

[Service Date August 28, 2007]

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

BNSF RAILWAY COMPANY,

DOCKET TR-070696

Petitioner,

CITY'S PRE-HEARING MOTION
IN LIMINE AND MOTION FOR
SUMMARY JUDGMENT
REQUIRING NEW SEPA
DETERMINATION BY THE
WUTC

v.

CITY OF MOUNT VERNON,

Respondent

And

SKAGIT COUNTY , WASHINGTON
STATE DEPARTMENT OF
TRANSPORTATION, WEST VALLEY
FARMS LLC, and SKAGIT COUNTY,

Intervenors

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WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

.....
1 **NAME AND ADDRESS OF PLEADING PARTY.** The City of Mount Vernon,
Respondent, located at 910 Cleveland Avenue, Mount Vernon, Washington 98273

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RESPONDENT MOTION FOR SJ AND IN LIMINE- PAGE 1
WUTC No. tr-070696

COPY

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I. TABLE OF AUTHORITIES

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II. INTRODUCTION AND RELIEF REQUESTED.

5

This matter comes before the Washington State Utilities and Transportation Commission (WUTC) to consider Petitioner’s request to abandon and close to public use a railroad-highway grade crossing located at Hickox Road, Mount Vernon (“the Crossing”) in accordance with RCW 81.53.060 and all applicable law. The WUTC convened a Second Prehearing Conference on Friday, July 20, 2007 for the purpose of creating a procedural schedule for the case and addressing any objections to the first Prehearing Conference Order (Order 01). Order 02 was then entered establishing a date for the filing of motions by August 28, 2007.

6

The City respectfully submits the following motions based on the authority and argument herein and respectfully requests that the WUTC deny the petition for closure until the State Environmental Policy Act is complied with including WUTC removing WSDOT’s previous threshold determination based on inadequate review and new information and grant the City’s motion in limine allowing the City to present certain evidence during the hearing that closure of the crossing will detrimentally impact and run against public policy found elsewhere within state law.

7

III. STATEMENT OF FACTS

8

A. Description of the Area Served by the Hickox Road Crossing

9

The Hickox Road crossing, (“the Crossing”) is located at the southern jurisdiction boundary line of the City of Mount Vernon.¹ Hickox Road is a two lane road running East-West extending Westerly to and intersecting with Dike Road.² Dike Road abuts a system of dikes protecting against flood events that may occur by overflowing of the Skagit River.³ Landward of the dikes and between the Crossing, or the west side of the Crossing, lie property that is part of the City’s 100 year flood plain based on current

¹ See Exhibit -1 Declaration of Mikael Love; See Exhibit 2- Declaration of Jodi Brautaset and attached map

² Id.

³ Id.

FEMA mapping.⁴ Land uses of the property include farming, use and storage of large farm equipment, maintaining livestock, and use as a primary residence.⁵ To the East of the Crossing is the Interstate Five corridor.⁶

10 The City of Mount Vernon partly responsible provides emergency services to the area including medical and fire services; however, the City relies heavily on Skagit County Fire Protection District No. 3 (“Fire District No. 3”) for the provision of these services within the area that lies between the Crossing and Dike Road to the West.⁷ Fire District No. 3 is an all-volunteer fire district whose volunteers respond out of two stations, Cedardale and Conway.⁸ The Cedardale station is located East of the Crossing.⁹ The Conway Station is located in the flood plain.¹⁰ The District’s five-year plan is to relocate the Conway Station out of the flood plain.¹¹ This will necessarily move the Conway Station a further distance from the affected area and will significantly increase the response time from Conway.¹² Once the relocation is completed, Cedardale will remain the station with the initial response responsibilities for the affected area.¹³

11 **B. Flood Hazards on the Skagit River.**

12 Overall, the City of Mount Vernon is protected by a dike system maintained by Dike Districts 3, 17, 20 and 1.¹⁴ The system of dikes that reside in the area due East of the Crossing are located within the jurisdiction of special purpose district Dike District No. 3.¹⁵ Dike District No. 3 is required by statute to provide flood protection, which includes the maintenance and repair of levees, compliance with Army Corps of Engineers and FEMA standards for levee inspection and improvements for the overall protection of life and property within the District. Recent flood studies prepared by the Army Corps and

⁴ Id.

⁵ See Exhibit 3- August 23, 2006 letter of Gary Jones on behalf of Richard Smith to the WUTC and May 30, 2007 letter of Gary Jones on behalf of David Boon to the WUTC; See also Exhibit 11 Declaration of John Devlieger.

⁶ See Exhibit 3- Declaration of Jodi Brautaset and attached map

⁷ See Exhibit 4- Declaration of Assistant Fire Chief Glenn Brautaset.

⁸ See Exhibit 5 – Declaration of David Skrinde Fire Chief for Fire Protection District No. 3

⁹ See Exhibit 3-- Declaration of Jodi Brautaset and attached map

¹⁰ See Exhibit 5 – Declaration of David Skrinde Fire Chief for Fire Protection District No. 3

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ See Exhibit 1 Declaration of Mikael Love

¹⁵ See Exhibit 6 Declaration of David Olson Dike District No. 3 Chairman

Skagit County anticipate the potential for flood damage with the City to be greater than which is shown in the current FEMA maps.¹⁶ The system of dikes which protects the City cannot withstand a 100 year flood event.¹⁷ Recent flood events of 1990, 1995, and 2003 have come close to over topping the dike system.¹⁸ No recent flood event has reached the predicted 100 year flood level.¹⁹ Each flood event in recent history has required the City to assist Dike District 3 in flood fighting efforts.²⁰

13

Flooding has the potential to cripple key infrastructure, transportation, water, sewer, residential areas, farmland, and endanger the welfare of persons and property that reside within the floodplain. There have been several occasions where the Hickox Road crossing was designated as an “alternate contingency route” for flood control.²¹ The purpose for the route was two-fold; 1) secondary evacuation route for residents and businesses south of Section Street, 2) secondary logistical route for flood control supplies for dike reinforcement south of the Waste Water Treatment Plant.²² Dike District 3 and landowners both rely on this route as a potential evacuation route in the event of Dike failure and the necessity to flee the area.²³ Skagit County’s hazard mitigation plan and vulnerability assessment identifies the threat of flooding as the greatest hazard to the general public and welfare within the County and specifically identifies low lying areas as particularly vulnerable.²⁴ The plan depends on warnings systems which are effective only if evacuation routes are maintained.²⁵ A key resource for flood fighting and emergency repairs to the dikes is the Meridan Quarry located East of Hickox Road in the City of Mount Vernon.²⁶ Maintaining the Hickox road crossing would allow an efficient route for delivery of necessary materials (i.e. sand, rock, equipment) needed for flood fighting purposes.²⁷

14

C. The Mount Vernon Siding Project

¹⁶ See Exhibit 1 Declaration of Mikael Love

¹⁷ Id.; See Exhibit 6 Declaration of David Olson Dike District No. 3 Chairman

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ See Exhibit 4 Declaration of Assistant Fire Chief Glenn Brautaset

²² Id.

²³ See Exhibit 6 Declaration of David Olson Dike District No. 3 Chairman; See also Exhibit 11 Declaration of John Devlieger

²⁴ See Exhibit 7- Excerpt from Skagit County’s Hazard Mitigation Plan

²⁵ Id.

²⁶ See Exhibit 6 Declaration of David Olson Dike District No. 3

15 Petitioners filed with the WUTC a request to order the Hickox rail crossing located within the City of Mount Vernon, Skagit County abandoned and closed.²⁸ A reason for the closure was to allow for the proposed expansion of WSDOT's Mount Vernon Siding Extension Project.²⁹ According to the Petitioners, removal of the crossing will allow construction of the siding project to take place.³⁰

16 The Mount Vernon Siding Project ("the Project") is a project sponsored by WSDOT to extend the existing 6,000 foot BNSF Railway siding in Mount Vernon an additional 3700 feet to the south.³¹ The purpose for the total siding length of 9700 feet is to allow long freight trains to pull off the main line track and permit faster trains and other faster freight to pass.³² As part of the proposal, WSDOT has anticipated that two at-grade railroad crossings located at Hickox Road (public crossing) and Pederson Lane (private crossing) will be closed.³³

17 **D. Previous Environmental Review Conducted**

18 Prior to the Petition, WSDOT Officials met with City Officials regarding the proposed closure of the Hickox rail crossing and provided a draft report involving an analysis of the traffic impacts as a result of the closure. After the meeting City Officials submitted written comment to WSDOT Officials objecting to the closure and its impacts on the City's built environment.³⁴ Specifically, the City objected to the impacts the closure would have to the City's land use planning and future growth needs, impacts to the City's existing transportation system and grid in the City's UGA, and the reduction of access across the railroad line for traffic and emergency vehicles in South Mount Vernon.³⁵ Similar concerns were raised as comment by the City with the WUTC.³⁶ Fire District No. 3 provided comment prior to the completion of the traffic study in which WSDOT would provide basis for its environmental review that the study underestimated the

²⁷ Id.

²⁸ See Exhibit 8- Petition to WUTC

²⁹ Id.

³⁰ Id.

³¹ See Exhibit 9- WSDOT's Determination of Non-Significance and Environmental Checklist

³² Id.

³³ Id.

³⁴ See Exhibit 10- City's June 30, 2006 letter to WSDOT and City's May 10, 2007 letter to WUTC.

³⁵ Id.

³⁶ Id.

impact of the closure on fire protection and provided a response time summary to WSDOT's consultant documenting that the closure would cause a 2 to 4.5 minute increase in response times to those areas of the of the District currently accessed by Hickox Road.³⁷ Subsequent to providing that information, Fire District 3 has obtained more information about response times in the area due to a typical fire response occurring on May 14, 2007.³⁸

19 On February 16, 2007, WSDOT's designated responsible official prepared and submitted both an environmental checklist involving the Project and a Determination that the additional 3600 feet of side tracking and closure of two rail crossing would not have a probable significant adverse impact on the environment also known as a Determination of Nonsignificance ("DNS").³⁹ Neither City nor Fire District comments were included within either document nor identified. Impacts to flooding, flood fighting operations or evacuations for a flood flight were not identified as a result of the closure or the project as a whole.

20 Within the environmental checklist, WSDOT failed to include approval by the WUTC for closure of the crossings within the list of government approval needed for the proposal.⁴⁰ Under proposed measures to ensure that the proposal is compatible with existing and project land uses, WSDOT's response failed to acknowledge significant impacts to the current agricultural land uses located in the area, significant impacts to the existing local transportation grid in the area, or significant impacts to planned transportation improvements and land uses identified in the City's and County's planning documents.⁴¹ When questioned about access to the existing street system and public streets serving the site, WSDOT response referred to a traffic study it has conducted to ensure that access is still available due to intersecting roads; however, WSDOT further explained that WUTC will hold a public hearing prior to closure decision.⁴² WSDOT explained that the project would not result in an increased need for public services and that any measures to reduce or control direct impacts on public service are not proposed as a part of the proposal.⁴³ At this time, it is unknown to the Respondent whether or not notice of WSDOT's

³⁷ See Exhibit 5 – Declaration of David Skrinde Fire Chief for Fire Protection District No. 3

³⁸ Id.

³⁹ See Exhibit 9- WSDOT's Determination of Non-Significance and Environmental Checklist.

⁴⁰ Id. at page 2.

⁴¹ Id. at page 10.

⁴² Id. at page 13.

⁴³ Id. at page 13-14

Determination of Nonsignificance (“DNS”) was provided in accordance with the regulations set under the regulations set forth by the Department of Ecology.⁴⁴

IV. LEGAL ARGUMENT

21 **The Closure of the rail crossing is an action which the WUTC is a responsible agency to determine and obtain compliance the State Environmental Policy Act.**

22 The State Environmental Policy Act’s (“SEPA”) primary requirement is that state and local agencies “include in every recommendation or report on proposals for legislation and other major action significantly affecting the quality of the environment,” a statement describing the environmental impacts and alternatives to the proposal.⁴⁵

23 The first step is determine whether the proposed government decision of activity constitutes a covered action or whether they are categorically exempt. Under the Department of Ecology rules, grade crossing closures *are not* categorically exempt from the State Environmental Policy Act.⁴⁶ Therefore, SEPA requires WUTC as the responsible Agency with authority to determine whether or not the closure of the Hickox Road Crossing constitutes a major action significantly affecting the quality of the environment.

24 **SEPA rules require the WUTC to prepare a new threshold determination if new information indicates probable significant adverse environmental impacts including lack of material disclosure.**

25 WAC 197-11-600 sets forth the criteria for determining whether a preexisting environmental document may be used unchanged and describes when existing documents may be used to meet all or part of an agency’s responsibilities under SEPA.

26 For a DNS, preparation of a new threshold determination is required by the Agency if there are either substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant impacts if a DS is being withdrawn), or new information indicating a proposals probable significant adverse

⁴⁴ See Exhibit 12 Declaration of Kevin Rogerson

⁴⁵ RCW 43.21C.030(c).

⁴⁶ WAC 197-11-865(2)

environmental impacts including discovery of misrepresentation or lack of material disclosure.⁴⁷

27 In the present matter, the City and Respondents have submitted new information to the WUTC not before received in WSDOT's previous environmental review. Such information relates to likely adverse impacts to both the built environment and natural environment. SEPA specifically identifies that elements of the natural environment to which an agency must determine probable significant environmental impacts include floods and surface water movement/quantity/quality.⁴⁸ The City has provided information the Crossing has been identified as a route to be utilized in the event evacuation is necessary to those residents during a flood flight.⁴⁹ Diking District 3 has identified the importance of the crossing in order to provide its services of maintaining and repairing the dikes in which it is responsible in staging successful emergency operations during a flood event.⁵⁰ Flooding of the Skagit River is a frequent and consistent threat to those properties that lie within the flood plain. Diking District 3 and the landowners both the area rely on the Crossing as a potential evacuation route.

28 SEPA identifies that elements of the build environment includes the proposal's impact to existing land use plans and to estimated population, agricultural crops, transportation systems, vehicular traffic, movement/circulation of people or goods, and the impacts to public services and utilities including fire, maintenance, water/storm water, sewer/solid waste, and other governmental services or utilities.⁵¹ Previous comments not included in WSDOT's DNS were submitted by the City that the proposed closure is inconsistent with land use plans of the City and would adversely impact its transportation system and grid.⁵² Moreover, both Fire District 3 and the City has submitted information, including new data, to the WUTC that this closure would adversely impact it ability to provide fire and medical services to the area West of the closure.⁵³ Previous comments and newly

⁴⁷ WAC 197-11-600 (3)(b)(i)(ii)

⁴⁸ WAC 197-11-444 (1)(c)(i)(iii)

⁴⁹ Exhibit 4 Declaration of Assistant Chief Glenn Brauteset

⁵⁰ Exhibit 6 Declaration of David Olsen Dike 3 Chairmen

⁵¹ WAC 197-11-444 (2)(b)(i),(vii); WAC 197-11-444(2)(c)(i),(ii),(v); WAC 197-11-444(2)(d)(i),(v),(vii),(viii),(xi).

⁵² Exhibit 1 Declaration of Mikael Love

⁵³ Exhibit 5 Declaration of David Skrinde; Exhibit 10 City's June 30, 2006 letter to WSDOT and City's May 10, 2007 letter to WUTC.

submitted information provided by declaration from land owners to the surrounding area indicate an adverse impact to agricultural crops and agricultural activity.⁵⁴

29 In sum, WSDOT's environmental review of the above built and natural environmental elements are either inadequate or not addressed. City respectfully requests, based on the new information presented by the Respondent and Intervenors, that WUTC remove WSDOT's DNS and conduct its own supplemental environmental analysis involving how the closure will impact the natural and built environment. Only through this process, may potentially affected parties be assured that all probable significant adverse environmental impacts are identified and appropriate mitigation is conditioned.

30 **SEPA Required WSDOT's to Send its DNS and Environmental Checklist to Mount Vernon and to Give Public Notice in Accordance with the Dept. Of Ecology Regulations.**

31 When a responsible official makes a determination that there will be no probable significant adverse environmental impacts from a proposal, the responsible official is required to send the DNS and environmental checklist to agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal.⁵⁵ Moreover, the responsible official must give notice to the public and other agencies that the environmental document is being prepared or is available using reasonable methods set forth within the Agencies own procedures or use similar methods provided by the Dept. of Ecology.⁵⁶ If the proposal involves another agency with jurisdiction, WSDOT cannot act upon the proposal for fourteen days after date of issuance of a DNS.⁵⁷ Within the fourteen day period, an agency with jurisdiction may assume lead agency status or submit comments to the lead agency.⁵⁸ The responsible official must reconsider its DNS when timely comments are made.⁵⁹

⁵⁴ Exhibit 3 August 23, 2006 letter of Gary Jones on behalf of Richard Smith to the WUTC and May 30, 2007 letter of Gary Jones on behalf of David Boon to the WUTC; Exhibit 11 Declaration of John Devlieger.

⁵⁵ WAC 197-11-340 (b).

⁵⁶ WAC 197-11-340 (b); WAC 197-11-510

⁵⁷ WAC 197-11-340(2)(a)(i)

⁵⁸ WAC 197-11-340(2)(c)(e)

⁵⁹ WAC 197-11-340(2)(f)

32 This regulatory scheme sets forth a clear purpose that it is necessary to provide both public notice and specific notice to agencies with jurisdiction, political subdivisions which may be affected as a result of implementation, and the public at large of the proposal when a DNS is determined in order to afford them an opportunity to provide comment or assume lead agency status if applicable. It is unclear at this point that WSDOT satisfied those notice requirements due to the fact that WSDOT has to date failed to provide such documents evidencing compliance with this requirement upon request by the City.⁶⁰ As such, the City cannot confirm or deny that WSDOT's previous SEPA review has complied with the procedural notice requirements set forth by the Dept. of Ecology. City would request that WUTC condition any adoption in whole or in part of WSDOT's previous environmental review upon a showing of compliance with procedural requirements set forth by the Department of Ecology's regulations.

33 **Evidence Presented that the Closure of the Crossing will Detrimentally Impact and Run against Public Policy found within State Law is Relevant to the Determination that Public Convenience and Necessity Requires the Crossing to Remain Open.**

34 Should it be established that the Crossing is dangerous and unsafe, the Washington Supreme Court, citing language within the findings of a Department of Transportation administrative ruling subject to review, held that the WUTC must further determine whether “.the convenience and the necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding the dangerous condition.”⁶¹ The WUTC has construed this holding broadly requiring a balancing of the public convenience and need for the crossing against the danger of the crossing.⁶²

35 Neither terms public convenience nor public need are defined within state statute or Washington case law. As such, the WUTC has allowed wide latitude involving issues to be raised and presented in order to determine public convenience and necessity.

36 Factual issues previously looked to by the WUTC include: 1) Are there available alternate crossings in an urban area in close proximity and sufficient numbers?; 2) What is the ability of those crossings to handle additional traffic?; 3) What are the number of

⁶⁰ See Exhibit 13 Declaration of Kevin Rogerson

⁶¹ Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949).

⁶² Burlington Northern Santa Fe v. City of Ferndale TR 940330 (1995); Burlington Northern Railroad Company v. Skagit County Docket No. TR-940282 (Dec. 1996) .

people affected by the closure?;⁶³ 4) What is the amount and character of travel on the railroad and on the highway?; 5) Do the alternative crossings have the ability to handle any additional traffic that would result from the closure?;⁶⁴ and 6) Are the alternative crossings safer and readily available?⁶⁵

37 In construing the term public convenience and public need broadly, WUTC has examined not only individual impacts of users of the crossing, but has also examined broader public policy issue regarding such a closure. Consistent with the WUTC's broad construction, the WUTC has included in its deliberations policy considerations regarding the effect such a closure has on larger public policy issues identified by Washington State Legislature elsewhere within state law. For example, affirming an initial order of closure of an at grade crossing in the City of Ferndale, the WUTC cited the state policy supporting the operation of passenger service embodied within Chapter 47.79 RCW establishing a high-speed ground transportation system which the closure purportedly promoted as additional grounds to support public need for such a closure.⁶⁶

The City has previously raised concerns that closure of the crossing will detrimentally impact and run against public policy found elsewhere within state law. Specifically, the policies identified in our state legislature within Washington State's Growth Management Act (GMA) declare that the State's public policy include: 1) efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans⁶⁷; 2) maintaining and enhancing natural resource-based industries, including agricultural and encouraging the conservation of productive agricultural lands⁶⁸, 3) the protection of critical areas.⁶⁹

38 Just as the WUTC identified public policy found elsewhere by the state as relevant to whether there existed public need and convenience that the closure will promote interconnectivity and passenger service, the City respectfully asks the WUTC to grant the

⁶³ Burlington Northern Santa Fe v. City of Ferndale TR 940330 (1995).

⁶⁴ Burlington Northern Railroad Company v. Skagit County Docket No. TR-940282 (Dec. 1996).

⁶⁵ Union Pacific Railroad v. Spokane County, Docket No. TR 950177 (1996).

⁶⁶ See BNSF v. Fernadale TR 94033 (1995) (citing state policy embodied within RCW 47.79 supporting the operation of passenger service).

⁶⁷ RCW 36.70A.020 (3)

⁶⁸ RCW 36.70A.020(9)

⁶⁹ RCW 36.70A.060

City's motion to allow parties to raise public policy found codified elsewhere by Washington State's legislature..

39

V. CONCLUSION

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The Petitioner must show that the previous environmental review complies with the applicable SEPA procedural regulations which provide for specific notice to affected jurisdictions and public notice of WSDOT's DNS before the WUTC can entertain adoption in whole or in part of WSDOT's previous review. Regardless, the City and Intervenors have provided new information to WUTC that the proposed closure will significantly and adversely impact the built and natural environment. Based on the information and Declarations herein, the WUTC should not adopt WSDOT's DNS. Rather, the WUTC should seek supplemental review in order to make a new threshold determination so that adequate review of the potential environmental impacts to Petitioners proposal occurs. Under the facts of this case, the petition concerning the closure of the crossing will likely run counter to public policy found with the State's Growth Management Act. Because the WUTC has construed the term public convenience and necessity broadly and previously examined policy issues, parties at the hearing should be able to present evidence relevant to policies issues.

41

DATED this 28th day of August, 2007



Kevin Rogerson
WSBA #31664
City Attorney
City of Mount Vernon, Respondent

TABLE OF EXHIBITS

Pre-filing Record Number	Description of Exhibit
Exhibit 1	Declaration of Mikael Love
Exhibit 2	Declaration of Jodi Brautaset and attached map
Exhibit 3	August 23, 2006 letter of Gary Jones on behalf of Richard Smith to the WUTC and May 30, 2007 letter of Gary Jones on behalf of David Boon to the WUTC.
Exhibit 4	Declaration of Assistant Fire Chief Glenn Brautaset.
Exhibit 5	Declaration of David Skrinde Fire Chief for Fire Protection District No. 3
Exhibit 6	Declaration of David Olson Dike District No. 3 Chairman
Exhibit 7	Excerpt from Skagit County's Hazard Mitigation Plan
Exhibit 8	Petition of BNSF to WUTC
Exhibit 9	WSDOT Determination of Non-Significance and Environmental Checklist
Exhibit 10	City's June 30, 2006 letter to WSDOT and City's May 10, 2007 letter to WUTC.
Exhibit 11	Declaration of John Devlieger
Exhibit 12	Declaration of Kevin Rogerson

EXHIBIT 1

BEFORE THE WASHINGTON UTILITIES TRANSPORTATION COMMISSION

BSNF RAILWAY COMPANY,
Petitioner

v.

