BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re the Petition of: WHATCOM COUNTY, Petitioner v. BNSF Railway Company, Respondent.	DOCKET NO. TR-180466 **RESPONDENT BNSF RAILWAY COMPANY'S POST-HEARING BRIEF**

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INTRODUCTION

1 At-grade railroad crossings are inherently dangerous.[1] Once the Cliffside Drive railroad crossing is converted to a quiet zone—meaning freight and passenger trains will no longer sound horns to warn of their approach—supplemental safety measures will be necessary to continue to ensure the safety of roadway users and train crews. Whatcom County has proposed installing a mountable median with reflectorized

[1] Swan, TR. 22:4–6 (Q: "Do you agree that all railroad crossings are inherently dangerous to some degree?" A: "Yes, they all carry a risk index of some sort, yes."); *see also, e.g., Illinois Cent. Gulf R. Co. v. Travis*, 106 So. 3d 320, 340 (Miss. 2012) ("We recognize that all railroad crossings are inherently dangerous. However, a railroad will not be held liable where it committed no negligence, and where the evidence indicates that the driver simply failed to look and listen for the train."); *Sawyer v. Ill. Cent. Gulf R.R. Co*., 606 So.2d 1069, 1075 (Miss.1992) ("Railroad crossings are dangerous places, and they are no less so that we encounter the danger with less frequency than in other days. Accepting these realities, our statute law mandates a motorist look and listen as he approaches a crossing.") (internal citations and quotes omitted). Washington's rules of the road similarly govern motorists' behavior when approaching a railroad crossing. *See, e.g.*, RCW 46.61.340; RCW 46.61.350.

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channelization paddles to decrease the risk of a train/vehicle collision. BNSF, however, requests the Commission take the safer course and order an upgraded system of non-mountable concrete medians, which further decrease the quiet zone risk index, more adequately restrict traffic from circumventing the traffic gates, cost the same to install, and involve less maintenance due to their greater durability.

2 BNSF, on behalf of the train passengers and crew who travel across the Cliffside Drive crossing, respectfully requests that the Commission exercise its full authority to determine whether an alternative supplemental safety measure is appropriate for this particular crossing, and not to simply approve the County's proposal because the FRA regulations permit the installation of a traversable median. A safer solution exists for the same, or lesser, cost.

RELIEF REQUESTED

3 The Commission should grant the County's petition to modify the grade crossing at Cliffside Drive, in part, as follows:

(1) The modifications must conform to those described in the petition, with the exception that the proposed mountable median will be upgraded to a non-mountable median.[2]

(2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportations' current Manual on Uniform Traffic Control Devices.

(3) The County must coordinate construction with BNSF, relating to crossing safety issues and other potential impacts on rail operation, and notify BNSF immediately upon completion of this project.

[2] Such devices have also been referred to as non-mountable or non-traversable systems/curbs.

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4 If the Commission declines BNSF's request for an upgraded non-mountable median on both sides of the crossing, BNSF requests that the Commission order at a minimum that a non-mountable median be installed on the east side of the crossing.

STATEMENT OF FACTS

5 On May 25, 2018, Whatcom County filed a petition with the Washington Utilities and Transportation Commission seeking approval to modify the highway-rail grade crossing warning devices at the Cliffside Drive crossing in Whatcom County, identified as USDOT 084821L, upon its conversion to a quiet zone.[3] Respondent BNSF Railway Company exercised its right to an evidentiary hearing on the grounds that a non-mountable median more adequately restricts traffic from circumnavigating crossing gates and therefore better protects public motorists and train passengers.[4]

1. Current Use of the Cliffside Drive Railroad Crossing.

6 Cliffside Drive is a no-outlet, two-lane roadway with a speed limit of 25 miles per hour.[5] The crossing bisects an "S" shaped section of BNSF Railway's single mainline track, which curves to the northwest on the north side of the road, and to the southeast on the south side of the road.[6] The curve restricts the visibility of oncoming trains that a perpendicular track would provide, which can incite drivers to feel emboldened to try to circumvent the gates.[7] The crossing is currently equipped with the following railroad warning devices: two (2) entrance gates, advanced warning

[3] Exh. CS-2, Exh. CS-3.
[4] Exh. CS-5, p. 4-5/5, Exh. SS-4.
[5] Exh. CS-3, p. 3.
[6] Exh. CS-22X.
[7] Arrington, TR. 130:1 – 131:3.

