

Exhibit No. ____ (KH-3)
Docket TR-100098
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF FIFE,

Petitioner,

v.

UNION PACIFIC RAILROAD,

Respondent.

DOCKET TR-100098

EXHIBIT TO TESTIMONY OF

Kathy Hunter

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Initial Order in Docket TR-961394

September 3, 2010

SERVICE DATE
APR 17 1997

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UNION PACIFIC RAILROAD COMPANY,)	
)	
Petitioner,)	DOCKET NO. TR-961394
)	
v.)	
)	INITIAL ORDER GRANTING
CITY OF FIFE,)	PETITION TO CLOSE 54TH
)	AVENUE EAST CROSSING
Respondent.)	
.....)	

This matter was heard upon due and proper notice to all interested persons at Lakewood, Washington on March 25, 1997, before John Prusia, administrative law judge.

The parties appeared as follows:

- PETITIONER:** Union Pacific Railroad Company
By Carolyn L. Larson, attorney
Kilmer, Voorhees & Laurick, P.C.
732 N.W. 19th Avenue
Portland, Oregon 97209

- RESPONDENT:** City of Fife
By Loren D. Combs, attorney
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, Washington 98402

- COMMISSION:** Commission Staff
By Ann Rendahl, Assistant Attorney General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, Washington 98504-0128

MEMORANDUM

This proceeding involves a petition by Union Pacific Railroad Company ("Union Pacific" or "the railroad") for an order from the Commission authorizing the closure of the 54th Avenue East railroad grade crossing in Fife, Pierce County, Washington. Union Pacific proposes to close the crossing in conjunction with a project to extend a main line siding across 54th Avenue East, and build a bypass road south of the tracks connecting the southern portion of 54th Avenue East to Frank Albert Road, where there is an overpass across the railroad tracks. The petition states that the redirection of traffic to the overcrossing would eliminate the hazards associated with the existing at-grade crossing, protect the residential area north of the tracks by directing traffic around instead of through the neighborhood, and permit full utilization of the railroad siding without creating crossing blockage problems for motorists. The proposal is to leave the grade crossing in place and not utilize the siding until the bypass road is open for use.

The City of Fife consents to the abandonment and closure of the crossing, admits the factual allegations in the petition for closure, and requests that the Commission condition its order by not allowing the crossing to be closed until specified criteria are met. Union Pacific agrees to the City's conditions.

A hearing was held in Lakewood, Pierce County, on March 25, 1997. Witnesses testified in support of the petition on behalf of Union Pacific, the City of Fife, and Commission Staff. Thirteen members of the public testified at the hearing, mostly in opposition to the petition. The Commission received three letters of comment from the public.

The Crossing and the Closure Proposal

The 54th Avenue East crossing is located in Fife, Pierce County, at Railway Milepost 149.08 Seattle Subdivision. The vicinity of the crossing is shown in Figure 1 (from Exhibits 5 and 4). The tracks run in an easterly-westerly direction at the site. 54th Avenue East runs in a north-south direction, crossing the tracks at an 80-degree angle. There is a single set of tracks at the crossing. The tracks are Union Pacific's main north-south line in the Puget Sound area. Approximately 12 freight trains use the 54th Avenue East crossing daily, at a speed not exceeding 60 miles per hour. The 54th Avenue East crossing is signalized with two advance warning signs and two cross-bucks with flashing signals and 12-foot gates.

54th Avenue East is a north-south arterial through Fife. It connects with Interstate Highway 5 (I-5) at an intersection approximately 3/4 mile north of the 54th Avenue East crossing. After crossing the tracks, it continues south for about one-half mile until it intersects with North Levee Road, an east-west roadway

that runs along the north side of the Puyallup River. Traffic presently uses the 54th Avenue East crossing principally for access between I-5 and points south of the Puyallup River, via North Levee Road and the Melroy Bridge. The crossing is on the most direct route between I-5 and the Melroy Bridge. Approximately 5,600 vehicles per day use the crossing.

