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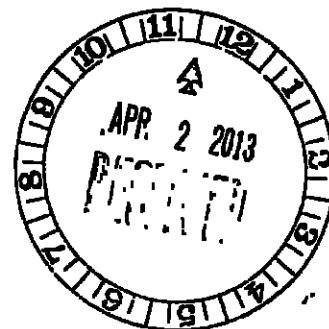
March 29, 2013

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**SURFACE
TRANSPORTATION BOARD**

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VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

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

Docket No. AB-6 (Sub-No. 465X)
BNSF Railway Company – Abandonment Exemption --
in King County, WA

234009

234010

Dear Ms Brown

Petitioner Ballard Terminal Railroad Company, L.L.C. hereby submits the accompanying original and 11 copies of its Verified Petition for Exemption and Petition to Partially Vacate NITU in the above-captioned proceedings, respectively, together with a check representing the combined filing fee of \$7,050 (broken down as follows \$6,800 in Finance Docket No. 35731, and \$250 in Docket No AB-6 (Sub-No 465X) Kindly date stamp and return the 11th copy to the undersigned in the provided envelope. A compact disc containing the filings in MS Word format is also supplied herewith

Very truly yours,

Myles L. Tobin

Attorney for Ballard Terminal Railroad Company, L.L.C.

MLT/ekf
Enclosures (11)
cc. Parties on Certificate of Service

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BEFORE THE
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FINANCE DOCKET NO 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
— ACQUISITION AND OPERATION EXEMPTION —
WOODINVILLE SUBDIVISION

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VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. 10502

INTRODUCTION

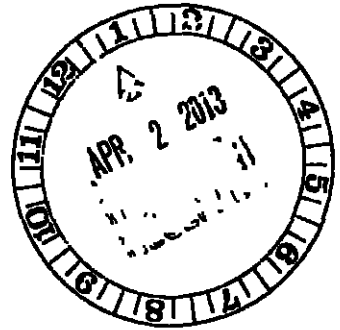
Pursuant to 49 U.S.C. § 10502, Ballard Terminal Railroad Company, L.L.C. ("Ballard"), a Class III common carrier by rail, seeks an exemption from the provisions of 49 U.S.C. § 10902 to enable it to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets on a line of railroad currently owned by the City of Kirkland and the Port of Seattle in King County, WA, and currently subject to a Notice of Interim Trail Use ("NITU"). Additionally, Ballard seeks the right to resume providing common carrier rail service over this trackage. The line consists of a portion of the former BNSF Railway Company ("BNSF") Woodinville Subdivision extending between MP 23.8 at Woodinville and MP 12.6 at Bellevue. Ballard is filing concurrently herewith a Petition to Vacate NITU in the underlying abandonment proceeding.¹ Ballard submits with this Petition a map of the Line as Exhibit A as well as the Verified Statement of its General Manager, Byron Cole, as Exhibit B. It also submits letters of support from two rail customers and the

¹ A NITU was issued for the Woodinville Subdivision in BNSF Railway Company -- Abandonment Exemption -- In King County, WA, STB Docket No. AB-6 (Sub-No. 465X) (STB served November 28, 2008) ("BNSF Woodinville Abandonment") and remains in place.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35731

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.
— ACQUISITION AND OPERATION EXEMPTION —
WOODINVILLE SUBDIVISION



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VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. 10502

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ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.

Dated: March 29, 2013

Cities of Woodinville, Snohomish and Snohomish County The documents are identified as Exhibits C, D, E, F and G, respectively

BACKGROUND

This petition involves a plan by Ballard to acquire the common carrier rights and obligations and the rail assets on, and to restore active rail service over, a short rail line that has been out of service and designated for use as a trail for the past several years. Known as the Woodinville Subdivision and identified here as "the Line," the track segment connects with a line currently operated by Ballard on behalf of Eastside Community Rail, LLC ("ECRR") from MP 23.8 at Woodinville northwards to Snohomish, Washington (the "ECRR Line"). The ECRR Line was acquired by ECRR from the bankruptcy trustee for the estate of the bankrupt GNP RLY, Inc. See Eastside Community Rail, LLC -- Acquisition and Operating Exemption -- GNP RLY, Inc., STB Finance Docket No. 35692 (STB served November 23, 2012).² Ballard has been operating the ECRR Line pursuant to an interim operating/agency agreement with ECRR. In a related Notice of Exemption in Finance Docket 35730, Ballard will lease the ECRR Line from ECRR. As the attached map indicates, the segment of the Woodinville Subdivision that Ballard proposes to reactivate extends from the end of the ECRR line operated by Ballard and continues south to MP 12.6. The total distance involved is 11.2 miles.

In 2008, BNSF sought and received an exemption to abandon the segment of the Woodinville Subdivision from MP 23.8 south to MP 11.25 at Bellevue. BNSF Woodinville Abandonment, cited in note 1, *supra*. On September 18, 2008, King County asked the Board to issue a NITU for the line. In its letter requesting the issuance of an NITU, King County stated its

² The physical assets of the ECRR Line are owned by the Port of Seattle, and ECRR holds an exclusive, permanent easement to conduct freight operations on the line. See The Port of Seattle -- Acquisition Exemption -- Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128 (STB served October 27, 2008).

willingness to accept all liabilities associated with the line and acknowledged that the requested trail use was subject to future reconstruction and reactivation of rail service. See Docket No AB-6 (Sub-No. 465X), Request of King County, Washington for Interim Trail Use Pursuant to 49 C.F.R. 1152.29 at 2.

Thereafter, in an unusual step, King County also sought a Board exemption authorizing it to acquire BNSF's remaining common carrier rights and obligations on the line, and specifically the right to restart rail service. After noting a "threshold issue" of "whether it is permissible under the Trails Act for a trail sponsor to acquire from a railroad the right to reactivate rail service over a railbanked line . . .", the Board eventually granted King County the requested exemption. King County, WA -- Acquisition Exemption -- BNSF Railway Company, STB Finance Docket No 35148 (STB served September 18, 2009) ("King County"). While transferring the right to reactivate rail service to King County, BNSF conveyed the track assets and right-of-way of the line to the Port of Seattle ("the Port"). See BNSF Woodinville Abandonment at 2. The Port subsequently conveyed a portion of the line involved in this proceeding to the City of Kirkland.

