

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 In the Matter of the Petition)
of the WASHINGTON STATE) DOCKET NO. TR-940309
3 DEPARTMENT OF TRANSPORTATION,) VOLUME 2
BURLINGTON NORTHERN RAILROAD) Pages 259 - 464
4 COMPANY, and THE NATIONAL)
RAILROAD PASSENGER CORPORATION)
5 for Modification of Order)
Regulating the Speed of)
6 Passenger Trains in)
Marysville, Washington.)
7 -----)

8 A hearing in the above matter was held
9 at 9:00 a.m. on January 20, 1995, at City Council
10 Chambers, 1635 Grove Street, Marysville, Washington
11 before Administrative Law Judge ALICE HAENLE.

RECEIVED
JAN 27 10:38 AM '95
STATE OF WASH
UTIL & TRANSP
COMMISSION

12
13 The parties were present as follows:

14 WASHINGTON UTILITIES AND TRANSPORTATION
15 COMMISSION STAFF, by ANN RENDAHL, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
16 Olympia, Washington 98504.

17 BURLINGTON NORTHERN RAILROAD COMPANY, by
18 REXANNE GIBSON, Attorney at Law, 110 - 110th Avenue NE,
Suite 607, Bellevue, Washington 98004.

19 WASHINGTON STATE DEPARTMENT OF
20 TRANSPORTATION, by MARY E. FAIRHURST, Assistant
Attorney General, P.O. Box 40113, Olympia, Washington
98504-0113.

21 CITY OF MARYSVILLE, by THOM GRAAFSTRA and
22 GRANT WEED, Attorneys at Law, 21 Avenue A, Snohomish,
Washington 98290.

23

24 Cheryl Macdonald, CSR
25 Court Reporter

ORIGINAL



		I N D E X				
	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
1						
2	PLOEGER	263	288	299	302	
	HIRASHIMA	306	327	345		
3	HARDER	351				
		411	424	433	435	442
4	CAMPBELL	363				
	MITSULES	369	374			
5	LEGARE	376	379			
	YOUNG	383	389,	393	394	
6	NATTERSTAD	396	400			
	MYERS	404	406			
7	SCOTT	445	456	462	463	

8

	EXHIBIT	MARKED	ADMITTED
	17	266	268
10	18	306	309
	19	306	313
11	20	306	319
	21	350	351
12	22	350	351
	23	350	351
13	24	350	351
	25	350	451
14	26	350	351

15

16

17

18

19

20

21

22

23

24

25

CONTINENTAL REPORTING SERVICE
SEATTLE, WA 206-624-DEPS (3377)

P R O C E E D I N G S

1
2 JUDGE HAENLE: The hearing will come to
3 order. This is a second day of hearing in docket No.
4 TR-940309 which is the petition for change in the
5 order governing train speed limits in the city of
6 Marysville. This second day of hearing is taking
7 place on January 20, 1995 at Marysville. Appearances
8 today are basically the same as they were yesterday.
9 If you just want to give your name and your client's
10 name just to show who will be doing the questioning.
11 Starting at this end.

12 MS. FAIRHURST: Mary Fairhurst for
13 Washington State Department of Transportation.

14 MS. GIBSON: Rexanne Gibson for Burlington
15 Northern.

16 MR. GRAAFSTRA: Tom Graafstra for the city
17 of Marysville.

18 MS. RENDAHL: Ann Rendahl representing
19 Commission staff.

20 JUDGE HAENLE: I told you before the
21 hearing that I had realized after we closed yesterday
22 that I had been treating the petitioners as a unit and
23 asking them if they had cross-examination questions of
24 the city witness. That was an error on my part and I
25 should have asked the Department of Transportation

1 separately whether they had cross-examination
2 questions. I will definitely do it that way this
3 morning, and I hope that -- I didn't mean any offense
4 by it. Just was so used to treating you as a unit
5 when you gave your witnesses that it was my mistake.
6 I apologize.

7 I also, left over from yesterday, had asked
8 the Department of Transportation for a cite to the
9 Intermodal Service Transportation Efficiency Act.
10 They have provided that and the citation is 23 USC
11 Section 104(d)(2) is what they gave me, so I
12 appreciate your looking that up and providing it.

13 Now, is there anything else of a procedural
14 nature we need to discuss this morning? Anything left
15 over?

16 MS. GIBSON: I have nothing.

17 JUDGE HAENLE: It's my understanding that
18 there are three more city witnesses and then two
19 Commission witnesses. Is that right, Mr. Graafstra?

20 MR. GRAAFSTRA: That's correct from the
21 city standpoint.

22 JUDGE HAENLE: Ms. Rendahl?

23 MS. RENDAHL: Yes, Your Honor.

24 JUDGE HAENLE: I remind you that we have
25 1:00 scheduled this afternoon for any additional

1 public witnesses that there may be. If there is
2 anyone in the audience who is a member of the public
3 who wants to give testimony, if you would print your
4 name and address on the sign-in sheet next to the door
5 there, we will be taking that testimony all together
6 at 1:00.

7 Would you call your first witness then for
8 the morning, Mr. Graafstra.

9 MR. GRAAFSTRA: City's first witness today
10 will be Mr. Ken Ploeger.

11 JUDGE HAENLE: Remember to speak directly
12 into the microphone to be sure it comes across.

13 Whereupon,

14 KENNETH PLOEGER,
15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. GRAAFSTRA:

20 Q. Mr. Ploeger, would you state your full name
21 spelling both your first and last names for the court
22 reporter?

23 A. Kenneth Ploeger, K E N N E T H P L O E G E R.

24 Q. Who is your employer?

25 A. City of Marysville.

1 Q. What is your occupation with the city
2 of Marysville?

3 A. I am the traffic signal technician and sign
4 technician for the city.

5 Q. And it seems to me that the description of
6 your occupation almost says what your duties are, but
7 perhaps you can tell us generally what your duties
8 are.

9 A. My duties are maintenance and operation of
10 the traffic signals and signs within the city which
11 are not on state highway maintained by the state, so
12 the traffic signals is everything north of Fourth and
13 signs throughout the city.

14 Q. Now, can you tell me what your training is
15 to become the traffic and signal technician for the
16 city of Marysville?

17 A. In order to become a signal technician you
18 have to take courses. I took courses at North Seattle
19 Community College when they were offered there by the
20 International Municipal Signal Association and passed
21 the tests at various levels and times, and I am a
22 level 1 sign tech and have passed level 1 signal tech,
23 level 2 signal technician, electrical supplement, the
24 electronic supplemental and the microprocessor.

25 Q. Now, as part of your duties in setting

1 traffic signals and devices, are you responsible then
2 for making determinations as to appropriate signals
3 and devices on roadways to set safety?

4 A. Basically I make my recommendations to the
5 engineer.

6 Q. But you're the person who makes the initial
7 recommendation as to what signaling devices should be
8 there to satisfy safety requirements?

9 A. Yes.

10 Q. And also isn't there something -- the model
11 or manual of uniform traffic?

12 A. The Federal Highway Administration has a
13 manual called the Manual on Uniform Traffic Control
14 Devices which everybody -- all states are required to
15 adhere to, and basically they get together on the
16 international, so the Manual on Uniform Traffic
17 Control Devices fairly well mirrors international
18 signs and signals.

19 Q. Now, within the city of Marysville, are
20 there a certain number of streets that cross the
21 railroads; is that correct?

22 A. Yes.

23 Q. Did you go out within the past week and
24 take photographs of many of those crossings?

25 A. Yes, I did.

1 Q. Is that the collection of photographs that
2 we have offered or we've had marked this morning -- I
3 guess we'll call it that?

4 JUDGE HAENLE: You had distributed the
5 documents. I didn't know which witness they were in
6 connection with so I hadn't marked them yet. My
7 suggestion is we mark -- what you've got is a stack
8 of photographs and a two-page document which is
9 entitled List of Photos. Let me suggest we make that
10 all one exhibit. That is, it would be Exhibit No. 17,
11 and when you refer to the photos, if you refer to them
12 as Exhibit 17 photo No. 1 or Exhibit 17 photo No. 2,
13 and I notice that you have already marked on the back
14 what the photo number is, which is extremely helpful.
15 So we'll make this Exhibit 17 for identification then.

16 (Marked Exhibit 17.)

17 Q. I'm going to hand you a copy of Exhibit 17.
18 Would you take a look to make sure that all of the
19 photos that are listed on the front list are there?

20 A. They're all here. Photo No. 11 is crossed
21 out because it's not on the slides or the photo.

22 Q. Did you take those photos?

23 A. Yes, I did.

24 Q. And over what time frame did you take those
25 photos?

1 A. Tuesday.

2 Q. Tuesday of this week?

3 A. This week.

4 Q. And as to each of the photos that are in
5 Exhibit 17, are they an accurate depiction of the
6 scene that is shown on the photo?

7 A. Yes, they are.

8 Q. You didn't do anything funny with the
9 camera, change lenses or do anything like that?

10 A. They were all taken with the same camera,
11 the same lens.

12 MR. GRAAFSTRA: I would offer Exhibit 17.

13 JUDGE HAENLE: Is that Tuesday the 17th or
14 Tuesday the 12th? This week or last week?

15 THE WITNESS: This week.

16 JUDGE HAENLE: The 17th. Is there any
17 objection to the entry of the documents, Ms.
18 Fairhurst?

19 MS. FAIRHURST: No, Your Honor.

20 JUDGE HAENLE: Ms. Gibson?

21 MS. GIBSON: No.

22 JUDGE HAENLE: Ms. Rendahl?

23 MS. RENDAHL: No, Your Honor.

24 JUDGE HAENLE: Exhibit 17 then will be
25 entered into the record.

1 (Admitted Exhibit 17.)

2 Q. Now, I understand that you have slide
3 reproductions of those photos as well?

4 A. Yes.

5 Q. Would you come on over here and get the
6 slide projector set up so that you can use the larger
7 version of the photos in your testimony.

8 Mr. Ploeger, will you show photo No. 1?

9 A. This is photo No. 1. This is the --

10 Q. Let me ask you a question about that. Why
11 did you take that photo?

12 A. Well, this is 136th Street interchange,
13 which used to be -- the contract has already been let
14 to redo this intersection. It was engineered by the
15 county about two to three years ago and with the Navy
16 coming in, 136th Street is being widened and we had to
17 redo the intersection and put a signal there. If you
18 notice at the bottom part of the picture where the
19 stop bar is, the distance between the stop bar and the
20 railroad tracks you can get one, maybe two, cars at
21 the most. If you got a pickup truck you're only going
22 to get one between the tracks and State Street. It's
23 in very close proximity to it. In reality there's not
24 enough room for putting a crosswalk or anything else
25 in there.

1 Q. Did you say there's storage really for only
2 one car to sit there?

3 A. There's only room for one.

4 Q. From your standpoint is there any signaling
5 or any other activities you can do elsewhere to assist
6 in creating a safer setting at that location?

7 A. No. The physical proximity of State Street
8 and the railroad, basically, the new signal is doing
9 everything we can with it and there's just nowhere
10 else to go with it.

11 Q. Based upon your background in setting
12 traffic signals, do you consider the setting that is
13 created by that location a safe setting?

14 A. From the standpoint of vehicles, no,
15 there's not enough room. Your clearance -- the
16 clearance there is just too close to be able to put
17 gates.

18 If I go to the next photo you will see the
19 gates on the north side. This we're looking at it
20 from -- we are on the east side of State Street and
21 there's no room to turn and put a car, to get a car
22 off of State Street before the gates. You're blocking
23 traffic north and south as soon as the gates -- as
24 soon as the gates come down. We're attempting to
25 alleviate that by widening the road there, but you're

1 still not going to have much storage.

2 Q. Would you move to photo No. 3?

3 A. (Complying).

4 Q. What is photo No. 3?

5 A. This depicts 128th Street -- or 131st
6 Street overpass where you go over the tracks. The
7 distance from the road to the edge of the track, not
8 where the stop sign is but the physical track itself,
9 is 43 feet. You will notice that the track -- and you
10 will see this all the way through, physically on the
11 private crossings your track is elevated, and you can
12 have all kind of sight distance up and down the
13 tracks, but if you're on the back side of the track
14 you cannot see the traffic on State Street. There's
15 commercial businesses back there. That's a commercial
16 area. The truck pulls up, he comes up over the top of
17 the railroad tracks in order to see north or south on
18 State Street. If it's a 45-foot truck he better hope
19 no train comes along, and as far as the time goes, he
20 can see down to 100th and with a 25-mile-an hour train
21 he has time to get out into traffic. Even if traffic
22 is heavy, he's got some time there.

23 This is one of the areas where the railroad
24 wants to go to 79 mile an hour, and if they go to 79
25 mile an hour, I haven't calculated how long it takes a

1 train to go 20 blocks at 79 mile an hour, but if
2 there's a truck there he's going to be sitting on the
3 tracks and he's going to have to take his choice, get
4 hit by traffic or get hit by a train.

5 Q. Moving on to the next photo. What location
6 is that?

7 A. This is 128th Street.

8 Q. Is that a public or a private crossing?

9 A. That is a private crossing. This is a
10 crossing for Northwest Composites, and I believe
11 Pacific Grinding Wheel is in there. There's a lot of
12 truck traffic crosses there for those two businesses
13 each day, and the distance from the tracks to the
14 roadway is 41 feet.

15 Q. Are your concerns about this location the
16 same as what you expressed about the previous
17 location?

18 A. Yes, they are.

19 Q. Moving on to the next photo.

20 A. This is 124th Street which is also a
21 private crossing.

22 Q. Now, this crossing appears to have some
23 signals and lights on it that the lower locations do
24 not?

25 A. That's correct. This crossing has gates.

1 The gates are 39 feet from the road.

2 Q. Do you know what the traffic on the west
3 side of the railroad is?

4 A. There's industrial complex back there with
5 about four or five different businesses in it, and
6 it's all truck traffic.

7 Q. Now, you were concerned about the safety of
8 the previous two crossings. Are you concerned about
9 the safety for this crossing?

10 A. You've got the same problem here. There's
11 just not enough physical distance between the railroad
12 and State Street to store a truck, and actually no
13 matter what they do with it you're going to have the
14 same problem.

15 Q. And on the west side of the railroad again
16 you have the problem of the change in elevation?

17 A. You have the same change in elevation
18 problem that you have elsewhere. You can't see State
19 Street from the far side of the track.

20 Q. Moving on to the next photo. What's that
21 location?

22 A. That is 124th Street -- or 122nd Street.
23 Excuse me. This is a public road and it has gates and
24 lights. The problem here is the same as the other
25 one. There's 37 feet from the gates to the edge of

1 State Street. You can't see from the back side.
2 You've got the same problems you've got on the other
3 crossings except this one you would have more warning
4 due to signals and gates.

5 Q. Would you go to the next one, please. What
6 location does this photo depict?

7 A. This photo is 116th. This is looking east
8 on 116th. There is, right behind you, a block, block
9 and a half, is I-5 and this is one of the major
10 corridors where you can get onto I-5. The problem we
11 have here, as you will see in a later photograph, is
12 storage. You get quite a bit of traffic and with
13 the Navy coming in, 136th, the traffic is going up
14 there tremendously. The intersection, you get one
15 truck blocking an intersection and all the clearance
16 in the world isn't going to do you any good because
17 you get a gridlock there, and it takes time to clear
18 that out.

19 Q. Would you go on to the next photo. What
20 location is that photo?

21 A. This is 104th Street crossing. 104th
22 Street crossing has gates. It has lights, and to the
23 stop bar from the gates you have 77 feet. This gives
24 you basically storage for roughly three cars. In this
25 one you move State Street you have more distance.

1 This would be an absolute minimum.

2 Q. So this one is slightly better than the
3 others?

4 A. Yes.

5 Q. Do you consider it a safe location?

6 MS. GIBSON: Your Honor, I'm going to
7 object to this witness's ability to express an opinion
8 as to the safety of a location. He's a signal and
9 sign technician. He's not an engineer, traffic
10 engineer. He's not an accident reconstructionist. I
11 think it's outside his area of expertise.

12 JUDGE HAENLE: Mr. Graafstra.

13 MR. GRAAFSTRA: Your Honor, I asked him in
14 direct questioning before whether as part of his
15 responsibilities he was responsible for setting
16 traffic signals and determining the safety and making
17 recommendations for the setting of signals, taking
18 into account safety. His background is in traffic
19 safety and setting appropriate signals. He has the
20 credentials at this point in time to express an
21 opinion. He's already expressed an opinion on that
22 subject three or four times without objection. It
23 seems to me it's also a little late.

24 MS. GIBSON: Your Honor, I will then join
25 in my objection a motion to strike his responses to

1 previous questions where an opinion was given as to
2 general safety of the railroad crossings.

3 JUDGE HAENLE: It was my understanding the
4 witness was testifying was it safe in terms of was the
5 signage and signaling all that it could be. Was there
6 anything else that could be done. Did I
7 misunderstand?

8 MR. GRAAFSTRA: He was testifying to that
9 and to the subject of whether there's anything they
10 can do to create more storage or location for
11 automobile traffic in that area. That's his duties.

12 JUDGE HAENLE: That's a different question
13 than the final conclusion question of is this a safe
14 crossing.

15 MR. GRAAFSTRA: I will withdraw that
16 question if that's the objection.

17 Q. From the standpoint of the signage, is this
18 a safe setting?

19 A. Yes.

20 Q. It is?

21 A. Yes.

22 Q. From the standpoint of the automobiles
23 storage at this place there, is it safe?

24 A. No.

25 Q. Moving on to the next photo. What location

1 is this?

2 A. This is the 92nd Street crossing. As you
3 can see, like most of the private crossings you
4 cannot see from one side to the other. You have a
5 very limited width here. There is going to be a
6 traffic signal going in at this location. I believe
7 February is when the contract will be let for putting
8 a signal in here. There is no signage as far as going
9 over the tracks. There's signage from the other side
10 but there's no signage on this side.

11 Q. Does the city intend to put signage there?

12 A. No.

13 Q. Is signage in the right-of-way so it's not
14 the city's responsibility?

15 A. Yes. It is going to remain a private
16 crossing. The city is not going to staff the
17 crossing.

18 Q. Moving on --

19 JUDGE HAENLE: Before you move on, could
20 you tell me, you said you would be putting in some
21 type of signal. What type of signal and where would
22 it be placed?

23 THE WITNESS: The signal that's going in is
24 basically a three-way signal for a T intersection, and
25 to accommodate the tuxedo business and Pilchuck

1 Rentals there is going to be a left turn going into
2 Tuxedo shop and there will be a left-turn lane so
3 that you can turn onto the private crossing, but it
4 is remaining a private crossing. It is not becoming a
5 city street.

6 JUDGE HAENLE: When you say signals for a T
7 crossing, is this flashing signals? a stoplight?

8 THE WITNESS: No. It's a green, amber,
9 red.

10 JUDGE HAENLE: Regular what I consider
11 stoplight?

12 THE WITNESS: Yes.

13 JUDGE HAENLE: Go ahead, please.

14 Q. Mr. Ploeger, do you know how far back the
15 buildings are at that location from the railroad
16 track?

17 A. No, I don't. I would have to guess. I
18 would say probably 30 to 35 feet. There's just enough
19 room between the railroad tracks -- there's a dirt
20 road that goes through there and right to the tracks.

21 Q. When you were there taking the photo, do
22 you know at what point in time as you were traversing
23 up that road you could see traffic going up or down
24 the tracks?

25 A. Traffic to the south you could see if

1 you were brought within about, oh, probably 25 to 30
2 feet of the tracks. Traffic to the north you had to
3 get past the building, and the front of your vehicle
4 would probably be within 15 to 18 feet of the tracks.

5 Q. Would you go on to the next photo, please.
6 What location is this?

7 A. This is 88th Street. This intersection is
8 one that is going to be completely remodeled with the
9 I-5 interchange coming through. At the present time
10 you can see the problem trying to widen the road. See
11 the tombstones on the right. There's also tombstones
12 on the left, and they're going to widen the other side
13 of the tracks to five-way, and here you have
14 practically no storage whatsoever nor coming
15 southbound to turn left to go over the tracks. Even
16 with the new signals the gates are going to be right
17 at State Street, so there's no storage whatsoever for
18 turning so as soon as those gates go down you're
19 blocking the southbound State Street.

20 Q. Move on to the next photo, please. What
21 location is that?

22 A. This is 83rd.

23 Q. Is that a private crossing?

24 A. This is a private crossing. Here again you
25 have the same problem you have on the other one. You

1 can't see from the back of the road what the traffic
2 is on State Street and you have 36 feet from the track
3 itself to the traffic face on the curve. The 84th
4 Street and 83rd Street crossings are identical. There
5 is a machine shop back there. You've got truck
6 traffic crossings same as you did up above and there's
7 just nowhere to store a truck. The tracks and State
8 Street are so close together that you got problems.
9 The other thing is the railroad when they put their
10 permit signs in in downtown Marysville, their permit
11 signs and their stop signs, the Manual on Uniform
12 Traffic Control Devices say a stop sign is red with
13 white letters. As I think the attorneys will agree,
14 if we put up a black and white stop sign and somebody
15 went through it and got hit, the city would be paying
16 a fortune.

17 Q. The stop sign there does not satisfy the
18 manual?

19 A. No.

20 Q. Move on to the next location, please. What
21 location is that?

22 A. This is 80th Street and State Street, and
23 this shows -- this is one of the main corridors where
24 you can get across the tracks and go on down Cedar
25 Street to get to I-5. The Manual On Uniform Traffic

1 Control Devices says that on either side of the
2 railroad tracks you're supposed to have in the
3 pavement a stop bar, a big cross that says Railroad
4 and another bar. There isn't enough room to put them
5 there. They're too close to the main road. Once the
6 gates are down you have no storage. The storage to
7 get off of the tracks, here again, is congested.
8 You'll see there's one car in front of the truck
9 coming eastbound, and east up on the tracks.

10 Q. Move to the next photo, please. What
11 location is that?

12 A. This is Grove Street.

13 Q. Is that the same street this building is
14 located on?

15 A. Yes. This is heading west here, go through
16 the traffic signal and you're there.

17 Q. Is that a public or private?

18 A. This is a public crossing. It has
19 flashers, it has gates. In the later photo -- you
20 will see there's one car coming across, but here
21 again, you can see part of the traffic here. The
22 light, the height is only about four feet, so you
23 can see over this, but we'll show you in later
24 photographs some interesting things about this
25 intersection.

1 Q. Move to the next photo.

2 A. This is Eighth Street.

3 Q. Is that a public or private?

4 A. This is a public crossing. Basically
5 there's tracks there that as far as I know aren't
6 being used but you have enough storage on both sides
7 here.

8 Q. Move to the next photo.

9 JUDGE HAENLE: What did you mean by rough,
10 sir?

11 THE WITNESS: The maintenance of the area
12 between the tracks, you definitely don't want to hit
13 them 25 mile an hour.

14 Q. What location is this?

15 A. This is Fourth Street. This is out
16 standing on the east side of State Street. I took
17 this picture heading looking west, and the reason I
18 backed up so far out of this intersection was in
19 the afternoon, the traffic coming off the freeway
20 towards the light, which you see the headlights there
21 is back all the way up on the freeway, the traffic
22 heading west is backed up north and south on State
23 Street and also east as you come in. You have a lot
24 of people that if they're waiting to make a left turn
25 or right turn to get out they pull out in the middle

1 of the intersection. You're not supposed to. The
2 police go down there and give them tickets. They do
3 it anyway. That intersection winds up in gridlock
4 probably three or four times an hour in the morning
5 and in the afternoon. Green clearance on the railroad
6 doesn't mean anything if you can't move. I'm not
7 saying it's the railroad's fault that you can't move
8 but what I'm saying is you're going to have vehicles
9 sitting on the railroad and it is a tremendous
10 problem.

11 Q. Move to the next photo. What location is
12 that?

13 A. This is First and State. This intersection
14 hopefully is going to be remodeled or reworked in some
15 manner with the new opening of the route coming under
16 the freeway. At the present time on the west side of
17 the intersection is Cedar Street. If you see the blue
18 building on the right, Cedar Street is between the
19 blue building and the railroad tracks. The distance
20 between the street face on the curb and the main line
21 track itself is 12 feet. The gate that you see on the
22 left side which comes down, comes down into the middle
23 of the street, lines up with the middle of the street
24 on Cedar. There is realistically no way, the streets
25 are so close there's no way to put a gate there. If

1 they're going to put in increased train speeds I don't
2 know -- and I'm not testifying this as an expert --
3 I'm testifying I don't want to be stopping 12 feet
4 away from the tracks on a 50-mile-an-hour train when
5 even a railroad puts their gates 16 feet off the
6 tracks.

7 Q. Go to the next photo.

8 A. These photos were taken at -- this
9 particular photo was at 128th.

10 Q. What is it?

11 A. This is a private track, and I really don't
12 know who maintains private crossings, whether it's the
13 people or whether it's the railroad, but as these
14 and some of the other ones will show you, the type of
15 nuts that they use on the bolts that they have there
16 are very easy to cut tires on. Whoever repaired the
17 track, when they repaired it, instead of putting a
18 full size board in they just stuck something in that
19 would fit. If you stand on the board just to the left
20 of the right rail, it will spring about a good three
21 inches just with my weight, and I admit my weight is
22 considerable, but my weight is not as much as a truck,
23 I hope.

