

Docket No. TR-180466 - Vol. II

**Whatcom County v. Burlington Northern Sante Fe
Railway**

March 5, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WHATCOM COUNTY,)	
)	
)	
Petitioner,)	Docket No.
)	
vs.)	TR-180466
)	
BNSF RAILWAY COMPANY,)	
)	
)	
Respondent.)	

VOLUME II
EVIDENTIARY HEARING
Pages 12-132

DATE: March 5, 2019

PLACE: 311 Grand Avenue
Bellingham, Washington

BEFORE:

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

Reported by:
Connie Recob, CCR, RMR, CRR, CLR
CCR No. 2631

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

2 <<<<<< >>>>>>

3

4 JUDGE CHARTOFF: We are on the record. Good
5 morning. Today is Tuesday, March 5th, 2019, and the time is
6 approximately 9:33. We are here today for an evidentiary
7 hearing in Docket TR-180466 related to a petition filed by
8 Whatcom County to approve the installation of median
9 barriers at a highway rail grade crossing at Cliffside Drive
10 in Whatcom County as part of a quiet zone improvement.

11 My name is Laura Chartoff. To my left is Rayne
12 Pearson. We are administrative law judges with the
13 Washington Utilities and Transportation Commission. We are
14 co-presiding on this matter so I'm going to start speaking
15 but either of us will jump in at any point.

16 Okay. So we took care of several housekeeping
17 matters off the record this morning and the parties have
18 stipulated to the admission of all the pre-filed testimony
19 and exhibits so I will give a copy of the exhibit list to
20 the court reporter instead of reading it into the record.
21 We will address the cross exhibits at the time that they are
22 offered.

23 So as far as the order of the proceeding, we're
24 going to start with Whatcom County's witness, followed by
25 UTC staff's witness and then BNSF's witnesses.

1 Just for the record, we are in the Whatcom County
2 courthouse and we will also be here this evening for the
3 public comment hearing that's scheduled to begin at
4 6:00 p.m.

5 So let's start by taking short appearances.
6 Please state your name and who you represent for the record.

7 MR. QUINN: Christopher Quinn with Whatcom
8 County Prosecutor's Office representing Whatcom County in
9 this matter in support of its petition.

10 JUDGE CHARTOFF: Thank you.

11 MR. ROBERSON: Jeff Roberson, AAG, appearing
12 for Commission staff.

13 MS. ENDRES: Good morning. Kelsey Endres for
14 BNSF Railway Company. With me this morning is Jennifer
15 Willingham and also Stephen Semenick.

16 JUDGE CHARTOFF: If there's nothing else
17 we'll get started by calling witnesses, so Whatcom County,
18 if you would please call your first witness.

19 MR. QUINN: That would be Mr. Cody Swan.
20 CODY SWAN, having been first duly sworn,
21 testified as follows:

22
23 JUDGE CHARTOFF: Thank you. Please be
24 seated. Please state your name, spelling your last name for
25 the record.

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1 THE WITNESS: Cody Swan, S-W-A-N.

2 JUDGE CHARTOFF: Thank you.

3 MR. QUINN: Your Honor, I have no direct
4 questions of Mr. Swan at this time.

5 JUDGE CHARTOFF: Okay. Thank you. So cross?

6 MS. ENDRES: Do Your Honors have a preference
7 whether we cross from the podium or stay at our seats?

8 JUDGE CHARTOFF: You can stay in your seat.

9

10 CROSS-EXAMINATION

11 BY MS. ENDRES:

12 Q. Good morning, Mr. Swan. My name is Kelsey Endres.
13 Again, I represent BNSF Railway Company. I'm going to be
14 asking you some questions today as we have a group
15 discussion about the warning devices or supplemental safety
16 devices that should be installed at Cliffside Drive when
17 it's converted to a quiet zone.

18 As an initial matter if I ask you a question that
19 you don't understand, and I'm sure it will happen, please
20 let me know and I'll rephrase it. Otherwise I'm going to
21 assume we're on the same page; is that fair?

22 A. Sounds good.

23 Q. We do have -- I can't see up there if we have a
24 binder of exhibits for you, but if there is anything --

25 A. I don't have a binder.

1 Q. -- that has been submitted on your behalf either in
2 your pre-file or your rebuttal testimony that you think
3 would be helpful to explain your answer, please let me know
4 and collectively we've got it here somewhere and we can
5 provide that to you.

6 JUDGE PEARSON: So I think we accidentally
7 stole his exhibits so we'll pass them back down. Or maybe
8 not. I don't think actually we have -- there were some
9 copies sitting up on the bench, but I don't think it was --

10 JUDGE CHARTOFF: It was these.

11 JUDGE PEARSON: Oh, yeah, you're right.

12 MS. WILLINGHAM: Your Honor, may I approach
13 with the binder?

14 JUDGE CHARTOFF: Yes.

15 MS. ENDRES: Hopefully we have everything in
16 there.

17 MR. QUINN: Looks like you do.

18 MS. ENDRES: If not, we'll figure it out. I
19 will tell you there are some exhibits that have been
20 numbered twice, either they were submitted once in someone's
21 pre-file testimony and then later as a cross-examination
22 exhibit so I'll try to be really clear in using both
23 numbers. I'll also tell you because that's our attempt to
24 save trees. There are some places where you'll see a page
25 that says go to this other location, so we'll walk through

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1 that together but just as a heads-up.

2 BY MS. ENDRES:

3 Q. As an initial matter I'd like to do a little bit of
4 housekeeping so that we all have our terminology down.

5 We've been using a lot of acronyms in the pre-file testimony
6 and just so we have a clear record to make sure that we're
7 all on the same page in the terminology that we're using.

8 The first is QZRI, we've seen that a lot in the pre-file
9 testimony which is the Quiet Zone Risk Index if I'm correct;
10 is that right?

11 A. Yep.

12 Q. And that as I saw in your testimony and elsewhere
13 is the measure of the risk to the motoring public in the
14 absence of the regular sounding of the train horn; is that
15 right?

16 A. I believe so, yes.

17 Q. And that must be below the National -- Nationwide
18 Significant Risk Threshold or the NSRT, in order to convert
19 the quiet zone, the crossing to a quiet zone; is that right?

20 A. That's right.

21 Q. And in this particular case your testimony is that
22 the Nationwide Significant Risk Threshold, that maximum
23 number, for the Cliffside Drive crossing is 14,723; is that
24 right?

25 A. If that is what is in my quiet zone calculator

1 calculations then that's what I believe to be correct.

2 Q. Feel free --

3 A. Which one was that?

4 Q. The first set should be all of yours, so your
5 pre-file direct testimony is CS1T, should be that first tab
6 I think, and then the exhibits that you submitted are tabbed
7 behind it.

8 A. Yeah, 14,723.

9 Q. And I think that the quiet zone calculator exhibit,
10 if I'm right, is CS-9?

11 A. It's not 9. Oh, this is Exhibit --

12 Q. Do you have a tab that says CS-9?

13 A. I do but I don't see the quiet zone calculator in
14 there.

15 MS. ENDRES: May I approach, Your Honor?

16 JUDGE PEARSON: Yes.

17 THE WITNESS: For some reason it's not -- oh,
18 it's on the text. I was looking behind -- sorry.

19 BY MS. ENDRES:

20 Q. So okay, so we're going to be hearing the term
21 "QZRI" and term "NSRT," although perhaps for clarity we can
22 try to say their full names. The next one is -- that I saw
23 is "SSM" or supplemental safety measure, just for
24 terminology?

25 A. Yes.

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1 Q. Okay.

2 A. Yep.

3 Q. And in this particular case, the County is
4 proposing the installation of the supplemental safety
5 measure of a traversable median with channelization paddles
6 or devices; is that right?

7 A. That's right.

8 Q. I'm going to talk a little bit more about the QZRI
9 calculations and the SSM that the County has proposed but
10 before I do I want to see if there are some things that we
11 can all agree on just to set our framework as we're moving
12 forward this morning.

13 Is it your understanding from the materials you
14 reviewed that the County, the UTC and the BNSF materials all
15 agree that it's a better idea to install some kind of
16 supplemental safety measure at this crossing once it's
17 converted to a quiet zone as compared to just leaving it how
18 it is?

19 A. Well, yeah. The code says that the risk index,
20 being the Quiet Zone Risk Index, being below the Nationwide
21 Significant Risk Threshold, this qualifies as being a quiet
22 zone as it sits right now. However, we feel that an
23 additional supplemental safety measure to increase that risk
24 to the motoring public that uses quiet zone is a good idea.

25 Q. And the safety of the motoring public is this

1 priority here as we look at what type of devices or
2 additional supplemental safety measure should be installed?

3 A. It is, amongst other considerations.

4 Q. Do you agree that all railroad crossings are
5 inherently dangerous to some degree?

6 A. Yes, they all carry a risk index of some sort, yes.

7 Q. And obviously it's everyone's goal to prevent an
8 accident with a train at this crossing once it's converted
9 to a quiet zone?

10 A. That's correct.

11 JUDGE PEARSON: Ms. Endres, I just want to
12 clarify one thing. When I'm looking at Exhibit CS-9, I
13 think what I'm seeing, correct me if I'm wrong, is that the
14 Nationwide Significant Risk Threshold is the 14,723 number
15 that you referenced and for this crossing in particular
16 Mr. Swan calculated it 14,562.45.

17 MS. ENDRES: That's the Quiet Zone Risk Index
18 if that's my understanding.

19 JUDGE PEARSON: For this particular crossing?

20 MS. ENDRES: Correct. Maybe Mr. Swan can
21 clarify what the calculation is on Exhibit CS --

22 THE WITNESS: I can clarify. So there's a
23 couple pieces of information here. So up you'll see
24 traffic. Traffic is ADT traffic count. That kind of is a
25 consideration in determining the Quiet Zone Risk Index of

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1 that crossing. As that changed, the Quiet Zone Risk Index
2 changes and the risk index performance changes. This is
3 what we believe to be the existing risk index at the
4 crossing as is with no improvements, so...

5 JUDGE PEARSON: Thank you for that
6 clarification. Go ahead.

7 BY MS. ENDRES:

8 Q. And for just clarity of the record, let's see here.
9 CS-9 is also CS-16X. Now, another thing to see if we can
10 all agree on is that every railroad crossing is unique which
11 is one of the reasons that a diagnostic team is gathered to
12 explore potential changes on the conversion to a quiet zone;
13 is that fair to say?

14 A. I missed the first part of that. Will you repeat
15 the question?

16 Q. Sure. One of the reasons that a diagnostic team is
17 gathered to address potential modifications to a crossing
18 upon conversion to a quiet zone is that every crossing is
19 unique, there's no, not necessarily one size fits all any
20 time a crossing is converted to a quiet zone; is that fair
21 to say?

22 A. I would say that's a fair assumption in most cases.

23 Q. And as I said, I'm going to ask you some questions
24 about the SSM that the County has proposed, but just
25 generally do you agree that nonmountable medians lower the

1 risk of an accident at this crossing more than
2 channelization -- traversable channelization?

3 A. I would say -- could you please repeat the question
4 one more time?

5 Q. Sure. Do you agree that nonmountable medians lower
6 the risk of an accident at this crossing more than
7 traversable channelization?

8 A. I would say they do 5 percent less.

9 Q. Is it fair to say that to some degree a
10 nonmountable median makes the crossing safer than
11 traversable channelization?

12 A. In this situation I think there's several
13 considerations of what would be the safest option and
14 there's plenty of other options that are safer. We weren't
15 trying to choose the safest option because safest option
16 would be us requesting BNSF to put in four quadrant gates
17 and we'll install the median on our road and that would be
18 the safest aside from closing the road or doing a grade
19 separation. So we were doing something that was economical,
20 safe and provided a greatly reduced Quiet Zone Risk Index.

21 Q. And nobody's debating that it reduces the Quiet
22 Zone Risk Index. My question, though, is that one of those
23 safer options to some degree is a nonmountable median; do
24 you agree?

25 A. Yeah, they both significantly reduce the Quiet Zone

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1 Risk Index.

2 Q. Just --

3 A. Yes, 5 percent.

4 Q. -- comparing a reversible median and a nonmountable
5 median, to some degree the nonmountable median makes the
6 crossing a little bit safer?

7 A. 5 percent safer.

8 Q. And this particular location is no outlet road,
9 there's no other access to the neighborhood?

10 A. That's correct.

11 MS. ENDRES: We had premarked as
12 cross-examination exhibits CS-22X and CS-23X as two aerial
13 views of the area in the crossing configuration. I would
14 like to ask you about those but given our initial
15 housekeeping matter, those are exhibits that BNSF would
16 offer into evidence.

17 JUDGE PEARSON: Are there any objections to
18 those two exhibits, Mr. Quinn?

19 MR. QUINN: No, Your Honor.

20 JUDGE PEARSON: We will admit those into the
21 record then and mark them accordingly.

22 (Exhibit Nos. CS-22X and CS-23X admitted.)

23 BY MS. ENDRES:

24 Q. Do you have those there, Mr. Swan?

25 A. Yep.

1 Q. And you may recognize these as exhibits that were
2 used in your deposition testimony. You can see that CS-22X
3 was Exhibit 4 and CS-23X was Exhibit 9.

4 Do you see where those stickers are?

5 A. Uh-huh, yes.

6 Q. So you've seen these before?

7 A. Yes.

8 Q. And we can see from Exhibit CS-22X the entire
9 footprint of the residential area served by the Cliffside
10 Drive railroad crossing?

11 A. Actually I was looking at the wrong one, but...
12 sorry. I have also seen these ones too. Yes.

13 Q. And then Exhibit CS-23X we had used in your
14 deposition as a not-to-scale estimate of the approximate
15 footprint of the traversable channelization that the County
16 has proposed that you had marked in Sharpie on that exhibit;
17 is that correct?

18 A. That's right.

19 Q. One of the topics that I want to ask you about that
20 you have described as one of the bases for the proposed
21 safety measure that the County has suggested has to do with
22 the installation and repair issues presented by mountable
23 channelization devices as compared to a nonmountable median;
24 is that right?

25 A. Yes.

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1 Q. Okay. And am I using the terminology you're
2 comfortable with when I say "traversable channelization" as
3 being the option the County's proposed and a "nonmountable
4 median" as being the option that BNSF prefers?

5 A. I understand what you're talking about, yes.

6 Q. What terminology would you use?

7 A. That's -- that's fine. Just the use of the term
8 "median" is kind of defined differently within the final
9 code, but -- or the final rule, but I understand what you're
10 speaking of when you're talking about that.

11 JUDGE PEARSON: Can I interject here? I
12 think that for brevity sake we could just say "mountable"
13 and "nonmountable."

14 MS. ENDRES: Okay. We can do that.

15 BY MS. ENDRES:

16 Q. When we discussed this during your deposition, if I
17 have this down right, you said the installation costs are
18 relatively the same to install the nonmountable system
19 versus the mountable system?

20 A. Yeah, and after I reconsidered that, I mean, I
21 didn't do a direct analysis of what the costs are to install
22 either one of them really, but I would say they are similar
23 based on some assumptions on how frequently we paint road
24 center lines and how often we may paint the curb and then
25 how often we may replace channelization devices on the

1 mountable medians.

2 And I've talked to other agencies and how they have
3 performed for them, and mainly Kent, and they said they
4 haven't had to replace much of the curb in the past 15 years
5 so I think the maintenance cost on that is relatively low.

