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BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,)
Petitioner,)
vs.) DOCKET TR-150189
) Pages 12-133
WHATCOM COUNTY,)
Respondent.)

EVIDENTIARY HEARING, VOLUME II
PAGES 12-133
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:30 A.M.
DECEMBER 1, 2015
WHATCOM COUNTY COURTHOUSE
COUNCIL CHAMBERS, FIRST FLOOR
BELLINGHAM, WASHINGTON

REPORTED BY: DIANE RUGH, CRR, RMR, CCR No. 2399

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VOLUME II WITNESS INDEX

Table with 2 columns: WITNESSES CALLED BY BNSF, WITNESSES CALLED BY UTC STAFF, WITNESSES CALLED BY WHATCOM COUNTY. Lists names and page numbers.

BELLINGHAM, WASHINGTON, DECEMBER 1, 2015
9:30 A.M.
-ooOoo-

JUDGE PEARSON: Good morning. Today is Tuesday, December 1, 2015, just after 9:30 a.m., and we are here today for an evidentiary hearing in docket TR-150189 related to a petition filed by Burlington Northern Santa Fe Railroad for closure of a grade crossing at Valley View Road in Whatcom County. In advance of the hearing the parties stipulated to the admission of all the prefiled testimony and exhibits so I will go over those briefly now. The first is B-1, then GH-1T, RW-12 through RW-3CX, SN-1T through SN-3, KB-1T through KB-5T, PB-1T through PB-6, JR-1T through JR-2, RM-1T through RM-6, HH-1T through HH-13CX, and PC-1T through PC-10CX. So this morning's proceedings are going to be BNSF's witnesses testify first, followed by Commission Staff's witnesses and then Whatcom County's witnesses. Just for the record, we are at the Whatcom County Courthouse in Bellingham, and we will also be here this evening for the public comment hearing that's scheduled to begin at 6 p.m. So let's start by taking short appearances.

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1 Please state your name and who you represent for the
 2 record, beginning with BNSF.
 3 MS. ENDRES: Good morning, Your Honor.
 4 Kelsey Endres on behalf of BNSF.
 5 JUDGE PEARSON: Thank you. For Staff?
 6 MR. BEATTIE: Julian Beattie, Assistant
 7 Attorney General representing Commission Staff.
 8 JUDGE PEARSON: Okay. And for the
 9 county?
 10 MR. GIBSON: I'm Dan Gibson from the
 11 Whatcom County Prosecutor's Office representing Whatcom
 12 County.
 13 JUDGE PEARSON: Thank you. So our first
 14 witness, Richard Wagner, is already on the stand so we
 15 can get started with testimony. Mr. Wagner, if you
 16 will please stand and raise your right hand.
 17
 18 RICHARD WAGNER,
 19 having been duly sworn, testified as follows:
 20
 21 JUDGE PEARSON: Please state your name
 22 and spell your last name for the record.
 23 A. Richard Wagner, W-a-g-n-e-r.
 24 MS. ENDRES: Does Your Honor have any
 25 preference whether we stay here or come up to the

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CROSS-EXAMINATION BY BEATTIE/WAGNER 17

1 podium?
 2 JUDGE PEARSON: I don't have any
 3 preference. I can hear you fine.
 4
 5 DIRECT EXAMINATION
 6 BY MS. ENDRES:
 7 **Q. Good morning, Mr. Wagner. Can you please**
 8 **state your position with BNSF Railway?**
 9 A. Manager of public projects for the Northwest
 10 Division. I serve Idaho, Washington, and British
 11 Columbia.
 12 **Q. Do you have a copy there with you of your**
 13 **prefiled testimony this morning?**
 14 A. Yes, I do.
 15 **Q. And is that true and correct as though you**
 16 **were testifying today?**
 17 A. Yes.
 18 MR. BEATTIE: Thank you, Judge Pearson.
 19
 20 CROSS-EXAMINATION
 21 BY MR. BEATTIE:
 22 **Q. Good morning, Mr. Wagner. My name is Julian**
 23 **Beattie and I'm with Commission Staff. And so this**
 24 **morning I'd like to start off with just a few**
 25

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CROSS-EXAMINATION BY BEATTIE/WAGNER 18

1 **questions, very simple questions to clarify the record,**
 2 **and then I'll move into more substantive type**
 3 **questions.**
 4 **So if you could first turn to Page 3 of your**
 5 **testimony, Line 19.**
 6 A. Yes.
 7 **Q. Sir, here you testified that you participated**
 8 **in a Crossing Safety Assessment. So just for clarity**
 9 **of the record, is what you describe as a Crossing**
 10 **Safety Assessment also known as a diagnostic review?**
 11 A. Formally a diagnostic review is relative to a
 12 quiet zone, not necessarily -- but the term is kind of
 13 used by everybody as a diagnostic. So, yes, diagnostic
 14 would be appropriate.
 15 **Q. Okay. Well, let me approach it from this**
 16 **angle, then. Staff witness Paul Curl refers in his**
 17 **testimony to a diagnostic review that occurred in July**
 18 **of 2014. Are you and Mr. Curl referring to the same**
 19 **event when you use the term Crossing Safety Assessment?**
 20 A. Yes.
 21 **Q. Thank you. Next, on the same page, Line 26,**
 22 **here you testify that the Intalco project will allow**
 23 **trains to meet and pass, quote, without blocking the**
 24 **mainline, end quote.**
 25 **You would agree that the term "mainline" could**

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CROSS-EXAMINATION BY BEATTIE/WAGNER 19

1 **refer to the Bellingham Subdivision which runs roughly**
 2 **parallel to I-5 or it could refer to the Cherry Point**
 3 **Subdivision which runs to the industrial facilities out**
 4 **west. So when you use the term "mainline" here in your**
 5 **testimony, which are you referring to, the mainline in**
 6 **the Bellingham Subdivision or the mainline on the**
 7 **Cherry Point Subdivision?**
 8 A. This is Line 26 on Page 3?
 9 **Q. Correct.**
 10 A. In this instance, that would be -- it would
 11 be -- actually, it would be both because you're keeping
 12 both the mainline on the Cherry Point which is -- yeah,
 13 it would be both, mainline and the Bellingham
 14 Subdivision.
 15 **Q. Thank you. So next I'd ask you to turn to**
 16 **Page 4. On Line 3 you testified, "This work will allow**
 17 **trains to exit the Bellingham Subdivision mainline and**
 18 **allow passenger and higher priority freight trains to**
 19 **clear through the Custer area."**
 20 **And I'm wondering if you can help me**
 21 **understand BNSF's priority system. What do you mean by**
 22 **a higher priority freight train?**
 23 A. Well, I guess I would prefer that Mr. Haag
 24 qualify what is meant by priority trains because my
 25 knowledge is kind of limited. We run trains for high

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CROSS-EXAMINATION BY BEATTIE/WAGNER 20

1 priority customers such as UPS, and that would be
 2 considered a high priority train. There may be other
 3 products that would fall into that area, but just the
 4 basic knowledge that I have, it would be -- high
 5 priority customers, it would be based on customers and
 6 passenger trains. The Cascade is probably the second
 7 highest, Cascade runs, passenger runs up to Vancouver
 8 are probably the highest -- second highest priority
 9 train, I believe. It's going to be up there in the top
 10 five at least.

11 **Q. Thank you, sir. If I could next have you turn**
 12 **to Page 7. At Line 18 you describe why you believe**
 13 **that closure in this case is the best, quote/unquote**
 14 **alternative.**

15 **So if I could have you, sir, please explain**
 16 **what other alternatives BNSF considered in this case.**

17 A. My pages are marked differently. I'm sorry,
 18 sir, I've lost track of where we're at. I mean, my
 19 numbering here is different. At the bottom of the
 20 page, is that the page number? I'm showing 7.

21 **Q. Correct.**

22 A. Richard Wagner 7, Richard Wagner 8.

23 **Q. Correct. And at Line 18 you're posed the**
 24 **question, "Why close a crossing, as opposed to other**
 25 **alternatives?"**

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CROSS-EXAMINATION BY BEATTIE/WAGNER 21

1 **A. Oh, okay, there we go, that's actually 9. Did**
 2 **you say Page 9?**

3 **Q. Perhaps I could just ask you what alternatives**
 4 **BNSF considered in this case.**

5 A. What other --

6 **Q. Apart from a crossing closure.**

7 A. None. This is always the first option. We
 8 made no plans for any other than seeking the closure of
 9 the crossing.

10 **Q. Okay, thank you, sir. I'm a bit hesitant to**
 11 **call out a page number, but on my Page 8 of your**
 12 **testimony --**

13 A. You said page 8?

14 **Q. Correct.**

15 MS. ENDRES: Your Honor, I have an extra
 16 set of testimony.

17 JUDGE PEARSON: Please.

18 A. Yeah, it's the same. Which line is that?

19 **Q. (BY MR. BEATTIE) I'm looking at Line 26.**
 20 **Here you testify, "Per the Manual on Uniform Traffic**
 21 **Control Devices, Valley View Road is considered a**
 22 **low-volume road." And I'd like to probe for a minute**
 23 **your use of the term "low-volume road."**

24 A. Uh-huh.

25 **Q. It's my understanding, according to the**

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CROSS-EXAMINATION BY BEATTIE/WAGNER 22

1 **manual, the standards for traffic control devices at**
 2 **grade crossings are virtually identical for those roads**
 3 **that are not considered low-volume roads. Therefore,**
 4 **wouldn't you agree that when you're using the term**
 5 **"low-volume road" in your testimony you're using it in**
 6 **a colloquial sense as opposed to a strictly technical**
 7 **sense as that term is used in the manual?**

8 A. Yes, except that we cite the actual count, the
 9 parameters of what a low-volume road is or low-volume
 10 traffic route is, and it's less than 400.

11 **Q. But you would agree that you're not using it**
 12 **in a strictly technical sense?**

13 A. Yes, yes.

14 **Q. Thank you. Turning back to Page 5, here**
 15 **starting at Line 8 you're asked, "What are the lengths**
 16 **of the trains that will occupy the siding track once it**
 17 **is put in use?" You answer, "The average length of a**
 18 **train is a mile or more. The siding track will be able**
 19 **to accommodate most trains to our existing customers on**
 20 **the Cherry Point Subdivision."**

21 **Focusing on your term "most trains," is it**
 22 **your testimony, then, that some trains would not be**
 23 **accommodated by the siding track?**

24 A. Let's see. I think that probably Mr. Haag
 25 would be better to answer that question. My knowledge

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CROSS-EXAMINATION BY BEATTIE/WAGNER 23

1 of the customers that we have, unless they change their
 2 facilities, that would increase the length of the
 3 trains, I believe. But Mr. Haag would be a better
 4 resource to answer that question.

5 But in my opinion, yes, unless there's
 6 added -- unless the facilities add track length, which
 7 would accommodate longer trains, yes, this will
 8 adequately serve those customers that we currently
 9 have.

10 **Q. Okay, but I just want to be clear. I**
 11 **understand Mr. Haag may be able to answer the question**
 12 **better, but you cannot commit on the record that all**
 13 **trains will definitely fit on the siding once it's**
 14 **expanded?**

15 A. That's why we designed it for the length. We
 16 designed it to serve the customers that we currently
 17 have. So yes, the existing customers that we have, it
 18 will serve those customers. So, yes, their trains will
 19 fit in that site.

20 **Q. There's a chance, however, that a train could**
 21 **stop not on the siding but actually on the mainline?**

22 A. Yes, sure. Again, though, that's train
 23 operations, so why that would happen or how that would
 24 happen, I can't speak to that. I don't believe I did
 25 speak to that actually.

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CROSS-EXAMINATION BY BEATTIE/WAGNER 24

1 Q. What I'm getting at is the Ham Road crossing
 2 will remain open; correct?
 3 A. Oh, yes, yes.
 4 **Q. If, hypothetically, a train was too big for
 5 the siding and therefore stopped on the mainline, isn't
 6 it possible that that train could block the Ham Road
 7 crossing?**
 8 A. We wouldn't operate it that way. There's a
 9 lot more length on the main than there is on the
 10 siding.
 11 **Q. So it's your assertion that no trains will be
 12 blocking the mainline --**
 13 A. At Ham.
 14 **Q. -- at Ham?**
 15 A. I would say yes, but Mr. Haag could speak to
 16 that better. He knows about train handling, I don't.
 17 There's considerably more length on the main than there
 18 is on the siding, if that were the case. But I don't
 19 believe that that would happen.
 20 **Q. So your answer, sir, is yes, no trains will be
 21 blocking the mainline at Ham?**
 22 A. Yes, no trains would be blocking the mainline
 23 at Ham.
 24 **Q. Thank you.**
 25 A. Sorry it took so long to get there.

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CROSS-EXAMINATION BY BEATTIE/WAGNER 25

1 Q. I'd like to move into my final series of
 2 questions. One of the issues in this case is
 3 mitigating actions; correct?
 4 A. Uh-huh.
 5 **Q. So my next series of questions is designed to
 6 help the parties take final positions in post-hearing
 7 briefing on what mitigations should occur.**
 8 A. Uh-huh.
 9 **Q. So I'd like to go through a list of mitigation
 10 actions that have been proposed at various points in
 11 the parties' respective testimonies, and ask you for
 12 BNSF's official position on each proposed action. So
 13 I'd like to start with the Ham-Arnie crossing.**
 14 A. Yes.
 15 **Q. The proposal is to install flashing lights,
 16 gates, pavement markings, stop lines and increased
 17 signage at the crossing.**
 18 A. BNSF supports this.
 19 **Q. Construct stop refuges?**
 20 A. BNSF does not support that. Our Traffic
 21 Impact Study indicates that they're not required or
 22 needed.
 23 **Q. Not required or needed?**
 24 A. Or needed, yes.
 25 **Q. Widen the crossing?**

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CROSS-EXAMINATION BY BEATTIE/WAGNER 26

1 **A. There's no reason to widen the crossing, so
 2 no. The crossing is adequate for the road surface, the
 3 traveling surface of the road. So widening it, we
 4 would not support that.**
 5 **Q. Thank you. Moving on to the south approach to
 6 the Valley View crossing.**
 7 A. Yes.
 8 **Q. The one that is at issue in this proceeding.
 9 So we're talking about traveling northbound from the
 10 Valley View-Arnie intersection. First proposal,
 11 install signage at the Valley View Road-Arnie Road
 12 intersection, specifically one sign at the south
 13 approach, one at the east approach, and one at the west
 14 approach.**
 15 A. BNSF supports that, yes.
 16 **Q. Final proposal, construct a cul-de-sac north
 17 of Arnie Road prior to the bridge on Valley View Road.**
 18 A. BNSF does not support that mitigation. Should
 19 I explain why?
 20 **Q. Are you aware that BNSF's petition proposed
 21 this mitigation?**
 22 A. Yes, I understand that.
 23 **Q. What, then, is the reason for no longer
 24 supporting this mitigation?**
 25 A. The reason would be because private property

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CROSS-EXAMINATION BY BEATTIE/WAGNER 27

1 is held on both sides. There's already current access
 2 to the private property which are used as fields for
 3 farming, and the only people who would need access
 4 there would be those people farming it. They have
 5 adequate room to turn any vehicles or farm equipment
 6 around once they get up the road prior to the closed
 7 crossing.
 8 So a cul-de-sac would only be constructed if
 9 you were going to have public vehicles and there was
 10 going to be public access to the road. We're proposing
 11 that there not be any public access to Valley View on
 12 the south approach to the crossing.
 13 **Q. Thank you. Now I'd like to move on to the
 14 north approach with the understanding that you'll stop
 15 me if there's anything else you want to say about
 16 mitigation actions that I haven't mentioned.**
 17 A. Sure.
 18 **Q. So now we're talking about approaching the
 19 crossing from the Valley View-Creasey intersection.
 20 You're familiar with the area?**
 21 A. Yes, you bet.
 22 **Q. First proposal, install signage at the
 23 intersections of Creasey Road and Valley View Road,
 24 parenthetically, one at the north approach.**
 25 A. We support that, yes.

