

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
January 17, 2014
Part of
Public Record

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**

**MOTION OF THE CITY OF KIRKLAND, WASHINGTON, KING COUNTY,
WASHINGTON, AND CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY TO (1) ISSUE SUBPOENAS ON THIRD PARTIES, (2) ENTER A
MODIFIED PROCEDURAL SCHEDULE, AND (3) GIVE THIS MOTION EXPEDITED
CONSIDERATION**

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
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KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, NW, Suite 800
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E-mail: epilsk@kaplankirsch.com
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Counsel for City of Kirkland, Washington

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

Dated: January 17, 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**

**MOTION OF THE CITY OF KIRKLAND, WASHINGTON, KING COUNTY,
WASHINGTON, AND CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY TO (1) ISSUE SUBPOENAS ON THIRD PARTIES, (2) ENTER A
MODIFIED PROCEDURAL SCHEDULE, AND (3) GIVE THIS MOTION EXPEDITED
CONSIDERATION**

Pursuant to 49 U.S.C. § 721(d) and 49 C.F.R. § 1117.1, the City of Kirkland,
Washington, King County, Washington, and Central Puget Sound Regional Transit Authority
(collectively, “the Regional Parties”), respectfully request the Surface Transportation Board
 (“Board”) to:

1. Issue subpoenas to several third-parties identified below;
2. Enter a modified Procedural Schedule to require responses to the Subpoenas Duces Tecum to third-parties and Requests to Produce Documents to Ballard Terminal Railroad Co., LLC by January 29, 2014 , in advance of depositions to be taken in early February, and
3. Give this Motion expedited consideration in light of the short period of time the Board has allowed for further discovery in this matter.

In support of their Motion, the Regional Parties state as follows:

BACKGROUND

This proceeding involves the requests of Ballard Terminal Railroad Company, L.L.C. (“BTR”) to (1) obtain an exemption from 49 U.S.C § 10902 to acquire the residual common carrier rights and obligations relating to an 11.2-mile portion of a railbanked line of railroad between Woodinville, Washington and Bellevue Washington (the “Line”), and (2) to vacate the NITU on that portion of the Line. On December 6, 2013, BTR filed its Reply to Comments submitted by the Regional Parties. In its Reply, BTR produced letters from so-called “shippers” that BTR argues demonstrate shipper demand for rail service on the Line. BTR also produced for the first time letters purporting to demonstrate that BTR has the financial resources to initiate and carry out service on the Line.

On January 15, 2014, the Board issued an Order acknowledging that BTR’s submission of new evidence in its Reply to Comments was “in contravention of 49 C.F.R. § 1121.3(a).” Order at 3. Rather than terminating the matter and allowing BTR to file new Petitions with its new evidence, the Board decided to reinstitute a procedural schedule to allow the Regional Parties the opportunity to take discovery on BTR’s new evidence. Accordingly, the Board ordered that discovery be completed by February 14, 2014.

The Regional Parties have reviewed BTR’s December 6 Reply and believe that further discovery is warranted, including discovery from several of the third-parties BTR identified in its Reply. *See Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision*, Docket No. FD 35731, slip op. at 3-4 (STB served May 17, 2013) (issuing deposition and document subpoena in this proceeding to third party). A copy of this Motion, including the proposed Subpoenas, has been served on the parties and third-parties in the most expeditious manner possible, as noted on the Certificate of Service.

ARGUMENT

MOTION FOR SUBPOENAS

Pursuant to 49 U.S.C. § 721(d), parties may take discovery from third-parties, but only the Board itself has the authority to issue subpoenas. *See East West Resort Transp., LLC, et al.—Petition for Declaratory Order—Motor Carrier Transp. of Passengers in Co. (East West)*, MCF 21008, slip op. at 2 (STB served June 1, 2005). Because of the limited time available for discovery, there is not time to contact each third-party to see if each will consent to appear at a deposition and produce documents.¹ Accordingly the Regional Parties ask the Board to issue subpoenas to the following third-parties:

American West Bank (documents only)

Aggregates West, Inc.