24 Q. Move to the next photo.

25 A. When they were driving the spikes in either

1 they hit rock or somebody got tired.

2 Q. And those are tire hazards?

3 A. Yes.

4 Q. Next photo.

5 A. This is another example. This is the same
6 intersection. This is a bolt that's worked out. This
7 is on the east rail, it's a bolt that's worked out of
8 the joint.

9 Q. Move to the next photo.

10 A. When I said you would see more of Grove,
11 both of the north and south side of Grove, which is
12 elevated as you saw from the other photos, it appears
13 -- you got experts here, they can tell you, but it
14 appears that for about 15 feet, 20 feet either side of
15 the intersection the ties are pumping water up,
16 they're moving up and down, they're bringing mud up
17 into the intersection or into the rails itself, and as
18 I say, I'm not an expert but it doesn't happen at all
19 the other places but it really makes me wonder why.

20 The next photo shows the -- this is on the
21 south side here, and you got all of this railroad
22 ballast all around and everything looks great and then
23 you come to these two areas and you've got all of this
24 mud.

25 Q. Move to the next photo.

1 A. This is taken on First Street. It's on the
2 east rail about 20 or 30 feet south of the
3 intersection. There's two bolts out, and I realize
4 that if you look at section 213.121(d) of the safety
5 manual it says you must have two bolts, but in
6 watching the trains come over, I noticed that this one
7 sure flexes up and down a lot more than the other ones
8 do.

9 Q. Move to the next photo.

10 A. This is back up at 128th, and this is --
11 the spike has worked up -- even with the rail it seems
12 the vehicles going over it only keeps the spike down.
13 It's even with the top of them.

14 These are a little bit dark. It was
15 raining. This is Fourth Street. There's a Volkswagen
16 parked with its tail right on the edge of the tracks.

17 Here's another car parked with it.

18 This is another car parked there. I went
19 down, did not go at the 3 to 5 or the 7 to 9 times
20 in the morning. This was like between 2 and 2:30 in
21 the afternoon so I didn't go down there trying to set
22 something up and find cars. I just went down to take
23 about five minutes each side and see what I got.
24 That's what I got there.

25 Then I went out to 116th. As I got out of

1 the car this is what was sitting on the tracks. That
2 van can't move until the light changes. These guys
3 are on the tracks. They're going to be there. That's
4 all I have.

5 JUDGE HAENLE: That was all of your
6 questions?

7 MR. GRAAFSTRA: I may have one or two more.

8 Q. Mr. Ploeger, from the standpoint of traffic
9 signals and devices, is there anything more the city
10 can do to render those locations more safe for
11 automobile traffic?

12 A. Basically without building overpasses, when
13 the county was taking care of our signals they had the
14 same concerns is that the best possible way to do it
15 would be to separate -- get more separation between
16 the tracks and the street. That turns out to be quite
17 a problem, but if you look to the south and the north,
18 you will find that south of Marysville the tracks are
19 on the west side of I-5. North of Marysville they are
20 on the west side of I-5. The railroad is the one
21 that's saying, oh, the Snohomish River bridge is in
22 bad shape, the trestle is in bad shape, we can only go
23 10 mile an hour here and 20 mile an hour here, we're
24 going to have to do all of this. Well, if they're
25 going to do it, it certainly would make Marysville

1 smile if they did it west of I-5.

2 JUDGE HAENLE: I'm sorry, did what? I
3 don't understand.

4 THE WITNESS: Moved the railroad.

5 JUDGE HAENLE: So you're suggesting that
6 the railroad move the tracks through Marysville?

7 THE WITNESS: Yes.

8 Q. That's the only way to get the necessary
9 storage and distance between the railroad tracks and
10 State Street; is that correct?

11 MS. GIBSON: Objection to the leading form
12 of the question.

13 Q. What is your opinion as to where the
14 railroad should be in relationship to State Street?

15 A. Where you have areas where there's only 37
16 to 40 feet between the tracks and the street and where
17 you have areas where there's only 12 feet between the
18 tracks and the public traveled roadway, the street,
19 the only really safe method is to move one or the
20 other.

21 MR. GRAAFSTRA: I don't have any further
22 questions.

23 JUDGE HAENLE: Petitioners, I believe you
24 indicated Ms. Gibson would be questioning first.
25 Please proceed.

1

2

CROSS-EXAMINATION

3

BY MS. GIBSON:

4

Q. Do you know when -- are you aware of the fact that the railroad tracks were laid in 1891 in this area?

7

A. Yes. What was the train speed then?

8

Q. I'm asking the questions, Mr. Ploeger. Now, Mr. Ploeger, being in charge of the signage here in this town, have you put up signs at each of the crossings that you talked about today saying to the people in this area Do Not Stop On Railroad Tracks?

14

A. No, we haven't.

15

Q. Why haven't you done that?

16

A. We have signs on the road saying that the crossings are there. On the public crossings yes, I believe they are but on the private crossings, no.

19

Q. Have you re-investigated such signs at all the public crossings?

21

A. I don't believe so.

22

Q. So that's something that you could do?

23

A. Certainly.

24

Q. Have you erected signs on State Street and any streets that feed in to the public crossings?

25

1 Have you erected signs saying Do Not Stop In
2 Intersection? Do Not Block Intersection?

3 A. No. That's part of the -- we have many
4 signs in Marysville and one of the items in the Manual
5 on Uniform Traffic Control Devices is the big problem
6 with signs is putting so many of them up that nobody
7 pays attention to anything, and we have signs up as
8 you come up to all the public crossings notifying you
9 that there is a crossing there. Some of the public
10 crossings are so close that you can't put those
11 railroad signs on the road itself. You have to put
12 them on State Street with a sign saying railroad this
13 way (indicating). They all have them.

14 Q. I first heard you to say that, no, you had
15 not put up signs saying Do Not Block Intersection. At
16 the end of your answer I heard you say you had. Could
17 you tell me -- answer this question. Have you put up
18 --

19 A. We have not put up signs saying Do Not
20 Block Intersection, no.

21 Q. And so that is something that at least as
22 amongst your choices as to what you could do; is that
23 right?

24 A. It would be one choice, one possibility,
25 yes.

1 Q. Now, the city -- does the city have
2 jurisdiction over private crossings?

3 A. I would have to defer that question to our
4 legal.

5 Q. Did you notice when you were out at the
6 private crossings taking your photographs that each of
7 them, in addition to a stop sign, has a sign that says
8 Private Crossing, No Trespassing?

9 A. Most of them, yes.

10 Q. Now, you're not an accident
11 reconstructionist, are you, Mr. Ploeger?

12 A. No.

13 JUDGE HAENLE: Would you wait to give your
14 answer, please, until counsel has finished her
15 complete question. I want to be sure that the court
16 reporter has a chance to record the entire question,
17 and I also want to be sure that you know what the
18 entire question is before you answer it.

19 Q. Let me ask the question again just for the
20 record. You're not an accident reconstruction, are
21 you?

22 A. No.

23 Q. And you haven't taken any measurements of
24 the eyeline view -- that is the view of a truck driver
25 seated in a truck -- at the crossing at 131st Street?

1 Have you done that?

2 JUDGE HAENLE: I'm sorry. I didn't see --

3 MS. GIBSON: Photograph No. 2 referred to
4 that street.

5 A. An eyeline view in relation to what?

6 Q. You testified about the view of a truck
7 driver proceeding east on 131st Street.

8 A. Yes.

9 Q. Do you recall that with photograph 2? And
10 my question is have you measured the eyeline view of a
11 truck driver in such a position?

12 A. No.

13 Q. And when you say -- I believe you testified
14 that a truck driver would have visibility south on the
15 tracks to 100th Street. Is that what you said?

16 A. Approximately, yes.

17 Q. You didn't measure that, did you?

18 A. No. That's approximately where the turn is
19 in the tracks.

20 Q. And that was from you standing on the
21 tracks with your camera?

22 A. Yes. I didn't have a camera, but yes.

23 JUDGE HAENLE: Please wait until she's
24 finished her question before you answer it. You're
25 breaking in and that doesn't make a very good record.

1 Go ahead.

2 Q. So you don't really know, sir, do you, what
3 the view would be for a truck driver seated in a cab
4 at that crossing?

5 A. That would depend if he was on the railroad
6 tracks or behind the railroad tracks.

7 Q. And it would depend on how tall the driver
8 was, wouldn't it?

9 A. Certainly.

10 Q. It would depend on how high his truck was?

11 A. Certainly.

12 Q. How high his seat in the truck was?

13 A. Certainly. Might I add something on that?

14 Q. If it will further explain your answer, go
15 ahead.

16 A. When you're on the tracks, looking down the
17 tracks, we're talking about a bend in the tracks, and
18 you can be two feet off the tracks or 30 feet off the
19 tracks, you can see clear down the tracks to where the
20 bend is.

21 Q. Now, for the majority of the streets in
22 this town that cross the Burlington Northern tracks,
23 isn't it true that they end up -- they are dead end
24 streets? And I'm talking now about the private
25 crossings?

1 A. Yes.

2 Q. Those are all dead end streets, aren't
3 they?

4 A. Yes.

5 Q. So they dead end to the west, correct?

6 A. Yes.

7 Q. And a number of the public crossings are
8 also dead end streets to the west of the tracks; isn't
9 that right?

10 A. Only one.

11 Q. Which one is that, sir?

12 A. Well, that's a private crossing, too. The
13 only public one that dead ends to the west is 104th.

14 Q. The last four photographs that you
15 testified about, I believe that's Exhibit 17
16 photographs 26 through 29, do you recall those
17 photographs with the cars blocking the tracks, sitting
18 on the tracks?

19 A. Yes.

20 Q. At those locations I believe that was,
21 what, Fourth Street and 116th Street? Was that right?

22 A. No, ma'am. That was Fourth Street.

23 Q. Wasn't No. 29 taken --

24 A. At 116th.

25 Q. Now, there are no signs in either of those

1 locations saying Do Not Stop On Tracks?

2 A. I don't believe so, no.

3 Q. To your knowledge, has your town, your
4 city, undertaken any educational programs to inform
5 the citizens, the users of the road here, in this town
6 not to stop on railroad tracks?

7 A. As far as I know, they have not as it's
8 part of the driver training.

9 Q. And same question as to any educational
10 programs that the city has put on for users of the
11 roadways here regarding not blocking intersections.
12 Has anything been done about that?

13 A. I would defer that to the city
14 administrator. I don't know.

15 Q. I think it's Exhibit 17, photograph No. 23,
16 do you recall, is that the photograph that you
17 described with the two bolt holes showing?

18 A. Yes.

19 Q. And how many -- do you recall how many
20 bolts were still in that particular photograph?

21 A. Yes. There were two bolts on each side.

22 Q. So a total of four were in that rail; is
23 that right?

24 A. Yes.

25 Q. And you yourself referred to the FRA Track

1 Safety Standards booklet which we've entered as
2 Exhibit 4 in this case, section 213.121 section (d).
3 You would agree, sir, that there's no violation of FRA
4 track safety standards depicted by that photograph 17,
5 photograph 23?

6 A. I would agree with that 100 percent. The
7 purpose of the photograph was to demonstrate that the
8 maintenance is not always perfect.

9 JUDGE HAENLE: I think that it's photograph
10 24 you're talking about or unless I misunderstood. I
11 want to be sure the record refers to the --

12 MS. GIBSON: Yes. And I would correct my
13 earlier conversations. I should have been referring
14 to Exhibit 17 photograph 24.

15 Q. And it's true, isn't it, that the section
16 of the FRA Track Safety Standards that I just referred
17 to says that each joint must have two bolts, at least
18 two bolts?

19 A. For a class 2 through 6 track, right.

20 Q. And this particular rail has four bolts,
21 right?

22 A. Correct.

23 MS. GIBSON: Nothing else.

24 JUDGE HAENLE: Do you have questions, Ms.
25 Fairhurst?

1 MS. FAIRHURST: I just have two.

2

3

CROSS-EXAMINATION

4 BY MS. FAIRHURST:

5 Q. Mr. Ploeger, when you referred in your
6 testimony to the citizens of the city of Marysville
7 parking in I believe it was photos 25, 26 and 27, you
8 weren't using the word park in its normal
9 understanding; is that correct?

10 A. That's correct. I was referring to them
11 stopping on the tracks while they were waiting to
12 proceed through the traffic light.

13 Q. And you would agree, wouldn't you, that the
14 citizens of the city of Marysville should not be
15 stopping on the railroad tracks?

16 A. Yes.

17 MS. FAIRHURST: I have no other questions.

18 JUDGE HAENLE: Questions, Ms. Rendahl?

19

20

CROSS-EXAMINATION

21 BY MS. RENDAHL:

22 Q. Mr. Ploeger, in your first photograph, I
23 believe it was the 136th Street interchange, and
24 that's also photo No. 2 of Exhibit 17, you talked
25 about the lack of storage for turning. Isn't it true

1 that those intersections are intertied, that the
2 railroad signals are intertied with the intersection
3 signals?

4 A. Yes, they are.

5 Q. So that if a train was coming through the
6 intersection signals would allow traffic to move off
7 the tracks?

8 A. Provided there is no blockage, yes.

9 Q. In reference to Exhibit 17, photograph No.
10 9, do you have a copy of that in front of you?

11 A. No, I don't.

12 JUDGE HAENLE: The record should reflect
13 that the witness has been provided with a copy of that
14 photograph.

15 Q. I believe your testimony was that there was
16 only stop signs on one side of the track?

17 A. Yes.

18 Q. Looking at the way this photograph is
19 taken, is it possible that the building, the Tuxedo
20 building, is blocking where a stop sign would be
21 located on the east side of the tracks?

22 A. It could be.

23 Q. Also in reference to Exhibit 17, photograph
24 No. 29, I believe it was a photograph of 116th Street
25 of a car or a van. You testified that the van was

1 stopped at the stoplight and there were cars that had
2 moved across the tracks. Again, isn't 116th Street,
3 aren't those intersection signals intertwined with the
4 --

5 A. Yes, they are.

6 JUDGE HAENLE: Please remember to wait for
7 the rest of the question. I would like to have the
8 question repeated and the answer repeated to be sure
9 we have the entire question.

10 Q. Mr. Ploeger, in reference to Exhibit 17,
11 photograph No. 29, you testified that there was a van
12 stopped at the stoplight on the east side of the
13 tracks and cars behind it had moved onto the tracks.
14 Isn't it true that the intersection at 116th Street is
15 intertwined with the railroad crossing signals?

16 A. Yes, it is.

17 Q. So on 116th Street, should a train be
18 coming down the tracks, the intersection signals would
19 turn green for traffic going east and west on 116th
20 Street allowing that traffic to move off the tracks;
21 isn't that correct?

22 A. No.

23 Q. Why?

24 A. They would turn green for traffic going
25 east, not west.

1 Q. Excuse me, you're correct. Going east so
2 it would allow the traffic to move off that crossing?

3 A. Yes.

4 MS. RENDAHL: I have no further questions.

5 JUDGE HAENLE: I think I only had one
6 question. You referred to the Manual of Uniform
7 Traffic Control Devices issued by a federal entity.
8 What was the entity that issues this, please, sir?

9 THE WITNESS: The Federal Highway
10 Administration.

11 JUDGE HAENLE: Thank you. Any redirect?

12 MR. GRAAFSTRA: Just a couple of questions.

13

14 REDIRECT EXAMINATION

15 BY MR. GRAAFSTRA:

16 Q. Mr. Ploeger, Fourth Street, is that a state
17 highway?

18 A. Yes, it is.

19 Q. So the signage on Fourth Street is the
20 responsibility of the state of Washington?

21 A. Yes, it is.

22 Q. And the state of Washington has not put up
23 these don't stand on railroad signs?

24 A. That's correct.

25 Q. Now, with regard to some of the other

1 public crossings throughout there, is there adequate
2 distance between State Street and railroad crossing to
3 put up signage in accordance with the requirements of
4 the manual on traffic control signals --

5 A. No, there is not.

6 Q. -- that says Don't Stand on the Railroad?

7 A. No, there is not.

8 Q. You answered a couple of questions about
9 the intertie between the railroad signals and the
10 traffic signals. Does that have anything at all to do
11 with the cars that are already on the tracks? For
12 example, in those exhibits that depicted the van and
13 the pickup and so forth, does that intertie solve
14 that problem?

15 A. In order to answer that question, I have to
16 go into what is called railroad preemption. Railroad
17 preemption under the definition of the Federal Highway
18 Administration will turn a signal green to clear the
19 tracks whenever a train is coming when we get our
20 signal from the railroad. The time required for this
21 varies very significantly because the Federal Highway
22 Administration has said we are not allowed to tell
23 people to run over pedestrians. If a pedestrian has
24 hit a walk pedestrian button at a traffic signal and
25 the light turns white for him to walk or her to walk,

1 she has or he has time to get across the street. You
2 cannot go into railroad preemption. An ambulance
3 cannot change that. Nothing can change it and right
4 in the manual it states you must give them time to go
5 at four feet per second to cross that street. If you
6 have a 60-foot street that means if they get that
7 white light, that white walk indication, and the
8 railroad said, got a train coming, you are going to
9 sit there for 20 seconds before you are allowed to
10 turn any light yellow or do anything with any light.
11 Then you've got three seconds of yellow. So it's
12 going to be 23 seconds before you can start the
13 clearance green. So if you have a 30-second advance
14 warning, you have given those vehicles seven seconds
15 to get off the tracks before the train gets there.

16 Q. Now, that of course -- in your answer that
17 presumes the vehicles that are there have an option to
18 get off the track; isn't that correct?

19 A. That is correct.

20 Q. So those remarks don't take into account
21 whether there's traffic in front of them and there's
22 no escape route for those vehicles; is that correct?

23 MS. GIBSON: Objection to the form.

24 JUDGE HAENLE: I will sustain the
25 objection.

1 Q. The driver of the vehicle, what can they do
2 when they're in that location?

3 A. At Fourth Street, if it's not during rush
4 hour they can go over the curb, but if it's during
5 rush hour it's going to be blocked the other way and
6 the gate is there so they have nowhere to go. They
7 can't go off to the right. If they've got vehicles
8 in front of them maybe they can back up and crash
9 through the gate if there's nobody behind them but
10 they basically have absolutely no exit, and there's no
11 -- there's nowhere to go.

12 MR. GRAAFSTRA: No further redirect.

13 JUDGE HAENLE: Anything else of the
14 witness?

15 Go ahead, Ms. Gibson.

16

17 RE-CROSS-EXAMINATION

18 BY MS. GIBSON:

19 Q. Now, this intertie that the signals -- the
20 railroad signals have with the city currently, is it
21 your understanding that that provides an additional 40
22 seconds clearance time in addition to the 20 --
23 minimum 20 seconds that the railroad signals would
24 normally give?

25 A. I have no idea. I wasn't here to hear what

1 the railroad said they were going to do on that so I
2 really couldn't tell you.

3 Q. Is it your understanding that the railroad
4 signals will still give the exact same amount of
5 warning time to the users of the roadway, that is, a
6 minimum of 20 seconds prior to the approach of the
7 train?

8 A. I really don't know what they're going to
9 do.

10 Q. So you then cannot say as you sit here
11 today whether the situation you have just described
12 where there may be pedestrians in the crosswalk, the
13 railroad signals have come on and there's a lag time
14 of some 24 seconds before the roadway signals would go
15 green, you don't know whether that situation is going
16 to change at all --

17 A. No, I don't.

18 Q. -- with the increase in train speed?

19 A. No, I don't.

20 Q. And in fact if the advance warning times on
21 the railroad signals stayed the same, that is, the 40-
22 second advance for the intertie and a minimum of 20
23 seconds warning for the user of the crossing, then
24 there really wouldn't be any change at all to your
25 system, would there?

1 A. I would have to look and see what it is at
2 the present time. I don't believe it's 40 seconds,
3 though.

4 MS. GIBSON: I have nothing else.

5 JUDGE HAENLE: And you said you had
6 something else, Ms. Rendahl?

7 MS. RENDAHL: I have a few additional
8 questions, yes.

9

10 RE CROSS-EXAMINATION

11 BY MS. RENDAHL:

12 Q. You talked about the MUTCD standards and
13 the requirement, as you stated, to have a stop bar and
14 pavement markings with the railroad cross there. Is
15 this a mandatory shall requirement or a may
16 requirement?

17 A. I believe it's a shall requirement. I
18 would have to look it up but I'm fairly certain that
19 is a shall requirement.

20 Q. You talked about 88th Street and the
21 improvements to that crossing, and you talked about
22 the 92nd Street private crossing that's just north of
23 88th Street. Does the city have any plans or are you
24 aware of any plans by the city to provide access to
25 those individuals to the west of the tracks north of

1 88th Street that would alleviate the problem with the
2 -- as you say, the problem with the 92nd Street
3 crossing?

4 A. I would have to defer that to planning. I
5 have no comment.

6 Q. Are you aware that there's a frontage road
7 located west of the tracks just north of 88th Street
8 with access from 88th Street?

9 A. Yes.

10 Q. And at the intersection of First and Cedar,
11 doesn't Cedar Street have flashing lights facing a
12 driver?

13 A. It has two flashing lights facing the
14 driver from the far side of the street.

15 Q. On the south and northbound, Cedar goes
16 north/south?

17 A. Cedar ends at First.

18 MS. RENDAHL: Thank you. I have no further
19 questions.

20 JUDGE HAENLE: Anything else of the
21 witness?

22 MS. GIBSON: Nothing else.

23 JUDGE HAENLE: Thank you, sir, you may step
24 down. Let's go off the record to change witnesses.
25 noticed.

1 (Recess.)

2 JUDGE HAENLE: Let's be back on the record.
3 During the time we were off the record the city has
4 called its next witness.

5 Whereupon,

6 GLORIA HIRASHIMA,
7 having been first duly sworn, was called as a witness
8 herein and was examined and testified as follows:

9 JUDGE HAENLE: Also during the time we were
10 off the record the city distributed three documents
11 which I have marked for identification as follows:
12 All three are maps. Exhibit 18 for identification has
13 the caption at the top City of Marysville
14 Comprehensive Plan. 19 for identification shows
15 various zoning areas in very bright colors, and
16 Exhibit 20 for identification has the caption on the
17 right-hand side Marysville Urban Growth Area
18 Continues. Your witness has been sworn.

19 (Marked Exhibits 18, 19 and 20.)

20 DIRECT EXAMINATION

21 BY MR. GRAAFSTRA:

22 Q. Would you state your full name for the
23 record and spell both your first and last names for
24 the court reporter.

25 A. Gloria Hirashima, G L O R I A H I R A S

1 H I M A.

2 Q. What is your occupation?

3 A. I'm city planner for the city of
4 Marysville.

5 Q. Can you tell me what your educational
6 background is?

7 A. I have a bachelor degree in environmental
8 policy analysis and planning.

9 Q. And when did you obtain that degree?

10 A. In 1987 from the University of California
11 Davis.

12 Q. And what has your job experience been since
13 graduation from college?

14 A. I worked for the past eight years. Five
15 years of that have been at city of Marysville, three
16 in my current position and previous to that I worked
17 for a planning firm in the city of Everett.

18 Q. And the name of that firm?

19 A. Shockey/Brent.

20 JUDGE HAENLE: You're going to have to
21 spell that.

22 THE WITNESS: S H O C K E Y/Brent, B R E N
23 T Associates.

24 JUDGE HAENLE: I'm going to need to have
25 the audience be quiet so we can be sure that we hear

1 the witnesses.

2 Q. What type of business was Shockey/Brent
3 Associates?

4 A. A land use planning firm.

5 Q. So most of your career since graduation has
6 been in land use planning; is that correct?

7 A. Correct.

8 Q. Now, what are your duties as city planner
9 for the city of Marysville?

10 A. I supervise the city planning and building
11 department. We make recommendations and draft and
12 prepare the city's long-range comprehensive plans as
13 well as the zoning regulations. We administer
14 regulations relating to land use and building within
15 the city.

16 Q. You're the official who does that; is that
17 correct?

18 A. Correct.

19 Q. Now, are you familiar with the
20 comprehensive plan for the city of Marysville?

21 A. Yes, I am.

22 Q. Now, you have in front of you a document
23 that's been marked Exhibit No. 18. Is that an
24 accurate depiction of the Marysville comprehensive
25 plan map?

1 A. Yes, it is. I don't actually have it in
2 front of me.

3 Q. I will give you one, I'm sorry. We ran out
4 of copies.

5 A. Yes, it is.

6 MR. GRAAFSTRA: I would offer Exhibit No.
7 18.

8 JUDGE HAENLE: Any objection, Ms. Gibson?

9 MS. GIBSON: No objection from petitioners,
10 and I speak on behalf of the DOT as well.

11 JUDGE HAENLE: Any objection, Ms. Rendahl?

12 MS. RENDAHL: No, Your Honor.

13 JUDGE HAENLE: Exhibit 18 will be entered
14 into the record.

15 (Admitted Exhibit 18.)

