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1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION

3	BNSF RAILWAY COMPANY,)	
4)	DOCKET NO. TR-090121
5	Petitioner,)	
6)	Volume IV
7	vs.)	Pages 87 to 391
8)	
9	SNOHOMISH COUNTY,)	
10)	
11	Respondent.)	
12	_____)	

13 A hearing in the above matter was held on
14
15 March 30, 2009, from 9:15 a.m to 5:50 p.m., at 9124 -
16
17 271st Street Northwest, Stanwood, Washington, before
18
19 Administrative Law Judge ADAM TOREM.

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45 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE TOREM: It is Monday morning, March
3 30th, 2009, it's about 9:15 in the morning, and we've
4 taken care of a number of off the record housekeeping
5 issues this morning. This is again Docket TR-090121.
6 We're going to hear from Burlington Northern Santa Fe's
7 witnesses this morning first, and if the first witness,
8 Mr. Rick Wagner, can come up and take a seat, we'll get
9 started with his testimony.

10 This morning's proceedings are going to have
11 the BNSF witnesses, then the one witness from UTC
12 Commission Staff, and then Mr. Logen will present his
13 exhibits and then take the stand for his own testimony.
14 Apparently the SEPA issues we talked about last Thursday
15 will be addressed by a witness, and if we get done this
16 afternoon we'll talk about after lunch sometime a
17 deadline for post hearing briefs that take into account
18 that date.

19 Just for the record we are at the Stanwood
20 Public Utilities District building, and we'll be here
21 this evening as well for the public comment hearing
22 that's scheduled to begin I believe at 6:00 p.m.

23 All right, let me swear in Mr. Wagner, if
24 you'll stand and raise your right hand.

25 (Witness RICHARD W. WAGNER was sworn.)

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1 JUDGE TOREM: All right, take a seat and
2 state your first and last name and spell it for the
3 record.

4 THE WITNESS: Richard W. Wagner, I go by
5 Rick.

6 MR. SCARP: May I?

7 JUDGE TOREM: You may, please.

8

9 Whereupon,

10 RICHARD W. WAGNER,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13

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

15 BY MR. SCARP:

16 Q. Good morning, Mr. Wagner. Can you just tell
17 us what is your position, and for whom do you work, and
18 what do you do?

19 A. I'm employed by BNSF Railway Company.

20 Q. In what capacity?

21 A. As a Project Engineer, which is more or less
22 a project manager.

23 Q. And with regard to the project, the siding
24 extension project in Stanwood, are you involved with
25 that project?

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1 A. Yes, sir.

2 Q. And is the petition to close the at-grade
3 crossing at Logen Road part of that project?

4 A. Yes, sir.

5 Q. Mr. Wagner, I've put before you there what I
6 believe has been marked as Exhibit 1 to this hearing,
7 and that's the petition for closure of a highway rail
8 grade crossing. Do you have that?

9 A. Yes, sir.

10 Q. The contact person at the bottom is Megan
11 McIntyre, can you tell us who that is?

12 A. Yes, Megan was the Manager of Public Projects
13 at the time that this was filed, and at this time I've
14 taken over her projects as well, in lieu of a formal
15 promotion into that position, but.

16 Q. In short, does that mean that you're now in
17 charge of this project?

18 A. Yes, sir.

19 Q. Are you familiar with what's contained in
20 Exhibit 1?

21 A. Yes.

22 Q. Okay. And did you participate in any way in
23 collecting the information?

24 A. Oh, yes, sir.

25 MR. SCARP: Your Honor, we would move to

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1 admit Exhibit 1.

2 JUDGE TOREM: All right, Exhibit 1 again for
3 the record is the petition for closure, I have that as a
4 total of 13 pages, and this is the document that started
5 this proceeding back on the 22nd of January. Are there
6 any objections to Exhibit 1?

7 Hearing none, that will be admitted.

8 And just for the record, I've also premarked
9 the response of Snohomish County dated 26 January, 2009,
10 waiving the right to this hearing as Exhibit 2. This
11 would be an appropriate time I think to have
12 Mr. Kasting, do you still want to offer that into
13 evidence as the County's position?

14 MR. KASTING: Yes, that's correct.

15 JUDGE TOREM: So are there any objections to
16 that being admitted at this time?

17 So Exhibit 2 will also be admitted showing
18 the County waived its right to the hearing, and there's
19 a form that they filled out that's enclosed within
20 Exhibit 1, I think it's labeled as page 6 of Exhibit 1.
21 So Exhibit 2 will be admitted as well.

22 Mr. Scarp, go ahead.

23 MR. SCARP: Thank you, Your Honor.

24 BY MR. SCARP:

25 Q. Can you just tell us a little bit,

0011

1 Mr. Wagner, about what the siding project that's -- is
2 it called the siding extension project?

3 A. Yes.

4 Q. What's its purpose?

5 A. Its purpose is to extend the siding to what
6 BNSF -- to a BNSF standard for use of parking freight
7 trains in the clear, and their current standard is 8,500
8 feet.

9 Q. Okay. And what's the reason for doing so,
10 what is resolved or what issues are taken care of by
11 doing that?

12 A. To be able to meet or pass other trains, have
13 a place to park a train so another train can proceed on
14 through.

15 Q. Okay.

16 A. And in this instance, it is -- well, never
17 mind, I'll stop there.

18 Q. Okay. What kind of train traffic does this
19 area have, what kind of rail traffic?

20 A. Freight, freight mainly from, it can come
21 from all parts of the country, but between Seattle and
22 Vancouver, BC.

23 Q. And how many freight trains do you have here?

24 A. Currently right now between 8 and 10 a day,
25 but due to market conditions it's down from I think as

0012

1 many as 15.

2 Q. All right. And is there an anticipation at
3 BNSF that this will increase, the traffic?

4 A. Yes. But there's also 4 Amtrak trains as
5 well that travel between Seattle and Vancouver, BC.

6 Q. Is there an anticipation of an increase in
7 the passenger rail traffic?

8 A. That's certainly a possibility.

9 Q. Okay.

10 A. We've already increased it. There was, as I
11 recall, there was just one, and we have allowed the
12 second train in lieu of the upgrades that come under the
13 program that BNSF and WSDOT are involved in right now.

14 Q. Okay.

15 A. To increase commuter rail.

16 Q. All right. Tell me, do you know what the
17 speed limits are on the track as you approach the or at
18 the crossing where Logen Road is, do you know what the
19 speed limits of those trains are?

20 A. 79 miles per hour for commuter or for
21 passenger trains and 60 miles an hour for freight.

22 Q. Is that information contained in Exhibit 1?

23 A. I believe so. Yes, sir, it is, I'm certain
24 of it.

25 Q. All right, at page 3.

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1 How do passenger trains and freight trains
2 interact, if you will, are they scheduled?

3 A. Well, the passenger trains are scheduled.
4 The freight trains are not because they -- there's
5 different classifications of freight trains. Z train is
6 your hottest priority, and those have priority on a par
7 of passenger.

8 Q. Okay. So how does this work with sidings and
9 things like that with those two different types of rail
10 traffic?

11 A. Well, the -- obviously because of the speed
12 of the passenger, they can overtake a freight, and so
13 you need to have areas that you can pull the freight
14 trains off of the main line and allow the passenger
15 trains to pass, either oncoming or overtaking.

16 Q. Okay. Now the State of Washington through
17 the Department of Transportation is involved in this
18 siding project?

19 A. Yes.

20 Q. And can you just briefly just summarize what
21 was their involvement?

22 A. They -- this project is mitigation of the
23 added additional Amtrak traffic.

24 Q. Okay.

25 A. That is their only role in this project.

0014

1 Q. And is this siding project, how, if at all,
2 is it related to the new terminus here for Amtrak?

3 A. Well, you'll have an Amtrak train stopping.
4 This is also a meet-pass area. Folks who live here
5 would notice that shortly after one comes, another one
6 comes, another one passes through.

7 Q. Meet-pass means?

8 A. Well, that you have them coming from both
9 directions on the track.

10 Q. Okay. Now when the siding project is
11 extended north from its -- first off, where does it --
12 how long is it right now going north out of Stanwood,
13 how far does it extend?

14 A. I believe it's 6,800 feet, but that's not
15 usable distance. I think there's only 4,800 feet that's
16 usable where you can park a train.

17 Q. In order for another one to pass?

18 A. In order for another one to pass, yeah.

19 Q. And you indicated before something about
20 standard of 8,500 feet, can you just briefly explain
21 that?

22 A. Well, that's the BNSF standard, because now
23 trains, coal trains, grain trains, they can be as long
24 as that due to technology and other aspects of the
25 industry that can now -- they can handle that. They can

0015

1 actually -- there's actually trains that are longer than
2 that.

3 Q. Okay. But in this corridor 8,500 is the
4 standard?

5 A. 8,500 feet allows you to park an 8,000 foot
6 train in there.

7 Q. All right.

8 JUDGE TOREM: Mr. Scarp, can you clarify, is
9 that 8,500 total feet or usable feet?

10 THE WITNESS: That's usable feet.

11 JUDGE TOREM: So the siding itself may have
12 to be longer than 8,500 feet?

13 THE WITNESS: Yeah, sure, depending on what
14 obstructions there may be, crossings, sidings. And by
15 crossing I mean a public crossing.

16 BY MR. SCARP:

17 Q. And that takes us to the Logen Road crossing
18 which currently is a public crossing; is that correct?

19 A. Yes.

20 Q. And when you say obstructions such as public
21 crossings, what does that mean in terms of the
22 engineering of the siding project?

23 A. Well, if we -- we're limited to the amount of
24 time that we can block the siding, and we could block
25 the siding without -- I guess we could theoretically

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1 block the siding without really blocking it, but trains,
2 locomotives, are supposed to stop within 200 feet of a
3 crossing for sight clearance and for them to have sight
4 clearance as well.

5 Q. Okay. And so the siding extension on this
6 project is going to go through Logen Road?

7 A. Yes.

8 Q. Okay. And does that mean that trains will
9 block the siding for longer periods of time, or can you
10 explain that?

11 A. Sure they could, it could be hours.

12 Q. And why is that?

13 A. As the needs of the operation dictate or if
14 you're waiting to move a series of higher level trains,
15 you know, higher rated trains through.

16 Q. Okay.

17 A. It could be passenger trains, could be higher
18 rated freight trains.

19 Q. Okay. And so your testimony is that the
20 siding could be occupied by a train for hours?

21 A. Yes.

22 Q. Okay. And is that part of the reason why
23 there's a petition to close that crossing?

24 A. Yes, that would be one.

25 Q. Okay. What else?

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1 A. And the safety effects of that as well.

2 Q. All right, I think there's some other

3 witnesses that are going to get into that.

4 A. Yes.

5 Q. So I won't take you too far down that.

6 A. Yes.

7 MR. SCARP: Your Honor, I would like to hand
8 the witness what we've -- a portion of the responses to
9 Data Request Number 18. And just for the record there
10 is a timetable, BNSF timetable, contained in response to
11 the data request, and that is about the fifth page of
12 Exhibit 2.

13 BY MR. SCARP:

14 Q. Mr. Wagner, if you look at the first page of
15 the responses to the data request from Mr. Logen, and
16 that would be Request Number 18, did you provide
17 information to respond to Request Number 18?

18 A. Yes, sir.

19 Q. And did you provide your attorneys with a
20 copy of the timetable for this area?

21 A. I believe that actually that because we were
22 in transition at the time, Megan and I, that Megan might
23 have supplied it.

24 Q. All right.

25 A. But I was aware of it.

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1 Q. Fair enough. And are you familiar with the
2 timetable --

3 A. Yes, sir.

4 Q. -- for Northwest Division Number 3, and this
5 is dated April 26, 2006 --

6 A. Yes, sir.

7 Q. And does this confirm what you testified to
8 earlier regarding the train speeds that are allowable on
9 this track?

10 A. Yes, sir.

11 MR. SCARP: Your Honor, we would move to
12 admit Exhibit 2.

13 JUDGE TOREM: That's Exhibit 3 actually.

14 MR. SCARP Oh, I'm sorry, 3.

15 JUDGE TOREM: I snuck in the other Snohomish
16 County exhibit ahead of it.

17 So Exhibit 3 by my count has a total of 8
18 pages and consists of a cover page with a response to
19 Mr. Logen's Data Request Number 18. Mr. Scarp or
20 Ms. Endres, whoever can best describe this, is this the
21 entirety of the response to the data request?

22 MS. ENDRES: I believe that the data request
23 had portions of the timetable that apply to other
24 divisions in Bellingham, so in the interest of saving
25 trees we didn't attach those portions for this.

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1 JUDGE TOREM: All right, so the timetable
2 portion has been cut down for the purposes of this
3 witness and the focus on this geographical location?

4 MS. ENDRES: Yes.

5 JUDGE TOREM: All right, so 8 pages, any
6 objections to its admission?

7 All right, hearing none, then Exhibit 3 will
8 be admitted.

9 MR. SCARP: And, Your Honor, my apologies for
10 referring throughout to Exhibit 2 and meaning Exhibit 3.

11 JUDGE TOREM: That's fine.

12 All right, and you've handed me another
13 schematic I believe as a separate exhibit.

14 MR. SCARP: I have, Your Honor.

15 BY MR. SCARP:

16 Q. Mr. Wagner, what's I believe been marked as
17 Exhibit 4, can you just tell us what that document is?

18 A. That's what we call a signature schematic,
19 which usually there's different iterations as you move
20 through a project, and different levels of authority
21 within the company will review this and possibly make
22 comments. It's very similar to track charts that we
23 have. As a matter of fact, it's almost identical to it,
24 but there's more detail in it.

25 Q. All right.

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1 A. This indicates the entire project.

2 Q. Okay. And do you utilize this document in
3 your work on this project?

4 A. Oh, yes.

5 Q. Okay. This shows a lineal configuration, and
6 when I say that it means sort of straight, if you will.
7 Is there a purpose that I'm looking at vertical lines
8 instead of curved lines, or I guess my question is, out
9 there if you look at the board up there, it shows a
10 curve in the track and things like that. Here we're
11 looking at vertical lines, why is that?

12 A. Well, if you look just down from the top,
13 you'll see that there's also curve data on this
14 schematic. About the third line down you'll see some
15 red alphanumeric characters there.

16 Q. Okay, what does that signify?

17 A. It signifies that there is a curve right
18 within -- right within -- Logen Road sits right in the
19 middle of a curve.

20 Q. And just if you can assist us, it shows up
21 there, where is Logen Road with relation to the tracks?

22 A. Just if you look along the top right below
23 where it says line segment 50, you will see 55, 56, 57,
24 58, 59, those are mileposts, railroad mileposts.

25 Q. Mm-hm.

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1 A. Probably also something you should know is
2 that a railroad milepost is not necessarily a mile,
3 5,280 feet, it can be a little short, a little long.
4 But right at 57 if you just move back 2 hatch marks
5 there along the milepost, you'll see Logen Road. Logen
6 Road is in green.

7 Q. All right. And so for purposes of this
8 schematic, that's where Logen Road is in terms of the
9 project schematic?

10 A. Yes, about 56.8.

11 Q. Okay. Mr. Wagner, does this -- what does
12 this tell us about the overall length of the siding
13 extension project, and what is that length?

14 A. The length is roughly I think it's 14,400
15 feet of the entire buildout.

16 Q. Okay.

17 A. That includes the existing siding and the
18 extension that we are building.

19 Q. Okay. Now if I'm looking at -- if I'm
20 looking at this Exhibit 4 so that down at the bottom it
21 says BNSF Railway Stanwood siding extension, if I'm
22 looking to my left, we're going south toward Stanwood
23 and it shows where the Amtrak station is?

24 A. Yes, the little red square there.

25 Q. All right.

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1 A. The little red square, or rectangle, excuse
2 me, at 271st, which is roughly milepost 55. I think they
3 have it 4.

4 Q. All right. And then at I think you said
5 approximately milepost 56.8 is where the crossing is for
6 Logen Road?

7 A. Yeah, I need to correct myself, it's actually
8 56.9.

9 Q. Okay, let the record so reflect.
10 Now going north, just can you briefly
11 summarize what is the project, and I know there's an
12 Amtrak pocket, what's up there and where is that?

13 A. Okay, so right between the public crossing at
14 102nd and between 300th Street --

15 Q. And can you just tell us where those
16 crossings are? If you need to reference a milepost,
17 that's fine.

18 A. Oh, okay, I'm sorry. At 55, well, let me put
19 my -- roughly 55.5 for 300th Street.

20 Q. 55?

21 A. Excuse me, 57.5.

22 Q. Okay.

23 A. And --

24 Q. It says 300th Street right on there in black
25 lettering?

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1 A. Yes, it does.

2 Q. Okay. And that's north of Logen Road?

3 A. That's correct.

4 And then a little further north at 57.993 is
5 the 102nd Street crossing.

6 Q. Okay. And those are both existing public
7 crossings?

8 A. Yes, sir.

9 Q. Where is the so-called Amtrak pocket?

10 A. In between the two of them in what in
11 railroad is called a tangent, which is a straight track.

12 Q. Okay. And what's the function or the
13 intention of that part of the siding?

14 A. Well, the Amtrak trains are shorter, don't
15 require the length that the freight does.

16 Q. What do they require?

17 A. Well, right now my understanding is the
18 length is right around 800 feet, 900 feet, and certainly
19 I suppose that could change. But there's 1,203 proposed
20 feet capacity of the one that we have designed for
21 there. That's the needed capacity for -- that gives us
22 the capacity to park a current standard length of Amtrak
23 train there.

24 Q. And why do you need a pocket there?

25 A. Well, because once again as I said earlier,

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1 that's an area where there is a meet-pass, so if you
2 have a station and you have to stop an Amtrak train
3 there while you have another one coming, that gives him
4 a place to sit while the other one is offloading at the
5 station.

6 Q. Okay.

7 A. And then that one can, you know.

8 Q. Now the freight trains, however, would they
9 be using that pocket to stop and to wait?

10 A. No, it's not long enough. I suppose if you
11 -- I mean anything's possible.

12 Q. But I mean if you had an 8,500 foot --

13 A. Oh, no, no, there's no, yeah.

14 Q. But if you had one or two cars or --

15 A. Yes, if you had a local, a short local there,
16 what's called a local train, which is one that goes out
17 and picks up industry cars.

18 Q. Okay, but when we're talking about a freight
19 train for purposes of these questions, we're talking
20 about a full sized freight train, they would park using
21 this schematic where?

22 A. They would park to the south, and to the
23 south would be below between 300th and roughly 271st
24 Street.

25 Q. Okay. So when we look on this at the 300th

0025

1 Street crossing, we're someplace about milepost 57.4 or
2 5, right in there?

3 A. That's correct.

4 Q. And then to the left or south towards
5 Stanwood down somewhere would it be short of 271st?

6 A. Oh, yeah, it has to be short of 271st,
7 because we have an industry track there that goes to
8 Wolf Kill Industry.

9 Q. Okay.

10 A. Which is a feed --

11 Q. Feed location?

12 A. Yes.

13 Q. All right. And so that's where you'd park
14 the freight trains, and that would block Logen Road; is
15 that correct?

16 A. Yes.

17 Q. Okay. How often could you expect freight
18 trains to block Logen Road?

19 A. I would say probably every time that one
20 would go into the siding and had to hold.

21 Q. And is there a range of time that you expect,
22 you said a couple of hours, is that always or sometimes?

23 A. Well, I suppose if there was an incident
24 somewhere, you could have -- it could sit there for much
25 longer as well.

0026

1 Q. What do you mean by an incident?

2 A. Well, if you had a derailment, if you had
3 some kind of a failure with the track, mechanical,
4 something that needed to be repaired.

5 Q. All right.

6 Is there a question at the location of Logen
7 Road regarding sight distance at that crossing?

8 A. Well, it's in the middle of a curve, and so
9 your sight distance is reduced. I mean in the instances
10 when we've been up there doing preliminary construction
11 research, we as a rule use a flagman for protection,
12 because there's not enough sight visibility up there,
13 it's not a safe condition if you're working along, if
14 you're walking along the track there.

15 Q. Okay.

16 A. So in order to be safe and operate within,
17 you know, company rules.

18 Q. Okay.

19 MR. SCARP: Your Honor, we would move to
20 admit Exhibit 4.

21 JUDGE TOREM: Are there any objections to
22 Exhibit 4?

23 I have a few questions before I admit it.

24

25

0027

1 EXAMINATION

2 BY JUDGE TOREM:

3 Q. Mr. Wagner, what you've said is Logen Road
4 crossing --

5 A. Yes.

6 Q. -- is that the one labeled here as 292nd
7 Street Northwest?

8 A. Yes, sir. That's the County's name for the
9 street.

10 Q. And so the intended parking on the siding for
11 an Amtrak would be to the north of that between 300th
12 Street and 102nd; is that correct?

13 A. That's correct.

14 Q. And that's where it says the capacity is
15 1,203 feet?

16 A. Yes, sir.

17 Q. So that portion of the siding, does it exist
18 today?

19 A. Oh, no.

20 Q. So that portion of the siding would be built
21 as part of the project as well?

22 A. Yes.

23 Q. And the portion to be built intended for the
24 freight trains of greater length would be used going
25 south from 300th Street perhaps as far as what looks

0028

1 like the crossing near the Amtrak station at 271st?

2 A. Yes, if you look at milepost 55.58, there's a
3 number 11 turnout siding.

4 Q. I see it.

5 A. Okay. So we would need to stop -- I believe
6 the -- we have to stop within 50 feet of that turnout.
7 We can't block the turnout.

8 Q. All right, so there would be 50 feet after
9 that turnout, and going northbound would be the
10 beginning of the usable siding?

11 A. Yes. And then no closer than 250 feet of
12 300th Street would be as far north as we could go.

13 Q. And so the crossings to be blocked would be
14 Logen Road or 292nd Street Northwest and a private
15 crossing that appears as well?

16 A. Yes, sir.

17 JUDGE TOREM: All right, I believe I
18 understand how this document works then. Are there any
19 objections to its admission?

20 Hearing and seeing none, then Exhibit 4 is
21 admitted.

22 Mr. Scarp, go ahead.

23 MR. SCARP: Thank you, Your Honor. And I
24 want to apologize, we've taken a little longer with this
25 witness than I anticipated, but I thought that questions

0029

1 relating to this project should be clarified for the
2 benefit of subsequent witnesses.

3

4 DIRECT EXAMINATION

5 BY MR. SCARP:

6 Q. Mr. Wagner, how far is Dettling Road, is that
7 another name for 300th?

8 A. Yes, sir.

9 Q. And is there a -- as part of the siding
10 extension, is there a plan first off for closure of
11 Logen Road?

12 A. I'm sorry?

13 Q. Sorry, I was confusing.

14 First off, is the petition to close Logen
15 Road part of the overall plan for the project, the
16 siding project extension?

17 A. Yes.

18 Q. And is there also a plan for any upgrades or
19 any work on the other crossings, adjacent crossings?

20 A. Yes, at 300th/Dettling as well as at 102nd.

21 Q. Which is north of 300th?

22 A. Yes.

23 And then back at 271st here in Stanwood.

24 Q. Okay. Can you just tell us what are the, to
25 the best of your knowledge and understanding as part of

0030

1 -- as project engineer, what are those upgrades to the
2 two crossings to the north?

3 A. Well --

4 Q. The north of Logen?

5 A. To the north of Logen, to the north there's
6 going to be some improvements to the approaches on
7 either side. Because as we add the new main on the
8 outside, on the west side, that changes the geometry of
9 the approaches. So your grades that bring you up to the
10 level to make the crossing need to be adjusted, as well
11 as the signals will need to be relocated, crossing arms,
12 that sort of thing.

13 Q. Those crossings have active warning devices?

14 A. Yes, sir.

15 Q. And are they expected to continue to have
16 active warning devices?

17 A. Oh, yes, yes.

18 Q. And that's flashing lights and gate arms?

19 A. Yes, sir.

20 Q. Bells?

21 A. Yes.

22 Q. All right. Those crossings are not intended
23 to be blocked by parked trains that would use the siding
24 that is going --

25 A. No.

0031

1 Q. All right.

2 Where's the site plan?

3 Could you just --

4 JUDGE TOREM: Mr. Scarp, I have three
5 different one page exhibits, two are labeled site plans
6 and one's for Logan Way and 292nd, one's for 300th
7 Street Southwest at the Old Pacific Highway, and then
8 there's another street closure exhibit for the siding
9 extension.

10 MR. SCARP: Which are all part of Exhibit 1.

11 JUDGE TOREM: Are they all contained in
12 Exhibit 1?

13 MR. SCARP: At least two of them are.

14 BY MR. SCARP:

15 Q. Looking at, Mr. Wagner, the photographs, the
16 color copy photographs that are part of Exhibit 1 that
17 you have there, can you tell us, they both say site
18 plan, one's for it says Logen Way, and it's misspelled,
19 at 292nd Street, and the other is for 300th Street at
20 Old Pacific Highway, can you just tell us what those,
21 what do those site plans signify?

22 A. It just shows a proposed scheme for a
23 turnaround.

24 Q. And tell us what is the scheme for
25 turnaround?

0032

1 A. Well, for Logen Road it would be a cul-de-sac
2 expansion of the, you know, buildout, build an area that
3 -- where a vehicle can turn around.

4 Q. Okay. And is that indicated by the white
5 line that's sort of curved, it shows a what I think is a
6 car, and then right near where that vehicle is begins a
7 curved white line, is that to signify what the intended
8 cul-de-sac --

9 A. Yes.

10 Q. Okay.

11 Mr. Wagner, and is that cul-de-sac, is that
12 part of the mitigation of the road closure?

13 A. Yes.

14 Q. Okay. That is the -- are the upgrades at
15 Dettling or 300th and also at 102nd, is that part of the
16 mitigation?

17 A. Yes.

18 Q. All right.

19 Mr. Wagner, last thing I want to talk to you
20 about because there have been questions regarding the
21 environmental review or the SEPA review, can you tell me
22 are you familiar with SEPA review as it relates to
23 projects that you're involved in?

24 A. Yes, sir.

25 Q. And can you tell us, what is the status of

0033

1 that right now as concerns the siding extension project
2 and to the extent it affects the petition for closure?

3 A. Well, the lead agency will be DOE.

4 Q. DOE, is that Department of Ecology?

5 A. Yes, sir.

6 Q. And why do you say they'll be the lead
7 agency?

8 A. Well, as it turns out, there is one permit
9 that's required by Snohomish County, which is a flood
10 hazard permit, but it is a Type 1, and as a Type 1, it
11 does not -- that doesn't mean that Snohomish County has
12 to be the lead agency on the SEPA.

13 Q. Do you have a contractor that you use for the
14 permitting process?

15 A. Yes, sir.

16 Q. And who is that contractor?

17 A. Intermountain Resources.

18 Q. And have you been in regular communication
19 with them?

20 A. Oh, yeah, I spoke with them this morning.

21 Q. Okay.

22 A. And they've left me several voice mails as
23 well.

24 Q. Okay. And have they indicated to you that
25 they've communicated with DOE?

0034

1 A. Yes, they have indicated that they have
2 spoken with DOE, DOE is waiting for the approval of the
3 -- the approval of the mitigation here at Stanwood for
4 the Stanwood project, the wetlands mitigation.

5 Q. And can you just briefly tell us, I don't
6 want to take us too far down --

7 A. Sure.

8 Q. -- but so that we have an understanding of
9 the kind of the status of that and what your knowledge
10 is of what's required and how the -- what are the
11 expectations timewise, because you heard the Judge say
12 that he's interested to know because we have two
13 administrative bodies here working it?

14 A. Sure. The Corps is currently working on
15 finalizing the permitting for another of my projects in
16 Everett which is rather large.

17 Q. The Corps of Engineers?

18 A. The Corps of Engineers, yes.

19 Q. Okay.

20 A. And the mitigation for that project is
21 finished, it's just a matter of finalizing, having the
22 wordsmiths look at the document, and then signatures,
23 which we are supposed to have today was the last date
24 that I was given on Thursday, it would either be Friday
25 or it would be on Monday.

0035

1 Q. Today?

2 A. Today.

3 Q. And that's for the Delta Yard Project in
4 Everett?

5 A. Yes, sir.

6 Q. And were you given an understanding of what's
7 next in the queue?

8 A. Yes, the next one in the queue is Stanwood
9 and another project, Swift. Swift, however, has a
10 mitigation plan that is all but approved, but Stanwood
11 will move to the top of the queue according to the Corps
12 of Engineers.

13 Q. And based on your experience, what is the
14 size of the project and the scope of the project for the
15 environmental review, and what would be your expectation
16 of some determination by the lead agency regarding the
17 SEPA review?

18 A. For Stanwood?

19 Q. Yes.

20 A. Well, the remarks that I have heard that were
21 related to the Corps was because we were kind -- we had
22 expressed concern that, you know, we didn't want --
23 because we've been so concerned with the amount of time
24 it's taken to have Delta approved, understandably
25 because it's considerably larger, but when we expressed

0036

1 concern, we were told that we would be -- we would
2 probably be surprised how quickly we got the permit.

3 MR. SCARP: Okay, I don't have any more
4 questions on that, Your Honor, I have one just last
5 issue.

6 BY MR. SCARP:

7 Q. Mr. Wagner, you were asked about a private
8 crossing that is within the siding, a portion of the
9 siding that will be used by larger freight trains. Is
10 that Mr. Lund's crossing?

11 A. Yes.

12 Q. For the record, where is that located --

13 A. That one is at --

14 Q. -- if you're using the schematic Exhibit 4?

15 A. If you're using the schematic, it is at 56.2,
16 and it would be in green on the schematic.

17 Q. All right. And what is the status, what's
18 the use of that, if you --

19 A. Mr. Lund moves his farm equipment back and
20 forth across there.

21 Q. Okay. Does anyone else use that?

22 A. I don't believe so, I think just he does.
23 It's not -- I wouldn't know I guess.

24 Q. All right. Well, let me ask this, are there
25 any roadways leading to it or --

0037

1 A. Oh, no, no, it's pretty -- it's pretty --
2 it's a pretty basic farm road.

3 Q. Okay, meaning it's --

4 A. Driveway, it's a driveway, it runs between
5 fields, it's very wet, there's no rock on it, you know,
6 it's a typical farm road.

7 Q. Okay. Is there a -- what's the -- what's the
8 sight distance? Have you been to that crossing?

9 A. Oh, yeah, yeah, lots of times, I was just
10 there early last week.

11 Q. And what was your reason for being there?

12 A. I was just down there looking at the site,
13 making sure that I knew what I was talking about.

14 Q. Okay. And what's the sight distance that you
15 were aware of, or did you pay attention?

16 A. Oh, there's -- that's tangent to the south.
17 You can see the overpass for highway -- I always get
18 this one goofed up.

19 Q. 532?

20 A. Yeah, 532.

21 Q. Okay.

22 A. Right, you can see south to 532, and you can
23 see up and beyond. It kind of disappears after --
24 disappears -- the main line disappears to the -- to your
25 right if you're standing on the east side.

0038

1 Q. To the north?

2 A. Yes, as you look to north up towards where
3 Logen Road is located, it disappears off into the brush.

4 MR. SCARP: All right, those are all the
5 questions I have.

6 JUDGE TOREM: Just so I'm clear on exhibits,
7 Exhibit 1 had the two site plans included in it is
8 admitted. Exhibit 3, the responses to data requests,
9 were admitted. And Exhibit 4 was the one page
10 schematic. I think I have one additional exhibit you
11 brought up, Mr. Scarp, this extension here, is that for
12 this witness?

13 MR. SCARP: You know, I think we can -- oh,
14 this is the construction -- I'm sorry, I did forget
15 that. Your Honor, I would hand this -- just so it's
16 part of the record. If anybody has questions about it,
17 they can certainly ask this witness.

18 JUDGE TOREM: I will mark this one as Exhibit
19 5, and we'll call it the construction plan.

20 MR. SCARP: The construction plan, correct.

21 BY MR. SCARP:

22 Q. And just briefly, if you would, Mr. Wagner,
23 can you tell us what is Exhibit 5?

24 A. That's a little more in-depth view of what
25 we're proposing post closure of 292nd.

0039

1 Q. All right. And it shows -- it shows -- to
2 the left of the -- it shows new main track --

3 A. Yes.

4 Q. -- which is to the west of the existing main
5 track which is the -- becomes the proposed siding track;
6 is that accurate?

7 A. Yes, sir.

8 Q. To the right of that or to the east, it shows
9 I think what you referred to before as a cul-de-sac?

10 A. Yes.

11 Q. And to the left of the new main track, it
12 shows a dark line with various arrows pointing to it,
13 what is that?

14 A. I'm a little lost. Oh, it looks like it's
15 pointing to --

16 Q. Are those just reflecting distances?

17 A. I think they're just reflecting distances.

18 MR. SCARP: All right, those are all, we
19 would move to admit Exhibit 5.

20 JUDGE TOREM: Any objections to Exhibit 5?

21 Hearing and seeing none then, Exhibit 5 is
22 also admitted to the record.

23 All right, any further questions for this
24 witness?

25 MR. SCARP: I have none, Your Honor.

0040

1 JUDGE TOREM: Mr. Thompson, any cross-exam?

2 MR. THOMPSON: No questions.

3 JUDGE TOREM: Mr. Kasting?

4 MR. KASTING: No questions.

5 JUDGE TOREM: Mr. Logen?

6 MR. LOGEN: Yes, I have some questions.

7 JUDGE TOREM: All right, and if I can remind
8 the witness to speak up a little bit and Mr. Logen as
9 well, go ahead.

10

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

12 BY MR. LOGEN:

13 Q. You've testified as to the speed limits, the
14 maximum speed limits of the trains passing through the
15 Logen Road crossing, do you have any idea what the speed
16 would be of a passenger train that is going to stop in
17 Stanwood or has stopped in Stanwood when it reaches or
18 comes to Logen Road?

19 A. I would only be supposing, but based on my
20 experience, they generally stay at track speed until
21 they need to slow to stop, and they stop rather quickly
22 because they're so light, so it would only be a guess on
23 my part.

24 Q. Thank you.

25 You said the standard is 8,500 feet, and you

0041

1 mentioned coal and grain trains were often that long,
2 how many coal and grain trains traverse this track?

3 A. I don't know. I know that our coal sales
4 have increased, and that's been carrying a lot of the
5 traffic, and grain as well goes north. I mean they're
6 both commodities that go north, but I don't know, I
7 wouldn't know how many.

8 Q. And you mentioned that the blocking of Logen
9 Road could be for hours. Given today's trains and the
10 traffic on the tracks, would that happen for hours
11 today, or is this just something possible in the future?

12 A. Oh, no, that could happen now.

13 Q. Okay. How often?

14 A. I wouldn't know, I wouldn't know.

15 Q. And you mentioned that a private crossing
16 will also be closed; is that Jim Lund's crossing?

17 A. No, I didn't say any private crossings would
18 be closed.

19 Q. On Exhibit 4, it says, close one private
20 crossing and one public crossing; where is that private
21 crossing?

22 A. I don't know, it's not our plan to close any
23 private crossings.

24 MR. SCARP: I'm sorry, what are we referring
25 to?

0042

1 THE WITNESS: In the green right below 1.

2 JUDGE TOREM: So again for the record,
3 Exhibit 3 under the scope of work has some green type
4 that talks about removing three existing signals,
5 closing one private crossing and one public crossing.
6 Mr. Logen, is that what you're referring to?

7 MR. LOGEN: That's what I'm referring to,
8 yes.

9 A. Yeah, no, it's not our plan to close the
10 private crossing.

11 BY MR. LOGEN:

12 Q. And the private crossing --

13 A. Not that I'm aware of.

14 Q. And the private crossings north of Logen Road
15 will also remain open?

16 A. North of Logen Road?

17 Q. Isn't there one between Dettling Road and
18 102nd or 300th and 102nd?

19 A. No.

20 Q. I don't see one on here, but I think there's
21 one.

22 A. Not to mind, but there is -- there are
23 several north of 102nd.

24 Q. Right, there's houses across there from the
25 road.

0043

1 A. Well, barns.

2 JUDGE TOREM: Mr. Logen, you're referring to
3 north of milepost 58 several private crossings marked
4 with a black type; is that correct?

5 MR. LOGEN: I thought there was a crossing,
6 private crossing between roughly milepost 57.5 and
7 milepost 58 or the 102nd Street crossing. I thought I
8 had read that earlier somewhere, but I must be wrong on
9 that.

10 BY MR. LOGEN:

11 Q. So is Dettling Road or 300th also on a curve?

12 A. It's right at the start of the curve, yes.

13 Q. Okay.

14 A. Well, actually it's in the curve, I'm not --
15 let me correct myself, it's in the curve.

16 Q. Okay.

17 A. It's not at the start.

18 Q. And 102nd, is it at the start of the curve or
19 in the curve?

20 A. The 102nd is in the tangent. It's straight
21 as an arrow there at 102nd.

22 Q. Okay. So am I understanding this correctly
23 on Exhibit 4 again that I'm looking at, there's a red
24 line that extends from approximately 56.5 up to just
25 past 58, is that the siding that's being constructed?

0044

1 A. Well, let me explain a little further. The
2 red line indicates new mainline that will be built on
3 the west side of the existing main. The existing main
4 will be converted to a siding, and the switch which is
5 currently at 56.5 will be relocated up to roughly 58.1.

6 Q. Okay.

7 A. And then -- and the track will be adjusted in
8 the area of 56.5 to have the alignment so that the new
9 track becomes the main and the existing main becomes an
10 extension of the siding.

11 Q. Okay, thank you.

12 So in looking at Logen Road, 300th, and
13 102nd, in the future when the siding is or the new
14 mainline is completed and the existing mainline becomes
15 a siding, there will be two tracks at each one of those?

16 A. Yes.

17 Q. Okay. So there's no difference between those
18 and Logen Road?

19 MR. SCARP: Is that a question?

20 MR. LOGEN: Good point. I'm not used to
21 doing this, so.

22 MR. SCARP: That's okay.

23 JUDGE TOREM: So, Mr. Wagner, the question
24 was where will there be, where there's one track now,
25 where at these crossings will there soon be two tracks?