6 Q. And when you say curb you mean the nonmountable
7 system?

8 A. No, the -- I'm sorry. The mountable plastic
9 composite curb is what I'm talking about.

10 Q. Okay.

11 A. So there hasn't been a direct analysis of gathering
12 information about maintenance costs for both curbs, but we
13 anticipate that we could be more proactive in our approach
14 to maintaining the mountable medians.

15 Q. But at the time I took your deposition your
16 testimony was that you expect the initial installation cost
17 to be about the same?

18 A. Oh, yeah, yeah. I thought you said maintenance
19 costs.

20 Q. I apologize if I misspoke or wasn't clear.

21 And like you just said, one of the things you like
22 about the mountable system is you can install that with
23 County forces where if you install the nonmountable system
24 you have to get a contractor to come out and do that
25 concrete work initially?

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1 A. That's right.

2 Q. And you estimated that process might take about a
3 month?

4 A. Yeah, perhaps. Maybe longer.

5 Q. And so I'm clear, the County's petition reflects
6 that it intends to install a curb off the fog line to
7 protect the warning devices at the crossing. Is that a
8 different type of installation process or do you also have
9 to have a contractor come do that curb work?

10 A. It depends on what we actually use in that
11 situation, what BNSF -- this was a request by BNSF. I guess
12 it's some type of policy that they need to protect those
13 warning devices that aren't a certain distance from the fog
14 line. So provided they approve something that's precast,
15 no, we wouldn't have to do extra concrete work, we'd install
16 something that's precast and that would be what we would
17 propose. So no.

18 Q. But if BNSF standard is to have something other
19 than precast, if concrete had to be installed for that part
20 of the project, then it would have to be a contractor to
21 come do it?

22 A. Uh-huh.

23 Q. "Yes"?

24 A. Yes.

25 Q. I only say that so we have a clear transcript.

1 A. Yes.

2 JUDGE PEARSON: I have a quick question. Can
3 we get a definition for "fog line"?

4 THE WITNESS: It would be the edge striping
5 of the road, the white line.

6 JUDGE PEARSON: On the outside edges of the
7 road?

8 THE WITNESS: Yeah.

9 BY MS. ENDRES:

10 Q. And if that were the case that a contractor would
11 have to pour the concrete curb off the fog line to protect
12 the warning lights, could presumably that company also
13 present a bid to install a nonmountable median?

14 A. Sure.

15 Q. And is it the case that anywhere concrete curbs or
16 medians exist in the County system, you have to have a
17 contractor come out and do that work?

18 A. Yeah, we don't do any concrete work ourselves.

19 Q. But the County does paint so if there was an issue
20 with painting of a nonmountable system, that's something the
21 County could do itself?

22 A. Yes.

23 Q. And when I took your deposition, if I have this
24 right, you said at that time you had not analyzed the
25 frequency of repair between nonmountable and mountable

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1 systems; is that right?

2 A. That's right.

3 Q. I'm going to talk a bit about the Yacht Club Road
4 in more detail in a minute but that is a system that has a
5 nonmountable protection; is that right?

6 A. That's right.

7 Q. And since that's been installed, the County has not
8 had to have a contractor come repair the concrete work; is
9 that right?

10 A. No, it's been installed for about a year but the
11 channelization devices have suffered some impacts and one of
12 them is lost at the westerly end and we've sent in a federal
13 application to shorten that.

14 Q. And I apologize if my question was unclear. For
15 this particular question I'm just asking about the curb, the
16 concrete part itself.

17 A. The concrete? No, we have not.

18 Q. And the County doesn't have any other crossings
19 with a mountable median or mountable system; is that right?

20 A. As far as I know we only have the Yacht Club Road.

21 Q. But Yacht Club Road has a nonmountable system; is
22 that right?

23 A. With any median, yes, mountable or otherwise.

24 Q. You provided, with the initial petition to close
25 the crossing, a photo from a crossing in Vancouver. Do you

1 recall that photo I'm talking about?

2 A. I do.

3 Q. And the petition for the installation I believe is
4 CS-3. Am I correct that the photo was submitted with the
5 petition or --

6 A. I think it was the notice of the quiet zone.

7 Q. Was the quiet zone. So the notice of the quiet
8 zone was CS-2. And those were the two color photographs
9 that accompanied that petition; is that right?

10 A. Yes.

11 Q. Or excuse me. The notice. And when I took your
12 deposition, you stated that you had not had a conversation
13 with the Vancouver engineer about their repair or
14 maintenance costs at that crossing; is that right still?

15 A. That's correct.

16 Q. We've submitted some photographs of this crossing
17 that we found from Google Earth as CS-12X, 13X, let's see,
18 14X and 15X. Do you have those there with you?

19 A. Yes.

20 MS. ENDRES: And we would also offer those
21 exhibits into evidence, Your Honor.

22 JUDGE PEARSON: Mr. Quinn?

23 MR. QUINN: I'm going to object at this time.
24 No. 1, I don't think there's proper foundation, and No. 2,
25 I'm not sure what the relevance is. Maybe that could be

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1 addressed.

2 JUDGE PEARSON: Go ahead, Ms. Endres, if you
3 want to explain the purpose for that --

4 MS. ENDRES: I can ask a foundational
5 question. The relevance would be to show the damage that
6 has occurred to the crossing that the County submitted as an
7 example of the type of devices that it proposes to install
8 as well as the configuration that we'll be exploring in
9 later questioning as a potential in this case.

10 JUDGE PEARSON: And how about the foundation?

11 MS. ENDRES: The foundation.

12 BY MS. ENDRES:

13 Q. Mr. Swan, do you recognize these photos as showing
14 the same crossing that you had submitted as an example in
15 the notice --

16 A. Yeah, I believe this is Evergreen Highway which I
17 don't believe would be apples to apples. It's a highway.
18 We're talking about a residential no outlet crossing.

19 Q. Do you recognize this as the same crossing --

20 A. Yes.

21 Q. -- as the photos that were submitted with the
22 notice of intent to establish a quiet zone?

23 A. Yes.

24 MR. QUINN: May I question in aid of the
25 objection?

1 JUDGE PEARSON: Sure.

2

3 REDIRECT EXAMINATION

4 BY MR. QUINN:

5 Q. Mr. Swan, do you know how old that SSM is?

6 A. I have no idea.

7 Q. Okay. And what's the setting in which it's
8 portrayed? Is it a railroad crossing?

9 A. It's -- yes, it's a close proximity railroad
10 crossing to an intersection on a highway.

11 Q. Okay. And do we know what the ADTs at that
12 crossing are?

13 A. I have no idea.

14 Q. Do we know if trucks or buses use that crossing on
15 a regular basis?

16 A. I have no idea.

17 Q. You've previously said that you can't say it's an
18 apple-to-apples comparison. Do you want to expand on that
19 for purposes of -- counsel wants to suggest that this is a
20 demonstration of how these wear over time, how they degrade
21 over time.

22 Would that help the fact finder determine that that
23 would be the case for the Cliffside Drive crossing?

24 A. No, because I don't know what the ADT is, and like
25 you said, we don't know what type of vehicles use this road.

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1 We don't know how old they are. We obviously probably would
2 differ a little bit in our maintenance plan than Vancouver,
3 so I would say it's not a fair comparison.

4 MR. QUINN: All right. No further questions,
5 Your Honor. I stand by the objection.

6 JUDGE PEARSON: Okay. So I think that these
7 exhibits, I'm going to allow them. I think they have
8 limited probative value. So with that caveat, I'll admit
9 them into the record and we will afford them weight
10 accordingly.

11 (Exhibit Nos. CS-12X-15X admitted.)

12 MS. ENDRES: So Your Honor, just for clarity,
13 is this 12 through 15?

14 JUDGE PEARSON: Correct. You can continue
15 with your questions with the understanding that Mr. Swan
16 probably isn't going to have a lot of information.

17 MS. ENDRES: Understood.

18

19 RE CROSS-EXAMINATION

20 BY MS. ENDRES:

21 Q. Well, let me just ask you this basically, Mr. Swan.
22 Does the depiction of the condition of the devices in that
23 crossing, which is the crossing that the County submitted in
24 its notice of intent to submit a quiet zone, does that
25 change your assessment at all relating to whether

1 traversable devices are appropriate here?

2 A. No.

3 Q. Or mountable devices?

4 A. Are appropriate -- when you say "here" you mean at
5 Cliffside?

6 Q. Yes, thank you.

7 A. Yes.

8 Q. These photographs show that on one side of the
9 crossing there's a mountable system. We can see that
10 there's at least one paddle missing on that side but it
11 looks like on the far side that they installed a
12 nonmountable system or a concrete curve.

13 Do you see that?

14 A. I do.

15 Q. And my question to you is whether that's also a
16 configuration that the County would think appropriate at the
17 Cliffside Drive crossing, to have a nonmountable system on
18 the east side of the tracks even if there's a mountable
19 system order installed on the west side?

20 A. No, because what we're proposing is an SSM that
21 satisfies the requirements of the final rule so I think that
22 there's no reason to mix and match. Picking one would be
23 easier maintenance effort, not picking both.

24 Q. So is it the County's position that regardless of
25 whether an alternative configuration could make the crossing

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1 safer for a similar cost because the FRA calculation allows
2 for the installation of a mountable system, that's simply
3 what the County -- the County's position is appropriate?

4 A. Could you please repeat that?

5 Q. Sure. If I understood your answer just now, you
6 said the FRA regulations and calculation allows for the
7 installation of a mountable system as an appropriate
8 supplemental safety device.

9 Do I have that accurately?

10 A. Uh-huh.

11 Q. "Yes"?

12 A. Yes.

13 Q. And is it the County's position that regardless of
14 if another system could be installed for the same cost and
15 make this crossing safer, the County still believes that
16 having a mountable system on both sides of the crossing is
17 the right approach in this case?

18 A. The -- yes.

19 Q. Now, the mountable system has these channelization
20 devices or paddles. Can those be twisted off or does there
21 have to be a pretty significant impact to actually shear one
22 off of the base?

23 A. They're pretty durable. I believe there would have
24 to be a significant and repetitive abuse of the paddle
25 before it became sheared off at the rubber. At Yacht Club

1 Road, the repetitive driving over of the last reflector to
2 the west on that crossing broke at the base which was
3 connected to the concrete which don't apply in this
4 situation because that base is not required to install them
5 on the quick curb. So I didn't see them shear off there
6 after repetitive abuse.

7 Q. We're going -- we've talked already a bit and the
8 materials reflect discussion about what was done at Yacht
9 Club Road. So we all understand the configuration of that
10 crossing, it's also a crossing that generally runs
11 east/west. In that particular case it's from the Chumstick
12 Highway across -- you're correcting me, it's not a highway?

13 A. Chuckanut.

14 Q. Chuckanut, thank you. Chuckanut Highway across
15 BNSF's tracks to another residential road on the west side
16 of BNSF's tracks; is that right?

17 A. That's right.

18 Q. And that particular case, once you cross the tracks
19 and you get to the end of the nonmountable median that was
20 installed, it comes to a T right at the end of that; is that
21 right?

22 A. That's right.

23 Q. Whereas in this particular case with Cliffside, we
24 don't have that T configuration right at the end of the
25 nonmountable system, the road continues heading -- it curves

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1 more towards the westerly direction and parallels the water;
2 is that right?

3 A. That's right.

4 Q. Now, when I took your deposition, you said you were
5 not able to quantify how often concrete would need to be
6 repaired as compared to repainted; is that right?

7 A. That's right.

8 Q. Or how often it may need to be repainted?

9 A. No. This is kind of a test scenario.

10 Q. And you characterized the Cliffside Drive as a
11 very, very low traffic road compared to other locations in
12 the county; is that right?

13 A. That's right.

14 Q. And that you would then expect the frequency of
15 needing to repaint or repair a damaged concrete median to be
16 correspondingly much lower than if it were on a road with
17 much higher traffic use; is that right still?

18 A. I would say yes to that as well as the other
19 median, the mountable median to be installed.

20 Q. My question was specific to the non-traversable
21 system or the concrete.

22 A. Yes.

23 Q. And you had stated that you would be -- the County
24 would be able to replace a deficiency quicker with a
25 mountable system than if it had to contract work out with a

1 nonmountable system; is that right?

2 A. I would say yes.

3 Q. But that assumes that a deficiency is encountered;
4 is that still the case?

5 A. Yes.

6 Q. And concrete is less likely to be damaged to the
7 point of repair than a channelization marker that's been
8 driven over; is that fair to say?

9 A. Yeah. Yes.

10 Q. And the County, I apologize if I asked you this
11 already, but the County has not had to repair the median
12 system at Yacht Club Road to this point other than you
13 mentioned there were a couple of the paddles that have been
14 removed?

15 A. Yes.

16 Q. At the Cliffside Drive it services, I think I saw
17 40 or 44 residential homes; is that right?

18 A. That's correct. Low 40s, yes.

19 Q. But the petition reflects or states there are no
20 school buses?

21 A. Yes.

22 Q. Where is the school bus stop service for those
23 residences?

24 A. I'm not sure.

25 Q. But it's a solely residential neighborhood, there

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1 aren't commercial businesses?

2 A. That's correct.

3 Q. And the County plans to inspect the crossing
4 monthly?

5 A. That is the plan.

6 Q. And is that the same plan whether a traversable
7 system median is installed or a non-traversable median is
8 installed?

9 A. Yeah, that's the plan initially. That could change
10 as we see how they're performing. I mean, our sign crew
11 does a monthly sign inventory so that would just be
12 incorporated into that.

13 Q. So is there a scenario where the County would
14 inspect the crossing system more frequently than once a
15 month?

16 A. More frequently? If it proves to be something that
17 we have to do after inspecting it monthly and it warrants us
18 inspecting it more often or potentially changing it, I would
19 say yes.

20 Q. The FRA regulations don't require the reflective
21 panels to be installed if a nonmountable system is selected;
22 is that true?

23 A. Yes.

24 Q. I want to ask you a bit about the QZRI or the Quiet
25 Zone Risk Index calculations that you did. Your pre-file

1 testimony reflects that the, at least when you submitted it,
2 the existing QZRI at Cliffside Drive is 13,837 and 78?

3 A. Can I reference a --

4 Q. Yes, please.

5 A. Which?

6 Q. Pre-file testimony at Page 4, your pre-file
7 testimony is CS-1T. It should be the first thing in there.

8 A. What page are we looking at?

9 Q. Page 4.

10 A. (Witness reviews document.) Yeah.

11 Q. And so that assumes that a horn is not blown; is
12 that right?

13 A. That assumes -- the Quiet Zone Risk Index assumes
14 that there's no horn or -- that existing one assumes there's
15 no horn or supplemental safety measure.

16 Q. Okay. And then with the proposed SSM of a
17 mountable system, the risk index was reduced by 75 percent
18 to 3,459.45; is that right?

19 A. That's right.

20 Q. And that 75 percent figure, that comes from the FRA
21 regulation?

22 A. It does.

23 Q. Did you calculate what the QZRI would be with
24 BNSF's proposed supplemental safety measure?

25 A. I did. It would be 5 percent more than that. I

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1 don't know if I -- if it's included in this document, but,
2 yeah.

3 Q. So to do that calculation we would take the
4 existing QZRI, same existing QZRI of 13,837.78 and then
5 using the FRA percentage we would reduce that by 80 percent?

6 A. That's right.

7 Q. Okay. And by my calculation then that comes up
8 with a QZRI of 2,767.56. Do you have any reason to disagree
9 with that?