Coastal Community Bank (documents only)

CT Sales, Inc.

Daniel T. Behr (EB5 Capital Partners.us, LLC)

Doug Engle

Paul Nerdrum

RJB Wholesale, Inc.

WATCO Companies, L.L.C.

A copy of the proposed subpoena to each entity is attached hereto as collective Exhibit 1. Please note that each subpoena sets a time and place for the deposition, but that such time and place is subject to modification upon agreement by the parties, including the deponent.

Each of those third parties was identified in BTR's Reply as either being a potential shipper on the Line or being able to provide financial support for BTR's proposed venture.

¹ The Regional Parties have served a copy of this Motion on each of the third-parties.

Pursuant to the Board's January 15, Order, the Regional parties need to obtain discovery from those entities to better understand the bases for BTR's statements in its Reply.

MOTION FOR REVISED PROCEDURAL SCHEDULE

Because of the short time available for discovery, and the relatively large number of depositions the Regional Parties will need to take before February 14, 2014, the Regional Parties request the Board to set a deadline of January 29, 2014 for BTR to produce documents requested in the Requests for Production attached hereto as Exhibit 2 and for each of the third parties to produce documents requested in the subpoenas. Further, the Regional Parties request that the Board set a deadline of January 23, 2013 for any third party to note objections to the subpoena. Having the documents in hand before the depositions will make the depositions proceed more efficiently. Moreover, it is possible that a review of documents will demonstrate that it is not necessary to take the deposition.

As is demonstrated by Exhibit A to each subpoena, the document requests have been framed very narrowly to avoid imposing an undue burden on any entity and to keep discovery focused on the issues raised in BTR's Reply and the new letters of support attached thereto. Locating and producing responsive documents should not be burdensome. The Regional Parties have also offered to enter into a protective order with the third-parties to preserve any responsive confidential material.

Similarly, the document requests for BTR are narrowly framed to seek only new information relating to issues raised in its Reply and the letters of support. Moreover, the requests to BTR seek information that BTR should have produced in response to prior discovery requests, either in direct response or under BTR's duty to supplement. *See* 49 C.F.R. § 1114.29. Accordingly, responsive documents should not be difficult to locate and produce by January 29,

2014. Under these circumstances, the approximately 10 days between the filing of this Motion and January 29 is a reasonable amount of time, consistent with the time allowed to respond to a request for production pursuant to 14 C.F.R. § 1114.30(b).

MOTION FOR EXPEDITED CONSIDERATION

Because of the limited time the Board has allowed for discovery, the need to coordinate with a number of entities to produce and review documents and to schedule depositions, the Regional Parties respectfully request that the Board give expedited consideration to this Motion. Specifically, the Regional Parties ask that the Board require BTR and any third party to respond to this Motion by January 23, 2014, and that the Board schedule a telephonic hearing for January 24, 2014 to resolve any objections raised by BTR or any of the third parties. Expedited consideration of this Motion will allow the Regional Parties to initiate discovery in a prompt manner in order to meet the Board's expedited discovery schedule. To facilitate expedited consideration, the Regional Parties will undertake to serve or deliver to the third parties listed above an order setting an expedited schedule for ruling on these requests, as it has done with this motion and the form of subpoenas attached hereto.

CONCLUSION

For the foregoing reasons, the Regional Parties respectfully request the Board to (1) issue the subpoenas attached as Exhibit 1; (2) enter a modified procedural schedule to require the third parties to object to subpoenas by January 23, 2014 and to require BTR and the third-parties to produce the requested documents by January 29, 2014; and, (3) to give this motion expedited consideration and to require any opposition to the motion to be filed on or before January 23, 2014 and to schedule a tentative telephonic hearing on this motion for January 24, 2014, if necessary.

