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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

THE BURLINGTON NORTHERN AND)	Docket No. TR-010194
SANTA FE RAILWAY COMPANY,)	
)	Volume VI
Petitioner,)	
)	Pages 378 to 783
v.)	
)	
SNOHOMISH COUNTY,)	
)	
Respondent.)	
_____)	

A hearing in the above matter was held on
October 12, 2001, at 8:30 a.m., at 600 - 128th Street
Southeast, Everett, Washington, before Administrative
Law Judge MARJORIE SCHAER.

The parties were present as follows:

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Joan E. Kinn, CCR, RPR
Court Reporter

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P R O C E E D I N G S

JUDGE SCHAER: We're here today for a second day of hearings in Docket Number TR-010194, which is a filing by Burlington Northern and Santa Fe Railroad seeking permission to close a railroad crossing at 156th Street Northeast in Marysville, Washington. We have the same counsel appearing today as were here yesterday, so I will note that we have the same appearances. And then to move forward, I believe that you have a preliminary matter, Mr. Stier, that you wanted to raise.

MR. STIER: Yes. Yesterday it was my understanding that Burlington Northern was going to offer an exhibit to respond to, and I apologize, I didn't jot down the number.

JUDGE SCHAER: Exhibit 43.

MR. STIER: 43, which was, I believe, a September 27 response or comment letter from the County to the revised SEPA checklist. We are a party to this proceeding, and I think DOT, it would be appropriate to allow them to respond and wouldn't delay the matter, because BN has already been allowed to reserve. And we may not respond, but we, you know, frankly, I'm not saying we as in Mr. Schultz, but I didn't see this letter until tomorrow, or tomorrow, until yesterday, and a lot of other things on our minds, and I just think it

00384

1 would be appropriate to reserve a response.

2 JUDGE SCHAER: And my understanding is that
3 we did give a late filed exhibit number and actually
4 admitted the exhibit from the railroad that will do
5 that, and they are required to provide that by the end
6 of October.

7 And, Mr. Cummings, do you have concerns about
8 this?

9 MR. CUMMINGS: Yes, Your Honor, just to note
10 the County's objections that we discussed off the
11 record. The County objects on the grounds of, one, it's
12 redundant. Burlington Northern is going to be filing a
13 response. Burlington Northern is the actual applicant
14 and petitioner in this matter. The purpose of the
15 letter was submitted in conjunction with Burlington
16 Northern's offer to submit their Exhibit Number 21,
17 which was a progression of SEPA documents, and this
18 letter was entered in an attempt to complete that
19 progression.

20 To the extent that the Department of
21 Transportation feels it's necessary to respond at a
22 substantive level, this isn't the appropriate forum, per
23 se. What they need to do is comment to Mr. Nizam, who
24 is considering the matter and hoping to make threshold
25 determination on the SEPA issue. So if their goal is a

00385

1 substantive issue, this isn't the appropriate forum, as
2 it's my understanding you're not going to be making a
3 threshold determination, Mr. Nizam will. So as a
4 result, that would just lend one more document to an
5 already full record that for substantive purposes is
6 irrelevant and needs to go to Mr. Nizam.

7 JUDGE SCHAER: I'm going to allow the late
8 filed exhibit. It may be that when all of the briefing
9 is done that we will determine that none of the SEPA
10 material in this record is relevant. But at this point,
11 we have most of it. We have another party being allowed
12 to file their response by the end of the month, and we
13 have another late filed exhibit that has already been
14 admitted that is going to be the threshold
15 determination, which will be made by the Commission. So
16 I think to the extent any of that belongs in the record,
17 it's appropriate to have a response from another party
18 who wishes to have that included in the record.

19 MR. STIER: Thank you, Your Honor.

20 JUDGE SCHAER: And so I'm looking here, I
21 think that we would make that late filed Exhibit 14. Is
22 that the next number in your series, Mr. Stier?

23 MR. STIER: Yes.

24 MR. THOMPSON: Do you have 14 already?

25 JUDGE SCHAER: Well, that's why I'm asking.

00386

1 MR. STIER: Well, let me see here.

2 JUDGE SCHAER: We had something that was 14,
3 and I think we moved it to be after the railroad
4 exhibits. What do you have listed as 14?

5 MR. THOMPSON: Are we going off of the list
6 that has 1 through 15? It's titled WSDOT's exhibit
7 list.

8 JUDGE SCHAER: I have been working from this
9 list, which is the WSDOT exhibit list that Mr. Stier
10 passed out yesterday morning.

11 MR. STIER: I think 14 is still vacant, Your
12 Honor.

13 JUDGE SCHAER: Do you want to take a moment
14 and look at this list and make sure there aren't two
15 exhibits missing.

16 MR. THOMPSON: I apologize, I was just
17 looking at the wrong thing.

18 JUDGE SCHAER: All right. Then I'm going to
19 mark for identification and admit at this point late
20 filed Exhibit 14, which will be the DOT response to
21 Exhibit 43. And I'm going to give the DOT the same time
22 line that was given to the railroad, which is if you
23 wish to file something under this exhibit number, you
24 need to do it by October 31st. That needs to be filed
25 with the Commission and served on all the other parties.

00387

1 Are there any other preliminary matters
2 before we move forward in the hearing?

3 And would you please call your next witness,
4 Mr. Walkley.

5 MR. WALKLEY: Thank you, Your Honor. I will
6 call Mr. Cowles.

7
8 Whereupon,

9 JOHN MICHAEL COWLES,
10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12
13 JUDGE SCHAER: Go ahead, Mr. Walkley.

14
15 D I R E C T E X A M I N A T I O N

16 BY MR. WALKLEY:

17 Q. Good morning, Mr. Cowles.

18 A. Good morning.

19 Q. Would you please state your full name for the
20 record.

21 A. My name is John Michael Cowles, C-O-W-L-E-S.

22 Q. And are you employed by the Burlington
23 Northern and Santa Fe Railway Company?

24 A. Yes, I am.

25 Q. And what is your current title?

00388

1 A. My title is manager of public projects.

2 Q. And could you tell us just very briefly what
3 that responsibility is?

4 A. My responsibility is to work with states of
5 Washington, Idaho, and Montana and other local agencies,
6 cities, and counties on public roadways that encumber
7 the Burlington Northern and Santa Fe Railway either at
8 grade, over or under, or any other type of encroachment
9 onto the right of way, as well as British Columbia, by
10 the way.

11 Q. Have you had an opportunity to investigate
12 whether or not there is an agreement between Burlington
13 Northern and Santa Fe and Snohomish County that permits
14 the 156th crossing on railroad property?

15 A. To the best of my knowledge and in searching
16 our records within our record department in Fort Worth,
17 Texas, there is no such document.

18 Q. I have handed you exhibits, and I would ask
19 you to pick up first of all the what I call the signal
20 agreement exhibit.

21 MR. WALKLEY: And that, Your Honor, has been
22 marked as BN Exhibit 29.

23 JUDGE SCHAER: That's marked and admitted,
24 Mr. Walkley.

25 MR. WALKLEY: Yes.

00389

1 BY MR. WALKLEY:

2 Q. Mr. Cowles, could you -- have you seen this
3 document before?

4 A. Yes, I have.

5 Q. Okay. Could you briefly identify what this
6 document is.

7 A. This is a city-county-railway agreement as a
8 local agency agreement that they use in implementing a
9 Section 130 federal highway grade crossing safety
10 improvement.

11 Q. Okay. But it is not -- it's not an agreement
12 for an easement or a license or anything?

13 A. No, it is not.

14 Q. Use of the lane, okay. If you would please
15 turn to -- by the way, before we turn the page, on the
16 lower right-hand corner, there is a date. Does that
17 appear to be about the date that the agreement was
18 signed?

19 A. Yes, it was.

20 Q. And what is that date?

21 A. It's March 15, 1991.

22 Q. Okay. Turning to page two of the exhibit, I
23 see a print here. Could you describe basically what
24 this print is depicting?

25 A. This is an Exhibit C print depicting the

00390

1 grade crossing at 156th Street and the improvements that
2 were in the -- were proposed to be put in place in --
3 back when this agreement was executed.

4 Q. Okay. So everybody is clear, if -- what does
5 the dashed line indicate that goes through the middle of
6 the page?

7 A. That is the center line of the roadway.

8 Q. And then the -- is the right of way shown on
9 both, the right of way limits are shown on both sides of
10 that?

11 A. The outside lines, the ten foot lines are the
12 edge of pavement lines on the center line. The railroad
13 right of way is not shown on this print.

14 Q. Would the railroad right of way be larger
15 than ten feet?

16 A. Yes.

17 Q. Okay. And then what are the strange looking
18 symbols on both sides? They look like crossed box or
19 something.

20 A. Those are -- depict the flashing lights and
21 gates as they are installed at the crossing.

22 Q. Okay. So those are symbols for flashing
23 lights and gates?

24 A. That is correct.

25 Q. Okay. The double line that is sort of skewed

00391

1 that goes up and down the page, could you tell us what
2 that is?

3 A. That is the BNSF main line track that goes
4 through the crossing.

5 Q. Oh, so the BNSF property would be more or
6 less parallel to that track?

7 A. That is correct.

8 Q. On each side?

9 A. Yes.

10 Q. Okay. And that 44, what does that stand for?

11 A. That's a milepost location. That's station
12 2436 plus 15 milepost.

13 Q. Okay, very good. I will now ask you to turn
14 to BNSF Exhibit Number 30, which is two photographs.
15 The first photograph, Mr. Cowles, this photograph, could
16 you please identify what that is, if you know.

17 A. This is the 156th Street crossing looking
18 towards the west from the east, westbound approach
19 looking west from the crossing.

20 Q. So the photograph appears to be taken on the
21 east side of the crossing looking west?

22 A. That is correct.

23 Q. Okay. And depicted on the picture, does it
24 show the flashers and the gates?

25 A. Yes, it does.

00392

1 Q. Okay. So then on the right-hand side, I see
2 -- I see what -- could you tell us whether railroad
3 signals are shown in this picture?

4 A. Yes, there are some railroad signals on the
5 north side of the crossing to the right of the crossing.

6 Q. Are those signals located to, if you know,
7 are those signals located to protect the current siding
8 that we have been talking about?

9 A. Yes.

10 Q. Okay. Now on the -- do you have any
11 observations here about the sight distance? And maybe
12 before you do that, if you could explain to us what
13 sight distance is. What is the definition of sight
14 distance?

15 A. Sight distance is as you approach a grade
16 crossing, sight distance triangle is from the driver's
17 viewpoint looking either direction of the crossing, both
18 approaches, the distance it takes for a driver to see
19 the train.

20 Q. So looking at the photograph on the
21 right-hand side of the roadway, and you have been out to
22 this site; is that correct?

23 A. Yes, I have.

24 Q. Okay. Looking at that, is it possible for a
25 person sitting in this position where the photograph was

00393

1 taken, is it possible for a person to see a southbound
2 train approaching the crossing at any distance?

3 A. The particular distance this photograph was
4 taken, I would say no.

5 Q. Okay. Does that brush on the right-hand
6 side, is that fairly high?

7 A. Yes, it is.

8 Q. Okay.

9 A. In order to see a train.

10 Q. Now looking straight ahead at the crossing
11 and also from your experience of examining the crossing,
12 is that a flat surface crossing, or is it somewhat
13 raised?

14 A. The standard is according to -- I believe
15 it's the -- is when you're building a crossing, there
16 should be a flat surface 25 feet on either approach to
17 the crossing with no more than a 5 degree slope on
18 either end. In this particular case, there is a slight
19 degree of curvature at the crossing, but I would say it
20 probably is acceptable.

21 Q. Okay. But would one want to take this at the
22 35 mile per hour speed or something like that?

23 A. I really don't know. I'm not a traffic
24 person. I'm not sure.

25 Q. Okay. All right. Turning to the next

00394

1 photograph, could you identify, please, what this
2 photograph, that's again the second photograph of this
3 exhibit, is depicting.

4 A. This is the 172nd Street Northeast, otherwise
5 SR 531, grade crossing.

6 Q. Okay. And just to give us an orientation,
7 what direction is the camera pointed?

8 A. I believe it's pointing to the east.

9 Q. Okay. And the -- I notice some striped signs
10 here. Could you tell us what those things are and what
11 that is.

12 A. These are median barriers that have been
13 placed within recent months, I believe.

14 Q. Okay.

15 A. And the purpose of those median barriers is
16 to discourage what we call meter runners, drivers who go
17 around gates when they are in the lowered position.

18 Q. So is this an added safety device then?

19 A. It is an added safety feature that we have
20 been -- the state has been putting up.

21 Q. It looks like these may break away. There's
22 one, in fact, that looks like it might have been struck
23 or whatever. Do these break away if --

24 A. I'm really not sure of the material and how
25 easy they are to break, but apparently someone did

00395

1 manage to hit this one.

2 Q. All right. The idea is to then -- your
3 testimony is that the idea is to discourage these
4 drivers from pulling out onto the left-hand lane and
5 trying to enter the crossing even if the gates are down?

6 A. That is correct.

7 Q. Okay. And the gates and flashers are shown
8 on this photograph?

9 A. Yes, they are.

10 Q. Okay, all right. Now we will turn to, ask
11 you to turn to Exhibit Number 31, BNSF Number 31, and
12 the first one I would like you to look at, please, there
13 are two here, is the accident report of 4-16-87. Do you
14 have that in front of you?

15 A. Yes, I do.

16 Q. Now first of all, could you tell us first of
17 all, could you tell us are you familiar with these types
18 of reports?

19 A. Yes, I am.

20 Q. Okay. And what is the purpose of these
21 reports?

22 A. This is an accident/incident report that is
23 mandatory for the narrow way of the railroad, and it has
24 an accident at a crossing. It is mandatory that these
25 forms are filled out and submitted to the Federal

00396

1 Railroad Administration and the local law enforcement
2 agencies.

3 Q. Were you here yesterday, Mr. Cowles, when
4 Mr. Ries testified as to what data may be or that some
5 data that he received that's the FRA is mandatory and
6 some data is just voluntary?

7 A. Yes, I was.

8 Q. So are you saying that this form represents
9 data that is mandatory?

10 A. Yes, I do.

11 Q. Okay. Now let's look for a moment, if we
12 can, at this Exhibit 4-16-87, box number 5. Is that
13 then the date that this accident occurred?

14 A. Yes, it was.

15 Q. And then what time did the accident occur?

16 A. 10:10 p.m.

17 Q. Okay. Turning now down to box number 18,
18 position of car unit and train. It says number 1. What
19 does that mean?

20 A. That means the train had struck the highway
21 user, meaning the vehicle, when it --

22 Q. Okay. So car unit number 1 would normally be
23 a locomotive?

24 A. Yes.

25 Q. Okay. And then turning in to number 30, box

00397

1 number 30.
2 A. Mm-hm.
3 Q. It shows a speed there. What is that telling
4 us?
5 A. That is the speed of the train that consist
6 going 50 mile per hour.
7 Q. Okay.
8 A. Estimated speed.
9 Q. So would you say that this accident report is
10 telling us that at 10:10 p.m. on April 16, 1987, a train
11 struck a car at approximately 50 miles an hour?
12 A. That is correct.
13 Q. Okay. Now having just seen the signal
14 agreements and so on, did this accident occur before or
15 after the flashers were installed?
16 A. It happened before the flashers and gates
17 were installed.
18 Q. Okay. And do you know what kind of
19 protection the crossing had at the time?
20 A. It had cross bucks.
21 Q. Cross bucks?
22 A. Yes.
23 Q. All right. Turning now to the second of
24 these reports, this one is dated August 23, 1991; is
25 that correct?

00398

1 A. That is correct.
2 Q. And what time did this accident occur?
3 A. This accident occurred at 11:40 p.m.
4 Q. Okay. Looking down now at box number 15,
5 position of car unit and train, what does that say?
6 A. That shows that the 94th car in the train was
7 on the crossing.
8 Q. Okay. And then looking down at box number
9 30, how fast was the train going at the time?
10 A. The train was stopped at zero miles per hour.
11 Q. Okay. And looking at box number 15 again,
12 what was that, what's that figure mean?
13 A. That's the 94th car on the train, position of
14 the train car was the 94th car that was stopped in the
15 crossing.
16 Q. Okay. So a train was stopped on the crossing
17 and a person hit it?
18 A. That is correct.
19 Q. Okay. Looking at box 46, was anyone killed
20 or injured?
21 A. Yes, there were three people injured.
22 Q. All right.
23 A. In this particular incident.
24 Q. All right. Now turning to BNSF Exhibit
25 Number 32, and I think we talked about this a couple of

00399

1 times yesterday, this is the using data produced by
2 WBAPS exhibit, and I will just remind everyone about
3 this. We will now go on. We're not going to testify
4 about this at this moment, but we will now go on.

5 If you would go then to the next exhibit,
6 which is the Railroad Safety Statistics Book, Annual
7 Report 2000, and I believe we had some testimony about
8 this yesterday from Mr. Ries.

9 JUDGE SCHAER: Excuse me, counsel, what
10 exhibit number do you have with this?

11 MR. WALKLEY: Okay, that is --

12 JUDGE SCHAER: I think it's Exhibit 26, and I
13 just was curious because you were saying it was the next
14 exhibit in order, so I wanted to make sure I had it
15 right.

16 MR. WALKLEY: That is Number 26, Your Honor,
17 yes.

18 JUDGE SCHAER: Thank you.

19 MR. WALKLEY: We have substituted the actual
20 book for the copies which we originally had in the
21 record.

22 JUDGE SCHAER: Yes.

23 MR. WALKLEY: Okay.

24 JUDGE SCHAER: And that is noted that
25 everyone should have a copy of this booklet, nice purple

00400

1 cover, says Railroad Safety Statistics and actually has
2 the same text as this document that had been admitted as
3 Exhibit 26, and now this is instead admitted in its
4 place.

5 Thank you, go ahead.

6 MR. WALKLEY: Thank you, Your Honor, and I
7 did distribute copies of the actual book.

8 BY MR. WALKLEY:

9 Q. Mr. Cowles, I would ask you first of all, are
10 you familiar with the exhibit, have you seen this
11 exhibit before?

12 A. Yes, I have.

13 Q. Okay. And did BNSF receive this exhibit to
14 your knowledge?

15 A. As far as I know, I may have been the only
16 one that's seen it. In fact, when I called Ron Ries a
17 week ago, he hadn't even gotten a copy of it, and he's
18 the one that basically made the report.

19 Q. Okay.

20 A. So it is a very new report.

21 Q. So it contains the latest --

22 A. It's the latest.

23 Q. -- compiled information, all right. I would
24 like you, please, to turn, if you would, to Table 1-12
25 at page 15.

00401

1 A. Mm-hm.

2 Q. Now just very briefly, Mr. Cowles, could you
3 identify what this page is and basically what it is
4 telling us.

5 A. This is a statistically format of highway,
6 number of highway-rail crossing incidents by state
7 broken out by public, private, and total crossings in
8 the last six years.

9 Q. Is the state of Washington shown on this?

10 A. Yes, it is.

11 Q. Okay. And can you tell from this what the
12 count, the incident count is on Washington crossings for
13 a five year period, 1995 through 2000, at public
14 crossings?

15 A. First of all, that's six years if you count
16 the number of years at the top.

17 Q. I'm sorry.

18 A. That's all right. It's 269.

19 Q. Okay. So what is this telling us right there
20 just very briefly?

21 A. In the state of Washington, there has been
22 269 highway-rail crossing incidents in the state of
23 Washington, both private and public, just public by the
24 way. That's total for public crossings.

25 Q. Okay. I would like you now to turn briefly

00402

1 to page 9 or page 117 and look at Table 9-2. Is the
2 state of Washington shown on this table?

3 A. Yes, it is.

4 Q. Okay. And does this page indicate how many
5 at grade public crossings that there were in the state
6 of Washington in the year 2000?

7 A. Yes, it shows the number of grade crossings.
8 It's broken down into public, private, and pedestrian.

9 Q. Okay. And what does it show for the public
10 vehicle crossings in the state of Washington?

11 A. There's 2,774 public crossings in the state
12 of Washington in the year 2000.

13 Q. Okay. So if you took the 269 that we just
14 mentioned and put that over or divided it by the 2,774
15 crossings, about what kind of figure would you get?

16 A. Between 9% and 10%.

17 Q. Okay. I would like to turn to Table 8-4 at
18 page 103, please.

19 A. (Complies.)

20 Q. Does that show, does this table show the
21 state of Washington?

22 A. Yes, it does.

23 Q. Okay. Now it's entitled motor incidents at
24 public crossings by state and type of warning. Does
25 this indicate to you as an experienced engineer any

00403

1 information about gates and warning devices versus cross
2 bucks?

3 A. Yes, it does.

4 Q. As far as incidents are concerned?

5 A. Yes, it does. What it shows is the number of
6 motor engines at the public crossing in the state of
7 Washington is a total of 23, and the majority of
8 incidents at public crossings in the state of Washington
9 in 2000 were a crossings that had gates and warning
10 devices.

11 Q. Okay. Now I think you have testified already
12 that 156th, which is the subject of this hearing, has
13 gates and flashers?

14 A. Yes, it does.

15 Q. So when one is looking at this book, they
16 ought to look at the gates and flashers in the various
17 categories; is that correct?

18 A. That's correct.

19 Q. Okay. All right, now I would like to turn to
20 Table 7.9, please, on page 96. Could you tell us
21 briefly what this page, what this Table 7.9 is trying to
22 do?

23 A. This is a table that identifies the total
24 number of rail-highway incidents by a warning device on
25 a national level. This is not according by state. It's

00404

1 on a national level.

2 Q. Okay. So this would be the entire United
3 States?

4 A. That is correct.

5 Q. Okay. Now could we -- could you find on this
6 page the number of accidents in the year 2000 that
7 happened at gated crossings.

8 A. Total accident count in the United States at
9 gated -- at -- total accidents at crossings is 3,500.
10 Let's see here. Okay, the count for gated crossings is
11 905 out of a total of 3,502.

12 Q. Okay. And then over next to the 905 is a
13 25%, 25.84%; what is that saying to us?

14 A. That is saying that out of all the incidents
15 at public, total incidents at both public and private
16 crossing, 25% of them were at gated, 25.84% of those
17 accidents happened as crossings with gates.

18 Q. Okay. So the installation of gates is a
19 safety measure, but it does not eliminate the
20 possibility of accidents?

21 A. It does not.

22 Q. Is that correct?

23 A. That is correct. It's a safety measure that
24 is posed to discourage and to warn. It's a different
25 warning device at a grade crossing to prevent

00405

1 highway-railroad collision.

2 Q. Now I notice in this chart if you look at
3 cross bucks, they have a slightly higher incidence, but
4 otherwise gates seem to rank fairly high in the accident
5 or the incident categories?

6 A. Yes.

7 Q. Okay. About what rank would that be in that
8 chart?

9 A. It would be the second most highest in that
10 chart.

11 Q. All right. Now above that is another Table
12 7-8, highway-rail incidents by users 2000.

13 A. Right.

14 Q. And could you tell us what that is,
15 indicating as far as rail equipment struck highway user.

16 A. This is a chart that basically breaks down by
17 vehicle type and the type of terrain and whereby the
18 train has hit the user.

19 Q. Okay. And then so the total number of
20 incidents in the United States in 2000 was what?

21 A. In the year 2000 -- repeat that question
22 again.

23 Q. If you look at the total count at the bottom,
24 that 2,774, is that the total -- what is that figure,
25 what does that mean?

00406

1 A. That is the total number of vehicles that
2 have -- where the train has hit the user.

3 Q. Okay. And then down the next table, it's
4 called highway user struck rail equipment.

5 A. That is correct.

6 Q. What is basically -- do you have any
7 observations about that table; what is that telling us?

8 A. Out of the total of 3,502 incidents, 728 of
9 them had struck the train at the railroad equipment.

10 Q. Okay. So there are cases where the highway
11 user strikes the train?

12 A. That is correct.

13 Q. And does that -- is that similar to what may
14 have happened in that one accident report that we just
15 reviewed?

16 A. That is correct.

17 Q. Okay. And would it be fair to say that if
18 you took all of the incidents, 728 over 2,774, in other
19 words there's a substantial percentage of the, we don't
20 know what that percent is right now, but there's a
21 percentage that's fairly substantial where the vehicle
22 hits the train?

23 A. That's correct.

24 Q. All right. Then I would like you to turn to
25 Table 8-2, page 101.

00407

1 A. (Complies.)

2 Q. If you could, please refer to the line called
3 gates, and tell us what that 804 figure is telling us
4 there.

5 A. The 804 figure is a number of accidents at --
6 first of all, the table is a rate of motor vehicle
7 incidents at public crossings by warning device, and the
8 804 is the count of motor vehicle accidents of the 2,895
9 total accidents where it happened at gated crossings.

10 Q. Okay. And the second figure, the one that
11 says per 100 crossings, 2.34?

12 A. What that basically means is out of every
13 2.34 gated crossings, there is a -- there is an
14 accident.

15 Q. Okay. And then the 0.57, what is that
16 telling us?

17 A. For every 100,000 vehicles that cross a gated
18 crossing, 0.57 accidents happen.

19 Q. Okay. And then does this chart show, it
20 shows that there were 804 accidents, does it show the
21 total number of crossings? Again, I believe we're
22 talking about the United States as a whole?

23 A. This is the United States as a whole.

24 Q. All right.

25 A. There are 34,296 gated crossings in the

00408

1 United States.

2 Q. Okay. So if you were to take -- did you have
3 an opportunity to take a percentage, if you took 804
4 accidents, divided it by 34,000 crossings, what kind of
5 figure is that? Would that be close to 2, some 2% or
6 so?

7 A. I don't have my calculator with me, but I
8 believe that is the case.

9 Q. Okay. And that's for a one year period?

10 A. That is for a one year period, the year 2000.

11 Q. Okay. And earlier we talked about Washington
12 over a you said six year period, and we had a figure of
13 I believe you testified was close to 10%; is that right?

14 A. That is correct.

15 Q. Okay. All right. I would like you now
16 please to turn to Table 8.6, page 105.

17 A. (Complies.)

18 Q. Okay, looking first at rail equipment struck
19 highway user, do you have any observations about gates;
20 what is this telling us about gates?

21 A. Okay, first of all, the table is about number
22 of incidents at public crossings by warning device and
23 the motorist action and warning location. What this
24 tells us about gates, and it's out of the 2,227 total
25 grade crossings where rail equipment struck the vehicle

00409

1 at the crossing, 663 of those accidents were at gated
2 crossings, which is basically 22.9% of all gated
3 crossings, of all crossings, is that right, yeah.

4 Q. Now I notice a number of actions here by the
5 motorists, drove arounds, stopped, and then proceeded;
6 in other words, people are ignoring the gates and
7 flashers?

8 A. 207 of those 663 count drove around or went
9 through the gate.

10 Q. Okay. Looking down then next to the next
11 chart, it says highway user struck rail equipment gates.
12 Could you tell us a little about that, please.

13 A. Out of the total number of crossing accidents
14 where the vehicle user hit the train, there was 668.
15 And out of those 668, 141 vehicles hit the train where
16 there were gated -- where the crossings were gated.
17 And --

18 Q. So --

19 A. Sorry, go ahead.

20 Q. Excuse me. So would this be one reason why
21 those median strips were -- are used that we saw in the
22 photograph of 172nd?

23 A. That is correct, they are there to discourage
24 that.

25 Q. And are there any median strips at 156th?

00410

1 A. No, there are not.

2 Q. There are not, okay. So the grand total can
3 be read by people, and we will just move on.

4 Could you please turn to Table 8.8.

5 A. (Complies.)

6 MR. WALKLEY: And by the way, we're almost
7 done with this, Your Honor.

8 BY MR. WALKLEY:

9 Q. 8.8 or 8-8, page 107, could you tell us,
10 please, if this chart, if these data indicate anything
11 about accidents when the train is going as little as 9
12 miles an hour?

13 A. Yes, this table talks about vehicles at
14 public crossings by vehicle speed, actually by vehicle
15 speed.

16 Q. Okay.

17 A. And the vehicle speed -- this says -- are you
18 sure this is the chart you want to talk about? Do you
19 want to talk about trains? I think you might have
20 gotten the wrong table there.

21 Q. All right, I'm sorry. Let's turn to Table
22 8.5, but that -- but this is interesting, because it
23 shows that even if a vehicle was at a crawl, there are
24 incidents; is that correct, Table 8-8?

25 A. Yes.

00411

1 Q. Okay. Table 8-5 on page 104 I believe is the
2 one you --

3 A. That's the one I'm familiar with.

4 Q. -- you may be referring to, okay. Could you
5 tell us about that; does that show what train speeds
6 would be?

7 A. Right, the train speeds where the rail
8 equipment strikes the highway user, the higher number of
9 the 2,227, this is at the top of the page, was at speeds
10 of 40 to 49. And the speeds at this particular crossing
11 I believe are 50 freight and 79 passenger.

12 Q. Okay. So you heard the testimony yesterday
13 about the problems with train breaking and the
14 possibility of leaving 156th in. What is this telling
15 us about whether that would be a truly safe operation or
16 would not be?

17 A. Under this second chart, it talks about
18 highway users striking the train, and the majority of
19 times when a vehicle strikes a train, it's at speeds of
20 less than ten miles an hour according to this chart and
21 these statistics. And when you're pulling into a siding
22 breaking a train, or even not even a siding, but just
23 breaking the train, there is that opportunity for
24 someone to run into the train basically at those speeds.

25 Q. Okay. I would like now to turn, if we could,

00412

1 to your grade crossing brochure just for a moment.

2 MR. WALKLEY: And, Your Honor, I'm talking
3 about Exhibit Number 27, BNSF grade crossing closure
4 program brochure.

5 BY MR. WALKLEY:

6 Q. Do you have a copy of that?

7 A. Yes, I do.

8 Q. Maybe you could pick it up and show it to
9 people.

10 A. (Complies.)

11 Q. Could you just tell us very, very briefly
12 what that is.

13 A. Two years ago the BNSF took it upon
14 themselves to enter into a very detailed program called
15 the grade crossing closure program. In fact, we put
16 together our own department that that's all they did was
17 talk about grade crossing safety. And this brochure was
18 put together just recently to talk about the various
19 safety initiatives the railroad is involved in.

20 And it gives you some contact information,
21 facts and figures about the railroad and its program to
22 -- it talks about grade crossing consolidation,
23 operation lifesaver, vegetation control, and other
24 things. And this was just recently put together in the
25 last two years.

00413

1 So the first year we -- this program was
2 initiated, we -- nation -- nationwide we had closed on
3 the Burlington Northern and Santa Fe system over 700
4 crossings, over 600 crossings. And this year alone we
5 have almost closed up to 500 crossings system wide. We
6 have approximately 38,000, 40,000 crossings on the
7 Burlington Northern and Santa Fe system.

8 Q. So --

9 A. So we're --

10 Q. I think the judge has asked us to move on.

11 A. Sure.

12 Q. But I just wanted to point to the fact that
13 this is in the record, and does it contain certain facts
14 and figures about BNSF in terms of crossing closures and
15 so on and so forth? That's what you have been saying,
16 correct? Okay.

17 JUDGE SCHAER: And you are at your 45 minute
18 estimate, counsel.

19 MR. WALKLEY: Okay, we're almost done.

20 BY MR. WALKLEY:

21 Q. Mr. Cowles, I would now like to turn to
22 Exhibit Number 28, which is the highway-rail crossing
23 consolidation and elimination brochure.

24 A. Okay. I don't have it here in front of me.

25 Q. It might be in that book.

00414

1 A. I've got it.
2 Q. Okay, just very, very briefly, have you seen
3 this?
4 A. Yes, I have.
5 Q. Before?
6 A. Yes, I have.
7 Q. And this contains information -- if you would
8 turn, please, just very briefly to page -- I think these
9 pages are not numbered, but there's a -- several pages
10 back in the book, there's certain guidelines called
11 candidates for consolidation and elimination. It shows
12 a photograph on the upper right-hand corner.
13 A. Yes.
14 Q. And there are certain criteria listed there.
15 First of all, this brochure, does this -- was this
16 brochure prepared by the FRA?
17 A. Yes, it was.
18 Q. Okay.
19 A. Federal highway.
20 Q. All right.
21 A. Or Federal Railway.
22 Q. And are those -- and then I would like you to
23 turn the page because we will speed this along to the
24 next page or the last page of the exhibit, which is
25 guidelines for high speed rail corridors.

00415

1 A. (Complies.)

2 Q. Were you here yesterday, Mr. Cowles, when
3 Mr. Ries mentioned that the certain criteria for closing
4 crossings in high speed corridors?

5 A. Yes.

6 Q. Okay. If you would look at this page and
7 look at the paragraph just below the picture of the
8 locomotive, could you read that, please, just briefly.

9 A. (Reading.)

10 All public and private crossings where
11 train speeds fall between 80 and 110
12 miles per hour should be closed, grade
13 separated, or equipped with special
14 signing and automated warning devices.

15 Q. Okay. And you heard Mr. Schultz say that
16 ultimately the State's goal for Amtrak passenger service
17 is in that range?

18 A. Currently, yes.

19 Q. Okay. So just to wrap up your testimony,
20 basically the last question, from all of this data and
21 all of this material, would you be able to conclude
22 whether or not 156th poses -- the grade crossing poses
23 any kind of risk to public safety?

24 A. I think not only 156th, but all grade
25 crossings have a potential for risk. The fact that this

00416

1 crossing has flashing lights and gates does not keep it
2 from any -- from non-risk. In fact, it kind of presents
3 an interesting situation where some, depending on the
4 motor vehicle driver, that there are some risks at
5 crossings with gates. That does not necessarily have to
6 be a low volume with cross bucks. All crossings present
7 some sort of risk.

8 MR. WALKLEY: Thank you very much.
9 That's all I have, Your Honor.

10 MR. STIER: Your Honor, I do have one
11 question.

12 JUDGE SCHAER: Go ahead, Mr. Stier.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. STIER:

16 Q. Yesterday at the public hearing, I know you
17 were there, Mike, and there was a gentleman, the very
18 first gentleman who spoke who sat through the hearing,
19 Ralph Krutsinger mentioned, he was talking about that
20 crossing, and he mentioned grooves in the pavement. Do
21 you remember him saying that?

22 A. I don't recollect, but go ahead.

23 Q. Okay. Did you see -- and he was talking
24 about, I got -- the implication I understood it to be is
25 that crossings don't kill drivers, drivers kill drivers

00417

1 type of statement, and he was talking about the drivers
2 creating grooves in the pavement. Would -- is that hump
3 -- is there a -- is there any problem with people like
4 at high speeds trying to jump these humps over the
5 tracks?

6 A. I really couldn't tell you.

7 MR. STIER: Okay, all right, that's all I
8 have.

9 JUDGE SCHAER: Mr. Cummings.

10 MR. CUMMINGS: Thank you.

11

12 C R O S S - E X A M I N A T I O N

13 BY MR. CUMMINGS:

14 Q. Good morning, Mr. Cowles, Jason Cummings, we
15 have met a couple of times actually.

16 A. Yes.

17 Q. Couple of questions. After all of these
18 statistics we just went through here that were put
19 together by the FRA, it sounds to me that crossings are
20 dangerous. Now in the case that we're dealing with,
21 you've got a petition to close 156th as part of a larger
22 project; is that correct?

23 A. That is correct.

24 Q. And the project is to extend the siding?

25 A. That's correct.

00418

1 Q. The siding currently crosses 172nd; is that
2 correct?

3 A. That's correct.

4 Q. And you propose to extend it all the way
5 across 156th?

6 A. That's correct.

7 Q. Now in terms of working with a project that
8 has two crossings that is now going to be crossed,
9 crossed the siding that is, you don't have any concerns
10 for 172nd?

11 A. Do you want to repeat that? I'm not sure
12 what you meant.

13 Q. In terms of this project, you expressed
14 concerns for safety at 156th; is that correct?

15 A. That's correct.

16 Q. Now you're presently looking to extend a
17 siding that already crosses 172nd; is that correct?

18 A. Extend it to the south.

19 Q. Yes.

20 A. To include 156th, yes.

21 Q. Now why is there no concern about the
22 crossing at 172nd?

23 A. Well, 172nd already is -- is already there.
24 The State Highway Department had to put on median
25 barriers in the interim in the last few months to

00419

1 address some of the safety issues at that crossing.

2 Q. Okay, now the crossing --

3 A. The focus -- excuse me.

4 Q. Okay.

5 A. The focus of this entire project is on 156th
6 and not 172nd.

7 Q. It doesn't make sense to look at the whole
8 picture? You're asking this Commission to look at not
9 just the closure of 156th but this entire siding
10 project, correct?

11 A. My focus is on 156th as it is addressed by
12 the siding extension.

13 Q. And the siding extension is tied in part to
14 172nd?

15 A. That is correct.

16 Q. So if you're not concerned about 172nd
17 because we have median barriers, so if we put median
18 barriers at 156th, would that make it okay?

19 A. Not necessarily.

20 Q. So 172nd has crossing arms and flashing
21 lights, correct?

22 A. 172nd, yes.

23 Q. And 156th has crossing arms and flashing
24 lights?

25 A. That's correct.

00420

1 Q. And the only difference between the two based
2 on the pictures we saw is 172nd has the over height bars
3 with some flashing lights I guess to project a little
4 bit further, and it has the median barriers?

5 A. And it also has a lot more ADT.

6 Q. That's interesting you raised that. So if
7 you've got -- what's the ADT on 172nd?

8 A. I'm not sure of the numbers, but I'm sure
9 they're higher than 156th.

10 Q. So you have a greater risk of an accident at
11 172nd?

12 A. Not necessarily.

13 MR. STIER: Your Honor, I'm going to object
14 to this line of questioning, because the implication of
15 this line of questioning is that there should be some
16 action here or there's ignoring of some required action
17 to close 172nd. That is certainly beyond the scope of
18 this hearing, it's completely irrelevant, and this line
19 of questioning is completely irrelevant to the issues in
20 this case if the implication is that there should be a
21 comparison between 172nd and 156th or that 172nd should
22 be closed perhaps, which I'm hearing him say.

23 JUDGE SCHAER: Okay.

24 MR. WALKLEY: And, Your Honor, I would add an
25 objection that he's mischaracterizing the testimony.

00421

1 He's tending to suggest that the witness does not care
2 about 172nd. He's also mischaracterizing that we're
3 proposing to add a track to 156th. The whole purpose of
4 this hearing is to close 156th.

5 MR. STIER: And also the purpose --

6 JUDGE SCHAER: Okay, I think I --

7 MR. STIER: -- as stated is to take traffic
8 and take blockage off of 172nd, and he's correct, this
9 is a mischaracterization.

10 JUDGE SCHAER: Okay, I'm going to overrule
11 the objection. We heard a lot yesterday about, from
12 your witnesses, Mr. Walkley, and yours, Mr. Stier, about
13 what the effects on 172nd will be if this new south
14 siding is built and 156th is closed. And I know that I
15 have an interest in knowing if that's going to make
16 172nd safer or less safe. And so I do think that it's
17 appropriate to, in terms of looking at what the safety
18 situation is going to be, to look at the effects on that
19 crossing as well.

20 Mr. Cummings, if you want to look at phrasing
21 your questions in a way that repeats what the witness
22 says without characterizing it, I would appreciate that.

23 MR. CUMMINGS: Certainly.

24 JUDGE SCHAER: Go ahead, please.

25 BY MR. CUMMINGS:

00422

1 Q. Mr. Cowles, you were looking at various
2 accidents that occurred at the 156th Street crossing.

3 A. That's right.

4 Q. And in your petition for the closure of
5 156th, you have asked or you have indicated that it
6 should be closed because public safety requires it; is
7 that correct?

8 A. I haven't seen -- it's been a while since I
9 have seen that petition.

10 Q. Let me pull it out for you. This is in
11 Exhibit Number 21, which was Mr. Walkley's big SEPA
12 packet, but it's easier -- and I appreciate Mr. Walkley
13 doing this, because actually I can go to Exhibit 1 or
14 Exhibit 1 of Exhibit 21 contains your petition. And I
15 will let you just refresh your recollection. I believe
16 it's this paragraph, paragraph 3.

17 A. (Reading.)

18 Okay, and what was your question again?

19 Q. So what I was asking for is when you filed
20 your petition to the UTC, you stated in essence that the
21 public safety would be benefited by this closure; is
22 that correct?

23 A. That is correct.

24 Q. And in support of that assertion, you cited
25 that there have been two accidents in the last 14 years?

00423

1 A. That's correct.

2 Q. Would it be safe to say that there has been
3 two accidents in the history of the crossing?

4 A. No, it would not.

5 Q. Are there other documented accidents that
6 you're aware of?

7 A. We have only -- as far as I'm aware of, we
8 started keeping records -- records only go back as far
9 as 1976, FRA's records.

10 Q. Okay.

11 A. As far as I know.

12 Q. So in terms of the records that are
13 available, there has been only two accidents reported?

14 A. That's correct.

15 Q. And Mr. Walkley had you take a look at this
16 agreement that was executed with the County for crossing
17 arms.

18 A. Yes.

19 Q. Were you involved with that project at all?

20 A. Yes, I was.

21 Q. Okay. In terms of the dates, you indicated
22 that it was executed on March 15, 1991?

23 A. Right.

24 Q. This is Exhibit 29. Do you have that in
25 front of you?

00424

1 A. Yes, I do, I will grab it.

2 Go ahead.

3 Q. Does it indicate when the County actually
4 executed the agreement?

5 A. November 2nd, 1990.

6 Q. Okay. So there's a lot of planning that
7 takes place in getting improvements made at a crossing?

8 A. Yes, there is.

9 Q. Okay. And ironically, there was an attempt
10 to put the crossing gates in before the second accident
11 you discussed; is that correct?

12 A. I'm not sure where you're coming from.

13 Q. I believe you indicated in the report that
14 the second accident was August 23rd of 1991?

15 A. That's correct.

16 Q. So the motion was started to get the gates
17 put in place, but when the gates actually -- when were
18 they actually installed?

19 A. I do not have the in-service date when they
20 were installed.

21 Q. But based on the accident report, it was
22 after the accident?

23 A. Yes.

24 Q. And in terms of improving the crossing, you
25 talked about some sight distance, and I believe it was

00425

1 Exhibit 30.

2 A. That's correct.

3 Q. The picture, the first picture there. Was
4 one of the reasons for installing gates, was that
5 because of the sight distance limitation?

6 A. If I remember correctly, I was there at the
7 diagnostic review with the State and the County, I
8 believe the County was there. And I believe one of the
9 items on the list for the WSDOT to signalize the
10 crossings was accidents. Also another thing that is on
11 a priority thing is sight restrictions. And I believe
12 the sight -- the sight restriction was a part of the
13 diagnostic review. We had discussed that prior to
14 making a decision to signalize this crossing. That is
15 correct.

16 Q. Okay. Now in terms of the petition that I
17 just showed you if I -- that you just signed --

18 A. Yeah.

19 Q. -- or that you had signed a file for the
20 closure of the crossing, when you allege that public
21 safety will be benefited, did you have the opportunity
22 to talk with any of those entities that provide public
23 safety in the region?

24 A. I was basing my comments on a traffic study
25 report that I was presented through Mr. Struthers, I

00426

1 believe. It was a traffic safety report. And also
2 discussing things with WSDOT.

3 Q. So your conclusions as to the safety
4 representations by the fire district and the sheriff's
5 office and possibly the school district, those were
6 based on what you gathered from the report by Mr. Norris
7 of Gary Struthers and Associates?

8 A. That is correct.

9 Q. Okay. Now I want to get back a little bit to
10 the timing. There was some discussion or I pointed out
11 yesterday that there was a meeting that took place on
12 January 21st of 2000.

13 A. Mm-hm.

14 Q. And at that meeting, Burlington Northern had
15 represented to the Department of Transportation that the
16 north option was the preferred option.

17 A. I kind of recall that.

18 Q. Okay. But you weren't at that meeting?

19 A. I can't recall that either.

20 Q. Okay. In terms of this project, do you
21 recall whether or not the north option was preferred?

22 A. No, I don't recall that.

23 Q. Okay. But at some point in time, Burlington
24 Northern actually filed an application with the Corps of
25 Engineers to construct the north project?

00427

1 A. I'm not familiar with the application to the
2 Corps.

3 Q. But you stated earlier when Mr. Walkley was
4 talking to you that you're responsible for this corridor
5 and you work with government agencies.

6 A. That is correct.

7 Q. On issues of crossings.

8 A. But I'm not involved with the construction of
9 a siding.

10 Q. Okay. But you are involved when it comes to
11 the closing of a crossing?

12 A. That is correct.

13 Q. Now when this project was originally
14 petitioned for before the UTC, it included cul-de-sacs
15 at either end of the crossing; is that correct?

16 A. That's correct.

17 Q. And as a result of -- well, are the
18 cul-de-sacs still included?

19 A. As part of the crossing, yes, I believe they
20 are. It's my understanding that the cul-de-sacs are
21 included, yes.

22 Q. So at this point, it's your understanding
23 that Burlington Northern is still offering to put
24 cul-de-sacs as a result of the crossing, of the closure?

25 A. Probably be best to answer that -- ask that

00428

1 -- answer that question would be Mr. Powrie, who is the
2 project engineer.

3 Q. Okay. So did you have any conversations
4 regarding the discussion of the County of SEPA issues?

5 A. I am not really up on the SEPA issues either.

6 Q. Okay. So in terms of the specific project
7 itself, what I'm hearing is you're really not involved
8 with it in any way?

9 A. No.

10 Q. So the purpose of your testimony today is to
11 come in and say that the crossing at 156th is a
12 dangerous crossing?

13 A. I shouldn't -- I wouldn't -- I wouldn't
14 characterize it dangerous.

15 Q. Okay.

16 A. I would just say it's got that potential to
17 -- like any other crossing, it has that potential to --
18 for accidents to happen.

19 Q. Okay. And speaking of the potential, Exhibit
20 Number 32 was the -- using data produced by WBAPS or
21 W-B-A-P-S. Mr. Walkley showed that to you at some point
22 in time.

23 A. That's correct.

24 Q. This is also an instrument for predicting
25 accidents; is that correct?

00429

1 A. That's correct.
2 Q. Is this something you relied upon?
3 A. I -- in fact, when I first saw this was in
4 discovery. I have never seen this type of report, this
5 type of situation.
6 Q. And this report is produced by the Federal
7 Rail Administration?
8 A. Apparently it's a form that you can use to
9 plug in some numbers. I have never used it before.
10 Q. Could you look at the first page.
11 A. Sure.
12 Q. In the upper left-hand corner, does it give
13 any indication of who produces this report?
14 A. Federal Rail Administration.
15 Q. And did you hear any conversations -- well,
16 you were present when Mr. Ries was testifying yesterday,
17 correct?
18 A. That's right.
19 Q. So you're aware that the Federal Rail
20 Administration puts out this report to inform others of
21 the probability of accidents at crossings?
22 A. That is correct.
23 Q. And you have never seen this documentation
24 before?
25 A. I have never seen it. I assume this is

00430

1 something you get off the Internet, plug in some
2 numbers, Web site type thing.

3 Q. And again, your responsibilities at
4 Burlington Northern are to work with local government
5 officials --

6 A. That's correct.

7 Q. -- concerning the closure process?

8 A. I didn't say closure, safety, things that I
9 work with government agencies on, not just on closures,
10 but on just providing safety improvements, anything that
11 has to do with railroad crossings, whether safety,
12 construction.

13 Q. If 156th Street is closed, where is the
14 nearest crossing?

15 A. I think 172nd is the closest.

16 Q. What is the distance between the two
17 crossings?

18 A. It's pretty close to a mile.

19 Q. Would you say it's over a mile?

20 A. Could be slightly over.

21 Q. Okay.

22 A. I'm not sure what the milepost at 172nd is.

23 Q. Let me show you your petition again. Go back
24 to Exhibit 21. And actually on that same page, I think
25 you give an actual indication of the mileage. I just

00431

1 want to make it clear for the record.
2 A. Okay.
3 Q. I will let you look at the first sentence
4 there.
5 A. 1.12 miles.
6 Q. Okay.
7 A. 172nd.
8 Q. Now is that based on track length alone?
9 A. That is correct.
10 Q. So it doesn't take into account the actual
11 distance that somebody would have to drive from the
12 156th Street crossing to get to 172nd?
13 A. No, this does not.
14 Q. Has there been any discussions -- well, let
15 me strike that. When you look at a project such as
16 this, a siding improvement or capital improvement to the
17 rail line, has there been any discussions as to looking
18 at a consolidation of crossings?
19 A. Like making an improvement to one and closing
20 a couple of others?
21 Q. Yeah.
22 A. No discussion of this particular case, no.
23 Q. Is there discussions in other particular
24 cases?
25 A. Throughout the system, there are

00432

1 consolidation efforts in other places.

2 Q. But in terms of the present case, it wasn't
3 discussed?

4 A. No.

5 Q. Are you familiar with the area around 172nd?

6 A. I have driven the area, yes.

7 Q. And you're familiar -- well, what's just west
8 of the tracks on 172nd?

9 A. What are you --

10 Q. Let's say you're going west on Highway or SR
11 530 or 172nd, you cross the tracks, what do you come
12 into?

13 A. There's a business on the right. I think
14 it's some type of a store, a market or a grocery store
15 or whatever. And on the left side as you go up about a
16 block or so, there's the school.

17 Q. Okay.

18 A. Continue on, you just kind of go out into
19 rural America.

20 Q. Okay. So within that median vicinity there
21 seems to be a store, a school; is there a post office
22 right there as well?