CITY OF MOUNT VERNON
Respondent

And
SKAGIT COUNTY, WASHINGTON
STATE DEPARTMENT OF
TRANSPORTATION, and WEST
VALLEY FARMS
Intervenors

DOCKET NO. TR-070696

DECLARATION OF
MIKAEL LOVE

I, Mikael Love , do hereby declare the following:

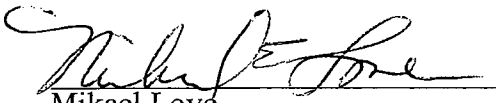
1. That I am a Professional Civil Engineer licensed in the State of Washington and employed by the City of Mount Vernon's Public Works Department as the Assistant Public Works Director. I have been employed by the City approximately 9 years and do hereby make this declaration in that capacity.
2. That my duties as a manager for the City of Mount Vernon include acting as the operations manager during flood fight activities. I assist the Incident Commander during a flood fight operation in implementation of the flood fight plan.
3. That Current 1985 FEMA mapping indicates that most of Mount Vernon's commercial industrial zone will effected by a 100-year flood event. The area of potential effect includes all area with Mount Vernon west of the river including the City's Riverfront Park, South Mount Vernon commercial district, Downtown business district, College Way business district, and the River bend area.

4. That recent flood studies prepared by the Army Corps and Skagit County anticipate the potential for flood damage with the City to be greater than that which is shown in the current FEMA maps.
5. That the City is protected by a dike system maintained by Dike Districts 3, 17, 20, and 1. These dike districts maintain a system of protective dikes that in their current configuration can not withstand a 100-year flood without significant improvements.
6. That the recent flood events of 1990, 1995, and 2003 have come close to over topping the dike system. No recent flood event has reached the predicted 100 year flood level.
7. That Mount Vernon's historic downtown business district has one of the lowest dike systems in the entire Skagit River basin. Each flood event in recent history has required the City to assist Dike District 3 in the construction of the temporary sandbag wall. Construction of the temporary sandbag wall requires the aid of approximately 2,000 volunteers and 120,000 sand bags to be constructed within a 12 hours period.
8. That the public assets within Mount Vernon susceptible to flooding include our Waste Water Treatment Plant, US Post Office, MV School District bus facility, 3 schools, City shop complex, all Public buildings downtown including City Hall, County Courthouse, County Jail, County Public Health Building, Library, and Public Works offices, other City infrastructure within the flood plain include, Interstate 5, surface streets, 4 Bridges crossing the River, traffic signals, and pump stations. The Privately owned assets susceptible to flood damage include approximately 90% of all the City's zoned commercial and industrial districts.
9. That the Hickox Road crossing is located at the southern jurisdiction boundary line of the City of Mount Vernon and involves Hickox Road which is a two lane road running East-West extending Westerly to and intersecting with Dike Road.

10. That Dike Road abuts a system of dikes that is included within the City's system of flood protection which serves to protect against flood events that may occur due to overflowing of the Skagit River.
11. That behind the Dikes and between the Hickox Crossing, or the west side of the Crossing, lie property that is part of the City's 100 year flood plain based on current FEMA mapping.

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

DATED this day of August 28, 2007.


Mikael Love
Assistant Public Works Director
for the City of Mount Vernon

City of Mount Vernon
Location Where Declaration Made

EXHIBIT 2

BEFORE THE WASHINGTON UTILITIES TRANSPORTATION COMMISSION

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

I, Jodi Brautaset, do hereby declare the following:

1. That I am a employed by the City of Mount Vernon's Planning and Engineering Department as the City's Engineering Technician. I have been employed by the City for a period of 8 years and do hereby make this declaration in that capacity.
2. That my duties include producing technically accurate maps and reviewing proposed plats for planning and development activities.
3. That the attached map is a fair and accurate aerial representation according to scale of the Southern Mount Vernon area based on available and accurate information and data maintained by the City of Mount Vernon and Skagit County.
4. That the overlay markings on the map are fair and accurate identifications of existing roadways, city limits, urban growth areas and the Cedardale Fire Station.

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

DATED this day of August 28, 2007.

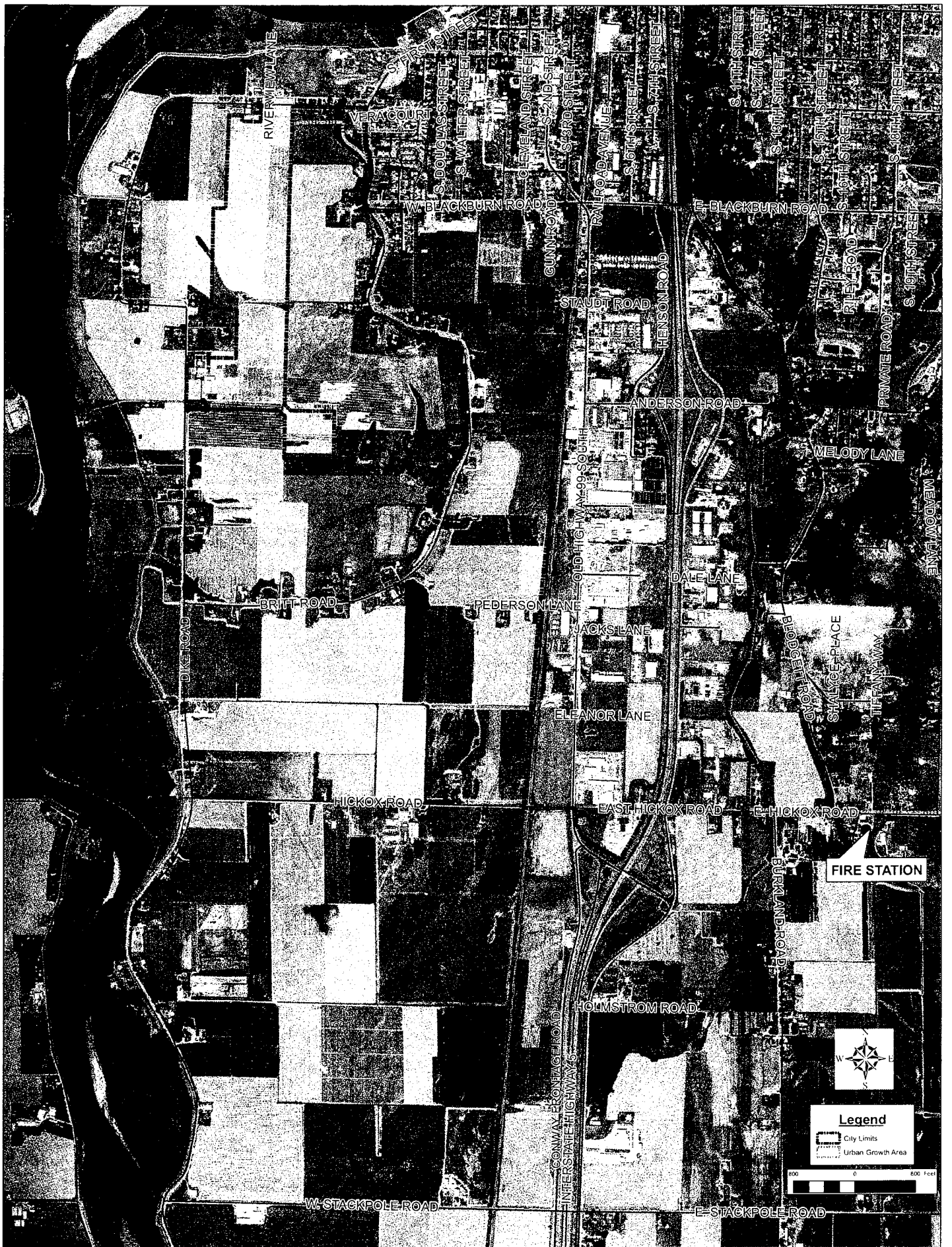
Jodi Brautaset

~~Mikael Love~~
Capital Program Manager
for the City of Mount Vernon

Jodi Brautaset
Senior Engineering Technician

City of Mount Vernon

Location Where Declaration Made



RIVER MEADOW LANE

VERA COURT

S. DOUGLAS STREET

S. WALTER STREET

CLEVELAND STREET

S. 2ND STREET

S. 3RD STREET

S. 4TH STREET

S. 5TH STREET

S. 6TH STREET

S. 7TH STREET

S. 8TH STREET

S. 9TH STREET

S. 10TH STREET

S. 11TH STREET

S. 12TH STREET

S. 13TH STREET

S. 14TH STREET

S. 15TH STREET

S. 16TH STREET

W. BLACKBURN ROAD

GUNN ROAD

STAUDT ROAD

HENSON ROAD

ANDERSON ROAD

DALE LANE

PEDERSON LANE

ELLEN LANE

ELLEANOR LANE

HICKOX ROAD

EAST HICKOX ROAD

E. HICKOX ROAD

HOLMSTROM ROAD

W. STACKPOLE ROAD

E. STACKPOLE ROAD

MEADOW LANE

PRIVATE ROAD

MELODY LANE

DALE LANE

SHALICE PLACE

BUDGET FORD

TIFFANY WAY

CONWAY LONZAGE ROAD

INTERSTATE HIGHWAY 76

BUCKLAND ROAD

SHALICE PLACE

BUDGET FORD

TIFFANY WAY

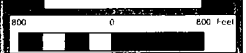
CONWAY LONZAGE ROAD

INTERSTATE HIGHWAY 76

FIRE STATION



Legend
City Limits
Urban Growth Area



Jones & Smith

Attorneys at Law

EXHIBIT 3

Gary T. Jones

Gail R. Smith

May 30, 2007

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

COPY

**Re: Reference No. TR-070696 BNSF
Highway-Railroad Grade Crossing Closure-Hickox Road**

Dear Ms. Washburn:

I am writing on behalf of David Boon owner and manager of the dairy located at the Southwest corner of the intersection between Hickox Road and BNSF Mainline track. The Boons are milk producers who farm land in the area and ship milk and receive large trucks to supply their farming needs. The primary access to the farm is Hickox Road and the proximity of the farm to Interstate 5 and South Mount Vernon is an economic advantage. This railroad closure seriously threatens the viability of the dairy and imposes significant costs on its continued operation.

Among the costs are higher insurance rates because of slower response times for fire and emergency personnel to come to the farm. All routes leading from the farm which do not cross Hickox Road involve multiple mile travel on narrow County roads. This is not only slow but dangerous to the extent that farm equipment, trucks, and other support vehicles currently use the Hickox Road crossing for shorter, safer access.

The Hickox Road crossing is particularly significant because it is a crossing for the Interstate 5 corridor, to Frontage Roads in addition to being the crossing of the Burlington Northern Sante Fe track. The ability to maintain a commercially viable dairy is partly a function of being able to get farm equipment to and from the center of the farm out to sources of forage and back to the farm. Closing the Burlington Northern crossing would narrow the available options for the dairy.

The interests of the dairy and those landowners whose property lies West of BNSF mainline track would be served by having a separation of the grade crossing. This would improve safety, maintain the vehicle access to the property and allow for farm use without the risk of train collision. However, this investment in infrastructure may not be immediately justifiable and the option of leaving the grade crossing open for agricultural use or other interruptible use would be preferable to a total closure. If the Utilities and Transportation Commission decides to allow a closure it would be in the interest of the Boon family to have a relocated crossing. Because we

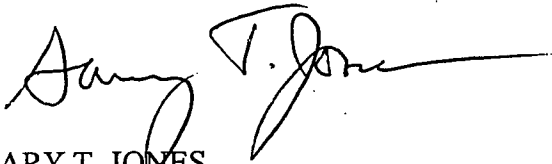
May 31, 2007

perceive that the control of a limited access crossing would be a constant problem, the relocation option is the preferred alternative.

My clients are concerned about the Hickox Road crossing because of its regional impacts and would like to see that the farm use of the South Mount Vernon area between BNSF tracks and Skagit River are viable for continuing commercial and agricultural use. The grade crossing threatens that use and requires mitigation measures now and in the long-term future. The decisions about how to solve the problem should be made in conjunction with Skagit County, the City of Mount Vernon, other landowners, and the Regional Transportation Planning Organization which coordinates transportation decisions.

Respectfully yours,

JONES & SMITH

A handwritten signature in black ink, appearing to read "Gary T. Jones", with a long horizontal flourish extending to the right.

GARY T. JONES
GTJ/sh

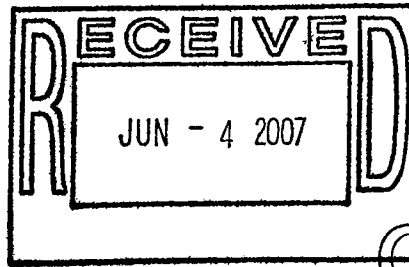
Jones & Smith

Attorneys at Law

Gary T. Jones

Gail R. Smith

May 30, 2007



COPY

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

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

Dear Ms. Washburn:

This comment letter is offered based on the Notice originally made to expire May 17, 2007 and later extended to May 31, 2007. It effects the crossing which abuts Skagit County Parcel No. P29327 owned by Richard H. Smith and Patricia A. Smith, husband and wife, and Robert E. Burkland and Pamela K. Burkland, husband and wife. My clients have pending plans for development of the property which lies within the Urban Growth Area for the City of Mount Vernon and abuts Old Highway 99 south of Mount Vernon in close proximity to a freeway overpass.

The Burklands and the Smiths live West of the BNSF track on Britt Road and Dike Road respectively and also farm land on the Westside of the BNSF tracks. Closing the Hickox Road Grade Crossing would impose a personal hardship on their homes, in addition to adverse effects on the business property.

Our office has previously commented at Public Meetings held about this proposal and attended the Board of County Commissioners Hearing prior to the decision by the Commissioners to oppose the grade crossing by Resolution adopted July 31, 2006. At that time Gary Struthers and Associates, Inc., consulting engineers put forward a compromise plan for revising the grade crossing to preserve access to the freeway from Hickox Road and from Hickox Road to South Mount Vernon west of the BNSF Railroad. The other alternative which would preserve the crossing would be a separation of the grade crossing so that the current and projected needs for surface transportation to South Mount Vernon and the agricultural land between Conway and Mount Vernon would continue to receive adequate service. Neither of the alternatives appear in the BNSF Petition and my clients are concerned that this closure is a prelude to more interference with surface transportation essential to South Mount Vernon and the agricultural land nearby.

There are already limits imposed on the westerly extension of Anderson Road which practically prohibits use of that crossing. One consequence of that closure is the limitation of access to

May 30, 2007

South Mount Vernon from the Westside of BNSF tracks. Please see the attached letter dated August 23, 2006 which itemizes the rail crossing closure issues. We believe that regional transportation planning at the federal level should take the opportunity to coordinate with the Growth Management Act based transportation planning required by RCW 36.70A.

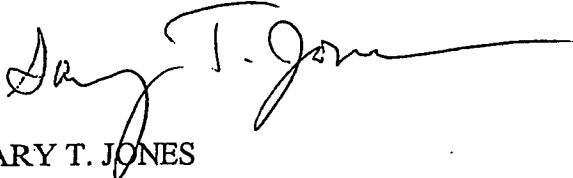
My clients anticipate the future development of South Mount Vernon and the interchange at Hickox Road. It would be shortsighted not to account for the future transportation needs of South Mount Vernon by retaining the Hickox Road crossing, either as a road highway – rail grade crossing or as a separation crossing. If the decision is made to close the highway – rail grade crossing now, the obligation of the BNSF to participate in sharing the costs of a separation of the highway – rail grade would be lost. This is an unfair shifting of economic burdens associated with the surface transportation requirements of the BNSF and the local community.

My clients are looking to the Washington Utilities and Transportation Commission for a resolution of this petition which pays more respect to the needs of local landowners and planning, while accomplishing the long term transportation goal of expanding the capacity of the rail line for passenger and freight transport.

Thank you for your consideration in this matter.

Respectfully yours,

JONES & SMITH

A handwritten signature in black ink, appearing to read "Gary T. Jones", with a long horizontal flourish extending to the right.

GARY T. JONES
GTJ/lfid

Jones & Smith

Attorneys at Law

Gary T. Jones

Gail R. Smith

August 23, 2006

Jeffrey T. Schultz
Rail Operations & Technical Expert
WSDOT Rail Office
PO Box 47387
Olympia, WA 98504-7387

via First Class Mail and
email to: SchultJ@wsdot.wa.gov

Re: Rail Crossing Closure Issues – Mount Vernon

Dear Mr. Schultz:

Richard Smith has asked me to respond to the traffic study of the Hickox Road closure proposed by BNSF and WSDOT near Mount Vernon between Old Highway 99 and the Dike Road.

The first and most obvious problem with the study is that it collected data on traffic during January / February 2006. The timing is not compatible with finding the peak flows of traffic in the study area. If you are studying birds it would be like looking for Trumpeter Swans in the summer when they are fledging their young on Wrangell Island. There is significantly more traffic associated with the agricultural use of this study area between March 15 and October 15. So, the impact on property owners including dairy, crop farmers, nursery, stock producers and others in the agricultural community are significantly underestimated by the study. These users are potentially in need of emergency medical services and fire response which your study shows suffer a decline in level of service if the closure option is chosen. The study also fails to differentiate among uses.

Closing a crossing has one level of impact for emergency vehicles and another for agricultural use. Tractors, cultivators, planters, spray rigs, irrigation and harvest equipment can each have their own special needs. In general the vehicles and equipment necessary for farming are a hazard to higher speed traffic and themselves on the frontage roads. Thus, cutting off a crossing road has a very heavy impact on the agricultural use of the land between the railroad tracks and the Skagit River. Under the Growth Management Act the area west of the railroad tracks has been designated for agricultural use as land with long-term commercial value for agricultural production. The option you are proposing negates that planning to a significant degree. It subordinates agriculture to rail transport

This problem with land use must be looked at in the context of Mount Vernon's Urban Growth Area encroaching upon traditional agricultural land. Hickox Road on both sides of the railroad tracks forms the southern boundary of the Mount Vernon Urban Growth Area. Within the area

east of the railroad tracks a substantial level of development has been achieved and the infrastructure investment made by Mount Vernon will transform this area.

This study does not recognize the need to coordinate crossing of I-5 and the rail road tracks. The relationship between Hickox crossing I-5 and the tracks is an important one.

The study fails to include contacts with the County and City of Mount Vernon transportation planners. For example, Dennis Carlson at Mount Vernon Development Services is usually contacted with regard to all Mount Vernon related transportation development issues. No where is his name or input recorded in the final report in draft form. Esco Bell, the Public Works Director for the City of Mount Vernon is also not mentioned and Jana Hansen, the Director of Development Services is not quoted or apparently contacted about this study.

Skagit County Public Works has a roads section headed by David Sheridan. Mr. Sheridan's input on the traffic impacts of the project are also not seen in the report. This may partially explain the opposition of the Skagit County Board of Commissioners. The Commissioners are very aware of the obligation under the Growth Management Act to protect long-term commercially significant farmland and to serve rural residences through fire protection and emergency services. The failure of the study to recognize the significance of Hickox Road as a border between City of Mount Vernon urban development and Skagit County agriculture is a fault, regardless of the levels of service.

Two alternatives are presented in the study. No mention is made of the alternative of rerouting Hickox Road around the proposed closure. There is also no mention of the alternative for providing a second track south of Stackpole Road and north of the Conway crossing. The area served and the loss of the level of service would be minimized by closing the Peter Johnson Road and leaving the Stackpole and Hickox Roads open for crossing. The desired length of siding for freight trains or other passing traffic could be achieved in the southern area. This would no doubt involve filling and grading some farm land. However, the remainder would be adequately served for transportation services, law enforcement and emergency response time. The heavy impacts on the Britt Road and Dike Road which flow from closing the Hickox crossing are avoided. The City of Mount Vernon plans for developing the urban growth area North of Hickox Road are preserved under this alternative.

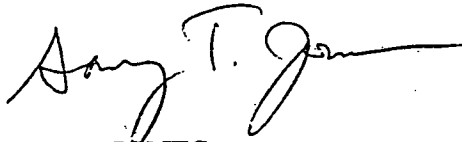
The report fails to explain why the particular length of siding is demanded. Is there an alternative which allows the track to be improved up to but not across the Hickox Road? Trains in the range of 100 cars can be held by lengthening the second track from Pedersen Road to Hickox Road, without closing the crossing at Hickox Road. A rough estimate would be 1-½ miles of available siding without impacting the intersection at Blackburn and the intersection of Hickox and the railroad tracks.

In summary, the rail transportation planning would fit better with the surface transportation needs if the Hickox Road were left open as a connection between the east and west sides of Interstate 5. Any alternative which closes the Hickox Road will have substantial impacts on

agriculture, future development of Mount Vernon, and on the present residents of rural Skagit County, especially those on the west side of the Burlington Northern Santa Fe rail line which would be closed by this proposed action.

Respectfully yours,

JONES & SMITH

A handwritten signature in black ink, appearing to read "Gary T. Jones". The signature is fluid and cursive, with a long horizontal line extending to the right.

GARY T. JONES
GTJ/lfd

cc: Garry Struthers Associates Inc.
Attn: Gary A. Norris, P.E.
3150 Richards Road, Suite 100
Bellevue, WA 98005-4446
email: garyn@gsassoc-inc.com

Richard Smith

EXHIBIT 4

BEFORE THE THE WASHINGTON UTILITIES TRANSPORTATION COMMISSION

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

I, Glenn Brautaset, do hereby declare the following:

1. That I am the Assistant Fire Chief employed by the City of Mount Vernon's Fire Department.
I have been employed by the City for a period of six years and do hereby make this declaration in that capacity.
2. That my duties as Assistant Fire Chief for the City of Mount Vernon include acting as Director of the Fire Department in the absence or unavailability of the Fire Chief or Chief of Operations/Training; acting as incident commander or other ICS roles as required; acting as the Emergency Manager for the City during flood fight and/or other emergency situations.
3. That specific job duties performed while acting under the above titles include:
 - a) developing, implementing and managing a comprehensive fire prevention program that includes fire and life safety inspections of all commercial, industrial, institutional, multi-family, education and public assembly occupations to insure compliance with applicable Federal, State, and Local fire and life safety laws and regulations; developing, implementing and managing a comprehensive and effective community fire and life safety program;

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

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

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

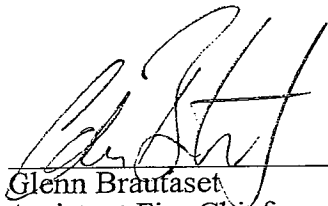
4. That it is my opinion that emergency services to the South Mount Vernon area will be decreased if the Hickox Railroad crossing is removed and will significantly and adversely affect the provisions of fire services in the area.
5. That the City of Mount Vernon relies heavily on mutual aid from Skagit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

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

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

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

DATED this day of August 28, 2007.



