

0466

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0467

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2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE:

5 JEFFREY SCHULTZ

6 Direct Examination by Mr. Lockwood 470

7 Cross-Examination by Mr. Jones 472

8 Cross-Examination by Mr. Thompson 495

9 Examination by Judge Torem 504

10 Redirect Examination by Mr. Lockwood 509

11 MIKAEL LOVE

12 Direct Examination by Mr. Rogerson 518

13 Cross-Examination by Mr. Scarp 520

14 Redirect Examination by Mr. Rogerson 523

15

16

17

18

19

20

21

22

23

24

25

0468

1 -----
2 INDEX OF EXHIBITS
3 -----

5	EXHIBIT:	MARKED:	ADMITTED:
6	JEFFREY SCHULTZ		
7	8		471
8	9		471
9	10		471
10	127		515
11	MIKAEL LOVE		
12	29		519
13	30		519
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

0469

1 A F T E R N O O N S E S S I O N

2 (3:05 p.m.)

3 JUDGE TOREM: We're back on the record, it's
4 5 minutes after 3:00, and we're ready to do the final
5 witnesses this afternoon we have scheduled are
6 Mr. Schultz from the Department of Transportation who is
7 ready to take an oath and adopt his testimony, and then
8 I understand that Mr. Love is going to be here at about
9 3:30, so we'll go from there. We've got scheduled about
10 45 minutes of cross-exam time for Mr. Schultz, and
11 Mr. Love I think is considerably shorter than that, so
12 we'll see if we wrap up today and see if there are any
13 other items to take up before the end of the day, and I
14 guess folks will get to see a football game tonight.
15 Anything else that we need to take care of on the record
16 now?

17 I'm sorry, sir, the microphones are going to
18 be for the people doing most of the talking, I'll try to
19 project so you can hear me.

20 So hearing no other business, let me swear in
21 Mr. Schultz.

22

23

24

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0470

1 Whereupon,

2 JEFFREY SCHULTZ,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 D I R E C T E X A M I N A T I O N

7 BY MR. LOCKWOOD:

8 Q. Mr. Schultz, will you please state your full
9 name and spell it for the record.

10 A. Jeff, J-E-F-F, Schultz, S-C-H-U-L-T-Z.

11 Q. How are you employed, Mr. Schultz?

12 A. I am employed by the Washington State
13 Department of Transportation, I am the operations and
14 rolling stock manager for the freight systems division
15 rail office.

16 Q. In that capacity, did you prepare an advance
17 written testimony that was submitted to this tribunal?

18 A. Yes.

19 Q. And was that testimony true and correct at
20 the time it was signed?

21 A. Yes.

22 Q. Is it still true and correct today?

23 A. Yes, it is.

24 Q. Did that written testimony include an exhibit
25 which is your resume'?

0471

1 A. Yes, it did.

2 Q. Did it also include a long-term rail report
3 as an exhibit?

4 A. Yes, it did.

5 Q. Are those true and correct and accurate
6 today?

7 A. Yes, they are.

8 MR. LOCKWOOD: Thank you, Your Honor, I would
9 -- I believe that the testimony has been premarked as
10 Exhibit 8, Mr. Schultz's resume' Exhibit 9, and the
11 report referenced as Exhibit 10, I would offer those.

12 JUDGE TOREM: Are you moving for their
13 admission?

14 MR. LOCKWOOD: Yes, Your Honor.

15 JUDGE TOREM: Are there objections to
16 Exhibits 8, 9, or 10?

17 MR. ROGERSON: None, Your Honor.

18 JUDGE TOREM: All right, seeing none, then
19 Exhibits 8, 9, and 10 are admitted.

20 Mr. Rogerson will be first for
21 cross-examination.

22 MR. ROGERSON: Mr. Jones will be
23 cross-examining.

24 JUDGE TOREM: Mr. Jones, can I ask given the
25 public's interest that you use a microphone, please.

0472

1 MR. JONES: Sure.

2

3 C R O S S - E X A M I N A T I O N

4 BY MR. JONES:

5 Q. Good afternoon, Mr. Schultz.

6 A. Good afternoon.

7 Q. I wanted to begin by going a little bit into
8 the history of this project which you have described in
9 your testimony. You have indicated that there was
10 implementation on June 30th, 2006, of a new train
11 schedule, is that right; do you remember that part of
12 your testimony on page 13?

13 A. Yes.

14 Q. One of the aspects of this hearing is to
15 understand or allow the public to understand the purpose
16 behind the Mount Vernon siding project as a needed pass
17 location for Amtrak Cascade's service, and I'm asking
18 you now if you could provide a little further
19 explanation about your role for the Department of
20 Transportation in integrating the Amtrak Cascade service
21 with the main line freight service that Burlington
22 Northern Santa Fe operates. In particular, could you
23 describe for us how the decision, you know, what
24 background information was gathered before the initial
25 phase of this siding was built between what have been

0473

1 called in some of the exhibits B and C, the initial
2 second track for this siding that you have described as
3 being extended by this project? That's a long question,
4 the question would be, you know, at what point did you
5 become involved in analyzing this for the Department of
6 Transportation?

7 A. I have been involved in various phases of
8 this project since its inception back in 2005.

9 Q. At that time was the siding extension already
10 begun?

11 A. The project, as I have described in my
12 testimony already, is really in two phases. There's a
13 -- the first phase was the phase where the existing
14 siding was upgraded. The second phase is the extension.

15 Q. At the time the existing siding was upgraded,
16 what was done to identify environmental impacts of the
17 whole project, including this phase that we're talking
18 about now?

19 A. During the initial phase there was no
20 environmental impact required to do an upgrade with the
21 existing siding component, so that part was not required
22 to have an environmental phase, so therefore there was
23 none done for the first phase. During the second phase,
24 the environmental work has been ongoing and continues to
25 go forward.

0474

1 Q. As part of your decision to collect
2 information appropriate for compliance with the State
3 Environmental Policy Act, did you contact the Regional
4 Transportation Planning Office that's operated in Mount
5 Vernon?

6 A. We worked together with the Skagit -- I
7 believe you're referring to the Skagit RTPPO?

8 Q. Yes, that's an acronym that I have heard used
9 for the organization.

10 A. Yes, we have chatted with them on several
11 occasions regarding this project. In fact, we had an
12 informational outreach gathering effort there and had a
13 presentation at the RTPPO and if I remember public
14 officials and the public.

15 Q. Maybe we don't understand each other about
16 the RTPPO. My understanding of the Regional
17 Transportation Planning Organization is that it grows
18 out of the Skagit Council of Governments and is
19 different from the Multimodal Transportation Center
20 which is in Mount Vernon where the train stops for the
21 passenger rail service.

22 A. I guess I'm somewhat confused by your
23 question, Mr. Jones. The station is -- the train
24 station is a separate entity entirely from the siding
25 project, I'm confused by your question.

0475

1 Q. Well, I'm inquiring about your contact with
2 local government agencies about this project.

3 A. Okay.

4 Q. Particularly the Skagit Council of
5 Governments.

6 A. Okay, I believe I outlined that in my
7 testimony that we have had a number of outreach efforts
8 with the City, the County, as well as the Skagit RTPO,
9 and we have met -- have met with their staff at that
10 meeting in I believe September of 2006.

11 Q. At that time, was Gary Norris engaged as a
12 preparer of a transportation impact analysis?

13 A. I believe we did have him on contract at that
14 point.

15 Q. Before engaging Mr. Norris, did you have a
16 scoping -- was there anything by way of a scoping
17 document which was provided to Mr. Norris about these
18 contacts with other agencies?

19 A. As we developed the task order to have
20 Mr. Norris do the traffic study for us, the task order
21 document outlines what is expected of the consultant,
22 what they're going to do in terms of contacts, and we
23 did as part of their job assign them the task of working
24 with local community to gather data from fire districts,
25 emergency services providers, police, and so forth as

0476

1 part of their work product.

2 Q. Did you make any contact with Skagit County
3 Diking District Number 3 preliminary to establishing the
4 scope of Mr. Norris's work?