23 A. There might be; I can't recall.

24 Q. So it's considerable use of local traffic in
25 that area as well as commuter traffic you might say?

00433

1 A. I assume so.

2 Q. Okay. And in terms of the elimination of
3 156th, you haven't decided to make any improvements to
4 172nd?

5 A. The railroad personally does not make
6 improvements to grade crossing without the -- without
7 basically the consent of the WUTC and the other people,
8 so it's -- it's not the railroad's position to make
9 improvements at grade crossings.

10 Q. Okay. In terms of mitigation for closing of
11 the 156th Street crossing.

12 A. Yes.

13 Q. Has the railroad offered any?

14 A. Yes, it has.

15 Q. And would it surprise you to know that the
16 petition that you signed and filed that included the
17 concept of cul-de-sacs is no longer on the table?

18 A. You mean the proposal we had proposed earlier
19 is now off the table?

20 MR. STIER: Your Honor, at this point, I'm
21 going to object, we're getting into the area of offers
22 of compromise, and that's what we're talking about here.

23 MR. CUMMINGS: Actually, Your Honor, we're
24 not. When this petition was filed, Burlington Northern
25 had included cul-de-sacs on both sides of the rail track

00434

1 that was being closed. That was not an offer, it was
2 the project description.

3 JUDGE SCHAER: Do you have that description
4 with you, Mr. Cummings?

5 MR. CUMMINGS: Yes.

6 MR. STIER: Your Honor, one additional point
7 here is if counsel wants to go there, I just want to
8 make sure that the court is aware that he's opening the
9 door to a very broad discussion of the procedural
10 history of this matter, and it will extend the hearing.

11 JUDGE SCHAER: Well, I would like to know a
12 little bit more specifically what we're talking about.
13 Is this a piece of paper that went into the petition or
14 that was filed with the County, or what are we talking
15 about?

16 MR. CUMMINGS: Should we go off the record?

17 MR. STIER: I don't believe so.

18 MR. CUMMINGS: Well, what we're talking
19 about, Your Honor, is that when Burlington Northern and
20 Santa Fe petitioned to close the crossing, they
21 submitted their original SEPA documentation in their
22 project descriptions. They had intended on building or
23 constructing cul-de-sacs on either side of 156th where
24 the crossing was to be closed. As a result of the
25 County -- well --

00435

1 JUDGE SCHAER: So you're saying that there
2 was a document filed with the original SEPA application?
3 MR. CUMMINGS: Yes.
4 JUDGE SCHAER: With whom was that filed?
5 MR. CUMMINGS: That was filed with the Staff
6 and the UTC.
7 JUDGE SCHAER: So that would be in the
8 record?
9 MR. CUMMINGS: It actually would be in Mr.
10 Walkley's report, and actually Mr. Walkley's SEPA
11 documents discuss the fact that as a result of the
12 County's desire to become a lead agency in the SEPA
13 matter because there would be County permits required
14 for the cul-de-sac, the Burlington Northern pulled out
15 the cul-de-sacs from the project to basically obscure or
16 eliminate the opportunity for the County to be a SEPA
17 lead agency.
18 JUDGE SCHAER: So is there something in
19 Exhibit 21 --
20 MR. CUMMINGS: Yes, there is.
21 JUDGE SCHAER: -- that you can show the
22 witness, say is this something that you are familiar
23 with and have seen before?
24 MR. CUMMINGS: Yes.
25 JUDGE SCHAER: All right.

00436

1 MR. STIER: Your Honor, I recognize that that
2 was in the nature of an offer of proof and explanation,
3 but the very essence of that requires rebuttal.

4 JUDGE SCHAER: Mr. Stier, the railroad has
5 put in this exhibit.

6 MR. STIER: Right.

7 JUDGE SCHAER: And this exhibit apparently
8 contains a document showing cul-de-sacs. And if that is
9 the case, then I think this witness can be asked about
10 his client's exhibit. And if there is something that
11 you will need to do in response to that, then that can
12 happen. But right now we have a factual question, did
13 this include cul-de-sacs, and apparently the answer to
14 that question is available in an admitted document, and
15 I think we need to get beyond that to see where that
16 might take us.

17 MR. STIER: Okay.

18 MR. CUMMINGS: Like I said, and if this
19 witness doesn't have recollection, then I obviously
20 won't be pursuing it with this witness.

21 JUDGE SCHAER: Okay.

22 BY MR. CUMMINGS:

23 Q. Mr. Cowles, I'm showing you Exhibit 21 again,
24 and this will be Exhibit 15 of Exhibit 21. This is a
25 letter written by Mr. Walkley to Mr. Thompson at the

00437

1 UTC. Are you familiar at all with this letter?

2 A. No, I am not.

3 Q. Okay.

4 JUDGE SCHAER: So you do have the letter in
5 the record if there's some reference you need to make,
6 but I don't think this witness knows anything further,
7 so let's move on.

8 Q. Mr. Cowles, yesterday we heard some
9 discussions regarding the fact that Amtrak was given
10 permission to use Burlington Northern tracks; is that
11 correct?

12 A. That's correct.

13 Q. Now there is concern raised by Burlington
14 Northern that the use by Amtrak is degrading its ability
15 to provide services for freight carrying.

16 MR. WALKLEY: That's a mischaracterization.

17 Q. Okay, well, let me see if I can
18 recharacterize.

19 Mr. Ketchem spoke yesterday about a limited
20 use. You've got tracks, you have to have trains that
21 leave at a certain time, and you need to have sidings to
22 pull trains off to allow other trains to pass; is that
23 correct?

24 A. That is correct.

25 Q. And that the future growth expected as a

00438

1 result of NAFTA and other areas in the Puget Sound
2 corridor all the way down to California envision an
3 increase in freight usage on Burlington Northern tracks.

4 A. I should hope so.

5 Q. Is that a fair assumption?

6 A. Yes.

7 Q. Is that your understanding?

8 A. Yes.

9 Q. Now in terms of needing larger sidings, would
10 the need for larger sidings be a result of Amtrak usage,
11 or is it also a result of the increased length of trains
12 needed by Burlington Northern?

13 A. I would say it's a combination of both.

14 Q. Okay.

15 A. Obviously we need to provide the -- Amtrak is
16 on a set schedule. We need to provide room for them to
17 meet their time of departure of stations to other
18 depots. And obviously with the growth in the industry,
19 we also need longer sidings for our longer trains, so
20 it's a combination of both.

21 Q. Okay. So in terms of let's say we pulled
22 Amtrak off of your tracks, would you still need to have
23 larger sidings?

24 A. I would assume, I'm not an operations man, I
25 would assume you probably would eventually as growth

00439

1 increases.

2 MR. CUMMINGS: Okay, thank you, I have no
3 further questions.

4 JUDGE SCHAER: Any questions from the
5 Commission Staff?

6 MR. THOMPSON: None.

7 JUDGE SCHAER: I have a couple of questions.

8 THE WITNESS: Sure.

9

10 E X A M I N A T I O N

11 BY JUDGE SCHAER:

12 Q. If we look at Exhibit 32, page 103.

13 A. Which one is 32?

14 Q. 32 is --

15 MR. WALKLEY: That's the WBAPS.

16 Q. I think I'm looking at Exhibit 26. Let's
17 look at page 103 in that. Yes, okay. Looking at the
18 tables that you discussed with counsel in Exhibit 26
19 including the table on page 103, looking at the number
20 of accidents that happen at gated crossings.

21 A. Yes.

22 Q. Looking at this data without any other
23 information, it would look like you should never build
24 gates because they are inherently dangerous, but I have
25 a sense that that might not be the right conclusion. So

00440

1 I'm wondering why -- do you have standards for when you
2 put in a gate?

3 A. Gates are usually installed at crossings that
4 have two tracks, high speed rail, high speed meaning,
5 you know, Amtrak routes, main line, crossings that are
6 very skewed that -- usually skewed crossings dictate
7 that you might have sight restrictions when you're
8 looking out the windows of a car or a truck.

9 Q. Is there some relationship between how many
10 cars use the crossing and whether or not you need gates?

11 A. There is, that is one of the -- one of the
12 pieces of information that we use when we make that
13 decision.

14 Q. Do any of these tables show the relationship
15 of how many accidents to how many vehicles use the
16 crossing?

17 A. You know, I can't recall; there might be
18 something in here.

19 Q. Okay. You gave me a number of factors that
20 would lead the railroad to put up gates, and it sounded
21 to me like those are factors that would say a particular
22 crossing might be less safe than others. Is that what
23 those criteria are about?

24 A. What you're asking me is, are there crossings
25 that are less safe than others?

00441

1 Q. No, I'm saying that -- I'm trying to figure
2 out the reason -- it seems to me that it's more likely
3 perhaps that the reason you have a lot of accidents at
4 the crossings that have gates is because there are
5 reasons that these crossings are dangerous such as two
6 tracks, high speed trains, main line, a lot more traffic
7 than some others may have, so that if you didn't have
8 gates and had these same crossings, you might even have
9 more accidents at those crossings than you have at the
10 gates; is that --

11 A. Statistically cross bucks are -- seem to have
12 more accidents than ones with gates.

13 Q. Okay.

14 A. They are always number one on the charts
15 here. I think a lot of it has to do with just driver
16 inattention at these or impatientness at these
17 particular crossings. But that's just my opinion.
18 There's other things that fall into play besides just
19 the physical evidence of gates.

20 Q. Okay.

21 A. There's a lot to do with driver behavior.

22 Q. The other thing I wanted to ask you about is
23 listening to the testimony of the other witnesses from
24 the railroad yesterday, there was a fair amount of
25 conversation about if the new siding were in place that

00442

1 you would not have to break trains at 172nd but could
2 pull past 172nd before you stopped and stop before 172nd
3 before you went in. Would those -- was that a correct
4 -- am I understanding that correctly from what you saw
5 yesterday?

6 A. What you're saying is that 172nd wouldn't be
7 blocked unnecessarily. You're talking about they would
8 just drive -- go right on through the crossing?

9 Q. I'm talking about that it might be blocked
10 less often.

11 A. Less often, that's correct.

12 Q. Or for shorter periods of time --

13 A. That is correct.

14 Q. -- because you wouldn't have to take the time
15 of breaking a train there; is that a correct
16 understanding?

17 A. That's correct.

18 Q. So when you're looking at the safety of this
19 project, was that improvement in safety at the 172nd
20 crossing --

21 A. Yes.

22 Q. -- one of the factors that you considered?

23 A. It would reduce the amount of time that we
24 would be in the crossing, occupying the crossing, that
25 is correct, at 172nd.

00443

1 JUDGE SCHAER: Okay, that's all I had. Go
2 ahead.

3 MR. WALKLEY: Your Honor, just a couple of
4 things because I realize we have to move on.

5

6 R E D I R E C T E X A M I N A T I O N

7 BY MR. WALKLEY:

8 Q. Mr. Cowles, I'm going to show you Exhibit
9 Number 43, which was discussed yesterday briefly.

10 MR. WALKLEY: Your Honor, it's the exhibit
11 with a 930 and railroad grade crossings on it. We think
12 it's -- I think it's Exhibit Number 43.

13 JUDGE SCHAER: I'm not --

14 MR. STIER: That's 44.

15 MR. WALKLEY: 44.

16 JUDGE SCHAER: Thank you, yes.

17 BY MR. WALKLEY:

18 Q. And what I am referring to specifically is
19 the page with a chart on it that was discussed briefly
20 yesterday. Mr. Cowles, do you remember when that was
21 discussed briefly yesterday?

22 A. That was the testimony of the County
23 engineer? I suppose that was, yeah, I remember that,
24 yes.

25 Q. Does that help to answer the Judge's question

00444

1 about what criteria are used and so on, at least
2 recommended for use by the WSDOT?

3 A. Yes, this is -- this comes from their
4 guidelines of ADT times the number of trains, and so
5 this is what they use to determine whether or not to use
6 the gates or to grade separate; that is correct.

7 Q. Okay. We heard some characterization, and I
8 might add mischaracterization, of your testimony and
9 other testimony regarding the petition. If we can
10 please turn to paragraph 3 of the petition again, I
11 would like you to read the last sentence. And, of
12 course, I understand that this document speaks for
13 itself, but --

14 JUDGE SCHAER: And what tab is that, counsel?

15 MR. WALKLEY: This is, Your Honor, this is
16 the tab number 1.

17 JUDGE SCHAER: Thank you.

18 MR. WALKLEY: Of BN's Exhibit 21 I think it
19 is.

20 BY MR. WALKLEY:

21 Q. Okay, looking at paragraph 3 of the document.

22 MR. WALKLEY: Which is four pages in, Your
23 Honor.

24 Q. I would like you to just simply read that
25 last sentence about what you said about improving public

00445

1 safety.

2 A. (Reading.)

3 Closure of the 156th Street crossing

4 would improve the safety of the

5 traveling public by reducing the risk of

6 future accidents.

7 Q. Okay. So when you wrote that sentence, if
8 you can recall when you wrote that sentence, were you
9 thinking about ambulances, or were you thinking about
10 highway traffic accidents?

11 A. I was thinking about highway traffic
12 accidents.

13 Q. At the grade crossing?

14 A. That's true, at the grade crossing.

15 Q. In other words, your thought there was, as I
16 think you testified earlier, no crossing is the safest
17 crossing?

18 A. That's correct.

19 Q. Okay. And were you here yesterday to hear
20 Mr. Ries talk about accident potential or accident
21 potential between two crossings, when you have two
22 crossings, each with a potential for accidents, you
23 eliminate one and you put its traffic over on the other,
24 for example, we eliminate 156th, put the traffic over on
25 172nd, what did he say again about and do you agree with

00446

1 what his observation was?

2 MR. THOMPSON: I'm going to object, I think
3 it's already in the record, and this just seems to be
4 asking the witness to repeat another witness's
5 testimony.

6 JUDGE SCHAEER: I'm going to sustain it. The
7 question was what did he say, and I think that is in the
8 record, counsel.

9 MR. WALKLEY: Okay.

10 BY MR. WALKLEY:

11 Q. Do you have any thoughts about whether there
12 would be a net safety improvement as far as grade
13 crossing accidents are concerned if 156th were closed
14 and virtually all of that traffic were added to 172nd?

15 A. Due to the additional risk, as Mr. Ries
16 testified to, I would say it would be -- it would be
17 justifiable to close the 156th crossing and to put that
18 traffic on 172nd.

19 MR. WALKLEY: Okay, I have no further
20 questions.

21 JUDGE SCHAEER: Okay, thank you for your
22 testimony.

23 Would you call your next witness, please.

24 Actually, while he's taking the stand, let's
25 go ahead and take our morning recess at this point.

00447

1 (Recess taken.)

2 JUDGE SCHAER: At this time, I believe that
3 you, Mr. Stier, are going to call a witness, and would
4 you do that, please.

5 MR. STIER: Yes, Your Honor. At this time, I
6 would like to call Gary Norris.

7

8 Whereupon,

9

10 GARY NORRIS,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

12

13 JUDGE SCHAER: Go ahead, Mr. Stier.

14

15 D I R E C T E X A M I N A T I O N

16

BY MR. STIER:

17

18 Q. Sir, would you state your name and
19 occupation, please.

19

20 A. My name is Gary Norris. I am a professional
21 traffic engineer, traffic planning engineer.

21

22 Q. And also provide us your business address.

22

23 A. My business address is Gary Struthers and
24 Associates, 3150 Richards Road, Bellevue, Washington,
25 Suite 100, zip code 98005.

24

25 Q. And what is your nature of your involvement

00448

1 in this case?

2 A. We were retained by -- as a subconsultant to
3 the DOT rail office to conduct a traffic impact analysis
4 of the proposed closure of the 156th Street crossing.

5 Q. And who first contacted you in that regard?

6 A. The first person to contact me was Ron Olson
7 of HDR.

8 Q. And what's HDR?

9 A. HDR is a consulting engineering firm located
10 in Bellevue.

11 Q. Okay. And what was their involvement in this
12 case?

13 A. I believe that their involvement is they are
14 the prime contractor with the WSDOT rail office for
15 conducting this kind of work.

16 Q. Okay. And what was the purpose of that
17 contact to you?

18 A. The initial purpose of the contact was to
19 review comments that had come back from a meeting that
20 was held in Snohomish County regarding the proposed
21 crossing and to prepare a scope of work to respond to
22 those questions and address the overall traffic impacts
23 of this crossing closure.

24 Q. And that you're referring to the 156th Street
25 Northeast crossing closure matter?

00449

1 A. That's correct.

2 Q. And I'm going to refer you to Exhibit 12, and
3 that would be your traffic analysis and Addendum 1
4 report, correct?

5 A. I guess.

6 Q. That's Exhibit 12. I'm referring you to that
7 document.

8 A. All right.

9 Q. And who prepared this document?

10 A. The staff of Gary Struthers and Associates
11 under my direction.

12 Q. And can you briefly describe that staff?

13 A. The staff is basically a transportation
14 engineer, professional engineer, licensed professional
15 engineer named Joan Smeltzer, and myself, and the
16 director of engineering, John Jidroni, who did quality
17 control. And then we also hired subconsultants to do
18 traffic counts and data collection for us. Also
19 involved at the time was a gentleman named Ed White, who
20 was the former transportation manager to the City of
21 Kent, and he was working with us at the time.

22 MR. STIER: Just bear with me, Your Honor,
23 I've got some sorting to do here, I apologize.

24 BY MR. STIER:

25 Q. You referenced some comments that were made

00450

1 by Snohomish County. Are those comments reflected
2 anywhere in your report?

3 A. Yes, they are.

4 Q. Where?

5 A. They are actually summarized in the
6 conclusions statement on page 23 and 24 and 25.

7 Q. And would that be the italicized material?

8 A. That's correct.

9 Q. So those, the italicized material, are
10 comments of Snohomish County associated with the
11 crossing closure?

12 A. What I believe is they are comments that came
13 out of a meeting of different involved parties from
14 Snohomish County and other entities I guess that were
15 impacted by the proposed action and was given to us to
16 include in our traffic analysis.

17 Q. Okay. So how did your team proceed to scope
18 this issue, this problem?

19 A. Basically we reviewed the comments that were
20 presented, and in addition to providing the normal
21 traffic data and analysis, we tried to address these
22 questions specifically in the development of the scope.

23 Q. Okay. And what was the scope as developed?

24 A. I don't understand that question.

25 Q. You said you developed the scope for the

00451

1 task, right?

2 A. Correct.

3 Q. And is that stated, the scope, is that stated
4 in your report?

5 A. No, it's not.

6 Q. Okay. So can you define what you ultimately
7 determined the scope of the report to encompass?

8 A. It encompassed a analysis of the existing
9 traffic conditions on 156th crossing, what the existing
10 volumes are, what they would be in the -- with the
11 closure of the crossing, where that traffic would be
12 forced to go. We looked at the or I guess we defined 11
13 critical intersections for evaluation in the area,
14 defined a study area. We took traffic counts at each of
15 the intersections a.m. and p.m. peak hour, and we took a
16 seven day count on 172nd to determine when the peak
17 hours were and to determine variations in flow by day
18 and also did some comparison of the what we call average
19 annual daily traffic.

20 In other words, this being somewhat of a
21 recreational area, a rural area, it's subject to
22 seasonal fluctuations in traffic volumes along these
23 corridors. So in an attempt to kind of stabilize those
24 volumes to reflect an average annual condition, we
25 adjusted those volumes by seasonal adjustment factors to

00452

1 achieve average annual conditions.

2 We also looked or spoke with the Marysville
3 Fire Department, which has responsibility for emergency
4 medical and fire response in this area. We attempted to
5 contact the Snohomish County Police but were unable to
6 because of schedule changes and vacations that were
7 going on during the time of the report. We never did
8 make final contact with them to gain data from them.

9 I would say that the emphasis of our effort
10 was one of collaboration with the County to disclose the
11 issues that would be relevant to making an informed and
12 an appropriate decision, and we met several times with
13 the County to discuss the report. And quite frankly,
14 Your Honor, the first comments that I had received from
15 the traffic operations was at this meeting yesterday.
16 So I think that our efforts were continually trying to
17 work with the County to develop a document that would
18 help them as well as us make an informed decision.

19 Q. And you state that you made some collateral
20 contacts to the fire department, you tried to make
21 collateral contact with the sheriff's department, didn't
22 work. Did you also contact the school district?

23 A. We did contact the school district in regards
24 to routing of school buses through this area. The
25 school district indicated -- and in fact, I've got maps

00453

1 that were sent to us. I believe they're part of an
2 exhibit; is that correct? I know they were submitted in
3 the initial documentation. But showed the routings that
4 were given to us by the transportation manager for the
5 Lakewood School District, which for the 2000-2001 school
6 year did not use the 156th railroad crossing for the
7 elementary, high school, or middle school bus routes.
8 Now I understand that as of the 2001-2002 that situation
9 has changed, and they are now using the crossing. But I
10 think what that points out, that there are other
11 alternatives to school transportation that do not
12 require the use of the 156th crossing.

13 Q. Okay. You have just handed me three
14 documents. Are these documents you received from the
15 high school?

16 A. That's correct, from the transportation
17 manager of the Lakewood School District, Marlene
18 Rosenbach I believe her name is.

19 MR. STIER: Okay. And, Your Honor, I'm going
20 to introduce this package. I don't think it is in the
21 record.

22 JUDGE SCHAER: Okay.

23 MR. STIER: And it has been disclosed in
24 discovery.

25 JUDGE SCHAER: I think what I would like you

00454

1 to do is go ahead and have copies made and then
2 distribute to counsel as soon as you have those so we
3 can have a chance to look at them.

4 MR. STIER: Okay. Can we assign this a
5 provisional exhibit number?

6 JUDGE SCHAER: We can mark it for
7 identification certainly.

8 MR. STIER: Yeah, just so I can speak to it.

9 JUDGE SCHAER: Okay. I believe we're up to
10 15 in your series. Is that your understanding also?

11 MR. STIER: Yes.

12 JUDGE SCHAER: You have handed me a three
13 page document which is headed at the top Lakewood School
14 District Number 306 bus route 2000-2001. First page is
15 high school, middle school. Second page is English
16 crossing elementary. And the third is Lakewood
17 Elementary, and I have marked this for identification as
18 Exhibit Number 15.

19 MR. STIER: Thank you.

20 BY MR. STIER:

21 Q. With reference to marked proposed Exhibit
22 Number 15, you just described where you got it. And
23 real briefly, does this depict the routes that they told
24 you that they were operating under last school year?

25 A. Yes, this is in actuality a fax that was

00455

1 received from Marlene Rosenbach, who is the district
2 transportation supervisor, and she told us these are the
3 bus routes that are being employed for the 2000-2001
4 school year.

5 Q. Did you ask her if it was going to change?

6 A. Basically in the conversation, the statement
7 was made that the bus routes are reviewed on an annual
8 basis and a determination made at that time what the
9 routing should be. So I guess it's understandable that
10 they do change from time to time.

11 Q. Did she indicate to you how many children are
12 within the triangle area?

13 A. No, she did not.

14 Q. Okay. So you don't really know from that
15 conversation how many pickups there are in the various
16 schools?

17 A. In the triangle area, I believe there was an
18 indication that there was a turn around about the park,
19 but I don't think there was any indication about how
20 many stops were made.

21 Q. I see, okay. Now who did you speak to with
22 the fire department?

23 A. I met with Chief Rex Tucker to speak about
24 the emergency vehicle response service to this area and
25 the use of 156th and 172nd as emergency vehicle response

00456

1 options. Basically what I was told by Chief Tucker was
2 that 172nd was used 99% of the time as the emergency
3 vehicle response route for this triangular area. And
4 that's from the station on Smokey Point Boulevard, I
5 believe 147 something, I don't -- let me see if I've got
6 the address here.

7 Q. There's also a map behind you that you might
8 be able to use. I don't know if --

9 A. Yeah, here's the station shown on this
10 exhibit. It doesn't have a number. But it's south of
11 152nd on the west side of Smokey Point Boulevard. And I
12 asked the chief what kind of activity went on inside of
13 the triangular area, and basically what I was told was
14 that during the summer months there are several times
15 that they are called to respond to incidents from bee
16 strings to drownings at the Gissberg Twin Lakes County
17 Park. As I said, that could be 6 to 12 times during the
18 summer months.

19 I asked him because I was concerned about the
20 congestion that exists along 172nd corridor,
21 particularly at the Smokey Point 531 intersection, what
22 kind of impact that had on emergency vehicle response,
23 and would they look at other alternatives for emergency
24 vehicle access to avoid that congestion. And he said,
25 no, that isn't a problem for them, they have their

00457

1 lights on and they just go right through it.

2 And it was curious to me because basically
3 it's about a 50/50 time just driving regularly to get
4 around to this crossing going either way, and in the
5 peak hour when the congestion exists, if you're driving
6 in your normal car, it's about twice as long to go
7 around this way. But according to the chief, that that
8 was not a concern to them, that they did not have any
9 problem getting through that congestion. They just
10 turned their lights on and, you know, like people are
11 supposed to do, they moved out of their way, so.

12 And I guess the second point to that, a
13 secondary emergency response is provided from the Lake
14 Goodwin station, which is located off this map to the
15 west. I think it's -- I'm not sure of the exact address
16 of that one.

17 Q. I'm handing you Exhibit 41. Will that help
18 you identify those alternatives?

19 A. I believe it's Fire District 20, Station
20 Number 2, yeah, is located -- it doesn't have any street
21 addresses, but it's east of 16th Avenue Northwest and
22 north of 140th Street Northeast I believe would be the
23 location.

24 Q. Okay, thank you.

25 A. Mm-hm.

00458

1 Q. So you say you never got a response from the
2 sheriff's department; is that correct?

3 A. That's correct.

4 Q. And so how did you approach their interest?

5 A. We had no basis to be able to make any kind
6 of an assessment based on fact in that, so I don't
7 believe that we really tried to say a whole lot about
8 it, but would understand that obviously with -- if the
9 crossing is closed, it would eliminate a secondary
10 access to this area. And depending on where the patrol
11 car was at the time the call came in, it would certainly
12 impact the response time if they didn't have a secondary
13 access.

14 Q. Could you show me on the map where their
15 station is?

16 A. Yeah, they have a new station located on the
17 south side of 152nd Street Northeast just west of 40th
18 Avenue Northeast on the --

19 Q. And that's east of the freeway, right?

20 A. That's east of the freeway and east of the
21 study area.

22 Q. And would they be responding from that
23 location, or could they be anywhere?

24 A. My assumption is that they could be anywhere,
25 and I would state that in the times that we were doing

00459

1 the study, we frequently saw patrol cars patrolling
2 along 172nd corridor, I would say maybe two or three
3 during a p.m. Peak period of two hours.

4 Q. Okay. Now as to the -- oh, did you make a
5 collateral contact with the City of Marysville?

6 A. We had a contact with the City of Marysville
7 in regards to future proposals for the study area in
8 terms of land development there. Being the annexation,
9 under consideration for annexation to the City, we
10 wanted to know what their concept of future development
11 was for that area.

12 Q. And who did you contact?

13 A. We spoke with Gloria Hirashima.

14 Q. And what information did you obtain?

15 MR. CUMMINGS: Object, Your Honor, on
16 hearsay.

17 MR. STIER: Well, Your Honor, this is an
18 expert. Does counsel want me to go through the
19 qualification process? I do have an exhibit, and these
20 are pertinent to his opinion.

21 MR. CUMMINGS: If he's offering her opinions,
22 we wouldn't allow it.

23 MR. STIER: Well, this is an expert witness
24 offering his opinion to the Court.

25 JUDGE SCHAER: I'm going to allow this

00460

1 information to come in as one of the bases for the
2 process.

3 Go ahead.

4 THE WITNESS: Could you restate that
5 question, please.

6 MR. STIER: Could you read it back, I forget
7 it.

8 JUDGE SCHAER: I believe it was, what did she
9 tell you.

10 MR. STIER: Oh, okay.

11 BY MR. STIER:

12 Q. What did she tell you?

13 A. What did she tell me. She told me several
14 things. What we were trying to determine, Your Honor,
15 was what the land use planning for this area was in
16 being -- in terms of being able to assess the future
17 impact on the road system out of the proposed
18 development as being considered. And what we were told
19 by her was that the City had no specific plans at that
20 point, that they were basically in the planning process.
21 They were anticipating hiring a land use planning
22 consultant to help them explore alternatives and to
23 develop concepts for consideration in eventual adoption
24 as their land use plan for that area.

25 That did not really suffice our need to

00461

1 present some kind of assessment in this report, and so
2 we pushed her a little bit for what she thought might be
3 a reasonable design alternative in this area. And what
4 she gave us was that the land use alternatives under
5 consideration would include single and multifamily
6 residential development with minimum densities of four
7 dwelling units per acre. In addition, there would be
8 commercial uses as well. Although she said she could
9 not predict the future land use density until further
10 analysis was conducted, she did offer that approximately
11 30% of the area would be single family, 40% would be
12 multifamily, and 30% would be community commercial.

13 Q. Did you -- was it your understanding from
14 that conversation and other research that there is an
15 annexation pending for this area?

16 A. That's correct.

17 Q. And can you explain what your understanding
18 is in regard to that annexation?

19 A. Well, my understanding changed over the
20 period of the project. Initially I thought the
21 annexation was going to go from 156th all the way to
22 172nd, but I think this last July when we were out doing
23 a field review, I noticed that the signs out there
24 indicated the annexation was going to be from 156th to
25 164th, so it kind of changed in that time frame.

00462

1 Q. And do you have a -- did you obtain any
2 information indicating why that annexation was
3 occurring?

4 A. No, it wasn't a particular interest to us why
5 it was occurring. I think it's just a normal part of
6 the process of community planning for future growth and
7 development. And as part of growth management, they
8 have defined urban boundaries and growth limits, and
9 this is part of their urban growth area, and I think
10 they're just working to bring that in.

11 Q. Did you review the County's growth management
12 and comprehensive plans?

13 A. Yes, we did.

14 Q. And did you speak to County officials with
15 regard to those issues?

16 A. In general, yes.

17 Q. Okay. And overall, are there any pertinent
18 information in the County comprehensive plan that
19 reflects upon this project?

20 A. I think basically the policies of the
21 comprehensive plan in my assessment support, strongly
22 support this proposed action in terms of eliminating
23 congestion on corridors which would occur at 172nd,
24 improvement of safety which will occur at 156th. It
25 sets the guidelines for the agencies to plan in advance

00463

1 for future transportation systems. It spells out a
2 funding and financing structure for these new
3 improvements. It dictates that the burdon of future
4 traffic volumes shouldn't be left to sole locations but
5 should be spread out over the corridor, which is really
6 significant in terms of the 172nd corridor, which based
7 upon our assessment of the impacts of the development
8 potential of that area will be exacerbated with traffic
9 congestion in the future.

10 So the whole essence of those policies
11 dictate the need to develop a transportation -- a
12 satisfactory, a safe and efficient transportation system
13 to serve this area beyond what exists there today. Our
14 analysis indicates that 156th crossing is not going to
15 be able to work in the future with that level of
16 development, and neither will the 27th and 172nd
17 intersections. So something has to be done here in
18 order to promote and allow the type of development that
19 is being discussed.

20 Q. Now would you say your conclusion is, that
21 conclusion you just expressed, applies whether or not
22 156th is closed at this time?

23 A. That definitely applies whether or not 156th
24 closes or not. And, in fact, I believe that closing
25 156th at this point in time is the right thing to do,

00464

1 because it gives the planning agency the framework for
2 which they're going to have to deal with in the future
3 is we're going to remove an unsafe crossing condition
4 and provide impetus to develop other facilities that are
5 going to be safer and more efficient than would be in
6 the case of relying on 156th access.

7 Q. Okay. Now what is the vehicle in your
8 experience of the County's or the local jurisdictions to
9 develop infrastructure to meet these needs?

10 A. Well, Snohomish County has an excellent track
11 record of comprehensive planning for land use
12 development, defining long-term transportation needs,
13 and developing funding strategies to implement those
14 transportation facilities as development occurs. And I
15 think they were probably one of the leaders in the Puget
16 Sound region in developing traffic mitigation policies
17 that are applied to new development to fund necessary
18 transportation improvements consistent with growth
19 management requirements.

20 Q. So let's -- you sat through some of the
21 testimony yesterday, and there has been quite a bit of
22 testimony about 172nd. Are you acquainted with the
23 characteristics of that street?

24 A. In general, yes.

25 Q. Okay. And are you acquainted with the

00465

1 movements of the train in that vicinity?

2 A. Yes.

3 Q. Okay. What is your, I guess what is your
4 take on the existing situation and the effect of growth
5 upon it with respect to the entire functionality of
6 172nd?

7 A. Well, in regards to the functionality of
8 172nd, I think the situation exists that over time as
9 high speed rail comes into play here and more freight
10 service is provided that delays are going to increase
11 substantially at the 172nd Street crossing without some
12 kind of siding improvements that are being proposed
13 here. And we did a little analysis of the actual
14 vehicle hours of delay that could occur, well, will
15 occur, is occurring, and I will refer to the comment
16 made by my distinguished colleague yesterday that he
17 himself had waited 25 minutes for train crossings on
18 172nd, which I need to point out is a major state
19 highway, east-west highway here that needs to be
20 preserved and promoted for efficiency to ensure
21 functional and safe and efficient movement across the
22 county.

23 But what we did was a comparison of the
24 existing average crossing times with southbound and
25 northbound trains based upon an eight minute crossing

00466

1 closure time that was given to us by Burlington Northern
2 Rail folks, and basically what we came up with, and this
3 is for the existing volumes that exist on 172nd.

4 Q. Just with -- all right, you're referring to a
5 document.

6 A. Right.

7 Q. Is this the document?

8 A. That's the correct document, yes.

9 MR. STIER: Okay. Your Honor, I would like
10 to mark this as a demonstrative, this is a demonstrative
11 exhibit to help you follow the testimony that he's going
12 to give at this point.

13 JUDGE SCHAER: Okay, why don't you distribute
14 it, not just to me, but to all counsel.

15 MR. STIER: Yes.

16 JUDGE SCHAER: You have handed me a one page
17 document, which I am going to mark for identification as
18 Exhibit 16. It has a heading at the top, 172nd Street
19 Northeast at Burlington Northern and Santa Fe Railroad
20 crossing, afternoon peak, and it's my understanding
21 you're offering this for illustrative purposes,
22 Mr. Stier.

23 MR. STIER: Yes, with regard to the testimony
24 he's about to give.

25 JUDGE SCHAER: Is there any objection?

00467

1 The document is admitted.

2 Go ahead, please.

3 BY MR. STIER:

4 Q. Okay.

5 A. What we did, and again, this was based on
6 anticipated or existing and anticipated crossing closure
7 times under different scenarios that we're talking
8 about, and that was based on the times that were
9 provided by Burlington Northern staff in their
10 testimony. I believe that was yesterday. And
11 specifically was that, Mr. Ketchem, is that the times
12 that you provided, I believe. And what we were given
13 was for a southbound train, the existing crossing
14 closure was on typical condition would be 8 minutes for
15 northbound and 8 minutes for southbound train. That
16 yielded 5.4 vehicle hours of delay at the crossing
17 during the p.m. peak hour. The situation, we understand
18 there was a little confusion between the existing and
19 the existing no action with the break train, my
20 understanding in speaking with Mr. Powrie this morning
21 is that the break train condition is going to be the
22 existing condition, and that is occurring now and will
23 continue to occur into the future. In fact, it will
24 become more frequent as the train lengths go from 5,000
25 to 9,000 feet and there's more train traffic occurring

00468

1 on the corridor. So with that, we came up with for the
2 southbound train 170.76 vehicle hours of delay at that
3 crossing associated to train crossing maneuvers. And
4 for the northbound train, it was 75.89 vehicle hours of
5 delay.

6 Now comparing that if the proposed action
7 providing an extension of the siding track to the south
8 were --

9 Q. Excuse me, let me digress just for one
10 moment. On that second, on the one you just talked
11 about, existing no action break train, what is the time
12 frame when this status would exist?

13 A. This would occur during the p.m. Peak hour.

14 Q. Okay. Is that today?

15 A. That's today.

16 Q. Okay. So the first column, number 5.4, when
17 is that?

18 A. That -- what we've really got here, this is
19 the existing no action break train is under the
20 condition where they have to break the train, and the
21 time could take up to 45 minutes for them to break the
22 train in the southbound direction, and I believe it's 30
23 minutes in the northbound direction. Typically if the
24 -- with the shorter length trains, the time I was told
25 was 8 minutes for a southbound train and eight minutes

00469

1 for the northbound train if they don't have to break the
2 train.

3 Q. So the assumption here is that the trains are
4 getting longer and they're going to have to start
5 breaking.

6 A. Right.

7 Q. On the second column there?

8 A. That's correct.

9 Q. Okay, continue please.

10 A. So under the -- with the proposed action,
11 extending the siding to the south, there still remains
12 the eight minute crossing closure time that is
13 associated with both the southbound and northbound train
14 as it is in an average condition today. So we're
15 basically maintaining what's there today with the
16 proposed action.

17 If we go to the north, the time of closure
18 goes from 8 minutes to 18 minutes for the southbound
19 train and 8 minutes to 10 minutes for the northbound
20 train, and that results in 27.32 vehicle hours of delay
21 for traffic on 172nd and 8.43 under the northbound train
22 condition for traffic on 172nd.

23 Now that speaks directly to emergency
24 response times on a major corridor. The letter that I
25 have, I believe this is an exhibit that I can speak to,

00470

1 it's a letter from Lieutenant Gerald Ross of the
2 Snohomish County Sheriff Department to the UTC. Is that
3 an exhibit?

4 Q. Let me --

5 MR. CUMMINGS: It is, let me find the actual
6 number for you. It's 48.

7 A. Okay, so under this exhibit, the lieutenant
8 refers to a blocked crossing at the 176th crossing, and
9 what we're trying to say here is with the proposed
10 action, extension to the south, we're actually improving
11 the condition or maintaining existing condition and
12 improving it from what it would be in the future if a
13 crossing is proposed to go north or we don't do any
14 action where they would be forced to break the train.

15 That is also going to have a significant
16 impact on school bus and school activity around the
17 Lakewood School District facilities there at 19th and
18 172nd and also in just general traffic. So in my
19 estimation of this project closure of the 156th Street
20 crossing is actually improving operations at 172nd.

21 Q. Now just to make sure it's clear with
22 reference to the columns with numbers, the existing, of
23 course, has 156th open, because that's the existing
24 status?

25 A. That's correct.

00471

1 Q. The existing no action would also have 156th
2 open?

3 A. That is correct.

4 Q. The existing south extension by definition
5 would require the closure of 156th?

6 A. That's correct.

7 Q. And the existing north extension would be the
8 status with 156th not closed?

9 A. That's correct, Your Honor.

10 Q. So with the -- in the latter situation then,
11 there would be a degradation in the status of 172nd with
12 or without the closure of 156th if the choice was to go
13 north?

14 A. That's correct.

15 MR. STIER: Okay, so I'm not going to -- just
16 to expedite this matter, Your Honor, I'm not going to go
17 into the methodology for gathering data, especially
18 since the traffic gentleman yesterday indicated that he
19 thought it was accurate, and I think it's a pretty good
20 explanation of what happened. So I guess I'm just
21 informing the Court that I think it's important, but I
22 think the report covers that kind of thing.

23 JUDGE SCHAER: All right.

24 MR. STIER: Unless you would like me to go
25 into it a little deeper.

00472

1 JUDGE SCHAER: I think that if counsel has
2 any concerns about the data, he can certainly bring
3 those out. I think your expert can offer an opinion
4 without you doing that.

5 MR. STIER: All right.

6 BY MR. STIER:

7 Q. Now one thing in your report, now there was
8 an exhibit or an Addendum 1 that was prepared. Can you
9 explain the circumstances of that?

10 A. Based on the initial meeting that we had with
11 the County staff, their only comment that I or we were
12 directed to specifically address was the potential for
13 or the impact of future development on the
14 transportation facilities in this area, and that was the
15 purpose of this addendum was to explore what those
16 impacts would be.

17 Q. And is this why you got into the issue of
18 what kind of development can occur in the triangle?

19 A. That's correct.

20 Q. And so how did you proceed to address those
21 future issues?

22 A. Well, what we did is, as stated earlier, we
23 met with the planner for the City of Marysville and
24 discerned what her understanding of future development
25 potential in that area might be. Secondly, we

00473

1 identified existing land uses within the study area or
2 within the growth area that would likely remain in the
3 future, and then we made an assessment of what the trip
4 generation would be associated with the proposed
5 development and assigned that to the street network and
6 then evaluated the capacity at the critical
7 intersections serving the area.

8 Q. And what was your conclusion?

9 A. My conclusion was, as I stated previously,
10 that the facilities in that area could not accommodate
11 the kind of growth that was being proposed in this area
12 without some major transportation investment.

13 Q. And is that demonstrated on Section 3.5 of
14 Addendum 1?

15 MR. STIER: That's page 3, that's also bates
16 number 70000334, Your Honor.

17 BY MR. STIER:

18 Q. Is that conclusion illustrated there?

19 A. Yes, that 3.5 is actually the level of
20 service analysis at the critical intersections in the
21 area. And basically what that shows is that all of the
22 intersections are below the level of service standard
23 for the area, and they're all with the exception of the
24 southbound ramp without the closure in a failure mode,
25 and the southbound ramp is at ultimate capacity, so it's

00474

1 just -- it is a horrendous condition.

2 Q. So just for the benefit of those of us that
3 don't deal with this every day in terms of traffic
4 matters, what makes an intersection fail as opposed to
5 be adequate?

6 A. Well, the profession has defined, as was
7 stated yesterday by my colleague, level of service,
8 which is a qualitative analysis of driver comfort,
9 delay, ability to move around in the system, and that
10 goes from A to F, with A being the best and F being the
11 worst case situation. In terms of a quantitative
12 analysis, specifically values of vehicle delay are
13 associated with those various qualitative levels. So
14 when you get into level of service F, that's really a
15 failure of the system. The system has no ability to
16 assimilate any more traffic circulation in it. So
17 whether it -- you're at F with 518 seconds of delay or F
18 with 875 seconds of delay, it really doesn't matter,
19 because there's no way you're going to be able to
20 accommodate those conditions. And it's just a -- it's a
21 fallacy even really to go beyond and discuss it, and
22 there's a lot of conversation within the profession
23 whether our models are really accurate beyond a capacity
24 of one, which is being reflected here.

25 Q. So are these models, I mean are these

00475

1 conclusions with the seconds of delay, is that per what,
2 seconds of delay per what?

3 A. That's average seconds of delay per vehicle.

4 Q. Okay. And these numbers, how are they
5 derived; how do you determine them?

6 A. We determine through the use of standard
7 level of service calculation models, which is put out by
8 the Federal Department of Transportation. They have a
9 highway capacity manual which defines the techniques and
10 procedures for calculating levels of service.

11 Q. And give me an example of key factors that
12 this addresses in terms of an intersection.

13 A. Well, it breaks out the various movements of
14 the intersection by through rights and lefts. And then
15 in terms of signals, it looks at the phasing of the
16 signal, the times that are associated with signals, and
17 basically those kinds of things.

18 Q. So this conclusion is that with or without
19 this closure of 156th, in 20 years with buildout,
20 there's going to be substantial non-functionality of the
21 key intersections, correct?

22 A. That's correct.

23 Q. Okay. And how does that tie into your
24 ultimate conclusions at this time?

25 A. Well, basically what that -- what I concluded

00476

1 from that discussion was that other alternatives have to
2 be developed here, that this circulation system is not
3 going to stand the test of time in terms of being able
4 to accommodate future development. And so the onus is
5 on the City and the County and, in fact, the DOT to look
6 at other roadway configurations to serve the proposed
7 development.

8 Q. And as stated in this, that one of those road
9 -- one of those solutions is not keeping 156th open; is
10 that correct?

11 A. Well, it was my assessment that in the first
12 place at grade intersections with railroads are not a
13 benefit or a bonus for a developing community, and that
14 any community I have ever worked in has always tried to
15 close as many at grade crossings as possible. And
16 because this is a developing community, it's a prime
17 time to deal with the issue of a closed crossing now
18 rather than waiting for the community to develop and
19 trying to go back and deal with it in the future. Our
20 assessment of future accidents, and I don't know whether
21 you want to introduce this figure now, but --

22 Q. Sure, let's talk about that.

23 A. -- Basically with -- if we left 156th open --

24 MR. STIER: Once again, for demonstrative
25 purposes, I would like to introduce Number 17.

00477

1 JUDGE SCHAER: Okay I'm going to mark for
2 identification Exhibit 17. It's a document headed
3 accident rate for motor vehicle accidents at 156th
4 Street railroad crossing.

5 MR. STIER: Does this go with it?

6 THE WITNESS: Yes.

7 MR. STIER: Oh, it's a two page document, I
8 apologize.

9 JUDGE SCHAER: Okay, it's a two page document
10 now, and the second page is headed Table 8.2-2 rates for
11 motor vehicle incidents at public crossings by warning
12 device. And so this has been marked as Exhibit 17, and
13 I believe that you have indicated that you're offering
14 it for illustrative purposes, Mr. Stier.

15 MR. STIER: Yes, Your Honor, and I may impose
16 upon the court reporter to take back that one copy,
17 because I apparently am short one.

18 JUDGE SCHAER: Okay, is there any objection?
19 Okay, this document is admitted.

20 THE WITNESS: Your Honor, I would like to
21 note too that this is page 101 of -- the second page
22 that is attached there is page 101 of the previous
23 exhibit that you have on your desk there, the railroad
24 safety statistics.

25 JUDGE SCHAER: Okay.

00478

1 THE WITNESS: So that's where this
2 information was taken from.

3 BY MR. STIER:

4 Q. Okay, so now proceed and explain to me your
5 analysis here.

6 A. What we did was take the existing daily
7 traffic volumes on the 156th crossing, which is roughly
8 about 973 using the K factor as appropriate to this
9 area, and we compared that to the volumes that we were
10 looking at in the future if -- with a full development
11 of this area. And the volume in the future was
12 estimated to be 13,000 or 12,676, and that yields about
13 1,300, 13, yeah, 1,300% increase in accidents at this
14 corridor or 13 times as many -- potential for 13 times
15 more accidents in the future than there is today. And I
16 need to point out that if this road system were left as
17 it is --

18 Q. Excuse me, wouldn't that be 1,300 times more?

19 A. No.

20 Q. 13 times?

21 A. 13 times more, 1,300% more.

22 Q. Okay.

23 A. 13 times more.

24 Q. I always have trouble with that. That's why
25 I have to hire experts.

00479

1 A. I need to point out too that we didn't do a
2 constrained assignment of the traffic leaving the area,
3 so it's basically we were using existing routings that
4 -- to assign the traffic flow from the proposed
5 development. Obviously with the kind of level of
6 service conditions that we're showing at 172nd, there's
7 more traffic going to try to go out to the 156th
8 corridor, so those volumes could probably be up more in
9 the neighborhood of like 20,000 than the 13,000 that
10 we're talking about, so that would be 20 times more
11 accidents.

12 But I think the bottom line is that either
13 from a safety or efficiency standpoint, this roadway
14 system is not going to work in the future, and the
15 burdon is on the County and the City to develop a
16 roadway system that will work and be safe and efficient
17 for the community.

18 Q. Any additional comments that we haven't
19 covered?

20 A. I have comments in regard to --

21 MR. CUMMINGS: At this point, I will object
22 in terms of being -- was there a question to the witness
23 of a specific nature, or are we just kind of opening the
24 door for general discussion?

25 MR. STIER: No, I'm asking him if there's

00480

1 anything pertinent to the report that he feels should be
2 brought out at this time.

3 JUDGE SCHAER: I think that is a little bit
4 broad.

5 MR. STIER: Okay.

6 JUDGE SCHAER: Can you be a little bit more
7 specific, please.

8 MR. STIER: Okay, I will ask for a recess to
9 chat with the witness so I can ask a direct question.

10 JUDGE SCHAER: I'm going to give you about a
11 five minute break to consult with your witness. Is this
12 your last witness?

13 MR. STIER: Yes.

14 JUDGE SCHAER: Okay, to make sure that you've
15 got your case presented. Let's be back on the record at
16 11:15.

17 MR. STIER: Okay, thank you very much.

18 (Recess taken.)

19 MR. STIER: Thank you for that accommodation.

20 JUDGE SCHAER: You're welcome. Go ahead,

21 Mr. Stier.

22 BY MR. STIER:

23 Q. With respect to the testimony by, and I'm
24 sorry, I've drawn a blank on the gentleman's name
25 yesterday.

00481

1 A. Mr. Bloodgood?

2 Q. Yes. Yesterday he testified or he was a bit
3 critical of your -- the fact that you don't have an a.m.
4 peak analysis. Can you talk, speak to that for a
5 moment?

6 A. Yes, Your Honor, I -- what we did is
7 evaluated both the a.m. and p.m. peak hour traffic
8 volumes at all the 11 analysis intersections in the
9 study area. And based upon our assessment, the p.m.
10 peak hour is typically 30% to 300% greater than the a.m.
11 volumes at these locations. And so we didn't feel that
12 it was necessary to explore the a.m. condition in the
13 future when the p.m. was obviously substantially worse
14 than the a.m.

15 Q. Okay. Now Mr. Bloodgood also spoke to a
16 cul-de-sac question, and could you explain, this is that
17 I think it's EDD or rule that he was referring to
18 regarding cul-de-sac?