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

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 17, 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**

**SUBPOENA TO AMERICANWEST
BANK TO PRODUCE DOCUMENTS
IN A PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

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

To: AmericanWest Bank
c/o Corporation Service Company,
Registered Agent
300 Deschutes Way SW, Suite 304
Tumwater, WA 98501

AmericanWest Bank
Attn: Nathan Engman
2237 NW 57th Street
Seattle, WA 98107
Phone: (206) 784-2200
Fax: (206) 784-6650

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 produce the items described in Attachment A at the
request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound
Regional Transit Authority (collectively, “the Regional Parties”) 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 AmericanWest Bank (including Nathan Engman and any other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C., or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on the section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA, including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard representatives.
2. All documents regarding Ballard's proposal to reinstate rail service on the section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA, including without limitation any analyses of Ballard's proposal and any document upon which Nathan Engman or anyone else for AmericanWest Bank relied in drafting the letter to Cynthia Brown dated November 22, 2013, a copy of which is attached hereto (but not including documents relating AmericanWest's assets or capital).

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
AmericanWest Bank c/o Corporation Service Company, Registered Agent 300 Deschutes Way SW, Suite 304 Tumwater, WA 98501	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
AmericanWest Bank Attn: Nathan Engman 2237 NW 57th Street Seattle, WA 98107 Phone: (206) 784-2200 Fax: (206) 784-6650	☒ 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

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 COASTAL
COMMUNITY BANK TO
PRODUCE DOCUMENTS IN A
PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

**DATE TO PRODUCE
DOCUMENTS:**

January 29, 2014

To: Coastal Community Bank
c/o Greg Starup
Colby Branch
2817 Colby Avenue
Everett, WA 98201
Phone: (425) 258-5299
Fax: (425) 257-0521

Administrative Office
c/o Director or Greg Starup
10520 19th Ave SE
Everett, WA 98208

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 produce the items described in Attachment A at the request of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority (collectively, “the Regional Parties”) 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

hoferfusion@stoel.com

Attorneys for the City of Kirkland, Washington

ATTACHMENT A

1. All communications and correspondence between Coastal Community Bank (including Greg Starup and any other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C., or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on the section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA,, including: email, letters, faxes, and any attachments thereto; and any notes from conversations with Ballard representatives.
2. All documents regarding Ballard's proposal to reinstate rail service on section of the former BNSF Woodinville Subdivision between Woodinville, WA and Bellevue, WA, including without limitation any analyses of Ballard's proposal upon which Greg Starup or anyone else for Coastal Community Bank relied in drafting the letter to Cynthia Brown dated November 21, 2013, a copy of which is attached hereto (but not including documents relating Coastal Community's assets or capital).

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
Coastal Community Bank c/o Greg Starup Colby Branch 2817 Colby Avenue Everett, WA 98201 Phone: (425) 258-5299 Fax: (425) 257-0521	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☒ Facsimile
Coastal Community Bank/Administrative Office c/o Director or Greg Starup 10520 19th Ave SE Everett, WA 98208	☒ 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

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 AGGREGATES
WEST, INC. TO TESTIFY IN A
DEPOSITION AND PRODUCE
DOCUMENTS IN A PROCEEDING
BEFORE THE SURFACE
TRANSPORTATION BOARD**

**DATE TO PRODUCE
DOCUMENTS:**

January 27, 2014

DATE OF DEPOSITION:

February 4, 2014 at 9:00 a.m.

To: Aggregates West, Inc.
c/o BS&G Inc.,
Registered Agent
1191 2nd Ave, Suite 1800
Seattle, WA 98101

Aggregates West, Inc.
c/o Scott Day
9151 Van Buren Road
Everson, WA 98247
Phone: (360) 966-3641
Fax: (360) 966-3841

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, SCOTT DAY OR AN AUTHORIZED SPEAKING AGENT IS 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 4, 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.

