

SERVICE DATE

DEC 28 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,  
  
Petitioner,

vs.

BURLINGTON NORTHERN SANTA FE RAILROAD,  
  
Respondent.  
.....

DOCKET NO. TR-961002

ORDER APPROVING SETTLEMENT; DENYING PETITION FOR CLOSURE; AUTHORIZING CROSSING RECONSTRUCTION (WALNUT STREET)

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  
  
Petitioner,

vs.

BURLINGTON NORTHERN SANTA FE RAILROAD,  
  
Respondent.  
.....

DOCKET NO. TR-981276

ORDER APPROVING SETTLEMENT; GRANTING PETITION FOR CLOSURE (CAMPBELL ROAD)

**Procedural history.** Docket No. TR-961002 came on regularly for hearing on September 8 1997 in Olympia and September 9, and 10, 1997, in Winlock, Washington before Administrative Law Judge C. Robert Wallis. The Commission recessed the hearing to allow the parties an opportunity to resolve the issues through settlement.

At a prehearing conference on September 30, 1998, the parties announced they had reached an agreement in principle. On October 21, 1998, the parties filed a proposed settlement agreement with the Commission, which included an agreement that the Campbell Street crossing in Winlock be closed instead of the Walnut Street crossing, and that the Walnut Street crossing should be reconstructed. Commission Staff petitioned for closure of the Campbell Street crossing to implement

terms of the settlement agreement. The Commission consolidated the Campbell Street closure petition with the Walnut Street petition and scheduled a hearing be held on the consolidated petitions and the proposed settlement.

The consolidated matter came on regularly for hearing on November 23, 1998 in Winlock, Washington. At the hearing the parties waived entry of an initial order and asked that the Commission decide the issues on the record of the proceeding.

**PARTIES:** Deborah L. Cade, Assistant Attorney General, Olympia, represented Petitioner Washington State Department of Transportation. Ann Rendahl, Assistant Attorney General, Olympia, represented Petitioner Washington Utilities and Transportation Commission. Rexanne Gibson, attorney, Bellevue represented respondent Burlington Northern Santa Fe Railroad. Mark Scheibmeier, Winlock City Attorney, Chehalis, represented intervenor, City of Winlock.

**DECISION:** The Commission accepts and adopts the parties' settlement agreement, authorizing the reconstruction of the Walnut Street crossing and the closure of the Campbell Street crossing. The Commission directs the parties to join in a concerted Operation Lifesaver educational campaign upon completion of the work, to heighten community awareness of remaining dangers, and minimize the possibility of injuries. In addition, the Commission requires review of final plans and requires monitoring of crossing blockages.

**MEMORANDUM**

**I. Background and factual setting**

**A. The legal standard.** Chapter 81.53 RCW grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for grade separations (over crossings and under crossings) where practicable, prohibits the construction of a new highway crossing at grade without prior Commission approval,<sup>1</sup> and sets out factors that the Commission is to take into account in determining whether a grade-separated crossing is practicable.

The statutes are based on the theory that all railway/highway crossings at grade are dangerous, and public policy strongly disfavors them. Reines v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 195 Wash. 148, 80 P.2d 408 (1983); Department of Transportation v. Snohomish County, 35 Wn.2d 247, 257, 212 P.2d 829 (1949); State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn.2d 95, 104 P.2d 764 (1940).

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<sup>1</sup> When used in Chapter 81.53, the term "highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public roadways. RCW 81.53.010.

In addition to the dangers inherent in any crossing at grade, there are factors that may make a particular crossing especially hazardous. These factors include vegetation or other obstacles that limit the motorist's view of the tracks as the motorist approaches the crossing,<sup>2</sup> an alignment in which the roadway approaches the crossing at an oblique angle,<sup>3</sup> limited holding capacity on the approaches between the railroad right of way and streets that intersect with the approaches,<sup>4</sup> more than one mainline track at the crossing,<sup>5</sup> and the presence of a siding track in addition to a mainline track at the crossing.<sup>6</sup>

In some cases the public convenience or need for a crossing outweighs the danger, and in that case the Commission may allow a crossing at grade to remain open. The balancing test was stated by the court in Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949) as follows:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition.