0045

1 A. There will be two tracks, there will be two
2 track crossings, double track crossings, at 102nd, at
3 300th/Dettling Road, and through 292nd/Logen Road.

4 BY MR. LOGEN:

5 Q. Okay, so 300th and 292nd to Logen Road, 300th
6 being Dettling Road, are both on curves, so there's no
7 difference between the two really other than the fact
8 that there may be trains stopped at Logen Road but there
9 won't be trains stopped at Dettling Road?

10 A. Well -- did you say -- 292nd is in the curve.

11 Q. Right.

12 A. 300th is in a curve.

13 Q. Right.

14 A. 102nd is in a tangent.

15 Q. Correct. But between, looking at 300th and
16 292nd, the only difference between those two is the fact
17 that trains will occasionally block the crossing at
18 Logen Road?

19 A. When in the siding they will block Logen Road
20 because of their length, yes.

21 Q. Okay. And trains will never block 300th or
22 102nd?

23 MR. SCARP: Do you mean parked trains?

24 Q. Parked trains.

25 A. Well, that would -- I don't know that I could

0046

1 answer that and say no, they never would. There could
2 be a reason why trains might block there I suppose, but.

3 JUDGE TOREM: Is there any plan to have them
4 blocked there?

5 THE WITNESS: No, I'm talking about emergency
6 situation.

7 MR. LOGEN: I think that was all the
8 questions I have, thank you.

9

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

11 BY MR. SCARP:

12 Q. Just for clarification, you mentioned earlier
13 distances for the standard siding for parked freight
14 trains, and I think your testimony was short of the
15 industry track going to Wolf Kill and short of 300th by
16 certain distances; is that your expectation for where
17 trains park?

18 A. Oh, yeah, there's -- that's the only place
19 there's 9,200 -- there would be 9,200 feet. There's
20 9,200 feet there, and that's the only place an 8,500
21 foot train could fit.

22 MR. SCARP: I have nothing further.

23 JUDGE TOREM: All right, any further
24 questions for this witness?

25 Mr. Thompson.

0047

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

2 BY MR. THOMPSON:

3 Q. Well, I would just for clarification on the
4 question of if a train were parked on the new siding
5 between, a freight train, between the Amtrak station and
6 to the north there, what would you expect would be the
7 typical clearance to the south of 300th or sort of a
8 minimum clearance?

9 A. Well, 9,200 feet between the Wolf Kill
10 turnout and 300th, 9,200 feet.

11 Q. I guess what I'm thinking of is for purposes
12 of, you know, if you're sitting in a car at the 300th
13 Street crossing looking to the south, what would be the
14 usual distance away that you would see a car, the last
15 train car parked?

16 A. Oh, the last train car parked, well, if it
17 was a 8,500 foot train, it would be 700 feet away.

18 Q. Okay.

19 A. Well, it would, excuse me, it would be 950
20 feet away.

21 Q. Okay.

22 A. So it would be out of view because you're in
23 the curve. I would assume it would depending on the
24 geometry of the curve.

25 Q. Thank you.

0048

1 A. No, can I just correct that? Because I know
2 that area, it would be out of sight. You don't have
3 1,000 feet to view, you don't have 1,000 feet of view.

4 Q. Okay.

5 JUDGE TOREM: Does that raise any additional
6 questions?

7 MR. LOGEN: I don't think so, Your Honor.

8 JUDGE TOREM: All right, thank you,
9 Mr. Wagner, you can step down.

10 We're just going to take a one minute break
11 so we get everybody up to speed. The next witness who's
12 going to be, as I said, Mr. Jeffers, if Mr. Jeffers will
13 approach the witness stand, we'll take a one minute
14 break off the record.

15 (Brief recess.)

16 JUDGE TOREM: All right, our next witness is
17 Mr. Kevin Jeffers. Would you stand and raise your right
18 hand.

19 (Witness KEVIN JEFFERS was sworn.)

20 JUDGE TOREM: Can you state and spell your
21 first and last name for the record.

22 THE WITNESS: Sure, Kevin Jeffers, last name
23 J-E-F-F-E-R-S.

24 JUDGE TOREM: All right.

25

0049

1 Whereupon,

2 KEVIN JEFFERS,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. ENDRES:

8 Q. Good morning, Mr. Jeffers. Will you please
9 state your position, whom you work for, and what your
10 job duties are?

11 A. I'm the Rail Engineer for the Washington
12 State Department of Transportation. My current duties
13 include being the project manager for the Stanwood
14 Station project as well as leading all technical
15 information as far as the Department's rail engineering.

16 Q. And what do you do in your position as
17 project manager for the Stanwood project?

18 A. Well, I manage an agreement between the State
19 of Washington and the Railroad for passenger rail
20 service and ensure that the State's investment is made
21 wisely.

22 Q. Are you familiar with passenger train service
23 in Washington, I'll call it the I-5 rail corridor sort
24 of between the Canadian border down south to Portland?

25 A. I am.

0050

1 Q. And could you just explain sort of the
2 current level of passenger train service and then
3 Amtrak's or WSDOT's future projection for passenger rail
4 service?

5 A. Sure. The State sponsors the Amtrak Cascade
6 service in what we call the Pacific Northwest rail
7 corridor. We sponsor passenger rail service between
8 Portland and Vancouver, BC. Today there are two round
9 trips, four trains per day that travel through Stanwood
10 on their way to either Bellingham or Vancouver, BC.
11 Those trains are fully sponsored by the State of
12 Washington and the passengers that ride them, that's
13 where the funds come from. Our future projections or
14 our future plans, we have a long range plan to increase
15 that to four trains per day, but in the short term, mid
16 term, say ten year time frame, we don't have any plans
17 to increase the number or frequency of those trains, but
18 we do intend to start -- begin stopping at the new
19 station that will start construction very soon.

20 Q. Why don't you tell us a little bit more about
21 the plans for the Amtrak station here in Stanwood?

22 A. Sure. The Amtrak station will be built here
23 over the summer, and as part of that, as Mr. Wagner
24 testified, we need to really mitigate the impacts to the
25 rail service, so we agreed to fund the improvements at

0051

1 Stanwood siding to mitigate the impacts to the rail
2 system as a whole.

3 Q. And without this mitigation that you just
4 spoke of, what would be the impact to rail service?

5 A. Well, we wouldn't be able to begin stopping
6 at the Stanwood station, and so the people of Stanwood
7 wouldn't have a stop. They would have to travel to
8 either to Mount Vernon or to Everett.

9 Q. And is that because it would create rail
10 congestion, or could you describe that a little bit
11 more?

12 A. Yes, it would. A passenger stop is a mere
13 two minutes, but the slowing and stopping and the taking
14 off and accelerating is somewhere around a four minute
15 hit, if you will, or a decrease in capacity. But in
16 advance, because the passenger trains have a priority,
17 then freight traffic has to clear the way well in
18 advance so that they're not delayed. This siding would
19 allow -- give another place for a freight train to wait
20 in the clear off of the main line to allow a passenger
21 train to move by either northbound or southbound.

22 Q. Is it, do you know if once the Amtrak station
23 is built and the passenger train is at the station, will
24 freight trains be able to sort of I guess skip the
25 station entirely on the siding track?

0052

1 A. Well, I suppose they could theoretically, but
2 I doubt that that would happen in practice. Generally I
3 would anticipate a freight train stopping in the siding
4 if it was in the proximity while the passenger train was
5 calling in to the station.

6 Q. So your understanding and testimony is that
7 the siding track will mitigate sort of a bottleneck
8 congestion of having to wait to go around passenger
9 trains at the station?

10 A. Yes.

11 Q. We heard Mr. Wagner testify that currently
12 two Amtrak trains per day are traveling along this
13 route, is that, and you said four, so is it two trains
14 going north and then it's a round trip, or is it -- can
15 you just clarify that for the record?

16 A. There's in the morning a train leaves
17 Bellingham. This sounds like an algebra question,
18 doesn't it? But a train leaves Bellingham -- no. But
19 one does leave north of here in the morning, another one
20 is leaving Seattle at roughly the same time, and they
21 meet in this general vicinity. The design-meet location
22 right now is Mount Vernon, but with the stop scheduled
23 here at Stanwood, odds are that meet location where
24 these two passenger trains have to get by each other
25 will probably tend to happen south at the what

0053

1 Mr. Wagner called the Amtrak pocket.

2 Q. And similarly, when you were describing a
3 long range plan to increase to four passenger trains per
4 day, does that mean eight total round trips?

5 A. Four round trips, eight total trains.

6 Q. Okay, thank you. Sorry if I wasn't clear on
7 that.

8 A. That's fine.

9 Q. Does WSDOT support closure of the Logen Road
10 as part of this project?

11 A. Yes, we do.

12 Q. Why is that?

13 A. Well, obviously because in order to fully
14 utilize the extended siding, we're in concurrence with
15 BNSF that the siding -- that the crossing will be
16 blocked. But we also have a general concern for safety
17 of the rail system as well, and at-grade crossings in
18 general are less safe than not having an at-grade
19 crossing, either an overpass or closing it all together.

20 Q. Are you aware of any specific safety hazards
21 that would exist at Logen Road for passenger trains if
22 it's left open to public travel?

23 A. Well, if a freight train were stopped in the
24 siding, and let's say in this case it's the local train
25 that Mr. Wagner testified about that might be shorter,

0054

1 so they would not theoretically be blocking the
2 crossing, but they could be moving through very slowly.
3 As that train were to pass, a passenger train could be
4 coming in the opposite direction, and a motorist who has
5 gotten impatient with the slow moving freight train at
6 the crossing could decide to go around the gates or
7 something like that and be struck by the Amtrak train.

8 Q. And Mr. Wagner testified that the speed limit
9 for Amtrak trains is 79 miles per hour, do you expect
10 that to be the speed limit of passenger trains traveling
11 through Logen Road crossing after the Amtrak station is
12 built?

13 A. I do. As Mr. Wagner testified, they do slow
14 and accelerate very quickly, much faster than a freight
15 train.

16 MS. ENDRES: I think those are all the
17 questions I have, short and sweet. I don't know if
18 Judge Torem has any additional ones.

19

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

21 BY JUDGE TOREM:

22 Q. Just on the speed question, Mr. Jeffers, it
23 looks to me that the Logen Road crossing going north
24 from the station would be approximately one mile or
25 more, and is it your opinion that a passenger train

0055

1 would be able to reach full speed by the time it gets to
2 Logen Road?

3 A. Yes. The trains that are -- typically use
4 this route are relatively short or in the case of the
5 very specialized Amtrak Cascades equipment very
6 relatively light weight, and they do accelerate very
7 quickly, so I have every confidence that they would be
8 at or near 79 miles an hour by the time they reached
9 Logen Road.

10 Q. Now you also mentioned the use of this Amtrak
11 pocket --

12 A. Yes.

13 Q. -- for the trains to meet as they come from
14 the north and head to the north in opposite directions.

15 A. Mm-hm.

16 Q. Would that influence the speed as they came
17 through the Logen Road crossing?

18 A. If you were departing the pocket track,
19 they'll be -- they would be entering the mainline if
20 memory serves, and I don't have the diagram in front of
21 me, but I believe they will be departing that pocket
22 track at a maximum speed of 35 miles an hour. It's
23 about a half mile if I remember, again working from
24 memory, from that point to Logen Road, maybe even
25 slightly longer, and they may not be quite at 79 miles

0056

1 an hour, but they could easily be well over 60.

2 Q. So if a train's coming south from the pocket
3 through Logen Road, would they be also then stopping at
4 the station another half a mile or mile later?

5 A. That's right.

6 Q. So you think they would accelerate up to 60
7 miles an hour and then slow back down to stop at the
8 station?

9 A. It's possible. It depends on the -- how
10 tight the tolerance is for the schedule. As I
11 mentioned, the design-meet location is going to be north
12 up at Mount Vernon or is up in Mount Vernon, so
13 theoretically the northbound train may already be late,
14 and so the southbound train is trying to keep from being
15 made late as well.

16 Q. All right, so the intention may be to have
17 trains come through at 79 miles per hour, but even if
18 the schedule is altered and the pocket is used for a
19 meet and pass, you still expect speeds in excess of 60
20 miles per hour at the Logen Road crossing?

21 A. Yes, sir.

22 Q. And for the train leaving the station from
23 Stanwood heading north, would that train be slowing for
24 use of the pocket ever, or would it be expected to be
25 heading straight on to its next stop?

0057

1 A. Well, ever is an absolute, so.

2 Q. As scheduled.

3 A. Generally it would not be using, the
4 northbound train would not use the pocket.

5 Q. So --

6 A. At least that's not the way we understand the
7 operations to be designed.

8 Q. So the design then is for the northbound
9 train to always leave and attain its highest and fullest
10 speed as soon as possible?

11 A. Yes.

12 Q. And as you said, with that mile of ground
13 between the station and Logen Road, that would be at 79
14 miles per hour?

15 A. Yes.

16 Q. Now is there any plan in the future to
17 increase that 79 mile per hour limit?

18 A. In the -- in our ultimate long-range plan
19 there is. We envision operating speeds up to 110 miles
20 an hour.

21 Q. When you say ultimate plan, how far in the
22 future might that be?

23 A. Well, that would -- all depends on the level
24 of funding. When I came to this job more than 10 years
25 ago, we had a 20 year plan that had that -- that showed

0058

1 that we would be attaining those speeds within 20 years.
2 However, the funding hasn't come anywhere close, the
3 funding available for those kind of improvements. So in
4 our latest iteration of our what we now call our
5 long-range plan, we took out the references to time
6 line. So before we -- before we would be -- at the same
7 time that we would be reaching those four round trip
8 level, we would be also trying to increase speeds up to
9 a maximum of 110 miles an hour.

10 Q. So this is decades in the future?

11 A. Yes, that's an -- those are unfunded
12 improvements.

13 JUDGE TOREM: All right.

14 Ms. Endres, does that raise any additional
15 redirect questions you want to pose to this witness?

16 MS. ENDRES: No, Your Honor.

17 JUDGE TOREM: All right.

18 Cross-exam, Mr. Thompson?

19 MR. THOMPSON: No questions.

20 MR. KASTING: Nothing from the County.

21 JUDGE TOREM: Mr. Logen.

22 MR. LOGEN: Just a couple.

23

24

25

0059

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

2 BY MR. LOGEN:

3 Q. You testified that the crossing could be
4 blocked or there could be a train close to the crossing
5 and people could go around the gates.

6 A. Yes.

7 Q. Do you have any idea how long those gates
8 are?

9 A. Well, the current gates that are installed
10 there?

11 Q. Yes.

12 A. I don't, I don't. I would imagine that they
13 would go at least halfway across the roadway surface
14 because that would be -- that's a minimum requirement.

15 JUDGE TOREM: Mr. Logen, which crossing are
16 you referring to?

17 MR. LOGEN: Logen Road.

18 JUDGE TOREM: Okay.

19 BY MR. LOGEN:

20 Q. The reason I ask is I believe the road's only
21 15 feet wide there, and as I recall the arms go most of
22 the way across the road, and it would be, without going
23 through the arms, it wouldn't be possible to go through
24 it.

25 A. I can't say that I've seen --

0060

1 Q. Do you recall that at all?

2 A. I can't say that I've witnessed the gates in
3 a down position, so I can't really testify.

4 Q. What speed do the passenger trains cross
5 Logen Road now?

6 A. 79 miles an hour.

7 Q. Okay. And do you have any idea if Amtrak
8 service were stopped in Stanwood -- let me start with
9 another question.

10 Once Amtrak service starts in Stanwood, will
11 it continue on indefinitely, or is it dependent on
12 ridership?

13 A. I suppose there's some dependency on
14 ridership, but generally we are not going to make this
15 kind of investment in total of roughly \$20 Million and
16 in service, you know, less than a year or something like
17 that. It would have to take quite a while before we
18 would have to -- before we would consider stopping or
19 ending the service stop in Stanwood.

20 Q. Do you --

21 A. That's a major investment.

22 Q. Do you have any expected ridership numbers
23 that would be contingent on keeping the stop open?

24 A. We don't have a -- if you're asking is there
25 a limit or a bottom, if you will, of how few riders

0061

1 and --

2 Q. Right.

3 A. I don't -- we don't have that sort of thing.

4 But I can say that the projected ridership for the first
5 year is 4,400 riders.

6 JUDGE TOREM: That's an annual number?

7 THE WITNESS: Yes.

8 BY MR. LOGEN:

9 Q. So 1,100 per train per year, so about 3 per
10 train, something like 3 or 4 per train?

11 A. I believe that works out right.

12 MR. LOGEN: I don't have any further
13 questions.

14 JUDGE TOREM: Okay, any other questions for
15 this witness?

16 MR. THOMPSON: None.

17 JUDGE TOREM: Mr. Jeffers, just give me a
18 minute to see if I have anything else.

19

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

21 BY JUDGE TOREM:

22 Q. Mr. Jeffers, you heard Mr. Wagner note that
23 despite what it says on the schematic exhibit that they
24 were not going to close Mr. Lund's private crossing.
25 Does that pose any safety questions from your

0062

1 perspective for Amtrak?

2 A. I don't believe it does. I have -- while
3 I've not been on the tracks at that location, I have
4 ventured down to Mr. Lund's gate from Pioneer Highway
5 and looked with the best I could down that way, and the
6 access road that Mr. Lund has is pretty much a muddy
7 track, or at least on the day it was, and the gate is a
8 locked gate. So other than Mr. Lund's farm equipment
9 using the crossing, I wouldn't envision anybody else
10 using it. And being as it's already in the siding, I
11 would imagine that his operators are already used to
12 dealing with the occasional freight train blocking that.

13 Q. Have you looked at the sight distances at
14 Mr. Lund's private crossing?

15 A. No, I haven't been to Mr. Lund's -- I haven't
16 been to that particular intersection, so I can't -- I
17 haven't seen those.

18 Q. Do you think that the current plan would be
19 able to accommodate a private crossing at what is now
20 Logen Road, does that raise any concerns for Amtrak?

21 A. It does in that the -- at that location, you
22 already have what is essentially a public roadway that
23 comes up to that location, so that would invite people
24 who aren't party to the private crossing who shouldn't
25 be using it to try to use it. There are residences on

0063

1 the east, and perhaps they're trying to get a shortcut
2 to Stanwood or something like that and get over to Old
3 Pacific Highway, 102nd Street.

4 Q. Would those concerns of unauthorized usership
5 be addressed by a private keyed gate?

6 A. I suppose it could.

7 Q. If a locked private gate is there with a key
8 that only an authorized user has, and I understand that
9 these agreements require one to open the gate and then
10 close it behind themselves to maintain the agreement,
11 what other concerns would Amtrak have about a private
12 crossing at that location?

13 A. Well, even the authorized user could be
14 injured or killed by the train moving through. I'm not
15 sure if this was the exact case or not, but just north
16 some of the private crossings that we talked about that
17 are shown in the exhibit that Mr. Wagner testified
18 about, one of those crossings, it was a private crossing
19 to my understanding, and there was a fatality of what I
20 believe to be an authorized user in October, it was
21 Halloween 2003, October 31st, 2003.

22 Q. Do you remember the circumstances of how that
23 occurred?

24 A. I don't, other than it was an Amtrak Cascades
25 train traveling in what was straight track.

0064

1 Q. And was that --

2 A. To the north.

3 Q. -- a pedestrian-train accident or a car or
4 vehicle?

5 A. No, it was a vehicle, some sort of pickup if
6 I'm not mistaken.

7 Q. And at Logen Road there's a curve; is that
8 correct?

9 A. Yes.

10 Q. So in your opinion would that increase the
11 safety concerns with a curve?

12 A. It would.

13 JUDGE TOREM: Okay.

14 Ms. Endres, does that raise any additional
15 questions you wanted to pose?

16 MS. ENDRES: I do have just a few.

17

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

19 BY MS. ENDRES:

20 Q. I'm going to ask you a few questions in the
21 context of what Judge Torem brought up with potentially
22 having a private crossing with a locked gate. Are you
23 aware of any crossings where that private crossing
24 configuration exists currently?

25 A. Well, I'm sure there are some, I'm not -- I

0065

1 mean I already testified I guess to Mr. Lund's private
2 crossing, but other specific examples, that would be
3 probably the limit.

4 Q. Do you know if a locked gate can actually
5 prevent a pedestrian from going down to wherever the
6 gate starts and walking around it?

7 A. Oh, as an old farmhand I've jumped many a
8 fence and many a gate, so I don't believe that would be
9 the case.

10 Q. And correct me if I'm wrong, I think I
11 remember that you earlier testified one of the safety
12 concerns is perhaps a freight train that can pull clear
13 of the crossing but still may be sitting close to it and
14 blocking the view of an Amtrak on the mainline track; is
15 that correct?

16 A. Yes.

17 Q. Is that concern still there if there's a
18 gated private crossing that a user may unlock the gate
19 to attempt to cross the tracks, and, you know, an Amtrak
20 train is coming through, and the view of that passenger
21 train is blocked by a freight train parked on the
22 siding?

23 A. I would say that that would be true of
24 whomever the user, whether they were authorized or not.

25 Q. And we'll probably get to this with our BNSF

0066

1 safety guys, but to the extent that you know, do you
2 know if trains are required to blow horns at private
3 crossings? And if you don't, you don't, but --

4 A. I believe it is up to the railroad or the
5 engineer.

6 Q. Okay.

7 A. Operating the train. I don't --

8 Q. Is it --

9 A. I don't believe it's a requirement.

10 Q. So is it fair to say you're not aware of any
11 law that requires --

12 A. I'm not.

13 Q. -- passenger or freight trains to blow horns
14 at private crossings?

15 A. I'm not aware of any.

16 MS. ENDRES: Okay, I don't have any other
17 questions.

18 JUDGE TOREM: Mr. Thompson, anything?

19 MR. THOMPSON: No questions.

20 JUDGE TOREM: Mr. Kasting?

21 MR. KASTING: I have no questions.

22 JUDGE TOREM: And Mr. Logen?

23 MR. LOGEN: I've got a couple.

24

25

0067

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

2 BY MR. LOGEN:

3 Q. You mentioned that you went down onto Jim
4 Lund's property from Pioneer Highway; is that correct?

5 A. I ventured down the driveway from Pioneer
6 Highway until I got to the locked gate and looked across
7 to the private crossing from there.

8 Q. Which side of the creek was that locked gate
9 on?

10 A. Which side of the creek?

11 Q. The north or south side?

12 A. If I remember -- as I recall, I don't believe
13 I -- I don't believe I crossed any creek, so I would
14 have to say I was to the east or perhaps -- I'm not sure
15 where the creek is, so I can't say.

16 Q. It's between the what used to be a cattle
17 barn and, well, it's basically two barns down there.

18 A. Okay, I didn't --

19 Q. The creek runs between, there's a large ditch
20 that goes --

21 A. I didn't --

22 Q. -- straight out towards the railroad.

23 A. I didn't go past any barns, so I can't -- I
24 believe I stopped short of the creek or to the east or
25 south of the creek.

0068

1 Q. So you didn't go to and you didn't cross the
2 creek to where there's an open gate by the barn north of
3 the Creek there?

4 A. I don't believe so.

5 Q. Okay.

6 Is there any reason that you are aware of
7 that 292nd or Logen Road couldn't be closed at Pioneer,
8 or not at Pioneer, but Old Pacific Highway?

9 MS. ENDRES: Your Honor, I'm going to object
10 as to foundation. I'm not sure Mr. Jeffers is the
11 proper person to testify about closing the County road.

12 JUDGE TOREM: Sustain the objection because I
13 think we are going to hear from Mr. Bloodgood, and that
14 might be better posed to him, Mr. Logen.

15 MR. LOGEN: Okay.

16 JUDGE TOREM: This witness knows I think the
17 operation of the Amtrak, but perhaps not how -- the
18 protocol for closing roads.

19 Mr. Jeffers, with that in mind, do you know
20 where Mr. Logen is asking about closures, are you
21 familiar with that intersection?

22 THE WITNESS: I'm familiar with the
23 intersection.

24 JUDGE TOREM: All right. And have you ever
25 worked on actual closings of roads in conjunction with

0069

1 Amtrak?

2 THE WITNESS: No, not directly.

3 JUDGE TOREM: All right, then we'll have to
4 direct the question to the other witness.

5 MR. LOGEN: Okay.

6 BY MR. LOGEN:

7 Q. I have I guess one final one. The speeds
8 that the trains are traveling, you indicated that they
9 could travel faster in the future, and that would be the
10 case even if the siding were not built or the new
11 mainline wasn't aligned and we use the old one for the
12 siding, would the train speeds still increase even
13 without stopping at Stanwood if there were no stop
14 there?

15 A. Yes, they could be increased. Of course,
16 before any speed increases above 79 miles an hour,
17 there's a number of things that would have to be done,
18 least of which getting -- would be getting federal
19 approval to exceed those speeds, so there would be a
20 much longer environmental and regulatory process before
21 that would occur.

22 MR. LOGEN: Thank you.

23 JUDGE TOREM: All right, anything further for
24 this witness?

25 Okay, let's take a five minute break, thank

0070

1 you, Mr. Jeffers, and we'll come back with our next
2 witness I believe is Mr. Norris.

3 (Recess taken.)

4 JUDGE TOREM: It's now about 5 minutes to
5 11:00, and our next witness is Gary Norris. I've been
6 handed his curriculum vitae and a Logen Road Railway
7 Crossing Closure Traffic Impact Analysis. We're going
8 to mark those as Exhibits 6 for the CV and Exhibit 7 for
9 the traffic impact analysis.

10 And I will swear in Mr. Norris now. Sir, if
11 you will raise your right hand.

12 (Witness GARY A. NORRIS was sworn.)

13 JUDGE TOREM: Thank you, can you state and
14 spell your name for the record.

15 THE WITNESS: My name is Gary A. Norris,
16 N-O-R-R-I-S.

17 JUDGE TOREM: All right, let's have the
18 direct exam then.

19

20 Whereupon,

21 GARY A. NORRIS,
22 having been first duly sworn, was called as a witness
23 herein and was examined and testified as follows:

24

25

0071

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

2 BY MS. ENDRES:

3 Q. Good morning, Mr. Norris.

4 A. Good morning.

5 Q. You should have in front of you what's been
6 marked as Exhibit 6; is that your curriculum vitae?

7 A. Yes, I do.

8 Q. Is the information contained in that true and
9 correct to the best of your knowledge?

10 A. To the best of my knowledge, yes.

11 MS. ENDRES: Your Honor, I would move to
12 admit Exhibit 6.

13 JUDGE TOREM: Mr. Norris, I have to ask you
14 when was this last updated?

15 THE WITNESS: When was it last updated, I
16 believe it was updated for a hearing in Leavenworth last
17 spring.

18 JUDGE TOREM: I'm just looking for the Hickox
19 Road analysis.

20 THE WITNESS: Yeah, that's not on there.

21 JUDGE TOREM: All right, despite that
22 incompleteness, are there any objections to the admission
23 of this exhibit?

24 Hearing none, Exhibit 6 is admitted.

25 BY MS. ENDRES:

0072

1 Q. All right, Mr. Norris, you also have in front
2 of you a document that is approximately 8 pages titled
3 Logen Road Railway Crossing Closure Traffic Impact
4 Analysis, March 30th, 2009; are you familiar with this
5 document?

6 A. Yes, I am.

7 Q. What is it in a nutshell?

8 A. Nutshell, it was my attempt to assess the
9 issues that surround the potential closure of Logen Road
10 as relates to the railway crossing. It examines the
11 existing geometric conditions on the roadway network
12 serving this area, traffic volumes that are on Logen
13 Road and the surrounding roadway network, impacts on
14 school service and emergency vehicle access and response
15 to the area, and then also makes an analysis of the
16 conditions that should be considered in the evaluation
17 of whether or not to close the roadway.

18 Q. And just to clarify, did you gather the
19 information that's within this document?

20 A. Yes, I did.

21 Q. And did you create this traffic impact
22 analysis what's been marked as Exhibit 7?

23 A. Yes, I did.

24 Q. Is the information that's in that document
25 true and correct to the best of your knowledge?

0073

1 A. Yes, it is.

2 MS. ENDRES: Your Honor, I would move to
3 admit Exhibit 7.

4 JUDGE TOREM: Any objections to the admission
5 of Exhibit 7?

6 All right, hearing none, Exhibit 7 is
7 admitted.

8 BY MS. ENDRES:

9 Q. All right, Mr. Norris, we're going to walk
10 through some of the analysis and conclusions that you
11 came to in this traffic impact analysis, but just so
12 that everyone here has a picture of your ultimate
13 conclusion where we're going, is it your position that
14 you recommend the Logen Road public crossing be closed
15 when the siding track is extended through the crossing?

16 A. Your Honor, it's my recommendation that the
17 Logen Road be closed at the crossing.

18 Q. And some of the things that you considered in
19 your traffic impact analysis that we're going to talk
20 about were the nature of the vehicular traffic, like you
21 said emergency response impacts, whether adjacent
22 crossings are suitable for Logen Road traffic, any
23 mitigation that's planned. Let's talk briefly first
24 about the nature of use of the Logen Road public
25 crossing. What is your understanding of the level of

0074

1 traffic that currently uses the Logen Road public
2 crossing?

3 A. My understanding of the existing traffic
4 volumes on the crossing are related to traffic counts
5 that were provided by Snohomish County taken last summer
6 and then again this fall, which basically indicated
7 there's approximately 140 cars a day that are using
8 Logen Road. In addition to that, we did p.m. peak hour
9 vehicle turning movement counts at Logen Road and
10 Pioneer Highway, Logen Road and 92nd, 292nd, which is
11 the extension of Logen Road to the west where it
12 intersects with Old Pacific Highway, and then also at
13 the crossing in downtown Stanwood at 271st. So that
14 kind of indicated the level of volume of peak hour
15 volumes on Logen Road itself were approximately 14
16 vehicles in the peak hour. On 271st it was
17 approximately 780 vehicles, and I guess the p.m. or the
18 total daily volume on Dettling Road was about 800
19 vehicles based on the County traffic counts.

20 Q. Okay. We'll talk about the adjacent
21 crossings briefly in a minute, but for right now I want
22 to focus on the Logen Road public crossing. I'm looking
23 specifically on page 4 of Exhibit 7, traffic impact
24 study, and is this what reflects what you've testified
25 to that the daily volume on Logen Road west of the

0075

1 railway crossing is 142 vehicles, 11 vehicles during the
2 a.m. peak and 19 vehicles during the p.m. peak?

3 A. That was the data from the Snohomish County
4 count, yes.

5 Q. How would you describe compared I guess to
6 other railroad crossings, public railroad crossings
7 within the county, is that a high daily traffic count,
8 is that a low daily traffic count, how would you
9 characterize that?

10 A. In general in regards to other railway
11 crossings, it's a very low volume. We have as in Hickox
12 Road had similar types of volumes, but this is a very
13 low traffic volume.

14 Q. And I'm looking a little bit further at the
15 bottom of page 4, and your report says approximately
16 half of the traffic on Logen is generated by the single
17 family homes along the corridor. How did you make that
18 conclusion?

19 A. I made that conclusion, Your Honor, based
20 upon the calculation of trip generation rates from the
21 -- to the traffic engineers generation handbook, which
22 gave me an estimate of about 67 daily trips being
23 generated by the 6 homes that are along the corridor, or
24 7 homes, excuse me. And then comparing that to the
25 daily traffic counts and peak hour traffic counts that I

0076

1 obtained, that was about half of that volume.

2 Q. Is that a process that's typically done by
3 other professionals in your same field?

4 A. Yes, it is.

5 Q. I would like to take a look at Figure 2,
6 traffic volumes, I believe it's after page 5. And you
7 testified as we just went through that Logen Road has an
8 average daily traffic count of approximately 140; is
9 that what the 140 refers to on this diagram --

10 A. That's correct.

11 Q. -- of Logen Road?

12 And up where it says Dettling Road, there's
13 an 800, does that refer to the average daily traffic
14 count up at Dettling Road?

15 A. Yes, it does.

16 Q. And down at the bottom of the page where it
17 says 271st Street Northwest, 7,800, is that the average
18 daily traffic count down at 271st Street?

19 A. Yes, it is.

20 Q. Do you know how far it is from Logen Road to
21 Dettling Road?

22 A. I believe from the intersection with Old
23 Pacific Highway to Dettling Road's intersection with Old
24 Pacific Highway is about a half a mile.

25 Q. And what about from the Logen Road public

0077

1 crossing down to 271st Street Northwest public crossing.

2 A. I believe that's about a mile and a half.

3 I'm not absolutely sure of that, but I think that's

4 about what it is.

5 Q. Is it your professional opinion that those

6 are reasonable distances to access alternative crossings

7 if the Logen Road public crossing is closed?

8 A. Your Honor, in this particular case, I

9 believe it's reasonable because of the activity centers

10 that are being served by these roads. Most of the

11 activity that is occurring in this area focuses around

12 the city of Stanwood itself major activities, and access

13 to this area is what is being offered by Logen Road and

14 the other surrounding roadway networks here that

15 supports that activity center, so I believe in light of

16 that because the focus is to the south that that is

17 correct, that it is a reasonable distance to travel.

18 Q. If we -- if the tribunal orders that the

19 Logen Road public crossing be closed, where will that

20 traffic be diverted to between the two adjacent

21 crossings?

22 A. The majority of the traffic obviously as

23 shown from the traffic counts itself are oriented to the

24 south, as I stated, to the activity center in downtown

25 Stanwood, so most of that traffic is coming either from

0078

1 or going to that area. Very little or a small
2 percentage is going to the north which would use
3 Dettling Road. So the major focus would be down to
4 271st as an alternative crossing. And again, most of
5 this traffic or at least half of it, as I said, was
6 being generated by the single family developments that
7 live along Logen Road, so that would be their main
8 access as well.

9 Q. Is it your opinion that 271st Street can
10 satisfactorily absorb that extra traffic diverted from
11 Logen Road?

12 A. Yes. Currently the daily traffic volumes are
13 about 7,800 vehicles per day, and the typical capacity
14 of a 2-lane roadway is roughly 10,000 to 12,000 cars.
15 And then when we get into the section where we have the
16 2-way left turn lane, the capacity goes anywhere from
17 12,000 to 18,000 vehicles, so that's well within the
18 capacity. I would like to say as well that the volumes,
19 the magnitude of the volumes that we're talking about in
20 terms of diverting to other links is so insignificant
21 that it was not likely to be even detected with the
22 typical traffic counting equipment within the limits of
23 error in that data collection process.

24 Q. And when you say, and I'm looking at page 7
25 where I think you wrote what you just said, traffic

0079

1 diverted from Logen Road would not be of a magnitude to
2 be detected by traditional traffic counting equipment,
3 does that apply to the Dettling crossing as well?

4 A. You're talking about the magnitude of the
5 traffic that would be diverted to Dettling Road being
6 within the significance of the volume that currently
7 exists on Dettling?

8 Q. Yes, you phrased that much better than I did.

9 A. I believe that's correct. When you look at
10 the magnitude, it's a very small volume that is going to
11 -- would be susceptible using Dettling Road as an
12 alternative, so it would be well within that. As we're
13 looking basically at 70 to 80 cars diverting off of the
14 road looking for alternative routes, a 5% magnitude
15 difference if we had, oh, let's see, we've got say 20%
16 is going to Dettling Road, and so that gives us about 14
17 cars a day, and that's certainly within 5 or, well, if
18 they were all using Dettling that would be about 40
19 cars, so certainly within that range.

20 Q. So to clarify, is it your opinion that the
21 crossings adjacent to Logen Road can acceptably handle
22 any Logen Road traffic that's rerouted to them?

23 A. Yes, it's my opinion that that would be the
24 case.

25 Q. Have you visited the Logen Road crossing,

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1 driven around the area?

2 A. Several times.

3 Q. What type of -- and I don't want you to --
4 I'm not asking for any sort of legal conclusion, but
5 what sort of property area is the crossing located in,
6 is it industrial, rural?

7 A. The crossing itself is basically an
8 agricultural area. Logen Road has single family
9 residences along it. As we said, I think there were
10 like seven. And then as you shift to the south along
11 Pioneer Highway, there's a lot of residential properties
12 on the east side, pioneer as you go to the north there's
13 a lot of vacant land, and to the west of the railway
14 itself is mainly agricultural as I see it.

15 Q. Did you consider farm equipment using both
16 Logen Road and the roads in the surrounding area?

17 A. I observed that there were notifications that
18 farm equipment does exist on both Logen Road and
19 Dettling Road and that there are warning signs notifying
20 the motoring traffic that that condition does exist.

21 JUDGE TOREM: Mr. Norris, does that mean that
22 you didn't personally observe the farm traffic, but you
23 saw the signs posted, that's all?

24 A. I did not see any farm traffic in the times
25 that I was there.

0081

1 BY MS. ENDRES:

2 Q. Mr. Norris, did you consider an accident
3 history of Logen Road and the two adjacent crossings?

4 A. Yes, I did. I obtained the accident records
5 from the Federal Railroad Administration accident
6 history for crossings and obtained data that dates back
7 to 1975 for the 271st, Logen Road, and Dettling Road
8 crossings.

9 Q. And how did that data that you collected
10 affect your analysis of whether we can acceptably and
11 safely reroute Logen Road traffic to the two adjacent
12 crossings?

13 A. I believe the basic question in that
14 consideration is whether or not there are accident
15 histories that occur at these other crossings that would
16 be impacted by the additional traffic volume being
17 diverted from Logen Road to either Dettling or 271st.
18 There were two accidents at the Dettling Road crossing
19 which occurred prior to the time the crossing was
20 improved with gates and warning lights. There has been
21 a history of crossing incidents at 271st, and really
22 it's mainly that either pedestrians or vehicles have
23 been driving around the gates and the warning system. I
24 believe that is part of this work, and correct me if I'm
25 wrong, but my understanding is that there will be

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1 improvements to the gates and the flashers at the 271st
2 crossing that will help mitigate any kind of accident
3 history that has occurred there, and I believe at this
4 point there's been no recent experience subsequent to
5 the improvement of the crossing at Dettling Road, so I
6 didn't see any issue with that.

7 Q. And the discussion that you have mentioned
8 about the accident, the prior accidents, is that on page
9 5 of your traffic impact study?

