

City of **Mount  
Vernon**

Office of the City Attorney

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

Phone (360) 336-6203  
Facsimile (360) 336-6267  
E-Mail [mvattorney@ci.mount-vernon.wa.us](mailto:mvattorney@ci.mount-vernon.wa.us)  
[www.ci.mount-vernon.wa.us](http://www.ci.mount-vernon.wa.us)

July 9, 2007

Executive Secretary  
Washington Utilities and Transportation Commission  
Richard Hemstad Building  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: TR-070696

Enclosed are 13 copies of the City of Mount Vernon's Petition to Intervene in the above referenced matter along with the City's Notice of Appearance and Certificate of Service. On today's date these documents were electronically filed with the Commission as directed by the Records Department. Please conform one copy and return to the City's attention in the self addressed stamped envelope. Thank you for your assistance with this matter.

Sincerely,



Chrissy Spreuse  
Paralegal

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COMMISSION

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,	)	
	)	
	)	
Petitioner,	)	DOCKET TR - 070696
	)	
vs.	)	NOTICE OF APPEARANCE
	)	
SKAGIT COUNTY	)	
	)	
	)	
Respondent.	)	
_____	)	

TO: PETITIONER; above named and BRADLEY P. SCARP, Representative for BNSF Railway Company

TO: SKAGIT COUNTY and STEPHEN FALLQUIST, Representative for Skagit County

AND: JONATHAN THOMPSON, Assistant Attorney General

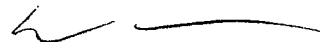
YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the CITY OF MOUNT VERNON, does hereby appear by attorney in the above-entitled cause without waiving questions of:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process; and
5. Insufficiency of service of process;

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6. Failure to state a claim upon which relief may be granted; and requests that all further papers and pleadings herein, except original process, be served upon the undersigned attorney at the address below stated.

DATED this 9-day of July 2007.



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KEVIN ROGERSON WSBA #31664  
City Attorney  
P.O. Box 809  
910 Cleveland Avenue  
Mount Vernon, WA 98273

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matter of the Petition of the BNSF  
Railway to Close a Grade Crossing Located at  
Hickox Road, at Railroad Milepost 65.60 in  
Skagit County, Washington State )  
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**DOCKET NO. TR-070696**

PETITION TO INTERVENE BY  
CITY OF MOUNT VERNON  
WASHINGTON, A MUNICIPAL  
CORPORATION, AS AN  
INTERESTED PARTY

**1. Name and address of petitioner.**

City of Mount Vernon  
PO Box 809  
910 Cleveland Avenue  
Mount Vernon, WA 98273

**Phone Number** (360) 336-6203  
**Facsimile** (360) 336-6267

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STATE OF WASHINGTON  
UTIL. AND TRANSPORTATION

**2. Name and address of the attorney, if any, representing the petitioner.**

Kevin Rogerson  
City Attorney  
City of Mount Vernon  
PO Box 809  
910 Cleveland Avenue  
Mount Vernon, WA 98273

**Phone Number** (360) 336-6203  
**Facsimile** (360) 336-6267

**E-mail** [kevinr@ci.mount-vernon.wa.us](mailto:kevinr@ci.mount-vernon.wa.us)

**3. If the petitioner is an organization:** A Municipal Corporation Organized Pursuant to RCW 35A.12

**a. State the number of members in the organization:**

N/A

- b. State the name of the person authorized to initiate this petition for the organization:**

Kevin Rogerson

- c. Attach a copy of the document authorizing participation in this case or state the basis for the authorization.**

Mr. Rogerson is the City Attorney representing the City of Mount Vernon and has been requested by the City Council and Mayor of the City to represent the City of Mount Vernon at WUTC hearings involving this matter.

- d. State the purpose of the organization:**

Mount Vernon is a local political subdivision whose jurisdictional boundaries lie within Skagit County, WA. The City's purpose is to exercise its delegated powers of government (including but not limited to its police powers) to administer designated affairs within its jurisdictional boundaries in order to, among other things, promote the public health, safety and welfare of its citizens. Mount Vernon further provides by agreement services outside its jurisdictional boundaries including the provision of emergency services by mutual aid.

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**4. The petitioner has the following interest in this proceeding:**

The railway crossing is located within or adjacent to the jurisdictional boundaries of the City. The public convenience and need, examining the amount and character of travel upon the crossing, outweigh any danger proposed by the crossing. The amount and character includes use by the City, the County, and Fire District's emergency responders for fire, police, and ambulance services for access to the residences and business in the area in response as mutual aid or primary roles as the case may be. Thus, the proposed closure would reduce access across the railroad for emergency vehicles and impact response times which must be further evaluated and mitigated. Emergency routes leading to the area residents that do not involve the Hickox Road crossing would involve multiple mile travel on narrow county roads. There are no other public railroad crossings in the City's UGA south of Blackburn Road. Moreover, the crossing is heavily used as primary access for surrounding residents' commercial agricultural uses (for example, the crossing is used by farm equipment, trucks, and other agricultural support vehicles) and it is anticipated to be critical for future commercial and or industrial expansion identified as needed within next twenty years.