As noted above, Ballard is an existing STB authorized Class III short line railroad common carrier. It currently operates the ECRR Line from Woodinville north to Snohomish under an interim operating agreement with ECRR. Ballard also operates two other rail lines in the state of Washington, one in its own name and another in the name of the Meeker Southern Railroad.³ Ballard attaches as Exhibit B the Verified Statement of Byron Cole, its General

³ See Ballard Terminal Railroad Company, L.L.C. -- Modified Rail Certificate, STB Finance Docket No. 33594 (STB served February 29, 1999), Ballard Terminal Railroad Company, L.L.C. d/b/a Meeker Southern Railroad -- Acquisition and Operation Exemption -- The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33959 (STB served November 15, 2000).

Manager, discussing how his company came to acquire the rail lines it presently operates and the company's future business plans.

Recently, a demand for rail service has developed on the Line that has prompted Ballard to file this Petition and the related petition to vacate the NITU on the Line. Mr. Cole identifies in his statement two customers that have come forward and asked Ballard to serve them. One of these, CalPortland, desires to use the Line to receive hundreds of thousands of cubic yards per year of construction materials. A second customer, Wolford Trucking & Demolition, Inc., plans to use the Line to ship 3 million cubic yards of traffic if Ballard restores service. Collectively, that would translate to approximately 50,000 carloads of freight.⁴

DISCUSSION

This Petition presents an important question: Where the petitioning carrier does not own the right-of-way or hold the common carrier right to reactivate service, whether the Board must approve a request by an authorized rail carrier to restore to active common carrier service a rail line that has been converted to trail use under the National Trails System Act, 16 U.S.C. 1247(d) ("the Trails Act") and the Board's implementing regulations at 49 C.F.R. 1152.29. Ballard believes the Board is compelled to grant that request as a matter of precedent and Congressional intent. More specifically, Ballard interprets those provisions as requiring the restoration of rail service by *any* "approved rail service provider." Georgia Great Southern -- Abandon. & Discon. Of Service -- GA, 6 S.T.B. 902, 906 (2003) (citing Butt v. SIB, 90 F.3d 580, 583 (D.C. Cir. 1996), Iowa Power -- Const. Exempt. -- Council Bluffs, IA, 8 I.C.C.2d 858, 866-67 (1990); and 49 C.F.R. § 1152.29). In Georgia Great Southern, the Board stated that interim trail service is subject to being cut off at any time by the reinstitution of rail service. If

⁴ These letters are appended as Exhibits C and D.

and when a railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside. Id. Georgia Great Southern intimates that King County cannot stand in the way of Ballard's service restoration.

That intimation was made explicit when the Board cautiously approved King County's unusual plan to act as trail sponsor on the Line while simultaneously holding the right to resume rail service on the Line:

[T]he right to reactivate a railbanked line is not an exclusive right [citation omitted]. While the parties' agreement would transfer to King County BNSF's opportunity to provide rail service, it would not preclude *any other service provider* from seeking Board authorization to restore active rail service on all or parts of the railbanked segments in the future if King County does not exercise its right to reinstate rail service [citations omitted]. Accordingly, regardless of the parties' intentions, a bona fide petitioner, under appropriate circumstances, may request the NITU to be vacated to permit reactivation of the line for continued rail service. [citations omitted].

King County at 3-4 (emphasis added). The Board plainly contemplated that a petitioner would do exactly what Ballard is seeking to do through this Petition, and all involved parties have had notice that, regardless of King County's particular desires, reactivation of rail service on the Line could be achieved by a third party with Board approval.

Indeed, the "Public Multipurpose Easement" entered into by King County and the Port and previously submitted to the Board in the King County proceeding⁵ specifically recognized and provided for the circumstance now presented by this Petition:

4.1.1 Grantor [the Port] and Grantee [King County] understand, acknowledge and agree that if the STB receives a request to use all or any portion of the Property for federally regulated interstate

⁵ Finance Docket No. 35148, King County Petition for Exemption, Exhibit C, filed September 22, 2008. Relevant portions of the Easement are attached to this Petition as Exhibit H. On the portion of the Line for which ownership has now been transferred from the Port to the City of Kirkland, Ballard presumes that the Easement now governs as between King County and the City.

freight rail service, then Grantor and Grantee may each be required to, and will if so required, make available some or all of their respective interests in the Property to accommodate reactivated freight rail service.

Thus, the fact that King County, the Port or the City of Kirkland may not agree to Ballard's restoration of service presents no bar to this Board's ability to issue an exemption authorizing Ballard to restore service or to the restoration of service itself.

Ballard seeks an exemption under 49 U.S.C. § 10502 from 49 U.S.C. § 10902 to require acquisition of King County's common carrier rights and obligations, the rights of King County, the Port of Seattle and the City of Kirkland in the rail assets on the Line, and the restoration of rail service. But for the exemption of Section 10502, Ballard's acquisition would require the Board's formal authorization under 49 U.S.C. § 10902 applicable to the acquisition (and operation) of rail lines by existing Class III rail carriers.⁶ Section 10902(c) requires the Board to issue a certificate authorizing a Class III carrier to acquire an additional line of railroad unless the Board finds that the acquisition is inconsistent with the public convenience and necessity.

Ballard believes that its request is appropriate for exemption from the formal requirements of Section 10902. Section 10502 directs the Board to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the transportation policy of §10101(a) and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power. Indeed, the legislative history behind Section 10505 (the predecessor section to the current

⁶ While there is an existing class exemption for Class III carrier transactions under Section 10902, see 49 C.F.R. § 1150.41, prior Board guidance has indicated that a individual petition for exemption is the appropriate vehicle for transferring a right to reactivate rail service under the circumstances involved here. See King County at 4, n.5

Section 10502) makes clear Congress' intent that the Interstate Commerce Commission (and now the Board) use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation.

In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

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

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980), see also Exemption from Regulation -- Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brac Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed transaction from Section 10902 is exactly the type of minor transaction Congress contemplated when it enacted Section 10502. Requiring Ballard to submit a formal application is not necessary to carry out the transportation policy of 49 U.S.C. § 10101(a), thereby satisfying the ICCTA's goals of minimizing federal control over transportation and reducing regulatory barriers to entry under Section 10101(a)(2) and (7). A grant of Ballard's Petition will also facilitate several other goals including those of Section 10101(a)(4), which ensures the development and continuation of a sound rail transportation system with effective competition between rail carriers and other modes of transportation, and those of Section 10101(a)(14), which encourages and promotes energy conservation. Granting

this exemption will allow the two customers that have appeared here in support of this Petition to shift their freight back to energy efficient rail service instead of truck delivery, thus fulfilling these goals.

