

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

**THE REGIONAL PARTIES' REPLY TO
BTR AND ECR'S MOTION FOR PROTECTIVE ORDER
AND REQUEST FOR SUBPOENA TO KATHY COX**

Communications with respect to this pleading should be addressed to:

Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Fax: (206) 386-7500
Email: mcohen@stoel.com
Email: hoferguson@stoel.com

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, D.C. 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: epilsk@kaplankirsch.com
E-mail: afultz@kaplankirsch.com

Counsel for City of Kirkland, Washington

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

Dated: January 28, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

STB Finance Docket No. 35731

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

**THE REGIONAL PARTIES’ REPLY TO
BTR AND ECR’S MOTION FOR PROTECTIVE ORDER
AND REQUEST FOR SUBPOENA TO KATHY COX**

The Regional Parties reply to BTR and ECR’s motion for a protective order as follows:

1. In its Reply of December 6, 2013, BTR presented new allegations about shippers and financial support that were not included in BTR’s Petition of April 3, 2013.
2. Instead of rejecting these improperly submitted materials and inviting BTR to file a new petition, the Board, on January 15, 2014, accepted BTR’s Reply and gave the Regional Parties a short interval (until February 14) to take discovery about BTR’s new allegations.
3. The Regional Parties immediately sought discovery.
4. In the discovery orders previously entered in this matter (Orders of May 17 and Aug. 22, 2013) the Board recognized that discovery of a nonparty was warranted where the nonparty had expressed an interest in BTR’s petition and BTR’s petition rested on allegations about the nonparty. The Regional Parties’ new discovery requests to nonparties and proposed form subpoenas seek information related to the statements included in letters submitted to the

Board on behalf of these nonparties, as well as BTR's representations about their demand for rail service or willingness to provide financial support to BTR. The Regional Parties should be permitted to take discovery of nonparties consistent with earlier discovery in this matter.

5. The Regional Parties seek discovery of several nonparties that were not included in BTR's April 3 Petition – where BTR was supposed to present its case-in-chief. The Regional Parties' earlier discovery efforts were driven by the content of that April 3 filing. Their new discovery requests are driven by BTR's December 6 filing.

6. With the exception of ECR, *none of the nonparties has objected* to the Regional Parties' request for issuance of subpoenas, and some have begun to produce documents voluntarily.

7. The requests to BTR (Exhibit 1) either seek information about the new allegations in BTR's December 6 Reply or are follow-up requests for materials that the Board previously ordered BTR to produce in the discovery order of August 22, 2013, but which BTR continues to withhold. For example, the Regional Parties request BTR's 2013 financial statement, records reflecting 2013 car movements on the Freight Segment, and communications between BTR and its newly identified shippers and financial supporters such as RJB Wholesale, Inc., CT Sales, Inc., Aggregates West, Coastal Community Bank, AmericanWest Bank, and WATCO Companies, LLC.

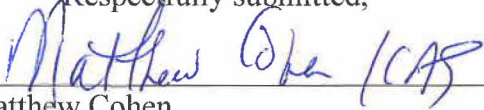
8. The Regional Parties inadvertently omitted Kathy Cox from their earlier filed motion for subpoenas, and hereby request that the Board issue the attached subpoena to Ms. Cox (Exhibit 2). Ms. Cox is believed to have information relevant to BTR's rail service plan. Doug Engle's deposition testimony (Exhibit 3) and emails produced by ECR (Exhibit 4) reveal that Ms. Cox has played an integral role in the development of BTR's rail service plan and strategy in

these proceedings. According to Mr. Engle, Ms. Cox would run the excursion train service featured prominently in BTR and ECR's plan. BTR and ECR do not deny that Ms. Cox has pertinent information. Their attempt to block the Regional Parties from taking discovery of her bolsters the Regional Parties' request to do so.

9. BTR and ECR's requests for shortened deposition time limits should be rejected. The Regional Parties have sought to schedule the non-party witnesses for short depositions, with as many as three witnesses in one day. The additional discovery will relate to matters that were not disclosed in BTR's initial petition and on which BTR affirmatively relies. Setting arbitrary time limits for completion of a deposition encourages stalling and obfuscation.

10. In conclusion, the Board has recognized, in prior discovery Orders and in the January 15 Order, that the Regional Parties are entitled to discovery to probe the bases of information presented by BTR. Despite the clear terms of the Board's Orders, BTR now attempts to avoid such discovery, apparently in the hopes of avoiding discovery of the weaknesses in its newly proffered allegations of support. In order to give effect to its January 15 Order regarding discovery, the Board should deny BTR's Motion for Protective Order and allow discovery to proceed. In order to complete discovery by the February 14 deadline, the Regional Parties respectfully request a prompt decision from the Board.

Respectfully submitted,



Matthew Cohen
Hunter Ferguson
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Fax: (206) 386-7500
Email: mcohen@stoel.com
Email: hoferguson@stoel.com

Counsel for City of Kirkland, Washington

Dated: January 28, 2014



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: epilsk@kaplankirsch.com
E-mail: afultz@kaplankirsch.com

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

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the of the foregoing “Regional Parties’ Reply to BTR and ECR’s Motion for Protective Order and Request for Subpoena to Kathy Cox” to be served upon counsel of record in this proceeding on January 28, 2014 via email and U.S. mail:



W. Eric Pilsch

Dated: January 28, 2014

EXHIBIT 1

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

**THE CITY OF KIRKLAND'S
SECOND SET OF REQUESTS FOR
PRODUCTION TO BALLARD
TERMINAL RAILROAD
COMPANY, LLC**

TO: Petitioner Ballard Terminal Railroad Company, LLC ("Ballard")

AND TO: Myles L. Tobin and Tom Montgomery, counsel for Ballard Terminal Railroad Company, LLC

Pursuant to the rules of the Surface Transportation Board ("STB") governing discovery, *see* 49 C.F.R. 1121.2 and 49 C.F.R. part 1114, subpart B, the City of Kirkland, Washington ("Kirkland"), submits the following requests for production of documents and electronically stored information (collectively, "Discovery Requests") to Petitioner Ballard Terminal Railroad Company, LLC. ("Ballard"). These discovery requests must be answered in writing and under by January 29, 2014 as requested in the motion served herewith but in no event later than 15 days after the date of service hereof, pursuant to 49 C.F.R. §§ 1114.26(a), .27(a), and .30(b). If Ballard cannot produce copies of the Documents and Electronically Stored Information (as those

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 1**

1 terms are defined below) as requested herein, Ballard is requested to produce such Documents
2 and Electronically Stored Information for inspection and copying by 9:00 a.m. on January 27,
3 2013, at the office of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington
4 98101, or at such other place as mutually agreed upon by counsel. Inspection and copying will
5 be conducted by counsel for Kirkland or its agents from time to time until completion. These
6 discovery requests, along with Kirkland's First Interrogatories and Requests for Production, are
7 continuing in nature and should be supplemented if information or material is discovered after
8 the service of your responses to these requests.

9 DEFINITIONS

10 1. Consistent with both the STB rules, 49 C.F.R. § 1114.30(a)(1) and the Federal
11 Rules of Civil Procedure, "Document and Electronically Stored Information" shall mean the
12 original, all copies, and all translations of any writing, drawings, graphs, charts, photographs,
13 phonograph records, tapes, video recordings, sound recordings, images, and other data or data
14 compilations stored in any medium (paper or other tangible format, as well as any electronic
15 format) from which information can be obtained. "Document and Electronically-Stored
16 Information" includes, for example (and not by way of limitation), email, paper documents,
17 photographs, microfilm, microfiche, computer tapes, computer printouts, spreadsheets,
18 calendars, appointment books, lists, tabulations, surveys, all other records kept by electronic,
19 photographic, or mechanical means, and things similar to the foregoing, however denominated.
20 "Document," as used herein, shall also mean any tape or audible recording, any photograph or
21 motion picture or videotape and any non-identical copy of any document as previously defined
22 (*e.g.*, any copy of a document as previously defined which differs from any other copy thereof
23 either by virtue of other material appearing thereon, such as handwriting or typewriting, or
24 otherwise). "Electronically Stored Information" includes without limitation email, voicemail,
25 documents, spreadsheets, calendars, and any other information existing in any electronic format
26 (*e.g.*, Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav).