5 A. Not preliminary to the establishment of his
6 work.

7 Q. And did you make contact with Skagit County
8 Emergency Services, Mark Watkinson or his predecessor,
9 Mr. Shin?

10 A. I did not initiate that.

11 Q. Okay. Did you meet with the Board of
12 Commissioners of Skagit County?

13 A. No, I was not invited.

14 Q. Did you actually come to the City Department
15 of Development Services --

16 A. Yes.

17 Q. -- and talk to Jana Hanson, the Director of
18 that department?

19 A. Yes, I did.

20 Q. And when did that happen?

21 A. I would have to refer to some notes on the
22 exact date, but it was in the summer of 2006 I believe.
23 If I may refer to my direct testimony?

24 Q. Sure.

25 A. I believe that may be in here somewhere.

0477

1 Suffice it to say we did meet with her.

2 JUDGE TOREM: Mr. Schultz, I think if you
3 look on page 17 there is a reference to the outreach,
4 but it also incorporates by reference a declaration
5 filed in September I believe as part of the motions we
6 had in this case, that may be where the specific
7 information is. I don't have that declaration in front
8 of me.

9 Mr. Lockwood, did you happen to bring that
10 piece of paper along?

11 MR. LOCKWOOD: No, that's in a different
12 three-ring binder.

13 JUDGE TOREM: Mr. Lockwood, did you see any
14 other spot in his testimony for sake of time that this
15 information that Mr. Jones is looking for about
16 Ms. Hanson might be found?

17 MR. LOCKWOOD: No, I didn't, and in fact I do
18 believe that in order to avoid duplication in the file
19 we did intentionally incorporate by reference the
20 earlier testimony.

21 JUDGE TOREM: So, Mr. Jones, we won't have
22 that directly available unless you happen to have the
23 September declaration or another member of the group of
24 attorneys does if it's important for a specific date.
25 If not, let's move along.

0478

1 MR. JONES: That's fine, yeah.

2 BY MR. JONES:

3 Q. In the process did you identify alternatives
4 to the proposed closing of the Hickox Road Crossing?

5 A. In our meeting with the City of Mount Vernon?

6 Q. Yes.

7 A. We discussed with the City to review a draft
8 traffic impact analysis about the closure, and we asked
9 them to provide input into that. That was the purpose
10 of the meeting.

11 Q. As a result of these consultations that you
12 have described, did Mr. Norris at your direction
13 consider alternatives to the extension, the siding
14 extension?

15 A. As a result of our discussions with the City
16 and County and Fire District, we revised the traffic
17 study as we felt appropriate based on their comments to
18 incorporate factual errors and additional information.
19 We did also look at a potential of rerouting Hickox Road
20 as part of the proposal to the order of magnitude of
21 what the costs and environmental impacts of such an
22 alternative would require. Mr. Norris, however, is not
23 a railroad engineer and was not directed to look at any
24 alternatives as part of his traffic mitigation work,
25 traffic study work.

0479

1 Q. In your testimony in answer to, this is on
2 page 14 and 15, you answered the question, why did WSDOT
3 want a traffic study prepared by saying that the, and
4 this is on page 15 at line 10, 9 and 10, the consultant
5 could examine mitigation strategies to minimize the
6 impacts. I'm not seeing in the document that has been
7 approved any mitigation of the impacts of closing the
8 crossing, and I'm wondering if you were satisfied with
9 the work product of your consultant to the extent that
10 it did not examine mitigation strategies?

11 A. I am satisfied with Mr. Norris's work
12 product.

13 Q. And is that because of the fact that you have
14 a limited budget for this project and a limited period
15 of time within which to perform the work that would
16 complete the siding extension without regard to
17 alternatives to siding extension?

18 A. Could you restate that.

19 Q. Have you indicated in your testimony that
20 really the Department of Transportation is not prepared
21 to implement anything other than the siding extension
22 plan?

23 MR. LOCKWOOD: Your Honor, I'm going to have
24 to object to the form of the questions, they're leading,
25 well, frankly they're compound and confusing. I

0480

1 certainly don't understand them, I don't know how this
2 witness can be expected to understand them.

3 JUDGE TOREM: Well, let me say he's
4 cross-examining, so he's allowed to lead this witness,
5 which was not the case earlier. However, Mr. Jones, I
6 do sympathize with the objection here, I'm going to
7 overrule it at this time and allow the witness, I think
8 Mr. Schultz was indicating he might have understood the
9 question, but if we can get it clearly phrased and it
10 sounds like the form of a question from the beginning,
11 it will be helpful for all the attorneys to follow and
12 myself as well.

13 MR. JONES: Thank you.

14 JUDGE TOREM: So the question I think was why
15 he was satisfied with Mr. Norris's work product, and the
16 initial question had to do with a question of budget or
17 at least an assertion on your part, and the second
18 assertion had to do with whether or not the DOT proposal
19 had any indication of any other alternative besides just
20 extend the siding and extend the siding.

21 BY MR. JONES:

22 Q. Right, I'm just asking Mr. Schultz if he can
23 confirm his testimony at page 16, line 12, which you
24 conclude:

25 Therefore, delaying the project and

0481

1 building an entirely new siding was not
2 a realistic or cost effective
3 alternative to extending the existing
4 siding at the Mount Vernon railroad
5 siding.

6 Is that essentially your position about this
7 project?

8 A. The position on our project was stated
9 throughout that entire question, which was basically we
10 looked at a whole number of things as part of this.
11 This project was to a large extent legislatively
12 directed and specified in our appropriations, and so
13 this was a designated project funded towards the Mount
14 Vernon siding extension. There was investment made in
15 the first phase of this project to upgrade the existing
16 siding. The environmental issues at alternative
17 locations were unknown and would delay the project, any
18 alternatives for this, for two years longer.

19 Q. You have heard the testimony of the public
20 this afternoon, was there anything that was said this
21 afternoon that changes your opinion with respect to the
22 need for necessity of the crossing as declared in your
23 testimony on page 17?

24 A. No.

25 Q. Is it your position that there are reasonable

0482

1 alternative means of access for all users, including
2 Mr. Christianson?

3 A. I believe Mr. Christianson is a member of the
4 all users group, so I don't know why you're necessarily
5 bringing him out separate than that, but I believe the
6 alternatives that have been studied in our traffic
7 analysis provide reasonable alternatives for traffic
8 within the area and don't adversely impact the traffic
9 flows and don't adversely impact the city nor the
10 county.

11 Q. Did you hear the testimony of Mr. Camacho
12 concerning the impact of diverting traffic from the
13 Hickox Road intersection to other intersections as
14 particularly on Blackburn Road in Mount Vernon?

15 A. Yes, I heard his testimony.

16 Q. And do you deny that the public safety will
17 be adversely affected by diverting traffic from Hickox
18 Road to Blackburn Road?

19 A. Could you restate that one more time, please.

20 Q. Is it your testimony that there is no impact
21 on public safety by diverting traffic from Hickox Road
22 to Blackburn Road?

23 A. No, it's my testimony that the traffic study
24 shows that there's no adverse impact.

25 Q. So you don't consider it an adverse impact

0483

1 that there would be farm equipment, large trucks, people
2 operating equipment that takes as much as 16 foot wide
3 traveled way in an area where a school is in operation?

4 A. I believe it's a public road and they can do
5 that today.

6 Q. Is it your position that this closure of the
7 railroad crossing would not exacerbate any problems that
8 have been described by the witnesses today?

9 A. Could you be more specific?

10 Q. Well, if Brian Waltner, for example, takes
11 his spray equipment on trailers past the Christian
12 school, would you say that is a no adverse impact when
13 compared to using the existing crossing?

14 A. He can do that today.

15 Q. My question to you is, do you regard that as
16 a safe alternative when comparing and contrasting using
17 Blackburn Road going by the Christian school with using
18 the railroad grade crossing at Hickox Road?

19 A. Well, I can't necessarily testify to the
20 quality of his particular driving, so I can't make a
21 value judgment on his ability to drive his vehicle
22 through that particular area.

23 Q. Well, I don't think that was my question, I'm
24 happy to rephrase it for you.

25 So from your standpoint, the two things are

0484

1 equal from a public safety standpoint, use of farm
2 vehicles crossing Hickox Road and the same farm vehicles
3 being diverted to Blackburn Road where there are school
4 children, people coming and going to accommodate
5 transportation of school children; is that right?

