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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

ENTERED
Office of Proceedings
November 4, 2013
Part of the Public
Record

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

STB Finance Docket No. 35731

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

**MOTION OF KING COUNTY, WASHINGTON, CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY, AND THE CITY OF KIRKLAND FOR
PROTECTIVE ORDER TO END FURTHER DOCUMENT PRODUCTION TO
BALLARD TERMINAL RAILROAD COMPANY, L.L.C.**

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Counsel for City of Kirkland, Washington
Dated: November 4, 2013

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

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I. INTRODUCTION

Pursuant to 49 C.F.R. § 1114.21(c), King County, Washington, Central Puget Sound Regional Transit Authority (“Sound Transit”), and the City of Kirkland (collectively, the “Public Entities”) jointly seek a protective order relieving them from producing any more documents in response to Ballard Terminal Railroad, LLC’s (“BTR”) discovery requests. In response to BTR’s broad discovery requests, the Public Entities have already collectively produced 4,786 documents, totaling 29,631 pages and nearly 17 gigabytes of data. The Public Entities have already produced all documents in their possession, custody, and control relating to BTR’s ability to initiate and operate its proposed reactivated service, including the existence of shipper demand. Further discovery is not warranted for the simple reason that it will not lead to the production of relevant material and will impose substantial expense and burden on the Public Entities. Accordingly, further document production is not warranted pursuant to both 49 C.F.R.

§ 1114.21(a), because BTR seeks the production of irrelevant material, and 49 C.F.R.

§ 1114.21(c), because any marginal relevance of the documents is outweighed by the burden of production.

II. BACKGROUND

A. BTR's Document Requests

BTR initiated this Proceeding on April 3, when it filed Petitions seeking to vacate the Notice of Interim Trail Use (“NITU”) on an 11.2- mile portion of the Woodinville Subdivision, formerly owned by the BNSF Railway Company, between MP 23.8 in Woodinville, WA, and MP 12.6 in Bellevue, WA (the “Line”) and to acquire the County’s reactivation authority, operating rights, and the tracks and rail facilities for the Line. The County is the interim trail user, and the County, Sound Transit, and Kirkland own different segments of the Line.

On May 8, BTR moved for a preliminary injunction to prevent Kirkland from salvaging the rails, ties, and other rail material on the Kirkland-owned segment of the Line. On August 1, the Board denied BTR’s motion for a preliminary injunction, finding that BTR had failed to demonstrate a likelihood of success on the merits because it could not show that it could meet the Board’s standards for reactivation – specifically, adequate financial capacity and credible shipper demand – and failed to satisfy the other criteria for a preliminary injunction. Kirkland then salvaged the rail materials on its segment of the Line.

On June 27, BTR served interrogatories and requests for production on each of the Public Entities, as well as requests for admission on King County and Kirkland. Kirkland answered BTR’s interrogatories and admission requests on July 15; the County and Sound Transit responded on July 19. By agreement with BTR, the Public Entities responded to the document requests later. Kirkland provided written objections and responses and its first volume of

documents on July 22. The County and Sound Transit provided written responses on August 2. Copies of Kirkland's, King County's and Sound Transit's written responses are attached hereto as Exhibits 1, 2, and 3, respectively.

BTR's document requests cover a broad range of topics, including:

- 1) copies of all communications and documents relating to the Line exchanged between the Public Entities and businesses that BTR considers potential shippers (e.g., Wolford Trucking & Demolition, Inc. and CalPortland Company);
- 2) all documents and communications relating to the Public Entities' development plans for the railbanked corridor, including design and construction of an interim trail and Sound Transit's light rail;
- 3) all documents and communications relating to the Line exchanged between the Public Entities, other government agencies, and certain adjacent property owners and businesses;
- 4) "all documents and communications relating to other uses and economic benefits, including but not limited to freight rail, of the Line";
- 5) from King County, all documents pertaining to the Eastside Rail Corridor Regional Advisory Council, an intergovernmental panel comprised of members of public agencies and local governments with an ownership interest in the Line and the Redmond Spur, addressing possible coordination of use of the railbanked corridors;
- 6) from Kirkland, all emails between Kirkland City Manager Kurt Triplett and Douglas Engle of Eastside Community Rail since January 1, 2011;
- 7) from Kirkland, all documents and communications provided to Kirkland city council members regarding the business plans of Eastside Community Rail; and
- 8) from Sound Transit, all documents and communications relating to the expansion of the "SR 202 bridge" in the City of Woodinville that is not located on the Line.

With the exception of the request for emails between Mr. Triplett and Mr. Engle, none of BTR's requests is limited by time, author, or custodian.

B. The Public Entities' Objections and Productions

Each of the Public Entities noted objections to BTR's document requests, both collectively and individually, on the grounds, *inter alia*, of relevance, overbreadth, and burdensomeness. In addition, each of the Public Entities noted that it would only provide certain types of documents in response to certain requests. BTR has not disputed any of these objections, or otherwise indicated that it has any issues with the written responses or the scope of the document productions themselves.

The Public Entities informed BTR that due to their breadth, BTR's document requests called for the production of a large amount of material that would take significant time to collect and review, and accordingly informed BTR that each would produce documents on a rolling basis. BTR agreed to this approach. At the outset, the Public Entities hoped that they could produce all responsive documents at a manageable level of effort over the course of several weeks. But the broad nature of BTR's requests, the large number of possible custodians within each entity, and the multiplier effects of electronic communications and documents combined to make responding to the Requests complex and costly.

Kirkland collected electronic and paper documents from 18 individuals who might have materials potentially responsive to these requests, including members of the city council and officials within different city departments. It then compiled these documents in an electronic database capable of accepting keyword search terms to facilitate efficient review. Using electronic search terms, Kirkland identified approximately 22,500 potentially responsive documents comprising more than 74,000 pages and 21 gigabytes of data. Faced with reviewing this mass of documents, Kirkland decided to first locate, review, and produce documents potentially containing information relevant to the key issues in this case – BTR's financial

position and freight demand – documents responsive to discrete requests (*e.g.*, a study of the Line by the Urban Land Institute), and documents underlying interrogatory answers.

Taking this approach, Kirkland identified and reviewed more than 3,000 documents, comprising nearly 9,700 pages that were potentially responsive. Of these, 784 documents comprising 2,830 pages and 1 gigabyte of data were responsive. Kirkland produced these documents on July 22 and August 9 and 13. Very few of these materials concerned freight demand; none concerned BTR's financial position. To gather and review these documents Kirkland staff and counsel spent more than 60 hours, at a cost of approximately \$22,600 in legal fees and \$8,000 in fees to e-discovery vendors.

King County has had a similar experience. It identified 65 individuals who were likely to have potentially responsive documents and to date, King County has produced 1,719 documents totaling 9,598 pages and 2.37 gigabytes of data in four separate productions on August 2, 12, and 29, and September 24. King County staff spread across numerous County departments and offices, as well as in-house counsel, have spent a substantial amount of time searching for and reviewing these documents. The materials produced include documents relied upon to prepare interrogatory responses, the final transactional documents relating to the transfers of interest in the Line among numerous local public entities, King County ordinances and supporting materials relating to the Line, materials relating to the Eastside Rail Corridor Regional Advisory Council, and communications between County staff and BTR, Eastside Community Rail, and related entities. The documents that remain are more of the same. As King County had made clear in its Interrogatory Responses and written responses to the Requests to Produce, outside of the depositions conducted in these proceedings King County had not had any meaningful communications with potential shippers regarding freight service on the Line.