10 A. If that's 5 percent less or 80 percent from that,
11 then yes, that's correct.

12 Q. And you're welcome to do -- I don't know if you
13 have a calculator --

14 A. I don't.

15 Q. -- on your phone or you want to do that yourself
16 and not take my word for it you're welcome to.

17 A. I take your word for it.

18 Q. So then when I compare the QZRI of the County's
19 proposed supplemental safety measure of 3,459.45 and I
20 compare that with the QZRI of BNSF's proposed supplemental
21 safety measure QZRI of 2,767.56 and I compare those two,
22 that's a 20 percent difference between those two, not 5
23 percent?

24 A. I don't -- then the math is wrong I would say.

25 Q. My math is wrong?

1 A. I would say the reduction from the Quiet Zone Risk
2 Index of 75 percent to 3,459 is 75 percent.

3 Q. Right.

4 A. The reduction, your method is 80 percent. That
5 delta is 5 percent.

6 Q. I understand the delta between the 75 and 80 is
7 5 percent.

8 A. You're saying you reduce our Quiet Zone Risk Index
9 20 percent. I mean that's a different way of looking at it
10 I would say.

11 Q. Let me ask it this way: Assume that's correct.
12 Assume that we're comparing the difference between the Quiet
13 Zone Risk Index of the County's proposed supplemental safety
14 measure and BNSF's proposed supplemental safety measure. If
15 BNSF's proposed measure reduces the QZRI of the County's
16 proposed measure by 20 percent, does that change your
17 opinion?

18 A. I don't believe that's how we would assess these
19 percentages. I would say they both have significant risk
20 reduction. I mean I don't necessarily think that it does
21 reduce it 20 more percent. I think it reduces it another
22 5 percent from 75 to 80 percent.

23 Q. Does that make a difference to you whether it
24 reduces the County --

25 A. That 5 percent safety?

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1 Q. Let me make sure I get my question out clearly just
2 for our record and to make sure I'm doing this right in my
3 head.

4 The difference between the QZRIs calculated using
5 the County's proposed supplemental safety measure and
6 BNSF's, if BNSF's reduces the County's QZRI by an additional
7 20 percent, does that make a difference to you?

8 A. If it was an additional 25 -- or 20 percent and it
9 was reduced to 95 percent below the QZRI, then that would be
10 a different consideration, but I don't believe the
11 20 percent mathematics that's involved in this is the
12 20 percent reduction in the QZRI.

13 Q. Is there any percent -- say there was another
14 alternative that cost the same that cut the County's
15 proposed QZRI, the new one of 3,459, cut that by half, is
16 there --

17 A. I don't know that one. I don't know what that
18 would be. I don't think that was a consideration in the
19 code or the final rule that came to that conclusion. These
20 are kind of comparable solutions. We chose one that for
21 other reasons we thought was a better fit at this location.
22 So the 5 percent for us is pretty insignificant when there's
23 other safety factors that come into play with this crossing
24 that probably mitigate that 5 percent difference, so -- such
25 as emergency access and things like that.

1 Q. If the FRA regulation had that as more than a
2 5 percent difference, would that make a difference to you?

3 A. I don't know. I would have to be presented with
4 that. I have no idea.

5 Q. Your rebuttal testimony that you submitted --

6 MS. ENDRES: Has the rebuttal testimony been
7 pre-admitted?

8 JUDGE PEARSON: Yes.

9 BY MS. ENDRES:

10 Q. Okay. You calculated a different QZRI using an
11 updated traffic count that the County ran after your
12 deposition?

13 A. Sure.

14 Q. And in that particular case, you increased the
15 average daily traffic count to 324 vehicles instead of 300
16 that you initially used; is that right?

17 A. That's right.

18 Q. And that was based on the fact that when we took a
19 closer look at the traffic count materials that the County
20 had relied on, we realized they had only looked at two
21 weekdays and so you had a new traffic count run using -- and
22 that case if I remember right, nine days, and the County
23 used seven of those meaning that two were outliers; is that
24 right?

25 A. Actually three were outliers. That 324 number

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1 includes one of the outliers so it is a skewed high ADT,
2 so --

3 Q. And this --

4 A. -- yes.

5 Q. Sorry. I didn't mean to interrupt you. This is
6 the only time the County's actually measured seven days or
7 more at this crossing to your knowledge?

8 A. Since my time here, yes, since 2013, but it's very
9 common for places like Cliffside that have not seen any
10 development in decades to not change much. So snapshots in
11 the middle of the week represent a good indication of what
12 the average daily traffic is on a weekly basis. Sometimes
13 they might need it for a project or might need a quick
14 little snapshot and that's probably what that was. And it's
15 upheld by the one we just did a couple months ago, I mean,
16 it supports it.

17 Q. So initially the FRA calculator had 450 set there
18 as a preset or whatever their most recent information was
19 until the parties here started modifying the numbers to make
20 different calculations; is that right?

21 A. Yes.

22 Q. And you said there was an estate sale that weekend?

23 A. Yes.

24 Q. Which explained the outlying information on the
25 Saturday and Sunday?

1 A. Friday, Saturday and Sunday, yes.

2 Q. And did you do any determination of other events or
3 sales that that area has had throughout the last year, say?

4 A. No.

5 Q. So when you ran the new QZRI, the new risk index,
6 the number you came up with was 14,562.45? And this is, if
7 you want to look at I think CS-9?

8 A. Okay. That's the existing one.

9 Q. That's where traffic counts as 324?

10 A. Yeah, but that's not the calculated one. There's
11 been no -- that's the -- yeah, with no supplemental safety
12 measures that's the number.

13 Q. And that was using the newer traffic information?

14 A. Yeah, that's 324.

15 Q. I meant to ask you this before just generally about
16 running this QZRI calculator. This is a website that you
17 can log into that the FRA provides to be able to input
18 different pieces of information to see how that changes the
19 QZRI; is that right?

20 A. Yes.

21 Q. So things that you can modify like you did here are
22 the average daily traffic count, right?

23 A. That's right.

24 Q. What other things can you modify?

25 A. You can modify train speeds, train counts. There's

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1 a couple other things. The main thing that I would modify
2 in that case or the things that I definitively know are
3 different than what they prompt you to, that's the ADT and I
4 got train counts from Stephen, so...

5 Q. What train counts did you use?

6 A. 19.

7 Q. And how many trains per day?

8 A. That would be 19 trains per day.

9 Q. So correct me if I'm wrong, my understanding is
10 that there are two pieces of information that you input
11 about train counts: One is total trains per day and of that
12 you say how many are in the daytime; is that your
13 understanding?

14 A. Oh, no, it just gives you train -- average daily
15 train count.

16 Q. Okay. So your calculations do include 19 trains
17 per day?

18 A. Yes.

19 Q. And then if there was another space to input the
20 number of those that are in the daytime, I take it you
21 didn't change that?

22 A. I didn't, but I did -- one thing I did do is I
23 manipulated that data wildly in varying directions and it
24 didn't get up until about -- any realistic train count or
25 traffic count input in there with the installation of our

1 supplemental safety measure put us well below the Quiet Zone
2 Risk Index. I mean up until you get to about 250,000 ADT,
3 then it starts to get funny, but I mean whatever you put
4 into that calculator as the ADT, with the installation of
5 the supplemental safety measure brings us below our
6 threshold.

7 Q. The new number that you calculated using 324
8 vehicles, that's right at the threshold, right?

9 A. With no -- yeah, that's right, so...

10 Q. Your -- 14,562.45 was your calculation and the
11 threshold is 14,723, that's 98 or 99 percent there; is that
12 right?

13 A. Oh, yeah, it's real close. That's why we're
14 installing supplemental safety measures.

15 Q. Right. So there's not much wiggle room there with
16 the traffic count in terms of just that initial QZRI without
17 the additional modifications?

18 A. Yeah, there's not a lot of wiggle room to be
19 eligible to do something that we can by the code which is
20 install -- or establish this as a quiet zone as is with no
21 supplemental safety measures. There's not a lot of wiggle
22 room there, no.

23 Q. And if you used all of the traffic counts that you
24 measured that would put it over the national -- Nationwide
25 Significant Risk Threshold without making modifications?

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1 A. Yeah.

2 Q. The traffic counts that the County got were
3 submitted to your rebuttal pre-file testimony and those
4 were -- those have been marked as CS-8 and CS-17X.

5 MS. ENDRES: BNSF would move to admit.

6 JUDGE PEARSON: Can you tell us again which
7 exhibits those are?

8 MS. ENDRES: CS- -- well, we would move to
9 admit the new quiet zone calculation that he ran and the new
10 traffic count so those are -- the quiet zone calculation is
11 CS-9 and it's also CS-16.

12 JUDGE PEARSON: So those are already in the
13 record, those are pre-filed.

14 MS. ENDRES: Oh, you're right, 8 and 9.

15 BY MS. ENDRES:

16 Q. I just have two more topics to cover with you,
17 Mr. Swan, and I'll try to move it along here.

18 I want to talk about the consideration of the
19 motorist safety at the crossing. We can agree that a
20 nonmountable system is also an FRA approved supplemental
21 safety measure at this crossing once it's converted to a
22 quiet zone?

23 A. Could you restate that question?

24 Q. Can we agree that the nonmountable system is also
25 an FRA approved safety measure to convert the crossing to a

1 quiet zone?

2 A. Yes.

3 Q. And the purpose of the Supplemental Safety Measures
4 that the County's proposed, or any I suppose Supplemental
5 Safety Measures, is to deter bad driver behavior at railroad
6 crossings; is that fair to say?

7 A. Yes.

8 Q. Because unfortunately drivers don't always make
9 smart or logical or lawful decisions at railroad crossings,
10 right?

11 A. That's correct.

12 Q. And can we agree that most people probably don't
13 like waiting for trains to clear the railroad crossing?

14 A. I'd say that's very subjective. I mean maybe.

15 Q. And this location, as you noted, is a no outlet
16 road?

17 A. That's right.

18 Q. And so if a car or vehicle is stuck waiting for a
19 train either to get into the neighborhood or to get out,
20 there's not an alternative way to go, there's no overpass or
21 underpass, they just have to wait?

22 A. That's right.

23 Q. And the petition reflects that there are 17 freight
24 trains a day on average going about 45 or timetable speed
25 limits 45 miles an hour?

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1 A. I believe so.

2 Q. And if you want to look at your petition that's
3 CS-3, if you feel like you want to refresh your memory.

4 A. I think I just looked at it as well.

5 Q. If you need to.

6 A. (Witness reviewing document.)

7 Q. Right?

8 A. Yep.

9 Q. That is the number plus two passenger trains a day,
10 that's the number you used for the train count for your QZRI
11 calculations?

12 A. That's right.

13 Q. And so 17 or 19 times a day, those are all
14 potential times that the residents are going to be stuck
15 waiting for a train at that crossing?

16 A. A portion of those, whatever is during the day when
17 you have those traffic volumes.

18 Q. But the traffic count that the County did, weren't
19 there also some amount of vehicular traffic at all hours of
20 the day and night?

21 A. Perhaps, yeah.

22 Q. Do you have that there?

23 A. What was it again?

24 Q. That is --

25 A. 9? 8.

1 Q. 8.

2 A. (Witness reviewing document.)

3 The timing would have to be impeccable between the
4 hours of like 10:00 to say 7:00 in the morning to encounter
5 a train, but yeah, there's traffic at night.

6 Q. I mean just taking that very first day, for
7 example, January 5th, there were six vehicles between
8 12:00 a.m. and 4:00 a.m.?

9 A. Yeah.

10 Q. Between westbound and eastbound traffic? Yeah?

11 A. Yeah.

12 Q. And the mountable devices or the channelization
13 devices, those are designed so that if someone is determined
14 and drives over them, they will in theory pop back up
15 without being broken off; is that right?

16 A. Yes.

17 Q. They can drive over that nonmountable system if
18 they choose to?

19 A. Yes.

20 MS. ENDRES: I think I can wrap up before
21 taking a break, if that works?

22 JUDGE PEARSON: If it works for you.

23 BY MS. ENDRES:

24 Q. The east side of the crossing, in your discussions
25 with emergency response, did they raise any concerns

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1 specific to a nonmountable system east of the crossing?

2 A. No.

3 Q. And it's on the west side of the crossing that has
4 that home with its driveway that comes --

5 A. It's not even that. It's the geometry of the road
6 that doesn't allow them to -- their trailing rail to track
7 completely on the road without going over the center line.

8 Q. And the County intends to widen the shoulder part
9 of the road on the west side of the crossing regardless of
10 which supplemental safety is installed; that was your
11 deposition testimony?

12 A. Widening -- widening the gravel portion of the
13 shoulder to provide support for the vehicles, the larger
14 vehicles.

15 Q. And that's regardless of which supplemental safety
16 measure is installed?

17 A. Regardless.

18 Q. And your testimony was that you believe emergency
19 vehicles do have sufficient space to traverse the road even
20 if a nonmountable system is installed; is that correct?

21 A. I believe they will get to where they're going
22 regardless of what supplemental safety measure is installed.

23 Q. And the aerial photo that you had there that we
24 looked at showed -- during your deposition, you identified
25 at least three places that emergency responders could turn

1 around west of the tracks if they needed to; is that right?

2 A. I would -- which document are you looking at here?

3 Q. We're looking at the photo that showed the aerial
4 view of the neighborhood.

5 JUDGE PEARSON: Can you identify these by
6 exhibit number?

7 MS. ENDRES: I'm flipping through it.

8 BY MS. ENDRES:

9 Q. I believe this was CS-22X. It was the one that was
10 Exhibit 4 to your deposition. Yes.

11 A. Okay. Yeah, there appears to be about three,
12 perhaps more but at least three.

13 Q. And do you agree that for emergency response
14 traversing a crossing that Yacht Club Road is actually a
15 tighter configuration than would exist at Cliffside?

16 A. I'm not sure. I don't know the exact width of the
17 road but I would say there's definitely geometry issues with
18 Yacht Club Road, that's why we proposed mountable medians
19 there.

20 Q. When a vehicle is approaching the Yacht Club
21 crossing in a westbound direction, before they get to the
22 tracks on the right side there's like a rock face there,
23 there's literally no space next to the road; is that right?

24 A. There's a little bit, but yeah, there is a big
25 slope right there, yeah.

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1 Q. And whereas with Cliffside when you're approaching
2 heading towards the track in the westbound direction on the
3 east side, there is some shoulder width there that's grassy
4 and has at least more space to the right compared to Yacht
5 Club Road?

6 A. Yeah. Yes.

7 Q. And you said earlier obviously we don't have that T
8 configuration at Cliffside?

9 A. That's right.

10 Q. And the crossing has a phone number to call the
11 railroad if something happens near the crossing itself; is
12 that right?

13 A. I believe so.

14 Q. And the homeowner near the crossing has its own
15 turnaround driveway if someone needed to pull in there and
16 turn around?

17 A. No, it's locked up. Are you talking at the T?

18 Q. I'm sorry. I apologize. At Cliffside Drive
19 there's a home just west of the railroad crossing and that
20 home has its own turnaround, correct?

21 A. Yes.

22 Q. And you said that that homeowner has advised the
23 County they don't mind driving down the way to turn around
24 if it means they get a quiet zone?

25 A. That's what our special programs manager informed

1 me of, yes.

2 Q. If a nonmountable median was installed, your
3 deposition testimony was that that footprint would be within
4 the currently painted stripe?

5 A. If a non -- yes.

6 Q. And widening the shoulder width using gravel is
7 meant to allow all emergency vehicles to traverse the
8 roadway without having to encroach on the median?

9 A. Yes.

10 Q. So under normal circumstances, even if the UTC
11 orders that a nonmountable system be installed, you expect
12 emergency responders will be able to travel up and down the
13 road freely?