YOUR 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 Aggregates West, Inc. (including Scott Day or any other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C., or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on the 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 documents regarding Ballard's proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard's proposal upon which Scott Day or anyone else for Aggregates West relied in drafting the letter to Cynthia Brown dated October 8, 2013, a copy of which is attached hereto.
3. All communications and correspondence with any of your customers or potential customers regarding the possibility of shipping product to them by rail.
4. All documents relating to estimates of the volume of material you estimate shipping on the Line, including all back-up or supporting material.

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
Aggregates West, Inc. c/o BS&G Inc., Registered Agent 1191 2nd Ave, Suite 1800 Seattle, WA 98101	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
Aggregates West, Inc. c/o Scott Day 9151 Van Buren Road Everson, WA 98247 Phone: (360) 966-3641 Fax: (360) 966-3841	☒ 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 Seattle, WA 98104	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

<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

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 C. T. SALES, INC.
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 4, 2014 at 9:00 a.m.

To: C. T. Sales, Inc.
c/o James A. House,
Registered Agent
7227 W. Bostian Road
Woodinville, WA 98072-6008
Phone: (425) 483-0101
Fax: (425) 485-9131

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, JAMES A. HOUSE OR A SPEAKING AGENT FOR C.T. SALES, INC. IS 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 4, 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.

YOUR 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 C.T. Sales, Inc. (including James A. House or any of its other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C., or any other entity or person purporting to represent Ballard relating to Ballard's proposal to reinstate rail service on 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 documents regarding Ballard's proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard's proposal upon which James A. House or anyone else for C.T. Sales relied in drafting the letter to Cynthia Brown dated October 8, 2013, a copy of which is attached hereto.
3. All communications and correspondence with Cascade Steel Rolling Mills or other entities regarding the possibility of shipping product directly to you by rail.
4. All communications and correspondence with any of your customers or potential customers regarding the possibility of shipping product to them by rail.
5. All documents relating to estimates of the volume of material you estimate shipping on the Line, including all back-up or supporting material.
6. Any and all cost estimates or feasibility studies for construction of a rail spur connecting C. T. Sales' facility to the Woodinville Subdivision.

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
C. T. Sales, Inc. c/o James A. House, Registered Agent 7227 W. Bostian Road Woodinville, WA 98072-6008 Phone: (425) 483-0101 Fax: (425) 485-9131	☒ 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 Seattle, WA 98104 <i>Attorneys for King County</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email

Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County and Sound Transit</i>	☐ 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

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 EB5 CAPITAL
PARTNERS.US, LLC TO TESTIFY
IN A DEPOSITION AND PRODUCE
DOCUMENTS IN A PROCEEDING
BEFORE THE SURFACE
TRANSPORTATION BOARD**

**DATE TO PRODUCE
DOCUMENTS:**

January 27, 2014

DATE OF DEPOSITION:

February 10, 2014 at 9:00 a.m.

To: EB5 Capital Partners.us, LLC
c/o The Company Corporation,
Registered Agent
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Daniel T. Behr
EB5 Capital Partners.us, LLC
3145 Cherry Lane
Northbrook, IL 60062
Phone: (847) 951-7245
dtb@eb5capitalpartner.us

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, DANIEL T. BEHR OR A SPEAKING AGENT IS HEREBY COMMANDED to appear at the offices of KATTEN MUCHIN ROSENMAN LLP, 525 W. Monroe Street, Chicago, IL 60661-3693, at **9:00 a.m. on FEBRUARY 10, 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.

YOUR 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, correspondence, other documents exchanged between EB5 Capital Partners.us, LLC (including Daniel T. Behr and any of its other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. (“Ballard”), Eastside Community Rail, L.L.C., 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 contracts or other agreements between EB5 Capital Partners.us, LLC and Ballard.
3. All documents related to your analysis of Ballard’s proposal to reinstate rail service on the Line, including material you gathered or created in connection with your inspections of the Line and analysis of existing and emerging rail traffic opportunities.
4. All documents regarding Ballard’s proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard’s proposal upon which Daniel T. Behr or anyone else for EB5 Capital Partners.us, LLC relied in drafting the letter to Cynthia Brown dated August 21, 2013, a copy of which is attached hereto.