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signs, bells, and eight flashing lights.[8] In addition, oncoming trains currently blow a whistle pattern upon their approach, as required by 49 C.F.R. § 222.21. The crossing has had one accident in its history, when a passenger train traveling 40 mph struck a vehicle that had stalled on the crossing in 1980.[9] The crossing has had gates since at least 1970.[10]

7 Approximately 17 freight trains and four passenger/Amtrak trains operate over the crossing in both directions on a daily basis, with speed limits of 50 and 79 miles per hour, respectively.[11] In 2018 alone, 163,788 passengers rode on Amtrak trains across Cliffside Drive, an average of 112 passengers per Amtrak train, and at least 13,870 crossings were made by train crews (two-person crews[12] on 19 trains per day, 365 days per year).[13]

8 The average annual daily traffic ("ADT") through the Cliffside Drive crossing is estimated at 324 vehicles, but has previously been measured at 450 vehicles daily.[14]

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[8] Exh. CS-3, p.4/6.

[9] Exh. BR-1.

[10] *Id.*; Exh. BR-2.

[11] Semenick, TR. 123:22–25 (trains in both directions).

[12] This assumes conservatively that Amtrak passenger trains have only two crew members. In reality, as the Commission can take judicial notice per WAC 480-07-495, Amtrak trains have crew members who are responsible for the train's operation (i.e., the conductor and engineer), as well as on-board service employees who staff coaches, dining cars, and sleeping cars, and otherwise tend to the needs of passengers.

[13] Amtrak's Vancouver, B.C. station handled approximately 163,788 passengers in 2018. https://www.railpassengers.org/site/assets/files/4976/wa02.pdf; https://www.wsdot.wa.gov/sites/default/files/2019/03/07/AmtrakCascadesAnnualPerformanceReport2018.pdf at p. 11 (164,000 annual station on-offs at Vancouver, B.C.). The Cliffside Drive crossing is North of Bellingham's Fairhaven Amtrak Station, on the route between Bellingham and Vancouver, B.C. (Amtrak's northern terminus). https://www.amtrak.com/routes/cascades-train.html. Therefore, each of the passengers getting on or off at Vancouver, B.C. must ride Amtrak between Vancouver and Bellingham. The precise number is not crucial to BNSF's argument; BNSF recognizes that the Commission can simply take judicial notice per WAC 480-07-495 that this crossing is located between the passenger stations of two large cities, and that four trains (two round-trips, as reflected in Whatcom County's Petition) carrying Amtrak passengers traverse the crossing on a daily basis corresponding with substantial annual ridership.

[14] Exh. CS-8; Swan, TR. 47:17–21, 47:17–21.

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As many as 697 vehicles have recently been counted on a single day, and both train and vehicle traffic occurs at all hours, day and night.[15] While Cliffside Drive is not a designated school bus route, the County did not know where the closest school bus stop serves the residential community.[16] Commercial vehicles comprise one percent of the average daily traffic.[17] The County did not present any data or statistics quantifying the frequency of emergency response, or average response times, to the area—in fact, neither the fire marshal nor any other emergency responder even commented at the public hearing—but County Engineer Cody Swan characterized the road as a "very, very low traffic road."[18]

9 During the times that a train occupies the crossing, a motorist must simply wait on either side—there is no alternative access to the Cliffside Drive homes.[19]

2. Cliffside Drive Crossing's Conversion to a Quiet Zone.

10 As stated above, trains currently sound their horns upon approaching the Cliffside Drive crossing, but the crossing is to be converted to a quiet zone.[20] The Quiet Zone Risk Index ("QZRI") measures the risk to the motoring public in the absence of the regular sounding of the train horn.[21] A crossing's QZRI must be below the National Significant Risk Threshold ("NSRT") in order to be converted to a quiet zone without adding supplemental safety measures.[22] Supplemental safety measures

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[15] CS-8; Swan, TR. 53:18–21.
[16] Swan, TR. 40:19–24.
[17] Exh. CS-3, p. 3/6.
[18] Swan, TR. 39:10–13.
[19] *Id*. at 52:15–22.
[20] BNSF does not like quiet zones for safety reasons. Semenick 125:4–9. However, BNSF does not have standing to prevent a crossing's conversion to a quiet zone, so long as the applicable federal requirements are met and the conversion is approved by the Federal Railroad Administration (FRA).
[21] Swan, TR. 19:8–16.
[22] *Id*. at 19:17–20:8.