BTR's discovery requests have been just as burdensome for Sound Transit, which is engaged in the planning and development of a multibillion dollar light rail project. Sound Transit began searching for responsive documents in late July but almost immediately encountered serious problems with its document retrieval system, which made it impossible to produce documents as quickly as it had expected. Sound Transit informed BTR of these issues. Sound Transit made its first production on September 19, consisting of 1,843 documents (16,262 pages and 13.12 gigabytes of data). A second production was made on October 29, consisting of 440 documents (941 pages and .367 gigabytes of data). Collectively, Sound Transit has produced 2,283 documents, including 17,203 pages and 13.48 gigabytes of data. Sound Transit staff and counsel have spent approximately three hundred (300) hours of attorney time searching for and reviewing those documents. This does not include the substantial amount of time spent by non-legal staff, which Sound Transit is unable to track. Substantively, Sound Transit had produced documents underlying its interrogatory responses, including communications and documents exchanged with property owners adjacent to its planned rail facilities within and near the corridor (*e.g.*, Safeway, Inc. and Wright Runstad & Company, a real estate developer), plans, studies and maps relating to Sound Transit's use of the Line, and documents relating to Sound Transit's East Link Maintenance Facility. As Sound Transit explained in its interrogatory answers that it has not had communications regarding freight service with potential shippers, outside of depositions in this case.

As the Public Entities worked through their document productions, two points became apparent. First, virtually none of the documents responsive to BTR's requests were relevant to the material issues in these proceedings. The Public Entities do not possess documents related to BTR's financial ability to reactivate rail service on the Line or to operate the Line. Only

Kirkland has had written communications with what BTR considers potential shippers (Safeway and Wright Runstad) about the existence (or non-existence) of shipper demand, and it produced those materials. To the extent that other documents were of any marginal relevance, they were largely cumulative of documents already in the public domain. For example, the plans of the Public Entities for the right-of-way are matters of public record and are readily available to BTR. The additional details in the documents requested are, at best, cumulative.

Second, the burden and cost of production was much higher than expected, largely due to the remaining volume of potentially responsive documents that require review. For example, Kirkland estimates that more than 19,000 documents totaling approximately 64,000 pages and 20 gigabytes remain for review. It will take approximately 100 hours of time (primarily attorney time) and cost \$25,000 to produce. These costs are amplified by the negligible value of these documents. The vast majority of the documents that remain appear to relate to documents and internal and external communications regarding the purchase and future development of the railbanked corridor.

Similarly, King County estimates that it has over 8 gigabytes of data to review, including an unknown number of documents. This includes documents from a number of County departments (including Parks, the Department of Natural Resources, the Wastewater Treatment Division), the Executive Office, some Council members and their staff, and the Facilities Management Division. These documents relate primarily to trail planning, environmental conditions on the right-of-way (*i.e.* hazardous materials), this proceeding, Eastside Rail Corridor Regional Advisory Council member notes and emails, property management-related materials, and other similar matters.

Potentially responsive documents are difficult to locate given both the breadth of BTR's requests and the breadth of King County's governmental responsibilities. Potentially responsive documents are located in the files of a number of King County employees spread across a number of departments and functional units. Electronic documents they may have generated or collected are stored in various formats and file types over at least ten distinct information technology (IT) systems. Paper documents may be stored or archived in any number of locations. In the aggregate such electronic and paper documents and communications relating to King County's efforts to acquire and develop the railbanked portions of the Eastside Rail Corridor run to tens of thousands of pages. It would be an immense burden for King County to search for potentially responsive documents and communications across all of these departments, divisions, functional units, and IT systems and to review the enormous universe of potentially responsive documents for privileged or otherwise unresponsive records. King County estimates that it could take more than 100 hours (primarily staff attorney and paralegal time) and \$10,000 or more in hard costs (exclusive of attorney and paralegal time) to produce those documents.

Sound Transit estimates that it has at least an additional 6 gigabytes of documents to review, and it will take approximately 160 to 210 hours to complete the review and production at a cost of \$3,000 to its vendors. The remaining documents consist of communications with King County, Kirkland, and the Port of Seattle relating to the Line (BTR's Request No. 3) and documents relating to the SR-202 bridge in Woodinville, which is not located on the Line.

On October 10, counsel for Sound Transit and King County contacted counsel for BTR to explain that Sound Transit and King County believe that, other than the documents Sound Transit ultimately produced on October 29, the remaining responsive documents are not relevant to this proceeding and that the cost and burden of production is too great. Counsel explained that

Sound Transit and King County were prepared to seek a protective order to end further production, but invited BTR to propose a way to narrow the remaining production. On October 28, BTR responded to say that it could not yet determine what had or had not been produced and could not make a proposal. BTR's counsel also indicated that BTR would seek an extension of time to file its Reply to Comments because it needed more time to review the documents that had already been produced. BTR filed that motion later in the day on October 28.

III. ARGUMENT

Pursuant to 49 C.F.R. § 1114.21(a), discovery is limited to matters “relevant to the subject matter involved in a proceeding. . . .” A party may seek a protective order “to protect a party [] from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c). The Board has wide latitude to provide relief, including issuing an order “[t]hat the discovery not be had.” *Id.* at § 1114.21(c)(1). In considering a motion for protective order, the Board must balance the burden against the likely relevance or value of the information sought: “Under 49 CFR 1114.21(c), discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought.” *Canadian Pacific Ry Co.—Control—Dakota, Minnesota & Eastern R. Corp.*, STB Finance Docket No. 35081, slip op. at 1 (STB served Apr. 28, 2008).

A. The Documents BTR Has Requested Are Not Relevant To The Issues In These Proceedings.

BTR seeks, in short, to reactivate rail service on the railbanked Line. In order to obtain the necessary Board authorizations to do that, the Board has established a threshold test that BTR must meet. *BNSF Railway Co. – Abandonment Exemption – In King County, Wa. (Woodinville Subdivision)*, STB Docket No. AB-6 (Sub-No. 465X); *Ballard Terminal Railroad Co., LLC – Acquisition and Operation Exemption – Woodinville Subdivision – Verified Petition For*

Exemption Pursuant To 49 U.S.C. § 10502, STB Finance Docket No. 35731 slip op. at 4-5 (STB Service Date August 1, 2013) (“August 1 Decision”). Specifically, BTR must demonstrate that it could exercise the requested operating authority and actually initiate and operate service on the Line. *See* August 1 Decision at 4. In considering whether BTR can meet that threshold test, the Board explained that it would look at BTR’s financial ability to acquire the necessary interests in the Line and to make necessary improvements to the Line. *Id.* at 5. The Board also explained that it would consider whether there was any evidence of shipper demand to use the Line, *id.*, and whether potential shippers had the ability to access the Line, *id.* at 4. Considering the evidence before it, including the testimony of BTR officers and employees, and BTR supporters, the Board concluded that BTR did not appear to have the financial ability to initiate or operate its proposed service, and further that there was no evidence of shipper demand to use the Line. *Id.* at 5. Accordingly, the Board held that BTR could not demonstrate a likelihood of success on the merits of its Petitions. *Id.*

Thus, broadly construed, the information relevant to these proceedings, and the information that is the proper subject of discovery, is information that relates to BTR’s ability to carry out its proposed reactivation, including its financial capability and the existence of shipper demand. The information BTR requested in its Requests for Production, and that the Public Entities have not yet produced, is clearly irrelevant. As explained above, most of that information relates to the plans of the Public Entities, and other public agencies, for the interim use of the Line as a trail, a commuter rail line, and other public uses. Production of those documents will not help demonstrate that BTR can afford to acquire the Line, initiate service, or operate freight service. Nor would additional information about the plans for those uses help demonstrate that there is shipper demand on the Line. Indeed, to underscore how far afield

BTR's discovery extends, Request No. 6 to Sound Transit seeks information about the SR-202 bridge, which is not even located on or adjacent to the Line.¹

The information that BTR needs to make its case is in its own hands and control. BTR needs to provide evidence of its own financial capability. BTR needs to provide evidence that it can afford to do what is necessary to reactivate service, including acquiring property rights and installing rail infrastructure. BTR needs to demonstrate that it has a plan to acquire those property rights. BTR needs to demonstrate that there is genuine shipper demand for service on the Line. None of that information is in the possession, custody, or control of the Public Entities; it necessarily is in the control of BTR itself, its financial backers, and its putative shippers. Further discovery into the activities of the Public Entities relating to property they own is simply not relevant to the issues raised by BTR's Petitions. *See* 49 C.F.R. § 1114.21(a)(1) (discovery may be had regarding any matter, not privileged, *that is relevant* to the subject matter involved in a proceeding) (emphasis added).

