

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TOWN OF TONASKET, a Washington)	DOCKET NO. TR-921371
municipal corporation; COUNTY)	
OF OKANOGAN, a Washington)	FINDINGS OF FACT
municipal corporation,)	CONCLUSIONS OF LAW
)	AND INITIAL ORDER
Petitioners,)	DENYING PETITION
)	TO CONSTRUCT A
v.)	CROSSING
)	
BURLINGTON NORTHERN RAILROAD)	
COMPANY,)	
)	
Respondent.)	
)	
.....)	

This matter came on for hearing on due and proper notice to all interested parties on May 27, 1993, at Tonasket, Washington, before Administrative Law Judge Rosemary Foster of the Office of Administrative Hearings. Exhibit 7 was submitted by the petitioner by letter dated June 11, 1993.

The parties were represented as follows:

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- COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
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MEMORANDUM

1. NATURE OF THE CASE

This case concerns a petition by the town of Tonasket and Okanogan County for authority from the Commission to construct a grade crossing and to install flashing light signals with gates at the intersection of Okanogan County Shop Road and the Burlington Northern railroad tracts at mile post 119.46. The railroad opposes the petition claiming, among other things, that the proposed crossing would be unnecessary and dangerous, and that there are other alternatives to provide access without installation of a crossing.

2. ISSUES

The issues are whether a public crossing should be established and, if so, whether public safety requires installation of signals.

3. DESCRIPTION OF THE CROSSING PROPOSAL

Tonasket has approximately 960 people. Railroad Avenue is just off Fourth Street in downtown Tonasket. See Appendix A for a map of Tonasket and the proposed crossing site. It has two large apple packing facilities, with loading docks, located on each side of the street. This same street is the sole means of accessing Lagoon Park, Tonasket's soccer and recreational park. Railroad Avenue is heavily congested during working hours and sometimes even after 5:00 p.m. due to trucks making deliveries and picking up goods at the apple packing plants, forklifts, and pedestrians, bicyclists and automobiles traveling to and from the playing field. Tonasket officials are very concerned that the traffic congestion will lead to a serious accident. They have considered alternative means of accessing the park and have not found them to be feasible. This led to the current petition for a proposed crossing located at the south side of Lagoon Park at the site of a previous Bureau of Reclamation road and crossing which is no longer used by the Bureau. This proposed crossing would allow an alternative access to the park and thus alleviate congestion on Railroad Avenue.

The railroad opposes the proposed public crossing because of the risks inherent in grade crossings. The railroad also claims that Tonasket has three other crossings and that these crossings rank near the top of the Federal Railroad Administration's estimate as to crossings having the highest potential for accidents. The railroad also claims that simply because the trains are traveling at 25 miles per hour does not reduce the likelihood of accidents. According to the railroad, slow speeds by trains lead to the highest frequency of accidents between trains and cars.

4. DISCUSSION AND CONCLUSION

RCW Chapter 81.53 gives the Commission the authority to regulate railroads, including the establishment of railroad crossings. In considering crossing proposals, the Commission adopts a balancing approach, i.e. balancing the hazards posed by a grade crossing against need for the crossing. The courts in Washington have held that railroad grade crossings are inherently dangerous. A party proposing such a crossing has the burden of establishing that need for the crossing exists. In this case, the petitioner has failed to establish that need for the crossing outweighs the inherent dangers posed by the crossing. Petitioner has not exhausted exploration of all alternatives available to it to solve the Railroad Avenue congestion problem. These alternatives include use of a flagger to minimize risk of an accident particularly when large trucks are backing in the area. In addition, painting crosswalks for pedestrians and stop and warning signs for forklift operators are possibilities.

In addition, the possible extension of Henderson Avenue to Lagoon Park to provide an alternate access needs to be explored. Although the undersigned understands that Tonasket residents are reluctant to disturb the wetland area which they have helped to restore and develop, a culvert could be an alternative to building a bridge through this area. This alternative also has the advantage of not resulting in any railroad crossing. All of these alternatives should be explored prior to consideration of petitioner's crossing proposal.

For these reasons, the petition should be denied.

Based on the entire record and the file in this matter, the undersigned administrative law judge makes the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. On November 30, 1992, the Town of Tonasket and Okanogan County filed with the Commission a petition seeking authority to construct a grade crossing and install flashing light signals with gates at the crossing site. The location for the proposed crossing is the intersection of Okanogan County Shop Road and the tracks of the Burlington Northern Railroad Company at railroad milepost 119.46. In its answer filed December 23, 1992, the railroad opposed the proposed grade crossing, alleging that it was unnecessary and dangerous, that there were other routes which would provide access to the playfield area, that the crossing would allow a private business to use a public street for its loading operations and that existing streets could be extended to provide alternative access to the playfield area.