Hickox road offers important economic benefits and the importance of the crossing will continue to increase with growth pressure. The City's buildable land analysis and land needs analysis has identified a substantial deficiency in commercial and industrial lands needed for the next twenty years. The City has identified the South Mount Vernon area as a likely area to locate additional needed commercial and industrial lands and the potential need of a full interchange at the crossing to support this growth.

Closure of the crossing will preclude the current and projected needs for surface transportation to South Mount Vernon. Reasonable alternatives such as separation of the grade crossing or relocation need to be thoroughly explored. Moreover, any and all significant probable adverse environmental impacts must be considered including direct, indirect, cumulative and future impacts. Reasonable alternatives and mitigation must be considered.

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**5. The petitioner's position with respect to the matters in controversy:**

Petitioner objects closure of the crossing. The crossing is necessary for public convenience and necessity. Acceptable emergency vehicle response times will be affected. Elimination of the at-grade crossing will add significant miles on narrow country roads to provide area residents emergency services and support their commercial activity. It is reasonably foreseeable that the closure will create future adverse impacts to the growth pressures likely in the area. Reasonable alternatives to allow for the construction of a siding extension that is necessary to accommodate freight and passenger train traffic on this single track rail line need to be explored as well as environmental impacts.

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6. **Whether the petitioner proposes to broaden the issues in the proceeding:**

No.

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7. **The petitioner intends to:**

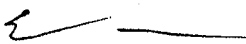
a. **Submit written testimony and exhibits of the following people:**

b. **Call witnesses to testify.**

c. **Cross-examine the witness called by other parties.**

d. **Submit written arguments and/or motions.**

8. **I submit this Petition to Intervene and request authorization to participate in this proceeding.**

 <sup>#</sup>31664

July 9, 2007

Kevin Rogerson  
City of Mount Vernon  
City Attorney  
PO Box 809  
910 Cleveland Avenue  
Mount Vernon, WA 98273





CERTIFICATE OF SERVICE

Chrissy Sprouse states and declares as follows:

I am a citizen of the United States of America, over 18 years of age and competent to testify to the matters set forth herein. On July 9, 2007, I hereby certify that I have this day served by first class mail, postage prepaid, a true and correct copy of the foregoing document(s) upon all parties of record in this proceeding entitled PETITION TO INTERVENE BY CITY OF MOUNT VERNON AS AN INTERESTED PARTY AND NOTICE OF APPEARANCE BY KEVIN ROGERSON on the following:

PETITIONER

JOHN LI, MANAGER  
PUBLIC PROJECTS  
BNSF RAILWAY COMPANY  
2454 OCCIDENTAL AVE. SOUTH, SUITE 1A  
SEATTLE WA 98134-1451

REPRESENTATIVE: BRADLEY P. SCARP  
MONTGOMERY SCARP MACDOUGALL, PLLC  
SEATTLE TOWER, 27<sup>TH</sup> FLOOR  
1218 THIRD AVENUE  
SEATTLE, WA 98101  
(206) 625-1801  
BRAD@MONTGOMERYSCARP.COM

RESPONDENT

SKAGIT COUNTY  
205 W. KINCAID, ROOM 103  
MOUNT VERNON, WA 98273

REPRESENTATIVE: STEPHEN FALLQUIST  
DEPUTY PROSECUTING ATTORNEY, CIVIL DIVISION  
SKAGIT COUNTY  
605 S. 3<sup>RD</sup> STREET  
MOUNT VERNON, WA 98273  
(360) 336-9460  
STEPHENF@CO.SKAGIT.WA.US

COMMISSION STAFF

JONATHAN THOMPSON  
ASSISTANT ATTORNEY GENERAL

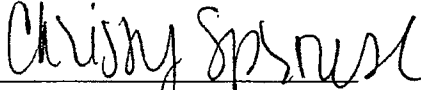
OFFICE OF THE ATTORNEY GENERAL  
P. O. BOX 40128  
OLYMPIA WA 98504-0128

GARY T. JONES  
JONES & SMITH  
P. O. BOX 1245  
MOUNT VERNON WA 98273

BRIAN K. SNURE  
SNURE LAW OFFICE  
612 SOUTH 227<sup>TH</sup> STREET  
DES MOINES WA 98198

Commission Staff: Jonathan Thompson  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P.O. Box 40128  
Olympia, WA 98504-0128  
(360) 664-1225  
[jthomps@utc.wa.gov](mailto:jthomps@utc.wa.gov)

DATED this 9<sup>th</sup> day of July, 2007 at Mount Vernon, Washington.

  
Chrissy Sprouse, Paralegal