6 A. I'm not sure I understood your question,
7 please state it one more time, please.

8 JUDGE TOREM: Mr. Jones, let me give it a
9 try.

10 MR. JONES: Okay.

11 JUDGE TOREM: I think Mr. Jones is asking
12 you, Mr. Schultz, to draw a distinction between what the
13 chosen path of those farm vehicles is apparently today
14 on Hickox Road and whether in your judgment with your
15 years with the State Department of Transportation you
16 think if they now chose to go to Blackburn Road, as you
17 know they could do today, is that as safe a route as
18 what they're currently choosing? In other words, if you
19 take away their choice of Hickox Road, doesn't that, as
20 Mr. Jones would say, make greater danger for the public
21 and particularly on Blackburn Road for the school
22 children?

23 Mr. Jones, is that a fair summary?

24 MR. JONES: Yes, I accept that.

25 THE WITNESS: Thank you, your honor, thank

0485

1 you.

2 A. In terms of traffic and traffic flow and if
3 you closed Hickox Road and traffic goes a different way,
4 our traffic analysis in the traffic study showed the
5 majority of the traffic does not go on Blackburn Road.
6 The majority of the traffic goes in other directions and
7 redistributes throughout the network. Mr. Norris will
8 testify to that tomorrow in terms of his expertise on
9 how the traffic flow model works. It is my
10 understanding that just based on how the traffic flow
11 model showed how the traffic would be distributed, the
12 amount of traffic that goes through Blackburn is
13 somewhere in the neighborhood of ten vehicles overall in
14 how it's redistributed at peak hour.

15 BY MR. JONES:

16 Q. You have had an opportunity to see the
17 prefiled testimony concerning the Boon interveners,
18 particularly the testimony of Jeff Boon concerning
19 harvest of corn and hay from opposite sides of
20 Interstate 5. Are you satisfied with the quality of the
21 analysis that's being done that relies on a strict
22 number of expected peak travels as opposed to analyzing
23 particular uses that exist on this railroad crossing?

24 A. The methodology that's employed in terms of
25 this traffic analysis is the standard in the industry.

0486

1 Q. Is it necessary to take account of individual
2 circumstances when applying the traffic impact analysis?

3 A. If there were some unusual conditions noted
4 by the traffic engineer doing the analysis, it would be
5 -- should be incorporated.

6 Q. So are you satisfied with a traffic engineer
7 who does not recognize farm equipment and the importance
8 of the commercial activity that's going on when
9 conducting a traffic impact analysis?

10 A. I believe Mr. Norris did a fine job on
11 traffic analysis.

12 Q. Do you think that he took account of the
13 seasonal differences that there would be between the
14 February time when he measured the traffic and the
15 actual summer time demand for agricultural use of the
16 Hickox Road Crossing?

17 A. He used a seasonal variation factor in his
18 testimony.

19 Q. Did you detect in his report anything that
20 took account of the actual agricultural traffic on
21 Hickox Road?

22 A. I don't believe it was broken out differently
23 than the standard highway vehicles trucks breakdown in
24 the model.

25 Q. In reviewing the work that's been done

0487

1 through your office, to what extent was any other branch
2 of the Washington Department of Transportation consulted
3 about this siding extension project?

4 A. We informed the Mount Baker Planning Area,
5 which is located here in Mount Vernon.

6 Q. And does that include their -- did you become
7 informed about their future plans for the Exit 224 on
8 Interstate 5 known as Hickox Road?

9 A. I'm not aware of any plans for that.

10 Q. So there are no plans that have been
11 discussed within the Department of Transportation for
12 adding further on/off ramps from Exit 224?

13 A. I am not aware that plans have been made to
14 do that. I am aware that there have been informal
15 discussions.

16 Q. In your discussions with the City of Mount
17 Vernon, did they advise you about the commercial land
18 use that was planned for the area immediately adjacent
19 to Exit 224?

20 A. They -- yes.

21 Q. Did the availability of the Hickox Road grade
22 crossing receive a favorable support from the City of
23 Mount Vernon staffing that you looked at when you held
24 your meetings with Mount Vernon?

25 A. No.

0488

1 Q. Do you understand -- what do you understand
2 to be the purpose of the intergovernmental coordination
3 features of the State Environmental Policy Act in this
4 regard, did you or your agency attempt to reconcile the
5 inconsistency between the City of Mount Vernon planning
6 for this commercial district and the plan for closing
7 the crossing?

8 A. Could you say that one more time, Mr. Jones.

9 Q. Did you put forward any change of your
10 initial plan to accommodate the City of Mount Vernon
11 plans for commercial development in the Exit 224 area
12 around Interstate 5?

13 A. No, other than we are in the process of
14 revising our SEPA document from the original one, which
15 was withdrawn to a new one.

16 Q. Excuse me one moment.

17 We heard testimony this morning from
18 Mr. MacDonald concerning the siding and how it will be
19 used. Was his testimony concerning the duration of the
20 stay of freight trains on the siding extension
21 consistent with the documents that you provided to
22 Mr. Norris for his traffic information analysis?

23 A. Could you be more specific about the duration
24 that you're referring to.

25 Q. Well, the description which was -- appears to

0489

1 have been provided was a meet and pass purpose for the
2 siding extension, and the question would be, you know,
3 whether presence on the siding for one to two hours,
4 which I believe was what he described, is that
5 consistent with the meeting and passing needs of the
6 Amtrak Cascades trains that you are attempting to
7 accommodate?

8 A. No, they're two distinct operational needs.
9 An Amtrak meet and pass time is somewhere in the
10 neighborhood of 5 to 10 minutes where we meet and pass
11 on a single track or using a siding. Those are
12 scheduled for approximately 5 to 10 minutes. Freight
13 trains on the other hand may have a number of different
14 operational needs, and a meet and a pass with another
15 freight train may be 10 minutes, 15 minutes, 2 hours, it
16 would be in some cases longer than that based on unusual
17 operating circumstances in the railroad environment.

18 Q. It's my understanding from your testimony
19 that the State Department of Transportation is paying
20 for this siding extension project; is that right?

21 A. That is correct.

22 Q. And if the siding extension would be used for
23 5 to 10 minutes for meet and pass with Cascade Amtrak
24 trains, then why is the Department of Transportation
25 supporting this project and paying for it if it's really

0490

1 benefiting the Burlington Northern Santa Fe main line
2 track use by freight trains?

3 A. The siding improvement is what we call a
4 system improvement, and as I have said in my direct
5 testimony, this project is one where you look at the
6 entire rail network, and it's not just a function of
7 what goes on only at the siding only during the
8 meet/pass times for Amtrak. Sidings are located
9 throughout the network. There's a siding down in
10 Stanwood, there's a siding north of here in Bow. What
11 happens at various locations both north and south of
12 Mount Vernon along the river network cascade, if you
13 will, to service throughout the region to Vancouver BC,
14 to Seattle, and even south of there. So it's important
15 to have locations that will enable trains to -- freight
16 trains, which operate over the same network as Amtrak
17 passenger trains that the State has interest in, to be
18 able to move along this network as well, because we all
19 share the same network.

20 And so the importance of this meet/pass
21 siding is that when it's not being used for Amtrak
22 service is that it's being used for BNSF trains that
23 will meet and pass at this location whereas right now
24 they can not use this location efficiently because it's
25 short, as I mentioned in my prefiled testimony, it's

0491

1 shorter than other sidings, and it's by lengthening it
2 will enable freight trains to meet and pass at this
3 location and continue on their journey both north and
4 south, and this has effects throughout the rail network
5 in the state.

6 Q. If we were to focus on the testimony we have
7 heard this afternoon about the local impact, would you
8 say that it's true or not true that limiting the use of
9 this siding to meet and pass for Amtrak trains would
10 relieve the need for closing the crossing?

11 A. I don't believe that's the alternative that
12 was proposed here. I think from the standpoint of what
13 we're talking about is a siding that works for both
14 freight and passenger to enable the network to function
15 properly. Working for Amtrak only would not necessarily
16 accommodate the system network needs that are required.

17 Q. Well, I guess my question to you is, in what
18 way has the Department of Transportation accommodated
19 the local concerns that have been expressed this
20 afternoon and in the prefiled testimony to this hearing?