BTR's interrogatories and document requests also sought information regarding communications between the Public Entities and potential shippers on the Line, apparently in search of evidence to support a theory that the Public Entities might have sought to suppress demand. King County and Sound Transit have made clear that they have not had any meaningful communications with potential shippers about service on the Line outside of depositions in these proceedings, and thus they do not have responsive documents. Kirkland described the limited communications it had with Safeway and Wright Runstad about whether they were interested in received freight service, and it promptly produced the few emails it has

¹ The SR 202 bridge is located on the "freight portion" of the Woodinville Subdivision, north of the Line at issue in these proceedings. Thus, Sound Transit's communications with respect to the SR 202 bridge have no conceivable relevance to the material issues in these proceedings. For further information regarding the SR 202 bridge, see the City of Kirkland's Reply in Opposition to BTR's preliminary injunction motion in these proceedings, which reply was filed June 4, 2013.

concerning those communications. Sound Transit has also produced its communications with Wright Runstad and Safeway, even though those communications do not relate to freight service on the Line.

The Public Entities understand that BTR has advanced a theory that they are somehow standing in the way of reactivation – that they are “fox [es] guarding the henhouse.” For example, Byron Cole of BTR recently opined in BTR’s “Support Letter” to the Board that the Public Entities were unreasonably opposed to “rails and trails,” and thus would not support BTR’s proposal to share the right-of-way in some manner. Although the Public Entities do not agree with BTR’s representations on that issue, the Public Entities’ position does not bear on BTR’s financial capacity or whether there is a genuine freight demand. BTR has not cited any authority to the contrary. If a petitioner cannot demonstrate that it can afford to initiate and operate service, and cannot demonstrate that there is any demand for service, its petition necessarily fails on those grounds alone.

At bottom, the Public Entities are pursuing permissible interim uses that provide for the possibility of reactivated freight service, and discovery into their opinions of BTR’s proposal are not relevant, particularly when BTR cannot make the threshold showing that it is capable of reactivating freight service under the standards the Board has established. *See* August 1 Decision at 4-5. In any event, the Public Entities have produced substantial numbers of documents relating to their plans for the Line, much of which has long been available to BTR through public sources. BTR has sufficient information to make its argument without the need for further discovery.

B. Even If The Remaining Documents Are Of Some Relevance, That Relevance Is Outweighed By The Cost And Burden Of Production.

The Board has recognized that discovery rules do not require parties to shoulder the substantial burden of searching through large numbers of irrelevant documents to locate a few potentially relevant documents, particularly when those documents are of marginal value. *Canadian Pac. Ry. Co.*, slip op. at 4 (denying a motion to compel production when production would impose a substantial burden on the producing party to review large numbers of irrelevant documents in the hope of producing some relevant documents).

That is the case here as well. The Public Entities have generated substantial quantities of documents potentially responsive to BTR's broadly-worded document requests. There are a substantial quantity of additional potential responsive documents covering a vast number of topics for the simple reason that the Public Entities are actively engaged in developing and implementing interim plans for the Line. For example, Sound Transit communicates with a number of entities regarding the construction of its commuter rail line on portions of the Line. Similarly, King County and Kirkland are working on plans for a trail and other public uses of the right-of-way. All of those plans are lawful and consistent with their ownership interests and trail sponsor obligations. As discussed above, these documents do not bear on the material issues in this case or are of only marginal relevance.

Moreover, the Public Entities have already produced a substantial volume of documents addressing almost every Request for Production. Further production would include cumulative material without adding much of new substance. Indeed, based on BTR's October 28, 2013, Request for Extension of Time, it appears that the Public Entities have already produced more documents than BTR can review, so it is difficult to see how the production of additional material is likely to move this case forward or assist BTR.

Balanced against the limited potential relevance of further production is the cost to produce, which is substantial. As explained above, the Public Entities expect it to take at least 300 hours to complete their review and production, with a hard cost (in addition to lost time) of at least \$30,000. In addition to those hard costs, the production will divert the resources of the Public Entities from their important public missions in the mere hope of discovering marginally relevant documents that might help BTR incrementally improve the inadequate record it has presented in support of its petitions. That cost and burden cannot be justified in light of the at-most marginal value of further document production. *See id.*

IV. CONCLUSION

In response to BTR's discovery requests, the Public Entities have made substantial document productions totaling tens of thousands of pages at a cost of tens of thousands dollars and hundreds of hours. King County and Sound Transit have not had meaningful communications with potential shippers concerning freight demand; the few documents that Kirkland has related to that topic were produced in the summer. The remaining documents in the Public Entities' discovery databases and files are not germane to the material issues in these proceedings. There is no basis to require the Public Entities to expend scarce resources reviewing these materials. Accordingly, the Board should enter a protective order that the Public

Entities need not produce any further documents in response to BTR's June 27, 2013, Requests for Production.

Respectfully submitted,



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Counsel for King County, Washington and
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Dated: November 4, 2013

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the MOTION OF KING COUNTY, WASHINGTON AND CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND THE CITY OF KIRKLAND FOR PROTECTIVE ORDER TO END FURTHER DOCUMENT PRODUCTION TO BALLARD TERMINAL RAILROAD COMPANY, L.L.C. upon the following parties of record by email and by first class U.S. mail, postage prepaid and properly addressed:

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Dated this 4th day of November 2013

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**THE CITY OF KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD TERMINAL RAILROAD COMPANY, LLC'S
FIRST REQUESTS FOR PRODUCTION**

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Dated: July 22, 2013

KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD'S FIRST REQUESTS FOR PRODUCTION - 1

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TO: Ballard Terminal Railroad Company, LLC ("Ballard"), its counsel of record, and counsel of record for all other parties to these proceedings.

The City of Kirkland, Washington ("Kirkland") hereby submits its Objections and Answers to Ballard's First Requests for Production ("Request for Production" or "RFP").

GENERAL RESPONSES AND OBJECTIONS

The following General Responses and Objections apply to Kirkland's Answers to Ballard's Requests for Production and shall have the same effect as if set forth in each Answer to each individual Request for Production. The assertion of the same, similar, or additional Objections in response to a specific Request for Production below does not waive or modify any of these General Responses and Objections.

1. Kirkland objects to these Requests for Production to the extent that they call for the disclosure of information protected by the attorney-client privilege, common-interest privilege, or other privilege and/or the right of privacy.

2. Kirkland objects to these Requests for Production to the extent that they call for the disclosure of information protected by the attorney work-product doctrine.

