EXHIBIT 4

**BEFORE THE THE WASHINGTON UTILITIES TRANSPORTATION COMMISSION**

| | | |
|---|---|---|
| **BSNF RAILWAY COMPANY,** **Petitioner** | ) | **DOCKET NO. TR-070696** |
| **v.** | ) | |
| **CITY OF MOUNT VERNON** **Respondent** | ) | **DECLARATION OF GLENN BRAUTASET** |
| **And** **SKAGIT COUNTY, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, and WEST VALLEY FARMS** **Intervenors** | ) | |

I, Glenn Brautaset, do hereby declare the following:

1. That I am the Assistant Fire Chief employed by the City of Mount Vernon's Fire Department. I have been employed by the City for a period of six years and do hereby make this declaration in that capacity.
2. That my duties as Assistant Fire Chief for the City of Mount Vernon include acting as Director of the Fire Department in the absence or unavailability of the Fire Chief or Chief of Operations/Training; acting as incident commander or other ICS roles as required; acting as the Emergency Manager for the City during flood fight and/or other emergency situations.
3. That specific job duties performed while acting under the above titles include:

a) developing, implementing and managing a comprehensive fire prevention program that includes fire and life safety inspections of all commercial, industrial, instititutional, multi-family, education and public assembly occupations to insure compliance with applicable Federal, State, and Local fire and life safety laws and regulations; developing, implementing and managing a comprehensive and effective community fire and life safety program;

b) participating in the development, updating, and maintenance of the City's Emergency Response Plan and programs; c) maintaining SARA Title III and Community Right to Know requirements relating to hazardous materials and development of hazardous materials response plans;

c) coordinating City addressing and Geo-base functions between the Fire Department and other City departments and coordination of the development and updating of target hazard Pre-Fire Plans and emergency response mapbooks;

d) serving as the Fire Department liaison specifically with the Washington State Fire Marshal, Skagit County Fire Marshal, Department of Emergency Management, Northwest Air Pollution Authority, Mount Vernon Police Department, and other local, county, regional or state investigative or regulatory agencies, in matters relating to fire prevention, fire investigation, hazardous materials, and emergency planning

4. That it is my opinion that emergency services to the South Mount Vernon area will be decreased if the Hickox Railroad crossing is removed and will significantly and adversely affect the provisions of fire services in the area.
5. That the City of Mount Vernon relies heavily on mutual aid from Skagit County Fire District #3 (the neighboring fire department to the south). For example, when a commercial or residential fire occurs on Dike Road, mutual aid is often requested knowing SCFD#3 has quick access from Hickox Road.
6. That in all circumstances, the City attempts to have Engine Companies respond from different routes (such as Hickox Road) to help expedite responses and create alternative routes should an obstruction be encountered on the primary route.
7. That if the Hickox Road railroad crossing is removed, then the City has only one feasible access to the area.

8. That emergency services to the South Mount Vernon area will be decreased if the railroad crossing is removed specifically its impact to Emergency Medical Services (EMS).
9. That, as with fire control, EMS and auto extrication is another use where SCFD#3 is routinely utilized for mutual aid and that many areas west of the railroad are best accessed by SCFD#3 using the Hickox railroad crossing.
10. That without the crossing, response would be through more congested business and residential areas, as well as a school zone. It is therefore likely that combinations of these factors will reduce response times when minutes may be critical to a patient outcome (heart attacks, strokes, respiratory arrest, etc.)
11. That, the City's "downtown" Engine Company is routinely committed (inspections, hydrant maintenance, etc.) to the expanding commercial district adjacent to Hickox Road. If a medical or fire call is received on Dike Road, it's conceivable the Hickox Road access may be the more prudent response route given the location of the incident.
12. There have also been occasions when the Engine Company has been blocked by a train at the Blackburn Road railroad crossing and the Hickox Road crossing provides another point-of-access should the fire or medical call be near the southern border of Mount Vernon.
13. That Emergency Management for Mount Vernon will be impacted if the railroad crossing is removed. As stated above, as the City's designated Emergency Manager, there have been several occasions where the City has designated the Hickox Road crossing as an "alternate contingency route" for flood control.
14. That purpose for the alternative contingency route was two-fold; 1) secondary evacuation route for residents and businesses south of Section Street and, 2) secondary logistical route for flood control vehicles providing supplies for dike reinforcement south of the Waste Water Treatment Plant.

15. That, the Hickox Road railroad crossing has historically played a valuable role for emergency use. Although perhaps not a primary access point, the Hickox Road crossing is a valuable alternate for fire, medical and emergency management purposes..

The below-signed does certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct at the time it was written.

DATED this day of August 28, 2007.

Glenn Braufaset
Assistant Fire Chief
for the City of Mount Vernon

City of Mount Vernon
Location Where Declaration Made

EXHIBIT 5

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

| | |
|---|---|
| BNSF RAILWAY COMPANY<br><br>PETITIONER,<br><br>vs.<br><br>THE COUNTY OF SKAGIT<br><br>RESPONDENT | Docket No. 070696<br><br>DECLARATION OF DAVID SKRINDE |

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I, David Skrinde am a Chief of Skagit County Fire Protection District No. 3.

2. Skagit County Fire Protection District No. 3 is an all-volunteer fire district whose volunteers respond out of two stations, Cedardale and Conway.

3. Prior to the completion of the final *Hickox Road Railway Crossing Closure Traffic Impact Analysis "WSDOT Study"* dated January 2007, the District provided a



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Response Time Summary to WSDOT's consultant documenting that the closure of Hickox Road would cause a 2 to 4.5 minute minimum increase in response times to those areas of the District currently accessed by Hickox Road. A true copy of the Response Time Summary is attached as Exhibit A.

**4.** Despite this information, the *WSDOT Study* understates the impact of the closure on fire protection and emergency medical services by referencing only a .6 minute increase in response time with no explanation of how this conclusion was derived.

**5.** Subsequent to preparing the Response Time Summary, the Fire District, on May 14, 2007, had a typical fire response in the area affected by the closure. The information contained in Exhibit A and the actual response times from the May 14th incident are summarized in the following tables:

**TABLE I**
**Distance and Driving Time at Speed Limit**

| Responding Station | Distance/Driving Time to Dike Road S Curves *Hickox Road Open* | Distance/Driving Time to Dike Road S. Curves *Hickox Road Closed* | Distance/Driving Time Increase |
|---|---|---|---|
| Cedardale | 3.2 miles/ 4.5 minutes | Via Blackburn Road 4.4 Miles/9 minutes | 1.2 miles/ 4.5 minutes |
| Cedardale | 3.2 miles/4.5 minutes | Via Stackpole Road 5.2 miles/9 minutes | 2 miles/ 4.5 minutes |
| Conway | 4.5 miles/ 8 minutes | No Change | 1.3 miles 3.5 minutes |



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**TABLE 2**

**Actual Response Time Summary (Based on May 14, 2007 fire response)**
(Response time includes dispatch time, mobilization of volunteers and drive time, the primary variable affected by the Hickox Road closing is the drive time variable.)

| Responding Station | Response Time *Hickox Road Open* | Est. Response Time *Hickox Road Closed* | Response Time Increase |
|---|---|---|---|
| Cedardale | 13 minutes (5 minute drive time) | 17 minutes (9 minute drive time) | 4 minutes |
| Conway | 14 minutes (7 minute drive time) | No Change | 2 minutes |

**6.** The above tables confirm that the closure of Hickox Road will increase the response times of the District a minimum of 2 minutes based on current response times from the Conway Station and a minimum of 4 minutes from the Cedardale Station.

**7.** The two minute delay reflected in Table 2 is somewhat misleading as the following factors could substantially increase the response time from the Conway Station.

a. A closure of Hickox Road will increase farm machinery traffic on Dike Road and Stackpole Road which will potentially further reduce response times from the current Conway Station.

b. The Conway Station is located in the flood plain. The District's five-year plan is to relocate the Conway Station out of the flood plain. This will necessarily move the Conway Station a further distance from the affected area and will significantly increase the response time from Conway. Once the relocation is



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completed, Cedardale will remain the station with the initial response responsibilities for the affected area.

Dated: 8/28/07.

David Skrinde, Chief Skagit County Fire Protection District No. 3



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Response Time Summary
Hickox Rd Closure Study

Station 1 (Conway)

- Response time and distance from station 1 traveling north on Dike Road to Hickox Road, 3.2 miles - 6 minutes at posted speed limit.
- Response time and distance from station 1 to S curves on Dike Road, 4.5 miles – 8 minutes at posted speed limit.

Station 2 (Cedardale)

- Station 2 to west Hickox Rd and Dike Road, 2 miles – 4 minutes at posted speed limit.
- Station 2 to Hickox Road west to Dike Road, north to S curves, 3.2 miles – 4.5 minutes at posted speed limit.
- Station 2 north on Hwy 99 south to Blackburn Road, west to Dike Road, South to S curves, 4.4 miles – 9 minutes at posted speed limit.
- Station 2 south to Stack pole Road, west to Dike Road, North to S curves, 5.2 miles – 9 minutes at posted speed limit.

Results:

With the elimination of Hickox Road, response times to service area affected either by north through Mount Vernon or south around Stack pole Road has a 9 minute travel time at posted speed limit. Maintaining Hickox Road access, travel time is cut in half to 4.5 minutes.

In 2005, SCFD 3 responded to 12 services calls with a response average of 13 minutes of the first arriving engine company. Add 4.5 minutes to the 13 minute average response time, and the projected response time average would be 17.5 minutes.

Respectfully submitted,

Chief David Skringe

EXHIBIT A



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EXHIBIT 6

**BEFORE THE WASHINGTON STATE**
**UTILITIES AND TRANSPORTATION COMMISSION**

| | | |
|---|---|---|
| BNSF RAILWAY COMPANY,<br><br>Petitioner,<br><br>v.<br><br>CITY OF MOUNT VERNON,<br><br>Respondent. | ) | DOCKET NO. TR-070696<br><br>DECLARATION OF DAVID OLSON, CHAIR, SKAGIT COUNTY DIKING DISTRICT NO. 3 |

I declare under penalty of perjury under the laws of the State of Washington that the following facts are true:

1. I make this declaration based on my personal knowledge.

2. I have lived more than 60 years in the area between Conway and Mount Vernon. My family has been engaged in agriculture, including dairy farming and crop farming. I currently reside at 18385 Torset Road, Mount Vernon, Washington 98273.