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"are pre-approved risk reduction engineering treatments installed at certain public highway-rail crossings within the quiet zone and can help maximize safety benefits and minimize risk."[23] They are designed to deter bad driver behavior at railroad crossings, because "unfortunately drivers don't always make smart or logical or lawful decisions."[24]

11 The County asserts that the NSRT for the Cliffside crossing is 14,723.[25] Upon elimination of the train horn, the County calculated Cliffside crossing's QZRI to be 14,562.45—which is 98.9% of the NSRT and therefore leaves no "wiggle room."[26] In other words, although that calculation reflects that technically the crossing is currently eligible for conversion without additional modifications, the figure is so close to the NSRT that the installation of supplemental safety measures is certainly appropriate to reduce the risk at the crossing.

3. Proposed Supplemental Safety Measures.

A. The County's Proposal: Mountable Medians

12 To reduce the QZRI by 75% per Appendix A to 49 C.F.R. Part 222, Whatcom County proposes to install a traversable median barrier with reflectorized channelization delineators.[27] Whatcom County also intends to upgrade flashing lights

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[23] Exh. BY-4, p. 4/11.

[24] Swan, TR. 52:3–11. See also Exh. BY-4 at p. 4 ("In the late 1980's, FRA observed a significant increase in nighttime train-vehicle collisions at certain gated highway-rail grade crossings on the Florida East Coast Railway (FEC) at which nighttime whistle bans had been established in accordance with State statute. In 1991, FRA issued Emergency Order #15 requiring trains on the FEC to sound their horns again. The number and rate of collisions at affected crossings returned to pre-whistle ban levels").

[25] Swan, TR. 19:21–24, 20:8.

[26] Exh. CS-9, Swan, TR. 50:7–14.

[27] "Due to the low profile of a mountable curb, mountable curbs are not very visible to drivers. To increase their visibility and to increase the effectiveness of the base curb system, many of these systems are augmented with the use of a series of vertical polymer posts with reflective sheeting attached. These posts, or channelization devices, are generically referred to as delineators. I refer you back to Exhibit

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to LED bulbs, install a concrete curb to protect BNSF's signals, and widen the shoulder of the road on the west side of the crossing to provide additional clearance for larger vehicles such as emergency responders (regardless of which type of median barrier is installed).

B. BNSF's Proposal: Non-Mountable Medians

13 BNSF appreciates the County's intent to make the Cliffside Drive crossing safer, and agrees with its plan for LED lights, a concrete curb, and wider shoulders. However, BNSF requests that the median be upgraded to a non-mountable concrete median, which provides a greater reduction of the QZRI (80% per FRA regulation[28]), and will thus better protect the crossing upon its conversion to a quiet zone, especially when train traffic counts and speeds increase in the future.[29] Washington State's Department of Transportation intends to double the number of Amtrak round-trips between Seattle and Vancouver by 2023 and eventually achieve high-speed rail (110 miles per hour and faster) for Amtrak Cascades.[30]

14 Accident Reconstruction Specialist Dusty Arrington, who has studied, designed, and tested all manner of barriers, curbs and channelizing devices during his career (including testing for State Departments of Transportation in Texas and Florida,

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DA-3 as an example." Exh. DA-1T, p. 4. Interchangeable terminology includes "channelization devices," "paddles," etc.

[28] As explained below, a non-mountable median likely provides even greater safety protections than reflected in the FRA regulations given the test data. The dilapidated condition of the FRA's own test crossing, as well as a Vancouver crossing presented as an example in Whatcom County's quiet zone application, reflects the degradation that occurs with traversable channelization.

[29] WUTC Staff representative Betty Young testified that diagnostic meetings "would have" discussed how to select a system that can handle any fluctuations in rail or vehicular traffic, although she did not recall whether the Cliffside Drive diagnostic meeting did so. Young, TR. 81:9–14.

[30] https://www.wsdot.wa.gov/sites/default/files/2019/03/08/Rail-Plan-20132035.pdf at ix; *see also* https://www.wsdot.wa.gov/NR/rdonlyres/AE671CC5-6633-4BF2-9041-FB328ADB1F31/0/LongRangePlanforAmtrakCascades.pdf at p. 15.