14 A. I would say the incumbrance of a nonmountable
15 versus a mountable may impact the response time to those
16 emergencies but they will get to where they need to go, yes.

17 Q. What's the basis --

18 A. Could potentially impact those response times.

19 Q. Do you have any data that supports that?

20 A. No, but I've talked to drivers that at Yacht Club
21 Road specifically are very cognizant of the fact that
22 there's something there and very -- watching for it at all
23 costs and driving very slowly down that access to get to the
24 bottom of Yacht Club Road.

25 Q. Okay. But here for Cliffside you expect emergency

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1 responders will be able to navigate the road even with a
2 nonmountable system installed?

3 A. Yes.

4 Q. And if there's an emergency, whether a mountable
5 system is installed or a nonmountable system is installed,
6 you would expect the responders to flag traffic like they
7 would anywhere else if they needed to?

8 A. I would expect that of them, yeah.

9 Q. And you weren't provided with any data about the
10 actual response frequency to that neighborhood on the west
11 side of the tracks?

12 A. I mean, no, I wasn't provided any direct data
13 besides some kind of vague -- the fire marshal's office gave
14 me some kind of things they respond to during the summer
15 months which are brush fires down there and he says they do
16 it frequently.

17 Q. But they didn't tell you how often?

18 A. The frequency, no.

19 Q. And the County didn't submit any testimony on
20 behalf of the fire department itself, did it?

21 A. No.

22 MS. ENDRES: I think I'm just about finished.
23 If I can just take about 30 seconds and flip back through my
24 notes and make sure I don't have any other questions, I'd
25 appreciate that.

1 BY MS. ENDRES:

2 Q. My last question for you, Mr. Swan, is: Can we
3 agree that one train accident at this crossing would be too
4 many?

5 A. That's right.

6 MS. ENDRES: That's all I have. I appreciate
7 your time.

8 MR. QUINN: May we break now? I'll have a
9 few questions for Mr. Swan when we get back.

10 JUDGE PEARSON: That sounds good. So let's
11 go ahead and be in recess for 30 minutes and come back.

12 MR. QUINN: Whatever works for counsel.

13 JUDGE PEARSON: Does that work?

14 We'll come back then at approximately 11:10.

15 (Recess 10:38-11:10.)

16 JUDGE CHARTOFF: We are back on the record.

17 Mr. Swan, you're still under oath. Mr. Quinn, you may
18 proceed with your redirect.

19 MR. QUINN: I'm not sure whether actually UTC
20 intended to cross before with that procedurally.

21 MR. ROBERSON: It seemed like time for cross.
22 So staff has no questions.

23 MR. QUINN: No questions? Thanks.

24 ////

25 ////

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1 REDIRECT EXAMINATION

2 BY MR. QUINN:

3 Q. Mr. Swan, if we could I'd like to talk a little bit
4 more about the community that's being served at the
5 crossing. We touched on it in your cross-examination but
6 can you please describe for the Court the community that's
7 being served and the area that's going to be included in the
8 quiet zone?

9 A. Yes. It's a no outlet road servicing approximately
10 44 residents, all of which are very familiar with the
11 existing crossing, use it about 160 times a day based on
12 traffic counts and are very aware of the proposed
13 improvement that's under discussion today.

14 Q. And why do you say that the residents of this
15 community are very familiar with the proposed improvements?

16 A. So this was initiated by that small proactive
17 community addressing our council and requesting assistance
18 on creating a quiet zone at that crossing. They were
19 actually willing to pay for those costs or a portion of
20 those costs and by them bringing this to counsel we have
21 moved to the stage of the process.

22 Q. And fair to say -- strike that.

23 And this is the only crossing in the proposed quiet
24 zone; is that correct?

25 A. That's correct.

1 Q. Is this the only means for accessing that
2 neighborhood which houses the 40 some odd residences?

3 A. That's correct.

4 Q. If you can describe for the Court, what's the
5 socioeconomic, as far as you know, makeup of this community?

6 A. I would say they're upper middle class, some
7 affluent people down there, yeah.

8 Q. Some nicer homes?

9 A. Yeah.

10 Q. And to date have there been any issues at this
11 crossing with motorists trying to run gates without SSMS?

12 A. Not to my knowledge. There has been no evidence
13 that I've found through looking at traffic data and anything
14 like that of any citations for that.

15 Q. And in the County's interaction with its
16 constituents with its residents on this issue, have they
17 expressed concerns about road motorists or aggressive
18 motorists trying to run the gates in this location?

19 A. They have not.

20 Q. Okay. Now, currently there are no -- I'm going to
21 refer to them as "mountable curbs" versus "nonmountable
22 curbs"; is that fair?

23 A. Perfect.

24 Q. And maybe if we could describe for the Court, so
25 what is the physical makeup, just of the curb now, that's

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1 mountable? Give me the dimensions if you could.

2 A. It's approximately I think a little shy of
3 12 inches wide domed and about three and a half inches tall,
4 made out of a composite, a durable composite rubber with --
5 that are painted yellow and right in those curves is a
6 groove to attach the channelization devices.

7 Q. When we talk about channelization devices, we're
8 talking about those reflective panels that you discussed --

9 A. That's correct.

10 Q. -- not only in your pre-file testimony but during
11 cross-examination?

12 A. That's correct.

13 Q. So this is an added feature on top of the curb --

14 A. That's correct.

15 Q. -- that's mounted to the ground. And then how
16 many -- how many intervals or at what intervals are these
17 panels posted on top of them?

18 A. I want to say 44 inches, I believe it's 44 inches.

19 Q. And how tall are these panels?

20 A. I can tell you exactly how they are. They're 34
21 plus 5 -- they're 41 inches tall.

22 Q. Okay. So it's the 41 inches plus the three inches
23 give or take maybe a couple inches because --

24 A. (Witness nods head up and down.)

25 Q. And what's -- what's the general purpose of this

1 assessment? What's it serve to do?

2 A. Physical deterrent for circumventing the gates and
3 provide safer crossing based on some risk index numbers.

4 Q. And that's recognized by the federal rule, I'll
5 refer to the FRA's final rule and I should have said that,
6 the final rule that's 22 -- excuse me -- 49 CFR 222, what's
7 been previously been admitted into evidence. That's
8 considered an approved channelization device for purposes of
9 applying for quiet zone and reducing QZRs, correct?

10 A. It's approved supplemental safety measure based on
11 the final code.

12 Q. Right. Now, let's talk about what the railroad
13 BNSF would like you to install. Now, that's a nonmountable
14 curb, correct?

15 A. Yeah, theoretically, yes.

16 Q. Theoretically a nonmountable curb. Describe that
17 physically, if you would?

18 A. It's approximately 12 inches wide with near
19 vertical faces six inches tall.

20 Q. Okay. And then what goes on -- does any
21 channelization devices, any reflective panels go on top of
22 that?

23 A. BNSF is requiring no reflective channelization
24 devices.

25 Q. They're not requiring them?

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1 A. They're not requiring that.

2 Q. Okay. So what's the purpose -- and I believe --
3 correct me if I'm wrong, I believe that's referred to, this
4 type of nonmountable curb is referred to in the rule, final
5 rule as a "non-traversable curb"; is that your
6 understanding?

7 A. Yes, I believe so.

8 Q. Okay. And what's the purpose of a non-traversable
9 curb?

10 A. To deter motorists from circumventing the gate.

11 Q. It's actually not to prevent them from crossing
12 lanes, is it?

13 A. It's to deter them.

14 Q. So it serves the same purpose as the mountable curb
15 that the County's proposing; is that correct?

16 A. Yes.

17 Q. And so I'm clear, the County is going to be
18 incurring the cost for the installation of these SSMs,
19 correct?

20 A. That's correct.

21 Q. And so I'm clear, the final rule, the FRA's final
22 rule does not require the County to utilize a specific SSM,
23 only that it use an approved SSM; is that correct?

24 A. Yes, you have the option between several SSMs to
25 implement, as BNSF's counsel described, very specific

1 crossings with very specific needs and you can choose from
2 several.

3 Q. And I know you discussed this on cross and we
4 focused on the curbs as SSMS. They have to be coupled of
5 course with gates at the crossing, correct?

6 A. That's correct.

7 Q. And those gates already exist, that's not an issue?

8 A. That's correct.

9 Q. Okay. What's another SSM that the FRA approves for
10 purposes of establishing a quiet zone?

11 A. Four quadrant gates, four quadrant gates with
12 medians closing the road.

13 Q. Okay.

14 A. Making it a private crossing when they have other
15 rules they follow, yeah.

16 Q. Let's talk about the four quadrant gates. So right
17 now there's just one gate on either side and I assume the
18 four quadrant gates mean two gates on each side so that cars
19 are deterred from crossing because there's two barriers?

20 A. That's correct.

21 Q. The whole crossing is blocked off; is that correct?

22 A. Essentially, yes.

23 Q. Who -- and where are those gates located if
24 installed?

25 A. Opposite the existing gates.

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1 Q. Okay. Who is responsible for those installations?

2 A. Within BNSF's right of way then BNSF would be
3 responsible for installation.

4 Q. So County is responsible for the approach to road
5 leading to the tracks and then the railroad is responsible
6 basically for the tracks and probably a parallel area on
7 either side? I'm not sure how far it extends, but...

8 A. Yes, that's correct.

9 Q. Now, those four quadrant gates, does that have --
10 does that reduce the risk index?

11 A. It does, yes.

12 Q. Do you know off the top of your head how
13 significant --

14 A. I think it's 77 percent but I'm not sure. There's
15 other factors that come into play with continued -- some
16 type of system that's a type of technology that's built into
17 the railroad system that affects that effectiveness rating,
18 and coupled with channelization devices or curb medians of
19 either type it goes up to 92 percent.

20 Q. Sure. So there's -- so we can actually make this
21 crossing even safer if we want to, right? We could put in
22 quadrant gates; is that right?

23 A. Yes.

24 Q. Now, the railroad, since they're responsible for
25 those gates, could put those gates in, couldn't they?

1 A. Yes.

2 MS. ENDRES: I'm going to object to the term
3 "responsible" to the extent we're getting into legal
4 opinions about cost sharing regulations and FRA preemption
5 issues and I think we're going afield of what's been
6 submitted in the pre-filed testimony or raised in the
7 cross-exam.

8 JUDGE PEARSON: Do you want to rephrase your
9 question?

10 MR. QUINN: Sure, sure.

11 BY MR. QUINN:

12 Q. Could the railroad install quadrant gates at this
13 crossing?

14 A. Yes, they can.

15 MS. ENDRES: And Your Honor, I apologize but
16 same objection about UTC regulation and laws. I'm not sure
17 that Mr. Swan has the appropriate foundation to be
18 testifying about cost allocation, installation and that
19 process with the UTC for the four quadrant gates.

20 JUDGE PEARSON: Okay. I understand your
21 objection. I'm going to allow it insofar as I think
22 Mr. Quinn is trying to establish that there are other SSMS
23 available at the crossing and I'll ignore anything that has
24 to do with cost allocation.

25 BY MR. QUINN:

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1 Q. And has BNSF asked that the County install quadrant
2 gates --

3 A. No.

4 Q. -- at Cliffside?

5 A. No.

6 Q. Has the -- has BNSF asked that you install medians
7 to the approaches for Cliffside Drive? Medians, not curbs
8 as we've discussed --

9 A. Okay.

10 Q. -- but medians as described in the rule?

11 A. No.

12 Q. Okay. Has BNSF suggested using wayside horns as an
13 additional protection in this quiet zone?

14 A. No.

15 Q. Are wayside horns something that could make the
16 crossing safer also?

17 A. I'm not usually familiar on the effectiveness
18 rating and how that reduces risk, but -- so I don't know.

19 Q. Okay. I'd like -- there was a lot of discussion
20 about the calculations. What I'd like you to do -- let's
21 just take this from the beginning.

22 For the County to establish a quiet zone, the QZRI,
23 right?

24 A. Sure.

25 Q. Has to be below the Nationwide Significant Risk

1 Threshold?

2 A. That's right.

3 Q. And the Nationwide Significant Risk Threshold at
4 this crossing that you've discussed is 14,723, that was your
5 testimony, your pre-file testimony and also your response on
6 cross; is that correct?

7 A. That's correct.

8 Q. Okay. What is the current QZRI; in other words,
9 what is the current risk index without horns, right, because
10 that's what the QZRI is the risk index without horns, at
11 Cliffside Drive?

12 A. That is 14,562.45.

13 Q. So that is currently -- and that's with an ADT of
14 how many?

15 A. 324.

16 Q. And that was based on a traffic study; is that
17 correct?

18 A. Yes.

19 Q. That was conducted when?

20 A. When was that conducted? Starting the week of
21 January 5th.

22 Q. Okay. And did you comply with the requirements of
23 a proper traffic study?

24 A. We did a seven-day traffic study. I think these
25 are used for different things, yes.

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1 Q. Are you confident that the ADT you utilized is an
2 accurate depiction of the trips for that community?

3 A. Through this week, yes, I would say -- based on
4 interpreting this data I would say it's less than that
5 actually because there's some skewed amounts in there.

6 Q. "Skewed amounts," in other words, there was some
7 additional trips because there were -- there was an estate
8 sale in the community on one of the days that you took data?

9 A. Yes, that's correct.

10 Q. And so if the current QZRI is below the Nationwide
11 Significant Risk Threshold, and let me clarify, under the
12 rule you don't have to install any SSMS; is that correct?

13 A. That's correct.

14 Q. Which means you wouldn't have to petition the UTC
15 for the installation of these mountable curbs; is that
16 correct?

17 A. That's correct.

18 Q. So why are we doing this?

19 A. To reduce the risk index below the Risk Index With
20 Horns as it currently exists and make the crossing
21 ultimately safer than it stands now with the horns sounding.

22 Q. Okay. In your department, the Department of Public
23 Works for Whatcom County, who are your clients? Who are you
24 primarily concerned with?

25 A. The Whatcom County citizens.

1 Q. These residents in particular as it applies to your
2 application?

3 A. That's right.

4 Q. And do you think that this decision to get well
5 below not just the QZRI but the current Risk Index With
6 Horns is in your community's best interest?

7 A. I do, and I believe the community feels that way
8 because they're -- they've been with us the whole process
9 and they're astutely aware of the improvements that are
10 proposed there and how the crossing will change.

11 Q. So the current QZRI, which is below the Nationwide
12 Significant Risk Threshold, is 13,837. What is the risk
13 index currently with horns?

14 A. 8,730.

15 Q. I'm sorry. Can you say that one more time, 8 --

16 A. 8,730.49.

17 Q. So that is with horns and no additional SSMS?

18 A. That's correct.

19 Q. And how long have we been operating under that --
20 under that rule? Because there's a trade horn rule in
21 place, right, I think it was --

22 A. Yeah, I'm not entirely sure off the top of my head.

23 Q. All right. Not a problem. So implementing a
24 mountable curb with channelization devices reduces that QZR
25 by 75 percent; is that correct?

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1 A. Yes.

2 Q. Okay. So that gets us to 3,459. Is that well
3 below the current risk index at that crossing?

4 A. It's below both the Risk Index With Horns and the
5 Nationwide Significant Risk Threshold, yes.

6 Q. Would you agree with me that it's significantly
7 below the current risk index for Cliffside Drive?

8 A. I would agree that it's significantly below, yes.

9 Q. And in fact if we look at the Nationwide
10 Significant Risk Threshold of 14,723, what percentage
11 reduction do we have if the QZRI is knocked down to 3,459?