Moreover, a grant of Ballard's Petition will further the Board's oft-expressed policy of preserving rail service for which there is a stated public need. As the Board has held, "we are mindful of Congress' intent, as expressed in many statutory provisions that lines be kept within the rail system where possible." Norfolk Southern Railway Company -- Adverse Abandonment -- St. Joseph County, MI, STB Docket No AB-290 (Sub-No. 286) (STB served February 14, 2008), slip op at 5-6 and note 15 (a denial of an adverse abandonment application opposed by a new short line railroad on account of potential new traffic); and BNSF Woodinville Abandonment, supra, slip op at 3-4 (denying an exemption from the offer of financial assistance provisions in the abandonment proceeding involving the very segment of the Woodinville Subdivision that is the subject of this Petition).

Although the right to restore rail service was transferred from BNSF to King County, the discussions of Ballard and ECRR with King County make it clear that the County has no interest whatsoever in restoring that rail service, which it views as supposedly a "non-starter." Indeed, the City of Kirkland, which owns 5.75 miles of the Bellevue-Woodinville Line has issued a request for proposed bids to remove the 5.75 miles of track which they own. Ballard has filed a request with the Federal Court in Seattle to issue a preliminary injunction preventing this removal of rail until such time as the Surface Transportation Board rules on this petition.

As part of Ballard's petition, it is requesting that the STB order the transfer all of the rail materials to it at net liquidation value. Kirkland does not want restoration of rail service. In fact, its request for bids makes it clear that Kirkland believes that restoration of rail service is

not appropriate (see portions of Kirkland's Request for Rail Removal Bids attached to Mr. Cole's Verified Statement). Kirkland recognizes, as Ballard does, that removal of the 5.75 miles of rail will deal a severe blow to restoration of rail service. Based on the bids that Ballard has seen for removal of this rail, the net value of the rail materials to Kirkland is likely to be no more than \$25,000.00, at best. However, if the rail materials are removed in totality, Ballard estimates that the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately \$10,000,000. If rail service is to be restored on this line, the transfer of rail assets to Ballard is necessary, and is in the public interest. Such a transfer is consistent with the Board's analogous authority in offer of financial assistance proceedings, and will help effectuate the Board's clear intentions expressed in the King County proceeding.

Ballard recognizes that the right to reinstitute rail service under the NITU was not transferred to it. However, that right was transferred to the proverbial "fox in the henhouse" as neither King County, nor Kirkland, have any interest in restoring rail service. And, as the Board made clear in its King County decision, other entities could step forward and reactivate rail service.

To be clear, Ballard understands that King County and Kirkland have interest in placing a trail on this right of way. Ballard has absolutely no objection to the corresponding uses of the right of way as both a trail and a rail line, and indeed has trails along both of its other lines in Washington State. Ballard's conversations with King County, Kirkland and others have been clear on that point. What is clear to Ballard, however, is that those entities do not want a rail line. Their position demonstrates why the Board was correct to proceed cautiously in allowing King County, the trail use sponsor, to acquire the right to reactivate rail service in 2009,

and in assuring that other parties would have the right to reactivate rail service if King County predictably did not.

Ballard also is aware that another entity made a somewhat similar request for reactivation of rail service approximately three years ago. See GNP RLY, Inc. -- Acquisition and Operation Exemption -- Redmond Spur and Woodinville Subdivision, STB Finance Docket No. 35407 (STB served June 15, 2011). GNP-RLY, Inc. sought reactivation of the Redmond Spur (not at issue here) as well as milepost 23.8 to milepost 22, which is a small portion of the segment for which Ballard is seeking reactivation. The STB did not reject or address the reactivation on its merits. Rather, the Board focused on the fact that GNP-RLY was financially unstable, and found that it was not a "bona fide" petitioner as contemplated in the King County decision. In fact, GNP-RLY has since gone through bankruptcy and ceased business. Ballard is not GNP-RLY. Ballard is a financially sound Class III carrier that operates three rail lines in the State of Washington serving multiple shippers. Ballard's major shareholder, Salmon Bay Sand and Gravel, is located on the Ballard line and is a very successful multi-generational business. While Ballard's relationship with GNP-RLY and now ECRR on the ECRR Line has been that of an agency operator, Ballard is now taking over full common carrier operations on the line through the separate notice of exemption for lease and operation which it has filed with the Board.⁷ The coexistence of rail operations with a trail on the Woodinville-Bellevue line segment is viable.

⁷ ECRR is very supportive of Ballard's efforts to reactivate rail service on the Line. ECRR's pending lease arrangement with Ballard on the ECRR Line will include an option to acquire some or all of Ballard's operations should Ballard experience a change in its existing management.

Ballard's acquisition of King County's common carrier rights and the trackage assets will permit a locally-based carrier to rehabilitate and restore to operation the Line handling traffic between the Line and the national rail system.

Granting Ballard's request will also satisfy both the limited scope and the no abuse of captive shippers tests of Section 10502. The total length of the track involved is only about 11.2 miles. Ballard's rail service would increase the competitive options of the shippers on the Line who could choose to move their traffic by offering them the choice of either rail or truck transportation. The fact that two shippers support this Petition demonstrates that the acquisition of the Line will not result in an abuse of market power.

Ballard certifies that, with this acquisition, its projected annual revenues will be less than \$5,000,000 annually. See 49 C.F.R. §§ 1121.4(h), 1150.42(c).

Under 49 U.S.C. § 10902 the imposition of labor protective conditions are not authorized for a Class III railroad acquisition and thus none should be imposed on this transaction.

Pursuant to 49 C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental review under 49 C.F.R. § 1105(c)(2)(i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in Section 1105.7(c) (4) or (5). In addition, this transaction is exempt from historic review under 49 C.F.R. § 1105.8(b)(1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval would be required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,

By: Myles L. Tobin
Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR BALLARD TERMINAL
RAILROAD COMPANY, L.L.C.**

Dated. March 29, 2013

Pursuant to 28 U S C 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on. March 28, 2013


Byron Cole

ATTORNEY CERTIFICATION OF SERVICE

I, Myles L. Tobin, an attorney-at-law of the State of Illinois, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following persons by First Class Mail on March 29, 2013:

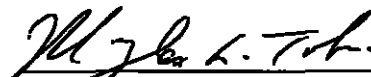
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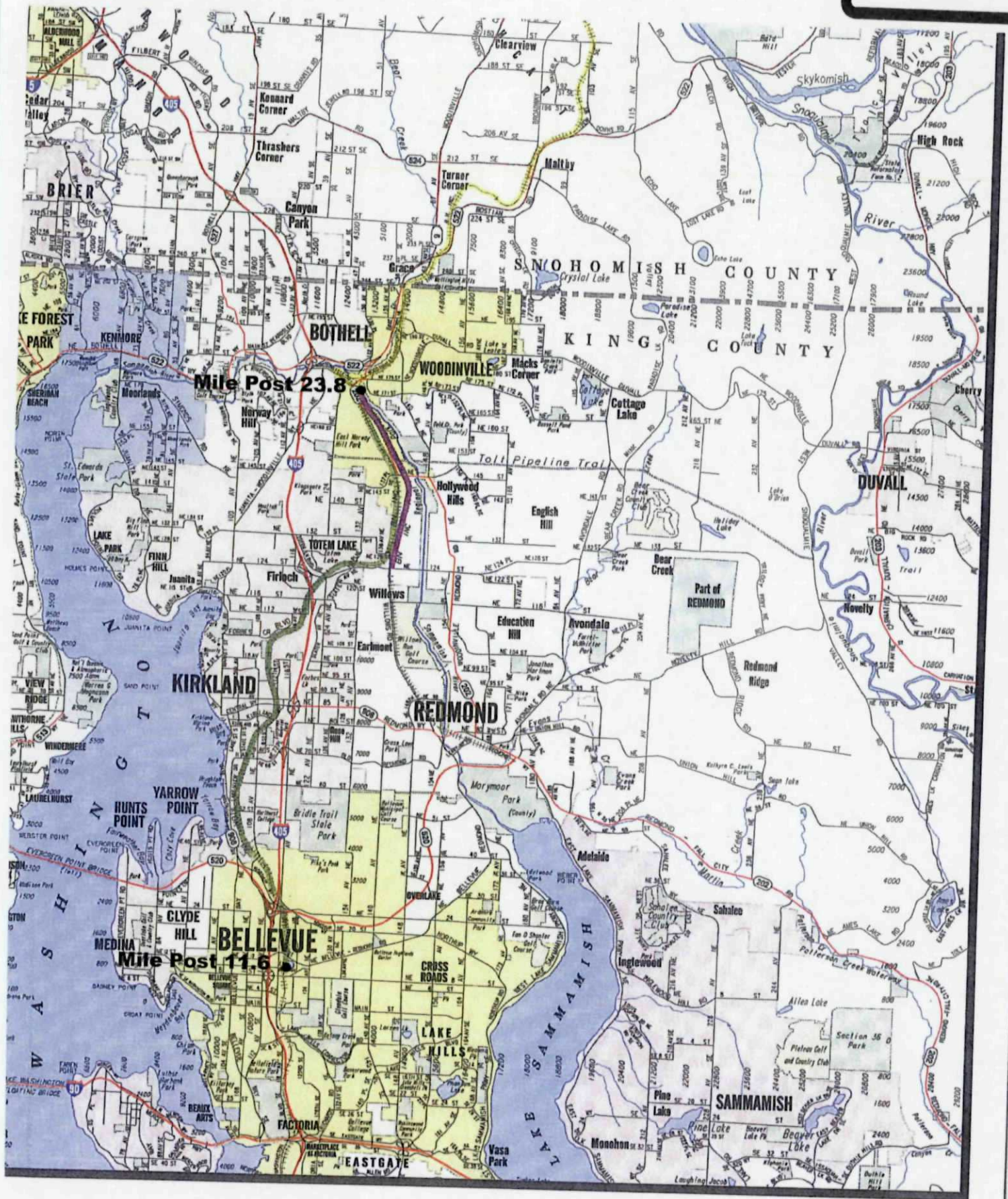
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1001 Connecticut Avenue NW
Washington, DC 20036



Myles L. Tobin

Dated: March 29, 2013



VERIFIED STATEMENT OF BYRON COLE

Byron Cole, being duly sworn, deposes and states as follows:

My name is Byron Cole. I am the General Manager, and one of two founders, in 1996, of the Ballard Terminal Railroad Company, LLC (BTRC, LLC). We are incorporated in the state of Washington. Our business address is:

Ballard Terminal Railroad Company, LLC

4725 Ballard Avenue NW, Seattle, WA 98107

We own and operate two Class III Common Carrier Shortline freight railroads: The Ballard Terminal Railroad (BDTL), in Seattle, and the Meeker Southern Railroad (MSN), about 10 miles East of Tacoma WA. In addition, we operate a third shortline, which we market as the Eastside Freight Railroad, under a contract with the Eastside Community Rail, LLC. All three railroads are portions of branchlines previously owned by BNSF Railway, and interchange only with BNSF.

The Ballard Terminal Railroad is in the Ballard Industrial district, in Seattle, and currently serves three customers and produces about 250 carloads per year. We started it up in 1998.

The Meeker Southern Railroad, near Tacoma, is in a semi rural area, but only about 12 miles away from the booming Port of Tacoma. In 2012 we had our best year ever for traffic there. MSN serves seven industries, is close to the largest deep water port on Puget sound, and has a thriving trans-load business.

Finally, since January, 2010, we have provided the twice weekly common carrier freight service over the 14 mile rail line between East Snohomish Junction and Woodinville.

Washington as an agent for the company owning the operating rights and the track maintenance

obligation. Initially, the owning rail carrier was GNP Rly. Inc., which purchased an operating easement over the line from BNSF in late 2009. Under contract to GNP-RLY, we began twice a week freight train operations over the 14 mile route on Jan 11, 2010. When GNP-RLY went into bankruptcy, we continued the operating agency relationship with the Bankruptcy Trustee. The operating rights, and the track maintenance obligation contract, were recently purchased from the bankruptcy trustee, for the Snohomish-Woodinville line by Eastside Community Rail, LLC ("ECRR") and we have continued that agency relationship for them, for operations on the line pursuant to an Interim Operating Agreement. By separate Notice of Exemption, we shortly will lease the Snohomish-Woodinville line from ECRR.

In the Petition to which this Verified Statement is attached, BTRC, LLC proposes to reactivate the connecting rail line from milepost 23.8 at Woodinville to milepost 12.6 at Bellevue and vacate the Notice of Interim Trail Use with respect to that particular line segment.

The Woodinville-Bellevue line was the subject of an abandonment exemption by BNSF. During the course of that proceeding, BNSF entered into a Notice of Interim Trail Use with King County. BNSF also transferred its right to reactivate rail service on that line segment to King County. As ECRR's discussions with King County have made clear, this was akin to placing the "fox in the henhouse" as King County has absolutely no intention of restoring rail service to this line. Indeed, the underlying real estate and truckage was sold to the Port of Seattle and, in turn, a 5.75 mile section of the line was sold to the City of Kirkland.