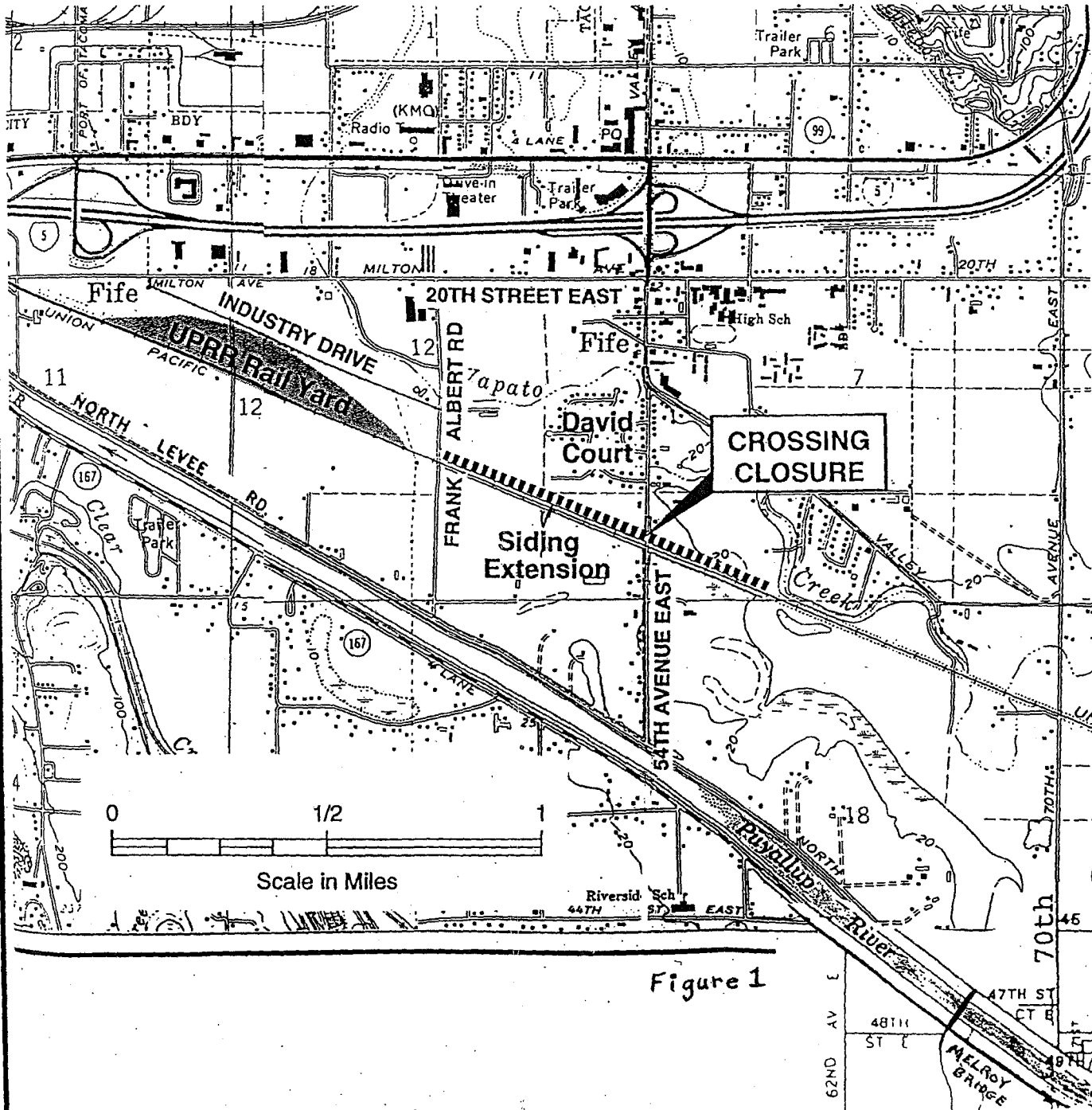


Figure 1

An existing large residential neighborhood known as David Court extends northwest from the crossing. There are a few houses along the east side of 54th Avenue East north of the crossing, and a few along both sides of 54th Avenue East south of the crossing, but otherwise the northeast, southeast, and southwest quadrants are undeveloped. An 800-unit residential project has been proposed for the southeast quadrant, extending between 54th Avenue East and 70th Avenue East, and bounded on the north by the railroad right of way and on the south by wetlands that parallel the river.

The nearest railroad crossing to the west of the 54th Avenue East crossing is on Frank Albert Road, approximately one-half mile to the west. The Frank Albert Road crossing is an overcrossing. The nearest railroad crossing to the east of the 54th Avenue East crossing is at 70th Avenue East, approximately one mile to the east. The 70th Avenue East crossing is a crossing at grade. It is controlled with signal lights and gates. Both of those crossings are alternatives for access between I-5 and the Melroy Bridge.

A railroad siding begins just to the west of the Frank Albert Drive overcrossing. Union Pacific has obtained permits and intends to extend that siding to the east. The railroad will construct a double track adjacent to the existing single track, extending from the existing crossing east across 54th Avenue East, and continuing east of 54th Avenue East for a distance of approximately 1800 feet.

In conjunction with construction of the siding and closure of the 54th Avenue East crossing, a bypass road is to be built on property of the Puyallup Tribe of Indians south of the tracks that will connect the southern portion of 54th Avenue East to Frank Albert Road. A Settlement Agreement between the Tribe, the railroad, the City of Fife, and other parties provides for the dedication of an easement for the bypass road to the City of Fife, with the bypass road to be constructed by the Tribe; expense allocations for construction, maintenance, and repair of the bypass road remain subject to negotiation and agreement between the Tribe, the railroad, and the City of Fife.

The City of Fife has adopted a Comprehensive Plan which calls for changes in arterial street designations and the creation of new truck routes to route traffic around residential areas of the city, including the David Court neighborhood. The plan includes an implementation strategy of exploring, with Union Pacific, the closing of the 54th Avenue East crossing at the time the bypass road contemplated in the Puyallup Tribe Settlement Agreement is built connecting Frank Albert Road and 54th Avenue East

The Transpo Group prepared a traffic impact analysis for Union Pacific. The study estimates traffic diversion patterns and counts that will result from closure of the crossing. It concludes that acceptable traffic flows can be maintained on the routes onto which traffic will be diverted with signalization of two intersections -- the intersection of Frank Albert Road and 20th Street East, and the intersection of Industry Drive and 20th Street East. The Transpo study determined Union Pacific's pro-rata share of the cost of that signalization based on the added traffic that would be diverted by the closure of the 54th Avenue East crossing. The City of Fife has accepted and approved the traffic study. Union Pacific has agreed to pay its pro-rata share of the cost.

Union Pacific and the City of Fife have agreed and stipulated that closure of the 54th Avenue East crossing should be conditioned upon terms and criteria which include completion of the connector bypass road contemplated in the Puyallup Tribe Settlement Agreement and acceptance of the road by the City, the granting of an easement for the construction of a pedestrian and bicycle overcrossing at the site of the present crossing, and payment by the railroad of its pro-rata share of the cost of signalization of the two intersections identified above.

Public Testimony and Comment

Most of the public witnesses testified in opposition to the petition. Among the reasons stated for opposition were: concern that closure of the crossing will increase traffic on alternative routes, increasing congestion on those routes to unacceptable or dangerous levels; concern by bicyclists that reduction in the number of crossings makes remaining crossings more dangerous for them; concern that closure of the crossing will jeopardize public safety by increasing fire and police response time to the area south of the crossing; and concern that closure of the crossing will make it more difficult for farmers who have fields on both sides of the crossing to get equipment across the tracks. Several public witnesses advocated construction of an overcrossing on 54th Avenue East. Several witnesses who reside in the David Court neighborhood north of the tracks oppose the plan to locate the railroad siding extension on the north side of the existing tracks.