21 A. As I have said in my prefiled testimony, we
22 have had outreach to the City, to the County, to the
23 Fire District, met with them on numerous occasions to
24 try to incorporate their concerns into the traffic
25 document and to -- and have incorporated some of their

0492

1 information into the document, but we weren't able to
2 necessarily address each and every one of their
3 concerns.

4 Q. I'm trying to find one that you have
5 addressed, and that's what I'm asking you. What is it
6 that you have done to accommodate the Fire District in
7 the proposal that you have before the Utilities and
8 Transportation Commission now?

9 A. I don't believe we were able to come to a
10 consensus on what -- to meet the Fire District's needs
11 entirely.

12 Q. I have heard the Board of County
13 Commissioners member for this portion of the district
14 say that he opposed the project to the extent that it
15 would as your agency has proposed close the crossing; is
16 that what you heard?

17 A. That the County Commissioner is opposed to
18 the crossing closing?

19 Q. Yes.

20 A. Yes, we have a document to that effect.

21 Q. And what has been done to respond to that or
22 accommodate that?

23 A. We tried to address the County Staff's
24 concerns about turning radius -- we tried to address
25 some of the County Staff's concerns about turning radius

0493

1 on Hickox Road and Dike Road.

2 Q. I'm interested in your response to the
3 testimony by Brian Waltner this afternoon that his
4 ability to turn left and go south as he proceeded west
5 on Hickox Road was very difficult given the
6 configuration of the overpass. Were you aware of that,
7 and has your agency done anything to accommodate that
8 difficulty?

9 A. I am aware of that because you have raised it
10 in the past at some of our hearings and discussions. I
11 have looked at the particular intersection that you're
12 mentioning. I'm not aware that the County Road
13 Authority has done anything to restrict movements on
14 that by signage, that they have made a left turn
15 prohibition on that for trucks or for any other
16 vehicles. I believe Mr. Norris could better answer that
17 from a traffic engineer standpoint when he testifies.

18 Q. Well, I guess I am asking you some questions
19 about your satisfaction with Mr. Norris's work product,
20 because it seems to me that you are the person to whom
21 he answers to some extent; is that true?

22 A. Yes, but I'm not a traffic engineer, he is.

23 Q. Right, but when people in the local community
24 are coming forward with comments as they have before now
25 and certainly Mr. Waltner here and you -- I don't

0494

1 understand your agency to have any response to his
2 concern?

3 A. The City and the County never raised this in
4 our initial discussions, we didn't address it in the
5 traffic study.

6 Q. And at this point your agency is doing
7 nothing to mitigate the problem that's been identified
8 by the public; is that correct?

9 A. This is the first time in a public forum that
10 this particular question has been laid out by a member
11 of the public other than yourself, and we could look
12 into it, but I believe it would be important to have the
13 County Road Authority, who I believe that portion of the
14 road is theirs, we would have to look into that and see
15 whose road it really is right there.

16 Q. So Interstate 5 and particularly that portion
17 of it that is within Exit 224 is beyond the authority of
18 the Washington State Department of Transportation?

19 A. Mr. Jones, I don't know where our authority
20 ends and where the County starts there, I'm not an
21 expert on that particular stretch of highway.

22 Q. Okay, well, I guess I was expecting from your
23 answer to the question, what type of future service is
24 WSDOT planning, that that would have been an appropriate
25 thing for you to address in terms of this application by

0495

1 Burlington Northern Santa Fe and its potential closure
2 of Hickox Road, so that's what I'm getting back to is
3 what is the -- what is your role in terms of mitigating
4 these identified impacts of closing the Hickox Road
5 at-grade crossing?

6 A. Ultimately the decision to close the crossing
7 and what things are necessarily relevant to that are
8 going to be determined by this tribunal in terms of
9 whether it's -- what's appropriate. We believe in terms
10 of what our testimony has been that we made the
11 appropriate recommendations in the traffic study, we
12 believe that our testimony on this matter is fairly
13 straightforward and thoroughly complete.

14 MR. JONES: I have no further questions at
15 this time.

16 JUDGE TOREM: All right, thank you,
17 Mr. Schultz, are you ready to take further
18 cross-examination from Mr. Thompson?

19 THE WITNESS: You bet, sure.

20 JUDGE TOREM: All right, let me give him the
21 microphone.

22

23 C R O S S - E X A M I N A T I O N

24 BY MR. THOMPSON:

25 Q. Good afternoon, Mr. Schultz.

0496

1 A. Good afternoon.

2 Q. It's the low blood sugar portion of the
3 afternoon, so I just have a few, I don't have too many
4 questions for you. One question I do have relates to
5 your written testimony at page 9, lines 20 through 24,
6 where you're discussing that the Mount Vernon siding
7 extension project is a two-phase project and that the
8 first phase rehabilitated the existing Mount Vernon
9 siding track, and then you say that the second phase
10 will extend the siding track approximately 3,700 feet
11 south. Could you take a look at the exhibit that we
12 have that we just marked today as Exhibit 127, do you
13 have a copy of that?

14 A. Yes, I do.

15 Q. Okay. Well, first one question I have for
16 you about the length of the second phase extension, you
17 have 3,700 feet there, and I see elsewhere in
18 Ms. McIntyre's and Mr. Gordon's testimony they say 6,651
19 feet, are those -- what explains the inconsistency
20 there?

21 A. I don't know, I did not review their
22 testimony, and I didn't do the math for them, so I don't
23 know why there's a discrepancy there.

24 Q. Okay, do you think that -- do you stand by
25 the 3,700 feet?

0497

1 A. Yes.

2 Q. Okay.

3 One question we had for you as a data
4 request, which is Data Request Number 3 there in Exhibit
5 Number 127, was what all was involved in that first
6 phase rehabilitation of the existing siding track, and
7 you have a -- you sort of quoted from the task order,
8 which is in some pretty technical terms, I'm wondering
9 can you just sort of describe kind of in more layman's
10 terms --

11 A. Layman's terms.

12 Q. -- what all was involved in phase 1?

13 A. Sure, I will do my best to do that. The
14 existing siding that -- at Mount Vernon was in what we
15 would call a class 1 status. It was not -- it was able
16 to handle trains at approximately 10 miles per hour and
17 enabled it to -- to enable it to accommodate Amtrak
18 service, we wanted to increase the speed on the siding
19 to 20 miles per hour. And so that would require
20 replacement of ties, which are the wood, you know, a
21 wood -- piece of wood that goes underneath the rails and
22 is attached to the rails by spikes, and also put in or
23 take out, if you will, 115 pound rail, which is that's
24 the weight per yard, if you will, of that and replace
25 that with 136,000 pound rail, which is newer rail,

0498

1 beefier rail, accommodates the newer freight cars in
2 service today. And that's welded rail, doesn't have
3 what we call joints in between the different pieces of
4 rail, and the older rail was jointed as well.

5 And as part of that, they also upgraded the
6 surface at Blackburn at the crossing there. It was a
7 rubberized grade crossing surface, and it was upgraded
8 to a concrete surface I believe as part of this project
9 and paid for with DOT dollars to upgrade that.

10 And we did not go in and do any work at the
11 at-grade crossing as part of this phase, because it had
12 been upgraded several years earlier in 2003 by the City
13 and paid for by the City as part of a project to do
14 signalization at the intersection and intertie that with
15 grade crossing warning devices into the traffic light
16 which was put in by the City. So the crossing had
17 already been upgraded and approved by UTC, and at that
18 time it was not necessary to upgrade.

19 Q. Okay. Have you seen in Ms. McIntyre's
20 testimony for BNSF where she describes after the planned
21 phase 2 extension she describes a portion of the siding
22 as being practically usable, and I take that to mean
23 that the track north of Blackburn, that portion is not
24 included in what she refers to as being practically
25 usable I think; does that sound right?

0499

1 A. I haven't reviewed her testimony today, so
2 it's not necessarily fresh in my mind but that's how I
3 would understand the concept would be that a portion of
4 the siding, it's like an orphan, you can't use it, it's
5 over here on this part of -- it's north of Blackburn,
6 it's not of a usable length enough to necessarily hold
7 an entire freight train, so it's basically there as part
8 of, if you will, the exit and entrance onto the main
9 line, it's basically a transition area.

10 Q. Okay. And so what, explain to me at the time
11 phase 1 was done, was it known that there would be a
12 phase 2 that would extend the track to the south?

