

Cody Swan

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

---

In Re the Petition of:	)
	)
WHATCOM COUNTY,	) DOCKET NO. TR-180466
	)
Petitioner,	)
	)
v.	)
	)
BNSF RAILWAY COMPANY,	)
	)
Respondent.	)
	)

---

DEPOSITION UPON ORAL EXAMINATION OF  
CODY SWAN

---

Taken at  
322 North Commercial Street, Suite 301  
Bellingham, Washington

REPORTED BY: Thad Byrd, CCR  
REPORTED ON: December 18, 2018

1                   A P P E A R A N C E S:

2  
3       For the Petitioner:

4               CHRISTOPHER D. QUINN  
5               Whatcom County Prosecuting  
6               Attorney's Office  
7               Whatcom County Courthouse  
8               311 Grand Avenue  
9               Suite 201  
10              Bellingham, Washington 98225-4038  
11              (360) 778-5710  
12              c.quinn@co.whatcom.wa.us

13       For the Respondent:

14              KELSEY E. ENDRES  
15              TOM MONTGOMERY  
16              Montgomery Scarp, PLLC  
17              1218 Third Avenue  
18              Floor 25  
19              Seattle, Washington 98101-3097  
20              (206) 625-1801  
21              kelsey@montgomeryscarp.com  
22              tom@montgomeryscarp.com

23  
24  
25

Cody Swan

Page 3

1                    E X A M I N A T I O N   I N D E X

2

Witness:

3

CODY SWAN

4

Examination By:

Page

5

MS. ENDRES

4 - 60

6

7

E X H I B I T   I N D E X

8

No.

Description

Page

9

1

Quiet Zone Diagnostic Meeting  
Notes

21

10

2

QZ Calculator Scenarios

23

11

3

Petition for Installation of  
Median Barriers

24

12

13

4

Google Maps View of Cliffside  
Drive

31

14

5

Google Maps View of Cliffside  
Drive

31

15

16

6

Google Maps View of Cliffside  
Drive

31

17

7

Google Maps View of Cliffside  
Drive

54

18

19

8

Map Depicting Cliffside Drive

30

20

9

Google Maps View of Cliffside  
Drive

36

21

10

Photograph of Cliffside Drive  
Railway Crossing

50

22

23

11

Photograph of Cliffside Drive  
Railway Crossing

51

24

25

Cody Swan

Page 4

1	No.	Description	Page
2	12	Photograph of Cliffside Drive	30
3	13	Whatcom County Response to BNSF Data Request No. 5	43
4	14	Whatcom County's Answers to BNSF's Data Request Nos. 1-10	57
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Cody Swan

Page 5

1 BELLINGHAM, WASHINGTON; TUESDAY, DECEMBER 18, 2018

2 9:04 a.m.

3 -- oo 0 oo --

4

5 CODY SWAN, having been duly sworn,  
6 testified under oath  
7 as follows:

8 EXAMINATION

9 BY MS. ENDRES:

10 Q. Good morning, Mr. Swan. My name is Kelsey Endres,  
11 and I am an attorney for BNSF Railway. I'll be the one  
12 asking you questions this morning relating to the  
13 petition that you filed to modify the warning devices at  
14 BNSF's railroad crossing in Whatcom County.

15 Mr. Montgomery there has kindly attended on my  
16 behalf to hand you exhibits as necessary given that I am  
17 over the phone.

18 Like I said earlier before we got started, if you  
19 have any problems understanding me or if I'm speaking too  
20 quickly, please let me know, and I'll speak up or slow  
21 down or take you off the speakerphone; okay?

22 A. Okay.

23 Q. Have you ever had your deposition taken before?

24 A. I have not.

25 Q. I will just go over a few tips and pointers that

1 will help us do a couple of things. One is to get you  
2 done as soon as we can.

3 Especially since we're on the phone, some of these  
4 are going to be important reminders and also to make sure  
5 that the our court reporter can take a clear transcript.

6 He's going to be typing out everything anybody says  
7 whether it's yourself or me or counsel there with you,  
8 and it ends up looking like a play transcript if you've  
9 ever seen that.

10 The No. 1 sort of rule of thumb is if we can both  
11 try to remember to help all of us not talk at the same  
12 time. That way our court reporter doesn't have to try to  
13 type two people talking at once; okay?

14 A. Okay.

15 Q. Do you understand you're under the same oath today  
16 as if you were in the hearing in this case or a  
17 courtroom?

18 A. I do.

19 Q. I'm going to assume that you understand the  
20 questions that I ask you unless you tell me that you  
21 don't understand them; is that fair?

22 A. That's fair.

23 Q. This is a funny question, but I ask it of every  
24 witness in a deposition. Is there anything that would  
25 prevent you from thinking clearly or testifying

1 truthfully today, any medication side effects or anything  
2 like that?

3 A. No.

4 Q. If at any time you need to take a break during the  
5 deposition, please let me know. Otherwise, we'll get  
6 going. Did you review any documents to prepare for your  
7 deposition this morning?

8 A. I mean, I've reviewed these documents in length  
9 before, so yes.

10 Q. And when you say these documents, what are you  
11 referring to?

12 A. All the documents that you've received through the  
13 last -- I forget what the discovery method is, but the  
14 requests for information.

15 Q. The data requests?

16 A. The data requests.

17 Q. So I'm assuming then the materials like the petition  
18 to install the median barriers, the various documents  
19 that you've provided to BNSF, those are all things that  
20 are fresh on your mind from your review?

21 A. Yes.

22 Q. If you do need to refer to any documents to explain  
23 any of your answers, let me know. I'll be able to pull  
24 them up here. I sent some along with Tom that we'll go  
25 through.

1 I didn't send the whole entire stack of materials.  
2 If there is something that you don't see or you think we  
3 should refer to in order to help understand or explain  
4 something, just let me know and I'll pull it up.

5 If it's not there, if you have a copy, we can get  
6 the court reporter to make a copy or else I can get one  
7 sent up to the office; okay?

8 A. Okay.

9 Q. Before I ask you about the particular crossing in  
10 this case, the Cliffside Drive, I just want to learn a  
11 little bit about your own background.

12 I don't need to know the details of your entire  
13 professional career, but could you just sketch out for me  
14 your history with the county and your work history just  
15 in general?

16 A. I've been with the county for five years doing -- I  
17 started as construction inspection, moved on to project  
18 engineer, which deals with handling consultants,  
19 administrating construction contracts and designing road  
20 projects.

21 Q. And prior to joining the county?

22 A. I worked with Pacific Surveying Engineering in a  
23 similar position as to the one I'm in now as a project  
24 engineer.

25 Q. How long were you with Pacific Surveying?



1 A. About six years.

2 Q. And before that?

3 A. College.

4 Q. Where did you go and what degree did you get?

5 A. I went to Ferris State University, and I received a  
6 bachelor's in science and surveying engineering.

7 Q. In your work history, how much work have you done  
8 relating to railroad crossings?

9 A. I've done a few or a couple of quiet zone notice of  
10 intents, actually three, and then we've worked with the  
11 railroad on projects that are either adjacent or crossing  
12 the railroad.

13 If we're doing small paving projects, we usually  
14 contact the railroad in a kind of flagging capacity to  
15 let them know we're going to be near them.

16 Q. And is that typically BNSF?

17 A. Yes.

18 Q. The three quiet zone notices, do those include this  
19 one and Yacht Club or are those separate?

20 A. No, they include those.

21 Q. And what was the third?

22 A. Cove Road.

23 Q. I saw reference to that in the emails I think.

24 A. Probably.

25 Q. So I understand Yacht Club was converted to a quiet

1 zone, and in that particular case there were  
2 non-mountable medians installed; is that right?

3 A. Yes.

4 Q. At Yacht Club there were mountable medians or  
5 non-mountable medians?

6 A. Non-mountable.

7 Q. I should say I want to make sure that we use the  
8 right terminology, and I'm still learning about how these  
9 work. Is that the right terminology to use or should I  
10 be using something else to describe that?

11 A. I would say that's correct. That's how the FRA  
12 defines that, as a non-mountable, yeah.

13 Q. And then what about at Cove?

14 A. Cove is the same as proposed at Cliffside, which is  
15 a mountable median with reflective channelization  
16 devices.

17 Q. And does the county currently have other locations  
18 where it's intending to file notice of its intent to  
19 create quiet zones?

20 A. No.

21 Q. I'm going to be asking you in detail obviously about  
22 the Cliffside Road modifications, but again because I'm  
23 learning and so I understand, can you explain to me  
24 generally why the county believed that mountable  
25 channelization devices are appropriate for this

1 particular location as compared to Yacht Club or  
2 non-mountable devices were selected and installed?