KIRKLAND'S SECOND SET OF REQUESTS FOR PRODUCTION TO BALLARD - 2

1 2. “Communication” shall mean any information transmitted from one person or
2 entity to another person or entity and includes, but is not limited to, email or letters and any
3 attachments or enclosures thereto, oral conversations and recordings thereof, voicemail, notes
4 from oral conversations, and materials comprising a presentation, application, proposal, offer, or
5 acceptance. To “communicate” means to transmit such information, in any medium.

6 3. “Person” shall mean any natural person, firm, association, partnership, limited
7 liability partnership, proprietorship, corporation, company, limited liability company, or any
8 other business or legal entity, and includes any and all of such person’s directors, officers,
9 employees, agents, attorneys, accountants, consultants, and/or other representatives.

10 4. Each of the terms “refer to,” “relate to,” “relating to,” or “regarding” shall mean
11 and include any logical or factual connection with the matter identified or discussed. These
12 terms include all matters or things that in any way discuss, concern, are connected to, arise from,
13 reflect, summarize, evaluate, comment on, evidence, suggest, indicate, and/or otherwise tend to
14 prove or disprove the subject or object of the particular Discovery Request in which any of these
15 terms is used.

16 5. “Identify.”

17 a. “Identify,” when used in the context of identifying a natural person, means to
18 state the person’s (i) full name, (ii) present or last known business and residence addresses, (iii)
19 present or last known business, residence, and cellular telephone numbers, and (iv) present or
20 last known employer, job title or (if the job title is unknown to you) the nature or description of
21 the position occupied by the person.

22 b. “Identify,” when used in the context of identifying an entity, association,
23 partnership, or other organization (*e.g.*, a Person – as that term is defined herein – other than a
24 natural person) means to state (i) the organization’s full name, (ii) the address and telephone
25 number of its primary place of business; (iii) each address where the organization is located
26 where you have had contact with it that is or may be material to this matter; (iv) each telephone

**KIRKLAND’S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 3**

1 number you have used to contact the organization; (v) the state of the organization's formation,
2 and (vi) all known natural persons who own, operate, and/or control the organization to the best
3 of your knowledge, information, and belief and, with respect to each natural person with whom
4 either of you has had contact, the person's (A) full name, (B) present or last known business and
5 residence addresses, (C) present or last known business, residence, and cellular telephone
6 numbers, and (D) present or last known employer, job title or (if the job title is unknown to you)
7 the nature or description of the position occupied by the person.

8 c. "Identify," when used in the context of identifying a document, means to provide
9 sufficient information to permit unambiguous identification of the document, including, without
10 limitation, the document's (i) form (i.e., letter, memorandum, handwritten notes, typewritten
11 notes, report, analysis, etc.), (ii) title (if any), (iii) date, (iv) author, and (v) addressee or intended
12 recipient, if any, and (vi) current location.

13 d. "Identify," when used in the context of identifying a communication, means to
14 provide sufficient information to permit unambiguous identification of the communication,
15 including without limitation (i) the date of the communication, (ii) the manner in which the
16 communication took place (i.e., whether the communication took place through a meeting,
17 telephone conversation, letter, email, or other form of communication, the form of which you are
18 to specify), (iii) the location of the communication if the communication was in the form of a
19 telephone conversation or meeting, (iv) all parties or persons present at the time of such
20 communication or who participated, overheard, or may have overheard the communication if it
21 was oral, or who have seen or may have seen the communication if it was in writing, and (v) the
22 subject matter and substance of the communication.

23 6. "You," "your," or "Ballard" means and includes Ballard Terminal Railroad
24 Company, LLC. and all agents, related entities, owners, affiliates, representatives, attorneys and
25 any other person who, or entity that, is affiliated with, has acted, and/or is acting for or on behalf
26 of Ballard.

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 4**

1 h. No. 15 (5/1/2013 email between Doug Engle, Myles Tobin, Byron Cole, Tom
2 Montgomery, Kathy Cox, and Ernie Wilson).

3 **RESPONSE:**
4

5 **RFP NO. 24:** Consistent with the Board's Order of August 22, 2013 in this proceeding,
6 please produce a summary of your revenue, expenses, and costs for the year 2013 for rail
7 operations on the Freight Segment.

8 **RESPONSE:**
9

10 **RFP NO. 25:** Please produce all Documents and Electronically-Stored Information
11 reflecting the number of rail cars you moved for customers on the Freight Segment in 2013.

12 **RESPONSE:**
13

14 **RFP NO. 26:** Please produce all Documents and Electronically Stored Information and
15 all Communications that refer or relate to arbitration with the Port of Seattle over your
16 compliance with the O&M and License agreements for the provision of rail service, including all
17 communications with the Port over the need for or scheduling of arbitration proceedings.

18 **RESPONSE:**
19

20 **RFP NO. 27:** To the extent not previously produced, please produce all
21 Communications regarding rail service on the Line between any business you believe to be a
22 potential shipper and you or your representatives or surrogates (including but not limited to your
23 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

24 **RESPONSE:**
25
26

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 6**

1 **RFP NO. 28:** Please produce all Communications regarding rail service and financing
2 between WATCO Companies, L.L.C. and you or your representatives or surrogates (including
3 but not limited to your attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside
4 Community Rail, LLC).

5 **RESPONSE:**
6

7 **RFP NO. 29:** Please produce all Communications regarding financing of the rail
8 reactivation plan at issue in this proceeding between AmericanWest Bank and you or your
9 representatives or surrogates (including but not limited to your attorneys, Douglas Engle, Kathy
10 Cox, Ernie Wilson, and Eastside Community Rail, LLC).

11 **RESPONSE:**
12

13 **RFP NO. 30:** Please produce all Communications regarding financing of the rail
14 reactivation plan at issue in this proceeding between Coastal Community Bank and you or your
15 representatives or surrogates (including but not limited to your attorneys, Douglas Engle, Kathy
16 Cox, Ernie Wilson, and Eastside Community Rail, LLC).

17 **RESPONSE:**
18

19 **RFP NO. 34:** Please produce all Communications regarding rail service or financing of
20 Ballard operations (including excursion trains) between EB5 Capital Partners.us, LLC and you or
21 your representatives or surrogates (including but not limited to your attorneys, Douglas Engle,
22 Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

23 **RESPONSE:**
24
25
26

1 **RFP NO. 35:** Please produce all Communications regarding rail service between General
2 Mills and you or your representatives or surrogates (including but not limited to your attorneys,
3 Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

4 **RESPONSE:**
5

6 **RFP NO. 36:** Please produce all Communications regarding rail service between CT
7 Sales, Inc. and you or your representatives or surrogates (including but not limited to your
8 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).\

9 **RESPONSE:**
10

11 **RFP NO. 37:** Please produce all Communications regarding rail service between RJB
12 Wholesale, Inc. and you or your representatives or surrogates (including but not limited to your
13 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

14 **RESPONSE:**
15

16 **RFP NO. 38:** Please produce all Communications regarding rail service between
17 Aggregates West and you or your representatives or surrogates (including but not limited to your
18 attorneys, Douglas Engle, Kathy Cox, Ernie Wilson, and Eastside Community Rail, LLC).

19 **RESPONSE:**
20

21 **RFP NO. 39:** Please produce all Documents and Electronically-Stored Information and
22 Communications reflecting a demand or request for rail service on the Line not encompassed
23 within your response to another document request.

24 **RESPONSE:**
25
26

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 8**

1 **RFP NO. 40:** Please produce all Documents and Electronically-Stored Information and
2 Communications regarding any plan, study, or analysis for the construction of siding or switch
3 tracks to provide rail service on the Line.

4 **RESPONSE:**

5

6 **RFP NO. 41:** To the extent not encompassed in your response to another document
7 request, please produce all Documents and Electronically-Stored Information and
8 Communications reflecting a commitment or promise to provide financing in support of Your
9 plan to provide rail service on the Eastside Rail Corridor, including any loan agreements,
10 promissory notes, joint venture agreements, or instruments reflecting the conveyance or
11 acquisition of an equity or debt position in Ballard.