19 A. I'm going to refer back in my report where
20 I've got the text written out for that, but --

21 JUDGE SCHAER: When you get there, give us
22 all the reference, please.

23 THE WITNESS: Okay, let me refer you to
24 Section 4.8, cul-de-sac requirements as stated in the
25 report on page 20.

00482

1 JUDGE SCHAER: Thank you.

2 BY MR. STIER:

3 Q. Okay.

4 A. And according to -- this was a comment that
5 was stated in the letter of issues that was given to us
6 as part of our initial scoping work. And in that they
7 say:

8 Snohomish County requirements require
9 that dead end streets longer than 1,000
10 feet are discouraged but will be
11 considered for cases where lots are
12 large and/or difficult terrain exists
13 provided that there are a maximum 25
14 single family units or a maximum of 250
15 ADT. In our assessment, it is estimated
16 that the proposed cul-de-sac on the east
17 side of the railway will have an ADT
18 volume of 120 vehicles and no volume on
19 the west side of the railway. Since the
20 ADT volumes for both cul-de-sacs will be
21 less than 250, the proposed cul-de-sac
22 should be considered.
23 And again, we're stating that in the future,
24 transportation planning in the area should address
25 circulation needs that could eliminate those long

00483

1 lengths of roadway.

2 But I think in fairness, if you look around
3 the Snohomish County and actually any area in our state,
4 you will find a lot of roads that under Mr. Bloodgood's
5 concept would be considered cul-de-sacs. And I guess
6 the one that's in this area that would be -- would come
7 to mind to me would be access to Camano Island, which is
8 served by a single bridge. So if we looked at a
9 cul-de-sac as being a single access to an area, that
10 would certainly be one. There are already cul-de-sacs
11 longer than 1,000 feet in this area. South of 156th is
12 one example on Twin Lakes Boulevard, and if you just
13 take a Thomas Brothers map, you can see that a number of
14 terminating roadways is all over the area.

15 Q. Referring once again to Exhibit 51, or excuse
16 me, 41, do you see under Mr. Bloodgood's testimony
17 description yesterday cul-de-sacs of significant length
18 on that map?

19 A. Yes, I do.

20 Q. Just --

21 A. One example that's --

22 Q. Why don't you stand up and just point at that
23 map. Well, I guess it's --

24 A. It's not on this map.

25 MR. CUMMINGS: It's right over here if you

00484

1 want to bring it down.

2 MR. STIER: That one there, oh, excellent.

3 No, that's fine, we can turn around.

4 Is that okay, Your Honor, if he just steps up
5 there.

6 MR. WALKLEY: I would be happy to bring it
7 over there.

8 MR. STIER: No, he can just walk up there.
9 We're almost wrapped up here.

10 BY MR. STIER:

11 Q. Okay.

12 A. Well, something that just popped out right
13 away would be 200th Street Northeast west of I-5, it
14 looks like it ties through under Smokey Point, from
15 Smokey Point Boulevard and heads west until almost the
16 Sill Road where there's a break just east of Sill Road
17 as an example. 204th Street Northwest east of Happy
18 Valley Road goes into a dead end. Let's see, oh, 220th,
19 we got 36th Avenue Northwest heads south from actually
20 from 212th it dead ends with a single access.

21 So I think you can see that it's not that
22 these are not allowed in the county and they don't exist
23 already. And I think with the future planning for the
24 area that that situation can be addressed effectively
25 and will have to be addressed as part of that process.

00485

1 Q. With respect to the definition of
2 cul-de-sacing in the code that Mr. Bloodgood was
3 referring to, do you think the situation with that, that
4 that is applicable to the after situation with the
5 crossing closure?

6 A. I don't understand your question.

7 Q. Okay. Mr. Bloodgood was referring to the
8 County rules regarding cul-de-sacs.

9 A. Actually streets of longer than 1,000 feet, I
10 think we have applied the term cul-de-sac to it.
11 There's typically probably a more formal definition of a
12 cul-de-sac, but --

13 MR. STIER: I see, all right.

14 I have no further questions, Your Honor.

15 Thank you.

16 JUDGE SCHAER: Mr. Cummings.

17 MR. CUMMINGS: Thank you.

18

19 C R O S S - E X A M I N A T I O N

20 BY MR. CUMMINGS:

21 Q. In terms of the cul-de-sac issue that we were
22 just discussing, the code provision actually is the
23 engineering designs and development standards; is that
24 correct?

25 A. That's correct.

00486

1 Q. And do you consider, well, would you not
2 consider that to apply to present day development?

3 A. What do you mean? I don't understand your
4 question.

5 Q. Well, we have a design standard that's in
6 effect right now.

7 A. Correct.

8 Q. That would apply to developments that start
9 from the date that it was adopted going forward,
10 correct?

11 A. New development proposals, correct.

12 Q. So isn't it conceivable to believe that
13 having a design standard such as that is to remedy
14 problems in the past where development allowed these
15 cul-de-sacs to exist?

16 A. Yeah, I believe that's the purpose of the
17 development standard. I don't believe that this
18 constitutes a development as such, so I'm not sure that
19 the development standards are applicable to it.

20 Q. Is that opinion shared by the Washington
21 Department of Transportation?

22 A. You would have to ask the Washington
23 Department of Transportation what their opinion is.

24 Q. Well, didn't you actually respond to some
25 concerns by the Washington Department of Transportation

00487

1 recently?

2 A. I don't know what you're talking about.

3 Q. Apparently on September 11, 2001, you wrote a
4 memorandum to Mr. Schultz at the rail office concerning
5 comments by the Washington Department of Transportation,
6 I guess the highway division out there. Does that
7 memorandum reflect or refresh your recollection?

8 A. Mm-hm, yeah, I wrote this letter.

9 Q. Okay. Now was that letter in response to
10 concerns by the Washington Department of Transportation
11 that the closure of 156th would actually result in
12 increased traffic use on 172nd and require some
13 mitigation?

14 A. This letter was written in response to the
15 DOT Northwest Region Development Services Group's
16 request for mitigation funding for this proposed action.

17 Q. So to answer my original question, are there
18 individuals within the Department of Transportation that
19 consider the closure of 156th an impact on 172nd
20 requiring mitigation?

21 A. Well, I guess you can read this letter as
22 well as I can.

23 Q. Well, it's a yes or no question.

24 A. I'm not answering questions for the DOT. I
25 mean they can answer for themselves.

00488

1 Q. I'm asking what you --

2 MR. STIER: Your Honor, I object, he's
3 answered the question now twice.

4 MR. CUMMINGS: Actually, he hasn't answered
5 the question.

6 MR. STIER: Yeah, he says he can't speak for
7 them. That's an answer.

8 JUDGE SCHAER: Do you want to ask the witness
9 what he was responding to.

10 MR. CUMMINGS: Certainly.

11 BY MR. CUMMINGS:

12 Q. Mr. Norris, what were you responding to?

13 A. I was responding to a memo that had been
14 written or framed in regards to a request for funding of
15 some transportation improvements in this area.

16 Q. And was that memo requesting improvements as
17 a result of the closure of 156th?

18 A. Yes, it was.

19 Q. Thank you. In terms of development in the
20 area, you stated that closure of 156th would be
21 beneficial for planning?

22 A. I believe that it would, yes.

23 Q. Now looking at the map behind you, how many
24 east-west corridors exist within the triangle?

25 A. What's the triangle?

00489

1 Q. Well, we will call the triangle the railroad
2 track point reaching down here in the south where it
3 intersects with I-5, actually I think it would be more
4 appropriate to say the Twin Lakes Avenue end point, up
5 to the end of the I-5 corridor at 172nd over to the
6 other rail crossing at 172nd. As you can see, it makes
7 somewhat of a triangle, I guess an isosceles triangle, I
8 wasn't very good at geometry.

9 A. Right.

10 Q. In terms of the triangle area or the study
11 area, how many east-west access points or east-west
12 corridors are there?

13 A. Your Honor, there are two.

14 Q. And which are those?

15 A. They would be the 172nd Street and the 156th
16 Street.

17 Q. In terms of the planned development, and I
18 know we're using planned loosely from your understanding
19 of what you talked with Marysville, correct, that it's
20 four dwelling units per acre or something to that
21 effect?

22 A. Whatever I stated previously.

23 Q. Okay. In terms of development in that area,
24 would not the ability to maintain an additional
25 east-west corridor be necessary?

00490

1 A. Could you restate the question, please?

2 Q. In terms of planned development in the
3 triangular area.

4 A. Planned development, what's the planned
5 development?

6 Q. I'm sorry, we will use future development.

7 A. Okay, potential future development.

8 Q. In terms of potential future development,
9 would not an additional east-west corridor be necessary
10 to improve circulation?

11 A. Quite frankly, I think it's going to be more
12 than one additional. It may be two or three additional
13 corridors east-west to support the development proposals
14 that we're evaluating.

15 Q. So why would you then want to remove one of
16 those corridors if we need two or three or more?

17 A. Because you're not talking about future here.
18 You're talking about existing. This is -- this is not
19 the future. This is existing.

20 Q. And as it exists, we have a corridor
21 presently being utilized, not to the level of 172nd.

22 A. As it exists, Your Honor, I don't believe
23 that 156th is essential to this area.

24 Q. And that's your opinion?

25 A. That's my professional opinion.

00491

1 Q. Now in terms of the information that you were
2 relying upon, I assume you and Mr. Schultz corresponded
3 with data in preparing your documents to result in your
4 ultimate conclusions?

5 A. That's correct.

6 Q. Did Mr. Schultz share with you a memorandum
7 summarizing County concerns dated March 2nd of 2000? I
8 will show this to you. It's Exhibit 54.

9 A. Yes, he did.

10 Q. Now in that memorandum, when did you get the
11 opportunity to see that?

12 A. I believe that I got that prior to our
13 scoping of the work that we did.

14 Q. Okay. So this would have been done before
15 you engaged in your analysis?

16 A. Correct.

17 Q. Okay. I want to direct you to page six of
18 the -- well, no, I'm sorry, page seven of the document,
19 and I want you to take a look, let's see, the fourth
20 person down identified in that document, does that name
21 -- is that name familiar to you?

22 A. Marlene Rosenbach.

23 Q. And does that document state Ms. Rosenbach's
24 concern at this meeting?

25 A. I don't know.

00492

1 Q. Okay. Well, what's the next line after
2 Marlene Rosenbach, what does it say?

3 A. It says:
4 Could reroute the school buses that use
5 156th Street Northeast six times a day,
6 would need a school bus turn around, the
7 blocking of 172nd Street Northeast at
8 the railroad tracks is a problem for
9 their school buses, looking for new
10 school sites in the area, one possible
11 site is off of 169th Street Northeast.

12 Q. So, actually, you were informed back in the
13 scoping period that the school district was utilizing
14 the crossing at least six times a day?

15 A. That was stated in the letter that we
16 received, yeah.

17 Q. Okay. In terms of contact with the sheriff's
18 office, who did you attempt to contact?

19 A. Boy, I would have to dig back through my file
20 to find that out, but I talked to the head of the
21 office, downtown office, who referred me to the north
22 precinct office, and I think at the time they were going
23 through a transition of the lead officer. And then the
24 one that we were directed to speak to, and I don't
25 recall his name directly, but he was on vacation for a

00493

1 lengthy period of time. They were suggesting, in fact,
2 we tried to call them like at 5:30 in the morning when
3 their shift change occurred, because that's when they
4 were all supposed to be there, and we never made that
5 contact. And so we tried considerable to make the
6 contact and get the information, but we were
7 unsuccessful.

8 Q. Now have you since seen comments from the
9 sheriff's office?

10 A. I have received a letter dated September
11 24th, 2001, which I referred to in my testimony, which I
12 believe is an exhibit here, from Lieutenant Gerald L.
13 Ross to the UTC.

14 Q. Mm-hm. And what was your response to that
15 letter again?

16 A. I was just basically speaking to how the
17 closure of 156th crossing would help address Mr. Ross's
18 issue or Lieutenant Ross's issue that blockages
19 occurring at 172nd Street crossing.

20 Q. Okay. What happens in the event of a
21 catastrophic blockage at 172nd? For example, I will
22 give you a hypothetical. Let's just say a train derails
23 and 172nd is closed.

24 A. Well, when, under what circumstances?

25 Q. Well, let's see, ten years ago, for example,

00494

1 there was a train derailment where a liquid petroleum
2 gas leaked and caught fire and caused the closure of
3 172nd for approximately three days. That's an exhibit
4 in the report. I can show you the Herald's article on
5 that matter. But as an expert, I will have you assume,
6 for example, that there was a train derailment causing
7 the closure of 172nd for three days. Does that affect
8 your analysis in any way?

9 A. No.

10 Q. So how would you expect emergency services to
11 get to where they need to respond to the west side of
12 172nd?

13 A. Well, the west side of 172nd is served by the
14 secondary response station located on Lake Goodwin Road.
15 Also on the west side they would be coming from the
16 station at Smokey Point Boulevard, which I stated in my
17 testimony it's a 50/50 travel time difference to the
18 156th crossing whether you come across 172nd or you come
19 around via 136th. So in this case, there's no trade off
20 in time to getting to that point, and so they're
21 continuing on north on 19th, and that would take them to
22 the west side of the tracks. So I don't see that
23 there's a significant negative impact to emergency
24 vehicle response to the west side of the 172nd Street
25 crossing.

00495

1 Q. So what you're suggesting then is that the
2 fire district should completely change the routes that
3 it takes to get to the west side of the tracks?

4 A. No, what I'm suggesting is that the reason
5 that I understand the fire department wants to keep this
6 crossing open is for access via that direction. And all
7 I'm saying is that that access with an incident at 172nd
8 street crossing is not going to be impacted on the west
9 side of the crossing by closure of the crossing.
10 They're not going to take 172nd over to 27th and come
11 down 27th, Twin Lakes Boulevard to 156th and go across
12 the crossing that way to get on the west side of the
13 crossing. They're going to go down to 136th, come cross
14 that way, come up north on 23rd, and then head up north
15 on 19th, and that will take them to the west side of the
16 crossing.

17 Q. And this is assuming that they're leaving
18 from the fire station?

19 A. That's correct.

20 Q. Does your assumption change if, for example,
21 we have a rolling paramedic unit, and for your
22 assumptions, I will also offer for your opinion that
23 there is not a paramedic unit on the west side of the
24 Burlington Northern tracks in terms of the other fire
25 houses. There's only one paramedic unit that leaves

00496

1 from the fire station at Smokey Point, but that it also
2 often times is rolling en route often like you described
3 the sheriff's vehicle as not being in one location.

4 Does that change your analysis in any way?

5 A. Well, where is this aid unit?

6 Q. Well, let's imagine that the aid unit is up
7 at Smokey Point Boulevard and 172nd and receives a call
8 to respond to the schools just on the other side of the
9 tracks and that the tracks are closed by a catastrophic
10 event.

11 A. So if that's the only unit that's available
12 in the area to respond, then they would have to go down
13 to 156th to go across. If that was not open, then as
14 Mr. Bloodgood suggested, there's options going around to
15 136th or to the north as well.

16 Q. So you basically would have them reroute and
17 take a longer route if 156th was closed?

18 A. That's not my assumption. I guess in good
19 emergency vehicle access planning and in good response
20 times, I guess I would be looking at providing other
21 emergency vehicle units that could respond to situations
22 in a timely manner around the county, as most other fire
23 agencies do.

24 Q. But presently if they have a secondary route,
25 they wouldn't necessarily need that, would they?

00497

1 A. Oh, I don't know, I mean you're still adding
2 considerable amount of time to get around that situation
3 by going down Twin Lakes Boulevard. I mean you're
4 adding a considerable amount of time to the response.

5 Q. And who should be responsible for paying for
6 the additional paramedic unit?

7 A. I guess I'm a traffic engineer. I don't make
8 those kinds of determinations.

9 MR. CUMMINGS: That's fine. I have no
10 further questions.

11 JUDGE SCHAER: Do you have any questions,
12 Mr. Thompson?

13 MR. THOMPSON: No.

14

15 E X A M I N A T I O N

16 BY JUDGE SCHAER:

17 Q. I have just a couple, and one of them was
18 triggered by the last discussion that you had with
19 Mr. Cummings. When I look at this map and where the
20 sheriff's department and the fire station are, it looks
21 to me like they would have to either go to 136th or
22 172nd to get across I-5; is that correct?

23 A. That's correct.

24 Q. And then if they are going to the park that
25 you testified is the place where they often have to go

00498

1 to deal with drownings or other emergencies, it looks to
2 me like they would go across I-5, but they would not
3 have to cross the railroad anywhere. Is that also
4 correct?

5 A. On either situation?

6 Q. Well, if you look, I guess if you look around
7 at this, if you were going to the park, would you go up
8 Smokey Point Boulevard and then across 172nd and then
9 down?

10 A. From the station?

11 Q. Yes.

12 A. Yes, they will go up to 531, down 22nd, and
13 down to the park that way.

14 Q. So they aren't crossing the railroad tracks
15 at all in getting there?

16 A. No. Whereas if they go this way, they're
17 forced to cross the railroad tracks, so you've got that
18 potential too.

19 Q. So if a train derailed for three days at
20 172nd, it wouldn't affect getting vehicles into the area
21 that has been referred to as the triangle?

22 A. Right, that's correct.

23 Q. Okay. And then am I correct that 136th has
24 some means of getting across I-5 and some means of
25 getting across the railroad?

00499

1 A. That's correct.
2 Q. And is that a grade crossing at 136th?
3 A. It's a grade crossing, yes, a gated, excuse
4 me.
5 Q. And that might be the access then for things
6 on the other side of the railroad?
7 A. (Nodding head.)
8 Q. Okay. That was one thing I was trying to
9 understand from the map.
10 Looking back at Exhibit 12, page 3.
11 A. Is that the report?
12 Q. Exhibit 12 is your report.
13 A. Okay, page 3 of the main text or the
14 addendum?
15 Q. Let me just check. I believe it might be of
16 the addendum. There is a table on the page I'm looking
17 for that you discussed with Mr. Stier.
18 A. Is that the level of service table?
19 Q. Yes.
20 A. That would be on page 3.
21 Q. Page 3 of the addendum?
22 A. Yeah, the 20:20 p.m. peak hour level of
23 service?
24 Q. Just a moment. And you have information here
25 indicating how these would function with closure and

00500

1 without closure?

2 A. Right.

3 Q. When you prepared this table, did you take
4 into account the information that's included in Exhibit
5 16?

6 A. No, I did not. That was a later, a
7 subsequent.

8 Q. And so I would like you to look at Exhibit 16
9 for a moment, and I know you can't give me precise
10 numbers. Exhibit 16 is one that was identified and
11 admitted today as an illustrative exhibit.

12 A. Is that the train delay?

13 Q. It says 172nd Street Northeast.

14 A. Right, I have that.

15 Q. And this exhibit went with your testimony
16 that indicated that comparing the existing situation
17 where there's a break in the train with the closed 156th
18 and the new south extension that there would be time
19 improvements on 172nd; is that correct?

20 A. That's correct.

21 Q. If you included this data in your analysis in
22 Table 2, would it make a difference in looking at the
23 with closure alternative?

24 A. No.

25 Q. So that the fact that there is not going to

00501

1 be a break in the trains and there would perhaps be less
2 time taken up by trains wouldn't improve the functioning
3 of --

4 A. It's not going to improve the level of
5 service. The only issue that could come into play, and
6 these were existing numbers, as we get into the future,
7 you're looking at about delaying on the westbound
8 approach in the neighborhood with a train break
9 situation 300 vehicles, which is about 6,000 feet, which
10 is over a mile of queue that will exist, that could
11 potentially as it in the future gets to a point where it
12 could block the 27th intersection.

13 Q. Okay. Now you were shown a triangular area
14 on the map by Mr. Cummings that is the railroad on the
15 west, 172nd Street on the north, and was it Interstate
16 5?

17 MR. CUMMINGS: Interstate 5 on the east.

18 Q. Interstate 5 on the east. Is that the same
19 area that you analyzed when you were looking at future
20 development, or were you looking at perhaps a broader
21 area that included some land on the other side of the
22 railroad?

23 A. We were specifically evaluating the area
24 within that triangular piece in terms of looking at the
25 accessibility into and out of that area.

00502

1 Q. Okay. So that was the same area that you had
2 studied?

3 A. Right.

4 JUDGE SCHAER: All right, that's all I had,
5 thank you.

6 MR. STIER: Just one, I got a couple of
7 questions, Your Honor.

8

9 R E D I R E C T E X A M I N A T I O N

10 BY MR. STIER:

11 Q. You were asked by Mr. Cummings about, and
12 this is his terminology, not mine, but about removal of
13 the 156th Street corridor. Is this -- do you consider
14 the action here to be a corridor removal action?

15 A. Not necessarily, no.

16 Q. The action here today is a crossing closure
17 action, correct?

18 A. Correct.

19 Q. And that crossing, when you close that, that
20 doesn't render that crossing unusable in a non-at grade
21 situation in the future, does it?

22 A. No, it doesn't.

23 Q. So the corridor is still there, it just would
24 need improvements, wouldn't it?

25 A. Correct.

00503

1 Q. Okay. And like you said that there were
2 other -- that there would be other corridors needed as
3 well?

4 A. That's correct.

5 Q. And would you envision that those would also
6 need improvements?

7 A. Correct, yes.

8 MR. STIER: No further questions.

9 JUDGE SCHAER: Is there anything further for
10 this witness?

11 Thank you for your testimony.

12 THE WITNESS: Thank you.

13 JUDGE SCHAER: Let's go off the record for a
14 moment to discuss where we are in the day and how we
15 want to go forward.

16 (Discussion off the record.)

17 JUDGE SCHAER: While we were off the record,
18 we discussed which witnesses are coming up and timing
19 for our lunch break, and then I believe you had
20 something you wanted to address now, Mr. Stier.

21 MR. STIER: Yes, Your Honor. It's just that
22 I think I forgot to move for admission of Exhibits 16
23 and 17. They were marked for identification.

24 JUDGE SCHAER: No, those both were admitted.

25 MR. STIER: They were admitted, okay. And

00504

1 then it's my understanding that I'm going to run copies
2 of Exhibit 15 and introduce that formally after the
3 break.

4 JUDGE SCHAER: That's my understanding, that
5 you will show it to counsel as soon as you can.

6 MR. STIER: All right.

7 JUDGE SCHAER: So they know whether or not
8 they have concerns about it.

9 MR. STIER: All right, thank you.

10 JUDGE SCHAER: Okay. With that then, we're
11 going to take our lunch break. We will be off the
12 record until 1:00.

13 (Luncheon recess taken at 11:45 a.m.)

14

15 A F T E R N O O N S E S S I O N

16 (1:00 p.m.)

17

18 JUDGE SCHAER: Mr. Stier is distributing an
19 exhibit, and we will discuss that in just a moment.

20 I would also like to take this time to bring
21 up a public exhibit I marked for identification at last
22 night's public hearing, letters the Commission has
23 received on this subject. Some of them were delivered
24 by witnesses who testified last night. We have other
25 letters in our public file at the Commission. And it is

00505

1 our usual practice to put these into an exhibit that's
2 part of the record so that -- but, of course, that means
3 that I need to bring this up with you and see if anyone
4 has concerns about that. So if anyone is going to have
5 any objection to Exhibit 64, which is the letters the
6 Commission has received, I would like to hear about it
7 now, or if anyone wants an opportunity to review those
8 before they're admitted. Otherwise I'm going to go
9 ahead and mark that as an exhibit and admit it. And I
10 usually would not make copies of all of them unless
11 someone particularly wants to see them, but of course
12 copies can be made available.

13 MR. WALKLEY: Your Honor, this is Robert
14 Walkley, of course, we're not given an opportunity to
15 cross-examine the witness that wrote those or whatever
16 unless the witness happens to be testifying, and so I
17 don't know why -- I don't know why they're being
18 admitted except just to -- in other words, I don't know
19 what weight could be assigned to them, because they
20 haven't been cross-examined or tested or anything else.
21 But just admission for the purpose of admitting them as
22 public testimony, that the testimony occurred, would be
23 fine. So if they are admitted, I just would like it on
24 record that BNSF does not necessarily agree to or admit
25 anything in those documents.

00506

1 JUDGE SCHAER: Are there any other concerns?

2 MR. STIER: Since it is -- if it is the
3 intent of the Court or of the ALJ to admit that, I think
4 just I would like to have copies.

5 JUDGE SCHAER: Okay, and I certainly can make
6 copies and distribute them to anyone who would like
7 copies.

8 MR. STIER: Not today, that's for sure.

9 JUDGE SCHAER: No, I don't have all of them
10 even with me. We usually just admit them for
11 illustrative purposes so that they are in the record and
12 they are in a mode that if the commissioners want to
13 review an initial order and want to see what the public
14 input has been, they can get to them without violating
15 any kind of thing that would bar them from viewing
16 public comment in the record.

17 MR. WALKLEY: Right, and I would only add
18 that some of them were written by agencies or cities or
19 whatever that had an opportunity to intervene and be
20 parties but apparently declined to do so. So whatever
21 weight is assigned to those things should be
22 accordingly.

23 JUDGE SCHAER: Any other comments?

24 Mr. Cummings?

25 MR. CUMMINGS: None.

00507

1 JUDGE SCHAER: Mr. Thompson?

2 MR. THOMPSON: None.

3 JUDGE SCHAER: Okay, well, then I'm going to
4 admit the public letters that have been received by the
5 Commission as Exhibit 64. Those will be admitted for
6 illustrative purposes to let the Commission know what
7 the public comment has been that's been received on this
8 matter. And I will make copies of those for Mr. Stier
9 and Mr. Walkley. Does anyone else want a copy?

10 MR. CUMMINGS: If copies are being made, Your
11 Honor, I guess it would complete the file.

12 JUDGE SCHAER: I will make copies for
13 everyone then, and those will be distributed after the
14 hearing.

15 So let's go then to what you just
16 distributed, Mr. Stier, please.

17 MR. STIER: Yes, Your Honor, we had proposed
18 Exhibit 15, and that was testified to by Mr. Norris, and
19 it is the fact sheets to be received from the school
20 district regarding the bus routes at the time of the
21 report, and I would like to move for admission.

22 JUDGE SCHAER: Okay. Is there any objection
23 to Exhibit 15?

24 MR. CUMMINGS: No objection.

25 JUDGE SCHAER: The document is admitted.

00508

1 And at this point then, Mr. Cummings, are you
2 ready to call your witness?

3 MR. CUMMINGS: I am, Your Honor, I would like
4 to call Mr. Steve Thomsen.

5
6 Whereupon,

7 STEVE THOMSEN,
8 having been first duly sworn, was called as a witness
9 herein and was examined and testified as follows:

10
11 JUDGE SCHAER: Go ahead, Mr. Cummings.

12
13 D I R E C T E X A M I N A T I O N
14 BY MR. CUMMINGS:

15 Q. Can you please state your name for the record
16 and spell your last name.

17 A. Steve Thomsen, T-H-O-M-S-E-N.

18 Q. And by whom are you employed?

19 A. Snohomish County Department of Public Works.

20 Q. And your occupation?

21 A. Basically I'm the County engineer, civil
22 engineer by trade.

23 Q. Okay. And in terms of being County engineer,
24 in the hierarchy of the Department of Public Works, how
25 does that sit?

00509

1 A. I report to the public works director, and as
2 the County engineer, I've got statutory responsibility
3 for the 1,600 odd miles of roads in the county and about
4 190 bridges.

5 Q. Okay. And when you say responsibility for
6 those or statutory authorization, what type of
7 responsibilities are those?

8 A. It includes oversight of new road
9 construction, approving engineer reports, plats, working
10 with -- also involved with our ER&R maintenance division
11 and our ER&R division, which is equipment rental and
12 revolving funds, working with special purpose districts,
13 flood control districts, and that pretty much covers it.

14 Q. Okay. In terms of your background, you
15 indicated you were a licensed engineer?

16 A. Yes, I have been licensed for about 15 years.

17 Q. And is that -- what type of license is that?

18 A. Civil engineering license.

19 Q. And what is your educational background?

20 A. I attended Oregon Institute of Technology and
21 received a Bachelor's Degree.

22 Q. And prior to becoming the County engineer,
23 what was your occupation?

24 A. I worked for the County as a design manager
25 for about, oh, I would say about ten years working on,

00510

1 again, the design or managing the design group that
2 designs roads and bridges in the county. Also the
3 railroad crossing program was something I was involved
4 with.

5 Q. Is that a program that Snohomish County
6 specifically started?

7 A. It was done in partnership with Burlington
8 Northern and federal rail funds, but we had -- were
9 experiencing some fatality rates at some of our
10 unsignalized crossings, and so we got involved and
11 improved about 20 some odd crossings to make them safer.

12 Q. And earlier today, you heard testimony from
13 Mr. Cowles regarding some signalization that took place
14 at 156th; was that one of the projects that was
15 identified by that program?

16 A. Yes, it was.

17 Q. And before work at the County, did you have
18 any other experience in engineering?

19 A. Before Snohomish County, I worked for the
20 City of Portland for about ten years again on city
21 arterials. I worked for several years on the light rail
22 project in the City of Portland.

23 Q. And in what position was that with Portland?

24 A. I was the assistant project manager for the
25 light rail project.

00511

1 Q. Okay. In terms of the present matter here
2 before the Commission, let's talk about your familiarity
3 with this area. Could you -- well, first of all, why
4 don't you describe generally the Exhibit 41 behind you.

5 A. Okay. Exhibit 41 is basically -- I'm going
6 to refer to that exhibit on here if that's --

7 Q. That's fine.

8 A. Showing the northwest portion of the county
9 around Arlington and the Lakewood area, and specifically
10 it's showing State Route 531 and the Burlington Northern
11 San Francisco crossing of that road. That also
12 encapsulates Lake Goodwin, Lake Ki, and the city of
13 Arlington to the east.

14 Q. Okay. In terms of a traffic analysis from
15 this perspective, what are the main routes that you see
16 in the area?

17 A. The main routes would be Interstate 5 jumps
18 right out as a main route, and then some of the other
19 main routes are the connectors to I-5 which would be SR
20 531 which is 172nd. There's also State Route 530 to the
21 north which is Island Crossing. And then to a lesser
22 degree 136th to the south, which turns into 140th. And
23 then Smokey Point Boulevard in the city of Arlington.
24 And 51st Avenue, which is another north-south arterial.

25 Q. Okay. Now you're familiar with the petition

00512

1 that's been filed by Burlington Northern in this matter?

2 A. Yes.

3 Q. And it's your understanding that they're
4 asking to close the 156th Street crossing in conjunction
5 with a proposed siding to be built or extended from its
6 current location. As the County engineer, what is your
7 perspective on the impacts that such a project could
8 entail?

9 A. My main concerns is that due to the unique
10 nature of this triangle area, which is not totally but
11 semi limited to access, land locked so to speak. You've
12 got I-5 on the east, you've got Burlington Northern on
13 the west, and 172nd to the north, and so transportation
14 opportunities are very limited in that triangle area.
15 And there's only two routes out of there, one being
16 27th, and the other one is 156th. And the extension of
17 the siding is proposed to close 156th, taking away one
18 of only two routes into that triangle area, and I'm
19 concerned about limiting transportation opportunities
20 for that area as well as emergency response into that
21 triangle area.

22 Q. What's your understanding of the present
23 level of service of 172nd?

24 A. It's starting to approach failure at some
25 intersections.

00513

1 Q. Okay. Is this a route that the County is
2 solely responsible for?

3 A. No, it's a State route, and the State route
4 has jurisdiction for that.

5 Q. Okay. To the extent that there are
6 development projects that are near 172nd, could you
7 coordinate with the State?

8 A. Yes, we're under a local agreement with the
9 State to share developments that impact both State
10 routes and County facilities.

11 Q. Okay. In terms of the area of which the
12 closure is about to take place, are there any pending
13 developments which you have communicated with the State
14 upon?

15 A. Yeah, there is a proposed expansion of the
16 Lakewood Middle School, and the State has been in
17 contact with the County on that proposal.

18 Q. And what is your understanding of the State's
19 concerns?

20 A. The State is concerned when Lakewood expands
21 that middle school it's going to be additional trips
22 generated, and their traffic information, information
23 that they have been given shows that the intersections
24 at 11th and 16th will have a failing level of service
25 with that expansion and are concerned about, that's 11th

00514

1 and 16th at 172nd, so they're concerned about that.

2 Q. Have they requested any form of mitigation?

3 A. They requested that the school look at
4 turning a private road or a road that is between the
5 schools and a playground to the south into a public road
6 between 11th and 16th to provide for that circulation.

7 Q. Okay. Let's talk about the actual proposal
8 that we have here. Has there been any communication
9 with representatives from the Department of
10 Transportation concerning the proposed closure at 156th?

11 A. I have contacted the DOT highways more than
12 once trying to get their input or understanding of what
13 was going on with this project.

14 Q. Okay. And what is your understanding in
15 terms of whether or not the closure of 156th will impact
16 172nd?

17 A. From what I understand from what they have
18 written, they are concerned that -- their concern
19 about --

20 MR. STIER: I'm sorry, I'm going to offer an
21 objection. This is being introduced as hearsay for the
22 truth of the matter contained therein. It's not being
23 remotely phrased in terms of any other approach, and I
24 would object to this line of questioning.

25 MR. WALKLEY: Join in that objection, Your

00515

1 Honor.

2 JUDGE SCHAER: Mr. Cummings.

3 MR. CUMMINGS: Let me rephrase it to bring us
4 into the opinion testimony.

5 JUDGE SCHAER: Okay. Also your witness
6 referred to something that had been written. Is that an
7 exhibit?

8 MR. CUMMINGS: It is not an exhibit. He has
9 apparently had correspondence back and forth with DOT.

10 JUDGE SCHAER: I would be more comfortable
11 with having the correspondence rather than his
12 representation of what it says, if that is available.

13 MR. CUMMINGS: I have that in my files.

14 JUDGE SCHAER: Why don't you go ahead and
15 rephrase the question.

16 MR. CUMMINGS: Certainly.

17 JUDGE SCHAER: If it raises no objection,
18 then otherwise you might want to look for that and
19 perhaps bring it in later.

20 MR. CUMMINGS: Certainly.

21 BY MR. CUMMINGS:

22 Q. Mr. Thomsen, in terms of your position as
23 County engineer, do you have occasion to review certain
24 routes within the county and determine whether or not
25 service needs to be improved on those routes?

00516

1 A. Personally I don't, but staff does.

2 Q. Is that saying they report to you?

3 A. Yes.

4 Q. And you have indicated that you have
5 responsibility for the roads within the county.

6 A. Yes.

7 Q. And to that end, when staff raises concerns,
8 do you communicate with other agencies to determine the
9 levels of needs that other agencies identify on a County
10 road, State route?

11 A. Yes.

12 Q. And have you done that in this case?

13 A. Yes, I called up the State Department of
14 Transportation.

15 Q. Now in your opinion as County engineer
16 concerning this roadway, does the closure of 156th
17 create any adverse impacts on 172nd?

18 A. It will add trips to 172nd.

19 Q. And as a result, is there a need to somehow
20 mitigate the potential impacts in the event that 156th
21 is closed?

22 A. Eventually when a transportation route
23 reaches a saturation point and has failure service,
24 something needs to be done to provide capacity. The
25 state would have to answer whether or not this

00517

1 particular route needs to be mitigated.

2 Q. Okay. In terms of the County's overall
3 concerns with this proposed closure, could you give your
4 overview?

5 A. I don't know that I understand your question.

6 Q. Okay, well, let me strike that.

7 Obviously the County has concerns with the
8 proposal to close 156th.

9 A. Yes.

10 Q. What are those concerns?

11 A. Okay. My concern, again, as I stated before,
12 is that because of the limiting factors on the east and
13 west and north side of this triangle, that when the
14 siding is extended and 156th is closed, I'm concerned
15 about the emergency response to the systems within that
16 triangle and to the west of the triangle. With only one
17 route instead of two, some of their options are going to
18 be limited.

19 I am concerned about future land use in that
20 triangle. I know that's in the urban growth area of the
21 City of Marysville, and there's plans to develop that.
22 And by restricting access into that triangle area, it
23 may restrict or reshape land use or slow it down. I'm
24 concerned that this is going to be a long-term decision
25 that will affect this area for a long time.

00518

1 And the school I know also has some concerns
2 about school bus safety in the triangle area, and I'm
3 concerned about that.

4 Q. Okay. Now you were here before when
5 Mr. Norris was testifying and he offered the testimony
6 that the closure of 156th would somehow benefit the
7 planning in the triangle areas as we have come to call
8 it.

9 A. Yes.

10 Q. Do you agree with that statement?

11 A. No, I don't. I don't agree with it.

12 Q. And what would your position be on that
13 matter?

14 A. To promote planning and future land use in
15 this triangle area, you need to provide transportation
16 options and circulation. And by eliminating one of the
17 two routes into this triangle area, you're going to be
18 limiting that.

19 Q. In terms of this closure, do you believe that
20 it will interfere with the provision of essential
21 services in that area?

22 A. For essential services that are trying to
23 respond to this area, again, there's two routes. If you
24 take one away, it will impact the ability of an
25 emergency service to respond. It takes away their

00519

1 flexibility.

2 Q. Now is the County opposed in general to the
3 concept of Burlington Northern extending a siding?

4 A. Not at all.

5 Q. Does the County support the increased
6 mobility of freight by the rail line?

7 A. Yes.

8 Q. And how about the increase in passenger rail?

9 A. Yes.

10 Q. And to that end, has the County made efforts
11 to work with Burlington Northern and the State to
12 improve these activities?

13 A. That's a specific question. I would answer
14 it by saying we're very much supportive of improving the
15 Burlington, the rail corridor and construction of
16 infrastructure to support that.

17 Q. Okay.

18 A. Including sidings.

19 Q. And in terms of this project then, why is it
20 that we specifically oppose this project of the siding?

21 A. When it was first presented to the County,
22 there wasn't a clear understanding of why the siding was
23 needed, and there was not any alternatives shown at that
24 time, and so there was a lot of concern about whether it
25 was the best option for a siding. One of the questions

00520

1 we immediately had was why not construct the siding to
2 the north.

3 Q. Okay.

4 A. And but there wasn't any information at that
5 time to address that.

6 Q. And in terms of your participation with this
7 hearing, you have heard several examples offered by
8 Burlington Northern in support of their south siding.

9 A. Yes.

10 Q. Has that satisfied some of the questions of
11 the County?

12 A. I believe it has, yes.

13 Q. In terms of the restrictions of the grade of
14 the rail north of 172nd as opposed to south of 172nd,
15 has the County ever been presented some information
16 along those lines before of it restricting the
17 development of the siding?

18 A. No, that information wasn't available.

19 Q. So the first time you heard about that was
20 yesterday?

21 A. Yes.

22 Q. Now what alternatives have you identified as
23 County engineer?

24 A. Some of the alternatives, like I mentioned
25 before, one was constructing the siding to the north.

00521

1 Some of the other alternatives is if we do have a siding
2 to the south, we will need to address the dead ending of
3 those roads, which would require cul-de-sacs. If we
4 close 156th, the traffic is going to have one way in,
5 one way out, that's 27th, including schools. I feel
6 that we should be looking at potential possibility of
7 signal or rechannelization at 27th to address any
8 turning or safety issues because of increased movement
9 in and out of that triangle area at 27th.

10 Q. So it sounds like you're identifying, if for
11 some reason the Commission grants the petition to close
12 156th, you're identifying steps that need to be taken or
13 steps that you would like to see taken?

14 A. Steps that need to be taken.

15 Q. Okay. And would those steps include, if you
16 can clarify this for the record, what steps do you
17 identify as need to occur if for some reason the
18 Commission grants the closure of 156th?

19 A. 156th would have to be cul-de-sac'd both on
20 east and west side of the railroad tracks, and that
21 cul-de-sac should be adequate for emergency vehicles and
22 school buses.

23 Q. So what you're really describing is more the
24 general term of cul-de-sac meaning but an actual turn
25 around of some form?

00522

1 A. Yes, a turn around, a paved turn around. And
2 I believe EDD standards refers to a commercial
3 cul-de-sac of a 45 foot diameter for that type of
4 application.

5 Q. When you say the EDD standards, are you
6 referring to Exhibit 59?

7 A. Just a second. This goes up to 58.

8 Q. It should be the very last page in there. It
9 was loosely put there.

10 A. Yes.

11 MR. CUMMINGS: And for counsel, this was the
12 document I handed out yesterday that is the late filed.
13 BY MR. CUMMINGS:

14 Q. Are these the -- is this the standards you
15 rely upon when you talk about what needs to be done in
16 terms of constructing a turn around?

17 A. That's correct.

18 Q. So aside from this cul-de-sac turn around,
19 does that essentially occur on both sides of the rail
20 crossing?

21 A. If there's a dead ending of the road on both
22 sides of the railroad, yes, there would need to be a
23 cul-de-sac for emergency vehicle turn around, possible
24 school bus turn around, and vehicle turn around.

25 Q. Okay. And what other, so now you have

00523

1 identified the cul-de-sac, what other things must occur
2 if this road were to be closed?

3 A. Some signage probably is in order. I have
4 not gone out and fully inspected the route, but adequate
5 signage to let people know they're going into a no
6 outlet situation would be required and just basically
7 communicating to the public that it's several thousand
8 feet to nowhere so that they can make their choices in
9 their transportation options. Probably some signage on
10 172nd to let them know that so they can adjust their
11 travel habits.

12 And in addition, I said before, and I can't
13 speak to specifics because a -- some design work would
14 have to occur, but looking at the intersection of 27th
15 and 172nd to provide for increased turning movements,
16 especially for school buses, that may warrant a signal.

17 Q. Okay. Now these are obviously options you
18 have identified or exceptions you have identified in
19 terms of a closure of 156th. In your opinion, could the
20 siding be extended and 156th not be closed?

21 A. Yes.

22 Q. Now obviously we have heard from the railroad
23 that they're not going to do this. In terms of an
24 engineering standpoint, is there anything that you can
25 see that would interfere from the roads perspective?

00524

1 A. Not from a road perspective. I see no
2 problem with leaving it open. There would be an
3 additional siding there, and you would have to
4 reconstruct the gates and signals to make -- and
5 restripe the road. There would be some minor work and
6 minor resigning.

7 Q. Okay. In terms of -- well, strike that.
8 There's been bandied around various concepts
9 of time restrictions at 172nd. Do those alone, and I
10 should clarify that we're talking about if the siding
11 was to the north, there's discussion that it would take
12 additional time for a train to cross 172nd as opposed to
13 the 156th is closed and they can just pull in or out.
14 Is the sole determiner factor the time blockage at 172nd
15 in considering the impacts on this triangular area?

16 A. I don't believe that's the sole concern.

17 Q. Okay. So alternative access is a very
18 important issue?

19 A. Yes, it is.

20 MR. CUMMINGS: And I will leave it at that,
21 thank you.

22 JUDGE SCHAEER: Does that conclude your
23 questions?

24 MR. CUMMINGS: Yes.

25 MR. WALKLEY: Is that the end?

00525

1 JUDGE SCHAER: Yes, Mr. Walkley, go ahead,
2 please.

3

4 C R O S S - E X A M I N A T I O N

5 BY MR. WALKLEY:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. I'm Robert Walkley representing the railroad.
9 I'm not sure, but I may be a bit confused about the
10 cul-de-sac issue, and maybe we can clarify that a little
11 bit. Are you saying that the design standards require
12 the construction of cul-de-sacs at the ends of 156th if
13 the crossing is closed?

14 A. Yes.

15 Q. Okay. And do you know of any policy or
16 ordinance or whatever in the county that prohibits the
17 construction of cul-de-sacs where the roads are over
18 1,000 feet long as we heard yesterday in testimony from
19 your operations, traffic operations, Mr. Bloodgood?

20 A. You could deviate from standards. There's a
21 process to deviate from standards to approach the issue
22 a different way.

23 Q. Is it possible that it's both required and
24 prohibited in the County? In other words, they are
25 required, but they're prohibited?

00526

1 A. I don't understand the question.
2 Q. You're saying that you think they are
3 required by the engineering standards.
4 A. Yes.
5 Q. Okay. Are those engineering standards
6 ordinances?
7 A. No.
8 Q. Okay. But is the -- but what about the 1,000
9 foot provision, is that in the standards?
10 A. The 1,000 feet is, yes.
11 Q. Okay. Are the cul-de-sacs in the standards
12 too?
13 A. Yes.
14 Q. Okay. But the standards are not ordinances?
15 A. Correct.
16 Q. So nothing in the standards is actually
17 required?
18 A. The EDDS refer to in Title 13, which is an
19 ordinance and to be administered by the County engineer.
20 Q. So it is an ordinance?
21 A. It's referred to.
22 Q. Okay. Is there any reason why the County
23 could not build those cul-de-sacs if they're necessary?
24 A. Anybody can build these cul-de-sacs.
25 Q. Okay. What about the signage advising people

00527

1 there's no outlet if the crossing is closed, is that
2 something the County could do?

3 A. Yes.

4 Q. Okay. And now I believe you testified that
5 there's no problem from the County, from your
6 perspective at least as County engineer, of leaving
7 156th open. I think some of the testimony yesterday
8 pointed out that the crossing though if it were open and
9 if the siding were built would not be usable at
10 unpredictable periods of time. So is it a concern that
11 if it were there, it would be closed for a long period
12 of time potentially blocked by a train, for instance?
13 In other words, is that a concern also?

14 A. Yes, depending on the use of 156th.

15 Q. Okay. So that would be a -- that would also
16 be an important issue, whether it was blocked by a train
17 or not?

18 A. Again, depending on the use.

19 MR. WALKLEY: Okay, that's all I have.

20 JUDGE SCHAER: Mr. Stier.

21 MR. WALKLEY: Oh, excuse me, there is
22 something else.

23 BY MR. WALKLEY:

24 Q. Are you, as County engineer, are you involved
25 in the planning process at all, in other words, the

00528

1 growth planning and road planning process that the
2 County undertakes?

3 A. At a high level, no. But when it comes down
4 to selecting roads, I'm involved with estimating roads,
5 yes.

6 Q. Do you get involved in planning future roads,
7 for instance?

8 A. Yes.

9 MR. WALKLEY: Okay, I just want to show you a
10 document that's not been admitted into evidence, Your
11 Honor, but I just want to show this to him. And
12 possibly we can mark it for identification, because we
13 may be using it with other witnesses.

14 Okay. I am handing the witness a document.
15 Is there an ID number for identification?

16 JUDGE SCHAER: When you hand it to me, I will
17 give it an identification number, and it will be marked
18 for identification as Exhibit 35.

19 MR. WALKLEY: Okay, I'm handing the witness
20 what has been marked as Exhibit 35.

21 JUDGE SCHAER: I would like to have a copy to
22 mark if that's what you're doing now, Mr. Walkley.

23 MR. WALKLEY: Are you going to have a copy
24 marked?

25 JUDGE SCHAER: I would like to do that, yes,

00529

1 if you have a copy that I can --
2 MR. WALKLEY: This is the only one I have.
3 JUDGE SCHAER: This is the only copy you
4 have?
5 MR. WALKLEY: Pardon?
6 JUDE SCHAER: Is this the only copy you have?
7 MR. WALKLEY: Yes.
8 JUDGE SCHAER: Are you planning to question
9 extensively on this document?
10 MR. WALKLEY: No, not extensively.
11 JUDGE SCHAER: Okay, let me go ahead and mark
12 it at this point.
13 MR. WALKLEY: (Complies.)
14 JUDGE SCHAER: You have handed me a multipage
15 document which is titled Lakewood and North Marysville
16 sub area planning project, public meeting June 19th,
17 2001, and I have marked this as Exhibit 35 for
18 identification.
19 MR. WALKLEY: Okay, thank you.
20 JUDGE SCHAER: Go ahead.
21 MR. WALKLEY: And I also have a very similar
22 document that I would also like, please, to be marked
23 for identification.
24 JUDGE SCHAER: Okay. If you are going to
25 question too extensively on these, then I am going to

00530

1 want you to offer them so we know whether or not they
2 are in the record before we go forward. And, of course,
3 we need copies for everyone to look at when we reach
4 that decision, but I am marking Exhibit 36 for
5 identification.

6 MR. WALKLEY: This material, Your Honor, was
7 included in the County's discovery to the railroad, and
8 so all of the counsel here have copies of it.

9 JUDGE SCHAER: Okay, so then you will at
10 least need to provide a copy to me.

11 MR. WALKLEY: You will certainly be given
12 this one, Your Honor.

13 JUDGE SCHAER: Okay.

14 MR. WALKLEY: And if I can just examine the
15 witness, I will give you this document, and it may be
16 used again.

17 JUDGE SCHAER: This document is titled
18 Lakewood Smokey Point sub area plan, workshop.

19 Go ahead, Mr. Walkley.

20 MR. WALKLEY: Okay, thank you.

21 BY MR. WALKLEY:

22 Q. I think I will hand you these one at a time.
23 I will first hand you Exhibit Number 35 for
24 identification. Have you ever seen that document
25 before?

00531

1 A. Yes, I have.

2 Q. Okay. Turning -- or could you identify what
3 this document is.

4 A. It's the Lakewood and North Marysville sub
5 area planning project public meeting. It was a handout
6 given to a public meeting held for this -- for the
7 Lakewood community on the urban growth area plan.