3 A. I would say that we've received input from the fire  
4 department on the non-mountable medians being restrictive  
5 on their ingress/egress.

6 Mountable provides a little bit more flexibility  
7 with their apparatus driving through the crossing in the  
8 case of emergency. It allows us to be more proactive  
9 when replacing deficiencies in the facility.

10 We do not do concrete work, so mountable curbs or  
11 non-mountable medians are made out of concrete, which  
12 will increase the repair time because we will have to  
13 contract that work out, leaving a deficient site until  
14 that work's done. Those are the main things.

15 Another big one is the reduction and the risk safety  
16 factor that comes with the proposed mountable medians  
17 greatly reduces the risk at Cliffside, and it's an  
18 approved safety measure that we can choose from, approved  
19 by FRA that is.

20 Q. When you say approved by FRA, what do you mean?

21 A. When you go through the federal code, they give you  
22 options for supplemental safety measures. This happens  
23 to be one of them.

24 Q. And non-mountable curbs are also one of those  
25 approved supplemental safety devices?

1 A. Yes.

2 Q. And how does the enhanced safety compare between  
3 those two, if you know, according to the FRA material?

4 A. Will you repeat that?

5 Q. Sure. You just mentioned that the traversable or  
6 mountable devices decrease the risk at that location.  
7 You said there's a reduction in the risk safety factor.

8 How does the reduction in the risk safety factor  
9 compare between mountable or non-mountable devices if you  
10 know?

11 A. They both are designated an effectiveness rating,  
12 which is basically a percentage in the reduction and  
13 risk. The mountable medians carry a 0.75 effectiveness  
14 rating.

15 The non-mountable medians carry a 0.8 effectiveness  
16 rating, which is a difference of about 5 percent in the  
17 reduction from one to the other.

18 Q. What does that mean in layman's terms?

19 A. So that means the risk -- the risk index that you  
20 have at that crossing currently will be reduced by 75  
21 percent when you implement mountable medians with  
22 reflective channelization devices, and it will reduce it  
23 by 80 percent if you install non-mountable medians.

24 Q. I see, so the non-mountable medians do provide a  
25 greater risk reduction, but the difference to your

1 understanding is a 5 percent change as compared to the  
2 mountable devices?

3 A. Yes.

4 Q. Let me ask you this. In the Yacht Club project, did  
5 you receive any type of similar feedback from emergency  
6 responders as you have received in Cliffside?

7 A. Yes.

8 Q. The communication you received from emergency  
9 responders relating to the Yacht Club Road project, how  
10 did that compare or differ to the feedback you received  
11 for the Cliffside project?

12 A. The information I received from emergency responders  
13 at Yacht Club Road is what initiated their involvement at  
14 Cliffside. They brought the issue to me that it was hard  
15 to access those two roads.

16 I believe it's Chuckanut Shore, and I forget the two  
17 roads at the bottom of Yacht Club Road, but with those  
18 medians it was more difficult for them to access the  
19 houses down there.

20 Q. Was that communicated to you prior to or after the  
21 non-mountable devices were installed?

22 A. After.

23 Q. And did they describe to you having some kind of  
24 response incident that had occurred at Yacht Club or was  
25 that the general concern that was relayed to you after

1 the project was complete?

2 A. Apparently, they drive down roads to check for  
3 access things randomly. That happened to be one of those  
4 instances or exercises.

5 Q. Were they able to traverse the crossing?

6 A. They were.

7 Q. And did they sustain any damage to any of their  
8 equipment that they reported to you?

9 A. They did not.

10 Q. You mentioned that one of the benefits of having the  
11 mountable device has to do with repair work and being  
12 able to be proactive to replace any deficiencies or  
13 damaged materials.

14 Have you done any type of assessment about the  
15 frequency of repair that you might expect comparing the  
16 two types of medians, the non-mountable and the  
17 mountable?

18 A. Can you repeat that question one more time?

19 Q. Sure. My question is have you done any type of  
20 analysis that helps us understand the frequency of repair  
21 or replacement work that you might expect to see between  
22 non-mountable medians and mountable medians? Does that  
23 make sense?

24 A. It does make sense. I would say that we didn't do  
25 direct analysis with these two uses of both of these

1 items, but we're familiar on how concrete reacts to  
2 vehicles rolling over it and hitting it.

3 Q. How would you describe that?

4 A. I would say it deteriorates rapidly over time, and  
5 it gets -- especially the paint, which is there to  
6 identify in the middle of the road.

7 Q. Can you quantify for me what you mean by  
8 deteriorates rapidly over time?

9 A. It starts a crack and spall, and with that spalling  
10 goes paint. It makes it need maintenance basically of  
11 some sort, either paint or a complete repair of the  
12 concrete.

13 Q. In your experience, how often would you project that  
14 need to arise?

15 A. I would say that differs from concrete batch to  
16 concrete batch.

17 Q. Can you give us any sense?

18 A. No, I can't. If they're hitting it frequently, it's  
19 going to need more repair than if they are not rolling  
20 over it. That's about it.

21 Q. Is the county able to repaint a concrete median or  
22 would that have to be contracted out?

23 A. No, we paint.

24 Q. For this particular road, for Cliffside Drive I saw  
25 in the materials you sent that there's an average daily

1 traffic count of three hundred; is that right?

2 A. Yes.

3 Q. How does that compare to other roads within the  
4 county system?

5 A. It's very, very low.

6 Q. When you're looking at a road like this and how  
7 often painting or maintenance of the concrete barrier  
8 might need to occur, then you would expect that to be  
9 much lower than other streets within the county just  
10 because of the average daily traffic; is that fair to  
11 say?

12 A. Say that question one more time, please.

13 Q. Again, I apologize if I'm not making sense.

14 A. No, you're making sense. I just want to hear it  
15 again.

16 Q. Given that you've characterized this as a very, very  
17 low traffic road compared to other locations in the  
18 county, would you then expect that the frequency of  
19 needing to repaint or repair damaged concrete barrier to  
20 be correspondingly much lower than if it were on a road  
21 with much higher traffic use?

22 A. Yes, but I would also add to that that it also would  
23 be -- a concrete barrier in the middle of the road will  
24 be hit more than a center line striping, so it would --  
25 the maintenance, yes, it would be lower.



1 Q. What do you mean when you say a concrete barrier  
2 would be hit more than --

3 A. Just a median in general in the middle of the road  
4 will need more painting maintenance than just a normal  
5 center line striping would.

6 Q. Does the Cliffside Drive right now currently have  
7 median center line striping?

8 A. They just have center line striping, yes.

9 Q. Do you know how often the county's had to go out  
10 there to repaint the striping on that?

11 A. I don't.

12 Q. If a concrete non-transversable barrier was installed  
13 similar to at the other location, is that something that  
14 would take up a broader footprint than the existing  
15 striping painted on the road?

16 A. No.

17 Q. Have you done any assessment or projection about how  
18 often you think the county would have to replace  
19 traversable devices at this location?

20 A. No.

21 Q. Are there other crossings within the county that  
22 have the traversable medians installed?

23 A. No.

24 Q. Have you done a type of budget projection for  
25 estimated maintenance and repair costs for traversable

1 devices?

2 A. For the initial installation?

3 Q. No, for repair and maintenance.

4 A. No, because we don't know how often it will need to  
5 be replaced.

6 Q. I think I saw in the materials you provided that  
7 there were some photographs of a crossing in Vancouver  
8 that looked like it had the traversable channelization.  
9 Do you know what I'm referring to?

10 A. Yup.

11 Q. What is that location, and then why were those  
12 photographs provided?

13 A. The location, I don't know. They were provided as  
14 support of them being used in the same scenario.

15 Q. And who provided those?

16 A. The city of Vancouver engineer. I forget who it  
17 was.

18 Q. How did you come to know that location?

19 A. Either through communication with the FRA or I don't  
20 know, just investigating what to use at quiet zone  
21 crossings.

22 Q. Is that the only other location in the state that  
23 has traversable channelization that you're aware of?

24 A. I do not know.

25 Q. So then I take it you haven't had any conversation

1 with the city of Vancouver engineer about their repair or  
2 maintenance costs at that location?