10 A. Yes, there's a history there for both 271st
11 and Dettling Road, and then as I said there have been no
12 incidents at the Logen Road.

13 Q. Is there -- did you learn anything about the
14 accident history at 271st that caused you to believe
15 that it is not an acceptably safe as far as railroad
16 crossings goes alternative crossing for Logen Road users
17 to use?

18 A. No, I didn't see anything in the particularly
19 in the layout or the control of the crossing that would
20 indicate that that would not be acceptable. Again, it
21 relates to motorists' reaction to warning devices and
22 their disregard of those devices that I believe with the
23 enhanced equipment that's being suggested with the
24 proposed closure would improve the warning and
25 observance of that.

0083

1 Q. Let's talk a little bit about your analysis
2 of the effect of closing the Logen Road public crossing
3 on emergency responders, and specifically I'm looking at
4 page 6 of your traffic impact study. And your study
5 states that primary emergency response to the area is
6 provided by the Snohomish County Fire District 14,
7 Station 96, where is that located?

8 A. That's located on 300th Street just west of
9 the I-5 interchange at Exit 215 on the north side of
10 300th Street. The address is 3231 - 300th Street
11 Northwest.

12 Q. Can you explain to us your analysis and your
13 conclusion about the effect of closure on emergency
14 response time to the Logen Road area?

15 A. Well, to begin with I was quite surprised
16 when I found out that the primary response for this area
17 was the Fire District 14 station on 300th, as it is
18 approximately 5 miles away from the Logen Road area when
19 in fact the City of Stanwood/Camano Island Fire
20 Department has a station that is about 1.6 miles or
21 about a third of the distance. When talking to the fire
22 chief, they indicated that there was a mutual aid
23 agreement and that they do respond to situations that
24 occur along Logen Road. So the difficult geometry in
25 accessing Logen Road from the District 14 station and

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1 the distance indicated to me it's probably unlikely that
2 as a first response that District 14 would be there when
3 you have such a close station at the City of
4 Stanwood/Camano Island Fire Department at 8117 - 267th
5 Street Northwest in downtown Stanwood.

6 Q. Now when you said you spoke with the fire
7 chief who indicated there was a mutual aid agreement
8 between the Stanwood fire station, well, first of all,
9 is the Stanwood fire station located on 532; is that
10 your understanding?

11 A. Just to the south of 532.

12 Q. Okay. And when you say the fire chief, which
13 fire chief are you referring to?

14 A. I spoke to the fire chief of the City of
15 Stanwood Fire Department.

16 Q. And just to clarify, did that fire chief tell
17 you that in an emergency situation at Logen Road they
18 could respond to that emergency situation based on the
19 mutual aid agreement?

20 A. Yes, he did.

21 Q. If the crossing is left open to public
22 travel, but, and we've heard testimony from Mr. Wagner
23 that the siding, the use of the siding track would mean
24 that the Logen Road crossing would be blocked
25 unpredictably or for potentially extended lengths of

0085

1 time, would you expect that whichever station responds
2 to an emergency would have to approach Logen Road from
3 the east to avoid the unpredictable, you know, not
4 knowing whether the crossing is blocked, or does that
5 affect it at all?

6 A. I would think, Your Honor, that under the
7 circumstances with the uncertainty of whether or not
8 that crossing was closed or blocked by train activity,
9 it would necessitate for an expedient response to come
10 from the east on Pioneer Highway.

11 Q. And you testified that the North County
12 Station 96, is that the one that's by I-5?

13 A. That's correct.

14 Q. Your report here says, response times are
15 estimated to be 12 minutes as the station is
16 approximately 4.8 miles from Logen Road. In your
17 analysis, did you become aware of any extension of that
18 response time if they are -- if Logen Road public
19 crossing is closed?

20 A. The issue that concerned me, and I have not
21 been able to verify this or not, but the approach to the
22 Logen area from the east would most likely be down
23 Pioneer Highway to 92nd, making a right turn onto 92nd,
24 and then making a right turn onto Logen Road, and there
25 is some roadway geometry because of the width of Logen

0086

1 Road, it's only about 15 feet wide with no shoulders or
2 any room for maneuvering, that it would be difficult for
3 a truck to get around that corner, and therefore access
4 from the south from Pioneer Highway from the Camano
5 Island/Stanwood Station would be more direct, it would
6 not be faced with that same kind of roadway geometrics.

7 Q. And those roadway geometrics that you
8 mentioned, is that one of the reasons that you believe
9 that Stanwood Fire Station would become sort of a first
10 responder under that mutual aid agreement?

11 A. It is.

12 Q. And I apologize if my question earlier wasn't
13 clear, your report here says that if response is coming
14 from Station 96, it's approximately 12 minutes. Do you
15 know what the additional time would be, ignoring the
16 geometry configuration problems for now, if the
17 responders are still going to come from Station 96, does
18 that increase the response time substantially by closing
19 Logen Road, the 12 minute response time?

20 A. I can't say for sure. I think there's some
21 issues with them making that turn that probably require
22 some special maneuvering around that corner, so however
23 long it took them to do that, I couldn't --

24 Q. Do you know what the response time from the
25 Stanwood Fire Station would be?

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1 A. I estimated about 4 minutes.

2 Q. Is it your understanding that if the crossing
3 is left open, the emergency response route will have to
4 be adjusted anyway because of the unpredictable
5 blockage?

6 A. Your Honor, it's my assertion that that would
7 be the case because of the unpredictability of being
8 able to use the crossing with train blockages which
9 would be unknown at the time of an emergency call.

10 Q. And is it your conclusion that closure of the
11 Logen Road public crossing will have a substantial
12 impact on emergency response?

13 A. No, I do not believe that it would.

14 Q. Does closure of the Logen Road public
15 crossing have a substantial effect on school bus routes?

16 A. My conversations with the Stanwood School
17 District indicated that they are not at this time using
18 Logen Road for bus routing. They did indicate, however,
19 though that they do evaluate that on a yearly basis. I
20 believe from my review of the road though that using
21 Logen Road for bus routing would be problematic because
22 of the width of the road and the fact that there, as I
23 said before, very little room for maneuvering outside
24 the roadway, and you've got extreme grades on the west
25 side all along the corridor, so I would think -- and

0088

1 plus the roadway geometry that I mentioned before for
2 the train or the emergency vehicles would also apply to
3 school buses and the difficulty in maneuvering around
4 those turns and accessing Pioneer Highway as well, so I
5 don't think that would be a preferred route for a school
6 bus.

7 Q. Mr. Norris, does closure of the Logen Road
8 public crossing affect the response route from the
9 Stanwood Fire Station up through Logen Road?

10 A. I don't believe it does, because the -- it
11 would be the same direct route. The only other issue
12 that would be there would be any kind of secondary route
13 access to the site. And again as we were noting that
14 with the blocking of the railway, that would be
15 problematic to get through there anyway. So I don't
16 think as a whole that it would really adversely impact
17 the emergency vehicle response.

18 Q. Did you consider future growth and
19 development of the area in your traffic impact analysis?

20 A. Yes, I looked at the development potential of
21 the land there. It's basically agricultural property
22 with 10 acre zoning. It's outside the City of Stanwood
23 urban growth area. The use of this road for a future
24 corridor as a connection between Pioneer and Old Pacific
25 Highway would be problematic because of the narrow width

0089

1 of the road being 15 feet wide across the extent even as
2 it goes into the 292nd Street section. There are no
3 shoulders, there would -- the cost of construction along
4 that would be significant, and with at this point in
5 time very little benefit to the motoring public, so.

6 MS. ENDRES: I don't think I have any further
7 questions for Mr. Norris at this time.

8 Did I move to admit Exhibit 7, Your Honor, I
9 can't remember?

10 JUDGE TOREM: You did.

11 MS. ENDRES: I did?

12 JUDGE TOREM: That was admitted, 6 and 7 are
13 admitted.

14 Thank you, Ms. Endres.

15 Mr. Thompson, any questions for Mr. Norris?

16 MR. THOMPSON: No questions.

17 JUDGE TOREM: Mr. Kasting?

18 MR. KASTING: Again no questions for the
19 County.

20 JUDGE TOREM: Mr. Logen, if you will allow me
21 to ask a couple of questions first, they might impinge
22 on some you were going to ask, but I just want to follow
23 a little bit with the traffic questions here.

24

25

1 EXAMINATION

2 BY JUDGE TOREM:

3 Q. Mr. Norris, you testified about the 140 trips
4 that are shown on Figure 2 being generated perhaps half
5 by these 7 private residences that are along Logen Road.
6 I'm trying to see which direction those went. Is there
7 any direction to those, did they go toward Old Pacific
8 Highway or toward Pioneer Highway, or are the
9 directional arrows shown only the peak hour trips on
10 this document?

11 A. The document illustrates the direction of
12 p.m. peak hour vehicle counts. It does not identify any
13 origins or destinations of those trips. It's only the
14 actual magnitude of what was observed. There was no
15 modeling that was done to assess where the trips are
16 coming. So all you can do is really look at the
17 magnitude of the trips at the different intersections
18 and see the orientation of those trips to gain a feel
19 about where they're coming from and going to.

20 Q. And looking at the roadway geometry, you said
21 that Fire Station 96 which was District 14 is the
22 primary responder to the Logen Road area; is that
23 correct?

24 A. That's correct.

25 Q. And they come from the north on Pioneer

0091

1 Highway to access this area?

2 A. Currently I believe they come down
3 300th/Dettling Road, and then come across that way.
4 With the closure of the crossing, they would be
5 compelled to use Pioneer Highway and come to 92nd.

6 Q. So if they were to come as you're describing
7 it down 300th, they would cross Pioneer Highway and
8 continue apparently westbound across the tracks once,
9 and then turn south on Old Pacific Highway and come back
10 across the tracks a second time?

11 A. That's my understanding, yes.

12 Q. And was that described to you by a member of
13 that fire house?

14 A. No, it was not.

15 Q. And would that routing with two crossings as
16 you've described it of the rail line to access the spots
17 on Logen Road between the railway on the west and
18 Pioneer Highway on the east, is your assumption that
19 that's the routing so they would avoid the roadway
20 geometrics you previously described at 288th and 92nd?

21 A. That is correct.

22 Q. And this would be for a fire engine that has
23 to make those turns; is that correct?

24 A. That's correct.

25 Q. Did you look at all about medical aid or

0092

1 ambulance and what their most direct routing would be?

2 A. Their most direct routing would most likely
3 be to the 288th Street/92nd intersection, come that way
4 rather than going across the railway twice.

5 Q. And so with the District 14 Station 96
6 response being 12 minutes, is that for the fire truck
7 with the routing and the two crossings we just
8 described?

9 A. Actually that's the time difference between
10 the -- with the closure between the two stations, it's a
11 comparative between the two stations.

12 Q. Okay. I don't recall if you had any data in
13 your report as to actual responses being made to the
14 Logen Road area. Were you able to get any data
15 regarding actual responses from either firehouse in
16 Stanwood or from the County?

17 A. I did not.

18 Q. Is that you tried and there wasn't a data
19 source, or you just didn't make that attempt at this
20 time?

21 A. I spoke with the chief and one of the fire
22 folks, and I didn't obtain any information from the
23 Stanwood Station on it and didn't have the opportunity
24 to talk to the District 14 chief, so.

25 Q. In your opinion though, it sounded as though

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1 if there were a medical emergency in one of the
2 residences or a fire anywhere along the Logen Road
3 corridor that the fastest response would be from the
4 City of Stanwood?

5 A. That's correct.

6 Q. And that would be by at least three times
7 faster?

8 A. Correct.

9 Q. And when you spoke to the Stanwood fire
10 chief, was that the same understanding that he
11 expressed, that he would be the primary responder
12 despite the assignment of primary responders in some
13 other plan?

14 A. The fire chief actually said that -- he
15 didn't get into that. He basically said it was a mutual
16 aid response and that they would respond to that. The
17 fireman that I spoke to said that they are actually the
18 ones that respond there, but I didn't get that word from
19 the chief. So it's just with the mutual aid response
20 it's just logical with those time differences that the
21 Stanwood Station would be the primary responder to.

22 Q. And again, the routing that the Stanwood Fire
23 Station would take would be along Pioneer Highway?

24 A. Correct.

25 Q. And up into Logen Road?

0094

1 A. Right, they're -- if you look at my graphic
2 on Figure 2 if you're looking at that one, SR 532 runs
3 east and west, and then SR 530 comes down north and
4 south, and so just on the south side of 532 are 268th
5 Street Northwest, and that southeast quadrant, that
6 intersection, is where the Stanwood/Camano Island Fire
7 Station is.

8 Q. So on the bottom right-hand portion --

9 A. Correct.

10 Q. -- of the map?

11 A. Correct.

12 Q. So there would be no reason for the Stanwood
13 folks to be on Old Pacific Highway making that response
14 if they were coming directly from their fire house?

15 A. That's correct.

16 Q. Okay. As to the accident history on page 5,
17 in the narrative above Table 1, it says the crash
18 history dates back to 1978, and then you have a date of
19 1975 in the table; which one is correct?

20 A. Yes, that '78 is in error, that should be
21 1975 was when the records became available for the
22 national data.

23 Q. All right, so I will make a pen and ink
24 correction to my copy, the narrative will then say the
25 crash history dates back to 1975.

0095

1 A. That's correct.

2 Q. At 271st Street Northwest, you described
3 those accidents as possibly being prevented in the
4 future when the gates are improved?

5 A. Correct.

6 Q. What is the nature of the gates that are
7 there right now?

8 A. I believe there's the full gates and flashers
9 and warning devices now.

10 Q. These are two quadrant gates?

11 A. I don't believe they're -- I don't know that
12 for sure, no. But these incidents have been occurring
13 over a 30 year time frame, and I know that the crossing
14 has been updated with the development of the siding and
15 the enhancement of the crossing protection, so not all
16 of them apply to the same gate crossing configuration.

17 Q. Do you know about when that modification
18 occurred?

19 A. I've got that in my --

20 Q. Because I believe the January 2008 incident
21 occurred actually while we were in hearing up at Hickox
22 road; is that correct?

23 A. I think that's true, yes.

24 Q. Do you have an approximate date for the
25 update, because it would have been I'm guessing either

0096

1 before the 1989 accident or somewhere thereafter?

2 A. Yeah, I don't have that right before me. I
3 would have to do a little research on that to be able to
4 verify that.

5 JUDGE TOREM: And I apologize if I'm
6 directing something to you that should go to a future
7 witness, but at least the attorneys understand what data
8 I'm looking for, and if we need to have a supplemental
9 exhibit later on to fill out the record, I would
10 certainly entertain that.

11 Okay, Mr. Logen, have I left you anything?

12 MR. LOGEN: Yes.

13 JUDGE TOREM: Okay.

14 MR. LOGEN: Thank you.

15 JUDGE TOREM: And as you can see, you'll have
16 to speak up just a little bit.

17 MR. LOGEN: Yes.

18

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

20 BY MR. LOGEN:

21 Q. Mr. Norris, you testified that you had
22 gathered the information in your report; is that
23 correct?

24 A. That's correct.

25 Q. How did you validate the information?

0097

1 A. What particular information are you referring
2 to?

3 Q. The accidents.

4 A. The accidents were obtained from the Federal
5 Railroad Administration accident reporting system.

6 Q. But you don't know that they -- or I'll
7 phrase it as a question.

8 Do you know if that is 100% accurate?

9 A. I can't speak to the 100% accuracy fact,
10 although I know that they do keep records of the
11 incidents that occur at grade crossings, so.

12 Q. In regards to the number of, what do you call
13 it, the number of cars that travel these roads, the
14 traffic volumes that you show on Figure 2, how did you
15 validate that?

16 A. Those were actually validated from field
17 traffic counts that were collected by a traffic count --
18 professional traffic counting company in March of this
19 year for the turning movement counts, and the 24 hour
20 counts that were obtained from Snohomish County were
21 collected in July of '08 and October of '08.

22 Q. What is the total capacity of Dettling Road
23 as far as traffic volume?

24 A. Generally the capacity of a two-lane road is
25 around 10,000 vehicles per day.

0098

1 Q. Specifically Dettling Road, what is the
2 capacity there, what would you estimate?

3 A. It's probably in that range from an actual
4 capacity standpoint.

5 Q. Are you aware if Dettling Road has ever been
6 closed?

7 A. I'm not aware of whether it has or not, no.

8 Q. You testified that it's a reasonable distance
9 for people to travel from instead of using Logen Road to
10 use 271st or Dettling Road. Is that a reasonable
11 distance, were you referring to cars and trucks and
12 pickups, that type of vehicles, or are you referring to
13 it being a reasonable distance for farm vehicles?

14 A. Of course the reasonableness of the route
15 totally depends on where people are going and what their
16 destination is, and so the practicality of it would have
17 to be evaluated on a case-by-case basis. But in general
18 because of the activities in this area, a half a mile
19 distance when traffic is oriented to the north or south
20 of this location is not a major impact because of the
21 point where they make their decision on the routing to
22 the destination that they're going to. And so that
23 location and that distance is consistent with the point
24 at which they make a decision for where they're going.

25 JUDGE TOREM: I think, Mr. Norris, the

0099

1 question was more specific than that. Let me rephrase
2 it.

3

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

5 BY JUDGE TOREM:

6 Q. Would it be reasonable since you said it
7 would be on a case-by-case basis to imagine a farmer on
8 the east side of the tracks at Logen Road to have to
9 make a decision whether to drive equipment that would
10 normally go across the existing Logen Road crossing from
11 the west side to the east side to have to decide to go
12 out to Old Pacific Highway and then turn north or south
13 and bring that farm equipment either across the Dettling
14 Road crossing or as you say the other choice would be
15 all the way down and across 271st on that street, which
16 direction would a person just trying to get to the other
17 side of the tracks with farm equipment go?

18 A. By virtue of the nature of the traffic on the
19 roadway system, I would assume they would probably go to
20 Dettling Road and go across.

21 Q. And do you know how much longer it might take
22 to move standard farm equipment that might have that
23 orange triangle on the back of it showing it's a slow
24 speed vehicle from there at the intersection of Logen
25 Road and the crossing that would be closed around to the

0100

1 other side of that crossing if you used the routing you
2 suggested?

3 A. Let's see, I would have to do some
4 calculation here.

5 Four or five minutes.

6 Q. So you think it would take an extra four or
7 five minutes to go out Pacific Highway, turn to the
8 right, turn to the right again at Dettling Road and
9 cross, and then come to Pioneer Highway, turn back
10 south, and I believe they would encounter that same
11 roadway geometrics you mentioned would be a hard turn
12 for the fire equipment, they would have to come back on
13 288th to 92nd and then go back up Logen Road?

14 A. Heading north on Logen Road, yes.

15 Q. And so is that a total trip length of four to
16 five minutes or just an additional four to five minutes
17 you're anticipating?

18 A. Additional four or five minutes.

19 I didn't observe in my experience any major
20 agricultural activity along Logen Road from Pioneer
21 Highway to the crossing. The road drops off pretty
22 sharply to the west, and there's a bank on the east side
23 of Logen Road with residential properties along the east
24 side, so I don't know -- I don't know what the occasion
25 would be for someone to want to go north on Logen Road

0101

1 if they were on the west side of the railway crossing
2 now and coming around from the other way.

3 JUDGE TOREM: Mr. Logen, go ahead.

4 MR. LOGEN: Thank you.

5

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

7 BY MR. LOGEN:

8 Q. What's the maximum distance that you consider
9 reasonable, and is that -- and the second part to the
10 question is, is that just in your judgment or is there
11 some standard for reasonable distance to travel to
12 another crossing?

13 A. I don't think there's any standard for
14 measuring what's reasonable for farm equipment to have
15 to travel to access the farm locations. This is an
16 answer to a hypothetical question of what the time would
17 be.

18 Q. You testified that Logen Road to Dettling
19 Road is approximately half a mile and Logen Road to
20 271st is approximately 1.5 miles; is that just the
21 distance on Old Pacific Highway?

22 A. Yes, I believe it is.

23 Q. So if someone were wanting to go from the
24 intersection of Logen Road to the other side of the
25 tracks on Logen Road, the intersection of, excuse me,

0102

1 Logen Road and Old Pacific Highway, that area, to get to
2 the other side of the tracks, what's the total distance
3 that they would have to travel?

4 A. So could you restate the question, please.

5 Q. If you started at the intersection of Logen
6 Road and Old Pacific Highway.

7 A. Okay.

8 Q. And you wanted to get to a point on Logen
9 Road east of the railroad.

10 A. Okay.

11 Q. What's the distance of that?

12 MS. ENDRES: Could Mr. Logen clarify what
13 point on Logen Road. I believe, and I'm not trying to
14 testify, but I believe the railroad track back out to
15 Pacific Highway is something like a mile, so I want to
16 make sure that Mr. Norris's answer is accurate.

17 Q. On the Figure 2 traffic volumes of your
18 exhibit, let's just assume that you would go from the
19 circle that's Old Pacific Highway/Logen Road; do you see
20 that circle?

21 A. Yeah.

22 Q. And you're going to go by one of these two
23 routes and go to the point where it says 140 on Logen
24 Road.

25 A. So going around on Old Pacific Highway down

0103

1 271st and back up on Pioneer Highway, is that what
2 you're suggesting?

3 Q. Yes.

4 A. Well, just kind of -- I don't know the exact
5 distance between Logen Road and, excuse me, between Old
6 Pacific Highway and Pioneer Highway along Logen Road,
7 but say roughly 5 miles or something like that, and I'm
8 assuming farm equipment would travel 20, 25 miles an
9 hour.

10 Q. 12 to 15.

11 A. 12 to 15?

12 Q. What we have.

13 JUDGE TOREM: Mr. Logen, I will let you
14 testify to that a little bit later.

15 MR. LOGEN: Sorry.

16 JUDGE TOREM: So you were estimating 25 miles
17 per hour in your --

18 THE WITNESS: I was estimating 25.

19 JUDGE TOREM: But you're estimating that
20 essentially to go around the long way would be a 5 mile
21 distance?

22 A. What I was estimating, yeah, about 5 miles,
23 so if I was going 25, it would be roughly about 10, 12
24 minutes I guess.

25 BY MR. LOGEN:

0104

1 Q. And approximately what would the distance be
2 going from that same circle where Logen Road and Old
3 Pacific Highway intersect traveling north on Old Pacific
4 Highway, crossing at Dettling Road, coming south on
5 Pioneer Highway to 288th and down around the sharp
6 corner that you described, I don't remember how you
7 described that, at 92nd and going back up to the 140?

8 A. That was the value I was giving of about four
9 or five minutes for that.

10 Q. And what is the approximate distance?

11 A. I was assuming it was roughly about 2 miles.

12 Q. And approximately what is the distance from
13 the circle on Old Pacific Highway and Logen Road
14 intersection to the mark of 140 on Logen Road traveling
15 on Logen Road?

16 A. It looks like about maybe 3/4 of a mile,
17 something like that.

18 Q. So do you feel that traveling an additional
19 mile and a quarter or an additional 4 and a quarter
20 miles is reasonable? Again, I'm asking in regards to
21 farm equipment.

22 A. I don't believe that there's any, like I said
23 before, any standard that specifies what's reasonable in
24 terms of farm equipment accessing their fields or what
25 they have to do. I think when we're looking at these

0105

1 situations, we're looking at the magnitude of the usage
2 and how it compares against the magnitude of the issue
3 and the safety that relates to the crossing itself and
4 the ability to get across. I think one of the issues
5 that the farm equipment is going to be faced with, just
6 as the emergency vehicle equipment and the general
7 public, is if that crossing's not open, that farm
8 equipment is going to have to turn around and go all the
9 way back the direction they already came and then
10 traverse these distances that we're talking about, so
11 you add that much more time into the travel. So I guess
12 that's where the reasonableness comes in is whether or
13 not we have a certain route that we know it's going to
14 take, or do we have a route that's uncertain that is
15 going to add time and is going to have a major certainty
16 that it's going to be blocked for a continuous period of
17 time on a regular basis.

18 JUDGE TOREM: So two clarifications.

19

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

21 BY JUDGE TOREM:

22 Q. You said if it's closed, you were saying that
23 not as though it was a permanent closure but closed due
24 to a freight train blocking the track for an unspecified
25 period of time?

0106

1 A. That's correct.

2 Q. And I think perhaps in other words your
3 testimony is that the inconvenience that might be
4 imposed on a farmer wanting to move equipment across has
5 to be weighed against the overall situation of certainty
6 for everybody not having to come and turn around if they
7 find the crossing blocked, that's why you're proposing
8 and supporting the actual closure of this as a public
9 crossing; is that correct?

10 A. I believe that that is one of the factors.
11 One of the factors that weighs in the favor of closure
12 is that it offsets the issue that was expressed about
13 the use of farm equipment across the crossing is the
14 uncertainty of whether that crossing is going to be open
15 and whether they can use it or not, and that's one
16 issue. The other issue is the whole safety of the
17 crossing too, so.

18 JUDGE TOREM: Go ahead.

19 MR. LOGEN: Thank you.

20

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

22 BY MR. LOGEN:

23 Q. Is Fire District 14 or specifically Station
24 96 I believe it is, is that manned or is it volunteer?

25 A. I believe that's a fully manned station.

0107

1 Q. Is the Stanwood/Camano Fire Department manned
2 or volunteer?

3 A. That is a manned station as well.

4 Q. Is there a paramedic at the Station 96?

5 A. I believe they have Medic One service at
6 Station 96 and at the Stanwood Station.

7 Q. Now moving on to the mutual aid agreement, it
8 seems like you provided conflicting or you got
9 conflicting information from the fire chief and a
10 fireman about who was going to respond there. In the
11 mutual aid agreement, isn't that only when one fire
12 department can't respond, the other one then responds?

13 A. You would have to discuss that more fully
14 with them, but my understanding is that under a mutual
15 aid agreement, the dispatcher evaluates who's the closer
16 proximity to the incident and makes a decision of who to
17 dispatch at that point in time.

18 Q. So if that's the case, you may not know the
19 answer to this question, there's taxes for our fire
20 districts, and why is somebody paying taxes to one fire
21 district when they're being served by another if that's
22 the case?

23 A. I don't have the answer to that question.

24 JUDGE TOREM: Mr. Logen, do you have a copy
25 by any chance of the mutual aid agreement between these

0108

1 two fire stations?

2 MR. LOGEN: I do not.

3

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

5 BY JUDGE TOREM:

6 Q. Mr. Norris, did you ever see one?

7 A. I did not.

8 Q. So that was only word of mouth that one
9 exists?

10 A. Right, the fire chief at Stanwood Station
11 indicated there was one.

12 Q. Mr. Norris, in your experience, would you
13 expect a mutual aid agreement to lay out what you've
14 just testified to regarding who would have priority or
15 whether it would be a dispatcher's discretion to know
16 which station to charge with an initial response?

17 A. I believe that would be laid out in the
18 mutual aid agreement.

19 Q. All right, so if that was something I wanted
20 to take up or the parties wanted to submit as a
21 supplemental exhibit, I could probably obtain that with
22 a Bench Request to one or both of these parties?

23 A. I would believe so, I can't say for certain.

24 Q. But if I asked for that, you would expect
25 that information to be contained in the mutual aid

0109

1 agreement?

2 A. Correct.

3 JUDGE TOREM: Mr. Logen, additional
4 cross-exam?

5

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

7 BY MR. LOGEN:

8 Q. On page 6 of your study marked Exhibit 7 on
9 emergency services, the last sentence says the closing
10 is not expected to have a significant adverse impact on
11 emergency response, so would you expect that there is
12 some impact then?

13 A. I believe there is impact on service from the
14 District 14 Station located adjacent to I-5. The time
15 and the turns that have to be made coming from that
16 direction would be impacted.

17 Q. And in regards to school transportation, you
18 indicated that there is no students currently living
19 along the corridor. If there were, how would they get
20 to school?

21 A. I guess they could be driven to a stop that's
22 adjacent to the highway where the bus could pick them
23 up, or parents could drive them.

24 Q. If the stop was on Old Pacific Highway, how
25 would the students get there?

0110

1 A. They would have to drive around.

2 MR. LOGEN: I believe that's all my
3 questions.

4 JUDGE TOREM: Any redirect?

5 MS. ENDRES: I do have a little bit of
6 redirect.

7

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

9 BY MS. ENDRES:

10 Q. I will sort of work backwards here while it's
11 fresh in my mind. I don't want to speculate too much or
12 ask you to speculate about school traffic. Couldn't
13 students walk to the bus stop if they needed to? I mean
14 they wouldn't necessarily have to be driven, would they?

15 A. They would not have to be driven necessarily,
16 no.

17 Q. And Mr. Logan asked you questions about
18 impact on emergency response, and then you've spoken a
19 little bit about the angle that emergency responding
20 vehicles, their route from Pioneer Highway to Logen
21 Road. If, and I want to exclude fire trucks from this,
22 if an aid car was coming from Station 96, would an aid
23 car be able to access Logen Road from Pioneer Highway?

24 A. I believe an aid car would.

25 Q. And did you testify earlier that Station 96

0111

1 does have a Medic One, or is it just the Stanwood
2 Station that has a Medic One?

3 A. My understanding is that they do have a Medic
4 One.

5 Q. And by they, you mean both stations or just
6 the --

7 A. Both stations.

8 Q. Mr. Logen asked you some questions about farm
9 equipment traveling from the west side of the railroad
10 tracks to the east side either using Logen Road directly
11 or north on Dettling or south on 271st, and I believe
12 you testified earlier that it's your expectation that
13 farm equipment would use the Dettling crossing because
14 it's a shorter reroute; is that correct?

15 A. Not only do I believe it would be shorter,
16 but it would also avoid conflicts from the heavier
17 traffic volumes that would be experienced along 271st
18 and going through the heart of the town.

19 Q. And is it correct that the Dettling Road
20 crossing has a farm equipment warning sign today?

21 A. That's correct, they do.

22 Q. Mr. Logen asked you questions about whether
23 it's reasonable to divert farm traffic up to Dettling
24 Road or south to 271st if the crossing is closed. Does
25 the volume of farm traffic affect your analysis? And I

0112

1 will sort of use extremes here, but specifically maybe 1
2 or 2 tractors versus if all 140 vehicles were slow
3 moving farm equipment?

4 A. I don't think it changes the same scenario
5 that we're talking about, the potential of a closure
6 being generated by the existence of a train blocking the
7 track and creating the uncertainty, the inability to get
8 across that crossing.

9 Q. Let me clarify my question a little bit. In
10 your professional opinion, would you consider the
11 reroute via Dettling crossing to be a more significant
12 public impact if it impacted a great number of farm
13 vehicles as opposed to just if it impacted one or two?
14 Am I still not being clear?

15 A. Yeah, I'm just trying to think about this
16 though. You're assuming that all of the farm equipment
17 is located on Logen Road on the west side of the
18 crossing and wants to get to Logen Road on the east side
19 of the crossing?

20 Q. I'm asking you to compare 1 slow moving farm
21 vehicle, whether diverting that 1 vehicle is more
22 reasonable than it would be to divert say 100?

23 A. I think it probably is more reasonable to
24 divert 1 rather than 100, but --

25 Q. Sorry if I wasn't being clear.

0113

1 A. No, that's all right.

2 Q. Do Pioneer Highway and Pacific Highway have
3 shoulders?

4 A. Both highways have very constrained
5 shoulders, maybe two to three feet along the section
6 between Dettling and Logen Road or 292nd. As you go
7 south along Pioneer Highway into town, you're getting
8 some sections where the shoulder widens out and on the
9 east side there's some sidewalk and things like that.
10 So it varies along there, but there's no really designed
11 shoulder storage for vehicles of the typical standard
12 design today of six to eight feet, so that does not
13 exist.

14 Q. How many homes are on Logen Road?

15 A. My count was there are about seven homes that
16 have access to Logen Road.

17 Q. So when we're discussing emergency access, is
18 that limited to those seven homes in your understanding?

19 A. That's correct.

20 MS. ENDRES: I don't have any further
21 questions.

22 JUDGE TOREM: Mr. Thompson, anything else?

23 MR. THOMPSON: No questions.

24 JUDGE TOREM: Mr. Kasting?

25 MR. KASTING: Still none.

0114

1 JUDGE TOREM: And Mr. Logen?

2

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

4 BY MR. LOGEN:

5 Q. You said that there was seven homes that have
6 access to Logen Road, do you have any idea how often,
7 well, a better question would be how many of those homes
8 have access only to Logen Road?

9 A. I would say from my count probably five to
10 six of the seven. There may have been some houses that
11 go all the way through. It was difficult to tell from
12 the areal mapping whether the connections were all the
13 way through, but it looked to be about probably five to
14 six of the seven have access only to Logen.

15 Q. So when you came up with your counts on
16 vehicle trips, you used seven homes; is that correct?

17 A. That's correct.

18 Q. And you assumed that they made all trips on
19 Logen Road rather than using their alternate access?

20 A. That's correct.

21 Q. The grade of Dettling Road, does it cause you
22 any concerns about farm equipment going up or down that
23 grade possibly pulling something?

24 MS. ENDRES: Which road, I'm sorry?

25 MR. LOGEN: Dettling Road.

0115

1 A. Dettling Road does have a steep grade as you
2 head east from the crossing. I mean traveling at 10 to
3 12 miles an hour I don't know that that would have a
4 significant impact on the ability of the farm equipment
5 to make the grade.

6 MR. LOGEN: Thank you, that's all I have.

7 JUDGE TOREM: All right, I see nothing else
8 for this witness, thank you, Mr. Norris.

9 THE WITNESS: Thank you.

10 JUDGE TOREM: Again, Exhibits 6 and 7 have
11 been admitted. We're at 12:00 noon or as close as we're
12 going to get to it, and we have I think three more
13 witnesses for BNSF. The next one scheduled is
14 Mr. Bloodgood followed by Mr. Agee and then
15 Mr. MacDonald. Do we want to do those after a lunch
16 break?

17 MR. SCARP: Probably.

18 JUDGE TOREM: All right, then we'll come back
19 and go off the record and discuss how long we'll take
20 for a lunch break, but we'll come back after a little
21 while with those witnesses in that order. And I think
22 that will make BNSF's case in chief; is that correct?

23 MR. SCARP: That's correct.

24 JUDGE TOREM: All right, so hopefully
25 everybody will be prepared with their witnesses after

0116

1 lunch. I think we're moving at a pretty reasonable pace
2 to get done perhaps all together in one day, but I don't
3 want to rush anybody. If we do need to come back and
4 reconvene tomorrow, we do have the room tomorrow, and I
5 imagine we have the same parking we're going to get
6 tomorrow that we have today.

7 So we'll be at recess for lunch.

8 (Luncheon recess taken at 12:00 p.m.)

9

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

11 (12:50 p.m.)

12 JUDGE TOREM: It's about 10 minutes to 1:00,
13 we're back on the record, and Mr. Bloodgood is in the
14 witness chair. I'm going to premark his resume' or CV
15 as Exhibit 8 and a Snohomish County Council motion
16 number 09-032 dated January 26, 2009, as Exhibit 9.

17 Sir, if you will stand and raise your right
18 hand.

19 (Witness JAMES BLOODGOOD was sworn.)

20 JUDGE TOREM: All right, thank you.

21

22 Whereupon,

23 JAMES BLOODGOOD,

24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

0117

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

2 BY MS. ENDRES:

3 Q. Good afternoon, Mr. Bloodgood, one more
4 document, start with your CV here, I guess this will
5 probably be marked as Exhibit 8, do you see this
6 document, your CV?

7 A. Yes.

8 Q. And is the information in here true and
9 correct to the best of your knowledge?

10 A. Yes.

11 Q. And when was that CV generated?

12 A. You mean like when was it last updated?

13 Q. Yes, is this the most recent update to your
14 CV that you have?

15 A. It's been a few years since I've updated it.
16 It's sort of self updating since my job's been the same
17 for the last few years.

18 MS. ENDRES: Your Honor, we'll move to admit
19 Mr. Bloodgood's CV as Exhibit 8.

20 JUDGE TOREM: Seeing no objections, admitted.

21 BY MS. ENDRES:

22 Q. Mr. Bloodgood, you should have what has been
23 marked and admitted as Exhibit 7, it's called a Logen
24 Road railway crossing Closure Traffic Impact Analysis;
25 do you have that document in front of you?

0118

1 A. Yes.

2 Q. Have you seen this document before?

3 A. Yes.

4 Q. I don't know if you were here earlier, were
5 you here for Mr. Norris's testimony?

6 A. Yes.

7 Q. Was there anything that you heard us discuss
8 relating to Exhibit 7 that you disagree with?

9 A. No, there was simply a minor correction, it's
10 more of a typographical correction. SR -- on the two
11 figures, Figures 1 and 2 I believe, I just wanted to
12 point out that Pioneer Highway is no longer State Route
13 530.

14 Q. And you're referring to Figures 1 and 2 where
15 it says Pioneer Highway and then a circle with 530 in
16 it?

17 A. Right.

18 Q. So you're saying the road is solely known as
19 Pioneer Highway; is that correct?

20 A. That's correct.

21 Q. Was there anything in Exhibit 7 relating to
22 vehicular traffic at Logen Road and the two adjacent
23 crossings that you disagree with?

24 A. No.

25 Q. Is it your understanding and position that

0119

1 the closing of Logen Road and diverting the Logen Road
2 traffic to the Dettling or 271st Street Crossing is an
3 acceptable result of closure to the public crossing?

4 Is it reasonable to deflect Logen Road
5 traffic to the two adjacent crossings?

6 A. Yes.

7 Q. And why is that?

8 A. It's a real low volume of traffic on Logen
9 Road. Diverting that to either one of the crossings or
10 both crossings would not have a significant operational
11 effect.

12 Q. Is it your position and understanding that
13 the closure of Logen Road Crossing to public travel
14 would have a significant impact on emergency response
15 time?

16 A. No, it is not my position that that would
17 happen.

18 Q. So is it fair to say that you are not aware
19 of a significant impact on emergency response time if
20 Logen Road Crossing is closed?

21 A. That's correct.

22 JUDGE TOREM: Mr. Bloodgood, can you keep
23 your voice up.

24 THE WITNESS: Sure.

25 MS. ENDRES: And I will try my best to let

0120

1 you get your answer out before I ask a question if you
2 let me get it out before you get to your answer so our
3 court reporter doesn't hate us at the end of the day.