8 Q. Okay.

9 A. In the area we're talking about.

10 Q. Now attached to this are some concept
11 drawings.

12 A. Mm-hm.

13 Q. Are you familiar with these concept drawings?

14 A. A little.

15 Q. Basically?

16 A. Yes.

17 Q. Okay. Turning to concept number A.

18 MR. WALKLEY: And I'm referring, for
19 everybody's information, I'm referring to a Lakewood
20 future land use concept A map, and I believe attached to
21 this also is a larger drawing of that. In the exhibit,
22 Your Honor, you will find a larger concept A map as
23 well.

24 BY MR. WALKLEY:

25 Q. Does this look at all familiar to you?

00532

1 A. Yes, I have seen this before.

2 JUDGE SCHAER: Are you planning to offer this
3 as an exhibit?

4 MR. WALKLEY: Yes, Your Honor.

5 JUDGE SCHAER: Why don't we deal with that
6 now then.

7 MR. WALKLEY: Okay.

8 JUDGE SCHAER: Before you get too much more
9 information into the record.

10 Is there any objection to the admission of
11 Exhibit 35?

12 MR. CUMMINGS: No objection.

13 JUDGE SCHAER: That document is admitted.

14 Go ahead then, sir.

15 BY MR. WALKLEY:

16 Q. Okay. Handing you the -- one of the concepts
17 that they identified in this is the concept A. Could
18 you possibly -- it would be helpful if we could just
19 post this up here and you could maybe point to it. I
20 know that you would have to have eagle vision to see,
21 but that way the judge and everybody could see it at the
22 same time.

23 MR. WALKLEY: And then we will just give it
24 to you, Your Honor. Does anybody have a small --

25 BY MR. WALKLEY:

00533

1 Q. One of the suggestions I believe you made for
2 an alternative to the closure of 156th is that we could
3 simply build north of 172nd, build our siding. On this
4 concept, you will notice, is this correct, that the line
5 that's approximately one inch from the top of the dark
6 area is labeled 172nd; can you see that?

7 A. I can see that.

8 Q. Okay. Does that represent 172nd Avenue then,
9 SR 531?

10 A. Yes.

11 Q. Okay. And then above that, there's a dotted
12 line and a dotted line with a kind of dotted line
13 pattern. Is that -- what is that, is that a conceptual
14 street grid?

15 A. It says it's a conceptual frontage road.

16 Q. Okay. So I know there may not be a scale on
17 this at all, but as an engineer, what would your
18 estimate be for this conceptual road that travels
19 east-west across the railroad north of 172nd?

20 A. Several thousand feet.

21 Q. Several thousand feet up.

22 A. Excuse me, what was the distance? I
23 misunderstood you.

24 Q. Yes, I just -- do you have any estimate for
25 how far above 172nd this conceptual new street would be

00534

1 running east-west?

2 A. See, I don't have a scale, I don't know, it's
3 a couple of thousand feet maybe.

4 Q. Okay.

5 MR. WALKLEY: Could I have somebody volunteer
6 to get me the English north schematic.

7 BY MR. WALKLEY:

8 Q. Now as I take it from this document, and
9 people will be able to read and study it, but this is a
10 concept proposed by whom?

11 A. Planning.

12 Q. By Snohomish County planning?

13 A. That's correct.

14 Q. I don't know if you were here yesterday or
15 have ever seen this, but were you here yesterday?

16 A. Yes, I was.

17 Q. Okay. And if you were here, you will
18 remember that there was considerable discussion about
19 both the north and the south alternative.

20 MR. WALKLEY: What I have done, Your Honor,
21 is pulled one of our Exhibit 24s, the English north
22 track schematic exhibit, back up.

23 BY MR. WALKLEY:

24 Q. You will see 172nd Street right here?

25 A. Mm-hm.

00535

- 1 Q. I admit to you that the scale of this thing
2 is not on here, and it may not be to actual scale. But
3 if this conceptual street were constructed, do you have
4 an opinion about whether or not it would impact the
5 siding if the siding were expanded to the north, would
6 that conceptual street cross the northern side?
7 A. It wouldn't have to.
8 Q. It wouldn't have to?
9 A. No.
10 Q. What would happen? Do you mean if it's grade
11 separated or something?
12 A. Yeah, it wouldn't cross the railroad. It
13 could be a frontage street, a local circulation street.
14 They've got people in and around that area and would
15 access on, could access onto 172nd.
16 Q. But it shows, does it not, a crossing right
17 here?
18 A. I don't know if that indicates a crossing.
19 The dotted line goes across, that's a conceptual.
20 Q. There are two, maybe you need to come up and
21 closely look at it, but it's got a double slash.
22 A. Yes.
23 Q. Okay. We thought that might indicate a
24 crossing.
25 A. Not that I know of.

00536

1 Q. Not that you know of.

2 Let me show you the -- some of the comments
3 in this document if I can find them.

4 MR. WALKLEY: If you bear with me, Your
5 Honor.

6 JUDGE SCHAER: What's your purpose in showing
7 these to him? Is there some kind of opinion you want to
8 draw from him?

9 MR. WALKLEY: Simply to show, Your Honor,
10 that his -- I'm cross examining him on his testimony
11 that the north alternative would be fine with the
12 County.

13 JUDGE SCHAER: Okay.

14 MR. WALKLEY: And what they're proposing or
15 considering at least is another road, in other words a
16 brand new 156th to the north, and I'm asking him whether
17 that --

18 MR. CUMMINGS: Your Honor, could we just have
19 him ask the question?

20 JUDGE SCHAER: I think he's looking for what
21 he wants to ask about. He wants to read something into
22 the record, or he needs to ask a question about it.

23 BY MR. WALKLEY:

24 Q. I will show you what's been marked as Exhibit
25 36. Have you ever seen that document before?

00537

1 A. Briefly before the meeting, yes.

2 Q. Okay. And could you identify it for the
3 record, please.

4 A. It looks to me like an agenda for the
5 Lakewood High School area meeting for the workshop on
6 the sub area plan.

7 MR. WALKLEY: And just for the record, Your
8 Honor, this also came from discovery from the County. I
9 would like to refer you -- and I would like to offer
10 this as an exhibit, please.

11 JUDGE SCHAER: Is there any objection?

12 MR. CUMMINGS: No objection.

13 JUDGE SCHAER: Okay, the document is
14 admitted.

15 Go ahead.

16 BY MR. WALKLEY:

17 Q. Referring you to about the second page,
18 although these are double sided pages, would you please
19 read the comments from the June 19th meeting. There's a
20 page here. And read where the arrow is pointing,
21 please.

22 A. It says:

23 Concept A shows a railroad crossing
24 north of 172nd. How does that work with
25 BNR?

00538

1 Q. Okay. So does that refresh your recollection
2 as to whether or not a crossing was conceived of in that
3 concept A?

4 A. These are comments from the citizens, so.

5 Q. Okay.

6 A. Again, it's a concept.

7 Q. So you're saying you don't know whether you
8 would be proposing another crossing up there or not?

9 A. That's correct.

10 Q. But it's a possibility?

11 A. It's a possibility.

12 MR. WALKLEY: Okay, I have no further
13 questions. Thank you.

14 JUDGE SCHAER: Mr. Stier.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. STIER:

18 Q. Mr. Thomsen, right, Thomsen?

19 A. That's correct.

20 Q. Okay. My name is Jeff Stier, and I'm the
21 Assistant Attorney General representing the Department
22 of Transportation. So you're Mr. Bloodgood's
23 supervisor; is that correct?

24 A. No.

25 Q. You're not? Well, what's the structure, he's

00539

1 a -- he's in the engineering department, right?
2 A. Yes, he's in the traffic section.
3 Q. Don't you supervise the traffic section?
4 A. The director of transportation and
5 environmental services reports to me, but not Jim
6 Bloodgood.
7 Q. So he's under that gentleman?
8 A. Yes.
9 Q. Or that woman or that person?
10 A. Yeah.
11 Q. Excuse me, I try not to do that.
12 So in your duties and in relation to your
13 testimony or your duties as Snohomish County engineer,
14 have you reviewed the report submitted by Mr. Norris?
15 A. Yes.
16 Q. And when did you do that?
17 A. I reviewed it when it was first presented to
18 the County in October, and then I followed up and read
19 the addendum after that was submitted.
20 Q. Okay. And have you reviewed it lately?
21 A. I looked at it last night.
22 Q. Okay. And were you here during
23 Mr. Bloodgood's testimony?
24 A. Yes.
25 Q. Okay. So now you made a couple of comments

00540

1 with respect to 172nd in your testimony, and one was
2 that it's beginning to approach closure, I think, is the
3 word I wrote. I don't know if you used that.

4 A. I didn't use closure.

5 Q. What was the term you used?

6 A. Operational failure.

7 Q. Operational failure. And what is the basis
8 for that statement?

9 A. It was information that I had earlier read
10 from DOT's comments from their developer section on the
11 Lakewood School proposal to expand the middle school.

12 Q. Okay.

13 A. The traffic analysis in there was discussing
14 LOS problems at 16th and 11th. That would be a level of
15 service F with the proposed school.

16 Q. That's --

17 A. Middle school improvement.

18 Q. I apologize for interrupting you.

19 A. That's okay.

20 Q. That's to the west of the rail?

21 A. That's correct.

22 Q. And so between -- would your comment
23 regarding failure, operational failure, also apply to
24 the area east in the present condition?

25 A. Right now, what I read, the data shows it's

00541

1 at 11th and 16th.

2 Q. So that's west?

3 A. Yes.

4 Q. So the concerns of the level of service
5 degradation relates to the schools to the west of the
6 rail?

7 A. That's correct.

8 Q. Okay. So I guess I'm confused why we're even
9 talking about that, so maybe you could clarify that for
10 me. What does that have to do with the 156th Street
11 closure?

12 A. I believe I was asked a question about what I
13 knew about 172nd, and I answered it.

14 Q. You were asked a question by your attorney,
15 and I'm just curious if you see any relevance of that
16 issue since you spent time talking about it here. What
17 does that have to do with the issues today? Can you
18 think of any connection?

19 A. Well, I suppose on an arterial like 172nd,
20 when you start having indications of level of service F
21 on some of the intersections, it's an indicator that the
22 road is starting to have problems.

23 Q. At least in the vicinity to the west of the
24 rail?

25 A. Yes. And 27th and 19th, which are also

00542

1 pretty close to that same vicinity, will be impacted if
2 156th is closed. So I would draw a conclusion that
3 those trips would add to or speed up the possibility
4 that more intersections might reach LOS F.

5 Q. So your testimony is then that in a condition
6 to the west of the rail that you say is degrading.

7 A. Mm-hm.

8 Q. Has some relationship to the condition to the
9 east of the rail because of the closure, that's your
10 testimony?

11 A. No, I'm saying it has a relationship to 19th,
12 which is also west of the rail.

13 Q. Okay. And you said 27th too?

14 A. And 27th, which is east of the rail.

15 Q. So it does have a relationship to east of the
16 rail?

17 A. I would have to say that eventually it would.

18 Q. And what is -- what supports that opinion,
19 any data?

20 A. I don't have any data to support it other
21 than what I have seen in the region, which is that all
22 roads are increasing on an annual basis. There's more
23 traffic on all roads. New development adds trips to
24 roads. And the school is expanding. There's an urban
25 growth plan that's, you know, being looked at, so

00543

1 there's going to be more trips on the road.
2 Q. And so --
3 A. And so unless there's a corresponding
4 capacity improvement on 172nd, more intersections will
5 experience level of service problems.
6 Q. So it's just kind of a -- would it be just
7 kind of a condition of life in the beautiful Pacific
8 Northwest, things, you know, the infrastructure is
9 inadequate, becomes inadequate as growth occurs, right?
10 A. If you wish to paraphrase it that way.
11 Q. Well, do you think it's a fair paraphrase?
12 A. I wouldn't chose those words.
13 Q. Okay. So there's something special besides
14 just general growth as you experience it that leads you
15 to make this conclusion?
16 A. General growth is a fair assessment.
17 Q. So my paraphrase was accurate, right?
18 JUDGE SCHAER: Let's move beyond the
19 beautiful Northwest phrasing, Mr. Stier.
20 MR. STIER: Well, people are moving here,
21 Your Honor. That's what I hear.
22 BY MR. STIER:
23 Q. And this area is growing, right?
24 A. That's correct.
25 Q. Okay. And that is contributing to a need to

00544

1 evolve the infrastructure, correct?
2 A. That's correct.
3 Q. And if you don't do it, you're going to have
4 degradation, correct?
5 A. Yes.
6 Q. And that leads you to the conclusion that
7 there will be degradation in this area, correct?
8 A. Correct.
9 Q. And there's no other facts besides that that
10 you can cite that support that conclusion?
11 A. Other than what was done in that Lakewood
12 School proposal that shows that 11th and 16th are --
13 will experience worse problems with the school
14 development.
15 Q. To the east of the rail?
16 A. Yes.
17 Q. Or excuse me, that's to the west?
18 A. I know what you meant.
19 Q. Okay. Now so in terms of that proposal
20 though, there has been a mitigation that was proposed in
21 response to that degradation potential, right, and
22 that's this private road to a public road?
23 A. Yes.
24 Q. What's going to happen with that?
25 A. It's under review right now. It's still

00545

1 pending.

2 Q. Is there any kind of a reason to think that
3 can't happen?

4 A. The school may object.

5 Q. Well, then they don't get a school, right?

6 A. Possibly.

7 Q. Okay. So I guess my point is it looks like
8 that there is a means to remedy the potential
9 degradation all within the area to the west of the rail,
10 correct?

11 A. Which degradation do you mean?

12 Q. The degradation related to the school.

13 A. Yes.

14 Q. There's a proposal, it may happen, and no
15 harm, no foul, we've got a solution to the problem,
16 correct?

17 A. Yes.

18 Q. Okay. Now you described I believe around
19 five points that you think there are problems. You
20 described them as problems associated with 156th Street
21 closure. And the first one, and once again I'm
22 paraphrasing, so you certainly can correct me if I don't
23 get it right, is the impact on emergency responses.

24 A. Mm-hm.

25 Q. And can you describe to me what your concern

00546

1 in regard to that issue is?

2 A. The triangle area, if I may refer to that,
3 there's two accesses into it, 27th and 156th. And the
4 time it takes for the emergency services on Smokey Point
5 Boulevard to respond to that by either driving to the
6 north or the south, it takes several minutes. I believe
7 that it was Mr. Norris said it was about 50/50 either
8 way. And I drove it the other day because I was
9 curious. It took me about five minutes both ways,
10 sometimes six. Of course, I didn't have a siren to go
11 whizzing by the traffic, but I pretended with my timer,
12 turned my clock off when I got to the signal. And it
13 took me about five or six minutes to get there. And
14 that was using either 27th or 156th. So if you take
15 away one of those roads, the time is still going to be
16 the same.

17 But if I was in transit or in route and 156th
18 was closed, I would have to chose another route, and it
19 may take longer. If there was a train blocking 172nd
20 and 156th was also closed, I would have a difficult time
21 getting in from the west or from the west to the east.
22 And so because of those constraints, lack of circulation
23 I think has been brought up, I was concerned about the
24 ability of the police, fire, or any emergency vehicle to
25 respond to emergencies in the triangle area and also to

00547

1 the -- somewhat to the west of the triangle area because
2 of the limited transportation facilities.

3 Q. So is it the policy of Snohomish County to
4 require secondary access to all developments?

5 A. It's always a consideration, and sometimes we
6 require it.

7 Q. Okay. Now we have talked today a little bit
8 about a number of dead end roads just within the
9 vicinity of that map.

10 A. Right.

11 Q. And you're probably familiar with most of
12 those roads, right?

13 A. Yes.

14 Q. Is there any development on those roads, any
15 new development?

16 A. I can't answer that. There may be. I don't
17 know. But what if there was?

18 Q. What if there was?

19 A. Yeah.

20 Q. Well, aren't you concerned that a truck might
21 tip over and block the access to those areas, and
22 therefore no emergency vehicles --

23 A. If there was a new development on one of
24 those long dead-end streets, we would look at emergency
25 access, we would require a turn around of some kind. We

00548

1 would start with EDDS and refer to EDDS and ask for a
2 turn around for new developments.

3 Q. So you would allow single access, not require
4 double access; no redundancy would be required?

5 A. It all depends on the size of the plot, the
6 development. We might require an additional circulation
7 road be put in if it was a large development.

8 Q. So let's talk about that. That gets us, I
9 assume that leads us to the point that there's going to
10 be a lot of development in the triangle?

11 A. Mm-hm.

12 Q. You anticipate that?

13 A. Yes.

14 Q. What do you base that on, just the general
15 concept we talked about before, it's all growing?

16 A. It's in an urban growth area, there's urban
17 growth area planning going on right now. The City of
18 Marysville is looking at it to be annexed, and that
19 usually means there's development pending, not pending,
20 but there will be development in the future.

21 Q. And because what, that improves the tax base
22 as it develops in that area or what?

23 A. Because it's zoned for development.

24 Q. So how long has the freeway been there?

25 A. Since the, what, late '60's, early '70's.

00549

1 Q. Or maybe '50's?
2 A. '50's.
3 Q. How long has the railroad been there?
4 A. Probably longer than that.
5 Q. So there's no doubt about it, this
6 development is a successor to those well established
7 infrastructure elements, right?
8 A. Yep.
9 Q. Okay. So what kind of growth do you expect
10 to occur in that area, and when do you expect it to
11 happen?
12 A. That's a hard one to predict. I know there's
13 a pending plat out there right now, a preliminary plat
14 that's being reviewed by the City of Marysville.
15 Q. Do you know how many units?
16 A. No, I don't.
17 Q. It's residential though?
18 A. Residential, yes.
19 Q. Do you anticipate there will be any
20 commercial there along the tracks?
21 A. Depends on how the sub area planning goes and
22 whether or not it's annexed, and it depends on a lot of
23 things.
24 Q. It's a possibility under the zoning?
25 A. Yeah.

00550

1 Q. Okay. So you have read the report. Do you
2 disagree with the estimates of traffic impact volume in
3 a buildout situation that Mr. Norris has expounded upon?

4 A. No.

5 Q. You don't disagree?

6 A. I do not disagree with him.

7 Q. Okay. So those numbers, and Mr. Bloodgood
8 seemed to indicate that they were actually low, as I
9 recall his testimony, could be higher?

10 A. I believe in one component of the area that
11 he was stating that he thought it was low. I forget
12 what it was, commercial.

13 Q. So traffic could even be worse than
14 Mr. Norris indicated?

15 A. That's true, yes.

16 Q. Okay. And as a traffic engineer with a heck
17 of a lot of experience, and I was impressed to hear that
18 you had the light rail experience as well, do you think
19 that 156th grade crossing would be safe in a buildout
20 situation?

21 A. I don't know how to answer that question,
22 because I'm not a railroad crossing expert. The analogy
23 is I see other high use crossings in the Smokey Point,
24 Marysville area be used on a daily basis that have worse
25 conditions than this.

00551

1 Q. So you think it would be a prudent management
2 of traffic to create an at grade crossing in an
3 intensive developed area like you're envisioning here?

4 A. I think any decisions like that are a balance
5 of weighing the safety of the train, the person in the
6 car, the emergency response, community, all factors
7 considered. I just can't take one and say it's prudent
8 to do this or not unless you sit down and look at all
9 factors and consider them.

10 Q. Well, you're not familiar with situations
11 where you're going to have a crossing that's going to be
12 just used for emergency, it's also if that happens it's
13 going to be used by the general public, correct?

14 A. I don't know that.

15 Q. You don't know that?

16 A. No.

17 Q. So do you have any knowledge of any railroad
18 crossing that is limited to emergency and there is some
19 type of prohibition, physical prohibition, to general
20 public use, have you ever seen that happen?

21 A. I can't think of any.

22 Q. Okay. At least in your experience then?

23 A. In my experience, yes.

24 Q. Okay. So if -- would that lead you to
25 conclude based on your experience that if this thing is

00552

1 open in any way, it's going to be open for the use by
2 the public at buildout?

3 A. That's a confusing question for me, because
4 I'm intuitively wondering if there isn't crossings out
5 there that are for emergency access only. And I don't
6 know that question, so I can't answer your question.
7 Because I think that might be a possibility, that one
8 could be open for emergency access only.

9 Q. Even though you have never encountered that?

10 A. Yes.

11 Q. And if that was the case, can you explain to
12 me how you would keep the public off of it?

13 MR. CUMMINGS: Your Honor, I'm going to
14 object to this one. He says he doesn't know if there
15 are any out there, he's only wondering, he doesn't know.
16 So to inquire further as to what restrictions would be
17 on such a crossing that he doesn't know exists seems a
18 little beyond the scope.

19 MR. STIER: Well, he knows enough to have an
20 opinion that he, you know, that it may be possible. He
21 seems to know that.

22 JUDGE SCHAEER: Well, if that's the only
23 concern is that it may be possible, then perhaps you
24 could put on someone in rebuttal who has more knowledge.

25 MR. STIER: Well, I would just like to know

00553

1 if he thinks it's possible, how he thinks it could be
2 possibly done, you know. I mean that's all I want to
3 get out of him on this point.

4 JUDGE SCHAER: Why don't you go ahead and
5 respond to that if you have any response, any idea.

6 A. I suppose my ideas or the analogy would be
7 what we do in plats. Sometimes because of certain
8 circumstances or restrictions, we don't allow public
9 access, but we allow emergency access, so we create a
10 paved surface, an emergency road that a fire truck or an
11 ambulance can drive on, and we put up signs that say
12 it's emergency access only and sometimes a gate,
13 sometimes bollards to prevent the general public from
14 using it.

15 BY MR. STIER:

16 Q. And you think that would be a satisfactory
17 solution on a 80 mile train corridor, 80 mile an hour
18 train corridor?

19 A. Now you're getting out of my expertise.

20 Q. Okay. So you didn't address any of those
21 issues with light rail in Portland?

22 A. No.

23 Q. No crossing issues at all?

24 A. The train in Portland was comingled with
25 traffic and buses. Everybody used the same space.

00554

1 Q. Okay. So you raised kind of an almost a
2 third point, but it sounds like the second point,
3 long-term decisions that will affect the area. Is that
4 also in relation to growth?

5 A. Yeah, future land use.

6 Q. So that's pretty much related to the buildout
7 situation we have been discussing, correct?

8 A. That's correct.

9 Q. Okay. So as a planner, if someone came up
10 and said, we're going to build out the triangle, you
11 know, in the patterns division, what would you recommend
12 for access to the area in just a fresh, clean situation?
13 How would you, in that triangle, how would you get in
14 and out if someone came in and wanted to develop the
15 whole thing in a mass urban type city development?

16 MR. CUMMINGS: Your Honor, I just want to
17 object. Mr. Thomsen has not been put on the stand as a
18 planner, and he hasn't purported to be a planner. He's
19 an engineer and a traffic engineer. If there's
20 questions about planning in regards to that, well, we
21 can certainly, you know, address that at a later time,
22 but I don't know if this witness is being put on to talk
23 about planning issues.

24 JUDGE SCHAER: Are you going to have a
25 witness who is a planner?

00555

1 MR. CUMMINGS: We have a planner coming up
2 next.

3 MR. STIER: I'm asking this question in the
4 context of access, which is a component, and that was
5 specifically how I framed the question.

6 JUDGE SCHAER: Okay, well, to the extent that
7 you know, go ahead and answer the question.

8 A. It needs more roads.

9 BY MR. STIER:

10 Q. It needs more roads. How many more roads?

11 A. Depends on traffic, ultimate buildout, and
12 how soon that would come on line.

13 Q. Well, just look at the -- you know the
14 numbers that Mr. Norris said, and you said that those
15 are feasible numbers. Let's say that number happened,
16 we got a development. As unlikely as that would occur,
17 you got a development that's going to build out --

18 A. I didn't say they were feasible numbers.

19 Q. I thought you testified that you didn't
20 disagree with those numbers as --

21 A. That is correct. I don't disagree with his
22 traffic report.

23 Q. Okay. So let's assume that those numbers
24 that you don't disagree with as feasible numbers for a
25 traffic report would be the numbers of a buildout

00556

1 situation that would happen precipitously. It would
2 happen in one fell swoop. What kind of road system
3 would you recommend as the city or as the County
4 engineer?

5 A. I would have to sit down and analyze it, make
6 it through. I just couldn't answer it off the cuff.

7 Q. Would you recommend at grade rail crossings?

8 A. I don't like at grade rail crossings.

9 Q. You testified that Snohomish County raised
10 questions regarding going north with the siding, and you
11 also testified that Burlington Northern testimony
12 yesterday satisfied some questions. But I -- could you
13 give me the specifics of the questions that you had and
14 what -- and what particular information satisfied those
15 questions?

16 A. It was regarding -- it was regarding a siding
17 to the north and the ability of a train to pull out and
18 enter onto the main line. I think the calculations that
19 were brought out by BNSF showed that it would take, if
20 I'm not mistaken, 18 minutes to pull across 172nd in
21 lieu of 8. That's the first time I had seen that
22 information. I didn't realize that there was that
23 difference.

24 Q. Did you ever ask anybody for that
25 information?

00557

1 A. I can't remember specifically. We had
2 meetings with Burlington Northern and were asking
3 general questions about how it worked. It wasn't
4 necessarily provided.

5 Q. But my question was, did you ask for that
6 information?

7 A. No.

8 MR. THOMPSON: I'm going to object on the
9 ground of relevance. I think, Your Honor, that it's
10 perfectly obvious that Mr. Thomsen has indicated that
11 this explanation that Burlington Northern has provided
12 helps him understand why a southern route is better than
13 a northern route. I don't think there's anything
14 further to explore.

15 JUDGE SCHAER: The objection is relevance,
16 Mr. Stier.

17 BY MR. STIER:

18 Q. You indicated that -- you said -- you
19 identified some alternatives to closure, and one of them
20 was go north, and then you went into a group of
21 alternatives if you go south and with a closure.

22 A. Mm-hm.

23 Q. And these alternatives was you need to
24 address cul-de-sacs.

25 A. Yes.

00558

1 Q. You need signal or channelization at 27th,
2 and 156th needs to be cul-de-sac'd?
3 A. Mm-hm.
4 Q. So doesn't the plan call for signalization
5 and channelization at 27th and 172nd?
6 A. Which plan?
7 Q. The closure plan.
8 A. Not that I know of.
9 Q. So has DOT expressed plans to do that in the
10 future?
11 A. I don't believe so.
12 Q. You don't believe so. Is DOT planning any
13 improvements in that area?
14 A. The interchange.
15 Q. The interchange?
16 A. Yeah.
17 Q. But that would not include signalization or
18 channelization in the vicinity of 27th?
19 A. It may. I haven't seen it recently.
20 MR. STIER: Okay, no further questions.
21 JUDGE SCHAER: Mr. Thompson, did you have any
22 questions?
23 MR. THOMPSON: No questions.
24 JUDGE SCHAER: I have just a couple of
25 questions.

00559

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E X A M I N A T I O N

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BY JUDGE SCHAEER:

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Q. I believe you indicated that when you first heard about this proposal to build the south siding and to close 156th Street that you had two questions, the first of which was, do we need a siding, and the second of which is, is this the best option. And those are the notes I took down, is that --

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A. Yes.
Q. And you talked then about whether or not this is the best option, but what did you conclude about whether or not a siding was a good idea or was needed?

A. I have no objection to the siding from an operational point of view for the railroad. It makes sense. It's just a question of where to put the siding.

Q. So the concern you expressed about whether it was needed has been satisfied or it's just not a concern anymore?

A. Less of a concern.

Q. Okay. And then listening to your testimony, it sounded to me that if this went to the south, that if there was a signal at 27th and if there were cul-de-sacs, that you might be comfortable with this project. Did I understand that correctly, or am I

00560

1 reading too much into what you said?

2 A. Yeah, I don't know if comfortable is the
3 right word, but I would be, you know, acceptable of the
4 project. It's acceptable to me if the siding is to the
5 south and that's the best operational place to put it,
6 for the rest of the traffic network to work, at a
7 minimum we need cul-de-sacs on 156th, and we may need a
8 signal at 27th. That needs to be looked at and analyzed
9 and engineered.

10 Q. Okay.

11 A. And one other thing.

12 Q. Certainly.

13 A. And that is emergency access, if I may. I
14 guess the question of whether or not because of the
15 constrained limited access of that triangle area,
16 whether or not it makes sense to have emergency access
17 at 156th in lieu of just general public access, so that
18 some of the avenues for the local emergency fire and
19 police have a way to get in there under the, you know,
20 if you look at the operation out there, there's going to
21 be times when there's not a train on that siding
22 blocking 156th or a main line train, and it could be
23 open to emergency vehicles.

24 Q. Okay. Were you here this morning for
25 Mr. Norris's testimony?

00561

1 A. Yes.

2 Q. And during his testimony, we admitted an
3 illustrative Exhibit Number 16, and then he testified to
4 the facts that are in this document. And I wonder if
5 someone could provide a copy of this to you for a
6 moment.

7 The court reporter will hand you a copy of
8 the exhibit.

9 MR. WALKLEY: I want to make sure we're
10 talking about the same one, Exhibit --

11 JUDGE SCHAER: Exhibit 16 says at the top
12 172nd Street Northeast at BNSF railroad crossing. The
13 court reporter has handed the witness a copy, and so we
14 can go ahead from there.

15 BY JUDGE SCHAER:

16 Q. And my notes on here indicate that if you had
17 a north extension, the numbers that you were just
18 talking about, how it would take 18 minutes instead of 8
19 to start out, is that what you were referring to?

20 A. Yeah.

21 Q. Okay. Now looking at the two left-hand boxes
22 and then the third box which shows what would happen
23 according to Mr. Norris with the south extension.

24 A. I think I may be looking at the wrong
25 exhibit.

00562

1 Q. Okay.

2 A. I know which exhibit you're talking about.

3 This is not it.

4 JUDGE SCHAER: Let's take a moment to see.

5 MR. WALKLEY: I believe it may be Exhibit 15,

6 Your Honor. Is this the one you're looking for?

7 JUDGE SCHAER: This is the one that I am

8 looking at, which I have marked as Exhibit 16.

9 THE WITNESS: I've got it right here.

10 BY JUDGE SCHAER:

11 Q. I just want you to look now at the first
12 three boxes there.

13 A. Okay.

14 Q. And looking -- actually, I really want you to
15 look at the two middle boxes, the one to the left being
16 current situation where trains have to be broken at
17 172nd.

18 A. Mm-hm.

19 Q. And the one next to it being what would
20 happen if the south siding were built.

21 A. Okay.

22 Q. And with that information in mind, if the
23 only choices presented to you were either to close 156th
24 and build the new south siding or whether to keep
25 everything as it is now with 156th open and without

00563

1 building a new siding, which would mean that trains
2 would continue to have to be split at 172nd, do you have
3 an opinion on which one of those would do better for
4 traffic on the roads?

5 A. So if I may clarify, you're asking me to
6 choose between the two middle boxes?

7 Q. Yes.

8 A. And will there be an option to choose the box
9 to the right?

10 Q. Right now I want to know just simply between
11 what's existing and what's being proposed without any
12 other options.

13 A. Well, the delay tells the story, the south
14 extension is the least delay for 172nd.

15 Q. And then I guess I'm kind of wanting you to
16 factor that information into what you know about 156th,
17 to think about the overall, the loss of 156th but the
18 improvement of timing on 172nd as compared to the
19 current situation, and see if you have an opinion about
20 which one of those is better for traffic flow?

21 A. That one is tougher. Again, I'm concerned.
22 Even though there is less impact to 172nd, if there is
23 any kind of event at 172nd that would -- I think the
24 example brought up earlier was a train derailment or
25 some kind of event that stopped the train there, then

00564

1 these are standard daily average conditions, which are
2 okay. My concern is during an emergency event, which
3 aren't described here, and then you look at what is the
4 failsafe, what is the plan B, what is the bailout for
5 emergency services. And with 156th closed, you know,
6 neither one of these are relevant. It's a situation
7 where we've got -- well, if it's a siding to the south,
8 156th is closed and then 172nd is also closed because of
9 an emergency, and it makes access difficult.

10 Q. Well, let's back up to the example that I
11 believe you were talking about, which is emergency
12 services to the triangle area.

13 A. Mm-hm.

14 Q. And that is entirely to the east of the
15 railroad; is that correct?

16 A. Yes.

17 Q. And you were talking about those services
18 coming from the Smokey Point fire station, and I assume
19 also if someone was coming from the sheriff's station
20 that's right around the corner.

21 A. Okay.

22 Q. If they took the north route, services from
23 either of those wouldn't have to cross the railroad to
24 get to the triangle, would they?

25 A. That's true.

00565

1 Q. And if the crossing was closed on 172nd for
2 three days, they would most likely know that, wouldn't
3 they?

4 A. Yeah, obviously.

5 Q. Okay. Does that make any difference to your
6 concern about getting services into that area?

7 A. I understand what you're saying in a specific
8 case where they're accessing the triangle only they
9 would be able to access in there. But if they were in
10 there and they got another call out in transit to go
11 further east, right now they would want to zip across on
12 156th, not drive 8,000 feet north, get back on 172nd,
13 and find a way out. And so it's -- I guess it's a
14 complicated answer, and any -- you could create a
15 situation where it works in any of these scenarios. But
16 my concern is if that emergency services are, you know,
17 out there, they respond to a call, and many times they
18 will get a second call, and they have to respond from
19 where they're at.

20 Q. Well, I guess my concern is, but if that's
21 all true and this will take longer sometimes for
22 emergency services.

23 A. Right.

24 Q. How does that factor in with the other
25 effects on the road and in your weighing overall in

00566

1 which option you would prefer?

2 A. It would be nice to pick an option that
3 satisfied everybody's needs, which might be this
4 southerly extension, because it's got the least amount
5 of impact to 172nd plus providing emergency access in
6 some fashion.

7 Q. Okay. I need to understand what you just
8 said. You're saying the best option would be -- tell me
9 again what the best option would be that you just
10 described.

11 A. For average conditions based on the data
12 shown here, the least amount of impact to 172nd is going
13 to be the siding to the south. But it's an average
14 condition. And so I'm saying in addition to that, you
15 need to address, we need to address emergency services
16 and how they're going to best possibly serve the
17 triangle area and areas to the west of the triangle in
18 any given situation, and that might include leaving
19 156th open for emergency vehicles.

20 Q. I'm not sure if you're going to know the
21 answer to this, but I'm going to ask you, because I
22 don't know the answer to it either. If you do, then you
23 can help me. I heard testimony yesterday that according
24 to the Commission's rules, a train may not block a road
25 for more than ten minutes, so that if there's a train

00567

1 across a road that's going to be there more than ten
2 minutes, it has to be broken apart.
3 A. Okay.
4 Q. Do you know if that rule would apply to 156th
5 if it were open only as an emergency access?
6 A. I can't answer that.
7 Q. Okay, I will ask someone else.
8 A. Okay.
9 Q. Try to find someone who would know that
10 answer.
11 A. Okay.
12 JUDGE SCHAER: Thank you, that's all I had.
13 MR. CUMMINGS: Nothing further.
14 JUDGE SCHAER: Thank you for your testimony,
15 Mr. Thomsen.
16 Who do we have next?
17 MR. CUMMINGS: Mary Evans.
18 JUDGE SCHAER: We're going to take a 15
19 minute recess. Please be back at quarter to 3:00 by the
20 clock on the wall in the back of this room. We're off
21 the record.
22 (Recess taken.)
23 JUDGE SCHAER: Would you like to call your
24 next witness, please.
25 MR. CUMMINGS: Thank you, Your Honor, I would

00568

1 like to call Ms. Mary Lynne Evans.

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3 Whereupon,

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MARY LYNNE EVANS,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

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D I R E C T E X A M I N A T I O N

9

BY MR. CUMMINGS:

10

Q. Good afternoon, Ms. Evans. Could you please state your name for the record and spell your last name.

11

12

A. Yes, my name is Mary Lynne Evans, E-V-A-N-S.

13

14

Q. And actually, for the purposes of the court reporter, I guess we should spell the Lynne as well.

15

16

A. It's L-Y-N-N-E.

17

18

Q. Thank you. And where are you employed?

19

20

A. I'm employed with Snohomish County Planning

21

and Development Services Department.

22

23

Q. And what is your occupation?

24

25

A. I'm an urban planner, well, urban and

regional planner.

Q. And do you have a supervisory role within the

office?

A. I do.

Q. And what's your title?

00569

1 A. I'm the supervisor for the long range
2 planning section.

3 Q. And what are your responsibilities as the
4 supervisor for the long range planning section?

5 A. I supervise 10 people, varies 10 to 11
6 people. We do long range sub area plans. We do green
7 space plans. We do annexations. We do public
8 involvement. Those are the majority of things.

9 Q. Now when you say we do plans, what does that
10 mean?

11 A. Within the County's comprehensive plan
12 structure under the Growth Management Act, there is a
13 general policy plan which has been adopted in 1995 and
14 updated every year. As part of that plan, it mandates
15 that we do further sub area planning for smaller
16 geographical areas, and that's part of what my section
17 does is those sub area plans.

18 Q. And this is all in accordance with the Growth
19 Management Act?

20 A. Yes, it is.

21 Q. And what is the purpose of the Growth
22 Management Act?

23 A. The Growth Management Act has 12 to 13 goals
24 that are to be balanced by local governments. Its
25 primary purpose is to control sprawl, to accommodate

00570

1 growth, to provide efficient public services, to make
2 sure that public services are available for urban
3 growth, to preserve green space, quality of life,
4 resource lands, critical areas.

5 Q. Okay. And in terms of labeling an area
6 within an urban growth area or a UGA as it's often
7 commonly referred to, what does that mean in the Growth
8 Management Act?

9 A. The Act itself does not have as many
10 specifications for what it means as our GPP does. Under
11 the Growth Management Act, it says that this area is an
12 area to be used for the future accommodation of growth,
13 and it should be characterized by urban growth with
14 urban facilities to meet that growth. That includes
15 roads, sewer, water, and storm.

16 MR. CUMMINGS: And for purposes of counsel
17 and the Judge, I believe the Snohomish County planning
18 policies were admitted by the State as Exhibit Number 8.
19 BY MR. CUMMINGS:

20 Q. So in terms of development aspects, if
21 property is within a UGA as opposed to outside of a UGA,
22 what does that mean?

23 A. It means that that area is slated for urban
24 growth within the forecasted time frame for this
25 particular plan, which is 2012. It means that

00571

1 eventually that urban growth area will become part of
2 the city and that it will be served by those services
3 that I earlier mentioned.

4 Q. Can intensive growth occur outside of a UGA?

5 A. No, it can not. That's a very important
6 aspect of the Growth Management Act. Rural areas are to
7 be used for rural uses. Rural uses are not to be in any
8 way, shape, or form similar to urban uses.

9 Q. Let's turn now to the issue before the
10 Commission, and that is a petition to close the 156th
11 Street crossing. Are you familiar with the area around
12 156th?

13 A. Very.

14 Q. And why is it that you're familiar with the
15 area?

16 A. One of the other hats that I wear is that I'm
17 the project manager for the Marysville sub area urban
18 growth area plan.

19 Q. What does that mean?

20 A. That means that the area -- may I point to
21 the map?

22 Q. Actually, yeah, let's refer to Exhibit 58,
23 and actually this is a blown up version of Exhibit 58,
24 so it focuses primarily on Marysville and Arlington.

25 A. I will try and speak loudly. Let me know if

00572

1 this is not loud enough.

2 The area that's shown on this map is a
3 portion of the county. It's the comprehensive plan map
4 for this portion of the county. It includes the city of
5 Marysville, Marysville's urban growth area, and the area
6 in question, which is here at 156th Street. On this
7 particular map, Marysville's urban growth area is
8 colored pink.

9 The reason that it's colored pink is because
10 it is designated on the map as an urban growth area, but
11 it does not have underlying zoning that allows it to go
12 to urban growth now. The reason that it does not is
13 because we are under a mandate under Policy LU 4.F.4 to
14 do a sub area plan for this area. Presently these
15 people can not develop their land except if it's vacant
16 and can be developed at one building unit for five to
17 ten acres. So it is under an artificial cap right now
18 for growth. It has not developed because of that
19 artificial cap.

20 However, there are policies within this plan
21 that are extremely specific about how this area should
22 be planned. Unlike many other areas within the county,
23 the policies within this plan name specifically the
24 Lakewood Smokey Point area shall be master planned.

25 Q. And are those, I don't mean to interrupt you,

00573

1 but are those policies or goals set forth in I will call
2 it Exhibit 57, which is the goal LU 4 and LU 5?

3 A. Yes, partially.

4 Q. Okay.

5 A. LU 1 also.

6 Q. Okay. Which would also be found in Exhibit
7 Number 8 from the State group?

8 A. (Nodding head.)

9 Q. Okay. So in terms of these goals and the
10 planning of the area, you said they have identified the
11 Smokey Point area or this Lakewood area.

12 A. Yes.

13 Q. And there's been planning that has taken
14 place.

15 A. Yes.

16 Q. You were present before when Mr. Thomsen was
17 testifying; is that correct?

18 A. Yes.

19 Q. And Mr. Walkley was pointing out some maps to
20 Mr. Thomsen in terms of concepts. Let's talk about when
21 you look at a sub area plan, what do you do for planning
22 in that area? What are the steps that are involved?

23 A. The first thing that you do is you take a
24 look at the policy direction that you get from the
25 comprehensive plan. The policy direction in this plan

00574

1 says that this area should be planned for 8 to 10
2 dwelling units per acre for residential and 15 to 20
3 employees per acre for the employment base. Then you go
4 from the actual directives in this plan to the actual
5 land, and you look at the land in a planning process to
6 see how much of that land is constrained and can accept
7 the sort of urban growth that is suggested out here.

8 Q. Okay.

9 A. Then you move from that to talking with the
10 people that live out there and the City and the special
11 purpose agencies to see what their capabilities are and
12 what they're interested in, and then you come up with
13 some concepts. That's really abbreviated.

14 Q. Okay. So in terms of the exhibit that we
15 have been showing Mr. Thomsen concerning a concept of
16 that area, is that some type of plan that's set in
17 stone?

18 A. Absolutely not. The representation that was
19 given of that with the dotted line across the front as
20 being an actual road alignment with road crossings was a
21 gross misrepresentation of a planning document. These
22 are very conceptual. They're what are called bubble
23 diagrams. They're done by our GIS system. They do not
24 have road alignments, nor do they have crossings that
25 are specified in them.

00575

1 Q. So what's the purpose of those documents?

2 A. The purpose of this document is to help the
3 citizens, the City, and the County to know what
4 direction they're going. It is as if you decided as a
5 family you want to build a house, and the first question
6 is what sort of house are you going to build, are you
7 going to build a rambler, are you going to build a Cape
8 Cod, what are you going to build. That's what these
9 are. These are suggesting what kind of house.

10 Q. Okay. Now how long have you been planning
11 for the Lakewood sub area?

12 A. How long have we been planning for the
13 County? I believe it's about five years.

14 Q. You have been with the project the whole
15 time?

16 A. I've been there only two years.

17 Q. So over the last five years, they have been
18 looking at the area to generate ideas of how to develop
19 it?

20 A. Yes.

21 Q. What role does 156th Street play in that
22 development?

23 A. It plays a crucial role in the development.
24 One of the important things that we must do under the
25 Growth Management Act is when we do land use plans --

00576

1 and the land is to decide what goes forward in a plan,
2 not the transportation facilities. Transportation
3 facilities are to provide support for the land use. We
4 look at the land, we decide what might be going out
5 there, we look at what's available out there for
6 facilities. In order to make this particular area
7 function, we must have a circulation pattern. 156th is
8 essential for the circulation pattern for the future.

9 Q. For the future?

10 A. (Nodding head.)

11 Q. So as it presently sits, then there isn't
12 some great burdon on immediate use for 156th?

13 A. There is great room for what?

14 Q. Is there a great burdon or need or use of
15 156th presently?

16 A. In terms of what the land uses are out there
17 now?

18 Q. Mm-hm.

19 A. I can testify to that only as I know from my
20 own personal experience, but I think others have said
21 more.

22 Q. Okay.

23 A. I can tell you that I know that it's used for
24 school bus routes, and it's used for entry into Gissberg
25 Lakes and for circulation throughout this entire area,

00577

1 especially when 176th is shut.

2 Q. 176th?

3 A. 172nd.

4 Q. Let's talk about the uses that you heard us
5 describe earlier as the triangle area. I think the
6 photo describes it better. You can see I-5, the main
7 road up and down there, you can kind of see how the
8 triangle is made up. What types of uses are made of the
9 area within the triangle?

10 A. Within this area right here, we have a mobile
11 home park in here, we have a plat going in here, we have
12 several smaller mobile homes in here. Most of it's
13 rural, wood lot, single family, small farmette.

14 Q. Okay.

15 A. There's a nursery there as well.

16 Q. Are there any planned developments pending in
17 the 156th area?

18 A. Yes, there are.

19 Q. Okay.

20 A. Marysville has a petition to annex in that
21 area with a suggestion for 300 single family homes in
22 the lower part here. There are petitions to annex going
23 farther up, but no specific developments proposed with
24 those petitions.

25 Q. And what's the time frame in terms of when is

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1 this planning process going to be done?

2 A. This planning process will go to council with
3 a land use plan and an implementation plan in April of
4 2002. Right now we are at the alternative stage, and we
5 are doing an EIS on those three alternatives. When we
6 finish that, we will come up with a preferred
7 alternative that will have a final EIS, and it will go
8 to council.

9 Q. And when a final, you say there's three
10 alternatives then that have been looked at or we have
11 narrowed the field to three alternatives to be used in
12 that area?

13 A. Yes.

14 Q. And council will adopt a final idea or use
15 for that area?

16 A. Yes.

17 Q. And then what will happen?

18 A. It will be a very specific use. It will be
19 adopted as part of the comprehensive plan. It will have
20 underlying zoning. The artificial cap on development
21 out there will be lifted, and development can occur.

22 Q. So in terms of when we look at the map up
23 there, will it still be a pink area?

24 A. No, it will be an area that has specific
25 colors in it similar to the document, although the

00579

1 document that was introduced earlier was in black and
2 white. I do have this document in color, which I can
3 give to folks. And it will have colors in there. There
4 are an example would be like this.

5 Q. Okay. So that would basically -- why don't
6 we actually pass those around right now. It might help
7 folks.

8 JUDGE SCHAER: Mr. Walkley, please look at
9 this and let me know if you would accept this as a
10 substitute for Exhibit 35, if you want to compare it
11 with this document. Just let me know if you have any
12 concerns.

13 MR. WALKLEY: It does look a little
14 different.

15 MR. CUMMINGS: It looks like the pages were
16 transposed.

17 Well, why don't we do this. They appear to
18 be slightly different only in terms of a page here or
19 there or maybe just how they're organized together. Can
20 I go ahead and have this marked as --

21 JUDGE SCHAER: Do you have any objection to
22 including this as part of Exhibit 35?

23 MR. WALKLEY: Not at all, let's do that.

24 MR. CUMMINGS: Let's go ahead and mark it as
25 Exhibit 35, and shall we go ahead and admit it into the

00580

1 record.

2 MR. WALKLEY: It may be the same document
3 just in a different order, but it's very hard to tell.

4 JUDGE SCHAER: Okay, well, you can --

5 MR. WALKLEY: I think it is.

6 JUDGE SCHAER: Why don't we go ahead and mark
7 this as an additional portion of Exhibit 35, and is
8 there any objection to its being admitted?

9 Hearing none, then this is also admitted as a
10 portion of Exhibit 35. And if later in the day you can
11 let me know if we still need both portions, Mr. Walkley,
12 that would be sufficient. Do you have someone who could
13 look through this while you're working on the hearing?

14 MR. WALKLEY: Thank you, Your Honor.

15 JUDGE SCHAER: Go ahead.

16 BY MR. CUMMINGS:

17 Q. Ms. Evans, so based on the development plans
18 that are taking place, what are we to expect to occur
19 within the next year?

20 A. Within the next year, there will be no
21 development except that which would meet the underlying
22 zoning, which is one dwelling unit per ten acres.

23 Q. Ms. Evans, beyond that, once the plans have
24 been accepted or the final of the three alternatives has
25 been accepted, then what can we expect?

00581

1 A. We can expect that this area will annex to
2 Marysville and will become part of the city. We can
3 expect that it will have commercial, probably
4 industrial, residential uses within it, open space. It
5 will have an arterial and grid street network.

6 Q. And when you say an arterial and a grid
7 street network, is that something that will be planned
8 on once one of the three alternatives is selected?

9 A. Yes, it is. What we generally do is the
10 County will plan an arterial network for these
11 particular areas. This is an unusual area in the county
12 because it is very rural right now and it has virtually
13 no street network out there at all, so we will have an
14 arterial network that will come along as part of this
15 plan. Then as developments come in, the local streets
16 will be put in as part of those developments.

17 Q. Now transportation is actually an element of
18 planning; is that correct?

19 A. That's correct.

20 Q. And there are certain goals or policies that
21 are followed as well?

22 A. Yes.

23 Q. Do those goals address any relationship with
24 the rail industry?

25 A. Yes, they do. In our GPP, we have a

00582

1 transportation element section that has goals that
2 relate to the rail industry.

3 Q. And in terms of transportation, you made an
4 earlier statement that says in effect that
5 transportation facilities provide support for land use.