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CROSS-EXAMINATION BY BEATTIE/WAGNER 28

1 Q. Next proposal, redesign an intersection at
 2 Valley View Road and Creasey Road to allow design
 3 vehicles to turn around.
 4 A. Yes, we do support that.
 5 **Q. Hypothetically, and I use the word**
 6 **"hypothetical" because this was not in anybody's**
 7 **testimony, but answer if you can. What is BNSF's**
 8 **position on a hypothetical cul-de-sac just north of the**
 9 **proposed closed crossing as in the cul-de-sac that**
 10 **would allow vehicles to turn around if they do not turn**
 11 **around at the Creasey intersection and instead proceed**
 12 **down to the closed crossing and find themselves faced**
 13 **with the barrier?**
 14 A. BNSF wouldn't support that, and mainly
 15 because, again, private property owned on both sides.
 16 There's one residence beyond Creasey and opposite of
 17 that residence is open fields that already have access
 18 to them. The only people that would be up there would
 19 be the resident and guests, and then farming of the
 20 property across on the -- I guess it would be the
 21 northeast quadrant of the existing crossing.
 22 **Q. Thank you, sir. Finally, moving on to the**
 23 **Main Street-Portal Way intersection. There's a**
 24 **proposal for active warning devices and signals at the**
 25 **Main Street crossing remaining in place.**

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CROSS-EXAMINATION BY BEATTIE/WAGNER 29

1 **A. Yes, BNSF supports this.**
 2 **Q. Thank you. Next proposal, construct a**
 3 **southbound right turn lane at Portal Way and Main**
 4 **Street.**
 5 A. Yes, BNSF supports this.
 6 **Q. Construct stop refuges?**
 7 A. BNSF does not -- they're not indicated in our
 8 Traffic Impact Study, that they would be advantageous.
 9 **Q. How about widening the crossing?**
 10 A. There would be no need to. The current width
 11 of the crossing meets the traveling surface, so no.
 12 **Q. Finally, traffic signals at the intersection.**
 13 A. BNSF does not support that. Again, the
 14 Traffic Impact Study indicates that. Excuse me, may I
 15 correct?
 16 **Q. You may.**
 17 A. Actually, I think there was rebuttal testimony
 18 by Mr. Bialobreski.
 19 MR. BEATTIE: That's all the questions I
 20 have. Thank you, sir.
 21 JUDGE PEARSON: I just have one
 22 question, Mr. Wagner. So in your testimony you're
 23 saying that traffic should be rerouted to either the
 24 Ham or the Main Street crossings; correct?
 25 A. Correct.

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CROSS-EXAMINATION BY BEATTIE/WAGNER 30

1 JUDGE PEARSON: Have you conducted a
 2 safety evaluation or a diagnostic evaluation of either
 3 of those crossings in the last 18 months?
 4 A. No.
 5 JUDGE PEARSON: Okay, thank you.
 6 Does anyone else have any questions for
 7 Mr. Wagner?
 8 Okay, you may step down. Mr. Haag is our next
 9 witness?
 10 MS. ENDRES: Your Honor, I wonder if it
 11 might be helpful for us to put up one of our blown-up
 12 area maps on the easel just for reference.
 13 JUDGE PEARSON: Sure.
 14 GRANT HAAG,
 15 having been duly sworn, testified as follows:
 16
 17 JUDGE PEARSON: Please go ahead and
 18 state your name and spell your last name for the
 19 record.
 20 A. Grant Haag, H-a-a-g.
 21 JUDGE PEARSON: Thank you.
 22
 23 DIRECT EXAMINATION
 24 BY MS. ENDRES:
 25 **Q. Good morning, Mr. Haag. Would you please**

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CROSS-EXAMINATION BY BEATTIE/HAAG 31

1 **state your position with BNSF.**
 2 A. I'm Terminal Superintendent of the Greater
 3 Seattle Terminal Complex with BNSF Railway.
 4 **Q. Do you have a copy of your prefiled testimony**
 5 **there with you?**
 6 A. I do.
 7 **Q. And is that testimony true and accurate as**
 8 **though you were testifying today?**
 9 A. Yes.
 10
 11 CROSS-EXAMINATION
 12 BY MR. BEATTIE:
 13 **Q. Good morning, Mr. Haag.**
 14 A. Good morning.
 15 **Q. Would you please turn to Page 4 of your**
 16 **prefiled testimony. At Line 18 you testify, "This work**
 17 **will allow trains to exit the mainline and allow**
 18 **passenger in the higher priority freight trains to**
 19 **clear through the Custer area, as well."**
 20 **So I'm wondering if you could help me with the**
 21 **concept of "higher priority train."**
 22 **A. Certainly. So we talked about the opportunity**
 23 **on the Bellingham as well as on our Cherry Point sub**
 24 **there. And the highest priority that we have on the**
 25 **Bellingham is our Amtrak trains that run north-south**

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CROSS-EXAMINATION BY BEATTIE/HAG 32

1 through Vancouver, B.C. and south.
 2 **Q. Okay, thank you. So is it your testimony that**
 3 **some trains will use the proposed Intalco siding**
 4 **expansion for meet and pass purposes on the Bellingham**
 5 **mainline?**
 6 A. They will be used to clear the Bellingham
 7 mainline.
 8 **Q. Okay. So it's not simply for meet and pass**
 9 **purposes for Cherry Point customers, it's also being**
 10 **used -- the proposed siding will also be used to clear**
 11 **the Bellingham mainline as you say?**
 12 A. Correct.
 13 **Q. Thank you for that clarification. I just have**
 14 **one more question for you.**
 15 **On Page 6, very first line you testify,**
 16 **"Currently, the train count through Valley View Road**
 17 **averages about four trains per day, for a total of**
 18 **eight trips through the crossing."**
 19 **Do these eight trains run seven days per week?**
 20 A. Typically, yes. So on average it's eight,
 21 eight trains per day. There may be days where there
 22 are less or there are more, but on average it is eight
 23 trains per day.
 24 **Q. Thank you. And I want to amend my statement.**
 25 **I actually have another question for you.**

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REDIRECT EXAMINATION BY ENDRES/HAG 33

1 **I was asking your colleague about whether all**
 2 **trains, all of your customers' trains will be able to**
 3 **fit on the expanded siding. Can you confirm that on**
 4 **the record, that all trains will be able to fit, not**
 5 **most but all?**
 6 A. Sure. So for the trains that run into our
 7 Cherry Point Subdivision there or that would go by that
 8 siding, yes, that's currently constructed in our
 9 transportation plan that all trains would fit at the
 10 siding in the proposed length.
 11 **Q. Therefore, under current assumptions you can**
 12 **also commit that the Ham Road crossing will not be**
 13 **blocked?**
 14 A. Not by plan, correct.
 15 MR. BEATTIE: Thank you, Mr. Haag,
 16 that's all I have.
 17 MS. ENDRES: I do have one.
 18
 19 REDIRECT EXAMINATION
 20 BY MS. ENDRES:
 21 **Q. I just wanted to clarify, you were asked by**
 22 **the UTC attorney about the priority differences for**
 23 **freight trains, and you and Mr. Wagner both testified**
 24 **that passenger service trains had the highest priority.**
 25 **Can you explain a little bit more whether**

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REDIRECT EXAMINATION BY ENDRES/HAG 34

1 **there are any priority differences between freight**
 2 **trains of what they carry?**
 3 A. Sure. Yes, there are different priorities
 4 amongst freight trains with intermodal being the
 5 highest priority in general.
 6 JUDGE PEARSON: What was that word you
 7 just said?
 8 A. Intermodal.
 9 JUDGE PEARSON: Can you explain what
 10 that is?
 11 A. Sure. So that is going to be the trains that
 12 you see with trailers on them, on the flat cars.
 13 JUDGE PEARSON: Okay.
 14 A. On this line we do not run pure intermodal
 15 trains on the Bellingham Sub in question. We do have
 16 what we call a slot plan, so times that we try to run
 17 trains in order to meet for inter-change-up in Canada
 18 with the CN and those types of things. So we do
 19 prioritize by that way on the Bellingham Sub.
 20 MS. ENDRES: Thank you.
 21 JUDGE PEARSON: I just have a few
 22 questions for you. So you stated in your testimony
 23 that the average length of trains is increasing. So
 24 can you just explain why that is, why the trains in
 25 this area are increasing in length?

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REDIRECT EXAMINATION BY ENDRES/HAG 35

1 A. Sure. So it's really about efficiency and
 2 mainline capacity. So if we increase the length of the
 3 trains it decreases the amount of trains that we run.
 4 JUDGE PEARSON: Okay. You also stated
 5 on Page 2, Line 25 of your testimony that BNSF
 6 experienced backlogging of trains as recently as 2014.
 7 So were trains in this particular area being
 8 backlogged?
 9 A. Yes. I was not here at that time but I do
 10 understand that there was congestion in this area as
 11 well.
 12 JUDGE PEARSON: Okay. And do you know
 13 what types of trains were being backlogged in this
 14 area, what commodities they were carrying?
 15 A. I could not speak directly to that
 16 specifically here.
 17 JUDGE PEARSON: So on Page 6, Lines 1
 18 through 2 of your testimony, you stated there are four
 19 trains per day for a total of eight trips servicing six
 20 different customers. Who are those six customers?
 21 A. The six customers there are BP, we have our
 22 Phillips 66, Praxair.
 23 JUDGE PEARSON: P-r-a-x?
 24 A. Yes. Petrogas.
 25 JUDGE PEARSON: Petrogas?

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REDIRECT EXAMINATION BY ENDRES/HAAG 36

1 A. Correct. And I would have to review the other
2 two.

3 JUDGE PEARSON: Okay. If you could get
4 that information to me --

5 A. Sure.

6 JUDGE PEARSON: -- about the other two
7 customers. We can go ahead and characterize that as a
8 bench request. That is the first bench request.

9 So you also stated that the road could be
10 blocked for hours. How many crew or personnel do you
11 have stationed at the train when it's blocking the
12 road?

13 A. So it depends. We have two road switchers
14 that work there. Each of those have three crew
15 members. On the through trains that come through, each
16 of those have two crew members.

17 JUDGE PEARSON: And is the crossing
18 regularly blocked now at Valley View Road?

19 A. It is -- we do switch over that crossing,
20 meaning with a road switcher there, that would move the
21 cars between the two tracks. So between the two tracks
22 that are there, we do switch cars in that area which
23 leads to the crossing being blocked.

24 JUDGE PEARSON: And how often does that
25 happen and for how long when it happens?

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REDIRECT EXAMINATION BY ENDRES/HAAG 37

1 A. It happens seven days a week and it
2 typically -- we do clear up while we're switching
3 there. So at any one time it could be 15 minutes
4 maybe, and then we would clear up.

5 JUDGE PEARSON: On Page 3 of your
6 testimony you state that there's \$189 million for
7 railroad capacity in Washington in 2015 and that BNSF
8 is investing \$6 billion in capacity commitments. So do
9 you have an idea of how much of those investments are
10 being allocated for safety improvements?

11 A. I do not have that breakdown.

12 JUDGE PEARSON: Okay, thank you. That's
13 all I have. Anyone else have any questions for
14 Mr. Haag? Okay, you may step down.

15 Are you going to be calling Mr. Bialobreski?
16 MS. ENDRES: Yes.

17 JUDGE PEARSON: Mr. Bialobreski, if you
18 could please wherever you are stand and raise your
19 right hand.

20

21 KURT BIALOBRESKI,
22 (Present telephonically)

23 having been duly sworn, testified as follows:
24 JUDGE PEARSON: If you could please
25 state your name and spell your last name for the

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DIRECT EXAMINATION BY ENDRES/BIALOBRESKI 38

1 record.

2 A. Kurt Bialobreski, B-i-a-l-o-b-r-e-s-k-i.

3 JUDGE PEARSON: Thank you.

4

5 DIRECT EXAMINATION
6 BY MS. ENDRES:
7 **Q. Good morning, Mr. Bialobreski. This is Kelsey
8 Endres, the attorney for BNSF.**

9 A. Good afternoon here.

10 **Q. Can you hear us okay?**

11 A. We're good now.

12 **Q. Can you please state for the record the
13 company that you work for and your position.**

14 A. I work for Hanson Professional Services and I
15 manage our Traffic Engineering Services.

16 **Q. Do you have a copy of your prefiled testimony,
17 your supplemental testimony, your rebuttal testimony,
18 and the exhibit that accompanied that Traffic Impact
19 Study there with you?**

20 A. Yes, I do.

21 **Q. And is your testimony true and correct as
22 though you were restating it here today?**

23 A. Yes, it is.

24 **Q. At this time I'm going to turn you over to the
25 attorneys for the other parties and they'll be asking**

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 39

1 **you some questions. If you could please do your very
2 best to speak up. We have you on speaker phone but
3 we're in a rather large conference room and we would
4 all appreciate it.**

5 A. No problem.

6

7 CROSS-EXAMINATION
8 BY MR. BEATTIE:
9 **Q. Mr. Bialobreski, my name is Julian Beattie,
10 I'm an attorney representing the Commission Staff in
11 this proceeding. I'd like to ask you a few questions
12 about the Traffic Impact Study that is in the record as
13 Exhibit KB-3.**

14 A. Okay.

15 **Q. If you could turn to Page 5 of your study,
16 please.**

17 A. Okay.

18 **Q. Full first paragraph you state that the
19 meet-pass siding track is needed to provide a safe area
20 to perform mandated regulatory inspections.
21 What mandated regulatory inspections are you
22 referring to?**

23 A. It was my understanding that the trains needed
24 inspected prior to them moving into the area where
25

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 40

1 they're servicing customers and delivering goods. And
 2 that's what we were stating.
 3 **Q. But you are not familiar with any specific**
 4 **regulations that call for inspections in this area?**
 5 A. Not personally. I read that I believe in a
 6 document provided by BNSF.
 7 **Q. You're testifying to your understanding.**
 8 A. Yes.
 9 **Q. Thank you. Now, if you could please turn to**
 10 **Page 12. Under Table 2, you testified about a metric**
 11 **known as exposure factor; correct?**
 12 A. Yes.
 13 **Q. And exposure factor is calculated by**
 14 **multiplying average daily traffic by average number of**
 15 **trains coming through a crossing each day; correct?**
 16 A. Yes.
 17 **Q. And on Page 12 it's your testimony that,**
 18 **quote, The exposure factors are reduced when the Valley**
 19 **View Road-Cherry Point crossing is closed, which means**
 20 **that, quote, The study area is generally less likely to**
 21 **have vehicle-train conflicts when the crossing is**
 22 **closed. Is that right?**
 23 A. Yes.
 24 **Q. But, sir, isn't it true that any decrease in**
 25 **exposure factor within the study area will simply be**

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 41

1 **offset by an increase in exposure outside the study**
 2 **area?**
 3 A. Not necessarily between origin and
 4 destination. The vehicles that are traveling, some
 5 will be absorbed within the system, if that makes
 6 sense.
 7 **Q. But you can't speak to this particular case**
 8 **then?**
 9 A. Well, I can't speak to the very specific
 10 location that they would be absorbed by, but because
 11 Valley View is there and there's a convenience
 12 associated with that, people are calculating that risk
 13 themselves of what the danger precaution is to cross
 14 the crossing. And essentially when it's closed there
 15 is a chance that they may find an alternate route that
 16 is not to that same land use within the study area that
 17 does not require them to cross. Or they may even be
 18 crossing multiple times. And so essentially when we
 19 redistribute traffic across the entire system, there
 20 would be some loss and some loss of -- there's some
 21 origin and destination that may or may not cause them
 22 to cross, or they may not cross the tracks multiple
 23 times any longer.
 24 **Q. Okay, I understand your testimony, but you**
 25 **would still agree, then, that you cannot assert a net**

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 42

1 **decrease in exposure factor for this given project;**
 2 **correct?**
 3 A. For this given project or across the entire
 4 system in the area?
 5 **Q. I'm not sure what distinction you're drawing.**
 6 **If there's a distinction --**
 7 A. By "the project" I mean specifically the
 8 siding at the closure of Valley View as in Valley View
 9 crossing or are you talking about the other crossings
 10 that you have listed right there?
 11 **Q. Let me approach it from this angle.**
 12 **You assert a decrease in exposure factor due**
 13 **to the closure of Valley View Road; correct?**
 14 A. Yes.
 15 **Q. But you cannot affirmatively tell me that that**
 16 **won't simply increase exposure factor by an equal**
 17 **measure somewhere else; correct?**
 18 A. You know, I wouldn't say that it wouldn't
 19 increase by equal measure. It will be -- we do project
 20 that it will decrease slightly.
 21 **Q. So your testimony, then --**
 22 A. Many times changes in travel patterns.
 23 **Q. So your testimony today, then, is that the**
 24 **closure of the Valley View crossing will result in a**
 25 **net decrease in the metric known as exposure factor?**

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 43

1 **A. Yes. We project it too. It is light, though.**
 2 **Q. Could you repeat your last statement? It's**
 3 **very light?**
 4 A. Yes, we do project it to slightly decrease.
 5 **Q. Last question, then. How can a car get from**
 6 **one side of the Intalco yard to the other side without**
 7 **crossing at least one set of railroad tracks at some**
 8 **point in the trip?**
 9 A. Let me pull up a map, please. So can you
 10 physically tell me where the Intalco yards would be?
 11 My understanding is essentially it's only where the
 12 siding is.
 13 **Q. Sir, do you have a full set of exhibits at**
 14 **your disposal?**
 15 A. I do.
 16 **Q. There's an exhibit -- one second, please.**
 17 A. I think I can explain this a different way, if
 18 that helps. If you looked at a map, and specifically
 19 we're considering areas maybe near Custer and by Portal
 20 Way, the intersection of Main Street and Arnie Road, in
 21 that general area, as it stands now, it could be
 22 possible that if I was in Custer and I wanted to go up
 23 to the area directly by -- to the Landview, to the
 24 private residents, I believe, that's currently north of
 25 the Valley View crossing, that I would cross the Main

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CROSS-EXAMINATION BY BEATTIE/BIALOBRESKI 44

1 Street and then cross Valley View, I would proceed, I
 2 would turn left, say, or turn to head westbound on Main
 3 Street and cross the track. I would take Main Street
 4 then north -- or at Arnie Road and I would head north
 5 and go across the Valley View track, and then end up at
 6 a residence to the north end of the -- or just in
 7 between there and I believe it's Creasey Road.