The Commission follows the same balancing process.

Factors the Commission considers in determining the need for a crossing include the amount and character of travel on the railroad and on the highway, the availability of alternate crossings, whether the alternate crossings are less hazardous, the ability of alternate crossings to handle any additional traffic that would result from the closure, and the effect of closing the crossing on public safety factors such fire and police control. See, Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

**B. The factual setting.** The tracks of the Burlington Northern Santa Fe railroad, or its predecessors, have intersected with Walnut Street in Winlock for more than 100 years. Now a two-track main line, the railroad carries traffic within and beyond

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<sup>2</sup> See, Whatcom County v. Burlington Northern Railroad Company, Docket Nos. TR-1725 and TR-1726 (January 1985).

<sup>3</sup> See, Thurston County v. Burlington Northern Railroad, Docket No. TR-1930 (April 1988).

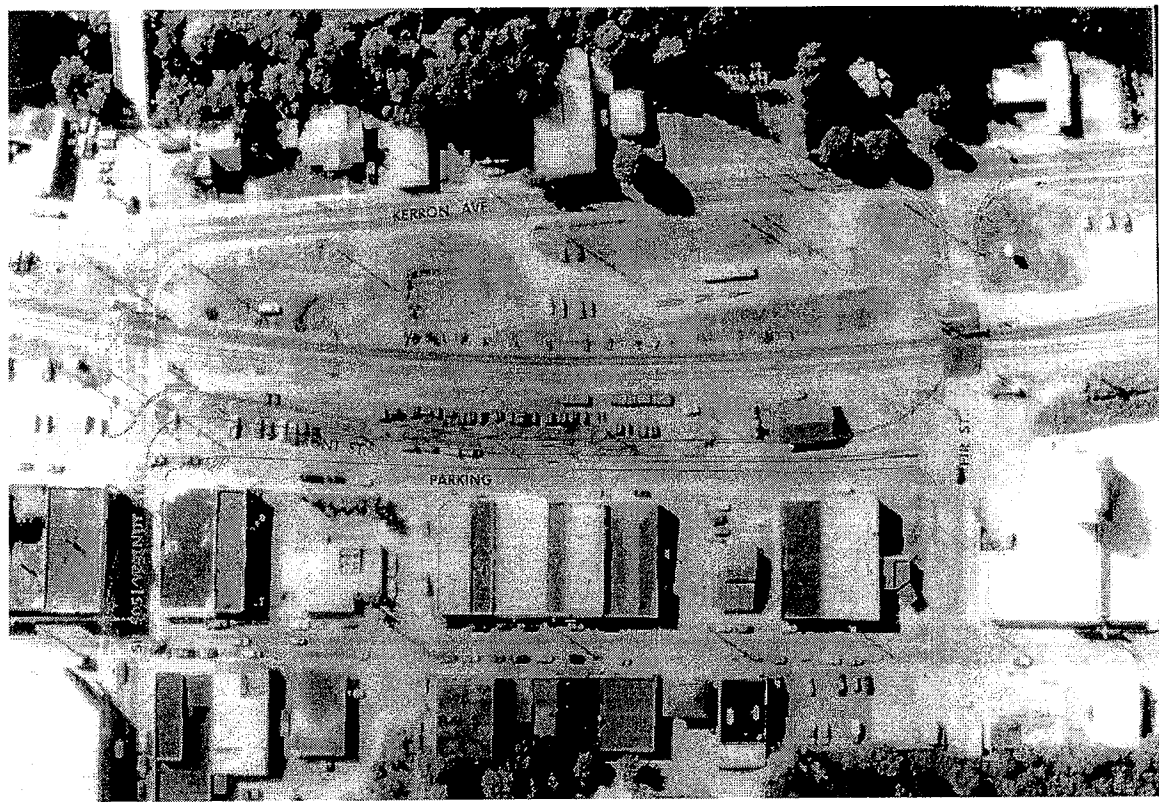
<sup>4</sup> See, Whatcom County, *supra* note 2.

<sup>5</sup> See, Department of Transportation v. Snohomish County, 35 Wn.2d 247 (1949).

