protection for the Port.

20. On information and belief, ECR is in breach of its obligations under Section 8.1, 8.8, 8.9 and 8.12 of the O&M Agreement because it has not obtained, and does not now have, freight service general liability insurance meeting the requirements of Sections 8.1, 8.8, 8.9 and 8.12. The O&M Agreement requires ECR to obtain insurance separate and apart from insurance that Ballard may obtain as its contractor. The insurance must be continuously in place, leaving no gaps in coverage periods.

21. On information and belief, ECR is in breach of its obligations under Section 8.3, 8.8, 8.9 and 8.12 of the O&M Agreement because it has not obtained and does not now have automobile coverage insurance meeting the requirements of Sections 8.3, 8.8, 8.9 and 8.12. The O&M Agreement requires ECR to obtain insurance separate and apart from insurance that Ballard may obtain as its contractor. The insurance must be continuously in place, leaving no gaps in coverage.

22. ECR is in breach of its obligations under Section 8.4 of the O&M Agreement because it has not forwarded evidence of the insurance required by Section 8.1 and 8.3.

23. Ballard, as ECR's contractor, recently forwarded a Certificate of Liability Insurance demonstrating that it has Railroad Liability Insurance covering its operation on three shortline rail lines that it operates, including what it calls "Eastside Freight Railroad." "Eastside Freight Railroad" is believed to be Ballard's operations on the Corridor. The Certificate of Liability Insurance also shows that the Port is named as an additional insured under the Ballard policy. Ballard has also forwarded a copy of the railroad liability policy for which the Certificate of Liability Insurance was issued ("the Ballard policy").

24. The Ballard policy does not fulfill ECR's obligations under Article 8 of the O&M Agreement because ECR is not a named insured under the Ballard policy. The Ballard policy also does not fulfill ECR's obligations under Article 8 of the O&M Agreement because it is at most the insurance of Ballard, as ECR's contractor, that is required by Section 8.13 of the O&M Agreement. The O&M Agreement required separate insurance of ECR from that provided by its contractor.

25. Assuming that the Ballard policy is meant to fulfill ECR's obligations under Article 8 of the O&M Agreement to provide insurance, the Ballard policy does not meet the requirements of Section 8.1 for at least the following additional reasons:

a. The policy is not an occurrence policy. It purports to be a "claims made" policy, although it excludes any claim that results from an "Accident" that took place in whole or in part prior to the First Coverage Date." It may leave gaps in coverage that GNP was required to fill, the obligations for which ECR assumed responsibility when it assumed GNP's obligations under the O&M Agreement.

b. The policy is not a general liability policy because it excludes any "occurrence" that does not result from an "accident," defined to be an event which commences at a specific time and at a specific location, and because it excludes injuries that in hindsight "could have been reasonably expected," which would be true of most accidents.

c. There is no contractual liability coverage.

d. The policy contains an exclusion for release or discharge of "pollutants."

e. The policy does not provide automobile coverage.

f. The policy is not primary and is not non-contributory.

g. The policy can be cancelled at any time by Ballard and can be cancelled by the insurer without giving notice to the Port.

h. The policy does not contain a waiver of subrogation.

26. The Ballard policy is not a railroad protective liability policy, and thus does not meet the requirements of Section 8.13 of the O&M Agreement.

PRAYER

Therefore, the Port asks that an arbitrator be selected, that an arbitration be held in Seattle, Washington, and that following the arbitration the arbitrator enter an award as follows:

1. Declaring ECR to be in default of its obligation to submit its contract with Ballard for the Port's approval, and directing ECR to make such changes in the contract as the Port may reasonably request.

2. Directing ECR to procure insurance in full compliance with Sections 8.1 through 8.13 of the O&M Agreement, providing no gaps in coverage, and to provide evidence of that insurance to the Port as required by Sections 8.4 and 8.6 of the O&M Agreement within five days of the award.

3. Enter a declaration that if ECR is in the future permitted to commence Excursion Rail Service, such service cannot commence until after ECR has provided evidence to the Port that it has fully complied with the insurance obligations of Section 8.2 of the O&M Agreement.

4. Awarding the Port its costs and attorneys' fees incurred in this proceeding.

5. Awarding such other and different relief as the evidence supports that would put the Port in as good a position as if ECR had fully performed.

DATED this 25th day of June, 2013.

GRAHAM & DUNN PC

By _____

Elaine L. Spencer
WSBA# 6963
Email: espencer@grahamdunn.com
Attorneys for Port of Seattle

EXHIBIT 12

Confidential Information Filed Separately Under Seal

EXHIBIT 13

Kurt Triplett

From:	Doug Engle <Doug.Engle@EsCRail.org>
Sent:	Monday, March 11, 2013 7:44 AM
To:	Kurt Triplett
Subject:	EsCR - Cross Kirkland Corridor
Attachments:	EsCR_PublicBusinessPlan_Woodinville_2013Feb19.pdf; STB Revenue Adequacy 9Oct12.pdf

Good morning Kurt,

In preparation for our meeting this morning, here is the current business plan, which does not include Kirkland as that is a step beyond our reach at this time.

Additionally, this is how EsCR will price its works for entity's utilizing its services.

Also, we have asked for documents concerning the rail corridor.
In order for EsCR to move forward with a more detailed, alternate 'trail with rail' proposal these items:

1. Overall vision statement, summary of City's objectives based on public processes to date, and relationship to future 'master plan';
2. All budgets for revenue and planned expenditures for the Cross Kirkland Corridor;
3. Existing plans & specifications, especially including typical cross-section(s) and proposed trail structure (depth of rock, pavement material, etc.);
4. Unusual or special provisions/requirements, e.g., trailhead parking, pedestrian bridges alongside track, art, ADA-compliance features, etc.;
5. Conceptual approach to trail requirements/design alongside Totem Lake and associated wetlands, including observation platforms;
6. Proposed budget or preliminary engineer's estimate, along with any grant conditions or limitations;
7. Interest level of COK for self-constructing portions of trail or partnering w/ECR;
8. City of Bellevue permitting requirements for COK R/W within Bellevue City limits.

Best regards,

Doug

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

Bounty of Washington: Tasting Train Facebook

PENGAD 800-631-6989 EXHIBIT KT 3-16-13 6 Wolford



EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

Richard Leahy
Woodinville City Manager

Cc: Woodinville City Council

Re: Eastside Community Rail – Business Plan

1. Business Plan

This past December, Eastside Community Rail (EsCR) acquired the 14.45-mile freight operating easement from the federal Bankruptcy Court for the railroad between Woodinville and Snohomish, WA. EsCR will be operated as a non-profit serving for profit entities utilizing the corridor.

Three core values of transparency, integrity and accountability will guide EsCR in its planning, agreements and operations. EsCR has adopted the mission to help maximize the utilization and overall public benefit of the Eastside Rail Corridor (ERC). Our vision for the rail corridor is for multiple uses of rail, trail, utilities and other public benefits.

We intend on using the Eastside TRailway Alliance as a public advisory board for strategic input. EsCR will work in full cooperation with public entities along the rail corridor. We have also worked diligently to bring together a solid business executive board of directors representing fundamental areas of business.

EsCR creates value primarily by maintaining the operating line right of way (ROW) for rail operations such as freight, excursion and potentially future commuter use. For managing the maintenance of way (MOW), agreements and extensions, EsCR will collect a percentage of gross revenues to cover its direct costs and overhead. This frees the users of the rail corridor to focus on their main businesses. Best of breed partners will conduct the rail structure, bridge and crossing works. Eastside Community Rail would like to partner with the communities along the corridor to provide a MOW road that could be used for a public trail system that connects to a labyrinth of trails.

The main market opportunity lies first in re-establishing an excursion service between downtown Woodinville and Snohomish, which successfully operated on the line for 14 years and only stopped service when I-405 was widened, a bridge structure removed and BNSF sold the ROW to the Port of Seattle. Given the track is publically rehabilitated, the Bounty of Washington Tasting Train will represent more than 90 percent of EsCR's income.

Partnering with a developer to build a hotel in Woodinville next to the excursion platform is a high priority to enhance the experience. It is important that the railroad own the land to have input on design, kitchen capacity, guest waiting areas, a gift shop, other amenities and to fit within the long-term vision of the city.

Secondarily, freight traffic has waned from over 300 cars per year three years ago to just over 200, and car movements need to be bolstered to at least 400 annually. This can be accomplished with marketing and extensions to the operating line. EsCR has an operating agreement with Eastside Freight Service operated by Ballard Terminal Railroad, which has operated on the line for more than three years. Freight operations will help cover maintenance of way costs for the excursion operation.

Strategically, long-term extensions to the corridor are contemplated:

- Re-establish 3-miles of service from the Woodinville wye to Ste San Michelle, the heart of the Wine District
- In the north, develop a new 8-miles connection to Everett from Snohomish, which provides access to Amtrak service and the Canadian market
- Re-establish 12-miles of service from Woodinville to north Bellevue with additional access to the Seattle market and cruise ship passengers

Presently, there are public efforts under consideration to utilize a portion of the corridor for a public trail. EsCR supports this and is willing to construct a MOW road for such a use. Current estimates indicate that this can be done at considerable savings to the public. MOW costs for the road will be based on the width being utilized by the trail, excluding track structure costs.

There have been studies completed by Sound Transit and other groups affirming the viability of commuter rail on the line. This may be possible in the long-term in a public private partnership arrangement with EsCR. It is ECR's policy is to support, but not lead, community efforts to use the corridor for regional rail transit that is consistent with other public works.

Transit also opens the door to transit oriented developments along the ROW.

Financing

No private company will invest in publically owned rail infrastructure because it cannot be used as collateral to secure the investment. Until the portion of track owned by the Port of Seattle is upgraded, passenger service is not possible. The previous owners of the Spirit of Washington Dinner Train and Iowa Pacific Holdings concur on this point.

Therefore, EsCR and interested local governments are seeking $6.26 million from the state of Washington to improve the railroad. If this funding is secured, EsCR will bear the ongoing cost of maintaining the railroad, which is about $1.1 million annually.

Once the public infrastructure improvements are secured;

- the Port of Seattle will affirm a long-term agreement for excursion service,

- EsCR will secure $3 million in private investment,
- EsCR will secure a Small Business Administration loan of $3.5M, and
- EsCR will secure a $3.5M motive power and rolling stock capital lease.

Importantly, no EsCR financing activities can be completed until the public appropriation commitments have been achieved. This will be an iterative process over 90-days following public funding. Finally, detailed plans, drawings, etc. for capital assets will not be completed until track maintenance has been committed to.

2. Excursion Train Operations

The excursion train business is not a pipe dream or just any private venture, but based on a highly successful run that brought economic vitality to the region.

The Spirit of Washington Dinner Train ran on the Eastside Rail Corridor for 14 years with annual rate of 100,000 passengers, $10 million in revenue and created jobs and tourism business from Renton to Woodinville. The only reason they stopped running was due to the reconfiguration of I405 and thus eliminating their ability to get to their station in Renton. The Dinner Train was a train ride from Renton to Woodinville with a brief visit to Columbia Winery with outside catered meals with a few selections of wine offered on the train.

After dozens of interviews with stakeholders and analyzing the current state of dining, the Bounty of Washington: Tasting Train concept was formed. Localism is not a fad but a strong trend. Farmer's market are on an annual 10% growth trend, small plates offering at fine dining restaurants are the rage, and wine, beer, and other drinks tastings are popular. Thus, the Tasting train is flipping the Dinner train concept. Passengers will experience the best of what Washington offers, fresh seafood, grass-fed meat, and award-winning wines and beer on the train. With about 1000 wineries, breweries, and distilleries, it will be easy to rotate the flavors and their makers. After analyzing all of the excursion trains nationwide, we developed an algorithm for our pricing. We will price the experience from $55 to $125 depending on the beverage and potential guest chef. We have had conversations with some of the award-winning chefs in the area and they are eager to participate. We have estimated an average price of $85 and growing to a bit more than 100,000 passengers which is in line with previous Dinner Train results.

We will have additional revenue streams of promotional items and sponsorships. We will offer sponsorships of train car names along with customer take-home items such as the glasses. Certain ingredient items such as Washington Apples or Washington Pork will also be potential sponsors. We will be able to sell wine and other featured food items initially on board the train and later at our train stations.

Operationally we assumed a mid-range staffing level at one staff person per 16 people. Since service will be staggered per car, we can use some staff as expeditors to ensure

prompt service and reduce staffing needs. The participating wineries and breweries will provide staff for educational purposes that will move to each car. Other volunteers can provide historical and regional overviews of the area. We will start at the wine-focused Woodinville with a stop in the quaint beautiful river view town of Snohomish and back to Woodinville along a beautiful valley. Depending on the winery partner, winery tours will be included. We will have partnerships for winery tours for our guests who want to have an entire day of exploration. In addition, we plan to have a mid-week Tulalip special where guests will bus from the top-rated Tulalip Resort to Snohomish and make the trip to Woodinville.

Our target market is tourists wanting a convenient way to experience the best of Washington such as the 435,000 cruise passengers and the 10 million out-of-town visitors annually in King County alone. Since the Tasting Train experience will rotate featured beverages and food, we expect locals to bring family and friends more often to enjoy their favorite wine or dining.

The rolling stock of seven cars, plus a baggage car, will be designed with a comfortable Northwest elegance more like a fine dining contemporary restaurant in Seattle rather than a stuffy old-fashioned look. We will mix the historic lore of train travel with contemporary style for an experience they will never forget on the Bounty of Washington: Tasting Train.

3. Train Movements

Currently, freight operates on the line two days per week in off-commuter hours. This is not expected to change at double the volumes in the future where trains may consist of ten cars. Presently, Boise Cascade and Spectrum Glass are the two biggest freight customers on the line. There is more freight business available if we can operate on the two miles of track down SR-202 toward Redmond that are currently not accessible or included. Eastside Freight Service has operated on the line for the past three years and is expected to continue into the future.

The Bounty of Washington excursion train is expected to operate year-round, excluding January when annual car maintenance will be conducted. The expected 400 annual trains will service both public (70%) and private passengers (30%), with overall volumes reaching 100,000+. The peak period will be the summer tourist season with expectations for bountiful holiday operations. The schedule will be oriented around evenings and two trips on weekends. Additional mid-week day trips may be developed to service Snohomish to Woodinville passengers seeking to spend the afternoon experiencing local Woodinville wines, brews and foods. Although the exact times have not been determined, trains are likely to start after 6:00 PM typically returning two hours later.

The freight operator, Eastside Freight Service, will continue to provide track clearances and train crews.

4. Railcar Storage and Maintenance

Freight operations will be very similar to today, and the addition of excursion service will require nightly railcar inspections. This will be conducted utilizing a 200' maintenance shop with a 100' pit in the area north of the wye near the warehouses.

Presently, the Eastside Freight Service locomotive and caboose are stored in a fenced "pen" at the wye. This will be moved provided access to the Wine District and/or Bellevue. The primary maintenance and railcar storage area will be in a fenced area at or very near the maintenance shop.

The exact location will be determined once Woodinville's SR-202 bridge planning is completed.

5. Platforms and Parking

Two platform types are being considered – raised wooden platform or stone/concrete pavers. The 900' platform will be on the north side of the tracks in Woodinville across from the fire station and post office, south of the NE 178th PL crossing.

A partially covered area will be constructed, including a portable ADA loading lift.

Paved diagonal parking for roughly 250 cars will be constructed inside the right of way with access points to the road every 100 yards. A barrier will be created between the parking and road to facilitate this configuration. Lighting and video camera's will also be installed.

We are hopeful that Snohomish and Woodinville will participate in the construction of platforms in both communities as public assets that reflect the experience they want for their visitors. Diverse public agency involvement is critical to securing future federal funding to extend the rail corridor and add a public trail alongside the track.

6. Capital Facilities

Snohomish Station

Initially, Snohomish Station will require a platform, covered areas, and ADA lift. In the future, restrooms and an enclosed visitor center will enhance the experience.

Wolford Spur

A new 1,000' spur will be developed into the Wolford Demolition and Trucking site in Maltby to support their business, process potential construction spoils business and initiate new trans-load freight business.

Woodinville Station

Initially, Snohomish Station will required parking, a platform, covered areas, and ADA lift. In the future, either a hotel or improvements similar to Snohomish will be required.

Woodinville Hotel

There are indications that the city has the need for at least one new hotel. EsCR has identified an opportunity to extend a hotel's normal business with expansions to help service the excursion train. These include

- Additional kitchen capacity
- Expanded waiting and conference area
- Excursion gift shop
- Coffee bar
- Restrooms
- Historical information
- Ticketing

Beyond the excursion train, the Woodinville Hotel will service Wine District tourism. When operating line extensions are completed, particularly to Everett and Amtrak, package deals will improve market awareness occupancy year around.

Maintenance Shop

A 200' maintenance facility is required to service the motive power and rolling stock. The site location will determine the maximum width inside the ROW. Long-term, an additional 100' of enclosed space may be added to facilitate nightly cleaning of equipment before the inspections.

The construction type will be 40' shipping containers along both sides, with a white "vinyl" roof over an arched metal structure. The inexpensive containers will be painted and provide secure storage of heavy tools, parts and equipment. The roof will be affixed to the containers.

A 100' heated concrete inspection pit will be installed with stair access at either end. Long-term, track mounted heavy lift equipment may be installed over the pit.

A 100' railcar wash area will be enclosed after the inspection pit with an oil and water separator.

Business Office

Initially, the current wye "shack" site will be maintained, painted and covered areas extended for MOW operations.

A new 20' x 35' multi-level business office will be built next to the shack for general, administrative, sales and marketing purposes. A covered watchman's look-out for the wye will be constructed atop this building. Long-term, the Woodinville Hotel may be the better site for these business activities, nearer the heart of the city and its business services.

7. Possible Construction Spoils

There are no written plans, agreements or otherwise to move spoils from Bellevue to Snohomish County, although there have been many conversations and some analysis. No other freight has been identified in Bellevue. EsCR will support this should it be needed in a partnership with Wolford Demolition and Trucking.

The most likely train configuration is 17 sidedump cars moving twice a day, once in and once out, during peak construction periods. Such operations would be conducted around primary commuter hours. Train operations would be suspended when construction projects would not need the service.

8. Other Positive Civic Impacts

EsCR is willing to work with Woodinville to develop a new 134th Ave NE crossing and orchestrate train movements to minimize traffic congestion.

Overflow parking for civic events could be constructed on the south side of the tracks near 132nd Ave NE in Woodinville.

Park and ride transit parking should be explored at the Woodinville platform site since there may be only nominal conflict between the two needs.

A MOW road connecting the wye area to NE Woodinville should be explored for construction in the near term. Wolford has nearly completed one mile of base trail southwest of Maltby, which would make connecting to the Burke-Gilman trail available to more people.

Previously, Woodinville has expressed interest in widening the 131st Ave NE railroad bridge, which can be orchestrated with EsCR to consider trail and potential future track requirements.

Eastside Community Rail and the Bounty of Washington: Tasting Train provide these benefits;

- Enable a rolling billboard for Washington agriculture and viticulture by celebrating local food and beverages
- Showcase the beautiful valley, Snohomish River bridge and historic rail route
- Direct sales tax revenue of approximately $1 million a year (based on $10 million of annual revenue from Dinner train)
- Direct excursion train jobs of 80 and trade jobs of 240
- Indirect jobs and economic development (former excursion train brought $140 million in tourism dollars) Generate awareness of the benefits of Woodinville,

Snohomish and the entire Eastside. The Spirit of Washington: Dinner Train sparked the awareness of Woodinville as a wine district. The Bounty of Washington: Tasting Train can be the catalyst of awareness of King and Snohomish counties as a tourism and livable destination

- Remove trucks from the highways which greatly reduces roadway wear and tear, toxic pollution, and traffic congestion
- Allows for future passenger rail service
- Potential redundancy to the slide-prone BNSF/Sounder route
- ECR will maintain the track for the next 35 years
- Protects the Eastside Rail Corridor assets while allowing the infrastructure to be productive now. The track structure will be maintained for more cost effective upgrades in the future.

In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

Respectfully,



Douglas Engle
Managing Director
Eastside Community Rail

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In summary, EsCR wants to provide a non-profit service to more quickly utilize the corridor for rail, trail and other public and private uses.

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Douglas Engle
Managing Director
Eastside Community Rail

Bounty of Washington: Tasting Train Proposed Schedule

Wednesday & Thursday Tulalip Special: Without winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $100 including bus service

Wednesday & Thursday Tulalip Special: With winery tour

12 p.m. Leave Tulalip

12:30 p.m. Arrive Snohomish

12:30 to 2:30 p.m. Lunch and Shopping in Snohomish

3:00 p.m. Embarkation Snohomish: Appetizers and wine tastings

4:00 p.m. Return from Woodinville: Dessert and wine tastings

5:00 p.m. Disembark Snohomish

6:00 p.m. Arrive Tulalip

Base Price: $120 including coach service

Friday Cruise Special or Mid-week Convention

1:00 p.m. Coach leaves Seattle

2:00 p.m. Arrive Woodinville, Embark in Woodinville Small Appetizers and wine tasting

3:00 p.m. Disembark Snohomish: Shopping

4:30 p.m. Embark Snohomish, Small Plates and wine tasting

5:30 p.m. Arrive Woodinville

6:30 p.m. Coach arrives in Seattle

Base Price: $110 (with coach service)

Friday Evening Happy Hour: Late Fall to early Spring

5:00 p.m. Embark Woodinville: Appetizers and Wine tastings

6:00 p.m. Disembark Snohomish: Entertainment and shopping

7:00 p.m. Embark Snohomish: Small Plates and Wine tastings

8:00 p.m. Arrive Woodinville

Base Price: $75

Saturday and Sunday Afternoon (dependent on demand in Late fall to Early Spring, every weekend Late Spring to Early Fall)

1:00 p.m. Embark Woodinville: Snacks and beer or wine tastings

2:00 p.m. Disembark Snohomish

3:30 p.m. Embark Snohomish: A small plate and beer or wine tastings

4:40 p.m. Arrive Woodinville

Price: $65, extra fees for premium winemakers and other special events

Saturday evenings: Winter Late Fall to early Spring

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

9:30 p.m. Arrive Woodinville

Base Price: $85

All evenings: Late Spring to Early Fall

Optional Winery tour before embarkation

6:30 p.m. Embark Woodinville: Small Plates and Wine tastings

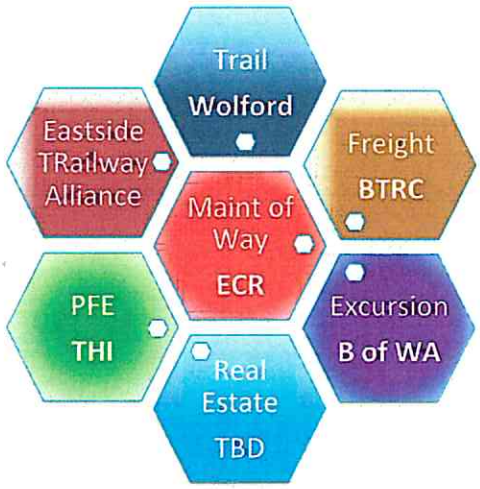
7:30 p.m. Disembark Snohomish: Entertainment