8 **Q. Sir, I heard you say that you would cross a**
 9 **set of tracks. And that's my point. How could you get**
 10 **from one side to the other without crossing a track**
 11 **somewhere?**

12 A. If you'd let me finish I can explain that. So
 13 that would basically be two crossings and two exposure
 14 factors, two exposure factor calculations that we knew
 15 that trip would cause. So we would essentially sum
 16 those, so we're crossing twice.

17 So now if I'm in Custer again and Valley View
 18 is closed, I would go north on Portal Way up to Creasey
 19 Road and I would cross the tracks there, I would cross
 20 the mainline there. And then I would head south on
 21 Valley View Road to that private entrance or to that
 22 private residence or land use. So basically what I'm
 23 trying to -- so then I'm only crossing the tracks one
 24 time, so the exposure factor for the overall system is
 25 decreased. So that's the general idea there.

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 45

1 Because right now what's happening with
 2 residents are essentially they're calculating the risk
 3 versus the convenience of crossing the tracks twice.
 4 And so what they're saying is -- what the general
 5 public, the traveling public is doing is saying you
 6 know what, I'll cross the mainline at Main Street and
 7 then cross the Valley View crossings and go north.
 8 Whereas, once we take that away, they're essentially
 9 only just crossing the mainline once and not crossing
 10 Valley View again.

11 **Q. I think I understand your testimony. You're**
 12 **saying that the way you get to a net decrease in**
 13 **exposure factor is by crossing tracks once as opposed**
 14 **to twice somewhere in some kind of hypothetical trip;**
 15 **that's your testimony?**

16 A. Yes, sir.

17 **Q. Okay, thank you.**

18 A. You're welcome.

19 MR. BEATTIE: Your Honor, that's all the
 20 questions I have for this witness.

21 JUDGE PEARSON: Thank you. Go ahead.

22

CROSS-EXAMINATION

24 BY MR. GIBSON:

25 **Q. Mr. Bialobreski, my name is Dan Gibson and I**

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 46

1 **represent Whatcom County in this matter. Just a couple**
 2 **questions.**

3 A. Can you speak up? I can barely hear you.

4 **Q. Does that help?**

5 A. Much better, thank you.

6 **Q. Just from a traffic perspective, would you**
 7 **agree that Valley View is a better road than Ham Road?**

8 A. There are left curves in it, which would
 9 basically make it inherently easier to travel because
 10 you could probably go a little bit faster. So from
 11 that standpoint I would say that that would be the only
 12 way I would consider it to be a better road than Ham
 13 Road. They both provide similar north-south access.
 14 Actually, Ham Road provides better access to Birch
 15 Bay-Lynden Road, which is one of the major arterials in
 16 the area, whereas, Valley View essentially is only
 17 providing access to Portal Way and to the Sand Point.

18 **Q. Just so summarize, Valley View is a straighter**
 19 **road, it doesn't have a 90-degree curve; correct?**

20 A. Correct. It provides better -- the term that
 21 we use a lot of times is either continuity or driver
 22 expectations for way finding, where a straight road or
 23 left turns is a little bit easier for way finding but
 24 not necessarily inherently a better road.

25 **Q. It's also a wider road, correct, by about a**

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 47

1 **couple feet?**

2 A. I believe so. I'll have to verify what we
 3 wrote in other testimony. I know it's posted in the
 4 Traffic Impact Study. I just wanted to make sure I'm
 5 giving the same answer. On the Traffic Impact Study I
 6 think the difference is 22. 18 feet we have listed.

7 **Q. So just in terms of emergency response**
 8 **vehicles, it would be typically easier to respond at a**
 9 **more rapid rate down a straight road that's wider as**
 10 **opposed to a narrow road that has a 90-degree curve;**
 11 **fair enough to say?**

12 A. Yes.

13 **Q. Just switching gears to a different topic,**
 14 **you've indicated in your testimony, and I believe this**
 15 **is at Page 2 of your rebuttal testimony, you've**
 16 **indicated that you checked with Ferndale School**
 17 **District and because the Ferndale School District**
 18 **indicated no buses used the Valley View crossing, you**
 19 **assumed that no buses used the Valley View crossing; is**
 20 **that correct?**

21 A. Yes.

22 **Q. Did you check with any of the private schools**
 23 **that provide bus service to students in the area?**

24 A. We did not.

25 **Q. Okay. So if there are in fact private schools**

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 48

1 **that do use this crossing, you simply overlooked that;**
 2 **is that fair to say?**
 3 A. We did not consider it.
 4 **Q. Okay. If you found out, for example, that**
 5 **there was private school transportation over this**
 6 **crossing, would that affect your calculus at all?**
 7 A. It would not affect our recommendation.
 8 MR. GIBSON: Thank you. I have no
 9 further questions at this time.
 10 JUDGE PEARSON: Okay, thank you. I just
 11 have a couple questions, Mr. Bialobreski. This is
 12 Judge Pearson.
 13 On Page 6 of the Traffic Impact Study, it
 14 states that Hanson -- this is in quotations --
 15 explained to Ms. Apana that the closure of Valley View
 16 would allow for improvement that would keep stopped
 17 trains from queuing across the Ham-Arnie Road crossing.
 18 So my question is, what is the capacity for
 19 train volume before the crossing at Ham Road would
 20 again be blocked for queuing purposes?
 21 A. Excuse me, could you speak up? That was kind
 22 of mumbled. I apologize.
 23 JUDGE PEARSON: So what is the capacity
 24 for train volume --
 25 A. What page did you reference?

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 49

1 JUDGE PEARSON: It's Page 6 of the
 2 Traffic Impact Study where it addresses improvements
 3 that would keep stopped trains from queuing across the
 4 Ham- Arnie Road crossing.
 5 A. Okay.
 6 JUDGE PEARSON: And my question is, what
 7 is the capacity for train volume before the Ham-Arnie
 8 Road crossing would again be blocked for queuing
 9 purposes?
 10 A. I believe the study says one unit train at a
 11 time.
 12 JUDGE PEARSON: If Valley View is
 13 presently being blocked, which it sounds like it is,
 14 how would closing the crossing at Valley View keep
 15 trains from queuing across the Ham Road crossing?
 16 A. They would be able to pull over into the
 17 siding and then trains would be able to go back and
 18 forth across. And so what I explained to Ms. Apana is
 19 that the only way it's not blocked is if there's a
 20 train that is going through. And then it's only
 21 blocked if a train goes through. There wouldn't be a
 22 train that sits there currently. It would wait for the
 23 inspections and things that we noted before.
 24 JUDGE PEARSON: Okay, thank you. And in
 25 your testimony you made recommendations for both the

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CROSS-EXAMINATION BY GIBSON/BIALOBRESKI 50

1 Ham and the Main Street crossings. Mr. Wagner stated
 2 that he had not done a safety or diagnostic evaluation
 3 at either of those crossings.
 4 Have you conducted a safety or diagnostic
 5 evaluation at either of those crossings?
 6 A. Briefly in the report and the Traffic Impact
 7 Study, we went through and looked at what would be
 8 warranted as far as improvements. And I believe in the
 9 testimony from -- or our rebuttal testimony to
 10 Mr. Curl, we agreed with the recommendations that would
 11 need to be for the improvements that would be at the
 12 Ham Road intersection minus the stop refuge for the bus
 13 vehicles, the bus traffic.
 14 At the Main Street intersection we actually
 15 recommended that there be a southbound right turn lane
 16 installed in order to make sure that cars did not --
 17 because that would be the -- the southbound right there
 18 would be where we would expect the majority or a fair
 19 number of vehicles that are rerouted to come back
 20 across the Main Street tracks. And we have recommended
 21 that a right turn lane be installed there in order to
 22 let them queue up and let the vehicles queue up and not
 23 block Portal Way for through traffic, which is a safety
 24 improvement in and of itself.
 25 We also looked at sight distance at the gates

REDIRECT EXAMINATION BY ENDRES/BIALOBRESKI 51

1 if lights weren't working for the Ham Road and Portal
 2 Way intersection, and I believe we found those to be
 3 sufficient. Even though we won't necessarily need
 4 them, some would be active gates instead of passive.
 5 We also looked at whether or not a traffic
 6 signal would be required at the intersection of Main
 7 and Portal Way due to proximity to the crossing. And
 8 per the Manual on Uniform Traffic Control Devices,
 9 Number 9, we do not believe that would be required.
 10 JUDGE PEARSON: Okay, thank you. That's
 11 all I have.
 12 MS. ENDRES: One quick follow-up, if I
 13 may.
 14
 15 **REDIRECT EXAMINATION**
 16 **BY MS. ENDRES:**
 17 **Q. Mr. Bialobreski, you were just asked a**
 18 **question or two about whether you performed any safety**
 19 **or diagnostic evaluation at Ham or Main. Just so the**
 20 **record is clear and we all understand, as part of what**
 21 **you did in the Traffic Impact Study, did you analyze**
 22 **whether those alternate crossings could safely**
 23 **accommodate the rerouted traffic?**
 24 A. You know, realistically in terms of from a
 25 traffic engineering perspective, there really isn't

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REDIRECT EXAMINATION BY ENDRES/BIALOBRESKI52

1 that much more traffic going across those crossings,
 2 and so we don't expect their usage essentially to
 3 change too much. So we don't see that there would be
 4 any additional increase in -- the traffic volumes
 5 wouldn't have any safety hazards in and of themselves.
 6 And that's why we did the exposure factor calculation.
 7 We actually, even with that, some of the past
 8 crashes that -- we looked at the records for the
 9 crashes at the crossings from the FRA inventory, and
 10 that hasn't really happened in the last five years so
 11 we didn't project or use any prediction models.
 12 **Q. So can those alternate crossings safely**
 13 **accommodate any rerouted traffic?**
 14 A. Yes, I would say so.
 15 MS. ENDRES: Thank you.
 16 JUDGE PEARSON: Okay, thank you. So is
 17 Mr. Bordenave present?
 18 MS. ENDRES: Mr. Bialobreski, nobody
 19 else has questions for you. Thank you very much for
 20 your time.
 21 PIERRE BORDENAVE,
 22 having been duly sworn, testified as follows:
 23
 24 JUDGE PEARSON: State your name and
 25 spell your last name for the record.

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CROSS-EXAMINATION BY GIBSON/BORDENAVE 54

1 Q. Dan Gibson here for Whatcom County. Just a
 2 couple of questions.
 3 Have you reviewed the testimony or the
 4 prefiled testimony of Roland Middleton?
 5 A. Yes, I have.
 6 **Q. Looking at the bottom of Page 2 of your**
 7 **prefiled rebuttal testimony, Lines 20 through 25, you**
 8 **assert that, "The Intalco Yard Expansion Project is not**
 9 **related to projected improvements identified for the**
 10 **GPT."**
 11 **How do you explain to the layperson how a**
 12 **development in about the same location serving**
 13 **customers out at Cherry Point is distinctly different**
 14 **from what GPT was proposing?**
 15 A. Actually, they're two separate projects, and
 16 GPT is proposing a project that would be served by a
 17 different set of additional tracks, a second mainline,
 18 and significant other improvements.
 19 And your question is how would I describe this
 20 to a layperson. I would put it in the perspective of,
 21 let's say there was a highway being proposed by the
 22 State through the County or in the City of Bellingham.
 23 That takes a number of years to evaluate, identify
 24 alternatives analyses, get the permits, and get the
 25 design correct. In the meantime, the City or the

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DIRECT EXAMINATION BY ENDRES/BORDENAVE 53

1 A. Pierre Bordenave, B-o-r-d-e-n-a-v-e.
 2
 3 DIRECT EXAMINATION
 4 BY MS. ENDRES:
 5 **Q. Good morning, Mr. Bordenave. For the record,**
 6 **can you please state the company that you work for and**
 7 **what position you hold.**
 8 A. I'm the Vice President of Environmental
 9 Services Group for JL Patterson and Associates,
 10 Incorporated, and we work for the BNSF Railway Company.
 11 **Q. And in a nutshell, what services does JL**
 12 **Patterson provide to BNSF?**
 13 A. Our environmental evaluations, environmental
 14 studies, permitting, permit management and
 15 environmental construction management.
 16 **Q. Do you have a copy of your prefiled testimony**
 17 **there that you submitted?**
 18 A. I do.
 19 **Q. Is your prefiled testimony true and accurate**
 20 **as though you were testifying the same this morning?**
 21 A. Yes.
 22 MS. ENDRES: Thank you.
 23
 24 CROSS-EXAMINATION
 25 BY MR. GIBSON:

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CROSS-EXAMINATION BY GIBSON/BORDENAVE 55

1 County has identified a local traffic problem or local
 2 traffic issue that needs to be addressed and decides
 3 that it needs to improve an arterial within that
 4 footprint of the highway.
 5 Those are two separate projects serving
 6 separate needs and requirements and so they would be
 7 done at different times and rates. You'd expect the
 8 arterial improvements that address safety concerns or
 9 traffic concerns would be done prior to a larger
 10 footprint project such as a highway.
 11 **Q. In that same vein, is the project about which**
 12 **we are speaking here, the Intalco Yard Project, is that**
 13 **primarily to serve the mainline of the Bellingham**
 14 **Subdivision or the customers at Cherry Point?**
 15 A. It's to primarily serve the Cherry Point
 16 Subdivision, because right now there is a siding that
 17 requires, as in my testimony, requires multiple
 18 switches and changes at that Intalco Yard to break
 19 trains up instead of having a full-length train.
 20 Full-length trains would need to stay on the mainline,
 21 thus completely clear the entire mainline before
 22 another train can come out.
 23 **Q. Which mainline are we speaking of?**
 24 A. The Cherry Point mainline.
 25 **Q. So just in terms of, say, a proportion of**

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CROSS-EXAMINATION BY GIBSON/BORDENAVE 56

1 **benefit, what is the proportion of benefit by the**
 2 **proposed improvements which would require Valley View**
 3 **closure, what's the proportion of benefits to the**
 4 **Cherry Point customers versus the proportion of benefit**
 5 **to the Bellingham Subdivision mainline?**
 6 A. I would have to defer to BNSF, their
 7 operations folks, as far as that. From what I
 8 understand and the reason we performed the analyses and
 9 the permitting for this, it was primarily to address
 10 the taking full trains off of the mainline, on the
 11 Cherry Point Subdivision mainline.
 12 **Q. And did you have an opportunity to examine the**
 13 **environmental documents, environmental impact documents**
 14 **that have been submitted previously with regard to the**
 15 **customers out at Cherry Point? The report, for**
 16 **example, from Mainline Management indicated that no**
 17 **further mitigation would be needed because of the**
 18 **ability to use the mainline for the benefit of the**
 19 **Cherry Point customers without additional improvements.**
 20 A. So the question is have I had an opportunity
 21 to review those documents, for what project are we
 22 talking about?
 23 **Q. That would have been the previous project**
 24 **completed for the benefit of the Cherry Point customers**
 25 **within the past several years.**

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CROSS-EXAMINATION BY GIBSON/BORDENAVE 57

1 **A. I'm not -- this is for all Cherry Point**
 2 **customers or for a specific Cherry Point customer?**
 3 **Q. Specific Cherry Point customers.**
 4 A. Okay. So in addressing -- BNSF has its
 5 operational needs, and a customer who is identifying a
 6 siding or a loop track or a storage track of their own
 7 on their own property, that would be separate from
 8 BNSF's needs for operational safety and capacity.
 9 **Q. So you're saying one could reconcile one**
 10 **report saying no further improvements needed, but BNSF**
 11 **then saying, well, that may be true for them but we**
 12 **need additional improvements?**
 13 A. Yeah. Another company would not speak for
 14 BNSF, yes.
 15 MR. GIBSON: Thank you. I have nothing
 16 further.
 17 JUDGE PEARSON: Okay, thank you. I just
 18 have one question, Mr. Bordenave.
 19 Do you have access to the March 19, 2014 BNSF
 20 Application to the Army Corps of Engineers?
 21 A. Right here I don't, but my company actually
 22 performed that work and filed that permit application.
 23 JUDGE PEARSON: Can you provide that to
 24 me?
 25 A. Sure.