We have been engaged in active discussions with several shippers interested in restoring rail service via the Woodinville-Bellevue line segment. Those shippers would potentially be served by that segment, then via the ECRR owned Woodinville-Snohomish line to ultimate interchange with BNSF. While discussions with several shippers are ongoing, two shippers,

CalPortland and Welford Trucking Company have filed support letters attached to this petition, as they are both ready, willing and able to utilize the Bellevue-Woodinville segment. Indeed, as they have both indicated, it is the location of the line to Bellevue which makes it opportune for their usage. The cities of Snohomish and Woodinville, as well as the County of Snohomish have also written letters supporting restoration of rail service.

Although the right to restore rail service was transferred from BNSF to King County, the discussions of ECRR with King County make it clear that the County has no interest whatsoever in restoring that rail service. Indeed, the City of Kirkland, which owns 5.75 miles of the Bellevue-Woodinville rail line has issued a request for proposed bids to remove the 5.75 miles of track which they own. We have filed a request with the Federal Court in Seattle to issue a preliminary injunction preventing this removal of rail until such time as the Surface Transportation Board rules on our petition.

As part of our petition, we are requesting that the STB order the transfer of all of the rail materials to us at net liquidation value. Kirkland does not want restoration of rail service. In fact, its request for bids makes it clear that it believes restoration of rail service is not a good idea (see selected portions of Kirkland's Request for Rail Removal Bids attached to this statement as Exhibit 1). Kirkland recognizes, as we do, that removal of the 5.75 miles of rail will deal a severe blow to restoration of rail service. Based on the bids that we have seen for removal of this rail, the net value of the rail materials to Kirkland is likely to be no more than \$25,000.00, at best. However, if the rail materials are removed in totality, we estimate that the cost to reinstall rail and crossings on that portion of the Bellevue-Woodinville segment alone will be approximately \$10,000,000. Consequently, if rail service is to be restored on this line, transfer of the rail assets is necessary, and is in the public interest.

We recognize that the right to reinstitute rail service under the Notice of Interim Trail Use was not transferred to Ballard. However, neither King County, nor Kirkland, have any interest in restoring rail service. And, as the Surface Transportation Board made clear in the Notice of Interim Trail Use, other entities could step forward and reactivate rail service.

To be clear, we understand that King County and Kirkland have interest in placing a trail on this right of way. WE HAVE ABSOLUTELY NO OBJECTION TO HAVING A TRAIL BE CONSTRUCTED BESIDE OUR RAIL LINE as BTRC, LLC has done on its other two lines.

We are the poster child for Rails with Trails! Both of our other railroads now have paved bike and /pedestrian trails constructed beside them. In both cases, we have participated and collaborated with the local jurisdictions on both the design, construction, and maintenance of the trails. This includes instances where we have provided clearing, filling and grading, including labor, equipment, and materials in some cases, for the trails. Now, as time goes by, we also help with the ongoing maintenance of the trail surfaces, brush abatement, grade crossing maintenance, etc. ECRR's conversations with King County, Kirkland and others have made it clear, however, is that they want a trail, not a rail line while acknowledging the Line is railbanked.

We also are aware that GNP-RLY made a somewhat similar request for reactivation of rail service approximately three years ago. GNP-RLY sought reactivation of the Redmond Spur (not at issue here) as well as milepost 23.8 to milepost 22, which is a small portion of the segment for which we are seeking reactivation here. The STB correctly did not reject the reactivation on its merits. Rather, the Board focused on the fact that GNP-RLY was financially unstable. In fact, GNP-RLY has since gone through bankruptcy and has ceased business.

Ballard Terminal Railroad, LLC is not GNP-RLY. We are a financially sound Class III carrier, formed in 1996, and now owning outright two shortlines, and operating a third, in the

State of Washington, serving multiple shippers. Our Co-founder is a senior partner in a very successful multi-generational construction materials business. While our relationship with GNP-RLY, and now ECRR, has been that of an agency operator, we are now taking over full common carrier operations on the adjoining Woodinville – Snohomish line through the separate notice of exemption for lease and operation which we have filed with the Board. The coexistence of rail operations with a trail on the Woodinville-Bellevue line segment is viable and ECRR has provided a proposal to Kirkland to build a trail next to the Line. We implore the Board to grant the relief requested and allow rail service to be restored.

I, Byron Cole, declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on March 28, 2013

Byron D Cole
Byron Cole



INVITATION TO BID

Notice is hereby given that the City of Kirkland will receive sealed bids in the office of the Purchasing Agent, City Hall, 123 Fifth Avenue, Kirkland, Washington, at 2:00 p.m. local time on March 15, 2013 for the project hereinafter referred to as:

Cross Kirkland Corridor Rail Removal Project Job No. 15-13-PW

At said time all bids will be opened and publicly read aloud. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check or a bond issued on a form acceptable to your surety made payable to the City of Kirkland for a sum of not less than the greater of \$5,000 or five percent (5%) of the total bid amount for Schedule A. No bid shall be considered unless accompanied by such bid proposal deposit. Incomplete proposals and proposals received after the time stated above will not be considered. Faxed or emailed responses are not acceptable.

The work to be performed under these specifications consists of furnishing all labor, tools, materials, and equipment necessary for construction of the Cross Kirkland Corridor Rail Removal Project.

Specific work includes removal of all rail, ties and other track material (OTM) within the Cross Kirkland Corridor right-of-way from 108th Avenue NE to 132nd Ave NE with the exception of at-grade roadway crossings. Items of work include removal and salvage of the railway; removal and salvage/disposal of OTM; restoration of all disturbed areas to match preconstruction or better conditions; and providing, installing, and maintaining TESC BMPs to protect sensitive areas. The estimated cost for the removal of the materials is \$435,000 to \$535,000 and the estimated salvage value of the material to be removed is \$465,000 to \$572,000 for an estimated credit to the City of Kirkland in the amount of \$35,000.

As evidence that the Bidder meets the project specific supplemental bidders qualifications specified in Section 1-02.1, the apparent two lowest Bidders must submit documentation demonstrating compliance to the Contracting Agency, within 48 hours of the official Bid tabulation by the City.