John Dekeyser, testifying on behalf of Pierce County Water District No. 21, expressed concern that the crossing is an avenue for escape in the event of flooding in the area south of the tracks, that siltation of existing drainage channels and siltation of the Puyallup River are increasing the flooding danger, and that planned residential development of the area between the tracks and the Puyallup River will increase the need for escape routes in the event of future flooding. Other witnesses expressed similar concerns.

Ishtosh Meninsky, on behalf of CMC Heartland Partners, a landowner which plans an 800-unit residential development for the area south of the tracks and east of 54th Avenue East, expressed concerns about the impact of the closure on traffic congestion in the area. CMC Heartland supplemented his testimony with written comments, in which the company contends that the closure petition is defective for several reasons:

1) Closing the 54th Avenue East crossing will force more traffic through the Port of Tacoma Road and Interstate 5 intersection. That intersection is near gridlock now. The intersection will be further impacted by a new Hyundai terminal on Port of Tacoma Road, which will generate at least 16,000 additional truck trips per year.

2) The Transpo traffic study does not analyze the impact that closing the crossing will have on future traffic that will be generated by growth south of the Puyallup River. The fastest growing areas in Pierce County lie south of Fife. The closest access to I-5 is via 54th Avenue East. The county is improving the route to 54th Avenue East, south of the river.

3) The steep grade of the Frank Albert Road overcrossing and the necessity for a 90-degree turn at the southern end of the overcrossing will cause truck traffic to move very slowly across the overcrossing. The increased congestion on the overcrossing will slow emergency response time.

4) 54th Avenue East is an arterial with direct access to an intersection on I-5. Turning it into a dead-end is financially irresponsible.

5) The Transpo traffic study is inadequate because it omits the 800-unit planned residential development to be constructed by CMC Heartland and the resulting increase in traffic. Only an overpass at 54th Avenue East will meet emergency response requirements for the planned development.

The Puyallup Tribe of Indians submitted written comments expressing the view that the issue of whether to close the crossing is not yet ready for decision, because the consultation process related to the proposed bypass road is not yet complete.

Two public witnesses testified in support of the petition. One testified that extension of the Union Pacific siding is essential to the continued competitiveness of the ports of Tacoma and Seattle. Trains moving through the

area have become longer and more frequent, and business has increased at the Port of Tacoma and in Fife. The Fife yard, where set-outs and pickups are performed for service to industries at the Port of Tacoma and Fife, is too short, requiring trains to extend onto and block the main line while making set-outs and pickups. The railroad cannot move traffic efficiently in the region without the additional siding space. The other witness testified that 54th Avenue East has become a busy speedway which endangers residents of the neighborhood lying to the north of the crossing, and that closing the crossing would benefit the public safety.

Discussion and Decision

The Commission is the principal agency charged with protecting the public safety at railroad crossings, under the guidance of standards established by the legislature and the courts.

Chapter 81.53 grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, prohibits the construction of a new highway crossing at grade without prior Commission approval,¹ and sets out factors that the Commission is to take into account in determining whether a grade-separated crossing is practicable. 81.53.060 authorizes a railroad company whose road is crossed by a street or highway to petition the Commission that the public safety requires the establishment of an under-crossing or over-crossing, an alteration in the existing grade crossing, or the closure of the existing crossing.

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).

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

¹ 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.

the motorist approaches the crossing,² an alignment in which the roadway approaches the crossing at an oblique angle,³ limited holding capacity on the approaches between the railroad right of way and streets that intersect with the approaches,⁴ more than one mainline track at the crossing,⁵ and the presence of a siding track in addition to a mainline track at the crossing.⁶

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).

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

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

⁴ See, Whatcom County v. Burlington Northern Railroad Company, Docket Nos. TR-1725 and TR-1726 (January 1985).

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

⁶ 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 54th Avenue East crossing should be closed. Any crossing is dangerous, as the legislature has provided and the courts have affirmed. Here, there are additional dangers. The roadway will cross a siding as well as a main line track. The siding could be blocked for lengthy periods of time. Drivers who are familiar with blocking patterns at the crossing will be tempted to hurry and try to get across the tracks ahead of an oncoming train. Some people will try to climb through the train, between cars, in order to cross the tracks. Stopped trains would be an attraction to children and transients who would have easy access to the siding. Trains stopped on the siding, even if they are not blocking the crossing, may block visibility of oncoming trains. Drivers also may mistakenly assume that train cars sitting or moving slowly on the siding are the sole cause of the crossing signals being active, when there also is a freight train approaching on the main line. Freight trains on the main line move at a high rate of speed.

Access via a safer route, the Frank Albert Road overcrossing, is readily available, albeit less convenient for some travelers. With mitigation measures agreed upon by the city and the railroad involving configuration and signaling improvements to the intersections of 20th Street East and Frank Albert Road and 20th Street East and Industry Drive East, alternative crossings on Frank Albert Road and 70th Avenue East can adequately handle the traffic that will be diverted by closure of the 54th Avenue East crossing. Closing the crossing will not result in a significant negative impact on fire and police response.

Closure of any crossing puts additional pressure on alternative traffic routes. However, the record does not support the assertion of CMC Heartland Partners that the increase in traffic on the Frank Albert Road overcrossing will jeopardize the public safety, or its assertion that the intersection of the Port of Tacoma Road and I-5 cannot handle the additional traffic. The traffic impact analysis performed by the Transpo Group does not indicate that the Frank Albert Road overcrossing is unable to handle the additional traffic, and the City of Fife's mitigation requirements do not indicate any need for improvements to the overcrossing. The traffic impact analysis concluded that less than 20% of the traffic that will be diverted by closure of the crossing will be diverted to the intersection of the Port of Tacoma Road and I-5. Should developments unrelated to closure of the 54th Avenue East crossing, such as additional truck traffic from the new Hyundai terminal, cause that I-5 intersection to become too congested, the alternative intersection at 54th Avenue East and I-5 is readily available. Also, the City of Fife is working with Pierce County on transportation network options involving the diversion of traffic off the Frank Albert overcrossing.