4 BY MS. ENDRES:

5 Q. Mr. Bloodgood, is it the County's position
6 that the Logen Road railway crossing should be closed?

7 A. Yes.

8 Q. Is it the position of the County that
9 alternative traffic routes are suitable if the Logen
10 Road public crossing is closed?

11 A. Yes.

12 Q. I have also handed you I believe what will be
13 marked as Exhibit 9. Do you have that document in front
14 of you? It's titled Snohomish County Council, Snohomish
15 County Washington, Motion Number 09-032.

16 A. I have that, yes.

17 Q. Have you seen this document before?

18 A. Yes.

19 Q. What is it?

20 A. It is a motion by the County Council stating
21 that they are not opposed to the closure of the Logen
22 Road Railroad Crossing, that the County Council supports
23 the passenger train station in Stanwood, and also
24 authorized the County Engineer to sign the waiver of
25 public hearing for this crossing closure.

0121

1 Q. And when you say the County Engineer to sign
2 a waiver of hearing, do you mean yourself?

3 A. No, Owen Carter is the County Engineer.

4 Q. Does Exhibit 9 indicate that it's the
5 official position of Snohomish County that the Logen
6 Road crossing should be closed?

7 A. Yes.

8 MS. ENDRES: Your Honor, I move to admit
9 Exhibit 9.

10 JUDGE TOREM: Any objections?

11 It's admitted.

12 BY MS. ENDRES:

13 Q. Mr. Bloodgood, we've heard a little bit about
14 some plans to mitigate the impacts of closure on traffic
15 that might otherwise use Logen Road, and Mr. Logen
16 brought up earlier with an earlier witness whether the
17 portion of Logen Road on the west side of the railroad
18 tracks will be closed. Can you explain what your
19 knowledge of that is?

20 A. I think the question that was posed was could
21 Logen Road be closed at Old Pacific Highway if I
22 remember correctly, and it could. That would require
23 some Council action, so I can't commit to anything other
24 than saying that we would work towards that goal with
25 the ultimate need to have the Council action.

0122

1 Q. Is it your understanding that at some point
2 between Old Pacific Highway and the railroad tracks at
3 Logen Road that the road would be barricaded and closed
4 to public travel if the Commission grants closure?

5 A. Yes.

6 MS. ENDRES: I don't think I have any more
7 questions of Mr. Bloodgood, Your Honor.

8 JUDGE TOREM: Mr. Thompson?

9 MR. THOMPSON: No questions.

10 JUDGE TOREM: Mr. Kasting?

11 MR. KASTING: None.

12 JUDGE TOREM: And Mr. Logen?

13

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

15 BY MR. LOGEN:

16 Q. You've said that it would need Council action
17 to close Logen Road at Old Pacific Highway, and it will
18 be barricaded and closed. Where in relation to the
19 railroad tracks and Old Pacific Highway on Logen Road
20 will it be closed?

21 A. Well, we haven't made an exact location, and
22 I think we had a phone conversation last week on this,
23 and I think you expressed the desire to close it at Old
24 Pacific Highway, and we would work with you wherever you
25 would want it.

0123

1 Q. Is it going to take Council action wherever
2 you put the barricade?

3 A. Unless the closure is right at the railroad
4 right of way, it will take Council action to close a
5 public right of way.

6 Q. Okay.

7 You stated that it's the County position that
8 Logen Road should be closed. Can you tell me why?

9 A. Because the County Council supports the train
10 station. We signed a waiver of the public hearing
11 indicating that we were not opposed to the closure of
12 Logen Road.

13 Q. So is not opposed to it different than it
14 should be closed?

15 A. Not opposed is in this case in support of the
16 train station, which as I understand for the strain
17 station to operate, Logen Road needs to be closed.

18 Q. So is there some kind of an agreement between
19 the County and the Railroad that says that in order to
20 get a train station, you've got to close any neighboring
21 roads or --

22 A. There is no agreement between the County and
23 Burlington Northern, no.

24 MR. LOGEN: Can I ask questions about
25 responses to data requests I have that Mr. Bloodgood may

0124

1 be knowledgeable of?

2 JUDGE TOREM: If you mean that they were data
3 requests to Snohomish County?

4 MR. LOGEN: Yes.

5 JUDGE TOREM: Certainly.

6 MR. LOGEN: Okay, thank you, I wasn't sure on
7 that.

8 BY MR. LOGEN:

9 Q. In response to data requests, I was given
10 studies of the various intersections and the roads,
11 specifically one of them was 300th Street Northwest or
12 Dettling Road and Pioneer Highway and also at Old
13 Pacific Highway. I noted in those that there was a
14 number of accidents at those intersections.

15 JUDGE TOREM: Let's establish if he has
16 knowledge of those documents.

17 MR. LOGEN: Oh, okay.

18 JUDGE TOREM: Do you have documents you want
19 to show him?

20 MR. LOGEN: Yes, I do.

21 JUDGE TOREM: Are these part of your exhibits
22 as well?

23 MR. LOGEN: A couple of pages are but not the
24 entire response to the DR.

25 JUDGE TOREM: If you would show the exhibit

0125

1 first to Mr. Kasting so he'll know what his -- to
2 Mr. Scarp and Mr. Kasting as well.

3 MR. SCARP: But these were propounded to the
4 County.

5 JUDGE TOREM: Correct. I'm not sure if the
6 railway ever saw these data requests or would have had
7 reason to, Mr. Logen, so if you would show them to the
8 gentleman on your right, Mr. Kasting, he's the attorney
9 for this witness.

10 MR. KASTING: Yep.

11 JUDGE TOREM: And you've seen them,
12 Mr. Casting?

13 MR. KASTING: Yeah.

14 JUDGE TOREM: If you will hand them up to
15 Mr. Bloodgood just to see if he had any response or role
16 in the response.

17 THE WITNESS: Yes.

18 JUDGE TOREM: Do you recognize those
19 documents, sir?

20 THE WITNESS: Yes.

21 JUDGE TOREM: Are you going to be able to
22 answer questions perhaps by memory?

23 THE WITNESS: I probably can.

24 JUDGE TOREM: All right.

25 BY MR. LOGEN:

0126

1 Q. So there appears to be a number of accidents
2 that have occurred at the intersections of Old Pacific
3 Highway and Dettling Road and Pioneer Highway and
4 Dettling Road; is that correct?

5 A. As I recall, there was a relatively low
6 number, and the accident rate was quite low as well.

7 Let me see, I have Pioneer Highway and
8 Dettling Road, and it looks like there were three
9 collisions in a three year period.

10 Q. Okay. What causes the County to undertake a
11 study like this?

12 A. In this case, this study was done as a
13 request from the Planning and Development Services
14 Department in response to a land use issue for a
15 possible sand and gravel pit on Pioneer Highway just to
16 the north of Old Pacific Highway, so there was concern
17 about potential impacts from truck traffic.

18 Q. And that truck traffic would use Dettling
19 Road?

20 A. It could have used that intersection of
21 Dettling and Pioneer Highway as well as Old Pacific and
22 Pioneer.

23 Q. Okay. Has the County ever undertaken a study
24 for the intersection of Logen Road and Pioneer Highway
25 or Logen Road and Old Pacific Highway?

0127

1 A. Not to my knowledge, no. Not a study of this
2 magnitude, no.

3 Q. Has there been accidents to your knowledge at
4 either one of those intersections?

5 A. Not that I can recall.

6 Q. Moving to a similar study of the intersection
7 of Old Pacific Highway or 102nd and Pioneer Highway,
8 that one shows on the sheet that's titled determination
9 of possible inadequate road condition, 3 pages down, I
10 believe it's one of my exhibits as well, it shows a
11 partial index or a total index, excuse me, of 39.15?

12 A. Yes.

13 Q. Can you tell us what that means?

14 A. Well, it's a summary of the different
15 indicators up above, and the way this process works,
16 it's called an inadequate road condition evaluation.
17 When you sum up the indicators, if the value is under
18 40, the facility is, and I hate to use a double
19 negative, but it's automatically determined not to be
20 inadequate. If the score is over 70, it's automatically
21 determined to be inadequate. In between 40 and 70, over
22 -- well, let me go back to the under 40. The under 40
23 is then evaluated in a more informal in-house traffic
24 operations review committee. For those that score
25 between 40 and 70, there is a more formal review that is

0128

1 conducted by the IRC review board, which consists of
2 three registered professional engineers in the state of
3 Washington. An evaluation is made, and a recommendation
4 is then forwarded to the County Engineer, who either
5 agrees or disagrees with those findings, whether it is
6 inadequate or is not inadequate.

7 MS. ENDRES: Your Honor, before we go much
8 further, if I'm correct that we're discussing 102nd
9 here, I guess I would just object for the record that we
10 haven't had any testimony, unless Mr. Bloodgood had some
11 to add, that any traffic will be rerouted to 102nd, so
12 I'm not quite sure where we're going with this
13 specifically, and I just would object along those lines.

14 JUDGE TOREM: Can you clarify, Mr. Logen,
15 what the 102nd intersection is and its relation to the
16 proposed closure?

17 MR. LOGEN: It is the next intersection just
18 north of Dettling Road, and it would be, because of the
19 grade of Dettling Road, would be an alternative if
20 you're pulling a heavy load.

21 JUDGE TOREM: So you're suggesting that this
22 may be the next northerly intersection where traffic
23 that has a concern with the grade would be diverting to?

24 MR. LOGEN: Yes.

25 JUDGE TOREM: I will allow it for that

0129

1 purpose, because there was some testimony as to the
2 grade in the questions you asked Mr. Norris, so
3 objection is overruled, we can entertain this line but
4 in a limited fashion again due to the limited nature of
5 the traffic that might be going that direction.

6 BY MR. LOGEN:

7 Q. On the data values, there's one that's
8 volume/capacity ratio?

9 A. Yes.

10 Q. It's at .33?

11 A. Yes.

12 Q. Does that indicate that the road could handle
13 three times the traffic or, yeah, it would be three
14 times?

15 A. No.

16 Q. Well, it's got one third of what it will take
17 now, and so it could take two thirds more?

18 A. Oh, no, I see where you're going. No, it's
19 really a measure of delay. In this case because it's an
20 unsignalized intersection, it's a measure of delay on
21 the Old Pacific side of the intersection since it is the
22 one that is stop controlled. It doesn't necessarily
23 mean it could handle three times the amount of traffic,
24 because as you start approaching capacity, you start
25 getting more turbulence in the traffic flow, and it's

0130

1 less predictable.

2 Q. Okay. And the sight distance ratio of .38?

3 A. Yes, it doesn't necessarily mean you could
4 see three times further.

5 Q. No, I didn't think that did, but I wasn't
6 sure what it meant, I wanted to understand that.

7 A. It's just -- you can see on the right side
8 you've got sight distance data as one of the tabs, and
9 there's a chart that gives you what we were looking at
10 for here, so that's on the second one, what is available
11 versus what is required.

12 Q. So to sum up, what does .38 mean?

13 A. It means it's good sight distance.

14 Q. That's good, the lower the number, the better
15 it is?

16 A. Yes, yes.

17 Q. Okay.

18 A. The higher the number, the closer you get to
19 40 if you total everything up.

20 JUDGE TOREM: Just so I'm clear, Mr. Logen,
21 as to which exhibit that I might have in front of me, it
22 appears that the numbers you're quoting come from what
23 you've submitted as Exhibit LFL-5.

24 MR. LOGEN: I believe that's correct.

25 JUDGE TOREM: Just so I can keep exhibits

0131

1 with the witness that's talking about them, I'm going to
2 mark that now as Exhibit 10, and I've just got it as a
3 one page exhibit. So I know you're referring to more
4 documents as the backup for those numbers, but what I'm
5 going to mark as Exhibit 10 is just a one page document.

6 MR. LOGEN: That's correct.

7 BY MR. LOGEN:

8 Q. I think my final question on this, is any of
9 this subjective at all?

10 A. This is a little bit subjective when you're
11 getting into things like driver expectancy, but the rest
12 of it is pretty much, you can see all the information on
13 the right side, it's pretty bookish.

14 Q. Yes, I looked through that and couldn't quite
15 tie the two together into the summary here.

16 MR. LOGEN: I think that's all the questions
17 I have.

18

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

20 BY JUDGE TOREM:

21 Q. On Exhibit 10, Mr. Bloodgood, which is that
22 cover page determination of the possible inadequate road
23 condition.

24 A. Mm-hm.

25 Q. The totals that came out here were 39.15.

0132

1 A. Yes.

2 Q. And if I understand correctly from the review
3 board determination at the bottom, this location,
4 Pioneer Highway at Old Pacific Highway, which apparently
5 is also known as 102nd?

6 A. Yes.

7 Q. Was determined not to be inadequate in its
8 road conditions by .85 points on this scale; is that
9 right?

10 A. Well, no, not exactly. It was automatically
11 determined that way. Even if it had gone over 40, it
12 could have been considered not inadequate.

13 Q. Can you explain that a little bit further,
14 how this numeric scale of 40 as a break point works?

15 A. When it is under 40, there is a more informal
16 in-house traffic operations section of Snohomish County
17 Public Works review. Over 40 yet under 70, there is a
18 more formal review conducted by three licensed engineers
19 in the state of Washington who then make a
20 recommendation on its adequacy or inadequacy to the
21 County Engineer, and the County Engineer then makes the
22 final determination.

23 Q. If someone were to, like myself, ask you
24 what's the take away then from this more formal
25 determination, how would you put it in layman's terms?

0133

1 A. I think you're having the eyes of a more
2 licensed professional seeing the issue versus not.

3 Q. And what's the ultimate conclusion that you
4 would report back?

5 A. I'm not sure I quite --

6 Q. What does this mean, this number that comes
7 out at 39.15, what do I need to know about the
8 intersection that that number tells me?

9 A. What it tells you is that it's not an
10 inadequate road condition.

11 Q. So the intersection is acceptable?

12 A. That's correct.

13 Q. Mr. Logen also referred to a similar
14 determination made or a study done just south at the
15 Dettling Road intersection?

16 A. Yes.

17 Q. How would this intersection compare to the
18 one to the south that Mr. Norris suggested would be the
19 closest alternate intersection for diversion of traffic?

20 A. That one scored far less, more in the 27.15
21 range, so significantly lower than the 102nd Avenue
22 crossing.

23 JUDGE TOREM: All right.

24 And I believe, Mr. Logen, you have the same
25 data sheet on that, you had submitted it as LFL-7?

0134

1 MR. LOGEN: Yes.

2 JUDGE TOREM: Would you mind if I mark that
3 as Exhibit 11 at this time to keep these together?

4 MR. LOGEN: Not a problem.

5 JUDGE TOREM: All right, that will be marked
6 as Exhibit 11.

7 MS. ENDRES: Your Honor, does Exhibit 11 have
8 a -- is it premarked by Mr. Logen, I want to make sure
9 that --

10 JUDGE TOREM: Yes, LFL-7.

11 MS. ENDRES: Thank you.

12 MR. SCARP: Excuse me, Your Honor, Number 10
13 was LFL?

14 JUDGE TOREM: -5.

15 MR. SCARP: Thank you.

16 JUDGE TOREM: Mr. Logen, did you want to
17 offer these for admission at this time, what I've marked
18 as 10 and 11?

19 MR. LOGEN: Yes, I would.

20 JUDGE TOREM: Are there any objections?

21 Okay, seeing none, then those two of
22 Mr. Logen's exhibits have been marked now as 10 and 11
23 and are admitted.

24 BY JUDGE TOREM:

25 Q. Mr. Bloodgood, you testified regarding what's

0135

1 been admitted now as Exhibit 9, the Snohomish County
2 Council Motion.

3 A. Yes.

4 Q. Were you present when this was adopted?

5 A. Yes.

6 Q. Do you know who prepared the document?

7 A. Yes, it was one of the public works staff.

8 Do you need a name?

9 Q. No, but it was prepared by a Snohomish County
10 employee?

11 A. Yes.

12 Q. And the language that is contained in the
13 various whereas clauses and the now therefore, was that
14 proposed by anyone outside the County?

15 A. There was no draft language that was
16 submitted to the County.

17 Q. So my understanding is the overall message
18 from the County Council was they wished to support
19 construction of the new passenger train station here at
20 Stanwood, and if its construction would require the
21 crossing now existing at Logen Road to be closed, that
22 was fine with them?

23 A. That's correct.

24 JUDGE TOREM: Okay.

25 Ms. Endres, did you have any further

0136

1 questions you wanted to follow up with?

2 MS. ENDRES: I do have just a few.

3

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

5 BY MS. ENDRES:

6 Q. Mr. Bloodgood, there's been some discussion
7 about the County's position, whether it supports closure
8 or does not support closure, another double negative
9 there. I noticed on Exhibit 9, page 2 at the top, that
10 this document also discusses and states that:

11 The closure of the Logen Road Crossing
12 will improve public safety by
13 eliminating a low volume crossing over a
14 high-speed rail line and completing
15 infrastructure improvements within the
16 public right-of-way.

17 Is it your understanding that the County
18 recognizes the danger presented at Logen Road crossing
19 as well as the low daily traffic count at Logen Road
20 crossing separate from the Amtrak station based on this
21 language?

22 A. Yes.

23 Q. Is it your professional opinion that 102nd is
24 a suitable alternative crossing for traffic that might
25 be diverted from the Logen Road crossing if it's closed?

0137

1 A. 102nd?

2 Q. Mm-hm, north of Dettling.

3 A. North of Dettling, that's an acceptable
4 crossing, yes.

5 Q. And there's also been some discussion like I
6 said about the County's position, and I want to focus on
7 your individual opinion as a professional engineer.

8 A. Okay.

9 Q. Given the testimony that you've heard from
10 Mr. Wagner about the project, the specifications of the
11 project, as well as Mr. Norris's testimony and
12 Mr. Norris's traffic impact study, as well as your own
13 knowledge as a County employee, is it your professional
14 opinion that the public safety requires closure of the
15 Logen Road crossing if the siding track project is
16 completed?

17 A. Yes.

18 MS. ENDRES: I don't have any other
19 questions, Your Honor.

20 JUDGE TOREM: Okay, any other further
21 cross-examination for this witness?

22 Mr. Logen.

23 MR. LOGEN: I have one.

24

25

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

2 BY MR. LOGEN:

3 Q. If there was not going to be an Amtrak
4 station and Burlington Northern Santa Fe proposed the
5 siding on their own, do you believe that Snohomish
6 County would support the closing of Logen Road?

7 MS. ENDRES: Your Honor, I'm going to object
8 to that as a hypothetical question that I don't know if
9 Mr. Bloodgood is the correct person to answer.

10 JUDGE TOREM: I understand the nature of the
11 objection, and it does call for some speculation, but I
12 will overrule the objection because I do believe
13 Mr. Bloodgood -- he looked like he was quite ready to
14 answer. But I also think that given that he was at the
15 County Council meeting at which the resolution was
16 adopted, he may have some insight. So I know it's a
17 hypothetical question and certainly doesn't speak for
18 the County Council, but, Mr. Bloodgood, what are your
19 thoughts on if there was no Stanwood Amtrak station,
20 what attention might the County Council be paying to the
21 Logen Road crossing?

22 A. Well, my hypothetical response would be that
23 I think that they would support it as well.

24 JUDGE TOREM: All right, thank you.

25 Mr. Logen, anything else?

0139

1 MR. LOGEN: No, thank you.

2 THE WITNESS: Can I make one clarification, I
3 was in error when you asked me about that factor, the
4 smaller the worse on that particular one.

5

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

7 BY JUDGE TOREM:

8 Q. Let's go back so we know for the record what
9 we're speaking about. This would be on either Exhibits
10 10 or 11, which factor?

11 A. The sight distance ratio.

12 Q. All right.

13 A. The .38, and that's why you will see that it
14 scores the maximum amount in the partial index column.

15 Q. All right, this is where the indicator value
16 on Exhibit 10 at the 102nd Street crossing or
17 intersection would be 100, and in comparison on Exhibit
18 11 the sight distance ratio of 1.21 scores a lower
19 indicator value of 23?

20 A. That's correct.

21 Q. So in comparing those two intersections so we
22 have this completely clear in the record, which has a
23 better sight distance ratio?

24 A. The Dettling and Pioneer Highway.

25 Q. And so again in layman's terms, does that

0140

1 mean the driver could see farther?

2 A. Yes.

3 MS. ENDRES: Your Honor, can I make one
4 clarification, one clarifying question?

5 JUDGE TOREM: Certainly.

6

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

8 BY MS. ENDRES:

9 Q. Exhibits 10 and 11, those don't refer to the
10 crossing at the railroad tracks, do they?

11 A. No, they are at the intersection.

12 MS. ENDRES: Okay, thank you.

13 JUDGE TOREM: Any other further
14 clarifications, Mr. Bloodgood, that you saw?

15 THE WITNESS: No.

16 JUDGE TOREM: Any other questions for this
17 witness?

18 All right, thank you, Mr. Bloodgood, you can
19 step down.

20 Next witness scheduled is David Agee,

21 Sir, how do you pronounce your name?

22 THE WITNESS: Agee.

23 JUDGE TOREM: All right, I got it correct,
24 that's good.

25 THE WITNESS: You did.

0141

1 JUDGE TOREM: Would you raise your right
2 hand.

3 (Witness DAVID AGEE was sworn.)

4 JUDGE TOREM: All right, thank you.

5 THE WITNESS: Last name is spelled A-G-E-E.

6 JUDGE TOREM: I believe, Ms. Endres, that you
7 indicated Mr. Agee would be testifying with exhibits
8 including the Operation Lifesaver slides, so we'll
9 premark those as Exhibit 12.

10 And he was also expected to testify with some
11 knowledge of this University of North Carolina Highway
12 Safety Research Center report from June of 1999; is that
13 correct?

14 MS. ENDRES: It is if I can find it.

15 JUDGE TOREM: All right, well, while you're
16 finding it I will mark my copy as Exhibit 13.

17 And there was some question as to whether he
18 would be testifying as to some photographs submitted
19 originally for Mr. Peterson to testify about, train and
20 tractor collision photos, did you intend to use those
21 this afternoon?

22 MS. ENDRES: There's a good chance we will.

23 JUDGE TOREM: All right.

24 MS. ENDRES: See how it goes.

25 JUDGE TOREM: I will hold those aside and

0142

1 mark them accordingly.

2

3 Whereupon,

4

DAVID AGEE,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8

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

9

BY MS. ENDRES:

10

Q. Good afternoon, Mr. Agee.

11

A. Good afternoon.

12

Q. Can you please briefly tell us who you work

13

for, what your job title is, and what you do?

14

A. Again my name is David Agee. I work for BNSF

15

Railway. I work as a Manager of Field Safety. I do a

16

variety of different types of work. I do law

17

enforcement training, fire department training, first

18

responder type. I teach class for DOT Rail Institute

19

investigation class. I deal with private crossings in

20

the states of Oregon, Washington, and British Columbia.

21

I deal with permits for private crossings, internal

22

company program of close calls with motorists, a report

23

of unsafe motorists/trespass program that we have. I do

24

Operation Lifesaver presentations to the public, and I

25

do training for volunteers as Operation Lifesaver

0143

1 presenters.

2 Q. Okay. And I just want to be clear for the
3 record, you're not here on behalf of or as an agent of
4 Operation Lifesaver today; is that correct?

5 A. That's correct.

6 Q. Mr. Agee, what is the purpose of the
7 Operation Lifesaver presentations that you give?

8 A. Operation Lifesaver presentations are
9 designed to educate the public about safety around
10 railroad tracks. It's a non-profit organization that
11 goes out and tries to explain to people the dangers of
12 trying to beat trains, stopping on tracks, trespassing,
13 those type things, to change the behavior of the public
14 so that we have less of these needless fatalities and
15 injuries that we're having nationwide at this time.

16 Q. Is that because all railroad crossings are
17 inherently dangerous to some degree?

18 A. Railroad crossings can be indeed dangerous.
19 It depends on the actions of the public, whether they're
20 stopping on the tracks, going around the gates, trying
21 to beat the train, those types of things, that's what
22 makes them dangerous in my opinion. If the public
23 complies with the statutes and looks, listens, stops if
24 necessary, then the risk is very reduced at that point.

25 Q. How long have you been giving Operation

0144

1 Lifesaver presentations?

2 A. I've been giving presentations since '97 when
3 I had a close call with about 15 high school kids and I
4 was convinced I killed at least the last 3 of them, so
5 since that period.

6 Q. Can you explain what you just mentioned a
7 little bit more for us?

8 A. I was taking the train out of Phoenix,
9 Arizona, and some kids on a close by road tried to beat
10 our train across the tracks, and the last 3 were so
11 close that you couldn't even see them in front of the
12 locomotive. And we put the train into emergency, and
13 believe me after striking a number of animals going --
14 what I was expecting to go back and see was it creates
15 chill bumps on me right now.

16

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

18 BY JUDGE TOREM:

19 Q. That was in Arizona when?

20 A. That was, well, when that happened was
21 probably about '97, '96, '97. I worked out of Arizona,
22 New Mexico.

23 Q. And there was an actual collision at that
24 time?

25 A. No, sir, there was a close call.

0145

1 Q. And you were an engineer?

2 A. At that time I was a conductor.

3

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

5 BY MS. ENDRES:

6 Q. How many years were you a conductor or part
7 of the train crew for BNSF or its predecessor?

8 A. I worked for Santa Fe for about two and a
9 half years as initially a conductor and then two and a
10 half years as a locomotive engineer before transitioning
11 into this current position now I'm in as the Manager of
12 Safety.

13 Q. We'll get to the Operation Lifesaver stuff in
14 a second, but first, you know, since you brought it up,
15 I want to talk a little bit about the experiences that
16 you had as a train crew member with that sort of close
17 call that you described. Have you had other situations
18 where you were involved either in a close call or a
19 collision with a pedestrian or a motorist?

20 A. I've certainly had many other close calls,
21 and I would estimate five to seven vehicle/train
22 collisions. Thank goodness none of them were fatal, but
23 certainly a significant number of close calls.

24 Q. That must have a scary sort of horrifying
25 mental effect on crew members, I mean what's the effect

0146

1 of that when a crew is involved in a collision with a
2 pedestrian or a motorist?

3 A. Well, in some cases friends of mine have
4 seemed very devastated by those actions. I can tell you
5 from my personal experience with just the close calls
6 that you are a victim in many different ways dealing
7 with some of those close calls when you know the
8 potential for the devastation that may result, it is a
9 severe impact on the individual personally.

10 Q. Have you ever been involved in a
11 train/motorist or pedestrian collision where the
12 motorist or pedestrian ignored or disregarded warning
13 devices?

14 A. I've certainly seen a number of those, and I
15 will give you a very good example, a concrete example
16 that occurred today. I was up at the Logen Road
17 crossing working with our -- one of our maintenance away
18 people who was doing some work there. I finished
19 talking to the gentleman. I drove across the tracks,
20 and as I cleared the opposite side, I noticed the lights
21 start to flash, and a van which was approaching from the
22 west to the east direction actually ran the lights
23 trying to beat the train.

24 Q. So this morning at the Logen Road crossing
25 you saw a motorist --

0147

1 A. Yes.

2 Q. -- ignoring the lights and trying to beat the
3 train?

4 A. Yes, that's correct, this morning.

5 Q. Have you ever been a member of a train crew
6 that struck a motorist or pedestrian who had ignored the
7 warning devices?

8 A. Yes, I have. I think probably two out of the
9 seven roughly were people who were trying to beat the
10 train, stopping on the crossing.

11 Q. Why do you think that motorists or
12 pedestrians disregard warning devices? Why do you think
13 that motorists, what are the reasons that motorists or
14 pedestrians ignore warning devices at railroad
15 crossings?

16 A. I think there are a variety of reasons.
17 Certainly in some cases being able to see the train,
18 assuming it's not there. Others may be that they're
19 somewhat ignorant of what the revised code and the
20 statutes may say in a particular state. They perceive,
21 as in the study here, in my opinion a lot of times they
22 don't perceive a red flashing warning light as being
23 anything more than a cautionary yield type of sign. The
24 public certainly doesn't in general understand what a
25 crossbuck is, what that implies, what's expected of

0148

1 their behavior at highway rail grade crossings. So I
2 think there are a variety of numbers including being
3 overcome with data where they're looking at multiple
4 lights and devices and highway intersections, and all of
5 that comes together to sometimes help create confusion
6 on the motorist's part.

7 Q. You have in front of you a set of graphics.
8 The first page is titled welcome to Operation Lifesaver,
9 and I guess what are we on, Exhibit 12?

10 MR. SCARP: 14.

11 JUDGE TOREM: No, this has been premarked as
12 Exhibit 12.

13 MR. SCARP: Oh, I'm sorry.

14 BY MS. ENDRES:

15 Q. Are you familiar with this document,
16 Mr. Agee?

17 A. Yes, I am.

18 Q. Can you explain what it is for us, please?

19 A. These are the visuals that we use when we go
20 out and try to educate the public about safety around
21 train tracks and working with different entities.

22 First one is we introduce the Operation
23 Lifesaver program as a non-profit organization designed
24 to educate the public.

25 The second one, the 3 G's of Operation

0149

1 Lifesaver. Here we talk about the value of education,
2 how that changes behavior. Engineering typically refers
3 to other issues that our engineering department gets
4 into, whether it's the signalization of crossings, grade
5 separations, and those type things.

6 And the third one is the enforcement where we
7 bring in our partners, the law enforcement community, to
8 explain to them why it's important for the public to
9 yield to the trains, and we emphasize things like
10 stopping distances and other issues along those lines.
11 It's a fact, visual, we talk about various things like
12 21% of the time people run into the train based on
13 Operation Lifesaver's data, people are more likely to
14 die in a vehicle/train collision at the rate of about 20
15 times more likely than they would be with a
16 vehicle/vehicle incident. We talk about a variety of
17 facts, the fact that we lose on average two trespassers
18 a day trespassing on railroad property nationwide, all
19 railroads considered. And then we lose two additional
20 people a day at highway rail grade crossings.

21 The next one, any time is train time, we talk
22 about the fact that people have to expect a train on any
23 track either direction at any time of day. And with the
24 police we emphasize, as well to the public as well, not
25 to overtake another vehicle close to the railroad tracks

0150

1 because of the blocking issue of other vehicles that may
2 be the size of that vehicle.

3 Q. Mr. Agee, just to clarify, you're on page 4
4 right now?

5 A. Right now I'm on the, well, these are not
6 numbered, but any time is train time is the one I
7 finished up with.

8 JUDGE TOREM: And that is the fourth page of
9 the exhibit.

10 A. So page 5, here we talk about weight ratios,
11 the ratio of a car to a soda can being roughly 4000 to
12 1, and then we compare that to the weight of an average
13 6,000 ton manifest train at the bottom, which is 12
14 million pounds, to the weight of a car, which is a 4000
15 to 1 ratio as well.

16 Q. So is it your understanding that the ratio of
17 impact between a car and a train is equivalent to the
18 ratio of impact between a soda can and a car?

19 A. I think it makes a good analogy that we can
20 see -- the public understands very clearly what a car
21 and a soda can the effect is going to be. They assume
22 sometimes that because of the speed of a train it's not
23 going to do as much damage, and so in my mind I'm trying
24 to create that analogy.

25 Q. Why would they think that based on the speed

0151

1 of a train it's not going to do much damage, can you
2 explain that a little bit more?

3 A. Well, I think they don't understand physics
4 sometimes. The thinking is that the car is going to be
5 pushed a slight amount, there's not going to be that
6 much intrusion into the car from the locomotive, and
7 they just have a natural perception that it's not --
8 it's safer if it's going slower.

9 Q. I think you told me once it's sort of similar
10 to watching an airplane; is that your understanding?

11 A. Well, what we get into is optical illusions,
12 and I know one vehicle that I struck, the driver of the
13 vehicle explained to me that she thought I was going
14 slower than I was. And I know based on my background in
15 aviation for many years, people do perceive trains or
16 airplane speed different. The larger the body, the
17 slower they perceive the speed. Smaller airplanes they
18 perceive as going much faster, yet terminal velocity is
19 about the same. So we know there's this optical
20 illusion, and certainly with trains people are
21 misjudging the speed and possibly thinking it's going
22 much slower than it's actually going.

23 Q. All right, on to slide 6, can you explain --

24 A. This is a case where the public is going
25 around a gate in a white van, and a train is to the left

0152

1 of that slide. We talk to people about stopping no
2 closer than 15 foot to a railroad track, no further than
3 50 foot back. The fact that the -- we talk about
4 highway devices here, the end of the gate arm has a red
5 light on it so it's really a stop light and not to go
6 when the gates are in transition, either coming down or
7 going up, because of the issue of a second train on a
8 second track, which creates a significant problem for
9 the public where they think that one train may have
10 activated the devices and actually there's a second
11 train coming that is reactivating the devices when the
12 first train is leaving, and that gets a lot of people
13 unfortunately in trouble even though they see the two
14 track sign in this case here to alert them under the
15 crossbuck that there is a possible train on the second
16 track.

17 Q. Is this driver behavior similar to what you
18 witnessed this morning at Logen Road?

19 A. Well, this morning the arm was not -- the
20 lights had started flashing, and I would say they had
21 been flashing for 3 or 4 seconds, and the driver had
22 plenty of time to stop prior to the red flashing lights,
23 so the gates had not reached their fully lowered
24 position at that point.

25 The next example is the two trains, the

0153

1 motorcycles waiting for the first train to go by, and we
2 have, unfortunately this happens all too often, where
3 the first train goes by, the person either goes around
4 the gates or they take off, and they don't expect a
5 train on the second track, and this creates
6 unfortunately some very devastating incidents.

7 Q. So this sort of situation could occur at a
8 public crossing that has a siding track and a main line
9 track?

10 A. Absolutely has that potential, absolutely.

11 Q. Okay.

12 And how about the next slide?

13 A. The next one is a young person going between
14 the trains. This happens when we have trains that are
15 stopped on the railroad tracks. People are impatient,
16 they want to get to the other side in some fashion, they
17 take the shortcuts to go through. And then because of
18 the movement of the train, the slack action, we have
19 people getting knocked down, getting arms, legs hurt, or
20 even getting knocked down to the point where the train
21 runs over them.

22 Q. And you mentioned slack action, is another
23 concern that the train is subject to start at any time?

24 A. That's correct, and if the train locomotive
25 is a mile or a mile and a half away, when they load

0154

1 those locomotives up and take off, there is no noise
2 coming out of the slack being taken up in the train, and
3 the last car moves at about the same time the locomotive
4 does, and that person has no warning that the train is
5 getting ready to reposition itself.

6 Q. What about the train crew's ability to see
7 somebody potentially climbing over the train, is that a
8 concern whenever you have somebody climbing over a train
9 that's parked on a curb, so maybe the crew can't see
10 back to the back of the train?

11 A. Well, not only are you talking about the
12 physical obstructions from the -- in a case like this
13 where we've got a curve and some dirt structure there,
14 the fact that you couldn't see a mile or a mile and a
15 half back on a train or 8,000 foot back. So if a person
16 was indeed crawling through the train at that time, you
17 wouldn't -- you would not be physically able to see them
18 do that.

19 The next one is a young boy it looks like
20 crawling under the train. Certainly this happens at
21 times with young kids where we've got stopped trains
22 again. Not only are you -- they're not expecting the
23 movement. Surprisingly these trains can accelerate
24 fairly quickly, particularly if there's, as was
25 mentioned earlier, a local, a train that does switching,

0155

1 picking up cars, dropping off cars in a local community,
2 that train can accelerate quite fast, and this young
3 person would be in danger of getting run over by the
4 train.

5 The next one, the truck being hit by the blue
6 locomotive, this was a fatal it seems like. I get
7 reports when they happen in daily, I'm getting reports
8 it seems like of either cars or trucks or pedestrians,
9 trespassers at crossings, and obviously very unfortunate
10 for not only the driver of the vehicle but also for the
11 operators of the train having to endure something like
12 this.

13 JUDGE TOREM: In this picture, where would
14 the crossing have been?

15 A. Yes, sir, it's hard to see, but if you look
16 at the end of the train, there's a slight red, and I
17 believe that's a sign. I'm not familiar with where this
18 took place at, so I can't give you an exact, but that
19 would be about where it was at is my guess. Again
20 that's just a pure guess. As you see, the stopping
21 distance is significant. We talked to people based on
22 my experience going as -- I run trains or ran trains at
23 70 miles per hour, and there we're maybe talking 7,000,
24 8,000 feet to stop. So the stopping distance by the
25 time you can see someone, particularly if there's

0156

1 limited sight visibility at that crossing, it's too
2 late.

3 Q. Is that the same conclusion for a train
4 traveling at 60 miles an hour?

5 A. At 60 miles an hour you're talking a mile
6 away, absolutely, depends upon things like grade,
7 curvature, territory, weights, various physical factors
8 come into play.

9 Q. What about a train moving at 30, 35 miles an
10 hour?

11 A. The stopping distance can be significant, and
12 if we're talking about a freight train I assume you're
13 asking about, a freight train at 30 or 35 miles an hour
14 may be three quarters of a mile or more, again depending
15 upon those factors, curve resistance, grade, whether
16 brakes have been applied, whether it's going up hill,
17 various factors like that come into play.

18 Q. So it's safe to say that trains can't stop on
19 a dime?

20 A. Correct.

21 Q. And how about the last photograph here?

22 A. The last photograph is a -- was a fatal as
23 well. And again in this one here I can not tell you
24 where the crossing is at. I see the -- this is a --
25 this is a much lighter train, it's a passenger train

0157

1 obviously. This is a train that stops a lot quicker, a
2 half a mile or three quarters of a mile depending on
3 track speed, because they do go up to 90 miles an hour
4 in different places in the country. So this train, that
5 may be the reflection in the back of the lights, again
6 that would be a guess on my part. Either way you go, by
7 the time the person and the train see each other, it's
8 up to the motorist at that point to stop, yield to the
9 train, or the pedestrian not to be on the tracks.