8:30 p.m. Embark Snohomish: Small Plates and Wine tastings

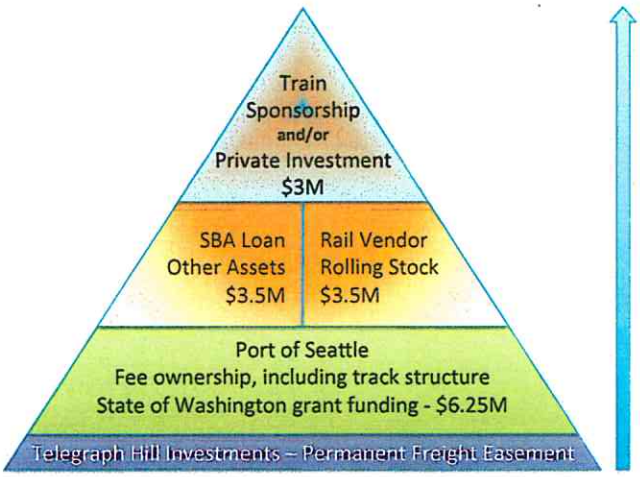
9:30 p.m. Arrive Woodinville

Base price: $85

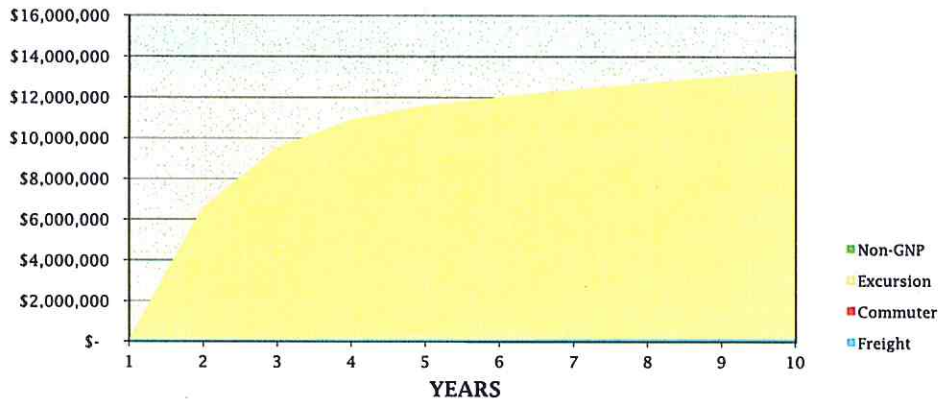
Organization



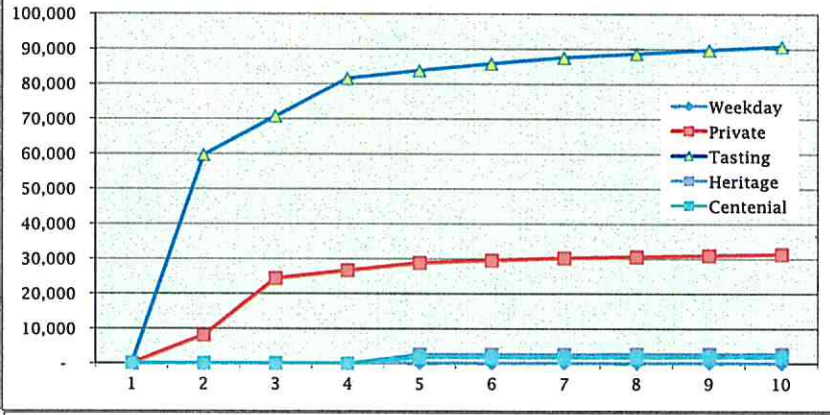
Financing Approach



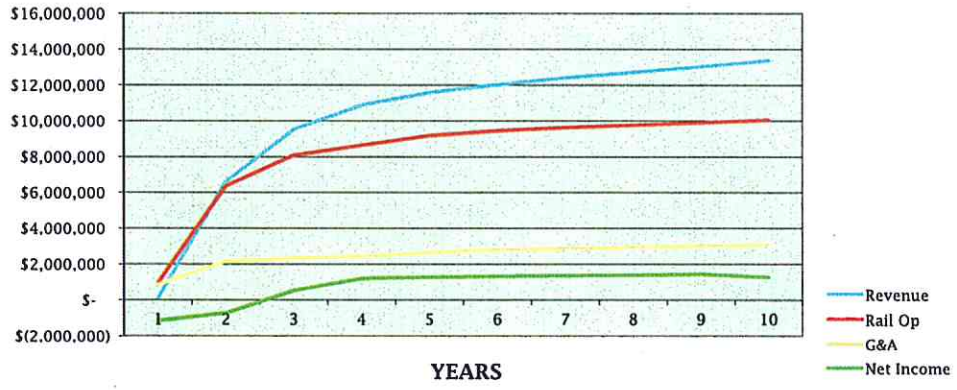
REVENUE



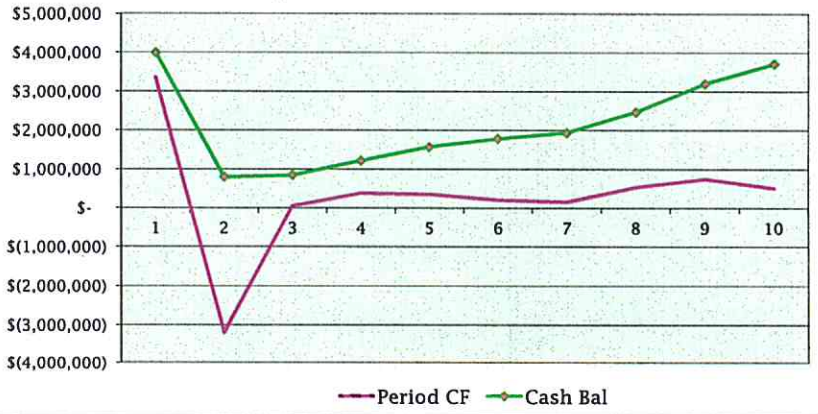
Daily Ridership



INCOME STATEMENT



Cash and Equivalents



Eastside Community Rail

Woodinville-Snohomish Maintenance of Way

11-Feb-13

MAIN TRACK - MP 23.80 to 38.25 + into Snohomish

	Unit	Cost	Units	Qty	Total	Avg Cost & Quote Date
Railworks						
Segment	**Milage**	**$/mile**	**Track Total**	**Rail Flaw Detection**	**Segment Total**	
Woodinville Wye	0.6	$ 222,320	$ 133,928	$ 0	$ 133,928	21-Jan-13
Woodinville Subdivision 24.0-37.61	13.6	$ 276,025	$ 3,756,700	$ 15,000	$ 3,771,700	
Snohomish Wye	0.6	$ 145,296	$ 87,528	$ 0	$ 87,528	
Snohomish Wye to Sno River Br	0.4	$ 265,680	$ 106,272	$ 0	$ 106,272	
Sno River Br into Snohomish	0.4	$ 793,840	$ 300,925	$ 0	$ 300,925	
Railworks Total		**$ 1,703,161**	$ 4,385,353	$ 15,000	**$ 4,400,353**	
Contingency				0%	$ 0	
Total Track Requirement	**15.6**				**$ 4,400,353**	**$ 282,184**
Protected Crossings	**10**			**Hours**	**Amount**	
Relay Certifications				22	$ 3,572	
Rail Bonding Inspections				10	$ 1,799	
So. Maltby Gate Replacement				28	$ 35,472	
Batteries and Crossing Arms				344	$ 186,525	
Subtotal				**404**	**$ 227,368**	
Contingency				0%	$ 0	
Total Protected Crossings					**$ 227,368**	**$ 22,737**
Bridges - MP 23.8 to 38.0	**11**		Bridges			
Osmose Inspection		$ 92,500	11		$ 92,500	$ 8,409
Osmose Priority 2 Repairs		$ 200,668	5		$ 200,668	$ 40,134
Osmose Priority 3 Repairs		$ 66,790	4		$ 66,790	$ 16,698
Sub-Total					$ 359,958	
Contingency				0%	$ 0	
Total Bridges					**$ 359,958**	**$ 32,723**
TOTAL MOW	**15.6**				**$ 4,987,679**	**$ 319,848**
Eastside Community Rail				20.3%	**$ 1,269,673**	**$ 81,421**
ECR Program Management			67%			
Insurance and Bonding			1.3%		$ 66,835	
Program Management			2.7%		$ 133,670	
Construction Management & Inspection			4.0%		$ 200,505	
Engineering Services During Construction			1.3%		$ 66,835	
OH Expenses			2.0%		$99,754	
ECR Program Management					$ 567,598	
ECR STB Revenue Adequacy Return				11.22%	$ 702,075	
Use Tax				0.00%	$0	
TOTAL FUNDING REQUEST	**15.6**				**$ 6,257,352**	**$ 401,269**

DRAFT FOR DISCUSSION PURPOSES

Fixed Assets Round 1

Eastside Community Rail
INITIAL OPERATIONS - Existing Track, Inspections & Planning, Excursion MP&RS
Round 1

Maintenance of Way	Unit	Track Miles / Description	15.6 / Quantity	Cost	28-Jan-13 Total
TOTAL RAIL				$ 4,400,353	
TOTAL SWITCHES				$ 230,000	
TOTAL SPURS & SIDINGS				$ 307,351	
TOTAL SIGNAL SYSTEMS COSTS		10		$ 227,368	
TOTAL MOW Road Planning				$ 256,740	
TOTAL Maintenance of Way					$ 5,421,812
Buildings, Bridges & Facilities (BB&F)					
TOTAL BRIDGES		11		$ 359,958	
TOTAL STATIONS		2		$ 1,290,626	
TOTAL MAINT. OF EQUIP. SHOP				$ 2,028,470	
TOTAL OFFICE				$ 318,308	
TOTAL Buildings, Bridges & Facilities (BB&F)					$ 3,997,362
Motive Power & Rolling Stock and MOW Vehicles					
Locomotive Startup Qty		2		$ 867,100	
Baggage Car & HEP Qty		2		$ 262,500	
Excursion Coach Startup Qty		7		$ 2,187,500	
Total Main of Way Equip & Vehicles		4		$ 219,650	
TOTAL MP&RS and MOW Vehicles					$ 3,536,750
TOTAL Business & Admin Assets					$ 351,095
TOTAL FIXED ASSETS - Round 1					**$ 13,307,019**

Total Assets		Life (yrs)		
MOW road (trail)	1.9%	10	$	256,740
Track	38.8%	35	$	5,165,072
BB&F	30.0%	30	$	3,997,362
Motive Power & Rolling Stock	26.6%	15	$	3,536,750
Business CapEx	2.6%	10	$	351,095
	100.0%	27.0	$	13,307,019

ANNUAL Fixed Asset Maintenance (yrs 1-3)		
TOTAL ANNUAL TRACK MAINT.	$	778,145
TOTAL ANNUAL BRIDGE MAINTENANCE	$	219,600
TOTAL FACILITIES MAINTENANCE	$	98,344
TOTAL ANNUAL MAINTENANCE		**$ 1,096,089**

Eastside Community Rail
TRAFFIC ANALYSIS
as of 2013 Feb 6

	Year 1 2013	Year 2 2014	Year 3 2015	Year 4 2016	Year 5 2017	Year 6 2018	Year 7 2019	Year 8 2020	Year 9 2021	Year 10 2022
Revenue										
Total Freight Revenue	$ 108,364	$ 116,037	$ 122,504	$ 129,982	$ 135,290	$ 140,843	$ 146,651	$ 152,728	$ 159,087	$ 165,742
Annual Growth Rate		7.1%	5.6%	6.1%	4.1%	4.1%	4.1%	4.1%	4.2%	4.2%
Total Freight Car Count	234	246	255	265	270	276	281	287	292	298
Avg Revenue/Car	$ 463	$ 472	$ 481	$ 491	$ 501	$ 511	$ 522	$ 533	$ 544	$ 556
Total Freight Car Miles (one-way)	2,645	2,778	2,875	2,990	3,050	3,110	3,173	3,236	3,301	3,367
EXCURSION PASSENGER SERVICE										
Private Train	$ -	$ 809,486	$ 2,475,633	$ 2,762,849	$ 3,049,803	$ 3,191,593	$ 3,321,662	$ 3,430,378	$ 3,543,340	$ 3,660,725
Tasting Train	$ -	$ 5,240,112	$ 6,270,449	$ 7,306,895	$ 7,583,477	$ 7,840,206	$ 8,076,021	$ 8,253,184	$ 8,434,251	$ 8,619,308
Heritage Train	$ -	$ -	$ -	$ -	$ 40,823	$ 41,094	$ 41,986	$ 42,899	$ 43,831	$ 44,783
Centennial Trail Special	$ -	$ -	$ -	$ -	$ 28,842	$ 29,517	$ 31,009	$ 32,576	$ 34,222	$ 35,952
Total Misc. Revenue	$ -	$ 471,916	$ 673,154	$ 697,550	$ 765,203	$ 780,988	$ 797,253	$ 814,010	$ 831,277	$ 849,067
Excursion Revenue	$ -	$ 6,521,514	$ 9,419,236	$ 10,767,295	$ 11,468,147	$ 11,883,398	$ 12,267,931	$ 12,573,047	$ 12,886,921	$ 13,209,835
Annual Growth Rate			44.4%	14.3%	6.5%	3.6%	3.2%	2.5%	2.5%	2.5%
Excursion Summary										
Total Passengers	-	67,753	94,999	108,184	116,821	119,552	121,938	123,422	124,925	126,446
Avg Passenger Revenue/Train	$ -	$ 96.25	$ 99.15	$ 99.53	$ 98.17	$ 99.40	$ 100.61	$ 101.87	$ 103.16	$ 104.47
Total Excursion Trains	-	272	380	380	411	419	423	425	428	430
Avg Revenue/Train	$ -	$ 23,976	$ 24,787	$ 28,335	$ 27,903	$ 28,367	$ 29,005	$ 29,555	$ 30,119	$ 30,696
Total Excursion Car Miles (one-way	-	35,080	49,009	49,009	53,007	54,028	54,549	54,865	55,182	55,502
Total Non-ECR Train Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL REVENUE	$ 108,364	$ 6,637,551	$ 9,541,740	$ 10,897,277	$ 11,603,437	$ 12,024,240	$ 12,414,582	$ 12,725,775	$ 13,046,008	$ 13,375,577
Annual Growth Rate		6025.3%	43.8%	14.2%	6.5%	3.6%	3.2%	2.5%	2.5%	2.5%
INDIRECT Cost Allocation										
Common Carrier Freight	100.0%	7.3%	5.5%	5.7%	5.4%	5.4%	5.5%	5.6%	5.6%	5.7%
Common Carrier Passenger	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Excursion	0.0%	92.7%	94.5%	94.3%	94.6%	94.6%	94.5%	94.4%	94.4%	94.3%
Non-ECR Trains & Non-Ops Rev	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total Car Miles	2,645	37,857	51,883	51,998	56,056	57,139	57,722	58,101	58,483	58,869

Eastside Community Rail
INCOME STATEMENT
11-Feb-13

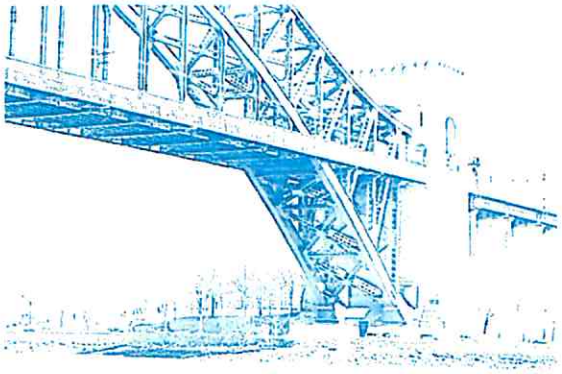
Business Case	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Most Likely	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
REVENUE (see "Traffic" tab for detail)										
Common Carrier Freight	$ 108,364	$ 116,037	$ 122,504	$ 129,982	$ 135,290	$ 140,843	$ 146,651	$ 152,728	$ 159,087	$ 165,742
Common Carrier Passenger	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Excursions	$ -	$ 6,521,514	$ 9,419,236	$ 10,767,295	$ 11,468,147	$ 11,883,398	$ 12,267,931	$ 12,573,047	$ 12,886,921	$ 13,209,835
Non-ECR Trains	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Revenue	**$ 108,364**	**$ 6,637,551**	**$ 9,541,740**	**$ 10,897,277**	**$ 11,603,437**	**$ 12,024,240**	**$ 12,414,582**	**$ 12,725,775**	**$ 13,046,008**	**$ 13,375,577**
Annual Growth Rate			43.8%	14.2%	6.5%	3.6%	3.2%	2.5%	2.5%	2.5%
Rail Operating Costs										
1. Direct Operations Costs										
TOTAL DIRECT TRANSPORTATION	**$ 2,463**	**$ 3,692,981**	**$ 5,097,067**	**$ 5,486,072**	**$ 5,802,487**	**$ 5,903,130**	**$ 5,988,160**	**$ 6,044,902**	**$ 6,102,566**	**$ 6,161,171**
		55.6%	53.4%	50.3%	50.0%	49.1%	48.2%	47.5%	46.8%	46.1%
2. Rail Admin Costs - indirect										
TOTAL ADMIN COSTS	**$ 69,125**	**$ 223,083**	**$ 334,105**	**$ 376,451**	**$ 402,923**	**$ 405,615**	**$ 413,728**	**$ 422,002**	**$ 430,442**	**$ 439,051**
		3.4%	3.5%	3.5%	3.5%	3.4%	3.3%	3.3%	3.3%	3.3%
3. Maintenance of Way and Structures - indirect										
TOTAL MOW and STRUCTURES	**$ 40,573**	**$ 278,778**	**$ 307,327**	**$ 307,327**	**$ 307,327**	**$ 311,467**	**$ 315,689**	**$ 319,996**	**$ 324,389**	**$ 328,869**
		4.2%	3.2%	2.8%	2.6%	2.6%	2.5%	2.5%	2.5%	2.5%
per mile	$ 2,808	$ 19,293	$ 21,268	$ 21,268	$ 21,268	$ 21,555	$ 21,847	$ 22,145	$ 22,449	$ 22,759
4. Maintenance of MP&RS (equipment) **- indirect**										
TOTAL MP&RS - Equipment	**$ 13,353**	**$ 17,804**	**$ 17,804**	**$ 17,804**	**$ 17,804**	**$ 18,160**	**$ 18,523**	**$ 18,894**	**$ 19,271**	**$ 19,657**
		0.3%	0.2%	0.2%	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%
TOTAL RAIL OPERATING COSTS	**$ 125,514**	**$ 4,212,646**	**$ 5,756,303**	**$ 6,187,655**	**$ 6,530,541**	**$ 6,638,373**	**$ 6,736,100**	**$ 6,805,794**	**$ 6,876,668**	**$ 6,948,748**
% of Revenue		63.5%	60.3%	56.8%	56.3%	55.2%	54.3%	53.5%	52.7%	52.0%
Corp Sales, Gen & Admin Expenses - indirect										
TOTAL Corp G&A EXPENSES	$ 864,011	$ 2,155,085	$ 2,332,469	$ 2,434,612	$ 2,639,022	$ 2,805,253	$ 2,884,880	$ 2,951,251	$ 3,019,412	$ 3,089,416
% of Revenue		32.5%	24.4%	22.3%	22.7%	23.3%	23.2%	23.2%	23.1%	23.1%
Gross Margin (EBITDA)	$ (881,161)	$ 269,821	$ 1,452,968	$ 2,275,010	$ 2,433,874	$ 2,580,615	$ 2,793,602	$ 2,968,730	$ 3,149,928	$ 3,337,413
% of Revenue		4.1%	15.2%	20.9%	21.0%	21.5%	22.5%	23.3%	24.1%	25.0%
Other (Income), Exp & Taxes										
Net Income Income/(Loss)	**$ (1,150,653)**	**$ (725,295)**	**$ 530,220**	**$ 1,207,869**	**$ 1,286,400**	**$ 1,335,559**	**$ 1,373,853**	**$ 1,408,931**	**$ 1,448,786**	**$ 1,277,020**
Net Income %	-1061.8%	-10.9%	5.6%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%	9.5%
Period Cash Flow	$ 3,359,656	$ (3,202,413)	$ 49,241	$ 378,193	$ 351,135	$ 205,141	$ 159,223	$ 527,629	$ 737,142	$ 506,118
Cash Balance	$ 3,996,481	$ 794,067	$ 843,308	$ 1,221,501	$ 1,572,636	$ 1,777,777	$ 1,937,000	$ 2,464,628	$ 3,201,770	$ 3,707,888

Eastside Community Rail

Monthly Percentage of Revenue

As of 2013 February 11

Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
0.1%	4.8%	5.9%	7.4%	10.3%	11.3%	11.3%	11.3%	9.3%	7.3%	8.2%	10.2%



Eastside Community Rail

Bridging the Gap

9 October 2012

Cost Plus Pricing Policy

Eastside Community Rail, LLC (ECR) requires that the return it earns for rail operations and projects is the rate set by the Surface Transportation Board (STB) for "revenue adequacy" of the railroad industry. ECR will use a 4-year weighted average to reasonably minimize fluctuations in the rate. This federal rate is the most independent and impartial means available to establish fair and reasonable "cost plus" pricing.

ECR expects to have a substantially lower overhead rate and cost structure than local governmental agencies or large private firms. ECR will support public works inside the rail corridor to the extent possible that do not conflict with rail operations or existing agreements. ECR will not enter into any agreement that infringes on its rights or authorities as a federal railroad.

Surface Transportation Board – Revenue Adequacy

"The annual determination of revenue adequacy is made in accordance with standards and procedures developed after passage of the Staggers Rail Act of 1980, which substantially deregulated railroads. A main goal of Staggers was to restore the railroad industry to a return on investment that would at least match its cost of investment capital."

"In Railroad Cost of Capital—2010, EP 558 (Sub-No. 14) (STB served Oct. 3, 2011), we determined that **the 2010 railroad industry cost of capital was 11.03%**. By comparing this figure to the 2010 ROI data obtained from the carriers' Annual Report R-1 Schedule 250 filings, we have calculated a revenue adequacy figure for each of the Class I freight railroads that were in operation as of December 31, 2010."

DECISION FOUND THAT ONE CLASS I RAILROAD (UNION PACIFIC RAILROAD COMPANY) ACHIEVED REVENUE ADEQUACY FOR THE YEAR 2010, IN ACCORDANCE WITH THE BOARD'S STANDARDS AND PROCEDURES DEVELOPED TO MAKE THAT DETERMINATION.

Following is STB's summary of the Returns on investment for all Class I railroads in 2010:

BNSF Railway Company	9.22%
CSX Transportation, Inc.	10.85%
Grand Trunk Corporation Consolidated*	9.21%
Kansas City Southern Railway Company	9.77%
Norfolk Southern Railway Company	10.96%
Soo Line Railroad Company*	8.01%
Union Pacific Railroad Company	11.54%

*(Including all Canadian and U.S. affiliates)

Historic Rates and ECR's Weighted Average

In Railroad Cost of Capital, STB Ex Parte No. 558, each year the Board determines the rail industry's after-tax cost of capital. ECR will apply annual weights to determine the "Weighted Average" to be used when pricing its works for public projects or operations.

	Cost of Capital	Weight	**Weighted Average**
2010	11.03%	40%	**11.02%**
2009	10.43%	30%	
2008	11.75%	20%	
2007	11.33%	10%	
2006	9.94%	0%	(5-yr Avg = 10.90%)

EXHIBIT 14

EXHIBIT 25 25-22AD ENGLE ND
PENGAD 800-631-6989

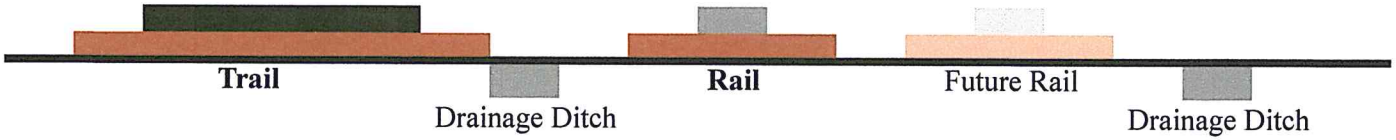
Eastside Community Rail

Corridor Alignment - Cost Sharing Example

As of 2013 May 3

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.

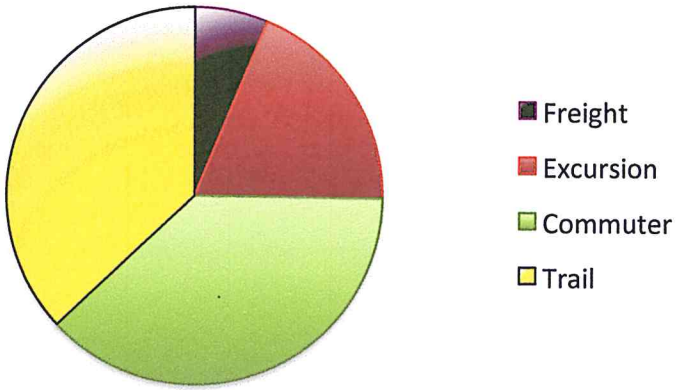


Trail expenses do not include rail structure costs.

Net		Gross Vehicle Miles	
6%	**Freight**	50,000	10%
19%	**Excursion**	150,000	30%
38%	**Commuter**	300,000	60%
63%	TOTAL	500,000	100%

Trail 37% | **Rail** 63%

Cost Sharing = Lower Operating Costs



ECRR is a zero-sum entity, with excess year-end funds added to the ECRR capital sinking fund.

EXHIBIT 15

GNP Rly Inc.

25 November 2009

Mr. Dan Thomas, Chief Financial Officer

and

Mr. Joe McWilliams, Managing Director, Real Estate Division
Port of Seattle
Pier 69
2711 Alaskan Way
Seattle, WA 98121

Re: BNSF corridor

Gentlemen;

Thank you for your time yesterday. Our discussion covered the following outstanding matters arising from your memo of 20 November 2009:

(a) Term of the O&M and License agreement
(b) The franchise fee; and
(c) Limitations of expansion of excursion train service.

Additionally, we touched on the scope of the agreement and the working limits of the operations on the Redmond spur.

We have the following comments with respect to each of these issues:

(a) Term of the O&M and License agreement.

I understood that your objection to the extension of the term of the agreements was that extending the term of the license to 35 years would be tantamount to conveying a "fee" interest in the land and that the Port did not have legal authority to convey the fee interest. I do not fully understand the Port's position on this issue. The O&M Agreement on the northern portion of the subdivision and the Railroad Right of Way License on the southern portion grant GNP only limited rights to use the property. The Port retains the right, for example, to use the property for trail purposes and to grant others the right to use the property for excursion rail purposes and for other purposes, such as for a water pipeline. Consequently, what the Port will convey to GNP would not be a "fee interest" even if granted in perpetuity. In addition, I understand that the Port has entered into even longer term lease agreements with other parties, including for example, the 50-year lease of the Seattle grain terminal to Cargill and the 40-year lease of Terminal 5 to APL/Eagle Marine Services. (These two leases are available on-line.) In any case, I believe that a 35-year term is consistent with other Port transactions and should be

within the power of the Port to provide for this transaction as well.

The business point is that the current term, both for freight and excursion service of 10 + 10 years does not allow for depreciation of assets in accordance with generally accepted accounting principles for railways. The term of the agreement should be in alignment with the actual and accounting life of new assets required to keep the railway whole. This is a question which affects both freight and excursion service, and pervades the financial structure and viability of any railroad.

The available term of RRIF loans, 35 years, reflects this principle, is the current industry standard, and reflects a term that is more in keeping with current industry practice. Needless to say, longer term capital financing is of advantage to the railway. You asked why we did not bring this matter up at the time of the bid. Simply put, we noted that there was no opportunity afforded by BNSF to discuss this matter at the time of the bid. Further, every bidder and BNSF openly said in the Everett bidder's meeting that 10 years was a wholly inadequate period for rail investments. Additionally, this was the first thing we brought to the attention of the Port immediately following our selection as TPO.