12 A. I'm not sure off the top of my head. I don't have
13 calculations but it would be over 75 percent.

14 Q. Okay. And if we utilize the nonmountable curb,
15 again, assuming that the 80 percent reduction is
16 appropriate, what's the difference between -- what's the
17 difference or what's the percentage reduction?

18 A. Between the nonmountable and the Nationwide
19 Significant, well, it would be probably right around 80 or a
20 little bit more.

21 Q. Okay. So we're talking about a 3 or 4 percent
22 reduction?

23 A. No more than 5.

24 Q. But we agree that both of those numbers are
25 significantly below the current risk index for Cliffside

1 Drive?

2 A. Both of them significantly reduce the risk based on
3 these numbers, yes.

4 Q. So regardless of what the Commission decides, this
5 is going to be a significantly safer crossing than it was or
6 than it currently is --

7 A. Yes.

8 Q. -- going forward; is that fair to say?

9 A. Yes.

10 MR. QUINN: I have no further questions.
11 Thank you.

12 JUDGE PEARSON: Thank you. I have a couple
13 of questions for you, Mr. Swan, and let me know if they
14 would more appropriately be addressed to either one of
15 BNSF's witnesses or Ms. Young. This is just for our
16 informational purposes.

17 Judge Chartoff and I did visit the crossing
18 yesterday, drove across it, drove through the neighborhood,
19 and we were curious whether trains travel in both directions
20 on that track or only one direction, and if so, which
21 direction do they travel?

22 THE WITNESS: I would assume they travel both
23 directions but BNSF would be better suited to answer that
24 question.

25 JUDGE PEARSON: Okay. I'll ask them. And

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1 then this also might not be a question you can answer.

2 Do you know how much time elapses between the time
3 the flashing lights come on and the gates go down and when
4 the train actually passes the crossing?

5 THE WITNESS: I don't off the top of my head.

6 JUDGE PEARSON: Okay. And so with respect to
7 the Yacht Club Road crossing that has come up a couple of
8 times, I'm interested in hearing both your answer to this
9 and also Ms. Young's as to why did the parties decide that
10 concrete medians were more appropriate at that crossing and
11 what's the difference between that crossing and the crossing
12 at issue here?

13 THE WITNESS: So originally the same thing
14 was proposed at Yacht Club Road as it was at Cliffside. At
15 the 11th hour kind of prehearing conference I believe it was
16 called, we decided to concede to BNSF and install what they
17 had -- what they requested. We did that as a matter of not
18 going this far along in litigation and just thinking that
19 that might be maybe an isolated quiet zone. We had a lot of
20 familiarity with any quiet zones. I think there's a handful
21 in the state and none in Whatcom County -- well, one in
22 Whatcom County now, but -- so it was just getting to know
23 that process and I guess we installed what BNSF required at
24 the time.

25 In looking back on that, I wish we probably would

1 have went through that process then to get the mountable
2 medians because we've -- we've had firsthand concerns by
3 larger vehicles that use that -- use that road about
4 continuous wear and tear on trash vehicles.

5 The fire marshal drove that as a training
6 exercise. I don't know why they chose that road but they
7 chose that road and it was difficult for them to move in and
8 out of that -- the T intersection to make the corner, and at
9 that point in time we changed to the nonmountable and kept
10 the lengths the same. Since then we've submitted a federal
11 application to shorten that, the length of that to make that
12 turning movement easier for all big trucks that use that
13 based on the feedback from the community.

14 JUDGE PEARSON: Okay. Thank you. I think
15 that's it. I'll ask those questions to the other witnesses
16 when they're up here.

17 THE WITNESS: Okay.

18 JUDGE PEARSON: So you are excused. Thank
19 you.

20 JUDGE CHARTOFF: Ms. Young, can you please
21 come up?

22

23 BETTY YOUNG, having been first duly sworn,
24 testified as follows:

25 ////

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1 JUDGE CHARTOFF: And please state your name
2 and spell your last name for the record.

3 THE WITNESS: Sure. It's Betty, last name is
4 Young, Y-O-U-N-G.

5 JUDGE CHARTOFF: Thank you.

6 JUDGE PEARSON: Mr. Roberson, is she
7 available for cross?

8 MR. ROBERSON: I don't need to introduce her
9 if you don't need that done.

10 JUDGE PEARSON: Okay, thanks. Ms. Endres can
11 go ahead.

12

13

CROSS-EXAMINATION

14 BY MS. ENDRES:

15 Q. Good morning, Ms. Young. We haven't met. My name
16 is Kelsey. I'm going to be asking you some questions this
17 morning about this proceeding. Thank you for being here
18 today.

19 Is this the first quiet zone "discussion" for lack
20 of a better word that you've been involved with on the UTC's
21 staff's behalf or were you also involved in the Yacht Club
22 Road or others?

23 A. This is the first petition I've been involved with
24 before the Commission specifically.

25 Q. Is it the UTC's -- now, I'm not trying to put words

1 in your mouth so you can rephrase this after my question but
2 just so I understand clearly UTC's staff's position, is it
3 staff's position that whatever supplemental safety measures
4 the County proposes are fine so long as the QZRI is below
5 that national threshold when the crossing is converted to a
6 quiet zone?

7 A. Yes.

8 Q. Does staff agree that to some degree a nonmountable
9 median presents a safer alternative supplemental safety
10 measure at this crossing?

11 A. Yes, according to the FRA. In the federal rule
12 there's a 5 percent difference in the effectiveness rating.

13 Q. If the County had proposed installing a
14 non-traversable system, non-traversable median, concrete
15 median, is that something the staff would have supported in
16 this case?

17 A. Yes.

18 Q. And if the judge orders, based on all the evidence
19 presented here, that a nonmountable system is appropriate
20 either on one side or both sides of the crossing, is that a
21 decision that staff would support?

22 A. Yes.

23 Q. Was it your predecessor -- well, strike that.

24 Who on behalf of UTC staff was involved in the
25 discourse about the yacht club supplemental safety measures?

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1 A. A staff person named Bob Boston.

2 Q. And in that case -- and I think this is BY-5 and
3 it's an exhibit that was submitted to your testimony.
4 Mr. Boston on staff's behalf wrote a letter in that case
5 saying that staff's opinion, and take a moment and flip to
6 it.

7 Do you have that there?

8 A. I do.

9 Q. In the yacht club proceeding it was the staff's
10 opinion, and I'm reading on Page 2, that first paragraph,
11 "It is Commission staff's opinion that non-traversable
12 medians provide a much higher disincentive for motorists to
13 drive over them because of the potential damage to
14 vehicles."

15 Did I read that correctly?

16 A. Yes.

17 Q. And understanding that your statement that so long
18 as the risk index is low enough the staff supports the
19 proposed modifications of the County, does the staff still
20 believe that non-traversable medians in general provide a
21 much higher disincentive for motorists to drive over them
22 because of the potential damage to vehicles?

23 A. I can't speak to Mr. Boston's opinion, but in my
24 personal opinion, there's a 5 percent difference in the
25 effectiveness rating according to the federal code so

1 there's a bigger disincentive because of potential damage to
2 a vehicle.

3 Q. As compared to a traversable system?

4 A. Correct.

5 Q. Now, at particular crossings, and I'll just ask
6 this question: The tracks at this location trains travel in
7 both directions; is that your understanding?

8 A. That's my understanding, yes.

9 Q. And they can travel through that crossing any time
10 of day. Other than Amtrak trains, freight trains don't run
11 on schedules necessarily; is that your understanding?

12 A. That's my understanding, yes.

13 Q. And so can vehicle and train traffic patterns vary
14 over time?

15 A. Yes.

16 Q. So when we look at or when you're participating in
17 a diagnostic team evaluation at a particular crossing, are
18 you trying to select a system that to some degree can handle
19 some traffic fluctuations in vehicle traffic or train
20 traffic?

21 A. So I want to clarify some things about diagnostic
22 team meetings. They are not required in the federal quiet
23 zone process. It's just suggested. When UTC staff
24 participates as a member of a diagnostic team, we're not
25 traffic engineers. We're not railroad engineers. So we do

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1 not make any sort of comments about design. Certainly the
2 County as the expert on its roads and its traffic management
3 techniques, they would be the ones to have the say what the
4 best traffic management device would be.

5 So my role when I participate as part of a
6 diagnostic team is really just to give administrative
7 guidance about what the regulations are and what the process
8 is before the Commission.

9 Q. In past diagnostic meetings that you've attended
10 have there been discussions about how to select a system
11 that can handle any fluctuations in rail or vehicular
12 traffic?

13 A. I imagine there would have been. I don't recall
14 that specifically at this particular meeting.

15 Q. Okay. And you stated that traffic -- or excuse
16 me -- diagnostic team meetings are not required but they're
17 recommended.

18 Are you referring to the FRA's guide to the quiet
19 zone establishment process?

20 A. Not specifically. It's my understanding that is
21 part of the quiet zone evaluation process. Again, this is a
22 federal process so I am not the expert on it. It's my
23 understanding that the diagnostic meeting is not a
24 requirement.

25 Q. Okay. Do you have BY-4 there in front of you?

1 This was submitted to your pretrial testimony. It's also
2 BY-11X for the record.

3 A. I do, yes.

4 Q. And what was the purpose of submitting this as an
5 exhibit to your testimony? How did this impact the staff's
6 opinion?

7 A. Well, my purpose for including it is this is really
8 the first time that in my experience that the quiet zone
9 conversation is coming before the Commission and it was
10 really my effort at educating the Commission more about the
11 process. Again, this is a guide. This is not the code.
12 This is not the federal rule. So it's just a guidance
13 document that the FRA produces for local jurisdictions that
14 want to create a quiet zone. So it was informational.

15 Q. Okay. And I understand if a diagnostic team
16 meeting isn't required but there is some involvement or at
17 least communication with the railroads that is required
18 before a crossing zone is created; is that right?

19 A. I believe that's true. Again, it's a federal
20 process.

21 Q. Okay. I'm looking, just for example, on Page 8 of
22 this exhibit where it's got a headline called Role of
23 Railroads. Do you see that there?

24 A. Yes.

25 Q. Okay. And so at least this document that was

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1 attached as an exhibit to your testimony in this section
2 states that they're "required to send a notice of intent and
3 a notice of quiet zone establishment to railroads operating
4 over the public highway rail grade crossings within the
5 proposed quiet zone. Railroad officials can provide
6 valuable input during the quiet zone establishment process
7 and should be included on all diagnostic teams."

8 Did I read that correctly?

9 A. Yes.

10 Q. So that's something that BNSF in this case has
11 participated in the diagnostic discussion that was commenced
12 in this particular instance?

13 A. Is that a question for me?

14 Q. Well, I suppose. BNSF was at the diagnostic
15 meeting you attended?

16 A. Yes.

17 Q. Okay. Did you have a chance or opportunity or
18 reason to read through Cody Swan's deposition? It was
19 submitted as a cross-examination exhibit in this case.

20 A. Cross-examination exhibit for me?

21 Q. No, it wasn't for you. I just was wondering, in
22 the materials you reviewed was that something that you
23 looked at?

24 A. I would have looked through everyone's testimony
25 that was filed, yes.

1 Q. So his deposition testimony was something that we
2 took with a court reporter. It was a different format than
3 what was submitted.

4 A. I apologize. No, I have not seen that.

5 Q. You've heard today some discussion about the ease
6 of maintenance for the County. The County has said if
7 there's repair needed to these reflectorized paddles, that's
8 something they could do themselves. If there's repair
9 needed to a concrete curb they have to have a contractor
10 come in and do that.

11 Do you remember hearing that this morning?

12 A. Yes.

13 Q. Okay. Does the ease of installation or repair for
14 the County factor into the staff's opinion as to what
15 supplemental safety measures are appropriate?

16 MR. ROBERSON: Objection. This is beyond the
17 scope of her direct testimony.

18 JUDGE PEARSON: Okay. Do you want to either
19 rephrase that or move on?

20 MS. ENDRES: Well, I think it's certainly
21 fair to inquire as to the bases for the staff's opinion that
22 they've made in this case and understand. I think that is
23 the topic of her pre-file testimony.

24 JUDGE PEARSON: Okay.

25 MR. ROBERSON: She doesn't testify about

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1 maintenance or anything. Her testimony is totally dedicated
2 to application of the federal code, the effectiveness
3 ratings of the supplementary safety measures. That's what
4 she said she formed her opinion based on. This is beyond
5 the scope of that.

6 JUDGE PEARSON: So I'll sustain the objection
7 and I'll rephrase the question for you. You can ask her
8 what she considered in making her recommendation.

9 BY MS. ENDRES:

10 Q. In making sure we understand what you did consider,
11 am I correct in understanding that the repair or maintenance
12 issues by the County was not something that you considered?

13 A. That's correct.

14 Q. Would Commission staff support the installation of
15 a nonmountable median on the east side of the tracks and the
16 installation of a mountable system on the west side of the
17 tracks?

18 MR. QUINN: For clarification purposes, Your
19 Honor, I heard the term "median." Are we referring to the
20 curb or median as defined under the federal rule?

21 MS. ENDRES: Well, the system that bisects
22 the roadway. The system between the two lanes of travel.

23 JUDGE PEARSON: Can you repeat that question
24 so I can understand exactly what you're talking about?

25 MS. ENDRES: Sure.

1 BY MS. ENDRES:

2 Q. In the -- we had a discussion with Mr. Swan about
3 whether the County would support installing a
4 non-traversable system on the east side of the tracks and a
5 traversable system on the west side of the tracks.

6 Do you recall hearing that this morning?

7 A. Yes.

8 Q. Is that something that UTC staff would feel
9 appropriate to this crossing?

10 A. You know, the burden of proof when a petition is
11 filed before the Commission is on the petitioner, and if
12 this was the approach that the County deemed was best for
13 its traffic control, then assuming I had attended a
14 diagnostic meeting where that specifically was discussed and
15 the reasons why, I could see that I would support that.

16 JUDGE PEARSON: Can I just clarify? You're
17 talking about a concrete median going into the neighborhood
18 or coming out of the neighborhood?

19 MS. ENDRES: So the neighborhood is on the
20 west side of the tracks so having a mountable system on the
21 west side of the tracks on the homeowner side.

22 JUDGE PEARSON: Right. And having concrete
23 on the other side?

24 MS. ENDRES: On the east side having
25 concrete, similar to that Vancouver crossing has two

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1 different setups.

2 JUDGE PEARSON: Got it.

3 BY MS. ENDRES:

4 Q. Was the traffic count provided by the County
5 something that impacted staff's opinion?

6 A. Opinion related to what?

7 Q. What system would be appropriate?

8 A. In a roundabout way. I mean really all of this
9 goes into what goes into that calculator, the federal quiet
10 zone calculator, which is a planning tool that the FRA
11 provides for and anyone that's trying to plan a quiet zone
12 and it's just one of the variables. So it was one of the
13 elements on the petition. Yes, it was part of the
14 consideration.

15 Q. And on that topic I saw in your rebuttal testimony
16 that you attempted to replicate the calculation in that
17 planning tool that Mr. Semenick's testimony provided using
18 that 450 traffic count number that was preloaded in there.

19 Do you remember that?

20 A. Yes.

21 Q. And were you ever able to replicate his figure?

22 A. I tried it multiple different ways. I think the
23 key for me here, and it was something I would like to
24 clarify, is that the initial calculation that you get when
25 you use the FRA quiet zone calculator is the information

1 that exists in the FRA's federal crossing inventory. So
2 that information is updated by the UTC for the state which
3 means that the local road authorities like Whatcom County
4 can contact us if traffic counts have changed and we can
5 make those changes at the UTC.