The City will not sell bid packages. Plans, specifications, and addenda may be viewed and obtained online at www.bxwa.com. Click on: "Posted Projects"; "Public Works"; "City of Kirkland". The Bidders List is maintained by the Builder's Exchange of Washington, Inc. Registration for the bidder's list may be made online, by phoning (425) 258-1303, or at Builder's Exchange of Washington located at 2807 Wetmore Ave, Everett, WA.

Questions regarding this project shall be submitted in writing to Aaron McDonald, P.E. via fax (425) 587-3844 or email amcdonald@kirklandwa.gov. Questions via phone will not be accepted. Bidders shall submit questions no later than 2:00 p.m. March 12, 2013.

The City reserves the right to reject any and all bids, and to waive any informalities in the bidding, and to make the award to the lowest, responsive, responsible bidder as best serves the interests of the City.

No bids may be withdrawn within forty-five (45) days after the actual date of the bid opening.

Published: Daily Journal of Commerce – February 26, 2013, March 4, 2013, March 11, 2013

Estimate of Railroad Track and OTM

Cross Kirkland Corridor



The Cross-Kirkland Corridor is a stretch of Railroad track with right of way between 108th Street in Bellevue to 132nd Ave NE in Kirkland, totaling 5.75 track miles along with 2,150 track feet of industrial trackage. There are three main track switches/turnouts; two of which are 100 lb. ARA #9 switches and one 115 lb. #9 BNSF common standard turnout. The Railroad was originally Northern Pacific track then Burlington Northern to later BNSF and finally sold to the Port of Seattle and eventually became the property of the City of Kirkland.

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.

Following in this report are materials that can be found throughout the Corridor:

- Jointed or bolted Rail in sections of 72, 80, 85, 90 RB, 100 ARA, 112, 115
- OTM of various portions & sizes as follows:
 1. 7-1/2"X11" single shoulder AREMA #2 tie plates
 2. Track spikes
 3. Rail anchors
 4. Joint bars & Compromise joint bars of various sizes
 5. Insulated Joints
 6. Track bolts, nuts, washers
 7. Insulated gage rods



March 25, 2013

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

Dear Ms Brown:

I would like to stress the importance of restoring rail service to the rail line segment between Woodinville and Bellevue, Washington via a rail line that is currently railbanked.

CalPortland is a major building materials and construction/services provider to the Western United States and Canada. We provide construction services and materials to a multitude of projects in the State of Washington generally, and in the area of Seattle, Washington, specifically.

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years which will necessitate the import of hundreds of thousands of cubic yards of construction aggregate materials to produce buildings, developments and roadways that are in strict accordance with all specifications for engineering parameters. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. Additionally, we anticipate ongoing projects in the future, on a regular basis.

In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service to Bellevue is critical. Restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of these various construction materials. Use of an already overburdened highway system via truck transportation is neither efficient or very cost-effective.

The opportunity to utilize Eastside Community Rail as a viable option for the movement of these materials is a very advantageous option for this region of the Puget Sound. We look forward to a strong future for the economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will allow



Ms. Cynthia T. Brown
March 26, 2013
Page 2

CalPortland, Ballard Terminal Railroad and Eastside Community Rail to service the community in the most efficient business methods possible for the Snohomish and east King County region. The addition of rail access would also promote the responsible reduction in truck fuel emissions and wear to the regions roads.

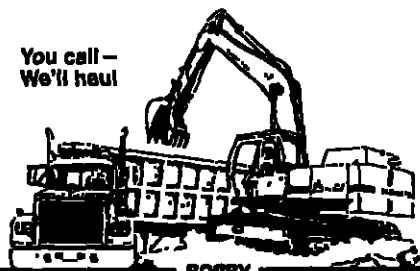
Very truly yours,

Michael Skrivan

Aggregate Sales Manager
Materials Group – Northwest Division
CalPortland

22014 West Bostian Rd.
Woodinville, WA 98072
(425) 827-7530/481-1800
FAX # (425) 488-6813

You call —
We'll haul



- 40 / 50 yard Debris Trailers
- Lowboys
- Belly Dumps
- Track Hoes, Loaders & Dozers

March 27, 2013

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

Dear Ms. Brown:

Bobby Wolford Trucking (BWT) was founded in 1972 to provide general demolition and trucking services, primarily to the real estate development industry. Since then we have added full recycling service for construction debris (such as concrete), land clearing debris, and the like. We are a Snohomish County certified "Intermediate Solid Waste Handling Facility" and processor of these materials. Our processing yard is located in Maltby (Snohomish County), alongside the BNSF railroad's former Woodinville line, now known locally as the Eastside Rail Corridor (ERC).

I am writing to stress the importance of restoring rail service to the next segment of the ERC, between Woodinville and Bellevue, Washington, a rail line that is currently inactive and rail-banked. We very much support continued freight use and enhancement of the entire ERC. In fact, we have started planning with the current railroad operator, Ballard Terminal Railroad (BTR), to construct a spur track from the main rail line directly into our recycling yard. This would allow us to both receive material to be recycled from up and down the corridor, as well as to economically ship out sorted and processed materials by rail to their final disposal point, e.g., landfills in southern Washington.

Ms. Cynthia T. Brown
March 26, 2013
Page 2

There are several major highway and secondary roadway projects scheduled in the area of Bellevue, Washington over the course of the next several years. These projects, plus multiple new high-rise buildings, will necessitate the export of hundreds of thousands of cubic yards of excavated materials, building demolition waste, and roadway grading spoils. We are currently targeting projects on I-405 and SR520 for the 2013 and 2014 construction seasons. A future light rail system with a tunnel and "cuts" are within one mile of the railroad, and will also require substantial movement of spoils and raw materials. Additionally, we anticipate ongoing construction projects in the future, on a regular basis. We estimate the volume of these projects at over three million cubic yards of construction spoils over the next several years.

We need to have the rail line intact to provide this service and to be able to bid on these important projects. We have already estimated that our bid would be at least 15% less expensive to our clients than the trucking option. For us to provide competitive and viable bids, we need the rail intact and active.

We have consulted with Eastside Community Rail (ECRR), the owner of the rail freight easement in the corridor, about the logistics of moving large quantities of excavated material from construction projects in King County by rail for direct placement as road or trail base alongside their existing railroad embankment, mainly in Snohomish County. BWT has extensive experience hauling for excavation contractors. We agree with ECRR that using rail to replace thousands of long truck hauls to dump sites would greatly reduce traffic congestion and wear on the region's highways, and would obviously reduce air pollution from diesel exhaust, too. Since the ERC runs right through areas of King County where there will be many large construction projects, it makes sense to use rail cars to move excavated material out of and some bulk construction materials in to those project areas. In view of the proximity of these various projects to Bellevue, Washington, restoration of rail service from Woodinville to Bellevue is critical to the efficient transportation of construction materials. Sole use of an already overburdened highway system, which is one of the worst in the country, via truck transportation is neither efficient, cost-effective nor particularly safe.