We all desire the enterprise to succeed, and it is desirable to have the proper environment so to do. The opportunity for long-term low cost finance from RRIF is of great significance to us; and should be, we think, to the Port. It is an opportunity not to be missed. Our RRIF discussions are well advanced, and we have advised them that this matter is under discussion with you, and their continuing work is on hold pending our mutual resolution of this question.

Given the above, we wish to have your undertaking that the agreements will be amended to meet the term of financing which we may negotiate with RRIF.

(b) Franchise Fee and Limitation of Expansion of Excursion train service.

As we have worked together over the past few years to negotiate this transaction, we have come to expect that the Port would be the owner of the southern portion of the subdivision and that we would eventually have rights to operate excursion rail service to MP 11.7 in Bellevue. This was, we believe, a fundamental premise of the Port/King County May 12, 2008 Interlocal Agreement and the form of Public Multipurpose Easement incorporated therein (and incorporated as Exhibit L to the BNSF/Port Purchase and Sale Agreement.) Those agreements state that the Port and King County intended that the whole Subdivision "be used for regional recreational trail and other transportation purposes, including, but not limited to rail or other transportation purposes other than interstate freight service ('Transportation Use')" and that "such Transportation Use will be carried out by a Third Party Operator". (Public Multipurpose Easement, recitals 4 and 5.) This incorporated form of Public Multipurpose Easement reflects the accommodation reached between the Port and King County that allows and protects the dual use of the corridor and establishes the Port's role as the advocate for and protector of the Transportation Use. In the incorporated form of Public Multipurpose Easement, King County also acknowledges that Port or the TPO may undertake Transportation Use of Property outside the Trail Area and that King County shall not interfere with the Transportation Use.

We have inferred from your recent comments and from the November 5, 2009 Memorandum of Understanding among the Port, King County and others that now King

County, not the Port, will be the long term owner of the southern portion of the subdivision and the licensor under the Railroad Right-of-Way License Agreement. If King County owns the fee interest in the southern portion, there would be no need for the Public Multipurpose Easement (in fact, even if the Port conveyed the easement to King County prior to the conveyance of the fee in the southern portion, the easement would merge into the fee title and have no further applicability.) Consequently, if King County becomes the fee owner of the southern portion of the subdivision, all of the painstakingly negotiated terms protecting and assuring viable dual use of the corridor would vanish.

While we recognize that the revised, final form of the Railroad Right of Way License provided GNP rights to Transportation Use on only MP 0.0 to MP 2.5 of the Redmond Spur and left to the Port the determination of whether and to what extent to expand these rights, it was reasonable -- given the context of all the other agreements (especially the incorporated form of Public Multipurpose Easement) and the expressly stated commitment of the Port to dual use -- for GNP to expect there to be an meaningful opportunity that the Port would expand GNP's rights under the License south of MP 23.8 and into Bellevue. GNP relied on this meaningful opportunity to expand its Excursion Rail rights to Bellevue in agreeing to pay a $1 million fee at closing under the O&M Agreement. Now that King County is expected to own the fee of the southern portion and the critical "dual use" protections of the Public Multipurpose Easement will not apply, it is no longer reasonable for GNP to expect such an expansion.

In our view, this represents a substantial change to the basic premises of our agreements with the Port that substantially affects the viability of our proposal.

We consider that is in our mutual interest to close this transaction on the 15th of December. Given the risk that GNP may not gain Excursion Rail Service rights south of MP 23.8 into Bellevue, we believe that, until that question is settled, a reduced fee to the Port is in order and we would propose the following:

(a) Franchise fee - $10,000 onetime payment (from $1M)
(b) Freight - $10.00/car (from $20.00)
(c) Passenger - $0.10/person (from $1.00)

and would request that you consider this proposal.

(c) Working Limits on Redmond Spur.

Given your present requirements, and in order to accommodate our operating requirements for excursion passenger services on the Redmond Spur we believe that extending our operations on the Redmond Spur mileage to the north curb of N124th St. in Redmond is necessary. Our current rights extend to MP 2.5, and we understand that the City of Redmond wishes to purchase to the city limits, which is N 124th street, MP 3.39. This extension would permit a conveniently located boarding location for the excursion train service on the Redmond Spur at a substantially shorter driving distance from the population centers of Bellevue and Seattle.

(d) Other matters.

When we commence excursion passenger services, we wish to discuss the insurance requirement increment. Given current insurance market conditions and the low speeds

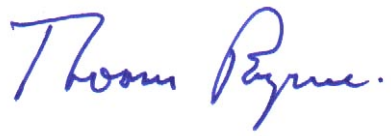
for the excursion service, we are of the view that an appropriate limit is $10 million.

You asked what would be the consequence of failing to secure RRIF financing in the absence of commercial financing. In our experience, there is no commercial financing available for railway purchases, and that is why RRIF was created. There is a reasonable market for the leasing of equipment. Our answer to your question was that the freight operation would be continued in operation on a minimal “mom and pop” operation basis which would meet our obligations as TPO. The excursion passenger service would also be operated, initially on a weekend basis as equipment may be acquired or leased and delivered as contemplated in the agreements. Both Ballard and we are familiar and comfortable with those types of operation.

Finally, as the closing date of December 15 is rapidly approaching, GNP needs to prepare for assuming operational responsibilities for Freight Rail Service. We need to know whether or not the Port and BNSF expect GNP to assume these responsibilities on December 15 or on some future date.

We look forward to our discussions on Monday, and are confident that we shall reach a mutually satisfactory conclusion.

Yours truly,



Thomas Payne
Chairman, Chief Operating Officer.

cc: Byron Cole, BTR
Douglas Engle, CFO, GNP
Jim Greenfield, GNP, Counsel
Craig Watson, POS, General Counsel
Isobel Safora, POS, Counsel

EXHIBIT 16

Port of Seattle

P.O. Box 1209
Seattle, WA 98111-1209
Tel: (206) 728-3000

www.portseattle.org

December 10, 2009

Thomas Payne
Chairman and COO
GNP Railway
403 Garfield Street, #20
Tacoma, WA 98444

Dear Mr. Payne:

The purpose of this letter is to clarify several of the points made in your letter of earlier today to Joe McWilliams and in the meeting yesterday between GNP, the Port and the County.

1. Extension of Excursion Service to Bellevue: You accurately note in your letter that the Port and the County will not permit excursion service to Bellevue. Thus, you should not rely on an extension to Bellevue to support your business plan. Because we anticipate that both the County and Sound Transit will have fee interests in the Bellevue segment of the corridor, the documents need to adequately reflect the understanding of all parties, including the anticipated future owners. *Since GNP has concluded that it can have a viable freight and excursion operation without service to Bellevue and the Port, the County and Sound Transit will not permit service to Bellevue, the Port will require the deletion of Sections 2.7 and 3.2 from the License as a condition to making the changes set forth in paragraphs 2, 3 and 4 below.*

2. Excursion Service on the Redmond Spur: GNP had previously requested extension of the excursion service area on the Redmond Spur from milepost 2.5 to milepost 3.39 at 124th Street, north of the City of Redmond. Both the Port and the County agreed to extend the excursion service area to milepost 3.39 provided that certain other terms in the license could be revised. The Port and County did not agree to have GNP conduct freight service to milepost 3.39. *Freight use of the Redmond Spur remains unchanged under the License and will be limited solely to perform head and tail operations that permit turning into the Y tracks.*

3. Insurance Requirements: In response to GNP's request to lower the insurance limits to "industry standards," I sent you an email dated November 20, 2009, stating that the Port agreed to lower insurance limits for the freight operations only. *Existing insurance requirements for excursion service will not change at this time given the different risks involved in excursion operations, but the Port reserves the right to adjust such requirements depending on increased risk.*

4. Fees to the Port: The Port's CEO, Tay Yoshitani, will brief the Port Commission about GNP's changes to the previously proposed fee as set forth in your November 25, 2009 letter. Barring objections from the Port Commission, the Port will close the transaction with those proposed fees. However, the Port will not eliminate the $1 Million Dollar payment from the agreement. *Rather, we propose revising the agreement to require that GNP pay the amounts proposed in your letter of November 25th and pay the Port $1 Million when it obtains financing.* The split in fees that would occur if the County acquires the Redmond Spur remains to be determined.

5. Term of the Operations and Maintenance Agreement (O & M) and License Agreement: The Port will not agree to GNP's request to extend the term of the O & M to 35 years. The County similarly indicated that it would not agree to a term of 35 years for the License.

Please contact me at your earliest convenience if you need to discuss anything further.

Sincerely,

Joe McWilliams
Managing Director,
Real Estate Division

EXHIBIT 17

THE WASHINGTON STATE CONSTITUTION
A Reference Guide

Robert F. Utter and
Hugh D. Spitzer

REFERENCE GUIDES TO THE STATE CONSTITUTIONS OF THE UNITED STATES, NUMBER 37
G. Alan Tarr, *Series Editor*



GREENWOOD PRESS
Westport, Connecticut • London

Emergency indebtedness to preserve the health of the citizens is not unconstitutional when it exceeds the constitutional debt limit. In 1924, the Board of Health barred the public from drinking the water then available in Kelso. A new municipal water plant cost $25,000, an amount that exceeded the city's constitutional debt limit. Yet, because of the public health emergency, the Washington Supreme Court allowed an exception to the Section 6 restrictions (McCarthy v. Kelso, 1924).

SECTION 5

> **Credit not to be loaned.** The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company, or corporation.

SECTION 7

> **Credit not to be loaned.** No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

This provision is similar to Article VII, Section 1 of the 1879 Iowa Constitution and has counterparts in the constitutions of many other states. Section 7 is similar, in part, to Article XI, Section 9 of the 1857 Oregon Constitution; Article VII, Section 11 of the 1874 amended New York Constitution; Article XII, Section 9 of the 1878 draft Washington Constitution; and the Hill proposed constitution, Article XI, Section 6 (Rosenow, 1962, 680).

During the convention, Section 7, addressing local governments, received much more attention than the state-oriented Section 5, mainly because local concerns with the railroads dominated the discussion. However, a textual difference between Sections 5 and 7 is that Section 7 allows for the "necessary support of the poor and infirm." Nevertheless, because of increasing state responsibility for the poor and infirm, Sections 5 and 7 are interpreted identically (Citizens for Clean Air v. Spokane, 1990; Washington Health Care Facilities Auth. v. Ray, 1980).

One of the most highly debated issues of the convention, the gift and loan prohibitions of Sections 5 and 7 were as stubbornly contested as any other provision. Many personal and local issues were involved in what was seen as a railroad subsidy question (Airey, 1945, 484). In order to attract a railway spur line, the citizens of Walla Walla had urged adoption of a clause allowing counties to subsidize railroads or other corporations when it was deemed to be for the public good (*Seattle Post-Intelligencer*, July 13, 1889). The convention's

Committee on State, County and Municipal Indebtedness was hopelessly divided on the issue (*Seattle Post-Intelligencer*, July 22, 1889).

The president of the Oregon and Washington Territory Railroad Company had promised Walla Walla a line connecting that city with the Northern Pacific Railroad system, in return for a subsidy.

The lack of railroad competition had caused problems for eastern Washington farmers, and agriculturalists saw a competing railroad line as necessary to stop unfair practices (*Walla Walla Weekly Union*, June 22, 1889). But the Union Pacific Railroad, already building lines in Walla Walla County, did not want competition from the Northern Pacific Railroad, so Union Pacific worked to defeat the subsidy scheme at the convention (Fitts, 1951, 65). Sections 5 and 7 are seen as anti-railroad provisions, so it is ironic that one of the two major railways sided with anti-corporate populists to gain their enactment.

Many lobbyists appeared before the convention on this issue, including some of the delegates themselves. One delegate who moved to accept the subsidies was himself the president of a railroad company, looking to establish subsidies for his own interests (Fitts, 1951, 70–71). Further, a scandal arose when the *Seattle Post-Intelligencer* accused the chair of the legislative committee, a Northern Pacific Railroad lobbyist, of taking a bribe from the railroad (*Seattle Post-Intelligencer*, July 13, 1889). A reporter witnessed "enough cases of liquor to stock a small saloon for two years" being delivered to the residence of delegate J.Z. Moore on the night the committee was due to meet there. The *Seattle Post-Intelligencer* reported that it was common for the railroads to use money or whiskey to get delegates to vote their way. Several days after the story on J.Z. Moore was released, Moore addressed the convention, denied the charges, and produced a bill for the whiskey (*Seattle Post-Intelligencer*, July 17, 1889).

However, the discussions always focused on the railroads. The supporters of subsidies noted that railroads were a quasi-public concern and that it was a good principle for the government to aid them. Another delegate argued that the difference between the railroads and, for example, water works owned by a city was that the profits of the railroad would go into private pockets. Some delegates looked beyond the railroad issue and feared to what other purposes subsidies would go. The vote for a provision prohibiting subsidies passed by a 2-to-1 margin. Motions for exceptions for irrigation canals, grain terminals, and shipping facilities were also defeated (Rosenow, 1962, 681–84).

Five of the counties associated with the railroad subsidy scheme—Asotin, Walla Walla, Franklin, Columbia, and Garfield—rejected the constitutional ratification when it went before the voters (Fitts, 1951, 194).

Over the last 100 years, the breadth and depth of application and interpretation of Sections 5 and 7 have led to several analytical approaches by the Washington Supreme Court. The court has struggled with the approach to Sections 5 and 7 just as much as the framers struggled with drafting those sections. As late as the 1970s, the court was taking a relatively strict view of government loans or credit to the private sector (Port of Longview v. Taxpayers, 1974). In the 1981

EXHIBIT 18

BEFORE THE SURFACE TRANSPORTATION BOARD

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

(Contains Confidential Testimony)

Deposition Upon Oral Examination Of

MICHAEL R. SKRIVAN

May 28, 2013

300 Fifth Avenue, 1st Floor Conference Room

Seattle, Washington

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

29906/No. 2704

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For the Witness: BEN STONE

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(206) 829-9590
ben@verislawgroup.com

A. Yes, I do.
Q. Is that your signature?
A. Yes, it is.
Q. How did you come to write this letter?
13:17:32 A. It was a request from Mr. Payne, and I don't recall why he needed it. I really don't.
Q. Do you recall much discussions with Mr. Payne back and forth about the letter?
A. Not other than just a request Could you, 13:17:58 Could you write a letter that you have -- there's a possibility of moving material. There's a potential to move materials.
Q. Okay. How would you describe CalPortland's interest in the ability to move material on a rail 13:18:13 line between -- well, let's say the whole thing: between Snohomish through Woodinville down to Bellevue?
MR. STONE: Object to the form of the question.
13:18:24 A. Can you rephrase that? What is our interest?
Q. Let me ask you this way: Why would you write a letter like Exhibit-47 on behalf of CalPortland? What's the upside, if you will, to CalPortland?
A. If he builds his railroad, I get to sell him 13:18:43 aggregate.

Q. With Mr. Payne it was selling him aggregate directly?

A. Correct.

Q. In your discussions with Mr. Payne back in 13:18:52 2010, was there any consideration of being able to supply other customers using the rail?

A. He always brought that as a subject of conversation, that if we get this up and running, you know, you can utilize the rail to move, move 13:19:09 materials, and I'd never had experience with that until he started educating me that that was the possibility.

Q. And did anything come of that? Did you ever sell --

13:19:23 A. No.

Q. -- materials to Mr. Payne?

A. No.

Q. Have you -- by "you," I mean CalPortland -- ever used the freight service that exists now between 13:19:31 Woodinville north to Snohomish?

A. No.

Q. After this December 3rd letter -- actually, let me back up and ask you this: Take a look at the letter. You mentioned there's some projects scheduled 13:19:48 for the SR520 Bridge -- this is the third line --

Q. Just the call to ask for a meeting was the first communication?

A. Correct.

Q. Do you remember who called you?

13:23:27 A. Doug Engle.

Q. What did you talk about on the phone?

A. It was basically arranging a meeting. I'm a busy guy. I don't have a lot of time for small talk with somebody I don't know.

13:23:38 Q. Understood. At that time did he tell you anything in particular about the project?

A. No, nothing at all. He just told me that he was -- he knew of my involvement with GNP and he was introducing himself as the continuation of that

13:23:53 entity.

Q. After that call, was there any other communications before your meeting?

A. No.

Q. Tell me about the meeting. You told me who

13:24:01 was there. What was the discussion?

A. It was really informal. We talked about potential, what ifs. Really open-ended. What they were planning on doing. Who they were. I'd never -- I'd known of Ballard. I just knew that they did some

13:24:18 of the contract work on the rail line for Mr. Payne,

could figure out what to price it and how to get it to them type thing.

Q. Am I understanding you correct this is for aggregate for ballast for their line?

13:27:11 A. That's what I kept asking about. That's all I'd ever known for that group.

Q. Did they ever get back to you with that information?

A. I don't think so.

13:27:23 Q. And you were the only CalPortland representative at that meeting?

A. Yeah. I don't think Mike was in there. I know he wasn't, no. There's only four of us; so...

(Exhibit-49 marked.)

13:27:55 Q. Handing you what we've marked as Exhibit-49, it's a letter that appears to be from you to Mr. Doug Engle dated March 14, 2013. Do you recognize this document?

A. I do.

13:28:11 Q. Is that your signature?

A. It's my electronic signature, yes.

Q. Do you recall writing this letter?

A. I do.

Q. Were you asked to draft this letter?

13:28:21 A. Yeah. Yeah, Doug asked me. He was going to

into the marketplace. And when you talk with contractors and truckers numbers start to be carried out, and part of my job is to forecast out for the future.

13:30:50 And so these are kind of what I was -- you know, I was kind of in the back of my mind, I've got to be ready for these kind of volumes coming up not -- maybe not this year or the next year, but in the next years. It's going to be coming down the road. That's 13:31:08 just what I do. We talk. We try and stay abreast of the market and understand what the potential is, because by the time a job comes out and it's written on Builders Exchange, I'm dead if I don't know about it before that.

13:31:22 Q. Do you know why Mr. Engle wanted this letter from you?

A. Not exactly. He mentioned he had a meeting with City of Kirkland. He had a hearing or something with the City of Kirkland, so that was kind of what I 13:31:39 thought it was for, showing his support.

Q. At the time you wrote this letter, were you still thinking primarily of being able to sell aggregate to Eastside Community Rail for use on the rail line, or were you thinking of other uses of the 13:31:53 rail?

A. Oh, absolutely, that's my primary focus was to -- at least that was more finite to me. But like I mentioned earlier, I think kind of in the abstract I'm thinking, Okay, if I can make a friend that has a service that I can utilize that my competitors don't, that had my wheels turning also.

Q. At the time you wrote the March 19 letter, did you have any contracts to either remove any of the spoils from any of the projects you mentioned, the I-405 or SR520 projects, the excavated materials that are mentioned in the letter?

A. No contracts, no.

Q. Did you consider this letter to be a request from Eastside Community Rail to provide rail service to you?

A. No. Not a request to provide service, no.

Q. At the time you wrote this letter, did you, CalPortland, have a need for Eastside Community Rail to provide rail service for you?

MR. MONTGOMERY: Object to the form of the question.

A. Define "need."

Q. Did you need something moved by rail, you know, in the immediate future, foreseeable future looking forward from March 19?

met with him face to face the once.

Q. Okay.

A. I don't recall meeting him any other time than the one time.

13:35:52 MR. PILSK: Why don't we mark this.

(Exhibit-50 marked.)

Q. Handing you what we've marked as Exhibit-50, and this is a letter dated March 25th, 2013. It appears to be from you, and this is to a Ms. Cynthia

13:36:16 Brown at the Surface Transportation Board. Do you recognize this letter?

A. I do.

Q. Is that your signature on the second page?

A. It is.

13:36:24 Q. Were you asked to write this letter?

A. This was a letter -- I sent my letter to Doug.

Q. When you say "my letter," you mean the March 19 letter we marked as Exhibit-49?

13:36:43 A. Yes, the March 19 letter. When I went on vacation, when I came back, this letter was forwarded to me via email. Asked me to review and see if it met my satisfaction.

Q. Okay. Let's mark this as 51.

13:36:54

(Exhibit-51 marked.)

Q. Take a look at what I've marked as Exhibit-51. This is an email appears to be from Mr. Engle to you dated March 25th, and attached to it is a draft of what looks like the letter to Ms. Brown. Is this the email you just mentioned?

A. Correct.

Q. Is this the first time you'd seen, or you had heard of a request that you provide a letter after the March 19 letter?

A. Yes.

MR. STONE: Just note my objection. Form to the last question.

Q. No phone call or anything from Mr. Engle before this email?

A. Like I said, I was on vacation, so I don't think so. I don't recall.

Q. Prior to receiving this email, Exhibit-51, had you drafted, made a draft of the letter that's attached?

A. I don't understand the question.

Q. In other words, this is a -- Mr. Engle says, "look at this letter back from our attorney." Had you provided a draft of a letter either to Mr. Engle or to Mr. Engle's attorney before receiving this March 25th

email?

A. Just the March 19th letter.

Q. Did you know when you received this email who the attorney was or what attorney he was referring to?

13:38:31 A. I do not. I did not.

Q. What did you do when you received this email?

A. It was first day back and he had "ASAP" on it, so I reviewed it quickly. I did notice a couple of words that I wasn't comfortable with that I amended

13:38:52 from the original letter, which is in the fourth paragraph, the last three words. It says "use of an already overburdened highway system via truck transportation is neither efficient," and I inserted "nor cost effective period," or "very cost effective

13:39:12 period," and struck "nor particularly safe," because I don't agree that moving materials via truck is not particularly safe.

(Exhibit-52 marked.)

Q. Handing you what's been marked Exhibit-52,

13:39:42 this is an email, top email in the chain from you to Mr. Engle dated March 26, and it appears, correct me if I'm wrong, this is transmitting your comments on the letter back to Mr. Engle.

A. Correct.

13:39:56 Q. You said and the text of the email says, "I

made one small change, Doug." You wrote that?

A. Yes, I did.

Q. And that was the only change you made to the letter?

13:40:09 A. That is the only change I made. I reviewed it very quickly.

Q. Between receiving the letter when you got back from vacation on March 25th and sending this out on March 26th, did you have any conversations with

13:40:24 Mr. Engle about the letter?

A. I did not.

Q. Did you talk to the lawyer that Mr. Engle mentioned?

A. I did not.

13:40:30 Q. Did you ever talk to a lawyer who either you understood to be representing Mr. Engle or Eastside Community Rail?

A. Not that I recall. I think I had a voicemail, but I did not speak to anybody.

13:40:42 Q. Do you recall who that was from?

A. I do not.

Q. Or when you received that? Was it waiting for you when you got back --

A. It wasn't around this letter. The only other

13:40:52 communication with an attorney from them was around

the time when Hunter and I were talking.

Q. About this deposition?

A. Yeah.

Q. Putting aside the deposition, you didn't talk to any lawyers representing Eastside Community Rail or Ballard about your letter to the STB?

A. No, I did not.

Q. Now, at the time you signed the March 25th letter, sort of the same series of questions I had about the March 19 letter: Did you consider this letter to be a request to Eastside Community Rail or to Ballard to provide rail service to CalPortland?

MR. STONE: Object to the form of the question.

A. Could you say that again, so I can listen.

Q. Sure. Did you consider this March 25th letter to be a request to Eastside Community Rail or to Ballard Rail to provide freight rail service to CalPortland?

MR. STONE: Object to the form of the question.

A. No, I did not.

Q. At the time that you wrote this letter, did you have an immediate, within the next three weeks, need for Eastside Rail or Ballard Rail to transport

material by rail?

A. No, I did not.

Q. Again, the March 25th letter also references projects -- I'm looking at the very end of the third paragraph. "We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons." Do you see that in the third paragraph?

A. Yes.

Q. Did CalPortland have any contracts for those jobs at the time you wrote the letter?

A. No contracts, no.

Q. Had they been bid yet? Had you submitted any bids?

A. We submitted a bid on a project on 405, but we had not been informed of any involvement.

Q. I'm sorry. When you say "not been informed of any involvement," what do you mean?

A. You put out a bid, you don't always get it, and you may not know till the project is actually a couple of weeks from taking delivery. A lot of contractors keep their cards very close to the vest.

Q. I see. You submitted it but didn't know whether it had been accepted or rejected yet.

A. No.

Q. Did your bids include an assumption that

CalPortland would use rail to deliver material?

A. Not in my bid, no.

Q. Okay. Did you discuss this March 25th letter with anyone else at CalPortland?

13:43:52 A. I did not.

Q. Now, the letter says that you were targeting these projects on I-405 and SR520 for the 2013 and 2014 construction seasons. When would you have to know that freight rail service was available to be

13:44:26 able to take advantage of freight rail to serve those projects if you got the work; in other words, how much lead time would you need that there was freight service to be had in order to take advantage of it?

A. That's hard to say, because it depends on

13:44:45 what kind of communication I get from a customer on his needs or wants. Sometimes I get six months' advanced notice, sometimes I get six hours. I mean, it's not an exact science.

Q. Okay. Has CalPortland signed any kind of a

13:45:22 contract or agreement with Eastside Community Rail?

A. We have not.

Q. Any kind of contract or agreement with Ballard Terminal?

A. We had a material supply agreement with

13:45:32 Ballard.

Q. What was that for?

A. To sell them ballast material for their rail needs. In order to be able to move forward with a formal quote, I had GNP set up with a credit account. So we submitted a credit application, and in order to get the credit application approved, we had to see that they were going to purchase some material from us, so I had them sign a material supply agreement.