6 A. That's correct.

7 Q. So specifically what kind of support does
8 156th provide to the proposals in that area?

9 A. There is one important issue that I haven't
10 really brought up before, and that's on this map as you
11 can see, here's 156th right here. This is the pink area
12 that's the urban growth area. This is a cross hatched
13 area, and I'm not sure if the Court can see that, but
14 that cross hatched area is called an urban reserve area.
15 And in our comprehensive plan, that urban reserve area
16 is to be held in rural uses until we can decide within
17 the next 50 years whether or not urban growth would go
18 out into that area. 156th would be -- could be a
19 primary support road for that area.

20 Q. Okay. Now in terms of the comp plan or
21 planning and Growth Management Act, you talked about a
22 population forecast.

23 A. Yes.

24 Q. Now does each city give its own population
25 forecast?

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1 A. Yes. What happens is the County gets a
2 forecast from the office of financial management at the
3 State, and then the County must sit down with each of
4 its cities and allocate growth to those cities, and it's
5 a collaborative process.

6 Q. And what is the importance of having
7 population allocated to a city?

8 A. The importance is that each of the cities are
9 in control of their own destiny in terms of how big they
10 want to grow. That's the importance for the city. They
11 also get to decide whether or not they are able to
12 provide services to those, that population forecast.
13 For the County, the importance is that we accommodate
14 our growth and that we do not sprawl that growth out
15 into the rural areas, that we concentrate it.

16 Q. From a planning perspective, do you believe
17 that the closure of the 156th Street crossing will
18 hinder growth in that area?

19 A. Yes, I do.

20 Q. And why is that?

21 A. Because we have a concept that's called
22 concurrency in which we are not supposed to encourage
23 growth if we can not provide services. And this is one
24 of the two east-west routes for this area. If we lose
25 this crossing and we have no other east-west route for

00584

1 this area, then we can not probably provide for an
2 adequate road system.

3 MR. CUMMINGS: Okay, thank you very much. I
4 have no further questions.

5 JUDGE SCHAER: Mr. Walkley.

6 MR. WALKLEY: Your Honor, as a preliminary
7 matter, it does appear there are differences, for
8 example, between the two Exhibit 35s.

9 JUDGE SCHAER: Okay.

10 MR. WALKLEY: In mine, first of all, I
11 included the large drawings, which are dated, I believe
12 you will find revised 7-30-01, and these are -- these
13 drawings supplied by the County or by the witness appear
14 to be 6-13-01 and don't include the large drawing. And
15 then there's also a page here that I don't believe I
16 have seen before called update on current affairs. So I
17 would just ask that -- I have no problem with combining
18 Exhibit 35, but noting at least those differences.

19 JUDGE SCHAER: Okay. And it looks like
20 update on current affairs may have been pulled out and
21 put back in.

22 MR. CUMMINGS: Yeah, they were somehow-- it
23 looks like they have been somewhat pulled out and then
24 put back in.

25 JUDGE SCHAER: Yes.

00585

1 MR. CUMMINGS: We will just slide them back
2 in. Would it be easier, Mr. Walkley, would you like
3 this as a separate exhibit, or does it bother you if
4 it's attached with yours?

5 MR. WALKLEY: It's all right as long as the
6 record is clear that there really are two. Why don't, I
7 have a suggestion, we call it A and B.

8 JUDGE SCHAER: That would be fine.

9 MR. WALKLEY: Mine will be 35-A and theirs
10 will be --

11 JUDGE SCHAER: That would be fine if that
12 makes it easier for you to refer to.

13 MR. WALKLEY: And then as far as 36, of
14 course, we don't have anything like that in this.

15 JUDGE SCHAER: No, 36 is already admitted as
16 a separate exhibit.

17 Did you have any questions?

18 MR. WALKLEY: I do have a few questions.

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. WALKLEY:

22 Q. If I understand your testimony, what you're
23 -- what you seem to be saying right now are, correct me
24 if I'm wrong, is that there is a temporary cap on really
25 on any development in the area that we have been calling

00586

1 the triangle.

2 A. Yes.

3 Q. And that's because the annexation and
4 planning and urban growth processes are all going on and
5 unfolding?

6 A. (Nodding head.)

7 Q. So --

8 JUDGE SCHAER: Ms. Evans, you're going to
9 have to answer with a word so the court reporter can
10 take it down.

11 A. Yes.

12 JUDGE SCHAER: Thank you.

13 BY MR. WALKLEY:

14 Q. So if I understand it correctly, this
15 process, is the planning process going on at the same
16 time as the annexation?

17 A. No, the City of Marysville will not annex
18 until we finish our plan.

19 Q. Okay. Why would you -- do you need to plan
20 in the area that Marysville is annexing?

21 A. Yes, we do. We have a work program that's
22 been adopted by the County Council that says this should
23 be what we are doing, and so we're continuing.

24 Q. But won't the City have its own plan in the
25 future?

00587

1 A. We are working cooperatively with the City
2 right now. Everything that we put out, you will see on
3 the front of this, it has their name and my name.

4 Q. I think you said you were part of an
5 annexation planning committee?

6 A. Part of what I supervise is an annexation
7 planner who does look at annexations.

8 Q. Now this update on current affairs that I'm
9 holding, and that's part of Exhibit what, 35-B?

10 JUDGE SCHAER: Yes.

11 Q. If you could turn to that, please.

12 JUDGE SCHAER: Pages 9 and 10, I think.

13 Q. It's the first time that I have seen this or
14 we have seen this. This looks like something that might
15 be given to groups or to the public to update them on
16 what, the closure of 156th Northeast?

17 A. Yes, it was. The reason that it was pulled
18 out of your packets is when I went home at lunch, I
19 realized that you probably would benefit if you all had
20 copies of this particular packet. And we had handed
21 these out on the June 19th meeting. The ones that I had
22 left were ones that were not completed or not put
23 together. So I tried to get a complete packet for you.
24 And the one part that was missing was the update on the
25 current affairs, so I tried to pull them all together

00588

1 for you.

2 Q. Okay.

3 A. At the meeting of the June 19th, we had, as
4 you can see on the agenda in this packet, this yellow
5 packet, under I think what has happened since the
6 January 29th meeting, we had some opportunities and
7 constraints for the area and guiding principles, and
8 then we talked about what sorts of things were going on
9 currently. And those were in answer to some of the
10 questions that the community had earlier. One question
11 was what is going on with annexations with the City of
12 Marysville, and the second is what about the closure of
13 156th.

14 Q. Okay.

15 A. And there was some great concern about it.

16 Q. And this was a meeting again that was held on
17 June 19th?

18 A. Correct.

19 Q. According to the copy. Did you have an
20 opportunity to attend last night's --

21 A. I did not.

22 Q. -- church meeting?

23 A. No, I'm sorry, I missed that.

24 Q. That was a very interesting meeting.

25 MR. WALKLEY: If I could look at Exhibit 36,

00589

1 please, Your Honor.

2 JUDGE SCHAER: (Complies.)

3 MR. WALKLEY: Thank you.

4 BY MR. WALKLEY:

5 Q. But before we leave this, I just want to
6 clarify, because the engineer that we had on really was
7 not clear about whether you were thinking about, you
8 meaning the County in general, whether one of the
9 concepts might be to place additional east-west road
10 crossings across the Burlington Northern north of 172nd.
11 And I will hand you or just invite you to --

12 A. Yes, I know this.

13 Q. -- turn to concept A.

14 JUDGE SCHAER: What page?

15 Q. What about that, what can concept A of 35 --

16 JUDGE SCHAER: So letter A not concept 8?

17 MR. WALKLEY: That's concept A like A like in

18 alpha.

19 JUDGE SCHAER: Thank you.

20 BY MR. WALKLEY:

21 Q. What does that dashed line mean at the top
22 going east-west across what appears to be the railroad
23 track?

24 A. The dashed line is a conceptual street grid.

25 You can see there are a number of them there. The fact

00590

1 that it goes across 172nd or the rail line above 172nd
2 is probably an error that is put forth by the GIS
3 system. There was no way for her to break those, or
4 when she put it on the map, she did not break it. I did
5 this map. There was no indication from the public nor
6 from any of the planning that we were doing that we
7 would try and make a crossing at the railroad. We did
8 not intend that to be a crossing.

9 Q. If that's the case, then why in Exhibit
10 Number 36 is there a comment from the June 19th meeting,
11 if you will read that concept right there please.

12 A. Right.
13 Concept A shows a railroad crossing
14 north of 172nd. How does that work with
15 the BNR?
16 And the response that we gave back to them at
17 that meeting was that it was not meant to be a crossing
18 at 172nd.

19 Q. Are you saying that the County would have no
20 plans to build any further at grade crossings north of
21 172nd?

22 A. I can not speak to what the County would do.
23 I can tell you what our planning process is discussing.
24 We are not discussing any more at grade crossings. We
25 want to preserve the crossings that are there, because

00591

1 we need an east-west grid.

2 Q. Is it conceivable that some day a plan might
3 include an at grade crossing north of 172nd?

4 A. Was it conceivable people would drive planes
5 into the WTC? I don't know.

6 Q. I take that as a yes probably.

7 A. No, it is a no.

8 Q. It's not conceivable?

9 A. I can not tell you that in this planning
10 process that we would be conceiving or not conceiving in
11 the future, because I deal with 20 to 2012, and under my
12 planning process, we would not be conceiving any further
13 at grade crossings.

14 Q. North of 172nd?

15 A. Anywhere.

16 Q. Anywhere?

17 A. In the Lakewood area. We want to preserve
18 what's there.

19 Q. The reason I'm asking that is, as you can
20 probably understand, is we have been urged a couple of
21 times in testimony, meetings, and so on to consider
22 building in the north, that this would be free of any
23 grade crossing issues and so on. And then I think could
24 you -- can you understand that if we were sitting at
25 this meeting and saw, of June 19, and saw a concept that

00592

1 shows another crossing that that might concern us?

2 A. I can understand that you would be concerned
3 by that. That was not the intent of the map, and I
4 would like to correct that misconception.

5 Q. What was the intent then?

6 A. The intent of the map --

7 Q. To show that route?

8 A. -- was to show that within the planning
9 process that part of what we would be doing would be to
10 set up an arterial system. You can see on those maps
11 there are other dotted lines.

12 Q. Yes.

13 A. And those are certainly not placed there
14 because that was the specific road alignment, but rather
15 to show to the public that we would have to have a
16 system of arterials in order to make this plan work.

17 Q. If you have -- do you have on the desk here a
18 blowup of this concept A, alpha?

19 A. I do not. What I have here are blow ups of
20 what we're doing under the EIS. So we have gone one
21 generation further with these. You see that these are
22 called alternatives one, two, and three. Those were
23 called concept A.

24 Q. Okay.

25 A. And in none of these alternatives do we have

00593

1 a road across the top. I'm happy to leave these.

2 Q. On concept A though, the obsolete one of June
3 13th, 2001, it shows a dotted line on 172nd
4 parallelling, my understanding of the dotted line would
5 be that, what, that it's a conceptual frontage road?

6 A. That's correct, which is an urban design way
7 of allowing for access for businesses and residences
8 that would not go directly onto SR 531.

9 Q. Would it butt up against the railroad right
10 of way or something?

11 A. It would go parallel with the road itself,
12 172nd.

13 Q. And 172nd crosses the right of way, right?

14 A. Yes. I think on concept A as you're looking
15 at it, those dotted lines are only on the east side.

16 Q. I have one that's -- that's correct, on the
17 east side. There's nothing on the west side?

18 A. No, because what was planned on the west side
19 or suggested here is something that is much smaller and
20 would not need those frontage access requirements.

21 Q. Well, wasn't there some testimony earlier
22 that there's a concern about mobility east-west on the
23 west side of the railroad?

24 A. From our City engineer or County engineer?

25 Q. Yes.

00594

1 A. Correct me if I'm wrong, but I understand
2 that he was talking about the present day. We're
3 talking here about the future.

4 Q. Okay. But in the future, there's no concern
5 about that then, according to this map?

6 A. We had some ideas about how one could develop
7 this area on the west side of the railroad. If you see
8 on concept A, there is a sort of light blue color and
9 it's called mixed use. There's also a grid pattern
10 there. And the thought was that we would make that into
11 a small neighborhood area that would have access for the
12 buildings from that interior grid, not from 172nd.

13 Q. But I'm having a little trouble understanding
14 even from this concept why 156th is important. Because
15 as I read the map, it shows it only on the east side of
16 the railroad. There is no west side of the railroad
17 connecting it on the concept map.

18 A. That's true, that's because this part, which
19 is for the future, is not part of our planning process.

20 Q. So your plan doesn't contemplate 156th
21 crossing the railroad?

22 A. It contemplates that this area stay as it is,
23 which is crossing the railroad. And part of what we
24 have to do for our environmental impact statement is to
25 model what the entire area generates for traffic. And

00595

1 then we have to talk about what roads we would put in
2 where. We're predicating our concept on this being kept
3 open, and we are modeling all of these trips.

4 Q. What briefly is the difference between
5 concept A and concept B?

6 A. Concept A --

7 Q. In this Exhibit 35-B.

8 A. Let me take this apart so we can look at
9 them. Concept A has more multifamily than concept B.
10 Concept A has more single family than Concept B.
11 Concept B has probably a bit more industrial, quite a
12 bit more industrial development than A. A is a more
13 residential approach.

14 Q. But you have heard testimony if you heard
15 your engineers and I think others have talked about the
16 problem they're having with what they call circulation.

17 A. Yes.

18 Q. In the so-called triangle.

19 A. Mm-hm.

20 Q. How does any of the conceptual roads or
21 whatever here address that circulation?

22 A. It doesn't at this point, but we will when we
23 come to the final concept. What we're doing is an EIS
24 that will look at what circulation is needed.

25 Q. Okay.

00596

1 A. So this was just a step before that
2 circulation map.

3 Q. So as you sit here today, there really is no
4 County circulation plan that --

5 A. We're in the process of putting it together
6 as we speak.

7 MR. WALKLEY: Okay, thank you very much.

8 THE WITNESS: You're welcome.

9 MR. WALKLEY: That's all I have.

10 JUDGE SCHAER: Mr. Stier, did you have
11 questions of this witness?

12 MR. STIER: Yes, I have a few.

13 JUDGE SCHAER: Go ahead, please.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. STIER:

17 Q. Were you here yesterday, ma'am?

18 A. I wasn't.

19 Q. Okay. So it appears to me and I just need
20 you to orient me a little bit on this, you have been
21 talking about three different things here, three
22 different areas geographically, focusing on them. One
23 area is down by 156th, which I think you called the
24 urban reserve area?

25 A. That's directly south of 156th.

00597

1 Q. Okay. And north of 156th is the urban growth
2 area?
3 A. Correct.
4 Q. And urban reserve area is what it says, it's
5 pretty low on the development scale for the next, well,
6 it's being held out for the next 50 years or whenever
7 you need it?
8 A. Probably next 20 by this time.
9 Q. Okay.
10 A. Remember this was a 1995 plan.
11 Q. Okay. And then the urban growth area, which
12 is from north of 156th?
13 A. Yes.
14 Q. To where?
15 A. North of 172nd. This is 172nd.
16 Q. Would that include that road area that
17 Mr. Walkley has been asking you about up there that --
18 A. Yes, yes, it would, yes.
19 Q. Okay. So that's the urban growth area, and
20 the significance of that is -- it's frozen now though,
21 right, as I recall you testifying?
22 A. Yes, but the significance is that it is
23 designated for urban growth at 8 to 10 dwelling units
24 per acre and 15 to 20 employees per acre, a mixed use.
25 Q. Now why up north of 172nd, I guess you're --

00598

1 you have -- what I have understood from this discussion
2 with Mr. Walkley is that there's no rail crossing
3 contemplated up there?

4 A. No, we did not contemplate it.

5 Q. Okay. So why is it so essential, why is it
6 not essential to have east-west corridors up north but
7 it's so essential to have east-west corridors down south
8 of 172nd?

9 A. If you look at the map, you can see the
10 reason. This area is Marysville, I-5. Right here is
11 called Cedar Village. What we have presently with the
12 tribes is a movement into this area for more urban
13 development. We have this area in particular under
14 request for urban development. This is the directly
15 adjacent urban reserve area. There's 156th. What we
16 have is urban uses moving north. So in order to provide
17 some sort of framework, some sort of grid system, some
18 sort of arterial system that would work, we look at
19 156th as being more important.

20 Q. So --

21 A. This area is much less developed and much
22 less under consideration for urban development.

23 Q. That's the green area, but I'm talking about
24 the white area north of -- it looks white to me, but I
25 think it's pink.

00599

1 A. Yes, it's pink.
2 Q. North of 172nd?
3 A. Yes. This area?
4 Q. Yeah.
5 A. Uh-huh.
6 Q. Now that's you would probably -- you say
7 growth is moving up north, so you would classify that as
8 potential for growth as that area just north of 156th,
9 correct, because it's all within the pink?
10 A. I don't understand your question.
11 Q. Okay. You say the growth is moving north?
12 A. Yes, from the Tulalips.
13 Q. And it's going to hit 156th before it hits
14 172nd --
15 A. Correct.
16 Q. -- I think is the implication.
17 A. Out here in this area.
18 Q. Oh, out in the green?
19 A. Yes. This area is immediately available or
20 will be immediately available as soon as this plan is
21 developed.
22 Q. So what does the fact -- my question I -- you
23 talked about the growth moving north as somehow relevant
24 to the need for cross east-west corridors north and
25 south of 172nd. That was the context of my question.

00600

1 And then you, as I recall, started talking about the
2 growth moving north, and I'm not understanding how that
3 impacts that area and why the north doesn't require,
4 north of 172nd within the pink apparently doesn't
5 require east-west corridors, but the testimony I have
6 heard today is south does?

7 A. It may in the future. But for the present
8 time, the trends that we're seeing are that it's moving
9 from Tulalip north quicker than it's coming from this
10 area. We have very few development requests for this
11 area, very few. So mostly things are moving this way.

12 Q. Okay, all right. So you also within your
13 planning decision making, you look at -- let's talk
14 about the triangle. You know what that is, right?

15 A. Mm-hm.

16 Q. Which would I assume be in that south of
17 176th pink area?

18 A. Yes.

19 Q. And I assume in your considerations you
20 project out the kind of growth that would occur there?

21 A. Yes, we do.

22 Q. Have you ever expressed an opinion as to
23 whether the growth there will be -- will have commercial
24 elements?

25 A. Absolutely. On this particular map and in

00601

1 our plan, our comprehensive plan, it suggests that it
2 have a mixed use development. Mixed use means
3 commercial, employment or industrial, and residential.
4 All three of these concepts have a mix of uses in them.

5 Q. Do you think that the proximity to the
6 railroad and potentially the railroad siding in that
7 area would be beneficial to the commercial development
8 in that area?

9 A. It depends on whether or not the railroad
10 allows access to the rail from those properties.

11 Q. If they did, would it be significant to
12 commercial development in the area?

13 A. It could.

14 Q. So what -- in your planning considerations,
15 since I guess the way I understand what you're saying is
16 it's more foreseeable that there's or more imminent that
17 there's growth south of 172nd than growth north of
18 172nd.

19 A. Yes, that's right.

20 Q. So in the planning then, what is the
21 east-west you heard -- excuse me, strike the question.

22 You heard Mr. Thomsen say that you needed
23 more than a -- more than two east-west corridors to
24 handle that. Do you agree with that statement, south of
25 172nd?

00602

1 A. Was Mr. Thomsen referring to the future or
2 the present?

3 Q. He's talking about the anticipated growth in
4 the triangle.

5 A. It's possible we could need more.

6 Q. So how does your planning address that?

7 A. As I told your other counsel, we're in the
8 process of deciding what we're going to do for roads.
9 We're doing our environmental impact statement. That
10 will project what we have here for population and for
11 employment and then what kind of traffic rates that will
12 generate and then what kind of roads we will have to
13 have to make the whole system work.

14 Q. So you're saying you haven't gotten there in
15 your process?

16 A. Not quite, right. We should be there by the
17 end of this year.

18 Q. Do you have any preliminary findings with
19 regards to the roads in that area south of 172nd?

20 A. No, we don't have any preliminary findings
21 with regard to the roads, but we are starting to compile
22 the number of acres for each of those suggested land
23 uses.

24 Q. So just based on your experience and your --
25 the anticipated growth in the area of the triangle, what

00603

1 kind of east-west access do you think would normally be
2 required for that area of space?

3 A. There are several considerations for that,
4 one of which is whichever land use comes out will have
5 different requirements for east-west access. If we are
6 talking about freight and goods mobility, that's one,
7 another type of east-west access. That one I would
8 expect the access would go towards I-5. We would need
9 more roads going that way. If we have higher
10 residential, we're probably going to need another
11 crossed, some sort of east-west crossing.

12 Q. Besides 156th?

13 A. Mm-hm.

14 Q. Okay. Now do you consider the adequacy of
15 existing infrastructure in your planning?

16 A. Yes, of course we do.

17 Q. Okay. And so I assume you're considering the
18 adequacy of 156th as a functional east-west corridor for
19 the developed area?

20 A. No, if I understand your question correctly,
21 are you asking me if we would consider 156th to be the
22 road alignment and road capability for our projected
23 land use?

24 Q. I'm asking -- well, that could be a good
25 place to start, but I'll say not the, a, a road

00604

1 alignment.

2 A. A road alignment. We are, yes, we are in our
3 EIS assuming that 156th is open.

4 Q. Okay. But your EIS doesn't make any other
5 assumptions regarding east-west, except for, of course,
6 172nd?

7 A. Generally the process for an EIS is to take
8 what's available and to see how it would be impacted and
9 then to suggest mitigation, and the mitigation could be
10 any number of forms.

11 Q. Okay. So now if it is being considered as an
12 access to a future developed buildout area in the
13 triangle, does your role consider the adequacy of that
14 access point from a safety and a capacity viewpoint?

15 A. Will you explain to me what you mean by
16 buildout?

17 Q. Buildout means developed. You're looking
18 ahead to a situation of development in the triangle,
19 correct?

20 A. Yes.

21 Q. Okay. That's I guess probably my improper
22 characterization. You know, I would call that buildout.

23 A. Buildout to me means two things.

24 Q. Okay.

25 A. And it bears on the answer to your question,

00605

1 which is why I was asking. Buildout, ultimate buildout
2 is what the land is capable of doing when it is
3 completely and totally developed by the market. What we
4 are doing here is looking at a development scenario to
5 2012, which is not going to be the ultimate land
6 capability, because the market will not be there.

7 Q. So it's there's gradients of development?

8 A. Yes.

9 Q. Okay.

10 A. Phasing, if you will.

11 Q. Phasing, okay.

12 A. Yes.

13 Q. So have you considered the adequacy of the
14 infrastructure of 156th from a safety and a functional
15 viewpoint for any of the phases?

16 A. We will in our EIS by the end of this year.

17 Q. Haven't done it yet though?

18 A. No, we're under -- doing it right now.

19 Q. So do you have any kind of general
20 consideration or policy or concept of or desire I guess,
21 any of those alternatives, toward at grade rail
22 crossings for access and circulation as opposed to other
23 alternatives; do you like them?

24 A. I'm surprised that my opinion matters.

25 Q. Well, you shouldn't be.

00606

1 A. When we had our first meeting with the
2 railroad and WSDOT and the County, I expressed my very
3 firm desire to make sure that whatever crossings that we
4 had on the railroad were safe and adequate for the
5 future. And I suggested that we look at elevated
6 crossings and that we work together on that. There was
7 a very loud resounding no from the section that had to
8 do with the railroad. They were not willing to look at
9 that at that time. They were not willing to consider
10 it. I put it forth as a possible option for the closure
11 of 156th.

12 Q. So you're telling me then that you have an
13 expectation that the railroad should pay for an overpass
14 to facilitate development in the City of Marysville?

15 A. No, I didn't say that.

16 Q. Okay, well, it sounds like you said that.

17 A. No. What I said to the railroad was that we
18 would work cooperatively to see how this could be done.
19 We had federal people there too.

20 Q. So if you work cooperatively to do that, can
21 you just kind of describe how that happens?

22 A. I would have to defer to our public works
23 department to do that.

24 Q. So implementation of financing infrastructure
25 is not something that you are involved in?

00607

1 A. No.

2 Q. Are you -- do you have any education or
3 association with that even though it's not formally
4 within your duty designation?

5 A. I have worked on it before with other
6 jurisdictions.

7 Q. How is it usually handled from a local
8 jurisdiction point of view?

9 A. The only one that I have worked with has been
10 the Port of Edmonds and the City of Edmonds, and I
11 worked with the Port on getting options for other access
12 across the rail for their particular site for public
13 safety reasons. And at that time that I worked with
14 them, the discussions that we had with the railroad
15 ranged everywhere from breaking the trains to working
16 with the City to get another -- another aid car that
17 would be based on the -- I'm not much help on this.

18 Q. Okay. Well, you are -- are you familiar with
19 the application of impact fees to mitigate?

20 A. Yes.

21 Q. And financed infrastructure improvements?

22 A. Yes, I am.

23 Q. And is it your understanding that the purpose
24 of that is to have development pay for infrastructure
25 associated with that development?

00608

1 A. Yes. However, there is one key portion to
2 that discussion, and that is that we can not as a
3 jurisdiction require a developer to pay for an existing
4 substandard situation under our level of service. We
5 have to ask them to pay only for the impacts that they
6 are causing.

7 Q. Okay. Or a proportion, the proportion of the
8 impacts that they are causing?

9 A. Mm-hm.

10 Q. And if that is an overpass, then they would
11 have to pay for a portion of the overpass; would that be
12 correct?

13 A. I'm going to defer again to our public works
14 department. They do that sort of thing.

15 Q. So you have no understanding at all that
16 mitigation or impact fees could be applied to
17 infrastructure such as an overpass; that's an alien
18 concept to you?

19 A. Absolutely not.

20 MR. CUMMINGS: Your Honor, I object to this
21 badgering of her. She answered it as truthfully as she
22 could answer it.

23 MR. STIER: I didn't say she wasn't being
24 truthful. She said she didn't have an opinion on it.

25 MR. CUMMINGS: I'm sorry, the alien concept.

00609

1 MR. STIER: Well, she didn't have an opinion
2 on it.

3 JUDGE SCHAER: Mr. Cummings, I heard this
4 witness say that she wanted to defer the answer to
5 public works. I did not hear her say that she had no
6 personal knowledge. If she has personal knowledge, I
7 would like her to expound on it. So I'm going to allow
8 the question to stand. I would like to find out what
9 she knows, if anything.

10 THE WITNESS: Would you ask the question
11 again, please, I'm sorry.

12 MR. STIER: Could you read it again.

13 JUDGE SCHAER: Maybe you should restate it to
14 take out the alien.

15 MR. STIER: All right, would you strike alien
16 and say, I don't know, whatever you want to use. Strike
17 out alien.

18 JUDGE SCHAER: Go ahead, ask another
19 question.

20 MR. STIER: Okay, I will restate it if I can.
21 It wasn't intended -- that was basically -- I meant
22 that, I mean it's something that she didn't have -- did
23 she have any knowledge of it, or is it something
24 completely outside her realm of knowledge, that's my --

25 JUDGE SCHAER: Why don't you ask her if she

00610

1 has any knowledge on how --

2 THE WITNESS: Yes, I do.

3 BY MR. STIER:

4 Q. Good, and what is it?

5 A. My knowledge is, as a current planner, I have
6 worked with development proposals in which I put
7 together an environmental impact statement that said
8 this is what would be needed, and this is the amount of
9 money that would be required to meet the development's
10 impacts. It was under a different jurisdiction, so I
11 have not worked with I think it's 26-B, which is our
12 particular title for it in Snohomish County, so I'm not
13 familiar with that. I am familiar with how it worked in
14 the City of Renton.

15 Q. And in that situation, the development paid
16 for its proportionate share of infrastructure, necessary
17 infrastructure improvements, correct?

18 A. Its proportionate share of infrastructure
19 improvements, yes, I think so.

20 Q. So you're familiar with the transportation
21 planning policies for the GMA?

22 A. Yes.

23 Q. And do you have the GMA with you there?

24 A. I do. I have the -- our policy plan, not the
25 state law.

00611

1 Q. Okay, well, I'm talking about the Snohomish
2 County.

3 A. Okay.

4 JUDGE SCHAER: Is this an exhibit in the
5 case?

6 MR. STIER: This is Exhibit is it 8. I just
7 misplaced my list. Yes.

8 JUDGE SCHAER: Okay, I would like you then to
9 let us know what page you're on also so I can follow
10 along.

11 MR. STIER: This is the TR section.
12 Unfortunately --

13 JUDGE SCHAER: Exhibit 8 looks like this.

14 MR. STIER: Yeah.

15 JUDGE SCHAER: About this thick.

16 MR. STIER: And TR, I mean it's not -- this
17 thing isn't numbered. I apologize.

18 JUDGE SCHAER: Okay.

19 MR. STIER: I apologize for Snohomish County.

20 JUDGE SCHAER: Why don't you just try to help
21 get me there, or maybe you can help get me to the TR
22 section.

23 THE WITNESS: Yes, it's about --

24 JUDGE SCHAER: I'm in it, okay. What page is
25 it now in the TR section?

00612

1 THE WITNESS: Depending on what he's after.
2 MR. STIER: Yeah, the policies and the goals.
3 THE WITNESS: It starts --
4 JUDGE SCHAER: The TR pages are numbered,
5 Mr. Stier, so you're going to have to help me.
6 BY MR. STIER:
7 Q. I'm just going to ask you about a couple of
8 these, and I'm going to ask how you deal with -- how
9 your plans are dealing with these issues and how should
10 they deal with these issues in relation to the 156th
11 Street crossing, and I will be more specific as I get
12 some of these. I'm just going to hit a few of them.
13 Let's look at Policy 9.B.4, and I don't know
14 if this is exactly true:
15 At grade crossing of freight rail lines
16 by roadway vehicle traffic shall be
17 minimized as much as practicable.
18 Do you plan dealing with that policy?
19 A. Yes, but I should answer that this policy
20 must be taken into consideration with the rest of these
21 policies. If you take a look at TR-1 and move to TR-9,
22 you will see that the policies go from a general to a
23 specific level. There are many, many other policies
24 prior to TR-9.B.4 that have to do with how to make
25 circulation systems, and all of them have to be weighed

00613

1 and balanced.

2 Q. So there is a policy, you're saying this is
3 not an exclusive requirement?

4 A. Exactly.

5 Q. Is what you're saying to me?

6 A. It says as much as possible.

7 Q. Okay.

8 A. Or practicable.

9 Q. So you balance this against other policies?

10 A. Yes.

11 Q. Have you balanced this policy with regard to
12 156th?

13 A. I would say that I could tell you that by
14 January of this year, but because we're still in the
15 process of doing that.

16 Q. Should it be balanced; is this an element
17 that should be considered?

18 A. Yes.

19 Q. Okay. Will the -- do you believe from the
20 testimony you have heard, you weren't here yesterday,
21 that's why I asked you, so I don't know how acquainted
22 you are with the benefits of the south siding or the
23 siding extension whether it's north or south; are you
24 familiar with those benefits?

25 A. I looked at those early on in this process.

00614

1 I don't know what was testified yesterday.

2 Q. Do you believe that they are beneficial to
3 development in the area?

4 A. The sidings?

5 Q. The siding extensions.

6 A. Again, it depends solely on whether or not
7 those rail lines are available to the land uses next to
8 them whether or not they're beneficial.

9 Q. Well, if the site, let's take this, if the
10 extension of the siding will reduce blockages on 172nd
11 by trains, do you think that's beneficial to growth in
12 the area?

13 A. Not if it's at the, how do you say it, at the
14 problem of 156th.

15 Q. At the expense of?

16 A. Expense of, thank you.

17 Q. Okay.

18 JUDGE SCHAER: But if all other things are
19 equal, would that be a good or a bad thing?

20 THE WITNESS: All other things are not equal.

21 We need --

22 JUDGE SCHAER: So you can't answer that
23 hypothetical?

24 THE WITNESS: No, we need 156th or another
25 east-west crossing to preserve our grid capabilities.

00615

1 BY MR. STIER:

2 Q. For the future?

3 A. Yes.

4 Q. Do you need it for the present?

5 A. I defer that to our public works department.

6 Q. So you don't have -- you aren't testifying
7 regarding the needs of that for the present?

8 A. No, I'm not.

9 Q. And you are testifying that you need an
10 east-west corridor other than 172nd?

11 A. Yes.

12 Q. For the anticipated development?

13 A. Yes, in that lower triangle part.

14 Q. Whether or not it's 156th?

15 A. I have not had any great success at getting
16 the railroad to put in new at grade or over crossings in
17 any of the other projects I have ever worked with.

18 Q. And the railroad has equal power on that
19 issue?

20 A. I'm not qualified to answer that. They have
21 in the projects I have worked on.

22 Q. Have you considered policy 10.D.4?

23 A. 10.D.4?

24 Q. That's what I have.

25 A. Land use types and densities shall be

00616

1 established along rail corridors that support freight
2 and passenger road transport, yes.

3 Q. And how have you considered that?

4 A. By looking at on the map where possible
5 placement of industrial uses might be put and the fact
6 that there are noise and safety considerations along
7 rail corridors for other uses such as residential, and
8 therefore these uses would be more compatible along a
9 rail corridor than a strictly residential approach would
10 be.

11 Q. So essentially you're addressing that issue
12 by placement of less noise sensitive elements like
13 commercial nearer to the railroad?

14 A. Yes.

15 Q. Okay. Are you doing anything that
16 affirmatively supports what the freight and passenger
17 system requires?

18 A. Yes, we talked at length about that when we
19 were putting this plan together. Part of what we wanted
20 to do was to make sure that this area had continued rail
21 capacity, which is why, you know, the discussion earlier
22 with Mr. Thomsen that the County does not oppose this as
23 a concept is we definitely agree with that.

24 Q. The County doesn't oppose what?

25 A. Oppose the idea of putting in sidings as a

00617

1 concept.

2 Q. Just doesn't think the siding should go where
3 it interferes with 156th?

4 A. It's a question if we can balance this out
5 and make it work for all of us.

6 Q. So how do we do that? Do you have a
7 suggestion?

8 A. I had several, but I haven't been in on the
9 latest discussions, so I may be way behind. But I did
10 look north. I looked north of this line here to see if
11 there were other capable areas in which the rail siding
12 could be put in. And my understanding was that there
13 were environmental considerations up there, ESA streams,
14 which looked to me to be the same sort of considerations
15 that we have here, as we have an ESA stream here. We
16 have environmental considerations in this same area.
17 This area up here does not have any other roads that
18 cross east-west for quite a distance, so it looked to me
19 like it might be possible to make it occur up north.

20 Q. Have you -- you state that there is an
21 equivalent stream to the south as there is to the north.

22 A. Right along the railroad tracks.

23 Q. What's the source of your information?

24 A. We have critical area maps, and I have looked
25 at those, and I have been out there.

00618

1 Q. And have you evaluated the functional or the
2 cost aspects of going each way?

3 A. No, that's not been my job. I understand
4 that's a consideration that the rail and other folks
5 must think about.

6 Q. If the testimony before this body today
7 indicates that if you go north, you will have a
8 significantly higher rate or amount of delay to traffic
9 due to blockages by going north as opposed to south,
10 would that be relevant to your considerations?

11 A. I certainly would like to see that data.

12 Q. I'm asking you to just assume that's correct,
13 would that be relevant?

14 A. It would be relevant, of course.

15 Q. And why?

16 A. Why?

17 Q. Mm-hm.

18 A. Because part of what I'm supposed to do as a
19 planner is to assure that land use and transportation
20 work together.

21 Q. And would that affect your decision as to the
22 alternative of going north if it has considerably or
23 substantially more blockage time as opposed to going
24 south, would that affect your decision?

25 A. There's a question of blockage and there's a

00619

1 question of circulation, and I would be very interested
2 to know if the blockage that you're speaking of up north
3 has to do with rural levels of traffic. If it does, my
4 consideration would be to put it there rather than in
5 the urban area.

6 Q. I don't understand what you mean by rural
7 levels.

8 A. This area up here is all rural, and if you're
9 speaking of blockages on roads up here, these are
10 rural --

11 Q. I'm talking about 172nd.

12 A. Oh, 172nd?

13 Q. Yes.

14 A. I'm sorry.

15 Q. I'm sorry, I was unclear I guess.

16 A. Then I think we have a bigger problem than
17 any of us have really talked about here, and I think we
18 ought to talk some more about that.

19 Q. So you feel that would be very relevant to
20 your planning decisions?

21 A. I'm not going to back off of my grid
22 requirement, if that's what you're asking me to do.

23 Q. I'm not asking -- I don't know what that
24 means, so I don't know if I'm asking you to do that or
25 not.

00620

1 A. My grid requirement is that I have an
2 east-west grid, at least two of them.

3 Q. An east-west grid?

4 A. Here and here.

5 Q. Okay. So you want -- you think that you need
6 at least two east-west corridors?

7 A. Yes.

8 Q. And you heard Mr. Thomsen suggest that you
9 might need more?

10 A. Yes, indeed.

11 Q. Do you think you might need more?

12 A. That's highly possible.

13 MR. STIER: I have no further questions.

14 JUDGE SCHAER: Did you have any questions,

15 Mr. Thompson?

16 MR. THOMPSON: No questions.

17 JUDGE SCHAER: Okay, I have a few questions.

18

19 E X A M I N A T I O N

20 BY JUDGE SCHAER:

21 Q. I'm looking at Exhibit 35 to start with, and
22 particularly my first question is about page 10 of
23 Exhibit 35-B.

24 A. Right.

25 Q. This appears to be a form letter to the

00621

1 Commission about this particular proceeding.

2 A. Right.

3 Q. And I note that in this letter on the page
4 before this, it indicates that there is going to be a
5 public hearing on July 12th and 13th.

6 A. Yes.

7 Q. And did you have an opportunity to let this
8 group know that those dates had changed?

9 A. Yes, we did.

10 Q. Okay.

11 A. We did.

12 Q. So were they informed of this hearing and of
13 the public hearing last night?

14 A. I don't know. We did not inform them.

15 Q. Okay. So you had told them about these
16 hearings, but you didn't have an opportunity to update
17 that information?

18 A. That's correct. I don't know if public works
19 did or not. We gave them a mailing list of folks that
20 were interested.

21 Q. So you provided a mailing list to public
22 works that they could have used to reach the people who
23 have had contact with you on this issue?

24 A. Yes.

25 Q. Thank you.

00622

1 Looking at the second page, I noticed that
2 you have shown in this form letter a copy to you of any
3 letters.

4 A. Yes.

5 Q. And I'm curious to know whether you have
6 received any such copies.

7 A. Yes, I did, I received four of them.

8 Q. Okay. Would you be willing to provide copies
9 of those to the Commission?

10 A. Absolutely.

11 Q. So that I may double check, and if we don't
12 have them, we can see what those public concerns were.

13 A. Yes.

14 JUDGE SCHAER: I had planned to include those
15 as part of Exhibit 64, and as we have discussed before,
16 copies will be provided. If any of these raise new
17 concerns, you can contact me after you receive that
18 exhibit.

19 BY JUDGE SCHAER:

20 Q. You answered more than once that you would
21 not propose any new grade crossings, but you didn't say
22 anything about proposing new not at grade crossings, and
23 I would like to hear a little bit of your thoughts about
24 that. Is that something that you could see that you
25 might propose if there was a need for more east-west

00623

1 corridor roads?

2 A. Elevated crossings are my -- the one I would
3 really prefer. I understand that the railroad -- that
4 they're very expensive. And, you know, in an attempt to
5 be realistic and to work with the railroad, I haven't,
6 you know, tried to push that as a concept. I did ask
7 about it early on in the meeting and, you know, received
8 a resounding no on that.

9 Q. But looking to the future as we -- we have
10 had discussion in these hearings about what's required
11 today and what may be required in the future. And
12 looking to the future, if it turned out that you needed
13 more east-west corridors, would that be something that
14 you would be interested in pursuing?

15 A. Yes, very much.

16 Q. And then as a hypothetical question, if 156th
17 were closed by this hearing and in the future there was
18 a need for an additional east-west corridor, is that
19 something that you might explore at that location as
20 well, to have a not at grade crossing put in?

21 A. Yes.

22 Q. Okay. Now you indicated that you have an EIS
23 looking at some different options, and it appears to me
24 that you would be aware from your knowledge of this
25 proceeding that there might be a closure at 156th. Have

00624

1 you examined that option or what you would do if that
2 happened as part of your EIS planning?

3 A. We have put it in as a variable.

4 Q. Okay. And then have you talked about how you
5 would mitigate the effects of that or how you would work
6 with what you're looking at, how that would affect the
7 three different concepts that you have?

8 A. We will have to do that.

9 Q. So that will be part of your --

10 A. I imagine it will come out as a significant
11 adverse impact.

12 Q. So then you would be looking in your -- when
13 you evaluate -- let me back up.

14 You show three different concepts.

15 A. Yes.

16 Q. At the back of Exhibit 35-B. And glancing at
17 these fairly quickly, it looked to me like the first one
18 might have more residential.

19 A. That's correct.

20 Q. The second one might have more commercial or
21 business park usage and maybe other kinds of commercial
22 usage and less residential?

23 A. Yes.

24 Q. And then the third might have a fair amount
25 of industrial usage?

00625

1 A. That's correct.

2 Q. And even less residential?

3 A. Yes.

4 Q. Would your recommendation on which of the
5 three concepts to go forward with be affected by whether
6 or not 156th crossing remained open?

7 A. Yes, but then that puts transportation as the
8 limiting factor on land use, which is exactly the
9 opposite of what the growth management says we should
10 do.

11 Q. Well, that's the other thing I wanted to ask
12 you about, because I'm not sure I understand that. The
13 notes that I took down say that you said the land should
14 decide what the use should be, and then you plan
15 transportation facilities or they are to be designed to
16 support the land.

17 A. Right.

18 Q. Is that correct?

19 A. Yes.

20 Q. So the land is what it is, and it's sitting
21 there.

22 A. That's right.

23 Q. And if there is not -- there are not adequate
24 corridors to serve the land, then part of your planning
25 would be to design those corridors; is that correct?

00626

1 A. Yes.

2 Q. And as we have just talked about in the
3 hypothetical situation, if 156th Street were closed,
4 then that would be a fact, and then you would have to
5 design transportation to support the land given that
6 fact in the hypothetical; is that correct?

7 A. We would lose that option of using 156th as
8 an east-west route. If we were then to try and make up
9 for that loss, we would have to come up with another
10 east-west crossing, totally different land uses, you
11 know, a grid system within that would be more arterials
12 than, you know, we think might be required now. It
13 would be very difficult to do, very difficult, because
14 it is land locked.

15 Q. But the land would still be the land?

16 A. The land would still be the land.

17 Q. And you would then still need to design
18 whatever transportation you needed to support that land.
19 Am I understanding those concepts correctly?

20 A. I can see where you're going.

21 Q. I'm not sure where I'm going, other than to
22 try to understand what we're talking about.

23 A. Right. When you have a green fields area
24 like this is, which is a relatively undeveloped area,
25 and you're trying to work it into an urban use, then

00627

1 what you have to do is to make sure that there are roads
2 and sewers and storm sewers that are available for that.
3 I can see no other way to make this land available for
4 any urban use unless we have at least two east-west
5 capabilities, crossings.

6 Q. Now are you --

7 A. So that would -- and I guess what I'm hearing
8 you say is if I -- if I were to lose that one 156th
9 crossing, my guess is that we might have to return some
10 of that land to rural uses. That's an entirely --
11 that's a comp plan amendment. That takes away the
12 development expectations of the people who have been put
13 into that UGA. It moves population forecasts out of
14 Marysville into somewhere else. It upsets the apple
15 cart pretty severely.

16 Q. Okay. Now when you have been doing your
17 planning, have you been also watching the kinds of
18 planning that the state legislature has instructed DOT
19 and the railroad to do on the high speed corridor?

20 A. We have been trying, yes.

21 Q. So is it your understanding that currently
22 the railroad is working to try to get the main line
23 corridor which goes through here to a top speed of 110
24 miles per hour?

25 A. Yes, I was aware of that.

00628

1 Q. And are you aware that under the legislation,
2 the longer term goal is to get an average speed up the
3 corridor of 150 miles an hour?

4 A. I didn't know it went up to 150.

5 Q. And I think that's still the case. I don't
6 know if that statute has been amended or not. But was
7 that part of your thinking when you were thinking about
8 in the long term whether you were going to have grade
9 crossings into this area?

10 A. Yes, yes, it was. As a matter of fact, we
11 looked at this little area right here, English. We have
12 a north corridor rail study that talks about this as a
13 possible, if we were to have a commuter rail, a possible
14 way for folks to commute by coming in here and catching
15 the train. So we knew that, you know, there were
16 possibilities for additional types of rail uses,
17 additional speeds, and so on.

18 We also looked at what would happen just in
19 our heads, what sort of land loss we would have here at
20 172nd if we were to put in an elevated crossing, how
21 much of the existing zoning that's now commercial or
22 area that is now commercial would be lost because of the
23 grades that you have to have to get up and down, and we
24 looked to see whether or not we could even maintain
25 this, which is right now a viable little commercial

00629

1 community, as a community.

2 Q. And what did you look at around 156th?

3 A. 156th, it's less of an issue, because there
4 isn't anything there that could be lost in terms of
5 development potential. It would be only a gain. So if
6 there were an above crossing, above grade crossing, it
7 wouldn't be as severe a loss to those property owners,
8 so we didn't look at it as closely.

9 Q. So did you think --

10 A. Am I being clear?

11 Q. Well, I'm just -- I'm not sure -- I'm trying
12 to do a reality check on one of my own senses, which is
13 that if I were doing long-term planning along the main
14 line of a high speed rail corridor, I wouldn't be
15 planning on having grade crossings in the next 10, 20,
16 50 years, and so I'm interested in the fact that you are
17 doing your planning through that window relying on the
18 concept of a grade crossing at 156th, and I'm trying to
19 just explore with you, because you're the expert and I'm
20 not.

21 A. No, I --

22 Q. How that fits into your job and the kinds of
23 things you do.

24 A. I just -- I asked -- I wondered if I was
25 being clear on my answers. You are absolutely right, it

00630

1 is my preference to have above grade crossings. That's
2 the first thing that I asked at the first meeting that I
3 went to, would these folks consider it. And there was
4 such a loud chorus of no's from that side of the table,
5 I thought, you know, well, I guess we have to be
6 thinking some other way.

7 Q. And I guess I'm saying, okay, maybe the
8 people there today said no, but what are we thinking 10,
9 20, 30 years down the road. Are you expecting grade
10 crossings to continue to exist, or are you expecting
11 some other solution?

12 A. Some other solution is going to have to be
13 found.

14 Q. So if that's true and you're going to need
15 land for that and other things for that, isn't it a
16 smart thing to kind of plan for that before you develop
17 the area?

18 A. Absolutely smart to.

19 Q. So are you doing any of that around 156th?

20 A. We are certainly around 172nd and 156th, we
21 have been looking at it.

22 Q. Okay. And then I had one more question that,
23 excuse me for sort of wondering around during part of
24 your testimony, but I was looking for my notes from the
25 public hearing last night. There was a woman who

00631

1 testified named Becky Foster, and indicated that she is
2 a planning commissioner in Marysville.

3 A. Mm-hm.

4 Q. Are you familiar with Ms. Foster?

5 A. I am.

6 Q. Okay. Another thing that she indicated was
7 that Marysville in its planning process has been looking
8 at another alternative access across the freeway, and
9 they're looking at perhaps doing that at 152nd.

10 A. Yes.

11 Q. Is that something you also have been looking
12 at with them?

13 A. Yes, but their access, as far as I understand
14 it, is an access onto the freeway, and I don't know how
15 far they have gone to actually talking about crossing
16 the rails.

17 Q. Okay. But it would -- from what my notes
18 say, it wouldn't just be access onto the freeway, but
19 also there would be an overpass across the freeway.

20 A. Uh-huh.

21 Q. Is that also your understanding?

22 A. Mm-hm.

23 Q. And then you've already gotten to the second
24 part of my question, if you're planning to build a
25 corridor with an overpass over the freeway, would you

00632

1 also be looking at an overpass over the railroad, or
2 would you be stopping at the road?

3 A. The only efficient thing to do and long range
4 thing to do is to make it into a crossing for both.
5 Money is always the object, I guess, in all of those
6 ideas.

7 Q. Okay. Let me just double check here. I
8 found your testimony very interesting.

9 My last question, you mentioned that
10 Mr. Stier asked you if you had thought about other
11 alternatives to the south side crossing that the
12 railroad is seeking in this, and you said that you had
13 several ideas for other options, and then you told him
14 one of them, which was going north. I would just like
15 to know what the others are.

16 A. Well, the other options I don't think meet
17 with the railroad's objectives. I thought that perhaps
18 the siding could be shorter. I didn't know if it needed
19 to be as long. And I remember at one meeting Burlington
20 Northern asking the folks there, you know, what the need
21 was for the extreme length of that particular one, and
22 the answer that I remember getting back was that future
23 trains are probably going to be much longer.

24 Q. Okay.

25 A. But, you know, I still have a question about

00633

1 whether the length of the siding is really necessary to
2 double cross over onto 156th or if it can be between
3 156th north to 172nd and not cross either of those major
4 roadways.

5 I talked about directly north. I also
6 wondered if there weren't capabilities around Sedro
7 Woolley, in that area in Skagit County, but.