<sup>6</sup> See, Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985); Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

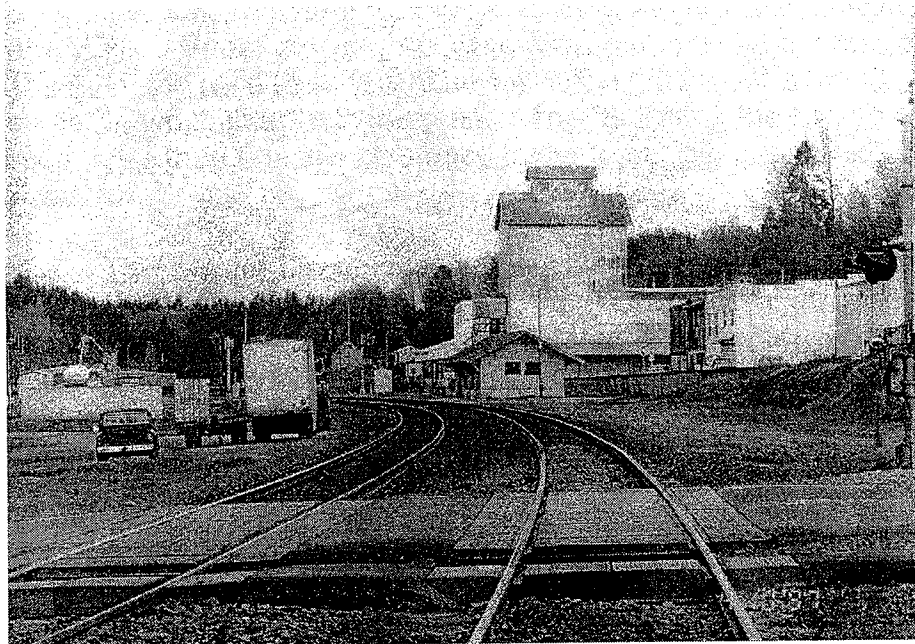
the north-south corridor between Portland and Seattle.

The alignment of railroad and city streets in Winlock is shown in Fig 1, which is Exhibit 1 in the hearing record. Passing through Winlock, the BNSF tracks accomplish a gentle curve, with Winlock on the eastern, convex, side of the arc. Three Winlock streets cross the BNSF tracks. To the North is Fir Street. One block to the south is Walnut Street. Several blocks south of Walnut (off the figure, to the left) is Campbell Street. Lines on the photograph show the Department of Transportation's initial proposal, especially the proposed widening and use of Front Street for access from Walnut to the Fir St. crossing.

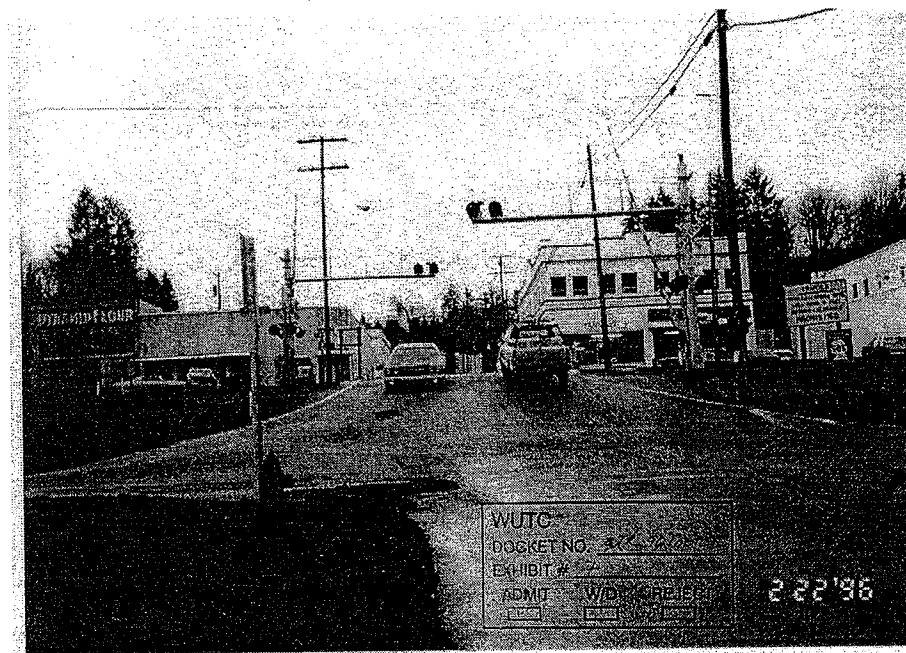


**Fig. 1.** Exhibit 1, an aerial photo of the crossing showing the west at the top, the tracks in the middle, Walnut street to the left, Fir Street to the right, and Kerron Avenue across the upper, westerly, portion of the photo..