Glenn Braufaset
Assistant Fire Chief
for the City of Mount Vernon

City of Mount Vernon
Location Where Declaration Made

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY)	Docket No. 070696
PETITIONER,	)	DECLARATION OF DAVID SKRINDE
vs.)	
THE COUNTY OF SKAGIT)	
RESPONDENT)	

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

1. I, David Skrinde am a Chief of Skagit County Fire Protection District No. 3.
2. Skagit County Fire Protection District No. 3 is an all-volunteer fire district whose volunteers respond out of two stations, Cedardale and Conway.
3. Prior to the completion of the final *Hickox Road Railway Crossing Closure Traffic Impact Analysis "WSDOT Study"* dated January 2007, the District provided a

DECLARATION OF DAVID SKRINDE- 1

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

- 5
- 6 4. Despite this information, the *WSDOT Study* understates the impact of the closure on
7 fire protection and emergency medical services by referencing only a .6 minute
8 increase in response time with no explanation of how this conclusion was derived.
- 9
- 10 5. Subsequent to preparing the Response Time Summary, the Fire District, on May 14,
11 2007, had a typical fire response in the area affected by the closure. The information
12 contained in Exhibit A and the actual response times from the May 14th incident are
13 summarized in the following tables:
14

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

17 Responding Station	18 Distance/Driving Time to Dike Road S Curves <i>Hickox Road Open</i>	19 Distance/Driving Time to Dike Road S. Curves <i>Hickox Road Closed</i>	20 Distance/Driving Time Increase
21 Cedardale	22 3.2 miles/ 4.5 minutes	23 Via Blackburn Road 4.4 Miles/9 minutes	24 1.2 miles/ 4.5 minutes
25 Cedardale	26 3.2 miles/4.5 minutes	Via Stackpole Road 5.2 miles/9 minutes	2 miles/ 4.5 minutes
Conway	4.5 miles/ 8 minutes	No Change	1.3 miles 3.5 minutes

DECLARATION OF DAVID SKRINDE2

SNURE LAW OFFICE, P.S.C.
612 SOUTH 227TH STREET
DES MOINES, WASHINGTON 98198

(206) 824-5630
Fax: (206) 824-9096

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TABLE 2

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

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

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

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

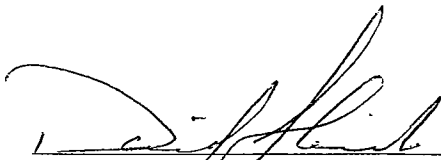
a. A closure of Hickox Road will increase farm machinery traffic on Dike Road and Stackpole Road which will potentially further reduce response times from the current Conway Station.

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

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

Dated: 8/28/07.



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

DECLARATION OF DAVID SKRINDE4

SNURE LAW OFFICE, PSC.
612 SOUTH 227TH STREET
DES MOINES, WASHINGTON 98198

(206) 824-5630
Fax: (206) 824-9096

Response Time Summary
Hickox Rd Closure Study

Station 1 (Conway)

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

Station 2 (Cedardale)

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

Results:

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

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

Respectfully submitted,

Chief David Skrinde

EXHIBIT A

DECLARATION OF DAVID SKRINDE⁵

SNURE LAW OFFICE, P.S.C.
612 SOUTH 227TH STREET
DES MOINES, WASHINGTON 98198

(206) 824-5630
Fax: (206) 824-9096

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

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

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

1. I make this declaration based on my personal knowledge.
2. I have lived more than 60 years in the area between Conway and Mount Vernon. My family has been engaged in agriculture, including dairy farming and crop farming. I currently reside at 18385 Torset Road, Mount Vernon, Washington 98273.
3. For more than 15 years I have been a Commissioner of Skagit County Diking District No. 3 which has responsibility for the levee along the Skagit River main stem and South Fork on the left bank of the river. This levee protects downtown Mount Vernon and the land on

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

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

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

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

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

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

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

DATED this 28 day of August 2007.

SKAGIT COUNTY DIKING DISTRICT NO. 3

By: David J. Olson
DAVID OLSON, Chair

SECTION II

MULTI-JURISDICTIONAL HAZARD IDENTIFICATION

NOTE:

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

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

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

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

FLOOD

DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND INFORMATION:

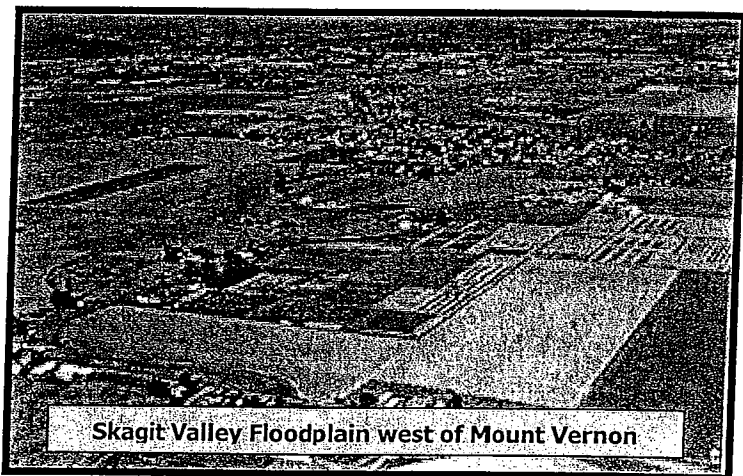
Except severe storms, floods are the most common of natural disasters that occur in Skagit County; the Federal Emergency Management Agency (FEMA) considers the Skagit River “potentially the most damaging river in the state”.

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

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

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

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



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

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

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

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

Dam Construction and Related Flood Control Storage Requirements (Information obtained from Seattle City Light, Puget Sound Energy, and U.S.A.C.E.)	
Year	Significant Construction or Flood Control Event
1924	Low Gorge Dam completed
1925	Lower Baker Dam completed
1929	Diablo Dam completed
1940	Ross Dam (1 st step) completed
1946	Ross Dam (2 nd step) completed
1949	Ross Dam (3 rd step) completed
1954	120,000 acre-feet of flood storage required in Ross Reservoir by FERC license
1956	16,000 acre-feet of flood storage required in Upper Baker Reservoir by FERC license
1959	Upper Baker Dam completed
1961	High Gorge Dam completed
1977	58,000 acre-feet of flood storage in Upper Baker Reservoir authorized by Congress

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

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

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

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

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

HISTORY:

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

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

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

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

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

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

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

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

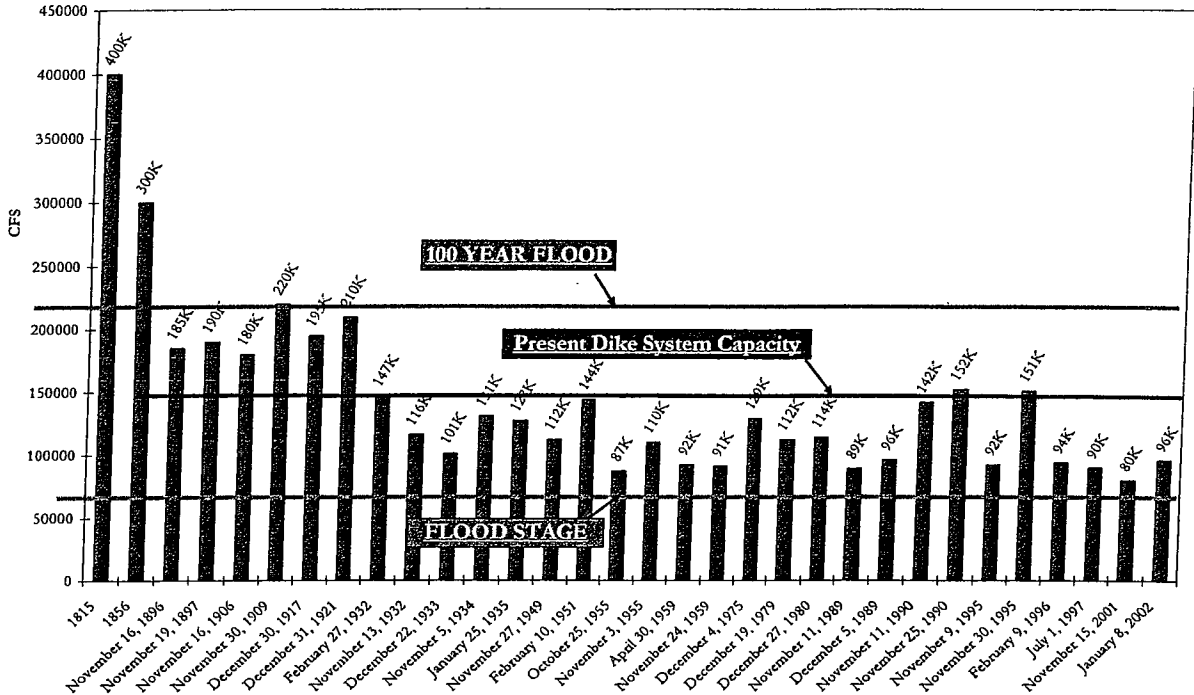
The City of Mount Vernon, the City of Burlington, and other areas within the floodplain were saved from serious flooding only because of an extensive and organized flood-fight effort carried out by the Skagit County Public Works Department, the United States Army Corps of Engineers, numerous local dike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

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



SKAGIT RIVER RECORDED DISCHARGES

1815 TO 2002



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

Recent Skagit River Flood Events Resulting in Presidential Disaster Declaration				
<i>(Information obtained from Skagit County Department of Emergency Management files)</i>				
Incident Date	Disaster Number	Concrete Gauge	Maximum Flow (cubic feet/second)	Estimated Damage
Dec. 1975	492	35.6 Feet	129,000 cf/s	\$365,808
Dec. 1979	612	34.0 Feet	112,000 cf/s	\$3,341,000
Nov. 1990	883	40.2 Feet	142,000 cf/s	\$36,381,228
Nov. 1990	883	39.89 Feet	152,000 cf/s	(for both events)
Nov. 1995	1079	39.34 Feet	92,000 cf/s	\$14,539,982
Nov. 1995	1079	41.57 Feet	151,000 cf/s	(for both events)
Feb. 1996	1100	32.11 Feet	94,000 cf/s	\$1,167,783

NOTE:

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

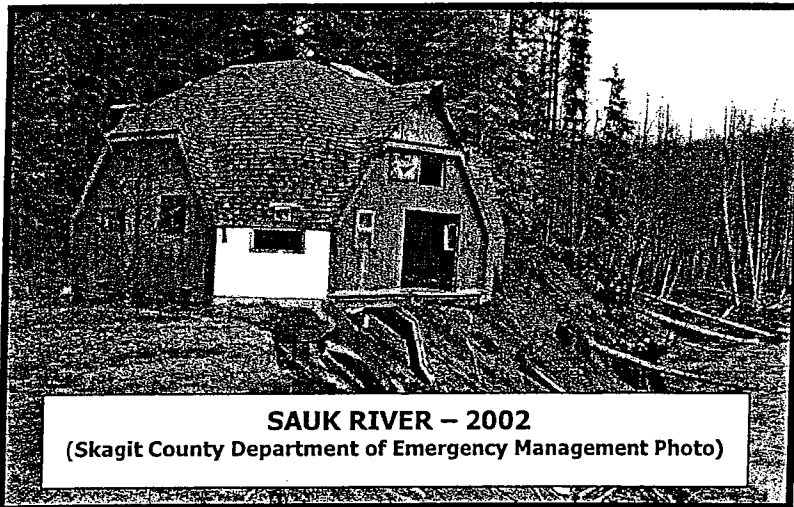
HAZARD IDENTIFICATION:

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

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

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

While the Skagit River poses a major flood threat in the lower valley, the Sauk River and Suiattle River (located in the upper valley) also pose a significant threat of their own. These streams do not have levee systems and have a history of changing their channels and eroding their banks during flood events. Because of the *WILD AND SCENIC RIVER* designation, government entities



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

and private property owners are not allowed to place rip-rap or any other type of material along these river banks to mitigate these channel changes and bank erosion. In areas where erosion is severe or drastic channel changes occur, homes and property are many times simply "lost" to the river.

The severity of flood damage is dependent upon ground elevation, the surrounding topography, peak flow volumes, surface flow velocities, and

proximity to the river or a levee break. Major channel changes are usually associated with high flow volumes, especially in areas characterized by flat, broad floodplains such as the lower Skagit Valley.

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

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

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

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

- The Anacortes Water Treatment Plant could be inoperable for up to 45 days or perhaps longer. This facility serves the City of Anacortes, the Town of La Conner, portions of Fidalgo Island, as well as the Shell and Tesoro refineries in addition to the City of Oak Harbor and Naval Air Station Whidbey Island located in Island County.
- All municipal wastewater treatment facilities as well as major storm water pumping systems could be inoperable for up to 45 days of perhaps longer.
- The economy of the entire county could be devastated. According to United States Army Corp of Engineers estimates, damages could exceed \$1 billion dollars locally per 100-year flood event. Road, railroad and pipeline transportation to the refineries would be in jeopardy forcing shutdowns for an industry employing more than 800 workers with annual payrolls exceeding \$57 million and thousands of people would possibly be unable to commute from their homes to work. According to the Washington State Office of Trade and Economic Development, exports to Canada are worth approximately \$6.6 billion and overland imports exceed \$14.3 billion annually; approximately 95% of all commercial goods between British Columbia and Washington are shipped overland, most of them via the I-5 corridor.
- In general, a 100-year flood event would create a wide variety of problems very similar to a large, damage-causing earthquake. Transportation routes and utilities will be greatly affected, local first response agencies will be totally overwhelmed and many personnel may not be able to report for duty as they may be personally affected by the incident and many shelter sites will be unusable due to their location in the floodplain. Health and environmental issues will result due to contaminated floodwaters, contaminated wells, hazardous materials and farm chemicals released into floodwaters, and dead animals.
- Evacuation efforts throughout the floodplain will require special considerations due to the fact that large numbers of dairy cattle will need to be evacuated from numerous

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

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

VULNERABILITY ASSESSMENT:

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

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

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

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

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

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

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

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

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

PROBABLITY AND RISK:

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

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

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

CONCLUSION:

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

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

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

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

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

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

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

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

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

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

EXHIBIT 8

TR-070696 (P)



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

RECEIVED
RECORDS MANAGEMENT

07 APR 11 AM 11:48

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

April 9, 2007

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

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

Dear Ms. Hunter:

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

Please let us know if you require any additional information.

Thank you.

Sincerely,

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

.....

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

<u>BNSF RAILWAY COMPANY</u>	
Petitioner	
<u>2454 Occidental Ave. South, Suite 1A</u>	
P.O. Box	Street
<u>Seattle, WA</u>	<u>98134</u>
City	ZIP Code

INTERROGATORIES

1.

State name of highway and railway at crossing intersection:

Existing highway Hickox Road

Existing railway The BNSF Railway Company

State Crossing No: 084 737D

Located in the ___ 1/4 of the ___ 1/4 of Sec. 06, Twp. 33, Range 04 W.M.

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

City: Mount Vernon

County: Skagit

2.

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

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

Average Daily Traffic over the tracks: 391 AADT

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

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

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

Average Daily Train Traffic: 17

3.

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

- 1) Safety – Elimination of this crossing will improve the safety of the highway and railway system as it removes the potential modal conflict point from both systems. As part of the crossing closure plan, petitioner also provides to signalize the passive crossing at Stackpole Rd. This upgrade will improve the safety measurement of the alternate access.
- 2) Redundancy - Hickox Road is a redundant crossing. There are two existing alternate accesses to the area located beyond the existing crossing. In specifics, Stackpole Rd is about 1 mile south and Blackburn Rd is 1.5 miles north to the crossing in subject. The extra mileage for the crossing users to take is negligible if the alternate accesses would be used. See Section 4.3, list of extra mileage to different destinations via alternate routes.

- 3) Impact on Passenger Operations – Hickcox Road is located within the proposed expansion of the Mt. Vernon Siding. This expansion is part of the State of Washington’s Passenger Rail Program. Removal of this crossing will allow construction of the project as set forth by the legislature. Passenger Rail operations and reliability will be improved by the removal of this crossing and the improvement of the Mt. Vernon Siding.
- 4) Recommended by WSDOT’s Study -The traffic impact study of Hickcox Rd crossing closure, which is sponsored by Washington State Department of Transportation, recommends closing the crossing. See “Hickcox Road Railway Crossing Closure Traffic Impact Analysis”

4.

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

- 1) West side of the Hickcox Road crossing,:
The west end of Hickcox Rd intersects with Dike Rd. The distance between Dike Rd intersection and the railroad crossing in subject is about 0.8 mile. Most of this area is farmer land. There are 12 homes and no merchants in this area.
- 2) East side of the Hickcox Rd crossing:
Hickcox Rd intersects with Old HWY 99 at about 0.1 mile east of the railway crossing in subject, and is dead-ended at about 0.15 mile east of the Old HWY 99 intersection. There are several businesses along Hickcox Rd at the east side of Old HWY 99, including Carpenter Training Center, PAPE Machinery and Timberland Homes.
- 3) The Distance from the Hickcox Crossing to Different Destinations:

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

5.

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

- 1) W Stackpole Road is the nearest alternate access that is 1 mile to the south of the Hickox Road crossing.
- 2) Blackburn Road is another alternate access that is 1.5 miles to the north of Hickox Road.

6.

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

Parcel # P29327

Owner Info

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

Parcel # P16426

Owner Info

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

Parcel # P29326

Owner Info

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

Parcel # P16410

Owner Info

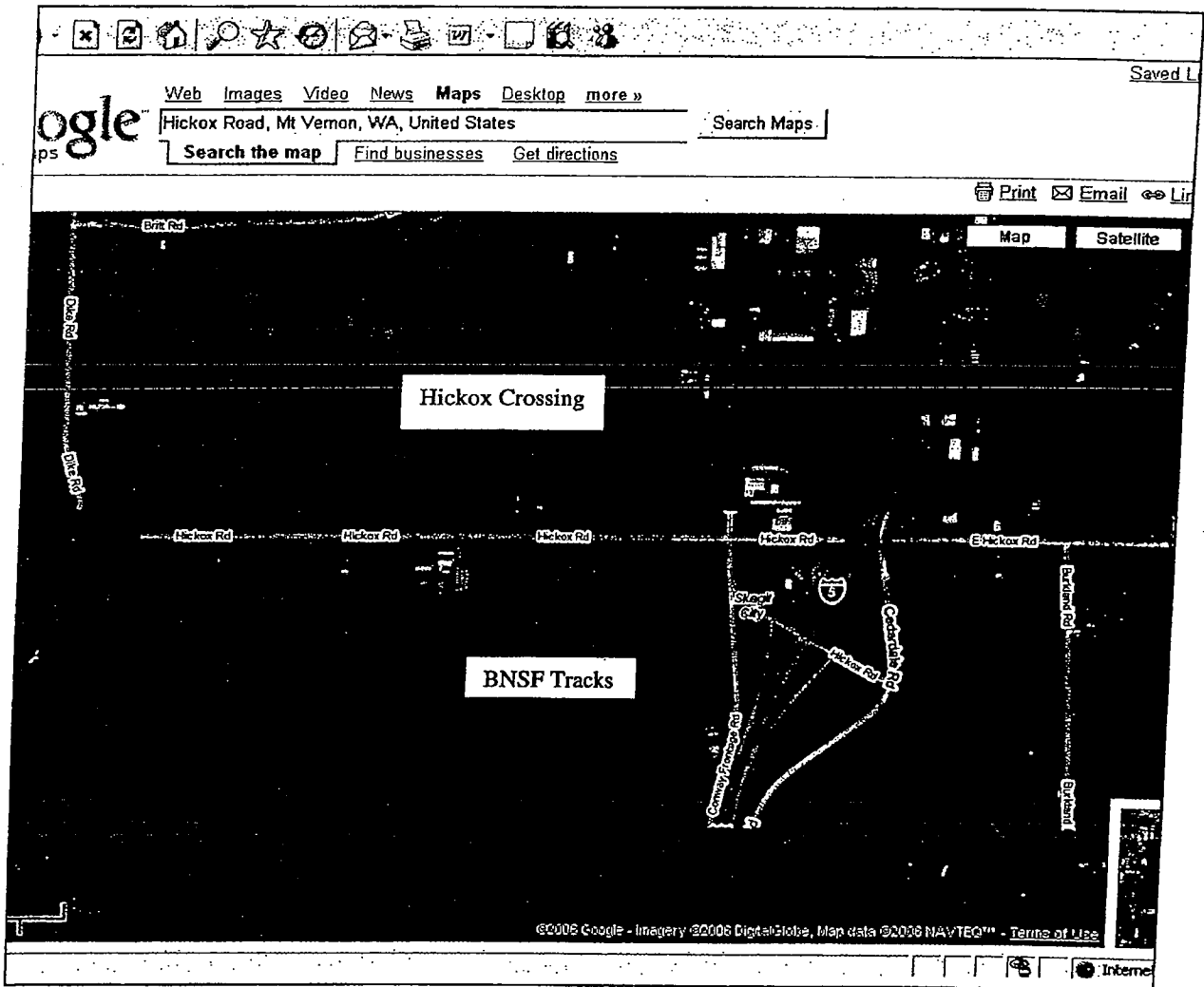
PEDROZA RODOLFO
18764 HICKOX RD
Mount Vernon, Wa 98273

Parcel # P16411

Owner Info

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

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



(Source: Google Map)

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



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

WAIVER OF HEARING BY RESPONDENT

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

Dated at _____, Washington, on the _____ day of _____, 2006.

Respondent

By: _____

INSTRUCTIONS

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

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

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

- (1) notice of the filing of the petition is posted at, or as near practical to, the crossing.
- (2) notice of the filing of the petition is published once in some newspaper of general circulation in the community or area where such crossing is situated, which publication shall appear within the same week that the notice referred to in (1) above is posted; and
- (3) no objections are received by the Commission within twenty days from the date of the publication of the notice.

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

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

EXHIBIT 9

DETERMINATION OF NONSIGNIFICANCE

Description of proposal:

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

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

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

Proponent:

Washington State Department of Transportation (WSDOT)

Location of proposal, including street address, if any:

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

Lead agency:

Washington State Department of Transportation (WSDOT)

For engineering questions, please contact:

Kevin Jeffers, P.E., Rail Projects Engineer

WSDOT Rail Office

PO Box 47407

Olympia WA 98504-7407

360-705-7982; jefferk@wsdot.wa.gov

For environmental questions, please contact:

Elizabeth Phinney, Rail Environmental Coordinator

WSDOT Rail Office

PO Box 47407

Olympia WA 98504-7407

360-705-7902; phinnee@wsdot.wa.gov

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

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

Comments must be submitted by March 6, 2007.