12 **RESPONSE:**

13

14 **RFP NO. 42:** Please produce all Documents and Electronically-Stored Information and
15 Communications reflecting any valuation of the property rights to the Line necessary to carry out
16 your rail service plan at issue in this proceeding.

17 **RESPONSE:**

18

19 **RFP NO. 43:** To the extent not encompassed in your response to another document
20 request, please produce all Documents and Electronically-Stored Information and
21 Communications reflecting a commitment or promise to provide financing to acquire the
22 property rights to the Line necessary to carry out your rail service plan at issue in this
23 proceeding.

24 **RESPONSE:**

25

26

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 9**

RFP NO. 44: Please produce all Documents and Electronically-Stored Information and Communications regarding the cost to build rail infrastructure and make improvements to the segment of the Line owned by the City of Kirkland necessary to carry out your rail service plan at issue in this proceeding.

RESPONSE:

RFP NO. 45: Please produce all Documents and Electronically-Stored Information and Communications reflecting a commitment or promise to build rail infrastructure and make improvements to the segment of the Line owned by the City of Kirkland necessary to carry out your rail service plan at issue in this proceeding.

RESPONSE:

DATED: January 17, 2014.

STOEL RIVES LLP

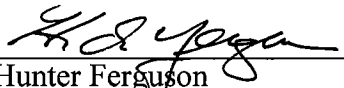
Hunter C. Ferguson
Matthew Cohen, WSBA No. 11292
mcohen@stoel.com
Hunter Ferguson, WSBA No. 41485
hoferguson@stoel.com

Attorneys for the City of Kirkland, Washington

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing DISCOVERY REQUESTS were served on
3 Counsel of Record in this proceeding by First Class Mail and Email on January 17, 2014:

4 DATED at Seattle, WA this 17th day of January 2013

5 
6 Hunter Ferguson

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 12**

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**

**SUBPOENA TO KATHY COX TO
TESTIFY IN A DEPOSITION AND
PRODUCE DOCUMENTS IN A
PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

**DATE TO PRODUCE
DOCUMENTS:
January 29, 2014**

**DATE OF DEPOSITION:
February 13, 2014 at 9:00 a.m.**

To: Kathy Cox
1204 Kirkland Avenue
Kirkland, WA 98033-6323
Phone: (425) 827-3311
Phone: (425) 822-3925

Kathy Cox
Marketing Philharmonic
218 Main Street
Kirkland, WA 98033
Phone: (425) 822-3925
kathy@marketingphilharmonic.com
kathy.com@escrail.org

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, YOU ARE HEREBY COMMANDED to appear at the offices of STOEL RIVES LLP, 600 University Street, Suite 3600, Seattle, Washington, 98101, at **9:00 a.m. on FEBRUARY 13, 2014**, or such other place and time as the parties may agree, then and there to testify at the request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority (collectively, “the Regional Parties”), in the above-entitled matter, and there to remain in attendance until discharged, and to provide testimony in a deposition to be conducted by the Regional Parties’ attorneys concerning matters regarding the petitions of Ballard Terminal Railroad Company, L.L.C.’s for exemption from regulation under 49 U.S.C. § 10902 to reactivate rail service on the Woodinville-Bellevue segment of the Woodinville Subdivision (the “Line”) and to partially vacate the NITU Order issued for the Line.

Your testimony shall be subject to continuance or adjournment from time to time or place to place until completed and is to be taken for the reason that you will give evidence relevant to Ballard's petitions. Your testimony will be recorded by verbatim transcript.

YOU ARE ALSO COMMANDED to produce the items described in Attachment A by **9:00 a.m. on JANUARY 29, 2014** to the offices of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101, or at such other time and place as the attorneys for the Regional Parties and you agree.

DATED: January __, 2014.

STOEL RIVES LLP

Matthew Cohen, WSBA No. 11232

mcohen@stoel.com

Hunter Ferguson, WSBA No. 41485

hoferguson@stoel.com

Attorneys for the City of Kirkland, Washington

ATTACHMENT A

1. All communications and correspondence between you and representatives of Ballard Terminal Railroad Company, L.L.C. ("Ballard"), or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on a section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA (the "Line"), including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard representatives.
2. All communications and correspondence between you and representatives of Eastside Community Rail, L.L.C. ("ECR"), relating to Ballard's and ECR's proposals to reinstate rail service on the Line, including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard or ECR representatives.
3. All communications and correspondence between you and any potential shipper on the Line.
4. All documents, studies, plans, or analyses relating Ballard's and ECR's proposals to reactivate rail service on the Line.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUBPOENA was served on the undersigned persons on January __, 2014 in the manner noted below.

DATED at Seattle, WA this 17th day of January 2014.

Leslie Lomax, Stoel Rives LLP, Practice Assistant

Individual or Entity Served	Method of Service or Delivery
Kathy Cox 1204 Kirkland Avenue Kirkland, WA 98033-6323 Phone: (425) 827-3311 Phone: (425) 822-3925	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
Kathy Cox Marketing Philharmonic 218 Main Street Kirkland, WA 98033 Phone: (425) 822-3925 kathy@marketingphilharmonic.com kathy.com@escrail.org	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Myles L. Tobin, Esq. Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

Seattle, WA 98104 <i>Attorneys for King County</i>	
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County and Sound Transit</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

EXHIBIT 3

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

Engle, Douglas

Page 54 1 THE WITNESS: Eastside Community Rail has no 2 employees. 3 Q. (By Mr. Ferguson) Okay. Is she an agent of 4 Eastside Community Rail? 5 MR. MONTGOMERY: Object to the extent it 6 calls for a legal conclusion. 7 THE WITNESS: There are no agreements 8 between Ms. Cox and Eastside Community Rail or Marketing 9 Philharmonic and Eastside Community Rail. 10 Q. (By Mr. Ferguson) Is she a shareholder of ECR? 11 A. No. 12 Q. Does she have a title connection with her 13 involvement with ECR? 14 A. She, as we represent ourselves as in charge of 15 the excursion train. And it might be helpful, sorry, but I 16 brought it, might be helpful if we -- 17 Q. We're going to come to the honeycomb, don't 18 worry. 19 A. Well, if you would like to get your questions 20 answered, this might be a faster, more expedient way to get 21 that done. 22 Q. Okay. Let's do it. 23 MR. MONTGOMERY: Where's your set? Are you 24 going to mark a set? 25 THE WITNESS: I just want to do the	Page 56 1 holdings, and that's probably to separate and put as a 2 separate entity. 3 So while Ms. Cox is interested in getting the 4 excursion train is going is so she can get her company 5 formed and off the ground. So we're working together to 6 get that to happen. 7 Q. What is her company? 8 A. Her company today is Marketing Philharmonic. And 9 she intends, when the public funding to upgrade the rail 10 infrastructure is put in place, she expects to own, manage, 11 the Bounty of Washington excursion train. 12 Q. Is there a corporate entity known as Bounty of 13 Washington tasting train? 14 MR. MONTGOMERY: Foundation. 15 THE WITNESS: No, but I believe there's a 16 domain name. 17 Q. (By Mr. Ferguson) We have a Facebook page, 18 that's correct, right? 19 A. Yes. 20 Q. Okay. Are you aware of any corporate entity that 21 exists right now that holds any property that includes 22 business plan or intellectual property or any assets that 23 might constitute the excursion train? 24 MR. MONTGOMERY: Object to the form. 25 THE WITNESS: I would say that Kathy and I
Page 55 1 honeycomb, that's all. 2 MR. FERGUSON: Katie, would you mark this as 3 22, I think we are. 4 (Exhibit Number 22 marked.) 5 Q. (By Mr. Ferguson) Okay. Go ahead. 6 A. Eastside Community Rail -- 7 Q. And for the record, you're referring to what's 8 been marked as Exhibit 22? 9 A. Exhibit 22. 10 Q. This is a document you've prepared? 11 A. Yes, it is. 12 Q. Okay. Would you please explain what it is, 13 please? 14 A. Eastside Community Rail, I view our company's 15 function as being administering and maintaining the right 16 of way. Companies like Wolford Equipment, Ballard Terminal 17 Railroad, the Bounty of Washington, some day, are all 18 separate entities. The trail will be Kirkland, King 19 County, Snohomish County, whomever. This is a conceptual 20 drawing of how we would like life to be once things are 21 fleshed out here. 22 We expect that at some point in the future, there 23 to be some real estate business, we'll figure that out when 24 we get there. And all of the interest in Telegraph Hills, 25 which no longer exists, is around what to do with legal	Page 57 1 have collaborated on works that we both hold. I think we 2 have a common interest in getting it off the ground. And I 3 believe that we have an understanding between us that 4 that's her business. And my business is Eastside Community 5 Rail. Her business is not freight. Her business is not 6 real estate. 7 Q. (By Mr. Ferguson) Are you aware of an entity 8 that will operate an excursion train? 9 A. We intend that operation to be formed in the 10 future, once we have identified funding to upgrade the rail 11 corridor to a passenger level of service. 12 Q. Okay. Do you intend for Ballard Terminal 13 Railroad to use any of its existing or future rolling stock 14 for the excursion train? 15 A. No. 16 Q. What about engineers and operating personnel, 17 where will they come from for the excursion train? 18 A. I believe the most likely scenario is the 19 engineer and conductor will be provided by Ballard 20 Terminal -- 21 Q. Okay. 22 A. -- Railroad. And the staffing would be provided 23 by Bounty of Washington. The scheduling -- 24 Q. When you say "staffing," you mean waiters, 25 bartenders?