Q. Who was it between? CalPortland and GNP?

A. GNP and Thomas Payne.

Q. My question was whether you had any contract with Eastside Community Rail.

A. No.

Q. Or with Ballard?

A. No.

Q. And the contract with GNP, about when was that? When did you enter into that?

A. I don't recall. If I had to guess, it would be in the 2010 range. I took over as aggregate sales manager in approximately January of 2010, so I wouldn't have been in a position to discuss any of that, but it would have been in that calendar year probably.

Q. Other than the I-405 and SR520 projects that are mentioned in the March 25th letter, are there any

other projects that you would be targeting or aware of on behalf of CalPortland in the area that would be served by the line between Woodinville and Bellevue?

A. Firm projects that are out on the street?

13:47:28 Q. Yes.

A. No. There's a lot of rumors.

Q. And then are there, whether you call them rumors or potential projects, those are other projects you might -- are you targeting them?

13:47:41 A. Absolutely.

Q. I take it there are potential projects. You have no contracts?

A. Correct.

Q. There's no need for CalPortland to use rail

13:47:49 service or any other kind of transportation service for those projects; is that correct?

A. Not today.

(Exhibit-53 marked.)

Q. Let me hand you what we've marked as

13:48:24 Exhibit-53. This is an email chain. The top email at the top of the page appears to be from you to Mr. Engle dated May 1st, 2013. Do you recognize that?

A. Yes.

Q. Do you recognize this as an email you wrote?

13:48:41 A. Yes, I do.

Q. Let me ask you first. Between March 25th when you wrote the letter to Ms. Brown of the STB and May 1, did you have any conversations with Mr. Engle about the rail project?

13:49:00 A. Not that I recall, direct conversation with Doug, other than trying to set up a meeting in Everett to see what the potential was up there.

Q. Okay. What about anyone else? Mr. Cole, did you have any conversations --

13:49:15 A. I have not had a conversation with Mr. Cole since the initial meeting on February 1.

Q. Anyone else who you understood to be connected with Eastside Community Rail? Mr. Wilson, Ernie Wilson?

13:49:28 A. Yeah, I think Ernie was also in the chain trying to set up a meeting. They were very interested in seeing our facility in Everett.

Q. Other than communications about seeing the facility in Everett, any other communications with

13:49:40 anyone from Eastside Community Rail?

A. Not that I recall, no.

Q. Now, what did you understand their interest was in seeing the facility in Everett?

A. They wanted to know proximity to a rail spur

13:49:56 or how we could get material to a rail line, and I

said I didn't have any idea of where -- you know, I'm just not that familiar with rail in that area, and that, you know, if they looked at our facility and there was a potential there, to let me know.

13:50:14 Q. Okay. Had you or someone on your staff made any efforts to find out if there were rail service available between Woodinville and Bellevue how would you get material onto that line?

A. No, we didn't.

13:50:29 Q. And then looking at this email, through the first and second line you say, "the cost of a spur into the Everett facility at this time would be cost prohibitive." Is that correct?

A. That's correct.

13:50:46 Q. How did you determine that?

A. We weren't going to spend any money to put a rail spur in.

Q. Did you talk to anyone else at CalPortland about that?

13:50:55 A. No.

Q. Didn't need to?

A. I didn't need to.

Q. I have to ask. Why didn't you feel you needed to talk to anyone about that?

13:51:03 A. That kind of an expenditure at our facility

up there at this time I wouldn't, I wouldn't recoup it. There's other opportunities for me to be able to access that without me spending any money.

Q. Did you have an estimate of how much it would cost to put in the spur?

A. In this letter from Ernie Wilson, he mentioned a 3 to $400,000 figure.

Q. And that was the only numbers that you had?

A. Yes.

Q. And that was more than enough to say for you no thank you?

A. 3 to 4,000 would be.

Q. From your point of view -- strike that.

The email says, "We think there could be a nearby site that may be an option, we are checking it out this week." What site was that?

A. I would consider that proprietary for my business. I know of a site that I could utilize for that. I don't want my competitors to know of it.

Q. Is it a site that CalPortland currently owns?

A. No.

Q. Did you check out that site?

A. We did.

Q. And is it a viable option?

A. It definitely is.

Q. Turning now to the section of the line itself, the railroad line itself between Woodinville and Bellevue. Does CalPortland own any property along the rail line?

14:11:54 A. No, we do not, that I'm aware of.

Q. Let me take a minute.

(Exhibit-56 marked.)

Q. I've handed you what we've marked as Exhibit-56. I'll represent to you that the section of

14:12:35 rail line that's highlighted or bounded in red is approximately the section of line we're talking about here between Woodinville and Bellevue on which Ballard is trying to reinstate service. Have you seen a map of that line before?

14:12:51 A. Just from articles in the newspapers depicting it.

Q. Are you familiar with this rail corridor at all?

A. Not with Eastside Rail, but I have been in --

14:13:07 there's -- I don't know want to call it abandoned because I think there's still some movement, but there is a grossly underutilized rail switchyard across I-405 in Bellevue that I have looked at.

Q. Do you know approximately where that is?

14:13:28 A. Just south of the Home Depot where 520 comes

across. You can see the Home Depot down, I believe --

Q. Would you put a red X by it.

A. I believe it's right in this area here (indicating).

14:13:44 Q. Right where 520, 520 and 405?

A. Right.

Q. When you say "rail switchyard," what does that mean?

A. I don't know. That's my interpretation of it. I'm not a rail expert.

14:13:53 Q. That's why I'm asking what do you think it is?

A. There's a lot of warehouses in there that are not being used and there's a lot of rail lines going in and out of and there's a lot of different switches.

14:14:04 Q. Why do you say it's grossly underused?

A. A lot of abandoned warehouses and property in there, so it looks like there could be some opportunities.

14:14:17 Q. Looking at this map of the line, does this help you determine whether or not to your knowledge CalPortland owns any property along the line?

A. It really doesn't help me, because I'm not involved in that part of our business. I just don't know land.

14:14:41

Q. I'm going to follow up with the same kind of question, but are you aware of any land that CalPortland leases along the rail line?

A. I am not.

14:14:51 Q. Or any agreements to make use of any land along the line?

A. I am not.

Q. Okay. In connection with your consideration of what Eastside Rail is proposing, do you know if you

14:15:03 or anyone else at CalPortland has looked at locations where aggregate or other materials could be off-loaded from a train onto trucks for delivery to a customer?

MR. STONE: Object to the form of the question.

14:15:16 Q. Let me back up and ask you this: One of the things you said was that the rail could provide an opportunity for CalPortland to sell aggregate.

A. Correct.

Q. I assume that the aggregate would be

14:15:29 transported from one of CalPortland's facility down the line to someplace, and then I assume that it would have to be removed from railcars to be delivered to the customer's site. Is that a fair assumption?

A. Yes.

14:15:43 Q. My question is whether you or anyone at

CalPortland to your knowledge looked at where you might be able to transload the material from the railcars to trucks or however else they were going to be delivered to the customer.

14:15:57 A. No.

Q. And then the other thing you mentioned in the letters was the excavation spoils coming out of the projects. Did you look at any locations where those spoils could be transloaded from trucks, or whatever, 14:16:14 onto railcars to be transported out of the area?

MR. STONE: Object to the form of the question, reference to the letters.

Q. This is the March 25th and March 19th, 2013, letters that we previously marked.

14:16:30 MR. STONE: Do you want to look at these letters?

A. I've only had one involvement with Mr. Tom Payne and the Eastside corridor project on 520 that we did not get involvement with. He told me he could 14:16:46 create a loading location in that same area near 520 and 405 in that switchyard that he could secure to bring spoils, get them on railcars, and get them up to Snohomish. That's my only conversation I've had with somebody that it was possible.

14:17:08 Q. Okay. Go ahead.

A. So that just opened my mind up to the possibility.

Q. That was Tom Payne told you that in the 2010 timeframe?

14:17:18 A. In that area. I'm not good with exact dates; so...

Q. Did Mr. Engle or Mr. Wilson make any similar representations to you in the course of your conversations in late 2012 or 2013?

14:17:34 A. Nothing specific, no.

Q. Other than hearing that from Mr. Payne, have you done any work to verify that there really is space to do that kind of work, to do the transloading?

A. No. Just walking in that area with

14:17:50 Mr. Payne.

Q. Okay.

(Exhibit-57 marked.)

Q. I've handed you what we've marked as Exhibit-57. This is an email. The top of the chain

14:18:19 appears to be from you to Mr. Engle dated April 14, 2013. Do you recognize this email?

A. I think it's in response to me not being able to make a meeting in Everett.

Q. Okay. The second email down from Mr. Engle

14:18:39 to you also dated April 14 -- I'm sorry. The second

seven-man rock like the size of this table. I just don't have a deposit that makes that. But everything smaller than that we do.

Q. What you would ship I suppose would depend on whether someone orders it?

A. That's correct.

Q. As of now you have no contracts that would require you to deliver any of that material by rail along the Eastside Community Rail lines; is that correct?

A. That's correct.

Q. If you can give me a minute, let me double-check things, but I think we're almost done.

(Discussion off record.)

Q. I've got nothing further remember. Thank you.

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

BY MR. MONTGOMERY:

Q. I'll ask you a few questions, if I may.

My name is Tom Montgomery and I represent Ballard Terminal Railroad.

Mr. Skrivan, how are you today?

A. Good. How are you?

Q. Fine. Just be aware the court reporter to your left is going to be trying --

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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

EXHIBIT 19

BEFORE THE SURFACE TRANSPORTATION BOARD

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

DEPOSITION UPON ORAL EXAMINATION

OF

BOBBY WOLFORD

Taken at 600 University Street, Suite 3600

Seattle, Washington

DATE: Thursday, May 16, 2013

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

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A. Just got a job driving a truck and then I bought my own truck and now I have 20 trucks. Worked real hard all my life.

Q. Okay. I read in your letter to the STB that you formed your company in 1972?

A. Mm-hm (answers affirmatively).

Q. Is that correct?

A. Back in there sometime, a long time ago.

Q. Okay. And the company, you formed it as Wolford Trucking and Demolition, Inc.?

A. Wolford Trucking and Salvage was the corporate name at that time.

Q. Okay. And you're the owner of Wolford Trucking and Demolition, correct?

A. Yes.

Q. Do you have any other -- do you hold any other offices in the company?

A. I have two corporations, one is an equipment sales and rental company, too.

Q. What's the name of your other company?

A. Bobby Wolford Equipment Sales and Rentals, Inc.

Q. Okay. Does it share office space with --

A. Yes.

Q. -- with Wolford Trucking and Demolition?

A. Same office.

or other employees or officers of Wolford Trucking and Ballard Terminal Railroad?

A. The one document that we found, which was the bid for the railroad removal is the only one I can find.

Q. But please listen to my question. Did you look and ask your employees -- did you ask your employees if they have any communications with Ballard Terminal Railroad?

A. Yes.

Q. And what did your employees tell you?

A. They said no.

Q. Did you --

A. Would that be Byron Cole, he's the Ballard Terminal Railroad. We haven't talked about anything, not much, about this project. Our go-to guy was a man named Ernie Wilson.

Q. Who is Mr. Wilson?

A. He is a retired surveyor.

Q. And when you say he was your go-to guy, is Mr. Wilson affiliated with a company?

A. The Eastside Rail.

Q. Have you ever met Mr. Wilson in person?

A. Yes, a couple times.

Q. Can you describe what he looks like, please?

A. Tall, thin guy with white hair.

A. Mm-hm (answers affirmatively).

Q. We asked for all materials concerning the construction projects that Wolford, your company, Wolford Trucking and Demolition is, quote, "currently targeting as stated in your March 27th, 2013, letter to Cynthia Brown, including any invitations for bids, proposals for bids, studies or estimates, and contracts."

A. These aren't out yet. In the next two years, they'll be looking for bids to move dirt out of Bellevue.

Q. So are you saying that you haven't received any invitations for bids?

A. Not yet.

Q. Okay.

A. But it's coming.

Q. If you turn to the second to last page of this Exhibit 2, you'll see a Number 29 in the right-hand corner.

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

Q. Okay. Is this part of the letter that you signed that was sent to Cynthia Brown of the Surface Transportation Board?

A. No. I didn't sign this, I don't believe. Did I? This isn't the one that Ernie wrote? Oh, sorry. Oh, yeah, that's part of the dirt removal, I'm sorry, yes --

Q. Did you just say that Ernie wrote this letter?

A. Yes.

Q. That would be Ernie Wilson?
A. Yes.
Q. Of Eastside Community Rail?
A. Yes.
Q. He wrote this letter?
A. Yes. I read it and approved everything he wrote. He did a great job.
Q. So, Mr. Wolford, if you take a look at the second page of the letter you signed, first full paragraph, can you read the sentence beginning with the words, "We are currently"?
A. Yes.
Q. Would you read it out loud?
A. We are currently targeting projects on 405 and 520 for the 2013, '14 construction seasons.
Q. Okay.
A. Yes.
Q. Turning back to the Attachment A in this exhibit, so it's back towards the front.
A. Mm-hm (answers affirmatively).
Q. Do you understand what's numbered here as Number 6 asking for all materials concerning the construction projects that your company is, quote, "currently targeting," do you understand that was in reference to the sentence you just read in your letter to

Cynthia Brown?

MR. MONTGOMERY: Object to the form.

THE WITNESS: Yes.

Q. (By Mr. Ferguson) Okay. I just want to make sure that you understood what we were referencing in the document request.

A. Yes.

Q. Okay. And you said that you haven't received any invitations for bids --

A. Not yet.

Q. -- for these projects?

So are you aware of any invitations for bids for these referenced projects? Are you aware -- let me rephrase that, it's a little bit garbled.

Are you aware that any invitations for bids exist for these projects you're currently targeting?

A. When they come out, then we give them prices. So they're not let yet, they're not even out to bid yet. They will.

Q. Okay. So does your company have any documents for these projects that it's targeting?

A. Not yet because they're not out yet. They will in the next two years.

Q. Okay. Thank you. Finally, looking at the request that's under Number 7.

Q. Can you describe what other business dealings you've had with Doug Engle?

A. I have no other business dealings with Doug Engle.

Q. Other than the apartment complex?

A. Well, the railroad.

Q. Okay. And that --

A. Now he's promising me my spur because he has that lease, Tom Payne is out and this guy is in, I guess.

Q. And is that through his company Eastside Community Rail, LLC?

A. Yes.

Q. Okay. And you've mentioned -- you mentioned Byron Cole's name earlier, do you --

A. He attended two meetings with him, that's when I...

Q. Which meetings are these?

A. One was City of Kirkland Public City Council meeting.

Q. Okay.

A. And one was the City of Bellevue just about three days after that meeting.

Q. And what were those meetings about, do you remember?

A. It was about the rail, preserving the rail.

Q. Does your company have any business dealings with Ballard Terminal Railroad currently?

A. Not now. We were going to put some ecology blocks and do some work for them but we never did.

Q. Okay.

A. A truck hit a railroad crossing sign in Maltby and we were going to -- it was discussed, but we haven't got a contract with them to do the repair yet.

Q. Okay. The subpoena that we sent to you, this is Exhibit 1, other than your attorney Ms. Alvord, did you discuss this with anyone?

A. You. You called and asked if it would be all right. I should have said no, but here I am.

Q. Anyone else?

A. No.

Q. Did you discuss it with Mr. Engle?

A. Oh, yes. I told him I was coming to this meeting today.

Q. Did you discuss it with Mr. Cole?

A. No, I haven't talked to Byron Cole about it.

Q. What did you tell Mr. Engle about the subpoena?

A. Said I'm going to come here and -- that letter I signed, everything in it was true, so I signed it. That was what I was going to stick to. That's...

Q. Did he tell you anything about the subpoena?

MR. MONTGOMERY: What was the answer?

THE WITNESS: If he could secure it with securities. I make loans for interest, yes, I do --

Q. (By Mr. Ferguson) What secured --

A. -- it's one of my other businesses.

Q. -- this loan to Doug Engle?

A. His condo. We made him sign some document, my office did, just to secure a personal loan.

Q. Do you know what that document was?

A. No, I never saw it. I just asked if it was done.

Q. Was it the deed of trust to his condo?

A. Something like that.

Q. Okay. Have you ever seen --

A. No, I haven't seen the document.

Q. -- the document?

A. We're really busy at work, almost too busy for this. I explained that to you.

Q. I'm just asking a straightforward question about why you loaned Doug Engle $20,000?

A. Probably for his fight with the city.

Q. Okay. So when did you make the loan?

A. Right after I went to a city council meeting and they said there that they asked, is there anything that would stop from ripping this railroad out? And the guy said, Yes, an injunction.

So at that point, we decided to get an injunction, or Doug Engle did. And I said, That's a good cause. I'm a City of Kirkland taxpayer, I own properties in Kirkland. I own a piece right by the railroad, actually.

Q. So did you make the loan to Mr. Engle for the purpose of obtaining an injunction?

MR. MONTGOMERY: Asked and answered.

MS. ALVORD: Also calls for speculation.

MR. MONTGOMERY: Foundation.

THE WITNESS: I don't know what he did with the money. He probably --

Q. (By Mr. Ferguson) I'm asking the reason why you made the loan. I'm not asking what Mr. Engle did with the money. Please listen to my question.

When you decided to make the loan, did you do so for the purpose of obtaining an injunction?

A. He needed some money to obtain an attorney.

Q. Mr. Wolford, please listen to my question. I'm asking you why you made the loan.

MR. MONTGOMERY: Asked and answered.

MS. ALVORD: I agree. Objection; asked and answered.

THE WITNESS: So he could -- why did I make the loan --

Q. (By Mr. Ferguson) Yes.

A. -- to him? Because I like interest. I make loans to get interest, that's one of my other businesses.

Q. What's the interest rate on your loan to him?

A. I don't know. Probably 10 percent.

Q. Was the only reason to make the loan to Mr. Engle to earn interest at 10 percent?

A. That was part of it.

Q. What were the other reasons?

A. To stop the City of Kirkland because they were doing unrightful, ripping a rail out. That's why. I believe in that. I pay taxes in Kirkland. This is a waste of Kirkland money. Misused funds.

Q. Okay.

MR. FERGUSON: Can we go off the record for a second.

(Recess taken from 11:16 to 11:21 a.m.)

MR. FERGUSON: Okay. Back on.

(Exhibit Numbers 3-4 marked.)

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

BY MR. FERGUSON:

Q. Mr. Wolford, I'm going to hand you what are marked Exhibits 3 and 4. Sorry, guys.

MR. MONTGOMERY: That's all right.

MS. ALVORD: Sure. Here Tom.

MR. MONTGOMERY: Thank you.

MS. ALVORD: Oh, thank you. Let me see, which one is 3?

MR. FERGUSON: Three should be the general map.

MS. ALVORD: I've got two of the same.

MR. WAGNER: Here, switch one with Tom.

MS. ALVORD: Okay. 3 is the colorful one.

MR. FERGUSON: The general map, not the photograph.

Q. (By Mr. Ferguson) Mr. Wolford, I understand that your facility is on what is marked on the general map, this is Exhibit 3, the freight segment; is that correct?

A. Yes.

Q. Can you --

MS. ALVORD: Over here.

THE WITNESS: No, over here.

MS. ALVORD: I'm sorry, for clarification are we looking at Exhibit 3?

Q. (By Mr. Ferguson) Let's look at Exhibit 3 first.

Would you mark on the map with this felt pen, which should show up, the approximate location of your business's yard?

A. Which one? The one in Kirkland or the one in

MR. FERGUSON: That --

THE WITNESS: -- got off the Internet.

MR. FERGUSON: No, someone in the Kirkland Planning Department helped to create the map.

MS. ALVORD: Kirkland Planning, okay.

THE WITNESS: Probably there (indicating). Okay. You know this big, I presume that's where it is.

MS. ALVORD: Off of 522.

THE WITNESS: Mm-hm (answers affirmatively).

MR. MONTGOMERY: Is that the Maltby one?

THE WITNESS: It's a 10-acre facility. This is my recycling facility.

Q. (By Mr. Ferguson) Is that the only facility of Wolford Trucking and Demolition, Inc.?

A. Yeah.

Q. There are no other properties where Wolford Trucking and Demolition conducts its business?

A. No, that's it.

Q. Okay. Just to be clear, I'm just trying to get an idea of where your business is?

A. It's right there.

Q. Okay. And turning to Exhibit 4, is Wolford Trucking and Demolition's facility located on this map?

A. Yeah, right there.

Q. Okay. If you can, would you draw an outline

spoils."

That's going on currently on Highway 522 right now. They're removing spoils that could be utilizing railroad now.

Q. We'll come to it. If you could finish reading the paragraph.

A. "We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years."

Q. Thank you.

MR. MONTGOMERY: Did you skip a sentence?

THE WITNESS: It's all gobbledygook. Who cares.

Q. (By Mr. Ferguson) When you say it's gobbledygook, what do you mean?

A. You're overbearing. All of this is gobbledygook to me. I'm a cut and dry guy, just want the railroad left in so we can save the taxpayers some money transporting dirt.

Q. Okay. You've said in this letter that you are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Are there particular projects that you are targeting?

A. Not yet, they haven't been let. The contracts haven't been let, but when they do, we'll be there to service them if the rail is there.

Q. When you say you're targeting projects, what do you mean?

A. They're in the future, when the contract is let, we will bid on it.

Q. Are there particular projects that you have in mind, though?

A. Moving spoils out of the -- by Lincoln Square is our biggest one in Bellevue.

Q. But is there a particular highway project that you are specifically planning to bid on?

A. We'll give prices to all of them. Right now, they're not let yet.

Q. But how do you -- do you know whether there are any projects planned?

A. According to the papers, I read them, you read them, yes, there's big projects in the works for the city of Bellevue.

Q. For I-405, are there particular areas where construction is to take place that you are considering bidding on?

A. Merlino just got a huge contract for 405. We would give him dirt prices if we had a rail.

Q. Merlino, you said?

A. Merlino Construction just did a huge, I don't know how many million project for 405. It's still going on.

Q. Merlino is a contractor?

A. Merlino Construction, yeah.

Q. Has Merlino Construction approached you about working with it on a highway project?

A. No, because we don't have our rail in place yet.

Q. Are there any other projects on I-405 other than the contract that Merlino has that you are targeting?

A. I'd have to talk to my superintendent and estimator. It's not my -- I don't run that part of my company.

Q. Are there projects on 520 that your company is targeting?

A. Yeah, we work with Scarsella Construction, they're currently doing one on 520.

Q. You are currently working on a project for highway 520?

A. Scarsella Construction is, and we subcontract to them, yes.

Q. Are there other projects on 520 that you are

currently targeting?

A. That I'm aware of, no, but my estimator would know. You have to understand my role in my company. I work in the yard.

Q. Just to clarify, is your company currently working on a project for 520?

A. Subcontracted, I believe. I'm not sure. I have 20 trucks, they work every day, there's different contractors. Again, my superintendent and estimator would know.

Q. Is your estimator -- who are you referring to when you refer to your estimator?

A. Scott Miller, Ollie, Jack, that's my group that runs my company.

Q. So three individuals?

A. Yes.

Q. Okay. When you refer to your superintendent, who are you referring to?

A. Scott Miller, estimator.

Q. So is it accurate that you yourself do not know whether your company --

A. That's accurate, yes.

Q. Let me finish, please.

Is it accurate that you yourself do not know whether your company is working on a project on 520?

A. That's an accurate. Yes.

Q. Okay. For the project that you referenced on I-405, that the -- what was the contractor's name again?

A. Merlino. You just asked if there's current construction on 405, yes, Merlino has a huge contract.

Q. Do you know where the construction is taking place?

A. It's like at 116th, north. I don't know exactly where, no. It's on 405, though. It's public record. We subcontract to him sometimes.

Q. But not for this project that's currently underway?

A. I don't know where my trucks go. I have dispatchers that dispatch them. Possibly working for him.

Q. All right. Can you describe to me, if you were to, if your company were to work on removing spoils from construction projects on 405, by rail, where would the railcars go?

A. Where would they stage? In Bellevue.

Q. Do you know where in Bellevue?

A. We have a place in mind. We haven't nailed it down yet because we're not sure of the rail.

Q. What is that place?

A. It's over by Home Depot. By Mutual Materials.

Q. Do you have an address?

A. Not in my head. I don't know. I could drive you there. I don't know the address.

Q. Do you have a cross street in mind where the Home Depot is?

A. It's about four blocks from NE 8th.

Q. Okay. And is that property adjacent to the rail line?

A. Yes. There's a rail line on it, of course.

Q. Okay. Do you know who owns this property?

A. No.

Q. Does your company own this property?

A. No, Doug Engle was going to secure all this. As soon as we know the rail's stand, we'll fine tune all this.

Q. So do you know if Doug Engle owns the property?

A. No, he doesn't own the property.

Q. Do you know if Eastside Community Rail owns the property?

A. No. It's some other property owner. We would do a sublease to them.

Q. Do you know if Ballard Terminal Railroad owns this property?

A. No, they don't own the property.

Q. Does Byron Cole own this property?

A. No.

Q. Do you know what this property is currently being

used for?

A. No. Doug Engle knows. He's the one that brought it up.

Q. Do you know how large a piece of property this is?

A. No.

Q. Have you ever seen this property?

A. No. I know the general area it's in.

Q. Okay. I want to give you what's been marked as Exhibit 9.

A. It's not on here.

Q. What is not on here? We're referencing Exhibit 9.

A. The staging area, if that's what you're going to ask me.

Q. I was. Do you know --

MR. WAGNER: Off the map.

THE WITNESS: It's south of here.

Q. (By Mr. Ferguson) It's -- when you say south of here, you mean it is south of NE 8th?

A. South of your map, yes, doesn't pertain, sir. (Speaking to himself.)

THE COURT REPORTER: Sorry, you have to speak up if I'm going to get this down.