6 The railroad is responsible for updating its train
7 counts and all of its train information, I believe the
8 requirement is every three years. So if you don't
9 manipulate anything, any of the numbers when you first go
10 into the quiet zone calculator, you strictly are getting the
11 information that comes from the federal crossing inventory.

12 I touched none of that. I ran the calculation with
13 exactly what exists in the inventory today. So it's my
14 understanding now that Mr. Swan and Mr. Semenick both
15 manipulated the numbers so I think there's reason why we all
16 came out with different numbers.

17 Q. So you didn't change the train count numbers, you
18 left whatever the numbers were that were automatically
19 preloaded based on the crossing inventory data that existed
20 at that time?

21 A. That's correct.

22 Q. Did you have an opportunity to review
23 Mr. Arrington's rebuttal pre-file testimony?

24 A. Yes.

25 Q. And he submitted some information relating to how

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1 the FRA appears to have generated those risk reduction
2 percentages. Did you read that section?

3 MR. ROBERSON: Okay. This is Mr. Arrington's
4 testimony. It's not Ms. Young's testimony. This is beyond
5 the scope.

6 JUDGE PEARSON: So can you -- I wasn't
7 listening to exactly what you were referring to because I
8 was looking at the exhibit list.

9 Can you repeat the question?

10 MS. ENDRES: Sure. I just asked if she had
11 reviewed the portion of his testimony where he describes how
12 the FRA apparently generated the risk reduction percentages.
13 I'm just asking at this point if she read that as part of
14 what she reviewed.

15 JUDGE PEARSON: I'll allow it.

16 THE WITNESS: Yes.

17 BY MS. ENDRES:

18 Q. And did Mr. Arrington's pre-file testimony on that
19 topic change staff's position relating to the proposed
20 safety measures that the County has suggested?

21 A. No. The effectiveness ratings are set out in the
22 CFR so that is the governing rule here. That's the law,
23 so...

24 Q. In Mr. Swan's redirect, he was asked about several
25 other alternative supplemental safety measures and whether

1 the railroad has asked to install those or not.

2 Do you recall hearing that this morning?

3 A. Yes.

4 Q. And in your experience have you been involved in
5 diagnostic team meetings where four quadrant gates were
6 discussed?

7 A. Yes.

8 Q. And is that something that is -- I'm saying
9 "governed by," that's not the right word, but subject to the
10 standards of the MUTCD for where four quadrants gates are
11 appropriate?

12 A. So just for the Commission's information, the MUTCD
13 is the Manual on Uniform Traffic Control Devices. The
14 Commission adopts that and 480-62-999 is the national
15 standard. So Part 8 deals with railroad devices, traffic
16 devices related to railroad crossings and the guidance about
17 anything related to quiet zones, it's just that they have to
18 comply with the MUTCD. There's nothing specifically that
19 talks about four quadrant gates to my knowledge related to
20 SSMs.

21 Q. The MUTCD's discussion of four quadrants gates, are
22 those only recommended when daily traffic rises to a certain
23 level?

24 A. Well, the MUTCD's guidance is that there is no one
25 standard treatment that works at every single crossing

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1 because of all the variables, train speeds, traffic, et
2 cetera, et cetera. So it's really up to the diagnostic
3 team, or an engineering study in this case, that's the
4 expertise of the railroad and the expertise of the road
5 authority to decide which treatment is the most appropriate.

6 When you're talking about quiet zones, it's one of
7 those options that the FRA provides that the local agency
8 can pursue whichever one is selected. Generally unless it's
9 a first class city, the entity has to come in here and
10 petition the Commission to make that change at the railroad
11 crossing.

12 Q. Are you aware of any quiet zone crossings with
13 similar ADT counts, here the most recent figure is 324,
14 where four quadrants gates were installed as an SSM?

15 A. Not that I'm aware of.

16 Q. And another alternative that Mr. Swan was asked
17 about by the County was whether the railroad requested for a
18 median as described in the rule.

19 Do you remember hearing that?

20 A. Yes.

21 Q. Is there, to your knowledge, space in the current
22 roadway for a median to be installed as distinguished from
23 the non-traversable concrete curb?

24 A. I guess I don't understand the distinction. I
25 don't --

1 Q. Fair enough. And then he was also asked about
2 wayside horns. Are there quiet zones that you're aware of
3 with similar configurations to this location where wayside
4 horns were installed as a supplemental safety measure?

5 A. Wayside horns are not a supplemental -- approved
6 supplemental safety measure. They are a one-for-one
7 tradeoff for the train horn so the train does not sound its
8 horn if a wayside horn is installed. So to answer your
9 question, not that I'm aware of.

10 Q. And wayside horns then sort of defeat the purpose
11 of the quiet zone, do they not?

12 A. That's my understanding.

13 Q. That's about all I have but just so I clearly
14 understand: The UTC supports the County's petition as is
15 but if the decision was made to install a non-traversable
16 system, the UTC staff would also support that decision?

17 A. Yeah. I just want to make sure that we're clear
18 that I'm considered UTC staff. I am not speaking for the
19 Commission. I am a party to the case just like the other
20 parties are. So UTC staff would support either treatment at
21 the crossings. They're both approved SSMS.

22 MS. ENDRES: That's all I have. I appreciate
23 your time.

24 JUDGE PEARSON: Mr. Roberson, do you have any
25 redirect?

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1 MR. ROBERSON: Can I try the redirect without
2 the microphone? I'm having trouble getting the volume. Can
3 you hear me?

4 JUDGE PEARSON: I can.

5 MR. ROBERSON: Thank you.

6

7 REDIRECT EXAMINATION

8 BY MR. ROBERSON:

9 Q. So does the FRA require any particular SSM to
10 convert a crossing into a quiet zone?

11 A. Do they require one? No.

12 Q. Any particular? Do they select the appropriate SSM
13 for any given crossing?

14 A. No.

15 Q. So who has the discretion to determine the
16 appropriate SSM?

17 A. The party that's applying for the quiet zone.

18 Q. In this case that would be Whatcom County, correct?

19 A. Correct.

20 Q. And so Whatcom County has determined that the
21 appropriate SSM is the mountable medians with channelization
22 devices, correct?

23 A. Correct.

24 Q. And staff supports that because it represents a
25 significant reduction in risk to the traveling public,

1 correct?

2 A. Correct.

3 Q. Staff does not select the SSM, correct?

4 A. That is correct.

5 Q. So when Ms. Endres asked you about selecting the
6 appropriate SSM, that's the road authority, that's not
7 staff, correct?

8 A. Correct.

9 Q. Okay. In terms of the Quiet Zone Risk Index
10 calculator, so you just ran the numbers straight with the
11 FRA defaults?

12 A. Yes.

13 Q. And those FRA defaults are set by the railroad for
14 railroad purposes, correct?

15 A. The information that's entered into the federal
16 inventory by the railroad, yes.

17 Q. So train counts came from BNSF?

18 A. Yes.

19 Q. Train speeds came from BNSF?

20 A. Yes.

21 Q. Any other information dealing with trains came from
22 BNSF?

23 A. Yes.

24 Q. So when you ran BNSF's information you got a QZRI
25 that was less than the NSRT?

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1 A. Yes.

2 MR. ROBERSON: That's all I have.

3 JUDGE PEARSON: Okay. Thank you. So

4 Ms. Young, I had a question for you, I think you've kind of
5 addressed it but I just want to clarify. It sounds like
6 staff's position in these proceedings, including Yacht Club
7 Road so I won't necessarily ask you the same question that I
8 asked Mr. Swan, is to defer to the County in what their
9 request is in their petition; is that accurate?

10 THE WITNESS: That's correct.

11 JUDGE PEARSON: Okay. And then in your
12 testimony in your -- I believe it was in your direct
13 testimony, you testified that in the last 10 years there
14 haven't been any accidents at the Cliffside Drive crossing.

15 Do you know if there have ever been any accidents
16 at that crossing?

17 THE WITNESS: I believe there have been but I
18 don't have the dates in front of me. It was prior to that
19 10-year period. We have them in our crossing inventory
20 information at the office. I just don't have that with me.

21 JUDGE PEARSON: Okay. So if -- can you get
22 that to me, and we'll just mark it as a bench exhibit, just
23 by the end of the week?

24 THE WITNESS: Sure.

25 JUDGE PEARSON: If you can just file it, that

1 would be useful, thank you.

2 THE WITNESS: Uh-huh.

3 JUDGE PEARSON: Okay. You are excused.

4 Thank you very much.

5 MR. ROBERSON: So just for my purposes, Bench
6 Request No. 1 is the accident data at that crossing --

7 JUDGE PEARSON: For all time.

8 MR. ROBERSON: March 8th?

9 JUDGE PEARSON: Sure. If you need longer,
10 just let me know.

11 Okay. So we have two witnesses left for
12 cross-examination. Mr. Quinn, this kind of falls on me
13 about how long you think it will take and whether you think
14 we should break for lunch and come back.

15 MR. QUINN: I tell you, I don't think I'm
16 going to request cross-examination of -- well, I'm just
17 going to cross Mr. Semenick. Then I'll be done. So I don't
18 anticipate a need to get the other witness on the phone.

19 JUDGE PEARSON: And do you think that your
20 original time estimate is still accurate?

21 MR. QUINN: Yeah, probably less than that,
22 quite frankly.

23 JUDGE PEARSON: I'm sorry, Mr. Roberson. You
24 actually estimated cross for Mr. Semenick as well and do you
25 have questions for Mr. Arrington?

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1 MR. ROBERSON: I do, but it's no longer than
2 five or ten minutes.

3 JUDGE PEARSON: For each witness? Okay, so
4 it's noon. If everyone is okay I think we should just press
5 on --

6 MS. ENDRES: Can we take a five-minute break
7 so I can touch with Mr. Arrington?

8 JUDGE PEARSON: Absolutely. So we can take a
9 five-minute break. We'll be in recess until 12:05.

10 (Recess 11:59-12:05.)

11 JUDGE CHARTOFF: We're back on the record.
12 The next witness is Mr. Semenick.

13

14 STEPHEN SEMENICK, having been first duly sworn,
15 testified as follows:

16 JUDGE CHARTOFF: Please state your name,
17 spelling your last name for the record.

18 THE WITNESS: Stephen Semenick,
19 S-E-M-E-N-I-C-K.

20 JUDGE CHARTOFF: Thank you.

21 JUDGE PEARSON: Ms. Endres, do you have any
22 preliminaries or is he available for cross?

23 MS. ENDRES: He's available.

24 JUDGE PEARSON: Mr. Quinn?

25 ////

1 CROSS-EXAMINATION

2 BY MR. QUINN:

3 Q. Good afternoon, Mr. Semenick. Thank you for being
4 here.

5 Mr. Semenick, when did you graduate from college?

6 A. May of 2013.

7 Q. How long have you been with BNSF?

8 A. About five and one-quarter years.

9 Q. And how long have you been in your current position
10 with BNSF?

11 A. Since June of 2017 I've been the manager of public
12 projects covering British Columbia and Washington.

13 Q. Less than two years in that position?

14 A. That is correct.

15 Q. How many quiet zone establishments in Washington
16 have you been involved with, sir?

17 A. I have to think for a minute.

18 Q. Okay.

19 A. I'd say about half a dozen.

20 Q. Okay. Do you recall which jurisdictions -- and
21 strike that.

22 In your current position as project manager how
23 many?

24 A. At the tail end of the Yacht Club Road, several
25 NOIs with the city of Kent, so I guess a smaller number

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1 since you said the establishment.

2 Q. So is that two?

3 A. Two that I'm aware of.

4 Q. Okay. Is it fair to say that you're familiar with
5 the process that a municipality goes through to establish a
6 quiet zone?

7 A. Yes.

8 Q. Are you very familiar?

9 A. Fairly familiar. It depends how you would define
10 "very."

11 Q. Well, how familiar do you have to be in your role,
12 in your position with BNSF?

13 A. I would say I am very familiar then since I have to
14 work with them quite closely throughout the process.

15 Q. And what is the -- what is the federal rule that
16 governs the establishment of quiet zones, sir?

17 A. The road authority, in this case Whatcom County,
18 would need to submit a petition, the NOI, or rather the NOI
19 to --

20 Q. And I'm sorry. What is the federal rule? Can you
21 refer us to the federal rule that governs the establishment
22 of quiet zones?

23 A. The CFR part 222.

24 Q. And you have that up there. It's marked as CS-7.
25 We'll be referring to that so I'll just direct your

1 attention to it so you get situated.

2 This is the rule that you're familiar with
3 regarding the establishment of quiet zones; is that correct?

4 A. Once I get there I'll --

5 Q. Okay. Take your time.

6 A. Yes, that is correct. This is what I'm familiar
7 with.

8 Q. Okay. And why is it important that you be familiar
9 with this rule as the representative for BNSF?

10 A. As the representative for BNSF I'm responsible on
11 the railroad's behalf to ensure that the road authority that
12 follows this process does so in the correct manner.

13 Q. You're aware Whatcom County is currently seeking to
14 establish a quiet zone at Cliffside Drive; is that correct?

15 A. That is correct.

16 Q. And you're familiar with the Cliffside Drive
17 crossing; is that correct?

18 A. That is also correct.

19 Q. How many times have you been to the crossing, sir?

20 A. Five or six times.

21 Q. Will you please describe for the Court, describe
22 the proposed quiet zone area and the surrounding
23 environments?

24 A. The proposed quiet zone area consists of the
25 Cliffside Drive railroad crossing which leads into the

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1 residential area with approximately 44 residents. The
2 crossing is currently equipped with crossing gates, flashing
3 lights, bells. Would you like me to go into further detail
4 or is that --

5 Q. What's the current QZ -- excuse me -- what's the
6 current risk index there with the horns being sounded, the
7 horns sounding?

8 A. I would have to reference the --

9 Q. If that would help refresh your recollection, by
10 all means.

11 A. Is there a specific exhibit where it's located?

12 Q. Oh, so you're not familiar with the current risk
13 index of the Cliffside Drive crossing?

14 MS. ENDRES: Your Honor, he's simply asking
15 to be directed to an exhibit to refresh his memory.

16 MR. QUINN: I'm just asking if he knows.

17 MS. ENDRES: That's argumentative. It's not
18 necessary.

19 JUDGE PEARSON: Okay. Just please do direct
20 him to the exhibit. I think everyone in this room knows
21 what that number is.

22 BY MR. QUINN:

23 Q. Let me just ask you outright: Do you know what the
24 current risk index is for the Cliffside Drive crossing?

25 A. Not off the top of my head.

1 Q. Okay. We'll come back to that.

2 Now, you're familiar with how a public authority
3 can establish a quiet zone in its own jurisdiction, correct?

4 A. Yes.

5 Q. What section of the rule outlines those procedures?
6 And actually I'll direct you. It is at Section 22.39. It
7 would be on Page -- upper left-hand corner, Page, I believe
8 it's 21894, if that's going to help, Section 22.39.

9 A. Yes, that is correct.

10 Q. Okay. And you agree with me that a public
11 authority can designate a quiet zone pursuant to this rule,
12 correct?

13 A. Correct.

14 Q. Okay. And what does that mean that a public
15 authority, or in this case the County, can simply designate
16 a quiet zone? What does that mean?