13 A. That was the whole idea was that there would
14 be -- the funding was going to come to us in a phased
15 sort of way where we only could get -- you get so much
16 per biannually or that's our budget period, so you get a
17 portion of funds once biannually, and you get another
18 portion of funds in another biennium, so you split the
19 projects up by funding, and that's how this was done.

20 Q. Why would you rehabilitate a portion of the
21 track that's not practically usable for purposes of use
22 as a siding I guess?

23 A. Well, because it was -- is being used,
24 because that's the part where the passenger trains and
25 freight trains are coming onto and off of the siding,

0500

1 and so rehabilitating the track there to bring it up to
2 20 miles an hour speed, it was, like I said before, it
3 was good for 10 miles an hour, it's good for 20 miles an
4 hour to get onto and off of the siding and allow a
5 freight train who is transitioning onto the siding to go
6 into the siding at 20 miles an hour. So if you -- in
7 other words, if you didn't upgrade that portion of the
8 siding as part of phase 1 and just did another part of
9 it, you wouldn't get the utility of having a freight
10 train get out of the way quicker by having it upgraded,
11 the speed upgraded in the siding.

12 Q. Does a train actually have to slow down to 20
13 before it goes into the siding?

14 A. It depends on the turnout or the switch speed
15 for a particular siding. They have -- Mr. MacDonald
16 probably could have answered this question better than I
17 since he's a railroad official, but nevertheless, in
18 most cases to go into a siding you have to reduce your
19 speed to whatever is allowed by that particular type of
20 switch. It can be 35 miles an hour, it can be 20 miles
21 an hour, depending upon the type of switch that goes
22 into the siding, it can be 10 miles an hour. Obviously
23 the faster the switch is, the faster the train can enter
24 the siding and then get out of the way of an opposing
25 freight train.

0501

1 Q. Okay.

2 A. Or passenger train as the case may be.

3 Q. Just one more thing, I wanted to, well,
4 actually two more things, the first of which is at page
5 14 of your testimony, about the middle of the page
6 there, the question to you is talking about the traffic
7 impact analysis, and your answer kind of lays out in
8 bullet points there at the bottom of the page some of
9 the things that the Commission has looked at in prior
10 crossing closure cases, and right there at the very
11 bottom of that page 14 it says one of the considerations
12 is whether, you know, alternate crossings are less
13 hazardous. And then so keying off that I guess we asked
14 you in Exhibit Number 127 there, Data Request Number 4,
15 asked you whether the traffic study addresses
16 specifically the question of whether alternate crossings
17 are less hazardous, and then you have an answer there
18 where you say that the traffic study did not
19 specifically address whether the alternative crossings
20 were less hazardous, but then you or someone I guess
21 expresses an opinion that perhaps the net result is an
22 overall gain in safety. Where would I find support for
23 that notion that there is a net gain in safety in the
24 prefiled testimony?

25 A. Well, there's a couple of different tools

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1 that could be utilized to analyze that in terms of
2 overall safety. There's some FRA models that can be
3 utilized to take a look at that. One that we did have
4 Mr. Norris take a look at was GradeDec.net, which is a
5 Internet based analysis tool that we worked with the FRA
6 on and had Federal Railroad Administration or FRA take a
7 look at.

8 Q. So if I have a question about that, I can
9 direct that to him?

10 A. That would be great.

11 Q. Okay.

12 You mentioned in response to Mr. Jones'
13 questions earlier that you tried to address some of the
14 turning radius issues I guess within the traffic study,
15 are there specific proposals from DOT that it's willing
16 to fund improvements at intersections to improve the
17 turning radii?

18 A. Yes, in the report, in the traffic study
19 report, the recommendations were that the turning --
20 because there are some large truck movements going up
21 Stackpole, sorry, Hickox Road from Dike Road that there
22 may be -- there was questions about turning radius,
23 could that roadway today accommodate those, and so I had
24 Mr. Norris look at that from the standpoint of the type
25 of trucks that go there, for example milk tanker trucks

0503

1 go that route, and could that be mitigation for that,
2 and that was examined and incorporated into our -- in
3 the traffic study as a recommendation.

4 Q. And that was at did you say Stackpole and
5 Dike Road?

6 A. Sorry, that was at Hickox and Dike Road.

7 Q. Okay, so just that intersection?

8 A. Yes.

9 Q. And is the -- in other words, so you're
10 expecting that the Commission's order were it to close,
11 agree with the petition and grant closure, would spell
12 out that yes, the petitioners or DOT needs to make this
13 improvement as a condition of closure?

14 A. Well, I think that would have to be worked
15 out with the roadway authority as well, I'm assuming
16 that Skagit County would have to agree with that as
17 well, it's their road.

18 Q. Well, at least to --

19 A. Work cooperatively with Skagit County.

20 Q. At least to provide funding should, you know,
21 the road authority agree that that's a worthwhile
22 improvement?

23 A. Right.

24 MR. THOMPSON: That's all I have, thanks.

25

0504

1 E X A M I N A T I O N

2 BY JUDGE TOREM:

3 Q. Mr. Schultz, if you turn to page 13 of your
4 testimony, there's a question at line 16, and the
5 answer, I guess it's all on that page, it's about the
6 railway's position on using this Mount Vernon siding,
7 and when I look at the answer it seems as though State
8 Department of Transportation for Amtrak Cascades wanted
9 simply a meet and pass siding here in Mount Vernon, and
10 then BNSF said, well, we store cars there, so you're
11 looking for a transitory use, we have some permanent or
12 long-term storage issues to replace the track, and if I
13 understand the answer further, then they said, well,
14 wait a minute, why don't you just extend it, and then we
15 can make some transitory use of longer trains here, and
16 you don't have to replace the tracks. Is that
17 essentially how the discussion went with BNSF?

18 A. I believe the way you described it I think is
19 how I summarized it, yes. We initially wanted to just
20 use it to meet and pass Amtrak trains. BNSF said wait,
21 we store freight cars there on a regular basis, we need
22 to move them or you need to provide storage tracks in a
23 different location. And then they changed their
24 position saying, you know, we would really like, we
25 think the best use of this item would be to extend it at

0505

1 that point. And we said okay, but we only have so much
2 money, and so we need to move forward with your
3 proposal, so we moved forward with the siding extension.

4 Q. So following up on their ability to say we
5 need to replace some storage tracks, could you use the
6 siding as it exists now, just length purposes only, for
7 Amtrak Cascades' purposes and schedule things,
8 understanding that some freight trains are longer and
9 can't use the existing siding, could you use this one in
10 Mount Vernon for meet and pass with just the upgrade you
11 have done and not phase 2?

12 A. It's used every day to do that today for
13 Amtrak Cascades. We use it today as a meet/pass
14 location.

15 Q. And so phase 2 simply allows longer freight
16 trains to meet and pass at this location as opposed to
17 others along the line?

18 A. Phase 2 will allow this siding to be used as
19 a meet/pass location for freight trains, for the longer
20 freight trains. It can be used for short freight trains
21 today.

22 Q. Do you know on the every day how many freight
23 trains generally meet and pass at this location now?

24 A. Well, I can tell you that every day today
25 four Amtrak trains meet here, they pass each other at

0506

1 the siding, two in the morning, two in the evening. As
2 for the number of freight trains it uses each day, I
3 don't have that information.

4 Q. So are the Amtrak trains simply meeting each
5 other, one going north, one going south?

6 A. Yes.

7 Q. Are they meeting any freight trains during
8 this time?

9 A. Not unless there's some unusual operating
10 circumstance, for example, one of the other Amtrak
11 trains has encountered a problem and a freight train
12 needs to get by. It's an unusual situation, but it can
13 happen, it's not totally unheard of.

14 Q. And so I have it in context then from Amtrak
15 time reduction, if the Commission grants the closure
16 request and allows this siding extension to end up with
17 a closure of the crossing, and I assume if the decision
18 is the other way maybe phase 2 gets rethought, I don't
19 know where you are in the process, if this is we're
20 doing it one way or the other, if it's granted, how many
21 minutes towards the 3 hour, 3 1/2 hour, 3 hour 55 minute
22 goal is this particular meet of freight trains going to
23 allow for that progress toward the intended final travel
24 time?

25 A. I take it, Your Honor, you're referring to

0507

1 our long-range plan?