3 A. No. They were brand new at the time.

4 Q. Do you know which railroad that crossing involved?

5 A. I don't know that either.

6 Q. Fair enough. How long ago were the concrete  
7 barriers installed at Yacht Club?

8 A. 2017, September.

9 Q. So a little over a year?

10 A. I believe so.

11 Q. Has the county had to do any repair or maintenance  
12 since they were installed?

13 A. No.

14 Q. And do you know off the top of your head what the  
15 average daily traffic at the Yacht Club location is?

16 A. Actually, let me go back to that question. We did  
17 remove two reflective panels from the west end of the  
18 west barrier and the west end of the east barrier because  
19 they had shown -- they were defective.

20 Q. What do you mean defective?

21 A. They were laying on the ground. They were broke  
22 from being ran over, but with that being said, that  
23 median does not need reflective panel.

24 Q. The FRA rule doesn't require reflective panels when  
25 there's a non-mountable?

1 A. That's right.

2 Q. How does the average daily traffic count compare  
3 between Yacht Club and Cliffside?

4 A. Similar. I forget what Yacht Club Road is, but  
5 they're similar.

6 Q. Are there any other reasons that the county prefers  
7 the traversable channelization at this location as  
8 compared to Yacht Club other than the communication you  
9 received from the emergency responders?

10 A. I would say maintenance, just being able to have a  
11 stock of parts to replace defective items was the other  
12 one.

13 Q. Again, just so I understand, you haven't done an  
14 estimate of the repair, how repair costs would compare  
15 between the county replacing defective items for  
16 traversable channelization and the county having to  
17 arrange for repair and maintenance of a non-traversable  
18 curb; is that accurate?

19 A. Yes. The only assessment we've done is we would be  
20 way more proactive about keeping a quiet zone as we  
21 proposed it.

22 Q. What does that mean, be way more proactive?

23 A. We'd be able to replace a deficiency quicker than if  
24 we contracted work out.

25 Q. Assuming that a deficiency is encountered?

1 A. Yes.

2 Q. So in the scenario that a non-mountable curb was  
3 installed without the reflectorized panels, which the FRA  
4 does allow in quiet zones, the two types of maintenance  
5 that might arise are, one, having to repaint the curb,  
6 which the county could do itself or, two, having to  
7 repair the concrete itself, which the county would have  
8 to contract out; am I understanding that correctly?

9 A. Yes.

10 Q. Are there other types of traffic, maybe not specific  
11 to railroad crossings, but other road locations where  
12 similar concrete non-traversable curbs exist within the  
13 county?

14 A. No. Did you say not railroad crossings?

15 Q. Right.

16 A. No, not that I know of.

17 Q. Going back to the FRA, I saw in the materials  
18 diagnostic meeting notes. We'll make this Exhibit 1 to  
19 your deposition.

20 (Exhibit 1 was marked for identification.)

21 Q. Do you have that there, Mr. Swan?

22 A. I do.

23 Q. For the record, this is an excerpt of the records  
24 that the county provided I believe in its response to  
25 data requests. This is WC0122 through 124, quiet zone

1 diagnostic meeting notes. Do you see that?

2 A. Yup.

3 Q. Does this appear to be an accurate copy of the notes  
4 that the county provided?

5 A. It does.

6 Q. I see that this appears to involve the Cove Road  
7 crossing and the Cliffside Road crossing. Cliffside  
8 starts on the second page, the notes from that meeting.

9 I see that there was an FRA inspector, Jeffrey  
10 Stewart, who attended the diagnostic meeting relating to  
11 Cliffside; is that right?

12 A. Yes.

13 Q. I didn't see in these notes any reference to any  
14 input that he gave as to the particular warning devices  
15 or crossing configuration or other materials. Am I  
16 missing the obvious here?

17 A. No. He didn't provide any input. FRA doesn't  
18 necessarily have to come to these diagnostic meetings.  
19 He was invited as a courtesy, and he attended and just  
20 attended as a spectator.

21 Q. Did he weigh in comparing mountable or non-mountable  
22 devices?

23 A. I don't believe so.

24 Q. I also saw in the materials that you provided that  
25 it looked like there was an email exchange that you had

1 with Jeffrey Stewart. We can mark this as Exhibit 2.

2 (Exhibit 2 was marked for identification.)

3 Q. Exhibit 2 is WC0145, and does this Exhibit 2 appear  
4 to be a true and correct copy of the email exchange that  
5 the county provided?

6 A. That's right.

7 Q. And this is an email that Jeffrey Stewart sent to  
8 you directly in February of this year?

9 A. That's right.

10 Q. How did this particular email come to be? Did you  
11 ask him to run these quiet zone calculator scenarios?

12 A. I did. I asked for help with Cove Road, and he  
13 ended up doing both of them. Cove Road has an  
14 alternative safety measure, which is a little trickier to  
15 calculate.

16 Q. Looking at just Cliffside Drive for now, that's the  
17 second table on this exhibit, the second half of the  
18 page. The numbers that he came up with differ from the  
19 numbers that you input in the information you provided.

20 I think your pre-file testimony explains that your  
21 numbers differed slightly based on daily train traffic  
22 used for the calculations. Is that an explanation of the  
23 difference here to your knowledge?

24 A. Yes.

25 Q. Were his numbers just wrong or why is his train

1 count different than the one that you used?

2 A. I believe Stephen Semenick, in the first sentence of  
3 that email, he says at the very end of it, assumed 29 as  
4 BNSF stated. I believe that's based on Stephen  
5 Semenick's guess at how many trains were going through  
6 there at the time.

7 Q. What train count did you use in yours?

8 A. I used one that Stephen provided me later when he  
9 actually looked it up and sent it to me in an email.

10 Q. Do you remember what that was?

11 A. High teens. I forget what it was.

12 Q. Is that information that would be in the petition?

13 MS. ENDRES: Tom, why don't you go ahead and  
14 make the petition Exhibit No. 3? That's tab No. 10.

15 (Exhibit 3 was marked for identification.)

16 Q. Mr. Swan, Exhibit 3 is a copy of the county's  
17 petition to install the median barriers, if you could  
18 just take a minute to flip through it and tell me if it  
19 appears to be an accurate copy.

20 A. It does.

21 Q. So on page 3 there is a train count there. Does  
22 that refresh your memory as to the number that you used  
23 in your quiet zone calculation?

24 A. Yeah, that's it.

25 Q. It looks like 17 freight trains and two passenger



1 trains for a total of 19?

2 A. That's right.

3 Q. I don't remember if I saw a screen shot of the  
4 information you input for your quiet zone calculation,  
5 but there was a spot to enter train speed?

6 A. Okay.

7 Q. Well, I'm asking --

8 A. Was there a spot? I don't know what you're  
9 referring to.

10 Q. Did you yourself run a quiet zone risk index  
11 calculation?

12 A. I did.

13 Q. And as part of that process, you had to input  
14 certain information specific to this crossing including  
15 train counts?

16 A. If it differed than what was provided on -- it  
17 provides data already. It fills in those blanks. If you  
18 know something's different, you just change it. That was  
19 the only thing I knew to be different was the train  
20 count.

21 Q. Was there a section relating to train speed if you  
22 recall?

23 A. There very well could be. I usually don't mess with  
24 train speeds because I just default to whatever's on  
25 there.

1 Q. If there was train speed, do you recall what the  
2 default was set at?

3 A. I would assume that it would be -- no, I don't.

4 Q. Is there a number you would assume it to be?

5 A. I would assume it would be what was on this  
6 petition.

7 Q. And this petition on page 3 contains three different  
8 potential train speeds, authorized freight train,  
9 operated freight train and authorized passenger train.  
10 Do you see that?

11 A. I do.

12 Q. And authorized passenger train speed, for example,  
13 79, although it says operated passenger train speed, 45,  
14 do you recall which of those the QZRI used?

15 A. No.

16 Q. And based on the numbers here on page 3 of the  
17 petition, which number would you select as part of that  
18 calculation?

19 A. As part of the quiet zone risk index calculator  
20 calculation?

21 Q. Yes.

22 A. I would use the default setting.

23 Q. Whether it was 45 or 79?

24 A. Whether it was 45 or 79.

25 Q. Let me ask you this. Did you fill out this petition

1 yourself?

2 A. I did.

3 Q. So page 4 where you describe the type of median  
4 barriers proposed and specified that the county proposes  
5 a mountable median, the last sentence of that section  
6 states that the breakaway reflective traffic  
7 channelization devices allow for emergency apparatus to  
8 openly access and use the full width of the roadway while  
9 deterring typical motorists.