MS. ALVORD: It's okay.

Q. (By Mr. Ferguson) Mr. Wolford, this property that you've been referencing, do you know if it is north or south of the Home Depot?

A. Sir, you have to ask Doug Engle. You're going to see him next week. You ask him these questions. These aren't for me.

Q. This property that you've referenced that is near the Home Depot, what would it be used for?

A. Staging area to load trucks. The gondolas to go up the track that you want to rip out.

Q. Would this be called a trans-loading facility?

A. Yes, it would.

Q. Okay. And do you plan to run -- excuse me, do you know if, is your plan to have railcars run --

A. Staged.

Q. -- to that area?

A. Staged and loaded. They would go night and day.

Q. After the railcars go to that area, where would they go?

A. Up to Snohomish to build the trails to rail nature trail for people for Snohomish County.

Q. Okay. I'd like to hand you what's been marked as Exhibit 10. When you say dirt will go to Snohomish, what do you mean? Will it go to the city of Snohomish?

A. No. Another question for Doug Engle. I've never

been up there. I've just been told. That's -- there's 23 miles of road or trails we're going to build with these spoils out of Bellevue. I don't know the particulars, you'll have to ask Mr. Engle. He's involved in that. I'm not. I will be, if you don't rip the rail out.

Q. Let's take a look back at, looking back at Exhibit 10.

A. Okay.

Q. Is it your testimony that you do not know where the excavation spoils will be deposited?

A. Yes, that's my testimony. Ask Mr. Engle, he knows.

Q. So when you said earlier that the materials would be taken to Snohomish, were you incorrect?

A. No, it's some place along here. I don't know where. I've never been to this project. He's got the rapport with the people that want the spoils. I don't.

Q. But you would be involved in building the trail, correct?

A. Placing the spoils as the railcars come in and dump, our bulldozers would place the material, yes.

Q. Okay.

A. That's my only part of that project, placing the spoils.

Q. Looking at your letter to Ms. Brown, what's been

years?

A. That's a true statement and I signed it.

Q. Okay.

A. I'm not saying I will haul all of them, but that's the calculation of dirt coming out of the city of Bellevue in the next three years.

Q. Okay. Looking at exhibit, let's see, it's titled Map 9, I think it's Exhibit 9 there.

MR. FERGUSON: Elizabeth, you might want to get your Number 9 from him.

MS. ALVORD: This is mine, thank you.

Q. (By Mr. Ferguson) Okay. Mr. Wolford, do you know if you plan to use any of the property along the rail line between Highway 520 and NE 8th as a staging area?

A. It's a possibility. Mr. Engle is in charge of that, not me. He was going to show us where a staging area was after we make sure the rail is in.

Q. Okay. Do you or do any of your companies own any property visible on this map, Exhibit 9?

A. No. North of here in Kirkland, I own property on the rail.

Q. Okay. Do you have any contracts to haul excavation spoils for a project in Bellevue?

A. Not yet. We can't till we know the rail is going to be in.

A. I don't think he -- he was there. I haven't met Byron that much. Couple brief -- well, at council meetings, I've met Byron.

Q. Okay. Have you ever asked Eastside -- have you ever asked Doug Engle or Eastside Community Rail for a rate to haul spoils out of Bellevue by rail?

A. Me personally, no.

Q. Do you know if anyone with your company --

A. I don't know.

Q. -- has asked Doug Engle or anyone else at Eastside Community Rail for a rate quote?

A. I don't know if they have.

Q. Looking back at Exhibit 9, please, do you know -- have you made any inquiries about acquiring any of the property along the rail corridor between Highway 520 and NE 8th?

A. No.

Q. Do you know if Doug Engle had made any inquiries to obtain property --

A. I don't know for sure.

Q. -- in that area?

A. No.

Q. Do you know --

A. I don't know.

Q. Do you know if his company, Eastside Community

Rail, has made any attempt to obtain property --

A. I don't --

Q. -- along that corridor?

A. -- know, no.

Q. What about for Byron Cole, do you know if he has made any attempt --

A. No.

Q. -- or inquiries to obtain property along the corridor?

A. I don't know. Ask Doug Engle.

Q. And do you know if Mr. Cole's company, Ballard Terminal Railroad, has made inquiries or attempted to obtain property along the corridor?

A. I don't know.

Q. Okay. You testified earlier that you own property in the city of Kirkland; is that correct?

A. Yes.

Q. Okay. Taking a look here at Exhibit 11 --

MR. MARCUSE: I'm sorry, is this 11?

MR. FERGUSON: No, sorry, this is 11.

I'm sorry, this should be -- you marked the photocopy of the map as 12?

THE COURT REPORTER: Yes.

MR. MARCUSE: Thank you.

MS. ALVORD: I'm sorry, is there an extra

copy?

MR. MARCUSE: I'm sorry, I'm holding onto what is now 11.

MS. ALVORD: What's this one?

MR. MARCUSE: The reproduction of the map from the map book is 12.

MS. ALVORD: And this is 11?

MR. FERGUSON: Correct.

MR. MARCUSE: The one labeled as "Map 8 Railbanked Segments: Woodinville-Bellevue" is Exhibit 11.

Q. (By Mr. Ferguson) Do you know how many parcels in Kirkland that you own?

A. Four.

Q. Do you own them personally or does one of your companies own them?

A. Personally.

Q. Do you know the locations of those four --

A. Of course I do.

Q. -- properties?

Could you indicate on the map where they're located, please?

A. I need to know where the road comes from 405 down to the lake is.

Q. Or do you know the addresses?

A. Sure. One there. One there. One there. I'm

missing some. I recently sold one up here. Anyway, I'm a big taxpayer.

Q. So do you only own three properties, then, in Kirkland?

A. Yeah, it was four, I just sold one.

Q. Okay. Can you tell me the addresses of each three of those properties?

A. Sure, you want me to write it here?

Q. That would be fine.

A. This one is Cedar Street.

Q. Okay. So, just draw a line, just so the record is clear, I think I understand what you're doing, just draw a line to each X indicating what the address is for, please.

A. (Witness complies.)

Q. Are those residential properties?

A. Two are. One is commercial.

Q. Okay. The two residential properties, those are the ones that are located on the lake?

A. Yeah.

Q. Or near the lake?

A. Yeah. I do own another one, but only half of it. No big deal, I'm not on the tax record, another person is.

Q. The commercial property that is located on Cedar Street, what is that used for?

A. Storage.
Q. For your equipment business?
A. No. I rent it out now.
Q. Okay. Do you know who is currently occupying it?
A. The new storage facility there. Brand-new. I forget what they call themselves. Five-year lease there. But I pay big taxes in Kirkland.
Q. Do you know what the square footage of these properties is?
A. The dirt? Or the building?
MS. ALVORD: Can you clarify, do you mean all together?
THE WITNESS: This structure here is 1,100 square feet. The structure at my residence is 4,000 square feet. This is a small piece of commercial property on the rail up there.
Q. (By Mr. Ferguson) Do you know how big that commercial property is?
A. It's fairly small.
Q. Is it bigger than an acre?
A. Oh, God, no, it's just a postage stamp piece.
Q. Think it's about a half acre?
A. No, not even a quarter.
Q. Smaller than a quarter acre?
A. Yeah.

Q. Is it located on the rail line?

A. It is. Maybe we use that for a staging area. Little small. But then again, we'll need the rail. That's why I bought the property. Because it was on the rail. Now some guy from the City of Kirkland wants to rip it out, how rude.

Q. Is there a spur track going to your property on Cedar Street?

A. No.

Q. Have you ever asked for rail service to that property?

A. No.

Q. Mr. Wolford, whose name is that property on Cedar Street --

A. Mine.

Q. -- held?

A. Mine.

Q. Personally?

A. Yes.

Q. For the property on Cedar Street, do you have a plan to use that in moving demolition spoils from Bellevue?

A. It's a bit small for that.

Q. So do you -- you don't intend to use that as part of any hauling operation?

A. Possibly if they leave the rail in.

Q. What would you use it for?

A. Load a railcar there. Well, there's not room for a spur really there.

Q. Okay.

A. But if it's not very well used, they could just spot a car there while they loaded them and go down the track. Doesn't sound like it's going to have a lot of use anyway except for maybe a dinner train or to service the wineries. That's what we really need this rail left in for. I don't know what's -- what that question is. There's a huge group of people that want this rail left in for a dinner train to service the wineries.

Q. Can you tell me more about that? I thought this was about hauling freight.

A. That's my concern. As a taxpayer in the city of Kirkland, I got a huge problem with ripping the track out because of that, that was a wonderful thing, the dinner train and the winery.

Q. And --

A. You'll find out. There's another group coming at you.

Q. I'm curious to know what you know about the plan.

A. I've heard bits and pieces, but there's strong people that want -- you'll see later, that's all I can say.

Q. Is this the train that is referred to as Bounty

note to secure the loan that you made to Doug Engle that you testified about earlier?

A. No, this is promissory note to Doug Engle, I don't know what he did with it. Probably for his fight, but I don't know. I really don't.

Q. I just need to identify the document. Can you identify the document for me, then?

A. It's a personal note to Doug Engle with interest.

Q. Is it to Doug Engle or from Doug Engle?

A. It's from Doug Engle, but I'm charging him interest.

Q. Okay. And this is for the loan that you made to him that was the subject of your earlier testimony?

A. Yes.

Q. Okay. And the loan amount is for 22,000, not 20,000, as I think you testified earlier?

A. Rough numbers. I didn't know what it was.

Q. Is it correct that the loan was made to Doug Engle as of March 15th, 2013?

A. Yes.

Q. And the loan period runs until September 30, 2017?

A. Wow, hope it's not that long, but I get more interest, so that's fine.

Q. Do you know why September 30, 2017, was chosen as

E X A M I N A T I O N

BY MR. MARCUSE:

Q. I'm Andrew Marcuse. Just to clarify, Andrew Marcuse with the King County Prosecutor's Office, I'm in the civil division, I do land use and real estate law for the county, so I'm not a criminal prosecutor. We're not at the courthouse, for those of you who were on the call the other day with the STB.

You testified earlier that Bobby Wolford Trucking and Demolition facility is in Maltby in Snohomish County.

A. Mm-hm (answers affirmatively).

Q. And has it always been located in Maltby?

A. Yes.

Q. And during the time that you operated that business in Maltby, have you ever received rail service at that facility?

A. No.

Q. Did you ever ask BNSF Railway for a rail quote?

A. Yes, they subcontract all their spurs out. And Condon out of Spokane was -- I think we got some prices from them to throw a rail in there, or a spur. It was a long time ago, kind of a blur.

Q. So you asked BNSF for a quote on a spur to your facility?

A. We asked if it's possible. And they said, we'd

table from you and heard that answer, I wasn't sure what you were saying. Were you saying the only reason to leave the rails in is the dinner train?

A. I was trying to get to that topic real quick when I said that. I just wanted that out there, that the dinner train and the wineries are supportive of leaving the rail in as well.

Q. As well as?

A. As well as my use of hauling dirt on the rail.

Q. And others?

A. And others. There's talk that Safeway might want to haul their flour up that track for their bakery.

MR. MONTGOMERY: I don't have any further questions. Thank you, Mr. Wolford.

THE WITNESS: All right.

MR. MARCUSE: Can I ask one follow-up question, couple follow-up questions to Ms. Alvord's question.

MR. FERGUSON: Sure, then I'll have some.

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

BY MR. MARCUSE:

Q. Mr. Wolford, a moment ago, you characterized the idea of a spur track on your current operation in Maltby as blue sky.

A. Hopefully I get it.

Q. Did you ever ask GNP Railway for a quote for service?

A. It's been so long, I inquired. And they referred me to Condon, it's a company in Spokane that does their sidings for them, to get a price. I even forget what it was.

Q. And did you ever ask Tom Payne or Doug Engle with GNP Railway for a quote for service?

A. Not a quote, but he said that because I built that, the trail I did build, in compensation, he'd get me a spur.

Q. Did he ever provide you with an estimate of the charges for freight service?

A. No. There's a base -- I know, I know that, like, Tom Payne got paid for every service that Byron Cole did, he runs the train. And there is a set price per -- he told me what it was, it escaped me.

Q. Have you ever asked Doug Engle for a quote for the rate for service?

A. No.

Q. Have you ever spoken with anyone else from Eastside Community Rail about a quote for service?

A. No. I need a spur first and that may not happen.

MR. MARCUSE: Thank you.

CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify: That the foregoing deposition of the witness named herein was taken stenographically before me and reduced to a typed format under my direction;

That, according to CR 30(e), the witness was given the opportunity to examine, read and sign the deposition after same was transcribed, unless indicated in the record that the review was waived;

That all objections made at the time of said examination have been noted by me;

That I am not a relative or employee of any attorney or counsel or participant and that I am not financially or otherwise interested in the action or the outcome herein;

That the witness coming before me was duly sworn or did affirm to tell the truth;

That the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions and exceptions of counsel made at the time of the foregoing examination and said transcript was prepared pursuant to the Washington Administrative Code 308-14-124 preparation guidelines;

Katie J Nelson

Katie J. Nelson, CCR, RPR,
Certified Court Reporter 2971 for
the State of Washington residing at
Redmond, Washington. My CCR
certification expires on 10/22/13.

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Friday, May 17, 2013

To: ELIZABETH A. ALVORD
CROMWELL LAW
1509 56th Ct. NW
Gig Harbor, Washington 98335

Re: Surface Transportation Board
Deposition of: BOBBY WOLFORD
Date Taken: Thursday, May 16, 2013

PLEASE TAKE NOTICE THAT:

Enclosed are two forms: "Affidavit" and a "Correction Sheet." Instruct the deponent to review the deposition, record any corrections on the Correction Sheet, and sign the Affidavit before a Notary Public. Return both forms to this office for their inclusion in the original transcript and distribution to other parties. The transcript will be forwarded to the appropriate party: June 17, 2013.

Thank you for your assistance in obtaining signature.

By: Katie J. Nelson, RPR, CCR, CCR No. 2971

cc: HUNTER FERGUSON, ANDREW MARCUSE, JORDAN WAGNER, TOM MONTGOMERY

A F F I D A V I T

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I have read my within deposition, and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the "CORRECTIONS" flyleaf page hereof.

_____
BOBBY WOLFORD

SUBSCRIBED AND SWORN to before me

this_____ day of _____, 2013.

_____
NOTARY PUBLIC in and for
the State of _____,
residing at _____.
My commission expires
_____.

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C O R R E C T I O N S H E E T

PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

PAGE	LINE	CORRECTION AND REASON

EXHIBIT 20

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BALLARD TERMINAL RAILROAD COMPANY, LLC, a Washington limited liability company, Plaintiff, vs. CITY OF KIRKLAND, a Washington municipal corporation, Defendant.	NO. 2:13-cv-586 PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER NOTE ON MOTION CALENDAR: Apirl 1, 2013 ORAL ARGUMENT REQUESTED

Plaintiff BALLARD TERMINAL RAILROAD COMPANY, LLC ("Ballard"), by its attorneys and pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves the Court to enter a temporary restraining order ("TRO") enjoining defendant CITY OF KIRKLAND (the "City") from removing the rail assets along a 5.75 mile segment of track it owns in King County, Washington. As support for its motion, Ballard is filing herewith copies of two petitions it has filed with the Surface Transportation Board ("STB") (Exhibits A & B),

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together with other various exhibits (Exhibits C through J).[1] After reviewing the material facts, we will explain why the Court should grant the relief Ballard requests.

SUMMARY OF ARGUMENT

Ballard has submitted two petitions to the STB in which it seeks an exemption from the provisions of 49 U.S.C. § 10902 to enable it to acquire the residual common carrier rights and obligations relating to an abandoned rail line located in this district, including the right to reinstate rail service. As part of its petition, Ballard has asked that the STB order the transfer all of the rail assets along the line to Ballard at net liquidation value.

The STB has exclusive jurisdiction over whether Ballard can reinstate rail service on an abandoned line, and thus, over the removal of rail assets along the line. Because these issues are currently pending before the STB, the City should be enjoined from removing the rail assets until the STB has rendered its decision on Ballard's petitions. If the City is not enjoined, Ballard will lose its opportunity to have the STB—the only authority that can properly consider the issue—render a decision. By losing this opportunity, Ballard will be irreparably harmed, and will have no adequate damage remedy. The removal of the City's rail assets along the Woodinville-Bellevue line will also make it extremely difficult, if not impossible, for Ballard to reinstate rail service, because of the substantial cost Ballard would have to incur to reinstall the rail and crossing materials along the line. This too will result in irreparable harm to Ballard. As such, the Court should issue a TRO.

STATEMENT OF FACTS

Ballard is a common carrier providing rail transportation service within the State of Washington. Ballard currently operates a 14-mile rail line between East Snohomish Junction and Woodinville, Washington (the "Snohomish-Woodinville line"). Ballard has been operating this line for several years as an agent for the owning rail carrier. After the line's

[1]Exhibits C and E through I, attached hereto are exhibits that are attached to one of Ballard's Petitions filed with the STB. Rather than attaching the consolidated petition and exhibits as on exhibit to this motion, for ease of reference, we are attaching only those exhibits that are relevant to the arguments herein, and are filing them seperately.

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previous owner went bankrupt, Ballard continued the operating agency relationship for the bankruptcy trustee. The Snohomish-Woodinville line was recently purchased by Eastside Community Rail, LLC ("ECRR"), with whom Ballard has continued the operating agency relationship for operations on the line pursuant to an interim operating agreement. Ballard is in the process of taking over full common carrier obligations on the Snohomish-Woodinville line through a notice of exemption for lease and operation filed with the STB. See Verified Statement of Byron Cole, attached hereto as Exhibit C, at 1-2 (hereinafter "Cole Statement").

The issues in this lawsuit center around an 11-mile connecting rail line that extends from the Woodinville end of ECRR's Snohomish-Woodinville line south to Bellevue, WA (the "Woodinville-Bellevue line"). In 2008, BNSF sought and received an individual exemption pursuant to 49 U.S.C. § 10502 from the abandonment provisions of 49 U.S.C. § 10903 applicable to actively used rail lines to abandon the Woodinville-Bellevue line. Pursuant to the STB's grant of exemption, BNSF discontinued rail service along the line. See BNSF Railway Company—Abandonment Exemption—In King County, WA, STB Docket No. AB-6 (Sub-No. 465X), 2008 WL 5027991 (STB served November 28, 2008).

During the course of the proceeding before the STB, BNSF entered into a Notice of Interim Trail Use ("NITU") with King County. Id. at *4. King County also sought and received an STB exemption authorizing it to acquire BNSF's common carrier rights and obligations with respect to the Woodinville-Bellevue line, including the right to restart rail service. See King County, WA-Acquisition Exemption-BNSF Railway Company, STB Finance Docket No. 35148, 2009 WL 2979430, at *3-4 (STB served September 18, 2009) (hereinafter King County Acquisition). King County never had any intention of restoring rail service to the line, and the underlying real estate and trackage along the line was conveyed to the Port of Seattle (the "Port"). King County Acquisition, 2009 WL 2979430, at *3. The Port, in turn, sold a 5.75 mile section of the line to the City. Cole Statement, at 2.

King County acknowledged in its letter requesting the issuance of an NITU that its trail use along the Woodinville-Bellevue line is subject to future reactivation of rail service.

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See King County's Verified Petition for An Exemption from 49 U.S.C. § 10901, attached hereto as Exhibit D, at 2. When the STB issued the NITU to King County and granted it the right to reinstate rail service, the STB put the County on further notice that rail service could be restored at any time, by other interested parties. See King County Acquisition, 2009 WL 2979430, at *3.

Recently, a demand for rail service has developed on the Woodinville-Bellevue line. Thus, two customers, CalPortland and Wolford Demolition Company, have come forward and asked Ballard to provide them rail services. These customers would potentially be served by the Woodinville-Bellevue line, then via the ECRR-owned Snohomish-Woodinville line to ultimate interchange with BNSF. Cole Statement, at 2-3. Representatives of CalPortland and Wolford Demolition Company have submitted letters to the STB in support of the restoration of the line, in which they assert that they are ready, willing, and able to utilize the line once rail service is reinstated. See Exhibits E and F, attached hereto. Representatives from the Cities of Woodinville and Snohomish, as well as the County of Snohomish, have also written letters in support of the restoration of rail service along the Woodinville-Bellevue line. See Exhibits G, H, and I, attached hereto.

Ballard and ECRR have been engaged in discussions with King County representatives about the restoration of rail service on the Woodinville-Bellevue line. The parties have yet to reach an agreement. Indeed, King County and the City have made it clear that they do not want to have rail service restored along the line. As such, the City recently issued a request for proposed bids to remove the rail assets along its 5.75 mile segment of the line. Cole Statement, at 3; Exhibit 1 to Cole Statement.

The removal of the City's rail assets will make it extremely difficult, if not impossible, for Ballard to reinstate rail service along the Woodinville-Bellevue line. Based on the bids the City has received thus far, the net value of the rail materials to the City is likely to be no more than $25,000. However, if the rail materials are removed in totality, the reinstallation of the

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rail and crossing materials on the City's 5.75 mile segment alone will cost approximately $10,000,000. Cole Statement, at 3.

On April 1, 2013, Ballard submitted to the STB a Verified Petition for Exemption Pursuant to 49 U.S.C. § 10502 and a Petition to Vacate Interim Trail Use along the Woodinville-Bellevue line. See Exhibits A and B, attached hereto. Pursuant to these petitions, Ballard seeks an exemption from the provisions of 49 U.S.C. § 10902 to enable it to acquire the residual common carrier rights and obligations relating to the Woodinville-Bellevue line, including the right to reinstate rail service. Ballard is also requesting as part of its petition that the STB order the transfer all of the rail assets along the line to Ballard at net liquidation value. See Exhibit A.

Ballard understands that the City has an interest in placing a trail along the Woodinville-Bellevue line. Ballard has no objection to the corresponding uses of a trail and a rail line. Indeed, both of Ballard's other railroads have paved bike/pedestrian trails beside them, and in both cases, Ballard has been involved extensively in the design, construction, and maintenance of the trails. Just as with Ballard's other two rail lines, the corresponding use of a trail and rail line along the Woodinville-Bellevue line is viable. Despite this, however, the City and King County have made it clear that they only want a trail on the right-of-way. Cole Statement, at 4.

Unless enjoined by the Court, the City will take action to remove its rail assets. This will deal a severe blow to the restoration of rail service along the Woodinville-Bellevue line, and will interfere with Ballard's pending petitions before the STB, the proper authority to determine this matter. As such, on April 1, 2013, Ballard filed its complaint in this matter. In its complaint, Ballard has asserted four claims against the City. Counts I and IV provide the basis for the request for a TRO. Specifically, Ballard alleges that the Surface Transportation Board ("STB"), the administrative agency charged with regulating transportation by rail carriers, is the proper and exclusive authority to determine whether Ballard can reinstate rail service and obtain the rail assets along the Woodinville-Bellevue

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line, and thus, whether the City has the right to remove its rail assets. Ballard also alleges that the City is precluded from removing its rail assets prior to issuing an EIS pursuant to applicable state environmental regulations. Because the City's efforts in removing the rail assets along the Woodinville-Bellevue line are imminent and will cause irreparable harm to Ballard, Ballard now seeks a TRO.

ARGUMENT

In the Ninth Circuit, a party seeking a preliminary injunction must establish: "(1) likely success on the merits; (2) likely irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the plaintiff's favor; and (4) that an injunction is in the public interest." Pimentel v. Dreyfus, 670 F.3d 1096, 1105 (9th Cir. 2012); see also Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The standard for the issuance of a preliminary injunction is more rigid than that governing a TRO. See Los Angeles Unified Sch. Dist. v. U.S. Dist. Ct., 650 F.2d 1004, 1006 (9th Cir. 1981). Thus, "if the district court's order meets the exacting requirements of a preliminary injunction, it follows a fortiori that it is acceptable as a TRO." Id.. Ballard has a very strong likelihood of success on the merits. The other factors, including the irreparable harm that Ballard will sustain if the Court does not issue a TRO, also weigh heavily in favor of the issuance of a TRO.

I. BALLARD HAS A STRONG LIKELIHOOD OF PREVAILING ON THE MERITS.

A. ICCTA Claim

In 1995, the Congress enacted the ICCTA, which became effective on January 1, 1996. Among other things, the ICCTA amended and recodified the Interstate Commerce Act, 49 U.S.C. §§ 10101 et seq., the statute pursuant to which rail carriers have been regulated by the federal government for over one hundred years. Pursuant to the ICCTA, the STB has exclusive jurisdiction over "transportation by rail carriers," 49 U.S.C. § 10501(b), which extends to property, facilities, instrumentalities, or equipment of any kind relating to that

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transportation. 49 U.S.C. § 10102(9). The STB's exclusive jurisdiction also extends to applications by rail carriers to abandon their rail lines, and to reinstating rail service along previously abandoned portions of track pursuant to the National Trails Act, 16 U.S.C. § 1247(d). See 49 U.S.C. §§ 10501(b), 10903; see also CSX Transp, Inc.—Petition for Declaratory Order, STB Finance Docket No. 34662, 2005 WL 1024490, at *2 (STB served May 3, 2005).

As part of its petition to vacate the interim trail use and to acquire the right to reinstate rail service along the Woodinville-Bellevue line, Ballard is requesting that the STB order that the City and the Port transfer to Ballard all of the rail assets along the line at net liquidation value. Because the STB has exclusive jurisdiction over reinstating rail service, including the transfer of the rail assets, only the STB can decide the issue regarding the removal of the rail assets. The City should thus be enjoined from removing its rail assets until the STB issues its decision on Ballard's petition.