Walnut Street at the existing crossing is State Route 605, under the jurisdiction of the state Department of Transportation, petitioner for closure of Walnut Street. Immediately to the west of the BNSF tracks, SR 605 now ends at its intersection with Kerron Avenue.



**Fig. 2** is a view of the tracks at the Walnut St intersection, looking northerly, with Walnut St. in the foreground. Exhibit No. 12.



**Fig. 3** shows the Walnut St. crossing from the west, with Kerron Avenue in the foreground and the crossing just beyond it. This view (Exhibit 7 in the record) illustrates the grade, the vertical curve, and the difficulty that the grade and the curve cause in seeing the tracks that some public witnesses addressed.

The chief problem with the Walnut Street crossing is shown in **Fig. 3**, a view of the Walnut Street crossing showing Kerron Avenue in the foreground. Moving toward the east, the road rises in a relatively steep grade to the tracks. The crossing, which is relatively flat, interrupts the grade. The "bump" of the flat crossing in the grade has caused more than one low-clearance trailer to be "high-centered" on the crossing, immobilized.

The Walnut Street crossing has been the site of a number of incidents and accidents, including the destruction of immobilized low-clearance trailers in 1978 and 1987 that also resulted in extensive property damage and at least one injury. Granted that all railroad crossings at grade are dangerous,<sup>7</sup> the Walnut street crossing is a particularly dangerous crossing that cannot be allowed to remain open in its present configuration.

The Department of Transportation recognized this and explored various alternatives to solving the Walnut Street "problem" before petitioning for its closure. Bringing the roadway grade to the standard, which requires virtually level approaches on both sides of the crossing – appeared to be prohibitively expensive because it would require raising Kerron Avenue to a substantial degree, impeding access to properties on that street, or lowering the rails to a significant degree, also a project that involves substantial expense.

Instead, the Department proposed to close Walnut Street and divert traffic along a widened Front Street to the Fir Street crossing. It went to hearing with this proposal.

During the first set of hearing sessions, in 1997, two very substantial problems with the Department's proposal became apparent. First, the proposed solution appeared Impractical in that it required traffic, including a substantial volume of heavy truck traffic, to make two 90-degree turns in urban streets with limited clearance, and with westbound traffic facing scant holding capacity at the Fir Street crossing.

The second problem is that citizens reported numerous instances of blockage of the Fir Street crossing during railroad switching activity, sometimes for periods comprising the better part of an hour.<sup>8</sup> With Walnut Street closed, Fir would be the only access and egress and its blockage would prevent emergency vehicles from speedy cross-track access.

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<sup>7</sup>See, the discussions above in this Order.

<sup>8</sup>Railroad personnel estimated the length of closures to be much shorter, based upon train crew reports. We find the citizen testimony more credible, but ask the parties to establish a monitoring program to report all blockages to railroad dispatchers so that an accurate record can be made.

Before completion of the evidentiary record in 1997, the parties asked that the hearing be recessed to allow discussions oriented toward settlement. The request was granted, the discussions were successful, and the parties jointly presented a proposed settlement agreement to the Commission at the November 23, 1998 hearing session.

**II. Public testimony**

The Commission held special sessions in Winlock on September 9 1997 and November 23 1998, dedicated to receiving testimony from members of the public about their views -- first on the proposed closure and later on the proposed settlement.

**A. Comments about closure.** The seriousness of the proposed closure is reflected in the number of persons -- about 200 -- who attended the September, 1997 session and the number of persons -- fifty -- who testified.<sup>9</sup> The public witnesses added insights into the history of the crossing, including historical photographs; context about use of the crossing and its dangers; information about train blockages of crossings; and the effect of the proposed closure on the community.