10 I paraphrased that, but do you see where I'm  
11 looking?

12 A. B?

13 Q. Correct. It's the last sentence in that section.

14 A. I'm reading it. Yeah, I see the sentence you're  
15 referring to.

16 Q. How does the width of Cliffside Drive, the lane  
17 width compare to Yacht Club's?

18 A. I am not sure. I would say they are similar.

19 Q. Is it your understanding that whichever type of  
20 median is installed at Cliffside, whether mountable or  
21 non-mountable, that emergency responders would be unable  
22 to navigate the roadway without going into or across the  
23 median?

24 A. Say that one more time.

25 Q. Let me ask that a better way. Is it the county's

1 understanding that emergency responders are unable to  
2 navigate Cliffside Drive without crossing into the  
3 medians?

4 A. Say that one more time for me.

5 Q. Let me back up again. The emergency responders have  
6 communicated to you their concern about being able to  
7 cross into the median to navigate Cliffside Drive; is  
8 that fair to say?

9 A. I would say that --

10 Q. In other words, they're worried about the width of  
11 the road being too narrow for their equipment to  
12 navigate?

13 A. Sure.

14 Q. And so is it your understanding that the emergency  
15 equipment that may need to access Cliffside Drive will be  
16 unable to stay in their lane of traffic without going  
17 into or across the median, whether or not mountable or  
18 non-mountable devices are installed?

19 MR. QUINN: I'm going to object to form, but,  
20 Cody, if you can answer that question, go ahead.

21 A. I would say no. I don't think they'll have to go  
22 over the median, but I also don't drive emergency  
23 response vehicles either. I don't know how quickly  
24 they'd want to access a site. I don't anticipate them to  
25 drive over the median.

1 Q. Were you provided with any information from  
2 emergency responders in terms of the frequency of their  
3 actual incidents at the Cliffside Drive location?

4 A. I was provided some, but I don't know the exact  
5 number of frequency. They told me what they respond to  
6 down there.

7 Q. What did they say?

8 A. Brush fires in the summer are frequent down there,  
9 and they respond to them quite often.

10 Q. But in terms of a particular number or how  
11 frequently those have actually occurred, we'd have to ask  
12 them I take it?

13 A. Yes.

14 Q. Do you know where their closest fire department or  
15 response location is that they'd be starting from to head  
16 out?

17 A. It's roughly a mile south of that location near  
18 Bennett.

19 Q. And is it a fire station?

20 A. Yes.

21 Q. Do you know which one?

22 A. I do not.

23 Q. Do you know if it's a city of Bellingham fire  
24 station?

25 A. I don't know that one. It's not in the city of

1 Bellingham, so I would say, no, that's not.

2 Q. Did they provide you with any data about actual  
3 response times out to Cliffside Drive?

4 A. No.

5 Q. Let's take a look at the actual layout of this area.  
6 Tom has a number of photographs.

7 (Exhibits 4 - 12 were marked for identification.)

8 Q. What I did is I just went on Google Maps and input  
9 Cliffside Drive, and I printed out a number of various  
10 viewpoints and distances involving the crossing and  
11 surrounding area. Your Exhibit 8 is the only one that's  
12 not a photograph.

13 Do you recognize these to show the correct location?

14 A. Yeah.

15 Q. Does it appear to be the same configuration that  
16 exists today?

17 A. I believe so.

18 Q. The reason I ask is because the street view looks  
19 like it's from 2012. You see that, for example, on  
20 Exhibit 12, so I wanted to make sure there haven't been  
21 significant changes as compared to what we see in these  
22 photographs.

23 If there is anything that you do notice as being  
24 different in terms of configuration or structures as we  
25 look through any of these in particular, please do let me

1 know.

2 If we look at Exhibit 4, the first of those  
3 photographs, we can see a little compass showing a north  
4 direction.

5 It looks like the road itself runs southwest to  
6 northeast or northeast to southwest, and the crossing  
7 generally or the railroad tracks generally run northwest  
8 to southeast or southeast to northwest; is that accurate?

9 A. Yup.

10 Q. If you look at Exhibit 5, the water would be at the  
11 top of the page. We can see the stop bar painted on the  
12 road for the railroad crossing, and I take it those stop  
13 bars are still there?

14 A. There are stop bars there.

15 Q. And there are currently gates and lights at the  
16 crossing. Do you expect that to remain the same?

17 A. Yes.

18 Q. Exhibit 6 appears to show a driveway right near that  
19 crossing. Do you see where I'm looking?

20 A. I do.

21 Q. And I thought I saw a reference in your email  
22 communication with the fire department about how you  
23 would expect the homeowner to use their driveway and  
24 whether or not the median would impact that. Did you  
25 make that kind of assessment?

1 A. I believe so. I believe that discussion came up.

2 Q. What did you conclude or how did you conclude that  
3 the improvements the county proposes would or wouldn't  
4 impact that homeowner?

5 A. Say that one more time, please.

6 Q. How did you conclude that the improvements the  
7 county proposes would or would not impact that homeowner?

8 A. The improvements that we proposed for one will  
9 impact the homeowner by mitigating for the sound horn,  
10 the train horn.

11 Secondly, they should not impact their  
12 ingress/egress into their driveway. If the westerly one  
13 does extend a bit beyond where they would enter their  
14 driveway, we've -- not myself, but our special programs  
15 manager has been in contact with them.

16 They would happily go down to the cul-de-sac, turn  
17 around and come back to their driveway if need be.

18 Q. And so that scenario might occur whether or not the  
19 traversable median is installed or the non-traversable  
20 median is installed? The impact on that particular  
21 homeowner would be the same for their travel?

22 A. Yes.

23 Q. Let me back up a minute. The emergency responder,  
24 whose name is escaping me right now, the fire department  
25 employee who you communicated with --



1 A. Mitch.

2 Q. What specifically did he state to you were his  
3 concerns?

4 A. About what?

5 Q. About the county's project or proposed project.

6 A. It was increasing the shoulder widths to accommodate  
7 them going up and down that horizontal curve on the west  
8 side of the tracks.

9 Q. Was that a concern that had ever been raised to the  
10 county before to your knowledge?

11 A. No.

12 Q. Did he raise any concern with you relating to the  
13 road on the other side of the tracks on the east side?

14 A. I don't recall.

15 Q. And so he has asked the county to increase the  
16 shoulder width on the west side of the tracks?

17 A. That's right.

18 Q. Is that independent from the channelization device  
19 installation?

20 A. No. We would do that concurrently, same as we did  
21 at Yacht Club Road.

22 Q. So that is something the county would plan to do?

23 A. Yes. It would --

24 Q. And -- go ahead.

25 A. It wouldn't be something -- it wouldn't be like a

1 paved shoulder. It'd just be gravel for the emergency  
2 vehicles to use.

3 Q. How much space will that add?

4 A. We'd have to look at it when we actually built the  
5 project.

6 Q. Do you know how wide the county's right of way is  
7 from the center line of the road?

8 A. On Cliffside Drive? I have no idea.

9 Q. How confident are you that there is additional space  
10 to be able to use to widen the shoulder?

11 A. Until I look at the right of way, I would say I'm  
12 50/50, but it's a fairly workable area. It's not big  
13 steep slopes everywhere, so I would assume that we would  
14 have that space.

15 Q. And that would be obviously regardless of whether a  
16 concrete median is installed or the traversable  
17 channelization; is that right?

18 A. Yes, especially if a concrete median is installed.

19 Q. Have you done any projection of the anticipated cost  
20 to widen the shoulder?

21 A. No.

22 Q. That shoulder extension would only be on the left  
23 side of the track?

24 A. Yes, because that has a horizontal curve.

25 Q. Is that meant to allow all emergency vehicles to

1 traverse the roadway without having to encroach on the  
2 median?

3 A. Yes.

4 Q. So in theory at least, if the county extends the  
5 width of the shoulder west of the tracks, emergency  
6 responders will be able to traverse the road without  
7 having to go over a traversable channelization device; is  
8 that correct?

9 A. I don't drive emergency vehicles, so the shoulder  
10 width under normal circumstances will allow them to go up  
11 and down the road freely. In an emergency situation, I  
12 don't know.

13 Q. What do you mean?

14 A. I don't know if they will need to access the middle  
15 of the road in an emergency situation, but if they're  
16 driving down the road, they'll be able to traverse the  
17 road under normal conditions.

18 Q. And I think you communicated with Mitch that if  
19 there was an emergency, you would expect them to control  
20 traffic and not have to park on the track or encroach on  
21 the crossing itself; is that right?

22 A. Yes.

23 Q. And that homeowner, the driveway that we saw in the  
24 exhibit we were discussing, I think Exhibit 6, do they  
25 have a turnaround drive themselves?