2 Q. Correct.

3 A. In terms of our overall goals. There are a
4 number of projects that have to happen over the course
5 of the next 20 years to enable our long-term vision to
6 be accomplished, equipment, other capital improvements
7 in the Everett area, in the Seattle area, north of here,
8 in terms of other sidings that need to be extended as
9 well south of here, Stanwood is another siding that is
10 short. So in terms of reaching the travel time goals,
11 this is more of what we call a reliability, an
12 operational reliability goal. This will enable a
13 reliable service as opposed to necessarily a travel time
14 reduction. There are other opportunities to reduce
15 travel time, but this is more of an operational
16 consistency project.

17 Q. Has Department of Transportation, I think in
18 light of Mr. Jones' question looking at what you call
19 the system improvement and Mr. Jones characterized this
20 as a greater benefit to BNSF with its ability to store
21 for longer periods of time more cars and therefore
22 require because of the blocking of Hickox Road the
23 closure as requested, has Department of Transportation
24 considered whether or not its goals could still be met
25 if the crossing was kept open and BNSF was limited to

0508

1 the same storage conditions it has today and not be able
2 to store cars such as to block the Hickox Road existing
3 crossing?

4 A. We have looked at how this impacts the
5 overall network, and the problem with freight train
6 operations in terms of how they flow, this particular
7 network or this particular railroad line being single
8 track in nature means you need to pull off at a regular
9 basis, regular interval. We have had a regular program
10 of upgrading those sidings. Upgraded a siding at
11 English, which is south of here which is north of
12 Marysville, very similar situation to this where there
13 was a at-grade crossing at the end of the siding, and it
14 was petitioned to be closed as part of the siding
15 extension. Same safety rationale, same circumstances if
16 you will. And we thought it was safety was best served
17 by closing the at-grade crossing and redistributing
18 traffic throughout the network.

19 Now in this particular circumstance, could
20 this crossing be left open and in some fashion, let me
21 preface that in some fashion, and meet the needs of the
22 program and meet the needs of the community? I would
23 venture to say that perhaps there's a possibility for
24 that. I think safety would be best served if the
25 at-grade crossing was closed to regular vehicle traffic

0509

1 and that perhaps a locked gate type of situation where
2 there is a flood emergency could be opened, people
3 evacuated, emergency supplies brought in, would be
4 acceptable.

5 JUDGE TOREM: That's all the questions I have
6 for this witness, is there any need for redirect,
7 Mr. Lockwood?

8 MR. LOCKWOOD: Yeah, briefly, Your Honor.

9 JUDGE TOREM: Mr. Lockwood, can you use the
10 microphone for the purpose of the public.

11 MR. LOCKWOOD: Certainly.

12

13 R E D I R E C T E X A M I N A T I O N

14 BY MR. LOCKWOOD:

15 Q. Mr. Schultz, is it fair to say that you
16 relied on Mr. Norris to identify turning radii on the
17 alternate routes that traffic would be diverted to?

18 A. Yes.

19 Q. And is it fair to say that Mr. Norris at
20 least in part relied on community input to identify
21 potential problem areas?

22 MR. ROGERSON: Your Honor, objection, these
23 are leading questions, this is redirect.

24 JUDGE TOREM: I will sustain the spirit of
25 it, but I think he's just trying to build a foundation

0510

1 quickly to whatever the ultimate redirection is going to
2 be.

3 So, Mr. Lockwood, can you rephrase that.

4 MR. LOCKWOOD: Certainly, Your Honor.

5 BY MR. LOCKWOOD:

6 Q. Do you know how Mr. Norris gathered
7 information that he used for preparing his traffic
8 impact analysis?

9 A. Yes. Mr. Norris asked the County for their
10 traffic information, it's a standard, and the City for
11 their traffic count information, which is standard
12 procedure. They gather this data as a regular part of
13 their existence, and so they gathered -- got the traffic
14 count data, the roadway data, roadway width data, the
15 speed limit data, those sort of things that the County
16 is the caretaker of and gathered the information from
17 the County Commission on the roadway shape and
18 configuration at those locations as well.

19 Q. To your knowledge, did anyone express a
20 concern relating to the turning radius that a truck
21 would experience turning left off I-5 onto the 99
22 frontage road toward Stackpole?

23 A. In terms of you mean going north on Old 99
24 and making a left-hand turn onto I believe it's Conway
25 frontage road?

0511

1 If I may refer to the map, Your Honor?

2 JUDGE TOREM: Go ahead.

3 A. It would be south on Conway frontage road?

4 Q. My understanding of the concerns that were
5 expressed would arise exiting Highway 5 and then turning
6 left on 99 frontage going south toward Stackpole. There
7 has been some concern expressed that that radii would be
8 too tight and awkward for large trucks, and Mr. Jones
9 asked you whether you had taken that into consideration
10 or whether Mr. Norris had taken that into consideration.

11 JUDGE TOREM: I'm not sure if that's the same
12 intersection you're describing that Mr. Waltner I think
13 it was, is that the same one? Because I saw some
14 different shakes of the head from different ends of the
15 table.

16 Mr. Rogerson, are we talking about the same
17 one?

18 MR. ROGERSON: To be honest, Your Honor, I'm
19 a little confused as to what we're talking about. My
20 understanding of the testimony given at public comment
21 was that the I-5 turnoff off-ramp going towards Hickox
22 Road if you were to avail yourself of Hickox Road and
23 that Hickox Road closure was no longer available that to
24 turn south on 99 would require the large commercial
25 vehicles to go beyond the roadway, enter into pedestrian

0512

1 rights of way, take cones out.

2 JUDGE TOREM: Correct.

3 MR. ROGERSON: I think that's my
4 understanding.

5 JUDGE TOREM: I understand the nature of the
6 turning hazard was described, and I agree as you
7 described it now that it required going out of
8 prescribed lanes of travel, perhaps crossing over cones
9 or other barriers. Where exactly it was occurring, I
10 wasn't sure if it was at Hickox Road or Stackpole Road.
11 Mr. Jones, if you will to the best of your understanding
12 point this out so we can all be on the same page.

13 MR. JONES: This is the Hickox interchange
14 224. The travel going westbound over the Interstate 5
15 for the traveler who wants to go south involves a very
16 sharp curve here to a left-hand turn curving to the
17 left.

18 JUDGE TOREM: Okay, I think that's all I
19 needed to know, if it was at Hickox or at Stackpole, but
20 it's at Hickox going towards Stackpole to the south. So
21 that's the answer I needed, Mr. Jones, I don't think we
22 needed any further demonstration. But I can see from
23 the map and I will describe for the record that this is
24 not a normal 90 degree turn. This is something in the
25 nature of 120 degrees, and for longer vehicles take

0513

1 notice that this would be quite difficult to make the
2 full swing. That's all I needed, Mr. Jones, thanks.

3 So, Mr. Lockwood, the question I think is,
4 did anyone from the County or the City express any
5 concerns about what would be required for enforcing this
6 kind of a turn if the Hickox grade crossing was closed?

7 MR. LOCKWOOD: That is correct, Your Honor,
8 that's my question.

9 JUDGE TOREM: Mr. Schultz.

10 A. I'm not aware that anybody raised any issues
11 about that at the City or County.

12 BY MR. LOCKWOOD:

13 Q. And to your knowledge, Mr. Norris, did you
14 self identify that as a problem?

15 A. To my knowledge, I don't.

16 Q. If it turns out that is in fact a problem,
17 would the Department have any responsibility to address
18 it?

19 A. I believe we could work together with the
20 County to address that issue if it was deemed important,
21 an important safety issue.

22 Q. Do you know if the Department of
23 Transportation itself or members of your staff ever
24 turned down an invitation to address any local public
25 body with respect to concerns about this project?

0514

1 A. No, I don't believe we have ever turned down
2 an opportunity to talk about this project.

3 Q. Did you completely disregard any of their
4 concerns?

5 A. No, we would not completely disregard
6 anybody's concerns.

7 MR. LOCKWOOD: Thank you, Mr. Schultz.

8 JUDGE TOREM: Mr. Jones, any limited
9 recross-examination?

10 MR. JONES: No, Your Honor.

11 JUDGE TOREM: Mr. Thompson?

12 MR. THOMPSON: No, Your Honor.

13 JUDGE TOREM: All right, thank you,
14 Mr. Schultz, you can step down.

15 It's now 4:15, and I understand Mr. Love has
16 been here since about 3:30.

17 MR. ROGERSON: That's correct, he's present.
18 He will be here tomorrow.

19 MR. SCARP: Very brief, Your Honor.

20 JUDGE TOREM: I know it will be very brief, I
21 just want to inquire if anybody needs to take a break
22 before we put Mr. Love on.