Based on the public and the expert testimony about the initial proposal, it is clear that the proposal simply would not have worked and that the public needs a Walnut St. crossing, despite some potential dangers.

**B. Comments on the proposed settlement.** In contrast to the earlier public session, the hearing session in November 1998 brought forth considerable attendance, but not overwhelming, and nearly universal approval of the proposal. The session opened with statements from counsel explaining the settlement proposal and the reasons that the parties all believe that it is an appropriate solution to their mutual problems. Citizens accepted the inconvenience of the Campbell Street closure as necessary, and complimented the parties for reaching an agreement that preserved local interests.

Some witnesses were Kerron Avenue property owners who will be directly affected by the reconstruction project and the raising of Kerron Street that is needed to reduce the crossing approach grade. Those persons have been

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<sup>9</sup>Ten additional members of the public testified at the evidentiary hearing session the following day.

provided access to persons who are responsible for the project so they can receive timely and accurate information about its progress and about its effect on their properties. Neither the parties nor the Commission, however, can guarantee that individual property owners will have no effect as a result of construction or operation of the project, but the parties appear to be committed to considering the property owners' needs as significant factors that must be balanced, among others, in the final design of the reconstruction.

**III. The Settlement Proposal**

The settlement proposal addresses a number of issues among the parties. Most significantly, it recognizes the substantial public need for the Walnut Street crossing and calls for its reconstruction rather than its closure. It meets the track-to-Kerron Avenue grade problem by raising Kerron, but leaving a slight grade. The remaining grade is the least possible that is achievable with the resources available. Low clearance traffic will be barred from the crossing and the prohibition clearly signed. Balanced with the demonstrated need for the crossing and the lack of realistic alternatives, the proposed reconstruction is in the public interest.

Other features of the settlement also meet the public interest. The department of Transportation will turn back to the City of Winlock the road traversing the crossing, and the city will enact ordinances barring low clearance traffic from the crossing and barring trespassing on railroad property – the latter responding to reports of citizens walking along the tracks.

Another advantage in the agreement is the closure of Campbell Street to vehicle traffic. It is a crossing that sees less vehicle traffic than Fir and Walnut streets. Its closure will not hamper the flow of traffic (although this order will call for citizen monitoring of possible blockages of Fir and Walnut streets to assure timely emergency access). Closure of this crossing to motor vehicles removes a hazard to the public and is in the public interest. The agreement provides that the crossing will remain open to pedestrian traffic – a wise move to allow walkers a lawful and protected access to school and downtown businesses.

The railroad will perform track work and the city will provide in-kind labor or materials with the result that storm drainage will improve and reduce flooding. Finally, the city agrees not to oppose a request to increase train speeds.

While the agreement does not represent a perfect solution for any party, on balance it is a workable solution that clearly operates in the public interest. The public convenience and necessity do require a redesigned crossing. In light of the record, however, the settlement agreement should be made subject to three conditions.



#### IV. Conditions and requirements

**A. Final plan review.** The settlement agreement establishes the principles for resolution of all issues, but not the details. Final approval should be conditioned on the Commission's review and approval of final engineering plans. To that end, the Commission asks Commission Staff to work with the parties on final design plans. When the plans are prepared, they must be submitted to the Commission. The Commission may approve the final plans, or state needed corrections, by letter of the Secretary.

**B. Public education.** Testimony at the hearings disclosed that trespassing on the railroad right-of-way is frequently observed. Enactment of an ordinance prohibiting it will be a step in the right direction, but it also requires enforcement and public education. Therefore, the Commission directs the parties to work with the City to develop an enforcement plan to become effective after completion of all work.

In addition, the Commission directs all parties to work with Commission Staff to prepare and implement a concerted public education campaign highlighting to the Winlock-area public the dangers of railroad tracks and crossings in general and the Winlock situation in particular. It should involve the education of school children, public meeting or meetings, publicity – with advertising if needed – in local media, aimed to alert every citizen in the vicinity of the new crossing configurations, the new penalties, and the awareness of remaining dangers.