Page 74 1 A. I've turned over the documents that I have. I 2 actually did look for e-mails and didn't see any. And I 3 have had phone calls primarily in the fourth quarter 2012. 4 Oh -- 5 Q. Let me ask this again because I'm a little bit 6 confused. Just listen to what I'm asking, please. Have 7 you had any written communications since June 2011 with 8 members of the King County Council or their staff? 9 A. Yes. 10 Q. And did you search for any of those written 11 communications? 12 A. Yes. 13 Q. And did you find any? 14 A. I don't believe that I found any e-mail 15 communication. I believe I found one document that I know 16 that was provided. And I just recalled that I had one 17 meeting with Larry Phillips and Kathy Cox, maybe March of 18 this year. 19 Q. Other than -- which document are you referring 20 to, if you can recall? 21 A. I don't recall off the top of my head. It would 22 have been a standard document that would, for example, be 23 in the business plan or that would be printout of a 24 PowerPoint. Nothing special. 25 Q. Okay. Have you had any written communications	Page 76 1 response to the discovery requests? 2 A. Yes, I did. 3 Q. And did you find anything? 4 A. I believe this is another one that my attorneys 5 in Chicago objected to providing. I provided the 6 documents. I would say that 80 percent of the conversation 7 has been around a trail between Brightwater and Maltby. 8 Q. So you found documents, communications with 9 representatives of Snohomish County, but some of those you 10 haven't produced? 11 A. I believe there are some e-mails that exist, I 12 haven't searched for them. But I believe there are some 13 e-mails that exist between, it would be primarily Steve 14 Thompson, Steve Dickson, would be my two primary contacts. 15 And again, those have been primarily related to the trail. 16 MR. MONTGOMERY: Again, Eastside has made it 17 clear, and I know you know this, that it objected to and 18 didn't produce documents related to the freight segment. 19 Q. (By Mr. Ferguson) Do you have a contract with 20 Snohomish County to construct a trail or maintenance of way 21 road alongside the freight segment? 22 A. No. 23 Q. Do you have a contract with any other public 24 agency to construct a maintenance of way road or a trail 25 alongside the freight segment?
Page 75 1 during the relevant time period, which is again, June 2011, 2 to the present with representatives of Sound Transit? 3 A. Yes. In fourth quarter, I exchanged some e-mails 4 with Michael Williams regarding the East Link area as it 5 relates to the rail yard options that were before them. 6 Provided him some of the standard docs that we had 7 available to us at that time. 8 Since then, I saw Ric Ilgenfritz at one of the 9 King County ERC RAC meetings and said that we had been 10 trying to get ahold of David Beal to no avail. I tried 11 contacting David Beal directly. Rich Leahy, the city 12 manager of Woodinville asked David Beal to call me. Tom 13 Hansen of Woodinville asked David Beal to call me. David 14 Beal didn't want to call me. That's it. 15 Q. So other than those that you've described, you've 16 had no other written communications with Sound Transit? 17 A. Correct. 18 Q. With respect to Number 15, which asked for all 19 communications between you and representatives of Snohomish 20 County, you referenced Mr. Camp earlier. 21 A. Mm-hm (answers affirmatively). 22 Q. So it's correct that you have had written 23 communications with Snohomish County reps since June 2011? 24 A. Yes, it is. 25 Q. And did you search for those communications in	Page 77 1 A. No. 2 Q. Number 16 asks for all communications related to 3 the line or the freight segment with reps of the city of 4 Snohomish. Have you had any written communications with 5 Snohomish city reps since June 2011? 6 A. Given that you've already subpoenaed all of their 7 e-mail, you would have that. Any other records have 8 already been provided. 9 Q. That's not my question, though. Have you had 10 communications with Snohomish County, excuse me, City of 11 Snohomish representatives since June 2011? 12 A. Yes. 13 Q. Okay. When you searched for documents in 14 response to Kirkland's discovery requests, did you search 15 for communications with City of Snohomish reps? 16 A. No. 17 Q. Do you believe that you have in your possession, 18 either hard copies, stored in a computer or an e-mail, 19 communications with the City of Snohomish reps? 20 A. Not as it relates to e-mail. 21 Q. So do you believe you have hard copies of 22 communications with City of Snohomish reps? 23 A. I don't understand your question. 24 Q. Okay. I'll rephrase it. 25 Maybe I misunderstood your answer, so I'm going

Page 130 1 A. Yes. 2 Q. And do you know what its debt amount is as of 3 today, even if you've got a rough estimate? 4 A. 600. 5 Q. When is the last time you ran the numbers? 6 A. December 31st. 7 Q. Okay. But these debts continue to accrue 8 interest? 9 A. Yes. 10 Q. Do you have a document that shows an income 11 schedule for ECR or revenue schedule? 12 A. No. 13 Q. Is that because ECR has not had any revenue to 14 date? 15 A. ECR has accrued revenue from Ballard Terminal for 16 freight operations, but again, we'll reconcile that at the 17 end of the year. It's not material right now. 18 Q. You have a small accounts receivable? 19 A. Yes. 20 Q. Okay. Is there anything other than the \$10 per 21 train car from Ballard that could constitute revenue stream 22 for this year? 23 A. No, and I would like to add just one very simple 24 concept, debt is a lot cheaper than equity. 25 Q. Certainly is today in the current economic times.	Page 132 1 excursion train run? 2 A. They will contribute to the maintenance of way 3 costs, and I will get an 11 percent margin on the business. 4 That's the gross amount, that's not the net amount. 5 Q. ECR is going to take 11 percent of the gross 6 revenues of any excursion train? 7 A. Less the maintenance costs. Up to 50 percent. 8 It gets complicated. 9 Q. Do you have a contract for that? 10 A. No. 11 Q. That's just an agreement between you and Kathy 12 Cox? 13 MR. MONTGOMERY: Object to the form. 14 THE WITNESS: It's a general agreement as to 15 how we're doing this, yes. 16 Q. (By Mr. Ferguson) Agreement with whom, who is 17 involved in the agreement? 18 A. Kathy Cox. 19 Q. Anyone else? 20 A. No, other than Byron who has agreed to provide an 21 engineer and conductor. 22 Q. Okay. 23 A. And scheduling. 24 Q. Do you know if Ballard is going to take any 25 percentage of excursion train revenues?
Page 131 1 Mr. Engle, if you could turn back to Exhibit 21. 2 A. Mm-hm (answers affirmatively). 3 Q. This is the agreement with EB5. 4 A. Mm-hm (answers affirmatively), yes. 5 Q. It's correct that EB5 holds an option with ECR, 6 and I guess, hold that question for a second. 7 Did EB5 also make a contribution to ECR? 8 A. Not yet. 9 Q. And why didn't it, if there's a reason, or why 10 hasn't it? 11 A. We need to get further down the path in 12 establishing an excursion business before private equity is 13 appropriate. 14 Q. Okay. When you say "we," do you mean ECR or do 15 you mean -- 16 A. ECR. 17 Q. -- a separate entity? 18 A. ECR needs to get further down the path in the 19 maintenance of way for the railroad before it can attract 20 private equity. 21 Q. Okay. But ECR isn't -- ECR doesn't have any 22 plans to run an excursion train? 23 A. No, but it's my job to make sure that the track 24 is in condition to run an excursion train. 25 Q. And so, then, how will ECR benefit from having an	Page 133 1 A. None other than compensation for their scheduling 2 and crews. 3 Q. Okay. Did you have to provide any assurances to 4 EB5 about the percentage of revenue ECR would take from the 5 excursion train? 6 A. There were no assurances, no. 7 Q. Is there a barrier to running excursion service 8 right now? 9 A. The track -- 10 MR. MONTGOMERY: Sorry, object to the form 11 and foundation. 12 Go ahead. Thank you. 13 THE WITNESS: The track, as classified by 14 Ballard Terminal, is in excepted condition. Excepted 15 condition does not allow you to run passenger operations, 16 per Exhibit 25. 17 Q. (By Mr. Ferguson) So that's what -- there needs 18 to be at least a \$6.4 million investment, capital 19 investment in the segment to bring it up to standard to run 20 passenger service. If the number is wrong, correct me on 21 the number. 22 A. I believe the number is less than that, like 23 \$5 million instead of 6, roughly to get it up to a Class 1 24 condition and you can operate passenger rail in a Class 1 25 condition.