1 A. Yes.

2 Q. And looking at Exhibit 4, are there locations that  
3 we can see on this exhibit west of the crossing where you  
4 would expect emergency vehicles would have sufficient  
5 space to turn around if necessary?

6 A. Do I see sufficient turnaround areas for emergency  
7 vehicles?

8 Q. Yes.

9 A. Yeah.

10 Q. And can you tell us where?

11 A. I would say the intersection of West Cliffside and  
12 Cliffside, Sandy Point Circle and Cliffside, that  
13 cul-de-sac perhaps. I don't know if that's big enough or  
14 not, but anywhere that we would have a T-like hammerhead  
15 intersection.

16 Q. If you could turn to Exhibit 9, do you have that  
17 there?

18 A. Yes.

19 Q. If someone has a pen there, are you able to mark for  
20 us on this exhibit how far the county proposes the  
21 channelization devices extend on either side of the  
22 railroad track?

23 A. Well, I'd be reluctant to mark a drawing that's not  
24 to scale, but I would reference you to the topographic --  
25 Exhibit 3, the last page has a topo map with improvements

1 on it.

2 Q. I understand it's not to scale, and I just said I'm  
3 not holding you to scale. I just want to get a general  
4 sense of the rough footprint that's anticipated for the  
5 installation of those devices.

6 If we compare it to the topographical sketch, it  
7 seems to me that on the east side of the tracks it  
8 extends to approximately where the railroad painted X  
9 ends closest to the crossing on the east side; is that  
10 fair?

11 A. I would say that's fair.

12 Q. So if you could mark that on Exhibit 9, and then the  
13 length of the channelization devices proposed are the  
14 same on each side of the crossing; is that right?

15 A. Yup.

16 Q. Could you just draw in the approximate same lengths  
17 on the west side of the crossing so we can just get a  
18 general sense?

19 MR. MONTGOMERY: I'll say for the record since  
20 you're not here, Kelsey, that he's using a black Sharpie  
21 and indicating it in the center roadway; is that correct?

22 A. Trying.

23 MR. MONTGOMERY: Close enough.

24 MR. QUINN: Kelsey, Chris Quin here. How are  
25 you doing as far as a need for a break?

1 MS. ENDRES: This would be a great time for a  
2 break if you all are good with it.

3 MR. QUINN: That's fine, Kelsey.

4 (Recess taken.)

5 Q. There are a couple of things I wanted to clarify  
6 with you. The homeowner that you spoke with, what was  
7 their name?

8 A. I didn't speak with the homeowner.

9 Q. The homeowner adjacent to the crossing, do you know  
10 what their name is?

11 A. I don't.

12 Q. Who was it that spoke with them or how was that  
13 information communicated to the county?

14 A. Roland Middleton is our special programs manager.

15 Q. And to your knowledge, did he have a phone  
16 conversation with the homeowner or in person or how was  
17 that communication made?

18 A. You know, I'm not sure if it was an email or a phone  
19 call or in person. Roland pretty much operates under all  
20 of those methods.

21 Q. Are you currently planning to determine the right of  
22 way for the shoulder expansion project?

23 A. Well, we need to see what they're building first.

24 We're pretty much in the infancy as far as construction  
25 is considered. I mean, we haven't got a determination on

1 what we're building yet.

2 Q. Are you referring to what kind of median device?

3 A. Yes.

4 Q. So if the UTC grants the county's petition to  
5 install the traversable channelization, are you still  
6 intending to expand the shoulder?

7 A. Yes. We're going to stabilize the shoulder  
8 regardless, but we're not moving forward with a  
9 construction project until we have a construction  
10 project.

11 Q. Will the construction project be the same? It's  
12 just not at the point yet that you develop that plan out  
13 further?

14 A. That's right.

15 Q. Is that part of the county's budget for the project  
16 already?

17 A. I would say yes. That is part of the county budget.  
18 Our budget will cover shoulder work, yes.

19 Q. Again, I apologize if I am just missing this, but  
20 the shoulder work is going to take place whether a  
21 traversable or non-traversable median is installed as  
22 part of the crossing quiet zone project?

23 A. You are correct.

24 Q. Do you have knowledge yourself about the fire  
25 district's or emergency responders' goals for response

1 time in this area?

2 A. You know what? I do not have any of that  
3 information.

4 Q. Is it your understanding from the fire department  
5 that if a non-traversable median is installed, if they  
6 have an emergency to the home adjacent to the crossing,  
7 they're going to have to go across the tracks and drive  
8 down past the median, find someplace to turn around and  
9 then head back toward the crossing to get to that home?

10 MR. QUINN: I'll object to form, but, Cody,  
11 you can answer.

12 A. Will you re-ask the question, please?

13 Q. Let me ask it this way. Does the county specify  
14 some kind of concern relating to the house right by the  
15 crossing in terms of its emergency response?

16 A. The county didn't express any concern. I'm having a  
17 difficult time understanding the question.

18 Q. If I said county, I apologize. I misspoke. In your  
19 communication with the emergency responder -- I think you  
20 said his name was Henry.

21 A. Mitch.

22 Q. In your communication with Mitch, did he raise a  
23 concern about emergency response specific to the property  
24 adjacent to the crossing, and if so, what did he say?

25 A. I don't recall specifically what he said, but he



1 mentioned something about turning around once they were  
2 in their driveway. I don't remember the details.

3 Q. Can you tell me anything more specific than that?

4 A. He was concerned about being able to turn around  
5 once he got into their driveway, which is something we  
6 don't deal with.

7 I mean, we're not going to rework someone's driveway  
8 for emergency access, so that's all I recall from that  
9 conversation.

10 Q. Do you know yourself whether any emergency response  
11 equipment would be tall enough to traverse even if it was  
12 a concrete median installed?

13 A. I know from hearing from Mitch specifically that  
14 their differential is too low to go over a non-mountable  
15 median, their rear differential.

16 Q. What do you mean rear differential?

17 A. The little mechanism in the back that houses the  
18 gears that turn the wheels.

19 Q. And for what type of equipment?

20 A. That would be their fire engine apparatus. The one  
21 that he had -- we were referring to the one that was in  
22 the photo that I provided you. I have no idea of the  
23 details of what that thing is. It's a fire truck.

24 Q. Did he ever tell you that if a concrete median's  
25 installed, they won't be able to get to that home at all?

1 A. No. I don't believe he said that. I don't recall  
2 the conversation about accessing that house, whether it  
3 be concrete or mountable.

4 Q. If you hadn't received this feedback from Mitch,  
5 would the county have proposed installing a concrete  
6 median at this location?

7 A. Would have proposed installing a concrete median?

8 Q. Right or the non-traversable median.

9 A. I think we would have proposed what we proposed. We  
10 actually proposed the same thing at Yacht Club Road.

11 Q. And then did the county ultimately agree to the  
12 non-traversable median at Yacht Club Road or was that  
13 ordered by the UTC?

14 A. No. We agreed to avoid a hearing basically.

15 Q. I see. Now, the fire district in this case is not a  
16 party or an intervenor to this proceeding; correct?

17 A. Come again?

18 Q. I'll strike that.

19 If the commission grants the county's petition as  
20 is, how often does the county intend to inspect the  
21 traversable channelization median?

22 A. I've begun to develop a plan for a monthly  
23 inspection and then annual reporting, so we'll monthly  
24 inspect it with our sign crew. They'll note anything on  
25 that.

1           We'll make improvements as needed, and then we'll do  
2 a monthly kind of inventory and reporting on all our  
3 crossings and just make sure they're all up to the  
4 standard we design them to.

5 Q.    So help me understand the difference between the  
6 monthly and the annual reporting.

7 A.    I guess the annual would be just kind of an  
8 inventory to make sure that we have parts and we have  
9 everything needed and just to reassess what we went  
10 through as far as damage and maintenance on the  
11 facilities.

12           Making sure we're prepared for the next year I guess  
13 would be the intent of the annual reporting, but we only  
14 had one crossing at the time, so it's definitely a work  
15 in progress.

16                   MR. MONTGOMERY: Kelsey, I'm going to take a  
17 quick two minute break. You can either continue if you'd  
18 like or wait.

19                   MS. ENDRES: We'll wait.

20                                   (Recess taken.)

21                   MS. ENDRES: I want to ask about the traffic  
22 counts from 2014.

23                                   (Exhibit 13 was marked for identification.)