The question regarding Ballard's right to reinstate rail service along the Woodinville-Bellevue line is properly before the STB, which previously informed King County that any rail service provider could reinstate rail service along the line:

> The threshold issue in this case is whether it is permissible under the Trails Act for a trail sponsor to acquire from a railroad the right to reactivate rail service over a railbanked line even if there is no evidence that the trail sponsor intends to exercise that right. . . . But as previously noted, the right to reactivate a railbanked line is not an exclusive right. While the parties' agreement would transfer to King County BNSF's opportunity to provide rail service, it would not preclude any other service provider from seeking Board authorization to restore active rail service on all or parts of the railbanked segments in the future if King County does not exercise its right to reinstate rail service. Accordingly, regardless of the parties' intentions, a bona fide petitioner, under appropriate circumstances, may request the NITU to be vacated to permit reactivation of the line for continued rail service. Thus, the parties' plans have not been shown to be inconsistent with the railbanking purpose of the Trails Act.

King County Acquisition, 2009 WL 2979430, at *3 (emphasis added; internal citations omitted). King County has also previously acknowledged that its trail use is subject to future reactivation of rail service. See Exhibit D, at 2. These statements by the STB and King County, as well as the clear language of the ICCTA, and the fact that the STB is the proper

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authority to decide the issue with respect to the removal of the rail, make manifest that the City cannot remove the rail. Ballard thus has a strong likelihood of success on the merits.[2]

B. SEPA Claim

Pursuant to the SEPA, any state or local government entity proposing action that will significantly affect the quality of the environment is required to issue an EIS, in which the entity is required, inter alia, to analyze the environmental impacts of the proposed action and various alternatives, and to discuss reasonable mitigation measures to reduce such impacts. Wash. Rev. Code Ann. § 43.21C.030(2)(c); WAC 197-11-440(6)(a). In issuing the EIS, the entity is also required to analyze impacts on both the nature and built environments, including the impacts the proposed action will have on the quality of the physical surroundings. WAC 197-11-440(6)(e). In this analysis, the entity is required to consider the cost of and effects on public services that could result from its proposal. Id. The EIS must also include a discussion of the environmental impacts upon land and shoreline use. Id.

Even if the City did have a right to remove the rail along the Woodinville-Bellevue line, which it does not, it cannot undertake the rail removal project without first issuing an EIS. Despite its clear obligation to do so, however, the City has not submitted an EIS. Ballard believes that the City will claim that the ICCTA preempts local environmental review of the rail removal project, and that it is thus not required to submit an EIS. The Court should reject this contention, however, because SEPA's requirement that the City submit an EIS does not restrict the City's alleged right to remove the rail assets, but merely governs the nature in which it must undertake the project. See Buddy and Holley Hatcher—Petition for Declaratory

[2]It is unclear whether the STB itself has authority to order the injunctive relief Ballard has requested herein. Even if it does, however, it is clear that Ballard would be required to seek a court order to enforce such relief. To the extent the STB could order injunctive relief, it is not set up to do so in an expedited manner. Because the City has already solicited bids to remove the rail assets, it is clear that it intends to begin the rail removal process any time now. Thus, because the irreparable harm to Ballard is imminent, the Court is the more appropriate forum for Ballard to obtain the requested relief.

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Order, STB Finance Docket No. 35581, 2012 WL 4320648, at *4 (STB served September 21, 2012) (hereinafter Hatcher).

For example, in Hatcher, the Hatchers filed a complaint in state court seeking to recover damages for damage to their property caused by the respondent railroads' removal of rail assets along a portion of track they had abandoned. Id. at *1. The railroads claimed that the Hatchers' claims were preempted because, pursuant to the ICCTA, the STB has exclusive jurisdiction over the remedies provided with respect to a rail carrier's facilities and the construction of its track. Id. at *2. The Hatchers subsequently filed a petition for declaratory order requesting that the STB declare that the ICCTA did not preempt their state court claims against the railroad. Id. at *1. The STB agreed with the Hatchers, finding that the ICCTA did not preempt their state court action because the action "does not undermine the Board's completed analysis and authorization of the abandonment," but rather "addresses the manner in which the Railroad Defendants conducted salvage and only seeks to hold them accountable for the damage they allegedly cause to the Hatchers' property as a result of such salvage." Id. at *4 (emphasis added). The STB further stated that its "authorization of the abandonment did not amount to blanket approval to conduct salvage operations without regard to state and local laws," and that such authorization "is not a license for railroads to take, or neglect to take, whatever actions they wish in exercising abandonment authority and any subsequent salvage." Id. at *5, 6; see also Emerson v. Kansas City Southern Ry., 503 F.3d 1126, 1132 (10th Cir. 2007). Thus, finding that the plaintiffs' state court action did not seek to regulate the railroads' abandonment of the track, nor did it seek to undo the already consummated abandonment, the STB issued the requested declaratory relief. Hatcher, 2012 WL 4320648, at *5, 7.

Similar to Hatcher, here, the requirement that the City submit an EIS before it removes its rail assets does not seek to regulate whether the STB properly authorized the abandonment of track, nor does it address the right to effectuate the abandonment. Indeed, the EIS does not seek to restrict the City's alleged right to remove the rail along the abandoned track in any

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way. Instead, just as in Hatcher, the EIS requirement addresses only the manner in which the City may conduct the rail removal. Thus, prior to removing the rail, the City must analyze the impacts of the removal and various alternatives, and consider reasonable mitigation measures to determine the effect the project will have on the surrounding environment. See Wash. Rev. Code Ann. § 43.21C.030(2)(c); WAC 197-11-440(6)(e). To permit the City to remove the rail assets without issuing an EIS would, as the STB stated in Hatcher, equate to an impermissible "blanket approval to conduct salvage operations without regard to state and local laws." 2012 WL 4320648, at *5. Thus, like Hatcher, here, the ICCTA does not preempt the requirement that the City issue an EIS prior to removing its rail assets.[3]

Because the City is required to submit an EIS prior to undertaking the rail removal project, if it fails to do so, Ballard, the future operator of the rail line, will be required to deal with and otherwise manage any adverse environmental conditions on the property caused by the removal. As such, Ballard has a strong likelihood of success on the merits on its SEPA claim.

II. BALLARD WILL SUFFER IRREPARABLE INJURY IF THE COURT DOES NOT ISSUE A TRO.

Because the STB has exclusive jurisdiction over reinstating rail service, only the STB can decide the issue regarding the removal of the rail assets. Thus, if the City is not enjoined from removing the rail assets before the STB has decided the issues raised in Ballard's petitions, the STB proceedings will be rendered meaningless, causing irreparable harm to Ballard. As the Sixth Circuit said in Performance Unlimited v. Questar Publishers, Inc., a party sustains irreparable harm that necessitates the issuance of a TRO if the proceedings on

[3]Ballard anticpates that the City will argue that this Court's 1999 decision in *Citizens for Safe and Legal Trails v. King County,* No. C98-1756Z, supports that the ICCTA preempts state and local environmental regulations, including the EIS requirement, with respect to the removal of rail assets from the abandoned track. As the STB recently made clear in *Hatcher*, however, the ICCTA preempts only those regulations that restrict a rail carrier's *right* to remove rail assets from an abandoned track, not the *manner* in which they do it. 2012 WL 4320648, at *4. The Court's decision in *Citizen for Safe and Legal Trails* is therefore inapposite.

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the merits "will be a meaningless or hollow formality unless the status quo is preserved" pending its decision. 52 F.3d 1373, 1382 (6th Cir. 1995) (reversing district court's denial of preliminary injunction because the parties' arbitration on the merits of the case would be rendered meaningless absent injunctive relief). That is precisely the case here. Thus, if the City removes the rail assets prior to the STB deciding Ballard's petitions, Ballard will have lost its opportunity to have the STB—the only authority that can properly consider the issue—render a decision. By losing this opportunity, Ballard will be irreparably harmed, and will have no adequate damage remedy.

The removal of the City's rail assets along the Woodinville-Bellevue line will also make it extremely difficult, if not impossible, for Ballard to reinstate rail service. While the City will only recoup approximately $25,000 from the removal of the rail assets, the reinstallation of the rail and crossing materials along the City's segment of the track alone will cost Ballard approximately $10,000,000, a sum so significant that it will likely preclude the restoration of rail service.

If Ballard is unable to reinstate rail service along the Woodinville-Bellevue line due to the substantial cost of reinstalling the rail materials, it will suffer a significant loss of a business opportunity. Ballard has already received notification from two potential rail customers that they are ready, willing, and able to utilize Ballard's services along the line once rail service is reinstated. Ballard also anticipates that if rail service is reinstated, it will service additional existing and future customers who do not otherwise have access to rail service at that location. If rail service is not reinstated, however, these customers will be required to either ship their commodities over the road at a significantly higher expense, or give their business to other rail carriers in the region. This will result in a substantial loss of a business opportunity to Ballard, which is a clear form of irreparable injury. Indeed, as the Second Circuit stated: "If preliminary relief is not available, [the plaintiff] will lose an opportunity to become a major publisher of children's books—that is to say, it will lose an opportunity to become a sufficiently well-known publisher of children's books to attract additional authors

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and owners of characters." Tom Doherty Assocs., Inc. v. Saban Entertainment, Inc., 60 F.3d 27, 38 (2d Cir. 1995); see also Sambo's of Ohio, Inc. v. City Council of Toledo, 466 F.Supp. 177, 181 (N.D. Ohio 1979) ("The loss the plaintiff suffered here is an irreparable and incalculable one, for it is the loss of the right to open a new business and strive to make it successful."); Garth v. Steck Tech Corp., 876 S.W.2d 545, 549 (Tex. App. 1994) ("[L]ost opportunity to create or gain control of a new market may result in unquantifiable losses for which there is no adequate remedy at law.").

Many courts have held that, in cases such as this, where there is a proceeding in which a party has requested injunctive relief, where a disruption to the status quo during the proceeding would so damage that party that it would not be able to recover even if prevails in the end, the party has suffered irreparable harm. See, e.g., Performance Unlimited, 52 F.3d at 1382-83 (the status quo should be maintained to the extent sufficient to ensure that the party seeking relief is not driven out of business during the pendency of the adjudication on the merits); Gateway E. Ry. Co. v. Term. R.R. Ass. of St. Louis, 35 F.3d 1134, 1139-40 (7th Cir. 1994) (upholding issuance of preliminary injunction because otherwise plaintiff would be forced to pay a significantly higher rate to operate over a segment of track than the rate it negotiated pursuant to the agreement at issue in the case); Roland Machinery Co. v. Dresser, Ind., 749 F.2d 380, 386 (7th Cir. 1984) (a party suffers irreparable harm by the denial of an injunction while waiting for an adjudication on the merits where the damage award comes too late). Here, if the status quo is not preserved during the pendency of the proceedings before the STB—i.e. if the rail assets are removed, then even if Ballard is successful in its attempt to reinstate rail service, it will not be able to recover because the cost of reinstallation is so substantial, and will likely preclude it from reinstating the rail service, despite its clear right to do so. Thus, if the Court does not issue a TRO, Ballard's attempt to reinstate rail service will likely ineffectual, resulting in irreparable harm to Ballard for which Ballard has no adequate remedy.

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Ballard will also suffer irreparable harm if the Court does not issue a TRO because permitting the City to move forward with the rail removal project without submitting an EIS will lead to adverse environmental conditions along the property, which Ballard, as the future operator of the rail line, will be required to manage and address.

III. THE BALANCE OF EQUITIES IN ISSUING A TRO WEIGHS IN BALLARD'S FAVOR.

If the Court issues a TRO, there will be no harm to the City. The interests that the City seeks to vindicate are its rights to the net liquidated value of the rail assets, which amounts to approximately $25,000, and its right to place a trail along the Woodinville-Bellevue line. With respect to the value of the rail assets, Ballard has requested that the STB order the City to transfer its rights to the rail assets to Ballard at this net liquidated value. Thus, the City will suffer no harm. With respect to the City's interest in placing a trail along the rail line, Ballard does not object to the corresponding uses of a trail and rail service, which it has done on its other two lines, and which is a viable scenario. Moreover, even if the STB ultimately denies Ballard's request to reinstate rail service, which it should not, the City's rights can be fully vindicated after the STB renders its decision, at which time the City can proceed with the rail removal, something that it has already put off doing for several years.

In all, there will be no significant harm to the City if the Court issues a TRO. Moreover, to the extent there is any harm, such harm is clearly outweighed by the substantial injury that Ballard will suffer if no relief is granted.

Federal courts have found that it is appropriate to maintain the status quo with respect to the condition of an abandoned rail line when another rail carrier seeks to continue or reinstate rail service along an already abandoned segment of track, even where the defendant would be burdened as a result. For example, in Gulf Coast Rural Rail Transp. Dist. v. Southern Pac. Transp. Co., the court issued a temporary injunction enjoining the defendant railroad, who had abandoned the relevant track, from removing the rail materials from the track while the plaintiff railroad, who was in the process of negotiating with shippers and

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operators to operate the line, sought financing to acquire the abandoned rail line. See Order Granting Temporary Injunction and Findings of Fact and Conclusions of Law, No. H-94-2749 (S.D. Tex. 1994), slip. op., attached hereto as Exhibit J. In its findings of fact, the court noted that while the defendant railroad would benefit from reusing the rail ties from the abandoned segment of track, the issuance of a temporary injunction enjoining it from removing the ties was not unduly burdensome. Id., Findings of Fact, at 2. Thus, the court issued a temporary injunction enjoining the defendant from removing the rail ties. Id., Order Granting Temporary Injunction, at 1. As such, just as in Gulf Coast Rural Rail, here the Court should issue a TRO enjoining the City from removing its rail assets while Ballard seeks to reinstate rail service.

IV. THE PUBLIC INTEREST WILL BE SERVED BY THE ISSUANCE OF A TRO.

Finally, for several different reasons, the public interest will be served if the Court issues a TRO. First, reinstating rail service along the Woodinville-Bellevue line will have a beneficial effect on interstate commerce, as local shippers will have additional options for the transportation of their commodities. Moreover, Congress has made it clear that the federal policy, as noted in the ICCTA, is to promote competition among rail carriers and different modes of transportation. 49 U.S.C. § 10101. Thus, reinstating rail service will allow Ballard to compete with trucks and other carriers for the transportation of commodities, promoting economic and efficient rates for such services.

Reinstating rail service will also promote economic development in the City and surrounding areas. Jobs will be created for the individuals who will work in providing services along the rail line, and the operation of the line will increase local tax revenues. See Gen'l Motors Corp. v. Harry Brown's, LLC, 563 F.3d 312, 321 (8th Cir. 2009) (the public interest is in favor of keeping jobs); Michigan Consol. Gas Co. v. Fed. Energy Reg. Comm., 883 F.2d 117, 123 (D.C. Cir. 1989); Missouri Edison Co. v. Fed. Power Comm., 479 F.2d 1185, 1189 (D.C. Cir. 1973); see also Weeks Marine Inc. v. TDM Am., LLC, 2011 WL 6217799, at *18 (D. N.J. 2011) (the public interest is "undoubtedly served" by the completion

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of a public works project that will create jobs and bring "economic vitality" to the surrounding region). Indeed, representative from the Cities of Woodinville and Snohomish and the County of Snohomish have written letters in support of the restoration of rail service along the Woodinville-Bellevue Line. See Exhibits G, H, and I, attached hereto. Finally, reinstating rail service along the Woodinville-Bellevue line will also greatly reduce traffic congestion and wear and tear on the region's highways, and will reduce air pollution for diesel exhaust.

V. ANY SECURITY OR BOND SHOULD BE NOMINAL.

The Court has broad discretion under Fed R. Civ. P. 65(c) in deciding whether to require security at all and, if so, the amount. See Walczak v. EPL Prolong, Inc., 198 F.3d 725, 733 (9th Cir. 1999). Because of Ballard's strong likelihood of success on the merits and the lack of any significant harm to the City, if the Court grants a TRO, any bond or security required should be minimal. See People of State of Cal. ex rel. Van De Camp v. Tahoe Reg'l Planning Agency, 766 F.2d 1319, 1326 (9th Cir. 1985) ("[T]he likelihood of success on the merits . . . tips in favor of a minimal bond or no bond at all.").

CONCLUSION

For the reasons stated above, the Court should grant Ballards's motion.

DATED this 1st day of April, 2013, at Seattle, Washington.

Montgomery Scarp, PLLC
s /Tom Montgomery
s/ Bradley Scarp
s/ Kelsey Endres

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Bradley Scarp, WSBA # 21453
Kelsey Endres, WSBA # 39409
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Myles L. Tobin (*pro hoc vice* application to be filed forthwith)
Elizabeth O. Bryant (*pro hoc vice* application to be filed forthwith)
FLETCHER & SIPPEL LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606
Tel: (312) 252-1500
Fax: (312) 252-2400
E-mail: mtovin@fletcher-sippel.com
ebryant@fletcher-sippel.com
Attorneys for Plaintiff Ballard Terminal Railroad Company, LLC

CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that a true and complete copies of PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER with EXHIBITS A through J and [PROPOSED] ORDER have been filed with the United States District Court via the ECF system and served via legal messenger on the following:

City of Kirkland
City Manager's Office
City Clerk
123 5th Ave
Kirkland, WA 98033

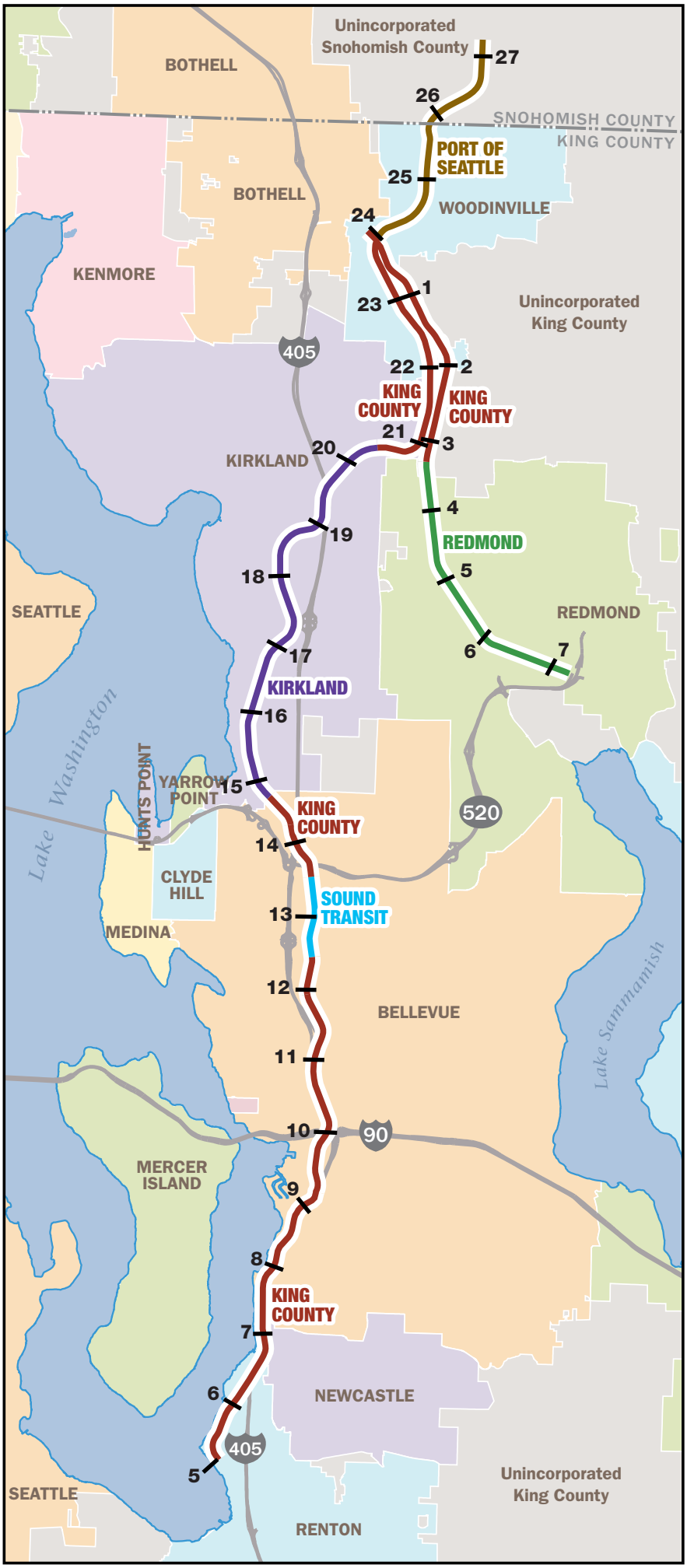
I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

DATED this 1st day of April 2013, at Seattle, Washington.

s/ Lisa Miller
Lisa Miller, Paralegal

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EXHIBIT 21



Eastside Rail Corridor (ERC) Ownership

February 19, 2013

Legend

Corridor Property Owners

- Port of Seattle
- King County
- Kirkland
- Redmond
- Sound Transit

- Freeway
- Lake
- 1 Mile Marker

N

0 2 Miles

King County

Note: Width of trail is exaggerated for information display purposes.

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.

File: 1302_3125L_ERC_OWNERmapLTR.ai lpre, wgab

EXHIBIT 22

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the 5th day of January, 2012 ("Effective Date") by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port") and the City of Kirkland, a municipal corporation of the State of Washington ("City"). The Port and the City are hereinafter sometimes referred to collectively as the "Parties".

RECITALS

A. The Port is the owner of real property developed as a rail corridor approximately 100 feet wide commonly known as the Woodinville Subdivision, portions of which are located between the City of Woodinville and the City of Renton ("South Segment"), and the City of Woodinville and the City of Redmond ("Redmond Spur"), in King County, Washington (collectively, the South Segment and the Redmond Spur are referred to as the "Woodinville Subdivision Rail Corridor"). The City desires to acquire a portion of the Port's interest in the South Segment approximately 5.5 miles in length, located within the City of Kirkland and a small portion of which is located in the City of Bellevue ("the Kirkland Segment"), which is legally described in Exhibit A attached hereto and incorporated herein by this reference.

B. On November 5, 2009, the Port entered into a Memorandum of Understanding (the "MOU") with King County, Central Puget Sound Regional Transit Authority ("Sound Transit"), Cascade Water Alliance, Puget Sound Energy and the City of Redmond (collectively, the "Regional Partners") setting forth the mutual understanding of the parties for the completion of future transactions where the Regional Partners would purchase from the Port interests in the Woodinville Subdivision and thus share in the cost of acquiring it.

C. Consistent with the MOU, on June 30, 2010, the City of Redmond purchased from the Port the portions of the Redmond Spur located within the city limits of Redmond (the "City Segment") and the City of Redmond agreed to convey to Sound Transit an easement for transportation purposes in the City Segment at the time Sound Transit closes on a purchase of interests in the remaining portions of the Woodinville Subdivision Rail Corridor owned by the Port.

D. Consistent with the MOU, Sound Transit and the Port entered into a Real Estate Purchase and Sale Agreement dated August 18, 2011 to purchase a portion of the corridor located in Bellevue (the "Bellevue Property") along with a transportation easement for potential future development of high capacity transportation facilities as a protective acquisition throughout the South Segment (less the Bellevue Property) and the portions of the Redmond Spur owned by the Port.

E. The City and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington (Intergovernmental Disposition of Property Act), which permits a political subdivision of the State of Washington to sell real property to the state or any municipality or any political subdivision thereof on such terms and

conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

F. The City and the Port have agreed upon the terms and conditions under which the Port will sell the Kirkland Segment to the City, all as set forth herein.

G. This Agreement was approved by Kirkland City Council on December 12, 2011

H. The Port Commission authorized execution of this Agreement on December 13, 2011, and will surplus the Kirkland Segment prior to closing.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Kirkland Segment. The Port agrees to sell to the City, and the City agrees to purchase from the Port, the Kirkland Segment. The Kirkland Segment includes the land described in Exhibit A attached hereto ("the Land"), together with all of the Port's right, title and interest in and to the buildings (if any) located on the Land ("the Buildings"), all of the Port's right, title, and interest in any tangible personal property and fixtures of any kind owned by the Port and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any ("the Personalty"); and all of the Port's right, title and interest in and to all Third Party Leases, Licenses and Contracts (defined in Paragraph 4.1 below) associated with the Kirkland Segment as of the Date of Closing.

The Land, the Buildings and the Personalty are referred to collectively herein as the "Kirkland Segment." The Woodinville Subdivision Rail Corridor less (a) the City Segment purchased in fee by the City of Redmond; (b) the Bellevue Property purchased in fee by Sound Transit; and (c) the Kirkland Segment purchased by the City pursuant to this Agreement is referred to herein as the "Port Property."

2. Purchase Price. The City shall pay to the Port a total purchase price of Five Million Dollars ($5,000,000) for the Kirkland Segment ("Purchase Price") at the Closing described in Paragraph 10 below.