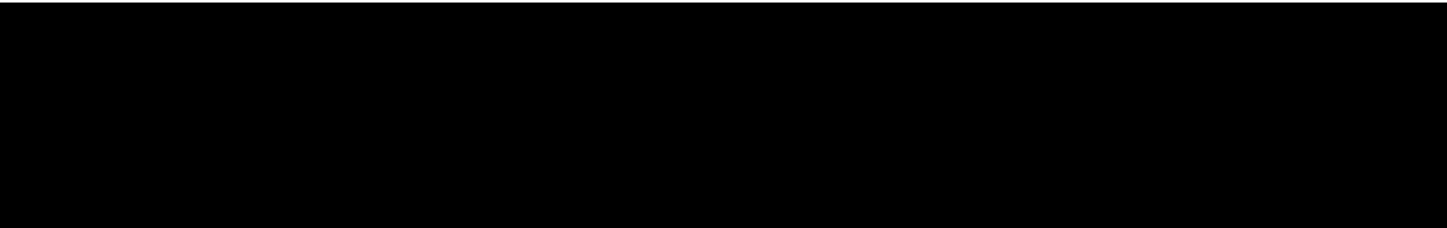
Page 190 1 2015 legislative session? 2 A. Correct. 3 Q. Will, if Ballard accesses the line between 4 Woodinville and Bellevue, do you expect ECR to have any 5 responsibilities for maintaining the right of way on that 6 line? 7 A. Not until there's additional services required on 8 the line, or inside the right of way. 9 Q. Do you have any understanding of how Ballard will 10 be able to maintain the operating costs for that line in 11 addition to its obligations to maintain the freight 12 segment? 13 MR. MONTGOMERY: Foundation; calls for 14 speculation; incomplete hypothetical. 15 THE WITNESS: And as pointed out by Chuck 16 Bromley from Boise Cascade, it's all about line density. 17 It's all about the number of cars on the line. And any 18 increases in traffic make your fixed costs go down 19 proportional to each car. So the more cars we get on the 20 line, the easier it is for -- to maintain the line and make 21 a buck. 22 Q. (By Mr. Ferguson) Okay. Looking at the graph 23 titled "Daily" -- or staying with "Revenue" for a second. 24 This freight revenue line, is that a flat line? 25 A. It pretty much -- it's taking the existing	Page 192 1 excursion service. On weekends would be probably twice a 2 day on weekends. 3 Q. Is there a weekends listed in here? 4 A. No, there isn't. So it kind of falls under 5 weekday. Private would be the same as chartered, so we 6 expect a large portion of our business to be companies like 7 Microsoft, Expedia. Companies that want to have a team 8 meeting on the train. And want to go, you know, keep 9 everybody locked up off-site. 10 The Heritage and Centennial trains are -- the 11 Heritage train would be more of a docent type train talking 12 about the history of the area. And the cities would 13 provide those docents, and it would be a much lower ticket 14 price, family oriented, no alcohol being served, et cetera. 15 The Centennial train, we're thinking about 16 loading up as many bikes as we can throw in and taking 17 people up to the Centennial Trail and doing something like 18 that. And that would probably kick off after we've got the 19 cash flow break even, which is why you see the uptick 20 starting in year four. 21 Q. ECR isn't planning on running the excursion 22 train, correct? 23 A. Correct. 24 Q. Some other entity, Bounty of Washington, which 25 Kathy Cox expects to operate, is --
Page 191 1 business and modestly growing it. For example, it doesn't 2 include introducing another lumberyard. It doesn't include 3 introducing Wolford. It doesn't include introducing any 4 other significant operation. 5 Q. This red square here that references commuter, 6 what does that refer to? 7 A. This financial model -- 8 Q. Yes. 9 A. -- is set up to handle any of these lines of 10 business, and there's obviously no commuter in this 11 business plan. And even the graph -- 12 Q. Is the red square just a placeholder? 13 A. Yes, it's a placeholder. And so is the green one 14 that says nonGNP. Should be nonECR. 15 Q. This isn't a -- there isn't a green line above 16 the yellow field? 17 A. Correct. 18 Q. Okay. 19 MR. MONTGOMERY: I haven't objected for a 20 while to the extent this does not involve Bellevue to 21 Woodinville, so I'll do that again. 22 Q. (By Mr. Ferguson) For daily ridership, this 23 graph, can you walk us through that, please? 24 A. Sure. Let's start with the legend. When we say 25 weekday, we're talking about a normal evening type of	Page 193 1 A. Yes. 2 Q. -- contending to run the excursion train? 3 So why did you come up with these numbers, then? 4 A. As the chief financial officer for GNP, I created 5 this model. 6 Q. Okay. 7 A. The ridership numbers and expectations were 8 created in 2010. And we were able, during the bankruptcy 9 process, to affirm numbers directly with the Temples for 10 what their ridership experience was. We also were able to, 11 Kathy, under a confidentiality agreement with Iowa Pacific, 12 was able to share her business plan, which -- or her 13 business concept, which they thought was the best they'd 14 ever seen. 15 And we know that from when the Temples stopped 16 operating in 2007, that the cruise ship business was not 17 reflected in the Temples' numbers. And since then, there 18 are 435,000 boardings a year in Seattle. And we've been 19 told by two vice presidents of marketing, one for Holland 20 America one for Princess Lines, that we should be able to 21 attract about 20 percent of that market. 22 So the Temples were running over a hundred 23 thousand, I believe 110 to 120 range per year. If we were 24 able to attract another 90,000, that means our ridership 25 should -- could, our market could be as high as 200,000