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DIRECT EXAMINATION BY BEATTIE/CURL 58

1 JUDGE PEARSON: Okay. So I will label
 2 that as my second bench request. That's all I have.
 3 Anything further?
 4 MS. ENDRES: Nothing further.
 5 JUDGE PEARSON: You can step down. Why
 6 don't we take a five-minute recess and go off the
 7 record.
 8 (Recess taken.)
 9 JUDGE PEARSON: Back on the record.
 10 Mr. Curl is on the witness stand.
 11
 12 PAUL CURL,
 13 having been duly sworn, testified as follows:
 14
 15 JUDGE PEARSON: State your name and
 16 spell your last name for the record.
 17 A. My name is Paul Curl, C-u-r-l.
 18
 19 **DIRECT EXAMINATION**
 20 **BY MR. BEATTIE:**
 21 **Q. Good morning, Mr. Curl. If you could please**
 22 **introduce yourself a little more. Tell us your**
 23 **position and your role in this case.**
 24 A. Yes. I'm a Senior Policy Specialist with the
 25 Commission. I primarily worked in the railroad safety

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DIRECT EXAMINATION BY BEATTIE/CURL 59

1 section. I was the primary investigator in this
 2 particular case and have sponsored testimony which
 3 states the Commission Staff's position on this case.
 4 **Q. And that's the testimony that has been**
 5 **admitted as Exhibit PC-1T?**
 6 A. Yes.
 7 **Q. Do you wish to make any changes to your**
 8 **prefiled testimony this morning?**
 9 A. Yes. I have two changes. The first change is
 10 on Page 5 beginning at Line 10. And there I testified
 11 that BNSF operates four trains per day over the
 12 crossing. There are actually four loaded trains coming
 13 in and four empty trains coming out for a total of
 14 eight trains per day.
 15 The second change I intended to make was on
 16 Page 2 beginning at Line 20. And I testified there
 17 that up to three school buses a day travel over the
 18 crossing. That was based on information that I got
 19 from BNSF's original petition. I had intended to
 20 change my testimony to say that there are no school
 21 buses over the crossing. However, I was onsite
 22 yesterday about 3:00 in the afternoon, and there was a
 23 private school bus using a full-size school bus from
 24 Lynden Christian School using the crossing. So I at
 25 this time would not change my testimony. The testimony

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DIRECT EXAMINATION BY BEATTIE/CURL 60

1 says up to three a day. I think that's probably
 2 accurate and I do not intend to change the testimony.
 3 JUDGE PEARSON: What page is that on?
 4 A. Page 2, beginning on Line 20.
 5 JUDGE PEARSON: I don't see that on my
 6 Page 2.
 7 A. I don't either.
 8 MR. GIBSON: Your Honor, I believe that
 9 might be on Page 5.
 10 JUDGE PEARSON: Thank you. There it is,
 11 okay.
 12 **Q. (BY MR. BEATTIE) Just to be clear, you are**
 13 **maintaining your original testimony which states up to**
 14 **three school buses travel over the crossing daily;**
 15 **correct?**
 16 A. I think that's probably more accurate than no
 17 school buses.
 18 **Q. Based on your personal observations at the**
 19 **crossing which occurred yesterday?**
 20 A. That's correct.
 21 **Q. Thank you. Before I turn you over for**
 22 **cross-examination, if you could please turn to Page 26**
 23 **of your testimony.**
 24 A. Yes.
 25 **Q. Starting at Line 1, you were asked whether the**

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1 **traffic study, which in my understanding refers to the**
 2 **traffic study filed by Kurt Bialobreski, the witness**
 3 **who testified earlier, and you were asked about safety**
 4 **improvements on Valley View Road. And you note that**
 5 **the traffic study recommends redesigning the**
 6 **intersection of Valley View Road and Creasey Road to**
 7 **allow a design vehicle to turn around. Do I have that**
 8 **correct?**
 9 A. Yes.
 10 **Q. You were next asked whether you support that**
 11 **approach, and it's your testimony that you don't**
 12 **because you believe the County should decide what to do**
 13 **with the north approach to the crossing, which is the**
 14 **approach coming from the Creasey-Valley View**
 15 **intersection.**
 16 **Is it still your testimony that you don't have**
 17 **an opinion because you think the County should decide?**
 18 A. I truly believe that there ought to be a
 19 cul-de-sac constructed at the crossing. I think
 20 earlier testimony said there was just one residence
 21 there, but I counted at least five access roads off of
 22 Valley View Road between Creasey and the existing
 23 crossing.
 24 I think my recommendation would be to build a
 25 barricade right at the crossing as close as you can to

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1 the crossing which gives property owners access along
 2 Valley View Road to their property. I'm not sure how
 3 just reconstructing Creasey Road gives access to the
 4 property owners. I think it's about three-tenths of a
 5 mile between Creasey Road and the crossing, 1,500 feet.
 6 There's a lot of property there and I would support a
 7 cul-de-sac at the crossing. I understand that's a
 8 difficulty because of private ownership, but I think
 9 that's the best solution in this case.
 10 **Q. Would you support a cul-de-sac at the crossing**
 11 **in addition to redesigning the Creasey intersection or**
 12 **in lieu of redesigning the Creasey intersection?**
 13 A. In lieu of. I don't believe it's necessary to
 14 reconstruct Creasey Road if you have a cul-de-sac at
 15 the crossing.
 16 **Q. So with regard to your original testimony,**
 17 **would you like to replace leaving it up to Whatcom**
 18 **County with your new recommendation or would you still**
 19 **leave it up to Whatcom County with what we might call**
 20 **some advisory testimony about the cul-de-sac?**
 21 A. It would have to be advisory, as the road will
 22 continue to belong to Whatcom County. They still
 23 certainly will have a better idea of how they would
 24 like to protect the property owners along the remainder
 25 of the road if the crossing is closed. I would

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1 consider it advisory.
 2 Is that your question?
 3 **Q. Yes, thank you. And just so we're clear for**
 4 **the record in case people have different understandings**
 5 **of this term, I'm speaking as a layperson, what is a**
 6 **cul-de-sac?**
 7 A. Well, a cul-de-sac is a turnaround area
 8 designed -- there's usually a design vehicle in mind
 9 such as a 50-foot truck or a school bus, something
 10 along that line. And a cul-de-sac is designed for that
 11 design vehicle to be able to turn around and go back
 12 the other way.
 13 **Q. Thank you. Any other changes to your prefiled**
 14 **testimony?**
 15 A. No.
 16 MR. BEATTIE: Your Honor, Mr. Curl is
 17 available for cross-examination.
 18 JUDGE PEARSON: Thank you.
 19
 20 CROSS-EXAMINATION
 21 BY MS. ENDRES:
 22 **Q. Good morning, Mr. Curl, thank you for being**
 23 **here today.**
 24 **I'm going to ask you some questions specific**
 25 **to some of the mitigation that's been discussed and**

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1 proposed so far, but before I do that I'd like to ask
 2 you a few questions just about your background.
 3 I know you have a long history with the UTC.
 4 You've been involved in quite a number of crossing
 5 closure cases. Is my understanding correct that you've
 6 been involved in previous cases, been involved in a
 7 petition to close a crossing for the justification
 8 similar to this one where the railroad or a railroad
 9 needed to install a siding track which would then place
 10 a railroad crossing across the siding track in one or
 11 other sets of tracks as well?
 12 A. Yes.
 13 Q. And is my understanding correct from your
 14 testimony that from the UTC staff perspective, that
 15 type of public crossing is then considered, I think the
 16 terminology that you used in your testimony to be ultra
 17 hazardous or extra hazardous or just in some way more
 18 dangerous than the type of normal railroad crossing
 19 that motorists might typically encounter?
 20 A. Well, it's not necessarily just adding a
 21 second track that makes it extraordinarily hazardous.
 22 All crossings are inherently dangerous. Some are more
 23 dangerous than others. So adding a second track, we
 24 have hundreds of crossings that have two tracks on
 25 them.

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1 The thing or the issue that makes this
 2 particularly hazardous is that the railroad intends to
 3 block the crossing for extended periods of time, and
 4 that leads to behavior that is unsafe. That's the
 5 reason. Not necessarily just the second track, it's
 6 the stopping and blocking the crossing that makes it
 7 hazardous.
 8 Q. And in the other petitions that you've been
 9 involved in, has the UTC typically recommended closure
 10 in that case because of the construction or extension
 11 of a siding track?
 12 A. Yes.
 13 Q. Do you yourself have a degree in traffic
 14 engineering?
 15 A. I do not.
 16 Q. I take it that you reviewed Mr. Bialobreski's
 17 prefiled testimony and the Traffic Impact Study?
 18 A. Yes.
 19 Q. Did you also have an opportunity to review the
 20 county traffic engineer's response to the Traffic
 21 Impact Study? I believe that was Mr. Rutan.
 22 A. Yes.
 23 Q. And my understanding, and I'd also like to
 24 know if it's yours, is that Mr. Rutan raised the issue
 25 of emergency response, and we'll talk about that a

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1 little bit more with the County witnesses, but are you
 2 aware of anything, any issues that Mr. Rutan raised
 3 with the Traffic Impact Study that have been wanting to
 4 make sure that emergency response time was addressed?
 5 A. No.
 6 Q. Now, in your testimony, Mr. Curl, you raise a
 7 number of mitigation options that were not proposed
 8 either in the petition to close the crossing or by
 9 other of the two licensed traffic engineers that have
 10 submitted testimony today. And I'd like to walk
 11 through those with you to make sure that I understand
 12 what they are and what the justification is so that the
 13 record is clear.
 14 Your testimony on Page 21 reflects that you
 15 raised the proposal of whether stop refuges should be
 16 constructed at Main Street and Portal; is that right?
 17 A. Yes.
 18 Q. And is that something that in your opinion
 19 needs to be done or are you wanting to make sure that
 20 the traffic engineers address that one way or the
 21 other?
 22 A. I'm not recommending that that mitigation be
 23 done. I would defer to the traffic engineer in that
 24 case.
 25 Q. Okay. And is it your understanding that

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1 Mr. Bialobreski, his opinion is that the stop refuge
 2 would not be necessary. Is that your understanding?
 3 A. I read his opinion. I don't necessarily agree
 4 with his reasoning, but I do agree with his conclusion.
 5 Q. Another one of the proposals that you raised
 6 to be considered that had not been raised by other
 7 traffic engineers was whether to widen the crossing at
 8 Portal Way.
 9 And as a preliminary question one of the
 10 proposals that was submitted in the Traffic Impact
 11 Study that Mr. Rutan appeared to agree with was to
 12 create an additional turn lane for motorists traveling
 13 south or southeast onto Portal who would then make a
 14 right-hand turn onto Main. Your proposal to consider
 15 to widen the crossing at Portal Way, is that regardless
 16 of whether the extra turn lane would be installed?
 17 A. Are you referring to Main Street, not Portal
 18 Way? There's no crossing on Portal Way.
 19 Q. Yes. Main Street is close to Portal Way, the
 20 crossing there?
 21 A. That's correct.
 22 Q. So your proposal to consider widening that
 23 crossing is independent from whether a turn lane is
 24 installed on Portal?
 25 A. Well, I've taken a second look at the Main

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1 Street crossing, and it is a narrow road if you just
 2 look at the fog lines, but it has sufficient shoulders
 3 that you could comfortably cross there. I'm not as
 4 concerned about the width of the road at Main Street,
 5 as my testimony would indicate.

6 **Q. So on the topic of whether to widen the**
 7 **crossing at Main Street, do you defer to the traffic**
 8 **engineer similar to the issue of whether to construct**
 9 **stop refuges?**

10 A. I do.

11 **Q. The third issue that you suggested be**
 12 **considered that wasn't put forth in the petition or in**
 13 **the Traffic Impact Study or Mr. Rutan's testimony has**
 14 **to do with whether to install a traffic signal at**
 15 **Portal Way. Mr. Bialobreski, as you saw, indicated**
 16 **that as part of the traffic study that was considered**
 17 **and due to the traffic volume, he did not feel that**
 18 **that was necessary at the intersection.**

19 **Is that also something that you defer to the**
 20 **traffic engineers on?**

21 A. Yes.

22 **Q. Is there anything else in Mr. Bialobreski's**
 23 **recommendations, in the traffic study that you disagree**
 24 **with at this time with mitigation?**

25 A. I do disagree with the widening the road at

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1 Ham Road. I think that that road, even though I'm not
 2 a traffic engineer, I believe it's a safety issue, not
 3 a traffic issue. And maybe I can give you an example.

4 Yesterday I was onsite at the Ham Road
 5 crossing. There was a pickup truck approaching from
 6 one direction, a motor vehicle of a passenger car
 7 approaching from the other direction. The pickup
 8 stopped and allowed the car to go across the crossing
 9 just like it was a one-way bridge. And I've driven
 10 across that crossing several times and it's not
 11 comfortable, it feels too tight. And I don't think
 12 this has anything to do with traffic engineering, I
 13 think it has to do with safety engineering. And I
 14 don't believe that you can cross -- if you were to meet
 15 a bus, for instance, at that crossing, you were meeting
 16 and passing right on the crossing, I think there's a
 17 hazard of -- potential hazard of a vehicle driving off
 18 the side of the crossing, perhaps fouling the traffic
 19 in some way, a broken axle.

20 So I stick by my recommendation that we should
 21 widen the road at Ham Road, preferably to 22 feet wide
 22 that's currently 18 feet. There's plenty of crossing
 23 surface there and the crossing surface is 24 feet,
 24 widen the road. And I'm not talking about a great
 25 distance here, maybe starting 50 feet on each side of

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1 the crossing and gradually widen the road so that it
 2 becomes 22 feet at the crossing and motorists could
 3 comfortably pass and meet each other at the crossing.
 4 That's my recommendation.

5 **Q. As part of our analysis of that proposal, is**
 6 **there any type of content -- one of the exhibits you**
 7 **submitted was an excerpt from, for example, the U.S.**
 8 **DOT Railroad Highway Grade Crossing Handbook. Is there**
 9 **anything within that that you're aware of that supports**
 10 **that widening that crossing would be appropriate or**
 11 **necessary?**

12 A. No.

13 **Q. Your understanding is that lights and gates,**
 14 **if the judge grants BNSF's petition, one of the**
 15 **mitigation options that BNSF has proposed is to install**
 16 **lights and gates at the Ham crossing. That's your**
 17 **understanding?**

18 A. Yes.

19 **Q. And would the installation of lights and gates**
 20 **appease your concern that motorists might choose the**
 21 **railroad crossing to pass each other?**

22 A. Well, I don't think that changes anything, no.
 23 I still think it's just not comfortable for two
 24 vehicles to meet and pass on top of that crossing.
 25 It's just too scenario, it just feels too scenario.

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1 **Q. That narrowness exists today; right?**

2 A. That's correct.

3 **Q. In other words, vehicles that may encounter**
 4 **one another, as long as that crossing's existed will**
 5 **have encountered that same scenario?**

6 A. That's correct, but the AADT currently is 211.
 7 Mr. Bialobreski is projecting that that will increase
 8 by 50 percent to something in excess of 300. Also now
 9 I've learned that a private school bus will be using
 10 that in addition to public school buses that already
 11 use the Ham Road crossing. And so I don't think the
 12 lights and gates addresses the problem that I've
 13 referenced in my testimony.

14 **Q. Have you done any type of calculation relating**
 15 **to the increase in the AADT at Ham as relates to**
 16 **whether the crossing should be widened?**

17 A. No.

18 **Q. And after you observed the private school bus**
 19 **at the crossing yesterday, did you get in contact with**
 20 **the private school district to see what alternate route**
 21 **they might take if the crossing is closed?**

22 A. No.

23 **Q. The MUTCD is a resource that the UTC along**
 24 **with the railroad or other jurisdictions used as a**
 25 **guide to determine what type of signage are appropriate**

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1 **at railroad crossings. Am I understanding that right?**

2 A. Oh, I think it's a little more than a guide.

3 I think they are standards.

4 **Q. Okay, fair enough. And within those standards**

5 **contain different signage, I guess, requirements for**

6 **various traffic conditions; is that right?**

7 A. Yes.

8 **Q. Is there any type of signage within the MUTCD**

9 **that you're aware of that might be something that you**

10 **would suggest to install at the Ham Road crossing if it**

11 **is not widened to discourage or direct motorists not to**

12 **meet and cross at the crossing itself?**

13 A. I'm not aware of anything right off the top of

14 my head.

15 **Q. Can we agree that once lights and gates are**

16 **installed at a crossing that it's illegal for motorists**

17 **to enter the crossing when the active devices are**

18 **triggered?**

19 A. Yes, we can agree to that.

20 **Q. Is there anything else in the Traffic Impact**

21 **Study's recommendations or those raised in the parties'**

22 **prefiled testimony that you disagree with that we**

23 **haven't discussed?**

24 A. Only what I discussed with Mr. Beattie which

25 had to do with how do you block the crossing and how

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1 much of Valley View Road will continue to be accessible

2 to property owners.

3 **Q. Has there been any discussion to your**

4 **knowledge in the diagnostic meeting or the safety**

5 **assessment or however we term that meeting between BNSF**

6 **and the County and the UTC of whether to convert the**

7 **segments of public roadway approaching Valley View to**

8 **private roads if the crossing itself is closed?**

9 A. I'm not aware of any discussion like that, no.

10 **Q. Would that impact your analysis at all if**

11 **those segments are converted to private roadways?**

12 A. Well, the County's view on what they want to

13 do with their own road will impact how I feel about it.

14 This is their road and it really has nothing to do with

15 safety, it really has to do with access to property

16 along the road.

17 **Q. So if it's not a County owned roadway then**

18 **this issue from your perspective is no longer one that**

19 **needs to be resolved?**

20 A. That's correct. I don't have jurisdiction any

21 longer if it's a private road.

22 **Q. My last question, Mr. Curl, is because since**

23 **you submitted your testimony we've had some additional**

24 **materials become part of the record. We've had the**

25 **updated SEPA materials, Mr. Bialobreski 's response to**

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REDIRECT EXAMINATION BY BEATTIE/CURL 74

1 **what you submitted.**

2 **Is it still your opinion or the UTC staff's**

3 **opinion that BNSF's petition to close the Valley View**

4 **crossing should be granted?**

5 A. Yes.

6 MS. ENDRES: Thank you. That's all I

7 have.