Moreover, the arguments of CMC Heartland and other opponents of closure do not consider the dangers to the public safety that will exist if the 54th Avenue East crossing is allowed to remain open.

CMC Heartland's argument that the crossing is needed to handle future growth south of the Puyallup River merits some consideration. The Commission does not consider speculative and uncertain future use of a crossing,⁷ but does consider evidence that an area is transitioning from a rural to a developed character, and evidence of planned development and its effect upon the hazardousness and need for a crossing as well as its effect upon congestion at alternate crossings.⁸

There is no dispute that the area around the 54th Avenue East crossing is transitioning from a rural to a developed character. There are plans for an 800-unit residential neighborhood immediately to the southeast of the crossing. This evidence does not demonstrate that the public necessity and convenience require that the crossing remain open. The crossing on Frank Albert Road will be able to handle additional traffic with the mitigation measures agreed upon by the city and the railroad. How soon future development between the tracks and the Puyallup River, or future growth south of the Puyallup River, will require additional or improved crossings in the Fife area, and whether a crossing on 54th Avenue East will become necessary, are speculative. Future decisions concerning the transportation infrastructure in the area may result in new routes and new crossings or improvements to other existing crossings. The Commission cannot anticipate future decisions of other entities concerning the siting of transportation infrastructure, and keeping crossings that presently are unnecessary may complicate the planning process. If need for a crossing at 54th Avenue East should develop in the future, it can be addressed by way of a petition to open a new crossing at the site.

The comments of Mr. Dekeyser on behalf of the Pierce County Drainage District #21, and similar comments regarding flooding, also relate to uncertain future need for a crossing at the location. The comments do not describe a present situation, but rather indicate that the flooding potential is increasing because of siltation in the drainage routes and in the river. The area which is likely to experience flooding has not yet been developed. Development of the transportation infrastructure in the area is ongoing and may address the need before the planned residential development occurs. Also, the city considered the question and concluded that closure of the crossing will not eliminate an escape

⁷ Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-94330 (March 1995).

⁸ Spokane County v. Burlington Northern, Inc., Docket No. TR-1148 (September 1985); Whatcom County v. Burlington Northern Railroad Company, Cause Nos. TR-1725 and TR-1726 (January 1985).

route, because the connector bypass that must be constructed before the crossing is closed will provide a substitute escape route. If a crossing at this site becomes necessary in the future to provide an escape route during floods, that need can be addressed through a petition to open a new crossing at the site.

The argument by some members of the public that the 54th Avenue East crossing should remain open because it allows faster response in the event of fire or other emergency does not justify leaving this dangerous crossing open. Access via a safer route is readily available. The City of Fife has determined that closing the crossing will not result in a significant negative impact on fire and police response. The fire department and police cannot rely on the crossing at present because it sometimes is blocked by trains stopped at the Fife rail yard, and closure of the crossing may even speed response time by eliminating consideration of which crossing to use. The dangers posed by the crossing outweigh any need for additional emergency access. See, Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996), at pages 7-8.

This order concludes that the additional access provided by the 54th Avenue East crossing is not essential for the public safety, and that the dangers posed by the crossing outweigh the need for additional access.

CMC's argument that failure to fully utilize the 54th Avenue East intersection with I-5 would be a trashing of a valuable public asset is not relevant to the Commission's decision whether the crossing should be closed.

The testimony concerning the placement of the siding extension is not material to the Commission's decision. This issue is not properly within the purview of the Commission in this type of proceeding. See, Burlington Northern Railroad Company v. City of Ferndale, Washington, Docket No. TR-940330 (March 1995)

The concerns expressed by the Puyallup Tribe do not require postponement of a decision on the petition. The railroad and the City of Fife have agreed that the Commission should condition closure on the completion and opening to traffic of the proposed bypass road across the tribe's land.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

FINDINGS OF FACT

1. On November 4, 1996, Union Pacific Railroad Company (Union Pacific, railroad, or UPRR) petitioned the Commission for closure of the 54th Avenue East grade crossing at Milepost 149.08 Seattle Subdivision on the Union Pacific railroad in Fife, Pierce County. The petition alleges that this crossing is to be closed in conjunction with a project to extend a main line siding across 54th Avenue East, and build a bypass road south of the tracks from 54th Avenue East to Frank Albert Road, where there is an overpass across the railroad tracks. It alleges that the redirection of traffic to the overpass would eliminate the hazards associated with the existing at-grade crossing, protect the residential area north of the tracks by directing traffic around instead of through the neighborhood, and permit full utilization of the railroad siding without creating crossing blockage problems for motorists. The proposal is to leave the crossing in place and not utilize the siding until the bypass road is open for use.

2. The City of Fife admits the factual allegations set out in the petition for closure of the crossing and supports the petition for closure, conditioned upon the Commission not allowing the crossing to be closed until the following criteria, which are set out in the city's revised mitigated determination of nonsignificance, are met:

a. The UPRR shall comply with the Department of Ecology's Puget Sound Stormwater Technical Manual for temporary and permanent stormwater facilities. A stormwater plan must be approved by the City prior to fill and grade permit issuance. That plan must take into consideration the existing stormwater conditions on adjacent properties and the impact to those properties caused by changes in the stormwater system. No plan shall be approved that increases or impedes stormwater flows on adjacent properties. Drainage District Number 21 must have the opportunity to review and comment on the stormwater plan prior to permit issuance by the City of Fife.

b. The UPRR shall provide the City with a copy of the U.S. Army Corps of Engineers 404 Permit and a wetland mitigation planting plan prior to the issuance of any permit from the City.