3. For more than 15 years I have been a Commissioner of Skagit County Diking District No. 3 which has responsibility for the levee along the Skagit River main stem and South Fork on the left bank of the river. This levee protects downtown Mount Vernon and the land on



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which the Burlington Northern Santa Fe Railroad right-of-way and Interstate 5, Old Highway 99 and Pioneer Highways are built.

4. In my capacity as Chairman of Skagit County Diking District No. 3, I have participated in the Skagit County Hazard Mitigation Planning process.

5. A key resource for flood fighting and flood damage repairs is the Meridian Quarry at the east end of Hickox Road in the City of Mount Vernon. Maintaining a route for delivery of sand, rock and other flood fighting materials from the Meridian Quarry to the Skagit River levees is important to the protection of farms, businesses and residents of south Mount Vernon. It is also crucial to the evacuation of people, equipment and animals from the flood plain which lies between the Skagit River levees and the Burlington Northern Santa Fe Railroad tracks. In the event of a levee failure south of Mount Vernon, Hickox Road would be the main escape route to high ground during the flood event.

6. Our District levees are not adequate to protect against the 100 year flood, which is a flood that has a 1% chance of occurring in any year. According to the hydrology studies which have been prepared by the Army Corps of Engineers water depths in the south Mount Vernon corridor between the Skagit River levees and the Burlington Northern Santa Fe railroad could be more than 10 feet deep in places. Having an efficient route for getting people away from the area and having the capacity to quickly bring flood fighting material to a break are crucial to the success of Dike District No. 3 protecting life and property.

7. Alternatives to Hickox road access to the Mount Vernon levees on the south end of town are completely inadequate. Anderson Road does not reach the dikes. Blackburn Road, access involves winding through city streets.



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8. The other primary access for flood fighting is at Conway where our District Headquarters is located. Although that location and the Railroad crossing at Conway are useful for flood fighting, the reach of trucks and personnel for a flood fight would be longer and slower if the District did not have the ability to cross both the freeway and the railroad tracks at Hickox Road. Many people could be trapped, unable to go as far south as Conway and unable to go north because of a breach of the levees in the City of Mount Vernon.

9. Skagit County Diking District No. 3 relies heavily on resources of the City of Mount Vernon and volunteer sand bagging to protect downtown Mount Vernon from flooding. The base elevation for the District's flood fight on Main Street in Mount Vernon is lower than any other levee in the vicinity. If the downtown Mount Vernon area were to flood, preservation of an emergency route to Interstate 5 at the Hickox Road rail crossing and highway interchange would be important.

**DATED** this 23 day of August 2007.

SKAGIT COUNTY DIKING DISTRICT NO. 3

By: David J. Olson
DAVID OLSON, Chair



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EXHIBIT 7

# SECTION II

## MULTI-JURISDICTIONAL HAZARD IDENTIFICATION

**NOTE:**

This section of the **Skagit County Natural Hazards Mitigation Plan** contains general, multi-jurisdictional information regarding the various natural hazards that affect Skagit County.

The statements regarding vulnerability assessment as well as probability and risk that are contained in this section depict the average condition that exists within Skagit County.

The contents of this section of the **Skagit County Natural Hazards Mitigation Plan** are based upon the best available information. Probability and risk assessments regarding natural hazards were made on a subjective basis considering past events.

Each jurisdiction has conducted their own vulnerability assessment and considered the probability and risk associated with each specific natural hazard. Please refer to Section IV of this plan for jurisdiction-specific information regarding vulnerability, probability, and risk associated with natural hazards as well as suggested mitigation strategies proposed by each of the jurisdictions that participated in the development of this plan.

# FLOOD

## DEFINITIONS:

**Flood –** An inundation of dry land with water caused by weather phenomena and events that deliver more precipitation to a drainage basin than can be readily adsorbed or stored within the basin. Skagit County primarily experiences river flooding but is also subject to minor tidal flooding and surface flooding.

**Flood Outlook** – Issued by the National Weather Service as an initial notice of a potential hazardous flooding event. The flood outlook raises public awareness of the possibility of a severe flooding event. A Flood Outlook is issued 72 to 36 hours before the occurrence of the event.

**Flood Watch** – Issued by the National Weather Service when the probability of a hazardous flooding event has increased significantly but its occurrence, location, or timing is still uncertain. The public can set their plans in motion to prepare for the event. A Flood Watch is issued from 36 to 12 hours before the occurrence of the event.

**Flood Warning** – Issued by the National Weather Service when a hazardous flooding event is occurring, is imminent, or has a high probability of occurrence within 12 hours. A Flood Warning is issued for conditions posing a threat to life and/or property.

**Flood Stage** – A height at which a watercourse overtops its banks and begins to cause damage to any portion of the river valley.

**Floodplain** – The land area of a river valley that becomes inundated with water during a flood.

**Floodway** – That portion of the natural floodplain that is regularly inundated during the normal annual flood cycles of a river or stream. For most waterways, the floodway is where the water is likely to be deepest and fastest. It is the area of the floodplain that should be kept free of obstructions to allow floodwaters to move downstream.

**100-Year Floodplain** – That portion of the floodplain that would be inundated by water during a 100-Year Flood event.

**500-Year Floodplain** – that portion of the floodplain that would be inundated by water during a 500-Year Flood event.

**National Flood Insurance Program (NFIP)** – A Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal Government which states if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas, the

Federal Government will make flood insurance available within the community as a financial protection against flood losses.

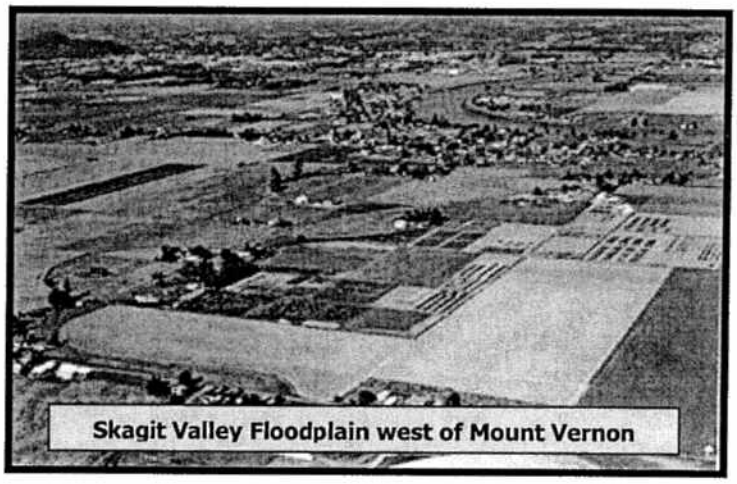
**Community Rating System (CRS)** – A voluntary program within the NFIP that encourages and recognizes community floodplain management activities that exceed the minimum NFIP standards for local mitigation, outreach, and education. Under the CRS, flood insurance rates are adjusted to reflect the reduced flood risk resulting from community activities that reduce flood losses, facilitate accurate insurance rating, and promote the awareness of flood insurance.

## BACKGROUND INFORMATION:

**Except severe storms, floods are the most common of natural disasters that occur in Skagit County; the Federal Emergency Management Agency (FEMA) considers the Skagit River "potentially the most damaging river in the state".**

**River Flooding** occurs on rivers and streams when excessive water discharge causes river or stream channels to overflow. The Skagit River, Samish River, Sauk River, Suiattle River, and Cascade River as well as many other smaller streams in Skagit County are all susceptible to river flooding.

Floods in the Skagit Basin can be classified as either spring snowmelt or winter rain on snow events. The threat of flooding in Skagit County is greatest in the months of November, December, January, and February although flood events have also occurred during other months of the year. Winter flood events have the potential to produce the highest peak flows when significant low elevation snowfall is present, followed by rising freezing levels, heavy rain, and wind. In addition, high tides that occur during a flood event further increase the potential of flooding due to their restricting effect on river discharge flows.


Skagit Valley Floodplain west of Mount Vernon

Based on discharge flows of rivers that empty into salt-water, the Skagit River is the third largest river system on the West Coast of the contiguous United States with only the Columbia River and the Sacramento River being larger.

From its source in Canada, the Skagit River flows 135 miles and empties into Skagit Bay. The river drains an area of approximately 3,115 square miles. The source starts at an elevation of 8,000 feet and drops to an elevation of 1,600 feet at the Canada-United States border. Three major tributaries empty into the Skagit River within Skagit County thereby significantly increasing the Skagit's flow. These rivers are the Cascade River, the Sauk River, and the Baker River. Several small watersheds are also tributary to the Skagit; these include Illabot Creek, Finney Creek, Day Creek, and Noockachamps Creek watersheds. In addition, many small feeder streams also discharge directly into the Skagit.

From Concrete to Sedro-Woolley, the river valley varies from 1 to 3 miles in width bordered by steeply rising timbered hills. Below Sedro-Woolley, the valley descends to nearly sea level and widens to a flat, fertile floodplain (approximately 90,000 acres in total area with 68,000 acres of this area located downstream of Sedro-Woolley) that joins the Samish Valley to the north and extends west through Mount Vernon to La Conner and south to the Stillaguamish River. During extremely large flood events, the Skagit River sometimes overflows the low divide between the Skagit River and the Samish River and enters the Samish River Basin. At Fir Island, the Skagit divides into the North Fork (carrying about 60% of the discharge flow) and the South Fork (carrying about 40% of the discharge flow).

Levee and dike building in Skagit Valley started in the late 1800's with pick, shovel, and wheelbarrows and today has progressed to excavators and dump trucks. Over the years there have been numerous floods and levee breaks followed by new levee construction projects to build the levees higher and wider thereby hoping to contain and control the mighty Skagit. Currently, there are about 56 miles of river levees and 40 miles of salt-water dikes in Skagit County. These levees and dikes are managed by Dike Districts with each district governed by a Board of Commissioners. There are currently 12 separate dike districts within Skagit County. The Districts have broad powers and responsibilities including the protection of lives and property located within their district.

The United States Army Corps of Engineers inspects the Skagit River levees on an annual basis to insure they meet established standards. The Skagit River levee system is constructed to control an event that falls within the 25-year flood to 35-year flood range with a river gauge height of 38 feet and a flow of 140,000 to 155,000 cubic feet per second. In comparison, the Skagit River gauge height averages 10 feet to 14 feet in the summer months and 15 feet to 18 feet in the winter months. **Flood Stage corresponds to a gauge height of 28 feet.**

Dam construction in the Skagit Basin began in 1924 with the Low Gorge Dam and continued until 1961. All of these dams were designed and built as hydropower generation structures. However, as the magnitude of Skagit Basin flooding problems became more evident, flood control storage was later required in the Ross and Upper Baker Reservoirs. No flood control storage is required in Diablo, Gorge, or Lower Baker Reservoirs.