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2. The Town of Tonasket has approximately 960 residents. The downtown area of Tonasket is traversed by the Burlington Northern Railroad. There are three railroad grade crossings in town. Just past the Fourth Street crossing are the facilities of the Chief Tonasket warehouse and apple packing company. Adjacent to Chief Tonasket, and separated by Railroad Avenue, which runs between the two buildings, are the Regal apple packing and warehousing facilities. Railroad Avenue is 36 1/2 feet wide at the point where it runs between the two apple packing plants. There are no sidewalks. The street runs past the warehouses and ends at the Lagoon Park playfield. The land for the Lagoon Park play field was donated to the town several years ago. The park is bordered by the Okanogan River on the west side and the railroad tracks on the east side. The playfield includes two or three baseball fields, four soccer fields, a boat ramp, a walking trail, and other recreational facilities. The playfield is used extensively by residents of Tonasket, mostly children and teenagers, and their parents, for soccer and other sports and recreational activities. Use is heaviest from April through September. The only road which presently accesses this area is Railroad Avenue. If the proposed crossing was constructed, Tonasket residents would have a second access to the playfield.

Residents of Tonasket are concerned over the congestion which exists between the two apple packing facilities. During busy times, Railroad Avenue has numerous semi trucks loading at the apple packing facilities. Not infrequently, the company loading operations extend after 5:00 p.m. until dark. Both companies also have the normal complement of delivery trucks and there are also fork lifts which operate in the area between Chief Tonasket and Regal. These activities lead to considerable congestion on Railroad Avenue between the two apple packing plants. This congestion problem is aggravated by children traveling on foot through the area after school to get to the Lagoon Park playfield. The congestion is further aggravated by vehicles of parents and spectators who also must travel Railroad Avenue to reach the playfield. So far there has not been a serious accident in this area, but city officials and town residents are concerned about the potential for an accident in this area.

The Town of Tonasket has sought various ways of alleviating the congestion problem. One alternative would involve extending Henderson Way through a mobile home park. However, this would entail condemning the mobile home park and crossing a wetland area. City officials estimate the cost of building a viaduct over the wetland to be \$100,000. The other alternative concerns the proposed crossing, which would access Lagoon Park using Highway 97 south of town and accessing a Bureau of Reclamation road and the existing private crossing which was used by the Bureau of Reclamation at one time but has since been closed. According to Exhibit 6, the Bureau is willing to allow resumed use of the

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crossing if the proposal is approved. City officials have obtained estimates of the cost of above and below grade crossings at the proposed site. The estimate is \$750,000 to \$1.1 million for an above grade crossing and perhaps as much as 150 percent of this cost for an underpass. After the city officials explored other alternatives, the petition which initiated this hearing was filed. The City supports the petition because it would alleviate the congestion which exists on Railroad Avenue between the two apple packing plants and because it would provide safer access to the playfield for all persons who want to use Lagoon Park. Tonasket officials estimate that the average number of vehicles using the crossing would be 100 each day and that maximum usage could increase to 250 per day at times during April through September. The Town proposes that the crossing be open during the day and closed at night as the park is closed. The petition also includes a request for signal lights and gates to be installed at the proposed crossing. The estimates for the lights and gates is between \$70,000 and \$95,000.

The proposed crossing site has open approaches and adequate site distances from the proposed crossing locations. At present there is one northbound and one southbound train using the proposed site each day. The train speed is approximately 25 miles per hour at the site location.

Five witnesses were called on behalf of the Town of Tonasket.

3. Tom Fancher, mayor of Tonasket, testified on behalf of the proposed crossing. He described the configuration of the apple packing facilities on Railroad Avenue as well as the alternatives to the proposed crossing which have been explored by the town. The traffic on Railroad Avenue includes cars, bicycles and pedestrians. During the period when the apple packing companies are operating, from approximately 8:00 a.m. to 6:00 p.m., Railroad Avenue is crowded with persons and vehicles trying to use the street to get to the park as well as fork lifts, and trucks delivering to the packing facilities. The mayor also presented a petition with 420 signatures from Tonasket residents supporting the proposed crossing.