3. Kirkland objects to these Requests for Production to the extent that they impose any obligations on Kirkland beyond those permitted under the Code of Federal Regulations and the United States Code.

4. Kirkland objects to these Requests for Production to the extent that they call for information that neither is relevant to the subject matter of the pending proceedings, nor appears reasonably calculated to lead to the discovery of admissible evidence.

5. Kirkland objects to these Requests for Production to the extent that they are

unduly burdensome and the time and effort required to attempt to compile all responsive information or documents outweighs the potential discoverability or probative value thereof.

6. Kirkland objects to these Requests for Production to the extent that they are designed to cause undue annoyance, harassment, or oppression.

7. Kirkland objects to these Requests for Production to the extent that they are overly broad with respect to scope, context, and/or time period.

8. Kirkland objects to these Requests for Production to the extent that they are vague, indefinite, or ambiguous and as such would require Kirkland to speculate as to the meaning or scope of the discovery request and potentially responsive information.

9. Notwithstanding these objections, Kirkland's responses to these Requests for Production are based upon a diligent search by Kirkland and its counsel. Discovery and other investigation and research concerning these proceedings are continuing. Kirkland, therefore, reserves the right to amend or supplement its responses in light of subsequently discovered evidence.

OBJECTIONS AND RESONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Produce all documents and communications identified in your answers to the foregoing Interrogatories.

RESPONSE:

Kirkland objects to RFP No. 1 to the extent it calls for the disclosure of privileged attorney-client communications and material protected by the work-product doctrine. Kirkland also objects to RFP No. 1 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Without waiving any objection, Kirkland agrees to produce documents that are

KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD'S FIRST REQUESTS FOR PRODUCTION - 3

responsive to RFP No. 1, with the exception of communications between counsel for Kirkland and in-house counsel for CalPortland Company. See Kirkland's Objection and Answer to Ballard's Interrogatory No. 2.

REQUEST NO. 2:

Produce all documents and communications between Kirkland and any potential shipper or developer relating to the Line.

RESPONSE:

Kirkland objects to RFP No. 2 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 2.

REQUEST NO. 3:

Produce all documents and communications relating to trail construction cost estimates, studies, and plans along the Line.

RESPONSE:

Kirkland objects to RFP No. 3 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland further objects to RFP No. 3 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 3. Kirkland also directs Ballard's attention to documents publicly available on Kirkland's website (www.kirklandwa.gov).

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REQUEST NO. 4:

Produce all communications and documents exchanged between Kirkland and Google, Inc., relating to plans for a corridor trail along the Line.

RESPONSE:

Kirkland objects to RFP No. 4 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland also objects to RFP No. 4 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 4.

REQUEST NO. 5:

Produce all document and communications relating to other uses and economic benefits, including but not limited to freight rail, of the Line.

RESPONSE:

RFP No. 5 is incomprehensible. To the extent it solicits any identifiable class of documents, Kirkland objects that RFP No. 5 is vague, indefinite, ambiguous, overly broad, and unduly burdensome.

REQUEST NO. 6:

Produce all documents and communications exchanged between Kirkland and King County relating to the Line or the Eastside Rail Corridor.

RESPONSE:

Kirkland objects to RFP No. 6 to the extent it calls for the disclosure of privileged common-interest communications and material protected by the work-product doctrine.

KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD'S FIRST REQUESTS FOR PRODUCTION - 5

Kirkland also objects to RFP No. 6 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland further objects to RFP No. 6 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 6, with the exception of communications between counsel for Kirkland and counsel for King County regarding these proceedings and Ballard's related, collateral federal court action against Kirkland.

REQUEST NO. 7:

Produce all documents and communications exchanged between Kirkland and the Port of Seattle relating to the Line or the Eastside Rail Corridor.

RESPONSE:

Kirkland objects to RFP No. 7 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland further objects to RFP No. 7 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 7.

REQUEST NO. 8:

Produce all documents and communications exchanged between Kirkland and Sound Transit relating to the Line or the Eastside Rail Corridor.

RESPONSE:

Kirkland objects to RFP No. 8 to the extent it calls for the disclosure of privileged common-interest communications and material protected by the work-product doctrine.

KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD'S FIRST REQUESTS FOR PRODUCTION - 6

Kirkland also objects to RFP No. 8 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland further objects to RFP No. 8 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 8, with the exception of communications between counsel for Kirkland and counsel for Sound Transit regarding these proceedings and Ballard's related, collateral federal court action against Kirkland.

REQUEST NO. 9:

Produce all documents and communications, both internal and external, relating to the Urban Land Institute study of the Line, including but not limited to study direction and objectives.

RESPONSE:

Kirkland objects to RFP No. 9 as vague, indefinite, ambiguous, overly broad, and unduly burdensome. Kirkland further objects to RFP No. 9 as requesting materials that are neither relevant to the subject matter of the pending proceedings nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 9.

REQUEST NO. 10:

Produce all documents and communications provided to Kirkland's city council, commissions, committees, and boards which relate to Eastside's potential freight, excursion, and trail operations/uses of the Line.

RESPONSE:

Kirkland objects to RFP No. 10 as vague, indefinite, ambiguous, overly broad, and

unduly burdensome. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 10.

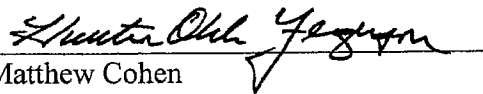
REQUEST NO. 11:

Produce all emails between Kurt Triplett and Douglas Engle from January 1, 2011, to the present.

RESPONSE:

Kirkland objects to RFP No. 11 as overly broad, and unduly burdensome. Without waiving any objection, Kirkland agrees to produce documents that are responsive to RFP No. 11.

Respectfully submitted,


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Counsel for the City of Kirkland, Washington

Dated: July 22, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing motion upon the following parties of record in the above-captioned proceedings via e-mail and by first class mail with postage prepaid and properly addressed:

Pete Ramels
Andrew Marcuse
Office of the Prosecuting Attorney—Civil
Division
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104
Attorneys for King County

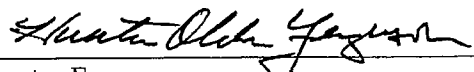
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Hunter Ferguson

Counsel for the City of Kirkland, Washington

Dated this 22nd day of July 2013

KIRKLAND'S OBJECTIONS AND ANSWERS TO
BALLARD'S FIRST REQUESTS FOR PRODUCTION - 9

EXHIBIT 2

**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**

**KING COUNTY, WASHINGTON'S RESPONSES TO BALLARD TERMINAL
RAILROAD COMPANY, LLC.'S FIRST REQUESTS FOR PRODUCTION**

Communications with respect to this pleading should be addressed to:

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W. Eric Pilsk
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Counsel for King County, Washington

Dated: August 2, 2013

King County, Washington (“the County”) hereby submits its objections and answers to Ballard Terminal Railroad Company, LLC’s First Requests for Production (“Discovery Requests”).

GENERAL OBJECTIONS

Each and every one of King County’s responses to these Discovery Requests is subject to and incorporates the following general objections, as applicable. These objections are set forth here to avoid the duplication and repetition of restating them in response to each request to produce. Some general objections may be referred to in a given answer for purposes of clarity. The failure to list a particular general objection in a given answer should not be construed as a waiver of that objection.

1. The County objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney-client privilege, the common-interest privilege, or other privilege and/or the right of privacy.

2. The County objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney work-product privilege.

3. The County objects to these Discovery Requests to the extent that they impose any obligations on the County beyond those permitted under the Code of Federal Regulations and the United States Code.