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and conducted compliance and developmental testing for manufactures of mountable curbs and channelization devices), testified that a mountable curb system will only have a limited ability to prevent a drive-around situation.[31] As Mr. Arrington explained:

> A mountable curb system does not physically prevent any class of vehicle from crossing it. In fact, it is designed to allow a vehicle to cross it at high speed without causing instabilities to the vehicle. Drivers generally understand there is little risk of damage to their vehicle when crossing a mountable curb system, and a determined driver likely will not be deterred from driving around the gate as intended. The installation of the system will enhance the performance of the lane markings on the road, but in my opinion, it will not have the desired effect of preventing the drive-around condition intended to be prevented by the installation of the system.[32]

For that reason, traversable (or mountable) channelization devices are utilized in high speed roadway applications where non-traversable/non-mountable devices/structures generally are not used.[33]

15 Simply put, mountable medians "keep honest people honest."[34] Non-mountable medians provide a more effective deterrent to drivers who want to go over the median and around the lowered crossing gates.[35] A particular consideration here, given the limited sight lines due to the track curvature.

16 The County, however, disagrees that the crossing calls for a non-mountable median. Its proffered reasons include: (1) the applicable quiet zone FRA regulation approves mountable medians as a supplemental safety measure; (2) it is allegedly

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[31] Exh. DA-1T p. 6.

[32] *Id*. at pp. 6–7.

[33] *Id*. at p. 3.

[34] *Id*. at pp. 7–8.

[35] *Id*. at p. 8.

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cheaper and easier for the County to install and maintain a mountable median; and (3) feedback received from the fire marshal in response to the installation of non-mountable medians at the County's Yacht Club Drive railroad crossing. Each of these was discussed and addressed during the parties' evidentiary presentation.

C. The Evidence.

i. The FRA Regulations.

17 BNSF recognizes that Appendix A to 49 C.F.R. Part 222—Approved Supplementary Safety Measures, states that mountable medians reduce the applicable risk index by 75%. Even the County agrees, however, there is no "one size fits all any time a crossing is converted to a quiet zone."[36] The FRA itself directs that when converting a crossing to a quiet zone, "Particular attention should be given to measures that prevent trespassing on railroad tracks since investments made to establish a quiet zone may be negated if the horn has to be routinely sounded to warn trespassers."[37] To that effect, the FRA strongly recommends that all crossings in the quiet zone be reviewed by a diagnostic team. A diagnostic team typically consists of representatives from the public authority, railroad, and State agency responsible for crossing safety, and FRA grade crossing managers.[38]

18 The FRA also recognizes that "Railroad officials can provide valuable input during the quiet zone establishment process and should be included on all diagnostic

[36] Swan, TR. 23:19–22.

[37] Exh. BY-4 p. 9/11.

[38] *Id*. at p. 5/11.

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teams."[39] Here, BNSF's input should not be disregarded solely because the County has proposed a permissible option under the FRA regulations.

19 At this particular crossing, impatient drivers know that they either have to beat the train, or wait. A mile-long freight train traveling 45 miles per hour would take one minute twenty seconds to clear the crossing; adding a 30-second advance warning time for a train horn and gates and lights adds up to a nearly two-minute delay.[40] This occurs seventeen times a day (or 21 times, including the two Amtrak round trips).[41]

20 BNSF also presented evidence that the FRA regulations likely underestimate the difference between a non-mountable median and a mountable median. The FRA percentages (75% for mountable channelization; 80% for non-mountable medians) are based on very limited and statistically insignificant data—as Mr. Arrington explained, "in the case of non-traversable medians, the 80% figure is nothing more than an arbitrary estimate loosely based on one crossing," which actually had a measured effectiveness rating of 92%.[42] The FRA was forthcoming about this fact.[43] Mr. Arrington also expressed concern that the FRA only compared the first 20 weeks of data after a brand-new system was installed.[44] Moreover, the very crossing the FRA

[39] Exh. BY-4, p. 5/11.
[40] Semenick, TR. 124:4–16.
[41] Swan, TR. 53:13–17.
[42] Exh. DA-12T p. 3.
[43] Exh. DA-13 (Interim Final Rule) at 70652–53.
[44] Exh. DA-12T p. 4.

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measured has had significant issues with broken channelization markers since the initial data set was gathered.[45]

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ADMIT ☑ W/D ☐ REJECT ☐

21 Even using the FRA percentages of 75% and 80%, the non-mountable median proposed by BNSF would decrease the Cliffside Drive crossing's QZRI ***an additional 20% below the QZRI associated with the County's proposed mountable median***.[46] This improvement in safety for drivers, passengers, and train crews is significant.