8 Q. Okay, I just --

9 A. You know, I don't want to -- really, I'm not
10 a rail planner, and I don't know what their real
11 objectives are.

12 JUDGE SCHAER: All right, well, those are all
13 the questions I have.

14 Is there any redirect, Mr. Cummings?

15 MR. CUMMINGS: No redirect.

16 JUDGE SCHAER: Anything further?

17 Thank you for your testimony.

18 MR. STIER: I do have a document that I would
19 like to stand on itself. I could do it at the close of
20 the County's case. I'm just a little worried that
21 someone might object to the document, and then I would
22 have to ask for some questions.

23 JUDGE SCHAER: Well, why don't you show the
24 document to Mr. Cummings right now.

25 MR. STIER: Okay.

00634

1 JUDGE SCHAER: And the two of you figure out
2 whether you're going to need this witness.

3 Why don't we have the next witness go ahead
4 and bring your stuff up, get yourself settled at the
5 stand, get organized, if there's any notes you need to
6 have handy or anything like that. And who is your next
7 witness going to be?

8 MR. CUMMINGS: I'm sorry?

9 JUDGE SCHAER: I'm asking you to do two
10 things at once.

11 MR. CUMMINGS: Lieutenant Jerry Ross.

12 JUDGE SCHAER: Mr. Ross, would you like to
13 come to the witness stand and kind of get settled in.

14 (Recess taken.)

15 MR. STIER: Your Honor, I would like to offer
16 this document that has just been handed up. Did you get
17 one?

18 JUDGE SCHAER: No. The court reporter got
19 one, so I will get hers for now.

20 MR. STIER: I think that's 18.

21 JUDGE SCHAER: I think you're right, so I'm
22 going to mark for identification as Exhibit 18 a letter
23 from Burlington Northern Railroad to Bill Briks at
24 Snohomish County Public Works, and the letter is dated
25 April 21st, 1995.

00635

1 And it's my understanding that you have
2 stipulated to its admission, Mr. Cummings.
3 MR. CUMMINGS: That's right.
4 JUDGE SCHAER: Does anyone else have any
5 objection to this document?
6 It's admitted then.
7 So would you like to call your next witness.
8 MR. CUMMINGS: Lieutenant Gerald Ross.
9

10 Whereupon,

11 GERALD ROSS,
12 having been first duly sworn, was called as a witness
13 herein and was examined and testified as follows:
14

15 JUDGE SCHAER: Thank you, go ahead.
16

17 D I R E C T E X A M I N A T I O N

18 BY MR. CUMMINGS:

19 Q. Would you please state your name, and spell
20 your last name for the record.
21 A. Gerald Ross, R-O-S-S.
22 Q. And by whom are you employed?
23 A. Snohomish County Sheriff's Office.
24 Q. What is your occupation?
25 A. I'm a lieutenant, the assistant precinct

00636

1 commander at the north precinct.

2 Q. And as the assistant precinct commander of
3 the north precinct -- but first off, where is the north
4 precinct? Let me flip back this exhibit and show you
5 Exhibit 41 for everyone's reference.

6 A. The precinct is right here, right on 152nd
7 Street right off of Smokey Point Boulevard.

8 Q. Okay. And what are your duties as the
9 assistant precinct commander?

10 A. I supervise approximately 70 uniformed
11 commissioned officers in a patrol and detective function
12 at the north precinct.

13 Q. And how long have you been with the sheriff's
14 office?

15 A. Just short of 18 years.

16 Q. And how did you start off at the sheriff's
17 office?

18 A. I was a patrol officer both at the south
19 precinct and the north precinct.

20 Q. Okay. And what's the territorial limits then
21 of the north precinct?

22 A. The north precinct is generally from Lake
23 Stevens west and north of the Snohomish River and
24 includes all of Arlington and Granite Falls area.

25 Q. Okay. And in terms of the north precinct, is

00637

1 it broken up into patrol areas?

2 A. Yes, it is.

3 Q. And what are those areas?

4 A. I'm not sure what you mean by --

5 Q. Well, how are those patrol areas broken up?

6 A. Well, we have one area, it's called the 10
7 area, which is that area of the northwest corner of the
8 north precinct. We have an area 14 area, which is just
9 south of that on the Tulalip reservation. 12 area,
10 which is just east of the 10 area. 11 area is our
11 Marysville area.

12 Q. Okay. In terms of the area where 156th
13 Street is located, what area is that considered?

14 A. Well, that would be right at the border of
15 the 14 and the 10 area.

16 Q. Is the borderline I-5?

17 A. North and south it is, yes.

18 Q. Okay. And what about the east-west line?

19 A. Well, that I'm -- that is not as clear as it
20 used to be. It used to be Fire Trail Road, but that has
21 changed a little bit, and the 14 area is a little bit
22 further north than that. I can't give you specifics on
23 that, but.

24 Q. During a deputy's normal shift, are they
25 stationed at the north precinct?

00638

1 A. No, of course not, they're out in their
2 areas.

3 Q. And in terms of being out in their areas, is
4 that a continuous circulation?

5 A. Right, they are constantly moving and going
6 from call to call and backing up other officers. If you
7 work the 10 area, that doesn't mean you're going to be
8 in the 10 area. You might be in the 12 area or the 13,
9 you know, you might be backing somebody else up in the
10 11 area. There's no predictability to it at all.

11 Q. Okay. I'm going to show you an exhibit
12 that's been marked Exhibit Number 48. It's a letter by
13 you to the Washington Utilities and Transportation
14 Commission. Are you familiar with the letter?

15 A. Yes, I am.

16 Q. And why did you write the letter?

17 A. Because an official response from --
18 representing the sheriff's office recognizing the
19 concerns we have about closing the 156th Street
20 crossing.

21 Q. Did somebody at the Utilities and
22 Transportation Commission contact you asking for a
23 response?

24 A. Yes.

25 Q. Okay. And are you familiar with the area

00639

1 around 172nd?

2 A. Oh, yes.

3 Q. Is it -- does it have any unique
4 characteristics?

5 A. You're speaking that -- well, yes, it's an
6 arterial that services the Kayak Point, the Lake Goodwin
7 area. It's a very important arterial, because it's the
8 one through area that we have right now to that very,
9 very quickly growing area of the Seven Lakes, what we
10 call the Seven Lakes area.

11 Q. Okay. And in terms of 156th, how does its
12 relationship work with 172nd from an operational
13 perspective of the sheriff's department?

14 A. Well, it provides us some redundancy. If
15 there is an emergency on a blockage of 172nd, we do have
16 a way to get around there in a fairly expedient manner.

17 One thing I would like to indicate here is
18 that the Snohomish County Sheriff's Office has the -- is
19 the most shorthanded agency in the state as far as
20 manpower to calls for service. We have more calls for
21 service than any other department, either county or
22 city, in the entire state. We have been in this
23 condition for over 10 years, and obviously we need to
24 have as best way as possible to respond to calls in the
25 most expedient manner, because we don't have a lot of

00640

1 ability to get backup. And so being able to do it as
2 best we can is really important.

3 Q. Okay. And in terms of response situations,
4 let's say, for example, you said it's the 10 area is
5 that area which is west of I-5?

6 A. Correct.

7 Q. And if a deputy is patrolling in the 10 area,
8 would he be called to say the Twin Lakes Park, Gissberg
9 Park?

10 A. Oh, yes.

11 Q. And how would -- what would his -- would his
12 route always be on 172nd?

13 A. Not necessarily.

14 Q. Okay.

15 A. I mean if he's out in the Lake Goodwin area
16 at the south end of lake Goodwin, he may respond through
17 156th to get to the lake or to the park. And it
18 provides us an alternate means to make an east-west
19 route as far -- it's not an arterial obviously, but it
20 is an alternate route and certainly provides us more
21 mobility.

22 Q. Is it a route that's --

23 A. But that isn't the main reason why I'm
24 concerned about this. The main reason is that should
25 that crossing get blocked off at 172nd, not having 156th

00641

1 Street crossing provides a great handicap for our
2 deputies as far as response times to get from east to
3 west in either direction. And it bears that out, we had
4 a derailment in -- if you want me to discuss that.

5 Q. Yeah, let's talk about that. So there's been
6 a history of -- has there in the last ten years been a
7 blockage of 172nd?

8 A. Well, there was one very notable one in 1991
9 where there was a derailment at that crossing at 172nd.
10 And I was working as a detective at the east precinct at
11 that time, so I had just left patrol about a year
12 earlier at the north precinct, so I didn't -- I wasn't
13 affected directly by it, but I did have an opportunity
14 to speak with several people who had some very much
15 direct involvement with it.

16 Q. These were deputies?

17 A. Well, not just deputies. I talked just
18 within the last three days I spoke with our former chief
19 of operations, Sam Goss, who at that time was the patrol
20 sergeant at the north precinct. And I also spoke with
21 our senior deputy sheriff. He is our highest seniority
22 deputy, Deputy Winn Holdahl, who also was a patrol
23 deputy at that time. And I spoke with Deputy Bill
24 Stoops, who also was a deputy at the north precinct at
25 that time. He still is.

00642

1 Q. Okay.

2 A. And I asked all three of them about the
3 impacts that it had, that derailment.

4 Q. And what is your understanding of the impacts
5 to the sheriff's office or to circulation in general on
6 172nd?

7 A. Well, it was a huge impact as far as response
8 times, I mean as far as being able to get from east to
9 west. I asked them whether 156th Street crossing played
10 any effect on that, and they said it had a major impact
11 to provide relief for east-west traffic at that time.
12 The derailment, according to them I believe it was two
13 to three days that that crossing was impacted. And so
14 for two to three days, had it not been for that 156th
15 Street crossing, our response times would have probably
16 been 10 to 15 minutes longer for emergency calls.

17 Q. And I know it's kind of needless to say, but
18 I need to ask the question for the record. What happens
19 when response times are delayed?

20 A. Well, obviously it jeopardizes the safety of
21 not only our deputies, but the community at large. And
22 as I explained earlier, we don't have a lot of backup to
23 begin with in north county.

24 Q. Now --

25 A. And that is a major concern for me is safety

00643

1 is a primary concern for my people that work for me.

2 Q. Now in terms of regular use, obviously we
3 just talked about situations when 172nd may be blocked,
4 do you have any knowledge of whether or not sheriff's
5 deputies may regularly use 156th as part of their normal
6 patrols?

7 A. They do. It's obviously not a primary way to
8 get from one area to another, but it is used,
9 absolutely, and I have had a number of deputies over the
10 last -- when they found out that I was involved in this
11 hearing have come to me and explained that they were
12 hoping that we could keep this open because of their
13 need for using that.

14 Q. Okay. There has been some discussions
15 throughout the hearings that maybe the siding could be
16 put to the north of 172nd, maybe the siding could be put
17 to the south, and there's been some testimony or
18 evidence put in the record that would document that if
19 the siding were put to the north of 172nd, there could
20 be an 18 minute blockage of 172nd when a southbound
21 train would start from a dead stop and cross 172nd on
22 its way and make its way from zero inertia all the way
23 to the full speed, and the length of the train could
24 result in an 18 minute delay. Now there's been
25 testimony that says if the siding is put to the south

00644

1 and 156th were cut off or the crossing closed that there
2 would only be an 8 minute delay at 172nd with the train
3 passage. What I wanted to ask you is, from an
4 operational level from the sheriff's office, what would
5 be the desired alternative, a 172nd Street crossing with
6 only an 8 minute delay and no 156th as an alternate
7 access or a 172nd Street with an 18 minute delay and an
8 alternate access point at 156th to get into the area?

9 A. Well, I believe the sheriff's office would
10 strongly support leaving 156th open and having a longer
11 delay. But then we're taking the word that it's only
12 going to be an 8 minute delay if it goes to the south,
13 and I just, you know, who are we taking whose word on
14 that? I mean I, you know, we know how Murphy's law is,
15 and I just -- I think we need that alternate route in
16 case of an emergency situation or even if it's not that
17 critical, having that opportunity to be open.

18 There's one other aspect in my letter that I
19 addressed, and I think it's important, and that is that
20 when the 156th Street crossing was put in there at some
21 date, I'm not sure when it was, but at some date there
22 was some wisdom that this should be placed there. At
23 the time it was placed there, it was much more rural
24 than it is today. There has been enormous growth in
25 that area, and there is a lot more potential for much

00645

1 greater growth in the future. And based upon that
2 growth potential and the growth, I see no justification
3 for now closing it. If we had justified it 15, 20 years
4 ago to have that crossing, then why with all this extra
5 growth do we now say we don't need it. It's illogical.
6 And once you take something like that away, to get it
7 back is next to near impossible. And I mean I know how
8 it works. If you take it away, you're not going to get
9 it back.

10 MR. CUMMINGS: Okay, thank you, I have no
11 further questions.

12 JUDGE SCHAEER: Did you have any questions,
13 Mr. Walkley?

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. WALKLEY:

17 Q. Lt. Ross, my name is Robert Walkley, and I
18 represent the Railroad. I think you were given a choice
19 between an 18 minute blockage north scenario and an 8
20 minute delay with 156th gone, and I think you said you
21 would choose to have 156th and the 18 minute delay on
22 172nd.

23 A. Correct.

24 Q. I think, would you consider with me for a
25 moment that there's a third choice, and that is that

00646

1 both 172nd and 156th could be blocked.

2 A. That is correct, that possibly could be true,
3 that's correct. We don't live in a perfect world. I
4 mean we need to -- we deal with what we have, and you
5 play the cards you've got. But as far as I'm concerned,
6 having that extra opportunity to get around that
7 crossing is extremely important. And if it was you
8 having a heart attack, you would want that fire district
9 there as quickly as you could to your house out there at
10 Lake Goodwin or Lake Ki or wherever it might be. And if
11 you had a train blocking there, you would want to be
12 able to get around that, and that's the reality.

13 Q. Were you here to hear the testimony yesterday
14 of Mr. Ketchem?

15 A. No, I was not.

16 Q. Regarding the north and the south
17 alternatives? Do your officers respond to rail highway
18 at grade crossing accidents?

19 A. We have. We don't do it very often, but we
20 do.

21 Q. Okay. What is your impression about the
22 desirability overall of at grade railroad crossings
23 after --

24 A. I don't quite understand that.

25 Q. -- after seeing the accidents that occur at

00647

1 crossings?

2 A. I don't follow what you're asking.

3 Q. Well, in your opinion as a police officer,
4 would a grade separation -- strike that question.

5 Your experience as a police officer, what do
6 you think in general about the risk associated to the
7 motoring public of at grade railroad crossings? Do you
8 have an opinion on that?

9 A. Well, certainly. Obviously, you know,
10 motorists do try to beat crossings, and we deal with
11 that all the time, but --

12 Q. Do you see --

13 A. -- the alternative is to have an overpass or
14 underpass on each crossing, and I don't know who is
15 going to pay that.

16 Q. Do you see, in your duties or in your
17 officers' duties, do you see incidences where the public
18 does try to run around gates?

19 A. You know, I used to see that quite often. I
20 have not seen that much lately. I go across a crossing
21 every day there at 116th Street to go home, and I have
22 yet to see somebody do that. And I have not been seeing
23 that as much as I did in years past.

24 Q. We have heard your concern, and we have heard
25 others talk about the 1991 accident that everyone is

00648

1 saying blocked 172nd. Do you know whether trains, for
2 example, where there is such an accident, do you know
3 whether trains could normally be broken apart to open up
4 the crossing if there is a derailment, such an accident?

5 A. I would imagine that's possible.

6 Q. Do you have any idea about how rare that kind
7 of occurrence could be?

8 A. You mean as far as a derailment for two or
9 three days?

10 Q. Right, and blocking a crossing.

11 A. Well, it's more common than you might think.
12 I mean they just had one in Baltimore here that closed
13 the city of Baltimore for a couple of days, shut it
14 down, so it happens.

15 Q. Wasn't that a tunnel?

16 A. It was a tunnel, but I'm saying it happens,
17 and they had to dis -- they had to postpone a baseball
18 game for that, two of them I think.

19 Q. Are you at all familiar in your training or
20 duties about the risks of accidents at at grade
21 crossings; do you get any training on that at all?

22 A. I have had some training in Operation
23 Lifesaver, if that's what you're speaking of.

24 Q. I think you're testifying that it's worth the
25 risk to the public of keeping 156th open for the rare

00649

1 event that 172nd may be closed for three days?

2 A. I'm saying that the risk to the public in
3 crossing that are minuscule compared to the protection
4 it's providing the public so that we can have emergency
5 services available to all areas of the county. The fact
6 remains is that 172nd Lakewood Road is an arterial that
7 serves a large, well, a generally large population of
8 the Seven Lakes area, and we need to have continuous
9 access to that area east to west. And by closing 156th,
10 we now have to depend on that 172nd crossing to be open
11 constantly, and as we have known from past, there have
12 been derailments that shut that off.

13 Q. Isn't there an access by 136th?

14 A. There is, but the point is is that we need to
15 -- that is a 10 to 12 minute delay to get around there.
16 And I, you know, I speak for my officers, when they need
17 backup, they need backup quickly. When they ask for
18 backup, they don't want to have to wait 15 minutes.
19 Those 15 minutes can sometimes seem like two hours.

20 Q. We have a map here, Lieutenant, if I can find
21 the clips here to tack it up. We have a map here, a
22 print, a schematic. This is a schematic that was used
23 numerous times during the hearing, and we have depicted
24 generally where the location of the sheriff's department
25 at 152nd and the fire station at about 147th or so. And

00650

1 this is a representation of 156th Street. And I'm
2 pointing to the BN Exhibit 24, I believe it is, project
3 area schematic. So help me out here, your location is
4 the -- is that the correct location there at about
5 152nd?

6 A. That's the location for our precinct, but
7 that's not where the deputies would normally be.

8 Q. Okay, Where would the deputies normally be?

9 A. Well, let me give you an example. I think if
10 I show you an example, I think it speaks for itself.
11 Let's say we have a deputy out here in the Lakewood area
12 up here at Lake Ki that's in need of help, and a deputy
13 from 12 area comes down onto 172nd to back him. He gets
14 to that road crossing and sees it's blocked. Now he has
15 a choice, he can -- if he sees a train moving, he would
16 probably wait, but if it's stopped, he has two choices
17 then. He can either go here, down, and across and get
18 to his partner, or he can go all the way back through
19 here, which is an extremely congested area, Smokey
20 Point. If you have been up there, you know how
21 congested it is these days, go back up through here, go
22 down Smokey Point, go back all the way down Stimson
23 Crossing, up around, and then get back up here.

24 And I'm trying to explain to you, that time
25 frame of the extra time that that takes is from our

00651

1 point of view enormous. And if somebody is having a
2 heart attack, the fire chief here will speak later of
3 how critical those times are for a heart attack, dealing
4 with something like that.

5 Q. But how often do you get a police situation
6 like that where this is blocked and the officers are in
7 those particular locations?

8 A. I do not have any statistics on that. We
9 don't keep statistics on that.

10 Q. Okay. Because we have heard about this
11 possibility, but we have never put any figures or flesh
12 around it. In other words, does it happen once or 20
13 times or what?

14 A. Well, I mean it's nothing we would ever need
15 to keep a statistic on. That's not something that we
16 normally would do.

17 MR. STIER: I have no further questions.

18 JUDGE SCHAER: Mr. Stier?

19

20 C R O S S - E X A M I N A T I O N

21 BY MR. STIER:

22 Q. Lieutenant, my name is Jeff Stier with the
23 Attorney General's Office representing the DOT. And I
24 recall that you were here this afternoon I'm sure
25 patiently waiting to testify, right?

00652

1 A. Well, I was waiting for an hour or so and
2 partially dozing, but yes, I was here. I didn't hear a
3 lot way in the back though I must admit.

4 Q. Okay.

5 A. My hearing is such that --

6 Q. Mr. Thomsen, as I recall, testified that he
7 drove it, he drove both ways around that area of what we
8 call the triangle there, and he said it took around
9 about five minutes to drive around 136th and up. That's
10 my recollection of his testimony. And, you know, I
11 think it sounds to me -- and I have driven around there
12 myself.

13 A. You're saying it's five minutes extra time
14 or --

15 Q. Five minutes extra.

16 A. I would challenge that, especially at certain
17 -- I don't -- you know, I don't know what time of day he
18 did that.

19 Q. Well, he didn't drive it with flashing lights
20 either.

21 A. I understand, but I mean at certain times of
22 the day, it's extremely congested.

23 Q. But you have flashing lights and people pull
24 over, right?

25 A. Most do.

00653

1 Q. Most do. Anyway, it seems to me that 15
2 minutes, having seen the area and in an emergency
3 vehicle with flashing lights, is it possible that's a
4 little excessive?

5 A. It could be. I mean I have not done it
6 myself, so I don't know.

7 Q. Okay. I'm a little unclear on area 10 and
8 area 8. I know you said they intersected at 156th.

9 A. I never said 8. I said that we have an area
10 14.

11 Q. Oh, I'm sorry.

12 A. That's our Tulalip Reservation, and we have
13 an area 10 which is north of that. And I said that they
14 used to have a boundary of Fire Trail Road that
15 separated them. But we have since moved it a little
16 further north, and to be honest with you, I can't tell
17 you exactly where that's at.

18 Q. So what area are we in here?

19 A. Well, this is normally the -- this up here
20 would normally be the 10 area. I believe that the 14
21 area might go up to this part. I'm not sure how far
22 north though.

23 Q. And do those areas extend to the east side of
24 the freeway?

25 A. Not the 14 area. The 10 area I believe does

00654

1 go, oh, boy, I'm not sure. I don't think it does. I
2 think the freeway is as far as the 10 area goes.
3 Q. Okay, I apologize, I guess I --
4 A. The 10 area --
5 Q. 10 is -- you're -- the triangle is in 10?
6 A. No, no.
7 Q. It's in 8?
8 A. There is no 8. I said we don't have an 8.
9 Q. Okay, I don't know where I got that in my
10 head, I'm sorry.
11 A. The 10 area works north and west of I-5.
12 Q. All right.
13 A. The 14 area is everything below that.
14 Q. On both sides of I-5?
15 A. No, on the west side of I-5.
16 Q. What's east?
17 A. And as far as the boundary here, I can't tell
18 you exactly where the cut off is. It used to be Fire
19 Trail, but we moved it a little further north.
20 Q. What's east of I-5 there?
21 A. This is the 11 area.
22 Q. That's 11. And so you have a deputy, I
23 assume, except for calls, and I know it's real clear
24 that there's a flow and you might end up with nobody in
25 an area depending on circumstances.

00655

1 A. That's correct.

2 Q. But the purpose of this is to have patrols
3 within your areas, and generally you've got somebody in
4 11 and somebody in 8?

5 A. There is no 8.

6 Q. I mean 10, excuse me, I've got a -- I'm
7 sorry, somebody in 10 and somebody in 14.

8 A. Correct.

9 Q. That's the intent. So it seems that you've
10 got coverage into -- if we're going to talk about the
11 triangle, which is --

12 A. One thing you're forgetting is that we're not
13 so much concerned about the backup from the 11 to the 14
14 area or the 12 area. What I'm concerned about is the
15 backup from the 12 area to the 10 area. The 12 area is
16 north of the 11 area, north of 172nd.

17 Q. So you're more concerned about getting over
18 to the westerly end of 172nd it sounds like. You talked
19 a lot about that.

20 A. Oh, absolutely, and just the other way around
21 too, the 10 area backing the 12 area.

22 Q. Okay. We haven't really talked a lot about
23 services into the triangle area, which is the area
24 served by, you know, bounded by the train tracks and the
25 freeway and 172nd there.

00656

1 A. Mm-hm.

2 Q. You haven't really talked about that too
3 much.

4 A. Well, I mean as far as calls for service,
5 generally the calls for service are either at the park
6 or in the -- we have some residential developments right
7 up in here, and we do have a lot of calls for service
8 there and at the park. As far as below that, there
9 aren't a lot of calls for service in this lower portion
10 of the triangle.

11 Q. So is your concern about this response time
12 problem more about the westerly outskirts of 172nd, or
13 is it regarding the triangle area?

14 A. I don't understand that question.

15 Q. Are you more concerned about -- you have
16 talked a lot about problems out west on 172nd.

17 A. The main issue here is being able to get
18 across that crossing, to be able to use the arterial
19 road. It's very simple. And when the trains are
20 blocking that arterial as they were in 1991 for a major
21 derailment, if we don't have that redundancy of the
22 156th crossing, then it really creates a problem for us.
23 If the 12 car needs to go to the 10 area, they have to
24 go all the way down to Stimson Crossing.

25 Q. Okay. So if you're blocked here, what's up

00657

1 north, where is --

2 A. We have to go all the way to Island Crossing
3 then.

4 Q. And how many miles is that?

5 A. Oh, that's a long -- I would say that's about
6 four miles north, and then we have to -- three miles
7 north, and then we have to cross the Interstate and go
8 down to the Sill Road and then wander our way back down.

9 Q. And then over --

10 A. That's really not a realistic way to get
11 around.

12 Q. And over here if you're blocked, presently
13 you go down this way, which as I recall from the
14 testimony about the length of the siding is somewhere in
15 the vicinity of a mile plus.

16 A. Mm-hm.

17 Q. Or you go down this way to here, which the
18 testimony is that's about 9,000 feet.

19 A. Wait, wait, wait.

20 Q. Or that's, yeah, that's 9,000 feet.

21 A. What was the first thing you were talking
22 about going south?

23 Q. Well, if this is blocked --

24 A. Taking I-5?

25 Q. No, you take -- go through 156th.

00658

1 A. Oh, correct, correct.
2 Q. And that's at least a mile?
3 A. Correct.
4 Q. And this is about a mile?
5 A. Mm-hm.
6 Q. And this is two miles. So you got to go a
7 mile anyway to go around, right?
8 A. Correct.
9 Q. Okay. So that takes time, right?
10 A. Certainly.
11 Q. And this takes more time?
12 A. Correct.
13 Q. About twice as much time as it takes to do
14 that?
15 A. I would say a little more, and the reason
16 being for that is that you don't have to deal with
17 traffic. You don't have to deal with the heavy traffic
18 at Smokey Point and Stimson Crossing and traffic lights,
19 you don't have to deal with all that, so it's actually
20 more than twice as long.
21 Q. So if it takes five minutes longer to go this
22 way, then it would take 10 minutes plus longer to go
23 this way.
24 A. Correct.
25 Q. So you've got a five minute swing?

00659

1 A. Five minutes plus.

2 Q. Five minutes plus swing, not 15 minutes?

3 A. Well, I don't know.

4 Q. Okay.

5 A. I don't know.

6 Q. Okay. And there might be somebody down here.

7 There usually is, right?

8 A. Well, that's true, but our -- what I'm trying
9 to explain to you, the car that normally backs the 10
10 car is the 12 car. The car that normally backs the 12
11 car is the 10 car.

12 Q. I see. So these guys are linked?

13 A. Yeah, they really are. The two cars up here
14 normally back each other. The two cars down here
15 normally back each other. And it normally works that
16 way. I mean certainly for a serious emergency, we have
17 to have more cars in, yes, you're right. But generally
18 it's a symbiotic relationship between those two pairs.

19 Q. But if you had a -- there's been talk of a
20 derailment, that's a pretty important event.

21 A. Mm-hm.

22 Q. And wouldn't that -- certainly that would
23 alert everybody in the vicinity that there's a problem,
24 right? Your dispatcher I'm sure would address this,
25 wouldn't he?

00660

1 A. Yes, of course.

2 MR. STIER: Okay. No further questions.

3 JUDGE SCHAER: Did you have any questions,
4 Mr. Thompson?

5 MR. THOMPSON: I do have just a couple of
6 questions.

7 You know, is this map available larger?

8 MR. CUMMINGS: Yeah, we can flip it back
9 over.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. THOMPSON:

13 Q. Lt. Ross, my name is John Thompson, I'm
14 another Assistant Attorney General, but I represent the
15 Utilities Commission.

16 You talked about I guess the Seven Lakes area
17 as being an area that you respond to a lot; is that
18 right?

19 A. Right, there are a bunch of lakes here,
20 there's Martha Lake, Lake Ki, Lake Goodwin, there's
21 several lakes up in this area right in here, and there's
22 residential developments around each lake. I mean as
23 you might imagine when you ever have a lake, you've got
24 housing all around each of those lakes.

25 Q. Okay. And the main --

00661

1 A. The main --

2 Q. I gather 531 --

3 A. There's only really one arterial. There's
4 two, there's Fire Trail at the lower end, but the main
5 one up to Kayak Point is 172nd or called Lakewood Road,
6 and it turns in -- this is Lakewood Road right here.

7 Q. Okay.

8 A. And it goes right up into that.

9 Q. Okay. At one point, I think you indicated
10 that without 156th that you would have a resulting delay
11 of somewhere in the neighborhood of 10 to 15 minutes in
12 response time. And I don't know that you attached a
13 specific area to what -- to where you measure that 15
14 minutes. Can you give me a --

15 A. Well, I'm just explaining as I showed you
16 earlier. If a deputy is going westbound to go out to
17 the Seven Lakes area.

18 Q. Right.

19 A. Gets to that intersection there at 172nd and
20 Lakewood where the railroad tracks are, and he sees that
21 it's blocked, okay, then he's got a choice of either
22 waiting for the train to pass or he can go two ways to
23 get around, the short route or the longer route.

24 Q. Okay. But the idea is being going from the
25 east side of I-5 to over to this area out off the edge

00662

1 of our exhibit here, which is what?

2 MR. CUMMINGS: Exhibit 41.

3 Q. Exhibit 41, which is sort of the Seven Lakes
4 area.

5 A. Right.

6 Q. But did I also understand you to say that the
7 ordinary protocol is that officers on the areas on the
8 west side of the highway support one another?

9 A. No, I didn't say that. I said normally the
10 car, which is the one that services this area.

11 Q. Which is North of 172nd?

12 A. Right, and the freeways, Seven Lakes area.

13 Q. Okay.

14 A. Is usually backed by the 12 car.

15 Q. Oh.

16 A. The 13 car is so tied up with Tulalip
17 Reservation types of calls that they're usually locked
18 in there, and they're usually backed by the 11 car,
19 which is over here. That's traditionally what happens
20 as far as backup.

21 Q. Okay. I'm going to shift gears to some other
22 questions. Are you aware of any areas in the county,
23 you know, housing developments or something of that
24 nature, areas where there's an access road provided
25 that's for the use of emergency vehicles only?

00663

1 A. Yes.
2 Q. And how does that work in your opinion?
3 A. Very poorly, and I will explain where that's
4 at. Fire District 1, well, it used to be 11, had a fire
5 station and Fire District 7 had a fire station very
6 close to each other out in the Silver Firs area, well,
7 the Gold Creek area. And there was a way to get a -- I
8 would have to show you really the map. I've got it here
9 as a matter of fact. But to get from Highway 9 from
10 Silver Firs, it can be done through an emergency
11 crossing. But the problem was they had a key for it,
12 and not all the deputies had the key, and then they had
13 problems with vandalism with the gate, and it was a
14 disaster. It was a total disaster. I think they
15 finally -- and, Chief, you might be able to help me on
16 that, I think they finally just opened all of that up
17 because they had so many problems with trying to make
18 that just a security gate.
19 Q. Is that a railroad crossing?
20 A. No, it's not a railroad crossing.
21 Q. Okay.
22 A. But it's similar in nature in that it was
23 supposed to be just for police and emergency vehicles.
24 Q. Okay.
25 A. It was a shortcut from the Silver Firs Gold

00664

1 Creek area to Highway 9 Clearview.

2 MR. THOMPSON: Okay, that's all the questions
3 I have, thank you.

4 MR. WALKLEY: If I could follow up one
5 question on that.

6 JUDGE SCHAEER: I don't have any questions, so
7 go ahead with your one question, and then we will have
8 redirect.

9 MR. WALKLEY: Okay.

10

11 R E C R O S S - E X A M I N A T I O N

12 BY MR. WALKLEY:

13 Q. I forgot what it was already. It's getting
14 late.

15 Then you would expect, Lt. Ross, that if, for
16 example, somebody suggested that 156th be left open but
17 sort of chained up, and you described that as a disaster
18 because you would expect what, that either A, you
19 couldn't keep the public out, or B, you couldn't find
20 the key when you need it?

21 A. That would be one of the main things.

22 Q. Okay.

23 A. And another problem with that is that our
24 deputies are constantly rotating where they work. We
25 bid for our shifts every year. That deputy works the 10

00665

1 car today might be working out in Sultan the next week.

2 And so --

3 Q. Okay.

4 A. -- you know, we've got 200 and some deputies
5 in our department. There's no telling who's going to be
6 there.

7 Q. So it would be lots of money in the local key
8 franchise, right?

9 A. Oh, it would be very hard to handle it that
10 way.

11 MR. WALKLEY: Thank you, I have no further
12 questions.

13 JUDGE SCHAER: Is there any redirect?

14 MR. CUMMINGS: Nothing further.

15 JUDGE SCHAER: Thank you for your testimony.

16 MR. THOMPSON: Actually, I do have a follow
17 up.

18 JUDGE SCHAER: Okay, got to be fast.

19

20 R E C R O S S - E X A M I N A T I O N

21 BY MR. THOMPSON:

22 Q. Do officers carry bolt cutters as part of
23 their --

24 A. They want to carry bolt cutters. No, they
25 don't.

00666

1 Q. Okay.
2 A. Not at all.
3 MR. THOMPSON: That's all.
4 JUDGE SCHAER: Thank you very much.
5 MR. CUMMINGS: Thank you very much,
6 Lieutenant.
7 JUDGE SCHAER: Okay, do you want to go ahead
8 and call your next witness.
9 MR. CUMMINGS: I would very much like to call
10 Assistant Chief Rex Tucker.
11
12 Whereupon,
13 REX TUCKER,
14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:
16
17 D I R E C T E X A M I N A T I O N
18 BY MR. CUMMINGS:
19 Q. Would you please state your name for the
20 record.
21 A. Pardon me?
22 Q. Could you please state your name for the
23 record.
24 A. Rex Tucker.
25 Q. How do you spell --

00667

1 A. Rex Tucker, T-U-C-K-E-R.

2 Q. Thank you very much. And what is your
3 occupation?

4 A. I am the Assistant Chief of Marysville Fire
5 District.

6 Q. And first of all, Assistant Chief Tucker, I
7 want to thank you for your patience. You have witnessed
8 a lot of testimony today, and I appreciate that you can
9 be here to take time out from your job.

10 A. You're welcome, it's been most entertaining.

11 Q. In terms of being a fire fighter, how long
12 have you been with the Marysville Fire District?

13 A. Started in 1973 as a volunteer. I was hired
14 as a full-time fire fighter in 1980 and have promoted
15 through the ranks since then.

16 Q. Where are you currently stationed out of?

17 A. 1635 Grove Street in Marysville is our
18 headquarter station, but I circulate throughout the
19 district.

20 Q. Okay. And actually, you were good enough to
21 point out to me, behind you is a map Exhibit 41, and you
22 pointed out something to me just recently, there is a
23 fire station that's been labeled but apparently has been
24 shut down, Fire District 20, Station Number 2?

25 A. Correct.

00668

1 Q. Okay, I just want to make it clear to
2 everyone, apparently that's been shut down, but the
3 Lakewood or is that Lake Goodwin?
4 A. That's Lake Goodwin Station, the 17500.
5 Q. Is that also within the Marysville Fire
6 District?
7 A. Yes, it is.
8 Q. Okay. Let's talk operations for a second.
9 A. Okay.
10 Q. In terms of response areas, there's the fire
11 house on Smokey Point Boulevard, correct?
12 A. Correct.
13 Q. And which station house is that?
14 A. 63.
15 Q. And where does Station House 63 have their
16 primary responsibility to respond to?
17 A. North of 100th Street, west of 67th Avenue to
18 about 56th Avenue Northwest, and then 188th Street on
19 the north side.
20 Q. Okay. So could you -- is the west end on
21 that map?
22 A. No.
23 Q. Okay, so it goes beyond Lake Goodwin?
24 A. Correct.
25 Q. Okay. And in terms of north, you can

00669

1 actually point out where the north boundary is, correct?

2 A. North boundary would be right in this area.

3 Q. Okay. And who responds above the north
4 boundary?

5 A. Silvana District 19.

6 Q. Okay. And they're not associated with --

7 A. No, they're a separate fire district.

8 Q. And is there a difference in services
9 provided from the Firehouse 63; am I using the right
10 number?

11 A. Yes, sir.

12 Q. And the Lake Goodwin Firehouse?

13 A. Station 6 -- all our basic level of training
14 is at BLS level, EMT level. All of our stations have
15 fire fighters trained to that level. At Station 61, our
16 downtown station, at Station 63, we have ALS level of
17 trained people, they're paramedics.

18 Q. And what is the distinction between a
19 paramedic and an EMT?

20 A. An EMT will train for 120 hours. A medic
21 will train for upwards of 2000 hours. The application
22 is that paramedics can do IVs, airways, administer drug
23 therapy, that kind of thing.

24 Q. So the services provided by a paramedic are
25 for graver injuries?

00670

1 A. Yes.

2 Q. Is that the proper terminology?

3 A. It will work.

4 Q. Okay. And in terms of the area then I guess
5 where area 63, or I'm sorry, Station House 63 provides
6 services, that is the one paramedic unit that responds
7 in that entire area?

8 A. Yes.

9 Q. Okay. Now Exhibit 46 in that notebook right
10 in front of you, there should be a tab on it, there's a
11 letter that you actually wrote to me. And attached to
12 that letter were some standards that have been proposed
13 by a National Fire, is it Fire Protection Association?

14 A. Yes, that is correct.

15 Q. Have these standards been adopted?

16 A. They're currently being appealed. They were
17 voted on at the NFPA convention in San Diego and then
18 have since gone through -- are going through an appeals
19 process.

20 Q. What's involved in that process?

21 A. I don't understand the entire process. I
22 know two areas that are specifically of interest to most
23 fire districts, and that is staffing and response times.

24 Q. Okay. And in terms of the NF or National
25 Fire Protection Association attachment that you have

00671

1 here, what does that relate to?
2 A. In terms of how it affects the fire district?
3 Q. Yeah, what is this standard?
4 A. It's a recommended standard. We're under no
5 obligation to adopt it. However, if we choose to ignore
6 it, we are at risk.
7 Q. Okay.
8 A. That's the first thing they will wave at us.
9 Q. Okay. And what does it mean if you're at
10 risk?
11 A. Through litigation.
12 Q. Okay. And is this saying that the Marysville
13 Fire District, have they adopted this standard?
14 A. Not yet. This standard hasn't been adopted
15 yet by NFPA. It's still in the appeals process.
16 Q. And assuming that it's passed, is it
17 something that will be adopted?
18 A. We will certainly look at that, yes.
19 Q. Well, what is it about 1710 that's causing
20 the appeal?
21 A. It's a standard recommending apparatus
22 staffing levels, and it's a standard recommending
23 response time criteria.
24 Q. Okay. And in regards to the response time
25 criteria, are those important to the fire district?

00672

1 A. Absolutely.
2 Q. And what are those criteria?
3 A. Our target is to be under five minutes for
4 either EMS or fire related incidents.
5 Q. Now is that a standard that the fire district
6 currently has set in writing?
7 A. There's a number of standards in place.
8 Q. Okay.
9 A. And each department has adopted its own
10 response standards.
11 Q. Okay.
12 A. Recommended standard, as far as I can
13 remember, has been four minutes. But the reality of
14 that was that no one could meet four minutes, and so.
15 And there was -- it was unclear as to what a response
16 time was. Was a response time the actual time from
17 dispatch to arrival, or was it from the time you were
18 out of the station to arrival. And this document begins
19 to clear those things up.
20 Q. Okay. So that's what this document attempts
21 to do is to clear up those standards?
22 A. (Nodding head.)
23 Q. So presently what is Station House 63's goal
24 for a response time?
25 A. Five minutes.

00673

1 Q. Now in terms of the area around 156th, you're
2 familiar with this petition to close, and obviously you
3 have learned a lot more today having a chance to sit
4 here.

5 A. I actually have.

6 Q. What are the fire district's concerns
7 regarding the petition to close 156th?

8 A. Fire district's policy has always been that
9 we are opposed to road closure. Road closure affects
10 our ability to respond.

11 Q. And in terms of a specific issue with this
12 crossing, does it raise any concerns aside from the
13 general opposed to a road closure?

14 A. If we were to be able -- had the luxury of
15 responding from the station on every alarm, we would --
16 we wouldn't worry so much about it. But much like law
17 enforcement, we are frequently out in the field and
18 being toned to an additional alarm. Any time a road is
19 closed and it changes our access route, it has potential
20 to change our response times.

21 Q. Okay. And in terms of, well, let's -- I'm
22 trying to envision the response scenario here. Let's
23 say you get a call from Station House 63 on Smokey Point
24 Boulevard requiring a paramedic unit.

25 A. Mm-hm.

00674

1 Q. And that unit responds and heads up to, well,
2 let's say it's heading to -- I will have to get closer
3 to the map so I can see. Let's say it's going up to the
4 boundary around Sill Road or Third Avenue and 180th.

5 A. Correct.

6 Q. So it would be up around this area right
7 about here.

8 A. Mm-hm.

9 Q. Which route will they take?

10 A. They would take the north. They would go
11 north on Smokey Point across 172nd and north on Third.

12 Q. Now what are they going to do if they come to
13 172nd presently and it's blocked?

14 A. What they have been instructed to do whenever
15 that happens is to check their resources. If there are
16 additional resources available, dispatch additional
17 resources and find an alternative route.

18 Q. In terms of a paramedic unit, where is the
19 next additional resource?

20 A. There are three additional resources. We
21 have one at Station 61 in downtown Marysville.
22 Arlington has a medic unit that comes out of the city of
23 Arlington, and so does Stanwood.

24 Q. So if there's a paramedic stopped at the
25 train on 172nd, are they going to wait for the train if

00675

1 their only response alternatives are downtown
2 Marysville, downtown Arlington, or Stanwood?

3 A. Given circumstances, they will request an
4 additional unit. Arlington would be of no use to them
5 because they will come in behind them. Stanwood may be
6 an alternative, but that's a long response time. They
7 may request a medic 61 from downtown and then seek an
8 alternative route around the train.

9 Q. And what would be the most logical
10 alternative route that they would take?

11 A. Back to 27th, down Twin Lakes Avenue, and
12 across 156th.

13 Q. Is this a route to your knowledge that has
14 been taken before?

15 A. Absolutely.

16 Q. Okay. Now you just heard the testimony from
17 Lt. Ross testifying about being out in the field and
18 receiving calls, and you just indicated the same thing
19 can happen with your units as well?

20 A. More and more frequently.

21 Q. Okay. So there may be an opportunity where
22 you would be say southwest of the 156th Street crossing
23 and with a paramedic unit and receive a call for life
24 support at the Twin Lakes Park?

25 A. Correct.

00676

1 Q. How would that response scenario go? Let's
2 say you're down by Fire Trail Road by Lake Goodwin, for
3 example?

4 A. If we were in the Lake Goodwin area and
5 needed to get to Twin Lakes, that would be east on 140th
6 to 23rd, north on 23rd to 156th to Twin Lakes Avenue.

7 Q. Now what's going to happen if 156th is
8 closed, then what route would you take?

9 A. Again, it would probably be more beneficial
10 to request an additional unit from Arlington to back us
11 up and then make the effort to get --

12 Q. Well, let me ask the question -- I'm saying
13 if this petition is granted and 156th is closed, how
14 would they respond?

15 A. Probably east on 140th, north on 23rd to
16 156th to 119 into Lakewood and then east on 172nd down
17 to 27th to Twin Lakes Avenue.

18 Q. Okay. And if there's a blockage at 172nd
19 because a train is passing through?

20 A. Then we wait.

21 Q. Okay. Or you call for additional backup?

22 A. We would call for additional resources, yes.

23 Q. I know this may seem like a silly question,
24 but what happens when paramedic units have to wait?

25 A. Generally they try to find alternative

00677

1 routes. They very seldom wait. They're aggressive
2 individuals.

3 Q. And what happens in terms of the person in
4 need of assistance?

5 A. Depends on the incident. We have a tiered
6 response level. Levels of responses range anywhere from
7 basic life support yellow, which is a very small on the
8 scale, and we have basic life support red, which is
9 further up on the scale, and then we have medic alarms,
10 which are on the top of the scale.

11 Q. Okay. There's another unique feature on the
12 other side of the tracks or the west side of the tracks,
13 and that is several schools; is that correct?

14 A. Correct.

15 Q. Has the fire district been receiving calls to
16 respond to the schools?

17 A. Yes.

18 Q. Is that a regular occurrence?

19 A. Yes, nine months out of the year it is.

20 Q. A little rest on the other three months?

21 A. A little rest on the third, but then Twin
22 Lakes takes over, so.

23 Q. That's true. If 156th is closed and you
24 receive a call from the fire house to the school, again,
25 it would be up through 172nd?

00678

1 A. Yes.

2 Q. Now the reason why I want to ask this
3 question is there has been this discussion, and maybe
4 you heard me ask this question of Lt. Ross, but if the
5 siding were maybe to go north, for example, it was
6 suggested that maybe it go north, but there may be an 18
7 minute delay if there's a southbound train leaving the
8 siding crossing at 172nd, but that would also mean that
9 156th were open. On the alternative, if they close
10 156th to construct the siding, there may only be an 8
11 minute delay of a train heading north across 172nd or
12 possibly coming south entering into the siding. If you
13 had a choice of an alternative from an operational
14 perspective of a fire district providing emergency
15 medical services in the area, which choice would you
16 pick?

17 A. My preference would be a blend of the two, an
18 8 minute delay with 156th Street open. But given the
19 choices, we would just as soon have 156th Street open.

20 Q. So it's important enough to have a second
21 additional route than to experience an additional delay
22 at one other stop?

23 A. Correct.

24 MR. CUMMINGS: I have no further questions.
25 Thank you very much.

00679

1 THE WITNESS: Thank you.

2 JUDGE SCHAER: Is there anything further for
3 this witness?

4 MR. WALKLEY: Yes, I have a couple of
5 questions.

6 JUDGE SCHAER: Okay.

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. WALKLEY:

10 Q. Good afternoon, thank you for bearing with us
11 this late.

12 A. You're welcome.

13 Q. We have been here for days, and we won't be
14 here very much longer, I think, so I have only a couple
15 of questions.

16 I think you have been given a choice between
17 8 minutes and so on, but one choice that may not have
18 been given to you is what if both 172nd and 156th are
19 blocked, would that be a serious problem in any of these
20 scenarios you have been talking about?

21 A. Yep. And again, we would respond with
22 calling for additional resources and try to find a way
23 around it.

24 Q. Now if you had a choice of that possibly
25 happening versus that not happening, in other words, the

00680

1 elimination of 156th, eliminating the possibility of
2 those two happening, what would you think of that? In
3 other words, if 156th is gone, the chance of blocking
4 172nd, we believe, the testimony is much less.

5 A. If you could guarantee me it was open, then I
6 might consider it, but.

7 Q. Do you have any experience with emergency
8 only crossings?

9 A. Yes.

10 Q. Because you just heard the testimony of Lt.
11 Ross.

12 A. Yes.

13 Q. Has that worked for your department?

14 A. No.

15 Q. Okay. So you don't support the idea of
16 making 156th let's say a private crossing and putting a
17 gate across it?

18 A. Not particularly, no.

19 Q. And why is that?

20 A. It's been our -- it's been my experience, one
21 of the first assignments I had when I was promoted was
22 to deal with a new neighborhood going up next door to an
23 old neighborhood. The old neighborhood didn't want a
24 road put through that was on the plans. They put the
25 road through, they decided there was a -- it all went to

00681

1 hearing, they put up a what I believe is called a dry
2 creek road with barriers, removable barriers inside.
3 And what happened was while we didn't use that road very
4 often, when it came time to use it, it had been
5 vandalized, maintenance on it hadn't been kept up. it
6 got to the point where it was impassable, and so we
7 chose to go around it. It took us less time to go
8 around than it did to try and figure out how to get
9 through it.

10 Q. Do you -- have you had experience, I have no
11 doubt that you have, but have you had experience
12 responding to an at grade rail crossing accident?

13 A. I'm not exactly sure what the definition of
14 at grade is.

15 Q. Okay. That term is used when the highway and
16 the railroad are at the same grade, that is the same
17 level, they're not separated, such as 156th.

18 A. Correct.

19 Q. Have you responded to those?

20 A. Yes.

21 Q. And so you have seen firsthand the terrible
22 consequences of those accidents?

23 A. Vehicles always lose.

24 Q. Yes. Not always, I think. But that danger,
25 do you agree that that danger would not exist if 156th

00682

1 were gone, it wouldn't exist at 156th, correct?

2 A. If there was no crossing there?

3 Q. Right.

4 A. There would be no danger, no.

5 Q. And there would be no danger if somehow 156th
6 were grade separated, for example, there would be no
7 danger of a collision at 156th?

8 A. Again, I'm not sure what grade separated
9 means.

10 Q. That simply means that the grade of the
11 railroad and of the highway are different. In other
12 words, the highway either goes above or below the
13 railroad.

14 A. Okay.

15 Q. Okay?

16 A. Agreed.

17 Q. All right. But what does your experience
18 tell you about those -- you said that vehicles always
19 lose. Do the people inside the vehicles lose too?

20 A. Absolutely.

21 MR. WALKLEY: Thank you very much. I have no
22 further questions.

23 JUDGE SCHAER: Mr. Stier, did you have
24 questions?

25 MR. STIER: Yes, I do.

00683

1

2

C R O S S - E X A M I N A T I O N

3

BY MR. STIER:

4

Q. On the map, well, first of all, I don't --

5

this appeal, who is appealing this NF --

6

A. NFPA?

7

Q. -- PA standard?

8

A. It's being appealed by the International Fire
Chiefs Association and several associations in cities.

9

I don't know the exact.