16 Q. I'm going to let you use my copy of Exhibit
17 18. Now, can you tell me for the record what the
18 comprehensive plan designations are for the areas in
19 the vicinity of the railroad as it traverses the
20 city of Marysville?

21 A. As it traverses the city of Marysville --
22 I will start I guess on the south end and work my way
23 north. Basically the railroad traverses the downtown
24 of Marysville which is the center of our business
25 community. On the south end we have industrial uses,

1 and that's basically the area south of First Street.
2 North of that we have various commercial zones
3 including downtown commercial, community commercial,
4 general commercial and mixed use designations, and
5 those designations would imply higher density
6 residential uses such as multifamily apartments, a
7 broad mix of retail, retail and wholesale businesses
8 and professional offices.

9 As we go further north of Grove Street then
10 we work into the areas designated for multifamily,
11 medium to high density, which in terms of dwelling
12 units is 18 to 28 dwelling units per acre. Actually,
13 I should probably note, in the downtown area the city
14 of Marysville, when they updated their plan, did not
15 set an upper limit for density. They basically want
16 to encourage as high density apartment uses as
17 possible in the downtown.

18 North of 88th Street or at the intersection
19 of 88th Street we have commercial uses designated
20 between Interstate 5 and State Avenue. That's on the
21 north side of 88th Street, and as you continue north
22 we have single family residential uses. Once again,
23 along the interchange at 116th Street we have proposed
24 commercial uses, business park and community
25 commercial uses, and then go back into the residential

1 area and then finally at the north end of town, north
2 of 124th Street is all industrial designated.

3 Q. Now, has the city of Marysville also
4 adopted an actual zoning map pursuant to its
5 comprehensive plan?

6 A. Yes, it has.

7 Q. I'm going to hand you what's been marked
8 Exhibit 19. You have one of those?

9 A. Yes.

10 Q. Is Exhibit 19 a true and accurate copy of
11 the city of Marysville's zoning map?

12 A. It's a generalized city/county zoning map.
13 It's not the city's official map because what we tried
14 to depict here was both city and county zoning. The
15 city's official map would only relate to the city
16 limits.

17 Q. So what you added to the city's map is the
18 adjoining county zoning in those areas that are
19 outside the city limits?

20 A. Correct.

21 Q. But it's true and correct as to the city's
22 actual zoning and based upon information supplied by
23 the county as to the county's adjoining zone?

24 A. Correct. There had been some minor changes
25 since this was prepared which was originally I think

1 in 1990, and there have been some rezones that have
2 occurred within the area since that time, but this is
3 basically accurate.

4 Q. There might be some minor changes?

5 A. Yes.

6 Q. We won't call them spot zones?

7 A. And annexations also that have occurred.

8 MR. GRAAFSTRA: Offer Exhibit 19.

9 JUDGE HAENLE: Any objection, Ms.

10 Fairhurst?

11 MS. FAIRHURST: No, Your Honor.

12 JUDGE HAENLE: Any objection, Ms. Gibson?

13 MS. GIBSON: No, Your Honor.

14 JUDGE HAENLE: Ms. Rendahl?

15 MS. RENDAHL: I do have a question
16 concerning -- and maybe this is more appropriate for
17 cross, but there are some changes in annexation,
18 whether the zoning has changed or it's just the city
19 limits that have changed?

20 THE WITNESS: The city limits.

21 MR. GRAAFSTRA: I will let you ask that on
22 voir dire.

23 MS. RENDAHL: This is basically a question
24 on voir dire to determine whether I have an objection
25 to the exhibit.

1 A. The city limits are what has changed.
2 Typically when the city annexes property we assign the
3 same zoning to the properties as were applicable in
4 the county.

5 MS. RENDAHL: I don't have an objection to
6 the exhibit.

7 JUDGE HAENLE: I will enter Exhibit 19 into
8 the record.

9 (Admitted Exhibit 19.)

10 Q. Ms. Hirashima, I don't want you to repeat
11 your testimony in describing the various zones that
12 you described in dealing with the comprehensive plan
13 map, but I would like you to at least generally
14 describe the actual physical development, not just
15 what the zone permits but where there are actual
16 notable physical developments along the railroad
17 corridor to the best that you're able to do so.

18 A. Well, in the downtown -- actually, I think
19 the comprehensive plan map is fairly representative of
20 the types of uses that we currently see. It probably
21 is not as representative as -- because the comp plan
22 is basically a 20-year plan. It's -- what's currently
23 out there is not an accurate representative of the
24 kinds of intensity of uses that we would expect to see
25 over the next 20 years, but we do see a representative

1 mix. For instance, in the area south of First Street
2 there are industrial uses, there are currently, such
3 as the mill operations, Welco and Garka mills.

4 JUDGE HAENLE: You will need to spell any
5 proper names you use for the reporter.

6 THE WITNESS: Welco is W E L C O and Garka
7 is G A R K A.

8 JUDGE HAENLE: Continue, please.

9 A. Those are located south of Fourth Street,
10 so those are basically manufacturing and industrial
11 uses. We also have a mix of retail uses south of
12 first. The mall is located in the downtown area, an
13 assortment of retail businesses and professional
14 offices are also located downtown. We do have in
15 the periphery of the tracks multifamily and single
16 family uses. We are seeing some changes occurring in
17 those areas consistent with our comprehensive plan and
18 that is many of the developed single family areas we
19 would -- we currently see some activity and we would
20 expect to see some future activity in conversions of
21 single family to commercial uses. Also we're seeing
22 some aggregation of parcels and property owners are
23 moving some of the single family residences to build
24 multifamily apartments, so we are seeing some
25 conversions consistent with our plan.

1 Q. Let me stop you. You used an expression a
2 moment ago that said you saw some multifamily on the
3 periphery of the railroad area, to use your
4 expression. Can you tell me exactly what that means,
5 what multifamily where?

6 A. Along Cedar Street in particular. We've
7 had a concentration of our higher density apartments
8 along Cedar Street just west of the railroad tracks.
9 I don't have an exact count of those units but there's
10 probably nine to 12, some smaller, some larger,
11 apartment complexes, and you would have somewhere
12 between five to 600 multifamily units along Cedar
13 Avenue.

14 Q. And Cedar is a street that immediately
15 parallels the railroad; is that correct?

16 A. That's correct.

17 Q. On which side?

18 A. On the west side.

19 Q. Now, moving north as you were doing, can
20 you tell us what the -- generally what the other
21 actual improvements are along the rail corridor?

22 A. North of Grove Street we have primarily
23 single family neighborhoods north of the -- north of
24 Grove Street. And actually, all the way along Grove
25 -- along State Avenue, which is the east side of the

1 railroad tracks, we have commercial businesses, and
2 actually even in the downtown, I probably skipped over
3 this, but along the railroad tracks there's not only
4 apartments but there are commercial businesses
5 operating along the tracks.

6 Moving further north continue to see
7 commercial businesses, some fast food restaurants,
8 some offices, mix of retail uses all along State
9 Avenue. There are some assorted industrial uses. I
10 think the Dansha Tannery is located on 88th Street and
11 there are some offices, a construction company located
12 south of 88th Street as well. We have residential
13 neighborhoods on the west side, basically, of the
14 tracks, east of I-5, and then commercial businesses
15 all along State Avenue backing up to the railroad
16 tracks.

17 Currently the area north of I-5 there is --
18 there are existing neighborhoods that have been there,
19 fairly long standing neighborhoods. However, you do
20 have quite a few larger parcels so there is potential
21 there for further development. And actually over the
22 past couple of years we have seen several subdivisions
23 submitted for that area between 88th to 100th street.
24 Or 116th Street. We have some commercial businesses
25 along 116th Street, gas station, freeway service use.

1 One of the things that I had become aware
2 of, because it's a recent application to the city,
3 following the city's comprehensive plan adoption last
4 year we did have some interest and we currently do
5 have an application pending for a commercial
6 development retail center at 116th Street northeast
7 just east of State Avenue on the corner of 116th and
8 State, and that will ultimately provide sewer to that
9 area, so I think we can expect to see additional
10 interest from property owners along 116th Street.
11 Actually, I have received phone calls from those
12 owners who are interested in developing their
13 property.

14 Further north along State Avenue we have
15 developed residential areas and once more there are
16 large parcels still present which would have potential
17 for additional development, and then north of 122nd,
18 it's all industrial zoned and designated under both
19 the city and the county plans. We do already have
20 quite a few industrial manufacturing firms in that
21 area. Two of the city's major employers, Northwest
22 Composites and Pacific Grinding Wheel, are located
23 west of State Avenue right at 128th Street, which is
24 west of the tracks and they are dependent on their
25 private crossing to access their facilities.

1 Q. Now, I understand that there's something
2 called the Growth Management Act of the state of
3 Washington. Has there been a requirement to do
4 planning under the Growth Management Act as well?

5 A. Yes, there is.

6 Q. And has the city of Marysville taken a
7 position as to what it's urban growth boundary ought
8 to be?

9 A. The city's position is consistent with our
10 comprehensive plan. The land uses that are colored
11 and shown in our comprehensive plan are in the city's
12 urban growth boundary proposal, and as it relates to
13 uses along the corridor, the rail corridor, the
14 county's plans are consistent with the city's
15 proposal.

16 Q. Now, as part of your duties as the city
17 planner, are you sort of the custodian of some aerial
18 photos and maps of the city as well?

19 A. Yes.

20 Q. And what do you use those for?

21 A. We have used them to conduct land use
22 inventories. We use them to -- as a tool for
23 conducting and completing the comprehensive plan.

24 Q. I'm going to show you if you don't have a
25 copy of Exhibit No. 20 -- do you have one?

1 A. I can look at this one.

2 Q. The larger one, okay. What is Exhibit 20?

3 A. It is an aerial photo taken in 1992 of the
4 Marysville area.

5 Q. What generally was it prepared for?

6 A. It was prepared for the purposes of
7 completing our land use inventory.

8 Q. Is it a true and accurate depiction of the
9 city of Marysville from the air and certain of its
10 notable landmarks?

11 A. Yes, it is. The only major changes that
12 have occurred since the photo was taken is further
13 development of physically east of 47th Avenue.

14 MR. GRAAFSTRA: I would offer Exhibit No.
15 20.

16 JUDGE HAENLE: Any objection, Ms.
17 Fairhurst?

18 MS. FAIRHURST: No, Your Honor.

19 JUDGE HAENLE: Ms. Gibson?

20 MS. GIBSON: No, Your Honor.

21 JUDGE HAENLE: Ms. Rendahl?

22 MS. RENDAHL: No, Your Honor.

23 JUDGE HAENLE: Exhibit 20 will be entered
24 into the record.

25 (Admitted Exhibit 20.)

1 Q. In your testimony a couple of moments ago,
2 Ms. Hirashima, you represented that there was a
3 proposed development that had gotten to the point of
4 an application of 116th Street; is that correct?

5 A. That's correct. It's actually -- what
6 they're pursuing right now is an annexation and a
7 rezone.

8 Q. What type of commercial development is that
9 intended to be?

10 A. A shopping center, retail grocery store,
11 bank. Those types of uses.

12 Q. Are there any other proposed developments
13 within the area depicted by Exhibit 20 that you have
14 knowledge of?

15 A. Well, actually Community Transit, state of
16 Washington are studying parking sites for our park and
17 ride facility. They have narrowed -- that will serve
18 the Marysville area. They have narrowed their site
19 selection process from I believe it was 40-plus sites
20 down to three sites. Two of the sites will be located
21 -- two the candidate sites are located in the vicinity
22 of 116th Street -- I think I marked that on the aerial
23 map -- and the other site is located at 88th Street,
24 just west of I-5 -- or east of I-5. And those will be
25 600 stall park and ride facilities, basically to serve

1 the Marysville area. They have been working on that
2 project for I believe three years now, and it's in
3 recognition of the fact that Marysville is a growing
4 urban area and is in need of further services such as
5 a park and ride facility.

6 JUDGE HAENLE: You said three potential
7 sites. Is the plan to choose one of those sites or to
8 develop more than one site, if you know?

9 THE WITNESS: It is to develop one site.

10 JUDGE HAENLE: Proceed, please.

11 Q. And two of the three remaining sites that
12 are on the list are depicted on your map; is that
13 correct?

14 A. That's correct.

15 Q. In the vicinity of 116th Street?

16 A. That's correct. I think all three are
17 actually on there. The two on 116th are real close
18 together.

19 Q. Oh, I see. The other is on 88th Street?

20 A. Right.

21 Q. Now, in your duties as the city planner for
22 the city of Marysville, do you have occasion to
23 contact and cooperate with the Tulalip tribes?

24 A. Yes, I do.

25 Q. What are the Tulalip tribes and where are

1 they located in relationship to the city of
2 Marysville?

3 A. The reservation is immediately west of the
4 city of Marysville and I believe it extends -- I'm not
5 sure of the exact south boundary, but I know it
6 extends at least from Fourth Street up to I believe
7 140th street and then it would be all that land west
8 of I-5.

9 Q. Now, in your contacts with the Tulalip
10 tribes, have you become aware of any proposed
11 development on their part?

12 A. Yes. They are actively pursuing plans and
13 of course we've all seen some of the initial stages of
14 development of the casino facility. They are planning
15 a casino expansion that will relocate the existing
16 casino, which is located at Fourth Street, to 116th
17 Street. They also have a major industrial park
18 planned for the area north of 88th Street to 116th
19 Street and that those plans were the basis for their
20 taking the lead on the 88th Street interchange
21 project.

22 Q. I want to direct your attention to the
23 industrial areas to the north end of the city. Based
24 upon your knowledge as the city planner, what do you
25 expect to happen in those industrial park areas over

1 the next several years?

2 A. We would expect that those areas would
3 continue to develop. We have -- even in the past year
4 we've seen a number of proposals come through for new
5 facilities such as manufacturing uses. We have an
6 application that was approved, for instance, for
7 Lindal Cedar Homes where they will be setting up a --
8 basically a trucking center on the west side of the
9 railroad tracks just south of Northwest Composites.
10 We also have other proposals under review, one from --
11 one I believe called Lobo Industrial Park, which is
12 also located in the same vicinity.

13 The Snohomish County executive just
14 recently a few weeks ago released a position in
15 recommendation to the city council to focus more of
16 the industrial development in the Marysville-Arlington
17 area, and in fact prior to the county's last hearing
18 on the urban growth boundary, the executive made a
19 pretty sweeping recommendation to take 3,000 acres of
20 agricultural land in this area out of the agricultural
21 designation and consider those lands for urban uses.
22 That recommendation also included some recommendations
23 to expand the current industrial uses along the Smokey
24 Point corridor and to encourage a broader mix of
25 retail office uses, changing the whole -- I guess the

1 whole atmosphere of the north end. Right now it's
2 been primarily conceived as an industrial area now.
3 We're also seeing some interest in retail commercial,
4 community commercial business uses.

5 We also have -- I forgot to mention the
6 Navy community support facilities are going to be
7 located at 136th Street, just north of 136th Street,
8 and those facilities are actually primarily built, and
9 I believe they're occupying in 1995.

10 Q. What kind of facilities are those?

11 A. That would be the off-site support facility
12 such as the commissary exchange sport center for the
13 Navy, Navy personnel. They're also right now
14 studying, and I believe they just released, an EIS on
15 it about two weeks ago to construct an additional 250
16 units, apartment units, housing units for Navy
17 personnel at the same location. So there is quite a
18 lot of activity which is under way currently which
19 will affect this area.

20 Q. And in that north area what are the primary
21 transportation corridors?

22 A. State Avenue is really the primary
23 transportation corridor and of course the interchange
24 is 116th Street. If when the 88th Street interchange
25 is complete then that will be a welcome exit/entrance

1 to the city. Also state highway up at 172nd, Smokey
2 Point, but the primary north/south is obviously State
3 Avenue and Interstate 5 via the interchanges.

4 Q. When applications for development are
5 presented to you, is transportation a factor that's
6 considered in reviewing those development
7 applications?

8 A. Yes, it is.

9 Q. Tell me, how does it get considered? In
10 your review of a development application what
11 consideration do you give to the transportation
12 network that accesses the development that's proposed?

13 A. When we receive a development application
14 or when we are going through a conference of plan
15 revision or a revision on any of the city's policies
16 relating to land use policies and ordinances relating
17 to land use we typically route those proposals out to
18 departments and agencies which would have concerns or
19 jurisdiction on those proposals. For instance, the
20 Department of Transportation receives copies of all
21 the development proposals that the city is reviewing
22 and Snohomish County does as well, Snohomish County
23 Public Works and Planning Division. Staff within the
24 city of Marysville such as the city engineer, the
25 public works director are also requested to comment on

1 these proposals. And we would review the developments
2 to see if they have traffic impacts requiring a
3 traffic study, and basically if there was some issues
4 that need to be resolved during the course of
5 development review we try and resolve those prior to
6 letting it proceed.

7 Q. Let's take as an example a proposed
8 multifamily development. Are multifamily developments
9 typically permitted to adjoin high speed highways
10 where the speed limit is 40 and 50 miles per hour?

11 A. Traffic is not my area of expertise, I
12 should probably state that first, but typically the
13 reviews I've overseen we would try and limit or reduce
14 the number of access points from both single family
15 residential developments and multifamily residential
16 developments as well as commercial developments along
17 our minor/major arterials.

18 MR. GRAAFSTRA: I don't have any further
19 questions.

20 JUDGE HAENLE: Let's break at this point,
21 take our morning recess. We'll come back then and
22 take cross-examination of the witness. Let's take 15
23 minutes, please. That brings us back by that clock a
24 couple of minutes to the hour.

25 (Recess.)

1 JUDGE HAENLE: Let's be back on the record
2 after our morning recess. Of the petitioners I
3 believe Ms. Gibson indicated she would go first. Why
4 don't you go ahead, ma'am.

5

6

CROSS-EXAMINATION

7

BY MS. GIBSON:

8 Q. Ms. Hirashima, as a city planner, is it
9 your job to make sure that any new development takes
10 into concern any adverse impacts on the health and
11 safety of the citizens of Marysville?

12 A. Yes, it is.

13 Q. And I assume that would include any hazards
14 posed by major transportation corridors going through
15 the city?

16 A. That would be a consideration.

17 Q. Let's look at some of the new developments
18 that you've indicated here in this town. First of
19 all, you talked about some new residential development
20 going on, I believe you said, north of 88th Street up
21 to 116th; is that right?

22 A. Yes. We received a couple of subdivision
23 applications or have been made aware of them as
24 they've been reviewed through Snohomish County.
25 Actually, our city limits does not include all that

1 area between 88th and 116th Street, but I am made
2 aware of plans that go through Snohomish for review,
3 so I am aware of them.

4 Q. How far do your city limits go?

5 A. Our city limits right now are primarily
6 isolated to the areas surrounding State Avenue until
7 you get to 108th Street and then from 108th Street to
8 116th Street on the west side of I-5 is in the city
9 limits. I guess the area between 80th and 108th
10 bounded by I-5 and State, most of that is in the
11 county, but I would receive copies of plans that go
12 through Snohomish County.

13 Q. Does the city then approve those plans,
14 those applications for development or does the county?

15 A. No. The county would.

16 Q. Does the city have input into those
17 applications?

18 A. We can comment on them, yes.

19 Q. And would access across the tracks be one
20 of the considerations that you would make?

21 A. Yes, it would because in that particular
22 area between 80th to 116th Street, there are not
23 really any alternatives for access. Their access is
24 -- the railroad tracks really bound their access. For
25 instance, last spring I think it was we had an

1 incident where the train was stopped for a couple of
2 hours across 80th Street and those residents were
3 unable to get out of their neighborhood, so it is
4 definitely a concern because of the fact that the
5 railroad is really -- can potentially block the only
6 alternative for access.

7 Q. And so that would be a consideration, then,
8 that you might give to the people who are making the
9 decisions about whether the application should be
10 approved or not?

11 A. Correct. Wouldn't be the only
12 consideration, obviously, because we would have to
13 take into consideration what the property -- what the
14 rights are of the property owners such as what zoning
15 and long-term land use plans would imply for the
16 property.

17 Q. You mentioned, I believe, a development to
18 build some sort of a trucking company just south of
19 Northwest Composites which is shown on Exhibit 20; is
20 that right?

21 A. That's right.

22 Q. Now, would that be an application that
23 would be coming to your agency or not?

24 A. Yes. That would definitely come through
25 the city.

1 Q. So is that within the city limits at this
2 time?

3 A. Yes.

4 Q. Now, looking at Exhibit 20, it does not
5 appear that there is access across the railroad tracks
6 to that site at this time. Would you agree with that?
7 Exhibit 20 is your aerial photo of urban growth.

8 A. The site I was referring to would actually
9 -- would actually access the 128th Street which is a
10 private, private crossing. They would utilize the
11 same road as Northwest Composites, so there is an
12 access currently in place, and I believe developments
13 south of 128th Street, which I was referring to, would
14 also utilize existing private crossing at 128th Street
15 because they have easement agreements with the
16 surrounding landowners to do so.

17 Q. And you think that would be appropriate
18 access for them to --

19 A. It's within their current property rights,
20 yes.

21 Q. And were you present today when Mr. Ploeger
22 testified?

23 A. Yes, I was.

24 Q. And did you hear his description of that
25 crossing, that private crossing at southwest 128th?

1 A. Relating to storage you mean?

2 Q. Yes.

3 A. Yes.

4 Q. And so even though it's your job to insure
5 that there are no adverse impacts through development
6 on the safety and health of the citizens you think you
7 could get -- approve that application?

8 JUDGE HAENLE: Your counsel has done an
9 objection, don't answer. Go ahead and state it.

10 MR. GRAAFSTRA: I was objecting to form.
11 It's not her duty solely to take into account the
12 issue of public safety. She's already testified that
13 there are a variety of factors including the property
14 owners' rights to use their property that come into
15 play, so the question is misleading.

16 MS. GIBSON: Well, Your Honor, he's
17 coaching the witness, number one, and it's proper
18 cross-examination.

19 JUDGE HAENLE: I'm going to overrule the
20 objection. Do you remember the question?

21 THE WITNESS: Could you repeat the
22 question?

23 (Record read as requested.)

24 A. My job is to -- in cases like that it would
25 be an application for binding site plan approval. The

1 zoning for that property is already industrial and the
2 long terms plans for that area are also industrial in
3 both the county and the city, so I would also take
4 those factors into account that they do have an
5 industrial zone which provides them with certain
6 rights to utilize their property.

7 We would certainly require a traffic study
8 which will be reviewed by our city engineer and public
9 works departments. We would solicit comment from
10 affected agencies which would include WSDOT and
11 Burlington Northern. In my recent recollection when
12 we did review a development that took access off 128th
13 Street we did solicit comments but did not receive any
14 feedback from Burlington Northern. However, because
15 we had a concern from city staff ourselves, we did
16 include a condition relating to assuring that truck
17 traffic utilizing 128th Street was spaced adequately
18 from the actual railroad crossing, but it was a
19 concern because I guess our assumptions were that a
20 truck driver utilizing 128th Street would act
21 responsibly, not stop on the tracks, that they
22 wouldn't stack up trucks in utilizing the private
23 road, and we actually did ask for a parking lottery
24 design because we felt the access point was too close
25 to the railroad crossing. So to the extent that we

1 can we will take that into consideration, but we're
2 always cognizant, too, of the fact that these
3 properties are industrial zoned and they do have
4 certain rights to utilize their property.

5 Q. In the event that the city had sufficient
6 concerns about the safety of new development, the
7 users of new development crossing the tracks, then in
8 that event would the city have the option of denying
9 the application for development?

10 A. I suppose, since it's within the city's
11 ability to approve and deny an application, but we
12 would want to take all factors into consideration.

13 Q. I would ask you to look and perhaps I will
14 give you this since you don't have a copy of the
15 exhibit.

16 Now, that's I-5 that's depicted on the far
17 left by the purple line on Exhibit 19?

18 A. Correct.

19 Q. And tell me, is this a greenbelt or some
20 kind of buffer zone that's in light green next to the
21 Interstate 5? Is that what that is?

22 A. What we're asking for is -- I don't think
23 there's an official greenbelt designation, but in our
24 comprehensive plan we are asking that a forested
25 corridor be retained to buffer noise impacts, et

1 cetera. But the actual -- I guess the generalized
2 zoning is a little bit misrepresentative in that we
3 don't have a zone for forested corridors along
4 highways.

5 Q. Let me show you your Exhibit 18 and
6 indicating for you this area, the same area adjacent
7 to I-5 in dark green there, and then your legend on
8 Exhibit 18, doesn't that indicate that that means
9 greenbelt?

10 A. Right. And what we had in mind, because I
11 drafted that portion of the plan, was retention of
12 existing trees along the I-5 corridor, our primary
13 concern being buffering noise impacts of the
14 interstate from the surrounding uses. I guess the one
15 thing that's a little bit misrepresentative is that
16 the corridor doesn't currently necessarily exist all
17 along I-5. There are portions where the trees have
18 already been cleared and so our intent would be that
19 some replanning occur either by WSDOT or property
20 owner.

21 Q. And is that because there are known impacts
22 from a major transportation corridor running through a
23 city? Is that why you have the forested area?