**Dam Construction and Related Flood Control Storage Requirements**
**(Information obtained from Seattle City Light, Puget Sound Energy, and U.S.A.C.E.)**

| Year | Significant Construction or Flood Control Event |
|---|---|
| 1924 | Low Gorge Dam completed |
| 1925 | Lower Baker Dam completed |
| 1929 | Diablo Dam completed |
| 1940 | Ross Dam (1st step) completed |
| 1946 | Ross Dam (2nd step) completed |
| 1949 | Ross Dam (3rd step) completed |
| 1954 | 120,000 acre-feet of flood storage required in Ross Reservoir by FERC license |
| 1956 | 16,000 acre-feet of flood storage required in Upper Baker Reservoir by FERC license |
| 1959 | Upper Baker Dam completed |
| 1961 | High Gorge Dam completed |
| 1977 | 58,000 acre-feet of flood storage in Upper Baker Reservoir authorized by Congress |

During major flood events, the United States Army Corps of Engineers takes over control of the Upper Baker Dam and the Ross Dam to maximize flood storage capacity and regulate the release of water in an attempt to minimize the impacts of the event to those areas located downstream. The United States Army Corps of Engineers typically takes control of the Upper Baker Dam and the Ross Dam under the following circumstances:

1. When there is a forecast of a natural flow of 90,000 cubic feet per second at Concrete.
2. Either dam raises their pool elevation enough to encroach within the designated flood control storage space.

In the event of a predicted flood, the Corps takes control 8 hours prior to the forecasted time of peak flow arrival at Concrete and relinquishes control when the natural flow volume reaches 62,500 cubic feet per second. Depending upon other circumstances, the Corps may retain control of the dams as the situation dictates in order to accommodate response and/or recovery efforts that may be occurring downstream.

In the event the Corps takes control of the dams because of an elevated pool height, the Corps will retain control of the dam until the owner of the dam has evacuated all water above the flood control pool. (For additional information regarding this issue, please refer to the United States Army Corps of Engineers Water Control Manual, Skagit River Project, Skagit River, Washington.)

The United States Army Corps of Engineers controlled these dams during the 1990 floods (two events) and the 1995 floods (two events) thereby significantly reducing peak flow rates and flood damage to government infrastructure and private property in the lower Skagit River Basin.

## HISTORY:

The Skagit River has a long, well-documented history of flood events – several recent flood events have resulted in Presidential Disaster Declarations.

While there were many large flood events during the late 1800's and early 1900's with peak flow rates varying between 180,000 cubic feet per second and 210,000 cubic feet per second, recent events have been notably smaller with peak flow rates of 152,000 cubic feet per second in 1990 and 151,000 cubic feet per second in 1995.

The differences in peak flow rates between these time periods is most likely attributable to the flood storage provided by the Ross Reservoir and the Upper Baker Reservoir as well as the regulating of water released from these reservoirs by the United States Army Corps of Engineers during flood events.

The 1975 flood event served as a "wake-up call" to all Skagit County residents and governmental agencies that the Skagit River posed a significant flood threat to the residents and businesses located within the floodplain and that we could not rely on a levee system to protect us from all flooding events. The 1975 flood caused considerable public damage to transportation systems, the river levee system and wastewater disposal and drainage systems as well as private damage to homes, businesses and the local agricultural community. Following the 1975 flood, there was a concerted effort by local dike districts and other government

agencies to raise and reinforce existing levees as well as increase flood awareness and public education regarding the flood risk in Skagit County.

The 1990 floods (two events) and the 1995 floods (two events) were the largest floods to impact Skagit County since the completion of the hydropower dams on the upper Skagit and the Baker River. The 1990 floods and the 1995 floods both involved an initial flood peak occurring on or near Veterans Day followed by a second flood peak occurring on or near Thanksgiving Day.

The 1990 floods caused major flooding in the Town of Hamilton as well as many other low-lying areas of Skagit County. In addition, a failure of the levee on Fir Island forcing an emergency evacuation of all residents of Fir Island as well as more than 1,200 head of cattle. Fir Island was inundated with water up to 8 feet in depth flooding almost all of the homes on the island and damaging agricultural land and crops. Before the water receded, unusually cold temperatures caused the floodwaters to freeze for almost two weeks causing further damage to many homes. Approximately 8,000 acres of farmland was damaged due to floodwaters and flood debris. In some areas, farmland was covered with up to 3 feet of sand and silt.

For several months following the 1990 flood event, farmers and residents of the island were assisted in their efforts to remove debris and clean their homes by a large and well organized volunteer effort spearheaded by local and regional religious groups.

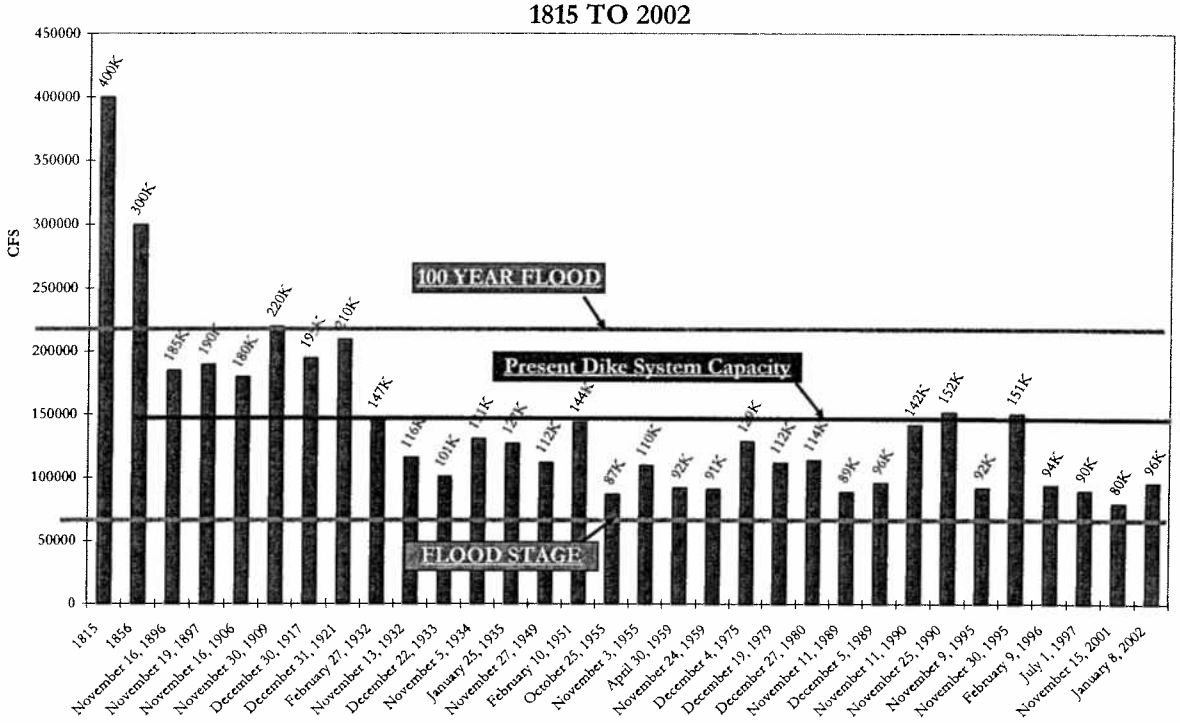
The City of Mount Vernon, the City of Burlington, and other areas within the floodplain were saved from serious flooding only because of an extensive and organized flood-fight effort carried out by the Skagit County Public Works Department, the United States Army Corps of Engineers, numerous local dike districts and fire departments as well as hundreds of volunteers and members of the Washington Military Department.

**FIR ISLAND – 1990**
**(Skagit County Public Works Department Photo)**

While the 1995 floods had almost the same peak flows as the 1990 floods, there was less damage from these floods because of the extensive work done to the levee system following the 1990 floods as well as the aggressive and sustained flood-fight efforts on the part of the dike districts and other governmental agencies to prevent a levee failure like the one on Fir Island in 1990.

## SKAGIT RIVER RECORDED DISCHARGES

### 1815 TO 2002




(The above information was obtained from the Skagit County Public Works Department)

**Recent Skagit River Flood Events Resulting in Presidential Disaster Declaration**
**(Information obtained from Skagit County Department of Emergency Management files)**

| Incident Date | Disaster Number | Concrete Gauge | Maximum Flow (cubic feet/second) | Estimated Damage |
|---|---|---|---|---|
| Dec. 1975 | 492 | 35.6 Feet | 129,000 cf/s | $365.808 |
| Dec. 1979 | 612 | 34.0 Feet | 112,000 cf/s | $3,341,000 |
| Nov. 1990 | 883 | 40.2 Feet | 142,000 cf/s | $36,381,228 (for both events) |
| Nov. 1990 | 883 | 39.89 Feet | 152,000 cf/s | |
| Nov. 1995 | 1079 | 39.34 Feet | 92,000 cf/s | $14,539,982 (for both events) |
| Nov. 1995 | 1079 | 41.57 Feet | 151,000 cf/s | |
| Feb. 1996 | 1100 | 32.11 Feet | 94,000 cf/s | $1,167,783 |

NOTE:

1. Flood stage at Mount Vernon is 28 feet (North American Vertical Datum 1929)
2. Flow rates are listed in Cubic Feet per Second as taken near Concrete
3. Recurrence Intervals are based on there being a 1% chance each year of a 100-year flood event occurring; a 2% chance each year of a 50-year flood event occurring; a 4% chance each year of a 25-year flood occurring, and so forth
4. Damage figures listed are in year of occurrence dollars

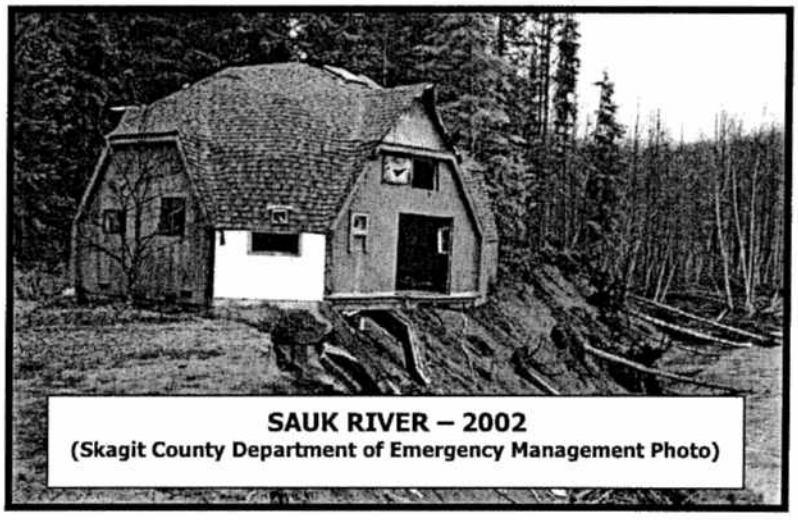
## HAZARD IDENTIFICATION:

While the levee system on the Skagit River has controlled much of the flood threat within the lower delta, these levees have also contributed to the vulnerability of the citizens and business of the county. Without the levees, minor flooding would occur on almost an annual basis, sometimes occurring more than once each year. The "inconvenience" of frequent minor flooding would have most likely encouraged residential and commercial development to be located on higher ground and out of flood hazard areas.