[45] See Exh. DA-13; Exh. DA-14.

[46] The QZRI with the County's proposed system is 3,459.45 (reducing the 13,837.78 QZRI by 75%). Swan, TR. 42:16–22. The QZRI with BNSF's proposed system is 2,767.56 (reducing the 13,837.78 QZRI by 80%). Swan, TR. 43:3–17, 44:8–10. The Commission can also take judicial notice of this math. Comparing the QZRI involved in a non-mountable system versus the QZRI involved in a mountable system, the non-mountable-based QZRI (2,767.56) further reduces the mountable-based QZRI (3,459.45) ***by an additional 20%*** (i.e., 3,459.45 – 2,767.56 = 691.89. 691.89 ÷ 3,459.45 = .2 or 20%).

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ii. Installation.

22 The cost to install a non-mountable median is essentially the same as the cost to install a mountable median.[47] The County simply wants the system that is "easier."[48] The need to retain a contractor, especially when the county may need to retain a contractor to install the concrete curb required to protect BNSF's signals anyway[49], is not sufficient justification to select the less safe option. In any event, there is no deadline to convert the crossing to a quiet zone, and another month is not long in the scheme of things when this proceeding alone has lasted nearly a year and when the true issue at play is increased safety to motorists and train crews. The Commission should ensure this project is done once, and done right.

iii. Maintenance.

23 A mountable median involves ***more*** maintenance as compared to a non-mountable concrete median, not less. Mountable medians are, by design, a roadway component that can be driven over should a motorist choose to do so.[50] Maintenance will be required less often for a concrete median, as the maintenance required for traversable channelization presents problems.[51]

24 First, the County did not analyze the frequency of repair between non-mountable and mountable systems.[52] The County did not analyze how often a non-mountable concrete median would need to be repaired, as compared to simply

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[47] Swan, TR. 27:17–20, 28:16-18.
[48] *Id*. at 36:20–23.
[49] *Id*. at 30:10–18.
[50] *Id*. at 54:12–19.
[51] Semenick, TR. 106:18 – 107:3.
[52] Swan, TR. 30:24 – 31:2.

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repainted.[53] Yacht Club Road, which has a non-mountable median, has not had to have concrete repair, despite vehicles damaging channelization paddles and driving over the curb so often that the County has sought leave from the FRA to shorten the length of the median west of the tracks.[54] The County does expect it would need to repaint or repair a damaged concrete median much less frequently at Cliffside Drive than if it were on a road with much higher traffic use.[55] The County also acknowledges that concrete is less likely to be damaged to the point of repair than a channelization marker that has been driven over.[56]

25 BNSF's Manager Public Projects, Steve Semenick, has "frequently seen" missing channelization paddles at railroad crossings throughout Washington State, some of which have been in disrepair since 2017.[57] Both the Vancouver crossing identified as an example in the County's quiet zone application, and the crossing used by the FRA to set its risk reduction ratings, show broken channelization paddles on Google Earth.[58]

26 Expert Dusty Arrington echoed Mr. Semenick's concerns about maintenance, explaining the damage that can occur to mountable curbs and channelization devices from freeze/thaw issues, road grime, vehicle strikes, and environmental effects such as UV light.[59] Mr. Arrington, too, has personally observed repairs delayed until the

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[53] Swan, TR. 39:4–9.

[54] *Id*. at 31:3–17. Amendment to Public Authority Application to Federal Railroad Administration (Ref: THR 000000440001), available at www.wutc.wa.gov (TR-160319).

[55] Swan, TR. 39:10–22.

[56] *Id*. at 40:6–9.

[57] Semenick, TR. 109:8–17, 120:23 – 121:3.

[58] Exh. CS-12X, Exh. DA-14.

[59] Exh. DA-1T, pp. 10–11.