10 MS. ENDRES: Your Honor, at this point we
11 move to admit Exhibit 12.

12 JUDGE TOREM: Any objections to Exhibit 12,
13 the Operation Lifesaver slides?

14 All right I have that exhibit as 11 pages, it
15 will be admitted.

16 BY MS. ENDRES:

17 Q. Mr. Agee, you've also been handed three
18 photographs of train collisions, which I guess -- I
19 don't know if Judge Torem marked this 13 or 14.

20 JUDGE TOREM: We'll mark those as 14.

21 Q. Can you describe what these pictures show,
22 Mr. Agee?

23 A. Well, let's start with the first one. It
24 looks like some locomotives have derailed, and while we
25 think that it takes a tremendous amount to derail a

0158

1 train, I can tell you from firsthand experience that I
2 was blown off the railroad tracks out of Phoenix,
3 Arizona by a microburst of wind, so we know that
4 sometimes we think that it takes something big to derail
5 a train, but in reality it may not.

6 The second picture with the truck appears to
7 me to be hauling gravel that's all over the front of the
8 locomotive. I have no idea where this took place at,
9 but the carnage is evident that when these type of
10 trucks, and this is one of our target audiences with
11 Operation Lifesaver is the professional drivers,
12 obviously it's devastating when we hit vehicles at a
13 crossing like that, or hit a vehicle like that I should
14 say.

15 The last picture looks like a -- I'm guessing
16 by the tire, well, looking at the fender too, it looks
17 like a piece of farm equipment. And I can relate a
18 personal story in this instance in Fresno, California
19 teaching a class to the California Highway Patrol that I
20 witnessed a big piece, a ten-wheel piece of equipment
21 after it was hit by a train, and the -- it didn't quite
22 look that devastated, it was only a glancing blow, but
23 it still was a significant incident.

24 Q. Are these photographs illustrative of the
25 type of incidents that you've been describing, the

0159

1 potential impact between a train and a vehicle?

2 A. Yes.

3 MS. ENDRES: Your Honor, we would move for
4 admission of Exhibit 14.

5 JUDGE TOREM: Any objections?

6

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

8 BY JUDGE TOREM:

9 Q. Mr. Agee, looking at that last picture again,
10 the way the rails are and the markings, do you have any
11 idea where this would have taken place?

12 A. No, sir.

13 Q. Just looking at the web page address at the
14 top, it appears to be from the United Kingdom. Is there
15 any similarity if this is actually from a British
16 locomotive, I recognize the laws of physics would apply
17 the same regardless of country, is there any indication
18 that this would be different than any other rail
19 intersection in this country?

20 A. I would not say based on what I can see here.
21 I would need to see a bigger picture I suppose, more
22 comprehensive picture.

23 Q. All right, it may just be that it's posted on
24 a British web site and could have been taken in this
25 country or any other, I just wasn't sure if there was

0160

1 something with those rails you could tell me differently
2 than -- they're clearly different than what's in the
3 picture of the gravel truck, which are I think a more
4 traditional thing we're used to seeing in this part of
5 the country, and pretty clearly the locomotives in the
6 first page were BNSF property.

7 A. Yes, sir.

8 JUDGE TOREM: All right, Exhibit 14 is
9 admitted.

10

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

12 BY MS. ENDRES:

13 Q. Now, Mr. Agee, you mentioned earlier in your
14 testimony what has been marked as Exhibit 13 and is
15 titled Prior Driver Performance and Express Attitudes
16 Toward Risk as Factors Associated with Railroad Grade
17 Crossing Violations; are you familiar with this
18 document?

19 A. I have scanned it, yes.

20 Q. And I think you mentioned it in reference to
21 your testimony about driver misperception, or at least
22 that's what I wrote down to myself. I would like you to
23 take a look at page 13, and I'm not going to ask you to
24 agree that the statistics in this study are correct but
25 just whether the analysis illustrates and is in line

0161

1 with your understanding as a railroad safety
2 professional. Specifically I'm going to direct you to
3 the second paragraph on page 13, and it says partway
4 through that paragraph:

5 Drivers in general perceived the
6 likelihood of a crash between a train
7 and a vehicle as somewhat less than 4
8 chances in 10. Drivers'
9 less-than-chance estimates of how often
10 a grade crossing crash was fatal is
11 surprising given that 86% indicated that
12 they correctly perceived the force of a
13 train when striking a car to be
14 equivalent to that of an automobile
15 running over a soda can.

16 Is this statement in line with your
17 understanding and expertise as a railroad safety
18 professional?

19 A. Yes.

20 Q. And I don't mean the 4 in 10, I mean that
21 drivers may underestimate how often a grade crossing
22 crash can be fatal?

23 A. Yes.

24 JUDGE TOREM: Just for the record, this is
25 page 13 as numbered in the report in the upper

0162

1 right-hand corner, and it may not be the 13th page into
2 the exhibit due to the Roman Numeral introductory pages.

3 Q. Did you want to elaborate on that?

4 A. No, I agree.

5 Q. On the next page, which says 14, which may or
6 may not be the 14th page, under drivers' perceptions of
7 train operations, do you see beneath drivers'
8 perceptions of train operations it states:

9 When drivers were asked for their
10 estimates of the time between when the
11 gates go down and when the train
12 actually arrives at a crossing,
13 approximately 1 out of every 4 believed
14 there to be a full 60 seconds. 12%
15 believed they had anywhere from 1 to 5
16 minutes before the train arrived.

17 Is that a concern of motorists' misperception
18 that you understand to be true? And again, not the 1 in
19 4 or 12%, but that in your own experience this is what
20 drivers misperceive?

21 A. Based on my presentations to the public, that
22 is common thinking of the length of time that a train --
23 their perception of train operations, yes.

24 Q. Does that create a problem from a safety
25 standpoint for the railroad?

0163

1 A. It does, because the motorist is misjudging
2 the speed because of the optical illusion part, and so
3 they're taking more risk on, and then they're thinking
4 that they've got more warning time. So when you combine
5 the two, the visual and the perception of time, then I
6 think that is part of the reason why we have some of our
7 collisions, combined with a variety of other things
8 including the second track and not expecting a train on
9 that track and so forth.

10 Q. On the next page, page 15, in the graph there
11 it says, 3 in 10 don't perceive threat of slow moving
12 train, is it your testimony that based on your
13 understanding some drivers do not perceive the threat of
14 a slow moving train?

15 A. Yes, it is.

16 Q. And the last thing I'm going to ask you about
17 in the paragraph below in the middle of page 15, it
18 says:

19 14% of drivers who responded to the
20 questionnaire believed it was possible
21 for a fully loaded train traveling at 55
22 miles per hour to come to a complete
23 stop in 300 feet or less.

24 In your expertise, do you believe that that's
25 an accurate statement, that some drivers believe it's

0164

1 possible for a fully loaded train to stop in 300 feet or
2 less?

3 A. Some people do indeed believe that. They
4 don't understand the physics combining the mass of the
5 speed and velocity of the train, and they do indeed
6 perceive that as being a fact, yes.

7 MS. ENDRES: Your Honor, we would move to
8 admit Exhibit 13, not for the truth of the statistics
9 therein, but as an illustration of Mr. Agee's
10 understanding and experience based on what we talked
11 about.

12 JUDGE TOREM: Any objections to the admission
13 of this for that limited purpose?

14

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

16 BY JUDGE TOREM:

17 Q. Okay, seeing none, I actually have one
18 question, Mr. Agee, about Ms. Endres' questions about
19 drivers' perceptions of train operations back on the
20 page marked as 14. It says:

21 The typical response from those surveyed
22 in the study was a belief that the train
23 would arrive about 30 seconds after the
24 gates had gone all the way down.

25 Is that how you understand this study?

0165

1 A. A full 60 seconds, is that what you're
2 talking about there?

3 Q. About another sentence and a half after that,
4 it says, the most typical response was 30 seconds.

5 A. Oh, okay. And are you asking me is that my
6 belief, or are you saying do I believe the study?

7 Q. First, you already testified, if I understood
8 correctly, that this was an accurate reflection of the
9 general public's misunderstanding about how long it
10 takes for the train to get there after the gates go
11 down; is that correct?

12 A. Yes, sir.

13 Q. What is your understanding as a railroad
14 engineer and conductor and now a safety technician as to
15 the timing of gates, perhaps this morning's incident,
16 the timing of lights then gates then train, what is the
17 most standard used within BNSF for those crossings?

18 A. Well, I would certainly defer to our signal
19 maintainers to give you an exact, but I can tell you in
20 general based on my discussion with signal maintainers
21 and having taught electronics in college with signal
22 maintainers before that, the CFR 49, the Federal
23 standard, requires a minimum of 20 seconds warning prior
24 to locomotives occupying crossing, and based on my
25 discussions with other BNSF employees, it's somewhere in

0166

1 that 30, 32 second range of time before the locomotive
2 occupies the crossing, based on the fact that we don't
3 want to give -- we can't violate the federal law by
4 being under the minimum, but we can't go too far in
5 time, otherwise people are impatient, they want to go
6 around the gates, those type of things.

7 Q. So here if the typical response was they
8 thought it was 30 seconds, that might actually coincide
9 with the reality that BNSF is aiming for of about 32
10 seconds?

11 A. Yes, sir.

12 Q. But that's from the beginning of signals, not
13 from when the gates are fully down as this survey is
14 asking the question?

15 A. The lights are flashing, and then the gates
16 are in the fully lowered position before the locomotive
17 occupies the crossing.

18 Q. And the timing you're measuring is not from
19 when all of the signals are deployed, but from when they
20 begin to deploy?

21 A. Yes, sir.

22 Q. So here the end result that I wanted to be
23 clear about is these people surveyed in the study are
24 greatly overestimating the amount of time that BNSF
25 would aim for for that train to occupy the crossing, as

0167

1 you put it, from when those gates are in their full and
2 lowered position?

3 A. At 60 seconds, yes, they would be.

4 Q. And at 30 seconds, they still would be from
5 the time the gates hit their fully lowered position?

6 A. They would be, yes, sir.

7 JUDGE TOREM: Okay, with those questions, are
8 there any other clarifications or questions about the
9 study before it's admitted?

10 All right, seeing none, then Exhibit 13 is
11 also admitted.

12

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

14 BY MS. ENDRES:

15 Q. Mr. Agee, we've had some discussion about
16 driver misperceptions and evading warning devices, and I
17 want to specifically talk about the configuration of a
18 public crossing in between -- in the middle of a siding
19 track with one main line track where the siding track
20 may allow freight trains to block that crossing
21 unpredictably or for unpredictable periods of time.

22 Does that create an incentive, so to speak, for
23 motorists or pedestrians to ignore warning devices as
24 the train is approaching?

25 A. To make sure I understand your question, are

0168

1 you saying if the train is completely blocking the
2 crossing or if it's separated so the cars can get
3 through?

4 Q. I'm going to get to both, so let's start with
5 blocking the crossing.

6 A. And then repeat your question.

7 Q. Does that give motorists or pedestrians,
8 given that they are aware that trains may block the
9 crossing for unpredictable periods of time, when a train
10 is approaching the crossing and the gates and lights
11 start to activate, does that give the motorists and
12 pedestrians an incentive to try to beat the gates or
13 disregard them?

14 A. In my opinion, yes.

15 Q. And is that so that they don't get stuck
16 having to wait or guess how long the train is going to
17 be parked there?

18 A. In my opinion, yes.

19 Q. What about the safety concerns where a train
20 may be parked on the siding but not fully blocking the
21 crossing, what safety concern is presented there?

22 A. The motorist at times believes that the
23 parked train is the one that's maybe creating the signal
24 activation. And the other one is the sight visibility
25 of a motorist when a train is parked away from the

0169

1 crossing but when a train's approaching at 60 or 70
2 miles per hour, by the time they can see the -- even
3 though the active devices are operating, by the time
4 they can see it, they may have taken on additional risks
5 at that time.

6 Q. You said you were involved with an internal
7 railroad program regarding close calls; did I remember
8 that right?

9 A. Yes, you did. It's the report of unsafe
10 motorists and trespasser program.

11 Q. Can you explain what that program is?

12 A. That program is designed to have our train
13 crews, maintenance folks, our signal maintainers, any of
14 our employees who observe a close call, and we define a
15 close call in our reports, but with a vehicle or a
16 trespasser to report that. And then every one of those
17 are investigated by our special agents or police
18 department, and they follow up on them. And the ones
19 that I can, I follow up on whether it's -- I use them
20 when I go in and talk to the police to explain the
21 gravity of their problem, or I may go into a school and
22 say we've got a trespassing issue, maybe it's the kids
23 and we need to do some education and maybe some of those
24 type things. So I use those reports to help me educate
25 the public in some fashion.

0170

1 Q. Does BNSF take motorist and pedestrian safety
2 at railroad crossings seriously?

3 A. We take that very seriously, and we have a
4 zero tolerance for trespassers, and we are doing all the
5 things we can to consolidate crossings in some cases, to
6 improve crossings, to work with different entities that
7 can help us reduce some of those injuries and fatalities
8 that we see on a yearly basis, yes.

9 Q. And you discussed some of the reasons that
10 drivers may disregard warning devices to try to beat a
11 train, I think you mentioned confusion, misperception of
12 train speed, how does driver or pedestrian impatience
13 factor into that?

14 A. Well, I think from my observations, when the
15 people see me coming, and I've gone down the tracks with
16 a single locomotive and seen them try to beat the train
17 because they are just totally lacking patience, and I
18 think they take more risk when they see a freight train
19 coming. They understand an Amtrak or a Talgo train is
20 not going to occupy the crossing for a significant
21 length of time, but when they see a locomotive freight
22 train coming down the track, they tend to take a little
23 bit more risk to get across and get on about their way.

24 MS. ENDRES: I think those are the only
25 questions that I have for Mr. Agee.

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1 JUDGE TOREM: Mr. Thompson?

2 MR. THOMPSON: No questions.

3 JUDGE TOREM: Mr. Kasting?

4 MR. KASTING: No questions.

5 JUDGE TOREM: And Mr. Logen.

6 MR. LOGEN: I have a few questions.

7

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

9 BY MR. LOGEN:

10 Q. This morning when you were out at the Logen
11 Road crossing, where were you parked?

12 A. I was going from the east headed west, and I
13 stopped on the east side talking to the maintenance away
14 person there, and then I was headed west at that point
15 when the approaching van, the minivan, passed me at that
16 point.

17 Q. Where was the maintenance person parked?

18 A. On the opposite side of the tracks on the
19 east side of the crossing.

20 Q. Were the vehicles clearly marked as railroad
21 vehicles?

22 A. No, my vehicle is not marked as railroad.

23 Q. How about the maintenance person?

24 A. He was driving a red vehicle, and it was not
25 marked as a railroad vehicle, no.

0172

1 MS. ENDRES: Your Honor, I'm just going to
2 object as to the relevance of these questions.

3 JUDGE TOREM: Mr. Logen.

4 MR. LOGEN: Well, I have one further question
5 that would tie this together, if I may.

6 JUDGE TOREM: Please do.

7 BY MR. LOGEN:

8 Q. That would be could this person that went
9 through the warning lights, could they have thought that
10 your vehicle or the other vehicle was the cause that the
11 lights were on or working on the signals was the cause
12 that the lights were on? That's why I was trying to
13 establish that.

14 JUDGE TOREM: Go ahead and answer.

15 A. Again, neither vehicle was marked as BNSF. I
16 have a green Jeep with no markings, and it was a red
17 pickup truck that the other person had. We weren't
18 around the bungalow doing anything there. So in my
19 opinion that was not a contributing factor.

20 JUDGE TOREM: So, Mr. Logen, you were just
21 trying to determine if there was perhaps a reason
22 associated with his presence and another signal
23 technician that could have caused a misunderstanding?

24 MR. LOGEN: Yes.

25 JUDGE TOREM: And I'm taking away from his

0173

1 answer that no, these were just two cars close to but
2 not actively interacting with a railway grade crossing;
3 is that the understanding you're taking away as well?

4 MR. LOGEN: Yes.

5 BY MR. LOGEN:

6 Q. And I'm also understanding that they weren't
7 parked on the right-of-way, they were parked on the
8 road? Because there is no shoulder except on the east
9 side.

10 A. I was driving westbound at that point.

11 Q. Okay. And you said that the lights were on
12 and that the -- had the arm started to come down when
13 the van went through?

14 A. At that point on driving by them and I see
15 the lights start to flash and the van is approaching
16 from 100 feet I suppose, I wasn't looking at the gate
17 arms, whether they had started down at that point, I
18 just know I could see out of the peripheral of my eye
19 the lights were starting to come on, and the person in
20 my mirror I saw go across the tracks, so I wouldn't know
21 if the arms were in transit at that point or not.

22 Q. Is there room on the road to go around the
23 gates, to drive around the gates?

24 A. Well, I really didn't sit there and look to
25 see how far the gate arms crossed the track there.

0174

1 Based on my understanding of the requirements under the,
2 I believe it's under the Manual Uniform Traffic Control
3 Devices, unless it's a one-way street, the gate arms
4 would not cross the entire lane of traffic.

5 Q. So they can not cross the entire lane, so
6 they can only go partially across the lane; is that what
7 you're saying?

8 A. Well, I would defer to people in our signal
9 department or engineer department who are versed in
10 public crossings and the requirements under that manual.
11 I deal with private crossings and couldn't speak as an
12 authority on what the requirements are.

13 Q. Okay.

14 In response to a couple of questions by
15 Ms. Endres, you said that in your opinion that people
16 may tend to drive around the barriers, and if there is a
17 train blocking the intersection or it's separated there
18 or make them try to beat it because they think there
19 might be a train that's going to stop there, is there
20 any opinion, any studies to support your opinion that
21 you're aware of?

22 A. I did not research -- that's not -- I'm
23 basing that only on my observations as a locomotive
24 engineer and a conductor and based on my observations of
25 motorist behavior at some of the crossings where I see

0175

1 them do these things.

2 Q. And you mentioned that you're part of an
3 internal program for reporting trespassers, how long has
4 that been in existence, or how long have trespassers
5 been reported?

6 A. Well, certainly the company officials and
7 employees have an obligation when they see these things
8 at any time to report them. The program where we have
9 initiated with certain cars that the employees use, that
10 program was started in would have been roughly '99,
11 2000, late the '99, 2000.

12 Q. Before that time, was there a policy to
13 report trespassers?

14 A. Yes, sir, our employees have a obligation to
15 report trespassers as well as unsafe vehicular activity
16 even prior to the initiation of the more formal
17 reporting system.

18 Q. Can you tell me why I wouldn't have been
19 reported when I was a kid waving to the engineer
20 standing on the right-of-way?

21 A. Well, sir, sometimes our employees are not as
22 diligent maybe as they should be, and I can't speak to
23 that example or know who that crew was, so I really
24 couldn't give you a fair answer on that.

25 Q. I see. I don't think they blew the horn, but

0176

1 they waved back.

2 You talked about, oh, in kind of your
3 introduction, you talked about striking a number of
4 animals. Can you tell me something more about that, is
5 that noticeable?

6 A. Can you -- I'm not quite sure I understand
7 what you mean by noticeable, can you explain that?

8 Q. If you hit an animal, does the conductor
9 typically notice that an animal's been hit, I mean is it
10 readily apparent?

11 A. As an engineer, the conductor, certainly
12 seeing an animal in front of the train is definitely
13 noticeable and apparent when they don't move, yes, sir.

14 Q. Would that be true at night as well?

15 A. Yes, sir, it would be. The headlights on
16 these locomotives, we're talking millions of candle
17 power per light, a significant amount of luminous light
18 there, so at nighttime, yes, you would see it as well.

19 Q. Are you aware of a train hitting a herd of
20 approximately 120 registered Holstein cattle on the
21 tracks north of here in about 1965, and the report when
22 the engineer got to Mount Vernon was I may have hit
23 something? I was wondering how that could happen if
24 it's that evident.

25 A. No, sir, I'm not aware of that situation.

0177

1 I've lived in Washington state now for just about a year
2 and a half and new to the area and not familiar with
3 that.

4 Q. And how would you say a close call when
5 driving a train is different than a close call say
6 driving an 18 wheeler as far as impact on the driver?

7 A. Well, I have never driven an 18 wheeler, but
8 I would say both of them are victims in my eyes.

9 Q. Okay, I'm going to the Operation Lifesaver
10 slides, the one with the -- where you talk about ratios
11 with the pop can and the car and the train and the
12 tanker.

13 A. Yes, sir.

14 Q. I've seen the Operation Lifesaver
15 presentation at least twice, and I think it's a very
16 good presentation with all the videos and everything.
17 But if this truck were to hit the car, would the damage
18 be significantly different if it was hit in the same
19 way?

20 A. Well, certainly the --

21 MS. ENDRES: Sorry, damage to what?

22 MR. LOGEN: To the car.

23 MS. ENDRES: Compared to the train and the
24 car?

25 MR. LOGEN: Compared to being hit by the

0178

1 train.

2 A. Well, certainly the weight ratios are
3 different. Instead of it being 4,000 to 1, it may be
4 1,000 to 1 or 50 to 1. Certainly the damage is going to
5 be significant with either the locomotive hitting the
6 car or the truck hitting the car. Either way it's going
7 to be significant I would expect.

8 Q. And then going to it looks like the second to
9 the last slide, it's a semi tractor with a blue
10 locomotive, what can you tell me about the sight
11 visibility, how did that contribute to this accident?

12 A. I would not be able to speak to that since
13 these slides were taken from the Operation Lifesaver
14 Incorporated's presentation that we use and have no
15 knowledge beyond what I can see in this picture.

16 Q. Okay. How many tracks are there where this
17 accident happened?

18 A. Again, without knowing where it was at, I
19 would have only what I can see in the picture, which
20 would indicate to me in this instance one track.

21 Q. And then we've got a packet of three pictures
22 here, one at least is Burlington Northern. Do you have
23 any idea if any of these accidents were due to a train
24 being stopped at a siding or a train was stopped, could
25 be seen from the siding, and somebody decided to drive

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1 around the barriers?

2 A. No, sir, I have no background for these three
3 pictures.

4 Q. Going to the North Carolina study, we're at
5 page numbered 13. I'm sorry, I didn't have a question
6 on these.

7 MR. LOGEN: No, I didn't have a question,
8 that was all my questions.

9 JUDGE TOREM: Bear with me just a second,
10 Mr. Agee, while I see if I have any other questions.

11 No, I don't have any questions.

12 Was there any redirect?

13 MS. ENDRES: No, Your Honor.

14 JUDGE TOREM: Any other questions for this
15 witness?

16 Thank you, Mr. Agee, appreciate your
17 testimony.

18 It's now a little after 2:15, do we want to
19 take a quick break before BNSF's last witness.

20 When we come back, we'll have Mr. MacDonald,
21 so we'll take a couple minute break.

22 (Recess taken.)

23 JUDGE TOREM: All right, it's a little bit
24 after 2:30, we'll be back on the record, and as
25 Mr. MacDonald is just getting comfortable, we'll have

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1 him stand up again.

2 (Witness DANNIEL MACDONALD was sworn.)

3 JUDGE TOREM: Thank you.

4 Can you state and spell both your first and
5 your last name for the record.

6 THE WITNESS: Yes, sir, Danniell,
7 D-A-N-N-I-E-L, MacDonald, M-A-C-D-O-N-A-L-D.

8 JUDGE TOREM: Are you ready for some slowly
9 stated questions?

10 THE WITNESS: Yes, Your Honor.

11

12 Whereupon,

13 DANNIEL MACDONALD,

14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:

16

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

18 BY MS. ENDRES:

19 Q. Good afternoon, Mr. MacDonald. Can you
20 please state your job title, who you work for, and give
21 us a brief description of your job duties?

22 A. I'm currently employed by the BNSF Railway
23 Company. I'm the Manager of Engineering for the
24 Northwest Division in Seattle. I'm responsible for
25 delivery of BNSF's capital projects, that includes the

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1 BNSF WSDOT program for passenger services. Responsible
2 for basic engineering and support for the entire
3 division including casualties and other required
4 engineering issues that come up. My territory goes from
5 Keddie, California to Vancouver, British Columbia, and
6 from the Puget Sound to White Fish, Montana.

7 JUDGE TOREM: What's the name of that city in
8 California?

9 THE WITNESS: Keddie, K-E-D-D-I-E.

10 BY MS. ENDRES:

11 Q. Are you familiar with the Stanwood siding
12 track extension project?

13 A. I am. Rick Wagner reports to me, and Rick
14 has been working on this project.

15 Q. How are you individually involved in the
16 project?

17 A. As I stated, Rick works for me, so I have
18 been responsible for working with Rick on the delivery
19 of the project including permitting issues, engineering
20 issues, consultant selection, contract award,
21 engineering design issues, and preparation for this
22 hearing.

23 Q. So you're familiar with the configuration of
24 the crossing and the specifics of the siding track
25 project extension?

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1 A. I am. I've also visited the site and driven
2 the crossings.

3 Q. We heard Mr. Agee testify that trains
4 occupying or blocking a crossing for extended periods of
5 time can create a safety hazard. Is that a safety
6 hazard at the Logen Road crossing once the siding
7 project is complete?

8 A. It would be in my opinion, yes.

9 Q. And why is that?

10 A. Long periods of time, driver expectation is
11 that the train will -- if the driver is conditioned that
12 there are long trains stopped there for an extended
13 period of time, it is typical for drivers to then make
14 the assumption that any train that comes through there
15 will be stopped for a long period of time, and thus in
16 seeing the devices activate would attempt to beat the
17 device and put themselves in a precarious situation.

18 Q. We've heard testimony about issues with sight
19 distance at the Logen Road crossing. Can you just
20 explain whether that creates a safety concern at Logen
21 Road, and if so, why?

22 A. It does. In its current condition, Logen
23 Road has active warning devices, and the sight distances
24 are mitigated through the presence of the active warning
25 device. The sight distances from when I believe it was

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1 Mr. Wagner testified are not even acceptable for BNSF
2 personnel, maintenance way and personnel, to occupy the
3 track using individual train detection. As a means of
4 protection, we had to use a Form B or flagging
5 protection. So the sight distance is limited due to
6 topography and the curve.

7 Q. Mr. Agee also testified of safety concerns
8 where a train may clear the siding track but be parked
9 close enough to block visibility. Will that be a safety
10 hazard at the Logen Road crossing if left open to
11 traffic once the siding extension is complete?

12 A. In my opinion, it would be if the train were
13 blocking to the south, as I believe Mr. Wagner testified
14 would be where the train would hold. If it was a
15 shorter train where Mr. Agee perhaps it was said that it
16 could be traveling one direction or the other, people
17 could assume that that train was what was causing the
18 activation, and if they were clear of the circuit, they
19 would still if the gates come on, people may assume that
20 that's what it was and choose to go around it rather
21 than wait for that slow train.

22 Q. So is it your testimony today that a train
23 parked close to the crossing but not all the way across
24 it can still activate gates and lights if those are left
25 at the crossing?

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1 A. A train in approach to an active crossing
2 would trigger the crossing warning circuit, but that is
3 based on the signal system design, so a train in
4 approach to a crossing would trigger that. If the train
5 stopped in the approach to the crossing, the crossing
6 devices would eventually recover. That is how they are
7 designed. We would to have defer to the signal
8 department if you wanted any more specific on that.
9 They are set to recover after a certain time once the
10 train ceases movement in that crossing circuit.

11 Q. And Mr. Agee mentioned the Manual on Uniform
12 Traffic Control Devices or MUTCD, are you familiar with
13 that manual?

14 A. I am. I currently sit as an associate member
15 to the National Committee on Uniform Traffic Control
16 Devices, which is an organization that supports the
17 development of that manual. It's -- I also am the
18 secretary to the light rail, excuse me, Railroad and
19 Light Rail Technical Committee, which is Parts 8 and 10
20 of the manual, so I've been extensively involved in the
21 current revision for the past several years on the
22 revisions that are coming out in the 2009 MUTCD.

23 Q. Now I want to focus you for a minute on the
24 configuration at Logen Road. Once the siding track
25 extension is complete and if the road is left open to

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1 public travel, do you know of any warning devices that
2 the MUTCD says would make that crossing acceptably safe
3 for public travel?

4 A. The concern I have with that is the long
5 periods of blockage. So the devices would be left in an
6 activated state for as long as that train was there,
7 which causes a driver perception issue based on the fact
8 that most drivers assume that the lights come on, the
9 gates go down, the train proceeds through the crossing,
10 and then the gates recover. But if you're left in a
11 situation where you have an extended period of time
12 where the gates are on and active, that would be
13 contrary to what we strive to show at all the other
14 crossings in the state and across the system, which is a
15 consistent message of that traffic control device, which
16 is a tenet of the uniform traffic control, the Manual on
17 Uniform Traffic Control Devices, is to get uniformity
18 across not only the city, the county, the state, but all
19 50 states.

20 Q. Now you just discussed a situation where the
21 devices would be activated or perhaps falsely activated
22 if a train is, maybe I'm not using the right term, but
23 be activated if a train is parked close enough to the
24 crossing; is that correct?

25 A. Correct. If the train were parked over the

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1 island circuit, which is the circuit directly that
2 encompasses the crossing itself and extends for some
3 distance out based on signal design, that crossing would
4 not recover.

5 Q. So would the bells keep clanging --

6 A. They would.

7 Q. -- that whole duration?

8 A. Yes.

9 Q. Are you familiar with 4-quad gates?

10 A. I am.

11 Q. Would the installation of 4-quad gates at
12 Logen Road make the crossing acceptably safe for public
13 travel once the project is complete?

14 A. I have concerns and reservations given the
15 current geometry of that is the answer to that, yes. I
16 would say at this point my opinion would be no. The
17 4-quadrant gates would be, on that narrow of a road,
18 potentially would be an issue. The application of the
19 4-quad gate is typically seen in quiet zone applications
20 now or in -- that's a typical location for it.

21 Q. Do you know a ball park cost to install
22 4-quad gates?

23 A. I believe I saw a correspondence recently
24 that is approximately \$350,000 for the installation of
25 4-quadrant gates. I could confirm that, I would have to

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1 confirm that with our signal department if you wanted a
2 very specific cost, but my understanding is
3 approximately \$350,000 for that installation.

4 Q. Can a person lift up a gate at a railroad
5 crossing when it's lowered if they wanted?

6 A. Yes.

7 Q. So it's light enough for one person to lift?

8 A. Yes.

9 Q. Is that a problem from a safety perspective?

10 A. It is.

11 Q. Why?

12 A. If someone wanted to lift a gate, there's
13 nothing that forces that gate to remain in the down
14 position.

15 Q. Is it fair to say that warning devices are
16 meant to deter motorists from having a run-in with a
17 train but can't prevent one from doing so or acting
18 recklessly?

19 A. Correct, they are a traffic control device
20 just like a stop sign can not prevent someone from
21 running through an intersection or running a red light.
22 They are a traffic control device intended to provide
23 the motorist with a uniform message about the traffic
24 condition they're about to experience at that
25 intersection.

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1 Q. How does the sight distance at Logen Road
2 affect your analysis of whether traffic devices can make
3 it acceptably safe for public travel once the siding
4 project is complete?

5 A. The active warning devices would have to
6 remain because of the sight distance issue, and the
7 second train issue or the blockage issue is the safety
8 issue. There is not enough sight distance for you to
9 traverse that crossing in my opinion without the active
10 warning devices being there.

11 Q. Does the safety concern with sight distance
12 change if the crossing is being used by slow moving farm
13 equipment for example?

14 A. In the current configuration with active
15 traffic control devices, they would have, I believe
16 Mr. Agee was testifying as to our standard what we
17 consider normal for operation of the gates and lights,
18 there would be time for that farm equipment or any just
19 say highway equipment to go across that crossing. The
20 bells, gates, and lights, lights would flash, gates
21 would descend, there's a predetermined time for that to
22 transpire. So in the current condition, you could take
23 a piece of farm equipment across that crossing or any
24 public crossing.

25 Q. So it's your testimony that the current

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1 configuration, if a piece of farm equipment is entering
2 or about to enter the crossing and the signals begin to
3 activate, that farm equipment would have time to clear
4 the tracks before the arrival of the train --

5 A. I would have --

6 Q. -- in theory if they're driving at a --

7 A. I would have to defer and start looking at
8 things like acceleration, are they at a stop, are they
9 going full speed, what is that full speed. So I don't
10 want to testify yes, because I'm sure someone could find
11 a piece of farm equipment that goes 1 mile an hour, and
12 then I would be -- I wouldn't be able to testify to that
13 in the affirmative, so.

14 Q. And I understand with that, can you -- what
15 if there were two tracks at that crossing?

16 A. The time to clear to the other side of the
17 track would essentially be increased by the time frame
18 of 15 foot track centers plus an additional say 6 feet
19 to clear to the far side of that crossing, so it would
20 be increased.

21 Q. Is cutting the train to let traffic go
22 through a feasible option at Logen Road?

23 A. If the train were to occupy the crossing and
24 it was required to be cut for some reason if it was a
25 public crossing, I would say no, it is not feasible or

0190

1 practical for us to do on a regular basis due to the
2 safety issues we would face with our train crews. We
3 operate 365 days a year in all hours 24 hours a day,
4 snow, rain, that exposes our train crews to severe
5 hazards of being out in the elements and walking
6 parallel to the mainline track.

7 Q. How long does it take to cut a train, or
8 maybe first you can explain the process of cutting a
9 train?

10 A. I can give you the process. How long it
11 would take would be very dependent on where the train
12 was -- where in the train you wanted to cut it, where --
13 how far you were walking, what the rate of the speed of
14 the person walking it was. There's too many variables I
15 guess for me to answer that. But the process would be
16 potentially pull up to the crossing and have one of the
17 train crew members dismount. They have to stop, come to
18 a complete stop, to have that person get off the train.
19 Then they would have to pull the train forward to
20 whatever position and then cut the train at the location
21 where they wanted it cut. And that train part would
22 continue on and clear the crossing. The individual left
23 on the ground would have to walk back and secure a
24 certain number of hand brakes on that train in
25 compliance with our operating rules, so that would be

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1 another variable, what type of train, what the grade
2 it's on, et cetera to make sure it's safe. Then that
3 individual would have to move forward and get back to
4 the cab.

5 Q. And what's the process for recoupling a train
6 that's split?

7 A. Essentially the process in reverse. That
8 individual would have to walk from the cab back to the
9 location. They would probably -- my understanding is
10 they would make the joint first, then untie the hand
11 brakes. They may have to do an air test depending on
12 how long those trains have been -- the cars were left
13 off the air. If that's the case, the individual would
14 have to walk the train it's my understanding four times,
15 twice on each side, the entire length to make sure that
16 the air is set and released on the brakes. But those
17 are operating issues, we can find out more in the
18 operating rules, but that is my understanding of what it
19 would take to cut the crossing in a certain case.

20 Q. So based on your understanding and
21 background, is it fair to say that requiring a train to
22 be broken to allow public travel could interfere with
23 railroad operations?

24 A. It would at this location, yes.

25 Q. Do you have involvement in the creation of

0192

1 private crossings?

2 A. As manager engineering, leases and issues
3 involving property rights for the company do come across
4 my desk, yes.

5 Q. Is a private crossing at Logen Road a
6 feasible solution to Mr. Logen's concerns?

7 A. Based on my review of the crossing today, if
8 a private crossing application were to come in, I would
9 recommend denial of that application due to the safety
10 concerns at that location.

11 Q. Can you explain why?

12 A. The sight distances as we spoke about
13 earlier, I do not have a -- I didn't wheel -- I didn't
14 have track protection this morning, so therefore I did
15 not go out on the track. The sight distances appeared
16 from the stopping point to be approximately 400 feet to
17 the south and maybe 800 feet to the north, that's an
18 estimation. So moving at maximum track speed, the time
19 frame that an individual stopped there without the
20 active warning devices would have prior to the arrival
21 of a train would not be sufficient in my opinion to
22 safely traverse that crossing.

23 Q. I believe you were here this morning for
24 Mr. Wagner's testimony?

25 A. I was.

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1 Q. He addressed the SEPA issue.

2 A. Yes.

3 Q. Did you have anything to add to that
4 discussion?

5 A. We did receive notice this afternoon that the
6 Corps permit we were waiting on that was in -- first in
7 queue ahead of the Stanwood project should be issued
8 tomorrow morning at 9:00. I believe it was picked up,
9 may have been picked up this afternoon or it would be
10 prepared by 9:00 tomorrow morning, which would mean that
11 our Corps -- the staff that we have at the Corps -- the
12 Corps staff that was working on this project for the
13 company would be available to move on to the Stanwood
14 project.

15

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

17 BY JUDGE TOREM:

18 Q. Did I understand that the permit for the
19 Stanwood project would be issued tomorrow, or was that
20 for a different project?

21 A. That was for the Everett project, Your Honor.

22

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

24 BY MS. ENDRES:

25 Q. What does that mean to this project, if

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1 anything?

2 A. That they will start working on the
3 environmental determination on this project at the Corps
4 of Engineers, which was necessary prior to the SEPA
5 document being filed with the Department of Ecology,
6 because that's one of the main components is to ensure
7 that compliance.

8 Q. Is that permit before the Corps part of the
9 Logen Road closure analysis?

10 A. It is part of the overall project, so it
11 would be -- the SEPA document I'm sure will -- it's my
12 understanding the Logen Road closure is included in the
13 SEPA document, but the Corps permit is specifically for
14 environmental issues.

15 Q. Once the siding track project is complete, if
16 the crossing was left open to public travel, in your
17 background and expertise would you characterize that
18 crossing as exceptionally hazardous?

19 A. I would characterize it as exceptionally
20 hazardous due to the fact that we will block it for an
21 extended period of time, which could lead to driver
22 behavior which may -- could lead to unacceptable
23 consequences based on driver behavior.

24 MS. ENDRES: I think those are all the
25 questions I have for Mr. MacDonald.

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1 JUDGE TOREM: Mr. Thompson?

2

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

4 BY MR. THOMPSON:

5 Q. Just to follow up on the SEPA issue, so the
6 Corps of Engineers it sounds like personnel who are
7 working on the Everett project are now finished with
8 that and ready to work on the Stanwood project?