Page 194 1 people a year. These numbers reflect growing the business 2 to about 120,000 people, which is very conservative, but 3 that's the way you do it with a proper ROI analysis, is 4 make all of your assumptions conservative. 5 Q. Okay. Do any of these graphs factor in any rail 6 movements on the line between Woodinville and Bellevue? 7 A. No. 8 Q. If there is no actual freight movement for Bobby 9 Wolford to haul spoils out or for CalPortland to move 10 aggregate material into Bellevue, are you aware of a viable 11 business model to operate freight on the line between 12 Woodinville and Bellevue? 13 MR. MONTGOMERY: Foundation; calls for 14 speculation; incomplete hypothetical. 15 THE WITNESS: I am not aware of any other 16 opportunities of those magnitudes. 17 Q. (By Mr. Ferguson) Are you aware of any freight 18 shipping opportunities, other than Wolford or CalPortland, 19 on the line between Woodinville and Bellevue? 20 MR. MONTGOMERY: Asked and answered a couple 21 of times. 22 THE WITNESS: I believe that there is reason 23 to believe that if the freight service was there, that a 24 sustainable trans-load facility would be successful. 25 Q. (By Mr. Ferguson) Okay.	Page 196 1 soon as possible for freight and excursion service. We 2 have freight business coming together in Bellevue, 3 including Safeway who's 5 year service buyout is coming to 4 an end. Safeway continues to receive their bakery flour in 5 Ballard via rail and trucking it to their Bellevue bakery. 6 Additionally, there are very large construction projects 7 where rail service can reduce truck traffic, favor the 8 environment, and provide substantial cost savings." 9 Did you write this paragraph that I just read in 10 this e-mail to Kurt Triplett? 11 A. Yes. 12 Q. Okay. In November of 2007, was it ECR's 13 intention to reactivate the line between Woodinville and 14 Bellevue? 15 MR. COHEN: 2012. 16 Q. (By Mr. Ferguson) Excuse me, 2012? 17 A. That was our initial intention coming in to our 18 business planning. 19 Q. Okay. Was it your intention to reactivate 20 freight service in partnership with Ballard Terminal 21 Railroad, similar to the agreement, operating agreement you 22 have with Ballard for the freight segment? 23 A. Yes. 24 Q. So you were going to have Ballard actually run 25 the cars on the line between Woodinville and Bellevue?
Page 195 1 MR. FERGUSON: We're done with that line of 2 questioning, so let's just take a couple-minute break, 3 figure out where we are and reconvene. 4 (Recess taken from 5:22 to 5:29 p.m.) 5 (Exhibit Number 31 marked.) 6 7 E X A M I N A T I O N - (Continuing) 8 BY MR. FERGUSON: 9 Q. Mr. Engle, I've just handed you what's been 10 marked as Exhibit 31. 11 A. Mm-hm (answers affirmatively). 12 Q. The bottom part of this document, it reads that 13 there's e-mail from you to Kurt Triplett Joan McBride, 14 copied to Kathy Cox and David Farmer dated November 7, 15 2012? 16 A. Mm-hm (answers affirmatively). 17 Q. Do you recognize this e-mail? 18 A. Yes. 19 Q. And the e-mail references a brief PowerPoint 20 presentation introducing ECR. Are those the documents that 21 are attached to this exhibit? 22 A. Mm-hm (answers affirmatively), yes. 23 Q. In the first, on the first page here, the second, 24 or I guess the third paragraph, it reads, "ECR intends to 25 reactivate the line between Woodinville and Bellevue as	Page 197 1 A. Yes. 2 Q. Okay. Do you know whether you had any 3 conversations with Mr. Cole that you would approach the 4 City of Kirkland about running freight before this e-mail 5 went out? 6 A. Try that again. 7 Q. Sure. Do you recall having any conversations 8 with Mr. Cole about running, about his company running 9 freight on the Woodinville-Bellevue line before you 10 e-mailed Kurt Triplett on November 7th? 11 A. Yes. 12 Q. Okay. And was he aware that you would be 13 contacting the City of Kirkland and other public agencies 14 and private businesses? 15 MR. MONTGOMERY: Objection; foundation. 16 THE WITNESS: Yes, that we both would be. 17 Q. (By Mr. Ferguson) Okay. Thank you. 18 (Exhibit Number 32 marked.) 19 Q. (By Mr. Ferguson) Mr. Engle, what's been marked 20 as Exhibit 32 has just been handed to you. This is an 21 e-mail thread starting with a message from Kurt Triplett to 22 you dated November 16th. Below that is an e-mail from you 23 to Kurt Triplett and Sung Yang of King County of the same 24 date. 25 In the e-mail that reads from your Comcast

Page 202 1 Mr. Wolford. 2 Q. (By Mr. Ferguson) Okay. If you turn to Page 2 3 of the letter, it's marked Page 29 in the bottom right-hand 4 corner. The last sentence of the first paragraph reads, 5 "We estimate the volume of these projects at over 3 million 6 cubic yards of construction spoils over the next several 7 years." 8 Do you have an understanding of where that 9 estimate of 3 million cubic yards of construction spoils 10 came from? 11 A. As I said previously, we started with the Lincoln 12 Center estimate and extrapolated that to other projects, 13 then talked to Wolford's people. I believe, Ernie talked 14 to Jack Miller, in particular, and -- about the volumes, 15 and then talked to Bobby about it. And -- who confirmed 16 our estimate. 17 Q. So is this estimate of 3 million cubic yards 18 yours and Mr. Wilson's estimate? 19 MR. MONTGOMERY: Objection; foundation and 20 form. 21 THE WITNESS: I'd say in collaboration with 22 Bobby Wolford. 23 Q. (By Mr. Ferguson) Okay. So is it fair to say 24 that it's an estimate based on the work of both Eastside 25 Community Rail and Wolford Trucking and Demolition and	Page 204 1 Q. Mr. Engle, I want to ask you a couple of 2 questions about your negotiations with Woodinville over the 3 sale of an easement to widen the SR202 bridge. 4 A. Yes. 5 Q. You refer to that a couple of times, I think it 6 was this morning. 7 A. Yes. 8 Q. And as I understand it, in order to complete that 9 project, Woodinville needed property rights from both 10 Eastside Community Rail and the Port? 11 A. Yes. 12 MR. MONTGOMERY: Would you please pause and 13 allow me time to think. 14 Thank you. 15 MR. COHEN: And I'm going to ask Katie to 16 mark an exhibit. 17 (Exhibit Number 33 marked.) 18 MR. COHEN: Is it 33? 19 THE COURT REPORTER: Yes. 20 Q. (By Mr. Cohen) Mr. Engle, I want to call your 21 attention to the second e-mail on this page, the one that 22 says, "Begin forwarded message" from you to Joe McWilliams, 23 Richard Leahy, Bcc, Kathy Cox and Ernie Wilson? 24 A. Yes. 25 Q. You with me?
Page 203 1 whoever its employees are? 2 A. Yes. 3 Q. Okay. 4 MR. FERGUSON: Mr. Cohen has a set of 5 questions he would like to ask specifically on behalf of 6 Kirkland. 7 MR. MONTGOMERY: You're going to have two 8 people doing questions? 9 MR. COHEN: I was looking through documents 10 while Hunter was presenting his testimony. I don't have 11 very much. The answer is yes. 12 MR. MONTGOMERY: Actually, this is like the 13 second time in my -- this is the second time, I remember 14 the first time. I remember the lawyers, they said exactly 15 what you said and two hours later -- 16 MR. COHEN: Mr. Montgomery, I promise you we 17 won't be at my questions -- I'll promise 20 minutes, but I 18 think I can do better. 19 MR. MONTGOMERY: Go ahead. 20 MR. COHEN: Thank you. 21 THE WITNESS: I can second that. 22 MR. COHEN: Yes, I promise you as well. 23 24 E X A M I N A T I O N 25 BY MR. COHEN:	Page 205 1 And you are -- well, tell me what's going on in 2 that e-mail? 3 A. The Port of Seattle wanted \$6.8 million for the 4 easement. 5 Q. I'm sorry, 6 -- 6 A. For fee. 7 Q. \$6.8 million from Woodinville? 8 A. For the fee. 9 Q. For the fee. To -- to acquire an interest in the 10 freight segment? 11 A. Correct. 12 Q. Okay. 13 A. And Kathy and I went down and met with Joe 14 McWilliams. 15 Q. Who is Joe McWilliams? 16 A. Joe McWilliams is the director of real estate for 17 the Port of Seattle. And with the intention of discussing 18 this, and I also believe accepting funds, public funds to 19 rehabilitate the track. One of the items was to get them 20 to move off of the 6.8 million to -- so Woodinville could 21 proceed with getting their bridge done. 22 It's my understanding, from Woodinville, that 23 they had an option of 6.8 million, another option was 6 24 million, and that to move their water pump station, sewage 25 pump station, that that was 2 million. So --