8 JUDGE PEARSON: Does anyone else have

9 any questions for Mr. Curl?

10 MS. ENDRES: Yes, Judge.

11

12 **REDIRECT EXAMINATION**

13 **BY MR. BEATTIE:**

14 **Q. Mr. Curl, with respect to the redesign of**

15 **Creasey Road -- excuse me, the intersection of Valley**

16 **View and Creasey, are you aware of any plans to install**

17 **a gate blocking access to Valley View Road from**

18 **Creasey?**

19 A. I did read that somewhere in the testimony,

20 I'm sorry, I don't remember exactly where, but I

21 believe Mr. Wagner had suggested that there would be a

22 locked gate installed on Valley View Road that would be

23 just south of Creasey Road and that property owners

24 would be able to unlock that gate and access their

25 property. And I believe that was Mr. Wagner's

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REDIRECT EXAMINATION BY BEATTIE/CURL 75

1 testimony.

2 **Q. Let's just assume it is. What is UTC's staff**

3 **position to a locked gate just south of the**

4 **intersection?**

5 A. Well, they're not fail-safe. They can be left

6 open. There is a residence south of where the gate

7 would be installed. If there were an emergency at that

8 property, how would the emergency vehicles get through.

9 So there are issues with using a locked gate. They're

10 appropriate in some circumstances. I'm not sure

11 they're appropriate in this case.

12 **Q. When there's an emergency, the person driving**

13 **that emergency vehicle does not distinguish between**

14 **private and public roads; is that correct?**

15 A. I'm not an emergency responder but that would

16 seem logical, yeah.

17 MR. BEATTIE: That's all I have, Judge,

18 thank you.

19 JUDGE PEARSON: Thank you. Mr. Curl, I

20 do have some questions for you but I'm going to reserve

21 those and recall you a little bit later after --

22 they're related to what the County witnesses are going

23 to testify to.

24 A. Okay.

25 JUDGE PEARSON: Thank you, you may step

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DIRECT EXAMINATION BY GIBSON/RUTAN 76

1 down. Mr. Rutan?
 2 JOE RUTAN,
 3 having been duly sworn, testified as follows:
 4
 5 JUDGE PEARSON: State your name,
 6 spelling your last name for the record.
 7 A. My name is Joe Rutan, R-u-t-a-n.
 8
 9 DIRECT EXAMINATION
 10 BY MR. GIBSON:
 11 **Q. Mr. Rutan, what is your profession?**
 12 A. I am a professional licensed engineer. I'm
 13 the County Engineer for Whatcom County and the
 14 Assistant Director of Public Works.
 15 **Q. Do you have with you a copy of your prefiled**
 16 **testimony?**
 17 A. Yes, I do.
 18 **Q. And is it a true and accurate statement today**
 19 **as it was when you submitted it?**
 20 A. Yes, it is.
 21 **Q. I'm going to show you what has been previously**
 22 **been marked and admitted as I believe JR-2 and just ask**
 23 **you to briefly identify what that is for the record.**
 24 A. That is a map of the northwest corner of
 25 Whatcom County with the Valley View crossing located in

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CROSS-EXAMINATION BY BEATTIE/RUTAN 77

1 the center of the map.
 2 **Q. I take it that's accurate as to scale?**
 3 A. Yes, it's accurate as to scale. That was
 4 produced yesterday by our GIS staff so it is the most
 5 recent map we would have of the county.
 6 **Q. Mr. Rutan, I think this is an appropriate time**
 7 **to explore some of the aspects of mitigation in this**
 8 **case. Rather than me doing that, I'd defer to**
 9 **Mr. Beattie and Ms. Endres who will have a number of**
 10 **questions in regard to that.**
 11
 12 **CROSS-EXAMINATION**
 13 BY MR. BEATTIE:
 14 **Q. Mr. Rutan, my name is Julian Beattie and I**
 15 **represent the Commission Staff. And I'm going to go**
 16 **through a list of mitigations that had been proposed at**
 17 **various points in this record and ask you for the**
 18 **County's position on each mitigation.**
 19 A. Excellent.
 20 **Q. And with respect to each mitigation in**
 21 **addition to stating whether the County supports or does**
 22 **not support the mitigation, if you could provide a**
 23 **rationale to that extent, that would be most helpful.**
 24 A. Certainly.
 25 **Q. Starting with the Ham-Arnie crossing, the**

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CROSS-EXAMINATION BY BEATTIE/RUTAN 78

1 **proposal is to install flashing lights, gates,**
 2 **pavement, stoplights and increase signage at the**
 3 **crossing?**
 4 A. We would support that.
 5 **Q. What about constructing stop refuges?**
 6 A. Obviously that would be additional safety. We
 7 look at this -- the County looked at this closure in
 8 several ways. One way was if this is a development
 9 generating this much traffic, what would we require of
 10 that development. We do that quite often so we need to
 11 make sure that we're fair to everyone.
 12 So when looking at the mitigation that was
 13 proposed by the Railroad, it was consistent with what
 14 would be required for a development of that, so that
 15 was beyond -- that additional widening on Ham would be
 16 beyond what we would require. I'd also mention that
 17 the road is 18 feet at that point so having the
 18 crossing wider than the road would help us when we
 19 eventually sometime get around to widening the road,
 20 but that is not anywhere on the horizon.
 21 **Q. Perhaps we're talking about two different**
 22 **mitigations. One is stop refuges and the other one is**
 23 **more generally widening the road.**
 24 A. Right. The stop refuge, we don't have an
 25 accident history out there that would show that that

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CROSS-EXAMINATION BY BEATTIE/RUTAN 79

1 would be a requirement.
 2 **Q. And with respect to widening the road, your**
 3 **position is also that that is not necessary?**
 4 A. Obviously, as a County Engineer I would like
 5 roads -- you know, wider is always necessary, but the
 6 reality is we have an 18-foot-wide road there so
 7 widening out the crossing isn't necessarily something
 8 that is going to provide a corridor of safety there.
 9 But we do support the additional signing, striping and
 10 lighting. We feel that that is an upgrade to that
 11 intersection.
 12 **Q. And gates?**
 13 A. Correct.
 14 **Q. If I may, I'd like to move on to the south**
 15 **approach to Valley View crossing, and by that I mean**
 16 **the approach from the Valley View-Arnie Road**
 17 **intersection. The proposal here is to install signage**
 18 **at the Valley View-Arnie Road, specifically one sign at**
 19 **the south approach, one at the east approach, and one**
 20 **at the west approach?**
 21 A. We would certainly support that.
 22 **Q. Does the County support constructing a**
 23 **cul-de-sac north of Arnie Road prior to the bridge on**
 24 **Valley View Road?**
 25 A. The Manual of Uniform Traffic Control Devices

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CROSS-EXAMINATION BY BEATTIE/RUTAN 80

1 would require a turnaround, not necessarily a
 2 cul-de-sac. That's one design of a turnaround and
 3 generally the biggest, and I would not propose a
 4 cul-de-sac here. A hammerhead would be more
 5 appropriate. But per the Manual of Traffic Uniform
 6 Controlled Devices, a turnaround is required.
 7 Now, this breaches into something that was
 8 spoken about. If this closure occurs, we have a bridge
 9 there. We also have the area from the north. And
 10 we've had lots of discussions of if this crossing
 11 closes, how are we going to manage those roads? Should
 12 they remain as open public roads, should they remain as
 13 private roads? Should we remove the bridge over Dakota
 14 Creek, which is a fish-bearing creek, and open up that
 15 additional habitat for fish?
 16 So based upon the outcome of this, we could be
 17 exploring how to manage those roads and potentially
 18 either continue as open public roads, we could maintain
 19 the right-of-way but make them for private use only,
 20 which is very common in the county, or we could vacate
 21 it totally based upon a request from the adjoining
 22 landowners. If the landowner owns both sides of that
 23 road, there's a good chance that a vacation could
 24 occur, and that means the road and the right-of-way.
 25 So some of those things, how we would manage

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CROSS-EXAMINATION BY BEATTIE/RUTAN 81

1 this in the future, is based upon that closure, which
 2 I'll just jump ahead, goes to the issue of the closure
 3 on the north side. We -- sorry.
 4 **Q. If we could just get to that in a moment. So**
 5 **is it your testimony, then, that you would not support**
 6 **any specific mitigation being ordered by Utilities and**
 7 **Transportation Commission in an order closing --**
 8 A. The Manual of Uniform Traffic Control Devices
 9 would require a turnaround on that road because it's
 10 more than 200 feet of the road. So it will require a
 11 turnaround.
 12 **Q. Are we still talking about Valley View --**
 13 A. North of Arnie just south of the bridge.
 14 **Q. Okay.**
 15 A. The MUTCD would require that if it remains a
 16 public road.
 17 **Q. I see. And so essentially what you're telling**
 18 **me is that you are not decided as to -- and when I say**
 19 **"you" I mean the County, is not decided as to what**
 20 **specific mitigation should be ordered, although you**
 21 **agree that some mitigation is necessary?**
 22 A. Absolutely. The application came in and it
 23 said there would be a cul-de-sac at that location. I
 24 took that to be a colloquial term for a turnaround, so
 25 yes, we would support a turnaround north of Arnie Road

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CROSS-EXAMINATION BY BEATTIE/RUTAN 82

1 just south of the bridge, absolutely.
 2 **Q. You used the term "hammerhead"?**
 3 A. Yes.
 4 **Q. Can you tell me what that is?**
 5 A. It's allows for a three-point turn. It's just
 6 pavement. You see them very often at the end of
 7 dead-end roads. It's just a wide enough area that
 8 allows an ambulance, fire truck, a UPS truck to turn
 9 around and not to have back up.
 10 **Q. Okay, I think I understand. So you would**
 11 **support some sort of turnaround just south of the**
 12 **bridge?**
 13 A. Correct.
 14 **Q. Cul-de-sac may have a technical term. I'm**
 15 **still not quite clear on that.**
 16 A. Yes. A cul-de-sac is one of the turnarounds
 17 that would be acceptable design. It is more common in
 18 an urban environment and it would be very uncommon in a
 19 rural environment like this.
 20 **Q. But the County's perspective is that there**
 21 **could be another option?**
 22 A. Absolutely.
 23 **Q. In terms of no turnaround and close the road**
 24 **completely to the public road?**
 25 A. If after this occurs the landowners approach

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CROSS-EXAMINATION BY BEATTIE/RUTAN 83

1 us, because we don't propose these, the landowners do,
 2 if the landowners come to us and propose to vacate that
 3 or to abandon the road to a private road, then it's a
 4 different issue. But at the time of the closure it's a
 5 public road and it will require, per the MUTCD, a
 6 turnaround.
 7 **Q. Okay, thank you. I think the record is**
 8 **sufficiently clear on that point.**
 9 **So I can now let you jump ahead to the Creasey**
 10 **Road approach, and by that I mean the approach from the**
 11 **Creasey Road, the Valley View intersection proceeding**
 12 **south to the proposed closed crossing.**
 13 A. Yes. When this originally came in, you know,
 14 myself and my traffic staff looked at this, and we
 15 wanted the cul-de-sac or a turnaround on Valley View
 16 down by the railroad tracks, as Mr. Curl was saying.
 17 As we got to talking and looking at the system out
 18 there, we had Creasey Road also that is a dead-end road
 19 there. And we felt that a turnaround at the
 20 intersection of Creasey and Valley View would provide a
 21 better overall turnaroundability for the area. It also
 22 then provides that turnaround if indeed Valley View
 23 were to become private or to be vacated in the future.
 24 **Q. So the County's position is that the best**
 25 **mitigation option at the Creasey intersection is to**

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CROSS-EXAMINATION BY BEATTIE/RUTAN 84

1 **redesign the intersection to allow design vehicles to**
 2 **turn around?**
 3 A. Correct.
 4 **Q. And the second half of your answer is that a**
 5 **cul-de-sac just north of the crossing is not warranted?**
 6 A. We feel that the redesign up at the
 7 intersection to allow a vehicle to turn around up there
 8 will provide more opportunity for the vehicles in the
 9 area to turn around and use the area. It's less likely
 10 someone will drive down Valley View. Now, it is
 11 against the MUTCD, the MUTCD would require that
 12 roundabout, but as a County Engineer looking at the
 13 system, I feel that providing a roundabout for Creasey
 14 and Valley View is better than providing one just for
 15 Valley View.
 16 **Q. What about the option of having both a**
 17 **roundabout at the intersection and one just north of**
 18 **the crossing?**
 19 A. That would be -- I don't think I would be
 20 comfortable requiring that, because that would be
 21 beyond what would be consistent with other developments
 22 of the same size or generating the same traffic. The
 23 amount of mitigation that they're proposing here for
 24 the additional traffic is consistent. It does not
 25 address the issue of additional travel time.

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CROSS-EXAMINATION BY BEATTIE/RUTAN 85

1 Q. What is the distance from the Creasey-Valley
 2 View intersection to the crossing, if you know?
 3 A. You know, looking at this, if that's a mile,
 4 I'm guessing maybe a quarter mile.
 5 **Q. What is the County's position on the locked**
 6 **gate just south of the Creasey-Valley View Road**
 7 **intersection?**
 8 A. For that to occur -- well, we would not allow
 9 a locked gate on a public road, ain't going to happen.
 10 For that to occur, that would have to go in front of
 11 the council and that would have to be made a private
 12 road. So that's one of the options. And that's a very
 13 legitimate potential outcome for this would be for the
 14 adjoining property owners to petition the County and
 15 make that a private road, which is also very common out
 16 in the county.
 17 **Q. But taking things in sequence for purposes of**
 18 **this proceeding only, the County's position is that the**
 19 **Creasey intersection should be redesigned to make it a**
 20 **roundabout?**
 21 A. We would prefer the Creasey intersection to be
 22 redesigned to allow for the design vehicles to turn
 23 around there. We feel that will provide more
 24 opportunity and would provide a safer network than
 25 building it down a quarter mile down on Valley View.

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CROSS-EXAMINATION BY BEATTIE/RUTAN 86

1 Q. Thank you. And finally, with respect to the
 2 Creasey intersection, does the County support
 3 installing signage at this intersection, specifically
 4 one sign at the north approach to the crossing?
 5 A. Absolutely.
 6 **Q. Moving on to the Main Street-Portal Way**
 7 **intersection, if I can. What is the County's position**
 8 **with regard to active warning devices and signals at**
 9 **the Main Street crossing remaining in place?**
 10 A. Very much support that. They're functioning
 11 very well.
 12 **Q. What is the County's position with regard to**
 13 **constructing a southbound right turn lane at Portal Way**
 14 **and Main Street?**
 15 A. We think that will be a legitimate mitigation
 16 effort and support it.
 17 **Q. What is the County's position with regard to**
 18 **signalizing the entire intersection?**
 19 A. Currently it does not meet warrants for a
 20 signal so I would not be able to recommend that. And
 21 that includes the additional traffic from the closure.
 22 **Q. Okay, thank you. And with respect to the Main**
 23 **Street crossing, does the County support constructing**
 24 **stop refuges?**
 25 A. We have nothing that would tell us that that

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CROSS-EXAMINATION BY BEATTIE/RUTAN 87

1 would currently be needed. Certainly we would never
 2 prevent the railroad from going out and constructing
 3 those refuges, but there's nothing that we can hang our
 4 hat on right now that show those would be required.
 5 **Q. And finally, widening the crossing.**
 6 A. Well, the addition of a right-hand turn lane
 7 widens it out, and as noted, even though the pavement
 8 area is quite wide, even though the lanes are striped
 9 narrow to provide traffic calming, to get people to
 10 drive a little bit slower down through there, so
 11 there's sufficient pavement area for that crossing.
 12 **Q. You're saying constructing a southbound turn**
 13 **lane, which the County supports, would widen the**
 14 **crossing on the Portal side, but on the Valley View**
 15 **side of Main Street you do not support widening?**
 16 A. We feel -- we don't see a need for that. And
 17 certainly there's no data coming out of that
 18 intersection that would show us that that is currently
 19 a need or would be a need with the additional traffic.
 20 **Q. I'm almost finished here. If I could just**
 21 **return to Creasey for one moment. It occurs to me that**
 22 **I may not completely understand what the term**
 23 **"redesign" means to you as the County. I think you**
 24 **mentioned a roundabout, but I just want to return to**
 25 **that one more time. And if you could explain to me**

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CROSS-EXAMINATION BY ENDRES/RUTAN 88

1 **precisely what you're envisioning.**
 2 A. Sure. Redesign to me meant they would submit
 3 a design to the County and we would review it and
 4 approve it and work through that with them. So I don't
 5 know what that is now. If I said cul-de-sac, I'm
 6 sorry, it was a mistake. It is a redesign to allow for
 7 a design vehicle to move through there, and we would
 8 let the traffic engineers work through our process to
 9 make that happen. I wouldn't want to predispose a
 10 design right now.