9 A. That is correct.

10 Q. And it sounded like they have to complete
11 their work before DOE can begin its SEPA work?

12 A. That is my understanding, and we do retain an
13 environmental consultant to steer us through these
14 issues, because it's a -- it changes with regulations at
15 different times. But my understanding is that yes, they
16 have -- now they are free to work on this, and once the
17 Corps has made a determination regarding the mitigation
18 of those issues, wetland impacts, that can be included
19 in the SEPA process. We -- so that is where -- that's
20 where it got stopped is without that determination of
21 the mitigation and the wetlands impacts and the
22 environmental issue, there was no way for the DOE to
23 move forward with its process.

24 Q. Okay.

25 And I don't know if this is your area of

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1 expertise, but is it your expectation then that the
2 Department of Ecology would then do a checklist and make
3 a determination?

4 A. That is correct, we will go through the SEPA
5 process with the Department of Ecology as the lead
6 agency.

7 MR. THOMPSON: Okay, thank you, that's all I
8 have.

9 JUDGE TOREM: Mr. Kasting.

10 MR. KASTING: Still nothing.

11 JUDGE TOREM: All right.

12

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

14 BY JUDGE TOREM:

15 Q. A couple of questions before I turn you over
16 to Mr. Logen. You mentioned that a private crossing
17 application would be denied due to safety reasons, and
18 it sounded like the main issue would be sight distances;
19 is that correct?

20 A. That is correct.

21 Q. And you estimate 400 feet visibility to the
22 south and 800 feet to the north?

23 A. That was my estimation, Your Honor, without
24 wheeling it or using any other instrument to verify
25 that.

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1 Q. What is the standard, if there is one, for
2 you to approve an application if the only issue is sight
3 distance? I guess in other words, what's a safe sight
4 distance both north and south to allow approval of a
5 private crossing?

6 A. I would say there is no standard for it, Your
7 Honor. The issue would involve train speed, train
8 dynamics, vehicle use, the intended use of the crossing,
9 was it seasonal, was it something that was for some
10 other private regulated entity, so there's lots of
11 variables. Based on my review of this crossing in
12 particular is what I made my statement that I would
13 recommend denial of this due to safety issues at this
14 location.

15 Q. Well, let's just cut right to the chase then,
16 what would it take sight distance here for you to change
17 your mind?

18 A. Boy, an absolute, several thousand feet at
19 minimum.

20 Q. In each direction or total?

21 A. In each direction, Your Honor, due to the
22 train --

23 MS. ENDRES: Your Honor, are you explaining
24 or -- are we talking about the situation the current
25 configuration with just one mainline track or the

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1 configuration after the siding track project is complete
2 where we'll have trains parked across on the siding
3 track as well as using the mainline track?

4 Q. Good clarification. I'm asking in the
5 condition of if the project were completed in the next
6 two-track configuration, because that's the only reason
7 you would have a private crossing application, that's
8 the implication I got this morning was that right now
9 Mr. Logen, as the driver of the minivan that ran the
10 lights this morning did, can cross there as a public
11 crossing, there would be no reason to have a private
12 crossing, but for clarification we're talking about
13 sight distances with the modifications planned here.

14 A. I have reservations, Your Honor, if you could
15 actually safely build a crossing there given the
16 curvature and the direction of travel from the east with
17 the train blocking that even if the train were split. I
18 don't know that you could safely work -- you could
19 safely construct a crossing at this location.

20 Q. So part of your testimony earlier was that at
21 this particular current configuration with only one
22 track, the only way to make this a safe crossing is with
23 an active warning device?

24 A. That is correct.

25 Q. Now you mentioned 4-quad gates are typically

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1 used in a quiet zone, can you elaborate on what a quiet
2 zone is?

3 A. 49 CFR part 222, that's an established rule
4 by the FRA for the establishment of quiet zones,
5 commonly referred to as the train horn rule, an act of
6 Congress that the FRA create that rule. And in that
7 rule, it was set out over I believe six or eight years
8 it took to craft that rule, it sets out the standards
9 for a public entity to declare a quiet zone essentially
10 where a train does not blow its horn, so it's a whistle
11 free or a horn free zone.

12 Q. And to facilitate that elimination of the
13 obligation for an engineer to sound the train horn,
14 you're suggesting I believe by your testimony that a
15 4-quad gate can be a factor in making the crossing, the
16 existing crossing there, a no-horn crossing?

17 A. It could be a factor, Your Honor, you are
18 correct. It is outlined as a supplemental safety
19 measure, an SSM I believe in the train horn rule. I
20 would have to defer back to the appendix which the
21 devices are listed to verify that, but it is -- that is
22 one of the safety measures that could be put in place at
23 a location where a quiet zone is desired.

24 Q. So when you testified earlier that these
25 4-quad gates are typically used in quiet zones, it was

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1 in relation to that rule as a supplemental safety
2 measure?

3 A. That is correct, Your Honor.

4 Q. Is there any reason that a 4-quad gate
5 couldn't be used here to maintain Logen Road crossing
6 and essentially leave it open?

7 A. The traffic control device, the flashing
8 lights and gates, driver expectation and the use of
9 those is for blockage of crossings by trains that are
10 passing through. That is the common expectation that
11 individuals have. The train horn rule goes on to set
12 out actually requirements for night time closures, I
13 believe it's from 10:00 p.m. to 7:00 a.m., and active
14 warning devices are not included in those longer term
15 closures so -- and as a part practically speaking based
16 on my experience in the industry, they are not -- active
17 devices are not used at locations where trains routinely
18 block for extended periods of time, because driver
19 expectation is then counter to what the train operations
20 will do, and it creates an issue where you're setting
21 the driver up to see the gates go down, the lights go
22 on, but the train doesn't move for an extended period of
23 time, and that doesn't create a uniform application of
24 that device.

25 Q. Let me ask it from a different angle then,

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1 two different questions. Wouldn't driver expectations
2 be addressed by appropriate signage at a crossing
3 indicating the potential length of delay?

4 A. The information could be put out there on a
5 sign. However, motorists -- there are numerous signs
6 placed -- numerous traffic control devices placed that
7 motorists disregard, therefore it's up to the individual
8 motorist to take heed of that traffic control device or
9 the information provided thereon. In my opinion, no, it
10 would not address it by telling them how long it would
11 -- it potentially could be blocked.

12 Q. Back to the 4-quadrant gates, is there any reason
13 aside from the driver expectation one you've already
14 described that on this apparently 15 foot wide roadway
15 4-quadrant gates would not be particularly effective in
16 sealing off the crossing for as long as it takes for the
17 train to clear?

18 A. I have concerns with the exit gate operation
19 on that roadway. If the -- I believe there was a
20 question asked earlier about how far the gate arms
21 extended across the roadway. Mr. Logen may have asked
22 that question or made reference. The way I heard it was
23 they essentially extended farther across than mid way.
24 Part of a 4-quadrant gate system is typically a vehicle
25 presence detection, which keeps the exit gate in the

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1 upright position until such time as the vehicle has left
2 the crossing area. If the entrance gate was already
3 down and created a barrier, you could essentially trap
4 someone inside there. The exit gate could be up, but if
5 that other gate goes down, and I believe Mr. Logen
6 mentioned several times or asked questions about could
7 you drive around two cars on a 15 foot roadway, that
8 would create a safety issue that I would find
9 unacceptable. We could create a trapping situation for
10 an individual between the gates.

11 Q. So what I'm understanding is the design
12 mechanisms built into the typical placement of
13 4-quadrant gates presume no interference on the exit
14 zone from the opposite entry gate?

15 A. That is correct. They do factor in certain
16 downstream effects of signals or traffic cues, those are
17 issues to be addressed during the diagnostic review.

18 Q. But in this case with a roadway that may be
19 already partially obstructed by the entry gate, it may
20 create a trapping situation in its current 2-quadrant
21 gate configuration that would only be further made a
22 problem by 4-quadrant gates?

23 A. That could be potentially correct. The
24 flashing lights, my understanding of the statute on
25 flashing lights is when the flashing lights come on,

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1 they have the same implication as a stop sign.
2 Therefore, the individual should stop when the flashing
3 lights come on, the gates would descend. So if you were
4 in compliance with the operation of the traffic control
5 device, you wouldn't have that issue of the potential to
6 hit the gate on the way down. However, if you did hit
7 the gate on the way down, it would sheer, so you could
8 break that gate off in the current configuration.

9 Q. Let me ask about the current configuration.
10 My understanding of your testimony raises perhaps a
11 current safety issue, do you know how long the gates
12 are, what the length of the design on the arm is?

13 A. I did not go and review the FRA diagrams at
14 this location with the signal maintainer, Your Honor, so
15 I would have to say no, I do not.

16 Q. All right. So there's not a standard length
17 or a range of lengths?

18 A. I believe there is -- there is a range of
19 lengths. I don't know the minimum length. The maximum
20 length is typically around 28 feet. They typically go
21 out to -- I believe the MUTCD says that they have to
22 cover the approach lanes of the roadway.

23 Q. All right, so each one is engineered to fit
24 its specific situation?

25 A. That is correct, Your Honor.

0204

1 Q. Might there also be a minimum length that
2 might lead to the situation that Mr. Logen describes as
3 it already mostly covers the roadway?

4 A. I assume there could. Our signal -- I would
5 have to verify counterweight and other mechanical
6 aspects of that, Your Honor, to answer you definitively,
7 but there would most likely be a practical minimum
8 length for that gate.

9 Q. All right. So despite what might be
10 appearing to be even a practical safety issue that
11 currently exists if the entry gates drop at Logen Road,
12 I'm referring to the potential for entrapment if the car
13 is on the tracks as the opposite gate comes down causing
14 some blockage of the roadway or difficulty in exiting,
15 despite that, you're not aware of any accidents at this
16 location?

17 A. I am not.

18 Q. All right. But again, the root of these
19 questions was a 4-quadrant system you think is not
20 appropriate for this intersection?

21 A. I would not recommend a 4-quadrant gate at
22 this intersection in lieu of closure, Your Honor, no, I
23 would not, and I would not advocate for a 4-quadrant
24 gate at this location.

25 Q. And you also don't see the possibility of a

0205

1 private crossing addressing Mr. Logen's need to move
2 equipment from one side to the other?

3 A. I do not, Your Honor. I have severe
4 reservations about the sight distance, the ability to
5 travel across both tracks safely and bring Mr. Logen
6 home at the end of the day. I don't -- I'm concerned
7 about his safety as well as the safety of our train crew
8 to make that movement safely.

9 Q. All right, and I know Mr. Logen will have an
10 opportunity to testify this afternoon as to just what
11 his desires are and what his current patterns are. Are
12 you going to be around this afternoon to hear his
13 testimony?

14 A. I will, Your Honor.

15 Q. So if we need to recall you based on what he
16 testifies to, you would be available to do that?

17 A. I will stay here, Your Honor, yes sir.

18 JUDGE TOREM: Okay, I appreciate that, thank
19 you.

20 Does that raise further questions before I
21 have Mr. Logen ask his cross-exam?

22 MS. ENDRES: I do have one brief question
23 that popped into my head.

24

25

0206

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

2 BY MS. ENDRES:

3 Q. Judge Torem was asking you about 4-quad
4 gates, and you testified that is it exit gate, am I
5 using the right term?

6 A. Exit gate is the gate --

7 Q. Sort of entrance gate and --

8 A. There's an entrance gate in the direction of
9 travel. The first gate you would go across would be
10 considered the entrance gate. The second gate on the
11 far side of the crossing would be considered the exit
12 gate.

13 Q. Do the exit gates come down before, after, at
14 the same time as the entrance gates?

15 A. They are typically delayed.

16 Q. Is it possible that a motorist who was trying
17 to beat 4-quad gates could do so by driving through the
18 exit gate before it lowered?

19 A. Yes, there's actually a provision, I believe
20 it's in the train horn rule, that discusses that and
21 actually advocates for the installation of medians to
22 avoid that, roadway medians, to avoid that learned
23 behavior. If they realize that they can do that and
24 drive through and keep the gates up, they do find a way
25 to make an S-curve through the crossing, and you could

0207

1 essentially defeat the 4-quadrant gate system by doing
2 so.

3 Q. And we've heard testimony that the roadway is
4 I think 15 feet, correct me if I'm wrong, is a median
5 barrier an option here?

6 A. I would have to defer back to the County as
7 to what their standard roadway width would be for the
8 installation of a roadway median, but my experience
9 would be that would not be enough room to put a median
10 at this location. Even if the median took up 1 foot and
11 you split the road in half, you would have lanes that
12 could potentially be 7 feet. But I would have to defer
13 back to the County to verify if they would accept a
14 roadway with 7 foot.

15 Q. I'm trying to think of the best term for
16 this, are you familiar with the term follow the leader
17 motorist behavior at railroad crossings?

18 A. I'm trying to --

19 Q. Have you ever seen a situation where one
20 motorist may attempt to beat a gate and another one
21 follows and so on and so forth?

22 A. I'm seen video of that. I don't think I've
23 ever seen it personally.

24 Q. Is that a potential concern if the Logen Road
25 crossing is to remain open?

0208

1 A. If the individuals chose to run around the
2 gate, yes. Because if the second car -- if the first
3 car made it because they went right when the gate
4 started, the second car followed them, yes, I would have
5 a serious concern that the second car could be met in
6 the crossing by the lead engine of the train.

7 MS. ENDRES: Thank you.

8 That's all I have, Your Honor.

9 JUDGE TOREM: All right, Mr. Logen, your
10 cross-exam.

11 MR. LOGEN: Thank you, Your Honor.

12

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

14 BY MR. LOGEN:

15 Q. Would the installation of a 4-quad gate at
16 Logen Road assuming that we've got two tracks there
17 improve the safety over the present crossing with one
18 track and arms?

19 A. In my opinion, no. 4-quadrant gates are
20 typically used to replace the sounding of the locomotive
21 horn, which is typically blown at Logen Road currently,
22 so I would -- in my opinion, no.

23 JUDGE TOREM: Is that on que for the record?

24 We'll note for the record we can hear a train
25 horn blowing now, and Mr. MacDonald is smiling broadly.

0209

1 It's amazing how these things work out.

2 THE WITNESS: Yes, Your Honor.

3 BY MR. LOGEN:

4 Q. No, I think this is a question for staff
5 rather than you.

6 There was just a question about follow the
7 leader mentality of drivers, what do you think the
8 chances of that happening with 140 cars per day
9 occurring at the Logen Road crossing?

10 A. I guess you're asking me to speculate, but
11 given that Mr. -- what Mr. Agee observed this morning in
12 terms of an individual running the lights, I would say
13 it's just as -- it could happen at that crossing today,
14 tomorrow, or the crossing here in town today or
15 tomorrow. I won't give you a number in terms of
16 percentage on that, but is it a possibility, yes, sir, I
17 think it is.

18 Q. You've testified about the sight distance at
19 Logen Road, what's the sight distance at Dettling Road?

20 A. Dettling Road has active crossing control
21 devices and is expected to remain a public crossing, so
22 I did not stop and do a sight distance analysis on that
23 roadway.

24 Q. Mr. Wagner testified that, I think it was,
25 testified that that's also on a curve, so I would assume

0210

1 that there's limited sight distance; is that a safe
2 assumption?

3 A. I would have to look back at the track charts
4 or go visit it in person, but that's -- on a curve with
5 active warning devices would implicate to me that yes,
6 there is potentially some sort of sight obstruction in
7 one of the quadrants in approach to that crossing.

8 Q. If there's trains parked on the siding, you
9 testified that people will -- they will change their
10 behavior because of the possibility of the crossing
11 being blocked by a train, and would you see any change
12 in behavior in drivers that see trains parked on the
13 siding just south of Dettling Road, would they tend to
14 also try to beat the train if it looked like it was
15 either moving very slowly or stopped?

16 A. There is -- I guess driver behavior, they
17 could -- anyone could expect to do anything, sir. So if
18 that is a perception of someone that is late and they
19 think that's what the issue is, could they make that
20 move, yes, sir, they could. Could they be conditioned
21 over time to do that, it would depend on what they saw
22 over time. But it is a possibility that someone will
23 get in their mind every time they see a train it will go
24 slow, just the same as someone could take the operate
25 approach and say every time this goes down it's just

0211

1 Amtrak going to go through here at 8:00 in the morning,
2 I'm okay, it's just Amtrak. So I would say there is a
3 possibility for both, but I understand what you're
4 asking.

5 Q. Thank you.

6 Is there a standard distance that a train
7 parks from a crossing?

8 A. I believe Mr. Wagner testified earlier that
9 it was 250 feet, and that is my recollection as well.
10 By our general code of operating rules I believe it
11 states where practical to position standing cars and
12 locomotives 250 feet from a public crossing.

13 Q. At what distance is the signal operated at
14 Logen Road?

15 A. The approach circuit, sir, in the current
16 configuration?

17 Q. Yes.

18 A. In the current configuration, it could extend
19 out for -- in order to achieve the warning device times
20 that we have set by our signal department, the shunts,
21 the terminating shunts could be out several thousand
22 feet, 4,000, 5,000, 6,000 feet for 79 mile an hour
23 locomotive. I would have to verify that, Your Honor,
24 with the actual diagrams held in the bungalow for the
25 FRA compliance, but they could be out several thousand

0212

1 feet.

2 Q. Okay.

3 A. Actually I won't say they could be, they are
4 set out several thousand feet possibly.

5 Q. Would those shunts be set out a different
6 distance on the siding as opposed to the main line?

7 A. The siding has a different track speed. It
8 would be designed for a different track speed, so yes,
9 they would be set for a different -- they're set for the
10 track speed or the maximum -- the class of track or the
11 track speed, whichever governs that location.

12 Q. So if a train is parked 250 feet from the
13 intersection, from the crossing and on the siding, would
14 that typically operate the crossing signals?

15 A. I believe I testified earlier that when the
16 train entered the approach circuit, it would activate
17 the devices if it was -- the way they work -- and I will
18 try to -- I'm not a signal -- I don't work for the
19 signal department, but I will give you my understanding
20 as the engineering manager of how the signal works in
21 approach. The shunt is set out at the maximum speed
22 that the train could approach the crossing at, and then
23 it's determined that you need so many seconds for the
24 equipment to sense the train. It works on an AC
25 circuit, so you have a rate of change of impedance. So

0213

1 basically says how fast am I decreasing this circuit
2 essentially. It's all electronic so it's not a -- so
3 when it gets there, it says, if the train is
4 decelerating at a rate that it thinks it will never
5 reach the crossing, is there a possibility that it would
6 not activate that crossing? Yes, that's a possibility.
7 But if it senses it, it doesn't know that it's
8 decelerating, it could activate the crossing, and then
9 the train would continue to decelerate and then stop.
10 Then after a certain amount of time where there is no
11 movement towards the crossing, the crossing warning
12 devices would recover, and the road would be opened
13 again.

14 Q. Okay. So that could be true at Logen Road
15 with a shorter train than the long ones we're talking
16 about, wouldn't it also be true at Dettling Road with a
17 longer train on the siding?

18 A. It's actually true at any crossing that has
19 active warning devices with constant time warning
20 devices. The circuitry that would detect the approach
21 of the train, any crossing on our system that has that
22 logic in it, it would be a possibility, sir.

23 Q. When you add the second track, will the sight
24 distance be increased?

25 A. No, the sight distance would be decreased

0214

1 because of the possibility that the track -- the train
2 would be -- a train or a part of a train would be
3 obstructing views of that crossing. If it's just a
4 purely geometric question that I'm putting the next
5 track out 15 feet, could I look down the track and see
6 incrementally further based on the sight triangle?

7 Q. Clearing the trees and everything else.

8 A. Well, actually at Logen Road we are working
9 on the other side to avoid environmental impact, so I
10 don't know that we're going to do anything on that -- in
11 those quadrants on the Logen Road, I'm sorry, on the
12 east side. On the west side when you approach, you
13 would have -- coming from the east, would your sight
14 distance potentially be increased, yes. Coming from the
15 west, would it be increased, I would have to think
16 through that to say -- I would have to run the -- draw a
17 picture or something on that.

18 Q. Okay.

19 A. And verify that.

20 Q. So safe to say it may be increased, may be
21 decreased then depending on the direction?

22 A. Depending on the direction, the condition,
23 what's on the track, what's not on the track, so those
24 issues would all come into play, sir, yes.

25 Q. You testified that keeping the Logen Road

0215

1 crossing open would hamper railroad operations, at least
2 that's what I jotted down here. Help me understand how
3 that would hamper operations if the train is going to be
4 parked there for hours, which we've also heard?

5 A. Correct, it would. So if -- however, there
6 would be -- we would most likely end up in discussions
7 regarding the statutory requirement that we not block a
8 public crossing, and therefore we could not occupy that
9 crossing for extended periods of time without having
10 required to perhaps cut the crossing or come to some
11 other agreement on that.

12 Q. As I recall, that requirement isn't -- it's
13 when practical I believe is how it says as far as
14 blocking grade crossing. I'm looking for it here.

15 A. And that may be. The larger -- the safety
16 concern is with the train parked on the crossing, an
17 individual either attempting to beat the train ahead of
18 time or driving into the side of the train would create
19 a safety issue as well, which would further impede
20 railroad operations if there's a collision at that
21 location.

22 Q. And you mentioned it was a statutory
23 requirement, isn't it in fact a WAC rule?

24 A. It may be, I may have misspoken, it may be a
25 rule and not a statutory requirement, so I will withdraw

0216

1 my testimony to that effect and let -- we can do further
2 research on where that actually comes in, Your Honor, I
3 apologize.

4 Q. And it's been my experience that WAC rules
5 can be waived; would you agree with that?

6 A. I believe there is an administrative process
7 in the state of Washington to address administrative
8 rules, yes, sir.

9 Q. Now you talked about the sight distances
10 being 800 feet to the north and 400 feet to the south,
11 yet we heard from Mr. Wagner that from 271st Street he
12 could see Logen Road, which is considerably more than
13 400 feet.

14 A. I don't believe I heard Mr. Wagner -- I did
15 not hear that myself, sir. I heard him say that towards
16 Logen Road it disappeared around the curve is what I had
17 heard. Now I would have to defer to, Your Honor, the
18 testimony of Mr. Wagner for that.

19 MS. ENDRES: Can I ask for clarification, are
20 you asking about Logen Road or the Logen Road railroad
21 crossing?

22 MR. LOGEN: The crossing, yes.

23 BY MR. LOGEN:

24 Q. I was a little bit confused about the, maybe
25 I understand it more, because in your answer to one of

0217

1 my earlier questions you said that you would classify
2 this as extremely hazardous due to driver behavior, and
3 I was having a hard time correlating that with there's a
4 train blocking the road, how can it be hazardous, and
5 we're talking, you know, a WAC rule that says you can't
6 block it, and so that's why it's got to be closed, so
7 I'm trying to understand this.

8 A. Just because the train occupies the crossing
9 doesn't prohibit someone from driving into the side of
10 the train, so I guess that's the other safety aspect
11 that I want to make sure I address is the presence of
12 the crossing in and of itself creates a condition
13 whereby an individual, whether paying attention or not
14 or distracted, could literally drive into the side of
15 the train, and I believe there's ample occasions of
16 that. There's actually on I believe on the accident
17 reporting forms there's actually a box it happens so
18 often that says driver drove into train or something to
19 that effect, so that's a safety concern that any warning
20 device, anything short of closure or grade separation
21 would not address.

22 Q. In a situation where a driver drives into the
23 side of the train, is the train usually moving or
24 stopped?

25 A. It could be either, I don't know for certain

0218

1 on that.

2 Q. That's not tracked?

3 A. I do not track it personally, so I would have
4 to defer to either the federal guidelines or someone
5 else in the company, sir, to find that information.

6 Q. You testified about the FRA train horn rule
7 and quiet zones.

8 A. Yes, sir, 49 CFR part 222.

9 Q. Are you familiar with the calculator that is
10 on their web site?

11 A. I am aware of the calculator on their web
12 site.

13 Q. And there's a number of options that can be
14 entered as mitigation for basically not using horns in a
15 quiet zone?

16 A. There are a list of supplemental safety
17 measures and ASM, auxiliary safety measures I believe is
18 the correct term, that could be used to implement a
19 quiet zone by a public agency.

20 Q. And there's the results of their calculator
21 gives a risk index; are you familiar with that?

22 A. I am aware that it gives, the results give a
23 risk index, yes.

24 Q. And a risk index with horns and without?

25 A. Those are outputs that I believe. I have

0219

1 never run the calculator, because I do not -- that's a
2 public agency's responsibility to address that side of
3 the calculator.

4 Q. Since this is put out by an agency of the
5 federal government and used I assume nationwide then,
6 and it also gives a nationwide significant risk
7 threshold number that you can compare your results of
8 your calculation to, and my understanding is that if the
9 results of your calculation with the mitigation falls
10 under that nationwide significant risk threshold, then
11 it's not a significant risk to turn off the horns or not
12 use them; is that correct?

13 A. Since I didn't write that portion of the
14 regulation, to do an interpretation without looking at
15 the FRA's documentation on what they interpret that to
16 mean, sir, I can not answer that affirmatively or
17 negatively as to what the FRA intended that to be.

18 MR. LOGEN: Okay, I think that's all the
19 questions I have.

20 JUDGE TOREM: All right, thank you,
21 Mr. Logen.

22 JUDGE TOREM: Ms. Endres, any follow-up?

23 MS. ENDRES: I have just one follow-up
24 question.

25

0220

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

2 BY MS. ENDRES:

3 Q. The documents that Mr. Logen was just
4 discussing, did you have an opportunity to look at
5 those?

6 A. (Shrugging.)

7 Q. And these are marked Exhibit LFL-12, 13, 14,
8 and 14, and I would like you to look at these, and I'm
9 not going to pretend to be an expert on this stuff, but
10 can you tell me whether this formula addresses Logen
11 Road's current configuration of one track or the future
12 configuration of two tracks?

13 A. I'm trying to find Logen Road here, Logen
14 Road, Logen Road.

15 JUDGE TOREM: I believe it's marked as 292nd
16 Street Northwest; is that correct, Mr. Logen?

17 MR. LOGEN: Yes, it is.

18 JUDGE TOREM: This is the same railway
19 intersection that we're referring to.

20 THE WITNESS: So I have 13, 14, I have two
21 page 2 of 2, so they're all for Logen Road, Your Honor?

22 JUDGE TOREM: That's my understanding.

23 MR. LOGEN: Yes.

24 THE WITNESS: Okay.

25 JUDGE TOREM: First off, let me ask you if

0221

1 you're familiar with these printouts and feel
2 comfortable interpreting them at all.

3 THE WITNESS: I have not looked at these or
4 had time to review them, Your Honor.

5 JUDGE TOREM: Ms. Endres, it might be more
6 appropriate to wait to see exactly what Mr. Logen
7 testifies to, and I have already asked this witness to
8 be available for further questions as needed. Once he
9 hears what Mr. Logen is purporting these to mean, I
10 think that might be a better time for Mr. MacDonald to
11 come back, and if he disagrees or agrees with
12 Mr. Logen's presentation, give his opinion at that time.

13 MS. ENDRES: Very good, Your Honor.

14 JUDGE TOREM: So aside from the questions
15 about these potential exhibits, was there any other
16 redirect?

17 MS. ENDRES: No.

18 JUDGE TOREM: All right.

19 Any other questions for this witness?

20 All right, thank you, Mr. MacDonald, I
21 understand you're going to stick around.

22 THE WITNESS: Yes, Your Honor.

23 JUDGE TOREM: Are there any other witnesses
24 that BNSF wishes to call this afternoon before I turn
25 the case over to Mr. Thompson for his witness?

0222

1 MR. SCARP: None, Your Honor.

2 JUDGE TOREM: Then at this time I want to
3 just review which exhibits BNSF has offered or hasn't
4 offered to make sure that the record is complete from
5 your perspective for your case in chief. Exhibit 1,
6 that's been admitted is the petition for closure.
7 Exhibit 2 is Snohomish County's waiver of the hearing.
8 Exhibit 3 sponsored by Mr. Wagner were BNSF's responses
9 to Mr. Logen's Data Request Number 18. Exhibit 4 was
10 the schematic, one page, all the multiple colored ink.
11 And then Exhibit 5 was the construction plan at the
12 siding. The other ones that I had listed were already
13 incorporated in Exhibit 1, so I've just crossed those
14 off my draft list. Exhibit 6 and 7 had to do with
15 Mr. Norris, those were his CV and the traffic impact
16 analysis. Exhibits 8 and 9 were brought in through
17 Mr. Bloodgood, his CV and the Snohomish County motion of
18 January 26th. Exhibits 10 and 11 also came in through
19 Mr. Bloodgood, they were Mr. Logen's exhibits regarding
20 the determination of possible inadequate road condition
21 forms, and Mr. Bloodgood interpreted those. Exhibits
22 12, 13, and 14 came in with Mr. Agee, they were the
23 Operation Lifesaver slides, the North Carolina safety
24 study and report, and then the three photographs of the
25 train and tractor collisions, and I think that's where

0223

1 we are as far as exhibits that have been admitted.

2 You had previously identified before today
3 some Mapquest maps and some other web pages having to do
4 with fire departments that were not offered, and you
5 also indicated you might have use for your responses to
6 Logen's Data Request Numbers 8 and Number 14. At this
7 time was there any need to offer those or put them into
8 the record, or are you saving them for later?

9 MS. ENDRES: We're not going to save them.
10 The Mapquest maps, the need for that was negated when we
11 got the traffic impact study.

12 JUDGE TOREM: Okay.

13 MS. ENDRES: The data requests that we
14 flagged had some specifics about siding track length and
15 whatnot to the extent that they were needed to refresh
16 Mr. Wagner which weren't needed.

17 JUDGE TOREM: Okay, just wanted to make sure
18 that we weren't overlooking something accidentally
19 today.

20 So it seems formal to ask, but does BNSF rest
21 its original case here?

22 MR. SCARP: We do, Your Honor.

23 JUDGE TOREM: All right, then at this time I
24 think we're ready for the Commission Staff's witnesses
25 unless Snohomish County has a change of heart and wishes

0224

1 to offer any additional evidence, it would be next as
2 respondent.

3 MR. KASTING: No changes.

4 JUDGE TOREM: All right, then hearing that,
5 we are ready to turn to Ms. Hunter, and any exhibits,
6 Mr. Thompson, that you've identified.

7 MR. THOMPSON: The only item we had was just
8 an excerpt from the USDOT Railroad Highway Grade
9 Crossing Handbook, and she's -- I just wanted to make
10 that a part of the record and ask that it be -- that you
11 take sort of official notice of it I guess. Ms. Hunter
12 actually is not going to refer to it in any detail in
13 her testimony, but --

14 JUDGE TOREM: I know I have that here because
15 you submitted it last week.

16 MS. ENDRES: It's huge.

17 MR. THOMPSON: We submitted an excerpt, one
18 of the chapters, Chapter 4.

19 JUDGE TOREM: All right, I know I have it, it
20 was about 6 pages.

21 MR. THOMPSON: I can give you a copy.

22 JUDGE TOREM: It was 8 pages in length.

23 MR. THOMPSON: Here you go.

24 JUDGE TOREM: You know what, I do have that,
25 I just didn't recognize it as such, so thank you.

0225

1 All right, so we're going to mark as Exhibit
2 15 this 8 page excerpt of the Department of
3 Transportation and FHA Handbook, it's pages 75 through
4 82.

5 You had also submitted previously some
6 photographs of the crossings and an overhead picture.
7 Were you planning to have Ms. Hunter testify or just
8 briefly mention those?

9 MR. THOMPSON: They might be largely
10 duplicative of things that are already in the record. I
11 guess I'll ask Ms. Hunter, do you plan to make reference
12 to those at all?

13 MS. HUNTER: I do not. They're just photos
14 of the crossings in question, the Logen Road crossing
15 300 and 271st, and there's an overhead that's similar to
16 this, but I think that photograph is already in the
17 petition.

18 JUDGE TOREM: I don't remember it being of
19 this resolution in the petition.

20 MS. HUNTER: That's probably true.

21 JUDGE TOREM: Let me suggest, although I will
22 be making a site visit probably tomorrow, that in the
23 case there's an appeal to the full Commission of
24 whatever ruling I issue that these might be the clearest
25 photographs of what I would describe in my report, and

0226

1 if you're able to give personal testimony as to just
2 generally that these do represent the crossings, it
3 might make the record a more full record for any person
4 besides those in the room to review if that becomes
5 necessary. As descriptive as I might be able to be,
6 these photographs are easily worth a thousand words
7 apiece.

8 And I would suggest that, Mr. Thompson, since
9 you had the trouble of making them and they've
10 circulated among the parties here that we mark the
11 aerial photograph as 16 and the 6 individual photographs
12 of the 3 crossings as Exhibit 17. And that way even if
13 Ms. Hunter doesn't rely on them particularly much for
14 her testimony today, I might be able to better refer to
15 them in footnotes as I explain what's out there in my
16 initial decision on this matter. So if you will indulge
17 me in that regard, we'll mark them as 15 for the
18 excerpt, 16 and 17 for the aerial and then the
19 individual photographs in that order.

20 Let me entertain the motion that we discussed
21 at the status conference last week that I take official
22 notice under WAC 480-07-495 of first the Department of
23 Transportation Grade Crossing Protective Handbook, that
24 would be the entire document from which this excerpt is
25 drawn, and also official notice of the sights, sounds,

0227

1 or otherwise what I might see out there on the driving
2 tour that's been described in the letter that you sent
3 dated March 13th, Mr. Thompson. I believe that's the
4 information that the rule allows me to take official
5 notice of and that I described last Tuesday that I would
6 intend to. Are there any objections to me doing so on
7 the record today?

8 All right, hearing none, I'm going to call
9 those Exhibit A and Exhibit B since they're not
10 something tangible in the record, but if I refer to any
11 knowledge I pick up on the drive, I might call it
12 Exhibit B somewhere in the directions and maybe give the
13 intersection for which I made a particular observation,
14 we'll see how articulate I can be with that.

15 And I will take official notice of the entire
16 handbook, but this portion has been marked as Exhibit
17 15. As to Exhibit 15 is there any objection to me
18 making those 6 or 8 pages part of the record?

19 Hearing none, then 15 is admitted.

20 And once we have a little bit of foundation
21 from this witness, we'll get to 16 and 17. So before I
22 forget, Ms. Hunter, let's get you sworn in, if you will
23 raise your right hand.

24 (Witness KATHY HUNTER was sworn.)

25 JUDGE TOREM: All right, thank you.

0228

1 (Discussion off the record.)

2 JUDGE TOREM: Ms. Hunter, can you spell your
3 first and last name for the record.

4 THE WITNESS: You bet. Kathy Hunter,
5 K-A-T-H-Y, H-U-N-T-E-R.

6

7 Whereupon,

8 KATHY HUNTER,
9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11

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

13 BY MR. THOMPSON:

14 Q. Ms. Hunter, by who are you employed and in
15 what position?

16 A. I work for the Washington Utilities and
17 Transportation Commission, and I'm the Deputy Assistant
18 Director of Transportation Safety.

19 Q. How long have you been in that position?

20 A. Approximately three years.

21 Q. And what are your responsibilities in that
22 position?

23 A. I am a manager in the rail safety program. I
24 supervise four Federal Railroad Administration certified
25 staff in different disciplines. I work on crossing

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1 petitions that are filed with the Commission which
2 include petitions to open new crossings, to close
3 crossings, to modify existing crossings. I review quiet
4 zone proposals that are filed at our agency, so I
5 actually participate in diagnostic meetings and offer
6 comments on behalf of the agency. I am a certified
7 Operation Lifesaver presenter. I also provide technical
8 assistance to railroads and road authorities on road
9 safety issues.

10 Q. What education or training have you had
11 specific to railroad safety?

12 A. I have attended several engineering classes
13 on railroad safety. Also attended a grade crossing
14 safety course. All of those classes have been at the
15 University of Wisconsin. I have attended three or four
16 rail safety conferences. I represent the State of
17 Washington as a Rail Safety Program Manager at a
18 national level.

19 Q. Could you just briefly summarize what are the
20 sources of state policy on highway railroad grade
21 crossings?

22 A. Well, RCW 81.53.060, WAC 480-62-150, and then
23 we talked about the MUTCD manual, that's also been
24 adopted and used to set policy.

25 Q. And real briefly again, what are the sources

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1 would you say of national or of federal policy on grade
2 crossing safety?

3 A. We were just talking about the manual on
4 railroad highway grade crossing safety that's published
5 by the Federal Highway Administration DOT, and also
6 Staff uses the FRA grade crossing consolidation manual
7 as well.

8 Q. Okay. And then I guess gleaning from those
9 sources, what -- is there a test or a set of
10 circumstances under which you would say public policy
11 favors the closure of grade crossings?

12 A. Typically Commission Staff will look at the
13 different characteristics of the crossing looking at the
14 crossing as far as what might be considered dangerous at
15 the crossing. Other characteristics might be redundancy
16 of crossings if it's a redundant crossing. Perhaps
17 there's a crossing on every city block, so we might
18 target that crossing for closure, it might meet that
19 redundancy criteria. We also look at alternate routes
20 when we're considering crossing closure, are the
21 alternate routes a reasonable distance, are they safe,
22 can they also accommodate the increase in traffic if
23 that crossing were closed. We also look at the number
24 of collisions at a crossing as well. If there's a high
25 number of collisions, typically that is something that

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1 is examined for potential closure. We also look at the
2 use of the crossing and the road for first response. If
3 there is a, you know, high frequency of use by first
4 responders, then typically that's taken into
5 consideration as well. And sight distance is also a
6 characteristic that we examine when we're looking at
7 crossings for a potential closure.

8 Q. And have you made an assessment of BNSF's
9 petition to close Logen Road?

10 A. I have.

11 Q. And what specifically did you do to research
12 or review that petition?

13 A. I reviewed the petition that was filed by
14 BNSF. I have made several site visits to the actual
15 crossing, drove the designated alternate routes to
16 familiarize myself with the alternate routes, kind of a
17 general familiarity of the area. I met with several
18 community members, Dan and Pat Logen. I've met with
19 Chief Fulfs from the North County Regional Fire
20 Authority. He actually filed comments in the case. I
21 did review the comments that were filed in the case as
22 well. I helped organize an informational community
23 meeting that was held in October 2008 in Stanwood
24 working with the Railroad and the County to organize a
25 meeting. I've looked at the crossing inventory on the

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1 Logen Road crossing, also the 271st crossing, 300th
2 crossing as well. Helped prepare Staff data requests
3 and responses to data requests that we received, looked
4 at numerous data requests that the parties distributed
5 between them, looked at some Commission orders as they
6 relate to crossing closures.