4. Raymond Colbert, general manager, Chief Tonasket Growers, testified concerning the congested conditions on Railroad Avenue between his company and the Regal apple packing facility. As general manager, he is in charge of grower relations, production, maintenance and the apple warehouse. From September, 1992 to May, 1993, Chief Tonasket had 1190 individual truck orders. The heaviest shipping period is from noon to as late as late as 8:00 p.m. Chief Tonasket also receives apples from delivery trucks which transport the apples from storage to the packing facility in Tonasket for packaging and shipping. The Chief Tonasket facility also has approximately 1750 truckloads of bins leaving the facility

each year. In addition, he indicated that there are about nine delivery trucks bringing various items to the Chief Tonasket facility each day. Mr. Colbert also expressed concern over the traffic congestion on Railroad Avenue, especially after school is out and the children are on their way to Lagoon Park.

5. Ron Gonsales, supervisor, Regal Fruit, testified in support of the proposed crossing. He also testified as president of the Riverview Valley Soccer Association, an association of soccer players including teams from Tonasket and Omak, with players ranging in age from 5 to 19. Mr. Gonsales indicated that the Lagoon Park has two baseball diamonds, a field which is used by Little League and two softball fields. Most of the usage of Lagoon Park occurs in spring and early summer. He estimates that as many as 400 players of various sports use the field during the busy season.

Testifying in his capacity as a supervisor for Regal Fruit, he estimates that Regal Fruit makes 100 trips across Railroad Avenue per day. In 1992, Regal had 1286 vans hauling apples from the Regal facilities. Regal sells 600 thousand packs of fruit annually. The peak activity period is between mid March and mid July. Loading times for the trucks also coincide with use of Railroad Avenue for access to Lagoon Park sports practices and games.

Mr. Gonsales also testified as a public witness. He considers Railroad Avenue as presently more unsafe than the hazards posed by the proposed crossing.

6. Jack Thomas Stevens, Fire Chief for Tonasket, testified in support of the proposed crossing. Mr. Stevens is also a local police officer. He also operates an auto wrecking and towing business. He recounted difficulties in fighting a fire which occurred several years ago at the combined Chief Tonasket and Regal apple packing company after road access to the area was blocked. He believes that limited access to the area around the apple packing facilities would limit fire fighting activities in this area in the future. For this reason, he supports the proposed crossing as offering a second means of access to Railroad Avenue. In response to these difficulties, the railroad offered to give the town officials a key to the blockade at the site of the proposed crossing so that the barrier could be moved to allow access to Railroad Avenue by fire fighting equipment and personnel.

7. Don Schneider, chief of police for Tonasket, testified concerning traffic patterns on Railroad Avenue. He indicated that warnings and a few citations had been issued due to congestion on Railroad Avenue between the two apple packing plants. He also indicated that the speed limit had been reduced to five miles per hour due to hazardous conditions in the area. There is also a

potential problem if a long train were to stop in town and block access by emergency vehicles to the other side of town. The proposed crossing would provide alternative access to the other side of Tonasket and remedy this potential problem.

Mr. Schneider also testified as a public witness.

Four witnesses appeared on behalf of the railroad.

8. Rich Perkins, trainmaster for the railroad, testified for Burlington Northern. As trainmaster, Mr. Perkins oversees from his Wenatchee base the territory which includes the portion of track which runs through Tonasket. One train goes through Tonasket to Oroville and returns each day. The times when the train passes vary each day, Monday through Friday. The average train is 5,000 tons, is 2400 feet in length and has about 35 cars. The train speed is 25 miles per hour. At this speed, it would take approximately one half mile to stop the average loaded train; if the train were unloaded, it would take a quarter or three eights of a mile to stop. The railroad is not opposed to use of the proposed crossing for access by emergency vehicles.

9. John Cowles, coordinator of public programs for Burlington Northern, testified concerning the railroad's policy favoring closure of existing grade crossings and disfavoring new crossing proposals in view of their dangerousness even when equipped with flashing signals and gates.

10. Kenneth Cottingham, owner, Cottingham Transportation Engineering, a highway traffic engineer consulting firm, testified concerning the problems associated with the proposed crossing. He cited the lack of traffic signals to control vehicle or pedestrian traffic on Railroad Avenue. He recommended a sidewalk with striping painted on the side of Railroad Avenue to accommodate pedestrians. He suggested having a flagger available during peak traffic periods to help direct traffic flow and use of marked areas for pedestrians. He also recommended the extension of Henderson Avenue which would give additional separate access to Lagoon Park as alternative to the proposed crossing.

With respect to the proposed crossing, the witness emphasized the dangers associated with vehicles exiting Highway 97, a major thoroughfare, to reach the access road and the proposed crossing. According to the witnesses, the variations in vehicle speed, i.e. 25 mph versus 55 mph, which occur when drivers enter or exit the access road to get to the proposed crossing create another hazard. He also noted that the irregularity of the train's arrival each day makes its appearance more unexpected and therefore more hazardous. Even a crossing with flashing lights and gates will not be without risk because these protections do not prevent people from driving around the gates or pedestrians from crossing under the gates. It

is also not possible to accurately estimate the speed of an oncoming train from the crossing site so that drivers and pedestrians frequently try to cross when the speed of the oncoming train makes it unsafe to do so. Mr. Cottingham also noted the prospect of pedestrians walking along the tracks as an additional hazard if the proposed crossing were authorized. (This possibility always exists.)