3. Inspection Contingency.

3.1 Inspection. The City may, at its sole cost and expense, conduct an acquisition due diligence investigation of the Kirkland Segment (the "Inspection"), including a physical inspection, to determine the condition of the Kirkland Segment, including the existence of any environmental hazards or conditions, during the period commencing on the Effective Date and ending at 5:00 p.m., Pacific Standard time sixty (60) calendar days thereafter (the "Inspection Period"). During the Inspection Period and subject to the limits set forth in this paragraph, the City and its employees, representatives, consultants and agents shall have the right and permission to enter upon the Kirkland Segment or any part thereof at all reasonable times

and after reasonable prior notice, and from time to time, at the City's own risk, for purposes of analysis or other tests and inspections deemed necessary by the City for the Inspection. The Port may have a representative present at any inspection or testing made by the City on the Kirkland Segment. The City shall not alter the physical condition of the Kirkland Segment without first providing the Port with detailed information of the City's intended activities on the Kirkland Segment and obtaining the prior written consent of Port to any physical alteration of the Kirkland Segment. The City shall provide the Port with a copy of any reports or data regarding the Kirkland Segment that the City possesses or obtains before, during or after the Inspection Period, including without limitation any environmental reviews of the Kirkland Segment or data regarding soil or groundwater quality at, on or under the Kirkland Segment. The City shall defend, indemnify and hold harmless the Port from and against all liability, cost, damage and expense (including, but not limited to, attorneys' fees) in connection with all claims, suits and actions of any kind made or brought against the Port, its officers, agents or employees by any person or entity as a result of or on account of actual or alleged injuries or damages to persons, entities or property received or sustained, in any way arising out of, in connection with, or as a result of the acts or omissions of the City, its officers, agents or employees, in exercising its rights under the right of entry granted herein. The City's obligations under this Paragraph 3.1 shall survive the termination of this Agreement.

3.2 Termination. If the City determines, in its sole judgment, that the Kirkland Segment is not suitable for any reason for the City's intended use or purpose, then City may terminate this Agreement by written notice to the Port before the expiration of the Inspection Period, in which case neither party shall have any further right or obligation under this Agreement except for those rights or obligations that expressly survive termination. In the event this Agreement is terminated pursuant to this Paragraph 3.2 and the City altered the physical condition of the Kirkland Segment in connection with its Inspection, the City shall return the Kirkland Segment to its pre-Inspection condition unless otherwise agreed to in writing by the Port. If this Agreement is not terminated on or before the expiration of the Inspection Period, the Inspection condition shall be deemed to have been waived by the City for all purposes.

4. Title; Railbanking Obligations.

4.1 Nature of Title. Subject to the City's satisfaction with or waiver of the Inspection Contingency under Paragraph 3 above, the Kirkland Segment shall be conveyed with no warranties of title (except that Port warrants it has the legal power and authority to execute and deliver the documents described in Paragraph 10.2 below) and shall be subject to all matters affecting the Kirkland Segment as of the Effective Date, whether of record or not, including but not limited to (i) matters which would be disclosed by a current, accurate survey of the Kirkland Segment; and (ii) the rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Kirkland Segment ("Third Party Leases, Licenses and Contracts"). The Port represents and warrants that Schedule 1 attached to this Agreement and incorporated herein by this reference, contains a complete list of Third Party Leases, Licenses and Contracts of which the Port has knowledge. The City acknowledges and affirms that the Port may not hold fee simple title to the Kirkland Segment, that the Port's interest in all or part of the Kirkland Segment, if any, may rise only to the level of an easement for railroad purposes. The City is willing to accept the Kirkland Segment on this basis.

4.2 Railbanking Obligations. The Port and the City acknowledge that the Woodinville Subdivision Rail Corridor is railbanked pursuant to 16 U.S.C. 1247(d). The Port and King County, a political subdivision of the State of Washington ("King County") entered into that certain Public Multipurpose Easement recorded under King Country Recording No. 20091218001538 (the "Multipurpose Easement") which, among other things, grants King County certain rights to acquire develop, maintain and operate a public trail for public pedestrian, bicycle and other non-motorized uses ("Trail") over portions of the Woodinville Subdivision Rail Corridor in its capacity as the Interim Trail User subject to the terms and conditions of the Multipurpose Easement so long as such Trail does not interfere with the use of the Woodinville Subdivision Rail Corridor for other Transportation Use as defined in the Multipurpose Easement.

5. Condition of the Kirkland Segment.

5.1 The City acknowledges that the Kirkland Segment may contain Hazardous Substances, and that Hazardous Substances released onto the Kirkland Segment may have migrated onto neighboring properties at times prior to the Effective Date. The City waives, releases and discharges forever the Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that the City might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Kirkland Segment or the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Kirkland Segment. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law (defined below), that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after the Effective Date. The City further agrees to indemnify and defend the Port against any and all Losses that the Port sustains as a result of claims by third parties, including but not limited to BNSF Railway Company ("BNSF") and federal, state and local regulatory agencies for damages or remediation costs related to environmental conditions in, at, on under or originating from the Kirkland Segment. Nothing in this Agreement shall be construed to waive or discharge any rights or claims the City may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Kirkland Segment. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

5.2 Subject to the Port's express representations, warranties and obligations under this Agreement, **THE CITY IS NOT RELYING ON, AND HEREBY WAIVES WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE KIRKLAND SEGMENT** including, but not limited to the physical condition of the Kirkland Segment; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Kirkland Segment with Environmental Laws (defined above) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Kirkland Segment; the presence of any Hazardous Substances (defined above), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Kirkland Segment; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Kirkland Segment; the condition of title to the Kirkland Segment, and the Third Party Leases, Licenses, Contracts, permits, orders, or other agreements, affecting the Kirkland Segment (collectively, the "Condition of the Kirkland Segment").

5.3 The City represents and warrants to the Port that except for the Port's express representations, warranties and obligations under this Agreement, the City has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Kirkland Segment or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

5.4 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Paragraph 5 shall survive the Closing (defined in Paragraph 10 of this Agreement) of the transaction contemplated herein and the delivery of the Deed (defined in Paragraph 10 of this Agreement) to the City. The City and the Port acknowledge that their willingness to enter into this Agreement reflects that the Kirkland Segment is being conveyed subject to the provisions of this Paragraph 5.

6. Closing Conditions.

6.1 The City's obligation to purchase the Kirkland Segment shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

6.1.1 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.1.2 The Port shall have performed all obligations to be performed by the Port under this Agreement on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

With a copy to: Port of Seattle
Legal Department
P.O. Box 1209
Seattle, WA 98111
Attn: General Counsel
Facsimile: (206) 787-3205

If to City: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Public Works Director
Facsimile: (425) 587-3807

With a copy to: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: City Attorney
Facsimile: (425) 587-3025

15. Miscellaneous:

15.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

15.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the real property interests in the Kirkland Segment and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

15.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto.

15.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

15.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. The City or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

15.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

15.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

15.8 Exhibits and Schedules. This Agreement contains the following Exhibits and Schedules which are attached and made a part of this Agreement: Exhibits A, B, C, D and Schedule 1.

15.9 Brokers. Neither party has had any contact or dealings regarding the Kirkland Segment, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale contemplated by this Agreement.

15.10 Time. Time is of the essence of this Agreement.

15.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

15.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Except as otherwise expressly provided herein, all references in this Agreement to the Port, King County or the City shall mean the Port, King County or the City, each solely in its capacity as owners of fee or easement interests in the Port Property and with reference to King County, its status as the Interim Trail User.

15.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing.

Signatures appear on following page

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF KIRKLAND:

By: _____
Its: City Manager

PORT OF SEATTLE:

By: _____
Its: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

CITY OF KIRKLAND:

By: _____
Its: _____

PORT OF SEATTLE:

By: _____
Its: _____

EXHIBIT 23

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 456X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY, WASHINGTON
(Woodinville Subdivision, MP 12.6 to MP 23.80)

STB Finance Docket No. 35731

BALLRAD TERMINAL RAILWAY LLC – ACQUISITION AND OPERATION EXEMPTION – WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502

VERIFIED STATEMENT OF JANE HAGUE

I, Jane Hague, do swear and affirm the following to the best of my personal knowledge:

1. I am a member of the King County Council, in which capacity I have represented King County Council District 6 for the past 18-plus years. I was first elected to represent District 6 in 1994 and I was most recently re-elected in 2011. Before my election to the King County Council, I was a member of the Bellevue City Council while I concurrently served as Manager of the King County Records and Elections Division. I have also served as president of the National Association of Counties as well as the Washington Association of Counties.

2. King County Council District 6 encompasses the cities of Bellevue, Clyde Hill, Kirkland, Medina, Mercer Island, and Woodinville, as well as the towns of Beaux

Arts Village, Hunts Point, and Yarrow Point, and a portion of the City of Redmond, as well as portions of unincorporated King County.

3. The Eastside Rail Corridor is a matter of great interest to many of my constituents in District 6 and to others in King and Snohomish counties and beyond. By "Eastside Rail Corridor" I mean the former BNSF Railway line that extends from the City of Renton north along the east side of Lake Washington through Bellevue, Kirkland, Woodinville, and unincorporated King and Snohomish Counties, to the City of Snohomish.

4. As a King County Councilmember I voted to authorize King County to become the interim trail user for the "railbanked" portions of the Corridor, to acquire a multipurpose public easement over the Corridor for trail purposes, and most recently to acquire title to portions of the Corridor, all of which votes and transactions are a matter of public record.

5. As articulated in various public documents such as King County Ordinance 17503, King County Motion 13801, and the charter for the Eastside Rail Corridor Regional Advisory Council, or RAC, as well as the 2009 Memorandum of Understanding between the Port of Seattle, King County, Sound Transit, and others, King County's position is that the Corridor should be available for multiple interim uses, including but not limited to recreational trail, public transportation, utilities, and other purposes, all subject to reactivation of freight rail as may be authorized by the Surface Transportation Board. I fully support and endorse the County's policy.

6. In furtherance of that policy I am participating in the RAC process. As set forth in King County Motion 13801, the mission of the RAC is to carry out a regional planning process to coordinate planning and development activities to the extent possible to ensure effective use of the railbanked portions of the Corridor. As of the date of this Verified Statement, the RAC has already met seven times and at least two more meetings are anticipated.

7. As a King County Councilmember and as a participant in the RAC I regularly meet, talk, or correspond with King County citizens, local government leaders, members of the business community, and other interested parties regarding matters concerning the Eastside Rail Corridor.

8. On January 8, 2013, I met with Kathy Cox and City of Snohomish Mayor Karen Guzak at the Bellevue Harbor Club. Ms. Cox and Mayor Guzak explained to me in general terms Eastside Community Rail's concept to move construction materials to and from Bellevue by rail via the Corridor. In response to their presentation, I remarked that it would be politically impossible—I may have said that it would be a "non-starter"—to persuade the City of Kirkland to leave in the existing rails, because City voters approved a City ballot measure to develop a trail, and the ballot measure contemplated that the rails would be removed.

9. Ballard Terminal Railroad's Requests to Admit Nos. 3 and 4 request the County to admit that at the January 8, 2013, meeting I told Ms. Cox and Mayor Guzak that "freight is a non-starter," and that I also advised them that King County would not allow the reactivation of freight rail operations on the Corridor between

Woodinville and Bellevue. I made no such statements to Ms. Cox and Mayor Guzak. As set forth in Paragraph 5 above, King County's position is that the Corridor should be available for multiple interim uses, including but not limited to recreational trail, public transportation, utilities, and other purposes, all subject to reactivation of freight rail as may be authorized by the Surface Transportation Board. I fully support and endorse the County's policy.

10. On January 24, 2013, I and members of my staff attended a meeting of the Eastside TRailway Alliance at Chateau Ste. Michelle Winery in Woodinville, Washington. As reflected in the Cascadia Center press release attached as Exhibit A to this Verified Statement, the meeting focused on a conceptual "tasting train" excursion service and the business case for that train to go to Bellevue, on a conceptual plan to move construction materials to and from Bellevue by freight rail, and on the City of Kirkland's plan to build a trail and remove the rails in the City's segment of the Corridor. Others at the meeting aggressively encouraged the City to leave the rails in place, and questioned the City's reasons for wanting to remove them. My perception was that the questioning was hostile in tone.

11. At the January 24 TRailway Alliance meeting, I stated that I would not intervene in the City's plan to remove the rails for its trail because City voters had approved a ballot measure that called for the rails to be removed. I may have said that persuading the City otherwise would be a "non-starter" because the voters had spoken. I also expressed my observation that because no businesses had committed to the use of freight rail in Bellevue, there did not seem to be a partnership or plan in place for freight rail use of the Corridor between

Woodinville and Bellevue, such that in combination with the City's plan to remove the rails there did not seem to be a justification for freight rail service to Bellevue.

12. At the end of the January 24 TRailways Alliance meeting, I was standing with Bruce Nurse, who is employed by Kemper Development Company ("Kemper"). Kemper is a major developer in the Bellevue, Washington area. I asked him what he thought of the matters discussed at the meeting. From his response I gathered that Bruce was frustrated that the advocates for Eastside Community Rail and Ballard Terminal Railroad were asserting that Kemper supported freight rail use of the Corridor, because Kemper had not yet determined what its position was, or whether to even take a position on the issue. I do not know whether Kemper has since taken a position, or what that position is.

13. Apart from my brief conversation with Bruce Nurse at the January 24, 2013 meeting of the Eastside TRailways Alliance, I have had no communication with him or with anyone else at Kemper Development Company regarding the Eastside Rail Corridor or regarding any form of rail use of the Corridor.

14. It is my understanding that in his deposition testimony Doug Engle asserted that I visited Kemper Development Company in January or February of 2013 to dissuade Kemper from supporting freight rail use of the Corridor. I did not visit Kemper Development Company and I have never sought to dissuade Kemper from supporting position on freight use of the Corridor. As stated in Paragraph

12, I do not know whether Kemper has taken a position on freight rail use of the Corridor, or what that position is.

15. Ballard Terminal Railroad's Requests to Admit Nos. 7 and 8 request King County to admit that at the Eastside TRailways Alliance meeting on January 24, 2013, I stated that "freight is a non-starter," and that I advised attendees that King County would not allow the reactivation of freight rail operations on the Corridor between Woodinville and Bellevue. I made no such statements. As set forth in Paragraph 5 above, King County's position is that the Corridor should be available for multiple interim uses, including but not limited to recreational trail, public transportation, utilities, and other purposes, all subject to reactivation of freight rail as may be authorized by the Surface Transportation Board. I fully support and endorse the County's policy.

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

Executed on July 17, 2013

JANE HAGUE

VERIFIED STATEMENT OF JANE HAGUE

EXHIBIT A

Copy of Cascadia Center Press Release dated January 24, 2013

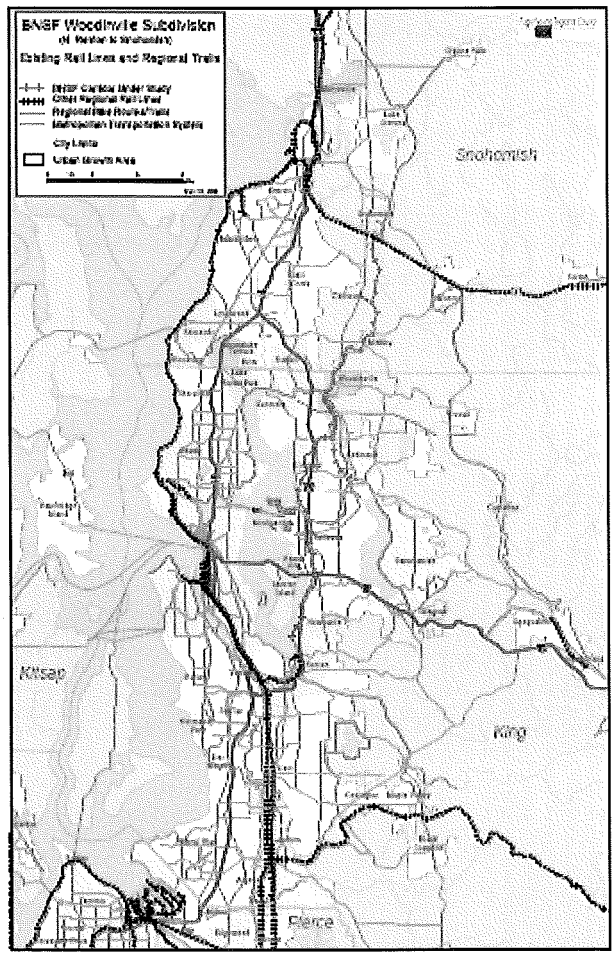
Jan. 24, 2013

Snohomish and King County leaders launch Eastside TRailway Alliance

PLEDGE cooperation between counties and raise concern over imminent track removal in Kirkland

OVERVIEW

Over 40 elected officials, winery owners, business, rail and trail advocates launched the first meeting of the **Eastside TRailway Alliance** at the Chateau St. Michelle Winery in Woodinville last night. Their mission is to support joint rail and trail development on the 42 mile Eastside Rail corridor from Snohomish to Renton, bridge a communication gap between the counties and focus on investing in the north segment.



"We are connected geographically through this remarkable, publicly-owned rail corridor…we need to connect politically for the greater good of the region", said Alliance co-chair Snohomish Mayor Karen Guzak. Les Rubstello, Woodinville City Councilmember and Alliance co-chair added, ***"Woodinville is a bull's-eye in the corridor - perfectly aligned with our zoning and infrastructure investments for joint rail and trail use. We had a great relationship previously with the Dinner Train and our wineries and other businesses are eager to provide better access.***

Both co-chairs urged a delay in track removal in Kirkland until a King/Snohomish county cooperative effort is commenced and a feasibility review is conducted on transporting Bellevue construction spoils by rail north for trail construction. They circulated a declaration (attached) for signatures before the next meeting in February.

The session was hosted by the Cascadia Center for Regional Development, a private, non-profit transportation policy center dedicated to joint rail and trail use. Director Bruce Agnew outlined a vision for development of rail and trails along the corridor emphasizing the role of private developers and interests leveraging public dollars. ***"With limited public tax dollars rails and trails need each other financially to work and trains can be "trail extenders" for bicycling families in the two county area," he said.***

King County Councilmember Jane Hague said, ***"the corridor offers an open canvas for many uses"*** and expressed support for connecting Snohomish and King County efforts. King County is currently organizing a stakeholder group limited to governments and private sector interests who have financially acquired ownership and easements on the corridor.

Several presenters and attendees questioned David Godfrey, transportation engineering manager for the City of Kirkland over plans by to remove 5.75 miles of track in Kirkland in mid-February. Loren Herrigstad, President of All Aboard Washington said, ***"the history of track removal and later replacement in the United States is dismal...once they are gone they never come back. We can not let that happen here."***

Godfrey said the city planned to maintain the raised rail bed of the corridor as they develop a gravel trail and estimated a cost of $1 million a mile for rail reconstruction sometime in the future.

The Eastside Community Rail group represented by Doug Engle and Kathy Cox has operating rights from the Port of Seattle (which acquired the corridor in 2009) for freight and future excursion trains between Snohomish and Woodinville. Mr. Engle outlined the need for $6 million in track improvements for the excursion train to begin service and Ms. Cox highlighted the **"Bounty of Washington"** rail excursion concept featuring local wineries and brews as well as locally grown produce. She also said encouraging discussions with the Tulalip Tribes had taken place for use of the Eastside Rail Corridor to connect the tribal entertainment and retail complex with Snohomish's historic district and Woodinville wineries.

Mr. Engle also said the railroad is prepared to haul excavation material and equipment on temporary basis in and out of several public and private mega construction projects in Bellevue north to fill in areas for less expensive trail construction. ***"We can save taxpayer dollars, reduce wear and tear on highways, and remove tons of toxic diesel fumes from hundreds of thousands of double dump trucks"...***said Engle. Agnew suggested new LNG-powered locomotives being explored by BNSF Rail way and CN Rail could also reduce air toxics by 80% over traditional diesel powered locomotives. (see attached letter to City of Bellevue)

Peter Camp, representing Snohomish County Executive Aaron Reardon, expressed support for the TRailways Alliance and indicated the County, City of Snohomish and others were exploring a new seven mile track along existing rail and utility rights of way between Snohomish and Everett. The City of Snohomish is constructing a sewer line to Everett and new rail (alongside the current BNSF east west line) could connect Eastside rail travelers to Sounder and the Amtrak *Cascades* service to British Columbia. ***"This will open up Snohomish, Skagit counties and Canada to new rail and trail extensions",*** said Mayor Guzak.

The Alliance will meet in three weeks at the Columbia Winery.

For further information contact:
Bruce Agnew
Cascadia Center
206-228-4011
bagnew@discovery.org

EXHIBIT 24

Michael Skrivan

From: Michael Skrivan
Sent: Wednesday, May 01, 2013 8:58 AM
To: 'Doug Engle'
Subject: RE: Potential rail spur for Everett aggregate yard

Doug, we are exploring potential alternate offloading locations that currently have a rail siding, the cost of a spur into the Everett facility at this time would be prohibitive. We think there could be a nearby site that may be an option, we are checking it out this week. Please call me regarding the request from the Kirkland city attorney for me to give a deposition regarding the letter of support that I provided to you. He is asking me to make four hours available, that is not going to work out well for me.

Michael Skrivan
Aggregate Sales Manager
Materials Group – Northwest Division
Glacier Northwest, Inc., DBA CalPortland Company
Mobile: 253-380-3720
mskrivan@calportland.com

CALPORTLAND

From: Doug Engle [mailto:Doug.Engle@escrail.org]
Sent: Tuesday, April 30, 2013 2:45 PM
To: Michael Skrivan
Cc: mmiddling@callportland.com; Ernest F. Wilson
Subject: Re: Potential rail spur for Everett aggregate yard

Mike,

The most important message is that CalPortland MUST initiate the spur request with BNSF.
We are happy to support the effort in any way we can.
Please keep me posted as we want your business!!

Cheers!

Doug
mobile: +1.425.891.4223

On 26 Apr 13, at 5:16 PM, Ernest F. Wilson <ernie.wilson@EsCRail.org> wrote:

Mike and Mike-
First, Doug and I would like to thank you once again for arranging for us to have a look at your operations in Everett. It was very useful to see it in person, and to be able to check out the surrounding area. We are sending this report to provide an overview of the process of establishing a new rail spur for your yard.

Skrivan
EXHIBIT NO. 53
5-28-13 P. HAMILTON, RPR

CAL023

We had a meeting with various BNSF managers in Seattle last week. We found that the railroad is open to providing service to your yard. We met Bonnie VanSickle, who is in charge of sales of 'Industrial Products', as they classify business opportunities like yours. There is another person who might need to be involved, Reeve Geary. He works in Economic Development, and Bonnie said she would brief him on your interest in gaining rail service to your yard. They also mentioned that there is already an ongoing business relationship between BNSF and CP, but did not know the individuals involved on either side. We can provide you the necessary contact information.

From an engineering perspective, I think it is feasible to construct a spur track from BNSF's north-south main line over to your yard, although there are challenges. In no particular order, here's what I see:

1. Proximity to Snohomish River RR bridge; we'll need to find out the minimum required distance between the bridge and a new turnout (switch);
2. Difference in elevation between BNSF rails and your yard and how to transition with minimum track grade;
3. Probable need for an overpass structure (and engineered fill) to cross over the street on the west side of SR 529;
4. Minimum clearances and other technical requirements for crossing under existing SR 529 bridge(s); and,
5. Potential wetlands issues.

The proposed route appears to cross only three other ownerships: BNSF Railway, State of Washington DOT (SR 529), and City of Everett (Ross Road). I do not know how open the two governmental entities are to railroad easements across their Rights-of-Way. BNSF would install the new turnout and take the track past their 'clearance point', say 15 feet or so east of their near rail. They might have to grant CP an easement or license to cross the balance of their 100' R-o-W, although it's more likely that there would just be some sort of operating agreement between the two companies, since BNSF would provide the car switching service.

So, it looks like it's now up to CalPortland to analyze the costs and benefits in order to determine if you want to proceed with preliminary planning for a spur. As a first rough estimate, I'd say this spur would cost in the neighborhood of $300-400K to complete. As you do your analysis, keep in mind that there could be inbound material shipments to your yard as well as outbound. For instance, we recently learned that Snohomish County is going to be reconfiguring the dikes on the easterly side of Smith Island, and will need tens of thousands of yards of suitable fill material for constructing the new dikes. Some of that dirt might well be excavation spoils from Bellevue, which could conceivably be delivered by rail to the island for a short truck haul to the dike sites.

I hope that you find this report helpful. Eastside Community Rail is not in a position to offer Civil Engineering services directly, but we would be interested in serving as your project managers/owners representatives to facilitate design and coordinate other pre-construction activities. Please let us know if you have questions on this report, or wish to discuss the spur idea further. I do have a few pictures of the vicinity that I can send, too, if you're interested.

Thank you for considering the possibility of becoming a shipper on our rail line. We appreciate your support of Eastside Community Rail.
Regards,

--
Ernie

Ernest F. Wilson, PLS
Eastside Community Rail
Right-of-Way/Development

425-869-8899 C 509-430-9350

EXHIBIT 25

Kurt Triplett

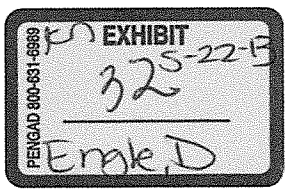
From: Kurt Triplett
Sent: Friday, November 16, 2012 11:04 AM
To: 'Doug Engle'; Yang, Sung
Subject: RE: Eastside Community Rail

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

Thanks again,

Kurt

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



Kurt/Sung,

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

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

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

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

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

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

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

Thank you for your consideration,

Doug

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

EXHIBIT 26

From: Kurt Triplett [KTriplett@kirklandwa.gov]
Sent: Wednesday, November 07, 2012 7:53 AM
To: Oskar Rey; Robin Jenkinson
Subject: Fwd: Eastside Rail Corridor Reactivation
Attachments: ECR Intro 21Oct12.pptx; ATT00001.htm; STB Revenue Adequacy 9Oct12.pdf; ATT00002.htm

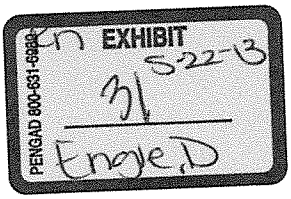
Follow Up Flag: Follow up
Flag Status: Flagged

FYI.