4. The County objects to these Discovery Requests to the extent that they call for information that neither is relevant to the subject matter of the pending proceedings, nor appears reasonably calculated to lead to the discovery of admissible evidence. The STB has defined the central issue in these proceedings as “under what circumstances will the Board grant a carrier’s request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does

not own or have any other interest in the right of way?” 78 Fed. Reg. 24465 at 24466. As the Board has recognized in its August 1, 2013 decision denying Ballard’s Request for Injunction, the key issues in this case relate to Ballard’s financial capability and the existence of bona fide shippers. Virtually all of the County’s records and documents regarding the Eastside Rail Corridor relate to King County’s long-term efforts to railbank the Corridor and bring it into public ownership, or to coordinate potential future uses with other jurisdictions and public entities. Generally, the County’s documents and communications address typical due-diligence issues related to a major real estate transaction, including title research, potential finance mechanisms and tools, budget matters, iterative exchanges and revisions of draft transactional documents, and the day-to-day minutiae of coordinating across government agencies and negotiating with other public and private parties. Other than the County documents already filed with the STB in connection with these petitions, or generated by the County in connection with these petitions and protected by the attorney-client privilege, the work-product doctrine, or the common-interest privilege, the County’s documents or communications are thus unlikely to have any bearing on the issues presented by Ballard’s petitions.

5. The County objects to these Discovery Requests to the extent that they are unduly burdensome and the time and effort required to attempt to compile all responsive information or documents outweighs the potential discoverability or probative value thereof. King County is a general-purpose local government comprised of three independent branches, numerous elected and appointed offices, and various agencies ranging from law enforcement to public health to tax collection to land-use permitting to regional wastewater treatment to parks and recreation and beyond. King County government employs over twelve thousand people. It is impossible to know whether one or more individual King County employees may have documents or

communications potentially responsive to these Requests. It is overbroad and unreasonable for King County to inquire of each and every employee whether they may have responsive documents or communications.

Further, since 2005, dozens of people spread over ten separate departments or divisions and organized into at least twenty distinct functional units have been involved in King County's ongoing efforts to acquire and develop the Eastside Rail Corridor. Electronic documents they may have generated or collected are stored in various formats and file types over at least ten distinct information technology (IT) systems. Paper documents may be stored or archived in any number of locations. In the aggregate such electronic and paper documents and communications relating to King County's efforts to acquire and develop the Eastside Rail Corridor likely run to tens of thousands of pages. Furthermore, a number of individuals may have retired or otherwise left King County's employment, and merely locating their documents or records and reviewing them for relevance would take a significant amount of effort across a large portion of King County's administration. In short, it is unduly burdensome for King County to search for potentially responsive documents and communications across all of these departments, divisions, functional units, and IT systems and to review the enormous universe of potentially responsive documents for privileged or otherwise unresponsive records.

Accordingly, King County identified a subset of current King County-employed people who could potentially have information responsive to these Discovery Requests. The list of people identified is attached as Exhibit B to these responses.

6. The County objects to these Discovery Requests to the extent that they are designed to cause undue annoyance, harassment, or oppression.

7. The County objects to these Discovery Requests to the extent that they are overly broad with respect to scope, context, and/or time period.

8. The County objects to these Discovery Requests to the extent that they are vague, indefinite, or ambiguous and as such would require the County to speculate as to the meaning or scope of the discovery request and potentially responsive information.

9. Notwithstanding these objections, the County's responses to these Discovery Requests are based upon a diligent search by the County and its counsel. Discovery and other investigation and research concerning these proceedings are continuing. The County, therefore, reserves the right to amend or supplement its responses at any time in light of deposition testimony, further investigation, research, or analysis, to the extent permitted or required by law, and to introduce any and all evidence in these proceedings.

RESPONSES TO REQUESTS FOR PRODUCTION

Subject to, and without waiving, the foregoing objections, King County responds to Ballard's First Requests for Production as follows:

REQUEST NO. 1:

Produce all documents and communications identified in your answers to the foregoing Interrogatories.

RESPONSE:

In addition to the general objections set forth above, King County specifically objects to Request for Production (RFP) #1 to the extent it calls for the disclosure of privileged attorney-client communications, or material protected by the work-product doctrine, or communications or material protected by the common-interest privilege, or any of them. Without waiving this

objection, or the General Objections, above, King County agrees to produce documents that are responsive to RFP #1. King County also directs Ballard's attention to the King County Council ordinances, motions, and supporting documents publicly available via the King County Council's legislation search website

(<http://mkcclegisearch.kingcounty.gov/custom/king/legislation.htm>). An initial list identifying ordinances and motions relating to the Eastside Rail Corridor is attached hereto as Exhibit A. King County will not separately produce these documents because they are available on the above-referenced website. King County will not produce communications or documents relating to the May 28, 2013, deposition of Michael Skrivan and related document production by CalPortland Company or the communications and documents relating to the May 16, 2013, deposition of Mr. Bobby Wolford, all of which communications and documents are already available to Ballard.

REQUEST NO. 2:

Produce all documents and communications between King County and any potential shipper or developer relating to the Line.

RESPONSE:

In addition to the general objections set forth above, King County objects to this RFP #2 because it calls for King County to speculate as to what person or entity may be or have been a "potential shipper or developer." Any business or person dealing in goods or materials is a potential shipper. Any business or person owning land is a potential developer. It is impossible for King County to know whether any of its myriad employees might have communicated with someone in this open-ended class of persons and entities regarding the matters identified in this RFP.

Subject to and without waiving the foregoing general and specific objections, King County will produce any responsive documents and communications in the possession, custody, or control of the people identified in Exhibit B and between (a) King County and persons or entities that are or were interested either in sending or receiving goods or materials via freight rail service on the Line, or (b) between King County and for-profit real estate development firms and relating to the Line, with the exception of communications or documents relating to the May 28, 2013, deposition of Michael Skrivan and related document production by CalPortland Company or the communications and documents relating to the May 16, 2013, deposition of Mr. Bobby Wolford, all of which communications and documents are already available to Ballard.

REQUEST NO. 3:

Produce all documents, maps, and communications relating to trail construction cost estimates and studies along the Line.

RESPONSE:

In addition to the general objections set forth above, King County objects to this RFP #3 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Trail construction cost estimates and studies cannot possibly have any relevance to the subject matter of the above-captioned proceedings, which relate to Ballard's request to reactivate the Line for freight rail and to acquire King County's reactivation rights. According to the STB, the central issue presented by Ballard's petitions is "under what circumstances will the Board grant a carrier's request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does not own or have any other interest in the right of way?" 78 Fed. Reg. 24465 at 24466. Trail construction cost estimates and studies have no bearing on this matter.

King County further objects to this request because it calls for King County to speculate and engage in conjecture as to what constitutes a “trail” for purposes of the request, and which “trail” construction cost estimates or studies pertain to “trail” construction “along” the Line. The dictionary definition of the term “trail” is broad enough to encompass anything from a dirt footpath to a sidewalk to a designated map route on a major road system. Given that the Line runs from Woodinville through Kirkland and Bellevue, and could potentially connect with any of the myriad existing dedicated bicycle- or footpaths or related nonmotorized transportation facilities (e.g. on-road bike lanes, designated biking routes, sidewalks, etc.), there is potentially an enormous number of “trails” that could be construed as being “along” the Line yet which are not in any way relevant to the Line itself or to these STB proceedings.

Subject to and without waiving the foregoing general and specific objections, King County will produce documents, maps, and communications in the possession, custody, or control of the people identified in Exhibit B and relating to construction cost estimates and studies for the improvement of the real property that makes up the Line in order to utilize that property for nonmotorized transportation and recreational purposes such as biking, walking, and jogging.