With the levees in place, the "inconvenience" of minor flood events has been minimized except in those low-lying areas upstream of the levee system and the residents and business owners of Skagit County have perhaps gained a false sense of security in the levee system - they may mistakenly assume that the levees will protect them from all floods in addition to the smaller, more frequent events. It should be noted that approximately 30,000 people or about 28% of the population of Skagit County live within the floodway and the floodplain of the Skagit River.

Due to the large amount of commercial and industrial development that is located in the lower valley floodplain, the majority of our transportation and communication infrastructure has also been located in the floodplain in order to serve the needs of the ever-growing community. A major Skagit River flood event that causes large portions of the valley to be inundated with water has the potential to severely impact the overall economy of Skagit County as well as other communities within the North Puget Sound region.

While the Skagit River poses a major flood threat in the lower valley, the Sauk River and Suiattle River (located in the upper valley) also pose a significant threat of their own. These streams do not have levee systems and have a history of changing their channels and eroding their banks during flood events. Because of the *WILD AND SCENIC RIVER* designation, government entities and private property owners are not allowed to place rip-rap or any other type of material along these river banks to mitigate these channel changes and bank erosion. In areas where erosion is severe or drastic channel changes occur, homes and property are many times simply "lost" to the river.



**SAUK RIVER – 2002**
**(Skagit County Department of Emergency Management Photo)**

The severity of flood damage is dependent upon ground elevation, the surrounding topography, peak flow volumes, surface flow velocities, and proximity to the river or a levee break. Major channel changes are usually associated with high flow volumes, especially in areas characterized by flat, broad floodplains such as the lower Skagit Valley.

**The following list of problems includes information contained in the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study as well as comments and suggestions made by various stakeholders and the public.**

In addition to damaging homes, businesses, property, and the environment, a 100-year flood event in Skagit County could potentially result in the following:

- Portions of Interstate 5, State Route 9, State Route 11, State Route 20, State Route 536 and possibly portions of State Route 530 would be inundated and impassable to traffic.

  [As part of the research conducted in August, 2001 to compile the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study, it was found that Interstate 5 is utilized by approximately 65,000 vehicles a day in Skagit County and approximately 23,000 daily commuter trips via State Route 20 occur between Fidalgo Island and the I-5 corridor. This study concluded that highway closures and resulting traffic delays due to a Skagit River 100-year flood event are estimated to cost over $15,000,000 per flood event.]

- The Anacortes Water Treatment Plant could be inoperable for up to 45 days or perhaps longer. This facility serves the City of Anacortes, the Town of La Conner, portions of Fidalgo Island, as well as the Shell and Tesoro refineries in addition to the City of Oak Harbor and Naval Air Station Whidbey Island located in Island County.

- All municipal wastewater treatment facilities as well as major storm water pumping systems could be inoperable for up to 45 days of perhaps longer.

- The economy of the entire county could be devastated. According to United States Army Corp of Engineers estimates, damages could exceed $1 billion dollars locally per 100-year flood event. Road, railroad and pipeline transportation to the refineries would be in jeopardy forcing shutdowns for an industry employing more than 800 workers with annual payrolls exceeding $57 million and thousands of people would possibly be unable to commute from their homes to work. According to the Washington State Office of Trade and Economic Development, exports to Canada are worth approximately $6.6 billion and overland imports exceed $14.3 billion annually; approximately 95% of all commercial goods between British Columbia and Washington are shipped overland, most of them via the I-5 corridor.

- In general, a 100-year flood event would create a wide variety of problems very similar to a large, damage-causing earthquake. Transportation routes and utilities will be greatly affected, local first response agencies will be totally overwhelmed and many personnel may not be able to report for duty as they may be personally affected by the incident and many shelter sites will be unusable due to their location in the floodplain. Health and environmental issues will result due to contaminated floodwaters, contaminated wells, hazardous materials and farm chemicals released into floodwaters, and dead animals.

- Evacuation efforts throughout the floodplain will require special considerations due to the fact that large numbers of dairy cattle will need to be evacuated from numerous

farms in addition to the approximately 30,000 people that live in the floodplain. In 1990, over 1,200 dairy cows were transported off of Fir Island and relocated to various dairies in Skagit and Snohomish counties.

- Recovery efforts will focus on re-opening and/or re-building transportation routes, re-establishing essential facilities and governmental services, clearing debris, cleaning and decontaminating homes, businesses, and farm buildings, and re-construction of levees.

## VULNERABILITY ASSESSMENT:

As mentioned earlier, the Skagit River is the third largest river system on the West Coast of the contiguous United States based on discharge flows of rivers that empty into salt-water. All persons, property, and businesses located within the floodway and the floodplain of the Skagit River are directly vulnerable to flooding. In addition, the overall economy of Skagit County is directly or indirectly vulnerable to major flood events.

In the past, those mainly affected by flooding were the farm families that lived in the lower portions of the valley and the crops and dairy herds they raised. With the dramatic increases in population and commercial development in the western portion of Skagit County that have occurred in recent years, the effects of a major flood event could be long-term and very difficult to overcome.

With a large increase in commercial and/or industrial development and the requirement that these structures be elevated above the existing floodplain, surface water flows may be altered or diverted from their normal locations thereby causing increased flooding in certain areas that may have previously had little vulnerability to flooding.

After the 1990 and 1995 flood events, there was a renewed interest in providing additional flood protection for the lower valley. As a result, the United States Army Corps of Engineers (USACE) and Skagit County conducted the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study.

As part of the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study, the USACE produced a Draft Baseline Economic Report in December 2002. This report contains detailed information regarding the potential losses due to flood events of various severity based upon an extensive economic review of the lower valley.

The study area was divided into six reaches (areas) for analysis based on their engineering and economic similarities. Land use was inventoried for the area likely to be inundated for flood events of differing severity up to a 500-year flood event. The data was collected during the first half of Federal Fiscal Year 2000.

A complete field survey of all commercial and industrial structures located in the floodplain was undertaken. Residential structures were surveyed through a random sample of the floodplain. The data collected included structure use, type of construction, structure size, condition, and first-floor elevation. A hand level was used to estimate elevations above ground level. Structure values were based on depreciated replacement value.

In addition to the residential and non-residential structure inventory, the USACE also calculated agricultural damages, transportation delays and costs due to the closure of Interstate 5. The study also includes several critical facilities such as water treatment and wastewater treatment facilities located within the floodplain.

**The USACE Draft Baseline Economic Report did not include short-term or long-term economic damage for business and industry located in the floodplain or business and industry that could be affected due to the closure of that portion of State Route 20 located west of Burlington.**

## PROBABLITY AND RISK:

Based upon the historical record of flooding in the Skagit River Basin and the severe impacts large flood events have had on the citizens of Skagit County, there is a **high probability** of future flooding and a **high flood risk** for the people, businesses, and infrastructure located within the floodway and the floodplain of the Skagit River.

The following statement is from the summary section of the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study.

> *Under existing conditions, flooding is a serious and frequently occurring problem for the Skagit River basin. Over 12,000 structures are at risk of flooding with a total property value (structure and content) exceeding $2.8 billion. Potential total losses from a single flood event could be as great as $1.4 billion. Based on study results, expected annual damages to property and associated losses would be nearly $42.7 million with direct residential damages accounting for nearly 60% of the losses. These damage figures, coupled with the damages expected to occur to agriculture, and the delay costs due to closure of Interstate 5 raise the expected annual damages to a level reaching $45.6 million (not including short-term and long-term economic damages). While the magnitude of damages is one concern, the long-term risk for flooding is another. The risk of flooding at least once during a 10 year period exceeds 50% for all but two of the study reaches, with one of these two (Reach 4) at virtually 50%. Based on the annual exceedance probabilities, there is a greater than 1 in 10 chance of flooding in any given year for all but two reaches (with Reach 6 having the greatest risk at 1 in 6). Both the highly expected annual damages and high probability of flooding indicate that the existing flood risk should be reduced.*

## CONCLUSION:

In Skagit County, floods are a major threat to property and the environment, and to a lesser extent, the safety of persons and livestock located within the floodway and the floodplain. Flood damages in Skagit County exceed losses due to all other natural hazards.

The citizens of Skagit County need to have an understanding of the flood risk and of the areas in which they elect to live and do business. **Citizens need to know what the terms FLOOD WATCH and FLOOD WARNING mean**. They need to familiarize themselves with local river-

level gauge readings and at what river-level gauge reading their property is impacted. They need to know that the existing levee system will not protect their property from all flood events.

**Those persons that choose to live and/or work in a flood hazard area need to recognize that government is not able to totally protect them from the impacts of a flood. Those people at risk need to take the necessary actions to prepare themselves, their families, and their businesses before a flood event – not after.**

Skagit County participates in the National Flood Insurance Program. Persons buying homes in the floodway and/or the 100-year flood plain are almost always required to purchase flood insurance as a condition of financing; however, there is no requirement that all residential structures purchase flood insurance if not required by a lending institution. In addition, many businesses located within the 100-year floodplain also purchase flood insurance.

Skagit County as well as the municipalities of Burlington, La Conner, and Mount Vernon also participate in the National Flood Insurance Program Community Rating System in an effort to provide flood mitigation activities and lower flood insurance premiums for those property owners who live within their jurisdictions and purchase flood insurance.