c. All fill imported into the site shall be clean fill. If other than clean fill is to be used, the UPRR must have a permit from the Tacoma-Pierce County Health Department and the approval of the City.

d. The 54th Avenue East Extension shall be build across Puyallup Tribe of Indian land as outlined in Document 1, pages 17-18 of the "Settlement Agreement between the Puyallup Tribe of Indians and Local Governments in Pierce County, the State of Washington, the United States of America, and Certain Private Property Owners", dated August 27, 1988. The road shall

be constructed, accepted by the City and open to through traffic before the crossing is closed.

e. The UPRR shall conduct a traffic study to determine the effect of the closure of 54th Avenue East on the intersections of Frank Albert Road and Industry Drive and 20th Street East and Industry Drive. [Additional provisions omitted; the study has been conducted and accepted by the City of Fife, as indicated below].

f. Upon closure of 54th Avenue East, the UPRR shall construct a temporary emergency cul-de-sac with ballast material on the north side of 54th Avenue. The location of the cul-de-sac shall be approved by the Community Development Director prior to construction or permit issuance. The temporary cul-de-sac shall be constructed in a manner that support fire apparatus;

g. The track siding extension shall not be used for long-term storage of rail cars. Under normal conditions, long-term means more than 24 hours. The siding will have power-operated switches controlled only by the dispatching center.

h. The UPRR shall pay to the city of Fife the sum or \$10,000 (Ten Thousand Dollars) to be used for the purchase of landscape materials to provide screening between the railroad tracks and the residential community to the north of the tracks (David Court Neighborhood).

i. The UPRR shall provide a perpetual easement for a grade separated pedestrian/bicycle access across the railroad tracks at the 54th Avenue East alignment.

Union Pacific has no objection to the conditions required by the City of Fife.

3. Herman Carl Naumann testified for the Staff of the Washington Utilities and Transportation Commission concerning posting, publication, and other dissemination of notice of the hearing on the petition, and concerning the location and configuration of the crossing. Mr. Naumann is railroad safety inspector with the Commission in Olympia.

4. Mr. Naumann inspected the 54th Avenue East crossing on March 13, 1997. The location of the crossing is at or near railway mile post 149.08 and the city limits of Fife, in the SE 1/4 of the SE 1/4 of Section 12, Township 20 North, Range 3 East, Willamette Meridian (W.M.) and the SW 1/4 of the SW 1/4 of Section 7, Township 20 North, Range 4 East, W.M. 54th Avenue East extends north and south and is a two-lane, two-way roadway, 22 feet wide. The avenue crosses the track at an 80 degree angle. It is constructed of blacktop.

The posted speed is 35 miles per hour. There is a slight upward grade to the crossing. The crossing is constructed of wooden planks on a single main line track. The railroad traffic consists of 12 freight trains in a 24-hour period at a speed not exceeding 60 miles per hour. The warning signs for motorists consist of two advance warning signs, two cross-bucks with flashing signals and 12-foot gates. Trains sound their whistles when traveling and switching over this crossing. The nearest crossing to this one is at Frank Albert Road (milepost 148.54), 1.26 miles to the west.

5. Mr. Naumann posted notice of the hearing on both sides of the crossing on March 13, 1997. A copy of the notice of hearing was published in The News Tribune of Tacoma on March 22 and 23, 1997.

6. John Turnbull and Bob Hines testified for the Union Pacific in support of the petition. Mr. Turnbull is Manager of Industry and Public Projects for the company. He has held the position for six years. He is based in Nampa, Idaho. His job responsibilities encompass the states of Washington, Oregon, Idaho, and Montana, working with state and local governments to improve safety at railroad crossings. Mr. Turnbull is familiar with the 54th Avenue East crossing. Mr. Hines has been the director of quality transportation for Union Pacific for the past two and one-half years. Before then, he was the senior manager of terminal operations in Seattle, responsible for railroad train operations and local switching operations between Seattle and Tacoma. Mr. Hines is familiar with the 54th Avenue East crossing.

7. The vicinity of the 54th Avenue East crossing is shown in Exhibits 4 and 5. On the south side of the tracks, between the tracks and North Levy Road, there are approximately 9 houses on the west side of 54th Avenue East and 4-5 houses on the east side of the road. There are businesses on the northwest and northeast corners of the intersection of 54th Avenue East and North Levy Road. On the north side of the tracks, there is a large residential area on the west side of 54th Avenue East, and there are some homes along the east side of the road. At Frank Albert Road there is an overpass over the tracks. There are signal lights and gates at the 54th Avenue East and 70th Avenue East crossings. There is an existing Union Pacific rail yard along the north side of the tracks extending west from Frank Albert Road.

8. Union Pacific proposes to extend the existing rail siding on the north side of the tracks, east from the existing Fife rail yard and across 54th Avenue East, because substantial growth in both the population and the industrial base is increasing the demands upon the railroad to provide services, and the existing yard can no longer hold the length of train that is needed if service is to be efficient. Trains have gotten longer and become more frequent. Presently, quite a

few of the trains that serve the Port of Tacoma extend beyond the Fife yard onto the main line, blocking train traffic going to and from points north. Some trains already block 54th Avenue East when serving industries in the area, and trains on the proposed extended siding will block that road.

9. Leaving the 54th Avenue East crossing open would create a poor safety situation after the siding is constructed. The crossing could be blocked for several hours at a time. That is a situation in which children and adults will try climbing through the train to access the other side of the track. It will be an attraction to children to play around the trains. People will be pulling pins, causing the cars to separate. It will be an attraction to transients to hop onto trains. It is a situation which causes drivers who are familiar with the crossing to hurry and try to get across the tracks ahead of an oncoming train. Also, the railroad experiences many accidents at gated crossing, and this crossing is gated. Access over the Frank Albert Road overpass is safer. Union Pacific has not considered putting an overpass at 54th Avenue East in conjunction with the siding extension, because it discussed the location of an overcrossing with the City of Fife in 1988, and it was decided that the crossing should be constructed at Frank Albert Road because the city did not want 54th Avenue East to be an arterial.

