

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
DOCKET TR-070696**

AGREEMENT TO MEDIATE

This is an agreement between Burlington Northern Santa Fe Railway Company (“BNSF”) and the City of Mount Vernon, Skagit County, the Washington State Department of Transportation (“WSDOT”) Freight Systems Division, Skagit County Fire Protection District No. 3 (“Fire District No. 3”), Western Valley Farms, LLC, David and Yvonne Boon, and the Staff of the Washington Utilities and Transportation Commission (“Commission”), hereinafter “parties,” and Ann E. Rendahl, an Administrative Law Judge, assigned by the Commission pursuant to WAC 480-07-700(2), hereinafter “mediator,” to enter into mediation with the intent of resolving issues related to BNSF’s petition in Docket TR-070696 to close the Hickox Road grade crossing in Mount Vernon, Skagit County.

The parties and the mediator understand and agree to the following:

1. Mediation is a process of negotiation and reaching agreement in which the mediator assists the parties to reach a voluntary settlement. No party will be bound to a result unless that party voluntarily consents to be bound. No agreement to elements of a less-than-complete settlement is binding without the express written commitment of the participant.
2. The mediator has no power to decide disputed issues for the parties and cannot approve or disapprove any proposal. Matters that require Commission approval must be submitted to the Commissioners for approval.
3. The parties, with the mediator’s concurrence, will determine the scope of the mediation, and do so early in the mediation process.
4. Statements during the mediation on the following topics are confidential and privileged, and may not be disclosed in any judicial or administrative proceeding, pursuant to RCW 5.60.070 and subject to the limitations set out in the statute: any communications made or materials submitted in or in conjunction with, the mediation, including, without limitation, statements of position, offers of settlement, tentative agreements to settle, admissions of fact or law, and similar statements.
5. Parties will make a good faith effort to resolve differences and to find a resolution acceptable to each party.
6. Parties will treat each other with respect.

Each person signing represents that she or he has authority to sign on behalf of the party and that he or she has the power to bind all of that party's representatives and participants in the mediation to the provisions of this agreement.

Dated and effective this 11th day of December, 2007, at Seattle, Washington

BNSF,
By: BRADLEY SCARP
Montgomery, Scarp, McDougall,
PLLC

WSDOT,
by: SCOTT LOCKWOOD
Assistant Attorney General

MOUNT VERNON,
By: KEVIN ROGERSON
City Attorney

FIRE DISTRICT NO. 3,
by: BRIAN K. SNURE
Snure Law Office, PSC

SKAGIT COUNTY,
By: STEPHEN R. FALLQUIST
Civil Deputy Prosecuting Attorney

WESTERN VALLEY FARMS,
by: GARY T. JONES
Jones & Smith, Attorneys at Law

DAVID & YVONNE BOON,
By: GARY T. JONES
Jones & Smith, Attorneys at Law

COMMISSION STAFF,
by: JONATHAN THOMPSON
Assistant Attorney General

Mediator

Washington Utilities and
Transportation Commission