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
EB5 Capital Partners.us, LLC c/o The Company Corporation, Registered Agent 2711 Centerville Road, Suite 400 Wilmington, DE 19808	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
Daniel T. Behr EB5 Capital Partners.us, LLC 3145 Cherry Lane Northbrook, IL 60062 Phone: (847) 951-7245 dtb@eb5captialpartner.us	☒ 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 Seattle, WA 98104	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

<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

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 DOUGLAS ENGLE
TO TESTIFY IN A DEPOSITION
AND PRODUCE DOCUMENTS IN
A PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

**DATE TO PRODUCE DOCUMENTS:
January 27, 2014**

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

To: Douglas Engle
c/o Tom Montgomery
Montgomery Scarp PLLC
1218 Third Avenue, Suite 2700
Seattle, WA 98101
Phone: (206) 625-1801
Fax: (206) 625-1807
tom@montgomeryscarp.com

Douglas Engle
c/o Myles L. Tobin, Esq.
Thomas J. Litwiler
Thomas C. Paschalis
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Phone: (312) 252-1502
mtobin@fletcher-sippel.com

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.

YOUR 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. To the extent not already produced, all communications, correspondence, other documents exchanged between you or persons for Eastside Community Rail, L.L.C. (“ECR”) and 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. To the extent not already produced, all documents regarding Ballard’s and ECR’s proposals to reinstate rail service on the Line, including without limitation any analyses of these proposals upon which you or anyone else for ECR relied in drafting the letter to Cynthia Brown dated November 27, 2013, a copy of which is attached hereto.
3. To the extent not already produced, all written communications and correspondence (including emails) and other documents relating to any demand for freight rail service on the Line.
4. To the extent not already produced, all documents relating to the financial capability of Ballard or ECR to reinstate 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
Douglas Engle c/o Tom Montgomery Montgomery Scarp PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101 Phone: (206) 625-1801 Fax: (206) 625-1807 tom@montgomeryscarp.com	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Douglas Engle c/o Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832	☒ 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	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

W400 King County Courthouse 516 Third Avenue 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

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 PAUL NERDRUM
TO TESTIFY IN A DEPOSITION
AND PRODUCE DOCUMENTS IN
A PROCEEDING BEFORE THE
SURFACE TRANSPORTATION
BOARD**

DATE TO PRODUCE DOCUMENTS:
January 27, 2014

DATE OF DEPOSITION:
February 11, 2014 at 9:00 a.m.

To: Paul Nerdrum
1040 NW 178th Street
Seattle, WA 98177
Phone: (206) 542-9694

Paul Nerdrum
5228 Shilshole Ave NW
Seattle, WA 98107
Phone: (206) 784-1234
Fax: (206) 781-0984

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 11, 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.

YOUR 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, correspondence, other documents exchanged between you or any person for Salmon Bay Sand & Gravel, Co. and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C. ("ECR"), 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 documents regarding Ballard's proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard's proposal upon which you or anyone else for Salmon Bay Sand & Gravel Co. or Ballard relied in drafting the letter to Cynthia Brown dated June 15, 2013, a copy of which is attached hereto.
3. All documents relating to demand for freight rail service on the Line.
4. All documents relating to the financial capability of Ballard or ECR to reinstate rail service on the Line.
5. All contracts or other agreements between you or Salmon Bay Sand & Gravel Co. and Ballard, including any commitments to provide financing or investment in Ballard.