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

Responsible official: Kenneth M. Uznanski, Jr.

Position/title: Manager, WSDOT Rail Office

Phone: 360-705-7905

Address: PO Box 47407
Olympia WA 98504-7407

Date: 02/16/07 **Signature:** 

**SEPA
ENVIRONMENTAL CHECKLIST**

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

Prepared by:

Washington State Department of Transportation

February 2007

**SEPA
ENVIRONMENTAL CHECKLIST**

A. BACKGROUND

1. Name of proposed project, if applicable:

Mount Vernon Siding Extension Project

2. Name of applicant:

Washington State Department of Transportation (WSDOT)

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

Applicant

Washington State Department of Transportation
Rail Office
310 Maple Park Avenue SE
PO Box 47407
Olympia WA 98504-7407

Contact

Kevin Jeffers, P.E.
360-705-7982
or
Elizabeth Phinney
360-705-7902

4. Date checklist prepared:

February 2007

5. Agency requesting checklist:

Washington State Department of Transportation

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

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

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

No.

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

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

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

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

No.

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

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

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

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

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

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

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

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

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

B. ENVIRONMENTAL ELEMENTS

1. Earth

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

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

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

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

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

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

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

No.

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

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

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

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

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

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

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

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

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

2. Air

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

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

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

No.

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

Dust will be controlled, as needed, using water.

3. Water

- a. Surface:**

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

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

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

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

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

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

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

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

No surface water withdrawals or diversions will be required.

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

The historic floodplain in this location lies behind a dike.

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

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

b. Ground:

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

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

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

There will be no waste discharged to ground water.

c. Water Runoff (including storm water):

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

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

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

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

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

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

4. Plants

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

- shrubs
- grasses
- blackberries
- trees

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

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

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

None.

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

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

5. Animals

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

- songbirds
- mice

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

None.

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

No.

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

No impacts are anticipated; thus no measures are proposed.

6. Energy and Natural Resources

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

heating, manufacturing, etc.

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

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

No.

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

Does not apply.

7. Environmental Health

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

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

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

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

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

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

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

b. Noise

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

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

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

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

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

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

None are proposed.

8. Land and Shoreline Use

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

The site is currently used as a railroad corridor.

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

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

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

c. Describe any structures on the site.

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

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

No.

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

Established Rail Corridor for roughly 100 years.

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

Established Rail Corridor for roughly 100 years.

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

Does not apply.

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

No.

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

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

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

None.

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

No measures are needed.

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

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

9. Housing

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

None.

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

- c. **Proposed measures to reduce or control housing impacts, if any:**
None are proposed.

10. Aesthetics

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

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

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

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

- c. **Proposed measures to reduce or control aesthetic impacts, if any:**
None will be needed.

11. Light and Glare

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

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

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

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

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

None.

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

None are needed.

12. Recreation

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

None.

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

No.

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

None.

13. Historic and Cultural Preservation

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

No.

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

None.

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

Not applicable because there are no impacts.

14. Transportation

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

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

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

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

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

No.

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

None.

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

No new roads or streets are proposed.

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

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

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

No impacts to vehicular traffic are anticipated.

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

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

15. Public Services

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

No.

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

None are proposed.

16. Utilities

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

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

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

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

C. SIGNATURE

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

Signature:

Kenneth M. Yranski

Date Submitted:

02/16/07

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

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

May 10, 2007

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

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

Dear Ms. Washburn:

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

- Hickox Road offers important safety and economic benefits to the residents and businesses in the area. Residential access to fire and emergency medical services would be detrimentally impacted by the proposed closure. While we desire improved passenger and freight rail service, absent effective mitigation of these concerns, we oppose this closure.
- In addition, closure of the crossing precludes expansion of Hickox in the future. A current WSDOT operational analysis of I-5 is examining at what point a full interchange at Hickox Road might make operational sense. Closure would add to the public cost of such a future improvement by preventing the need for the BN Railroad to participate financially, and it would reduce the benefit of the interchange to transportation by blocking westerly access.
- The importance of the rail crossing will continue to increase with growth pressure. For example, the City of Mount Vernon has analyzed the buildable lands in its urban growth area (UGA) and identified an important need for an additional 800 acres of commercial land during the next twenty years. There are only two feasible regions to locate this added commercial land—in the river bend area and/or in South Mount Vernon. Additional commercial land in South Mount Vernon would greatly increase the need for the rail crossing to remain open at Hickox Road.

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

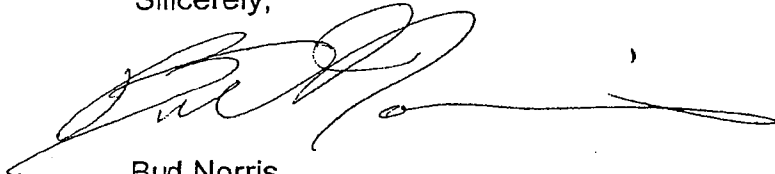
For the above reasons, the proposed closure would (1) reduce access across the railroad for traffic, emergency vehicles and school buses in South Mount Vernon, (2) limit traffic options for the existing transportation grid, and (3) reduce the ease with which Mount Vernon can attract needed commercial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

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

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

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bud Norris', with a long horizontal flourish extending to the right.

Bud Norris
Mayor

City of

Mount Vernon

Public Works Department

1024 Cleveland Avenue
Post Office Box 809
Mount Vernon, WA 98273

Phone (360) 336-6204
FAX (360) 336-6299
E-Mail: mvengineering@ci.mount-vernon.wa.us
www.ci.mount-vernon.wa.us

June 30, 2006

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

RE: Draft Hickox Road Report

Dear Mr. Schultz:

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

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

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

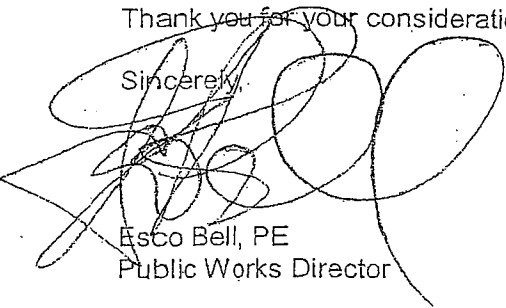
Secondly, the City has analyzed the buildable lands in its urban growth area (UGA) and identified an important need for an additional 800 acres of commercial land during the next twenty years. There are only two feasible regions to locate this added commercial land—in the river bend area and/or in South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

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

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

Thank you for your consideration.

Sincerely,



Esco Bell, PE
Public Works Director



BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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

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

1. I make this declaration based on my personal knowledge.
2. I reside at 16965 Britt Road, Mount Vernon, Washington 98273.
3. On adjoining land I operate an agricultural hauling business which serves the Mount Vernon area. We have three trucks that are hauling products such as potatoes, fertilizer, grain and other farm products.
4. Our trucks frequently cross the Hickox Road-Burlington Northern Santa Fe Railroad intersection. During potato harvest this could be twelve times per day per truck.

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


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

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

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

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

DATED this 28 day of August 2007.


JOHN DEVLIEGER

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,
Petitioner

vs.

CITY OF MOUNT VERNON,
Respondent

And

SKAGIT COUNTY, WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,
WEST VALLEY FARMS LLC, and SKAGIT
COUNTY,
Intervenors.

DOCKET NO. TR-070696

**DECLARATION OF KEVIN L.
ROGERSON IN SUPPORT OF
DISPOSITIVE MOTION FOR
PARTIAL SUMMARY JUDGMENT
AND MOTION IN LIMINT**

I, Kevin L. Rogerson, declare as follows:

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

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

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

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

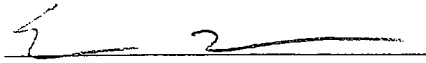
15 4. That, on August 24th, 2007, the City received environmental documents involved in
16 WSDOT's DNS determination of the Project.

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

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

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

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

25 
26 Kevin Rogerson, WSBA#31664

35 Wn.2d 247, THE DEPARTMENT OF TRANSPORTATION et al., Appellants, v. SNOHOMISH COUNTY et al., Respondents

[No. 30835. En Banc. Supreme Court December 14, 1949.]

THE DEPARTMENT OF TRANSPORTATION et al., Appellants, v. SNOHOMISH COUNTY et al., Respondents.«1»

[1] PUBLIC SERVICE COMMISSIONS - RAILROADS - CLOSING GRADE CROSSINGS - ORDERS OF DEPARTMENT - APPEAL - COST BOND. A review of an order of the department of transportation closing a railroad grade crossing is governed by Rem. Rev. Stat. (Sup.), § 10523, relating to railroad and highway crossings and providing that orders of the public service commission may be reviewed in the superior court of the county wherein the crossing involved is situated, which statute does not require that a bond for costs be filed when petition is made for such review; therefore, the superior court of the proper county had jurisdiction to review such an order where no cost bond was filed with the petition for review.

[2] APPEAL AND ERROR - REVIEW - EXTENT DEPENDENT ON NATURE OF CASE - RULINGS OF ADMINISTRATIVE BOARDS - FINDINGS. On appeal from a judgment reversing an order of the department of transportation closing a grade crossing, the supreme court is not required to give the findings of the trial court the same weight as it ordinarily gives when a case is tried before the court without a jury and the trial court sees and hears the witnesses; since the trial court reached its conclusions from a transcript of the oral evidence and the exhibits submitted at the departmental hearing, and the supreme court, in that respect, is in the same position as was the trial court.

[3] PUBLIC SERVICE COMMISSIONS - RAILROADS - CLOSING GRADE CROSSINGS - ORDERS OF DEPARTMENT - APPEAL - SCOPE OF REVIEW. Upon an application to close a grade crossing to vehicular traffic, the findings of the department of transportation upon the facts will not be disturbed on appeal unless they show evidence of arbitrariness or disregard of the testimony or the material rights of the parties; and held in this case that the department fully considered the testimony and exercised its honest judgment in ordering the grade crossing closed, and that its order should not be disturbed.

SIMPSON, C. J., dissents.

Appeal from a judgment of the superior court for Snohomish county, Olson, J., entered October 1, 1948, reversing an order of the department of transportation closing a grade crossing. Reversed.

The Attorney General, John Lindberg, and Phil H. Gallagher, Assistants, for appellant department of transportation.

«1» Reported in 212 P. (2d) 829.

[3] 42 Am. Jur. 490.

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Thomas Balmer, A. J. Clynch, and R. Paul Tjossem, for appellant Great Northern Railway Company.

Little, Leader, LeSourd & Palmer, for respondents.

ROBINSON, J. -

On March 17, 1947, the director of the department of transportation of the state of Washington made an order closing the grade crossing of Park avenue in the town of Mukilteo, in Snohomish county, to vehicular traffic over the tracks of the Great Northern Railway Company. The superior court of Washington, for Snohomish county, issued a writ of review. In response to the writ, the department certified to the court a transcript of oral testimony, taken at a hearing conducted by it prior to the making of an order; also, the exhibits introduced in evidence, its findings of fact, and the closure order of March 17. After considering the oral testimony given at the departmental hearing and the exhibits then introduced, the superior court made findings of fact and conclusions of law, and entered a judgment reversing the order made by the department of transportation and directing it to dismiss the petition of the Great Northern Railway Company and enter an order directing the company forthwith to reopen the grade crossing to vehicular traffic. The department and railway company have appealed from that

judgment.

[1] Before considering this appeal on the merits, we must pass upon the contention made by the appellants in their opening brief that the superior court did not have jurisdiction to review the order of the department. That contention seems to be made upon the theory that the review of the closure order of the department of transportation was, in effect, an action against the state of Washington and governed by Rem. Rev. Stat., § 886 [P.P.C. § 933-1]. In the actions therein provided for, the plaintiff is required to file a surety bond to indemnify the state as to costs, and no such bond was filed in this cause. However, we think that the review of the departmental order sought in this proceeding was applied for pursuant to Rem. Rev. Stat. (Sup.), § 10523 [P.P.C. § 824-21], Laws of 1937, chapter 22, Railroad and

Dec. 1949] DEPT. OF TRANS. v. SNOHOMISH CO. 249

Highway Crossings, pp. 59-60, § 6, wherein it is provided that orders of the public service commission may be reviewed in the superior court of the county wherein the crossing involved is situated. However, there is no provision that a bond for costs shall be required in petitioning for such a review.

The order involved in this case was not, strictly speaking, made by the public service commission but by a division of the department of public works which succeeded to the powers and duties of the public service commission and is itself composed of three divisions, (1) "the division of transportation," (2) "the division of public utilities," and (3) "the division of highways." Rem. Rev. Stat., § 10779 [P.P.C. § 239-1], Laws of 1921, chapter 7, § 21, p. 18. The order which was reviewed by the superior court of Snohomish county was issued by the department of transportation, which will hereinafter be referred to as the department. Since the order involved a crossing situated in Snohomish county, we hold the superior court of that county had jurisdiction to review it, although no cost bond was filed with the petition for review.

By virtue of Rem. Rev. Stat. (Sup.), § 10523, Laws of 1937, chapter 22, § 6, p. 59, the superior court, in making such a review, is authorized to consider the reasonableness and lawfulness of the order under review, and the statute also authorizes the appeal to this court from the judgment entered on review.

[2] We will, therefore, consider this matter on the merits. In so doing, we will keep in mind that the trial court was also a reviewing court and, as such, did not see the witnesses or hear them testify, and had to reach its conclusions from a transcript of the oral evidence given at the departmental hearing and the exhibits submitted therein. We also must review the judgment appealed from upon the same evidence and exhibits, and are, therefore, not required to give the findings of the trial court the same weight which we ordinarily give when a case is tried before the court without a jury and the trial court sees and hears the witnesses.

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Laws of 1937, chapter 22, p. 50, is an act of which the short title is: "Railroad and Highway Crossings." By § 2 of that act, currently codified as Rem. Rev. Stat. (Sup.), § 10514 [P.P.C. § 824-7], the legislature delegated very wide powers to the public service commission with regard to railroad and highway crossings, and those powers are now vested in the department of transportation. The department is authorized to establish under crossings or grade crossings, or to change the location of an existing highway or crossing, or to cause the closing or discontinuance of an existing highway crossing and divert the travel thereon to another highway or crossing, or, if not practicable, to change such crossing from grade, or to close and discontinue the crossing and open an additional crossing for the partial diversion of travel; and these powers are now vested in the department of transportation. In short, the department is given wide powers to rearrange the traffic over or under railways by closing certain crossings and opening others, and may even change the locations of the highways themselves.

When an application is made to the department to close a grade crossing, as was done in this matter,

the department is required to fix a time and place of hearing and give notice to all parties who may be presumed to be affected thereby. After the hearing, the department must make and file its written findings of fact concerning the matters inquired into and enter its order based thereon, specifying any changes to be made by way of closing the grade crossing or establishing an under crossing or over crossing at the grade crossing, or the highway may be closed at the crossing point and the travel diverted through another channel. The whole purpose of § 2 of the railroad and highway crossing act (Laws of 1937, chapter 22, p. 50; Rem. Rev. Stat. (Sup.), § 10514) is to promote the public safety. In enacting it, the legislature was merely reaffirming a long-established legislative policy.

In *Reines v. Chicago, M., St. P. & Pac. R. Co.*, 195 Wash. 146, 150, 80 P. (2d) 406, a case decided in 1938, this court said, in part:

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"The statute law of this state relating to grade crossings has for many years been based upon the theory that all grade crossings are dangerous, and administrative commissions have existed for many years with extensive powers of regulation. As early as 1909 an act was passed providing that all railroads, or extensions thereof thereafter constructed should cross all existing railroads and highways by passing under or over, unless authorized to do otherwise by consent of the railroad commission. Laws of 1909, chapter 162, p. 618. Subsequent legislation provided that towns and counties or the state highway commissioner might, upon allegations that the public safety required it, petition for the elimination of existing grade crossings and a substitution of under or over crossings, and provided for the machinery for carrying that purpose into effect, including the right of eminent domain. Laws of 1913, chapter 30, p. 74; Laws of 1921, chapter 138, p. 494.

"Ever since 1909, the railroad commission, or the successor to its powers and duties, has had the power and duty to require any railroad to install and maintain proper signals, warnings, or other devices to warn and protect the public at any highway crossing. Rem. Rev. Stat., § 10513 [P.C. § 5640]. Additional and later legislation (1931) provides that railroads must install the sawbuck crossing signs, with the lettering 'Railroad Crossing,' at all grade crossings and 'additional safety devices and signs may be installed at any subsequent time when required by the department of public works.' Rem. Rev. Stat., § 6308-2 [P.C. § 2691-2], subd. (b)." (Italics ours.)

In the instant matter, the department strictly followed the procedure required by the statute. It fixed August 22, 1946, as the date of hearing. It served notice of the date and place of hearing on the petition, and also gave notice of the time and place of hearing to the commissioners of Snohomish county, and posted such notices at several places in the county. It further published notices in the *Everett Daily Herald*, and otherwise notified a number of persons known to be interested in the matter. Many of the residents of Mukilteo and its environs appeared at the hearing, as well as a number of persons from other parts of the county, including Everett. All persons in attendance, who desired to testify, were permitted to do so. Nineteen testified, and a

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stenographic record was made of their testimony. That record and eleven exhibits introduced at the hearing were before the trial court on review, and are, of course, a part of the record before us.

On March 17, 1947, the department filed comprehensive findings of fact, to which was appended the following order:

"WHEREFORE, IT IS ORDERED That the Park Avenue crossing be, and the same hereby is, closed to vehicular traffic.

"IT IS FURTHER ORDERED That the Great Northern Railway Company take such steps as are necessary to accomplish this closure.

"Dated at Olympia, Washington, March 17, 1947 and effective five days after date.

"DEPARTMENT OF TRANSPORTATION OF WASHINGTON
PAUL REVELLE
Director"

The department entered comprehensive findings of fact, and, in so doing, gave a thorough description of the physical features involved and a careful digest of the evidence given at the trial. Because of the length of these findings, we cannot fully state them in this opinion. However, we think a partial quotation from them should be included, as follows:

"Mukilteo is an unincorporated community located on Possession Sound between Seattle and Everett. The tracks of the Great Northern Company pass through Mukilteo in a general easterly-westerly direction. Park Avenue in Mukilteo crosses these tracks in a general northerly-southerly direction. At this crossing there are two main line tracks, a passing track and another track leading to a switch going to the government holdings on a dock located in Mukilteo. It is this crossing which the railway company is seeking to close.

"Approximately 500 feet west of this crossing is located a highway overpass. This overpass was built by the State Department of Highways as a Federal Aid project. Prior to the time this overpass was completed in 1941, Park Avenue was the only means of getting from the north part of Mukilteo to the south part of Mukilteo. During part of the war years the Park Avenue crossing was closed to vehicular traffic at the request of the U. S. Army. Secondary State Highway 1-I runs from a point between Everett and Seattle on U. S. Highway 99 to and across the above mentioned

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overpass. At Second Street in Mukilteo an extension of Highway 1-I goes in an easterly-westerly direction to Park Avenue, turns north for one block on Park, and at a point approximately 1/2 block south of the crossing turns in an easterly direction to Everett. Those persons desiring to travel between Everett and Seattle may do so without crossing the railroad crossing herein involved. Persons traveling between Everett and Mukilteo via Highway 1-I may do so in one of two ways: They may either use Second Street and the over-crossing, or they may use the Park Avenue crossing.

"Park Avenue, north of the crossing, is approximately two blocks in length. Located upon the west side thereof are some of the community's principal businesses. Other businesses are located on Front Street which intersects Park Avenue two blocks north of the crossing; also on Front Street is located the ferry dock which is used by ferries operating between Mukilteo and Whidby Island. To the south of the crossing on Park Avenue is the fire station, the post office and other important portions of the community.

"No traffic count was made as to the amount of vehicular traffic crossing the railroad tracks; however, evidence was adduced as to the amount of train travel at the intersection. During the month of July, 1946, the schedule of the Great Northern Railway Company shows that 12 eastbound trains and 12 westbound trains are scheduled to cross the intersection each day. During the month of July, 246 eastbound passenger trains, and 129 eastbound freight trains crossed this intersection. During the same period of time, 236 westbound passenger trains, and 136 westbound freight trains crossed the intersection. The total number of trains, therefore, crossing Park Avenue during the month of July, 1946, was 747.

"The maximum permissible speed, as set by the railroad company, for passenger trains is 60 miles per hour, and for freight trains it is 50 miles per hour. Some of these trains go at the maximum speed at the crossings.

"No evidence was adduced by petitioner as to the fact of there ever having been any serious accidents

involving automobiles and trains at this crossing. On the other hand, evidence was given by persons who had lived in the vicinity for a number of years that there had been no serious accidents. In spite of this record of no serious accidents, however, the department specifically finds that the grade

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crossing of Park Avenue and the Great Northern Railway tracks in Mukilteo is an exceedingly dangerous crossing because of the following factors: the grade of Park Avenue south of the railway tracks which, particularly in icy or wet weather, could cause northbound motor vehicles to slide onto the tracks, or southbound vehicles to slide backwards onto the tracks, the poor visibility available to motorists approaching the tracks, the number of trains using the tracks, and the speed with which these trains travel over this crossing. It is to be noted here that Mukilteo is not an incorporated city or town; therefore, the railroad company is under no obligation to reduce the speed of its trains.

"Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and the necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition. A great deal of the evidence of various persons opposed to the closing of the crossing was directed to this proposition. As has been before stated in these findings, prior to the completion of the overpass west of the crossing, the crossing at Park Avenue was the only way in which persons could travel from one part of Mukilteo to the other. The overpass was constructed as a Federal Aid Project with the view of eliminating the crossing at Park Avenue. From all of the evidence it must be found that the overpass is not wide enough to allow free and unrestricted passage during seasons of the year when persons are traveling in great numbers upon the Mukilteo-Whidby Island Ferry. During the summer months, particularly on week-ends, it is very often the case that a line of cars is parked upon the overpass and on up the road beyond Fifth street, while other cars are moving from the ferry on to the overpass. As before stated the fire station for Mukilteo is located south of the railroad tracks, whereas a good portion of the business district is located north of the tracks. At the fire station is a pulmotor for use in resuscitating victims of drowning accidents. The beaches are also located north of the railroad tracks. It is possible with proper policing for fire equipment to use the overpass even during periods of great ferry travel. The cars coming off the ferry could be stopped and if the cars waiting to go onto the ferry were spaced so as to leave the access streets open and the center of the overpass open, the fire truck could proceed from the station on Second Street to the intersection of Second Street and the highway

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leading to the overpass, thence across the overpass, and thence to Front Street. A fire truck has the right of way in case of an emergency. If other users of the road traversed by the fire truck obey the law, there is access from the south side of the railway tracks to the north side. If other motorists disobey the law, and if they are not properly policed to provide sufficient space for the fire truck, the fire truck would have no way of going from the south portion of Mukilteo to the north portion. This department cannot make findings based upon the assumption that motorists will not obey the law. We must find, therefore, that the overpass provides access from the southern portion of Mukilteo to the northern portion for emergency vehicles. As to ordinary vehicular traffic, there is no great inconvenience in using the overcrossing rather than the grade crossing. The distance is not so great as to justify a finding that it would be not in the interest of the public to close the Park Avenue crossing to vehicular traffic.