24 A. The concern would be noise and visual
25 proximity to the highway.

1 Q. Has there been any similar plan for a
2 greenbelt or forested area, any kind of buffer zone,
3 adjacent to the railroad tracks?

4 A. No. No, there hasn't, primarily because of
5 existing patterns of development and the existing
6 proximity to buildings which occur along majority of
7 the railroad right-of-way through the city.

8 Q. Would you agree that the railroad tracks
9 constitute a major transportation corridor?

10 A. In terms of carrying passengers through
11 this region, no. As far as -- the railroad doesn't
12 represent any significant passenger rail service to
13 the Puget Sound area and certainly we don't have -- in
14 terms of a depot or stop within Marysville, there's
15 not a direct service link provided to Marysville
16 within the city.

17 Q. My question was actually broader than that.
18 Not just encompassing passenger transportation but
19 wouldn't you agree that freight traffic, railroad
20 traffic, is a major mode of transportation?

21 A. Through the country, yes.

22 Q. And with the track running through
23 Marysville it's a major mode of transportation running
24 through this town, isn't it?

25 A. I don't know what percentage of freight the

1 freight service constitutes as opposed to statewide
2 what truck traffic or shipping would constitute so I
3 really can't answer that.

4 Q. Now, you've indicated that one of your jobs
5 is to insure that new development doesn't adversely
6 impact the safety and health of the citizens, and yet
7 you've also indicated that two proposed sites for the
8 park and rides are on the west side of the railroad
9 tracks and 88th and 116th, correct?

10 A. Correct.

11 Q. Now, in choosing those sites, is the --
12 well, number one, the sites have not been chosen yet,
13 have they?

14 A. They are the remaining candidate sites and
15 there were upwards of 40 sites reviewed and these are
16 the three remaining sites.

17 Q. Three? I thought you said two.

18 A. Three. There's two at 116th and one at
19 88th Street and I believe a decision will be issued in
20 the next six months as to the final site selection.

21 Q. Will there be one site chosen?

22 A. There will be one site chosen.

23 Q. Could the city, if it became convinced that
24 there were safety hazards being created by placing
25 park and rides between I-5 and the railroad tracks, in

1 that event, could the city change the selection to
2 some other site that would not be in that area?

3 A. No, we can't because it's not the city's
4 decision. The project is being funded through
5 primarily the state of Washington, WSDOT, Department
6 of Transportation, and then Community Transit is also
7 working on the project, but the city is not a major
8 decision maker in this -- in the site selection.

9 Q. Does the city have input into the site
10 selection?

11 A. We can certainly comment.

12 Q. And could the city make comment such that
13 those sites would tend to adversely affect the safety
14 and health of the citizenry?

15 A. Yes. We could make comment.

16 Q. Have you done that so far? Have you made
17 any comment to the decision making parties as to any
18 concerns that you might have about people crossing the
19 railroad tracks to get to those park and ride spaces?

20 A. I have not myself participated in those
21 committees so I can't answer but perhaps our city
22 administrator can because I think he attended some of
23 those committee meetings.

24 Q. Now, the casino expansion, that has not
25 even begun, has it?

1 A. Actually, yes, it has.

2 Q. The actual -- the final completion of that
3 project would be done when?

4 A. I don't know that, the completion date, but
5 I'm sure we can get the information for you.

6 Q. Is it years away?

7 A. I think it's like two years away, couple of
8 years away.

9 Q. So the city has some time to do planning
10 and make some changes prior to completion of that
11 casino; is that right?

12 A. No, because that's the Tulalip
13 reservation's project. They do their own planning,
14 own permitting. We have absolutely no jurisdiction,
15 and I don't think, while they may ask us for some
16 comment, they typically -- it's not a requirement.

17 Q. My question really was directed at plans
18 that the city could have in order to direct traffic
19 from Marysville into the reservation area. You would
20 still have time to make those plans, would you not?

21 A. I don't know what plans you're speaking of.

22 Q. You testified earlier about concerns about
23 people from Marysville going to the casino or did you
24 not?

25 A. I did not, but you're correct in that I

1 would anticipate people from Marysville will use the
2 casino.

3 Q. And you will be doing some planning to
4 provide for access to the casino; is that right?

5 A. That's primarily the basis for or one of
6 the basis for the tribes taking lead on the 88th
7 Street interchange project was to provide access.

8 Q. You mentioned a new development, an
9 application for development for a shopping center on
10 116th, and I believe you said it was just east of
11 state; is that right?

12 A. Correct.

13 Q. Now, most of the development in the town of
14 Marysville residential development is to the east of
15 State Street, correct?

16 A. The new development has been east of state.

17 Q. And people living east of State Street,
18 then, would not be crossing the railroad tracks in
19 order to use that new shopping center if it's built,
20 right?

21 A. Any residents currently west of State
22 Avenue would certainly -- and actually because of this
23 shopping center's location I would anticipate that
24 this will primarily serve existing residents, many of
25 which are located west of the railroad tracks, so they

1 will be using this. The shopping center would
2 probably serve an area with a radius including much of
3 the development, developed areas up to 136th Street
4 west of I-5 and probably down to about 100th Street
5 where you run into some of the major competition, but
6 I wouldn't anticipate that this new development is
7 really intended to serve residents on the east side of
8 town. It's really intended to serve people on the
9 north and west sides of town, most of which are
10 existing residents.

11 Q. Looking on Exhibit 19, you show only your
12 residential areas there as being only -- speaking of
13 west of the tracks -- as only being the small block of
14 orange between 116th and 124th; is that right?

15 A. No. It would be all that yellow area too,
16 single family residential area. The yellow -- all the
17 yellow represents residential uses.

18 Q. Look at Exhibit 19, please. Do you have
19 19?

20 A. Is that the zoning?

21 JUDGE HAENLE: Yes.

22 Q. Are you looking at Exhibit 19?

23 A. Yes, I am. It's basically all the
24 orange areas and yellow areas also.

25 Q. And if we're talking about the areas north

1 and west -- the residential areas north and west of
2 116th?

3 A. And south also.

4 JUDGE HAENLE: Well, let counsel phrase her
5 question and listen to her question and respond to the
6 question, please.

7 Q. If we're talking about users of the
8 shopping mall coming from the north and west, north
9 and west of 116th, then looking at Exhibit 19, what
10 you're really talking about is the orange areas; is
11 that right?

12 A. Correct.

13 Q. And roughly, just looking at that, wouldn't
14 you say that only about one quarter of those residents
15 come from the west side of the track?

16 A. One third probably if you look at the south
17 side of 116th Street as well.

18 Q. Has the city already approved that
19 application for development of that shopping center?

20 A. No, it has not.

21 Q. And so it appears that the city has to deny
22 it if it has sufficient concerns about safety?

23 A. Correct.

24 MS. GIBSON: Nothing else.

25 JUDGE HAENLE: Do you have questions, Ms.

1 Fairhurst?

2 MS. FAIRHURST: No, Your Honor.

3 JUDGE HAENLE: Ms. Rendahl?

4 MS. RENDAHL: Just a few.

5

6

CROSS-EXAMINATION

7 BY MS. RENDAHL:

8 Q. Ms. Hirashima, do you have copies of all of
9 the exhibits?

10 A. Yes, I do.

11 Q. Comparing Exhibit 18 and Exhibit 19, is it
12 a correct representation that Exhibit 18 represents
13 expected development and 19 represents actual
14 development or am I not understanding the difference
15 between these two?

16 A. I think that's pretty close interpretation.

17 Q. Being in charge of the city of Marysville,
18 are you familiar with the area around 88th Street, the
19 intersection of 88th Street and state?

20 A. Yes.

21 Q. Are you familiar with there being a
22 frontage road west of the railroad north of 88th
23 Street?

24 A. In the new interchange plans you mean?

25 There is currently a road that serves some residential

1 -- the residential properties in that vicinity between
2 the Interstate 5 and the railroad tracks, but in the
3 new interchange plans there is also a plan for an
4 additional intersection.

5 Q. How will that intersection providing access
6 to that frontage road, how will that be configured?

7 A. I'm not real familiar with those plans
8 because I am not involved in the transportation
9 committees that review the interchange, but my
10 understanding having seen copies of plans is that
11 immediately west of the intersection the state intends
12 to install the signal and there will be an access road
13 east of it, east of the interchange running north to
14 the residential properties.

15 Q. So there will be an additional access to
16 those areas besides the frontage road west of the
17 road?

18 A. I guess I'm not familiar with the frontage
19 road that you're speaking of so I'm going to have to
20 defer that question to somebody who could answer it.

21 Q. Do you know if the city has any plans in
22 the long-range or future in solving the traffic
23 congestion problems in and around State Street and the
24 railroad tracks through constructing any underpasses
25 or overpasses?

1 A. We don't have any plans under way.

2 Q. When new development is planned such as new
3 residential subdivisions or commercial business parks,
4 EIS's or environmental impact studies, are those
5 required by the city for such development?

6 A. If the project is deemed to have
7 significant adverse impacts we would require EIS. If
8 we feel the impacts can be mitigated through proposals
9 by the development or conditions placed on it by the
10 city then we would issue a mitigated determination of
11 nonsignificance or a DNS.

12 Q. Through the EIS process or even the
13 nonsignificant or whatever you just described for
14 nonsignificance, do you consider the impact,
15 especially if the development is close to the
16 railroad, do you consider the impact from noise or
17 vibration from the railroad in the planning for that
18 development or business park?

19 A. It could be a factor. I don't know to what
20 extent it would be. I guess it would depend on the
21 proposal itself and the kinds of feedback we receive
22 from other agencies and departments as to what kind of
23 role that would play in the review.

24 MS. RENDAHL: I have no further questions.

25 JUDGE HAENLE: I have only one question, I

1 think. On Exhibit 19, which is the zoning, I assume
2 that DU means dwelling unit and AC means acre?

3 THE WITNESS: Correct.

4 JUDGE HAENLE: Thank you. Did you have any
5 redirect?

6 MR. GRAAFSTRA: Just a couple of questions,
7 Your Honor.

8

9

REDIRECT EXAMINATION

10 BY MR. GRAAFSTRA:

11 Q. When a proposal or development is submitted
12 in the city of Marysville, is notice given to people
13 who may have an interest to comment?

14 A. Yes.

15 Q. Do you maintain a list of people to whom
16 you specifically mail notice?

17 A. We maintain a list. The actual mailing is
18 basically focused on what kind of project it is and
19 what kinds of permits are involved in the project, but
20 we do maintain a mailing list which would have state,
21 federal and local agencies who would have jurisdiction
22 or interest in the project, and when a project comes
23 through that has some bearing or requires some
24 permitting or we feel merits comment by agencies
25 within the property vicinity, such as Burlington

1 Northern, we would route a copy of the project to
2 those offices. For instance, our conference of plan
3 was routed to just about every federal and state
4 agency just this last year prior to adoption and we
5 solicited comments.

6 Q. And so you have specific recollection of
7 routing materials to Burlington Northern?

8 MS. GIBSON: Object to the form of the
9 question, it's leading.

10 JUDGE HAENLE: I'm going to overrule the
11 objection. Do you have specific recollection?

12 THE WITNESS: Yes, I do.

13 Q. What is that recollection?

14 A. On some projects, but the one I
15 particularly have in mind is our comprehensive plan
16 because we did actually get some comment back from
17 Burlington Northern. When we were adopting our
18 comprehensive plan we routed a copy of the document
19 and the maps to federal and state agencies and we did
20 actually get a comment back from Burlington Northern,
21 and I recollect that because it was unusual because I
22 think it was the first time we had received comment
23 back, and also because the city responded to that by
24 making a change relative to Burlington Northern's
25 request, and that was actually in the 116th Street

1 area. Burlington Northern had requested, because of
2 access considerations -- the city council had
3 originally proposed some community commercial uses and
4 at Burlington Northern's request we reconsidered that
5 and actually put in a less intense use immediately
6 adjacent to the rail at one location, which was 116th
7 Street, and that was the only location it commented on
8 relative to our entire comp plan.

9 Q. And so taking into consideration --

10 JUDGE HAENLE: Having trouble hearing you.

11 Q. Taking into consideration all land use
12 actions that you've been associated with since you've
13 been city planner, how many times do you recall
14 Burlington Northern commenting on any planned use
15 actions?

16 MS. GIBSON: I will object. What's the
17 relevancy of this?

18 MR. GRAAFSTRA: She asked the question
19 about whether the city of Marysville ever commented to
20 them about what they were doing. I'm just asking the
21 converse. It's relevant what is Burlington Northern
22 doing. They're saying, gee, all this development we
23 shouldn't consider it, because it's after the railroad
24 came here. Well, what's Burlington Northern been
25 telling us all along? It's relevant.

1 MS. GIBSON: Your Honor, she's already made
2 the comment in her prior testimony that the only time
3 that she knows of that the feedback was made from
4 Burlington Northern was the one incident that she
5 testified to.

6 JUDGE HAENLE: Well, were there any other
7 times that you got feedback?

8 THE WITNESS: That was the only one I
9 recall.

10 MR. GRAAFSTRA: Thank you. No further
11 questions.

12 JUDGE HAENLE: Anything more of the
13 witness?

14 Thank you, ma'am. You may step down. Did
15 you have another city witness, Mr. Graafstra?

16 MR. GRAAFSTRA: The city has decided not to
17 call any further witnesses.

18 JUDGE HAENLE: Does that complete the
19 city's presentation then?

20 MR. GRAAFSTRA: That's correct, subject to
21 whatever final argument or final brief is decided
22 upon.

23 JUDGE HAENLE: Let's go off the record then
24 to change witnesses.

25 (Recess.)

1 JUDGE HAENLE: Let's be back on the record.
2 During the time we were off the record the Commission
3 staff called its first witness of the.

4 Whereupon,

5 GARY HARDER,
6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8 JUDGE HAENLE: Also during the time we were
9 off the record I marked a number of documents as
10 follows. Marked as 21 for identification is a map.
11 Mine has yellow, blue, green and pink shading on it
12 entitled Marysville Train Speeds. I will mark this as
13 21 for identification.

14 22 for identification is a series of
15 mounted photographs in 22 pages. I will mark this as
16 Exhibit 22. The first page is entitled BN, Cascade
17 Division, Bellingham Subdivision.

18 Exhibit 23 for identification is also a
19 group of mounted photographs. The printed heading is
20 WUTC Photo Sheet. I will mark this group of documents
21 as 23 for identification.

22 24 for identification is a two-sided sheet
23 that begins what Operation Lifesaver is, and a
24 pamphlet entitled Information and Key Safety Tips at
25 Highway, Rail Grade Crossings.

1 Exhibit 25 for identification for
2 identification is a chart entitled Accidents at all
3 Grade Crossings Reported 1972 through Current, and Ms.
4 Rendahl asked me to add to that state of Washington,
5 so I have written that in at the top as well to add to
6 the caption.

7 And Exhibit 26 for identification appears
8 to be a group of correspondence. Would you describe
9 for me what that is, Ms. Rendahl.

10 (Marked Exhibits 21 - 26.)

11 MS. RENDAHL: Your Honor, these three
12 documents are letters received by the Commission prior
13 to this hearing expressing opinion from the public
14 concerning the petition for us at this hearing. And
15 the Commission in the past has allowed such letters in
16 not to prove the truth of what is in those letters but
17 for illustrative purposes only. That is why they are
18 offered by the Commission staff.

19 JUDGE HAENLE: Before we went back on the
20 record I believe counsel agreed that they have
21 stipulated the entry of 21 through 24 and 26. Is that
22 correct, Mr. Graafstra?

23 MR. GRAAFSTRA: That's correct.

24 JUDGE HAENLE: Ms. Gibson?

25 MS. GIBSON: Yes. And we would also have

1 no objection to 25.

2 JUDGE HAENLE: And Ms. Fairhurst?

3 MS. FAIRHURST: Same answer as Ms.

4 Gibson's.

5 JUDGE HAENLE: It was my understanding that
6 you, Mr. Graafstra, did have some questions or wanted
7 information about 25 before you indicated whether or
8 not you would object; is that correct?

9 MR. GRAAFSTRA: That's correct. I have
10 indicated I have no objection at this time on
11 authenticity only.

12 JUDGE HAENLE: I will enter 21 through 24
13 and 26 into the record with 26 being admitted for
14 illustrative purposes only for the Commission's rules
15 and I think that takes care of all of them except for
16 25.

17 (Admitted Exhibits 21 - 24 and 26.)

18

19 DIRECT EXAMINATION

20 BY MS. RENDAHL:

21 Q. Would you please state your full name for
22 the record and spell it for the recorder?

23 A. Gary Harder, H A R D E R.

24 Q. And what is your business address?

25 A. Utilities and Transportation Commission,

1 1300 South Evergreen Park Drive Southwest, Post Office
2 Box 47250, Olympia, Washington 98504-7250.

3 Q. And so you're employed by the Utilities and
4 Transportation Commission?

5 A. Yes, I am.

6 Q. What is your position with the Commission?

7 A. The title of my position is rail carrier
8 compliance specialist.

9 Q. How long have you been employed by the
10 Commission in this capacity?

11 A. Approximately 22 years.

12 Q. Have you held other positions with the
13 Commission during that time?

14 A. I've held essentially this same position.
15 It's been jockeyed around as to the responsibilities
16 but it turns out to be the same thing, yes.

17 Q. What are your responsibilities, then, as a
18 rail carrier compliance specialist?

19 A. I help the inspectors in the field to be
20 providing them the expertise in the different areas
21 that they are inspecting. I review their reports,
22 take care of and analyze some of the accident data
23 that is coming in and also process special assessments
24 of special projects and also process the petitions for
25 any changes at railroad crossings and for new

1 crossings.

2 Q. Have you reviewed the train speed petitions
3 here before us today?

4 A. Yes, I have.

5 Q. Has the Commission rail staff under your
6 direction conducted an analysis or investigation of
7 the request to increase train speeds?

8 A. Yes, we did.

9 Q. And what did you do in that investigation?
10 What did the staff do?

11 A. The staff had their rail inspector, who is
12 a certified track inspector in the employment of the
13 state but also is a certified track inspector under
14 the Federal Railroad Administration, do a walking
15 inspection of the track in the city limits of
16 Marysville. My other inspector, I also had him review
17 and look at the railroad crossings and take some
18 pictures of those crossings as part of the review.

19 Q. What standards did the staff consider in
20 conducting its investigation, if any?

21 A. We used and applied the Manual for Uniform
22 Traffic Control Devices. We used the accepted
23 practices of what we've done in the past at the
24 railroad crossings. The traffic inspector, as I said,
25 a federal inspector, essentially is using the Federal

1 Track Safety Standards in doing his inspection of the
2 track.

3 Q. What other factors or issues did the staff
4 consider in conducting its investigation?

5 A. We also reviewed the relationship of the
6 track to the community of Marysville in essence of
7 where is the track? Is it essentially in a rural area
8 or a residential area, commercial area or a
9 combination or just urban/residential community that
10 it goes through.

11 Q. Do you have Exhibits 21, 22 and 23 in front
12 of you?

13 A. Yes, I do.

14 Q. Looking at Exhibit 21, would you please
15 explain what this exhibit shows?

16 A. I took the petition that was filed by
17 the petitioners and took the request that they had
18 asked for and plotted them on the -- on a map of what
19 I understood to be the city limits of Marysville. I
20 tried to show the existing train speeds which are
21 shown for passenger and freights in yellow. I tried
22 to also show in that -- indicated in yellow the
23 railroad crossings that are public in the city of
24 Marysville, and also what is being requested by the
25 freight trains in Marysville for 50 miles an hour in

1 green and what is proposed by the increase in
2 passenger trains in blue, green and pink.

3 Q. So does this map indicate the track that
4 was inspected in your investigation of the city of
5 Marysville?

6 A. Yes, it does.

7 Q. How often does the Commission staff inspect
8 the track through the city of Marysville?

9 A. In cooperation with the FRA inspectors the
10 program is to have employees inspect all Amtrak routes
11 once a year if not twice a year. This track here,
12 because of the request, has probably been inspected
13 within the last year of 1994 about six times.
14 Ordinarily we would have inspected this at least once
15 a year.

16 Q. Now, you spoke of Amtrak routes. As Amtrak
17 is currently not operating on this route, do you have
18 other standards for routes?

19 A. We would inspect them at least once a year.

20 Q. What does the staff do to insure that --
21 let me rephrase. Does the staff have any enforcement
22 duties in relation to Burlington Northern Railroad?

23 A. Yes. In accordance with the federal
24 program, the track inspector would inspect this track
25 and write up any defects or exceptions. These

1 exceptions are spelled out in the FRA standards and
2 the railroad is given a copy of this report and they
3 are to indicate on that copy that they did receive a
4 copy of that report. On that report there is a
5 section that the railroad is to indicate and return
6 back to the FRA what corrective measures and what they
7 did to comply with the defect. There's two ways they
8 could do that. If it was a class 2 track, for
9 example, and the defect was addressing class 2 track
10 and it was not a defect under class 1, they could
11 remark over in the area that they corrected the defect
12 by reducing the train speed by now making it class 1
13 track. Or they could also indicate that they
14 corrected the problem and indicate the date that they
15 so corrected the problem.

16 Q. Does the Commission staff have any other
17 enforcement powers over the railroad if it finds a
18 defect in the track or that the railroad has failed to
19 correct a problem?

20 A. Yes, we do. We also have a state report
21 that the inspectors will file or I myself will fill
22 out when we observe a problem with the public
23 crossing. Say with the material and the ride over the
24 crossing we feel needs to be corrected or planks are
25 defective, that signing needs to be changed or is not

1 there that should be there, such as the crossbuck
2 sign, if there's clearance problems along the
3 right-of-way that businesses have encroached upon, we
4 have rules that would also apply to that. And we also
5 have an equipment safety program where one of the
6 inspectors will inspect the railroad equipment. We
7 also have a hazardous material person who does
8 hazardous material inspections and we also have safety
9 inspectors that go out and investigate fatal accidents
10 at railroad crossings or at -- or along the railroad
11 right-of-way.

12 Q. Does the Commission have the ability to
13 issue penalties against the railroad?

14 A. Excuse me.

15 Q. Does the Commission staff have the ability
16 to issue penalties against the railroad for failure to
17 correct problems?

18 A. Yes, we do.

19 Q. Looking at Exhibit 22, would you explain
20 what this exhibit shows?

21 A. These are pictures taken by the traffic
22 inspector as he was walking the track looking at it
23 for compliance with FRA standards. He took pictures
24 at different locations of the track structures. For
25 instance, he's looking on the first page south,

1 looking north, also shows the milepost that he's at,
2 approximately, and also shows that this is a picture
3 essentially of bridge 10.5 over Union Slough. The
4 lower picture again does the same thing identifying
5 what the picture is and also that it's looking in the
6 other direction.

7 Q. Does this exhibit -- what area of track
8 does this exhibit cover?

9 A. It covers essentially, like the first page
10 indicates, from milepost 37.6 all the way through to
11 the northerly city limits, which we were understood,
12 led to believe as being 136th Street Northeast at
13 railroad milepost 43.3.

14 Q. Did the staff in conducting its track
15 inspection find any defects in the track?

16 A. Yes. The inspector did -- let's look at
17 page 10. He noted what is known as a wheel engine
18 burn in the track which to some degree is common, but
19 these are a little bit over and above what he felt as
20 being acceptable under the FRA standards. I believe
21 the center picture to the left with the ruler shows
22 what he is kind of indicating is what is an accepted
23 width of the track, width of the rail. On my Xerox
24 copy on the top picture I can't make out what the
25 dimensions are, but he's taking exception also to the

1 fact that it's been smashed or been compressed to such
2 a degree that you have what's known as a tight gauge
3 possibility, and the other thing is the third picture
4 in the lower right portion also shows that there's an
5 engine burn across from each other is what he's trying
6 to do with that picture. I think there's essentially
7 two pictures there in that lower quadrant showing that
8 there's an engine burn on the rail that is opposing
9 each other. So you could have a narrow gauge
10 condition.

11 Q. What did the staff do after finding this
12 investigation -- finding this defect in rail?

13 A. Mr. Kimbrell wrote this up on a FRA defect
14 report and was given to the road master. This morning
15 I double-checked it to make sure that the defect in
16 fact does not exist out there now. They have
17 corrected this by what's known as a building up of the
18 rail through a welding process. So they have built it
19 up with a welder and then ground it off to the profile
20 for the configuration of a rail head or top of the
21 rail.

22 Q. So the defect has been corrected?

23 A. Yes, it has.

24 JUDGE HAENLE: I indicated earlier that I
25 did want to try to break just a few minutes before 12

1 to be sure that we could get back in time before the
2 public witnesses. Would it be all right if we broke
3 now and then continue with Mr. Harder after lunch?

4 MS. RENDAHL: That's fine, Your Honor.

5 JUDGE HAENLE: I didn't know how much more
6 you had but since you had several more packets I
7 thought this would be a good time.

8 MR. GRAAFSTRA: I need to ask a procedural
9 question. We left open whether we were going to do
10 oral arguments or do post hearing briefs.