Page 206 1 Q. These are all payments to the Port? 2 A. These all would have been -- no, alternatives 3 that Woodinville had available to it in order to complete 4 the bridge. 5 Q. By relocating the bridge in some fashion? 6 A. Yes. 7 Q. Okay. I understand. 8 A. So to start the negotiations, to try and help 9 Woodinville to get this done, because we -- I think 10 everybody in this room knows that the Port is trying to 11 maximize the dollars it gets out of the corridor, that what 12 we would do is come up with a number that would keep the 13 Port engaged, that it was going to get some money, and that 14 would be attractive to the City of Woodinville so that we 15 could get some meaningful discussions underway. 16 So we chose a number that was 50 percent of 17 Woodinville's lowest cost option, and the notion was, per 18 the conversations with Joe McWilliams was that we could 19 split the money, whatever that would be, and that why don't 20 we go back to Woodinville with the number of \$1 million 21 because that would be half as much as their best priced 22 option, and see if we could get into conversation. 23 Q. So Eastside Community Rail would split the 24 million dollars with the Port, yes? 25 A. Yes.	Page 208 1 MR. COHEN: You're welcome to it, if you 2 want. 3 MR. MONTGOMERY: Let me agree, 34, we're 4 only addressing the face page. 5 MR. COHEN: 34 is only the face page. 6 Q. (By Mr. Cohen) So I'm referring to the e-mail in 7 the middle of the page that says: "Begin forwarded 8 message." 9 A. Mm-hm (answers affirmatively). 10 Q. All right. So this is you, once again, trying to 11 make this deal happen? 12 A. Yes. 13 Q. And the last e-mail was March 21st, now it's a 14 week later, am I correct? 15 A. Yes. I'm sorry, it's actually two weeks later. 16 Q. Well, it was March, the e-mail we were looking at 17 in Exhibit 33 was March 21st, and we're now talking 18 March 28th, correct me if I'm wrong? 19 A. 21, 28, you're right. Where am I seeing, oh, 20 it's the year, sorry. It's getting late. 21 Q. So this e-mail recites that you spoke with Joe 22 today and they were waiting for -- and you would like to 23 see something from the city. Joe is -- 24 A. Mm-hm (answers affirmatively). 25 Q. -- Joe is Joe McWilliams?
Page 207 1 Q. And your participation in this venture would be 2 to convey to Woodinville an easement over a portion of the 3 freight segment? 4 A. Yes. 5 Q. Remind me, remind me, Mr. Engle, how much did GNP 6 pay for the entire freight segment? 7 A. \$10. 8 Q. That's what I recall, but I wasn't sure. 9 I want to mash -- 10 A. Ask how much the Port of Seattle paid, 11 \$450 million tax credit, plus \$81 million, and the third 12 party operator was a mandatory part of that. They had to 13 give it away. 14 MR. COHEN: Let's mark one more. 15 (Exhibit Number 34 marked.) 16 Q. (By Mr. Cohen) So I'm going to show you, 17 Mr. Engle, what's been marked as Exhibit 34, and I'm 18 directing your attention to, looks like the next e-mail in 19 that chain, this is from you to Richard Leahy, Cc Joe 20 McWilliams, Bcc Kathy Cox, Ernie Wilson. You with me? 21 A. How come (indicating)? There's something on the 22 back here. Is this on the back of yours. 23 MR. COHEN: No, that's probably my original. 24 I'm sorry, the back is irrelevant. If you -- 25 MR. MONTGOMERY: Hold on. Hold on.	Page 209 1 A. Yes. 2 Q. I gather that the city had not yet responded to 3 your million-dollar-split-the proceeds offer? 4 A. Correct. 5 Q. Okay. And then, you forwarded that e-mail to Les 6 Rubstello, correct? 7 A. Yes. 8 Q. And who is Les Rubstello? 9 A. Council member for City of Woodinville. 10 Q. And he's a member of your Eastside TRailway 11 Alliance? 12 A. Yes, but this -- that wasn't the reason for 13 sending it to him. It's in his role, his capacity as 14 council member. 15 Q. I see. And you're trying to enlist his help to 16 make the deal happen? 17 MR. MONTGOMERY: Object to the form. 18 THE WITNESS: We had been advised at various 19 government entities that sometimes the only way to get 20 things done in the city of Woodinville is to go through the 21 city council, because of difficulties in dealing with 22 staff. 23 Q. (By Mr. Cohen) Right. 24 MR. COHEN: Okay. One more exhibit to mark. 25 (Exhibit Number 35 marked.)

EXHIBIT 4



From: Kathy Cox [<mailto:kathy.cox@escrail.org>]
Sent: Tuesday, March 12, 2013 10:41 PM
To: Byron Cole
Cc: 'Doug Engle'; 'Ernest F. Wilson'
Subject: Statement for King County Meeting

Byron,

Below and attached is your prepared statement for tomorrow's Eastside Rail Corridor Regional Advisory Council meeting. It starts promptly at 9 a.m. but public comments aren't until 10:40. The meeting is at the same place: the Selig building at 5th and Yesler (300 5th Ave.).

I would also like to schedule some time with you to discuss media preparations that will be upcoming.

Thanks for your support to make this corridor viable for multiple uses.

Best,

Kathy Cox
Excursion Train Managing Director
kathy.cox@EsCRail.org
office: 425-822-3925
cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

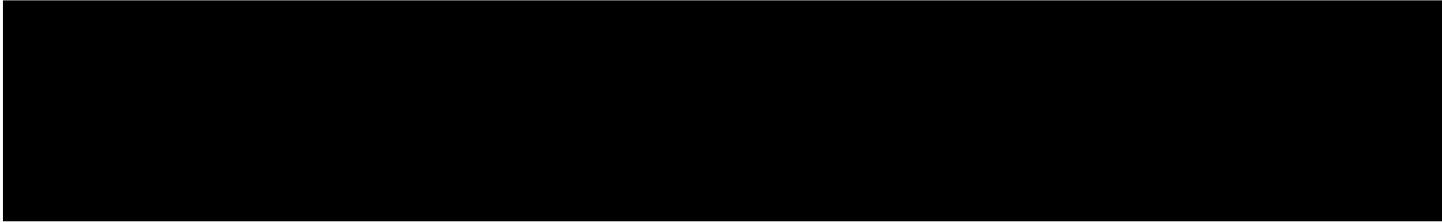
In the last Regional Advisory Council meeting I heard the Honorable Mayor McBride say that she took Kirkland's regional responsibility seriously and that Kirkland supports dual rail and trail use.

But in Kirkland's recently published rail removal specifications it states, "The demographics and location of this stretch of Railroad were never favorable to continue freight service or initiate additional passenger or commuter operations throughout the corridor. This memorandum gives both a synopsis and detailed

description of the Railroad materials on site throughout the Kirkland segment of the route."

We realize that Kirkland started their process three years ago. Things have changed. King County just finalized their portion of the purchase of the corridor. Traffic and carbon emissions are continuing to grow. And there has been a change in ownership in the rail rights but I have still been running the rail. We appreciate the we caught Kirkland at the last minute but we believe this corridor is viable for multiple uses that benefit the entire community right now not just when I am dead and gone. Although it is a compromise, we are willing to help lay a temporary trail on top of the existing rail so Kirkland residents can start enjoying their rail this summer, many months before the goal. Please let us work together to make the best use of this corridor.

Please contact me by Friday if you are interested.



From: Kathy Cox [<mailto:kathy.cox@escrail.org>]
Sent: Friday, May 03, 2013 3:11 PM
To: 'Byron Cole'
Cc: 'Doug Engle'
Subject: Statement

Byron,

If any media call you this is what we recommend you say,

The judge felt she didn't have the jurisdiction to address the order so she moved it to the Surface Transportation Board (STB). Kirkland has agreed to keep the tracks in place as long as we file a motion for an injunctive order to the STB by May 8th. Our filing is expected by May 8th."

Best,

Kathy

Kathy Cox <kathy.cox@escrail.org>
To: Doug Engle
RE: FW: Ballard Terminal Railroad Company v. City of Kirkland

7 May 2013 10:40 AM



Doug....this are my answers. If you agree I can send to Tom.

We could have Byron talk to Raechel and give him these emails.

Tom and Doug,

Below are my answers

From: Tom Montgomery [mailto:Tom@montgomeryscarp.com]
Sent: Tuesday, May 07, 2013 10:26 AM
To: 'Doug Engle'; kathy.cox@escrail.org
Cc: Myles Tobin
Subject: FW: FW: Ballard Terminal Railroad Company v. City of Kirkland

I will leave it to those closer to the action to decide whether and how to respond to Ms. Dawson's follow up questions.