7 Q. And having done all that, did you form an
8 opinion about the safety of the Logen Road crossing?

9 A. I do have a concern about the safety if the
10 siding track is constructed at Logen Road. Part of what
11 Staff looks at is the danger at the crossing versus the
12 public convenience and necessity to keep the crossing
13 open. So my initial analysis is that if a siding track
14 is constructed through Logen Road that it would create
15 an exceptionally hazardous condition and that the actual
16 value or use of the crossing is diminished because of
17 the blocking that will be anticipated when the siding is
18 functional.

19 Q. Okay.

20 A. I am also concerned about I think it's been
21 mentioned several times about the sight distance at the
22 current crossing. I think Mr. MacDonald just testified
23 as well about if there are trains parked near the
24 crossing, the sight visibility would potentially be
25 decreased even further. Talked a lot about driver

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1 confusion as well, I think Mr. Agee talked about driver
2 confusion, driver expectation. I think all of those
3 factors staff has reviewed as well and has taken those
4 into consideration, so we do have significant concerns
5 about the safety of this crossing if the siding were
6 constructed.

7 Q. There's been an awful lot of testimony about
8 the issue of safety issues that arise from main line and
9 siding track location, did you generally agree with the
10 testimony of Mr. MacDonald on that point?

11 A. I did, I do.

12 Q. Regarding the earlier testimony about impact
13 on first responders or emergency response, did you have
14 anything that you could add to that, or did you
15 generally agree with the prior testimony?

16 A. I generally agree. I just wanted to say that
17 having driven those alternate routes probably a half a
18 dozen times, I do recognize that there is a additional
19 time commitment for folks that are used to using Logen
20 Road, so it is more inconvenient to have to drive the
21 alternate routes, but I do think the alternate routes
22 are a reasonable distance. I'm not a traffic engineer
23 like Mr. Norris that testified earlier, but I do agree
24 with his statements about reasonable distance and time.
25 I think pretty much my experiences driving the alternate

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1 routes and talking with folks, I'm in general agreement
2 with Mr. Norris.

3 Q. Could you address a little bit the issue of I
4 guess the safety of the alternative crossings that have
5 been identified as places where traffic would be
6 diverted from Logen Road, maybe starting with 300th
7 Street or Dettling. And I guess actually we could
8 probably refer to the -- is there a picture of Dettling
9 Road crossing in the pictures we submitted?

10 A. There is. I show it as KH-3, I did not
11 record the exhibit number.

12 Q. Yes, I think it's premarked as 17.

13 A. So there's been two accidents, and I think
14 Mr. Norris touched on those, prior to the crossing being
15 signalized. There have been no accidents since signals
16 were installed at the Dettling crossing. It's my
17 understanding with the improvements that the County and
18 the Railroad are proposing at this crossing as far as
19 the approaches, I'm comfortable that the improvements
20 proposed will help mitigate the accident data, although
21 the accidents did take place before the warning devices
22 were installed. I don't have any significant concerns
23 about the safety of this crossing.

24 Q. What sort of safety devices are there just
25 looking at the photo?

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1 A. There's cantilever mounted lights and gates
2 currently at the crossing.

3 Q. And that's in addition to what you would find
4 presently at Logen Road, right, the cantilevers?

5 A. Logen Road has shoulder mounted lights and
6 gates, so similar but slightly different.

7 Q. Okay.

8 And now how about 271st Street to the south
9 in Stanwood?

10 A. 271st Street, my observations when I visited
11 that crossing initially was that the hardware, active
12 warning devices, pavement markings, were very old. It's
13 my understanding that they've been in place at that
14 crossing for more than 30 years. I do have concerns
15 because there's been 5 accidents at that crossing since
16 1975. I think Judge Torem mentioned earlier the latest
17 accident actually occurred in January of 2008 when we
18 were at Hickox Road where a pedestrian got under the
19 gates at that location and was struck by an Amtrak. So
20 one thing that the stakeholders did, stakeholders to
21 this proceeding, is that we actually convened a
22 diagnostic meeting at the alternate route crossing
23 several months ago, and we looked at the characteristics
24 of each crossing, and we had an opportunity to examine
25 those characteristics and make recommendations for

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1 improving safety. So the 271st Street crossing we spent
2 quite a bit of time at talking about what improvements
3 should be there. It's my understanding that the
4 railroad will install all new active warning devices at
5 that crossing, they will consider adding additional
6 signage, they will look at sidewalk placement because of
7 the anticipated increase of pedestrian traffic because
8 of the Amtrak station. So there was a lot of discussion
9 about how to make that crossing safer, so after that
10 diagnostic meeting I did not have any significant
11 concerns about the safety. I would have if the railroad
12 was proposing not to make any upgrades at 271st, because
13 I really think that it needs those improvements.

14 Q. I sort of mentioned this earlier, and you had
15 -- I think you mentioned that you had met with an
16 official from the North County Regional Fire Authority
17 regarding impact on emergency response; do you want to
18 describe that conversation?

19 A. Yeah, I contacted Chief Fulfs. He submitted
20 comments in the case, general comments about his
21 concerns about the closure of Logen Road and losing the
22 ability to respond, you know, to an incident that might
23 be in that local area. So he did meet with Staff and
24 just said he didn't have any specific concerns, but he
25 said from a first responder's perspective, there's

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1 always concern when roads are closed, that it limits
2 their ability to respond to an emergency. And Chief
3 Fulfs did acknowledge though that his station, which is
4 located south of Stanwood, isn't the primary responder
5 for incidents around Logen Road, that would actually be
6 the station on 300th, but that if there were a situation
7 whether a large structure fire or something of that
8 magnitude, that his station would respond as well as the
9 City of Stanwood with the mutual aid agreement that they
10 have in place.

11 Q. Did you have any -- there was a discussion
12 again with Mr. MacDonald a moment ago about the
13 possibility of using 4-quadrant gates as a way of
14 addressing the problem of people driving around the
15 gates I guess at Logen Road if the crossing would remain
16 open; do you have anything to add to Mr. MacDonald's
17 testimony on that point?

18 A. Well, I agree with what Mr. MacDonald said,
19 that you typically see a 4-quadrant gate system in a
20 high speed rail corridor in a quiet zone application.
21 My opinion is that 4-quad gates could help mitigate the
22 hazards that would result from a second track being
23 installed there, a siding track, but that, you know,
24 that there's still that opportunity for safety concerns.
25 I think that Mr. MacDonald described, you know, driver

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1 behavior as unpredictable. 4-quad gates are not
2 foolproof. They are designed to seal a corridor where a
3 train is moving at a high rate of speed, but the gates
4 will break off if someone drives into a gate, the
5 vehicle detection that's required on the crossing
6 surface, so it's not 100%, so I do echo what
7 Mr. MacDonald said earlier. I do believe though that it
8 comes down to more of a cost value judgment, the cost of
9 I think it was mentioned \$350,000, \$400,000 to install
10 4-quadrant gates versus putting those on a crossing
11 where substantially that crossing could be blocked for
12 hours at a time. My observation would be in a high
13 speed rail corridor if you find 4-quadrant gates, you're
14 not going to see a siding track within that corridor
15 that's going to have freight trains stopped for a long
16 period of time.

17 Q. Is there, well, in the case where 4-quadrant
18 gates are installed as a supplemental safety device, if
19 I've got that right, for a quiet zone, who typically
20 pays for them in that circumstance?

21 A. Typically the community, the road authority
22 that's initiating the quiet zone.

23 Q. So the local --

24 A. Government.

25 Q. -- jurisdiction is looking for a way to

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1 silence the train horns, and the way to do that is
2 through the supplemental, buying the supplemental
3 devices?

4 A. That's correct.

5 Q. Are there maintenance costs associated with
6 that kind of a device as well?

7 A. It's my understanding maintenance costs are
8 higher on 4-quad gates versus a 2-quad gate system.

9 Q. Have you given thought to Mr. Logen's, well,
10 I guess this Mr. Logen's brother's use of the crossing
11 as a place for bringing the tractor across, and do you
12 have an opinion about that issue?

13 A. I have given it some thought. I guess
14 overall my observation is that it's more of a private
15 type need to get his farm equipment across that crossing
16 so his family can maintain their property on both sides
17 of the railroad crossing, and I don't think that it
18 typically represents the general public's overall use of
19 that public crossing, that it's more unique to his needs
20 in getting his equipment across. Closing a crossing or
21 considering to close a crossing is generally based on a
22 safety issue to protect the general traveling public, so
23 folks that travel that crossing in their cars, the
24 railroad employees, passengers on an Amtrak, so it's
25 more of a public issue versus a private need.

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1 Q. How would you address the notion that there's
2 a tradeoff between, safety tradeoff I guess you would
3 say, between allowing Mr. Logen to continue to use that
4 location with his tractor versus driving around on
5 higher speed roads?

6 A. Well, I think Mr. MacDonald said that, you
7 know, without active warning devices there, if it were
8 converted to a private crossing, I think that I would
9 like Mr. MacDonald have significant concerns about the
10 Logen family traveling over that crossing. If the
11 active warning devices remain and they still have that
12 type of notification of an oncoming train, I think that
13 would alleviate some of my concern.

14 I'm not a traffic engineer, I think I just
15 said that a few minutes ago, but I would be concerned,
16 you know, to see a tractor traveling on Pioneer Highway
17 or Old Pacific Highway at 60 miles per hour at 12 miles
18 per hour as a tractor, so I think that that brings its
19 own set of safety concerns versus railroad crossing
20 safety. Now you have vehicular kind of safety issues on
21 the highway. I think that there are some reasonable
22 alternatives instead of driving the tractor on Old
23 Pacific Highway or Pioneer, you know, perhaps the Logen
24 family could consider, you know, loading their tractor
25 onto a trailer and transporting it on the roadways in

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1 that manner. Certainly you could probably go closer to
2 the speed limit than 12 miles per hour. So it seems
3 like there's a reasonable alternative to taking that
4 tractor over those railroad tracks at that location.

5 Q. Are there benefits, would there be benefits
6 to closing Logen Road crossing in addition to the
7 elimination of the collision hazard?

8 A. Well, I think we touched briefly that if that
9 public crossing were closed, no train horn would be
10 blown at that location, and essentially that equipment
11 could be removed from the Logen Road crossing and
12 reinstalled at a different location.

13 Q. All right.

14 Could you just sort of summarize then Staff's
15 recommendation with respect to the petition?

16 A. Staff's recommendation is to close the Logen
17 Road railroad crossing. The crossing would become
18 exceptionally dangerous with the addition of the siding
19 track at that location, and Staff feels that the public
20 convenience and necessity does not require the crossing
21 to remain open. Staff also believes that the alternate
22 routes are reasonable as far as distance and time and
23 offers safe alternatives.

24 MR. THOMPSON: Thank you, that's all the
25 questions I have for Ms. Hunter at this point.

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1 JUDGE TOREM: All right, start with the
2 railway, do you have any cross-exam?

3

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

5 BY MR. SCARP:

6 Q. Just clarification very briefly, Ms. Hunter,
7 you referenced the crossing accident record at 271st and
8 that there was a pedestrian fatality.

9 A. I believe it was an injury, I don't believe
10 it was a fatality.

11 Q. I'm sorry, injury in January of 2008, and
12 that was your understanding someone who went past or
13 underneath --

14 A. Underneath.

15 Q. -- an active warning device?

16 A. That's correct.

17 MR. SCARP: Okay, that's all the questions I
18 have.

19 JUDGE TOREM: County?

20 MR. KASTING: Nothing.

21 JUDGE TOREM: Mr. Logen.

22 MR. LOGEN: Thank you.

23

24

25

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

2 BY MR. LOGEN:

3 Q. You indicated that you drove the alternate
4 routes several times. Other than that, how did you
5 determine that the alternate routes were safe?

6 A. How did I determine they were safe? I did
7 review Mr. Norris's traffic study as well. I drove the
8 routes from a -- just from a driving standpoint, they
9 appeared to be safe. I looked at the inventory and
10 accident data for the crossing portion of the alternate
11 routes and determined based on my experiences actually
12 traveling those roadways at the designated speeds and
13 over the crossings that they appeared to be safe to me.

14 Q. Was traffic generally following the
15 designated speed on Dettling Road?

16 A. On Dettling Road, my observation was yes.

17 Q. At 271st Street, you indicated that there has
18 been five accidents at that crossing, and there's three
19 tracks there, why isn't that being slated for closure as
20 well?

21 A. You could ask the County that question, but
22 my observation would be that that's a critical
23 thoroughfare to downtown Stanwood.

24 Q. We've got an overpass just a block away on
25 Highway 532 to totally avoid that crossing.

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1 A. I agree with you that that's a possibility.
2 I think because the City of Stanwood is the road
3 authority that that would be a question for them. I do
4 think that the improvements that are being proposed at
5 that location will help mitigate the accidents. And if
6 you look back at the accident data, three of the
7 accidents were attributed to vehicles driving around the
8 gates. Now we've looked at, as part of the diagnostic
9 review, looked at to see if we could install median
10 barriers on the approaches, but because of the adjoining
11 driveways and parallel roadways, that's not an option.
12 So my understanding the City is also considering putting
13 in some type of video enforcement at that crossing so
14 folks that are driving around the gates or not following
15 all traffic rules at that crossing could be ticketed, so
16 that's an option to improve safety away from the
17 traditional installation of median barriers.

18 Q. Thank you.

19 You stated that adding a track makes the
20 Logen Road crossing exceptionally dangerous, the
21 proposal is also to add a track at the two crossings
22 north of there, so is it the adding of the track, or is
23 there something else that makes it dangerous?

24 A. I think that the second component is the
25 parked train or the parked train near the crossing as

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1 well. It's my understanding at 300th and 102nd that the
2 trains would be entering near those crossings but not
3 blocking those crossings, so it's more of an on/off
4 movement at that location.

5 Q. Would the trains be traveling very slowly at
6 that point?

7 A. I would imagine yes, they would be,
8 especially at 102nd where they're entering the siding.

9 Q. You indicated that loading the tractor onto a
10 truck or something like that would be an alternative to
11 driving a tractor around. What if you're pulling a load
12 of hay or something like that to store in the barn or
13 the shed that are on the other side of the tracks, I
14 don't see how that's really feasible.

15 JUDGE TOREM: Is there a question there?

16 Q. How would you propose an alternative for
17 that?

18 A. So the tractor's pulling like a hay wagon is
19 what you're saying?

20 Q. Yes.

21 A. So I don't have a lot of farming experience
22 or equipment experience, but my dad did have a tractor
23 and did hay, harvest hay. And how he handled it is he
24 would typically pull his John Deere tractor on the back
25 of -- on a trailer, flat bed trailer, and then

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1 consequently then would also load the hay onto his flat
2 bed trailer as well. Both times he used a three quarter
3 ton type pickup to move his tractor and then also move
4 his hay. So I'm not sure if I understand the question.
5 It sounds like maybe your tractor is actually pulling
6 the hay wagon?

7 Q. Yes.

8 A. It is, okay. I guess my response would be is
9 it possible to have your pickup truck pull the same
10 trailer or a trailer that would allow you to move your
11 hay from one place to another?

12 JUDGE TOREM: Well, he'll have a chance to
13 testify and answer that question rather shortly I
14 imagine, but I appreciate the response and the
15 consideration.

16

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

18 BY JUDGE TOREM:

19 Q. Would it be fair, Mr. Logen, Ms. Hunter, that
20 you were just envisioning in your previous answer the
21 transportation of the trailer alone?

22 A. Yes.

23 Q. And had you given any additional thought to
24 other accoutrements of the farm lifestyle?

25 A. Well, I know my dad had lots of equipment

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1 that he used for mowing fields, baling, that type of
2 thing, so I can only imagine perhaps the Logen family
3 has similar equipment that's used with their tractor as
4 well. And, you know, the inconvenience of having to
5 move that equipment on the back of a trailer versus
6 hoisting it and lifting it up off the trailer and moving
7 it from point A to B I recognize that, it appears to me
8 that would be less convenient.

9

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

11 BY MR. LOGEN:

12 Q. There's active warning devices at Logen Road,
13 can you tell me when they were installed?

14 A. I believe they were installed 2002.

15 Q. And what was the safety record before they
16 were installed?

17 A. There's no accidents, there has never been an
18 accident at the Logen Road crossing. The signals were
19 installed in 2002, Snohomish County filed a petition
20 with the Commission with the concurrence of BNSF.

21 Q. Snohomish County provided me a copy of a
22 letter to Lori Halstead, notice of intent for quiet zone
23 at Logen Road dated May 30th, 2007; are you familiar
24 with that process at all?

25 A. Yes, I actually did participate in the

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1 diagnostic meeting at that crossing with the railroad
2 and the County.

3 Q. And in the letter there, they state that they
4 ran the quiet zone calculator, and the results were that
5 there could be a quiet zone at Logen Road without
6 installing any additional equipment; is that correct?

7 A. That's correct, the risk was significantly
8 below the acceptable tolerance.

9 Q. So the quiet zone calculator is a indication
10 of the risk at a particular crossing?

11 A. Yes.

12 Q. Okay. I reran the quiet zone calculator on
13 my exhibits labeled LFL-12, 13, and 14, with two tracks
14 and various levels of mitigation. All of the results
15 indicated that the risk index was well below the
16 national threshold. In fact with I believe it was
17 4-quadrant gates there was significant reduction in the
18 risk.

19 JUDGE TOREM: Let me ask Ms. Hunter if she's
20 got those exhibits in front of her so she's familiar and
21 ready for the question that's coming.

22 THE WITNESS: I do.

23 BY MR. LOGEN:

24 Q. The particular one that I'm looking at is
25 LFL-13 I believe it is. It shows that the quiet zone

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1 risk index is 1478.5, which is significantly less than
2 what it was with one track, that's with two tracks and
3 4-quadrant gates, and Snohomish County ran it with one
4 track and with no mitigation. This shows that the risk
5 is much lower, how do you explain this showing the risk
6 much lower and the witnesses we've heard today saying
7 that the risk is much higher?

8 A. Can I ask a clarifying question, Mr. Logen,
9 when you ran this, did you put the second track in?
10 Because it's my understanding you can not change the
11 inventory. Were you able to change the inventory for
12 the Logen Road crossing and put two tracks in versus the
13 single track?

14 Q. I believe I was, I was able to do that, yes.

15 A. Okay.

16 Q. I mean it came up with the inventory, and
17 there was a place to modify right here where it says
18 modify.

19 A. So you modified and added the second track,
20 so all of these examples have two tracks, not single?

21 Q. That was my intent when I was doing this,
22 yes.

23 A. So part of the value of having a diagnostic
24 team review when there's a quiet zone proposal at a
25 crossing is to look at the characteristics of the

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1 crossing that the calculator can not take into account.
2 So for example when we visited the Logen Road crossing
3 back in 2007 when the County filed the proposal, one of
4 the things that the diagnostic team keyed on was the
5 sight visibility restrictions. So as I recall, BNSF
6 strongly objected and said, we will not support a quiet
7 zone at this crossing because of the obstructions.

8 Now the Commission's rule in a quiet zone is
9 different. We don't have the ability to say yes or no.
10 Our role in a quiet zone is to offer our expertise or
11 observations via a comment mechanism to the road
12 authority and the railroad, but we don't have an
13 absolute yes or no role in that process. So the
14 comments that the Commission provided were we recognized
15 back in 2007 that you qualify without adding any
16 supplemental safety measures, but the Commission is
17 concerned about the sight distance north and south of
18 this crossing. So that really is our role is to
19 highlight our safety concerns in a quiet zone situation,
20 and then it's really I believe up to the railroad and
21 the local road authority then to see how they're going
22 to progress through that federal quiet zone system.

23 So I recognize that this risk was lowered by
24 adding those 4-quad gates, but I also think that a team
25 of rail safety experts offering their comments and

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1 observations as a diagnostic team does not get taken
2 into account with this risk level of 1478, and my guess
3 is there's no place in that FRA inventory to put that
4 the second track is actually a siding track.

5 Q. Yes, there is.

6 A. That's going to be blocked for extended
7 periods of time?

8 Q. The blocking, no, but the fact it was a
9 siding, yes.

10 A. Okay.

11 Q. Main or siding you could add.

12 A. Okay. So that's good to know, I didn't know
13 that. But I guess my concern would be more around the
14 extended blockages of that crossing and the potential
15 behavior that could result from users at that crossing.

16

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

18 BY JUDGE TOREM:

19 Q. Ms. Hunter, is it accurate to say then that
20 despite what Mr. Logen may have gotten from the FRA's
21 computer calculator, you think that human beings with
22 the training and the actual being at the site that see
23 things the computer can't would still override this, and
24 the Commission's recommendation, you would still
25 recommend despite these numbers you're seeing today your

0252

1 previous testimony that the crossing be closed?

2 A. Yes, I think the Commission would offer
3 strong comments in opposition.

4 Q. All right. Even though it's not the decision
5 authority?

6 A. Correct.

7 Q. These numbers wouldn't change your prior
8 testimony or those recommendations?

9 A. That's correct.

10 JUDGE TOREM: Mr. Logen, did you want to ask
11 further questions about these or save that for your
12 testimony?

13 MR. LOGEN: I don't think I have any further
14 questions, no.

15 JUDGE TOREM: Mr. Thompson, is there any need
16 for a short redirect?

17 MR. THOMPSON: I don't think I do need any
18 redirect, no.

19 JUDGE TOREM: All right, let me ask then --

20 MR. SCARP: May I ask a question?

21 JUDGE TOREM: Just one second, Mr. Scarp,
22 because I wanted to make sure that we get these other
23 exhibits on Mr. Thompson's --

24 MR. THOMPSON: I move the admission of --

25 JUDGE TOREM: 16 and 17, 15 has been

0253

1 admitted. Are there any objections to Exhibits 16 or 17
2 being admitted?

3 All right, hearing none, Mr. Scarp, your
4 follow up.

5

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

7 BY MR. SCARP:

8 Q. Ms. Hunter, this quiet zone calculator that
9 we've heard a fair amount about, can you tell me is that
10 the purpose for mitigation of train horns as opposed to
11 a determination of public safety?

12 A. Mitigation of train horns.

13 MR. SCARP: That's all I have, thank you.

14 JUDGE TOREM: Mr. Logen, anything further?

15

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

17 BY MR. LOGEN:

18 Q. Do train horns improve the public safety, the
19 use of train horns?

20 A. Well, it gives you an audible warning that
21 there's an incoming train that's approaching, so the
22 quiet zone I think Mr. MacDonald talked about briefly,
23 the quiet zone crossing is one where the train horn is
24 not blown.

25 Q. And I believe that the Snohomish County's

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1 results indicated when you don't blow the horn, it's not
2 as safe in the cover letter there I believe it's
3 covered?

4 A. That it's not as safe if the train horn is
5 not blown?

6 Q. It's kind of a backward sentence, sorry about
7 that.

8 A. That's okay.

9 Q. That there was some increase of risk by
10 having a quiet zone there but not a significant
11 increase, is that what was shown on Snohomish County's
12 petition?

13 A. Where in the cover letter do you derive that?

14 Q. Doesn't it give --

15 JUDGE TOREM: Mr. Logen, it may be more
16 helpful if there's a document that will speak for itself
17 to simply submit that as an exhibit, and then I could
18 read the actual text and draw what I would hope would be
19 obvious conclusions.

20 MR. LOGEN: That would be fine. I thought
21 the results of the calculator were in there.

22 THE WITNESS: They're attached, but I didn't
23 want to speak on behalf of the County of what their
24 intent was.

25 JUDGE TOREM: I appreciate the thrust of the

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1 question, but it may be easier to get this point across
2 by submitting the document, either the cover letter
3 alone or the whole package in its entirety, for my
4 review and for potential objection.

5 MR. LOGEN: I would propose that we do that
6 then.

7 JUDGE TOREM: Okay.

8 Were there any other questions for this
9 witness?

10 MR. LOGEN: I have none.

11 JUDGE TOREM: All right, any other questions
12 at all?

13 MR. THOMPSON: No.

14 JUDGE TOREM: All right then, hearing none,
15 Ms. Hunter, thank you for your testimony.

16 Mr. Thompson, is there anything else that
17 Commission Staff wants me to consider in this case?

18 MR. THOMPSON: I believe that's it.

19 JUDGE TOREM: All right, it is now 10 after
20 4:00. We have this sort of artificially imposed
21 deadline to get done today, but I want to go off the
22 record for at least five minutes, give everybody a
23 stretch break, and then I think, Mr. Logen, we're up to
24 your case. So in these five minutes or so while we're
25 getting comfort and other needs taken care of, let's

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1 confer off the record as to how long your testimony
2 might be and what expected cross-examination might take,
3 and then we'll see what we want to do between now and
4 the 6:00 p.m. public comment hearing which will require
5 at least some reorganization of this room, but we have
6 sufficient bodies to make that move quickly. All right,
7 so we'll be off the record for about five minutes.

8 (Recess taken.)

9 JUDGE TOREM: All right, it's about 4:35,
10 we're back on the record, and we have one additional
11 witness, Mr. Logen.

12 We're going to confirm right now that at the
13 end of Ms. Hunter's testimony, I did mean to say I was
14 admitting Exhibits 16 and 17 into the record.

15 And I promised that we were going to discuss
16 whether we thought we could finish the hearing tonight,
17 and our court reporter has said as long as we have a 30
18 minute break between this proceeding and the public
19 comment proceeding, she's willing to stay on and we
20 won't have a mutiny here, so we anticipate we're able to
21 do that. In what I hope was a time saving gesture, we
22 stayed off the record a little bit longer to mark
23 Mr. Logen's exhibits and all be on the same page as to
24 the numbers I'm about to assign, so I'm going to read
25 the numbers that Mr. Logen had assigned to them and then

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1 indicate the actual exhibit number being assigned in
2 this proceeding.

3 We'll start with LFL-1, which is Mr. Logen's
4 response to BNSF Data Request Number 3, it's 1 page,
5 that's been assigned Exhibit 18.

6 LFL-2 is also 1 page, and it should be noted
7 that at the top of that 1 page it says page 1 of 2, so
8 for those keeping score, change that pen and ink to say
9 1 of 1 so there's no future question as to this exhibit
10 being incomplete, it is a 1 page exhibit, it's been
11 assigned Exhibit 19, and it's a ratio of speed to
12 stopping distances taken from somewhere at the James
13 Madison University web site.

14 At this point to account for some duplicate
15 exhibits and those that have already been admitted, we
16 skipped to LFL-6, and that's been marked as Exhibit 20.
17 It is a 1 page document, it's a memorandum from November
18 21st, 2007, referring to the preferred option for
19 signalization of Pioneer Highway and Old Pacific
20 Highway, that's Exhibit 20.

21 Exhibit LFL-8 is a series of 8 pages
22 referring to rail accident or incident reports in or
23 around Stanwood. I've assigned that Exhibit Number 21.

24 Mr. Logen's LFL-9 is a 2 page document, it's
25 the executive summary as well as table 2 from a Highway

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1 Rail Grade Crossing Technical Working Group in November
2 2002. It's titled Guidance on Traffic Control Devices
3 at Highway Rail Grade Crossings, I've assigned that
4 Exhibit 22.

5 Mr. Logen's LFL-10 is a 4 page printout from
6 the Federal Transit Administration Reports and
7 Publications, it's called Lesson 38, 4-quadrant Gated
8 Crossing. This has been assigned Exhibit 23.

9 Exhibit 24 is a 1 page document, it's from
10 the Transportation Research Board and a publications
11 index web site. It's simply I understand to be the
12 abstract of a much longer article entitled Field
13 Evaluation of a 4-quadrant Gate System for Use at
14 Railroad Highway Grade Crossings, so just this 1 cover
15 page printout that has the abstract is being assigned
16 Exhibit 24.

17 And the last 3 exhibits, LFL-12, 13, and 14
18 are products apparently of the FRA's quiet zone
19 calculator that were previously referred to with
20 Ms. Hunter's testimony. At the top of the printout
21 there's an indication under the home, help, and contact
22 tabs where it says change scenario. Each of those has a
23 unique identifier where it says Logen Road. The first
24 one which is LFL-12 has the identifier Logen Road 28432,
25 that page has been assigned Exhibit 25. LFL-13 which

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1 says Logen Road 28433 is assigned Exhibit 26, it's also
2 1 page. LFL-14 which is 2 pages has the FRA calculator
3 number Logen Road 28434, and again that's a 2 page
4 document, and that's Exhibit 27.

5 Mr. Logen is also going to be submitting a
6 copy of his prepared remarks which he's annotated, we're
7 going to mark that as Exhibit 28, essentially
8 Mr. Logan's testimony from which he will be reading
9 shortly. That has been furnished to Mr. Scarp in an
10 unannotated form to assist him today and will be
11 furnished after the hearing at a deadline we'll set for
12 the rest of the parties and myself and mainly for the
13 use of the court reporter in preparing our transcript.

14 Mr. Logen, is that all the documents covered
15 that you think you're going to be submitting today?

16 MR. LOGEN: Yes, it is.

17 JUDGE TOREM: Did I get that accurately then?

18 MR. LOGEN: Yes.

19 JUDGE TOREM: Let me ask then since you
20 intend to offer those all, I'm going to indicate that
21 you're offering them now aside from your testimony, are
22 there any objections to any of these exhibits? Let me
23 start with Commission Staff first.

24 MR. THOMPSON: So this is the time to make an
25 objection to the exhibits?

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1 JUDGE TOREM: It is, and there may be some
2 foundational questions that have to be held until
3 Mr. Logen's testimony is made, but if there are
4 substantive exhibits or relevance exhibit issues now,
5 that may alter Mr. Logen's testimony if I rule that it's
6 just wholly irrelevant, and I think he would be better
7 apprised now than interrupted in his testimony. So if
8 you see any, you can still object or I may have to hold
9 a ruling until Mr. Logen actually gets to the foundation
10 in his testimony, but if you know of any you're going to
11 object to one way or the other, I would like to know in
12 advance.

13 MR. THOMPSON: Well, I will just say I have
14 some concerns about what I guess would be 25, 26, and 27
15 just because I have -- there's no way that I am able to
16 determine from looking at these how the result was
17 produced. It sort of just looks like an end result, and
18 it's not clear to me, you know, particularly on the
19 issue of whether it's possible or whether a second track
20 was added, there just doesn't seem like there's adequate
21 foundation here. Maybe he can supply that through
22 testimony.

23 JUDGE TOREM: All right, well, I hope that
24 Mr. Logen's testimony as prepared or as he can ad lib
25 today can explain the process by which 25, 26, and 27

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1 were generated, and that may be setting the foundation.
2 I know we had a little bit of that discussion back and
3 forth with him and Ms. Hunter.

4 Mr. Scarp, you looked like you had similar
5 concerns with those three exhibits.

6 MR. SCARP: Well, I do, and I will just echo
7 for the time being, and I don't need to ask cross-exam
8 questions now, but I do have those.

9 Similarly Number 20 is the preferred option
10 for signalization at Pioneer Highway at Old Pacific
11 Highway which is a -- it regards signalization at an
12 intersection that is a significant distance removed, and
13 I guess from a relevance standpoint I'm not sure what
14 we're trying to accomplish there.

15 JUDGE TOREM: I believe this is the same
16 highway that's 102nd; is that correct, Mr. Logen?

17 MR. LOGEN: Yes, it is.

18 MR. SCARP: Right, and I understand that, but
19 we're talking about a 2007 signalization. I'm unclear,
20 perhaps Mr. Logen can address that for us.

21 JUDGE TOREM: Okay. Any other exhibits that
22 are causing anyone concern before hearing Mr. Logen's
23 testimony and potential foundation for them?

24 MR. KASTING: The County would just echo
25 those same concerns.

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1 JUDGE TOREM: All right.

2 MR. SCARP: And then finally similarly
3 there's the 4-quad gates, I guess I will start with a
4 foundation question, I don't know what qualifications or
5 expertise Mr. Logen is going to bring to allow him to
6 rely on portions of a railroad traffic control device,
7 so that's just preliminary.

8 JUDGE TOREM: All right, and those would be
9 22, 23, and 24 I think depending on --

10 MR. SCARP: Correct.

11 JUDGE TOREM: -- which particular 4-quad gate
12 exhibits you're referring to, but I believe it's those
13 three.

14 All right, Mr. Logen, do you know from the
15 portions of your testimony that has been prepared what
16 foundation you're laying for first the quiet zone
17 calculations, is that something you're prepared to speak
18 to when we have you testify?

19 MR. LOGEN: Yes, each one of the exhibits I'm
20 incorporating into my testimony.

21 JUDGE TOREM: All right, then we'll have you
22 reoffer those at the completion of your testimony on
23 those three.

24 As to the signalization memo that Mr. Scarp
25 just raised at the Pioneer Highway and Old Pacific

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1 Highway, were you going to address why that's relevant
2 in your testimony? I believe it had to do with
3 alternative routes.

4 MR. LOGEN: Yes.

5 JUDGE TOREM: Okay, so you're going to cover
6 that in your testimony as well?

7 MR. LOGEN: I am.

8 JUDGE TOREM: All right.

9 And finally the --

10 MR. LOGEN: And the safety of those
11 alternatives.

12 JUDGE TOREM: All right.

13 As far as the 4-quadrant gate items, how did
14 you intend to use those or have me refer to them as part
15 of the record?

16 MR. LOGEN: Just to show that the 4-quadrant
17 gates have been used successfully in many applications
18 on entire rail corridors on the East Coast. I mean
19 there must be something similar.

20 JUDGE TOREM: Okay, I understand, so it's a
21 general question as to these documents showing how
22 they're used and why they're used?

23 MR. LOGEN: Just that 4-quadrant gates seem
24 to improve safety at a crossing.

25 JUDGE TOREM: Okay. Well, what I'm hearing

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1 right now then is that there are potential objections to
2 Exhibits 20, 22, 23, and 24 as a group, 25, 26, and 27,
3 those calculator exhibits as a group, were there any
4 objections to 18, the response to the data request
5 regarding the speed of the tractor?

6 MR. SCARP: Oh, I had none.

7 JUDGE TOREM: All right, so that will be
8 admitted, 18 is admitted.

9 19, the ratio of speed to stopping distance,
10 any objections to that?

11 MR. SCARP: Well, I'm not sure, and I guess I
12 just don't know what the purpose of this is. However,
13 first looking at Mr. Logen's Number 28, it appears
14 there's a paragraph about stopping distances out on the
15 highway for vehicles as opposed to stopping distances at
16 the rail crossing, am I --

17 MR. LOGEN: That's correct, I'm addressing
18 the safety of the alternate route.

19 JUDGE TOREM: All right, so we'll hold off
20 admission of that one.

21 Finally, the only other one that seems to be
22 uncontested is the rail accident and incident reports
23 marked as Exhibit 21, is there any objection to that
24 one?

25 MR. SCARP: I guess two of them in, well,

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1 Dettling Road, there are five pages, is that correct?

2 MR. LOGEN: 8 pages.

3 MR. SCARP: Two of them appear at Dettling,
4 the ones that don't occur, well, I'm assuming that
5 you're going to tell us it's going to go to weight,
6 we've already had testimony regarding this, so I guess
7 we'll just have to go through and look to see if the
8 configuration and devices are the same. I guess there's
9 a relevance objection in terms of what it is we're
10 trying to show by these. I won't make a foundation
11 objection, it's just relevance, Your Honor.

12 JUDGE TOREM: All right, on the relevance
13 issue I'm going to err on the side of allowing this to
14 come in today. There are several -- I do hope that,
15 Mr. Logen, you will point out what you believe is the
16 relevance, I'm going to allow Exhibit 21 to be admitted
17 at this time even though there are a number of accidents
18 that are described here that of course are not at Logen
19 Road because there are no reported accidents there.

20 MR. LOGEN: That's right.

21 JUDGE TOREM: But you go as far afield as I
22 think 102nd, which is the same intersection to which
23 Mr. Scarp has concerns about Exhibit 20, the
24 signalization exhibit. But again because I want to --
25 I'll give you some latitude on talking about safety,

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1 then I will allow these accident reports to come in.
2 And as Mr. Scarp correctly anticipates, depending on
3 what's there at the time of the accident and what
4 signals are in place now will go to the weight of how
5 it's considered in the overall public safety
6 requirements, which is the main statutory drive for
7 this, and then depending on my findings regarding safety
8 of the crossing, public convenience and necessity.

9 So I think that's all we can do with
10 processing the exhibits at this point. Let me have you
11 step over to where you can testify, and when you get
12 there if you will raise your right hand.

13 (Witness LYNN LOGEN was sworn.)

14 JUDGE TOREM: All right, thank you.

15 For the record, can you spell your first and
16 last name.

17 MR. LOGEN: My name is Lynn Logen, it's
18 L-Y-N-N, last name is L-O-G-E-N.

19 JUDGE TOREM: I understand you have a
20 prepared transcript or manuscript to read from. I would
21 just encourage you to read it at a reasonable pace and
22 look up from time to time to make sure the court
23 reporter and I are tracking with you, okay?

24 MR. LOGEN: All right.

25 JUDGE TOREM: Go right ahead.

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1 MR. LOGEN: Do I need to move that the
2 exhibits be accepted at this point or wait until the end
3 for that?

4 JUDGE TOREM: The ones that have been
5 objections noted, let's wait until the end so that any
6 of the relevance issues and perhaps foundational issues
7 may have been addressed by the statement you're about to
8 make.

9 MR. LOGEN: Thank you.

10

11 Whereupon,

12

LYNN LOGEN,

13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

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

17 MR. LOGEN: Well, I plan to limit my
18 testimony to the three issues described in the
19 prehearing conference order, which are the requirements
20 of public safety, the convenience and necessity of the
21 use of Logen Road crossing, and the alternatives to the
22 closure.