REQUEST NO. 4:

Produce all documents, including but not limited to meeting notes, pertaining to the Eastside Rail Corridor Regional Advisory Council’s Technical Committees and meetings of the ERC Regional Advisory Council.

RESPONSE:

In addition to the general objections set forth above, King County objects to this RFP #4 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information.

According to the STB, the central issue presented by Ballard's petitions is "under what circumstances will the Board grant a carrier's request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does not own or have any other interest in the right of way?" 78 Fed. Reg. 24465 at 24466. The ongoing Eastside Rail Corridor Regional Advisory Council process can have no bearing on the issue presented by Ballard's petitions. Subject to and without waiving the foregoing general and specific objections, King County agrees to produce documents in the possession, custody, or control of the people identified in Exhibit B and responsive to RFP #4. King County also directs Ballard's attention to documents publicly available on the Eastside Rail Corridor Regional Advisory Council's website (<http://www.kingcounty.gov/operations/erc-advisory-council.aspx>). King County will not separately produce these documents because they are available on the above-referenced website.

REQUEST NO. 5:

Produce all documents and communications relating to other uses and economic benefits, including but not limited to freight rail, of the Line.

RESPONSE:

In addition to the general objections set forth above, King County objects to this RFP #5 because it calls for King County to speculate and engage in conjecture as to the meaning of the undefined terms "other uses" and "economic benefits." King County also objects to this RFP #5 as vague and overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Taken literally this request could encompass almost the entire potential universe of documents that King County may possess in connection with the Eastside Rail Corridor. It is unduly burdensome to require King County to amass all of those documents in one location and review them for privilege. Moreover, discussions related to potential "other" uses of the Line are

neither relevant to the issues in these Petitions, nor likely to lead to the discovery of admissible evidence. Further, many of the documents responsive to this RFP # 5 are also responsive to other of these RFPs, including specifically RFP #2 and RFP #4.

Subject to and without waiving the foregoing general and specific objections, and in addition to documents produced in response to RFP #2 and RFP #4, King County will produce responsive documents and communications in the possession, custody, or control of the people identified in Exhibit B and evidencing a final agreement to use the Line for purposes other than a recreational trail, dating from and after December 18, 2009, the date on which King County initially acquired an interest in the Line and became the Interim Trail Sponsor for the Line. Documents and communications prior to that date are superseded by the final transactional documents executed as of that date.

REQUEST NO. 6:

Produce all documents and communications exchanged between King County and Kirkland relating to the Line or the Eastside Rail Corridor.

RESPONSE:

In addition to the general objections set forth above, King County specifically objects to this RFP #6 to the extent it calls for the disclosure of material protected by the attorney-client privilege, the work-product doctrine, or the common-interest privilege. King County also objects to this RFP #6 as vague and overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Subject to and without waiving the foregoing general and specific objections, King County will produce documents responsive to RFP #6 in the possession, custody, or control of the people identified in Exhibit B and dated after April 13, 2012, the date on which Kirkland initially acquired its interest in the line, with the exception of

communications between counsel for the City of Kirkland and counsel for King County regarding these proceedings and Ballard's related federal court action against the City of Kirkland.

REQUEST NO. 7:

Produce all documents, maps, and communications exchanged between King County and the Port of Seattle relating to the Line or the Eastside Rail Corridor.

RESPONSE:

In addition to the general objections set forth above, King County objects to this RFP #7 as vague and overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Numerous persons employed by King County and the Port of Seattle have communicated on and off for years regarding a wide variety of issues generally related to the Eastside Rail Corridor from BNSF. It is overbroad and unduly burdensome to require the County to collect all of those communications from all of those persons in one location and review them for privilege. The vast majority of such documents are irrelevant to the merits of Ballard's petitions in the above-captioned matters, and thus unlikely to lead to the discovery of material relevant to those proceedings. Furthermore, those communications culminated in the November 2009 MOU between the Port and the County and other parties, the December 2009 BNSF-Port-County transaction, and the 2013 Port-County transaction. The final, public documents for those transactions constitute the entire understanding between the Port and King County regarding the Line and the Eastside Rail Corridor. Prior documents and communications are superseded by the final transactional documents between the Port and the County.

Subject to and without waiving the foregoing general and specific objections, King County will produce the November 2009 MOU, the December 2009 BNSF-Port-County transactional documents, and the February 2013 Port-County transactional documents.

REQUEST NO. 8:

Produce all documents, maps, and communications exchanged between King County and Sound Transit relating to the Line or the Eastside Rail Corridor.

RESPONSE:

In addition to the general objections set forth above, King County specifically objects to this RFP #8 to the extent it calls for the disclosure of material protected by the attorney-client privilege, work-product doctrine, or the common-interest privilege. King County further objects to this RFP #8 as vague and overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Numerous persons with King County and Sound Transit have communicated on and off for years regarding a wide variety of issues generally related to the Eastside Rail Corridor. It is overbroad and unduly burdensome to require the County to collect all of those communications from all of those persons in one location and review them for privilege. The vast majority of such documents are irrelevant to the merits of Ballard's petitions in the above-captioned matters, for the reasons set forth above, and thus unlikely to lead to the discovery of material relevant to those proceedings. Furthermore, many of those communications culminated in the final terms and conditions set forth in a 2009 MOU between King County, Sound Transit, and other parties, in Sound Transit's April, 2012, deed for a high capacity transportation easement over the Eastside Rail Corridor, and in Sound Transit's April, 2012, deed for a portion of the Line in the City of Bellevue. The 2009 MOU and Sound Transit's 2012 deeds constitute the entire understanding between Sound Transit and King County

regarding the Line and the Eastside Rail Corridor. Prior documents and communications are superseded by those final transactional documents.

Subject to and without waiving the foregoing general and specific objections, King County will produce documents responsive to RFP #8 in the possession, custody, or control of the people identified in Exhibit B and dated from and after April 11, 2012, the date on which Sound Transit initially acquired an interest in the Line, with the exception of communications between counsel for King County and counsel for Sound Transit regarding these proceedings and Ballard's related federal court action against the City of Kirkland.

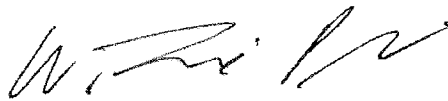
REQUEST NO. 9:

Produce all documents pertaining to freight shipping or reactivation of the Line.

RESPONSE:

In addition to the general objections set forth above, King County specifically objects to this RFP #9 to the extent it calls for the disclosure of material protected by the attorney-client privilege, the work-product doctrine, or the common-interest privilege. King County further objects to this RFP #9 because it calls for King County to speculate as to which documents "pertain" to freight shipping or reactivation of the Line, as well as what is meant by "freight shipping." Ostensibly any documents that remotely relate to the Line may "pertain" to "freight shipping" or reactivation since the Line was established as a freight railroad more than a century ago and was approved for railbanking in 2008. King County also objects to this RFP #9 as vague and overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information.

Subject to and without waiving the foregoing general and specific objections, King County will produce any documents and communications in the possession, custody, or control of the people identified in Exhibit B and dated from and after December 18, 2009, on which date King County first acquired an interest in the Line, and relating to the end of railbanking on the Line or to the restoration of freight rail service on the Line upon the end of railbanking, with the exception of documents (a) exchanged by the parties in connection with or pertaining to these petitions or (b) in connection with or pertaining to the petitions filed by GNP Rly, Inc., all of which documents are already available to Ballard.