Ms Cynthia T. Brown
March 26, 2013
Page 3

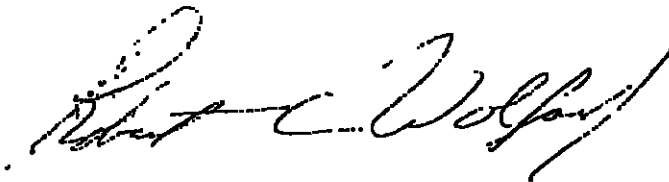
In conclusion, even though we are a trucking company, we see the benefit to all of us of maintaining a functioning, thriving railroad through the east side of both King and Snohomish Counties, and keeping our communities connected by rail to the rest of the country. We also support the multiple uses of this public corridor, like trails, or some form of passenger rail services, that so many other agencies are planning. The opportunity to utilize the Eastside Rail Corridor as a viable option for the movement of construction materials is very advantageous for this region of the Puget Sound. We look forward to a strong future for economic growth in the Bellevue, Kirkland, Redmond and Snohomish County areas. The ability to help lower traffic congestion while still servicing the market with the necessary construction material needs by allowing rail to be utilized will help CalPortland, Ballard Terminal Railroad, Eastside Community Rail and others provide service to the community in the most efficient manner possible. The resumption of rail service to Bellevue would also promote the responsible reduction of truck exhaust emissions and wear to the region's roads.

Thank you for considering our position to reactivate the rail corridor for our business and for the community

Very truly yours,

Bobby Wolford

Owner
Wolford Trucking and Demolition

A handwritten signature in black ink, appearing to read "Bobby Wolford", is written over a horizontal line.



**Snohomish County
Executive Office**

**Aaron Reardon
County Executive**

(425) 388-3460
FAX (425) 388-3434
MS #407
3000 Rockefeller Avenue
Everett, WA 98201-4046

March 21, 2013

To Whom It May Concern:

Snohomish County strongly supports multiple purpose use of the Eastside Rail Corridor, including trail, commuter rail, excursion rail, and freight. Snohomish County demonstrated its support for this corridor in 2009, granting GNP Railway the right to operate on the portion of the corridor owned by Snohomish County in the City of Snohomish. Snohomish County hosted a Rail Summit in 2011 that gathered community leaders to discuss the positive use and impact of actively using the rail corridor. Snohomish County is actively engaged in the regional discussion of the corridor, participating in the TRailways coalition and attending the advisory council created by King County.

Snohomish County's Centennial Trail is the crown jewel of the county's trail network, used by many thousands each year. The Centennial Trail starts at the border with Skagit County and currently ends in the City of Snohomish. We, and the City of Snohomish, are excited by the prospect of connecting the Centennial Trail to the Sammamish River and Burke Gilman Trails in King County by acquiring and building a trail adjacent to the track in the Eastside Rail Corridor from Snohomish to Woodinville. Snohomish County is actively negotiating the purchase of a trail easement in the Snohomish County portion of the rail corridor. The Port of Seattle and the County have exchanged letters of intent, and we expect to close the purchase in a few months. The County is moving forward with project financing for both the acquisition and the development of the trail. We look forward to demonstrating that rail and trail can happily co-exist adjacent to each other, as it does in Marin County and Escondido, California. Connecting the Centennial Trail to the Sammamish River and Burke Gilman Trails will be a major benefit to the entire region.

Several hundred jobs in Snohomish County currently depend upon rail access for freight. These jobs are important for our community and we strongly support maintaining the corridor for freight.

county executive@co.snohomish.wa.us
www.co.snohomish.wa.us

Approximately half of the Snohomish County residents who commute to King County reach their jobs in King County by travelling south down I-405. Using the Eastside Rail Corridor for commuting would reduce vehicular congestion, improve air quality, and reduce the region's carbon footprint. Whether diesel motor units or other types of rail cars are used, the corridor is an exciting opportunity to develop and implement commuter transportation far faster and cheaper than usual in Puget Sound.

Excursion rail service, such as proposed by Eastside Community Rail, is an exciting opportunity for economic development along the corridor. The service would tie the wine district of Woodinville to historic Snohomish, substantially increasing tourism in both King and Snohomish County. Excursion service is important to Snohomish County and we strongly support action to start the service.

Eastside Community Rail advises Snohomish County that it would like to assist development projects in the Bellevue area by providing economical and environmentally friendly freight rail service, specifically to transport construction spoils from large excavation projects. Community Rail could use these spoils to create a maintenance-of-way road alongside the track in Snohomish County, which could then serve as the base for the trail linking Snohomish to the Sammamish River Trail. This synergy saves money and substantial time in creating the trail.

Two significant barriers impede the start of excursion rail service and the fastest, cheapest rail development from Woodinville to Bellevue: the condition of the track and Kirkland's intent to remove the rails in Kirkland. The track is currently classified as "excepted", precluding passenger traffic. Community Rail desires to upgrade the track to class 2, which would allow passenger rail traffic up to thirty miles per hour. Community Rail estimates the cost of upgrading the track from excepted to class 2 status at almost \$6 million.

Although Snohomish County cannot practically or legally fund this work, Snohomish County strongly supports Community Rail's attempts to obtain grants for the track upgrade. The track needs to be improved to achieve the community's vision.

Kirkland has repeatedly and publicly stated its commitment to maintain the corridor for both commuter transportation and a trail. Kirkland is moving forward with its trail and additional planning because the citizens of Kirkland voted to tax themselves to create a trail. Snohomish County acknowledges and respects the decision of Kirkland citizens to develop its portion of the corridor as expeditiously as possible.

Kirkland's removal of the rails would obviously break the line, preventing rail service into and south of Kirkland, whether for excursion, commuter or freight. Although we wish it were otherwise, commuter rail does not appear to be feasible until the project is included in Sound Transit's list of projects approved by the voters. An additional impediment to commuter service from Snohomish County is the fact that Sound Transit's territorial jurisdiction ends at the King

County/Snohomish County border in Woodinville. While it is possible for an entity other than Sound Transit to provide commuter rail service (e.g., Community Rail using diesel motor units), such commuter service could not occur in any event unless and until the tracks are upgraded and unless and until a sufficiently capitalized entity is willing to provide the service. Kirkland will not remove the ballast, but will merely remove the track. Kirkland has publicly assured the corridor community that it supports contemporaneous rail use and will support rail use as soon as a feasible, practical plan is put forward.