Sent from my iPhone

Begin forwarded message:

> **From:** Doug Engle <dengle76@comcast.net>
> **Date:** November 7, 2012 6:50:50 AM PST
> **To:** Kurt Triplett <KTriplett@kirklandwa.gov>, Joan McBride <jmcbride@kirklandwa.gov>
> **Cc:** Kathy Cox <kathy@marketingphilharmonic.com>, David Farmer <dave@mgmtspecialists.com>
> **Subject: Eastside Rail Corridor Reactivation**
>
> Good Day,
>
> I hope that your election results were met with much satisfaction!
>
> In preparation for our next Thursday meeting, I have attached a brief PowerPoint presentation introducing Eastside Community Rail (ECR).
> We did try to get this meeting on the calendar before the elections to no avail.
>
> ECR intends to reactivate the line between Woodinville and Bellevue as soon as possible for freight and excursion service.
> We have freight business coming together in Bellevue, including Safeway who's 5-yr service buyout is coming to an end.
> Safeway continues to receive their bakery flour in Ballard via rail and trucking it to their Bellevue bakery.
> Additionally, there are very large construction projects where rail service can reduce truck traffic, favor the environment, and provide substantial costs savings.
>
> ECR supports trails with rails, and we would like to help Kirkland still achieve its Cross Kirkland Connector.
> With a little cooperation, the trail could be connected at either end.
>
> ECR's financing partner out of Chicago has 17 pieces of rolling stock available for the excursion train.
> We are also evaluating Totem Lake as an excursion depot and a station at the So. Kirkland P&R.

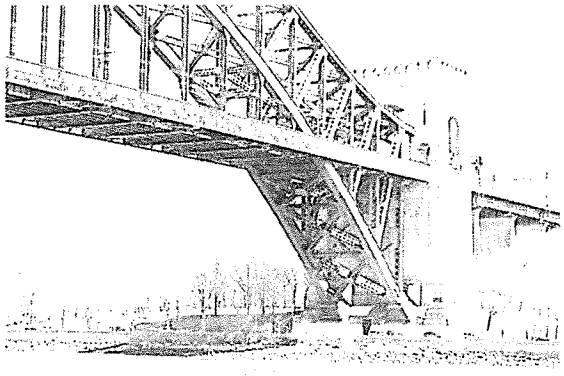


We are asking the city to enter into good faith negotiations for a rail and trail solution through Kirkland and to not disturb the track structure any further.
Please note at this time, that ECR is not formally notifying the city via legal letter in hopes of successful good faith negotiations.

There is a win-win to be had here that will better serve Kirkland's long-term interests by working together.

Best wishes,

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



Eastside Community Rail

Bridging the Gap

9 October 2012

Cost Plus Pricing Policy

Eastside Community Rail, LLC (ECR) requires that the return it earns for rail operations and projects is the rate set by the Surface Transportation Board (STB) for "revenue adequacy" of the railroad industry. ECR will use a 4-year weighted average to reasonably minimize fluctuations in the rate. This federal rate is the most independent and impartial means available to establish fair and reasonable "cost plus" pricing.

ECR expects to have a substantially lower overhead rate and cost structure than local governmental agencies or large private firms. ECR will support public works inside the rail corridor to the extent possible that do not conflict with rail operations or existing agreements. ECR will not enter into any agreement that infringes on its rights or authorities as a federal railroad.

Surface Transportation Board – Revenue Adequacy

"The annual determination of revenue adequacy is made in accordance with standards and procedures developed after passage of the Staggers Rail Act of 1980, which substantially deregulated railroads. A main goal of Staggers was to restore the railroad industry to a return on investment that would at least match its cost of investment capital."

"In Railroad Cost of Capital—2010, EP 558 (Sub-No. 14) (STB served Oct. 3, 2011), we determined that **the 2010 railroad industry cost of capital was 11.03%**. By comparing this figure to the 2010 ROI data obtained from the carriers' Annual Report R-1 Schedule 250 filings, we have calculated a revenue adequacy figure for each of the Class I freight railroads that were in operation as of December 31, 2010."

DECISION FOUND THAT ONE CLASS I RAILROAD (UNION PACIFIC RAILROAD COMPANY) ACHIEVED REVENUE ADEQUACY FOR THE YEAR 2010, IN ACCORDANCE WITH THE BOARD'S STANDARDS AND PROCEDURES DEVELOPED TO MAKE THAT DETERMINATION.

Following is STB's summary of the Returns on investment for all Class I railroads in 2010:

BNSF Railway Company	9.22%
CSX Transportation, Inc.	10.85%
Grand Trunk Corporation Consolidated*	9.21%
Kansas City Southern Railway Company	9.77%
Norfolk Southern Railway Company	10.96%
Soo Line Railroad Company*	8.01%
Union Pacific Railroad Company	11.54%

*(Including all Canadian and U.S. affiliates)

Historic Rates and ECR's Weighted Average

In Railroad Cost of Capital, STB Ex Parte No. 558, each year the Board determines the rail industry's after-tax cost of capital. ECR will apply annual weights to determine the "Weighted Average" to be used when pricing its works for public projects or operations.

	Cost of Capital	Weight	Weighted Average
2010	11.03%	40%	**11.02%**
2009	10.43%	30%	
2008	11.75%	20%	
2007	11.33%	10%	
2006	9.94%	0%	(5-yr Avg = 10.90%)



Eastside Community Rail

October 2012

Bridging the Gap

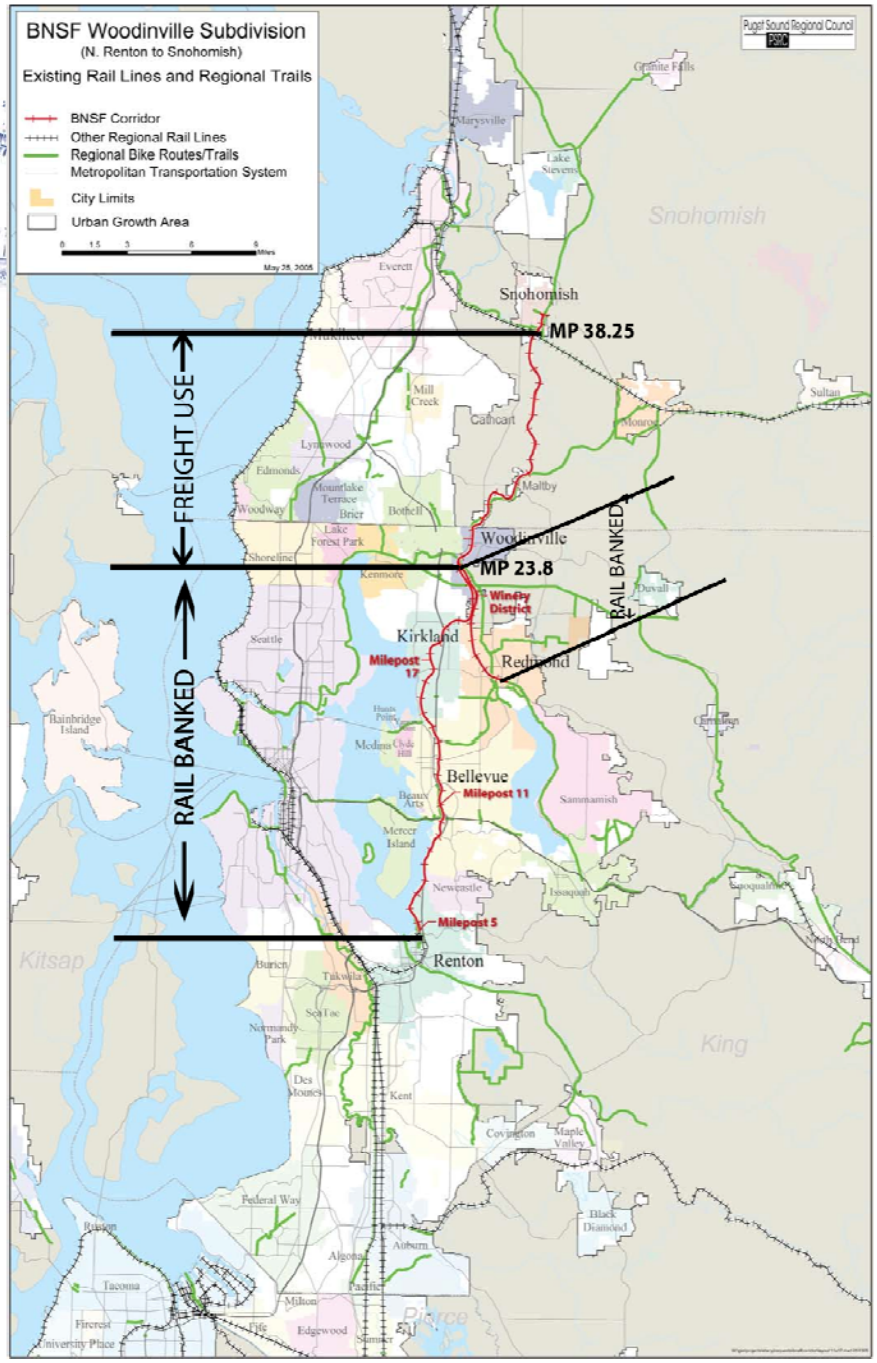
Introducing

Eastside Community Rail, LLC



Eastside Community Rail

Bridging the Gap



ECR is a federal railroad that owns the Woodinville Freight Easement acquired from BNSF milepost 38.25 to 23.8.



Mission Statement

ECR's mission is to help maximize the utilization and overall public benefit of the Eastside Rail Corridor and reasonably profit from its efforts.



Core Values

- Transparency
- Integrity
- Accountability



Strategic Priorities

1. MUST grow the freight business
2. Re-establish excursion service
3. Extend corridor mileage
4. Pursue real estate opportunities
   - Intermodal
   - Bellevue batch plant
   - Transit Oriented Development
5. Support trail, transit and other uses



Double the Freight Business





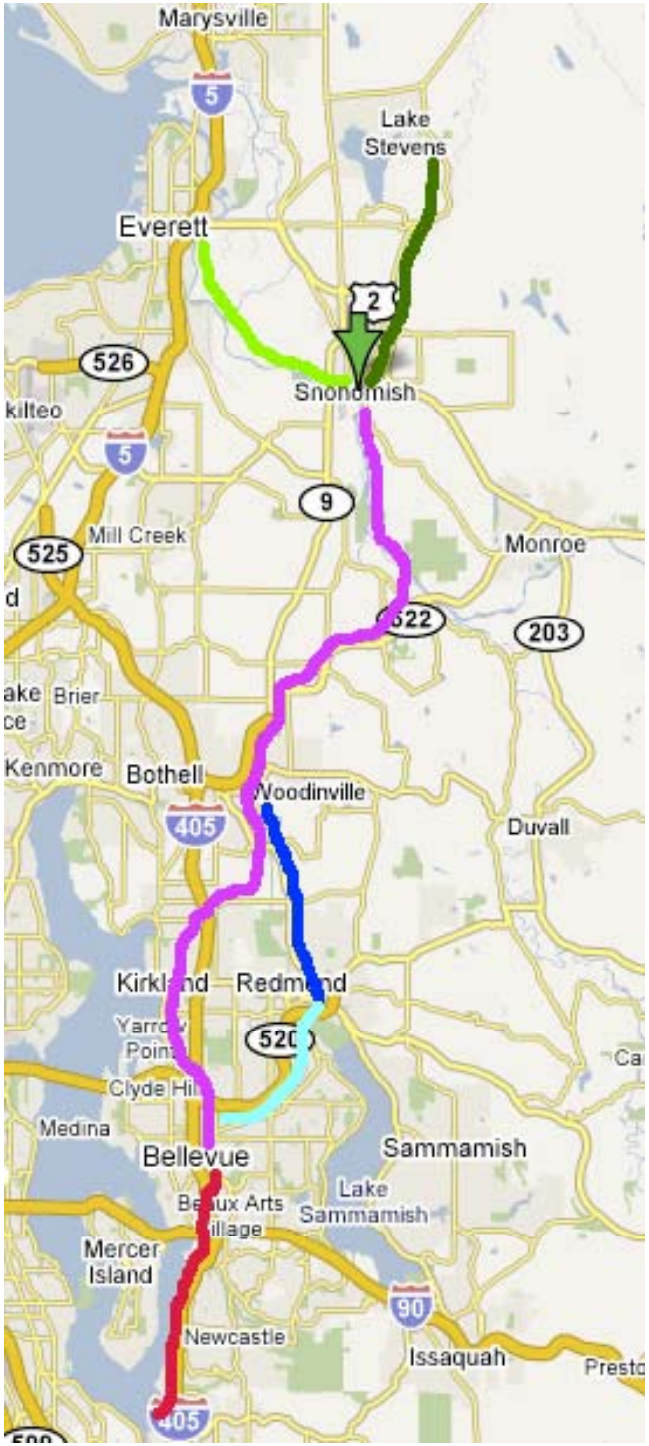
Eastside Community Rail

Bridging the Gap

Re-Introduce Excursion Train







Eastside Community Rail

Bridging the Gap

Acquire Extensions

1. Woodinville to Bellevue
2. Woodinville to NE 124th St
3. Snohomish to Everett



We support Trails with Rails, Cascadia Center's "TRailway."





Trails with Rails

ECR's policy is to fully support, but not lead, community efforts to utilize the corridor for regional trail development…

PROVIDED

the existing track structure remains.



Commuter Rail Transit

ECR's policy is to fully support, but not lead community efforts to utilize the corridor for commuter rail transit.



So. Kirkland Park and Ride

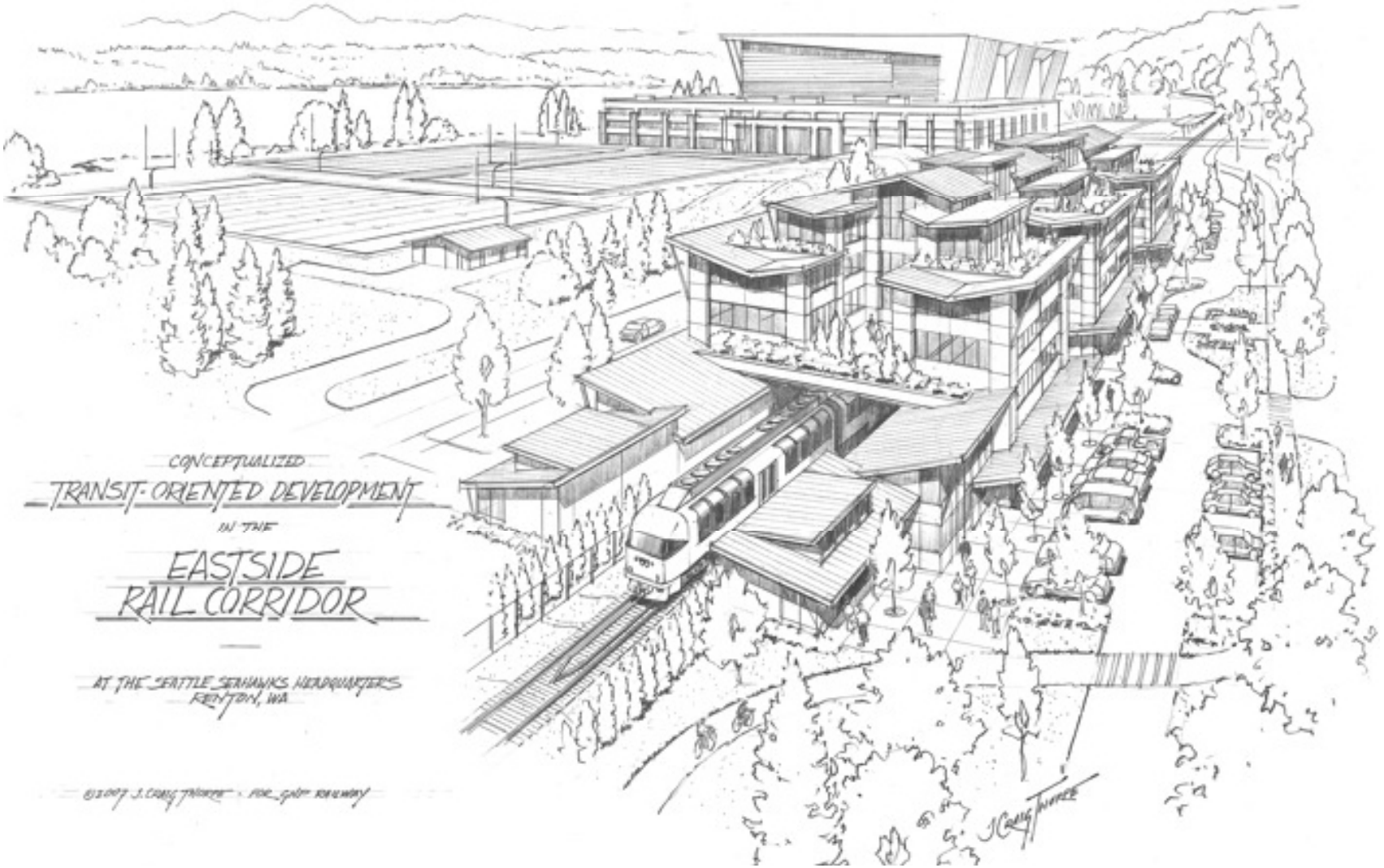
(potential excursion station)





Transit Oriented Development

(inside corridor example)





Business Model

ECR's policy is to reasonably price its works.

(Direct Cost + Allocated Overhead)

X

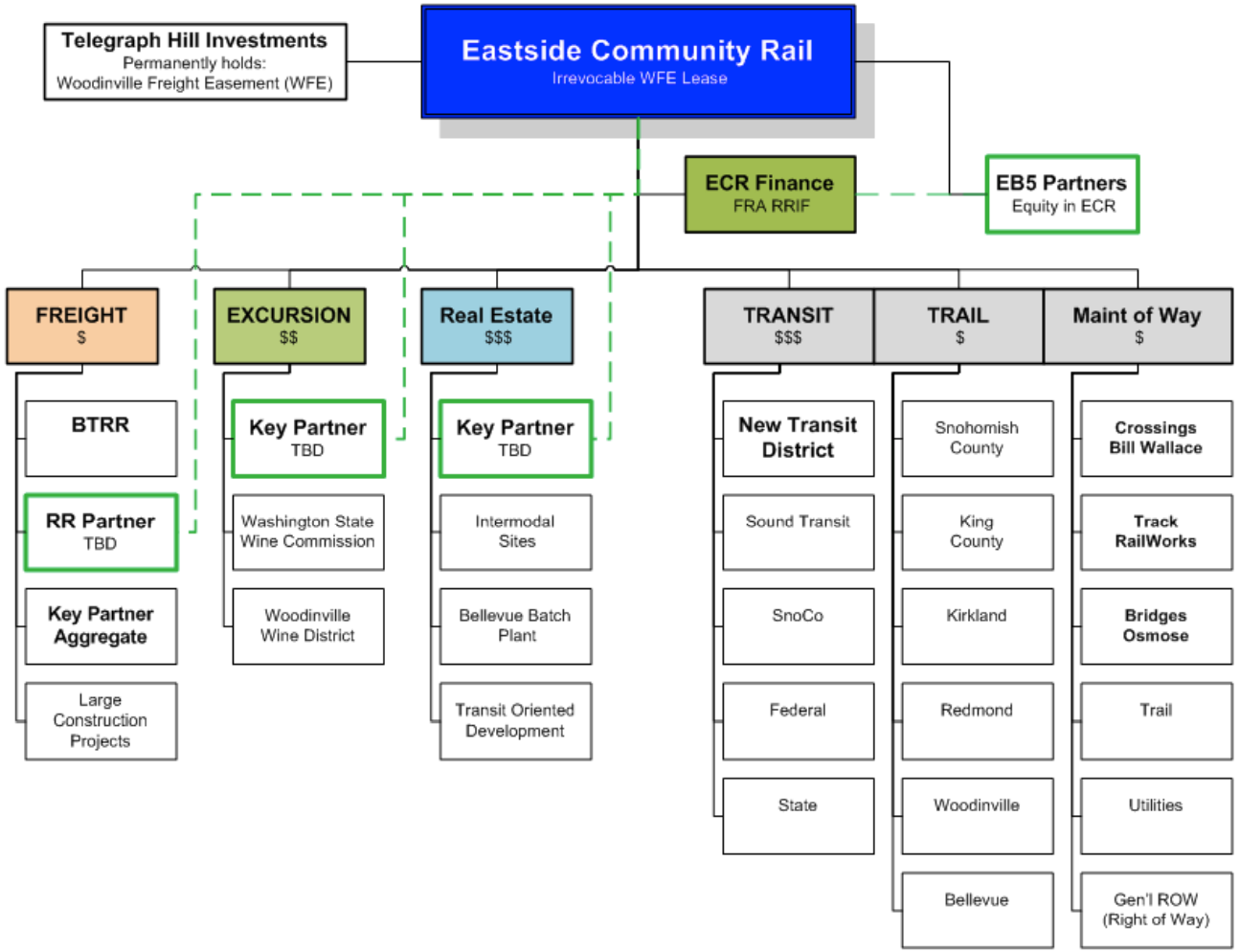
STB Revenue Adequacy Rate*

=

Price

*see ECR's Surface Transportation Board's Revenue Adequacy policy

How we are organized…





Eastside Community Rail

Bridging the Gap

Thank you

EXHIBIT 27

Confidential Information Filed Separately Under Seal

EXHIBIT 28

www.EsCRail.org

EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

19 February 2013

To: Eastside TRailway Alliance

Cc: King County Council & City of Kirkland

Re: Eastside Rail Corridor – Kirkland Rail and Trail – **Trail Specification**

First order estimate of $2.87 million ($587k/mile).

Eastside Community Rail (EsCR) and Wolford Demolition and Trucking have been estimating the cost of construction of a new "primarily" 15' "base trail" 15' from the existing track with Eastside Freight Service acting as the authorized railroad.

> Length 4.86 miles, which excludes portions north of NE 124th St
> Trail Clearance: 20' =>0.05 Ac./sta.
> Trail Bed: crushed stone base course – 4" deep 15'-0" =>18.3 cy/sta.
> Trail Surface: crushed stone top course – 2" deep, 12'-0" =>8.9 cy/sta.

"Primarily," because corridor "pinch points" must be addressed in future development efforts of the Cross Kirkland Connector. The initial effort can be quickly constructed and utilized by the public by year-end 2014 – with city cooperation.

A "base trail" is the maintenance of way (MOW) road substructure that can either be immediately paved or paved with gravel added to the shoulders for walking, running or horse riding. Technically, the base trail is a road for use by the railroad in maintaining the right of way when needed.

Railroads are inspected monthly from the track by both rail-mounted vehicles and simply walking for visual inspection of the track structure. Unless there is an urgent need, maintenance work is scheduled weeks in advance.

Twenty feet of clearing is proposed as typical, as it is the most cost effective overall width for heavy equipment to develop the MOW road.

Although the minimum distance from the centerline of the track is 10'-6", EsCR proposes a standard separation of 15' and only utilize the minimum distance initially at pinch points. In either case, a drainage ditch will be constructed between the two.

The MOW road will undulate up and down along the track depending upon terrain.

EsCR believes that for two to four train movements a day at 15-20 MPH, a separating drainage ditch, and elevation differences, generally a fence between the track and MOW

road is not required. However, in segments where the trail is significantly above the railroad, a fence may be appropriate.

All trail crossings of the track will be perpendicular and protected by fencing, signage and other appropriate means as provided by the trail authority.

Grade crossings at streets are the city's responsibility.

Bridges are excluded from this estimate.

The public will provide insurance for the use of the MOW road as a trail.

The public will pay the railroad for maintenance of MOW road costs.

PSE utility needs have not been defined, yet are typically easily and willingly accommodated on either side of the track structure.

EXHIBIT 29



EASTSIDE COMMUNITY RAIL
BRIDGING THE GAP

22 February 2013

To: Eastside TRailway Alliance
Kirkland City Council

Cc: King County Council

Re: Eastside Rail Corridor – Cross Kirkland Corridor

We applaud Kirkland's vision in providing for dual use of the Eastside Rail Corridor and taking their regional responsibility seriously. We believe we have a win-win solution to provide near-term benefits while preserving the infrastructure for mid-term and long-term use for the greater good for the greatest number. Eastside Community Rail (EsCR) and Wolford Demolition and Trucking has a first cost estimate of constructing primarily 15' base trail 15' from the existing track as an alternative to Kirkland removing the track structure for use as an interim 8' gravel trail. Specifications are included in the attached first-order estimate of $2.9 million. We expect to have a second-order estimate, which we would like to discus with the city of Kirkland the week of March 8th.

Through our rail operator economies, we can provide a wider trail for less cost while preserving the legacy of Kirkland's history of rail. With this trail building solution there will not be any wasted in ground expenses without planning for the future. We can maximize tax payer dollars with using the $3.6 million already secured, including CMAQ funds, to provide the Cross Kirkland Corridor trail and keep the rails in place for potential near-term use by an excursion train and for use for future generations.

Our first-order estimate to utilize active rail to build a trail alongside the track structure is significantly less than Kirkland's budget. Thus, Kirkland will likely have several hundred thousand dollars still available for the trail amenities it wants. We would like to work cooperatively with Kirkland to ensure we meet the city's needs and provide for the best community asset for the state funds it received.

In summary, EsCR wants to provide Kirkland a non-profit service to more quickly utilize the corridor for rail and trail.

Respectfully,

Douglas Engle
Managing Director
Eastside Community Rail