11 JUDGE HAENLE: I suppose you wanted to
12 prepare the oral arguments over the lunch hour if
13 you're going to do them.

14 MR. GRAAFSTRA: That's not the fundamental
15 issue. I need to attend other matters at my office
16 this afternoon. I know it's starting to look like tag
17 team, it's actually going to be a continuation of this
18 afternoon's session and unfortunately since I've been
19 here for most of the hearing it will be sort of
20 disadvantageous if he was then left with the burden of
21 doing oral argument if that's what the court ruling
22 would be on how this matter would be closed. So I
23 would like a determination on that subject to see
24 whether I have to stay here and Mr. Weed gets to do
25 oral argument or whether we're going to do post

1 hearings briefs.

2 JUDGE HAENLE: You indicated already before
3 we went on the record that you would prefer briefs.

4 MS. FAIRHURST: The state would also prefer
5 briefs.

6 JUDGE HAENLE: Ms. Rendahl?

7 MS. RENDAHL: The Commission staff would
8 prefer briefing rather than oral argument.

9 MR. GRAAFSTRA: I had some inflammatory
10 remarks I wanted to make.

11 JUDGE HAENLE: You will have to save them.

12 Let's break for lunch. We will set a date
13 for brief after the lunch.

14 (Lunch recess.)

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

(1:00 p.m.)

JUDGE HAENLE: Let's begin the hearing then. The purpose of this portion of the hearing is to take testimony from members of the public. This portion of the hearing was scheduled for 1:00 in the afternoon of January 20. Before we went on the record, I indicated that counsel at the front table, Ms. Fairhurst, that would be on your left end, represents the Washington State Department of Transportation. Ms. Gibson, who is to her right, represents the Burlington Northern Railroad which is also a petitioner. Mr. Weed, on the left side of the right table, is the city attorney representing the city of Marysville, and Ms. Rendahl at the very end will present the Commission staff's case. My name is Alice Haenle. I'm the administrative law judge designated to conduct the case.

To this point we've heard testimony from the petitioners, the city and are part way through the Commission staff witnesses. They are presenting testimony about the requested proposed train speed limit increases. I wanted to make sure that that's the only issue we will be covering today is the train speed limit increases. I understand there is a

1 petition about the Fifth Street grade crossing. That
2 is not at issue today. That is the subject of a
3 separate petition. So we will be talking only about
4 the petition to increase the train speed limits.

5 We had a number of people who came
6 yesterday who agreed to come back today at 1:00 to
7 give testimony. I will be calling their names first
8 and then I will be calling the names of the people who
9 signed today. If you have not signed up today and
10 want to give testimony, please print your name and
11 address on the sign-up sheet at the side of the door.

12 John Campbell.

13 Whereupon,

14 JOHN CAMPBELL,
15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17 JUDGE HAENLE: The witness is sworn.

18

19 DIRECT EXAMINATION

20 BY MS. RENDAHL:

21 Q. Would you please state your name for the
22 record and spell your name for the recorder.

23 A. Yes. My name is John C. Campbell. Last
24 name is C A M P B E L L.

25 Q. And would you please state your address for

1 the record.

2 A. Yes. 5303 - 110th Place Northeast,
3 Marysville.

4 Q. So you are a homeowner here in Marysville?

5 A. Yes.

6 Q. And are you speaking today on your own
7 behalf or on behalf of an organization?

8 A. Basically myself, yes.

9 Q. And what is your position on the train
10 speed petition?

11 A. I'm trying to be a concerned conscientious
12 citizen of a community. I have opinions and strong
13 feelings about different subjects and this is one I've
14 thought about for years and have followed quite a bit
15 on on this transportation thing, went to other
16 meetings and so forth, so I probably don't have the
17 qualification of many other people here, but I just
18 would like to give my opinion.

19 JUDGE HAENLE: Well, first of all, sir, do
20 you think it's a good idea or not?

21 THE WITNESS: I have mixed feelings about
22 it.

23 A. First of all, my first answer increasing
24 the speed limit as it is right now, no, I am against
25 it after a lot of thought about it.

1 Q. Please go ahead and make your full
2 statement.

3 JUDGE HAENLE: And you will need to
4 concentrate on speaking slowly, Mr. Campbell, to be
5 sure that the court reporter can get your statement.
6 Go ahead, sir.

7 A. Yes, thank you. Of course I said I don't
8 have a lot of background maybe in transportation, but
9 I've been around a few years and I travel a little
10 bit. In fact we made a point -- knowing this hearing
11 was coming up last Monday, I took the family to Canada
12 to try out the rail system there, the sky train, and
13 we talked to people there. We see their speed is
14 running about 55 miles an hour, and we see that it
15 works very fine. We see it costs about \$4.50 to run
16 it all day long and all the stops and so forth, and we
17 looked the system over real well, and of course just
18 before New Year's we took Amtrak from Everett to
19 Seattle. It leaves 9:30, comes back at 5. Spent the
20 day, and we thought, gee, wouldn't it be nice if the
21 train would come up our way to Marysville.

22 '93 -- a little more experience background
23 here first -- is that in '93 we went to Europe, went
24 to five different countries and we made a note of the
25 transportation systems over there and rode quite a

1 few. So that's all the background I have, and so I
2 base my reasoning on, for one thing, in 1969, a lot of
3 people remember the train accident, and I rushed down
4 there and I took black and white photographs which I
5 have yet today. I developed them myself and so forth,
6 and it shows what can happen when somebody is not
7 paying attention operating trains. There's two
8 freight trains, many probably already know about it,
9 and so I have the black and white photographs here.

10 And I believe that looking at the rails,
11 I've noticed through the years you see so many spikes,
12 or nails, that are loose. Rails are -- they just look
13 like they are unsafe and when they brought the train
14 from Spain into Everett here a few months ago I was
15 down looking at that and right when it was sitting
16 there at the station in Everett, I pointed out to one
17 of the men that came from Spain, could speak English,
18 and says, you know, what do you think of this. Look
19 at the spikes. Some of them are up two or three
20 inches and he shakes his head.

21 And so these things make me wonder, you
22 know, I can't see increasing the train through
23 Marysville especially, and remembering the train
24 accident, it really bothers me, and I feel that
25 knowing that here in the next couple of weeks, I

1 believe Burlington Northern is going to do an
2 experiment running from Everett to Seattle, and I
3 would like to ask them why don't they do an experiment
4 clear to Vancouver, and let's see how many people will
5 ride it and what is it going to cost?

6 Some of us, I've talked to, of course, many
7 of my neighbors and friends and we get together, and
8 they all agree. What is the purpose of it? Can we
9 justify -- what is the number? Hear numbers like \$40
10 million to save 30 minutes, and I'm wondering, when
11 we drove Monday to Vancouver, Canada, it's a beautiful
12 drive, it isn't heavy traffic, and I thought, gee,
13 what is the purpose? This keeps going through my mind
14 and so that is why I'm against increasing the speed,
15 and I would suggest that maybe if we saved all of that
16 money of upgrading the tracks and just ran a train
17 like we used to at the slower speed and make more
18 stops, what's the advantage of running this train as
19 fast as you can run it from Seattle to Vancouver,
20 Canada and it doesn't stop in my town. How do I
21 benefit from it?

22 And but I'm not basing my against the speed
23 limit thing based because I can't get on the train
24 but, I mean, it's something to think about. Gee, so
25 nice there in Canada where the train went slower,

1 sure, they claimed it was a top speed of 55 but it
2 stopped every mile or so and it increased -- we could
3 see the businesses that built up around those areas,
4 New Westminster. Wife says look at that beautiful
5 market there. So we jump off and you can get on and
6 off any time you want.

7 And I think that's the kind of thing we
8 need here. We don't need high speed, that's more of a
9 commuter-type train, but what's the rush in getting
10 the people from Seattle to Vancouver, Canada? Is it
11 to bring the Canadians to Seattle to spend their
12 money? If they're tourists, if it's a tourist thing,
13 I don't know why they need to save 30 minutes, so I
14 think that's basically all I have to say there looking
15 at my notes here, so thank you.

16 JUDGE HAENLE: Counsel, did you have
17 questions? Anyone?

18 MS. GIBSON: I have none.

19 JUDGE HAENLE: Thank you, sir, for your
20 testimony. You may step down.

21 JUDGE HAENLE: Kristin Kinnamen. I'm
22 sorry. Indicated she did not want to testify. I'm
23 just going to call the names of the people that either
24 put yes next to whether they were going to testify on
25 the sign-in sheet or the ones that put a question

1 mark and I will give you the chance to say yes or no.
2 Once I have called all the names I will ask if there's
3 anyone else that's changed their mind and perhaps
4 changed their minds once you've seen everyone else do
5 it.

6 JUDGE HAENLE: Caldie Rogers.

7 MR. MITSULES: Caldie is not here and I'm
8 going to do it.

9 Whereupon,

10 LARRY MITSULES,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MS. RENDAHL:

16 Q. Would you please state your full name and
17 spell your last name.

18 A. My name is Larry Mitsules, M I T S U L E S,
19 and I'm representing the Marysville Chamber of
20 Commerce.

21 Q. Would you please give us your business
22 address then?

23 A. 11031 Highway 99 North, Marysville 98271.

24 Q. And I see you've brought up a written
25 statement. If you're going to read that into the

1 record, I advise you to speak slowly so the reporter
2 can take everything down. Before you go ahead and
3 read that, what is your position on this petition?

4 A. We're asking that you not increase the
5 speed limits.

6 Q. Please go ahead and --

7 JUDGE HAENLE: Could I ask also what is
8 your position with the Chamber of Commerce, sir?

9 THE WITNESS: I'm on the government affairs
10 committee on the board of directors. And I'm here to
11 speak for Caldie because of illness.

12 JUDGE HAENLE: And has the board of
13 directors authorized you to come and give testimony
14 today?

15 THE WITNESS: They asked me to do that.

16 JUDGE HAENLE: Go ahead, please.

17 A. If I could just preface my remarks that
18 are written here, this committee didn't come to these
19 conclusions without talking to lots of members
20 including economic development and governmental
21 affairs, and I serve on one of those committees and
22 have a little bit of influence on the other. The
23 greater Marysville Chamber of Commerce echoes the
24 concerns of our citizens regarding increased rail
25 speed through Marysville. We believe this increased

1 speed prevents a very real safety hazard to our
2 citizens.

3 As a Chamber of Commerce, we recognize and
4 support the importance of rail transportation as a key
5 part of economic development particularly here in
6 Marysville where our city's incorporation is linked to
7 the completion of the Great Northern Railroad in 1891.
8 But another key component to economic development
9 recognized by this chamber and the community we serve
10 is quality of life. This is reflected in our city's
11 motto where quality of life is our way of life. This
12 motto is our statement of priority and commitment to
13 developing a framework that encourages growth without
14 compromising quality of life. This includes the
15 safety and well-being of our citizens.

16 Historically there is a direct correlation
17 between increased rail speed and increased accidents
18 and fatalities. Recognition of this correlation is
19 what led to the 20- to 25-mile-an-hour speed limit
20 imposed on trains traveling within city limits. This
21 safety precaution is particularly important in
22 Marysville where many of our businesses and residents
23 not to mention our main street are located literally
24 within feet of the rail line. We are told that some
25 in the rail industry refer to the raised accident rate

1 that accompanies speed limit increases as the learning
2 curve while others refer to it as the fatality curve.
3 Unbelievable and unacceptable.

4 Given these considerations, we urge you not
5 to increase train speed while traveling through
6 Marysville. Understand, we are talking about only an
7 eight to ten-mile stretch of track. The time saved,
8 or shall we say the minutes saved, by the proposed
9 speed increase is simply not worth the risk. Please
10 do not disregard the safety of our citizens for the
11 sake of a few minutes.

12 JUDGE HAENLE: Counsel, have you questions?

13 MS. GIBSON: I have a couple of questions
14 for you.

15 JUDGE HAENLE: Would you identify yourself.

16

17 CROSS-EXAMINATION

18 BY MS. GIBSON:

19 Q. I am Rexanne Gibson and I represent
20 Burlington Northern. Were you here yesterday when
21 testimony was given by Mr. Clark, the representative
22 of Amtrak?

23 A. No. Caldie was here yesterday, and as I
24 say that illness forced me to come and represent her.

25 Q. In your written statement which you just

1 read, you stated that there is a recognized
2 relationship between higher speeds of trains and
3 injuries and fatalities. Am I accurately paraphrasing
4 what you said?

5 A. And I can recollect where that input to our
6 committee came from. I can tell you the doctor who
7 gave us a little input from that.

8 Q. A doctor gave that to you?

9 A. A chiropractor.

10 Q. A chiropractor told you that?

11 A. He referred to that increase in accidents.

12 Q. You yourself weren't present to hear the
13 testimony of Mr. Clark speaking from Federal Railroad
14 Administration statistics that show in fact more
15 accidents occur with trains that are going at slow
16 speeds?

17 A. I wasn't here.

18 MS. GIBSON: Thank you. I have nothing
19 else.

20 JUDGE HAENLE: Anyone else?

21 MR. WEED: Yes. I did have just a couple
22 of questions.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. WEED:

3 A. State your name.

4 Q. My name is Grant Weed. I'm the city
5 attorney for Marysville.

6 You had indicated that there were a number
7 of businesses I believe that were within feet of the
8 tracks. Do you have personal knowledge of what some
9 of those businesses might be here in Marysville?

10 A. My storgey is not within the city limits;
11 however, I'm directly across Highway 99 from the
12 railroad tracks. I can tell you that Dale's Nursery
13 is out the back door of the railroad tracks, so
14 everybody on the west side of State Street practically
15 speaking, their businesses are within feet of the
16 railroad tracks.

17 Q. Would you have an estimate of how many
18 feet, for example, Dale's Nursery would be from the
19 tracks?

20 A. Just a guess, 25, 50 maybe, out the back
21 side where they have their planning area. It does
22 shake our building across the street at the speeds
23 that they go now, so that's not -- I mean, that's a
24 consideration for us during the times when they roll
25 through, and I'm talking about being across the

1 highway from the railroad tracks.

2 Q. That's the building where your business is?

3 A. Exactly.

4 Q. You do have an estimate as to how many feet
5 your building is from the tracks?

6 A. Maybe David could tell us.

7 THE WITNESS: What's the width of the
8 street, David, do you know that?

9 JUDGE HAENLE: If you don't know, that's
10 fine.

11 A. But I would say we're probably two street
12 widths from the tracks.

13 MR. WEED: Thank you. That's all the
14 questions I have.

15 MS. RENDAHL: Just for clarification,
16 sir, what is your business?

17 THE WITNESS: It's Jack's Home Furnishings.

18 JUDGE HAENLE: Thank you, sir. You may
19 step down.

20 Steven Paul. You said possibly. Did you
21 want to testify, sir? Steven Paul?

22 Joe Legare.

23 Whereupon,

24 JOE LEGARE,

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

1 herein and was examined and testified as follows:

2

3

DIRECT EXAMINATION

4 BY MS. RENDAHL:

5 Q. Would you please state your name and spell
6 your last name for the recorder.

7 A. Joseph A. Legare, L E G A R E.

8 Q. Would you please state your address for the
9 record. First maybe I should ask you, are you here on
10 your own behalf or on behalf of an organization?

11 A. Here on behalf of an organization,
12 Marysville School District.

13 Q. What is your position with the school
14 district?

15 A. Transportation supervisor.

16 Q. Give us your business address then.

17 A. 4220 - 80th Street Northeast, Marysville.

18 Q. Are you authorized to speak on behalf of
19 the school district?

20 A. Yes, I am. I have authorization from
21 assistant superintendent Fred McCarthy.

22 Q. What is the position of the school district
23 on the petition before us today?

24 A. Con, against.

25 Q. Go ahead and make your statement.

1 A. I want to express a concern for the safety
2 of the students of Marysville School District. The
3 ones that ride the bus as well as the ones that walk
4 across the railroad tracks in Marysville. To this
5 point we haven't had any accidents involving buses and
6 cars in Marysville. We want to keep it that way.
7 Presently we have 45 big buses that cross daily across
8 railroad tracks and we have 122 special education
9 buses that cross railroad tracks on just a typical
10 school day. With all the mechanical devices we have
11 on the railroad crossing there's always a potential
12 that they may fail. The drivers watch for these at
13 all times.

14 The drivers are trained on how to cross
15 railroad tracks safely. We also train the students
16 the expectations we have on the buses crossing the
17 railroad tracks, and how to evacuate a bus when they
18 cross the railroad tracks. We do evacuations twice a
19 year, emergency evacuations, and typically if we go
20 very fast it takes two and a half to three minutes to
21 evacuate a full size school bus. Special education
22 school buses may take much much longer than that; it
23 depends on whether they can walk or not.

24 The proposed increase of the rail, I feel
25 like it would jeopardize the safety of the students,

1 the ones that ride the school bus as well as the ones
2 that walk across the tracks. Inclement weather
3 conditions -- we have lots of fog -- vision is
4 impaired a great deal, as well as sound. These are
5 two things the school bus drivers depend on and the
6 students walking, they also depend on these two. If
7 the high speed rail does come through Marysville I'm
8 not at all comfortable with it. I feel like we're
9 jeopardizing the safety of the students that we
10 transport on the school buses as well as the ones that
11 walk. That's all.

12 JUDGE HAENLE: Can you estimate for me --
13 you said you have 45 large buses and 122 special
14 education buses. Do you know how many total bus
15 crossings you have per day?

16 THE WITNESS: That is the crossings.

17 JUDGE HAENLE: That's the number of
18 crossings?

19 THE WITNESS: That's the number of times
20 they cross the tracks.

21 JUDGE HAENLE: Counsel, have you questions?

22 MS. GIBSON: Yes.

23

24

25

1 CROSS-EXAMINATION

2 BY MS. GIBSON:

3 Q. You've indicated that your drivers are
4 specially trained about driving across railroad
5 crossings; is that correct?

6 A. Correct.

7 Q. And I assume they are specially trained to
8 strictly obey the crossing signals, are they?

9 A. That's correct.

10 Q. Would that include training not to stop on
11 railroad tracks?

12 A. That is correct.

13 Q. Does your school district give any
14 education to the children who are walking across
15 tracks in terms of good safety habits at railroad
16 crossings?

17 A. To my knowledge there's no formal education
18 on that.

19 Q. I have nothing else. Thank you.

20 JUDGE HAENLE: Anything else?

21 MR. WEED: I have a couple of questions.

22

23 CROSS-EXAMINATION

24 BY MR. WEED:

25 Q. I'm Grant Weed, city attorney for the city

1 of Marysville. Do you have any idea of the number of
2 crossings by student pedestrians each day?

3 A. I can give you a guess. That's what it's
4 going to be, though, a guess and I'm going to say
5 around a thousand.

6 Q. In your experience with the school
7 district, are you aware of any incidents where a bus
8 either for special ed or for the big buses have
9 stalled on the tracks?

10 A. Yes. I've been with the district 15 years,
11 10 years as a mechanic, so I was on all the service
12 calls that went out. We had a couple of instances
13 where we did have to push or pull buses that broke
14 down off the railroad tracks. In those circumstances
15 the bus drivers did evacuate all the students on it,
16 but we were lucky no trains were coming when the buses
17 were sitting there and until help could get there to
18 get the buses off the track.

19 Q. Can you recall where those incidents
20 occurred?

21 A. They were both on 80th.

22 Q. Can you recall when those incidents
23 occurred?

24 A. Taxing my memory now. I'm going to say one
25 was probably about 1985 and probably '88 or '89.

1 Q. And those were incidents where the buses
2 needed to be towed from the tracks?

3 A. We towed one and we pushed one off the
4 tracks.

5 Q. Do you have any recollection as to how long
6 the buses were stalled and physically on the tracks?

7 A. It was a relatively short period. Probably
8 less than five minutes because that is right down from
9 the bus garage.

10 Q. So 80th Street is in the vicinity of the
11 bus garage?

12 A. Yes, it is.

13 MR. WEED: No further questions.

14 MS. FAIRHURST: I have a couple of
15 questions, Your Honor.

16 JUDGE HAENLE: Identify yourself.

17

18 CROSS-EXAMINATION

19 BY MS. FAIRHURST:

20 Q. Mary Fairhurst for the Department of
21 Transportation. First, Mr. Legare, would you
22 encourage the Operation Lifesaver program in your
23 schools?

24 A. Where the railroad comes in and speaks?

25 Q. Yes.

1 A. Yes.

2 Q. And secondly, are you aware that the
3 warning time would be the same when a train was
4 approaching when the train is going at an increased
5 speed as the amount of warning there is with the
6 current speeds so there would be no difference with
7 the increased speeds with the amount of warning?

8 A. No. You're telling me there's going to be
9 more advanced warning?

10 Q. That it would not be any less warning than
11 what is currently occurring.

12 A. In seconds or in minutes?

13 Q. Right, seconds.

14 A. No. No, I was not aware of that.

15 MS. FAIRHURST: I have no other questions.

16 JUDGE HAENLE: If you were made aware of
17 that, that the number of seconds would be the same,
18 would that change your testimony in any way, sir?

19 THE WITNESS: No.

20 JUDGE HAENLE: Anything else of the
21 witness.

22 MS. RENDAHL: Just one question, Your
23 Honor.

24 I'm Ann Rendahl. I represent the
25 Commission staff in this proceeding. Does the school

1 district have any policy? What's the policy of the
2 school district for stopping at signalized crossings?
3 Is the policy that the buses should stop at the
4 crossing regardless of whether the signal is activated
5 before going across?

6 THE WITNESS: Yes. School district policy
7 we stop at all railroad crossings whether they have
8 the crossing guards or not, whether it's marked -- we
9 stop at every single one.

10 MS. RENDAHL: I have no other questions.

11 JUDGE HAENLE: Anything else of the
12 witness?

13 Thank you, sir. You may step down.

14 Brad Young. Did you want to testify,
15 sir?

16 MR YOUNG: Yes.

17 JUDGE HAENLE: You put a question mark next
18 to your name.

19

20 DIRECT EXAMINATION

21 BY MS. RENDAHL:

22 Q. Would you please state your full name and
23 spell your name for the recorder.

24 A. Sure. Brad Young, B R A D, Y O U N G.

25 Q. And are you here today on your own behalf

1 or on behalf of an organization or a business?

2 A. I'm representing business here today.

3 Q. And what is that business?

4 A. Northwest Composites.

5 Q. And what is the business address of that
6 business?

7 A. 12810 Smokey Point Road.

8 Q. What is your position with Northwest
9 Composites?

10 A. I'm part of the management team at
11 Northwest Composites.

12 Q. And so you're authorized to speak on behalf
13 of the business today?

14 A. Yes, I am.

15 Q. What is the position of the business on
16 this speed increase request?

17 A. We are against any increase in speed for
18 trains.

19 Q. Please go ahead and make your statement.

20 A. We are one of the larger employers in the
21 area. We employ approximately 275 employees up at
22 Northwest Composites, which is just north of the
23 freeway exit up here. And we have quite a bit of
24 traffic that comes in and out of our facility every
25 day, and we are primarily concerned about the safety

1 of our employees and our customers as we get quite a
2 bit of traffic, personal traffic and business
3 operations traffic across the tracks there. With
4 increased speed it just appears to us that there would
5 be a much greater possibility of serious bodily harm
6 and so on that basis we are against it.

7 We are also in a building that is very
8 close to the tracks, it is certainly within 50 feet,
9 and it's new construction and we currently experience
10 vibration from trains as they pass. We manufacture
11 aircraft components and parts, and we do have some
12 high tolerance precision equipment in there, and we
13 are also concerned about the possibility of increased
14 disruption and cost of producing out of tolerance
15 parts based upon possible vibration.

16 We also have a concern about the condition
17 of the track up in our area. As trains pass right now
18 you can see deflection on the railroad tracks and I'm
19 certainly no expert. I can't tell you whether that
20 means anything or not, but from our perspective it
21 appears that it might not be a good idea unless it was
22 all looked at much closer, so -- and that's just
23 another comment for you that there is some deflection
24 that looks abnormal to us as we sit there and wait for
25 trains to go by up at Northwest Composites.

1 JUDGE HAENLE: Which crossing is the one
2 that your customers and employees most often use?

3 THE WITNESS: It's the crossing at our
4 facility which is -- well, if you know where we're
5 located. We have a sign right on the west side of
6 Smokey Point Boulevard.

7 JUDGE HAENLE: Counsel, let me take a look.
8 We do have a map with your facility marked on it. I'm
9 not recalling which of the interchanges that involved.

10 THE WITNESS: It would be about the third
11 crossing north of the freeway exit there, third or
12 fourth.

13 JUDGE HAENLE: Thank you. Counsel?

14 A. I have one more comment. We have second
15 shift and sometimes third shift operations at our
16 facility, too, and people tend to work pretty hard at
17 our place so we're also concerned about late night
18 activity where if an employee was going home and was
19 tired they may not be as careful, so once again, high
20 speed trains it seemed like serious bodily harm could
21 be much more probable, so that's all I have.

22 JUDGE HAENLE: Counsel, any questions of
23 the witness?

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MS. GIBSON:

Q. I'm Rexanne Gibson with Burlington Northern. Mr. Young, the crossing that services your plan, that's a private crossing, isn't it?