24 Q.    Mr. Swan, these are the materials the county  
25 provided relating to the traffic counts at the crossing.

1 Are these some of the materials that you reviewed?

2 A. Yes.

3 Q. I noticed that these appear to have made seven day  
4 averages from just measuring the motor traffic on two  
5 days, a Wednesday and a Thursday in December 2014. Am I  
6 looking at this correctly?

7 A. I believe so.

8 Q. Is that the normal way to measure average traffic  
9 counts is just to do it over a two day span?

10 A. You know, I don't know.

11 Q. Is there any information that you see here that  
12 tells us, for example, what weekend traffic is like or  
13 any other days of the week that particular week?

14 A. No.

15 Q. This was from four years ago. Has there been any  
16 additional development along Cliffside Road between then  
17 and now to your knowledge?

18 A. Not that I know of. I think it's pretty well packed  
19 in down there.

20 Q. I mean, traffic volume counts are something you deal  
21 with in all kinds of county projects; is that right?

22 A. I deal with the actual ADT number, yes. I don't get  
23 the traffic counts.

24 Q. Do you know in other projects where you've used ADT  
25 numbers whether they've had a bigger data pool than just

1 two days of traffic?

2 A. Yeah, normally you get a week's worth. I don't know  
3 if this had any impact on this, but it is a no outlet  
4 road.

5 The same people -- typically the same people going  
6 in are coming out. There's no other way to get out, so  
7 maybe that had something to do with it.

8 Q. Although typically weekend traffic volumes can  
9 differ from weekday commuting?

10 A. Yeah, and they could potentially be lower because  
11 you're not seeing a lot of trash services, propane  
12 services, things like that. Yeah, you're absolutely  
13 correct.

14 Q. Are there propane services to this area? Do you  
15 know?

16 A. You know what? I don't know if there is or not.

17 Q. And I saw in the petition it states there aren't any  
18 school buses that use the crossing.

19 A. That's correct.

20 Q. Where does that information come from? There  
21 weren't any school buses observed during the traffic  
22 count days or something else?

23 A. I don't know.

24 Q. Do you know where the closest school bus stop is for  
25 any kids who live in this area on Cliffside Road?

1 A. I do not.

2 Q. The inspection frequency that you described, if the  
3 commission were to order the installation of a  
4 non-traversable median, would the inspection frequency be  
5 the same or different?

6 A. It'd be the same.

7 Q. And if the commission were to order a  
8 non-traversable median, would the county prefer that with  
9 or without channelization devices?

10 A. We would want channelization devices because we want  
11 to identify to the traveling public that there's  
12 something in the middle of the road other than just the  
13 yellow.

14 Q. I didn't see this in the materials that I reviewed.  
15 Did the county receive any public comments either  
16 relating to its notice of intent to establish a quiet  
17 zone or relating to this UTC petition?

18 A. Not that I recall. It was initiated by the public  
19 approaching counsel to get this installed.

20 Q. Homeowners on Cliffside Road or --

21 A. Yes.

22 Q. (Continuing) -- someone else?

23 A. Yes.

24 Q. To get the quiet zone implemented?

25 A. Yes.

1 Q. We already discussed the information that  
2 Mr. Middleton received from the homeowner adjacent to the  
3 crossing, but to your knowledge has the county received  
4 any type of communication, whether it's a port or  
5 otherwise relating to what type of additional warning  
6 devices to install at that crossing to make the quiet  
7 zones come into effect?

8 A. Could you repeat that?

9 Q. Let me back up a minute. We discussed earlier that  
10 there was some communication that Mr. Middleton had with  
11 the adjacent homeowner about whether their traffic route  
12 would have to change or what they would be willing to do  
13 to get a quiet zone established. Do you remember when we  
14 were discussing that?

15 A. Yes.

16 Q. To your knowledge, has the county received any  
17 similar input from other homeowners on Cliffside Drive?

18 A. I don't know.

19 Q. How do the installation costs compare between  
20 installing traversable channelization and non-traversable  
21 channelization?

22 A. They're comparable. They're relatively the same.  
23 The one nice thing about the mountable is we can install  
24 them with county forces as opposed to contracting out  
25 concrete work.

1 Q. And help me understand why that's preferable other  
2 than it's probably easier to do.

3 A. That's it.

4 Q. Is there a particular contractor the county uses for  
5 those kinds of projects?

6 A. For non-mountable?

7 Q. Correct.

8 A. No. It's typically small enough that we just get  
9 quotes, and whoever quotes the lowest gets it.

10 Q. To your knowledge, would installing a non-mountable  
11 median create any kind of construction delay as compared  
12 to installing mountable channelization?

13 A. Yeah, because we'd have to go through the quote  
14 process.

15 Q. And how long does that typically take?

16 A. Maybe a month.

17 Q. Traversable channelization, is that the Kwik Kurb  
18 brand?

19 A. The mountable medians would be the Kwik Kurb.

20 Q. So the mountable medians are Kwik Kurb. Those are  
21 really just visual impediments to drivers?

22 A. What's that?

23 Q. The Kwik Kurb or the mountable medians, those are  
24 visual impediments to drivers. Motorists can actually  
25 drive across them into the opposing traffic lane if



1 somebody chooses to do that for whatever reason?

2 A. They can drive over the non-mountable if they choose  
3 to do so, but I wouldn't suggest them doing it. I mean,  
4 they're not designed to drive over. They're designed to  
5 keep people in their traffic lane. They're quite  
6 imposing medians.

7 Q. Kwik Kurb, isn't that made to allow emergency  
8 vehicles to cross?

9 A. No. I don't know if it's necessarily -- I don't  
10 think it's allowed or made to allow that.

11 Q. But that's the function of it? Somebody can  
12 actually physically drive a vehicle over it in theory  
13 without damaging the channelization panels? Those are  
14 designed to spring back up after being driven over?

15 A. Yeah, I guess. They're designed to take some abuse.  
16 Like I said, we took two of them off of the Yacht Club  
17 Road.

18 Q. Right. Is it fair to say that non-traversable  
19 medians provide a higher distance for drivers to  
20 disregard them because of the potential resulting damage  
21 to the vehicle?

22 A. About 5 percent.

23 Q. 5 percent more?

24 A. More disincentive than mountable medians with  
25 reflective channelization devices.

1 Q. And you're basing that on the FRA regulation?

2 A. Yes.

3 Q. Are there other changes that the county proposes  
4 being made to the crossing other than installing the  
5 traversable channelization medians?

6 A. Well, following the diagnostics team meeting, I  
7 requested an unofficial engineer's estimate from Stephen  
8 Semenick for updating warning lights to LEDs at the  
9 county's expense.

10 I still haven't received that. We were going to do  
11 that as part of this. We were going to hire BNSF to do  
12 that as part of this.

13 Q. Upgrade the light?

14 A. Yeah, and there's one other thing. A curb to  
15 protect the overhang will be near the -- a small curb off  
16 the fog line to protect the warning lights.

17 Q. The photographs that we marked starting at Exhibit  
18 4, do any of those show the location where that curb will  
19 be installed?

20 A. Yeah. Now that I look at this closer, it looks a  
21 little bit different in this area. If you refer to  
22 Exhibit 10, that shoulder is paved all the way up to the  
23 omni deck or the crossing deck corner, so it looks  
24 different.

25 Q. Where there's gravel, now there's pavement?

1 A. Not all of that, but just -- I can show -- it kind  
2 of goes from the corner of that omni deck down the road  
3 off that fog line. I can draw it on here.

4 Q. That'd be great.

5 A. Okay. I drew it on there.

6 MR. MONTGOMERY: Maybe he could crosshatch the  
7 paved portion.

8 Q. Still looking at Exhibit 10, I can see there's some  
9 grassy area adjacent to the street. Do you see that?

10 A. Yeah, I see a grassy area.

11 Q. Is that flat enough for a motorist to pull over onto  
12 if an emergency vehicle was coming behind them on that  
13 stretch of Cliffside Drive or embankment?

14 A. Yeah, it's pretty flat. There's that path up there  
15 at the end, and that's a relatively flat path.

16 Q. Is it the same sort of grassy layout on both sides  
17 of the road east of the crossing there?

18 A. Yeah. It looks like once you get past the path  
19 there, there's a little bit more defined ditch on what  
20 would be the south side of Cliffside.

21 Q. Are you looking at a particular exhibit?

22 A. Exhibit 11, sorry.

23 Q. And you're looking at -- it looks like maybe there's  
24 a culvert on the path there.

25 A. Yeah, that area there.

1 Q. To your knowledge, does this railroad crossing have  
2 one of those signs that provides a railroad telephone  
3 number to call in the case of an emergency at that  
4 railroad crossing?