11. Dennis Heatherington, coordinator, Operation Lifesaver, Pacific Division of the company, testified concerning the company's educational program regarding the dangers inherent in grade crossings. 50 percent of grade crossing accidents involving automobiles and trains occur at crossings with gates and signal lights.

Two witnesses offered testimony on behalf of the public.

12. Patrick Walter, a resident of Tonasket, testified on behalf of the proposed crossing. He is the father of two young children who use Lagoon Park. He does not allow them to walk on Railroad Avenue because of the busy traffic. He does not believe it is possible to make Railroad Avenue a safe access to Lagoon Park.

13. Scott Olson, a resident of Tonasket, testified in support of the proposed crossing. Mr. Olson teaches fifth grade. His class has adopted the wetland area through which Henderson Avenue would have to be extended if this alternative were pursued to avoid both the congestion on Railroad Avenue and the construction of the proposed crossing. He recounted the work which had been done to restore the creek area including planting 500 salmon each of the last two years. He considers this wetland area an asset to the community. He also believes that the proposed crossing would make it much safer for children to use either the proposed crossing road or Railroad Avenue to access Lagoon Park because the proposed crossing would alleviate congestion on Railroad Avenue.

14. The record establishes that petitioner has failed to establish that the proposed crossing should be authorized. Petitioner has not pursued other alternatives short of the crossing proposal. In addition, the inherent dangers associated with a grade crossing outweigh the benefits to be derived from the proposed crossings.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this petition and the parties thereto.

2. The Commission's authority to regulate the safety of grade crossings is set forth in Chapter 81.53 RCW. RCW 81.53.020 expresses a legislative preference for overcrossings or undercrossings where practicable. Establishing a grade crossing requires Commission approval. The Commission has discretion to grant or deny petitions for opening of grade crossings.

Court decisions which have considered whether grade crossings should be established have been based on the theory that all grade crossings are dangerous. See Reines v. Chicago, Milwaukee, St. Paul & Pacific R. R., 195 Wash. 146, 150, 80 P.2d 406 (1938). The policy of the law is against the allowance of such crossings. See State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn. 2d 95, 104, 104 P. 2d 764 (1940). These and other cases require the Commission to engage in an analysis and to apply a balancing test to determine whether the public convenience and necessity outweigh the danger to the public of having a grade crossing. In the Commission's final order in Cause No. TR-1148, Spokane County v. Burlington Northern, Inc. (Sept., 1985), the Commission held that there is a strong public policy against opening of a crossing. The proponents of a crossing have the burden of showing evidence of public need and convenience which overcomes the dangers inherent in all grade crossings and the particular dangers presented by the proposed crossing.

In this case, the record establishes that petitioner has not met its burden of establishing that the public need and convenience outweigh the dangers inherent in all crossings as well as the dangers inherent in this particular crossing. While the Town of Tonasket asserts with regard to the inherent danger argument that the crossing between the two apple warehouses on Railroad Avenue is dangerous and the proposed crossing would alleviate this danger, the record indicates that it is a traffic problem for which the town should seek other solutions rather than the proposed crossing. These other solutions would include designated sidewalk areas for pedestrians, stop and proceed with caution signs for forklift operators and use of a flagger to guide traffic during heavy congestion periods. In addition, the alternative of extension of Henderson Avenue should receive consideration, particularly since if this could be accomplished, no crossing, with all its inherent dangers, would be required.

As to crossings in general, the record indicates that crossings in general are dangerous because collisions involving even slow moving trains and vehicles or pedestrians involve a great risk of extensive injury to car occupants and/ or pedestrians. The record further indicates that persons crossing the tracks are not able to accurately judge the speed of an oncoming train and may proceed to cross even when it is dangerous to do so. It is the general policy of the railroad to attempt to close crossings because of their dangerousness rather than open them.

With respect to the dangers associated with the proposed crossing, the record establishes that even with signals and gates with proposed crossing could not be made totally safe and free from risk to drivers and pedestrians.

After consideration of all the evidence, it is concluded that the dangers posed by opening a crossing at the proposed site outweigh the public convenience and advantage to be gained by construction of a crossing and installation of flashing light signals. For these reasons, the petition should be denied.

Based on the above proposed findings of fact and conclusions of law, the undersigned makes the following initial order.