**C. Blockage monitoring.** The railroad operates a siding parallel to its main lines immediately to the north of the Fir Street crossing. The siding is used for switching on a regular basis. The railroad's policy is to limit to a few minutes the blockages of Fir -- and occasionally Walnut -- streets that are necessary when trains enter the siding and accomplish needed switching,. Citizen testimony, which is found credible, indicates that the crossing is at times blocked for longer periods.

Because such blockages can impair emergency vehicle access, and because the "safety valve" of the Campbell Street crossing farther to the south will be removed, it is necessary to minimize them. The key to resolving this issue is to make the railroad aware of blockages, and the railroad provides a ready means to do so by making its toll free central dispatch number available.

The final condition to approval of the settlement agreement is that the parties develop a plan for such monitoring and informing the railroad when blockages occur. Like the final construction plans, it must be submitted to the Commission for approval prior to commencement of construction. The greatest success will be found if the monitoring discloses that blockages longer than a few minutes are very rare.

**V. Conclusion.**

The settlement agreement is in the public interest. It is approved and adopted as the Commission's order, subject to the conditions set forth above.

**FINDINGS OF FACT**

- 1. The Burlington Northern and Santa Fe Railway Company (BNSF), respondent in these proceedings, is a common carrier railroad.
- 2. Tracks of the BNSF intersect public roads within the City of Winlock at Fir, Walnut, and Campbell streets.
- 3. The Walnut Street crossing in its present configuration is particularly dangerous because of the approach grade from the west, which renders the crossing impassable to low-clearance vehicles. In other respects the crossing is the only convenient means within the City of Winlock for motor vehicle traffic, particularly truck traffic, to cross the BNSF tracks. Crossing reconstruction, including modification of the westerly approach grade and barring low-clearance vehicles would lessen the danger of the crossing to the public.
- 4. The Campbell Street crossing is dangerous to vehicular and train traffic in its present configuration. It is used less frequently than the Fir and Walnut street crossings. It a convenient crossing point for pedestrians.

**CONCLUSIONS OF LAW**

- 1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.
- 2. The settlement agreement of the parties acknowledges the public need for a reconstructed and thereby safer crossing at Walnut Street and recognizes that the public convenience and necessity do not require maintenance of the Campbell Street crossing for motor vehicle traffic. The public convenience and necessity do, however, require improvement of the Campbell Street crossing to accommodate pedestrian use.
- 3. The conditions requiring final plan approval, public education, and

monitoring of blockages, that are set out in detail in the body of this order, are appropriate and necessary and in the public interest.

- 4. The Commission should adopt the settlement agreement, subject to the three conditions set out in the body of this order.

**ORDER**


The Commission orders that the settlement agreement of the parties, contained in Appendix A to this order, is accepted and adopted as the Commission's own, subject to the conditions of final plan review, public education, and blockage monitoring that are set out in the body of this order.


In so doing, the Commission (1) denies the petition for closure of the Walnut Street crossing that is the subject of Docket No. TR-961002 and approves its reconstruction, and (2) approves the petition for closure to motor vehicles and improvement for pedestrian use of the Campbell Street crossing that is the subject of Docket No. TR-981276.

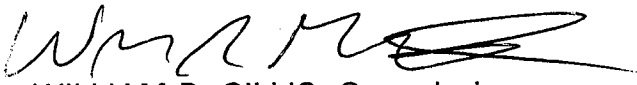
The Commission retains jurisdiction over the subject matter of this proceeding and the parties thereto, to effectuate the terms of this order.

DATED at Olympia, Washington, and effective this 28<sup>th</sup> day of December 1998.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

  
 ANNE LEVINSON, Chair

  
 RICHARD HEMSTAD, Commissioner

  
 WILLIAM R. GILLIS, Commissioner

**NOTICE TO PARTIES:** This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).



APPENDIX A

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

**SETTLEMENT AGREEMENT**

This agreement is entered into on October 21, 1998 by the petitioner Washington State Department of Transportation (WSDOT) and respondents Burlington Northern and Santa Fe Railway Company (BNSF) and the City of Winlock (Winlock) as well as staff of the Washington Utilities and Transportation Commission (WUTC) in settlement of all issues in WSDOT v. Burlington Northern Railroad et al., WUTC Docket No. TR-961002 and WUTC v. Burlington Northern and Santa Fe Railway Co., WUTC Docket No. TR-981276.