From: Raechel Dawson [mailto:rdawson@kirklandreporter.com]
Sent: Tuesday, May 07, 2013 10:21 AM
To: Tom Montgomery
Subject: Re: FW: Ballard Terminal Railroad Company v. City of Kirkland

Thank you for getting back to me Mr. Montgomery.

Are you able to tell me the main points you hope to address in the injunctive relief?

We want to keep the status quo with the rails intact until the STB makes a decision on reactivating the line. There would be \$10 million in damages if Kirkland removes the rail before the reactivation decision.

Also, forgive me for my ignorance, but I'd like to confirm if I have everything straight: Ballard filed a petition asking for carrier rights at the Snohomish - Woodinville line to the STB but also to acquire rail materials if Kirkland were to remove their rail materials in their 5.75 mile section.

Ballard Terminal Railroad already holds the freight lease from Snohomish to Woodinville from Eastside Community Rail. Ballard Terminal Railroad is petitioning to reactivate the line from Woodinville to Bellevue for the public interest of removing trucks and promoting commerce with new freight business.

In addition, Ballard TRC and Eastside Community Rail will now seek injunctive relief on the removal of the rails within the Cross Kirkland Corridor span, to be filed May 8.

The freight operator, Ballard TRC, is filing for injunctive relief not Eastside Community Rail.

Is the STB then going to consider both of these requests in accordance or separately? And is this injunctive relief going to be an appeal of the NITU STB decision, and if so, does that mean there is the potential of having rail removal completely dismissed all together or is Ballard simply seeking a temporary restraining order of rail removal?

We believe that the STB will consider the injunctive relief and the reactivation separately. The STB has already given the schedule for the reactivation decision which will be no later than January 2014. The injunctive relief would be to keep the status quo of retaining the rails until the reactivation decision.

If it's easier to speak over the phone, I'd be happy to call you at your convenience.

Raechel Dawson
Reporter
Office: 425-822-9166, Ext 5052
Internal: 36-5052
Fax: 425-822-0141
11630 Slater Avenue NE, Ste 9, Kirkland, WA 98034

Kathy Cox <kathy.cox@escrail.org>

7 April 2013 10:39 AM



To: "Mark Miller" <ontheroadmark@yahoo.com>, "Bruce Agnew" <bagnew@discovery.org>, "Loren Herrigstad" <lbhrgstd@isomedia.com>, "Lloyd Flem" <washarp@q.com>, "Karen Guzak" <karen@karenguzak.com>, "Les Rubstello" <psakayk@gmail.com>, <stephaniemsweber@aol.com>
Cc: "Doug Engle" <dengle2001@gmail.com>, "Byron Cole" <byroncole@comcast.net>, "Ernie Wilson" <ernie.wilson@escrail.org>
RE: KIRO Report

Dear rail team,

Would any of you be willing to talk to Tim Haeck the KIRO reporter and present the other side of the story? The Burke-Gilman trail is not relevant at all. If you know of a more appropriate contact please let me know. I can contact the reporter to arrange it.

Due to legal constraints, Byron, Doug, Ernie and I should try to not comment.

Best,

Kathy Cox
Excursion Train Managing Director
kathy.cox@EsCRail.org
office: 425-822-3925
cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

From: Mark Miller [mailto:ontheroadmark@yahoo.com]
Sent: Saturday, April 06, 2013 9:58 PM
To: Bruce Agnew
Cc: Kathy Cox; Doug Engle
Subject: Re: KIRO Report

Bruce,

The Tim Haeck, KIRO story, is disappointing because he did not present the other side of the story and appears to have published a press release.

Ron & Don are 3-7pm drive time commentators who I have listen to along w/ 88.5, 94.9, 570, 770, 1000, 1090, and the rest of the talk radio contingent.

In talking w/ the various media I would start w/ reporters and talk show hosts who are use to riding a commuter train in the US (NYC, CHI, PHI, DC, SFO, BOS) and/or have used them in major US cities. Europe is a different animal and not directly comparable.

My recollection is Dave Ross has presented the issue fairly in the past,

Medved is from PHI and went to Yale.

m

--- On Sat, 4/6/13, Bruce Agnew <bagnew@discovery.org> wrote:

From: Bruce Agnew <bagnew@discovery.org>
Subject: Re: KIRO Report
To: "Mark Miller" <ontheroadmark@yahoo.com>
Cc: "Kathy Cox" <kathy.cox@escrail.org>, "Doug Engle" <dengle2001@gmail.com>, "Elizabeth Churchill" <echurchill@discovery.org>
Date: Saturday, April 6, 2013, 4:56 PM

Mark
Thanks for all your help and joining us in Snohomish.

Liz, if Mark is not already on list, please add him.
Bruce

Sent from my iPhone

On Apr 6, 2013, at 1:17 PM, "Mark Miller" <ontheroadmark@yahoo.com> wrote:

Bruce & Kathy

Going forward please put me on distribution for your trail/rail related material.

I physically spoke to Loren at AAW Oct-13th, WSDOT Oct-31st, and AAW Nov-3rd about volunteering ERC and have heard nothing.

m

--- On Sat, 4/6/13, Bruce Agnew <bagnew@discovery.org> wrote:

From: Bruce Agnew <bagnew@discovery.org>
Subject: FW: KIRO Report
To: "ontheroadmark@yahoo.com" <ontheroadmark@yahoo.com>, "stephaniemsweber@aol.com" <stephaniemsweber@aol.com>, "Jim Hamre" <jimhamre@mindspring.com>, "Jim Cusick" <jc_cusick@hotmail.com>
Date: Saturday, April 6, 2013, 12:33 PM

FYI
Bruce

From: Kathy Cox <kathy.cox@escrail.org>
Date: Saturday, April 6, 2013 12:08 PM
To: Bruce Agnew <bagnew@discovery.org>, Loren Herrigstad <lbhrgstd@isomedia.com>, Lloyd Flem <washarp@q.com>
Cc: "dickburkhart@comcast.net" <dickburkhart@comcast.net>, "stephaniemsweber@aol.com" <stephaniemsweber@aol.com>, 'Doug Engle' <Doug.Engle@escrail.org>, Karen Guzak <karen@karenguzak.com>, 'Les Rubstello' <psakayk@gmail.com>, 'Byron Cole' <byroncole@comcast.net>
Subject: RE: KIRO Report

Bruce, Loren and Lloyd,

Can you help find someone to dispute this report in the comments field and also comment in the string on this one? I just got off the phone with Byron and he said that Burke-Gilman trail was a completely different circumstance. First of all when the track was removed in the 1970s there was not even a railbanking status. Let alone that track was never used and no one disputed it moving to be a trail.

<http://mynorthwest.com/11/2244768/Railway-Ruckus?page=1#comments>

Also, you can listen to Ron and Don about the issue that was positive for Kirkland. <http://kiroradio.com/listen/9954492/> It starts at 10:43 and ends at 15:53. They asked for comments but I couldn't find them announce any comments.

I would like to offer to Ron and Don a different view from a rail expert such as one of you.

Please let me know what you think.

Best,

Kathy Cox

Excursion Train Managing Director

kathy.cox@EsCRail.org

office: 425-822-3925

cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)

From: Kathy Cox <kathy.cox@escrail.org>

Date: Friday, April 5, 2013 8:01 PM

To: Bruce Agnew <bagnew@discovery.org>, 'Doug Engle' <Doug.Engle@escrail.org>, Karen Guzak <karen@karenguzak.com>, 'Les Rubstello' <psakayk@gmail.com>, Loren Herrigstad <lbhrgstd@isomedia.com>, Lloyd Flem <washarp@q.com>, 'Byron Cole' <byroncole@comcast.net>

Subject: KIRO Report

<http://mynorthwest.com/108/2245342/Kirkland-not-first-to-turn-railway-into-trail>

This is a report that takes a more positive Kirkland spin. Who is this historian, Feliks Banel? The Burke Gilman trail/rail is a totally different circumstance. Bruce, Lloyd or Loren, do you have a good reply?

A friend told me Ron and Don asked for callers about the topic but I didn't get to hear it. Did any of you heard about it?

Best,

Kathy Cox

Excursion Train Managing Director

kathy.cox@EsCRail.org

office: 425-822-3925

cell: 425-503-7393

[Bounty of Washington: Tasting Train Facebook](#)