"As to pedestrian traffic a different situation exists. To a pedestrian the greater distance which would have to be traversed in going from the south portion of Mukilteo to the north portion would be quite inconvenient. Furthermore, the matter of visibility at the crossing, and the grade of Park Avenue at the crossing would not be factors causing danger to pedestrians nor to the trains. The department specifically finds, therefore, that the public interest will not be served by closing the Park Avenue-Great Northern Railway crossing to pedestrian traffic.

"It is contended by residents of Mukilteo that the closing of this crossing would damage business

property due to the fact that the closing of the crossing would result in making the north portion of Park Avenue a dead end street. The department has no jurisdiction to consider damage to property as such. Other remedies may be provided by law to compensate owners for damage to property, if any. The department may only consider whether or not convenience and necessity justifies the closing of the crossing. It would be convenient for the residents of Mukilteo for this crossing to remain open. However, because of the overpass there is no necessity for it to remain open.

"No evidence was adduced as to whether or not an overpass or an underpass would be feasible at Park Avenue. Because of the grade of Park Avenue, it is obvious that a highway underpass would not be feasible. A highway overpass would probably do more damage to business and

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business property on Park Avenue than a complete closure because of the fact that the overpass would extend so far into the north portion of Park Avenue. No evidence was adduced as to whether improvements could be made to the existing crossing other than that some structures adjacent to the crossing could be removed. This would not, however, do away with the steep grade on the southerly portion of Park Avenue. As to installing signals or gates or having a watchman on duty at the crossing, signals are already in operation and neither a watchman nor gates would make this crossing safe, principally because of the steep grade of Park Avenue south of the crossing.

"Having considered all of the evidence adduced at this hearing, and having in mind that the general policy of the law of the State of Washington is against the establishment or maintenance of grade crossings, the department finds that public safety requires the closing to vehicular traffic of Park Avenue where it crosses at grade the Great Northern Railway tracks in the community of Mukilteo in Snohomish County."

Extensive as the above quotation of findings is, we have omitted a great part of the findings of fact, consisting largely of the data as to the distances from which drivers of vehicles approaching the crossing can see an approaching train or whether there is a train actually on the crossing.

In reviewing the findings entered by the department, the trial judge held that the department rightly found that the crossing was dangerous, but refused to concur with the departmental finding that it was exceedingly dangerous

Despite the fact that both the department and the reviewing court found from the evidence that the crossing was dangerous, the respondents insistently contend that the evidence did not so prove, basing that contention primarily upon the fact that there was un rebutted testimony to the effect that there had never been an accident at that crossing, although it had been a grade crossing for at least forty years. We are not impressed by that argument. A father, with knowledge that his ten-year-old son constantly attended the so-called western movies, would hardly be considered prudent if he persisted in permitting a loaded pistol to lie around the home, on the theory that there was

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no danger in so doing since the boy had not yet shot anyone while playing with it. In our opinion, the evidence primarily established that the crossing was potentially dangerous. That was the major point with which the department was concerned.

[3] As hitherto shown, many of our statutes are based upon the theory that all grade crossings are dangerous, and from time to time the power to close them has been delegated to various commissions, not to the courts. Furthermore, we have consistently held that the courts should not, without grave cause, interfere with the orders of such commissions, such as the public service commission, the department of public works, or the department of transportation. In *In re Stolting*, 131 Wash. 392, 230 Pac. 405, the court said:

"Time and again we have held that we will not interfere with the action of the department of public works on matters of this nature unless its members have acted unfairly, arbitrarily or in disregard of the testimony. [Citing a long list of cases.] There is nothing in this case to indicate that the department did not fully consider the testimony and honestly exercise its judgment. Such being the case, there is nothing for us to do but affirm the judgment, which is done."

The rule above quoted from the opinion in the Stolting case has since been consistently followed by this court. For example, in its opinion in Northern Pac. R. Co. v. Department of Public Works, 144 Wash. 47, 256 Pac. 333, the court said, in 1927, citing eight of its previous decisions:

"Lastly, it is contended that the findings of convenience and necessity are not supported by the evidence. The record shows that a large number of witnesses, well situated to speak upon the subject, testified to the contrary and with considerable detail showing convenience and necessity for the extension of service granted by the order. By a long line of decisions [citing cases], we have held that we will not interfere with the findings and action of the department of public works in matters of this kind, in the absence of a showing that the members of the department acted unfairly or arbitrarily and in disregard of the material rights of the parties interested. There is nothing here inconsistent

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with the view that the department fully considered the testimony in the case and under the law exercised its honest judgment in disposing of it."

In State ex rel. Model Water & Light Co. v. Department of Public Service, 199 Wash. 24, 90 P. (2d) 243, decided in 1939, the court said, citing eight former decisions as authority for the statement:

"The findings of the department are to be given the same weight accorded to any impartial tribunal, and may not be overturned unless the clear weight of the evidence is against its conclusions, or unless it has mistaken the law applicable to the matter adjudicated, or, as sometimes expressed, unless the findings show evidence of arbitrariness and disregard of the material rights of the parties to the controversy. [Citing cases.]"

In 1945, in its opinion in Taylor-Edwards Warehouse & Transfer Co. v. Department of Public Service, 22 Wn. (2d) 565, 157 P. (2d) 309, this court reaffirmed and stated the general rule by quotation from a former decision as follows:

"In any event, it cannot be said that the department, in denying appellant's application, acted arbitrarily, capriciously, or upon a fundamentally wrong basis.

"Unless we can say that the order of the commission is wrong in the sense that its discretion has been arbitrarily exercised, we must, under well settled rules, say that it is not to be overcome by judicial decree. To do so would be but to substitute our own will for that of the commission, and in so doing we would in all probability trench upon some equities while declaring others.' State ex rel. Tacoma Eastern R. Co. v. Northern Pac. R. Co., 104 Wash. 405, 413, 176 Pac. 539."

There can be no doubt but that the closing of the crossing caused the residents of Mukilteo considerable inconvenience, and that, if we reverse the judgment entered by the trial court, it continue to do so. However, we agree with the appellants that proper policing will, in a great measure, tend to relieve the situation, and we think that, if it does not, relief can undoubtedly be had by a proper petition to the administrative body which is clothed with such

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wide powers over railroad and highway crossings by chapter 22 of the Laws of 1937.

We find nothing in the record inconsistent with the view that the department fully considered the testimony in the case and, under the law, exercised its honest judgment in disposing of it, and we are not inclined to depart from our past decisions, and substitute our own judgment for that of the department.

The judgment appealed from is reversed and set aside, and the order of the department of March 17, 1947, will accordingly be sustained and enforced.

BEALS, MALLERY, SCHWELLENBACH, HILL, GRADY, HAMLEY, and DONWORTH, JJ., concur.

SIMPSON, C. J. (dissenting) - This controversy, in reality, is one between the Great Northern Railway Company and the people of the recently incorporated town of Mukilteo.

At a time prior to the hearing, the Great Northern Railway Company filed with the department its petition which reads as follows:

"I.

"The main line of the Great Northern Railway, doubletracked, extends in a northerly and southerly direction through the community known as Mukilteo in Snohomish County, Washington, and in said community crosses at grade a county road known as Park Avenue, which road is under the jurisdiction of Snohomish County, Washington; the said crossing being further identified as the grade crossing located at Great Northern Railway Survey Station 1617+00.

"II.

"Your petitioner alleges that the afore-described grade crossing is dangerous and unsafe and that public safety requires that the same be closed and permanently discontinued."

Just before the departmental hearing, sixty-six employees at the ammunition dock at Mukilteo, filed a protest against the closing of Park avenue "on the ground and for the reason that said road greatly 'facilitated' their means of passage to and from work, as most of the employees live in Everett or toward Everett." In addition, several property

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owners and individuals doing business in Mukilteo protested and testified.

To better indicate my reasons for dissent, I give the following word picture of the community: The town, inhabited by about fifteen hundred people, is located on Puget Sound, a short distance southwest of the city of Everett. The shore line of the sound at this point extends generally in an easterly-westerly direction. That is, the community faces toward the sound looking toward the north. The town is laid out so that Front street runs parallel and close to the shore line. As the community built up and moved inland, other streets were made at block intervals running parallel to Front street, being designated numerically, one through ten, with First street a block from Front street. The streets which run north and south have been given names. Of those streets, we are here concerned with Park and Lincoln avenues. These two streets are approximately five hundred feet apart, with Park avenue being east of Lincoln. Park avenue approaches the bathing beach, and Lincoln avenue, the ferry slip. Park avenue is sixty feet in width, and is surfaced to the north and south of the railroad crossing. The crossing itself is equipped with a wigwag signal and a gong that sounds as trains approach. The grade of Park avenue north of the tracks is approximately level. South from the tracks the grade is 6.9 per cent, extending for about thirty-five feet, increasing to one of 17.9 per cent for a distance of seventy-five feet.

It is between Park and Lincoln avenues, running north and south, and Front and First streets running east and west, that the main business district of the community is situated. Park avenue between Front and First street, is considered the main street of the town.

The Great Northern Railway tracks come into Mukilteo from Everett about on a line with First street, cross Park avenue just south of First, and then cut diagonally through the community so that the tracks bisect Second street at Washington, which is the second avenue west of Park avenue. The main traveled highway, known as secondary

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highway 1-I, extends parallel to the railroad tracks, from the direction of Everett, a considerable distance before Park avenue is reached, and, as testified to by one of the witnesses, the motorist looks down the tracks before the crossing and buildings are reached. In addition, a sharp turn must be made shortly before reaching the crossing, necessitating the driver to slow down. A traveler approaching from the west must also make a sharp turn before reaching the crossing, and would likewise be traveling at a slow rate of speed.

An additional fact to be considered is that, when approaching from the east, the view is unobstructed, since, as stated, the highway parallels the tracks for some distance and the motorist looks down a considerable way before the crossing and buildings are reached. The testimony of Jack Wilson, assistant fire chief of the Mukilteo fire department, showed that approaching from the north one can see east on the tracks five or six thousand yards.

An individual on the south side of the tracks, desiring to continue on to Seattle, would remain south of the tracks, but those desiring to go to Whidby Island, or into the business district of Mukilteo, would be able, on coming to Park avenue, if it were open, to turn to the right, cross the tracks and proceed to the main business district or go to Front street, turn to the left, continue to Lincoln avenue and to the ferry slip. With Park avenue closed they would be compelled to go to Lincoln avenue, cross the overhead pass, go to Front street, and then turn east to get into the business district, or straight ahead to the ferry slip.

In 1940-41, the state constructed an overhead passage at Lincoln avenue. Section 10 of the contract for the improvement, entered into without the knowledge of the people of Mukilteo, reads as follows:

"Upon the completion of the project the Railway Company will petition the Department of Public Service of the State of Washington for an order closing and discontinuing the existing grade crossing at Railway Station 1617+00 on Park Avenue in said Town of Mukilteo, to which the

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Director of Highways shall lend support. On final entry of said order the Railway Company will at its own cost and expense, remove the planks, signs and signals."

Concerning the project, Mr. Schearer, state highway district engineer testified:

"Q. Do you know whether or not there was a grade separation or grade crossing at the present location of that highway overpass bridge before it was constructed? A. No. There was no open street there at the time it was constructed except that portion right at the ferry dock. A short portion that was constructed on Front Street down to the dock. Q. But there was no crossing there down to the dock? A. No. I believe there was a platted street, but it was not open to the traffic. Q. That bridge is located at what is known as Lincoln Avenue? A. Yes, approximately on Lincoln Avenue. Q. And that is about one block west of Park Avenue, is that correct? A. Yes. Q. And then I understand that there was no public crossing of any type on Lincoln Street prior to the construction of this bridge? A. That is correct. Q. Do you know approximately what the cost of that construction of that highway bridge was? A. Well, the bridge was built as a part of an entire project. That is, some road construction was included with the bridge. And my recollection is the total cost of that project was somewhere around \$100,000. The bridge proper, - I looked it up before coming here, - the final estimate for that structure and that cost

was just under \$26,000 just for the structure itself, not including the approaches."

Although the passage crosses the railroad in line with Lincoln avenue, it is not built as a part of that street, but simply as a portion of the project. The project itself consists of a state highway approach from the direction of Seattle to the ferry slip. This highway, of which the bridge is a part, was built without regard to the platted streets of Mukilteo, but extends from the ferry slip through the community.

Keeping in mind the description of Mukilteo as presented above, I will now analyze the evidence presented by, first, the petitioning railroad and then the respondent community in order to show that the lower court was justified in reversing the order of the department.

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Mr. Burr, a Great Northern Railway division engineer, testified on behalf of the petitioning railroad concerning the dangerous aspect of the crossing. He stated that at the crossing there are two mainline tracks, a passing track, and another leading to a switch going to the government docks. Concerning obstructions to the automobile driver's view, the witness testified that there were many on both sides of the road, and on both sides of the tracks. However, a plat submitted at the hearing, showing visibility distances along the tracks in various locations on Park avenue, indicates conclusively that Mr. Burr was mistaken. This is also shown by testimony of Mr. Christopherson, the station agent, who testified as follows: (In passing, I should call attention to the fact that the depot is on the north side of the railroad, and but a short distance west of Park avenue.)

"Q. From your place of employment and in the station, that is where you work, is right at the station proper? A. Yes. Q. From that location can you see the traffic going over the Park Avenue grade crossing? A. I see most of it. Q. You have a view right out of the station windows? A. Yes, when I am working at the telegraph desk, I see most of Park Avenue cars crossing the grade crossing. Q. What hours do you work there now? A. Now it is from 7:45 a. m. until 4:45 p. m. Q. And have you observed the automobile traffic going over the Park Avenue crossing during your work down there? A. Yes, quite a bit. Q. What would you say generally as to the speed of cars that you have observed going north toward the Bay coming down the hill; what would you say their speed is? A. Well, I find that local people here know the danger here and are very careful. But I have seen strangers that - I figured they were strangers - people I have not seen before sometimes will be in a hurry for catching a ferry and they will go over there pretty fast. Q. From your observation how fast would you say they were going when you say 'pretty fast'? A. Well, over that crossing I have seen them go 30 and 40 miles an hour. Q. As you would estimate it? A. Yes, those few cars. Q. Have you ever had occasion to see cars coming from the ferry and approaching - proceeding south and going over the crossing? A. Yes. Q. About how fast would you say those cars travel, from your estimate? A. Well, most of them were going very cautiously, not very fast. Once in a

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while you will see one that figures the track is clear and he will bounce over there pretty fast. That is just an occasional car. Q. Have you ever seen any cars having difficulty going over the grade? A. Yes. Q. What have you observed? A. Well, especially during the fall and the winter, cars coming over on the ferry, their cars are cold and they come up over that steep grade, that short steep hill, and their motors die and they either slip or roll back to get another start. Q. Do some of them roll back over the grade crossing proper to get another start? A. Yes. Q. And then go back and start over? A. Yes, and, to get a good start.'

Frank Percival, employee of the petitioning railroad company, presented testimony concerning the train schedules and the speed of the trains. He stated that the maximum speed allowed in this area was sixty miles per hour for passenger trains, and fifty miles per hour for freights. At the time of the hearing, there was a schedule which called for twenty-four trains a day to pass over the crossing.

The record also shows that people, local and transients, coming from the east, would, in order to get into the business district, have to cross Park avenue, the main street of the community, south of the tracks, and proceed another block to Lincoln avenue, cross the overhead pass, turn to the right on Front street, and backtrack a block to Park avenue. The evidence shows that the business in this community is greatly enhanced by transients, and that the closing of the crossing would take much of the business away from the people of Mukilteo.

Other factors, perhaps more important than the business aspect mentioned above, were also related by the citizens of Mukilteo. These facts have to do with the traffic problem which is present on Lincoln avenue in relation to the use of the ferry. The undisputed testimony shows that traffic, especially in the summer, on that approach, is very heavy four days a week - Friday through Monday. The overpass is a two-lane highway. On the days mentioned, the cars awaiting the use of the ferry are lined up bumper to bumper back over the overpass for several blocks, at least to Fifth street. The evidence also shows that the ferries haul

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between twenty and forty vehicles, with a total capacity of sixty each trip, and that when the ferries are unloading there is a solid mass of cars on the overpass. It can be seen that this situation would be bad enough if the passage and approach were in conformity with the streets of the community of Mukilteo. At least the people in that town would be able to get into the traffic line. As it is now, it becomes nearly impossible for the people of the community to break into the line of traffic from the side streets.

In conjunction with this traffic snarl on those occasions, and the inconvenience and delay such a situation would cause the citizens of the community in traveling from their homes on the south side of the track to the business district on the north side of the track, if Park avenue is closed, there is the added fact that the community fire station is located on Park avenue south of the track. This station maintains modern equipment, and also a pulmotor. With the closing of the Park avenue crossing, the fire department in going to any part of the business district has to rely on the overpass and, with the traffic situation as it is, the citizens of Mukilteo are exposed to great danger. It should be remembered, also, that the public bathing beach in Mukilteo is at the north end of Park avenue. This beach, during the summer months, is crowded with children. With the Park avenue crossing open, both the fire fighting equipment and the pulmotor could be rushed immediately to any area, as emergencies arose. With it closed, the situation could, and probably will, arise where homes and business houses burn and people die, due entirely to the closing of Park avenue.

The assistant fire chief said that it would be impossible to get a fire truck down the overpass when it was occupied by automobiles waiting to get on the ferry. As another witness said, events such as a fire, or a person drowning, cannot be so regulated as to accommodate the traffic problem now present in the use of the overpass.

The facts, as testified to by the citizens of the community in showing their reasons for maintaining the crossing, are

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supported by one of the petitioner's witnesses, Mr. Schearer, state highway department engineer, who testified:

"Q. Well, Mr. Schearer, don't you feel that in a little town of this kind, of Mukilteo, that there should be more than one approach, more than one road going in, so there is an exit so to speak for these people?
A. Well, of course, that is desirable, Mr. Leader. The more entrances to the `business district or any other part of the town, the more stores you have open, the more access you have for your traffic. Q. Yes. And to go in just one way and have to go out the same way is not satisfactory. A. It is not so

satisfactory. Q. And if you have the fire department outside of the main business section and you have that long ferry line to try and get through, you have a very dangerous situation, do you not? A. A dangerous condition, yes. If the road was blocked it would be difficult to get through. Of course, we hope to cure that condition because we know it is indeed a problem. Q. What are you going to do to eliminate that? A. We will just make a study. We don't know what will be the final answer."

Of course, the crossing is dangerous. Every railroad crossing is dangerous. So are street intersections in our cities and towns and so are intersecting highways in rural areas. However, THIS CROSSING HAS EXISTED FOR FORTY-TWO YEARS AND DURING THAT TIME NO ACCIDENT HAS OCCURRED UPON IT. That it is safer than most crossings is demonstrated by the testimony of Mr. Burr, who stated:

"Q. Wouldn't the fact that you had many accidents on one crossing which you considered not a dangerous crossing speaking from an engineering standpoint, and here is another one where you had many accidents and you considered it a safe crossing; wouldn't that indicate you were mistaken in your engineering knowledge as to whether one was more dangerous than the other? A. I am basing my answer on knowledge of grade crossings between Spokane and Seattle. I know that on some crossings with the best grades we have made, that we have some of the most accidents. But I don't call them hazardous crossings. Q. So some of them where you have the best views you have the most accidents? A. Yes, some of them with the best views or grades, it depends on the location a lot. Q. So this one down here, while

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you may have an obstructed view, you may have less accidents than you will on a crossing that has a regular straight of way crossing with good view? A. You may have less accidents on this than another one, yes sir."

As a matter of fact, the order of the department in closing Park avenue has not resulted in reducing a dangerous situation. Its real result has been to create a definite hazard - a real danger - which will without doubt cause loss of business and property and may result in a great loss of life.

I am fully persuaded that the individuals making up the town of Mukilteo have the best interests of themselves and the people who may visit their town at heart, and that they are more able to care for their safety than any governmental department.

The judgment of the trial court should be affirmed.

SERVICE DATE
MAR 3 1 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BURLINGTON NORTHERN)	
RAILROAD COMPANY,	)	DOCKET NO. TR-940330
)	
Petitioner,)	
	)	COMMISSION DECISION AND ORDER
v.	)	DENYING REVIEW; AFFIRMING
	)	INITIAL ORDER GRANTING PETITION
CITY OF FERNDALE, WASHINGTON,	)	TO CLOSE A RAIL CROSSING
)	
Respondent.)	
.....)	

NATURE OF PROCEEDINGS: This is a request by Burlington Northern Railroad Company for permission to close the Thornton Road railroad crossing in the City of Ferndale. The City opposes the proposed closure.

INITIAL ORDER: An initial order entered on November 18, 1994, by Administrative Law Judge Lisa Anderl would grant the petition. It would conclude that public safety concerns outweigh the public convenience and need for the crossing. It would deny a petition by the City to reopen to examine alternative placement for a siding track.

ADMINISTRATIVE REVIEW: The City seeks administrative review. It contends that a signalized gate and crew member to flag traffic over the crossing while the train is split will alleviate any safety concerns, and that the crossing needs to remain open so that the City may construct a planned Thornton Road connector. The Commission Staff filed, then withdrew, a motion to reopen the docket to allow the Commission to comply with the requirements of the State Environmental Protection Act.

~~**COMMISSION:** The Commission will not grant review. It affirms the initial order. The hazards at the crossing outweigh any present need for it to remain open.~~

[1] The Commission generally will grant a petition to close a grade crossing unless the public need for the crossing outweighs the hazards that result from the crossing. RCW 81.53.020.

Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

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APPEARANCES: Rexanne Gibson, attorney, Bellevue, represents the petitioner, Burlington Northern Railroad Company (Burlington or the railroad). Jeanne A. Cushman, assistant attorney general, Olympia, represents the Washington State Department of Transportation (DOT). Gary Cuillier, attorney, Ferndale, represents the respondent, City of Ferndale (Ferndale or the City). Ann Rendahl, assistant attorney general, Olympia, represents the Washington Utilities and Transportation Commission (Commission Staff).

MEMORANDUM

This is a request by Burlington for permission to close the Thornton Road railroad crossing in the City. Burlington petitioned for closure, stating that the proposed Amtrak (passenger train) service through Ferndale will require an extension to the siding track at Thornton Road. The extended siding would be used to store freight trains while the passenger trains pass on the main track, and the crossing could be closed or blocked for up to an hour during these movements. The petition further stated that the property which is accessed by Thornton Road is being acquired by the State of Washington, and that the crossing will no longer be necessary to serve those properties. The Commission Staff supports closure of the crossing, claiming it is required for public safety.