**RECITALS**

1. SR 505 in the vicinity of Winlock is crossed at grade by the BNSF rail line (the Walnut Street crossing). This rail crossing has been the site of numerous train-vehicle incidents and collisions. The Walnut Street crossing creates safety hazards for both trains and vehicles, as well as potential liability for WSDOT, BNSF, and WUTC. One of the more significant safety hazards is the potential for low-clearance trucks to high-center on the tracks and cause derailments. Winlock has two other at-grade crossings at Fir Street and Campbell Street.

2. To address this safety hazard, WSDOT filed a petition before WUTC to close the Walnut Street crossing on August 9, 1996. The WSDOT proposal for closing the Walnut Street crossing included rerouting vehicular traffic to Fir Street and improving Front Street. Winlock was allowed to intervene in that action.

3. Winlock and its citizens have raised concerns regarding the potential closure of the Walnut Street crossing, including the ability of emergency vehicles to cross from one side of the railroad tracks to the other in the event that a train is blocking the Fir Street crossing, traffic flow patterns, and the economic viability of the downtown business area of Winlock.

4. The Campbell Street grade crossing poses safety risks because of the steep grade and the location of side streets. The Campbell Street crossing is less significant for residential, commercial, and public safety needs than the Walnut Street crossing. On October 6, 1998, the WUTC staff filed a petition to close the public rail crossing at Campbell Street to vehicular traffic and convert it to a private pedestrian-only crossing.

5. In order to further its goals of increasing use of higher speed passenger trains through the Pacific Northwest Rail Corridor, WSDOT is attempting to close those at-grade crossings that pose significant safety hazards for trains and vehicles.

6. The need for the grade crossing at Walnut Street outweighs the dangers posed by the crossing, whereas the safety risks at the Campbell Street crossing outweigh the need for a vehicular crossing at Campbell Street.

7. The parties to this agreement recognize that there are other at-grade rail crossings in the Pacific Northwest Rail Corridor that require closure or improvement for rail and vehicle safety reasons, and that there are limited resources available for this purpose. Based on the need to prioritize crossing safety projects as well as other highway safety improvement projects, WSDOT has determined that the funds it has committed in this settlement are the maximum amount that it can allocate to this crossing.

**AGREEMENT**

Based on the foregoing, the parties agree as follows:

1. WUTC staff will also file a petition to request that WUTC consolidate this petition with WSDOT's petition to close the Walnut Street crossing, Docket No. TR-961002. WSDOT will prepare any documentation required by the State Environmental Policy Act for the closure of the Campbell Street crossing.

2. WSDOT will make improvements at the Walnut Street crossing between Front Street and Kerron Avenue to reduce the hazard for low-clearance trucks, as described in the preliminary drawings attached as Exhibit A. WSDOT will fund this work with part of a grant from the Federal Highway Administration and with state funds in the total amount of \$550,000.00. WSDOT will make its preliminary and final designs available to Winlock and WUTC staff for review and comment prior to the project's advertisement for bids. WSDOT will make a good faith effort to advertise for bids on this project no later than Spring 1999, with work to commence no later than summer 1999. WSDOT and BNSF will coordinate with respect to construction schedules. WSDOT will invite Winlock, BNSF, and WUTC staff to the preconstruction meeting that will be held after contract award and prior to the start of construction.

3. BNSF will perform work on the tracks in the vicinity of the Walnut Street crossing, including lowering the west rail, as specified in the construction agreement to be entered into between WSDOT and BNSF. WSDOT will contribute \$250,000 toward this work from the Federal Highway Administration grant. BNSF will contribute the remainder of the funds necessary to do this work, not to exceed \$156,000.