Warning and evacuation of flood-prone areas has improved significantly in the past 25 years. River flow gauging systems jointly operated by the United Stated Geological Survey and Skagit County provide the National Weather Service, the River Forecast Center, and Skagit County Government with up-to-date river levels greatly increasing the ability to predict flood events on the Skagit River. The timeliness of these predictions, as well as the familiarity of local agencies as to their roles and responsibilities, significantly improves the county's preparedness level for flood events. During a flood event, every attempt is made to insure that flood warning information is disseminated as widely as possible. In addition, 24-hour flood information is available via telephone and the Internet to aid citizen access to flood information. This information includes river-level gauge readings that are updated on a regular basis during flood emergencies.

About 30% of Skagit County residents live in the floodplain including the cities/towns of Burlington, La Conner, Mount Vernon and Sedro-Woolley and the number of persons living within the floodplain will no doubt continue to increase as the population of the county continues to increase.

Due to the size of the Skagit River and its floodplain and the location of large population centers, critical facilities, governmental services, and major transportation routes relative to the floodplain, the devastation caused by a 50-year or 100-year Skagit River flood event will most likely directly or indirectly affect almost all Skagit County residents.

***It should be noted that the United States Army Corps of Engineers Skagit River Flood Damage Reduction Feasibility Study as well as the associated Draft Baseline Economic Report are currently being revised due to recent upgrades made to the Skagit River levee system. The flood-related information contained in this plan is the result of the best data available at the time of printing.***

EXHIBIT 8

TR-070696 (P)

BNSF RAILWAY

BNSF Railway Company
2454 Occidental Ave South
Suite 1A
Seattle, WA 98134-1451



April 9, 2007

Katherine Hunter
WUTC
P.O. Box 47250
Olympia, WA 98504-7250

Re: Petition for the Abandonment and Closure of a Highway Rail Grade Crossing
DOT # 084737D

Dear Ms. Hunter:

Enclosed is the captioned petition for closure of the grade crossing at Hickox Road in Mt. Vernon, Skagit County, WA.

Please let us know if you require any additional information.

Thank you.

Sincerely,

Vivian Doolittle
Assistant to John Li,
Public Projects Manager
BNSF Railway Company

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

| | | |
|---|---|---|
| BNSF Railway Company | ) | DOCKET NO. TR- |
| Petitioner, | ) | PETITION FOR THE ABANDONMENT AND CLOSURE OF A HIGHWAY-RAIL GRADE CROSSING AT HICKOX ROAD. |
| vs. | ) | |
| The County of Skagit, WA | ) | |
| Respondent, | ) | D.O.T. 084 737D |
| | ) | W.U.T.C. |

Application is hereby made for an order from the Washington Utilities and Transportation Commission consenting to the abandonment and closure to public use of a grade crossing located at the point described in the following interrogatories and answers which are hereby referred to and made a part of this petition.


BNSF RAILWAY COMPANY
Petitioner

2454 Occidental Ave. South, Suite 1A
P.O. Box Street

Seattle, WA 98134
City ZIP Code


**(See Instructions on last page)**

## INTERROGATORIES

**1.**

State name of highway and railway at crossing intersection:

Existing highway Hickox Road

Existing railway The BNSF Railway Company

State Crossing No: 084 737D

Located in the ___1/4 of the ___1/4 of Sec. 06 , Twp. 33 , Range 04 W.M.

Railway mile post (nearest tenth): 65.60 (BNSF LS 50, Bellingham Subdivision)

City: Mount Vernon

County: Skagit

**2.**

(a) Type of highway at crossing (Indicated with X):

( ) State, ( X ) County, ( ) City Street

Average Daily Traffic over the tracks: 391 AADT

(b) Type of railroad at crossing (Indicate with X):

( X ) Common Carrier, ( ) Logging, ( ) Industrial

( X ) Main Line, ( ) Branch Line, ( ) Spur

Average Daily Train Traffic: 17

**3.**

State fully the reasons for seeking authority to close and abandon the public use of the grade crossing described:

1) Safety – Elimination of this crossing will improve the safety of the highway and railway system as it removes the potential modal conflict point from both systems. As part of the crossing closure plan, petitioner also provides to signalize the passive crossing at Stackpole Rd. This upgrade will improve the safety measurement of the alternate access.

2) Redundancy - Hickox Road is a redundant crossing. There are two existing alternate accesses to the area located beyond the existing crossing. In specifics, Stackpole Rd is about 1 mile south and Blackburn Rd is 1.5 miles north to the crossing in subject. The extra mileage for the crossing users to take is negligible if the alternate accesses would be used. See Section 4.3, list of extra mileage to different destinations via alternate routes.

3) Impact on Passenger Operations – Hickcox Road is located within the proposed expansion of the Mt. Vernon Siding. This expansion is part of the State of Washington's Passenger Rail Program. Removal of this crossing will allow construction of the project as set forth by the legislature. Passenger Rail operations and reliability will be improved by the removal of this crossing and the improvement of the Mt. Vernon Siding.

4) Recommended by WSDOT's Study -The traffic impact study of Hickox Rd crossing closure, which is sponsored by Washington State Department of Transportation, recommends closing the crossing. See "Hickox Road Railway Crossing Closure Traffic Impact Analysis"

**4.**

Describe the area or site that is served by the crossing, including the approximate number of homes or businesses that might be affected by the closure.

1) West side of the Hickox Road crossing,:
The west end of Hickox Rd intersects with Dike Rd. The distance between Dike Rd intersection and the railroad crossing in subject is about 0.8 mile. Most of this area is farmer land. There are 12 homes and no merchants in this area.

2) East side of the Hickox Rd crossing:
Hickox Rd intersects with Old HWY 99 at about 0.1 mile east of the railway crossing in subject, and is dead-ended at about 0.15 mile east of the Old HWY 99 intersection. There are several businesses along Hickox Rd at the east side of Old HWY 99, including Carpenter Training Center, PAPE Machinery and Timberland Homes.

3) The Distance from the Hickox Crossing to Different Destinations:

| **Destinations from the Middle Point of the East Side of Hickox Xing** | **Miles to the Destination Via Hickox Xing** | **Miles to the Destination Via Alternate Access** | **Extra Mileage by Taking the Alternate Access** |
|---|---|---|---|
| I-5 South Bound Access | 0.65 | 3.1 | 2.5 |
| I-5 North Bound Access | 1.6 | 3.3 | 1.7 |
| Intersection of Old HWY 99 and Blackburn Rd | 2 | 2.9 | 0.9 |
| Intersection of Old HWY 99 and Stackpole Rd | 1.5 | 2.3 | 0.8 |
| Skagit County Fire District Three | 1.7 | 4.7 | 3 |
| Skagit Valley Hospital | 3.2 | 4.8 | 1.6 |
| The School Bus Station at Cleveland Rd | 2.2 | 2.7 | 0.5 |

**5.**

How far is the nearest alternate access across the tracks from the crossing proposed for closure?

1) W Stackpole Road is the nearest alternate access that is 1 mile to the south of the Hickox Road crossing.

2) Blackburn Road is another alternate access that is 1.5 miles to the north of Hickox Road.

6.

Attach a sketch showing the layout of the highway and railway in the vicinity of the crossing as well as the parcels of private property located on both sides of the highway for a distance of 500' from the crossing, including the name and mailing address of each property owner.

**Parcel # P29327**

**Owner Info**

SMITH RICHARD H/PATRICIA A
BURKLAND ROBERT E/PAMELA K
18495 DIKE RD
Mount Vernon, Wa 98273

**Parcel # P16426**

**Owner Info**

SUNDQUIST LILLIAN M
C/O GILBERTSON NORMA
P O BOX 395
Stanwood, Wa 98292

**Parcel # P29326**

**Owner Info**

D & D SEED CO INC
18754 PEDERSON LANE
Mount Vernon, Wa 98273

**Parcel # P16410**

**Owner Info**

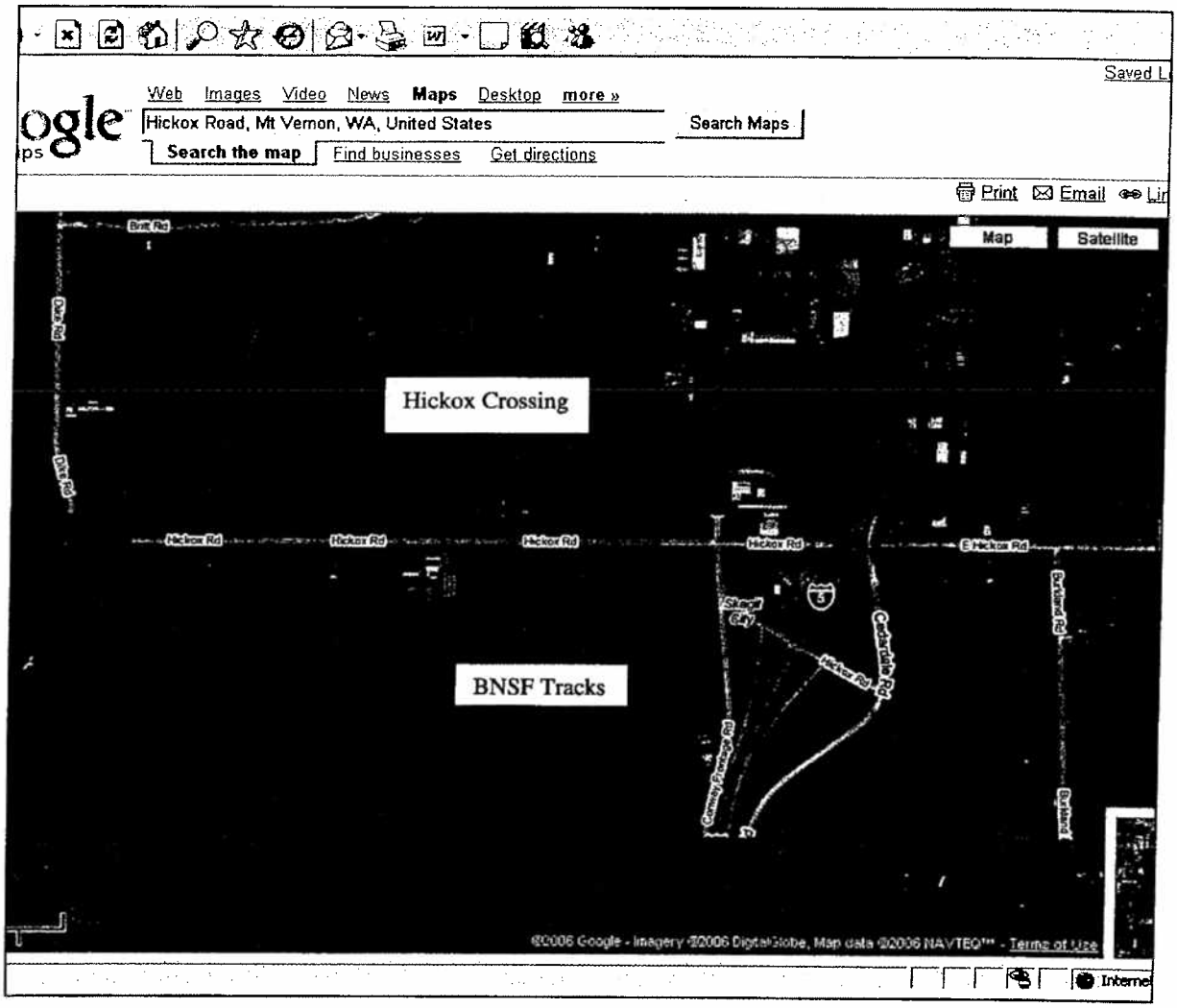
PEDROZA RODOLFO
18764 HICKOX RD
Mount Vernon, Wa 98273