A. That's correct.

Q. And it has stop signs posted on each side of the crossing?

A. That is correct.

Q. It also has a No Trespassing sign on it?

A. That's correct.

Q. Are you familiar with a company that has a facility just south of yours at about 124th Street?

A. What's the name of the company?

Q. I don't remember the name. That's why I'm asking if you know the industry that's there. It's something like Concura?

A. Contura, I believe. I'm not sure they're still there. I don't think they're still there. I think it was Contura, C O N T U R A.

Q. At any rate, are you familiar with that crossing there at 124th?

A. I've been across it, yes.

Q. It has signals?

A. Yes, it does.

1 Q. And would your company be interested in
2 paying for private signals at this crossing that you
3 have the concerns about, the crossing that you're
4 using?

5 A. Could you ask the question one more time?
6 I didn't hear.

7 Q. Well, you've already testified that you're
8 using a private crossing, correct?

9 A. That's correct.

10 Q. And you've indicated that you're aware of
11 the signals at the private crossing at 124th Street,
12 right?

13 A. That's correct.

14 Q. Because it's a private crossing rather than
15 a public crossing obviously there aren't going to be
16 public monies for the installation of signals, and
17 that's why I'm asking, is your company interested in
18 paying for signals to be installed at this crossing
19 about which you testified you have concerns?

20 MR. WEED: I'm going to object based on
21 relevancy.

22 JUDGE HAENLE: Counsel?

23 MS. GIBSON: Well, Your Honor, I think it's
24 probative of the extent of the concerns and it's
25 cross, proper cross-examination in that way.

1 JUDGE HAENLE: I will overrule the
2 objection. Sir?

3 A. I think it would depend on the amount that
4 it would take in order to put that through, and timing
5 related to cash flow for us.

6 Q. Now, you mentioned your concerns about what
7 you see as flexion in the track. I would ask you, Mr.
8 Young, if you were here yesterday to hear the
9 testimony of Marvin Nelson who testified about the
10 condition of the track?

11 A. No, I was not aware there was a meeting
12 yesterday.

13 MS. GIBSON: Thank you, sir, I have nothing
14 else.

15 JUDGE HAENLE: Anything else?

16 MR WEED: I have a couple of questions.

17 JUDGE HAENLE: Identify yourself, please.

18

19 CROSS-EXAMINATION

20 BY MR. WEED:

21 Q. I'm Grant Weed, city attorney for the city
22 of Marysville. Mr. Young, I believe you testified
23 concerning your business's concerns with the high tech
24 equipment used on the business premises and your
25 testimony was that you presently receive at your

1 business vibration from trains going by. Can you
2 explain to the administrative law judge, if you can,
3 how those vibrations impact the performance of your
4 equipment?

5 A. Sure. A couple of areas we're concerned
6 about, one is we have precision saws that require very
7 close tolerances, accuracy, and vibration can affect
8 their performance if they're in operations, you know,
9 when a train would go by. The other thing that
10 concerns us is we have a lot of calibrated equipment
11 as we build military and commercial aircraft hardware,
12 so any extraneous activity for that, we just want to
13 make sure that our inspection equipment is accurately
14 recording and performing.

15 Q. What would be the consequences of that
16 equipment not performing properly due to excessive
17 vibration?

18 A. It's possible that we could create hardware
19 and it could be rejected by our customers or we could
20 scrap it out because it was not fabricated the way
21 that we thought it was going to be fabricated so it
22 would incur more dollars to us.

23 Q. Is it also possible that if defects were
24 not discovered that the defective equipment could be
25 utilized in the end product?

1 A. It's possible.

2 MS. GIBSON: Well, Your Honor, I will
3 object to this line of questioning. It's irrelevant.
4 We're here to address safety issues, any safety
5 concerns, and not strictly the economic concerns that
6 are being voiced by the witness at this point.

7 JUDGE HAENLE: I will overrule the
8 objection. Sir, you said it's possible?

9 A. It's possible that hardware could not be
10 exactly what we thought it was, but I doubt it would
11 cause any serious concern with our customer. Most of
12 our products are secondary structural kind of
13 components.

14 Q. Are you aware of any other businesses in
15 the vicinity of your business that use the same
16 crossing that your business uses?

17 A. No. Ours is a dedicated crossing for our
18 facility.

19 Q. You've testified that there are both
20 employees and customers that utilize the crossing to
21 access your business. What type of business people
22 use the crossing to access your business?

23 A. We have a wide variety of customers that
24 come in from all over the world. Boeing, McDonnell
25 Douglas, a lot of people from California. We have

1 engineers and purchasing people. We have suppliers
2 that come in that are our suppliers for raw materials
3 and components. We have a lot of people in the
4 business that swing by our place.

5 Q. What type of vehicles do your suppliers
6 generally use?

7 A. If it's personal traffic it would be
8 automobiles, personal vehicles. If they're bringing
9 equipment in or if we're transporting product then it
10 would be larger, sometimes double trucks, things like
11 that.

12 Q. Has anyone from Burlington Northern ever
13 contacted you or your business for that matter
14 concerning your business paying for any upgrades to
15 the private crossing that your business uses?

16 A. I'm unaware of that but that's not to say
17 that they haven't. We have had a general manager
18 change recently and it's certainly possible that they
19 were in communication with him. I just don't know
20 that.

21 Q. Is today the first time you've ever been
22 asked about the possibility for paying for the private
23 crossing upgrades?

24 A. That's the first time I've ever been asked
25 that, yes.

1 MR. WEED: Nothing else.

2 JUDGE HAENLE: Anything else.

3

4 REDIRECT-EXAMINATION

5 BY MS. RENDAHL:

6 Q. Just for clarification, is your business
7 located at 128th Street?

8 A. That's correct.

9 Q. And that's where the private crossing is?

10 A. That's correct.

11 Q. How long has your business been located
12 there?

13 A. Since 1987.

14 Q. And are there any other alternate access
15 points to your business or is the private crossing the
16 only access point?

17 A. That's the only access to our facility.

18 Q. Have you considered looking into any other
19 -- providing any alternate access than going over the
20 private crossing?

21 A. If there were alternate routes it would
22 require easements on other properties and we have not
23 explored that to any great length.

24 MS. RENDAHL: No other questions.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RE CROSS-EXAMINATION

BY MS. GIBSON:

Q. Do you do any safety education of your employees with respect to use of the crossing?

A. Yes, we do.

Q. Do you monitor their use of the crossing to insure that they're using it safely?

A. It's kind of the honor system. We don't go out there and monitor to make sure that they're looking both ways, but obviously it's a concern to us because it's not a normal situation.

Q. Obviously your company knew the tracks were there when they installed the facility in 1987?

A. Sure.

Q. Do you do anything about cautioning your visitors about use of the crossing?

A. I am unaware of anything that we have done for that.

MS. FAIRHURST: One question.

JUDGE HAENLE: Could I ask, what was your position with the company, your job title?

THE WITNESS: I'm the contracts manager and I do business management functions also.

JUDGE HAENLE: Thank you. Go ahead.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RE CROSS - EXAMINATION

BY MS. FAIRHURST:

Q. You stated that your company moved to the site in 1987?

A. Yes.

Q. And at that time isn't it true that the trains running along the track were authorized to run at 50 miles per hour past your company?

A. I don't know what they were authorized to run.

MS. FAIRHURST: No other questions.

JUDGE HAENLE: Anyone else?

Thank you, sir. You may step down.

JUDGE HAENLE: Is your facility within the city limits, sir? It's outside, isn't it?

THE WITNESS: I don't know where the city limits are but it's 128th.

JUDGE HAENLE: Margaret Natterstad.

Whereupon,

MARGARET NATTERSTAD,

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. RENDAHL:

3 Q. Would you please state your full name for
4 the record and spell your last name.

5 A. My name is Margaret Natterstad, N A T T E R
6 S T A D.

7 Q. And are you here today speaking on your own
8 behalf or on behalf of a business or organization?

9 A. My own behalf.

10 Q. What is your address?

11 A. 10532 - 38th Avenue Northeast, Marysville,
12 98271.

13 Q. And how long have you been a resident of
14 Marysville?

15 A. 14 and a half years.

16 Q. What is your position on the petition
17 before us here today?

18 A. I like the idea of high speed rail, but I
19 think it's inappropriate through the Marysville area.

20 Q. Please go ahead and make your statement.

21 A. Our particular neighborhood, which has
22 approximately 120 residences, only has one road in and
23 out of our neighborhood, and that's over the railroad
24 tracks. We have no other alternative, and I know from
25 in fact having children, making numerous vehicle trips

1 per day, as many as 10, 12, taking various kids to
2 various functions from school and sports and dance
3 classes, you name it, the number of times that I've
4 gone over the railroad tracks that the railroad
5 crossing guards have not worked has been too numerous
6 to count.

7 I myself have called Burlington Northern at
8 least a dozen times reporting the gates were down.
9 And that doesn't count the times that they just work
10 improperly. You can sit there, wait after a train
11 goes by and at least a minute or two can lapse before
12 the gates will go back up. I've seen many of my
13 neighbors, I know many of them, and most of these home
14 in this neighborhood are four bedroom homes so you can
15 imagine the number of kids that are either driving or
16 crossing those railroad tracks themselves, walking to
17 the nearby stores.

18 I've seen cars cross in front of trains
19 right after the train has gone by because the crossing
20 guards don't go up. I've had policemen come by and
21 wave me to go around the crossing guards when I --
22 we're just south of Kruse Junction on 104th, and to
23 the north the railroad tracks curve so our line of
24 sight/visibility is very poor, and like the gentleman
25 from the school district, in inclement weather,

1 whether it's fog, your visibility is extremely
2 hampered and noise from the train horns is not
3 necessarily audible. I know that when the
4 transportation department closes down the roads the
5 school buses do not necessarily run in our
6 neighborhood and our children have to go out to Dale's
7 Nursery to catch the bus. They are crossing those
8 railroad tracks and that has occurred for a couple of
9 weeks on occasion. Usually it's only a couple of days
10 but it does happen.

11 I was told when I called Burlington
12 Northern not just the dispatcher or whatever in
13 Everett but someone else in the company, I called
14 down to Seattle and they had told me that when a
15 crossing guard is not working you're supposed to call
16 911, which I have done on occasion, and the 911
17 operators just tell me to call Burlington Northern,
18 which isn't always feasible; if I'm heading out of the
19 neighborhood I can't go home to look up the phone
20 number to call. And a lot of my neighbors know that
21 I'm involved. I think I can safely say that I speak
22 for the majority of home owners in the neighborhood
23 even though I don't have official representation, but
24 I have been active in the community. They call me to
25 ask me to call and report the crossing guards or gates

1 are down, and it's just -- I guess I don't have
2 anything to judge except past experience and I myself
3 have actually walked along the railroad tracks, seen
4 the condition of the tracks, and I don't have any,
5 really, assurance that these improvements that you're
6 proposing are actually going to be done or that they
7 will work the way they say they are, and when you're
8 talking about a high speed rail with lack of
9 visibility with as many crossings as there are in
10 Marysville, I think it's a danger situation.

11 And the other thing I would like to know,
12 too, is as these train speeds -- they're going to be
13 phased in if I'm correct. What commitments is
14 Burlington Northern going to make? I mean, are we
15 going to have above ground or underground crossings at
16 some point in time? To me that would be the only safe
17 feasible way to protect the citizens of Marysville.

18 JUDGE HAENLE: What crossing is it that is
19 the access for you?

20 THE WITNESS: The street is on 104th which
21 is just immediately north of Dale's Nursery.

22 JUDGE HAENLE: Counsel, questions?

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MS. GIBSON:

Q. How long have you lived at that house?

A. 14 and a half years.

Q. And were the train speeds 50 miles per hour up until recent times?

A. The train speeds vary so widely that I wouldn't be aware of how fast. We live about a half a mile away from the tracks and we do get significant vibration and I think the gentleman from northwest Composite said that he's seen the track flex. It's sort of a standard joke how high does it go at our crossing and everyone has commented on it.

Q. Were you here yesterday to hear Mr. Nelson's testimony?

A. No, I wasn't available.

THE WITNESS: Why weren't some of these proceedings held in the evening? If you want public comment it would have been nice to have at least one meeting in the evening so more public could attend.

JUDGE HAENLE: The railroad didn't schedule the hearings. The Utilities and Transportation Commission scheduled them. I schedule them.

THE WITNESS: Shame on you.

JUDGE HAENLE: Why, thank you. We try to

1 accommodate as best we can the requests for various
2 times of public hearings. When people ask for the
3 evening some people complain because they don't like
4 to go out when it's dark so we get all kinds of
5 various requests. I will make a note of yours. Other
6 questions?

7 Q. You talked about what you see as
8 malfunctioning of the gates. As I hear you talking,
9 the gates are always down rather than up; is that
10 right?

11 A. I have never seen a train go by with the
12 gates up, that is true, but I have seen at least two
13 times where the gates have been down for at least one
14 half an hour.

15 Q. And so it's a convenience issue to you
16 then, is it because you can't get across?

17 A. I think it's a safety issue because if
18 people think that the gates are down and they might be
19 malfunctioning they out of habit will just assume that
20 there's no train coming and maybe make a crossing that
21 is not safe.

22 Q. Would you agree with me that it becomes a
23 safety issue if people disobey the signals, that is,
24 when they're in the down position?

25 A. Yes.

1 Q. As long as people obey and do not cross
2 when the gates are down, it would be a convenience
3 issue but not a safety issue, wouldn't you agree with
4 me?

5 A. That's a sneaky way of putting it, yeah.

6 Q. I don't mean to be sneaky with you,
7 believe me.

8 A. I know you don't. What I think is that
9 when the gates are malfunctioning, which they have
10 occurred in the past and have continued to do so, that
11 that misleads the public as to what -- are they
12 supposed to sit there for half an hour to an hour with
13 no train coming? They don't realize. My husband
14 worked as a railroad fireman for three months when he
15 was in college doing a concrete run. I'm familiar
16 with trains and I am aware of you need to obey. I
17 have turned around and gone home and called Burlington
18 Northern because the gates have been down for
19 significant periods of time. It is a safety issue.
20 Those gates are malfunctioning on a regular basis.

21 Q. And by malfunctioning you mean staying
22 down?

23 A. Yes.

24 MS. GIBSON: I have no other questions.

25 MR WEED: I have a couple of questions.

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. WEED:

Q. As a follow-up to your testimony concerning you seeing these gates down for an inordinate amount of time with no trains coming, would you believe it to be a safety issues if there was to be a need for a safety response say from the city of Marysville say with respect to fire?

A. Possibly, yes. I think it would depend on the judgment of the person doing the crossing. But I've seen school buses stop and just stop there, and I'm not positive on this. My children have reported they have been let off and walked home because crossing guards have malfunctioned.

Q. You've indicated that 104th Street crossing is the only access route via street to your neighborhood?

A. Yes.

Q. You testified at the beginning of your comments that you liked the idea of high speed rail but not through Marysville. Can I ask you this question? That is, are you opposed or in favor of increasing the speed at the crossing at 104th for passenger rail to 79 miles an hour?

A. Yes, I am opposed.

1 Q. Are you in favor of or opposed to
2 increasing the freight rail speed to 50 miles an hour?

3 A. Yes, I am opposed.

4 MR. WEED: No further questions.

5 JUDGE HAENLE: Anything more?

6 MS. RENDAHL: No, Your Honor.

7 JUDGE HAENLE: Thank you for your
8 testimony. You may step down. Let's go off the
9 record for a moment. I have to check to see if
10 there's anyone else.

11 (Recess.)

12 JUDGE HAENLE: Let's go back on the record.
13 During the time we were off the record there was one
14 additional gentleman that said he wanted to testify.
15 His name is John Myers. Would you come up, sir.
16 Whereupon,

17 JOHN MYERS,
18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: Name is John Myers, M Y E R
22 S. I live at 7113 61st Drive Northeast in Marysville.
23 I'm against the increased speeds. I understand why
24 Burlington Northern wants to increase their speeds but
25 I don't see any safety conditions that would allow

1 that to happen. We have apartments, Cedar Street
2 Apartments, which are probably within 75 feet of the
3 train tracks. Northwest Composites have already said
4 their spiel. We have Pacific Grinding Wheel which is
5 just north of them. I don't know what their head
6 count is for employees, but I would estimate around
7 150 people. They also have numerous trucks crossing
8 the tracks. Within the last 10 years I can think of
9 at least three trucks that have been hit at the
10 railroad crossing going into Northwest Composites.

11 There's numerous private crossings within
12 Marysville between 80th and 100th that of course are
13 not marked other than to say there's a train crosses.
14 There's no kind of safety devices put in place. If
15 Burlington Northern insists upon increasing the speeds
16 at least I would like to see some consideration into
17 consolidating some of the private crossings to make it
18 so that we can limit the number, which would be
19 putting a road parallel to the train tracks so more
20 than one residence can use the crossings. In the
21 areas where there's limited crossings I would like to
22 see a cyclone fence to keep kids and dogs off the
23 tracks. And that's pretty much it in a nutshell.

24 JUDGE HAENLE: Were you testifying just on
25 your own behalf, sir?

1 THE WITNESS: Yes.

2 JUDGE HAENLE: Are you a property owner in
3 the area?

4 THE WITNESS: No, I'm not.

5 JUDGE HAENLE: So when you referred to
6 apartments within 75 feet of the tracks, are you
7 involved in those apartments or living in those
8 apartments?

9 THE WITNESS: No, but I am concerned about
10 their safety.

11 JUDGE HAENLE: Counsel, questions?

12 CROSS-EXAMINATION

13 BY MS. GIBSON:

14 Q. You live on 61st Drive Northeast?

15 A. Yes.

16 Q. Could you point that out on the map?

17 A. It's over here near the golf course
18 (indicating).

19 Q. There's a pointer. If you could locate it
20 on the map. Let me ask you this. Do you use a
21 railroad crossing to get to and from your residence?

22 A. Yes, I do, on Fourth Street.

23 JUDGE HAENLE: You're going to need to turn
24 this way so the reporter can hear. Which crossing was
25 it?

1 THE WITNESS: I use the Fourth Street
2 crossing. I also use the crossing on Grove.

3 Q. So you're indicating generally the vicinity
4 of east of Eighth Street, north of Fourth Street?
5 Would that be right if this is the Grove Street
6 crossing?

7 JUDGE HAENLE: Try it again. East of
8 which?

9 Q. Are you generally indicating the area east
10 on Grove Street? Is it in this area (indicating)?

11 A. Yeah.

12 Q. So that would be generally south of Grove
13 Street to the east, several blocks east of State?

14 A. Right. I don't live anywhere near the
15 train tracks but I cross it quite often. I owned a
16 business that was backed up right to the train tracks
17 on Grove, on intersection of State and Grove, and I
18 can go along with Margaret Natterstad's comment about
19 the train arms quite often not functioning properly.
20 Yes, they always do come down but the question is
21 whether or not they go up and then people get
22 impatient and go around the arms to save some time.

23 Q. Were you here, sir, to hear the testimony
24 that was given?

25 A. I heard part of the testimony, yes.

1 Q. I have no other questions. Thank you.

2 JUDGE HAENLE: Questions?

3

4

CROSS-EXAMINATION

5 BY MR. WEED:

6 Q. You've indicated that you owned a business
7 that was in the vicinity of the tracks. Where was
8 that business located?

9 A. Right on the corner of Grove and State.

10 Q. That would be just a block west or so of
11 this location?

12 A. Yes.

13 Q. And your testimony was that at that
14 crossing you personally experienced difficulties with
15 the crossing arms functioning properly?

16 A. Yes, sir.

17 Q. For how many months or years did you
18 operate the business at that location?

19 A. Two years.

20 Q. Do you have an estimate of how many times
21 you personally experienced the crossing arms not
22 properly functioning?

23 A. Driving my private car only once but being
24 at the business I've noticed it probably half a dozen
25 times and I also worked elsewhere so I wasn't at the

1 business for probably eight to ten hours a day so I
2 didn't see some of the incidents, but from my
3 employees' feedback I was hearing that.

4 Q. With the existing speeds of the train, did
5 the train passing in proximity to your business have
6 any noticeable impact?

7 A. Noise from the train whistles and the
8 engines sometimes on the telephone made it difficult
9 to hear but as far as the vibrations, I could feel the
10 vibrations but the kind of business it didn't affect
11 the performance of any of my machinery.

12 Q. Could you state for me how close your
13 business would be in proximity to the tracks, the
14 business that you previously owned?

15 A. The land abutted up to the north
16 right-of-way.

17 Q. How far from the building at the business
18 would that be?

19 A. We were approximately 250 feet.

20 MR. WEED: No further questions.

21 JUDGE HAENLE: Anything else of the
22 witness?

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MS. GIBSON:

Q. I would like to clarify, Mr. Myers, that when you say the gates were not functioning properly, by that you mean that the gates were down?

A. They stayed down after the train had been through, yes.

JUDGE HAENLE: Thank you, sir. You may step down. I don't have any other names on the list. Is there anyone else now from the public who wanted to give testimony in this matter? Well, I appreciate your coming out and giving the testimony. We'll go off the record for a minute to allow the Commission witness that we were part way through to assume the stand again. We have two Commission witnesses left and I don't know if there will be any rebuttal or not, so you're welcome to stay and listen to that if you like. Let's go off the record now, please.

(Recess.)

JUDGE HAENLE: Let's go back on the record. During the time we were off the record Mr. Harder assumed the stand again. May I remind you, sir, that you were sworn at the beginning of the hearing and remain under oath. Go ahead. I believe you were in the middle of your direct when we interrupted for

1 lunch.

2

3

DIRECT EXAMINATION

4 BY MS. RENDAHL:

5 Q. Mr. Harder, do you still have a copy of
6 Exhibit 22 in front of you?

7 A. Yes, I do.

8 Q. Have you been present throughout the
9 testimony yesterday and today?

10 A. Yes, I have.

11 Q. And were you present yesterday when Mr.
12 Nelson testified concerning the condition of the track
13 through Marysville?

14 A. Yes, I was.

15 Q. Did the staff reach the same conclusion on
16 the condition of the track as expressed in this
17 testimony?

18 A. Yes. The inspection of the track by our
19 track inspector we arrived essentially at the same
20 assessment of the track as Burlington Northern did.

21 Q. And that assessment is what?

22 A. Is that the request of the freight train
23 speed and the passenger train speed was within the
24 limits of standards that is set out by the FRA class 4
25 track.

1 Q. So you agree, then, that the track
2 structure meets class 4 standards?

3 A. Yes, we do.

4 Q. Looking next, do you have Exhibit 23 in
5 front of you?

6 A. Yes, I do.

7 Q. Could you describe briefly what is in this
8 exhibit?

9 A. Exhibit 23 is pictures taken by one of our
10 inspectors, Jerry Buxton. Pictures are of each of the
11 public crossings, essentially north and south from the
12 crossing along the railroad tracks, and the second
13 page is the pictures approaching the crossing showing
14 the railroad signals at each of the public crossings.

15 Q. Were you present yesterday during Mr.
16 Frazier's testimony concerning the railroad crossings
17 in the city of Marysville?

18 A. Yes, I was.

19 Q. And you agree with his testimony concerning
20 the present condition of the crossings and the
21 crossing signals?

22 A. Yes, I do.

23 Q. Does the staff have any recommendation
24 concerning improvement -- concerning any improvements
25 to these crossings and crossing signals?

1 A. Based on what is proposed in the petition,
2 and I believe which was re-emphasized by Mr. Frazier,
3 Burlington Northern, that they install gates at 88th
4 Street, which is apparently part of their proposal. I
5 don't take an exception to anything else needing
6 to be done to the railroad crossings and with the
7 railroad signals.

8 Q. In conducting the investigation, did the
9 staff review the private crossings in the city of
10 Marysville?

11 A. Yes, we did.

12 Q. Were you present yesterday during the
13 testimony of the city's witness concerning these
14 private crossings and also this morning?

15 A. Yes, I was.

16 Q. Do you agree with the testimony of the
17 city's witnesses concerning the condition of the
18 crossings, private crossings through Marysville?

19 A. I believe if we briefly look at those
20 crossings again in that they are -- those private
21 crossings out there and they are all signed like a
22 railroad crossing would be, as a private crossing with
23 stop signs, and that there is one private crossing
24 with shoulder-mounted flashing lights with gates, I
25 agree with that part of it, the testimony, yes.

1 Q. Do you have any -- did you have any
2 objections to any of the testimony or anything that
3 you would state differently than the signal technician
4 Mr. Ploeger this morning concerning the configuration
5 of the intersection, intersections or whether or not
6 there are stop signs located at various crossings?

7 MR. WEED: I'm going to object to the form
8 of the question as leading, vague and ambiguous.

9 MS. RENDAHL: I will rephrase my question.

10 Q. Mr. Harder, I first need to locate the map.

11 JUDGE HAENLE: Well, I assume that the
12 question was asked in that manner so that the witness
13 wouldn't have to go back over each and every crossing
14 and describe what was physically present at each and
15 every crossing. I think that's a good use of time.
16 Avoiding that is a reasonable goal, and I don't mind a
17 leading question in that regard, Counsel. We spent
18 probably 15 minutes with him describing every single
19 one and the crossing signage and signals, and I really
20 don't think it's useful to go all the way back through
21 that if we can avoid that by the question.