17 A. That means that the County follows the required
18 processes to establish a quiet zone that they made use of.

19 Q. Without having to apply with the FRA; is that
20 correct?

21 A. That is not correct.

22 Q. Okay. Could you review the rule and tell me where
23 it requires that the public authority actually apply for a
24 designation quiet zone?

25 A. The first sentence of 22.39.

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1 Q. Can you read that, please?

2 A. It describes, "A quiet zone may be designated by a
3 public authority without the need for formal application to
4 get an approval by the FRA."

5 Q. Thank you. And under what circumstances can the
6 County do that without even applying to the FRA formally?
7 Because I think it's going to be the next three paragraphs.
8 Feel free to -- under what circumstances can the County
9 designate a quiet zone without formal application?

10 A. (Witness reviewing document.)

11 Q. I'll direct you to Paragraph No. 1. What's the
12 first way they can do that?

13 MS. ENDRES: Your Honor, I'm just going to
14 object and say this rule obviously speaks for itself. If
15 we're just going to walk through Mr. Semenick reading what's
16 here and already been submitted as an exhibit for the Court
17 to look at it, then I think argumentative, the fact we're
18 going to sit through and read what it says.

19 JUDGE PEARSON: Do you want to respond to
20 that, Mr. Quinn?

21 MR. QUINN: I can move things along a little
22 bit quickly, but I think I'm allowed to inquire as to the
23 basis for the County's application and what constitutes
24 proper grounds for establishing a quiet zone to specifically
25 include what the County's petitioning the UTC to do here. I

1 think it's completely material. This is the rule that we
2 have to scrutinize and the Commission has to consider.

3 JUDGE PEARSON: Can you ask your questions a
4 bit more generally then?

5 MR. QUINN: Sure, I will. Thank you.

6 BY MR. QUINN:

7 Q. Mr. Semenick, isn't it true that a quiet zone can
8 be established by simply implementing that every public
9 highway, railway crossing within the quiet zone either one
10 or more of the SSMS identified in the rule?

11 A. That is correct.

12 Q. Okay. And that's what the County's proposing to do
13 here; isn't that correct?

14 A. That is correct.

15 Q. Okay. So in fact, we're in compliance with that
16 first requirement of the final rule which allows the County
17 to establish a quiet zone with no formal application to the
18 FRA, correct?

19 A. That is correct.

20 Q. And the final rule actually deems the use of an SSM
21 such as the one the County's proposing as basically per se
22 sufficient to establish a quiet zone.

23 Do you agree with me?

24 A. Can you repeat the question?

25 Q. Okay. Under that provision, the FRA is saying

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1 that, hey, if you have an SSM in the quiet zone, at every
2 crossing in the quiet zone you're per se, you can per se
3 establish that quiet zone, it's per se safe enough to
4 establish a quiet zone; isn't that correct?

5 A. That is correct.

6 Q. Okay. And that would be the status in the current
7 case here in Whatcom County at Cliffside Drive, right?

8 A. Correct.

9 Q. Okay. Paragraph 2 talks about a second way the
10 County can establish a quiet zone without formal application
11 to the -- and approval by the FRA. It says, "A quiet zone
12 may be established if the Nationwide Significant Risk
13 Threshold," right, "is at or below the Nationwide
14 Significant Risk Threshold."

15 Do you agree with me that currently Cliffside Drive
16 is below that Nationwide Significant Risk Threshold?

17 A. Depending on how you inputted what parameters you
18 utilize in the quiet zone calculator.

19 Q. Fair enough. The two calculations that were
20 performed by Mr. Swan, do you agree with me that in those
21 cases it came in under the Nationwide Significant Risk
22 Threshold?

23 A. Yes, I agree.

24 Q. Okay. And assuming that that's the case, would
25 Whatcom County qualify for establishing a quiet zone without

1 formally applying to the Federal Railroad Administration?

2 A. They would.

3 Q. Now, let's assume we -- strike that.

4 Let's move on a little bit from there.

5 So assuming that, again, using Mr. Swan's numbers
6 and there's a QZRI below the national risk, Nationwide --
7 excuse me -- Nationwide Significant Risk Threshold, there is
8 no requirement that the County install SSMS; do you agree
9 with me on that?

10 A. Based off of Mr. Swan's calculations I agree.

11 Q. But under this scenario, even though the County
12 doesn't have to do that, they are seeking to install such;
13 isn't that correct?

14 A. That is correct.

15 Q. Okay. And you're aware that the UTC supports
16 Whatcom County's petition to install these SSMS?

17 A. I am aware, that's correct.

18 Q. Okay. And do you have a compelling reason or does
19 BNSF have a compelling reason for requiring or for
20 requesting -- for requesting that the County utilize an SSM
21 other than the one they propose?

22 A. That request is based off of the -- primarily the
23 FRA's risk reduction calculation which shows nonmountable
24 medians are 5 percent, have a 5 percent greater reduction
25 than the nonmountables. Additionally, BNSF believed that

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1 the maintenance required for the channelization devices
2 along a mountable median could present problems as -- once
3 the quiet zone is established.

4 Q. So just so I understand, it's twofold, No. 1, you
5 think the 5 percent increase in safety requires the County
6 to install a nonmountable curb versus a mountable curb,
7 No. 1, correct?

8 MS. ENDRES: Your Honor, that's misconstruing
9 his question. The question was whether there's a compelling
10 reason, not whether the County is required. He's
11 misconstruing the witness's testimony.

12 JUDGE PEARSON: Mr. Quinn, do you want to
13 respond?

14 MR. QUINN: I'll rephrase.

15 JUDGE PEARSON: Thank you.

16 BY MR. QUINN:

17 Q. Mr. Semenick, you gave a twofold response to the
18 compelling reason why the railroad is objecting to Whatcom
19 County's proposed use of a nonmountable curb; is that
20 correct?

21 A. That's correct.

22 Q. One was the 5 percent difference in safety in risk
23 reduction; is that correct?

24 A. Yes, the ability to greater reduce the risk.

25 Q. And you agree with me that it's 5 percent?

1 A. Per what the FRA publishes, yes, it's 5 percent.

2 Q. And the second part of your -- the compelling
3 reason was concerns over maintenance of a mountable system
4 and channelization devices?

5 A. Primarily the channelization devices as they may
6 present maintenance and safety issues for drivers if a piece
7 of a delineator or channelization device rather were to
8 fracture off if it was impacted.

9 Q. Have you discussed these concerns with Whatcom
10 County Public Works?

11 A. Yes.

12 Q. Have they allayed any of those concerns during your
13 discussions about that?

14 A. Can you rephrase?

15 Q. Have they allayed, have they -- did they share your
16 concerns about maintenance and upkeep and possible risk to
17 drivers in this community related to a mountable system?

18 A. To an extent, and they additionally discussed their
19 proposed maintenance and inspection to mitigate those risks.

20 Q. So they -- in other words, they addressed your
21 concern? They represented, Hey, we're going to keep up on
22 this and we're going to maintain them?

23 A. They provided a response. I wouldn't say
24 necessarily it addressed my overall concerns.

25 Q. Okay. But you also heard the testimony of Mr. Swan

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1 today as far as the County's intentions to maintain their
2 roads and maintain their SSMS such as the one that will be
3 out at Cliffside Drive?

4 A. And that included a month -- initially a monthly
5 inspection and increasing frequency based on performance?

6 Q. Yes.

7 A. I understand that was their plan.

8 Q. And do you have any reason to doubt that they'll
9 address their -- address their roads and address their SSMS
10 they represent?

11 A. I do based on performance of channelization devices
12 on mountable medians and other jurisdictions throughout
13 Washington where I've frequently seen a number of missing
14 "paddles" as I'll call them.

15 Q. Sure. And these are at crossings, railroad
16 crossings?

17 A. Yes.

18 Q. And where are the ADTs at those locations then?

19 A. I'm not aware of what the ADTs are.

20 Q. Can you describe the neighborhoods that these
21 crossings service? Are they through traffic, if you
22 describe them more in detail?

23 A. It's through traffic in a city's downtown area.

24 Q. Downtown areas. Buses go through there, trucks?

25 A. I can't confirm but I believe so.

1 Q. Okay. So really not similar to what we're dealing
2 with here; is that fair to say?

3 A. To an extent, yes.

4 Q. You heard Mr. Swan testify that the current risk
5 index with train horns at Cliffside Drive is 8296. Any
6 reason to doubt that representation, doubt that testimony?

7 A. No.

8 Q. And let me ask you this: Has BNSF invested in any
9 additional safety measures to reduce this number, that
10 current number?

11 A. So may I respond to the previous question?
12 Mr. Swan's QZRI for --

13 Q. I didn't ask about the QZRI. I asked about the --
14 sorry.

15 MS. ENDRES: I apologize.

16 BY MR. QUINN:

17 Q. No, I'm asking about the current Risk Index With
18 Horns at Cliffside Drive.

19 A. Okay.

20 Q. Not the QZRI. QZRI --

21 A. No concern then.

22 Q. Okay. So has BNSF invested in any additional
23 safety measures to reduce the current risk index at that
24 crossing to date?

25 A. So you're asking if BNSF, since the diagnostic

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1 meeting, has invested in the crossing infrastructure
2 maintenance.

3 Q. No, at any time even before that. What investments
4 has BNSF made to reduce the current risk at that crossing?

5 A. At some point in time I would believe that we
6 installed the active signals, the flashing lights, gates,
7 the advanced warning system.

8 Q. Anything after that?

9 A. We perform periodic maintenance and inspections and
10 we will update equipment based on industry standards and
11 internal BNSF standards.

12 Q. Okay. So let's talk a little bit about the risk
13 index calculator. You indicate that you ran numbers for
14 Cliffside Drive; is that correct?

15 A. That is correct.

16 Q. You used a different number of average daily trips,
17 ADT number when you ran your calculations; is that correct?

18 A. That is correct.

19 Q. What number did you use?

20 A. For the ADT I used the prepopulated value of 450.

21 Q. And you said it's a prepopulated value. Did you
22 have any personal knowledge of the number of ADTs?

23 A. I did not.

24 Q. Did BNSF conduct any independent traffic studies on
25 its own?

1 A. BNSF did not and does not.

2 Q. So why did you use 450 as opposed to the 324 that
3 Mr. Swan used based on a week-long traffic study?

4 A. The value of 450 was the current value. I was not
5 aware of the 324. I completed the study back in -- before
6 that information was available.

7 Q. You mean you conducted your calculation before?

8 A. Yes.

9 Q. So there's really no basis for using the 450 ADT
10 other than that was a prepopulated figure in the calculator?

11 A. That is correct.

12 Q. Okay. But let's utilize your number, though.
13 Using your 450 ADT, what is the QZRI for Cliffside Drive?

14 A. Using the 450 ADT I came up with a value of
15 15,707.4 I believe.

16 Q. And that's clearly above the Nationwide Significant
17 Risk Threshold; isn't that correct?

18 A. That is correct.

19 Q. Okay. And by that number, what does that number
20 represent? Does that represent the risk index without
21 horns?

22 A. Yes.

23 Q. Okay. Does it consider any SSMS at that point?

24 A. It does not.

25 Q. Okay. So what I'd like to do is ask you: Well,

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1 can you reduce that QZRI that you used by 75 percent for me?

2 A. You can.

3 Q. No.

4 A. Can I?

5 Q. Can you?

6 A. Not without a calculator.

7 Q. Did you calculate it?

8 A. Did I?

9 Q. Yeah.

10 A. I have.

11 Q. You have. So you know what the resulting QZRI is
12 if you reduce -- excuse me. You'd know what the resulting
13 QZRI would be if you reduce that 15,707 number by
14 75 percent, you just don't have it in front of you?

15 A. If I had a calculator I could.

16 Q. How about this: Why don't we just split it in
17 half. Let's reduce it by 50 percent. What's half of
18 15,000?

19 A. About 7,500.

20 Q. Is that less than the current risk -- the current
21 risk index at the crossing with horns?

22 A. Yes.

23 Q. Okay. And that's just --

24 A. The risk index being approximately 8,300.

25 Q. Yeah, approximately 8,300. And that's just a

1 50 percent reduction, correct?

2 A. That is correct.

3 Q. And it's well below, that 50 percent reduction is
4 well below the Nation- -- excuse me -- the Nationwide
5 Significant Risk Threshold, isn't it, the 14,723?

6 A. That is correct.

7 Q. Okay. And in fact that 50 percent reduction based
8 on your numbers, right, well qualifies Cliffside Drive for
9 quiet zone consideration, right?

10 A. It would qualify Cliffside Drive for a quiet zone.

11 Q. And in fact, so much so that the County wouldn't
12 even have to formally apply to the FRA for its
13 establishment; isn't that correct?

14 A. That is correct.

15 Q. Do you agree that the County's best situated to
16 deal with its county roadways, its road projects, its
17 responsibilities, if you will, to its motoring public? Do
18 you agree with me on that?

19 A. Can you rephrase to make sure I understand that the
20 County would be the best --

21 Q. Best situated, in the best position to address its
22 road needs.

23 A. As compared to?

24 Q. Well, for example, let's say a railroad.

25 A. They would be as compared to BNSF.

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1 Q. Okay. Is BNSF involved in county road projects as
2 far as you know up here in Whatcom County?

3 A. To an extent. If it involves a UTC petition
4 adjacent to a railroad crossing we would be, otherwise we
5 would not be.

6 Q. Fair enough. What about regular maintenance,
7 regular inspections, regular -- again of the roadways, the
8 approaches in particular? Are they involved in that aspect?

9 A. Of routine maintenance and inspection, we are not.

10 Q. Does Whatcom County get to tell the railroad how to
11 maintain its tracks in its area that it's legally
12 responsible for at crossings?

13 A. Whatcom County does not. They can but they do not
14 have any authority to dictate how BNSF maintain or inspects
15 our right-of-way. That lies within the FRA.

16 Q. Sure. Fair enough. I mean they could be heard and
17 I'm sure --

18 A. Yes.

19 Q. Because it is a partnership of course, right?

20 A. It is.

21 MR. QUINN: Sir, I don't think I have any
22 more questions. Thank you very much. I appreciate it.

23 MR. ROBERSON: I have a very limited number
24 of questions.

25 ////

1 CROSS-EXAMINATION

2 BY MR. ROBERSON:

3 Q. I guess first of all, the SSM proposed by the
4 County is approved by the FRA, correct?

5 A. That is correct.

6 Q. And you mentioned that it has an effectiveness
7 rating of 75 percent?

8 A. That is correct.

9 Q. So that's something that a road authority could
10 choose to install at a crossing if it wanted to install or
11 to create a quiet zone, correct?

12 A. Correct.

13 Q. One of your big concerns is maintenance. BNSF
14 wouldn't be responsible for any of the maintenance of the
15 SSM, correct?

16 A. That is correct.

17 Q. So the party that's responsible for maintaining the
18 SSM is the County and they want this particular SSM; is that
19 correct?

20 A. That is correct.

21 Q. Okay. In your testimony you express concern that a
22 driver who damages a channelization device wouldn't report
23 it; is that right?

24 A. That is correct.

25 Q. Is that the basis of your concern about

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1 maintenance, just that these things are going to get damaged
2 and no one is going to hear about it?

3 A. Yes.

4 Q. Okay. So could someone else report a broken
5 channelization device if they saw it?

6 A. Somebody else could.

7 Q. And you've heard today that the residents in the
8 other side of Cliffside Drive are very much in favor of this
9 quiet zone, correct?

10 A. That's what they stated.

11 Q. They drove the creation of it. So they would have
12 an incentive to make sure that the SSM is appropriately
13 functioning because otherwise it's no longer a quiet zone,
14 correct?