**Parcel # P16411**

**Owner Info**

SCHWAB CHARLES W
SCHWAB SHERIDA A
18266 GROUSE LN
Mount Vernon, Wa 98274

Satellite Picture of the Highway and Railway in the Vicinity of the Crossing:




(Source: Google Map)

Layout of the Highway and Railway in the Vicinity of the Crossing with Parcel Numbers:


(Source: Access Skagit County – The Official Website for Skagit County Government)

## WAIVER OF HEARING BY RESPONDENT

Having investigated the conditions existing at and in the vicinity of the grade crossing described herein and being satisfied that such conditions are substantially as described in the interrogatories and answers thereto, and consent that the grade crossing should be closed and abandoned to public use. Hearing in this proceeding is hereby waived.

Dated at _____, Washington, on the _____ day of

_____, 2006.

_____
Respondent

By: _____

INSTRUCTIONS

The original and one copy of the petition with interrogatories completely answered must be filed with the Washington Utilities and Transportation Commission unless the waiver of hearing form is filled out by the respondent. If waiver of hearing is filled out by the respondent, only the original copy of the petition is required to be filed with the Commission.

If waiver of hearing is not executed on the petition filed, the copy will be served upon the respondent for answer within 20 days. Upon receipt of respondent's answer, the application will be investigated.

Under the terms of RCW 81.53.060 as amended by the session laws of 1959, the Commission may order the closure of a grade crossing without hearing where:

(1) notice of the filing of the petition is posted at, or as near practical to, the crossing.

(2) notice of the filing of the petition is published once in some newspaper of general circulation in the community or area where such crossing is situated, which publication shall appear within the same week that the notice referred to in (1) above is posted; and

(3) no objections are received by the Commission within twenty days from the date of the publication of the notice.

If an objection is received, the matter will be set for hearing.

Petitions submitted by counties must be signed by at least two members of the Board of County Commissioners.

EXHIBIT 9

# DETERMINATION OF NONSIGNIFICANCE

**Description of proposal:**

The proposed **Mount Vernon Siding Extension Project** will extend the existing 6,000-foot BNSF Railway siding in Mount Vernon an additional 3,700 feet to the south.

The total siding length of 9,700 feet will allow long freight trains to pull off the main line track and permit faster passenger trains and other faster freight trains to pass. The existing siding is located on the east side of the main line track.

As part of the extension project, two at-grade railroad street crossings (one private and one public) are anticipated to be closed.

**Proponent:**

Washington State Department of Transportation (WSDOT)

**Location of proposal, including street address, if any:**

The project site is located on the BNSF main line railroad tracks at the southwestern limits of Mount Vernon and into Skagit County, between Railroad Mileposts 66.07 and 76.08, Bellingham Subdivision of the Northwest Division of BNSF. Hickox Road and Pederson Lane, two at-grade railroad street crossings, cross over the railroad tracks within the project site. The project site is located in Section 31, township 34 N, range 4 W; and section 6; township 33 N; range 4 W.

**Lead agency:**

Washington State Department of Transportation (WSDOT)

For engineering questions, please contact:
Kevin Jeffers, P.E., Rail Projects Engineer
WSDOT Rail Office
PO Box 47407
Olympia WA 98504-7407
360-705-7982; jefferk@wsdot.wa.gov

For environmental questions, please contact:
Elizabeth Phinney, Rail Environmental Coordinator
WSDOT Rail Office
PO Box 47407
Olympia WA 98504-7407
360-705-7902; phinnee@wsdot.wa.gov

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.

**Comments** must be submitted by **March 6, 2007.**

Please send comments to:
Elizabeth Phinney
WSDOT Rail Office
PO Box 47407
Olympia WA 98504-7387
phinnee@wsdot.wa.gov

**Responsible official:** Kenneth M. Uznanski, Jr.

**Position/title:** Manager, WSDOT Rail Office **Phone:** 360-705-7905

**Address:** PO Box 47407
Olympia WA 98504-7407

**Date:** 02/16/07 **Signature:** Kenneth M Uznanski Jr

# SEPA
# ENVIRONMENTAL CHECKLIST

## THE BNSF RAILWAY
## MOUNT VERNON SIDING EXTENSION PROJECT

**Prepared by:**

**Washington State Department of Transportation**

**February 2007**

SEPA
ENVIRONMENTAL CHECKLIST

## A. BACKGROUND

1. **Name of proposed project, if applicable:**

   Mount Vernon Siding Extension Project

2. **Name of applicant:**

   Washington State Department of Transportation (WSDOT)

3. **Address and phone number of applicant and contact person:**

| Applicant | Contact |
|---|---|
| Washington State Department of Transportation<br>Rail Office<br>310 Maple Park Avenue SE<br>PO Box 47407<br>Olympia WA 98504-7407 | Kevin Jeffers, P.E.<br>360-705-7982<br>or<br>Elizabeth Phinney<br>360-705-7902 |

4. **Date checklist prepared:**

   February 2007

5. **Agency requesting checklist:**

   Washington State Department of Transportation

6. **Proposed timing or schedule (including phasing, if applicable):**

   Construction is anticipated to begin in May / June 2007 and will be completed by December 31, 2007.

7. **Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

   No.

8. **List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

   Wetland Report (prepared by WSDOT)
   Wetland Mitigation Report (prepared by WSDOT)

Biological Assessment (prepared by WSDOT)
Site Reconnaissance (prepared by Farallon Consulting)
Cultural Resources Survey (prepared by Jones & Stokes)
Traffic Study (prepared by Garry Struthers Associates)

9. **Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.**

No.

10. **List any government approvals or permits that will be needed for your proposal, if known.**

Corps of Engineers Nationwide Permit 23
401 Water Quality Certification
Coastal Zone Consistency Determination
Section 106 compliance
Critical Areas Ordinance compliance
Fill and grading

11. **Give brief, complete description of your proposal, including the proposed uses and the site of the project. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.**

The proposed project will extend the existing 6,000-foot BNSF Railway siding in Mount Vernon an additional 3,700 feet.

The total siding length of 9,700 feet will allow long freight trains to pull off the main line track and permit faster passenger trains and other faster freight trains to pass. The existing siding is located on the east side of the main line track.

As part of the extension project, two at-grade railroad street crossings (one private and one public) are anticipated to be closed.

12. **Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.**

The project site is located on the BNSF main line railroad tracks at the southwestern limits of Mount Vernon and into Skagit County, between Railroad Mileposts 66.07 and 76.08, Bellingham Subdivision of the Northwest Division of BNSF. Hickox Road and Pederson Lane, at-grade railroad street crossings, cross over the railroad tracks within the

project site. (Please see attached vicinity map.) The project site is located in Section 31, township 34 N, range 4 W; and section 6; township 33 N; range 4 W.

## B. ENVIRONMENTAL ELEMENTS

### 1. Earth

**a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other:**

The existing rail bed is standard railroad right-of-way. The tracks are placed on level fill above a standard railroad embankment. The surrounding land is agricultural (Skagit County) and a limited amount of light industrial land (Mount Vernon).

**b. What is the steepest slope on the site (approximate percent slope)?**

The existing railroad bed is elevated 8 feet above the bottom of the railside ditch, with 2H:1V sloping sides (50% slope).

**c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.**

Sumas Silt Loam is the only soil series present within the project footprint.

**d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.**

No.

**e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.**

Fill is needed to construct the 8-foot high railroad support structure. The width of the fill will be 40 feet for 3,050 feet and 70 feet for 650 feet. The extra width at the southern end of the siding extension is so that the turnout (switch) can be constructed in one piece prior to its move into the railroad main line. It is anticipated that there will be approximately 720 cubic yards of excavation of structurally unsuitable soil and 23,315 cubic yards of clean structural fill and ballast used for the construction of the siding extension. The fill material will come from an approved commercial quarry.

**f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.**

Soil erosion is not probable on the site because of the nature of the construction practices involving compacted stabilized material. Construction Best Management

Practices (BMPs) will be used appropriately to prevent any construction-related erosion. The finished project has been designed to preclude erosion.

**g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

The only impervious surface will be the rail, ties, and signal bungalow. The ties are spaced at 16 to 23 inches apart with pervious crushed rock ballast between rails. The ballast is designed so any precipitation striking the rail or ties infiltrates into the ballast and the subballast. The signal bungalow is an 8 x 8 foot structure. The percent of impervious surface is minimal, and there will be no stormwater runoff from the completed project.

**h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any.**

Construction Best Management Practices (BMPs) will be designed and implemented according to the most recent version of the Stormwater Management Manual for Puget Sound. The BMPs used will be those most appropriate for the project site, and could include such items as construction entrances, filter fabric fences, sediment ponds or basins, check dams, filter berms, and permanent seeding.

**2. Air**

**a. What types of emissions to the air would result from the proposal (i.e., dust, automobile odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.**

Some dust could be generated during construction. Heavy equipment will emit exhaust during construction. Following completion of the project, emissions from the site will be limited to diesel train exhaust passing the site, which is pre-existing to the project.

**b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.**

No.

**c. Proposed measures to reduce or control emissions or other impacts to air, if any.**

Dust will be controlled, as needed, using water.

**3. Water**

a. Surface:

**1) Is there any surface water body on or in the immediate vicinity of the site**

**(including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river if flows into.**

There were six wetlands identified within the project action area. Five of these wetlands were located along the railroad berm toe of slope, with two of these areas extending out into privately-owned agricultural fields. These wetlands are considered of low quality and were rated as Category 3 and 4.