23 All right, we're pressing on, so let's get
24 reconfigured for the exhibits for Mr. Love, they are
25 Exhibits 29 and 30, and I will ask Mr. Love to come up

0515

1 and take a seat at the witness stand for a moment.

2 MR. THOMPSON: Before we go on, I neglected
3 to offer Exhibit 127 for admission.

4 JUDGE TOREM: Yes, you did.

5 MR. THOMPSON: And I would like to do that
6 now.

7 JUDGE TOREM: All right, Exhibit 127 is being
8 offered at this time, are there any objections? Has
9 everybody received a copy of it for one? That was one
10 that just came up today, I was given two copies of it
11 and that was it, I will for demonstration purposes allow
12 Mr. Thompson to walk around with it while I get
13 Mr. Love's exhibits in front of me.

14 MR. SCARP: I'm sure we have no objections.

15 MR. ROGERSON: No objections from the City.

16 JUDGE TOREM: All right, no objection, so
17 Exhibit 127 is admitted.

18 JUDGE TOREM: Let me note as I talked to
19 Mr. Thompson earlier about this, I've got my working
20 copy of Exhibit 127 now, and these other additional
21 cross-exam exhibits will have to be filed eventually
22 including the one that the railway has prepared for me
23 as well, they will have to be not only given to me but
24 the ones that need to be filed electronically have to be
25 with the same procedures we did prior to the prehearing

0516

1 conference last month. So please don't neglect when
2 we're all done with this week's hearing to get those
3 turned in. If we need to set an end date so that works
4 better for you and your staff so that what date is the
5 drop-dead date, we can do that when we get around to it
6 Wednesday afternoon.

7 MR. ROGERSON: Just a point of clarification,
8 Your Honor, those exhibits that are admitted into
9 evidence will we need to further electronically file
10 with the UTC?

11 JUDGE TOREM: The new cross-examination
12 exhibits that were brought up for the very first time
13 today. Everything else I think has already been
14 discussed up to Exhibit 126, but for instance 127 didn't
15 exist on December 20th, the items that came in from the
16 Fire District on Friday evening clearly didn't exist
17 back in December, so those still need to be filed with
18 the Commission and have not, I don't think as of this
19 morning, been done. So I'm just saying don't forget to
20 do that. We may admit them in the record here, but they
21 won't be part of the Commission's electronic record
22 management system until we follow through. I'm not too
23 worried about the lag in time. Let me just say now that
24 we'll do that no later than February 1st, because that
25 will also cover any of the cross-exam exhibits for

0517

1 Mr. Liou or Mr. Zeinz when we take up their testimony
2 the week of January 28th in Seattle.

3 All right, Mr. Love, don't get too
4 comfortable, I need to swear you in.

5 (Witness MIKAEL LOVE was sworn.)

6 JUDGE TOREM: Mr. Rogerson is going to ask
7 you a few questions about your exhibits, do you happen
8 to have them in front of you?

9 THE WITNESS: I'm not familiar with the
10 numbers, but I've got my prefiled direct testimony.

11 JUDGE TOREM: Should be your prefiled
12 testimony and your resume'.

13 THE WITNESS: And my resume'.

14 JUDGE TOREM: We have numbered those as 29
15 and 30.

16 THE WITNESS: 30 is my resume'?

17 JUDGE TOREM: Correct.

18 Mr. Rogerson.

19 MR. ROGERSON: Thank you, Your Honor.

20

21 Whereupon,

22 MIKAEL LOVE,

23 having been first duly sworn, was called as a witness

24 herein and was examined and testified as follows:

25

0518

1 D I R E C T E X A M I N A T I O N

2 BY MR. ROGERSON:

3 Q. Mr. Love, can you please state your name and
4 spell your last name for the record.

5 A. It's Mikael Edward Love, L-O-V-E.

6 Q. And can you please tell the tribunal what
7 your occupation is?

8 A. I'm the Assistant Public Works Director at
9 the City of Mount Vernon.

10 Q. And, Mr. Love, in that capacity did you have
11 occasion to cause to be filed prefiled testimony on
12 November 5th, 2007, bearing your signature?

13 A. Yes.

14 Q. And is that identified as Exhibit Number 29?

15 A. I believe so.

16 Q. And did you sign on November 5th below the
17 caption that you declared this under the penalty of
18 perjury that the forgoing is true and correct?

19 A. Yes.

20 Q. And did you have occasion since that time to
21 review your prefiled testimony?

22 A. I have.

23 Q. And do you still stand by that statement that
24 all those answers in here remain true and correct
25 answers?

0519

1 A. Yes.

2 Q. Attached to your prefiled testimony is
3 Exhibit Number 30, and that exhibit is your resume'; is
4 that right?

5 A. That's correct.

6 Q. Have there been any significant changes,
7 modifications, additions to that that you would wish to
8 tell the tribunal?

9 A. No.

10 MR. ROGERSON: At this point, Your Honor, I
11 would offer into evidence Mr. Love's prefiled direct
12 testimony identified as Exhibit Number 29 and Mr. Love's
13 resume' identified as Exhibit 30.

14 JUDGE TOREM: All right, thank you.

15 Any objections?

16 MR. SCARP: None, Your Honor.

17 JUDGE TOREM: Seeing none, those are
18 admitted, 29 and 30.

19 My schedule says, Mr. Love, there's a couple
20 attorneys that want to cross-examine you, in fact, it's
21 only attorneys from Burlington Northern that are
22 scheduled. So this is part of the group of witnesses
23 you said would take a total of two hours, so I don't
24 know how long for Mr. Love.

25 MR. SCARP: Your Honor, I promised brevity,

0520

1 and I will do my utmost.

2 JUDGE TOREM: If you would use the
3 microphone, we have had members of the public express an
4 interest in hearing the questions and the responses, and
5 so just make use of the sound system we have set up for
6 today.

7 MR. SCARP: I would be happy to, Your Honor,
8 I'm usually asked to keep my voice down.

9 JUDGE TOREM: I'll let you know.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. SCARP:

13 Q. Good afternoon, Mr. Love, my name is Bradley
14 Scarp, and I represent BNSF, I have a couple of
15 questions for you. Are you aware, and if you are please
16 tell us, is it true that Hickox Road is not a designated
17 evacuation route for flood emergency?

18 A. I am not aware.

19 Q. You don't have knowledge one way or the
20 other?

21 A. I don't have knowledge one way or the other,
22 no.

23 Q. All right. Do you know whether Hickox Road
24 west of the railroad crossing is a lower elevation than
25 Dike Road further to the west?

0521

1 A. I don't have that information.

2 Q. All right. Do you know, is Hickox Road west
3 of the railroad tracks part of Mount Vernon?

4 A. I would have to refer to a city map to make
5 that determination. I'm not sure if we've got one
6 available, but I could -- based on a city map, I could
7 make that determination.

8 Q. As you sit here today, do you know?

9 A. No.

10 Q. All right. Do you have any data on the last
11 time when Hickox Road was used for flood fighting
12 operations? I think that's the term you use, isn't it?

13 A. Yeah, flood fight operation.

14 Q. Do you have any data on when the last time
15 Hickox Road was used for that purpose?

16 A. Specific to west of the railroad tracks?

17 Q. Correct.

18 A. Okay.

19 Q. And that's a very valid point. I think your
20 prefiled testimony indicated that the quarry from which
21 most of the riprap comes from that's used for that
22 purpose does come down the east side of Hickox Road east
23 of Interstate 5; is that correct?

24 A. That's correct.

25 Q. I'm talking about Hickox Road west of I-5,

0522

1 when was the last time that was used to your knowledge
2 for flood fight operations?