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public complains about aesthetics or a significant portion of the system becomes damaged.[60]

27 On the other hand, Mr. Arrington explained why concrete, non-mountable medians are very resilient and durable, with a similar lifespan to the roadway itself.[61] Even if channelization paddles/delineators are installed on a non-mountable concrete median (as they were at Yacht Club Road), "the concrete curb prevents the level of maintenance issues that occur with mountable curb systems."[62] (BNSF does not have a preference as to whether channelization devices are also installed on top of non-mountable medians.[63])

28 As Mr. Semenick explained,

> with the reduced number of the channelization devices residents traversing the crossing would have more of an opportunity to mount the [mountable] curb and drive around as opposed to a fully equipped [non-mountable] channelization, channelized median.[64]

29 Moreover, the County can paint any cosmetic issues itself.[65] The County intends to inspect the crossing monthly, whether a traversable system is installed or a non-mountable median is installed.[66]

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[60] Exh. DA-1T p. 12.
[61] *Id*. at pp. 12–13.
[62] *Id*. at p. 12.
[63] Exh. SS-1T, p. 8. The FRA regulations do not require the installation of reflective panes if a non-mountable system is selected. Swan, TR. 41:20–23. The non-traversable median itself should prevent motorists from damaging corresponding channelization devices, at least to the extent that such devices could be damaged with a mountable median. BNSF defers to the WUTC and/or County to make that decision. *Id*.
[64] Semenick, TR. 118:12–18.
[65] Swan, TR. 20:19–22.
[66] *Id*. at 41:3–9.

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iv. Emergency Access.

30 Emergency responders will have sufficient access to navigate Cliffside Drive even with a non-mountable concrete median.[67] The footprint of a non-mountable median would be the same as the existing painted center stripe.[68] The County did not submit any testimony on behalf of the fire marshal, which reflects that the fire department does not consider the median choice enough of an issue to become more involved in the dialogue.[69] Moreover, Cliffside Drive does not present the "T" configuration that reportedly concerns the fire marshal at Yacht Club Road (which the County intends to shorten).[70] There is no data to suggest that a non-mountable median would adversely affect emergency response times at Cliffside Drive (similarly, neither the County nor fire marshal provided any data of the frequency of emergency response).[71]

31 The County intends to widen the gravel portion of the shoulder, west of the crossing, to provide support for larger vehicles, whichever type of median is involved.[72] Widening the shoulder ameliorates any concern raised regarding

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[67] Swan, TR. 55:18–22 ("I believe they will get to where they're going regardless of what supplemental safety measure is installed."), 58:25 – 59:3.

[68] *Id*. at 58:2–9.

[69] *Id*. at 59:19–21.

[70] *Id*. at 38:18 – 39:3 (configuration differences between Yacht Club Road and Cliffside Drive); 57:1–9, 76:7–13 ("The fire marshal drove that as a training exercise. I don't know why they chose that road but they chose that road and it was difficult for them to move in and out of that -- the T intersection to make the corner, and at that point in time we changed to the nonmountable and kept the lengths the same. Since then we've submitted a federal application to shorten that, the length of that to make that turning movement easier for all big trucks that use that based on the feedback from the community.").

[71] *Id*. at 58:19–20, 9–12.

[72] *Id*. at. 55:8–17.

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emergency response.[73] The fire marshal—who, again, did not even opt to appear at the public hearing—did not raise any concerns specific to the east side of the crossing.[74]

4. WUTC Staff's Input.

32 WUTC staff supports either option, simply because either results in a QZRI below the national threshold when the crossing is converted to a quiet zone.[75] But Staff agrees that a non-mountable median presents a safer alternative supplemental safety measure at the crossing, and has previously expressed that "non-traversable medians provide a much higher disincentive for motorists to drive over them because of the potential damage to vehicles."[76] Staff acknowledged that it would have supported a non-mountable median had the County proposed it in the first place.[77] Furthermore, if the Commission rules that a non-mountable median is appropriate, Staff will support that decision.[78] Similarly, if the Commission orders, based on the evidentiary presentation, that a non-mountable system is appropriate on one side of the crossing, it would also be a decision backed by Staff.[79]

5. Public Comments.

33 As an initial matter, the public was confused at the outset about the nature of the public comment session, having been led to believe that the sole issue was whether or not to implement a quiet zone.[80] The public was not provided with substantive

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[73] Swan, TR. 55:3–14.
[74] *Id*. at. 54:24 – 55:1.
[75] Young, TR. 78:2–7.
[76] *Id*. at 78:8–12; Exh. BY-5 p. 3/3; see also Exh. DA-8.
[77] Young, TR. 78:13–17.
[78] *Id*. at 92:13–21.
[79] *Id*. at 78:18–22, 86:2–15 ("I could see that I would support that" when asked about installing a non-traversable system on the east side of the tracks and a traversable system on the west side of the tracks).
[80] *See, e.g*., Public Comment Hearing, TR. 139:1–4 ("AUDIENCE MEMBER: Could you go over again