22 MR. WEED: I would agree. My concern is
23 that by asking the open-ended question do you object
24 to any part of anything, any city witness, is so open-
25 ended that it --

1 JUDGE HAENLE: I don't think it was quite
2 that open-ended.

3 MS. RENDAHL: I will rephrase my question
4 to take care of this.

5 Q. Concerning whether there are stop signs at
6 the six private crossings that do not have signals and
7 gates, do you know if there are stop signs at each of
8 these private crossings?

9 A. There are stop signs at all the private
10 crossings, yes, except the one that is signalized,
11 yes.

12 Q. On each side of the tracks?

13 A. On each side of the tracks, yes.

14 Q. How are you qualified to state that?

15 A. I personally drove and was on and over each
16 of the private crossings.

17 Q. Concerning the testimony this morning by
18 Mr. Ploeger, specifically about the storage space at
19 crossings and intersections at Fourth Street, I
20 believe also 106th street, 116th Street was mentioned
21 and 136th Street -- there may have been others -- do
22 you agree with Mr. Ploeger's opinion concerning the
23 safety of those intersections?

24 A. I essentially do, yes.

25 Q. What is your opinion as to how congestion

1 at those intersections can be best managed?

2 A. Well, I think right now they are managed
3 probably as best as they can because Fourth Street
4 does have railroad signals with gates. The railroad
5 signal is providing a preempt and direction to the
6 traffic signal on Fourth and Cedar. If people proceed
7 to stop on the track and procedurally negotiating
8 Fourth Street by the follow-the-leader syndrome of
9 each car taking the spot that's left for him by his
10 bumper to bumper so that there is traffic waiting for
11 a red signal on Cedar and State and traffic is backed
12 up and over the railroad crossing, the traffic signal
13 and the railroad signal are so designed that the
14 signal on State and Cedar Street goes green at the
15 same time the flashing lights start to work.
16 Approximately five to seven seconds later, after a
17 green has been given to those cars, the gates starts
18 to come down stopping any further movement onto the
19 railroad tracks whereby that traffic that was on the
20 crossing, whether directly on it or possibly even
21 under the gate on the east side, has had time to
22 progress over the track and out of the way of a train.

23 This is similarly accomplished at 116th
24 Street and is my understanding that the railroad
25 signals at 136th Street, which currently intersects

1 State Street without a traffic signal, is all set up
2 to do the same thing once the traffic signals are
3 installed on 136th and State Street.

4 Q. Were you present yesterday during Mr.
5 Rowley's testimony concerning accidents at grade
6 crossings here in Marysville and accidents or
7 incidents on the rail in Marysville?

8 A. Yes, I was.

9 Q. Do you take exception to any of his
10 testimony?

11 A. No. A reflection and a check of our
12 accident records showed what was presented at the
13 hearing yesterday, yes.

14 Q. In your experience with the Commission in
15 reviewing rail accidents, do these accidents represent
16 relatively high or low number of accidents?

17 A. Relatively low number of accidents.

18 Q. And why do you believe this is a low number
19 of accidents?

20 A. The number of accidents that were reflected
21 here yesterday in comparison to the number of
22 accidents that happened within the state for 1993 was
23 extremely low, and the history of accidents within the
24 state has been dropping significantly. We're down to
25 84 accidents that occurred at all railroad grade

1 crossings in the state right now. And this is a
2 reflection of a national average of the accidents that
3 they are being reduced all over the whole nation, so
4 I'm basing this on other communities that we reviewed
5 accidents in and other crossings that maybe have a
6 repeated accident rate.

7 Q. During your investigation or the staff's
8 investigation, did the Commission staff identify any
9 specific local safety hazards within the city of
10 Marysville?

11 A. I would not classify as a local safety
12 hazard unless you would call the attention to the
13 signs that are up and the signs that maybe should be
14 put up at railroad crossings. And the sign I'm
15 speaking about is the sign that states Do Not Stop On
16 Tracks. Many of the intersections, as stated by the
17 city, are very close to traffic-related intersections,
18 the intersection of the railroad tracks and the
19 intersection of two streets, and those six
20 intersections have traffic signals and they're very
21 close in proximity. So Fourth Street, you might have
22 maybe 25 cars backed up on the east side and as little
23 as maybe four cars backed up on the west side. This
24 is typical of 116th, 88th, 136th and many of the
25 crossings in the city of Marysville. So I would

1 recommend that the signing be definitely used to
2 reinforce the message to the driver that not only is
3 it unlawful to occupy the intersection of a railroad
4 track and a roadway, that they should be reminded of
5 it and that sign be used on either side of the tracks.

6 Q. So what is your specific recommendation on
7 how to correct the safety problem?

8 A. I believe that as a condition of the order
9 once it would be issued, whether for the increase,
10 regardless of the train speed increase, however it
11 comes out, that the crossings have those signs erected
12 in all four quadrants.

13 Q. Which signs are you referring to?

14 A. The sign stating Do Not Stop On Tracks.

15 Q. Who, in your opinion, in your
16 recommendation to the Commission should bear the
17 burden of placing those signs in the four quadrants?

18 A. It's been done in the past by cities,
19 municipalities and state highway departments. I
20 believe, though, for the pictures that I've got that
21 were taken by Mr. Buxton of 88th Street that you will
22 see that the railroad has installed those signs on the
23 railroad signal. There are two signs on the west side
24 that state in white letters on black background, Do
25 Not Stop On Tracks. I just feel that the signs should

1 be installed. I believe it is up to either one to
2 install the sign. It's not really a definite
3 direction as to who should install the signs. I just
4 believe that they should be up.

5 Q. So given your investigation and the staff's
6 investigation of the tracks through Marysville, grade
7 crossings and accident statistics and this safety
8 concern in the intersections that you've just
9 discussed, what is your recommendation to the
10 Commission about whether passenger trains can safely
11 travel through Marysville at the speeds requested?

12 A. I believe that passenger trains can
13 negotiate and travel through city of Marysville
14 safely.

15 Q. And why is this your opinion?

16 A. Because the signals will be improved,
17 provide the standard of 20 seconds of warning time at
18 the railroad crossings. The track located in
19 Marysville is somewhat running through town but yet it
20 is cordoned off by some of the geography of the city,
21 meaning streets or the businesses and businesses that
22 have been conscientious enough or the city has been
23 conscientious enough to require that the land be
24 fenced with cyclone fencing on one side or the other
25 side. In fact goes so far as to say that some of

1 the apartments that have been constructed and are in
2 use right now do have many of them with the fencing
3 along the back side, along the railroad tracks. The
4 downtown corridor is pretty much commercial. It does
5 get into the outer areas of commercial and
6 residential, but the heavy part of town is fenced and
7 is cordoned off. For these reasons I believe that the
8 speed increases could be granted.

9 Q. And what is your recommendation considering
10 the same factors as to whether freight trains can
11 safely operate at the speeds requested?

12 A. I believe they can be operated in the
13 increase speed granted.

14 Q. What is your basis for that recommendation?

15 A. The freight trains will pass through the
16 city much more quickly. The crossings will be blocked
17 less. I believe, as was testified yesterday, the
18 incident and accident rate or possible incident and
19 accident rate would be decreased possibly because of
20 the -- because of maybe the psychological -- not using
21 the right word but the psychological effect of the
22 fact that the trains are traveling faster has more
23 effect on the driver. They know that a 100-car train
24 is traveling through town. They know that at 10 miles
25 an hour or 25 miles an hour it is going to take so

1 long to get across that crossing. So the concept is
2 I'm going to wait so long I better get over this
3 crossing as soon as possible so the chances of waiting
4 is maybe pretty slim whereas that chance of waiting is
5 maybe a little more realistic when they know that the
6 train is not going to be occupying the crossing that
7 long.

8 The track meets the FRA standards. It will
9 be inspected more often as a class 4 track, twice
10 weekly with one calendar in between. It will be
11 inspected by BN and monitored by the FRA, and by
12 ourselves since it is -- it will be an Amtrak route.
13 For those reasons I believe the freight train speeds
14 should also be granted.

15 MS. RENDAHL: No further questions.

16 JUDGE HAENLE: So the questions I heard you
17 ask first were can trains safely pass at this speed?
18 Is the position of the Commission -- is the Commission
19 staff taking a position about whether or not this
20 petition should be granted as well as making the --
21 take a position about whether it could be granted
22 safely? Is it taking a basic position about whether
23 this petition should be granted?

24 MS. RENDAHL: I will ask the witness.

25 Q. Mr. Harder, what is the position of the

1 Commission staff concerning this petition?

2 A. That the petition should be granted.

3 JUDGE HAENLE: Thank you. I suppose
4 petitioners would go first in this case. I'm not sure
5 about cross-examination. Go ahead.

6

7

CROSS-EXAMINATION

8 BY MS. GIBSON:

9 Q. Mr. Harder, would you turn to Exhibit 23,
10 the one that says WUTC Photo Sheet on the front, turn
11 to page 4 of that, please.

12 JUDGE HAENLE: Before we get that far, you
13 have not moved the entry of 25, I believe.

14 MS. RENDAHL: No, because I have not
15 discussed that. That will be through Mr. Scott, and I
16 need to lay a foundation according to the objection of
17 the city's other attorney, Mr. Graafstra.

18 JUDGE HAENLE: So long as it wasn't an
19 oversight, and actually, you know, if the Commission
20 staff has taken a position favoring the petition,
21 perhaps we should take the cross-examination of the
22 city first. What do you think?

23 MS. GIBSON: That's fine with me.

24 JUDGE HAENLE: Let's take the city first
25 then. Go ahead, sir.

1 CROSS-EXAMINATION

2 BY MR. WEED:

3 Q. Mr. Harder, you've testified that in your
4 opinion you agree that the condition of the track is
5 the same as that testified to by Burlington Northern
6 representatives; is that correct?

7 A. Yes, I did.

8 Q. How many personal inspections of the track
9 have you made yourself?

10 A. The inspection that was done was done by my
11 track inspector through my direction.

12 Q. How many times have you personally
13 inspected the track within the city limits of
14 Marysville?

15 A. I have not walked all of the track. I have
16 inspected or observed many pieces of the track in the
17 city several times.

18 Q. The basis for your conclusions is primarily
19 upon what your staff persons have told you; is that
20 correct?

21 A. That's correct.

22 Q. Mr. Harder, are you a traffic engineer?

23 A. No, I'm not.

24 Q. Have you personally seen the westbound
25 traffic on Fourth Street here in Marysville during

1 rush hour backing up onto the track even when there's
2 a green light on the west side of the railroad track?

3 A. I didn't necessarily observe this rush
4 hour, but the condition that you're talking about I
5 have observed at other times, yes.

6 Q. You have observed the condition that Mr.
7 Ploeger for the city testified to and you don't
8 disagree that that phenomena doesn't happen, do you?

9 A. I agree with what he said.

10 Q. You testified concerning your opinion about
11 the psychological effect of increased train speeds on
12 drivers, and I believe your testimony was that you
13 believe that drivers would be more cautious or act in
14 a more safe manner as a result of the increased train
15 speeds?

16 A. That's what was testified to yesterday, and
17 I also concur with the Amtrak representative who
18 testified to that effect, yes.

19 Q. On what do you base your personal opinion?

20 A. My personal opinion is based on reviewing
21 the accidents that the Commission receives from
22 railroad, which is actually the FRA report, and which
23 we use in our statistical analysis. Those accidents
24 are catalogued as to where they occurred, whether
25 they're in a yard, whether on a main line or a branch

1 line. Branch line usually is a train track that is
2 maybe maximum from 25 to 40 miles an hour and on main
3 line it's usually 79 miles an hour over most of the
4 track in the state of Washington. So from observing
5 those accident reports is what I make my evaluation
6 on.

7 Q. You're saying from observing and reading
8 those accident reports you're able to draw conclusions
9 about the psychological state of drivers and how they
10 react to higher train speeds?

11 A. I'm merely saying that the accidents that
12 have occurred seem to be more on those tracks that are
13 less than, say, 40 miles an hour than on those tracks
14 that we have crossings that trains operate at 50 for
15 freight and 79 for passenger.

16 Q. You're not able to give us any concrete
17 testimony about the psychological effect of individual
18 drivers, are you, based upon those reports?

19 A. Based on my own personal opinion, that's
20 all.

21 Q. You, I believe, testified about the cyclone
22 fencing near the tracks in the multifamily area
23 of town. Have you personally inspected the condition
24 of those cyclone fences?

25 A. As I said, walking the track to look at

1 some of the area of what was around between the
2 railroad crossing and on either side of the tracks,
3 yes, I have observed the cyclone fencing, yes. There
4 are fencings that are present, wood or barbed wire or
5 that sort of a thing, too.

6 Q. In your inspecting some of those cyclone
7 fences, did you observe the condition of those fences?

8 A. At the time that I inspected the fences the
9 observations of the fence behind the -- I will call it
10 -- shopping mall between First and Fourth on the west
11 side was in considerable disrepair. Since that time
12 and looking at the crossings yesterday and the area
13 yesterday, it looks like it has been repaired, but
14 from my previous observations I didn't recall and
15 don't recall any other fencing that hasn't been
16 repaired or in good condition.

17 Q. Would it surprise you to know that in other
18 parts of the city where there is multifamily adjacent
19 to the track that there is cyclone fences in a similar
20 state of disrepair that have not been corrected?

21 A. It's possible, yes.

22 MR. WEED: That's all the questions I have.

23 JUDGE HAENLE: Go ahead, Ms. Gibson.

24

25

1 CROSS-EXAMINATION

2 BY MS. GIBSON:

3 Q. Well, Mr. Harder, if those fences which
4 counsel was referring to in fact need repair, would
5 that be the responsibility of the property owner on
6 whose property the fences is erected?

7 A. I can't answer that other than to maybe
8 whoever put the fence up would be responsible for
9 maintaining. I don't have any knowledge of whose
10 responsibility it would be.

11 Q. Would you turn to page 4 of Exhibit 23. At
12 the top of that page it says page 2 of 2 but count the
13 fourth page down. Are you there?

14 A. Yes. If you're referring to this as being
15 pictures that were taken of Fourth Street?

16 Q. Yes.

17 A. And those pictures that taken east and
18 west on Fourth Street?

19 Q. Yes. You're on the correct page. Looking
20 at the bottom page there sort of toward the right-hand
21 side, is that one of the signs which you're
22 recommending? It says No Stopping On Tracks?

23 A. That's a similar sign. The unusual part
24 about that particular sign is this is the first time
25 I've witnessed that the sign has been red letters on

1 white background. Usually they're black letters on
2 white background. It was a little unusual, yes.

3 Q. Were you present when Mr. Ploeger testified
4 today that the Department of Transportation has a
5 responsibility for erecting those signs on Fourth
6 Street?

7 A. Yes, I was.

8 Q. Now, you have also testified that at one
9 crossing you observed a no stopping on track sign
10 erected right on a railroad on the gatepost. Is that
11 what you said?

12 A. This was on the set of signals on 88th
13 Street.

14 Q. And are you assuming that it was erected by
15 the railroad because of where it is positioned?

16 A. That's correct.

17 Q. And that's what your assumption is based
18 on?

19 A. That's correct.

20 Q. Now, you don't have any independent
21 evidence or reason to think that the railroad put it
22 there other than where it's located?

23 A. Yeah. Other than where it's located is
24 what I'm making my assumption on that the railroad did
25 put it there --

1 Q. Were you finished?

2 A. -- the railroad did put it there.

3 Q. When you compare that placement right on
4 the signal post to the one that's shown in your
5 paragraph in Exhibit 23 on page 4 where it's put back
6 a distance from the crossing, would you say that it's
7 more effective, gives the driver more warning if it's
8 placed back a ways from the crossing?

9 A. Actually, I would say that the proper
10 placement would be as you suggest and where it is
11 placed on either side of the street, in fact on Fourth
12 Street, but also I'm recommending that for a car that
13 has approached the railroad tracks westerly bound in
14 the lower picture of page 2 there that if the car is
15 at the railroad crossing or on the railroad crossing
16 he may be sitting there for half a second, half a
17 minute, I don't know. He in his mind, is what I'm
18 sort of saying, has forgot or maybe he was on the
19 inside lane and didn't see the sign. I'm proposing
20 that four signs be installed, the one as is shown in
21 the lower picture before the railroad signals and one
22 on the other side of the tracks in the same direction
23 as this one in the lower picture, essentially
24 bracketing the roadway for the traffic approaching the
25 railroad crossing.

1 Q. Were you here when Mr. Ploeger testified
2 that there was not room on the public streets to erect
3 a No Stopping On Tracks sign?

4 A. From my observation of the railroad
5 crossings I didn't see that there was any problem with
6 installation of that sign whatsoever.

7 Q. And does that include all of the crossings
8 that you observed, all public crossings?

9 A. All the public crossings where it was a
10 problem of the traffic might have an occasion to
11 back up on the tracks, yes.

12 MS. GIBSON: Nothing else.

13 JUDGE HAENLE: Ms. Fairhurst.

14 MS. FAIRHURST: Nothing, Your Honor.

15

16

EXAMINATION

17 BY JUDGE HAENLE:

18 Q. At the very beginning Ms. Rendahl asked you
19 what types of standards you used. You indicated you
20 used the MUTCD manual. You said something about
21 accepted practices and then you talked about federal
22 track safety standards for inspecting the track. What
23 accepted practices were you referring to in that
24 middle part of it?

25 A. These practices were the practical

1 knowledge that I use, highway engineers use, whether
2 they be Department of Transportation or county or city
3 engineers, use to design and place railroad signals
4 at railroad crossings. The Manual For Uniform Traffic
5 Control Devices only sets minimum standards as to,
6 say, setback from the curb or a shouldered road and
7 the distance from the track.

8 Q. So you weren't referring to any particular
9 manual or set of standards, you were referring just to
10 practices in the industry?

11 A. That's correct.

12 Q. Ms. Rendahl also asked you if you agreed
13 with Mr. Rowley's testimony about the accident record
14 that he described. If I remembered Mr. Rowley's
15 testimony there was cross-examination after his
16 testimony about accidents that took place before the
17 period of time he was talking about and a couple of
18 incidents in 1994 as well. Were you agreeing with
19 those incidents that were referred to as well as the
20 ones that Mr. Rowley testified about on his direct
21 examination?

22 A. Yes, I was.

23 JUDGE HAENLE: That's all I had. Any
24 redirect?

25 MS. RENDAHL: Just a bit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDIRECT EXAMINATION

BY MS. RENDAHL:

Q. Mr. Harder, you stated at the beginning of your testimony that you were with the Commission for 22 years; is that correct?

A. Approximately, yes. I was hired in 1973.

Q. And prior to that time what is your educational background?

A. I have a civil engineer's degree from the St. Martin's college in Olympia.

Q. And after that what was your work experience after your bachelor's degree?

A. After I obtained a bachelor's degree I went to work for Thurston County and the Thurston County engineer's office helping transcribe survey notes, looking at traffic intersections with the right-of-way people and the right-of-way design engineer and the traffic engineer.

Q. As a part of your job responsibility with the Commission, are you responsible for investigating crossing signals, malfunctions in crossing accidents?

A. I will review the inspector's reports of the grade crossing accidents. I will investigate many of the signal malfunction reports. I will probably assign it to the inspector. I will trace those down

1 and immediately be calling the railroad to ascertain
2 what's going on, and especially during the interim
3 initially putting the railroad on notice that we have
4 a problem with that particular crossing and asking
5 them to search out if indeed the problem is true and
6 see what they can do to correct it.

7 Q. So through your position you are familiar
8 with standards set forth in the Manual of Uniform
9 Traffic Control Devices as was discussed earlier
10 today?

11 A. Yes, I am.

12 Q. And look at FRA standards for crossings?

13 A. Yes.

14 Q. Is it part of your job responsibility also
15 to handle applications for crossing signals?

16 A. Yes, it is. I process the petition and on
17 many occasions, lately because of manpower, have done
18 the investigation and taken the six years, discussed
19 the issue with the city and county engineers and with
20 the railroad and ultimately drafted the order for
21 installing the railroad signal.

22 MS. RENDAHL: No further questions.

23 MS. GIBSON: Your Honor, I have a few.

24 MR. WEED: I have a couple myself.

25 JUDGE HAENLE: Have the city go first and

1 then we'll come to your questions.

2

3

RECROSS-EXAMINATION

4 BY MR. WEED:

5 Q. Mr. Harder, under the Manual on Uniform
6 Traffic Control Devices, what is the minimum setback
7 for the No Stopping On Tracks sign that you've
8 recommended for Fourth Street?

9 A. I believe it says in the manual -- I'm not
10 exactly sure of where -- of what the distances are but
11 I believe it says in the proper location. I don't
12 believe there's any set distances.

13 Q. It's your testimony that you don't believe
14 that there's any particular distance established in
15 number of feet?

16 A. That's right.

17 Q. And it's your testimony or your proposal
18 that, for example, on traffic heading westbound on
19 Fourth Street that there be a bracketing of the
20 signage, in other words, two signs prior to the tracks
21 and two signs shortly after the tracks. Is that a
22 fair recital of your testimony?

23 A. No, it's not. What I stated was that a
24 sign be placed before -- excuse me. For traffic
25 westbound on Fourth Street, on the right side, north

1 side of Fourth Street before the railroad signal there
2 would be a sign stating Do Not Stop On Tracks. For
3 the same westbound traffic north side but on the east
4 side of the track there would be a sign stating Do Not
5 Stop On Tracks.

6 Q. Would such signage necessarily insure that
7 vehicles on the inside westbound lane of travel would
8 see those signs?

9 A. Possibly not, no.

10 Q. Isn't it true that vehicles nevertheless
11 from time to time don't comply with such signs even
12 when they're seen by motorists?

13 A. That's true.

14 Q. And isn't it also true that such signage
15 would still not insure that there would be a clear
16 zone during the rush hour, in other words, an area for
17 vehicles to escape if there's vehicles backed up from
18 beyond the tracks on the west side?

19 A. The stop signs -- excuse me. The stop on
20 track signs would not accomplish this. It would
21 reinforce to the driver what his actions should be.
22 The traffic signal intertie essentially is engineered
23 to accomplish the exit of vehicles that are caught or
24 have stopped on the tracks.

25 Q. Assuming there are motorists that simply do

1 not obey those signs, the presence of those signs
2 aren't going to have any impact on creating a clear
3 zone for cars to escape in the event a train does
4 come, correct?

5 A. I feel that they will have an impact. I
6 feel people have a conscious looking at signs as they
7 travel down the road and essentially that might be the
8 reason why, as your city traffic technician testified,
9 that the highway department is reluctant to install
10 signs indiscriminately but, yes, those signs that
11 actually should be accomplishing something and should
12 be working will register in that driver's eye and his
13 mind as to reinforce what to do when he comes to and
14 is faced with that situation of traffic backed up on a
15 railroad crossing.

16 Q. Maybe I should ask my question in a little
17 bit different way then. If you assume that there are
18 some motorists that are not going to obey those no
19 stopping on the tracks signs, the placement of those
20 signs is going to have no impact whatsoever in those
21 instances in creating a clear zone, is it?

22 A. If the person wishes to drive the car and
23 violate the law I can't design for that person.
24 There's no engineer that can design for that type of
25 person driving an automobile. In that case the signs

1 would not have an effect, no.

2 Q. Particularly where traffic is backed up
3 from the next light westbound back to the track?

4 JUDGE HAENLE: I think we're starting to
5 repeat here and I don't think we're really adding
6 anything to the record, Mr. Weed.

7 MS. RENDAHL: I was going to object as
8 asked and answered.

9 JUDGE HAENLE: I really feel it has been.

10 MR. WEED: I will withdraw the question.
11 No further questions.

12 JUDGE HAENLE: Anything else?

13 MS. GIBSON: Couple of things.

14

15

RECROSS-EXAMINATION

16 BY MS. GIBSON:

17 Q. Question has been raised about the accident
18 that was referred to that happened December, I believe
19 it was 5, 1994, question that was asked of Mr. Rowley
20 on cross-examination hitting a truck in Marysville.
21 Do you know anything about that incident?

22 A. I do recall when there was mention of some
23 recent accidents that have occurred outside the scope
24 of the years that we searched our records for. We
25 only searched as far as '93. In discussing this with

1 the train master and some of the claims people it was
2 determined that there were some recent accidents,
3 recent as December. When we asked for copies of those
4 accidents, yes, indeed it was determined that there
5 was a truck accident and that the truck had broken off
6 the gate. I believe it happened on Fourth Street.

7 Q. And was that the extent of the incident
8 then?

9 A. That's correct. There was no train/vehicle
10 collision or no injury occurred.

11 Q. You mentioned that along with your
12 recommendation of putting Do Not Stop On Tracks signs
13 that part of the reason was because of the proximity
14 of State Street running parallel to the tracks and the
15 need for cars to turn off of State Street and then
16 back up near the tracks, correct?