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
Paul Nerdrum 1040 NW 178th Street Seattle, WA 98177 Phone: (206) 542-9694	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
Paul Nerdrum 5228 Shilshole Ave NW Seattle, WA 98107 Phone: (206) 784-1234 Fax: (206) 781-0984	☒ 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 Seattle, WA 98104 <i>Attorneys for King County</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

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

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 RJB WHOLESALE,
INC. 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 5, 2014 at 9:00 a.m.

To: RJB Wholesale, Inc.
c/o Nick Beck, Registered Agent
12418 NE 124th Street
Kirkland, WA 98034
Phone: (425) 823-1414
Fax: (425) 821-7353

Pursuant to 49 U.S.C. § 721(d), 49 C.F.R. § 1121.2, and 49 C.F.R. part 1114, subpart B, NICK BECK OR A SPEAKING AGENT FOR RJB WHOLESALE, INC. IS 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 5, 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.

YOUR 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 RJB Wholesale, Inc. (including Nick Beck or any of its other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. (“Ballard”), Eastside Community Rail, L.L.C., or any other entity or person purporting to represent Ballard relating to Ballard’s proposal to reinstate rail service on 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 documents regarding Ballard’s proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard’s proposal upon which Nick Beck or anyone else for RJB Wholesale relied in drafting the letters to Cynthia Brown dated June 17 and August 20, 2013, copies of which are attached hereto.
3. All communications and correspondence with entities regarding the possibility of shipping product directly to you by rail.
4. All communications and correspondence with any of your customers or potential customers regarding the possibility of shipping product to them by rail.
5. All documents relating to estimates of the volume of material you estimate shipping on the Line, including all back-up or supporting material.
6. Any and all cost estimates or feasibility studies or plans for construction of a rail spur connecting RJB Wholesale, Inc.’s facility to 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
RJB Wholesale, Inc. c/o Nick Beck, Registered Agent 12418 NE 124th Street Kirkland, WA 98034 Phone: (425) 823-1414 Fax: (425) 821-7353	☒ 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 Seattle, WA 98104 <i>Attorneys for King County</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile

1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County and Sound Transit</i>	
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

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 WATCO
COMPANIES L.L.C. 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 7, 2014 at 9:00 a.m.

To: WATCO Companies, L.L.C.
c/o Corporation Service Company,
Registered Agent
2900 SW Wanamaker Drive, Suite 204
Topeka, KS 66614

WATCO Companies, L.L.C.
c/o Corporation Service Company,
Registered Agent
300 Deschutes Way SW, Suite 304
Tumwater, WA 98501

WATCO Companies, L.L.C.
c/o Mark Blazer
1900 N. Main, Suite 13
Helena, MT 59601
Phone: 406-495-1096
Fax: 406-495-1098
mblazer@watcocompanies.com

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 WINGATE HOTEL, 2007 NORTH
OAKS, HELENA, MT 59601, at **9:00 a.m. on FEBRUARY 7, 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.

YOUR 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, correspondence, other documents exchanged between WATCO Companies, L.L.C. (including Mark Blazer or any of its other employees, officers, agents or representatives) and Ballard Terminal Railroad Company, L.L.C. ("Ballard"), Eastside Community Rail, L.L.C., 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 documents regarding Ballard's proposal to reinstate rail service on the Line, including without limitation any analyses of Ballard's proposal upon which Mark Blazer or anyone else for WATCO relied in drafting the letter to Cynthia Brown dated November 25, 2013, a copy of which is attached hereto.
3. All contracts or other agreements between WATCO and Ballard.
4. All documents relating to your analysis of Ballard's proposal to reinstate rail service on the Line, including documents regarding potential demand for service on the Line and Ballard's financial condition.