15 A. That's correct, they would have incentive.

16 Q. So these involved citizens would have a strong
17 device to report a broken channelization device, correct?

18 A. Correct.

19 MR. ROBERSON: That's actually all I have.

20 JUDGE PEARSON: Ms. Endres, do you have any
21 redirect?

22 MS. ENDRES: I do, Your Honor.

23 ////

24 ////

25 ////

1 REDIRECT EXAMINATION

2 BY MS. ENDRES:

3 Q. You were just asked some questions about BNSF not
4 being responsible for maintenance and the County being
5 responsible for maintenance. If there is a maintenance
6 problem, say the County sets a schedule to inspect this
7 crossing every 30 days and they inspect the crossing and the
8 next day someone drives over this and breaks a
9 channelization device and the County doesn't -- it's not
10 reported, the County doesn't find it until its next monthly
11 inspection.

12 What is BNSF's concern about safety at that
13 crossing for its train crews and the motoring public?

14 A. BNSF's concern is that with the reduced number of
15 the channelization devices residents traversing the crossing
16 would have more of an opportunity to mount the curb and
17 drive around as opposed to a fully equipped channelization,
18 channelized median.

19 Q. And in that scenario there's no train horn to warn
20 the public?

21 A. There would not be.

22 Q. You were asked about why you ran a quiet zone risk
23 calculation using 450 cars when the County had submitted
24 updated traffic patterns reflecting an average daily traffic
25 count of 324.

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1 Did you ever replicate or calculate a Quiet Zone
2 Risk Index using that 324 count?

3 A. I did.

4 Q. And what value did you get?

5 A. I would have to reference my notes. I don't have
6 it in front of me.

7 Q. Is that something here you do have to refresh your
8 memory --

9 A. Yes.

10 Q. -- that I could bring you?

11 A. Yes.

12 Q. Where?

13 A. It would be on my -- in my notes, my binder.

14 MS. ENDRES: May I approach, Your Honor?

15 JUDGE PEARSON: Sure.

16 MS. ENDRES: Is it this (indicating)?

17 THE WITNESS: Yes.

18 BY MS. ENDRES:

19 Q. If you want to just take that page of notes I'll
20 take the rest back.

21 A. (Witness reviewing document.)

22 Q. In looking at that, does that refresh your
23 recollection?

24 A. It does.

25 Q. And what value did you calculate using that updated

1 figure?

2 A. With 324 ADT the QZRI that I was able to calculate
3 was 15,387.35.

4 Q. And how does that compare to the risk threshold?

5 A. That is greater than it.

6 Q. And what inputs did you modify, if anything, other
7 than the ADT figure?

8 A. In addition to the ADT figure being modified, I
9 increased the train count to 19 from the 14 which is
10 prepopulated, and increased the day through trains from 7 to
11 10, trying to stick with the 50 percent split between day
12 through and night through.

13 Q. And did you attempt to do that to accurately
14 reflect the actual train traffic through this crossing?

15 A. Yes.

16 Q. The maintenance concern that you described based on
17 your experience at other crossings having mountable
18 channelization systems, do you have personal knowledge of
19 what type of vehicle caused particular damage that you
20 observed?

21 A. I didn't observe any of the vehicles striking --
22 striking the channelization devices.

23 Q. And can you give us a sense in your experience at
24 those other crossings where you observed damage, the range
25 of how long that action in real life got taken to fix?

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1 A. It still has not been fixed. It's been quite some
2 time. Site visits were completed on those locations in late
3 2017 and to date I haven't seen any repairs.

4 MR. QUINN: Your Honor, I'm going to move --
5 I'm going to object to the question and move to strike. I'm
6 not sure how that's relevant to Cliffside Drive, quite
7 frankly, what the status is of another location. I'm not
8 sure how that bears upon the decision you have to make.

9 MS. ENDRES: Your Honor, I'm just exploring
10 the basis for his concern and certainly he was asked in
11 cross examination about the difference in traffic and what
12 types of vehicles might have caused that damage, also in the
13 context of the County's plan to be inspecting these
14 crossings. I think that's fair to see and explore in his
15 experience the basis for his testimony as to why in real
16 life they're inspection and maintenance problems and that's
17 the basis for his testimony.

18 JUDGE PEARSON: I'll allow it. Go ahead.

19 BY MS. ENDRES:

20 Q. Mr. Semenick, you're not disputing the fact that
21 the County has a right to establish a quiet zone assuming
22 the calculations, the risk index calculations are correct,
23 are you?

24 A. I am not.

25 Q. And you're not disputing that a supplemental safety

1 measure is a good idea at this crossing, are you?

2 A. I am not.

3 Q. Have you heard anything today that changes your
4 opinion that these municipalities can do a safer alternative
5 for these 44 residents for the same cost?

6 A. Could you rephrase? As I understand you're asking
7 is there anything that's changed my opinion on if they
8 should install mountable versus nonmountable?

9 Q. Yes.

10 A. I have not.

11 Q. And this crossing doesn't only serve 44 residences
12 but it serves to some degree train crews that are traveling
13 across the tracks. How many train crew members ride a
14 train?

15 A. There are two members to each crew.

16 Q. And what about passenger trains?

17 A. Passenger trains, I'd have to refer to Amtrak but
18 I'm guessing hundreds per train.

19 MS. ENDRES: Those are the only questions I
20 have.

21 MR. QUINN: Your Honor, I know that normally
22 the parties are limited to one round. Unfortunately I think
23 Mr. Semenick introduced some testimony that's not included
24 in his pre-file regarding other calculations using other
25 numbers so I'm going to ask if you find good cause to allow

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1 just a very brief recross on that specific issue?

2 JUDGE PEARSON: Can you be more specific?

3 MR. QUINN: Of course. The question was
4 posed whether or not Mr. Semenick used the risk calculator
5 for utilizing the ADT of 324. In his testimony he didn't
6 talk about running those numbers. He -- obviously he
7 testified that that increased other numbers to get to the
8 QZRI that he testified to. I would just like to be able to
9 follow up on that to clarify, because again, that was not
10 provided in his direct testimony. He only ran it with an
11 ADT of 450.

12 JUDGE PEARSON: So I wouldn't have a problem
13 with that except that, just to be perfectly transparent,
14 we're deciding between two different medians here so the
15 number without the medians is of no consequence to our
16 decision.

17 MR. QUINN: I understand. I'll withdraw the
18 request. Thank you.

19 JUDGE PEARSON: So I have a couple of
20 questions for you, Mr. Semenick. You heard a couple of them
21 earlier today.

22 Which directions do the trains travel on that
23 track at Cliffside Drive, do you know?

24 THE WITNESS: It would be both northbound and
25 southbound.

1 JUDGE PEARSON: Okay, so they go both
2 directions, okay.

3 THE WITNESS: Yeah.

4 JUDGE PEARSON: And then my other question
5 was: How much time elapses between when the safety device
6 is activated so the gates go down and the lights start
7 flashing and when the train actually passes the crossing?

8 THE WITNESS: So each crossing will have
9 different parameters that lead to the ultimate advanced
10 warning time. The FRA minimum is 20 seconds, the gate's
11 activating prior to the train occupying the crossing. I do
12 not have the exact number for Cliffside Drive.

13 JUDGE PEARSON: I just needed a ballpark.

14 THE WITNESS: I believe it's somewhere in the
15 neighborhood of 30 seconds. I can provide a more definitive
16 calculation.

17 JUDGE PEARSON: That's okay. It's the same
18 amount of time basically as the horns go off?

19 THE WITNESS: Approximately.

20 JUDGE PEARSON: Do the horns typically go off
21 simultaneous with the gates coming down or do the gates come
22 down first and then the horns?

23 THE WITNESS: I think there's a timing
24 requirement for when the horns must sound. It's either 25
25 or 15 seconds as noted by the FRA.

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1 JUDGE PEARSON: Okay. I was just curious.

2 And then -- so this is just kind of a general
3 question about BNSF's opinions about quiet zones generally.
4 If BNSF could have its way, would there not be quiet zones?

5 THE WITNESS: BNSF, we don't like quiet
6 zones. I believe the train horn, if there does have to be a
7 crossing that the train horn should sound at each crossing.

8 JUDGE PEARSON: Okay. For safety reasons?

9 THE WITNESS: Correct.

10 JUDGE PEARSON: Okay. And then at this
11 Cliffside Drive crossing, do you know when those active
12 safety devices were installed, the gates and the lights?

13 THE WITNESS: I do not have a date for that.

14 JUDGE PEARSON: So I want to get that
15 information and it will be Bench Request No. 2. I would
16 actually like a full history of all the improvements that
17 have been made at the Cliffside Drive crossing.

18 Do you know about how long it would take to get
19 that information?

20 THE WITNESS: I -- off the top of my head I
21 do not.

22 JUDGE PEARSON: Do you think you could get it
23 by the end of the week or do you need longer?

24 THE WITNESS: I could probably have it by the
25 end of the week.

1 JUDGE PEARSON: So why don't we set that as
2 the due date. If you need more time just let me know.

3 THE WITNESS: Okay.

4 JUDGE PEARSON: Okay. And I think that was
5 it. So you can be excused at this point. You're excused.
6 Thank you. I think we're ready to call Mr. Arrington on the
7 phone. We can be in recess until we get him on the line.

8 (Discussion off the record.)

9 JUDGE CHARTOFF: We're back on record.

10 Mr. Arrington, I am Judge Chartoff and beside me is Judge
11 Pearson. We're co-presiding in this matter. Can you please
12 stand and raise your right hand so I can swear you in.

13

14 DUSTY ARRINGTON, having been first duly sworn,
15 testified as follows via
16 speakerphone:

17

18 JUDGE CHARTOFF: Thank you. Please be
19 seated. Can you please state your name, spelling your last
20 name for the record.

21 THE WITNESS: Sorry. You were cutting out a
22 little bit. My name is Dusty Arrington, D-U-S-T-Y,
23 A-R-R-I-N-G-T-O-N.

24 JUDGE CHARTOFF: Thank you. Is the witness
25 available for cross?

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1 MS. ENDRES: Yes.

2 JUDGE CHARTOFF: Please proceed.

3

4 CROSS-EXAMINATION

5 BY MR. ROBERSON:

6 Q. Good afternoon, Mr. Arrington. How are you doing?

7 A. Doing well. How about yourself?

8 Q. I'm doing all right. So --

9 JUDGE PEARSON: Mr. Roberson, you might want
10 to identify yourself.

11 MR. ROBERSON: Good point.

12 BY MR. ROBERSON:

13 Q. My name is Jeff Roberson. I'm an assistant
14 attorney general representing the Commission staff in this
15 matter. I just have a couple of questions for you. Okay.

16 Are you familiar with 49 CFR Part 222, the code
17 provisions dealing with quiet zones?

18 A. Yes.

19 Q. And you're aware that the FRI has approved certain
20 SSMS for use in establishing quiet zones?

21 A. Yes.

22 Q. And you're aware that the FRA has set the
23 effectiveness ratings of those SSMS by rule?

24 A. Yes.

25 Q. And are you aware of -- well, strike that.

1 You have concerns with those effectiveness ratings.

2 Did you ever present those concerns to the FRA?

3 A. I have not.

4 Q. Did BNSF ever comment in the rule to express
5 concern about those effectiveness ratings?

6 A. I don't have information to validate that so I
7 don't know.

8 Q. Okay. And a road authority that wanted to
9 establish a quiet zone would, per the rule, have to use the
10 effectiveness rating established by the FRA, correct?

11 A. They would have to follow the ruling, yes.

12 Q. Okay. You talk a little bit about maintenance, the
13 maintenance necessary to keep up channelization devices in
14 your testimony. I just have a couple questions on that.

15 Did you review the County's maintenance plan
16 when you -- before you testified?

17 A. I did not.

18 Q. Did you talk to any County employees about the
19 plans for maintenance for the channelization devices?

20 A. I did not. I did not. All my information on the
21 maintenance is based off of personal experience and the
22 projects that I was involved with with TTI.

23 Q. Have you ever had any personal experience in
24 Whatcom County?

25 A. No.

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1 MR. ROBERSON: That's all actually all the
2 questions I have.

3 JUDGE PEARSON: Any redirect, Ms. Endres?

4 MS. ENDRES: No.

5 JUDGE PEARSON: Mr. Arrington, can you hear
6 me? This is Judge Pearson.

7 THE WITNESS: Yes.

8 JUDGE PEARSON: Okay. Thank you. So my
9 first question is: Did you personally visit the crossing at
10 Cliffside Drive?

11 THE WITNESS: I have not. I reviewed the
12 location using publicly available tools such as Google
13 Street View and Google Earth.

14 JUDGE PEARSON: Okay. And in your rebuttal
15 testimony on Page 3, Lines 15 through 16, you speak
16 generally about research standards and you said that site
17 specific conditions affect human behavior.

18 Do you recall that testimony?

19 THE WITNESS: Yes.

20 JUDGE PEARSON: Okay. So as that relates to
21 railroad crossings, would you agree that site specific
22 conditions such as the surrounding area, what type of
23 neighborhood it is, would affect human behavior at that
24 crossing?

25 THE WITNESS: Yes.

1 JUDGE PEARSON: And would you agree that
2 visibility at the crossing would affect people's behavior?

3 THE WITNESS: I would agree that pretty much
4 everything to do with a site specific condition would affect
5 human behavior.

6 JUDGE PEARSON: So you said you haven't been
7 to the crossing and the aerial view of the crossing, just to
8 let you know, is much different from when you're actually
9 physically at the crossing looking to get across the
10 crossing.

11 And so would it affect your opinion at all if you
12 knew that the visibility at the crossing is -- it's fairly
13 "treacherous," I guess is the word that I would use?

14 THE WITNESS: Well, I guess my question is:
15 How would you define the human perception of it? Because in
16 some ways it may make it more likely and in some ways it may
17 make it less likely that a person may try and violate the
18 conditions.

19 JUDGE PEARSON: Okay. So if visibility was
20 low, if there was a corner right there and you can only see
21 a very little ways, do you think that would affect someone's
22 decision to try and circumvent the gates?

23 THE WITNESS: Yes. I think it could have
24 affected it both positively and negatively. There could be
25 a chance that because a person cannot see a potential train

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1 coming, depending on that particular person, some people may
2 find that to embolden them to try and cross because they
3 don't see a train coming, but others it may restrict them
4 from doing it because they may not feel comfortable trying
5 to cross without being able to see a long distance down the
6 track.

7 JUDGE PEARSON: Okay. That's helpful. Thank
8 you.

9 Those are the only questions that I have. Do you
10 have anything for him?

11 JUDGE CHARTOFF: No.

12 JUDGE PEARSON: Okay, then we'll excuse you.
13 We'll go ahead and hang up. Thank you for being available
14 today.

15 THE WITNESS: All right. Thank you.

16 JUDGE CHARTOFF: So that concludes the
17 evidentiary portion of the hearing.

18 Anything else before we go off the record?

19 MR. QUINN: Not from the County, Your Honor.

20 MR. ROBERSON: Not from staff.

21 MS. ENDRES: No, Your Honor.

22 JUDGE CHARTOFF: Okay. We will be in recess
23 until the public comment hearing later in evening. We are
24 off the record.

25 (Hearing adjourned at 12:52 p.m.)

1 STATE OF WASHINGTON)
2) SS: C E R T I F I C A T E
3 COUNTY OF SNOHOMISH)

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7 That the foregoing is a true and correct
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13 outcome of said litigation;

14 Witness my hand and seal this 13th day of
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