**2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.**

Yes, 0.89 acres of Category 3 and 4 wetlands will be filled as a result of this project. These wetlands occur primarily in the railroad ditch at the toe of the railroad support structure. Mitigation for the impacted wetlands will be at a mitigation site on Gages Slough. This site will be shared with the SR 20, I-5 to Freedonia highway project. (Details are contained in the attached Mount Vernon Wetland Biology Report, updated February 2007, and the Mount Vernon Wetland Mitigation Report, February 2007.) (Please note that this project is utilizing the Multi-Agency Permitting Team to facilitate permitting.)

**3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**

The material to be removed from the wetlands is 720 cubic yards of structurally unsuitable soil. A total of 23,315 cubic yards of structural fill will be used to create a railroad support structure 8 feet high and 40 feet wide for 3,050 feet, and 8 feet high and 70 feet wide for an additional 650 feet (at the southern end – to support the construction of a rail turnout (switch). Fill material will come from an approved commercial quarry.

**4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.**

No surface water withdrawals or diversions will be required.

**5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.**

The historic floodplain in this location lies behind a dike.

**6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**

No waste will be discharged to surface waters. Best Management Practices will be employed, which will prevent construction erosion and sedimentation.

b. **Ground:**

1) **Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities, if known.**

No ground water will be withdrawn, nor will water be discharged to the groundwater.

2) **Describe waste material that will be charged into the ground from septic tanks or other sources, if any (for example: Domestic sewage, industrial, containing the following chemicals; agricultural; etc.) Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

There will be no waste discharged to ground water.

c. **Water Runoff (including storm water):**

1) **Describe the source of runoff (including storm water) and method of collection and disposal, if any (including quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

The only source of runoff will be precipitation in the form of rain and/or snowmelt. During construction, to prevent sediments from traveling beyond the construction zone, a series of Best Management Practices have been designated for the site. These best management practices include such items as construction entrances, filter fabric fences, sediment ponds or basins, check dams, filter berms, and permanent seeding. No runoff will be allowed to flow off the construction site until the quality of the discharge is at or below acceptable water quality limits.

2) **Could waste materials endanger ground or surface waters? If so, generally describe.**

No. Best Management Practices for erosion control will be applied for handling any possible waste materials.

d. **Proposed measures to reduce or control surface, ground, or runoff water impacts, if any:**

Best Management Practices will be used during construction, and seeding, fertilizing and mulching of disturbed slopes after construction will be performed to reduce and eliminate surface water runoff impacts.

4. **Plants**

a. **Check or circle types of vegetation found on the site:**

X shrubs
X grasses
X blackberries
X trees

b. **What kind and amount of vegetation will be removed or altered?**

All the vegetation in the area to be filled will be removed. Seeding, fertilizing and mulching of exposed soils will be done when the proposed project is completed.

c. **List threatened or endangered species known to be on or near the site.**

None.

d. **Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:**

Seeding, fertilizing and mulching will be done to cover cover disturbed slopes.

5. **Animals**

a. **Circle any birds and animals that have been observed on or near the site or are known to be on or near the site:**

X songbirds
X mice

b. **List any threatened or endangered species known to be on or near the site.**

None.

c. **Is the site part of a migration route? If so, explain.**

No.

d. **Proposed measures to preserve or enhance wildlife, if any:**

No impacts are anticipated; thus no measures are proposed.

6. **Energy and Natural Resources**

a. **What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for**

**heating, manufacturing, etc.**

During construction, the contractor will be using diesel-fueled construction equipment. Diesel fuel will also be used by the trains on the tracks. A minor amount of electricity will be used to operate the signals and switches. The use of electricity should be similar to current conditions, with the possibility that it could increase slightly as rail traffic on the tracks increase.

b. **Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.**

No.

c. **What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:**

Does not apply.

7. **Environmental Health**

a. **Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.**

No environmental health hazards are anticipated as a result of project construction. Continued railroad operations will be consistent with applicable rules and regulations.

1) **Describe special emergency services that might be required.**

WSDOT/BNSF do not anticipate that special emergency services will be required. Following construction, BNSF is equipped to respond to derailments or accidents. During railway operations, BNSF personnel will be required to comply with BNSF's health and safety plan.

2) **Proposed measures to reduce or control environmental health hazards, if any:**

During construction, the contractor will be required to follow the applicable Washington Industrial Safety and Health Administration (WISHA) regulations. BNSF will require the contractor's Health and Safety Plan to define the appropriate engineering control methods and personal protection equipment for the health and safety of their workers. The contractor will be required to have a safety officer on-site at all times. In addition, the contractor's employees are required to attend a BNSF safety orientation.

During operation, BNSF personnel will be required to comply with BNSF's health and safety plan.

b. Noise

**1) What types of noise exists in the area which may affect your project (for example: traffic, equipment, operation, other)?**

The area is currently a transportation corridor for the BNSF railway; however, train noise will not affect this project. The noise generated by surrounding agricultural work or light industrial work will not affect this project.

**2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.**

During construction, operation of heavy equipment will generate noise. Construction times will be limited to daylight hours per the County's and / or City's ordinances. The BNSF will work with the County and / or City if there is a need to work outside the County's and / or City's ordinances.

During operation, noise will be generated by trains. An increase in the number of trains can be anticipated as demand increases. Trains will continue to pass the site 24 hours per day. Train noise is exempt from noise regulation per WAC173-60-050 (4)(c).

**3) Proposed measures to reduce or control noise impacts, if any:**

None are proposed.

**8. Land and Shoreline Use**

**a. What is the current use of the site and adjacent properties?**

The site is currently used as a railroad corridor.

The adjacent properties consist of agricultural land, and at the northeast portion of the project site, a few light industrial properties.

**b. Has the site been used for agriculture? If so, describe.**

The project site is part of the BNSF Railway's north-south main line railroad corridor.

**c. Describe any structures on the site.**

Presently, the site has a set of railroad tracks, signal apparatus, and a signal control bungalow on the rail support structure.

**d. Will any structures be demolished? If so, what?**

No.

**e. What is the current zoning classification of the site?**

Established Rail Corridor for roughly 100 years.

**f. What is the current comprehensive plan designation of the site?**

Established Rail Corridor for roughly 100 years.

**g. If applicable, what is the current shoreline master program designation of the site?**

Does not apply.

**h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.**

No.

**i. Approximately how many people would reside or work in the completed project?**

No one would reside at the completed project site. Track maintenance crews of 1-4 persons can be on-site periodically as needed.

**j. Approximately how many people would the completed project displace?**

None.

**k. Proposed measures to avoid or reduce displacement impacts, if any:**

No measures are needed.

**l. Proposed measures to ensure the proposal is compatible with existing and project land uses and plans, if any:**

The proposed siding extension is an enhancement of the existing rail corridor; the rail corridor has been at this site for roughly 100 years.

**9. Housing**

**a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.**

None.

**b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**
None.

**c. Proposed measures to reduce or control housing impacts, if any:**

None are proposed.

**10. Aesthetics**

**a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?**

The tallest structures will be two signal posts, located at the southern end of the siding extension, which will be up to 21 feet high. These signal posts will replace two existing signal posts, located midway through the project area. The signal posts are made of steel and painted gray. Aside from these posts, there will be an 8 foot x 8 foot electronics bungalow that is 8 feet high. All other facilities will be within 6 inches of surface level.

**b. What views in the immediate vicinity would be altered or obstructed?**

The railroad tracks are located on an 8-foot support structure. The height of the support structure will remain the same, but will be 40 feet wider on the east side, with a 70-foot width at the southern end. Since the majority of the surrounding land is agricultural with no nearby houses, any impact to the view will be minimal. Where the light industrial properties are located, either storage lots or parking lots are located adjacent to the BNSF right-of-way. Again, there will be minimal impact on views.

**c. Proposed measures to reduce or control aesthetic impacts, if any:**

None will be needed.

**11. Light and Glare**

**a. What type of light or glare will the proposal produce? What time of day would it mainly occur?**

The only source of light will be the railroad signal system, which will operate continuously. The signal system lights are only visible in a straight line of sight along the tracks.

**b. Could light or glare from the finished project be a safety hazard or interfere with views?**

No, the purpose of the signal lights is to safely signal trains.

**c. What existing off-site sources of light or glare may affect your proposal?**

None.

**d. Proposed measures to reduce or control light and glare impacts, if any:**

None are needed.

**12. Recreation**

**a. What designated and informal recreational opportunities are in the immediate vicinity?**

None.

**b. Would the proposed project displace any existing recreational uses? If so, describe.**

No.

**c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:**

None.

**13. Historic and Cultural Preservation**

**a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.**

No.

**b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.**

None.

**c. Proposed measures to reduce or control impacts, if any:**

Not applicable because there are no impacts.

**14. Transportation**

**a. Identify public streets and highways serving the site, and describe the proposed access to the existing street system. Show on site plans, if any.**

Hickox Road (a public crossing) and Pederson Lane (a private crossing) currently cross

over the railroad tracks in an east-west direction. Both of these roads are anticipated to be closed at the railroad tracks as part of the project. Each of these roads intersect with public roads both east and west of the project site, so access is still ensured for residences, farm buildings, and businesses. A traffic study has been conducted for the project.

For any proposed closing of a public grade crossing (in this project that would be Hickox Road), the Washington Utilities and Transportation Commission holds a public hearing prior to a closure decision.

b. **Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?**

No.

c. **How many parking spaces would the completed project have? How many would the project eliminate?**

None.

d. **Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).**

No new roads or streets are proposed.

e. **Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.**

The project is a rail project designed to allow for additional capacity for rail transportation.

f. **How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.**

No impacts to vehicular traffic are anticipated.

g. **Proposed measures to reduce or control transportation impacts, if any.**

Temporary construction impacts to traffic will be managed by working with Skagit County and the City of Mount Vernon.

15. **Public Services**

a. **Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.**

No.

**b. Proposed measures to reduce or control direct impacts on public services, if any.**

None are proposed.

**16. Utilities**

**a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**

Electricity, natural gas, water, refuse service, telephone, and sanitary sewer are available next to the site. However, only existing electricity for the track signals will be used at the site.

**b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in immediate vicinity which might be needed.**

Only electricity for the track signals will be needed at the site. Puget Sound Energy is the provider.

**C. SIGNATURE**

The above answers are true and complete to the best of my knowledge.