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(202) 955-5600
Counsel for King County, Washington

Dated: August 2, 2013

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of KING COUNTY, WASHINGTON'S RESPONSES TO BALLARD TERMINAL RAILROAD COMPANY, LLC.'S FIRST INTERROGATORIES AND REQUESTS TO ADMIT upon the following parties of record by email and by first class mail with postage prepaid and properly addressed:

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Attorneys for Ballard Terminal Railway LLC

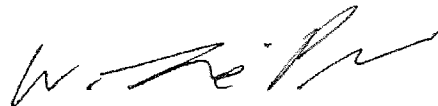
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Attorneys for Port of Seattle



W. Eric Pilsch
Kaplan Kirsch & Rockwell, LLC
Counsel for King County, Washington

Dated this 2nd day of August, 2013

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

STB Finance Docket No. 35731

**KING COUNTY, WASHINGTON'S RESPONSES TO BALLARD TERMINAL
RAILROAD COMPANY, LLC.'S FIRST REQUESTS FOR PRODUCTION**

EXHIBIT A

Initial List of King County Ordinances and Motions Relating to the Eastside Rail Corridor

Initial List of King County Ordinances and Motions Relating to the Eastside Rail Corridor

Date	Number	Type	Description
7/8/13	17619	Ordinance	Budget expenditure restriction ER 4, page 24
6/4/13	13902	Motion	Transmitting dual use plan for ERC
2/11/13	13834	Motion	Confirming appointments to Eastside Rail Corridor regional advisory council.
1/15/13	13805	Motion	Organization of Council: vice-chair of regional coordination presides over COW re: ERC
12/11/12	13801	Motion	ECR as corridor of regional significance, establishing regional advisory council to initiate regional planning process
12/11/12	13802	Motion	Enter into contract for regional planning process facilitation services
12/11/12	17500	Ordinance	Authorize supplemental appropriations
12/11/12	17501	Ordinance	Authorize entering into a reciprocal coordination and cooperation covenant agreement with PSE
12/11/12	17502	Ordinance	Authorize intergovernmental land transfer agreement with Redmond
12/11/12	17503	Ordinance	Authorize acquiring portions of ERC from Port of Seattle
12/15/09	16738	Ordinance	Authorize negotiation for additional property interests from BNSF in ERC per MOU re: acquisition of Woodinville subdivision
5/6/08	16084	Ordinance	Authorize participation with Port of Seattle in acquisition BNSF ERC
12/19/07	15995	Ordinance	Approving MOU with Port of Seattle and BNSF re: acquisition of Woodinville Subdivision
7/11/05	15233	Ordinance	Authorizing the BNSF Rail Line acquisition project for the preservation of transportation right-of-way in eastside King County

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

STB Finance Docket No. 35731

**KING COUNTY, WASHINGTON'S RESPONSES TO BALLARD TERMINAL
RAILROAD COMPANY, LLC.'S FIRST REQUESTS FOR PRODUCTION**

EXHIBIT B

**Initial List of Current King County Employees Identified as Possibly Having Documents or
Communications Potentially Responsive to Ballard's Requests for Production**

Initial List of Current King County Employees Identified as Possibly Having Documents or Communications Potentially Responsive to Ballard's Requests for Production

Name	Title	Agency
Atherton, Emiko	Legislative Aide	King County Council
Bourguignon, Mary	Senior Legislative Analyst	King County Council
Braddock, Shannon	Legislative Aide	King County Council
Brewer, Jim	Legal Counsel	King County Council
Christopher, Rob	Legislative Aide	King County Council
Cusack, Rebecha	Director of Strategic Policy	King County Council
Dembowski, Rob	Councilmember	King County Council
Domingo, Cindy	Legislative Aide	King County Council
Dunn, Reagan	Councilmember	King County Council
Evans, Elizabeth	Legislative Aide	King County Council
Goff, Tom	Legislative Aide	King County Council
Gossett, Larry	Councilmember	King County Council
Hague, Jane	Councilmember	King County Council
Huddleston, Michael	Municipal Relations Manager	King County Council
Jensen, Christine	Legislative Aide	King County Council
Kinno, Erika	Legislative Aide	King County Council
Lambert, Kathy	Councilmember	King County Council
McClure, AJ	Legislative Aide	King County Council
McDermott, Joe	Councilmember	King County Council
Noris, Anne	Clerk of the Council	King County Council
Nuber, Kimberly	Legislative Aide	King County Council
Patterson, Julia	Councilmember	King County Council
Phillips, Larry	Councilmember	King County Council
Resha, John	Principal Legislative Analyst	King County Council
Swift, BrynDel	Legislative Aide	King County Council
Vadino, Bill	Legislative Aide	King County Council
Von Reichbauer, Pete	Councilmember	King County Council
Zoppi, Leah	Legislative Aide	King County Council
Auld, Gina	Capital Projects Manager	Facilities Management Division (FMD)
Bender, Sid	Budget Manager	Performance, Strategy and Budget
Bromley, Verna	Deputy Prosecuting Attorney	Prosecuting Attorney's Office
Brown, Kathy	Division Director	FMD, Department of Executive Services (DES)
Brown, Kevin	Division Director	Parks and Recreation Division, King County Department of Natural Resources and Parks

Initial List of Current King County Employees Identified as Possibly Having Documents or Communications Potentially Responsive to Ballard's Requests for Production

		(KCDNRP)
Burns, Bob	Deputy Department Director	KCDNRP
Carlson, Diane	Directory of Regional Initiatives	Office of the King County Executive
Cleveland, Grover	Business Development Manager	Director's Office, KCDNRP
Constantine, Dow	King County Executive	Office of the King County Executive
Davies, Marc	Paralegal	Prosecuting Attorney's Office
Davis, Tricia	Budget Manager	Performance, Strategy and Budget Division, Executive Department
Dively, Dwight	Division Director	Performance, Strategy and Budget Division, Executive Department
Engstrom, Kurt	Real Property Agent	Water and Land Resources Division (WLRD), KCDNRP
Forbes, Tesia	Administrator	Prevention Division, Public Health Department
Hills, Jennifer	Risk Manager	Risk Management Office, Department of Executive Services (DES)
Holecek, Linda	Property Agent Supervisor	WLRD, KCDNRP
Jackson, Robert	Real Property Agent	WLRD, KCDNRP
Jarrett, Fred	Deputy County Executive	Office of the King County Executive
Lehman, Jennifer	Budget/Finance Officer	Parks and Recreation Division, KCDNRP
Marcuse, Andrew	Deputy Prosecuting Attorney	Prosecuting Attorney's Office
Neely, Jim	Unit Supervisor	Solid Waste Division, KCDNRP
Nunnenkamp, Robert	Property Agent	Parks and Recreation Division, KCDNRP
Nygard, Kathy	Confidential Secretary	Parks and Recreation Division, KCDNRP
Ramels, Pete	Deputy Prosecuting Attorney	Prosecuting Attorney's Office
Rich, Jason	Capital Projects Manager	Parks and Recreation Division, KCDNRP
Salyer, Steve	Section Manager	Real Estate Services Section, FMD, DES
Sargent, Winnie	Insurance and Contracts Review Manager	Risk Management Office, DES
St. John, David	Government Relations Administrator	Director's Office, KCDNRP
Sullivan, Linda	Capital Projects Managing	Wastewater Treatment Division,

Initial List of Current King County Employees Identified as Possibly Having Documents or Communications Potentially Responsive to Ballard's Requests for Production