11 **Q. Thank you. That's very helpful.**
 12 MR. BEATTIE: Those are all the
 13 questions I have, thank you.

14
 15 **CROSS-EXAMINATION**
 16 **BY MS. ENDRES:**

17 **Q. Good morning, Mr. Rutan, thank you for being**
 18 **here today. I'm going to jump around on you a little**
 19 **bit which tends to happen when you go second because**
 20 **your colleague has raised some good points to follow up**
 21 **on.**

22 **The process of potentially converting part of**
 23 **the public road on Valley View to private, you**
 24 **mentioned that that would involve a request from the**
 25 **adjoining landowners?**

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CROSS-EXAMINATION BY ENDRES/RUTAN 89

1 **A. It is driven by the abutting landowners, yes.**
 2 **Q. And do you know how many landowners would be**
 3 **affected?**

4 A. I do remember looking at an assessor's map,
 5 and it was just a couple. It was not a large number of
 6 landowners, which is why when we looked at this, okay,
 7 how is this going to develop potentially after this
 8 closes, you know, we were trying to keep those things
 9 in line.

10 **Q. Has the County had any discussions at all with**
 11 **any of those landowners?**

12 A. Not with the landowners, simply internal.

13 **Q. How long does that process usually take? And**
 14 **the process I'm referring to is the decision to have**
 15 **the public road converted to private.**

16 A. If indeed it were converted to private it
 17 would have to go in front of our council. There would
 18 be a public hearing. So it's introduced, two weeks
 19 later there's a public hearing, and potentially
 20 decisions at that point.

21 **Q. As a traffic engineer with this being one of**
 22 **the options that the County considered and when part of**
 23 **what we're discussing today is what mitigation the**
 24 **Court may order or if the judge would order the parties**
 25 **to present a joint proposal to the Commission within a**

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CROSS-EXAMINATION BY ENDRES/RUTAN 90

1 **certain amount of time, would you think it appropriate,**
 2 **given that this looks like an option that is worth**
 3 **exploring with the private landowners, to order and**
 4 **proceed with constructing a turnaround or making**
 5 **changes to the Valley View Road under the assumption**
 6 **that it would remain public? Does that make sense?**
 7 **And the reason I ask is because Mr. Beattie**
 8 **mentioned the sequence of this and what the County's**
 9 **position is. And if I'm understanding your testimony**
 10 **correctly, it seems like from the County's perspective**
 11 **it could make sense, if the landowners prefer, to**
 12 **convert part of Valley View on either side to a public**
 13 **roadway, which then would no longer be maintained by**
 14 **the County.**

15 **When we're looking at the order and the**
 16 **sequence and how this might play out, would it be your**
 17 **opinion that if the judge granted the petition that she**
 18 **permit the parties to explore conversion to a private**
 19 **crossing with the adjacent landowners, or in your**
 20 **opinion as a Traffic Engineer, I just want to make sure**
 21 **I'm understanding you that the judge should order that**
 22 **the roads be upgraded per the MUTCD while they're**
 23 **public regardless of whether they're then relatively**
 24 **shortly converted to a private road. Does that make**
 25 **sense?**

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CROSS-EXAMINATION BY ENDRES/RUTAN 91

1 **A. Yes, and I prefer the second one, just because**
 2 **we have gone through lots of right-of-way proceedings,**
 3 **and just because you initiate a right of way proceeding**
 4 **doesn't mean that it actually occurs. And we've**
 5 **actually had right-of-way proceedings that are approved**
 6 **and then the applicants never pay the fees, we actually**
 7 **have to pay money to do it. So there's too many "ifs"**
 8 **and too much risk to the public to not install them at**
 9 **the point. But that is why I was willing to recommend**
 10 **or accept the redesign of Creasey and Valley View for**
 11 **the reasons I mentioned.**

12 **Q. And without, then, constructing some kind of**
 13 **turnaround?**

14 A. Without doing something further south on
 15 Valley View. That would then allow for, if the roads
 16 continued as is then we have an appropriate turnaround
 17 there that provides that ability for two roads, not
 18 just one. And if indeed in the future if the status
 19 were to change to private or to vacate it, then we have
 20 that facility there to account for it.

21 **Q. Do you know what the fee is, by the way, that**
 22 **you just mentioned?**

23 A. For road vacation -- I mean for road
 24 abandonment I don't know, it's a couple hundred bucks.
 25 For vacation, if they actually vacate the property,

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CROSS-EXAMINATION BY ENDRES/RUTAN 92

1 they have to buy the property back at market value, so
 2 that is something that I wouldn't be able to give you
 3 without having a real estate agent.
 4 MS. ENDRES: Your Honor, may I change
 5 the exhibit on the board?
 6 JUDGE PEARSON: Sure.
 7 A. I would also just add that what the owners out
 8 there may decide to do today may be different,
 9 different owners 20 years from now. So this vacation,
 10 if indeed this were to change, could happen immediately
 11 after or it could happen 50 years from now.
 12 **Q. (BY MS. ENDRES) Mr. Rutan, can you see that**
 13 **board okay?**
 14 A. Well enough.
 15 **Q. I put it up just because it gives us a little**
 16 **more of a zoomed-in view of the roads and approaches on**
 17 **Valley View.**
 18 A. I'm actually holding the smaller copy.
 19 **Q. Okay, fair enough. So I understand your**
 20 **position about why a redesign at the Creasey and Valley**
 21 **View intersection may be appropriate without then a**
 22 **turnaround just north of the tracks. If we look at**
 23 **south of the tracks, south of the crossing just north**
 24 **of Arnie, that seems to me to be a much shorter**
 25 **distance there.**

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CROSS-EXAMINATION BY ENDRES/RUTAN 93

1 **A. Yes, it is.**
 2 **Q. And I can kind of see on this map, is that the**
 3 **bridge, it looks like there's a little screen that goes**
 4 **to the Valley View Road?**
 5 A. Correct. That is the California Creek, yes.
 6 **Q. And is there space in between Arnie Road and**
 7 **the bridge for some type of turnaround?**
 8 A. You know, I'll just go back to that road would
 9 be closed up at the railroad, so it will remain a
 10 public road even if you put the cul-de-sac. You know,
 11 we need access to that bridge. We need -- you know, so
 12 even if you put that cul-de-sac before that bridge,
 13 we're going to have to drive through that cul-de-sac up
 14 to that bridge and maintain that bridge up until such
 15 time that maybe we decide to remove that bridge.
 16 **Q. And I apologize because I think I**
 17 **misremembered where you recommended that a turnaround**
 18 **be installed. So your recommendation is that a**
 19 **turnaround be installed in between the bridge and the**
 20 **closed crossing itself?**
 21 A. Correct.
 22 **Q. Is there any way to redesign the intersection**
 23 **of Arnie and Valley View in a similar way to Creasey**
 24 **and Valley View so that vehicles could turn around**
 25 **without constructing --**

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CROSS-EXAMINATION BY ENDRES/RUTAN 94

1 **A. Well, there certainly would, but the reason**
 2 **wouldn't be there because the reason to do it up at**
 3 **Valley View and Creasey was it was providing two roads.**
 4 **Here, doing it in the intersection you're providing for**
 5 **one road, doing it out of the intersection you're**
 6 **providing it for one road, so.**
 7 **Q. You mentioned that one of the ways you**
 8 **approached this was to look at it like the County or a**
 9 **development was being built generating a certain amount**
 10 **of traffic.**
 11 A. Correct.
 12 **Q. And one of the main points that your prefiled**
 13 **testimony raised wasn't so much in response to anything**
 14 **specifically contained within the Traffic Impact Study**
 15 **but it raised the issue of impact on emergency response**
 16 **time. And I know we'll have some more testimony from**
 17 **the fire chief. But any time a traffic-related project**
 18 **is completed, whether it's to build a new subdivision**
 19 **or rerouting traffic for some kind of construction**
 20 **project, isn't there always potentially some impact on**
 21 **emergency response time?**
 22 A. Yes, potentially. In most cases we're
 23 building stuff, so response time is lessened because
 24 we're creating networks, not undoing networks.
 25 **Q. But sometimes there can be some increase in**

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CROSS-EXAMINATION BY ENDRES/RUTAN 95

1 **emergency response times for many construction**
 2 **projects?**
 3 A. Certainly, it's possible.
 4 **Q. And again, I warned you I'm going to jump**
 5 **around a little bit so I do appreciate your patience.**
 6 **Do you agree with Mr. Bialobreski's opinion**
 7 **that the alternate crossings could safely accommodate**
 8 **rerouted traffic should the Valley View crossing be**
 9 **closed?**
 10 A. Yes, I do. The volumes on these roads out
 11 here are relatively small and there is a large amount
 12 of capacity available on those roads.
 13 **Q. One of the points that Mr. Bialobreski made --**
 14 **and by the way, I'm assuming you did have an**
 15 **opportunity to review all of Mr. Bialobreski's**
 16 **testimony?**
 17 A. Yes.
 18 **Q. Was that from a traffic planning or engineer's**
 19 **perspective, that in general the objective is to**
 20 **maintain response times, and I'm talking about**
 21 **emergency response times, similar to the current**
 22 **district response times. At the very least you**
 23 **recommend not creating a response time greater than the**
 24 **longest response time being served by the impacted**
 25 **responders.**

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CROSS-EXAMINATION BY ENDRES/RUTAN 96

1 **Do you agree with that statement?**
 2 A. Yes. Nothing really there to disagree with.
 3 **Q. We've heard testimony today, and you've been**
 4 **here this morning, that part of the justification for**
 5 **expanding the siding track is to allow trains to meet**
 6 **and pass or clear the mainline, and that there may be**
 7 **trains parked across or on the siding for extended**
 8 **periods of time.**
 9 **For a traffic planning purpose, would you then**
 10 **recommend to emergency responders that even if the**
 11 **crossing were to remain open, given the potential for**
 12 **long delays that they plan alternate routes anyway?**
 13 A. I would -- I think they should, any time
 14 they're dealing with crossing a railroad anywhere in
 15 this county, we have 49 crossings, they should be aware
 16 of alternate routes. So I would say yes, in 49
 17 locations in the county.
 18 **Q. So one thing that distinguishes this**
 19 **particular crossing from those other 49, and we've had**
 20 **one of our earlier witnesses, I think Mr. Curl**
 21 **explained, this isn't a scenario that simply just**
 22 **involves two sets of tracks, that we would see**
 23 **everywhere that this is a track that's really similar**
 24 **to a parking space for trains, so the delay here may be**
 25 **much longer, we heard testimony maybe up to hours.**

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CROSS-EXAMINATION BY ENDRES/RUTAN 97

1 **A. Well, at 15 minutes, my understanding is they**
 2 **can block a public road for 15 minutes, and after that**
 3 **they have to move the train. Which is why they're**
 4 **coming in to ask to close this, because they can't**
 5 **block it for hours like you're saying.**
 6 **Q. I'm going to ask you to make an assumption**
 7 **that that law does not require that trains move in less**
 8 **than 15 minutes and that if the crossing remains open,**
 9 **a train may be parked there for hours at a time. Just**
 10 **assume. Let's just set that aside and whether it**
 11 **applies.**
 12 A. Okay.
 13 **Q. Assuming that a train may be parked there for**
 14 **hours, would you recommend that emergency responders**
 15 **plan an alternate route specific to this crossing**
 16 **because of its special characteristic?**
 17 A. The issue there isn't the responders, it's why
 18 is the train sitting there for more than 15 minutes.
 19 So my answer is the same as before. At any crossing
 20 they should have -- because if that can happen here it
 21 can happen at any crossing.
 22 **Q. And I'm not -- I apologize if I'm not asking**
 23 **this very eloquently. What I think we can agree with**
 24 **is that this crossing is going to have special or**
 25 **unique characteristics that are going to distinguish it**

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CROSS-EXAMINATION BY ENDRES/RUTAN 98

1 **from other crossings. And so whether it's a fair idea**
 2 **or a good idea or whether this law applies, if you have**
 3 **information that the Railroad's trains may be across**
 4 **just this specific crossing for hours at a time,**
 5 **regardless of whether you think they should or anyone**
 6 **thinks they should but they may be, when you're**
 7 **planning traffic?**
 8 A. My answer is the same. There's 49 crossings.
 9 At any one of those crossings you're going to have a
 10 train sitting up there for 15 minutes. If you're
 11 driving an ambulance you're not going to want to sit
 12 and wait for 15 minutes. So any of these locations, I
 13 would recommend they have an alternate route around.
 14 And that's not specific to here, that's specific to
 15 everywhere.
 16 **Q. One of the issues that was raised somewhere in**
 17 **the prefiled testimony was whether the County believes**
 18 **that an overpass should be built. Is that something**
 19 **that the County recommends?**
 20 A. I don't feel that it would -- obviously
 21 separated crossings are always safer. And as County
 22 Engineer and as a dad and having kids driving, I want
 23 separated crossings. Do I feel as County Engineer I
 24 have some legitimate ability to ask that of the
 25 Railroad per this project? No, I don't.

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CROSS-EXAMINATION BY ENDRES/RUTAN 99

1 **Q. When County engineers are referencing things**
 2 **like the Railway Grade Crossing Handbook, it provides**
 3 **some factors to consider to determine whether the cost**
 4 **of an overpass is justified under the traffic flow**
 5 **levels; is that right?**
 6 A. Yes.
 7 **Q. And using that analysis and given that the**
 8 **traffic counts that the County collected that were**
 9 **consistent with the Traffic Impact Study, does that**
 10 **justify a recommended overpass?**
 11 A. I haven't run that analysis, but based on the
 12 low volumes out here and the lack of accident history,
 13 no, I don't believe that that would lead to that
 14 recommendation.
 15 **Q. In the Railroad's petition to close the**
 16 **crossing, a gentleman named Shiraz Balolia is the only**
 17 **adjacent parcel owner identified.**
 18 A. Okay.
 19 **Q. In the public comments on the last page,**
 20 **Mr. Balolia stated that he had no objection to this**
 21 **project. Are you aware of any other adjacent parcel**
 22 **owners who opposed the project?**
 23 A. No, I'm not.
 24 MS. ENDRES: I think that's all I have,
 25 Mr. Rutan. I thank you again for your time.

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RE CROSS-EXAMINATION BY BEATTIE/RUTAN 100

1 JUDGE PEARSON: Anything further?

2 RE CROSS-EXAMINATION

3 BY MR. BEATTIE:

4 **Q. Mr. Rutan, I think I'm a little confused now**

5 **as to where the turnaround is envisioned to be. And**

6 **we're talking about the Arnie Valley View approach?**

7 A. Yes.

8 **Q. Is it closer to the crossing or further from**

9 **the crossing with respect to the bridge?**

10 A. I'm glad we circled around back to that

11 because there was some confusion. The petition states

12 that it would be south of the bridge so before the

13 bridge. We are okay with that. We would still need

14 access out of that turnaround to the bridge. Our

15 maintenance crews will still go up there, we don't

16 necessarily need the public up there, but we would

17 still need to do that. And if that is more than 200

18 feet from the intersection from per the MUTCD, that

19 will require some form of turnaround.

20 MR. BEATTIE: Thank you.

21 JUDGE PEARSON: Thank you. You may step

22 down. Mr. Middleton?

23 MR. GIBSON: If I could, Your Honor, Mr.

24 Hollander has driven down from North Whatcom Fire and

25 Rescue, and if the parties are amenable to it I would

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DIRECT EXAMINATION BY GIBSON/HOLLANDER 101

1 like to take him out of order at this time.

2 JUDGE PEARSON: That's fine with me.

3

4 HENRY HOLLANDER,

5 having been duly sworn, testified as follows:

6

7 JUDGE PEARSON: Your name, spelling your

8 last name for the record.

9 A. Henry Hollander. H-o-l-l-a-n-d-e-r.

10

11 DIRECT EXAMINATION

12 BY MR. GIBSON:

13 **Q. Mr. Hollander, what is your profession?**

14 A. I'm a Division Chief with the North Whatcom

15 Fire and Rescue.

16 **Q. And specifically what does that mean?**

17 A. Specifically what does that mean. Our tasks

18 are split. Our Division Chiefs are like an Assistant

19 Chief, so we take our tasks and split them up. So we

20 have a Division Chief in charge of staff and we have a

21 Division Chief in charge of Facilities and Apparatus

22 and Support. And that's the position that I hold.