**Signature:** Kenneth M Ynanski Jr

**Date Submitted:** 02/16/07

EXHIBIT 10

City of Mount Vernon

Mayor

910 Cleveland Avenue
Post Office Box 809
Mount Vernon, WA 98273

Phone (360) 336-6211
FAX (360) 336-0623
www.ci.mount-vernon.wa.us

May 10, 2007

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250, Olympia, WA 98504-7250

**RE: Reference No. TR-070696**
**BNSF Railway Petition to Close Hickox Road Highway-Rail Grade Crossing**

Dear Ms. Washburn:

The purpose of this letter is to assure that the WUTC receives our comments in opposition to the proposed closure of the rail crossing at Hickox Road in South Mount Vernon. During the past year we have reviewed the report materials analyzing this proposal and provided our comments opposing the closure to the WUTC and the rail operations office of WSDOT. These comments are reiterated as follows:

- Hickox Road offers important safety and economic benefits to the residents and businesses in the area. Residential access to fire and emergency medical services would be detrimentally impacted by the proposed closure. While we desire improved passenger and freight rail service, absent effective mitigation of these concerns, we oppose this closure.

- In addition, closure of the crossing precludes expansion of Hickox in the future. A current WSDOT operational analysis of I-5 is examining at what point a full interchange at Hickox Road might make operational sense. Closure would add to the public cost of such a future improvement by preventing the need for the BN Railroad to participate financially, and it would reduce the benefit of the interchange to transportation by blocking westerly access.

- The importance of the rail crossing will continue to increase with growth pressure. For example, the City of Mount Vernon has analyzed the buildable lands in its urban growth area (UGA) and identified an important need for an additional 800 acres of commercial land during the next twenty years. There are only two feasible regions to locate this added commercial land—in the river bend area and/or in South Mount Vernon. Additional commercial land in South Mount Vernon would greatly increase the need for the rail crossing to remain open at Hickox Road.

- Lastly, the importance of the Hickox rail crossing, especially to the City, is made greater by the fact that there are no other public rail crossings in the City's UGA south of Blackburn Road—a distance of approximately one and a half miles.

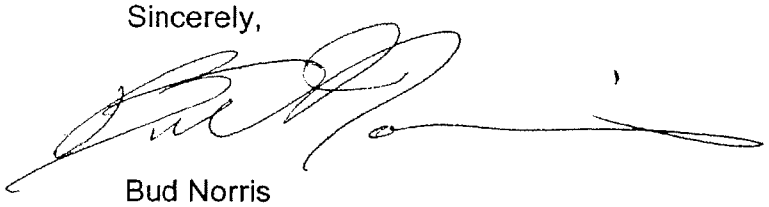
For the above reasons, the proposed closure would (1) reduce access across the railroad for traffic, emergency vehicles and school buses in South Mount Vernon, (2) limit traffic options for the existing transportation grid, and (3) reduce the ease with which Mount Vernon can attract needed commercial development.

We believe that roads such as Hickox are crucial to the regions they serve. Without a complete review of alternatives such as moving the proposed siding, waiving blockage limitations, or installing better gating systems and demonstrating that none of these are workable, we ask that any application for closure of this facility be summarily dismissed.

Even if the rail siding must be extended across Hickox Road, we would advocate an improved crossing facility that allows the side track improvement with appropriate safe guards while keeping the Hickox Road crossing open.

Thank you for your consideration.

Sincerely,



Bud Norris
Mayor

City of Mount Vernon
Public Works Department

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June 30, 2006

Jeffrey T. Schultz
Rail Operations Technical Expert
Washington State Department of Transportation
Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

**RE: Draft Hickox Road Report**

Dear Mr. Schultz:

Thank you for meeting with Jana Hanson and me last month to discuss the proposed closure of the rail crossing at Hickox Road in South Mount Vernon. I have reviewed the draft report that you provided to me at the meeting, and this letter provides a brief summary of my comments.

The technical methods used in the report appear to be thorough in analyzing traffic impacts based upon current usage and planning documents. Even so, the report does not adequately assess the importance of the rail crossing to the City.

For example, the City and WSDOT want to eventually improve the Hickox Road interchange on I-5 from its current "north bound off" and "south bound on" limitations to a full access interchange. This improvement will increase the importance of the Hickox Road rail crossing.

Secondly, the City has analyzed the buildable lands in its urban growth area (UGA) and identified an important need for an additional 800 acres of commercial land during the next twenty years. There are only two feasible regions to locate this added commercial land—in the river bend area and/or in South Mount Vernon. Additional commercial land in South Mount Vernon would greatly increase the need for the rail crossing to remain open at Hickox Road.

Lastly, the importance of the Hickox rail crossing to the City is made greater by the fact that there are no other public rail crossings in the City's UGA south of Blackburn Road—a distance of approximately one and a half miles.

For the above reasons, the proposed closure would (1) reduce the ease with which Mount Vernon can attract needed commercial development, (2) limit traffic options for the existing transportation grid in the City's UGA, and (3) reduce access across the railroad for traffic and emergency vehicles in South Mount Vernon. We believe that these impacts are significant to the City, and we are opposed to the proposed rail crossing closure at Hickox Road.

Thank you for your consideration.

Sincerely,

Esco Bell, PE
Public Works Director

EXHIBIT 11

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

| | |
|---|---|
| BNSF RAILWAY COMPANY,<br><br>Petitioner,<br><br>v.<br><br>CITY OF MOUNT VERNON,<br><br>Respondent. | DOCKET NO. TR-070696<br><br>DECLARATION OF JOHN DEVLIEGER |

I declare under penalty of perjury under the laws of the State of Washington that the following facts are true:

1. I make this declaration based on my personal knowledge.

2. I reside at 16965 Britt Road, Mount Vernon, Washington 98273.

3. On adjoining land I operate an agricultural hauling business which serves the Mount Vernon area. We have three trucks that are hauling products such as potatoes, fertilizer, grain and other farm products.

4. Our trucks frequently cross the Hickox Road-Burlington Northern Santa Fe Railroad intersection. During potato harvest this could be twelve times per day per truck.



Jones & Smith
*Attorneys at Law*
415 Pine Street
P.O. Box 1245
Mount Vernon, WA 98273
(360) 336-6608

5. I am a former dike district commissioner for Skagit County Diking District No. 3. My property is in the Skagit County Sub Flood Control Zone for south Mount Vernon. I am a fire district volunteer for Skagit County Fire District No. 3.

6. It is incomprehensible to me that people planning transportation for the State of Washington could expend large amounts of public money to provide an access to Interstate 5 for farm and agricultural transportation such as I operate and then render it difficult to use and inconvenient by closing the Hickox Road crossing. It is dangerous and slow for me to use alternate routes through Mount Vernon such as Blackburn Road and Highway 99 south to gain access to the Anderson Road interchange. It is safer for the public and for my business to use the Hickox Road crossing as access to and from Interstate 5.

7. In a flood the evacuation route for my business and for my neighbors who live between the Skagit River levees and the Burlington Northern Santa Fe Railroad, the Hickox Road crossing is the primary avenue. It is also the primary means for flood fighting material to arrive to strengthen the levees or provide repairs in the event of a breach.

8. On a frequent basis the Hickox Road interchange is used by Skagit County Fire District No. 3 to access the area where I live for emergency medical service and fire protection.

9. The pending petition makes neither Anderson Road nor Hickox Road available for property owners in my vicinity. Because of the volume of traffic and the specialized nature of our agricultural uses it is seasonally very important that the Hickox Road corridor be maintained.

**DATED** this 28 day of August 2007.

JOHN DEVLIEGER



Jones & Smith
*Attorneys at Law*
415 Pine Street
P.O. Box 1245
Mount Vernon, WA 98273
(360) 336-6608

EXHIBIT 12

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

| | |
|---|---|
| BNSF RAILWAY COMPANY,<br>Petitioner<br><br>vs.<br><br>CITY OF MOUNT VERNON,<br>Respondent<br>And<br>SKAGIT COUNTY, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, WEST VALLEY FARMS LLC, and SKAGIT COUNTY,<br>Intervenors. | **DOCKET NO. TR-070696**<br><br>**DECLARATION OF KEVIN L. ROGERSON IN SUPPORT OF DISPOSITIVE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION IN LIMINT** |

I, Kevin L. Rogerson, declare as follows:

1. I am an attorney representing Respondent City of Mount Vernon in the above-referenced matter. I make this declaration based upon my personal knowledge.

2. Attached to this declaration are true and correct copies of the following documents in support of Petitioners Motion for Partial Summary Judgment and motion in limine:



MOUNT VERNON CITY ATTORNEY
PO BOX 809
MOUNT VERNON, WASHINGTON 98273
(360) 336-6203 FAX (360) 336-6267

- Exhibit 1 Declaration of Mikael Love
- Exhibit 2 Declaration of Jodi Brautaset and attached map
- Exhibit 3 August 23, 2006 letter of Gary Jones on behalf of Richard Smith to the WUTC and May 30, 2007 letter of Gary Jones on behalf of David Boon to the WUTC.
- Exhibit 4 Declaration of Assistant Fire Chief Glenn Brautaset.
- Exhibit 5 Declaration of David Skrinde Fire Chief for Fire Protection District No. 3
- Exhibit 6 Declaration of David Olson Dike District No. 3 Chairman
- Exhibit 7 Excerpt from Skagit County's Hazard Mitigation Plan
- Exhibit 8 Petition of BNSF to WUTC
- Exhibit 9 WSDOT Determination of Non-Significance and Environmental Checklist
- Exhibit 10 City's June 30, 3006 letter to WSDOT and City's May 10, 2007 letter to WUTC.
- Exhibit 11 Declaration of John Devlieger

3. That, on August 23, 2007, I requested from Scott Lockwood, Deputy Attorney General representing WSDOT, all the SEPA documentation involved in Mount Vernon Siding Project including all notices sent.

4. That, on August 24th, 2007, the City received environmental documents involved in WSDOT's DNS determination of the Project.

5. That, based on representation by Scott Lockwood, I have reasonable belief that these hardcopies consist of WSDOT's entire environmental file for the Project involving the DNS.

6. That, I have been unable to locate any document that confirms or denies that public notice of the DNS or specific notice to agencies with jurisdiction or impacts political subdivisions was sent.

The Foregoing is true and correct to the best of my knowledge, under the penalty of perjury of the laws of the State of Washington.

EXECUTED this 28th day of August, 2007 in Mount Vernon, Washington.

Kevin Rogerson, WSBA#31664



**MOUNT VERNON CITY ATTORNEY**
PO BOX 809
MOUNT VERNON, WASHINGTON 98273
(360) 336-6203 FAX (360) 336-6267