ORDER

WHEREFORE, IT IS HEREBY ORDERED That the Petition of the Town of Tonasket for authority to construct a grade crossing and to install flashing light signals with gates at the intersection of the Okanogan Shop Road and the Burlington Northern Railroad Company at Railroad milepost 119.46 be, and the same is hereby, denied.

DATED at Olympia, Washington, and effective this 13th day of August, 1993.

OFFICE OF ADMINISTRATIVE HEARINGS

Rosemary Foster
ROSEMARY FOSTER
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized

representative, with proof of service as required by WAC 480-09-120(2).

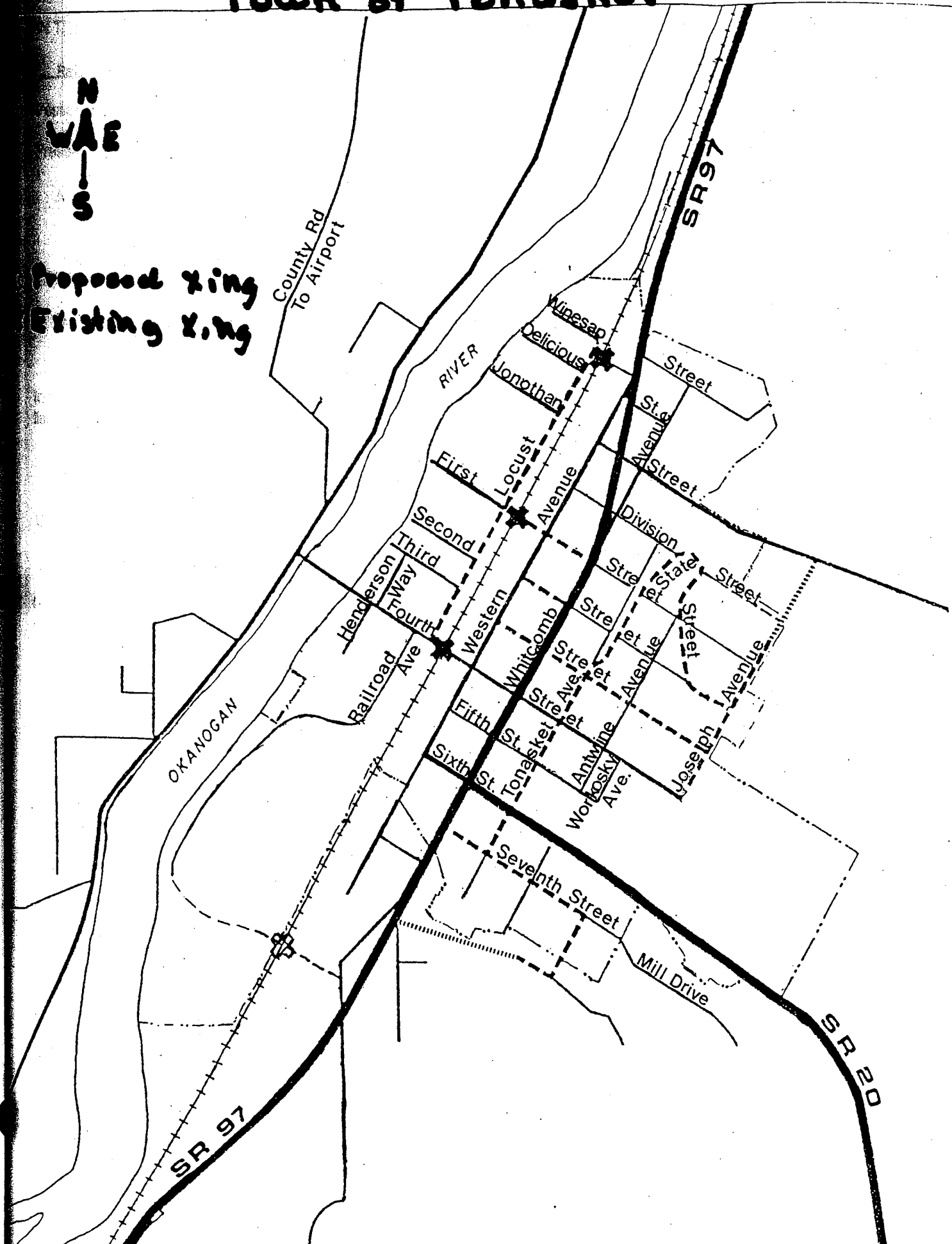
In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P. O. Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.

Town of Tonasket



Proposed Xing
Existing Xing

County Rd
To Airport



OKANOGAN

SR 97

SR 97

SR 20