23 In regards to the requirements of public
24 safety, I would like to first describe the use of Logen
25 Road at the point it is crossed by the railroad. The

1 Logen family owns farm property north and west of the
2 intersection of Logen Road as well as south and east of
3 that intersection. We use the crossing to move
4 equipment such as tractors with various implements and
5 trailers between these two pieces of property by using
6 the Logen Road crossing. Logen Road is posted as a
7 farming area with a sign showing a tractor. With the
8 proposed closing of the Logen Road crossing, the
9 alternatives would be to travel on Old Pacific Highway
10 and Pioneer Highway, both of which are heavily traveled
11 as indicated on --

12 JUDGE TOREM: Is it Mr. Norris's report?

13 MR. LOGEN: -- the traffic study, the volumes
14 there. There is 4,000 trips on Old Pacific Highway and
15 4,500 on Pioneer Highway. The speed limits along those
16 highways are posted at 50 miles an hour.

17 The other alternative besides traveling on
18 those highways is to use the crossing to the north
19 either at 102nd Street or Dettling Road. I believe
20 there would be situations where we would not be able to
21 use Dettling Road. If we're pulling a heavy load, we
22 wouldn't be able to stop on the grade. The only data
23 that I was able to locate in regards to the safety of a
24 tractor driver and for other drivers on the highway when
25 either of our 2 tractors which travel at 11 miles an

1 hour or at about 15 miles per hour as indicated in
2 Exhibit 18, when those tractors are driven on a heavily
3 traveled highway at 50 miles an hour, the table of
4 stopping distances that I have as Exhibit 19 shows that,
5 well, it assumes that a driver is approaching a stopped
6 object and the distance that it takes to stop. There
7 wouldn't be a whole lot of difference in the stopping
8 distance if you're stopping for a tractor that was
9 traveling very slowly or traffic backed up behind it.

10 And the other situation that I'm sure that
11 traveling on these highways at slow speeds is it will
12 cause people to pass the tractor when it's not
13 appropriate and cause drivers to take other risks. In
14 some places on the Pioneer Highway and perhaps the Old
15 Pacific Highway the stopping distance at 50 miles per
16 hour exceeds the sight distance. In addition, there are
17 sections of Old Pacific Highway and Pioneer Highway
18 where there is no shoulder, that is also shown by
19 Mr. Norris's study, thereby requiring the tractor to
20 travel fully within the driven lane rather than
21 partially on the shoulder.

22 The other option to traveling north and using
23 one of the crossings there is to travel south from the
24 property that's west of the railroad tracks and crossing
25 the railroad at 271st Street Northwest and then on

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1 Pioneer Highway. In regards to traveling on Old Pacific
2 Highway and Pioneer Highway to use the 271st Street
3 Northwest crossing, the safety issues regarding the
4 streets would be the same as I described earlier to
5 utilize the crossings north of Logen Road except the
6 distance is greater, thereby increasing the risk.

7 The choices of crossing streets are 102nd
8 Street, Dettling Road, and 271st Street Northwest.
9 Dettling Road has the least amount of traffic, but the
10 steep grade can make it impassable, and curves and grade
11 result in very short sight distances. Traveling through
12 the city of Stanwood and then using 271st Street is a
13 much longer distance, and 271st Street is fairly busy,
14 but it does have shoulders and a lower speed limit.
15 However, this isn't really an option due to the
16 distances that we would have to travel on Old Pacific
17 Highway and Pioneer Highway.

18 The last alternative is to use 102nd Street
19 to cross the railroads, which is the same as traveling
20 on Old Pacific Highway until it meets Pioneer Highway.
21 The intersections involved in these alternative
22 crossings offer another way to look at the public
23 safety. I asked Snohomish County to provide studies
24 regarding the safety or accidents regarding the crossing
25 at Old Pacific Highway and at Dettling Road. Their

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1 response to my Data Request Number 13 is that they
2 provided an extensive study of the Pioneer Highway and
3 Old Pacific Highway or 102nd Street intersection. Due
4 to the number of accidents, severity of those accidents,
5 and projected facilities shown on the Exhibit Z of the
6 Snohomish County response on a sheet titled
7 determination of possible inadequate road condition, the
8 location was very close to being classified as
9 inadequate. I realize that that was -- I understand
10 that better now, and it's above the 40 score, it would
11 be something they would look at, it would have to be I
12 believe above 80 where it was definitely found to be
13 inadequate. So that was my Exhibit Number 10 showing
14 the determination of possible inadequate road condition.

15 The intersection of Old Pacific Highway and
16 Pioneer Highway could not be closed as noted on Exhibit
17 10 because Old Pacific Highway is a freight route, and a
18 truck turning radius is not available at Old Pacific
19 Highway and Dettling Road. Plus Dettling Road would
20 need to be widened and curves improved for truck travel.
21 And my proposed Exhibit 20 or LFL-6, the November 21st,
22 2007, memorandum, indicates in handwriting about two
23 thirds of the way down the page, it says that Dettling
24 Road needs to be widened and curves improved for truck
25 traffic, so indicating a safety condition there. In a

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1 similar study provided by Snohomish County, and
2 Snohomish County labeled it as Exhibit AA, it was
3 regarding Dettling Road, and I marked that as or it's
4 been marked as Exhibit 11, and it reports three
5 accidents at Pioneer Highway and Dettling Road. I did
6 not research the public safety of traveling with a slow
7 moving tractor on Pioneer Highway and Old Pacific
8 Highway south of Logen Road and Old Pacific Highway due
9 to the distances involved in traveling that route
10 through Stanwood. I am not aware of any accidents at
11 the intersection of Logen Road and Old Pacific Highway.

12 I next looked at the public safety in regards
13 to crossing the railroad at the three optional
14 crossings, and BNSF provided a partial response to my
15 Data Requests 24 and 25, a portion of which are included
16 as Exhibit 21, and that is 8 pages. These reports of
17 accidents included accidents involving vehicles and
18 trains at all 3 of the alternate crossings to Logen Road
19 but none at Logen Road. The Commission has received a
20 comment from the fire chief of the North County Regional
21 Fire Authority who has concerns about closing Logen Road
22 and states the public safety would be affected by longer
23 response time and limited access to the Old Pacific
24 Highway area.

25 In summary regarding public safety, I would

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1 like to say that the railroad has provided an extensive
2 amount of data regarding the general safety of grade
3 crossings and the horrific accidents that can result
4 when a train strikes something. I'm very well aware of
5 this having seen firsthand experienced a herd of cattle
6 that was killed on tracks bordering our farm. I have
7 also seen several presentations regarding railroad
8 safety. I do not dispute the fact that in general grade
9 crossings and trains are dangerous to the public.
10 However, I question that this specific crossing would be
11 unsafe and must be closed and there isn't any options to
12 doing that. In fact, I believe that I have shown that
13 closing Logen Road would serve to degrade the public
14 safety in general, and one result would be that traffic
15 would be forced to travel on the highways,
16 intersections, and crossings that are already less safe
17 than Logen Road. I understand that the added siding can
18 possibly degrade the public safety at the Logen Road
19 crossing, but this can be addressed as I describe in
20 alternatives to closure.

21 In regards to the convenience and necessity
22 of the use of the Logen Road crossing, Mr. Norris
23 assumed that Stanwood's Fire Department will respond. I
24 do not think that's been established as a fact. In
25 fact, it was my understanding that they would not

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1 respond unless specifically requested by the other fire
2 department that normally would serve that area. As I
3 described earlier, the Logen family has farm property on
4 both sides of the railroad and adjacent to Logen Road.
5 The use of Logen Road crossing is the most convenient
6 way to access these properties without being exposed to
7 the hazards of traveling on the two highways, Old
8 Pacific Highway and Pioneer Highway, and exposing the
9 public to the hazards of slow moving vehicles on those
10 roads. Traveling on these highways will impede the
11 traffic on both of the highways causing inconvenience
12 for many people possibly for hours at a time. And
13 Burlington Northern Santa Fe has refused to consider a
14 convenient private crossing as a replacement so that the
15 inconvenience for my family as well as the public could
16 be avoided. In addition, there have been many members
17 of the public that have submitted comments explaining
18 their use of Logen Road and the inconvenience closure
19 will have on them, and I expect that we'll hear from
20 many more at the hearing tonight. In summary, closure
21 will cause the Logen family the need to acquire
22 additional equipment and will cause a number of people
23 inconvenience.

24 And this is all a, I don't have this written
25 in here, but this whole area is diked, I don't know if

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1 you've driven around here much. Where we're sitting
2 here used to be tide flats up to the base of the hill as
3 evidenced by shell mounds at the base of the hills in
4 these areas, and it was diked many years ago. But
5 occasionally those dikes break, and it's been a little
6 while since downtown Stanwood has been flooded, but it
7 has happened in the past a number of times, and I'm sure
8 it will happen in the future. And the Old Pacific
9 Highway is definitely in a low lying area and that it
10 could very well be flooded so that emergency vehicles
11 would not be able to travel that area possibly and get
12 to the barns and houses that are on the north end of Old
13 Pacific Highway near Pioneer Highway.

14 Now as far as alternatives to closure, the
15 proposed new siding will result in one main track and
16 one siding track at the Logen Road crossing. I note
17 that the crossing at 271st Street already has a total of
18 three tracks, yet it is not being proposed for closure.
19 There are several alternatives to closure including
20 leaving the crossing open and grade separation. The
21 present use of Logen Road crossing is insufficient to
22 warrant the expense of grade separation. However, I
23 believe that mountable medians with reflective traffic
24 channelization devices are a viable option along with
25 the non-traversable curb medians with or without

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1 on the level of service at the crossing
2 point, but a positive effect on driver
3 behavior at the crossing by eliminating
4 risky and illegal behavior as well as
5 violations at the crossing, thus
6 producing superb improvements in safety
7 MOE's.

8 MOE's are measures of effectiveness.

9 And this goes on to state that:

10 Such benefits are especially important
11 at crossings with limited sight
12 distance, high speed trains, and
13 multiple tracks.

14 We've heard testimony that there's plans to
15 increase the speed of the passenger trains here. I'm
16 not sure what is considered high speed as I'm not an
17 expert in rail safety or anything like that, but 79
18 miles an hour seems pretty fast to me. To further
19 examine the safety and alternatives, I went to the quiet
20 zone calculator on the Federal Railroad Administration
21 web site. Snohomish County provided a response to a
22 data request showing that the quiet zone calculation at
23 the Logen Road crossing as it exists today with just the
24 main line and determined that the risk index was
25 7070.92. I entered the addition of 1 siding track at

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1 the Logen Road crossing, and the calculator raised the
2 risk index to an index of 8565.58, that is my Exhibit
3 25, which is still below the national significant risk
4 threshold of 17,610. I then added 4-quadrant gates to
5 the crossing with 1 main track and 1 siding track still,
6 and the resulting risk index was 1478.5, which is my
7 Exhibit 26. I then entered option 12, which is
8 mountable medians with reflective traffic channelization
9 devices, and option 13, non-traversable curb medians
10 with or without channelization devices, to obtain risk
11 indexes of 2141.4 and 1713.12 respectively. Those runs
12 are included as my Exhibit 27. All of the results of
13 the mitigation are well below the nationwide significant
14 risk threshold of 17,610.

15 As far as in summary of the alternatives
16 here, I believe that there are four or more viable
17 alternatives to the closing of the Logen Road crossing.
18 One would be leaving the crossing open with the two
19 tracks. Two would be installing 4-quadrant gates.
20 Three would be installing mountable medians with
21 reflective traffic channelization devices. Four would
22 be installing non-traversable curb medians with or
23 without channelization devices.

24 Public safety will be harmed by the closing
25 of Logen Road crossing, and leaving the crossing open

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1 results in a crossing that is still well below the
2 nationwide significant risk threshold as shown by the
3 calculations. The last three options result in a
4 crossing that is more safe for the public than the
5 present crossing even with the addition of the siding.

6 In summary, I would like to say that I
7 believe that I've shown that the public safety will be
8 harmed by the closing of the Logen Road crossing, that
9 convenience and necessity of the public requires leaving
10 the crossing open and that there are viable options to
11 closing the crossing. Leaving the crossing open also
12 preserves options for the public in the future.
13 Therefore, Logen Road should not be closed, but instead
14 an alternative to closing should be ordered. I also
15 note that in one case that I was referred to, the
16 Department of Transportation versus Snohomish County,
17 that that crossing was closed because there was an
18 overpass, there was a safer alternative that was an
19 overpass I believe within a couple of blocks of the
20 crossing that was closed in that case. That's not the
21 case here.

22 That's all I have.

23 JUDGE TOREM: Thank you, Mr. Logen.

24 I believe we'll go straight to cross-exam,
25 and then we'll get to the, because I don't know what

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1 will come out on cross-exam, we'll deal with the other
2 exhibits that you've wished and objections that have
3 already been posed once we're done with
4 cross-examination.

5 Mr. Scarp.

6 MR. SCARP: Thank you, Your Honor.

7

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

9 BY MR. SCARP:

10 Q. Mr. Logen, did you conduct any traffic
11 analysis or traffic count?

12 A. I did not.

13 Q. Okay. Is this the first time you've been
14 involved in analysis of a grade crossing, a public grade
15 crossing closure?

16 A. Yes, it is.

17 Q. It's fair to say then your experience is
18 everything you've learned in the past couple of months?

19 A. That is correct.

20 Q. Okay. And you heard the testimony of
21 Mr. MacDonald and Ms. Hunter and also Mr. Bloodgood,
22 Mr. Agee, do you have any dispute that they're
23 professionals in their fields?

24 A. I do not.

25 Q. Okay. And did you gather from listening to

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1 their testimony that they have among them substantial
2 experience in analyzing the factors for a grade crossing
3 closure?

4 A. I don't know that I can assume that or not.
5 I don't recall them testifying how long they've been
6 doing what they've been doing in all cases.

7 Q. Okay, fair enough.

8 I would like you to look if you would at the
9 third page of Exhibit 28, your notes.

10 A. Yes.

11 Q. And in the middle of the page there under
12 convenience and necessity of use of Logen Road crossing,
13 the first paragraph there, do you see that?

14 A. Yes.

15 Q. The last sentence says:
16 BNRR has refused to consider a
17 convenient private crossing as a
18 replacement so that the inconvenience
19 for the Logens and the public can be
20 avoided.

21 Do you see that?

22 A. Yes, I do.

23 Q. All right. Have you proposed a private
24 crossing as a resolution to this?

25 A. I thought that that's what I was doing when I

0282

1 talked to you and you called back about possibly the use
2 of Jim Lund's crossing.

3 Q. All right. And when you say here that
4 consider a convenient private crossing and you've got
5 the public in the same sentence, you weren't considering
6 that the public would be using the private crossing,
7 were you?

8 A. I was not. It's just the inconvenience of
9 public of us traveling on the highway.

10 Q. All right. And so the convenience of a
11 private crossing would be strictly for the use of the
12 Logens for their farm equipment?

13 A. That's correct.

14 Q. All right. Is there anyone else that you're
15 aware of besides members of the Logen family that
16 traverse from property on one side of the crossing to
17 the other aside from Mr. Lund who's farther south and
18 has his own crossing?

19 A. Currently I'm not aware of any. We have at
20 one time leased to people that had another private
21 crossing that went from their property to our property.

22 Q. How long ago was that?

23 A. 40 years ago.

24 Q. Okay, fair enough.

25 And so but what we're talking about here then

0283

1 for that type of use would be for the Logen family?

2 A. Yes.

3 Q. Okay. And can you help us out here --

4 MR. SCARP: And, Your Honor, I wonder if we
5 could use for illustration the aerial photo, I want to
6 make sure I understand if I can approach here.

7 JUDGE TOREM: Please do.

8 BY MR. SCARP:

9 Q. And maybe you can show us and so that Judge
10 Torem especially has an understanding, Mr. Logen, of
11 exactly what we're talking about here and the crossing
12 and where it comes down. I assume this is what we're
13 talking about here is --

14 A. Right.

15 Q. And maybe the --

16 JUDGE TOREM: For the record, Mr. Logen is
17 pointing at an aerial photograph that we're using for
18 demonstrative purposes only today which shows the 292nd
19 Street Northwest and Logen Road railroad crossing.

20 Q. And you've indicated here where the crossing
21 itself is, maybe I could use a pen to be more precise,
22 and then you come up toward the east and then in a
23 southeasterly direction following Logen. This area here
24 that shows it heavily at least in this picture forested
25 with trees, whose property is that?

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1 A. That's part of the Albert family partnership,
2 they own this, and that's part of this parcel.

3 Q. Okay, and how --

4 A. And it includes this portion over here.

5 Q. Is that some sort of wetland? I mean it's
6 forested, it's not farmed, is that correct?

7 A. I couldn't tell you if it's classified as
8 wetland or not. It is like all of this area on the east
9 side of the railroad tracks fairly low lying and --

10 Q. Wet?

11 A. Wet, yes.

12 Q. But how long has it been since that parcel
13 has been farmed, just if you know, I mean given the age
14 of the trees and such?

15 A. I don't know.

16 Q. Okay. Long time?

17 A. At least 50 years I think it was. About 50
18 years ago it was used for grazing.

19 Q. All right. Now can you show us from this map
20 or this photo where does your property start and end?

21 A. This parcel right here.

22 Q. Okay, and for the record you're showing
23 what's north of Logen Road crossing west of the railroad
24 tracks?

25 A. That's correct.

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1 Q. Who owns that parcel?

2 A. I believe it's in the name of my nephew, my
3 brother's son.

4 Q. And who's that?

5 A. Eric Logen.

6 Q. Okay. And how about over here on the east
7 side of the tracks?

8 A. This parcel below Logen Road clear down to
9 here, here's Jim Lund's, here's the crossing.

10 Q. And the light colored part here is Mr. Lund's
11 property, so if we're moving where it's green all the
12 way up to where the trees are, is that Logen?

13 A. Yes, plus this parcel here that goes up to
14 here.

15 Q. So this parcel up here on the hillside?

16 JUDGE TOREM: And up here is referring to
17 what appears to be the east side of the tracks?

18 THE WITNESS: Yeah, and east of Logen Road
19 and south of what would be 292nd if it went all the way
20 across.

21 JUDGE TOREM: And it's bordered by the
22 Pioneer Highway?

23 THE WITNESS: Yes.

24 BY MR. SCARP:

25 Q. So where does your property begin here to the

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1 north, can you show us?

2 A. Right here.

3 Q. And that's this part right here, and who owns
4 this part here?

5 A. I'm not sure, it may be Alberts as well.

6 Q. Okay.

7

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

9 BY JUDGE TOREM:

10 Q. So the southern portion of that parcel is
11 Logen family property?

12 A. Yes.

13 Q. And the northern portion may be Albert, but
14 it's definitely not Logen?

15 A. That is correct.

16 Q. And again, this is the parcel bordered by the
17 tracks --

18 A. Pioneer Highway --

19 MR. SCARP: No, this parcel upland is
20 bordered by Logen Road to the west and Pioneer Highway
21 to the east.

22 Q. And who is that in the name of? The first
23 one was Eric Logen.

24 A. Margaret Logen.

25 Q. So Margaret Logen for that?

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1 A. Yes, this one and this one.

2 JUDGE TOREM: All right.

3

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

5 BY MR. SCARP:

6 Q. Is any of this property in your name,

7 Mr. Logen?

8 A. No, it's not.

9 Q. Okay.

10 A. Not presently.

11 Q. All right.

12 And so the closest parcel is here, what's

13 this cross street right here, is that --

14 A. That is 292nd I believe.

15 Q. Okay.

16 A. I'm not sure. It's not a posted road, it's

17 more or less a driveway to this one house where my niece

18 lives.

19 Q. Okay. So your parcel begins at, if I will,

20 the northeasternmost part is at what would be 292nd and

21 Pioneer Highway?

22 A. That's correct.

23 Q. All right. And so how far is that from

24 Dettling or 300th?

25 JUDGE TOREM: I don't believe there's any

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1 scale indicated, so can you estimate?

2 Q. If you know.

3 A. I asked Mr. Norris that this morning on the
4 distance for the various routes to come around and get
5 back down to here.

6 Q. Back down to here, you mean down --

7 A. Down to my mother's house here.

8 Q. Okay, and again that's on the --

9 A. It's on Logen Road.

10 Q. All right.

11 A. At roughly 288th.

12 Q. All right. But you would know that route
13 pretty well, wouldn't you, you've traveled it a lot?

14 A. Yeah.

15 Q. Okay.

16 A. It's probably 3 quarters of a mile I'm
17 guessing.

18 Q. From 292nd to 300th, all right.

19 This parcel down below to the west of Logen
20 Road, when was the last time you farmed that?

21 A. We leased it out about 15 years ago, and my
22 son and I have been doing work on the ditches recently
23 to start farming it again.

24 Q. So the last time it was farmed was about 15
25 years ago?

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1 A. Yes.

2 Q. All right.

3 Okay, thank you.

4 Mr. Logen, do you live in Bellevue?

5 A. I do.

6 Q. And what is your job?

7 A. I work for Puget Sound Energy.

8 Q. Okay. Is there a structure at your, I think
9 you called it your mother's house, which is east of
10 Logen Road that you could keep your tractor or one of
11 your tractors, is there a barn or --

12 A. Yes, there's a barn and several sheds.

13 Q. Okay. Do you have a pickup truck as well?

14 A. I have one in Bellevue.

15 Q. All right.

16 A. It's --

17 Q. Do you use it -- well, never mind.

18 A. It's a 1980, let's put it that way, it goes
19 to the dump.

20 Q. All right.

21 Do you have, you know, an orange triangle
22 that you put on the back of your tractor if you're on
23 the highway?

24 A. I think there's one in the tractor garage.

25 Q. Okay.

0290

1 A. I'm not positive on that, but I know I've
2 seen one somewhere.

3 Q. Are there signs out here on Old Pacific
4 Highway as you go north out of Stanwood toward Logen
5 Road that caution drivers against farm equipment on the
6 road?

7 A. I wasn't sure, and I asked my brother who
8 lives in Stanwood, and he didn't believe there were any.

9 Q. Have you ever seen any on Dettling Road?

10 A. Yes, I believe there's one in one of the
11 pictures that Staff submitted.

12 Q. Are you aware of farm equipment caution signs
13 anywhere else in the area between say 271st and 102nd on
14 either Pacific Highway or Pioneer?

15 A. On Old Pacific Highway I don't know if there
16 are any other than my brother's answer to the question.

17 Q. Okay.

18 A. On Pioneer Highway, that's on Google, I
19 cruised the entire road, didn't see any.

20 Q. Okay.

21 Mr. Logen, there's your exhibits regarding
22 calculations of the quiet zone calculator. Where's the
23 data that you put in, do you have that available, or do
24 you just have the printout?

25 A. I just printed this is all.

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1 Q. Okay. Let me ask you on Exhibit 25, it says
2 estimated total cost zero dollars; do you see that?

3 A. Yes, I do.

4 Q. And on Exhibit 26, it says estimated total
5 cost \$100,000; do you see that?

6 A. I do.

7 Q. Do you know why that is, the difference?

8 A. 26 would reflect the installation of
9 4-quadrant gates, upgrade from the present 2-quadrant.
10 Exhibit 25 is with no added equipment, it's just adding
11 a siding track.

12 Q. Where does -- pardon me if I'm -- where does
13 Exhibit 26 show 4-quadrant gates?

14 A. If you look at the column marked pre-SSM,
15 shows a 0 and then SSM shows 4.

16 Q. Okay. So then on Exhibit 25 --

17 A. I did print this page, and you can see that
18 the 4 ties to the 4-quadrant gates.

19 JUDGE TOREM: Mr. Logen, we can't hear you
20 when you have your back turned.

21 Q. Then going back to Exhibit 25 if you can,
22 pre-SSM, and SSM, which by the way, what does that mean,
23 SSM, supplemental something?

24 JUDGE TOREM: I believe on those pages,
25 Mr. Scarp, it says SSM stands for supplementary safety

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1 measures.

2 MR. SCARP: Thank you.

3 BY MR. SCARP:

4 Q. That one says 0 and 0, is that --

5 A. That's correct.

6 Q. That's what you put in, inputted 0 gates?

7 A. I added the siding track only on that
8 scenario.

9 Q. Oh.

10 And in your traffic count, is 60 cars, is
11 that --

12 A. That came from the traffic study done by your
13 consultant.

14 Q. And who was that, Mr. Norris?

15 A. Yes, I'm sorry.

16 Q. All right. Did you put in a higher estimate
17 consistent with what he testified to here today?

18 A. I did not.

19 Q. Okay.

20 Mr. Logen, do you ever see tractors out on
21 Old Pacific Highway when you're up here?

22 A. Yes.

23 Q. And do you ever drive around them?

24 A. Yes.

25 Q. Are you aware of any accidents involving them

0293

1 here?

2 A. No, I'm not.

3 Q. All right.

4 A. I would like to say I'm usually only here on
5 the weekends.

6 Q. Okay.

7 A. When the traffic is light.

8 Q. All right.

9 The quiet zone, if the crossing is closed,
10 that would make it a quiet zone, wouldn't it?

11 A. I believe that it would because there would
12 be no crossing to honk for.

13 Q. Okay.

14 You've testified that your opinion regarding
15 the viability of using medians at the Logen Road
16 crossing in order to facilitate the use of 4-quadrant
17 gates; do you recall that testimony?

18 A. Yes.

19 Q. And do you know what the width of those
20 medians is or are?

21 A. I do not.

22 Q. Okay. And similarly do you know what the
23 width of the traffic lanes that would be divided would
24 then be?

25 A. I do not. I believe there was testimony

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1 earlier that said if they are a foot wide, that would
2 make the resulting lanes 7 foot rather than 7 1/2 foot.

3 Q. And do you know what the width of a fire
4 truck is?

5 A. It's probably 7, 7 1/2 feet, I don't.

6 Q. Okay.

7 A. I've never measured one.

8 Q. All right. How about a school bus?

9 A. I would think they vary somewhat, but it's
10 somewhere in that width as well.

11 Q. Would you agree with me then if you add
12 medians to facilitate 4-quadrant gates that you probably
13 couldn't run a fire truck or a school bus across Logen
14 Road?

15 A. Not unless the crossing was widened slightly.

16 Q. Have you spoken to the County about the cost
17 of installing or the viability of installing medians?

18 A. I have not.

19 MR. SCARP: I think those are all the
20 questions I have, Your Honor.

21 JUDGE TOREM: All right.

22 Mr. Thompson?

23 MR. SCARP: Oh, I did find another one.

24 BY MR. SCARP:

25 Q. Regarding Exhibit 28, Mr. Logen, you said

0295

1 that the speeds on Pioneer or Old Pacific Highway exceed
2 the sight distance. Do you recall your testimony on
3 that.

4 A. Yes.

5 Q. Do you have any qualifications to determine,
6 and I apologize, I think you said the stopping distances
7 exceed the sight distance, wasn't that --

8 A. I believe that to be true, yes.

9 Q. All right. Do you have any qualifications to
10 determine stopping distances?

11 A. I do not.

12 Q. All right. And have you measured stopping
13 distances in this instance on any of the roads out here
14 that we're talking about?

15 A. I have not.

16 Q. All right. And have you measured sight
17 distances?

18 A. I have not.

19 MR. SCARP: All right, those are all the
20 questions I have, Your Honor.

21 JUDGE TOREM: All right, thank you,
22 Mr. Scarp.

23 Mr. Thompson, anything?

24 MR. THOMPSON: No, Your Honor.

25 JUDGE TOREM: All right.

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1 Mr. Kasting?

2 MR. KASTING: I have a couple quick ones.

3 JUDGE TOREM: Sure.

4

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

6 BY MR. KASTING:

7 Q. On Exhibits 25, 26, and 27, was there any way
8 to include sight distances into these estimations, or
9 was it simply that you put in there was going to be a
10 siding added?

11 A. I did not see a place to add or change sight
12 distances. I assumed that those -- I assumed that those
13 factors were taken into account when the model was
14 populated, which I didn't do, it came you select the
15 crossing, and the model populates.

16 MR. KASTING: Nothing further.

17 JUDGE TOREM: All right, thank you.

18 Mr. Logen, did you have anything else you
19 wanted to add to clarify any of the responses you had
20 given on cross-examination?

21 MR. LOGEN: I don't believe so, no.

22 JUDGE TOREM: Okay.

23 Let me walk back through then the exhibits
24 that are still outstanding. First, Exhibit 19, if I
25 understood the objections on some of the supporting

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1 testimony just come in was a question as to how this
2 would be useful to me, which will be truly if it's
3 useful to me as now the finder of fact, I will err on
4 the side of admitting it. If I can't find any use for
5 it that's going to help me in my decision, then I would
6 be indicating it's irrelevant or otherwise not useful
7 and be excluded. 19 despite what, Mr. Scarp, you've
8 indicated he doesn't have any particular expertise in
9 stopping distances, this appears to be a table that
10 toward the bottom, although it's a 1950 code updated
11 through 1989, appears to have at least one state's
12 judicial endorsement that these are at least some
13 average stopping distances for vehicles for unloaded
14 except for the driver with brakes in good condition on
15 dry hard approximately level stretches of highway and
16 free from loose material. I can't say that it would add
17 a whole lot of weight or that I can give a lot of weight
18 to this, but at least it gives me some basis for if
19 there's a brief that comes in later that talk about
20 stopping distances to have something in the record to
21 which to refer. So for a very limited purpose of ball
22 park figures for stopping distances on the highway, this
23 will be admitted, 19.

24 Now 20, despite all the testimony that came
25 in as to why this is being offered, Mr. Logen, it

1 appears simply the annotation three quarters of the way
2 down the page regarding the need for Dettling Road to be
3 widened is the main thrust of why this was being
4 offered, and I see from you nodding your head that I
5 did get that correct?

6 MR. LOGEN: Yes, and that would include fire
7 trucks as well.

8 JUDGE TOREM: I understand. The testimony
9 that's come in thus far looked at this is all regarding
10 closing Logen Road today as opposed to the potential
11 closure further north of this intersection described,
12 and it appears that this intersection is still open as
13 you've suggested it be used as an alternative farther
14 north for the farm equipment in cases where Dettling
15 Road would be inappropriate due to grade. And I don't
16 see that there's been any other supporting testimony in
17 the record that would tell me whether this November
18 21st, 2007, suggestion is in the works or otherwise has
19 been accomplished, so I don't see that this will help me
20 at all and may turn out to be a distraction, and
21 Dettling Road and what improvements might need to be
22 required there are not necessarily directly before me.
23 So I'm going to exclude Exhibit 20 as less helpful than
24 you might have thought it would be. The supporting
25 testimony around it though may still be helpful as the

1 transcript is produced.

2 Turning to Exhibits 22, 23, and 24, let me
3 say first I appreciate the spirit in which these were
4 researched and offered, but I want to say that the one
5 sentence comments in Exhibit 22 and 24 and what I have
6 been able to glean is also included in Exhibit 23
7 regarding how 4-quadrant gated crossings did or didn't
8 function in these particular studies are less helpful
9 than the testimony that came in today from the live
10 witnesses that described the intent of them as well as
11 information that I believe is encompassed in those
12 documents of which I took official notice and proffered
13 by the Commission, Exhibit A, the DOT Grade Crossing
14 Protective Handbook. I do believe that that has
15 portions that address 4-quadrant gates, and I hope I'm
16 not confusing it with another handbook that definitely
17 does, but I believe this one does as well. I would
18 rather rely on that in context than any of these studies
19 which are specific to particular roadways and are not
20 from anything I can glean here directly applicable to
21 the situation here just north of Stanwood on Logen Road.
22 So I understand the general message of these, and I
23 think that's been gotten across, but admitting them as
24 an exhibit on which I might be able to rely or even
25 consider citing to in a decision, they're not helpful,

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1 so I would exclude 22, 23, and 24.

2 As to 25, 26, and 27 and the calculator for
3 quiet zones, I've had to wrestle as we heard the back
4 and forth as to what the purpose of this calculator is
5 and how it functions, how you put information in. And
6 as much as I thought initially I would like to admit
7 these, the more I heard about the factors that are not
8 readily apparent on their face, I don't think in good
9 faith I can make these part of the record other than the
10 testimony you've already discussed as to the efforts you
11 went to to see. Because I don't know what these numbers
12 mean, there hasn't been for me at least sufficient
13 explanation of what this nationwide significant risk
14 threshold means at the 17,610 point level and how that
15 might compare. I don't know if this is a linear scale
16 or a geometric scale, and I'm also a bit at a loss to
17 understand how the estimated costs are calculated.
18 You've indicated you didn't make those calculations but
19 the computer did that on its own. So I find it might be
20 a useful tool for someone who knows why it's being done
21 or if there's a more complete narrative with it, but I
22 simply don't have that in the proceedings today, so I
23 can't in good faith entertain those and the objections
24 have to be sustained as to the completeness of 25, 26,
25 and 27.

0301

1 What I do want to say rather than sounding as
2 though that's discouraging that some of this material
3 you put together, Mr. Logen, has been excluded, the
4 message of it is gotten across, and the issues have been
5 raised through your cross-examination of other
6 witnesses. And these six exhibits, 22 through 27, focus
7 mainly as to whether or not 4-quadrant gates are a
8 reasonable alternative to closure, and that's definitely
9 an issue on which a record has been created today with
10 or without these specific exhibits, and it's something I
11 expect to see addressed in the briefs of all parties
12 that care to address that in their post-hearing briefs.
13 So I don't want you to walk away thinking that because
14 I've excluded these exhibits that that issue is off the
15 table whatsoever, but a brief that addresses the actual
16 scenario of what I will see when I drive the area
17 tomorrow and one that does not introduce new evidence
18 but simply analyzes the testimony we heard about roadway
19 widths, approaches, and what can be seen in the
20 photographs that were admitted in Exhibit 17 will be
21 real helpful for making that case and can be made
22 without these documents I believe. So because these are
23 much less helpful to me than what I've just described,
24 they're excluded.

25 Mr. Logen, you were going to submit Exhibit

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1 28, your notes with the annotations, and I need to set a
2 deadline for you to do that. Would noon on Thursday
3 work to allow you enough time to scan that and E-mail it
4 in to me and the records center and all the parties?

5 MR. LOGEN: Yes.

6 JUDGE TOREM: That's great, we'll set that
7 deadline then now.

8 And, Mr. Scarp, it appeared to me from
9 discussion earlier from Mr. Norris and testimony from
10 Mr. Logen that it would be helpful for me to have a copy
11 of the mutual aid agreement between these fire
12 departments. So, Ms. Endres, apparently you're being
13 deputized to find that. If you need further time past
14 noon on Thursday to acquire it, please just send an
15 E-mail indicating an approximation of when it can be
16 submitted. So we'll mark that as Exhibit 29 will be the
17 mutual aid agreement for the local fire departments.

18 Mr. Logen, is there any other testimony or
19 exhibits that you have?

20 MR. LOGEN: None.

21 JUDGE TOREM: All right.

22 So the last housekeeping we have to do before
23 we take a break to get ready for the public comment
24 hearing tonight I think is setting a deadline somewhere
25 out there for post-hearing briefs. Mr. Scarp, based on

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1 your knowledge of the State Environmental Policy Act
2 proceedings that are pending, can we comfortably set a
3 deadline, or would you like to set a deadline earlier
4 for briefs with a chance for maybe a two-page letter
5 after the comment period ends, would you rather move
6 forward say somewhere in the first two weeks of May, say
7 a month from now to submit briefs, and then if necessary
8 you will submit a copy as Exhibit 30 of the SEPA
9 document?

10 MR. SCARP: What I would like to do is could
11 we put that on the record just before we start the
12 public comment? If I have a chance to find out perhaps
13 a little more on -- I don't want to make promises I
14 can't keep.

15 JUDGE TOREM: All right, I will allow you to
16 confer with the rest of your clients.

17 MR. SCARP: I think we could all -- unless
18 you have some ideas now about what you think. I just
19 don't -- I'm sort of indifferent to what the date is so
20 long as we have what it is you want before you. So if
21 we could maybe just put that on the record before we
22 begin.

23 JUDGE TOREM: Certainly. So let me be clear
24 then, what I'm asking for is a proposed date for
25 submission of post-hearing briefs that will address

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1 everything except the SEPA documents unless the parties
2 wish to submit just one brief and wait for SEPA and then
3 have several weeks thereafter, which is a date that's
4 uncertain. What I'm looking for is a brief on
5 everything with substance that's before the Commission,
6 and if there's a chance to comment on the SEPA documents
7 from the parties, that can come in after the SEPA record
8 closes.

9 MR. SCARP: I'm sorry, I did misunderstand.
10 I would suggest while the information is fresher in
11 everyone's mind, I don't have a particular date.

12 John, you want to take a stab?

13 MR. THOMPSON: I sort of liked the idea of
14 the first couple weeks of May.

15 JUDGE TOREM: Would Friday, May the 8th, work
16 for everybody?

17 MR. SCARP: Sure.

18 JUDGE TOREM: Okay, so let's set Friday, May
19 the 8th, as the deadline for post-hearing briefs. And
20 with any luck SEPA records will be issued in the next 20
21 to 30 days, and there will be a 30 day comment period
22 for whatever the Department of Ecology submits. When
23 that comes out, I would ask that the SEPA document
24 itself, whether it be a mitigated determination of
25 non-significance or DNS by itself or on the off chance

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1 they recommend an environmental impact statement or
2 report, whatever DOE recommends, that that be submitted
3 as Exhibit 30. And no later than 10 days after the
4 close of comment period that you plan on submitting any
5 additions or supplements to your briefs, which should
6 have already been filed on May 8th. I'm anticipating it
7 will be the end of May or the beginning of June before I
8 can officially close the record and take in the SEPA
9 documents and any comments on them. What I will plan to
10 do is when I see Exhibit 30 come in and I read in that
11 document what the closing date is for their comments, I
12 will issue you a new deadline based on that, but I'm
13 going to count on, Mr. Scarp, you or Ms. Endres
14 submitting the SEPA document so I am triggered to do
15 that.

16 MR. SCARP: Understood.

17 JUDGE TOREM: Anything else for this portion
18 of today's hearing, the evidentiary hearing?

19 All right, then the evidentiary hearing is
20 closed at about 10 minutes to 6:00. I'm going to give
21 our court reporter a break for as long as she needs up
22 to 30 minutes, and I will tell the rest of the folks
23 here when we're going to take their comments as we
24 rearrange the room, so we're off the record.

25