Freight use of the corridor for removal of construction excavation spoils from Bellevue would benefit Snohomish County and Snohomish County therefore supports such use. Although freight service from Bellevue north will be problematic if Kirkland picks up the track, the rail line in King County is railbanked. The rail corridor through Kirkland could be reactivated as soon as a practical, feasible, tangible and economically viable plan for freight use of the track is brought forward.

In summary, Snohomish County supports use of the Eastside Rail Corridor for freight, excursion and commuter rail service and for a trail. Snohomish County is moving forward to develop a trail and supports grant requests to upgrade the track. Snohomish County will continue to work with other agencies to develop this important public asset.



Peter B. Camp
Executive Director

March 8, 2012

The Honorable Kirkland City Council
123 5th Avenue
Kirkland WA, 98033



Honorable City Council.

Re: Eastside Rail Corridor

The Eastside Rail Corridor has been identified as a regionally important dual use "rails and trails corridor" that could provide crucial long-term public transportation, freight, and excursion train links; as well as unsurpassed regional non-motorized recreational trail links.

It has come to our attention that Kirkland intends to remove the existing railroad tracks within the portion of the corridor owned by Kirkland to build a non-motorized pedestrian/bicycle trail. While we respect Kirkland's ownership position and desire to expedite the benefits of this corridor for its citizens; we ask that you consider delaying removal of the tracks until later this year. This corridor, particularly through Kirkland, is of great importance to Woodinville and the region.

As you know, the Eastside Rail Corridor Regional Advisory Council, of which Kirkland is a member, is currently discussing and planning the future of the corridor. We understand the Advisory Council will present its recommendations in Summer 2013 and request that Kirkland consider delaying removal of the tracks until these recommendations are known. At that time, Kirkland can determine if it is in the best interest of its citizens and the region to remove the tracks, after full consideration of regional issues and impacts.

We appreciate your consideration of our request. We offer to host a Kirkland-Woodinville Joint City Council Meeting to further discuss this matter as soon as it can be arranged.

We look forward to your response.

Sincerely,

Bernard W. Talmas, Mayor

Cc: Kirkland City Council
Kirkland City Manager
Woodinville City Council
Woodinville City Manager



CITY OF SNOHOMISH

Founded 1859, Incorporated 1890

116 UNION AVENUE SNOHOMISH, WASHINGTON 98290 TEL (360) 568-3115 FAX (360) 568-1375

February 26, 2013

Sen. Rosemary McAuliffe
403 Legislative Building
PO Box 40401
Olympia, WA 98504-0401

Dear Hon. Sen. McAuliffe:

Thank you for meeting with City Councilmember Dean Randall, City Manager Larry Bauman and me in your Capitol office on February 14. We appreciate your interest in the Eastside Rail Corridor's potential for improvements that will make public passenger services feasible as well as help to preserve the corridor for freight use and trail development

We want to reiterate and provide additional information that supports our request for \$6.26 million in state capital funding needed to upgrade the Eastside Rail Corridor, which is owned by the Port of Seattle and other local governments in the region. We believe that it is important for state leaders to understand that no private company will invest in publicly owned rail infrastructure because it cannot be used as collateral to secure the investment. However, until such public investment is found to upgrade these tracks, passenger service is not feasible due to deteriorated track conditions that must first be repaired.

The \$6.26 million will be used along nearly 15 miles of track between Woodinville and Snohomish. This is a great short term jobs program and is a financial bargain: to lay more ties for a smoother ride, upgrade 11 bridges, 10 crossings, and do the ditching and brush cutting required to run passenger trains up to 30 miles/hour. That averages about \$400,000 a mile – a fraction of the cost of highway upgrades.

Furthermore, the potential exists for easily achieved multi-modal uses of the corridor. Sufficient rights of way exist in nearly all sections of corridor to provide ample room for rail and trail uses to exist side by side. Connecting this corridor to such trail systems as the Tolt-Pipeline Trail and Centennial Trail offers exciting opportunities to expand one of the fastest growing personal transportation and recreational developments that is transforming our region. Snohomish County is currently exploring funding options to purchase the northern section of this rail corridor for combined rail and trail uses.

Eastside Community Rail, the current operator that is working under agreements with the Port of Seattle to provide freight service and initiate excursion services on the rail corridor, is committed to ongoing track maintenance costs of \$1.1 million annually once these tracks are upgraded to passenger rail status. Our city government sees the Eastside Rail Corridor as a nearly unprecedented opportunity for public use of a rail system that in recent decades has been

underutilized. The ultimate vision and future goal of our local government and many others in the region is to see this corridor developed and extended to provide commuter rail services between Bellevue and Everett. This can be achieved at a fraction of the capital costs of Sound Transit's existing commuter rail services. That is why we need your support and efforts this legislative session.

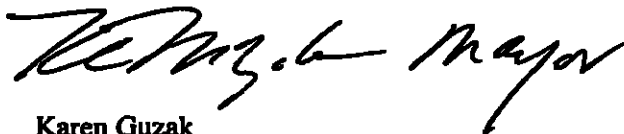
Improving the tracks now will pave the way for future expansions of passenger services for this rail corridor. The risks of allowing this corridor to deteriorate and be carved up or severed at this time are significant. Your involvement at this time could be the most important action that could be taken to ensure that the broadest public uses of these rails will be possible both near term and in the decades to come.

The recently formed Eastside TRailway Alliance—composed of local governments, business associations, wineries, and various groups committed to both rail and trail development—is devoted to seeing the Eastside Rail Corridor improved and expanded for public benefit. Few public projects in our region have attracted as much public support and interest as has this corridor. Few corridors of this type provide such opportunity for public benefit.

We would appreciate your active support in helping our region maximize the public investments that have already occurred on the Eastside Rail Corridor. Devoting \$6.26 million in state funds at this critical juncture might just be one of the best investments the state could possibly make during this legislative session—or possibly any other session, at least in recent times—for cost-efficient transportation services.

Please let us know if we may be able to provide additional information that would support this request or assist you in your work on behalf of the people of our state.

Best regards,

A handwritten signature in black ink, appearing to read "Karen Guzak" followed by a stylized flourish.

Karen Guzak
Mayor

c: Snohomish City Council
 Woodinville City Council
 Bruce Agnew, Cascadia
 Eastside TRailway Alliance
 Eastside Community Rail