5 A. I don't know that.

6 Q. In the materials the county provided, there was a  
7 response from the UTC that assumed that the length of the  
8 quiet zone would extend one quarter mile in each  
9 direction of the crossing.

10 Is that distance accurate or does the county propose  
11 or plan to implement a longer quiet zone?

12 A. No. That would be the distance.

13 Q. Do you think that if a non-traversable median was  
14 installed, the emergency response would have sufficient  
15 means to travel to the homeowners on Cliffside Drive?

16 MR. QUINN: I'll object to the form of the  
17 question, but if you can answer that, go ahead.

18 A. Can you repeat the question please?

19 Q. Sure. In your background and experience, if the UTC  
20 orders that a non-traversable median be installed either  
21 with or without the channelization panels, do you believe  
22 that emergency responders would still be able to access  
23 the homes along Cliffside Drive if need be without having  
24 to cut across the median?

25 A. I believe so, but I have no idea of how to drive an

1 emergency response vehicle down there.

2 Q. Well, in terms of just the width available for the  
3 vehicles they drive when you're planning a project like  
4 this.

5 A. Yeah. That's why we're working closely with them.

6 Q. Are there any concerns that you have with installing  
7 a non-mountable median that we haven't already discussed?

8 A. Not off the top of my head.

9 MS. ENDRES: What I would like to do is go off  
10 the record for just a few minutes so I can flip through  
11 the remaining materials that I had pulled and my notes to  
12 see if there's anything I've missed that I need to ask you  
13 about.

14 (Recess taken.)

15 Q. I don't have too much more, Mr. Swan, just a couple  
16 of things to clarify, and we'll get all of us out of  
17 here.

18 MR. MONTGOMERY: He nodded.

19 Q. In terms of the county repairing a non-mountable  
20 median or a concrete median, why can't the county repair  
21 the concrete itself?

22 A. We can't because we don't have the proper machinery,  
23 so we don't have a flip form machine. It's a cost that I  
24 think that they kind of took on years and years ago that  
25 they no longer do.

1           They just don't have curbs in the -- we don't have  
2 these type of things in the county to need maintenance.

3   Q.    You mentioned that the crossing on the west side of  
4 the tracks has a horizontal curb. I meant to ask you  
5 what that means, and if you can show me where that is on  
6 one of those photographs that we marked as Exhibit 4 and  
7 so on.

8   A.    The best one is probably 9. 9 shows it pretty good  
9 unless you have a more zoomed in -- how about 7? 7's  
10 better. On the left side of the page, you can see that  
11 curve. It's just a curve is all it is.

12           It's a lot softer as you get towards the crossing as  
13 you're working from the left to the right on the page,  
14 but it still exists. It exists enough that a turning  
15 radius on those big fire apparatus needs a little bit  
16 more room to maneuver.

17   Q.    As they're traveling towards the crossing in a  
18 northeast direction?

19   A.    Both ways and going down. It's a hill there too, so  
20 coming back up is a little bit more challenging if it  
21 were slippery out.

22   Q.    I see. Is it just on either side of that curve that  
23 the county plans to extend the width of the shoulder?

24   A.    Yeah.

25   Q.    In the petition with the UTC, which is Exhibit 3,

1 page 4, do you have that there?

2 A. I do.

3 Q. Part C asked to describe who will maintain the  
4 barriers, and it says the proposed barriers will be  
5 maintained by the county's public works maintenance and  
6 operations division. Do you see where I'm reading?

7 A. Yup.

8 Q. Then it says the barriers will be maintained in the  
9 original installed condition, and all damage compromising  
10 the functionality of the barrier will be corrected  
11 immediately.

12 How does the county intend to be able to correct any  
13 damage immediately? Is that damage that would be  
14 identified during the monthly inspections or some other  
15 way?

16 A. I would say it would either be brought to our  
17 attention by whoever hit it or through these monthly  
18 inspections and then having a cache of material that we  
19 can use to replace defective components of that facility.

20 Q. So once a defect is identified to the county, what  
21 is the turnaround time for repair?

22 A. I don't know that yet. We haven't defined that  
23 turnaround time, but posthaste.

24 Q. How would you expect, for example, if a motorist  
25 damaged the barrier to know who to contact at the county?

1 Is there going to be some kind of signage installed?

2 A. No, but the traveling public finds a way of  
3 contacting the person they need to contact, but there is  
4 no signage that's going to be installed for them to  
5 notify anybody.

6 Q. This is a hypothetical situation, but say the  
7 channelization is damaged. It's not yet brought to the  
8 county's attention and train crews are traveling at the  
9 crossings.

10 If they notice that there's been damage, do you know  
11 whether or not they're allowed to then blow the horn for  
12 the crossing?

13 A. I believe if they feel that there is -- I don't  
14 think they can judge the status of -- you asked a  
15 hypothetical question. I'll give you the best I can to  
16 answer it.

17 I know if they see any eminent danger, they can blow  
18 the horn regardless. If that defect causes that, then  
19 they can blow the horn regardless if it's a quiet zone or  
20 not.

21 Q. Was there some type of cost-sharing proposed to the  
22 county by BNSF to install the non-traversable style of  
23 medians?

24 A. I don't believe so.

25 Q. Would that change the county's position about



1 whether a non-mountable median is appropriate if BNSF  
2 proposed some type of cost-sharing agreement for the  
3 installation?

4 A. That's not a decision for me to make.

5 Q. Whose decision would that be?

6 A. That would either be -- that would be a county  
7 engineer's decision.

8 Q. Can you tell me who specifically?

9 A. Joe Rutan.

10 Q. Does the county have any plans to do another traffic  
11 count at the crossing as part of this proceeding given  
12 the last one was in 2012?

13 A. I can request one at any time.

14 Q. And I said 2013. I should have said 2014, but do  
15 you currently have any plans to have an updated traffic  
16 count done?

17 A. No. There's not a lot of action going on down there  
18 development wise. There's not a lot of change in the way  
19 that that road is used, so I don't anticipate them doing  
20 anything. There's no complaints of speeding or anything  
21 like that.

22 (Exhibit 14 was marked for identification.)

23 Q. Turn to Data Request No. 6 on page 3. You're  
24 identified as the county's witness with knowledge of this  
25 answer, and this relates to a shear curb face six inches

1 tall and whether that increases the risk of damage to  
2 emergency vehicles.

3 The county states that there is an increased risk  
4 from a shear face of a six inch curb when rubbed by a  
5 tire as a tire has a higher propensity to roll off the  
6 rim. Do you see where I'm reading?

7 A. Yes.

8 Q. What's the source of that information?

9 A. I believe that was in conversations with Mitch.

10 Q. Are there any actual incidents of which you're aware  
11 of where that's happened with one of the county's  
12 emergency response vehicles?

13 A. Not to my knowledge.

14 Q. Turn to page 5, Data Request No. 9. Your response  
15 references documents attached numbered WC0154 through  
16 159. Do you see where I'm looking?

17 A. I do.

18 Q. The materials that we were provided only go to 155.  
19 Are you able to tell us what 156, 7, 8 and 9 are?

20 A. No, but there were a lot of redundant things,  
21 though. I guess -- I know what they're referring to in  
22 this.

23 That would have been -- I don't know if you guys  
24 have this, but it would have been as part of the NOI  
25 material. That would be the document that states --

1 makes that statement. It's UTC's response to the notice  
2 of intent is what is referred to in that statement.

3 Q. I'm just pulling up the attachment here.

4 A. I think you have the notice of intent as part of  
5 something else.

6 Q. 155 is as far as mine goes, and that's the traffic  
7 count information. Are you able to access that and have  
8 the court reporter make it an exhibit just so we make  
9 sure we have it?

10 A. As part of Data Request No. 1, I don't know what  
11 exhibit it is of yours, but I bet it is included in that.  
12 It might not be numbered like -- it might not have the  
13 WC0155 or whatever the number is there.

14 MR. QUINN: Kelsey, if I may interject, I  
15 don't have our responses here in front of me. If there  
16 was an oversight, if those weren't provided, we'll of  
17 course supplement that.

18 I don't have the other exhibits or the other data  
19 that Cody's referencing right now, but as he said it might  
20 be -- maybe Tom has our response there.

21 MR. MONTGOMERY: Let's go off the record.

22 (Recess taken.)

23 MS. ENDRES: Hopefully, if there are pages  
24 missing, they won't raise any additional questions. If  
25 they do, then I'll reserve the right to briefly reconvene

Cody Swan

Page 60

1 to ask Mr. Swan about them given that he's identified as a  
2 witness with knowledge in this response.