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
WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 2900 SW Wanamaker Drive, Suite 204 Topeka, KS 66614	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
WATCO Companies, L.L.C. c/o Mark Blazer 1900 N. Main, Suite 13 Helena, MT 59601 Phone: 406-495-1096 Fax: 406-495-1098 mblazer@watcocompanies.com	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☒ Facsimile
WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 300 Deschutes Way SW, Suite 304 Tumwater, WA 98501	☒ U.S. Mail ☐ Hand Delivery/Messenger ☐ Email ☐ Facsimile
WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 2711 Centerville Road, Suite 400 Wilmington, DE 19808	☒ 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	☒ U.S. Mail ☐ Hand Delivery/Messenger

29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	☒ Email ☐ Facsimile
Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	☒ U.S. Mail ☐ Hand Delivery/Messenger ☒ Email ☐ Facsimile
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

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.

YOUR 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 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**

**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 7. The "Line" means any part of the railbanked segment of the Woodinville
2 Subdivision running between milepost 23.8 in Woodinville, Washington, and approximately
3 milepost 11.25 in Bellevue, Washington.

4 8. The "Freight Segment" means any part of the segment of the Woodinville
5 Subdivision running between milepost 23.8 in Woodinville, Washington, and approximately
6 milepost 38.25 in Snohomish, Washington.

7 9. The relevant time period for the following discovery requests is January 1, 2013
8 through the date on which Ballard files its last pleading in this proceeding.

9
10 **REQUESTS FOR PRODUCTION**

11 **RFP NO. 23:** Please produce the following documents listed in your privilege log
12 received on September 16, 2013 and that were discussed in Hunter Ferguson's email of
13 September 23, 2013 to your attorneys of September 23, 2013, identifying uncontested
14 deficiencies in your previous document productions (attached as Exhibit 1 hereto):

- 15 a. No. 1 (10/5/2012 email between Doug Engle, Myles Tobin, and Dan Behr);
16 b. No. 2 (10/17/2012 email between Doug Engle, Myles Tobin Dan Behr, and Byron
17 Cole);
18 c. No. 3 (3/26/2013 email between Doug Engle, Lisa Miller, Myles Tobin,
19 Montgomery, Kelsey Endres, and Byron Cole);
20 d. No. 4 (3/26/2013 email between Doug Engle, Myles Tobin, Byron Cole, and
21 Ernie Wilson);
22 e. No. 9 (4/2/2013 email between Kathy Cox, Myles Tobin, Elizabeth Bryan, Byron
23 Cole, and Doug Engle);
24 f. No. 10 (4/2/2013 email between Kathy Cox, Myles Tobin, Elizabeth Bryan,
25 Byron Cole, and Doug Engle);
26 g. No. 12 (4/26/2013 email between Kathy Cox, Myles Tobin, and Doug Engle); and

**KIRKLAND'S SECOND SET OF
REQUESTS FOR PRODUCTION TO BALLARD - 5**

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

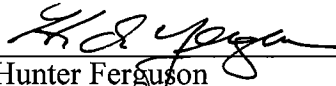
Hunter Cohen
Matthew Cohen, WSBA No. 11292
mcohen@stoel.com
Hunter Ferguson
Hunter Ferguson, WSBA No. 41485
hoferguson@stoel.com

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

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the of the foregoing Motion of the City of Kirkland, Washington, King County, Washington, and Central Puget Sound Regional Transit Authority to (1) Issue Subpoenas on Third Parties, (2) Enter a Modified Procedural Schedule, and (3) Give This Motion Expedited Consideration upon the following parties of record and other interested persons by email on January 17, 2014, or as otherwise indicated below:

Jordan Wagner Jennifer Belk Central Puget Sound Regional Transit Authority 401 S. Jackson Street Seattle, WA 98104 <i>Attorneys for Central Puget Sound Regional Transit Authority</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Tom Montgomery Montgomery Scarp PLLC 1218 3rd Ave # 2700 Seattle, WA 98101 <i>Attorneys for Ballard Terminal Railway LLC</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile

Pete Ramels Andrew Marcuse Office of the Prosecuting Attorney—Civil Division W400 King County Courthouse 516 Third Avenue Seattle, WA 98104 <i>Attorneys for King County</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Charles A. Spitulnik W. Eric Pilsk Allison Fultz Kaplan Kirsch & Rockwell LLP 1001 Connecticut Avenue, NW, Suite 800 Washington, DC 20036 <i>Attorneys for King County</i>	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
AmericanWest Bank c/o Corporation Service Company, Registered Agent 300 Deschutes Way SW, Suite 304 Tumwater, WA 98501	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
AmericanWest Bank c/o Nathan Engman 2237 NW 57th Street Seattle, WA 98107 Phone: (206) 784-2200 Fax: (206) 784-6650	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
Coastal Community Bank c/o Greg Starup Colby Branch 2817 Colby Avenue Everett, WA 98201 Phone: (425) 258-5299 Fax: (425) 257-0521	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
Coastal Community Bank/Administrative Office c/o Director or Greg Starup 10520 19th Ave SE Everett, WA 98208	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile

Aggregates West, Inc. c/o BS&G Inc., Registered Agent 1191 2nd Ave, Suite 1800 Seattle, WA 98101	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
Aggregates West, Inc. c/o Scott Day 9151 Van Buren Road Everson, WA 98247 Phone: (360) 966-3641 Fax: (360) 966-3841	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
C. T. Sales, Inc. c/o James A. House, Registered Agent 7227 W. Bostian Road Woodinville, WA 98072-6008 Phone: (425) 483-0101 Fax: (425) 485-9131	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
EB5 Capital Partners.us, LLC c/o The Company Corporation, Registered Agent 2711 Centerville Road, Suite 400 Wilmington, DE 19808	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
Daniel T. Behr EB5 Capital Partners.us, LLC 3145 Cherry Lane Northbrook, IL 60062 Phone: (847) 951-7245 dtb@eb5captialpartner.us	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Douglas Engle c/o Tom Montgomery Montgomery Scarp PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101 Phone: (206) 625-1801 Fax: (206) 625-1807 tom@montgomeryscarp.com	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile

Douglas Engle c/o Myles L. Tobin, Esq. Thomas J. Litwiler Thomas C. Paschalis Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, IL 60606-2832	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile
Paul Nerdrum 1040 NW 178th Street Seattle, WA 98177 Phone: (206) 542-9694	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
Paul Nerdrum 5228 Shilshole Ave NW Seattle, WA 98107 Phone: (206) 784-1234 Fax: (206) 781-0984	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
RJB Wholesale, Inc. c/o Nick Beck, Registered Agent 12418 NE 124th Street Kirkland, WA 98034 Phone: (425) 823-1414 Fax: (425) 821-7353	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☒ facsimile
WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 2900 SW Wanamaker Drive, Suite 204 Topeka, KS 66614	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
WATCO Companies, L.L.C. c/o Mark Blazer 1900 N. Main, Suite 13 Helena, MT 59601 Phone: 406-495-1096 Fax: 406-495-1098 mblazer@watcocompanies.com	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☒ facsimile

WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 300 Deschutes Way SW, Suite 304 Tumwater, WA 98501	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
WATCO Companies, L.L.C. c/o Corporation Service Company, Registered Agent 2711 Centerville Road, Suite 400 Wilmington, DE 19808	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
Kathy Cox 1204 Kirkland Avenue Kirkland, WA 98033-6323 Phone: (425) 827-3311 Phone: (425) 822-3925	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☐ copy via email ☐ facsimile
Kathy Cox Marketing Philharmonic 218 Main Street Kirkland, WA 98033 Phone: (425) 822-3925 kathy@marketingphilharmonic.com kathy.com@escrail.org	Service by: ☐ hand delivery via messenger ☒ mailing with postage prepaid ☒ copy via email ☐ facsimile



W. Eric Pilsch
Kaplan Kirsch & Rockwell, LLC
Counsel for King County, Washington and
Central Puget Sound Regional Transit Authority

Dated this 17th day of January, 2014