The closure was protested by the City and the matter was set for hearing. On October 3, 1994, the Commission consolidated this case for hearing with Docket No. TR-940308, the joint petition of Burlington, Amtrak, and the Department of Transportation for an increase in passenger train speed limits through the City. Hearings were held in Ferndale on October 12 and 13, 1994, at which all of the parties and members of the public testified. The matters were not consolidated for decision and order.

The parties filed briefs by November 7, 1994. The petitioner requested that separate orders be entered in these dockets, and that request was granted.

~~The City filed, along with its brief, a petition to reopen the record to permit additional evidence for the purpose of determining whether an alternative location for the proposed siding exists, and should be considered by the petitioner. The City submitted an affidavit from Stan Strelbel, the City Manager, in support of the petition. In general, the affidavit suggests that there is another location to the north of the city which would be suitable for an 8500' siding track, and that this location should be considered.~~

Burlington and the Commission Staff filed answers to the petition on November 10, 1994, opposing the request to reopen. No request to file a reply was made or granted.

An initial order would grant the petition. It would conclude that public safety concerns outweigh the public convenience and need for the crossing. It would deny a petition by the City to reopen to examine alternative placement for a siding track.

The City seeks administrative review. It contends that a signalized gate and crew member to flag traffic over the crossing while the train is split will alleviate any safety concerns, and that the crossing needs to remain open so that the City may construct a planned Thornton Road connector. Alternatively, the City seeks permission to reopen the record to permit additional evidence for the purpose of determining whether an alternative location for the proposed siding exists and should be considered by the petitioner.

On February 27, 1995, the Commission Staff moved to reopen the docket to allow the Commission to comply with the requirements of the State Environmental Policy Act (SEPA). On March 20, 1995, the DOT and Burlington answered the Commission Staff motion. On March 24, 1995, the Commission Staff and Burlington replied to the answer.

THE MOTIONS TO REOPEN SHOULD BE DENIED

The Commission will not reopen the record to receive new evidence. The motion to reopen by the City repeats a motion it made prior to entry of the initial order. The City sought to reopen the record to permit additional evidence for the purpose of determining whether an alternative location for the proposed siding exists and should be considered by the petitioner.

Reopening is authorized under RCW 81.04.160 and WAC 480-09-820(2). The rule states that reopening may be granted in contested proceedings to permit receipt of evidence which is essential to a decision and which was unavailable and not reasonably discoverable at the time of the hearing, or for any other good and sufficient cause. WAC 480-09-820(2)(b). The Commission agrees with the administrative law judge that the evidence proposed for receipt into the record is neither essential to the decision, nor was it unavailable at the time of hearing. The evidence concerns whether there are other viable sites for a siding/passing track. The Commission does not require such information to decide whether Thornton Road should be closed. Indeed, the City has not presented any argument or citation to establish that this issue is properly within the purview of the Commission in this type of proceeding. ~~As discussed below, the issues in this case concern whether there~~ are alternative means of public access if the crossing is closed, not whether the railroad has alternatives to constructing the siding track in a particular location.

Finally, the City does not offer any reasons why this information, even if it were relevant, was not presented at the hearing. The railroad's decision to site the siding track in Ferndale was discussed extensively on the record. The City had the opportunity to subpoena witnesses. WAC 480-09-475. Burlington presented detailed testimony on the various factors, including environmental and economic considerations, which influenced the choice of location. The evidence proposed by the City in response to the railroad's testimony was both available and discoverable at the time of hearing in this matter and, thus, does not support reopening. The City's motion to reopen is denied.

The Commission Staff motion to reopen the proceedings was premised on a concern that the Commission should have, but had not, complied with the requirements of the State Environmental Policy Act (SEPA) prior to taking action on the petition to close the Thornton Road crossing. In answer, Burlington and the DOT state that the DOT is the lead agency for SEPA compliance, that it conducted a SEPA review, that the City commented on the impact of closing the Thornton Road crossing in that review, and that all of the requirements of SEPA have been met. In reply, the Commission Staff withdrew its motion to reopen. The reply states that the Commission Staff has reviewed the documentation prepared by the DOT pursuant to SEPA, and that the Commission Staff is assured that the DOT has complied with SEPA requirements concerning the closure of the Thornton Road crossing. Burlington also replied, agreeing with its answer. Permission to withdraw the motion is granted.

THE CROSSING SHOULD BE CLOSED

A. The Legal Standard

Chapter 81.53 grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, and prohibits the construction of a crossing at grade without prior Commission approval.

All crossings at grade are dangerous, and the policy of the law is strongly against the allowance of such crossings. Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R., 195 Wash. 146, 80 P.2d 406 (1938); State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn.2d 95, 104 P.2d 764 (1940).

However, in some cases the public convenience or need for the crossing outweighs the inherent danger, and in that case a crossing may remain open. The test was stated by the court in Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949) as follows:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition.

The Commission follows the same balancing process.

The question, then, is whether the public convenience and need outweighs the danger of the crossing so that it should nonetheless remain open. Factors to consider in this regard include the availability of alternate crossings, the ability of those crossings to handle the additional traffic, and the number of people affected by the closure.

B. The Current Situation

The crossing at Thornton Road is a double set of tracks, protected by stop signs and crossbucks. Thornton Road runs east/west and crosses the north/south tracks at right angles. The tracks run west of and parallel to I-5 through this area of town. Thornton Road currently dead-ends shortly after crossing the tracks, west of I-5. The crossing currently serves two residences. The petitioner proposes to either build an access road for those properties, or to allow access through the crossing only for the property owners. Under this latter situation, Thornton Road would be gated to the west of the tracks and only property owners would have access.

The tracks at Thornton Road are a mainline track and a siding track. Burlington proposes to extend its existing siding track north another 3,631 feet, to a total length of 8,600 feet. This length is necessary for the track to be used as a passing track when passenger trains come through. Burlington will store its freight trains on this siding track to allow the Amtrak to come through on schedule. Freight trains are generally about 7,000 feet long and could not be stored on the existing siding. The extended siding will be long enough that a freight train could be pulled far enough north to be out of the grade crossings in the main part of town -- Washington Street and Second Avenue. A freight train could be on the siding for one hour or more.

If Thornton Road remains open as a public crossing, the railroad would have to split the train while it waits on the siding. This is a time consuming process and presents an additional hazard at the crossing because of train movements across the tracks at grade and because a stopped train can impair sight distance, already limited at this crossing. A vehicle, after stopping, would have to creep out towards the tracks to see if a train was coming. Train speeds, especially with fast trains viewed head on, are extremely difficult to judge and a passenger train approaching at 79 m.p.h could be a significant hazard at an unprotected crossing.

Thornton Road is a 25 m.p.h. city street, with one lane of travel in each direction and no curbs or sidewalks. West of the crossing, it is the main east/west street in the north part of the city, and it serves many residents who have settled in the subdivisions which are growing rapidly in the northwest part of the city. Using Thornton, they are able to access Vista Drive or Malloy Drive and travel south into the business district. The portion of Thornton Road which crosses the Burlington tracks is a dead end which only provides access to two residences. The routes south on Vista Drive or Malloy Drive are the main access to I-5, for both north and southbound traffic. Closure of the crossing would not affect the current traffic patterns.

C. Public Need for the Crossing

The City is in the process of planning for growth and development over the next 15-20 years. The City has a draft transportation plan which will likely be submitted to and acted on by the City council this year. The plan contains several options for improving traffic flow through town. One of those options is the construction of an extension to Thornton Road southbound to connect with Portal Way near the southbound ramps to and from I-5. This proposal is illustrated in exhibit #4. This option has been in the City's plans for many years, often as a high priority item. The City has never been able to obtain any funding for this project and does not have good prospects of obtaining such funding in the future. The City would like to see Thornton Road remain open because it believes that this project is the least expensive option and because the project could be completed incrementally, without a large expense all at once.

Members of the public spoke in favor of keeping Thornton Road open as one of the City's main options for improving traffic flow within the city limits. The residents believe that the future proposed use of Thornton Road is critical to draw traffic onto I-5 without first going through the center of town, which is already fairly congested during peak traffic times. Most public witnesses favored a grade crossing at Thornton, but some had no preference between a grade crossing or an over crossing.

The City has other options to developing Thornton Road at grade, including an over-grade crossing which would also cross over I-5 and connect with Newkirk Road to the east of the freeway. The City's transportation consultant recommends the Thornton Road extension as the least expensive option, although perhaps not the best for long term growth and traffic needs. Costs of the various options are uncertain, with an overpass estimated at \$6 million and the extension at \$4 million (\$2 million for construction and \$2 million in mitigation costs). The City has no money for any of the options, but hopes to eventually fund construction with a combination of State/Federal highway funds, and money it is now collecting in growth mitigation fees. Some type of extension of Thornton Road, either to the south or the east, has been in the City's plans since at least 1972.

Much time at the hearing was spent discussing the various options for restructuring traffic flow through the city. In addition, various expert opinions were offered on the Thornton Road extension, including the opinion that the resulting intersection with Portal Way would be unworkable because of the proximity to the freeway ramps. However, this order does not need to decide the best plan for the City to follow -- that is uniquely the domain of the City government. This order considers traffic flow options only to the extent that they are relevant to the public need for the crossing.

D. Policy Considerations

In 1992, the Federal Railway Administration designated a high speed rail corridor between Eugene, Oregon and Vancouver, British Columbia. The petitioners argue that the crossing will become even more dangerous with the operation of a high-speed passenger train service between Seattle and Vancouver, B.C. This service is proposed to start in 1995, and it is because passenger trains will have the right of way on the track that Burlington must use the siding track for its freight trains.

State policy supports the operation of the passenger service. In 1993 the Washington State Legislature enacted Chapter 47.79 RCW which established a high-speed ground transportation program. The program's stated goals include the implementation of high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Vancouver, B.C. by 2025. RCW 47.79.020(2). In addition, as discussed above, public policy disfavors crossings at grade.

Finally, petitioners argue that closing the crossing is consistent with the policy contained in the Federal Railroad Administration's Rail-Highway Crossing Safety / Action Plan Support Proposals (Exhibit 12). That document notes that the following criteria have been useful in determining when crossings should be consolidated: consolidate where there are more than four per mile in urban areas and one per mile in rural areas and alternate routes are available; consolidate crossings with fewer than 2000 vehicles per day and more than two trains per day and an alternate route is available; link construction work with eliminations, especially when upgrading rail corridors for high speed trains; when improving one crossing, consider eliminating adjacent crossings and rerouting traffic; eliminate complex crossings where it is difficult to provide adequate warning devices or which have severe operating problems (e.g. multiple tracks, extensive switching operations, long periods blocked, etc.) The Petitioners state that these conditions are all present at the Thornton Road crossing and support an order to close the crossing.

E. Commission Decision

The Commission agrees with the initial order's finding that there is no present public need or convenience which is served by the grade crossing at Thornton Road. At most there is a private need for access to the residences on the east side of the tracks, and Burlington will allow those property owners to continue to use the tracks as a private crossing.¹

¹ Commission Staff supports the railroad's petition, but on brief suggests that a crew member flag traffic at the crossing when a train is split to allow access to the private properties. Since a crew member will have to be at the crossing to split and reconnect the train, this is a reasonable additional safety precaution.

The Commission agrees with the initial order's conclusion that only the present public need should be considered in determining whether to close a crossing. Where the legislature has considered future need to be a relevant consideration, that has been stated. See, for example, RCW 81.80.070 in which the Commission was directed to consider the present or future public convenience and necessity in a grant of motor carrier authority. In addition, as pointed out by Commission Staff, the City is always entitled to petition the Commission to open a grade crossing, should the public need for it arise.

Finally, even if future need for the crossing were a relevant consideration, the Commission would not be persuaded that the likely future use of the at grade crossing is anything more than speculative and highly uncertain.²

This order carefully considered the testimony presented by the City and by the members of the public in favor of keeping the crossing open. As noted above, the desire of the City to keep its options open for use of the crossing is not a present public need served by the crossing. Other options remain open to Ferndale regarding its traffic flow problems, and no change or disruption to present conditions will result from closure of the Thornton Road crossing.

[1] This Commission concludes that the at-grade crossing at Thornton Road in the City of Ferndale should be closed in the interest of public safety. This conclusion is based on the dangerous nature of grade crossings in general, the fact that this crossing will soon experience increased use as a passing track, the switching activity which will occur over the crossing, and the absence of present public need for the crossing.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

FINDINGS OF FACT

1. On March 10, 1994, Burlington Northern Railroad Company (Burlington or the railroad) petitioned the Commission for closure of the Thornton Road crossing in the city of Ferndale. The grade crossing has two tracks, a mainline and a siding track. The siding track will be extended to the north and will see increased use as a passing track with the start of passenger train service between Seattle and Vancouver, B.C. in 1995.

² If this order were to consider future use of this crossing, with Thornton Road as a through street, higher traffic volumes would have to be assumed. Higher traffic volumes would increase the danger at Thornton Road, as the crossing has neither lights nor gates and has limited sight distance.

2. The Thornton Road crossing is protected by stop signs and crossbucks. It currently sees freight train use, operating at maximum speeds of 50 m.p.h. By spring of 1995, two passenger trains per day will operate through the crossing at speeds up to 79 m.p.h. Thornton Road is an east/west street. The railroad tracks run north/south, roughly parallel, to and to the west of, I-5. Thornton Road dead-ends between the tracks and I-5. The crossing currently serves two residences. The petitioner will provide access to those residents if the petition is granted.

3. On October 3, 1994, this petition was consolidated for hearing with the joint petition of Burlington, Amtrak and the Washington State Department of Transportation for an increase in passenger train speed limits through Ferndale. The petition to close the crossing is tied to the increased speed limits, as passenger train operations on the Burlington tracks will affect the traffic over and use of the crossing.

4. The Thornton road crossing is hazardous because it is a grade crossing, it will soon experience increased use as a passing track, and switching activity can block the track for an hour or more.

5. There is not present public need or convenience which is served by the grade crossing at Thornton Road. At most there is a private need for access to the residences on the east side of the tracks, and Burlington will allow those property owners to continue to use the tracks as a private crossing. The desire of the City to keep its options open for the use of the crossing is not a present public need served by the crossing.

6. The closure should be conditioned upon the railroad providing access for properties which would be otherwise landlocked, and providing a crew member to flag traffic over the crossing while the train is split.

CONCLUSIONS OF LAW

~~1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this application.~~

2. Pursuant to RCW 81.53.060, a railroad crossing at grade may be closed upon petition of the railroad company if the public safety requires such closure. Only present public need should be considered in determining whether to close a crossing.

3. The grade crossing at Thornton Road in the city of Ferndale is dangerous and is not required by the public convenience and necessity. The petition of Burlington Northern Railroad Company for closure of this crossing should be granted in the interest of public safety, on condition that the railroad provide access to those properties located to the east of the tracks which would be landlocked by the closure, including the use of a crew member to flag traffic across when a train is split at the crossing.

ORDER

THE COMMISSION ORDERS That the petition of Burlington Northern Railroad Company for closure of the at-grade crossing at Thornton Road in the City of Ferndale is granted, on condition that the railroad provide access to those properties located to the east of the tracks which would be landlocked by the closure, including the use of a crew member to flag traffic across when a train is split at the crossing.

DATED at Olympia, Washington, and effective this *31st* day of March 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

Wm. R. Gillis

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

SERVICE DATE
DEC 13 1996

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Burlington Northern Railroad Co.,	)	DOCKET NO. TR-940282
)	
Petitioner,	)	FINDINGS OF FACT;
v.	)	CONCLUSIONS OF LAW;
	)	AND ORDER CLOSING GREEN
Skagit County, Washington,	)	ROAD CROSSING AND
	)	GRANTING LEAVE TO WITH-
Respondent.	)	DRAW PETITION AS TO
	)	FOUR CROSSINGS
.....)	

NATURE OF PROCEEDING: This is a petition to close six railway-highway crossings at grade.

PROCEDURAL STATUS: Hearings were held on two crossings, Boe Street and Green Road, on February 23 and 24, 1995, in Mt. Vernon, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings.¹ At hearing, Skagit County expressed concerns about closure of the Green Road crossing, and several members of the public testified in opposition to closure of that crossing. The County withdrew its opposition to closure of the Boe Street Crossing. The Commission entered an order closing the Boe Street crossing on May 26, 1995. The hearing on the Green Road crossing was continued pending completion of a Commission Staff determination of whether there is an environmental impact of closing the crossing; that determination since has been made. Subsequent to the hearing, Skagit County and the petitioner entered into an agreement to close the Green Road crossing, and Skagit County has withdrawn its opposition to closure. The petitioner, the respondent, and counsel for Commission Staff have waived an initial order so that the record may proceed directly to consideration by the Commission. Petitioner has requested leave to withdraw its petition as to the four crossings that did not go to hearing.

COMMISSION: The Commission grants leave to withdraw the petition as to the four crossings that did not go to hearing. The Commission grants the petition to close the Green Road crossing, conditioned on the construction of a cul-de-sac on Green Road at the point of closure. All crossings at grade are inherently dangerous, and this one is especially hazardous. The crossing is a convenience to residents and business people in the vicinity, but a safer alternate crossing is available. The need for the crossing is not so great that it must be kept open despite its dangerous condition.

¹ The petitioner withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings.

[1]* A highway-railway crossing at grade which is poorly configured, poorly protected, has a small holding capacity for vehicles, and is on a railroad main line, should be closed when a safer crossing is readily available, although somewhat less convenient for some persons. RCW 81.53.060.

[2] That a dangerous crossing at grade allows faster response in the event of fire and other emergency than another route does not require leaving the crossing open when the alternate access is safer and is readily available. RCW 81.53.060.

APPEARANCES: Rexanne Gibson, attorney, Bellevue, represents petitioner Burlington Northern Railroad Co. John R. Moffat, prosecuting attorney, represents Skagit County. Ann Rendahl, assistant attorney general, Olympia, represents the staff of the Washington Utilities and Transportation Commission. Bradford E. Furlong, attorney, Mt. Vernon, appeared at hearing as an intervenor.²

MEMORANDUM

This is a petition by Burlington Northern Railroad Company (BNRR) to close six highway-railway crossings at grade in Skagit County. The six crossings are: Milltown Road; Spruce Street; Green Road; Boe Street; West Johnson Road; and West Stackpole Road. BNRR cites public safety concerns in its petition for closure of the crossings. Skagit County opposed closure of the Milltown Road, Spruce Street, Green Road, and Boe Street crossings, and requested a hearing.

BNRR withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings. BNRR now has requested leave to withdraw its petition as to those four crossings.

Hearing was held on the other two crossings, Boe Street and Green Road. BNRR requested that separate orders be entered for each of the crossings. Skagit County withdrew its opposition to closure of the Bow Street crossing at hearing. The Commission entered an order closing the Boe Street crossing in May 1995.

At the commencement of the hearing in this matter, Commission Staff stated that, through an oversight, it had not complied with the state Environmental Protection Act (SEPA) by doing a threshold determination of whether there is an environmental impact of

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

² Mr. Furlong intervened only with respect to the Spruce Street and Milltown Road crossings. He did not participate in the hearing on the Boe Street and Green Road crossings.

closing the Green Road crossing. Evidence was taken on crossing issues. The administrative law judge continued the proceeding as to Green Road until it could be determined whether an additional hearing would be necessary on environmental issues.

In September 1996, the Commission issued a mitigated determination of non-significance with respect to BNRR's proposal to close the Green Road crossing. The determination states that the proposal does not have a probable significant impact on the environment, but lists the following required mitigation: construction of a cul-de-sac on Green Road within the existing railroad/county right-of-way to county standards as approved by the county engineer; necessary grading and filling; and compliance of the project with Skagit County critical area Ordinance 14.36.

On December 2, 1996, Skagit County filed with the Commission an agreement between the county and BNRR providing for the closure of the Green Road crossing and construction of a cul-de-sac at the closure point, and the granting of an easement for the cul-de-sac to the county. In a letter accompanying the agreement, Skagit County waived further hearing on the petition and withdrew its opposition to closure of the Green Road crossing. Skagit County, BNRR, and Commission Staff have waived an initial order.

A. Request for Leave to Withdraw Petition as to Four Crossings

On January 17, 1996, BNRR filed a request for leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road crossings. No party responded in opposition. It is consistent with the public interest to grant withdrawal of the petition. The request will be granted.

B. Green Road Crossing

Applicable Standards

Chapter 81.53 grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, prohibits the construction of a new highway crossing at grade without prior Commission approval,³ and sets out factors that the Commission is to take into account in determining whether a grade-separated crossing is practicable.

81.53.060 authorizes a railroad company whose road is crossed by a street or highway to petition the Commission that the public safety requires the establishment of an under-crossing or over-crossing, an alteration in the existing grade crossing, or the closure of the existing crossing.

³ When used in Chapter 81.53, the term "highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public roadways. RCW 81.53.010.

The statutes are based on the theory that all railway/highway crossings at grade are dangerous, and public policy strongly disfavors them. Reines v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 195 Wash. 148, 80 P.2d 408 (1983); Department of Transportation v. Snohomish County, 35 Wn.2d 247, 257, 212 P.2d 829 (1949); State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn.2d 95, 104 P.2d 764 (1940).

In addition to the dangers inherent in any crossing at grade, there are factors that may make a particular crossing especially hazardous. These factors include vegetation or other obstacles that limit the motorist's view of the tracks as the motorist approaches the crossing,⁴ an alignment in which the roadway approaches the crossing at an oblique angle,⁵ limited holding capacity on the approaches between the railroad right of way and streets that intersect with the approaches,⁶ more than one mainline track at the crossing,⁷ and the presence of a siding track in addition to a mainline track at the crossing.⁸

In some cases the public convenience or need for a crossing outweighs the danger, and in that case the Commission may allow a crossing at grade to remain open. The balancing test was stated by the court in Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949) as follows:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition.

Factors the Commission considers in determining whether the public convenience and need outweigh the danger of the crossing include the amount and character of travel on the railroad and on the highway, the availability of alternate crossings, whether the alternate crossings are less hazardous, the ability of alternate crossings to handle any additional traffic that would result from the closure, and the effect of closing the crossing on

⁴ See, Whatcom County v. Burlington Northern Railroad Company, Docket Nos. TR-1725 and TR-1726 (January 1985).

⁵ See, Thurston County v. Burlington Northern Railroad, Docket No. TR-1930 (April 1988).

⁶ See, Whatcom County, *supra* note 4.

⁷ See, Department of Transportation v. Snohomish County, 35 Wn.2d 247 (1949).

⁸ See, Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985); Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

public safety factors such fire and police control. See, Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

The Evidence

Witnesses for BNRR, the Washington State Department of Transportation, the National Railroad Passenger Corporation, and the Federal Railroad Administration testified in support of the petition to close the Green Road crossing. Five members of the public and a fire department official testified in opposition to the proposal to close the Green Road crossing. A witness for Skagit County and a Commission Staff witness also testified concerning the crossing.