10. To mitigate the impact of the siding extension and closure of the crossing, Union Pacific will convey property along the north side of the siding extension to the City of Fife for use as a parkway. Union Pacific will contribute toward the purchase of trees to act as a buffer in the parkway. Union Pacific will contribute toward the cost of constructing traffic signals at the intersection of Industry Drive and 20th Avenue East and the intersection of Frank Albert Road and 20th Avenue East. Union Pacific will construct an easement for a pedestrian or bicycle overcrossing at 54th Avenue East. Union Pacific will make sure that before 54th Avenue East is closed, a bypass road is built connecting 54th Avenue East and Frank Albert Road on the south side of the tracks.

11. The bypass connector road that is to be constructed south of the tracks is the subject of a 1988 agreement, amended in 1990, between the Puyallup Tribe of Indians, local governments, Pierce County, the State of Washington, and property owners including the Union Pacific. The City of Fife and the tribe can determine the actual location of the bypass roadway when it is built. Negotiations involving the railroad and the tribe presently are going on concerning the construction of the roadway.

12. Larry Toddtli testified for Union Pacific in support of the petition. Mr. Toddtli is a senior transportation engineer. For the past twelve years, he has been employed by the Transpo Group, where he directs transportation planning studies and traffic engineering studies. Mr. Toddtli is personally familiar

with the 54th Avenue East crossing. He studied the current traffic patterns in the area and the effect of the proposed closure on traffic patterns in the vicinity of the Frank Albert road crossing. The Transpo Group prepared a traffic impact analysis under his direction (Exhibit 10). The City of Fife has accepted and approved the traffic study.

13. Approximately 5,700 vehicles per day use the 54th Avenue East crossing. About 95 percent of the traffic is going to or coming from the Melroy Bridge on the Puyallup River. 54th Avenue East presently is the principal route between I-5 and the bridge. Southbound traffic diverted by the closure of the 54th Avenue East crossing is likely to be split fairly evenly between the Frank Albert Road crossing and the crossing at 70th Avenue East. About two-thirds of northbound traffic that is diverted by the closure is likely to use the Frank Albert Road crossing. The diversion will create substantial congestion at the intersection of Frank Albert Road and 20th Street East (for north to west left turns from Frank Albert Road) and at the intersection of Industry Drive and 20th Street East (for north to west left turns from Industry Drive). Signalization of those intersections would allow them to operate at nearly free-flow conditions. The Transpo study estimated the cost of signalizing the two intersections, and determined Union Pacific's pro-rata share of the cost of that signalization based on the added traffic that would be diverted by the closure of the 54th Avenue East crossing.

14. Howard Schesser testified for the City of Fife, supporting the petition subject to compliance with conditions that the city council imposed in its revised mitigated determination of non-significance. Mr. Schesser is community development director for the city. His department deals with all land use, as well as public works issues, engineering issues, and building issues on behalf of the city. He was involved in the preparation of the city's comprehensive plan. The city has adopted the comprehensive plan, and the plan has been approved by the state pursuant to the Growth Management Act. The comprehensive plan addresses the closure of the 54th Avenue East crossing. The plan provides that the city shall explore with Union Pacific the closing of the crossing at the time the access road contemplated in the Indian settlement agreement is built, to eliminate traffic going through the residential area and reducing congestion on 54th Avenue East and Valley Avenue. It is the city's policy to direct through traffic around the city's residential areas rather than through them. The city is working with the county on several transportation network options involving relocation of the Melroy Bridge and the diversion of traffic off the Frank Albert bridge, so that through traffic will go around the city. Construction of a railroad overpass at 54th Avenue East would be contrary to the city's planning efforts. The city also is looking at placement of a road network so that residents of the area just north of the 54th Avenue East crossing will have additional access to Valley Avenue.

15. The city has received complaints from residents of the David Court subdivision about traffic and traffic congestion on 54th Avenue East. The increase in traffic is detrimental to the residential character of the neighborhood.

16. Prior to approving closure of the 54th Avenue East crossing, the city held workshops, public meetings, and public hearings. Public notice was given to the public and to the Puyallup Tribe.

17. When the area between the tracks and North Levy Road along 54th Avenue East is developed, drainage and flooding issues will have to be addressed. Any development in the area will have to deal with the flooding issues before it will be approved. Closing the 54th Avenue East crossing will not increase flooding-related safety risks in the area, in that the bypass road will provide an escape route that presently is provided by the crossing.

18. The railroad is granting of a perpetual easement at the site of the crossing for a grade-separated pedestrian and bicycle access across the tracks.

19. The city has adopted the Transpo study's determination of the railroad's pro rata portion of the cost of signalization of the intersections of Frank Albert Road and 20th Street East and Industry Drive and 20th Street East. The railroad has agreed to pay that pro rata portion.

20. The city has given consideration to emergency issues such as fire response times and police response times if the 54th Avenue East crossing is closed. It consulted with the fire purveyor, which is the City of Tacoma, and the City of Fife police department. Closing the crossing will not create a health and safety risk. It will not result in a significant increase in response time once the bypass road is built, and will provide a route that is certain; 54th Avenue East sometimes is blocked by trains, which requires emergency vehicles which attempt to use it to backtrack. The city issued a finding of no significance with regard to public safety issues.

21. The Puyallup Tribe of Indians submitted a letter to the Commission commenting on the proposed closure. The tribe comments that the land use consultation process spelled out in the Puyallup Land Claims Settlement concerning the bypass connector road between 54th Avenue East and Frank Albert Road remains in progress, that the City of Fife conditioned its approval of the closure of the crossing on completion of the connector, and that in the tribe's view the issue of whether to close the crossing is not yet ready for decision.