23 **Q. Do you have with you a copy of your prefiled**

24 **testimony in this matter?**

25 A. I do.

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 102

1 Q. And have you had a chance to review that?

2 A. I did.

3 **Q. Does it appear to be accurate and true?**

4 A. It appears to be, yes.

5 **Q. Just one thing I would like to clarify with**

6 **you before I turn you over to the attorneys for**

7 **cross-examination, something that you and I spoke**

8 **about.**

9 **Is it your intent here today to speak in**

10 **opposition or in support of the closure, or simply to**

11 **provide information that the judge uses to analyze what**

12 **needs to be done?**

13 A. Just simply to provide information.

14 MR. GIBSON: Thank you very much.

15

CROSS-EXAMINATION

16

17 BY MS. ENDRES:

18 **Q. Good morning, Chief Hollander, thank you for**

19 **being here this morning. You had an opportunity to sit**

20 **here while Mr. Rutan was being questioned?**

21 A. The later part of it, yeah.

22 **Q. Okay. I'd like to start with something that**

23 **he and I discussed or tried to discuss. In the event**

24 **that this particular crossing is kept open, you**

25 **understand that there's an existing siding track that**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 103

1 **is going to be extended across the road and that the**

2 **Railroad will be using that track to basically park**

3 **trains so that other trains on the mainline can move**

4 **more freely.**

5 A. Uh-huh.

6 **Q. The scenario that I posed to Mr. Rutan had to**

7 **do with what or how the emergency response may alter**

8 **its approach to this crossing or homes near this**

9 **crossing with the knowledge that the crossing may be**

10 **extended or may be blocked for substantially longer**

11 **times than the other railroad crossings that emergency**

12 **responders use.**

13 **What's your thought on that?**

14 A. What is my thought on that?

15 **Q. Yes. Would you recommend that for emergency**

16 **response planning purposes that alternate routes be**

17 **used?**

18 A. If we knew that trains were going to be parked

19 there for extended periods of time, do we know what

20 days or hours?

21 **Q. No, sir.**

22 A. Just randomly just block off the road --

23 **Q. Yes, just based on trains --**

24 A. -- and we knew that, we would make our crews

25 aware of that fact. You can see the track from Peace

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 104

1 Portal, so we would slow down. And if we visually saw
 2 a train there then we would take an alternate route
 3 depending, again, where we're coming from and where
 4 we're going, because we could be coming from any
 5 direction and going to any direction.
 6 **Q. So for stations that may be dispatched or**
 7 **responders coming from any direction there, it sounds**
 8 **like then it may be the exception that responders would**
 9 **have a clear sight of the crossing itself. For**
 10 **responders who don't have that benefit, would you**
 11 **recommend that there be some type of policy change or**
 12 **communication within emergency response to simply avoid**
 13 **the crossing in the first place?**
 14 A. I'm not sure if we would -- a lot of our
 15 dispatches are CAD oriented in a CAD program, so it
 16 wouldn't be a policy change, it would be a CAD or
 17 computer-aided dispatch change.
 18 **Q. And it sounds like that would be something**
 19 **that would be a consideration?**
 20 A. It would be a consideration, yeah, sure. If
 21 we knew the road was blocked we wouldn't go that way.
 22 **Q. Obviously it may take longer to get to the**
 23 **crossing, find it blocked, turn around and then just**
 24 **take an alternate route?**
 25 A. Right.

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 105

1 Q. We submitted a number of potential exhibits
 2 for your cross-examination this morning. Did you have
 3 a chance to take a look at any of those?
 4 A. No.
 5 MS. ENDRES: Your Honor, may I hand the
 6 chief one of the exhibits?
 7 JUDGE PEARSON: Yes.
 8 **Q. (BY MS. ENDRES) Mr. Hollander, this was**
 9 **premarked Exhibit 4CX for your testimony. And could**
 10 **you take a moment and look at that and tell me if**
 11 **that's a document that you're familiar with? That's**
 12 **titled the Capital Facilities Plan for North Whatcom**
 13 **County and Fire. Have you seen that before?**
 14 A. Yeah, this looks like a piece of the document.
 15 **Q. Okay. So North Whatcom Fire and Rescue, that**
 16 **is your department?**
 17 A. That's correct.
 18 **Q. The excerpt of this, if you'll turn to the**
 19 **second page, contains different, it looks to me like**
 20 **response time objectives for different types of -- here**
 21 **they're labeled tiers for different areas within your**
 22 **jurisdiction?**
 23 A. Correct.
 24 **Q. The homes around the Valley View crossing, are**
 25 **you able to tell us whether those fall under Tier 1,**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 106

1 **Tier 2 or Tier 3?**
 2 A. That would be Tier 3 because it's rural. But
 3 this is not our adopted level. We have a revised
 4 adopted level of service. You have an older version.
 5 **Q. So this version, just for the record, states**
 6 **that the level or the goal or the objective is response**
 7 **time to rural areas within 12 minutes 90 percent of the**
 8 **time for arrival of the first few fire engine**
 9 **companies.**
 10 **Your testimony this morning is that that**
 11 **actually is not the current accurate objective; is that**
 12 **right?**
 13 A. Correct. The times are the same but it's 80
 14 percent of the time is what was changed. And that's in
 15 line with the NFPA standards or national standards.
 16 **Q. So on the next page of this document it also**
 17 **includes a Tier 4 which is remote. Are those for**
 18 **residences or businesses that are even further from a**
 19 **responding station than what would fall under Tier 3?**
 20 A. Correct. We have 200 square miles of area and
 21 some of it is very remote.
 22 **Q. Okay. So for even more remote locations,**
 23 **there's a longer response time objective.**
 24 A. Well, there's a goal.
 25 **Q. Or a goal, okay. So Valley View actually**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 107

1 **isn't even the furthest type of tier that the North**
 2 **Whatcom County Fire District services; is that right?**
 3 A. Correct.
 4 **Q. Before I hand you one of the other exhibits,**
 5 **it's actually just an article that explains a new**
 6 **Automatic First Response Agreement between the North**
 7 **Whatcom Fire and Rescue and Whatcom County Fire**
 8 **District 7. Do you know what the Automatic First**
 9 **Response Agreement is between those two departments?**
 10 A. Between North Whatcom and Fire District 7,
 11 that goes back to a staffing plan that has changed
 12 since then when our pay station was in the City of
 13 Lynden. So District 7 would come out to the Laurel
 14 area for us because they physically had staffed
 15 stations closer than we did. And then in exchange we
 16 would go to the Bay Road area because we were staffed
 17 closer than they were.
 18 **Q. So let me back up a minute for those here who**
 19 **don't have the benefit of looking at these documents.**
 20 **The southern boundary of your fire district is**
 21 **Bay Road which is -- it may even be on that map up**
 22 **there. It's not too far south of this railroad**
 23 **crossing?**
 24 A. Correct.
 25 **Q. And do you have some type of mutual aid**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 108

1 agreement with, then, the fire emergency response
 2 district whose boundary stops -- whose northern
 3 boundary is at Bay Road?
 4 A. Yeah, it's the center of the road, so actually
 5 we service the north side and District 7 services the
 6 south side of Bay Road.
 7 Q. Okay. And for dispatch purposes, then, is
 8 there some type of mutual aid agreement between the two
 9 where if North Whatcom responding station can't respond
 10 as quickly as the responding station from District 7,
 11 that the dispatch may then dispatch the responders from
 12 7 to get there first?
 13 A. Sort of. It's not done by time, it's done by
 14 availability. So if we don't have an apparatus
 15 available then the automatic CAD system starts
 16 searching for the next closest station. So it is
 17 conceivable that if our first two ambulances are tied
 18 up on aid calls that they will call for a District 7
 19 ambulance.
 20 Q. Okay. So I think one thing I'm trying to
 21 understand here is if the crossing is closed, or if
 22 it's not closed, and there's some type of emergency
 23 call to one of the residences in Valley View in this
 24 area, are there different stations that may be
 25 dispatched, or would it only come from one?

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 109

1 A. There's an order of stations. And it
 2 typically goes closest and then further, further,
 3 further away. So in this case -- and then it's also
 4 kind of the west side of Custer, those residents in
 5 there would be serviced from the Birch Bay-Lynden
 6 station, Station 63. However, 20 to 25 percent of the
 7 time they're already on another call when a call comes
 8 in so then the next station is Blaine Road on Odell,
 9 Station 61. So they would be coming down the freeway,
 10 getting off the Birch Bay-Lynden Road, and then
 11 typically they would take Peace Portal to the road
 12 you're talking about, Valley View, to get up --
 13 depending on what the address is of the customer.
 14 Q. So that dispatch process or those alternate
 15 stations you just described, that's the same process
 16 whether or not the crossing is closed?
 17 A. Yeah. If the crossing closes then we would
 18 have to go in and change, possibly change our station
 19 order.
 20 Q. Okay.
 21 A. But we have the ability to do that.
 22 Q. Okay. You just mentioned, and I think in your
 23 testimony you mentioned maybe two or three different
 24 staffed fire stations, and you just mentioned in your
 25 testimony Odell Road. Is that Station 61?

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 110

1 A. 61 is Odell Road, and 63, Birch Bay-Lynden
 2 Road, are staffed. And District 7 just recently
 3 staffed 46 which is on Brown Road.
 4 Q. So 46 is Brown Road. Your testimony relating
 5 to Odell Road, Station 61, this is on Page 2 of your
 6 testimony, stated that closing Valley View could add up
 7 to three minutes response time from Station 61 if
 8 responding to Valley View south of the closure.
 9 How did you calculate that additional time?
 10 A. I said three minutes or did I say one to three
 11 minutes?
 12 Q. I think you said at up to three minutes. And
 13 the reason I ask is when I looked up Mapquest it
 14 labeled it as one. So that's where my question is
 15 coming from. Where is the three minutes?
 16 A. It just depends exactly where you got to go
 17 and where you're coming from and how far you have to
 18 drive around. Three would be probably the extreme.
 19 Q. Even with that additional increase in response
 20 time, does that still fall within the response time
 21 objectives that your group has adopted?
 22 A. That is considered within.
 23 Q. There are also volunteer stations throughout
 24 your district.
 25 A. Correct.

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 111

1 Q. And are some of those closer to this crossing
 2 than --
 3 A. The closest one we currently have is the
 4 Custer station, but it became inactive about three
 5 years ago, and that building is currently for sale and
 6 not being used as a fire station.
 7 Q. And I'm going to ask you about that station in
 8 just a minute. You call that the Custer station?
 9 A. Custer station, 64.
 10 Q. Volunteer stations, is there one at Station
 11 65? Is that closer?
 12 A. There's a 65 at Haynie.
 13 Q. Is that closer than the Staff Station 61?
 14 A. To what?
 15 Q. To the Valley View crossing area.
 16 A. Well, no. I would say 61 is probably a little
 17 closer.
 18 Q. What about 68, Delta?
 19 A. 68 is our most active volunteer station. We
 20 do get a really good response out of that. It's going
 21 to be a little bit longer than Blaine.
 22 Q. And then what about Station 62, Semiahmoo;
 23 might that be dispatched?
 24 A. Not very likely. It's pretty far out.
 25 Q. The volunteer stations, they all house at

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 112

1 **least one aid unit and fire engine; is that right?**
 2 A. For most of the 12 stations we have, that's
 3 correct. There might be an exception in there.
 4 **Q. Did you calculate additional response time for**
 5 **any of the volunteer stations?**
 6 A. In our response calculations, there is added
 7 time for them to get from their house to the station in
 8 our averages.
 9 **Q. Okay. So even with adding that response time,**
 10 **would that still meet the district's objective?**
 11 A. Again, it depends who is coming from where and
 12 where they're going.
 13 **Q. Might there be an occasion where more than one**
 14 **station is dispatched?**
 15 A. Absolutely. Any time there's CPR or an
 16 unconscious we send two units just because of the
 17 manpower that's required to do CPR and ventilations.
 18 Sometimes there's three.
 19 **Q. One of the points that you raise in your**
 20 **prefiled testimony had to do with the curve on Ham Road**
 21 **or Arnie Road, which I think you can see on that map**
 22 **there, and whether responders would be able to navigate**
 23 **that curve safely.**
 24 A. Yeah, we can do it safely. It's a narrower
 25 road, you have to go slower. It's just not our first

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 113

1 road of choice. Valley View would be our first road of
 2 choice.
 3 **Q. So if Valley View crossing is closed and there**
 4 **was an incident to the south and assuming that dispatch**
 5 **called out a unit from Station 63, would it then take**
 6 **Ham Road?**
 7 A. That would probably be the recommended, yeah.
 8 **Q. If pursuant to the Mutual Aid Agreement**
 9 **dispatch called out responders from District 7 because**
 10 **District 7 is to the south of the railroad crossing, if**
 11 **the call comes from the south of the railroad crossing,**
 12 **there wouldn't be any impact on District 7's response**
 13 **time, would there?**
 14 A. No, because they wouldn't be crossing the
 15 railroad tracks.
 16 **Q. And if the call goes out to Station 63 or one**
 17 **of the stations north of the crossing or an incident or**
 18 **a call placed north of the crossing, there wouldn't be**
 19 **any impact on emergency response time in that scenario,**
 20 **would there?**
 21 A. Correct.
 22 **Q. You also stated in your prefiled testimony**
 23 **that Fire District 7 station at Brown Road, you said**
 24 **that was Station 46?**
 25 A. Uh-huh.

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 114

1 Q. That that could add up to three minutes
 2 response time if responding. Is that also the one to
 3 three minute range?
 4 A. Yeah. Again, depending where the address is
 5 and the exact location, sure.
 6 **Q. And how did you calculate that addition? Was**
 7 **it just looking at the map online?**
 8 A. Just looking at the map, yeah.
 9 **Q. Your testimony stated that for Fire District**
 10 **7, Station 45, which is at Grandview Road?**
 11 A. Correct.
 12 **Q. That that might be one of the stations that**
 13 **would be dispatched to an emergency call?**
 14 A. That is our first out ALS response unit. So
 15 any ALS response calls in our district, that would be
 16 our first ambulance we get. The second one would come
 17 from Smith Road.
 18 **Q. And Station 45, it sounds like, confirms to**
 19 **you that they don't expect any impact on emergency**
 20 **response?**
 21 A. That's what I read.
 22 **Q. Chief, one of the exhibits we also provided**
 23 **for your cross-examination is exhibit HH-3CX entitled**
 24 **Annual Report 2014 for North Whatcom Fire and Rescue.**
 25 **Have you seen a copy of that document before**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 115

1 **in your job?**
 2 A. I have seen it before, yes.
 3 **Q. If you could for me turn to Page 8 of that**
 4 **document. Do you have that there?**
 5 A. Yep.
 6 **Q. In your testimony you explain that time is of**
 7 **the essence when responding to a fire. And I don't**
 8 **think anybody would disagree with that. Looking at**
 9 **Page 8 of this exhibit, it indicates that of all the**
 10 **responses that your district responds to, that fire**
 11 **calls made up 4 percent of the calls.**
 12 **Does that percentage sound about right to you?**
 13 A. Yeah, that's correct. Of course, you would
 14 have to add in the false alarms because those are fire
 15 calls. So yeah, it could be closer to 10 percent with
 16 four of them being actual fires. But what we respond
 17 to -- what we are requested to respond to and what we
 18 arrive to are not always the same thing. So this is
 19 what we are actually arriving to. So 4 percent were
 20 working fires.
 21 **Q. And I do see on this same chart it says false**
 22 **alarms 7 percent. Is that the false alarm you just**
 23 **referred to?**
 24 A. Correct.
 25 **Q. I'd like to talk for a minute about the**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 116

1 station that is for sale at the Custer station.

2 A. Yes.

3 **Q. And that one when it was open was actually**

4 **very close to this crossing just across Portal. Has**

5 **the fire district discussed taking that station off the**

6 **market and opening it up again if Valley View crossing**

7 **is closed?**

8 A. Not at any of the meetings I've attended.

9 **Q. Is that something that you would think about**

10 **raising if the crossing is closed?**

11 A. I think we need to readdress it, yeah. The

12 largest problem is not the facility, it's getting the

13 people to volunteer. Volunteerism has declined

14 nationally so it's getting more and more difficult to

15 get volunteer firefighters.

16 **Q. Page 4 of the exhibit you have lists a number**

17 **of -- it's a roster of members. Do you have that**

18 **there?**

19 A. Yep.

20 **Q. It lists two columns of firefighters and two**

21 **columns of volunteer firefighters. And it looks like**

22 **the volunteer firefighters outnumber the career**

23 **firefighters by a decent amount there.**

24 A. That's correct.

25 **Q. Is it your understanding that the approximate**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 117

1 **number of volunteer firefighters on this is still**

2 **decreasing or is that something that you see more**

3 **broadly over a number of years?**

4 A. In the last few years it's been steadily

5 decreasing. So typically for every one we bring on

6 we've been losing two.

7 **Q. And even with that factored in to this**

8 **consideration, it's your projection that with closing**

9 **Valley View, the impact on emergency response times**

10 **would still allow your district to meet its response**

11 **time objectives for a Tier 3 community?**

12 A. Could you rephrase that question?

13 **Q. Sure. You said earlier that even if the**

14 **crossing is closed and there's some implication on**

15 **emergency response times from one to three minutes**

16 **more, that the fire district would still be within its**

17 **stated objectives for responding within 12 minutes 80**

18 **percent of the time?**

19 A. Yeah, I think so, because there isn't a lot of

20 call volume in that area. Obviously it's a rural area.

21 **Q. The last page of your prefiled testimony**

22 **states that the fire district's goal is generally to**

23 **reduce response times within the limits of safety,**

24 **which we can appreciate. When emergency response**

25 **vehicles are responding to an incident and they have**

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 118

1 **their lights and flashers on, they're allowed to exceed**

2 **normally posted speed limits; is that right?**

3 A. Correct.

4 **Q. And does that include when they're crossing**

5 **railroad tracks?**

6 A. You know, I don't know that. We're going to

7 slow down when we go over railroad tracks or all our

8 tools and hoses are going to be falling off the fire

9 trucks. So it's going to be a safety thing just to

10 slow down for the bumps.

