

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY CO.

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

DOCKET TR-090121

COMMISSION STAFF'S COMMENTS  
ON THE SEPA PROCESS AND  
WSDOT'S DETERMINATION OF NON-  
SIGNIFICANCE

1 Consistent with Judge Torem's August 31, 2009, Notice of Opportunity to Comment on the Completion of Environmental Review Process under State Environmental Policy Act (SEPA), Staff provides these comments.

2 Staff has reviewed WSDOT's determination of non-significance, including the SEPA environmental checklist. Staff concludes that the checklist raises considerations that are either (1) already taken into account in Staff's recommendations in this matter (specifically the transportation impacts described at pages 16 through 18 of the checklist and the agreed improvements to nearby crossings and the construction of a turnaround on Logen Road) or (2) within the expertise and authority of other agencies, such as wetland impacts and required mitigation measures in connection with construction of the new siding track. Therefore, Staff's recommendation in this case remains as testified to by Ms. Hunter.

3 Under Department of Ecology rules, grade-crossing closures expressly are not categorically exempt from SEPA.<sup>1</sup> This means that an agency with jurisdiction (usually, but

---

<sup>1</sup> WAC 197-11-865(2).

not necessarily the WUTC) must make a threshold determination as to whether a proposal to close an at-grade crossing requires the preparation of an environmental impact statement. Although the WUTC is an “agency with jurisdiction”<sup>2</sup> with respect to petitions for closure of grade crossings, it is not the “lead agency”<sup>3</sup> with authority to determine whether the siding extension project, including the proposed closure of Logen Road crossing, requires an environmental impact statement. In this case, because the proposed crossing closure is part of the siding extension project, SEPA rules require that the environmental impact of the siding extension and the proposed crossing closure be evaluated in one document. Under the Department of Ecology’s SEPA rules, “[p]roposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action” must be evaluated in one document.<sup>4</sup> “Closely related” proposals, or parts of proposals, are further defined as those that are “interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.”<sup>5</sup> The proposed closure of Logen Road crossing depends on the siding extension project as its justification. Therefore, it is appropriate that any environmental impacts of closing Logen Road crossing should be evaluated in the same document that assesses the environmental impact of the siding extension project.

4 Department of Ecology rules provide that “when an agency initiates a proposal, it is the lead agency for that proposal.”<sup>6</sup> Additionally, when “the primary sponsor or initiator of

---

<sup>2</sup> WAC 197-11-714(3): “‘Agency with jurisdiction’ means an agency with authority to approve, veto, or finance all or part of a nonexempt proposal (or part of a proposal).”

<sup>3</sup> WAC 197-11-050(2): “The lead agency shall be the agency with main responsibility for complying with SEPA’s procedural requirements and shall be the only agency responsible for: (a) The threshold determination; and (b) Preparation and content of environmental impact statements.”

<sup>4</sup> WAC 197-11-060(3)(b).

<sup>5</sup> WAC 197-11-060(3)(b)(ii).

<sup>6</sup> WAC 197-11-926.

the project is an agency,” the project shall be considered a public project.<sup>7</sup> WSDOT is providing the funding for the siding extension project. As such, it has properly assumed the lead agency role, completed an environmental checklist, and published a threshold determination of non-significance for the siding extension project.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Respectfully submitted,

ROBERT M. MCKENNA  
Attorney General

---

JONATHAN C. THOMPSON  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff

---

<sup>7</sup> WAC 197-11-928.