3 A. I don't have that information.

4 Q. Do you know, did the mayor of Mount Vernon
5 declare a civil emergency for flooding in November of
6 2006?

7 A. November of 2006, yes, he did.

8 Q. Okay. It's your contention, Mr. Love, that
9 Hickox Road is important for flood fighting and
10 potential emergency evacuation if the dike breaks west
11 of that area?

12 A. That's correct.

13 Q. All right. And currently you would
14 anticipate that Hickox Crossing where it crosses the
15 railroad tracks is used for that purpose now, is that
16 correct, or could be used?

17 A. Could be used for that purpose, that's
18 correct.

19 Q. All right. Mr. Love, if there was a locked
20 gate for other purposes that could be opened by the
21 public authorities for use in emergency for flood
22 fighting or evacuation, would that represent the same
23 status that the crossing is used for now for those two
24 purposes?

25 A. I don't believe it would be a same status,

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1 but if you could open it under an emergency situation,
2 if it was opened, I would say that that would be an
3 equal status to where it is today.

4 Q. Okay.

5 A. However, finding the key sometimes is a
6 challenge in an emergency situation.

7 Q. All right. And when you're talking about
8 flood fighting operations, that typically takes some
9 manning up or some organization?

10 A. That's correct, large number of volunteers,
11 large number of City staff, County staff, Diking
12 District, Army Corps of Engineers, it's quite extensive.

13 MR. SCARP: Those are all the questions I
14 have, thank you, Mr. Love.

15 JUDGE TOREM: Mr. Rogerson, any redirect?

16 MR. ROGERSON: Briefly, Your Honor.

17

18 R E D I R E C T E X A M I N A T I O N

19 BY MR. ROGERSON:

20 Q. Mr. Love, in terms of your capacity for the
21 City of Mount Vernon in the event of an emergency, could
22 you describe briefly the role you play?

23 A. The current role that I have been assigned to
24 is the operations sector chief. Essentially the
25 operations sector chief is responsible for partial

0524

1 planning of the flood fight operation, most specifically
2 for the downtown flood fight effort and the placement of
3 sand bags to whatever level of effort we need to deploy
4 at that time.

5 Q. And are there other city officials who are
6 part of that team that you just described?

7 A. Yeah, there's a complete structure of our
8 emergency response team starting at the top with our
9 assistant fire chief. I'm one of the sector --

10 Q. I'm sorry, can you identify the name of the
11 assistant fire chief?

12 A. Glenn Brautaset.

13 Q. Please continue.

14 A. Starting with Glenn Brautaset, I would be
15 working beneath Glenn on the operations side. There's
16 also multiple other sectors that are in place at that
17 time, folks that get the materials that we need, folks
18 that coordinate with the media, so there's an extensive
19 branch that's developed for the flood fight operations.

20 Q. And when it comes to time to declare a civil
21 emergency and evacuate a certain area, who generally
22 would make the decision and designate an emergency
23 route, evacuation route?

24 A. If at that time we needed to develop an
25 emergency route, I would assume that that decision would

0525

1 be made by the -- there's kind of a governing board that
2 declares the emergency, I would assume the mayor, diking
3 districts, the police, public works director Esco Bell,
4 would all convene and determine the appropriate route at
5 that time.

6 Q. And, Mr. Love, why is it important to have
7 flexibility in determining a potential evacuation route
8 in the event of a civil emergency pertaining to a flood
9 of record?

10 A. A flood of record is very unpredictable. We
11 don't necessarily know or we can't predict where
12 potentially the dike could fail. There's been instances
13 where it's nearly failed near the Burlington Northern
14 crossing at the Skagit River, there's been instances in
15 the past where it's failed near Conway, so it's just
16 very unpredictable.

17 Q. And should the event Hickox Crossing is
18 closed, how does that affect your ability to plan for an
19 evacuation?

20 A. It would limit the routes in which we could
21 use.

22 MR. ROGERSON: Thank you, nothing further.

23 JUDGE TOREM: Mr. Scarp, anything further?

24 MR. SCARP: I have nothing, Your Honor.

25 JUDGE TOREM: Any other counsel find anything

0526

1 they needed to ask this witness?

2 All right, seeing none, thank you, Mr. Love.

3 That's our last witness for today. It's
4 almost 4:30, so let's just make sure we're all on the
5 same page for tomorrow. We're planning to have
6 Mr. Peterson on at 9:00 in the morning, is that still
7 going to work, Mr. Scarp?

8 MR. SCARP: I anticipate yes.

9 JUDGE TOREM: All right. And then
10 Ms. McIntyre and Mr. Gordon will be on at 10:30 and
11 11:30 respectively, and hopefully we'll have a fuller
12 lunch break than today at 12:30 for an hour. And then
13 when we come back in the afternoon, Mr. Lockwood, you're
14 going to have Mr. Norris talk about the traffic study at
15 1:30 then?

16 MR. LOCKWOOD: That's correct, Your Honor.

17 JUDGE TOREM: All right. And Mr. Norris's
18 testimony, we were looking at an hour of questions from
19 the City and an hour and a quarter from Commission
20 Staff, so that would put us if we actually get on the
21 record at 1:30 until 3:45, and we're asking folks for
22 tomorrow night's public hearing at 5:30 to come,
23 Mr. Rogerson has asked the facilities to come at about
24 4:00 and between 4:00 and 5:00 take the tables out of
25 the back of the room and replace them with more chairs

0527

1 so we can accommodate more of the commenting public or
2 just the inquiring minds that want to know what we're up
3 to in here.

4 So I'm going to ask folks in advance to make
5 sure in the afternoon we don't run over more than the 15
6 minutes allotted, or we may be competing with the noise
7 in the back of the room so we can serve both the record
8 and the need for the public hearing tomorrow evening.
9 So keep that in mind if there's anything between
10 Commission Staff and the City or, Mr. Jones, I'm not
11 sure if you're asking the questions tomorrow as well, if
12 you can coordinate between now and 1:30 tomorrow to see
13 if there are common areas of inquiry. If we can
14 compress that a little bit or avoid any duplication in
15 advance, that would be great.

16 We also have a couple of other issues that
17 are being carried over to tomorrow just for
18 housekeeping, the driving route, proposed Exhibit Number
19 150, is going to be copied and made available to me
20 hopefully tomorrow morning, but if not, I would like to
21 have it by lunch. Just in case we have an hour and a
22 half for lunch and the weather is nice, I might try to
23 take that drive tomorrow rather than force it to
24 Thursday and wait to see what the weather is then. So I
25 will ask Mr. Thompson to see if he can have the most

0528

1 up-to-date driving directions with the Commission's I
2 think you called them little hints to avoid wrong turns
3 so I might actually make it back by the afternoon
4 available by lunch time tomorrow.

5 And then, Mr. Scarp, you gestured at me with
6 some exhibits earlier, I wasn't sure if they were 128
7 through 135 or 136 and 137.

8 MR. SCARP: Your Honor, they are 128 through
9 135, but I think what we need to do is now that we have
10 them condensed, we'll make some copies so that counsel
11 can all see. Mr. Rogerson asked that he at least be
12 apprised of what it is we are offering, I think that's a
13 fair request.

14 JUDGE TOREM: Sounds fair to me, all right,
15 so we're actually going to inform each other of what
16 we're offering, sounds good.

17 So let's have those exhibits if possible
18 ready for tomorrow. Now again as far as filing them
19 with the Commission, I don't expect anybody to head back
20 to their office and have to E-mail them there this week.
21 There's no reason to do that. As long as it's done by
22 February 1st, the same deadline we gave the public to
23 file their comments, I don't see any reason it has to be
24 done much ahead of that. That will allow you also to
25 come up with any other cross-exam exhibits for Mr. Liou

0529

1 and Mr. Zeinz so we won't have to set a new deadline for
2 that. And finally, the exact date of when we're going
3 to have Mr. Liou and Mr. Zeinz available between the
4 28th of January and the 1st of February, preferably not
5 on the 1st of February itself, that's a Friday, then if
6 we can address that tomorrow, great, if not, let's try
7 to have that on the record before the close of business
8 on Wednesday and have that decided. Then I can issue a
9 notice later this week laying out all these other dates
10 we're coming up with.

11 Any other housekeeping items we need to take
12 care of before we adjourn for today?

13 All right, then seeing none, we are adjourned
14 at 4:32, see you tomorrow morning.

15 (Hearing adjourned at 4:32 p.m.)

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