11 **Q. If the crossing were to remain open and there**

12 **was an incident, there was a vehicle-train collision or**

13 **pedestrian-train injury or fatality, is that something**

14 **that your district would be called out to respond to?**

15 A. Most likely.

16 **Q. And in your 20-plus year career as a**

17 **firefighter, have you ever responded to a train-car or**

18 **pedestrian crash or collision before?**

19 A. I have.

20 **Q. In your understanding, you understand that**

21 **closing the Valley View railroad crossing would**

22 **eliminate that potential at this location?**

23 A. I don't know if I could agree with that. I

24 mean, if a person was walking across the railroad track

25 you could still have -- I understand the risk would be

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CROSS-EXAMINATION BY ENDRES/HOLLANDER 119

1 less but I don't think it would be eliminated.

2 Obviously no vehicle-train collisions would happen if

3 it was closed.

4 **Q. There's a safety benefit to be said for that,**

5 **isn't there?**

6 A. Could be.

7 MS. ENDRES: That's all I have. Thank

8 you very much for your time.

9 JUDGE PEARSON: Anyone else have any

10 questions for Mr. Hollander? Before we call the next

11 witness I do need to take a very brief recess, just

12 about three minutes, so we'll go off the record.

13 (Recess taken.)

14 JUDGE PEARSON: Back on the record.

15 Mr. Middleton?

16 ROLAND MIDDLETON,

17 having been duly sworn, testified as follows:

18

19 JUDGE PEARSON: Please state your name,

20 spelling your last name for the record.

21 A. Roland Middleton, M-i-d-d-l-e-t-o-n.

22

23 DIRECT EXAMINATION

24 BY MR. GIBSON:

25 **Q. Mr. Middleton, you have with you a copy of**

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DIRECT EXAMINATION BY GIBSON/MIDDLETON 120

1 **your previously submitted testimony?**
 2 A. Yes, I do.
 3 **Q. Is it true and accurate?**
 4 A. Yes.
 5 **Q. I'm going to ask you, by virtue of the fact**
 6 **that Mr. Bordenave subsequently submitted materials in**
 7 **appended testimony today, can you provide just a bit of**
 8 **background for the posture in which you came into this**
 9 **matter and just to kind of explain where you were**
 10 **coming from?**
 11 A. I'm currently the Special Programs Manager for
 12 Whatcom County Public Works. My previous job or one of
 13 my previous jobs with Whatcom County for over 15 years
 14 was the SEPA official for Whatcom County. I lead the
 15 Project Development Group for Public Works and assist
 16 with permit issues, land use issues specific to Public
 17 Works Department.
 18 A question came up with regard to the
 19 crossing. As is typical, the County Engineer will ask
 20 me to review things. One of the questions that I had
 21 was a procedural issue with regard to the Statement
 22 Policy Act and that I put in my prefiled testimony.
 23 That was followed up by some testimony by Bordenave,
 24 and answering the questions that I raised in my
 25 previous testimony.

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DIRECT EXAMINATION BY GIBSON/MIDDLETON 121

1 Q. And how do you reconcile the two, where you
 2 started the work and where you ended up?
 3 A. Needing additional information, essentially.
 4 The refineries, BP Refinery and ConocoPhillips, both
 5 added oil trains to their facility. They stated in
 6 their applications that no additional rail would be
 7 needed for their applications. In addition, Gateway
 8 Pacific Terminals stated that they would need
 9 additional rail at what is now the Intalco or Custer,
 10 essentially the project, and that the Valley View
 11 crossing would likely need to be closed.
 12 We are just questioning is this actually for
 13 the Cherry Point customers entirely or inclusive, or is
 14 it specific just starting off and building a portion of
 15 the Gateway Pacific Terminals ahead of time without
 16 having the super review done for Gateway Pacific. And
 17 that was the question that we had and that was the
 18 essence of my testimony previously. And that was
 19 answered by Burlington Northern that it is actually a
 20 separate project having to do with the safety of the
 21 Custer mainline and it's not a pre- construction of
 22 what's needed for Gateway Pacific Terminals.
 23 **Q. So your concern is with regard to the SEPA**
 24 **that has been addressed?**
 25 A. Yes. And the lead agency for the State

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EXAMINATION BY JUDGE PEARSON/HAAG 122

1 Environmental Policy Act, the Department of Ecology,
 2 has subsequently now issued a Determination of
 3 Non-Significance for this project.
 4 MR. GIBSON: I have no further
 5 questions.
 6 MS. ENDRES: I have no questions, Your
 7 Honor.
 8 JUDGE PEARSON: Okay, thank you. I
 9 don't have any questions either so you may step down.
 10 I'd like to recall Mr. Haag at this point
 11 because I have some additional questions. You may be
 12 seated. I remind you that you're under oath.
 13
 14 GRANT HAAG,
 15 having been reminded of oath, testified as follows:
 16
 17 JUDGE PEARSON: While we were off the
 18 record Ms. Endres stated that you had an answer to my
 19 earlier questions as to the six customers were that
 20 currently use the Cherry Point mainline and cross the
 21 Valley View crossing?
 22 A. Yes, ma'am. So the two additional are Energy
 23 Logistics and Intalco. Would you like me to list the
 24 prior four as well?
 25 JUDGE PEARSON: I have those written

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EXAMINATION BY JUDGE PEARSON/HAAG 123

1 down.
 2 So I just have some questions because I want
 3 to clarify. I became confused over the course of the
 4 hearing.
 5 A. Sure.
 6 JUDGE PEARSON: So earlier you and
 7 Mr. Wagner both with respect to addressing high
 8 priority customers such as Amtrak and UPS and the
 9 intermodal, is it true, though, that none of those
 10 customers run on the Cherry Point line?
 11 A. Correct.
 12 JUDGE PEARSON: So who are the higher
 13 priority customers on the Cherry Point line?
 14 A. So specifically would be our unit train
 15 customers. But one thing to understand in regards to
 16 how rail traffic works is Cherry Point includes the
 17 Bellingham sub, the Bellingham sub includes the Cherry
 18 Point sub. And you can actually draw that further out
 19 to the Seattle sub which is below it as well.
 20 JUDGE PEARSON: Can you explain that to
 21 me a little bit more about how the trains on Cherry
 22 Point mainline block or delay the trains on the Valley
 23 View mainline?
 24 A. Sure, yeah. So if you have one siding
 25 capacity taken out by a train, say on the Bellingham,

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EXAMINATION BY JUDGE PEARSON/HAAG 124

1 it's going to make a longer meet/pass point for other
 2 trains on the Bellingham, so that's going to make you
 3 hold one train back further while another one comes.
 4 It's basically like a one-lane road, so then the siding
 5 is for passing locations. So if you don't have the
 6 opportunity to go ahead and pull in at this Valley View
 7 Road proposed expansion, then you have to hold that
 8 train back at a different side which then impacts your
 9 velocity on those lines.

10 JUDGE PEARSON: I see.

11 So my other question is the testimony clearly
 12 shows that there are four trains that make two trips
 13 per day on the Cherry Point mainline right now;
 14 correct?

15 A. On average.

16 JUDGE PEARSON: On average, okay. And
 17 it sounds like from the testimony that the need to park
 18 trains on the siding is to get out of the way of other
 19 trains that are coming through on the mainline? That's
 20 the reason for parking them there?

21 A. Yes. So both on the Bellingham and on the
 22 Cherry Point.

23 JUDGE PEARSON: Okay. So on the Cherry
 24 Point line, who is parking there and whose way are they
 25 getting out of and why?

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EXAMINATION BY JUDGE PEARSON/HAAG 125

1 A. In the proposed siding, how that would work,
 2 is that what you're asking?

3 JUDGE PEARSON: Or currently.

4 A. So currently those tracks, remember we have a
 5 train that comes from Everett that goes up there for
 6 the customers. And that train would then break into
 7 two pieces on the two sidings they have up there, and
 8 that would be used to switch, like we talked about
 9 earlier, over that crossing currently. If we needed to
 10 we could put a unit train in there for some of the
 11 customers to break into the two crossings as well, but
 12 that is not as viable.

13 JUDGE PEARSON: So with the new siding
 14 and if the crossing is closed, who will be parking
 15 there and why? Whose way are they getting out of?

16 A. Sure. So there's a couple answers to that.
 17 With the unit trains that come in and out --

18 JUDGE PEARSON: And what are the unit
 19 trains? What does that mean and who do they belong to?

20 A. A unit train is one train of all the same cars
 21 for one customer.

22 JUDGE PEARSON: So they don't break down
 23 is what you're saying?

24 A. Correct. So from the origin to the
 25 destination, that train is going to stay intact. Where

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EXAMINATION BY JUDGE PEARSON/HAAG 126

1 how the network works otherwise, it gets re-switched
 2 out at different locations across the system to go
 3 towards the locations that are closer to the
 4 destination.

5 JUDGE PEARSON: Okay. So you're saying
 6 it's a unit train, but what type of train? What
 7 freight are they carrying, the ones that will be
 8 parking?

9 A. The unit trains that currently utilize Cherry
 10 Point are crude oil trains.

11 JUDGE PEARSON: Okay. You're saying one
 12 oil train will get out of the way of another oil train?

13 A. Yes. So to come into the facility you're
 14 going to have an empty train leaving after it's
 15 unloaded and a loaded train coming in. So it will
 16 allow them to pass each other on the Cherry Point.

17 JUDGE PEARSON: So the empty train might
 18 get out of the way of the full train or the other way
 19 around?

20 A. It would make the same concept. So whether
 21 the empty goes in the siding and the load holds the
 22 main, which would be what we would typically do, or the
 23 other way around.

24 JUDGE PEARSON: Okay. I was just
 25 curious who had the priority in that situation, I

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EXAMINATION BY JUDGE PEARSON/HAAG 127

1 guess. Because it sounded like from the testimony
 2 today that there are trains that will be getting out of
 3 the way of higher priority trains.

4 A. Sure. So in that situation you'd have to open
 5 up a room at the facility so the empty would have to
 6 leave before the load could come in. Does that make
 7 sense?

8 JUDGE PEARSON: Okay. So it has more to
 9 do with how the oil companies are doing business than
 10 one train or type of commodity necessarily having
 11 priority over another type of commodity?

12 A. At that location. But we do prioritize our
 13 trains in regards to what they're carrying. So we
 14 talked about intermodal trains having higher priority.

15 JUDGE PEARSON: Right. I understand
 16 that, but that doesn't apply here, right?

17 A. Not on the Cherry Point line.

18 JUDGE PEARSON: Not on the Cherry Point
 19 line, okay. That's what I was wondering.

20 So if the oil trains are parked on the siding
 21 and they're full, what type of security measures are in
 22 place for that?

23 A. In regards to how the train is secured?

24 JUDGE PEARSON: Yes.

25 A. Okay. So we have guidelines that are in place

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EXAMINATION BY JUDGE PEARSON/HAAG 128

1 on any train that's secured. We have locks on the cabs
 2 of the engines. Typically, so we could park that
 3 without a crew there. It depends on if a crew is
 4 there. If a crew is not there, which I'm assuming is
 5 what you're asking, the cabs of the locomotives are
 6 locked with a key, as well as the brakes tied, based on
 7 the grade at the location and how heavy the train is.
 8 So what that does is trains have air brakes
 9 but they also have manual brakes, so the crew then ties
 10 the manual brakes on each car to ensure that those hold
 11 the train when they leave, as a safety precaution.
 12 JUDGE PEARSON: Are there crew there
 13 that are providing security?
 14 A. Is there a crew located on --
 15 JUDGE PEARSON: Is it manned? Yes, are
 16 the oil trains --
 17 A. No. It doesn't have to be.
 18 JUDGE PEARSON: It doesn't have to be?
 19 A. Correct.
 20 JUDGE PEARSON: Okay. I think that's
 21 all the questions that I have, thank you.
 22 Mr. Curl, if you could come back up, I have a
 23 couple questions for you. I'll remind you that you're
 24 still under oath.
 25

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EXAMINATION BY JUDGE PEARSON/CURL 129

1 PAUL CURL,
 2 having been reminded of oath, testified as follows:
 3
 4 JUDGE PEARSON: So this relates to
 5 Mr. Middleton's prefiled testimony and Mr. Bordenave's
 6 prefiled testimony.
 7 With respect to the recommendation issued by
 8 the Army Corps of Engineers, have you reviewed BNSF's
 9 March 19, 2014 application on which that recommendation
 10 was based?
 11 A. Yes, I have.
 12 JUDGE PEARSON: Okay. And in your
 13 opinion with respect to the Department of Ecology's
 14 SEPA Determination of Non-Significance, what level of
 15 review or scrutiny is appropriate for the Commission to
 16 apply?
 17 A. Once the Determination of Non-Significance is
 18 issued, we're done with it.
 19 JUDGE PEARSON: So we accept it at face
 20 value?
 21 A. That's correct.
 22 JUDGE PEARSON: Okay. So historically
 23 there's never been an instance where the commission has
 24 challenged a SEPA Determination of Non-Significance?
 25 A. I can't say never, but within my memory, no.

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EXAMINATION BY JUDGE PEARSON/CURL 130

1 JUDGE PEARSON: Okay. Would that be
 2 something you could look into for me and find out if
 3 that's ever happened before?
 4 A. Yes.
 5 JUDGE PEARSON: Thank you very much.
 6 That's all I have for you.
 7 Unless there's anything further, that
 8 concludes the evidentiary portion of the hearing, but
 9 before we go off the record I want to discuss due dates
 10 for the bench requests that I issued.
 11 The first one which is a list of customers,
 12 that's been addressed on the record today. So I will
 13 label the next one as my first bench request which is
 14 the BNSF's March 19, 2014 application to the Army Corps
 15 of Engineers. Ms. Enders, do you have an estimation of
 16 when you can provide that to me?
 17 MS. ENDRES: I think generally the rules
 18 provide for ten days, but I would think we can get it
 19 within a week.
 20 JUDGE PEARSON: Okay, that sounds good.
 21 We can just say ten days, that's fine with me.
 22 And then I have a couple of follow-up
 23 questions that I'll just characterize as bench
 24 requests. I would like some written documentation from
 25 BNSF about what the clear definition of higher priority

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1 freight is and how the priority system works.
 2 MS. ENDRES: I'm sorry, say again?
 3 JUDGE PEARSON: I'd like a clear
 4 definition of what higher priority freight is and
 5 something in writing that talks about the priority
 6 system.
 7 MS. ENDRES: Just in general?
 8 JUDGE PEARSON: Yes. And then also I
 9 don't believe that Mr. Haag was able to answer the
 10 question about which trains were backlogged in 2014 in
 11 Whatcom County, about where they were backlogged and
 12 what freight they were carrying. So I'd like an answer
 13 to that question too, and we can label that Bench
 14 Request Number 3.
 15 And ten days is December 11th. We can push it
 16 out to the 12th, we don't have to count today. So if
 17 you can get those to me electronically and also filed
 18 with the records center, of course.
 19 Is there anything else before we go off the
 20 record from any other parties?
 21 MR. BEATTIE: Yes, Judge Pearson. You
 22 asked Mr. Curl a question about his knowledge with
 23 respect to SEPA documentation.
 24 JUDGE PEARSON: Oh, I did, I'm sorry.
 25 That should be Bench Request Number 4.

1 MR. BEATTIE: And will that also be due
 2 on December 12th?
 3 JUDGE PEARSON: Yes.
 4 MR. BEATTIE: Thank you.
 5 MS. ENDRES: I'm sorry, what was that
 6 specific request?
 7 JUDGE PEARSON: I wanted to know if the
 8 Commission has ever challenged a SEPA Determination of
 9 Non-Significance.
 10 Anything else?
 11 MS. ENDRES: I'm assuming for that last
 12 bench request, that's only directed to the UTC?
 13 JUDGE PEARSON: That's correct.
 14 If there's nothing further we will be off the
 15 record until the public comment hearing later this
 16 evening at 6:00. Thank you.
 17 (Proceedings concluded at 12:32 p.m.)
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1 CERTIFICATE
 2 STATE OF WASHINGTON)
 3)
 4 COUNTY OF SNOHOMISH)
 5 THIS IS TO CERTIFY that I, Diane Rugh, Certified
 6 Court Reporter in and for the State of Washington,
 7 residing at Snohomish, reported the within and
 8 foregoing testimony; said testimony being taken before
 9 me as a Certified Court Reporter on the date herein set
 10 forth; that the witness was first by me duly sworn;
 11 that said examination was taken by me in shorthand and
 12 thereafter under my supervision transcribed, and that
 13 same is a full, true and correct record of the
 14 testimony of said witness, including all questions,
 15 answers and objections, if any, of counsel, to the best
 16 of my ability.
 17 I further certify that I am not a relative,
 18 employee, attorney, counsel of any of the parties; nor
 19 am I financially interested in the outcome of the
 20 cause.
 21 IN WITNESS WHEREOF I have set my hand this 9th
 22 day of December, 2015.
 23
 24 DIANE RUGH, RPR, RMR, CRR, CCR
 25 CCR NO. 2399