	Supervisor	KCDNRP
Terry, Kathryn	Assistant Division Director	Parks & Recreation Division, KCDNRP
Thompson, Bob	Project Program Manager	Real Estate Services Section, FMD, DES
Townsend, Chris	Project Program Manager	Director's Office, FMD, DES
True, Christie	Department Director	KCDNRP
Wilbert, Bill	Environmental Programs Managing Supervisor	Wastewater Treatment Division, KCDNRP
Williams, Doug	Property Supervisor	Real Estate Services Section, FMD, DES
Woodworth, Don	Deputy Prosecuting Attorney	Prosecuting Attorney's Office
Yang, Sung	King County Executive Chief of Staff	Office of the King County Executive

EXHIBIT 3

**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**

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY’S RESPONSES TO
BALLARD TERMINAL RAILROAD COMPANY, LLC.’S FIRST REQUEST FOR
PRODUCTION**

Communications with respect to this pleading should be addressed to:

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E-mail: afultz@kaplankirsch.com

Counsel for Central Puget Sound Regional
Transit Authority

Dated: August 2, 2013

Central Puget Sound Regional Transit Authority (“Sound Transit”) hereby submits its objections and answers to Ballard Terminal Railroad Company, LLC’s First Requests for Production (“Discovery Requests”).

GENERAL OBJECTIONS

Each and every one of Sound Transit’s responses to these Discovery Requests is subject to and incorporates the following general objections, as applicable. These objections are set forth here to avoid the duplication and repetition of restating them in response to each request to produce. Some general objections may be referred to in a given answer for purposes of clarity. The failure to list a particular general objection in a given answer should not be construed as a waiver of that objection.

1. Sound Transit objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney-client privilege, common-interest privilege, or other privilege and/or the right of privacy.

2. Sound Transit objects to these Discovery Requests to the extent that they call for the disclosure of information protected by the attorney work-product doctrine.

3. Sound Transit objects to these Discovery Requests to the extent that they impose any obligations on Sound Transit beyond those permitted under the Code of Federal Regulations and the United States Code.

4. Sound Transit objects to these Discovery Requests to the extent that they call for information that neither is relevant to the subject matter of the pending proceedings, nor appears reasonably calculated to lead to the discovery of admissible evidence.

5. Sound Transit objects to these Discovery Requests to the extent that they are unduly burdensome and the time and effort required to attempt to compile all responsive information or documents outweighs the potential discoverability or probative value thereof.

6. Sound Transit objects to these Discovery Requests to the extent that they are designed to cause undue annoyance, harassment, or oppression.

7. Sound Transit objects to these Discovery Requests to the extent that they are overly broad with respect to scope, context, and/or time period.

8. Sound Transit objects to these Discovery Requests to the extent that they are vague, indefinite, or ambiguous and as such would require Sound Transit to speculate as to the meaning or scope of the discovery request and potentially responsive information.

9. Notwithstanding these objections, Sound Transit's responses to these Discovery Requests are based upon a diligent search by Sound Transit and its counsel. Discovery and other investigation and research concerning these proceedings are continuing. Sound Transit, therefore, reserves the right to amend or supplement its responses at any time in light of deposition testimony, further investigation, research, or analysis, to the extent permitted or required by law, and to introduce any and all evidence in these proceedings.

RESPONSES TO REQUESTS FOR PRODUCTION

Subject to, and without waiving, the foregoing objections, Sound Transit responds to Ballard's First Requests for Production as follows:

Request No. 1:

Produce all documents and communications identified in your answers to the foregoing Interrogatories.

RESPONSE:

Sound Transit objects to Request No. 1 to the extent it calls for the disclosure of privileged attorney-client communications, or material protected by the work-product doctrine, or communications or material protected by the common-interest privilege, or any of them. Subject to and without waiving the foregoing general and specific objections, Sound Transit will produce any responsive documents in its possession, custody, or control.

Request No. 2:

Produce all documents and communications between Sound Transit and any potential shipper or developer relating to the Line.

RESPONSE:

Sound Transit objects to the phrase “potential shipper and developer” as vague and overly broad. The phrase “potential shipper and developer” encompasses any entity that might at some point in the future have the potential to ship goods on the Line or any entity that might at some point in the future seek to develop property that has some connection to the Line. That phrase, therefore, encompasses almost every commercial entity on the east side of Lake Washington.

Subject to and without waiving the foregoing general and specific objections, Sound Transit will produce responsive documents and communications between (a) Sound Transit and persons or entities that are or were interested either in sending or receiving goods or materials via freight rail service on the Line, or (b) between Sound Transit and for-profit real estate

development firms and relating to the Line, with the exception of documents and communications related to the depositions of Mr. Michael Skrivan and Mr. Bobby Wolford in this matter, all of which communications and documents are already available to Ballard.

Request No. 3:

Produce all documents and communications relating to the Line, the ERC, or the reactivation of freight shipping on the Line between Sound Transit and the following entities: (a) Port of Seattle; (b) Kirkland; (c) King County.

RESPONSE:

Sound Transit specifically objects to Request No. 3 to the extent it calls for the disclosure of material protected by the work-product doctrine, or common-interest privilege. Sound Transit further objects to Request No. 3 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. In particular, Sound Transit objects to the blanket request for documents relating to the Line or the ERC. Sound Transit is planning for the construction of a light rail commuter line on portions of the ERC and the Line. Because of overlapping ownership and interests between Sound Transit, King County, the Port of Seattle, and the City of Kirkland, there are countless potentially responsive documents that may contain some reference to the Line of the ERC that are not relevant to the issues in these proceedings or likely to lead to the discovery of admissible evidence. It would be unduly burdensome for Sound Transit to review document from the great number of employees and contractors to identify every reference to the Line or the ERC.

Subject to and without waiving the foregoing general and specific objections, Sound Transit will produce responsive documents in its possession, custody, and control.

Request No. 4:

Produce all documents, including but not limited to plans, studies, and maps, pertaining to the Link light rail system north of Bellevue and any use of the Eastside Rail Corridor.

RESPONSE:

Sound Transit objects to this Request No. 4 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Subject to and without waiving the foregoing general and specific objections, Sound Transit will produce responsive documents in its possession, custody, and control.

Request No. 5:

Produce all documents relating to the East Link Bellevue maintenance facility and any property located or adjacent to the Eastside Rail Corridor.

RESPONSE:

Sound Transit objects to this Request No. 5 as overbroad, unduly burdensome, and not reasonably calculated to lead to relevant information. Subject to and without waiving the foregoing general and specific objections, Sound Transit will produce responsive documents in its possession, custody, and control.

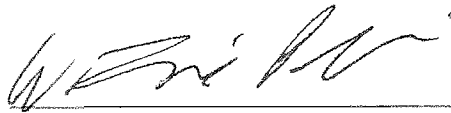
Request No. 6:

Produce all documents, maps, and studies which relate to the SR-202 bridge over the Sammamish River and communications with the City of Woodinville pertaining to the bridge.

RESPONSE:

Sound Transit objects to this Request No. 6 as requesting material not relevant to the issues in these proceedings, nor likely to lead to the discovery of admissible evidence. Subject to

and without waiving the foregoing general and specific objections, Sound Transit will produce responsive documents in its possession, custody, and control.



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(202) 955-5600
Counsel for Central Puget Sound Regional Transit
Authority

Dated: August 2, 2013

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY'S RESPONSES TO BALLARD TERMINAL RAILROAD COMPANY, LLC.'S FIRST REQUEST FOR PRODUCTION upon the following parties of record by email and by first class mail with postage prepaid and properly addressed:

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Authority

Dated this 2nd day of August, 2013