3 Q. Before we do adjourn, Mr. Swan, are there any  
4 answers to any of my questions that you would like to  
5 change?

6 A. No.

7 Q. And inevitably in any deposition a witness gets  
8 asked a question, and their question is I don't remember,  
9 whether it's asking to identify someone or describe  
10 something.

11 Is there anything I asked you about where you  
12 couldn't remember the answer at the time, but you have  
13 since come to remember?

14 A. No.

15 Q. Have we discussed all of the reasons that the county  
16 believes that traversable channelization devices are  
17 preferable to non-traversable channelization?

18 A. Can you please repeat that?

19 Q. Sure. Have we discussed this morning all the  
20 reasons that the county believes that a traversable  
21 median is preferable to a non-traversable median?

22 A. Yes.

23 MS. ENDRES: That's all I have. I appreciate  
24 your time this morning.

25 ///

Cody Swan

Page 61

1 (Whereupon the deposition  
2 was concluded at 11:17 a.m.)

3

4 (Signature was reserved.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A F F I D A V I T

STATE OF WASHINGTON )  
  )     ss.  
COUNTY OF WHATCOM  )

I have read my within deposition and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CORRECTION SHEET hereof.

\_\_\_\_\_  
CODY SWAN

\_\_\_\_\_  
Today's Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, the undersigned Washington Certified Court Reporter hereby certify that the foregoing deposition upon oral examination of each witness named herein was taken stenographically before me and transcribed under my direction;

that the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Washington Certified Court Reporter  
No. 2052

Cody Swan

1 BILLING MEMO: Copy Room Initials\_\_\_\_\_  
THAD BYRD, CCR TAKEN: 12/18/18  
2 JOB NUMBER: 58595

3 WITNESS: CODY SWAN PAGES: 63  
CAPTION: WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
4 VENUE: BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
5 DOCKET NO.: TR-180466  
EXHIBITS: 1 - 14  
6 \*SPECIAL INSTRUCTIONS\*\_\_\_\_\_

7  
8  
9 KELSEY E. ENDRES  
Montgomery Scarp, PLLC  
1218 Third Avenue  
10 Floor 25  
Seattle, Washington 98101-3097  
11 MILEAGE: 54 miles (154 miles total)  
APPEARANCE FEE: 2.25 hours  
12 0 + 1  
ETRAN: Yes  
13 EXHIBITS: Yes, PDF  
EMAIL: kelsey@montgomeryscarp.com  
14 tom@montgomeryscarp.com  
PHONE: (206) 625-1801

15  
16 CHRISTOPHER D. QUINN  
Whatcom County Prosecuting  
Attorney's Office  
17 Whatcom County Courthouse  
311 Grand Avenue  
18 Suite 201  
Bellingham, Washington 98225-4038  
19 \*\* NO ORDER \*\*  
EMAIL: c.quinn@co.whatcom.wa.us  
20 PHONE: (360) 778-5710

21 \*FOR OFFICE USE\*  
TRAN\_\_\_\_EX\_\_\_\_TRAN\_\_\_\_EX\_\_\_\_TRAN\_\_\_\_EX\_\_\_\_  
22 BINDER\_\_\_\_BINDER\_\_\_\_BINDER\_\_\_\_  
TABS\_\_\_\_COVERS\_\_\_\_TABS\_\_\_\_COVERS\_\_\_\_TABS\_\_\_\_COVERS\_\_\_\_  
23 LETTERS\_\_\_\_LETTERS\_\_\_\_LETTERS\_\_\_\_

24  
25



Cody Swan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THAD BYRD, CCR  
SEATTLE DEPOSITION REPORTERS, LLC  
600 UNIVERSITY STREET, SUITE 320  
SEATTLE, WASHINGTON 98101  
(206) 622-6661 Fax: (206) 622-6236

December 28, 2018

CHRISTOPHER D. QUINN  
Whatcom County Prosecuting  
Attorney's Office  
Whatcom County Courthouse  
311 Grand Avenue  
Suite 201  
Bellingham, Washington 98225-4038

NOTICE RE SIGNATURE

RE: WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
Venue: BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
Docket No.: TR-180466

The transcript of CODY SWAN's deposition is ready for reading and signing at 600 University Street, Suite 320, Seattle, Washington 98101.

Pursuant to CR 30(e), you have 30 days from the date of this notice to read, sign, and make any corrections to your deposition transcript.

Please call (206) 622-6661 with the date you will be reading your deposition. At the end of the 30-day period, your transcript will be filed with the appropriate representative of the Court.

---

Thad Byrd, CCR

cc: KELSEY E. ENDRES

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

A F F I D A V I T

STATE OF WASHINGTON )  
                              )    ss.  
COUNTY OF WHATCOM  )

I have read my within deposition and the  
same is true and accurate, save and except for changes  
and/or corrections, if any, as indicated by me on the  
CORRECTION SHEET hereof.

\_\_\_\_\_  
CODY SWAN

\_\_\_\_\_  
Today's Date

Cody Swan

1 SEATTLE DEPOSITION REPORTERS, LLC  
2 600 UNIVERSITY STREET, SUITE 320  
3 SEATTLE, WASHINGTON 98101  
4 (206) 622-6661

CHANGE SHEET

5 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,  
6 SHOWING PAGE, LINE AND REASON.

=====

7	Page	Line	Correction and Reason
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____

20

21

22

\_\_\_\_\_  
CODY SWAN  
TAKEN: 12/18/18

23

24 Re: WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
25 Docket No.: TR-180466  
Reporter: Thad Byrd, CCR

Cody Swan

1           DATE FILED:

2

3           TO:    KELSEY E. ENDRES  
4                    Montgomery Scarp, PLLC  
5                    1218 Third Avenue  
6                    Floor 25  
7                    Seattle, Washington 98101-3097

6

NOTICE RE CHANGES TO ORIGINAL DEPOSITION

7

Case Name:   WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
8   Venue:    BEFORE THE WASHINGTON UTILITIES AND  
              TRANSPORTATION COMMISSION

8

9   Docket No.:  TR-180466  
10   Witness:    CODY SWAN  
11   Date taken:  12/18/18

9

12   Pursuant to CR 30(e), enclosed is a copy of the  
13   Signature Page and Change Sheet, if any, to the  
14   above-referenced original deposition transcript.

13

14

15

16

\_\_\_\_\_  
Thad Byrd, CCR

17

18

19

20

21

22

23

24

25           cc:    CHRISTOPHER D. QUINN

Cody Swan

1           DATE FILED:

2

3           TO:   KELSEY E. ENDRES  
4                    Montgomery Scarp, PLLC  
5                    1218 Third Avenue  
6                    Floor 25  
7                    Seattle, Washington 98101-3097

6

NOTICE RE FILING OF ORIGINAL DEPOSITION

7

RE:   WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
8   Venue:   BEFORE THE WASHINGTON UTILITIES AND  
9                    TRANSPORTATION COMMISSION

9

Docket No.:   TR-180466

Witness:   CODY SWAN

10

Date taken:   12/18/18

11

12

Enclosed is the original sealed transcript of the  
deposition of CODY SWAN.

13

14

Pursuant to CR 30(e), the original signature page and  
changes, if any, received by this office will be  
forwarded to all counsel.

15

16

17

18

\_\_\_\_\_  
THAD BYRD, CCR

19

20

21

22

23

24

25

cc:   CHRISTOPHER D. QUINN

Cody Swan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THAD BYRD, CCR  
SEATTLE DEPOSITION REPORTERS, LLC  
600 UNIVERSITY STREET, SUITE 320  
SEATTLE, WASHINGTON 98101  
(206) 622-6661 Fax: (206) 622-6236

TO: KELSEY E. ENDRES  
Montgomery Scarp, PLLC  
1218 Third Avenue  
Floor 25  
Seattle, Washington 98101-3097

NOTICE RE ORIGINAL DEPOSITION

Case Name: WHATCOM COUNTY v. BNSF RAILWAY COMPANY  
Venue: BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
Docket No.: TR-180466  
Witness: CODY SWAN  
Taken: 12/18/18

Pursuant to CR 30(e), the deposition transcript, was submitted with the Signature Page and Change Sheet to the above-referenced witness for examination, reading, and signing. More than 30 days have transpired, and I have not received the signed Signature Page

This letter records the fact that the witness has failed to sign the deposition transcript, and in accordance with CR 30(e), the original deposition transcript is filed without that signature.

\_\_\_\_\_  
THAD BYRD, CCR

cc: CHRISTOPHER D. QUINN