The Green Road crossing lies on a BNRR main line which is being upgraded so that high-speed rail passenger service can be initiated between Seattle and Vancouver, B.C. The Washington state legislature, in chapter 47.79 RCW, has established as a goal the implementation of such high-speed service. Among the priorities set out in RCW 47.79.030 are improved grade crossing protection or grade crossing elimination.

Federal railroad safety policies, set out in the Federal Railroad Administration's Rail-Highway Safety/Action Plan Support Proposals, favor consolidation of crossings when practical and improvement of the remaining crossings. The FRA, which regulates railroad safety, has the policy and goal of reducing grade crossings by 25% by the year 2000, to reduce the number of collisions that are occurring at grade crossings.

In the vicinity of the crossing, Green Road and old Highway 99 run parallel to one another on opposite sides of the tracks, in an approximately north-south direction, until Green Road crosses the tracks and intersects with old Highway 99. Green Road has low traffic volumes. The Green Road crossing consists of one track protected by stop signs and crossbucks. The crossing is 50 to 65 feet north of the intersection of Green Road with old Highway 99. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees.

The crossing does not allow good advance sight of approaching trains. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The skewed angle of the crossing results in drivers stopping at the crossing having a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. It presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the

DOCKET NO. TR-940282

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rail. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour. They may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks also makes the crossing hazardous. Stop signs are not a very effective method of controlling traffic at railroad grade crossings. More people violate stop signs at railroad grade crossings than they do at regular highway intersections.

There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop intersection. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. People who live or do business on Green Road can use Cook Road.

Six persons testified in opposition to closure. A farmer who lives south of the crossing opposes closure because he uses old Highway 99 and Green Road to access his fields, reaching Green Road via the Green Road crossing. The Cook Road crossing is a more difficult road to cross with farm equipment. A truck operator who has his shop on Green Road opposes closure because it is difficult for him to turn his trucks around at the shop, and therefore convenient to enter Green Road at one end and exit at the other. He acknowledges the danger at the Green Road crossing, and has seen other truck drivers make the mistake of getting stuck at the intersection with their back end still on the track.

An owner of business property along Green Road opposes closure because business and traffic in the area is growing, the intersection of old Highway 99 and Cook Road has become congested, and closing the Green Road crossing would add to the congestion and adversely affect the area's growth. A Green Road resident and business operator opposes closure because there already is too much traffic at the intersection of Green Road and Cook Road, and because the intersection has flooded in the past whereas the south end of Green Road remained open.

A resident of Green Road opposes closure because the crossing provides alternative access in case of emergencies. The witness acknowledges that some cars coming from old Highway 99 do not stop at the crossing. The fire chief of the Burlington Fire Department and Skagit County Fire District 6 also opposes closure, because closure would increase emergency response time by about two minutes.

A witness who is both the county engineer and the public works director for Skagit County expressed concerns about closure of the crossing which the county wished to have addressed as part of the SEPA review. The county subsequently withdrew its opposition to closure of the crossing.

Discussion and Decision

[1] Our analysis starts with the fact that all crossings at grade are dangerous. There are factors peculiar to the Green Road crossing that make it particularly dangerous. The crossing is on a railroad main line which will be used by high-speed passenger trains. The configuration of the crossing results in poor sight distances. The crossing cannot be seen until a driver is almost upon it. The skewed angle of the crossing prevents a driver from having a good line of sight of trains coming from one direction. The proximity of the crossing to the intersection with old Highway 99 creates three hazards, described above: drivers may be confused by the presence of two stop signs; the crossing has a limited holding capacity for vehicles; and vehicles exiting old Highway 99 may misjudge their speed and slide over the crossing before they can stop. The crossing is not protected by electronic signals or gates.

The crossing is a convenience to residents and business people in the vicinity, but is not shown to be a necessity. The crossing is not heavily used. Closure of the crossing would not cut off any residences or businesses. There is another crossing nearby which is equipped with electronic signal devices. Electronic signals make a crossing much safer than do crossbucks and stop signs.⁹ Consolidation of crossings necessarily inconveniences those whose crossing is eliminated in favor of adjacent crossings.

The argument that the Cook Road crossing is busy does not justify leaving the Green Road crossing open. See, Whatcom County, supra; Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985), at page 7. Consolidating crossings when practical and improving the remaining crossings promotes the public safety.

[2] The argument that the Green Road crossing should remain open because it allows faster response in the event of fire and other emergency does not justify leaving the crossing open. Access via a safer route is readily available, and the need for additional access does not outweigh the dangers posed by the crossing. See, Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996), at pages 7-8.

After considering the convenience of the crossing, hazards inherent in all crossings at grade, the hazards that are particular to this crossing, the fact that it is lightly used, and the accessibility of a safer alternate crossing, the Commission concludes that the need for the crossing is not so great that it must be kept open despite its dangerous condition.

The mitigated determination of non-significance requires as mitigation the construction of a cul-de-sac at the point of closure of Green Road. Consistent with that determination, the Commission will condition closure of the crossing on construction of a cul-

⁹ See, Whatcom County v. Burlington Northern Railroad Company, Cause Nos. TR-1725 and TR-1726 (January 1985), at page 5.

de-sac, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

FINDINGS OF FACT

1. On January 24, 1995, the Burlington Northern Railroad Company ("BNRR") petitioned the Commission for closure of four highway-railway crossings at grade in Skagit County: Milltown Road near Conway, at railroad milepost 60.28; Spruce Street in Conway, at railroad milepost 62.50; Green Road near Burlington, at railroad milepost 73.88, located in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 19, Twp. 35N, Range 4 E.W.M., Burlington, Skagit County; and Boe Street near Bow, located at railroad milepost 79.20.

2. With respect to the Green Road crossing, the petition states that the crossing is .45 mile to the south of the Cook Road grade crossing; that the Cook Road crossing is signalized with cantilevers and gates while the Green Road crossing has passive warning devices (cross bucks); that Cook Road can serve the homeowners and businesses that reside on Green Road; and that closing the Green Road crossing will improve the safety of the motoring public.

3. In March 1994, Skagit County filed an objection to the petition and requested a hearing.

4. In October 1994, BNRR and Skagit County jointly submitted two additional grade crossings as part of the petition: West Johnson Road near Conway, at railroad milepost 64.58; and West Stackpole Road near Conway, at railroad milepost 65.58.

5. On February 21, 1995, BNRR and Skagit County requested that the request for closure of the West Johnson Road and West Stackpole Road crossings be withdrawn from the petition and that no evidence be taken with respect to those crossings at the hearing.

6. Bradford M. Furlong was granted leave to intervene with respect to two crossings, Spruce Street and Milltown Road.

7. A hearing was held on February 23, 1995, in Mount Vernon, before Administrative Law Judge Lisa A. Anderl. At the commencement of the hearing, BNRR requested and was granted an indefinite continuance of the hearing with respect to the Milltown Road and Spruce Street crossings. Mr. Furlong expressed no interest in the Bow Street and Green Road crossings, and was excused from the remainder of the hearing.

8. Kenneth E. Cottingham testified for BNRR in support of the petition. Mr. Cottingham is a consulting transportation engineer, licensed in Washington as a mechanical engineer. He has worked on rail grade crossing design, operations, and safety since 1956. He performed an on-site inspection of the Green Road crossing in January 1995.

9. Green Road is the original paved north-south highway in the area. It is 15½ feet wide, and has no pavement markings. The Green Road crossing is 50 to 65 feet north of an intersection of Green Road with old Highway 99. Green Road and old Highway 99 both run in a north-south direction on opposite sides of the tracks. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees. The crossing consists of one track protected by stop signs and crossbucks. The track is a main line of BNRR, and the high-speed rail corridor of Amtrak.

10. The crossing is hazardous in several respects. It does not meet accepted standards of sight distance. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The angle of the crossing makes it hazardous. Vehicles stopping at the crossing have a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. First, it presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the rail. Eighty-two foot truck-trailer rigs are common. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour and the drivers may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks makes the crossing hazardous. Stop signs are not an effective method of controlling traffic at railroad grade crossings. More people violate stop signs at grade crossings than at highway intersections.

11. There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. Cook Road also is the interchange of I-5, which lies to the west of old Highway 99.

12. The nature of the area along Green Road between the Green Road crossing and Cook Road is primarily residential. People who live or do business on Green Road can use Cook Road. Green Road has light traffic.

13. Edward Leon Quicksall testified for the National Railroad Passenger Corporation in support of the petition to close the Green Road crossing. Mr. Quicksall is transportation manager in charge of field operations. He is responsible for anything to do with Amtrak trains in and out of Seattle. New Amtrak service is planned between Seattle and Vancouver, B.C. Amtrak plans to operate its equipment initially at 79 miles per hour.

14. Jeff Schultz testified for the Washington State Department of Transportation in support of the petition to close the Green Road crossing. He is a rail passenger analyst. He is involved in the passenger rail project going from Seattle to Vancouver, B.C. The Washington state legislature directed the department to reestablish service between the two cities several years ago as part of the high speed ground transportation legislation, chapter 47.79 RCW. RCW 47.79.030 states that the department shall work on improved grade crossing protection or grade crossing elimination as part of this project. The department's goal for service is 3 hours and 30 minutes, with an interim goal of 3 hours and 55 minutes. There was passenger service on the corridor prior to 1981, and it took 4 hours and 30 minutes. In order to perform the new goal, it will be necessary for Amtrak to operate over the Green Road crossing at 79 miles per hour. The legislature has set a future goal of 150 miles per hour. Grade crossing consolidation will be necessary to accomplish the faster speeds. Consolidation enhances safety by eliminating the potential for conflicts between automobiles and trains.

15. Ronald Ries testified for the Federal Railroad Administration in support of the petition to close the Green Road crossing. He is Crossing and Trespasser Regional Manager for the FRA, which regulates railroad safety in interstate commerce. His duties are to help coordinate grade crossing safety initiatives and trespasser prevention programs. It is the policy and goal of the FRA to see a 25 percent reduction in public highway rail grade crossings by the year 2000. In 1994, the FRA, together with the Federal Highway Administration, Federal Transit Administration, and National Highway Traffic Safety Administration published the Rail-Highway Crossing Safety Action Plan Support Proposals which address 55 specific proposals to reduce the number of collisions that are occurring at grade crossings and prevent trespassing. Criteria the FRA has determined to be useful in selecting appropriate crossings for closure or consolidation are: to consolidate crossings where there are more than four per mile in urban areas and more than one per mile in rural areas when an alternate route is available; to consolidate crossings which have fewer than 2000 vehicles per day and more than two trains per day and an alternate route is available; and to eliminate crossings where the road crosses the tracks at a skewed angle.

16. The following residents and business owners in the area of the crossing testified in opposition to the petition to close the Green Road crossing.

a. Douwe Dykstra resides on Gear Road, which is just south of the Green Road crossing. He operates a dairy farm there, and also has land on Green Road, north of the crossing. He travels with farm equipment back and forth between the two fields, using old Highway 99 and the Green Road crossing. If the Green Road crossing is closed, he will have to use the Cook Road crossing, which is a difficult road to cross with farm equipment.

b. Harry Smit is a trucker whose shop is on Green between the crossing and Cook Road. It is difficult and dangerous to turn trucks around at his shop, so he enters Green Road at one end and exits at the other. He is aware of two accidents at the crossing. Approaches at the crossing are not long enough for an 80-foot truck. He recommends that the Green Road crossing be kept open and improved with flashing lights and drop arm gates.

c. Robert Farrell, Sedro Woolley, owns business and residential property on Green Road which he leases. The area is part of the I-5 corridor. Traffic flow in the corridor is tremendous, and business has recognized this and is developing the area. The intersection of Cook Road and old 99 is congested already, and the Green Road-Cook Road intersection is becoming more difficult to use. Keeping the Green Road crossing open would relieve congestion on Cook Road. Closing it might choke off further growth in the area.

d. Randy Rockafellow has a farm equipment maintenance business at his residence on Green Road. The Green Road-Cook Road intersection has flooded in the past, while the Green Road crossing remained above water, providing safe access. There is a lot of traffic on Cook Road, making it difficult to enter from Green Road.

e. Kenneth Thomas resides on Green Road. Cars sometimes do not stop at the crossing when exiting old highway 99, and rip through his yard. Nonetheless, he favors keeping the crossing open because if it were closed, it would take additional time for emergency vehicles to reach his home. He also is concerned about access in the event trains block Cook Road.

17. John A. Pauls testified in opposition to the petition. Mr. Pauls is the chief of the Burlington Fire Department and the chief of the Skagit County Fire District 6. The fire department opposes closure of the Green Road crossing because emergency response to the southern end of Green Road would be increased. The additional response time at emergency speed would be two minutes. Two minutes makes a significant amount of difference, increasing response time to that area by one-third.

18. Janette Keiser testified for Skagit County. She is the public works director, Skagit County Public Works Department, and is the county engineer. The county's preliminary investigation identified concerns that it wanted addressed as part of the SEPA documentation. Although Green Road is a low-volume road, closure of the crossing might have an adverse impact on the businesses and property owners on Green Road. Several large agricultural enterprises rely on Green Road for ingress and egress. If closure would deny adequate ingress and egress, it would deny the policies of the county's Growth Management Act. The county was concerned that the impact on congestion, emergency response, and business viability be considered as part of the SEPA process. As stated in Finding No. 24, the county withdrew its opposition to closure subsequent to the hearing.

19. Gary Harder testified for the staff of the Washington Utilities and Transportation Commission. He has provided technical assistance to the rail section for the

last 21 years. The Commission's records do not show any accidents at the Green Road crossing in the last ten years.

20. At the conclusion of testimony, the administrative law judge continued the hearing on the petition to close the Green Street crossing pending completion by Commission Staff of a determination of whether there is an environmental impact of closing the crossing.

21. The Commission entered an order closing the Boe Street crossing on May 26, 1995.

22. On January 17, 1996, BNRR requested leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings. No party has responded in opposition to the request.

23. Commission Staff has made a determination of non-significance for closure of the Green Road crossing under the State Environmental Protection Act. The determination states the following required mitigation: a proposed cul-de-sac on Green Road will be constructed within the existing railroad/county right-of-way to county standards as approved by the county engineer; grading and filling will be performed as determined during the design stage; and the project will comply with the county's critical area Ordinance 14.36.

24. On October 27, 1996, BNRR and Skagit County entered into an agreement: to waive the hearing currently pending; to eliminate the Green Road crossing by the county abandoning the roadway right-of-way across the railroad right-of-way and constructing a cul-de-sac upon the railroad's right-of-way; for BNRR to pay the county \$6,190 for eliminating the crossing and closing the road; and for BNRR to grant the county an easement for the construction of the cul-de-sac. The county withdraws its objection to the closure of the Green Road crossing on condition as described in the agreement.

25. BNRR, Skagit County, and Commission Staff have waived entry of an initial order in this proceeding.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this petition.

2. Granting the unopposed request to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is consistent with the public interest.

3. The grade crossing at Green Road and mile post 73.88 of the BNRR tracks in Skagit County is dangerous and is not required by the public convenience and safety. The petition to close the crossing should be granted subject to construction of a cul-de-sac on

Green Road at the point of closure, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

4. The petition of BNRR to close the Green Road crossing should be granted, conditioned upon construction of the cul-de-sac referred to above.

5. An initial order may properly be omitted in this matter.

ORDER


THE COMMISSION ORDERS That the request of Burlington Northern Railroad Company for leave to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is granted.

THE COMMISSION FURTHER ORDERS That the petition of Burlington Northern Railroad Company for closure of the Green Road crossing at mile post 73.88 in Skagit County is granted, conditioned upon construction of a cul-de-sac on Green Road at the point of closure, such as that described in the agreement between Burlington Northern Railroad Company and Skagit County dated October 27, 1996.

DATED at Olympia, Washington, and effective this 13th day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

SERVICE DATE
DEC 13 1996

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Burlington Northern Railroad Co.,	)	DOCKET NO. TR-940282
)	
Petitioner,	)	FINDINGS OF FACT;
v.	)	CONCLUSIONS OF LAW;
	)	AND ORDER CLOSING GREEN
Skagit County, Washington,	)	ROAD CROSSING AND
	)	GRANTING LEAVE TO WITH-
Respondent.	)	DRAW PETITION AS TO
	)	FOUR CROSSINGS
.....)	

NATURE OF PROCEEDING: This is a petition to close six railway-highway crossings at grade.

PROCEDURAL STATUS: Hearings were held on two crossings, Boe Street and Green Road, on February 23 and 24, 1995, in Mt. Vernon, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings.¹ At hearing, Skagit County expressed concerns about closure of the Green Road crossing, and several members of the public testified in opposition to closure of that crossing. The County withdrew its opposition to closure of the Boe Street Crossing. The Commission entered an order closing the Boe Street crossing on May 26, 1995. The hearing on the Green Road crossing was continued pending completion of a Commission Staff determination of whether there is an environmental impact of closing the crossing; that determination since has been made. Subsequent to the hearing, Skagit County and the petitioner entered into an agreement to close the Green Road crossing, and Skagit County has withdrawn its opposition to closure. The petitioner, the respondent, and counsel for Commission Staff have waived an initial order so that the record may proceed directly to consideration by the Commission. Petitioner has requested leave to withdraw its petition as to the four crossings that did not go to hearing.

COMMISSION: The Commission grants leave to withdraw the petition as to the four crossings that did not go to hearing. The Commission grants the petition to close the Green Road crossing, conditioned on the construction of a cul-de-sac on Green Road at the point of closure. All crossings at grade are inherently dangerous, and this one is especially hazardous. The crossing is a convenience to residents and business people in the vicinity, but a safer alternate crossing is available. The need for the crossing is not so great that it must be kept open despite its dangerous condition.

¹ The petitioner withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings.

[1]* A highway-railway crossing at grade which is poorly configured, poorly protected, has a small holding capacity for vehicles, and is on a railroad main line, should be closed when a safer crossing is readily available, although somewhat less convenient for some persons. RCW 81.53.060.

[2] That a dangerous crossing at grade allows faster response in the event of fire and other emergency than another route does not require leaving the crossing open when the alternate access is safer and is readily available. RCW 81.53.060.

APPEARANCES: Rexanne Gibson, attorney, Bellevue, represents petitioner Burlington Northern Railroad Co. John R. Moffat, prosecuting attorney, represents Skagit County. Ann Rendahl, assistant attorney general, Olympia, represents the staff of the Washington Utilities and Transportation Commission. Bradford E. Furlong, attorney, Mt. Vernon, appeared at hearing as an intervenor.²

MEMORANDUM

This is a petition by Burlington Northern Railroad Company (BNRR) to close six highway-railway crossings at grade in Skagit County. The six crossings are: Milltown Road; Spruce Street; Green Road; Boe Street; West Johnson Road; and West Stackpole Road. BNRR cites public safety concerns in its petition for closure of the crossings. Skagit County opposed closure of the Milltown Road, Spruce Street, Green Road, and Boe Street crossings, and requested a hearing.

BNRR withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings. BNRR now has requested leave to withdraw its petition as to those four crossings.

Hearing was held on the other two crossings, Boe Street and Green Road. BNRR requested that separate orders be entered for each of the crossings. Skagit County withdrew its opposition to closure of the Bow Street crossing at hearing. The Commission entered an order closing the Boe Street crossing in May 1995.

At the commencement of the hearing in this matter, Commission Staff stated that, through an oversight, it had not complied with the state Environmental Protection Act (SEPA) by doing a threshold determination of whether there is an environmental impact of

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

² Mr. Furlong intervened only with respect to the Spruce Street and Milltown Road crossings. He did not participate in the hearing on the Boe Street and Green Road crossings.

closing the Green Road crossing. Evidence was taken on crossing issues. The administrative law judge continued the proceeding as to Green Road until it could be determined whether an additional hearing would be necessary on environmental issues.

In September 1996, the Commission issued a mitigated determination of non-significance with respect to BNRR's proposal to close the Green Road crossing. The determination states that the proposal does not have a probable significant impact on the environment, but lists the following required mitigation: construction of a cul-de-sac on Green Road within the existing railroad/county right-of-way to county standards as approved by the county engineer; necessary grading and filling; and compliance of the project with Skagit County critical area Ordinance 14.36.

On December 2, 1996, Skagit County filed with the Commission an agreement between the county and BNRR providing for the closure of the Green Road crossing and construction of a cul-de-sac at the closure point, and the granting of an easement for the cul-de-sac to the county. In a letter accompanying the agreement, Skagit County waived further hearing on the petition and withdrew its opposition to closure of the Green Road crossing. Skagit County, BNRR, and Commission Staff have waived an initial order.

A. Request for Leave to Withdraw Petition as to Four Crossings

On January 17, 1996, BNRR filed a request for leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road crossings. No party responded in opposition. It is consistent with the public interest to grant withdrawal of the petition. The request will be granted.

B. Green Road Crossing

Applicable Standards

Chapter 81.53 grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, prohibits the construction of a new highway crossing at grade without prior Commission approval,³ and sets out factors that the Commission is to take into account in determining whether a grade-separated crossing is practicable.

81.53.060 authorizes a railroad company whose road is crossed by a street or highway to petition the Commission that the public safety requires the establishment of an under-crossing or over-crossing, an alteration in the existing grade crossing, or the closure of the existing crossing.

³ When used in Chapter 81.53, the term "highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public roadways. RCW 81.53.010.

The statutes are based on the theory that all railway/highway crossings at grade are dangerous, and public policy strongly disfavors them. Reines v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 195 Wash. 148, 80 P.2d 408 (1983); Department of Transportation v. Snohomish County, 35 Wn.2d 247, 257, 212 P.2d 829 (1949); State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn.2d 95, 104 P.2d 764 (1940).

In addition to the dangers inherent in any crossing at grade, there are factors that may make a particular crossing especially hazardous. These factors include vegetation or other obstacles that limit the motorist's view of the tracks as the motorist approaches the crossing,⁴ an alignment in which the roadway approaches the crossing at an oblique angle,⁵ limited holding capacity on the approaches between the railroad right of way and streets that intersect with the approaches,⁶ more than one mainline track at the crossing,⁷ and the presence of a siding track in addition to a mainline track at the crossing.⁸

In some cases the public convenience or need for a crossing outweighs the danger, and in that case the Commission may allow a crossing at grade to remain open. The balancing test was stated by the court in Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949) as follows:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition.

Factors the Commission considers in determining whether the public convenience and need outweigh the danger of the crossing include the amount and character of travel on the railroad and on the highway, the availability of alternate crossings, whether the alternate crossings are less hazardous, the ability of alternate crossings to handle any additional traffic that would result from the closure, and the effect of closing the crossing on

⁴ See, Whatcom County v. Burlington Northern Railroad Company, Docket Nos. TR-1725 and TR-1726 (January 1985).

⁵ See, Thurston County v. Burlington Northern Railroad, Docket No. TR-1930 (April 1988).

⁶ See, Whatcom County, *supra* note 4.