22. 13 members of the public testified concerning the petition to close the crossing. They were:

a. Francis Floyd testified on behalf of the estate of George K. Yamimoto. The estate owns 20 acres on the corner of 54th Avenue East and North Levy Road. The estate has concerns and questions regarding the public health and safety as it relates to the closure. Fire service to the property presently is provided down 54th Avenue East, using the crossing. If the crossing is closed, fire service will have to take a more circuitous route, using the Frank Albert Road overpass. The estate is concerned that response time may not be adequate on the new route, and that a new fire hall south of the tracks will be necessary. The estate recommends as possible mitigation measures a contribution toward a new fire hall, the placement of a water line under the tracks to the properties south of the present crossing, or the construction of an overpass at 54th Avenue East.

b. John Dekeyser is a Commissioner of Pierce County Water District No. 21. Mr. Dekeyser testified in person, and also submitted written comments which are part of Exhibit 13. Mr. Dekeyser opposes closure of the crossing. Mr. Dekeyser is concerned about the effect that closing the crossing would have on escape egress in the event of flooding in the area, particularly if plans to put hundreds of houses in the area south of the tracks are carried out. The Puyallup River used to meander through the area between the tracks and the present river channel before the river was channelized. The railroad bed is a levy, and there is a levy along the north side of the present river channel, and the land lying between the two is up to 15 feet lower than the levies. Water naturally flows north and west, through the railroad bed. There used to be trestles along the railroad bed for water movement, but the trestles have been replaced with culverts, which forces the water to head west into an impound area that does not drain when the river is high. Drainage of the impoundment is worsening due to natural siltation of the impoundment and siltation of the river. As this drainage situation worsens, Frank Albert Road is likely to flood. Measures that would mitigate the risk would be replacement of culverts on the railroad bed with trestles, the completion of a proposed route 167 prior to closing 54th Avenue East, and leaving an emergency crash gate and crossing on 54th Avenue East.

c. Charles Bob Myrick represents the Tacoma Wheelman's Bicycle Club. Closure of the 54th Avenue East crossing will increase safety problems for bicyclists at the two crossings onto which traffic will be diverted, the Frank Albert Road and 70th Avenue East crossings. The club favors having as many crossings in the area as possible. The club also is concerned that closure of the crossing will adversely impact plans for trail construction in the area.

d. James Dennis Loudy testified on his own behalf. He opposes closure of the 54th Avenue East crossing. He lives just north and west of the crossing. An increase in rail traffic in recent years has caused foundations and driveways to crack. Placing the proposed siding on the south side of the existing

railroad bed would have less of a negative impact on him. Drainage in the area is poor, and he wants the railroad to improve drainage. Closing the crossing will make it more difficult for him to get out of the area because his only egress will be onto Valley Avenue, which already is congested and will be more congested because of traffic that will be diverted to the 70th Avenue East crossing. Mr. Loudy would prefer that an overcrossing be constructed at 54th Avenue East, like the one on Frank Albert Road.

e. George Grimm testified on his own behalf. Mr. Grimm favors construction of an overpass for 54th Avenue East. Mr. Grimm lives on North Levy Road, near its intersection with 54th Avenue East. He is concerned about safety response time if the crossing is closed. He clocked the trip between the fire hall and his house, using the 54th Avenue East crossing and the Frank Albert Road crossing, and it took him 5 minutes for the former, and 13 minutes for the latter. Closure of the crossing will increase congestion on the Frank Albert Road crossing.

f. Franklin L. Dacca testified on behalf of his mother, Mariann C. Dacca. Mrs. Dacca owns 10 acres at the northeast corner of the crossing. She lives on 54th Avenue East. 54th Avenue East in the vicinity of the crossing has become a speedway. Residents who walk along the road or cross it to get mail are placed at risk. Closure of the crossing would make the area safer for the residents. A park area planned in conjunction with the closure also would benefit the residents of the area and of the city.

g. Keiko Loudy testified on behalf of herself and a neighbor. She resides at the end of 27th Street, in the David Court neighborhood northwest of the crossing. She opposes construction of the proposed railroad siding extension. The siding would be very close to homes in the neighborhood. She would have no problem with the siding if it were constructed on the south side of the existing rail bed.

h. Thomas E. Tarrant testified on his own behalf. Mr. Tarrant owns 2-3/4 acres between the tracks and the river, on the east side of 54th Avenue. 54th Avenue East is a direct route south from Interstate 5. Mr. Tarrant is concerned that, in view of the development planned for the area south of the tracks, closing the 54th Avenue East crossing will negatively impact medical and fire response, and will make it more difficult to get out of the area if there is flooding. He favors construction of an overpass on 54th Avenue East, to "allow it to be what it is."

i. Michael L. Gehrke testified on behalf of the Port of Tacoma. He is director of intermodal services for the port. He has been involved in a

number of studies addressing road and rail congestion in the area of the port. The port has grown tremendously since 1984. Pacific rim trade is projected to double in the next ten years. The ability of the Seattle and Tacoma ports to compete with California ports and the Vancouver, Canada, port depends upon their ability to move containers through their port facilities and out toward the major population centers east of Denver quickly. The new siding proposed by Union Pacific is needed to remove present and future congestion on the railroad's main line. Without this improvement, Tacoma and Seattle will lose out to their competitors.

j. Lewis William Boitano testified on his own behalf. Mr. Boitano resides in Puyallup. He is a bicyclist who rides to Fife. Closure of the 54th Avenue crossing will increase traffic on alternate routes. While other road system improvements proposed in the Fife master plan may solve many of the traffic problems that the closure will create, Mr. Boitano feels that closure of the crossing should wait until these street improvements and master plan are in effect.