10

Q. And you said that on the grounds of staffing
and response time, so --

11

A. No, no, no, I said those are two issues that
we're concerned with. Those are two issues that have
been brought to light in the appeals.

12

Q. So there is some kind of dispute regarding
staffing and response time?

13

A. Yes.

14

Q. On response times, what's the nature of that
dispute?

15

A. Definition of response time. Is it response
time when it's the apparatus leaves the station, is the
response time when the fire fighters are made aware of
the alarm.

16

Q. Is that defined in the -- is that the

17

18

19

20

21

22

23

24

25

00684

1 problem, it's not well defined?

2 A. It's not generally accepted like this
3 standard would be.

4 Q. Okay, I'm sorry, so it's not generally
5 accepted to have a response time based on notification?

6 A. Correct.

7 Q. Would you agree with that?

8 A. We have always assumed that our response time
9 included from the time of notification to time of
10 arrival, and that's why our goal is a five minute goal.
11 If you separate that, we look at a one minute ready
12 time, in other words, notification, ready, out the door,
13 and that reduces our time to a four minute response
14 time. Our concern with this was that they said a four
15 minute response time, which reduces us down under our
16 scenario to a three minute response time.

17 Q. I see now, okay. All right, so there's a
18 station here?

19 A. That's Silvana District 19.

20 Q. Okay. And there's a station here?

21 A. That's Arlington City.

22 Q. And there's a station here?

23 A. That's our Station 63.

24 Q. And this one is gone, Station 20?

25 A. Correct.

00685

1 Q. And then there's a station over here?
2 A. Correct.
3 Q. And what's that called?
4 A. That's Station 65.
5 Q. 65. And there's one up there, but I'm not
6 going to talk about that now. But that could come into
7 play. You've got pretty good coverage it looks like of
8 this area?
9 A. Yes.
10 Q. And it looks like you've got some redundancy
11 here?
12 A. Yes.
13 Q. And I would assume since Station 20 is gone,
14 then Station 12 covers that area to a large degree, and
15 the redundancy is this lake Goodwin Station over here?
16 A. Correct.
17 Q. Okay.
18 A. I want to point out the difference though is
19 that the Station 63 and Station 65 are staffed 24 hours
20 a day. City of Arlington is staffed 24 hours a day.
21 Silvana and these two stations here are volunteer
22 response stations.
23 Q. The north stations are?
24 A. Yeah, those are Silvana stations.
25 Q. So the 24 staffed ones are all -- this one --

00686

1 I did it on the scale at my desk on the same map, this
2 one is within two miles of the triangle. That one is
3 Arlington?

4 A. Right.

5 Q. Fire District 12 is within two miles. So you
6 have -- and this at least, not 24 hours a day, the one
7 up north, 19, is also within two miles. That's pretty
8 -- all from the east side everybody is within -- you've
9 got three stations within two miles.

10 A. We like to call that good planning.

11 Q. I know, it is good planning. So it doesn't
12 seem -- I just guess how -- is the problem here getting
13 into the park and having problems getting in there? I
14 mean you got good coverage.

15 A. The problem with closing 156th Street is not
16 how many times we use that street. It's is it going to
17 be there when we need to use it. The station at
18 Arlington that you point out is a BLS station. It's not
19 a medic station. That's at the -- I believe that's at
20 the airport station.

21 Q. I see.

22 A. The City of Arlington has medics to back our
23 station up. So the problem with closing 156th Street or
24 with any street is that it impacts our ability to
25 respond. We look at it like not how often we use it,

00687

1 not how many times we use it, but is it available to us
2 when we need it.

3 Q. So where exactly, and I recognize that you
4 say that there's more field activity.

5 A. Yes.

6 Q. But with reference -- but it's not as much as
7 the police, who are always out?

8 A. No, thank God.

9 Q. So when you're at 12, actually that's pretty
10 good positioning to hit the triangle from either
11 direction?

12 A. Correct.

13 Q. But have you -- you have talked -- people
14 have talked about train blockages on 172nd. Has there
15 been a substantial problem with blockages of the
16 intersection here on the interchange?

17 A. On the interchange, yes. The interchange is
18 a problem. Funnel a four lane road into one lane road,
19 goes both ways, so getting into there is difficult.

20 Q. Two lanes each way, one lane east and one
21 lane west?

22 A. Yes, the interchange is east and west.

23 Q. So it was two lanes each way and now it's one
24 lane each way there funneled in? You said funneled into
25 one lane, and I just want to make sure.

00688

1 A. No.
2 Q. They're really funneled into two lanes,
3 right?
4 A. It's a two lane.
5 Q. Okay.
6 A. Two way road.
7 Q. All right. And are there shoulders through
8 there?
9 A. Across the overpass?
10 Q. Yeah.
11 A. Yeah, they're narrow, yeah.
12 Q. But there's room for people to move over?
13 A. Yes.
14 Q. And an emergency vehicle can pass if they
15 move over?
16 A. If we're very careful.
17 Q. Yeah, okay. So it's congestion, which I
18 would assume in your trade you're pretty familiar with
19 congestion and having to get around people who don't
20 move aside. I mean that isn't an unusual thing
21 anywhere?
22 A. Not an unusual thing at all.
23 Q. So that's not impassable on a regular -- I
24 would say pretty typically the interchange is not
25 impassable; is that correct?

00689

1 A. No, it's not impassable.

2 Q. And when there's a train in the way of 172nd,
3 that creates a passibility problem?

4 A. Correct.

5 Q. Okay. All right. Why was this Station 20
6 closed?

7 A. It was a -- prior to our merger with District
8 20, it was a volunteer station, relied on a volunteer
9 response. As time went by, there were no volunteers to
10 respond to it. So what we had was a hall with an engine
11 in it with nobody to provide the service. So rather
12 than leave a sign outside that said fire station, we
13 decided to make it a storage facility, and essentially
14 Station 63 and Station 65 were providing the coverage
15 anyway.

16 Q. So if it's -- if the problem -- and I
17 recognize I'm not saying it's perfect, but the
18 interchange is not typically, in fact, it is very
19 atypical for it to be impassable, then what exactly is
20 the problem about the closure? Could you specifically
21 tell me what the problem is? Because it looks like you
22 can get to the triangle.

23 A. From the north, sure.

24 Q. Well, you can get to the triangle from the
25 south and from Arlington and from up here?

00690

1 A. Mm-hm.

2 Q. Okay.

3 A. And you can get to it from Seattle too.

4 Q. But they're all two miles away.

5 A. These are all two miles away, correct. We
6 are two miles away to that point. If we took this
7 route, we are not two miles away.

8 Q. So --

9 A. We are two miles from this point to this
10 point or from this point to this point, but if we're
11 down here, then we have to come north and turn around,
12 we are more than two miles.

13 Q. Well, one thing is if -- and that would only
14 happen if it was blocked, and you have no way of knowing
15 that, correct?

16 A. Not necessarily only if it was blocked. It
17 depends on where our units are. Much like law
18 enforcement, we're dealing -- law enforcement has a much
19 more pronounced problem than we do, and they don't
20 normally respond from a station, we do. But we're
21 finding that more and more we are responding when we're
22 out in the field.

23 Q. Right.

24 A. So our route selection is important. And any
25 time we take a road out of our route selection

00691

1 opportunities, that changes our response times.
2 Q. But for fire, you've got good redundancy. If
3 you're over here with the 12 people.
4 A. Correct.
5 Q. Then Arlington can come in that way. So
6 you've got good redundancy.
7 A. Yes.
8 Q. So the problem is paramedics?
9 A. EMS, yes.
10 Q. Okay.
11 A. Emergency medical service.
12 Q. So if 12 paramedics over here in this
13 southwest quadrant and if there's a blockage up here and
14 they're heading up to get to it on 19th or something of
15 that sort, would they ever know the blockage was there
16 until they get there?
17 A. Not until they were able to observe it.
18 Q. Okay, so --
19 A. We don't have any prior knowledge.
20 Q. So when you -- when that would happen, then
21 for them to get there under the present, they would go
22 down to 156th and then come back up that way?
23 A. Correct.
24 Q. And so there would be a time duration to do
25 that?

00692

1 A. Yes.

2 Q. And so the problem here is there would be a
3 longer time duration to go around. How much longer
4 would it take?

5 A. I have no idea. I can venture a guess, and
6 that would be it.

7 Q. Well, the sheriff, you were here when he
8 testified, and he said five minutes plus. Does that
9 sound about right?

10 A. I thought that was a pretty conservative
11 statement.

12 Q. And I recognize every minute counts, but I
13 also recognize that this is going to be benefited in
14 terms of closures by the sidings going south, and, you
15 know, I just want you to think again about your comment
16 that you would prefer longer blockages here and 156th
17 rather than shorter blockages and no 156th, and weigh it
18 against a five minute plus in that regard.

19 A. Well, my original response was that I would
20 just as soon have 8 minutes delays with 156th open.

21 Q. Right.

22 A. Given the two opportunities, the two choices.

23 Q. So the concern is getting to the park area,
24 that's your concern, from when people are out in the
25 field?

00693

1 A. Or from the park area.

2 Q. And then going southwest from the park?

3 A. Correct.

4 Q. This is your area of concern?

5 A. Correct.

6 Q. Okay. And that would only come into play if
7 for some reason there was no redundancy from Arlington,
8 but you testified there are paramedic units that aren't
9 fire department?

10 A. They are not at that station. They are
11 further north. Arlington City Station would be up in
12 this area right here.

13 Q. And there is a paramedic there?

14 A. Yes.

15 Q. So that would be four miles?

16 A. Oh, I would say closer to eight.

17 Q. Well, that's two.

18 A. Okay.

19 Q. So it would be --

20 A. All right, I will accept four miles, but I
21 don't think that the crow flies that way.

22 Q. Right.

23 MR. CUMMINGS: Your Honor, I was trying to
24 make an objection and just note that the map ends, he's
25 speculating, there's no way to gauge with that map.

00694

1 MR. STIER: Absolutely, I'm just asking, he
2 just pointed there.

3 THE WITNESS: That's as close as I can come.

4 MR. STIER: Okay, I have no further
5 questions, thank you.

6 THE WITNESS: Thank you.

7 JUDGE SCHAER: Are you going to move to
8 strike, or are we going to get done?

9 MR. CUMMINGS: We're going to get done.

10 JUDGE SCHAER: Thank you. Because I think
11 the answer had already been given and rejected.

12 Did you have any questions, Mr. Thompson?

13 MR. THOMPSON: I do.

14 JUDGE SCHAER: Go ahead, please.

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. THOMPSON:

18 Q. Under the -- I'm sorry, I'm Jonathan
19 Thompson, Attorney for the Staff of the Commission.
20 Under the NFPA standards you were discussing for
21 response time, if I have that right, if I stated that
22 right, in the standard in terms of minutes for
23 responding, is there a different standard for urban
24 versus a rural setting, or is it uniform?

25 A. There's a different standard for career

00695

1 departments and volunteer departments. Combination
2 departments which are both career and volunteer haven't
3 been addressed very well.
4 Q. So is there a greater response time in
5 volunteer?
6 A. Correct.
7 Q. Is that typically rural then?
8 A. Yes.
9 Q. Okay. And so the -- is five minutes the goal
10 of --
11 A. That was our goal.
12 Q. Okay.
13 A. That was our target.
14 Q. Do those response times differ within the
15 county as far as what's the standard?
16 A. Yes.
17 Q. Okay.
18 A. City of Everett has different expectations.
19 They have seven departments within their city. They
20 have different expectations than we do, so the response
21 time is less.
22 Q. Are there -- what's the organization unit, a
23 precinct or what?
24 A. We're Marysville Fire District.
25 Q. Fire district. Among the -- would a whole

00696

1 district have the same response standard?

2 A. Yes.

3 Q. Are there districts within the county that
4 have a longer response time?

5 A. I don't know.

6 Q. Okay. I know you mentioned that I think in
7 response to your attorney's question that you sometimes
8 use 156th. Can you give some kind of an estimate of how
9 often you think you're required to use that route as an
10 alternative?

11 A. Required to use it?

12 Q. Or that you do use it.

13 A. No, I can't answer either required or amount
14 of use.

15 Q. Is it --

16 A. I don't track their --

17 Q. I mean are we talking about like once a month
18 or once a year or once a week?

19 A. It could be all of those. There's no
20 telling.

21 Q. Okay.

22 A. The opportunity to use it does go up during
23 the summer because of the recreational use of Gissberg
24 Lakes.

25 Q. So you --

00697

1 A. I can't say we use it every hour, every week,
2 or every month, at least once a day, I don't know. I
3 don't know. There are roads that -- 152nd across the
4 street that we may not use within a week, and yet we may
5 use it five times in a day.

6 Q. Well, is it just there are no records kept on
7 it, or you don't have specific knowledge of it, or --

8 A. Both, we don't keep records on our route
9 selection, and we don't keep records on -- I don't
10 personally have knowledge of it.

11 Q. Well, it strikes me that possibly your
12 response -- I mean you have indicated that you're
13 opposed to the closing of any road, and I think you also
14 indicated that you're particularly opposed to the
15 closing of this route because of its importance, but you
16 don't have any specifics in terms of really how
17 frequently it's used I guess is what you're saying?

18 A. No, we don't.

19 Q. Okay. To the discussion of the usefulness I
20 guess of having a gated crossing that would be available
21 only to emergency personnel, if the choice were between
22 no crossing at all and a gated crossing, would it be
23 worth it to have a gated crossing?

24 A. An analogy I can draw. With the school
25 district, we have used gated accesses before. They have

00698

1 issued keys to us, and that worked for a time. What
2 happened was they changed the locks, we lost the keys,
3 or the locks and gates were vandalized. They expected
4 us to provide the upkeep. We expected them to provide
5 the upkeep. It failed.

6 Q. Okay.

7 A. With the gated access here, we would have the
8 same problem. Vandalism is one. A key or a key entry
9 system, codes, access.

10 Q. Yeah, I understand. My question is really
11 more specific though. It's just if the question came
12 down to if you had your choice, you know, you're
13 presented with only two choices, and they are, no
14 crossing at all or a, you know, a locked gate I guess,
15 would you -- would a locked gate be of some use to you I
16 guess is the question?

17 A. Oh, given those two scenarios, sure. You're
18 going to pin me down here to one of them, yeah. I could
19 ask you the same question, if you were in a car wreck on
20 the other side of 156th and we had to drive around, what
21 would you rather have?

22 Q. Okay.

23 JUDGE SCHAER: Mr. Tucker, I'm not sure I
24 understood your answer to his question.

25 A. Given either having something there that we

00699

1 could cross or nothing, sure, we would just as soon have
2 something.

3 JUDGE SCHAER: Okay, thank you.

4 A. You know, our interest is in serving the
5 public.

6 MR. THOMPSON: I think that's all I have,
7 thank you.

8 THE WITNESS: Thank you.

9 JUDGE SCHAER: And I didn't have any
10 questions for you, so --

11 THE WITNESS: Can I go home?

12 JUDGE SCHAER: Not quite yet. Mr. Cummings
13 might want to ask you another hour or two of questions.

14 MR. CUMMINGS: Chief Assistant Tucker, thank
15 you very much.

16 THE WITNESS: Thank you.

17 JUDGE SCHAER: Thank you, sir.

18 THE WITNESS: Appreciate the opportunity.

19 JUDGE SCHAER: Okay, let's go off the record
20 for a moment to discuss where we are in the process.

21 (Recess taken.)

22 JUDGE SCHAER: After our recess, we are ready
23 to continue with testimony from Staff. Would you like
24 to call your witness, Mr. Thompson.

25 MR. THOMPSON: Staff calls Ahmer Nizam.

00700

1

2 Whereupon,

3

AHMER NIZAM,

4 having been first duly sworn, was called as a witness

5 herein and was examined and testified as follows:

6

7

D I R E C T E X A M I N A T I O N

8

BY MR. THOMPSON:

9

Q. Mr. Nizam, would you please state your full

10

name, and spell it for the record.

11

A. Yes, my name is Ahmer Nizam, that's spelled

12

A-H-M-E-R, N-I-Z-A-M.

13

Q. And you're employed by the WUTC?

14

A. That's right.

15

Q. What is your position?

16

A. Grade crossing specialist.

17

Q. And what are your responsibilities in that

18

position?

19

A. Responsibilities include administration and

20

investigation of petitions filed with the Commission for

21

grade crossing reconstruction, grade crossing signal

22

upgrades, opening new crossings and closing existing

23

crossings, as well as providing technical assistance to

24

inspectors in the field, representing the Commission on

25

diagnostic reviews of crossings for safety upgrades.

00701

1 And those are the primary responsibilities.

2 Q. Okay. What investigation have you done in
3 connection with the petition to close 156th Street
4 crossing?

5 A. After receiving and reviewing the petition, I
6 conducted several site visits to verify different
7 characteristics of the crossing, observe locations of
8 alternative routes, and basically to familiarize myself
9 with the crossing as well as review of the traffic
10 analysis done by Gary Struthers and Associates, review
11 of all of the comments submitted to the Commission by
12 the different parties and interested persons, a review
13 of the background of the crossing itself, as well as
14 literature, nationally accepted literature available for
15 crossing closures.

16 Q. Of course, you attended the hearings, I
17 guess, and listened to all the testimony?

18 A. That's correct.

19 Q. Okay. Can you summarize for us what the
20 State policy, such as there is one, is with regard to
21 the closure of crossings?

22 A. Well, the State of Washington has a
23 legislative preference for crossings not at grade, that
24 is either over or under crossings. And if crossings are
25 to be made at grade, they have to be established through

00702

1 permission of the Washington Utilities and
2 Transportation Commission. Generally the policy of the
3 Commission towards closures manifests itself in State
4 law that gives the Commission authority to close
5 crossings. Parties can file petitions with the
6 Commission alleging that public safety requires the
7 closure of grade crossings.

8 Q. And is there a national policy on grade
9 crossing closures that you can summarize?

10 A. The national policy is very similar to the
11 Commission policy, and it can basically be summarized as
12 grade crossings that -- and this is a policy toward
13 existing crossings. Grade crossings that can not
14 demonstrate a need should be closed, and that's, you
15 know, that type of guidance is available through several
16 documents such as the U.S. DOT Federal Highway
17 Administration Grade Crossing Handbook, the Federal
18 Railroad Administration Consolidation Manual that was
19 referred to earlier, and to a lesser extent the Manual
20 on Uniform Traffic Control Devices.

21 Q. And does the Manual of Uniform Traffic
22 Control Devices have a relation to State law?

23 A. It's adopted through statute. It's adopted
24 by reference through statute. So yes, it is also a
25 state policy, and that explicitly says, grade crossings

00703

1 that do not demonstrate a need should be closed.

2 Q. Okay. Can you summarize what the relevant
3 considerations are in deciding whether a crossing should
4 be closed?

5 A. As far as demonstrating a need or not?

6 Q. Yes.

7 A. Can I refer you to the exhibit?

8 Q. Yeah, let's do that, let's take a look at
9 what's marked as Exhibit 62. Can you just indicate what
10 that is?

11 A. Yes, this is an excerpt from the U.S. DOT
12 Federal Highway Administration Highway Rail Grade
13 Crossing Handbook, and the section has to do with
14 closure of crossings under the identification of
15 alternatives chapter. And typically --

16 Q. Is --

17 A. I'm sorry.

18 Q. Yeah, so and this contains criteria for
19 closure of crossings, determining when a closure is
20 appropriate?

21 A. Yeah, it points out three typical
22 considerations when assessing whether to close a
23 crossing based on whether or not the danger of the
24 crossing may outweigh the need for the crossing. And if
25 I can point you to the end of the second paragraph under

00704

1 number three, closure, the very last sentence.

2 Q. What page are you on?

3 A. I'm sorry, 92.

4 Q. Okay. So it's the second column under the
5 heading danger?

6 A. Yes.

7 Q. Okay.

8 A. You know, the typical three considerations
9 are that:

10 Alternative routes should be within a
11 reasonable travel time and distance from
12 the closed crossing. The alternate
13 routes should have sufficient capacity
14 to accommodate and divert traffic safely
15 and efficiently.

16 And if you will skip over to page 93 in the
17 very -- in the second column, the third paragraph, the
18 very last paragraph there:

19 Another important matter to consider in
20 connection with crossing closure is
21 access over the railroad by emergency
22 vehicles, ambulances, fire trucks, and
23 police.

24 Q. Could you read the sentence following that as
25 well?

00705

1 A. (Reading.)
2 Crossings that are frequently utilized
3 by emergency vehicles should not be
4 closed.

5 Q. Is the operating convenience of the railroad
6 a consideration that would be taken into effect under
7 state policy?

8 A. No, it --

9 Q. Let me restate that, strike that question.
10 In a proceeding of this sort, is the
11 operating convenience of the railroad something that is
12 considered?

13 A. According to the statute, RCW 81.53.060,
14 public safety is stated as what the Commission may
15 consider.

16 Q. How does the -- how do the needs of the
17 public in maintaining the crossing play into the
18 consideration?

19 A. Can you repeat that, please?

20 Q. Is the need of the public for the crossing a
21 consideration?

22 A. Yes, it is, and that's -- if I could just
23 explain. Crossings are, as we have heard so many times
24 before, crossings are potentially dangerous by their
25 very nature, because they are a point of conflict

00706

1 between -- they are a potential point of conflict, that
2 is, between a train and a car. And so the need for the
3 crossing, you know, basically represents that the need
4 outweighs that potential hazard, therefore a crossing
5 should be created or remain open.

6 Q. Were you able to make any kind of a
7 determination about Commission policy regarding the type
8 of evidence of public need that the Commission will
9 consider or has historically considered?

10 A. In the research I have done, which has been
11 to review previous Commission orders, of which I have
12 found very few, but what I found is that the Commission
13 historically has preferred and has in what I have -- in
14 the orders that I have found to consider the
15 circumstances at crossings and that apply to current or
16 existing conditions rather than speculating on future
17 conditions.

18 Q. Okay. Can you give particular examples that
19 you would base that on?

20 A. I can't give you the docket numbers, but I
21 can -- there was a case, I believe it was a Supreme
22 Court case that the Commission originally issued an
23 order for, and incidentally it was the Great Northern
24 Railroad versus Snohomish County back in the 1940's, the
25 late 1940's. That was one.

00707

1 One after that that I remember that
2 explicitly made reference to the fact that the
3 Commission can or may only consider current situations
4 or circumstances is one that, and again I don't remember
5 the docket number, but it was 1994, I believe, and it
6 was Burlington Northern Santa Fe versus the City of
7 Ferndale.

8 Q. Okay.

9 A. I can't remember much else from that as far
10 as a reference to the docket.

11 Q. What about Winlock?

12 A. Winlock was another one, but the one that
13 would support the idea that the Commission may consider
14 only current conditions and circumstances at a crossing
15 would be the Ferndale case.

16 Q. Okay. Let's go through the three, well,
17 considerations or factors that you identified in Exhibit
18 62. And if you could just start with I think the first
19 you identified in the text, it says:

20 Alternative routes should be within a
21 reasonable travel time and distance from
22 a closed crossing.

23 What is your opinion with regard to whether
24 that factor exists in this case?

25 A. I believe from the -- from my own

00708

1 observations at the crossing as well as from the
2 testimony and comments and studies that have been in the
3 file and as part of this hearing that that is true, that
4 reasonable alternative access exists within -- well,
5 what makes it reasonable is that reasonable travel time
6 and distances are associated with the alternative
7 routes.

8 Q. And you're talking about 172nd?

9 A. 172nd and to a lesser extent 136th, I
10 believe.

11 Q. And what's your response to the argument
12 concerning the currently low level of service on 172nd?

13 A. I think it's been demonstrated in this
14 hearing, in this proceeding, that under current
15 conditions, you know, and I want to be specific about
16 that, under current conditions, any sort of degradation
17 that would result on 172nd and the other impacted
18 intersections would not be to any extent significantly
19 beyond what the -- let me restate that.

20 Whether or not the crossing is closed, then
21 any degradation that would have on the affected
22 intersections would remain relatively the same.

23 Q. Okay.

24 A. And again, that's not my professional
25 opinion. That's what I believe has been demonstrated

00709

1 through the testimony of other people.

2 Q. Okay. Moving on to the next sentence in
3 Exhibit 62, it indicates that, well, the factor is:

4 The alternative routes should have
5 sufficient capacity to accommodate the
6 diverted traffic safely and efficiently.

7 What about that one in this case?

8 A. I think what that's referring to is in part
9 what I just answered, but also if the traffic is being
10 diverted to another grade crossing, for example, that
11 crossing would have a level of warning appropriate for
12 the increase in traffic, and I believe that's correct in
13 this case under current conditions. And I also think
14 that it's been demonstrated that the -- I believe the
15 average daily traffic across 156th that today is in the
16 area of about 750 vehicles, and I'm led to believe that
17 the diversion of those 750 vehicles onto 172nd today,
18 meaning under current conditions, would -- 172nd would
19 be able to handle that increase.

20 Q. All right. The third area you indicated here
21 in the Railroad Highway Grade Crossing Handbook was it
22 says:

23 Another important matter to consider in
24 connection with crossing closure is
25 access over the railroad by emergency

00710

1 vehicles, ambulances, fire trucks, and
2 police.

3 Then we certainly heard some testimony today
4 about that. What is your conclusion on that point?

5 A. I think it's very clear that closure of the
6 crossing would result in the elimination of a potential
7 emergency route. However, it would not result in the
8 elimination of a primary emergency route.

9 Q. So what is your -- what is the Staff's or
10 your recommendation ultimately in the case?

11 A. Well, I think within the limits of what the
12 Commission -- what I believe the Commission may
13 consider, Staff believes that the closure of the 156th
14 grade crossing would not degrade public safety beyond
15 the benefits to public safety of closing the crossing by
16 virtue of elimination of a potential hazard.

17 Q. And so Staff's recommendation would be?

18 A. Staff's recommendation would be a conditional
19 closure.

20 Q. Okay. And what sort of a condition would you
21 suggest or recommend?

22 A. Okay, first and foremost, the construction of
23 cul-de-sacs that would be designed according to some
24 design vehicle considerations either specified by or
25 agreeable to Snohomish County. And the other condition

00711

1 that's -- and when I'm mentioning Staff, I have also
2 discussed this with Mike Rowswell, so it's not just me
3 sitting here.

4 Q. Who is Mike Rowswell?

5 A. Mike Rowswell is the rail safety manager for
6 the Washington Utilities and Transportation Commission,
7 my immediate supervisor.

8 Q. Okay.

9 A. In terms of a gated emergency crossing, I
10 think the benefits of having the emergency crossing are
11 less for emergency response by law enforcement and
12 emergency response personnel but more for the benefit of
13 the public in the event that what's been called a
14 cataclysmic event occurs on 172nd. In other words, the
15 crossing could be opened up as a temporary public route
16 in the event that one of -- in the event that that
17 crossing is inaccessible.

18 MR. THOMPSON: Okay, thank you very much.

19 The witness is available for

20 cross-examination.

21 JUDGE SCHAEER: Mr. Walkley, did you have
22 questions?

23

24

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00712

1 C R O S S - E X A M I N A T I O N

2 BY MR. WALKLEY:

3 Q. Mr. Nizam, just to clarify again, what was
4 your testimony about the status of these excerpts as far
5 as Washington state law or the policy of the Commission?

6 A. Well, what the policy of the Commission is
7 concerning grade crossings in general as far as closing
8 them?

9 Q. Yes, I mean at the beginning of your
10 testimony, you were asked whether this railroad highway
11 grade crossing handbook and these excerpts are UTC
12 policy or what.

13 A. Okay.

14 Q. Would you define that again, please?

15 A. Yeah, UTC policy doesn't have anything to do
16 with that. What that is is a nationally accepted
17 guidance document for, number one, improving safety at
18 crossings, and basically it's a guide for traffic
19 engineers and crossing station professionals to use when
20 making decisions regarding improving safety at
21 crossings.

22 Q. So are you testifying that the Staff would
23 use these excerpted pages, or would the Staff use the
24 entire book or --

25 A. The Staff doesn't use the entire book. For

00713

1 example, the book has lengthy and specific sections
2 about different accident prediction analyses, you know,
3 for example, the New Hampshire accident prediction
4 analysis, and Staff in Washington wouldn't use that.

5 Q. Okay. Turning -- in other words, what's
6 written in here, you have chosen to talk about those
7 criteria I think on page 93 was it, but in other words,
8 you're saying that you would consider all of the
9 material in at least in the excerpted portions here?

10 A. Yes.

11 Q. Okay. I would like to refer you to page 89,
12 Paragraph A, elimination, at about ten lines down where
13 it begins elimination of a crossing. I'm wondering if
14 you could read that.

15 A. Certainly.
16 Elimination of a crossing provides the
17 highest level of crossing safety,
18 because the point of intersection
19 between highway and railroad is removed.

20 Q. Okay. Now if you would read the next
21 sentence, please.

22 A. (Reading.)
23 However, the effects of elimination on
24 highway and railroad operations may be
25 beneficial or adverse, thus the benefits

00714

1 of the elimination alternative are
2 primarily safety and perhaps operational
3 offset by construction and operational
4 costs.

5 Q. Now isn't that -- isn't that saying that in
6 addition to pure public safety concerns that there is
7 some kind of benefit or balancing tests among various
8 factors that should be taken into account in the
9 decision as to whether to close the crossing or not
10 close it?

11 A. It's important to understand that elimination
12 doesn't only refer to closing crossings but also to
13 grade separating crossings.

14 Q. Yes.

15 A. And so when this says the benefits of the
16 elimination alternative are primarily safety and perhaps
17 operational offset by construction and operational costs
18 -- Mr. Walkley, can you repeat the question that you had
19 for me, please.

20 MR. WALKLEY: Could you -- I don't think I
21 could.

22 (Record read as requested.)

23 A. Okay, when I have talked about the Commission
24 having a legislative preference for crossings not being
25 at grade, what it actually is is a legislative

00715

1 preference for crossings that may exist to be grade
2 separated where practicable, and I think that statement,
3 where practicable, can be applied to that.

4 BY MR. WALKLEY:

5 Q. But you would not apply efficiencies or
6 benefits in the examination of a closure of a crossing?
7 Because doesn't, in other words, what I'm asking is
8 doesn't the Commission also have a responsibility for
9 doing what it can to further the efficiency of freight
10 transportation, for example, under the freight mobility
11 statutes that have been testified to?

12 A. I'm not aware of anything within the
13 Commission statutes themselves that make reference to
14 that.

15 Q. Okay. And what about the expressed intent of
16 the legislature that was testified to by Mr. Schultz
17 regarding the corridor in this case?

18 A. Well, again, parties may petition the
19 Commission when alleging that public safety requires the
20 closure of a grade crossing. The Commission has no say
21 in whether or not siding tracks can be constructed in
22 order to improve efficiency of the railroad.

23 Q. Now you testified that you would recommend
24 closure but with conditions, and one is to build
25 cul-de-sacs. Could you explain that; what do you mean

00716

1 by that?

2 A. By cul-de-sacs, I mean, and I think I use the
3 term loosely, some sort of turn around sufficient for a
4 vehicle that uses the roadway with the longest wheel
5 base allowed by the County to actually turn around.

6 Q. Do you believe that -- have you considered
7 whether the County ordinance permits the construction of
8 such cul-de-sacs in your determination here?

9 A. I have not. I'm looking at it more as a
10 practical matter of having seen the crossing and
11 understanding how narrow the roadway currently is. And
12 if I were to drive down that road in my Ford Escort, I
13 don't think I would be able to turn around and make a
14 U-turn without ending up in a ditch.

15 Q. Well, could we examine that for a moment. We
16 have an aerial photograph, and if you could come over
17 here perhaps, this aerial photograph is part of the
18 record of admitted. Is it correct that -- could you
19 point out, please, where 156th is located.

20 A. (Indicating.)

21 Q. Pointing to the east side of the railroad,
22 could you describe whether there is a farm or some
23 other --

24 A. It looks like there's a private residence
25 right here.

00717

1 Q. Okay.

2 A. And a farm over there.

3 Q. And is there a driveway leading into the
4 private residence?

5 A. Yes.

6 Q. Okay. So what are you saying then, a person
7 going to the private residence certainly wouldn't need a
8 cul-de-sac to turn around?

9 A. No, because they have use of their driveway.

10 Q. So who else would be going down there needing
11 a cul-de-sac?

12 A. Well --

13 Q. Particularly if the roadway were a sign
14 saying dead end, which we have seen all over Puget
15 Sound. How in the world -- in other words, what causes
16 you to think that anybody would get down there and need
17 to turn around?

18 A. The only way that I can answer that is that I
19 am an absent minded driver, and I have found myself in
20 those types of predicaments before.

21 Q. Okay. So in case there's an absent minded
22 driver, we need to build a cul-de-sac on the east side,
23 even though there's a farm or there's a roadway right
24 there leading into what you called a residence?

25 A. In other words, they could use the person's

00718

1 driveway to turn around?

2 Q. To turn around; is that correct, do you think
3 they could?

4 A. I think they could.

5 Q. Okay. So why do we need a cul-de-sac on the
6 east side if the only -- is there any other user, by the
7 way, between the -- is there any other user of the
8 roadway if the crossing is closed to the west of that
9 farm or that house?

10 A. To the west of the house?

11 Q. Yeah, to the west of the house between the
12 house and the tracks.

13 A. No, there are no other users.

14 Q. Okay. There's no other reason to be down
15 there, right?

16 A. No, the reason I suggested cul-de-sacs is
17 because I discounted the use of private property as a
18 means of turning around.

19 Q. But why would anyone need to turn around is
20 my problem.

21 MR. CUMMINGS: Your Honor, I believe that's
22 been asked and answered. I believe that Mr. Nizam
23 already commented that absent minded people sometimes go
24 down dead end roads and need to turn around. It's a
25 fact of life.

00719

1 MR. THOMPSON: I join the objection, I think
2 that the point has been made.

3 JUDGE SCHAER: Do you have anything to add to
4 that answer, Mr. Nizam?

5 BY MR. WALKLEY:

6 Q. Do you know how wide the roadway is?

7 JUDGE SCHAER: Now are you going on to
8 another question then, counsel?

9 A. How wide the roadway is?

10 MR. WALKLEY: He can answer the question,
11 Your Honor.

12 JUDGE SCHAER: Well, I just didn't know if
13 you were wanting to --

14 A. I believe there are 11 foot lanes with no
15 shoulders, two 11 foot lanes with no shoulders.

16 BY MR. WALKLEY:

17 Q. Now if cul-de-sacs were built, who would you
18 envision would have to build those cul-de-sacs?

19 A. Without any basis and, you know, just going
20 on a past experience of who builds cul-de-sacs when
21 roads are closed, I think I would have to say the
22 Burlington Northern Santa Fe.

23 Q. Well, what -- you have been all over the
24 state, I assume, right, looking at various grade
25 crossings and so on and closures?

00720

1 A. Yes, sir.

2 Q. Would you say that it's common to have
3 cul-de-sacs when closures occur; is that a common thing
4 to require?

5 A. Cul-de-sacs or turn arounds, yes, some way of
6 turning traffic around. And, you know, and you have to
7 understand that the roads aren't always this long, so.
8 And sometimes there is more high density populated
9 growth around a crossing.

10 Q. Are you aware of the contest or controversy
11 between the railroad and the County over jurisdiction of
12 the Commission versus the County and the SEPA review
13 process in this case?

14 A. Yes.

15 Q. Do you think that a requirement for
16 cul-de-sacs might affect that ongoing dispute?

17 A. I think --

18 Q. Or that former dispute?

19 A. I think discussions between the railroad and
20 the County subsequent to this hearing may answer that.

21 Q. But if you -- it's a little confusing to me,
22 if you were to -- if the Commission were to issue an
23 order requiring let's say as a condition that in essence
24 the railroad build cul-de-sacs, and that in turn
25 requires the railroad let's say arguably to go to the

00721

1 Snohomish County for a permit, what are you saying, that
2 we may close the crossing if we comply with an
3 impossible condition?

4 MR. CUMMINGS: Objection, Your Honor,
5 assuming facts not in evidence.

6 JUDGE SCHAER: Sustained.

7 Can you rephrase the question.

8 BY MR. WALKLEY:

9 Q. Do you believe that the -- that Snohomish
10 County would grant permission to the railroad if it were
11 to apply for a permit to build to grade let's say for
12 cul-de-sacs at that location?

13 A. I can't answer for the County.

14 Q. But you have seen lots of material in your
15 capacity as a person who is reviewing the SEPA
16 documentation, have you not?

17 A. Yes, and I can't remember -- let me rephrase
18 that. I don't believe that I have ever seen anything
19 from the County that objects to the construction of
20 cul-de-sacs.

21 Q. Have you ever seen anything from the County
22 that claims that there is a problem, an environmental
23 problem, with the railroad's proposal to build the
24 siding or to close the crossing at 156th?

25 A. Yes.

00722

1 Q. Okay. And so is it expected -- would you
2 expect with your experience with public authorities,
3 would you expect the same public authority who is
4 objecting to the railroad's SEPA documentation as
5 pointed out in the exhibits we put into evidence, it
6 would be in Exhibit 21 for example, that that same
7 authority would grant a simple request for grading for
8 cul-de-sacs?

9 A. I think like myself, perhaps representatives
10 of the County have gained more extensive knowledge of
11 the overall proposal from sitting in on this hearing, so
12 in light of that, I don't know what their answer would
13 be.

14 Q. Is it -- have you looked at the feasibility
15 of the turn around being located on the railroad
16 property? In other words, the 156th is closed, have you
17 looked at the feasibility of whether or not a cul-de-sac
18 is buildable on railroad property on either side of the
19 crossing?

20 A. Well, I have seen something provided by the
21 railroad that basically contains preliminary plans for
22 cul-de-sacs.

23 Q. But do you recall whether the preliminary
24 plans were on or off the railroad right of way?

25 A. I don't recall.

00723

1 Q. Okay. And the other condition that you're
2 thinking of is that there be a gated emergency crossing.
3 What do you mean by that?

4 A. Well, I think I explained. When I say gated
5 emergency crossing, we have heard from the various law
6 enforcement and emergency response personnel that they
7 -- that they would not necessarily object, but not find
8 as much use in that as perhaps was originally thought by
9 Staff. But the benefits in that would be more for the
10 public in the event that 172nd was blocked.

11 Q. What though -- I'm not arguing with you here,
12 I'm only trying to understand. When you say gated, do
13 you mean some kind of a locked gate across the crossing
14 or what?

15 A. Well, that would be something that would be a
16 result of discussions between the parties as far as how
17 it was gated.

18 Q. Were you here for the testimony of both Lt.
19 Ross and Chief Tucker though?

20 A. Yes.

21 Q. When they described gated emergency crossings
22 as disasters?

23 A. I don't recall the word disastrous, but I was
24 here for their testimony.

25 Q. Possibly I could refresh you.

00724

1 A. And once again, they were speaking in terms
2 of responding to an emergency and not opening up the
3 crossing as an alternate route in case 172nd is blocked.

4 Q. And were you here for the testimony of
5 Mr. Ketchem?

6 A. Yes, I was.

7 Q. And did you hear him explain on day one of
8 the hearing what the operational problems are with
9 breaking a train at 156th?

10 A. Yes.

11 Q. Okay. So I don't understand. The train is
12 sitting on 156th, and it's a gated emergency crossing,
13 would you anticipate the railroad would break the train
14 or not break the train in the event of an emergency?

15 A. We're talking about a cataclysmic event that
16 the frequency of such event would, you know, I don't
17 expect that it would happen -- well, I can't speculate
18 on that, because that's not what I want to do. But if a
19 cataclysmic event that blocked 172nd did happen, I
20 suppose I would -- I'm not in a position to ask anything
21 of the railroad, but I suppose I would assume that, as a
22 show of good faith, that they would want to help the
23 County out a little bit by providing an alternate route
24 for a very important arterial to the community.

25 Q. I don't understand that. What do you mean an

00725

1 alternative route?

2 A. Well, 172nd is a very important route, as has
3 been demonstrated.

4 Q. Right.

5 A. If something happened at the crossing that
6 blocked it for, you know, a day to three days, 172nd, my
7 point was 152nd could be an alternate route in that
8 event.

9 Q. 156th?

10 A. 156th, yes.

11 Q. But how could it be if a train was sitting on
12 it? In other words, I think you heard Mr. Ketchem
13 testify, and if you didn't, he's going to do it again.

14 A. I think --

15 Q. That it is possible that both 156th and 172nd
16 could be blocked by the same incident.

17 A. One thing that I --

18 Q. Because we're talking about trains here that
19 are --

20 MR. CUMMINGS: Your Honor --

21 Q. -- a mile and a half long.

22 MR. CUMMINGS: Will you let the witness
23 answer the question.

24 JUDGE SCHAER: If you're going to have
25 Mr. Ketchem testify to that, why don't we listen to what

00726

1 he has to say.

2 MR. WALKLEY: Okay, I'm just trying to
3 understand the witness's --

4 JUDGE SCHAER: Go ahead and explain your
5 concept one more time. This will be about the fifth.

6 A. I didn't explain one thing, that there's
7 obviously a risk involved with that, and that that risk
8 is if there's a train that happens to be stopped on
9 156th while that event took place, then the use of 156th
10 as an alternate crossing may be unattainable. But
11 that's assuming that a cataclysmic event took place at
12 the same time a train is stopped at the crossing.

13 BY MR. WALKLEY:

14 Q. Let's get back to the gate for a minute. You
15 said gated emergency crossing. What do you mean by
16 gated?

17 A. By gated, I mean some mechanism or some
18 structure in front of the crossing that would not allow
19 cars to enter the railroad right of way.

20 Q. Would it be a public crossing still?

21 A. No, it would be --

22 Q. Or a private crossing?

23 A. It would be closed to the public, and it
24 would be a private crossing.

25 Q. If the crossing exists --

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1 MR. CUMMINGS: Your Honor, may I interject
2 for just a moment.

3 JUDGE SCHAER: Yes.

4 MR. CUMMINGS: Maybe we can go off the
5 record.

6 (Discussion off the record.)

7 BY MR. WALKLEY:

8 Q. And so the proposal from Staff for a
9 condition to the Commission after hearing all this would
10 be that there be a gated -- that 156th remain as an at
11 grade crossing, but that it be closed as a public
12 crossing and that it somehow be gated for emergency use?

13 A. Maybe I can --

14 Q. But not by the public?

15 A. -- clarify that. Some either -- that would
16 be one option, yes. Or some sort of agreement with the
17 County be worked on that would basically develop a plan
18 that in the event of blockage of 172nd and if 152nd
19 wasn't immediately blocked by a train, that perhaps a
20 temporary crossing can be installed achieving the same
21 end.

22 Q. So we would not, under your proposal, we
23 would not eliminate 156th, it would still be an at grade
24 crossing?

25 A. Can I refer to --

00728

1 Q. But we would have cul-de-sacs?

2 JUDGE SCHAER: Can you answer yes or no,
3 Mr. Nizam, and then we can move on.

4 A. Yes.

5 MR. STIER: Bob, I'm just -- Your Honor, I
6 would like to ask some questions on these lines too, and
7 maybe to move things along because I do have someplace
8 to be at some point tonight, my dad is in town for just
9 tonight in Seattle, and I was planning on having dinner
10 with him, so I would kind of like to get out of here,
11 and I would request that I have an opportunity to
12 cross-examine in the very near future. And if
13 Mr. Walkley still feels it's not covered, then he can
14 pick it up when we're all done here.

15 JUDGE SCHAER: Is that acceptable to you,
16 Mr. Walkley?

17 MR. WALKLEY: That will be acceptable, Your
18 Honor.

19 JUDGE SCHAER: Go ahead, Mr. Stier.

20 MR. STIER: Thank you.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. STIER:

24 Q. Now with respect to the crossings, you have
25 said several times cataclysmic events, so you're not

00729

1 envisioning that the temporary crossing or whatever it
2 is going to be would even be used for typical
3 emergencies like bee stings, for example, in the park?

4 A. That's correct.

5 Q. Okay.

6 A. Ideally it would never be used.

7 Q. Okay. So I guess I'm going to offer, this is
8 less of a question but more of a suggestion, okay, and I
9 hope that's not inappropriate.

10 A. Yes.

11 Q. You know, it seems from what you have been
12 describing, I think you were getting there, you were
13 describing a -- you have kind of moved a little away
14 from a crossing. And I thought for a long time it's
15 common sense that if there's a cataclysmic event, the
16 railroad is going to move their train and let people get
17 through there just because out of public necessity they
18 would do that.

19 A. That's what I was saying.

20 Q. You don't need a crossing. I mean, in fact,
21 even if it's not improved, you know, people can bump
22 through there with their emergency vehicles and get to
23 the other side, but that would only happen in what, '91,
24 a derailment or something like that. I mean that's what
25 you're talking about, right? You're not talking about a

00730

1 day-to-day blockage of 172nd, are you?

2 A. No, I'm talking about things in the nature of
3 the former.

4 Q. Yeah, and I think you hit on something
5 personally there when you just made that suggestion that
6 there be some kind of an agreement that, you know, if
7 there is an event of that scope that the railroad
8 facilitate some emergency way to get through there. And
9 I think it seems to me that that makes a -- that makes
10 more sense than the improvements necessary for a
11 temporary crossing and the obligation to have keys, and
12 then who is going to decide whether this is a big
13 emergency or a little emergency, et cetera, et cetera.
14 It seems that's not workable. Would you agree with
15 that?

16 A. I agree with that, and I would like to add
17 that as long as some other acceptable means achieves the
18 same end, I think that I would agree with that.

19 Q. And isn't it also true that the UTC can issue
20 emergency orders if there was a non-cooperation
21 situation?

22 A. A non-cooperation in terms of?

23 Q. The BN wouldn't let them through, which is
24 inconceivable, but let's say that happened.

25 A. An emergency order would probably take some

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1 time to draft and get signed, so it probably wouldn't
2 help in an immediate situation.

3 Q. Well, I mean, you know, we're talking once
4 again the cataclysmic event which would go on more than
5 a day or two days. And like I said, in the
6 inconceivable circumstance, the UTC could step in and
7 remedy a problem if there is a problem. But like I
8 said, I think that's inconceivable, you know.

9 But, you know, there's a lot involved with
10 just the term when you say there's a crossing there.
11 Well, first of all, I have a real problem with the
12 question of, okay, I will try to phrase this as a
13 question. If you've got some kind of a dedicated right
14 there, my understanding is that then suddenly you're
15 going to have the breakage of the train requirement
16 kicks in, because there's a crossing there. Even though
17 it's not supposed to be used, it's still a crossing, and
18 I don't know of any exception to the requirement of the
19 brakeage under the 10 minute rule.

20 A. You have to remember that -- and I'm -- I
21 need to argue this point, but --

22 Q. Well, I don't want to argue, I'm just making
23 a point.

24 A. Well, we made a distinction between a public
25 and a private crossing, and our rules only apply to

00732

1 public crossings.

2 Q. So if it's a private crossing, I don't --
3 that's a nice distinction, but this is not a private
4 crossing you're taking about, because it's for public
5 access by public vehicles. That's not a private
6 crossing. So I'm just saying, that's not as convenient
7 a vehicle, a thing to use in my opinion.

8 But anyway, so your recommendation, you would
9 be willing to modify it, to talk about something, some
10 alternate accommodation besides a classic crossing if
11 there was some way we could accommodate the cataclysmic
12 event?

13 A. I think Staff's recommendation is that if
14 there was a cataclysmic event, some provision be made to
15 use 156th as an alternate route.

16 Q. All right. With respect, just one other
17 point here, back on the safety aspect, do you view the
18 reduction of temporary blockages on 172nd by the south
19 siding extension to be a safety issue as well as a
20 operational convenience issue?

21 A. Yes.

22 Q. So in essence, this closure that would
23 facilitate that extension would have safety effects up
24 on 172nd?

25 A. I think in fairness with regard to what I

00733

1 mentioned that the Commission may consider, if the
2 Commission has to disregard speculative things like
3 future growth, then the future train operations also
4 fall into that category.

5 Q. Well, no, but this is not a future train
6 operation. This is an effect of the event of the
7 closure, which is the extension. That's what it's for.

8 A. Okay.

9 Q. I mean that's an imminent effect of this
10 whole thing, which is to extend it so that gets trains
11 through there faster. And so you -- that's not really a
12 future event. That's totally associated with this
13 event, right?

14 A. So your question is, less blockage on --
15 you're asking me if I believe that less blockage on
16 172nd if that would result from the siding extension
17 would improve safety?

18 Q. Correct.

19 A. Yes.

20 MR. STIER: Okay, no further questions.

21 JUDGE SCHAER: Did you need to ask anything
22 more, Mr. Walkley?

23

24

25

1 C R O S S - E X A M I N A T I O N

2 BY MR. WALKLEY:

3 Q. I'm still not entirely clear about what your
4 thinking is about what a -- what is a cataclysmic event?

5 A. A cataclysmic event is something that's been
6 referred to all the way back to the first meeting I had
7 in Snohomish County regarding this proposal prior to
8 even the petition being filed. And I think what it
9 refers to is some event that would block the use of
10 either the 172nd grade crossing or the 27th Avenue
11 northern access for some extended period of time.

12 Q. Now you mean 27th Avenue off of 172nd?

13 A. I believe when the term cataclysmic event was
14 used first in one of the Gary Struthers and Associates,
15 I think it was in the addendum, that he was referring to
16 the inaccessibility of 27th Avenue.