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information about the arguments for a concrete median to be able to provide much input; instead, they were invited to talk to Mr. Semenick/BNSF after the public comment hearing.[81] Even so, members of the public were in favor of either barrier so long as they were able to maintain their emergency access—as confirmed by the evidence presented to the Commission—and did not incur additional expense (also confirmed).[82] As two residents expressed, "any type of barrier along there, whether it is a concrete barrier or whether it is a rubber barrier that's painted yellow, is going to do the job," and "whether it's concrete or rubber it seems like the goal is still going to be served."[83] One resident raised concern about identifying a barrier system in heavy snow; because the County expressed that it intends to install reflectorized paddles whether a mountable or non-mountable median is ordered, either system should address his concern.[84]

6. Minimum Alternative.

34 At the evidentiary hearing, the parties discussed the installation of a mountable median on the west side of the crossing, with a non-mountable median on the east side, where the roadway shoulders are currently wider and there are no driveways close to the crossing. The use of such a hybrid configuration is illustrated at the same Vancouver crossing that the County provided as an example in its quiet zone

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what is the question we're trying to answer here? I'm a little confused. The type of median, you said?"), 141:9–13 ("So the hearing today is a little different than what I think most of us had expected. We were led to believe this was more of a: Are we in favor of the quiet zone or not?").

[81] Public Comment Hearing, TR. 139:13–24, TR. 144:18–21 "I would be curious to understand why BNSF has its policy and what the difference between those two [options] and why they prefer concrete over rubber.").

[82] It is unclear whether the residents have been asked to contribute funding to the project. The context of several comments suggested that is the case, but the County did not specify the source(s) of its funding.

[83] Public Comment Hearing, TR. 142:5–8, 144:10–15.

[84] *Id*. at 149:23 – 150:1.

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application. [85] While BNSF believes that the evidence relating to safety, access, and maintenance factors all support a non-mountable median on both sides of the crossing, this hybrid configuration is preferable to mountable medians on both sides.

STATEMENT OF ISSUES

35 Whether the WUTC should order a non-mountable concrete median be installed upon the Cliffside Drive railroad crossing's conversion to a quiet zone, to make the crossing safer for the hundreds of thousands of motorists, train crews, and Amtrak passengers annually traversing the crossing. A non-mountable concrete median has the same installation costs as a mountable system, allows for emergency access, and involves less maintenance over time, whereas a mountable median would be more susceptible to damage and extended disrepair and allows deviant motorists to drive across it to circumvent crossing gates.

EVIDENCE RELIED UPON

36 This brief relies upon testimony at the evidentiary hearing, prefiled testimony, and exhibits in the record, as specifically cited herein.

ARGUMENT

37 Under RCW 81.53, the Washington Utilities and Transportation Commission has jurisdiction over public railroad-highway grade crossings within the State of Washington, including the Cliffside Drive grade crossing. RCW 81.53.261 requires

[85] Exh. CS-13X, 14X, 15X (depicting a non-mountable median on one side, and mountable channelization on the other).

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that the Commission grant approval prior to any changes to public railroad grade crossings within Washington State; *see also* WAC 480-62-150.

> If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices.

RCW 81.53.261.

38 While the WUTC does not have authority over whether crossings are converted to quiet zones, it maintains its jurisdiction over which warning systems best fit crossing configurations and protect the motoring public, rail passengers, and train crews.

39 For the safety, installation, maintenance, and repair factors discussed above, the best supplemental safety system for the Cliffside Drive crossing, upon its conversion to a quiet zone, is a non-mountable concrete median on both sides of the crossing. It makes the crossing safer, and involves lower costs over time. At a bare minimum, if the Commission determines that a mountable median is most appropriate on the west side of the tracks, a non-mountable median should be installed on the east side of the crossing.

CONCLUSION

40 The parties to this proceeding have the unanimous goal of preventing motorists from trespassing onto the Cliffside Drive crossing when a train approaches and of protecting the train crews and public who traverse BNSF's tracks. The Commission should order that the safer option of non-mountable, concrete medians be installed

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upon the crossing's conversion to a quiet zone. As County witness Mr. Swan agreed, one accident at this crossing would be one accident too many.[86]

DATED this 5th day of April, 2019.

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[86] Swan, TR. 60:2–5.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed this document with the WUTC and served this document upon the persons and entities listed below via email:

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I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

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