k. Robert Mizukami testified on his own behalf. Mr. Mizukami is a farmer who resides at the intersection of 20th Avenue East and Frank Albert Road. He opposes closure of the 54th Avenue East crossing. He has traffic, drainage, public safety, and farmer convenience concerns, and disagrees with the city's determination of nonsignificance. Construction of the proposed siding will require the filling in of a drainage ditch. The crossing currently carries 5700 vehicle trips a day. Traffic that is diverted to the Frank Albert Road overcrossing will have to make a right turn from the new bypass road and from Industrial Way just at the base of Frank Albert overcrossing, which will cause them to be moving very slowly over the overcrossing. Closure of the crossing will increase emergency response time on the south side of the tracks between 54th and 70th. Closure of the crossing will make it more difficult for farmers who have property on both sides of the crossing to get equipment across the tracks. Mr. Mizukami also is concerned that Union Pacific will continue asking to close more crossings to the east in order to further expand the siding.

l. Ishtosh Meninsky testified on behalf of CMC Heartland Partners. CMC Heartland owns about 170 acres in the vicinity of the 54th Avenue East crossing, bounded on the north by the railroad right of way, on the west by 54th Avenue East, on the East by 70th Avenue East, and on the south by a wetland area. CMC Heartland opposes closure of the crossing. CMC Heartland participated in the City of Fife's public hearings that considered the closure of the crossing, and filed a paper opposing closure. CMC Heartland feels that the traffic study testified to does not adequately consider the impact on the intersection of 20th Street East and 54th Avenue East of planned future road projects in the Fife area. CMC Heartland also is concerned that extending the existing railroad siding may cause trains to back up across the 70th Avenue East crossing.

m. W. Carl Stegman testified on his own behalf and on behalf of some neighbors. Mr. Stegman lives in David Court. Mr. Stegman favors construction of an overcrossing at 54th Avenue East. Closure of the 54th Avenue East crossing will increase traffic congestion at the intersections of 20th Street and 54th Avenue East, 20th Street and Industrial Way, 20th Street and Frank Albert Road, and on Pacific Highway. Mr. Stegman is concerned about the impact of closing the crossing on fire and police protection, and flooding.

23. In addition to the letter from the Puyallup Tribe of Indians and the written comments of Mr. Dekeyser, described above, the Commission received a written statement of objection from CMC Heartland Partners. The statement contends that the petition of closure of the crossing is defective for reasons that are summarized in the memorandum portion of this order.

CONCLUSIONS OF LAW

- 1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties to this petition.
- 2. The public safety requires the closure of the crossing at grade at 54th Avenue East on the Union Pacific railroad line in Fife, Pierce County. The crossing is dangerous. The public convenience and need for the crossing do not outweigh the dangers to the public safety of leaving the crossing open.
- 3. The petition to close the 54th Avenue East crossing should be granted. Granting the petition should be made contingent upon the conditions set out in the City of Fife's Answer, as amended, and agreed to by Union Pacific.

ORDER

THE COMMISSION ORDERS That the petition of Union Pacific Railroad Company for closure of the 54th Avenue East grade crossing at or near milepost 149.08 Seattle Subdivision in Fife, Pierce County, is granted, and Union Pacific is authorized to effect the closure, conditioned upon the following criteria being met:

- a. The UPRR shall comply with the Department of Ecology's Puget Sound Stormwater Technical Manual for temporary and permanent stormwater facilities. A stormwater plan must be approved by the City prior to fill and grade permit issuance. That plan must take into consideration the existing stormwater conditions on adjacent properties and the impact to those properties caused by changes in the stormwater system. No plan shall be approved that increases or impedes stormwater flows on adjacent properties. Drainage District Number 21 must have the opportunity to review and comment on the stormwater plan prior to permit issuance by the City of Fife.

- b. The UPRR shall provide the City with a copy of the U.S. Army Corps of Engineers 404 Permit and a wetland mitigation planting plan prior to the issuance of any permit from the City.
- c. All fill imported into the site shall be clean fill. If other than clean fill is to be used, the UPRR must have a permit from the Tacoma-Pierce County Health Department and the approval of the City.
- d. The 54th Avenue East Extension shall be build across Puyallup Tribe of Indian land as outlined in Document 1, pages 17-18 of the "Settlement Agreement between the Puyallup Tribe of Indians and Local Governments in Pierce County, the State of Washington, the United States of America, and Certain Private Property Owners", dated August 27, 1988. The road shall be constructed, accepted by the City and open to through traffic before the crossing is closed.
- e. Upon closure of 54th Avenue East, the UPRR shall construct a temporary emergency cul-de-sac with ballast material on the north side of 54th Avenue. The location of the cul-de-sac shall be approved by the Community Development Director prior to construction or permit issuance. The temporary cul-de-sac shall be constructed in a manner that support fire apparatus;
- f. The track siding extension shall not be used for long-term storage of rail cars. Under normal conditions, long-term means more than 24 hours. The siding will have power-operated switches controlled only by the dispatching center.
- g. The UPRR shall pay to the city of Fife the sum or \$10,000 (Ten Thousand Dollars) to be used for the purchase of landscape materials to provide screening between the railroad tracks and the residential community to the north of the tracks (David Court Neighborhood).
- h. The UPRR shall provide a perpetual easement for a grade separated pedestrian/bicycle access across the railroad tracks at the 54th Avenue East alignment.

DATED at Olympia, Washington, and effective this 17th day of
 April 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

John Prusia
 JOHN PRUSIA
 Administrative Law Judge

NOTICE TO PARTIES

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a petition are contained in WAC 480-09-780(3). As provided in WAC 480-09-780(4), any party may file an answer to a petition for administrative review within ten (10) days after service of the petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2).

One copy of any petition or answer must be served on each party of record, with proof of service as required by WAC 480-09-120(2). When any party has appeared by an attorney or other authorized representative, service shall be made upon the representative.

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, Washington, 98504-7250. After reviewing petitions filed, answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.