17 Q. And who would make the decision? In other
18 words, any blockage of 27th, for example, Avenue would
19 be or what kind of blockage of that avenue would
20 constitute it? In other words -- let me back up.

21 Have you given any thought in this
22 recommendation or this potential recommendation by
23 Staff, have you given any thought to who would make a
24 decision as to whether or not you had a cataclysmic
25 event, quote, unquote?

00735

1 A. Well, I assume that would be the -- that
2 would be Snohomish County.

3 Q. And so -- all right. Were you here during
4 Mr. Ketchem's testimony when he talked about what's
5 involved in breaking a train?

6 A. Yes.

7 Q. Did you hear him say, I believe this is
8 correct, that train men in order to break a train when
9 they -- they might have to walk say half the train
10 distance?

11 A. Yeah.

12 Q. As much as that to even to get to the place
13 to break the train?

14 A. Yes, I did.

15 JUDGE SCHAER: May I interject a question
16 here. I thought I heard you say earlier in your
17 testimony, Mr. Nizam, that you would consider a
18 cataclysmic event to be something that would close the
19 crossing for a day or longer, something like the three
20 day event.

21 THE WITNESS: Referring to the derailment
22 that was cited earlier in previous testimonies.

23 JUDGE SCHAER: And so is the day or longer
24 accurate in terms of the kinds of timing you were
25 talking about?

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1 THE WITNESS: Yes.
2 JUDGE SCHAER: Okay, let's go from there if
3 we could, Mr. Walkley.
4 BY MR. WALKLEY:
5 Q. Is that 24 hours or --
6 A. Yes.
7 MR. CUMMINGS: Objection, Your Honor.
8 MR. WALKLEY: Well, no, I mean this is a
9 fairly important thing.
10 JUDGE SCHAER: This has been asked and
11 answered. He was asked 24 hours, and the answer was
12 yes. Let's go on, Mr. Walkley.
13 BY MR. WALKLEY:
14 Q. In other words, you mentioned though two
15 things, the blockage of 172nd expected to last 24 hours
16 or longer, blockage by what?
17 A. Perhaps a derailed train similar to the
18 occurrence that was cited earlier.
19 Q. What about a failed bridge?
20 A. A failed bridge?
21 Q. Yeah, that has nothing to do with the
22 railroad.
23 A. You mean in general?
24 Q. Yeah, that would block 172nd. In other
25 words --

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1 MR. THOMPSON: Objection, there's no bridge
2 in the area. The question makes no sense.

3 Q. Okay, but where blocked? In other words,
4 have you given this -- I suggest, in other words, that
5 you give this a great deal of thought, because the --

6 JUDGE SCHAER: Mr. Walkley, is there a
7 question before the witness?

8 MR. WALKLEY: Yes.

9 BY MR. WALKLEY:

10 Q. Have you thought about the practical
11 application of such a definition on either the public
12 authorities or the railroad? How in the world --

13 JUDGE SCHAER: That's enough, sir, let's not
14 go on to the rhetoric.

15 Q. -- would we ever do this?

16 JUDGE SCHAER: Mr. Walkley, you're out of
17 order.

18 BY MR. WALKLEY:

19 Q. Have you given consideration to that?

20 A. Well, I think I probably made a mistake in
21 using the word cataclysmic, and what I was referring to
22 was something that was used in the, like I said before,
23 in Gary Struthers Associates I believe it was the
24 addendum and for -- there were two addendums, and I'm
25 actually familiar with the draft addendum and the

00738

1 addendum we have today. It may not be in the addendum
2 today, but it was certainly in the draft addendum. But
3 what I was referring to was some sort of event that
4 would disrupt the use of the 172nd Street crossing for
5 more than a day.

6 MR. WALKLEY: Okay, thank you, that's all I
7 have.

8 JUDGE SCHAEER: Mr. Stier, did you have
9 anything further?

10

11 R E C R O S S - E X A M I N A T I O N

12 BY MR. STIER:

13 Q. If that event extended on for let's say the
14 road was blown up, okay, I mean really, okay, and it's,
15 you know, it would take two years to get the money and
16 to reconstruct the road, I mean would there have to be
17 some kind of end point where -- I mean this isn't like
18 completely reinstating the crossing, you're not
19 envisioning that? It's a temporary measure?

20 A. Yes, sir.

21 Q. For a short duration?

22 A. Yes.

23 Q. However that can be defined?

24 A. If something like that happened, I would
25 envision the crossing would remain open until somebody

00739

1 came up with a more permanent solution.

2 MR. STIER: Okay, no further questions.

3 JUDGE SCHAER: Any questions, Mr. Cummings?

4 MR. CUMMINGS: I'm a little reluctant, just a
5 couple of questions.

6 JUDGE SCHAER: Go ahead.

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. CUMMINGS:

10 Q. Mr. Nizam, thank you for your patience. Is
11 your decision regarding the support of the petition to
12 close 156th based upon the proposed siding that's
13 associated with this project?

14 A. No.

15 Q. Okay. So your decision is based solely upon
16 156th being 156th?

17 A. Yes.

18 Q. Okay. In terms of the manual that was relied
19 upon or guide back or handbook, you identified the three
20 factors that you looked into and the first being
21 alternate routes within a reasonable amount of travel
22 time. On page 93, if I can direct your attention to
23 that page.

24 A. Uh-huh.

25 Q. On the second column as you go down the I

00740

1 guess it's the kind of the line right above the final
2 bullet over there; does that make sense?

3 A. Yes.

4 Q. Criteria for crossing on main line.

5 A. Yes.

6 Q. Is this crossing considered a main line?

7 A. Yes, it is.

8 Q. And the criteria they're talking about are --
9 well, do you understand what this criteria is?

10 A. If you're talking about any main line section
11 with more than five crossings within a one mile segment.

12 Q. Yes. What's the purpose of that criteria?

13 A. To eliminate redundant crossings.

14 Q. And the standard by this handbook then is
15 where you have five crossings within a one mile segment.

16 A. I think it's important to point out that this
17 isn't really a standard, but it's rather something that
18 would help to guide rail safety professionals or traffic
19 engineers when looking at a segment of track or a
20 corridor and something to basically point out that if
21 there are four or more crossings within a one mile
22 segment of track, you should probably take a close look
23 to see if one of those crossings or more can't be closed
24 or consolidated.

25 Q. In terms of your consideration in the

00741

1 dangerousness of the 156th Street crossing outweighing
2 the public needs, how is it you defined that
3 dangerousness as opposed to the public need?

4 A. Okay. As I said before, all crossings
5 represent a potential hazard by their very nature as a
6 point of a potential collision between a train and a
7 highway vehicle. That's where the dangerousness comes
8 in.

9 Q. Okay.

10 A. Okay. Now once the Commission is petitioned
11 to close a crossing, that's assumed, so the burden of
12 proof is on public need.

13 Q. Okay.

14 A. And the reason I made reference to this
15 section of the book was to kind of give the Commission
16 an idea of what sorts of things they're looking at when
17 assessing public need.

18 MR. CUMMINGS: Okay, thank you, I have no
19 further questions.

20 JUDGE SCHAER: I had just one or two
21 questions.

22

23

E X A M I N A T I O N

24 BY JUDGE SCHAER:

25 Q. Were you in the hearing room today when

00742

1 Mr. Thomsen testified on behalf of the County?

2 A. Yes, I was.

3 Q. According to my notes, one of the things
4 Mr. Thomsen had indicated was that if there were a
5 crossing built to the south that there should be
6 cul-de-sacs on 156th that were adequate for emergency
7 vehicles or school buses, and he described those as
8 being commercial cul-de-sacs, which I believe were
9 referenced in the document he was discussing at the
10 time. Do you recall that testimony?

11 A. Yes, I do.

12 Q. And looking at 156th, can we contemplate that
13 there might be times when people on that road would have
14 need to have children brought home on school buses or to
15 call emergency vehicles and that those vehicles might
16 then need to be able to turn around?

17 A. Considering the possible turnover in who
18 lives in each of those houses, yes.

19 Q. And how far is the house by the railroad from
20 the main road out there? Is it a significant distance
21 for perhaps a kindergartner to walk?

22 A. I would say that if a -- if your question has
23 to do with whether or not a kindergartner is being
24 dropped by a school bus, I don't think the school bus
25 would drop him at the end of the street.

00743

1 Q. Do you think they would need to bring him
2 down the street?

3 A. Yes.

4 Q. So the kind of cul-de-sac you're talking
5 about is the commercial specifications that Mr. Thomsen
6 described?

7 A. I'm not so sure about that, but the way I
8 described it was whatever design vehicle that the County
9 specified or was agreeable to, and by design people, I
10 mean whatever vehicle the County asked them to design
11 for, and I wasn't -- I didn't remember the specific
12 reference to the school bus and fire truck, but it was
13 getting at the same thing.

14 MR. CUMMINGS: Your Honor, if I could
15 interject, I was just going to point out that Exhibit 59
16 was what I believe Mr. Thomsen was discussing, and I
17 think you are correct, it does identify a commercial
18 standard.

19 JUDGE SCHAER: Do you have that document
20 available to you?

21 MR. CUMMINGS: I can hand it to him.

22 JUDGE SCHAER: Can we have that made
23 available, please.

24 THE WITNESS: I have it in front of me.

25 BY JUDGE SCHAER:

00744

1 Q. If you would look at the first page is a map,
2 the second page is text, and the third page there's a
3 picture of a cul-de-sac, and there is a text box talking
4 about cul-de-sacs and their sizes, talking about a
5 commercial cul-de-sac. Would this be the kind of
6 standard you would expect the County to use in making
7 this determination?

8 A. If this is the standard that the County is
9 subject to by their own, well, accepted standards, then
10 yes.

11 JUDGE SCHAER: Okay, that's all I had.
12 Do you have anything further for this
13 witness?

14 MR. THOMPSON: I have one question.

15 JUDGE SCHAER: Okay, go ahead.

16

17 R E D I R E C T E X A M I N A T I O N

18 BY MR. THOMPSON:

19 Q. Is it possible for the Commission to -- well,
20 let me ask you this.

21 Are you familiar with the rule, the
22 Commission's rule on requiring the breaking of trains
23 when they occupy a crossing?

24 A. Not necessarily breaking trains, but clearing
25 the crossing, whether it's breaking a train or moving

00745

1 the train ahead of the crossing.

2 Q. Okay, what does it require then?

3 A. It requires that when a train is blocking a
4 crossing -- well, first of all, trains can't block
5 crossings for more than 10 minutes if reasonably
6 possible. And if a train is approached by an emergency
7 vehicle with its lights flashing, the train must
8 immediately be moved or the crossing cleared.

9 Q. Okay. Is it possible for the Commission to
10 grant waivers of this ruling?

11 A. I have been led to believe that by other
12 Commission Staff, but I haven't verified that
13 independently.

14 MR. THOMPSON: Thank you, that's all.

15 JUDGE SCHAER: Is there anything further for
16 this witness?

17 MR. STIER: Your Honor, I have one question
18 that kind of came up.

19 JUDGE SCHAER: Go ahead.

20 MR. STIER: On cul-de-sacs.

21 JUDGE SCHAER: Go ahead.

22

23 R E C R O S S - E X A M I N A T I O N

24 BY MR. STIER:

25 Q. Are you familiar with the Snohomish speed or

00746

1 the Edmonds speed case; do you remember that case?

2 A. I'm not as familiar with it as my supervisor,
3 but to some extent, yes.

4 Q. But you remember that thing got held up for
5 years when the fence -- when there was where people just
6 tried to change the nature of the fence from a hard
7 structure to a vegetated fence.

8 A. Yes, I do.

9 Q. And that was opposed, that got caught up in
10 local land use decision making, right, and it ended up
11 in the Court of Appeals as I recall. You may not know
12 that, but as I recall, it definitely went in through the
13 court systems.

14 A. Okay.

15 Q. So my point is, I bring that to your
16 attention and I ask the Court -- I will give you
17 citations on it in my brief, to take judicial notice of
18 this, is that when you get involved with, you know,
19 outside permitting, it can become an obstacle to the
20 closure, and the thing can get diverted. And so I'm
21 asking you, considering that fact and considering what
22 happened on that Edmonds speed case, if there's a
23 problem, if there's a problem in getting a permit to do
24 the cul-de-sacs, would Staff consider rescinding that
25 requirement?

00747

1 A. Well, I believe that once a Staff
2 recommendation has been made and an initial order is
3 filed, I'm not sure whether Staff can do that.

4 MR. STIER: If there was a motion to modify,
5 assume we got the right to seek a modification of an
6 order, and, you know, is that correct, Your Honor?

7 JUDGE SCHAER: Well, I think --

8 MR. STIER: I know this is somewhat unusual,
9 but I think I've got an unusual problem here.

10 JUDGE SCHAER: I think one of the things that
11 perhaps parties should brief is if these conditions are
12 imposed, should they be conditions precedent or should
13 they not. I don't think it would necessarily have to be
14 a condition precedent to close the crossing, Mr. Stier.

15 MR. STIER: All right, thank you.

16 JUDGE SCHAER: So why don't you add that to
17 your list of issues, please.

18 MR. STIER: No further questions, thank you.

19 JUDGE SCHAER: Okay, anything further for
20 this witness?

21 Thank you for your testimony.

22 And did you have a witness that you wished to
23 call, Mr. Walkley?

24 MR. WALKLEY: Yes, I do, Your Honor. This
25 will be fairly short. This is in the nature of simple

00748

1 rebuttal to some of the suggestions and questions that
2 came up during today's proceedings, and I have asked
3 that Mr. Ketchem, who has already testified, return to
4 the stand.

5 JUDGE SCHAER: Mr. Ketchem, I will remind you
6 that you are already under oath in this proceeding.

7 THE WITNESS: Thank you, Your Honor.
8 Hopefully I can clear some things up here.

9 JUDGE SCHAER: I hope so.

10

11 Whereupon,

12

13 STEVE KETCHEM,
14 having been previously duly sworn, was called as a
15 witness herein and was examined and testified as
16 follows:

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D I R E C T E X A M I N A T I O N

BY MR. WALKLEY:

Q. Mr. Ketchem, you just heard the testimony of
Mr. Nizam as well as earlier where there were questions
raised from time to time by various people the
suggestion that 156th remain open as a crossing. Could
you please once again just tell us from your operating
point of view whether the idea of keeping that crossing
open in a cataclysmic event, whatever that is, is

00749

1 workable or not?

2 A. Now you're speaking of keeping the crossing
3 open only for emergency vehicles; is that correct?

4 Q. Yes. You heard Mr. Nizam's suggested
5 condition, and that is, as I understand it, that the
6 crossing physically would remain in place, that there
7 would be some gates placed on each side of the crossing,
8 and that cul-de-sacs would be constructed, and that the
9 crossing would be open for emergency vehicle use, as I
10 understand, only in the -- in a cataclysmic event. Now
11 could you give us your thoughts about that?

12 A. All right, so what we're saying here is that
13 if I put a train in a siding at English and this is a
14 private crossing for emergency use only and that train
15 is sitting there with a crew on the locomotives and an
16 emergency vehicle comes up to that crossing, my crew
17 would have to walk back and cut that crossing to allow
18 that emergency vehicle through there.

19 Q. And the crew would be located either --
20 logically at either end of the extended siding?

21 A. That's correct.

22 Q. Okay.

23 A. Now the next scenario I want to talk about
24 here is that if I pull, and this would fall under the
25 same thing here, if I pull a train into the siding there

00750

1 and under the regulations that we have right now that we
2 can not occupy a crossing for over 10 minutes, I would
3 have to cut that crossing unless I got some type of --

4 Q. Is that true --

5 A. -- leniency to do so.

6 Q. Is that true even with a private crossing?

7 A. No, that is not true with a private crossing.
8 Public crossings, yes. Private crossing, no. But if an
9 emergency vehicle approaches a private crossing with its
10 lights flashing, we have to cut that crossing.

11 Q. When you say we have to, what does that come
12 from?

13 A. That comes not only from our own rules, but I
14 believe it is mandated mostly by all counties.

15 Q. Okay. So we don't need a cataclysmic event,
16 right, in order to have to break the train?

17 A. No.

18 JUDGE SCHAER: Are you asking me that
19 question?

20 MR. WALKLEY: No, Your Honor.

21 A. If we had a event that happened at 127th that
22 caused that crossing to be blocked for any length of
23 time, the Burlington Northern Santa Fe would work with
24 the community and the County, and we would clear that
25 crossing for emergency vehicles. We're not going to

00751

1 leave the crossing blocked and not allow emergency
2 vehicles to cross there if that's the only route they
3 have. I mean we're not that type of railroad. We
4 wouldn't do that.

5 I would say here though that if we set up a
6 standard to where we're going to put up gates on this
7 crossing, and they're going to be locked, and we're
8 going to have emergency vehicles only use it, then what
9 we're going to find is we're going to get tampering with
10 the gates. Unless we put barricades on both sides of
11 it, we're going to get people running around it trying
12 to get across there when there's no trains because they
13 don't want to go down to 127th or they don't want to go
14 down to the other crossing.

15 Another thing is we will have to maintain
16 that crossing, which is going to be a cost. It's -- if
17 the train is sitting there and there's an emergency
18 vehicle coming down either way on that main street,
19 which one is it, going up and down?

20 Q. 172nd.

21 A. No, not 172nd.

22 Q. 156th.

23 A. No, the one that goes up and down.

24 Q. Oh, you mean Smoky Point?

25 A. Yeah, if they see that vehicle, the chances

00752

1 are they don't know if it's going to go back and try to
2 use that crossing or not, so they're going to get off
3 and they're going to walk back, and it may just keep on
4 going the other way, you know. How are they going to
5 communicate with the train crew to make sure the train
6 crew gets down there to cut the crossing for them when
7 they don't have the radios to communicate with the train
8 crew.

9 Q. Okay.

10 A. So if the train crew is sitting 3,500 feet or
11 4,000 feet up the road there or up the track, he may not
12 even see that vehicle sitting there waiting for them to
13 come back and cut it, so.

14 Q. And if he did see it and was located
15 thousands of feet away --

16 A. Yeah, but it would take him a considerable
17 amount of time to get back there and then cut it.

18 Q. In other words, what you're saying is through
19 practice, through our rules, through BNSF's rules,
20 through the training of the crews, is that correct, that
21 they are taught and we operate that we will attempt to
22 break that train in the event that an emergency --

23 A. That's correct.

24 Q. -- is there whether or not there is a
25 cataclysmic event.

00753

1 Now do you have any idea from your testimony
2 yesterday and so on, do you have any idea, for example,
3 of some of the other consequences of this proposal? For
4 instance, what about the length of the proposed
5 extension if we are required to break the train here on
6 some occasions but not others?

7 JUDGE SCHAER: Counsel, I'm going to ask you
8 to be more specific when you talk about this proposal.
9 I had heard a proposal today from Mr. Thomsen for the
10 County that there should be emergency gates and access
11 available for emergency vehicles any time they came to
12 the crossing. And I have heard a proposal from the
13 Commission Staff that there should be access made
14 available only in the event of some kind of major
15 accident that closes 172nd Street or the access road
16 there for more than 24 hours. Which proposal are you
17 asking the question about, please?

18 MR. WALKLEY: I think it would be safe to say
19 I'm asking about either one of them, Your Honor.

20 JUDGE SCHAER: Well, I think we're getting
21 very different information from your witness in his
22 answers about the two different circumstances.

23 MR. WALKLEY: All right.

24 JUDGE SCHAER: And I don't want this record
25 to be ambiguous.

00754

1 MR. WALKLEY: Right, I want it be to clear.
2 We're talking about a petition to close 156th Street,
3 that is to eliminate 156th Street. These proposals both
4 from Thomsen and from Nizam are to keep it.

5 JUDGE SCHAER: Then I will instruct you to
6 ask the question in terms of one proposal and then the
7 other, the one from Thomsen and then the one from Nizam
8 if that helps you clarify your question.

9 MR. WALKLEY: Okay.

10 THE WITNESS: I think I know what you're
11 going to ask me.

12 BY MR. WALKLEY:

13 Q. Are there any circumstances under which it
14 would be acceptable to BNSF that that crossing
15 physically remain in place at 156th?

16 A. I don't understand what you're really asking
17 me.

18 Q. Okay.

19 A. Is there any circumstances that the BNSF
20 would like to see the crossing still there?

21 Q. Right.

22 A. Is that what you're asking me?

23 Q. Well, that's one question.

24 A. As an operating officer, no, I do not want
25 the crossing there.

00755

1 Q. Okay. Now you heard the Judge distinguish
2 between the two proposals, one Mr. Thomsen's proposal,
3 one Mr. Nizam's proposal. Is either one of those
4 acceptable as far as you know to operations as you
5 envision the south extension?

6 A. Okay, if we leave 156th Street in even under
7 emergency circumstances, we would have to redesign the
8 south extension to account for the footage that we would
9 lose by having to break the crossing, which would be 600
10 feet, so we would have to extend the south extension 600
11 feet to accommodate if we did have to break that
12 crossing to stay out of the 172nd.

13 Q. Okay.

14 A. There's another thing that I'm puzzled about
15 here too is if my train crews, if there's -- let's say
16 there's an ambulance sitting there at the crossing and
17 my train crew is required to get down and get on the
18 ground, walk back, and split the train up and let the
19 ambulance through, and that ambulance sits there for 10,
20 15 minutes, where's the liability fall if somebody dies
21 because of my crew not getting back there right away?

22 JUDGE SCHAER: Now in giving that answer,
23 were you talking about Mr. Thomsen's proposal or about
24 the Commission Staff proposal where you would know that
25 there had been a cataclysmic event declared and that

00756

1 that crossing was to be kept open until the other
2 situation was resolved?

3 THE WITNESS: No, this isn't the catastrophic
4 even, I'm not talking about that.

5 JUDGE SCHAER: Okay, that's the problem I'm
6 having with your answers. There are two different
7 proposals. You testified earlier with the cataclysmic
8 event you didn't think the railroad would have a problem
9 with working out a way to make this available. Is that
10 my correct understanding of your testimony?

11 THE WITNESS: That's correct.

12 JUDGE SCHAER: And I believe you're talking
13 now about something like Mr. Thomsen's proposal where an
14 emergency vehicle came to the crossing, there might be a
15 need to clear the road; is that correct?

16 THE WITNESS: That's correct.

17 JUDGE SCHAER: Okay, go ahead, Mr. Walkley.

18 BY MR. WALKLEY:

19 Q. Okay, well, obviously, Mr. Ketchem, we're not
20 here to negotiate a proposal tonight, but the only
21 purpose for calling you back is to make sure that we're
22 clear on the record and that if anyone has questions
23 about whether or not it is feasible under either Mr.
24 Thomsen's proposal or Mr. Nizam's ideas to have the
25 crossing open under any circumstances.

00757

1 A. No.

2 Q. Your answer is no?

3 A. That's correct.

4 Q. Were you earlier talking about 172nd Street,
5 if there is a catastrophe there that the railroad would
6 do its utmost to clear that, and we're not talking about
7 a three day emergency?

8 A. Well, I can't say what the catastrophe would
9 be, but I know the railroad would work with the County
10 and the City, and we would do everything we could to
11 assist in not only opening up the road traffic, the
12 automobile traffic, but our own railroad traffic. I
13 mean that's --

14 Q. Okay. Have you had experience in your long
15 career, I think you testified 25 years in the railroad,
16 have you had experience with whether or not it is
17 feasible to exclude the public from such a so-called
18 private crossing? In other words, what are the problems
19 that you would foresee with that under either
20 Mr. Thomsen's or Mr. Nizam's proposal as far as
21 maintenance or policing of this is concerned?

22 A. Well, I would first have to see the design of
23 it and see how we would actually try to keep the public
24 from trying to use it. If we put just a gate across
25 there and put a lock on it and leave access on both

00758

1 sides of it for vehicles to get around it, of course
2 people are going to try to do that. But if it's all
3 fenced off and it was prevented from anybody else trying
4 to use it, then I don't know.

5 The vandalism part, would they go over and
6 cut the locks and try to go through there, I'm sure they
7 would at some time.

8 Q. And have you had experience, any other
9 experience with this sort of thing where there is a
10 private, a so-called private crossing with some kind of
11 gate for fire entrance?

12 A. Well, I have worked on probably half of the
13 Burlington Northern Santa Fe system, and I have never
14 run across such a situation in my career.

15 MR. WALKLEY: Okay, I have no further
16 questions.

17 MR. STIER: One question.

18

19 C R O S S - E X A M I N A T I O N

20 BY MR. STIER:

21 Q. If whatever the scenario is -- let me start
22 again.

23 Whatever the scenario is, is it possible for
24 an emergency vehicle to cross the tracks, and I'm
25 talking about the siding, without formal and

00759

1 standardized crossing improvements? In other words,
2 could they bump across?

3 A. No.

4 Q. They could not?

5 A. No.

6 Q. So there would have to be something done to
7 make this thing passable for an emergency vehicle?

8 A. There would have to be a crossing in there,
9 whether it's cement, wood, or hard tack, something would
10 have to be in there for the vehicle to be able to go
11 across.

12 Q. Is there such a thing as a temporary
13 crossing?

14 A. What do you mean by temporary? I mean we
15 have --

16 Q. Is there a way you could slap something down
17 that would work for a short term?

18 A. For a short term?

19 Q. Yeah, for an emergency.

20 A. For example, if there was a catastrophe --

21 Q. Right.

22 A. -- and we had to go out there and put
23 something down, yes, we could do that.

24 Q. So if you had to do a standardized crossing,
25 do you have any idea what the cost would be?

00760

1 A. No, that wouldn't be -- I would not know
2 that.
3 Q. You can't even --
4 A. I know crossings are very expensive though,
5 to maintain a crossing.
6 Q. Have you ever seen a budget for a crossing?
7 A. No, it doesn't come through my department.
8 Q. But you are aware that in an emergency there
9 could be something to make it passable?
10 A. Yes.
11 Q. That wouldn't require all that expense?
12 A. Now are we talking about -- is this going to
13 be automatic gates or --
14 Q. No, I'm talking about --
15 A. -- I mean are we going to have crossing
16 lights out there?
17 Q. -- cars bumping across the tracks. That's
18 what I'm talking about. And we've got a cataclysmic
19 event, and whether or not you're ordered to or not, and
20 you open it up because you're good people and you want
21 somebody across, is it possible to throw down something
22 in that very unique situation to get cars across there?
23 A. Yes.
24 Q. And can you just very briefly describe how
25 that would be done?

00761

1 A. We would probably, if it was just a temporary
2 thing, we would just go fill it in, fill it in with
3 dirt.

4 Q. And then pull it out?

5 A. (Nodding head.)

6 MR. STIER: Okay, no further questions.

7 JUDGE SCHAER: Do you have any questions,

8 Mr. Cummings?

9 MR. CUMMINGS: No.

10 MR. THOMPSON: No questions.

11 JUDGE SCHAER: I have a couple.

12

13 E X A M I N A T I O N

14 BY JUDGE SCHAER:

15 Q. I'm having some problems rationalizing in my
16 mind two different things, making the two different
17 things you have said make sense to me, so I want to make
18 sure that I understand what you're saying.

19 We have right now 156th Street going across
20 this area of track; is that correct?

21 A. Mm-hm.

22 Q. And the railroad would like to close that
23 crossing. Now if you did something like going out and
24 getting some of those nice concrete barriers from your
25 friends at the DOT and putting them up along both sides

00762

1 of this long enough that people couldn't go around them,
2 would that be one possible way of keeping people from
3 using that crossing?

4 A. Well, I'm not really sure, because it might
5 keep some vehicles off there, but won't it open up foot
6 traffic?

7 Q. Well --

8 A. Because there is now a crossing that they can
9 cross on.

10 Q. That might be another problem, but I'm trying
11 to figure out right now just if there is a way. Do you
12 recall from your personal experience or have you heard
13 about the event that happened in 1991 where one of your
14 trains derailed at 172nd, there was a dangerous chemical
15 spill, and that area was closed for three days?

16 A. Mm-hm.

17 Q. Now I want you to have that in your mind as
18 your picture of what a cataclysmic event is.

19 A. Okay.

20 Q. Something that has happened that is going to
21 keep that road closed, and let's say that perhaps not
22 quite as much spilled, but it's going to be closed for
23 at least a day. If that were to happen and you had time
24 then to bring in your forklifts or have the City bring
25 in theirs and move these barriers out and let people use

00763

1 that crossing so that there was a means to get across
2 the railroad until that was fixed, what concerns would
3 that cause you?

4 A. As long as the crossing was maintained such
5 that we could move that kind of traffic across it, I
6 don't see a problem.

7 Q. And even if the road got kind of old and
8 bumpy and not real nice, if it were something that
9 people, as Mr. Stier said, could bump across and get
10 through in an emergency situation, do you think that
11 that is something that would cause problems to the
12 railroad?

13 A. We would probably get a lot of bills for car
14 repairs.

15 MR. WALKLEY: And liability.

16 Q. Do you have any kind of relationship now with
17 the emergency personnel in Snohomish County who kick
18 into gear if there is some kind of, you know, if the
19 mountain erupts or a big wave comes in or the terrorists
20 blow up the Navy base or something else is going on, the
21 kind of emergency teams that were organized for Y-2K and
22 everybody was talking to each other; are you guys part
23 of that loop?

24 A. Yes, we are, under emergency response and
25 Hazmat response.

00764

1 Q. As part of that loop, if you were to get
2 direction from the County saying we've got a cataclysmic
3 event, we need you to open this up for emergency
4 vehicles, is that something that you think you could
5 work with them on?

6 A. Oh, yes.

7 JUDGE SCHAER: Okay, thank you, that's all
8 the questions I had.

9 Do you have any redirect, Mr. Walkley?

10 MR. WALKLEY: Only one thing.

11

12 R E D I R E C T E X A M I N A T I O N

13 BY MR. WALKLEY:

14 Q. Mr. Ketchem, are you the proper officer to
15 make a final decision as to whether this is acceptable
16 to the company or not?

17 A. As far as what is acceptable?

18 Q. As far as any of these conditions that we
19 have been talking about, either Mr. Thomsen or
20 Mr. Nizam?

21 A. No, no, I'm not.

22 Q. Okay. Do you think there will be someone
23 else that has to make that decision?

24 A. Yes.

25 Q. Okay. So your testimony tonight is just as

00765

1 a, what, just as a practical or operational sense?

2 A. That's correct.

3 Q. And not -- okay. And so you are not speaking
4 for the company as far as whether or not we would accept
5 such a -- either proposal?

6 A. No.

7 MR. WALKLEY: Okay, thank you, that's all I
8 have.

9 JUDGE SCHAEER: Anything further for this
10 witness?

11 Thank you for your testimony.

12 Okay, that brings us to the end of our
13 hearing today, and in a few minutes you will get to go
14 home. Right now we need to talk about things like
15 briefing dates, whether you want one set of simultaneous
16 briefs or one set of simultaneous briefs followed by one
17 set of reply briefs.

18 I think there are some legal issues perhaps
19 related to some of the operational issues that have come
20 up. I would like people to put their creative thinking
21 caps on and think about if there were to be different
22 kinds of conditions, how would it make sense to do
23 those. We're talking about some kind of a crossing, are
24 we talking about some kind of an emergency easement, or
25 are we talking about something that you folks that work

00766

1 with transportation know about that people who work
2 mostly with electric rates and telephones might not know
3 about.

4 We're going to have to look in your briefs
5 obviously at the issues of really what's before the
6 Commission. Is it just a question of yes or no on a
7 specific proposal? Is it a question of whether other
8 alternatives like a north alternative can be considered?
9 And the other thing you're going to have to look at,
10 what standards the Commission should be using. And then
11 you will have to develop what you think the evidence
12 shows around those standards, of course.

13 But I really don't want to be left with gaps
14 where some parties have briefed an issue and others have
15 not. And so I would encourage you even informally to
16 talk after today about perhaps putting together an
17 issues list or an order to address issues so that when I
18 put your briefs in a pile and start going through them,
19 I can see whatever everybody thinks about the different
20 pieces in a way that I can analyze those.

21 So those are the questions I have in mind,
22 and I would like to hear back. I know the record needs
23 to be kept open until the end of the month for the two
24 letters that are going to be filed, one from the
25 railroad and one from the Department of Transportation.

00767

1 I know that we're going to have another late filed
2 anybody exhibit of the SEPA determination, and I don't
3 know what a time line is for that. I'm really
4 uncomfortable just leaving this open, but I don't know
5 if you can let me know what that time line might be
6 today.

7 MR. THOMPSON: Well, much of it depends on, I
8 think, responses from other agencies, including the
9 Department of Ecology.

10 JUDGE SCHAER: Is there a deadline for those?

11 MR. NIZAM: Yeah, mid November, but I
12 anticipate it will be much sooner than that. I don't
13 see a reason why it couldn't be also by the end of the
14 month.

15 JUDGE SCHAER: So let's --

16 MR. NIZAM: Actually, I'm sorry.

17 JUDGE SCHAER: Okay.

18 MR. NIZAM: I don't know what the responses
19 are going to be of Washington State Department of
20 Transportation or BNSF to those comments of Snohomish
21 County, and I think I spoke too soon saying that.

22 JUDGE SCHAER: I thought you were talking
23 about the Ecology response.

24 MR. NIZAM: Oh, no, that should be in next
25 week.

00768

1 JUDGE SCHAER: Even though they have another
2 month?

3 MR. NIZAM: Yeah.

4 JUDGE SCHAER: Okay. So if you have those by
5 the end of the month, is it reasonable to expect that by
6 the end of November something will be out, or do you
7 have to go through hoops then inside the Commission? I
8 don't know your process.

9 MR. NIZAM: Only if -- after the threshold is
10 issued, there's a 14 day comment review.

11 JUDGE SCHAER: But we aren't holding this
12 record open for anything but the threshold determination
13 at this point. Is that correct?

14 MR. NIZAM: Correct.

15 MR. WALKLEY: We're closing it right after
16 the threshold.

17 MR. NIZAM: I'm sorry?

18 MR. WALKLEY: We're closing this proceeding
19 right after the threshold though, because you don't need
20 two appeal tracks here. You see, there's a separate
21 SEPA appeal track, and there's this appeal track.

22 JUDGE SCHAER: I'm just trying to figure out
23 a date that would make sense for having briefs due, and
24 I'm now going to just leave that question open and
25 listen to your answers.

00769

1 MR. THOMPSON: I sort of thought the idea was
2 to reassess at the time that we have a SEPA threshold
3 determination, and if it's a determination of
4 non-significance, well, then that's the end of it. But
5 if it calls for an environmental impact statement, then
6 certainly that's going to take longer.

7 JUDGE SCHAER: What I would like to do is
8 build something that's based on that being the closing
9 of the record, with the understanding that within 10
10 days of that document being filed if people think that
11 we need to do something differently, they can certainly
12 let me know. I would like to have something in place
13 even if we have to change it, some kind of default
14 that's going to keep this on track and get it done, so.

15 MR. STIER: Okay, I heard Ahmer say probably
16 by mid November you should be able to render your
17 decision.

18 MR. NIZAM: (Nodding head.)

19 MR. STIER: And I guess my proposal would be
20 let's say let's close the record November 15th. And
21 then if something happens bizarre like an EIS, then I
22 guess we will have to get back to you in 10 days.

23 But I think the other trigger there is
24 perhaps we really don't want to brief it unless we just
25 reserve that issue and brief that issue. We could

00770

1 probably proceed to brief the other issues earlier than
2 that, and then if there's something that needs to be
3 briefed in regards to the EIS or the environmental
4 aspect of this, perhaps we could supplement at that
5 time. So I don't know if that has to hold it up.

6 There's two ways to do it. We could all just
7 wait until November 15th and submit briefs within two
8 weeks. You know, that's one way, or we could do it
9 earlier. Because memories do fade. But we still need
10 to get the transcript, and I don't know how long that's
11 going to be and so forth, so, you know. Either way it
12 works for me. I think it's whatever you want to do as
13 far as I'm concerned.

14 JUDGE SCHAER: Well, I really think it's
15 however you want to structure your briefing. The burden
16 is on you guys right now. When I get the briefs, I will
17 get to work on this, but I don't want to get them
18 December 24th. I'm not sure your friends will
19 appreciate you offering to do something over
20 Thanksgiving either, which is the 22nd of November. But
21 if they go along with you, that's your issue and not
22 mine.

23 MR. STIER: You just want to close the
24 record.

25 JUDGE SCHAER: Well, I want to close the

00771

1 record, and I want to have a briefing date, and I want
2 to know if you want one round of briefs or two, and I
3 want to have tentative dates for all of those things
4 now, so.

5 MR. STIER: The question is, do we want to
6 brief before or after the record is closed.

7 MR. THOMPSON: Well --

8 MR. CUMMINGS: From just my perspective, I
9 will just say two things. One, I think it makes more
10 sense to wait until the record is closed just because
11 that's just logically the rational thing to do, the
12 record is closed, then we can brief.

13 Two, I think that with the volume of the
14 record that's been placed, I think it's sufficient to do
15 one brief. I'm not certain that rebuttal is necessary
16 or not. I would take the position that it would be one
17 brief. Obviously the parties can try to communicate the
18 issues as the Judge has suggested, and I see no reason
19 why the parties can't do that. We've been able to talk
20 leading up to this hearing on a fairly regular basis. I
21 would recommend that the November 15th date in
22 consideration of kind of that holiday window.

23 I would recommend if the other parties agree
24 maybe we set a briefing schedule like, I'm sorry, I
25 don't have a calendar in front of me, I'm trying to

00772

1 think like the second week in December. That would move
2 us back from the holiday, we have that window, we can
3 get them in, it's not going to interfere with your
4 holiday. You may have them there, but, you know at
5 least it's there and out of the way, and it's not
6 something to worry about over the holiday break. I will
7 just throw that out as an offer.

8 JUDGE SCHAER: Well, I am hoping and
9 currently planning to take the same school vacation that
10 my son does at Christmas, so I'm going to be out of the
11 office from about December 18th to January 2nd, which
12 means that a brief due on December 18 and a brief due on
13 January 2nd mean the same to me if anyone else wants
14 some more time.

15 MR. CUMMINGS: January 3rd.

16 MR. WALKLEY: That's the day after the
17 holidays.

18 JUDGE SCHAER: So I'm just letting you know
19 as far as where I'm going to be. I've got three days of
20 hearings December 14th, 15th, and 16th, so getting them
21 in any sooner isn't really going to get me going on that
22 either.

23 MR. CUMMINGS: In that case, I will change my
24 recommendation to January, the second week in January,
25 the 10th or 12th.

00773

1 JUDGE SCHAER: Does anyone want to do a reply
2 brief first?

3 MR. STIER: If we agree on the issues, I see
4 no need for a reply brief.

5 JUDGE SCHAER: Okay.

6 MR. STIER: But I do think we need to have an
7 exchange and maybe if nothing more than by in two weeks
8 everybody -- we can exchange a list of what we think the
9 issues are and designate a chairman to put them in
10 order, you know, and we just, you know, whatever
11 somebody thinks is an issue we put in an order, and if
12 you want to talk about it, you can talk about it, you
13 know. And if you don't, you don't. And so we don't
14 even have to agree on the issues. They're all going to
15 be there, you know. And if we do that in two weeks.
16 But we need to get this -- this time line is -- I mean
17 the construction is ready to go.

18 MR. WALKLEY: Yeah, this is unacceptable to
19 have this --

20 MR. STIER: We need to get that moving in
21 that regard if we can.

22 MR. WALKLEY: Yeah, the entire decision
23 should be made by January. In other words, we're ready
24 to go. We can not have this decision on this thing
25 interminable like this. Because as I understand it,

00774

1 briefs will be filed, you would consider it, you would
2 be drafting an order, we're looking at what, February,
3 March, April of next year before the Commission acts.
4 We can't do that.

5 JUDGE SCHAER: Well, right now we have
6 requests from you and you and you to have late filed
7 exhibits all dealing with the SEPA issue.

8 MR. STIER: Well, I can move mine up.

9 JUDGE SCHAER: Well, I'm just wondering if --

10 MR. THOMPSON: I'm happy to cut SEPA right
11 out of this.

12 JUDGE SCHAER: Or we have had a suggestion
13 that that could be a separate brief. And if that were
14 the case, then you could get working.

15 MR. WALKLEY: Well, that's just a letter, a
16 reply.

17 MR. STIER: That's an interesting point you
18 just made, Judge, you know, why are we -- why is SEPA
19 here now?

20 JUDGE SCHAER: Well, if you can agree that it
21 shouldn't be, we can go ahead and say that we're going
22 to have transcripts two weeks from today.

23 MR. WALKLEY: The only --

24 JUDGE SCHAER: We can give you two weeks more
25 to write a brief, and we can get going.

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1 MR. WALKLEY: The only reason it's here is
2 that it came in as an exhibit. It's unchallenged. And
3 we simply didn't want the record to look like, well,
4 there it is, there's your answer, if there wasn't any
5 answer. In other words, it was an agreement among all
6 of us that the SEPA issues would not be litigated with
7 this thing. If we had not agreed with that, it would be
8 another week that we would be here. So I would suggest
9 that we simply leave the SEPA issues, however, out of
10 the briefs and everything potentially by simply saying
11 what we want to say. The railroad and the UTC and the
12 WSDOT will simply say whatever they wish to say by
13 October 31st to the letter of 9-27 written by the
14 County, Stigall. That will all go from here and to the
15 Commission's SEPA process determination. As far as our
16 briefs here though on this hearing, I view that as
17 really a different matter, a separate matter.

18 JUDGE SCHAER: What do you suggest?

19 MR. WALKLEY: I would suggest that we have to
20 have enough time, of course, to get the transcript and
21 to read it, because we will have forgotten everything by
22 then, so we -- and we are talking about leaving the
23 record open for the threshold. But the brief, the post
24 hearing brief, if I hear you correctly, Your Honor,
25 you're really just asking the parties to summarize their

00776

1 case, to talk about whatever issue they wish to talk
2 about, and that's what I suggest. Trying to get us to
3 agree on a set of issues or to agree on anything at that
4 point may be very, very difficult. So I would suggest
5 that we just simply -- that you just simply set a date.

6 JUDGE SCHAER: And what date would you
7 suggest? Let me ask you again.

8 MR. WALKLEY: I would suggest a date of not
9 later than about -- for that, we're going to need to ask
10 the reporter, how long will the transcript take for
11 normal?

12 THE COURT REPORTER: That will be two weeks.

13 MR. WALKLEY: So that's Halloween or
14 something. Then we need some time to read it. That's
15 all looking dangerously like November 15th or
16 thereabouts when the threshold will have been made, but
17 we're not briefing the threshold, we're briefing this
18 hearing. So November 15th. Well, let's see what day
19 actually --

20 MR. STIER: Is there a possibility to
21 accelerate that transcript, as a request, whatever you
22 could do to accelerate it would really help. I think
23 November 14th is a Friday. 16th then, let's say that.

24 MR. WALKLEY: So we just, we leave it, Your
25 Honor, with that the parties will brief whatever they

00777

1 want to brief at --

2 JUDGE SCHAER: No, Mr. Walkley, I haven't
3 agreed to that.

4 MR. WALKLEY: Pardon?

5 JUDGE SCHAER: I haven't agreed to not having
6 an issues list. We're talking about a date now.

7 MR. WALKLEY: And, well, I'm suggesting
8 something like the 16th of November, because we're not
9 going to be briefing, I don't think we will be briefing
10 the SEPA issues at all unless we deem otherwise.

11 JUDGE SCHAER: So is everyone comfortable
12 with a date of November 16th for the briefs to be due?

13 MR. STIER: Aye.

14 JUDGE SCHAER: Okay, we have briefs due on
15 November 16th.

16 I am going to require that you put together
17 an issues list. As noted by Mr. Stier, you don't have
18 to agree that these are the issues. You don't have to
19 brief them all, but I want you to be using a common
20 order with a common understanding of what other people
21 are going to be bringing up. I don't want surprises,
22 especially with one round of briefs. I don't want
23 anyone calling me Monday after November 16th and saying,
24 gosh, I didn't know they were going to talk about X and
25 I want to have a chance to respond.

00778

1 So what date can you folks exchange an issues
2 list, and I think I'm going to require that you give me
3 a copy of that just so I can start thinking about what
4 I'm going to be dealing with.

5 MR. STIER: You might even consider if you
6 think we haven't addressed an issue. I personally would
7 welcome a suggestion if you think something is missing.

8 JUDGE SCHAER: In the unlikely event that you
9 have missed something that I think is important, then
10 that will give me an opportunity to let you know that.

11 MR. STIER: I could have an issues list by
12 next Friday.

13 JUDGE SCHAER: Okay. Why don't you circulate
14 that to everyone else by next Friday.

15 MR. STIER: Well, I mean I will have mine.

16 JUDGE SCHAER: Okay, so you're going to
17 circulate it.

18 MR. STIER: Yeah, I will just --

19 JUDGE SCHAER: You're all going to circulate
20 it by next Friday, and then the following week -- which
21 one of you is going to be the scrivener?

22 MR. STIER: I would be happy to do that.

23 JUDGE SCHAER: Mr. Stier is going to put this
24 together, and so by October 26th, you will have provided
25 me with an issues list?

00779

1 MR. STIER: Sure.
2 JUDGE SCHAER: And that will be about the
3 time that you will be getting the transcript, so I will
4 try to let you know sometime in the next week if there's
5 anything that I see is missing.
6 MR. STIER: 10/20 exchange.
7 JUDGE SCHAER: 10/19 exchange.
8 MR. STIER: Pardon me?
9 JUDGE SCHAER: 10/19.
10 MR. STIER: 10/19, yeah, you're right.
11 JUDGE SCHAER: Today is the 12th.
12 MR. STIER: Yeah, that's right.
13 JUDGE SCHAER: Okay.
14 MR. STIER: And then 10/26 to the judge?
15 JUDGE SCHAER: Yes.
16 MR. WALKLEY: Just a list of issues?
17 MR. STIER: Yes.
18 MR. WALKLEY: That we want to discuss in the
19 brief?
20 MR. STIER: And then 11 --
21 JUDGE SCHAER: And then he's going to put
22 them in an order, and then you're all going to follow
23 that order in your briefs so that I can put the common
24 issues together by looking at item 1-A, and anyone who
25 wants to brief 1-A will have their information there for

00780

1 me.

2 MR. STIER: And I will circulate that earlier
3 in the week, so if somebody doesn't like what I did,
4 they have an opportunity to tell me to change the order.

5 MR. CUMMINGS: It doesn't mean we'll be
6 successful, but at least we can tell you.

7 MR. STIER: You can tell me.

8 JUDGE SCHAER: Okay, so is there anything
9 else that we need to discuss today?

10 MR. STIER: And then briefs 11/16?

11 JUDGE SCHAER: And then briefs will be due
12 11/16.

13 MR. CUMMINGS: Your Honor, do you have a
14 preference in the style of brief? I know there are
15 certain rules that say, you know, every paragraph should
16 be numbered for documents filed with the Commission.
17 I'm just wondering since you're obviously getting four
18 briefs which could be who knows how long, do you have a
19 preference in format?

20 JUDGE SCHAER: I just love numbered
21 paragraphs.

22 MR. CUMMINGS: Do you love them, okay.

23 JUDGE SCHAER: And I will return the favor by
24 giving you numbered paragraphs in the order so that if
25 there's something you don't like it's easier to refer

00781

1 to.

2 MR. CUMMINGS: Do you prefer double spacing?

3 JUDGE SCHAER: Yes.

4 MR. STIER: A numbered paragraph, I don't
5 even know what that is. Is that like section numbers or
6 each paragraph numbered?

7 JUDGE SCHAER: Each paragraph has its own
8 number.

9 MR. STIER: So more of an outline form?

10 JUDGE SCHAER: No, just write what you
11 usually write, and then have your secretary who knows
12 how go through and number the paragraphs so that when we
13 need to refer to things, that way if things are shared
14 electronically or if they're in some other format, we
15 can post things to the on line library or the
16 Commission's Web page, and if others print them, we can
17 still know what we're talking about. We're finding that
18 page numbers aren't as reliable, so we have gone to
19 paragraph numbers.

20 MR. STIER: Do you number in the margin, in
21 the middle or --

22 JUDGE SCHAER: In the left margin is where we
23 do it, but I will let you do it wherever you want to.

24 MR. STIER: Okay.

25 JUDGE SCHAER: As long as you do it.

00782

1 MR. STIER: I just have never seen it done.

2 JUDGE SCHAER: Well, if you want to look on
3 our Web site and look at a couple of our orders.

4 MR. STIER: Okay.

5 JUDGE SCHAER: Ahmer is handing you --

6 MR. NIZAM: This is a notice of prehearing
7 conference, and you must have a copy of this in your
8 file.

9 MR. STIER: I just thought maybe that was a
10 mistake.

11 MR. WALKLEY: But you want double space,
12 right, this is single spaced?

13 JUDGE SCHAER: I would prefer double space,
14 yes.

15 Commission rules set a 60 page limit for
16 briefs. I'm really easy on waiving that. I would
17 rather hear everything you have to say than have
18 something get less attention because you were trying to
19 meet a page limit. I only wrote a 220 page brief once,
20 but I needed every single line.

21 So is there anything else then, because I
22 think we're all kind of ready to get out of here?

23 Thank you all for your hard work and your
24 representation of your clients, and I look forward to
25 seeing what you produce.

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MR. STIER: Thank you, Your Honor.
(Hearing adjourned at 7:30 p.m.)