17 A. Essentially, correct, yes.

18 Q. And that's not -- the fact that there's a
19 major street running parallel to the railroad track
20 and then requiring people to negotiate a crossing in
21 between those two parallel lanes, that's not a totally
22 unique situation, is it?

23 A. No, it's not. In fact this is occurring or
24 has occurred apparently traditionally because of the
25 geography of the state of Washington. Railroads

1 travel the least grade to transgress from point A to
2 point B. So does the highway. So state highways in
3 fact are very much in evidence of being parallel to
4 railroad tracks. Burlington Northern, Union Pacific
5 for that matter.

6 Q. And that's throughout the state of
7 Washington?

8 A. Yes.

9 Q. And there are many crossings in between the
10 tracks and those state highways then throughout the
11 state?

12 A. Yes, there are.

13 Q. So in that sense the geographical
14 configuration of State Street here in Marysville is
15 not a local safety hazard, is it?

16 A. No, it's not.

17 Q. I have nothing else.

18 JUDGE HAENLE: Anything more of the
19 witness?

20 MR. WEED: I have one question.

21 JUDGE HAENLE: Why don't we take the city's
22 other question and then finish up. Let's make this
23 the last round.

24

25

RECROSS-EXAMINATION

1 BY MR. WEED:

2 Q. Following up on the last line of
3 questioning, is it your testimony that the proximity
4 of State Street to these tracks in the event of a
5 derailment is not a safety factor?

6 A. I'm saying that in the event of a
7 derailment that I believe, as was testified, the track
8 and distance between State Street, at probably its
9 closest point, was probably maybe 75 feet. In the
10 derailment accidents and areas that I've been at and
11 reviewed pictures, in many cases the cars have stayed
12 within the right-of-way of the railroad tracks, across
13 the tracks, so the length of, say, an 80-foot railroad
14 car would be somewhat but not quite in the
15 right-of-way of State Street. It could and eventually
16 there is a possibility that the train could roll off
17 and roll into State Street, but generally speaking,
18 once the railroad wheels come off of the rail, go on
19 to a tie and ultimately into the ballast, the rock
20 that supports the tie, the speed of that car and of
21 that train is decreased very, very significantly, so
22 as to say that there is a real problem with State
23 Street being that close to the railroad track, I can't
24 answer that.

25 Q. Isn't it true that the higher the rate of

1 speed of the train, the more likely it would be that a
2 train could end up onto the right-of-way of State
3 Avenue here in Marysville in the event of a
4 derailment?

5 A. I don't know that there's really a tie
6 between the train speed and a derailment of how much
7 it would be or how much State Street would be affected
8 by a faster train than a slower train. A train
9 traveling 25 miles an hour could just as well occupy
10 or roll over on State Street as a train traveling at
11 50 miles an hour. I don't know.

12 JUDGE HAENLE: Anything else?

13 MR. WEED: Nothing else.

14 JUDGE HAENLE: Anything else, Ms. Rendahl?

15

16 REDIRECT EXAMINATION

17 BY MS. RENDAHL:

18 Q. Just to clarify a cross-examination
19 question. Mr. Harder, would you look at this document
20 and does this document refresh your memory as to the
21 accident that occurred in early December of 1994?

22 A. This is an accident, yes, that happened on
23 December 6, 1994 involving a GMC pickup truck.

24 Q. And what occurred during that accident?

25 A. A southbound train collided with a pickup

1 on the private crossing that accesses Pacific Grinding
2 Wheel on December 6, 1994 and struck this pickup
3 truck. So a vehicle/train collision occurred on
4 December 6.

5 Q. Does that information change your testimony
6 today in any way?

7 A. I misunderstood the railroad's attorney. I
8 thought she was talking about a different accident.
9 Yes, it does.

10 Q. So it does not change your testimony?

11 A. It does not change my testimony, overall
12 testimony, other than the fact that maybe clarifying,
13 as you say, the accident condition occurred on Fourth
14 Street and it didn't involve a semi breaking a gate
15 off.

16 MS. RENDAHL: No further questions.

17 JUDGE HAENLE: Thank you for your testimony
18 then, sir. You may step down. Let's take until 5
19 minutes after 3 and we'll take the last Commission
20 witness. I forgot to have you give an appearance, Mr.
21 Weed. In the excitement of having public testimony
22 you have been here since 1:00 and have been the person
23 representing the city now. Would you just give your
24 name and your business address, sir.

25 MR. WEED: Yes. I thought it was maybe the

1 excitement of having yet a third attorney appear on
2 our behalf that that was overlooked, but for the
3 record my name is Grant Weed. My business address is
4 21 Avenue A and I'm with the firm of Keithly Weed and
5 Graafstra, Inc. P.S.

6 JUDGE HAENLE: The other two gentlemen
7 acted as assistant city attorneys and you are the
8 actual city attorney?

9 MR. WEED: That is correct.

10 JUDGE HAENLE: Let's recess now and be back
11 at five minutes after the clock.

12 (Recess.)

13 JUDGE HAENLE: Let's be back on the record.
14 During the time we were off the record we discussed
15 scheduling of the briefs. I believe that we have
16 agreed on simultaneous briefs, not a response.
17 Petitioners have indicated they are going to request
18 an expedited transcript to help move the briefing time
19 up a bit, so we have agreed that simultaneous briefs
20 will be due on the 17th of February. Remember that
21 that is a date at which the briefs must be received at
22 the Commission before closing that day. That is not a
23 postmark or mailing date, and you should have your
24 briefs to the other parties on that date as well,
25 please. I would find it particularly helpful if at

1 the beginning of your brief you made the shortest
2 possible summary to say what factors you feel the
3 Commission should consider most important from your
4 point of view in making this evaluation. I would like
5 to see that right up front to kind of get me ready to
6 read the rest of it.

7 Call your next witness, please, Ms.

8 Rendahl.

9 MS. RENDAHL: I believe he's on the stand
10 right now.

11 Whereupon,

12

ALAN SCOTT,

13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

16

DIRECT EXAMINATION

17 BY MS. RENDAHL:

18 Q. Would you please state your full name and
19 spell your last name for the recorder?

20 A. Alan Scott, A L A N S C O T T.

21 Q. What is your business address?

22 A. 1300 South Evergreen Park Drive Southwest,
23 Olympia, Washington 98504. That's the WUTC.

24 Q. So you're employed by the Utilities and
25 Transportation Commission?

1 A. Yes.

2 Q. What is your present position with the
3 Commission?

4 A. I'm the operations manager over rail.

5 Q. As the operations manager for rail, do you
6 oversee safety inspection programs for the Commission?

7 A. Yes. I oversee the statewide railroad
8 safety inspection program.

9 Q. How long have you been employed by the
10 Commission?

11 A. Approximately 19 years.

12 Q. Would you briefly describe the rail safety
13 programs that you oversee?

14 A. Currently we have six employees that work
15 full-time in our railroad section. We inspect
16 railroad facilities such as we've heard today,
17 testimony from Mr. Harder, track structures, freight
18 cars, locomotives, including observance of the air
19 brake test and terminals. We also do inspections
20 involving the transportation of hazardous materials
21 both by the railroad and shippers. That includes the
22 shipping papers, the packaging standards, the
23 placarding. Placarding means that's the actual --
24 denotes the type of class of hazardous material. And
25 it's usually a triangle or a diamond shape and it's

1 located on the side of the cars for emergency response
2 personnel. In case there is an accident they can't
3 get to the shipping paper at least they have an idea
4 of what the car contains.

5 Also, we look at train placement. There's
6 regulations for hazardous materials and how they're to
7 be placed in trains before they depart terminals. We
8 do tank car inspection. We look at the valves, hoses
9 and covers. We also inspect public grade crossing,
10 includes checking for proper signing, pavement
11 markings, the site distances at the crossing,
12 automatic signal operations and maintenance of the
13 crossing surfaces.

14 Under operating practices, we also radar
15 trains, check for -- check that the train crew is
16 operating the train in accordance with the railroad
17 operating speed and also the maximum allowable speed
18 that the Commission sets within the corporate limit of
19 the cities and count in the state of Washington. We
20 also observe railroad employee and rule compliance to
21 be sure that they're operating these trains correctly.
22 We do accident investigations including both grade
23 crossing accidents and also accidents or collisions
24 involving rail equipment, which would be derailments.

25 We also are highly involved in Washington

1 Operation Lifesaver. I think Mr. Rowley alluded to
2 the Operation Lifesaver program. This is a public
3 education awareness program to promote railroad safety
4 to make the public aware of the dangers of an
5 intersection of a railroad track and a roadway and
6 also that it's dangerous for children or others to be
7 walking along railroad tracks. We conduct
8 presentations in the schools. We conduct
9 presentations among civic groups such as rotary clubs,
10 Kiwanis. We also work fairs, we hand out material on
11 -- this material has to do with making the public
12 aware of, like I mentioned earlier, of the dangers of
13 around railroad property. So all of these activities
14 are going on simultaneously.

15 MR. WEED: Your Honor, if I could I would
16 like to have the record reflect that Mr. Scott has
17 given his response to this question either in part or
18 in whole from some kind of written script or notes or
19 some sort of materials.

20 THE WITNESS: Sure. I've looked at some
21 material.

22 JUDGE HAENLE: Did you want to look at the
23 material, sir?

24 MR. WEED: I simply want the record to
25 reflect that his response came to some extent from

1 written materials that he has in his possession. I
2 don't particularly care to inspect them.

3 Q. Mr. Scott, what is it that you are looking
4 at?

5 A. It's a public handout that just gives a
6 brief synopsis of our rail inspection program and I
7 just used it to make sure I covered all the areas, but
8 it's certainly -- we hand it out to the public so it
9 gives a synopsis of our rail program and what we're
10 doing.

11 Q. Do you have a copy in front of you of
12 what's been marked as Exhibit 24?

13 A. Yes.

14 Q. Are these pamphlets the type of things that
15 you distribute to the public through the Operation
16 Lifesaver program?

17 A. Yes, they are. They basically describe
18 what the Operation Lifesaver program is, why it's
19 needed, when it began, where it's active, who gets
20 involved and how we can help to get the message
21 across. We also do public service announcements. We
22 did a blitz in August and September. We're trying to
23 get the word out to the public about railroads,
24 railroad operations. We did that blitz. They were
25 20- to 30-second public service announcements along

1 the corridor from Bellingham all the way to Seattle
2 on south and also in the Pasco and Yakima areas.

3 Q. Does the Commission staff work with
4 Burlington Northern in promoting these programs?

5 A. We have an executive board which Burlington
6 Northern participates, they're on the executive board.
7 So is Union Pacific, Washington Central Road, various
8 other state agencies like the state patrol, Washington
9 State DOT, superintendent of public instruction which
10 handle the school bus safety program, so we have
11 various entities on this executive board to help
12 develop policy and strategies for getting this message
13 out to the public.

14 Q. Do you have a copy of what's been marked as
15 Exhibit 25 in front of you?

16 A. Yes.

17 Q. Would you describe what this document is?

18 A. What this document is is a synopsis
19 basically of all of the grade crossing accidents
20 reported since 1972 up to 1993 in the state of
21 Washington.

22 Q. Did you prepare or was this document
23 prepared at your direction?

24 A. It was prepared at my direction.

25 Q. And what is the source of the information

1 in this document?

2 A. All of the accidents are investigated
3 normally by municipalities, police departments, and
4 they're required to turn in a Washington collision
5 report that normally goes to the state patrol. We
6 also receive copies of these reports on all grade
7 crossing accidents. Plus the railroad is required to
8 turn in these accident reports to the Federal Railroad
9 Administration, so we get both of those documents.

10 Q. Are these documents collected and stored at
11 the Commission in the ordinary course of business at
12 the Commission?

13 A. Yes.

14 Q. And do you rely on these documents in the
15 ordinary course of business at the Commission?

16 A. Yes.

17 MS. RENDAHL: Your Honor, I believe
18 foundation has been laid and I offer this into
19 evidence.

20 JUDGE HAENLE: Any objection, Mr. Weed?

21 MR. WEED: No objection.

22 MS. GIBSON: No objection.

23 MS. FAIRHURST: No objection.

24 JUDGE HAENLE: Exhibit 25 will be entered.

25 (Admitted Exhibit 25.)

1 Q. Mr. Scott, looking at Exhibit 25, can you
2 explain what this document shows and what the
3 implication of this document is?

4 A. Well, it's an interesting document because
5 it basically reflects the number of accidents
6 involving automobiles, trucks and trains where a train
7 struck an automobile, and an automobile struck a
8 train from 1972 to 1993. And what I think is
9 interesting about it is you can see in the early 70s
10 the accident rate was fairly high with over 300
11 accidents on the average occurring a year, and the
12 reason why I say it's interesting is at that time the
13 Congress passed the Surface Transportation Act. What
14 that act did is provide federal funds along with state
15 matching funds to install or improve grade crossings
16 by installing signals and gates at these crossings.
17 Many of the cities did not have or do not have the
18 funds to do that. When that program started, and was
19 accelerated in the mid '70s on into the '80s, you can
20 see in definite reduction in the number of accidents.
21 Then I would say around 1984, around that time it
22 started to level off up to about '87, and then in '88
23 and in '89 and around on into '91 and '92 it started
24 to go down even more.

25 The reason I bring up those dates is

1 because that's when we started to get highly involved
2 in Operation Lifesaver so while I can't categorically
3 say that these programs are the reason for the
4 reduction of accidents, because there's a lot of
5 factors that are involved, a lot of variables, weather
6 conditions is one -- I mean, you can go on and on and
7 on, but we think that these programs as far as
8 engineering, which is the installation of the signals,
9 designing these signal installations all the way to
10 the public awareness program is having an impact in
11 the state of Washington as far as the reduction of
12 accidents at grade crossings.

13 Q. Should the Commission grant the petition to
14 increase the train speeds or even deny the petition to
15 increase train speeds here in the city of Marysville,
16 what will the Commission staff do to continue to try
17 to reduce the number of accidents at grade crossings
18 in Washington state?

19 A. We'll continue to routinely inspect public
20 crossings. We'll continue to work in the Operation
21 Lifesaver program to get -- to make the public aware
22 of the dangers around railroad property. So
23 regardless of what happens in this hearing we're going
24 to continue these programs because our mandate is to
25 prevent accidents.

1 Q. You testified earlier that you also managed
2 the Commission's programs on hazardous waste
3 inspection. And you briefly explained that program,
4 but how does the staff inspect cars containing
5 hazardous materials?

6 A. Well, we have again -- Mr. Harder alluded
7 to it. Many of the regulations involved are federal
8 regulations. Congress gave the state the ability to
9 participate in the enforcing of those regulations
10 because of limited resources, the federal government
11 can't do it all, and so the states are able to
12 supplement the federal government, and what that means
13 is that state inspectors can be certified. That means
14 that once they are trained they can conduct these
15 inspections under the federal regulations and conduct
16 them independently.

17 And we have one person that is certified by
18 the Federal Railroad Administration to conduct
19 hazardous material inspections. What we normally do
20 is we go to the shippers, usually the larger shippers,
21 and we go to railroad terminals and we observe how the
22 railroad handles the equipment. We check the shipping
23 papers to make sure that the documentation is correct,
24 has the name of the shipment, the proper hazard class,
25 weight, all the way down, the emergency response

1 information on the shipping paper in case there is a
2 problem that the municipality emergency response
3 personnel can get that shipping paper and take the
4 proper emergency response action.

5 We also check to make sure that the
6 railroads inspectors check this equipment, make sure
7 it's not leaking before it departs, it's properly
8 packaged. All of these things are things that we're
9 looking at. And our job is not to take the place of
10 the railroad inspectors. It's their responsibility to
11 maintain the railroad. Our job is to supplement what
12 they're doing, along with the FRA inspectors, as far
13 as oversight to pick up any patterns of noncompliance
14 and get it corrected.

15 Q. Does the Commission have any enforcement
16 powers if the investigator finds any violations of
17 hazardous materials laws or regulations?

18 A. Yes. Under the federal guise when we
19 handle, we write up, the defective conditions the
20 federal government handles it for us under federal
21 government claims and conditions if a monetary penalty
22 is assessed.

23 Q. So regardless of what happens with the
24 petition here in Marysville, what will the staff do to
25 insure the safe transportation of hazardous materials?

1 A. We will keep coordinating working with the
2 Federal Railroad Administration inspecting shipments
3 of hazardous materials around the state.

4 MS. RENDAHL: I have no further questions.

5 JUDGE HAENLE: Do you have questions, Mr.
6 Weed?

7 MR. WEED: Yes, I do.

8

9

CROSS-EXAMINATION

10 BY MR. WEED:

11 Q. Mr. Scott, turning your attention to
12 Exhibit No. 25, the exhibit relating to accidents at
13 all grade crossings, this is accidents in the
14 aggregate in the state of Washington?

15 A. Yes, sir.

16 Q. This exhibit does not have any data
17 concerning near accidents or near collisions, does it?

18 A. No, sir.

19 Q. And the accidents that are tallied on this
20 exhibit would occur only when they're reported by
21 local law enforcement, at least in the case of a local
22 jurisdiction; isn't that correct?

23 A. That's correct.

24 Q. Would this exhibit include train/pedestrian
25 accidents?

1 A. No.

2 Q. What specifically will a Commission do to
3 notify, advise and educate Marysville citizens and
4 Marysville businesses in the event the petition to
5 increase the train speeds is granted?

6 A. Well, that's an excellent question. We've
7 been talking about the strategy, how to handle it. I
8 think the best way to do it is to work with the
9 cities, contact the superintendent, of course, of the
10 schools, talk to the Chamber of Commerce, make
11 contacts. I just talked to the person from -- I can't
12 remember the name of the business, but he testified
13 earlier, and he gave me his card. And he's already
14 willing for us to come out there and do a
15 presentation. I can't think of the name of the
16 business again. Somebody help me? But we will make
17 those type of contacts.

18 We have a person working full-time as an
19 Operation Lifesaver coordinator. That person gets on
20 the phone, contacts businesses. We'll also work with
21 local radio, work with the newspapers. We have a
22 public information officer full-time at the
23 Commission. They can contact the newspapers, also
24 television, radio. We'll do what we can to get the
25 message out if the speed increase is granted because I

1 think that is a real critical issue that the word has
2 to get out to the public.

3 Q. So your testimony is you will work with all
4 of these different interest organizations. Anything
5 more specific than that? Will there be meetings held
6 in the city of Marysville with any of these groups?

7 A. Well, we haven't thought about that idea
8 but that may be a good idea.

9 Q. Will there be any public meetings or public
10 hearings held?

11 A. We haven't done that. At this point where
12 the Commission has granted other speed increases, I'm
13 not aware where public meetings were held but it's
14 certainly worth exploring.

15 Q. The Commission is certainly committed to
16 doing what it can to notify citizens and businesses
17 and even noncitizens about the increase in train
18 speeds in the event the petition is granted?

19 A. Absolutely.

20 MR. WEED: No further questions.

21 JUDGE HAENLE: Ms. Gibson, any questions?

22

23

CROSS-EXAMINATION

24 BY MS. GIBSON:

25 Q. Is the name you were trying to think of

1 Brad Young from Northwest Composites?

2 A. Yes, thank you.

3 Q. And that's the person who has agreed to
4 have some education done there?

5 A. Right. I've got his card, and our
6 Operation Lifesaver coordinator, I will have him call
7 him and hopefully will set up some presentation with
8 his drivers and others that work there.

9 Q. Mr. Scott, I would like you if you could to
10 clarify for the record the prior testimony about the
11 grade crossing accident that occurred on December 6,
12 1994 involving a pickup truck. Do you in your file
13 that you have with you today have a memorandum from a
14 WUTC railroad inspector named Gerald Buxton?

15 A. Yes, I do.

16 Q. And is that dated December 19, 1994?

17 A. Yes.

18 Q. Was that memorandum written from Mr. Buxton
19 to yourself?

20 A. Yes.

21 Q. And is it regarding the accident of
22 December 6, 1994?

23 A. Yes.

24 Q. In that memorandum, does Mr. Buxton write
25 that according to his investigation the driver failed

1 to stop at the stop sign as required?

2 MR. WEED: Objection. Hearsay. The
3 document speaks for itself and we haven't had an
4 opportunity to take a look at it. I at least would
5 like to see the document.

6 JUDGE HAENLE: Ms. Gibson.

7 MS. GIBSON: I don't have a problem with
8 counsel looking at the document. The document itself
9 is not in evidence and we do have relaxed rules of
10 hearsay here and I'm trying to clarify something for
11 the record.

12 JUDGE HAENLE: Let's go off the record so
13 counsel can take a look at that.

14 (Recess.)

15 JUDGE HAENLE: Let's go back on the record
16 then. During the time we were off the record Mr. Weed
17 was reviewing the document.

18 MR. WEED: Once again, I would renew my
19 objection that the document is hearsay.

20 JUDGE HAENLE: Ms. Gibson.

21 MS. GIBSON: Your Honor, we do have the
22 relaxed rules of hearsay and so I would ask that the
23 testimony be permitted.

24 JUDGE HAENLE: Seems to me that there are
25 probably elements of an accident report that would be

1 generally it would be admissible, I think, as a
2 business record. There could be elements of an
3 accident report that will be opinion that wouldn't
4 necessarily be admissible, but I'm going to overrule
5 the objection in this case with the question that
6 we've heard so far. I think that question can be
7 answered without a problem that being opinion evidence
8 of the writer of the report, and I feel that that is
9 an exception to the hearsay rule, for our purposes
10 anyway.

11 MR. WEED: For purposes of the record I
12 would like to state that I don't have an opportunity
13 to cross-examine the writer of the report unless he's
14 here today and able to testify.

15 JUDGE HAENLE: You're absolutely correct in
16 that, yes.

17 Go ahead, Mr. Scott, do you remember the
18 question?

19 THE WITNESS: No.

20 JUDGE HAENLE: Question was does the report
21 show that the driver failed to stop for the stop sign?

22 THE WITNESS: The report shows that.

23 MS. GIBSON: I have nothing else.

24 JUDGE HAENLE: Questions, Ms. Fairhurst?

25 MS. FAIRHURST: No, Your Honor.

1 JUDGE HAENLE: Any redirect?

2

3 REDIRECT EXAMINATION

4 BY MS. RENDAHL:

5 Q. Just simply, Mr. Scott, in putting
6 together Exhibit 25 in response to cross-examination I
7 believe you said you rely only on what you're provided
8 by the local police department or local law
9 enforcement. Do you also rely on information provided
10 by the railroad or Federal Railroad Administration?

11 A. That's correct. The railroad is required
12 by federal regulation to report. There's a threshold,
13 depending on the type of accident; if it's a
14 derailment or collision involving rail equipment it's
15 up to 5600 or 6,000. If it involves an injury,
16 property damage accident or failure at a grade
17 crossing, required to report that, and we get copies
18 of that report from the railroad for the state of
19 Washington. In other words, it's the same report that
20 goes to the FRA. They just send us that same report
21 to us also besides the traffic collision reports
22 that we receive from the Washington State Patrol.

23 MS. RENDAHL: Thank you. I have no further
24 questions.

25 JUDGE HAENLE: Anything more of the

1 witness?

2 MR. WEED: Just one question.

3

4 RECROSS-EXAMINATION

5 BY MR. WEED:

6 Q. Mr. Scott, the report that you referred to
7 in your possession does not include any report from
8 the local law enforcement agency, does it?

9 A. That is correct. We have not yet received
10 -- the accident took place in December. Normally by
11 the time the police officer finishes his report under
12 his jurisdiction and closes it out and it is sent to
13 the records center of the Washington State Patrol and
14 then eventually to us, it could be two or three months
15 or longer before we received the report.

16 Q. This is an accident that occurred within
17 the city of Marysville?

18 A. Yes. On December 6 at the crossing,
19 private crossings to Pacific Grinding Wheel.

20 Q. Can you tell me why the city of Everett
21 police department investigated the accident?

22 A. I don't know. I can't tell you that.

23 Q. Are you aware that that's what the report
24 states?

25 A. No, I wasn't aware of that.

1 MR. WEED: No further questions.

2 JUDGE HAENLE: Anything else?

3 MS. GIBSON: Nothing else.

4 JUDGE HAENLE: Thank you for your
5 testimony. You may step down. Does that complete
6 witnesses from the Commission staff?

7 MS. RENDAHL: Yes, Your Honor.

8 JUDGE HAENLE: Did the petitioner have any
9 rebuttal witnesses?

10 MS. GIBSON: No, Your Honor, we do not.

11 JUDGE HAENLE: Anything else then that we
12 haven't covered that we need to cover? Anyone?

13 MS. GIBSON: I don't think so.

14 MS. FAIRHURST: No, Your Honor.

15 JUDGE HAENLE: I would remind you then that
16 the briefs are due on February 17. Remember that's a
17 receipt date. The hearing will then be adjourned and
18 an initial order will issue. Thank you all.

19 (Hearing adjourned at 3:35 p.m.)

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

As Court Reporter, I hereby certify that
the foregoing transcript is true and
accurate and contains all the facts,
matters, and proceedings of the hearing
held on: *January 20, 1995*

Cheryl A. Macdonald

CONTINENTAL REPORTING SERVICE, INC.