4. Closure of the Campbell Street crossing and conversion to a private pedestrian-only crossing will not occur until after substantial completion of the roadway and track work on the Walnut Street crossing and reopening of the Walnut Street crossing to vehicular traffic. WSDOT will contribute \$70,000 in TransAid funds for the relocation of the signal at Campbell Street and conversion of the Campbell Street crossing to a private pedestrian-only crossing. BNSF and Winlock will enter into a separate agreement for the maintenance of the pedestrian-only crossing.

5. BNSF, at its own cost, will make needed improvements to the stormwater drainage system in the vicinity of the railroad tracks between Fir Street and Campbell Street. Winlock will contribute \$10,000 in labor to the work on the drainage system.

6. After the completion of the Walnut Street crossing work, WSDOT will begin the process to turn back to Winlock the section of SR 505 between Front Street and the end of SR 505 on the west side of the Walnut Street. Winlock will accept this turn back of this portion of SR 505.

7. BNSF will seek approval from WUTC in Docket No. TR 961532 for freight and passenger train speed increases through Winlock. Winlock agrees not to oppose this petition.

8. Winlock will enact city ordinances (1) prohibiting the use of the Walnut Street crossing by low-clearance trucks and (2) prohibiting trespassing on the railroad right of way by pedestrians. These ordinances will include appropriate penalties for violation, and will be enforced by Winlock. After the ordinance prohibiting low-clearance trucks is enacted, WSDOT will place appropriate signs on SR 505 outside the city limits to notify drivers of the prohibition on low-clearance trucks and indicating an alternate truck route.



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To <i>Ann Rendahl</i>	From <i>Deborah Lade</i>	
Co.	Co.	
Dept.	Phone # <i>753-4964</i>	
Fax # <i>6-5522</i>	Fax # <i>586-6847</i>	

*Deborah L. Lade*

**DEBORAH L. CADE, WSBA No. 18329**  
 Assistant Attorney General  
 Attorney for Petitioner Washington State  
 Department of Transportation

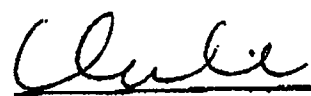
**REXANNE GIBSON, WSBA No. 12649**  
 Attorney for Respondent Burlington Northern  
 Santa Fe Railway Company

*[Signature]*

**MARK SCHEIBMEIR, WSBA No. 12059**  
 City Attorney  
 Attorney for City of Winlock

**ANN RENDAHL, WSBA No. 22848**  
 Assistant Attorney General  
 Attorney for Utilities and Transportation  
 Commission Staff

**DEBORAH L. CADE, WSBA No. 18329**  
Assistant Attorney General  
Attorney for Petitioner Washington State  
Department of Transportation



**REXANNE GIBSON, WSBA No. 12649**  
Attorney for Respondent Burlington Northern  
Santa Fe Railway Company

**MARK SCHEIBMEIR, WSBA No. 12059**  
City Attorney  
Attorney for City of Winlock

**ANN RENDAHL, WSBA No. 22848**  
Assistant Attorney General  
Attorney for Utilities and Transportation  
Commission Staff

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**DEBORAH L. CADE, WSBA No. 18329**  
Assistant Attorney General  
Attorney for Petitioner Washington State  
Department of Transportation

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**REXANNE GIBSON, WSBA No. 12649**  
Attorney for Respondent Burlington Northern  
Santa Fe Railway Company



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**MARK SCHEIBMEIR, WSBA No. 12059**  
City Attorney  
Attorney for City of Winlock

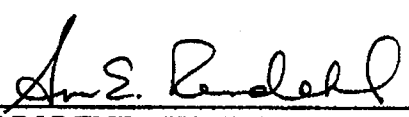
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**ANN RENDAHL, WSBA No. 22848**  
Assistant Attorney General  
Attorney for Utilities and Transportation  
Commission Staff

DEBORAH L. CADE, WSBA No. 18329  
Assistant Attorney General  
Attorney for Petitioner Washington State  
Department of Transportation

REXANNE GIBSON, WSBA No. 12649  
Attorney for Respondent Burlington Northern  
Santa Fe Railway Company

MARK SCHEIBMEIR, WSBA No. 12059  
City Attorney  
Attorney for City of Winlock



ANN RENDAHL, WSBA No. 22848  
Assistant Attorney General  
Attorney for Utilities and Transportation  
Commission Staff