⁷ See, Department of Transportation v. Snohomish County, 35 Wn.2d 247 (1949).

⁸ See, Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985); Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

public safety factors such fire and police control. See, Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

The Evidence

Witnesses for BNRR, the Washington State Department of Transportation, the National Railroad Passenger Corporation, and the Federal Railroad Administration testified in support of the petition to close the Green Road crossing. Five members of the public and a fire department official testified in opposition to the proposal to close the Green Road crossing. A witness for Skagit County and a Commission Staff witness also testified concerning the crossing.

The Green Road crossing lies on a BNRR main line which is being upgraded so that high-speed rail passenger service can be initiated between Seattle and Vancouver, B.C. The Washington state legislature, in chapter 47.79 RCW, has established as a goal the implementation of such high-speed service. Among the priorities set out in RCW 47.79.030 are improved grade crossing protection or grade crossing elimination.

Federal railroad safety policies, set out in the Federal Railroad Administration's Rail-Highway Safety/Action Plan Support Proposals, favor consolidation of crossings when practical and improvement of the remaining crossings. The FRA, which regulates railroad safety, has the policy and goal of reducing grade crossings by 25% by the year 2000, to reduce the number of collisions that are occurring at grade crossings.

In the vicinity of the crossing, Green Road and old Highway 99 run parallel to one another on opposite sides of the tracks, in an approximately north-south direction, until Green Road crosses the tracks and intersects with old Highway 99. Green Road has low traffic volumes. The Green Road crossing consists of one track protected by stop signs and crossbucks. The crossing is 50 to 65 feet north of the intersection of Green Road with old Highway 99. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees.

The crossing does not allow good advance sight of approaching trains. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The skewed angle of the crossing results in drivers stopping at the crossing having a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. It presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the

rail. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour. They may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks also makes the crossing hazardous. Stop signs are not a very effective method of controlling traffic at railroad grade crossings. More people violate stop signs at railroad grade crossings than they do at regular highway intersections.

There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop intersection. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. People who live or do business on Green Road can use Cook Road.

Six persons testified in opposition to closure. A farmer who lives south of the crossing opposes closure because he uses old Highway 99 and Green Road to access his fields, reaching Green Road via the Green Road crossing. The Cook Road crossing is a more difficult road to cross with farm equipment. A truck operator who has his shop on Green Road opposes closure because it is difficult for him to turn his trucks around at the shop, and therefore convenient to enter Green Road at one end and exit at the other. He acknowledges the danger at the Green Road crossing, and has seen other truck drivers make the mistake of getting stuck at the intersection with their back end still on the track.

An owner of business property along Green Road opposes closure because business and traffic in the area is growing, the intersection of old Highway 99 and Cook Road has become congested, and closing the Green Road crossing would add to the congestion and adversely affect the area's growth. A Green Road resident and business operator opposes closure because there already is too much traffic at the intersection of Green Road and Cook Road, and because the intersection has flooded in the past whereas the south end of Green Road remained open.

A resident of Green Road opposes closure because the crossing provides alternative access in case of emergencies. The witness acknowledges that some cars coming from old Highway 99 do not stop at the crossing. The fire chief of the Burlington Fire Department and Skagit County Fire District 6 also opposes closure, because closure would increase emergency response time by about two minutes.

A witness who is both the county engineer and the public works director for Skagit County expressed concerns about closure of the crossing which the county wished to have addressed as part of the SEPA review. The county subsequently withdrew its opposition to closure of the crossing.

Discussion and Decision

[1] Our analysis starts with the fact that all crossings at grade are dangerous. There are factors peculiar to the Green Road crossing that make it particularly dangerous. The crossing is on a railroad main line which will be used by high-speed passenger trains. The configuration of the crossing results in poor sight distances. The crossing cannot be seen until a driver is almost upon it. The skewed angle of the crossing prevents a driver from having a good line of sight of trains coming from one direction. The proximity of the crossing to the intersection with old Highway 99 creates three hazards, described above: drivers may be confused by the presence of two stop signs; the crossing has a limited holding capacity for vehicles; and vehicles exiting old Highway 99 may misjudge their speed and slide over the crossing before they can stop. The crossing is not protected by electronic signals or gates.

The crossing is a convenience to residents and business people in the vicinity, but is not shown to be a necessity. The crossing is not heavily used. Closure of the crossing would not cut off any residences or businesses. There is another crossing nearby which is equipped with electronic signal devices. Electronic signals make a crossing much safer than do crossbucks and stop signs.⁹ Consolidation of crossings necessarily inconveniences those whose crossing is eliminated in favor of adjacent crossings.

The argument that the Cook Road crossing is busy does not justify leaving the Green Road crossing open. See, Whatcom County, supra; Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985), at page 7. Consolidating crossings when practical and improving the remaining crossings promotes the public safety.

[2] The argument that the Green Road crossing should remain open because it allows faster response in the event of fire and other emergency does not justify leaving the crossing open. Access via a safer route is readily available, and the need for additional access does not outweigh the dangers posed by the crossing. See, Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996), at pages 7-8.

After considering the convenience of the crossing, hazards inherent in all crossings at grade, the hazards that are particular to this crossing, the fact that it is lightly used, and the accessibility of a safer alternate crossing, the Commission concludes that the need for the crossing is not so great that it must be kept open despite its dangerous condition.

The mitigated determination of non-significance requires as mitigation the construction of a cul-de-sac at the point of closure of Green Road. Consistent with that determination, the Commission will condition closure of the crossing on construction of a cul-

⁹ See, Whatcom County v. Burlington Northern Railroad Company, Cause Nos. TR-1725 and TR-1726 (January 1985), at page 5.

de-sac, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

FINDINGS OF FACT

1. On January 24, 1995, the Burlington Northern Railroad Company ("BNRR") petitioned the Commission for closure of four highway-railway crossings at grade in Skagit County: Milltown Road near Conway, at railroad milepost 60.28; Spruce Street in Conway, at railroad milepost 62.50; Green Road near Burlington, at railroad milepost 73.88, located in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 19, Twp. 35N, Range 4 E.W.M., Burlington, Skagit County; and Boe Street near Bow, located at railroad milepost 79.20.

2. With respect to the Green Road crossing, the petition states that the crossing is .45 mile to the south of the Cook Road grade crossing; that the Cook Road crossing is signalized with cantilevers and gates while the Green Road crossing has passive warning devices (cross bucks); that Cook Road can serve the homeowners and businesses that reside on Green Road; and that closing the Green Road crossing will improve the safety of the motoring public.

3. In March 1994, Skagit County filed an objection to the petition and requested a hearing.

4. In October 1994, BNRR and Skagit County jointly submitted two additional grade crossings as part of the petition: West Johnson Road near Conway, at railroad milepost 64.58; and West Stackpole Road near Conway, at railroad milepost 65.58.

5. On February 21, 1995, BNRR and Skagit County requested that the request for closure of the West Johnson Road and West Stackpole Road crossings be withdrawn from the petition and that no evidence be taken with respect to those crossings at the hearing.

6. Bradford M. Furlong was granted leave to intervene with respect to two crossings, Spruce Street and Milltown Road.

7. A hearing was held on February 23, 1995, in Mount Vernon, before Administrative Law Judge Lisa A. Anderl. At the commencement of the hearing, BNRR requested and was granted an indefinite continuance of the hearing with respect to the Milltown Road and Spruce Street crossings. Mr. Furlong expressed no interest in the Bow Street and Green Road crossings, and was excused from the remainder of the hearing.

8. Kenneth E. Cottingham testified for BNRR in support of the petition. Mr. Cottingham is a consulting transportation engineer, licensed in Washington as a mechanical engineer. He has worked on rail grade crossing design, operations, and safety since 1956. He performed an on-site inspection of the Green Road crossing in January 1995.

9. Green Road is the original paved north-south highway in the area. It is 15½ feet wide, and has no pavement markings. The Green Road crossing is 50 to 65 feet north of an intersection of Green Road with old Highway 99. Green Road and old Highway 99 both run in a north-south direction on opposite sides of the tracks. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees. The crossing consists of one track protected by stop signs and crossbucks. The track is a main line of BNRR, and the high-speed rail corridor of Amtrak.

10. The crossing is hazardous in several respects. It does not meet accepted standards of sight distance. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The angle of the crossing makes it hazardous. Vehicles stopping at the crossing have a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. First, it presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the rail. Eighty-two foot truck-trailer rigs are common. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour and the drivers may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks makes the crossing hazardous. Stop signs are not an effective method of controlling traffic at railroad grade crossings. More people violate stop signs at grade crossings than at highway intersections.

11. There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. Cook Road also is the interchange of I-5, which lies to the west of old Highway 99.

12. The nature of the area along Green Road between the Green Road crossing and Cook Road is primarily residential. People who live or do business on Green Road can use Cook Road. Green Road has light traffic.

13. Edward Leon Quicksall testified for the National Railroad Passenger Corporation in support of the petition to close the Green Road crossing. Mr. Quicksall is transportation manager in charge of field operations. He is responsible for anything to do with Amtrak trains in and out of Seattle. New Amtrak service is planned between Seattle and Vancouver, B.C. Amtrak plans to operate its equipment initially at 79 miles per hour.

14. Jeff Schultz testified for the Washington State Department of Transportation in support of the petition to close the Green Road crossing. He is a rail passenger analyst. He is involved in the passenger rail project going from Seattle to Vancouver, B.C. The Washington state legislature directed the department to reestablish service between the two cities several years ago as part of the high speed ground transportation legislation, chapter 47.79 RCW. RCW 47.79.030 states that the department shall work on improved grade crossing protection or grade crossing elimination as part of this project. The department's goal for service is 3 hours and 30 minutes, with an interim goal of 3 hours and 55 minutes. There was passenger service on the corridor prior to 1981, and it took 4 hours and 30 minutes. In order to perform the new goal, it will be necessary for Amtrak to operate over the Green Road crossing at 79 miles per hour. The legislature has set a future goal of 150 miles per hour. Grade crossing consolidation will be necessary to accomplish the faster speeds. Consolidation enhances safety by eliminating the potential for conflicts between automobiles and trains.

15. Ronald Ries testified for the Federal Railroad Administration in support of the petition to close the Green Road crossing. He is Crossing and Trespasser Regional Manager for the FRA, which regulates railroad safety in interstate commerce. His duties are to help coordinate grade crossing safety initiatives and trespasser prevention programs. It is the policy and goal of the FRA to see a 25 percent reduction in public highway rail grade crossings by the year 2000. In 1994, the FRA, together with the Federal Highway Administration, Federal Transit Administration, and National Highway Traffic Safety Administration published the Rail-Highway Crossing Safety Action Plan Support Proposals which address 55 specific proposals to reduce the number of collisions that are occurring at grade crossings and prevent trespassing. Criteria the FRA has determined to be useful in selecting appropriate crossings for closure or consolidation are: to consolidate crossings where there are more than four per mile in urban areas and more than one per mile in rural areas when an alternate route is available; to consolidate crossings which have fewer than 2000 vehicles per day and more than two trains per day and an alternate route is available; and to eliminate crossings where the road crosses the tracks at a skewed angle.

16. The following residents and business owners in the area of the crossing testified in opposition to the petition to close the Green Road crossing.

a. Douwe Dykstra resides on Gear Road, which is just south of the Green Road crossing. He operates a dairy farm there, and also has land on Green Road, north of the crossing. He travels with farm equipment back and forth between the two fields, using old Highway 99 and the Green Road crossing. If the Green Road crossing is closed, he will have to use the Cook Road crossing, which is a difficult road to cross with farm equipment.

b. Harry Smit is a trucker whose shop is on Green between the crossing and Cook Road. It is difficult and dangerous to turn trucks around at his shop, so he enters Green Road at one end and exits at the other. He is aware of two accidents at the crossing. Approaches at the crossing are not long enough for an 80-foot truck. He recommends that the Green Road crossing be kept open and improved with flashing lights and drop arm gates.

c. Robert Farrell, Sedro Woolley, owns business and residential property on Green Road which he leases. The area is part of the I-5 corridor. Traffic flow in the corridor is tremendous, and business has recognized this and is developing the area. The intersection of Cook Road and old 99 is congested already, and the Green Road-Cook Road intersection is becoming more difficult to use. Keeping the Green Road crossing open would relieve congestion on Cook Road. Closing it might choke off further growth in the area.

d. Randy Rockafellow has a farm equipment maintenance business at his residence on Green Road. The Green Road-Cook Road intersection has flooded in the past, while the Green Road crossing remained above water, providing safe access. There is a lot of traffic on Cook Road, making it difficult to enter from Green Road.

e. Kenneth Thomas resides on Green Road. Cars sometimes do not stop at the crossing when exiting old highway 99, and rip through his yard. Nonetheless, he favors keeping the crossing open because if it were closed, it would take additional time for emergency vehicles to reach his home. He also is concerned about access in the event trains block Cook Road.

17. John A. Pauls testified in opposition to the petition. Mr. Pauls is the chief of the Burlington Fire Department and the chief of the Skagit County Fire District 6. The fire department opposes closure of the Green Road crossing because emergency response to the southern end of Green Road would be increased. The additional response time at emergency speed would be two minutes. Two minutes makes a significant amount of difference, increasing response time to that area by one-third.

18. Janette Keiser testified for Skagit County. She is the public works director, Skagit County Public Works Department, and is the county engineer. The county's preliminary investigation identified concerns that it wanted addressed as part of the SEPA documentation. Although Green Road is a low-volume road, closure of the crossing might have an adverse impact on the businesses and property owners on Green Road. Several large agricultural enterprises rely on Green Road for ingress and egress. If closure would deny adequate ingress and egress, it would deny the policies of the county's Growth Management Act. The county was concerned that the impact on congestion, emergency response, and business viability be considered as part of the SEPA process. As stated in Finding No. 24, the county withdrew its opposition to closure subsequent to the hearing.

19. Gary Harder testified for the staff of the Washington Utilities and Transportation Commission. He has provided technical assistance to the rail section for the

last 21 years. The Commission's records do not show any accidents at the Green Road crossing in the last ten years.

20. At the conclusion of testimony, the administrative law judge continued the hearing on the petition to close the Green Street crossing pending completion by Commission Staff of a determination of whether there is an environmental impact of closing the crossing.

21. The Commission entered an order closing the Boe Street crossing on May 26, 1995.

22. On January 17, 1996, BNRR requested leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings. No party has responded in opposition to the request.

23. Commission Staff has made a determination of non-significance for closure of the Green Road crossing under the State Environmental Protection Act. The determination states the following required mitigation: a proposed cul-de-sac on Green Road will be constructed within the existing railroad/county right-of-way to county standards as approved by the county engineer; grading and filling will be performed as determined during the design stage; and the project will comply with the county's critical area Ordinance 14.36.

24. On October 27, 1996, BNRR and Skagit County entered into an agreement: to waive the hearing currently pending; to eliminate the Green Road crossing by the county abandoning the roadway right-of-way across the railroad right-of-way and constructing a cul-de-sac upon the railroad's right-of-way; for BNRR to pay the county \$6,190 for eliminating the crossing and closing the road; and for BNRR to grant the county an easement for the construction of the cul-de-sac. The county withdraws its objection to the closure of the Green Road crossing on condition as described in the agreement.

25. BNRR, Skagit County, and Commission Staff have waived entry of an initial order in this proceeding.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this petition.

2. Granting the unopposed request to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is consistent with the public interest.

3. The grade crossing at Green Road and mile post 73.88 of the BNRR tracks in Skagit County is dangerous and is not required by the public convenience and safety. The petition to close the crossing should be granted subject to construction of a cul-de-sac on

Green Road at the point of closure, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

4. The petition of BNRR to close the Green Road crossing should be granted, conditioned upon construction of the cul-de-sac referred to above.

5. An initial order may properly be omitted in this matter.


ORDER


THE COMMISSION ORDERS That the request of Burlington Northern Railroad Company for leave to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is granted.

THE COMMISSION FURTHER ORDERS That the petition of Burlington Northern Railroad Company for closure of the Green Road crossing at mile post 73.88 in Skagit County is granted, conditioned upon construction of a cul-de-sac on Green Road at the point of closure, such as that described in the agreement between Burlington Northern Railroad Company and Skagit County dated October 27, 1996.

DATED at Olympia, Washington, and effective this ^{13th} day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

RCW 43.21C.030

Guidelines for state agencies, local governments — Statements — Reports — Advice — Information.

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the world-wide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

[1971 ex.s. c 109 § 3.]

RCW 36.70A.020 Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

[2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

RCW 36.70A.060

Natural resource lands and critical areas — Development regulations.

(1)(a) Except as provided in *RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

[2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

Notes:

*Reviser's note: RCW 36.70A.1701 expired June 30, 2006.

Intent -- Effective date -- 2005 c 423: See notes following RCW 36.70A.030.

197-11-335 << 197-11-340 >> 197-11-350

WAC 197-11-340

Determination of nonsignificance (DNS).

(1) If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of nonsignificance (DNS) substantially in the form provided in WAC 197-11-970. If an agency adopts another environmental document in support of a threshold determination (Part Six), the notice of adoption (WAC 197-11-965) and the DNS shall be combined or attached to each other.

(2) When a DNS is issued for any of the proposals listed in (2)(a), the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the optional DNS process in WAC 197-11-355 is used.

(a) An agency shall not act upon a proposal for fourteen days after the date of issuance of a DNS if the proposal involves:

- (i) Another agency with jurisdiction;
- (ii) Demolition of any structure or facility not exempted by WAC 197-11-800 (2)(f) or 197-11-880;
- (iii) Issuance of clearing or grading permits not exempted in Part Nine of these rules;
- (iv) A DNS under WAC 197-11-350 (2), (3) or 197-11-360(4); or
- (v) A GMA action.

(b) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11-510.

(c) Any person, affected tribe, or agency may submit comments to the lead agency within fourteen days of the date of issuance of the DNS.

(d) The date of issue for the DNS is the date the DNS is sent to the department of ecology and agencies with jurisdiction and is made publicly available.

(e) An agency with jurisdiction may assume lead agency status only within this fourteen-day period (WAC 197-11-948).

(f) The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents. When a DNS is modified, the lead agency shall send the modified DNS to agencies with jurisdiction.

(3)(a) The lead agency shall withdraw a DNS if:

- (i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
- (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
- (iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

(b) Subsection (3)(a)(ii) shall not apply when a nonexempt license has been issued on a private project.

(c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also WAC 197-11-070).

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-340, filed 10/10/97, effective 11/10/97.
Statutory Authority: RCW 43.21C.110. 95-07-023 (Order 94-22), § 197-11-340, filed 3/6/95, effective 4/6/95; 84-05-020 (Order DE 83-39), § 197-11-340, filed 2/10/84, effective 4/4/84.]

197-11-443 << 197-11-444 >> 197-11-448

WAC 197-11-444

Elements of the environment.

(1) Natural environment

(a) Earth

(i) Geology

(ii) Soils

(iii) Topography

(iv) Unique physical features

(v) Erosion/enlargement of land area (accretion)

(b) Air

(i) Air quality

(ii) Odor

(iii) Climate

(c) Water

(i) Surface water movement/quantity/quality

(ii) Runoff/absorption

(iii) Floods

(iv) Ground water movement/quantity/quality

(v) Public water supplies

(d) Plants and animals

(i) Habitat for and numbers or diversity of species of plants, fish, or other wildlife

(ii) Unique species

(iii) Fish or wildlife migration routes

(e) Energy and natural resources

(i) Amount required/rate of use/efficiency

(ii) Source/availability

(iii) Nonrenewable resources

(iv) Conservation and renewable resources

(v) Scenic resources

(2) Built environment

(a) Environmental health

(i) Noise

- (ii) Risk of explosion
- (iii) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- (b) Land and shoreline use
 - (i) Relationship to existing land use plans and to estimated population
 - (ii) Housing
 - (iii) Light and glare
 - (iv) Aesthetics
 - (v) Recreation
 - (vi) Historic and cultural preservation
 - (vii) Agricultural crops
- (c) Transportation
 - (i) Transportation systems
 - (ii) Vehicular traffic
 - (iii) Waterborne, rail, and air traffic
 - (iv) Parking
 - (v) Movement/circulation of people or goods
 - (vi) Traffic hazards
- (d) Public services and utilities
 - (i) Fire
 - (ii) Police
 - (iii) Schools
 - (iv) Parks or other recreational facilities
 - (v) Maintenance
 - (vi) Communications
 - (vii) Water/storm water
 - (viii) Sewer/solid waste
 - (ix) Other governmental services or utilities

(3) To simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in WAC 197-11-444 may be combined.

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-444, filed 2/10/84, effective 4/4/84.]

197-11-508 << 197-11-510 >> 197-11-535

WAC 197-11-510
Public notice.

(1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.

Examples of reasonable methods to inform the public are:

- (a) Posting the property, for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Notifying the news media;
- (e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
- (f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas).

(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

(3) Documents which are required to be sent to the department of ecology under these rules will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet compliance with this section.

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-510, filed 2/10/84, effective 4/4/84.]

197-11-570 << 197-11-600 >> 197-11-610

WAC 197-11-600

When to use existing environmental documents.

(1) This section contains criteria for determining whether an environmental document must be used unchanged and describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA.

(2) An agency may use environmental documents that have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts. The proposals may be the same as, or different than, those analyzed in the existing documents.

(3) Any agency acting on the same proposal shall use an environmental document unchanged, except in the following cases:

(a) For DNSs, an agency with jurisdiction is dissatisfied with the DNS, in which case it may assume lead agency status (WAC 197-11-340 (2)(e) and 197-11-948).

(b) For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or

(ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.

(c) For EISs, the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense).

(4) Existing documents may be used for a proposal by employing one or more of the following methods:

(a) "Adoption," where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document; or

(b) "Incorporation by reference," where an agency preparing an environmental document includes all or part of an existing document by reference.

(c) An addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.

(d) Preparation of a SEIS if there are:

(i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or

(ii) New information indicating a proposal's probable significant adverse environmental impacts.

(e) If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).

[Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-600, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-600, filed 2/10/84, effective 4/4/84.]

197-11-860 << 197-11-865 >> 197-11-870

WAC 197-11-865

Utilities and transportation commission.

All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:

(1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petroleum and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

(3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and

(4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under WAC 197-11-800, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

[Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-865, filed 2/10/84, effective 4/4/84.]

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 August 28, 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 CITY'S PRE-HEARING MOTION IN LIMINE AND MOTION FOR SUMMARY JUDGMENT REQUIRING NEW SEPA DETERMINATION BY THE WUTC (with exhibits) on the following:

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JOHN LI, MANAGER
PUBLIC PROJECTS
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South Lockwood

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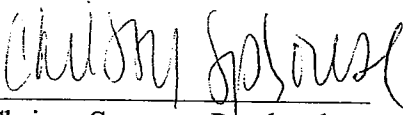
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DATED this 28th day of August, 2007 at Mount Vernon, Washington.



Chrissy Sprouse, Paralegal